

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

Mailed: May 15, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Herve Brin*  
*v.*  
*PSBC Limited*  
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Opposition No. 91267498  
—

B. Craig Killough of Kim, Lahey and Killough, for Herve Brin.

Michael J. Leonard, Barbara J. Grahn and Christopher D. Olszyk, Jr.,  
of Fox Rothschild LLP, for PSBC Limited.

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Before Cataldo, Greenbaum and Larkin,  
Administrative Trademark Judges.


Opinion by Greenbaum, Administrative Trademark Judge:

PSBC Limited (“Applicant”) seeks registration on the Principal Register of the  
mark POUPETTE ST BARTH (in standard characters, ST BARTH disclaimed) for

Perfumery; perfumes; eaux de toilette; perfume bases, namely, essential oils and flower extracts; essential oils; cosmetics; lotions for cosmetic use; fluid creams, namely, cosmetics; tissues impregnated with cosmetic lotions; cosmetic soaps; cosmetic preparations for skin care; cosmetic skin lotions; cosmetic skin creams; beauty masks; sun care lotions and creams; cosmetic preparations for promoting skin tanning self-tanning cosmetic preparations; hand lotions; cosmetic hand creams; nail polish; false nails; nail-polish removing products, namely,

nail-polish removers; lip care products, namely, lip stains for cosmetic purposes; lipstick; cosmetic lip pencils; eye care products, namely, eye make-up; mascaras; eye shadows; eye pencils; eyebrow pencils; false eyelashes; cosmetic hair care creams; shampoos; hair-conditioning preparations; hair conditioners; hair lotions; hair styling creams and gels; hair sprays; make-up; make-up removing preparations; make-up powders; blushers; cosmetic blusher pencils; adhesives and decorative transfers for cosmetic use; temporary tattoo transfers for the body and nails for cosmetic use; nonmedicated toiletry preparations; toilet soaps; shower gels not for medical use; bath gels not for medical use; bath oils not for medical use; foaming bath products, namely, bath foams; bath beads; cleansing milk for toilet purposes; potpourris; incense; cosmetic hand and nail care preparations; bath salts not for medical use, in International Class 3.<sup>1</sup>

Herve Brin (“Opposer”) opposes registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), asserting priority and a likelihood of confusion with the marks ST BARTH (in standard characters) and LSB LIGNE ST

BARTH and design (LIGNE disclaimed), displayed as  both registered on the Principal Register for:

Perfumery products, namely, perfumes, eau de cologne, perfumed water, toilet water, body splash, eau de parfum and room fragrances; hair care preparations, namely, shampoos, conditioners, gels, sprays; cosmetics, namely, foaming facial cleanser, facial cleanser preparations, skin

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<sup>1</sup> Application Serial No. 79274962 was filed on November 7, 2019 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), seeking an extension of protection to the United States of International Reg. No. 1505545, issued on the same date, with a claimed priority date of May 7, 2019. The application includes the following translation statement: “The English translation of ‘POUPETTE’ in the mark is ‘little puppet.’” The application also identifies other goods in International Classes 9, 14, 18, 24 and 25 that are not involved in this proceeding.

toner, moisturizing skin lotions, moisturizing skin cream, soothing beauty facial mask, moisture skin mask, clarifying skin mask, facial peeling cream, eye mask, eye cream, night cream, perfumed cream, anti-aging cream, skin care preparations, creams, gels, milks, body oils, serums, powders and astringent and soothing lotions for the face, body and hands; cosmetics preparations for slimming, namely, creams gels and oils for cellulite reduction; cosmetics preparations for body relaxation, namely, massage oils, lotions, creams and gels for massages; after shave preparations, moisturizing sprays; bath products, namely, skin soaps, shaving soap, bar soaps, bath foam, bath and shower gel, fragrant bath soap, body exfoliating cream, bath beads, bath herbal extracts and bath oil; non-medicated salts for the bath and the shower; sun tanning cosmetics, namely, self-tanning milk, pre-sunning milk, sun screen cream, sun screen lotion, sun block lotion, sun tanning lotions, sun tanning oils, after-sun moisturizer, anti-wrinkle sun creams, after sun products, namely, after sun lotions, gels and oils, sun block cream powder blush, essential oils for personal use, in International Class 3;<sup>2</sup>

In its Answer, Applicant denies the salient allegations of Opposer's Notice of Opposition.<sup>3</sup>

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<sup>2</sup> Reg. No. 2837742 (ST BARTH) issued on May 4, 2004 and has been maintained.

Reg. No. 2868347 (LSB LIGNE ST BARTH and design) issued on August 3, 2004 and has been maintained. The registration includes the following description of the mark: "The mark consists, in part, of the letters 'LSB.'" Color is not claimed as a feature of the mark.

The above-listed goods are recited in Reg. No. 2737742. The registrations identify virtually identical goods, with minor differences that do not affect our decision.

<sup>3</sup> Applicant's "affirmative defenses" either amplify Applicant's denials, or were not pursued at trial and therefore are waived. *See Alcatraz Media v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 n.6 (TTAB 2013), *aff'd mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014).

I. Evidentiary Issue

In its brief, Applicant seeks to strike the Testimony Declarations of Herve Brin, Corinne Gabory and Christine Greaux (the “Declarations”) “for failure to comply with 28 U.S.C. § 1746 and 37 C.F.R. § 2.20.” App. Br., 19 TTABVUE 14.

The Declarations, which were signed and dated, were attested to as follows:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that all statements made of his [or her] own knowledge are true and that all statements made on information and belief are believed to be true.

Trademark Rule 2.123(a)(1) provides that a party may submit testimony in the form of an affidavit or a declaration pursuant to Trademark Rule 2.20. Trademark Rule 2.20 in turn provides that a declaration may use language referencing 18 U.S.C. § 1001. Also, 35 U.S.C. § 25 authorizes the USPTO to accept a declaration under Trademark Rule 2.20 or the language of 28 U.S.C. § 1746. *See M/S R.M. Dhariwal (HUF) 100% EOU v. Zarda King Ltd.*, 2019 USPQ2d 149090, at \*6 (TTAB 2019) (Board granted motion to strike original and substitute testimony declarations of foreign witness made under 28 U.S.C. § 1746 because they did not refer to U.S. laws as to penalty of perjury). In either case, declarants will be subject to United States perjury laws if they make willful or knowing false statements. *Id.* Here, the operative language makes it clear that the declarants made their statements under the risk of criminal liability under 18 U.S.C. § 1001.

As Applicant points out, the Declarations’ attestations omit the clause “and that such willful false statements and the like may jeopardize the validity of the

application or submission or any registration resulting therefrom.” App. Br., 19 TTABVUE 15. However, the omitted language involves false statements in declarations that generally are submitted in support of applications and their maintenance, and is not required here.

The Declarations are acceptable because they comply in all material respects with Trademark Rule 2.20. Accordingly, the motion to strike is denied.<sup>4</sup>

## II. Record

The record consists of the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant’s involved application file. The record also includes:

- Opposer’s Corrected Notice of Reliance on screenshots from the website of Opposer’s distributor, Beauty Frontier, and Applicant’s responses to certain of Opposer’s discovery requests, 21 TTABVUE; and
- Opposer’s Corrected Testimony Declarations, 22 TTABVUE, of
  - Dr. Peter Bell, a U.S. customer of Opposer (“Bell Test. Decl.”), 22 TTABVUE 2-3;
  - Opposer Herve Brin, owner of Ligne St. Barth, S.A.S., “a company that manufactures and sells ST BARTH brand personal care products under [his] supervision,” with exhibits, including printouts of TESS pages showing the current status and title of the registrations in Opposer’s name (“Brin Test. Decl.”), 22 TTABVUE 4-9, at 4, ¶¶ 1-2; TESS printouts located at 11 TTABVUE 17-21;
  - Corinne Gabory and Christine Greaux, employees of Ligne St. Barth, S.A.S. (“Gabory Test. Decl.” and “Greaux Test. Decl.”), 22 TTABVUE 10-13; and
  - Paula Vazquez, a member and manager of Beauty Frontier, with exhibits (“Vazquez Test. Decl.”). 22 TTABVUE 14-16.

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<sup>4</sup> Opposer’s motion for leave to file substitute declarations, 24 TTABVUE, filed along with Opposer’s Rebuttal Brief, 23 TTABVUE, is therefore moot.

- Applicant’s Notices of Reliance on certain of Opposer’s Answers to Applicant’s Interrogatories (First and Second Set); TSDR printouts of third-party registrations of marks incorporating the term ST. BARTH/ST BARTH or SAINT BARTH/SAINT-BARTH, and of marks comprising a mark plus a geographic term for lifestyle/luxury brands; and Internet printouts from third-party websites displaying ST BARTH or ST BARTS in association with perfumery, cosmetics or personal care products. 14 TTABVUE.
- Applicant’s Testimony Affidavit of Monique Giraud, Applicant’s predecessor and “founder of the fashion line POUPETTE ST BARTH” (“Giraud Aff.”). 13 TTABVUE 2-4, at ¶¶ 1-2, 9.
- Applicant’s Testimony Affidavit of Sebastien Coste, Director of Applicant, with exhibits (“Coste Aff.”). 13 TTABVUE 5-9.
- Opposer’s Rebuttal Notice of Reliance on a TESS printout of ST BARTH-inclusive trademarks in Class 3, and on the Rebuttal Testimony Declaration of Herve Brin (“Brin Rebuttal Test. Decl.”). 17 TTABVUE.<sup>5</sup>

Both parties filed Briefs, and Opposer filed a Rebuttal Brief, as noted above.

### III. Statutory Entitlement to Oppose and Priority

Entitlement to a statutory cause of action, formerly referred to as “standing” by the Federal Circuit and the Board, must be established by the plaintiff in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*7 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021); *Australian Therapeutic*

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<sup>5</sup> Opposer’s Rebuttal Notice of Reliance refers to USPTO “official records” of an opposition proceeding and a cancellation proceeding, 16 TTABVUE 3, but Opposer did not submit them. While such materials may be submitted under Notice of Reliance, *see Osage Oil & Transp., Inc. v. Standard Oil Co.*, 226 USPQ 905, 906 n.5 (TTAB 1985) (copy of cancellation proceeding file may be submitted under notice of reliance), they are not the type of materials of which the Board takes judicial notice. *Cf. Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co., Inc.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (per Fed. R. Evid. 201(b) and 201(c), providing case captions including case names and docket numbers of trademark infringement actions “was likely sufficient” for the Board to take judicial notice that a party had filed various infringement actions, but not sufficient to take judicial notice of the contents of the complaints, that the cases related to the mark at issue in the Board proceeding, or that others were actively infringing the party’s asserted mark).

*Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at \*3 (Fed. Cir. 2020), *cert. denied*, 142 S. Ct. 82 (2021) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26, 109 USPQ2d 2061, 2067 n.4 (2014)); *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014). A party in the position of plaintiff may oppose registration of a mark where such opposition is within the zone of interests protected by the statute, 15 U.S.C. § 1063, and the party has a reasonable belief in damage that is proximately caused by registration of the mark. *Corcamore*, 2020 USPQ2d 11277, at \*6-7.

Opposer's entitlement to oppose registration of Applicant's mark is established by Opposer's pleaded, valid and subsisting registrations, which Opposer has entered into the record as Exhibits A and B to the Notice of Opposition. 1 TTABVUE 9-12. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (party's ownership of pleaded registration establishes standing).<sup>6</sup>

Because Opposer's pleaded registrations are of record and Applicant has not filed a counterclaim to cancel them, priority is not at issue as to the mark and goods covered by the registrations. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Moreover, Applicant, in its Brief, "does not contest" Opposer's entitlement or priority. 19 TTABVUE 14.

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<sup>6</sup> Mr. Brin also testified to the current status and title of the pleaded registrations, Brin Test. Decl., 22 TTABVUE 4, ¶ 1, which were submitted as Exhibits 1-2. *Id.* at 17-21.

#### IV. Likelihood of Confusion

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at \*2 (Fed. Cir. 2023) (cleaned up). The determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*DuPont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks*, 128 USPQ2d at 1689. We must consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Charger Ventures*, 2023 USPQ2d 451, at \*4 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not relevant to the analysis.”). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d



994, 2020 USPQ2d 10341, at \*3 (Fed. Cir. 2020) (citing *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). However, 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) (“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.”); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 65 USPQ2d 1375, 1380 (Fed. Cir. 2022) (“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.”) (citation omitted). These factors and others for which there are argument and evidence are discussed below.

For purposes of our likelihood of confusion analysis, we focus on the most relevant pleaded registration, Reg. No. 2837742, for the standard character mark ST BARTH for various perfumery, cosmetics, and other personal care products, “which of the pleaded registrations has the most points in common with Applicant’s [POUPETTE ST BARTH] mark . . . .” *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at \*12 (TTAB 2023). If we find a likelihood of confusion as to this mark, we need not find it as to the composite word and design mark in the other pleaded registration, which identifies virtually identical goods. On the other hand, if we do not find a likelihood

of confusion as to this mark, we would not find it as to the composite word and design mark either, because it includes additional visual elements and is limited to a particular depiction. *See, e.g., Fiserv, Inc. v. Elect. Transaction Sys. Corp.*, 113 USPQ 1913, 1917 (TTAB 2015); *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

A. Similarity or Dissimilarity of the Goods and Channels of Trade

Under these *DuPont* factors, we base our evaluation on the goods as they are identified in the application and registration. *See Octocom Sys. Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the classes of purchasers to which sales of the goods are directed.”); *see also Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (Board must “give full sweep” to an identification of goods or services regardless of registrant’s actual business).

The goods identified in both Opposer’s registration and the involved application include many identical or legally identical perfumery, cosmetics and other personal care products, e.g., perfumes, eaux de toilette/toilet water, shampoos, hair conditioners, sprays and gels, bath gels and oils, beauty masks, hand lotions, and various products for tanning and self-tanning. It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the

identification of goods within a particular class in the application. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

Further, where, as here, the goods are in-part identical or legally identical, and there are no restrictions or limitations as to the channels of trade or classes of purchasers in either the application or Opposer's registration, we must presume that Applicant's and Opposer's identified goods will be sold in the same channels of trade and will be bought by the same classes of purchasers. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (absent restrictions in an application or registration, the identified goods, if identical, are "presumed to travel in the same channels of trade to the same class of purchasers.") (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1001 (Fed. Cir. 2002)); *see also Stone Lion*, 110 USPQ2d at 1161.

Applicant does not dispute the in-part identity/legal identity of the goods, or that they are presumed to move through the same channels of trade.

These *DuPont* factors strongly favor a finding of likelihood of confusion

#### B. Conditions Under Which and Buyers to Whom Sales are Made

Next, we consider the conditions under which the goods 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, i.e., the fourth *DuPont* factor. “Purchaser sophistication may tend to minimize likelihood of confusion. Conversely, impulse purchasers of inexpensive items may tend to have the opposite effect.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691, 1695 (Fed. Cir. 2005).

Applicant argues that this *DuPont* factor weighs against a likelihood of confusion because the goods of both parties “are expensive, premium, and characterized as high-end or luxury[,]” and they “are designed for the high-end customer who expends significant attention, time, and expense in deciding to purchase the goods.” App. Br., 19 TTABVUE 23, 24. Applicant has not introduced any testimony or evidence to support these arguments as to any of the identified Class 3 goods. Indeed, all of Applicant’s testimony about the fourth *DuPont* factor concerns Applicant’s actual use of its mark on clothing “and other goods,” which are sold in high-end boutiques and luxury retailers, and Applicant’s “intention” to use the mark on cosmetics.<sup>7</sup> Girard Aff., 14 TTABVUE 3-4, ¶ 4. The contentions about Applicant’s future use on cosmetics are purely speculative.

Applicant’s arguments also are irrelevant. In considering the scope of the involved goods, we are bound by the goods as they are identified in the application and

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<sup>7</sup> Similarly, Mr. Coste testified that “products” bearing the POUPETTE ST BARTH mark are now found in high-end retailers in the U.S., such as Saks Fifth Avenue, Nordstrom, and Bloomingdales, as well as in eponymous boutiques “located in the major fashion districts around the world,” including in Miami and New York, and “it is Applicant’s intention to expand the use of the POUPETTE ST BARTH trademark to cover goods, such as sunglasses, jewelry, bags, linen and cosmetics, that are related to and/or overlapping of the long-time use of the POUPETTE ST BARTH trademark in connection with clothing.” Coste Aff., 13 TTABVUE 7, ¶¶ 11-13.

registration, neither of which limits the goods to a particular price point or characterization as “high-end or luxury.” *E.g.*, *Stone Lion*, 110 USPQ2d at 1162 (“It was proper, however, for the Board to focus on the application and registrations rather than on real-world conditions....”). Absent such limitations, we must presume that the goods include relatively inexpensive perfumery, cosmetics and other personal care products that ordinary consumers use regularly and frequently replace. *See Kimberly-Clark Corp. v. H. Douglas Enters., Ltd.*, 774 F.2d 1144, 227 USPQ 541, 542 (Fed. Cir. 1985) (purchasers of “relatively inexpensive and frequently replaceable ... products have long been held to a lesser standard of purchasing care”).

The fourth *DuPont* factor also favors a finding of likelihood of confusion.

#### C. Strength or Weakness of Opposer’s Mark

Before we evaluate the similarity or dissimilarity of the parties’ marks, we consider the strength or weakness of Opposer’s ST BARTH mark under the fifth and sixth *DuPont* factors, as that may affect the scope of protection to which Opposer’s mark is entitled. The fifth *DuPont* factor enables Opposer to expand the scope of protection afforded his pleaded mark by adducing evidence of “[t]he fame of the prior mark (sales, advertising, length of use),” while the sixth *DuPont* factor allows Applicant to contract that scope of protection by adducing evidence of “[t]he number and nature of similar marks in use on similar goods.” *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*17 (TTAB 2022) (quoting *DuPont*, 177 USPQ at 567).

In determining the strength of a mark, we consider both its conceptual strength, based on the nature of the mark itself, and, if there is probative evidence in the record, its commercial strength, based on marketplace recognition of the mark. *New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at \*10 (TTAB 2020); *see also In re Chippendales USA Inc.*, 662 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (“A mark’s strength is measured both by its conceptual strength ... and its marketplace strength ....”). “[T]he strength of a mark is not a binary factor, but varies along a 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)).

Because Opposer’s mark is registered on the Principal Register without a showing of acquired distinctiveness, it is presumptively valid and inherently distinctive for the identified goods. Trademark Act Section 7(b), 15 U.S.C. § 1057(b). *See also Tea Bd. of India v. The Republic of Tea, Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). Nonetheless, we may consider the conceptual weakness of a registered mark in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016).

1. Conceptual strength

As to the conceptual strength of Opposer’s mark, “we evaluate [the mark’s] intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words.” *In re Davia*, 110 USPQ2d 1810, 1815 (TTAB 2014). “Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source

identification, than their more fanciful counterparts.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). Conversely, word marks that are arbitrary, fanciful, or suggestive are “held to be inherently distinctive.” *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000).

Both Opposer and Applicant’s predecessor reside on the island of Saint Barthelemy. Brin Test. Decl., 22 TTABVUE 4, ¶ 2; Giraud Aff., 13 TTABVUE 2, ¶ 1. Mr. Brin testified that “St. Barthelemy is a small remote Caribbean island having fewer than 10,000 residents according to estimates, and is less than 10 square miles in land area. There is no direct commercial airline service to St. Barthelemy from the United States.” Brin Rebuttal Test. Decl., 17 TTABVUE 2, ¶ 4. Ms. Giraud testified that “St. Barthelemy is commonly known in French as St Barth.” Giraud Aff., 13 TTABVUE 2, ¶ 1. She also testified that “[w]hile the island of St. Barth may only have approximately 10,000 residents, it is a popular destination for wealthy tourists from Europe, the United States and elsewhere and is well-known as an exclusive location frequented by an elite clientele.” *Id.*, at 13 TTABVUE 3, ¶ 6.

Applicant argues that ST BARTH is weak because “the wording is clearly a geographic reference to the Caribbean Island of Saint Barthelemy.”<sup>8</sup> App. Br., 19 TTABVUE 27. But we must consider whether ST BARTH has any descriptive

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<sup>8</sup> Applicant's argument that Opposer’s mark as a whole is geographically descriptive is an impermissible collateral attack absent a counterclaim, and has only been considered in the context of our analysis of the mark’s general conceptual weakness. See *Fort James Operating Co. v. Royal Paper Converting Inc.*, 83 USPQ2d 1624, 1626 n.1 (TTAB 2007).

significance as applied to the goods in connection with which it may be used and registered, not in a vacuum. *See Palm Bay Imps.*, 73 USPQ2d at 1692 (“VEUVE is an arbitrary term as applied to champagne and sparkling wine, and thus conceptually strong as a trademark.”). Here, even if we assume, arguendo, that ST BARTH refers to the island of Saint Barthelemy, there is no evidence the term is anything other than arbitrary for the identified perfumery, cosmetics and other personal care products.<sup>9</sup> Consequently, Opposer’s ST BARTH mark is a conceptually strong mark for the identified goods. *Id.*; *see also Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004) (defining an arbitrary mark as a “known word used in an unexpected or uncommon way” and observing that such marks typically are strong).<sup>10</sup>

## 2. Commercial Strength

Opposer asserts that his mark has “a very high level of fame among consumers of high-end personal care products,” and the mark is therefore entitled to a broad scope of protection. Opp. Br., 18 TTABVUE 24. In support, Opposer testified to use of the mark on or in association with “personal care products” in the U.S. through various distributors and warehouse companies since 1989 (Brin Test. Decl., 22 TTABVUE 5, ¶ 6), and through an online shop that has been available to U.S. consumers “for 20

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<sup>9</sup> To the contrary, Mr. Brin testified that “St. Barthelemy is not known for perfumes, cosmetics or other personal care products. In fact, my company, Ligne St Barth, S.A.S. is the only manufacturer of goods for export of any type that is located on St. Barthelemy.” Brin Rebuttal Test. Decl., 17 TTABVUE 3, ¶ 5.

<sup>10</sup> We address Applicant’s arguments about the effect of Applicant’s disclaimer of ST BARTH below, in the section about the similarity of the marks. *See* App. Br., 19 TTABVUE 11, 19-21, 27.



years” (*id.*, 22 TTABVUE 5, ¶ 8); marketing catalogs that are “expensive to produce” and involve “internationally renowned models and photographers,” (*id.*, 22 TTABVUE 6, ¶ 10); a “marketing budget [that] is about fifteen (15%) of our sales revenue,” (*id.*, 22 TTABVUE 6, ¶ 11); “substantial sums” spent to train Opposer’s “distributors and retailer so that they are knowledgeable sellers who are very familiar with our products and the quality and benefits of our products as compared to competing products,” (*id.*, 22 TTABVUE 6, ¶ 12); and favorable coverage over approximately the last ten years in magazines such Vanity Fair (2012), Glamour (2016) and Forbes Luxury Travel (2021) (*id.*, 22 TTABVUE 6, ¶ 13). He also testified that

Celebrities such as Jack Nicholson, Melanie Griffith and Claudia Schiffer have purchased ST BARTH’s products. Influencer Lindsay Silberman has promoted ST BARTH personal care products. Steven Spielberg caused 600 sets of ST BARTH products to be ordered for use by participants during the filming of the movie TITANIC. This type of publicity has contributed to the consumer association of ST BARTH with premium personal care products. *Id.*, 22 TTABVUE 6, ¶ 13.

In addition, one of Opposer’s U.S. customers testified to his use of “ST BARTH personal care products” since before 2017, his purchase of several ST BARTH products in the U.S., and his recognition of the brand:

I prefer to use ST BARTH personal care products over other brands due to the high quality of ST BARTH products. If I saw other personal care products labeled in whole or in part as ST BARTH, I would wonder if there is a relationship between those products and the products of Ligne St. Barth.”

Bell Test. Decl., 22 TTABVUE 2, ¶¶ 2-4.

Commercial strength or fame of a mark for likelihood of confusion purposes “may be measured indirectly by the volume of sales and advertising expenditures in connection with the [goods or services] sold under the mark, and other factors such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the [goods and services] identified by the mark []; and the general reputation of the [goods and services].” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017); *see also Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305-06 (Fed. Cir. 2002). Raw numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be necessary, for example, market share or sales or advertising figures for comparable types of goods and services. *Bose*, 63 USPQ2d at 1309.

There are deficiencies in Opposer’s evidence that preclude us from finding ST BARTH commercially strong for the identified goods. For example, Opposer claims use of the mark in the U.S. since 1989, but his testimony about the sales and marketing figures for ST BARTH “personal care products” is extremely vague, with no reference to actual advertising or sales figures, or any contextual information such as Opposer’s market share.<sup>11</sup> *Cf. Bose*, 63 USPQ2d at 1309. Further, the purported

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<sup>11</sup> For example, Opposer testified that “ST BARTH personal care products are premium products that sell at a higher end of the price scale for personal products. ST BARTH personal care products are found in high end hotels, spas and perfumeries. However, our products are consumer products that are useful to the general public.” Brin Test. Decl., 22 TTABVUE 5, ¶ 9. But Opposer provided no pricing information about his products or the products of his competitors.

The testimony from Opposer’s U.S. distributor is equally vague: “ST BARTH personal care products are premium products priced at the upper end of the scale of personal care products. These products have a reputation of high quality, and are unique in their use of particular natural ingredients.” Vazquez Test. Decl., 22 TTABVUE 15, ¶ 4. “We sell ST BARTH

publicity attributed to Opposer from publications “featuring ST BARTH products,” “Influencer Lindsay Silberman,” and the purchase of “600 sets of ST BARTH products” when the movie TITANIC was filmed, as set forth in paragraph 13 of Mr. Brin’s testimony above, is unsubstantiated and/or outdated. For example, the movie TITANIC was released more than 25 years ago; there is no information about the extent of Ms. Silberman’s following, or how and when she “has promoted ST BARTH personal care products;” and only the Forbes Luxury Travel magazine issued within the last five years. Also, there is no information about the distribution of Opposer’s catalog, or whether any sales resulted from distribution of that (or previous) catalog(s).

Overall, this testimony and evidence do little to establish the commercial strength of Opposer’s mark. Accordingly, we find Opposer’s mark is of average commercial strength.

### 3. Third-party ST BARTH and ST BARTH-formative Marks

Applicant argues that Opposer’s mark is entitled to a limited scope of protection because it “consist[s] of or incorporate[s] a weak (non-famous) geographic term, already coexisting with Applicant and numerous third-party registrants and users of marks/names consisting of or incorporating the term ST BARTH for related goods, without a single instance of actual confusion made of record by Opposer.” App. Br., 19 TTABVUE 18. As support, Applicant submitted six third-party registrations for

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products as a wholesaler to high end spas, lifestyle shops, home shops and specialty shops in the United States. We have averaged about 80 active customer accounts in the United States over the last 5 years.” *Id.*, at ¶ 5.

ST BARTH or SAINT BARTH-inclusive marks identifying retail clothing stores in Class 35, bags in Class 18, towels and textile products in Class 24, and various clothing in Class 25. 14 TTABVUE 47-69. Applicant also submitted five third-party websites showing use of ST BARTH or ST BARTS in connection with perfume, nail polish, makeup, scalp and body scrub, and a moisturizer.<sup>12</sup> 14 TTABVUE 84-102, 115-144.

a. Third-party Registrations

Third-party registrations “may bear on conceptual weakness if a term is commonly registered for similar goods or services.” *Tao Licensing*, 125 USPQ2d at 1057; *see also In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). Here, none of the third-party registrations are for goods that are the same as the identical or legally identical Class 3 goods listed in Opposer’s registration and Applicant’s application.<sup>13</sup> Accordingly, the registrations do not establish that Opposer’s ST

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<sup>12</sup> We do not consider the Idalmi St Barth website (idalmistbarth.fr), 14 TTABVUE 73-83, or the July of St Barth website (julyofstbarth.com), 14 TTABVUE 103-114 (at 108), because they originate in France, and Applicant provided no evidence supporting the likelihood that U.S. consumers will encounter them. *See In re TracFone Wireless, Inc.*, 2019 USPQ2d 222983, at \*3 n.7 (TTAB 2019) (foreign websites, although in English, not considered because they are directed to local foreign consumers and there is no basis to conclude U.S. consumers are likely to have been exposed to them); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265 n.9 (TTAB 2011) (website for Australian brewery not considered because no basis to conclude U.S. consumers exposed to it).

<sup>13</sup> Applicant’s reliance on other Board cases that found clothing related to cosmetic products is misplaced, as those decisions were based on the record evidence therein. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“The Board must decide each case on its own merits. Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”) (citation omitted). Further, Mr. Coste’s conclusory testimony concerning a relationship between cosmetics and clothing is not probative of the legal question. *See Coste Aff.*, 3 TTABVUE 7, ¶ 13 (“it is Applicant’s intention to expand the use of the POUPETTE ST BARTH trademark to cover goods, such as sunglasses, jewelry, bags,

BARTH mark is conceptually weak for the Class 3 goods identified in the registration. *See Omaha Steaks*, 128 USPQ2d at 1694 (where the involved goods are identical, it is error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”); *In re i.am.symbolic, llc.*, 866 F.3d 1315, 123 USPQ2d 1744, 1751 (Fed. Cir. 2017) (disregarding third-party registrations for goods in other classes where the proffering party “has neither introduced evidence, nor provided adequate explanation to support a determination that the existence of I AM marks for goods in other classes, ... support a finding that registrants' marks are weak with respect to the goods identified in their registrations”).

b. Third-party Websites

Under the sixth *DuPont* factor, we consider “[t]he number and nature of similar marks in use on similar goods [or services].” *DuPont*, 177 USPQ at 567. Evidence of third-party use bears on the strength or weakness of a registrant’s (here Opposer) mark. *i.am.symbolic*, 123 USPQ2d at 1751. If the evidence establishes that the consuming public is exposed to third-party uses of similar marks for similar goods, it “is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Palm Bay Imps.*, 73 USPQ2d at 1693.

Two of the five websites display ST BARTH as the name of a shade of makeup or tinted moisturizer, rather than as a trademark, and are therefore of little probative value. 14 TTABVUE 115-130 (at 118), and 140-144. *Cf. In re Champion Int’l Corp.*,

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linen and cosmetics, that are related to and/or overlapping of the long-time use of the POUPETTE ST BARTH trademark in connection with clothing.”).

183 USPQ 318, 320 (TTAB 1974) (citing *In re Clairol Inc.*, 457 F.2d 509, 173 USPQ 355 (CCPA 1972) (A shade name may be registered as a trademark if the evidence shows that it is “an arbitrary designation which does not in itself have a connotation of color as used on and in connection with the goods in question **and that it is applied in the manner of a trademark to the product.**”)) (emphasis added).

The remaining three websites are probative, as two show use of ST BARTH as a trademark for perfume or nail polish, and the third shows use of a similar mark, ST BARTS, for a scalp and body scrub. 14 TTABVUE 84-88, 89-102, and 131-139. But three websites are too few in number to establish that ST BARTH is commercially weak for Opposer’s goods. *See, e.g., In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (four third-party registrations and no third-party uses were “a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant” in the Federal Circuit’s decisions in *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) and *Juice Generation*, 115 USPQ2d at 1675). *See also Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030 (TTAB 2016) (weakness found based on at least 85 actual uses of ROSE-formative marks for similar services, eight similar third-party registrations, expert testimony and other evidence regarding the common nature of ROSE-formative marks in the industry, and testimony by opposer that it did not vigorously enforce its mark).

4. Conclusion on Strength or Weakness of Opposer's Mark

On this record, which also includes testimony about Opposer's policing efforts, *see* Brin Test. Decl., 22 TTABVUE 6-7, ¶ 14, regarding Opposer's successful Cancellation Proceeding against a third-party mark for CALYPSO ST BARTH for personal care products in Class 3, and 22 TTABVUE 8, ¶ 17, regarding recognition by the government of Saint Barthelemy of Opposer's exclusive right to use ST BARTH to identify Class 3 goods, Opposer's mark is entitled to the normal scope of protection accorded inherently distinctive marks. *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*26 (TTAB 2021).

D. Similarity or Dissimilarity of the Marks

We compare the marks "in their entireties as to appearance, sound, connotation and commercial impression." *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567); *see also Palm Bay Imps.*, 73 USPQ2d at 1691. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *Inn at St. John's*, 126 USPQ2d at 1746 (citing *Davia*, 110 USPQ2d at 1812); *accord Krim-Ko Corp. v Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion."). "The proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties." *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018).

Because similarity is determined based on the marks in their entireties, our analysis is not predicated on dissecting the marks into their various components. *Stone Lion*, 110 USPQ2d at 1161; *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.”). On the other hand, “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 consideration of the marks in their entireties.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Further, the marks “must be considered ... in light of the fallibility of memory ...” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quotation omitted). We focus on the recollection of the average consumer, here an ordinary purchaser of perfumery, cosmetics and other personal care products, who normally retains a general rather than a specific impression of trademarks. *Id.*; *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971). And we bear in mind that where, as here, goods are in-part identical/legally identical, “the degree of similarity necessary to support a conclusion of likely confusion declines.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quotation omitted).

Applicant argues that POUPETTE, which it asserts is a “nickname (meaning ‘little puppet’),” is the dominant part of its mark POUPETTE ST BARTH because ST



BARTH is “a reference to the geographic origin of the mark” that Applicant has disclaimed.<sup>14</sup> App. Br., 19 TTABVUE 19-20. This argument is unpersuasive.

When considered in their entireties, we find Opposer’s mark ST BARTH and Applicant’s mark POUPETTE ST BARTH to be very similar in appearance, sound, connotation and commercial impression, due to the shared term ST BARTH. Applicant’s mark incorporates Opposer’s entire mark, to which Applicant has added the term POUPETTE. While there is no rule that a likelihood of confusion is present where one mark encompasses another, in this case, as in many others, the fact that Applicant’s mark includes the entirety of Opposer’s mark increases the similarity between them. *See e.g., China Healthways Inst. Inc. v. Wang*, 491 F.3d 1337, 83 USPQ2d 1123, 1125 (Fed. Cir. 2007) (applicant's mark CHI PLUS is similar to opposer's mark CHI both for electric massagers); *Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (finding CALIFORNIA CONCEPT marks substantially similar to prior mark CONCEPT); *Coca-Cola Bottling Co. of Memphis, Tenn., Inc., v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (BENGAL LANCER for club sods, quinine water and ginger ale likely to cause confusion with BENGAL for gin).

As we found above, there is no evidence that ST BARTH has any meaning or significance when applied to the identical or legally identical perfumery, cosmetics

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<sup>14</sup> Opposer acknowledges that “Poupette’ is a French term for ‘little puppet.’” Brin Test. Decl., 22 TTABVUE 8, ¶ 20.

We do not further consider Applicant’s arguments about its “incontestable registration” for POUPETTE as the registration is not of record. App. Br., 19 TTABVUE 19. *See Cai*, 127 USPQ2d at 1799 (unsupported attorney argument not considered).

and other personal care products identified in the application and registration, and there is scant evidence of use (and no evidence of registration) by third parties of similar marks on similar goods that might dilute the source-identifying capacity of ST BARTH for those goods. *Cf. Jack Wolfskin*, 116 USPQ2d at 1136; *Juice Generation*, 115 USPQ2d at 1675. Accordingly, Applicant's reiterated arguments under the first *DuPont* factor concerning the purported geographic significance, and therefore weakness, of ST BARTH, remain unconvincing. App. Br., 19 TTABVue 19-22.

Further, Applicant's disclaimer of ST BARTH in its own application has no impact on our findings as to the conceptual strength of Opposer's mark ST BARTH for the identified goods. *See Nat'l Data*, 24 USPQ2d at 751 ("The technicality of a disclaimer in National's application to register its mark has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO."); *see also Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103, USPQ2d 1435, 1440 (Fed. Cir. 2012) (disclaimed term remains part of the mark for the purpose of comparing marks in a likelihood of confusion analysis).

Applicant's addition of POUPETTE to Opposer's mark ST BARTH is not sufficient to distinguish the marks because POUPETTE does not change the meaning or commercial impression of the source-identifying term ST BARTH in the way that, for example, the additional word CLEAR in ALL CLEAR changes the meaning of the single word ALL. *Lever Bros. Co. v. Barcolene Co.*, 463 F.2d 1107, 174 USPQ 392

(CCPA 1972). Rather, as applied to the identified goods, the shared term ST BARTH remains equally arbitrary in both marks.

Further, consumers familiar with Opposer's ST BARTH mark for perfumery, cosmetics and other personal care products may perceive Applicant's addition of the term POUPETTE merely as a variant or line extension of Opposer's ST BARTH mark, with both marks indicating a single source. *Cf., e.g., In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (VANTAGE TITAN "more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices"); *Schieffelin & Co. v. Molson Cos., Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) ("Those consumers who do recognize the differences in the marks may believe that applicant's mark is a variation of opposer's mark that opposer has adopted for use on a different product."). This perception could be even more likely for French-speaking consumers, who could view Applicant's mark as identifying a diminutive line extension by Opposer.<sup>15</sup> As Opposer testified,

My native language is French. To a French speaking consumer, the term "Poupette" suggests that the Applicant's proposed brand is a lesser or smaller line of personal care products that is associated with our ST BARTH personal care products. "Poupette" is a French term for "little puppet." A puppet is a model of an animal or person that is directed or controlled by a person. The

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<sup>15</sup> We take judicial notice of the October 2015 U.S. Census Bureau's "Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013" ([census.gov/data/tables/2013/demo/2009-2013-lang-tables](https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables)) (last accessed May 11, 2023), which indicates that after English, French is the fifth most common non-English language spoken in U.S. households, with approximately 1.3 million speakers who are over five years old. *See Ricardo Media, Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355, at \*7 n.9 (TTAB 2019) (Board took judicial notice of U.S. Census Bureau data although neither party made such data of record).

overall mark may be perceived as a brand that is controlled by me or my company, but is somehow smaller or lesser.

Brin Test. Dec., 22 TTABVUE 8, ¶ 20.

We find that when viewed in their entirety, the marks ST BARTH and POUPETTE ST BARTH are more similar than they are different. This *DuPont* factor also weighs in favor of a finding of likelihood of confusion.

E. Conclusion

Having considered all the evidence and arguments bearing on the relevant *DuPont* factors, all of which favor a finding of likelihood of confusion, we conclude that Opposer has proved his Section 2(d) claim by a preponderance of the evidence.

**Decision:** The opposition is sustained under Section 2(d) of the Trademark Act.