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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Caesars License Company, LLC

Serial No. 98083981

Jeffrey P. Dunning, Greenberg Traurig LLP, for Caesars License Company, LLC.

Juna Bell,[1] Trademark Examining Attorney, Law Office 133,
Laurie Kaufman, Managing Attorney.

Before Goodman, Thurmon and O'Connor,
Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Caesars License Company, LLC ("Applicant") seeks to register the standard-character mark WISHBONES for "bar services provided in a casino," in International Class 43.[2]

[1] The application was reassigned from the original Examining Attorney for purposes of this appeal. We refer to both Examining Attorneys as "the Examining Attorney."

[2] Application Serial No. 98083981 was filed on July 13, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intent to use the mark in commerce.

Citations to the prosecution file are to entries in the USPTO's Trademark Status & Document Retrieval ("TSDR") system in .pdf format. Citations to the appeal record are to TTABVUE, the Board's online docketing system.

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), due to a likelihood of confusion with the mark WISHBONE FARMS in standard characters, "FARMS" disclaimed, for "restaurant, catering and restaurant carryout services," in International Class 43 (the "Cited Registration" or "Cited Mark").[3]

When the refusal was made final, Applicant appealed and requested reconsideration, which was denied. The appeal was resumed, has been fully briefed and is ready for decision. We affirm the refusal to register.

I. Likelihood of Confusion

"The Trademark Act 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, mistake, or to deceive." *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the "*DuPont* factors"). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019).

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See In re Charger Ventures*, 64 F.4th at 1381 ("In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the

[3] Registration No. 6441669 issued on August 3, 2021 on the Principal Register.

analysis.") (citation omitted). In determining likelihood of confusion, two key considerations are the similarity or dissimilarity of the marks and the similarity or dissimilarity of the goods or services. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.").

A. Similarity or Dissimilarity of the Services, Channels of Trade and Consumers

Under the second and third *DuPont* factors, we consider "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration" and the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. With each factor, our determination must be based not on evidence of use, but on the identification of goods or services in the Application and Cited Registration. *See, e.g.*, *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018).

The services need not be identical or even competitive to find a likelihood of confusion, but must be "'related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] emanate from the same source.'" *In re Country Oven, Inc.*, No. 87354443, 2019 TTAB LEXIS 381, at *4-5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012)). Evidence that "a single

company sells the goods [or services] ... of both parties, if presented, is relevant to a relatedness analysis." *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002).

As indicated above, Applicant's services are "bar services provided in a casino" and Registrant's services are "restaurant, catering and restaurant carryout services." In support of relatedness, the Examining Attorney provided over twenty third-party use-based registrations covering both bar services and restaurant, catering and/or restaurant carryout services.[4] The Examining Attorney also made of record Internet evidence showing third parties that offer both bar and restaurant services under the same mark.[5] The third-party registration and Internet evidence supports a finding that bar services and restaurant, catering and carryout services are of a type that commonly emanate from the same source, often under the same mark. *See, e.g., In re Country Oven*, 2019 TTAB LEXIS 381, at *15. Indeed, the evidence shows that bar and restaurant services are often provided together, including on casino properties.[6] *Cf. In re Binion*, No. 76590702, 2009 TTAB LEXIS 701, at *13 (finding that applicant's "casino and gaming" and "hotel and bar" services were closely related to

[4] January 11, 2024 Nonfinal Office Action, TSDR at 9-27 (attaching copies of Registration Nos. 5165418, 5909445, 5134098, 6180079, 7259497, 6046973, 5249713, 7037747, 6613452 and 5456119); October 25, 2024 Final Office Action, TSDR at 8-39 (attaching copies of registrations including Registration Nos. 3267453, 6950032, 3766907, 3702348, 5687221, 6131016, 7243165, 4877290, 3292812, 6888515, 7014381, 3436753, 7214421 and 4873484).

[5] January 11, 2024 Nonfinal Office Action, TSDR at 28-41; October 25, 2024 Final Office Action, TSDR at 40-90, 116-26.

[6] *See, e.g.*, April 7, 2025 Denial of Request for Reconsideration, TSDR at 8-10 (Wolfgang Puck Bar & Grill located within MGM Grand Hotel & Casino); 21-25 (Mandalay Bay Resort and Casino offerings include Border Grill restaurant, House of Blues Restaurant & Bar and Ri Ra Irish Pub).

registrant's "restaurant services"). In view of the foregoing, we find that the respective services are closely related.

Applicant's services are only offered in casinos, but Registrant's services are not limited as to channel of trade or class of consumer and we therefore must presume that Registrant's services move in all of the normal trade channels to all of the normal consumers. *See, e.g., Coach Servs.,* 668 F.3d at 1370; *In re Elbaum*, 1981 TTAB LEXIS 68, at *3. Registrant's services "thus must be construed to encompass all types of restaurant services, including stand-alone restaurants as well as restaurants that may be located within a hotel or casino." *In re Binion*, 2009 TTAB LEXIS 70, at *10; *see also In re Midwest Gaming & Entm't LLC*, No. 85111552, 2013 TTAB LEXIS 55, at *6-7 ("[A]lthough applicant has limited its trade channels to casinos and its purchasers presumably to casino patrons, registrant's unrestricted registration encompasses bar services rendered in a casino setting to casino patrons.").

Here, "Applicant acknowledges that bar services and restaurant services are commercially related"[7] and does not take the position on appeal that the trade channels or classes of consumers differ.

The second and third *DuPont* factors weigh in favor of likelihood of confusion.

B. Similarity or Dissimilarity of the Marks

We turn now to the first *DuPont* factor, which compares the marks "in their entireties as to appearance, sound, connotation and commercial impression." *In re*

[7] 6 TTABVUE 7 n.2; *see also* 9 TTABVUE 8 (reply brief stating that Applicant does not dispute that the services are related for purposes of the second *DuPont* factor).

Detroit Athletic Co., 903 F.3d at 1303 (quoting *DuPont,* 476 F.3d at 1361). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13 (quoting *In re Davia*, No. 85497617, 2014 TTAB LEXIS 214, at *4). In considering the marks, we focus "on the recollection of the average customer, who retains a general rather than specific impression of the marks." *Inter IKEA Sys. B.V. v. Akea, LLC*, No. 91196527, 2014 TTAB LEXIS 166, at *17-18 (citations omitted). "[S]imilarity is not a binary factor but is a matter of degree." *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (citation omitted).

Our analysis cannot be predicated on dissecting the marks into their various components; that is, our finding must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also In re Electrolyte Labs., Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) ("No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.") (citation omitted). Nonetheless, "in articulating reasons for reaching a conclusion on the issue of confusion, 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 Detroit Athletic Co.*, 903 F.3d at 1305 (quoting *In re Nat'l Data Corp.*, 753 F.2d at 1058).

In refusing registration, the Examining Attorney reasoned that the marks are similar because they both contain the essentially identical term WISHBONE(S),

which of the two words in the Cited Mark is more significant or dominant in creating a commercial impression because the word FARMS is disclaimed.[8] In maintaining the refusal, the Examining Attorney considered Applicant's argument that the marks are not similar due to the additional word FARMS, but was not persuaded. The Examining Attorney noted that although Applicant's mark omitted "FARMS," it did not add any distinguishing matter that would create a different commercial impression, such that WISHBONES "is likely to appear to prospective purchasers as a shortened form of registrant's mark."[9] The Examining Attorney presented evidence that farm-to-table restaurants are desirable for sustainable or cleaner dining, with consumers now accustomed to farms being associated with restaurants, such that the "presence of FARMS in the registrant's mark does not change the commercial impression of the marks because consumers may perceive WISHBONE FARMS as being related to WISHBONES but provided on a farm or featuring food from farms."[10] Applicant argues that this reasoning improperly dissected the Cited Mark and failed to account for the "unique and desirable connotation" that "FARMS" has for restaurant services and its effect on how consumers are likely to perceive "WISHBONE" in the Cited Mark which it asserts "creates a very different connotation from Applicant's one-word mark viewed in relation to bar services."[11]

[8] January 11, 2024 Nonfinal Office Action, TSDR at 3; October 25, 2025 Final Office Action, TSDR at 4.

[9] October 25, 2025 Final Office Action, TSDR at 6 (citing inter alia *In re Mighty Leaf Tea*, 601 F.3d 1342 (Fed. Cir. 2010)).

[10] October 25, 2025 Final Office Action, TSDR at 6.

[11] 6 TTABVUE 7-8.

The marks WISHBONES and WISHBONE FARMS contain the nearly identical word WISHBONE(S),[12] creating similarities in appearance, sound and connotation. We agree with the Examining Attorney that WISHBONE is dominant in the Cited Mark. The word WISHBONE has not been shown to describe any quality or characteristic of Registrant's services nor is there any showing of commercial or conceptual weakness and it is presumed to be inherently distinctive and source-identifying. *See Tea Bd. of India v. Republic of Tea, Inc.*, No. 91118587, 2006 TTAB LEXIS 330, at *62 (absent claim of acquired distinctiveness, under Trademark Act Section 7(b), 15 U.S.C. § 1057(b), mark registered on Principal Register is presumed to be inherently distinctive); *cf. In re Chippendales USA, Inc.*, 622 F.3d 1346, 1352 (Fed. Cir. 2010) ("[I]f the mark is inherently distinctive, it is presumed that consumers will view it as a source identifier.").

Registrant disclaimed the word "FARMS," conceding that it is merely descriptive and has less source-identifying significance. *See, e.g., In re Six Continents Ltd.*, No. 88430142, 2022 TTAB LEXIS 35, at *22-23. Although not disregarded in our analysis, descriptive terms are often considered less significant or less dominant when comparing marks. *See, e.g., In re Chatam Int'l*, 380 F.3d 1340, 1343 (Fed. Cir. 2004).[13]

[12] As noted by the Examining Attorney, the plural "WISHBONES" in Applicant's mark is not materially different from the singular word "WISHBONE" in the Cited Mark. *See, e.g.*, *Wilson v. Delaunay*, 245 F.2d 877, 878 (CCPA 1957) (finding "no material difference, in a trademark sense, between the singular and plural forms of the word 'Zombie'"); *Swiss Grill Ltd. v. Wolf Steel Ltd.*, No. 91206859, 2015 TTAB LEXIS 312, at *35 n.17 (singular and plural of SWISS GRILL deemed "virtually identical").

[13] Applicant questions whether FARMS is truly descriptive here because it "does not immediately identify any feature or characteristic of a restaurant or the food served therein, but rather only vaguely suggests some unspecified connection between the restaurant and agriculture." 9 TTABVUE 4 n.2. Even so, that FARMS has less source-identifying

FARMS is also less significant because WISHBONE is the first term in the Cited Mark, and consumers are generally more inclined to focus on and remember the first word, prefix, or syllable in a mark. *See Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372 (Fed. Cir. 2005) ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because it is the first word in the mark and the first word to appear on the label). Thus, the word WISHBONE in the Cited Mark is dominant in our analysis.

As for connotation, Applicant argues that the word FARMS in the Cited Mark suggests that Registrant's services are associated with a farm with consumers likely to perceive WISHBONE FARMS as referring to a specific location—i.e., a farm—real or fictional, where Registrant provides its services or sources food, a connotation that is absent from Applicant's Mark.[14] The term WISHBONE in the Cited Mark, therefore, Applicant argues, would be perceived as either the name of the farm or as referring to farm animals such as turkeys or chickens, which have a bone called a wishbone.[15] In contrast, Applicant argues that its mark WISHBONES has a very

significance than WISHBONE in the Cited Mark is supported by Applicant's evidence of other marks containing the word FARMS registered for restaurant services, *see infra*.

[14] 6 TTABVUE 6-7. We cannot help but note that Applicant characterizes the significance of FARMS differently depending on the argument. *See* 9 TTABVUE 4 n.2 (FARMS arguably not descriptive in the Cited Mark because it "only vaguely suggests some unspecified connection between the restaurant and agriculture"); 9 TTABVUE 8 ("Unlike for a restaurant where the term 'FARMS' has a clear and desirable connotation, the term 'FARMS' would be entirely incongruous in relation to a casino bar…."); *see also* 6 TTABVUE 4 (the Cited Mark "clearly connotes a place").

[15] *Id.* at 6 and n.1 (citing MERRIAM-WEBSTER DICTIONARY definition of "wishbone" as "a forked bone in front of the breastbone in a bird consisting chiefly of the two clavicles fused at their median or lower end"); June 10, 2024 Petition to Revive, TSDR at 13.

different connotation when used with casino bar services, either being arbitrary, suggesting the name of a person (such as the bar's owner),[16] or conveying the concept of good luck while gambling "just as getting the bigger half of the Thanksgiving turkey wishbone is reputed to bring good luck."[17]

The additional word FARMS is a point of differentiation in the marks. But we do not agree with Applicant that it creates clear and significant differences in connotation of WISHBONE FARMS for "restaurant, catering and restaurant carryout services" and WISHBONES for "bar services provided in a casino." Because the marks share the nearly identical, dominant word WISHBONE(S), consumers are likely to perceive the marks' connotations as the same or similar.

Moreover, evidence provided by the Examining Attorney shows that there is not such a divide between casino offerings and farm-to-table offerings that consumers would necessarily believe they have different sources when offered under marks having nearly identical dominant terms. The Examining Attorney provided evidence that casinos have embraced "eatertainment," in which guests seek unique and elevated dining experiences; even casino buffets "have really increased in quality, and food has gone upscale exponentially," with food cooked fresh several times a day.[18]

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[16] 6 TTABVUE 7.

[17] 9 TTABVUE 6. Applicant made this argument for the first time in its reply brief. During prosecution, Applicant pressed an alternative connotation relating to midcentury modern bar stools having a "wishbone" design. *See* June 10, 2024 Petition to Revive, TSDR at 9-10, 18-80. Applicant does not mention the chair design argument on appeal and we therefore do not consider it.

[18] April 7, 2025 Denial of Request for Reconsideration, TSDR at 61-68 (article on www.fsmagazine.com); *see also id.* at 4-6 (website for Hollywood Casino at Charles Town

"To stay relevant, restaurants within these establishments need to think about the trends of tomorrow."[19] Although not tied to the casino setting, there is evidence of a trend of restaurants featuring farm-to-table offerings, such that consumers are likely to perceive FARMS as having a general connotation when used with restaurant, catering and carryout services. Farm-to-table offerings can include both food and drink,[20] with the evidence showing one provider of restaurant services on a farm, Great Country Farms, that has "sister sites just up the road: Henway Hard Cider Company, Bluemont Vineyard, and Dirt Farm Brewing, all featuring homegrown boozy beverages."[21]

The Examining Attorney did not ignore the word FARMS or its effect on the connotation and overall commercial impression of WISHBONE FARMS, but

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Races states that the executive chef overseeing its seven restaurants "is proud that now many people come to the property just for the remarkable dining…").

[19] *Id.* at 64. The evidence shows that casinos offer restaurants and carryout options that are also available outside the casino setting. *See id.* at 40-46 (Nobu), 50-51, 54 (Dunkin' Donuts), 87 (Papa John's).

[20] *See, e.g.*, October 25, 2024 Final Office Action, TSDR at 135-37 (website of Founding Farmers, a farmer-owned restaurant group "committed to creating delicious and sustainable food and drink" urges consumers to let us "take you back to the roots of good food & drink: high-quality ingredients grown with care, scratch-made cooking, and exceptional hospitality").

[21] *Id.* at 141-43 (printout of article from Northern Virginia Magazine website).

Applicant faults the Examining Attorney for mischaracterizing the record as containing "food **and beverage** industry articles and advertisements highlighting restaurants sourcing food from farms." 9 TTABVUE 3 n.1 (quoting 8 TTABVUE 6). Applicant states that "the evidence cited by the Examining Attorney does not show any similar usage of the term 'farm' or 'farms' in connection with bar services and has nothing whatsoever to do with 'beverages'." 9 TTABVUE 3 n.1. This is contradicted by the evidence discussed in the text. We also note that two of the third-party marks cited by Applicant with FARMS in their names cover bar services in addition to restaurant services. *See infra* (identifications for JUNE FARMS and REDFARM marks); *see also* March 17, 2025 Request for Reconsideration, TSDR at 38, 65) (TSDR printouts).

determined that, given its general connotation for Registrant's services, the additional word FARMS did not overcome the similarity created by the nearly identical, dominant word WISHBONES when used with Applicant's services.

We also consider Applicant's argument that the word FARMS and/or the nature of the services cause WISHBONE(S) to have different connotations in the respective marks. As for Applicant's mark, we agree that it is common for bars to be named after a person, but here there is no evidence that consumers would perceive WISHBONES as the name of the bar's founder or any other person. "WISHBONE" is not a common personal nickname and Applicant's mark does not contain an apostrophe indicating that it is possessive. *Cf. In re Beds & Bars Ltd.*, No. 85597669, 2017 TTAB LEXIS 141, at *14 ("Insofar as contextual clues are concerned, the mark BELUSHI'S includes the surname BELUSHI in the possessive form (i.e., with an apostrophe 's'). This is consistent with perception of the term as a surname.").

As for the proffered "good luck" connotation of Applicant's mark, the MERRIAM-WEBSTER DICTIONARY definition states that the etymology of "wishbone" is "from the superstition that when two persons pull it apart the one getting the longer fragment will have a wish granted."[22] Although the "good luck" association may be stronger in a casino, we believe consumers are most likely to associate the word WISHBONE(S) with this tradition both when encountered in WISHBONES for bar services provided in a casino, where one may wish to win money, and in WISHBONE FARMS for restaurant and catering services, which contemplate people gathered for a meal

[22] June 10, 2024 Petition to Revive, TSDR at 14.

(potentially at a casino) where the wishbone pulling tradition is often practiced. We do not believe consumers familiar with the general connotation of FARMS relating to farm-to-table food are likely to perceive WISHBONE in the Cited Mark as referring to an anatomical feature of poultry rather than the common tradition. *See, e.g., In re Solid State Design Inc.*, No. 87269041, 2018 TTAB LEXIS 1, at *11 ("These claimed subtle differences in meaning are not supported by any record evidence that the average consumer of application software, 'who normally retains a general rather than a specific impression of trademarks,' will interpret the dominant word 'populace' to connote something different in each mark.") (quoting *In re Bay State Brewing Co.*, No. 85826258, 2016 TTAB LEXIS 46, at *6).

The caselaw cited by Applicant does not persuade us otherwise. In *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1337 (Fed. Cir. 2015), the Federal Circuit faulted the Board for simply declaring that the additional, disclaimed word JUICE did not distinguish Applicant's mark PEACE LOVE AND JUICE (and design) from opposer's standard character mark PEACE & LOVE without explaining how that word may cause the marks to have different connotations. *Id*. at 1341. In the *Louis Roederer* case, there was no likelihood of confusion between CRISTAL and CRYSTAL CREEK for wines and champagnes because the marks "evoked very different images in the minds of relevant consumers: while the former suggested the clarity of the wine within the bottle or the glass of which the bottle itself was made, the latter suggested 'a very clear (and hence probably remote from civilization) creek or stream.'" *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373,

1375 (Fed. Cir. 1998). Here, there is evidence of a more general connotation of "FARMS" in relation to Registrant's services.[23] Although on the leaner side, the analysis shows that the Examining Attorney considered how the word FARMS could affect consumer perception of WISHBONE(S) in the respective marks but concluded that it does not change their commercial impressions. Applicant's disagreement with this conclusion does not require a different result. *See, e.g., Louis Roederer*, 148 F.3d at 1375 ("Although Roederer disagrees, chiefly, with the Board's interpretation of the commercial impression of the marks, even reasoned disagreement with such a finding does not, without more, establish that it is clearly erroneous.").

Finally, Applicant urges that the USPTO's registration of marks that are nearly identical except for the word "FARM" or "FARMS" for restaurant services warrants a similar outcome here. In support, Applicant refers to ten pairs of registrations made of record with its Request for Reconsideration:[24]

Mark	**Pertinent Goods and Services**	**Reg. No.**
	restaurant services; take-out restaurant services	7433435
BODHI FARMS (FARMS disclaimed)	catering services; hotel accommodation services; resort lodging services; restaurant services	5957226

[23] Although consumers are not aware of disclaimers, the Cited Registration's disclaimer of FARMS indicates that WISHBONE FARMS is not considered a unitary phrase referring to a specific place. *See In re Six Continents*, 2022 TTAB LEXIS at *23 ("The disclaimer is also a concession that ATWELL SUITES is not a unitary mark."); *see also Dena Corp. v. Belvedere Int'l*, 950 F.2d 1555, 1561 (Fed. Cir. 1991) (in a unitary mark, the elements are inseparable and "must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.").

[24] 6 TTABVUE 10-11; March 17, 2025 Request for Reconsideration, TSDR at 12-89.

	bar and restaurant services	4124007
GRACIE'S FARM (FARM disclaimed)	restaurant services	7701417
	restaurant services	3389324
IRVING FARM (FARM disclaimed)	café services; coffee shops; restaurant	5750344
 (JUICE disclaimed)	restaurant services	6182689
JUICEFARM	restaurant and cafe services; snack bar services; juice bar services	4486345
JUNE	restaurant and café services	7013153
JUNE FARMS (FARMS disclaimed)	bar services; hospitality services in the nature of provision of food and drink; hospitality services in the nature of provision of temporary accommodation; restaurant services; rental of rooms for social functions; rental of banquet and social function facilities for special occasions, namely, weddings; rental of banquet and social function facilities for special occasions, namely, private parties; rental of vacation cabins; resort lodging services; snack bar services	7385832
KARMA	restaurant and café services; restaurant and catering services; restaurant services featuring sandwiches; doughnut and kolache shops in the nature of a restaurant; fast-food restaurant services; ice cream shop services in the nature of a restaurant; take-out restaurant services	5431756
KARMAFARM	catering services; restaurant services	5874925
LOGAN'S	restaurant services	3326246
LOGAN FARMS (FARMS disclaimed)	Delicatessen, restaurant and catering services	2898622

RED'S	restaurant services	5144075
REDFARM	restaurant services; catering services; take-out restaurant services; home delivery restaurant services; bar services and cocktail bar services	4129129
ROSEWOOD	hotel, resort hotel, resort condominium lodging and restaurant services	3434201
ROSEWOOD FARMS (claim of acquired distinctiveness in whole)	coffee bars; coffee shops; tea shops	7362769
	restaurant and catering services; all of the foregoing not relating to baseball or softball or a baseball or softball team, baseball or softball league, baseball or softball mascot or baseball or softball stadium	5881893
ROYAL FARMS	restaurant services, including sit-down and take-out restaurant services, fast food restaurants and snackbars through convenience stores	4533266

We have carefully reviewed this evidence, but it does not persuade us that the additional word FARMS gives rise to a different connotation in the marks involved here, WISHBONES and WISHBONE FARMS. Unlike the standard character marks involved here, several of these other marks contain a design and/or stylization (BODHI, GRACIE'S, IRVING, JUICE and ROYALS), presenting a point of differentiation between the marks in each pair that is absent in the involved marks. Unlike WISHBONES, several of the marks have an apostrophe and are clearly possessive in form giving them the connotation of a given name or nickname and associating each mark with a particular person. Several of the shared terms, including the surnames IRVING and LOGAN, the generic or descriptive word JUICE, and the laudatory term ROYAL, appear to be conceptually weaker for restaurant or

hospitality services than the shared term here, WISHBONE(S). Concededly, other pairs of marks registered to different parties (e.g., JUNE/JUNE FARMS and ROSEWOOD/ROSEWOOD FARMS) appear on their face to contradict the refusal. We acknowledge the importance of consistency in examination actions, but we are not bound by the prior registrability determinations of examining attorneys made at different times on different records.[25] Instead, we must assess the registrability of Applicant's mark based on the record before us. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to [Applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."); *In re Am. Furniture Warehouse CO*, No. 86407531, 2018 TTAB LEXIS 122, at *19 ("While we recognize that consistency is highly desirable, consistency in examination is not itself a substantive rule of trademark law, and a desire for consistency with the decisions of prior examining attorneys must yield to proper determinations under the Trademark Act and rules.") (internal quotation and citation omitted).

On this record, considering the marks in their entireties, we find that the marks WISHBONES and WISHBONE FARMS are similar. The first *DuPont* factor weighs in favor of likelihood of confusion.

[25] The TSDR evidence submitted by Applicant shows that the owner of the registration for ROSEWOOD extended the time to oppose registration of ROSEWOOD FARMS. *See* March 17, 2025 Request for Reconsideration, TSDR at 73-74. We have no way of knowing whether the parties entered an agreement refraining from opposing each other's applications.

II. Conclusion – Balancing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there is evidence and argument, "explain the results of that weighing," and address "the weight [we] assigned to the relevant factors." *In re Charger Ventures*, 64 F.4th at 1384. Applicant's "bar services provided in a casino" are closely related to Registrant's "restaurant, catering and restaurant carryout services" and because the Cited Registration does not contain any limitations, the respective services can both be provided in a casino setting, to the same consumers. Thus, the second and third *DuPont* factors weigh in favor of a likelihood of confusion. Although there are differences, the marks WISHBONES and WISHBONE FARMS feature the nearly identical dominant word WISHBONE(S) which is inherently source-identifying for Registrant's services and renders the marks similar. We do not find that the connotations of the marks are so different that consumers are likely to perceive the overall commercial impressions in a markedly different way. The first *DuPont* factor also weighs in favor of likelihood of confusion. No *DuPont* factor weighs against likelihood of confusion in this case.

Balancing the factors, we conclude that confusion is likely between Applicant's mark and the Cited Mark for their respective identified services.

Decision:

The refusal to register Applicant's mark under Trademark Act Section 2(d) is affirmed.