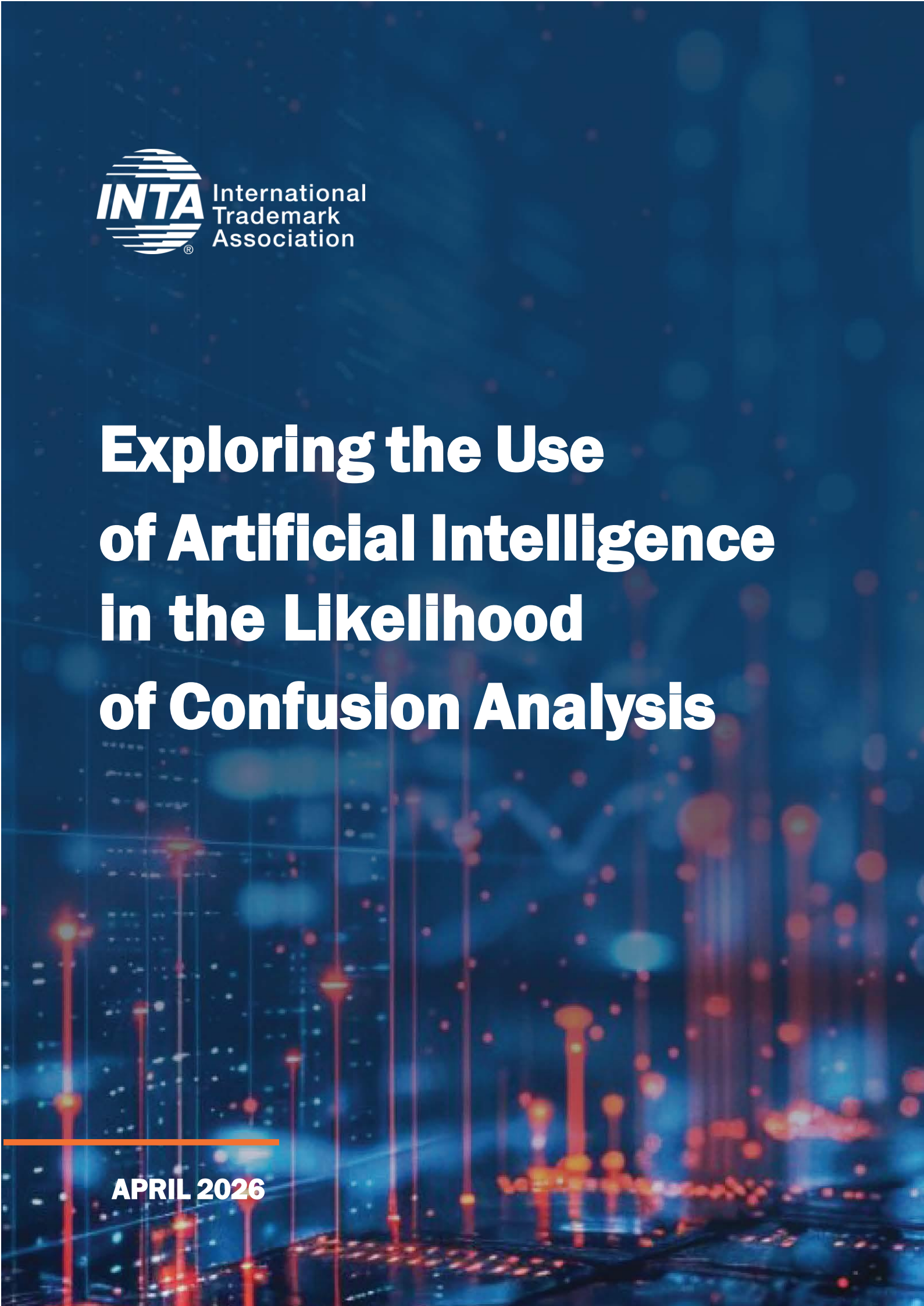

Exploring the Use of Artificial Intelligence in the Likelihood of Confusion Analysis

APRIL 2026

Acknowledgements

In 2025, the International Trademark Association (INTA) issued its *Artificial Intelligence and Intellectual Property Rights Foundational Principles*, developed by the Artificial Intelligence Advisory Group and presented through a resolution adopted on May 17, 2025. These principles reaffirm INTA's commitment to fostering the responsible adoption and evolution of new technologies while safeguarding the ability of intellectual property owners to protect and enforce their rights.

To support this initiative, INTA commissioned FTI Consulting to prepare this Report. FTI Consulting worked in close partnership with INTA's project team, including:

INTA Project Team:

- *Heather Steinmeyer—Chief Policy Officer*
- *Lori Schulman—Senior Director, Internet Policy*
- *Jose Luis Londono—Associate Senior Director, Policy Development*
- *David Gooder—Senior Advisor; Former Commissioner for Trademarks at the U.S. Patent and Trademark Office (USPTO)*
- *Helena Rother—Research Strategist*

Together, the Data & Analytics–AI team at FTI Consulting and the INTA Project Team collaborated to present the content of this Report. The objective was to align with INTA's broader mission of advancing innovation responsibly, particularly amid the rapid development and growing accessibility of AI and generative AI technologies that continue to reshape the intellectual property landscape.

FTI Consulting expresses its appreciation to INTA and its contributors for their guidance, collaboration, and trust throughout this engagement.

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CHAPTER 1

Executive **Summary**

In this Report, the International Trademark Association (INTA) and FTI Consulting explore the potential application of Artificial Intelligence (AI) to likelihood of confusion analysis in trademark law, with the aim of supporting Intellectual Property Offices (IPOs) and Intellectual Property (IP) practitioners by detailing how AI technologies may enhance the examination process, improve consistency, and uphold legal standards while maintaining human oversight in decision-making. The Report explains the technology that could be deployed and the factors that IPOs should consider when designing and implementing AI systems for the purposes of relative examination. As of this Report's date, INTA is not aware of any IPO that has a fully integrated AI system for likelihood of confusion analysis. However, given the emergence of AI in commercial clearance and some aspects of IPO administration, the time is ripe to consider further adoption and use of AI in relative trademark examination.

INTA is committed to responsible AI adoption to protect intellectual property rights amid rapid technological advances. INTA chose the likelihood of confusion analysis as a representative example of how AI could be applied to subjective, as well as objective, AI legal analysis. Likelihood of confusion is central to trademark law, protecting brand identity and consumer perception by preventing misleading similarities between marks. It is assessed through the eyes of the "average consumer," whose perception varies by context. This doctrine balances brand owner rights with consumer trust and market stability, underpinning trademark clearance, registration, enforcement, and litigation. The Report highlights the increasing complexity of marks, including non-traditional types like sounds and colors, and evolving consumer behavior influenced by digital technologies.

Trademark Lifecycle and Likelihood of Confusion

The likelihood of confusion analysis arises throughout the trademark lifecycle—from brand creation and clearance searches to examination, opposition, enforcement, and litigation. The interplay between trademark owners and IPOs is critical, with owners conducting pre-filing clearance and IPO examiners performing substantive analysis in relative examination jurisdictions. Global classification systems provide frameworks for organizing goods, services, and figurative elements for examination. For the purposes of only, INTA chose The *DuPont* decision to gauge the capability and consistency of AI using a proven legal standard of likelihood of confusion analysis.

The *DuPont* decisional factors ("*DuPont* factors") are a robust legal framework in which to analyze likelihood of confusion. In jurisdictions where likelihood of confusion analysis is performed, almost all frameworks, including *DuPont*, incorporate four common elements: the similarity of the marks, the relationship between the goods and/or services identified by the marks, the strength of the prior mark, trade channels/consumer sophistication. Any combination of factors should be looked at on the whole and through the eyes of the "average" or "common" consumer. Decisions to allow registration are based on the evidence presented to the examiner and the examiner's life experience.

Artificial Intelligence: Methods and Technical Framework

This Report provides a foundational overview of AI, defining it as systems performing tasks that would typically require human intelligence, including subfields like Machine Learning (ML), Deep Learning (DL), and Natural Language Processing (NLP). It explains learning paradigms—supervised, unsupervised, and reinforcement learning—and core AI methods relevant to trademark examination.

Jurisdictional Variation of Likelihood of Confusion

We note that in jurisdictions where likelihood of confusion analysis is performed almost all frameworks incorporate four common elements: the similarity of the marks, the relationship of the goods and/or services, the strength of the prior mark, trade channels/consumer sophistication. Any combination of factors should be looked at in the whole and through the eyes of the "average" or "common" consumer. We chose the *DuPont* factors because they are robust and well-tested due to their extensive history. They are representative of how a system could be designed and provide a consistent approach for how a likelihood of confusion evaluation is to be performed. AI methods and modalities are explored alongside the 13 *DuPont* factors, which include similarity of marks, relatedness of goods and services, the similarity of established, likely-to-continue trade channels, conditions of purchase and buyer sophistication, fame of prior marks, number and nature of similar marks, the nature and extent of any actual confusion, concurrent use without confusion, market interface between the parties, extent of applicant's right to exclude others, the extent of potential confusion and any other established fact(s) probative of the effect of use. The *DuPont* factors are analyzed on a sliding scale with no particular factor outweighing any other.

Risks, Limitations, and Mitigation Strategies

This Report acknowledges AI's risks, including data quality, bias, performance metrics and model drifts, and the role of human oversight. Successful implementation includes change management, training and upskilling, understanding AI outputs and limitations, and workflow integration.

Conclusion and Future Outlook

AI holds promise to transform likelihood of confusion analysis by enhancing efficiency, scale, and data-driven insight. However, the process remains deeply human-centric, relying on context, perception, and judgment that AI cannot fully replicate. This Report envisions AI as a powerful assistant that supports examiners without supplanting legal reasoning. Future developments may prompt reconsideration of legal frameworks and introduce new challenges in unfair competition. Responsible AI adoption depends on robust data governance, transparency, continuous validation, and human expertise. The evolving collaboration between examiners and AI is poised to reshape


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