

This Opinion is Not a
Precedent of the TTAB

Mailed: April 10, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Suarez Industries, Inc.

Serial No. 97602779

Deborah L. Corpus of Pearne & Gordon LLP,
for Suarez Industries, Inc.

Lori Emilo, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.

Before Lykos, Adlin and English, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Suarez Industries, Inc. seeks a Principal Register registration for the mark EDENPURE, in standard characters, for:

all-purpose cleaners for household purposes; cleaner for use on carpets, rugs, upholstery, clothing, table cloths, car interiors, toilets, floor drains, furniture, glass, stainless steel, household non-porous and hard surfaces, and for stain removal; cleaning agents for cleaning surfaces for household purposes; dish detergents; glass cleaners; household cleaning preparations; laundry detergent; spray cleaners for household purposes; biotechnological cleaning solution for breaking down organics, and removing stains, in International Class 3.¹

¹ Application Serial No. 97602779, filed September 22, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered mark EDEN'S PURE, in standard characters, for "cosmetics; deodorant for personal use; deodorants for body care; body deodorants; non-medicated toiletry preparations," in International Class 3,² that it is likely to cause confusion. After the refusal became final, Applicant appealed and filed a request for reconsideration that was denied. Applicant and the Examining Attorney filed briefs.³

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*") (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated

² Registration No. 6935966, issued December 27, 2022 on the Principal Register (the "Cited Registration").

³ The materials attached to Applicant's Appeal Brief were made of record during prosecution and need not have been reintroduced.

by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. The Cited Mark’s Strength

During prosecution, Applicant introduced websites showing third-party use of what Applicant calls “EDEN-formative trademarks being used to offer deodorants and body soap for sale to American consumers.” June 30, 2023 Request for Reconsideration TSDR 9, 27-72. It argued, based on this evidence, that because the cited mark “is currently peacefully coexisting [with these third-party marks] in the U.S. marketplace without a likelihood of confusion,” Applicant’s mark can also peacefully coexist without a likelihood of confusion.” *Id.* at 10 (underlining in original).⁴

We construe Applicant’s reliance on this third-party use evidence as an argument that the cited mark is commercially weak.⁵ Under the sixth *DuPont* factor, evidence of widespread third-party use of similar marks for similar goods tends to indicate a lack of [*3] commercial strength. *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (“The purpose of introducing evidence of third-party use is ‘to show that customers have become so conditioned by a plethora of ... similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.’”) and *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030,

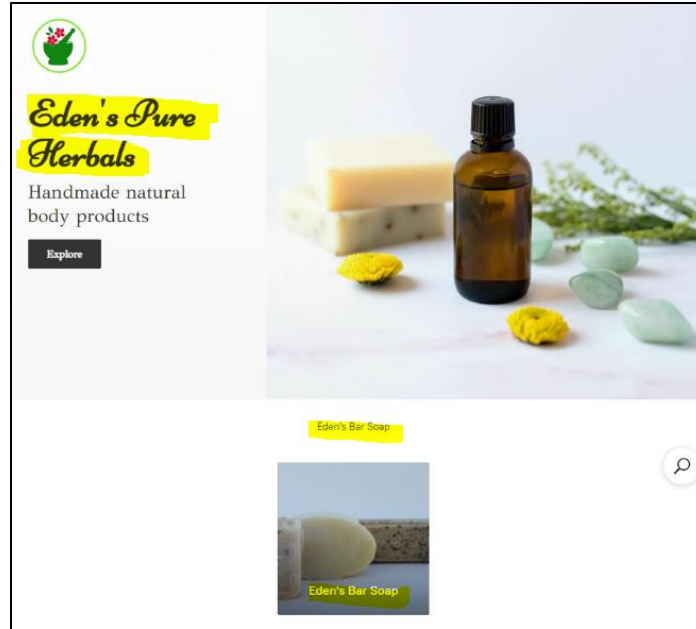
⁴ Applicant did not reassert this argument in its Appeal Brief.

⁵ Applicant does not argue that the cited mark is conceptually weak.

1033 (TTAB 2016) (“Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”) (both cases quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691, 1694 (Fed. Cir. 2005)) .

Here, Applicant’s argument that these third-party marks are “peacefully coexisting” with the cited mark is unsupported by any evidence, and is therefore unpersuasive. Indeed, “[a]ttorney argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367 , 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)); see also *In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006 (TTAB 2014) (finding that there was no proof to support counsel’s statements).

In any event, we do not find the argument particularly persuasive. The most relevant third-party marketplace use Applicant introduced is shown in Eden’s Pure Herbals’s website, which depicts bar soap and lip balm offered under the mark EDEN’S, as shown below:



June 30, 2023 Request for Reconsideration TSDR 28-29 (highlighting added). Because the bar soap and lip balm are offered under the mark EDEN'S by itself, these third-party products are not offered under a mark nearly as similar to the cited mark as is Applicant's EDENPURE mark. Nonetheless, we acknowledge that because this third-party's trade name is EDEN'S PURE HERBALS, and it sells bar soap, this may at least suggest some commercial weakness of EDEN'S PURE to the extent any consumers associate the trade name EDEN'S PURE HERBALS with the EDEN'S bar soap.

Applicant's other third-party evidence is much less significant, however. Two examples are from third parties based in foreign countries, *id.* at 32-34, 48-49, without evidence that the marks shown identify goods sold in the United States, and these examples are therefore essentially irrelevant to our consideration of the cited mark's strength in the United States.⁶ The other third-party marks Applicant relied upon during prosecution (**herb'neden**, simplyeden in stylized format,⁷ PUR EDEN,⁸ SECRETS OF EDEN, D'EAU EDEN, EDENS GARDEN, ESSENTIAL EDEN and EDENS,), *id.* at 36-47, 51-72, are too different from the cited mark to show that the cited mark is commercially weak. While these examples tend to establish that the word "EDEN" by itself has some commercial weakness for personal care products, the cited mark is EDEN'S PURE, and none of the third-party marks in use that Applicant relies upon are nearly as close to that cited mark as is Applicant's involved mark.

Thus, we find that the term "EDEN" alone is somewhat commercially weak, which weighs slightly against finding a likelihood of confusion, because Applicant's and Registrant's mark share and begin with forms of "EDEN." On the other hand, the mark the Examining Attorney cites against the involved application is EDEN'S

⁶ Furthermore, on the Canadian website Applicant introduced, June 30, 2023 Request for Reconsideration TSDR 32-34, the deodorant is sold under a mark that is merely a stylized lowercase "e," a third-party mark that is incompetent to establish that the cited mark EDEN'S PURE is weak.

⁷ The owner of this mark, Simply Eden Bath &Body, is based in Eden, Utah.

⁸ This mark is apparently owned by an Italian company, but products offered under this mark may be available in the United States. While this mark is closer to the cited mark than most of the others, the term "PUR" is spelled differently than "PURE" and may or may not be pronounced similarly. Moreover, in this third-party mark, unlike Applicant's and Registrant's marks, the term EDEN comes second, making PUR EDEN less similar to EDEN'S PURE than EDENPURE.

PURE, not EDEN or a form thereof alone, and we must keep in mind both that marks are considered in their entirety, and that likelihood of confusion “is to be avoided as much between weak marks as between strong marks,” *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982).

B. The Marks

We consider marks “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). Here, the marks are quite similar, with the only differences between them being that Registrant’s mark EDEN’S PURE includes an apostrophe followed by an “s” at the end of the word EDEN, and a space between “EDEN” and “PURE,” while Applicant’s mark EDENPURE does not contain an “apostrophe s”, or the space between EDEN and PURE. We find these differences minor and insufficient to avoid consumer confusion.

First, the marks look and sound almost identical because they each contain “EDEN” followed by “PURE.” The “apostrophe s” at the end of the word “EDEN” in Registrant’s mark results in some visual and aural difference between the marks. However, consumers are unlikely to notice this slight difference in sound and appearance in the middle of Registrant’s mark, and even if they did, they could very well focus more intently on the combination of “EDEN” and “PURE,” in that order, in both Applicant’s and Registrant’s marks. Consumers who do notice the differences between the marks may not perceive them as distinguishing two different sources of

goods, but could instead, because the differences between the marks are so slight, perceive one mark as a variation of the other, used by the same source.

Furthermore, while potential consumers who see the marks side-by-side or hear them one after the other may notice the differences between EDENPURE and EDEN'S PURE, that is not how consumers typically encounter marks. Indeed, "[t]he proper test is not a side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression' such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 USPQ2d 1901, 1905 (TTAB 2007)).

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

Consumers encountering these marks at spaced intervals may not remember the slight differences between EDENPURE and EDEN'S PURE.

We find that the differences between the marks in meaning and commercial impression are if anything even less significant than the minor differences in sight and sound. We take judicial notice that: (1) "Eden" means "paradise," "the garden where according to the account in Genesis Adam and Eve first lived" and "a place of pristine or abundant natural beauty;"⁹ and (2) "pure" means "unmixed with any other matter."¹⁰ Thus, both marks convey pristine cleaning or personal care products that are derived from a beautiful source, or that result in an Eden-like appearance or smell.

We have not ignored the "apostrophe s" in Registrant's mark that is absent from Applicant's mark, and, as Applicant correctly argues, denotes possession. 6 TTABVUE 4-5.¹¹ But we find that this part of the cited mark does not result in a significantly different meaning or commercial impression. Both marks still convey products having, or that create, the purity of Eden. *See In re Chatam International Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004) (affirming refusal to register JOSE GASPAR GOLD for tequila based on prior registration of GASPAR'S

⁹ merriam-webster.com/dictionary/Eden. The Board may take judicial notice of dictionary definitions. *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); *Threshold TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

¹⁰ merriam-webster.com/dictionary/pure.

¹¹ Citations to the appeal record are to TTABVUE, the Board's online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

ALE for beer, stating that “GASPAR and GASPAR’S convey a similar appearance, sound, connotation, and commercial impression”); *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (“The absence of the possessive form in applicant’s mark BINION has little, if any, significance for consumers in distinguishing it from the cited mark” BINION’S ROADHOUSE); *Georgia-Southern Oil Inc. v. Richardson*, 16 USPQ2d 1723, 1725 (TTAB 1990) (“The marks are virtually identical, differing by only a possessive letter ‘s’ in user’s mark.”); *In re Curtice-Burns, Inc.*, 231 USPQ 990, 992 (TTAB 1986) (MCKENZIE and MCKENIE’S “are virtually identical in commercial impression”); *Winn’s Stores, Inc. v. Hi-Lo, Inc.*, 203 USPQ 140, 144 (TTAB 1979) (“consumers who are familiar with opposer’s use over the years of this term ‘WINN’S’ would upon encountering applicant’s retail variety store services under the name ‘WIN-WAY DOLLAR STORE’ be likely to assume that they were owned or controlled by opposer”).

In short, the marks are highly similar in appearance, sound, meaning and commercial impression. Notwithstanding the slight commercial weakness of “EDEN” alone for personal care products, this factor weighs heavily in favor of finding a likelihood of confusion.

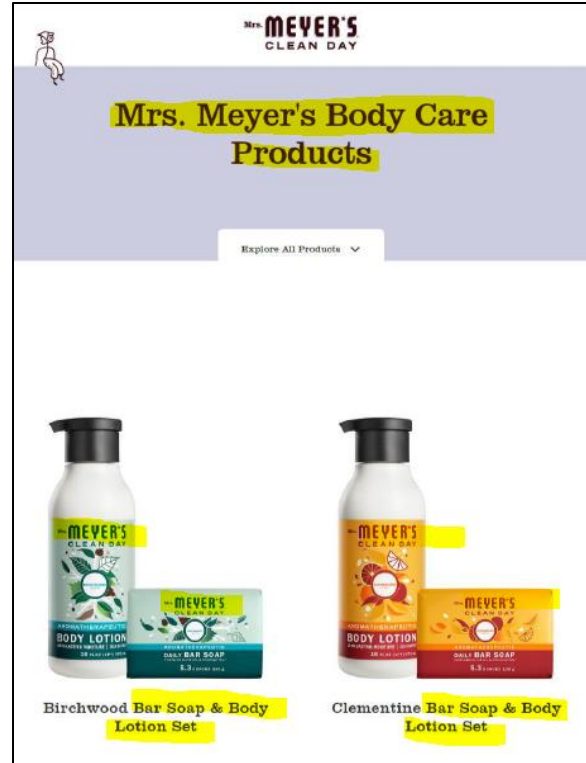
C. The Goods, Their Channels of Trade and Classes of Consumers

The goods need not be identical or even competitive in order to find a likelihood of confusion. Rather, the question is whether the goods are marketed in a manner that “could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB

2007)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 227 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods”).

Here, the Examining Attorney argues that third-party websites establish a relationship between the goods, because they show that some entities use the same marks for both household cleaning products and cosmetics or deodorants. *See In re Detroit Athl. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (crediting relatedness evidence showing that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a single mark associated with a source that sells both”); *Hewlett-Packard Co.*, 62 USPQ2d at 1004 (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

For example, the third party MRS. MEYERS mark is used for a line of “household cleaners,” such as “multi-surface everyday cleaner,” as well as “body care products,” such as “body wash and body lotion,” as shown below:

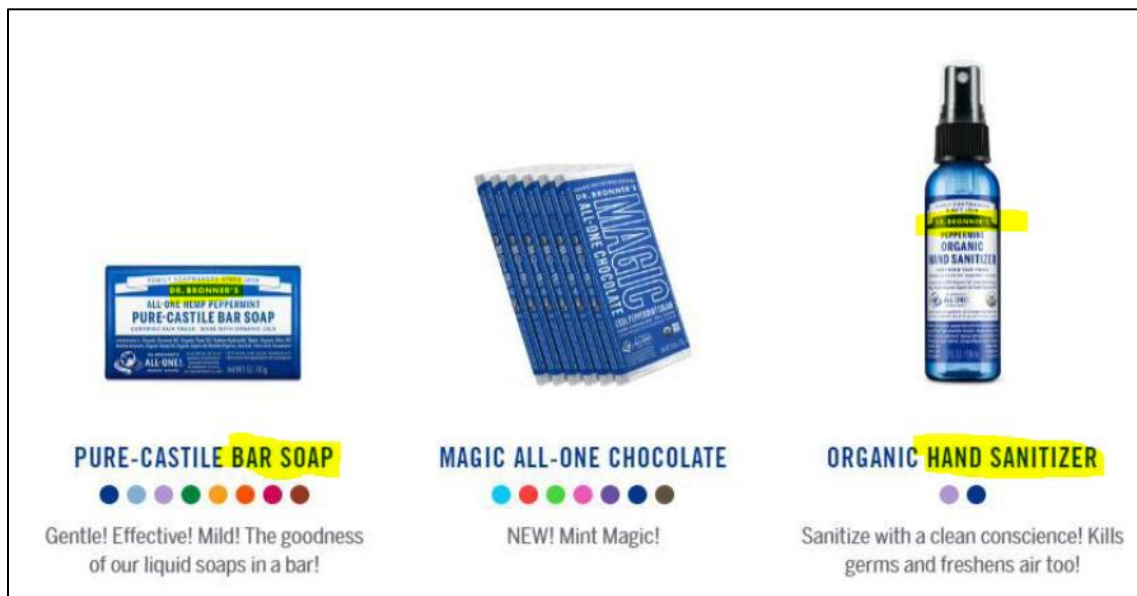
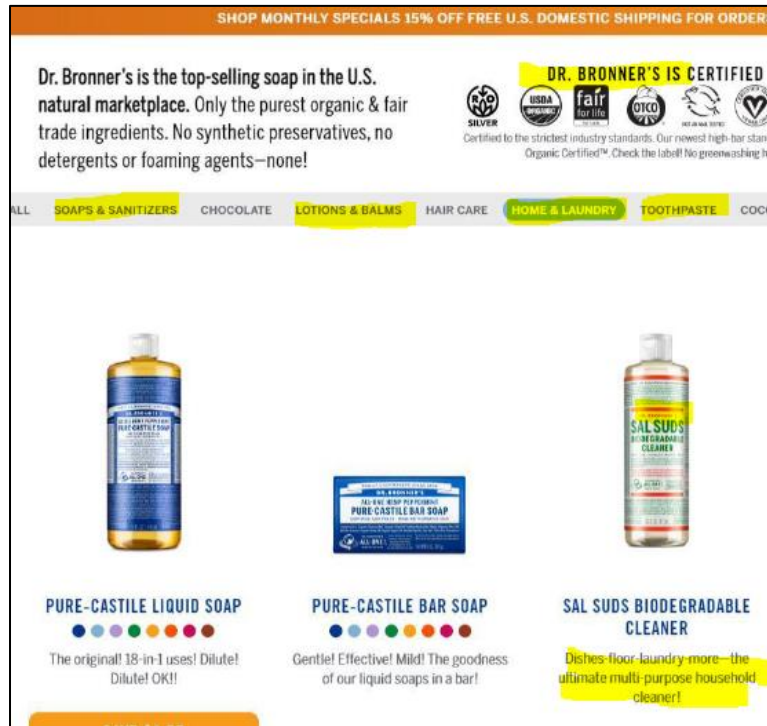


February 7, 2023 Office Action TSDR 14, (highlighting added). We take judicial notice that “toiletries,” identified in the Cited Registration, are “an article or preparation (such as toothpaste, shaving cream, or cologne) used in cleaning or grooming oneself.”¹² Thus, the MRS. MEYERS bar soap and body lotion fall within Registrant’s identification of “non-medicated toiletry preparations,” just as the MRS. MEYERS “multi-surface everyday” household cleaner falls within Applicant’s identification of “cleaning agents for cleaning surfaces for household purposes.”

Dr. Bronner’s uses its DR. BRONNER’S mark for “home and laundry” cleaners such as “the ultimate multi-purpose household cleaner,” intended for “Dishes-floor-

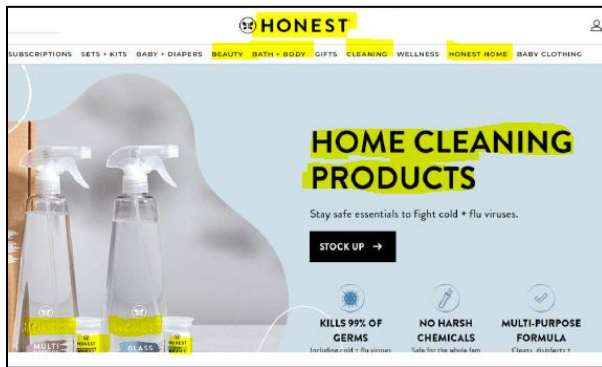
¹² merriam-webster.com/dictionary/toiletry

laundry-more.” It uses the same DR. BRONNER’S mark for personal care products such as bar soap and hand sanitizer, as shown below:



Id. at 23, 25 (highlighting added).

The third-party HONEST mark is used for a variety of “home cleaning products” as well as personal cleaning products, such as baby shampoo and body wash, as shown below:



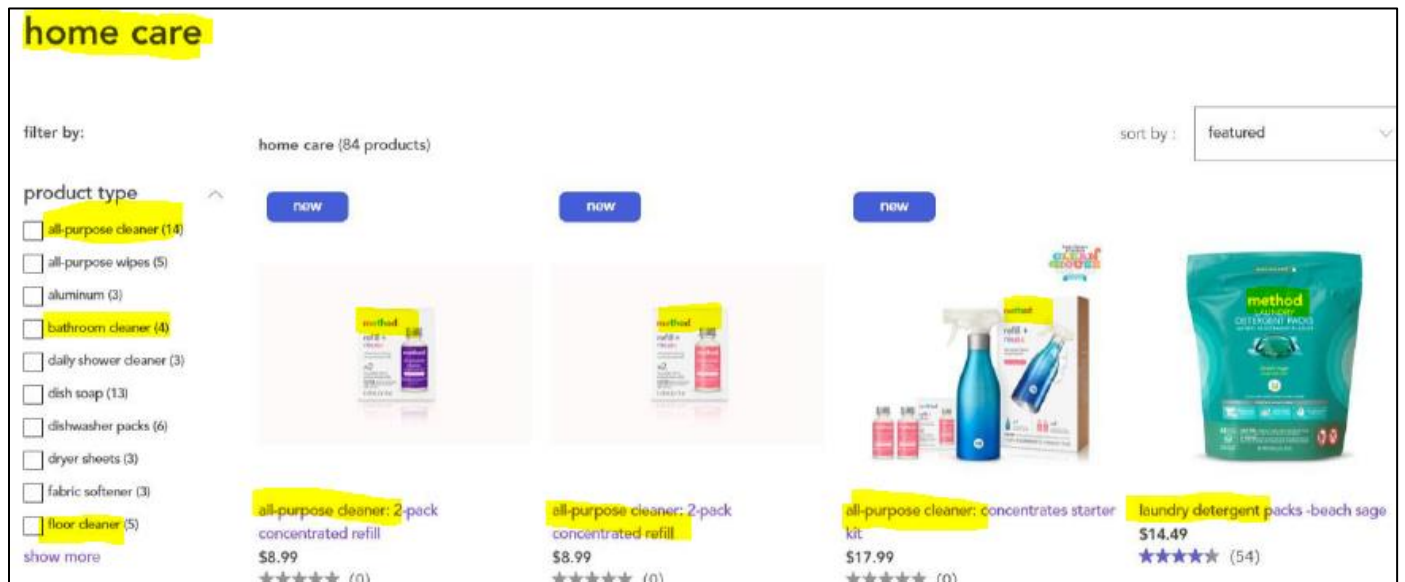
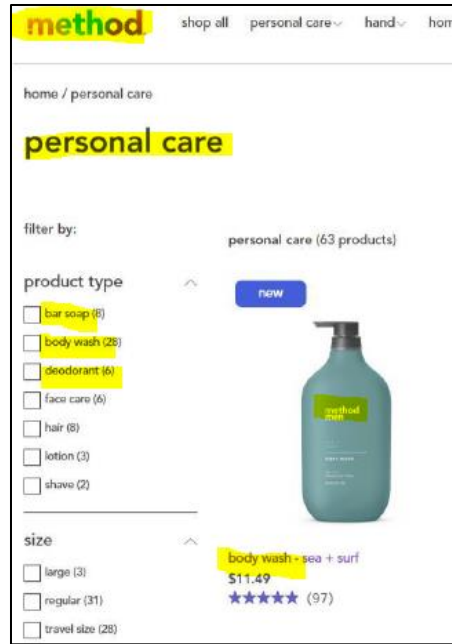
Id. at 28, 35 (highlighting added).

The third-party ATTITUDE mark is used for personal care products such as hand soap, and household cleaners, such as bathroom and floor cleaners, as shown below:



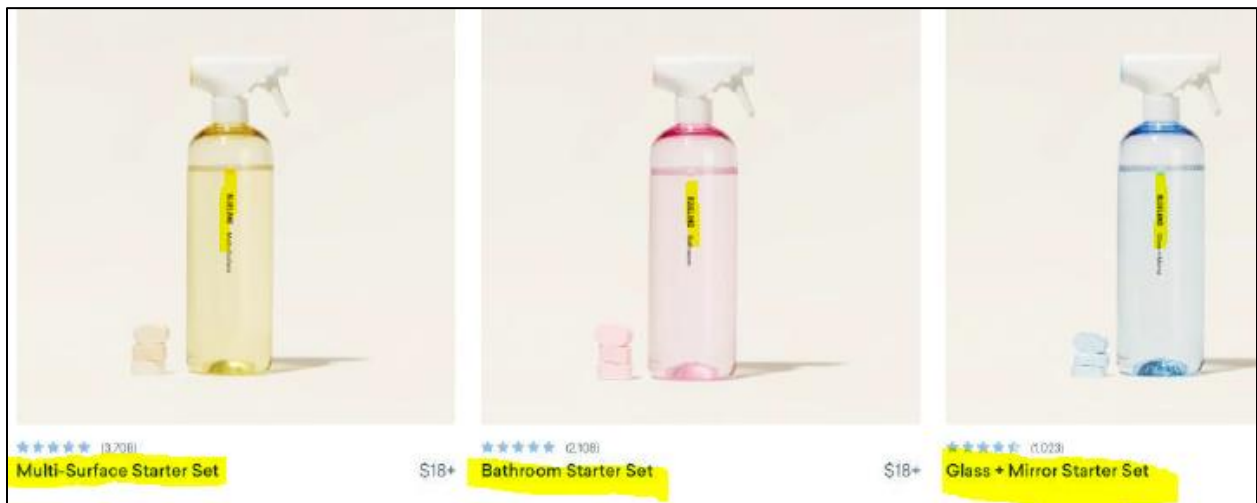
April 19, 2023 Office Action TSDR 9, 21 (highlighting added).

Third-party mark METHOD is used for “personal care” products such as body wash, deodorant and soap, encompassed by Registrant’s identification of goods, and “home care” products, such as the “all-purpose cleaners” and “laundry detergent” identified in the involved application, as shown below:



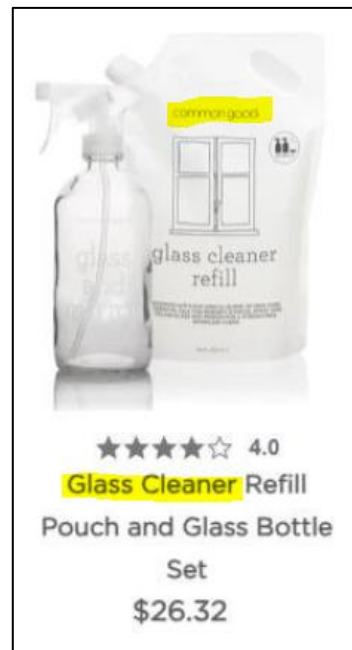
Id. at 35, 40 (highlighting added).

The third-party BLUELAND mark is used for facial cleanser and body wash on the one hand, and multi-surface, bathroom and glass and mirror cleaning sprays and dish soap on the other, as shown below:



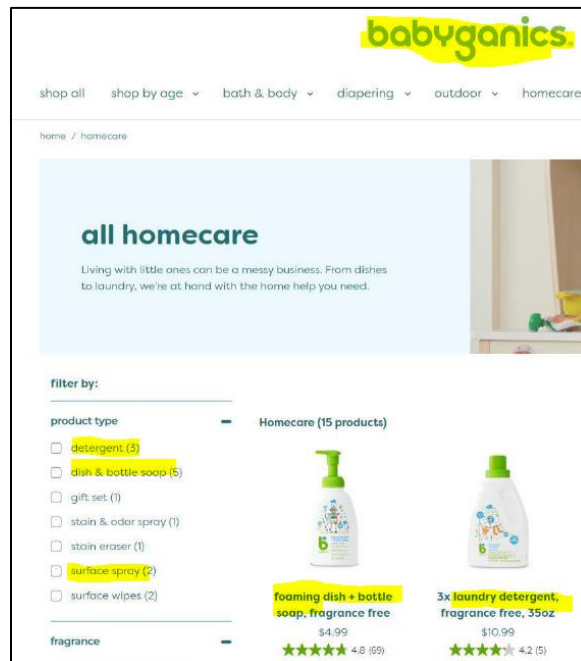
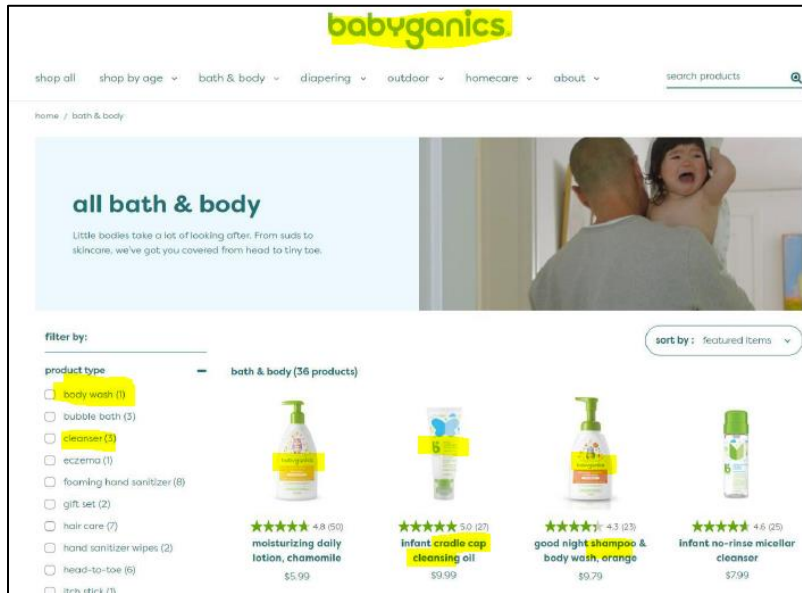
July 25, 2023 Denial of Request for Reconsideration TSDR 20, 22, 25 (highlighting added).

Third-party mark COMMON GOOD is used for hand soap, shower gel, dish soap, laundry detergent, and bathroom and glass cleaner:



Id. at 30, 32, 35, 38 (highlighting added).

The third-party BABYGANICS mark is used for bath and body goods, such as cradle cap cleansing oil and shampoo, and household cleaners, such as dish soap and laundry detergent, as shown below:



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Id. at 41, 44 (highlighting added).

Third-party Clean Cult uses its CLEAN CULT mark on dish soap, identified in the involved application, and hand soap, encompassed by the goods identified in the Cited Registration, as shown below:

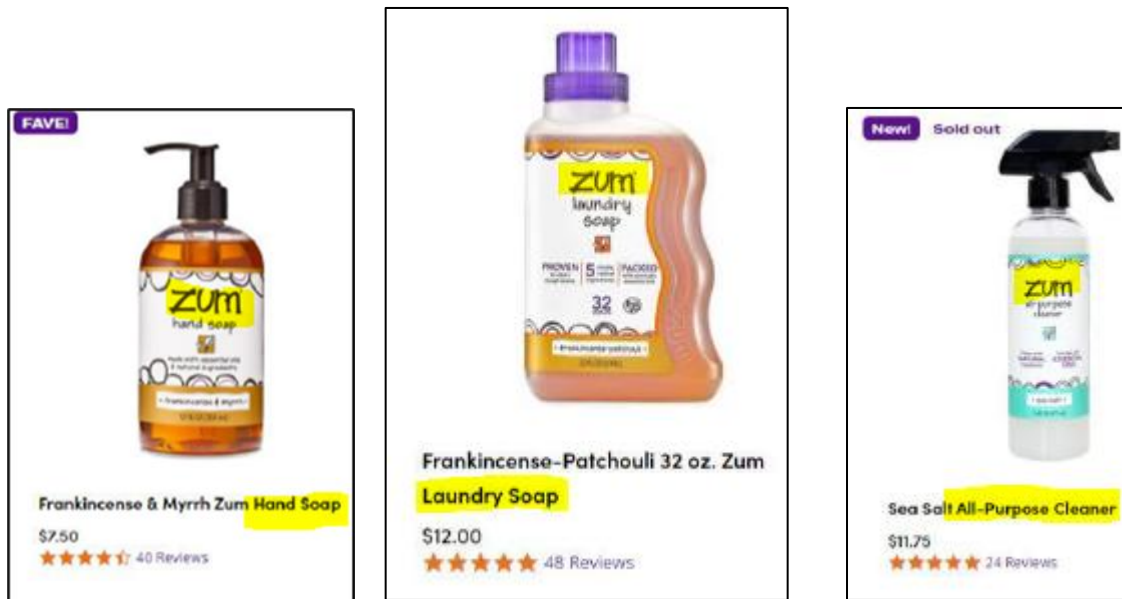


Id. at 48 (highlighting added).

The third-party PURACY mark is used for personal care products encompassed by the Cited Registration's identification of goods, such as hand soap, and household cleaning products identified in the involved application, such as laundry detergent, as shown below:



Id. at 54, 67 (highlighting added). Similarly, the third-party ZUM mark is used for hand soap, encompassed by the Cited Registration’s identification of goods, and laundry soap and all-purpose cleaner, identified in the involved application:



Id. at 96 (highlighting added).

In addition, third-party Brandless, apparently named ironically because it displays “Brandless” with a trademark (™) symbol, uses the mark for skincare and multi-surface cleaning products and laundry detergent. April 19, 2023 Office Action TSDR 43-47. The third-party PUBLIC GOODS mark is used for a variety of personal care products such as deodorant, body wash, facial cleanser, shampoo, soap and eye cream, and home cleaning products, including dish soap and glass, surface and bathroom “cleaners.” *Id.* at 64-87. Another third-party mark, HEALTHY BABY, is used for laundry detergent, one of Applicant’s identified goods, and deodorant, one of Registrant’s, along with shampoo and body wash, also encompassed by Registrant’s identification of goods. *Id.* at 88-95. The third-party mark NO TOX LIFE is used for deodorant, a facial cleansing bar, shampoo and body wash, all encompassed by the Cited Registration’s identification of goods, and dish soap, encompassed by the involved application’s identification of goods. July 25, 2023 Denial of Request for Reconsideration TSDR 9-19.

Furthermore, the Examining Attorney introduced 20 use-based third-party registrations showing that the same marks are registered for goods encompassed by the Cited Registration’s identification of goods on the one hand, and goods identified in the involved application on the other, as follows:

VANSOCI (Reg. No. 6355985) is registered for “cosmetics” and “all-purpose cleaners.”

VIPEAST (Reg. No. 6976812) is registered for “all-purpose cleaners” and “cosmetics.”

OCTOPY (Reg. No. 6355940) is registered for “cosmetics” and “all-purpose cleaners.”

GFG (Reg. No. 6807425) is registered for “cosmetics” and “all-purpose cleaners.”



(Reg. No. 6679598) is registered for “cosmetics” and “all-purpose cleaners.”

Lqemwth (Reg. No. 6839264) is registered for “cosmetics” and “detergent soap.”

OWTERY (Reg. No. 6505630) is registered for “cosmetics” and “detergent soap.”

ESTIGLIO (Reg. No. 6903036) is registered for “cosmetics” and “all-purpose cleaners.”

PZO (Reg. No. 6356025) is registered for “deodorants for human beings or for animals” and “all-purpose cleaners.”

TINGOD (Reg. No. 6889382) is registered for “cosmetics” and “all-purpose cleaners.”

SAPHUS (Reg. No. 6893734) is registered for “laundry detergent” and “cosmetics.”

CATHYCAT (Reg. No. 7020570) is registered for “laundry preparations in the nature of laundry detergent” and “cosmetics.”

HUNMUI (Reg. No. 6820966) is registered for “cosmetics” and “all-purpose cleaners.”

TOTOOL (Reg. No. 6936397) is registered for “cosmetics” and “all-purpose cleaners.”



(Reg. No. 6941533) is registered for “laundry detergents” and “cosmetics.”

LZLOOK (Reg. No. 6972843) is registered for “laundry detergent” and “cosmetics.”

ENYUR (Reg. No. 6775028) is registered for “laundry detergent” and “cosmetics.”

utooki

(Reg. No. 6974365) is registered for “laundry detergent” and “cosmetics.”

GHERANE

(Reg. No. 6979743) is registered for “cosmetics” and “detergent soap.”

freshcia

(Reg. No. 7014193) is registered for “cosmetics” and “laundry detergent.”

April 19, 2023 Office Action TSDR 96-135. “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1998). The third-party registration evidence thus corroborates the third-party use evidence, and the two types of third-party evidence establish that the goods are related.

In addition, the third-party use evidence also makes clear that the ordinary channels of trade and classes of consumers for home cleaning products overlap with those for cosmetics and deodorants. In fact, these types of personal care and home cleaning products are often offered on the same websites, under the same marks, by

the same sources, under headings such as “Household Cleaners,” “Home Care,” “Body Care Products,” “Personal Care” and “Bath and Body.” Consumers need only click on these headings to access and purchase these related goods.

In short, the record shows that cosmetics, deodorant and other personal care products are related to, and travel in the same channels of trade as, home cleaning products, and that the classes of consumers for these types of products overlap. These factors also weigh in favor of finding a likelihood of confusion.

D. Consumer Sophistication and Care

Applicant argues that confusion is unlikely because consumers will exercise care in purchasing Applicant’s and Registrant’s goods.

The ordinary consumer is very familiar with household cleaning products and also with cosmetics and deodorants and is very careful in selecting each of these types of products. Extra care is taken when shopping for and selecting household cleaning products based on ingredients and surface applications for several reasons. For instance, today’s purchasers are more aware of and educated on natural or plant-based ingredients compared to conventional chemicals that are known to cause noxious fumes, skin irritation or have other physical impact to a person when exposed. Today’s purchasers are also keenly aware of the delicate nature of their home surfaces to avoid staining, scratching, or any other damage that could result from using the wrong cleaning product. Even more, they are knowledgeable of the companies manufacturing such products – whether the products and the company are environmentally conscious, plant-based and cruelty free regarding product testing ... today’s consumers are also much more educated and knowledgeable about cosmetics and deodorants and their sources because they are applied directly to the consumer’s skin and can affect not only the skin but also their bodies due to possible allergic reactions, hormonal influences and other physical consequences. Consumers are also careful and knowledgeable to check manufacturers and their product labels to determine: if

they test on animals, types of ingredients, vegan, plant-based, suitable for sensitive skin, women- or minority-owned business, etc. Likewise, makers of these products market and label their products to provide all of this information as today's purchaser is highly attentive to all these aspects.

6 TTABVUE 5-6. We are not persuaded.

First, Applicant cites no evidence in support of these claims; they are pure attorney argument, and unconvincing for that reason alone. *Cai v. Diamond Hong*, 127 USPQ2d at 1799; *In re U.S. Tsubaki*, 109 USPQ2d at 2006. Second, Applicant's claim that consumers of the identified cleaning and personal care products focus on the products' ingredients as well as the business practices of the companies that offer them is belied by the record. Indeed, the vast majority of the third-party websites introduced by Applicant and the Examining Attorney do not list either specific ingredients or corporate practices, and instead describe the offered products more generally. Third, most of the third-party products about which there is evidence of record are inexpensive, typically in the \$5.00-\$30.00 range, with many of them under \$10.00 and a significant fraction under \$5.00. These goods could be purchased on impulse. *See Palm Bay*, 73 USPQ2d at 1695. Finally, we must base our decision on the "least sophisticated potential purchasers" for the identified goods. *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162-63 (Fed. Cir. 2014). Thus, while we have no doubt that some consumers of cleaning and personal care products are careful about what they put on their skin or use in their family home, at the same time we must account for consumers seeking to clean, for example, storage sheds or warehouses with few workers, and children or teenagers

with limited budgets purchasing cosmetic products for the first time. Neither Applicant's nor Registrant's identification of goods contains any limitations on the types of purchasers for the identified products. This factor is neutral.

E. The 13th DuPont Factor

Applicant points out that it owns Registration No. 6521783 (EDENPURE WORLDWIDE for vacuum cleaners and parts therefor, air purifiers, and electric fans and heaters), without clearly explaining the alleged significance of this registration. 6 TTABVue 2-3. Like the Examining Attorney, we construe Applicant's reliance on this registration as an invocation of the rare exception stated in *In re Strategic Partners, Inc.*, 102 USPQ2d 1397, 1399-1400 (TTAB 2012) ("the present case involves the unique situation presented by the coexistence of applicant's existing registration with the cited registration for over five years, when applicant's applied-for mark is substantially similar to its existing registered mark, both for identical goods"). The exception does not apply here, because: (1) Applicant's EDENPURE WORLDWIDE registration issued in 2021, and is therefore less than five years old; (2) the involved mark EDENPURE and the mark in Applicant's EDENPURE WORLDWIDE registration are not "substantially similar;" and (3) the vacuum cleaners, fans, heaters and air purifiers in the EDENPURE WORLDWIDE registration are not identical or even similar to the cleaning goods identified in the involved application. See *In re Country Oven, Inc.*, 2019 USPQ2d 443903, at *15-18 (TTAB 2019).

II. Conclusion

The marks are highly similar and the goods are related and travel in the same channels of trade to the same classes of general consumers. These factors easily outweigh the slight commercial weakness of the marks' shared term "EDEN," especially where Applicant's mark is much more similar to Registrant's than any of the third-party marks upon which Applicant relies. Confusion is likely.

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