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Mailed: February 6, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dean Severson

Serial No. 98118905

Anthony Cartee, of Cartee, LC, for Dean Severson.

Drew Sander, Trademark Examining Attorney, Law Office 131,
Nicholas A. Coleman, Managing Attorney.

Before Wellington, English, and O'Connor,
Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Applicant Dean Severson seeks registration of the mark FLAT EARTH SURF CLUB (standard characters, SURF disclaimed) for "hats; shirts," in International Class 25.[1]

The Examining Attorney refused registration under Section 2(d) of the Trademark

[1] Application Serial No. 98118905, filed August 5, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use dates of July 27, 2023.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system and identify the documents by title, date, and page in the downloadable .pdf version. Citations to the briefs are to the Board's TTABVUE online docket system.

Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the mark TERRA PLANA registered for "footwear, namely, boots, shoes, sandals and slippers," in International Class 25,[2] that use of Applicant's mark in connection with Applicant's goods is likely to cause confusion.

After the refusal was made final, Applicant appealed. The appeal is briefed, and is ready for decision. We reverse the refusal to register.

I. Likelihood of Confusion

"The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or to deceive." *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up). Our determination of the issue of likelihood of confusion is based on analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the "*DuPont* factors"), *cited in B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 145 (2015). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., 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 Charger Ventures*, 64 F.4th at 1381 ("In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the

[2] Registration No. 3055256, issued January 31, 2006; renewed (the "Cited Mark" or "Cited Registration"). "The foreign wording in the mark translates into English as Flat Earth."

analysis.") (citation omitted). In determining likelihood of confusion, two key considerations are the similarity or dissimilarity of the marks and the similarity or dissimilarity of the goods or services. *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, 1165 (Fed. Cir. 2002)); *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.").

A. Relatedness of the Goods; Trade Channels; Classes of Consumers

Under the second and third *DuPont* factors, we consider "[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration" and the "similarity or dissimilarity of established, likely-to-continue trade channels." *DuPont*, 476 F.2d at 1361. We also consider the classes of consumers. For each factor, our determination must be based not on evidence of use, but on the identification of goods in the Application and Cited Registration. *See, e.g.*, *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 (Fed. Cir. 2018); *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (citing *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.,* 918 F.2d 937, 942 (Fed. Cir. 1990)).

The goods need not be identical or even competitive to find a likelihood of confusion, but must be "'related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and services] emanate from the same source.'" *In re Country Oven,*

Inc., No. 87354443, 2019 TTAB LEXIS 381, at *4-5 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012)). Evidence that "a single company sells the goods ... of both parties, if presented, is relevant to a relatedness analysis." *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1267 (Fed. Cir. 2002).

The Examining Attorney argues that the goods are related because it is common for the same manufacturer to produce a wide variety of clothing items that include Applicant's hats and shirts as well as Registrant's footwear.[3] To this end, the Examining Attorney provides screenshots from the websites of several manufacturers providing hats, shirts and footwear, including under the same mark:

- Billabong (offering sandals and hats and shirts);[4]
- Vans (offering shoes and boots as well as hats and shirts);[5]
- Nike (offering shoes as well as hats and shirts);[6] and
- Reef (offering shoes and sandals as well as shirts).[7]

The evidence that the involved goods are offered by the same source, under the

[3] The Examining Attorney notes that prior Board decisions have found boots and shoes to be related to clothing items including shirts. 6 TTABVUE 7-8 (citing cases). These past decisions have limited utility in our analysis. There is no "'per se' rule to the effect that the use of the same or similar marks on different items of wearing apparel [is] likely to cause confusion." *In re Embiid*, No. 88202890, 2021 TTAB LEXIS 168, at *34. We must examine the record in this case to determine whether the particular items at issue are related. *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(a)(iv) (2025) ("The facts of each case vary ... therefore, there can be no rule that certain goods or services are per se related....").

[4] October 31, 2024 Final Office Action, TSDR 14-35.

[5] *Id.* at 39-70.

[6] *Id.* at 72-90.

[7] *Id.* at 91-103.

same mark, indicates that consumers are likely to regard the goods as related. *See Detroit Athletic*, 903 F.3d at 1306 (crediting relatedness evidence showing that third parties use the same mark for the involved goods and services); *In re Davey Prods. Pty*, No. 77029776, 2009 TTAB LEXIS 524, at *15 (finding two third-party webpages offering applicant's and registrant's goods showed that the goods "can be manufactured and sold by a single source," supporting relatedness); *see also Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) ("[T]estimony that third-party companies sell both types of goods is pertinent to the relatedness of the goods."). We find that Applicant's hats and shirts are related to Registrant's footwear, namely, boots, shoes and sandals. *See, e.g.*, *In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, at *8 n.5 ("[I]t is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.") (citing inter alia *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335 (CCPA 1981)).

In addition, both Applicant's hats and shirts and Registrant's footwear are worn on the body, and may be purchased as part of a coordinated outfit, such that the goods are complementary. *See, e.g., In re Melville Corp.*, No. 73736814, 1991 TTAB LEXIS 18, at *3-4 (women's shoes considered complementary to women's pants, blouses, shorts and jackets; "When shopping for shoes, a purchaser is usually looking for a shoe style or color to wear with a particular outfit."); *Nina Ricci, S.A.R.L. v. ETF Enters*, 1979 TTAB LEXIS 49, at *11 (finding that shoes, hats and other clothing

items are "commercially related").

As for the consumers, Applicant argues that they are "distinct and different" because "prospective purchasers of Applicant's goods are beachgoers, surfers, and outdoor enthusiasts, whereas the class of prospective purchasers of the Registrant's goods are entirely unknown."[8] This argument is not well-taken. Absent limitations in the Application or Cited Registration, we presume that the goods travel through all their normal channels of trade and are offered to all prospective purchasers of such goods. *Coach Servs.*, 668 F.3d at 1370; *see also Davey Prods.,* 2009 TTAB LEXIS 524, at *17-18 ("Because neither applicant's identification of goods nor registrant's identification of goods includes any restrictions or limitations as to trade channels, we presume that the respective goods are or would be marketed in all normal trade channels for such goods."). As identified, Applicant's goods are not limited to those purchased by certain classes of consumers, e.g., beachgoers, surfers, and outdoor enthusiasts, but may be purchased by the general public. *See In re i.am.symbolic*, 866 F.3d at 1327.

The evidence listed above supports a finding that Applicant's hats and shirts and at least Registrant's shoes, boots and sandals may be encountered by the same consumers in at least one common trade channel, the websites of manufacturers of the goods. Thus, the channels of trade and classes of consumers are similar and overlapping. *See, e.g., Davey Prods.*, 2009 TTAB LEXIS 524, at *18-19 (evidence of

[8] 4 TTABVUE 12.

websites offering the goods of applicant and registrant showed that the goods would be encountered by the same purchasers in the same and overlapping trade channels).

The second and third *DuPont* factors weigh in favor of a likelihood of confusion.

B. Similarity or Dissimilarity of the Marks

We turn to the first *DuPont* factor, which compares the marks "in their entireties as to appearance, sound, connotation, and commercial impression." *Detroit Athletic*, 903 F.3d at 1303 (quoting *DuPont*, 476 F.3d 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 Fed. App'x 516 (Fed. Cir. 2019). In considering the marks, we focus "on the recollection of the average customer, who retains a general rather than specific impression of the marks." *Inter IKEA Sys. B.V. v. Akea, LLC*, No. 91196527, 2014 TTAB LEXIS 166, at *17-18 (citations omitted). "[S]imilarity is not a binary factor but is a matter of degree." *In re St. Helena Hosp.*, 774 F.3d 747, 752 (Fed. Cir. 2014) (citation omitted).

Our analysis cannot be predicated on dissecting the marks into their various components; that is, our finding must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985); *see also In re Electrolyte Labs., Inc.*, 929 F.2d 645, 647 (Fed. Cir. 1990) ("No element of a mark is ignored simply because it is less dominant, or would not have trademark significance if used alone.") (citation omitted). Nonetheless, "in articulating reasons for reaching a conclusion on the issue of confusion, 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." *Detroit Athletic*, 903 F.3d at 1305 (quoting *Nat'l Data*, 753 F.2d at 1058).

The Examining Attorney argues that the marks are confusingly similar because the dominant part of Applicant's mark, FLAT EARTH, is the foreign equivalent of the Cited Mark TERRA PLANA. In support, the Examining Attorney contends that "terra plana" means "flat earth" in Portuguese, a common modern language, such that under the doctrine of foreign equivalents the Cited Mark should be translated when comparing its meaning and connotation with Applicant's mark. Applicant disagrees that the doctrine of foreign equivalents applies in this case.

Under the doctrine of foreign equivalents, foreign words from common modern languages are translated into English to determine similarity of connotation when compared to an English word mark. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005) (cited in *In re Vetements Grp. AG*, 137 F.4th 1317, 1324-25 (Fed. Cir. 2025), *cert. denied*, No. 25-215, 2026 U.S. LEXIS 373 (Jan. 12, 2026)). "Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline," with translation appropriate only when the ordinary American consumer would stop and translate the word into its English equivalent. *Id.* "When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be

applied." *Palm Bay Imps.*, 396 F.3d at 1377 (citing *In re Tia Maria, Inc.*, 1975 TTAB LEXIS 130, at *41).

In support of his argument that TERRA PLANA should be translated to "flat earth," the Examining Attorney submitted the following:

- Printout from Google Translate, a machine translation service, showing a translation of "flat earth" in English to "terra plana" in Portuguese;[9]
- Printout from DeepL translator, a machine learning translation tool, showing a translation from "flat earth" in English to "terra plana" in Portuguese;[10]
- Printout from Reverso, a translation app, showing a translation of "terra plana" in Portuguese to "flat earth, flat land, flat-earth" in English.[11]
- Printout from MyMemory, a translation website, showing a computer translation of "terra plana" in Portuguese to "flat earth" in English.[12]
- Printout from the U.S. Census Bureau website showing that approximately 997,882 people aged 5 and over speak Portuguese at home.[13]

The census evidence supports a finding that an "appreciable" number of Americans are capable of translating TERRA PLANA from Portuguese into English, *see Vetements*, 137 F.4th at 1327-28, and Applicant does not argue otherwise. However, we must also ask whether the ordinary American purchaser would translate the words TERRA PLANA or take the Cited Mark at face value. *See id.* at 1328 ("Second, we consider if the context in which the words appear would cause the ordinary American purchaser to take the 'VETEMENTS' marks at face value in French (i.e., not to translate).") (citing *Palm Bay*, 396 F.3d at 1377). Even assuming

[9] April 11, 2024 Nonfinal Office Action, TSDR 31-32.

[10] *Id.* at 35-37.

[11] October 31, 2024 Final Office Action, TSDR 7-9.

[12] *Id.* at 10-13.

[13] April 11, 2024 Nonfinal Office Action, TSDR 38.

that the translation evidence provided is appropriately considered,[14] we find that the ordinary American purchaser would not translate the Cited Mark.

First, American consumers, even non-Portuguese speakers, would be familiar with the word "terra," which appears in English language dictionaries.[15] These dictionaries show that "terra" has meaning in English both as a standalone word and as part of phrases like "terra cotta" and "terra firma."[16] This supports a finding that consumers would take the phrase "terra plana" as it is and not stop and translate it. *See, e.g.*, *Tia Maria*, 1975 TTAB LEXIS 130, at *4 (consumers would not translate TIA MARIA for a Mexican restaurant into "Aunt Mary," its English equivalent).

Second, contrary to the Examining Attorney's contention, the evidence does not show that the translation of TERRA PLANA in Portuguese to FLAT EARTH in English is direct and literal.[17] As noted above, one of the printouts provided by the

[14] The Examining Attorney did not cite any legal support for the use of machine translation tools such as Google Translate, DeepL and Reverso. We are aware of at least one non-precedential decision of this Board that declined to consider Google Translate evidence absent any indication that it is among the types of sources from which the Board typically takes judicial notice or otherwise constitutes an authoritative source of information. *In re MercadoLibre, Inc.*, No. 88950207, 2023 TTAB LEXIS 280, at *11. However, Applicant did not object to the sources used by the Examining Attorney and himself submitted a printout from Google Translate, so we consider the printouts for what they are worth.

[15] "[T]he Board may take judicial notice of use of a term in dictionaries." *Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imps. Co.*, No. 91061847, 1982 TTAB LEXIS 146, at *7. *See also B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988) ("dictionaries and encyclopedias may be consulted"); *In re Nextgen Mgmt., LLC*, No. 88098031, 2023 TTAB LEXIS 1, at *10 n.5 (Board may take judicial notice from "online dictionaries which exist in printed format or have fixed regular editions").

[16] *See* MERRIAM WEBSTER.COM DICTIONARY, www.merriam-webster.com/dictionary/terra; THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, ahdictionary.com/word/search.html?q=terra; and COLLINS DICTIONARY, www.collinsdictionary.com/dictionary/english/terra (all accessed February 2026).

[17] 6 TTABVUE 5.

Examining Attorney includes both "flat earth" and "flat land" in the English translation of "terra plana."[18] Two of the printouts give example sentences that translate "terra plana" to "flat land," in the sense of a topographical feature.[19] And Applicant provided a printout from a Google Translate detection search for "terra plana" showing that the phrase in Spanish translates to "flat land" in English.[20] The evidence of differing translations of the phrase "terra plana" further supports that consumers are unlikely to translate Registrant's mark.

For these reasons, we do not apply the doctrine of foreign equivalents under the first *DuPont* factor. We find that consumers encountering Registrant's mark will take it "as is" and perceive it as suggesting stability or solid footing when used with Registrant's footwear goods. As for Applicant's mark, we agree with the Examining Attorney that FLAT EARTH would be perceived as referring to "a scientifically-inaccurate cultural phenomenon related to the notion that the Earth is flat."[21] When

[18] October 31, 2024 Final Office Action, TSDR 7. The first two printouts, from Google Translate and DeepL, April 11, 2024 Nonfinal Office Action, TSDR 31-37, are less probative because they appear to show translations of the words "flat earth" in English to "terra plana" in Portuguese; they do not show translations of the words "terra plana" into English. By starting with the words "flat earth" and asking for their meaning in Portuguese, the searches necessarily excluded any other English translation of the words "terra plana."

[19] October 31, 2024 Final Office Action, TSDR 7 (Reverso translates "Um verdadeiro pequeno paraíso para corredores com terra plana e um cenário espetacular" as "A true little paradise for runners with flat land and a spectacular setting."); 10 (MyMemory translates "visita à terra plana" as "visit to flatland").

The dictionary definitions of "terra" in English also reflect varied meanings, including "any of the relatively light-colored highland areas on the surface of the moon or a planet," www.merriam-webster.com/dictionary/terra, "the planet earth, as in science fiction," and "earth; land." www.collinsdictionary.com/dictionary/english/terra.

[20] October 11, 2024 Response to Office Action, TSDR 16.

[21] 6 TTABVUE 3.

used with SURF CLUB, this could be perceived as "a nod to historical fringe beliefs, or even a symbol of a community that questions established norms."[22] In Applicant's mark, associating FLAT EARTH with a SURF CLUB also engenders a certain incongruity and nonsense connotation that is wholly absent from the Cited Mark. *See Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 1108 (CCPA 1972) (ALL and ALL CLEAR not confusingly similar because the "commercial impression engendered by applicant's mark is derived not from the component words 'all' or 'clear,' per se, but rather from the mark as a whole"). The marks thus have different connotations and commercial impressions.

We also must consider the marks' appearance and sound. FLAT EARTH SURF CLUB and TERRA PLANA are not at all similar in appearance or sound because they do not share any of the same words or any words that have similar letters or sounds.

For the foregoing reasons, we find the first *DuPont* factor weighs against finding confusion likely.

C. Purchasing Conditions

The fourth *DuPont* factor evaluates "[t]he conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361. A heightened degree of care when making a purchasing decision

[22] 4 TTABVUE 9. Although "SURF" is disclaimed, in comparing the meanings of the marks in their entireties we must consider the impact of that word in the Cited Mark because its disclaimer "has no legal effect on the issue of likelihood of confusion because the public is unaware what words have been disclaimed." *Charger Ventures*, 64 F.4th at 1382 (citation and internal quotation marks omitted).

may tend to minimize likelihood of confusion. *See, e.g., In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985). Conversely, impulse purchases of inexpensive goods may tend to have the opposite effect. *Palm Bay Imps.,* 396 F.3d at 1376.

During prosecution and on appeal Applicant mentioned "sophistication of consumers" as a factor in the likelihood of confusion analysis without developing the argument or offering any evidence in support of it.[23] The Examining Attorney, for his part, argues that purchasers of hats, shirts and footwear are not sophisticated, because the evidence shows that the goods are of a kind that are often low cost and subject to impulse purchase.[24] The record shows these goods offered at a variety of prices, with some hats priced as high as $88, shirts as high as $54.99 and boots as high as $230.[25] Nevertheless, neither Applicant's nor Registrant's identification is limited by price or consumer sophistication, and we must consider that the goods could include both lower and higher priced items of the sorts identified. *See, e.g., In re i.am.symbolic, llc*, No. 85044494, 2015 TTAB LEXIS 369, at *23, *aff'd*, 866 F.3d 1315 (Fed. Cir. 2017). The fourth *DuPont* factor is neutral.

II. Conclusion – Weighing the *DuPont* Factors

The final step in analyzing likelihood of confusion is to assess our findings under the *DuPont* factors and determine whether, on balance, confusion is likely. *See Charger Ventures*, 65 F.4th at 1379.

[23] *See* October 11, 2024 Response to Office Action at 12; 4 TTABVUE 11-12.

[24] 6 TTABVUE 9.

[25] *See* April 11, 2024 Nonfinal Office Action, TSDR 12-23; *id.* at 12, 27; October 31, 2024 Final Office Action, TSDR 16-103; *id.* at 45.

We have carefully considered all of the evidence made of record, as well as all of the arguments related thereto. We find that Applicant's "hats; shirts" are related to Registrant's "footwear, namely, boots, shoes, sandals" and the goods are sold in overlapping channels of trade to overlapping classes of consumers, with the second and third *DuPont* factors weighing in favor of a likelihood of confusion. We find that FLAT EARTH SURF CLUB and TERRA PLANA are not at all similar in appearance and sound, and present distinct connotations, with the marks having different overall commercial impressions, such that the first *DuPont* factor weighs heavily against a likelihood of confusion. The fourth *DuPont* factor is neutral.

We find that the first *DuPont* factor outweighs the relatedness of the goods and overlap in trade channels and consumers and is dispositive that confusion is not likely between Applicant's mark and the Cited Mark for their respective identified goods. *See Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive.").

Decision:

The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is reversed.