

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: April 11, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Oracle's Apothecary, LLC*

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Serial No. 90399653

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Ticora E. Davis of The Creator's Law Firm, for Oracle's Apothecary, LLC.

Jacob Magit, Trademark Examining Attorney, Law Office 111,  
Chris Doninger, Managing Attorney.

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Before Zervas, Dunn and Lebow,  
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Oracle's Apothecary, LLC, seeks to register the standard-character mark ORACLE'S APOTHECARY (APOTHECARY disclaimed) on the Principal Register for

Online retail store services featuring liquid soap, hand soap; Online retail store services featuring herbs, smudge sticks, candles, wax melts, matches, disinfectant bathroom cleaners, subscription boxes containing candles, smudge sticks, herbs; Online retail store services featuring face masks, series of non-fiction books in the field of spiritual health and wellness, keychains, coffee cups, tea cups, mugs, sanitary masks for protection against viral infection; Online retail store services featuring apparel and clothing, namely, aprons

in International Class 35.<sup>1</sup>

The Trademark Examining Attorney has refused registration on the ground that Applicant's mark, for the recited services, is likely to cause confusion under Trademark Act 2(d), 15 U.S.C. § 1052(d), with the following marks registered on the Principal Register:

- ORACLE for "clothing, namely, shirts" in International Class 25;<sup>2</sup> and



- for "Online retail store services featuring metaphysical products, namely, healing crystals and non-consumable, non-therapeutic, and non-medicinal essential oils solely derived from cannabis with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis" in International Class 35.<sup>3</sup>

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<sup>1</sup> Application Serial No. 90399653 ("the Application") was filed on December 21, 2020 under two bases: Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), for

"Online retail store services featuring liquid soap, hand soap; Online retail store services featuring herbs, smudge sticks, candles, wax melts, matches, disinfectant bathroom cleaners, subscription boxes containing candles, smudge sticks, herbs,"

based on Applicant's claim of first use anywhere of January 5, 2018, and first use in commerce of February 6, 2018. The Application was filed under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), for

"Online retail store services featuring face masks, series of non-fiction books in the field of spiritual health and wellness, keychains, coffee cups, tea cups, mugs, sanitary masks for protection against viral infection; Online retail store services featuring apparel and clothing, namely, aprons," based on Applicant's allegation of a bona fide intention to use the mark.

<sup>2</sup> Registration No. 3030079; renewed.

<sup>3</sup> Registration No. 6407263. "The mark consists of the stylized words 'ORACLE HEALING' with one dot on each side of the phrase. All of this is placed above a design of a flower backed by waves of water." Color is not claimed.

After the refusal was made final, Applicant filed a notice of appeal. The appeal has been fully briefed. For the reasons discussed below, we affirm the refusal.

### **I. 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), quoted in *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, \*2 (Fed. Cir. 2023).

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. duPont deNemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the “*DuPont* factors”), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 135 S. Ct. 1293, 191 L. Ed. 2d 222, 113 USPQ2d 2045, 2049 (2015). “Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129

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Registration was also finally refused based on likelihood of confusion with the mark ORACLE in 4287359, but that registration was cancelled on August 25, 2023, rendering the refusal moot.

USPQ2d 1160, 1161-62 (Fed. Cir. 2019). “The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.” *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (internal punctuation omitted).

We focus our likelihood of confusion analysis on the composite mark ORACLE HEALING and Design in Registration No. 6407263 which, as outlined above, covers online retail store services featuring inter alia crystals. Because we find confusion likely based on the services in this registration, we need not consider the likelihood of confusion between Applicant’s mark and the mark ORACLE in Registration No. 3030079. *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).<sup>4</sup>

#### **A. Similarity or Dissimilarity 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*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) *aff’d* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

Applicant’s mark, again, is ORACLE’S APOTHECARY in standard characters

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<sup>4</sup> We will refer to the owner of Registration No. 6407263 as “Registrant.”



and Registrant's mark is (hereafter ORACLE HEALING and Design). The Examining Attorney contends that Applicant's and Registrant's marks are "confusingly similar" in appearance, sound, and commercial impression because they share the lead term, ORACLE, which Applicant maintains is the dominant portion of both marks.<sup>5</sup> "When evaluating a composite mark consisting of words and a design," she asserts, "the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services."<sup>6</sup> See *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983) ("[T]he verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.").

The design in Registrant's composite mark is not so memorable or striking that consumers will remember the design. In fact, unaided by the description of the mark in the registration record indicating that the design is "a flower backed by waves of water," it is difficult to discern what the image is of, and how to refer to it. And the dots on either side of the wording 'ORACLE'S HEALING' have no relationship to the design element, and serve to highlight the wording in the mark. We thus agree with the Examining Attorney that the words in Registrant's mark are dominant over the

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<sup>5</sup> 7 TTABVUE 5 (Examining Attorney's Brief).

<sup>6</sup> *Id.* at 6-7.

design. *Cf. Parfums de Coeur Ltd. v. Lazarus*, 83 USPQ2d 1012 (TTAB 2007) (prominently displayed design considered to be dominant element of the mark because it catches the eye and engages the viewer before the viewer looks at the word “Bodyman”).

We note, further, that the additional words APOTHECARY and HEALING in the marks are either merely descriptive or generic of the identified services. An “apothecary” is defined as “one that prepares and sells drugs and other medicines; a pharmacist” and a “pharmacy.”<sup>7</sup> And to “heal” is “to make free from injury or disease : to make sound or whole”; and “to make well again : to restore to health.”<sup>8</sup> One goes to an apothecary (or pharmacist) for healing purposes. Because an apothecary is the source of medicine for healing, ORACLE’S APOTHECARY connotes a highly similar meaning to the literal element in the ORACLE HEALING and design mark.

Moreover, Applicant has disclaimed the exclusive right to use the term APOTHECARY in its mark, thus acknowledging the descriptive nature of that term in its mark. And Registrant has disclaimed “HEALING” in its mark, thus acknowledging that term as descriptive of its apothecary services. The term ORACLE /ORACLE’S is therefore the dominant term in the marks and the one likely to be recalled by consumers purchasing the services. *See In re Zuma Array Ltd.*, 2022 USPQ2d 736, \*12-13 (TTAB 2022) (“Applicant disclaimed exclusive rights in the term ‘Smart,’” “thus conceding that ‘smart’ is merely descriptive of electronic sensor

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<sup>7</sup> June 21, 2021 Office Action, TSDR 17.

<sup>8</sup> December 21, 2021 Office Action Response, TSDR 67.

modules.”) (citing *In re Six Continents Ltd.*, 2022 USPQ2d 135, \*18 (TTAB 2022) (disclaimer of the word SUITES in mark ATWELL SUITES “is a concession that ‘Suites’ is not inherently distinctive”). Disclaimed matter that is descriptive of a party's goods or services is typically less significant or less dominant when comparing marks. *In re Detroit Athl. Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049-50.<sup>9</sup>

In addition, we agree with the Examining Attorney that “the ending of the wording ‘ORACLE’ in the applied-for mark includes an apostrophe and letter ‘S’” “has little, if any, trademark significance and does not otherwise affect the overall similarity of the mark in terms of commercial impression.”<sup>10</sup> *See e.g., See In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (noting that “[t]he absence of the possessive form in applicant’s mark ... has little, if any, significance for consumers in distinguishing it from the cited mark”); *In re Curtice-Burns, Inc.*, 231 USPQ 990, 992 (TTAB 1986) (finding the marks McKENZIE’S and McKENZIE “virtually identical in commercial impression”); *Winn’s Stores, Inc. v. Hi-Lo, Inc.*, 203 USPQ 140, 143 (TTAB 1979) (noting that “little if any trademark significance can be attributed to the apostrophe

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<sup>9</sup> Applicant disagrees “that consumers are more likely to focus on the first word of a trademark” because “according to Dr. Lynell Burmark, an education consultant in visual literacy, unless words are attached to an image, “they will go in one ear, sail through the brain, and go out the other ear.” 5 TTABVUE 12. There is, however, no evidence of record from a Dr. Lynell Burmark in this proceeding and furthermore, as the Examining Attorney notes, 7 TTABVUE 6-7, the claim “is directly contradicted by established case law, which holds that when evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services.” *In re Viterra Inc.*, 101 USPQ2d at 1908 (quoting *CBS Inc. v. Morrow*, 708 F.2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir. 1983)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*41 (TTAB 2022) (quoting *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*31 (TTAB 2021)); TMEP §1207.01(c)(ii).

<sup>10</sup> 7 TTABVUE 7 (Examining Attorney’s Brief).

and the letter ‘s’ in opposer’s mark”). One is the possessive adjective form of the other, and does nothing to alter the commercial impression of the term, even in combination with the following term.

Applicant argues that “the Office Action appears to highlight the similar elements of the marks, namely, the term ‘ORACLE,’ and abruptly concludes that the marks are therefore confusingly similar without taking into consideration the additional elements of the mark included.”<sup>11</sup> We disagree. “[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.” *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (“It is well-established that it is improper to dissect a mark, and that marks must be viewed in their entirety. In some circumstances, however, one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark.”) (citations omitted).

While there are some obvious differences between the marks in the appearance and sound of the second word of each mark, the initial terms ORACLE’S and ORACLE are almost identical, and the second terms APOTHECARY and HEALING have the similar connotations of aiding a return to well-being, and so the two marks

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<sup>11</sup> 5 TTABVUE 10-11 (Applicant’s Brief).



create very similar commercial impressions. The first *DuPont* factor thus weighs in favor of finding a likelihood of confusion.

**B. Similarity or Dissimilarity of the Services, Channels of Trade, and Classes of Customers**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. A proper comparison of the services “considers whether ‘the consuming public may perceive [the respective services of the parties] as related enough to cause confusion about the source or origin of the ... services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002)). It is sufficient for a finding of likelihood of confusion if relatedness is established for any service encompassed by the identification of services within a particular class. *See Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335 , 209 USPQ 986 (CCPA 1981).

Applicant’s services, once again, are

Online retail store services featuring liquid soap, hand soap; Online retail store services featuring herbs, **smudge sticks**, candles, wax melts, matches, disinfectant bathroom cleaners, subscription boxes containing candles, smudge sticks, herbs; Online retail store services featuring face masks, series of non-fiction books in the field of spiritual health and wellness, keychains, coffee cups, tea cups, mugs, sanitary masks for protection against viral infection; Online retail store services featuring apparel and clothing, namely, aprons,

and Registrant’s services are

Online retail store services featuring metaphysical products, namely, **healing crystals** and non-consumable, non-therapeutic, and non-medicinal essential oils solely derived from cannabis with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis

(emphasis added).

The Examining Attorney provides evidence from the websites of five third parties that offer retail store services that featuring the same goods featured by the retail store services offered by Applicant and Registrant under their respective marks. Based on this evidence, she argues that Applicant's crystals and Registrant's smudge sticks are the kinds of goods that "are commonly provided by the same entity and marketed under the same marks."<sup>12</sup>

- Free People (freepeople.com) provides both "Shoppe Geo Meditation Stones" as well as "smudge sticks" which THE AMERICAN HERITAGE DICTIONARY, defines as "wand[s] made of various dried leaves or herbs that produce fragrant smoke when burned, used among certain Native American peoples in rituals intended to cleanse places, persons, or objects of negative spiritual energies."<sup>13</sup>

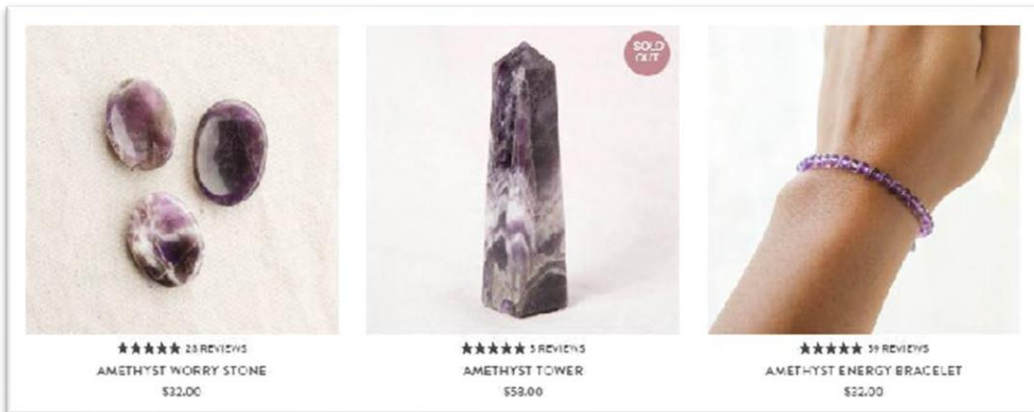
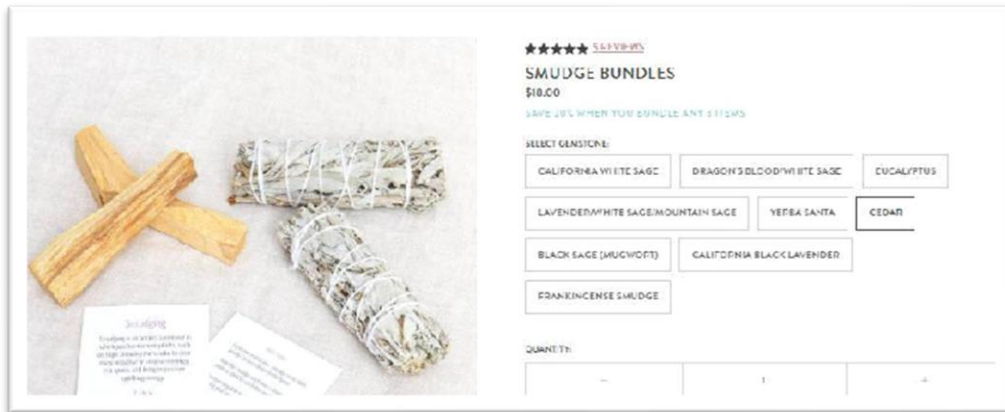
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<sup>12</sup> January 10, 2023 Final Office Action, TSDR 23-24.

<sup>13</sup> <https://www.ahdictionary.com/word/search.html?q=smudge%20stick> (accessed April 10, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at \*2 n.17 (TTAB 2019).



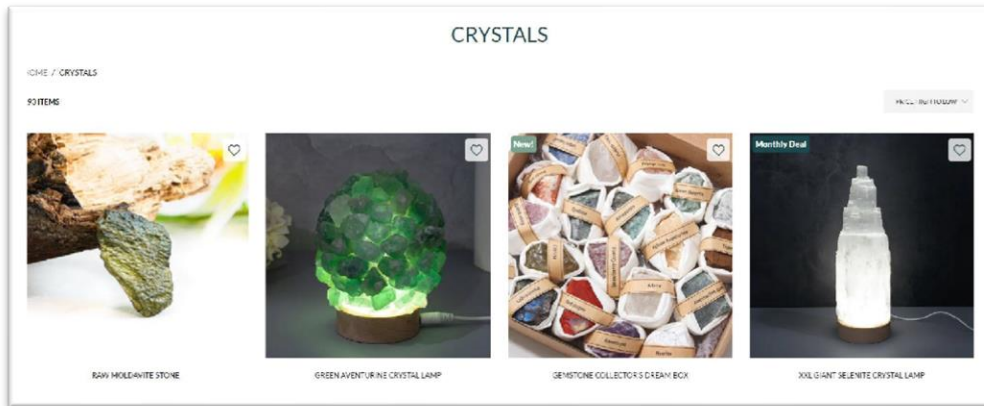
• Tiny Rituals (tinyrituals.co) sells its smudge sticks in bundles, and also offers various crystals and crystal books:<sup>14</sup>



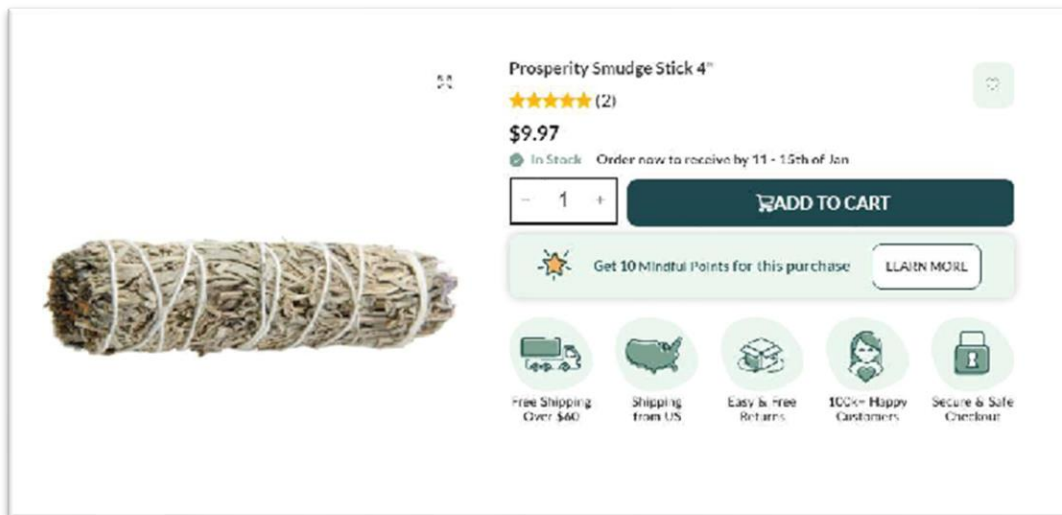
<sup>14</sup> *Id.* at 25-27.



- Mindful Souls (mindfulsouls.com) sells various crystals, such as these,<sup>15</sup>



as well as smudge sticks:

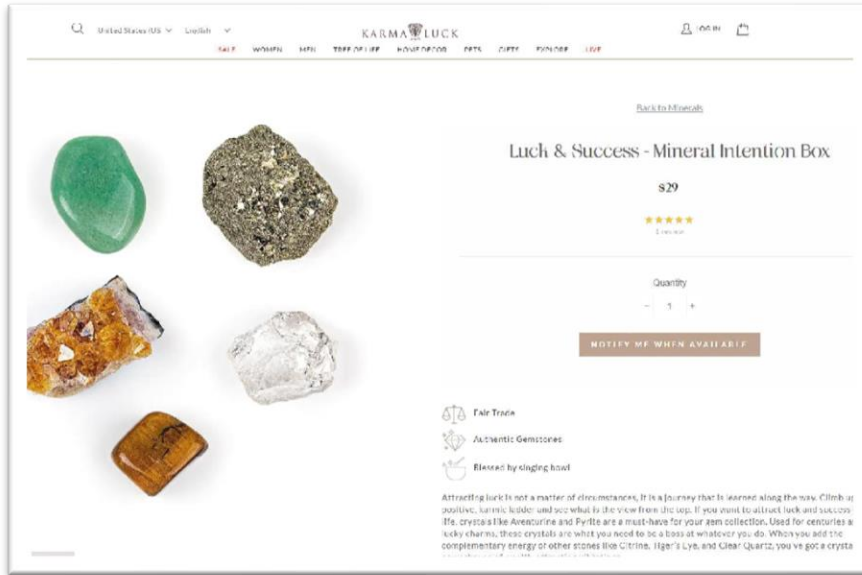


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<sup>15</sup> *Id.* at 28.

<sup>16</sup> *Id.* at 30.

- Karma Luck (karmaandluck.com) provides a Luck & Success – Mineral Intention Box as shown below,



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and a Healing Wisdom – 5 Sage Smudge Sticks Combo Box:<sup>18</sup>



<sup>17</sup> *Id.* at 31.

<sup>18</sup> *Id.* at 32.

- Finally, there is Tarah Co. (shoptarahco.com), which sells a Sacred Spirit Crystal Box and a Success Manifest Smudge Kit as shown below,



The foregoing evidence establishes that it is common for crystals and smudge sticks to be sold by the same entity under the same mark. Moreover, with respect to channels of trade, the evidence shows that the Examining Attorney can rely on the same evidence, namely, the websites of Free People, Tiny Rituals, Mindful Souls, Karma and Luck, and Tarah Co, which show that crystals and smudge sticks are sometimes offered for sale through the same websites by the same specialty retailers. Consequently, the second and third *DuPont* factors weigh in favor of finding a likelihood of confusion.

### **C. Strength of Weakness of ORACLE**

“A mark’s strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength ...” *In re Chippendales USA Inc.*, 622 F.3d 1346, 1353-54 (Fed. Cir. 2010), *quoted in Advance Mag. Publishers, Inc. v. Fashion Elecs., Inc.*,

2023 USPQ2d 753, \*9 (TTAB 2023). Because the cited mark is registered on the Principal Register without a claim of acquired distinctiveness, its commercial strength is presumptively treated as neutral, *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1086 (TTAB 2016), and its conceptual strength is treated as inherently distinctive—at the very least, suggestive. 15 U.S.C. § 1057(b). *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007).

Under the sixth *DuPont* factor, however, a mark’s strength may be attenuated by “[t]he number and nature of similar marks in use on similar goods.” *DuPont*, 177 USPQ at 567. Based on the evidence, its strength may vary along a spectrum from very strong to very weak. *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 1325 (Fed. Cir. 2017). “The weaker [a registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338 (Fed. Cir. 2015), *quoted in Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at \*7.

Thus, an applicant may adduce evidence of active third-party registrations to show that a mark or a segment thereof is descriptive, suggestive, or so commonly adopted that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1364, 2023 USPQ2d 737, at \*5 (Fed. Cir. 2023) (citing 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:90); *Sock It to Me v. Fan*, 2020 USPQ2d 10611, at \*9 (quoting *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (“The conclusion to be drawn

[from third-party registrations] is that there is an inherent weakness in a mark comprised in whole or in part of the word in question and that, therefore, the question of likelihood of confusion is colored by that weakness to the extent that only slight differences in the marks may be sufficient to distinguish one from the other.”).

According to Applicant, “the phrase ‘ORACLE’ is conceptually weak and only entitled to a narrow scope of protection in relation to cosmetic and retail services” because “[w]idespread use of third-party renditions of the term ‘ORACLE’ for cosmetics, clothing, and relatedness goods and/or services have weakened the significance of the term and the scope of protection afforded the cited mark.”<sup>19</sup> As proof of this contention, Applicant points to the following seven third-party registrations coexisting on the Principal Register:<sup>20</sup>

MARK	GOODS / SERVICES
ORACLE	Lighting fixtures; Electric lighting fixtures; LED lighting fixtures for indoor and outdoor lighting applications <sup>21</sup>
ADORABLE ORACLE	Motivational cards <sup>22</sup>
ORACLELADY	Jewelry <sup>23</sup>

<sup>19</sup> 5 TTABVUE 15 (Applicant’s Brief).

<sup>20</sup> An eighth registration, Registration No. 5129045, was included, but it was cancelled and therefore has no probative value. *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264 (TTAB 2011) (“[D]ead’ or cancelled registrations have no probative value at all”).

<sup>21</sup> December 21, 2021 Response to Office Action, TSDR 102-03 (Registration No. 6582116).

<sup>22</sup> *Id.* at 104-05 (Registration No. 4866740).

<sup>23</sup> *Id.* at 106-07 (Registration No. 6046117).



ORACLE OLIVE OIL	Olive oils for food <sup>24</sup>
ORACLE	Tires for vehicles <sup>25</sup>
ORACLE	Lighting apparatus for automotive vehicles, motorcycles and recreational vehicles, headlights for automotive vehicles, motorcycles and recreational vehicles, and halogen light bulbs for automotive vehicles, motorcycles and recreational vehicles <sup>26</sup>
ORACLE	Electric coffee grinders; Electric coffee makers, electric espresso machines, electric combination espresso/coffee machines <sup>27</sup>

Third-party registrations may have some probative value to the extent they serve to suggest that such goods are of a type which emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, n.6 (TTAB 1988). However, we agree with the Examining Attorney that these seven third-party registrations are not probative in showing that the term ORACLE is conceptually weak in connection with crystals. As emphasized in *DuPont*, it is “[t]he number and nature of similar marks in use on **similar** goods” that is important. *DuPont* at 567 (emphasis added). Consequently, Applicant has failed to demonstrate that Registrant’s mark is weak in connection with the retail sale of crystals and the sixth *DuPont* factor is neutral.

Applicant, in addition to the foregoing registrations, also provides with its brief a

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<sup>24</sup> *Id.* at 108-09 (Registration No. 5979573).

<sup>25</sup> *Id.* at 110-111 (Registration No. 5765716).

<sup>26</sup> *Id.* at 112-14 (Registration No. 4121065).

<sup>27</sup> *Id.* at 117-119 (Registration No. 4544850).

list of six additional third-party registrations (Exhibit F) that “have all been permitted to coexist on the trademark register even though each is used in connection with the selling of cosmetics, clothing and other related services and each includes the term ‘ORACLE[.]’”<sup>28</sup> We sustain the Examining Attorney’s objection to this new evidence because “[t]he record in an application should be complete prior to the filing of an appeal,” Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). The evidence, in any event, has no bearing on the weakness of the cited mark.

#### **D. Conclusion**

Having carefully considered all of the evidence made of record, as well as all of the arguments related thereto, *In re Charger Ventures LLC*, 2023 USPQ2d 451, at \*7, we find that the marks are similar, the services are related and move in overlapping channels of trade. The first, second, and third *DuPont* factors thus weigh in favor of a finding of likelihood of confusion, while the sixth *DuPont* factor is neutral and no *DuPont* factors weigh against a likelihood of confusion. We therefore conclude that confusion between Applicant’s mark ORACLE’S APOTHECARY for the services identified in Class 35 and the mark ORACLE HEALING in Registration No. 6407263 is therefore likely.

**Decision:** The refusal to register is affirmed under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

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<sup>28</sup> 5 TTABVUE 17 (Applicant’s Brief).