

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: October 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Hussmann Corporation

—
Serial No. 97530166

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Billie Jean Smith of Wong Meyer Smith & McConnell,
for Hussmann Corporation.

Kara Jagdeo, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

—
Before Lykos, Lebow and Bradley,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Hussmann Corporation, has applied to register on the Principal
Register the mark STORECONNECT, in standard characters, for

Platform as a service (PAAS) featuring computer software platforms for
providing analytics for commercial refrigeration equipment in the food
and beverage retailing industry

in International Class 42.¹

¹ Application Serial No. 97530166 was filed on August 2, 2022 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere and in commerce since at least as early as January 28, 2019.

The Trademark Examining Attorney has refused registration of Applicant's mark on the ground that it is likely to cause confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), with the mark STORECONNECT, also in standard characters and on the Principal Register, for

Downloadable and recorded data processing software for use in ...
inventory management

in International Class 9.²

Applicant appealed the final refusal and submitted a request for reconsideration, which the Examining Attorney subsequently denied. Following resumption of the appeal, Applicant and the Examining Attorney filed their respective briefs.

For the reasons discussed below, we reverse the refusal to register.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused

² Registration No. 6504493, issued October 5, 2021. In addition to the above-noted goods at issue in the refusal, the registration also identifies the following goods in the same class:

Downloadable and recorded application software for use in the creation, installation, management and administration of on-line e-commerce websites; downloadable and recorded communication software for use in the creation, installation, management and administration of on-line e-commerce websites; downloadable and recorded computer software for use in the creation, installation, management and administration of on-line e-commerce websites; downloadable and recorded computer software programs for use in the creation, installation, management and administration of on-line e-commerce websites; downloadable and recorded computer software for business purposes, namely, for use in the creation, installation, management and administration of on-line e-commerce websites; downloadable and recorded computer software for communication between computer processes; downloadable and recorded computer software programs for database management; and downloadable and recorded data processing software for use in tracking e-commerce transactions, sales lead management and affiliate marketing.

registration if it:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, ... as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d), *quoted in In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *2 (Fed. Cir. 2023).

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. duPont deNemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the “*DuPont* factors”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). 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). “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.” *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

A. Similarity of the Marks

Under the first *DuPont* factor, we find that Applicant’s and Registrant’s STORECONNECT marks are identical “in their entirety as to appearance, sound,

connotation and commercial impression.” *DuPont*, 177 USPQ at 567. Because they are identical, the marks are likely to engender the same connotation and overall commercial impression when considered in connection with Applicant’s and Registrant’s respective goods. *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411-12 (TTAB 2015), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017).

Applicant does not address the similarity of the marks in its brief, apparently conceding the issue. *See In re Morinaga Nyugyo K. K.*, 120 USPQ2d 1738, 1740 (TTAB 2016). The first *DuPont* factor weighs heavily in favor of finding a likelihood of confusion.

B. Similarity of the Goods and Services and Channels of Trade

We turn now to the second *DuPont* factor, which concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor regarding the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567.

A proper comparison under the second *DuPont* factor “considers whether ‘the consuming public may perceive [the respective goods or services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’” *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)). “[T]he greater the degree of similarity between the applicant’s mark and the cited registered mark, the lesser the degree of similarity between the applicant’s goods or services and the registrant’s goods or services that is required to support a finding of likelihood of confusion.” *Time Warner Entm’t Co.*

v. Jones, 65 USPQ2d 1650, 1661 (TTAB 2002). And where identical word marks are involved, as is the case here, the degree of relatedness required to support a finding of likelihood of confusion declines even further. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) (“even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source”).

Applicant’s services, once again, identify a

Platform as a service (PAAS) featuring computer software platforms for providing analytics for commercial refrigeration equipment in the food and beverage retailing industry,

and Registrant’s goods at issue in the refusal are

Downloadable and recorded data processing software for use in ... inventory management.

To establish the relatedness of Applicant’s and Registrant’s goods and services, the Examining Attorney submits evidence from twelve third-party websites that she contends shows that “the same entity commonly manufactures, produces, or provides the relevant goods and services—software for providing analytics, as well as software for inventory management, both of which may be used for commercial refrigeration equipment in the food and beverage retail industry—and markets these goods and services under the same mark.”³ *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (evidence of third parties offering the goods and services at issue under one mark shows relatedness); *Hewlett-Packard*, 62 USPQ2d

³ 8 TTABVUE 5 (Examining Attorney’s Brief).

at 1004 (stating that evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

Applicant, however, contends that “the Examining Attorney has failed to establish that the goods and services in the Application and Registration are related.”⁴ Specifically, citing *St. Helena Hosp.*, 113 USPQ2d at 1087, Applicant argues that because relatedness of the goods is not self-evident from the face of the respective identifications of goods/services, then “something more” than the fact that the goods and services are used together is required to establish their relatedness:

On their face, there is nothing to suggest that the services are in any way related. The words common to both are “computer,” “software,” “for,” “in,” “the,” and “and.” The services in the application do not mention e-commerce, inventory management, sales lead management or affiliate marketing. The services in the registration do not reference analytics, commercial refrigeration equipment, or the food and beverage retailing industry. This is unquestionably an instance where the relatedness of the services “is not evident, well-known or generally recognized. This is an instance where “something more” is required.”⁵

We disagree. Although the Federal Circuit has held that “something more’ than the mere fact that the goods and services are ‘used together’” is required when relatedness of the goods and services “is not evident, well-known or generally recognized,” *St. Helena Hosp.*, 113 USPQ2d at 1087 (quoting *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004)),⁶ that proposition

⁴ 6 TTABVUE 6 (Applicant’s Brief) (initial caps lowered).

⁵ 6 TTABVUE 8 (Applicant’s Brief).

⁶ In *St. Helena Hosp.*, the Board had found that “consumers are likely to believe that health care services and ‘similarly marked’ printed materials come from the same source or are somehow connected with or sponsored by a common company based on several examples of organizations that render health care services and distribute printed materials.” *St. Helena*

is not invoked merely because the wording in the respective identifications do not overlap or reference each other, and Applicant presents no authority to the contrary. Nor do we find application of the “something more” standard discussed in *St. Helena Hosp.* appropriate here, where Applicant’s services (software as a service) are essentially the goods (software) provided in a different format.

Nevertheless, we agree with Applicant that the evidence of record fails to establish relatedness of the respective goods and services. Although the Examining Attorney made of record evidence from twelve different third-party websites to show

that the same entity commonly manufactures, produces, or provides the relevant good and services—software for providing analytics, as well as software for inventory management, both of which may be used for commercial refrigeration equipment in the food and beverage industry—and markets these goods and services under the same mark[.],⁷

that evidence falls short of establishing relatedness. Turning to that evidence, we note that the first five websites listed by the Examining Attorney in his brief, which are summarized below, all pertain to vending machines:

Nayax (nayax.com) offers management software for monitoring “Vending & Other Unattended Business,” and the company’s “Vending Management System” software provides inventory management with “AI-based data analytics.”⁸

OTI (otiglobal.com) offers cloud-based software for vending machines that, among other things, provides inventory and stock level tracking, generation of routes and necessary stock for fill-ups, and reports to

Hosp., 113 USPQ2d at 1086 (citation omitted). The Federal Circuit noted that the involved evidence of relatedness showed “that printed materials are used ‘in connection’ with various health services programs,” *id.* (citations omitted), but reiterated that “the mere fact that goods and services are ‘used together’ does not, on its own, show relatedness.” *Id.*

⁷ 8 TTABVUE 5.

⁸ January 10, 2024 Reconsideration Letter, TSDR 7-21.

analyze vending data.⁹

Parlevel (parlevelsytms.com) offers software that provides in-depth reports with detailed analytics and inventory management of vending machines.¹⁰

Vendon (vendon.net) offers a software platform inventory management that provides “a detailed overview of translations, location, machine or product performance, and analyze[s] consumption patterns, bestselling products, and underperforming machines” for vending machines.¹¹

VendNovation (vendnovation.com) offers “cloud-based vending machine software” for management of dispensing systems and other transactional devices, which among other things, manages inventory and consumption levels.¹²

Applicant argues that the Examining Attorney “repeatedly mischaracterizes vending machines as a subset of refrigeration equipment, asserting that vending machines are ‘a type of refrigeration equipment.’”¹³ “This mischaracterization,” contends Applicant, “enables the Examining Attorney to make the unsubstantiated leap that a system that provides analytics pertaining to a vending machine can also be deemed to be providing analytics for commercial refrigeration equipment in the food and beverage retailing industry.”¹⁴ According to Applicant, “there is no evidence in the record that anyone considers vending machines to be ‘commercial refrigeration equipment.’”¹⁵

⁹ *Id.* at 22-24.

¹⁰ *Id.* at 26-36.

¹¹ *Id.* at 37-46.

¹² *Id.* at 48-52.

¹³ 6 TTABVUE 12 (Applicant’s Brief).

¹⁴ *Id.*

¹⁵ *Id.*

The Examining Attorney disagrees, asserting that “the evidence of record does demonstrate that vending machines are advertised and described as refrigeration equipment by third parties in the marketplace.”¹⁶ In particular, she points to the following statements from the websites of three vending machine companies:

Vendnet (vendnetusa.com), a vending machine company that provides replacement parts for vending machines, offers a “Refrigeration Unit” which it describes as a “Refrigeration Assembly for Chilled Machines”;¹⁷

VendTek (vendtek.com), which sells and repairs vending machines, explains that “Refrigerated vending machines dispense fresh food, milk and perishable items”;¹⁸ and

Royal Vendors (royalvendors.com), which sells and repairs vending machines, indicates that it designs and manufactures “refrigerated beverage vending machines.”¹⁹

We are unpersuaded by this evidence. First, as Applicant notes, “it is common knowledge that not all vending machines offer refrigerated products, and that some vending machines offer products that are not even edible.”²⁰ Even if it is not common knowledge as the Examining Attorney posits in response,²¹ her own evidence establishes that there are vending machines for a variety of products, and that not

¹⁶ 8 TTABVUE 10 (Examining Attorney’s Brief).

¹⁷ January 10, 2024 Reconsideration Letter, TSDR 61-62. This website in particular is not persuasive as it is clear from the accompanying picture and description that it is not referencing the vending machine itself, but rather a particular part of the vending machine that helps with keeping items cold. *Id.* at 61 (“When it comes to vending machines that offer chilled foods the refrigeration assembly must be reliable and efficient.”)

¹⁸ *Id.* at 65.

¹⁹ *Id.* at 68.

²⁰ 6 TTABVUE 12 (Applicant’s Brief).

²¹ 8 TTABVUE 10 (Examining Attorney’s Brief).

all of them are refrigerated.²² Second, it is clear from Applicant's recitation of services that "commercial refrigeration equipment," the subject of Applicant's software platforms, is a term of art in the refrigeration industry, and that term has not been defined in the record. Nor is there evidence of record suggesting that vending machines are properly categorized as commercial refrigeration equipment.

We find the evidence from the remaining seven third-party websites to be lacking as well, and thus insufficient to establish relatedness. For example, Opsy (opsy.com) offers refrigeration services management software that integrates various actions, including customer and staff information, estimating/quoting, scheduling, dispatch, routing, billing and invoicing, receipting, reporting and inventory,²³ but nothing about the software indicates that it is used to provide "analytics for commercial refrigeration equipment" as Applicant's recitation of services specifies. It is, as Applicant observes, simply "software to automate tasks for companies that service refrigeration equipment."²⁴ Another company, ServiceBox (getservicebox.com), offers software for a number of industries including the refrigerating industry: "From scheduling and dispatching employees ... to self-populating timesheets, easy accounting integration and an intuitive inventory tracking system, ServiceBox will keep your productivity amped and your office chill."²⁵ But there is no mention of

²² See e.g., January 24, 2024 Reconsideration Letter, TSDR 38 (Vendon website depicting a coffee vending machine), 66 (VendTek website indicating that its vending machines dispense "snacks, cold beverages, coffee/hot drinks, combo machines, food, and more.").

²³ September 13 2023 Final Office Action, TSDR 151-156.

²⁴ 6 TTABVUE 11 (Applicant's Brief).

²⁵ September 13, 2024 Final Office Action, TSDR 157-162.

providing analytics for commercial refrigeration equipment. This, again, is software to automate tasks for refrigeration companies. Finally, BuildOps (buildops.com), another company, offers all-in-one HVAC software and software platforms for analytics, detailed reports, and inventory management for refrigeration retailers in the appliance industry.²⁶ However, there is nothing to indicate that the company's software provides analytics for commercial refrigeration equipment. As Applicant observes, it is software that HVAC contractors may use to "help run their operations."²⁷ The Examining Attorney's remaining evidence is equally unimpressive.

As to channels of trade, Applicant argues that "[t]here is no evident commonality" in Applicant's and Registrant's respective channels of trade because "[t]he services identified in the application are directed to owners or users of commercial refrigeration equipment in the food and beverage retailing industry, specifically, refrigeration cases, whereas the services identified in the '493 Registration are directed to the management and administration of on-line e-commerce websites."²⁸ As the Examining Attorney points out, however, Registrant's inventory management software "is not limited to e-commerce websites."²⁹ Furthermore, because the cited registration describes the relevant goods broadly and there is no limitation as to their nature, type, channels of trade, or class of purchasers, "it is presumed that the registration encompasses all goods or services of the type described, that they move

²⁶ May 31, 2023 Office Action, TSDR 75-90.

²⁷ 6 TTABVUE 9 (Applicant's Brief) (citing May 31, 2023 Office Action, TSDR 79).

²⁸ *Id.* at 15.

²⁹ 8 TTABVUE 10 (Examining Attorney's Brief).

in all normal channels of trade, and that they are available to all classes of purchasers.”³⁰ See *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *15-16 (TTAB 2023) (“If an application or registration describes goods or services broadly, and there is no limitation as to their nature, it is presumed that the ‘registration encompasses all goods or services of the type described.’”) (quoting *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013)). All of this notwithstanding, because Applicant’s and Registrant’s software are not the same, we cannot presume that their respective trade channels and classes of purchasers are the same, and the record does not establish that the normal channels or classes of purchasers for Registrant’s data processing software for use in inventory management match the trade channels and classes of purchasers for Applicant’s software platforms for providing analytics for commercial refrigeration equipment in the food and beverage retailing industry.

The record is devoid of evidence that any of the goods in the cited registration are related to Applicant’s services, meaning that the second *DuPont* factor weighs heavily against a finding of a likelihood of confusion. We deem the third *DuPont* factor neutral.

C. Purchasing Conditions

Under the fourth *DuPont* factor, we consider “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 476 F.2d at 1361.

³⁰ *Id.*

Applicant, quoting *Embarcadero Techs., Inc. v. Rstudio, Inc.*, 105 USPQ2d 1825 (TTAB 2013), argues that the respective goods and services “are of a very technical and specialized nature, not the types of software to be purchased in retail stores,” and “the fact that they will be purchased by technology professionals highly familiar with the different nature, use and purpose of each software products, carry great weight and diminish and likelihood of confusion.”³¹ As the Examining Attorney notes, however, Applicant’s and Registrant’s identifications of goods/services “do not have this limitation as to their class of purchasers,” nor has Applicant offered any evidence to substantiate its assertions.³² As she further notes, “where the purchasers consist of both professionals and the public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser.”³³ *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014)).

The fourth *DuPont* factor is neutral.

D. Conclusion

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument; “explain the results of that weighing;” and “the weight [we] assigned to the relevant factors.” *In re Charger Ventures LLC*, 65 F.4th 1375, 2023 USPQ2d 451, at *7 (Fed. Cir. 2023). “No mechanical rule determines likelihood of confusion, and each case requires weighing

³¹ 6 TTABVUE 15-16 (Applicant’s Brief).

³² 8 TTABVUE 11 (Examining Attorney’s Brief).

³³ *Id.*

of the facts and circumstances of the particular mark.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010). *See also Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 2024 USPQ2d 293, at *2 (Fed. Cir. 2024). We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto.

We have found that while Applicant’s and Registrant’s marks are identical, their respective goods and services are not related and that this factor is dispositive in our analysis. *Kellogg Co. v. Pack’em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991). The other factors relating to trade channels, classes of customers, and purchasing conditions being neutral, we find no likelihood of confusion when the mark STORECONNECT is used with Applicant’s “Platform as a service (PAAS) featuring computer software platforms for providing analytics for commercial refrigeration equipment in the food and beverage retailing industry” on the one hand, and Registrant’s “Downloadable and recorded data processing software for use in ... inventory management” on the other.

Decision: The refusal to register the mark STORECONNECT in Serial No. 97530166 under Section 2(d) is reversed.