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Precedent of the TTAB

Mailed: February 26, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Universal Trim Supply Co., Ltd.*

Serial No. 88480628

Nicole B. Rackiewicz, Christopher D. Reaves, and Morton J. Rosenberg of  
Rosenberg Klein & Lee, for Universal Trim Supply Co., Ltd.

Anna J. Oakes, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

Before Mermelstein, Goodman and English,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Universal Trim Supply Co., Ltd. (“Applicant”) seeks registration on the Principal  
Register of the mark:



for the following goods:

electric vacuum food sealers for household purposes;  
electric bag sealers in International Class 7;

hand-powered tool used to close re-sealable bags used with  
vacuum sealers in International Class 8;

plastic food storage bags for household use; resealable  
plastic food storage bags with vacuum sealers for personal  
use; plastic vacuum bags for packing; vacuum compression  
bags, namely, plastic food storage bags with one-way  
valves, in which air is evacuated for personal use in  
International Class 16;

resealable garment storage bags with vacuum sealers for  
clothing; vacuum compression bags made of high-density  
polyethylene plastic for the storage of personal items;  
vacuum compression bags and hanging bags, namely,  
plastic bags with one-way valves, in which air is evacuated  
for storing clothing; resealable high-density polyethylene  
plastic bags with vacuum sealers for the storage of  
household items in International Class 22.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the registered mark SEAL N' VAC (in standard

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<sup>1</sup> Application Serial No. 88480628 was filed on June 19, 2019, based upon Applicant's assertion of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The application includes a description of the mark which reads as follows: "The mark consists of the stylized word 'SEALVAX' with the letter 'L' having a pair of leaf like designs extending in opposite directions from a vertical section of the letter 'L' and an upper section of the letter 'S' forming an arcuate bar extending over the letters 'EALVAX' with an arcuate bar under the word 'SEALVAX' intersecting with a lower section of the letter 'X'." Color is not claimed as a feature of the mark.

Page references to the application record refer to the online database page numbers of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

characters), subject to two registrations owned by the same entity for the following goods:

Hand-powered tool used to close re-sealable bags used with vacuum sealers, comprised of hand-operated hand-held pumps for removing air from and sealing plastic bags for food storage for household use in International Class 8.<sup>2</sup>

Evacuatable resealable storage bag made of nylon and polyethylene with a valve made of polyethylene and polypropylene and a closure system made of polyethylene for household food storage purposes in International Class 16.<sup>3</sup>

Evacuatable resealable plastic storage containers for household use; Evacuatable resealable household storage containers for food; Household storage containers for food in International Class 21.<sup>4</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

#### I. Evidentiary Issue

Before proceeding to the merits of the refusal, we address the materials attached to Applicant's brief as Exhibits A-N which are copies of third-party registrations. The exhibits are duplicative of exhibits previously submitted with Applicant's December 23, 2019, Response to Office Action and unnecessary. *In re Thor Tech Inc.*, 85 USPQ2d 1474, 1475 n.3 (TTAB 2007) (attaching evidence from record to briefs is duplicative

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<sup>2</sup> Registration No. 4808818.

<sup>3</sup> Registration No. 4808818.

<sup>4</sup> Registration No. 4734887.

and is unnecessary). Accordingly, we will make our determination based on the exhibits that are already part of the record on appeal.

## II. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). We consider each *DuPont* factor for which there is evidence and argument. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In every Section 2(d) case, two key factors are the similarity or dissimilarity of the marks and the goods or services. *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.”).

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

We first consider the second and third *DuPont* factors. The second *DuPont* factor “considers ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,’” while the third *DuPont* factor considers “the similarity or dissimilarity of established, likely-to-continue trade channels.” *In*

*re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). Our analysis under these factors is based on the identifications of goods in the application and the cited registrations. *Id.*; *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-63 (Fed. Cir. 2014). “It is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.” *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981)).

Applicant’s goods are:

electric vacuum food sealers for household purposes;  
electric bag sealers in International Class 7;

hand-powered tool used to close re-sealable bags used with  
vacuum sealers in International Class 8;

plastic food storage bags for household use; resealable  
plastic food storage bags with vacuum sealers for personal  
use; plastic vacuum bags for packing; vacuum compression  
bags, namely, plastic food storage bags with one-way  
valves, in which air is evacuated for personal use in  
International Class 16;

resealable garment storage bags with vacuum sealers for  
clothing; vacuum compression bags made of high-density  
polyethylene plastic for the storage of personal items;  
vacuum compression bags and hanging bags, namely,  
plastic bags with one-way valves, in which air is evacuated  
for storing clothing; resealable high-density polyethylene  
plastic bags with vacuum sealers for the storage of  
household items in International Class 22.

Registrant’s goods in Registration No. 4808818 are:

Hand-powered tool used to close re-sealable bags used with  
vacuum sealers, comprised of hand-operated hand-held

pumps for removing air from and sealing plastic bags for food storage for household use in International Class 8.

Evacuatable resealable storage bag made of nylon and polyethylene with a valve made of polyethylene and polypropylene and a closure system made of polyethylene for household food storage purposes in International Class 16.<sup>5</sup>

Registrant's goods in Registration No. 4734887 are

Evacuatable resealable plastic storage containers for household use; Evacuatable resealable household storage containers for food; Household storage containers for food in International Class 21.<sup>6</sup>

Applicant argues that “the fact that goods are classified differently certainly confirms that the goods are not in fact identical and therefore that there are differences between the goods themselves.” Applicant’s brief, 6 TTABVUE 13. Applicant points out that Registration No. 4734887 lists goods in Class 21 while the goods in Applicant’s application are classified in International Classes 7, 8, 16 and 22. *Id.* at 13. As to the cited Registration No. 4808818, which lists goods in Classes 8 and 16, Applicant argues that the registration does not include any goods in International Classes 7 or 22 and “on that basis alone, this registration is not

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<sup>5</sup> We take judicial notice that polyethylene is “a light, usually thin, soft plastic, often used for making bags or for keeping things dry or fresh.” Cambridge Dictionary, dictionary.cambridge.org, <https://dictionary.cambridge.org/us/dictionary/english/polyethylene> (accessed February 22, 2021). The Board may take judicial notice of dictionary definitions from online sources when the definitions themselves are derived from dictionaries that exist in printed form or have regular fixed editions. *See In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

<sup>6</sup> We take judicial notice that evacuate is defined as “3: to remove something (such as gas or water) from especially by pumping.” Merriam-Webster dictionary, merriam-webster.com <https://www.merriam-webster.com/dictionary/evacuate> (accessed February 22, 2021).

appropriate to act as a bar to registration of Applicant's Mark in relation to goods in International Classes 7 and 22." *Id.* at 14.

However, as noted by the Examining Attorney, the classification of goods by the USPTO is a purely administrative determination and has no bearing on the issue of likelihood of confusion. *See Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 29 USPQ2d 1771, 1774 (Fed. Cir. 1993) ("classification is wholly irrelevant to the issue of registrability under section 1052(d), which makes no reference to classification"); and *Nat'l Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212 (TTAB 1990). (The classification system was established for the convenience of the Office rather than to indicate that goods in the same class are necessarily related or that classification in different classes indicates that they are not related). In addition, goods can be classified in more than one class, so a different classification for a particular good does not prove that identical goods are unrelated. *See In re Int'l Salt Co.*, 166 USPQ 215, 215-216 (TTAB 1970) (salt can be classified in more than one class due to different purposes or uses). Thus, the differences in classification of Applicant's and Registrant's goods does not serve as evidence that the goods are somehow unrelated.

The identifications themselves evidence relatedness. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (the descriptions in the application and registration are evidence of relatedness). Registrant's "hand-powered tool used to close resealable bags used with vacuum sealer" in Registration No. 4808818 is identical to Applicant's "hand-powered tool used to close re-sealable bags used with vacuum sealers" and is closely related to

Applicant's "electric vacuum food sealers for household purposes" as these are all vacuum sealing tools used with resealable bags. The "Evacuatable resealable storage bag made of nylon and polyethylene with a valve" for food storage listed in Registration No. 4808818 is encompassed by Applicant's "vacuum compression bags, namely, plastic food storage bags with one-way valves." *See In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.'"). Registrant's "Evacuatable resealable plastic storage containers for household use" are related to Applicant's "resealable high-density polyethylene plastic bags with vacuum sealers for the storage of household items" as both goods are resealable and used for vacuum storage of household items.

In addition, the Examining Attorney submitted website evidence showing that companies offer, under the same mark, resealable bags for vacuum sealing, containers for vacuum sealing, and hand held and electric vacuum sealers. September 11, 2019, Office Action at TSDR 2-25; February 7, 2020, Office Action at TSDR 2-7. The Examining Attorney also submitted evidence showing that companies that offer resealable plastic bags for food and household storage also offer plastic storage containers. February 7, 2020, Office Action at TSDR 8-13. The website evidence demonstrates that goods of the type offered by both Applicant and Registrant are marketed and sold together under the same marks. *See Hewlett-Packard Co.*, 62 USPQ2d at 1004 (evidence that "a single company sells the goods and services of both parties, if presented, is relevant to the relatedness analysis"). "We find that



consumers would readily perceive these types of [goods] as being sufficiently related as to be offered by a single business.” *In re Integrated Embedded*, 120 USPQ2d 1504, 1515 (TTAB 2016).

As to classes of purchasers, because the goods at issue are without any restrictions or limitations as to classes of consumers, the goods could be offered to all classes of purchasers, including ordinary consumers. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981) (citing *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958)). Both Applicant’s and Registrant’s goods are offered to the general public, and the goods would be offered to ordinary consumers for household use.

As to trade channels, to the extent the goods are legally identical, we may presume that Applicant’s and Registrant’s identical products travel in the same ordinary trade and distribution channels and will be marketed to the same potential consumers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (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). As to the related goods, because neither Applicant’s nor Registrant’s identifications of goods are restricted as to channels of trade or classes of consumers, we must presume that they travel in all channels appropriate for the goods and are available to all potential classes of ordinary consumers of such goods. *See In re Elbaum*, 211 USPQ at 640. The website evidence discussed above is probative to show that the trade channels and classes of purchasers overlap for both the legally identical and related goods.

We find that the second and third *DuPont* factors favor a finding of likelihood of confusion.

B. Strength or Weakness of SEAL-Formative Registered Marks

We now consider the strength or weakness of the word SEAL in Registrant's mark.


Applicant argues that SEAL is a weak term and that the "dilution of the term 'SEAL' is critically important here because the word 'SEAL' is the only arguable similarity between the marks." Applicant's brief, 6 TTABVUE 19, Applicant's reply brief, 9 TTABVUE 5. To show support for its argument that SEAL is a weak term, Applicant incorporated in its brief the following chart shown below of third-party registrations for SEAL marks for "various types of resealable bags" (Exhibits A-L) and two SEAL formative marks for either hand powered pump to seal bags or hand operated food cutter (Exhibits M-N).<sup>7</sup> Applicant's brief, 6 TTABVUE 16. These third-party registrations were submitted during examination by Applicant. December 23, 2019, Response to Office Action at TSDR 8.

Applicant did not submit any marketplace evidence demonstrating third party use of SEAL-formative marks on similar goods.

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<sup>7</sup> Applicant provided a similar chart in its December 23, 2019, Response to Office Action. The third party registrations, Exhibits A-L, list "various types of resealable bags," plastic storage bags, or reclosable or resealable plastic storage bags (for uses that include food storage and household use), or vacuum sealed bags for household storage or food storage. Exhibit A also lists "electric pump vacuum sealer" in addition to resealable bags. The food cutter identified by the registration in Exhibit N is unrelated to the goods at issue here.

Exhibit	Registration Number	Registration Date	Mark
A	3923767	February 22, 2011	
B	4471580	January 21, 2014	SEALEX
C	5586966	October 16, 2018	SEAL & SAVE
D	5347872	November 28, 2017	
E	1876323	January 31, 1995	
F	2986347	August 16, 2005	SLIDE 'N SEAL
G	3413619	April 15, 2008	COLOR SEAL
H	4319980	April 16, 2013	
I	5276277	August 29, 2017	SEAL-N-SAVOR
J	5279701	September 5, 2017	
K	5303246	October 3, 2017	SEAL 2 GO
L	5858572	September 10, 2019	LOCNSEAL

Exhibit	Registration Number	Registration Date	Mark
M	5233383	June 27, 2017	
N	2482197	August 28, 2001	CUT-N-SEAL

Third-party registrations are relevant evidence of the inherent or conceptual strength of a mark or term because they are probative of how terms are used in connection with the goods identified in the registrations. “Third party registrations show the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services.” *See, e.g., Institut National Des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992). *See also Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674-75 (Fed. Cir. 2015); *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006).

Third-party registrations used in this manner are not evidence that customers are accustomed to seeing the use of other similar marks in the marketplace, but rather evidence that a term is suggestive or descriptive of the relevant goods or services and it is less likely to have source identifying significance to purchasers. *See Juice Generation*, 115 USPQ2d at 1675 (“Third party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.”) (citation omitted); *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973) (“The existence of these registrations is not evidence of what happens in the market place or that customers are familiar with them.”). The third-party registrations for marks

that contain SEAL along with other matter for resealable plastic bags reflect some degree of conceptual weakness of SEAL in this context. Thus we find that SEAL is highly suggestive in the context of resealable bags and containers in Registrant's mark.<sup>8</sup>

However, the registrations Applicant has submitted are distinguishable in that they combine SEAL with wording other than VAC and evoke different commercial impressions. Applicant's mark is much closer to the mark in the cited registrations than any of these third-party registrations. Therefore, these third-party registrations do not support a finding of conceptual weakness as to Registrant's SEAL N' VAC mark as a whole. *See In re Merck & Co., Inc.* 189 USPQ 355, 356 (TTAB 1975) (third-party registrations showing frequent adoption of the letter "M" as a portion of composite mark do not establish that registrant's mark M-VAC as a whole is weak and entitled to limited protection).

### C. Similarity of the Marks

We turn next to the first *DuPont* factor, which requires us to determine the similarity or dissimilarity of the marks in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). The test under the first *DuPont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are

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<sup>8</sup> We take judicial notice of the definition of seal which is defined as "c (1): a tight and perfect closure (as against the passage of gas or water)." Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/seal> (accessed February 22, 2021).

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. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012).

In comparing the marks, we consider them in their entirety. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). It is nevertheless appropriate, for rational reasons, to regard certain features of the marks as being more dominant or otherwise significant, and therefore to give those features greater weight. *Stone Lion*, 110 USPQ2d at 1161; *In re Nat'l Data Corp.*, 224 USPQ at 751.



Applicant's mark is and Registrant's mark is SEAL N' VAC.

In Applicant's mark, the letters "s" and "x" are extended at the top and bottom to form part of the curved design that frames the words SEALVAX; the letter "l" incorporates a leaf design.

Applicant argues that "the design elements are the dominant feature" of Applicant's mark. Applicant's brief, 6 TTABVUE 10.

In this mark, the words are encircled with arcuate design elements, and a unique leaf-like design is centrally disposed above the words. These design elements are dominant, and at worst, must be considered as integral features of the mark. Indeed the design elements are integrated into the literal elements of Applicant's Mark and as such, the word portion of the mark can quite

literally not be separated from the design elements.  
Applicant's brief 6 TTABVUE 9.

Applicant also contends that consumers will separate out the letter "l" leaf design element from its mark due to its "unique stylization," separating the terms, and viewing the mark as "Sea Vax." 6 TTABVUE 10.

We disagree. Although design elements are incorporated into the letters "s," "l" and "x," consumers are more likely to remember the letters as forming the words SEALVAX rather than the incorporated design. We find that the design portion of Applicant's mark primarily serves to emphasize the word element SEALVAX and that the letter "l" leaf design and curves formed by the letters "s" and "x" are less prominent. *See In re Viterro Inc.*, 101 USPQ2d at 1908 ("In the case of a composite mark containing both words and a design, 'the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.'") (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 2001) ("words are normally accorded greater weight because they would be used by purchasers to request the goods")). *See also In re Speroules*, 227 USPQ 166, 168 (TTAB 1985) ("Unless a design is so arbitrary and distinctive as to make a definite and immediate impression in and of itself, the design merely becomes part of the overall picture. Since few people have total recall, one can expect the public in most cases to remember the words with only a general impression as to the design."). As to the letter "l," we find it more likely that consumers will perceive this portion of the mark not simply as a design element, but as the letter "l." Especially in view of the suggestiveness of the term "seal" in

connection with these goods, it is more likely that consumers will perceive the literal portion of Applicant's mark as SEALVAX rather than "SEA VAX."

Applicant submits that in comparing the literal elements of Applicant's mark to the cited mark, they are different in appearance, sound, meaning and commercial impression. Applicant argues that the cited mark is made up of three portions, and the letter "n" with an apostrophe is a "distinguishing feature" of the cited mark, creating a pause between "seal" and "vac." Applicant's brief, 6 TTABVUE 11, 12. Applicant submits that Registrant's mark "would be read" as "seal and vacuum." *Id.*

Applicant also argues that its mark is "a single fanciful term" and "arbitrary," that VAX in its mark is not similar to VAC, that consumers would not interpret VAX as an alternative abbreviation to VAC, as there is no plural abbreviation for VACS, and that consumers would pronounce the terms differently and attribute different meanings to these terms. *Id.* at 12; Applicant's reply brief, 9 TTABVUE 4. Applicant argues that as to appearance and commercial impression, its mark SEALVAX "creates a sharper visual style and an edgier, more modern impression" which is "distinct from the impression of SEAL N' VAC, where the 'N' presents a more folksy style." Applicant's reply brief, 9 TTABVUE 4. Applicant submits that the commercial impressions of Applicant's mark and the cited mark are not the same because VAX is not the same as VAC, and Applicant's mark includes design elements which distinguish its mark from the cited mark. Applicant's brief, 6 TTABVUE 12, 19.

Considering the dominant literal portion of Applicant's mark, SEALVAX, and Registrant's mark SEAL N' VAC, we find they are similar in sound and appearance



even with their slight differences. The marks both include the term SEAL, and VAC/VAX are terms that could be viewed as abbreviations for vacuum,<sup>9</sup> differing only by the final consonant (“c” or “x”) but likely pronounced in a very similar manner. *See Flow Tech. Inc. v. Picciano*, 18 USPQ2d 1970, 1972 (TTAB 1991) (Omnitrax and Omnitrak are “practically identical”). Although the cited mark also includes an “N apostrophe” which acts to join the terms “seal” and “vac” we find this addition is not sufficient to distinguish the marks in appearance and sound. *See e.g., Wenatchee-Beebe Orchard Co. v. H.W. Butler & Bro., Inc.*, 126 USPQ 296, 296 (TTAB 1960) (“B and B” when spoken is substantially similar to Opposer’s mark “BEEBE”). Even if Registrant’s mark is perceived as “seal and vac” or “seal in vac,” the cited mark is very similar in appearance and sound to the literal portion of Applicant’s mark SEALVAX.

As to connotation of the marks, Applicant considers its mark to be a “fanciful” or “arbitrary,” a “single word,” with no known meaning.<sup>10</sup> Applicant’s brief, 6 TTABVUE 12-13. Applicant argues that SEALVAX is a noun while Registrant’s mark suggests the action of seal and vacuum. *Id.* However, in the context of Applicant’s and Registrant’s goods, we find that SEALVAX and SEAL N’ VAC convey similar

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<sup>9</sup> February 7, 2020, Office Action at TSDR at 14-15. VAX is an abbreviation for vacuum cleaners. Abbreviations.com. VAC is an abbreviation for vacuum. Merriam-Webster Dictionary, merriam-webster.com.

<sup>10</sup> At least as to the term “seal,” the third-party registration evidence contradicts Applicant’s claim that “seal” is arbitrary as used in connection with the involved goods.

meanings, both suggesting vacuum sealing.<sup>11</sup> Although Applicant argues that the differences in sound, appearance and connotation distinguish the marks, the overall commercial impressions created by the marks are very similar, even with their slight differences and the addition of the design elements in Applicant's mark. The emphasis must be on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1976).

When we consider the marks in their entirety, we find the marks are more similar than dissimilar. The first *DuPont* factor favors a finding of likelihood of confusion.

### III. Conclusion

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. Because we have found that the marks at issue are similar and that Applicant's identified goods are identical in part or related to Registrant's goods and that those goods would move in the same or overlapping trade channels and would be offered to the same classes of purchasers, we conclude that Applicant's



mark, as used in connection with the goods identified in its involved application, so resembles the cited mark SEAL N' VAC as to be likely to

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<sup>11</sup> We take judicial notice of the term vacuum which is defined as "2:b a space partially exhausted (as to the highest degree possible) by artificial means (such as an air pump)." Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/vacuum> (accessed February 22, 2021).

cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act. The third-party registration evidence of record, although one factor to be considered, does not persuade us of a different result because it does not show that the cited mark SEAL N' VAC is conceptually weak.

**Decision:** The Section 2(d) refusal to register Applicant's mark affirmed.



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