

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: November 2, 2021

Mailed: November 3, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Garan Services Corp.
—

Application Serial No. 88674888
—

G. Roxanne Elings of Davis Wright Tremaine LLP,
for Garan Services Corp.

Jason R. Nehmer, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

—
Before Bergsman, Coggins and Hudis,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Garan Services Corp. (“Applicant”) seeks registration on the Principal Register of the mark MATCH STUDIO (in standard characters) for “clothing, namely, tops and bottoms,” in International Class 25.¹ Applicant disclaims the exclusive right to use the word “Studio.”

—
¹ Application Serial No. 88674888 was filed on October 31, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s claim of a bona fide intention to use the mark in commerce.

The Examining Attorney refused to register Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the marks MATCH, in standard character form,² and MATCH and design,³ reproduced below, owned by the same entity, for the goods listed below:

Clothing and accessories for babies, adults, children, women and men, namely, caps; caps with visors; hats; beanies; coats for men, women and children, namely, coats made of cotton, heavy coats, over coats, rain coats; jackets for men, women and children, namely, outer jackets, rain proof jackets; denim pants; woven bottoms and tops; wearable garments and clothing, namely, shirts for adults, children, women and men, namely, button down shirts, collared shirts, dress shirts, crew necks, knit shirts, knit tops, long sleeve and short sleeve shirts, long and short sleeve t-shirts, tank tops, long sleeve pullovers; cardigans; crew neck sweaters; sweaters; v-neck sweaters; sweatshirts for babies, adults, children, women and men; hooded sweatshirts for babies, adults, children, women, men, in International Class 25.



The description of the mark reads as follows:

The mark consists of the word "MATCH" in the middle of seven stylized matchsticks, one that runs in a straight vertical line through the center of the word "MATCH" and six others, three to either side of the central vertical stylized matchstick, that are increasingly curved in an

² Registration No. 4808154 registered September 8, 2015; Combined Declaration under Sections 8 and 15 filed.

³ Registration No. 4808153 registered September 8, 2015; Combined Declaration under Sections 8 and 15 filed.

outward facing direction the further each such stylized matchstick is from the central vertical stylized matchstick.

Citations to the record refer to the USPTO Trademark Status and Document Retrieval (TSDR) system by page number in the downloadable .pdf format. References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, if applicable.

We base our determination under Section 2(d) on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, referred to as “*DuPont* factors”), *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, 1203 (Fed. Cir. 2003). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997) and *DuPont*, 177 USPQ at 567). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020) (citing *Dixie Rests.*, 41 USPQ2d at 1533).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA

1973). “Two key factors in every Section 2(d) case are the first two factors regarding the similarity or dissimilarity of the marks and the goods or services, because 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.” *In re Embiid*, 2021 USPQ2d 577, at *10 (TTAB 2021) (quoting *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)); *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

Because the design element in Registration No. 4808153 for the mark MATCH and design arguably contains an additional point of difference with Applicant’s mark, we confine our analysis to the issue of likelihood of confusion between Applicant’s mark MATCH STUDIO and Registration No. 4808154 for the mark MATCH in standard character form. That is, if confusion is likely between Applicant’s mark MATCH STUDIO and MATCH in standard character form, there is no need for us to consider the likelihood of confusion with the mark with a design element; the standard character mark is a sufficient basis for us to affirm the refusal of registration. Conversely, if there were no likelihood of confusion between Applicant’s mark and MATCH in standard character form, then there would be no likelihood of

confusion with MATCH with a design element. *See, e.g., N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1225 (TTAB 2015); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

I. Similarity or dissimilarity and nature of the goods.

Applicant is seeking to register its mark for “clothing, namely, tops and bottoms.” The description of goods in the cited mark includes a wide variety of clothing items, including, *inter alia*, “woven bottoms and tops.” Because Applicant’s “tops and bottoms” is broad enough to encompass “woven bottoms and tops,” the goods are legally identical. *See In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413-14 (TTAB 2018) (where the goods in an application or registration are broadly described, they are deemed to encompass all the goods of the nature and type described therein); *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

We need not consider whether each of Registrant’s identified products and each of Applicant’s products are related for purposes of a *DuPont* likelihood of confusion analysis. It is sufficient if we find similarity with respect to use of an applicant’s mark in connection with any product in a particular International Class. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Comput. v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1398 (TTAB 2007).

II. Established, likely-to-continue channels of trade and classes of consumers.

Because the goods described in the application and the cited registration are in part legally identical, we presume 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) (identical goods are presumed to travel in same channels of trade to same class of purchasers) (cited in *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (“With respect to similarity of the established trade channels through which the goods reach customers, the TTAB properly followed our case law and ‘presume[d] that the identical goods move in the same channels of trade and are available to the same classes of customers for such goods....”)); *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Rsch. Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

III. The strength of Registrant’s MATCH mark, including the number and nature of similar marks in use in connection with similar goods.

In determining strength of Registrant’s MATCH mark, we consider both its inherent strength, based on the nature of the mark itself, and commercial strength or recognition. *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).”).

To determine the conceptual strength of the cited MATCH mark, we evaluate its intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-

arbitrary-fanciful continuum of words. Word marks that are arbitrary, fanciful, or suggestive are “held to be inherently distinctive.” *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000). *See also, In re Chippendales* 96 USPQ2d at 1684 (“In general, trademarks are assessed according to a scale formulated by Judge Friendly in *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759 (2d Cir. 1976), which evaluates whether word marks are ‘arbitrary’ or ‘fanciful,’ ‘suggestive,’ ‘descriptive,’ or ‘generic.’”). We also look to evidence pertaining to the number and nature of similar marks in use on similar goods or services.

The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) defines “match,” inter alia, as “a pair suitably associated // carpet and curtains are a *match*,” and “to harmonize with // the jacket *matched* the pants.”⁴ Applicant submitted 55 third-party registrations consisting, in part, of the word “match” for clothing products.⁵ For example:⁶

- Registration No. 5882293 for the mark MatchU for, inter alia, tops and bottoms;

⁴ August 10, 2020 Response to Office Action (TSDR 17-18).

⁵ *Id.* at TSDR 40-106. We do not consider the pending applications because they are evidence only that the applicants filed the applications on a certain date; they are not evidence of the use of the mark. *Nike Inc. v. WNBA Enters. LLC*, 85 USPQ2d 1187, 1193 n.8 (TTAB 2007); *Interpayment Servs. Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003); *In re Juleigh Jeans Sportswear, Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992).

⁶ The Examining Attorney correctly notes that all not all of the third-party registrations are probative because they engender a different meaning and commercial impression (e.g., Registration No. 5926857 for the mark MATCH PLAY, Registration No. 5030622 for the mark MATCH POINT, Registration No. 5229889 for the mark BOTTEGA PERFECT MATCH ESPRESSO BAR, etc.). However, we find most of the registrations are probative.

- Registration No. 5713805 for the mark MATCH WITH MOMMY for, inter alia, shirts;
- Registration No. 5755083 for the mark MATCHES for, inter alia, shirts, shorts, and trousers;
- Registration No. 594712 for the mark MIX. MATCH. IMAGINE! for, inter alia, tops and bottoms; and
- Registration No. 5292364 for the mark MATCHUP PROBLEM for, inter alia, shirts, pants, shorts, and tank tops.

“Third party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well-recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). In addition to the dictionary definition of “match” made of record, the above-recited registered marks indicate that the term MATCH is highly suggestive in connection with clothing products.

In *Plus Prods. v. Natural Organics, Inc.*, 204 USPQ 773 (TTAB 1979), which involved an opposition to the registration of NATURE’S PLUS for vitamins by the owner of the mark PLUS, also for vitamins, the applicant made of record eight third-party registrations that issued prior to opposer’s registration and seven registrations that issued after, all for marks containing the word PLUS and all for goods that are the same or closely related to vitamins. The Board drew the following inferences from the co-existence of these registrations:

1. Opposer was satisfied to register PLUS side-by-side with eight existing registrations.
2. The Patent and Trademark Office has historically registered PLUS marks for vitamins to different parties so long as there has been some difference, not necessarily created by a distinctive word, between the marks as a whole, e.g., VITAMINS PLUS and IRON PLUS.
3. A number of different trademark owners have believed, over a long interval of time, that various PLUS marks can be used and registered side by side without causing confusion provided there are minimal differences between the marks.

Id. at 779. *See also In re Hartz Hotel Servs., Inc.* 102 USPQ2d 1150, 1153 (TTAB 2012) (“Because of the highly suggestive nature of the term ‘Grand Hotel,’ ... the same inferences apply.”); *Jerrold Elec. Corp. v. Magnavox Co.*, 199 USPQ 751, 758 (TTAB 1978) (third-party registrations “reflect a belief, at least by the registrants, who would be most concerned about avoiding confusion and mistake, that various ‘STAR’ marks can coexist provided that there is a difference.”); *In re Sien Equip. Co.*, 189 USPQ 586, 588 (TTAB 1975) (the suggestive meaning of the word “Brute” explains the numerous third-party registrations incorporating that word with other wording or material no matter how little additional significance they may add to the word “Brute” per se).

In this appeal, 20 of the third-party “match” registrations registered prior to the marks in the cited registrations and 35 third-party “match” registrations registered after the marks in the cited registrations. We presume that the owner of the cited registrations did not perceive its MATCH marks as interfering with the prior-registered MATCH marks and that the owners of those prior registrations did not

perceive Registrant's MATCH marks as interfering with their use of their MATCH marks. Likewise, we presume that Registrant and the other owners of the prior MATCH registrations did not have a problem with the registration of the third-party marks issued after the registration of the Registrant's marks.

In addition, Applicant submitted excerpts from websites where the website owners use the word "match" as part of a trademark in connection with the sale of clothing.⁷ For example,

- MATCH YOUR PUP (matchyourpup.com) for matching pet and owner clothing;⁸
- MATCH BOUT (matchbout.co) for athletic clothing with a boxing theme;⁹
- MatchU (matchutailor.com) for clothing;¹⁰
- MATCH MY HUSTLE (matchmyhustle.net) for clothing;
- MATCH WITH MOMMY (matchwithmommy.com) for clothing;¹¹
- EZ MATCH socks advertised for sale on eBay.com;¹²
- Eve Tees website (teespring.com) advertising MATCH MADE IN HEAVEN shirts;¹³

⁷ February 16, 2021 Request for Reconsideration (TSDR 13-58).

⁸ *Id.* at TSDR 13-14.

⁹ *Id.* at TSDR 15-17.

¹⁰ *Id.* at TSDR 18.

¹¹ *Id.* at TSDR 21.

¹² *Id.* at TSDR 23-24.

¹³ *Id.* at TSDR 25-27.

- MATCHES FASHION website (matchesfashion.com) advertising men's clothing;¹⁴
- MATCH MUCH hats advertised on Amazon.com;¹⁵
- FRUIT OF THE LOOM SURE-MATCH socks advertised on Walmart.com;¹⁶
- MATCH UP APPAREL (matchupapparel.com) advertising clothing;¹⁷
- MISS MATCH clothing boutique (mismatchsd.com) advertising clothing;¹⁸
- MATCH MY FLY CLOTHING (matchmyfly.com) advertising clothing;¹⁹
- BALLE DE MATCH Men's Apparel (raquetdepot.com) advertising men's apparel;²⁰ and
- MATCH custom apparel (shootreadyapparel.com) advertising clothing.²¹

The third-party websites noted above show that others in the clothing field consider the word “match” to have a highly suggestive significance when applied to clothing (i.e., that clothing products should complement or enhance each other). “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.” *In re FabFitFun*, 127 USPQ2d 1670, 1674 (TTAB 2018) (quoting *Palm Bay Imps., Inc.*

¹⁴ *Id.* at TSDR 31.

¹⁵ *Id.* at TSDR 37.

¹⁶ *Id.* at TSDR 39.

¹⁷ *Id.* at TSDR 46-47.

¹⁸ *Id.* at TSDR 49.

¹⁹ *Id.* at TSDR 51-54.

²⁰ *Id.* at TSDR 55-56.

²¹ *Id.* at TSDR 57-58.

v. Veuve Cliquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)).

“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.” *Id.* (quoting *Rocket Trademarks Pty Ltd v. Phard S.p.A.*, 98 USPQ2d 1066, 1072 (TTAB 2011)). *Cf. In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (“A woman’s ensemble, which may consist of a coordinated set of pants, a blouse and a jacket, is incomplete without a pair of shoes which match or contrast therewith. Such goods are frequently purchased in a single shopping expedition. When shopping for shoes, a purchaser is usually looking for a shoe style or color to wear with a particular outfit. The items sold by applicant [women’s shoes] and registrant [“women’s clothing, namely, pants, blouses, shorts and jackets”] are considered to be complementary goods.”).

Under these circumstances, based on the evidence of record, we accord marks consisting, in whole or in part, of the word “match” in connection with clothing a narrow scope of protection. Such marks, inherently, are highly suggestive; in the marketplace, such marks travel in a crowded field. In other words, Registrant’s MATCH marks are not entitled to such a broad scope of protection that they will bar the registration of every mark comprising, in whole or in part, the word “match”; they will only bar the registration of marks “as to which the resemblance to [Registrant’s marks] is striking enough to cause one seeing it to assume that there is some connection, association or sponsorship between the two.” *Anthony’s Pizza & Pasta*

Int'l Inc. v. Anthony's Pizza Holding Co., 95 USPQ2d 1271, 1278 (TTAB 2009), *aff'd*, 415 F. App'x 222 (Fed. Cir. 2010) (quoting *Pizza Inn, Inc. v. Russo*, 221 USPQ 281, 283 (TTAB 1983)).

IV. The similarity or dissimilarity of the marks.

We now turn to the *DuPont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *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, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff'd mem.*, 777 F. App'x 516 (Fed. Cir. 2019); *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).

In comparing the marks, we are mindful that where, as here, the goods are in part legally identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). "The proper test is not a side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression' such that persons who encounter the marks would be likely to assume a connection between the parties." *Cai v. Diamond Hong*, 127 USPQ2d at 1801 (quoting *Coach Servs.*, 101 USPQ2d at 1721); *Midwestern Pet Foods, Inc. v. Societe des Produits*

Nestle S.A., 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012). We keep in mind that “[s]imilarity is not a binary factor but is a matter of degree.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)).

The marks MATCH and MATCH STUDIO are similar because they both include the word “match.” On the other hand, the marks are dissimilar because Applicant’s mark, but not Registrant’s mark, includes and ends with the word “studio,” that (according to the dictionary definition and other evidence made of record) would be perceived as a center of creativity.

The Lexico.com website defines “studio,” inter alia, as “a room where an artist photographer, sculptor, etc. works // *mostly the painting is done in the studio working from drawings.*”²² The Examining Attorney submitted an excerpt from the Dexigner website (dexigner.com) using the word “studio” to describe a fashion design workshop.

Fashion Design Studios

Tiffany Hill Studio

Tiffany Hill Studio consists of freelance fashion design industry experts that bring your creative visions to life.

...

C.C. Elegance Studio

At C.C. Elegance Studio, we offer a wide variety of fashion services so you can stay on top of every season’s new looks. ...²³

²² February 10, 2020 Office Action (TSDR 12).

²³ *Id.* at TSDR 15.

Where Registrant's MATCH mark means and engenders the commercial impression of harmonization or coordination, Applicant's mark MATCH STUDIO means and engenders the commercial impression of a center for clothing design. We find that, although MATCH is the entirety of the commercial impression created by Registrant's mark, in Applicant's mark the words "match" and "studio" have equal weight in creating the commercial impression. This is because, as discussed above, we found the word "match" to be highly suggestive as applied to clothing.

We disagree with the Examining Attorney's assertions that "match" is the dominant part of Applicant's mark because Applicant disclaimed the exclusive right to use the word "studio"²⁴ and because "match" is the first word in Applicant's mark and, therefore, more likely to be remembered by consumers.²⁵ There is no mechanical test to select the dominant element of a mark.²⁶ *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1059 (TTAB 2017). "[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature

²⁴ The Examining Attorney contends, without any evidence, that "[t]here are over 300 active registrations for clothing that contain the word 'STUDIO.'" Examining Attorney's Brief (10 TTABVUE 16). Without any supporting evidence, we cannot give this contention any consideration.

²⁵ Examining Attorney's Brief (10 TTABVUE 7-8).

²⁶ While we generally consider the first term in a mark to be the feature that will be called for, and so remembered, by consumers, this is not invariably the case. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014) ("the Board did not err in finding that 'STONE LION CAPITAL' is 'similar in sight, sound, meaning, and overall commercial impression' to 'LION CAPITAL' and 'LION.'"); *In re Chatam Int'l Inc.*, 71 USPQ2d at 1946 ("Viewed in their entireties with non-dominant features appropriately discounted, the marks [GASPAR'S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical.").

of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 750-51 (Fed. Cir. 1985); *see also Stone Lion Capital Partners*, 110 USPQ2d at 1161. Here, because of the highly suggestive nature of the word “match,” there is no rational reason for giving it more weight than the word “studio.” Moreover, a disclaimer does not remove the disclaimed portion from the mark for the purposes of comparing marks in a likelihood of confusion determination. *See Midwestern Pet Foods v. Societe des Produits Nestle*, 103 USPQ2d at 1440; *Nat’l Data Corp.*, 224 USPQ at 751; *Bordon, Inc. v. W.R. Grace & Co.*, 180 USPQ 157, 158 (TTAB 1973).

The crux of the issue before us is whether Applicant’s coupling of the words “match” and “studio” suffices to avoid likelihood of confusion with Registrant’s mark MATCH. We find that it does. Because “match” is highly suggestive as applied to clothing, and is used by many third parties for clothing, the addition of the word “studio” to Applicant’s mark suffices to distinguish the two marks when considered in their entireties. *See Jack Wolfskin Aurustung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1131 (Fed. Cir. 2015) (“[T]he Board incorrectly found a likelihood of confusion between the two marks because the Board failed to properly compare New Millennium’s mark [KELME and paw print design] *as a whole* to Jack Wolfskin’s mark [a paw print design] and also failed to recognize, in light of the significant evidence of paw prints appearing in third-party registrations and usage for clothing, the relatively narrow scope of protection afforded to marks involving paw prints.”); *Conde Nast Publ’n, Inc. v. Miss*

Quality, Inc., 597 F.2d 1404, 184 USPQ 422 (CCPA 1975) (COUNTRY VOGUES for dresses not likely to be confused with VOGUE for magazines; purchasers likely to view VOGUES in its normal suggestive sense as applied to such goods); *Knight Textile Corp. v. Jones Inv. Co., Inc.*, 75 USPQ2d 1313 (TTAB 2005) (NORTON-MCNAUGHTON ESSENTIALS is not similar to ESSENTIALS because of the weakness of the term “essentials”); *Kayser-Roth Corp. v. Morris & Co., Inc.*, 164 USPQ 153 (TTAB 1969) (PAUL JONES ESQUIRE and ESQUIRE not likely to be confused as applied to men’s clothing).

We find that the marks are not similar.

V. Conclusion

Having considered the evidence of record as it pertains to the relevant *DuPont* factors, we find that confusion is unlikely to result from contemporaneous use of the prior registered mark MATCH for a wide variety of clothing products, including “woven bottoms and tops” and Applicant’s MATCH STUDIO mark for “tops and bottoms,” even where the marks are used on in part legally identical goods marketed in the same trade channels and to the same classes of purchasers. We find that, because of the highly suggestive nature of Registrant’s MATCH mark coupled with the multiple third-party uses of record, the dissimilarity of the marks, under the first and sixth *DuPont* factors, simply outweigh the evidence as to the other *DuPont* factors. *See, e.g., Kellogg Co. v. Pack-Em Enters. Inc.*, 14 USPQ2d 1545 (TTAB 1889), *aff’d*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

Decision: We reverse the refusal to register Applicant's mark MATCH STUDIO under Section 2(d) of the Trademark Act.