

**This Opinion is Not a
Precedent of the TTAB**

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United States Patent and Trademark Office
Trademark Trial and Appeal Board

In re Les Mills International Limited

Serial No. 85652407

Elizabeth M. Fox, of King & Spalding LLP, for Les Mills International Limited.

Renee McCray, Trademark Examining Attorney, Law Office 111 (Robert L. Lorenzo,
Managing Attorney).

Before Taylor, Wolfson, and Lykos, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Les Mills International Limited (“Applicant”) seeks registration on the
Principal Register of the mark GRIT (in standard characters) for the following goods
and services, as amended:

“Audio and video recordings, namely, pre-recorded compact discs, digital video discs, CD Roms and digital files all featuring fitness and health club related programs incorporating audio-visual teaching resources in the nature of digital files, graphics, text, music and information related to fitness and health club related programs and recorded seminars and presentations related to fitness and health club programs; electronic publications, namely, magazines, manuals, and newsletters featuring fitness and health club related programs incorporating audio-visual teaching resources in the nature of digital files featuring graphics and text related to fitness and health club programs recorded on computer media; Downloadable musical sound recordings featuring music related to fitness and health

club programs; Audio-visual presentations in the nature of downloadable music, text and graphics files and downloadable electronic publications in the nature of teaching booklets and teaching manuals, all in the field of health and fitness; downloadable multimedia file containing artwork, text, audio, video, games, and Internet Web links relating to exercise-to-music programs incorporating audio-visual teaching resources in the nature of digital files featuring recorded seminars, and presentation in the field of instructional fitness and health club programs; downloadable musical sound recordings; downloadable video recordings featuring exercise-to-music programs incorporating related audio-visual teaching resources in the nature of digital files featuring recorded seminars and presentations related to instructional fitness and health club programs and graphics, text, information and music related thereto all of the forgoing directed to health and fitness clubs” in International Class 9;

“Printed matter and training materials, namely, books, booklets, newsletters, magazines, manuals, posters, postcards, calendars and printed paper banners all in relation to fitness and health club related programs; instructional, teaching materials and training materials, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to the fitness and health club related programs all of the forgoing directed to health and fitness clubs” in International Class 16; and

“Recreation services in the nature of providing training and education services, namely, classes, seminars, programs, courses, workshops and conferences in the fields of health, nutrition and physical fitness; health club, and physical fitness club services, namely, providing instruction and equipment in the field of physical exercise; education services, namely, producing and conducting pre-choreographed group fitness exercise classes and providing instruction and advice with respect to such group fitness exercise classes; exercise instruction and physical fitness training services; providing information and consultation in the fields of recreation, physical fitness and exercise, and information on group exercise planning and instruction; publication of printed matter, namely, books, booklets, newsletters, magazines, manuals, posters and postcards all in relation to fitness and health club related programs; publication of electronic media, namely, digital files and video recordings featuring seminars, presentations,

graphics, text, information and music related to fitness programs; publication of electronic publications, namely, magazines, manuals, and newsletters featuring fitness and health club related programs all of the forgoing directed to fitness and health clubs” in International Class 41.¹

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), contending that Applicant’s use of its mark for its identified goods and services is likely to cause confusion with the mark GRIT FIT (in standard character format) for the following services in International Class 41:²

Providing fitness and exercise studio services, namely, physical fitness and exercise instruction and training; Providing assistance, personal training and physical fitness consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvement in their daily living; Education services, namely, providing classes and instruction in the field of physical fitness and exercise; Education and entertainment services, namely, production of videos in the field of physical fitness and exercise, production of live physical fitness and exercise demonstrations, and providing a web site featuring photographic, video and prose presentations featuring physical fitness and exercise instruction; and Publishing of books and handbooks in the field of physical fitness and exercise.

When the refusal was made final, Applicant appealed and filed a request for reconsideration.³ After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

¹ Application Serial No. 85652407, filed on June 14, 2012; based on Trademark Act § 44(e), 15 U.S.C. § 1126(e). A copy of New Zealand Reg. No. 958091, registered May 1, 2012, is of record.

² Reg. No. 4080649; registered January 3, 2012.

³ A request for reconsideration, and the evidence attached thereto, form part of the record at the time the request is filed. It was therefore unnecessary for Applicant to attach to its appeal brief additional copies of its request for reconsideration and evidence. It was also

Evidentiary Issues

The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). The Board will not ordinarily consider additional evidence filed with a brief. We therefore sustain the Examining Attorney's objection to the introduction of new evidence, in the nature of third-party registrations, submitted for the first time with Applicant's brief. In addition, we do not take judicial notice of the contents of websites for which only a link is provided; accordingly, we disregard the website links provided by Applicant in its appeal brief.⁴ We also *sua sponte* strike the evidence attached to Applicant's reply brief. *In re City of Houston*, 101 USPQ2d 1534, 1537 (TTAB 2012); *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1334 (TTAB 2009) (Applicant's evidence, included for the first time with its reply brief, considered "manifestly untimely").

Applicant asserts that it is the owner of an allowed application for LES MILLS GRIT for the same services as are recited in its GRIT application, but Applicant did not make this application of record. In any event, an application is not evidence of anything except of the fact that it was filed on a certain date. *See In re 1st USA Realty Professionals, Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007); and *In re Juleigh Jeans Sportswear, Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992).

duplicative to refile Applicant's responses to Office actions and previously issued Office actions.

⁴ We hasten to add that had Applicant attached copies of the webpages to which the links pointed, these would have been excluded as untimely on the Examining Attorney's objection.

Applicable Law

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *see also In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

A. Comparison of the Marks

In comparing the marks, we must consider the marks in their entirety as to appearance, sound, connotation and commercial impression, to determine the similarity or dissimilarity between them. *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *du Pont*); *Palm Bay*, 73 USPQ2d at 1692. Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b) (April 2013). The test, under the first *du Pont* factor, 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 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 similarity or dissimilarity of the marks is determined based on the marks in their entireties, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) ("It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion."). On the other hand, more or less weight may be given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant's mark is the word GRIT. The cited mark is GRIT FIT. The first word in a two-word mark is typically considered the dominant portion of the mark. *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). The fact that "grit" is the first word in Registrant's mark favors a finding that it is the dominant portion of the cited mark. Moreover,

the word GRIT is arbitrary as applied to the involved goods and services, whereas the word “fit” has a commonly understood meaning. The third-party registrations submitted by the Examining Attorney support this conclusion by showing that this meaning comports with its record dictionary definition of “physically healthy and strong.”⁵ Third-party registrations can be used to demonstrate “the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services.” *Institut National Des Appellations D’Origine v. Vintners International Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) (“[T]hird-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry”).

In each of the registrations submitted by the Examining Attorney, the word “fit” has been disclaimed in recognition of this commonly understood meaning:

Reg. No. 4396493 for the mark ACE GET FIT for, *inter alia*, DVDs, downloadable multimedia files, text files, and written materials featuring information on exercise and fitness in class 9; printed informational materials in the fields of exercise and fitness in class 16; and “providing a website and online journals in the nature of blogs featuring information on exercise and fitness”;⁶

Reg. No. 4397961 for the mark CAMP FIT and design, registered on the Supplemental Register with a disclaimer to the term “fit” for on-going television programs in the field of physical fitness for children;⁷

⁵ At <http://www.merriam-webster.com>, attached to the denial of the request for reconsideration, 6 TTABVue 2.

⁶ Registered September 3, 2013.

⁷ Registered September 3, 2013.

Reg. No. 4419875 for the mark IS IN-SHAPE FIT and design, for health club services;⁸

Reg. No. 44399301 for the mark STYLISH & FIT for conducting fitness classes and personal training in the field of health and wellness;⁹

Reg. No. 4421293 for the mark RIPP FIT for physical fitness instruction;¹⁰ and

Reg. No. 4425485 for the mark SIT TO FIT for physical fitness training of individuals and groups.¹¹

In view of the highly suggestive nature of the word FIT, we accord it less weight in determining likelihood of confusion. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), *quoting National Data*, 224 USPQ at 752 (“Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.”). Because both marks share the term GRIT, which is the dominant portion of Registrant’s mark, they are similar in appearance and pronunciation. In connotation, the meaning of “grit” is the same in each mark, i.e., a quality of “mental toughness and courage”¹² that is touted as a positive attribute when engaging in physical training and disciplined exercise.

Applicant argues that the marks create different commercial impressions as GRIT FIT is a unitary term that is not dominated by the first word “grit,” but which

⁸ Registered October 15, 2013.

⁹ Registered September 10, 2013.

¹⁰ Registered October 22, 2013.

¹¹ Registered October 29, 2013.

¹² At <http://www.merriam-webster.com>, attached to the denial of the request for reconsideration, 5 TTABVUE 16.

is instead a play on the phrase “get fit.”¹³ To be considered a unitary mark, the elements of the mark in question must be so merged “that the mark has a distinct meaning of its own independent of the meaning of its constituent elements.” *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (EUROPEAN FORMULA above a circular design on a dark background was not a unitary mark); *cf. In re EBS Data Processing, Inc.*, 212 USPQ 964, 966 (TTAB 1981) (“[I]f the elements are so merged together that they cannot be regarded as separable elements, the mark is a single unitary mark and not a composite mark and no disclaimer is necessary.”). Here, the elements in the mark GRIT FIT retain their separate meanings and have not so merged as to have created a single commercial impression that goes beyond the meaning created by the constituent elements GRIT and FIT. The mark GRIT FIT suggests a way of getting or keeping physically healthy and strong by applying mental toughness and courage to one’s training regimen. There is no support in the record for Applicant’s argument that the meaning of GRIT FIT is a play on the phrase “get fit” or that the term “grit” is “obscured” because it rhymes with “fit.” The mark GRIT FIT is not a unitary mark, such that the meaning of the terms “grit” and “fit” have been subsumed into a new, unique combination.

The marks GRIT and GRIT FIT are similar in sight, sound, meaning and commercial impression. The mere deletion of the word FIT from the registered mark GRIT FIT is insufficient to overcome a likelihood of confusion. *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (Mark comprising letters ML

¹³ Applicant’s Brief p. 10, 9 TTABVue 112.

“is likely to be perceived as a shortened version of ML MARK LEES when used on the same or closely related skin care products”; confusion is likely). A finding of likelihood of confusion is favored under the first *du Pont* factor.

B. Comparison of the Goods and Services

We next turn our attention to a comparison of the similarity or dissimilarity and nature of the goods and services described in the application and the services described in the registration. *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (“the question of registrability of an Applicant’s mark must be decided on the basis of the identification of goods [and/or services] set forth in the application”) (quoting *Octocom Sys., Inc. v. Houston Comps. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). *See also In re Risesmart, Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). It is settled that it is not necessary that the respective goods or services be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. The goods or services need only be sufficiently related that consumers would be likely to assume, upon encountering the goods or services under similar marks, that they originate from, are sponsored or authorized by, or are otherwise connected to the same source. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re Home Builders Assn. of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990).

Applicant provides instruction and equipment in the field of physical exercise, conducts individual and group fitness exercise classes and in general runs classes, seminars, programs, courses, workshops and conferences in the fields of health, nutrition and physical fitness. Applicant publishes printed matter and electronic media related to these fitness programs (identified in classes 9 and 16), and on behalf of others (identified as publication services in class 41).

The services identified in the GRIT FIT registration are legally identical in part to those listed in Applicant's class 41 recitation of services. For example, Registrant provides "physical fitness and exercise instruction and training;" Applicant provides "instruction and equipment in the field of physical exercise." Registrant provides "classes and instruction in the field of physical fitness and exercise"; Applicant provides "classes, seminars, programs, courses, workshops and conferences in the fields of health, nutrition and physical fitness." Registrant provides "physical fitness consultation to individuals"; Applicant provides "consultation in the fields of recreation, physical fitness and exercise." Because the services overlap in part, the second *du Pont* factor favors a finding of likelihood of confusion with respect to Applicant's Class 41 services. "Likelihood of confusion must be found if there is likelihood of confusion involving any item that comes within the identification of goods in the involved application." *In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006), citing *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

Registrant's services are also highly related to the goods in Applicant's class 9 and 16 identifications. Applicant's goods in class 9 are electronic media such as pre-recorded compact discs, DVDs, electronic publications, musical sound recordings, multimedia files and video recordings. Applicant's goods in class 16 are printed matter such as books and magazines, posters and calendars. All of Applicant's goods are related to fitness and health club programs. Registrant produces videos, operates a website, and publishes books and handbooks in the field of physical fitness and exercise. There is a sufficient relationship between Applicant's goods and Registrant's services such that confusion would be likely when the goods and services are used on or in association with similar marks.¹⁴

The *du Pont* factor concerning the relatedness of the goods and services recited in the application and registration favors a finding of likelihood of confusion.

C. Trade Channels; Classes of Purchasers

Applicant's application contains a limitation on the channels of trade and classes of purchasers for both its goods and its services. Applicant's goods and services have been qualified as being directed to "health and fitness clubs." Applicant argues that this limitation obviates any likelihood of confusion. We disagree. First,

¹⁴ In this regard, we note the Examining Attorney's submission of third-party websites, attached to the denial of Applicant's request for reconsideration, showing the relatedness of Applicant's goods and services to Registrant's services. See, e.g., 5 TTABVUE 5 ("Moving to his own beat; Zumba creator Beto Perez shares healthy living tips," The Courier (Bath, New York) 11/18/12) ("In 2001, ... he and a partner approached [Beto Perez] about turning his classes into a fitness business. 'In the beginning, we were just thinking we would sell DVDs,' Perez says. ... One decade later, Zumba Fitness is an international phenomenon...."); 5 TTABVUE 14 ("evian® Presents: Live Young®, Get Fit! Workout Series; Pop-Up Workout Series with Celebrity Trainer Jackie Warner in Los Angeles, New York and Miami," 5/31/12) ("Participants at evian's Live Young, Get Fit! events will be treated to a one-hour fitness session with Jackie Warner.... Participants at the LA event will receive ... a complimentary copy of Jackie Warner's latest book....").

there is no corresponding limitation in the services of the cited mark. Registrant's fitness and exercise studio services, its educational services in the field of physical fitness and exercise, etc., are not limited in any way as to channels of trade or classes of consumers, and, thus, are broad enough to encompass health and fitness clubs as targeted markets. *See Jump Designs*, 80 USPQ2d at 1374; *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (broad identifications are presumed to encompass all goods and/or services of the type described).

These *du Pont* factors weigh in favor of a finding of likelihood of confusion.

D. Purchaser Sophistication

Applicant asserts that its purchasers are sophisticated. Applicant's argument is lessened by its assertion that the gyms and fitness clubs to which Applicant offers its programs "then promote Applicant's goods and service to its members as a class offering."¹⁵ The ordinary consumer of fitness or exercise programs who thus is exposed to Applicant's programs has not been shown to be sophisticated when it comes to recognizing the marks in connection with which Applicant's programs may be offered. Moreover, even sophisticated buyers such as purchasing agents of gyms and health clubs are not immune from source confusion where, as here, the marks are highly similar and the services are in-part-identical. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). On the other hand, ultimate consumers may exercise some degree of care in choosing the type of fitness program to engage in, as these regimens are of a somewhat personal nature.

We find this *du Pont* factor to be neutral.

¹⁵ Appeal Brief, 9 TTABVue 119.

E. Third-party Uses

The sixth *du Pont* factor requires consideration of any evidence pertaining to “the number and nature of similar marks in use on similar goods.” The principle behind this factor is that if a certain term appears in many marks that are owned by separate entities and that are used for similar goods or services, consumers will look to other elements in the marks to distinguish them. In this connection, Applicant submitted excerpts from twelve third-party websites that utilize “GRIT” in their names. The websites are:¹⁶

1. GRIT ROOM –a schedule of gym classes at “thegritroom.tumblr.com”;



2. –personal training at www.grit-fitness.com (the printout is partially illegible and the words under “grit” cannot be deciphered);
3. IRON GRIT FITNESS –personal training at irongritfitness.wordpress.com;
4. GRIT GYM –personal training at www.gritgym.com;
5. JUST GRIT – a workout program at www.justgrit.com;
6. GRIT YOGA –a yoga studio at <http://www.gritcycle.com>;
7. GRIT CYCLE –a fitness center for cycling at <http://www.gritcycle.com>;
8. GRIT PIT FITNESS –a personal training program at gritpitfitness.com (currently under development);

¹⁶ Submitted with Applicant’s request for reconsideration, 4 TTABVUE.

9. GRIT & GLIMMER –a blog featuring posts about weight loss, exercise challenges, and the like at Gritandglimmer.com;
10. GRACE AND GRIT FITNESS –personal training and small group fitness classes at www.graceandgritfitness.com;
11. TRUE GRIT SPORTS –personal training and fitness courses for individuals or teams at www.truegrit-sports.com; and
12. GRIT BY BRIT –personal training blog offering a workout routine to users at gritbybrit.com.

It has been said many times that each case must be decided on its own facts. *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (internal citation omitted). Insofar as these third-party uses are concerned, they are relatively few in number, and we do not find the evidence to be compelling. Unlike Applicant’s mark, each third-party name uses “Grit” in combination with another term that further distinguishes it from Registrant’s mark and from each other. The probative weight also is limited given the absence of any corroborating facts bearing on the extent of these uses. That is to say, there are no specifics regarding the extent of sales or promotional efforts surrounding the third-party marks and, thus we cannot discern what impact, if any, these uses have made in the minds of the purchasing public. Accordingly, we are unable to find that customers have become conditioned to recognize that other entities use “Grit” marks for similar goods or services. *See Anthony’s Pizza & Pasta Int’l, Inc. v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271, 1276-78 (TTAB 2009), *aff’d*, 415 Fed. Appx. 222 (Fed. Cir. 2010); *Kohler Co. v.*

Baldwin Hardware Corp., 82 USPQ2d 1100, 1112 (TTAB 2007); *Carl Karcher Enterprises Inc. v. Stars Restaurant Corp.*, 35 USPQ2d 1125, 1130-31 (TTAB 1995). *Cf. In re Hartz Hotel Services Inc.*, 102 USPQ2d 1150 (TTAB 2012) (marks comprising term “Grand Hotel” for hotels accorded narrow scope of protection in view of numerous third-party uses of GRAND HOTEL for hotel services); *In re Broadway Chicken, Inc.*, 38 USPQ2d 1559, 1565 (TTAB 1996) (evidence of third-party use of the term “Broadway” for restaurant services was so common that consumers would look to the other elements of Applicant's mark BROADWAY CHICKEN to distinguish the source of the goods from BROADWAY PIZZA and BROADWAY BAR & PIZZA).

F. Conclusion

We have carefully considered all of the evidence made of record pertaining to the issue of likelihood of confusion, as well as all of the arguments related thereto, including any evidence and arguments not specifically discussed in this opinion. We conclude that purchasers familiar with Registrant's fitness-related services rendered under the mark GRIT FIT would be likely to mistakenly believe, upon encountering Applicant's mark GRIT for its fitness-related goods and services, that the goods and services originated from or are associated with or sponsored by the same entity.

Decision: The refusal to register Applicant's mark GRIT under Section 2(d) is affirmed.