

This Opinion is not a
Precedent of the TTAB

Mailed: February 11, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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H. Lee Moffitt Cancer Center and Research Institute, Inc.
v.
Milligram, Inc.
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Opposition No. 91228243
—————

Lisa C. Pavento and Stephen M. Schaezel of Meunier Carlin & Curfman LLC,
for H. Lee Moffitt Cancer Center and Research Institute, Inc.

L. Clint Crosby and Brittany B. Simpson of Baker, Donelson, Bearman, Caldwell &
Berkowitz, P.C. for Milligram, Inc.
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Before Bergsman, Kuczma and Goodman,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Milligram, Inc. (Applicant) filed an application on the Principal Register to
register the letter “M” and design, shown below,



for the goods and services listed below:

Downloadable mobile applications for providing information to medical personnel and patients regarding the cost of a patient's prescription medication taking into account that patient's insurance coverage, in Class 9; and

Providing on-line non-downloadable software for providing information to medical personnel and patients regarding the cost of a patient's prescription medication taking into account that patient's insurance coverage, in Class 42.¹

According to the description of the mark, "the mark consists of a square background holder with the letter "M" in a stylized font," and "color is not claimed as a feature of the mark."

H. Lee Moffitt Cancer Center and Research Institute, Inc. opposes registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles Opposer's previously registered marks containing the stylized letter "M" and design in connection with goods and services in the field of cancer protection, prevention, detection and treatment as to be likely to cause confusion. Opposer pleaded ownership of three registrations consisting, in whole or in part, of the stylized letter "M." The two most relevant registrations are set forth below:



¹ Application Serial No. 86835666, filed December 1, 2015, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's claimed bona fide intent to use the mark in commerce.

for the goods and services and services listed below:

Printed material, namely newsletters and educational brochures relating to cancer protection, prevention, detection and treatment, in Class 16;

Educational services, namely, conducting classes, seminars and workshops in the field of cancer protection, prevention, detection and treatment, in Class 41; and

Medical services; medical counseling, medical testing; medical research; telephone hot line counseling, namely offering advice regarding cancer prevention, detection, treatment, research and community resources, in Class 42.²



for the goods and services listed below:

Publications, namely, printed instructional and teaching materials, brochures, pamphlets, bulletins, newsletters and magazines, all in the field of health care, cancer protection, prevention, detection and treatment, medical diagnostics and prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases, in Class 16;

Medical educational services, namely, conducting lectures, seminars and workshops to health care practitioners, patients and patient caregivers in the field of health care, cancer care and prevention of cancer, and medical diagnostics, prognostics and the evaluation of drug and treatment effectiveness relating to cancer and other diseases, in Class 41;

Providing an online database and depository for the collection of clinical and molecular data derived from a patient that is accessible by physicians, patients and

² Registration No. 2487525, issued September 11, 2001; renewed.

researchers, namely, an online database in the field of human clinical and molecular data accumulation and analysis for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases for research purposes; medical and clinical research resources in the field of cancer and other diseases, namely, providing data regarding tumor-specific molecular signatures and the effectiveness of a drug and/or diagnostic test for research purposes; medical and clinical research resources in the field of cancer and other diseases, namely, providing evidence-based treatment protocols by effectively comparing standard treatment therapies with clinical outcomes for research purposes; medical research services consisting of collection and analysis of data in the field of human clinical and molecular data for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases, namely, matching particular patients to a particular drug, treatment, therapy or clinical trial by the specific molecular signature of the patient; collection and analysis of data services in the field of human clinical and molecular data accumulation and analysis for research assistance for medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases, namely, providing objective data in usable form on the effectiveness of a drug or diagnostic test, in Class 42.

Providing health care, medical information and counseling in the field of cancer; providing medical screening and diagnostic services with use of patient scanning equipment; providing an online computer database featuring medical information in the field of human clinical and molecular data accumulation and analysis for aiding medical diagnostics, prognostics and the evaluation and testing of drug and treatment effectiveness; medical services, namely, cancer care and prevention of cancer, and medical diagnostics, prognostics and evaluation of drug and treatment effectiveness relating to cancer and other diseases; medical counseling; telephone hot line counseling, namely, offering advice regarding cancer

prevention, detection, treatment and clinical testing in the field of cancer and other diseases, in Class 44.³

Opposer also pleaded common law use of the stylized letter “M” and design, shown above, “in association with a wide range of medical goods and services, including the provision of prescription and insurance related information and services.”⁴

Applicant, in its Answer, denied the salient allegations in the Notice of Opposition.⁵

For the sake of economy, we confine our analysis of the issue of likelihood of confusion between Applicant’s mark and the marks in Registration No. 2487525 for the stylized letter “M” and design mark and Registration No. 3671302 for the mark MOFFITT CANCER CENTER and the stylized letter “M” and design mark both identified above. Opposer’s pleaded registration for the stylized letter “M” and design mark is the most similar to Applicant’s mark because those two marks both consist of a stylized letter “M” without any other words that might distinguish the marks. Opposer’s pleaded registration for the mark MOFFITT CANCER CENTER and the stylized letter “M” and design has the most similar description of goods and services to Applicant’s application. If the opposition cannot be sustained on the basis of the marks and description of goods and services in those registrations, it could not be sustained on the basis of the mark in the other pleaded registration. *See In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

³ Registration No. 3671302, issued August 25, 2009; Sections 8 and 15 declarations accepted and acknowledged. Opposer disclaimed the exclusive right to use the term “Cancer Care.”

⁴ Notice of Opposition ¶4 (1 TTABVUE 4).

⁵ 4 TTABVUE.

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), the application file at issue. The parties introduced the following testimony and evidence:

A. Opposer's testimony and evidence.

1. Notice of reliance on the following items:

- a. Copies of Opposer's pleaded registrations printed from the USPTO electronic database showing the current status of and title to the registrations;⁶
- b. Applicant's responses to Opposer's interrogatory Nos. 23-25;⁷
- c. Applicant's responses to Opposer's requests for admission Nos. 6-21;⁸

⁶ 20 TTABVUE 8-24.

⁷ 20 TTABVUE 25-27. In the notice of reliance, Opposer identified Applicant's responses to interrogatory Nos. 17-25, but it introduced only the responses to interrogatory Nos. 23-25. 20 TTABVUE 6. Parties are responsible for the accuracy of their electronic filings. *Cf. Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1758 (TTAB 2013) (citing *Hard Rock Cafe Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1404 (TTAB 1998) ("It is reasonable to assume that it is opposer's responsibility to review the documents it submits as evidence to ensure that such submissions meet certain basic requirements, such as that they are legible...."), *aff'd*, 565 F. App'x 900 (Fed. Cir. 2014) (mem.); *Weider Publ'ns, LLC v. D&D Beauty Care Co.*, 109 USPQ2d 1347, 1351 (TTAB 2014) (onus is on party making submissions to ensure that, at a minimum, "all materials are clearly readable by the adverse party and the Board"), *appeal dismissed per stipulation*, No. 14-1461 (Fed. Cir. Oct. 10, 2014).

⁸ 20 TTABVUE 28-32. In the notice of reliance, Opposer identified Applicant's responses to requests for admission Nos. 1-26, but it introduced only the responses to requests for admission Nos. 6-21.

- d. A copy of the “Nice Agreement Current Edition Version - General Remarks, Class Headings and Explanatory Notes” printed from the USPTO electronic database;⁹ and
 - e. A dictionary definition of the word “Medical” from the MACMILLAN DICTIONARY (macmillandictionary.com/us);¹⁰
2. Testimony declaration of Donn William Davis II, Opposer’s Pharmacy Operations Manager;¹¹
 3. Testimony declaration of Leslie G. Trinkle, a paralegal in Opposer’s Office of Innovation and Industry Alliances;¹²
 4. Testimony declaration of Joshua B. Adkins, Opposer’s Director of Strategic Marketing;¹³
 5. Opposer’s rebuttal notice of reliance on the following items:
 - a. An excerpt from the Mederi Therapeutics website (mederi-inc.com);¹⁴
 - b. An excerpt from the Medicina website (medicina.co.uk);¹⁵

⁹ 20 TTABVUE 33-71.

¹⁰ 20 TTABVUE 72-74.

¹¹ 21 TTABVUE.

¹² 22 TTABVUE.

¹³ 23 TTABVUE. The portion of the Adkins declaration designated as confidential is posted at 24 TTABVUE.

¹⁴ 32 TTABVUE 6-7.

¹⁵ 32 TTABVUE 9.

- c. The definition of the term “take into account” from IDIOMS BY THE FREE DICTIONARY (idioms.thefreedictionary.com) and the CAMBRIDGE ENGLISH DICTIONARY (dictionary.cambridge.org);¹⁶ and
- d. A copy of the file history for Registration No. 4640131 for the mark MOFFITT CANCER CENTER (in standard characters);¹⁷ and
6. Rebuttal testimony declaration of Margaret A. Cogburn, a paralegal for Opposer’s counsel.¹⁸

B. Applicant’s testimony and evidence.

1. Notice of reliance on the following items:
 - a. Opposer’s responses to Applicant’s requests for admissions;¹⁹
 - b. Opposer’s responses to Applicant’s first set of interrogatories;²⁰ and
 - c. Opposer’s responses to Applicant’s second set of interrogatories;²¹
2. Notice of reliance on the following items:
 - a. Excerpts from Opposer’s website;²²

¹⁶ 32 TTABVUE 11-18.

¹⁷ 32 TTABVUE 20-171.

¹⁸ 32 TTABVUE 172-179.

¹⁹ 28 TTABVUE 6-18.

²⁰ 28 TTABVUE 20-41.

²¹ 28 TTABVUE 43-58.

²² 29 TTABVUE 12-42.

- b. A copy of the Notice of Opposition in Opposition No. 91206547 (Opposer v. Bristol-Myers Squibb Company) for what is now Registration No. 4491582 and related documents;²³
 - c. A copy of an Office Action from Opposer's application Serial No. 86214921 (Registration No. 4640131) for the mark MOFFITT CANCER CENTER;²⁴
 - d. Excerpts from third-party websites;²⁵
3. Notice of reliance on copies of third-party registrations;²⁶ and
 4. Testimony declaration of Dr. Bruce Wolf, Applicant's founder and Chief Executive Officer.²⁷

II. Standing

Standing is a threshold issue 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); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). To establish standing in an opposition or cancellation proceeding, a plaintiff must prove that it has "both a 'real interest' in the proceedings as well as a 'reasonable' basis for its belief of damage." *See Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*,

²³ 29 TTABVUE 44-57.

²⁴ 29 TTABVUE 59-101.

²⁵ 29 TTABVUE 103-195.

²⁶ 30 TTABVUE.

²⁷ 31 TTABVUE.

170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (TTAB 1982).

Opposer has established its standing by properly introducing into evidence its pleaded registrations.²⁸ See, e.g., *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *N.Y. Yankees P'ship v. IET Prods. & Servs., Inc.*, 114 USPQ2d 1497, 1501 (TTAB 2015). Applicant, in its brief, does not contest that Opposer has standing.

III. Priority

Because Opposer's pleaded registrations are of record, priority is not at issue with respect to the goods and services identified therein. *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)).

With respect to Opposer's common law use of the stylized letter "M" and design "in association with a wide range of medical goods and services, including the provision of prescription and insurance related information and services," Opposer must prove that it has used its stylized "M" and design in connection with the provision of prescription and insurance related information and services prior to the filing date of Applicant's application, December 1, 2015, or May 2015, Applicant's date of first use in connection with its downloadable software.²⁹ Opposer did not

²⁸ 26 TTABVUE 272-360.

²⁹ Wolf Testimony Decl. ¶7 (31 TTABVUE 3). Oral testimony regarding a party's first use of its mark may be sufficiently probative if it is not characterized by contradictions, inconsistencies or indefiniteness and carries with it conviction of its accuracy and applicability. See *B.R. Baker Co. v. Lebow Bros*, 150 F.2d 580, 66 USPQ 232, 236 (CCPA

introduce any testimony or evidence regarding when it first used its stylized letter “M” and design mark in connection with the provision of prescription and insurance related information.³⁰ Accordingly, Opposer failed to meet its burden of proving prior common law use of its stylized letter “M” and design mark in connection with the provision of prescription and insurance related information and, therefore, it must rely on its pleaded registrations for purposes of proving likelihood of confusion.

IV. Likelihood of confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*du Pont*”) cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *du Pont* factor that is relevant or for which there is evidence of record. See *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006);

1945). “Oral testimony, if sufficiently probative, is normally satisfactory to establish priority of use in a trademark proceeding.” *Powermatics, Inc. v. Globe Roofing Prods. Co.*, 341 F.2d 127, 144 USPQ 430, 432 (CCPA 1965).

³⁰ For example, Donn William Davis, Opposer’s Pharmacy Operations Manager, testified that he started working for Opposer as a Critical Care Pharmacist in 2004, that Opposer’s on-site pharmacy dispenses prescription medications bearing the stylized letter “M” and design mark, and that Opposer’s on-site pharmacy advises patients about how to navigate insurance payments. He did not testify about when Opposer first began using the stylized letter “M” and design mark in connection with those goods or services. Also Joshua Adkins, Opposer’s Director of Strategic Marketing, testified that Opposer first used the stylized letter “M” and design mark in 1986. Adkins Testimony Decl. ¶20 (23 TTABVUE 6). However, Mr. Adkins did not testify about what goods or services the mark was used to identify.

ProMark Brands Inc. v. GFA Brands, Inc., 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *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.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Primrose Ret. Communities, LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1032 (TTAB 2016).

A. The similarity or dissimilarity and nature of the goods and services.

Applicant is seeking to register its mark for a mobile application and providing downloadable software for providing the cost of prescription medication.

The word “prescription” is defined as “a direction, usually written, by the physician to the pharmacist for the preparation and use of a medicine or remedy” or “the medicine prescribed.”³¹

³¹ Dictionary.com based on the RANDOM HOUSE UNABRIDGED DICTIONARY (2019). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in

The word “medication” is defined, inter alia, as “a medicinal substance.”³² The word “medicine” is defined, inter alia, as

1. any substance or substances used in treating disease or illness; medicament; remedy.
2. the art or science of restoring or preserving health or due physical condition, as by means of drugs, surgical operations or appliances, or manipulations: often divided into medicine proper, surgery, and obstetrics.
3. the art or science of treating disease with drugs or curative substances, as distinguished from surgery and obstetrics.³³

Opposer contends that its pharmacy is a part of its medical services and is, thus, encompassed within its description of services.

8. [Opposer’s] Department of Pharmacy was developed as a part of a multidisciplinary approach to patient care where the Department “has the primary responsibility for drug information and is accountable to apply that knowledge as the ‘patient’s advocate’ for all drug therapy, drug delivery, research and education.” Exhibit 1.

9. [Opposer’s] Department of Pharmacy provides drug information and education to patients in multiple clinics, infusion centers and in-patient arenas. When educational materials are provided to patients they often bear the Moffitt M Mark. Exhibit 1.

10. [Opposer’s] on-site specialty pharmacy dispenses prescription medications bearing the Moffitt “M” Mark on prescription labels, advises patients of the cost of those medications based on the patients’ insurance coverage, and provides medical education, counseling services and

printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

³² Dictionary.com based on the RANDOM HOUSE UNABRIDGED DICTIONARY (2019).

³³ *Id.*

assistance navigating insurance copayments to patients or in obtaining free drug from manufacturers if the patient is unable to afford the ordered drug. *See* Exhibit 2 ...³⁴

Davis Testimony Declaration Exhibit 1 provides that Opposer’s pharmacy staff “works directly with the primary health team, rounding with physicians, planning with nurses, coordinating with the lab, facilitating research and providing patient and staff education.”³⁵ “Pharmacists participate in the development, support and management of investigational/research protocols.”³⁶ “[T]he Pharmacy staff is a full and equal partner in a multidisciplinary approach to patient care, education and research.”³⁷

Davis Testimony Declaration Exhibit 2 provides that Opposer’s pharmacy staff offers

- Medical education and counseling services ... for the safe and effective use of all pharmaceuticals and nutritional products
- Assistance navigating insurance copayments ...³⁸

In its “Glossary of Terms,” Opposer defines “Clinical trial” as “a research study to test a new treatment or drug.”³⁹

³⁴ Davis Testimony Decl. ¶¶8-10 and Exhibits 1 and 2 (28 TTABVUE 4 and 7-13).

³⁵ 28 TTABVUE 7.

³⁶ *Id.*

³⁷ *Id.* at 8.

³⁸ *Id.* at 11.

³⁹ Adkins Testimony Decl. ¶26 and Exhibit 6 (23 TTABVUE 7 and 130).

1. MOFFITT CANCER CENTER “M” and design mark.

Registration No. 3671302 for  is registered for goods and services encompassing “health care, cancer protection, prevention, detection and treatment, medical diagnostics and prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases.” The description of goods and services in Opposer’s registration does not include pharmacy services, nor does it include providing information regarding the cost of prescription medications. It is established beyond peradventure that our analysis of the second *du Pont* factor must be based on a comparison of the goods and services identified in the application and the cited registration, respectively, not on extrinsic evidence of actual use. *E.g.*, *Coach Servs. Inc. v. Triumph Learning LLC*, 669 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012); *Octocom Sys., Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). When identifications are technical or vague and require clarification, it is appropriate to consider extrinsic evidence of use to determine the meaning of the identification of goods. *See, e.g.*, *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *In re Trackmobile*, 15 USPQ2d 1152, 1154 (TTAB 1990).

Here, the description of goods and services (*i.e.*, the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases) is neither vague nor technical and it does not require clarification through extrinsic evidence. Also, we note that mail order and retail pharmacy services, as well as “financial administration of pharmacy reimbursement programs and services” and “business

administration of pharmacy reimbursement programs and services” are listed in the USPTO’s Trademark Acceptable Identification of Goods and Services. *See In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1354 (TTAB 2015).

While intuitively the “evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases” should have a connection to pharmacy services, Applicant’s description of goods and services does not involve pharmacy services. Applicant’s description of goods and services involves a mobile application and downloadable software that provides information regarding the cost of prescription medications taking into account that patient’s insurance coverage. There is no testimony or evidence that other treatment or research centers provide information regarding the cost of prescription medications taking into account that patient’s insurance coverage.

Accordingly, Opposer has failed to prove that its goods and services in the field of “health care, cancer protection, prevention, detection and treatment, evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases” is related to a mobile application and downloadable software that provides information regarding the cost of prescription medications taking into account that patient’s insurance coverage.

2. Stylized letter “M” and design mark.

Registration No. 2487525 is for  for goods and services in the field of cancer protection, prevention, detection and treatment, as well as “medical services.” While intuitively cancer treatment and medical services include prescribing and taking

prescription medications, Applicant's goods and services involve providing information about prescription drug prices, not pharmacy services. For the same reasons that Opposer's goods and services in the field of "evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases" are not related to Applicant's goods and services that provide information about the cost of prescription drugs taking into account that patient's insurance coverage, Opposer's goods and services in the field of cancer protection, prevention, detection and treatment, as well as "medical services" are not related to Applicant's goods and services.

B. Established, likely-to-continue channels of trade and purchasers to whom sales are made.

There is no evidence or testimony that Opposer's medical services, medical counseling, medical testing, medical research, providing information and educational services about cancer protection, prevention, detection and treatment, as well as the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases are offered in the same channels of trade as Applicant's mobile application and downloadable software for obtaining the cost of prescription medications taking into account that patient's insurance coverage. However, some patients in need of cancer treatment will need prescription medications and will want a means for determining the price for the prescription medications. Accordingly, Opposer's goods and services will be offered to some of the same consumers as Applicant's goods and services.

C. The strength of Opposer's stylized letter "M" and design mark, including the number and nature of similar marks in use on similar goods and services.

In determining the strength of a mark, we consider both its inherent or conceptual strength, 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 (secondary meaning."); *Top Tobacco, L.P. v. N. Atl. Operating 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 Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). Market strength is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d at 1899.

1. The inherent strength of the stylized letter "M" and design mark.

The letter "M" does not have any meaning when used in connection with medical services, medical counseling, medical testing, medical research, or providing information and education about cancer protection, prevention, detection and treatment. Moreover, because the stylized letter "M" and design has been registered on the Principal Register, it is entitled to a presumption of validity by Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), and "moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods [and services]." *Tea Bd. of India*, 80 USPQ2d at 1899.

Opposer's stylized letter "M" and design mark is inherently strong.⁴⁰

2. The commercial strength of Opposer's marks.

Opposer contends that its marks featuring the stylized letter "M" and design are commercially strong for the following reasons:

- Opposer has been using the stylized letter "M" and design mark since 1986;⁴¹
- Opposer "has made a significant investment in its advertising spent over the past two years";⁴²
- Opposer uses the stylized letter "M" and design mark "on a multitude of medically-related informational materials sent to thousands of patients, medical personnel, and members of the general public.";⁴³
- Opposer "has an economic impact in the state [Florida] of 2.15 billion dollars.";⁴⁴
- Opposer is the "ninth ranked cancer center in the nation and has been listed in the U.S. News & World Report as one of the 'Best Hospitals' for cancer care since 1999.";⁴⁵

⁴⁰ However, it may not be a fanciful mark because, as discussed below, consumers may perceive a logo comprising the letter "M" as being the first letter of the parties' trade names.

⁴¹ Adkins Testimony Decl. ¶20 (23 TABVUE 6).

⁴² Adkins Testimony Decl. ¶23 (24 TTABVUE 7). Because Opposer designated its advertising expenditures as confidential, we only refer to them in general terms.

⁴³ Adkins Testimony Decl. ¶25 (23 TTABVUE 7).

⁴⁴ Adkins Testimony Decl. ¶13 (23 TTABVUE 5).

⁴⁵ Adkins Testimony Decl. ¶14 (23 TTABVUE 5).

- Opposer “treats or has contact with more than 350,000 out-patient visits annually.”;⁴⁶
- Opposer has been recognized by the National Cancer Institute as a NCI Comprehensive Cancer Center which recognizes Opposer for its “scientific excellence as well as its strength in cancer research, education, training and community outreach.”;⁴⁷
- Opposer has been recognized as a best place to work by publications including Computerworld, Florida Trend, Tampa Bay Times, Science Magazine, Working Mother and WorkplaceDynamics;⁴⁸

The testimony shows that Opposer is a renowned center for cancer research. However, Opposer has failed to show that consumers associate the stylized letter “M” design mark with Opposer or that it is a well-known trademark. For example, although Opposer has been using the stylized letter “M” and design mark since 1986, Opposer uses the stylized letter “M” and design mark primarily in connection with the trade name Moffitt Cancer Center, as shown below, rather than as a standalone mark.⁴⁹



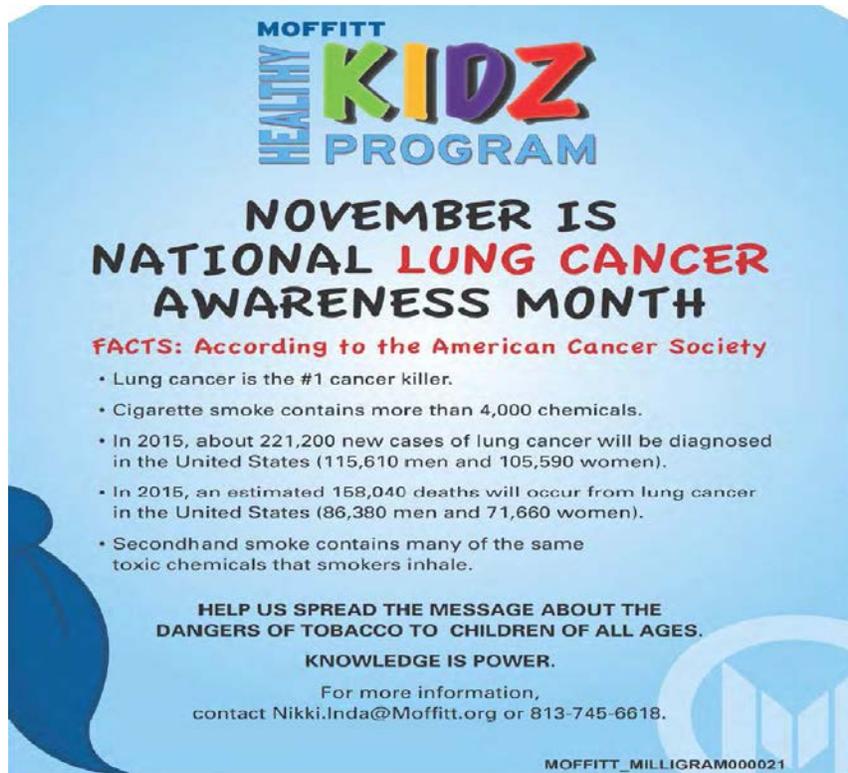
⁴⁶ Adkins Testimony Decl. ¶16 (23 TTABVUE 6).

⁴⁷ Adkins Testimony Decl. ¶¶17 and 18 (23 TTABVUE 6).

⁴⁸ Adkins Testimony Decl. ¶19 (23 TTABVUE 6).

⁴⁹ 21 TTABVUE and 23 TTABVUE.

In fact, Opposer's style guide provides that "The 'M' symbol should not appear without the Oncology Network logo or as primary imagery in any artwork."⁵⁰ Accordingly, when the stylized letter "M" and design mark is used as a standalone mark, it appears in the background as shown below:⁵¹



Because the stylized letter "M" and design does not appear as "the primary artwork in any imagery," consumers' attention is directed to or focused on the trade name Moffitt Cancer Center or Moffitt Oncology Network, rather than the stylized letter "M" and design.

⁵⁰ Adkins Testimony Decl. ¶24 and Exhibit 4 (23 TTABVUE 49).

⁵¹ 23 TTABVUE 69.

Opposer has failed to show that its stylized letter “M” and design is so commercially strong that we should accord it a broader scope of protection than any other mark.

3. The number and nature of similar marks in use in connection with similar services.

Applicant introduced excerpts from third-party websites and copies of their associated registrations containing the letter “M,” for goods or services that arguably are in the medical field.⁵² Just because goods and services are in the medical field does not, ipso facto, mean that they are related. *See Astra Pharm. Prods., Inc. v. Beckman Instruments, Inc.*, 718 F.2d 1201, 220 USPQ 786, 790 (1st Cir. 1983) (“The most favorable inference that may be drawn from the evidence regarding the similarity of goods is that both parties’ products are used in the medical or health

⁵² 29 TTABVUE 102-195 and 30 TTABVUE 33-130.

The excerpt of the third-party use of the letter “M” at henryschein.com (29 TTABVUE 107) is illegible and, therefore, can be given no consideration. Opposer also introduced Registration No. 1480780, shown below, for “disposable medical sterilization pouches, bags, and tubing.” (30 TTABVUE 40).



The mark in this registration is purportedly the mark in the website at henryschein.com. This mark is so highly stylized that it should be treated as a design mark. *See Textron, Inc. v. Maquinas Agricolas “Jacto” S.A.*, 215 USPQ 162, 163 (TTAB 1982) (“when letter marks are presented in a highly stylized form, so that they are essentially design marks incapable of being pronounced or conveying any inherent meaning, then differences in the lettering style and design may be sufficient to prevent a likelihood of confusion.”).

The excerpt of the third-party use at mibioresearch.com (29 TTABVUE 191) displays the stylized letters “MI” rather than just the letter “M.” Also, the registration that includes the stylized letters “MI,” Registration No. 4235059, is for the mark MOLECULAR IMAGING and the stylized letters MI. (30 TTABVUE 117). Because the mark includes the letters MI, and not the letter “M” alone, and the name “Molecular Imaging,” this registration has little, if any, probative value.

care field. However, such a broad inference is not sufficient to demonstrate that a genuine issue exists concerning likelihood of confusion as to the source of the products involved in the present suit.”); *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010) (“a finding that the goods are similar is not based on whether a general term or overarching relationship can be found to encompass them both.”). Some of the websites in the record have little probative value because they are too far afield from Opposer’s goods and services.⁵³ See *In re i.am.symbolic*,

⁵³ The excerpt of the third-party use of the letter “M” at mederi-inc.com (29 TTABVUE 115) is for a company that manufactures products for the treatment of diseases or conditions that affect the human gastrointestinal tract, such as GERD and Secca for bowel incontinence, used by gastroenterologists, general surgeons, ENTs, gynecologists, bariatric surgeons, colon and rectal surgeons, urogynecologists, and thoracic surgeons. (29 TTABVUE 115). The registration that displays this stylized letter “M” mark, Registration No. 3908623, is for, inter alia, “medical devices for use in treating incontinence, urological disorders and gastroenterological disorders.” (30 TTABVUE 52).

The excerpt of the third-party use of the letter “M” at chirohealthusa.com (29 TTABVUE 122) is a company specializing in physical therapy and chiropractic equipment. The registration that displays the mark in this website, Registration No. 4716141, is for distributorship and retail store services in the field of chiropractic and physical therapy equipment, exercise, fitness and rehabilitative equipment. (30 TTABVUE 65).

The excerpt of the third-party use of the letter “M” at mediscripts.com (29 TTABVUE 128) is for advertising the goods and services of others by distributing medical pads. The registration that displays the mark in this website, Registration No. 4279762, is for “advertising the goods and services of others by distributing medical pads.” (30 TTABVUE 71).

The excerpt of the third-party use of technokrafts.com (29 TTABVUE 138) is a foreign website (the prices are listed in Euros) selling one identifiable surgical instrument. The other products are unidentifiable. There is no testimony or evidence to the effect that consumers in the United States would utilize this foreign entity company. The registration that displays the mark in this website, Registration No. 4665189, is for, inter alia, “medical services; health care.” (30 TTABVUE 77). However, this registration is based on a request for extension of protection from an International Registration pursuant to Section 66 of the Trademark Act, not use in commerce. A registration based on Section 66 of the Trademark Act possesses little, if any, probative value because it does not require use in commerce to be registered and therefore is not evidence that the mark therein has ever been encountered by consumers in the marketplace. *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff’d*, 864 F.2d 149 (Fed. Cir. 1988); *In re 1st USA Realty Professionals, Inc.*, 84 USPQ2d 1581, 1583 (TTAB 2007); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

The excerpt of the third-party use of the letter “M” at medicina.co.uk (29 TTABVUE 149) is a website located in the United Kingdom. (29 TTABVUE 149). The website advertises the sale of syringes and feeding tubes. There is no testimony or evidence to the effect that consumers in the United States would utilize this foreign entity company. The registration that displays the mark in this website, Registration No. 4065113, is for, inter alia, syringes. (30 TTABVUE 92). This registration is based on a registration issued by the European Trademark Office pursuant to Section 44 of the Trademark Act. Because this third-party registrant filed a Section 8 declaration of continued use, the registration is equivalent to a registration based on use. However, consumers are not going to mistakenly believe that syringes emanate from or are associated with goods and services in the field of cancer protection, prevention, detection and treatment.

The excerpt of the third-party use of the letter “M” at slideshare.net (29 TTABVUE 162) is a company that specializes in pulmonary, allergy and sleep medicine. The registration that displays the mark in this website, Registration No. 3381820, shown below, is for “medical services.” (30 TTABVUE 99).



With respect to this example, although the third-party website is not relevant, the registration is probative.

The excerpt of the third-party use of the letter “M” at mestra.es/en (29 TTABVUE 193) is from a company that manufactures dental laboratory machines and appliances. Moreover its registered mark is MESTRA and the letter “M” and design, not the letter “M,” a standalone mark. See Registration No. 4021195 (30 TTABVUE 124).

The excerpt of the third-party use of the letter “M” at opticalus.com (29 TTABVUE 183) is from a company specializing in eye testing machines and apparatus. The registration that displays the mark in the website, Registration No. 3332791, shown below, for, inter alia, apparatus for clinical diagnosis (30 TTABVUE 105).



With respect to this example, although the third-party website is not relevant, the registration is probative because apparatus for clinical diagnosis is broad enough to include apparatus for the detection and treatment of cancer.

The excerpt of the third-party use of the letter “M” at ryortho.com is a press release about a company in the field of implants. (29 TTABVUE 188). The registration that displays the mark in this website, Registration No. 3503147, is for the mark METASURG and a stylized letter “M” for “surgical instruments and surgical implants comprising artificial material for bone surgical procedures.” (30 TTABVUE 111). In addition to the goods being distinguishable from Opposer’s services, the addition of the name “Metasurg” serves to distinguish this mark from Opposer’s marks.

LLC, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009) (the third-party registrations are of limited probative value because the goods identified in the registrations appear to be in fields which are far removed from the goods at issue). However, the relevant third-party websites and registrations reproduced below show us that third-parties use letter logos which are associated with their trade names.

- Melanoma Exposed

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Registration No. 4491582 for the mark shown below for “printed matter, namely, magazines, booklets, brochures, pamphlets, newsletters and catalogs in the field of melanoma.”⁵⁵



⁵⁴ 29 TTABVUE 102.

⁵⁵ 20 TTABVUE 33.

- Microchem Laboratory LLC

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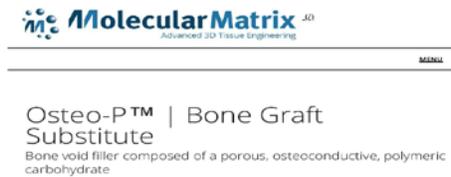


Registration No. 5108644 for the mark shown below for laboratory testing and analysis services for, inter alia, medical purposes.⁵⁷



- Molecular Matrix, Inc.

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Registration No. 4849584 for the mark shown below for “medical and scientific apparatus, namely, devices for growing cells in three dimensions.”⁵⁹



⁵⁶ 29 TTABVUE 109.

⁵⁷ 30 TTABVUE 46.

⁵⁸ 29 TTABVUE 118.

⁵⁹ 30 TTABVUE 58.

- Owen Mumford Limited

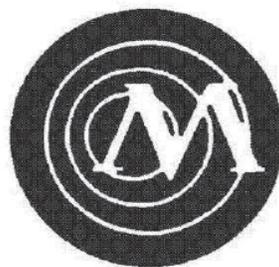


Owen Mumford Products

Owen Mumford is a manufacturer that specializes in making medical devices for both consumers and healthcare professionals. They design products that are easy to use and allow for maximum comfort while being used.

ADW Diabetes offers the complete product spectrum from Owen Mumford. We carry their full line of lancets, pen needles, safety lancets, and injection aids.

Registration No. 3516505 for the mark shown below for, inter alia, blood sampling apparatus and medical injection instruments with needles; apparatus for testing and analyzing blood samples; medical diagnostic instruments and apparatus, namely, cartridges for syringes, drug delivery pens, cartridges, cylinders, plungers, barrels, pistons, cartridges, stoppers, needles, nozzles, injectors, valves, dosing pumps, needle tip caps and plugs, all for syringes and drug delivery pens.⁶¹



⁶⁰ 29 TTABVUE 145; *see also* 29 TTABVUE 143.

⁶¹ 30 TTABVUE 85. This registration is based on a European registration pursuant to Section 44 of the Trademark Act. However, because the registration has been renewed, it is equivalent to a registration based on use in commerce.

In sum, we have four, relevant third-party websites and six, relevant third-party registrations. The conclusion that we draw from Applicant's evidence of third-party use and registration is that companies create use logos incorporating the first letter of their trade name. Presumably, consumers encountering logos incorporating the first letter of an entity's trade name are likely to associate the logos with the trade names and, that without evidence that consumers identify the letter logos as standalone marks, such marks should not be entitled to a broad scope of protection.

However, with respect to the likelihood of confusion analysis between the parties' stylized letter "M" and design marks as standalone marks, the issue of likelihood of confusion insofar as the registrability of Applicant's mark is concerned is determined based on Applicant's mark sought to be registered and the mark in Opposer's pleaded registration, both which are limited to the letter "M" and a design and do not include their trade names. *See Fort James Operating Co. v. Royal Paper Converting Inc.*, 83 USPQ2d 1624, 1629 (TTAB 2007); *In re Big Pig Inc.*, 81 USPQ2d 1436, 1439 (TTAB 2006); *Miller Brewing Co. v. Premier Beverages, Inc.*, 210 USPQ 43, 47 (TTAB 1981); *compare with Hewlett-Packard Co. v. Human Performance Measurement Inc.*, 23 USPQ2d 1390 (TTAB 1991) ("the letters "HPM" in applicant's mark and the letters "HP" in opposer's marks are not arbitrary; rather, they obviously serve as acronyms for the distinguishing portions of the parties' respective trade names, namely, Human Performance Measurement and Hewlett-Packard.").

Considering the record as a whole, including evidence pertaining to both conceptual or inherent, commercial strength, and third-party use and registration,

we find that Opposer's mark is appropriately placed in the middle of the "spectrum from very strong to very weak." *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)).

D. The similarity or dissimilarity of the marks.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *du Pont*, 177 USPQ at 567. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014); *see also Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted). In comparing the marks, we are mindful that "[t]he 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); *see also Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012).

1. MOFFITT CANCER CENTER “M” and design mark.

The parties’ marks are set forth below:

Opposer’s Mark

Applicant’s Mark



While we must consider the marks in their entireties, it is appropriate to accord greater importance to the more distinctive or prominent portions of a mark. *See In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Here, Opposer’s trade name “MOFFITT CANCER CENTER” is the most distinctive and prominent portion of Opposer’s mark because it is that portion of the mark that consumers will remember and use to request Opposer’s goods and services. It stretches credulity to presume that consumers will refer to Opposer’s goods and services as the “M” logo brand cancer related goods and services.

Opposer’s use of the stylized letter “M” in its composite mark draws attention to Opposer’s MOFFITT CANCER CENTER trade name because, as noted above, it is not unusual for entities to adopt and use logos comprising the first letter of their trade names. Thus, the stylized letter “M” in Opposer’s mark  means “Moffitt Cancer Center” and engenders a commercial impression associated with that name. On the other hand, Applicant’s standalone, letter “M” and design mark is merely the letter “M.” *See In re TSI Brands Inc.*, 67 USPQ2d 1657, 1661-62 (TTAB 2002)

(applicant's mark **AK** is not similar to registrant's marks  and  all for clothing).

We find that Applicant's standalone, letter "M" and design mark  is not similar to Opposer's MOFFITT CANCER CENTER and letter "M" and design mark  in terms of appearance, sound, meaning or commercial impression.

2. Stylized letter "M" and design mark.

The parties' marks are set forth below:

Opposer's Mark



Applicant's Mark



The marks are similar because they are both the letter "M" within a background border or design. Although both marks are clearly recognizable as the letter "M," the differences in the way the marks are displayed distinguishes the marks. In reaching this finding of fact, we note that "[t]he nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in the context in which they occur." *In re Electrolyte Labs. Inc.*, 929 F.2d 645, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Georgia-Pacific Corp. v. Great Plains Bag Co.*, 614 F.2d 757, 204 USPQ 697, 699 (CCPA 1980) (even if the letter portion of a design mark can be verbalized, "[t]he verbalization of the mark must be considered within the environs of the marketplace.")). In other words, the appearance of the marks may serve to

distinguish the marks. See *Electrolyte Labs.*, 204 USPQ at 1240 ( is not similar to **K⁺EFF**). What is important is not whether people will confuse the marks, but whether the marks will be likely to confuse people into believing that the goods or services they are purchasing emanate from the same source. *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992) (citing *Paula Payne Prods. Co. v. Johnson Publishing Co.* , 473 F.2d 901,177 USPQ 76, 77 (CCPA 1973); *Columbian Steel Tank Co. v. Union Tank & Supply Co.*, 277 F.2d 192, 125 USPQ 406, 409 (CCPA 1960)).

Given the conditions under which or the degree of care consumers will naturally exercise in selecting goods and services in the field of health care, cancer protection, prevention, detection and treatment, we find that that parties' marks are not similar. See *in re Essenlix Corp.*, ___ USPQ2d ___ (TTAB 2018) (“purchasers of medical products and services exercise a heightened degree of care because of the specific purpose of the products and services, the medical nature of the products and services, and the duty of care the purchasers have selecting and using the products and services.”); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039 (TTAB 2016) (“on balance, given the nature of the services and the high cost associated therewith [providing assisted living facilities], the conditions of sale favor a finding of no likelihood of confusion.”).

E. The nature and extent of any actual confusion.

Opposer claims that it has used its stylized letter “M” marks in commerce since at

least as early as 1986.⁶² Applicant has used its stylized letter “M” mark in commerce in connection with its downloadable software since May 2015,⁶³ and in connection with its mobile application since March, 2016.⁶⁴ Applicant’s goods and services are available to anyone with internet access.⁶⁵ Applicant argues that despite over three years of concurrent use of the marks, Opposer admits that it is unaware of any reported instance of actual confusion.⁶⁶

The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by Applicant of its mark for a significant period of time in the same markets as those served by Opposer under its mark. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff’d*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). In other words, for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred. *Barbara’s Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred); *Red Carpet Corp. v. Johnstown Am. Enters. Inc.*, 7 USPQ2d 1404, 1406-1407 (TTAB

⁶² Adkins Testimony Decl. ¶20 (23 TABVUE 6).

⁶³ Wolf Decl. ¶7 (31 TTABVUE 3).

⁶⁴ *Id.* at ¶9 (31 TTABVUE 3).

⁶⁵ *Id.* at ¶11 (31 TTABVUE 3).

⁶⁶ Opposer’s response to Applicant’s requests for admission Nos. 7 and 15 (28 TTABVUE 11 and 13). Applicant also is unaware of any instances of confusion. Wolf Decl. ¶22 (31 TTABVUE 5).

1988); *Central Soya Co., Inc. v. N. Am. Plant Breeders*, 212 USPQ 37, 48 (TTAB 1981) (“the absence of actual confusion over a reasonable period of time might well suggest that the likelihood of confusion is only a remote possibility with little probability of occurring.”).

While Applicant and Opposer have been using their marks simultaneously for three years, Applicant did not introduce any testimony or evidence regarding the advertising and marketing for its downloadable software and mobile application other than they may be obtained from Applicant’s website and its mobile application may be downloaded from the iTunes Store or Google.⁶⁷ Also, Applicant did not introduce any testimony or evidence regarding how many software units or mobile applications consumers have downloaded or how many people have visited its website. In essence, there is no testimony or evidence regarding the extent of Applicant’s use such that the record is not so complete as to allow us to determine whether there has been a reasonable opportunity for confusion to have occurred.

The nature and extent of any actual confusion is a neutral *du Pont* factor.

F. Balancing the factors.

Despite the fact that the some of the same consumers may encounter the marks of the parties, because the marks are not similar and the goods and services are not related, we find that Applicant’s mark  for a downloadable mobile application and software for providing information regarding the cost of a patient’s prescription medication taking into account that patient’s insurance coverage is not likely to cause

⁶⁷ Wolf Decl. ¶¶20 and 21 (31 TTABVUE 5).

confusion with Opposer's registered mark  for goods and services in the field of "health care, cancer protection, prevention, detection and treatment, medical diagnostics and prognostics and the evaluation and testing of drug and treatment effectiveness relating to cancer and other diseases" or Opposer's mark  for goods and services in the field of cancer protection, prevention, detection and treatment.

Decision: The opposition is dismissed.