

This Opinion is Not a
Precedent of the TTAB

Mailed: April 15, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Melapreneur

Serial No. 90858280

Ticora Davis of The Creator's Law Firm
for Melapreneur.

Derek Van Den Abeelen, Trademark Examining Attorney,¹ Law Office 126,
Andrew Lawrence, Managing Attorney.

Before Adlin, Goodman and Allard, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Melapreneur seeks registration of the mark MELAPRENEUR, in
standard characters, for:

online retail store services featuring clothing, namely, t-
shirts, hats and hoodies, in International Class 35; and

entertainment and education services, namely, providing
podcasts for motivational and educational purposes about
entrepreneurship in the black community as well as
reviewing television shows with all black cast members;
entertainment services, namely, providing podcasts
featuring interviews with business owners, creators,
innovators and inventors about entrepreneurship in the
black community; entertainment services, namely,

¹ Examining Attorney Kiara Rodriguez Fontánez handled the involved application throughout prosecution, but Mr. Van Den Abeelen filed the Examining Attorney's Appeal Brief. We refer to both of them as the "Examining Attorney."

providing podcasts featuring interviews with entrepreneurs and business owners discussing entrepreneurship in the black community; entertainment services, namely, providing a podcast featuring discussions surrounding entrepreneurship and the entrepreneurial journey of the host of the podcast; entertainment and educational services, namely, providing a podcasts featuring tips for entrepreneurs and new business owners in the field of business, accounting, taxes, self care and the importance of resting; education and entertainment services, namely, providing podcasts discussing resources for entrepreneurs to assist with their personal and professional growth and development; education and entertainment services, namely, providing podcasts discussing resources for entrepreneurs to assist with addressing challenges in entrepreneurship; education and entertainment services, namely, providing podcasts discussing resources for entrepreneurs to assist with addressing lifestyle challenges; entertainment services, namely, providing a series of online, non-downloadable videos in the field of reviewing products and services from black owned businesses; entertainment and education services, namely, providing a series of online non-downloadable videos for motivational and educational purposes about business ownership and entrepreneurship; entertainment services, namely, providing a series of online non-downloadable videos featuring interviews with business owners, creators, innovators and inventors about entrepreneurship (sic), starting a business and owning a business as well as reviewing shows of all black cast members; entertainment services, namely, providing a series of online non-downloadable videos featuring discussions surrounding entrepreneurship and the entrepreneurial journey of the host of the videos; entertainment and educational services, namely, providing a series of online non-downloadable videos featuring tips for entrepreneurs and new business owners in the field of business, accounting, taxes, self care and the importance of resting; education and entertainment services, namely, providing a series of online non-downloadable videos discussing resources for entrepreneurs to assist with their personal and professional growth and development; education and entertainment services, namely, providing a series of online non-downloadable videos discussing

resources for entrepreneurs to assist with addressing challenges in entrepreneurship; education and entertainment services, namely, providing a series of online non-downloadable videos discussing resources for entrepreneurs to assist with addressing lifestyle challenges, in International Class 41.²

The Examining Attorney refused registration in both classes of services under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered mark MELANINPRENEURS, in standard characters, for

advertising and directory services, namely, promoting the services of others by providing a web page featuring links to the websites of others offering beauty products and services, fashion designers, retail clothing boutiques, hair salons, skincare spa services, restaurants, food and beverage products, hotels, visual artists, music entertainers, photographers; providing on-line web directory services featuring hyperlinks to the websites of Black-owned businesses, in International Class 35,³

that it is likely to cause confusion. After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. Applicant and the Examining Attorney filed briefs.

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”)

² Application Serial No. 90858280, filed July 30, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

³ Registration No. 6593735, issued December 21, 2021 (the “Cited Registration”).

(setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor about 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 services. *See 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.”).

A. The Marks

We consider marks “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). Here, the marks are highly similar because they both begin with “MELA” and end with “PRENEUR” (or the plural “PRENEURS”). The differences between the marks – Registrant’s use of the full word “MELANIN” rather than simply “MELA,” and its pluralization of “PRENEURS” – are relatively insignificant and insufficient to avoid consumer confusion.

The marks look and sound alike, and we find that consumers are unlikely to focus on the letters “NIN” in the middle of Registrant’s mark that follow “MELA” and are absent from Applicant’s mark. Indeed, consumers typically focus on the first part of marks, and “MELA” is the first part of both of them. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (“the identity of the marks’ two

initial words is particularly significant because consumers typically notice those words first”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *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 similarities in sound and appearance do not end there, however. Not only do both marks begin with the same four letters, but they also end in the singular or plural form of the term “PRENEUR.” It is settled that the difference between the singular and plural versions of the same term, in this case “PRENEURS,” is of little consequence. *Wilson v. DeLaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957) (“It is evident that there is no material difference, in a trademark sense, between the singular and plural forms of the word ‘Zombie’ and they will therefore be regarded here as the same mark.”). Because the first and last parts of both marks look and sound so similar, the letters “NIN” in the middle of Registrant’s mark that are absent from Applicant’s are not enough to avoid the likelihood of consumer confusion.

In fact, while potential consumers who carefully compare the marks side-by-side or hear them one after the other may notice the differences between MELAPRENEUR and MELANINPRENEURS, that is not how consumers typically encounter marks. Accordingly, “[t]he 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) (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 USPQ2d 1901, 1905 (TTAB 2007)).

Thus, we must consider whether the differences between the marks are likely to be recalled by purchasers seeing or hearing them “at spaced intervals,” i.e. consumers who encounter one of the marks first, and do not encounter the other until later. *Grandpa Pidgeon’s of Mo., Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573, 574 (CCPA 1973). In other words, we must keep in mind: (1) “the fallibility of memory over a period of time;” and (2) that the “average” purchaser “normally retains a general rather than a specific impression of trademarks.” *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (“marks must be considered in light of the fallibility of memory”) (citation, internal quotation marks, and ellipsis omitted). Consumers encountering these marks at spaced intervals may not remember the slight differences between MELAPRENEUR and MELANINPRENEURS.

The relative insignificance of the differences between the marks becomes even clearer when we consider the marks’ similar meanings and commercial impressions. According to one dictionary, the term “MELA” at the beginning of Applicant’s mark means “black,”⁴ and according to another, the term “forms words relating to black or dark.”⁵ May 3, 2022 Office Action TSDR 10, 25.⁶ The word “MELANIN” at the

⁴ <https://www.merriam-webster.com/dictionary/mela>.

⁵ <https://www.yourdictionary.com/mela>.

⁶ Applicant relies on a different definition of “mela” as used “in India,” indicating that there the term means “a religious fair, especially one held in connection with a festival.” June 5,

beginning of the cited mark is defined as “[a] dark brown to black pigment occurring in the hair, skin, and iris of the eye in people and animals.”⁷ *Id.* at 9. *See also* June 5, 2023 Request for Reconsideration TSDR 20 (substantively similar definition introduced by Applicant). Thus, “MELA” and “MELANIN” convey similar meanings. Moreover, because the second part of the marks – “PRENEUR”/“PRENEURS” – means “entrepreneur(s)”⁸ and is “used with some nouns to make nouns meaning a particular kind of person who sets up and runs a business,”⁹ both marks convey Black entrepreneurs. May 3, 2022 Office Action TSDR 11, 12. And to the extent that any consumers encountering the terms MELAPRENEUR and MELANINPRENEURS out of context would not construe them as conveying Black entrepreneurs, the terms’ meaning would become apparent in the context of many of the identified services, such as Applicant’s podcasts “about entrepreneurship in the black community” and Registrant’s “hyperlinks to the websites of Black-owned businesses.”

In short, the marks are quite similar in appearance, sound, meaning and commercial impression. This factor weighs heavily in favor of finding a likelihood of confusion.

2023 Request for Reconsideration TSDR 22. We do not rely on this definition because: (1) this case is about use of the marks in the United States rather than India; and (2) in the context of Applicant’s and Registrant’s services, largely focused on Black entrepreneurship and Black-owned businesses, the Examining Attorney’s definition is much more relevant.

⁷ <https://www.lexico.com/en/definition/melanin>.

⁸ <https://en.wiktionary.org/wiki/-preneur>.

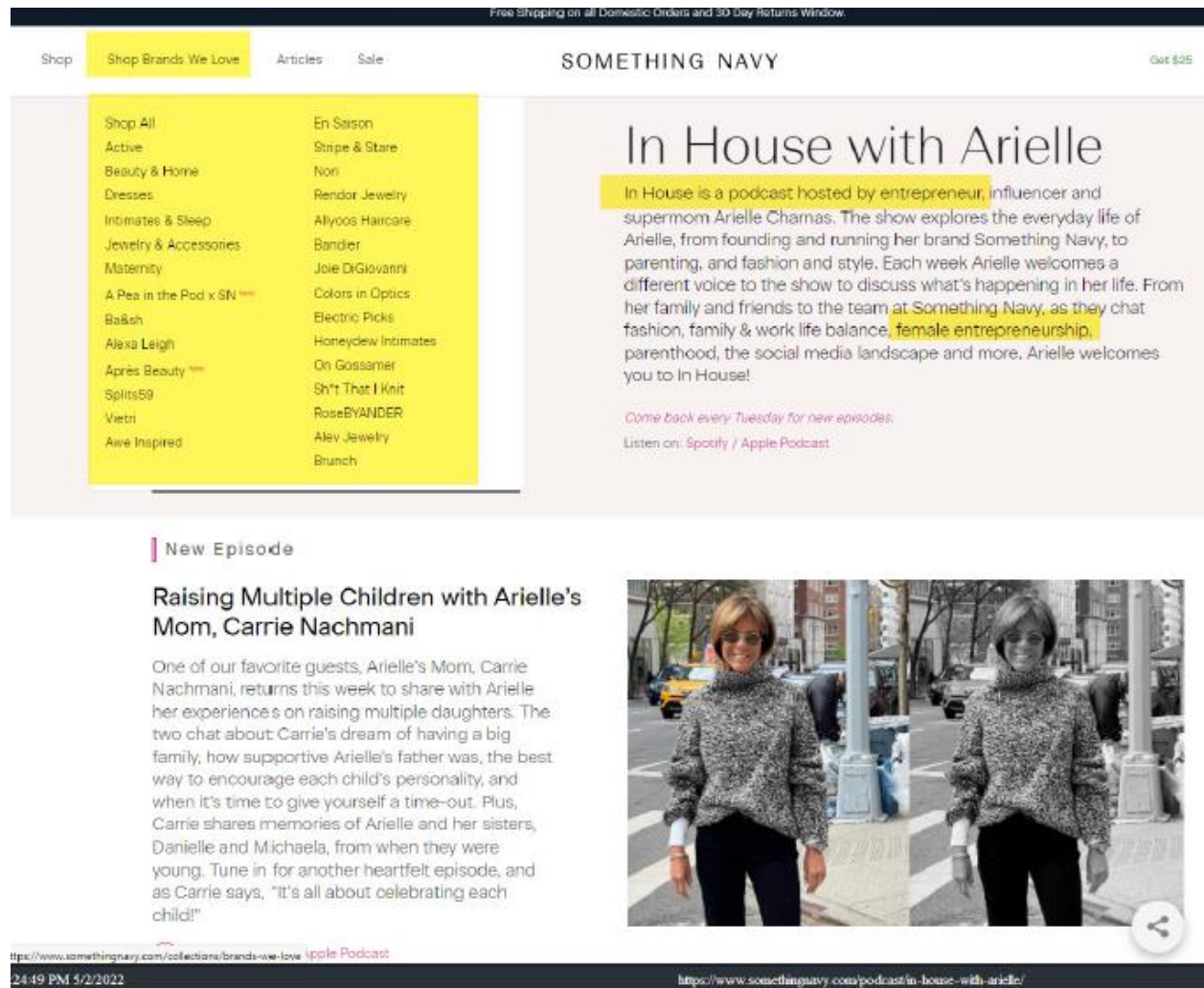
⁹ <https://www.macmillandictionary.com/us/dictionary/american/preneur>.

B. The Services, Their Channels of Trade and Classes of Consumers

The services need not be identical or even competitive in order to find a likelihood of confusion. Rather, the question is whether the services are marketed in a manner that “could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 227 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”); *Recot, Inc. v. 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”).

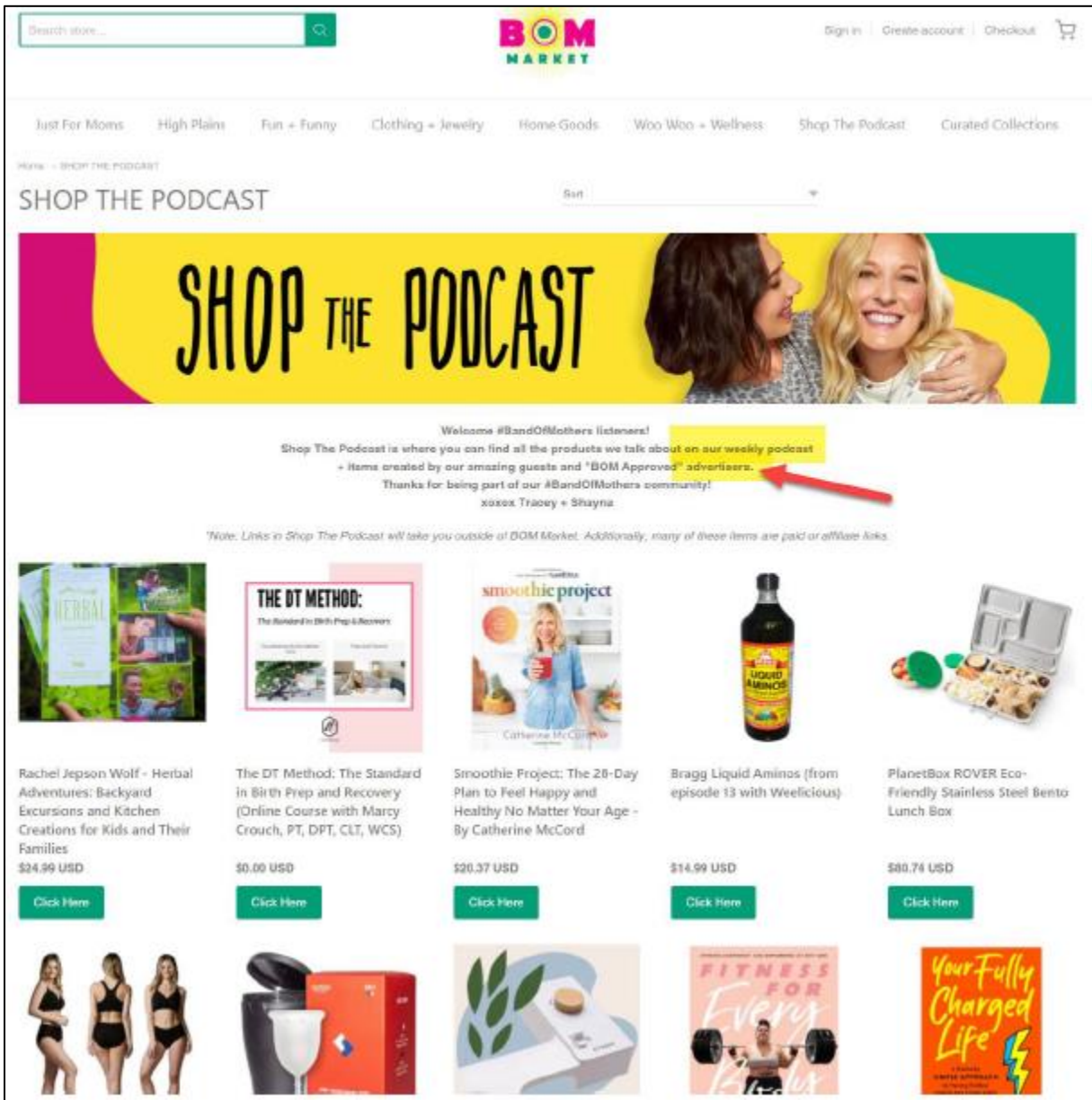
Here, the Examining Attorney argues that third-party websites establish a relationship between the services, because they show that some entities use the same marks for business directory services on the one hand, and podcasts/videos about Black entrepreneurs and businesses, or online retail clothing stores, on the other. *See In re Detroit Athl. Co.*, 128 USPQ2d at 1050 (crediting relatedness evidence showing that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard Co.*, 62 USPQ2d at 1004 (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

For example, the website for the “In House” podcast with Arielle Charnas includes a hyperlink through which consumers can “Shop Brands We Love,” which falls within Registrant’s identified “providing a web page featuring links to the websites of others offering ... [various] products and services,” as shown below:



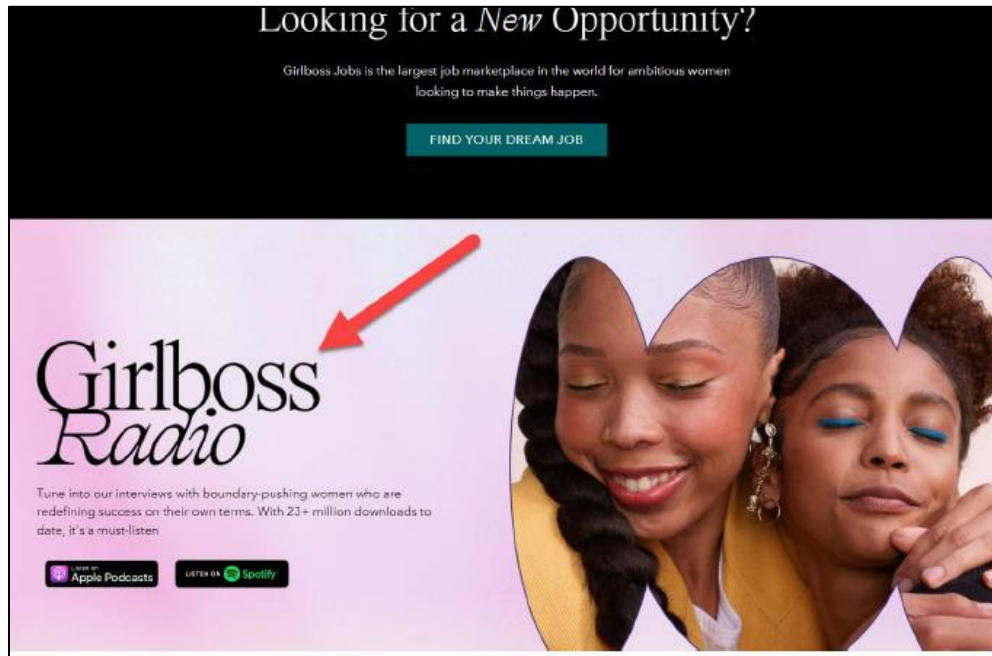
May 3, 2022 Office Action TSDR 15. As shown above, the link to “Brands We Love” allows users to choose between different types of goods (“beauty and home,” “dresses”) or specific businesses (“Stripe & Stare,” “Nori”), and one of the podcast’s topics is “female entrepreneurship.”

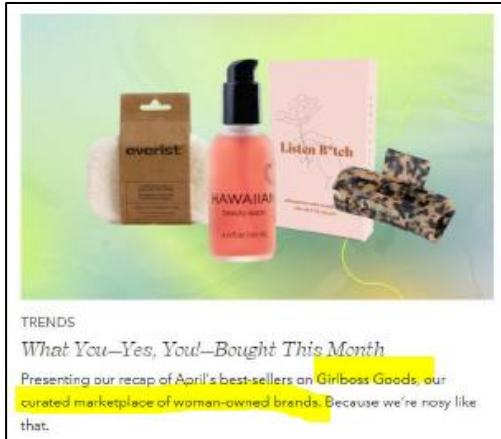
Similarly, the “BandofMothers” podcast has a “Shop the Podcast” website known as the “BoM Market” that provides hyperlinks to books, lunchboxes, nutritional supplements and other products, including underwear, as shown below:



Id. at 16-18.

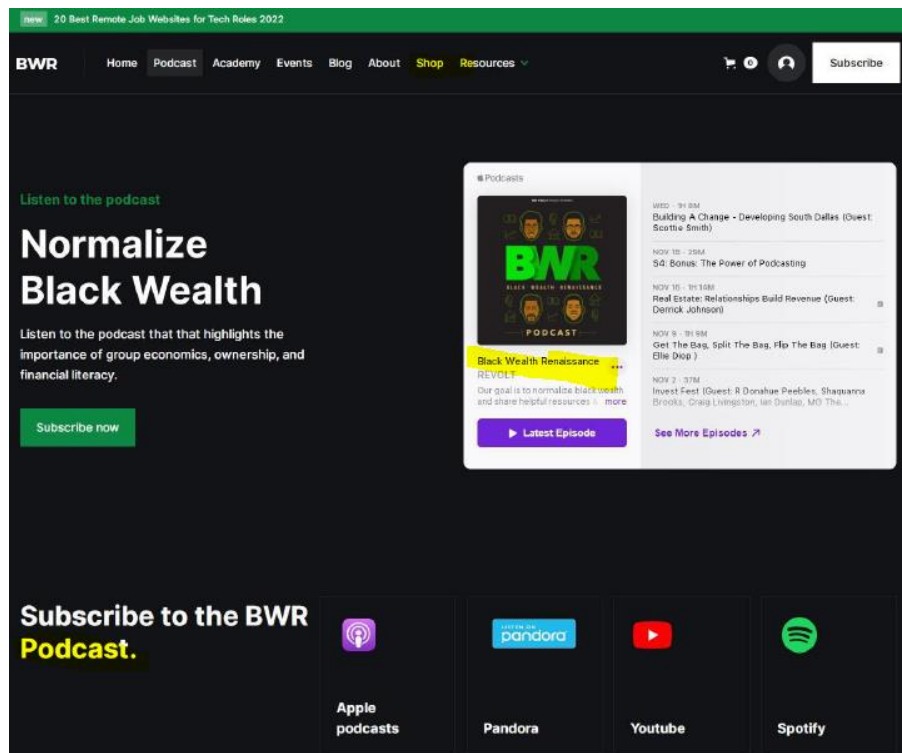
Third-party Girlboss offers a podcast, available on its website, along with hyperlinks to “Shop” and to “Girlboss Goods, our curated marketplace of women-owned brands” as shown below:

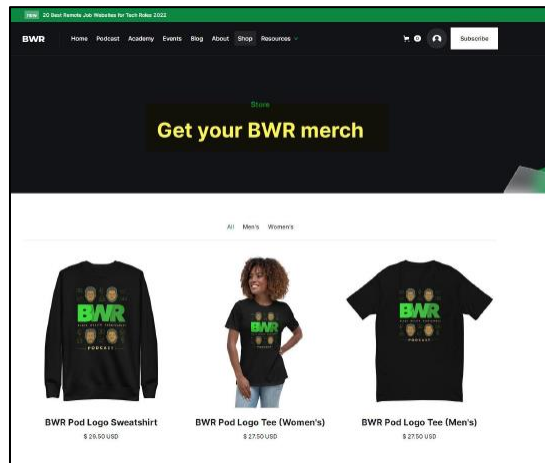
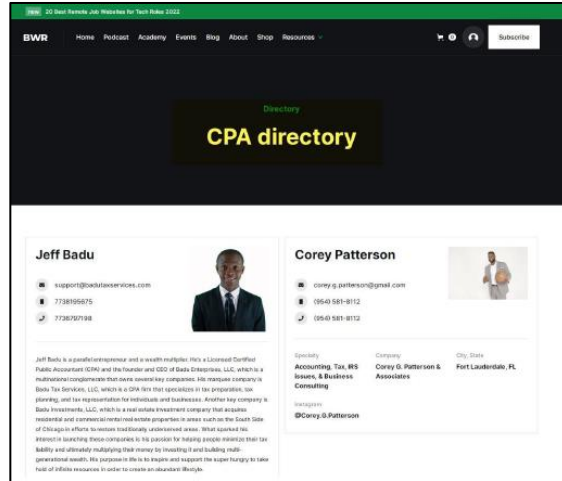
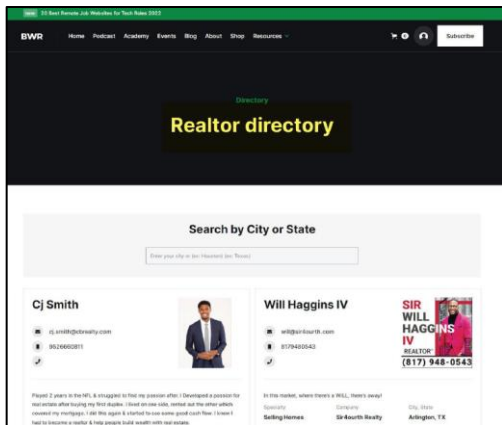




Id. at 19, 20, 22, 24. As shown above, website visitors may “Shop By” two categories: “gifting” and “BIPOC,” with the acronym “BIPOC” referring to “Black, Indigenous, (and) People of Color.” December 5, 2022 Office Action TSDR 58. In addition, consumers may shop for “fashion” via the link. *Id.*

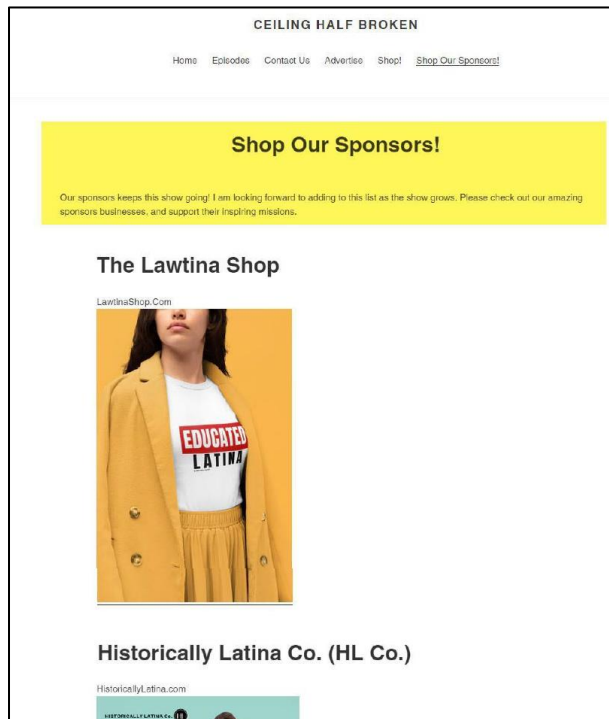
The Black Wealth Renaissance (“BWR”) podcast’s website features a link to “Shop,” as well as realtor and CPA directories and a “Merch” store, as shown below:





Id. 12, 14, 25, 32. The “merch” store features t-shirts and sweatshirts.

In the third-party Ceiling Half Broken podcast, the host “talks to BIPOC and allies about breaking the glass ceiling in professional settings, creating a balanced life, and taking their personal and professional lives to the next level.” *Id.* at 35. The podcast’s website includes a “featured collection” of branded products, including t-shirts and sweatshirts, and also links allowing visitors to “shop our sponsors!,” as shown below:

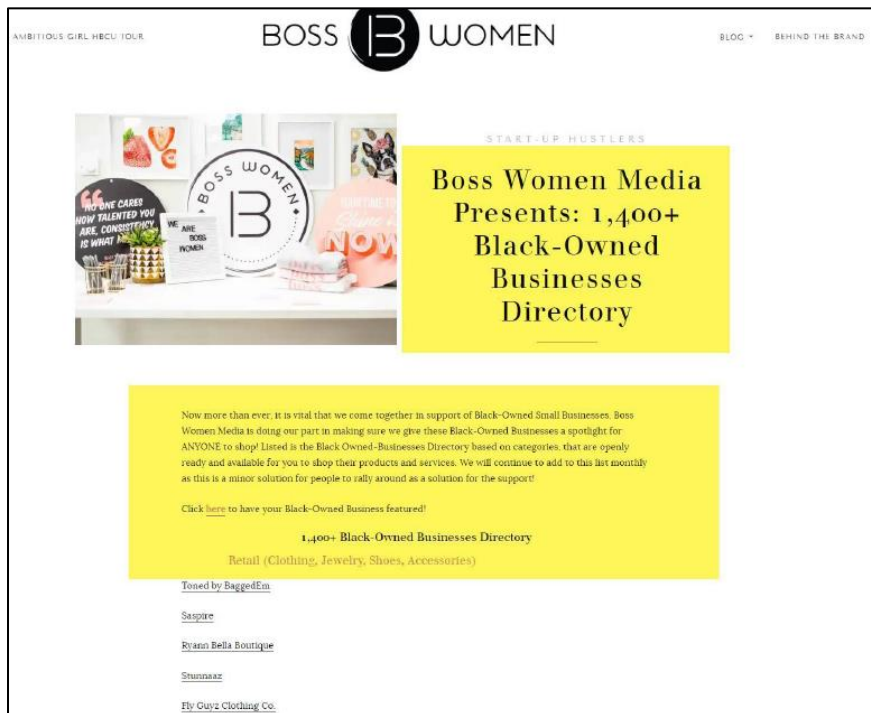
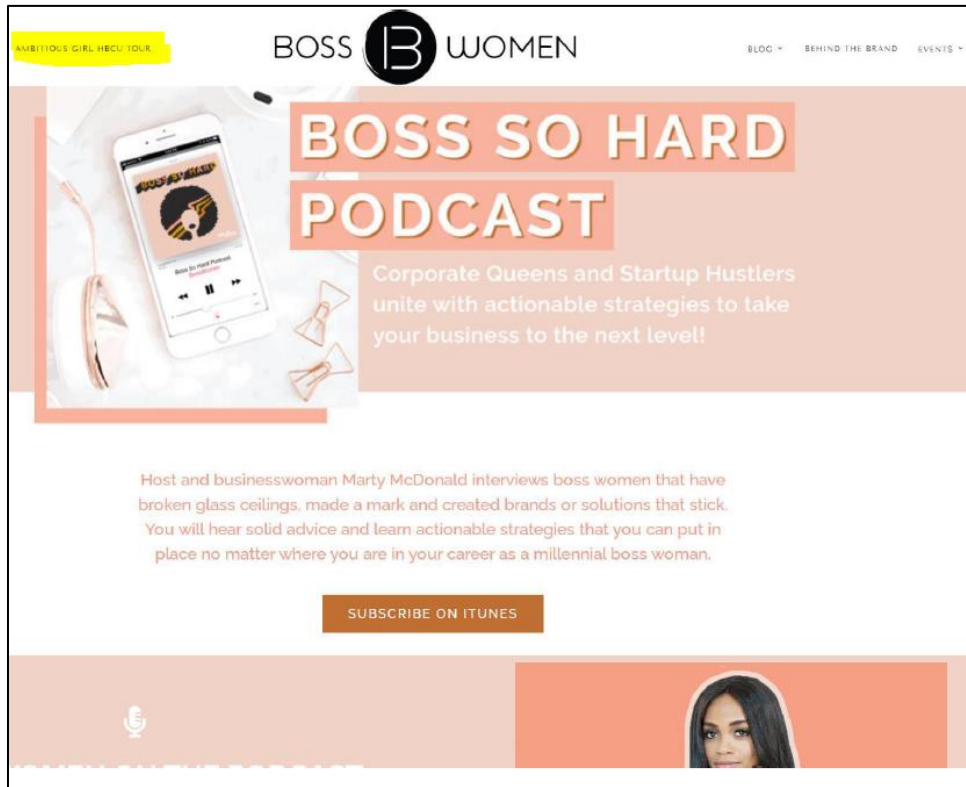


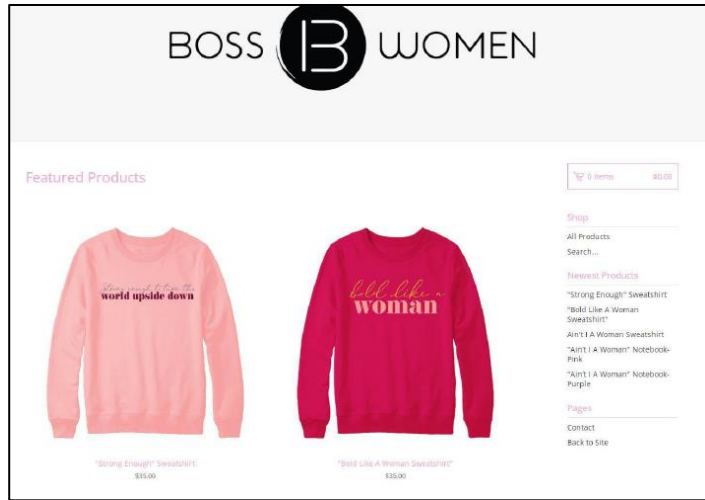
Id. at 36, 38.

The host of the third-party Boss Women podcast “interviews boss women that have broken glass ceilings, made a mark and created brands or solutions that stick.”

Id. at 40. The Boss Women website links to an “Ambitious Girl HBCU Tour,” and mentions a “multi-city Black Girl Magic Tour.” *Id.* at 40, 42. In addition, the podcast’s

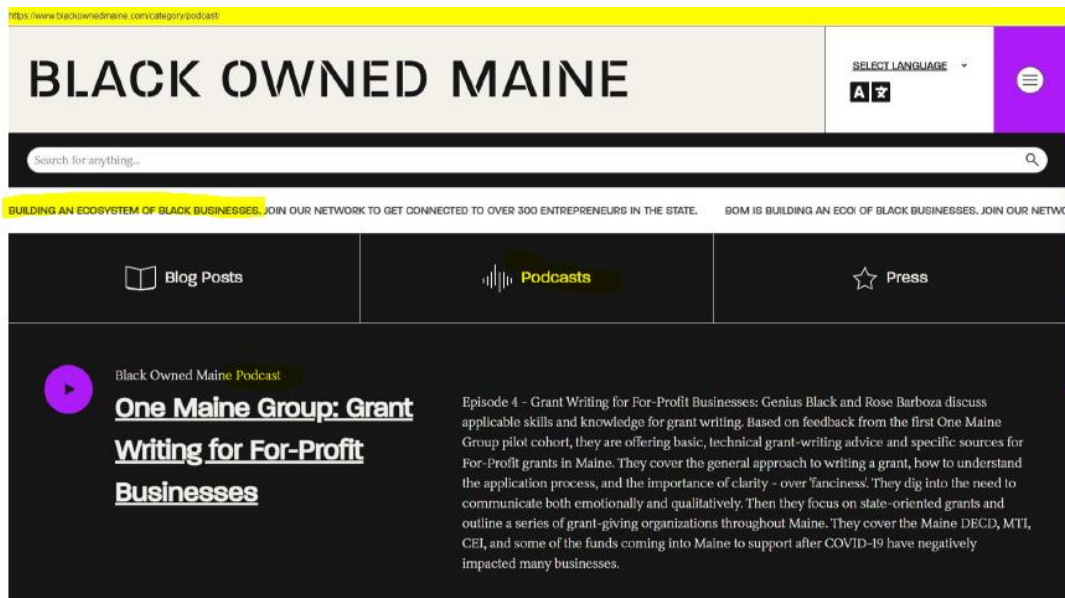
website provides a “1,400+ Black-Owned Business Directory,” and offers branded “merch,” including clothing and notebooks, as shown below:

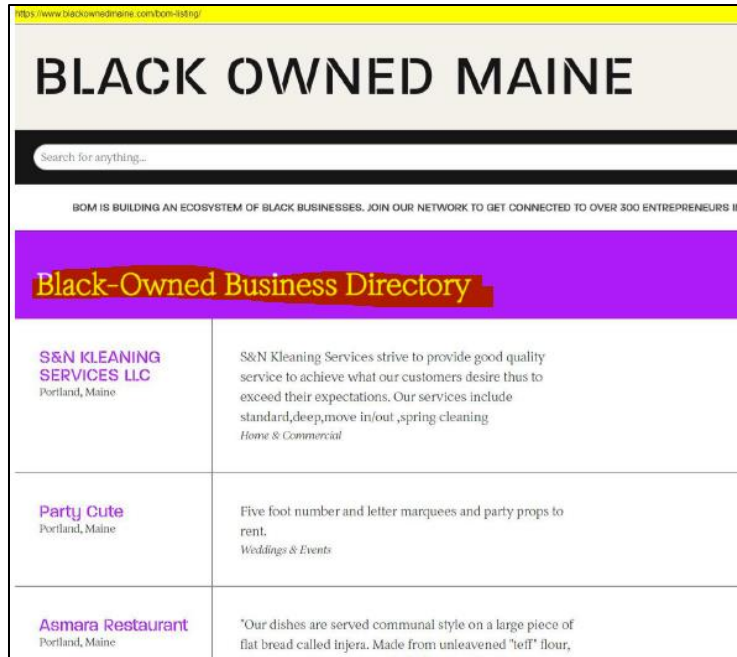




Id. at 40, 42, 44, 54, 55.

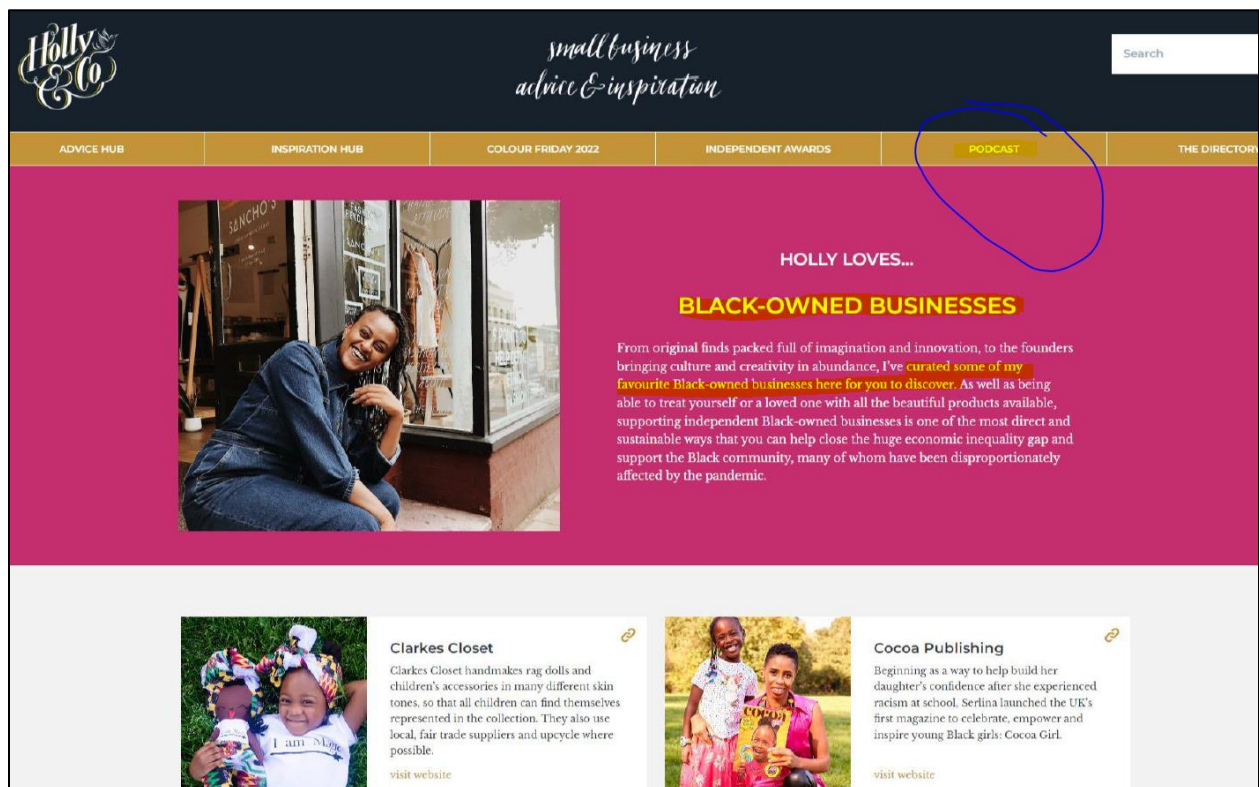
Third-party Black Owned Maine, “an ecosystem of Black businesses,” features podcasts and a directory of Black-owned businesses, as shown below:





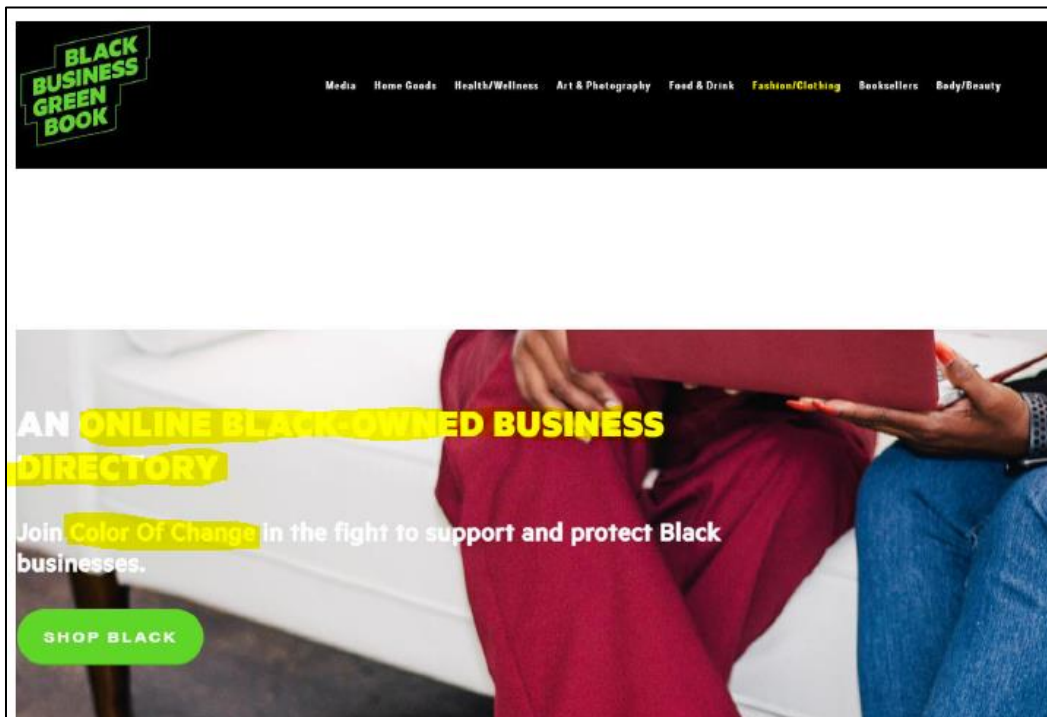
Id. at 59, 64.

The third-party Holly & Co. website features a collection of podcasts, and a Black-owned business directory, as shown below:



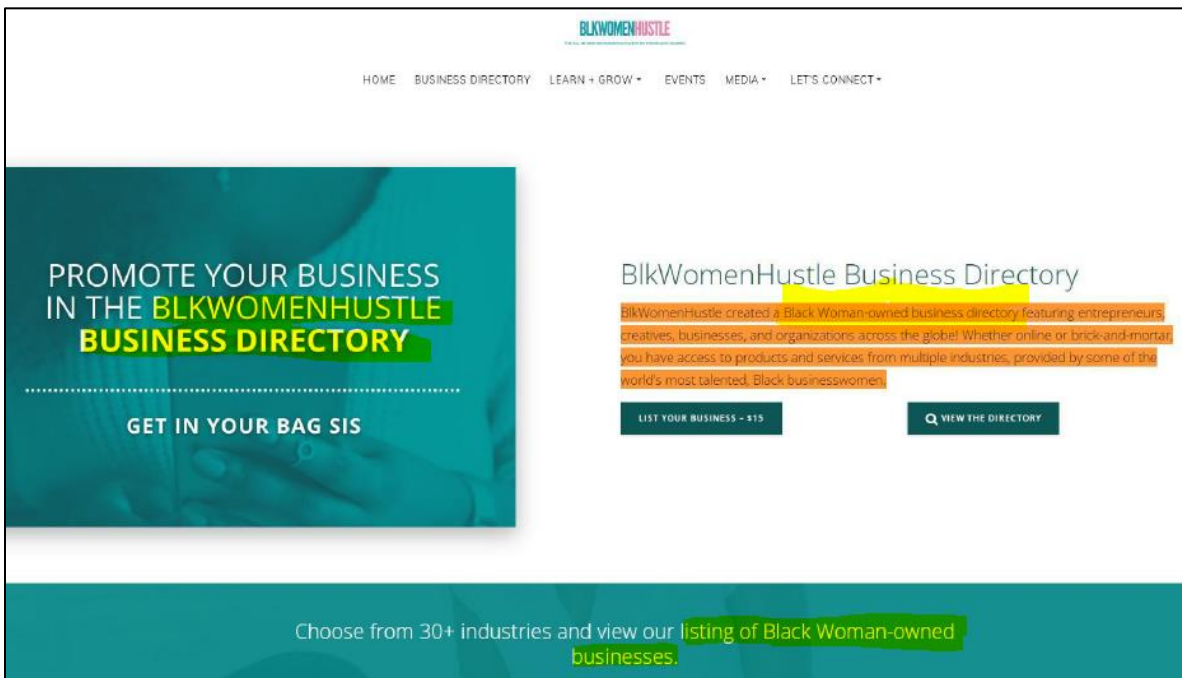
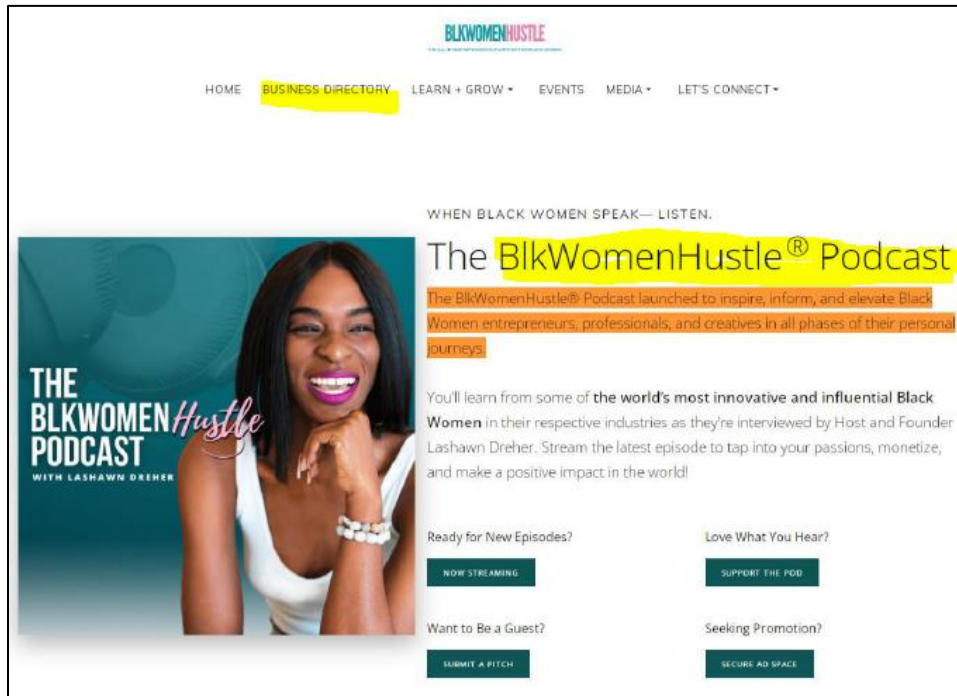
Id. at 68. Clothing businesses are included in the Black-owned business directory.

Third-party Color of Change offers podcasts and a Black-owned business directory, as shown below:



Id. at 76, 85. One of the categories in the directory is “Fashion/Clothing.”

Finally, the BlkWomenHustle Podcast includes a “Black Woman-owned business directory” on its website, as shown below:



July 31, 2023 Denial of Request for Reconsideration TSDR 4, 13. “Apparel & Accessories” is one of the directory’s categories. *Id.* at 14.

This evidence is sufficient to show a relationship between the services identified in the Cited Registration and those in the involved application, in both classes thereof, especially where the marks are as close as they are here. In fact, the close similarity of the marks reduces the degree of similarity between the services required to support a finding of likelihood of confusion. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *Time Warner Ent. Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002); and *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001).

Here, the record shows that it is not uncommon for the same sources to offer both podcasts and other content encompassed by Applicant's identification of services, and Black-owned business directories, or links to products and services, identified in the Cited Registration. It is also not uncommon for these third-party podcast and business directory sources to offer their own branded clothing products via online stores. While some of the third parties cited by the Examining Attorney apparently do not offer their own online clothing stores, with only one exception all of the third parties about which there is evidence of record offer business directories that list companies that offer clothing. This also tends to support a finding that Applicant's Class 35 retail clothing store services are related to Registrant's business directory services "featuring links to the websites of others offering ... retail clothing boutiques." Moreover, the end result of purchasing clothing directly through Applicant's retail store is essentially the same as the end result of purchasing clothing by using Registrant's business directory to find clothing indirectly through a

hyperlink. Thus, the use by unaffiliated parties of MELAPRENEUR and MELANINPRENEURS for direct or indirect links to online clothing stores “could give rise to the mistaken belief that [Applicant’s retail clothing stores and Registrant’s Black-owned business directory and advertising services] emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722.

In addition, the Examining Attorney’s third-party use evidence also makes clear that the ordinary channels of trade and classes of consumers for podcasts and other educational and entertainment content focused on Black entrepreneurs overlap with those for Black-owned business directories. In fact, podcast and other content providers focused on Black businesses and entrepreneurs offer their content on the same websites as they offer Black-owned business directories. Furthermore, sources of Black-owned business directories often list retail clothing stores in those directories, with the result being that directory users are often one click away from online clothing stores. In fact, Applicant introduced evidence that “most (60%) of consumers surveyed are already prioritizing or want to prioritize buying from Black-owned businesses,” and that “the majority of consumers start online or tap their inner circles when they’re looking to support Black business owners.” June 5, 2023 Request for Reconsideration TSDR 24.

In short, the services are related and travel in some of the same channels of trade to the same classes of consumers.¹⁰

¹⁰ Applicant’s argument that the Examining Attorney “is required to show ‘something more’ than that the Applicant’s mark and Cited Mark are both used to provide services to Black

C. Consumer Sophistication and Care

Applicant argues that confusion is unlikely because “consumers of Black-owned companies are intentional in their search for and transactions with such companies” and “are likely more inclined to do their due diligence prior to using” Applicant’s or Registrant’s services. 6 TTABVUE 20 (citing June 5, 2023 Request for Reconsideration TSDR 24). We take the point, but at the same time the Black-owned businesses on which both Applicant’s entertainment and educational services and Registrant’s directory focus do not all offer expensive or other products that consumers purchase with care, nor would we expect consumers to exercise much care when purchasing the t-shirts, hats and hoodies offered through Applicant’s retail store. Moreover, entrepreneurs who are just starting out that conduct research or seek advice through Applicant’s services would not necessarily be sophisticated consumers of podcasts and other content. This factor thus weighs only slightly against a finding of likelihood of confusion.

II. Conclusion

The marks are quite similar, the services are related and the channels of trade and classes of consumers overlap. These factors outweigh any consumer

entrepreneurs,” 6 TTABVUE 21, is not well taken. This case does not involve restaurant-type services on the one hand and food or beverage products on the other, such as the cases upon which Applicant relies, and here the question is not whether goods are related to services. Rather Applicant’s and Registrant’s marks are used only for services. And, even if “something more” was required, Applicant’s and Registrant’s focus on Black-owned businesses and Black entrepreneurs is “something more.” Citations to the appeal record are to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

Serial No. 90858280

sophistication or care in purchasing. *See In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986); *Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970); *see also, HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweighed sophisticated purchasers, careful purchasing decision, and expensive goods). Confusion is likely.

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