

This Opinion is Not a
Precedent of the TTAB

Hearing: January 16, 2024

Mailed: June 4, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re YMF Carpets, Inc.
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Serial No. 90822795
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Stephen F. Roth of Lerner David LLP
for YMF Carpets, Inc.

Andrew Leaser, Trademark Examining Attorney, Law Office 117,
Cynthia Tripi, Managing Attorney.

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Before Kuhlke, Shaw, and Johnson,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

YMF Carpets, Inc. (“Applicant”) seeks registration on the Principal Register for the mark CREATIVE HOME IDEAS (HOME disclaimed) in standard characters for goods ultimately identified as:

Chair pads; seat cushions; shower curtain rings; shower curtain hooks; shower curtain rods; drapery hardware, namely, traverse rods, poles, curtain hooks, curtain rods and finials; bed pillows; decorative 3d pillows and cushions; bamboo pillows; accent pillows; pillows for household pets; pillows, in International Class 20;

Oven mitts; soap dispensers; table placemats of plastic, in International Class 21;

Fabric window coverings and treatments, namely, curtains, draperies, sheers, swags, and valances; shower curtain liners; shower curtains of textile or plastic; shower curtains; comforters; bed sheets; duvets; duvet covers; pillow shams; table cloth of textile; table runners of textile; table placemats of textile; kitchen towels of textile; throws; towels made of textile materials; towels; beach towels; moisture absorbent microfiber towels, in International Class 24; and

Area rug; rugs; outdoor floor mats; accent rugs; door mats; bath mats; rubber bath mats; non-slip mats for baths; anti-fatigue floor mat; anti-fatigue floor mats made primarily of rubber, plastic, textiles, in International Class 27.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) as likely to cause confusion with the following registered marks of three separate owners:²

CREATIVE HOME in standard characters for Marble boards, Countertop holders for paper towels, Mortars and pestles for kitchen use, and Soap dispensers; Stainless steel Tea kettles, non-electric and Trash cans; Mugs in International Class 21;³

HOMEIDEAS in standard characters for Baby bunting; Bath linen, except clothing; Bath mitts; Bed linen; Bed blankets; Bed canopies; Bed covers; Bedspreads; Blankets for outdoor use; Cotton fabrics; Cotton towels; Coverlets; Curtain holders of textile material; Curtains; Diaper changing cloths for babies; Door curtains; Drugget fabric;

¹ Application Serial No. 90822795, filed on July 12, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging an intention to use the mark in commerce.

² The Examining Attorney suggests the registrations for HOMEIDEAS may be owned by related parties; however, there is nothing definitive in the record and we take the records as they are in this record.

³ Registration No. 5935258, issued on the Principal Register on December 17, 2019, owned by EVCO International Corporation.

Felts; Household linen; Mattress covers; Mattress pads; Mosquito nets; Net curtains; Non-woven textile fabrics; Pillow shams; Pillowcases; Place mats of textile; Quilt covers; Quilts; Shower curtains of textile or plastic; Silk blankets; Tablecloths, not of paper; Ticking fabric; Towel sets; Towels; Wall hangings of textile; Woollen blankets; Bed sheets; Bed sheets of plastic, not being incontinence sheets; Blankets for household pets; Cloth for tatami mat edging ribbons; Cloths for removing make-up; Coasters of textile; Covers for cushions; Curtains of textile or plastic; Eiderdown covers; Eiderdowns; Fitted toilet lid covers; Furniture coverings made of plastic materials; Handkerchiefs of textile; Knitted fabrics of cotton yarn; Large bath towels; Quilts of towels; Serviettes of textile; Sleeping bag liners; Sleeping bags; Sleeping bags for babies; Swaddling blankets; Table linen, not of paper; Table napkins of textile; Tablemats of textile; Towels; Travelling blankets; Travelling rugs; Unfitted furniture covers not of paper; Unfitted fabric furniture covers, in International Class 24;⁴ and

HOMEIDEAS for Basins in the nature of bowls; Bottles, sold empty; Bowls; Brushes for pipes; Brushes for washing up; Combs; Cups; Grill scrapers; Grills in the nature of cooking utensils; Kitchen grinders, non-electric; Lunch boxes; Mess-tins; Non-electric egg beaters; Pepper mills, hand-operated; Pie servers; Place mats, not of paper or textile; Plates; Pots; Sprinklers for watering flowers and plants; Tart scoops; Toilet paper holders; Towel rails and rings; Automobile wheel cleaning brushes; Blacking brushes; Bottle openers, electric and non-electric; Buckets made of woven fabrics; Cake brushes; Camping grills; Cardboard cups; Cleaning brushes for barbecue grills; Cleaning brushes for household use; Clothes pins; Clothes-pegs; Concession dispensing equipment, namely, condiment pump dispensers; Cooking utensils, namely, grill covers; Cosmetic brushes; Crumb brushes; Dishwashing brushes; Drying racks for laundry; Dusting brushes; Electric face cleansing brushes; Electric tooth brushes; Eyebrow brushes; Eyelash brushes; Filaments for making brushes; File brushes; Fireplace brushes; Floor

⁴ Registration No. 5568524, issued on the Principal Register on September 25, 2018, owned by Xiaoqiang Xing.

brushes; Grass sprinklers; Graters for kitchen use; Hair brushes; Hair, nail and tooth brushes; Horse brushes; Horsehair for brushes; Lamp glass brushes; Large-toothed combs for the hair; Lawn sprinklers; Lint brushes; Lip brushes; Make-up brushes; Mushroom brushes; Nail brushes; Non-electric griddles; Nozzles for sprinkler hose; Nozzles for watering hose; Pastry brushes; Pet brushes; Plastic coasters; Plastic cups; Rails and rings for towels; Scoops for household purposes; Scraping brushes; Scrubbing brushes; Shaving brushes; Shoe brushes; Shut-off valves for water sprinkler nozzles; Squeegees for shaving brushes; Syringes for watering flowers and plants; Table napkin holders; Toilet brushes; Tongue brushes; Tooth brushes; Tub brushes; Washing brushes, in International Class 21.⁵

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request, the appeal resumed and briefs were filed. We reverse the refusal to register.

I. 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) (“*DuPont*”). 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 and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *In re Chatam Int’l*



⁵ Registration No. 5731072, issued on the Principal Register on April 23, 2019, owned by Hong Kong pennybuying Tech Co.



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 goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all [*DuPont*] factors for which there is record evidence but ‘may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).



A. Weakness of Cited Marks

Before addressing the similarity of the marks and goods, we look at the evidence of record to determine the level of distinctiveness of Registrants’ marks. Applicant did not submit evidence of third-party use; therefore, the question of commercial weakness cannot be determined. However, as to the question of conceptual weakness, during prosecution Applicant presented the following chart that summarizes the third-party registrations for marks that include CREATIVE + HOME; HOME + IDEA; and CREATIVE + IDEA for home or related consumer goods or services:⁶



⁶ Applicant’s brief, 6 TTABVUE 12-16; May 1, 2023 Request for Reconsideration, Stephen Roth, Applicant’s attorney, Declaration ¶¶ 3, 4, 5, 6 and exhibits, TSDR 12-59. Citations to briefs refer to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number; the number(s) following TTABVUE refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system.

Reg. No.	Mark (Design) if Applicable	Reg. Date	Goods	Disclaimer
6,226,224	 <p>common creative HOME</p> <p>[COMMON CREATIVE HOME]</p>	12/22/20	Class 42: Interior decorating; Interior decoration consultation; Design of interior decor; Home staging consultation, namely, temporary interior and exterior home decoration consultation for the purpose of making homes more appealing to prospective buyers...	None
5,935,258	CREATIVE HOME	12/17/19	Class 21: Marble Cutting boards, Countertop holders for paper towels, Mortars and pestles for kitchen use, and Soap dispensers; Stainless steel Tea kettles, non-electric and Trash cans; Mugs	"HOME"
2,662,830	CREATIVE IDEAS FOR HOME AND GARDEN	12/17/02	Class 16: Magazines featuring home improvement information and ideas	"HOME and GARDEN"
5,600,531	 <p>CREATIVE VISION HOME LLC</p> <p>[CREATIVE VISION HOME LLC]</p>	11/6/18	Class 42: Home staging consultation, namely, temporary interior and exterior home decoration consultation for the purpose of making homes more appealing to prospective buyers	"HOME LLC"

Reg. No.	Mark (Design) if Applicable	Reg. Date	Goods	Disclaimer
6,955,636	 [CREATIVE HOME]	1/17/23	Class 28: Balls for sports; Christmas tree decorations; Inflatable ride-on toys; Magic tricks; Matryoshka dolls; Model toy vehicles; Plastic character toys; Puzzles; Stuffed dolls; Toy airplanes; Toy construction blocks; Toy construction sets; Toy dough; Toy robots; Toys, namely, puppets and accessories therefor	None
5,312,396		10/17/17	Class 6: Nails; metal hardware in the nature of cord cleats; metal craft storage bins; decorative metal hardware, namely, metal hooks, shelf brackets, casters, knobs, pulls and finials ... Class 8: webbing stretchers in the nature of hand tools for stretching upholstery; tack removers, namely, hand tools for removing tacks from upholstery... Class 20: shower curtain rings; curtain rings; Pin-on drapery hooks; lead drapery weights; zinc drapery weights; tieback hooks in the nature of non-textile curtain holders; plastic rings in the nature of non-textile curtain holders... Class 26: twist pins for upholstery; zippers; zipper slides and stops; upholstery zippers; upholstery needles; decorator's needles; pin cushions; t-pins in the nature of sewing pins and upholstery pins: ...	None

Reg. No.	Mark (Design) if Applicable	Reg. Date	Goods	Disclaimer
6,250,483	SIMPLE CREATIVE HOME	1/19/21	Class 41: Providing on-line non-downloadable articles in the field of crafting, decorating, quilting, sewing, gardening, home improvement, gardening, cooking, recipes, seasonal and holiday activities and decorations, decluttering, creativity, human interest stories, reviews of books, outdoor living, self-care, goal-setting and achievement, motivation, lifestyle, community, and family	"HOME"
6,816,266	 VIORY CREATIVE HOME DECOR [CREATIVE HOME DÉCOR]	8/9/22	Class 27: Decorative wall hangings, not of textile	None
5,599,356	FELT CREATIVE HOME GOODS	11/6/18	Class 20: Displays in the form of a frame for displaying repositionable letters, symbols, and numbers	"FELT" and "HOME GOODS"
5,922,850	HAPPY HOME IDEAS	11/26/19	Class 25: aprons	None
5,040,150	 HOMEIDEAS	9/13/16	Class 20: Closet accessories, namely, belt racks; Clothes hangers; Coat racks; Crates; Dividers for drawers; Hat racks; Mirrors; Non-metal clothes hooks; Non-metal garment hooks; Non-metal hooks; Non-metal pegs; Non-metal clothes hooks; Non-metal garment hooks; Packaging materials, namely, plastic shipping and storage boxes; Plastic shipping and	None

Reg. No.	Mark (Design) if Applicable	Reg. Date	Goods	Disclaimer
5,731,070	HOMEIDEAS	4/23/19	Class 11: Alcohol fuel burners for starting barbeque grills; Anti-splash tap nozzles; Apparatus for disinfecting water; Barbecues; Bread baking machines; Bread-making machines; Drain structures for use in spas, steam rooms and baths; Drinking fountains...	None
5,731,071	HOMEIDEAS	4/23/19	Class 16: Document files; Paper filters for coffee makers; Paper coffee filters; Plastic bags for packaging; Plastic film for wrapping; Plastic film for packaging...	None
5,569,418	HOMEIDEAS	9/25/18	Class 25: Boots; Footwear; Gaiters; Gloves; Hats; Knitted gloves...	None
5,731,072	HOMEIDEAS	4/23/19	Class 21: Basins in the nature of bowls; Bottles, sold empty; Bowls; Brushes for pipes; Brushes for washing up; Combs; Cups; Grill scrapers...	None
5,568,524	HOMEIDEAS	9/25/18	Class 24: Baby bunting; Bath linen, except clothing; Bath mitts; Bed linen; Bed blankets; Bed canopies; Bed covers; Bedspreads; Blankets for outdoor use; Cotton fabrics; Cotton towels; Coverlets; Curtain holders of textile material; Curtains...	None
5,941,037	HOMIDEA	12/24/19	Class 11: (Based on Use in Commerce) Luminous house numbers in the nature of solar powered and non-solar powered lighting units and fixtures	None

Reg. No.	Mark (Design) if Applicable	Reg. Date	Goods	Disclaimer
5,312,396		10/17/17	<p>Class 6: Nails; metal hardware in the nature of cord cleats; metal craft storage bins; decorative metal hardware, namely, metal hooks, shelf brackets, casters, knobs, pulls and finials; ...</p> <p>Class 8: webbing stretchers in the nature of hand tools for stretching upholstery; tack removers...</p> <p>Class 20: shower curtain rings; curtain rings; Pin-on drapery hooks; lead drapery weights; zinc drapery weights; tieback hooks in the nature of non-textile curtain holders; plastic rings in the nature of non-textile curtain holders...</p> <p>Class 26: twist pins for upholstery; zippers; zipper slides and stops; upholstery zippers; upholstery needles; decorator's needles; pin cushions; t-pins in the nature of sewing pins and upholstery pins; straight pins in the nature of metal pins used for sewing and crafts...</p>	"HOME CREATIVE DIY"
5,397,996		2/6/18	<p>Class 6: Brackets of metal for furniture; Furniture casters of metal</p> <p>Class 20: Furniture fittings, not of metal; Furniture casters, not of metal</p>	"IDEAS FOR YOUR HOME"

Generally, the existence of third-party registrations cannot justify the registration of another mark that is so similar to a previously registered mark as to create a likelihood of confusion, or to cause mistake, or to deceive. *E.g., In re i.am.symbolic, llc*, 123 USPQ2d at 1744; *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272 (TTAB 2009).

However, a large number of active third-party registrations including the same or similar term or mark component for the same or similar goods or services may be given some weight to show, in the same way that dictionaries are used, that a mark or a portion of a mark has a normally understood descriptive or suggestive connotation, leading to the conclusion that the term or mark component is relatively conceptually weak. *See, e.g., Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (CCPA 1976); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *24 (TTAB 2022).

Of the 18 third-party registrations for various combinations of the terms, only three include the word CREATIVE for goods that are similar to the goods in the registrations and two⁷ include the word IDEAS for goods that are similar to the goods in the registrations. *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1694 (Fed. Cir. 2018) (Board must focus “on goods shown to be similar”). While the bulk of the evidence does not point directly to the use of these words in connection with the exact goods listed in the cited registrations, they do show registration for such marks generally in the field of home goods and services for home design. In addition, although the marks in the third-party registrations contain other elements and not always the exact formulations of the respective words, they

⁷ The listed owner for one of these registrations is one of the cited Registrants.

still are “relevant to the question of whether the shared segment...has a commonly understood descriptive or suggestive meaning in the field and whether there is a crowded field of marks in use.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 2023 USPQ2d 737, at *5 (Fed. Cir. 2023). The Examining Attorney and Applicant refer to the involved goods as “home décor goods used by consumers to decorate their homes and households.” Ex. Att. brief, 8 TTABVUE 5-6 (quoting Applicant’s September 28, 2022 Response, TSDR 16). It is not surprising to see several registrations incorporating these terms for home goods and services. The word HOME describes the nature of the goods as being for the home and is sometimes disclaimed in the submitted examples, as well as in Applicant’s application and the cited Registration for CREATIVE HOME. CREATIVE and IDEAS are general terms to suggest an attribute (creative) or recommendations (ideas) for home decoration.⁸ Overall, we find these marks are comprised of weak terms, and the combination of the terms in various forms does not measurably increase their distinctiveness. We therefore accord these registrations an attenuated scope of protection.

⁸ We take judicial notice of the following definitions: CREATIVE (adjective) “resulting from originality of thought, expression”; IDEA “a thought conception or notion.” www.dictionary.com/browse. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016). With regard to the search results from the USPTO database for marks containing these words submitted by Applicant, as the Examining Attorney noted, such results do not make the registrations of record. Moreover, the listings by themselves have limited probative value as they do not provide full information, and the Examining Attorney noted the broad search included applications which have no probative value. *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1405 n.17 (TTAB 2018); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016). One option to increase the probative value of such evidence would be to submit a representative sample.

B. Relatedness of the Goods, Trade Channels and Classes of Consumers, Conditions of Sale

When considering the goods, trade channels and classes of consumers, we must make our determinations based on the goods as they are identified in the application and cited registrations. *See Stone Lion Cap. Partners, L.P. 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). The issue is not whether the goods will be confused with each other, but rather whether the public will be confused as to their source. *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.”).

Applicant “does not dispute that there are overlapping goods at issue here and thus the relatedness of the goods are not in dispute on this appeal.” App. brief, 6 TTABVUE 8. However, because the cited marks are weak in the home goods industry we make findings as to the closeness of the respective goods.

Applicant’s “soap dispensers” in Class 21 are identical to the “soap dispensers” listed in Registration No. 5935258 owned by EVCO International Corporation for the mark CREATIVE HOME.

Applicant’s “curtains,” “shower curtains of textile or plastic,” “pillow shams,” “bed sheets,” and “towels” in Class 24 are identical to the same goods listed in Registration No. 5568524 owned by XiaoQiang, Xing for the mark HOMEIDEAS. In addition,

several other goods in Class 24 are legally identical to goods listed in Class 24 in the registration (e.g., Applicant's towels include Registrant's cotton towels and large bath towels; and Registrant's tablecloths, not of paper, encompasses Applicant's "table cloth of textile").

Applicant's "table placemats of plastic" in Class 21 are encompassed by and legally identical to the "place mats, not of paper or textile" in Registration No. 5731072 owned by Hong Kong pennybuying Tech Co. for the mark HOMEIDEAS.

The Examining Attorney submitted printouts of third party websites showing the relatedness and complementary nature of Applicant's "shower curtain rings," "shower curtain hooks," "shower curtain rods," "curtain hooks," and "curtain rods," in Class 20, and the "shower curtains" and "curtains" listed in Registration No. 5568524 for the mark HOMEIDEAS. *See, e.g.*, October 31, 2022 Office action pp. 2-7 (www.pier1.com, www.westlem.com, www.zgallerie.com). The Examining Attorney also submitted printouts of third party websites showing the relatedness of "shower curtains" and "curtains" in Class 24 (present in the application and cited Registration No. 5568524), and Applicant's "rugs, "bath mats, and "doormats." *See, e.g.*, October 31, 2022 Office action pp. 8-15 (www.pier1.com, www.westlem.com, www.zgallerie.com); June 5, 2023 Office action pp. 2-26 (www.thecompanystore.com, www.crateandbarrel.com).

We presume the trade channels for the identical and legally identical goods are the same. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012).

The record demonstrates the closely related goods (e.g., shower curtain hooks, shower curtains, and bath mats) travel in the same channels of trade.

As to the conditions of sale, the Examining Attorney explains:

[T]here is nothing in the identifications that limits the potential purchasers of the identified goods. Given that Applicant and the registrants offer “home décor goods,” the relevant purchasers of the goods at issue would be anyone with a home. As such, it must be presumed that Applicant’s and the registrants’ goods are available to the general public, and where the purchasers consist of the general public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser. *In re FCA US LLC*, 126 USPQ2d 1214, 1222 (TTAB 2018) (citing [*Stone Lion*, 110 USPQ2d at 1163]).

Ex. Att. brief, 8 TTABVUE 12.

In summary, the cited registrations include identical and legally identical goods to Applicant’s goods in International Classes 21 and 24, and very closely related goods in International Classes 20 and 27, that all travel in the same channels of trade to the same classes of consumers who exercise ordinary care for a range of goods, including those that are relatively inexpensive. *OSF Healthcare Sys.*, 2023 USPQ2d 1089 (TTAB 2023) (USPTO should prove likelihood of confusion for each class of goods or services). In view of the identical and closely related nature of the goods that include relatively inexpensive items, these factors weigh in favor of likely confusion.

C. Similarity/Dissimilarity of the Marks

We compare the marks in their entireties as to “appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)

(quoting *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*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 Fed. App’x 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

Applicant’s mark CREATIVE HOME IDEAS and the cited marks CREATIVE HOME and HOMEIDEAS all include the word HOME; this is not a term consumers would use to identify source in the home goods industry. Similarly, the other terms CREATIVE and IDEAS are highly suggestive of a desired attribute of the goods to be creative, or good ideas for your home décor. When viewed in their entirety, given the weakness of these terms, various combinations may be sufficient to distinguish source. In this case, the word IDEAS in Applicant’s mark distinguishes it from Registrant’s mark CREATIVE HOME. Similarly, the word CREATIVE distinguishes Applicant’s mark from the mark HOMEIDEAS owned by the Registrants.

The Examining Attorney argues:

Applicant’s addition of “IDEAS” to CREATIVE HOME or “CREATIVE” to HOMEIDEAS does not significantly affect the commercial impressions of the marks. The CREATIVE HOME mark creates the impression of an original and/or imaginative household or house. The HOMEIDEAS marks create the impression of ideas related to a household or house. The CREATIVE HOME IDEAS mark encompasses both of these commercial impressions: it refers both to ideas related to an original and/or imaginative household or house and to original and/or imaginative ideas related to a household or house.

Ex. Att. brief, 8 TTABVUE 11.

Applicant responds:

CREATIVE HOME suggests a dwelling that contains items, whereas CREATIVE HOME IDEAS would be for actual products or items that one would put in their home.

App. brief, 6 TTABVUE 22-23.

We find the connotation and commercial impressions between these marks sufficiently different. We agree with Applicant the CREATIVE HOME connotes a place whereas CREATIVE HOME IDEAS focuses on what kind of ideas are being offered for the home. In the case of HOMEIDEAS, that mark presents as a single word or, even viewed as separate words, as a single thought, in contrast to the CREATIVE HOME IDEAS mark that is a phrase modified by the word CREATIVE.

We bear in mind that 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 (Fed. Cir. 2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977)). Even registered marks deemed “weak” are entitled to the presumptions of validity under Section 7(b) and protection under Section 2(d). *See, e.g., In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018); *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974). However, given the weakness of the marks, in terms of appearance, sound, connotation, and commercial impression, we find, in this case, the dissimilarity of the marks sufficiently outweighs their similarities. In view thereof, this factor weighs heavily against a finding of likelihood of confusion.

D. Lack of Actual Confusion

Applicant submitted evidence under *DuPont* factor eight to show the lack of actual confusion despite concurrent use for at least almost a decade. Applicant argues the Examining Attorney did not consider this evidence and that was error. While the Examining Attorney may have accorded it little to no weight, the Examining Attorney did address it in the brief.

The Board has explained the analysis of the eighth *DuPont* factor in the context of an ex parte proceeding:

As noted above, our analysis as to the second, third, and fourth *du Pont* factors, discussing the similarity or dissimilarity of the services, channels of trade, and relevant consumers, is based, as dictated by precedent from the Federal Circuit, on the identifications **as set forth** in the application and the cited registration. ... As such, we may not consider, in assessing these *du Pont* factors, evidence of how Applicant and Registrant are **actually rendering** their services in the marketplace. ...

The eighth *du Pont* factor, by contrast - “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion,” ... requires us to look at **actual market conditions**, to the extent there is evidence of such conditions of record. In this regard, we consider all of the evidence of record that may be relevant to the eighth *du Pont* factor.

In re Guild Mortg. Co., 2020 USPQ2d 10279, *6-7 (TTAB 2020) (emphasis in original).

Applicant's evidence consists of a declaration from Yaron Shemesh, Applicant's CEO, and printouts from amazon.com of the cited Registrants' online retail presence.

Applicant's CEO attests:⁹

5. YMF has used the CREATIVE HOME IDEAS mark on many of the goods in the Trademark Application since at least 2001.

6. YMF and the owners of the CREATIVE HOME mark and the HOMEIDEAS marks have both sold goods on the internet, including on Amazon for several years. (See Exhibit A showing use of these marks on Amazon, and Exhibit B, showing reviews going back several years in time.)

7. YMF has no knowledge of having ever received any misdirected inquiries from consumers regarding the CREATIVE HOME branded products or the HOMEIDEAS branded products. Nor is YMF aware of any consumers of its products contacting the owners of the CREATIVE HOME and HOMEIDEAS brands about YMF products.

8. Neither I, nor anyone I have spoken to at YMF is aware of any consumer confusion or actual confusion between the CREATIVE HOME mark or the HOMEIDEAS mark, with the CREATIVE HOME IDEAS mark, despite years of concurrent retail sales of similar goods on similar platforms by all parties.

9. The owners of CREATIVE HOME mark and the HOMEIDEAS marks have not contacted UMF regarding our use, despite their likely knowledge of YMF's use of the mark CREATIVE HOME IDEAS.

Exhibit A consists of screenshots of the Amazon storefronts for Applicant and Registrants, displaying use of the respective marks CREATIVE HOME IDEAS, CREATIVE HOME and HOMEIDEAS with various home goods. Exhibit B consists

⁹ Shemesh Decl. ¶¶ 5-9, May 1, 2023 Request for Reconsideration, TSDR 2-3.

of screenshots from the comments pages of the online stores. The comments date as far back as follows: CREATIVE HOME March 15, 2014; HOMEIDEAS August 17, 2017; CREATIVE HOME IDEAS June 10, 2015.

While the evidence indicates that Applicant and the Registrants all offer their respective goods on the Amazon platform, these limited screenshots are not sufficient to demonstrate a meaningful overlap in the market on which to conclude there has been no actual confusion. We add that the constraint in the *ex parte* context due to the absence of information from the Registrants themselves “necessarily limits the potential probative value of evidence bearing on the eighth *Du Pont* factor, compared with an *inter partes* proceeding, where the registrant has an opportunity to present argument and evidence in response.” *Guild Mortg.*, 2020 WL 1639916, at *9. This evidence is not sufficient to show that in the actual marketplace, the same consumers have been exposed to both marks for the respective goods to make a finding as to the “length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” We find this factor neutral.

E. Conclusion

In sum, despite the identical and closely related goods, in view of the weakness of the marks, Applicant’s mark is sufficiently different so as to obviate likely confusion. *See Kellogg Co. v. Pack’em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive.”).

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Decision: The refusal to register Applicant's mark under Trademark Act Section 2(d) is reversed.