

TTAB Upholds Refusal of BRONKO Mark

WRITTEN BY

Howard J. Shire | Justin W. Tilghman

Published in [World Trademark Review Daily](#) on July 29, 2024. Reprinted here with permission.

- **TTAB found that the marks BRONKO and BRONCO were phonetically identical and visually similar, which could lead to consumer confusion**
- **Evidence supported the TTAB's conclusion that consumers are accustomed to seeing goods such as sauces, chocolates, cookies, ice cream and pasta marketed together and offered under a single mark**
- **The TTAB's decision underscores the importance of clear and precise identification of goods in trademark applications, and serves as a reminder to applicants to thoroughly address all grounds for refusal during the prosecution process**

In a recent decision, the Trademark Trial and Appeal Board (TTAB) upheld the refusal to register the trademark BRONKO for International Foodstuffs Co. LLC. The application, filed under Serial No. 97444079, sought to register the mark for various food products, including chocolates, biscuits, cookies, ice cream, and pasta.

Decision

The refusal was based on two grounds:

- likelihood of confusion under Section 2(d) of the Trademark Act and
- an indefinite identification of goods. The TTAB affirmed both grounds for refusal

The TTAB affirmed both grounds for refusal.

Likelihood of Confusion

The primary issue was a likelihood of confusion with an existing registration for BRONCO BERRY SAUCE for "sauce" in International Class 30. The TTAB found that the marks BRONKO and BRONCO were phonetically identical and visually similar, which could lead to consumer confusion. The TTAB emphasized that similarity in sound alone could be sufficient to support a finding of likelihood of confusion.

Additionally, the TTAB considered the relatedness of the goods. Evidence showed that it is common for a single entity to offer both sauces and the types of goods listed in the BRONKO application under the same mark. This evidence included third-party websites and registrations demonstrating that sauces, chocolates, cookies, ice cream, and pasta are often marketed together. Consequently, the TTAB concluded that consumers might mistakenly believe that the goods emanate from the same source.

For instance, websites such as [Goya](#) and [DeLallo](#) offer sauces, cookies, and pasta under the same brand. Similarly, [Graeter's](#) offers sweet sauces, ice cream, and chocolates, while [Stonewall Kitchen](#) offers sweet sauces, chocolate confections, cookies, and biscuits. This pattern of marketing supports the TTAB's conclusion that consumers are accustomed to seeing these types of goods offered together under a single mark.

Moreover, the examining attorney provided evidence of third-party registrations showing that the same entities have registered single marks identifying both the applicant's and registrant's identified goods. For example, the mark FRIKA-K (Reg. No. 6394151) is registered for various sauces, cookies, pasta, and biscuits, and the mark WELLESLEY FARMS (Reg. No. 6577832) is registered for sauces, ice cream, cookies, and pasta. This further supports the relatedness of the goods and the likelihood of consumer confusion.

Indefinite Identification of Goods

The application initially included "Chocolates and Chocolate Confectionery Products; Biscuits; cookies; Ketchup and Sauces being condiments; Ice Cream; Pasta." The examining attorney required clarification of "Chocolates and Chocolate Confectionery Products" as this term was deemed indefinite. Although the applicant deleted "Ketchup and Sauces being condiments" to address the likelihood of confusion refusal, it did not amend the indefinite identification of goods.

The TTAB noted that since the applicant did not address this issue in its appeal brief, the applicant had effectively waived its ability to contest the refusal on this ground. As a result, the refusal based on the indefinite identification of goods was also affirmed.

Conclusion

The TTAB's decision underscores the importance of clear and precise identification of goods in trademark applications and the potential for consumer confusion when marks are phonetically and visually similar, especially within related product categories. The refusal to register the BRONKO mark serves as a reminder to applicants to thoroughly address all grounds for refusal during the prosecution process.

RELATED INDUSTRIES + PRACTICES

- [Intellectual Property](#)