

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: November 10, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Uri Charles
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Serial No. 90239457
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Taylor R. Mutell and John G. Tutunjian of Tutunjian & Bitetto, PC,
for Uri Charles.

Ronald McMorrow, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Greenbaum, Pologeorgis, and Allard,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

Uri Charles (“Applicant”) seeks registration on the Principal Register of the mark FLVSH mark (in standard characters) for goods ultimately described as “Downloadable mobile application software for use in text messaging, in-app messaging, location-based messaging, chatting, sharing and transmitting of photos,

images, pictures, videos, audio content, multimedia content, electronic files, information and data, and storing contacts,” in International Class 9.¹

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, as used in connection with the goods recited above, so resembles the mark FLASH (in standard characters) for “Computer software, software applications and mobile applications for picture sharing,” in International Class 9² as to be likely to cause confusion, to cause mistake, or to deceive.

After the Examining Attorney made the refusal final, Applicant appealed to this Board. Both Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

I. Evidentiary Issue

As a preliminary matter, the Examining Attorney has objected to Applicant’s attaching to his appeal brief copies of three third-party registrations, arguing that that they are untimely and should be disregarded.³

¹ Application Serial No. 90239457 was filed on October 7, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as July 10, 2019.

² Registration No. 5514173; issued on July 10, 2018.

³ Examining Attorney’s brief (6 TTABVUE 2).

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.

As a general rule, the Examining Attorney is correct that the evidentiary record should be complete before an appeal is filed. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); see also TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1207.01 (2022) and cases cited therein. However, Section 1207.03 of the TBMP also provides that if an applicant, during the prosecution of the application, provides a listing of third-party registrations, without also submitting actual copies of the registrations, and the examining attorney does not object or otherwise advise the applicant that the listing is insufficient to make such registrations of record at a point when the applicant could cure the insufficiency, the examining attorney is deemed to have waived any objection as to the admissibility of the list. TBMP § 1207.03. *See also In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012) (“[T]he examining attorney’s failure to advise applicant of the insufficiency of the list of registrations when it was proffered during examination constituted a waiver of any objection to consideration of that list. Accordingly, we will consider the ... list of registrations ... for whatever limited probative value such evidence may have.”) (quotation omitted), *aff’d*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013).

In the case before us, Applicant in his September 10, 2021 response to the first Office Action argued that the mark of the cited registration was weak and cited some particulars of two marks in support of his argument: (1) Registration No. 5120420 for the mark FLASHE, with what Applicant described as “an identical goods listing in the same class” (the “420 registration”);⁴ and (2) application Serial No. 90376298 for

⁴ Registration No. 5120420; issued on January 10, 2017.

the mark FLASH for what Applicant characterized as “the same class of goods” (the “’298 application”).⁵ Applicant did not make of record the related TESS records.

In the following September 23, 2021 Office Action, the Examining Attorney did not object to this improper listing of third-party marks or advise Applicant that the listing was insufficient to make the registration of record, or even address Applicant’s argument at all.⁶

Subsequently, Applicant attached to his appeal brief TESS printouts of: (1) the ’420 registration for the FLASHE mark;⁷ (2) the registration for the FLASH mark, which matured from the ’298 application;⁸ and (3) a newly introduced third-party registration, Reg. No. 2855434, for the mark FLASH (the “’434 registration”).⁹ Applicant also included a chart in his brief that recited certain details about these registrations, namely, the mark, the registration number, the registration date, class and a description of the goods.¹⁰

While the Examining Attorney’s failure to object to the improper listing during examination constitutes a waiver of objection to the evidence that was improperly submitted during examination, namely, the limited information about the marks of the ’420 registration and the ’298 application, the absence of an objection does not

⁵ September 10, 2021 Response to Office Action at TSDR 8.

⁶ September 23, 2021 Office Action.

⁷ Exhibit A to Applicant’s brief (4 TTABVUE 21-22).

⁸ *Id.* (4 TTABVUE 19-20).

⁹ *Id.* (4 TTABVUE 17-18).

¹⁰ Applicant’s brief, pp. 4-5 (4 TTABVUE 6-7).

constitute a waiver of *any* objection to the *future* untimely submission of registration evidence, such as the TESS printouts of the third-party registrations. *City of Houston*, 101 USPQ2d at 1537, n.7.

Therefore, we overrule the Examining Attorney's objection to the extent that it relates to the limited information of the third-party marks set out in Applicant's September 10, 2021 response. However, we sustain the Examining Attorney's objection to the extent that it relates to the TESS printouts attached as Exhibit A, the chart set out on pages 4-5 of Applicant's brief that summarizes the details of the TESS printouts in Exhibit A, and any related discussion to the extent that it involves more than the details of the two marks set out in Applicant's response. *City of Houston*, 101 USPQ2d at 1537, n.7.

We hasten to add, however, that the probative value of the admitted evidence has limitations. First, a third-party registration may be entitled to some weight to show the meaning of a mark, much like a dictionary definition. *See* TBMP § 704.03(b)(1)(B) (The "probative value is limited, particularly when the issue to be determined is likelihood of confusion, and there is no evidence of actual use of the mark shown in the registration [but] may be entitled to some weight to show the meaning of a mark, or a portion of a mark, in the same manner as a dictionary definition.") and cases cited therein. However, evidence of a pending application has little to no probative value as the application is evidence only that the application has been filed. *In re Team Jesus LLC*, 2020 USPQ2d 11489, at *3 n.29 (TTAB 2020) (an application is evidence only of the fact that it was filed, and therefore has no probative value).

II. Likelihood of Confusion Analysis

We base our determination of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(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*”). See also *In re Majestic Distilling Co.*, 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).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. See e.g., *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 or services. See *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (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.’”)).

A. The Similarity or Dissimilarity and Nature of the Goods, Channels of Trade and Classes of Purchasers

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the ... goods ... as described in an application or registration....” *DuPont*, 177 USPQ at 567. This factor considers whether the consuming public may perceive the respective goods of Applicant and Registrant as related enough to cause confusion about the source or origin of the goods. *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (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 goods, we are bound by the identifications of the involved application and the cited registration. *See e.g., Octocom Systems, Inc. v. Houston Computer Services 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 the matter before us, Applicant’s goods are identified as “Downloadable mobile application software for use in ... sharing and transmitting of ... pictures ...”.

The goods of the cited registration are identified as “[M]obile applications for picture sharing”.

We find that the goods identified in the involved application are identical in-part to the goods identified in the cited registration. It is sufficient for a refusal based on

likelihood of confusion that relatedness is established for any good encompassed by the identification in the cited registration; likely confusion need not be shown vis-à-vis each particular good in a particular class. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Furthermore, because of the identical nature of the goods, and the lack of any restrictions in the identifications, we must presume that the channels of trade and classes of purchasers are the same. *See e.g., In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade.”).

Applicant argues that the goods of the involved application and the cited registration are not closely related because Applicant’s identified goods offer more functionality than those of the cited registration. For example, Applicant argues that “Registrant’s mobile application software for picture sharing clearly does not include any ability to transmit text messaging, videos, audio content, multimedia content, electronic files, information and data, and storing contacts.”¹¹ In contrast, Applicant argues Registrant’s goods are solely for picture-sharing purposes.¹²

¹¹ Applicant’s brief, pp. 11-12 (4 TTABVUE 13-14).

¹² *Id.* at p. 12 (4 TTABVUE 14).

Applicant's arguments are not persuasive. Our determination must be made on the identifications of goods and it is sufficient for our purposes that the identifications are identical in-part. *Tuxedo Monopoly*, 209 USPQ at 988. The fact that Applicant's identification describes a mobile app with more functionality than the goods described in the cited registration does not obviate the fact that the goods are identical in-part. Further, to the extent that Applicant's mobile application for picture-sharing offers more features, i.e., "sharing and transmitting of ... audio content, multimedia content, electronic files, information and data, and storing contacts," than Registrant, the goods as identified by Registrant are subsumed by Applicant's identification. *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.'").

Applicant also argues that because the goods identified in the cited registration have limited functionality compared to Applicant's, this will cause Applicant's goods to be "marketed in completely different channels of trade to different consumers to be used differently."¹³

This argument is not persuasive. Applicant's argument as to different channels of trade based on the differences in functionality of the goods has no impact on our decision, as we must reach our decision on the basis of the identifications of goods in the involved application and cited registration, neither of which contains any

¹³ *Id.* at pp. 11-12 (4 TTABVue 13-14).

limitations. Where, as here, we have found the goods to be identical in-part, absent restrictions in the application and the cited registration, we must presume that the goods travel through the same channels of trade and are offered to the same class of consumers. *See e.g., Viterra*, 101 USPQ2d at 1908 (“[I]t is well established that, absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers.” (internal quotations omitted)); *In re Embiid*, 2021 USPQ2d 577, at *28 (TTAB 2021) (“[W]e may not import restrictions into the identification based on alleged ‘real world conditions’ of the sort argued by Applicant”) (citation omitted).

For the reasons discussed above, we find that the second and third *DuPont* factors weigh heavily in favor of likelihood of confusion.

B. Strength or Weakness of the Mark of the Cited Registration

Applicant argues that the mark of the cited registration is “extremely weak,”¹⁴ that “[t]he USPTO has allowed the registration of Registrant’s mark, as well as numerous other identical marks for related goods,”¹⁵ and that there is a “crowd of ‘FLASH’ marks, with similar goods, [and that] the purchasing public has learned to differentiate [them] from each other.”¹⁶ Applicant also argues that the cited mark

¹⁴ *Id.* at p. 3 (4 TTABVUE 5).

¹⁵ *Id.*

¹⁶ *Id.* at p. 6 (4 TTABVUE 8).

FLASH “is a weak mark” because it “immediately gives an idea of the picture sharing goods identified in the registration”¹⁷ and is “highly suggestive and descriptive”.¹⁸

Of course, because the cited mark FLASH is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), it is entitled to a presumption of validity under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b). *See also In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1362 (TTAB 2007). Thus, the registered mark FLASH cannot be treated as merely descriptive; we must consider the mark to be at worst highly suggestive. Nonetheless, we may acknowledge the weakness of a registered mark in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016).

Based on our earlier ruling, there is some evidence in the record of two marks that could potentially support Applicant’s argument that the cited mark is inherently weak. One mark, however, is the subject of a pending application (i.e., the ’298 application), which evidence is not persuasive because a pending application has no probative value other than as evidence that the application was filed. *Team Jesus*, 2020 USPQ2d 11489, at *3 n.29.

The only remaining evidence that could potentially support Applicant’s argument is the mark FLASHE of the ’420 registration. Third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the

¹⁷ *Id.* at p. 3 (4 TTABVUE 5).

¹⁸ *Id.* at p. 8 (4 TTABVUE 10).

[mark] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (quotation omitted). *See also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015).

In terms of commercial weakness or dilution in the marketplace, the sixth *DuPont* factor requires that we consider the “number and nature of similar marks in **use** on similar goods.” *Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (emphasis added) (quoting *DuPont*, 177 USPQ at 567)). However, Applicant has not introduced any evidence of use of the FLASH mark in commerce by third-parties. To the extent that Applicant relies on the ’420 registration and the pending application to support his position, this evidence is not competent evidence of use. *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (“Applicant’s citation of third-party registrations as evidence of market weakness is unavailing because third-party registrations standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences.”).

The ’420 registration alone is insufficient to show that the cited mark is weak and can only be afforded a very narrow scope of protection. The amount of evidence here – a single registration and no evidence of third-party use – “is a far cry from the large

quantum of evidence of third-party use and third-party registration that was held to be significant in both” *Jack Wolfskin* and *Juice Generation. In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018). *See also New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, *13 (TTAB 2020) (evidence of three third-party registrations, coupled with the lack of evidence of third-party use, “falls short of the ‘voluminous evidence’ that would establish” that the common ERA element of the involved marks is so commonly registered in connection with the involved goods that it is a conceptually weak term).

Finally, we turn to Applicant’s arguments that the cited mark FLASH “is a weak mark” because it “immediately gives an idea of the picture sharing goods identified in the registration”¹⁹ and is “highly suggestive and descriptive.”²⁰ Applicant’s argument is unpersuasive. At worst, the term FLASH is suggestive of the flash associated with the picture-taking for the photos that are then shared with others. In any event, because the mark is registered on the Principal Register, we cannot entertain Applicant’s arguments that the registered mark is descriptive of Registrant’s goods. *See Fiesta Palms*, 85 USPQ2d at 1362.

In sum, we find evidence of record does not demonstrate that the cited mark is weak and, therefore, we accord the cited mark the normal scope of protection any inherently distinctive mark deserves.

¹⁹ *Id.* at pp. 3, 8-9 (4 TTABVUE 5, 10-11).

²⁰ *Id.* at p. 8 (4 TTABVUE 10).

C. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we consider “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014).

The proper test regarding similarity “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). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than specific impression of marks.” *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018).

Because the goods have been found to be identical in-part, the degree of similarity necessary to support a finding of likelihood of confusion declines. *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010).

The bulk of the Applicant’s arguments focus on his incorporation of the letter “V” into his mark, which Applicant argues causes his mark to be sufficiently different in terms of sight, sound, meaning and commercial impression to avoid a likelihood of confusion. Applicant argues, for example, that his mark is spelled differently,

pronounced differently, and “does not create any connotation of pictures and/or picture sharing at all.”²¹

We disagree and find that Applicant’s mark is more similar than dissimilar to the cited mark. The marks are similar in sight due to the shared “FL” and “SH” elements. The similarity in their spelling also causes them to have some similarity in pronunciation. Further, the slight differences in spelling that might be apparent on a side-by-side comparison of the marks may not be noticed by consumers when the marks are separately considered, particularly given the identical nature of Applicant’s and Registrant’s goods, and when taking into consideration the fallibility of memory over a period of time and the fact that purchasers normally retain a general rather than a specific recollection of trademarks. *See, e.g., Viterra*, 101 USPQ2d at 1912 (XCEED and X-Seed and design similar); *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 485 (TTAB 1985) (CAYNA similar to CANA); *In re Bear Brand Hosiery Co.*, 194 USPQ 444, 445-46 (TTAB 1977) (KIKS similar to KIKI).

Additionally, the context of the intended use of the marks affects their commercial impression. We find it is likely that consumers, upon encountering Applicant’s mark for use with photo-related goods, are likely to understand the “V” to be an inverted “A” and “read” the mark as FLASH; consequently, the marks will have the same connotation and make the same commercial impression.

Applicant also argues:

Applicant’s mark is a unique and fanciful word that is not suggestive or descriptive of the goods listed in class 009. This is distinguishable from

²¹ *Id.* at 10 (4 TTABVUE 12).

Registrant's mark, FLASH, which is highly suggestive and descriptive of the picture sharing goods listed in Class 09. Registrant's mark, FLASH, immediately conveys knowledge of a quality, feature, function, or characteristic of a Registrant's pictures [sic] sharing goods. This is distinguishable from Applicant's mark, FLVSH, [which] is a fanciful, invented word used for the sole purpose of functioning as a trademark and not to suggest or describe a significant quality, feature, function, or characteristic of an applicant's goods. Thus, Applicant's goods and the Registrant's goods would not be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source.²²

We do not find Applicant's arguments persuasive. Applicant's mark may be a coined term and, if so, that would cause the mark to be deemed inherently distinctive. However, Applicant conflates the issue of inherent strength with the issue of similarity, and also conflates it with the issue of channels of trade. It may be true that Applicant's mark is a coined term; however, even coined terms can be found to be similar to registered marks when the marks are similar in sight, sound, meaning and commercial impression. *See e.g., Inter Ikea Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1741 (TTAB 2014) (finding IKEA and AKEA confusingly similar, stating “[w]here, as here, both marks are coined terms that look alike and sound alike and there are no known differences in the meaning to distinguish them, the marks engender a similar commercial impression”) (citations omitted); *Atlas Supply Co. v. The Dayton Rubber Co.*, 125 USPQ 529, 530 (TTAB 1960) (“The marks ‘PLYCRON’ and ‘NYCRON’ are similar in composition, they bear a marked resemblance in sound, and they are both coined terms having no apparent meaning other than as trademarks. In view thereof, it is believed that purchasers of tires might reasonably

²² Applicant's brief, pp. 8-9 (4 TTABVUE 10-11) (citations omitted).

attribute a common origin to ‘PLYCRON’ tires and ‘NYCRON’ cord for making tires”).

Additionally, as discussed above, because we find Applicant’s goods to be identical in-part to the goods identified in the cited registration and, because the respective identifications have no restrictions, we must presume that the goods travel in the same channels of trade. This is so, regardless of any differences in the marks.

Thus, the first *DuPont* factor weighs in favor of likelihood of confusion.

D. Balancing the Factors

In sum, we find that the goods identified in the involved application and the cited registration are identical in-part. Because of the in-part identical nature of the goods, and the lack of any restrictions in the identifications, we must presume that the channels of trade and classes of purchasers are the same. Applicant did not prove that the cited mark was inherently or commercially weak; therefore, it is accorded the normal scope of protection any inherently distinctive mark deserves. The marks of the involved application and the cited registration are more similar than dissimilar. Balancing these factors, we find that Applicant’s mark is likely to be confused with the mark of the cited registration.

Decision: The refusal to register Applicant’s mark under Section 2(d) of the Trademark Act is affirmed.