

This Opinion is not a  
Precedent of the TTAB

Mailed: September 10, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Miranda Frye Inc.*  
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Serial No. 88347449  
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John D. Tran of Rhema Law Group for Miranda Frye Inc.

Ellen J.G. Perkins, Trademark Examining Attorney, Law Office 110,  
Chris A.F. Pedersen, Managing Attorney.  
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Before Lykos, Shaw and Larkin,  
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

Miranda Frye Inc. (“Applicant”) seeks registration on the Principal Register of the  
mark:



MIRANDA FRYE

for goods identified as “Earrings; Jewelry; Jewelry charms; Necklaces; Bracelets;  
Charms for jewelry; Drop earrings; Gold-plated earrings; Hoop earrings; Necklace  
and earring combinations that can be worn separately or as one piece; Rings;

Women’s jewelry; excluding belt buckles or buckles,” in International Class 14.<sup>1</sup> The description of the mark states: “The mark consists of the stylized letters ‘MF’ intertwined above the stylized words ‘MIRANDA FRYE’.” Color is not claimed as a feature of the mark, and Miranda Frye’s consent to use and register the mark is of record.

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 of likelihood of confusion with the following two commonly-owned marks, both registered for “jewelry, namely, bracelets, and belt buckles of precious metals,” in International Class 14:

- FRYE in standard characters;<sup>2</sup> and



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When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, and the appeal resumed. Both Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

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<sup>1</sup> Application Serial No. 88347449 was filed on March 19, 2019, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1(a), claiming dates of first use anywhere and in commerce of April 1, 2016.

<sup>2</sup> Registration No. 3149258, issued September 26, 2006; renewed.

<sup>3</sup> Registration No. 3149259, issued September 26, 2006; renewed.

## I. Preliminary Matters

The Examining Attorney objects to evidence attached to Applicant's brief, consisting of a list of third-party applications and registrations for marks purportedly comprised of the term FRYE, and a copy of Applicant's registration for the stylized initials of the applied-for mark.<sup>4</sup> Applicant did not respond to the objection. Because the evidence was not previously submitted, the Examining Attorney's objection is sustained and the evidence is not considered. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) ("The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal."); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 1207.01 (2020).

## II. Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all the probative facts in evidence 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*"). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We must 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). In any likelihood of confusion analysis, two key considerations are the similarities between the goods and the similarities between the marks. See *Federated*

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<sup>4</sup> Examining Attorney's Br., 9 TTABVue 3.

*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 confine our *DuPont* analysis to the mark FRYE, in standard characters, in Registration No. 3149258. This mark is more similar to Applicant’s mark than the cited composite mark because it is in standard characters and the goods in this registration are identical to those in the other cited registration. If we find a likelihood of confusion as to this FRYE mark and the goods identified in its registration, we need not find it as to the other cited mark. Conversely, if we do not find a likelihood of confusion as to this mark, we would not find it as to the other mark. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1734 (TTAB 2018) (citing *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010)).

A. The nature and similarity or dissimilarity of the goods, the established, likely-to-continue trade channels, and the classes of purchasers.

We begin with the similarity of the respective goods. Applicant’s and Registrant’s goods are, in part, identical inasmuch as both include “bracelets.” Applicant does not argue otherwise. We need not find similarity as to each and every good listed in an applicant’s identification. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in a particular class in the application. *See SquirtCo 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 in the application).

Because the goods are identical in part and without restriction, we must presume that they are sold in all normal trade channels and to all normal classes of purchasers for such goods. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). Thus, we consider Applicant's and Registrant's trade channels and classes of purchasers to be the same. *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same).

The *DuPont* factors regarding the similarity of the goods, channels of trade, and classes of purchasers strongly favor a finding of a likelihood of confusion.

B. The similarity or dissimilarity of the marks in their entireties in terms of appearance, sound, connotation and commercial impression.

Next, we consider the *DuPont* factor relating to the similarity of the marks. In comparing the marks we must consider them in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Similarity as to any one of these factors may be sufficient to support a finding that the marks are confusingly similar. *See Krim-Ko Corp. v. Coca-Cola 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."); *In re*

*Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. Sept. 13, 2019). Moreover, the identity of the goods reduces the degree of similarity between the marks that is necessary for confusion to be likely. *See, e.g., In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010).

Applicant's mark comprises the name MIRANDA FRYE with the stylized initials "MF." The registered mark is simply the term FRYE in standard characters. Thus, each of the marks consists, in whole or in part, of the surname FRYE. Nothing in the record suggests that FRYE has any significance other than as a surname. Accordingly, to the extent that the two marks under consideration share the designation FRYE, they are at least in part identical in sound, appearance, and commercial impression. In addition, Registrant's mark is presented standard characters and therefore we must consider that it may be presented in the same stylization found in Applicant's mark. *See In re Viterra Inc.*, 101 USPQ2d at 1909. *See also Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847-48 (Fed. Cir. 2000).

In comparing MF MIRANDA FRYE with FRYE, we note that Applicant's mark encompasses the entire registered mark. Applicant has added the stylized initials "MF" and the given name MIRANDA, but the addition of a given name to a recognizable surname has limited distinctive capability. That is, a surname preceded by a given name or initials is a common, highly conventional combination of word

elements, and the name MIRANDA FRYE could well be interpreted as a more specific reference to a person or company that is otherwise identified by the surname FRYE.

We have held that the addition of a given name to a surname is insufficient to distinguish it from the surname alone, for likelihood of confusion purposes. *See, e.g., Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1446-47 (TTAB 2014) (holding BRUCE WINSTON for gemstones and jewelry confusingly similar to WINSTON for polished diamonds and jewelry); *In re Chatham Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) (“[T]he first name JOSE modifies the surname GASPAR and serves to emphasize that GASPAR is a name”); *In re SL&E Training Stable Inc.*, 88 USPQ2d 1216, 1219 (TTAB 2008) (“The first name ‘Sam’ in applicant’s mark modifies the surname ‘Edelman,’ in effect, telling which Edelman it is, and therefore emphasizes the ‘Edelman’ portion.”); *Audemars Piguet, Ltd. v. Hammerman Bros, Inc.*, 181 USPQ 843 (TTAB 1974) (“[I]t is not believed that the addition of the given name to opposer’s mark is sufficient to distinguish these marks”); *Somerset Distilling Inc. Speymalt Whisky Distribs. Ltd.*, 14 USPQ2d 1539 (TTAB 1989) (JAS. GORDON likely to be confused with GORDON’S).

We acknowledge that the initials “MF” and the name MIRANDA feature prominently in the cited mark and that it is often the first part of a mark that consumers remember. *See, e.g. In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). But these elements serve to modify, and therefore are subordinate to, the surname FRYE which is the dominant element of the mark. FRYE

is most likely to be used by consumers to call for the goods because consumers have a propensity to shorten names. *See Nina Ricci S.A.R.L. v. E.T.F. Enters. Inc.*, 889 F.2d 1070, 12 USPQ2d 1901, 1903 (Fed. Cir. 1989) (“[T]he Board has previously recognized the practice in the fashion industry of referring to surnames alone”); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1961 (TTAB 2016) (“[W]e also keep in mind the penchant of consumers to shorten marks.”). Similarly, the initials “MF” are likely to be seen as reinforcing the full name MIRANDA FRYE. *See In re Mighty Leaf Tea*, 94 USPQ2d at 1259 (“ML is likely to be perceived as a shortened version of ML MARK LEES when used on the same or closely related skin care products.”); *In re TSI Brands Inc.*, 67 USPQ2d 1657, 1661-62 (TTAB 2002) (customers will perceive the letters AK in applicant’s mark AK AMERICAN KHAKIS and design as standing for the term “American Khakis”). Taken as a whole, MF MIRANDA FRYE could be perceived as the full name and initials of the person or company identified by the surname FRYE alone.

Applicant argues that the Examining Attorney “failed to evaluate the applicant’s mark and Registrant’s marks in their entirety;” and “improperly dissected applicant’s mark and incorrectly focused on the ‘FRYE’ term whereby ignoring other more prominent and distinguishing features in applicant’s mark”.<sup>5</sup> This argument is unpersuasive.

“Although marks must be considered in their entirety, it is settled that one feature of a mark may be more significant than another, and it is not improper to give

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<sup>5</sup> Applicant’s Br., p. 8, 7 TTABVUE 9.

more weight to this dominant feature in determining the commercial impression created by the mark.” *Bay State Brewing*, 117 USPQ2d at 1960 (citing *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[T]here 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 consideration of the marks in their entirety.”)). Here, we consider the marks as a whole, but give more weight to the surname FRYE because we find that it is the dominant portion of the marks.

In sum, we find that the marks, when viewed in their entirety, are far more similar than they are different and, overall, convey similar commercial impressions. That is to say, the marks appear to be variations of each other that nonetheless point to a common source. As such, this *DuPont* factor favors a finding of likelihood of confusion.

C. The number and nature of similar marks in use on similar goods.

The sixth *DuPont* factor addresses the strength of the cited mark by considering the number and nature of similar marks in use on similar goods. *DuPont*, 177 USPQ at 567. Applicant argues that “the evidence that the word ‘FRYE’ is used widely for a variety of different goods and services show that the ‘FRYE’ mark is weak and conditioned to differentiate between marks based upon other distinctions.<sup>6</sup> This argument is unpersuasive as well inasmuch as there is no evidence properly of record regarding third-party use of the term FRYE. This *DuPont* factor is neutral.

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<sup>6</sup> *Id.* at 7, 7 TTABVUE 8.

D. Conclusion

We find that Applicant's and Registrant's goods are identical in part; the channels of trade and classes of consumers are the same; and Applicant's mark is similar to the cited mark. We conclude that there is a likelihood of confusion between



Applicant's mark, MIRANDA FRYE , and the cited mark, FRYE, for the respective goods.

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