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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re A & V Leather Inc.

Serial No. 98361893

Oleg A. Mestechkin of Mestechkin Law Group PC,
for A & V Leather Inc.

Theodora Fleurant,[1] Trademark Examining Attorney, Law Office 133,
Laurie Kaufman, Managing Attorney.

Before Goodman, Pologeorgis, and Thurmon,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

A & V Leather Inc. ("Applicant") seeks registration on the Principal Register of the stylized mark  for the following goods in International Class 9:[2]

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[1] Trademark Examining Attorney Alex Seong Keam handled the prosecution of the involved application on behalf of the Office; however, Trademark Examining Attorney Theodora Fleurant was substituted as the assigned Trademark Examining Attorney subsequent to the filing of Applicant's notice of appeal.

[2] Application Serial No. 98361893, filed on January 17, 2024, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming December 2, 2021 as both the date of first use and the date of first use in commerce. The description of the mark reads as follows: "The mark consists of stylized letters 'A', '&', and 'V'." The

> Cases for eyewear; Cell phone cases; Eye glass cases; Eyewear accessories, namely, straps, neck cords and head straps which restrain eyewear from movement on a wearer; Eyewear cases; Eyewear pouches.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the standard character mark AV, registered on the Principal Register, for "Eyeglasses, sunglasses; Eyeglass, sunglass; Eyeglass and sunglass frames; Eyeglass and sunglass chains, cords and straps" in International Class 9.[3]

When the refusal was made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, the appeal resumed. Applicant and the Examining Attorney both filed briefs. For the reasons explained below, we affirm the Section 2(d) refusal to register.[4]

I. Examining Attorney's Evidentiary Objections

The Examining Attorney objects to evidence Applicant submitted with its appeal brief for the first time.[5] Specifically, the Examining Attorney objects to (1) embedded webpage evidence, (2) hyperlinks for webpages that have not been properly made of record, and (3) a mere listing of third-party registrations.[6]

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application also identifies goods in International Classes 14 and 18, but these classes of goods are not subject to the appeal.

[3] Registration No. 4950022, issued on May 3, 2016; renewed.

[4] The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

[5] Examining Attorney's Appeal Brief, p. 3, 8 TTABVUE 3.

[6] *Id.*

As to the hyperlinks embedded in Applicant's appeal brief, the "Board does not accept Internet links as a substitute for submission of a copy of the resulting page." *TV Azteca, S.A.B. v. Martin*, Can. No. 92068042, 2018 WL 6504575, at *4 n.15 (TTAB 2018) (citing *In re Aquitaine Wine USA, LLC*, Ser. No. 86928469, 2018 WL 1620989, at *9 n.21 (TTAB 2018)); *In re Olin Corp.*, Ser. No. 86651083, 2017 WL 4217176, at *5 n.15 (TTAB 2017)). Thus, we have given the hyperlinks and arguments based solely on the hyperlinks or corresponding webpages no consideration.

Additionally, with regard to the list of third-party registrations submitted by Applicant with its brief, it is well established that the mere submission of a list of registrations does not make such registrations part of the record. *See In re Peace Love World Live, LLC*, Ser. No. 86705287, 2018 WL 3570240, at *6 n.17 (TTAB 2018) (citing *In re 1st USA Realty Prof'ls*, Ser. No. 78553715, 2007 WL 2315610, at *1 (TTAB 2007)). We therefore sustain the Examining Attorney's objection and have given no consideration to this list of third-party registrations.

In any event, it is well-settled that the record in an ex parte proceeding should be complete prior to appeal. Trademark Rule 2.142(d); 37 C.F.R. § 2.142(d). Exhibits that are attached to or embedded in a brief but not made of record during examination are untimely, and will not be considered. *See In re Fitch IBCA, Inc.*, Ser. No. 75628232, 2002 WL 745593, at *1 n.2 (TTAB 2002); see also TBMP §§ 1203.02(e) and 1207.01. To the extent Applicant wished to introduce additional evidence after its appeal had been filed, Applicant should have filed a separately captioned written request with the Board to suspend the appeal and remand the application for further

examination pursuant to Trademark Rule 2.142(d). Applicant did not do so. Accordingly, the Examining Attorney's evidentiary objection is sustained, and we give no consideration to any evidence submitted by Applicant (or any argument based on this evidence) with its appeal brief for the first time.[7]

II. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1314-15 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant and for which there is evidence and argument of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). 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, 1355 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993) ("[T]he various evidentiary factors may play more or less weighty roles in any particular determination.").

"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) (internal citations removed). "Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services,

[7] We note that Applicant did not submit any evidence during the prosecution of its involved application, including with its request for reconsideration.

because 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.'" *In re Embiid*, Ser. No. 88202890, 2021 WL 2285576, at *3 (TTAB 2021) (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976)).

B. Similarity of the Marks

We initially consider the first *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Import, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361).

Here, Applicant's mark is  . The cited mark is AV in standard characters. The marks are similar in appearance, sound, connotation, and overall commercial impression because both marks contain the sole letters "A" and "V."

Applicant argues that the marks are different visually and aurally resulting in different commercial impressions.[8] Specifically, Applicant contends that the marks differ because Applicant's mark contains an additional character, namely, the ampersand, and is stylized.[9] Applicant maintains that these differences sufficiently distinguish the marks so as to avoid possible confusion. Additionally, Applicant argues that the cited AV mark is weak and entitled to limited scope of protection.[10]

[8] Applicant's Appeal Brief, pp. 7-8, 6 TTABVUE 11-12.

[9] *Id.*, 6 TTABVUE 12.

[10] *Id.* at pp. 11-12, 6 TTABVUE 15-16

Lastly, Applicant argues that there is no likelihood of confusion because the cited registration "as registered" has not been used in commerce.[11] Specifically, Applicant argues that the Registrant is using the mark in a stylized manner, rather than as a standard character mark and that the Registrant markets its goods under a different mark.[12]

We are not persuaded by Applicant's arguments. First, as to the stylization, a mark in typed or standard characters, such as the cited registration, may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. *See In re Viterra Inc.*, 671 F.3d 1358, 1363, (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348 (Fed. Cir. 2010); Trademark Rule 2.52(a), 37 C.F.R. §2.52(a). Thus, a mark presented in stylized characters, such as Applicant's mark, generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. *See, e.g., In re Viterra Inc.*, 671 F.3d at 1363; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (stating that "the argument concerning a difference in type style is not viable where one party asserts rights in no particular display"). In this case, the mark subject to the cited registration is in standard characters, therefore it can be displayed in any manner, including a manner identical or similar to Applicant's mark. Accordingly, the stylization of Applicant's mark does not obviate the similarity of the marks.

[11] *Id.* at 17, 6 TTABVUE 16-17.

[12] *Id.*

Likewise, the presence of the ampersand in Applicant's mark does not preclude the refusal because as noted above, the marks are still comprised of identical letters. Further, punctuation is generally not sufficient to alter the connotation and overall commercial impression of otherwise confusingly similar marks and, as such, is not sufficient to distinguish marks. *See, e.g., In re St. Helena Hosp.*, 774 F.3d 747, 750-51 (Fed. Cir. 2014) (finding punctuation in registrant's mark, TAKE 10!, did not alter the pronunciation or distinguish it in any significant way from applicant's mark, TAKETEN); *Mini Melts, Inc. v. Reckitt Benckiser LLC*, Opp. No. 91173963, 2016 WL 3915987, at *5 (TTAB 2016) (finding "the hyphen in [a]pplicant's mark MINI-MELTS [did] not distinguish it from [o]pposer's mark [MINI MELTS]"); *Mag Instrument Inc. v. Brinkmann Corp.*, Opp. No. 91163534, 2010 WL 3253200, at *10 (TTAB 2010) (citing *Goodyear Tire & Rubber Co. v. Dayco Corp.*, Opp. No. 91057813, 1978 'WL 21284, at *1 n.1 (TTAB 1978)) (finding hyphen did not distinguish opposer's mark, MAG-NUM STAR, from applicant's mark, MAGNUM MAXFIRE).

Even assuming the ampersand marginally changes the sound of Applicant's mark, slight differences in the sound of similar marks will not avoid a likelihood of confusion. *In re Energy Telecomms. & Elec. Ass'n*, Ser. No. unknown, 1983 WL 51826, at *1 (TTAB 1983) ("Slight differences in the sound of similar marks do not avoid a likelihood of confusion."); *see also In re Viterra Inc.*, 671 F.3d at 1367. Here, even with Applicant's inclusion of the ampersand, Applicant's mark and the cited registration remain highly similar in sound and commercial impression due to the shared letters, "A" and "V."

With regard to Applicant's argument of nonuse of the cited "standard character," even if we assume that the registrant is using its mark, AV, in a stylized manner, the registrant is well within its rights to do so. As explained previously, a mark in typed or standard characters, such as the cited registered mark, may be displayed in any lettering style. *See In re Viterra Inc.*, 671 F.3d at 1363; *In re Mighty Leaf Tea*, 601 F.3d at 1348; Trademark Rule 2.52(a), 37 C.F.R. §2.52(a). Thus, whether or not the registrant is using their mark in a stylized manner has no bearing on the likelihood of confusion with the Applicant's mark.[13]

Lastly, with regard to the strength of the cited mark, Applicant failed to timely submit any evidence during prosecution to demonstrate any weakness of the cited mark. Moreover, because the cited mark registered on the Principal Register, without a claim of acquired distinctiveness, the mark is presumed to be inherently distinctive for the goods listed in the cited registration. Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *Tea Bd. of India v. Republic of Tea, Inc.*, Opp. No. 91118587, 2006 WL 2460188, at *21 (TTAB 2006) (a "mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods"). Thus, we accord the cited mark

[13] In any event, Applicant's argument constitutes an impermissible collateral attack on the cited registration. Thus, evidence and arguments that constitute a collateral attack on a cited registration, such as information or statements regarding a registrant's nonuse of its mark, are not relevant during ex parte prosecution. *See In re Dixie Rests.*, 105 F.3d 1405, 1408 (Fed. Cir. 1997) (argument that the registrant's mark is not actually used in connection with listed services amounts to a thinly-veiled collateral attack on the validity of the registration).

the normal scope of protection afforded an inherently distinctive mark.

Quite simply, we find that Applicant's mark and the cited mark are highly similar in sound, appearance, connotation, and overall commercial impression, notwithstanding the stylization or the inclusion of an ampersand in Applicant's mark. Thus, the first *DuPont* factor strongly favors a finding of likelihood of confusion.

C. Similarity of the Goods

We next turn to the comparison of the goods, the second *DuPont* factor. In making our determination regarding the similarity of the goods, we must look to the goods as identified in Applicant's application and the goods listed in the cited registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed."). Further, where, as here, the marks are very similar, the degree of similarity between the goods required to support a finding of likelihood of confusion declines. *See Time Warner Entertainment Co. v. Jones*, Opp. No. 91112409, 2002 WL 1628168, at *8 (TTAB 2002) ("the 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."); *In re Opus*

One Inc., Ser. No. 75722593, 2001 WL 1182924, at *3 (TTAB 2001) (same).

It is settled that it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. The respective goods need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that goods emanate from the same source." *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (quoting 7-*Eleven Inc. v. Wechsler*, Opp. No. 91117739, 2007 WL 1431084, at *10 (TTAB 2007)). The issue here is not whether consumers would confuse Applicant's goods with Registrant's goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L'Oreal S.A. v. Marcon*, Opp. No. 91184456, 2012 WL 1267956, at *6 (TTAB 2012); *In re Rexel Inc.*, Ser. No. 73241423, 1984 WL 63591, at *1 (TTAB 1984). Moreover, registration must be refused if Applicant's mark for any of its identified goods is likely to cause confusion with Registrant's mark for any of its listed goods. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336-37 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item in a class that comes within the identification of goods or services in the application).

To reiterate, Applicant's goods are as follows:

> Cases for eyewear; Cell phone cases; Eye glass cases; Eyewear accessories, namely, straps, neck cords and head straps which restrain eyewear from

movement on a wearer; Eyewear cases; Eyewear pouches.

Registrant's listed goods are:

Eyeglasses, sunglasses; Eyeglass, sunglass; Eyeglass and sunglass frames; Eyeglass and sunglass chains, cords and straps metal nuts, bolts and screws.

Both Applicant's identification and the cited registration include eyeglass straps and eyeglass cords. Thus, the goods are legally identical in part.

With regard to the remaining goods, the Examining Attorney submitted screenshots from various online retailer websites demonstrating that a single third-party provides both eyeglasses (Registrant's goods) and eyeglass cases (Applicant's goods) under the same mark. As example:

- **Diff Eyewear**;[14]
- **Warby Parker**;[15]
- **WeSeeOptical**;[16]
- **ThinOptics**;[17]
- **OptiPak**;[18]
- **EyeBuy Direct**;[19]
- **Zenni**;[20]

[14] Final Office Action dated November 1, 2024, TSDR pp. 61-64.

[15] *Id.*, pp. 7-13.

[16] *Id.*, TSDR pp. 14-17.

[17] *Id.*, TSDR pp. 18-22, 108-111.

[18] *Id.*, TSDR pp. 23-27.

[19] *Id.*, TSDR pp. 28-33.

[20] *Id.*, TSDR pp. 34-39.

- **Oliver Peoples**;[21] and
- **SONIX**.[22]

We find that the Examining Attorney's third-party marketplace use evidence clearly establishes that it is not uncommon for a single entity to offer under a single mark both "eyeglasses" and other eyewear related accessories such as "eye glass cases."[23] Therefore, this evidence supports a finding that Applicant's Class 9 goods and the goods listed in the cited registration are related. *See, e.g., In re Detroit Athletic*, 903 F.3d at 1306-07 (crediting relatedness evidence showing that third parties use the same mark for the goods and services); *Hewlett-Packard v. Packard Press*, 281 F.3d 1261, 1267 (Fed. Cir. 2002) (evidence that "a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis"); *Made in Nature v. Pharmavite*, Opp. No. 91223352, 2022 WL 2188890, at *25 (TTAB 2022) (third-party websites promoting sale of both parties' goods showed relatedness); *L'Oreal v. Marcon*, Opp. No. 91184456, 2012 WL 1267956, at *8 (TTAB 2012) (evidence that "companies have marketed cosmetics and beverages under the same mark" supported finding goods related).

Additionally, the Examining Attorney submitted fifteen third-party registrations

[21] *Id.*, TSDR pp. 65-81.

[22] *Id.*, TSDR pp. 112-115. The evidence also includes screenshots from a single third-party retailer website that offers both eyeglasses (Registrant's goods) and cell phone cases (Applicant's goods) under the same mark. *Id.*, TSDR pp. 116-128.

[23] We note that some of the third-party retailer website evidence submitted by the Examining Attorney only demonstrates that the third party sells both goods but not under the same mark. *See, e.g.*, *Id.*, TSDR pp. 85-107. While this evidence shows overlapping trade channels for the goods at issue, it does not necessarily demonstrate that the parties' goods are related for likelihood of confusion purposes.

identifying both eyeglasses and cases for eyeglasses.[24] Although third-party registrations are not evidence that the registered marks are in use or that the public is familiar with them, they nonetheless have some probative value to the extent they serve to suggest that the goods listed in the registrations are of a kind that may emanate from a single source. *See, e.g., In re I-Coat Co.*, Ser. No. 86802467, 2018 WL 2753196, at *10 (TTAB 2018) (citing *In re Infinity Broad. Corp.*, Ser. No. 75689077, 2001 WL 951738, at *4 (TTAB 2001)); *In re Aquamar*, Ser. No. 85861533, 2015 WL 4269973, at *4 n.5 (TTAB 2015); *In re Albert Trostel & Sons Co.*, Ser. No. 74186695, 1993 WL 596274, at *3 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, Ser. No. 73603019, 1988 WL 252484, at *2 (TTAB 1988). Thus, the third-party registration evidence indicates that Applicant's Class 9 goods and Registrant's goods are the type that may emanate from the same source.

Finally, we note that eyeglasses and eyeglass cases are complementary goods inasmuch as they are likely to be purchased and used together by the same purchasers. Where the goods at issue have complementary uses, as is the case here, and thus are often used together or otherwise purchased by the same purchasers for the same or related purposes, such goods have generally been found to be sufficiently related such that confusion would be likely if they are marketed under the same or similar marks. *See Sage Therapeutics, Inc. v. Sageforth Psych. Servs., LLC*, Opp. No. 91270181, 2024 WL 1638376, at *8 n.39 (TTAB 2024) ("Complementary goods and services are typically found to be related.") (citations omitted); *see also In re Martin's*

[24] August 15, 2024 Non-Final Office Action, TSDR pp. 10-41.

Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1567 (Fed. Cir. 1984) ("complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion"). The evidence shows that these complementary goods are often sold under a single mark.

Because the record demonstrates that the parties' respective goods are legally identical in part or otherwise related and complementary in nature, the second *DuPont* factor strongly favors a finding of likelihood of confusion.

D. Similarity of Trade Channels and Classes of Purchasers

Under the third *DuPont* factor, we consider the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. We also consider the portion of the fourth *DuPont* factor that addresses the "buyers to whom sales are made." *Id.*; *Sabhnani v. Mirage Brands, LLC*, Can. No. 92068086, 2021 WL 6072822, at *10 (TTAB 2021) (considering the portion of the fourth *DuPont* factor, buyers to whom sales are made, in conjunction with the second and third *DuPont* factors).

Here, both Registrant's and Applicant's identifications are unrestricted as to trade channels and customers. Moreover, because Applicant's "Eyewear accessories, namely, straps, neck cords and head straps which restrain eyewear from movement on a wearer" and Registrant's "Eyeglass and sunglass chains, cords and straps the parties' lighters are legally identical in part, these goods must be presumed to travel in the same channels of trade, and to be offered to the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d at 1362 (absent restrictions in the application and

registration, identical goods are presumed to travel in the same channels of trade to the same class of purchasers; the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 754 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Smith and Mehaffey*, Ser. No. 74213737, 1994 WL 417267, at *1 (TTAB 1994). Applicant provided no evidence rebutting this presumption.

As for Registrant's "eyeglasses" and Applicant's "eyeglass cases," the record demonstrates that these goods are often promoted through the same outlets, and offered through the same websites and at the same brick-and-mortar locations, including eyewear establishments and department stores. As for the classes of purchasers of these goods, the record reveals that the average purchaser for both Applicant's goods and Registrant's services is the same, namely, an ordinary consumer who is in the market for eyeglasses and cases for the same. As such, we find that, at a minimum, consumers of Registrant's "eyeglasses" and Applicant's "cases for eyewear" overlap.

Accordingly, both the third *DuPont* factor, as well as the portion of the fourth *DuPont* factor relating to buyers to whom sales are made, also weigh heavily in favor of finding a likelihood of confusion.

II. Conclusion

We have considered all of the arguments and evidence of record and all relevant *DuPont* factors. We find that (1) the marks at issue are similar in sound, appearance,

connotation, and overall commercial impression, (2) Applicant's and Registrant's goods are legally identical in part or otherwise related and complementary in nature, and (3) the parties' respective goods travel in overlapping trade channels and are offered to overlapping classes of consumers. There is no evidence of record to establish that the cited standard character mark AV is either conceptually or commercially weak and, therefore, we accord it the normal scope of protection afforded inherently distinctive marks. As such, we conclude that Applicant's  nark, as used in connection with the goods identified in Class 9, so resembles the cited standard character mark AV for the listed goods in the cited registration as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.[25]

Decision: The refusal to register Applicant's mark  under Section 2(d) of the Trademark Act for the goods identified in International Class 9 is affirmed. The application will proceed solely in connection with the goods identified in International Classes 14 and 18.

[25] Applicant argues that any doubt regarding the issue of likelihood of confusion should be resolved in Applicant's favor. *See* Applicant's Appeal Brief, p. 14, 6 TTABVUE 18. Applicant is mistaken. In the context of a Section 2(d) refusal in an ex parte proceeding, any doubt is resolved **against**, not in favor of, the applicant. *See Hewlett-Packard Co v. Packard Press, Inc.*, 281 F.3d 1261, 1264 (Fed. Cir. 2002) ("This court resolves doubts about the likelihood of confusion against the newcomer because the newcomer has the opportunity and obligation to avoid confusion with existing marks."). In any event, for the reasons explained in this decision, we have no doubt that confusion is likely.