

This Opinion is Not a
Precedent of the TTAB

Mailed: April 30, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Arkoss Group Corp.
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Serial No. 97475190
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Augusto Perera of Augusto Perera, P.A., for Arkoss Group Corp.

Anna Burdecki, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.

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Before Coggins, Johnson, and Cohen,
Administrative Trademark Judges.

Opinion by Johnson, Administrative Trademark Judge:

Arkoss Group Corp. (“Applicant”) seeks registration on the Principal Register of the composite mark shown below (“Applicant’s Mark”) for “Beer; Beer, ale and lager; Beer, ale, lager, stout and porter” (“Applicant’s Goods”) in International Class (“Class”) 32.¹

¹ Application Serial Number 97475190 was filed on June 24, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intent to use the mark in commerce. The mark is described as follows: “The mark consists of a depiction of the profile of a male American Indian’s head. The man is wearing feather headdress and on the band of the headdress appears the term ‘SIBONEY,’ in which a design of a hatchet is formed inside the letter ‘O.’ The lower portion of the man’s head is partially covered by another depiction of the term ‘SIBONEY,’ which also includes a design of a



The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 2(d), on the ground that Applicant’s Mark is likely to be confused with the standard character mark RON SIBONEY² (the “Cited Registration”), registered on the Principal Register for “Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs” (“Registrant’s Goods”) in Class 33.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration,³ the appeal proceeded and was fully briefed. We affirm the refusal to register.

hatched [sic] inside the letter ‘O.’ Below the second term ‘SIBONEY’ appears the wording ‘LAGER BEER’ inside of a horizontal feather design. All of the forgoing elements appear inside of a shaded rectangle with curved edges.” Color is not claimed as a feature of the mark. The exclusive right to use “LAGER BEER” is disclaimed.

² Registration No. 5112129 issued on Jan. 3, 2017; a declaration under Trademark Act Section 8, 15 U.S.C. § 1058, has been accepted. The registration contains the following translation statement: “The English translation of ‘RON’ in the mark is ‘RUM.’” “RON” is disclaimed.

³ Request For Reconsideration After Final Action Denied dated Sept. 6, 2023; *see also* 4 TTABVUE.

Citations to the appeal record are from the publicly available documents in TTABVUE, the Board’s electronic docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473,

I. Evidentiary Issues

Applicant requests that the Board exercise its discretion and consider new evidence in the form of printed copies of webpages appended to Applicant's Appeal Brief. (9 TTABVUE 3). Some of the evidence attached to Applicant's brief was submitted prior to appeal, but some was not. The Examining Attorney objects to the new evidence, which includes printouts from the websites of Anheuser-Busch, Molson Coors, Bacardi, and Ron Barceló. (8 TTABVUE 2).

"The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal." Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *see also In re tapio GmbH*, 2020 USPQ2d 11387, at *3 (TTAB 2020) ("screen shots" from applicant's website that were embedded in applicant's brief and other materials that were first filed with applicant's appeal brief not considered); *see generally* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 1203.01, 1203.02(e), 1207.01 (2023).

"It is not necessary to attach as exhibits to a brief evidence that is already in the application because the appeal brief is associated with the application. Such evidence should not, as a matter of course, be resubmitted as exhibits to the brief." TBMP § 1203.02(e); *see also In re Info. Builders Inc.*, 2020 USPQ2d 10444, at *2 n.4 (TTAB 2020) (same). In addition, embedded in Applicant's brief are hyperlinks for

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. Applicant's Appeal Brief appears at 6 TTABVUE, the Examining Attorney's Appeal Brief appears at 8 TTABVUE, and Applicant's Reply Brief appears at 9 TTABVUE.

website material already part of the record. Providing a website address or link to Internet materials is insufficient to make such materials of record because the information displayed at the link can be changed or deleted. *See In re ADCO Indus.-Techs.*, 2020 USPQ2d 53786, at *2 (TTAB 2020) (citing *In re Olin Corp.*, 124 USPQ2d 1327, 1332 n.15 (TTAB 2017) (citing *In re Powermat Inc.*, 105 USPQ2d 1789, 1791 (TTAB 2013))). Consequently, we sustain the Examining Attorney's objection, and will only consider evidence that was properly introduced into the record during examination. Any other material will not be considered.

II. Likelihood of Confusion

To determine whether there is a likelihood of confusion between the marks under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(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). However, "[n]ot all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances." *Stratus Networks, Inc. v. UBTA-UBET Commc'ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020); *see also Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011). Two key considerations are the similarities between the marks and the relatedness of the goods. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380

(Fed. Cir. 2002) (“The likelihood of confusion analysis ... ‘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, and the Channels of Trade

We begin with the *DuPont* likelihood of confusion factors regarding the similarity of the goods and the channels of trade. The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.” 177 USPQ at 567. The third *DuPont* factor concerns “the similarity or dissimilarity of established, likely-to-continue trade channels.” *Id.*

When analyzing the second *DuPont* factor, we look to the identification of goods in the application and cited registration. *Stone Lion Cap. Partners v. Lion Cap. 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). The goods do not have to be identical or even competitive in order to find that there is a likelihood of confusion. *In re Iolo Techs., LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010). It is sufficient that the identified goods of the applicant and the registrant are related in some manner. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (citation omitted); *On-Line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000). Or, conditions surrounding the marketing of the goods could result in the goods likely being encountered by the same consumers under circumstances that, because of the marks used in connection with the goods, would lead those consumers to mistakenly

believe that the goods originate from the same source. *See, e.g., Coach Servs.*, 101 USPQ2d at 1722 (citation omitted); *On-Line Careline*, 56 USPQ2d at 1475.

Evidence of relatedness under the second factor may include pages from third-party websites showing that the relevant goods are used by purchasers for the same purpose; advertisements showing that the relevant goods are advertised together; or copies of use-based registrations of the same mark for both Applicant's identified goods and the goods listed in the cited registration. *See, e.g., In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014).


As noted above, Applicant's Goods are "Beer; Beer, ale and lager; Beer, ale, lager, stout and porter," and the goods identified in the Cited Registration are "Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs." Applicant contends, generally, that the goods offered under the marks are different. (6 TTABVUE 17-20). But to demonstrate relatedness of the goods, the Examining Attorney submitted as evidence printed copies of pages from the following websites showing that the same entity offers various types of beer, distilled spirits, rum, liqueurs, and other alcoholic beverages under the same mark: Dogfish Head, Round Barn, New Holland, Lexington Brewing & Distilling, Brickway Brewery & Distillery, Maplewood Brewing & Distillery, Grand Cannon Brewing & Distillery, and Square One Brewery and Distillery.⁴


⁴ *See* Nonfinal Office Action dated Mar. 7, 2023 at 8-43 (Dogfish Head, Round Barn, and New Holland); Final Office Action dated May 31, 2023 at 10-73 (Lexington Brewing & Distilling, Brickway Brewery & Distillery, Maplewood Brewing & Distillery, Grand Cannon Brewing & Distillery, and Square One Brewery and Distillery).

The Examining Attorney also submitted for the record copies of ten use-based, third-party registrations for marks identifying, inter alia, the goods identified in both the involved Application and the Cited Registration.⁵ The following examples are illustrative:

RYE KNOT (standard character mark), Reg. No. 6795441, for “Beer” and “Rum; Schnapps; Distilled spirits; Bourbon; Brandy; Hard cider; Mezcal; Vodka; Whiskey; Wine.”

NUTTERCUP (standard character mark), Reg. No. 6495124, for “Beer” and “Spirits, bourbon.”

 , Reg. No. 6695289, for “Beer” and “Bourbon; Whisky; Wine; Alcoholic beverages, except beer; Bourbon whisky; Spirits; Distilled spirits.”

 , Reg. No. 5939189, for “Beer,” “Distilled spirits,” and “Providing social meeting, banquet and social function facilities.”

ATWATER (standard character mark), Reg. No. 6188822, for “Beer” and “Bourbon whisky; Distilled spirits; Flavored brewed malt beverage; Flavored malt-based alcoholic beverages, excluding beers; Gin; Hard seltzer; Vodka; Whisky.”

As a general proposition, although use-based, third-party registrations alone are not evidence that the marks shown therein are in use or that the public is familiar with them, particularly in the absence of any evidence showing the extent of their use, we weigh whatever probative value they have in conjunction with the third-party

⁵ See Final Office Action dated May 31, 2023 at 73-92. The other five registrations are: PATIALA HOUSE (composite mark), Reg. No. 6456126; 3B (composite mark), Reg. No. 7024974; PASKENTA BREWERY & DISTILLERY, Reg. No. 6926288; SALT FLATS, Reg. No. 7066044; and CLASS 100, Reg. No. 7032380.

website evidence submitted by the Examining Attorney. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993) (citing *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988) and cases therein); *see also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (citation omitted). Here, the totality of the website and third-party registration evidence of record demonstrates that consumers would readily expect that the Registrant's "Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs" and Applicant's "Beer, ale, lager, stout and porter" are likely to emanate from the same source. As a result, we find that the goods are related. The second *DuPont* factor therefore weighs in favor of a finding of likelihood of confusion.

When analyzing the third *DuPont* factor, we consider whether the identifications of goods contain any restrictions as to channels of trade or classes of purchasers, and if there are none, we must presume that the identified goods travel in the ordinary channels of trade for such goods, and are offered or sold to all potential purchasers of such goods. *Coach Servs.*, 101 USPQ2d at 1722; *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000).

Applicant contends, generally, that "the consumers for the two parties' goods are very different" because "Applicant's goods do not include rum or spirits." (6 TTABVUE 20). Applicant's argument is unavailing, however. Here, the Application and Cited Registration are unrestricted as to channels of trade or classes of purchasers, so we must presume that the average consumer⁶ would encounter both

⁶ Applicant mentions the sophistication of consumers for the first time in its reply brief. (*See* 9 TTABVUE 5, 8). Therefore, we consider any argument regarding consumer

Applicant's and Registrant's goods in the ordinary trade channels for such goods. Although the Cited Registration specifically excludes "beers," the same third-party webpages referenced above demonstrate that "Beer, ale, lager, stout and porter" and "Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs" may be encountered by the same classes of consumers under the same marks in common trade channels – the websites and physical locations of breweries, distilleries, and wineries. This evidence of record supports a finding that Applicant's and Registrants goods are offered in common channels of trade. *See, e.g., In re Chatam Int'l*, 380 F.3d 1340, 71 USPQ2d 1944, 1947 (Fed. Cir. 2004) ("substantial evidence" supported finding of a close relationship between tequila and beer or ale; many of trade channels were same and customers were same) (quoting *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003)); *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1827-28 (TTAB 2015) (beer and other alcoholic beverages found to be sold to the same consumers in many of the same channels of trade, supported by deposition and declaration testimony). The relevant class of consumers for the identified goods also would be the same, i.e., adult members of the general public who consume beer and other alcoholic beverages.

Overall, we find all of the aforementioned third-party Internet evidence supports our finding that Applicant's Goods and Registrant's Goods are offered to the same

sophistication to be waived or forfeited. *See, e.g., In re Future Ads LLC*, 103 USPQ2d 1571, 1573 (TTAB 2012) (claim of acquired distinctiveness raised for first time in reply brief should have been made in a separate request for remand); *see generally* TBMP § 1203.01.

consumers in the same channels of trade. Therefore, the third *DuPont* factor weighs in favor of a finding of likelihood of confusion.

B. The Similarity or Dissimilarity of the Marks

Next, we consider the *DuPont* factor relating to the similarity or dissimilarity of the respective marks. In comparing the marks, we must consider their appearance, sound, meaning, and overall commercial impression when assessing them in their entirety. *Palm Bay Imps.*, 73 USPQ2d at 1692. Similarity as to any one of these elements may be sufficient to support a finding that the marks are similar for likelihood of confusion purposes. *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.”); *see also In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017) (quoting *Coach Servs.*, 101 USPQ2d at 1721); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (marks “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 “Beer, ale, lager, stout and porter” and “Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs” — who normally retains a general, rather than specific, impression of marks. *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014) (citations omitted).

Overall, “our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks.” *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at *4 (TTAB 2020) (citing *Stone Lion*, 110 USPQ2d at 1161). In making such a determination, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012).

Applicant argues that its composite mark is distinct in appearance, sound, connotation, and overall commercial impression from the mark of the Cited Registration, RON SIBONEY. (6 TTABVUE 4-17). We find, however, that the marks at issue are similar in sound, appearance, connotation, and overall commercial impression.

“SIBONEY” is the dominant element of both marks. We accord “SIBONEY” greater weight in Applicant’s Mark because in composite marks, the word portion is normally accorded greater weight because it is likely to make a greater impression

on purchasers, be remembered by them, and be used by them to refer to or request the services. *In re Viterra*, 101 USPQ2d at 1908 (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *31 (TTAB 2021)). Moreover, in Applicant's Mark, "SIBONEY" appears twice: It is prominently featured in large, stylized, white-outlined lettering in the center of the mark, across the profile of an American Indian male's head, and again in high contrast lettering (i.e., black letters on a white background) on the band of his headdress. The viewer's eye is immediately drawn to the word "SIBONEY" in the center of the mark and the design of a hatchet formed inside the centrally positioned letter "O" therein. The words "LAGER BEER," positioned below in much smaller letters inside of a horizontal feather design, are disclaimed. "It is well-settled that disclaimed, descriptive (or generic) wording may have less significance in likelihood of confusion determinations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); *Cunningham*, 55 USPQ2d at 1846 ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion.") (quoting *In re Nat'l Data*, 224 USPQ at 752); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression").

“SIBONEY” is the dominant element of Registrant’s mark. Although it appears first, “RON,” which translates to “RUM” in English, is descriptive for Registrant’s Goods and disclaimed. As a result, we find that consumers may easily drop the non-source identifying element “RON” and instead refer to Registrant’s mark simply as “SIBONEY” in conversation or written communications. Although there is no correct pronunciation of a mark and we consider all the reasonable possibilities of pronunciation, *Inter IKEA Sys.*, 110 USPQ2d at 1740 n.19, we find that “the propensity of consumers to often shorten trademarks,” *Big M Inc. v. U.S. Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985), and the significant impression that words in a composite mark generally make on consumers, *see In re Viterra*, 101 USPQ2d at 1908, cause Applicant’s Mark and Registrant’s mark to appear and sound similar. Moreover, Registrant’s mark is in standard characters and may be displayed in any lettering style, for the rights reside in the words, or literal elements, of the mark and not in any particular display or rendition. *In re Viterra*, 101 USPQ2d at 1909; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010). As a result, some consumers may consider Applicant’s SIBONEY LAGER BEER composite mark, shown below, as a related enterprise of Registrant’s RON SIBONEY.



As shown by the Wikipedia page submitted by Applicant, the word “SIBONEY” refers to an historical group of Taíno people of western Cuba, Jamaica, and the Tiburon Peninsula of Haiti.⁷ “[T]here is no evidence here, or other reason to find, that [SIBONEY] has one meaning when used [in Applicant’s Mark] and a second and different meaning when used” in the Cited Registration. *In re Joel Embiid*, 2021 USPQ2d 577, at *7-8 (TTAB 2021). This shared meaning, coupled with consumers’ propensity to shorten marks, makes the marks here more similar than dissimilar in connotation. And as discussed above, this propensity causes the marks to appear similar to consumers and to sound similar when spoken by consumers. As a result, we find that the marks share the same connotation and commercial impression when used on related alcoholic beverages. *See Krim-Ko Corp.*, 156 USPQ at 526 (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *see also In re Inn at St. John’s, LLC*, 126 USPQ2d at 1746 (quoting *Krim-Ko Corp.*).

Overall, we find that Applicant’s Mark and the mark of the Cited Registration are similar in appearance, sound, connotation, and commercial impression. This *DuPont* factor weighs in favor of a finding of likelihood of confusion.

C. Applicant’s Remaining Arguments

Finally, we note Applicant’s contention that RON SIBONEY is both “highly suggestive and descriptive” of Registrant’s Goods, and is a “weak mark” overall that

⁷ Response to Office Action dated Apr. 14, 2023 at 14 (en.wikipedia.org/wiki/ciboney).


is not entitled to a broad scope of protection. (6 TTABVUE 4-9). A suggestive mark “requires imagination, thought and perception to reach a conclusion as to the nature of the goods.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 13 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (citations omitted)). In contrast, “a merely descriptive mark forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods.” *Id.* at 1755 ((quoting *id.*) (citations omitted)). We construe Applicant’s arguments as meaning that the word “SIBONEY” suggests a connection with the Siboney, a group of Taíno people of western Cuba, Jamaica, and the Tiburon Peninsula of Haiti.⁸ But the record is devoid of any evidence demonstrating that Registrant’s mark is weak, or that there is any relationship, or nexus, between the Siboney people and Registrant’s Goods. In fact, Registrant’s RON SIBONEY mark is the only registered mark using “SIBONEY” in conjunction with rum and other alcoholic beverages that was cited against the involved Application.⁹ Applicant’s arguments are unpersuasive.


⁸ Response to Office Action dated Apr. 14, 2023 at 14.

⁹ See Non-Final Action dated Mar. 7, 2023 at 6-7. Applicant also asserts that “SIBONEY” is “famous among ... consumers of Cuban origin.” 6 TTABVUE 7. In support, Applicant proffered printed copies of webpages from restaurants and clubs using “SIBONEY” in their business names, as well as Google search engine results for “siboney,” “siboney lyrics,” and “siboney menu.” See Request for Reconsideration After Final Action dated Aug. 1, 2023 at 11-84. One of the businesses is located outside of the United States. Under the sixth *DuPont* factor, “[t]he number and nature of similar marks in use on similar goods,” 177 USPQ at 567, an applicant may submit evidence of registration and/or use of similar marks by third parties to demonstrate the conceptual and commercial weakness of the registered mark. None of the evidence of record here shows any third-party use of the word “SIBONEY” in conjunction with Applicant’s Goods or Registrant’s Goods, and Applicant did not submit any third-party registrations of similar marks.

III. Conclusion

Having considered all of the arguments and evidence relating to the relevant likelihood of confusion factors, we conclude that on this record, confusion is likely

between Applicant's Mark  for "Beer; Beer, ale and lager; Beer, ale, lager, stout and porter" in Class 32, and the mark of the Cited Registration, RON SIBONEY, for "Alcoholic beverages except beers; Distilled Spirits; Rum; Spirits and liqueurs" in Class 33. Weighing the relevant factors, both marks have the same dominant source-indicating element, SIBONEY, and both marks convey the same overall commercial impression; their goods are related; their consumers overlap; and their trade channels are the same.

Decision: The refusal to register Serial Number 97475190 for the mark , on the Principal Register, is affirmed under Section 2(d) of the Trademark Act.