

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 4, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Shivworks Products Group, LLC

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Serial No. 88330418
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Mark Bowen of Malin Haley DiMaggio & Bowen PA,
for Shivworks Products Group, LLC.

Jules Dean, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

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Before Cataldo, Wolfson, and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Shivworks Products Group, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark CLINCH PICK (“PICK” disclaimed) for “Military and tactical knives; fixed bladed knives” in International Class 8.¹

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of

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¹ Application Serial No. 88330418, filed on March 7, 2019, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

likelihood of confusion with the mark CLINCH DRIVE (in standard characters; “DRIVE” disclaimed) registered on the Principal Register for “Hand tools, namely, wrenches” in International Class 8.²

When the refusal was made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, this appeal resumed. Both Applicant and the Examining Attorney filed briefs. For the reasons explained below, we reverse the refusal to register.³

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor for which there is evidence and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular

² Registration No. 4728331, issued on April 28, 2015.

³ The TTABVue and Trademark Status & Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

determination.”).

In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“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.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Similarity of the Marks

We first consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 369 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). “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.” *In re i.am.symbolic, LLC*, 123 USPQ2d at 1748 (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted)). The focus is on the recollection of the average purchaser, who normally retains a general rather

than a specific impression of trademarks. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Although marks must be considered in their entireties, it is settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.”).

Applicant’s mark is CLINCH PICK in standard characters and the cited mark is CLINCH DRIVE also in standard characters. Due to the shared term CLINCH, the marks are similar in appearance, sound, connotation and commercial impression. The addition of a merely descriptive term in Applicant’s mark, i.e., “PICK”, and in Registrant’s mark, i.e., “DRIVE,” which have been disclaimed, does not detract from the similarity of the marks. Disclaimed matter that is descriptive of or generic for a party’s services is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”)

§§ 1207.01(b)(viii) and (c)(ii) (Oct. 2018).

Moreover, both marks begin with the identical term CLINCH. It is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered when making purchasing decisions. *Palm Bay Imps., Inc.*, 73 USPQ2d at 1692; *see also Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988); *Fruit of the Loom Inc. v. Fruit of the Earth Inc.*, 3 USPQ2d 1531, 1533 (TTAB 1987). As such, consumers will focus more on the term CLINCH in both Applicant's mark and Registrant's mark as the source-indicator for the parties' respective goods.

In challenging the refusal, Applicant maintains that its applied-for mark is distinct from the cited mark visually, aurally and in overall commercial impression.⁴ Specifically, Applicant contends that, although both marks begin with the term CLINCH, the addition of the terms PICK and DRIVE in Applicant's and Registrant's marks, respectively, creates distinctively different overall commercial impressions between the marks because these terms have different meanings.⁵ As such, Applicant concludes that the marks are sufficiently dissimilar so as to weigh against a finding of likelihood of confusion.⁶

We are not persuaded by Applicant's argument. We initially note that the cited mark issued on the Principal Register without a showing of acquired distinctiveness

⁴ Applicant's Appeal Brief, p. 5, 10 TTABVUE 10.

⁵ *Id.*

⁶ *Id.*

under Section 2(f) of the Trademark Act. Accordingly, we find Registrant's CLINCH DRIVE mark, when viewed in its entirety, is inherently distinctive and, therefore, is entitled to the normal scope of protection accorded an inherently distinctive mark.

We also note that there is no evidence of record demonstrating that third parties use marks identical or similar to the cited mark for identical or similar goods. Thus, the cited CLINCH DRIVE mark, based on this record, is not weakened by any third-party uses. Additionally, by disclaiming the term "PICK" in its applied-for mark, Applicant has conceded that this term is, at a minimum, merely descriptive of its identified goods. *See In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2014 n.4 (TTAB 1988). As noted, disclaimed matter that is descriptive of a party's goods is typically less significant or less dominant when comparing marks.

While the meaning or connotation of the terms PICK and DRIVE may differ, we find that consumers are likely to place more emphasis and significance on the initial and distinctive wording "CLINCH." In sum, when viewing the marks in their entireties, we find that Applicant's CLINCH PICK mark and the cited CLINCH DRIVE mark are more similar than dissimilar. Given that (1) both Applicant's mark and the cited mark begin with the identical and distinctive term CLINCH followed by disclaimed, merely descriptive wording, and (2) there is no evidence of record demonstrating any conceptual or commercial weakness of the cited mark as a whole and, therefore, the cited mark should be accorded the normal scope of protection afforded an inherently distinctive mark, we find the commercial impressions conveyed by the parties' respective marks are similar and sufficient to cause

purchasers and prospective purchasers who then encounter the other's mark on the other's goods, to mistakenly believe that these goods originate from or are sponsored by the same entity.

Accordingly, the first *DuPont* factor favors a finding of likelihood of confusion.

B. Similarity of the Goods

We next turn to the comparison of the goods under the second *DuPont* factor. In making our determination regarding the relatedness of the goods, we must look to the goods as identified in Applicant's application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed."); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

It is well-settled that the goods need not be identical or competitive to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs. Inc.*, 101 USPQ2d at 1722 (citation omitted); *Hilson Research, Inc. v. Soc'y for Human Res.*

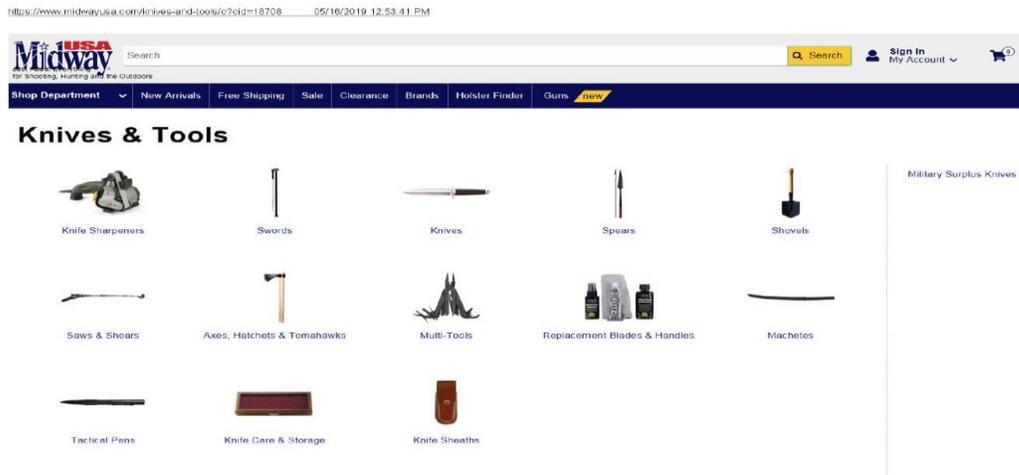
Mgmt., 27 USPQ2d 1423, 1432 (TTAB 1993). The issue here, of course, is not whether consumers would confuse Applicant's goods with Registrant's goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984). Moreover, registration must be refused if Applicant's mark for any of its identified goods is likely to cause confusion with the Registrant's mark for any of its identified goods. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

Applicant's goods are identified as "Military and tactical knives; fixed bladed knives." The Registrant's goods are identified as "Hand tools, namely, wrenches."

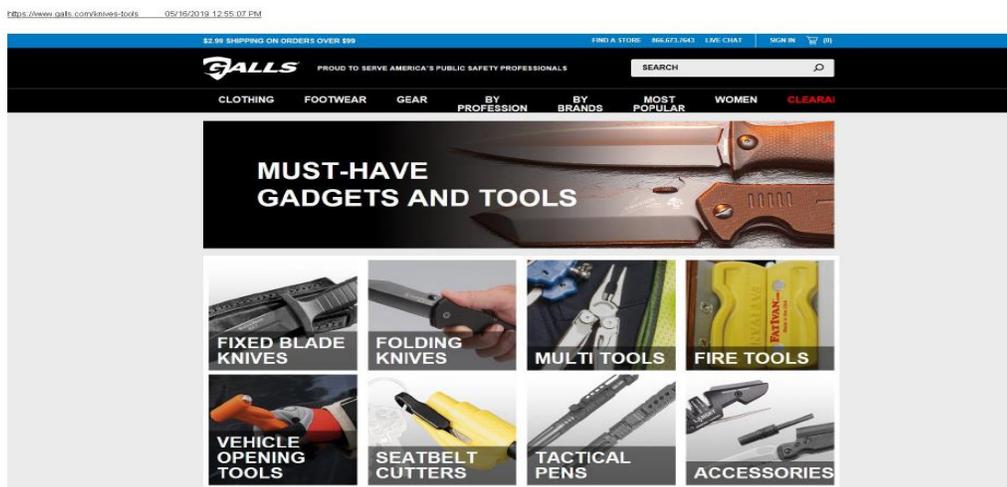
While the Examining Attorney acknowledges that the goods are not identical, he nonetheless argues that both Applicant's and Registrant's goods are a type of hand tool and are often found in the same shopping category called "KNIVES and TOOLS."⁷ As illustration, the Examining Attorney submitted screenshots from various online retailers which provide a shopping category of "KNIVES and TOOLS." A representative sample is provided below:

⁷ Examining Attorney's Brief, p. 7; 12 TTABVUE 8.

- www.midwayusa.com⁸



- www.galls.com⁹



KNIVES | TOOLS

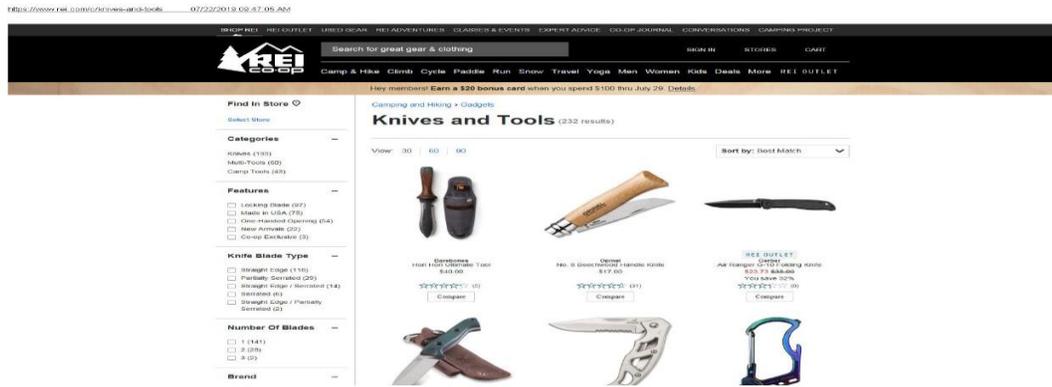
Choose from Galls' first-rate assortment of knives and tools. Our tactical knives and lifesaving tools are designed for rescue teams — and are ideal for forcible entry and extrication from unstable structures and vehicles. We also offer SWAT styled knives for concealed carry and extreme operations. Shop for [fixed blade knives](#), [folding knives](#), [multi-tools](#), [fire tools](#), [vehicle opening tools](#), [seatbelt cutters](#) and [accessories](#). Brands include Benchmade, Smith & Wesson, SOG, Boker, Stat Gear and Gerber.

⁸ May 16, 2019 Office Action, TSDR p. 12.

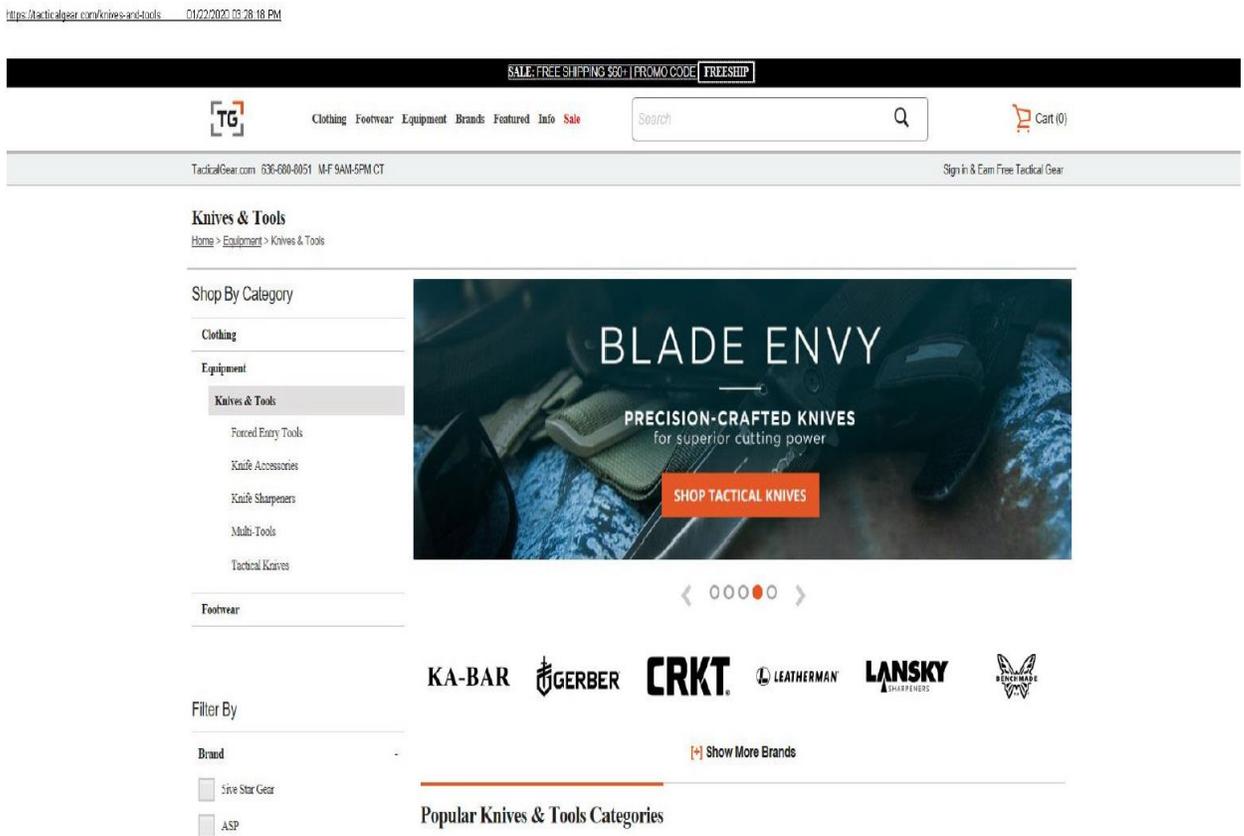
⁹ *Id.*, TSDR pp. 25 and 30.

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- www.rei.com¹⁰



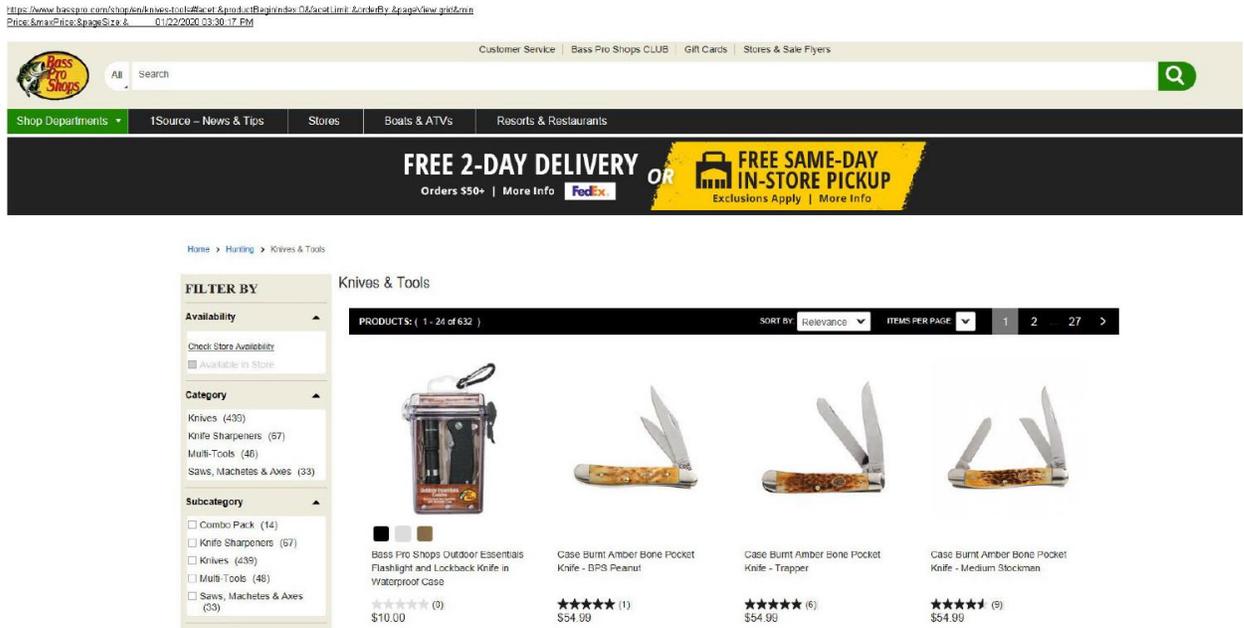
- www.tacticalgear.com¹¹



¹⁰ July 22, 2019 Final Office Action, TSDR p. 27.

¹¹ February 3, 2020 Denial of Request for Reconsideration, TSDR p. 8.

- www.basspro.com¹²



Additionally, the Examining Attorney contends that it is typical for manufacturers to offer a product called a multi-tool which commonly includes, inter alia, knives and wrenches as components within the same tool, performing the functions of both a knife and wrench.¹³ In view thereof, the Examining Attorney concludes that knives and wrenches are complementary goods.¹⁴ Further, the Examining Attorney maintains that knives and wrenches are provided as both survival and utility goods meant to be used together for a variety of projects and situations.

As examples, the Examining Attorney has submitted the following Internet

¹² *Id.*, TSDR p. 13.

¹³ Examining Attorney's Brief p. 7, 12 TTABVUE 8; *see also* May 16, 2019 Office Action, TSDR pp. 7-10.

¹⁴ Examining Attorney's Brief p. 7, 12 TTABVUE 8.

evidence:

- Scheels, www.scheels.com, indicating that this online retailer provides several types of knives including fixed blade and tactical knives, and wrenches to their consumers;¹⁵

The screenshot shows the Scheels website interface. At the top, the Scheels logo is on the left, and a search bar with the text "Search Your Passion" is in the center. To the right of the search bar is a "Find a Store" button. Below the search bar is a navigation menu with categories: MENS, WOMENS, KIDS, HUNT, FISH, OUTDOORS, SPORTS, FAN GEAR, COLD WEATHER HQ, and SALE. Below the navigation menu is a breadcrumb trail: "Home / All / Activities / Hunting / Knives & Tools". The main content area is titled "Knives & Tools". On the left side, there is a "Filter" section with a "Category" dropdown menu. The category list includes: Automatic Knives (44), Hunting Knives (90), Multi-Tools (50), Pocket Knives (154), and Saws & Tools (29). On the right side, there are "SORT" and "Items Per Page" dropdown menus. The "Items Per Page" is set to 24. The main product grid displays four items: 1. Burk 110 Auto Flite Knife, 2. Benchmade Pagan OTF, 3. Work Sharp Ken Onion Knife, and 4. Benchmade Infidel Double.

The screenshot shows the Scheels website interface with search results for "wrench". At the top, the Scheels logo is on the left, and a search bar with the text "Search Your Passion" is in the center. To the right of the search bar is a "Find a Store" button. Below the search bar is a navigation menu with categories: MENS, WOMENS, KIDS, HUNT, FISH, OUTDOORS, SPORTS, FAN GEAR, COLD WEATHER HQ, and SALE. Below the navigation menu is a breadcrumb trail: "Your search phrase was 'wrench' - Showing results for 'wrench'". The main content area is titled "26 Matches for 'wrench'". On the left side, there is a "Filter" section with a "Category" dropdown menu. The category list includes: Activities (25) and Home & Yard (1). Below the "Category" dropdown are sections for "Brand", "Activity", "Sale Products", and "Price". On the right side, there are "SORT" and "Items Per Page" dropdown menus. The "Items Per Page" is set to 24. The main product grid displays four items: 1. Real Avid Armorer's Master Wrench, priced at \$59.99, with a 7-star rating and 15 comments. 2. Wheeler FAT Torque Wrench with 10 Bit Set, priced at \$49.99, with a 4-star rating and 14 comments. 3. Magpul Armorer's Wrench, priced at \$74.99, with a 2-star rating and 2 comments. 4. Carlson's Speed Wrench, priced at \$19.99, with a 0-star rating and 0 comments.

- REI Co-op, www.rei.com, indicating that this online retailer provides survival knives and fixed blade knives, alongside various multi-tools with wrench features in the same shopping category;¹⁶

¹⁵ February 3, 2020 Denial of Request for Reconsideration, TSDR pp. 68-75.

¹⁶ July 22, 2019 Final Office Action, TSDR pp. 27-32.



Gerber
StrongArm Serrated Fixed Blade Knife
\$69.95
☆☆☆☆☆ (14)
[Compare](#)



GSI Outdoors
Cathole Sanitation Trowel
\$4.95
☆☆☆☆☆ (51)
[Compare](#)



Leatherman
Skeletool Topo Multi-Tool
\$69.95
☆☆☆☆☆ (11)
[Compare](#)

<https://www.rei.com/c/knives-and-tools> 07/22/2019 09:47:05 AM



Benchmade
636 Bugout Drop-Point Fine-Edge
Knife
\$120.00
☆☆☆☆☆ (16)
[Compare](#)



Leatherman
Signal Topo Multi-Tool
\$119.95
☆☆☆☆☆ (10)
[Compare](#)



Benchmade
940-1702 G10 EX Knife
\$195.00
☆☆☆☆☆ (13)
[Compare](#)

- Mega Knife, www.megaknife.com, showing that this online retailer offers a “3pc tactical hunting fixed blade” and wrench multi-tool set, that includes a knife;¹⁷



NEW ARRIVALS FREE GEAR KNIVES ▾ CS:GO KNIVES ▾ MYSTERY BOXES TACTICAL SETS ▾ SWORDS ▾
OUTDOOR & TACTICAL GEAR ▾

Home / KNIVES / 3 PC Tactical Hunting Fixed Blade Knife Karambit Wrench Tool SILVER SET NEW



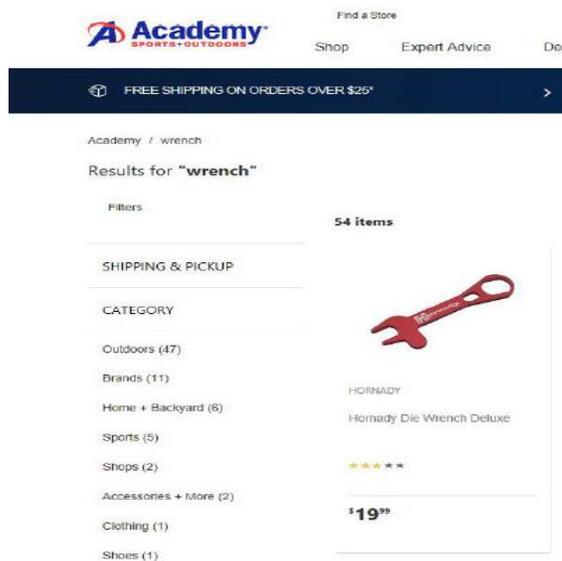
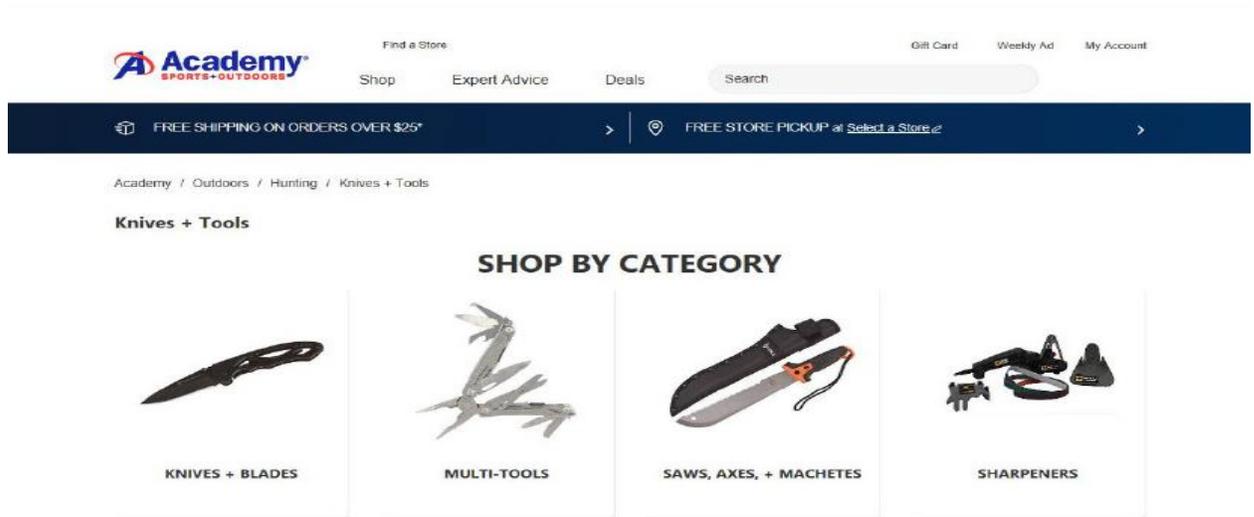
3 PC Tactical Hunting Fixed Blade Knife Karambit Wrench Tool SILVER SET NEW

\$64.95 \$44.95
(You save \$20.00)



Quantity

¹⁷ May 16, 2019 Office Action, TSDR pp. 8-9.



- Cabela's, www.cabelas.com, indicating that this online retailer provides various types of knives alongside various types of wrenches in the same category.²⁰

²⁰ *Id.*, TSDR pp. 23-35 and 77-81.

https://www.cabelas.com/category/Knives-Tools/104740397.uts 01/22/2020 03:46:39 PM

https://www.cabelas.com/browse.cmf?categoryId=75409580&CQ_search=wrench&CQ_rsType=SAVT 02/03/2020 01:57:33 PM

Relying on this evidence, the Examining Attorney concludes that the parties' respective goods are similar or complementary in terms of purpose or function and, therefore, the goods at issue should be considered related for likelihood of confusion purposes.

While the evidence submitted by the Examining Attorney, as discussed more fully below, demonstrates that Applicant's and Registrant's goods travel in similar trade

channels and are offered to overlapping classes of consumers, the evidence of record nonetheless is insufficient to show that a single entity provides both Applicant's and Registrant's goods under a single mark.²¹ "The mere fact that two products may move in the same channels of trade to the same class of purchasers does not, ipso facto, prove that there is a definite relationship between the goods." *Champion International Corp. v. Genova, Inc.*, 199 USPQ at 305. *See also Canada Dry Corp. v. American Home Product Corp.*, 468 F.2d 207, 175 USPQ 557 (CCPA 1972) (despite the fact that applicant's laundry detergent is sold in the same channels of trade to the same consumers as opposer's soft drinks, the two products are so different in their essential character and purpose that there is no likelihood of confusion); *Alliance Mfg. Co., Inc. v. Chicago Musical Instrument Co.*, 184 USPQ 118, 121 (TTAB 1974).

Additionally, the fact that Applicant's and Registrant's goods may be found under the same shopping category titled "KNIVES and TOOLS" does not demonstrate that the goods are necessarily related for likelihood of confusion purposes. Indeed, the shopping category itself delineates the goods by identifying them separately. Moreover, neither Applicant nor Registrant offers a multi-tool that incorporates both a wrench and a knife. Further, the example of multi-tools submitted by the Examining Attorney do not demonstrate that "military or tactical knives" or "fixed

²¹ The Examining Attorney submitted evidence of a single manufacturer that provides a combination of a fixed bladed knife and wrench. *See* example from www.megaknife.com, May 16, 2019 Office Action, TSDR pp. 8-9. However, a single instance of a party providing a combined fixed blade knife with a wrench as part of a three-knife set for hunting is hardly sufficient evidence to demonstrate that Applicant's and Registrant's goods are related for likelihood of confusion purposes.

bladed knives” are incorporated as components of these multi-tools. Instead, as the screenshots above demonstrate, the knives appear to be folding or retractable knives akin to a Swiss army knife.

We find that the knives included in these multi-tools are distinctively different goods than Applicant’s “military and tactical knives; fixed bladed knives.” We therefore find this evidence has little, if any, probative value in our analysis concerning the relatedness of the parties’ respective goods. Moreover, the Examining Attorney has not submitted any evidence to support his argument that knives and wrenches are provided as both survival and mechanical or utility goods meant to be used together for a variety of projects and situations. The evidence merely illustrates that the goods may be found in similar trade channels.

Quite simply, on this record, we find that the evidence does not show that Applicant’s goods and Registrant’s goods are related for likelihood of confusion purposes.

Thus, the second *DuPont* factor does not favor a finding of likelihood of confusion.

C. Similarity of Trade Channels and Classes of Purchasers

Next we consider established, likely-to-continue channels of trade, the third *DuPont* factor. Because the identifications of Applicant’s and Registrant’s goods have no restrictions as to channels of trade or classes of customers, we must presume that the identified goods travel through all normal and usual trade channels for such goods, and that they are sold to all classes of prospective purchasers for those goods. *Stone Lion*, 110 USPQ2d at 1161; *see also Coach Servs.*, 101 USPQ2d at 1723 (absent limitation, “goods are presumed to travel in all normal channels ... for the relevant

goods.”).

Applicant does not address this *DuPont* factor in its brief. Notwithstanding, the evidence submitted by the Examining Attorney establishes that, at a minimum, the parties’ goods travel in similar trade channels, i.e., online retailers, and that they are offered to overlapping consumers.

Accordingly, the third *DuPont* factor weighs in favor of finding a likelihood of confusion.

D. Sophistication of Consumer

Applicant argues that its purchasers are sophisticated and discriminating.²² In support of its argument, Applicant submitted the declaration of one of its managing members, Ms. Shannon Lew, who declares the following: (1) Applicant’s knives are generally designed to be compact and configured with alternate blade designs that are specifically constructed for use in self-defense situations;²³ (2) Applicant’s customers have often sought and received specialized tactical training in the use of edge weapons to protect themselves and others;²⁴ (3) Applicant’s knives are sold at a suggested retail price above \$140.00 that is significantly above the average retail price points for conventional knives;²⁵ and (4) Applicant’s knives are sold through its

²² Applicant’s Appeal Brief, p. 8; 10 TTABVUE 13.

²³ January 16, 2020 Request for Reconsideration, Shannon Decl., ¶ 5 TSDR pp. 12-13.

²⁴ *Id.* at ¶ 6 TSDR pp. 13.

²⁵ *Id.* at ¶ 7 TSDR pp. 13.

own website, which specializes in edged weapons for use in self-defense, and through a select network of dealers that similarly specialize in weapons used in self-defense.²⁶

Applicant's argument is not plausible given the identifications of goods involved in this appeal. Because there are no restrictions as to purchasers, trade channels, or price point for the goods in Applicant's involved application, we find that the purchasers of tactical/military knives or fixed bladed knives are members of the general public, who necessarily encompass both sophisticated consumers of such knives as well as those who have limited experience in self-defense training and may yet seek to purchase Applicant's goods for personal or home security and protection. Our decision must be based on the "least sophisticated purchasers," *Stone Lion*, 110 USPQ2d at 1163, and we consider those purchasers.

For those sophisticated purchasers that Applicant identifies who use care, we point out that they may not be sophisticated or knowledgeable in the field of trademarks or immune from source confusion. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993) (indicating that "even sophisticated purchasers can be confused by very similar marks"); *Top Tobacco, LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011); TMEP § 1207.01(d)(vii).

Thus, this *DuPont* factor is neutral.

II. Conclusion

We have considered all of the arguments and evidence of record. We find that the record as a whole does not support a finding that there is a likelihood of confusion.

²⁶ *Id.* at ¶ 4 TSDR pp. 12.

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While the marks are similar and the parties' respective goods may travel in overlapping trade channels and be offered to overlapping classes of consumers, the parties' respective goods have not been shown to be related. We therefore conclude that confusion is not likely. *See Kellogg Co. v. Pack'em Enterprises, Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("we know of no reason why, in a particular case, a single *duPont* factor may not be dispositive").

Decision: The refusal to register Applicant's standard character mark CLINCH PICK under Section 2(d) of the Trademark Act is reversed.