

**This Opinion is Not a
Precedent of the TTAB**

Mailed: August 19, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Namaste Couture LLC.
—

Serial No. 97652794
—

Sergey A. Lysenko, Esq.
for Namaste Couture LLC.

Andrew Clark,¹ Trademark Examining Attorney, Law Office 107,
Leslie Bishop, Managing Attorney.

—

Before Cataldo, Larkin and Brock,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Namaste Couture LLC, seeks registration on the Principal Register of
the standard character mark NAMASTE COUTURE BY APRIL STOLF for

Jewelry, namely, custom-made and hand-made gemstone jewelry not of
precious metal or diamonds; Jewelry, namely, custom-made and hand-
made gemstone and mineral jewelry not of precious metal or diamonds;
Jewelry, namely, custom-made and hand-made jewelry crafts and arts
not of precious metal or diamonds; Custom-made and hand-made
costume jewelry not of precious metal or diamonds; Custom-made and

¹ The Trademark Examining Operation reassigned this case to Mr. Clark after prosecution for purposes of briefing. We will refer to Mr. Clark and his predecessor as the “Examining Attorney.”

hand-made costume jewelry crafts and arts not of precious metal or diamonds in International Class 14.²

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified goods, so resembles the mark NAMASTE in standard characters, registered on the Principal Register for "jewelry," in International Class 14,³ as to be likely to cause confusion, mistake or deception.

The Examining Attorney further refused registration pursuant to Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), based upon Applicant's failure to comply with the requirement to disclaim "COUTURE" apart from the mark as shown. The Examining Attorney contends that this wording merely describes a characteristic of the identified services. Trademark Act Section 2(e)(1); 15 U.S.C. § 1052(e)(1).

When the refusals were made final, Applicant appealed and filed a request for reconsideration. Subsequently, the Examining Attorney denied the request for reconsideration and the Board resumed the appeal. The appeal is fully briefed.⁴ We

² Application Serial No. 97652794 was filed on October 28, 2022, based upon Applicant's allegation of August 23, 2011 as a date of first use of the mark anywhere and in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). With its application, Applicant submitted the following statements: "The English translation of Namaste in the mark is I bow to you" and "The name(s), portrait(s), and/or signature(s) shown in the mark identifies April Stolf, whose consent(s) to register is made of record."

³ Registration No. 4937695 issued on April 12, 2016. Section 8 affidavit accepted; Section 15 affidavit acknowledged.

⁴ Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020). 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.

reverse the Section 2(d) refusal to register and affirm the Section 6(a) disclaimer refusal.

I. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). We discuss the *DuPont* factors for which Applicant and the Examining Attorney have presented evidence and arguments. “Not all of the [*DuPont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010)).

A. Relatedness of the Goods/Channels of Trade/Consumers

With regard to the goods, channels of trade and classes of consumers, we must make our determinations under these factors based on the goods as they are

Applicant’s briefs appear at 5 TTABVUE and 9 TTABVUE, and the Examining Attorney’s brief appears at 7 TTABVUE.

Citations in this opinion to the application record, including the request for reconsideration and its denial, are to pages in the Trademark Status and Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

identified in the involved application and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Computs. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant's identified "custom-made" and "hand-made" jewelry is encompassed by the registrant's unrestricted and more broadly identified "jewelry," which includes "all goods of the type identified, without limitation as to their nature or price," *Sock It to Me, Inc. v. Fan*, 2020 USPQ2d 10611, *8 (TTAB 2020); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1750 (Fed. Cir. 2017). We must thus presume that the registrant's "jewelry" includes hand-made and custom-made jewelry of the type identified in the involved application. As a result, the goods are legally identical.

"The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed." *Octocom Sys., Inc.*, 16 USPQ2d at 1787.

Because the goods identified in the application and the cited registration are legally identical, we must also presume that the channels of trade and classes of purchasers of the identified jewelry are the same. *See In re Viterra Inc.*, 671 F.3d

1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade”); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”).

We find that the *DuPont* factors of the relatedness of goods, channels of trade and classes of consumers weigh in favor of likelihood of confusion.

B. Conditions of Sale

Neither identification of goods restricts the recited jewelry by price. Registrant’s goods include “jewelry” without any restrictions as to material composition (e.g., gold, emeralds, diamonds) or price point. As noted above, the registrant’s goods thus are presumed to include all types of jewelry, and are not limited to “very expensive top-end wedding and anniversary diamond rings,”⁵ as Applicant contends. In the absence of any express limitations suggesting otherwise, we find that the jewelry at issue includes lower cost items that may be purchased without the enhanced degree of care reserved for wedding and anniversary bands. On the other hand, the purchase of jewelry is subject to some degree of care given the personal, aesthetic and often

⁵ 5 TTABVUE 18-20.

symbolic nature of the pieces and their design and style, even if modestly priced. As a result, this *DuPont* factor is neutral.

C. Actual Confusion

Applicant argues that there is no evidence of any actual confusion and that there has been concurrent use for at least eight years.⁶ We do not accord significant weight to Applicant's contention, unsupported by any evidence, that there have been no instances of actual confusion despite contemporaneous use of the respective marks. *Cf. In re Guild Mortgage Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019) (error not to consider evidence of contemporaneous use of marks for over forty years in same geographic area based on record evidence of such use). In this case, Applicant's "assertions are unsupported by sworn statements or other evidence, and 'attorney argument is no substitute for evidence.'" *In re OEP Enters., Inc.*, 2019 USPQ2d 309323, *14 (TTAB 2019) (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (internal quotation omitted)).

The Federal Circuit has addressed the question of the weight to be given to an assertion of no actual confusion by an applicant in an ex parte proceeding:

With regard to the seventh *DuPont* factor, we agree with the Board that Majestic's uncorroborated statements of no known instances of actual confusion are of little evidentiary value. *See In re Bissett-Berman Corp.*, 476 F.2d 640, 642, 177 USPQ 528, 529 (CCPA 1973) (stating that self-serving testimony of appellant's corporate president's unawareness of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion). A showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion. The opposite is not true, however. The

⁶ 5 TTABVUE 17-18.

lack of evidence of actual confusion carries little weight, [citation omitted], especially in an ex parte context.

In re Majestic Distilling Co., 65 USPQ2d 1291, 1205 (Fed. Cir. 2003).

Accordingly, while examples of actual confusion may point toward a finding of a likelihood of confusion, an absence of such evidence is not compelling in support of a finding of no likelihood of confusion, particularly in an ex parte proceeding in which the owner of the cited registration has no say. Thus, we cannot conclude from the purported lack of instances of actual confusion that confusion is not likely to occur.

The eight *DuPont* factor is neutral.

D. Strength or Weakness of the term NAMASTE for jewelry

We consider the conceptual strength of “namaste” in relation to jewelry. Applicant submitted the following definitions of “namaste:” “**Literally** ‘I humbly bow to you’; also used as a greeting or acknowledgement of the equality of all, and pays honor to the sacredness of all;” “Used especially among Hindus to express a polite or respectful greeting or farewell.”⁷ The Examining Attorney submitted with his brief the following definition of “namaste:” “an expression of respectful greeting performed by lacing the palms together, bowing the head slightly, and saying ‘namaste’ and that is used traditionally by Hindus in South Asia.”⁸ In the context of jewelry, we find this

⁷ October 3, 2023 response to Office action at 62-67. Definition retrieved from ahdictionary.com (AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE.)

⁸ We grant the Examining Attorney’s request that we take judicial notice of these dictionary definitions. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format, definitions in technical dictionaries, translation dictionaries and online dictionaries, and we elect to do so here. *See, e.g., In re Nextgen Mgmt., LLC*, 2023 USPQ2d 14, at *9 n.5 (TTAB 2023). Definition retrieved from merriam-webster.com/dictionary/couture (MERRIAM-WEBSTER DICTIONARY).

definition may suggest an expression of respectful greeting on the part of the wearer. Given the meaning of “namaste” in relation to the goods, the term may have a small degree of inherent conceptual weakness in connection with jewelry and on its face is at worst mildly suggestive when used in connection with such goods.


We next consider Applicant’s argument concerning the number and nature of third-party uses of “namaste” for jewelry products. Applicant argues that “Evidence of record displays 113 (ONE HUNDRED AND THIRTEEN) instances of use of the term ‘Namaste’ for ‘jewelry.’”⁹ In support of this contention, Applicant introduced into the record with its October 3, 2023 response to Office action¹⁰ and January 4, 2024 request for reconsideration¹¹ screenshots from third-party websites displaying “Namaste,” alone and as a formative in trademarks and trade names, and also as an ornamental feature of a variety of items of jewelry. The following examples are illustrative.

⁹ 5 TTABVUE 7.

¹⁰ At 26-53.

¹¹ At 24-145.

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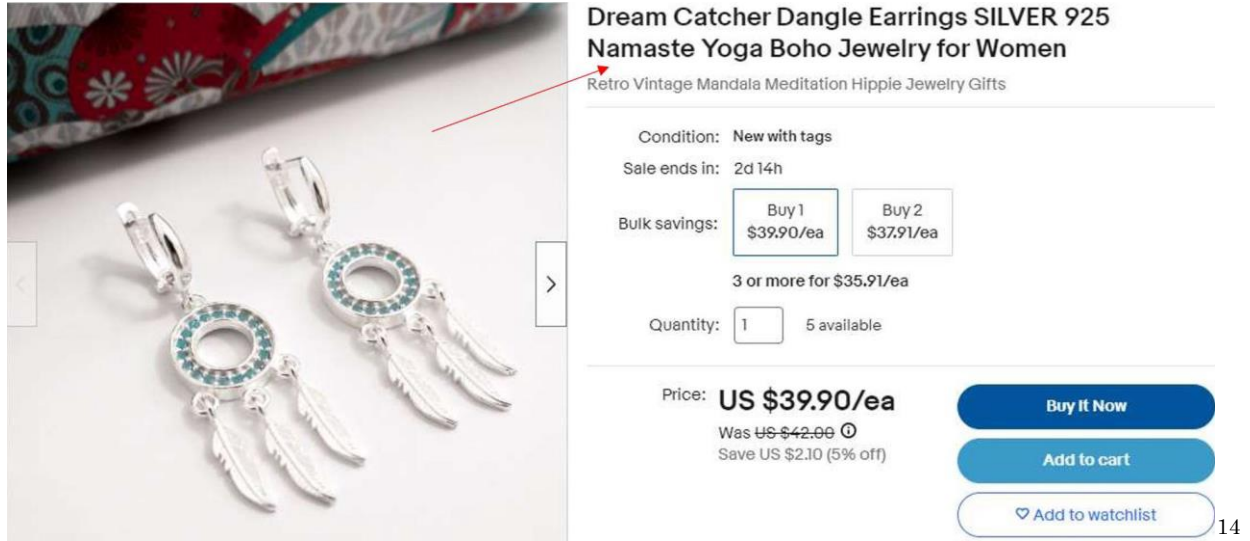
Details

- Handmade item
- Pendant width: 1 Inches; Pendant height: 1/8 Inches; Necklace length: 20 Inches
- Materials: Brass

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¹² October 3, 2023 response to Office action at 26. (Amazon.com)

¹³ *Id.* at 33. (Etsy.com)



The evidence also indicates that the jewelry items displaying “Namaste” as a decoration or source indicator are available on numerous retail websites, including, inter alia, Amazon, eBay, Etsy, Walmart, Zazzle and Jewlr.¹⁵ The evidence further indicates that the term “Namaste” frequently is associated with the practice of yoga, mindfulness and Eastern religious and philosophical thought.¹⁶

The Examining Attorney argues in response that “it is important to note that the registered mark is the only mark registered in International Class 014 using the term, NAMASTE, and thus the registered mark is strong and entitled to a broad scope of protection.”¹⁷ The Examining Attorney is correct that Applicant has not introduced evidence of third-party registration of NAMASTE or NAMASTE-formatives as a mark for jewelry. However, the absence of such evidence does not

¹⁴ *Id.* at 39. (EBay.com)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 7 TTABVUE 9.

necessarily entitle the mark in the cited registration to a broad scope of protection in light of Applicant's extensive evidence of third-party use of "Namaste" in connection with various jewelry items. *See In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1746 n. 8 (TTAB 2016); *see also In re FabFitFun*, 127 USPQ2d 1670, 1673-74 (TTAB 2018). In addressing this evidence, the Examining Attorney argues that:

the majority of the provided instances of third-party marketplace usage provided by the Applicant show the term "NAMASTE" used as an ornamental feature of the associated jewelry goods. This evidence could be determined to show that the term is commonly used as an ornamental feature on jewelry; however, this does not show widespread use of the term "NAMASTE" as the source of jewelry goods in the marketplace sufficient to limit the Registrant's scope of protection.¹⁸

However, as the Examining Attorney acknowledges, this evidence shows consumers have been exposed to widespread ornamental use of "Namaste" on jewelry.¹⁹ In addition, the Examining Attorney acknowledges, and review of the record confirms,²⁰ that Applicant's evidence also shows use by third parties of "Namaste" as a source identifier. In addition, several of the uses appear to be both ornamental and source-identifying. Consumers thus have become accustomed to encountering the term "Namaste" on various forms of jewelry, both as a trademark

¹⁸ 7 TTABVUE 10.

¹⁹ We reject the Examining Attorney's suggestion that such evidence constitutes an impermissible collateral attack on the validity of the cited registration. 7 TTABVUE 10-11. Applicant's arguments do not "appear to imply that the term 'NAMASTE' would not function as an indicator of source for the identified jewelry goods." 7 TTABVUE 10. Rather, Applicant's arguments appear to be directed solely to the relative weakness of the mark in the cited registration. 5 TTABVUE 7-11.

²⁰ October 3, 2023 response to Office action at 26-53; January 4, 2024 request for reconsideration at 24-145.

or trade name and as a feature thereof. Indeed, many of these goods are identified as “Namaste bracelet(s),”²¹ “Namaste earrings,”²² “Namaste charm ornament,”²³ “Namaste necklace,”²⁴ etc.

While Applicant has not presented specific evidence concerning the extent and impact of these uses, it nevertheless presented extensive evidence of these third-party marks and ornamental uses in internet commerce for the jewelry identified in the cited registration. “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.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (citation omitted). Internet printouts, such as those offered by Applicant, “on their face, show that the public may have been exposed to those internet websites and therefore may be aware of the advertisements contained therein.” *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1072 (TTAB 2011).

“The purpose of introducing evidence of third-party use is ‘to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different marks on the bases of minute distinctions.’” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018). The Federal Circuit has held that “extensive

²¹ October 3, 2023 response to Office action at 26-28.

²² *Id.* at 29.

²³ *Id.* at 30.

²⁴ *Id.* at 33.

evidence of third-party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established.” *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGaA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)). We believe that the record of third-party use in this case reflects a more extensive amount of evidence than that found convincing in *Jack Wolfskin* and *Juice Generation*. Ultimately, we believe the evidence of weakness here is as persuasive, if not more persuasive, than that in *Jack Wolfskin* and *Juice Generation*.

Based on the totality of the evidence, including the dictionary definitions, we find that the shared term NAMASTE is somewhat weak in that it suggests a polite greeting or promotion of equality and mutual respect, while the third-party uses discussed above tend to show consumer exposure to third-party use of the term on similar goods. Overall, we find the evidence suggests that consumers of jewelry will look not just to the NAMASTE component of Applicant’s mark to identify and distinguish the source of the goods, but also to the other parts of the marks, particularly the phrase BY APRIL STOLF in Applicant’s mark, which identifies the designer. Accordingly, we find on this record that the common term NAMASTE is quite weak. The relative weakness of the term NAMASTE comprising the entirety of the registered mark and the only common term in the applied-for mark weighs in favor of a finding of no likelihood of confusion.

E. Similarity/Dissimilarity of the Marks

We consider Applicant's mark NAMASTE COUTURE BY APRIL STOLF and the registered mark NAMASTE and compare them "in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay*, 73 USPQ2d at 1691 (quoting *DuPont*, 177 USPQ at 567). The marks "must be considered ... in light of the fallibility of memory." *St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977)).

The proper focus is on the recollection of the average consumer, who retains a general rather than specific impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); *see also Gegenuber Dem Julichs-Platz v. Chesebrough-Pond, Inc.*, 470 F.2d 1385, 176 USPQ 199, 200 (CCPA 1972) ("Side-by-side comparison is not the test. The focus must be on the 'general recollection' reasonably produced by appellant's mark and a comparison of appellee's mark therewith.") (citation omitted).

Because, as found earlier, the goods at issue in this appeal are jewelry without any reference to price point, the average consumer includes ordinary purchasers of jewelry. We further acknowledge that "[w]hen marks would appear on virtually identical ... [goods or] services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." *See Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992), cert. denied,

506 U.S. 1034 (1994). *See also ECI Div. of E-Systems, Inc. v. Env't Commc'ns Inc.*, 207 USPQ 443, 449 (TTAB 1980). In determining whether confusion is likely we limit ourselves, as we must, to a comparison of the applied-for mark with the registered mark.²⁵ *See In re Viterra*, 101 USPQ2d at 1908, (citing *DuPont*, 177 USPQ at 567).

The only common element in the marks is the term NAMASTE comprising the registered mark and, as discussed above, this term is quite weak as a source identifier in the field of jewelry. *See In re Bed & Breakfast Registry*, 229 USPQ 818, 819 (Fed. Cir. 1986) (“The record shows that a large number of marks embodying the words ‘bed and breakfast’ are used for similar reservation services, a factor that weighs in favor of the conclusion that BED & BREAKFAST REGISTRY and BED & BREAKFAST INTERNATIONAL are not rendered confusingly similar merely because they share the words ‘bed and breakfast.’”); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPE) § 1207.01(b)(ix) (May 2024) and authorities cited therein (“weak designations may be entitled to a narrower scope of protection than an entirely arbitrary or coined word.”).

While we are mindful that weak marks still deserve protection from registration of a similar mark for legally identical goods or services, *see China Healthways Inst.*,

²⁵ Because decisional law requires us to limit our consideration of the marks as applied-for and registered in determining their similarity or dissimilarity, we find inapposite Applicant’s argument (5 TTABVUE 17) that the registrant uses its registered NAMASTE mark in combination with “Scott Kay” or other wording. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)). Unlike the phrase BY APRIL STOLF, which appears in the drawing of the mark in the application, the name “Scott Kay” does not appear in the drawing of the cited mark.

Inc. v. Wang, 491 F.3d 1337, 1340, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007), we must evaluate whether the registered NAMASTE mark is sufficiently similar to Applicant's mark NAMASTE COUTURE BY APRIL STOLF that consumers would mistakenly believe the goods emanate from a common source.

Regarding the appearance and sound of the marks, in Applicant's mark NAMASTE COUTURE BY APRIL STOLF the term NAMASTE is modified by the following terms COUTURE BY APRIL STOLF. By contrast, NAMASTE comprises the entirety of the registered mark. This difference in structure renders the marks more dissimilar than similar in appearance and sound.

Turning to connotation and overall commercial impression, as discussed above, "namaste" is defined, inter alia, as "**Literally** 'I humbly bow to you'; also used as a greeting or acknowledgement of the equality of all, and pays honor to the sacredness of all."²⁶ In relation to fashion, the term "couture" is defined as "the business of designing, making, and selling highly fashionable, usually custom-made clothing."²⁷

Applicant argues:

"NAMASTE COUTURE" is a unitary fusion derived from merging of two incongruent terms with incompatible values. That Fusion creates its own unique meaning which is further supported by the overall commercial impression of the mark including part "BY APRIL STOLF" and also backed up by actual use of the mark with direct impact on consumer perception.

Applicant came up with idea to combine these two values into something unique by merging two words together and twisting their overall suggestive meaning into new idea of spiritual or religious wealth where the top-end is no longer determined by money or luxury but rather by

²⁶ October 3, 2023 response to Office action at 62-67. Definition retrieved from [ahdictionary.com](https://www.ahdictionary.com) (American Heritage Dictionary of the English Language.)

²⁷ *Id.* at 71.

Hindi culture, spirituality and religious values. **Therefore, the two words are NOT separable and only both of them together in the exact order create this new meaning.**²⁸

To the extent consumers would be aware of its intended meaning, Applicant's mark connotes custom made jewelry observing the sacredness and equality of everyone, designed by an individual named April Stolf, while the registered mark connotes the sacredness and equality of everyone. These connotations and the overall impressions conveyed by the marks in their entireties are only somewhat similar, with the applied-for mark having a more specific connotation than the registered mark.

Applicant's website evidence discussed above shows that numerous third parties have made extensive use of the word NAMASTE in the field of jewelry. Based on this evidence, we find that purchasers are able to distinguish among various NAMASTE marks by looking to other elements of the marks. In this case, the other elements consist of COUTURE BY APRIL STOLF, which distinguish Applicant's mark from the registered mark in appearance, sound, and, to a lesser extent, in meaning, with the result that the marks are more dissimilar than similar in overall commercial impression. We find that NAMASTE is weak in the field of jewelry, and that Applicant's addition of COUTURE BY APRIL STOLF renders the two marks sufficiently distinguishable, when viewed in their entireties, that confusion is not likely to occur. *See, e.g., Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313, 1315 (TTAB 2005) (ESSENTIALS for clothing not confusingly similar to

²⁸ 5 TTABVUE 14. Emphasis supplied by Applicant.

NORTON MCNAUGHTON ESSENTIALS for identical goods because of multiple uses of ESSENTIALS-formative marks for clothing.).

In view thereof, the *DuPont* factor of the similarity or dissimilarity of the marks favors a finding of no likelihood of confusion.

F. Balancing the Factors

In conclusion, we find that the goods are legally identical and are presumed to be available in the same channels of trade at all price points to the same classes of consumers. The marks NAMASTE and NAMASTE COUTURE BY APRIL STOLF are more dissimilar than similar. Evidence of record establishes that the registered mark in its entirety is weak and entitled to a narrow scope of protection. Because the marks are somewhat dissimilar and because of the weakness of the term NAMASTE, we find that confusion is not likely between Applicant's mark NAMASTE COUTURE BY APRIL STOLF and the mark NAMASTE in the cited registration.

II. Disclaimer

A requirement under Trademark Act Section 6, 15 U.S.C. § 1056(a), for a disclaimer of unregistrable matter in a mark, is appropriate when that matter is merely descriptive of the goods or services at issue. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). A disclaimer is a statement that the applicant does not claim the exclusive right to use a specified element or elements of the mark in a trademark application or registration. *In re White Jasmine LLC*, 106 USPQ2d 1385, 1394 (TTAB 2013). "The effect of a disclaimer is to disavow any exclusive right to the use of a specified word, phrase, or design outside of its use

within a composite mark.” *Id.* (quoting *In re Franklin Press, Inc.*, 597 F.2d 270, 201 USPQ 662, 665 (CCPA 1979)). Merely descriptive or generic terms are unregistrable under Trademark Act Section 2(e)(1), and therefore are subject to a disclaimer requirement if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is a ground for refusal of registration. *See In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1266 (Fed. Cir. 2015); *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1933 (TTAB 2012).

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of an ingredient, quality, characteristic, function, feature, purpose, or use of the goods or services with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). “The mere descriptiveness of a word in a mark is assessed in the same manner as the mere descriptiveness of an entire mark.” *In re Korn Ferry*, 2024 WL 3219482, at *2 (TTAB 2024).

Whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the possible significance that the mark is likely to have to the average purchaser encountering the goods or services in the marketplace. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1818, 1831 (Fed. Cir. 2007); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1473 (TTAB 2014); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other

words, the issue is whether someone who knows what the goods or services are will understand the mark (or word) to convey information about them. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016).

It is the Examining Attorney's burden to prove that a term is merely descriptive of an applicant's goods or services. *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2052 (TTAB 2012). The determination that a term is merely descriptive is a finding of fact and must be based upon substantial evidence. *Bayer Aktiengesellschaft*, 82 USPQ2d at 1831.

A. Whether "COUTURE" Is Descriptive

In support of his contention that the term COUTURE merely describes Applicant's identified goods, the Examining Attorney relies upon website evidence from ten third parties using the term "couture" or "couture jewelry" to describe jewelry pieces that tend to be hand-crafted, unique, one-off, or otherwise exclusive items.²⁹ In addition, the Examining Attorney submitted the following definition of "couture jewelry" from Google.com: "Haute couture jewelry, also known as high-end jewelry or luxury jewelry, refers to jewelry that is made by hand and is of the highest level of quality and craftsmanship."³⁰ As noted above, COUTURE is defined as "the business of designing, making, and selling highly fashionable, usually custom-made clothing."³¹

Descriptiveness is considered in relation to the relevant goods or services. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d

²⁹ August 12, 2023 first Office action at 6-12.

³⁰ *Id.* at 6.

³¹ *Id.* at 71.

1753, 1757 (Fed. Cir. 2012). “That a term may have other meanings in different contexts is not controlling.” *Robinson v. Hot Grabba Leaf, LLC*, 2019 USPQ2d 149089, at *5 (TTAB 2019), *cancellation order vacated on default judgment*, No. 0:19-cv-61614-DPG (S.D. Fla. Dec. 17, 2019) (citing *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018)). “It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.” *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)). The term “COUTURE” in Applicant’s mark immediately describes a feature or characteristic of Applicant’s custom-made and handmade jewelry, namely, that it is unique, hand-crafted and of superior quality.

B. Whether “NAMASTE COUTURE” in Applicant’s Mark Is Unitary

We now consider whether the wording “NAMASTE COUTURE” in Applicant’s mark creates a unitary whole such that no disclaimer of “COUTURE” is necessary. “Several factors inform the unitariness analysis: the physical connection of the potentially unregistrable component to other elements of the proposed mark by lines or other design features; the relative location of the respective elements of the proposed mark; and the significance of the terminology as used on or in connection with the goods or services.” *Korn Ferry*, 2024 WL 3219482, at *6, (citing *In re Lego Juris A/S*, 2022 WL 1744613, at *3 (TTAB 2022)).

In its brief, Applicant analogizes its mark to LIGHT N’ LIVELY, found by the Board in *In re Kraft*, 218 USPQ 571, 573 (TTAB 1983), to be unitary and not subject to a disclaimer. Relying upon its arguments above regarding the mark’s connotation,

Applicant contends that “NAMASTE COUTURE” is incongruent, unitary and otherwise suggestive of its goods.³² Applicant’s arguments are repeated here:

“NAMASTE COUTURE” is a unitary fusion derived from merging of two incongruent terms with incompatible values. That Fusion creates its own unique meaning which is further supported by the overall commercial impression of the mark including part “BY APRIL STOLF” and also backed up by actual use of the mark with direct impact on consumer perception.

Applicant came up with idea to combine these two values into something unique by merging two words together and twisting their overall suggestive meaning into new idea of spiritual or religious wealth where the top-end is no longer determined by money or luxury but rather by Hindi culture, spirituality and religious values. **Therefore, the two words are NOT separable and only both of them together in the exact order create this new meaning.**³³

The wording “NAMASTE COUTURE” in Applicant’s mark connotes high-end, custom made jewelry invoking the Hindu ideal of observing the equality and sanctity of all. As discussed above, the additional wording “BY APRIL STOLF” indicates its source in a particular individual. Applicant argues that “NAMASTE COUTURE” creates a new meaning by merging the ideas of wealth and spirituality to invoke spiritual, as opposed to monetary, wealth. However, Applicant does not demonstrate the extent, if any, to which consumers will perceive the asserted new meaning conveyed by its mark. In order to be considered unitary, the elements of a mark must be so integrated or merged together that they cannot be regarded as separable. *See In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399 (Fed. Cir. 2006); *In re Kraft, Inc.*, 218 USPQ at 573; *In re EBS Data Processing*, 212 USPQ 964, 966 (TTAB 1981).

³² 5 TTABVUE 20-23.

³³ 5 TTABVUE 14. Emphasis supplied by Applicant.

That is not the case here. The terms “NAMASTE COUTURE” are not alliterative, nor are they connected physically or by design features.

Furthermore, Applicant has not submitted any evidence beyond its own intended subjective meaning of its mark to indicate that consumers would view the terms NAMASTE COUTURE as inseparable from one another or creating an additional meaning beyond that of the component terms. Rather, each component in the mark retains its significance in relation to the identified goods, and the combination of “NAMASTE COUTURE” in Applicant’s NAMASTE COUTURE BY APRIL STOLF mark fails to elevate COUTURE from describing a custom made, high quality feature of Applicant’s goods.

We further find no incongruity in the wording “NAMASTE COUTURE” in Applicant’s mark. As discussed above, the wording “NAMASTE COUTURE” indicates, in connection with Applicant’s goods, high quality, custom made jewelry invoking the ideals of equality and sanctity for all. Such a meaning presents no incongruity. *Cf., e.g., In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978); *In re Shutts*, 217 USPQ 363, 364–5 (TTAB 1983); *In re Vienna Sausage Mfg. Co.*, 156 USPQ 155, 156 (TTAB 1967); and *In re John H. Breck, Inc.*, 150 USPQ 397, 398 (TTAB 1966).

We similarly are not persuaded that “NAMASTE COUTURE” in Applicant’s mark is a double entendre. As discussed above, we find no evidence that consumers will view “NAMASTE COUTURE” in Applicant’s mark as having several connotations. *Cf. In re Colonial Stores Inc.*, 157 USPQ at 382; *In re Tea and Sympathy, Inc.*, 88

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USPQ2d 1062 (TTAB 2008); *In re Simmons Co.*, 189 USPQ 352 (TTAB 1976); and *In re Del. Punch Co.*, 186 USPQ 63 (TTAB 1975).

In summary, we find that the term “COUTURE” in Applicant’s mark is merely descriptive of a feature or characteristic of Applicant’s identified goods and neither Applicant’s mark nor any portion thereof is unitary. Therefore, the term “COUTURE” is appropriately subject to the disclaimer requirement.

III. **Decision:** The refusal to register based on likelihood of confusion under Section 2(d) of the Trademark Act is reversed.

The refusal to register Applicant’s mark under Section 6(a) of the Trademark Act on the ground that Applicant failed to comply with the Examining Attorney’s requirement to provide the disclaimer of “COUTURE” is affirmed.

However, if Applicant submits the required disclaimer of the term “COUTURE” to the Board within 30 days from the date of this decision and prior to filing any appeal of this decision, the requirement for the disclaimer will have been met, and the portion of this decision affirming the disclaimer refusal will be set aside. *See In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, ____ (TTAB 2018). Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1218. The disclaimer should read as follows: “No claim is made to the exclusive right to use COUTURE apart from the mark as shown.” TMEP § 1213.08(a)(i).