

This Opinion is Not a
Precedent of the TTAB

Hearing: April 26, 2022

Mailed: April 29, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Aubrac Holdings, Inc.
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Serial No. 88586817
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Ismail Amin, The Amin Law Group, Ltd., for Aubrac Holdings, Inc.

Kapil K. Bhanot, Trademark Examining Attorney, Law Office 108,
Kathryn E. Coward, Managing Attorney.

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Before Zervas, Adlin, and Johnson,
Administrative Trademark Judges.

Opinion by Johnson, Administrative Trademark Judge:

Aubrac Holdings, Inc. (“Applicant”) seeks registration on the Principal Register of the standard character mark ULTIMATE AMMUNITION¹ (“Applicant’s proposed mark”) for, inter alia, “Ammunition; Ammunition for firearms; Rifle ammunition; Shells for large size ammunition; Shotgun ammunition; Small arms ammunition,” in International Class 13 (“Applicant’s Goods”).

¹ Application Serial No. 88586817, filed on August 21, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce.

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's proposed mark, as used in connection with Applicant's Goods, so resembles the typed mark² ULTIMATE³ ("Registrant's Mark"), registered on the Principal Register in International Class 13 for "ammunition; shotgun shells; shotgun shell shot" ("Registrant's Goods"), as to be likely to cause confusion, to cause mistake, or to deceive.

The Trademark Examining Attorney also refused registration of Applicant's proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of the identified goods, and did not accept Applicant's claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).

Applicant requested reconsideration of the refusals. After the Examining Attorney denied the request for reconsideration, Applicant filed a Notice of Appeal. The appeal has been fully briefed. We affirm both refusals to register as well as the refusal to accept Applicant's claim of acquired distinctiveness.

² A "typed mark" is the legal equivalent of a standard character mark. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2014).

³ Registration No. 2522982, issued December 25, 2001; renewed.

Citations to the appeal record are to the publicly available documents in TTABVUE, the Board's electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry, if applicable.

Citations to the application record are to downloadable .pdf versions of the documents in the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

I. Mere Descriptiveness of ULTIMATE AMMUNITION

Section 2(e)(1) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with an applicant's goods or services, is merely descriptive of them. "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); see also *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Descriptiveness is analyzed in relation to an applicant's identified goods, "the context in which the [term] is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use"; that the term may have other meanings in different contexts is not controlling. *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1831. Also, descriptiveness is not considered in the abstract. *Id.* The question is whether someone who knows what the goods or services are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012).

Furthermore, where two or more merely descriptive terms are combined, the determination of whether the composite is also merely descriptive turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, the

combination results in a composite that is itself merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1374 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents and for tracking the status of the records by means of the Internet), *cited in In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1163 (TTAB 2013).

The Examining Attorney argues that ULTIMATE AMMUNITION is merely descriptive inasmuch as the mark is laudatory and merely describes a feature of Applicant's Goods, "namely, that they are the highest level of achievement in ammunition design and production." (Examining Attorney's Appeal Brief, 11 TTABVUE 5). During the hearing, the Examining Attorney further argued that "ultimate" modifies "ammunition."

Applicant contends that ULTIMATE AMMUNITION is not merely descriptive in that the definition for "ultimate" entered into the record by the Examining Attorney shows that "ultimate" is "indefinite and vague" and has multiple meanings. (Applicant's Brief, 9 TTABVUE 15-16). In fact, Applicant argues that its proposed mark is suggestive; the combination of "ultimate" and "ammunition" makes ULTIMATE AMMUNITION inherently distinctive at a minimum, "and, as such, does not require secondary meaning." (9 TTABVUE 15, 18). Applicant further posits that consumers may associate "ultimate" with the experience of using Applicant's ammunition, or the "sophistication of the ammunition as being well-developed." (9 TTABVUE 16).

First, we address the issue of acquired distinctiveness, also known as “secondary meaning.” At the hearing, Applicant’s counsel argued that he made a claim of acquired distinctiveness in the alternative, citing to page seven of Applicant’s Request for Reconsideration of November 23, 2020. We find, however, that the single reference to acquired distinctiveness in Applicant’s filings is not a claim, in the alternative, of acquired distinctiveness.⁴ There is no reference in the filing to claiming acquired distinctiveness in the alternative. The inclusion of the term “however” in the relevant paragraph cannot be construed as an alternative claim.

Applicant’s general statement operates as a concession that its mark is merely descriptive. *See In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1403 (TTAB 2018) (a claim of acquired distinctiveness made to overcome a refusal in a prior registration for the same wording in connection with same services “can be viewed as a concession by Applicant that the wording itself is not inherently distinctive for those services”). But here, the basis for the ULTIMATE AMMUNITION application is intent-to-use. “An intent-to-use applicant who has used the mark on related goods or services may file a claim of acquired distinctiveness under [Trademark Act] § 2(f) before filing an allegation of use, if the applicant can establish that, as a result of the applicant’s use of the mark on other goods or services, the mark has become distinctive of the goods or services in the intent-to-use application, and that this previously created distinctiveness will transfer to the goods and services in the intent-to-use application when use in commerce begins.”

⁴ *See* Nov. 23, 2020 Request for Reconsideration at 13.

In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 1347, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPE) § 1212.09(a) (July 2021). We find that Applicant’s claim of acquired distinctiveness fails because Applicant has not proffered any evidence that satisfies the test articulated in *In re Dial-A-Mattress*.

As to the remainder of Applicant’s arguments, we are unpersuaded. A determination of mere descriptiveness must be based on the significance of the terms in connection with the goods listed in the identification. Here, the record evidence and the identification – which includes the word “ammunition”— demonstrate that “ultimate” is laudatory and that ULTIMATE AMMUNITION is thus merely descriptive of Applicant’s Goods. The Examining Attorney entered into the record a dictionary definition of “ultimate” as “representing or exhibiting the greatest possible development or sophistication,”⁵ and a definition of “ammunition”⁶ as “projectiles, such as bullets and shot, together with their fuses and primers, that can be fired from guns.” One of Applicant’s business partners uses laudatory language to describes Applicant’s Goods: “Ultimate Ammunition will be providing us with high quality match grade ammunition for competitions and exhibition shooting. UA is a new company based out of Las Vegas, NV. They are investing a lot of money into research and development to produce the best ammunition in the world.”⁷ Even Applicant uses

⁵ Nov. 21, 2019 Office Action at 27 (definition from THE AMERICAN HERITAGE DICTIONARY).

⁶ *Id.* at 6 (definition from THE AMERICAN HERITAGE DICTIONARY).

⁷ June 11, 2021 Response to Office Action at 20 (Facebook entry on Global Precision Group page).

laudatory terms, or “puffery,” in its own catalog in which the ULTIMATE AMMUNITION mark is prominently featured:

- “Upgrade the capability of your machine gun to exceed all existing standards.” (emphasis added)

ULTIMATE AMMUNITION

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7.62x51 MARK 2 MOD3

Next Generation Machine-Gun Ammunition

The 7.62x51 MARK 2 Mod3 was created specifically for machine guns.
Made from Solid copper, the 150gr bullet is «barrier blind».
It easily penetrates barriers including sheet metal, auto glass and bone while maintaining the ability to effectively transfer energy to the target.
Upgrade the capability of your machine gun to exceed all existing standards.

DoD Certified primer.
NATO compliant primer sealant.

Military powder.
Good temperature stability.
Flash suppressant.
Clean burning.

NAS3 Two-Piece Shell Case Technology.
Match grade case.
50% lighter and 2x stronger than brass.
Functionally less abrasive than brass, self lubricating and corrosion resistant.

Neck tension optimized for bullet concentricity.
Crimping calculated to use in DMR platform.

150 grains Solid Match
This solid bullet was made exclusively for Ultimate Ammunition in hard copper alloy to give a good accuracy and devastating terminal effect.

7.62x51 MARK 2 Mod3 Specifications

Muzzle Velocity in 24" barrel: 2950 Fps
B.C. G1: 0.513
COAL: 2.798"
Barrel Twist: 12" or faster
Accuracy: <1 Moa at 500m
Temperature Range: -54°F to +165°F

Available in link

308 WIN. 3 8

⁸ *Id.* at 48.

- “Shoot less, shoot **better!**” (emphasis added)



Moreover, in its Reply Brief, Applicant states that its mark is “suggestive and not ‘merely descriptive’ because it suggests the notion of offering the best products in a specific marketplace,” and that its mark “suggests to sophisticated patrons a notion of offering the best products in a specific marketplace.” (12 TTABVUE 11).

⁹ *Id.* at 51, 55, 64.

Contrary to one of Applicant's arguments, no new or non-descriptive meaning is created by combining "ultimate" and "ammunition," so their composite, ULTIMATE AMMUNITION, is merely laudatorily descriptive and unregistrable. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)). We note that in support of his argument that "ultimate" is laudatory, the Examining Attorney cites, appropriately, *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (ULTIMATE BIKE RACK found laudatory and descriptive of applicant's bicycle racks being of superior quality). Applicant quotes that same case to support its argument that here, "ultimate" is suggestive: "[t]he term ULTIMATE has some elements of suggestiveness because it does not define any particular characteristic and requires the exercise of some imagination in order to reach a conclusion about the nature of the recited goods." *Id.* at 1565; Applicant's Reply Brief, 12 TTABVUE 9. However, Applicant takes that one sentence out of context. The remainder of the paragraph states: "**On the other hand, ULTIMATE also has some elements of descriptiveness because it has a laudatory or puffing connotation. The Board, however, has the duty to place this term in its proper context within the mark and to determine the public's perception.**" *Id.* at 1566 (emphasis added). The Federal Circuit ultimately affirmed the Board's finding that ULTIMATE BIKE RACK is merely descriptive.

Overall, we do not analyze whether Applicant's proposed mark is descriptive in a vacuum, but instead we analyze Applicant's proposed mark in connection with the

goods on which the mark is used. In this context, the evidence of record is more persuasive than Applicant's arguments. Consequently, we conclude that Applicant's proposed mark, ULTIMATE AMMUNITION, is merely descriptive of, inter alia, "Ammunition; Ammunition for firearms; Rifle ammunition; Shells for large size ammunition; Shotshell ammunition; Small arms ammunition."¹⁰

II. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark must be refused registration if it "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive" 15 U.S.C. § 1052(d).

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the *DuPont* factors. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019). "Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. ... Any single factor may control a particular case." *Stratus Networks, Inc. v. UBTA-UBET Commc'ns Inc.*,

¹⁰ In any event, the possible alternative meanings Applicant attributes to the proposed mark are themselves merely descriptive. *In re RiseSmart, Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012).

955 F.3d 994, 2020 USPQ2d 10341, *3 (Fed. Cir. 2020). “In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services.” *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, *29 (TTAB 2021) (citing *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)).

A. The Similarity or Dissimilarity and Nature of the Goods

We begin with the *DuPont* factor regarding the similarity of the goods. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Applicant’s Goods are, inter alia, “Ammunition; Ammunition for firearms; Rifle ammunition; Shells for large size ammunition; Shotshell ammunition; Small arms ammunition.” Registrant’s Goods are “ammunition; shotgun shells; shotgun shell shot.” The goods at issue are identical; the Examining Attorney need not prove, and we need not find, similarity as to each good listed in the respective identifications. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (a finding of likely confusion must be made with respect to at least one item in each opposed class of the application to establish likely confusion as to that class of goods); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“it is sufficient for finding a likelihood of confusion if relatedness is established for any item

encompassed by the identification of goods within a particular class in the application.”).

Applicant argues that, based on actual marketplace use, Applicant’s Goods are distinct from the goods actually offered under Registrant’s Mark. (Applicant’s Brief, 9 TTABVUE 9-13; Applicant’s Reply Brief, 12 TTABVUE 4-6). Applicant’s argument, however, is unpersuasive, for we must base our determination of likelihood of confusion on the identification of goods in the application and registration at issue, and not on extrinsic evidence of actual use. *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 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)). Here, both Applicant and Registrant identify “ammunition” generally, and shotgun ammunition specifically.

Because the goods are identical, this *DuPont* factor strongly supports a finding of a likelihood of confusion.

B. Established, Likely-to-Continue Channels of Trade and Classes of Purchasers

Next, we consider the similarity or dissimilarity of established, likely-to-continue channels of trade and classes of purchasers. Absent “specific limitations” regarding trade channels or purchasers, which are not present in the respective identifications, and given the identical nature of the identified goods, we presume that those identified goods move through identical channels of trade and are available to identical purchasers. *In re Viterra*, 101 USPQ2d at 1908 (identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re i.am.symbolic*, 123 USPQ2d at 1750; *see also In re Fat Boys Water Sports*,

118 USPQ2d at 1518-19 (in part legally identical goods presumed to flow in the same channels of trade to the same classes of consumers). As a result, these *DuPont* factors also weigh in favor of a finding of likelihood of confusion.

C. The Similarity or Dissimilarity of the Marks

When considering the *DuPont* factor relating to the similarity or dissimilarity of the marks, we must consider the appearance, sound, connotation and overall commercial impression of the marks in their entireties. *Palm Bay Imps., Inc. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Similarity as to any one of these factors may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.”), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. Sept. 13, 2019) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

“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*, 123 USPQ2d at 1748 (quoting *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014)

("[M]arks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison."). Our analysis must focus on the recollection of the average purchaser — here, an ordinary consumer of ammunition and shotgun shells — who normally retains a general, rather than specific, impression of trademarks.

In addition, descriptive or disclaimed matter is often "less significant in creating the mark's commercial impression," *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001), and may be given little weight. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Viterra*, 101 USPQ2d at 1908; *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We find "ULTIMATE" to be the dominant element of Applicant's proposed mark, since the second element, "AMMUNITION," which appears in the identification, is obviously generic for ammunition. Consumers are less likely to rely on generic wording to identify source. *See, e.g., In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (in comparing THE DELTA CAFÉ and DELTA, the generic term "CAFÉ" lacked sufficient distinctiveness to create a distinct commercial impression). While we do not ignore "AMMUNITION," its generic nature is a rational basis for giving it less weight in the analysis. *In re Detroit Athletic*, 128 USPQ2d at 1049.

Applicant argues that the Examining Attorney has “given inadequate consideration to the two-word combination of Applicant’s proposed mark, ULTIMATE AMMUNITION” (9 TTABVUE 9-10), and that its mark should be evaluated in its entirety, citing *Juice Generation, Inc. v. GS Enters LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). (9 TTABVUE 10). However, *Juice Generation* can be easily distinguished from the facts here. There, the applicant’s mark was the PEACE LOVE AND JUICE composite mark used for juice bar services. The opposer, which owned a family of PEACE & LOVE standard character and composite marks for restaurant services, entered into the record a “fair number of third-party uses of marks containing ‘peace’ and ‘love’ followed by a third, product-identifying term.” *Id.* at 1674. The U.S. Court of Appeals for the Federal Circuit found that the Board had not sufficiently considered applicant’s PEACE LOVE AND JUICE mark as a whole, instead giving more weight to the “peace” and “love” elements of the mark. *Id.* at 1676-77.

The lack of third-party registrations or third-party uses of ULTIMATE or ULTIMATE AMMUNITION for ammunition, shot, or any other good in this record is a far cry from the large quantum of third-party uses and third-party registrations that were held to be consequential in *Juice Generation*. Applicant’s proposed mark and Registrant’s Mark sound alike inasmuch as they share the word “ULTIMATE.” “AMMUNITION,” which is a generic term for Applicant’s proposed goods, would be discounted by those hearing it. *See In re Detroit Athletic*, 128 USPQ2d at 1049-50. Consumers also have a tendency to shorten marks too. *In re Aquitaine Wine USA*,

LLC, 126 USPQ2d 1181, 1188 (TTAB 2018) (recognizing consumers’ “propensity to shorten marks when ordering them orally”). Furthermore, “ULTIMATE,” which is the sole element of Registrant’s Mark, appears first in Applicant’s proposed mark, and is thus more likely to be remembered by purchasers. *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1998) (first part of a mark “is most likely to be impressed upon the mind of a purchaser and remembered”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word).

Overall, given the identical element ULTIMATE, which is found in both marks and dominant in Applicant’s, and the close similarity of the ULTIMATE AMMUNITION and ULTIMATE marks in appearance, sound, connotation, and commercial impression, we find the first *DuPont* factor also weighs in favor of finding a likelihood of confusion.

III. Conclusion

Balancing all of the relevant likelihood of confusion factors, we find that Applicant’s proposed mark, ULTMATE AMMUNITION, is merely descriptive for the goods proposed to be offered under the proposed mark, and that Applicant has failed to make a proper showing of acquired distinctiveness for its intent-to-use mark.

We also find that confusion is likely between Applicant’s proposed mark, ULTIMATE AMMUNITION, for inter alia, “Ammunition; Ammunition for firearms; Rifle ammunition; Shells for large size ammunition; Shotshell ammunition; Small

arms ammunition,” in International Class 13, and Registrant’s Mark, ULTIMATE for ammunition, given the identical goods, identical classes of purchasers, and the similarity of the marks in appearance, sound, connotation, and overall commercial impression.

Decision: The refusals to register Applicant’s proposed mark, ULTIMATE AMMUNITION, in International Class 13 for, inter alia, “Ammunition; Ammunition for firearms; Rifle ammunition; Shells for large size ammunition; Shotshell ammunition; Small arms ammunition,” are affirmed.