

THIS OPINION
IS NOT A PRECEDENT
OF THE TTAB

Hearing: February 28, 2017

Mailed: March 16, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Margaritaville Enterprises, LLC

v.

Rachel A. Bevis DBA Rachel A. Bevis

—————
Opposition Nos. 91219403 and 91221395¹
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Joel R. Feldman and Jamie N. Shipp of Greenberg Traurig, LLP
for Margaritaville Enterprises, LLC.

Rachel A. Bevis DBA Rachel A. Bevis, *pro se.*²
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Before Kuhlke, Lykos and Heasley,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

¹ On June 11, 2015, the Board granted Opposer's contested motion to consolidate the instant proceedings. 17 TTABVUE 2-3. Citations to the record are to Opposition No. 91219403 (the parent case) and the corresponding TTABVUE entry and page number, the Board's online docketing system, unless otherwise noted. Portions of the record have been designated confidential and have been treated as such in this opinion.

² Applicant was originally represented by legal counsel but then chose to represent herself. 14, 15 TTABVUE. While acknowledging that parties may appear *pro se*, the Board advised Applicant to secure the services of an attorney familiar with Board inter partes proceedings. 16 TTABVUE 2-4.

Rachel A. Bevis DBA Rachel A. Bevis (“Applicant”) has applied to register the mark MARIJUANAVILLE in standard characters on the Principal Register for “T-Shirts, Hats, Sweat Shirts, sweat pants, Jackets, Socks” in International Class 25³ and “Drive-through retail store services featuring coffee and related goods; Retail apparel stores; Retail clothing stores” in International Class 35.⁴

Margaritaville Enterprises, LLC (“Opposer”) opposed the registration of Applicant’s mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on Opposer’s previously used and registered MARGARITAVILLE marks. Opposer pleaded ownership of and submitted with its notices of opposition copies of multiple pleaded registrations obtained from the U.S. Patent and Trademark Office’s (“USPTO”) Trademark Status and Document Retrieval (“TSDR”) database (thereby making them of record pursuant to Trademark Rule 2.122(d)(1)), including the following:

Registration No. 1642132 for the mark MARGARITAVILLE in typed format⁵ on the Principal Register for “clothing, namely, shirts, sweaters, sun visors and caps” in International Class 25 and “nightclub services; retail clothing, gift and souvenir store services; mail order services in the field of clothing, gifts and souvenirs” in International Class 42; registered April 23, 1991; renewed. (pleaded in both Opposition Nos. 91219403 and 91221395).

³ Application Serial No. 86293056, filed May 28, 2014, filed under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce.

⁴ Application Serial No. 86346860, filed July 24, 2014. The current basis for the application is Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

⁵ Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. A typed mark is the legal equivalent of a standard character mark. Trademark Manual of Examining Procedure (“TMEP”) § 807.03(i) (January 2017).

Registration No. 3117262 for the mark MARGARITAVILLE in standard characters on the Principal Register for “Clothing, namely, pants, sweat shirts, shorts [, and dresses]” in International Class 25; registered July 18, 2006; Sections 8 and 15 affidavits accepted and acknowledged. (pleaded in both Opposition Nos. 91219403 and 91221395).

In her amended/operative answer (filed January 23, 2015) to the notice of opposition in Opposition No. 91219403, Applicant denied the salient allegations.⁶ However, in her answer to the notice of opposition in Opposition No. 91221395, filed approximately three months later, the *pro se* Applicant admitted several salient allegations, including the following:

Jimmy Buffet, an internationally-famous musician, songwriter, and entertainer, is an owner of Margaritaville’s parent company, Margaritaville Holdings, LLC. ¶ 2.

Margaritaville is the successor-in-interest to trademarks filed and registered by Jimmy Buffet. ¶ 3.

Margaritaville provides goods and services associated with Jimmy Buffet and Jimmy Buffet-related themes such as beaches, tropics, leisure activities, and islands. ¶ 4.

Margaritaville regularly commercializes Jimmy Buffet’s song titles and lyrics as trademarks, notably “Margaritaville.” ¶ 5.

The MARGARITAVILLE mark is a coined term based on Jimmy Buffet’s famous “Margaritaville” song. ¶ 6.

Due to the longstanding and widespread use of the MARGARITAVILLE mark, including extensive use of the mark adjacent to Jimmy Buffet’s name, the MARGARITAVILLE mark is strongly associated with Margaritaville and Jimmy Buffet. ¶ 20.

⁶ 11 TTABVUE.

The MARGARITAVILLE mark has been used on a wide variety of goods and services for many years. As a result the mark is a commercially strong source indicator for Margaritaville's various goods and services. ¶ 22.

By virtue of Margaritaville's continuous and exclusive, and widespread use of the distinctive MARGARITAVILLE mark, Margaritaville is entitled to a broad scope of protection for the MARGARITAVILLE mark. ¶ 23.

MARIJUANAVILLE and MARGARITAVILLE, which share the same first three and last six letters, are similar in appearance. ¶ 28.⁷

The remaining salient allegations were denied.

The Board denied Opposer's fully briefed motion for summary judgment on January 29, 2016. 29 TTABVUE.

I. The Record; Accelerated Case Resolution

On August 6, 2016, the parties stipulated to resolve this proceeding under the Board's Accelerated Case Resolution ("ACR") procedure, agreeing that the Board may resolve any genuine issues of material fact.⁸ See Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 528.05(a)(2) (Jan. 2017). The parties are commended for pursuing this expeditious, cost-efficient alternative to trial. In lieu of separate assigned testimony and briefing periods, the parties agreed to treat the summary judgment motion evidence as part of the final record, with the option of filing supplemental ACR briefs in summary judgment format with additional evidentiary submissions attached thereto.

⁷ Opp. No. 91221395, 4 TTABVUE.

⁸ 34 TTABVUE.

The record includes the pleadings and, pursuant to Trademark Rule 2.122(b), Applicant's application file. Opposer submitted with its motion for summary judgment the following evidence:

- Declaration of Mary Martha Adkins ("Adkins Declaration I"), paralegal employed by Greenberg Traurig, LLP with exhibits attached thereto.⁹

Opposer also submitted with its ACR supplemental brief the following:¹⁰

- Declaration of Jimmy Buffett ("Buffett Declaration"), a singer/songwriter and the original owner of the MARGARITAVILLE trademarks.
- Declaration of Laura McConnell ("McConnell Declaration"), Chief Financial Officer of Opposer.
- Declaration of Kristen Fancher ("Fancher Declaration"), Chief Legal Officer and General Counsel of Opposer.
- Declaration of Tamara Baldanza-Dekker ("Baldanza-Dekker Declaration"), Chief Marketing Officer of Opposer.
- Declaration of John P. Moreton, a marketing consultant ("Morton Declaration") (redacted and confidential versions).
- Declaration of David K. Barnhart, a lexicographer and linguistic consultant ("Barnhart Declaration") (redacted and confidential versions).
- Declaration of Mark Eddie, a songwriter, musician, and comedian ("Eddie Declaration").
- Declaration of Mary Martha Adkins ("Adkins Declaration II") with exhibits attached thereto.¹¹

⁹ A list of the exhibits is provided at Appendix I.

¹⁰ Opposer submitted both confidential and redacted versions of its supplemental ACR brief.

¹¹ A list of exhibits is provided at Appendix II.

Applicant did not make any evidence of record. Nonetheless, Opposer, as plaintiff in this proceeding, bears the burden of proof by a preponderance of the evidence. In reaching our decision, we have not considered any statements made by either party in their briefs that are unsupported by evidence properly in the record. *See, e.g., Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1725 n.7 (TTAB 2010). *See also* TBMP § 704.06(b).

II. *Standing*

Standing is a threshold issue that must be proven by the plaintiff in every *inter partes* case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015). Our primary reviewing court, the U.S. Court of Appeals for the Federal Circuit, has enunciated a liberal threshold for determining standing, namely that a plaintiff must demonstrate that it possesses a “real interest” in a proceeding beyond that of a mere intermeddler, and “a reasonable basis for his belief of damage.” *Empresa Cubana Del Tabaco* 111 USPQ2d at 1062 (citing *Ritchie v. Simpson*, 170 F.3d 1902, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999)). A “real interest” is a “direct and personal stake” in the outcome of the proceeding. *Ritchie v. Simpson*, 50 USPQ2d at 1026.

Opposer has demonstrated through the USPTO database printouts made of record with its notices of opposition that it is the owner of its pleaded registrations and that the registrations are valid and subsisting. Because Opposer’s

registrations are of record, Opposer has established its standing. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Ind., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

III. Section 2(d) Claim

We will now consider Opposer's Section 2(d) claim, focusing on Opposer's registered mark MARGARITAVILLE for the goods and services identified in Registration Nos. 1642132 and 3117262 pleaded and made of record with both notices of opposition. In our view, these two registrations, coupled with their corresponding identified goods and services, are most likely to support a likelihood of confusion claim. If Opposer could prevail on its Section 2(d) claim on these registrations, then consideration of others would be unnecessary; and if Opposer could not, then consideration of other less relevant registrations would not assist Opposer. *See, e.g., In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. Priority

Priority is not at issue in view of Opposer's ownership of the valid and subsisting registrations noted above for the goods and services identified therein. *See King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

B. Likelihood of Confusion

We base our determination under Section 2(d) on an analysis of all of the

probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*du Pont*”). See also, *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). “Not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). For example, the Board can “focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (quoting *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001)). The fame of the prior mark can also be critical. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002). These factors, and the other relevant *du Pont* factors are discussed below.

Fame of the Prior Mark

We begin with the fame of Opposer’s MARGARITAVILLE mark. Fame of the prior mark, if it exists, plays a dominant role in balancing the likelihood of confusion factors. *Bose Corp.*, 63 USPQ2d at 1305. Fame for likelihood of confusion purposes and fame for dilution purposes are distinct concepts. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed Cir. 2005). Unlike dilution, fame for likelihood of confusion purposes does not require the opposer to show fame among every segment of the U.S. population. Rather, fame for likelihood of confusion

purposes arises as long as a “significant portion of the relevant consuming public ... recognizes the mark as a source indicator.” *Id.* Fame for likelihood of confusion purposes may be measured indirectly by the volume of sales and advertising expenditures of the goods sold under the mark, for example, and other factors such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the products identified by the marks; and the general reputation of the products and services. *Bose Corp.*, 63 USPQ2d at 1308.

Jimmy Buffett, the original owner of Opposer’s pleaded marks, explains the genesis of the MARGARITAVILLE brand for clothing and retail stores featuring clothing in his declaration:

4. In 1977, I released a song titled “Margaritaville.”
5. The song “Margaritaville” appeared on the album *Changes in Latitudes, Changes in Attitudes*.
6. Since 1977, I have performed the song “Margaritaville” at each of my concerts.
7. The title of the song, “Margaritaville,” is a term that I coined to describe a fictional location.
8. I regularly refer to “Margaritaville” as a state of mind inspired by margaritas.
9. The images I most commonly associate with “Margaritaville” are beaches, tropics, leisure activities, islands and escapism.
10. In 2016, my song “Margaritaville” was inducted into the GRAMMY Hall of Fame.
11. Based on the success of my song “Margaritaville” and loyalty of my fan base, in 1985 I opened a retail store named “Margaritaville” in

Key West, Florida. In addition to selling MARGARITAVILLE-branded souvenirs, including clothing in Key West, Florida, this retail store mailed newsletters, named *The Coconut Telegraph*, to my fans to purchase MARGARITAVILLE-branded souvenirs, including clothing by mail and phone.

12. MARGARITAVILLE-branded retail stores have operated continuously since 1985.
13. MARGARITAVILLE-branded clothing and other souvenir items have been continuously available since 1985.¹²

Thus, the record shows that Opposer, through its predecessor in interest, has continuously used the MARGARITAVILLE mark for over 30 years to identify clothing items and retail stores featuring clothing, and that the mark has its origins in a well-known song by Jimmy Buffet, symbolic of a “state of mind.”

By 2013, Opposer and its licensees had expanded its MARGARITAVILLE-branded retail stores to 14 locations in the United States: Las Vegas, NV; Orlando, FL; Myrtle Beach, SC; Key West, FL; New Orleans, LA; Glendale, AZ; Panama City, FL; Uncasville, CT; Honolulu, HI; Nashville, TN; Pensacola, FL; Chicago, IL; Cincinnati, OH; and Atlantic City, NJ.¹³ Opposer’s U.S. revenues from merchandise sold in its stores from 2008-2013 are of record but are designated confidential; suffice to say that the annual dollar value figures are impressive.¹⁴ Although the stores sell a wide variety of goods, at least half of the revenues are derived from clothing and headwear sales.¹⁵ Having said this, we

¹² Buffett Declaration; 39 TTABVUE 28-29.

¹³ McConnell Declaration ¶ 20; 39 TTABVUE 32-33.

¹⁴ McConnell Declaration ¶¶ 13-20; 39 TTABVUE 31-33.

¹⁵ McConnell Declaration at ¶ 21; 39 TTABVUE 33.

can conclude that the U.S. revenues derived from clothing product sales alone remain equally impressive.

From 1985-2013, Opposer and its predecessors in interest published a magazine entitled *The Coconut Telegraph* in print format to promote the sale of MARGARITAVILLE-branded clothing items to Jimmy Buffett fans. Opposer now has a significant online presence through its own direct-to-consumer sales e-commerce website “Margaritaville.com” which has actively operated an online retail store since 1999.¹⁶ Within the past several years, the website has received a significant number of visits.¹⁷ In addition, through social media platforms, Opposer has expanded the reach of its brand exposure for its MARGARITAVILLE mark with 677,485 followers on Facebook, 12,600 followers on Twitter and 58,000 followers on Instagram.¹⁸

In terms of direct evidence of consumer recognition, in 2010, Opposer commissioned a brand awareness survey showing that of 841 respondents, 73% were familiar with the MARGARITAVILLE brand.¹⁹ While the survey is seven years old, it is entitled to some probative weight insofar as it was commissioned prior to the instant litigation and was used in the ordinary course of business. *See Chanel, Inc. v. Makarczyk*, 110 USPQ2d 2013, 2022 (TTAB 2014).

¹⁶ Baldanza-Dekker Declaration at ¶ 4; 39 TTABVUE 267. Since 1997, the Margaritaville.com website has also provided information for Jimmy Buffett fans such as tour dates and song lyrics.

¹⁷ Baldanza-Dekker Declaration at ¶ 6-11 (confidential); 39 TTABVUE 268.

¹⁸ Baldanza-Dekker Declaration at ¶ 12-15; 39 TTABVUE 268.

¹⁹ Moreton Declaration at ¶¶ 2, 4-5, Ex. 1 (confidential).

In addition, Opposer has presented strong evidence of unsolicited media recognition of the MARGARITAVILLE trademark in connection with clothing reminiscent of the “Margaritaville” lifestyle embodied in the song and the retail stores offering for sale such items:

New York Times (April 24, 2016)—

Mr. Buffett, patron saint of the untroubled, has long been known for his business acumen. In some ways, with his approach to concert merchandise and tour sponsorship in the 1980s, he created the model of musician-as-entrepreneur that managers for artists like Madonna and Dave Matthews have pursued more recently. Other singers have parlayed their personas into business empires – Dolly Parton, for instance, with her Dollywood theme park, Dixie Stampede dinner theaters, Dolly slot machines and “Coat of Many Colors” merchandise – but none are as singularly sprawling as Mr. Buffett’s Margaritaville.²⁰

Billboard (November 22, 1986)—

One of the most successful business side ventures initiated by a recording artist is thriving in the 48 contiguous states’ southernmost city, Key West, Fla.

That’s where Jimmy Buffett lives when he’s not slumming at his other pads in Aspen, Colo.; Mobile, Ala.; and the isle of St. Bart in the Caribbean. (It’s a tough job, but someone has to live in those places.) And Key West is where Buffett’s Margaritaville Store has been doing business in Buffett memorabilia and trivia.

Known for his relaxed music flavorings, Buffett takes advantage of the image by offering tropical clothing and gift items for sale at the store or through his monthly newsletter, *The Coconut Telegraph*. *The Telegraph* is distributed through subscription sales and as a free advertising tool at the Margaritaville Store. Its 9,000 subscribers include Buffett fans in the U.S., Canada, Taiwan, Israel, England, Germany, and Australia.

²⁰ Adkins Declaration II at ¶ 6, Ex. 4; 39 TTABVUE 101-105.

Besides cataloging items available for mail-order sale, the newsletter, effectively edited by Carol Shaughnessy, focuses on the Margaritaville lifestyle as exemplified by Buffett.²¹

Forbes (January 16, 1995)—

Business savvy sure runs in the family. Warren Buffett's distant relative (FORBES, *July 18, 1994*), writer and singer of Caribbean rock songs Jimmy Buffett, has found almost as many ways to capitalize on his particular talent as "Uncle" Warren has on his.

* * *

Showing he was made of the same stuff as his "uncle," Jimmy Buffett lost no time expanding his new franchise. With his long-time friend Sunshine Smith, Buffett opened a 400-square-foot shop in Key West called Margaritaville Store that sold T shirts and beach trinkets, later adding a mail-order catalog, newsletter, nightclub and cafe. Buffett expanded to New Orleans three years ago, with a much bigger cafe and retail operation.

* * *

All of which is a textbook lesson in how to cross-market music, restaurants and retailing. Last year Buffett sold more than \$50 million worth of CDs, tapes, concert tickets, books, T shirts, trinkets and food, helping to make him one of the highest-earning entertainers in the word (FORBES, *Sept. 26, 1994*).²²

Playboy (February 1998)—

In the years since, Buffett's many albums have created their own sort of legendary geography, an elusive mythical place whose capital is Margaritaville.

* * *

Today, along with his current sailboat, the *Savannah Jane*, and his two seaplanes—the flying boat is his latest passion—Buffett owns a bar on Duval Street, just down the street from where he used to play for beers years ago. This proves not only that what goes around comes around, but that sometimes you're able to buy

²¹ Adkins Declaration II at ¶ 7, Ex. 5; 39 TTABVUE 113-114.

²² Adkins Declaration II at ¶ 9, Ex. 7; 39 TTABVUE 113-114.

it. The Margaritaville Store adjoins the Margaritaville Bar.
(There are Margaritavilles in Key West and New Orleans.)

* * *

“When I saw all those Hawaiian shirts out there that night, I started thinking, Well, why don’t I do that? Why should somebody else make these shirts for me? Why don’t I own and control this? And I guess I was one of the first artists to own his own T-shirt concession, which now consist of multimillion-dollar corporations.”

So began the diversification of Margaritaville, Inc.²³

The MARGARITAVILLE trademark has also been the subject of numerous non-fiction books as an example of successful marketing of “lifestyle” brands. See excerpts from *Thank You for Firing Me!*, by Kitty Martini & Candice Reed © 2010; *Brand Like a Rock Star*, by Steve Jones © 2012; *Creating Breakthrough Products* (Second Edition), by Jonathan Cagan and Craig Vogel © 2013; and *Music Marketing for the DIY Musician*, by Bobby Borg © 2014.²⁴ It also appears in works of non-fiction as representing

a state of mind that says, ‘Kick back on the front porch, chill out, have a beer and gaze mindlessly at the tropical surroundings. Anything that is a problem will have to wait until tomorrow because right now I’m enjoying my own little paradise.’

Key West 101: Discovering Paradise!, by Christopher Schulz and David Sloan © 2005.²⁵ And as illustrated below, the trademark MARGARITAVILLE is closely associated with a particular style of clothing:

Thunder Island, by Meryl Sawyer © 1999—

²³ Adkins Declaration II at ¶ 10, Ex. 8; 39 TTABVUE 117-120.

²⁴ Adkins Declaration II at ¶ 13-16, Ex. 13-16; 39 TTABVUE 138-168.

²⁵ Adkins Declaration II at ¶ 19, Ex. 17; 39 TTABVUE 169-170.

He pretended to check the merchandise in Margaritaville’s store. Instead, he eyed the passing crowd, examining the people for familiar faces. Nothing.

“Don’t you just love Jimmy Buffett?”

Kyle looked down at the cute brunette at his elbow. “The mogul of margaritas is my kind of guy. Remember, Margaritaville is just a state of mind—not a place.”²⁶

Bit the Jackpot: A Tale of Vegas Vampires, by Erin McCarthy © 2006—

“Actress,” Alexis said, pointing to Kelsey. “They’re filming a movie here in the casino. *Vampires in Vegas*.”

“Really? That’s exciting,” the one wearing a Margaritaville T-shirt said.”²⁷

The Telltale Turtle, by Joyce & Jim Lavene © 2008—

“He didn’t seem to, no like when he saw Charlene.” Danny pulled into the drive beside the building. The goat man, in jeans and a faded Margaritaville T-shirt with a broad rimmed straw hat on his gray hair, was sitting outside the clinic on a bench.²⁸

Trick My Truck But Don’t Mess With My Heart, by LuAnn McLane © 2008—

“You seriously need Stacy and Clinton to clean out your closet,” Sarah says why holding up my prized Jimmy Buffett Margaritaville T-shirt and tosses it at me. Do you actually wear this stuff?” “Hey, I’m a parrot-head and proud of it,” I tell her, referring to what huge Jimmy Buffett fans are called, me being one of them.²⁹

After A While You Just Get Used To It, by Gwendolyn Knapp © 2015—

²⁶ Adkins Declaration II at ¶ 26, Ex. 24; 39 TTABVUE 204-207.

²⁷ Adkins Declaration II at ¶ 27, Ex. 25; 39 TTABVUE 208-210.

²⁸ Adkins Declaration II at ¶ 29, Ex. 27; 39 TTABVUE 215-220.

²⁹ Adkins Declaration II at ¶ 30, Ex. 28; 39 TTABVUE 221-224.

“Fine,” he said. He tucked in his Margaritaville shirt, felt the back of his shorts for his wallet, and awaited his orders from the Sarge, but they never came.³⁰

Nine Months: Candace, by Maggie Wells © 2016—

Sam was ancient, *in his forties*, Candace thought. He was sun-burned and balding, but kind of dapper in his Margaritaville shirt, flip-flops and Gap shorts that were frayed at the hems. He was also unsteady on his feet. *He seems harmless*, she thought. So she accepted the beer and took a big gulp.³¹

These excerpts show that Opposer’s MARGARITAVILLE marks have been the subject of widespread media and popular culture exposure with regard to clothing and traditional brick-and-mortar as well as online retail stores featuring clothing.

Opposer has established that its pleaded MARGARITAVILLE mark is, for purposes of the likelihood of confusion analysis, famous for “clothing, namely, shirts, sweaters, sun visors and caps” and “retail clothing, gift and souvenir store services; mail order services in the field of clothing, gifts and souvenirs” as set forth in for Registration No. 1642132 and “[c]lothing, namely, pants, sweat shirts, shorts” as set forth in Registration No. 3117262.³² This factor weighs heavily in Opposer’s favor.

³⁰ Adkins Declaration II at ¶ 31, Ex. 29; 39 TTABVUE 225-227.

³¹ Adkins Declaration II at ¶ 32, Ex. 30; 39 TTABVUE 228-232.

³² Opposer did not submit evidence to support a finding that the mark MARGARITAVILLE is famous for “nightclub services” as identified in Registration No. 1642132.

The Goods and Trade Channels

The next step in our analysis is a comparison of the goods identified in Applicant's application vis-à-vis the goods identified in Opposer's pleaded registrations. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also, Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

At the outset, we note that the involved applications and Opposer's pleaded registrations include goods and services that are identical, at least in part. Applicant's Application Serial No. 86293056 and Opposer's Registration No. 3117262 both include sweat shirts. Likewise, Applicant's Application Serial No. 86346860 and Opposer's Registration No. 1642132 both include retail clothing stores. Given that the goods and services are identical in part in each of these consolidated proceedings, this *du Pont* factor weighs in favor of finding a likelihood of confusion.

Because the goods and services are legally identical in part, and neither Opposer's registrations nor the involved applications contain any limitations on the channels of trade and classes of purchasers, we must presume that the channels of trade and classes of purchasers are the same for these identical goods and services. *See Stone Lion*, 110 USPQ2d at 1161; *In re Yawata Iron & Steel Co., Ltd.*, 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); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011). See also *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion). For this reason, Applicant's argument that she intends to market and offer her goods and services solely in locations that support the marijuana industry is unpersuasive. As such, the *du Pont* factor regarding the similarity or dissimilarity of established, likely to continue trade channels also favors a finding of likelihood of confusion.

Conditions of Sale

Next we consider the conditions under which the goods and 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. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay*, 73 USPQ2d at 1695.

Applicant contends that it intends to direct its goods and services to consumers connected with the cannabis industry, and therefore, confusion as to source is unlikely to occur. But the identifications in the applications and Op-

poser's registrations do not include any limitations regarding marketing. In addition, they both include retail clothing store services and apparel offered at no specified price point. We cannot assume, as Applicant urges, that these goods and services are rendered to different classes of buyers in different marketing contexts at different prices. Rather, we must presume that the goods and services are marketed to all ordinary consumers of clothing in the usual marketing channels. Ordinary consumers of apparel are likely to exercise only ordinary care, and given the lack of price restrictions in the identifications, may buy inexpensive clothing items on impulse. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000) ("When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care."). Accordingly, this factor also favors a likelihood of confusion.

The Marks

Keeping in mind that where the goods and services are identical, the degree of similarity between the marks necessary to support a determination that confusion is likely declines, *see Bridgestone Americas Tire Operations, LLC v. Fed. Corp.*, 673 F.3d 1330, 102 USPQ2d 1061, 1064 (Fed. Cir. 2012), we now consider the first *du Pont* likelihood of confusion factor, which involves an analysis of the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *See Palm Bay*, 73 USPQ2d at 1691 (quoting *du Pont*, 177 USPQ at 567). "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.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal citation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Our analysis cannot be predicated on dissection of the involved marks. *Stone Lion*, 110 USPQ2d at 1161. Rather, we are obliged to consider the marks in their entireties. *Id.* See also *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). 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. *Stone Lion*, 110 USPQ2d at 1161.

Applicant argues that the marks in question MARGARITAVILLE and MARIJUANAVILLE are “completely different,” as the prefix “margarita” denotes a mixed cocktail whereas “marijuana” constitutes a plant.³³ Opposer, however, argues that the marks are similar in sound, appearance, connotation

³³ Applicant’s Supplemental ACR Brief, 38 TTABVUE 3.

and commercial impression. In support thereof, Opposer has submitted the declaration of David K. Barnhart, an expert lexicographer and linguistic consultant. He was tasked with evaluating “the linguistic status of the term Margaritaville and Marijuanaville as brand names for retail stores and apparel.”³⁴ In this regard, he consulted “a broad cross-section of reference books including dictionaries, thesauruses, encyclopedias, word counts, and handbooks of usage” and surveyed “examples of usage from independently collected evidence of the use of the term Margaritaville and Marijuanaville.”³⁵ Ultimately, he offered the opinion “that due to the shared linguistic properties of the two terms *Margaritaville* and *Marijuanaville*, when used in the contexts enumerated above [internal citation omitted] these two terms are similar and may result in consumer confusion.”³⁶

“The issue of likelihood of confusion is the ultimate conclusion of law to be decided by the Board [internal citation omitted]. Further, the Board has consistently held that although opinion testimony on the question of likelihood of confusion is admissible, it is entitled to little or no weight.” *The Land-O-Nod Co. v. Paulison*, 220 USPQ 61, 63 (TTAB 1983). *See also The Mennen Co. v. Yamanouchi Pharmaceutical Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979). For

³⁴ Barnhart Declaration ¶ 6; 39 TTABVUE 275.

³⁵ Barnhart Declaration at ¶ 7; 39 TTABVUE 275.

³⁶ Barnhart Declaration at ¶ 14; 39 TTABVUE 279.

this reason, we cannot, as Opposer urges, rely on Dr. Barnhart's opinion testimony.³⁷ The Board also generally does not rely on linguistics experts to explain how a mark is pronounced. *Plyboo America Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1640 (TTAB 1999); *Fisons Ltd. v. UAD Laboratories, Inc.*, 219 USPQ 661, 663 (TTAB 1983); *The Mennen Co. v. Yamanouchi Pharmaceutical Co., Ltd.*, 203 USPQ 302, 305 (TTAB 1979). *But see Research in Motion Ltd. v. Defining Presence Marketing Group Inc.*, 102 USPQ2d 1187, 1193 (TTAB 2012) (Board pointed to expert testimony presented by Applicant that "there is certainly undeniable phonological similarity between BlackBerry and Crackberry. They sound alike. ..."). We can, however, rely on the evidentiary materials made of record to his declaration in reaching our own determination.

Turning now to our comparison of the marks MARGARITAVILLE and MARIJUANAVILLE, in terms of sound and appearance, both marks are similar insofar as they are single-term 14 letter marks comprised of five syllables, each commencing with the same letter string "mar-" and ending with the suffix "-ville." As to their connotation and commercial impression, the record shows a public association between the two terms as representing a similar "state of mind" induced by either a cocktail or marijuana. According to the record, the suffix "-ville" is a slang term frequently combined with other words to denote a "state of being":

³⁷ Likewise, as to the connotation and commercial impression of the marks, we will not consider singer/songwriter/comedian Mark Eddie's opinion that "the commercial impression of "Marijuanaville" is a marijuana themed version of Margaritaville." Eddie Declaration at ¶ 14; 39 TTABVUE 406.

-ville combining form. *U.S. Slang.* in a state of, being in or from: *He's despairville, see... and he's fed up with humanity* (S.J. Perelman). *I just finished it [a book] and all I can say is like War and Peaceville* (Bruce Jay Friedman). [*< -ville, place name suffix, as in Nashville, Louisville*]. Source: *The World Book Dictionary*. Chicago, World Book, Inc., 1992.³⁸

“Margarita” and “marijuana” are defined as follows”

The term *margarita*, designating a cocktail, is well-established, being attested in print from at least as early as 1950. ... The Merriam-Webster Collegiate Dictionary cites *margarita* from 1956. The Random House Dictionary (Unabridged Edition) states the earliest date as 1960-1965.³⁹

The term *marijuana*, designating a plant with addictive properties, is well-established, being attested in print at least as early as 1918 (as recorded in *The Barnhart Dictionary of Etymology*) and the variant form *mariguan* from 1874. The ultimate origin is unknown. The electronic edition of the *Oxford English Dictionary* cites 1874 for the earliest evidence.⁴⁰

Thus, combining MARGARITA and MARIJUANA with -VILLE results in coined marks connoting a “state of being” associated with either a cocktail or marijuana.

Opposer also made of record the following evidence showing popular culture and media usage of the term “Marijuanaville” as an allusion to “Margaritaville”:

In 1998, *Orlando Sentinel* columnist George Diaz wrote “Plug in the Jimmy Buffett CD. Everybody sing along to that catchy tune, ‘Wasted Away Again in Marijuanaville,’ in honor of pin

³⁸ Barnhart Declaration at ¶ 8(b); 39 TTAVUE 276.

³⁹ Barnhart Declaration at ¶ 8(c); 39 TTAVUE 276.

⁴⁰ Barnhart Declaration at ¶ 8(d); 39 TTAVUE 276-77.

head Chris Webber. The erstwhile Wiz Kid, who became Sacramento's headache in the offseason, was detained for possession of marijuana in Puerto Rico earlier this week."⁴¹

In 1998, Scott McCabe of *The Examiner* wrote in his "Stupid Crimes" column: "Wasted away again in Marijuanaville: A Florida Keys teen was arrested after deputies say he left his MySpace page called up on a computer at a home that had been burglarized . . . Deputies found no one inside, but they did find an empty soda and snack containers, and some marijuana on a coffee table."⁴²

In a November 10, 2015 column titled "Five reasons South Florida should decriminalize street pot," *Sun Sentinel* columnist Daniel Vazquez wrote: "Think Marijuanaville. Tourists would prefer getting high in the sun and surf . . . Hunger-inducing weed will drive people to local clubs, bars and restaurants. Along with Margaritaville in Hollywood [Florida], we could have *Marijuanaville*."⁴³

In a July 15, 2014 blog post titled "Perfect Names for the 6 New California States—The Bold Italic—San Francisco, author Jules Suzdaltsev wrote: "Jefferson = New Greenland . . . Honorable Mention: Marijuanaville—like Margaritaville but with more buffets and less Buffett."⁴⁴

Singer, songwriter, and comedian Mark Eddie has co-written and performs a tribute song entitled "Marijuanaville" "based on the music and lyrics of Jimmy Buffett's song "Margaritaville." During live performances he introduces the song as his version of Jimmy Buffet's "Margaritaville." YouTube videos featuring the song have received over 2 million views.⁴⁵

⁴¹ Adkins Declaration II at ¶ 37, Ex. 35; 39 TTABVUE 248-250.

⁴² Adkins Declaration II at ¶ 38, Ex. 36; 39 TTABVUE 251-253.

⁴³ Adkins Declaration II at ¶ 39, Ex. 37; 39 TTABVUE 254-255.

⁴⁴ Adkins Declaration II at ¶ 40, Ex. 38; 39 TTABVUE 257-258.

⁴⁵ Eddie Declaration at ¶¶ 9-20; 39 TTABVUE 404-408.

The connection between MARGARITAVILLE and MARIJUANAVILLE is also reflected on social media platform Twitter showing a connection between the two terms among members of the general public:⁴⁶



Thus the overall connotation and commercial impression of the marks is highly similar – a chemically induced mental paradise. The public is likely to perceive Applicant’s mark as an extension of Opposer’s lifestyle brand. Based on this evidence we find that Opposer’s mark MARGARITAVILLE and Applicant’s mark MARIJUANAVILLE are similar in connotation and commercial impression.

⁴⁶ Because we have no evidence regarding the extent of exposure of the social media “tweets” made of record, while relevant, we have accorded this evidence only limited probative value.

⁴⁷ Adkins Declaration II at ¶ 41, Ex. 39; 39 TTABVUE 259-265.

In sum, this first *du Pont* factor, regarding the sound, appearance, connotation and commercial impression of the involved marks, taken in their entireties, weighs in favor of finding a likelihood of confusion as well.

The Number and Nature of Similar Marks in Use on Similar Goods

We now consider the number and nature of similar marks in use on similar goods, the sixth *du Pont* factor. Applicant essentially contends that Opposer cannot monopolize the commonly shared suffix “-ville” derived from the French word for town. Applicant, however, has submitted no evidence regarding either third-party use or registration of Opposer’s mark MARGARITAVILLE for the same or similar goods and services. *See Palm Bay*, 73 USPQ2d at 1694 (“[t]he purpose of defendant introducing third-party uses 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.”). *See also 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); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (internal citations omitted).

As Opposer correctly notes, its mark is a coined term, arbitrary in relation to the goods and services, making it inherently strong. *See American Lebanese Syrian Associated Charities v. Child Health Research Institute*, 101 USPQ2d at 1028 (“In determining the strength of a mark, we consider both its inherent

strength based on the nature of the mark itself and its commercial strength, based on the marketplace recognition value of the mark.”) (internal citations omitted). According, this *du Pont* factor favors a finding of likelihood of confusion.

Actual Confusion and Contemporaneous Use

We turn to the seventh *du Pont* factor (nature and extent of any actual confusion) and the related eighth *du Pont* factor (extent of the opportunity for actual confusion) as argued by Opposer.

As Opposer correctly observes, the current filing basis for both of the involved applications is intent-to-use, and we have no evidence that Applicant has used its applied-for mark in commerce. Actual confusion cannot yet occur and evidence of actual confusion cannot yet exist. Accordingly, these *du Pont* factors are neutral.

The Variety of Goods

Opposer next raises the ninth *du Pont* factor, the variety of goods on which a mark is or is not used (house mark, “family” mark, product mark). *du Pont*, 177 USPQ at 567. Opposer argues that both parties agree that Opposer sells a wide variety of goods in multiple retail channels. However, because our finding of fame is limited to clothing and retail clothing stores, we deem this factor neutral in our *du Pont* analysis.

Market Interface

Opposer also discusses the tenth *du Pont* factor, “the market interface between applicant and the owner of a prior mark.” *du Pont*, 177 USPQ at 567. This *du Pont* factor consists of a mere “consent” to register or use; agreement provisions designed to preclude confusion, i.e. limitations on continued use of the marks by each party; assignment of mark, application, registration and good will of the related business; and/or laches and estoppel attributable to owner of prior mark and indicative of lack of confusion. *Id.*

According to the record, there is no market interface between Applicant and Opposer. In other words, Opposer has not consented to Applicant’s use or registration of the mark; nor have the parties entered into any co-existence agreements. The tenth *du Pont* factor therefore favors a finding of likelihood of confusion.

Right to Exclude Others

The next *du Pont* factor raised by Opposer is the extent to which Applicant has a previous right to exclude others from use of its mark on its goods. There is no evidence that Bevis has any right to exclude others from using MARIJUANAVILLE except for any rights based on the subject Applications, which are opposed in this proceeding. For this reason, the eleventh *du Pont* factor favors a likelihood of confusion.

Extent of Potential Confusion

Last, we consider the extent of potential confusion, i.e., whether de minimis

or substantial. With regard to this factor, Applicant argues that there is no “realistic” potential for confusion. Opposer points out that the clothing and retail store goods and services involved here are directly competitive.⁴⁸ Since these are the type of goods and services that would be marketed to and purchased by significant numbers of purchasers, the potential for confusion therefore cannot be deemed *de minimis*. Accordingly, this *du Pont* factor favors Opposer.

Balancing the du Pont Factors

The record shows that Opposer’s mark MARGARITAVILLE is famous in connection with clothing and retail stores featuring clothing and is inherently strong. As such, it is entitled to a wide scope of protection. *Bose Corp.*, 63 USPQ2d at 1308-9. *Recot*, 54 USPQ2d at 1897 (“Famous marks are accorded more protection precisely because they are more likely to be remembered and associated in the public mind than a weaker mark.”). The goods and services involved are identical in part and are therefore presumed to travel through the same trade channels and be purchased by the same classes of consumers, ordinary consumers. Ordinary consumers of apparel are likely to exercise only ordinary care, and may buy inexpensive clothing items on impulse. When considered in their entirety, the marks MARGARITAVILLE and MARIJUANAVILLE are similar in appearance, sound, meaning and commercial impression. “In a correct assessment of the du Pont factors”, the fame of Opposer’s MARGARITAVILLE mark “magnifies” these similarities. *See Kenner*

⁴⁸ Opposer’s Motion for Summary Judgment pp. 16-17, 20 TTABVUE 17-18.

Parker Toys Inc. v. Rose Arts Industries, Inc., 22 USPQ2d 1453, 1457 (Fed. Cir. 1992). See also *Research in Motion*, 102 USPQ2d at 1194 (“[A] potential consumer who is aware of opposer’s famous mark is even more likely to be attuned to its similarity to applicants’ mark upon encountering the latter”). The remaining *du Pont* factors discussed either favor a finding of likelihood of confusion or are neutral.

Accordingly, we find that Opposer has proved its Section 2(d) claim by a preponderance of the evidence in both proceedings.

Decision: The opposition is sustained on Opposer’s Section 2(d) claim in both Opposition Nos. 91219403 and 91221395.

APPENDIX I

Exhibit List to Declaration of Mary Martha Adkins (“Adkins Declaration I”)

Ex. 1: Wikipedia entry entitled “Margaritaville.”

Ex. 2: Sheet music for the song “Margaritaville” by Jimmy Buffett.

Ex. 3: Printout from www.allmusic.com listing Billboard awards given to Jimmy Buffett’s *Changes in Lattitudes, Changes in Attitudes* album.

Ex. 4: Printout from www.allmusic.com listing the albums on which the song “Margaritaville” appears.

Ex. 5: Printout from www.riaa.com of the search results for “Songs You Know by Heart” in the Recording Industry of America Gold & Platinum database.

Ex. 6: Printout from www.riaa.com of the search results for “Boats, Beaches, Bars & Ballads” in the Recording Industry of America Gold & Platinum database.

Ex. 7: An article entitled “Nashville Scene” from November 22, 1985 *Billboard* magazine.

Ex. 8: Screenshot from www.margaritaville.com/shop.

Ex. 9: Screenshot from www.hsn.com/margaritaville/.

Ex. 10: Screenshot from www.frontgate.com/homeplusstyle/margaritaville/.

Ex. 11: Opposer's First Set of Interrogatories in Opp. No. 91219403.

Ex. 12: Applicant's Responses to Opposer's First Set of Interrogatories in Opp. No. 91219403.

Ex. 13: Opposer's First Set of Interrogatories in Opp. No. 91221395.

Ex. 14: Applicant's Responses to Opposer's First Set of Interrogatories in Opp. No. 91221395.

Ex. 15: Dictionary entry for "margarita" from dictionary.reference.com.

Ex. 16: Dictionary entry for "marijuana" from dictionary.reference.com.

Ex. 17: Dictionary entry for "-ville" from dictionary.reference.com.

Ex. 18: Printout from www.cosmickitchen.com of the song "Margari-taville."

APPENDIX II

Exhibit List to Declaration of Mary Martha Adkins (“Adkins Declaration II”)

Exs. 1-2: Copies of The Coconut Telegraph, Vol. 9, No. 5, dated Sept.-Oct. 1993 and Vol. 29, No. 5, dated Holiday 2013.

Ex. 3: A screenshot from <http://www.margaritaville.com/coconut-telegraph>.

Ex. 4: A printout from the LexisNexis® data-base of a The New York Times article dated April 24, 2016 titled “Easy, Breezy, Boozy and Lucrative” and a photocopy of the first page of the article as it appeared in the printed The New York Times.

Ex. 5: A photocopy of an article titled “Nashville Scene” that appeared in the November 22, 1985 issue of Billboard.

Ex. 6: A printout from the LexisNexis® data-base of a Chicago Tribune article dated April 30, 1992 titled “Jimmy Buffett starts his own record label.”

Ex. 7: A printout from the LexisNexis® data-base of a Forbes article dated January 16, 1995 titled “Margarita marketing.”

Ex. 8: A photocopy of an article titled “The CEO of Margaritaville” that appeared in the November 22, 1985 issue of Playboy, along with a photocopy of the issue’s cover.

Ex. 9: A printout from the LexisNexis® data-base of a The International Herald Tribune article dated July 7, 2007 titled “Wasting away? No way; Margaritaville now an empire; SPOTLIGHT.”

Ex. 10: A printout from the LexisNexis® data-base of a Los Angeles Times article dated December 30, 2008 titled “Buffett’s booming empire; No, this is Jimmy’s. His ventures bring him an annual net income of about \$40 million.”

Ex. 11: A printout from <https://www.bostonglobe.com/arts/music/2012/06/21/listen-jimmy-buffett-before-was-mayormargaritaville/TjcZVRVLHRhFZR54ZtDU5J/story.html> of an article titled “Before he was mayor of Margaritaville...” that first appeared on BostonGlobe.com on June 22, 2012.

Ex. 12: A printout from <http://www.bloomberg.com/news/articles/2013-05-26/welcome-to-margaritaville-the-most-lucrative-song-ever> of an article titled “Welcome to ‘Margaritaville,’ the Most Lucrative Song Ever” that first appeared on Bloomberg.com on May 26, 2013.

Ex. 13: Photocopies of the cover page, copyright page, and pages 116 and 117 of the book titled Thank You for Firing Me! by Kitty Martini and Candice Reed.

Ex. 14: Photocopies of the cover page, copyright page, and pages 1, 2, and 51 – 68 of the book titled Brand Like a Rock Star by Steve Jones.

Ex. 15: Photocopies of the copyright page and pages 15, 16, and 17 of the book titled *Creating Breakthrough Products (Second Edition)* by Jonathan Cagan and Craig M. Vogel.

Ex. 16: Photocopies of the cover page, copyright page, and pages 16 and 87 of the book titled *Music Marketing for the DIY Musician* by Bobby Borg.

Ex. 17: Photocopies of the cover page, copyright page, and page 88 of the book titled *Key West 101: Discovering Paradise* by Christopher Schultz and David Sloan.

Ex. 18: Photocopies of the cover page, copyright page, and page 99 of the book titled *The Writing Diet* by Julia Cameron.

Ex. 19: Photocopies of the cover page, copyright page, and pages 217 – 218 of the book titled *The New Encyclopedia of Southern Culture, Volume 8: Environment*, edited by Martin Melosi.

Ex. 20: Photocopies of the cover page, copyright page, and pages 191 – 193 of the book titled *The New Encyclopedia of Southern Culture, Volume 12: Music*, edited by Bill C. Malone.

Ex. 21: Photocopies of the cover page, copyright page, and page 63 of the book titled *301 Smart Answers to Tough Business Etiquette Questions* by Vicky Oliver.

Ex. 22: Photocopies of the cover page, copyright page, and page 20 of the book titled *Fodor's South Florida 2015* by Lynne Helm, Jill Martin, and Paul Rubio.

Ex. 23: Photocopies of the cover page, copyright page, and page 173 of the book titled Moon Handbooks Cape Cod by Ray Bartlett.

Ex. 24: Photocopies of the cover page, copyright page, and pages 12 – 13 of the book titled Thunder Island by Meryl Sawyer.

Ex. 25: Photocopies of the cover page, copyright page, and page 238 of the book titled Bit the Jackpot A Tale of Vegas Vampires by Erin McCarthy.

Ex. 26: Photocopies of the cover page, copyright page, and page 8 of the book titled Never Happened by Debra Webb.

Ex. 27: Photocopies of the cover page, copyright page, and pages 120 – 121 of the book titled The Telltale Turtle by Joyce & Jim Lavene.

Ex. 28: Photocopies of the cover page, copyright page, and page 83 of the book titled Trick My Truck But Don't Mess With My Heart by LuAnn McLane.

Ex. 29: Photocopies of the cover page, copyright page, and page 69 of the book titled After A While You Just Get Used To It by Gwendolyn Knapp.

Ex. 30: Photocopies of the cover page, copyright page, and page 72 of the book titled Nine Months Candace by Maggie Wells.

Ex. 31: A screenshot from http://www.imdb.com/title/tt1397941/?ref_=ttep_ep3. This screenshot was captured on October 7, 2016.

Ex. 32: A screenshot from <http://www.emmys.com/awards/nominees-winners/2009/outstanding-short-format-animatedprogram>.

Ex. 33: A printout from <http://www.hollywoodreporter.com/heat-vision/jurassic-world-has-a-brookstone-802161> of an article titled “Jurassic World’ Has a Brookstone? Product Placement Runs Wild in the Park” article dated June 13, 2015.

Ex. 34: A printout from <http://www.hollywoodreporter.com/news/jimmy-buffett-musical-sets-san-906663> of an article titled “Jimmy Buffett Musical Sets San Diego Premiere” article dated June 27, 2016.

Ex. 35: A printout from the LexisNexis® data-base of a Orlando Sentinel article dated August 21, 1998 titled “Webber Goes Up in Smoke.”

Ex. 36: A printout from the LexisNexis® database of a The Examiner article dated November 12, 2010 titled “Stupid Crimes.”

Ex. 37: A printout from <http://www.sun-sentinel.com/opinion/todays-buzz/sfl-south-florida-pot-laws-20151110-story.html> of an article dated November 10, 2015 titled “Five reasons South Florida should decriminalize street pot.”