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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Leskro Incorporated

Serial No. 98644460

Gregory Kenyota, of Bochner PLLC,
for Leskro Incorporated.

Jacquelyn Jones,[1] Trademark Examining Attorney, Law Office 120,
Joshua Toy, Managing Attorney.

Before Wellington, English, and Casagrande,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

Leskro Incorporated (Applicant), appeals the refusal of its application to register the mark KATIE'S KANDY KORNER in standard-character format on the Principal Register for goods identified as "Candies; Candy; Chocolate; Chocolate bars; Hard candies; Milk chocolate; Snack cakes," in International Class 30.[2]

[1] The Examining Attorney during prosecution was Karl Wert.

[2] Application Serial No. 98644460 was filed on July 11, 2024, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark for the identified goods. The word "Candy" is disclaimed.

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), due to likelihood of confusion with two registered marks owned by different entities:

- The composite mark 

, for goods identified as "Candy," in Class 30;[3] and

- CAROL'S CANDY CORNER (in standard characters; "Candy" disclaimed), for goods identified as "Candy; Chocolate; Candies; Candy bars; Chocolate and chocolates; Chocolate bars; Chocolate bunnies; Chocolate truffles; Confectioneries, namely, snack foods, namely, chocolate; Confectionery, namely, candy and chocolate; Chocolate candies; Chocolates and chocolate-based ready to eat candies and snacks; Filled chocolate; Fruit jelly candy; Gift baskets containing candy; Gummy candies; Hard candies; Milk chocolate; Rock candy," in Class 30.[4]

After final refusal,[5] Applicant appealed.[6] The appeal has been briefed[7] and is now ready for decision. For the reasons explained below, we affirm the refusal to register.

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[3] Reg. No. 5054799 issued on October 4, 2016, with a date of first use anywhere and in commerce of July 31, 2015 (Section 8 Declaration of Continued Use accepted).

[4] Reg. No. 7741868 issued on April 1, 2025, with a date of first use anywhere and in commerce of October 1, 2004. The name shown in the mark identifies Carol Wert, whose consent to register is of record.

[5] *See* Oct. 8, 2025, Final Office Action. Citations in this opinion to the application record refer to the version of the documents as downloaded in .pdf format from the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

[6] *See* 1 TTABVUE. References to the briefs and appeal record cite to the Board's TTABVUE electronic docket system. The number preceding "TTABVUE" represents the docket number assigned to the cited filing in TTABVUE, and any number immediately following "TTABVUE" identifies any specifically-cited page(s).

[7] *See* 4 TTABVUE (Applicant's Brief); 6 TTABVUE (Examining Attorney's Brief).

ANALYSIS

The refusal here is based on two different registrations, so we need to pick one to begin our analysis. We'll begin with Registration No. 7741868 for CAROL'S CANDY CORNER (the " '868 Registration"). If we conclude that confusion isn't likely as to that registered mark, we'll then assess whether confusion is likely as to the mark in the other cited registration.

A. Section 2(d) refusals generally

Section 2(d) of the Trademark Act 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, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). To determine whether confusion is likely, we use the roadmap set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). *du Pont* lays out several factors that may be relevant in a given case. *See, e.g.*, *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Though *du Pont* lists thirteen numbered factors, we generally address only those that are relevant and material to the case before us. *See, e.g.*, *Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1241 (Fed. Cir. 2004); *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 943 (Fed. Cir. 1990). Typically, those are the factors that the parties address and on which there is relevant evidence in the record. *See, e.g.*, *Dollar Fin. Grp., Inc. v. Brittex Fin., Inc.*, 132 F.4th 1363, 1371-72 (Fed. Cir. 2025); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 946-47 (Fed. Cir. 2000). After making findings on the relevant factors, we then weigh them together to determine

if, on balance, they indicate that confusion is likely. *See, e.g.*, *Charger Ventures*, 64 F.4th at 1381; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1319 (Fed. Cir. 2003).

B. Comparison of the goods

A few of the relevant factors present us with some low-hanging fruit to be picked, such as the second likelihood of confusion factor listed in *du Pont*: "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration." 476 F.2d at 1361. Here, the application lists "Candies; Candy; Chocolate; Chocolate bars; Hard candies; Milk chocolate; Snack cakes." The '868 Registration lists:

> Candy; Chocolate; Candies; Candy bars; Chocolate and chocolates; Chocolate bars; Chocolate bunnies; Chocolate truffles; Confectioneries, namely, snack foods, namely, chocolate; Confectionery, namely, candy and chocolate; Chocolate candies; Chocolates and chocolate-based ready to eat candies and snacks; Filled chocolate; Fruit jelly candy; Gift baskets containing candy; Gummy candies; Hard candies; Milk chocolate; Rock candy.

As can be seen, everything in the application except "snack cakes" is listed in the registration. As Applicant acknowledges, "the goods are identical or legally identical,"[8] in part. Thus, when we do our final weighing, this factor will weigh in favor of a conclusion that confusion is likely.

[8] *See* 4 TTABVUE 16, 17.

C. Comparison of the trade channels and classes of customers

We see two more varieties of low-hanging fruit. *du Pont* tells us that we must assess "[t]he similarity or dissimilarity of established, likely-to-continue trade channels" and the "buyers to whom sales are made." *Id.* Applicant does not address these factors. But the Examining Attorney does, pointing out that where, as here, the goods are identical, we must presume that the goods travel in the same channels of trade to the same classes of purchasers.[9] We agree with the Examining Attorney. *See, e.g.*, *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1372 (Fed. Cir. 2018); *In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012). When we do our final weighing of the findings on the factors, these two factors will also weigh in favor of a conclusion that confusion is likely.

D. Comparison of the marks

We now turn to the first of the two factors that Applicant addresses: "[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." *du Pont*, 476 F.2d at 1361. Our primary reviewing court has termed this a "predominant inquiry" in the likelihood of confusion analysis. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165 (Fed. Cir. 2002); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265 (Fed. Cir. 2002). Because people usually are exposed to marks at "spaced intervals," *Grandpa Pidgeon's of Mo., Inc. v. Borgsmiller*, 477 F.2d 586, 587 (CCPA 1973), they "ordinarily

[9] 6 TTABVUE 9-10.

must depend upon their past recollection" when later exposed to a similar mark. *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (CCPA 1981). So when we compare marks, we don't do a "side-by-side comparison," but rather consider the marks "in light of the fallibility of memory." *In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014) (citation omitted); *see also Diamond Alkali Co. v. Dundee Cement Co.*, 343 F.2d 781, 784 (CCPA 1965) (the test is whether confusion is likely when "the marks are compared by separate recall later in time and removed in place").

We assess marks by looking at their "appearance, sound, connotation and commercial impression." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1340 (Fed. Cir. 2015) (citation omitted); *accord In re i.am.symbolic, llc*, 866 F.3d 1315, 1324 (Fed. Cir. 2017). Similarity in all aspects is not required, however. This factor supports refusal "if the similarity in either form, spelling or sound alone is likely to cause confusion." *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 732 (CCPA 1968) (citation omitted); *see also Hancock v. Am. Steel & Wire Co.*, 203 F.2d 737, 740 (CCPA 1953) ("it is proper to consider [the marks'] appearance, sound and meaning … but a combination of all three factors need not necessarily exist") (cleaned up; citations omitted).

"Similarity is not a binary factor but is a matter of degree." *St. Helena Hosp.*, 774 F.3d at 752 (citation omitted). "The proper test is … 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." *i.am.symbolic*, 866 F.3d at 1323 (citation omitted); *see also Phillips Petroleum Co. v.*

Knox Indus. Corp., 277 F.2d 945, 947 (CCPA 1960) ("The issue is whether the marks are confusingly similar, not whether they are identical.") (citation omitted).

Applicant's mark is KATIE'S KANDY KORNER; the mark in the '868 Registration is CAROL'S CANDY CORNER. Both are three words. All three words are two syllables each and all begin with a "k" / "hard c" sound. They thus are identical in cadence and alliterative in sound. The first words are the possessive form of female names. The last two words in each are phonetically identical and, in the context of the respective (and identical) goods, mean the same thing (a corner store where candy is sold). The only difference is KATIE'S / CAROL'S. Overall, these marks are highly similar. *See, e.g.*, *Midwestern Pet Foods, Inc. v. Société des Produits Nestlé S.A.*, 685 F.3d 1046, 1053 (Fed. Cir. 2012) (finding BEGGIN' STRIPS and WAGGIN STRIPS' similar where they "have the same format, structure, and syntax"); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060 (Fed. Cir. 1985) ("CASH MANAGEMENT ACCOUNT and THE CASH MANAGEMENT EXCHANGE are, in large part, identical in sound and appearance and have a general similarity in cadence.").

Applicant insists they're "not similar."[10] Applicant highlights that it spells "candy corner" with K's, not C's. Yes, this technically renders the marks non-identical, but consumers plainly will see "KANDY KORNER" and understand it as an intentional and playful misspelling of "CANDY CORNER." The difference is de minimis. *See, e.g.*, *St. Helena Hosp.*, 774 F.3d at 750-51 (rejecting argument that TAKETEN and TAKE 10! are dissimilar, saying "the differences in appearance are minimal"); *Contour*

[10] *See* 4 TTABVUE 14, 16.

Chair-Lounge Co. v. Englander Co., 324 F.2d 186, 189 (CCPA 1963) (finding that "'Contur' but a slight misspelling of 'Contour,'" Court held that confusion was likely as between CONTURFOAM for mattresses and box springs and CONTOUR for chairs).

Applicant also points to the different female names that are the first words of the marks. Applicant argues that, because they're first words, they're the "dominant elements" of the marks, and this means the dominant elements differ in sound, meaning, and commercial impression.[11] We don't see it that way. The two names may be different, but they still have significant similarities. As noted above, both are two syllables each, begin with a "k" / "hard c" sound, are in possessive form, and are an integral part of the alliterative nature and cadence of each mark. Viewing them in light of the "fallibility of memory" that kicks in when consumers depend on their recollection of marks to which they've previously been exposed, we disagree with Applicant. The differences Applicant highlights in the female names pale in comparison to the overall similarities in the marks—and it's not a close question.

We find the marks to be highly similar when viewed in their entireties. When we perform the final weighing of the relevant factors, this factor will count in favor of a conclusion that confusion is likely. Just how much this will weigh in favor of the refusal may vary depending on the next factor we discuss.

[11] *See id.* at 14-16.

E. The number and nature of similar marks in use on similar goods

du Pont's sixth-listed factor is "[t]he number and nature of similar marks in use on similar goods." 476 F.2d at 1361. The Federal Circuit has explained that:

> [t]he purpose of introducing evidence of third-party use is to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions. Third-party use is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.

Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co., 908 F.3d 1315, 1324 (Fed. Cir. 2018) (cleaned up; citations omitted).

This is the main theme of Applicant's brief: that "[t]he shared term 'CANDY CORNER and its phonetic variants is a weak and diluted term for candy and related goods and services."[12] To support this assertion, Applicant points to evidence in the record that fourteen (14) other businesses around the country use "CANDY CORNER."[13] According to Applicant, this means "that the term [Candy Corner] carries a suggestive or descriptive connotation in the relevant industry and is therefore weak."[14] Applicant also urges that consumers, as a consequence, are

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[12] 4 TTABVUE 3; *see also id.* at 9-14.

[13] *See* Apr. 30, 2025, Response to First Nonfinal Office Action, at TSDR 16-17 (Candy Corner); *id.* at 18-21 (Yelp review for a different Candy Corner); *id.* at 22-23 (a third Candy Corner); *id.* at 24 (a fourth Candy Corner); *id.* at 25-26 (The Candy Corner); *id.* at 27-28 (Sophia's Candy Corner); *id.* at 29 (Johnny's Candy Corner); *id.* at 30 (Michael's Candy Corner); Sept. 9, 2025, Response to Second Nonfinal Office Action, at TSDR 16-17 (Kandy Korner); *id.* at 18 ("Oaks Candy Corner" a/k/a "Oaks Candy"); *id.* at 19 (Mary Lou's Candy Corner); *id.* at 22-23 (Skip's Candy Corner); *id.* at 24-25 (Nancy's Candy Corner); *id.* at 26 (The Candy Corner).

[14] *See* 4 TTABVUE 13.

unlikely to be confused because of "the distinctive first-word personal names that precede 'CANDY CORNER.'"[15]

We agree with Applicant that the shared component "CANDY CORNER" / "KANDY KORNER" is weak. "Candy" is generic for candy,[16] and the term "corner" in "Candy Corner" for entities selling candy to the public is suggestive in the sense that it conjures an image where the candy is sold in a hometown-type establishment with a friendly, neighborhood vibe. So the term "Candy Corner" (or slightly different spellings of the term) is conceptually weak in the context of candy sales.[17]

The fourteen third-party uses also are probative to show that "Candy Corner" is fairly weak in the marketplace as well (commercial weakness). But most of these third-party users appear to be small, single-location shops.[18] And Applicant does not

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[15] *Id.* at 11.

[16] "Candy" is disclaimed in both marks for this reason.

[17] Conceptual strength or weakness refers to a mark's "distinctiveness." *See Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). Distinctiveness assesses the inherent relationship between the words in the mark and the goods or services. *See, e.g.*, *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210 (2000) ("a mark is inherently distinctive if its intrinsic nature serves to identify a particular source") (cleaned up; citation omitted). Distinctiveness can range along a whole spectrum, from marks that have no relationship whatsoever with the goods or services ("arbitrary" or "fanciful" terms, which are inherently distinctive), to marks that actually name the good or service ("generic" terms—like the word "candy" for candy—which are not inherently distinctive). In between are marks that are "suggestive," i.e., terms that require some thought to be understood to relate to the goods or services (inherently distinctive, but not as much as arbitrary or fanciful terms) and terms that are "descriptive," i.e., they are easily seen to describe an aspect of the goods or services (not inherently distinctive). *See generally Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768-69 (1992).

[18] *See also* Apr. 30, 2025, Response to First Nonfinal Office Action, at TSDR 12 (characterizing each as a "store" and listing a location in a specific town); Sept. 9, 2025, Response to Second Nonfinal Office Action, at TSDR 12 (same). We note that the retailer named "Kandy Korner" appears to have five locations on Cape Cod. *See id.* at 16.

give us any more information of the extent of these third-party uses. That tends to blunt the force of this third-party use evidence a bit. *See*, *e.g.*, *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 1373-74 (Fed. Cir. 2005) (The probative value of third-party trademarks depends entirely upon their usage. … As this court has previously recognized, where the record includes no evidence about the extent of [third-party] uses ... [t]he probative value of this evidence is thus minimal.") (citations omitted). Without additional evidence, we don't have much to go on in determining "the consuming public's awareness" of these other uses. *See id.*[19]

Still, overall, based on the record before us, we find the shared "CANDY CORNER" / "KANDY KORNER" segment of the respective marks conceptually and commercially weak. This factor will rest on Applicant's side of the scale when we perform our weighing of the factors.

F. The "coexistence" of the two cited registrations

Applicant also argues that "[t]he USPTO allowed [the two registrations cited against Applicant] to coexist, which demonstrates that the USPTO itself does not view 'CANDY CORNER' as distinctive enough to confer exclusive rights on any one registrant."[20] But Applicant is not trying to register "CANDY CORNER" by itself. Its

[19] Where the sheer number of third-party uses rises to the level of "ubiquitous," "considerable," or extensive, then such evidence can be potent even without additional evidence showing the extent of the uses. *See i.am.symbolic*, 866 F.3d at 1329 (discussing *Jack Wolfskin Ausrustung Fur Draussen GmbH v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1373-74 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015)). We do not think the evidence here rises to that level, particularly where, as here, the evidence shows these third-party users to be small businesses. The modest number of third-party uses does not convince us that this factor should be given overriding weight.

[20] 4 TTABVUE 9.

mark is KATIE'S KANDY KORNER. And the marks cited against it are more than just "CANDY CORNER." The '868 Registration is for CAROL'S CANDY CORNER, and the other cited registered mark has a stylized typeface, colors, and a design, so it too has additional elements. Plus, we already held that the segment "CANDY CORNER" that Applicant's mark and the mark in the '868 Registration have in common is weak. What, beyond that, might Applicant be arguing?

To the extent that Applicant is going further by arguing that all marks containing "CANDY CORNER" must be registered because the USPTO allowed two marks with that wording to be registered, we reject the argument. "Neither the Board nor any Trademark Examining Attorney is bound by decisions of Examining Attorneys to register prior marks." *In re USA Warriors Ice Hockey Program, Inc*., No. 86489116, 2017 WL 2572815, at *4 n.10 (TTAB 2017). "The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement … , even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect." *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016).

Or maybe Applicant is arguing that, when comparing marks containing "CANDY CORNER," we must give no weight at all to "CANDY CORNER" and compare only the other elements of the marks. If so, we reject that too. We are required to compare marks in their entireties. *See In re Detroit Athl. Co*., 903 F.3d 1297, 1305 (Fed. Cir. 2018) ("it would be impermissible to ignore [non-source identifying] words outright"); *Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 673 (Fed. Cir. 1984) ("Arguments to the effect that one portion of a mark possesses no trademark

significance leading to a direct comparison between only what remains is an erroneous approach.").

No matter how we look at it, this argument simply is not persuasive.

G. Conclusion as to whether confusion is likely as to the mark in the '868 Registration

Having made findings on the relevant likelihood-of-confusion factors, our final step is to assess these findings together to determine if, on balance, they indicate that confusion is likely. *See, e.g.*, *Charger Ventures*, 64 F.4th at 1384. Because the factors may interact with one another, the weight each factor is given depends on the overall circumstances in the case. *See id.* at 1381; *In re Shell Oil Co.*, 992 F.2d 1204, 1206 (Fed. Cir. 1993). This step is not a "simple tally of factors." *Swagway, LLC v. ITC*, 934 F.3d 1332, 1340 (Fed. Cir. 2019); *accord Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 1356 (Fed. Cir. 2011).

We found the goods to be identical. This is not only an important factor by itself, *see, e.g.*, *Pink Lady Corp. v. L.N. Renault & Sons, Inc.*, 265 F.2d 951, 953 (CCPA 1959) (similarity or dissimilarity of the goods "is logically a factor of considerable importance to be given much weight in reaching the ultimate conclusion") (citation omitted), but it also affects how we factor-in the similarities in the marks: "When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992); *accord Viterra*, 671 F.3d at 1363; *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348 (Fed. Cir. 2010).

And because the goods are identical, we also found that the channels of trade and classes of customers also are presumed to be identical. So these two factors add more weight in favor of a conclusion that confusion is likely.

The comparison of the marks, of course, is a "predominant" factor in the weighing. *See, e.g.*, *Herbko Int'l*, 308 F.3d at 1165; *Hewlett-Packard*, 281 F.3d at 1265; *see also Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."). Here, we found the marks to be highly similar. But we agreed with Applicant that the shared "CANDY CORNER / KANDY KORNER segment of the marks is conceptually and commercially weak. That suggests that the public can distinguish between various "CANDY CORNER" marks more easily than otherwise, a factor that weighs in Applicant's favor.

But we conclude that the marks, as wholes, are just too close, in light of the identity of the goods, channels of trade, and classes of customers, to persuade us that these factors are outweighed by the weakness of the shared CANDY CORNER segment. Despite the weakness of CANDY CORNER, we conclude that, on balance, confusion is likely in the circumstances presented here. Thus, registration must be refused under Section 2(d) in view of the '868 Registration. There is no need to assess whether refusal is also appropriate in view of the mark of Registration No. 5054799. *See, e.g.*, *In re Max Cap. Grp. Ltd.*, No. 77186166, 2010 WL 22358, at *7 (TTAB 2010).

Decision: The refusal to register Applicant's mark is affirmed.