

This Opinion Is Not a
Precedent of the TTAB

Mailed: April 15, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Game Changer Bourbon LLC

Serial No. 97934533

John B. Dawson, of Carle Mackie Power & Ross LLP, for Game Changer Bourbon LLC.

Kristin Kuraishi, Trademark Examining Attorney, Law Office 131,
Nicholas A. Coleman, Managing Attorney.

Before Pologeorgis, Thurmon and Lebow, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Game Changer Bourbon LLC (“Applicant”) seeks registration on the Principal Register of the mark PLAYER EXCLUSIVE, in standard characters with “EXCLUSIVE” disclaimed, for “Bourbon; Distilled spirits,” in International Class 33.¹

¹ Application Serial No. 97934533 was filed on May 12, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce. During prosecution, Applicant amended the Application to allege use under Section 1(a) of the Act, alleging a first use anywhere and in commerce on or before April 15, 2024. *See* Applicant’s August 20, 2024 Amendment to Allege Use.

Citations to the prosecution file are to entries in the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. Citations to the appeal record are to TTABVue, the Board’s online docketing system.

The Trademark Examining Attorney issued a final refusal of registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), finding a likelihood of confusion based on a Registration of the mark PLAYERS VODKA, in standard characters with “VODKA” disclaimed, for “vodka,” in International Class 33.²

The appeal is briefed and ready for final decision. We affirm the refusal to register.

I. Section 2(d) – Applicable Law

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. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1318 (Fed. Cir. 2018). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the goods or services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208 (Fed. Cir. 1993).

² Registration No. 6493501, issued September 21, 2021, on the Principal Register.

“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). 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); *Shell Oil*, 992 F.2d at 1206 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between 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)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 1342 (Fed. Cir. 2004); *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.”).

II. Likelihood of Confusion – Analysis

The Applicant and the Trademark Examining Attorney focused on the first two *DuPont* factors, with some additional argument submitted under factors three and four. We will address *DuPont* factors one through four.

A. Similarity of the Marks

To evaluate the similarity of the marks under the first *DuPont* factor, we consider the marks in their entirety as to appearance, sound, connotation and commercial impression. *See, e.g., Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison*

Fondee En 1772, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (citing *DuPont*, 476 F.2d at 1361). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s LLC*, No. 87075988, 2018 TTAB LEXIS 170, at *13 (quoting *In re Davia*, No. 85497617, 2014 TTAB LEXIS 214, at *4), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019); *accord Krim-Ko Corp. v. Coca-Cola Bottling 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.”) (citation omitted).

“The 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.” *Coach Servs. Inc. 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 marks.” *In re i.am.symbolic, llc*, No. 85916778, 2018 TTAB LEXIS 281, at *11.

The applied-for mark PLAYER EXCLUSIVE and the cited mark PLAYERS VODKA are similar in appearance. The first term in both marks is “PLAYER(S).” *See In re Detroit Athletic Co.*, 903 F.3d 1296, 1303 (Fed. Cir. 2018) (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”); *Palm Bay Imps.*, 396 F.3d at 1372-73; *Presto Prods., Inc. v. Nice-Pak Prods. Inc.*, No. 91074797, 1988 TTAB LEXIS 60, at *8 (“it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

The applied-for mark uses a singular version of “PLAYER,” while the cited mark uses a plural “PLAYERS.” This is a distinction, but not one many consumers will notice and recall. The distinction between a singular and plural version of a word “is not sufficient to prevent likely confusion.” *In re Wenger Corp.*, 2022 TTAB LEXIS 48, *4. *See also Wilson v. Delaunay*, 245 F.2d 877, 878 (CCPA 1957) (“there is no material difference, in a trademark sense, between the singular and plural forms of the word ‘Zombie’ and they will therefore be regarded here as the same mark”). This is especially so where PLAYER(S) is the initial and dominant element in both marks, increasing the likelihood consumers will focus on that shared element.

The second word in each mark is disclaimed and appears descriptive of the goods of Applicant and Registrant. While we consider marks in their entirety, we also acknowledge that not all elements of a mark are equally distinctive. Disclaimed or descriptive matter generally has less source-indicating weight in the analysis. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data*, 753 F.2d 1056, 1060 (1984)). The first word, “PLAYER(S),” is dominant in both marks and is more likely to be relied upon and remembered by consumers. The marks, considered in their entirety, look similar.

The marks also sound similar. While the two marks have distinct pronunciations—that is, “PLAYER EXCLUSIVE” and “PLAYERS VODKA” do not sound identical—they share the first and dominant element. “[W]e also keep in mind

the penchant of consumers to shorten marks.” *In re Bay State Brewing Co.*, No. 85826258, 2016 TTAB LEXIS 46, at *9. It is likely that many consumers familiar with the cited mark may refer to the mark as simply PLAYERS when asking for the goods. We find the marks are similar in sound.

We also find the marks are similar in meaning and commercial impression. The shared use of the word “player” in both marks creates a common meaning. Consumers familiar with PLAYERS VODKA are likely to view PLAYER EXCLUSIVE for bourbon and other distilled spirits (which includes vodka) as a variation or extension of the PLAYERS VODKA mark. Many consumers will mistakenly conclude that these businesses operated under these marks are connected, perhaps thinking the new “exclusive” version is a business extension involving more exclusive or limited production goods.

Applicant argues that a “player exclusive” is an item designed uniquely for a particular player, such a special basketball shoes made for a particular basketball player. 9 TTABVUE 14. Applicant submitted evidence confirming this practice, but did not submit any evidence that this practice is common for bourbon or distilled spirits. Response to Office Action dated August 20, 2024, at 47-53. The fact that some basketball fans may be aware of player exclusive basketball shoes does not make the two marks at issue in this appeal any more or less similar. We find that most consumers of Applicant’s bourbon and other distilled spirits are unlikely to connect these goods with custom-made basketball shoes.

Applicant also argues that the word “exclusive” shows that the goods sold under the mark will be special in some way. 9 TTABVUE 14. Some consumers likely attribute this type of meaning to Applicant’s mark, but as we explained above, consumers familiar with the cited PLAYERS VODKA mark may view Applicant’s mark as a business extension, with Registrant extending its business from vodka to other exclusive distilled spirits. The exclusivity connoted by the applied-for mark may not be a meaningful distinction with consumers familiar with Registrant’s vodka.

The marks are similar. The first *DuPont* factor supports the refusal.

B. Similarity or Relatedness of the Goods

We evaluate the second *DuPont* factor based on the goods identified in the Application and the cited Registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion as to a class of goods in the Application if relatedness is established between any of the goods identified in that class and those identified in the cited Registration. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 1336 (CCPA 1981); *see also Double Coin Holdings Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, at *18; *In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, at *9 n.5. In addition, the goods need only be sufficiently related that a relevant consumer would be likely to assume, upon encountering goods marketed under the marks at issue, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See Black & Decker Corp. v. Emerson Elec. Co.*, Nos. 91158891 and 91158941, 2007 TTAB LEXIS 50, at *25-26.

The cited Registration identifies “vodka,” in International Class 33. The Application identifies “Bourbon; Distilled spirits,” also in International Class 33. Vodka is a distilled spirit, so the goods overlap and are identical in part.³ Applicant does not dispute this fact and does not address the second *DuPont* factor in its Appeal Brief. The goods are identical in part. The second *DuPont* factor strongly supports the refusal.

**C. Trade Channels and Customer Care – The Third and Fourth
DuPont Factors**

The third *DuPont* factor asks whether the established, likely to continue trade channels overlap or are similar. This consideration is important because when goods travel through the same trade channels, consumers will see the goods together in those channels, thus increasing consumers’ exposure to the marks in proximity to one another and the chance that they will be confused. Because the goods are identical in part and neither the Application nor the cited Registration contain any limitations on the goods, we must presume the identical in part goods travel through the same trade channels (i.e., the channels traditionally used with distilled spirits like bourbon and vodka). *In re Vittera Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“it is well established that, ‘absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same

³ Vodka is defined as “a colorless liquor of neutral spirits distilled from a mash (as of rye or wheat).” Merriam-Webster online dictionary. The Board may take judicial notice of published definitions. *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 996 (Fed. Cir. 2020) (“The Board relied on dictionary definitions of the terms ‘stratus’ and ‘strata’ to evaluate similarities in the connotation of each mark.”).

class of purchasers”) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268 (Fed. Cir. 2002)). Applicant appears to concede that the third *DuPont* factor supports the refusal. 9 TTABVUE 17. We find the trade channels and classes of purchasers are presumed the same with respect to the legally identical in part goods at issue. Thus, the third *DuPont* factor also heavily favors a finding that confusion is likely.

The fourth *DuPont* factor considers the likely care exercised by relevant consumers. *DuPont*, 476 F.2d at 1361 (considering “[t]he conditions under which ... sales are made, i.e. “impulse” vs. careful, sophisticated purchasing”). Applicant argues that its goods are very expensive and thus will be purchased with care. Applicant submitted evidence confirming high prices for some of its goods (e.g., \$4500 for a bottle of bourbon). Response to Office Action dated August 20, 2024, at 18 (showing a small bottle of Steph Curry endorsed bourbon for \$4,500). However, because the Application contains no restrictions on the goods, the Application covers bourbon and distilled spirits sold at any price point, from the very expensive bourbon identified in Applicant’s evidence to inexpensive vodka. We evaluate the fourth *DuPont* factor based on the goods identified in the Application and the cited Registration. *See, e.g., Sock It To Me, Inc. v. Fan*, No. 91230554, 2020 TTAB LEXIS 201, at *24-25 (where there are no limitations in the identification, goods encompass “all goods of the type identified, without limitation as to their nature or price”) (citation omitted). Because the goods are not restricted by price, or anything else, we

cannot assume that all relevant consumers will exercise a heightened degree of care. *Viterra*, 671 F.3d at 1362. We find the fourth *DuPont* factor is neutral.

Conclusion: Weighing the Factors

We have reviewed and evaluated all the evidence of record and all the arguments presented. Only the first three *DuPont* factors are probative in this appeal, and all three support the Section 2(d) refusal. The marks are similar and the goods are identical in part. The identical in part goods are presumed to travel through the same trade channels and offered to the same classes of purchasers. The record supports the refusal. Confusion is likely.

Decision: The Section 2(d) refusal is affirmed.