

This Opinion is not a  
Precedent of the TTAB

Mailed: January 12, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Consolidated Artists BV*  
*v.*  
*Loopy Mango, LLC*  
—

Opposition No. 91207728  
Opposition No. 91209057  
—

Donna M. Klett of Pearne & Gordon LLP,  
for Consolidated Artists BV.

Anna Pulvermakher, Co-owner and Member of Loopy Mango, LLC, *pro se.*  
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Before Bergsman, Ritchie and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Loopy Mango, LLC (“Applicant”) seeks registration on the Principal Register of the marks LOOPY MANGO (in standard characters)<sup>1</sup> and LOOPY MANGO and design, shown below,<sup>2</sup>

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<sup>1</sup> Application Serial No. 85386220, filed August 1, 2011 (Opposition No. 91209057).

<sup>2</sup> Application Serial No. 85262519, filed March 9, 2011 (Opposition No. 91207728).



both for the goods and services listed below:

Bags, namely, hand bags, tote bags, duffle bags, bags for carrying knitting supplies, in Class 18;

Clothing, namely, shirts, dresses, scarves, in Class 25;<sup>3</sup> and

Retail store services featuring clothing, accessories, bags, jewelry, shoes, hats, belts, cushions, pillows, blankets, throws, scarves, furniture, yarn, soap, fragrances, candles, candy, stationery, in Class 35.<sup>4</sup>

Consolidated Artists BV (“Opposer”) opposed the registration of Applicant’s marks under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that Applicant’s marks so resemble Opposer’s MANGO marks for, *inter alia*, handbags, clothing, and retail clothing store services as to be likely to cause confusion. Opposer pleaded ownership of the registrations listed below:

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<sup>3</sup> Applicant filed its applications for the goods in Classes 18 and 25 based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

<sup>4</sup> Applicant filed its applications for the services in Class 35 based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as December 1, 2004, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

1. Registration No. 2950734 for the mark MNG BY MANGO (stylized), shown below,

The logo consists of the letters 'MNG' in a large, bold, black, serif font. Below 'MNG' is the word 'MANGO' in a smaller, bold, black, sans-serif font, preceded by the word 'by' in a very small, lowercase, sans-serif font.

for the goods listed below:

Goods made of leather and imitations of leather not included in other classes, namely, wallets, vanity cases sold empty, handbags, in Class 18; and

Clothing, namely, outerwear, namely, coats, jackets, pants, dresses, shirts, blouses, sweaters, skirts, belts, shorts, trousers, lounge wear, blazers, waistcoats, overcoats, scarves, foulards, footwear, in Class 25;<sup>5</sup>

2. Registration No. 3436144 for the mark MANGO (stylized), shown below,

The logo is the word 'MANGO' in a large, bold, black, serif font.

for the goods listed below:

Optical apparatus and instruments, namely, spectacles, eyeglasses, sunglasses, in Class 9;

Jewelry, in Class 14;

Goods made of leather and imitation leather, namely, handbags, traveling bags, school bags, leather shopping bags, purses, wallets, business card cases; brief cases,

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<sup>5</sup> Registered May 17, 2005; renewed.

toiletry cases sold empty and cosmetic cases sold empty; umbrellas, in Class 18

Clothing for men, women and children, namely, anoraks, bathing suits, beachwear, belts, blazers, blouses, blousons, capes, cardigans, chemises, coats, suit coats, top coats, cutlottes [sic], dresses, gloves, halter tops, hosiery, jackets, jeans, jumpers, jumpsuits, lounge wear, mufflers, neckerchiefs, overalls, overcoats, pants, parkas, pedal pushers, ponchos, pullovers, raincoats, rain jackets, scarves, shawls, shirts, shorts, skirts, slacks, socks, sport coats, sport shirts, stoles, sweat shirts, sweaters, swim wear, t-shirts, trousers, vests, bandanas, kerchiefs; footwear; headgear, namely, caps, and hats except for Panama hats, in Class 25.<sup>6</sup>

3. Registration No. 3636814 for the mark MNG BY MANGO (stylized), shown below for “retail clothing, shoes [sic] store services,” in Class 35;<sup>7</sup>



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<sup>6</sup> Registered May 27, 2008; Sections 15 and 71 affidavits accepted and acknowledged. Between the fifth and sixth year after registration, the registrant of a registration filed in accordance with Section 66 of the Trademark Act, 15 U.S.C. § 1141f (Madrid Protocol), is required to file an affidavit of use. Section 71 of the Trademark Act, 15 U.S.C. § 1141k. A Section 71 affidavit is the equivalent of a Section 8 affidavit or declaration. 15 U.S.C. § 1058.

In its brief, Opposer put the Board on notice that the description of goods in the TSDR records is incorrect. Opposer’s Brief, p. 8 n.25 (98 TTABVUE 9). “When it comes to the attention of the Board that there has been an Office error in the preparation of a registration status and title copy made of record in an inter partes proceeding, that is, that the status and title copy does not accurately reflect the status and title information which the Office has in its records, the Board will take judicial notice of the correct facts as shown by the records of the Office.” TBMP § 704.03(b)(1)(A) (June 2016). Likewise, we exercise our discretion to take judicial notice of the correct description of goods as set forth above. *See* the August 27, 2015 Notification of Partial Invalidation.

<sup>7</sup> Registered May 27, 2008; Sections 8 and 15 affidavits accepted and acknowledged.

4. Registration No. 3749876 for the mark MNG MANGO (standard characters)

for the goods and services listed below:

Clothing for use by women, namely, anoraks; bathing suits, beachwear, belts, blazers, blouses, blousons, capes, cardigans, chemises, coats, fur coats, suit coats, top coats, corselets, dresses, gloves, halter tops, hosiery, jackets, jeans, jumpers, jumpsuits, lounge wear, mufflers, neckerchiefs, overalls, overcoats, pants, parkas, pedal pushers, pullovers, raincoats, rain jackets, scarves, shawls, shirts, shorts, gym shorts, sweat shorts, skirts, slacks, socks, sport coats, sport shirts, stoles, sweat pants, sweat shirts, sweaters, swim wear, t-shirts, trousers, vests, headbands, bandanas, footwear; headgear, namely, caps, and hats except for Panama hats, in Class 25; and

Retail store services for clothing featuring footwear, hats, spectacles, jewels, and leatherwear articles, in Class 35;<sup>8</sup> and

5. Registration No. 4400453 for the mark MANGO (standard characters) for the

services listed below:

Retail store services featuring clothing, shoes, headgear not including Panama style hats; computerized on-line retail store services in the field of clothing, shoes, headgear not including Panama style hats; retail store services available through computer communications and interactive television, featuring clothing, shoes, headgear not including Panama style hats; retail shop window display arrangement services; retail store services in the field of clothing, shoes, headgear not including Panama style hats, featuring a bonus incentive program for customers; rental of signs for advertising purposes, in Class 35.<sup>9</sup>

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<sup>8</sup> Registered February 16, 2010; Sections 15 and 71 affidavits accepted and acknowledged.

<sup>9</sup> Registered September 10, 2013. Opposer pleaded ownership of application Serial No. 78421651 which registered as Registration No. 4400453 during the opposition. When an opposer pleads ownership of an application, opposer may make of record the subsequently issued registration of that application without amending the pleading. *See United Global Media Group, Inc. v. Tseng*, 112 USPQ2d 1039, 1040 n.3 (TTAB 2014); *Hunt Control Sys. Inc.*

In its Answers, Applicant denied the salient allegations in the Notices of Opposition.

The proceedings were consolidated in the Board's November 20, 2013 Order.<sup>10</sup>

## I. Preliminary Issues

### A. Evidentiary stipulation.

The parties stipulated that “documents exchanged during discovery are authentic and can be made of record at trial by either party by notice of reliance alone. Each party reserves the right to object to such evidence on the bases of relevance, materiality and weight.”<sup>11</sup> While it is not clear from the record what documents were requested and produced in response to requests for production of documents, because neither party lodged an objection to the documents introduced through a notice of reliance, we consider all of the documents made of record through the notices of reliance filed by the parties. In this regard, documents submitted under notice of reliance are admissible and probative only for what they show on their face, and not as proof of the matters asserted therein. In other words, the documents are admissible to show that they have been printed, not the truth of what has been printed. *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010).

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*v. Koninklijke Philips Elec. N.V.*, 98 USPQ2d 1558, 1563 n.6 (TTAB 2011); *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1045 n.12 (TTAB 2009).

<sup>10</sup> 22 TTABVUE.

<sup>11</sup> 31 TTABVUE.

B. Improper rebuttal.

Opposer's seventeenth notice of reliance, which was introduced during Opposer's rebuttal testimony period, includes Internet materials purportedly showing use of Opposer's marks "relevant to the strength of Opposer's marks."<sup>12</sup> The strength of Opposer's mark is a likelihood of confusion factor for which evidence should be introduced during Opposer's case-in-chief. Because Applicant did not introduce any evidence challenging the strength of Opposer's marks, the Internet materials proffered during Opposer's rebuttal period do not rebut any evidence introduced by Applicant. Accordingly, we do not give the evidence in Opposer's seventeenth notice of reliance any consideration.

II. The record.

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application files.

A. Opposer's evidence.

1. First notice of reliance on Opposer's pleaded registrations printed from the USPTO electronic database (TSDR) showing the current status of and title to the registrations;<sup>13</sup>

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<sup>12</sup> 93 TTABVUE.

<sup>13</sup> 48 TTABVUE 6-48.

2. Second notice of reliance on Applicant's responses to Opposer's first set of requests for admission Nos. 3-9, 11 and 14 and third set of requests for admission Nos. 32-36 and 39;<sup>14</sup>
3. Third notice of reliance on Applicant's responses to Opposer's second set of requests for admission Nos. 16, 18-20, and 24-29;<sup>15</sup>
4. Fourth notice of reliance on Applicant's responses to Opposer's first set of interrogatories and requests for production of documents;<sup>16</sup>
5. Fifth notice of reliance on Applicant's responses to Opposer's second and third set of interrogatories;<sup>17</sup>
6. Sixth notice of reliance on dictionary definitions and photographs of Opposer's stores and goods;<sup>18</sup>
7. Seventh notice of reliance on labels displaying Opposer's marks on products and packaging;<sup>19</sup>
8. Eighth notice of reliance on various financial documents regarding Opposer's sales and a "Google Analytics report on U.S. sales through Opposer's website, mango.com";<sup>20</sup>

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<sup>14</sup> 48 TTABVUE 49-77.

<sup>15</sup> 49 TTABVUE. Confidential exhibits are posted at 50 TTABVUE.

<sup>16</sup> 51 TTABVUE. Confidential responses are posted at 52 TTABVUE.

<sup>17</sup> 53 TTABVUE. Confidential responses are posted at 54 TTABVUE.

<sup>18</sup> 55 TTABVUE.

<sup>19</sup> 56 TTABVUE.

<sup>20</sup> 57 TTABVUE. Confidential exhibits are posted on 58 TTABVUE.

9. Ninth notice of reliance on various financial documents regarding Opposer's sales;<sup>21</sup>
10. Tenth notice of reliance on materials printed from the Internet displaying Opposer's marks;<sup>22</sup>
11. Eleventh notice of reliance on a "Google Analytics website traffic report for Opposer's website, mango.com";<sup>23</sup>
12. Twelfth notice of reliance on "Google Analytics paid search traffic reports for Opposer's website, mango.com," and "Google Analytics AdWords advertising reports for Opposer's website, mango.com";<sup>24</sup>
13. Thirteenth notice of reliance on various documents related to Opposer's marketing, including sample advertisements;<sup>25</sup>
14. Fourteenth notice of reliance on a "[s]ampling of publicity related to Opposer's marks, in print, online and on television";<sup>26</sup>
15. Fifteenth notice of reliance on a "[s]ampling of publicity related to Opposer's marks, in print and online";<sup>27</sup> and

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<sup>21</sup> 59 TTABVUE. Confidential exhibits are posted on 59 TTABVUE.

<sup>22</sup> 61 and 62 TTABVUE.

<sup>23</sup> 63 TTABVUE. Confidential exhibits are posted on 64 TTABVUE.

<sup>24</sup> 65 TTABVUE. Confidential exhibits are posted on 66 TTABVUE.

<sup>25</sup> 67-69 TTABVUE. Confidential documents are posted on 70 TTABVUE.

<sup>26</sup> 71-74 TTABVUE.

<sup>27</sup> 75 TTABVUE.

16. Sixteenth notice of reliance on “stockists lists from Applicant’s website,” printouts from Applicant’s blog, and Applicant’s sales reports and purchase orders.<sup>28</sup>

B. Applicant’s evidence.

1. First notice of reliance on brochures from trade shows Applicant has attended;<sup>29</sup>
2. Second notice of reliance on photographs of Applicant’s products displaying Applicant’s marks and documents related to the production of Applicant’s shopping bags;<sup>30</sup>
3. Third notice of reliance on documents related to Applicant’s marketing;<sup>31</sup>
4. Fourth notice of reliance on documents related to Applicant’s marketing;<sup>32</sup>
5. Fifth notice of reliance on photographs of Applicant’s exhibits at trade shows and other marketing;<sup>33</sup>
6. Sixth notice of reliance on Opposer’s responses to Applicant’s written discovery, including requests for admission;<sup>34</sup>
7. Seventh notice of reliance on Internet webpages;<sup>35</sup> and

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<sup>28</sup> 76-77 TTABVUE. Confidential documents are posted on 78 TTABVUE.

<sup>29</sup> 81 TTABVUE.

<sup>30</sup> 81-82 TTABVUE.

<sup>31</sup> 90 TTABVUE 2-4. Confidential documents are posted on 85 TTABVUE.

<sup>32</sup> 90 TTABVUE 7-11. Confidential documents are posted on 86 TTABVUE.

<sup>33</sup> 84 TTABVUE.

<sup>34</sup> 91 TTABVUE.

<sup>35</sup> 87 TTABVUE.

8. Eighth notice of reliance on publications in general circulation.<sup>36</sup>

### III. Standing

Because Opposer has properly made its pleaded registrations of record, Opposer established its standing in this proceeding. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

### IV. Priority

Because Opposer has properly made of record its pleaded registrations, and because Applicant has not filed a counterclaim to cancel any of Opposer's pleaded registrations, Section 2(d) priority is not an issue in the oppositions as to the marks and the goods and services covered by the pleaded registrations. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

### V. Likelihood of Confusion

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

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<sup>36</sup> 88-89 TTABVUE.

*Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See In re Chatam Int’l Inc.*, 380 F.2d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015).

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

We evaluate the relatedness of the parties’ respective goods and services based on their identification in the subject applications and pleaded registrations. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)); *see also Paula Payne Prods. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (“Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods”).

As illustrated in the table below, the goods and services of the parties are in part identical:

Applicant's description of goods and services	Opposer's description of goods and services
Bags, namely, hand bags, tote bags, duffle bags, bags for carrying knitting supplies, in Class 18	Goods made of leather and imitation leather, namely, handbags, in Class 18  Registration No. 3436144 for the mark MANGO (stylized)
Clothing, namely, shirts, dresses, scarves, in Class 25	Clothing for men, women and children, namely ... dresses ... scarves ... shirts, in Class 25  Registration No. 3436144 for the mark MANGO (stylized)
Retail store services featuring clothing, accessories, bags, jewelry, shoes, hats, belts, cushions, pillows, blankets, throws, scarves, furniture, yarn, soap, fragrances, candles, candy, stationery, in Class 35	Retail clothing, shoe store services, in Class 35, in Registration No. 3636814 for the mark MNG BY MANGO (stylized)  Retail store services for clothing featuring footwear, hats, spectacles, jewels, and leatherwear articles, in Class 35, Registration No. 3749876 for the mark MNG MANGO (standard characters)  Retail store services featuring clothing, shoes, headgear, in Class 35, in Registration No. 4400453 for the mark MANGO (standard characters)

Under this *du Pont* factor, Opposer need not prove, and we need not find, similarity as to each and every product or activity listed in the description of goods and services. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item or activity encompassed by the identification of goods or services in a particular class in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Inter*

*IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011), *judgment set aside on other grounds*, 110 USPQ2d 1679 (TTAB 2014).

B. Established, likely-to-continue channels of trade.

Because the goods and services described in the applications and Opposer's registrations are in part identical, we must presume that the channels of trade and classes of purchasers are the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011).

C. The similarity or dissimilarity of the marks.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In comparing the marks, we are mindful that where, as here, the goods and services are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods and services. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d

1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Prod. Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721; *see also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Because the goods at issue are handbags and clothing without any restrictions or limitations as to channels of trade, classes of consumers, or price points, and the services are retail store services in the field of handbags and clothing, without any restrictions or limitations as to channels of trade, classes of consumers, or price points, we find that the average customer is an ordinary consumer. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 USPQ2d at 1162 (“investment

advisory services” and “capital investment consultation” ““are not restricted to high-dollar investments or sophisticated consumers,’ but rather ‘could be offered to, and consumed by, anyone with money to invest, including ordinary consumers seeking investment services.’”).

For the sake of economy, we confine our analysis to the issue of likelihood of confusion between Applicant’s marks and Opposer’s Registration No. 4400453 for the mark MANGO (standard characters) and Registration No. 3436144 for the mark MANGO (stylized), shown below:



Of all the marks in Opposer’s pleaded registrations, these two marks are the most similar to Applicant’s marks and are registered for goods and services that are in part identical to Applicant’s goods and services. If likelihood of confusion cannot be found on the basis of these registered marks, it could not be found on the basis of the other pleaded registrations. *See In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

We find that the parties’ marks are similar rather than dissimilar when viewed in their entirety in terms of appearance, sound, connotation and commercial impression. The marks are similar in terms of appearance, sound, and meaning because they both consist of or include the word “Mango.” Opposer’s stylized version of its MANGO mark is not so distinctive as to create a commercial impression separate and apart from the literal word “Mango.” Moreover, because one of

Applicant's LOOPY MANGO marks is in standard characters, Applicant's rights in that mark are not limited to any particular depiction of the mark. The rights associated with a mark in standard characters reside in the wording, and not in any particular display. Thus, Applicant is entitled to all depictions of its standard character mark regardless of the font style, size, or color. Applicant's mark could at any time in the future be displayed in a manner similar to Registrant's mark; that is, the word could be displayed in the same font style and size. *In re Viterra Inc.*, 101 USPQ2d at 1909-11; *Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) (rejecting argument that a mark in standard character format (typed) is distinct from a mark in a logo format; "[b]y presenting its mark in a typed drawing, a *difference* cannot legally be asserted by that party" (emphasis in original)).

The word "Mango" is defined as "a fleshy yellowish-red tropical fruit that is eaten ripe or used green for pickles or chutneys."<sup>37</sup> Thus, the word "Mango" is an arbitrary and inherently strong term when used in connection with handbags, clothing and retail store services in the field of handbags and clothing and it is entitled to broad scope of protection or exclusivity of use.

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<sup>37</sup> *Oxford Dictionary* (oxforddictionaries.com) at 55 TTABVUE 7.

In Applicant's marks LOOPY MANGO, "Loopy" is an adjective modifying the word "Mango."<sup>38</sup> The word "Loopy" is defined as "crazy or silly" and "having many loops."<sup>39</sup> Thus, the meaning and commercial impression engendered by the mark LOOPY MANGO is a silly mango or a curvy mango.<sup>40</sup> Because of the identity of the description of goods and services and the inherent strength of the word "Mango" when used in connection with those goods and services, consumers may mistakenly believe that the LOOPY MANGO handbags, clothing and retail store services are a derivative or line of the MANGO handbags, clothing and retail stores services.

With respect to Applicant's LOOPY MANGO and design mark, the words "Loopy Mango" are accorded greater weight because the literal portion of Applicant's mark is likely to make a greater impression upon purchasers, would be remembered by them, and would be used to request the goods and services. *See In re Viterra Inc.*, 101

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<sup>38</sup> Because "Loopy" is an adjective modifying the word "Mango," we disagree with Applicant's contention that the word "Loopy" is the dominant portion of Applicant's mark LOOPY MANGO. Applicant's Brief, p. 26 (104 TTABVUE 27). In fact, the word "Loopy" emphasizes the word "Mango" because it points out the type of mango; that is, a Loopy Mango.

<sup>39</sup> *Oxford Dictionary* (oxforddictionaries.com) at 55 TTABVUE 16. A "loop" is defined, *inter alia*, as "a curving or doubling of a line so as to form a closed or partly open curve within itself through which another line can be passed or into which a hook may be hooked." *Merriam-Webster* (merriam-webster.com). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010). Also, in knitting or crocheting, a "loop is a shape of one stitch or just one stitch." Applicant's response to Opposer's interrogatory No. 37 (51 TTABVUE 41).

In response to Opposer's interrogatory No. 40, Applicant stated that "the word 'loopy' has two meanings – 'crazy' and 'consisting of loops' – and all crocheted and knitted products consist of loops." (51 TTABVUE 43).

<sup>40</sup> We disagree with Applicant's assertion that LOOPY MANGO does not evoke a fruit and that it does not have any particular meaning. Applicant's Brief, p. 25 (104 TTABVUE 26).

USPQ2d at 1908, 1911 (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983)); *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987); *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1431 (TTAB 2013) (citing *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999)). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Because of the identity of the description of goods and services and the inherent strength of the word "Mango" when used in connection with those goods and services, consumers may mistakenly believe that the LOOPY MANGO and design mark handbags, clothing and retail store services are a derivative or line of the MANGO handbags, clothing and retail stores services.

While we agree with Applicant that there is no explicit rule that likelihood of confusion automatically applies where an applicant's mark contains an opposer's entire mark,<sup>41</sup> where, as here, the goods and services are in part identical, the fact that Opposer's mark MANGO is subsumed by Applicant's mark LOOPY MANGO increases the similarity between the two. *See, e.g., In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (applicant's mark VANTAGE TITAN for medical magnetic resonance imaging diagnostic apparatus confusingly similar to TITAN for

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<sup>41</sup> Applicant's Brief, p. 26 (104 TTABVUE 27).

medical ultrasound diagnostic apparatus); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (applicant's mark MACHO COMBOS for food items confusingly similar to MACHO for restaurant entrees); *In re Riddle*, 225 USPQ 630, 632 (TTAB 1985) (RICHARD PETTY'S ACCU TUNE for automotive service centers confusingly similar to ACCU-TUNE for automotive testing equipment).

In view of the foregoing, we find that Applicant's marks LOOPY MANGO (standard characters) and LOOPY MANGO and design are similar to Opposer's MANGO (standard characters) and MANGO (stylized) in their entirety in terms of appearance, sound, connotation, and commercial impression.

D. The nature and extent of any actual confusion and the length of time during and conditions under which there has been concurrent use without evidence of actual confusion.

There have been no reported instances of actual confusion.<sup>42</sup> Applicant contends, in essence, that the lack of any reported instances of confusion is probative that there is no likelihood of confusion.<sup>43</sup> Opposer, on the other hand, argues that Applicant's limited sales, limited advertising, and focus on yarn and knitting products, makes it unlikely that any evidence of actual confusion would come to the attention of either party.<sup>44</sup>

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<sup>42</sup> Applicant's response to Opposer's interrogatory No. 30 (51 TTABVUE 38-39); Opposer's response to Applicant's interrogatory Nos. 17-18 (91 TTABVUE 25-26).

<sup>43</sup> Applicant's Brief, pp. 31-33 (104 TTABVUE 32-34).

<sup>44</sup> Opposer's Brief, pp. 31-35 (98 TTABVUE 32-36). Opposer also contends that there is circumstantial evidence of actual confusion. Opposer asserts that "Applicant's "website analytics show that almost 1,450 visits to its website loopymango.com were the result of searches that include the term 'mango,' but do not include the term 'loopy,'" including searches for Opposer's website mango.com. Opposer's Brief, p. 31 (98 TTABVUE 97 and 97 TTABVUE 97 [Confidential]) (citing a Google Analytics Organic Search Traffic as part of

The absence of any reported instances of confusion is meaningful only if the record supports appreciable and continuous use by Applicant of its marks for a significant period of time in the same markets as those served by Opposer under its marks. In other words, for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred. *Citigroup Inc. v. Capital City Bank Group Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff'd Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *Barbara's Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred); *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404, 1406-1407 (TTAB 1988); *Central Soya Co., Inc. v. North American Plant Breeders*, 212 USPQ 37, 48 (TTAB 1981) (“the absence of actual confusion over a reasonable period of time might well suggest that the likelihood of confusion is only a remote possibility with little probability of occurring”).

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Applicant’s response to Opposer’s interrogatory No. 56 (54 TTABVUE 44 and 47-176 [Confidential]). Opposer’s contention is not persuasive. First, Opposer did not introduce any testimony regarding how to interpret the report or summarizing the report. In this regard, we note that there were 5769 entries in the report, Opposer did not direct us to the purported mango.com entries, and we could not find any such entries. While we have no reason to doubt Opposer’s evidence, we could not verify Opposer’s contention. Second, just because a search entry consisting of the word “mango” does not include the word “loopy,” does mean that the user was misdirected to Applicant’s website. For example, entry No. 30 (54 TTABVUE 47) is for “happy mango knit dress kit.” The fact that Applicant, not Opposer, sells kits for knitting dresses shows that the particular user was not misdirected. Finally, assuming that there were mango.com entries does not *ipso facto* mean that when the user viewed the search results, he/she was misdirected away from Opposer’s website. When the hit list came up, there could be any number of reasons that a user chose to go to Applicant’s website. For example, the user could have viewed Opposer’s website first. In view thereof, we are not persuaded by Opposer’s contention that there is indirect evidence of actual confusion.

Applicant's "main business" is "retail, wholesale and manufacturing of yarn and hand knitted products."<sup>45</sup> Applicant opened its first LOOPY MANGO retail store at 206 Avenue B, New York City, on December 1, 2004. It closed December 31, 2005.<sup>46</sup> Applicant operated two LOOPY MANGO stores in Brooklyn, New York: one from December 1, 2005 through November 30, 2006 and another from August 1, 2006 through February 28, 2010.<sup>47</sup> Finally, Applicant has operated a LOOPY MANGO retail store at 78 Grand Street, New York City from April 1, 2010 to the present.<sup>48</sup> At its retail stores, Applicant has sold, *inter alia*, LOOPY MANGO branded hand-crocheted clothing (*e.g.*, dresses, hats, scarves, coats, etc.), bags, and yarn.<sup>49</sup>

Applicant also sells LOOPY MANGO branded products through various retailers in cities located in at least 20 states, including Orlando, Florida, San Francisco, California, and New York City where Opposer has MANGO retail stores.<sup>50</sup> In addition, Applicant sells products through select ANTHROPOLOGIE stores (locations not provided) and through the ANTHROPOLOGIE website ([anthropologie.com](http://anthropologie.com)).<sup>51</sup>

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<sup>45</sup> Applicant's response to Opposer's interrogatory No. 25 (51 TTABVUE 37).

<sup>46</sup> Applicant's response to Opposer's interrogatory Nos. 1 and 2 (51 TTABVUE 23).

<sup>47</sup> Applicant's response to Opposer's interrogatory No. 2 (51 TTABVUE 23-25).

<sup>48</sup> Applicant's response to Opposer's interrogatory No. 2 (51 TTABVUE 26).

<sup>49</sup> Applicant's response to Opposer's interrogatory No. 2 (51 TTABVUE 24-26).

<sup>50</sup> Applicant's response to Opposer's interrogatory No. 2 (51 TTABVUE 27-30). Opposer does not sell through independent specialty stores in the U.S. Opposer's response to Applicant's request for admission No. 12 (91 TTABVUE 61).

<sup>51</sup> Applicant's response to Opposer's interrogatory No. 2 (51 TTABVUE 26). Opposer does not sell products through Anthropologie. Opposer's response to Applicant's request for admission No. 14 (91 TTABVUE 61-62).

The LOOPY MANGO products Applicant sells through other retailers includes the following:

Hand crochet necklaces and bracelets, belts, hand knit scarves, cowls, wraps, blankets and throws, yarn, knitting needles, crochet hooks, bags, project and tote bags and DIY knit and crochet kits.<sup>52</sup>

Applicant's sales through these third-party retailers have been modest<sup>53</sup> and Applicant's advertising has been minimal.<sup>54</sup>

Interrogatory No. 26

Where and how have you advertised your store, your goods and/or your services during each year since you began using the LOOPY MANGO marks?

Answer to Interrogatory No. 26

Google adwords

NY Magazine April 2011

Vogue Knitting Magazine November 2013

Vogue Knitting Magazine Vogue Knitting Live Event in New York, NY January 2013

Vogue Knitting Magazine Vogue Knitting Live Event in Chicago, IL November 2013

Vogue Knitting Magazine Vogue Knitting Live Event in New York, NY January 2014

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<sup>52</sup> Applicant's response to Opposer's interrogatory No. 42 (51 TTABVUE 44).

<sup>53</sup> Applicant's response to Opposer's interrogatory No. 43 (52 TTABVUE 41-42). Because Applicant has designated its sales revenue as confidential, we may refer to it in only general terms.

<sup>54</sup> Applicant's response to Opposer's interrogatory No. 38 (52 TTABVUE 39). Because Applicant has designated its advertising expenditures as confidential, we may refer to them in only general terms.

Etsy 2013<sup>55</sup>

Opposer began using its MANGO marks in the United States on May 20, 2006.<sup>56</sup> Opposer sells its products through its own retail stores, catalogs and website, as well as through 500 JC Penney stores and Amazon.com.<sup>57</sup> Opposer has 11 retail stores located in the following cities: Costa Mesa, Santa Monica, and San Francisco California, San Juan, Puerto Rico, Miami Beach, Orlando, and Sunrise, Florida, and Manhattan and Flushing, New York.<sup>58</sup>

According to Applicant, the LOOPY MANGO store at 78 Grand Street in New York City is only a five minute walk from Opposer's MANGO store at 561 Broadway in New York City.<sup>59</sup> Despite the fact that Opposer's MANGO store is only five minutes from Applicant's LOOPY MANGO store, Applicant was not aware of Opposer's store until after Opposer had filed the opposition.<sup>60</sup> Likewise, Opposer became aware of

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<sup>55</sup> 52 TTABVUE 34-35. Applicant designated as confidential its entire response to this interrogatory. The publications and other media where Applicant advertised its products and services is not confidential inasmuch as the purpose of advertising is to present the mark to consumers. However, Applicant included the amounts that it paid for the advertising which we have treated as confidential.

Applicant included *Selvedge Magazine*, a publication from Great Britain. Because Applicant did not include any evidence as to its circulation in the United States, we have not given the evidence regarding *Selvedge Magazine* any consideration.

<sup>56</sup> Opposer's response to Applicant's interrogatory No. 1 (91 TTABVUE 7). *See also* Opposer's response to Applicant's interrogatory no. 5 (91 TTABVUE 11) and interrogatory No. 59 (91 TTABVUE 135).

<sup>57</sup> Opposer's response to Applicant's interrogatory Nos. 8, 29 and 41 (91 TTABVUE 17 and 35).

<sup>58</sup> Opposer's response to Applicant's interrogatory Nos. 14 and 36 (91 TTABVUE 23-24, 42-43, 46-47).

<sup>59</sup> Applicant's response to Opposer's interrogatory No. 30 (51 TTABVUE 38-39). *See also* Applicant's response to Opposer's interrogatory No. 55 (53 TTABVUE 14).

<sup>60</sup> Applicant's response to Opposer's interrogatory No. 55 (53 TTABVUE 14).

Applicant's LOOPY MANGO marks due to these oppositions.<sup>61</sup> Although Applicant opened its New York City LOOPY MANGO store on April 1, 2006, there is no evidence regarding when Opposer opened its New York City store so we do not know how long they have coexisted.<sup>62</sup>

While Opposer has advertised its MANGO marks in magazines such as *Vogue*, *Elle*, *InStyle*, and *Marie Claire*,<sup>63</sup> Applicant advertises in a different set of publications indicating that the parties may be marketing to different classes of consumers within the apparel and handbag markets. Further, we do not know how many times Opposer advertised in those magazines, the circulation of those magazines, the effectiveness of those advertisements, or whether the circulation of those magazines overlapped with the circulation of the publications where Applicant advertised.

Considering the size of the retail apparel market in the United States and Applicant's niche in that market, simply because both parties participate in the

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<sup>61</sup> Opposer's response to Applicant's interrogatory No. 15 (91 TTABVUE 24).

<sup>62</sup> The statements in Applicant's brief that "even 5 years – the amount of time during MANGO and LOOPY MANGO stores were located with a 5 minute walk from each other – is a very long time" (Applicant's Brief, p. 33; 104 TTABVUE 34) and "there were many instances of shoppers walking into Loopy Mango store with MANGO branded bags – customers who had just made a purchase as Mango store nearby – obviously a lot of people were exposed to both marks on the same day and yet not a single instance of confusion" (Applicant's Brief p. 32; 104 TTABVUE 33) are inadmissible because they were not introduced through testimony of a witness with knowledge of the facts during Applicant's testimony period. "[T]he facts and arguments presented in the brief must be based on the evidence offered at trial. A brief may not be used as a vehicle for the introduction of evidence." TBMP § 801.01 (June 2016). *See also* TBMP §704.06(b) ("Factual statements made in a party's brief on the case can be given no consideration unless they are supported by evidence properly introduced at trial.").

<sup>63</sup> 67 TTABVUE 52-129.

apparel market does prove that there has been a reasonable opportunity for confusion to have occurred. Based on the record developed in this case, Applicant has failed to show that there has been a reasonable opportunity for confusion to have occurred and, thus, the probative value of the lack of any reported instances of confusion is *de minimis*. Accordingly, we find that this factor is neutral.

E. Balancing the factors.

Because the marks are similar, the goods and services are in part identical and we must, therefore presume that the goods and services move in the same channels of trade, we find that Applicant's marks LOOPY MANGO and LOOPY MANGO and design for the goods in Applicant's identification of goods and services is likely to cause confusion with Opposer's registered marks MANGO and MANGO (stylized) for, inter alia, handbags, dresses, scarves, shirts, and retail store services for clothing featuring footwear, hats, spectacles, jewels, and leatherwear articles.

**Decision:** The opposition is sustained and the registration of Applicant's marks LOOPY MANGO and LOOPY MANGO and design are refused.