

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 3, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Andre Young
v.
Draion M. Burch DO

—
Opposition No. 91224580¹
Opposition No. 91226572
—

James D. Weinberger of Fross Zelnick Lehrman & Zissu PC,
for Andre Young.

Andrea H. Evans of The Law Firm of Andrea Hence Evans LLC,
Jon A. Schiffrin of Schiffrin & Longo, P.C.,
for Draion M. Burch Do, LLC.

—
Before Kuhlke, Goodman and Pologeorgis,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

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¹ On March 3, 2016, the Board consolidated proceedings in Opposition Nos. 91224580 and 91226572, designating Opposition No. 91224580 as the parent case. 8 TTABVUE.

References to the record and the briefs refer to the Board's TTABVUE docket system.

Draion M. Burch DO, LLC (“Applicant”) filed applications to register the following marks:

DR. DRAI (standard characters) for:

Educational and entertainment services, namely, providing motivational speaking services in the field of osteopathic medicine, obstetrics and gynecology provided by a doctor, in International Class 41; and

Health care consulting in the field of osteopathic medicine, obstetrics and gynecology rendered by a doctor; Obstetric and gynecology services rendered by a doctor, in International Class 44²; and



for:

Audio books in the field of women’s health and men’s health; Downloadable MP3 files, MP3 recordings, on-line discussion board posts, webcasts, webinars and podcasts, news, and audio books in the field of women’s health and men’s health; Downloadable webinars in the field of women’s health and men’s health; Electronic publications, namely, magazines, books, manuals, worksheets, workbooks, blogs, journal articles, newspapers, tutorials, forums, research papers, conference papers featuring men’s health and women’s health topics recorded on computer media, in International Class 9;

² Application Serial No. 86590205 was filed on April 7, 2015, under Section 1(a), alleging July 1, 2011 as the date of first use and use in commerce for both services. The application includes the following statement: The name(s), portrait(s), and/or signature(s) shown in the mark identifies Dr. Draion Burch, whose consent(s) to register is made of record. This application is the subject of Opposition No. 91224580.

A series of books, written articles, handouts and worksheets in the field of men's health and women's health, in International Class 16;

Education services, namely, providing non-downloadable webinars in the field of women's health and men's health; Education services, namely, providing classes, webinars, seminars, workshops, conferences in the fields of women's health and men's health; Educational and entertainment services, namely, providing motivational and educational speakers; Educational and entertainment services, namely, providing motivational speaking services in the field of osteopathic medicine, obstetrics and gynecology; Educational services, namely, conducting classes, seminars, conferences, workshops in the fields of women's health and men's health and distribution of training materials in connection therewith; Educational services, namely, providing online instruction in the field of women's health, in International Class 41; and

Providing a web site featuring medical information; Providing medical information; Providing medical information, consultancy and advisory services, in International Class 44.³

Andre Young ("Opposer") opposes registration of Applicant's marks on the grounds of (1) likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C.

³ Application Serial No. 86730410 was filed on August 19, 2015. The Class 9 and 16 goods are based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act. For the Class 41 services, Applicant alleges September 15, 2013 as the date of first use and October 1, 2013 as the date of first use in commerce; for the Class 44 services, Applicant alleges July 01, 2011 as the date of first use and September 15, 2013 as the date of first use in commerce.

Applicant has disclaimed OBGYN & MEDIA PERSONALITY, and the application includes the following statement: The name(s), portrait(s), and/or signature(s) shown in the mark identifies Dr. Draion Burch, whose consent(s) to register is made of record.

Applicant also has provided the following description of the mark: The mark consists of the stylized text "DOCTOR DRAI OBGYN & MEDIA PERSONALITY." The "T" is a cross symbol. The second "O" in the term "Doctor" features a side profile of a woman's face. The jagged line that appears between the text "Doctor" and "Drai" represents a fetal heart rate tracing. Color is not claimed as a feature of the mark. This application is the subject of Opposition No. 91226572.

§ 1052(d); (2) false suggestion of a connection under Trademark Act Section 2(a), 15 U.S.C. § 1052(a); and (3) dilution under Trademark Act Section 43(c), 15 U.S.C. § 1125(c).⁴ Opposer has pleaded ownership of the previously used and registered marks DR. DRE (typed drawing)⁵ for a “series of musical sound recordings” in International Class 9⁶; “posters, art prints and stickers” in International Class 16; “clothing, namely, T-shirts, sweatshirts, caps” in International Class 25; and “entertainment services by a musical artist and producer, namely, musical composition and production of musical sound recordings” in International Class 41.⁷

Applicant filed answers denying the salient allegations in the notices of opposition and asserted affirmative defenses.⁸ Each party filed a trial brief and Opposer filed a reply brief.

⁴ Opposer states in his brief that he “elected not to pursue the dilution claim.” 30 TTABVue 24. In view thereof, the dilution claim is deemed waived.

⁵ Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. § 2.52, was amended to replace the term “typed” drawing with “standard character” drawing. A mark depicted as a typed drawing is the legal equivalent of a standard character mark. *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1236 n.5 (TTAB 2015) (citing Trademark Manual of Examining Procedure (“TMEP”) § 807.03(i)).

⁶ Reg. No. 2275314 issued September 7, 1999; renewed. The registration includes the statement that “‘DR. DRE’ identifies the stage name of a living individual whose consent is of record.”

⁷ Reg. Nos. 2271449, 2271448 and 2271450 for Classes 16, 25 and 41, respectively, all issued on August 24, 1999, and have been renewed. The registrations include the statement that “‘DR. DRE’ identifies the stage name of a living individual whose consent is of record.”

⁸ Applicant’s “affirmative defense” that it is the senior user and has priority constitutes a collateral attack on Opposer’s pleaded registrations, which, in the absence of a counterclaim for cancellation is not permissible. In any event, Opposer’s registrations are more than five years old, so they could not be canceled on a likelihood of confusion ground. Applicant’s defenses of “fair use, informational use and descriptive use” are use-based defenses applied in civil trademark infringement actions and are inapplicable in a Board proceeding which determines questions of registrability. In the ’580 Opposition, Applicant asserted that the

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), the files of the involved applications. Opposer made of record his pleaded Registration Nos. 2275314, 2271449, 2271448, and 2271450 by submitting with his notices of opposition current printouts of information, from the USPTO's Trademark Search and Document Retrieval System database (TSDR), showing the current status and title of the registrations pursuant to Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1); Opposer also submitted additional copies of these registrations from the TSDR database with his notice of reliance. Opposer submitted the following evidence by way of notice of reliance: copy of an Office Action for DOCS by DRE, a third-party application (Serial no. 86768267), copy of notice of opposition for Opposition No. 91219583 involving Serial No. 86214488 for Dre Spitz and order entering default judgment, copy of petition to cancel for Cancellation No. 92056861 involving Reg. No. 4285945 for **dreSuit** and order entering default judgment, selected responses by Applicant to Opposer's Interrogatory requests with accompanying verification, a notice of reliance on Internet printouts and printed publications from Lexis/Nexis purporting to show the notoriety, strength, and fame of the Dr. Dre mark and Dr. Dre, the individual, and Internet printouts from Amazon.com regarding Applicant's principal Draion Burch's book sales.

marks are dissimilar and the goods and services unrelated, which is not a true affirmative defense, but merely an amplification of its denial of the likelihood of confusion claim.

Applicant submitted the testimonial deposition of Draion M. Burch, D.O., principal of Applicant, with exhibits, and submitted a notice of reliance on third-party registrations for phonetic variations of DRE,⁹ the file histories for the involved applications,¹⁰ selected responses by Opposer to Applicant's Interrogatory requests without the verification page, Internet printouts purporting to show Applicant's principal Draion Burch's notoriety and medical experience, printed publications and Internet printouts purporting to show third-party use of Dr. Dre, Dre, and composite marks and phonetic equivalents of Dre; file history pertaining to Cancellation No. 92055378 for Reg. No. 4067361 for DIAMONDDRE and a confidential letter agreement between Opposer and SuperDre Music, LLC.

II. Evidentiary Issues

Both parties, by way of notices of reliance, submitted printouts from various websites downloaded from the Internet.¹¹ Opposer and Applicant also submitted printouts from printed publications. Although admissible for what they show on their face, *see* Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2), this evidence constitutes hearsay and may not be relied upon for the truth of the matters asserted unless a competent witness has testified to the truth of such matters or the evidence is subject to a hearsay exception or stipulation. Fed. R. Evid. 801(c) and 803; *Safer, Inc. v. OMS*

⁹ Applicant's motion, filed August 24, 2017, to amend the cover sheet of its notice of reliance is granted.

¹⁰ As indicated, the file histories of the involved applications are automatically of record, and it was not necessary for Applicant to file copies of the applications in its notice of reliance.

¹¹ Some of the Internet printouts are articles from printed publications such as Forbes, Rolling Stone, and the New York Times.

Invs., Inc., 94 USPQ2d 1031, 1040 (TTAB 2010). However, to the extent that a party has acknowledged as fact any portion of this evidence submitted by the adverse party, we deem such portions of the submitted evidence stipulated into the record for the truth of any matters asserted therein.

Opposer has requested in its brief, in connection with his submitted evidence, that we apply the hearsay exception for printed publications, (newspapers and magazines), that are over twenty years old, or that were published before May 1997.¹² Federal Rule of Evidence 803(16) provides an exception to the hearsay rule for a “statement in a document that is at least 20 years old and whose authenticity is established.” We find that the newspapers or magazines in the record that were published in 1997 or earlier meet the authenticity requirements of Fed. R. Evid. 902(6) and are admissible under the ancient documents exception to the hearsay rule. We treat the newspaper story submissions dated 1997 or earlier in Applicant’s notice of reliance similarly.

Opposer also requests in his brief that we apply the hearsay exception for “[m]arket quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations” for Exhibit nos. DR 176, 184 and 185 which are Internet printouts from grammy.com (Dr. Dre awards list), billboard.com (Dr. Dre chart history) and staticbrain.com (Dr. Dre album sales statistics) for purposes of establishing Opposer’s receipt of Grammy awards, rank on

¹² 30 TTABVUE 12.

the Billboard Hot 100 and Opposer's record sales.¹³ We decline to do so. Not only has Opposer not established that these web pages are compilations contemplated by the rule, Opposer has made no showing that these Internet pages are generally used or relied upon by the public or persons in particular professions.

In his brief, Opposer has referenced an entry for Dr. Dre in the Encyclopedia Britannica which is not in the record and notes that the Board may take judicial notice thereof.¹⁴ The Board, in its discretion, declines to do so.¹⁵ Opposer has not made a specific request for judicial notice nor supplied the necessary information as required by the Rule. Fed. R. Evid. 201(c)(2).

In his brief, Opposer has characterized Exhibit nos. DR 158-162, 175, 179-180, 192-196, which are Internet printouts from Wikipedia (Wikipedia.com), Genius, (genius.com), IMDB (IMDB.com), Biography (biography.com) and All Music (allmusic.com), as "online reference works."¹⁶ However, it has not been shown that any of the referenced online sources constitute a standard reference work or are otherwise authoritative material. With respect to the printouts from the Wikipedia online encyclopedia, the Board previously addressed the admissibility of evidence derived from this website in *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032 (TTAB 2007) and determined that "[t]here are inherent problems regarding the

¹³ 30 TTABVUE 17, n.2.

¹⁴ 30 TTABVUE 18-19.

¹⁵ Even if we had taken judicial notice of this reference, it would not change our decision herein.

¹⁶ 30 TTABVUE 19. IMDB and Genius are collaborative websites similar to Wikipedia.

reliability of Wikipedia entries because Wikipedia is a collaborative website that permits anyone to edit the entries.” Therefore, exhibits from these websites constitute hearsay and we do not accept these printouts as evidence of the truth of the matter asserted therein.

Applicant has requested that the Board take judicial notice of the definitions for “samurai,” “Thai,” “bonsai,” and “chai” and has submitted these definitions from the Merriam-Webster Online Dictionary as an attachment to its brief.¹⁷ Dictionary definitions are generally amenable to judicial notice and we take notice of them. *Hard Rock Cafe Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1405 (TTAB 1998) (although request for judicial notice of dictionary definitions untimely, the Board took judicial notice because relevant to the analysis of likelihood of confusion); *Weight Watchers Int’l, Inc. v. I. Rokeach & Sons, Inc.*, 211 USPQ 700, 702 n.5 (TTAB 1981) (taking judicial notice of official records where relevance is clear from record and briefs).

Applicant also has requested judicial notice of the term “dre” as defined in urbandictionary.com and has provided this definition as an attachment to its brief.¹⁸ While slang dictionaries with fixed printed editions and online forms are appropriate for judicial notice, aside from not having a print edition, the urban dictionary is a collaborative source which the Board treats similar to Wikipedia. *In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2061 n.3 (TTAB 2013). Therefore, the Board declines to take judicial notice of the definition of “dre” from this source.

¹⁷ 32 TTABVUE 14 n.3.

¹⁸ 32 TTABVUE 12.

Applicant has conceded in its brief that Opposer uses Dre as a shortened version of Andre and that Dr. Dre is Opposer's stage name; that Opposer is a record producer and hip hop artist; that Opposer is "responsible for the sale and production of music;" and that "Opposer's net worth is worth of several million dollars."¹⁹

III. The Parties

As we have previously stated, the various articles and Internet materials under Opposer's notice of reliance cannot be used as evidence of the "facts" stated therein, unless subject to a hearsay exception. Thus, many of the facts asserted by Opposer in his brief have no evidentiary support. While we do not consider these articles and stories for the truth of the matter, these articles and stories can be considered to show that Opposer/Dr. Dre has been the subject of significant unsolicited media coverage involving a variety of commercial and philanthropic endeavors and has been subject to media coverage in connection with his earnings as a "hip hop cash king" or celebrity. *See Mag Instrument Inc. v. Brinkmann Corp.*, 96 USPQ2d 1701, 1708 (TTAB 2010) ("probative value [of Internet materials] is strictly confined to showing that the public may have been exposed to those internet websites and therefore may be aware of the information or advertisements contained therein").

With regard to the newspaper and magazine articles subject to a hearsay exception, we derive the following facts about Opposer and his musical sound recording and musical sound recording production services.

¹⁹ 32 TTABVUE 8, 12-13, 18.

Opposer, Andre Rommel Young, is known by the stage name Dr. Dre and referred to in the press as Dr. Dre.²⁰ Opposer has been considered “the single most important force behind L.A. hip-hop” and has discovered and produced rappers Parcyde, Snoop Dog, and the Lady of Rage, collaborated with musical artist Ice Cube, and contributed to the Natural Born Killers soundtrack album.²¹ Opposer also launched record labels Death Row records and Aftermath.²²

Opposer, identified as Dr. Dre, was a member and producer of the Los Angeles rap group N.W.A. The N.W.A. album Niggaz4Life, which Dr. Dre produced, was known for “[p]ropane material [that] pushes notions of what is acceptable musically to the limit; subject matter ranges from harder-than-the-rest braggadocio to customary disses of ex-comrade Ice Cube and mind-boggling misogyny (titles: ‘To Kill A Hooker,’ ‘One Less Bitch,’ ‘Findum, Fuckum & Flee’).”²³ Dr. Dre’s first solo rap album under the stage name Dr. Dre was The Chronic.²⁴ The Chronic was considered a “rap masterwork” and achieved double platinum status by the end of 1993, selling

²⁰ 16 TTABVUE 582; 20 TTABVUE 107.

²¹ 16 TTABVUE 518, 521, 525, 582; 20 TTABVUE 10.

²² 16 TTABVUE 508, 582.

²³ 16 TTABVUE 584.

²⁴ 20 TTABVUE 107.

more than 3 million copies.²⁵ In 1994, Billboard ranked *The Chronic* as the sixth bestselling album of 1993 as well as the fifth biggest selling rap album.²⁶

In 1995, Opposer, identified as Dr. Dre, won Source hip hop awards for producer of the year, album of the year, best artist, best producer and best album all for *The Chronic*.²⁷

Applicant, Draion M. Burch DO, LLC, is a company owned by Draion M. Burch, a board certified osteopathic doctor and OB/GYN.²⁸ Applicant's owner's nickname is Draï, derived from his name Draion, and he refers to himself as Dr. Draï, as does his family, his professors, his medical colleagues, and his patients.²⁹ Through the LLC, Applicant's owner provides obstetrics and gynecological medical services and speaking services on women's health and transgender health.³⁰ Under the "Dr. Draï brand" Applicant's owner has authored books, made television and radio

²⁵ 16 TTABVUE 574, 598. Songs on the album include what was described as "militant fare:" "The Day the Niggaz Took Over," and "Nigga Witta Gun," as well as "Lil Ghetto Boy," "Rat-Tat-Tat-Tat," "Stranded On Death Row" and the hits "Nuthin' But a 'G' Thang," (where "G" stands for Gangster) and "Dre Day." 16 TTABVUE 560, 574; 20 TTABVUE 107. The rap music on *The Chronic* was described as "epithet-laced and insult-laden." 20 TTABVUE 107.

²⁶ 16 TTABVUE 547, 557.

²⁷ 16 TTABVUE 537.

²⁸ 25 TTABVUE 11, 14, 35, 93, 174.

²⁹ 25 TTABVUE 16-17, 98-99, 115-116. "[B]ecause my name is Draion, everyone calls me Draï in my family. All my friends call me Draï. When I became a physician and I graduated from medical school, I became Dr. Draï, obviously because I'm actually a physician." 25 TTABVUE 16-17.

³⁰ 25 TTABVUE 12-13.

appearances, conducted Twitter chats, and participated in speaking engagements and online videos all relating to women's health and transgender health topics.³¹

IV. Standing

Opposer has properly made his pleaded registrations of record by submitting copies with his notices of opposition and by way of notice of reliance. Trademark Rule 2.122(d)(1)-(2), 37 C.F.R. §§ 2.122(d)(1)-(2). In view thereof, we find Opposer has established his personal interest in this proceeding and proven his standing. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *see also Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

V. Priority

Because Opposer has made his pleaded registrations of record and shown they are valid and subsisting, priority is not an issue in this case as to the DR. DRE marks for the goods and services recited in those registrations. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711, 1712 (TTAB 1993).

³¹ 25 TTABVUE 12-13, 60-61, 63-65, 67-69, 75-76, 85-86. Applicant's owner testified that he is a "gay gynecologist" and that as a "part of the LGBT community . . . a lot of transgender people come to me, a lot of lesbians come to me [for health care]." 25 TTABVUE 40, 42, 78.

VI. Likelihood of Confusion

We first turn to the likelihood of confusion ground. We consider Opposer's pleaded registered marks vis-à-vis the marks in the involved applications. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014). In our analysis we will focus on Opposer's pleaded registrations with the classes of goods and services which can be considered closest to the goods and services in the subject applications, namely Reg. No. 2275314 and its International Class 9 goods and Reg. No. 2271450 and its International Class 41 services.³² *Fiserv, Inc. v. Elec. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015). If we find a likelihood of confusion as to these pleaded registrations, we need not find it as to the others. On the other hand, if we do not reach that conclusion, we would not find it as to the other pleaded registrations either. *Id.* (citing *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010)).

Our determination under Trademark Act Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). Opposer must establish that there is a likelihood of confusion by a preponderance of the evidence.

³² We note that these goods and services are the ones that Opposer has referenced in his arguments.

A. Similarity of the Marks

As to the first *du Pont* factor, “similarity or dissimilarity of the marks,” we analyze “the marks in their entirety as to appearance, sound, connotation and commercial impression.” *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) quoting *du Pont*, 177 USPQ at 567. *See also Palm Bay Imps. 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. Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Serial No. 86590205 DR. DRAI

Applicant’s mark is DR. DRAI and Opposer’s mark is DR. DRE. The marks are similar in appearance in that both are two words with each mark having as the first word an identically pronounced abbreviation for doctor (Dr.), and the second word in each mark beginning with the letters “dr.” The marks differ in appearance because Opposer’s mark ends with the vowel “e” while Applicant’s mark ends with the vowel combination “ai.” As to sound, both marks are three syllables. We find the marks are

phonetic equivalents and are capable of being pronounced so as to sound similar, with consumers pronouncing the DRE/DRAI portion of each parties' mark with a "long a" sound. Applicant does acknowledge in its testimony that the parties pronounce DRAI and DRE the same.³³ Nonetheless, Applicant submits that while DRE in Opposer's mark is pronounced with a "long a" sound, (as a "shortened version of the given name Andre")³⁴, consumers would more likely pronounce DRAI as a "long i" sound due to consumers' familiarity with the pronunciation of "long i" words bonsai, samurai, chai or thai. We recognize that there is no correct pronunciation of a trademark, and not all purchasers would pronounce DRE/DRAI the same. Nevertheless, given that the more common pronunciation for the "ai" vowel combination is the "long a" sound, (similar to the word aid) we think it more likely that numerous consumers would pronounce DRAI in this manner. *See In re Belgrade Shoe Co.*, 411 F.2d 1352, 162 USPQ 227, 227 (CCPA 1969) (while "there is no correct pronunciation of a trademark," the court held that "one is very likely to pronounce 'Collegienne' as if it were spelled 'Colleejen' or 'Colleejun.'"). Thus, we find the marks are similar as to sound.

As to connotation and commercial impression, Applicant argues that the use of "Dr." in the marks is insignificant, submitting that the wording "Dr." or "doctor" is "routinely used as a clever play on expertise" and as a reference to individuals who

³³ 25 TTABVUE 156-57. According to Applicant, Draï is a shortened form or nickname of Draion, a given name. *Id.* at 157.

³⁴ 32 TTABVUE 8.

are doctors by title.³⁵ Applicant also argues that the marks are distinguishable because DRE and DRAI are shortened versions of the parties' dissimilar first names, Draion and Andre, and are spelled differently. However, we find the marks are similar. Both marks reference a particular person after the abbreviation of the term "Dr." and consumers would likely view these marks in a similar manner, i.e., as a reference to a particular person with expertise. The minor difference in the spelling of DRE and DRAI is not sufficient to distinguish the marks. Although there are some visual differences, whether spelled as DRE or DRAI, the word has the same pronunciation and connotation of a name. We find the marks as a whole are more similar than dissimilar, and this *du Pont* factor weighs in favor of a finding of a likelihood of confusion.



Applicant's mark  is a word and design mark. In considering likelihood of confusion, we must consider the marks in their entirety; however, there is nothing improper in giving more weight, for rational reasons, to a particular feature of a mark. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In the case of marks which consist of words and a design, the words are normally accorded greater weight because they would be used by purchasers to

³⁵ 32 TTABVUE 12.

request the goods or services. *See In re Viterra*, 101 USPQ2d at 1908 (“In the case of a composite mark containing both words and a design, ‘the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.’”) (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983)); *In re Dakin’s Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999) (“words are normally accorded greater weight because they would be used by purchasers to request the goods”). Also, disclaimed or otherwise descriptive matter is generally viewed as a less dominant or significant feature of a mark. *See In re Nat’l Data Corp.*, 224 USPQ at 751-52.



Applicant’s  mark has some obvious differences to Opposer’s DR. DRE mark in appearance and pronunciation due to the addition of disclaimed descriptive or generic wording, the use of the full term DOCTOR, rather than the abbreviation, and the addition of a design. The most prominent features of Applicant’s word and design mark are the words DOCTOR DRAI, which are in a substantially larger type and a more prominent position than the disclaimed terms OBGYN AND MEDIA PERSONALITY. Applicant claims that the design creates a “significant visual impression” as does the stylized wording.³⁶ We disagree. DOCTOR DRAI is the dominant feature of Applicant’s word and design mark. Although design elements are incorporated into the letters “t” and “o” in the word “doctor,” consumers

³⁶ 32 TTABVUE 15.

are more likely to remember the letters as forming the word “doctor” rather than the incorporated design. The “fetal heart rate tracing” design element, which is less visually prominent than DOCTOR DRAI, would not be articulated by consumers when calling for the goods and services. As discussed with Applicant’s standard character mark, the DOCTOR DRAI portion of this mark is the phonetic equivalent of DR. DRE, and also as found with the standard character mark, DOCTOR DRAI and DR. DRE have a similar connotation and commercial impression. When



considered in its entirety, Applicant’s mark is more similar than dissimilar to Opposer’s DR. DRE mark, and this *du Pont* factor weighs in favor of a finding of a likelihood of confusion.

B. Strength of Opposer’s Mark

The fifth *du Pont* factor is the strength or fame of the prior mark,³⁷ and the sixth *du Pont* factor is the number and nature of similar marks in use for similar goods or services. *du Pont*, 177 USPQ at 567. It is Opposer’s position that his mark is strong.³⁸

In determining the strength or weakness of a mark, we consider both its inherent strength (conceptual strength) based on the nature of the term itself and its

³⁷ The Federal Circuit uses the term ‘fame’ instead of ‘strength’ in evaluating likelihood of confusion. 1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 4:16 (5th ed. March 2018). Fame, if it is found, must be accorded significant weight in the likelihood of confusion analysis. *See Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002).

³⁸ In connection with the likelihood of confusion claim, Opposer has not specifically alleged in his notices of opposition that his mark is famous nor specifically argued that his mark is famous.

commercial/market strength based on use in the marketplace. *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017). To determine the conceptual strength of the mark, “we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words.” *In re Davia*, 110 USPQ2d 1810, 1814 (TTAB 2014). Market strength is the extent to which the relevant public recognizes a mark as denoting a single source.³⁹ *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017); *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). *See also In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1744-45 (TTAB 2016) (market strength is “the degree of association in the mind of the consumer of the mark with the source of the goods or services based on the exclusivity (and sometimes renown) of the mark in the relevant market.”). Evidence of third-party use may reflect commercial weakness, while third-party registration evidence that does not equate to proof of third-party use may bear on conceptual weakness if a term is commonly registered for the same or similar goods or services. *See 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”); *Tao Licensing*, 125 USPQ2d at 1057.

³⁹ This factor involves assessing the mark “along a spectrum from very strong to very weak.” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017).

Opposer argues that his DR. DRE mark is arbitrary and entitled to a broad scope of protection while Applicant argues that the DR. DRE mark is a combination of “two common elements that are inherently weak.”⁴⁰

To support its assertions, Applicant has introduced evidence of third-party registrations for phonetic variants of the term DRE. None of the registrations covers the specific type of goods and services identified in Opposer’s Class 9 and Class 41 registrations.⁴¹ The most relevant of these registrations are as follows:

Registration No.	Mark	Goods or Services
Reg. No. 3836211	DRAI’S HOLLYWOOD	Class 41: nightclubs
Reg. No. 3660562	DRAI’S ⁴²	Class 41: nightclubs
Reg. No. 4551215	DRA	Class 41: entertainment in the nature of theater productions; instruction in the field of music
Reg. No. 4995595	DRA	Class 9: downloadable music files; phonograph records featuring music; compact discs featuring music
Reg No. 4182571	DRAY	Class 9: Apparatus for recording, transmission, processing and reproduction of sound, images or data

⁴⁰ 32 TTABVUE 31.

⁴¹ Applicant has not introduced any third-party registration evidence of the asserted conceptual weakness of “Dr.” or “Doctor.”

⁴² Applicant has provided news stories relating to DRAI’s nightclubs which are referred to in the stories as Drai’s Nightclub, Drai’s Nightclub at The Cromwell, and Drai’s Beachclub. 21 TTABVUE 2-78, 106-107.

The only registration that covers goods similar to Opposer's goods is Reg. No. 4995595, a Section 66(a) registration for the phonetic equivalent DRA. We accord little probative value to this registration which is not use-based. The other third-party registrations also are of limited probative value because while they could be categorized as belonging generally to the entertainment field or tangential to musical recordings, they do not involve the same or similar goods and services as Opposer and are only marginally related. *See Conde Nast Publ'ns, Inc. v. Am. Greetings Corp.*, 329 F.2d 1012, 141 USPQ 249, 251-52 (CCPA 1964) (third party registrations showing goods with "different descriptive properties" insufficient to show weakness). Except for the third-party registration for DRAI'S, there is no evidence of use to show consumer exposure to these marks. We do not find the registrations to be sufficient to establish that the DRE portion of Opposer's mark is weak or that Opposer's mark as a whole is weak. "A personal name mark, unless it is primarily merely a surname, is registrable on the Principal Register without a showing of secondary meaning, and thus is deemed to be inherently distinctive under the Lanham Act if the record shows that it is used in a manner that would be perceived by purchasers as identifying the services in addition to the person." *Brooks v. Creative Arts By Calloway LLC*, 93 USPQ2d 1823, 1829 (TTAB 2009) (case citations omitted). *See also In re Carson*, 197 USPQ 554 (TTAB 1977) (individual's name may function as a trademark or service mark). Therefore, as to conceptual strength, we find that Opposer's DR. DRE mark is inherently distinctive.

As to his mark's commercial strength under the fifth *du Pont* factor, Opposer points to evidence that "the DR. DRE name and mark has been the subject of immeasurable publicity and accolades, including unsolicited publicity in prominent national publications" and "Forbes magazine consistently has ranked Dr. Dre as one of the highest-earning celebrities and musicians."⁴³ Applicant, on the other hand, argues that third-party uses of "Dr." and phonetic variants of "Dre" as well as the use of "Dr. Dre" by another individual in a related if not identical field shows that the DR. DRE mark is weak under the sixth *du Pont* factor.⁴⁴

We point out that, to the extent any marketplace strength or fame attaches to the DR. DRE mark, it is in connection with Opposer's musical sound recordings and his production of musical sound recordings.⁴⁵ As to musical composition services, there is no evidence of sales or advertising, and the press coverage that could relate to these services is minimal.⁴⁶

⁴³ 30 TTABVUE 44.

⁴⁴ 32 TTABVUE 31.

⁴⁵ As discussed, we are focusing on the most relevant goods and services in Classes 9 and 41. We note that there is no evidence of sales, advertising or any public recognition of Opposer's mark in connection with Class 16 posters, art prints, stickers and Class 25 clothing.

⁴⁶ It appears there are five submissions which reference Dr. Dre in connection with songwriting, which could fall under music composition services. Most are hearsay. The two submissions which are subject to a hearsay exception are a mere passing mention in a review of a music single and do not reflect a reference to the DR. DRE service mark but to the individual Dr. Dre. See for example:

**** DR. DRE INTRODUCING SNOOP DOGGY DOGG Deep Cover (no timing listed)**
PRODUCER: Dr. Dre
WRITERS: Dr. Dre, C. Wife, Snoop
PUBLISHERS: Sony/Nuthouse, ASCAP; Pending
Solar-Epic 74547 (c/o Sony) (cassette single)

16 TTABVUE 577.

To measure the market strength or fame of a mark, normally we look to the volume of sales and advertising expenditures for the goods and services sold under the mark, and by the length of time those indicia of commercial awareness have been evident. *Bose Corp. v. QSC Audio Prods. Inc.*, 63 USPQ2d at 1309. Here, opposer has provided no evidence of the volume of his sales or of his advertising expenditures in connection with musical sound recording production services and no evidence of advertising expenditures in connection with musical sound recordings. There is some evidence from newspaper and magazine articles relating to Opposer's sale of musical sound recordings. Although we have considered the evidence from newspaper and magazine articles up to 1997 under the hearsay exception, there is no clear evidence of sales of Opposer's musical sound recordings under the mark subsequent to 1997, as these newspaper and magazine articles and Internet web pages are hearsay and cannot be considered for the truth of the matter. As previously stated, we have not found the other articles and evidence subject to a hearsay exception, and we do not accept these printouts as evidence of the truth of the matter asserted therein.

For the most part, Opposer's printed publications and Internet evidence are hearsay. These articles and web pages are evidence only of the manner in which the term is used in the news stories and articles and of the fact that the public has been exposed to the stories and articles and may be aware of the information they contain. Many of the stories, articles or web pages do not relate to musical sound recordings and musical sound recording production services.⁴⁷ For example, there are stories

⁴⁷ Some articles provide additional designation and refer to Opposer as a producer, rapper, or music icon, while other articles refer to him as Beats co-founder, Apple Executive, mogul,

related to Dr. Dre's Coachella performances, the Straight Outta Compton biopic on the rap group N.W.A., Dr. Dre's Beats radio show, the Apple Beats sale, an HBO documentary featuring Dr. Dre and Jimmy Iovine, the funding by Dr. Dre and Jimmy Iovine of a multidisciplinary degree program at a California university, Dr. Dre's participation in an ice bucket challenge, Dr. Dre's role in a Dr. Pepper commercial, Dr. Dre's monetary gift for terrorism victims, Dr. Dre's role in the Training Day movie, Dr. Dre receiving a key to the city of Compton, California, and Dr. Dre planning an original TV show. These articles are not evidence of the attention Opposer's products (musical sound recording) and services (musical sound recording production) have received.

As to the articles which do reference Opposer in connection with musical sound recording or production of musical sound recordings, in many instances Opposer was one of many individuals listed or briefly discussed.⁴⁸ Many of the articles do not feature stories about Opposer's brand or his goods or services, but simply mention Opposer in the larger context of stories concerning albums, record singles, rap music, or awards. Such brief mentions in articles would have limited impact on the purchasing public. *See Old Swiss House, Inc. v. Anheuser-Busch, Inc.*, 569 F.2d 1130, 196 USPQ 808, 810 (CCPA 1978) ("12 articles, each published only once, which appeared in various newspapers and trade journals" and in which "in all but one, the

or entrepreneur. In cases where Dr. Dre is mentioned in passing and not featured, it is not clear to what extent DR. DRE makes any impression on the reader as a trademark or service mark rather than a reference to the individual.

⁴⁸ At least sixty-three of the articles are from the same source, Billboard.

mark . . . was buried in the body of the articles” . . . “is not the type of public exposure of a mark that would be expected to have any significant impact on the purchasing public”); *In re Tennis Indus. Ass’n*, 102 USPQ2d 1671, 1681 (TTAB 2012) (applicant’s mark not likely to be noted in connection with news stories where brief mention made). *Safer Inc.*, 94 USPQ2d at 1042 (Board could not make inference of fame in studies where DEER AWAY mark was one of many repellants identified in the studies and it was in no way singled out as a particularly well-known product). There also is no evidence regarding the unique visitors to the various websites in which Opposer’s products and services have been referenced or appeared.⁴⁹ *See Safer Inc.*, 94 USPQ2d at 1042 (Board could not infer fame or renown of mark referenced in governmental studies and university sponsored articles, studies or reports in absence of circulation figures).

While the evidence of record does not support a finding that the mark DR. DRE, as used in connection with the Classes 9 and 41 goods and services, has achieved a degree of fame that would fall at the “very strong” end of the spectrum regarding the commercial strength of a mark, it does reflect significant exposure to the public over the years to DR. DRE, as used in connection with musical sound recording and musical sound recording production services, as the result of widespread unsolicited media attention. We find on this record that the DR. DRE mark has achieved a degree of renown in the music field and is strong.

⁴⁹ For example, it is unclear to the extent the websites thefader.com, spin.com, hypebeast.com, boombox.com, pitchfork.com, altpress.com, nme.com, and vibe.com have been viewed.

As to the sixth *du Pont* factor, Applicant argues that third-party uses show the relative weakness of DR. DRE in related and identical fields.⁵⁰ To support its assertions, Applicant has introduced evidence of third-party uses of phonetic variants of DRE, including those used in combination with another term, and use by one third party of Doctor Dre.⁵¹ As to the term Dr./Doctor, Applicant points to use by a professional basketball player of the terms “Dr. J.”⁵² and “well known” physicians and medical celebrities that use “Dr.” with their first name, such as Dr. Travis, Dr. Rachael, Dr. Jenn, and Dr. Phil for unspecified services.⁵³ The third-party uses of DRE or its phonetic variants provided by Applicant are The Dray Way, used by a talent agent, Dray Day, used in connection with podcasts, Draï’s, used for nightclubs, and SuperDre, used for deejay services.⁵⁴ There is also one third-party use of Doctor Dre, used by a radio deejay and TV-host (video-deejay).⁵⁵

The third-party uses of Dr./Doctor by medical doctors or a basketball player are not probative of the weakness of “Dr.” as this evidence does not show use in connection with the same or similar services as Opposer. Similarly, the third-party uses for The

⁵⁰ 32 TTABVUE 31.

⁵¹ Applicant has not introduced evidence to show the number and nature of third-party uses of “Dr.” or “Doctor” to support its assertion of commercial weakness of this term.

⁵² While the Wikipedia entry submitted by Opposer is hearsay, we consider Applicant to have stipulated to the truth regarding the statement made as to Julius Erving (“Dr. J.”) by Applicant’s reliance thereon. 19 TTABVUE 316.

⁵³ 25 TTABVUE 128-129. Applicant’s testimony is not substantiated with any supporting documentation regarding these uses. Applicant’s principal testified that doctors in the media use their first names with their doctor title to be more personable with the audience. *Id.*

⁵⁴ 21 TTABVUE 2-144, 207-223.

⁵⁵ 20 TTABVUE 92-138. Also shown as Doctor Dré in some articles. *See e.g.*, 20 TTABVUE 92, 121.

Dray Way, Dray Day and Drai's also are of limited probative value as to the weakness of "Dre" because while the services may be generally classified in the entertainment field, they are only marginally related to Opposer's music production services. Although the use of SuperDre in connection with deejay services may be more closely related to Opposer's music production services, this single use would not be sufficient to show weakness of the term DRE. Lastly, the one use of Doctor Dre by a third party is insufficient to establish that Opposer's mark is weak. *Corp. Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1690 n.13 (TTAB 1987) ("[A] single third-party use cannot serve to establish that the term 'SHAPE' is 'weak' in the sense that it has been commonly used in the field as to not have very much effect in distinguishing source.") (parenthetical omitted); *In re U.S. Shoe Corp.*, 8 USPQ2d 1938, 1940 (TTAB 1988) ("The weakness of the registered mark is not demonstrated by a single third-party use"); *Bank of Am. Nat'l Trust & Sav. Ass'n v. The First Nat'l Bank of Allentown*, 220 USPQ 892, 897 (TTAB 1984) (same).

Applicant's evidence does not establish that there is significant third-party use of Dr./Doctor marks, Dre marks or Dr. Dre marks in connection with Opposer's goods and services such that DR. DRE is weak and entitled to a narrow scope of protection. In view of the widespread unsolicited media coverage and publicity of DR. DRE we find that the DR. DRE mark would be viewed as a strong and distinctive mark in connection with musical sound recording and musical sound recording production services. Although the record supports a finding that Opposer's DR. DRE mark is a strong mark, the strength of the mark on this record does not reach the level of

playing “a ‘dominant’ role in the process of balancing the *du Pont* factors.” *Recot Inc. v. Benton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).

C. Relatedness of Goods and Services and Channels of Trade

We evaluate the relatedness of Applicant’s and Opposer’s goods and services based on the identification of goods and services as set forth in the involved applications, compared with the identification of goods and services contained in the pleaded registrations of record. See *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Computs. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). We keep in mind that the respective goods and services do not have to be identical or even competitive in order to determine that there is a likelihood of confusion; rather, it is sufficient that the respective goods and services are related in some manner, or the conditions surrounding their marketing must be such that the goods and services will be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that they originate from the same source. *Coach Servs.*, 101 USPQ2d at 1722, (quoting *7-Eleven Inc. v. Wechler*, 83 USPQ 1715, 1724 (TTAB 2007)); *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000). The issue is not whether purchasers would confuse the goods or services but whether there is a likelihood of confusion as to the source of the goods or services. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984).

Because each class in Applicant’s multi-class applications is, in effect, a separate application, we determine whether Opposer has shown a likelihood of confusion with respect to each class of goods and services in each involved application. *N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1228 (TTAB 2015). Opposer’s services are “entertainment services by a musical artist and producer, namely, musical composition and production of musical sound recordings.” Opposer has focused on the following of Applicant’s Class 41 services: “educational and entertainment services, namely, providing motivational speaking services in the field of osteopathic medicine, obstetrics and gynecology provided by a doctor,” in Application Serial No. 86590205, and Applicant’s “educational and entertainment services, namely, providing motivational and educational speakers; educational and entertainment services, namely, providing motivational speaking services in the field of osteopathic medicine, obstetrics and gynecology,” in Application Serial No. 86730410.

Opposer argues that Applicant’s “educational and entertainment services, namely, providing motivational and educational speakers” are related to Opposer’s “entertainment services [by a musical artist and producer] because consumers would perceive that the provision of motivational or educational speakers is related to Opposer’s musical composition and production services due to the entertainment nature of both types of services.”⁵⁶ Opposer has submitted no evidence to support this assertion.

⁵⁶ 30 TTABVUE 41.

In some cases, the Board is able, in the absence of evidence, to make an affirmative finding that the involved goods or services are related based solely on the goods or services as described in the involved application and registration. *See, e.g., Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1438 (TTAB 2014) (goods in part are legally identical because the broadly identified “jewelry” encompasses within its scope all of the specific jewelry items described in the application). *See also Hewlett-Packard*, 62 USPQ2d at 1004 (although addressing the issue of likelihood of confusion, the court held that the respective identifications of goods were, themselves, evidence as to the relatedness of the parties’ goods and extrinsic evidence of relatedness was not per se required). In this case, it is apparent that the only thing these respective services have in common is that they both are identified as “entertainment services.” That general point of similarity is not enough to support a finding that the parties’ specific services are related. *Bose Corp. v. QSC Audio Prods. Inc.*, 63 USPQ2d at 1310 (“a broad general market category is not a generally reliable test of relatedness of products”). The record does not provide any context for entertainment services as a general market category, and Applicant’s entertainment and educational motivational speaking services which are specifically limited in content to osteopathic medicine, obstetrics and gynecology are a subject matter which is obviously far removed from music. With regard to Applicant’s educational and motivational speaking services generally, (and those not limited by content), Opposer has provided no evidence of the relatedness of the parties’ respective services. Absent extrinsic evidence as to how musical composition, musical

production and educational and motivational speaking services are related, the fact that these services fall within the general category of entertainment is insufficient on its face to show relatedness. *See Cooper Indus., Inc. v. Repcoparts USA, Inc.*, 218 USPQ 81, 84 (TTAB 1983) (“the mere fact that the products involved in this case (or any products with significant differences in character) are sold in the same industry does not of itself provide an adequate basis to find the required ‘relatedness’”). We find these particular services are not related.

As to the remainder of Applicant’s goods and services, Opposer acknowledges the limitations on the subject matter to the fields of women’s and men’s health, medicine, obstetrics, or gynecology. Although, as we have said, each class of each application is essentially a separate application for which Opposer has the burden to prove likelihood of confusion, Opposer has not directly addressed which of these other goods or services in each class it claims to be related to his goods and services. Opposer submits that confusion is likely because the remaining goods and services “are offered in non-medical settings to the general public (general interest tv, general interest radio shows, charity functions, corporate events).” However, the mere fact that Applicant’s goods and some of Applicant’s services could be offered in non-medical settings is insufficient to warrant a finding that Opposer’s and Applicant’s goods and services are related. *See Elec. Design & Sales Inc. v. Elec. Data Sys. Corp.*, 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992) (“[A]lthough the two parties conduct business not only in the same fields but also with some of the same companies, the mere purchase of the goods and services of both parties by the same institution does

not, by itself, establish similarity of trade channels or overlap of customers.”). There is no per se rule in this regard; rather, each case must be determined on the facts therein.

In this case, there is no evidence of record to show that a single company sells or offers the types of goods and services of both parties or that consumers would likely believe that the parties’ goods and services would emanate from the same source. *See e.g., N. Face Apparel*, 116 USPQ2d at 1232 (while opposer provided evidence that clothing and backpacks, and electric scooters or mopeds or motorcycles can be sold through the same channels of trade, this evidence was insufficient to show that consumers would believe that the same company that sells clothing and tents and backpacks would also sell motorcycles and electric scooters, even when the goods are offered in the same store). We find that the record does not support that the goods and services offered by Applicant in non-medical settings are related to Opposer’s musical sound recordings or musical composition and musical sound recording production services.

Opposer also argues that consumers would consider the goods and services of Applicant as licensed products and services of Opposer since “the names and likenesses of well-known persons frequently are licensed for use on various goods and services.”⁵⁷ It is true that the Board has recognized in prior cases that it is a common practice to license commercial trademarks for use on “collateral” products (such as clothing, glassware, linens, etc.), which are unrelated in nature to the goods or

⁵⁷ 30 TTABVUE 33, 42.

services on which the marks are normally used. Here, Opposer has not shown that he has a history of licensing or that he has done any licensing at all. Nor has Opposer even shown that Applicant's goods and services are of the type for which owners of merchandising marks would license their marks. *See Blue Man Prods. v. Tarmann*, 75 USPQ2d 1811, 1820 (TTAB 2005), *rev'd on other grounds*, slip. op. 05-2037, (D.D.C. Apr. 3, 2008) (noting that there was no evidence of licensing by opposer or others to establish relatedness of tobacco and cigarettes, and musical recordings, magnets, postcards, posters, hats, T-shirts, sweatshirts, and musical and theatrical performances).

Lastly, Opposer has not addressed nor provided any evidence in support of the relatedness of his goods and services to Applicant's "health care consulting in the field of osteopathic medicine, obstetrics and gynecology rendered by a doctor; obstetric and gynecology services rendered by a doctor" and medical consulting and medical advisory services. We find on the face of the involved applications and pleaded registrations that these goods and services are not related.

In view of the foregoing, we find the factor regarding the similarity or dissimilarity of the goods and services favors Applicant.

As to the channels of trade, absent any specific limitations in Applicant's identification of goods and services and the identification of goods and services contained within Opposer's pleaded registrations, the issue of likelihood of confusion must be determined by looking at all the usual channels of trade and methods of

distribution for the respective goods and services. *See CBS Inc. v. Morrow*, 218 USPQ at 199.

As there are no restrictions with regard to the goods and services in the pleaded registrations and the involved applications, we must presume that they move in all normal and usual channels of trade and methods of distribution for those goods and services and that they are available for purchase by all the usual purchasers. *See Octocom Sys.*, 16 USPQ2d at 1787. Applicant's testimony and supporting exhibits indicate that Applicant uses a website and social media (Facebook, Twitter, YouTube, Instagram, Pinterest, Google+, and LinkedIn), blogging, television, radio, "new media"⁵⁸ online publications and print media in connection with the DR. DRAI brand to reach consumers.⁵⁹ Opposer argues that his goods and services are offered through the same trade channels of television, radio shows and social media, referencing Exhibit Nos. DR 188-191, which are screenshots of Opposer's Dr. Dre Facebook, Twitter, Instagram and YouTube pages.⁶⁰ To the extent this evidence may be accepted to show on its face that Opposer advertises in the same general media, the parties' trade channels generally overlap. However, we accord very little weight to this factor on this record. *Federated Foods Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (existence of an environment where wide variety of goods offered in same store, does not necessarily support likelihood of confusion);

⁵⁸ Applicant identifies these as online publications such as Good Housekeeping, Bustle and the New York Post. 25 TTABVUE 76-77.

⁵⁹ 25 TTABVUE 17, 33, 39, 41, 44-45, 51, 52, 74-77, 156, 249-253.

⁶⁰ 30 TTABVUE 19.

Parfums de Coeur, Ltd. v. Lazarus, 83 USPQ2d 1012, 1021 (TTAB 2007) (“[M]ere fact that opposer may advertise its products on the same cable television channels . . . is not enough . . . to demonstrate that the factor of the channels of trade favors opposer.”); *Standard Knitting, Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 USPQ2d 1917, 1932 (TTAB 2006) (“simply because automobiles and clothing may both be marketed over the Internet does not lead to the conclusion that the goods would emanate from the same source”). We find this *du Pont* factor is neutral.

D. Conditions of Sale

As to the *du Pont* factor focusing on the conditions under which and buyers to whom sales are made, Applicant argues confusion is still unlikely due to the degree of care exercised by consumers when acquiring Applicant’s health care services and Opposer’s music composition and production services. Applicant’s testimony indicates that his typical fee for a speaking engagement is \$5,000, and that depending on the medical situation, he charges between \$1,000 to \$5,000 for medical services.⁶¹ Additionally, Applicant testified that some of the purchasers for his educational services are doctors and that some of the classes or webinars he provides may only be attended by medical doctors.⁶²

We acknowledge that at least some of Applicant’s services are of the type where the consumer exercises a higher degree of care, as do consumers of Opposer’s music composition and production services. *See e.g., Coach Servs. Inc. v. Triumph Learning*

⁶¹ 25 TTABVUE 133-134.

⁶² 25 TTABVUE 101-102.

LLC, 96 USPQ2d 1600, 1608 (TTAB 2010), *aff'd-in-part, rev'd-in-part* and *remanded on other grounds*, 668 F.3d 1356, 101 USPQ2d 1713, 1723 (Fed. Cir. 2012). (educational professionals responsible for purchasing educational materials for school systems are likely to exercise a very high degree of care); *Carefirst of Md., Inc. v. FirstHealth of the Carolinas, Inc.*, 77 USPQ2d 1492, 1503 (TTAB 2005) (“[I]t is common knowledge that even ordinary consumers tend to exercise some sophistication when it comes to decisions relating to healthcare and healthcare insurance services.”). However, at least some of the goods and services of Applicant and Opposer, e.g., musical sound recordings, audio books, electronic publications, would be offered to the general consumer. These less sophisticated consumers may therefore exercise less care in their purchase, thereby making confusion more likely. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 USPQ2d at 1163 (affirming that TTAB properly considered all potential investors for recited services, which included sophisticated investors, but that precedent requires consumer care for likelihood-of-confusion decision to be based “on the least sophisticated potential purchasers”); *Alfacell Corp. v. Anticancer Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004) (noting that where both sophisticated and members of the general public are relevant consumers, the standard is equal to that of the least sophisticated consumer). Additionally, the fact that some purchasers may exercise care before utilizing these services does not mean there can be no likelihood of confusion. *Carlisle Chem. Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970)

(“Human memories even of discriminating purchasers . . . are not infallible.”). We find this *du Pont* factor neutral.

E. Extent of Concurrent Use and Actual Confusion

Applicant argues that the parties have coexisted for ten years without actual confusion.⁶³ While there is no evidence of any actual confusion in the record, there also is no evidence that a meaningful opportunity for actual confusion has existed. Moreover, a lack of evidence of actual confusion does not mean that there is no likelihood of confusion. *J&J Snack Foods Corp. v. McDonald’s Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991); *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983). We find this *du Pont* factor neutral.

F. Variety of Goods and Services on which a Mark is Used

This *du Pont* factor assumes that use of the same mark by a single source on a wide variety of products (house mark, family of marks, product mark) makes it more likely that relevant consumers will be confused by the similar mark of a newcomer. *See, e.g., Uncle Ben’s, Inc. v. Stubenberg Int’l Inc.*, 47 USPQ2d 1310, 1313 (TTAB 1998). As Applicant points out, Opposer’s DR. DRE registrations reflect the offering of goods and services in the music field or in connection with collateral or promotional items related thereto. We find this *du Pont* factor slightly favors Opposer.

⁶³ Applicant includes in this time period Applicant’s principal Draion Burch’s being awarded a medical degree in 2007.

G. Right to Exclude Others

Under this *du Pont* factor, Applicant argues that it has the right to exclude others because there are no other DR. DRAI and DR. DRAI and design marks for related goods and services. However, Applicant's mere assertion that it is the only user of these marks does not suffice to establish that Applicant has any significant right to exclude others from use of its marks. *McDonald's Corp. v. McSweet LLC*, 112 USPQ2d 1268, 1284 (TTAB 2014) (citing *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1205 (TTAB 2009)). We find this *du Pont* factor neutral.

H. Extent of Potential Confusion

Although Applicant argues under the twelfth *du Pont* factor that there is no potential for confusion because Applicant's principal would not want to be associated with Opposer's brands, we find the evidence of record does not establish this factor either way. This *du Pont* factor is neutral.

I. Other Established Facts

Opposer argues that Applicant sought registration in bad faith, basing this contention on Applicant's failure to conduct a trademark search.⁶⁴ However, Applicant's failure to conduct a search does not constitute a sufficient basis for us to infer that Applicant acted in bad faith. *Techex, Ltd. v. Dvorkovitz*, 220 USPQ 81, 84

⁶⁴ The case cited by Opposer, *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger U.S.A. Inc.*, 146 F.3d 66, 46 USPQ2d 1942 (2d Cir. 1998), is a civil infringement and unfair competition case which is inapposite to this opposition proceeding both as to its facts and as to the applicable legal standards.

(TTAB 1983). To the extent that Applicant's intent in adopting its mark is a factor to be considered in our likelihood of confusion analysis, we deem this *du Pont* factor to be neutral.

We conclude there is no likelihood of confusion as to Application Serial Nos. 86590205 and 86730410. Although the similarity of the marks and the strength of the mark favor Opposer, these factors are outweighed by the differences in the goods and services. *See e.g. Han Beauty Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1560 (Fed. Cir. 2001) ("While it must consider each [*du Pont*] factor for which it has evidence, the Board may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of the goods."); *N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d at 1233 ("The difference in the goods and services is dispositive on the issue of likelihood of confusion."); *Calypso Tech. Inc. v. Calypso Capital Mgmt. LP*, 100 USPQ2d 1213, 1223 (TTAB 2011) ("[T]he factors of the dissimilarity of the goods and services and the sophistication of the customers strongly outweigh the factors, such as similarity of the marks and the strength of plaintiff's mark, that would favor a finding of likelihood of confusion."); *Morgan Creek Prods. Inc. v. Foria Int'l Inc.*, 91 USPQ2d 1134, 1143 (TTAB 2009) (dissimilarity of clothing items versus motion picture DVDs and CDs dispositive factor).

VII. False Suggestion of a Connection

Section 2(a) prohibits registration of "matter which may . . . falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols." 15 U.S.C. § 1052(a). To establish his claim of false suggestion of a connection under

Section 2(a), Opposer must prove (1) Applicant's mark (or part of it) is the same as or a close approximation of Opposer's previously used name or identity; (2) Applicant's mark (or part of it) would be recognized as such by purchasers, in that the mark points uniquely and unmistakably to the Opposer; (3) Opposer is not connected with the goods and services that are sold or will be sold by Applicant under its mark; and (4) that Opposer's name or identity is of sufficient fame or reputation that when Applicant's mark (or part of it) is used on Applicant's goods or services a connection with Opposer would be presumed. *Univ. of Notre Dame du Lac v. J.C. Food Imps. Co., Inc.*, 703 F.2d 1372, 217 USPQ 505, 509 (Fed. Cir. 1983); *In re Jackson Int'l Trading Co.*, 103 USPQ2d 1417, 1419 (TTAB 2012); *Hornby v. Tjx Cos. Inc.*, 87 USPQ2d 1411, 1424 (TTAB 2008); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985). *In re L.A. Police Revolver and Athletic Club, Inc.*, 69 USPQ2d 1630, 1633 (TTAB 2003); *In re Debbie Sauer*, 27 USPQ2d 1073, 1074 (TTAB 1993).

A. Whether Applicant's mark (or part of it) is the same as or a close approximation of Opposer's previously used name or identity?

There are two parts to this element. First, we determine whether Dr. Dre is a name or identity of Andre Young. Next, we determine if DR. DRAI and  are a close approximation of Dr. Dre. The evidence shows, and Applicant does not dispute, that Opposer is known professionally as "Dr. Dre."⁶⁵

⁶⁵ 32 TTABVUE 13.

Andre Rommel Young [p]opularly known as Dr. Dre first gained notoriety as a member and producer of the militant L.A. rap group N.W.A. (Niggaz With Attitude).⁶⁶

N.W.A.'s Dr. Dre Launching Label "Music producer Andre Young, best known as Dr. Dre of the hit rap group N.W.A., plans to launch a record label, Death Row Records" ⁶⁷

In light of the above, we find that Dr. Dre is a name or identity of Opposer.



We next must decide whether DR. DRAI and  are a close approximation to Dr. Dre. "[T]he similarity required for a 'close approximation' is akin to that required for a likelihood of confusion under § 2(d) and is more than merely 'intended to refer' or 'intended to evoke.'" *Bos. Athletic Ass'n v. Velocity, LLC*, 117 USPQ2d 1492, 1497 (TTAB 2015) (citation omitted). In other words, Applicant's mark must do more than simply bring Opposer's Dr. Dre identity to mind. For the same reasons we found that Applicant's marks are similar to Opposer's DR. DRE mark for purposes of the likelihood of confusion analysis, we find here that Applicant's marks are a close approximation of Opposer's name or identity, Dr. Dre.

B. Whether Applicant's mark or part of it points uniquely and unmistakably to Opposer?

Under this element, "the initial and critical requirement is that the name (or an equivalent thereof) claimed to be appropriated by another must be unmistakably associated with a particular personality or 'persona.'" *Univ. of Notre Dame*, 217 USPQ

⁶⁶ 20 TTABVUE 107.

⁶⁷ 16 TTABVUE 582.

at 509. As discussed previously in connection with the likelihood of confusion claim, Opposer has been the subject of widespread media attention. In the articles and stories he is identified and referred to as Dr. Dre. *Bos. Athletic Ass'n*, 117 USPQ2d at 1498 (online articles and news stories, while hearsay, are competent to show that the public has been exposed to the term and the meaning the public is likely to associate with the term); *Nike Inc. v. Maher*, 100 USPQ2d 1018, 1024 n.12 (TTAB 2011) (“The probative value of the news articles is that they show how the authors perceive, or refer to, opposer, and the exposure of the public to Opposer’s name.”).

Applicant argues that the references in the media do not uniquely point to Opposer, due to the use of Doctor Dre by another individual, as well as uses by others of DRE, DRAI and DRA. However, we cannot make any meaningful conclusions regarding the extent, if any, of public exposure to these references, and while there is another user of Doctor Dre that has been in the public eye, the record does not show that he is as well-known to the same degree as Opposer. We find that the evidence establishes that Dr. Dre has come to be associated with and refers uniquely and unmistakably to Opposer.

C. Whether Opposer is connected with Applicant’s activities performed

under its marks DR. DRAI and  ?

For this element, the question is whether Applicant has established a commercial connection, such as “an ownership interest or commercial endorsement or sponsorship of applicant’s [goods] or services” with Opposer which entitles it to

register the involved marks. *In re Sloppy Joe's Int'l Inc.*, 43 USPQ2d 1350, 1354 (TTAB 1997). It is undisputed that Opposer has no connection with the goods and services Applicant intends to offer under its applied-for marks.

D. Whether the fame or reputation of Dr. Dre is such that a connection with Opposer would be presumed?

The fourth and final element requires a showing that the fame or reputation of the name appropriated by the applicant is such that, when applicant's mark is used in connection with applicant's goods and services, purchasers would mistakenly presume that a commercial connection exists between the named person or institution and the applicant. This element does not require a fame analysis like that which might be relevant to a Section 2(d) likelihood of confusion analysis or a Section 43(c) dilution analysis. *In re White*, 73 USPQ2d 1713, 1720 (TTAB 2004). "Rather, the key is whether the name per se is unmistakably associated with a particular person or institution and, *as used* would point uniquely to the person or institution. In short, it is the combination of (1) the name of sufficient fame or reputation and (2) its use on or in connection with particular goods or services, that would point consumers of the goods or services uniquely to a particular person or institution." *Id.*

As stated, Opposer, (as Dr. Dre) gained notoriety as a producer and performer in the rap group N.W.A., received notice for his work as a producer for other musical artists, and had considerable success with his first solo effort *The Chronic* for which he also received industry awards.⁶⁸ Dr. Dre, has been interviewed and profiled by the

⁶⁸ As reflected by Opposer's submissions under notice of reliance, Opposer has been the subject of media attention from the 1990's to the present. We mentioned the subject matter

media. The public has been exposed to articles written in connection with Dr. Dre's music, both as a member of N.W.A. and as a solo artist, his occasional music performances, and his music production efforts, both as a producer of his own music and other artists. The public has been exposed to media coverage regarding Dr. Dre's music nominations and awards, the sale of Beats Electronics to Apple, other commercial and philanthropic endeavors, and his regular mentions on the "hip hop cash king" list.⁶⁹ Dr. Dre also has been mentioned on various websites in connection with his life and his music. We find that the Dr. Dre name is well-known.

Our final inquiry, then, is whether consumers of Applicant's motivational and educational speaking services or goods and services relating to the subject areas of osteopathic medicine, obstetrics and gynecology, and men's and women's health would think only of the well-known Dr. Dre name when the marks DR. DRAI and



are used on or in connection therewith. We do not require proof that the name Dr. Dre is famous in the health or medical field or even that he offers goods or services in these fields. *In re Pedersen*, 109 USPQ2d 1185, 1202 (TTAB 2013). Rather, the question is whether Opposer's reputation as a musician and producer is of such a nature that when Applicant's DR. DRAI marks are used in connection with its

of many of those articles in our discussion of Opposer's likelihood of confusion claim, and as stated, most of these articles are hearsay and not subject to a hearsay exception.

⁶⁹ The record shows Opposer received press coverage in *Forbes* as to his earnings with articles in 2007, 2008, 2010-2012, 2014-2016.

applied-for goods and services consumers will understand the mark to refer to Dr. Dre.⁷⁰

Opposer argues that it is a common practice of celebrities to use their names in connection with a vast array of goods and services and that a connection would be presumed. Applicant, on the other hand, argues that “it is not likely that consumers will recognize Applicant’s Dr. Drai’s marks as referring to Dr. Dre because Dr. Dre is not a medical doctor nor is he qualified to provide any type of medical services or sell products specifically in the medical or healthcare industry.”⁷¹ As stated in connection with the likelihood of confusion discussion, it is commonplace for performers or well-known individuals to expand their product lines to incorporate a diverse set of goods and services to capitalize on the renown of their names. *In re Jackson Int’l Trading Co*, 103 USPQ2d at 1419 (citing cases); *In re Sloppy Joe’s*, 43 USPQ2d at 1354 (“Thus, the name and/or likeness of a well known writer may well be ‘extended’ for use on goods or services unrelated to writing.”). Here, there is no evidence that it is commonplace for celebrities to sell or license the sale of goods or services of the type provided by Applicant in Classes 9, 16, 41 and 44. Nor do we have evidence that Opposer himself sells or licenses the sale of any products or services under his name. We only have Opposer’s general statement in his brief regarding celebrity licensing; however, Attorney argument is no substitute for evidence. *Enzo Biochem Inc. v. Gen-*

⁷⁰ Just as in the case of likelihood of confusion, we determine whether Opposer has shown a false suggestion of a connection with respect to each class of goods and services in each involved application because each class in Applicant’s multi-class applications is, in effect, a separate application.

⁷¹ 32 TTABVUE 42.

Probe Inc., 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005). *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1275 (TTAB 2016).

Opposer also argues that Opposer's name in the recording industry is sufficiently related to Applicant's "MP3 files, magazines, audio books, a series of books and other types of public performance" and that "it is beyond question that Applicant's [m]arks would be viewed by the public as pointing uniquely and unmistakably to Dr. Dre" "because Applicant has applied to use its marks in connection with services that relate to the [entertainment] industry in which Dr. Dre is recognized."⁷² Although it is not necessary for Opposer to show that consumers would believe Applicant's goods or services would emanate from Opposer,⁷³ the record still must support a likely association that results from Applicant's use of its marks, such that it seems likely that the consumer will think that there is some kind of connection. However, there is no evidence to establish that Opposer's reputation in the recording or entertainment industry is of such a nature that a connection (sponsorship, approval, support or the like) with Applicant's educational and motivational speaking services or its medical and health care products and services would be presumed when Applicant's DR. DRAI marks are used on such goods and services. *See In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1649 (TTAB 2015) (Princess Kate's reputation is in part as a fashion trendsetter and is of such a nature that a connection with cosmetics, jewelry,

⁷² 30 TTABVUE 30; 33 TTABVUE 17. *See Bd. of Tr. of the Univ. of Ala. v. BAMA-Werke Curt Baumann*, 231 USPQ 408, 411 n.7 (TTAB 1986) (false suggestion of connection can be found on one item in a class of goods; respondent's use of BAMA on athletic socks falsely suggested a connection with petitioner.)

⁷³ *Hornby*, 87 USPQ2d at 1427 n.19.

handbags, bedding and clothing would be presumed when Applicant's ROYAL KATE mark used on such goods.); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (evidence showed that native American's are engaged in large scale manufacturing of cigarettes, and run smoke shops, such that when MOHAWK is used in connection with cigarettes a connection with Mohawk tribe presumed); *In re Cotter & Co.*, 228 USPQ 202, 205 (TTAB 1985) ("WESTPOINT designation, namely, shotguns and various rifles, are goods of a type that customers would associate with a military post or reservation"); *compare Hornby*, 87 USPQ2d at 1427 n.19 ("We point to petitioner's fame as a model not to show that consumers would expect her to be associated with the sale of clothing, but because consumers are likely to associate clothing and models, and therefore to view the mark TWIGGY as pointing to petitioner.") with *Nat'l Aeronautics and Space Admin. v. Record Chem. Co. Inc.*, 185 USPQ 563, 568-569 (TTAB 1975) ("NASA has not created, through the evidence presented, a picture or climate that would alert a purchaser in his natural habitat to look upon every product reaching the marketplace under the 'APOLLO 8' designation as being associated with or the result of NASA technology. Thus, even assuming that a purchaser would associate 'APOLLO 8' with the historical flight, it is unlikely that the average purchaser would follow through with a line of reasoning that would lead him to NASA as the source or sponsorship of applicant's products or to the mistaken belief that they are products of NASA space exploration technology.").

We also find that there was no actual intent by Applicant to trade on the goodwill generated by Opposer's name. Applicant's testimony indicates that Dr. Draai is the

nickname of Applicant's principal and that Applicant's principal filed DR. DRAI as his trademark because "That's my name."⁷⁴ Applicant's principal further testified that he would not want to be associated with the Dr. Dre name because "it's a bad reflection on me as a doctor."⁷⁵

Although Opposer has established that his name Dr. Dre is of sufficient fame or reputation, Opposer has failed to show that a connection would be presumed in the mind of the consuming public when Applicant's DR. DRAI marks are used in connection with its applied-for goods and services. Because the fourth element of the test has not been met, Opposer has failed to prove that Applicant's marks falsely suggest a connection with Opposer.

Decision: Opposition Nos. 91224580 and 91226572 are dismissed on the likelihood of confusion and false suggestion of a connection grounds.

⁷⁴ 25 TTABVUE 115-116, 157.

⁷⁵ 25 TTABVUE 117.

"This guy is known for misogyny and homophobic things, saying -- lyrics and stuff like that, which I didn't know at the time. And being part of the LGBT community, that's when I said, you know, 'I cannot be associated with that.' And being an OB-GYN, I cannot be associated with anyone that has any kind of misogynistic speech because it's a bad reflection on me as a doctor."

As to the cease and desist letter sent by Opposer, Applicant's owner testified "I was just appalled how someone would think that I wanted to be them and I actually went to medical school. ... I was hurt that someone was attacking me in my position as being a doctor. And I earned the right to be a physician." *Id.* at 28.