

**This Opinion is Not a
Precedent of the TTAB**

Mailed: July 5, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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The Board of Regents of the University of Oklahoma
v.
K-Jump Health Co., Ltd.

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Opposition No. 91224288
—

David M. Sullivan of Crowe & Dunlevy,
for The Board of Regents of the University of Oklahoma.

Joe McKinney Muncy, P. Jay Hines and H. David Starr of MG-IP Law, PC,
for K-Jump Health Co., Ltd.¹

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Before Greenbaum, Hightower and Heasley,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

K-Jump Health Co., Ltd. (“Applicant”) filed an application for registration on the
Principal Register of the stylized mark OUCARE, displayed below,

¹ Applicant’s change of counsel is noted. The record has been updated to reflect the withdrawal of Applicant’s prior counsel on April 11, 2018 (16 TTABVUE), after this case was fully briefed, and the appointment of new counsel on May 15, 2018 (17 TTABVUE).



for

Blood pressure measuring apparatus; Thermometers for medical purposes; Pulse meters; Lancets; Apparatus for blood analysis; Blood testing apparatus; Respirators for artificial respiration; Medical apparatus, namely, respiratory equipment and monitors therefor; Respiratory masks for medical purposes; Heart pacemakers; Blood glucose meter; Vacuum pumps for medical purposes; Spirometers; Digital thermometers; Body-fat monitors; Medical diagnostic apparatus, analytical apparatus for medical purposes and blood pressure measuring apparatus; Aerosol dispensers for medical use; Medical products, namely, therapeutic mattresses, beds, seats and cushions; Furniture especially made for medical purposes; Support mattresses for medical use; Air mattresses for medical purposes; Pads for preventing pressure sores on patient bodies in International Class 10.²

The Board of Regents of the University of Oklahoma (“Opposer”), opposes registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when applied to Applicant’s goods, so resembles Opposer’s numerous previously used and registered OU and OU-formative marks (to which Opposer collectively refers as the “OU Marks”³) for various educational,

² Application Serial No. 86440641 was filed on October 31, 2014, based upon Applicant’s claim of first use anywhere and in commerce since at least as early as September 30, 2014. The mark is described as follows: “The mark consists of designed upper cap characters ‘OU’ and ‘CARE’ following ‘OU.’” Color is not claimed as a feature of the mark.

³ 1 TTABVUE 14, ¶ 3. For ease of reference in this decision, we adopt Opposer’s nomenclature.

entertainment, and sports services, assorted clothing, and various other goods, as to be likely to cause confusion.⁴

Opposer also relies on prior use of the OU Marks “for goods and services including ... medical services.”⁵ Opposer alleges use since 1911 of the OU Marks “in promoting numerous facilities that provide services in the medical field,” including “OU Medical Center and the OU Health Science Center” and “OU Medical Center Edmond, which has been in existence for nearly seventy years.”⁶ Opposer further alleges use since 1997 of the OU Marks “to promote medical products related to its medical services, including use of the OU Marks on scrubs, first aid kits, athletic tape, walking canes, toothbrushes, and the like,” as do “numerous other universities and medical centers.”⁷ Opposer also alleges that due to long-term, extensive use and substantial marketing, advertising, and promoting of the OU Marks in the medical field, ... Opposer’s Marks in the medical field have secondary meaning,⁸ and that they “are famous and are widely recognized by the general consuming public as an exclusive identification of the goods and services of Opposer.”⁹

⁴ We do not list all of the pleaded registrations, but merely note that none of them identifies any type of medical apparatus.

⁵ *Id.* at 14, ¶ 2.

⁶ *Id.* at 15, ¶ 4.

⁷ *Id.* at 15, ¶ 5.

⁸ *Id.* at 16, ¶ 7.

⁹ *Id.* at 17-18, ¶ 8.

As the second ground for opposition, Opposer alleges that Applicant's mark is likely to dilute Opposer's famous OU Marks through blurring pursuant to Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c).

Applicant, in its answer, denied the salient allegations in the Notice of Opposition.¹⁰

I. The Record

The record consists of the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the file of application Serial No. 86440641.

Opposer submitted no testimony. However, during its assigned testimony period, Opposer filed a Notice of Reliance on:

1. TSDR printouts of Opposer's pleaded registrations;¹¹
2. third-party registrations for medical related goods and services;¹² and
3. Internet printouts from Opposer's website submitted to show "Opposer's common law use of the OU mark for medical goods and services."¹³

Applicant submitted no testimony or other evidence, and only Opposer filed a brief. Nonetheless, Opposer, as plaintiff in this proceeding, must prove its standing

¹⁰ Applicant also raised several putative and actual affirmative defenses, but pursued none of them. Such affirmative defenses therefore are deemed waived. *See Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013), *aff'd per curiam*, 565 F. App'x 900 (Fed. Cir. 2014).

¹¹ 13 TTABVUE 6-82.

¹² *Id.* at 83-152.

¹³ *Id.* at 153-81.

and its claims by a preponderance of the evidence. *See Cerveceria Centroamericana, S.A. v. Cerveceria India Inc.*, 892 F.2d 1021, 13 USPQ2d 1307, 1309 (Fed. Cir. 1989).

II. Standing

Opposer has established its standing by properly introducing into evidence its pleaded registrations. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Applicant does not dispute Opposer's standing.

III. Priority

A. Pleded Registrations

Because Opposer's pleaded registrations are of record, priority is not at issue with respect to the goods and services identified in those registrations. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Applicant presented no testimony or other evidence, and therefore has not established any earlier use of its mark.

B. Common Law Use

As noted above, Opposer presented no testimony, and Applicant, in its answer, did not admit any allegations concerning Opposer's common law use of the OU Marks. We therefore examine the evidence submitted by Opposer under Notice of Reliance to ascertain whether Opposer has proven priority through its asserted use of its OU Marks.

Opposer's evidence of use consists entirely of printouts from its website. Although these materials are admissible for what they show on their face, *see* Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2), this evidence constitutes hearsay and may not be relied upon for the truth of the matters asserted therein, i.e., to demonstrate use of the OU Marks on medical or medical-related goods and services. Fed. R. Evid. 801(c); *Safer Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010); *see also Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1467 n.30 (TTAB 2014) (Internet webpage evidence admissible only to show what has been printed and not for the truth of what has been printed), *cited in WeaponX Perf. Prods. Ltd. v. Weapon X Motorsports, Inc.*, 126 USPQ2d 1034, 1040 (TTAB 2018). In the absence of credible testimony, Opposer has not proven priority through its asserted common law use of the OU Marks on medical-related goods or services.

IV. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). We discuss below these and other relevant factors. *See M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947

(Fed. Cir. 2006) (even within *du Pont* list, only factors that are “relevant and of record” need be considered).

In this case, we have based our Section 2(d) likelihood of confusion findings and decision only on pleaded Registration No. 3100177 for the mark OU (in standard characters)¹⁴ for education services including instruction at the graduate, post-graduate, and professional levels, as the services it identifies are more similar to Applicant’s identified medical apparatus than are any of the other pleaded registrations. If we do not find a likelihood of confusion on the basis of this previously registered mark, we would not find a likelihood of confusion as to the other pleaded marks registered for less similar goods and services. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016); *In re Max Capital Grp., Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. Strength of Opposer’s Registered Mark/Third-Party Uses

We begin by evaluating the strength of Opposer’s standard character mark OU and the scope of protection to which it is entitled. In determining strength of a mark, we consider both inherent strength, based on the nature of the mark itself, and 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 (secondary meaning).”); *Top Tobacco, L.P. v. N. Atl. Operating*

¹⁴ Registered on June 6, 2006; renewed. For the reasons discussed above, we do not consider Opposer’s alleged common law use of its OU Marks on or in relation to medical and medical-related goods and services.

Co., Inc., 101 USPQ2d 1163, 1171-72 (TTAB 2011) (the strength of a mark is determined by assessing its inherent strength and its commercial strength); *Tea Board of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006); 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:83 (5th ed. June 2018 update) (“The first enquiry focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another’s use.”).

Concerning conceptual strength, we find that Opposer’s standard character mark OU is arbitrary in connection with the educational services identified in the registration, and therefore it is inherently distinctive. Moreover, there is no evidence of conceptual weakness based on consumer exposure to extensive third-party use of the same or similar marks in connection with the same or similar services. *Cf. 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) (at least fourteen relevant third-party uses or registrations of record); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015) (at least twenty-six relevant third-party uses or registrations of record).

However, Opposer submitted insufficient evidence to support a finding that the mark is commercially strong. Market strength is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Board of India*, 80 USPQ2d at 1899. As discussed above in connection with Opposer’s common-law priority claim,

Opposer's evidence of use consists solely of Internet printouts from Opposer's website. This evidence is of limited probative value because it does not establish the degree of consumer exposure to or recognition of the term OU. *See Top Tobacco*, 101 USPQ2d at 1168 (trade designations on materials of limited probative value because they do not establish they were actually used in commerce or the degree of consumer exposure). Opposer submitted no corroborating testimony or evidence concerning consumer exposure to and recognition of the mark OU in connection with the educational services identified in the registration. *Cf. Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) (commercial strength of a mark "may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident.").

On this record, we find Opposer's mark to be distinctive and conceptually strong. Opposer's mark is not, however, commercially strong or famous. The strength of Opposer's mark slightly favors a finding of likelihood of confusion.

B. Similarity of the Marks

The first *du Pont* factor is the similarity of the parties' marks. In a likelihood of confusion analysis, we compare the marks in their entireties for similarities and dissimilarities in appearance, sound, connotation and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014). "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) (quotation omitted).



Applicant’s mark incorporates the entirety of Opposer’s distinctive standard character mark OU. While there is no rule that likelihood of confusion automatically applies where one mark encompasses another, in this case, as in many others, the fact that Opposer’s entire mark is incorporated in Applicant’s mark increases the similarity between the two. *See, e.g., Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (finding CALIFORNIA CONCEPT marks substantially similar to prior mark CONCEPT); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (finding applicant’s mark VANTAGE TITAN confusingly similar to registered mark TITAN).

The term OU is by far the largest and most visually prominent element of Applicant’s mark. The prominence of the term OU is further enhanced by its placement as the initial literal element of Applicant’s mark. *See Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *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 in the mind of a purchaser and remembered.”). *See also Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word). We also find that the two marks have the same arbitrary connotation and that they create the same commercial impression, i.e., the letters “OU.”

The presence of CARE as the trailing term in Applicant’s mark distinguishes it somewhat in appearance and sound from Opposer’s mark. This point of distinction, however, does not significantly outweigh the overall similarity of these two marks. We find that the first *du Pont* factor weighs in favor of a finding that confusion is likely.

C. Similarity of the Parties’ Goods and Services and Channels of Trade

We next consider the *du Pont* factors involving the relatedness of the goods and services, and the similarity of established, likely to continue channels of trade. We base our evaluation on the goods and services as they are identified in the application and registration. *Stone Lion*, 110 USPQ2d at 1171; *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

1. Similarity of the Goods and Services

Opposer posits that the “educational services” identified in Registration No. 3100107 “are broad and encompass education, research, and instruction in the field of medicine,” and that the medical apparatus identified in the application “are complementary to Opposer’s ... services and commonly [are] used together for a common purpose” in that “[p]atients seeking medical services, or students being

instructed in the medical field, often use many of the goods listed in the application ... including thermometers, bed sheets, and the like.”¹⁵ Opposer argues

[i]t is well known that a large variety of medical goods, including many of those in the OUCARE application, are often used by doctors and/or patients in hospitals and facilities which offer and provide medical services. For example, medical staff use thermometers daily to determine the well-being of customers and bed sheets and mattresses are used in hospitals for patient bedding.¹⁶

Opposer points to the third-party registrations it made of record under Notice of Reliance as evidence that “numerous institutions that own registrations for medical services commonly own identical trademark registrations for medical goods.”¹⁷

We agree that the services identified in the registration are worded broadly enough to compass educational services in the field of medicine, and that patients, medical staff, and medical students would use many of the medical apparatus identified in the application. However, there is no evidence to support a finding that such goods and services are commercially related.

Opposer’s relatedness evidence consists of twelve use-based, third-party registrations of marks owned by colleges and universities (or their governing bodies), as well as the Mayo Foundation for Medical Education and Research (“Mayo Foundation”). Third-party registrations are probative of the relatedness of the goods and services because they suggest that the listed goods and services are of a type that may emanate from the same source. *See, e.g., In re Aquamar, Inc.*, 115 USPQ2d 1122,

¹⁵ 14 TTABVUE 13-14.

¹⁶ *Id.* 8-9.

¹⁷ *Id.*, at 9.

1126 n.5 (TTAB 2015); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988). However, none of the registrations are for marks (or variants thereof) that identify both medical education services, and medical apparatus similar to the apparatus identified in the application.

In particular, the Mayo Foundation owns registrations for the marks MAYO and MAYO CLINIC, both for “medical devices, namely, orthopedic joint implants, electromagnetic medical diagnostic imaging apparatus, [and] elbow braces,” and a registration for MAYO CONSERVATIVE HIP PROSTHESIS for “medical apparatus, namely, orthopedic joint implants,”¹⁸ the President and Fellows of Harvard College own a registration for HARVARD APPARATUS for “medical apparatus, namely, mechanical syringe pumps, microprocessor syringe pumps, peristaltic pumps, animal ventilators, cell injectors, electroporation generators, chart recorders and perfusion systems,”¹⁹ and the Trustees of the University of Massachusetts own a registration for MASSBIOLOGICS and design for pharmaceutical, anti-infective, and antiviral preparations, antifungal preparations and vaccines, and antibiotics,²⁰ but none of the registrations also identifies medical education services. Conversely, the Board of Regents of the University of Texas System owns registrations for the marks UT HEALTH and design, UTMB, and UTMB HEALTH for “medical training and teaching,” but none of the registrations also identifies any medical apparatus.²¹ St.

¹⁸ 13 TTABVUE 88-104.

¹⁹ *Id.* at 84-87.

²⁰ *Id.* at 143-46.

²¹ *Id.* at 109-19 and 127-38, respectively. All three also identify medical wearing apparel, namely, caps, scrub pants, and scrub tops, as does a fourth registration owned by the same

George's University LLC owns a registration for SGU for medical bags for use by medical personnel adapted for and sold with medical and surgical instruments and medical teaching and training services,²² but the identified medical bags are not medical apparatus, and the medical and surgical instruments sold inside the medical bags are not identified as independent goods covered by the registration. Finally, and furthest afield from the goods and services at issue here, Saint Louis University owns a registration for SAINT LOUIS UNIVERSITY and design for "medical wearing apparel, namely, scrub tops,"²³ and the Board of Trustees of Ithaca College owns a registration for ITHACA COLLEGE for baby bottles,²⁴ but neither registration identifies either medical apparatus or medical education services.

2. Channels of Trade

"The third *Du Pont* factor considers '[t]he similarity or dissimilarity of established, likely-to-continue trade channels.'" *Stone Lion*, 110 USPQ2d at 1161 (quoting *du Pont*, 177 USPQ at 567). Because the identification of goods in the application and the identification of services in the registration contain no restrictions or limitations on the nature of the goods and services, their channels of trade, or classes of customers, we must presume that the identified goods and services travel through all normal and usual trade channels for such goods and services, and that they are sold

registrant for the mark UTHEALTH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER OF HOUSTON. *Id.* at 105-08.

²² *Id.* at 120-26.

²³ *Id.* at 139-42.

²⁴ *Id.* at 147-52.

to all classes of prospective purchasers for those goods and services. *Id.* at 1161; *see also Coach Servs.*, 101 USPQ2d at 1723 (absent limitation, “goods are presumed to travel in all normal channels ... for the relevant goods.”); *Jump Designs*, 80 USPQ2d at 1374. However, because we found above that the identified goods and services are not similar, we do not presume, as Opposer would have us do, that the classes of purchasers and channels of trade are the same. *Cf. In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (legally identical goods are presumed to move in the same channels of trade and are offered to the same class of consumers); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers.”). Moreover, Opposer submitted no evidence to support a finding that the identified goods and services travel through the same channels of trade to the same classes of purchasers.

Accordingly, these *du Pont* factors do not support a finding of likely confusion.

D. 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 may tend to minimize likelihood of confusion. Conversely, impulse purchasers of inexpensive items may tend to have the opposite effect.” *Palm Bay*, 73 USPQ2d at 1695. Although Opposer again failed to submit any evidence on this factor, given the nature of Opposer’s services, it is reasonable to infer that the relevant purchasers are likely to

exercise a high degree of care when making their purchasing decisions. Similarly, at least some of the medical apparatus identified in the application, such as heart pacemakers and vacuum pumps for medical purposes, would be bought by purchasing departments at hospitals and nursing homes, who also would be expected to exercise a high degree of care. On the other hand, medical apparatus such as digital thermometers and blood glucose meters could be purchased by ordinary consumers for home use. We found above that there is no evidence to support a conclusion that the identified goods and services move through the same channels of trade to the same customers. Nonetheless, to the extent there is any customer overlap, we find this factor neutral.

E. Conclusion

The Federal Circuit has instructed that a single *du Pont* factor may be dispositive in any particular case. *Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“*DuPont* recognized that in determining likelihood of confusion ‘each case must be decided on its own facts.’ *DuPont*, 476 F.2d at 1361, 177 USPQ at 567. It also recognized that ‘each [of the thirteen elements] may from case to case play a dominant role.’ *Id.*”). We find the second and third *du Pont* factors dispositive here. *See, e.g., North Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1230-34 (TTAB 2015) (dismissing opposition as to classes of goods and services for which opposer did not establish relatedness to its goods); *Itel Corp. v. Ainslie*, 8 USPQ2d 1168, 1171 (TTAB 1988) (dismissing opposition in which marks

were nearly identical but opposer failed to prove relatedness of the goods and services).

We have carefully considered all arguments and evidence of record, including any not specifically discussed herein. Because there is no evidence supporting a finding that the parties' goods and services are related and that they move in the same channels of trade, we find that Opposer has not carried its burden to establish by a preponderance of the evidence that Applicant's mark, when used on the medical apparatus identified in the application, is likely to cause consumer confusion with Opposer's mark, when used in connection with the educational services identified in the registration.

V. Dilution

In addition to its Section 2(d) claim, Opposer has asserted a claim of dilution by blurring. The record evidence, which was not sufficient to support a finding of commercial strength for purposes of a likelihood of confusion analysis, certainly does not support a finding that Opposer's mark OU is famous for purposes of a dilution analysis, which requires a much more stringent showing of fame. 15 U.S.C. § 1125(c)(2)(A); *see Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (distinguishing between fame in likelihood of confusion analysis and fame in dilution analysis); *Coach Servs.*, 101 USPQ2d at 1724 ("Fame for likelihood of confusion and fame for dilution are distinct concepts, and dilution fame requires a more stringent showing."). Because Opposer

has not met its burden of demonstrating that its standard character mark OU is famous, Opposer cannot prevail on its dilution claim.

Decision: The opposition is dismissed on the ground of likelihood of confusion. The opposition also is dismissed on the ground of dilution.