

This Opinion Is Not A
Precedent Of The TTAB

Oral Hearing: November 2, 2023

Mailed: February 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Baxter S.r.l.
v.
Wholesale Interiors, Inc.

Opposition No. 91263387

Leo M. Loughlin and Davide F. Schiavetti of Rothwell, Figg, Ernst & Manbeck, P.C.
for Baxter S.r.l.

Joshua M. Gerben and Kathryn Kent of Gerben Perrott, PLLC
for Wholesale Interiors, Inc.


Before Kuhlke, Cataldo and Coggins,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Wholesale Interiors, Inc., seeks registration of the mark BAXTON STUDIO (STUDIO disclaimed) in standard characters for “furniture” in International Class 18.¹ The application seeks registration under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), in part, as to the word BAXTON.

¹ Serial No. 88381362, filed April 11, 2019, based on an allegation of first use and first use in commerce in 2007 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

Opposer, Baxter S.r.l., has opposed registration of Applicant's mark on the ground of likely confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), because, as used in connection with Applicant's goods, the mark so resembles

Opposer's previously used and registered mark  for:

Furniture; furniture of metal; furniture made of plastic; office furniture; wardrobes; divans; tables; armchairs; seats; beds, pillows; bedside tables; dressers; sideboards; furniture shelves; furniture parts; mirrors; frames, namely, bed frames, mirror frames, articles not included in other classes made of wood, namely, chairs, armchairs, sofas, tables; decorative containers made of wood and leather in International Class 20.²

By its answer, Applicant generally denies the salient allegations. Applicant also filed a counterclaim that it did not pursue at trial or in its brief. In view thereof, as noted at the end of the decision it is dismissed.

I. 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 file of the application subject to the notice of opposition. In addition the record includes:

- Opposer's Testimony Declaration of Luigi Bestetti, Opposer's President and Representative of the Board of Directors, with exhibits (Bestetti Decl.);³

² Not. of Opp., 1 TTABVUE. Registration No. 4208259; Section 71 declaration accepted. "The mark consists of the wording 'BAXTER' in stylized lettering within a concentric oval design."

³ 23 TTABVUE.

- Opposer's Notices of Reliance on Opposer's pleaded registration showing status and title, and Applicant's responses to Opposer's First Set of Interrogatories and First Set of Admissions;⁴
- Applicant's Testimony Declaration of Haowei Shen, Applicant's President, with exhibits (Shen Decl.);⁵ and
- Applicant's Notices of Reliance on printouts of third-party websites displaying Applicant's mark and responsive documents provided by Opposer showing use of Opposer's mark in advertising and Opposer's website; and excerpts from online articles.⁶

II. ENTITLEMENT TO A STATUTORY CAUSE OF ACTION

An opposer's entitlement to a statutory cause of action is a requirement that must be proven by the plaintiff in every opposition. *See Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, *3 (Fed. Cir. 2020) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014)). A party in the position of plaintiff may oppose registration of a mark where such opposition is within the zone of interests protected by the statute, 15 U.S.C. § 1063, and the party has a reasonable belief in damage that is proximately caused by the prospective registration of the mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, *6-7 (Fed. Cir. 2020).

As listed above, the record includes status and title copies of Opposer's pleaded registration. In view thereof, Opposer's entitlement to a statutory cause of action to

⁴ 24-25 TTABVUE. A printout of Opposer's pleaded registration showing status and title was also attached to the notice of opposition. 1 TTABVUE 7.

⁵ 26 TTABVUE.

⁶ 27-28 TTABVUE.

oppose registration of Applicant's mark is established. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (pleaded registrations "suffice to establish ... direct commercial interest"; a belief in likely damage can be shown by establishing a direct commercial interest); *Made in Nature v. Pharmavite*, 2022 USPQ2d 557, at *7 (TTAB 2022) (pleaded registrations demonstrated entitlement to bring a statutory cause of action); *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *6 (TTAB 2020) (pleaded registrations establish statutory entitlement to bring opposition).

III. SECTION 2(d) CLAIM

Section 2(d) of the Trademark Act prohibits the registration of a mark that "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d).

To prevail on its Section 2(d) claim, Opposer must prove, by a preponderance of the evidence, that it has either a registration or priority in the use of its pleaded mark



, and that Applicant's use of its BAXTON STUDIO mark in connection with the goods identified in its application is likely to cause confusion, mistake, or deception as to the source or sponsorship of those goods. *Cunningham*, 55 USPQ2d at 1848.

A. PRIORITY

Because the counterclaim against the pleaded registration was not pursued, priority is not in issue with respect to the mark and goods in the registration. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058 (Fed. Cir. 2014); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); and *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); *Nkanginieme v. Appleton*, 2023 USPQ2d 277, at *4 (TTAB 2023).

B. Likelihood of Confusion Factors

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 and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (*DuPont*); *see also In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (Board considers each *DuPont* relevant factor for which there is evidence and argument). Ultimately, we find the *DuPont* factor considering the similarity or dissimilarity of the marks to be dispositive in this case as the dissimilarity points to no likely confusion, even weighing the other relevant *DuPont* factors in Opposer's favor. *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) ("The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but 'may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.'") (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1340, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir.

1991) (“We know of no reason why, in a particular case, a single *[D]uPont* factor may not be dispositive.”). Nonetheless for completeness we make findings for all of the relevant *DuPont* factors.

1. Relatedness of Goods, Channels of Trade, Conditions of Purchase

Applicant’s identified “furniture” goods are identical to Opposer’s “furniture” and legally identical to Opposer’s other listed specific items of furniture in that Applicant’s broad identification encompasses such goods. In any event, it is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

Further, where, as here, the goods are identical and legally identical and there are no limitations as to channels of trade or classes of purchasers in either the application or Opposer’s registration, we must presume that Applicant’s and Opposer’s goods will be sold in the same channels of trade and will be bought by the same classes of purchasers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

Applicant argues without evidentiary support that “[t]he consumers purchasing furniture are not prone to impulse buying. The consumer seeking furniture typically has specific guidelines and attributes in mind.” App. brief, 32 TTABVue 13. While Applicant points to the record to demonstrate the differences in the target market for

their respective goods, we must make our determination based on the goods as recited and neither identification of goods is limited by price or market. We consider “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing,” *DuPont*, 177 USPQ at 567, based on the identifications of goods in the pleaded registration and subject application, as that determines the scope of the benefit of registration. *Stone Lion Cap. Partners v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

Because the identifications of goods in the application and registration include furniture without limitation as to their nature or price, *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013), the goods are presumed to include furniture items that are relatively inexpensive. “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.” *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000), *cited in In re FabFitFun, Inc.*, 127 USPQ2d 1670, 1673 (TTAB 2018). Based on the identifications the buyers to whom sales are made are all general consumers of furniture and the goods at issue include somewhat inexpensive products (e.g., low end bedside tables, chairs). The purchaser care would be ordinary care for such goods. Although furniture by its nature may not be subject to a high level of impulse purchasing, some of the goods are subject to a lower level of purchaser care.

In view thereof, the *DuPont* factors regarding the goods and channels of trade weigh in favor of finding a likelihood of confusion. The conditions of purchase weigh slightly in favor of a likelihood of confusion.

2. Strength of Opposer's Mark



Before we make our comparison of the marks, we consider the strength, including



any fame, of Opposer's mark. We do so because a determination of the strength of this mark helps inform us as to its scope of protection.

When evaluating the strength, we look at the mark's inherent strength based on the nature of the term itself and its commercial strength in the marketplace, *Spireon Inc. v. Flex Ltd.*, 71 F.4th 1355, 2023 USPQ2d 737, at *4 (Fed. Cir. 2023), citing *In re Chippendales USA, Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (measuring both conceptual and marketplace strength), as well as “[t]he number and nature of similar marks in use on similar goods.” *Made in Nature, LLC*, 2022 USPQ2d 557, at *21 (quoting *DuPont*, 177 USPQ at 567). *See also New Era Cap*, 2020 USPQ2d 10596 at *10; *In re Chippendales USA Inc.*, 96 USPQ2d at 1686 (“A mark’s strength is measured both by its conceptual strength ... and its marketplace strength”). “[T]he strength of a mark is not a binary factor, but varies along a spectrum from very strong to very weak.” *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003). *See also Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017).

Opposer asserts the



mark is “inherently distinctive and commercially

strong (and famous).” Opp. brief, 29 TTABVUE 13. Opposer argues that



is “inherently strong because it is a coined word and therefore fanciful on the spectrum of distinctiveness” and because the mark “is fanciful and strong” it is “famous in the mind of the public.” *Id.*

Because Opposer’s registration is on the Principal Register, without a claim of

acquired distinctiveness, the mark




is presumed to be inherently

distinctive for those goods. Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006) (a “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods”). However, far from being a “coined” word, BAXTER is a name.⁷ At best, BAXTER is arbitrary for the identified goods.

Commercial strength is “based on marketplace recognition of the mark [],” *Made in Nature*, 2022 USPQ2d 557, at *21, and “may be measured indirectly, among other

⁷ Baxter “2. a male given name.” Dictionary.com based on RANDOM HOUSE UNABRIDGED DICTIONARY (2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

things, by the volume of sales and advertising expenditures of the [services] traveling under the mark, and by the length of time those indicia of commercial awareness have been evident.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689-90 (Fed. Cir. 2018) (quoting *Bose Corp. v. QSC Audio Prods.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) (internal citations omitted)). “Fame for confusion purposes arises as long as a significant portion of the relevant consuming public recognizes the mark as a source indicator.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Here, the “relevant consuming public” consists of purchasers of furniture. “Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use,” *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011) (citing *Bose*, 63 USPQ2d at 1305), and, as a

result, it is incumbent on Opposer to clearly prove that its  mark is famous. *Made in Nature*, 2022 USPQ2d 557, at *31 (citing *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012)).

Other than a recitation of advertising expenses and sales between 2016-2021 and examples of some advertising and a few unsolicited references in third-party publications, there is no context for how these numbers figure in the industry and no sense of the breadth and impact of consumer exposure.⁸ The evidence points to a

⁸ Bestetti Test. Decl., 23 TTABVUE 7-8.

narrower group of relevant consumers (hotels, restaurants and private residences such as the Ritz Carlton Residences).⁹ In fact, in its reply brief Opposer asserts that it simply argued the mark is “strong and famous because it is a coined, fanciful term that consumers will remember.” Opp. reply brief, 33 TTABVUE 5. On the other hand,

there is no evidence of record to shrink or dilute the strength of the mark for furniture goods.



Based on the evidence of record, we find Opposer’s Mark



is arbitrary for furniture goods and therefore conceptually strong, but the record does not support extending the scope of protection based on commercial strength. We accord



the normal scope of protection for an arbitrary mark and this weighs slightly in Opposer’s favor.

3. Similarity or Dissimilarity of the Marks

Considering the similarity or dissimilarity of the parties’ marks, we compare them in their entirety in terms of appearance, sound, connotation and commercial impression. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018); *see also Palm Bay*, 73 USPQ2d at 1694. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)). “The proper test is not a side-by-side comparison of the marks,

⁹ *Id.*, 23 TTABVUE 4.

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 (quotation omitted). The marks must be considered in their entireties, but “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *Detroit Athletic*, 128 USPQ2d at 1051 (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985)).

Opposer asserts Applicant’s BAXTON STUDIO mark is “very similar” to



Opposer’s mark because the first four letters, BAXT, in each mark are identical and the strength of Opposer’s mark increases its scope of protection.

Specifically Opposer asserts:

[T]he letters BAXT- in [Applicant’s] mark are the dominant portion of the mark. Further, the line of cases discussed above clearly demonstrates that the addition of a second nondistinctive term to the mark, such as “STUDO” for furniture, is insufficient to avoid a likelihood of confusion with the BAXTER Mark.

Opp. brief, 29 TTABVUE 16-17.

Applicant argues without evidentiary support that BAXTER is a surname¹⁰ and



that the mark is rarely used without the phrase “Made in Italy.” App. brief, 32 TTABVUE 11. As Opposer correctly responds, the use with “Made in Italy” is not relevant to our consideration as the mark in Opposer’s registration does not include that phrase.

While the first portion of a mark is often the more prominent and memorable portion of a mark, *Palm Bay*, 73 USPQ2d at 1692 (“VEUVE nevertheless remains a ‘prominent feature’ as the first word in the mark and the first word to appear on the label.”), here the literal portion of Opposer’s mark is the entire word BAXTER which has the appearance of a name and is in fact defined as a given name. On the other hand, the term BAXTON in Applicant’s mark is a surname.¹¹ Opposer breaks up the

¹⁰ The link to a Wikipedia page in Applicant’s brief is not of record and does not make the resolving website of record. *Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 71345, at *2 (TTAB 2020) (exhibits attached to brief not considered); *Norris v. PAVE: Promoting Awareness, Victim Empowerment*, 2019 USPQ2d 370880, at *2 (TTAB 2019) (inserted screenshots and hypertext link within the text of reply brief, if not previously and properly introduced into the record, not considered); *see also Int’l Dairy Foods Ass’n v. Interprofession du Gruyère*, 2020 USPQ2d 10892, at *7-8 (TTAB 2020) (nonconforming evidence consisting of Internet materials bearing web addresses without a copy of the corresponding web pages not considered by the Board), *aff’d*, 575 F. Supp. 3d 627 (E.D. Va. 2021), *aff’d*, 61 F.4th 407, 2023 USPQ2d 266 (4th Cir. 2023); *TV Azteca, S.A.B. de C.V. v. Martin*, 128 USPQ2d 1786, 1790 n.14 (TTAB 2018) (providing an Internet link to an article is insufficient to make the article of record because the information displayed at a link’s Internet address is impermanent. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (agreeing with the Board that factual statements made in a brief are not evidence introduced at trial). *See also* n.7, *supra* (“Baxter” is a male given name).

¹¹ There is no dispute that Applicant seeks registration under Section 2(f), in part, because BAXTON is a surname. *See* Application No. 88381362, June 25, 2019 Office Action, TSDR 1 (LexisNexis results for BAXTON).

names BAXTER and BAXTON and points to the first four letters. However, the commercial impression of each mark as a whole is as a different name. The word STUDIO in Applicant's mark adds to the commercial impression of that mark. Although STUDIO is disclaimed as merely descriptive, the mark must still be regarded as a whole, including the disclaimed matter, in evaluating similarity to other marks. *See Nat'l Data*, 224 USPQ at 751 ("The technicality of a disclaimer in National's application to register its mark has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO."); *see also Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1356 (Fed. Cir. 2004) ("[C]onfusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed.") Thus, the Board must consider the mark in its entirety, including the disclaimed portion. We take judicial notice of the following definitions of STUDIO:


1. The workroom or atelier of an artist, as a painter or sculptor or
2. A room or a place for instruction or experimentation in one of the performing arts: *a dance studio*. . . .
5. Studio apartment.¹²

The word STUDIO creates the added connotation and commercial impression of a smaller apartment or room for artistic endeavors which is absent from Opposer's mark.

We find these facts similar to those presented in *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459 (Fed. Cir. 1998) (CRISTAL

¹² Dictionary.com based on RANDOM HOUSE UNABRIDGED DICTIONARY (2024).

and CRYSTAL CREEK are different in appearance and sound and evoke different connotations and commercial impressions). The only similarity of these different words are the first four letters BAXT-. The overall commercial impression of Applicant's mark is the surname BAXTON modified by the word STUDIO bringing up an image of a small room, contrasted by Opposer's mark a different given name

BAXTER presented in an oval design . We find in this case that the first four letters of words that present different names are not sufficient to find likely confusion given all the dissimilarities between the marks – especially the different commercial impressions. We find this factor strongly favors no likelihood of confusion.

4. Lack of Actual Confusion

Applicant argues it has used the mark “in interstate commerce at least as early as 2004” and “the parties have co-existed for almost 20 years without evidence of consumer confusion.” Applicant concludes that “[t]his is not surprising since the channels of trade are profoundly different in actual use because as Opposer admitted in a recent ex-parte appeal brief, ‘BAXTER only sells through authorized ‘high-end designer furniture stores’ and targets consumers seeking ‘unique furniture collections. ... In contrast, Applicant sells to budget-minded consumers seeking affordable, modern furniture, and Applicant’s goods are sold primarily through mass, online retailers.’ App. brief, 32 TTABVUE 12-13 (quoting Opp. brief, 29 TTABVUE 4).

A showing of actual confusion is not necessary to establish a likelihood of confusion. *Herbko Int’l*, 64 USPQ2d at 1380. However, the absence thereof may have

some probative value depending on the circumstances. In assessing actual confusion we consider actual market conditions. *In re Guild Mortg. Co.*, 2020 USPQ2d 10279 at *6 (TTAB 2020). Applicant solves the question by its own argument; there has not been a meaningful overlap in actual trade channels for confusion to occur.

This factor is neutral.

5. Extent of Potential Confusion


In its reply brief, Opposer argues that the extent of potential confusion is substantial in view of the identical goods, channels of trade, class of consumers, no need for purchaser sophistication and substantially identical marks. First, this factor was not addressed in Opposer's main brief, second our finding that the marks are dissimilar supports a finding that potential confusion is at most de minimis.


6. Balancing the Factors

We have carefully considered all arguments and evidence properly of record as they pertain to the relevant likelihood of confusion factors. Any of the *DuPont* factors may play a dominant role in our analysis, and in some cases, a single factor is dispositive. *Champagne Louis Roederer*, 47 USPQ2d at 1460 (holding that the Board did not err in deciding likelihood of confusion based solely on dissimilarity of marks, noting that "we have previously upheld Board determinations that one *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks"); *Kellogg Co.*, 21 USPQ2d at 1145. We find this to be such a case.


We have found that the parties' goods, customers, and channels of trade are identical or legally identical; that the goods as identified without limitation include

somewhat inexpensive items subject to a lower consideration in the purchasing

decision; and that Opposer's mark  is arbitrary and conceptually strong for furniture. Nonetheless, on the record before us, we find that the dissimilarity of

the marks  and BAXTON STUDIO in appearance, sound, connotation, and overall commercial impression outweighs the other *DuPont* factors. For that reason, we find the first *DuPont* factor to be outcome determinative.

Considering the record evidence as a whole, we find that Opposer has not carried its burden to establish by a preponderance of the evidence that Applicant's mark BAXTON STUDIO is likely to cause consumer confusion with Opposer's mark

 used in association with its identified goods.

DECISION: The opposition is dismissed as to the likelihood of confusion claim, and the counterclaim is dismissed.