

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: May 21, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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*In re Malibu Shirts, Inc.*

—————  
Serial No. 98696754  
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Sandy Lipkin of Law Offices of Sandy Lipkin,  
for Malibu Shirts, Inc.

Glen Learned, Trademark Examining Attorney, Law Office 131,  
Nicholas A. Coleman, Managing Attorney.

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Before Larkin, Elgin, and Lavache,  
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

Applicant Malibu Shirts, Inc. seeks registration on the Principal Register of the composite mark displayed below for “Hats; Sweatshirts; T-shirts,” in International Class 25:<sup>1</sup>

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<sup>1</sup> Application Serial No. 98696754, filed August 13, 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 application includes the following mark description and color statement:

The mark consists of the words “NORTHWEST” and “AIRLINES” written in a dark circle around “NWA” which is placed on a dark circle in the center, from which wings extend from both left and right.

Color is not claimed as a feature of the mark.



The Trademark Examining Attorney refused registration of Applicant's mark on the ground of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), citing the following two standard-character marks, which are registered on the Principal Register to different owners:

- NWA for "Clothing, namely, shirts, t-shirts, sweatpants, sweatshirts, track suits, hooded sweatshirts, long sleeve shirts, tank tops, hats, beanies, baseball caps, bandanas," in International Class 25;<sup>2</sup> and
- N.W.A. for "Clothing, namely, shirts, tops, and headwear," in International 25.<sup>3</sup>

After the Examining Attorney made the refusal final, Applicant requested reconsideration, which the Examining Attorney denied. Applicant then filed this appeal, and both Applicant and the Examining Attorney filed briefs.<sup>4</sup> For the reasons explained below, we **reverse** the refusal.

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<sup>2</sup> Registration No. 7666875, issued on January 28, 2025.

<sup>3</sup> Registration No. 4675580, issued on January 20, 2015; renewed.

<sup>4</sup> As the Examining Attorney noted in his brief, 6 TTABVUE 2-3, and the Board confirmed in an order at 8 TTABVUE, Applicant's Original Appeal Brief, 4 TTABVUE, is 28 pages long and thus exceeds the 25-page limit under Trademark Rule 2.142(b)(2), 37 C.F.R. § 2.142(b)(2). Applicant therefore filed an Amended Appeal Brief complying with the page limit and requests that it be substituted for the Original Appeal Brief. *See* 7 TTABVUE 2. We grant Applicant's request and have considered the Amended Appeal Brief in reaching our decision; we have not considered Applicant's Original Appeal Brief.

## 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 or services, because the “fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). Here, 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, 1379 (Fed. Cir. 2019).

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The Examining Attorney also objected to evidence attached for the first time to Applicant’s Original Appeal Brief. See 6 TTABVUE 2. Because we have not considered Applicant’s Original Appeal Brief, and the evidence in question was not attached to Applicant’s Amended Appeal Brief, the Examining Attorney’s objection is moot.

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

Varying weight may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp.*, 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. Focus on Registration No. 7666875**

Although the Examining Attorney cited two registrations—Registration Nos. 7666875 and 4675580—as bars to the registration of Applicant’s mark, we need not consider both in our analysis. The goods listed in Registration No. 4675580 are identical or legally identical to goods listed in Registration No. 7666875, and, between the two registered marks, the standard-character mark NWA in Registration No. 7666875 is slightly more similar to Applicant’s mark. Therefore, we will focus our analysis on that registered mark.<sup>5</sup> A finding of likelihood of confusion as to NWA in standard characters alone would suffice to affirm the Section 2(d) refusal. And, if we were to conclude that there is no likelihood of confusion as to the standard-character NWA mark, then we would be compelled to conclude that there is also no likelihood of confusion as to the registered standard-character N.W.A. mark. *See In re Morinaga Nyugyo K.K.*, No. 86338392, 2016 TTAB LEXIS 448, at \*7-8; *In re Max Cap. Grp.*, No. 77186166, 2010 TTAB LEXIS 1, at \*4-5.

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<sup>5</sup> We will refer to its owner as “Registrant.”

## **B. Comparison of the Goods**

We begin our analysis with 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)).

Here, Applicant’s goods are identified as “Hats; Sweatshirts; T-shirts,” in International Class 25, and Registrant’s goods are identified as “Clothing, namely, shirts, t-shirts, sweatpants, sweatshirts, track suits, hooded sweatshirts, long sleeve shirts, tank tops, hats, beanies, baseball caps, bandanas,” in International Class 25.

Thus, all of Applicant’s identified goods are identical to goods listed in the cited registration.

## **C. Trade Channels and Classes of Consumers**

Next, we consider established, likely-to-continue channels of trade, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. Because Applicant’s goods are identical to Registrant’s goods, and there are no relevant restrictions in the identifications as to the goods or channels of trade, we presume that the relevant trade channels and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (finding Board entitled to presume that trade channels and classes of purchasers were the same where the respective goods were identical); *In re Am. Cruise Lines, Inc.*, No. 87940022, 2018 TTAB LEXIS 363, at \*5; *In re Inn at St. John’s*,

*LLC*, No. 87075988, 2018 TTAB LEXIS 170, at \*6, *aff'd*, 777 Fed. App'x 516 (Fed. Cir. 2019).

Applicant argues, however, that the trade channels of the respective goods differ because Applicant's goods "are typically distributed through channels connected to the airline industry, such as airport retail stores, airline-operated online shops, in-flight catalogs, and promotional events tied to air travel" and thus "are marketed primarily to airline passengers, aviation enthusiasts, and consumers seeking branded travel apparel or memorabilia associated with the airline's identity."<sup>6</sup> Applicant contrasts these trade channels and consumers with those of Registrant's goods, asserting that Registrant's various clothing items "are sold through general retail and fashion-oriented channels" and "a website clearly associated with the National Wrestling Alliance," and "marketed to a general wrestling-centered consumer base interested in lifestyle or entertainment-related apparel, not to travelers or airline customers."<sup>7</sup>

These arguments are unavailing. Again, our analysis is based on the goods as they are identified in Applicant's application and the cited registration. *See Stone Lion*, 746 F.3d at 1323. And, here, the restrictions to trade channels and classes of consumers that Applicant asks us to rely on are simply not reflected in the respective identifications of goods.

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<sup>6</sup> Applicant's Amended Brief, 7 TTABVUE 20.

<sup>7</sup> *Id.*

**D. Comparison of the Marks**

We turn now to the first *DuPont* factor, which focuses on the similarity or dissimilarity of the marks in their entireties 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 (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) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”); *Inn at St. John’s*, 2018 TTAB LEXIS 170, at \*13.

Here, Applicant’s mark is:



and the cited mark is NWA (in standard characters).

When assessing their similarity, “[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 Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (stating that “marks must be compared in their entireties”). 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 entireties.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305 (Fed. Cir. 2018) (quoting *Nat’l Data*, 753 F.2d at 1058).

### **1. Examining Attorney’s Arguments**

The Examining Attorney argues that the respective marks share the “same dominant acronym,”<sup>8</sup> NWA, “which constitutes the entirety of the [cited] mark.”<sup>9</sup> According to the Examining Attorney, this “shared acronym element is centered prominently in its own space within the design element [of Applicant’s mark] such that it creates its own unique and separable impression such that consumers are likely to believe that the inclusion of the NWA acronym in the design signifies a common source with other goods bearing the acronym NWA.”<sup>10</sup> The Examining Attorney downplays the other elements in Applicant’s mark, asserting that they “fail to significantly distinguish the applied-for mark from the registered mark[] in this case, because the wording in the applied-for mark predominates over the design

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<sup>8</sup> Examining Attorney’s Brief, 6 TTABVUE 7.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 7.

elements”<sup>11</sup> and because the registered mark “contain[s] no additional elements to help consumers differentiate between the registered mark[] and the applied-for mark.”<sup>12</sup>

## **2. Applicant’s Arguments**

Applicant argues that its mark “differs materially in both content and appearance from the cited mark,” because its mark “prominently features the additional wording ‘NORTHWEST AIRLINES,’” which “dominates the overall visual impression of the mark” and “introduces a distinct visual structure and additional textual content that alters the viewer’s focus and perception of the mark as a whole.”<sup>13</sup> Applicant asserts that this additional wording, along with the “circular framing and wing imagery,” results in a composite design with “a markedly different overall appearance.”<sup>14</sup>

As to sound, Applicant notes that there is “a clear and immediate difference in pronunciation” between the respective marks, “as the applicant’s mark requires the speaker to articulate a complete company name [NORTHWEST AIRLINES] followed by an abbreviation [NWA], whereas the cited mark consists solely of the three-letter sequence” of NWA.<sup>15</sup>

Lastly, Applicant contends that the respective marks have different meanings and create different overall commercial impressions because “the inclusion of the words

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<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> Applicant’s Amended Brief, 7 TTABVUE 15.

<sup>14</sup> *Id.* at 16.

<sup>15</sup> *Id.*

‘NORTHWEST AIRLINES’ in the applicant’s mark immediately directs consumers to interpret the mark as identifying or evoking an airline or aviation-related entity,” specifically “an airline operating in or associated with the northwestern region.”<sup>16</sup> Thus, according to Applicant, “[c]onsumers encountering [Applicant’s] mark on apparel would likely view the goods as promotional or commemorative merchandise tied to an airline or aviation-themed brand, rather than as general fashion items.”<sup>17</sup>

### 3. Analysis

We agree with Applicant that there are significant differences between the respective marks in terms of sound, appearance, connotation, and overall commercial impression. As Applicant notes, its mark has additional literal and design elements that do not appear in Registrant’s mark, setting the marks apart both visually and aurally.<sup>18</sup> In fact, the sole similarity between the Applicant’s mark and Registrant’s mark is the shared initialism NWA, which is also present in an almost identical form in the other cited mark (N.W.A) that already coexists on the register with Registrant’s mark.<sup>19</sup> Thus, the question is whether source confusion is likely here because Applicant’s mark and Registrant’s mark share this initialism. We find that it is not.

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<sup>16</sup> *Id.* at 16-17.

<sup>17</sup> *Id.* at 18-19.

<sup>18</sup> Consumers considering Applicant’s mark in its entirety would likely verbalize it as “NORTHWEST AIRLINES NWA” or “NWA NORTHWEST AIRLINES.” Also possible, but less likely, is “NORTHWEST NWA AIRLINES.” All of these verbalizations differ in sound as compared to “NWA” alone.

<sup>19</sup> The Examining Attorney states that the owners of the cited registrations entered into a consent agreement allowing for coexistence of the registered marks, “which is contained in USPTO records for U.S. Registration No. 7666875.” Examining Attorney’s Brief, 6 TTABVue 9 n.2. However, a copy of the consent agreement has not been made of record and the Board

First, we are not persuaded by the Examining Attorney’s argument that NWA is the dominant element in Applicant’s mark or that consumers encountering Applicant’s mark will—to the exclusion of all other elements in the mark—focus solely on NWA as creating a “unique and separable impression.”<sup>20</sup> On the contrary, in Applicant’s mark, NWA is defined by, and thus conceptually tied to, the other wording that surrounds it: NORTHWEST AIRLINES. Therefore, to the extent that NWA does create a unique impression in the minds of consumers, that impression is likely to be that NWA is an abbreviation, or initialism, of NORTHWEST AIRLINES. Thus, we find that purchasers with a general rather than specific impression of Registrant’s mark are at least as likely to focus on and remember the words NORTHWEST AIRLINES and the wing-like design elements, as they are the initialism NWA alone, which merely abbreviates NORTHWEST AIRLINES.<sup>21</sup>

Further, while the Examining Attorney brushes off the other elements in Applicant’s mark, we cannot ignore their impact on the commercial impression of the mark as a whole in connection with the identified goods. *See Viterra*, 671 F.3d at 1362 (“[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.”); *Embarcadero Techs., Inc. v. RStudio, Inc.*, No. 91193335, 2013 TTAB LEXIS 6, at \*34-35 (“[W]e must also look

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generally does not take judicial notice of USPTO records. *See In re House Beer, LLC*, No. 85684754, 2015 TTAB LEXIS 66, at \*3 (“[T]he Board does not take judicial notice of the files of applications or registrations residing in the Office.”).

<sup>20</sup> Examining Attorney’s Brief, 6 TTABVUE 7.

<sup>21</sup> For this reason, even if consumers were to shorten Applicant’s mark to just NWA, they would likely do so with the understanding that NWA stands for NORTHWEST AIRLINES.

at any commercial impressions or connotations created by the marks and, in doing so, we consider the marks in relation to the identified goods . . . .”). Here, the wing-like design elements in Applicant’s mark, when viewed together with the wording in the mark, particularly AIRLINES, reinforce the impression that, as Applicant contends, the mark “identif[ies] or evok[es] an airline or aviation-related entity” and that the goods are thus “promotional or commemorative merchandise tied to an airline or aviation-themed brand.”<sup>22</sup> We have no evidence, nor reason to believe, that consumers would perceive the same connotation when viewing the cited mark consisting solely of the letters NWA.

The Examining Attorney points out that the cited mark is registered in standard characters and thus NWA may be presented in any font style, size, or color, including the same font style, size, and color of the NWA portion of Applicant’s mark.<sup>23</sup> That general proposition is true. *See In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108, at \*13 (“[T]he rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color.”). But, applying that proposition in this case is of little consequence. Even if the cited NWA mark were displayed in the relatively nondescript block capital letter font style featured in Applicant’s mark, we are not convinced that it would lead to confusion, given that Applicant’s mark has other differentiating elements that create a distinct

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<sup>22</sup> Applicant’s Amended Brief, 7 TTABVUE 16-19.

<sup>23</sup> Examining Attorney’s Brief, 6 TTABVUE 6.

commercial impression and that are not encompassed by Registrant's standard-character claim.

We are also not persuaded that consumers would assume that Applicant's goods sold under its mark are from the same source as the goods sold under the cited mark with which they are acquainted or familiar, and that Applicant's mark is merely a variation of, or derivative of, the cited mark, or vice versa. *Cf., e.g., In re Comexa Ltda.*, No. 75396043, 2001 TTAB LEXIS 274 (applicant's use of term AMAZON and parrot design for chili sauce and pepper sauce is likely to cause confusion with registrant's AMAZON mark for restaurant services); *SMS, Inc. v. Byn-Mar Inc.*, No. 91068062, 1985 TTAB LEXIS 32, at \*4 (finding applicant's marks ALSO ANDREA and ANDREA SPORT were "likely to evoke an association by consumers with opposer's preexisting mark [ANDREA SIMONE] for its established line of clothing"). Again, Applicant's mark creates a commercial impression that is distinct from Registrant's mark. *Comexa*, cited above, provides a contrasting example. There, the registered mark consisted solely of the term AMAZON. *Comexa*, 2001 TTAB LEXIS 274, at \*1. That term, by itself, may conjure thoughts of the Amazon jungle or region. Thus, adding a depiction of a parrot (a common jungle bird) to the term AMAZON in the applicant's mark actually reinforced the impression already present in AMAZON alone. Unsurprisingly, the Board found that the parrot design was not a differentiating element. *See Comexa*, 2001 TTAB LEXIS 274, at \*6 ("[T]he mere existence of the parrot design in applicant's mark is not likely to be seen, in our view, as indicating that applicant's goods come from a different source."). That is not the

case here, where the design elements and additional wording in Applicant's mark actually create in the minds of consumers a meaning of NWA—a reference to an airline—that is not present when NWA appears by itself.

Accordingly, we find Applicant's mark, considered in its entirety, is dissimilar to the cited mark in terms of sound, appearance, connotation, and overall commercial impression.

## **II. Conclusion**

We have considered all of the arguments and evidence of record pertaining to the relevant *DuPont* factors. *See In re Charger Ventures LLC*, 64 F.4th 1375, 1384 (Fed. Cir. 2023) (explaining that the Board must “weigh the *DuPont* factors used in its analysis and explain the results of that weighing” (emphasis deleted)). The goods are identical and we presume that they travel in the same ordinary trade channels and will be marketed to the same potential consumers for such goods. Therefore, the second and third *DuPont* factors weigh heavily in favor of concluding that confusion is likely. *See, e.g., In re FabFitFun, Inc.*, No. 86847381, 2018 TTAB LEXIS 297, at \*7.

But given the dissimilarity of the marks in sound, appearance, meaning and commercial impression, we find that the first *DuPont* factor outweighs the second and third factors. We reach this finding with full awareness of the principle that, where the goods are identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines. *See Bridgestone Ams. Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 1337 (Fed. Cir. 2012). Here, however, the differences between the marks, viewed in their entireties, are substantial enough to make confusion unlikely even where the marks are used with identical goods that

presumably travel in the same types of trade channels and are sold to the same classes of consumers. *See Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 1381-1382 (Fed. Cir. 2016) (holding that although Applicant’s MAYARI mark incorporated the entirety of Opposer’s MAYA mark for identical goods, “the Board did not err in balancing all relevant *DuPont* factors and in determining that the dissimilarity of the marks was sufficient to preclude a likelihood of confusion”) (citing *Odom’s Tenn. Pride Sausage, Inc. v. FF Acquisition, L.L.C.*, 600 F.3d 1343, 1346-47 (Fed. Cir. 2010) (“[A] single *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks.”) (internal quotation omitted)); *FabFitFun, Inc.*, 2018 TTAB LEXIS 297, at \*23-24.

We therefore conclude that confusion is unlikely.

**Decision:** The refusal under Trademark Act Section 2(d) to register Applicant’s mark is **reversed**.