

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of L'OREAL (UK) Limited

Mark: SEQUIN CRUSH
Serial No. 88/477,548

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OFFICE ACTION RESPONSE

In an office action issued on August 7, 2019 (the "Office Action"), the Examining Attorney has refused registration of the SEQUIN CRUSH mark Serial No. 88/477,548 (the "Application") in International Class 3 for "makeup" pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the basis that the SEQUIN CRUSH mark is confusingly similar to U.S. Registration No. 5,482,944 for BEAUTY SEQUINS (registered on the Supplemental Register) in International Class 3 for "adhesives for affixing false eyebrows; adhesives for affixing false eyelashes; adhesives for artificial nails; cosmetics; essential oils; eyeshadow; face creams; face paint; face and body lotions; facial masks; false eyelashes; foundation; lip gloss; lipstick; make-up primer; make-up remover; perfume; sun block; eyebrow cosmetics" (sometimes also referred to as the "Cited Mark"). In addition, the Examiner has requested that SEQUIN be disclaimed from Applicant's mark. L'OREAL (UK) Limited ("Applicant") respectfully requests that the Examining Attorney consider the arguments below to reverse his finding and approve the Application for publication.

ARGUMENT

1. Disclaimer Request.

Pursuant to the Office Action, the Examining Attorney has initially refused registration of SEQUIN CRUSH on the basis that the term “SEQUIN” is purportedly merely descriptive pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. §1052(d) and should, therefore, be disclaimed. In support thereof, the Examining Attorney provides evidence of online uses of SEQUIN in the context of makeup to claim that the same is “merely descriptive” of Applicant’s goods, namely, makeup. Applicant respectfully disagrees with the Examiner’s finding and for the reasons set forth below, Applicant respectfully requests that the Examining Attorney reverse his finding.

“A term is descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services].” *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 U.S.P.Q. 215, 218 (C.C.P.A. 1978) (emphasis supplied). The immediate idea must be conveyed “forthwith with a degree of particularity to purchasers and potential purchasers, ***who are unfamiliar with Applicant and its services.***” *Stix Prods., Inc. v. United Merchants & Mfrs., Inc.*, 160 U.S.P.Q. (BNA) 777, 784 (S.D.N.Y. 1968). **Accordingly, the Trademark Office must consider the term outside the context of the goods and determine whether it immediately evokes the nature or characteristics of the goods at issue.** Moreover, it has been established that, “merely” means “only” and, as such, “[a]lthough a [term] may be generally descriptive, if in a particular instance, it also functions as an indication of origin, it is not “merely descriptive.” *In re Colonial Stores, Inc.*, 157 U.S.P.Q. 382, 385 (C.C.P.A. 1968)(emphasis added).

On the other hand, a term is suggestive, if it requires imagination, thought and perception to reach a conclusion as to the nature of the goods or services. *Abcor*, 588 F.2d at 814. Most

importantly, it is well-established that the concept of mere descriptiveness "should not penalize coinage of [...] word combinations whose import would not be grasped without some measure of imagination and 'mental pause.'" *In re Shutts*, 217 USPQ 363, 364–5 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow-removal hand tool).

In evaluating the descriptiveness of a term, the Examiner must consider the mark as a whole to evaluate the impact and identify the meaning, if any, attributable to such term by an ordinary purchaser. *See In re Chamber of Commerce*, 675 F.3d at 1300, 102 U.S.P.Q.2d at 1219; *In re Bayer*, 488 F.3d at 964, 82 USPQ2d at 1831; *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987)(a descriptive analysis requires consideration of the [...] possible significance that the mark would have to the average purchaser of the goods or services in the marketplace). Moreover, in evaluating the necessity of a disclaimer, the Examiner must be mindful of the reasons for which disclaimers are required, if any are applicable. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 U.S.P.Q. 215, 217 (C.C.P.A. 1978) ("The major reasons for not protecting [descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringing suits by the registrant against others who use the mark when advertising or describing their own products.").

Here, consideration of the meaning of SEQUIN (whether in the context of Applicant's mark as a whole (*i.e.* SEQUIN CRUSH) or alone for the sake of the argument) does not support a finding that the term is merely descriptive as used by Applicant. The dictionary defines "sequin" as "a small, shiny disk sewn as one of many onto clothing for decoration."¹ Clearly, the subject matter covered by Application, *i.e.* makeup for the face, does not involve clothing in any way, nor would makeup be expected to involve sewing or disks being sewn onto one's face. Also,

¹ The dictionary definition of SEQUIN is attached hereto as **Exhibit A**.

invoking common knowledge and a common understanding of what a sequin looks like, the disk in question is rather large, compared to makeup which is usually made of liquid, powder or other substance of either small size or malleable form to allow for application onto one's face. Sequins, in contrast, are generally made of metal or plastic and are typically known to be quite rigid disks that do not reasonably or logically evoke "makeup" or application to one's face.

As such, when confronted with the term SEQUIN, a reasonable consumer thinks of the shiny metal or plastic disk sewn onto clothing or textile and not of makeup or other skincare products. Even taken in the context of the makeup (which, as shown above, is not the appropriate test for assessing descriptiveness), SEQUIN does not refer to a characteristic, feature or attribute of the product. In other words, makeup does not contain and is not expected to contain sequins, *per se*. In this way, a sequin, i.e. a shiny metal or plastic disc sewn onto clothing is not an "attribute, characteristic, quality or feature" of makeup products as would be required for it to be merely descriptive. Even assessed in the context of makeup, to the extent SEQUIN conveys anything about the goods, it does so *by analogy*. That is, because a sequin is shiny, using one's imagination to attribute meaning to SEQUIN for makeup, one might conclude that the resulting product is shiny or shimmery in *some* way, although the exact way is completely unknown. In addition to SEQUIN suggesting some form of shiny makeup by analogy, what is also relevant is that it does not even evoke how exactly shine comes into play in the context of the relevant makeup product. That is, the suggestion made by SEQUIN for makeup, i.e. "shiny" or "shine" could mean a number of different things such as "brightening" in the way a cheek highlighter brightens the skin, "glittery" as in a lipstick or eyeshadow that has sparkles in it, or even "glossy" to describe the texture or effect of a lip balm. In this way, not even the notion of that the mark *might* suggest by *analogy* (i.e. "shine") conveys anything *specific* about the goods. *Stix Prods.*,

Inc. v. United Merchants & Mfrs., Inc., 160 U.S.P.Q. (BNA) 777, 784 (S.D.N.Y. 1968) (to be merely descriptive, the immediate idea must be conveyed “forthwith with a degree of particularity to purchasers and potential purchasers, who are unfamiliar with Applicant and its services”). As such, SEQUIN does not immediately convey the nature or ingredients of the goods, but rather, at best, suggests by analogy, certain vague characteristics of those goods. The use of SEQUIN in the Applicant’s Mark is, therefore, suggestive, *i.e.* inherently distinctive, and need not be disclaimed from the Mark.

The above is particularly true here where SEQUIN is used together with CRUSH to form the unitary phrase SEQUIN CRUSH (as further illustrated in Section 2 below), the meaning and commercial impression of which cannot be reduced to its individual parts. *See* TMEP §§1213.05–1213.05(g)(iv) (“if a composite mark (or portion thereof) is “unitary,” an individual component of the mark (or of the unitary portion) that would otherwise be unregistrable need not be disclaimed). Thus, even if the Examiner ultimately disagrees that SEQUIN in and of itself is not merely descriptive pursuant to Section 2(e)(1), what is clear is that, when considered in the context of SEQUIN CRUSH as a whole, SEQUIN folds into the meaning of CRUSH to form a unitary phrase, no portion of which should be disclaimed.

2. Likelihood of Confusion.

The test for likelihood of confusion under Section 2(d) of the Lanham Act is “whether the applicant’s mark so resembles any registered mark(s) as to be likely to cause confusion or mistake, when used on or in connection with the goods or services identified in the application.” TMEP § 1207.01. The Lanham Act does not provide a “mechanical test for determining likelihood of confusion.” *Id.* Rather, certain factors must be weighed to assess whether confusion is likely as set forth in *In re E.I. Du Pont de Nemours & Co.*, 476 F.2d 1357, 177

U.S.P.Q. 563 (C.C.P.A. 1973). Notably, “not all of the *DuPont* factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 U.S.P.Q.2d 1257, 1259 (Fed. Cir. 2010). As set forth below, the relevant *Du Pont* factors supports a finding that the marks at issue can co-exist in the marketplace without confusion.

To determine the likelihood of confusion between two marks, those designations must be considered as the public perceives them. *Martin v. Crown Zellerbach Corp.*, 422 F.2d 918, 165 U.S.P.Q. 171 (C.C.P.A. 1970), cert. denied, 400 U.S. 911 (1970); *Opryland USA v. Great Am. Music Show*, 970 F.2d 847, 851, 23 U.S.P.Q.2d 1471, 1473 (Fed. Cir. 1992). That is, a likelihood of confusion analysis must focus on the entireties of the marks, not just the marks’ common elements. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 U.S.P.Q. 749, 751 (Fed. Cir. 1985) (“likelihood of confusion cannot be predicated on dissection of a mark”); TMEP § 1207.01(b)(iii) (“[d]etermining whether there is a likelihood of confusion requires careful consideration of the nature of the common elements of the marks at issue, as well as the **overall commercial impression** created by each mark”) (emphasis added). “**Commercial impression**” refers to “**what the probable impact will be on the ordinary purchaser in the marketplace.**” *T.W. Samuels Distillery, Inc. v. Schenley Distillers, Inc.*, 458 F.2d 1403, 1404, 173 U.S.P.Q. (BNA) 690, 691 (C.C.P.A. 1972) (emphasis added). Thus, “[a] mark should not be dissected or split up into its component parts and each part then compared with corresponding parts of the conflicting mark to determine the likelihood of confusion. It is the impression that the mark as a whole creates on the average reasonably prudent buyer and not the parts thereof, that is important.” McCarthy on Trademarks § 23:41 (6th ed. 2013). As a result, **the use of identical,**

even dominant, words in common does not automatically mean that two marks are similar.

Freedom Sav. & Loan v. Vernon Way, 757 F.2d 1176, 1183 (11th Cir. 1985).

As applied here, the above rules support a finding that there is no likelihood of confusion between SEQUIN CRUSH for makeup and the BEAUTY SEQUINS for adhesive eyelashes and related cosmetics. In the Office Action, the Examining Attorney disregarded the: (1) the addition of the highly arbitrary and strong term CRUSH in Applicant's mark; (2) the absence of the term BEAUTY, *i.e.* the first word in the Cited Mark, from Applicant's SEQUIN CRUSH mark; and (3) the distinct overall meanings and commercial impressions that the marks each create by reason of these very differences. The Examiner's analysis is devoid of any discussion about the similarity of the marks as a whole and the distinctiveness of the shared matter SEQUIN between the marks. Interestingly, however, the very matter that forms the basis of the 2(d) Refusal, namely, SEQUIN, *i.e.* the only matter shared between the marks, was simultaneously found by the Examiner to be merely descriptive and required to be disclaimed. Further, in complete contradiction to the disclaimer request and in complete disregard of the above-referenced anti-dissection rule, the opinion summarily points out that both marks contain the term "SEQUIN," and, without further analysis as to the dominance or importance of that "part" (as against any other part of the marks at issue), concludes that the marks are confusingly similar. In this way, by failing to analyze the marks in their entireties, the Office Action ignores not only the differences in sight and sound between the marks, but also and most importantly, the significantly different meanings and commercial impressions that the marks each create.

That is, taken as a whole, the marks vary in sight, sound, meaning and commercial impression. As for sight and sound, the Cited Mark is comprised of two words and four syllables, whereas the Applicant's mark is comprised of two words and a total of three syllables.

Importantly, the Cited Mark begins with the term BEAUTY making one's first impression thereof visually and phonetically distinct from Applicant's mark which begins with the term SEQUIN. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369 (Fed. Cir. 2005) (noting that VEUVE as the first word in the mark weighs towards a finding that it is more dominant than the remainder). Finally, only half of the syllables present in the Cited Mark, *i.e.* SEQUINS, are present and shared with the SEQUIN CRUSH mark and, even there, the words are different of the word (Applicant uses the singular). Clearly, the marks are visually and phonetically distinguishable and, on that basis alone, are not likely to be confused.

More importantly, the marks convey entirely different meanings and commercial impressions. On the one hand, BEAUTY SEQUINS for eyelash extensions and other cosmetics is highly descriptive (as found by the USPTO in its initial refusal of that mark) and as evidenced by the fact that it is registered on the Supplemental Register. That is, BEAUTY SEQUINS describes a characteristic or quality of the products -- the literal definition of a SEQUIN is "a small shiny disk sewn as one of many onto clothing for decoration."² By using the term BEAUTY in front of SEQUINS in connection with Class 3 cosmetics, the Cited Mark invokes the notion that the products are shiny and decorative, except that, rather than being disks for clothing, they are shiny and decorative BEAUTY products for the face, *i.e.* **BEAUTY SEQUINS**. In this way, BEAUTY in the Cited Mark (much to the contrary of what the Examining Attorney asserted in the Office Action) not only plays an important role in the overall commercial impression of the Cited Mark, but is actually the term that gives the phrase and the use of SEQUINS in the Cited Mark its entire meaning. In other words, SEQUINS in the Cited Mark folds into the meaning of BEAUTY, thereby forming a unitary phrase in which the individual

² A copy of the dictionary results for SEQUIN as attached as **Exhibit A** hereto.

meaning of SEQUIN is lost into the meaning of the Cited Mark as a whole to refer, not to a SEQUIN as a decorative clothing item, but rather to refer to fictitious “BEAUTY SEQUINS,” suggestive of the shimmery nature of the relevant goods. *See, e.g., In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983) (“LIGHT N’ LIVELY” as a whole is distinctly different from the merely descriptive significance of the term “LIGHT” per se); *see also In re Symbra’ette, Inc.*, 189 USPQ 448 (TTAB 1975) (holding SHEER ELEGANCE as a whole is distinct and different from the meaning and commercial impact of SHEER alone).

On the other hand, SEQUIN CRUSH, as used in Applicant’s Mark for makeup, conveys, with the use of some imagination, the notion that the product is designed for a shine or sparkle lover, *i.e.* someone with a “crush” on “sparkly things” or “sequins.” Adopting that interpretation, Applicant’s Mark uses SEQUIN as an adjective to modify and define the kind of CRUSH that is at issue. That is, CRUSH is the subject and, therefore, the primary idea that is conveyed by Applicant’s Mark. In this way, the terms SEQUIN and CRUSH *together* form a phrase with meaning that is derived entirely by their combination. In other words, neither CRUSH nor SEQUIN alone would be able to convey the meaning of “sparkle lover” that is created by their combination and, thus, by the mark as a whole. ***In this way, as with the Cited Mark, SEQUIN in the Applicant’s mark also folds into the meaning of CRUSH, thereby forming a unitary phrase, the meaning and commercial impression of which cannot be reduced to its individual parts.*** *Symbra’ette*, 189 USPQ at 448 (holding SHEER ELEGANCE as a whole is distinct and different from the meaning and commercial impact of SHEER alone). For this reason, the Office Action’s contention that the term “SEQUIN in [A]pplicant’s mark and SEQUINS in the registration create a similar overall commercial impression” is flawed in that it violates the anti-dissection rule and forms an incomplete analysis of the marks’ meanings by focusing only on the term

SEQUIN. Alternatively, one might also understand or interpret SEQUIN CRUSH to refer to the act of crushing sequins, *i.e.* that the product involves the crushing or shaking of certain shiny matter as a precursor or as a means of putting the same to use as makeup. Even this interpretation is distinct from the commercial impression created by BEAUTY SEQUINS.

What is clear and most relevant here is that, however many interpretations may be attributed to SEQUIN CRUSH in the context of make-up, beauty or a beauty sparkle, the very idea conveyed by the BEAUTY SEQUINS. Similarly, nothing in the Cited Mark can or would be read to refer to a person who loves sparkles or sequins. Accordingly, despite the general rule that a likelihood of confusion may result when there are similar terms or phrases appearing in two marks, an important and relevant exception applies here where the Cited Mark and the Applicant's Mark, viewed in their entireties, convey significantly different commercial impressions. *See, e. g., Shen Manufacturing Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 U.S.P.Q.2d (BNA) 1350 (Fed. Cir. 2004)(finding RITZ and THE RITZ KIDS to create different commercial impressions).

Moreover, even to the extent any dominant portion of the marks might be evaluated for purposes of similarity in this instance, the dominant portion of Applicant's mark is necessarily CRUSH. In the Office Action, however, the Examining Attorney ignores the existence of CRUSH in the Applicant's mark and summarily asserts that the addition of BEAUTY in the Cited Mark has no impact on its commercial impression to finally conclude that "the term **SEQUIN** in [A]pplicant's mark and **SEQUINS** in the registration create a similar overall commercial impression." In support thereof, the Examining Attorney, without further analysis, cites the following cases *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells*

Fargo Bank, Nat'l Ass'n, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar). Those cases, however, are entirely distinguishable from the one at hand in that they involve nearly identical, single-word marks in which just two or three letters are added to the shared matter to convey essentially the same meaning. For example, COMMCASH and COMMUNICASH each are just abbreviations of COMMUNICATION and CASH combined together to form one term. Clearly, BEAUTY SEQUINS and SEQUIN CRUSH present a very different circumstance. Not only do they each involve an entirely different word from one another, but they also, as shown above, convey completely different literal and suggestive meanings as a result of those additional words. That situation is simply not true for the cases cited by the Examining Attorney. Those cases are, therefore, entirely inapplicable to the case at hand and ineffective to demonstrate that confusion is likely to result from the coexistence of BEAUTY SEQUINS and SEQUIN CRUSH on the register.

Further, the Office Action goes on to state that “even if potential purchasers realize *the apparent differences* between the marks, they *could* still reasonably assume, due to the overall similarities in sound, appearance, connotation, and commercial impression in the respective marks, that registrant’s goods sold under the “**BEAUTY SEQUINS**” mark constitute a new or additional product line from the same source as the goods sold under applicant’s “**SEQUIN CRUSH**” mark, and that registrant’s mark is merely a variation of applicant’s mark.” In support thereof, the Office Action attempts to liken the present case to that of *SMS, Inc. v. Byn-Mar Inc.* 228 USPQ 219, 220 (TTAB 1985) in which the “applicant’s marks ALSO ANDREA and

ANDREA SPORT were ‘likely to evoke an association by consumers with the [preexisting] mark [ANDREA SIMONE] for its established line of clothing’.” The above raises three noteworthy points.

First, although the Office Action is devoid of any analysis as to the differences between the marks, the above statement evinces the Examining Attorney’s acknowledgement that the marks have “apparent differences.”

Second, the test for likelihood of confusion is not whether (as the Office Action purports) one “*could* reasonably assume a connection” but rather, whether one is “*likely* to assume such a connection.” The distinction is a significant one in that the former evaluates whether there is *any reasonable possibility* for confusion as opposed to the applicable rule, which is whether confusion is *more likely than not* to occur. *See* TMEP §1207.01. Merely asking, as does the Examining Attorney in the Office Action, whether *any* reasonable person “could” assume a connection between the two marks is not the same and does not warrant the same result as asking whether something is *more likely than not, i.e. whether more than 50% of reasonable people would assume that connection*. In fact, if we applied the Examiner’s “could reasonably” standard to the Section 2(d) analysis, then the “likelihood of confusion” rule would have to be renamed the “potential for confusion” rule and its application would lead to very few marks, however, in fact, dissimilar, being able to coexist on the register. The Examiner’s contention that “despite the apparent differences between the marks, a reasonable consumer could assume a connection between the two,” therefore, in no way addresses whether confusion is likely under Section 2(d) as is the sole inquiry to be made under this Office Action.

Third, the case of *SMS*, 228 USPQ at 220 upon which the Examiner relies to assert that the marks are confusingly similar, is also entirely inapplicable to the present situation. In *SMS*,

the preexisting mark was ANDREA SIMONE, the name of an individual, used for a clothing brand, *i.e.* a relatively arbitrary and strong mark. The marks that were found likely to create confusion with ANDREA SIMONE, were the weaker marks ALSO ANDREA and ANDREA SPORT, *both of which shared the distinctive term ANDREA* with the prior mark and *were otherwise comprised of descriptive and weak additional matter* (*i.e.* ALSO and SPORT). The entire basis for that decision was the fact that (a) ANDREA SIMONE was a relatively distinctive and strong mark entitled, therefore, to a wide scope of protection against similar marks, and (b) the shared matter between the marks was distinctive while the additional matter in the junior mark was descriptive and, therefore weak. *See e.g.* TMEP §1209.01 “trademark significance should be evaluated on a continuum;” *See also, Kenner Parker Toys Inc. v. Rose Art Indus.*, 963 F.2d 350, 353 (Fed. Cir. 1992) (holding that the stronger the mark, the wider the scope of protection against third party marks). Contrary to the position seemingly suggested by the Examiner, *SMS* does not stand for the proposition that any two marks which share one term are confusingly similar under Section 2(d). Rather, *SMS* merely reinforces the notion that a strong prior mark is entitled to a wide enough scope of protection that, in some instances, the common use of a highly distinctive term might be sufficient, *absent any additional distinctive matter in the junior mark*, to render the marks confusingly similar when used on identical goods.

SMS, therefore, has no bearing on the outcome of this case where the senior mark is registered on the supplemental register due to its inherent weakness, the shared matter between the marks, namely, SEQUIN is disclaimed from the senior mark, highly suggestive and relatively weak, and the additional matter, namely, CRUSH in Applicant’s mark is inherently distinctive. *See In re Shawnee Milling Co.*, 225 USPQ 747, 749 (TTAB 1985) (holding GOLDEN CRUST for flour highly suggestive and, therefore, entitled to a limited scope of protection); *see also*,

Juice Generation, Inc. v. GS Enters. LLC, 794 F.3d 1334, 1338-40, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015) (if the common element of two marks is "weak" in that it is generic, descriptive, or highly suggestive of the named goods or services, it is unlikely that consumers will be confused unless the overall combinations have other commonality).

Finally, while the above is in and of itself sufficient to distinguish the present case from that of *SMS*, what is also relevant is that, unlike *SMS* where the senior mark was highly distinctive and entitled to a broad scope of protection against junior marks, here, the senior mark BEAUTY SEQUINS (with "BEAUTY" disclaimed) is weak and entitled to a very limited scope of protection. As a result, *SMS* has no applicability to the present case.

Instead, the Examiner should properly apply the long-standing rules established in TMEP §1207.01(b)(iii) (citing *In re Shawnee Milling Co.*) as shown above and find that BEAUTY SEQUINS and SEQUIN CRUSH are sufficiently distinguishable in sight, sound, meaning and commercial impression that they are not likely to be confused with each other.

Finally, in determining a likelihood of confusion, the Examining Attorney may also consider the level of fame associated with the prior registrant. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. (BNA) 563 (C.C.P.A. 1973). In this particular instance, the Examining Attorney has submitted no evidence demonstrating that the Cited Mark has acquired a level of fame and/or notoriety that might otherwise negate the inherent weakness of the Cited Mark such that the ordinary consumer would immediately believe that Applicant's goods marketed under the SEQUIN CRUSH mark actually emanate from and/or are otherwise associated with the registrant of the Cited Mark. Furthermore, the record is devoid of any evidence in the nature of either of the registrant's and Applicant's sales/profits and advertising. This additional factor weighs heavily against a finding of likely confusion.

Accordingly, there is room on the Principal Register for the SEQUIN CRUSH mark to peacefully co-exist with the BEAUTY SEQUINS mark.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests that the Application be approved for publication.

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Respectfully submitted,

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