

**This Opinion is Not a
Precedent of the TTAB**

Mailed: November 24, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hong Kong NETEASE Interactive Entertainment Limited

Serial No. 88256950

Zhi Dong of Hamre, Schumann, Mueller & Larson, P.C.,
for Hong Kong NETEASE Interactive Entertainment Limited

Matthew Howell, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

Before Lykos, Heasley and Hudis,
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Hong Kong NETEASE Interactive Entertainment Limited (“Applicant”) seeks registration on the Principal Register of the mark RANGERS OF OBLIVION (in standard characters) for the following goods and services (as amended):

Computer game cartridges and discs; Computer game cassettes; Downloadable computer game programs; Computer game programs downloadable via the Internet; Downloadable Computer game software; Downloadable Computer game software for use with personal computers, home video game consoles used with televisions and arcade-based video game consoles; Downloadable Computer gaming software for recreational game playing purposes; Downloadable Computer programs for pre-recorded games; Downloadable Computer programs for video and computer games; Downloadable computer game software

via a global computer network and wireless devices; Downloadable electronic game software for use on laptop, handheld computers, tablet computer, handheld wireless devices; Pre-recorded motion picture and television films about children's entertainment and computer games; Video disks and video tapes with recorded animated cartoons; Downloadable Virtual reality game software; Downloadable Augmented reality game software, in International Class 9; and

Entertainment services, namely, providing on-line computer games; Entertainment services, namely, providing on-line reviews of computer games; Production of video and computer game software; Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; Provision of information relating to electronic computer games provided via the Internet; Providing online news and information in the field of computer games; Arranging and conducting computer game competitions; Providing on-line nondownloadable electronic publications, namely, magazines and newsletters in the field of computer games; Providing online virtual reality games; Providing online augmented reality games, in International Class 41.¹

The Trademark Examining Attorney refused registration of Applicant's RANGERS OF OBLIVION mark pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground of likelihood of confusion with the mark OBLIVION (in standard characters), registered on the Principal Register for: "computer game programs; providing downloadable computer game programs offered via handheld computers, wireless telephones and mobile and wireless devices" in International Class 9.²

When the refusal was made final, Applicant appealed and indicated in its Notice of Appeal that it had requested reconsideration. However, Applicant never filed a

¹ Application Serial No. 88256950 was filed on January 10, 2019, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

² Registration No. 3154482, issued on October 10, 2006; renewed.

Request for Reconsideration. The Board, therefore, resumed the appeal. Applicant and the Examining Attorney filed briefs. We affirm the refusal to register as to both Classes 9 and 41.

I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter. With its Response to the First Office Action, Applicant submitted screen captures from Registrant's and Applicant's respective websites.³ In the Final Office Action, the Examining Attorney advised that he would not consider this Internet evidence because it did not bear the URL addresses or the access dates of the submitted webpages. *See In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1733 (TTAB 2018).⁴

As noted above, Applicant did not seek reconsideration of the Final Office Action so as to make the properly marked Internet evidence of record. *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1334 (TTAB 2009) (new evidence may be filed with request for reconsideration). After filing its Notice of Appeal, Applicant did not seek a remand in order to make the properly marked Internet evidence of record. *In re I-Coat*, 126 USPQ2d at 1734 n.15 ("The proper procedure for an applicant or examining attorney to introduce evidence after an appeal has been filed is to submit

³ Response to Office Action of October 1, 2019 at TSDR 38-42. Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, if applicable.

⁴ Office Action of October 29, 2019 at TSDR 6.

a written request with the Board to suspend the appeal and remand the application for further examination.”); *see also*, Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (same).

Rather, Applicant attached the properly marked Internet evidence to its Appeal Brief.⁵ The Examining Attorney objected to the evidence attached to Applicant’s Appeal Brief as being untimely.⁶ The Examining Attorney’s objection is well taken, and sustained. Trademark Rule 2.142(d) (“The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.”). Additionally, even if we considered Applicant’s Internet evidence, determining likelihood of confusion is based on the identification of the goods and/or services recited in Applicant’s application and the cited registration, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

II. Likelihood of Confusion - Applicable Law

We base our determination of likelihood of confusion under Trademark Act Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors enunciated in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) (cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); *see also In re Majestic Distilling Co.*,

⁵ Appeal Brief, 5 TTABVUE 15-19.

⁶ Examining Attorney’s Brief, 7 TTABVUE 8.

315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). However, “each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973).

In applying the *DuPont* factors, we bear in mind the fundamental purposes underlying Trademark Act Section 2(d), which are to prevent confusion as to source and to protect registrants from damage caused by registration of confusingly similar marks. *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *DuPont*, 177 USPQ at 566.

Varying weights may be assigned to the various *DuPont* factors depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“the various evidentiary factors may play more or less weighty roles in any particular determination”). Two key considerations are the similarities between the marks and the relatedness of the goods and services. *See In re i.am.symbolic*, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”)).

III. Likelihood of Confusion - Analysis

We now consider the arguments of Applicant and the Examining Attorney, the applicable law and the evidence of record. The likelihood of confusion factors Applicant and the Examining Attorney discussed are the similarity or dissimilarity of the marks, the relatedness of the goods and/or services associated with the respective marks, and the channels of trade in which the marks, goods and/or services travel. We discuss these factors below.

A. The Similarity or Dissimilarity and Nature of the Goods and/or Services, and Channels of Trade

1. Similarity of Goods

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...” *DuPont*, 177 USPQ at 567. “This factor considers whether ‘the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the ... [goods and] services.’” *In re St. Helena Hosp.*, 113 USPQ2d at 1086 (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)).

To determine the relationship between the respective goods and services, we are bound by the Identifications in Applicant’s involved Application and the cited Registration. *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (“Likelihood of confusion must be determined based on an analysis of the marks as applied to the [goods or] services recited in applicant’s application vis-à-vis the [goods or] services recited in [a] ...registration, rather than what the evidence shows

the [goods or] services to be.”) (citing *Canadian Imperial Bank v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987)).

“Likelihood of confusion must be found as to the entire class [of goods] if there is likely to be confusion as to **any** ... [product] that comes within the recitation of ... [goods] in that class.” *Primrose Retirement Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1033 (TTAB 2016) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)).

Registrant’s broadly worded goods in Class 9 are “computer game programs; providing downloadable computer game programs offered via handheld computers, wireless telephones and mobile and wireless devices.” Applicant’s goods in Class 9 include “downloadable computer game programs” and “downloadable computer game software via a global computer network and wireless devices.” We find that Applicant’s and Registrant’s Class 9 goods are, in part, legally identical. *See, e.g., In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”). The second *DuPont* factor, the relatedness of Registrant’s Class 9 goods and Applicant’s Class 9 goods, supports a finding that confusion is likely.

2. Similarity of Goods and Services

Registrant’s goods and Applicant’s services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in

some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] ... emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

Once again, Registrant’s goods in Class 9 are “computer game programs; providing downloadable computer game programs offered via handheld computers, wireless telephones and mobile and wireless devices.” Applicant’s Class 41 services include “providing online computer games” and “providing a web-based system and online portal for customers to participate in online gaming.” With respect to software, “it [is] proper for the [B]oard to ground its determination of relatedness in the fields for which [it is] ... created, rather than the media format in which [it is] ... delivered [– otherwise known as a] ... subject-matter-based mode of analysis” *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1948 (Fed. Cir. 2006). On this basis, we find Registrant’s Class 9 goods related to these particular Class 41 services identified in the Application. *Cf. In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413 (TTAB 2018) (“Applicant’s claim that the identification in the cited registration is limited to software applications that are ‘specifically and especially useful’ to their users must be rejected in view of the controlling principle that where the goods in an application or registration are broadly described, they are deemed to encompass ‘all the goods of the nature and type described therein....’”) (quoting *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)).

Evidence of relatedness also may include news articles or third-party websites showing that the relevant goods and services are used by purchasers for the same purpose; advertisements showing that the relevant goods and services are advertised together; or copies of use-based registrations of the same mark for both Applicant's identified services and the goods listed in the cited registration. *See, e.g., In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

The Examining Attorney made of record 19 active, use-based third-party registrations of marks registered in connection with the same types of Class 9 goods as those of Registrant and the same types of Class 41 services as those of Applicant.⁷ These third-party registrations have probative value to suggest that computer game software and computer games provided online are goods and services of a kind that may emanate from a single source, regardless of the modality in which access to the software is provided. *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001).

The Examining Attorney additionally made of record (with the Final Office Action of October 29, 2019) excerpts from six third-party webpages showing that it is

⁷ Office Action of April 1, 2019 at TSDR 10-32, 36-38 and 50-53; Office Action of October 29, 2019 at TSDR 24-32, 36-41, 47-51, 64-66 and 76-78.

common for the same companies to provide computer game software and online access to computer games:

- **King** – “In the Kingdom you’ll find the best games to play in your browser, as well as our game apps.” (at TSDR 8-9).
- **EA** – featuring “EA online games” and EA apps available for download via the App Store and Google Play (at TSDR 10-11).
- **Activision** – “Official CALL OF DUTY® designed exclusively for mobile phones” and “Download CALL OF DUTY® MOBILE now! ... Note: An Internet connection is required to play this game ... [T]his app contains social features that allow you to connect and play with friends” (at TSDR 12-13).
- **Bandi Namco** – providing downloadable computer game software for personal computers and puzzle games to be played online (at TSDR 14-15).
- **Microsoft Casual Games** – providing various digital versions of Solitaire available for download and to be played online through website access (at TSDR 17).
- **Nintendo** – providing access to numerous computer games to be played online and computer game software available via download or on media disk (at TSDR 18-20).

These third-party websites establish that the same entities commonly provide Registrant’s types of goods and Applicant’s types of services through the same trade channels for use by the same classes of consumers in fields of use that are similar or complementary in purpose or function. Consequently, Applicant’s services and Registrant’s goods are commercially related. See, e.g., *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009).

Applicant argues that the circumstances surrounding the marketing of Registrant’s goods and Applicant’s services are relevant to show that the respective goods and services are different.⁸ This argument is predicated on evidence that, as

⁸ Applicant’s Brief, 5 TTABVUE 13-14.

mentioned above, we decline to consider after sustaining the Examining Attorney's evidentiary objection.⁹ The second *DuPont* factor, the relatedness of Registrant's Class 9 goods and Applicant's Class 41 services, supports a finding that confusion is likely.

3. Channels of Trade

The third *DuPont* factor concerns the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 177 USPQ at 567; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). Neither the OBLIVION Registration nor the RANGERS OF OBLIVION Application contains any restriction on the channels of trade or classes of purchasers. When as here, the respective Identifications of Goods for International Class 9 are legally identical, in part, those particular goods are presumed to travel in the same channels of trade to the same class of purchasers. *In re Viterra, Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); ("[A]bsent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.").

Registrant's computer game software presumptively moves in all relevant trade channels for such software. Because of its identical function (delivery of computer game software to users), Registrant's goods would travel in the same trade channels

⁹ Applicant also notes that a Google search brings up a reference to the 2013 movie "Oblivion," starring Tom Cruise, before search results showing either Registrant's software or Applicant's online software services. *Id.* at 8-9 and 14, citing Office Action Response of October 1, 2019 at TSDR 43-46. As the Tom Cruise movie has nothing to do with the goods or services of Registrant or Applicant, we find this irrelevant to the present appeal.

through which Applicant's services of providing online computer games are offered. *M2 Software*, 78 USPQ2d 1947-48 (“[I]t [is] proper for the [B]oard to ground its determination of relatedness in the fields for which the goods [and services] are created, rather than the media format in which they are delivered.”). We also note, once more, the six third-party websites made of record by the Examining Attorney through which Registrant's types of goods and Applicant's types of services are promoted and sold – online direct-to-consumer websites – demonstrating an overlap of trade channels. The third *DuPont* factor, channels of trade, support a finding that confusion is likely.

B. The Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *In re Detroit Athletic*, 128 USPQ2d at 1048. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (quoting *In re Davia*, 110 USPQ2d at 1812). Moreover, “[w]hen trademarks would appear on substantially identical goods, ‘the degree of similarity necessary to support a conclusion of likely confusion declines.’” *Coach Servs.*, 668 F.3d 1356, 101 USPQ2d at 1722 (internal citations omitted).

Under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons between marks, and must instead rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255, 259

(TTAB 1980). “The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quotation omitted).

The parties’ marks ““must be considered ... in light of the fallibility of memory”” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). Therefore, the focus is on the recollection of the average purchaser, here, the purchaser of computer game software or online computer game software services, who normally retains a general rather than a specific impression of trademarks. *In re Assoc. of the U.S. Army*, 85 USPQ2d 1264, 1268 (TTAB 2007); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Applicant concedes, as it must, that Registrant’s mark and Applicant’s mark share the identical term OBLIVION.¹⁰ The Examining Attorney argues that adding a term to a registered mark generally does not obviate the similarity between the compared marks nor does it overcome a likelihood of confusion, citing *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) (finding JOSE GASPAR GOLD and GASPAR’S ALE confusingly similar); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1090 (TTAB 2016) (finding JAWS DEVOUR YOUR HUNGER and JAWS confusingly similar). The only exceptions, says the Examining Attorney, are when (1)

¹⁰ Applicant’s Brief, 5 TTABVUE 10.

the matter common to the marks is merely descriptive or diluted, and not likely to be perceived by purchasers as distinguishing source, or (2) the compared marks in their entireties convey significantly different commercial impressions – neither of which is the case here. *see, e.g., Citigroup*, 98 USPQ2d at 1258-59 (“City Bank” diluted by significant third-party usage of marks ending in this phrase; *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004) (PUTTING ON THE RITZ had different commercial impression than RITZ)).¹¹

The term OBLIVION means “the state of being unaware or unconscious of what is happening,” “the state of being forgotten, especially by the public,” or “extinction.”¹² In connection with computer game software and the providing of online computer games, we find OBLIVION to be inherently distinctive – a premise with which Applicant and the Examining Attorney both agree.¹³ Thus OBLIVION, in connection with Registrant’s goods and Applicant’s goods and services, is not merely descriptive, and Applicant has provided no evidence or argument that this term is diluted by the presence of third party marks in the marketplace or on the trademark register.

We also find that, when the OBLIVION and RANGERS OF OBLIVION marks are compared in their entireties, they do not convey a significantly different meaning or commercial impression. Rather, by adding the wording “RANGERS OF” to Registrant’s mark “OBLIVION, Applicant’s mark includes the entirety of

¹¹ Examining Attorney’s Brief, 7 TTABVUE 9-11.

¹² Definition of OBLIVION from a Google search (Office Action Response of October 1, 2019 at TSDR 18) – relied upon by both Applicant and the Examining Attorney in their briefs. 5 TTABVUE 8 and 7 TTABVUE 10.

¹³ Applicant’s Brief, 5 TTABVUE 9; Examining Attorney’s Brief, 7 TTABVUE 10.

Registrant's mark and gives the commercial impression of having certain characters, "RANGERS," from Registrant's "OBLIVION," or indicates that the goods and services promoted and sold in connection with Applicant's mark are a line extension of Registrant's computer game software. *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at *7 (TTAB 2019) ("[Respondent's] ROAD WARRIOR [mark for tires] looks, sounds, and conveys the impression of being a line extension of [Petitioner's] WARRIOR [mark for tires].") (citing *SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983)).

Applicant argues that: (1) RANGERS OF OBLIVION and OBLIVION look different because Applicant's mark is three words beginning with the distinct terms "RANGERS OF", whereas Registrant's mark is one word; (2) the wording RANGERS OF cannot be ignored, because "it is the first portion of a mark that is more likely to make an impression on potential purchasers," citing *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752, 1755 (TTAB 2009); (3) the marks differ in sound because the pronunciation of Applicant's entire mark includes three additional syllables than the Registrant's Mark; and (4) the marks have different meanings and commercial impressions because "RANGERS¹⁴ OF OBLIVION conveys an impression of wardens or policemen salvaging [one] ... from [a] ... state of unconsciousness"; so that, "if OBLIVION implies an inducement into the state of unconsciousness or a detachment

¹⁴ Applicant provided definitions of the term RANGER as meaning "a keeper of a park, forest, or area of countryside" or "a member of a body of armed men" with the Office Action Response of October 1, 2019 at TSDR 19. The Examining Attorney did not object to this definition, or its source.

from the real world,” Applicant’s mark, “through [the addition of] the words RANGERS OF, connotes a salvific reminder for remaining attachment to the real world.”¹⁵

While likelihood of confusion cannot be predicated on dissecting the marks into their various components, different features may be analyzed and given more or less weight, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *See In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). While it is true that the first portion of a mark usually is more likely to make an impression on potential purchasers,” *Brown Shoe* 90 USPQ2d at 1755, this is not universally true and there is no mechanical test to determine the dominant element of a mark. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1059-60 (TTAB 2017) (citing *In re Dixie Rests.*, 41 USPQ2d at 1533-34).

Here, we find the dominant portion of Applicant’s mark is “OBLIVION,” because it is the object of the preposition, the world from which the “RANGERS” come. “OBLIVION” is the only term in Registrant’s mark. *See In re Mr. Recipe*, 118 USPQ2d at 1090 (“Applicant’s mark JAWS DEVOUR YOUR HUNGER ... is similar to Registrant’s [JAWS] mark because they share the word ‘Jaws.’ The word ‘Jaws’ is the dominant element of Applicant’s mark because it is the subject of the sentence or slogan JAWS DEVOUR YOUR HUNGER”).

Further, contrary to Applicant’s arguments, even slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomm. &*

¹⁵ Applicant’s Brief, 5 TTABVUE 7-12.

Elec. Ass'n, 222 USPQ 350, 351 (TTAB 1983). The shared word “OBLIVION,” naturally, is pronounced the same in both marks.

In sum, when considered in their entirety, the marks RANGERS OF OBLIVION and OBLIVION are more similar than they are dissimilar. The added wording “RANGERS OF” is insufficient to distinguish Applicant’s mark from Registrant’s mark in appearance, sound, meaning or commercial impression. The first *DuPont* factor weighs in favor of finding a likelihood of confusion.

IV. Likelihood of Confusion - Conclusion

The first, second and third *DuPont* factors support the conclusion that confusion is likely. The RANGERS OF OBLIVION and OBLIVION marks have more similarities than dissimilarities. This is particularly true considering that marks would appear on, in part, legally identical goods as well as related goods and services. The trade channels for the respective goods and services overlap.

Decision: The refusal to register Applicant’s mark RANGERS OF OBLIVION for the goods identified in International Class 9 and services identified in International Class 41, on the ground of likelihood of confusion under Trademark Act Section 2(d), is affirmed.