

THIS OPINION IS NOT A
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Mailed:
February 8, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Ever Neuro Pharma GmbH*¹

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Serial Nos. 79076253 & 79076255

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Bharati Bakshani of Ladas & Parry LLP for Ever Neuro Pharma GmbH.

Hai-Ly H. Lam, Trademark Examining Attorney, Law Office 112 (Angela B. Wilson,
Managing Attorney).

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Before Kuhlke, Kuczma, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge

Applicant Ever Neuro Pharma GmbH seeks registration on the Principal Register of the mark EVER NEURO PHARMA in standard character form² and the following composite mark:³



¹ The applications were originally filed in the name Ebewe Neuro Pharma GmbH. The April 16, 2011, name change is recorded in the Office Records at Reel/Frame Numbers 4523/0475 and 4523/0479.

² Application Serial No. 79076253.

³ Application Serial No. 79076255.

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based on a request for extension of protection under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), for goods ultimately identified as:

Pharmaceutical preparations used for the treatment of central nervous system diseases and neurodegenerative diseases; Nutritional additives for medical purposes for use in foods and dietary supplements for human consumption

in International Class 5.

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, when used with its identified goods, so resembles the mark NEUROPHARMA, registered in stylized form

NEUROPHARMA

for the following goods registered in International Class 5:

Pharmaceutical and veterinary preparations, in particular preparations for combating neuron diseases; natural and synthetic bioactive preparations for application in the fields of human or animal medicine, namely, pharmaceutical and veterinary preparations acting on the central nervous system; intermediate pharmaceutical and veterinary preparations, namely, anaesthetic and analgesic ingredients sold as components of pharmaceutical and veterinary preparations acting on the central nervous system and for combating neuron diseases⁴

as to be likely to cause confusion, mistake, or deception.

Registration also has been refused pursuant to Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), for applicant's failure to provide the required disclaimer of "NEURO PHARMA" as a unitary term. Applicant first agreed to disclaim the terms

⁴ Registration No. 3329636, issued November 6, 2007.

“NEURO” and “PHARMA” separately,⁵ then withdrew the disclaimer,⁶ and now offers to disclaim “NEURO PHARMA” if the refusal under Section 2(d) is withdrawn.⁷

Applicant timely appealed the refusals, and briefing is complete.⁸

Appeals Consolidated

We have considered all arguments and evidence filed in each case. Because the refusals to register are based on common issues of law and fact, as well as nearly identical records and briefs, they are hereby consolidated and we will address them in a single opinion. Except where otherwise specified, the record evidence is the same for both applications.

Record

The examining attorney submitted the following record evidence:

- A screenshot from Merriam-Webster’s Medical Dictionary defining “neuro” as an adjective meaning “neurological”;⁹
- A Random House Unabridged Dictionary definition of “neuro-” as “a combining form meaning ‘nerve,’ ‘nervous system,’ used in the formation of compound words: *neurology*”;¹⁰

⁵ Response to Office action, July 30, 2010.

⁶ Request for Reconsideration, February 28, 2011.

⁷ Reply Brief at unnumbered pages 1, 6.

⁸ The Board granted several extensions of time for applicant to file its appeal and reply briefs based, in part, on applicant’s intent to “furnish a letter of consent.” No such consent was filed and briefing concluded on July 31, 2012.

⁹ February 1, 2010, Office action at unnumbered page 28. The examining attorney also submitted a second screenshot defining “neuro” as an acronym for “neurological,” but the source is unclear. Response to Request for Reconsideration, March 22, 2011 (“Recon. Response”), at unnumbered pages 2-3.

¹⁰ Recon. Response at unnumbered pages 4-5, retrieved from Infoplease.com.

- A screenshot from Wordsmyth.net defining “neuro-” as a prefix for “nerve; nervous system” or “mind”;¹¹
- A screenshot from the Merriam-Webster Online Dictionary defining “neurology” as “the scientific study of the nervous system especially in respect to its structures, functions and abnormalities”;¹²
- A Merriam-Webster’s Medical Dictionary definition of the noun “pharma” as “a pharmaceutical company”;¹³
- A WordNet 3.0 definition¹⁴ and printouts from Rhymezone.com¹⁵ and FreeDictionary.org¹⁶ all defining the noun “pharma” as “a company that makes and sells pharmaceuticals”;
- A screenshot from Wordsmyth.net defining “pharmaceutical” as the adjective “of or relating to pharmacists or medicinal drugs” and the noun “a medicinal drug or preparation”;¹⁷
- Random House Unabridged Dictionary definitions of “nervous system”;¹⁸
- A screenshot from the website www.impelneuropharma.com displaying the mark below:¹⁹



- Printouts of seventeen third-party registrations of marks used in connection with the same or similar goods as those identified in the application and the cited registration;²⁰

¹¹ *Id.* at unnumbered pages 6-7.

¹² February 1, 2010, Office action at unnumbered pages 29-30.

¹³ *Id.* at unnumbered page 32, retrieved from Dictionary.com.

¹⁴ *Id.* at unnumbered page 31, retrieved from Dictionary.com.

¹⁵ Recon. Response at unnumbered page 8.

¹⁶ *Id.* at unnumbered page 9.

¹⁷ *Id.* at unnumbered pages 10-11.

¹⁸ *Id.* at unnumbered pages 12-13, retrieved from Infoplease.com.

¹⁹ *Id.* at unnumbered page 14.

- Screenshots referencing third parties offering the same or similar goods as those identified in the application and the cited registration;²¹
- Printouts of 21 registrations (two registered to applicant under its former name,²² 19 to third parties) with the term “NEURO” or “PHARMA” either disclaimed, registered under Trademark Act Section 2(f) based on a showing of acquired distinctiveness, or registered on the Supplemental Register;²³ and
- Screenshots from applicant’s website stating in part that it is a “pharmaceutical company focusing on the development, manufacturing and marketing of treatments for neurodegenerative and cerebrovascular disorders.”²⁴

Applicant did not timely submit any evidence.²⁵

Disclaimer Requirement

An examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Trademark Act Section 6(a). Merely

²⁰ February 1, 2010, Office action at unnumbered pages 5-27; August 26, 2010 final Office action, Serial No. 79076253, at unnumbered pages 5-13, 17-32; August 26, 2010 final Office action, Serial No. 79076255, at unnumbered pages 5-29.

²¹ August 26, 2010 final Office action, Serial No. 79076253 at unnumbered pages 36-46; August 26, 2010 final Office action, Serial No. 79076255 at unnumbered pages 30-40.

²² EBEWE PHARMA and design (Registration No. 3151117) and EVER PHARMA (Registration No. 3896576), both with “PHARMA” disclaimed. Recon. Response at unnumbered pages 68-73.

²³ *Id.* at unnumbered pages 15-73.

²⁴ *Id.* at unnumbered pages 75-76.

²⁵ Applicant submitted two “Charts of Tagged Records” and a TARR printout for the mark NEURO THERAPEUTICS PHARMA, Registration No. 3960032, along with its reply brief. This evidence was not timely submitted, and we have given it no consideration. 37 C.F.R. § 2.142(d); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1059 n.2 (TTAB 2002); *In re Trans Cont’l Records, Inc.*, 62 USPQ2d 1541, 1541 n.2 (TTAB 2002); Trademark Trial and Appeal Board Manual of Procedure (TBMP) §§ 1203.02(e), 1207.01 (3d ed. rev. 1 2012). Nonetheless, as mentioned in note 22 *supra*, one of these records (applicant’s Registration No. 3907587 for EVER PHARMA) was submitted by the examining attorney and therefore is of record and has been considered by the Board. The majority of the remaining records proffered by applicant are not existing registrations, but rather refer to canceled registrations or abandoned or pending applications.

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descriptive terms are unregistrable under Trademark Act Section 2(e)(1) and, therefore, are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. *See In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859, 1860 (Fed. Cir. 1987); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975); *In re Ginc UK Ltd.*, 90 USPQ2d 1472 (TTAB 2007); *In re National Presto Indus., Inc.*, 197 USPQ 188, 190 (TTAB 1977); *In re Pendleton Tool Indus., Inc.*, 157 USPQ 114, 115 (TTAB 1968).

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973). Furthermore, it is well-established that the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *See In re Abcor Dev. Corp.*, 200 USPQ

at 218. Finally, while a combination of descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning, *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382, 385 (CCPA 1968), the mere combination of descriptive words does not necessarily create a nondescriptive word or phrase. *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1374 (Fed. Cir. 2004).

“Neuro” is defined as “nerve” or “nervous system.”²⁶ “Pharma” is defined as “a pharmaceutical company.”²⁷ These terms individually are merely descriptive of applicant’s pharmaceutical preparations for the nervous system. We find that when combined, NEURO and PHARMA do not present a unique or incongruous meaning or commercial impression. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1318 (TTAB 2002). Rather, each component of the composite mark retains its merely descriptive significance in relation to applicant’s goods, thus resulting in a composite that is itself merely descriptive. Moreover, NEURO PHARMA is a unitary phrase and as such must be disclaimed as a composite and not as to the individual words separately. Trademark Manual of Examining Procedure (TMEP) § 1213.08(b) (October 2012) and cases cited therein. This phrase is not separated by registrable wording and it evokes a single descriptive significance. *Compare In re Medical*

²⁶ Random House Unabridged Dictionary, Recon. Response at unnumbered page 4.

²⁷ Merriam-Webster’s Medical Dictionary, February 1, 2010, Office action at unnumbered page 33.

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Disposables Co., 25 USPQ2d 1801, 1805 (TTAB 1992) (MEDICAL DISPOSABLES unitary expression that must be disclaimed as a composite) *with In re Grass GmbH*, 79 USPQ2d 1600, 1603 (TTAB 2006) (SNAP ON and 3000 each retains separate descriptive significance and may be disclaimed separately). Rather, NEURO PHARMA is a “grammatically or otherwise unitary expression.” *In re Grass*, 79 USPQ2d at 1602 (quoting TMEP § 1213.08(b)). Thus, the disclaimer requirement as a unitary mark NEURO PHARMA is appropriate.

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (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.”). We discuss each of the *du Pont* factors as to which applicant or the examining attorney submitted argument or evidence. To the extent that any other *du Pont* factors for which no evidence or argument was presented may nonetheless be applicable, we treat them as neutral.

A. Similarity of the Goods and Channels of Trade

We turn first to the similarity of the goods and their channels of trade, the second and third *du Pont* factors, respectively. The question before us is not whether purchasers can differentiate the goods and services themselves, but rather whether purchasers are likely to confuse the source of the goods and services. See *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989).

The applicant's identified goods are, in part:

Pharmaceutical preparations used for the treatment of central nervous system diseases and neurodegenerative diseases.

Goods identified in the cited registration include:

- pharmaceutical . . . preparations, in particular preparations for combating neuron diseases;
- pharmaceutical . . . preparations acting on the central nervous system;
- anaesthetic and analgesic ingredients sold as components of pharmaceutical . . . preparations acting on the central nervous system and for combating neuron diseases.²⁸

Registrant's "pharmaceutical . . . preparations acting on the central nervous system" encompass applicant's "Pharmaceutical preparations used for the treatment of central nervous system diseases and neurodegenerative diseases" and, as such, are legally identical. It 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. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Computer v.*

²⁸ In each instance, the ellipses represent the omitted terms "and veterinary."

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TVNET.net, Inc., 90 USPQ2d 1393, 1397 (TTAB 2007). In addition, the record establishes the close relationship between applicant's and registrant's various pharmaceutical preparations. See *In re Davey Prods. Pty. Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). Applicant has not disputed the similarity of the goods.

Because there are no limitations to the goods in the application or the cited registration as to channels of trade and classes of purchasers, we must presume that the respective goods travel through all usual channels of trade and are offered to all normal potential purchasers. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); see also *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 177 USPQ 76, 77-78 (CCPA 1973). Moreover, given that the goods are legally identical and otherwise so closely related and there is no limitation in the identifications, we must presume that the goods travel in the same channels of trade, and are available to the same classes of purchasers. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994).

In view of the above, we find that the goods are legally identical and otherwise closely related, travel in the same channels of trade, and are sold to the same classes of purchasers. In our likelihood of confusion analysis, these findings under the second and third *du Pont* factors support a conclusion that confusion is likely.

B. Similarity of the Marks

We next consider the *du Pont* likelihood of confusion factor focusing on “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Elec. Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d*, No. 92-1086 (Fed. Cir. June 5, 1992). Where the goods are legally identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines. *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1246 (TTAB 2010).

Applicant’s marks incorporate the entirety of registrant’s mark. As discussed above, we have found NEURO PHARMA to be merely descriptive of applicant’s goods, and, as such, applicant’s self-described house mark EVER is the dominant element in both of its marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (stating that “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a

mark. . . . [t]hat a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark”). Disclaimed matter is often “less significant in creating the mark’s commercial impression,” *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001), but “it may not be ignored.” *M2 Software Inc. v. M2 Commc’ns Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1949 (Fed. Cir. 2006). *See also Palm Bay*, 73 USPQ2d at 1692 (first part of mark more prominent); *Presto Prods. Inc. v. Nice-Pak Prods. Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1998) (noting that “it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

That being said, for purposes of the Section 2(d) analysis we must accord the cited registration the Section 7(b) presumptions and the appropriate scope of protection.²⁹ Therefore, at most we may determine that the mark NEUROPHARMA in the cited registration is highly suggestive. Moreover,

The technicality of a disclaimer in [applicant’s] application to register its mark has no legal effect on the issue of likelihood of confusion. . . . The power of the PTO to accept or require disclaimers is discretionary under the statute, and its practice over the years has been far from consistent. Thus, it is inappropriate to give the presence or absence of a disclaimer any legal significance.

National Data, 224 USPQ at 751 (citation omitted).

²⁹ Applicant in this ex parte appeal cannot make a collateral attack on the validity of the cited registration. *See, e.g., In re C. F. Hathaway Co.*, 190 USPQ 343, 345 (TTAB 1976) (finding HATHAWAY GOLF CLASSIC likely to cause confusion with registered mark GOLF CLASSIC, noting that applicant’s contention that the words “golf classic” are merely descriptive constitutes an impermissible collateral attack on the registration); *see also In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); TMEP § 1207.01(d)(iv).

The examining attorney argues that the addition of the house mark EVER is more likely to add to the likelihood of confusion. Applicant argues that because the common element is merely descriptive, the addition of the house mark (and the design element in one of its applications) serves to distinguish the marks.

“Additions or deletions to marks may be sufficient to avoid a likelihood of confusion if: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted.” TMEP § 1207.01(b)(iii). While the cited mark is highly suggestive, we cannot analyze it as merely descriptive. Thus, we must determine whether the addition of the house mark EVER (and the design elements in one of the applications) to the suggestive mark NEUROPHARMA is sufficient to distinguish them or instead may appear simply as the house mark added to the product mark resulting in reverse confusion.

Applicant relies on *Knight Textile Corp. v. Jones Investment Co., Inc.*, 75 USPQ2d 1313 (TTAB 2005),³⁰ in support of its position. However, in that case, the record included many examples of third-party registrations of the common term ESSENTIALS. This record does not contain examples of third-party registrations of the term NEUROPHARMA (with or without the space) and only one example of a

³⁰ Applicant failed to provide citations for the cases on which it relied, and its reply brief was not in proper format. Counsel is reminded to comply with the requirements of Trademark Rule § 2.126 and TBMP §§ 101.03 and 1203.02(f).

third-party website that displays the term NEURO PHARMA, in connection with a pharmaceutical delivery device.³¹

As is frequently noted, each case must be determined based on the evidence and facts in that case. Here, unlike the circumstances in *In re Smith & Vandiver, Corp.*, slip op. 77492026 (TTAB Nov. 29, 2011), an unpublished case noted by applicant, we have only one example of third-party use and the common element is not disclaimed in the cited registration. On the contrary, this cited registration issued on the Principal Register without a showing of acquired distinctiveness. We find this case more similar to *In re Dennison Mfg. Co.*, 229 USPQ 141 (TTAB 1986) (finding GLUE STIC for “general purpose adhesive in stick form” generic for those goods and likely to cause confusion with UHU GLU STIC for “adhesives for paper and stationery”) in view of the legal identity of the goods. In fact, the circumstances here present a stronger case for likely confusion in that the common element in the cited mark has not been disclaimed as it was in *Dennison*. In addition, the structure of applicant’s marks here are likely to suggest instead that applicant’s products are a variation of registrant’s products. *See, e.g., In re Riddle*, 225 USPQ 630, 632 (TTAB 1985) (finding RICHARD PETTY’S ACCU TUNE and design for automotive service centers specializing in engine tune-ups and oil changes likely to cause confusion with ACCUTUNE automotive testing equipment).

³¹ Even if we were to consider the untimely evidence, applicant’s listed examples of third-party registrations that contain elements of the common term NEURO PHARMA (e.g., Reg. No. 3512543 for the mark CITA NEUROPHARMACEUTICALS for research services) are not as probative on this issue as the 23 third-party registrations containing the exact term at issue in *Knight Textiles*. The third-party applications are of no probative value. *See, e.g., Interpayment Servs., Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003); *In re Juleigh Jeans Sportswear, Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992).

As is well-established, even weak marks are entitled to protection against the registration by a subsequent user of a similar mark for closely related goods. *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974). Here, although there are differences in the marks, the goods are, in part, legally identical. Moreover, in these circumstances, where the goods involve pharmaceuticals “and confusion as to source can lead to serious consequences, it is extremely important to avoid that which will cause confusion.” *Alfacell Corp. v. Anticancer Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004) (citing *Glenwood Labs., Inc. v. American Home Prods. Corp.*, 455 F.2d 1384, 173 USPQ 19 (CCPA 1972)).

In view of the above, we find that the similarities outweigh the dissimilarities, in particular given the legally identical goods.

Conclusion

We have carefully considered all of the evidence of record as it pertains to the relevant *du Pont* factors, as well as applicant's arguments (including any evidence and arguments not specifically discussed in this opinion). We find that because the goods are legally identical and otherwise closely related, the channels of trade and classes of purchasers are the same, and the marks are similar, confusion is likely between applicant's marks and the mark in the cited registration. To the extent there are any doubts, we resolve them, as we must, in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 863, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Decision: The requirement for a disclaimer under Section 6 and the refusal to register under Section 2(d) of the Trademark Act are affirmed as to both applications.