

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 18, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Shaquanna Brooks
v.
Miss Business LLC
—

Opposition No. 91287370
—

Antoinette Martin of R.J. Pierce Law Group, P.C.,
for Shaquanna Brooks.

Darlene Harris of Power in Protection Law Firm PLLC,
for Miss Business LLC.

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Before Heasley, Allard, and Stanley,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Miss Business LLC (“Applicant”) seeks registration on the Principal Register of the mark MISS BUSINESS (in standard characters, with “BUSINESS” disclaimed) for:

Notebooks; Pens; Printed books in the field of business, entrepreneurship and career; Stationery; Office stationery; Paper stationery; School supply kits containing various combinations of selected school supplies, namely, writing instruments, pens, pencils, mechanical pencils, erasers, markers, crayons, highlighter pens, folders, notebooks, paper, protractors, paper

clips, pencil sharpeners, writing grips, glue and book marks; Spiral-bound notebooks; Wire-bound notebooks, in International Class 16.¹

Shaquanna Brooks (“Opposer”) has filed a Notice of Opposition against registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on likelihood of confusion with her registered mark, MS. BUSINESS (in standard characters) for business and financial services:

Account auditing; Accountancy services; Accounting services; Accounting services for mergers and acquisitions; Accounts receivable billing services; Bookkeeping; Business acquisitions consultation; Business management; Business management and consultation; Business management consultation; Business marketing services; Business merger consultation; Business networking; Business operation, business administration and office functions; Business organization consulting; Business planning; Financial records management; Financial statement preparation and analysis for businesses; Insurance claims auditing services; Marketing advisory services; Marketing consulting; Marketing plan development; Marketing research; Marketing services, namely, consumer marketing research; Payroll administration and management services; Payroll preparation; Payroll processing services; Real estate advertising services; Real estate marketing analysis; Real estate marketing services; Real estate sales management; Tax advisory services; Tax assessment; Tax consultation; Tax filing services; Tax lien management services; Tax preparation; Administrative accounting; Advertising of commercial or residential real estate; Assisting with the formation, negotiation, and management of contracts with public sector entities; Business information and accounting advisory services; Direct marketing consulting services; New business venture development and formation consulting services; Providing insurance agent referrals; Providing real estate leads for prospective purchasers; Providing business planning and marketing solutions for real estate professionals; Real estate transaction auditing services; Wage payroll preparation, in International Class 35;

and

¹ Application Serial No. 90045060 was filed on July 9, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere since February 14, 2010 and use in commerce since at least as early as October 1, 2013.

Business credit reporting services; Business liquidation services, financial; Financial administration of scholarship programs; Financial advice; Financial advice, namely, budget planning; Financial analysis; Financial analysis and consultation; Financial asset management; Financial consultancy; Financial consultancy and insurance consultancy; Financial consultation; Financial consulting; Financial consulting services, namely, expert analysis in finance; Financial due diligence services in the field of real estate; Financial forecasting; Financial information; Financial information and advisory services; Financial information and evaluations; Financial information processing; Financial investment analysis and stock research; Financial investment brokerage; Financial investment brokerage services; Financial loan consultation; Financial management; Financial management of reimbursement payments for others; Financial management via the Internet; Financial planning; Financial planning and investment advisory services; Financial planning consultation; Financial planning for retirement; Financial portfolio analysis services; Financial portfolio management; Financial research; Financial research and equity research brokerage services; Financial research and information services; Financial restructuring services; Financial retirement plan consulting services; Financial risk management; Financial services, namely, business fundraising for others; Financial services, namely, credit repair and restoration; Financial services, namely, debt settlement; Financial services, namely, microfinance lending services; Financial services, namely, money lending; Financial services, namely, mortgage planning; Financial services, namely, vehicle title loans; Financial services, namely, wealth management services; Financial trust operations; Financial valuations; Insurance administration; Insurance agencies; Insurance brokerage; Insurance consultancy; Insurance consultation; Insurance information; Insurance subrogation; Real estate acquisition services; Real estate appraisal; Real estate appraisal and valuation; Real estate brokerage; Real estate consultancy; Real estate consultation; Real estate escrow services; Real estate financing services; Real estate funds investment services; Real estate insurance underwriting services; Real estate investment services; Real estate investment trust management services; Real estate investment trust services; Real estate lending services; Real estate listing; Real estate management consultation; Real estate management services; Real estate management services relating to shopping centers; Real estate multiple listing services; Real estate procurement for others; Real estate service, namely, rental property management; Real estate services to stop foreclosure, namely, mortgage debt management; Real estate services, namely, condominium management services; Real estate services, namely, rental of vacation homes; Real estate services, namely, tax appraisals; Real estate services, namely, vacation home rental management services; Real estate syndication; Real estate time-sharing; Real estate trustee services; Real

estate valuation services; Real estate valuations; Appraisal of real estate; Commercial and residential real estate agency services; Financial services, namely, providing on-line stored value accounts in an electronic environment; Financing of real estate development projects; Intellectual property venture fund development and formation services for others; Lease of real estate; On-line financial planning services; Payroll tax debiting services; Providing real estate listings via the Internet; Rental of real estate; Residential real estate agency services; Strategic financial advisory services; Vacation real estate time-sharing; Vacation real estate timeshare services, in International Class 36.²

Applicant, in its Answer, admits that it filed the subject Application, and that USPTO records list Opposer as the owner of the pleaded Registration; otherwise, it denies the salient allegations of the Notice of Opposition.³ Both parties have submitted briefs.

I. The Record

The record consists of the pleadings, and, by operation of Trademark Rule 2.122(b), the file of Applicant's involved Application. 37 C.F.R. § 2.122(b). The record also includes Opposer's pleaded registration, obtained as a printout of a USPTO

² Registration No. 5927244 issued on the Principal Register on December 3, 2019. Citations to the briefs and other materials in the record refer to the Board's TTABVue online docket system.

³ Applicant also asserted eight purported "affirmative defenses" in its Answer. 7 TTABVue 4-5. The first, claiming that the Notice of Opposition fails to state a claim on which relief can be granted, is not a true affirmative defense. *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 WL 16646840, *1 n.5 (TTAB 2022). The second, denying a likelihood of confusion, amplifies the denials in the Answer and does not serve as an affirmative defense. *NPG Records, LLC v. JHO IP Holdings LLC*, 2022 WL 3701446, *12 (TTAB 2022). The third and fourth, denying disparagement, false suggestion of a connection, and dilution, are irrelevant, as Opposer claims likelihood of confusion. *Am. Vitamin Prods. Inc. v. Dow Brands Inc.*, 1992 WL 88051, *3 (TTAB 1992). The fifth through eighth raise equitable defenses of laches, estoppel, waiver and acquiescence, but Applicant did not pursue them in its final brief, so they are impliedly waived. *Hangzhou Mengku Tech. Co. v. Shanghai Zhenglang Tech. Co.*, 2024 WL 5265081, *1 (TTAB 2025).

TSDR record showing the active status and title of her pleaded registration. *See* Trademark Rule 2.122(d)(1), 37 C.F.R. § 2.122(d)(1). That is all the record consists of, as the parties' other filings do not comply with the requirements for submitting testimony or exhibits.

Opposer submitted:

- A notice of reliance purporting to attach Opposer's first set of requests for Admission and interrogatories, and Applicant's responses thereto. It also purported to attach a USPTO record of Opposer's pleaded registration. There were no attachments. (9 TTABVUE.)
- A declaration by Opposer that was unsigned. (10 TTABVUE.)
- The same declaration by Opposer, signed but lacking a verification executed under penalty of perjury. (11 TTABVUE.)
- A rebuttal notice of reliance purporting to attach portions of Applicant's responses to requests for admission and interrogatories, the file histories of Opposer's registrations and applications, and pages from Opposer's website and Instagram page. There were no attachments. (14 TTABVUE.)

Applicant submitted:

- A notice of reliance purporting to attach Applicant's first sets of requests for admission, interrogatories, and requests for production of documents, as well as Opposer's responses thereto. There were no attachments. (12 TTABVUE.)
- A declaration from Applicant's founder/CEO, signed but lacking a verification executed under penalty of perjury. (13 TTABVUE.)

None of these submissions is properly in evidence.

"Opposition proceedings before the TTAB are in many ways 'similar to a civil action in a federal district court.'" *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138, 143 (2015) (quoting TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF

PROCEDURE (TBMP) § 102.03). Testimony must be under oath and subject to cross-examination. *Id.* at 144. “The testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to [Trademark Rule] § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party’s testimony period,” *WeaponX Performance Products, Ltd. v. Weapon X Motorsports, Inc.*, 2018 WL 1326374, *3 (TTAB 2018) (citing Trademark Rule 2.123(a)(1), 37 C.F.R. § 2.123(a)(1)). Under Trademark Rule 2.20:

the language of 28 U.S.C. 1746, or the following declaration language, may be used: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

37 C.F.R. § 2.20.

Alternatively, the language prescribed by 28 U.S.C. § 1746 for declarations executed within the United States is “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.” 28 U.S.C. § 1746.

These provisions have one thing in common: “In either case, a declarant will be subject to United States perjury laws if willful or knowing false statements are made.” *M/s R.M. Dhariwal v. Zarda King Ltd. and Global Tech. & Trade Marks Ltd.*, 2019 WL 1915763, *2 (TTAB 2019) (citing *In re Dermahose Inc.*, 2007 WL 499919, *5 (TTAB 2007) (“the common feature of oaths, sworn statements, unsworn declarations under penalty of perjury, and declarations under Rule 2.20 is that the person making the statement is subjecting himself or herself to criminal penalties for making

statements that the person knows are not true.”)).

A declaration that does not attest to an awareness of the penalty for perjury is unacceptable. TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 804.01(b) (May 2025). If it is not properly verified under Trademark Rule 2.20, it is not testimony. *TV Azteca, S.a.b. De C.v. v. Martin*, 2018 WL 6504575, *4 (TTAB 2018). *See also McDonald’s Corp. v. McKinley*, 1989 WL 274414, *1 n.4 (TTAB 1989) (“Applicant’s unsworn statement does not constitute testimony in the absence of an oath or affirmation thereof.”). “Evidence not obtained and filed in compliance with these sections will not be considered.” 37 CFR § 2.123(k); *accord* TBMP § 706. Consequently, because Opposer’s and Applicant’s declarations are unverified, they do not substantially comply with the requirements for declaration testimony; they are inadmissible, and cannot be considered. 37 C.F.R. §§ 2.20, 2.123(a)(1), *cited in M/S R.M. Dhariwal v. Zarda King*, 2019 WL 1915763, at *2.

The parties’ notices of reliance are even more deficient. Trademark Rule 2.122(g) provides that “A notice of reliance shall be filed during the testimony period of the party that files the notice.” 37 C.F.R. § 2.122(g). The TBMP explains what a notice of reliance comprises:

Certain types of evidence need not be introduced in connection with the testimony of a witness but may instead be made of record **by filing the materials with the Board under cover of one or more notices of reliance** during the testimony period of the offering party. Normally, **exhibits filed under a notice of reliance** consist of pleaded registrations and pleaded applications, printed publications, official records, Internet materials, an adverse party’s written disclosures and certain written discovery responses, and discovery depositions of an adverse party. **A notice of reliance is essentially a cover sheet for the materials sought to be introduced.**

TBMP § 704.02 (emphasis added).

In other words, a party may properly make such evidence of record by filing it as exhibits under cover of one or more notices of reliance. *See, e.g., RLP Ventures, LLC v. Panini Am., Inc.*, 2023 WL 6442609, *7 (TTAB 2023). Here, the parties filed the cover sheets, but not the exhibits to which they referred. Consequently, none of the purported exhibits identified in the cover sheets is in evidence.

The record thus consists only of the pleadings, the file of the opposed Application, 37 C.F.R. § 2.122(b), and Opposer's pleaded registration, 37 C.F.R. § 2.122(d)(1). The file of the opposed Application is nonetheless instructive. It reveals that the original Application, filed in July 2020, identified not only Class 16 goods, such as notebooks and pens, but Class 25 clothing, such as shirts and T-shirts, Class 35 business advice services in the fields of entrepreneurship and career, and Class 41 business training services in the same fields.⁴ The Examining Attorney issued a nonfinal Office Action that refused registration as to Classes 35 and 41 only, based on likelihood of confusion with the very same MS. BUSINESS registration cited in the present proceeding.⁵ After much back and forth, the Application finally emerged from examination identifying only its Class 16 stationery goods. It was published for opposition in August 2023, and Opposer filed her Notice of Opposition a month thereafter.⁶

⁴ App. Ser. No. 90045060, July 9, 2020 application.

⁵ Oct. 27, 2020 Nonfinal Office Action at 2-4 (citing Opposer's Reg. No. 5927244).

⁶ 1 TTABVUE, Sept. 27, 2023.

II. Entitlement and Priority

A plaintiff's entitlement to invoke a statutory cause of action for opposition or cancellation is a necessary element in every inter partes case. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1304 (Fed. Cir. 2020).⁷ To establish entitlement to bring and maintain an opposition proceeding under Section 13 of the Trademark Act, 15 U.S.C. § 1063:

a plaintiff must demonstrate “an interest falling within the zone of interests protected by the statute and ... proximate causation.” *Corcamore*, 978 F.3d at 1303 (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129-134 (2014)); *see also Meenaxi Enter., Inc. v. Coca-Cola Co.*, 38 F.4th 1067, 1070 (Fed. Cir. 2022). Stated another way, a plaintiff is entitled to bring a statutory cause of action by demonstrating a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 1374-75 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 1275 (Fed. Cir. 2014).

DowntownDC Business Improvement District v. Clarke, 2024 WL 4449409, *10 (TTAB 2024).

Opposer attached to her Notice of Opposition a printout of a USPTO TSDR record showing the active status of her pleaded registration for MS. BUSINESS and her title thereto.⁸ 37 C.F.R. § 2.122(d)(1). *See Heil Co. v. Tripleye GmbH*, 2024 WL 4925901, *15 (TTAB 2024) (status and title copy of pleaded registration). Applicant admits that

⁷ This opinion follows the practice set forth in TBMP § 101.03(a) (2025). It cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the Westlaw (WL) legal database and cites only precedential decisions, unless otherwise noted.

⁸ Notice of Opposition, 1 TTABVUE 12-18.

USPTO records list Opposer as the owner of the registered mark.⁹ Opposer's ownership of the pleaded MS. BUSINESS registration suffices to show her direct commercial interest in this matter, and a plausible claim of likely damage to that interest stemming from registration of Applicant's mark. *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *6 (valid and subsisting pleaded registration establishes opposer's direct commercial interest in the proceeding and its belief in damage) (citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000)).

With respect to priority, Applicant attempts to claim prior common law use of its MISS BUSINESS mark, asserting that "[w]here, as here an applicant can demonstrate earlier use in commerce, the registered rights of the opposer must yield."¹⁰ (Citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 1402 (CCPA 1974)). Actually *King Candy* stands for the opposite proposition. The Board has found:

Because Opposer properly made of record its valid and subsisting pleaded registrations, and Applicant did not counterclaim to cancel Opposer's pleaded registrations, priority is not at issue for the marks and goods and services identified therein. *See King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, [] (CCPA 1974); *Nkanginieme v. Appleton*, [2023 WL 2424119], at *2 (TTAB 2023) ("Opposer's registration removed priority as an issue.").

Heil v. Tripleye, 2024 WL 4925901, at *16. Opposer has accordingly established both statutory entitlement to a cause of action and priority.

⁹ Answer, ¶¶ 3, 4, 7 TTABVUE 3.

¹⁰ Applicant's brief, 16 TTABVUE 11.

III. Likelihood of Confusion

Under Section 2(d) of the Trademark Act, a mark may be opposed and refused registration if it:

[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 [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive....

15 U.S.C. § 1052(d).

“It is well established that, in opposition proceedings, the burden of proof rests on the opposer. *See Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 973 (Fed. Cir. 2018).” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1365 (Fed. Cir. 2023). “As plaintiff, Opposer bears the burden of proving [her] Section 2(d) claim by a preponderance of the evidence. *See B&B Hardware v. Hargis*, 575 U.S. at 144 (“The party opposing registration bears the burden of proof, *see* [Trademark Rule 2.116(b), 37 C.F.R.] §2.116(b), and if that burden cannot be met, the opposed mark must be registered, *see* 15 U.S.C. §1063(b)’).” *DowntownDC v. Clarke*, 2024 WL 4449409, at *1.

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the “*DuPont* factors”). The likelihood of confusion analysis considers all relevant *DuPont* factors for which there is evidence of record. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265 (Fed. Cir. 2002); *Dollar Fin. Grp., Inc. v. Brittex Fin., Inc.*, 132 F.4th

1363, 1371 (Fed. Cir. 2025) (“The Board need not consider every *DuPont* factor, only those “that are relevant and of record.”).

There is a dearth of evidence in this record. That dearth, however, does not disadvantage the parties equally, as Opposer, not Applicant, bears the burden of proof. *DowntownDC v. Clarke*, 2024 WL 4449409, at *18.

A. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of the parties’ marks in their entirety, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361. As noted, Opposer has successfully introduced her registration for MS. BUSINESS (in standard characters) into the record. 37 C.F.R. § 2.122(d)(1). Applicant’s mark is MISS BUSINESS, also in standard characters.

Applicant argues that “[w]hile ‘MISS BUSINESS’ and ‘MS. BUSINESS’ are superficially similar in sound and appearance, the law requires evaluation of the overall commercial impression, not mechanical comparison.”¹¹ Specifically, it argues, “‘Miss’ and ‘Ms.’ are distinct honorifics in American English, each with different cultural and personal connotations.”¹² Furthermore, it insists, “The marks appear in entirely different visual contexts (fonts, colors, design elements) and are promoted via different content formats.”¹³ So, it concludes, “When considered as a whole, the

¹¹ Applicant’s brief, 16 TTABVUE 12.

¹² *Id.*

¹³ *Id.*

marks create distinct commercial impressions.”¹⁴

We agree with Opposer, however, that the marks are very similar. In appearance, they have the same structure, consisting of a female honorific preceding BUSINESS. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1303 (Fed. Cir. 2018) (“the marks reveal an identical structure”). “MISS” is quite similar to “MS.”, differing only by the omission of two letters and the addition of a period. *See Research In Motion Ltd. v. Defining Presence Marketing Grp., Inc.*, 2012 WL 893481, *5 (TTAB 2012) (“Despite this difference in the first two letters [of BLACKBERRY and CRACKBERRY], we find that the similarities in appearance outweigh the differences.”); *Endo Labs. Inc. v. Mead Johnson & Co.*, 1966 WL 7350, *2 (TTAB 1966) (difference of two letters does not distinguish TRIACTOL from TRIKETOL).

As for the period after “MS,” “[p]unctuation, such as quotation marks, hyphens, periods, commas, and exclamation marks, generally does not significantly alter the commercial impression of the mark.” *Peterson v. Awshucks SC, LLC*, 2020 WL 7888976, *18 (TTAB 2020). As for the marks’ visual contexts, both are in standard characters, and may be displayed in the same font, size, or color. *Monster Energy Co. v. Lo*, 2023 WL 417620, *17 (TTAB 2023).

In sound, the only difference is between “MISS” and “MS.”—the latter often pronounced “MIZ.”¹⁵ Such a minor difference in the sound of the marks “may go undetected by consumers and, therefore, would not be sufficient to distinguish the

¹⁴ *Id.*

¹⁵ American Heritage Dictionary, AHDictionary.com, Oct. 27, 2020 Office Action at 13.

marks.” *In re Viterro Inc.*, 671 F.3d 1358, 1367 (Fed. Cir. 2012).

In connotation and commercial impression, dictionary definitions in the Application’s prosecution history show that “MS.” is “used instead of **Miss** or **Mrs.** (as when the marital status of a woman is unknown or irrelevant).”¹⁶ Thus, “MS.” encompasses “MISS” in meaning. *See Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 998 (Fed. Cir. 2020) (finding Board’s reliance on dictionary definitions of the relevant terms in the marks and on the “marks themselves” to be substantial evidence on which to evaluate similarities in the connotation of each mark).

Taken in their entireties, then, MISS BUSINESS and MS. BUSINESS are highly similar, and the first *DuPont* factor weighs strongly in favor of finding a likelihood of confusion.

B. Relatedness of the Goods and Services

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...” *DuPont*, 476 F.2d at 1361; *Bertini v. Apple, Inc.*, 63 F. 4th 1373, 1380 n.3 (Fed. Cir. 2023). “We must make our determinations ... based on the goods and services as they are recited in the registration[] and application.” *Advance Magazine Pub’rs., Inc. v. Fashion Elecs., Inc.*, 2023 WL 4261426, *15 (TTAB 2023).

Opposer’s Registration essentially recites business consulting and financial services in Classes 35 and 36 in such general fields as accounting, insurance,

¹⁶ Merriam-Webster.com, June 2, 2021 Office Action at 24 (emphasis in italics in original).

marketing, real estate, and taxes. On the other hand, Applicant's Application identifies stationery and books, specifically:

Notebooks; Pens; Printed books in the field of business, entrepreneurship and career; Stationery; Office stationery; Paper stationery; School supply kits containing various combinations of selected school supplies, namely, writing instruments, pens, pencils, mechanical pencils, erasers, markers, crayons, highlighter pens, folders, notebooks, paper, protractors, paper clips, pencil sharpeners, writing grips, glue and book marks; Spiral-bound notebooks; Wire-bound notebooks, in Class 16.

Opposer asserts that:

- "Registrant's goods [sic] include a variety of business-related services, positioning the mark within the broader business consulting and development space. Applicant's goods—namely notebooks, pens, and printed books in the field of business—are a natural area of expansion for the Registrant. It is common for companies offering business services to also provide branded educational or promotional materials, such as business workbooks, writing instruments, and publications. ... The overlap in industry focus and complementary nature of the goods and services makes confusion likely."¹⁷
- "Applicant claims use in connection with books and stationery, but these goods are naturally complementary to Opposer's business consulting and financial services."¹⁸
- "Opposer regularly uses branded print materials in the course of providing services, and consumers are likely to encounter educational or inspirational materials as an extension of a brand in the entrepreneurial and financial coaching space."¹⁹

None of these assertions is proven with evidence. **Evidence** of relatedness could include such things as news articles showing that the relevant goods and services are used together; webpages showing that they are advertised or sold by the same source; or copies of prior use-based registrations of the same mark for Applicant's goods and

¹⁷ Opposer's main brief, 15 TTABVue 24.

¹⁸ Opposer's reply brief, 17 TTABVue 3.

¹⁹ *Id.*

Opposer's services. *See, e.g., L'Oreal S.A. v. Marcon*, 2012 WL 1267956, *7 (TTAB 2012). But in this case, the record contains no such evidence. Opposer's registration does not recite publishing services or publications. Opposer has not proven that the parties' goods and services are advertised, sold, or registered by the same source under the same mark. There is no evidence that the goods and services are used together. "Attorney argument is no substitute for evidence." *Zheng Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)). Yet that is all Opposer presents.

Even if Opposer had adduced evidence that she provided printed materials in the course of providing business consulting and financial services in such fields as accounting, insurance, marketing, real estate, and taxes, that could still fall short of proving relatedness to Applicant's stationery and books. Opposer has not shown that such "printed materials are generally recognized as being related, nor has it shown 'something more' to establish relatedness in the circumstances of this case." *In re St. Helena Hosp.*, 774 F.3d 747, 754 (Fed. Cir. 2014).

The most the parties' goods and services have in common is that they are both in the general field of business.²⁰ But that is not enough to establish a relationship between them. It is error to deny registration simply because "applicant sells some of its goods in some of the **same fields** in which opposer provides its services...." *Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp.*, 954 F.2d 713, 716 (Fed. Cir. 1992) (emphasis in italics in original); *Bose Corp. v. QSC Audio Prods., Inc.*, 293

²⁰ Applicant's goods include "printed books in the field of business, entrepreneurship and career."

F.3d 1367, 1376 (Fed. Cir. 2002) (“[A] broad general market category is not a generally sound reliable test of relatedness of products [or services].”); *Elec. Data Sys. Corp. v. EDSA Micro Corp.*, 1992 WL 184671, *4 (TTAB 1992) (“[T]he issue of whether or not [goods and services] are related does not revolve around the question of whether a term can be used that describes them both, or whether both can be classified under the same general category.”); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 2010 WL 1514315, *12 (“a finding that the goods [and services] are similar is not based on whether a general term or overarching relationship can be found to encompass them both.”).

Opposer’s assertion that “notebooks, pens, and printed books in the field of business—are a natural area of expansion”²¹ fares no better. “The burden is on opposer to present evidence that is persuasive of the fact that the new business represents an expansion of, and not merely an unrelated addition to, the business that opposer conducted prior to the first use of applicant’s mark on the goods for which applicant is seeking a registration. Without such evidence of a natural expansion, opposer would be asserting the dreaded right in gross to a mark....” *Electronic Data Systems v. EDSA*, 1992 WL 184671 at *5 (quoting *Sheller-Globe Corp. v. Scott Paper Co.*, 1979 WL 24890, *5 (TTAB 1979)). Opposer’s extensive listing of services does not suffice to evidence such a natural expansion, as the Board has explained:

The fact that a company is a widely diversified and expanding corporation does not mean that it has the propensity to move or will move under a particular mark in any or all directions or that it is entitled to an unlimited scope of protection of the mark. To accept this proposition would, in effect,

²¹ Opposer’s main brief, 15 TTABVUE 24.

bestow upon a company a right in gross in a mark which is contrary to the basic concept of trademark law and to the statutory language of Section 2(d).

Texas Gas Transmission Corp. v. Chemplex Co., 1972 WL 17750, *8 (TTAB 1972).

Opposer fails to adduce such evidence of a propensity for expansion. If anything, her reliance on this doctrine tacitly concedes the unrelatedness of the parties' goods and services, and amounts to nothing more than an assertion of a right in gross.

Opposer argues that "if the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks."²² That is generally true, but "[a]s we have long held, each case must be decided on its own facts and the differences are often subtle ones." *In re St. Helena Hosp.*, 774 F.3d at 753 (internal punctuation and citation omitted). The marks in this case are very similar, but that alone is not a sufficient basis for finding likelihood of confusion, given the dearth of evidence that the parties' goods and services are related. *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1245 (Fed. Cir. 2004) ("Although the marks are identical, the differences in the products as well as the weakness of [opposer's] mark lead us to dismiss [the] [o]pposition."); *Calypso Tech., Inc. v. Calypso Cap. Mgmt., LP*, 2011 WL 4090446, *10 (TTAB 2011) ("Essentially plaintiff would have us find confusion simply because of the similarity of the marks. But this is not a sufficient basis for doing so."; dismissing opposition based on dissimilarity of the services and sophistication of consumers); *In re OSF*

²² Opposer's main brief, 15 TTABVue 20-21.

Healthcare Sys., 2023 WL 6140427, *17 (TTAB 2023) (where evidence of record was insufficient to show that applicant’s services were related to the registrant’s services, “we conclude that confusion is unlikely as to the services in those classes notwithstanding the identity of the marks”).

We find, in sum, that Opposer has not met her burden to show that the parties’ goods and services are related, and the second *DuPont* factor weighs heavily against finding a likelihood of confusion.

C. Similarity of Channels of Trade and Classes of Customers

The third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 476 F.2d at 1361.

Opposer asserts that:

- “Here, the parties’ goods [sic] are so similar in the classes of purchasers that are being targeted that the Board must presume that Applicant’s and Opposer’s goods will be sold in the same channels of trade bought by the same classes of purchasers.”²³
- “Beyond this presumption, in fact both Opposer and Applicant sell their products through ecommerce channels.”²⁴ “The marks appear in overlapping online spaces, including Instagram, digital workshops, and branded merchandise targeting the same demographic.”²⁵
- “Both parties target the same consumer group: women interested in entrepreneurship, financial growth, and self-empowerment.”²⁶

Opposer’s arguments fail for several reasons.

²³ Opposer’s main brief, 15 TTABVUE 25.

²⁴ *Id.*

²⁵ Opposer’s reply brief, 17 TTABVUE 3.

²⁶ *Id.*

First, her arguments depend on showing that the parties' goods and services are related—a key point she has utterly failed to prove. Second, her claim that the parties' use ecommerce and common online spaces, such as Instagram, proves nothing. "Advertising on the Internet is ubiquitous and proves little, if anything, about the likelihood that consumers will confuse similar marks used on such goods or services." *In re St. Helena Hosp.*, 774 F.3d at 754. The Board has long recognized the principle that "the mere fact that goods and services may both be advertised and offered through the Internet is not a sufficient basis to find that they are sold through the same channels of trade." *Parfums De Coeur, Ltd. v. Lazarus*, 2007 WL 683784, *10 (TTAB 2007), cited in *Shenzhen v. Fancy Pants*, 2022 WL 16646840, at *24. And third, the channels of trade and classes of customers are determined, not by a party's assertions, but by the recitations in the application and registration—neither of which limit the parties' goods and services to a common class of customers. *In re Detroit Ath. Co.*, 903 F.3d at 1308 (citing *Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 1323 (Fed. Cir. 2014) (class of customers cannot be narrowed by testimony or argument)).

Here, as with the second *DuPont* factor, the parties' goods and services might appeal to a broad class of potential customers in the general field of business, but the breadth of that field, and the ubiquitous nature of online marketing, do nothing to predispose those customers to perceive those goods and services as emanating from the same source. *Cf. Sports Authority Michigan Inc. v. PC Authority Inc.*, 2002 WL 31039597, *12 (TTAB 2002) ("We find little likelihood for confusion attributable to channels of trade employed by the parties, notwithstanding that there are no

restrictions on the involved identifications. In regard to classes of consumers, the mere fact that both opposer and applicant are presumed to market to general consumers, including businesses and individuals, does not dictate a conclusion that confusion is likely to arise.”).

The third *DuPont* factor thus weighs against a finding of likelihood of confusion.

D. Miscellaneous Other *DuPont* Factors

Given the dearth of evidence presented, the remaining *DuPont* factors may be addressed briefly. Under the fifth factor, concerning the strength of Opposer’s mark, there is no evidence of Opposer’s advertising or sales under the mark, and thus no evidence of its commercial strength, so the fifth factor is neutral. *See generally Bureau Nat’l. Interprofessionnel du Cognac v. Cologne & Cognac Entm’t.*, 2024 WL 3659100, *4 (Fed. Cir. 2024). “Because Opposer’s mark is registered on the Principal Register, with no claim of acquired distinctiveness under Section 2(f), we presume it is inherently distinctive, i.e., that it is at worst suggestive of the goods.” *Heil v. Tripleye*, 2024 WL 4925901, at *18. Applicant presents no evidence of third-party use or registration of similar marks, so the sixth factor is neutral.

Applicant also presents no evidence confirming contemporaneous use of the parties’ marks in the same marketplace without actual confusion, so the eighth factor is neutral, as well. *In re Embiid*, 2021 WL 2285576, *19 (TTAB 2021) (eighth factor “requires us to look at actual market conditions, to the extent there is evidence of such conditions of record.”).

Opposer's registration lists a variety of services, which relates to the ninth factor, but as discussed above, that variety does not support an inference that Applicant's stationery and books are a natural area of expansion. There is also no evidence of the parties' market interface, or of Applicant's right to exclude others. The ninth, tenth, and eleventh factors are neutral, as well.

And given Opposer's failure to adduce a shred of evidence to satisfy her burden of proof, we find under the twelfth *DuPont* factor, "[t]he extent of potential confusion, i.e., whether de minimis or substantial," 476 F.2d at 1361, that the extent of potential confusion is indeed de minimis. "Section 2(d) of the Trademark Act is concerned about the likelihood of confusion, not some theoretical possibility built on a series of imagined horrors." *Electronic Data Sys. v. EDSA*, 1992 WL 184671, at *6. "Opposer has the burden of proof and must establish its likelihood of confusion claim by a preponderance of the evidence, and we see Opposer's likelihood of confusion claim as amounting to only a speculative, theoretical possibility." *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 2016 WL 7655551, *12 (TTAB 2016).

IV. Decision

At the end of the day, Opposer has not presented sufficient evidence in connection with the likelihood of confusion factors, and the evidence we do consider—the application file that is automatically of record and the status and title copy of Opposer's pleaded registration—do not suffice to carry her burden of proof. Weighing the various factors, we find that the parties' marks very similar, but the similarity of the parties' goods and services is another key consideration in determining a

likelihood of confusion. *In re St. Helena Hosp.*, 774 F.3d 747. Opposer failed to establish a relationship between her services and Applicant's goods. A single *DuPont* factor may be dispositive in any particular case. *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 333 (Fed. Cir. 1991). And in this case, the second factor is dispositive. *North Face Apparel Corp. v. Sanyang Indus. Co.*, 2015 WL 6467820, *18 (TTAB 2015) ("The difference in the goods and services is dispositive on the issue of likelihood of confusion."). On balance, we conclude that the second *DuPont* factor outweighs the first. Opposer has also failed to show that the channels of trade and classes of customers are the same, and that the extent of potential confusion is any more than de minimis. The remaining *DuPont* factors are neutral. On balance, we find that Opposer has failed to satisfy her burden to show, by a preponderance of the evidence, that confusion as to source is likely.

The opposition to registration of Applicant's mark MISS BUSINESS is dismissed.