

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

Mailed: May 22, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Sun Tube, LLC

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Serial No. 97365902
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Zachary D. Messa of Johnson Pope Bokor Ruppel & Burns, LLP,
for Sun Tube, LLC.

Jacqueline Tate-Naghi, Trademark Examining Attorney, Law Office 120,
Joshua Toy, Managing Attorney.

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Before Thurmon, Bradley, and Brock,
Administrative Trademark Judges.

Opinion by Brock, Administrative Trademark Judge:

Sun Tube, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark PRO-GO for “lotion containers sold empty for domestic use, namely bendable tubing for personal transport of such lotions” in International Class 21:¹

¹ Application Serial No. 97365902 was filed on April 15, 2022 based upon Applicant’s 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).

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard character mark HANDY PRO-GO, registered on the Principal Register for goods including, inter alia, “portable plastic containers, namely, pails” in International Class 21 (“Registrant’s Mark” or “Cited Registration”).²

Applicant appealed the final refusal to register and the appeal is fully briefed.³

We reverse.

I. Analysis

“The Trademark Act [under Section 2(d)] prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion set forth in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003). In considering the

² Citations are to the downloadable .pdf versions of documents in the Trademark Status & Document Retrieval (TSDR) database.

Registration No. 7152017 issued on August 29, 2023. The Cited Registration additionally includes goods in Class 20, but the Examining Attorney did not cite these goods as a basis for the refusal to register Applicant’s mark. *See* February 13, 2025 final Office Action, at 3-4.

³ Appeal brief, 4 TTABVUE; Examining Attorney’s brief, 6 TTABVUE; Applicant’s reply brief, 7 TTABVUE. Citations to the briefs refer to TTABVUE, the Board’s online docket system.

evidence of record on these factors, we keep in mind that “[t]he 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.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976).

Here, we have considered these *DuPont* factors, as well as any other factor that is relevant and for which there is evidence and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weight, however, 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”). We weigh the factors together to determine if, on balance, they indicate that confusion is likely. *See, e.g., Charger Ventures*, 64 F.4th at 1381; *Majestic Distilling*, 315 F.3d at 1319. Ultimately, “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).

A. Similarity or Dissimilarity of Goods

We begin by considering the second *DuPont* factor, because Applicant’s discussion of the marks assumes a familiarity with the goods. Under this factor, we consider “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *DuPont*, 476 F.2d at 1361. We base our analysis on the identifications in the application and cited registration. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018) (“The relevant inquiry in an ex parte proceeding

focuses on the goods and services **described in the application and registration, and not** on real-world conditions.”) (emphasis in italics in original changed to bold here); *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (quoting *Octocom Sys., Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990)) (“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”). The goods in the application are “lotion containers sold empty for domestic use, namely bendable tubing for personal transport of such lotions”, and the goods in the Cited Registration are, inter alia, “portable plastic containers, namely, pails”.

Applicant argues that the goods are dissimilar because the goods in the Cited Registration are specifically limited to pails, which are not included in Applicant’s limited identification.⁴ Applicant’s argument is unavailing, because identity is not required to support a finding of likelihood of confusion. *Coach Servs. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (“[I]t is not necessary that the products ... be similar or even competitive to support a finding of likelihood of confusion ... if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.”) (internal citations omitted).

⁴ 4 TTABVUE 10. Applicant also refers to the Class 20 goods in the Cited Registration, namely, “plastic inserts for use as container liners.” *Id.* Because these goods did not form the basis for the instant refusal, we do not address them; the refusal is based on the Class 21 goods in the Cited Registration. See February 13, 2025 final Office Action at 3 (“Registrant’s mark is HANDY PRO-GO in standard characters for, in pertinent part, ‘portable plastic containers, namely, pails’ in International Class 021.”).

The Examining Attorney submitted evidence to show that Applicant's goods are related to Registrant's in a manner likely to cause source confusion. "Evidence of relatedness may include ... advertisements showing that the relevant goods and services are advertised together or sold by the same manufacturer or dealer ..." *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *5. In particular, the Examining Attorney asserts that the nine websites in the record demonstrate that "the same entity commonly provides both lotion containers sold empty for domestic use, namely bendable tubing for personal transport of such lotions and portable plastic containers, namely, pails, under the same mark."⁵ *See, e.g., Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024); *Detroit Ath. Co.*, 903 F.3d at 1306. We review this evidence to determine whether it shows that consumers are accustomed to seeing both types of goods sold under a single mark.

As an initial matter, the application originally identified "lotion containers sold empty for domestic use." In response to the August 4, 2024 Office Action, to which the Examining Attorney attached three websites to show that Applicant's then-goods were related to Registrant's pails, Applicant amended its original identification of goods to "lotion containers sold empty for domestic use, **namely bendable tubing for personal transport of such lotions**" (emphasis added).⁶ Accordingly, the first three websites discussed below do not show goods with the new limitations in Applicant's amended identification. The six additional websites attached to the

⁵ 6 TTABVUE 7-8; evidence at August 4, 2024 Office Action at 7-24, and February 13, 2025 final Office Action at 7-55.

⁶ October 15, 2024 response to Office Action, at 5.

February 13, 2025 final Office Action addressing Applicant's amended goods, , reflect the Examining Attorney's search for "tubes."

- **Containerandpackaging.com**⁷

This entity appears focused on containers, as indicated by its name. The screenshots show a number of plastic pails; the lotion containers are rigid plastic bottles, not "bendable tubing." While this website is not probative of whether plastic pails are sold under the same mark as Applicant's goods as amended, it does show lotion containers, generally, sold under the same website house mark as plastic pails.

- **Uline.com**⁸

The screenshots of this website include a number of plastic pails; again, the lotion containers are rigid bottles, not "bendable tubing." Additionally, these bottles are identified as "Boston Round Pump Bottles," so even if these goods are comparable to Applicant's, they appear to be of a specific type of container. Accordingly, this website is not probative of whether goods like Applicant's and Registrant's are offered under the same mark.

- **Packagingcentre.co.za**⁹

This website uses the .co.za country code, designating a website in South Africa. The website is in English, but pricing is not in U.S. dollars. *See In re Well Living Lab Inc.*, No. 86440401, 2017 TTAB LEXIS 156, at *12 n.10 ("We evaluate the probative

⁷ August 4, 2024 Office Action, at 7-14.

⁸ *Id.* at 15-18.

⁹ *Id.* at 19-24.

value of foreign information sources on a case-by-case basis. ... Various factors may inform the probative value of a foreign website in any given case, such as whether the website is in English (or has an optional English language version), and whether the nature of the goods or services makes it more or less likely that U.S. consumers will encounter foreign websites in the field in question.”). We accord this website no probative weight as there is no explanation in the record why U.S. consumers would purchase these goods from South Africa, and in South African rand rather than the U.S. dollar.

- **Kaufmancontainer.com**¹⁰

This is the first website attached to the final Office Action, so the Examining Attorney would have been able to provide evidence in response to Applicant’s amended identification of goods for the first time. Like some of the other websites, this entity is focused on “stock and custom packaging components.” The website shows several plastic pails; a keyword search for “tube” displays a rigid, plastic lotion tube as well as soft, plastic squeeze bottles (identified variously as “airless pump tubes,” “plastic tubes,” PCR tubes,” etc.), including travel sizes. Insofar as these soft plastic bottles are described as tubes, we find this probative of whether soft tubes or bottles for lotion are related to plastic pails.

¹⁰ February 13, 2025 final Office Action, at 7-12.

- **Wholesalesuppliesplus.com**¹¹

This entity appears focused on soap and candle making supplies, as evidenced by the product categories. The evidence shows a small (12 ounce) plastic “tub” without a handle (i.e., not a “pail”); the list of “tubes” includes this statement: “This guide focuses on two popular types of containers: lip balm tubes and deodorant tube containers.” The displayed tubes are sold under various marks including Crafter’s Choice, Elements Bath & Body, and Rustic Escentuals. This website is not probative of whether goods like Applicant’s and Registrant’s are offered under the same mark.

- **Usplastic.com**¹²

As indicated by the product categories displayed on the website, this entity offers a range of plastic products: bottles, buckets, containers, drums, fitting, labware, “sheets,” tanks, and tubing. The website shows a number of plastic pails; the “tottles and tubes” category includes lip balm tubes as well as soft, plastic lotion bottles described as “Malibu tubes,” “tottle bottles,” and “MDPE & LDPE open end lotion tubes.” Insofar as these soft plastic bottles are described as tubes, we find this website probative of whether soft tubes or bottles for lotion are related to plastic pails.

- **Opentip.com**¹³

The evidence shows a number of plastic pails sold under various trademarks, including Shurhold, Basco, and Vestil; the lotion containers (apparently in response

¹¹ *Id.* at 13-21.

¹² *Id.* at 22-27.

¹³ *Id.* at 28-37.

to a key word search for “cosmetic tube”) include soft, plastic lotion tubes or bottles also sold under various trademarks including Muka and Aspire. This website is not probative of whether goods like Applicant’s and Registrant’s are offered under the same mark.

- **Berlinpackaging.com**¹⁴

The evidence shows a number of plastic pails; the category “sunscreen & lotion tubes” includes soft, plastic lotion bottles or tubes. Insofar as these soft plastic bottles are described as tubes, we find this website probative of whether soft tubes or bottles for lotion are related to plastic pails.

- **Foamy.co.za**¹⁵

This is another website designating South Africa. As with the other South Africa website, we accord this website no probative weight;; the website is in English, but pricing is not in U.S. dollars. *See In re Well Living Lab*, 2017 TTAB LEXIS 156, at *12 n.10.

Applicant discounts the probative value of the websites, asserting that none of them offer “any wearable bendable tubing like Applicant’s goods as advertised and promoted on Applicant’s website.”¹⁶ We are not persuaded by this argument. First, Applicant’s goods are not limited to “wearable” tubing; that limitation is not part of the identification, and we do not read limitations into Applicant’s identification based

¹⁴ *Id.* at 38-44.

¹⁵ *Id.* at 45-55.

¹⁶ 4 TTABVUE 11.

on its website. *See Detroit Ath. Co.*, 903 F.3d at 1306. However, we do consider Applicant's limiting language of "bendable tubing for personal transport of such lotions," in our comparison of the goods. Second, some of the travel containers for lotion shown in the evidence are made of "bendable tubing." That is, some of the lotion containers appear to be made of flexible, plastic tubing that is crimped closed at one end and capped at the other; a tube that can be squeezed empty is bendable. In this manner, Applicant's limitation can still describe some of the travel lotion containers sold under the same marks as plastic pails.

In sum, we find that four websites (i.e., containerandpackaging.com, kaufmancontainer.com, usplastic.com, and berlinpackaging.com) show that the broader category of lotion containers may be sold under the same website house mark as plastic pails, but also sometimes not, and of these four websites that offer both types of goods, only the latter three include tube containers that might be considered "bendable" like Applicant's.¹⁷ Given the potential differences in the lotion container products and Applicant's own identification (and the lack of evidence that such differences are not consequential), as well as the limited number of entities offering both types of goods, we are not persuaded that the goods are sufficiently related such that confusion is likely. *Cf. Country Oven, Inc.*, 2019 TTAB LEXIS 381, at *7 (initial finding that retail bakery services are related to bread buns on the face of the

¹⁷ The evidence does not show (nor does the Examining Attorney explain) that these soft, plastic lotion bottles used in this comparison are effectively the same as Applicant's specific type of lotion container, namely, "lotion containers sold empty for domestic use, namely bendable tubing for personal transport of such lotions."

identifications bolstered by 10 use-based registrations including the same); *see also*, *In re Davia*, No. 85497617, 2014 TTAB LEXIS 214, at *25 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

The second *DuPont* factor weighs against a finding that confusion is likely.

B. Similarity or Dissimilarity of Trade Channels, and Classes of Consumers

Under the third and fourth *DuPont* factors we consider, respectively, “the similarity or dissimilarity of established, likely-to-continue trade channels” and “the conditions under which and buyers to whom sales are made.” *DuPont*, 476 F.2d at 1361; *Detroit Ath. Co.*, 903 F.3d at 1306, 1308; *Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 TTAB LEXIS 464, at *20. The Examining Attorney argues that because the goods are closely related, so too are the channels of trade and classes of purchasers.¹⁸ In addition, as the Cited Registration does not contain any restrictions as to channels of trade and classes of purchasers, we must presume the goods travel in all the usual channels of trade and to all the normal classes of purchasers for such goods. *See, e.g., Detroit Ath.*, 903 F.3d at 1308 (“The registration contains no restrictions on the channels of trade or classes of customers. As a result, the Detroit Athletic Club’s clothing is presumed to be sold in all normal trade channels to all the normal classes of purchasers.”) (citation omitted).

¹⁸ 6 TTABVUE 3.

Considering that the goods at issue are still lotion containers for domestic or personal use – despite the very specific limiting language that follows – they could still be offered for sale in the same types of online stores that sell many types of product packaging. That is, the Examining Attorney’s evidence instead tends to indicate that these products share the same channels of trade; some online retailers of packaging components and containers sell both plastic pails and lotion containers similar to Applicant’s, direct to consumers.¹⁹ Both types of goods flow through at least this common trade channel.

Applicant disputes this fact, asserting that “Registrant’s specimen and its website show[] that the Registered Mark’s goods are for professionals, such as professional painters.”²⁰ This may be true, but as previously discussed in the context of Applicant’s goods and its website, we cannot read limitations into the goods of the Cited Registration, its trade channels, or classes of purchasers. *See id.*

On this record, we find that there is overlap in the trade channels and classes of customers; these factors weigh in favor of a finding of likely confusion.

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.” *DuPont*, 476 F.2d at 1361; *see also Stone Lion*, 746 F.3d at 1319.

¹⁹ We find the analysis slightly different when considering whether products are related vs. whether they travel in overlapping trade channels and sales conditions, such as direct-to-consumer channels and purchases for domestic use.

²⁰ 4 TTABVUE 6.

“Similarity is not a binary factor but is a matter of degree.” *Monster Energy Co. v. Chun Hua Lo*, No. 91225050, 2023 TTAB LEXIS 14, at *44 (quoting *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 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*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) (quoting *Coach Servs.*, 668 F.3d at 1368. And “[t]he focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.” *In re Box Sols. Corp.*, No. 76267086, 2006 TTAB LEXIS 176, at *14.

Applicant’s mark is PRO-GO and the Cited Mark is HANDY PRO-GO. Both marks share the identical PRO-GO component, including the hyphen, while Registrant’s Mark contains the additional, leading term HANDY. The marks are therefore similar in appearance and sound, to an extent, and the entirety of Applicant’s PRO-GO mark is identical to the PRO-GO component of Registrant’s mark. “Marks have frequently been found to be similar where one mark incorporates the entirety of another mark, as is the case here.” *TiVo Brands LLC v. Tivoli, LLC*, No. 91221632, 2018 TTAB LEXIS 439, at *51-52.

Applicant disagrees, asserting that “the presence of the first and dominant term ‘HANDY’ in the Registered Mark significantly alters the mark’s connotation when compared to Applicant’s Mark”²¹ and “the difference in the dominant first terms of

²¹ 4 TTABVUE 6.

each of the Marks accompanied by the difference in appearance, sound, pronunciation and connotation supports the conclusion that each of the Marks have distinct and different commercial impression.”²² HANDY in the Cited Mark, Applicant argues, “evokes the impression of someone who is skilled craftsman, such as a painter, or in the alternative, a good which aids the skilled craftsman in his job,” and this “connotation is further supported by the use of ‘PRO’ which is a reference to professional.”²³

Applicant presents interesting arguments distinguishing *In re Mighty Leaf Tea*, 601 F.3d 1342 (Fed. Cir. 2010) (ML in standard characters was likely to cause confusion with the registered ML MARK LEES stylized mark), and likening its application to *In re Griffith Labs. Int’l, Inc.*, No. 78290739, 2006 TTAB LEXIS 89 (non-precedential). Non-precedential decisions are not binding on the Board, but may be relied upon for whatever persuasive value they may have. *In re Fiat Grp. Mktg. & Corp. Comm’ns. S.p.A.*, No. 79099154, 2014 TTAB LEXIS 29, at *10 n.6.

We disagree with Applicant’s assertion that the term HANDY in the Cited Mark is necessarily dominant and therefore “each of the Marks have distinct and different commercial impression[s].”²⁴ But we are also not persuaded by the Examining Attorney’s argument that “applicant’s mark is likely to appear to prospective purchasers as a shortened form of registrant’s mark.”²⁵ Indeed, Applicant’s argument

²² *Id.* at 8.

²³ *Id.*

²⁴ *Id.*

²⁵ 6 TTABVUE 4-5.

that HANDY reinforces the meaning of PRO tends to suggest that consumers might not shorten the Cited Mark in this manner. While we agree that the PRO-GO portion of both marks appear the same, we are not convinced that HANDY PRO-GO and PRO-GO have similar meanings and create similar commercial impressions when considered in relation to Applicant's and the Cited Registration's goods.

The shared PRO-GO component of the marks could indicate a shortened form of "professional" or the positive aspect of the phrase "pros and cons" combined with "go" or a shortened form of "on the go." PRO-GO connotes a portable, professional good; a portable good for a professional; or perhaps just something positive and portable. When viewed in connection with the goods in the Cited Registration, i.e., plastic pails, we agree with Applicant's assessment that this might suggest professional painters' buckets,²⁶ and the HANDY component reinforces this, as in a handyman. As applied to Applicant's goods, however, some of these meanings may change. Here, PRO-GO for travel lotion containers certainly leans on the "go" aspect of travel and portability, but the other meanings of PRO do not carryover as well; travel lotion containers for personal use do not so clearly suggest a professional use in the same manner as a plastic pail.

Therefore, despite some similarities in the appearance, sound, and meaning of PRO-GO and HANDY PRO-GO, when used in connection with their respective goods, the marks create different commercial impressions. Overall, we do not find the find

²⁶ 4 TTABVUE 8.

the marks sufficiently similar, which weighs against a conclusion that confusion is likely.

D. Conclusion: Balancing of the *DuPont* Factors

Having made our findings on the relevant likelihood of confusion factors, our final step is to assess these findings to determine if, on balance, confusion is likely. *See, e.g., Charger Ventures*, 64 F.4th at 1384. We did not find the marks similar or the goods related. We did find overlap in the trade channels and classes of customers. Given that “[t]he 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,” *Federated Foods*, 544 F.2d at 1103, the first and second *DuPont* factors are determinative. The balance tips in favor of a conclusion that confusion is not likely.

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