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Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Zhenhai Petrochemical Jianan Engineering Co., Ltd.

Serial No. 79381020

Andrew T. Rissler and Alex D. Patel of Patel IP, PC
for Zhenhai Petrochemical Jianan Engineering Co., Ltd.

Valerie Kaplan, Trademark Examining Attorney, Law Office 107,
Leslie Bishop, Managing Attorney.

Before Heasley, Cohen, and O'Connor,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, Zhenhai Petrochemical Jianan Engineering Co., Ltd., seeks registration on the Principal Register of the mark 

, ultimately for "heat exchangers, other than parts of machines, for industrial use" in International Class 11.[1]

[1] Application Serial No. 79381020 was filed on August 7, 2023, seeking an extension of protection of International Registration No. 1756076 under Section 66A of the Trademark Act, implementing the Madrid Protocol. According to Applicant's description of the mark,

The Examining Attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as used in connection with these goods, so resembles the registered mark SPINFLOW (in standard characters) for "vacuum cleaners, robotic vacuum cleaners and parts thereof; robotic appliances for household purposes and maintenance and parts thereof, namely, robotic vacuum cleaners and parts thereof," in International Class 7, as to be likely to cause confusion, to cause mistake, or to deceive.[2]

Applicant has appealed the Examining Attorney's final refusal, and the case is briefed.

I. Prosecution History and Briefs on Appeal

We summarize the prosecution history of the application because it provides a useful background to the briefing and disposition of this appeal.

Applicant applied to register 

for:

> Refrigerating machines and installations; air heaters; gas condensers, other than parts of machines; heat exchangers, other than parts of machines; steam heating apparatus [for industrial purposes]; air heating apparatus; heating apparatus for solid, liquid or gaseous fuels; evaporators for chemical processing; heat generators; steam generating installations.

"The mark consists of the stylized wording 'SPINFLOW' under a circle with bands." Color is not claimed as a feature of the mark.

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system and identify the documents by title, date, and page in the downloadable .pdf version. Citations to the briefs and other materials in the appeal record refer to the Board's TTABVUE online docket system.

[2] Registration No. 5082950 issued on the Principal Register on November 15, 2016. Sections 8 and 15 declarations accepted and acknowledged.

The Examining Attorney issued a nonfinal provisional full refusal based on likelihood of confusion with the cited registered SPINFLOW mark. The Examining Attorney based the Section 2(d) refusal on the similarity of the marks and the identified goods, and made of record three websites purporting to show the respective sorts of goods offered by the same sources. The Examining Attorney further advised Applicant that, among other things, it must incorporate any parenthetical or bracketed information into the description of goods, and could otherwise amend its identification of goods.[3]

Applicant responded by narrowing its identification of goods under 37 C.F.R. § 2.71(a) to:

> Air heaters; gas condensers, other than parts of machines; heat exchangers, other than parts of machines; steam heating apparatus for industrial purpose; air heating apparatus; heating apparatus for solid, liquid or gaseous fuels; evaporators for chemical processing; heat generators; steam generating installations; all of the aforementioned goods are for industrial use.

Applicant also argued against the refusal, contending that the marks were distinguishable, that its identified industrial goods were completely unrelated to vacuum cleaners, and that its industrial customers "would pay a higher-than-normal level of attention when making their purchasing decisions and it is therefore very unlikely to cause confusion about the origin of the goods."[4] Applicant attached webpages showing the registrant's robotic vacuum cleaners, and one of Applicant's

[3] April 11, 2024 Office Action at 4.

[4] Aug. 5, 2024 Response to Office Action at 7.

brochures showing its heat exchangers, which transfer heat from one medium to another.[5]

The Examining Attorney then issued an Office Action making final the Section 2(d) refusal, attaching webpages from five third-party websites purporting to offer the respective sorts of goods for sale.[6]

Applicant filed a Request for Reconsideration in which it narrowed its identification of goods to its current description, "heat exchangers, other than parts of machines, for industrial use." "After the amendment," it argued, "we submit that the applied-for goods are not similar to the goods of the cited earlier mark in Class 7." Applicant attached a product brochure showing one of its industrial heat exchangers, weighing over 700 metric tons, carried on a flatbed truck:

the applied-for goods are very large in size, with a weight of over 700 metric tons, and a pressure vessel diameter of up to 6,000mm. As you could see from a photo of the actual product in the product brochure as follows:



[7]

Applicant further argued that "the goods of the cited earlier mark are for cleaning, while the applied-for goods are for temperature regulation for machinery in heavy industries such as refinery, petrochemical and oil and gas industries."[8] Additionally,

[5] *Id.* at 6, 9-17.

[6] Oct. 16, 2024 Office Action.

[7] Jan. 28, 2025 Response to Office Action/Request for Reconsideration at 6.

[8] *Id.* at 7.

Applicant challenged the probative value of the Examining Attorney's third-party website evidence: "We submit that all five websites cited by the examiner are all distributors offering a wide variety of goods under various trademarks."[9]

The Examining Attorney nonetheless denied Applicant's Request for Reconsideration, and maintained the refusal to register based on likelihood of confusion under Section 2(d), citing seven third-party websites purporting to offer the respective sorts of goods.[10] This appeal ensued.

The briefing has been somewhat irregular, to say the least. Oddly, and inexplicably, Applicant devoted its main brief to an argument that its mark was not merely descriptive under 15 U.S.C. § 1052(e)(1).

The Examining Attorney responded, "The Applicant submits arguments solely arguing that a Section 2(e)(1) refusal should not have been issued and the applied-for mark is not descriptive. However, a Section 2(e)(1) refusal has never been issued in regard to this application. The sole issue in this case is the Section 2(d) Refusal due to likelihood of confusion with the mark in U.S. Registration No. 5082950."[11] The Examining Attorney's brief nonetheless addressed the applicable *DuPont* factors.

Applicant acknowledged its error in its reply brief: "Applicant acknowledges that its previously filed Appeal Brief inadvertently focused on arguments under Section 2(e)(1) descriptiveness. This was an error. The only live refusal before the Board is the Section 2(d) refusal for likelihood of confusion. Applicant regrets the oversight

[9] *Id.*

[10] April 14, 2025 Office Action/Denial of Request for Reconsideration.

[11] Examining Attorney's brief, 12 TTABVUE 7.

and appreciates the opportunity, under TBMP §1203.02(c), to use this Reply Brief to directly address the Examining Attorney's Section 2(d) arguments."[12] Applicant's reply brief addresses the Examining Attorney's Section 2(d) arguments, as Applicant did during the course of prosecuting its Application.

The issue we face is how to treat this irregular briefing. It happens from time to time that the Board will not consider a brief—most often because it exceeds the page limit. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1203.01 (2025). But "[t]he failure to file a conforming appeal brief will not be treated as a failure to file a brief which would result in the dismissal of the appeal. In such a situation, the examining attorney will still file a brief, and the applicant may file a reply brief, although the reply brief must be limited to arguments that reply to the arguments made in the examining attorney's brief; it may not be used as a substitute for a main brief, and any arguments that are not properly the subject of a reply brief will not be considered." *Id*. Similarly, "[a]n examining attorney's failure to file a brief will not result in the application being approved; the Board will simply decide the appeal without the benefit of the brief." TBMP § 1203.02(b). "In any event, consideration of reply briefs is discretionary with the Board." *Saint-Gobain Corp. v. Minnesota Mining and Mfg. Co.*, No. 91119166, 2003 WL 476503, *1 n.3 (TTAB 2003), and we exercise our discretion to consider Applicant's reply brief along with its responses to the Office Actions. *See In re Thomas,* No. 78334625, 2006 WL 1258862, *1-2 & n.5 (TTAB 2006) (giving no consideration to applicant's main brief, but stating

[12] Applicant's reply brief, 13 TTABVUE 2.

"We have, however, considered applicant's responses to Office actions and its reply brief.").

II. Likelihood of Confusion

Section 2(d) of the Trademark Act provides that a mark may be refused registration if it:

> [c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive….

15 U.S.C. § 1052(d).

To determine whether there is a likelihood of confusion between marks under Section 2(d), we analyze the evidence and arguments under the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (the "*DuPont* factors") *cited in B&B Hardware, Inc. v. Hargis Indus., Inc.,* 575 U.S. 138, 145 (2015). As our primary reviewing Court explains:

> Likelihood of confusion is a question of law with underlying factual inquiries based on the *DuPont* factors. *Stratus Networks, Inc. v. UBTA-UBET Commc's Inc.,* 955 F.3d 994, 998 (Fed. Cir. 2020). … In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis. *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 1370 (Fed. Cir. 2002). The Board is required to consider each factor for which it has evidence, but it can focus its analysis on dispositive factors. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406-07 (Fed. Cir. 1997). A single *DuPont* factor may, for example, be dispositive of the likelihood of confusion analysis. *Kellogg Co. v. Pack'em Enters.*, Inc., 951 F.2d 330, 333 (Fed. Cir. 1991). The weight given to each factor depends on the circumstances of each case.

In re Charger Ventures LLC, 64 F.4th 1375, 1381 (Fed. Cir. 2023).

A. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant's and Registrant's marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 476 F.2d at 1361.

As the Examining Attorney correctly states,[13] the wording of the respective marks,



and SPINFLOW, is identical. Applicant's design element would not suffice to distinguish the marks, as purchasers would use the wording to request or refer to the goods. *E.g.*, *Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co., Ltd.,* 2024 WL 3739358, *9 (TTAB 2024).

Applicant does not contest the similarity of the marks, but argues that the other *DuPont* factors outweigh the similarity: "Although the literal wording of the marks is identical, the Board does not assess similarity 'in a vacuum.' …. Where the goods are unrelated, trade channels differ, and sophisticated purchasers are involved, even identical marks do not support a finding of likely confusion."[14]

We find that the marks are very similar, and the first *DuPont* factor weighs heavily in favor of finding a likelihood of confusion.

B. Similarity of the Goods

This brings us to the second *DuPont* factor, the "similarity or dissimilarity and

[13] Examining Attorney's brief, 12 TTABVUE 4.

[14] Applicant's reply brief, 13 TTABVUE 5.

nature of the goods or services as described in an application or registration." *DuPont*, 476 F.2d at 1361.

As noted, Applicant's goods are "heat exchangers, other than parts of machines, for industrial use." A "heat exchanger" is "[a] device used to transfer heat from a fluid flowing on one side of a barrier to a fluid or fluids flowing on the other."[15] Registrant's goods are "vacuum cleaners, robotic vacuum cleaners and parts thereof; Robotic appliances for household purposes and maintenance and parts thereof, namely, robotic vacuum cleaners and parts thereof." We thus compare freestanding heat exchangers for industrial use with vacuum cleaners and parts thereof.

To make this comparison, we "consider[] whether the consuming public may perceive the respective goods . . . of the parties as related enough to cause confusion about the source or origin of the goods." *Naterra Int'l, Inc. v. Bensalem*, 92 F.4th 1113, 1117 (Fed. Cir. 2024) (citation omitted). "If the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion may not be likely." TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(a)(i) (Nov. 2025).

[15] American Heritage Dictionary (1980). *See In re Thor Tech Inc.,* No. 78634024, 2009 WL 1098997, *4 n.10 (TTAB 2009) (the Board may use definitions to determine the meaning of the terms used in the description of goods). The Board may sua sponte take judicial notice of definitions from printed dictionaries that were not made of record prior to appeal. TMEP § 710.01(c) (Nov. 2025).

There are several ways of showing that consumers are likely to view goods as similar or related. In some cases, the identifications of goods in the application and cited registration may themselves evidence their similarity. *Monster Energy Co. v. Lo*, 2023 WL 417620, *7 (TTAB 2023). But the identifications in this case do nothing of the sort, and the Examining Attorney does not so contend. Another way is to show that the goods are complementary. That, however, requires a showing that customers would seek out both types of goods for the same purpose. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1567 (Fed. Cir. 1984) (bread and cheese complementary products, often used in combination). There is no such showing here, as vacuums are used for cleaning and industrial heat exchangers are used for temperature regulation.

Yet a third way of showing that consumers perceive two types of goods to be related is to show that third-party companies provide both under the same mark. *Naterra*, 92 F.4th at 1117. This evidence may take the form of use-based third-party registrations identifying both sorts of goods, or third-party websites showing the goods offered under the same mark. The rationale underlying this means of proof is, the more consumers see companies offering their goods under one mark, the more likely they are to perceive those goods as emanating from a common source. *See In re Detroit Ath. Co.*, 903 F.3d 1297, 1306 (Fed. Cir. 2018).

The Examining Attorney takes this third tack. She makes no third-party registrations of record, but relies on seven third-party websites purporting to offer both kinds of goods, arguing:

The evidence of record establishes that the same entity commonly manufactures, produces, or provides the relevant goods and markets the goods under the same mark:

• https://www.ferguson.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Office action of October 16, 2024, TSDR p. 2-5; Request For Reconsideration Denied of April 14, 2025, TSDR p.11, 14, 32

• https://www.globalindustrial.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Office action of October 16, 2024, TSDR p. 7-8, 11-12, Request For Reconsideration Denied of April 14, 2025, TSDR p. 3, 41-42

- https://www.homedepot.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Office action of October 16, 2024, TSDR p. 14, 16; Request For Reconsideration Denied of April 14, 2025, TSDR p. 4, 43-45

• https://www.grainger.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Office action of October 16, 2024, TSDR p. 17-19; Request For Reconsideration Denied of April 14, 2025, TSDR p. 5, 46

• https://www.lowes.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Office action of October 16, 2024, TSDR p. 21-22

• https://www.jondon.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Request For Reconsideration Denied of April 14, 2025, TSDR p.7-8

• https://www.michiganmaintenance.com/, showing that heat exchanges and vacuum cleaners are sold by the same entity See Request For Reconsideration Denied of April 14, 2025, TSDR p.9-10.[16]

[16] Examining Attorney's brief, 12 TTABVUE 5-6.

Applicant responds that: "the goods are not related in a manner that suggests a common source."[17] "The Examining Attorney argues that Applicant's heat exchangers and Registrant's vacuum cleaners are 'often sold by the same entity.' However, the only evidence submitted consists of retailer websites showing both categories available through the same large distributors."[18] "[M]ere retailer overlap does not establish relatedness; probative evidence would include examples of a single entity offering both goods under a single mark. None exists here."[19] "These goods differ categorically in nature, function, and market."[20]

We agree with Applicant that this third-party website evidence fails to demonstrate similarity or relatedness of the respective goods.

- **Ferguson.com** – A distributor carrying multiple brands of equipment for residential and commercial buildings, carries the WEIL-MCLAIN and SERVICE FIRST brands of heat exchanger and SAMSUNG Jet Bot Robot Vacuum.[21]
- **GlobalIndustrial.com** – A distributor of industrial supplies, carries the RUFFNECK HP Series High Pressure Heat Exchanger Unit and the MAKITA Lithium-Ion robotic vacuum.[22]

[17] Applicant's reply brief, 13 TTABVUE 4 (capitalization omitted).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Oct. 16, 2024 Office Action at 7-22; April 14, 2025 Office Action at 8, 46, 61.

[22] Oct. 16, 2024 Office Action at 35-36, 51-55, April 14, 2025 Office Action at 12, 74, 90-91, 94, 146, 180-81, 185.

- **HomeDepot.com** – A large home improvement retailer, sells the RUFFNECK and VEVOR electric heat exchangers, and the IROBOT ROOMBA vacuum & mop.[23]
- **Grainger.com** – An industrial supplies and equipment provider carrying multiple brands, offers the STANDARD XCHANGE heat exchanger and the MAKITA robotic vacuum.[24]
- **Lowes.com** – A familiar home improvement retailer with an extensive range of products, sells the WOODMASTER Commercial/Residential heat exchanger garage/shop fan coil and the IROBOT ROOMBA combo pet robotic vacuum and mop.[25]
- **Jondon.com** – Was a supplier and distributor of cleaning and restoration products. It offered the CORE HM Blower heat exchanger and various brands of vacuum cleaners. [26]
- **MichiganMaintenance.com** – A retailer offering PROCHEM heat exchangers and SANITAIRE vacuums, among other brands.[27]

This third-party evidence does not show manufacturers, producers or dealers selling the items under their own marks, but large retailers primarily selling others' goods bearing the manufacturers' and producers' trademarks. Not one third-party

[23] Oct. 16, 2024 Office Action at 65, 77, April 14, 2025 Office Action at 17, 104-107, 116-19, 151, 189, 203.

[24] Oct. 16, 2024 Office Action at 83, 86, 89, April 14, 2025 Office Action at 23, 122, 125-28.

[25] Oct. 16, 2024 Office Action at 95, 99, April 14, 2025 Office Action at 25, 134, 138, 159.

[26] April 14, 2025 Office Action at 30, 36-37, 164, 169-71.

[27] April 14, 2025 Office Action at 39-40, 42-44,173-78.

use example shows heat exchangers and vacuums bearing the same trademark. *Naterra*, 92 F.4th at 1117. None of this third-party evidence shows how consumers would be educated to perceive the respective goods as emanating from a common source.

As we have found in analogous cases involving large brick-and-mortar retailers, "[t]he evidence provided … is not sufficient to show that consumers would believe that the same company that sells [vacuum cleaners] would also sell [industrial heat exchangers], even when they see the goods offered in the same store." *North Face Apparel Corp. v. Sanyang Indus. Co.,* No. 77375588, 2015 WL 6467820, *16 (TTAB 2015). "It has long been held that the mere fact that two different items can be found in a supermarket, department store, drugstore or mass merchandiser store is not a sufficient basis for a finding that the goods are related." *Morgan Creek Prods., Inc. v. Foria Int'l, Inc.*, No. 91173806, 2009 WL 1719597, at *8 (TTAB 2009) citing *Recot Inc. v. Becton*, 214 F.3d 1322, 1330 (Fed. Cir. 2000); *Shoe Factory Supplies Co. v. Thermal Eng'g Co.,* No. 91060214 1980 WL 30144, *9 (TTAB 1980) ("This contention [to equate different or unrelated goods by urging that they are all sold in supermarkets, department stores, and similar establishments] has been rejected…").

So too here, in the context of large online and brick-and mortar retailers offering a wide variety of products bearing the brands of others. This evidence is relevant to channels of trade, which we will address, but it fails to show that Applicant's and Registrant's goods are similar or related in the sense that matters for likelihood of confusion purposes, i.e., we cannot find on this record that consumers would believe the goods emanate from the same source.

In short, the gulf between vacuum cleaners and freestanding industrial heat exchangers is much too wide to be bridged by the evidence of record, even though the marks' wording is the same. *See Pneutek, Inc. v. Scherr*, 1981 WL 40499, *7 (TTAB 1981). As the Board has declared, "[t]he identity of the marks alone is not sufficient to establish likelihood of confusion in the absence of probative evidence that the goods are related. If that were the case, then the Registrant would have rights in gross, and that is against the principles of trademark law." *In re Thor Tech, Inc.*, No. 85667188, 2015 WL 496133, *1 (TTAB 2015). "[I]f the goods or services in question are not related or marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that they originate from the same source, then, even if the marks are identical, confusion may not be likely." TMEP § 1207.01(a)(i) (citing inter alia *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1371 (Fed. Cir. 2012); *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1245 (Fed. Cir. 2004)).

For these reasons, the second *DuPont* factor weighs heavily against a likelihood of confusion.

C. Channels of Trade, Classes of Customers, and their Sophistication and Care

The third *DuPont* factor considers "[t]he similarity or dissimilarity of established, likely-to-continue trade channels," and the fourth considers "[t]he conditions under which and buyers to whom sales are made, i.e., 'impulse' vs. careful, sophisticated purchasing." *DuPont*, 476 F.2d at 1361.

The Examining Attorney maintains that the third-party use evidence of record shows that vacuum cleaners and industrial heat exchangers are offered through the

same channels of trade.[28] Applicant responds that: "Applicant's heat exchangers for industrial use are sold through specialized channels to engineers, industrial procurement teams, and commercial buyers."[29] "By contrast, Registrant's vacuum cleaners are mass-market consumer goods sold in household appliance channels."[30]

Registrant's goods are not so limited, though. The cited Registration identifies "Robotic appliances for household purposes and maintenance and parts thereof," but it also identifies, more generally, "vacuum cleaners, robotic vacuum cleaners and parts thereof" with no limitation to household purposes. *See In re Detroit Ath. Co.,* 903 F.3d at 1308 (third *DuPont* factor must be evaluated with an eye toward the goods or services described in the application and registration). The third-party evidence, moreover, shows that vacuum cleaners and heat exchangers are available through a very broad channel of trade, in the sense of being offered by large distributors and retailers. There is no indication that these distributors and retailers offer behemoth industrial heat exchangers like Applicant's 700 metric ton heat exchanger, but Applicant's identification of its goods, "heat exchangers, other than parts of machines, for industrial use" does not impose a size limitation. *Id*. It is apparent from the record that third-party distributors and retailers offer their vacuum cleaners and heat exchangers under different categories online, and would presumably display them in different aisles of brick-and-mortar stores, as they serve distinctly different purposes—cleaning versus heat transfer. Taking all these considerations into

[28] Examining Attorney's brief, 12 TTABVUE 5-6.

[29] Applicant's reply brief, 13 TTABVUE 4.

[30] *Id*., 13 TTABVUE 5.

account, we find that the respective goods are offered in overlapping broad channels of trade, but understand that the goods would not tend to be displayed in proximity to one another. *Cf. Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 WL 2188890, *25 (TTAB 2022) (side by side display).

We next consider the classes of customers. Applicant's heat exchangers are limited to industrial use. "You use **industrial** to describe things that relate to or are used in industry," and "**Industry** is the work and processes involved in collecting raw materials, and making them into products in factories."[31] Applicant explains that its heat exchangers "are for temperature regulation for machinery in heavy industries such as refinery, petrochemical and oil and gas industries."[32] This explanation illustrates, but does not delimit, the range of industries to which Applicant may potentially offer its heat exchangers, as its identification of goods is not limited beyond "industrial use." *See Detroit Ath.,* 903 F.3d at 1308 (channels of trade evaluated based on specification in application, "not those as they exist in the real world").

Registrant's vacuum cleaners, as noted, are partially limited to household purposes, but are otherwise available to companies as well as residential customers. There is therefore a potential overlap, as both sorts of goods could conceivably be offered to industrial companies.

[31] CollinsDictionary.com 1/31/2026. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Leathernecks Motorcycle Club Int'l, Inc.,* No. 90498154, 2024 WL 2863442, *6 n.6 (TTAB 2024).

[32] *Id.* at 7.

That doesn't end the analysis, though, as the mere purchase of both sorts of goods by the same institution does not, by itself, establish an overlap of customers. "The likelihood of confusion must be shown to exist not in a purchasing **institution**, but in 'a customer or purchaser.'" *Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp.,* 954 F.2d 713, 717 (Fed. Cir. 1992) (quoting *Astra Pharm. Prods. v. Beckman Instruments,* 718 F.2d 1201, 1206 (1st Cir. 1983)). "However, there is no evidence that the same people at the … institutions [who] make the decision to purchase [heat exchangers] also choose to purchase [vacuum cleaners]." *Calypso Tech., Inc. v. Calypso Capital Mgmt., LP*, No. 91184576, 2011 WL 4090446, *9 (TTAB 2011). The point is, given the disparity in the goods, we cannot presume that their classes of purchasers would be the same. *Electronic Design & Sales v. Electronic Data Sys.,* 954 F.2d at 717.

As for the care and sophistication of the respective purchasers, the Examining Attorney argued during the course of prosecution that "the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion."[33] That is true, generally speaking, but in this case, given the inherent technical nature of Applicant's goods, and each purchaser's need to conform those goods to its own industrial needs, the purchasing process would be "so attenuated and lengthy … that there is time for all involved to understand clearly and completely the vendors with whom they are dealing." *Edwards Lifesciences Corp.*

[33] Oct. 16, 2024 Office Action at 5 (citing *In re Charger Ventures*, 64 F.4th at 1383).

v. VigiLanz Corp., No. 76302366, 2010 WL 1514315, *13 (TTAB 2010). "[I]n light of the inherent nature of the goods and services involved, some degree of purchasing care may be exercised by Applicant's potential or actual consumers." *Heil Co. v. Tripleye GmbH*, 2024 WL 4925901, *36 (TTAB 2024) (quoting *In re Info. Builders Inc.*, No. 87753964, 2020 WL 2094122, *6 (TTAB 2020)). None of the goods are every-day purchases and some care would be taken to purchase the goods of both Registrant and Applicant. The purchasers responsible for buying Registrant's vacuum cleaners would not be expected to exercise as great a degree of care, but as noted, there is no reason to presume that they would be involved in purchasing Applicant's products.

In sum, under the third and fourth *DuPont* factors, we find that the respective goods can be offered through the same broad channels of trade, but would not tend to be displayed in proximity to one another, given their different purposes: cleaning versus heat exchange. They can be offered to the same industrial institutions, but we cannot presume that they would be encountered by the same purchasers. And the inherent nature of Applicant's goods would necessitate lengthy evaluation before purchase, lessening any likelihood of confusion.

III. Conclusion

We have considered all of the evidence and arguments pertaining to the relevant *DuPont* factors, and balance them accordingly. *Charger Ventures*, 64 F.4th at 1383. In so doing, we bear in mind that "[n]ot all of the *DuPont* factors are necessarily … of equal weight in a given case, and any one of the factors may control a particular case." *Naterra*, 92 F.4th at 1116 (quoting *Tiger Lily Ventures Ltd. v. Barclays Cap. Inc.*, 35 F.4th 1352, 1362 (Fed. Cir. 2022)). "Each case must be decided on its own facts and

the differences are often subtle ones." *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973), *quoted in Heil*, 2024 WL 4925901, at *16.

In this case, the marks are quite similar, with identical wording, distinguished, if at all, only by Applicant's design element, weighing heavily in favor of likelihood of confusion. But the goods are manifestly dissimilar. The cited Registration identifies vacuum cleaners, the purpose of which is to clean homes or buildings. The Application identifies free-standing industrial heat exchangers, the purpose of which is to transfer heat from one medium to another. The goods are so different in kind that purchasers are unlikely to believe they emanate from a single source. The third-party use evidence does nothing to bridge this gap, and in fact widens it, as it shows vacuums and heat exchangers offered under different brands. The gulf between the goods "is much too wide to be bridged, even by the marks here involved, on the basis of the record…." *Pneutek, Inc. v. Scherr*, 1981 WL 40499, *7 (TTAB 1981). We find that the second *DuPont* factor weighs heavily against likelihood of confusion, supporting a conclusion that in this case "[t]he difference in the goods … is dispositive on the issue of likelihood of confusion." *North Face Apparel Corp. v. Sanyang Indus. Co.,* No. 77375588, 2015 WL 6467820, *18 (TTAB 2015).

This is consistent with our findings on the remaining factors of record. We find the third *DuPont* factor to be neutral. The respective goods could be offered through the same broad channels of trade, and could conceivably be offered to some overlapping industrial institutions, but given their different natures, and the differing purchasers who would consider the respective goods, "the potential for

confusion appears a mere possibility, not a probability." *Electronic Design & Sales, v. Electronic Data Sys.,* 954 F.2d at 719.

And the fourth *DuPont* factor, purchasing conditions, weighs slightly against likelihood of confusion because consumers of the goods are likely to exercise some care in purchasing, and purchasers of Applicant's goods in particular are likely to engage in a lengthy decision-making process to purchase industrial heat exchangers.

On this record, we do not find a likelihood of confusion between the marks, as applied to the goods. 15 U.S.C. § 1052(d).

Decision: The refusal to register Applicant's mark is reversed.