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Mailed: May 1, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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In re Marx Brothers, Inc.

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Serial No. 98455354
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C. Brandon Browning of Maynard Nexsen PC,
for Marx Brothers, Inc.

Amy E. Thomas, Trademark Examining Attorney, Law Office 110,
Loksye Lee Riso, Managing Attorney.

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

Opinion by Lavache, Administrative Trademark Judge:

Applicant Marx Brothers, Inc. seeks registration on the Principal Register of the standard character mark PALM ISLE for “Coconut milk; Coconut oil for food; Desiccated coconut; Flaked coconut; Processed coconut,” in International Class 29, and “Coconut water,” in International Class 32.¹

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¹ Application Serial No. 98455354, filed March 18, 2024, based on an allegation of a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark only as to the identified Class 29 goods on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), citing the standard character mark PALM ISLAND, which is registered on the Principal Register for "Gourmet sea salt for cooking and spices," in International Class 30.² After the Examining Attorney made the partial refusal final, Applicant appealed. Both Applicant and the Examining Attorney filed briefs. For the reasons explained below, we **affirm** the refusal as to the goods in International Class 29.

I. Likelihood of Confusion

Trademark Act Section 2(d), in relevant part, prohibits registration of a mark that "so resembles a mark registered in the Patent and Trademark Office . . . as to be likely, when used on or in connection with the goods of the applicant, to cause confusion." 15 U.S.C. § 1052(d). To determine whether confusion is likely, we analyze all probative evidence relevant to the factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) ("*DuPont*"). See *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315 (Fed. Cir. 2003).

In every Section 2(d) case, two key *DuPont* factors are the similarity or dissimilarity of the marks and respective goods, 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." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, we have considered

² Registration No. 4695011, issued on March 3, 2015; renewed.

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, 1379 (Fed. Cir. 2019).

Varying weight 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); *In re Shell Oil Co.*, 992 F.2d 1204, 1205 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”). Ultimately, however, “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).

A. Comparison of the Marks

We begin our analysis with the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). Similarity as to any one of these elements may be sufficient to support a finding that the marks are confusingly similar. See *Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 732 (CCPA 1968); *In re Inn at St. John’s, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13.

When assessing whether marks are confusingly similar, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1324 (Fed. Cir. 2017) (quoting *Coach Servs. 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 trademarks.” *In re Box Sols. Corp.*, No. 76267086, 2006 TTAB LEXIS 176, at *14.

All elements of the respective marks must be considered. *See In re Viterra*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“[M]arks must be viewed ‘in their entirety,’ and it is improper to dissect a mark . . . , including when a mark contains both words and a design.”); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (“[M]arks must be compared in their entirety”). That said, “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 entirety.” *Nat’l Data*, 753 F.2d at 1058.

Here, Applicant’s mark is PALM ISLE and the cited mark is PALM ISLAND.

The Examining Attorney argues that the marks are confusingly similar in terms of appearance and sound, because both marks share the same first term, PALM, and the respective second terms, ISLE and ISLAND, share the same first three letters.³ As to commercial impression, the Examining Attorney notes that ISLE and ISLAND have the same meaning,⁴ and thus asserts that the marks, when considered in their

³ Examining Attorney’s Brief, 6 TTABVUE 4.

The TTABVUE and TSDR citations in this opinion refer, respectively, to the Board’s docket system and the electronic file database for the involved application. For TTABVUE citations, the number preceding the “TTABVUE” designation is the docket entry number and any numbers following indicate the page numbers within the docket entry.

⁴ *See id.* (citing September 27, 2024 Nonfinal Office Action at TSDR 47 (excerpt from THE AMERICAN HERITAGE dictionary, defining “isle” as “[a]n island, especially a small one”)).

entireties, “convey the same idea, stimulate the same mental reaction and have the same overall meaning and commercial impression.”⁵

Applicant argues that the marks look different because each mark contains a term that does not appear in the other (ISLE vs. ISLAND) and because PALM ISLE is composed of eight letters, while PALM ISLAND has ten letters.⁶ Applicant also contends that the different second terms in the marks render the marks distinguishable in sound, noting that PALM ISLAND has three total syllables, while PALM ISLE has two.⁷ As to the overall meaning and commercial impression of the marks, Applicant contends that its PALM ISLE mark, when considered in connection with its identified coconut products, will be viewed as connoting “that Applicant’s goods originate from a small island including coconut palms from which the coconuts in Applicant’s Coconut Products are grown and originate.”⁸ Applicant asserts that this connotation does not apply to the cited PALM ISLAND mark because, when applied to Registrant’s identified gourmet sea salt for cooking and spices, the term PALM “is entirely arbitrary since neither salt nor spices are derived from palms.”⁹ According to Applicant, these differences preclude a likelihood of confusion.

We have carefully considered both the Examining Attorney’s and Applicant’s arguments and find that the respective marks are confusingly similar. We are not

⁵ *Id.* at 6.

⁶ Applicant’s Brief, 4 TTABVUE 9-10.

⁷ *Id.* at 10.

⁸ *Id.* at 11.

⁹ *Id.*

persuaded by Applicant's arguments that a likelihood of confusion may be avoided because the respective marks have a different number of letters or syllables. As the Examining Attorney notes, the likelihood-of-confusion determination is not made on a purely mechanical basis, where it is simply a matter of counting and comparing letters and syllables. *See In re John Scarne Games, Inc.*, 1959 TTAB LEXIS 31, at *1 (no proceeding number in original). Instead, we must consider the perception of consumers who "are governed by general impressions made by appearance or sound, or both." *Id.* And, here, regardless of the total number of letters or syllables in each mark, the marks are highly similar in terms of appearance and sound because they share an identical first term and have synonymous second terms that are phonetically similar.

We are also unpersuaded by Applicant's argument that the respective marks have different connotations and overall commercial impressions. When considering the marks as a whole, the general impression created by each is of an island with palm trees, or perhaps the name of a particular island, as the Examining Attorney suggests.¹⁰ Applicant is correct that we must consider the meaning of each mark as applied to the respective identified goods. *See, e.g., Nat'l Data*, 753 F.2d at 1058 ("[M]arks . . . must be considered in connection with the particular goods or services for which they are used."); *Embarcadero Techs., Inc. v. RStudio, Inc.*, No. 91193335, 2013 TTAB LEXIS 6, at *34-35 ("[W]e must also look at any commercial impressions or connotations created by the marks and, in doing so, we consider the marks in

¹⁰ Examining Attorney's Brief, 6 TTABVUE 6.

relation to the identified goods and services.”). But there is nothing in the record to convince us that, when considering Applicant’s PALM ISLE mark in connection with Applicant’s goods, the relevant consumers will differentiate the mark by going beyond the general impression it creates to conclude that Applicant’s goods “originate from a small island including coconut palms from which the coconuts in Applicant’s Coconut Products are grown and originate.”¹¹ Nor is there any support for the conclusion that consumers will view the cited PALM ISLAND mark differently because “neither salt nor spices are derived from palms.”¹²

Simply put, this is not a case where the differences in the respective identified goods results in a significant difference in connotation or commercial impression between the two marks. And, again, our analysis must account for the “the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.” *Box Sols.*, 2006 TTAB LEXIS 176, at *14; *see also Gastown Inc. v. Gas City, Ltd.*, 1975 TTAB LEXIS 95, at *10-11 (“The similarity of the marks [GASTOWN and GAS CITY] . . . is a sufficient basis upon which to predicate a holding of likelihood of confusion because the average purchaser normally retains but a general or overall rather than a specific recollection of the many trademarks that he encounters in his daily excursions into the different marketplaces of our society.”) (no proceeding number in original).

¹¹ Applicant’s Brief, 4 TTABVUE 11.

¹² *Id.*

Thus, we find that whatever connotation the relevant consumers are likely to attribute to Applicant's mark would be similar enough to the connotation created by the cited mark to cause confusion. *See In re Morinaga Nyugo KK*, No. 86338392, 2016 TTAB LEXIS 448, at *27-28 (“[W]hile the marks are not identical, they are similar enough that their use on identical or closely related goods is likely to cause confusion.”); *see also, e.g., In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *28 (“[T]here is no evidence here, or other reason to find, that the mark TRUST THE PROCESS has one meaning when used with shoes, and a second and different meaning when used with shirts and sweatshirts, based on the nature of the respective goods.”); *cf., e.g., In re M. Serman & Co.*, No. 73348680, 1984 TTAB LEXIS 74, at *3-4 (finding CITY GIRL and CITY WOMAN confusingly similar); *H. Sichel Sohne, GmbH v. John Gross & Co.*, 1979 TTAB LEXIS 70, at *12-13 (BLUE NUN and BLUE CHAPEL confusingly similar) (no proceeding number in original).

Accordingly, we find Applicant's mark is highly similar to the cited mark in terms of sound, appearance, connotation, and overall commercial impression. The first *DuPont* factor therefore supports a conclusion that confusion as to source is likely.

B. Comparison of the Goods

We turn now to the second *DuPont* factor, which concerns the similarity or dissimilarity and nature of the respective goods, i.e., the relatedness of the goods. *DuPont*, 476 F.2d at 1361. In assessing relatedness, we must consider the goods as they are identified in Applicant's application and 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)).

Registration may be refused as to an entire class of goods if an applicant's mark as used in connection with any of its identified goods in that class is likely to cause confusion with the registrant's mark for any of the goods listed in the cited registration. 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 (CCPA 1981) (indicating that likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods in the application).

Here, Applicant's goods, in relevant part, are identified as "Coconut milk; Coconut oil for food; Desiccated coconut; Flaked coconut; Processed coconut," in International Class 29. Registrant's goods are identified as "Gourmet sea salt for cooking and spices," in International Class 30.

Applicant argues that, "[b]ecause Applicant's Coconut Products are different from the Registrant's Spices, potential consumers of Applicant's Coconut Products will not be confused into purchasing any of the Registrant's Spices since these goods simply would not suit the consumers' needs and would, therefore, not confuse the consumers as to source."¹³ Applicant asserts that the same is true as to consumers of Registrant's

¹³ *Id.* at 12.

goods, i.e., that Applicant's goods would not meet the needs of consumers of Registrant's goods, and thus there is not likelihood of confusion.¹⁴

We agree with the Examining Attorney that this "consumers' needs" argument "is conclusory with no supporting evidence,"¹⁵ that the record shows the respective goods are, in fact, related, and that the goods "need not be identical or even competitive to find a likelihood of confusion."¹⁶ Indeed, the issue is not whether consumers would confuse Applicant's goods with Registrant's goods, but whether there is a likelihood of confusion as to the source of these goods. *L'Oreal S.A. v. Marcon*, No. 91184456, 2012 TTAB LEXIS 77, at *20; *In re Rexel Inc.*, No. 73241423, 1984 TTAB LEXIS 57, at *2. Thus, it is sufficient that the goods are related in some manner, or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Coach Servs.*, 668 F.3d at 1396; *7-Eleven, Inc. v. Wechsler*, No. 91117739, 2007 TTAB LEXIS 28, at *18.

To support the contention that the goods here are related, the Examining Attorney has introduced the following internet evidence showing third-party gourmet food companies offering both Applicant's types of goods and Registrant's types of goods under the same mark:

¹⁴ *Id.*

¹⁵ Examining Attorney's Brief, 6 TTABVUE 7. "Attorney argument is no substitute for evidence." *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005).

¹⁶ Examining Attorney's Brief, 6 TTABVUE 7.

- An excerpt from VertulloImports.com showing both coconut milk and various types of sea salt being offered under the same VERTULLO mark;¹⁷
- An excerpt from RudcaFood.com showing both coconut oil and various types of sea salt being offered under the same PAPA PALERMO mark;¹⁸
- An excerpt from PerformanceFoodservice.com showing dried coconut, “salts & seasonings,” and “essential culinary spices,” all advertised in connection with the same MAGELLAN mark;¹⁹
- An excerpt from RolandFoods.com showing coconut milk, coconut oil, cream of coconut, and sea salt, all offered under the same ROLAND mark;²⁰ and
- An excerpt from WindyCityOrganics.com showing coconut flakes and salt being offered under the same RAWGURU mark.²¹

The Examining Attorney also introduced 24 active, use-based, third-party registrations showing instances of a single mark being registered for various types of coconut products, as well as salt or spices.²² Like the evidence of third-party use described above, these third-party registrations demonstrate that the listed goods are of a type that may commonly emanate from a single source under the same mark and

¹⁷ May 14, 2025 Final Office Action at TSDR 11-14, 16-17.

¹⁸ *Id.* at 23-24.

¹⁹ *Id.* at 27-28.

²⁰ *Id.* at 30-37.

²¹ *Id.* at 40, 43. The Examining Attorney also provided an excerpt from BatoryFoods.com advertising various types of processed coconut and salts. *Id.* at 46-54. This evidence does not show these goods being offered under the same mark, but it does show that such goods may be distributed by the same entity, indicating that the goods can share the same trade channels.

²² *See* September 27, 2024 Nonfinal Office Action at TSDR 10-15, 19-20, 34-37; May 14, 2025 Final Office Action at TSDR 55-90.

thus may be perceived as related.²³ *In re Albert Trostel & Sons Co.*, No. 74186695, 1993 TTAB LEXIS 36, at *7.

The evidence of record also confirms what is otherwise commonly known, namely that coconut products, sea salt, and spices are common ingredients in food, and may be used in the same recipe.²⁴ Thus, the respective goods are complementary because they can be used together by the same parties for the same purposes. *See, e.g., In re Ox Paperboard, LLC*, No. 87847482, 2020 TTAB LEXIS 266, at *18 (noting that complementary use of goods is a factor in finding relatedness).

In sum, considering the evidence as a whole, in connection with the goods as they are identified in the application and the cited registration, we find that the respective goods are related in terms of their purpose and complementary nature, and commonly emanate from the same source under the same mark. Thus, the conditions and activities surrounding the marketing and use of the goods are such that they could

²³ Applicant argues that, of the 24 third-party registrations, “three of the registrations are commonly owned by Performance Food Group, Inc., two are commonly owned by Rev Family Enterprises, Inc. and two are commonly owned by Phytonatus Nutracêutica Ltda.” Applicant’s Brief, 4 TTABVUE 13. Applicant also contends that, even when these third-party registrations are considered together with the third-party use evidence, the total number of third parties offering both types of goods is “statistically insignificant” when compared to the “vast number of seasoning production businesses” that exist. *Id.* We disagree with both arguments. First, even taking into account the ownership details of the third-party registrations, the evidence still shows registrations owned by at least 20 different third parties. Second, “[t]here is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product.” *In re G.B.I. Tile & Stone Inc.*, No. 77369073, 2009 TTAB LEXIS 647, at *15.

²⁴ *See, e.g.,* May 14, 2025 Final Office Action At TSDR 27-28 (excerpt from PerformanceFoodservice.com, referring to seasonings and fruits as “pantry items restaurants have been searching for” and listing “salts & seasoning” and “dried coconut” as a “touch of something special” for recipes and characterizing these items as “ingredients that take your guests on a gastronomic adventure”).

be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same source when offered under highly similar marks. *See Coach Servs.*, 668 F.3d at 1396.

Accordingly, we find that the goods are related and the second *DuPont* factor supports a conclusion that confusion as to source is likely.

C. Trade Channels and Classes of Consumers

Next, we consider the similarity or dissimilarity of established, likely-to-continue channels of trade, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. Here, the Examining Attorney's evidence, discussed above, establishes that the goods at issue are, in fact, offered through the same trade channels and encountered by the same classes of consumers. We therefore find that the third *DuPont* factor also supports a conclusion that confusion as to source is likely.

II. Conclusion

Having considered all of the arguments and evidence of record pertaining to the relevant *DuPont* factors, we find that the marks are highly similar in appearance, sound, connotation, and overall commercial impression; that Applicant's goods and Registrant's goods are related; and that the respective goods travel through the same channels of trade and are offered to the same or overlapping classes of purchasers. Thus, all relevant *DuPont* factors weigh in favor of a conclusion that confusion is likely.

Decision: The refusal under Trademark Act Section 2(d) to register Applicant's PALM ISLE mark for the identified goods in International Class 29 is **affirmed**.

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Accordingly, the application will proceed only as to the goods in International Class 32.