

This Opinion is not a
Precedent of the TTAB

Mailed: February 17, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Mutyaar Inc.


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Serial No. 86345866

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Matthew H. Swyers of The Trademark Company LLC,
for Mutyaar Inc.

Jordan A. Baker, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

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Before Seeherman, Kuhlke and Lykos,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Mutyaar Inc. (“Applicant”) seeks registration on the Principal Register of the mark  for “Clothing, namely, blouses, shirts, skirts, dresses, tops, camisoles, trousers, t-shirts, sweat shirts, jackets, under garments, scarves, stoles, jumpers, sweaters, jeans,” in International Class 25.¹

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¹ Application Serial No. 86345866 was filed on July 23, 2014, under Section 1(b) of the Trademark Act, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified goods, so resembles the mark STYLEHAÜS (in standard characters) registered on the Principal Register for "retail clothing boutiques" in International Class 35,² as to be likely to cause confusion, mistake or deception.


When the refusal was made final, Applicant appealed and briefs were filed. We affirm the refusal to register.

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. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). These factors and others are discussed below. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944 (Fed. Cir. 2006) (even within the *du Pont* list, only factors that are "relevant and of record" need be considered).

² Registration No. 4056360, issued on November 15, 2011.

Similarity/Dissimilarity of the Marks

We consider Applicant's mark  and Registrant's mark STYLEHAÜS and compare them "in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). The marks "must be considered ... in light of the fallibility of memory" *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). "[S]imilarity is not a binary factor but is a matter of degree." *In re St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059 (Fed. Cir. 2003)).

The marks are virtually identical in sound, see *Centraz Indus. Inc. v. Spartan Chem. Co. Inc.*, 77 USPQ2d 1698, 1701 (TTAB 2006) (recognizing that "there is no correct pronunciation of a trademark"), see also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (XCEED similar to X-SEED), and meaning, since HAUS is the German word for HOUSE.³ Applicant posits that the

³ THE COLLINS ENGLISH-GERMAN DICTIONARY (www.collinsdictionary.com). We grant the Examining Attorney's request to take judicial notice of the dictionary definition. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*,

German spelling and umlaut create the commercial impression of “a German-sounding term” which is enough to distinguish the marks. While there are differences in appearance due to the German spelling of the word “house” in Registrant’s mark and the stylization in Applicant’s mark, they are minimal and do not change the similar connotation and overall commercial impression of a house of style. Although the German word “haus” does not have the umlaut, the spelling is otherwise the same, and the presence of the umlaut in the cited mark does not change the impression that HAÜS is the same as HAUS. Therefore, for purposes of our analysis we view the second portions of the marks HOUSE and HAÜS, as equivalent. *In re Thomas*, 79 USPQ2d 1021 (TTAB 2006) (under doctrine of foreign equivalents foreign word and English equivalent may be held to be confusingly similar). However, even without relying on the doctrine of foreign equivalents, the words HOUSE and HAÜS sound virtually the same, as noted above, and bear a strong visual resemblance.

In addition, because Registrant’s mark is in standard characters it is not limited to any particular depiction. The rights associated with a mark in standard characters reside in the wording and not in any particular display. *In re RSI Sys., LLC*, 88 USPQ2d 1445 (TTAB 2008); *In re Pollio Dairy Prods. Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); TMEP § 1207.01(c)(iii) (Oct. 2015). We must consider Registrant’s mark “regardless of font style, size, or color,” *Citigroup Inc. v. Capital*

703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983) (the Board may take judicial notice of dictionary definitions). See also *In re Driven Innovations, Inc.*, 115 USPQ2d 1261, 1266 n.18 (TTAB 2015); *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

City Bank Group Inc., 98 USPQ2d 1253, 1258-59 (Fed. Cir. 2011), including iterations similar to Applicant's. Thus, the minimal stylization in Applicant's mark has little effect in distinguishing the marks.

Finally, the marks have the same structure, beginning with the word STYLE, ending with the equivalent words HOUSE and HAÜS, and combining to appear as one word. Overall we find that the similarities outweigh the dissimilarities and weigh in favor of finding a likelihood of confusion.

Similarity of the Goods/Channels of Trade/Consumers

With regard to the goods and services, channels of trade and classes of consumers, we must make our determinations under these factors based on the goods and services as they are identified in the application and registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). "This factor considers whether 'the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the goods and services.'" *In re St. Helena Hosp.*, 113 USPQ2d at 1086 (quoting *Hewlett Packard*, 62 USPQ2d at 1004).

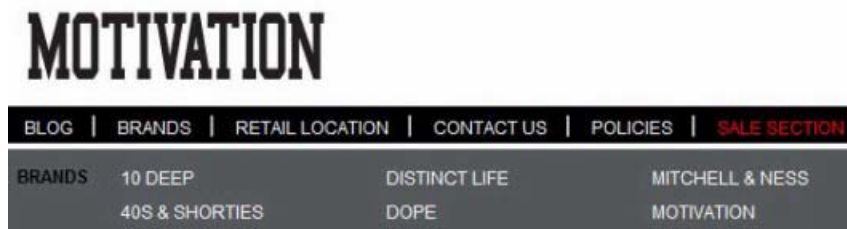
It is well recognized that confusion may be likely to occur from the use of the same or similar marks for goods, on the one hand, and for services involving those

goods, on the other.” See, e.g., *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (holding BIGG’S (stylized) for retail grocery and general merchandise store services and BIGGS and design for furniture likely to cause confusion); *In re H.J. Seiler Co.*, 289 F.2d 674, 129 USPQ 347 (CCPA 1961) (holding SEILER’S for catering services and SEILER’S for smoked and cured meats likely to cause confusion). When the goods and services in question are well known or otherwise generally recognized as having a common source of origin, the burden of establishing relatedness is easier to satisfy. *In re St. Helena Hosp.*, 113 USPQ2d at 1082. For example, relatedness would generally be recognized when the services clearly include or encompass the goods in the identification, such as when the services are “brewpubs” and the goods are “beer” or when the services are “electronic transmission of data and documents via computer terminals” and the goods are “facsimile machines, computers, and computer software.” *In re Coors Brewing Co.*, 343 F.3d 1340, 1347, 68 USPQ2d 1059, 1064 (Fed. Cir. 2003); *Hewlett-Packard Co. v. Packard Press, Inc.*, 62 USPQ2d at 1005 (Fed. Cir. 2002).

Applicant’s “clothing, namely, blouses, shirts, skirts, dresses, tops, camisoles, trousers, t-shirts, sweat shirts, jackets, under garments, scarves, stoles, jumpers, sweaters, jeans” are clearly the type of items that would be offered for sale in “retail clothing boutiques,” the services identified in Registrant’s registration. Moreover, the record establishes that clothing store services and clothing items can have a common source of origin. The Examining Attorney submitted twenty-five use-based third-party registrations featuring both a wide variety of clothing goods and the

provision of “retail clothing boutique” services. *See, e.g.*, Reg. No. 3301129 for the mark SUGAR & ROX for “belts; bottoms; dresses; footwear; headwear; jackets; jeans; neckwear; pants; shirts; shorts; skirts; sleepwear; socks; t-shirts; tops” and “retail clothing boutiques”; Reg. No. 3771991 for the mark AMARA OMAR for “belts; footwear for women; hoods; men and women jackets, coats, trousers, vests; men’s suits, women’s suits; shifts; short sets; ties; tops; women’s underwear; wraps” and “retail clothing boutiques”; and Reg. No. 3819713 for the mark SOUTHERN WRAG COMPANY for “bottoms; jackets; shirts for infants, babies, toddlers and children; short sets; tops; wearable garments and clothing, namely, shirts; wraps” and “retail clothing boutiques.”⁴ *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993) (third-party registrations may serve to suggest that the listed goods and/or services are of a type which may emanate from a single source).

In addition, the record includes examples of retail boutique services where the boutique also makes available for purchase clothing goods under the same mark. For example, Motivation Boutique reproduced below offers its own goods under the MOTIVATION mark, as well as offering third-party clothing.⁵



⁴ November 5, 2014 Office Action, TSDR pp. 5-9, 16-18.

⁵ April 17, 2015 Office Action, TSDR pp. 76-77.

The Buckle online store also offers, in addition to third-party clothing goods, its own goods under the BUCKLE mark.⁶



The record also includes a printout from the online source nyc.com listing boutiques that also sell clothing under the same brand, ranging from well-known designers (Miu Miu, Balenciaga) to smaller local shops (Kiwi Design Co., Darling).⁷

As to the channels of trade and classes of consumers, we must presume that Registrant's "retail clothing boutiques" and Applicant's "Clothing, namely, blouses, shirts, skirts, dresses, tops, camisoles, trousers, t-shirts, sweat shirts, jackets, under garments, scarves, stoles, jumpers, sweaters, jeans" are marketed in all normal trade channels for such goods/services and offered to all normal classes of purchasers for such goods/services. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). *See also In re Viterra Inc.*, 101 USPQ2d at 1908. Given the relationship between retail boutique store services and clothing, discussed above, Registrant's services constitute a trade channel through which

⁶ April 17, 2015 Office Action, TSDR pp. 72-74.

⁷ April 17, 2015 Office Action, TSDR pp. 39-43.

Applicant's goods travel, and at least some of Registrant's customers are part of the general consuming public for Applicant's goods. To the extent that Applicant's services and Registrant's goods are offered to the general consuming public, the channels of trade and classes of purchasers overlap. Applicant's services and Registrants' goods meet in the trade channel of the retail store, where they are offered to the same classes of customers.

Applicant argues that the goods and services are sufficiently different because Registrant's boutique stores are "highly specialized" and offer "styling by appointment and hand-picked merchandise selections." 4 TTABVUE 13. With regard to trade channels and classes of consumers, Applicant continues with this premise, arguing that Applicant "reaches the end consumer by and through traditional manners for clothing manufacturers" whereas Registrant "appears to reach its end consumers by and through highly specialized and sophisticated personal stylists in the registrant's only location, Los Angeles." 4 TTABVUE 13-14.

The problem with Applicant's arguments is that Applicant seeks to narrow the scope of the registration by extrinsic evidence. It is well-established that the question of likelihood of confusion must be determined on the basis of an analysis of the mark as applied to the goods and/or services recited in an applicant's application vis-à-vis the goods and/or services recited in the cited registration, rather than what the evidence shows the goods and/or services to be. *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999). *Accord*, *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d


1813 (Fed. Cir. 1987). As the Examining Attorney has pointed out, the services as identified in the cited registration are not so limited. Thus, based on the identifications themselves and the evidence of record, we find that Applicant's goods and the Registrant's services, as identified in the respective application and registration, can emanate from the same source and be offered through the same channels of trade to the same classes of customers. In view thereof, these *du Pont* factors favor a finding of likelihood of confusion.

Sophistication of Purchasers

Applicant argues that "purchasers of registrant's services, and in particular, personal stylization services, are sophisticated given the cost associated with the same." 4 TTABVUE 14. Again, Applicant's argument impermissibly narrows the broad identification "retail clothing boutiques" which would include any consumer shopping for clothing; there is nothing inherent in the identification of "retail clothing boutiques" which would limit the price point of all of the goods sold in such stores, such that we could assume that consumers entering such stores would be particularly careful or sophisticated. In our analysis, we must consider all potential customers, including the less sophisticated. *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 765 (TTAB 1986) (average ordinary wine consumer must be looked at in considering source confusion). There is nothing in the record that purchasers of clothing in retail boutiques exercise greater care in their purchase other than the usual care taken in purchasing clothing, and such items can be subject to impulse purchasing. Moreover, even if a consumer did not actually shop in Registrant's

boutique stores, she could be aware of the brand and store, and therefore, when encountering clothing sold in other venues, believe that there was a connection between the clothing and the store. In view of the lack of evidence either way we find this factor to be neutral.

Balancing of Factors

In conclusion, because the marks are similar, the goods and services are related, and the channels of trade and consumers overlap, we find that confusion is likely between Applicant's mark  and the mark STYLEHAÜS in the cited registration.

Decision: The refusal to register Applicant's mark is affirmed.