THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 27, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Octavio J. Ramirez Bartolomei

Serial No. 98798291

Octavio J. Ramirez Bartolomei, *pro se.*

Henry Urban, Trademark Examining Attorney, Law Office 120
Joshua Toy, Managing Attorney.

Before Lykos, Allard, and O'Connor, Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

In the application as originally filed, Octavio J. Ramirez Bartolomei ("Applicant") sought registration on the Principal Register of the mark HAPPY MAMITA (in standard characters) for "Shirts; Tee shirts," in International Class 25.[1]

Registration was subsequently refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as used in connection with

[1] Application Serial No. 98798291 was filed on October 12, 2024, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

the goods indicated above, so resembles the mark MAMITA (in typeset form[2]) registered on the Principal Register for "Clothing, namely, T-shirts, jackets, pants, sweaters for children," in International Class 25,[3] that it is likely to cause confusion or mistake, or to deceive.[4] The Office Action also required a translation statement.[5]

In an apparent attempt to overcome the refusal, Applicant submitted an amended drawing, seeking to register the following mark:

[6]

In the subsequent non-final Office Action, the Trademark Examining Attorney refused to accept the proposed amended drawing, asserting that it materially altered

---

[2] Prior to November 2, 2003, "standard character" drawings were known as "typed" or "typeset" drawings. *See In re Viterra Inc.*, 671 F.3d 1358, 1363 n.2 (Fed. Cir. 2012). A typeset mark is the legal equivalent of a standard character mark. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 807.03(i) (Nov. 2025).

[3] Registration No. 2636293 was issued on October 15, 2002; renewed. The registration includes the following translation statement: "The English language translation of 'MAMITA' is 'little mother'." The registration also identifies goods in International Classes 16 and 28 that do not form a basis for the refusal.

[4] April 15, 2025 non-final Office Action at TSDR 2-4.

Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system.

[5] April 15, 2025 non-final Office Action at TSDR 2, 4-5.

[6] May 3, 2025 Drawing. Applicant describes the mark as "consist[ing] of Love it in bold black letters on top of white eagle head with gray eyes surrounded by orange and yellow sun with green and brown pines and mountain as feathers and Believe it in bold black letters under." May 3, 2025 Response to Office Action.

the mark in the drawing of the original application.[7] Trademark Rule 2.72(b)(2), 37 C.F.R. § 2.72(b)(2). As a result, the proposed amendment was not entered and the previous drawing of the mark remained operative. The refusal under Section 2(d) was maintained, as was the translation statement requirement.[8]

In response, Applicant attempted again to amend the drawing, this time proposing a drawing with the same design image but without any literal elements:

[9]

Applicant did not address the Section 2(d) refusal or the translation statement requirement.[10]

In response, the Examining Attorney made final the refusal to accept the proposed drawing, the refusal under Section 2(d) and the translation statement requirement.[11]

---

[7] May 30, 2025 non-final Office Action at TSDR 2-3.

[8] May 30, 2025 non-final Office Action at TSDR 3-6.

[9] June 21, 2025 Drawing; June 21, 2025 Response to Office Action at TSDR 2.

[10] June 21, 2025 Response to Office Action at TSDR 2.

[11] October 16, 2025 Final Office Action.

After the Examining Attorney made the refusal final, Applicant appealed.[12] Both Applicant and the Examining Attorney filed briefs.[13] Applicant's brief in its entirety consists of the following image and statement:

> What I am interested in is using the logo, not showing name of brand or causing confusion, Happy Mamita (Mommy in Spanish) can just go on the label, not on the shirt itself, please.[14]

For the reasons explained below, we affirm the refusals to accept the proposed amended drawings; as a result, the operative drawing consists of the standard character mark HAPPY MAMITA. We also affirm the refusal to register the HAPPY MAMITA mark under Section 2(d). In light of our affirmance on these two grounds, we exercise our discretion not to address the refusal based on Applicant's failure to provide the required translation statement. *See, e.g., In re SIPCA Holding SA*, No. 88488405, 2021 TTAB LEXIS 202, at *13-14 (TTAB 2021) (affirming refusal to register for failing to provide a definite identification and to respond to information

---

[12] 1 TTABVUE.

References to the briefs on appeal refer to TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry.

[13] Applicant's brief appears at 4 TTABVUE and the Examining Attorney's brief appears at 6 TTABVUE.

[14] 4 TTABVUE 2.

requirements, but declining to reach likelihood of confusion refusal where applicant "was not sufficiently forthcoming, making a fair and complete consideration of the substantive issue (likelihood of confusion) impossible"); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 1217 (2025) (indicating Board's discretion not to reach a further requirement or refusal after the Board has affirmed one requirement or refusal).

I. Applicant's Proposed Amended Drawings

Trademark Rule 2.72(b)(2), 37 C.F.R. § 2.72(b)(2), provides that in an application based on a bona fide intention to use a mark in commerce under Section 1(b) of the Act, an applicant may amend the drawing of the mark if "[t]he proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application." The test for determining whether a proposed amendment is a material alteration has been articulated as follows:

> The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication, it would be tantamount to a new mark appropriate for a new application.

In re Hacot-Colombier, 105 F.3d 616, 620 (Fed. Cir. 1997) (quoting *Visa Int'l Serv. Ass'n v. Life-Code Sys., Inc.*, No. 91065453, 1983 TTAB LEXIS 13, at *9-10 (TTAB

1983)). Although the general test refers to republication, it also applies to amendments to marks proposed before publication. *See In re Who? Vision Sys., Inc.*, No. 75399617, 2000 TTAB LEXIS 548, at *21 (TTAB 2000). "Material alteration is the standard used for evaluating amendments to marks in all phases of prosecution, i.e., before publication, after publication, and after registration." TMEP § 807.14.

The crucial questions, therefore, are whether the proposed amendment retains "the essence of the original mark" and whether it creates "the impression of being essentially the same mark." *In re Who? Vision Sys.,* 2000 TTAB LEXIS 548, at *17. That is, "the new and old forms of the mark must create essentially the same commercial impression." *Id.* (quoting *In re Nationwide Indus. Inc.*, No. 73492987, 1988 TTAB LEXIS 19, at *9 (TTAB 1988)). *See also In re Guitar Straps Online, LLC*, No. 85047191**,** 2012 TTAB LEXIS 287, at *3-4 (TTAB 2012).

We find that both Applicant's first and second proposed amended drawings constitute material alterations of the mark in the drawing of the application as originally filed because no aspect of the original mark is present in either of the proposed amended drawings. The marks of the proposed amended drawings are entirely different and new marks; that is, neither retains the essence of the original mark. The original drawing consists of the standard character mark HAPPY MAMITA. None of these literal elements appears in either of Applicant's proposed amended drawings, nor does Applicant's original drawing contain any imagery of an eagle head or sun design, both of which appear in the proposed amended drawings.

Thus, the proposed amended drawings are prohibited under Trademark Rule 2.72(b)(2).

The literal elements LOVE IT and BELIEVE IT would require a new search, which further supports the finding that the proposed amendments constitute a material alteration. *In re Pierce Foods Corp.*, No. 73353662, 1986 TTAB LEXIS 157, at *4 (TTAB 1986). Similarly, the eagle head design would require a new search. *Id*. Further, Applicant's proposed amendments are tantamount to an improper attempt to maintain the application filing date in lieu of filing new applications for different marks with later filing dates.

Accordingly, the Examining Attorney's refusal to enter the two proposed amended drawings is affirmed. As a result, the operative drawing is that of the standard character mark HAPPY MAMITA. We continue with an analysis of the likelihood of confusion refusal under Section 2(d) as to the HAPPY MAMITA mark in standard characters.

II. Likelihood of Confusion under Section 2(d)

Section 2(d) of the Trademark Act prohibits the registration of a mark that "[c]onsists of or comprises a mark which 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, or to cause mistake, or to deceive …." 15 U.S.C. § 1052(d). 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. 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 (Fed. Cir. 2003). 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); *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.").

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and 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)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976). These two factors, together with the third *DuPont* factor, are addressed in this decision. Applicant, however, does not address any of the *DuPont* factors. Although we acknowledge that Applicant states that he is not interested in causing confusion[15] and have no reason to doubt the sincerity of his statement, it is nonetheless insufficient to avoid a finding of likelihood of confusion for the reasons explained below.

A. The Similarity or Dissimilarity of the Goods and the Similarity or Dissimilarity of Established, Likely-To-Continue Trade Channels and Classes of Consumers

We turn first to the second *DuPont* factor, which involves a comparison of the goods as they are identified in the involved application and the cited registration. *See*

[15] 4 TTABVUE 2.

In re Detroit Athletic Co., 903 F.3d 1297, 1306 (Fed. Cir. 2018); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002).

Recall that Applicant identifies "Shirts; Tee shirts" and that the cited registration identifies "T-shirts." Here, Applicant's "Tee shirts" are identical to Registrant's "T-shirts." And, because Applicant's identified "shirts" is broad enough to encompass Registrant's more narrowly identified "t-shirts," the goods are also legally identical. *See New Era Cap Co. v. Pro Era, LLC*, No. 91216455, 2020 TTAB LEXIS 199, at *39-40 (TTAB 2020) (finding "caps" as identified in the application broad enough to encompass all types of caps, including "athletic caps" identified in the opposer's registration, rendering the parties' goods in-part legally identical); *In re Hughes Furniture Indus., Inc.*, No. 85627379, 2015 TTAB LEXIS 65, at *10 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'"). Consequently, Applicant's goods and those of the cited registration are identical in-part and legally identical in-part.

This brings us to the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers, the third *DuPont* factor. *DuPont*, 476 F.2d at 1361. Because the goods are both identical in-part and legally identical in-part and because the identifications of the involved application and cited registration are unrestricted as to trade channels, we must presume that the goods travel in the same channels of trade to the same class of purchasers. *See In re Viterra,* 671 F.3d at 1362 (even though there was no evidence regarding channels of trade and classes of

consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

The identical and legally identical nature of the goods, and the presumed identity in trade channels and classes of purchasers, cause the second and third *DuPont* factors to weigh heavily in favor of finding a likelihood of confusion.

B. Similarity or Dissimilarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of marks in their entireties, considering their appearance, sound, meaning and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee 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) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion."); *In re Inn at St. John's, LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13 (TTAB 2018), *aff'd per curiam*, 777 Fed. Appx. 516 (Fed. Cir. 2019).

Where the goods are identical and legally identical, as they are in this case, the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as in the case of diverse goods. *See, e.g., Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373 (Fed. Cir. 2018) (quoting *In re Viterra*, 671 F.3d at 1363); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir.

2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992).

While marks must be compared in their entireties and the analysis cannot be predicated on dissecting the marks into their various components, different features may be analyzed to determine whether the marks are similar. *See In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *New Era Cap*, 2020 TTAB LEXIS 199, at *41-42. 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 a consideration of the marks in their entireties. *In re Charger Ventures LLC*, 64 F.4th 1375, 1382 (Fed. Cir. 2023) (permissible for the Board "to focus on dominant portions of a mark"); *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004).

Recall that Applicant's operative drawing shows the mark as HAPPY MAMITA and the cited mark is MAMITA, each in standard characters (or its legal equivalent) format.

As an initial matter, we find that MAMITA is the dominant portion of Applicant's mark. HAPPY, an adjective defined as "enjoying or characterized by well-being and contentment,"[16] has less trademark significance due to its laudatory nature, and

[16] https://www.merriam-webster.com/dictionary/happy?src=search-dict-hed. Accessed on May 25, 2025. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *See In re Cordua Rests. LP*, No. 85214191, 2014 TTAB LEXIS 94, at *6 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594 (Fed. Cir. 2016).

serves to describe MAMITA.[17] Moreover, for these same reasons, the term HAPPY does not serve to distinguish the marks.

Registrant's mark consists in its entirety of the term MAMITA. Thus, the dominant portion of Applicant's mark and the entirety of the mark of the cited registration are identical. Because of this, we find that the marks look alike and sound alike when pronounced to the extent that they share the term MAMITA. They also have similar connotations and engender similar commercial impressions due to the shared MAMITA element.

In the case before us, Applicant has merely added HAPPY to the cited mark. The addition of a term to a registered mark has often been found to increase the similarity between the compared marks where, as in the present case, the dominant portion of one entity's mark is the same as the entirety of another entity's mark. *See In re Charger Ventures*, 64 F.4th at 1381-82 (holding SPARK and SPARK LIVING confusingly similar); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557 (CCPA 1975) (holding BENGAL and BENGAL LANCER and design confusingly similar); *In re Toshiba Med. Sys. Corp.*, No. 79046106, 2009 TTAB LEXIS 447, at *26-27 (TTAB 2009) (holding TITAN and VANTAGE TITAN confusingly similar).

Moreover, given that Registrant's mark consists entirely of the term MAMITA and Applicant merely adds HAPPY to it, consumers familiar with Registrant's MAMITA

---

[17] The record shows that the English translation of MAMITA is "mommy." April 15, 2025 Office Action at TSDR 9. Applicant concedes the same in his brief. 4 TTABVUE 2.

t-shirts who encounter Applicant's HAPPY MAMITA t-shirts could very well assume that the t-shirts emanate from the same source. Indeed, consumers could perceive one entity's mark as a brand extension of the other.

In short, when comparing the marks in their entireties, overall the marks are similar. Thus, the first factor weighs in favor of a likelihood of confusion.

C. Summarizing the *DuPont* Factors

The goods are identical in-part and legally identical in-part and are presumed to travel through the same channels of trade to the same classes of consumers. Thus, the second and third *DuPont* factors weigh heavily in favor of a likelihood of confusion. The marks are similar due to the shared element MAMITA, and, as result, the first *DuPont* factor weighs in favor of a likelihood of confusion. Inasmuch as all three factors weigh in favor of a likelihood of confusion, and none weigh against it, confusion is likely.

Decision:

The refusal to enter both of the proposed amended drawings is **affirmed**. The refusal to register Applicant's HAPPY MAMITA mark under Section 2(d) of the Trademark Act is **affirmed**. Because we affirm on these two grounds, we need not reach the other remaining ground regarding the requirement for a translation statement. *See, e.g., In re SIPCA Holding*, 2021 TTAB LEXIS 202, at *13-14.