

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
May 21, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Vanity Fair, Inc.*  
*v.*  
*Ilyil Entertainment, LLC*

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Opposition No. 91201657  
to application Serial No. 85155569  
filed on October 19, 2010

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Carrie A. Shufflebarger, Esq. of Thompson Hine LLP for Vanity Fair, Inc.

Mustafa Abdul Rahman, Esq. for Ilyil Entertainment, LLC.

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Before Taylor, Lykos and Greenbaum, Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Applicant, Ilyil Entertainment, LLC, seeks registration on the Principal Register of the standard character mark INDIGO VANITY for “short-sleeved or long-sleeved t-shirts” in Class 25, based on applicant’s bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).<sup>1</sup>

Opposer, Vanity Fair, Inc., opposes registration of applicant’s mark on the ground

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<sup>1</sup> The identification of goods also includes “audio recordings featuring music” in Class 9, which is unopposed.

that, as applied to applicant's goods, the mark so resembles opposer's famous, previously used and registered VANITY FAIR marks, in standard characters and stylized form, for, *inter alia*, intimate apparel and sleepwear, as to be likely to cause confusion, mistake or deception under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Opposer pleaded ownership of four registrations, all on the Principal Register:

• *Vanity Fair* for "petti-slips and briefs" in Class 25;

• *Vanity Fair* for "pajamas, nightgowns, slips, chemises, thong underwear, bustiers, camisoles, bras, body suits, briefs, panties, pant liners, girdles, bodybriefers, and panty-girdles" in Class 25;

• VANITY FAIR (standard characters) for "foundation garments, lingerie, underwear, bras, slips, loungewear, robes, sleepwear" in Class 25; and

• VANITY FAIR (standard characters) for "providing consumer product information via the Internet" in Class 35.<sup>2</sup>

As a second ground for opposition, opposer alleges that applicant's mark, when applied to applicant's goods, will cause a likelihood of dilution with opposer's

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<sup>2</sup> Reg. Nos. 0918102 (registered August 10, 1971, claiming May 28, 1970 as the date of first use and first use in commerce; third renewal); 2185908 (registered September 1, 1998, claiming August 1996 as the date of first use and first use in commerce; renewed); 2808866 (registered January 27, 2004, claiming 1915 as the date of first use and first use in commerce; renewed); and 3127692 (registered August 26, 2006, claiming April 15, 1992 as the date of first use and first use in commerce; Section 8 Affidavit accepted; Section 15 Affidavit acknowledged), respectively.

famous pleaded VANITY FAIR marks under Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

Applicant, in its answer, denied the salient allegations in the notice of opposition, and asserted several “affirmative defenses” which were not pursued at trial. The “affirmative defenses” are deemed to have been waived and are given no further consideration.

*The Record*

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of application Serial No. 85155569. During its assigned testimony period, opposer filed a notice of reliance (“NOR”) upon the following: printouts of its four pleaded registrations from the USPTO TSDR and assignment databases, which show that the registrations are valid, subsisting and owned by opposer;<sup>3</sup> applicant’s responses and supplemental responses to opposer’s first set of interrogatories; articles from a trade journal, Harvard Business School, a few magazines, including Harper’s Bazaar, Glamour, and Just-Style.com, and excerpts from a book, all discussing opposer’s VANITY FAIR brand.<sup>4</sup> Opposer also

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<sup>3</sup> Pleadings registrations may be made of record by attaching “a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration.” Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1).

<sup>4</sup> Notwithstanding the April 17, 2013 Board order, which imposed certain discovery sanctions on applicant, the Board declines to consider NOR Exhibit DD (excerpts from applicant’s Tumblr social media page, printed and submitted by opposer pursuant to URLs identified in applicant’s supplemental response to opposer’s first set of document requests) because the NOR does not specify the relevance of the materials. *See* Trademark Rule 2.122(e); TBMP § 704.08(b). Opposer’s contentions to the contrary (Br. at 19, n.1) comprise an overly broad reading of the Board order. Additionally, opposer referenced and included URLs to audio files on You Tube of the work of Indigo Marie Ford, a recording artist who is affiliated with applicant (Br. at 19); identification of URLs does not make the content of

submitted the testimony deposition, with accompanying exhibits, of Lis Cravens, Vice President of Marketing and Merchandising for opposer's Vanity Fair brand (16-19 TTABVUE).<sup>5</sup>

Applicant did not take testimony or offer any other evidence during its assigned testimony period. Only opposer filed a brief.

*Standing and Priority*

Because opposer has made the pleaded registrations properly of record, opposer has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc., v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982). Moreover, because the registrations are properly of record, priority is not in issue as to the goods and services identified therein. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

*Likelihood of Confusion*

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA

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those You Tube files properly of record. See *In re HSB Solomon Assocs., LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) ("reference to a website's [I]nternet address is not sufficient to make the content of that website or any pages from that website of record."). We note that opposer relied on the two exhibits and You Tube videos only in support of its dilution claim which, as discussed *infra*, we deny. Consideration of these materials would not have yielded a different result.

<sup>5</sup> Certain testimony and exhibits were designated as confidential, and we will discuss those portions of the record in general terms. In addition, while we only discuss certain portions of the record in the decision, we have considered the entire record in arriving at our determination.

1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

*Fame of the Marks*

We begin with the fifth *du Pont* evidentiary factor, which requires us to consider evidence of the fame of opposer's marks, and to give great weight to such evidence if it exists. *See Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1309 (Fed. Cir. 2002); *Recot Inc. v. Becton*, 214 F.3d 1322, 54 F.2d 1894 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992).

Fame of an opposer's mark or marks, if it exists, plays a "dominant role in the process of balancing the DuPont factors," *Recot*, 214 F.3d at 1327, 54 USPQ2d at 1456 [sic – 1897], and "[f]amous marks thus enjoy a wide latitude of legal protection." *Id.* This is true as famous marks are more likely to be remembered and associated in the public mind than a weaker mark, and are thus more attractive as targets for would-be copyists. *Id.* Indeed, "[a] strong mark ... casts a long shadow which competitors must avoid." *Kenner Parker Toys*, 963 F.2d at 353, 22 USPQ2d at 1456. A famous mark is one "with extensive public recognition and renown." *Id.*

*Bose*, 63 USPQ2d at 1305.

Fame may be measured indirectly by the volume of sales and advertising expenditures of the goods and services identified by the marks at issue, "the length of time those indicia of commercial awareness have been evident," widespread critical assessments, and through notice by independent sources of the products identified by the marks, as well as by the general reputation of the product and services. *Id.* at 1305-06.

According to Ms. Cravens, since its founding in the early 1900s, opposer has been an innovator in bras and related intimate apparel sold nationwide under the VANITY FAIR marks. Cravens Test., pp. 12-15, Exh. 2. Ms. Cravens testified that in addition to introducing nylon, color coordination and prints in intimate apparel, opposer introduced an advertising campaign, shot in the 1950s by a fashion photographer who was renowned for photographing major celebrities, such as Grace Kelly. Cravens Test., pp. 12-15. Ms. Cravens further testified that the advertising campaign lasted for 30 or 40 years, and opposer has referenced the campaign in some of its more recent advertisements. Cravens Test., pp. 13-15, 31-36, Exhs. 2, 8-10.<sup>6</sup>

By its notice of reliance, opposer has introduced evidence that almost one decade ago, *Women's Wear Daily* ("WWD") twice listed VANITY FAIR as one of the top-10 brands in innerwear (NOR Exhs. J and K), and as number 44 of the top-100 brands in apparel in 2005 (NOR Exh. L). Opposer also introduced a handful of articles from WWD that referred to the well-known nature of the VANITY FAIR brand of intimate apparel in the 2005-2007 time period (NOR Exhs. M, N-P). More recently, WWD mentioned VANITY FAIR intimate apparel in four articles in 2012 (NOR Exhs. X-AA). Opposer also has introduced evidence of several editorial placements or editorial mentions between 2008 and 2012 of its VANITY FAIR branded intimate apparel in magazines including *Glamour*, *More*, *In Style* and *OK Magazine* (Cravens Test. pp. 31, 33-36, Exhs. 7-11), and five additional articles

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<sup>6</sup> Opposer submitted samples of its 2008 through 2012 advertising campaigns (Cravens Exhs. 7-11), as well as a historical overview of opposer's prior campaigns (Cravens Exh. 2).

between 2009 and 2011 in *Glamour*, *Just-Style.com*, and *Harper's Bazaar* mention or discuss opposer's VANITY FAIR branded intimate apparel. NOR Exhs. S-W. In addition, a September 23, 2003 article in *Business Wire* reported a licensing agreement concerning the launch of a VANITY FAIR maternity and nursing line (NOR Exh. I), and the August 9, 2012 *Business Insider* reported the launch of intimate apparel shops, including Vanity Fair and Maidenform, at JCPenney (NOR Exh. BB). Opposer's VANITY FAIR branded intimate apparel also was mentioned in several chapters in the 1998 book by Jeffrey L. Rodegen, entitled *The Legend of VF Corporation* (NOR Exh. CC), and in 2003, an article in the *Harvard Business School Spring Business History Review* reviews a book entitled "Uplift: The Bra in America," which mentions several "companies and individuals who promoted, designed, produced, and marketed brassieres in the United States" including Vanity Fair (NOR Exh. H).

Opposer's sales figures from 2009 to 2013 and opposer's multi-platform media plan and advertising expenditures<sup>7</sup> for 2012 have been made of record under seal, and we therefore shall not divulge them in this opinion, but we find that they appear substantial. Cravens Test., pp. 38-44, Exh. 12-13 (confidential). Ms. Cravens testified that these figures are representative of such figures since 2007, when opposer acquired the VANITY FAIR brand. Cravens Test., pp. 38-42 (confidential). Ms. Cravens also testified that based on sales, VANITY FAIR is the leading

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<sup>7</sup> Opposer references the advertising campaign as a "multi-million dollar" endeavor. Br. at 8.

intimate apparel brand in the market segment consisting of mid-tier department stores. Cravens Test., pp. 42-43 (confidential).

Finally, opposer cites to *Hainline v. Vanity Fair*, 301 Fed. Appx. 949 (Fed. Cir. 2008), an opposition in which the Federal Circuit affirmed a Board decision which found that opposer's VANITY FAIR mark was famous.

As the party asserting that its mark is famous, opposer has the burden to clearly prove it. *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012), citing *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007). Upon careful review of the record in this case, we are not persuaded that opposer's mark is famous.

First, while opposer's sales and advertising figures appear to be impressive, raw numbers alone are not necessarily sufficient to prove fame, since such figures may be misleading. See *Bose*, 63 USPQ2d at 1309. For example, without context, opposer's sales figures, and Ms. Craven's testimony that opposer is the market leader for intimate apparel in the "mid-tier department store" market segment, could represent a somewhat limited market share. Similarly, the evidence shows that opposer has engaged in long-term print advertisement of its intimate apparel under the VANITY FAIR brand, has impressive advertising figures for its more recent VANITY FAIR campaigns, and also has enjoyed some recognition of its intimate apparel so branded. However, such evidence falls short of demonstrating the extent to which such activities and achievements translate into widespread recognition of opposer's VANITY FAIR mark among the general public. Notably, it



does not appear that WWD has ranked opposer highly since 2005, or that WWD (or any other publication) has referred to opposer with laudatory terms such as “best name” or “national brand” since 2007. There is also no evidence that Mr. Rodegen’s 1998 book ever was sold, nor is there any evidence as to the circulation of the 2003 Harvard Business School article or the sales of the book it reviews. Moreover, the record is devoid of any information regarding the circulation of the magazines in which there were editorial placements or mentions of opposer’s VANITY FAIR branded intimate apparel and, in any case, the evidence thereof is limited to only a few years. As a result, such evidence does not establish that opposer’s mark is widely recognized by the consuming public.

With regard to the prior finding of fame, we are not privy to the evidence made of record in the other opposition in which opposer’s VANITY FAIR mark was found famous. Simply put, we cannot determine in this case the evidentiary bases for the Board’s findings in the unrelated proceeding.

Because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, we reiterate, it is the duty of the party asserting that its mark is famous to clearly prove it. *Coach Servs.*, 101 USPQ2d at 1720; *Edward Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1408 (TTAB 2010). Opposer has not met its burden. We are constrained to find on this record that the evidence falls short of establishing that opposer’s pleaded VANITY FAIR marks are famous for purposes of our likelihood of confusion determination.

*Strength of the Marks*

Although the evidence of record does not support a finding that opposer's pleaded VANITY FAIR marks are famous, the evidence reflects that the marks are arbitrary with respect to the goods, as well as the longevity of use of the marks, the apparently substantial sales and advertising figures, and the absence of third-party use for similar goods. We therefore find the marks to be strong, and entitled to a broad scope of protection.

*Comparison of the Goods, Channels of Trade and Classes of Purchasers*

Before turning to the remaining relevant *du Pont* factors, we note that we focus our discussion on the mark and goods in Registration No. 2185908. We do so because the marks pleaded in all four registrations are identical, except for the stylization of two,<sup>8</sup> and because the goods include camisoles, which, when considered vis-à-vis the goods identified in the application, are most likely to support a finding of likelihood of confusion.<sup>9</sup> See, e.g., *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

We turn next to a consideration of the goods, channels of trade and class of purchasers. We base our evaluation on the goods as they are identified in the

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<sup>8</sup> Because applicant seeks to register its mark in standard characters, the stylization of registrant's pleaded mark is not distinguishing. See *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010).

<sup>9</sup> As indicated in footnote 11 herein, the record only supports a finding that camisoles and t-shirts are related goods within the meaning of this *du Pont* factor. In any event, in light of the dispositive differences between the marks as discussed *infra*, even if opposer had submitted testimony and evidence regarding the relatedness of t-shirts and the other goods (or services) identified in the other pleaded registrations, such evidence would have no effect on the outcome.

application and registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, \_\_ F.3d \_\_, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). In this case, the “short-sleeved and long-sleeved t-shirts” identified in the application and the “camisoles” identified in Reg. No. 2185908 are similar in that they both are tops that can be worn as outerwear. When asked: “You mentioned the daywear and camisoles. Is that something that could be potentially be worn as outerwear?”, Ms. Cravens replied: “Definitely. Definitely. Depending on the fabrication and the styling of the camisole, you could wear it under a jacket and really going into a meeting and be just fine as outerwear. You could wear [it] under a sweater. You could wear it under a lightweight shirt. But, yes.”<sup>10</sup> Cravens Test., p. 17. It is sufficient for a finding of likelihood of confusion if the relatedness is established for any item encompassed by the identification of goods within a particular class in the application or registration. *Tuxedo Monopoly, Inc., v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).<sup>11</sup>

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<sup>10</sup> According to Ms. Cravens, “daywear would be layering pieces such as camisoles, slips that you would wear under a skirt or a full slip that you would wear under a dress.” Cravens Test., p. 16.

<sup>11</sup> Opposer further argues that applicant’s t-shirts are within its “natural zone of expansion.” Br., p. 14. However, the expansion of trade doctrine usually is considered in the context of priority (which is not in question here). *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1598 (TTAB 2011). The analysis under this *du Pont* factor requires consideration of the similarity of the goods. Although we focused our discussion on Registration No. 2185908, we point out that the documentary evidence (NOR Exh. X) and Ms. Cravens’ testimony (pp. 11-12) that opposer’s parent company owns other apparel companies that offer t-shirts does not support a finding that t-shirts are related to any of the goods or services identified in the other pleaded registrations, as there is no evidence

As to the channels of trade and classes of purchasers, because the identifications of goods in the application and Reg. No. 2185908 contain no limitations, it is presumed that the goods identified therein move in all channels of trade normal for those goods, and that they are available to all classes of purchasers for those goods. *See Stone Lion*, 110 USPQ2d at 1161; *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). In other words, there is nothing to prevent applicant from offering for sale its t-shirts through the same trade channels and to the same purchasers who buy opposer's camisoles and vice-versa. *See In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012). Moreover, the record confirms this presumption. Ms. Cravens testified that opposer's goods are sold in mid-tier, nationwide retailers, such as Kohl's, J.C. Penny and Sears, and department stores such as Macy's, as well as on-line retailers such as Herroom.com and Fresh Bare, and that all of these retailers also carry short-sleeve and long-sleeve t-shirts. Cravens Test., pp. 21, 23-24.

Accordingly, the *du Pont* factors of the similarity of the goods, the channels of trade, and the classes of purchasers favor a finding of likelihood of confusion as to Reg. No. 2185908.

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that the sibling companies also offer any of the goods or services identified in those registrations. Further, Ms. Cravens' testimony (pp. 23-24) that the same stores that carry VANITY FAIR merchandise also carry t-shirts might support a finding that the respective goods move through the same trade channels; but it does not necessarily follow that all goods that are sold in department stores are related to each other, that t-shirts and any of the other goods identified in the pleaded registrations are sold in the same departments of the retail stores, or that opposer's product information services identified in Reg. No. 3127692 are related to or move in the same trade channels as t-shirts. Absent evidence or testimony that the other goods and services identified in the other pleaded registrations are related to t-shirts, we decline to make such a finding.

*Conditions of Sale*

With regard to the conditions of sale, because we are bound by the identifications of goods in the application and registration and because none of the identifications are restricted as to price, the goods at issue must include inexpensive as well as expensive apparel. Inexpensive t-shirts and camisoles would not be purchased with a great deal of care or require purchaser sophistication, which increases the likelihood of confusion. *Recot*, 54 USPQ2d at 1899 (“When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care”) (internal citations omitted). This factor also favors a finding of likelihood of confusion as to Reg. No. 2185908.

*Comparison of the Marks*

We next consider the marks INDIGO VANITY and VANITY FAIR, and compare them “in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), quoting *du Pont*, 177 USPQ at 567. 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.*, 101 USPQ2d at 1721 (internal citation omitted).

In addition to the obvious dissimilarities in appearance and sound of the involved marks, the meanings and overall commercial impressions of the marks are distinct as well. Opposer contends that VANITY FAIR and INDIGO VANITY convey the same overall meaning when they are viewed on the parties' related goods because "indigo" is a shade of blue, applicant's mark INDIGO VANITY therefore connotes "Blue Vanity," and opposer prominently features the color blue in its packaging, trade dress and advertisements. We do not find these arguments persuasive. Even assuming, arguendo, that opposer prominently features blue in relation to its goods, when considering word marks, the Board ordinarily does not look at trade dress because it is not part of opposer's mark, and opposer is free to change it or abandon it at any time. *Vornado, Inc. v. Breuer Elec. Mfg. Co.*, 390 F.2d 724, 156 USPQ 340, 342 (CCPA 1968). To the extent that trade dress "may nevertheless provide evidence of whether the word mark projects a confusingly similar impression," (*Kenner Parker Toys Inc. v. Rose Art Indus. Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1458 (Fed. Cir. 1992), citing *Specialty Brands, Inc. v. Coffee Beans Distribs., Inc.*, 748 F.2d 669, 223 USPQ 1281, 1284 (Fed. Cir. 1984)), there is no record evidence that applicant has a particular trade dress that might create a confusingly similar impression with opposer's trade dress.

Further, there is no record evidence to support a conclusion that consumers would associate the color blue with opposer, or that they would associate the word "Indigo" in applicant's mark with the color blue rather than with the recording

artist Indigo Marie Ford, who is affiliated with applicant.<sup>12</sup> More importantly, as the dictionary definitions from Dictionary.com<sup>13</sup> show, “Vanity Fair” is a unitary phrase with specific literary connotations evoking fashionable society:

**Vanity Fair**<sup>14</sup>  
*noun*

1. (in Bunyan’s *Pilgrim’s Progress*) a fair that goes on perpetually in the town of Vanity and symbolizes worldly ostentation and frivolity.
2. (*often lowercase*) any place or group, as the world or fashionable society, characterized by or displaying a preoccupation with idle pleasures or ostentation.
3. (*italics*) a novel (1847-48) by Thackeray.

INDIGO VANITY does not share this connotation, and although both marks contain the common term VANITY, overall, the marks create different commercial impressions. In this regard, we also disagree with opposer’s argument that VANITY is the dominant element of the parties’ marks. Instead, we find that the term INDIGO is the dominant element in applicant’s mark because of its placement in the initial position in applicant’s mark INDIGO VANITY. *See Palm Bay*, 73 USPQ2d at 1692. Moreover, we find this factor of the dissimilarities of the marks to be pivotal in that even considering the other *du Pont* factors, this factor outweighs the others. *See Kellogg Co. v. Pack’em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d

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<sup>12</sup> Applicant is a music production company. NOR Exh. E, Resp. to Int. No. 1. “Indigo Vanity” is the nickname of Indigo Marie Ford. NOR Exh. E, Resp. to Int. Nos. 1 and 3. Ms. Ford adopted “Indigo Vanity” as her nickname in 2009, and uses that moniker in the lyrics of some of her songs. NOR Exh. E., Resp. to Int. No. 3.

<sup>13</sup> The Board may take judicial notice of dictionary definitions, including online dictionaries with regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

<sup>14</sup> Dictionary.com Unabridged, based on the Random House Dictionary (2014).

1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *du Pont* factor may not be dispositive.”).

We distinguish *Hainline*, where the Federal Circuit affirmed the Board’s findings that VANITY was the dominant word in each of opposer’s pleaded VANITY FAIR marks, several of which are also pleaded herein, that VANITY was the dominant word in each of applicant’s marks VANITY N SANITY, VANITY INSANITY and VANITY & SANITY, that VANITY is arbitrary as applied to clothing and therefore conceptually strong, and that all of the marks created the same commercial impressions. *Hainline*, 301 Fed. Appx. at 953-954. One of the primary reasons for these findings was the placement of the word VANITY in the initial position in each of the marks. *Id.* at 953. Obviously, this differs from the instant situation, where the word VANITY is in the second position in applicant’s mark. In addition, unlike in the present case, in *Hainline*, VANITY FAIR was found to be a famous mark for purposes of likelihood of confusion, and thus was accorded extreme deference. *Id.* at 952.

As has often been said, each case must be determined on the particular facts. Under the facts of this case, because of the differences in appearance, sound, meaning and commercial impressions in opposer’s VANITY FAIR marks and applicant’s INDIGO VANITY mark, we find that confusion is not likely.



*Dilution*

In addition to its Section 2(d) claim, opposer has asserted claims of dilution by blurring and by tarnishment. Because we have found above that opposer has not met its burden of demonstrating that its VANITY FAIR mark is famous for purposes of our likelihood of confusion determination, opposer cannot prevail on this record on dilution, whether by blurring or tarnishment, each of which requires a stronger showing of fame. *See, e.g., The Toro Company v. ToroHead*, 61 USPQ2d 1164 (TTAB 2001). Further, in the analysis of dilution by blurring, marks are compared under the test for similarity for likelihood of confusion purposes. *Nike Inc. v. Maher*, 100 USPQ2d 1018, 1030 (TTAB 2011). We have already found that applicant's INDIGO VANITY mark is not similar to opposer's VANITY FAIR marks for purposes of likelihood of confusion. It thus stands that the marks are not sufficiently similar for purposes of dilution by blurring. Because opposer has not met its burden of demonstrating that its VANITY FAIR marks are famous or are similar to applicant's INDIGO VANITY mark, opposer cannot prevail on its dilution claims.

We carefully have considered all of the evidence of record pertaining to the relevant likelihood of confusion and dilution factors, as well as all of the parties' arguments with respect thereto (including any evidence and arguments not specifically discussed in this opinion), and we conclude that opposer has not proved any of its pleaded claims.

DECISION: The opposition is dismissed.