

This Opinion is not a  
Precedent of the TTAB

Mailed: January 17, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Mystic Apparel LLC*  
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Serial No. 86166478  
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Andrew S. Langsam of Pryor Cashman LLP,  
for Mystic Apparel LLC.

Kimberly M. Ray<sup>1</sup>, Trademark Examining Attorney, Law Office 122,  
John Lincoski, Managing Attorney.

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Before Quinn, Kuczma and Gorowitz,  
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Mystic Apparel LLC (“Applicant”) seeks registration on the Principal Register of  
the mark LA CASA BELLA (in standard characters) for:

Home Furnishings, namely, Pillows, Picture Frames,  
Decorative Mirrors, and Accent Sculptures of Plastic in  
International Class 20.<sup>2</sup>

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<sup>1</sup> On August 30, 2016, the USPTO reassigned this application to Trademark Examining Attorney Kimberly M. Ray.

<sup>2</sup> Application Serial No. 86166478 was filed on January 15, 2014, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act. The English translation of LA CASA BELLA in the mark is THE BEAUTIFUL HOUSE.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d), 15 U.S.C. § 1052(d)<sup>3</sup>, because of a likelihood of confusion with the mark ULTRA BELLA CASA (standard character mark) in Registration No. 4134057 registered for "handmade decorative pillows of various sizes made of fabric and crystals with scented and unscented fillings" in International Class 20 and "home furnishing accessories not made of paper in the nature of table linen, namely, coasters, napkins, table mats, and table runners" in International Class 24.<sup>4</sup>

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. For the reasons set forth below, the refusal to register is affirmed.

#### I. Likelihood of Confusion

Our determination under § 2(d) is based on an analysis of all probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)

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<sup>3</sup> The refusal of registration was also based on Registration No. 3016782 for the mark Ultra Bella casa and design. Registration No. 3016782 was cancelled on June 24, 2016, and therefore, the refusal based on that Registration is moot.

<sup>4</sup> Registration No. 4134057 issued May 1, 2012. "CASA" is disclaimed and the English translation of "Bella Casa" in the mark is "Beautiful House" or "Beautiful Home."

(“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.”). Indeed, Applicant states that the relevant *du Pont* factors are the similarity or dissimilarity of the marks and the relatedness of the goods and submits that an analysis of these *du Pont* factors supports a finding that the marks can easily co-exist in the marketplace without source confusion.<sup>5</sup>

A. Similarity of Goods, Channels of Trade and Classes of Consumers

We first consider the second *du Pont* factor focusing on the similarity or dissimilarity of Applicant’s goods, particularly, “Home Furnishings, namely, Pillows”<sup>6</sup> and the following goods in class 20 in the cited Registration: “Handmade decorative pillows of various sizes made of fabric and crystals with scented and unscented fillings.” We also consider the respective channels of trade and classes of consumers for such goods.

It is well-settled that the issue of likelihood of confusion between applied-for and registered marks must be determined on the basis of the goods and services as they

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<sup>5</sup> Applicant’s Appeal Brief p. 2 (4 TTABVUE 3).

<sup>6</sup> In the Trademark Examining Attorney’s Appeal Brief, the Examining Attorney acknowledged that “this partial refusal continues based solely on Registration No. 4134057, and with respect only to applicant’s identified ‘Home Furnishings, namely, Pillows.’” The Examining Attorney has conceded that the §2(d) refusal is withdrawn as to the “Picture Frames, Decorative Mirrors, and Accent Sculptures of Plastic” in Class 20 of Applicant’s application. Since Applicant did not file a request to divide the application, after the appeal is decided the application containing those goods for which no refusal or requirement was made (and any goods for which the refusal has been reversed), will be published for opposition. *See* Trademark Board Manual of Procedure § 1202.05 (2016).

are identified in the involved application and registration. *Paula Payne Products Co. v. Johnson Publishing Co., Inc.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973); *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2050 (TTAB 2012). As Applicant's goods are "home furnishings, namely, pillows," we must construe Applicant's goods to include Registrant's "handmade decorative pillows," which can be generally described as "home furnishings, namely pillows." In fact, the goods differ only to the extent that Applicant's goods are defined more broadly. Thus, the goods are identical in part.

Because the goods are in part identical, and because neither Applicant's identification of goods nor the identification of goods contained in the cited registration contains a limitation of any kind with respect to consumers or channels of trade, we must presume that the goods move in the same channels of trade and are sold to the same classes of consumers. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1646 (TTAB 2008); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994). *See also In re Viterra Inc.*, 101 USPQ2d 1908 (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

Inasmuch as Applicant's goods are legally identical in part to the goods in the cited registration, and such goods are presumed to travel in the same trade channels to the same customers, we find that the second and third *du Pont* factors heavily favor a finding of likelihood of confusion.

II. Similarity or dissimilarity of the marks as to appearance/sound/meaning/  
commercial impression

We now turn to the first *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, meaning and commercial impression. *In re Viterra Inc.*, 101 USPQ2d at 1908; *du Pont*, 177 USPQ at 567.

The Examining Attorney argues that Applicant's mark LA CASA BELLA and the registered mark ULTRA BELLA CASA share the same visual elements, CASA and BELLA, noting that marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression.<sup>7</sup>

On the other hand, Applicant argues that the common elements in the marks, CASA and BELLA, are presented in a different order in Applicant's mark than they are in the registered mark and, that each mark also contains an additional element which further distinguishes them. According to Applicant, the "LA" portion of its mark is a definitive article used in the Spanish or Italian languages whereas, the word "ULTRA," used in Registrant's mark, is an adjective of the English language.<sup>8</sup> Applicant argues the separate words, their different parts of speech, and the distinct additional elements of each, is evidence that the marks are connotatively, visually and orally distinct from one another.

When comparing marks, we are mindful that the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks in

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<sup>7</sup> Examining Attorney's Appeal Brief at 6 TTABVUE 5.

<sup>8</sup> Applicant's Appeal Brief pp. 3-4 (4 TTABVUE 4-5).

their entireties are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *See, e.g., Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1676 (Fed. Cir. 2015). Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *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.”). Additionally, we bear in mind that the marks “must be considered ... in light of the fallibility of memory” and “not on the basis of side-by-side comparison.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) citing *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of the marks. *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016); *see also* Trademark Manual of Examining Procedure (“TMEP”) §1207.01(b) (January 2017).

Where the primary difference between marks is the transposition of the elements that compose the marks, as is present in this case, the transposition may serve as a basis to distinguish between them when the reversed combination creates a distinctly different connotation and/or is readily distinguishable in sound and appearance. *In*

*re Akzona Inc.*, 219 USPQ 94, 96 (TTAB 1983) (“Applicant’s mark ‘SILKY TOUCH,’ conveys the impression that applicant’s synthetic yarns are silky to the touch. On the other hand, registrant’s mark ‘TOUCH O’ SILK,’ suggests that registrant’s clothing products contain a small amount of silk.”); *Murphy, Brill and Sahrer, Inc. v. New Jersey Rubber Company*, 102 USPQ 420 (Commr. Pat. 1954) (finding that TOPFLITE for shoe soles conveys a different meaning than FLITE TOP for hosiery).

However, where this transposition does not change the overall commercial impression, there may be a likelihood of confusion. Confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions. *See, e.g., In re Wine Society of America Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) (holding THE WINE SOCIETY OF AMERICA and design, for “wine club membership services including the supplying of printed materials” *etc.*, likely to be confused with AMERICAN WINE SOCIETY 1967 and design, registered for a newsletter, bulletin and journal of interest to members of the registrant); *In re Nationwide Industries Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988) (finding RUST BUSTER, with “RUST” disclaimed, for a rust-penetrating spray lubricant likely to be confused with BUST RUST for a penetrating oil, holding that “the reversal in one mark of the essential elements of another mark may serve as a basis for a finding of no likelihood of confusion only if the transposed marks create distinctly different commercial impressions.”); *In re Gen. Tire & Rubber Co.*, 213 USPQ 870, 871 (TTAB 1982) (holding SPRINT STEEL RADIAL (with “STEEL” and “RADIAL” disclaimed) for

pneumatic tires, and RADIAL SPRINT (with “RADIAL” disclaimed) for radial tires, likely to cause confusion); *Bank of America Nat’l Trust and Savings Assoc’n v. The American Nat’l Bank of St. Joseph*, 201 USPQ 842, 845 (TTAB 1978) (“the words ‘BANKAMERICA’ and ‘BANK OF AMERICA’, on the one hand, and ‘AMERIBANC’, on the other, convey the same meaning and create substantially similar commercial impressions”); *see also* TMEP §1207.01(b)(vii).

Applicant contends, without support, that its mark LA CASA BELLA is a direct translation of Spanish or Italian for “the beautiful house” giving it a European flair, connoting a certain lifestyle and sophistication. On the other hand, Applicant notes that Registrant’s mark does not have the same connotation, is “not a direct translation,” is grammatically incorrect in both Spanish and Italian because the adjective “ultra bella” comes before the noun “casa,” and therefore consumers would likely recognize the mark as an Americanized term. Additionally, Applicant argues that the word “ULTRA” is quickly understood without any translation by U.S. consumers as meaning the “best,” “the most” or the “end” resulting in the term ULTRA having a common-man connotation, certainly not one of sophistication or European elegance. Thus, Applicant concludes that the registered mark lacks the European flair of Applicant’s mark presenting instead, a “causal Anglicanized [sic] version of a vaguely similar phrase.”<sup>9</sup>

Even accepting Applicant’s unsupported arguments as true does not render Applicant’s mark distinguishably different from Registrant’s mark. Applicant’s

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<sup>9</sup> Applicant’s Appeal Brief pp. 5-6 (4 TTABVUE 6-7).

statement that the cited Registration connotes a “most beautiful house” while its mark connotes “the beautiful house,”<sup>10</sup> recognizes that the marks have a very similar meaning. Yet, Applicant concludes that the respective connotations of the marks are quite distinct; Applicant’s mark LA CASA BELLA representing a sophisticated and European decorated home and Registrant’s mark ULTRA BELLA CASA, grammatically incorrect in both Spanish and Italian, representing an English version of an informal description of a “best” or “most,” *i.e.*, an extreme house, an idea Applicant contends is not conveyed by its mark.<sup>11</sup> Inasmuch as Applicant reaches its conclusion unsupported by any evidence, we do not agree that the marks are so different.

Here, not only do LA CASA BELLA and ULTRA BELLA CASA engender the same connotation when used on the identical goods, but the resemblances between them in sound and appearance, and particularly in connotation and commercial impression, are such that considering the average individual is not infallible in his or her recollection of trademarks and, little distinction can be drawn between them. *See Carlisle Chemical Works, Inc. v. Hardman & Holden*, 434 F.2d 1403, 168 USPQ 110 (CCPA 1970) (reversing dismissal of oppositions to registration of COZIRC based on use of ZIRCO for related goods, finding that the marks “are substantially similar, the difference being in a reversal of syllables which are essentially the same”); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982) (affirming refusal to register

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<sup>10</sup> Applicant’s Appeal Brief p.6 (4 TTABVUE 7).

<sup>11</sup> Applicant’s Appeal Brief pp. 5-6 (4 TTABVUE 6-7).

SPRINT STEEL RADIAL for pneumatic tires based on registration for RADIAL SPRINT for vehicle tires, finding that the marks “convey the same meaning, that is, a steel radial tire called ‘SPRINT’ or a radial tire called ‘SPRINT’ both of which could emanate from the same source”); *Plus Prods. v. Physicians Formula Cosmetics, Inc.*, 198 USPQ 111, 114 (TTAB 1978) (“... the use of identical terms in inverse order as we have in the present case is likely to cause confusion in trade when used on such closely related cosmetic products”); *In re Wm. E. Wright Co.*, 185 USPQ 445, 446 (TTAB 1975) (FLEXI-LACE confusingly similar to LACE-FLEX); *In re Atlantic Gulf Service*, 184 USPQ 828, 830 (TTAB 1974) (ATLANTIC GULF SERVICE so resembles GULF ATLANTIC as to be likely to cause confusion); *Fisher Scientific Co. v. Ipco Hospital Supply Corp.*, 165 USPQ 471, 472 (TTAB 1970) (sustaining opposition to MIX O THERM based on THERMIX used for identical goods, stating “they are in their essentials merely reverse combinations of the same words, and such being the case, would more than likely convey substantially the same commercial impressions”); *Royal Crown Cola Co. v. Bakers Franchise*, 150 USPQ 698 (TTAB 1966), *aff’d*, 404 F.2d 985, 160 USPQ 192 (CCPA 1969) (“... the applicant’s compound mark includes the same words which make up opposer’s mark, that is to say ‘RITE DIET’ is merely ‘DIET-RITE’ transposed. The marks of the parties create substantially the same commercial impressions ...”).

Moreover, the additional terms included in Applicant’s and Registrant’s marks do not diminish their overall similarity. “LA,” the first word of Applicant’s mark, means

“the” in English.<sup>12</sup> The word “the” at the beginning of a mark does not generally have any trademark significance and is usually insignificant in determining the likelihood of confusion. *See In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (finding WAVE and THE WAVE “virtually identical” marks; “[t]he addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance.”); *In re Narwood Prods. Inc.*, 223 USPQ 1034, 1034 (TTAB 1984) (finding THE MUSIC MAKERS and MUSICMAKERS “virtually identical” marks; the inclusion of the definite article “the” is “insignificant in determining likelihood of confusion”). The term “ULTRA” in Registrant’s mark is defined as “beyond,” or “Beyond the range, scope, or limit of.”<sup>13</sup> In the context of Registrant’s mark, “ULTRA” is laudatory implying that Registrant’s goods result in a more beautiful house, or that they are a refinement of an existing “BELLA CASA” line of goods. Thus, the dominant and similar portion of Applicant’s and Registrant’s marks are the terms “CASA” and “BELLA.”

Where the goods of Applicant and Registrant are similar and/or closely related as they are in this case, the degree of similarity between the marks required to support

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<sup>12</sup> Because the parties both contend that the term “LA” in Applicant’s mark means “the” in English, we accept their translation. *See* Applicant’s Appeal Brief pp. 3, 6 (4 TTABVUE 4, 7) and Examining Attorney’s Appeal Brief (6 TTABVUE 6).

<sup>13</sup> *See* American Heritage Dictionary, definition of “ultra,” <https://ahdictionary.com/word/search.html?q=ultra&submit.x=45&submit.y=17> (Oct. 12, 2016). We take judicial notice of this definition of “ULTRA” submitted by the Examining Attorney. Examining Attorney’s Appeal Brief (6 TTABVUE 7). The Board may take judicial notice of dictionary definitions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including definitions in online dictionaries that exist in printed format or have regular fixed editions. *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).

a finding of likelihood of confusion is not as great as would be required with diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *also see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004). While we acknowledge that the two marks have a somewhat different appearance, the marks are similar in sound and are likely to convey the same or similar meaning. Thus, we find that in overall commercial impression they are quite similar. In this case, their similarities outweigh the differences.

### III. Conclusion

When comparing Applicant's mark LA CASA BELLA and Registrant's mark ULTRA BELLA CASA in their entireties they are similar in appearance, sound, and even more so in meaning and commercial impression. The reversal of order between "CASA" and "BELLA" in the marks does not obviate their similarity resulting from the terms being common to both marks. Confusion is likely between two marks consisting of reverse combinations of the same elements if they convey the same meaning or create substantially similar commercial impressions, as the dominant portions in these two marks do. Additionally, the marks are used in connection with goods that are in part identical, and that are presumably sold through the same channels of trade to the same classes of customers. Accordingly, we find that confusion is likely.

Lastly, inasmuch as the Examining Attorney conceded that the §2(d) refusal is withdrawn as to the goods identified as "picture frames, decorative mirrors, and accent sculptures of plastic" in Applicant's application, the application containing

those goods which were not subject to the refusal will be published for opposition. See TBMP § 1202.05.

**Decision:** The refusal to register Applicant's mark LA CASA BELLA for "Pillows" is affirmed. Therefore, Application Serial No. 86166478 is approved for publication for "Home Furnishings, namely, Picture Frames, Decorative Mirrors, and Accent Sculptures of Plastic" in International Class 20.