

This Opinion Is Not a  
Precedent of the TTAB

Mailed: April 1, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Wilson Carter*

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Serial No. 98290246

Francis John Ciaramella, of Francis John Ciaramella PLLC, for Wilson Carter.

Brian Callaghan, Trademark Examining Attorney, Law Office 108,  
Kathryn E. Coward, Managing Attorney.

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Before Goodman, Thurmon and Stanley, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Wilson Carter (“Applicant”) seeks registration on the Principal Register of the mark CLUTCH, in standard characters, for “Batteries; Battery chargers for mobile phones; Battery chargers for use with electronics; Mobile telephone batteries,” in International Class 9.<sup>1</sup>

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<sup>1</sup> Application Serial No. 98290246 was filed on November 29, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging a first use of the mark in commerce on May 15, 2019.

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 issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion, based on three registered marks owned by two entities. One cited Registration is for the mark CHARGEPLAY CLUTCH, in standard characters, for “Controller chargers and stands, namely, battery chargers with stands and battery chargers in hand-held casings for video game controllers and mobile video game controllers; battery packs for charging portable devices,” in International Class 9.<sup>2</sup> The other two cited Registrations are owned by a single entity and are variations of the same mark shown below in standard character form and with a design:



CLUTCH OUTDOORS<sup>3</sup>

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The appeal is briefed and ready for final decision. We affirm the refusal to register.

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<sup>2</sup> Registration No. 6206286, issued November 24, 2020. The current owner of this Registration, according to USPTO records, is Hewlett-Packard Development Company, L.P.

<sup>3</sup> Registration No. 7355929, issued April 9, 2024. The word “OUTDOORS” is disclaimed. The current owner of this Registration, according to USPTO records, is Tog-IP LLC.

<sup>4</sup> Registration No. 7355930, issued April 9, 2024. The word “OUTDOORS” is disclaimed. The mark is described as follows: “The mark consists of a design and words. The design depicts two mountain peaks with the larger one on the left and the smaller one on the right, which are joined at their bases in the form a three-pointed shape. A separate line is drawn at the base of the mountains resembling the three-pointed base is surrounds. The words ‘CLUTCH OUTDOORS’ appear to the right of the design with the word ‘CLUTCH’ being in larger-sized lettering and positioned atop the word ‘OUTDOORS’ in smaller-sized lettering.” The current owner of this Registration, according to USPTO records, is Tog-IP LLC.

**I. Section 2(d) – Applicable Law**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). “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, 1318 (Fed. Cir. 2018). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods or services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993).

“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). Varying weights 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, 1356 (Fed. Cir. 2011); *Shell Oil*, 992 F.2d at 1206 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the

similarities between the goods or services. *See 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, 1164-65 (Fed. Cir. 2002)); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004); *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 differences in the marks.”).

## **II. Likelihood of Confusion – Analysis**

Either the Applicant, the Trademark Examining Attorney or both presented arguments under *DuPont* factors one, two, four, five, eight and thirteen, because Applicant’s arguments address issues under each of these factors. We address these factors in turn below.

We limit our analysis to the cited word mark CLUTCH OUTDOORS, because it is more similar to the applied-for mark than the other cited marks. All three cited Registrations identify goods that overlap with those identified in the Application. We hereafter refer to the cited word mark CLUTCH OUTDOORS as the “Cited Mark,” the Registration of the Cited Mark as the “Cited Registration,” and Tog-IP LLC as the “Registrant.”

### **A. Similarity of the Marks**

To evaluate the similarity of the marks under the first *DuPont* factor, we consider the marks in their entirety as to appearance, sound, connotation and commercial impression. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison*

*Fondee En 1772*, 396 F.3d 1369, 1371 (citing *DuPont*, 476 F.2d 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, \*13 (quoting *In re Davia*, No. 85497617, 2014 TTAB LEXIS 214, \*4), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“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.” *Coach Servs. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally “retains a general rather than a specific impression of marks.” *In re i.am.symbolic, llc*, No. 85916778, 2018 TTAB LEXIS 281, \*11.

The applied-for mark CLUTCH and the Cited Mark CLUTCH OUTDOORS are similar in appearance. The first term in the Cited Mark is dominant, partly because it is the first term in the mark, and also because the word “outdoors” is descriptive or generic as to some of the goods identified in the Cited Registration and has been disclaimed. Consumers, therefore, are not likely to rely on the term “outdoors” to distinguish Registrant’s outdoor goods from those of others. The word CLUTCH is the dominant and sole distinctive element of the Cited Mark. *See In re Detroit Athletic Co.*, 903 F.3d 1296, 1303 (Fed. Cir. 2018) (finding “the identity of the marks’ two

initial words is particularly significant because consumers typically notice those words first”); *Palm Bay Imps.*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, No. 94-2562, 1988 TTAB LEXIS 60, at \*8 (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

The applied-for mark CLUTCH is identical to the dominant element of the Cited Mark. This creates a similar appearance that is likely to lead consumers to mistake one mark for the other. The added word OUTDOORS in the Cited Mark creates a visual distinction, but not one that consumers are likely to place much weight on given that the word “outdoors” is descriptive or generic for the goods. The visual similarity of the marks increases the likelihood of confusion.

The marks also sound similar. The applied-for mark sounds identical to the dominant CLUTCH element of the Cited Mark. “[W]e also keep in mind the penchant of consumers to shorten marks.” *In re Bay State Brewing Co.*, No. 85826258, 2016 TTAB LEXIS 46, at \*9. It is likely that many consumers familiar with the Cited Mark may refer to the mark as simply CLUTCH when asking for the goods. We find the marks are highly similar in sound.

Applicant argues that the marks are used in the market in different fonts, and thus create a different commercial impression. 6 TTABVUE 7. This argument is misplaced because both the Cited Registration and the Application present the marks in standard characters, which means both cover all fonts and other similar variations of the marks. There is no evidence that the word “clutch” has a different meaning or

that it creates a different commercial impression in these two marks. *In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at \*20-21 (finding no evidence to support a different meaning of the applied-for mark with different goods).

We find the marks similar in sight, sound, meaning and commercial impression. The first *DuPont* factor supports the Section 2(d) refusal.

### **B. Similarity or Relatedness of the Goods**

We evaluate the second *DuPont* factor based on the goods identified in the Application and the Cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion as to a class of goods in the Application if relatedness is established between any of the goods identified in that class and the Cited Registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, \*18; *In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, \*9 n.5. In addition, the goods need only be sufficiently related that a relevant consumer would be likely to assume, upon encountering goods marketed under the marks at issue, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, Nos. 91158891 and 91158941, 2007 TTAB LEXIS 50, \*25-26.

The Cited Registration identifies, among other things, “solar-powered battery chargers for charging mobile and handheld electronic devices,” which is a subset of the broader “battery chargers for use with electronics” identified in the Application.

The goods, therefore, are identical in part and the second *DuPont* factor supports the Section 2(d) refusal.

Applicant did not specifically address the second factor in its Appeal Brief and effectively conceded that the goods are at least closely related. But, while arguing that a prior registration owned by Applicant should moot the current refusal, he acknowledged that battery chargers and batteries “are certainly legally identical goods.” 6 TTABVUE 5.<sup>5</sup>

### **C. Customer Care – The Fourth *DuPont* Factor**

The fourth *DuPont* factor considers the likely care exercised by relevant consumers. *DuPont*, 476 F.2d at 1361 (considering “[t]he conditions under which ... sales are made, i.e. “impulse” vs. careful, sophisticated purchasing”). Applicant argues that the relevant consumers “will be sophisticated.” 6 TTABVUE 10. There is no evidence in the record to support this argument, and we see no reason to believe that consumers of the battery chargers identified in the Application and Cited Registration will be particularly sophisticated. The Application and the Cited Registration identify goods that are not restricted by target market, price, or consumer sophistication. Electronics, particularly cell phones, are very widely used, and the need to charge such devices is equally common. Absent evidence showing that consumers of the identified goods consistently exercise special care in making

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<sup>5</sup> Applicant first made this argument in a Response to Office Action dated November 4, 2024, where Applicant also submitted third-party registrations that identify both batteries and battery chargers. Response to Office Action dated November 4, 2024, at 10 (argument), 19-66 (third-party registrations). The argument is also presented in Applicant’s Appeal Brief, which makes the same arguments presented in the Response to Office Action.

purchases, we are compelled to find that the relevant consumers exercise ordinary care. Applicant's arguments to the contrary lack evidentiary support and are not persuasive. *Martahus v. Video Duplication Servs. Inc.*, 3 F.3d 417, 420 (Fed. Cir. 1993) (“[M]ere attorney arguments unsubstantiated by record evidence are suspect at best.”).

We further note that when dealing with goods likely purchased by a wide range of consumers, we must base our decision “on the least sophisticated potential purchasers.” *Stone Lion Capital Partners*, 746 F.3d at 1325. We find that the “least sophisticated potential purchasers” of battery chargers for electronics are likely to exercise ordinary care in making purchasing decisions, which does not materially alter the likelihood of confusion analysis. The fourth *DuPont* factor is neutral.

#### **D. Factor Five – Fame of the Cited Mark**

Applicant argues “there is no evidence that the cited Prior Marks are famous or have acquired secondary meaning within the marketplace or that consumers associate the term CLUTCH with the Prior Owners.” 6 TTABVUE 11. While this statement is accurate, it is also irrelevant. It is rare to have evidence of the fame of a cited mark in an ex parte appeal, given that the party likely to have such evidence (i.e., the owner of the cited registration) is not part of the appeal. The fifth *DuPont* factor is neutral.

We also note that the Cited Mark CLUTCH OUTDOORS was registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. The Cited Registration is “prima facie evidence of the validity of

the registered mark,” and we must assume the mark, as a whole, is inherently distinctive. Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b); *see also Tea Bd. of India v. Republic of Tea, Inc.*, No. 91118587, 2006 TTAB LEXIS 330, at \*62; *New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 TTAB LEXIS 199, at \*29-30. We, therefore, give the Cited Mark “the normal scope of protection to which inherently distinctive marks are entitled.” *Bell’s Brewery, Inc. v. Innovation Brewing*, No. 91215896, 2017 TTAB LEXIS 452, at \*20. There was no need for evidence that the Cited Mark has acquired secondary meaning (i.e., acquired distinctiveness), as Applicant mistakenly argues. 6 TTABVUE 11.

#### **E. Factor Eight – The Lack of Actual Confusion**

Applicant argues there is no evidence of “demonstrated events of confusion by consumers between the respective marks.” 6 TTABVUE 11. This argument is misplaced, because an appeal of a refusal to register a mark is an ex parte proceeding. That means the owner of the Cited Registration is not a party and we simply cannot know whether the Registrant has evidence of actual confusion. *In re Majestic Distilling Co.*, 315 F.3d at 1317 (“uncorroborated statements of no known instances of actual confusion are of little evidentiary value” in an ex parte appeal). In addition, we have insufficient evidence of the kind of marketplace circumstances that can lead to actual confusion. *In re Guild Mortg.*, 912 F.3d at 1380-81 (suggesting that “evidence of concurrent use of the two marks for a particularly long period of time—over 40 years—in which the two businesses operated in the same geographic market—southern California—without any evidence of actual confusion” may be

probative under the eighth *DuPont* factor, even in an ex parte appeal). For these reasons, we place no weight on the eighth *DuPont* factor, which considers the probative value of evidence of a lack of actual confusion.

#### **F. The Thirteenth Factor – Other Considerations**

Applicant owns a prior registration for a stylized version of its mark, and argues that because the prior registered mark is more similar to the applied-for mark than the cited marks are, the Section 2(d) refusal must be withdrawn. This argument does not fall under any other *DuPont* factor, so we address it under the thirteenth factor.

We appreciate that Applicant might find it somewhat unfair that its current Application is being refused registration based on three Registrations that all issued after Applicant's prior registration. But each application must be evaluated on its own merits, *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016), and there is no legal reason to ignore the three Registrations cited and relied upon by the Trademark Examining Attorney here. As our analysis of the preceding *DuPont* factors shows, every probative factor supports the refusal. That is enough. The refusal must be affirmed.

Applicant cannot rely upon the *Morehouse* defense, as that defense is recognized only in inter partes proceedings, not in ex parte appeals. *In re Strategic Partners, Inc.*, No. 77903451, 2012 TTAB LEXIS 80, at \*9. The Board has recognized a limited exception where the applied-for mark and the previously-registered mark are effectively identical, the goods overlap and the prior registrations have coexisted for at least five years, which means likelihood of confusion is no longer a possible basis

to seek cancellation. *Id.* These conditions are not met in this appeal. The Cited Registration issued in 2024. Applicant could have opposed registration of that mark and could petition to cancel the registration if it feels it has priority and that confusion is likely. The thirteenth *DuPont* factor is neutral.

**G. Conclusion: Weighing the Factors**

The marks are similar and the goods are identical in part. The first two *DuPont* factors are dispositive in this appeal, as both factors point toward a likelihood of confusion. We considered Applicant's arguments under other *DuPont* factors, but we find each of those factors is neutral. The record supports the refusal. Confusion is likely.

**Decision:** The Section 2(d) refusal is affirmed.