







FUENTE MARKETING LTD. v. VAPOROUS TECHNOLOGIES, LLC, Appeal No. 2024-1460 (Fed. Cir. April 8, 2026). Before Prost, Taranto, and Hughes. Appealed from the Trademark Trial and Appeal Board.

Background:


Fuente filed an opposition against Vaporous'  mark, alleging a likelihood of confusion between the  mark and Fuente's own standard character X marks. Fuente owns two standard character marks for the letter "X" that cover goods including cigars, ashtrays, and lighters. Vaporous'  mark covers oral vaporizers and similarly related goods.


The Parties stipulated that the  mark "consists of an abstract stick figure consisting of two diagonal intersecting lines in the shape of a wide stylized letter X and a shaded circle above the letter X." The TTAB relied on this as evidence that consumers would perceive the  as a stick figure and not the letter "X." The TTAB accordingly dismissed Fuente's opposition and determined that there was no likelihood of confusion between the marks because the marks create sufficiently different commercial impressions to avoid a likelihood of confusion.

Issue/Holding:

Did the Board err in holding that Vaporous'  mark did not create a likelihood of confusion with Fuente's X marks? No, affirmed.

Discussion:

Fuente appealed the TTAB's decision to the Federal Circuit arguing it was erroneous for the TTAB to rely on the Parties' stipulated description of the  mark to determine how consumers would perceive a mark. Fuente argued that, at best, the stipulation merely indicates how the mark is intended to be perceived. The Federal Circuit agreed that there was error in the TTAB's reliance of the stipulated description, such that the TTAB should not have relied on the stipulated description to determine the commercial impressions and dissimilarities of the marks (the first *DuPont* factor). However, the Federal Circuit found that the error was harmless because the TTAB also reached the same conclusion without reference to the stipulation by determining that the "circle, or head of the stick figure" comprised about a fifth of the mark and thus was not a "minor or unnoticeable feature of the mark as a whole."

The Federal Circuit also evaluated the remaining *DuPont* factors and determined that the goods travel in overlapping channels of trade because vapes could be considered alternatives to cigars. The Federal Circuit also determined that the goods are available to all ordinary purchasers who likely purchase goods with impulse rather than with care. Upon weighing all the factors, the Federal Circuit concluded that there was no likelihood of confusion between Vaporous'  mark and Fuente's X marks.