

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Jacqueline Anne Occasions, LLC
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Serial No. 88264864
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Jasmine C. Boyd and Rosezena J. Pierce of R.J. Pierce Law Group, P.C.,
for Jacqueline Anne Occasions, LLC.

Maryna Gipsov, Trademark Examining Attorney, Law Office 127,
Mark Pilaro, Managing Attorney.

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Before Mermelstein, Lykos, and Coggins,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Jacqueline Anne Occasions, LLC (“Applicant”) seeks registration on the Principal Register of the mark JACQUELINE ANNE OCCASIONS (in standard characters, “occasions” disclaimed) for

Wedding reception planning and coordination consultation services; Wedding reception planning and coordination services; Arranging, organizing, conducting, and hosting social entertainment events; Consultation in the field of special event planning for social entertainment purposes; Party planning of baby showers, graduation parties, prom parties, proposal party, engagement parties, and anniversary parties; Party and wedding reception planning

and coordination services; Party and wedding reception planning consultation services; Party and wedding reception planning, coordination and consultation services; Providing information in the field of wedding party planning; Providing information regarding wedding reception planning for wedding parties; Special event planning for social entertainment purposes; in International Class 41.¹

The Trademark 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, as applied to the services identified in the application, so resembles the word mark JACQUELINE EVENTS & DESIGN (in standard characters, "events & design" disclaimed) for

Party and wedding reception planning and coordination services; Party and wedding reception planning consultation services; Party planning; Party planning consultation, in International Class 41,²

on the Principal Register as to be likely to cause confusion, to cause mistake, or to deceive.

After the Examining Attorney made the refusal final, Applicant appealed to this Board and requested reconsideration. The Examining Attorney denied the request for reconsideration. Applicant then requested remand from the Board to submit additional evidence, which the Board granted. On remand, the Examining Attorney

¹ Application Serial No. 88264864 was filed on January 16, 2019, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere at least as early as December 26, 2018, and first use in commerce since at least as early as January 16, 2019. According to the Application, the name shown in the mark identifies Alexandria Jacqueline Ann Oscar, whose consent to register is made of record.

² Registration No. 5035113, issued September 6, 2016.

was not persuaded and maintained the final refusal to register. The Board resumed the appeal, and Applicant and the Examining Attorney filed briefs. 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) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See, e.g., *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). When analyzing these factors, the overriding concern is not only to prevent buyer confusion as to the source of the services, but also to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *In re Country Oven*, 2019 USPQ2d 443903, *2-3 (TTAB 2019) (citing *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993)).

In any likelihood of confusion analysis, 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), and *Shell Oil*, 26 USPQ2d at 1688, but two key considerations are the similarities between the marks (the first *DuPont* factor) and the similarities between the services (the second *DuPont* factor). See *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747

(Fed. Cir. 2017); *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, *3 (TTAB 2020). Applicant argues these two key considerations as well as the conditions under which and buyers to whom sales are made (the fourth *DuPont* factor), and the number and nature of similar marks in use on similar services (the sixth *DuPont* factor).

A. Similarity or Dissimilarity of the Marks in their Entireties

Under the first *DuPont* factor, we consider whether Applicant's and Registrant's marks are similar when viewed in their entireties in terms of appearance, sound, connotation, and commercial impression. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1689 (Fed. Cir. 2005)). "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) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). *Accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

The test under this factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the services offered under the respective marks is likely to result. See *In re i.am.symbolic, llc*, 123 USPQ2d at 1748; *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally

retains a general rather than a specific impression of trademarks. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016). Consumers may not necessarily encounter the marks in close proximity and must rely upon their recollections over time. *In re Mucky Duck Mustard*, 6 USPQ2d 1467, 1468 (TTAB 1988).

Because the similarity or dissimilarity of the marks is determined based on the marks in their entireties, “our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks.” *In re Ox Paperboard, LLC*, 2020 USPQ2d 10878, *4 (TTAB 2020) (citing *Stone Lion*, 110 USPQ2d at 1161). Nonetheless, “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

As indicated above, Applicant’s mark is JACQUELINE ANN OCCASIONS, and Registrant’s mark is JACQUELINE EVENTS & DESIGN.

Applicant acknowledges that each mark contains the name JACQUELINE, but argues that the marks differ in sound and appearance because Applicant’s mark contains a second name, ANNE, followed by the term OCCASIONS, neither of which is present in the cited mark; and points out that Registrant’s mark encompasses an

ampersand and the words EVENTS and DESIGN, none of which is present in Applicant's mark.³

The Examining Attorney argues that JACQUELINE is the dominant feature of both marks because it is the initial term,⁴ and that “[a]dding a second name ANNE to Applicant's mark does not change its meaning or commercial impression . . . to distinguish it from Registrant's mark and overcome the likelihood of confusion because the dominant element is identical in both marks and consumers are likely to focus on the first name in the mark.”⁵

The marks are similar in appearance and sound to the extent that each begins with the name JACQUELINE, and are structured similarly (i.e., beginning with JACQUELINE and ending with descriptive or generic wording). However, the marks differ in appearance and sound to the extent that Applicant's mark includes the additional name ANNE and ends with word OCCASIONS, while no other name appears in Registrant's mark which includes an ampersand and ends with the term EVENTS & DESIGN which is not present in Applicant's mark. The marks are also similar to the extent that OCCASIONS and EVENTS are plural words, but they are different to the extent that the cited mark ends with a singular term (i.e., DESIGN).

³ Brief, p. 12 (14 TTABVUE 13). Citations to the briefs in the appeal record refer to the TTABVUE docket system, and citations to the prosecution file refer to the .pdf version of the TSDR system record. *See, e.g., In re Consumer Protection Firm PLLC*, 2021 USPQ2d 238, *3 n.3 (TTAB 2021).

⁴ Examiner's Statement, unnumbered p. 9 (16 TTABVUE 10).

⁵ 16 TTABVUE 16.

We agree that JACQUELINE is the dominant term of Registrant's mark, and we find that JACQUELINE ANNE is the dominant portion of Applicant's mark. These are the initial and non-descriptive terms of the marks, and the secondary terms are descriptive and disclaimed. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (court may place more weight on a dominant portion of a mark, for example if another feature of the mark is descriptive or generic standing alone, however, the ultimate conclusion nonetheless must rest on consideration of the marks in total); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (disclaimed and generic word less dominant); *In re Integrated Embedded*, 120 USPQ2d 1504, 1513 (TTAB 2016) (noting that the dominance of BARR in the mark BARR GROUP is reinforced by its location as the first word in the mark); *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). We cannot ignore the name ANNE within Applicant's mark. It will be read and remembered with JACQUELINE because it immediately follows that name and is itself also a common forename.

Applicant argues that the commercial impression of the marks differ because Registrant's mark is "highly suggestive of a person named JACQUELINE" while "Applicant's mark identifies 'JACQUELINE ANNE,'" a different person with a different name.⁶ Applicant continues, arguing that due to the alleged commercial weakness of the cited mark, which we discuss below under the sixth *DuPont* factor,

⁶ 14 TTABVUE 11.

the “marks obviously identify two different individuals.”⁷ Similarly, Applicant argues that OCCASIONS in its mark conveys “[s]omething memorable and intimate[. m]ore than just the event or the design[— i]t’s an experience,” while Registrant’s EVENTS & DESIGN is straightforward, “lack[ing] the intimate association that is present in [A]pplicant’s mark.”⁸

The Examining Attorney argues that the addition of the “second name ANNE to Applicant’s mark does not change its meaning or commercial impression”⁹ and argues that the dictionary definitions of record for OCCASION and EVENT reflect similar meanings; specifically, that OCCASION means “[a] significant event, especially a large or important social gathering,” and EVENT means [a] social gathering or activity,” both of which, she argues, convey the same connotation in light of the services.¹⁰

Registrant’s mark contains not only the word EVENTS but EVENTS & DESIGN. The addition of & DESIGN lends a subtle difference to the connotation of Registrant’s mark: not just events, but also design. While an event must necessarily be planned, the inclusion of & DESIGNS tells more about the services: not merely putting on events, but also focusing on the design. Admittedly, the ending terms OCCASIONS and EVENTS & DESIGN have some similarity in their connotation, but there are

⁷ 14 TTABVUE 12.

⁸ 14 TTABVUE 15.

⁹ 16 TTABVUE 16.

¹⁰ 16 TTABVUE 18; May 18, 2020 Reconsideration Letter TSDR 3 (definition of “event”) and 5 (definition of “occasion”), both from THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE at ahdictionary.com.

also slight differences; however, these terms are not to be evaluated on their own. The marks must be viewed in their entirety. As explained above, JACQUELINE is the dominant term of Registrant's mark while JACQUELINE ANNE is the dominant portion of Applicant's mark. These differing dominant names are followed by different wording. Nonetheless, the marks present similar meanings and connotations: a female (named JACQUELINE or JACQUELINE ANNE) who hosts or plans special events.

We recognize the differences in the marks as noted by Applicant, but also the similarities as noted by the Examining Attorney. On balance, given the similar structure and connotation of the marks, we find that the first *DuPont* factor weighs in favor of finding a likelihood of confusion.

B. The Services, Channels of Trade, and Classes of Customers

The second *DuPont* factor “considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir 2018) (quoting *DuPont*, 177 USPQ at 567), and the third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *Id.* at 1052 (quoting *DuPont*, 177 USPQ at 567). *See also Stone Lion*, 110 USPQ2d at 1161-63. We begin with these *DuPont* factors.

In making our determination regarding the relatedness of the services, we must look to the services as identified in Applicant's application and the cited registration. *Stone Lion*, 110 USPQ2d at 1162; *In re Info. Builders Inc.*, 2020 USPQ2d 10444, *2

(TTAB 2020). “[R]egistration must be refused in a particular class if Applicant’s mark for any of its identified goods or services in that class is likely to cause confusion with the Registrant’s mark for any of its identified goods or services.” *In re Info. Builders Inc.*, 2020 USPQ2d 10444 at *2 (citing *SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983), and *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335 , 209 USPQ 986, 988 (CCPA 1981)). Here, the identification of services in both the application and cited registration include party and wedding reception planning, coordination, and consultation services. The services are therefore identical in part.

Because the party and wedding reception planning, coordination, and consultation services are identical, we must presume that the channels of trade and classes of purchasers for these services are the same. *See In re Viterra*, 101 USPQ2d at 1908; *DeVivo v. Ortiz*, 2020 USPQ2d 10153, *13 (TTAB 2020) (citing, inter alia, *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)). For these reasons we find that the services are in part legally identical, and offered via the same channels of trade to the same classes of consumers. Thus, the second and third *DuPont* factors weigh in favor finding a likelihood of confusion.

C. Purchasing Conditions and Consumer Sophistication

Next in our analysis is the fourth *DuPont* factor, the conditions under which the services are likely to be purchased, e.g., whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. *DuPont*, 177 USPQ at 567. Applicant argues that “consumers practice great care

when choosing wedding consultation and planning services” because “[t]he average wedding cost[s] around fifteen thousand dollars . . . takes close to a year to plan . . . [and t]he amount of detail and level of care used to make someone’s dream wedding come to life is very high.”¹¹ Applicant also argues that “consumers of these services are sophisticated and use great care insofar as they use recommendations, reviews, and research to become more knowledgeable about the source and the services before” hiring a wedding planner, and because of the nature of the services they are “looking for a personal relationship with the consultant” to plan their special event.¹²

The Examining Attorney does not dispute the expensive and time-consuming nature of the services. Instead, the Examining Attorney argues that even sophisticated and knowledgeable purchasers in this field are not necessarily sophisticated or knowledgeable in the field of trademarks or immune from source confusion.¹³ She further argues that “even where customers seek to establish personal relationships with their wedding consultants, it is highly unlikely they will be addressing them by a full name[; r]ather, they would be on a first-name basis with their wedding planners, hence, focusing on remembering the first term JACQUELINE in the compared marks.”¹⁴

We acknowledge the inherent nature of the party and wedding reception planning, coordination, and consultation services which take time and effort to perform and

¹¹ 14 TTABVUE 18.

¹² *Id.*

¹³ 16 TTABVUE 21.

¹⁴ *Id.*

would not be purchased on impulse. *See In re Info. Builders Inc.*, 2020 USPQ2d 10444, *4 (TTAB 2020) (“[I]n light of the inherent nature of the goods and services involved, some degree of purchasing care may be exercised by Applicant’s potential or actual consumers.”). Prospective consumers of such services are likely to interview multiple providers before making a decision. In addition, the record shows that for at least three providers of such services, the services are relatively expensive with one offering “planning packages from \$5600,”¹⁵ another offering planning services for \$2500-\$3500,¹⁶ and a third charging \$3200 for full wedding planning, \$2600 for partial planning, \$825 for one-day planning, and \$75 for hourly consulting.¹⁷ Not surprisingly, the record indicates that “vetting a wedding planner can be exhausting.”¹⁸

We are mindful that precedent requires that we base our decision on the least sophisticated potential purchasers. *Stone Lion*, 110 USPQ2d at 1163. Nonetheless, we find based on this record, where the services are expensive, time consuming, and consumers are likely to research multiple providers before making a purchasing decision, that it is likely that even the least sophisticated consumer will exercise a heightened level of care. Accordingly, we find the fourth *DuPont* factor weighs against a finding of likelihood of confusion.

¹⁵ November 12, 2019 Final Office Action TSDR 27 (robertsandcoevents.com).

¹⁶ *Id.* at TSDR 63 (sevenivorybrides.com).

¹⁷ May 18, 2020 Reconsideration Letter TSDR 13 (weddingwire.com).

¹⁸ March 28, 2019 Office Action TSDR 38 (chanceycharmweddings.com).

D. The Number and Nature of Similar Marks in Use on Similar Services

The sixth *DuPont* factor “considers ‘[t]he number and nature of similar marks in use on similar goods.’” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). As the Federal Circuit has stated, “evidence of third-party use of similar marks on similar goods ‘can show that customers have been educated to distinguish between different marks on the basis of minute distinctions.’” *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) (quoting *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)).

“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 [such] marks on the bases of minute distinctions,’” *Omaha Steaks*, 128 USPQ2d at 1693 (quoting *Palm Bay Imps.*, 73 USPQ2d at 1694 (internal quotation omitted)), and “to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Id.* (quoting *Palm Bay Imps.*, 73 USPQ2d at 1693). In its request for remand, Applicant submitted the following evidence of third-party use of JACQUELINE-formative marks for event or wedding planning:¹⁹

- JACQUELINE & JENNIFER (jacquelineandjennifer.com)
- EDE BY JACQUELINE (californiaweddingday.com)
- JACQUELINE HALLGARTH (weddingwire.com)
- JACQUELINE EVENTS (jacquelineevents.com)

¹⁹ 7 TTABVUE 7-29

- EVENTFULLY, JACQUELINE (eventfullyjacqueline.com)
- JACQUELINE'S PARTY RENTAL (incityhotspots.com)
- JACQUELINE RAE (jacquelinerae.ca)²⁰
- CHIC WEDDINGS BY JACQUELINE (facebook.com)
- LUXE EVENTS BY JACQUELINE (no URL)²¹
- EVENTS BY JACQUELINE ANTOINETTE (eventsbyjacquelineantoinette.com)
- WEDDINGS BY JACQUELINE (google.com)
- JACQUELINE CHILOW EVENTS (chilowevents.com)
- JACQUELINE JOHNSON WEDDINGS & EVENTS (thumbtack.com)
- JACQUELINE'S EVENT PLANNING LLC (westindiansocialclub.org)
- LIFETIME EVENTS BY JACQUELINE (lebjv.com)

and use of similar JAC[K]LYN-formative marks for the same services:

- EVENTS BY JACKLYN (eventsbyjacklyn.com)
- JACKLYN RUDD (somethingtocelebrate.com)
- JACLYN JOURNEY WEDDINGS (jaclynjourney.com)
- JACLYN ZORENE EVENT PLANNING (jaclynzoreneeventplanning.com)
- EVENTS BY JACLYN (eventsbyjaclyn.com)

The Examining Attorney concedes that “JACQUELINE is a reasonably common name that would be expected to be used by others in the marketplace.”²² However, she argues that “the record does not support that this [name] is . . . meaningfully weakened . . . by widespread third-party use of similar marks.”²³ Based on this record, we agree that JACQUELINE is a common forename that would be expected to be used by others in the marketplace. However, we disagree that the record does not

²⁰ This web page uses the Internet country code top-level domain for Canada. However, because the Examining Attorney did not object to this page, and the services may be available in the U.S. or to U.S. consumers, we consider it.

²¹ The Examining Attorney did not object to the absence of an URL on what appears to be a screenshot of an internet page for services in Orange County, California, and so we also consider it.

²² 16 TTABVUE 14.

²³ *Id.*

support a finding that JACQUELINE is weak. Taken as a whole, the third-party uses demonstrate that the name JACQUELINE is diluted and commercially weak for the relevant services. Fifteen of the uses contain JACQUELINE, while five more contain the phonetically equivalent JAC[K]LYN, and eight of these combine JACQUELINE or JAC[K]LYN with EVENT[S]. Several of the third-party marks “are as similar to the mark in the cited registration as is Applicant’s mark.” *In re I-Coat Co.*, 126 USPQ2d 1730, 1735 (TTAB 2018).

“The weaker [a registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation*, 115 USPQ2d at 1674. In view thereof, the sixth *DuPont* factor weighs against a finding of likelihood of confusion.

E. Summary

As explained above, the fourth and sixth *DuPont* factors do not favor a likelihood of confusion because of careful purchasing inherent to the nature of the services and the several third-party uses of similar marks for identical and similar services. On balance, we find that these factors combined outweigh the first, second, and third factors, in which we found the marks to be somewhat similar, the services in part identical, and offered through the same channels of trade to overlapping consumers.

II. Decision

The refusal to register Applicant’s mark JACQUELINE ANNE OCCASIONS is reversed.