

This Opinion Is Not a  
Precedent of the TTAB

Mailed: August 19, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Queendom Aesthetics, LLC*  
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Serial No. 88085646  
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Rosezena J. Pierce and Jasmine C. Jandrlich of R.J. Pierce Law Group, P.C.,  
for Queendom Aesthetics, LLC.

Sara E. Kunkleman, Trademark Examining Attorney, Law Office 105,  
Jennifer Williston, Managing Attorney.

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Before Goodman, Pologeorgis and Lebow,  
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:



Applicant, Queendom Aesthetics, LLC, seeks registration on the Principal Register of the mark QUEENDOM AESTHETICS and Design shown here for “Beauty balm creams; Beauty creams; Beauty creams for body care; Beauty lotions; Beauty milks; Beauty serums; Beauty soap; Body scrub; Body scrubs; Cosmetics;

Foundations; Make-up; Make-up preparations; Make-up removing preparations;

Make-up sets; Moisturizing body lotions; Moisturizing creams; Moisturizing milk; Moisturizing milks; Moisturizing preparations for the skin; Bar soap; Body and beauty care cosmetics; Face and body beauty creams; Facial beauty masks; Facial concealer; Facial moisturizers; Make-up foundation; Make-up foundations; Make-up primer; Make-up primers; Non-medicated skin toners; Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; Skin moisturizer; Skin moisturizer masks; Skin moisturizers used as cosmetics; Skin soap; Tinted makeup moisturizers,” in International Class 3:<sup>1</sup>

Applicant disclaimed the exclusive right to use “AESTHETICS” apart from the mark as shown. The colors teal, white, gold, red, and black are claimed as features of the mark. The description of the mark reads as follows:

The mark consists of a teal background upon which appears the facial features of a queen figure wearing a gold and white striped crown, with black eyebrows and black eyelashes, a small black nose, and lips wearing red lipstick, with the black words "QUEENDOM AESTHETICS" appearing below.

Applicant appeals from the Trademark Examining Attorney’s refusal to register under Trademark Act § 2(d), 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 QUEENDOM, in standard characters, registered on the Principal Register, for the goods listed below as to be likely to cause confusion:

Non-medicated soaps; perfumery products, namely, perfumery; essential oils, non-medicated cosmetics, hair lotions; fragrances for

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<sup>1</sup> Application Serial No. 88085646 was filed on August 20, 2018 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of first use of the mark in commerce of January 2, 2017.

personal use; cologne; eau de parfum, eau de toilette; perfumes and perfumed waters; perfume extracts; non-medicated body care and cleaning preparations; non-medicated body lotions, milks and creams; deodorants for personal use; antiperspirants for personal use; non-medicated soaps for personal use; non-medicated soaps for personal use in liquid, solid and gel form; non-medicated bath gel; non-medicated shower gel; non-medicated bath preparations; bath salts; non-medicated skin care preparations; exfoliant creams; talcum powder, for toilet use; perfumed powders for cosmetic use; non-medicated cosmetics, perfumery articles for care and beauty of eyelashes, eyebrows, eyes, lips and nails; non-medicated lip balm; nail polish; nail polish removers; adhesives for cosmetic use; non-medicated hair preparations and treatments; non-medicated shampoos; make-up products, namely, make-up; make-up removing preparations; depilation products; non-medicated shaving preparations; non-medicated pre-shave preparations; non-medicated after-shave preparations; non-medicated beauty preparations, namely, beauty creams, beauty serums, beauty milks, beauty lotions and beauty gels; cosmetic tanning and self-tanning preparations, non-medicated; cosmetic kits comprised of cosmetics, fragrances and perfumery; fragrances for the home; incense; potpourri; scented wood; sachets for perfuming linen; aromatic extracts, namely, extracts of flowers being perfumes” in International Class 28.<sup>2</sup>

When the refusal was made final, Applicant filed a request for reconsideration, which the Examining Attorney denied. The appeal is fully briefed. We affirm the refusal to register.

## **I. Applicable Law and Analysis**

The fundamental purpose of Trademark Act § 2(d) is to prevent confusion as to source, and to protect registrants from damage caused by registration of confusingly similar marks. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985). Our analysis is based on all of the probative evidence of record. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973)

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<sup>2</sup> Registration No. 5478049, issued May 29, 2018, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), based on International Registration No. 1375059.

("*DuPont*"). In making our determination, we consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) ("[T]he various evidentiary factors may play more or less weighty roles in any particular determination").

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."). We discuss the relevant *DuPont* factors below.

#### **A. Similarity or Dissimilarity of the Goods and Trade Channels**

We begin our analysis with the second and third *DuPont* factors. The second *DuPont* factor considers the "similarity or dissimilarity and nature of the goods or services as described in an application or registration," *In re Detroit Athletic Co.*, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *DuPont*, 476 F.2d at 1361), and the third *DuPont* factor considers the "similarity or dissimilarity of established, likely-to-continue trade channels." *Id.* at 1052. It is "not necessary that the goods be identical

or even competitive to support a finding of a likelihood of confusion.” *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)). “[L]ikelihood of confusion can be found ‘if the respective goods are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Id.*

Moreover, we need not find similarity as to each and every good listed in an applicant’s identification of goods. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods or services in a particular class in the application. *See SquirrCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

Applicant’s goods and Registrant’s goods are identical in part and overlapping. For example, both identifications include beauty creams, beauty lotions, beauty milks, and make-up. Additionally, Applicant’s goods include “cosmetics,” and the Registrant’s goods include non-medicated cosmetics. Further, the Examining Attorney provided Internet evidence in the form of screenshots from the websites of cosmetic retailers Glymedplus, Ulta and Sephora, as well as pages from Etsy,

showing the offering for sale of both Applicant's and Registrant's goods together within the same trade channels.<sup>3</sup>

Applicant does not dispute that the goods are related but argues that "Applicant's goods travel in separate and distinct channels of trade apart from the registered trademark's goods." Specifically, Applicant contends that

Applicant's trademark reaches the end consumer by and through digital marketing campaigns, Applicant's website and the services outlined in the Queendom Aesthetics registration [sic] that are associated with the goods. In contrast, the registered trademark appears to reach its end consumers by and through its website in connection with Registrant's gender equality social platform. Registrant's Trade Channel is specifically linked with its social justice activism and the products reflect this movement. In this regard, there is no overlap as between the channels of trade of the Applicant as they pertain to the Applicant's Trademark and those of the registrant as they pertain to the cited registration.<sup>4</sup>

Apart from speculating that the registered mark "appears to reach its end consumers by and through its website in connection with Registrant's gender equality social platform," Applicant's contentions do not show divergent trade channels. As Applicant concedes, and as shown by the webpages of Registrant made of record by Applicant, both Applicant and Registrant sell their goods online through their websites.

Additionally, the fact that the respective goods are identical in part means that we must also assume that the relevant purchasers and channels of trade are identical to the same extent. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed.

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<sup>3</sup> 5 TTABVUE 11-22; 6 TTABVUE 2-17; 7 TTABVUE 2-19; 8 TTABVUE 2-12.

<sup>4</sup> 10 TTABVUE 14-15.

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); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 56 C.C.P.A. 769, 159 USPQ 721, 723 (CCPA 1968); *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.”).

The evidence of record establishes that Applicant’s and Registrant’s goods are overlapping and identical in part, and they travel in the same trade channels to the same or overlapping classes of purchasers. Accordingly, the second and third *DuPont* factors strongly support a finding of a likelihood of confusion.

#### **B. Similarity or Dissimilarity of the Marks**

The first *DuPont* factor considers the “similarities or dissimilarities of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Athletic Co.*, 128 USPQ2d at 1047 (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019)).

The test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are so similar that confusion as to the source of the goods offered under the respective marks is likely to result. *See Zheng Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d

1797, 1801 (Fed. Cir. 2018) (citing *Coach Servs.*, 101 USPQ2d at 1721). Our focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Neutrogena Corp. v. Bristol-Myers Co.*, 410 F.2d 1391, 161 USPQ 687, 688 (CCPA 1969) (many consumers “may have but dim recollections from having previously seen or heard one or the other of the involved marks.”). In making our determination, we keep in mind that the more closely related the goods are, the more “the degree of similarity [between the marks] necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

The Examining Attorney argues that the word QUEENDOM is the dominant element in both marks. Specifically, she points out that “the word portion of a mark is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services,” citing *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterra Inc.*, 101 USPQ2d at 1908 and TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §1207.01(c)(ii)). Additionally, she argues that because Registrant’s mark is in standard characters and is not limited to any particular display or rendition, it could be presented in the same manner as Applicant’s mark, citing *In re Viterra Inc.*, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983). The Examining Attorney thus concludes that Registrant’s mark QUEENDOM and Applicant’s mark

QUEENDOM AESTHETICS and Design “are highly similar in terms of sound, connotation, and overall compressional impression because the dominant portion of the applied-for mark, QUEENDOM, is identical to the only wording in the registered mark.”<sup>5</sup>

Applicant concedes “[i]t is well-known that likelihood of confusion is not necessarily avoided between marks merely by adding or deleting a house mark, other distinctive matter, or a term that is descriptive or suggestive of the named goods or services, if the dominant portion of both marks is the same,” citing *In re Detroit Athletic Co.*, 128 USPQ2d at 1051,<sup>6</sup> and that “it is often true that the words in a composite word and design mark are considered to be dominant.” However, Applicant emphasizes “this is not always the case,” *In re Covalinski*, 113 USPQ2d 1166 (TTAB 2014), and that “there is no general rule that the letter portion for the mark will form the dominant portion of the mark.”<sup>7</sup> *In re Viterra*, 101 USPQ2d at 1911. Applicant argues that “[i]n the present case, Applicant’s design is prominently displayed at the top of Applicant’s mark and Applicant’s design is the largest element in the mark ... Applicant’s design is the dominant element in the mark and should be accorded more weight when determining whether the marks are confusingly similar.”<sup>8</sup>

We agree with the Examining Attorney that the word QUEENDOM is the dominant word in both Registrant’s and Applicant’s mark. In Registrant’s mark, it is

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<sup>5</sup> 12 TTABVUE 6.

<sup>6</sup> 10 TTABVUE 9.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 10.

the only word. In Applicant's mark, it is the dominant word. Although Applicant's mark also includes the word AESTHETICS, that word is disclaimed as descriptive,<sup>9</sup> and is shown in significantly smaller font than the word QUEENDOM in the mark. "[D]escriptive and disclaimed terms generally have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf*, 55 USPQ2d at 1846 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.") (quoting *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)); *In re Dixie Rests. Inc.*, 41 USPQ2d at 1531, 1533-34 (Fed. Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression").

Additionally, we find that the word QUEENDOM in Applicant's mark is also the dominant element in Applicant's mark as a whole. While Applicant is correct in noting that there is no per se rule that wording will form the dominant portion of a mark, *In re Viterra*, 101 USPQ2d at 1911, we find that it is dominant here. Applicant cites prior cases where the Board found a design element to be dominant with respect to a particular composite word and design mark,<sup>10</sup> but they are distinguishable from the present case.

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<sup>9</sup> Applicant disclaimed AESTHETICS in the mark following the Examining Attorney's argument and evidence in her December 6, 2018 Office Action, TSDR 5-6, defining that term as "relating to, or dealing with aesthetics or the beautiful," and therefore descriptive of Applicant's goods.

<sup>10</sup> 10 TTABVUE 9.

For example, in *In re Covalinski*, the Board found that the design was dominant

in the mark  not only because the design was large and prominently displayed, but also inter alia because the various designs within the main double-R design were so integrated with the rest of the wording as to make the design dominant. *Id.*, 113 USPQ2d at 1168. As explained by the Board, “[i]nside the [horizontal] legs [of each letter R] appear the rest of the letters (i.e., the letter strings ‘edneck’ and ‘acegirl’), in a form in which the initial letters of each string are displayed in relatively tiny typeface and subsequent letters are displayed in increasing thickness. Together, these graphic devices serve not only to draw attention to the RR letters apart from the wording, but also make the letters that form the ‘a-c-e’ of the word “RACEGIRL” difficult to notice.” *Id.*



**BODYMAN**

In *Parfums de Coeur Ltd. v. Lazarus*, 83 USPQ2d 1012 (TTAB 2007), the Board, within the context of comparing registrant’s BOD MAN and BOD marks for fragrances with the applicant’s mark shown here for entertainment services, found that the design element in applicant’s mark dominant not only because the design was prominently displayed, but also because “the design is of a grotesque image--a torso that acts as a face, with the nipples being eyes and the navel acting as a mouth” and “which also includes a cape with the initials BM, reminiscent of a super hero costume.” *Id.* at 1017.



And in *Steve's Ice Cream, Inc. v. Steve's Famous Hot Dogs*, 3 USPQ2d 1477 (TTAB 1987), the Board found that the design element in the applicant's mark shown here was sufficient to distinguish the applicant's mark for "hot dogs" from the registered mark STEVE'S in standard characters for "ice cream" not only because of the prominent design, but also because the design was "extremely suggestive of the fact that applicant's restaurants feature hot dogs. The highly stylized depiction of humanized frankfurters, prancing arm in arm to musical notes, creates a distinctive commercial impression."

Unlike the facts in *Covalinski*, where the wording in the mark was so integrated into the design as to make the design dominant, the design in Applicant's mark does not distinguish the mark from Registrant's mark in a way that is meaningful from a likelihood of confusion perspective. Additionally, unlike the facts in *Parfums de Coeur Ltd.* and *Steve's Ice Cream, Inc.*, where the parties' goods were not identical or overlapping, the present case involves goods that are identical in part and overlapping. In any event, as is often noted by the Board, each case must be decided on its own merits. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001).

Applicant asserts that the design element in its mark "is affixed to all products in a retail setting." Therefore, Applicant contends, "consumers are more likely to encounter the mark in a retail setting on hang tags and labels," and "the visual

impression of the mark is likely to be more important,” citing *In re Covalinski*, 113 USPQ2d at 1168. This argument is unavailing because there is no evidence that Registrant does not also affix its mark QUEENDOM to its products and, as discussed above, consumers are likely to view Applicant’s design as a mere reinforcement of the word QUEENDOM in Applicant’s mark.

Applicant also argues that the marks have different commercial impressions because [t]he term “queendom” is defined as the realm of a queen. Aesthetics is defined as “the philosophical theory or set of principles governing the idea of beauty at a given time and place.” In this context, Applicant’s trademark creates a connotation of skin care products that govern a set of principles related to beauty that is fit for a queen.<sup>11</sup> In contrast, Applicant asserts:

Registrant states on its website that ‘Queendom is a movement that celebrates women. Our goal is to promote gender equality with one principle in mind: WOMEN CAN DO ANYTHIN.’ The commercial impression associated with registrant’s mark is inextricably linked to its social justice platform. Here, the commercial impression associated with registrant’s mark is the unity of women, whereas Applicant’s commercial impression relates to the principles of beauty.<sup>12</sup>

However, evidence supporting Applicant’s contention about what Registrant states on its website is not found in the record. Nor, as the Examining Attorney observes, is there evidence “to show consumers would adopt either interpretation when considering the marks given that the wording QUEENDOM has a defined

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<sup>11</sup> 10 TTABVUE 12 (referring to definitions from dictionary.com submitted with Applicant’s January 6, 2020 Request for Reconsideration, 4 TTABVUE 16-44).

<sup>12</sup> *Id.*

meaning.”<sup>13</sup>

Just as we may not resort to extrinsic evidence to restrict the identification of goods or services in a cited registration, see *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys, Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990), or the classes of consumers in a cited registration, see *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986); *Stawski v. Lawson*, 129 USPQ2d 1036, 1055 (TTAB 2018), we also may not resort to extrinsic evidence to restrict the commercial impression of a standard character mark, whose owner may or may not use that mark in connection along with some type of social message. See *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (“Regardless, we do not consider how Applicant and Registrant actually use their marks in the marketplace, but rather how they appear in the registration and the application. We must compare the marks as they appear in the drawings, and not on any labels that may have additional wording or information.”).

Finally, Applicant argues that “Applicant similarly has a registered mark for Queendom Aesthetics design mark, Registration No. 5755520, in class 44 for Beauty Care services and Cosmetic skin care services, among other things. ... [I]f Applicant’s mark in Reg. No. 5755520 was not deemed to cause confusion with the cited registration, similarly the applied for goods associated with the registered service mark will similarly not likely cause confusion due to the distinct and separate

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<sup>13</sup> 12 TTABVUE 10.

commercial impression.”

A copy of Applicant’s Registration No. 5755520 was not made of record during examination, so we do not consider it. *In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1644 n.11 (TTAB 2011) (The Board does not take judicial notice of registrations in Office records). Even if the registration was of record, we are not privy to the records of that prior registration. Moreover, although consistency in examination and the register are commendable goals, we are not bound by prior decisions of examining attorneys. *See In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1206 (TTAB 2009) (the Board is not bound by the decision of the prior trademark examining attorney). Again, each case must be decided on its own merits. *In re Nett Designs Inc.*, 57 USPQ2d at 1566.

Simply put, the dominant portion of Applicant’s mark, i.e., the term QUEENDOM, is identical to the cited QUEENDOM mark in appearance, sound, connotation and commercial impression. For the reasons discussed above, consumers are more likely to remember the term QUEENDOM than the other elements of Applicant’s mark. *Nat’l Data*, 224 USPQ at 751. While we have not overlooked the design element or stylization in Applicant’s involved mark or the disclaimed, descriptive wording AESTHETICS, we nonetheless conclude that Applicant’s mark and the cited QUEENDOM mark, when considered in their entirety, are substantially similar.

Accordingly, the first *Dupont* factor also weighs in favor of likelihood of confusion.

### **C. No Actual Confusion**

Applicant points to the absence of evidence of actual confusion, the seventh

*DuPont* factor, as weighing in its favor. *DuPont*, 177 USPQ at 567. However, we do not accord probative value to Applicant's contention, particularly considering the relatively short time period since Applicant purportedly commenced use of its mark (January 1, 2017) and there is no evidence regarding when Registrant, if ever, used its mark in commerce in the United States.<sup>14</sup> Nor is there any evidence as to the geographic reach, or the amount and extent of Applicant's sales of Applicant's identified goods under its mark.

Regardless, an applicant's "uncorroborated statements of no known instances of actual confusion are of little evidentiary value." *In re Majestic Distilling Co.*, 3154 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2011) (citing *In re Bissett--Berman Corp.*, 476 F.2d 640, 642, 177 USPQ 528, 529 (CCPA 1973)). "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. Thus, we cannot conclude from the lack of instances of actual confusion that confusion is not likely to occur." *In re Integrated Embedded*, 120 USPQ2d 1504, 1515 (TTAB 2016). This factor is neutral in our analysis.

## **II. Conclusion**

In sum, we find Applicant's mark and Registrant's mark to be similar in appearance, sound, connotation and commercial impression; the respective goods are identical in part and overlapping; and the goods travel in the same trade channels to

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<sup>14</sup> Because Registrant's mark was registered under §66(a) of the Trademark Act pursuant to the Madrid Protocol, Registrant was not required to demonstrate use of its mark in commerce prior to registration.

the same or overlapping customers. We therefore conclude that Applicant's mark, as used in connection with the goods identified in its involved application, so resembles the cited mark QUEENDOM as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

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