

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 7, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Pour Moi Limited

—
Serial No. 79318691

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Molly B. Markley of Young, Basile, Hanlon & MacFarlane P.C.,
for Pour Moi Limited.

Krystina Osgood, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

—
Before Kuhlke, Allard, and Elgin,
Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:

Pour Moi Limited (“Applicant”) seeks registration on the Principal Register of the
mark POUR MOI (in standard characters) for

Jewellery; jewellery coated with precious metals; jewellery
made of precious metal alloys; jewellery with ornamental
stones; body jewellery; bracelets; jewellery chains;
jewellery charms of common metals; decorative trinkets
and jewellery, namely, decorative jewellery and decorative
key fobs made of metal for personal use; earrings; facial
jewellery; gems; gold bracelets; gold jewellery chains; gold
earrings; gold jewellery; personal jewellery; pierced
earrings; jewellery, namely, rings; signet rings; wedding
rings; women’s jewellery in International Class 14;

Luggage, travelling bags, wallets and all-purpose carrying bags; leather and imitations of leather; all-purpose athletic bags; all-purpose carrying bags; attaché cases; bags, namely, barrel bags and weekend bags; bags, namely, envelopes and pouches of leather, for packaging; travelling bags made of leather; beach bags; belt bags and hip bags; book bags; briefcases; bumbags; canvas bags being canvas travelling bags; canvas shopping bags; leatherware, namely, card wallets; carry-on bags; carry-on suitcases; clutch bags; coin holders in the nature of wallets; coin purse frames; cosmetic bags sold empty; cosmetic purses; cross-body bags; duffel bags; daypacks; evening handbags; flexible bags for garments in the nature of flexible garment bags for travel; folding briefcases; garment bags for travel; gym bags; handbags; handbags made of leather; handbags, purses and wallets; haversacks; hiking rucksacks; key cases; key cases of imitation leather; leather bags and wallets; luggage; multi-purpose purses; waist pouches; roller suitcases; saddlebags; school bags; wheeled shopping bags; suitcases; travel cases; travel luggage; travelling bags in International Class 18; and

Clothing, namely, shirts, pants and dresses; footwear; headwear; parts of clothing, footwear and headgear, namely, underarm gussets; bath robes; clothing, namely, belts; bottoms as clothing; boxing shorts; bralettes; brassieres; cardigans; casual jackets; casual shirts; casual trousers; casualwear, namely, casual shirts, pants and dresses; clothing for men, women and children, namely, shirts, pants and dresses; clothing, namely, collars; dresses; hosiery; knit shirts; knickers; knitted underwear; knitwear, namely, knitted sweaters; ladies' clothing, namely, shirts, pants and dresses; ladies' underwear; leggings; negligees; nighties; nightwear; pyjama bottoms; shirts; short trousers; socks; socks and stockings; stockings; strapless bras; swim wear for children; tank tops; tee-shirts; tights; underwear in International Class 25.¹

¹ Application Serial No. 79318691 was filed on April 9, 2021 based on an extension of protection of an International Registration pursuant to Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f. An English translation of “pour moi” in the mark as “for me” is of record. See December 1, 2021 Office Action, at TSDR 68-69 (www.collinsdictionary.com).

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the goods identified in the application, so resembles the marks POUR MOI and POOR ME? NO, POUR MOI for "Non-medicated skin care preparations and cosmetics for the face and body" in International Class 3;² and (as to International Class 25 only) the mark POUR MOI, LLC (with "LLC" disclaimed) for "Adult sexual stimulation aid for sexual dysfunction, namely, a combination vibrator, inflatable balloon and electrical stimulator" in International Class 10,³ on the Principal Register, as to be likely to cause confusion, to cause mistake, or to deceive.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to the Board as to the goods in International Class 25 only.⁴ Subsequently, the Trademark Examining Attorney withdrew the refusal based on cited Registration No. 4168897 (POUR MOI, LLC);⁵ thus, the only grounds remaining for appeal is the refusal based on likelihood of confusion under Section 2(d) with the cited Registration

² Registration No. 4645533 (POUR MOI), issued November 25, 2014 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a); Registration No. 5446364 (POOR ME? NO, POUR MOI), issued April 17, 2018 under Section 1(a) of the Trademark Act. English translations of "pour moi" appearing in both marks as "for me" are of record. Both registrations are owned by Pour Moi Beauty, LLC. As to Registration No. 4645533, a Combined Declaration of Use and Incontestability under Trademark Sections 8 and 15, 15 U.S.C. §§ 1058, 1065, was accepted and acknowledged on February 25, 2021.

³ Registration No. 4168897, owned by Pour Moi, LLC, issued July 3, 2012 under Trademark Act Section 1(a); renewal accepted on October 18, 2022.

⁴ 4 TTABVUE. Page references to the application record refer to the .pdf version of USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. *See In re Integra Biosciences Corp.*, 2022 USPQ2d 93, at *7 (TTAB 2022). Applicant's brief is at 4 TTABVUE and its reply brief is at 7 TTABVUE; the Examining Attorney's brief is at 6 TTABVUE.

⁵ 6 TTABVUE 2.

Nos. 4645533 and 5446364 (POUR MOI and POOR ME? NO, POUR MOI) as to International Class 25.⁶

We affirm the refusal to register.

I. The Record on Appeal

The record on appeal consists of pages from the USPTO databases regarding the cited registrations,⁷ records of third party registrations⁸ and Internet webpages,⁹ made of record by the Examining Attorney; and screenshots from Applicant's Internet website,¹⁰ the Internet website of the owner of the cited registration POUR MOI, LLC,¹¹ the Internet websites of third parties Dior, Armani, and Chanel,¹² and TESS records for third party registrations containing variations of the terms "for me" and "4 me,"¹³ made of record by Applicant.

II. Evidentiary Issue

Before proceeding to the merits of the refusal, we address an evidentiary matter. The Examining Attorney objected to inclusion of hyperlinks to several retailer

⁶ Thus, Applicant has abandoned the subject application as to the goods in International Classes 14 and 18. *See* Trademark Act Section 12(b), 15 U.S.C. § 1062(b); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 718.05 (2022). Further, we do not address the arguments in Applicant's appeal brief relating to Registration No. 4168897.

⁷ December 1, 2022 Office Action, at TSDR 2-9.

⁸ June 28, 2022 Office Action, at TSDR 2-260.

⁹ December 1, 2022 Office Action, at TSDR 10-70; June 28, 2022 Office Action, at TSDR 266-308.

¹⁰ March 31, 2022 Response to Office Action, at TSDR 8.

¹¹ *Id.*, at TSDR 9

¹² *Id.*, at TSDR 10-16

¹³ *Id.*, at TSDR 17-30.

websites in Applicant's brief and requests that we disregard such evidence.¹⁴ In response, Applicant argued these "website addresses all appear in the prosecution record," namely, in Exhibit C to its March 31, 2022 response to Office Action, and therefore this evidence "should be considered."¹⁵

Providing a hyperlink to Internet materials is insufficient to make such materials of record. *In re ADCO Indus. – Techs., L.P.*, 2020 USPQ2d 53786, at *2 (TTAB 2020) (web addresses or hyperlinks are insufficient to make the underlying webpages of record); *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1195 n.21 (TTAB 2018) (Board does not consider websites for which only links are provided); *see also* TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 1208.03 (2023).

Comparing the complained-of hyperlinks in Applicant's brief to the evidence in the record, we found screenshots from the Internet websites for Armani, Chanel, and Dior in the record,¹⁶ and therefore consider this evidence and argument. As to the hyperlinks to the websites for Gucci, Dolce & Gabbana, and Free People,¹⁷ although we discovered screenshots from these websites in the record,¹⁸ they are not the specific pages hyperlinked by Applicant. Accordingly, we have not utilized these

¹⁴ 6 TTABVUE 3.

¹⁵ 7 TTABVUE 2-3.

¹⁶ *See* December 1, 2021 Office Action, at TSDR 10-23, 29-52; March 31, 2022 Response to Office Action, at TSDR 10-16 (Exh. C).

¹⁷ Namely, www.gucci.com/us/en/st/decor-lifestyle, www.dolcegabbana.com/en/fashion/gifts/dg-lifestyle/foodandbeverage-gifts/, and www.freepeople.com/skincare/?topper=1.

¹⁸ *See* June 28, 2022 Office Action, at TSDR 266-74, 279-88, and 302-07.

hyperlinks and give no consideration to arguments based on evidence purportedly found at the hyperlinks.

III. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We must consider each *DuPont* factor for which there is evidence or argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at *4 (Fed. Cir. 2023) (“The Board is required to consider each factor for which it has evidence, but it can focus its analysis on dispositive factors.”); *Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (“Not all of the *DuPont* factors are necessarily ‘relevant or of equal weight in a given case, and any one of the factors may control a particular case.’”) (citing *In re Majestic Distilling Co.*, 65 USPQ2d at 1204) ; *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”) (citing *Nina Ricci*,

S.A.R.L. v. E.T.F. Enters., Inc., 889 F.2d 1070, 12 USPQ2d 1901, 1903 (Fed. Cir. 1989)).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (analysis may focus on dispositive factors such as similarity of marks and relatedness of goods) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see also 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.”). Those factors and others are considered below.

A. Similarity or Dissimilarity of the Marks

We begin our analysis by comparing, under the first *DuPont* factor, “the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. v. Veuve Cliquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). We must compare the marks in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Id.* (quoting *DuPont*, 177 USPQ at 567). “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v.*

Triumph Learning LLC, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted).

Because the addition of terms and punctuation in cited Registration No. 5446364 for POOR ME? NO, POUR MOI presents points of difference with Applicant's mark POUR MOI, we confine our analysis to the issue of likelihood of confusion between Applicant's mark and the POUR MOI mark in cited Registration No. 4645533. That is, if confusion is likely between those marks, there is no need for us to consider the likelihood of confusion with the mark in Registration No. 5446364; conversely, if there is no likelihood of confusion between the marks, then there would be no likelihood of confusion between POUR MOI and the cited mark POOR ME? NO, POUR MOI. *See In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (confining analysis to most similar marks).

There can be no dispute that Applicant's standard character POUR MOI mark is identical in appearance and sound to Registrant's POUR MOI standard character mark. *In re i.am.symbolic, llc*, 123 USPQ2d at 1748 ("Symbolic does not, and cannot, dispute that the mark, I AM in standard character form, and the registrants' marks, I AM in standard character, typed, or stylized form, are pronounced the same way and, at a minimum, legally identical."). There also is no evidence of record that consumers would perceive the identical marks to engender a different meaning or commercial impression in the context of the clothing goods listed in the subject application than in the context of Registrant's cosmetics or skin care preparations. *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *4 (TTAB 2019) (no evidence that

identical marks engender different impressions as applied to non-identical goods and services). Thus, the first *DuPont* factor “weighs heavily in favor of finding a likelihood of confusion.” *Id.*

B. Strength and Weakness of the Cited Mark

We next consider, under the fifth and sixth *DuPont* factors, Applicant’s contention that the POR MOI mark is weak such that its applied-for mark can coexist with the cited registration.¹⁹

“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).” *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010). Here, we consider the cited mark’s inherent strength, based on the nature of the mark itself.²⁰ *New Era Cap. Co. v. Pro Era LLC*, 2020 USPQ2d 10596, at *10 (TTAB 2020); *Top Tobacco, L.P. v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength). As such, we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary-fanciful continuum of words. *See generally, In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (marks are classified according to their increasing degree of inherent

¹⁹ *See* 4 TTABVUE 7-8.

²⁰ The owner of the cited POUR MOI registration is not a party to this proceeding and thus cannot introduce evidence regarding its commercial use or marketplace strength. *See In re Thomas*, 79 USPQ2d 1021, 1027, n.11 (TTAB 2006) (“Because this is an ex parte proceeding, we would not expect the examining attorney to submit evidence of fame of the cited mark.”). As a result, the commercial strength of Registrant’s mark is not at issue in this appeal.

distinctiveness) (citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 23 USPQ2d 1081, 1083 (1992)).

The cited POUR MOI mark is inherently distinctive because it registered on the Principal Register without a claim of acquired distinctiveness. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000) (word marks registered without a claim of acquired distinctiveness that are arbitrary, fanciful or suggestive are “held to be inherently distinctive.”); *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006) (a “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods”).

Next, the sixth *DuPont* factor “considers ‘[t]he number and nature of similar marks in use on similar goods.’” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). “The Federal Circuit has held that evidence of the extensive registration and use of a term by others can be powerful evidence of the term’s weakness.” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017) (citing *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. v. Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (“*Jack Wolfskin*”) and *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015) (“*Juice Generation*”).

Although evidence of use may reflect commercial weakness, “third-party registration evidence that does not equate to proof of third-party use may bear on conceptual weakness if a term is commonly registered for similar goods or services.” *Tao Licensing, LLC*, 125 USPQ2d at 1056 (citing *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976) (even if “there is no evidence of actual use” of third-party registrations, such registrations “may be given some weight to show the meaning of a mark in the same way that dictionaries are used.”)).

Applicant made of record third-party applications and registrations containing FOR ME (the English equivalent of POUR MOI) or the phonetic equivalent 4 ME. Relying on the Federal Circuit’s decision in *Juice Generation, supra*, Applicant argued that “[t]he fact that similar marks are registered for numerous closely related goods supports the assertion that the mark is not a strong indicator of source in its own class and should not be given significant weight outside of the registered goods.”²¹

Applicant made of record TESS records for six subsisting registrations:

- NATURAL FOR ME in standard characters for “cosmetics” in International Class 3 (Registration No. 5770991);
- SAFE 4 ME and design for “Hair shampoo; Non-medicated handmade soap bars; Skin cleansing lotion” in International Class 3 (Registration No. 6215390);
- LLHP4ME in standard characters for “cosmetic cream for skin care” in International Class 3 (Registration No. 5587913);

²¹ 4 TTABVUE 8.

- MINIS 4 ME in standard characters (“minis” disclaimed) for “Cosmetic cases sold filled with cosmetics; cosmetics” in International Class 3; and “Cosmetic cases sold empty; purses” in International Class 18 (Registration No. 5130040);
- JUST FOR ME in typeset letters²² for “Non-medicated hair care products, namely, no-lye conditioning cream relaxer, hair shampoos, hair conditioners, hair detanglers, scalp conditioners and hair dressing oil” in International Class 3 (Registration No. 3379845); and
- ITZMADE4ME in standard characters for “Cosmetics; Hair care preparations; Non-medicated skin care preparations” in International Class 3 (Registration No. 5929965).²³

We agree with the Examining Attorney’s argument that, because there is no evidence of use of these third-party marks, they are not probative of the commercial strength of the cited mark. “The probative value of third-party trademarks depends entirely upon their usage.” *See Palm Bay Imps., Inc.*, 73 USPQ2d at 1693 (discussing evidence of third-party use of the term VEUVE and foreign equivalents to evaluate strength of shared term).

As to the conceptual strength of Registrant’s inherently distinctive mark, Applicant does not contend that the third party registrations show, in the manner of dictionary definitions, that POUR MOI has any suggestive connotation with regard

²² Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. § 2.52, was amended to replace the term “typed” drawing with “standard character” drawing. A mark depicted as a typed drawing is the legal equivalent of a standard character mark. *See In re i.am.symbolic, llc*, 123 USPQ2d at 1748 (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012)); *see also* TMEP § 807.03(i).

²³ *See* March 31, 2022 Response to Office Action, at TSDR 17-30. We do not list the two pending applications cited by Applicant because they are evidence of nothing more than that they were filed. *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016) (“There is no evidence of record that these applications ever registered and a pending application is evidence only that the application was filed on a certain date; it is not evidence of use of the mark.”) (citing cases).

to the goods that would render the mark anything but arbitrary, and thus conceptually strong. *See id.* at 1692 (arbitrary terms are conceptually strong trademarks); *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004) (defining an arbitrary mark as a “known word used in an unexpected or uncommon way” and observing that such marks are typically strong). Thus, the offered third party registration evidence is unavailing for this purpose.

Also problematic is that none of the six registrations above include the composite term POUR MOI, all include additional wording, and (in some cases) the number “4” in place of the word “for” and/or a design or stylization. The coexistence of these few marks, all of which have distinguishing elements, with the cited registration is not sufficient for us to conclude that the cited mark POUR MOI is entitled to only a limited scope of protection. In short, Applicant’s evidence “falls short of the ‘ubiquitous’ or ‘considerable’ use of the mark components present in [*Juice Generation* and *Jack Wolfskin*].” *In re i.am.symbolic, llc*, 123 USPQ2d at 1751; contrast *Primrose Retirement Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030 (TTAB 2016) (weakness found based on at least 85 actual uses of ROSE-formative marks for similar services, eight similar third-party registrations, expert testimony and other evidence regarding the common nature of ROSE-formative marks in the industry, and testimony by opposer that it did not vigorously enforce its mark).

Thus, we find the sixth *DuPont* factor neutral in our analysis of the likelihood of confusion, and we accord the cited mark POUR MOI “the normal scope of protection to which inherently distinctive marks are entitled.” *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *26 (TTAB 2021) (quoting *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017)).

C. Similarity of Goods, Channels of Trade, and Classes of Consumers

The second *DuPont* factor “considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir 2018) (quoting *DuPont*, 177 USPQ at 567), whereas the third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *Id.* at 1052 (quoting *DuPont*, 177 USPQ at 567); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). Our comparison is based on the goods as identified in Applicant’s application and the cited registration. *See Stone Lion*, 110 USPQ2d at 1162; *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 8 USPQ2d 1944, 1947 (Fed. Cir. 2006) (in reviewing the second *DuPont* factor, “we consider the applicant’s goods as set forth in its application, and the opposer’s goods as set forth in its registration.”).

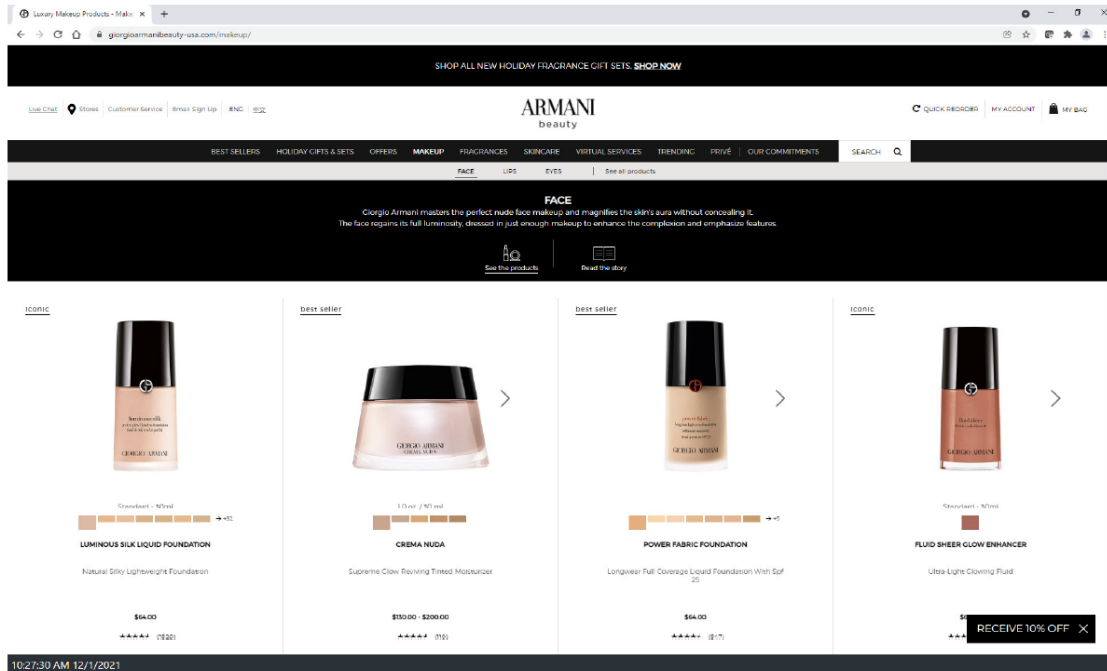
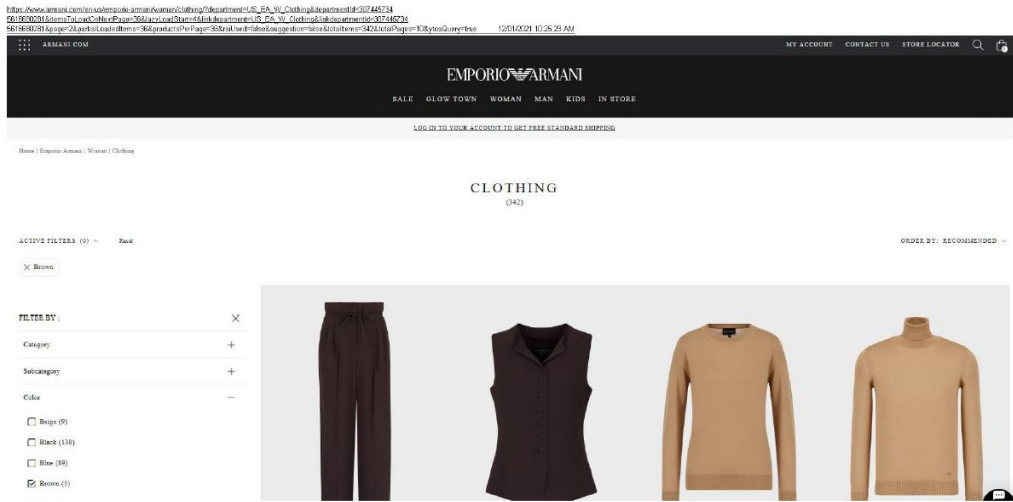
The issue is not whether purchasers would confuse Applicant’s and Registrant’s goods, but rather whether there is a likelihood of confusion as to the source of these goods. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one

another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1737 (TTAB 2018) (“[T]he test is not whether consumers would be likely to confuse these goods, but rather whether they would be likely to be confused as to their source.”).

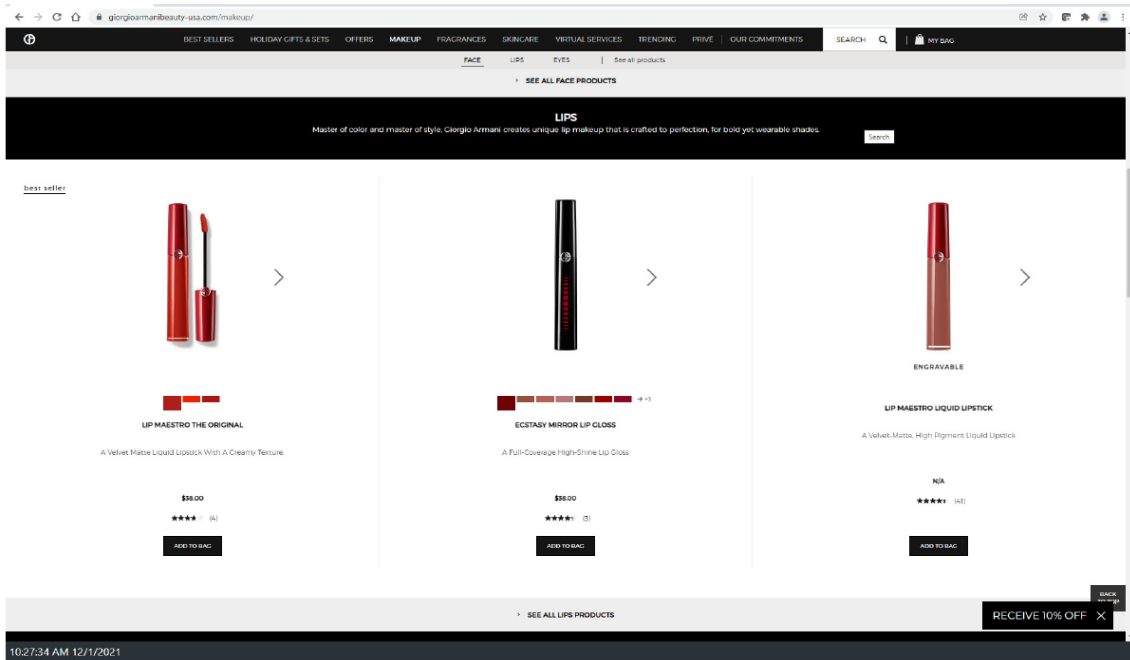
Applicant’s goods are various clothing items, whereas Registrant’s goods are “non-medicated skin care preparations and cosmetics for the face and body.” “Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant goods and services are used together or used by the same purchasers; advertisements showing that the relevant goods and services are advertised together or sold by the same manufacturer or dealer; or copies of use-based registrations of the same mark for both the applicant’s [goods] and the goods listed in the cited registration.” *In re Country Oven*, 2019 USPQ2d 443903, at *4-5. The Examining Attorney provided both use evidence and third party registrations to show that these goods are related.

First, the record contains evidence of seven third parties which sell both clothing of the type in Applicant’s identification of goods and Registrant’s type of skin care products or cosmetics. A representative sample of the webpages in the record are set forth below:

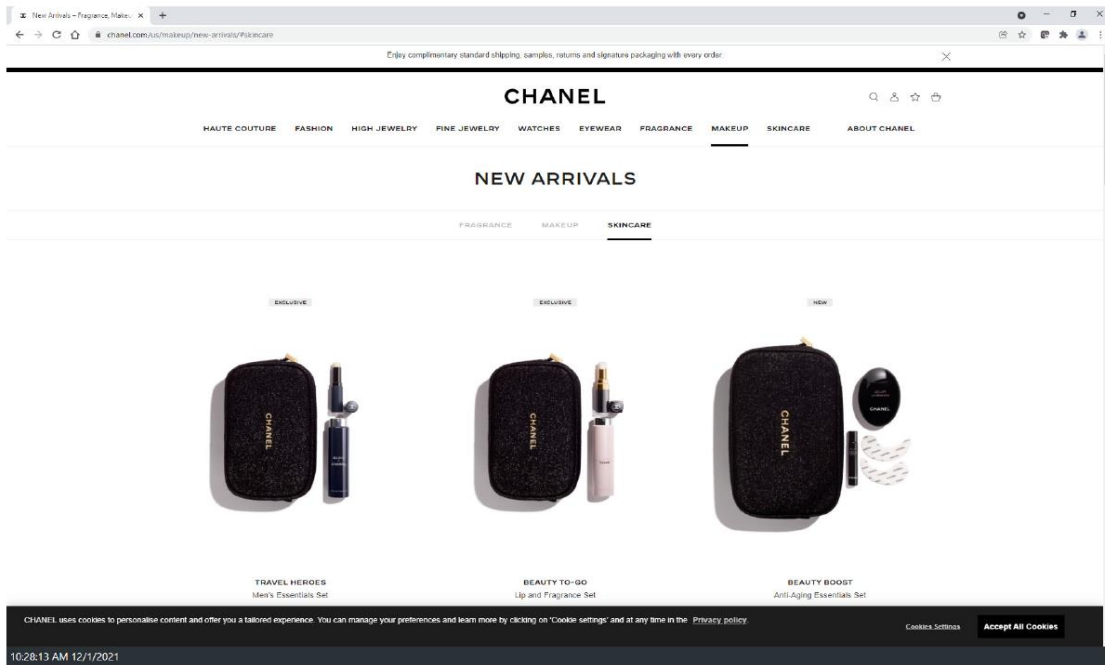
ARMANI²⁴



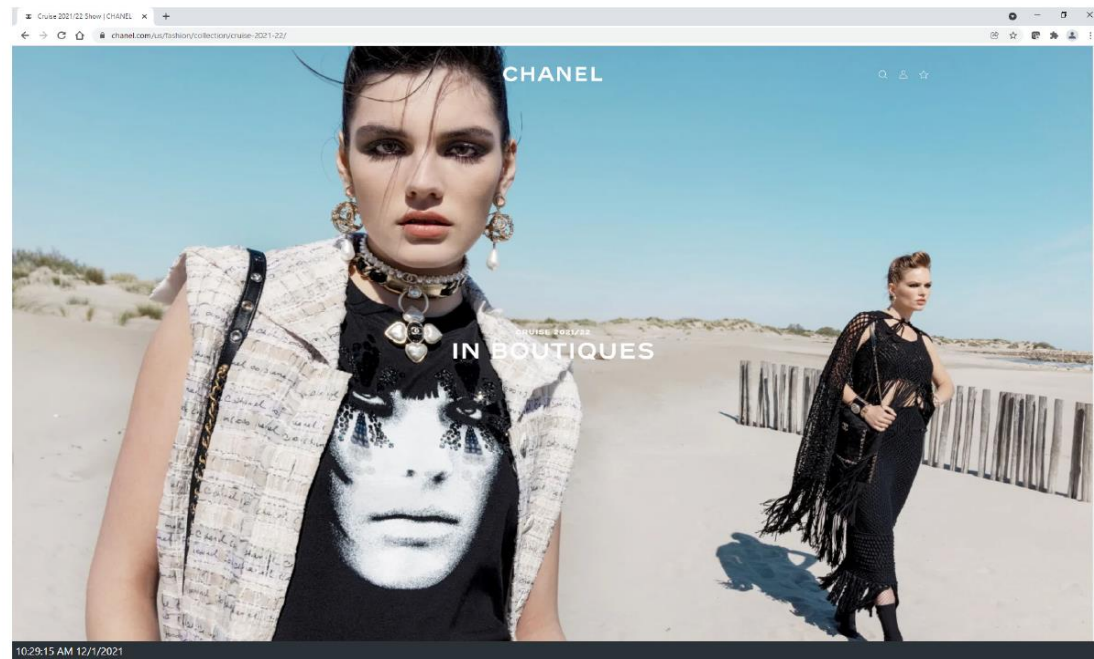
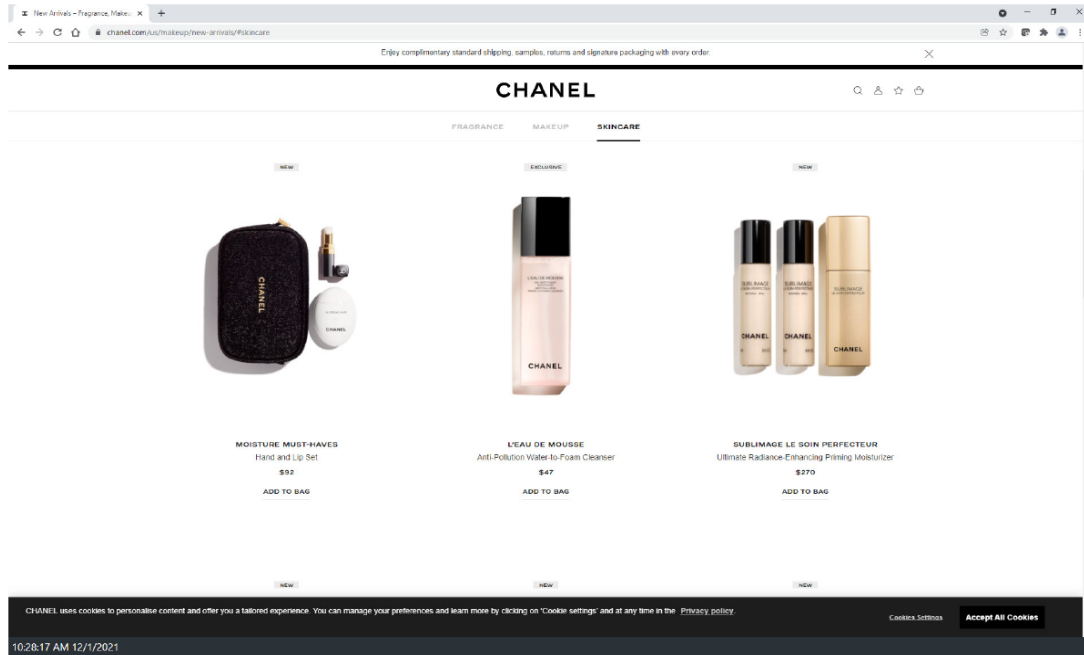
24 December 1, 2021 Office Action, at TSDR 18-20, 24-28.



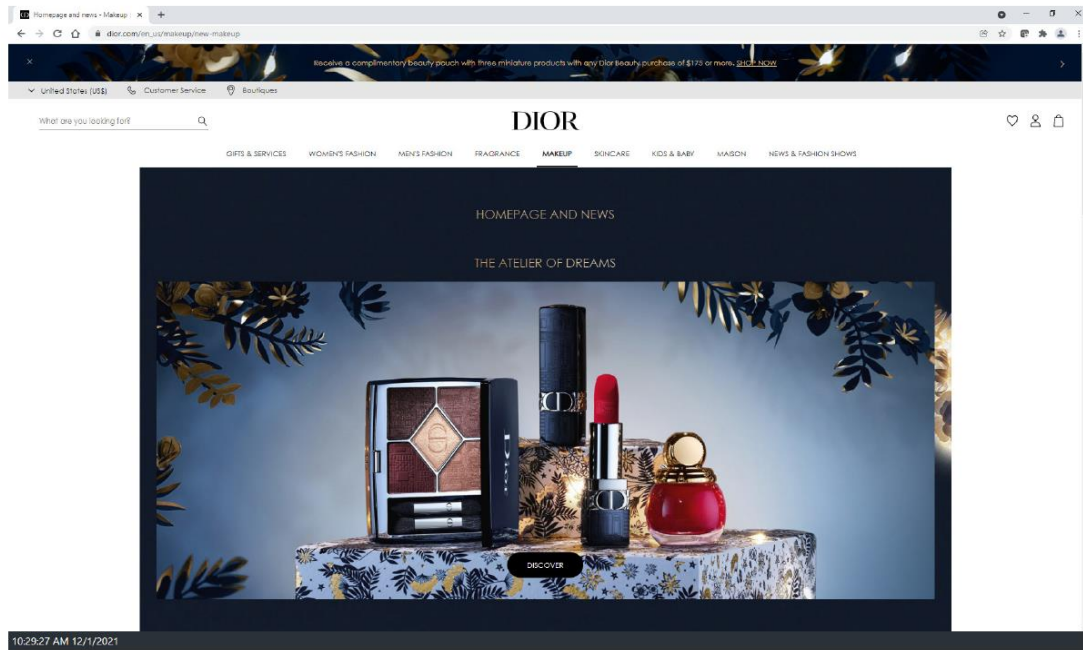
CHANEL²⁵



²⁵ *Id.*, at TSDR 29-33, 44.



DIOR²⁶



DIOR CHEZ MOI
[SHOP](#)

²⁶ *Id.*, at TSDR 45-52.

DOLCE & GABBANA²⁷

This screenshot shows the top portion of the Dolce & Gabbana website. The header includes the brand name, navigation links for 'New In', 'Women', 'Men', 'Children', 'Gifts', 'Personalize', 'Home', 'Food&Beverage', 'Beauty', and 'World', along with search, user, and cart icons. A 'Filter' button is visible. Below the navigation, a category bar lists various shoe types: 'View All', 'Sneakers', 'Flats and Lace Ups', 'Sandals and Wedges', 'Slides and Mules', 'Boots and Booties', 'Pumps', 'Portofino Sneakers', 'Sorrento Sneakers', 'Daymaster Sneakers', 'Airmaster Sneakers', and 'Custom 2.2'. The main content area displays a grid of four shoe products, each with a heart icon for favoriting. The products are: 1) Polished calfskin mules with a 3.5 heel, priced at \$995; 2) Polished calfskin sliders with the DG logo, priced at \$745; 3) Patent leather sandals with embellishment, priced at \$1,295; and 4) Patent leather thong sandals with embroidery, priced at \$1,195. All items are marked as 'New collection'.

This screenshot shows the bottom portion of the Dolce & Gabbana website, specifically the 'Socks' category. The header and navigation are identical to the previous screenshot. The main content area displays a grid of four items: 1) A pair of white socks with blue stripes and the DG logo, priced at \$95; 2) Leopard-print cotton jacquard socks, priced at \$115; 3) Leopard print tights in tulle, priced at \$265; and 4) Garden-print tights, priced at \$315. The first item has an 'Add to bag' button. The second item is marked as 'New collection'. At the bottom of the page, there is a timestamp '11:46:56 AM 6/28/2022', the operating system 'Windows 10 Enterprise N 2016 LTSB 64-bit Build 14393', and a URL: 'https://www.dolcegabbana.com/en/women/watchesandjewelry/necklaces/'.

²⁷ June 28, 2022 Office Action, at TSDR 268, 272-74.

BEAUTY
DOLCE & GABBANA
GIFT IDEAS | PERFUMES | MAKEUP | VIDEOS | CHANGE LANGUAGE

VELVETSKIN
NEW NATURAL MATTE FOUNDATION TRANSFERPROOF[®] SPF 50/PA+++
#REAGUREN

MAKEUP
THE DOLCE&GABBANA MAKEUP LINE IS A MODERN CLASSIC RANGE OF MUST-HAVE PRODUCTS FOR EYES, LIPS, FACE AND HAIR. THE COLLECTION IS INSPIRED BY THE DOLCE&GABBANA WOMAN WHO IS ALWAYS LOOKING FOR THE PERFECT LOOK EACH DAY.

FACE | EYES | LIPS | ACCESSORIES | ICONIC FASHION EDITIONS | FASHION COLOR NEWS

Google Chrome
102.0.5095.63
11:48:02 AM 6/28/2022
Windows 10 Enterprise N 2016 LTSC 64-bit Build 14393
https://www.dolcegabbanebeauty.com/makeup?_gl=1*cs:230*_ga=117194NTE0Mj5NC44NjJNDiZ0DM*_ga_2565Q288CVMTY1NjQyNgMCM04LEiMTY1NjQyNgMCM041Ng_&_ga=2-245487156-1131374001-1850429832-1885142774-1850429832

DOLCE & GABBANA | GIFT IDEAS | PERFUMES | MAKEUP | VIDEOS

SHINNISSIMO HIGH SHINE LIP LACQUER
Shinnissimo combines shine with high comfort. Lips appear stretched in the ultimate shiny lip lacquer in just one stroke.

GLORIOUSKIN PERFECT LUMINOUS CREAMY FOUNDATION
Gloriouskin luminous creamy foundation that gives a bright complexion with a lightweight finish.

SOLAR GLOW ILLUMINATING POWDER DUO
The perfect duo that illuminates and sculpts the complexion instantly.

Google Chrome
102.0.5095.63
11:48:31 AM 6/28/2022
Windows 10 Enterprise N 2016 LTSC 64-bit Build 14393
https://www.dolcegabbanebeauty.com/makeup?_gl=1*cs:230*_ga=117194NTE0Mj5NC44NjJNDiZ0DM*_ga_2565Q288CVMTY1NjQyNgMCM04LEiMTY1NjQyNgMCM041Ng_&_ga=2-245487156-1131374001-1850429832-1885142774-1850429832


AVON²⁸

Enjoy special discounts when you shop with an Avon Rep. [Details](#) Blog ESPAÑOL

AVON Find a Rep Sign In 0 Q

SHOP FEATURED LIVE SHOPPING SPECIAL OFFERS DIGITAL BROCHURE BECOME A REP INSIDER BLOG

Amazing prices when you shop with a Rep! [DISCOVER](#)







SASSY. SEXY. COOL.
Introducing fmg CathyCat
The purrfect makeup for your most seductive eyes yet.

[Shop Now](#)

Home / Makeup

Makeup 124 Items [Filter by](#) [Sort by](#)

Best Sellers


 <p>Avon True Color Love at 1st Lash Mascara ★ 4.5 - Reviews 519 \$15.00</p> <p>Add to Bag</p>	 <p>fmg Cashmere 24 Hour Liquid Foundation ★ 4.0 - Reviews 280 \$32.00 <small>Available in 30 shades</small></p> <p>Select a Shade</p>	 <p>fmg Glimmer Eyeshadow Quad ★ 4.1 - Reviews 81 \$15.00 SPECIAL OFFER <small>Available in 10 shades</small></p> <p>Select a Shade</p>	 <p>fmg Colors of Love Hi-Brow Tinted Brow Gel ★ 3.8 - Reviews 174 \$17.00 <small>Available in 4 shades</small></p> <p>Select a Shade</p>
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Enjoy special discounts when you shop with an Avon Rep. [Details](#) Blog ESPAÑOL

AVON Find a Rep Sign In 0 Q

SHOP FEATURED LIVE SHOPPING SPECIAL OFFERS DIGITAL BROCHURE BECOME A REP INSIDER BLOG

Amazing prices when you shop with a Rep! [DISCOVER](#)







Summer, Naturally
Colorful solids and playful prints turn up the summery vibes.

[Shop Now](#)

Home / Fashion

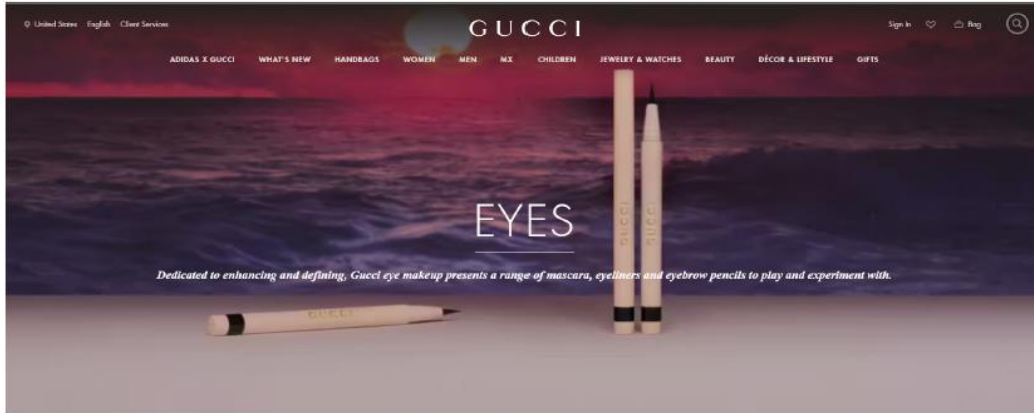
Fashion 102 Items [Filter by](#) [Sort by](#)

Tops

 <p>Grommet Detail Top ★ 0.0 - Reviews 0 \$39.99 FINAL SALE</p>	 <p>2-Pack Reversible Tanks ★ 4.1 - Reviews 11 \$24.99</p>	 <p>2-Pack Crew-Neck Pocket Tees ★ 4.5 - Reviews 54 \$24.99</p>	 <p>Breast Cancer Awareness 2-Piece Lounge Set M (8-10) Only ★ 5.0 - Reviews 9 \$65.00 FINAL SALE</p>
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²⁸ *Id.*, at TSDR 275, 277-78.

GUCCI²⁹



Gucci Beauty

Designed to express uniqueness, the eye makeup collection gives even more opportunities to experiment and be creative.



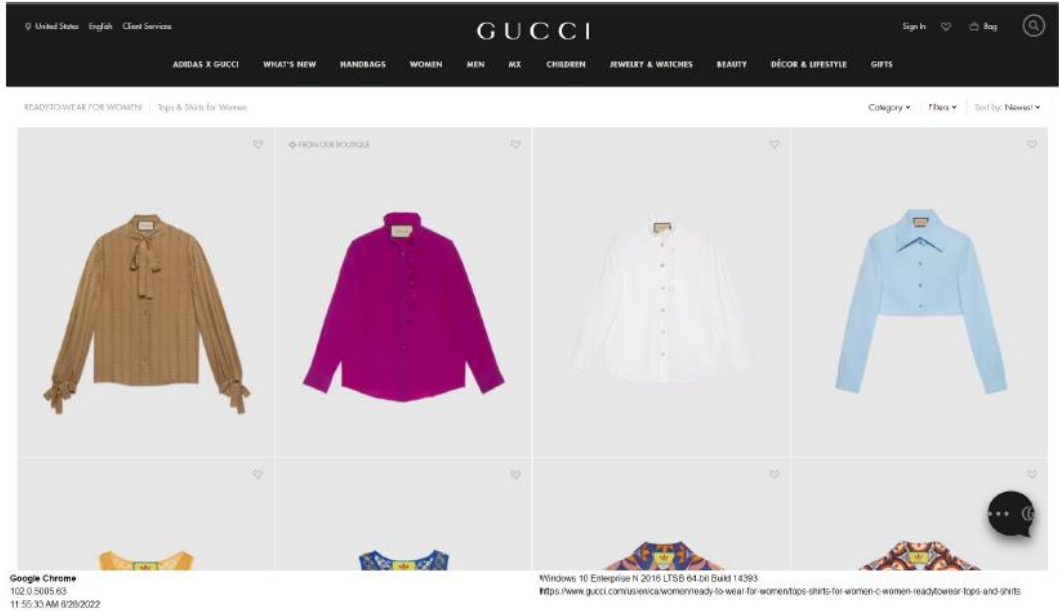
Gucci Beauty



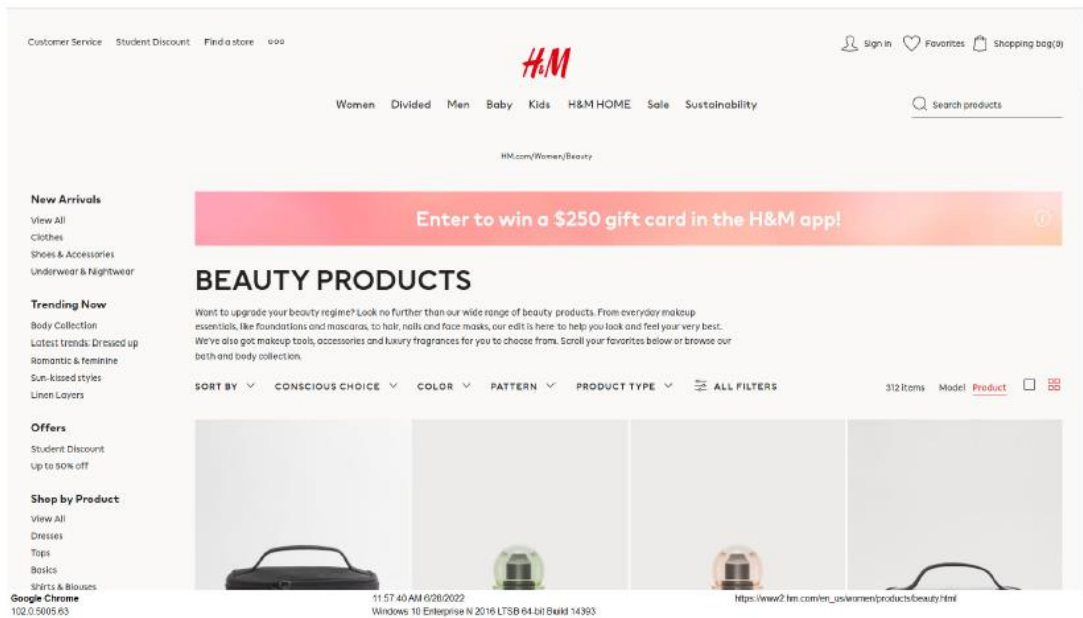
Universal Nourishing Balm

A multi-use un-fragranced balm, Baume Nourrissant Universel is set to become a wonder fix and go-to for all sorts of beauty needs. Designed to soothe the skin in multiple ways, whether looking to nourish the lips, or help to reduce areas of dryness.

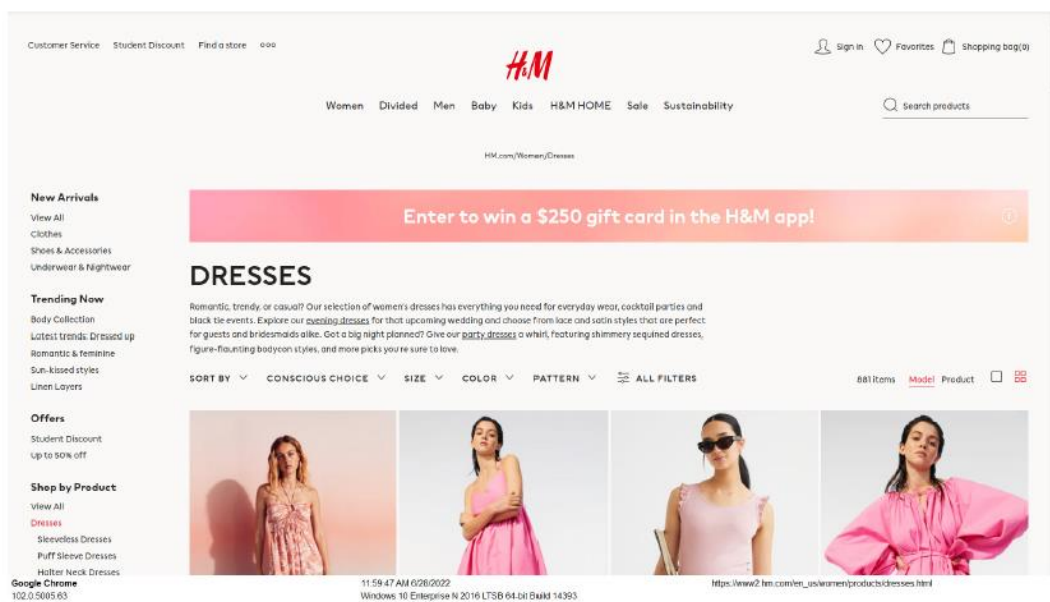
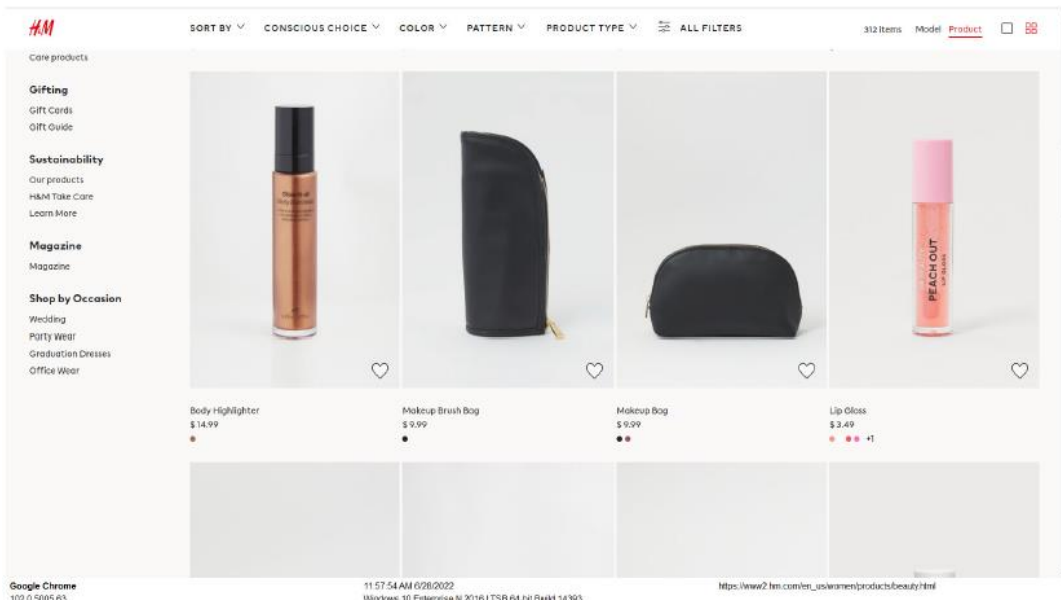
²⁹ *Id.*, at TSDR 279-80, 284-86.



H&M³⁰



³⁰ *Id.*, at TSDR 289-93, 296-97, 300-01.



The Examining Attorney also made of record thirty-one third-party use-based registrations for goods that are identical or highly related to Applicant's and

Registrant's goods to show that they may emanate from a single source under a single mark. A representative sample is summarized below:³¹

- LOU & GREY for cosmetics, non-medicated skin care preparations, and various items of clothing;
- FASHION ANGELS for cosmetics, non-medicated skin care preparations, and various items of clothing;
- LADREA for cosmetics, non-medicated skin preparations, and various items of clothing;
- MAKE FUN HAPPEN for non-medicated skin care preparations and various items of clothing;
- NIECEY FRAZIER for various cosmetics, non-medicated skin care preparations, and various items of clothing;
- RAE LOUIS for cosmetics and non-medicated skin care preparations, and various items of clothing;
- 2 GORJIS for cosmetics and various non-medicated body preparations, and various items of clothing;
- MARIAN HANNA for cosmetics, non-medicated skin care preparations, and various items of clothing;
-  for cosmetics, non-medicated skin care preparations, and various items of clothing; and
- MADE IN MEDITERRANEO for cosmetics, skin care preparations, and various items of clothing.

Applicant dismissed the evidence of use as relating to “famous, global marks used in connection with unrelated goods,” and pointed in particular to evidence of record showing that brands relied upon by the Examining Attorney are used in connection with other goods; namely, that ARMANI also is used in connection with plates and

³¹ See June 28 Office Action, at TSDR 5-10, 14-17, 21-27, 59-65, 87-97, 101-06, 111-13, 120-25, 130-32, 136-43, 147-52, 178-87, 200-27, 231-34, 239-41, 251-53, and 258-60. We do not include those marks registered for use in connection only with items of clothing not included in Applicant's identification of goods in International Class 25, e.g., only “headbands.”

bowls, notebooks, bath linen, candles, restaurants, and interior design services, and CHANEL is used in connection with sunglasses.³² Applicant did not address the third-party registration evidence.

The Examining Attorney, while acknowledging that the use evidence relates to “famous” brands, argues “this further demonstrates that consumers are used to seeing these types of goods offered by the same source and would be unable to make the distinction between Applicant and the registrant as to the source of the goods.”³³

In view of the third-party registrations (none of which were shown to relate to “famous” brands), it is reasonable to conclude that Applicant’s clothing, particularly women’s clothing, and Registrant’s cosmetics and non-medicated skincare preparations are commercially related. Further, the Internet evidence suggests that consumers have been exposed to these goods emanating from the same source under the same mark. *See, e.g., In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355-56 (TTAB 2015) (six websites showing sale of the subject goods, coupled with five third-party registrations of marks for them, “support the conclusion that the goods are related”); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265-66 (TTAB 2011) (relying on over twenty third-party registrations listing wine and beer and webpages showing that companies make and sell both types of goods, finding: “The third-party registration evidence and the website evidence together amply demonstrate the relatedness of beer and wine”); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB

³² March 31, 2022 Response to Office Action, at TSDR 10.

³³ *Id.*, at TSDR 9-10.

2009) (two websites showing sale of the subject goods and twenty-one third-party registrations probative of relatedness of subject goods).

We note also that, although there is no per se rule, the Board previously has found (albeit on different records) that clothing and cosmetics are related:

Turning to the goods in question, we note the not uncommon commercial practice of using identical marks for cosmetic and clothing goods made or marketed by the same source as shown by evidence introduced by the Examining Attorney and a substantial body of case precedent holding, by virtue thereof and by virtue of a perceived intimate relationship between cosmetics and clothing in the women's fashion arena (whether underwear, outerwear or both), that such goods are highly related and would, when sold under identical or highly similar marks, evoke impressions of common origin (or at least confusion with respect thereto).

In re Barbizon Int'l, Inc., 217 USPQ 735, 737 (TTAB 1983); *see also In re Christian Dior, S.A.*, 225 USPQ 533, 534 (TTAB 1985) (“[W]e find that dresses as well as toiletries, including toilet soap and cologne, are sufficiently related to men's dress shirts that confusion [as] to source or origin would be likely from the contemporaneous use of the same or similar mark on said goods.”); *In re Arthur Holland, Inc.*, 192 USPQ 494, 496 (TTAB 1976) (“It has been held repeatedly that the use of the identical trademarks for clothing and for a toilet preparation or cosmetic is likely to cause confusion, mistake or deception.”) (citations omitted); *Faberge, Inc. v. Madison Shirt Corp.*, 192 USPQ 223, 226 (TTAB 1976) (finding BRUTUS for men's clothing confusingly similar to BRUT and BRUT 33 for toiletries including cologne, and stating “manufacturers of wearing apparel and accessories frequently under the identical or similar marks . . . also sell a line of toiletries and cosmetics”); *In re*

Cosmetically Yours, Inc., 171 USPQ 563, 563-64 (TTAB 1971) (collecting cases where clothing and cosmetics or toiletries found related). Moreover, “because the marks are identical, the degree of similarity between the goods . . . required for confusion to be likely declines.” *DeVivo v. Ortiz*, 2020 USPQ2d 10153, *11 (TTAB 2020) (citing *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 USPQ2d 1102, 1117 (TTAB 2015)).³⁴

Further, as to the third *DuPont* factor, because Applicant’s and Registrant’s identifications contain no restrictions as to channels of trade or classes of purchasers, we must presume that the identified goods travel in the ordinary channels of trade for such goods. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003). The record shows that the identified goods are sold through the online webpages of clothing and cosmetics companies. We find this evidence is sufficient to show trade channel overlap. *See e.g., In re Joel Embiid*, 2021 USPQ2d 577, at *31 (TTAB 2021) (evidence showing that shoes and shirts are sold together on the websites of clothing companies supports a finding of related trade channels).

We conclude that Applicant’s identified goods are related to the goods identified in Registrant’s cited mark, that they are marketed in many of the same retail

³⁴ Applicant has also, in making some of its arguments, relied on cases by the Second Circuit Court of Appeals involving the issue of infringement and applying that circuit’s *Polaroid* factors *See* 4 TTABVUE 5. This analysis presents certain differences from the issue of likelihood of confusion as it concerns registrability. We are not bound by these authorities, as we apply the law set forth by the Federal Circuit and its predecessor. At any rate, these cases are distinguishable from the situation in the present appeal and we will not burden this opinion with a discussion of them.

channels, and to the same potential purchasers. In view thereof, the second and third *DuPont* factors strongly support likelihood of confusion.

D. Conclusion - Balancing the *DuPont* Factors

We have considered, weighed, and balanced all of the evidence made of record, and the arguments related thereto, carefully. *In re Charger Ventures*, 2023 USPQ2d 451, at *7 (“[I]t is important . . . that the Board . . . weigh the *DuPont* factors used in its analysis *and* explain the results of that weighing.”).

We find that Applicant’s mark and the cited mark are identical, and Applicant’s application includes goods that are related to the cited goods, which travel in overlapping trade channels to the same consumers. We further find that Registrant’s mark is inherently distinctive and entitled to a normal scope of protection. These findings lead us to conclude that Applicant’s mark for clothing is likely to be confused with Registrant’s cited mark for “Non-medicated skin care preparations and cosmetics for the face and body.”³⁵

IV. Decision

The refusal to register Applicant’s mark POUR MOI under Section 2(d) is **affirmed**.

³⁵ Therefore, we need not reach likelihood of confusion based on the remaining cited Registration No. 5446364.