

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 23, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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*In re Genuine Risk*

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Serial No. 90170906  
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Jack A. Wheat of McBrayer PLLC,  
for Genuine Risk.

Benjamin Rosen, Trademark Examining Attorney, Law Office 120,  
Joshua Toy, Managing Attorney.

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Before Heasley, Pologeorgis, and Bradley,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Genuine Risk (“Applicant”) seeks registration on the Principal Register of the standard character mark **GOOD TIMES** for “bourbon” in International Class 33.<sup>1</sup>

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<sup>1</sup> Application Serial No. 90170906, filed on September 10, 2020, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming August 22, 2020 as both the date of first use and the date of first use in commerce. Applicant originally filed its application seeking registration of the mark GOOD TIMES BOURBON, but amended the drawing of the mark during prosecution to delete the term BOURBON from the mark, *see* October 24, 2024 Response to Suspension Inquiry, which was accepted by the Office. Additionally, in its July 2, 2024 Response to Office Action, Applicant amended its application to claim ownership of its prior Registration No. 7301065, issued on the Principal Register, for the standard character mark CASA GOOD TIMES for “Alcoholic beverages, except beers; Alcoholic beverages, namely, Distilled spirits.”

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 likelihood of confusion with the following five registered marks<sup>2</sup> (all owned by different registrants):

- Reg. No. 4491880 – **GOODE TIMES GUARANTEED** (standard characters) for “alcoholic beverages except beers” in International Class 33;<sup>3</sup>
- Reg. No. 4760521 – **LET THE GOOD TIMES ROLL** (standard characters) for “distilled spirits” in International Class 33;<sup>4</sup>
- Reg. No. 5499622 – **WE GROW GOOD TIMES** (standard characters) for “alcoholic beverages except beers; distilled spirits” in International Class 33;<sup>5</sup>

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**GOOD TIME**

- Reg. No. 6181713 – **GOOD TIME** for, among other things, “distilled spirits; vodka” in International Class 33;<sup>6</sup> and
- Reg. No. 6202224 – **GUARD THE GOOD TIMES** (standard characters) for “whiskey” in International Class 33.<sup>7</sup>

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<sup>2</sup> The Examining Attorney also cited a sixth registration, Registration No. 5785980 for the standard character mark GOOD TIMES FROM A GOOD PLACE for “alcoholic beverages, except beers” in International Class 33. The registration file of this registered mark indicates that the registrant submitted a Section 8 affidavit on November 17, 2025 that deletes from the registration, among other goods and services, the entirety of the identified Class 33 goods. While the Office has yet to act upon the registrant's Section 8 affidavit, it is clearly this particular registrant's intention to delete these goods from its registration. Thus, this particular registration will be given no consideration in our analysis.

<sup>3</sup> Registered March 4, 2014; renewed; owned by Jackson Family Farms, LLC.

<sup>4</sup> Registered June 23, 2015; renewed; owned by Rollins Distillery, Inc.

<sup>5</sup> Registered June 19, 2018; renewed; owned by Dry Hills Distillery, LLC.

<sup>6</sup> Registered October 20, 2020; owned by BioKare, Inc. This registration also identifies goods in International Class 25, which are not relevant to the issues in this proceeding.

<sup>7</sup> Registered November 17, 2020; owned by Proud Cock Distilleries.

In the initial Office Action, the Examining Attorney also cited to the following registered marks: (1) Reg. No. 4931903 for the mark TAP INTO GOOD TIMES! (stylized characters

When the refusal was made final, Applicant appealed. The appeal is fully briefed. For the reasons explained below, we reverse the Section 2(d) refusal to register.<sup>8</sup>

### **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, 1361 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314-15 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant and for which there is evidence and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”).

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plus design) for “Alcoholic beverages, except beers” in Class 33; (2) Reg. No. 4869769 for the mark SIPPIN’ ON GOOD TIMES (standard characters) for “Distilled Spirits; liquor; Spirits and liqueurs” in Class 33; Distilled Spirits; (3) Reg. No. 4489317 for the mark SHARE GOOD TIMES (standard characters) for “Alcoholic beverages, except beers” in Class 33; and (4) Reg. No. 4856045) for the mark TAP INTO GOOD TIMES! (standard characters) for “Alcoholic beverages, except beers” in Class 33. These four registrations, however, were cancelled during the prosecution of Applicant’s application and therefore have no probative value in our analysis. *Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 WL 2188890, at \*15 (TTAB 2022) (disregarding cancelled third-party registrations because “[a] cancelled or expired registration has no probative value other than to show that it once issued and it is not entitled to any of the statutory presumptions of Trademark Act Section 7(b)”).

<sup>8</sup> The TTABVue and Trademark Status and 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.

“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, 1199 (CCPA 1973) (internal citations removed). “Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because 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.’” *In re Embiid*, No. 88202890, 2021 WL 2285576, at \*3 (TTAB 2021) (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)).

#### **A. Similarity of the Goods**

We first turn to the comparison of the goods, the second *DuPont* factor. In making our determination regarding the similarity of the goods, we must look to the goods as identified in Applicant’s application and in the cited registrations. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (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.”)).

To reiterate, Applicant’s goods are “bourbon.” The five cited registrations employ broad wording to identify their respective goods, i.e., “alcoholic beverages, except

beer(s),” “distilled spirits,” and “whiskey.”<sup>9</sup> The broad identifications in each of the five cited registrations encompass Applicant’s more narrowly defined goods. *See In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 WL 1734918, at \*3 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”). Thus, the goods are legally identical.

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

### **B. Similarity of Trade Channels and Classes of Purchasers**

We next consider the third *DuPont* factor involving the established, likely-to-continue channels of trade of the goods. Because we have found that Applicant’s and Registrants’ goods are legally identical and there are no restrictions as to trade channels or classes of purchasers in any of the cited registrations or the involved application, we must presume that these legally identical goods are provided in the same trade channels and are offered to the same classes of purchasers. *Monster Energy Co. v. Lo*, No. 91225050, 2023 WL 417620, at \*8 (TTAB 2023) (citing *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion)); *In re Yawata Iron &*

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<sup>9</sup> The record includes the dictionary definitions of “bourbon and “spirit.” Bourbon is defined as “a whiskey distilled from a mash made up of not less than 51 percent corn plus malt and rye.” Merriam-Webster.com, November 7, 2024 Final Office Action, TSDR p. 21. “Spirit” is defined as “a distilled alcoholic liquor.” *Id.*, TSDR p. 15.

*Steel Co.*, 403 F.2d 752, 771 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

Thus, the third *DuPont* factor also weighs heavily in favor of finding a likelihood of confusion.

### **C. Strength of the Cited Marks**

Before we compare the marks at issue, we consider, under the sixth *DuPont* factor, Applicant's argument that the wording "GOOD TIMES" is suggestive and inherently weak as used in connection with the goods listed in the cited registrations.<sup>10</sup> We do so because a determination of the strength or weakness of the cited marks helps inform us as to their scope of protection. *See In re Morinaga Nyugyo Kabushiki Kaisha*, No. 86338392, 2016 WL 5219811, at \*6 (TTAB 2016) ("[T]he strength of the cited mark is--as always--relevant to assessing the likelihood of confusion under the *du Pont* framework.").

#### **1. Conceptual Strength of the Cited Marks**

Conceptual strength is a measure of a mark's distinctiveness and may be placed "in categories of generally increasing distinctiveness: . . . (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful." *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

Because each of the cited marks issued on the Principal Register without a claim of acquired distinctiveness, the marks are presumed to be inherently distinctive for the goods listed in the cited registrations. 15 U.S.C. § 1057(b); *Tea Bd. of India v.*

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<sup>10</sup> Applicant's Appeal Brief, p. 8, 4 TTABVUE 9.

*Republic of Tea, Inc.*, No. 91118587, 2006 WL 24060188, at \*21 (TTAB 2006) (“A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.”).

However, the Federal Circuit has held that if there is evidence that a mark, or an element of a mark, is commonly adopted by many different registrants, that may indicate that the mark or a common element thereof has some conceptual weakness as an indicator of a single source. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015) (“[E]vidence of third-party registrations is relevant to ‘show the sense in which a mark is used in ordinary parlance,’ . . . that is, some segment that is common to both parties’ marks may have ‘a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that segment is relatively weak.”) (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339 (Fed. Cir. 2015)).

Here, Applicant did not submit any third-party registrations. Instead, it relies solely on the cited registrations, as well as its own registration for the mark CASA GOOD TIMES, to support its argument: that the wording “GOOD TIMES” is conceptually weak and diluted because it is suggestive of the merriment consumers anticipate enjoying when imbibing alcoholic beverages. We agree with Applicant.

We find that the cited GOOD TIMES-formative marks themselves, each of which

is combined with other terms and each of which covers one or more pertinent alcoholic beverages, show that marks containing the term GOOD TIMES for alcoholic beverages can be distinguished by additional matter and/or the differing connotations conveyed in light of the conceptual weakness of the “GOOD TIMES” element.<sup>11</sup> See e.g., *In re Hartz Hotel Servs., Inc.*, No. 76692673, 2012 WL 1193704, at \*4 (TTAB 2012) (“It is clear from the third-party registrations that the addition of a geographic location to the word GRAND HOTEL has been sufficient for the [USPTO] to view these marks as being sufficiently different from the cited registrant’s mark, and from each other, such as not to cause confusion.”); *Plus Prods. v. Nat. Organics, Inc.*, No. 91055487, 1979 WL 24902, at \*7-8 (TTAB 1979) (numerous PLUS marks on the trademark register for vitamins reflect the Office’s belief, the trademark owners’ belief, and plaintiff’s belief that PLUS marks can be registered side by side for vitamins without confusion provided there are minimal differences between the marks.). Accordingly, we find that the registrations of record demonstrate that the wording GOOD TIMES, when used in association with alcoholic beverages, is conceptually weak, thereby undermining this wording as an indicator of a single source.

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<sup>11</sup> While we acknowledge that the four registrations of record that have been cancelled, as well as cited Registration No. 5785980 for the standard character mark GOOD TIMES FROM A GOOD PLACE where the relevant Class 33 goods will be deleted, have no probative value in our analysis, they nonetheless do show that these registrations also did issue, at one point in time, for marks including the wording GOOD TIMES used in connection with various alcoholic beverages.

## 2. Commercial Strength or Weakness of the Cited Marks<sup>12</sup>

To assess commercial strength of the cited mark, we consider the number and nature of similar marks in use on similar goods. *DuPont*, 476 F.2d at 1361; see *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, No. 91217095, 2016 WL 765551, at \*4 (TTAB 2016). If the evidence establishes that the consuming public is exposed to widespread third-party use of similar marks for similar goods, it “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1373 (Fed. Cir. 2005).

Here, Applicant has not submitted any evidence of third-party marketplace uses of marks identical or similar to the cited marks. And the third-party registrations discussed above do not establish that the relevant consuming public has been exposed to widespread use of similar marks in connection with alcoholic beverages. See, e.g., *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406 (CCPA 1973) (holding that “[t]he existence of these [third-party] registrations is not evidence of what happens in the market place or that customers are familiar with them”). Accordingly, the record does not establish that the wording GOOD TIMES included in the cited marks is commercially weak when used in connection with the goods listed in the cited registrations.

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<sup>12</sup> As is normally the case in ex parte proceedings, the fifth *DuPont* factor is neutral because the owners of the cited registrations are not parties to this proceeding, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited marks in the marketplace. *In re Integrated Embedded*, No. 86140341, 2016 WL 7368696, at \*9 (TTAB 2016); *In re Thomas*, No. 78334625, 2006 WL 1258862, at \*6 n.11 (TTAB 2006).

### 3. Conclusion as to the Strength of the Cited Marks

In short, while the evidence of record does not establish that the wording GOOD TIMES in the cited marks is commercially weak, the record does show that use of the wording GOOD TIMES in marks used in connection with alcoholic beverages has a commonly understood suggestive meaning and, therefore, this component of the cited marks is conceptually weak. In light of this conceptual weakness, we deem the GOOD TIMES component of each of the cited marks to have a limited scope of protection.

Accordingly, we find that the sixth *DuPont* factor favors a finding that confusion is not likely.

#### D. Similarity of the Marks

We finally consider the first *DuPont* factor, focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay*, 396 F.3d at 1371 (quoting *DuPont*, 476 F.2d at 1361).

Applicant's mark is **GOOD TIMES** in standard characters. The cited marks are as follows:

- **GOODE TIMES GUARANTEED** in standard characters;
- **LET THE GOOD TIMES ROLL** in standard characters;
- **WE GROW GOOD TIMES** in standard characters;

**CERTIFIED**



**GOOD TIME**

- **GOOD TIME** ; and
- **GUARD THE GOOD TIMES** in standard characters.

Applicant argues that the cited marks are conceptually weak, considering the multitude of GOOD TIMES-formative marks in the alcohol beverage space, and, that they should therefore be accorded a limited scope of protection.<sup>13</sup> As such, Applicant concludes that consumers can and will be able to distinguish between Applicant's mark and the cited registrations and, therefore, the Section 2(d) refusal should be reversed.<sup>14</sup>

The Examining Attorney contends that although Applicant's mark does not contain the entirety of the cited registered marks, Applicant's mark nonetheless is likely to appear to prospective purchasers as a shortened form of each respective cited mark.<sup>15</sup> Additionally, the Examining Attorney argues that because the goods at issue are legally identical in part, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods.<sup>16</sup> In applying this principle, the Examining Attorney maintains that the marks at issue are highly similar on their face and any small differences between the marks should not detract from the overall similarity of the marks at issue.<sup>17</sup> The Examining Attorney further contends that the marks at issue have similar meanings and overall

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<sup>13</sup> Applicant's Appeal Brief, p. 8, 4 TTABVUE 9.

<sup>14</sup> *Id.*

<sup>15</sup> Examining Attorney's Brief, p. 5, 6 TTABVUE 5.

<sup>16</sup> *Id.* at 6-7, 6 TTABVUE 6-7.

<sup>17</sup> *Id.* at 7, 6 TTABVUE 7.

commercial impressions because of the shared wording GOOD TIMES, making confusion likely.<sup>18</sup>

We initially note that the only common element in the marks is the term GOOD(E) TIME(S) and, as discussed above, this term is weak as a source identifier in the field of alcoholic beverages. While we are mindful that weak marks still deserve protection from registration of a similar mark for similar goods/services, *see China Healthways Institute, Inc. v. Wang*, 491 F.3d 1337, 1340 (Fed. Cir. 2007), the cited marks are not just GOOD TIMES but rather distinctive phrases that include the wording GOOD TIMES. We must evaluate whether the cited marks in their entirety are sufficiently similar to Applicant's mark GOOD TIMES that consumers would mistakenly believe the goods emanate from a common source. In other words, we will not find confusion solely because the parties' marks share the weak term GOOD TIMES. *See, e.g., In re Bed & Breakfast Registry*, 791 F.2d 157, 159 (Fed. Cir. 1986) ("The record shows that a large number of marks embodying the words 'bed and breakfast' are used for similar reservation services, a factor that weighs in favor of the conclusion that BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL are not rendered confusingly similar merely because they share the words 'bed and breakfast.'"); *In re FabFitFun, Inc.*, No. 86847381, 2018 WL 4043156, at \*7 (TTAB 2018) (holding I'M SMOKING HOT for cosmetics and related non-medical personal care items and SMOKIN' HOT SHOW TIME for cosmetics not likely to cause confusion based on a totality of the evidence showing that the shared

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<sup>18</sup> *Id.* at 6, 6 TTABVUE 6.

wording is somewhat weak in view of its suggestiveness and that the marks overall convey different commercial impressions); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(b)(viii) (Nov. 2025) and authorities cited therein (“If the common element of two marks is ‘weak’ in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality.”).

Turning to the marks at issue, we find that the cited marks and Applicant’s mark are somewhat similar visually and aurally in light of the shared wording GOOD TIMES. However, the similarity of the marks ends there. When viewing the cited marks in their entirety, and keeping in mind that the wording GOOD TIMES is conceptually weak for the goods involved, we find, contrary to the Examining Attorney’s arguments, that the cited marks have differing connotations and overall commercial impressions when compared to Applicant’s mark. Indeed, the structure and distinctive sentiments expressed in each of the cited marks are absent from Applicant’s mark. For example, the cited mark GUARD THE GOOD TIMES connotes protecting the good times one is experiencing. Further, the cited mark LET THE GOOD TIMES ROLL suggests that one should keep on having a good time. These connotations and commercial impressions are not present in Applicant’s mark. Moreover, given that the cited marks use “GOOD TIMES” as part of an overall distinctive phrase, we find it unlikely that consumers will view Applicant’s mark as a shortened form of any of the cited marks.

Quite simply, we find that Applicant's mark and the cited marks are sufficiently dissimilar in structure, meaning and overall commercial impression, notwithstanding any similarities in sound and appearance due to the shared wording GOOD TIMES. Thus, the first *DuPont* factor favors a finding that confusion is not likely.

## II. Balancing the Factors

Any of the *DuPont* factors may play a dominant role. *DuPont*, 476 F.2d at 1361-62. In fact, in some cases, a single factor may be dispositive. *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive."). In the present appeal, we find that (1) under the sixth *DuPont* factor, the record evidence shows that the term GOOD TIMES is conceptually weak when used in connection with alcoholic beverages, and (2) when considering the marks as a whole under the first *DuPont* factor, the marks are sufficiently dissimilar not only in structure but in meaning and overall commercial impression, notwithstanding some visual and aural similarity due to the shared term GOOD(E) TIME(S). For these reasons, we find the first and sixth *DuPont* factors to be pivotal and together prevail over the legal identity of the goods under the second *DuPont* factor, as well as the presumed identical trade channels and classes of purchasers under the third *DuPont* factor. Under these circumstances, we find that confusion is unlikely.

**Decision:** The refusal to register Applicant's GOOD TIMES mark under Section 2(d) of the Trademark Act is reversed.<sup>19</sup>

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<sup>19</sup> After Applicant amended the drawing of its mark from GOOD TIMES BOURBON to GOOD TIMES, the disclaimer of the word "BOURBON" that was previously entered remained as part of the application and still does. Since Applicant's mark no longer includes the term BOURBON, the disclaimer should be deleted upon the return of the application to the assigned Examining Attorney for further processing of Applicant's application.