

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: April 22, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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*In re Heretic Beauty Inc.*

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Serial No. 98831998

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Valerie Greenberg of the Greenberg Law Firm,  
for Heretic Beauty Inc.

Amit Shoor, Trademark Examining Attorney, Law Office 117,  
Cynthia Tripi, Managing Attorney.

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Before Greenbaum, Pologeorgis, and Lebow,  
Administrative Trademark Judges.


Opinion by Pologeorgis, Administrative Trademark Judge:

Heretic Beauty Inc. (“Applicant”) seeks registration on the Principal Register of the standard character mark **EAU DE MACABRE** for “Fragrances and perfumery” in International Class 3.<sup>1</sup>

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<sup>1</sup> Application Serial No. 98831998, filed on October 31, 2024, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming October 31, 2024 as both the date of first use and the date of first use in commerce. The application includes the following partial translation: “The English translation of EAU DE in the mark is WATER OF.”

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the following two marks, both registered on the Principal Register and owned by different Registrants:



- Reg. No. 6110672 –  for:  
Hats; Jackets; Long-sleeved shirts; Pants; Shorts; Socks; Sweaters; Athletic shorts; Athletic sweaters; Baseball caps and hats; Bomber jackets; Camouflage jackets; Camouflage pants; Crew neck sweaters; Fashion hats; Fleece shorts; Graphic T-shirts; Gym shorts; Heavy jackets; Light-reflecting jackets; Lounge pants; Men's socks; Outer jackets; Rainproof jackets; Reversible jackets; Short-sleeved or long-sleeved t-shirts; Sports jackets; Sports caps and hats; Sweat pants; Sweat shorts; Walking shorts; Wind resistant jackets, in International Class 25;<sup>2</sup> and
- Reg. No. 6278850 – **MACABRE** (in standard characters) for “candles” in International Class 4.<sup>3</sup>

When the refusal was made final, Applicant appealed. Both Applicant and the Examining Attorney have filed briefs. For the reasons explained below, we affirm the Section 2(d) refusal to register.<sup>4</sup>

### **I. Likelihood of Confusion**

Section 2(d) of 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

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<sup>2</sup> Issued July 28, 2020 and owned by Albert J. De La Garza, an individual.

<sup>3</sup> Issued February 23, 2021 and owned by Candace Mass, an individual.

<sup>4</sup> The TTABVue and Trademark Status and Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

goods of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). *See also In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023). Our determination under Section 2(d) is based on 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, 1361 (CCPA 1973) (“*DuPont*”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 144 (2015); *see also In re Majestic Distilling Co.*, 315 F.3d 1311 (Fed. Cir. 2003).

In any likelihood of confusion analysis, different *DuPont* factors may play a dominant role and some factors may not be relevant. *Naterra Int’l, Inc. v. Bensalem*, 92 F.4th 1113, 1116 (Fed. Cir. 2024) (quoting *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). In addition, varying weight may be assigned to each factor depending on the evidence presented, and “any one of the factors may control a particular case.” *Id.*; *see also In re Charger Ventures*, 64 F.4th at 1381. While we consider each *DuPont* factor for which there is evidence and argument, *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019), two key considerations are the similarities between the marks and the similarities between the goods. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002)).


#### **A. Similarity of the Marks**

Under the first *DuPont* factor, we consider “the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. v. Veuve Cliquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed. Cir. 2005) (quoting *DuPont*, 476 F.2d at 1361). “Similarity

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in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, No. 87075988, 2018 WL 2734893, at \*5 (TTAB 2018) (quoting *In re Davia*, No. 85497617, 2014 WL 2531200, at \*2 (TTAB 2014)).

The proper test for similarity “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, 1373 (Fed. Cir. 2018) (quoting *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012) (internal quotation marks and citation omitted)). The focus is on the recollection of the average customer, who retains a general rather than specific impression of a trademark. *In re St. Julian Wine Co.*, No. 87834973, 2020 WL 2788005, at \*6 (TTAB 2020). Consumers may not necessarily encounter the marks in close proximity and must rely upon their recollections thereof over time. *In re Mucky Duck Mustard*, No. 73603019, 1988 WL 252484, at \*1 (TTAB 1988).

Here, Applicant’s mark is **EAU DE MACABRE** in standard characters. The cited marks are **MACABRE**, also in standard characters, and  .

The marks are similar in appearance, sound, connotation, and overall commercial impression because the entirety of the single term comprising the cited marks is encompassed by Applicant’s mark; in such cases, confusing similarity has often been found. *See e.g., See In re Mighty Leaf Tea*, 601 F.3d 1342, 1347-48 (Fed. Cir. 2010) (ML similar to ML MARK LEES); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 557 (CCPA 1975) (BENGAL and BENGAL LANCER and design

found to be similar); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 324-25 (CCPA 1967) (THE LILLY similar to LILLI ANN); *In re U.S. Shoe Corp.*, No. 73444699, 1985 WL 72046, at \*3 (TTAB 1985) (CAREER IMAGE similar to CREST CAREER IMAGES).

As to connotation, we take judicial notice of the definition of the word MACABRE which is defined as “dwelling on gruesome” or “tending to produce horror to the beholder.”<sup>5</sup> Thus, the marks at issue have similar dark connotations based on the definition of MACABRE.

In countering the refusal, Applicant argues that the addition of the wording “EAU DE” in its mark sufficiently differentiates the marks at issue.<sup>6</sup> In support of its argument, Applicant submitted status and title copies of the following two pairs of registrations, owned by different registrants, that co-exist on the Principal Register:<sup>7</sup>

**Pair No. 1**

Reg. No. 2650625 – **EAU DE LUNE** (standard characters) for “fragrances, namely, perfume” in Class 3.

Reg. No. 6761638 – **LUNE** (standard characters) for goods, including, “cosmetic preparations for skin care; face and body lotions; facial cleansers.

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<sup>5</sup> See [www.merriam-webster.com/dictionary/macabre](http://www.merriam-webster.com/dictionary/macabre) (accessed April 20, 2026). “The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format.” *Performance Open Wheel Racing, Inc. v. U.S. Auto Club Inc.*, No. 91229632, 2019 WL 2404075, at \*5 n.34 (TTAB 2019).

<sup>6</sup> Applicant’s Appeal Brief, pp. 5-6, 6 TTABVUE 6-7.

<sup>7</sup> Applicant’s June 29, 29025 Response to Office Action, TSDR pp. 6-13

**Pair No. 2**

Reg. No. 5910559 – **EAU DE JUICE** (standard characters) for goods, including, “perfume, eau de perfume, eau de toilette, eau de cologne, fragranced body care preparations, namely, body lotions, bath gels, shower gels, body scrubs, body powders” in Class 3.


Reg. No. 2650368 – **JUICE** (standard characters) for “skin and body care products, namely, cleansers, toners, scrubs, lotions, creams, bath gels, body lotions, body sprays, bar soaps, cosmetics, aromatic oils” in Class 3.

We are not persuaded by Applicant’s argument. While prospective consumers are more likely to focus on the first portion or word in a trademark, *see Palm Bay*, 396 F.3d at 1372-73, likelihood of confusion is not necessarily avoided between otherwise confusingly similar marks merely by adding other distinctive matter. If an important portion of the marks is the same, as is the case here with the dominant wording MACABRE, then the marks may be confusingly similar notwithstanding peripheral differences. *See, e.g., Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 1321-22 (Fed. Cir. 2014) (affirming Board's finding that confusion likely where applicant's mark STONE LION CAPITAL incorporated the entirety of the registered marks LION CAPITAL and LION); *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1266 (Fed. Cir. 2002) (finding that, even though applicant’s mark PACKARD TECHNOLOGIES, with “TECHNOLOGIES” disclaimed, does not incorporate every feature of opposer’s HEWLETT PACKARD marks, a similar overall commercial impression is created); *In re U.S. Shoe Corp.*, No. 73444699, 1985 WL 72046, at \*3 (TTAB 1985) (holding CAREER IMAGE (stylized) for clothing and retail women's clothing store services, and CREST CAREER IMAGES (stylized) for uniforms, likely to cause confusion, noting that CAREER IMAGE would be perceived

by consumers as a shortened form of CREST CAREER IMAGES). This especially holds true here because, although Applicant's mark begins with "EAU DE," which is absent from both of the cited marks, the wording EAU DE merely modifies the term MACABRE and therefore is ancillary to the connotation and commercial impression created by the dominant term MACABRE.


As for the two pairs of third-party registrations submitted by Applicant, the existence on the register of other seemingly similar marks does not provide a basis for registrability of Applicant's applied-for mark. *See Sock It To Me, Inc. v. Aiping Fan*, No. 91230554, 2020 WL 3027605, at \*12 (TTAB 2020) (quoting *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, (CCPA 1973)). Indeed, prior decisions and actions of other trademark examining attorneys in applications for other marks have little evidentiary value and are not binding upon the USPTO or the Board. *In re Brunetti*, 151 F.4th 1367, 1377 (Fed. Cir. 2025) ("We have recognized that a decision of the Board may not be challenged on the ground that examining attorneys in other cases may have made erroneous rulings."); *In re USA Warriors Ice Hockey Program*, No. 86489116, 2017 WL 2572815, at \*4 n.10 (TTAB 2017). Each case is decided on its own facts, and each mark stands on its own merits. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016) (citing *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174, (Fed. Cir. 2009)).

Lastly, Applicant's mark is in standard-character format. Thus, Applicant could display its mark in the same font style, size or color identical or similar to the cited

mark , thereby heightening the likelihood of confusion. *In re*

*Aquitaine Wine USA, LLC*, No. 86928469, 2018 WL 1620989, at \*5 (TTAB 2018); *In re Strategic Partners Inc.*, No. 77903451, 2012 WL 1267930, at \*3 (TTAB 2012).

While we acknowledge the minor difference between the marks in terms of appearance and sound when viewed on a side-by-side basis, that is not the test. When considered in their entirety, and against the backdrop of fallibility of memory, Applicant's mark **EAU DE MACABRE** and the cited registered marks **MACABRE**

(in standard characters) and  are similar in appearance, sound and connotation, and convey a similar overall commercial impression in light of the shared dominant term **MACABRE**, notwithstanding the inclusion of the wording "EAU DE" in Applicant's mark.

Accordingly, we find that the first *DuPont* factor favors a finding of likelihood of confusion.

### **B. Similarity of the Goods**

We next turn to the comparison of the goods, the second *DuPont* factor. In making our determination regarding the similarity of the goods, we must look to the goods as identified in Applicant's application and in the cited registrations. *See Stone Lion*, 746 F.3d at 1323 (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 942 (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 class of purchasers to which the sales of goods are directed.")).

It is settled that it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. The respective goods need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that goods emanate from the same source.” *Coach Servs. Inc.*, 668 F.3d at 1369 (quoting *7-Eleven Inc. v. Wechsler*, No. 91117739, 2007 WL 1431084, at \*10 (TTAB 2007)).

The issue is not whether consumers would confuse Applicant’s goods with Registrant’s goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L’Oreal S.A. v. Marcon*, No. 91184456, 2012 WL 1267956, at \*6 (TTAB 2012); *In re Rexel Inc.*, No. 24142), 1984 WL 63591, at \*1 (TTAB 1984). Moreover, registration must be refused if Applicant’s mark for any of its identified goods is likely to cause confusion with Registrants’ marks for any of their listed goods. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 1041 (Fed. Cir. 1983) (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, 1336-37 (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).

To reiterate, Applicant’s goods are “Fragrances and perfumery” in Class 3. Cited Registration No. 6110672 lists various clothing items in Class 25. Cited Registration No. 6278850 lists “candles” in Class 4.

In support of the refusal, the Examining Attorney made of record numerous third-

party, use-based registrations, each identifying, under a single mark, both Applicant's goods and at least one of the Registrants' goods. Although the registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless have probative value to the extent that they serve to suggest that the goods listed therein are of a kind which may emanate from a single source under a single mark. *See In re Albert Trostel & Sons Co.*, No. 74186695, 1993 WL 596274, at \*3 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, No. 603019, 1988 WL 252484, at \*3 n.6 (TTAB 1988). The third-party registrations are identified below:<sup>8</sup>

- VERA ORGANIX (ORGANICS disclaimed) (Reg. No. 6472633) for goods including “perfume” in Class 3 and “candles made in whole or in part of organic materials” in Class 4.



- (THE BRAND disclaimed) (Reg. No. 6642442) for goods including “perfumes” in Class 3 and various clothing items in Class 25.
- WELCOME TO A BETTER SMELLING LIFE (Reg. No. 7657439) for goods including “cologne; fragrances and perfumes” in Class 3 and “candles” in Class 4.
- VICTORY REY (Reg. No. 75258173) for “Perfume oils; Essential oils for use in the manufacture of scented products” in Class 3 and “candles; oils for lighting” in Class 4.
- L'AMBITION DE CERCLE INTÉRIEUR (Reg. No. 7580481) for “perfume” in Class 3 and “clothing, namely, shirts and pants” in Class 25.

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<sup>8</sup> May 8, 2025 Office Action, TSDR pp. 7-31.



- (Reg. No. 3109605) for “cosmetics and perfumes” in Class 3 and various clothing items in Class 25.
- WAKEHEART (Reg. No. 5946093) for “perfume” in Class 3 and various clothing items in Class 25.
- YOU ARE THE LUXURY! (Reg. No. 769756) for goods in Class 3 including “perfume.”
- NAYKED APPAREL (Reg. No. 6841636) for goods in Class 3 including “cologne” and “Belts; Button down shirts; Hats; Lingerie; Pants; Polo shirts; Shirts; Socks; Stretch pants; T-shirts; Underwear; Yoga pants” in Class 25.
- WHERE FASHION MEETS FRAGRANCE (Reg. No. 6754926) for goods in Class 3 including “perfume” and “candles” in Class 4.

Additionally, the Examining Attorney submitted the following third-party internet marketplace evidence demonstrating that a single entity provides the goods at issue under a single mark. The websites are identified below:<sup>9</sup>

- Screenshots from the website [www.versace.com](http://www.versace.com) – offering for sale fragrances and candles under the VERSACE mark.
- Screenshots from the website [www.gucci.com.com](http://www.gucci.com.com) - offering for sale both candles and fragrances under the GUCCI mark.
- Screenshots from the website [www.dior.com](http://www.dior.com) – offering for sale fragrances, candles and clothing, namely, pants and shorts, under the DIOR mark.
- Screenshots from the website [www.tomfordbeauty.com](http://www.tomfordbeauty.com) – offering for sale candles, fragrances and pants and shorts under the TOM FORD mark.
- Screenshots of the website [www.burberry.com](http://www.burberry.com) – offering for sale fragrances, candles and men’s pants and shorts under the

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<sup>9</sup> July 23, 2025 Final Office Action, TSDR pp. 7-21.

BURBERRY mark.

We initially note that VERSACE, GUCCI, DIOR, TOM FORD, and BURBERRY are designer name marks. Consumers likely will perceive Applicant's and Registrants' marks as product marks rather than designers' names, particularly since there is no evidence that Applicant or either Registrant is a designer. Nevertheless, this evidence still has some significance because consumers encounter these brands in the marketplace, and therefore, are exposed to the use of these marks on fragrances, clothing and candles. *Wet Seal, Inc. v. FD Mgmt., Inc.*, No. 91157022, 2007 WL 458529, at \*10 (TTAB 2007) (evidence of three companies, CALVIN KLEIN, CHANEL and BCBG, selling both clothing and fragrances under their house marks supported that clothing and fragrances are related).

We find that the third-party registration evidence and marketplace use evidence, when viewed in tandem, sufficiently demonstrate that Applicant's goods and Registrants' goods are related for likelihood of confusion purposes. Thus, the second *DuPont* factor also favors a finding of likelihood of confusion.

**C. Similarity of Trade Channels and Classes of Purchasers**

We next consider established, likely-to-continue channels of trade, the third *DuPont* factor. Because there are no limitations as to channels of trade or classes of purchasers in either Applicant's application or the cited registrations and the identified goods are related, we must presume that the goods identified in Applicant's applications and the cited registrations travel through all normal and usual trade channels for such goods, and that they are sold to all classes of prospective purchasers for those goods. *Stone Lion*, 746 F.3d at 1322-23; *see also Coach Servs.*, 668 F.2d at

1370 (absent limitation “goods are presumed to travel in all normal channels ... for the relevant goods”).

The only probative evidence relating to the trade channels through which the goods at issue travel is the third-party website evidence submitted by the Examining Attorney discussed above. This evidence shows that Applicant’s goods and Registrants’ goods are the type of goods that may be provided in the same online marketplace to similar or overlapping purchasers. We additionally note that it is common knowledge that clothing items, perfumes/colognes, and candles are all sold at brick and mortar department stores and are available to the general public. Therefore, the third *DuPont* factor weighs in favor of finding a likelihood of confusion.

#### **D. Thirteenth DuPont Factor**

Under the thirteenth *DuPont* factor, which considers “[a]ny other established fact probative of the effect of use,” *DuPont*, 476 F.2d at 1361, we address Applicant’s argument that because the two cited marks, owned by different registrants, co-exist on the Register and are more similar to each other than Applicant’s mark, Applicant’s mark should be entitled to proceed to registration.<sup>10</sup>

The existence on the register of other seemingly similar marks does not provide a basis for registrability for Applicant’s mark. *See AMF Inc.* 474 F.2d at 1406 (“the existence on the register of confusingly similar marks cannot aid an applicant in its effort to register another mark which so resembles a registered mark as to be likely to cause confusion, mistake or to deceive.”); *In re Total Quality Grp., Inc.*, No.

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<sup>10</sup> Applicant’s Appeal Brief, pp. ii-iii, 4 TTABVUE 3-4.

75078660, 1999 WL 588248, at \*5 (TTAB 1999) (same). This is particularly true since we do not know the history of these two cited registrations or the commercial relationships between the two Registrants or whether these Registrants have consented to the coexistence of their respective registrations.


Notwithstanding, neither the Board nor any Trademark Examining Attorney is bound by decisions of Examining Attorneys to register prior marks. To the contrary, “the [US]PTO must decide each application on its own merits, and decisions regarding other registrations do not bind either the [USPTO] or [the reviewing] court.” See *In re Boulevard Entm’t*, 334 F.3d 1336, 1343 (Fed. Cir. 2003). “The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the [Board] must forgo applying that standard in all other cases.” *Id.* Indeed, the issuance of the two cited registrations does not require the approval of a third registration if, on the facts of the case, it would be improper to do so under the governing legal standard. See, e.g., *In re Cordua Rests.*, 823 F.3d at 600 (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement, including non-genericness, even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.”); cf. *In re Shinnecock Smoke Shop*, 571 F.3d at 1174 (“Even if all of the third-party registrations should have been refused registration under section 1052(a), such errors do not bind the USPTO to improperly register Applicant’s marks.”).

In that regard, Applicant was not without remedy against the refusal of registration in this case. Applicant could have sought a suspension of this appeal or the prosecution of its application after receiving the Section 2(d) refusal to pursue (1) a cancellation proceeding or civil action against the cited registrations, if appropriate, or (2) possibly a consent agreement with one or both Registrants. The record demonstrates, however, that Applicant did not pursue these alternatives. Overall, this is not a case in which the co-existence of the cited registrations outweighs the impact of the other *DuPont* factors on the issue of a likelihood of confusion, particularly since the Examining Attorney's refusal is justified on the record in this case. The thirteenth *DuPont* factor is neutral.

### III. Conclusion

We have considered all of the arguments and evidence of record and all relevant *DuPont* factors. We find that (1) the marks at issue are similar, (2) Applicant's and Registrants' goods are related, and (3) the parties' respective goods travel, at a minimum, in overlapping trade channels and are offered to overlapping classes of consumers.

As such, we conclude that Applicant's standard character mark **EAU DE MACABRE**, as used in connection with "fragrances and perfumery," so resembles

the cited marks  for various clothing items and **MACABRE** (in standard characters) for "candles," as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

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**Decision:** The refusal to register Applicant's **EAU DE MACABRE** mark under Section 2(d) of the Trademark Act is affirmed.