

This Opinion is not a
Precedent of the TTAB

Mailed: May 23, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Minegar

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Serial No. 86179013

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Nancy S. Freeman of Winderweedle, Haines, Ward & Woodman, P.A.,
for Judith M. Minegar.

Shaunia Carlyle, Trademark Examining Attorney, Law Office 110,
Chris A.F. Pedersen, Managing Attorney.

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Before Taylor, Ritchie, and Wolfson,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Judith M. Minegar (“Applicant”) seeks registration on the Principal Register of the mark IDEAS VINTAGE MARKET and design, as shown below, for services identified as “retail store services featuring furniture, furniture paint and finishes, clothing, fashion accessories such as scarves, hats, shoes, rings, necklaces, and earrings, and vintage items,” in International Class 35:¹

¹ Application Serial No. 86179013 was filed on January 29, 2014, under Section 1(a) of the Trademark Act, alleging dates of first use and first use in commerce on September 1, 2013, and disclaiming the exclusive right to use the term "VINTAGE MARKET" apart from the mark as shown.



The description of the mark states: The mark consists of the words “Ideas Vintage Market” and an image of a chandelier.

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 applied to the identified services, so resembles the previously registered mark, IDEAS and design,² as shown below, for the services listed below in International Class 35, as to be likely to cause confusion, mistake, or to deceive:



The description of the mark states: The mark consists of the word “IDEAS” with a geometric design in the dot of the “I.” The listed services are:

The bringing together, for the benefit of others, of a variety of goods excluding the transport thereof, enabling customer [sic] to conveniently view and purchase those goods,

² Registration No. 4239597 issued November 13, 2012, and is based on United Arab Emirates Registration 151010. The registration also contains goods in International Class 24 which are not relevant to the refusal.

namely, textiles and textile goods, bed and table covers, men, ladies and children clothing and footwear, textile piece goods, bed sheets, Towels, Bathrobes, headgears, scarves, Shawls, readymade garments, pajamas in the nature of Shalwar Kamiz, blouses in the nature of Kurta, Belts, Curtains, Furniture, Crockery, Perfumes, Pens, Watches, Birthday cards, Get well cards, Artificial flowers, plants, Rugs, Carpets, infants clothing and beddings, Kitchen Accessories, Cushions, Jewelry, Hand bags and Shoes; retail store services, wholesale store services, mail order catalogue services and home shopping services by means of television, all featuring textiles and textile goods, bed and table covers, men, ladies and children clothing and footwear, textile piece goods, bed sheets, towels, bathrobes, headgears, scarves, shawls, readymade garments, pajamas in the nature of Shalwar Kamiz, blouse in the name of Kurta, belts, curtains, furniture, crockery, perfumes, pens, watches, birthday cards, get well cards, artificial flowers, plants, rugs, carpets, infants clothing and bedding, kitchen Accessories, Cushions, Jewelry, Hand bags and Shoes.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. For the reasons discussed below, we reverse the refusal to register.

I. Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 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 similarities between the goods and/or

services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). We consider the *du Pont* factors for which there were arguments and evidence. The others, we consider to be neutral.

Services/Channels of Trade/Classes of Purchasers

We consider first the relatedness of the services. Applicant identifies retail store services featuring, among other things, furniture, scarves, and shoes. These exact services are included in the cited registration.

As such, the services overlap and are identical-in-part. We need not discuss the similarity of all of Applicant's services because it is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the recitation of services in the application. *See, e.g., Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of [services] within a particular class in the application).

Because the services described in the application and in the cited registration are in part identical, we must presume, at least with respect to the overlapping services, that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

These *du Pont* factors favor a finding of likelihood of confusion.

Strength of the Mark

Applicant argues that the shared term “IDEA” is weak and that consumers will recognize subtle differences between the marks due to the number and nature of similar marks in use on similar goods. *See 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); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *Promark v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1244 (TTAB 2015) (“Such third-party registrations and uses are competent to show that the common term has an accepted meaning in a given field and that marks containing the term have been registered and used for related goods because the remaining portions of the marks may be sufficient to distinguish the marks as a whole from one another.”).

In particular, Applicant argues that there are a significant number of third-party registrations for clothing or furniture-related goods and services that include the term “IDEA” or “IDEAS” and, that therefore, “the word ‘ideas’ is extremely weak in connection with the goods furniture and clothing....”³ These include registrations for such related goods and services for the term IDEA alone, and IDEA, stylized, owned by different registrants⁴:

³ 4 TTABVUE 7.

⁴ In addition to these four dozen use-based registrations, Applicant submitted a number of non-registered applications, non-use-based registrations, and unnecessary duplicates of these registrations. We give none of these any consideration in our analysis because, as

IDEA; Registration No. 3358535
IDEA and design; Registration No. 2993728
IDEA SHOWHOUSE; Registration No. 4484244
INFINITE IDEAS; Registration No. 4478088
GLOBE UNION IDEAS IN MOTION, and design; Registration No. 4353340
IDEA BABY and design; Registration No. 4322032
BATH & KITCHEN IDEA CENTER; Registration No. 4048418
IDEAITALIA; Registration No. 3167813
DESIGN IDEAS; Registration No. 3144261
SHAPING IDEAS INTO PLASTICS; Registration No. 3074525
THE HOMEMAKER'S IDEA COMPANY; Registration No 2802436
LOWE'S CREATIVE IDEAS; Registration No. 3941343
ANOTHER BIRD BRAINED IDEA; Registration No. 4080425
CASAIDEAS; Registration No. 3911585
WE PUT YOUR IDEAS INTO MOTION and design; Registration No. 3743219
NEW IDEAS ALWAYS AT WORK; Registration No. 3586871
IDEABOOK; Registration No. 3597138
IDEAJAB; Registration No. 4478331
CASA BY IDEA NUOVA; Registration No. 4094014
IDEA NUOVA; Registration No. 4067450
IDEA HOUSE and design; Registration No. 3825675
IDEA AT WORK; Registration No. 3870746
IDEA@WORK; Registration No. 2806279
DESIGN IDEAS and design; Registration No. 2902718
DESIGN IDEAS; Registration No. 2212237
NORWALK THE FURNITURE IDEA; Registration No. 1974563
TAIWAN TRADE IDEA! EZ and design; Registration No. 4471613
IDEA EXPRESS; Registration No. 3893694
IDEAS FROM A LIFETIME AT SEA; Registration No. 3584679
DESIGN IDEAS; Registration No. 3144261
IT STARTED WITH A SIMPLE IDEA . . . ; Registration No. 3601372
ASIANIDEAS.COM and design; Registration No. 3511385
ASIANIDEAS; Registration No. 3511384
IDEAWEAR; Registration No. 2451929
DESIGN IDEAS; Registration No. 2212237
NITA IDEAS; Registration No. 1712565
MARY MAXIM . . . THE IDEA PLACE; Registration No. 1516837
CURATED IDEA MERCHANTS UNLIMITED; Registration No.
SOMETIMES THE GREATEST IDEAS START WITH A JACKASS;
Registration No.4445275
GLOBAL UNION IDEAS IN MOTION and design; Registration No. 453340

Applicant herself acknowledges in her brief, only use-based registrations are availing in our analysis.

IDEAS THAT FIT; Registration No. 3383012
IDEAS TO IMPRESS and design; Registration No.3256061
INNER IDEA; Registration No. 4223603
COMMON SENSE IDEAS FOR THRIVING AFTER 50; Registration No. 3772101
IDEAWEAR; Registration No. 2640139 (see also p.135; same rant)
CITY OF IDEAS; Registration No. 2496620
BIG IDEA; Registration No. 2495242
BIG IDEA and design; Registration No. 2497418

Applicant also submitted evidence of five websites that include the term “idea” or “ideas” for retail or online retail services featuring furniture or clothing:

www.ideafurniture.com
www.brightideasfurniture.com⁵
www.fine-ideas.com
www.facebook.com/nobadideas⁶
<https://foursquare.com/v/fresh-ideas-clothing-co>

Based on this evidence, we agree that the term “IDEA” and its plural “IDEAS” are used and registered by third parties in the relevant industry of retail furniture and clothing to such an extent that the public has been exposed to the terms and will look to other distinguishing aspects of Applicant’s mark. As our primary reviewing Court has noted, “extensive evidence of third-party use and registrations is ‘powerful on its face.’” *See 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, 1675 (Fed. Cir. 2015) (“The weaker an opposer’s mark, the closer an applicant’s mark

⁵ In addition to a printout of the company’s website, there is a Yelp review in the record: www.yelp.com/biz/bright-ideas-furniture-royal-oak.

⁶ Referencing <http://www.nobadideas.com>.

can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.”)).

We find this sixth *du Pont* factor to weigh against finding a likelihood of confusion.

The Similarity/Dissimilarity of the Marks

We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

When, as here, the services at issue are identical in part, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than if the services were not identical. *In re Viterra Inc.*, 101 USPQ2d at 1912.

We note, nevertheless, that the marks have significant differences in sight, sound, and commercial impression. Although the marks share the term “IDEAS,” as noted above, we have found the shared term to be weak. Furthermore, Applicant’s mark contains additional wording and each mark includes a distinctive, eye-catching design.

As to meaning, Applicant’s mark imparts the connotation or commercial impression of light or bright ideas, and also has a commercial impression of retail goods being sold in or through a “vintage market.” The mark in the cited registration, by contrast, gives no such commercial impression, but rather references a geometrical design.

In considering the marks in their entireties, we find they differ significantly in terms of appearance, sound, meaning and commercial impression. We accordingly find that this *du Pont* factor weighs against finding a likelihood of confusion.

II. Conclusion on Likelihood of Confusion

On balance, after considering all of the arguments and evidence of record as they pertain to the relevant *du Pont* factors, we find that although the services are in-part identical and would therefore travel through some of the same channels of trade to some of the same consumers, the shared term “IDEAS” is weak and, looking at the marks as a whole, including the distinguishing design elements in each mark, we conclude that the marks are not similar in sight, sound, connotation or commercial impression. Accordingly, we find that Applicant’s registration of the mark



is not likely to cause confusion with the cited mark



under Section 2(d) of the Trademark Act, 15 U.S.C. § 2(d).

Decision: The refusal to register Applicant's mark is reversed.