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January 24, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Leather and Vinyl Doctor, LLC

Serial No. 77853280

Scott T. Kannady of Brown & Kannady, LLC for Leather and Vinyl Doctor, LLC.

Cynthia Sloan, Trademark Examining Attorney, Law Office 116
(Michael W. Baird, Managing Attorney).

Before Holtzman, Bergsman, and Kuczma
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Leather and Vinyl Doctor, LLC ("applicant") filed a use-based application for the mark the THE LEATHER + VINYL DOCTOR, in standard character form, for "furniture restoration, repair and maintenance" in Class 37.

Applicant disclaimed the exclusive right to use the term "Leather + Vinyl."

The examining attorney issued a final refusal to register the mark pursuant to § 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), citing Registration No. 3626025 as a bar to registration. Registration No. 3626025

is for the mark LEATHER & VINYL MD and Design,¹ shown below,
for "leather and vinyl cleaning and repair services;
upholstery cleaning and repair services," in Class 37, with
"Leather & Vinyl" being disclaimed:



Preliminary Issues

A. Evidence attached to applicant's brief

Applicant submitted Exhibits A-1, B-1 and C-1 with its appeal brief. These Exhibits are updated internet printouts supplementing Exhibits A, B and C filed with applicant's July 27, 2010 response to an Office Action. The examining attorney did not address or object to Exhibits A-1, B-1 and C-1.

Trademark Rule 2.142(d) addresses the submission of evidence submitted after an appeal is filed:

The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed.

¹ Registration No. 3626025, issued May 26, 2009.

Evidence submitted after appeal, without a granted request to suspend and remand for additional evidence, see TBMP § 1207.02, may be considered by the Board, despite its untimeliness, if the nonoffering party (1) does not object to the new evidence, and (2) discusses the new evidence or otherwise affirmatively treats it as being of record. TBMP § 1207.03. Although the examining attorney did not object to the late filed evidence, she did not discuss it or otherwise treat it as being of record. Accordingly, the Exhibits attached the applicant's brief are untimely and have not been considered.

B. Judicial Notice

With her appeal brief, the examining attorney submitted copies of webpages relating to the definition of the letters "MD," requesting the Board take judicial notice of the webpages based on our decision in *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). The webpages are from the following websites and relate to the definition of the letters "MD" as follows:

1. MD. Doctor of Medicine. 1. Managing Director, 2. Maryland, Latin *Medicinae Doctor*. *Collins English Dictionary*, <http://www.collinslanguage.com/results.aspx?context=3&reversed=False&action=define&homonym=1&text=MD>.

2. M.D. noun [C]. abbreviation for Doctor of Medicine (=an advanced university degree needed to work as a medical doctor). *Steven Tay, M.D. Cambridge Dictionaries Online*
http://dictionaries.cambridge.org/define.asp?key=md*1+0&dict=A.
3. md - 2 of 2 thesaurus results. Main Entry: doctor. Part of Speech: noun. Definition: medical practitioner. Synonyms: **MD**, bones, doc, etc.
Roget's 21st Century Thesaurus, Third Edition, Copyright © 2011 by the Philip Lief Group
<http://thesaurus.com/browse/md>.
4. Words and phrases that have a meaning related to doctor: (237 results). Appears in the definition of: . . . "md;" Synonyms: . . . "md."
Copyright © 2011 Datamuse
<http://www.rhymzone.com/r/rhyme.cgi?Word=doctor>.

For the reasons set forth in *Red Bull*, 78 USPQ2d at 1378, we take judicial notice of definition nos. 1-3 above; however, we decline to take notice of definition no. 4 inasmuch as the source of the information is not identified in the excerpt (e.g., derived from a well-known dictionary) and there is no indication that it otherwise meets the requirements for judicial notice.

Likelihood of Confusion

Our determination of likelihood of confusion under § 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the 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 Co.*, 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 and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). These are the two factors to which applicant and the examining attorney have devoted the most attention. Other factors such as the similarity or dissimilarity of trade channels, customer care and lack of confusion, were also argued and considered.

A. The similarity or dissimilarity and nature of the services, channels of trade and classes of consumers

We initially address the *du Pont* factor involving the similarity or dissimilarity of applicant's services ("furniture restoration, repair and maintenance"), in relation to the services in the cited registration ("leather and vinyl cleaning and repair services; upholstery cleaning and repair services"). It is well-settled that the issue of likelihood of confusion between applied for and registered marks must be determined on the basis of the services as they are identified in the involved application and registration. *Paula Payne*

Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Thus, where a recitation of services is broadly constructed, we must allow for all possible services that may fall within the recitation, keeping in mind that a likelihood of confusion may be found with respect to a particular class based on any service within the recitation of services for that class. See *In re Wacker Neuson SE*, 97 USPQ2d 1408, 1409 (TTAB 2010) citing *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Initially, we note applicant's admission that both parties provide "repair services."²

To better assess the degree of similarity between upholstery repair versus furniture repair services, we turn to the definition of "upholstery:"³

- (1). the padding, covering, etc, of a piece of furniture.
Collins English Dictionary-Complete & Unabridged
10th Edition. 2009 © William Collins Sons & Co.
found at
<http://dictionary.reference.com/browse/upholstery>

² Applicant's Brief p. 5.

³ The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d at 1377.

By definition, "upholstery" is a component of a piece of furniture. Therefore, we find the term "furniture repair" encompasses "upholstery repair" and, that "upholstery repair" and "furniture repair" are closely related, if not legally identical services.

To support the similarity of the services, the examining attorney submitted eleven use-based third-party registrations that serve to suggest that applicant's restoration and maintenance of furniture and registrant's cleaning of upholstery are of a kind that may emanate from a single source.⁴ The registrations listed below are the most relevant to show the relatedness of the services for furniture and upholstery:⁵

Registration No.	Mark	Services
3056802	CARRIAGE HOUSE II-IN HOME RESTORATIONS	"furniture restoration, repair and maintenance;" "Service includes--- chemical cleaning. . . antique restoration. . . furniture. . .upholstery . . ."
3748234	ARAHULL	"upholstery cleaning services" and "furniture restoration, repair and maintenance"
3423984	SEALMASTER	"cleaning and maintenance services in

⁴ These third-party registrations submitted by examining attorney were attached to the August 17, 2010 Office Action.

⁵ We have only listed the services in each of the registrations that are pertinent to the services identified in applicant's application and the cited registration.

		the field of . . . upholstered furniture, leather. . ."
3652918 3652920 (same owner)	Design Mark KEMTEX	". . . furniture care services, namely, furniture cleaning, maintenance, reupholstering, refinishing, repair and restoration . . ."
3553419	TEAMCARE	"office furniture . . . cleaning . . . repair and maintenance"

Although such registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent they are based on use in commerce and serve to suggest that that the services listed therein are of a kind which may emanate from a single source under a single mark. *See In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1203 (TTAB 2009); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

The internet materials submitted by the examining attorney with the Office Action of January 27, 2010, also support the close relationship between the parties' services (emphasis added):

www.leathervinylmd.com advertises: "**clean** and **repair** leather and vinyl **furniture** . . ." and "Leather **Upholstery Cleaning**" by "First we deep **clean** your auto or **furniture**

upholstery . . ." "we come to your site to **restore** your faded or **damaged furniture upholstery . . .**"⁶

<http://expertleathercare.com> advertises: "Taking Care Of Your Leather **Furniture** Is Our Business," and have "been in the leather and vinyl **furniture repair** business since 1980," "provide on-site mobile service to **restore** your **leather furniture . . .** The experts in **Leather Furniture Cleaning and Repairs. . .**"

www.leathermagic.com/+leather+upholstery+cleaner advertises: "**Leather Repair, Cleaning, Care and Restoration**" in connection with a **photo of leather furniture**, and "**restoration** of Leather and Vinyl **Upholstery**," "Find out what it takes to **repair, restore** and preserve your Leather, Vinyl and Cloth materials" with an adjoining **photo of furniture**.

In addition, applicant submitted an excerpt from the website identified below:⁷

www.leatherdoctoronline.com advertises: "refinish, recolor, or reupholster your leather **furniture**," offers "**Reupholstery**" services by "Custom matching new leather on an old piece [of furniture] that is damaged or faded beyond **repair**, or replacing the old **upholstery** entirely."

Because applicant's and registrant's repair services are so closely related as to be legally identical, we can presume that the channels of trade and classes of purchasers are the same. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items

⁶ This website features the mark shown in the cited registration.

⁷ See Exhibit C to July 27, 2010 response to Office Action.

could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers.").

Even without the presumption, the evidence shows that the services travel in the same channels of trade to the same types of customers. Where, as here, the services in the application are broadly described and there are no limitations in the recitation of services as to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the application encompasses all services of the nature and type described, that applicant's services move in all channels of trade that would be normal for such services, and that applicant's services would be purchased by all potential customers. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981), citing *The Kalart Co., Inc. v. The Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); see also, *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1646 (TTAB 2008).

In view of the inherent nature of upholstery as a component of furniture, applicant's recitation of services, namely, furniture restoration, repair and maintenance

services, is broad enough to encompass registrant's upholstery cleaning and repair services, and applicant's unrestricted services travel in all trade channels where such services are offered. In this regard, registrant's services would be provided to customers who wish to repair upholstery. Inasmuch as upholstery is a component of furniture, applicant's furniture repair services are broad enough to encompass upholstery repair and would therefore be provided to the same customers. This is supported by the foregoing third-party registrations and internet evidence that demonstrates upholstery and furniture restoration, maintenance, cleaning and repair services are promoted via similar avenues and offered by the same entities.

Applicant's argument that consumers interested in services of any kind are sophisticated and exercise a higher degree of purchaser care, is without any evidentiary support and does not factor into our decision.

Based on the legally identical or highly related nature of the services set forth in the application and cited registration, and the similar trade channels and customers, the *du Pont* factors of the similarity of the services, trade channels and customers favors a finding of likelihood of confusion.

B. The similarity or dissimilarity of the marks as to appearance/sound/connotation and commercial impression

We now turn to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *du Pont*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987).

1. Sound and appearance

The marks are very similar in sound and appearance to the extent they incorporate the phrase "Leather [&/+] Vinyl" near the beginning of each mark. The "+" symbol in applicant's mark is positioned between two words. Placed as such, it appears as a symbol for the word "and" in the same manner as the "&" in applicant's mark. Therefore, the "+" and the "&" symbols of the marks will be pronounced the same, rendering the phrases "Leather + Vinyl" and "Leather & Vinyl" identical in sound and, the marks "THE LEATHER & VINYL DOCTOR" and "LEATHER & VINYL MD and Design" similar in sound and appearance. However, due to the weakness of the "Leather [&/+] Vinyl" phrase as discussed *infra*, the

similarity in sound and appearance is not entitled to significant weight.

2. Connotation

Although applicant's mark begins with the word "THE," the definitive article "the" is not distinctive and does not add any source-identifying significance. See *In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (the definite article THE and the generic term BAR are not distinctive terms, and they add no source-indicating significance to the mark as a whole); *In re Weather Channel, Inc.* 229 USPQ 854, 856 (TTAB 1985) ("nor does the use of the word 'the' add any source-indicating distinctiveness" to the term THE WEATHER CHANNEL); *In re The Computer Store, Inc.*, 211 USPQ 72, 74-75 (TTAB 1981) (use of the definite article "The" does not convert the merely descriptive term THE COMPUTER STORE into a registrable mark). Thus, the inclusion of the word "THE" in applicant's mark does not serve to distinguish its mark from the cited mark.

Applicant's mark concludes with the word "Doctor" while the cited mark concludes with the letters "MD" and contains a design of a doctor. In view of the similar connotation of "doctor" and "MD," these differences are not sufficient to distinguish the marks and avoid likelihood of confusion.

Based on the results of an internet search for "MD" which revealed listings for the State of Maryland as well as for "doctor of medicine" and other health related websites, Applicant argues that the term "MD" is not conclusive of the word "doctor" and could be used in reference to the State of Maryland.⁸ The dictionary definitions submitted by the examining attorney, of which we have taken judicial notice, show that "MD" is an abbreviation for "Doctor of Medicine," and is a synonym for "doctor."

We do not disagree with applicant that the letters "MD" may sometimes refer to the State of Maryland as reflected in applicant's evidence as well as in definition no. 1 *supra*. In this instance however, viewers of registrant's mark used in connection with repair services would more likely than not interpret "MD" to mean "doctor" given the context of the mark which includes a design of a "doctor" as well as the suggestive correlation between "doctors" and "repairing."

Applicant has not shown any association of the phrase "Leather and Vinyl" with the State of Maryland or any other reason why viewers would associate "MD" when used with the

⁸ Applicant's Brief p. 4; Exhibit A to July 27, 2010 response to Office Action.

term "Leather and Vinyl" with the State of Maryland. None of the third-party references in applicant's Exhibits A-C⁹ show use of the term "MD" in connection with "Leather & Vinyl" where "MD" is used as an abbreviation or reference to the State of Maryland. Thus, while the letters "MD" may not be conclusive of the word "doctor," the evidence of record shows that "MD" is commonly defined and associated with the word "doctor." Thus, when we consider the marks as a whole, the connotation of applicant's mark which includes the word "doctor," and the cited mark which includes the letters "MD," is the same. While it is axiomatic that a mark should not be dissected and considered piecemeal in determining likelihood of confusion, *Franklin Mint Corp. V. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981), it can be appropriate to accord additional weight to a feature of a mark provided the ultimate conclusion rests on consideration of the marks in their entireties. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

3. Commercial Impression

It is well established that confusion is likely not only for marks that physically sound or look alike, but

⁹ Submitted as Exhibits A-C to July 27, 2010 response to Office Action.

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also for marks that convey the same idea, stimulate the same mental impression or may have the same overall meaning. *The Proctor & Gamble Co. v. Conway*, 419 F.2d 1332, 164 USPQ 301, 304 (CCPA 1970) (MISTER STAIN likely to be confused with MR. CLEAN on competing cleaning products); *Ralston Purina Co. v. Old Ranchers Canning Co., Inc.*, 199 USPQ 125, 127-28 (TTAB 1978) (TUNA O'THE FARM for canned chicken likely to be confused with CHICKEN OF THE SEA for canned tuna).

When considering the similarity of the marks, 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 overall commercial impression so that confusion as to the source of the services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992).

In evaluating the similarities of the marks, if one of the marks comprises both a word and a design, the word is normally accorded greater weight in determining whether marks are similar because it would be more likely to be

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impressed upon a purchaser's memory and used by purchasers to request the goods or services. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1267-68 (TTAB 2011); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *Kabushiki Kaisha Hattori Tokeiten v. Scuto*, 228 USPQ 461, 462 (TTAB 1985).

The word portion of registrant's mark is entitled to more weight even though the words "Leather and/& Vinyl" have been disclaimed by both applicant and registrant. When determining whether there is a likelihood of confusion, marks must be considered in their entirety and a disclaimer does not remove the disclaimed portion of a mark for purposes of this analysis. *Nat'l Data Corp.*, 224 USPQ at 751; *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984); *In re Iolo Technologies LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010). Therefore, while the mark in the cited registration contains a design and claims color as a feature of the mark, the words "Leather & Vinyl MD" are to be accorded greater weight than the design portion. This is especially so in this case where the design portion of

the cited mark reinforces the significance of the word portion of the mark.

The design as described in the cited registration consists of "an orange doctor in scrubs with a steth[o]scope examining a hanging leather hide above the orange words 'Leather and Vinyl MD'." This design illustrates and reinforces the words "Leather" and "MD" in the cited mark. Therefore, instead of differentiating the cited mark, the design considered together with the word portion of the cited mark conveys the same commercial impression as the words "Leather + Vinyl Doctor" in applicant's mark.

In assessing the commercial impressions of marks, that a particular feature is descriptive with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark. *Nat'l Data*, 224 USPQ at 751. Here, applicant supports its argument that the term "Leather & Vinyl" is weak with internet evidence showing descriptive uses of "Leather & Vinyl" for repair services offered by third parties.¹⁰

¹⁰ Applicant's Brief p. 4, and Exhibits B and C to July 27, 2010 response to Office Action which refer to: "browse our directory of leather and vinyl repair franchises," www.allbusiness.com; "Mobile leather and vinyl repair. . .," www.coloradocolorglo.com; ". . . repair leather and vinyl furniture. . .," www.leathervinylmd.com [featuring

Applicant also disclaimed the term "Leather & Vinyl" in its response to the July 27, 2010 Office Action providing further evidence of the descriptiveness of this term. See *Bass Pro Trademarks LLC v. Sportsman's Warehouse Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008). We agree that "Leather & Vinyl" is descriptive of furniture and upholstery repair services and, therefore accord it less weight in determining the overall similarity of the marks.

Applicant also submitted a sampling of webpages for various furniture and repair businesses utilizing names that are allegedly similar to the cited mark.¹¹ While third-party uses of the cited mark would be evidence of the weakness of the mark and is a separate *du Pont* factor to be considered in determining likelihood of confusion, 177 USPQ at 567, applicant's evidence fails to show use of the cited mark by third parties. Even if the business names shown in the webpages evidenced use of the cited mark, they would have limited probative value because they do not show the public's awareness of the respective businesses, see *Anthony's Pizza & Pasta Int'l Inc. v. Anthony's Pizza*

cited mark]; "Repairs to leather and vinyl goods. . .," www.myleatherdoctor.com; "Vinyl/Leather Repair," www.drvinyl.com/usa.

¹¹ Applicant's Brief p.4, and Exhibit C to July 27, 2010 response to Office Action.

Holding Co., 95 USPQ2d 1271, 1278 (TTAB 2009), and fall far short of the persuasive evidence of "numerous" third party uses such as those involved in *Steve's Ice Cream v. Steve's Famous Hot Dogs*, 3 USPQ2d 1477 (TTAB 1987); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559 (TTAB 1996), cited by applicant.¹²

Regardless of the weakness of the term "Leather & Vinyl," the non-descriptive word portions of the marks, i.e., "Doctor" and "MD," are synonymous. As explained in *Nat'l Data*, where a descriptive term forms part of two or more marks for related products, the purchasing public becomes conditioned to this frequent marketing situation and will not be confused unless the overall combinations have other commonality. 224 USPQ at 752. Here, the overall similarities in commercial impression of the marks results from the equivalence of the terms "MD" and "Doctor" in combination with the identical, but weak, term "Leather [&/+] Vinyl." Considering the substantial similarities in connotation and commercial impression between the marks, a purchaser who sees one mark and later encounters the other is likely to think, if the two marks used for the same or related services, that the second mark is the same mark seen earlier, or if some differences are recognized, that

¹² Applicant's Brief p. 4.

the second mark is a slightly varied version of the first, with both serving to indicate origin in the same source.

See In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1468 (TTAB 1988).

In comparing the marks, we are mindful that where, as here, applicant's services are closely related or legally identical to registrant's services, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between and services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Real Estate One, Inc. v. Real Estate 100 Enterprises Corp.*, 212 USPQ 957, 959 (TTAB 1981); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443, 449 (TTAB 1980).

In view of the foregoing, we find applicant's mark THE LEATHER & VINYL DOCTOR is similar in connotation and commercial impression to the LEATHER & VINYL MD and Design mark shown in the cited registration.

C. Lack of actual confusion

In addition to the foregoing factors, applicant raised the *du Pont* factor relating to a lack of actual confusion

noting that applicant is unaware of any confusion.¹³ The fact that an applicant in an *ex parte* case is unaware of any instances of actual confusion is generally entitled to little probative weight in the likelihood of confusion analysis, inasmuch as the Board in such cases generally has no way to know whether the registrant likewise is unaware of any instances of actual confusion, nor is it usually possible to determine that there has been any significant opportunity for actual confusion to have occurred. *See, e.g., In re Opus One Inc.*, 60 USPQ2d 1812, 1817 (TTAB 2001); *In re Jeep Corporation*, 222 USPQ 333, 337 (TTAB 1984); *In re Barbizon International, Inc.*, 217 USPQ 735, 737 (TTAB 1983).

In any event, applicant's uncorroborated statements of no known instances of actual confusion are of little evidentiary value. *See In re Bissett-Berman Corp.*, 476 F.2d 640, 642, 177 USPQ 528, 529 (CCPA 1973) (stating that self-serving testimony of appellant's corporate president's unawareness of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion).

¹³ Applicant's Brief p. 7.

D. Balancing the factors

In view of the similarity of the marks in their entireties in connotation and commercial impression, the legal identity of at least some of applicant's services to those in the cited registration, the relatedness of all of the services of applicant and registrant, and the presumption that the services may move in the same channels of trade and are available to the same classes of consumers, we find that applicant's mark THE LEATHER + VINYL DOCTOR for the services identified in the application is likely to cause confusion with the mark LEATHER & VINYL MD and Design shown in Registration No. 3626025.

Decision: The refusal to register is affirmed.