

This Opinion is Not a
Precedent of the TTAB

Mailed: November 3, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Dorinda Medley, Inc.
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Serial No. 90235507
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Douglas A. Miro and Holly Pekowsky of Amster, Rothstein & Ebenstein LLP,
for Dorinda Medley, Inc.

Marc J. Leipzig, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Cataldo, Wolfson and Hudis,
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Dorinda Medley, Inc. (“Applicant”) seeks registration on the Principal Register of the mark BLUE STONE MANOR (in standard characters) for “clothing, namely, sweatshirts, sweatpants, loungewear, active wear in the nature of jackets, track pants, and tank tops, shirts, shorts, pants, hats, and aprons; footwear; headwear” in International Class 25.¹

¹ Application Serial No. 90235507 was filed on October 5, 2020, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce. The Application also includes goods and services in International Classes 18, 21 and 41. However, only the goods in International Class 25 are the subject of the

The Trademark Examining Attorney refused registration under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the goods identified in the Application, so resembles the standard character marks:

BLUE STONE for Bathrobes; Belts; Blouses; Coats; Dresses; Footwear; Gloves; Jackets; Jumpers; Nightgowns; Pajamas; Pants; Polo shirts; Pullovers; Raincoats; Shirts; Shorts; Skirts; Socks; Suits; Sweat pants; Sweat shirts; Sweaters; Swim wear; T-shirts; Ties as clothing; Tights; Trousers; Underwear; Vests, in International Class 25,² and

BLUESTONE SUN SHIELDS for Headwear, in International Class 25,³

registered to different owners on the Principal Register, as to be likely to cause confusion, mistake, or deception.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register Applicant's mark for the goods in Class 25.

I. Likelihood of Confusion

Trademark Act Section 2(d) prohibits the registration of a mark that:

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously

Examining Attorney's refusal to register and this appeal. Office Action of January 29, 2021 at TSDR 2; Applicant's Brief, 6 TTABVUE 2 n.1; Examining Attorney's Brief, 11 TTABVUE 5 n.1; Applicant's Reply Brief, 8 TTABVUE 2 n.1.

Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents. 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.

² Registration No. 6177508 was issued on October 20, 2020.

³ Registration No. 5594118 was issued on October 30, 2018.

used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

Our analysis is based on all of the probative evidence of record. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*” – noting the factors to be considered). 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. Cap. 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 applying the *DuPont* factors, we bear in mind the fundamental purposes underlying Trademark Act Section 2(d), which are to prevent confusion as to source and to protect trademark owners from damage caused by the registration of similar marks for related goods or services that are likely to cause confusion. *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 331 (1985); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 34 USPQ2d 1161, 1163 (1995); *DuPont*, 177 USPQ at 566.

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See 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 below these factors, and the other *DuPont* factors for which there is evidence and argument.

A. Consideration of the Closest Mark and Goods that are the Basis for the Likelihood of Confusion Refusal

We focus our likelihood of confusion analysis on Registration No. 6177508 for the standard character BLUE STONE mark, because that mark includes fewer points of difference to Applicant’s mark than does the standard character BLUESTONE SUN SHIELDS mark of Registration No. 5594118. If we find that there is no likelihood of confusion with the registered BLUE STONE mark in connection with the recited Class 25 goods, there is no need for us to consider a likelihood of confusion with the registered BLUESTONE SUN SHIELDS mark in connection with “headwear” in Class 25.⁴ *See, e.g., N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1225 (TTAB 2015) (citing *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010)).

⁴ The Examining Attorney states that (1) “The wording ‘SUN SHIELDS’ was intended to be removed from the mark in Registration No. 5594118 by Examiner’s Amendment dated June 26, 2018. Due to office error, however, the mark itself was never updated to reflect the change,” and (2) “[B]efore applicant [i.e., registrant] sought to amend its mark (deleting ‘SUN SHIELDS’), the wording had been required to be disclaimed as descriptive, considering that applicant itself had described its specimen as a ‘sun visor that can be worn up as a typical sun visor or down as a face shield.’” Examining Attorney’s Brief, 11 TTABVUE 2, n.3 and 3. The Examining Attorney, however, did not make the prosecution history of Registration No. 5594118 of record in the present appeal. In any event, our consideration of the BLUESTONE SUN SHIELDS mark and goods of Registration No. 5594118 in this appeal is based on the registration details as they appear in the registration. *See Trademark Act Section 7(b)*, 15 U.S.C. § 1057(b) (“A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner’s ownership of the mark, and of the owner’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.”).

B. The Similarity or Dissimilarity of the Respective Goods, Channels of Trade and Potential Consumers

1. Goods

We now turn to the comparison of the goods at issue, the second *DuPont* factor. In making our determination regarding the similarity of the goods, we must look to the goods as identified in the appealed BLUE STONE MANOR Application and the cited BLUE STONE registration. *See Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“[T]he question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”)); *see also Paula Payne Prods. Co. v. Johnson Publ’g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (“Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods”).

“It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer.” *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006).

Several of the clothing items identified in Class 25 of the BLUE STONE MANOR Application are identical to, or (at the very least) are encompassed by, the clothing products identified in Class 25 of the BLUE STONE Registration. It is sufficient for a finding of likelihood of confusion as to a particular class if relatedness is established for any item of identified goods within that class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). For example, both Applicant's application and the cited registration identify footwear, shirts, shorts, sweatpants and sweatshirts among the listed goods. Relatedness can be found based on the descriptions in the application and registration without resort to additional evidence. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) ("While additional evidence, such as whether a single company sells the goods ... of both parties, if presented, is relevant to a relatedness analysis ..., the important evidence already before [the Board comprises the identifications of goods in] the ... application and [cited] registrations.").

The Examining Attorney argues that the Class 25 goods of the BLUE STONE MANOR Application are identical or related to the Class 25 goods of the BLUE STONE registration.⁵ In neither Applicant's brief nor in its Reply brief does Applicant argue to the contrary. Applicant therefore has conceded this point. *In re Gibson Guitar Corp.*, 61 USPQ2d 1948, 1950 n.2 (TTAB 2001) (In the applicant's appeal from the examining attorney's refusal to register the applicant's guitar body design, inter alia, as merely a configuration that had not acquired distinctiveness, the applicant

⁵ Examining Attorney's Brief, 11 TTABVUE 3-4.

did not, in its appeal brief, pursue its contention of inherent distinctiveness; therefore this argument was not considered by Board).

We find the respective clothing goods are identical in part, and otherwise related. The second *DuPont* factor supports a finding that confusion is likely.

2. Trade Channels and Potential Consumers

The third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567); *see also Stone Lion*, 110 USPQ2d at 1161-63. Because Applicant’s goods overlap with the goods of the cited BLUE STONE registration, we must therefore presume that the channels of trade and potential consumers are also identical as to these overlapping goods. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion); *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). In neither Applicant’s brief nor in its Reply brief does Applicant argue against the overlap of trade channels or potential consumers. The third *DuPont* factor supports a finding that confusion is likely.

C. Strength of the Cited Mark

Before we evaluate the similarity or dissimilarity of the respective marks, we first consider the strength of the cited BLUE STONE mark. The strength of Registrant’s mark affects the scope of protection to which it is entitled. Thus, we consider the conceptual strength of Registrant’s mark, based on the nature of the mark itself, and

its commercial strength, based on marketplace recognition of the mark. *See 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 ...”). The commercial strength of the mark also is affected by the number and nature of third-party uses of similar marks for similar goods. *DuPont*, 177 USPQ at 567.

1. Conceptual Strength

The sixth *DuPont* factor allows Applicant to contract the scope of protection for the cited BLUE STONE mark by adducing evidence of “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567 (cited in *Sock It To Me, Inc. v. Aiping Fan*, 2020 USPQ2d 10611, at *8 (TTAB 2020)). Third-party registrations “may bear on conceptual weakness if a term is commonly registered for similar goods or services.” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1057 (TTAB 2017). Applicant did not provide such evidence. Rather, Applicant argues that BLUE STONE, as a mark, is weak. As Applicant further refines its argument, “[s]ince ... Reg. [No. 5594118] for [the] BLUESTONE SUN SHIELDS [mark] and ... Reg. [No. 6177508] for [the] BLUESTONE [mark] co-exist for clothing, Applicant’s BLUE STONE MANOR [m]ark should as well.”⁶

The existence of one third-party registration containing the term BLUESTONE for clothing is not enough to narrow the scope of protection of the cited BLUE STONE Registration. While the Federal Circuit has held that “**extensive** evidence of third-

⁶ Applicant’s Brief, 6 TTABVUE 4; Applicant’s Reply Brief, 8 TTABVUE 4.

party use and registrations is ‘powerful on its face,’ even where the specific extent and impact of the usage has not been established,” see *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (emphasis added) (citing *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015)), the record of one third-party registration in this case is far, far less than the amount of evidence found convincing in *Jack Wolfskin* and *Juice Generation* wherein “considerable evidence of third-party registration” of similar marks was shown. *Id.*

2. Commercial Strength

In an ex parte appeal, the owner of the cited registration is not a party, and the Examining Attorney is under no obligation to demonstrate exposure to or recognition of the cited mark in the marketplace. *In re Integrated Embedded*, 120 USPQ2d 1504, 1512 (TTAB 2016). For that reason, “this factor is usually treated as neutral in such proceedings.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1207.01(d)(ix) (2022). On the other hand, “[e]vidence 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. v Veuve Cliquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005)). Applicant did not provide any such evidence during prosecution.

In the absence of adequate proof to the contrary, Registrant’s BLUE STONE mark is considered inherently distinctive as evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Trademark Act Section

2(f), 15 U.S.C. § 1052(f). *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006). In this ex parte appeal, because there is no evidence of record regarding the commercial recognition of the cited BLUE STONE mark, or evidence of similar marks in use by third parties for clothing, the commercial strength of Registrant's mark is a neutral factor, as is the fifth *DuPont* factor.

D. The Similarity or Dissimilarity of the Respective Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *In re Detroit Athletic*, 128 USPQ2d at 1048; *Stone Lion*, 110 USPQ2d at 1160. "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), *aff'd mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). We make this comparison mindful that "[w]hen trademarks would appear on substantially identical goods, 'the degree of similarity necessary to support a conclusion of likely confusion declines.'" *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) ("(internal citations omitted).

"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." *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017) (quoting *Coach Servs.*, 101 USPQ2d at 1721 (internal quotation

marks omitted)). The focus is on the recollection of the average purchaser – here a potential purchaser of clothing products – who normally retains a general rather than a specific impression of trademarks. *In re Assoc. of the U.S. Army*, 85 USPQ2d 1264, 1268 (TTAB 2007); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); *see also In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (“marks must be considered in light of the fallibility of memory and not on the basis of side-by-side comparison”) (cleaned up; citation omitted).

So long as we “analyze[] the marks as a whole[, i]t is not improper for the Board to determine that, ‘for rational reasons,’ ... [we] give ‘more or less weight ... to a particular feature of the mark[s]’ provided that ... [our] ultimate conclusion regarding ... likelihood of confusion ‘rests on [a] consideration of the marks in their entirety.’” *Quiktrip W., Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 2021 USPQ2d 35, *2-3 (Fed. Cir. 2021) (citing *Packard Press, Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 1357 (Fed. Cir. 2000) and *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

Although we must consider the marks in their entirety, we find the term BLUE STONE to be the dominant portion of Registrant’s BLUE STONE mark and Applicant’s BLUE STONE MANOR mark. This is because they are the first or only terms in each mark. *See Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”). The term BLUE STONE, as the first and dominant portion of Applicant’s BLUE STONE MANOR mark, is the

“term most likely to be remembered by consumers” and “used in calling for the ... [goods]” or in otherwise referring to Applicant. *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009).

Here, Applicant’s addition of MANOR to the registered BLUE STONE mark does not obviate the similarity between the compared marks, nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). To the contrary, Applicant’s mark incorporates the cited mark in its entirety, thereby increasing the similarity between the two. *See, e.g., Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (finding BENGAL and BENGAL LANCER and design confusingly similar); *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1823 (TTAB 2015) (applicant’s mark WINEBUD for “alcoholic beverages except beers” likely to cause confusion with BUD for beer); *In re Davia*, 110 USPQ2d at 1813 (applicant’s mark CHANTICO and design for pepper sauce likely to cause confusion with CHANTICO for agave sweetener); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1269 (TTAB 2009) (finding TITAN and VANTAGE TITAN confusingly similar).

In fact, purchasers of Registrant’s BLUE STONE clothing items are likely to assume that Applicant’s clothing, sold under the mark BLUE STONE MANOR mark, are merely a line extension of goods emanating from Registrant. *See Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1433 (TTAB 2013) (“Purchasers of opposer’s GOTT and JOEL GOTT wines are likely to assume that applicant’s goods,

sold under the mark GOTT LIGHT and design, are merely a line extension of goods emanating from opposer.”).

We therefore do not agree with Applicant’s argument that, merely by adding the term MANOR to the end of Registrant’s BLUE STONE mark, the BLUE STONE MANOR and BLUE STONE marks are sufficiently different in appearance, sound meaning or commercial impression so as to avoid a likelihood of confusion,⁷ particularly when the respective marks would be used on identical or otherwise related goods. The first *DuPont* factor supports a finding that confusion is likely

E. The Conditions under which and Buyers to whom Sales are Made, i.e. “Impulse” v. Careful, Sophisticated Purchasing

The fourth *DuPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ v. careful, sophisticated purchasing.” *DuPont*, 177 USPQ at 567. Applicant argues, without any proof or citation to controlling case law,⁸ “[c]onfusion is not likely where the purchasers of the goods at issue are sophisticated. ... Consumers of clothing are sophisticated. ... Accordingly, since consumers of the relevant goods are sophisticated, this ... weighs against finding confusion likely.”⁹

Noting there are no limitations on purchasing conditions or types of consumers in either the BLUE STONE MANOR Application or the BLUE STONE Registration,

⁷ Applicant’s Brief, 6 TTABVUE 4-7; Applicant’s Reply Brief, 8 TTABVUE 4-6.

⁸ See TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2022), discussing the Board’s preference for citations to its own precedential decisional law and the controlling precedential decisional law of the United States Court of Appeals for the Federal Circuit over “[d]ecisions of other tribunals [that] may be cited to the extent allowed and for the purposes permitted by the tribunal that issued the decision.”

⁹ Applicant’s Brief, 6 TTABVUE 7-8.

our decisional law states to the contrary. *See, e.g., Brown Shoe Co., Inc. v. Robbins*, 90 USPQ2d 1752, 1755 (TTAB 2009) (“With regard to the conditions of sale, these goods include general clothing items that would not be purchased with a great deal of care or require purchaser sophistication, which increases the likelihood of confusion.”) (citing *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Gen’l Mills Fun Grp., Inc. v. Tuxedo Monopoly, Inc.*, 204 USPQ 396, 401 (TTAB 1979) (“[T]he identification of goods in applicant’s application does not contain any limitations as to ... [purchase prices, purchasing conditions or types of consumers], and we must therefore presume for purposes herein that applicant’s goods include items of clothing in the low and middle as well as the upper price ranges, that they move through all normal channels of trade for goods of this type, and that they are available to all purchasers of such goods.”), *aff’d*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981).

F. The Extent to which Applicant has a Right to Exclude Others

Applicant argues “[c]onsumers seeing Applicant’s BLUE STONE MANOR [m]ark will automatically know it is a reference to the Berkshires [Massachusetts] home of Applicant’s principal, Dorinda Medley, the well-known celebrity from the reality television show REAL HOUSEWIVES OF NEW YORK[,]” thus distinguishing Applicant’s mark from the cited BLUE STONE mark. In support of this argument, Applicant made of record numerous articles appearing in print and online magazines such as ARCHITECTURAL DIGEST, PAGE SIX, PEOPLE, HOUSE BEAUTIFUL and TRAVEL + LEISURE,

referring to Ms. Medley's BLUE STONE MANOR mansion, its furnishings, history and use for charitable fundraising events.¹⁰

We interpret Applicant's contentions and evidence as an argument of the eleventh *DuPont* factor that discusses "[t]he extent to which [the] applicant has a right to exclude others from use of its mark on its goods." *DuPont*, 177 USPQ at 567. Whatever rights Applicant has or purports to have in the BLUE STONE MANOR mark, Applicant provides no legal support for finding that alleged recognition of this mark as a name for a home and estate provides Applicant any right to exclude others from using the BLUE STONE MANOR mark, or similar marks, on clothing items. *See Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *61 (TTAB 2022) ("Applicant provides no legal support for finding that ... recognition of its ... mark for different goods provides Applicant any right to exclude others from using the NATURE MADE mark, or similar marks, on food and beverages [such as those covered by Opposer's MADE IN NATURE mark].")

G. Likelihood of Confusion: Summary and Conclusions

Applicant's and Registrant's clothing goods are identical or otherwise related. We presume, therefore, that the respective trade channels and potential consumers for these goods overlap.

In the absence of adequate proof to the contrary, Registrant's BLUE STONE mark is inherently distinctive as evidenced by its registration on the Principal Register

¹⁰ Office Action Response of July 28, 2021 at TSDR 13-24; Request for Reconsideration of February 25, 2022 at TSDR 17-56.

without a claim of acquired distinctiveness. In this ex parte appeal, the commercial strength of Registrant's mark is a neutral factor.

The respective marks, BLUE STONE and BLUE STONE MANOR, are more similar than they are different. Purchasers of Registrant's and Applicant's clothing products are members of the general public who would not purchase these items with a great deal of care or purchaser sophistication.

Whatever rights Applicant has or claims to have in the BLUE STONE MANOR mark, its purported rights have not been shown to cover clothing items such that would give Applicant the right to exclude others from using this mark or similar marks for clothing.

Balancing these factors for which there has been evidence and argument, we find that confusion between Applicant's BLUE STONE MANOR mark and goods, and Registrant's BLUE STONE mark and goods, is likely.

Decision:

The refusal to register Applicant's mark BLUE STONE MANOR under Trademark Act Section 2(d), in Class 25 only, is affirmed. The Application shall proceed for the goods and services in Classes 18, 21 and 41, only.