

This Opinion is Not a  
Precedent of the TTAB

Mailed: April 25, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Galhuma Trading, Inc.*

Serial No. 90211174

Mark Terry of Mark Terry, P.A.,  
for Galhuma Trading, Inc.

Andrew Rhim, Trademark Examining Attorney, Law Office 101,  
Kathy Wang, Acting Managing Attorney.

Before Zervas, Lykos and Goodman,  
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Galhuma Trading, Inc. (“Applicant”) seeks to register on the Principal Register  
the standard character mark YESMODERN for

On-line retail store services featuring furniture, namely, chests and cabinets, bars, bar sets, comprising bar furniture, bar stools, bed frames, benches, bookcases, bunk beds, chairs, chaise lounges, coat racks, coffee tables, console tables, sofa beds, day beds, desks, dressers and chests of drawers, end tables, entertainment centers, filing cabinets, futon frames, game table seating, rocking chairs, bed headboards, home theater seating, jewelry armoires, living room sets comprising living room furniture, loveseats, ottomans, pub and bar tables, pub and bar sets comprising pub and bar furniture, recliners, sectionals,

sofas, tables; On-line retail store services featuring pet furniture in International Class 35.<sup>1</sup>

Registration was refused under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the standard character mark YES! YES! MODERNS registered on the Principal Register for

Retail store and wholesale store services featuring outdoor and external blinds, namely, blackout blinds, slatted blinds, venetian blinds, roller blinds, vertical blinds, window blinds; retail store and wholesale store services featuring external shutters, namely, roller shutters, rolling shutters, plantation shutters, louvre shutters, window shutters, security shutters, shutter doors and shutter grilles; retail store and wholesale store services featuring roofing, guttering, re-roofing, roof maintenance and roof restoration products; retail store and wholesale store services featuring fixtures and fittings for solar cells and solar panels for electricity generation in International Class 35,<sup>2</sup>

that it is likely to cause confusion or mistake or to deceive.

Following issuance of the final refusal, Applicant appealed and filed a request for reconsideration that was denied. The appeal is briefed. We affirm.

## **I. Likelihood of Confusion – Applicable Law**

Our determination under Section 2(d) is based on an analysis of all of the

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<sup>1</sup> Application Serial No. 90211174, filed September 25, 2020, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), claiming a bona fide intent to use the mark in commerce.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system. Citations to briefs refer to the actual page number, if available, as well as TTABVue, the Board's online docketing system. *See, e.g. Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

<sup>2</sup> Registration No. 6375288, registered on June 8, 2021 pursuant to an extension of protection under Trademark Act 66(a), 15 U.S.C. § 1141f(a). *See* The Madrid Protocol Implementation Act of 2002, Pub. L. No. 107-273, 116 Stat. 1758, 1913-21. The registration also includes goods and services in International Classes 6 and 37 that do not form the basis for the refusal.

probative evidence of record bearing on a likelihood of confusion. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We 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). When analyzing these factors, the overriding concerns are not only to prevent buyer confusion as to the source of the services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *Shell Oil*, 26 USPQ2d at 1688 (“the various evidentiary factors may play more or less weighty roles in any particular determination”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *see also In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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 [services] and differences in the marks.”). These factors and others are discussed below.

### **A. The Marks**

We commence with the first *DuPont* factor which involves an analysis of the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (citing *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d, 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516 (Fed. Cir. 2019). For example, “[s]imilarity in sound alone may be sufficient ... [to support] a finding of likelihood of confusion.” *In re 1st USA Realty Pros., Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (citing *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

We compare Applicant’s standard character mark, YESMODERN, with Registrant’s mark, YES! YES! MODERNS, also in standard characters. Applicant argues that the “textual portions” of the involved marks “are quite different.”<sup>3</sup> Focusing on visual and aural distinctions, Applicant notes that while its mark is

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<sup>3</sup> Applicant’s Brief, pp. 6; 6 TTABVue 7.

comprised of two words without a space, the cited mark includes spaces and punctuation marks. Applicant also emphasizes that its mark consists of three syllables, two words and nine letters, whereas the cited mark consists of four syllables, three words and thirteen letters. Applicant further contends that the marks project different connotations and commercial impressions insofar as YESMODERN constitutes a unitary phrase suggesting “a positive affirmation of the word modern, which refers to present or recent times as opposed to the past,” while YES! YES! MODERNS “evokes thoughts of a person screaming in joy, as in the exclamatory sentence ‘Yes! Yes!’”<sup>4</sup> Applicant criticizes the Examining Attorney for not comparing the marks in their entirety, contending “that a side-by-side comparison illustrates how different the [Applicant’s] mark is when compared to the cited mark.”<sup>5</sup> Applicant goes so far as to reprint the marks side-by-side in its brief for comparison purposes.<sup>6</sup>

Applicant’s misapprehends the guidance for comparing of the marks. “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). Moreover, the marks at issue “must be considered ... in light of the fallibility of memory ...” of consumers. *In re St. Helena Hosp.*, 774 F.3d

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<sup>4</sup> Applicant’s Brief, pp. 6-7; 6 TTABVUE 7-8.

<sup>5</sup> Applicant’s Brief, p. 9; 6 TTABVUE 10.

<sup>6</sup> *See id.*

747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (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 purchaser, who retains a general rather than specific impression of trademarks. *Inn at St. John's*, 126 USPQ2d at 1746 (internal citations omitted). Consumers do not focus on minutia but rather overall impressions. *See In re John Scarne Games, Inc.*, 120 USPQ 315, 315-16 (TTAB 1959) (“Purchasers of game boards do not engage in trademark syllable counting — they are governed by general impressions made by appearance or sound, or both.”).

We find that the marks are similar in appearance and sound. Both marks commence with the word “yes” and end with the word “modern” or plural thereof. Although the cited mark includes a space between each word and the applied-for mark does not and the cited mark includes punctuation, we find that consumers are unlikely to notice that minor distinction or pronounce the words differently. *See e.g. Stockpot, Inc. v. Stock Pot Rest., Inc.*, 220 USPQ 52, 54 (TTAB 1983), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) (finding STOCKPOT and STOCK POT confusingly similar); *In re Best Western Family Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) (BEEFMASTER and BEEF MASTER found “practically identical”). The only distinction in terms of literal elements is the inclusion of the additional word “yes” in the cited registration. Thus, the marks YESMODERN and YES! YES! MODERN are highly similar in sound and appearance.

In addition, we are unpersuaded by Applicant’s argument that its mark YESMODERN constitutes a unitary phrase with its own distinct meaning. A mark is

unitary only if it “has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (finding EUROPEAN FORMULA and design for cosmetic products not unitary since the “elements are not so merged together that they cannot be regarded as separate” and the proximity of the words to the design feature “does not endow the whole with a single, integrated, and distinct commercial impression”). The record is devoid of evidence that consumers would attribute a particular meaning to YESMODERN other than the meaning of the individual words “yes” and “modern” such that they would view the mark as a unitary phrase with its own distinct meaning. Instead we find that YES! YES! creates the same connotation of a positive affirmation of the word MODERN, and that the repetition of “yes” in Registrant’s mark does not change the connotation or commercial impression. *Cf. In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, 1155 (TTAB 2009) (Board affirmed genericness refusal of proposed mark TIRES! TIRES! TIRES! finding that the proposed mark is not a unitary phrase since “[t]here is no ‘additional meaning’ in ‘tires tires tires’ that separates the designation from ‘tires’ or even other designations solely comprising a repetition of ‘tires.’).

We therefore disagree with Applicant’s assertion that consumers are likely to perceive the designation YESMODERN as having an entirely different connotation and commercial impression when compared with YES! YES! MODERNS, and find otherwise. In making this determination, we have also taken into account that the

cited mark contains two exclamation points following the word “yes,” but other than Applicant’s self-ascribed meaning, the record is devoid of evidence that this punctuation mark significantly alters the connotation or commercial impression of the mark. *See, e.g., Pinocchio’s Pizza Inc. v. Sandra Inc.*, 11 USPQ2d 1227, 1228 (TTAB 1989) (“[T]he marks are virtually identical, the only difference being the insignificant inclusion of an apostrophe in registrant’s PINOCCHIO’S mark.”). *Cf. In re Litehouse Inc.*, 82 USPQ2d 1471 (TTAB 2007) (punctuation marks in the mark CAESAR!CAESAR! do not significantly change commercial impression of the mark and do not suffice to cure mere descriptiveness of the mark for salad dressing). Customers are not likely to note or remember that the registered mark has exclamation marks, while Applicant’s mark does not. *See, e.g., In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (TAKE 10! found similar to TAKETEN despite exclamation point); *Pinocchio’s Pizza Inc. v. Sandra Inc.*, 11 USPQ2d 1227, 1228 (TTAB 1989) (“the marks are virtually identical, the only difference being the insignificant inclusion of an apostrophe”). Applicant’s and Registrant’s marks therefore engender highly similar connotations and commercial impressions.

Although we have pointed to the identical portions of the marks, we acknowledge the fundamental rule that the marks must be considered in their entireties. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363 , 116 USPQ2d 1129, 1134 (Fed. Cir. 2015); *Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 181 USPQ 272, 273-74 (CCPA 1974). We



have noted the specific differences; however, these differences are outweighed by the similarities of the marks. And the fact that Applicant's mark appears in compound form is of little significance. Again, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009) (citing *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975)). When comparing the marks overall, they are highly similar in sound, meaning, connotation and commercial impression. The similarity of the marks weighs in favor of finding a likelihood of confusion.

#### **B. Strength of the Cited Mark**

In determining the strength of a cited mark, we consider both its inherent strength, based on the nature of the mark itself, and, if there is evidence in the record of marketplace recognition of the mark, its commercial strength. *See In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength ... and its marketplace strength ...."); *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); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006) (same).

Applicant postulates that the MODERN component in the cited mark is weak and entitled to only a narrow scope of protection. Applicant did not introduce any evidence of third-party uses that would establish any diminished commercial strength of

Registrant's mark, the sixth *DuPont* factor. *See Palm Bay*, 73 USPQ2d at 1693 (“Evidence of third-party use of similar marks on similar [services] is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”); *see also Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (internal citations omitted). Instead, Applicant challenges the inherent or conceptual strength of the cited mark by making of record approximately 146 third-party registrations that are comprised of or include MODERN in their marks for retail store services.<sup>7</sup>

Properly made of record, third-party registrations alone may be relevant, in the manner of dictionary definitions, “to prove that some segment of the [marks] has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation*, 115 USPQ2d at 1675 (internal quotation marks omitted). *See also Jack Wolfskin*, 116 USPQ2d at 1136; *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”). “[E]vidence of third-party registrations is relevant to ‘show the sense in which . . . a mark is used in ordinary parlance.’” *In re Guild Mortg. Co.*, 2020 USPQ2d 10279, at \*3 (TTAB 2020).

We have not considered the third-party registrations for unrelated retail stores services that offer products such as food, beverages, cosmetics, and fire arms. Third-

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<sup>7</sup> December 15, 2021 Response to Office Action, TSDR 16-135.

party registrations in unrelated fields “have no bearing on the strength of the term in the context relevant to this case.” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1058 (TTAB 2017). *See also see also Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1694-95 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”).

The remaining third-party registrations for retail services featuring furniture, blinds or window treatments certainly demonstrate the inherent or conceptual weakness of the term MODERN when used in connection with such services. From this record we can surmise that MODERN as used in this context refers to a style of home décor. None of the third-party registrations, however, are comprised of both YES and MODERN, the only two words in the cited mark. Indeed, the cited registration is the sole registration in the record for related retail services containing both words. Applicant neither argued nor submitted any evidence to show that the term “yes” is conceptually weak. As such, Applicant has not shown that the cited mark as a whole has been weakened by third-party registrations or uses of similar marks by competitors in the industry offering the same or similar services. *See, e.g., Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 223 USPQ 1281, 1284-85 (Fed. Cir. 1984) (“Applicant introduced evidence of eight third-party registrations for tea which contain the word ‘SPICE’, ... None of these marks has a ‘SPICE (place)’ format or conveys a commercial impression similar to that projected by the SPICE ISLANDS mark, and these third-party registrations are of significantly

greater difference from SPICE VALLEY and SPICE ISLANDS than either of these two marks from each other.”).

### **C. The Services**

Next we compare the services as they are identified in the involved application and cited registration, the second *DuPont* factor. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018); *Stone Lion Cap. Partners, LP v. Lion Cap. 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); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also B&B Hardware*, 113 USPQ2d at 2049 (recognizing that an “applicant’s right to register must be made on the basis of the [services] described in the application”). The services need not be identical or even competitive to find a likelihood of confusion. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that the services emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). Likelihood of confusion must be found as to the entire class if there is likely to be confusion with respect to any service that comes within the identification of services in that class. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355 (TTAB 2015) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986,

988 (CCPA 1981)).

Evidence of relatedness may include news articles or evidence from computer databases showing that the relevant services are used together or used by the same purchasers; advertisements showing that the relevant services are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both applicant's services and the services listed in the cited registration. *See, e.g., Davia*, 110 USPQ2d at 1817 (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and thus consumers were likely to purchase the products at the same time and in the same stores).

Applicant argues that the services are unrelated, because its online retail store services involve the sale of furniture items whereas the retail and wholesale store services identified in the cited registration involve the sale of blinds, outdoor shutters, roofing, and solar panels, products serving entirely different purposes.

We agree that the record is devoid of evidence that Applicant's on-line retail store services featuring furniture is related to Registrant's retail and wholesale store services offering roofing and shutters for outdoor use. However, the record shows otherwise with regard to the online retail and brick-and-mortar retails services featuring furniture, blinds, and indoor shutters. The Examining Attorney submitted evidence from the home furnishing and décor websites of Furniture Finesse,<sup>8</sup> Royal

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<sup>8</sup> September 22, 2021, Office Action, TSDR 8-14.

Furniture and Design,<sup>9</sup> Kendall Furniture,<sup>10</sup> Montgomery's,<sup>11</sup> Zilli,<sup>12</sup> and Bouclair<sup>13</sup> demonstrating that it is not uncommon for such entities to manufacture and offer for sale furniture such as some of the items included in Applicant's application and blinds and/or indoor shutters of the type identified in the cited registration under the same trademark either via their self-branded direct-to-consumer websites or in their own self-branded brick-and-mortar retail stores. By way of illustration, Royal Furniture and Design touts its retail offerings in furniture and blinds from a variety of manufacturers such as Basset, Tommy Bahamas, and Heritance Hardwood Shutters.<sup>14</sup> This evidence shows that consumers may expect to find Applicant's and Registrant's products as identified in the involved application and cited registration as emanating from a common source under a single brand name. The aforementioned evidence is not from "big box" online or brick-and-mortar retailers selling a wide variety of goods from different suppliers but rather from stores and their dedicated direct-to-consumer sales websites specializing in home furnishings and window treatments. This targeted type of retailing is narrower in scope, and as such is entitled to a higher

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<sup>9</sup> September 22, 2021, Office Action, TSDR 15-20.

<sup>10</sup> September 22, 2021, Office Action, TSDR 21-25.

<sup>11</sup> January 10, 2022, Office Action, TSDR 17-22.

<sup>12</sup> January 10, 2022, Office Action, TSDR 23-26.

<sup>13</sup> January 10, 2022, Office Action, TSDR 30-36.

<sup>14</sup> September 22, 2021, Office Action, TSDR 21-25 (www.keysfurniture.com accessed on September 22, 2021).

degree of probative weight. *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, at \*8 (TTAB 2020).

In addition to being related, we can glean from the identifications themselves and the record evidence that furniture and blinds or shutters are complementary products. *See also Country Oven*, 2019 USPQ2d 443903, at \*6 (finding that “the identifications in the application and registration themselves support finding the goods and services are related.”). Consumers looking to complete an interior design project in a particular style such as modern, art deco or mission may also look for furniture items, blinds and shutters offered under the same mark. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding bread and cheese to be related because they are often used in combination and noting that “[c]omplementary use has long been recognized as a relevant consideration in determining a likelihood of confusion.”). For example, Furniture Finesse “offers a variety of furniture styles including contemporary, transitional and traditional,” invites prospective consumers to “[a]dd a new look to your home to complement your existing décor from some of the finest manufacturers,” and offers assistance in “Finding Your Perfect Shade.”<sup>15</sup>

In short, we find that Applicant’s and Registrant’s services are in-part related and complementary. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (“[C]omplementary use has long been recognized

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<sup>15</sup> September 22, 2021 Office Action, at TSDR 12 and 15 ([www.furniturefinesseyorkpa.com](http://www.furniturefinesseyorkpa.com) accessed on September 22, 2021).

as a relevant consideration in determining a likelihood of confusion.”). The second *DuPont* factor also favors a finding of likelihood of confusion.

**D. Established, Likely-to-continue Trade Channels and Classes of Consumers**

We now direct our attention to the similarity or dissimilarity of established, likely-to-continue trade channels and classes of consumers, the third *DuPont* factor.

Neither the registration nor the application contains any restriction on the channels of trade or classes of purchasers. As such, the services presumptively move in all normal trade channels and typical consumers. *See, e.g., Detroit Athletic Co.*, 128 USPQ2d at 1052 (“the registration does not set forth any restrictions on use and therefore cannot be narrowed by testimony that the applicant’s use is, in fact, restricted to a particular class of purchasers”) (citation omitted)). The evidence discussed in the preceding section shows that some of Applicant’s and Registrant’s services are sold through the same retail brick-and-mortar and online furnishing and decor stores to the same classes of consumers. This *DuPont* factor also weighs in favor of finding a likelihood of confusion.

**II. Conclusion - Balancing the *DuPont* Factors**

We have carefully considered all of the evidence made of record, as well as all arguments related thereto. The marks are highly similar in appearance, sound, connotation and commercial impression. This factors, coupled with the in-part related and complementary nature of the services marketed in overlapping trade channels to the same classes of consumers for those services lead us to the conclusion that prospective consumers are likely to confuse the source of the involved services and



believe mistakenly that they originate from or are associated with or sponsored by the same entity.

**Decision:** The Section 2(d) refusal is affirmed.