

This Opinion is Not a  
Precedent of the TTAB

Mailed: June 30, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re SA Consumer Products, Inc.*

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Serial No. 90544627

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Kyle D. Donnelly of Avek IP, LLC for SA Consumer Products, Inc.

Daniel Wood, Trademark Examining Attorney, Law Office 128,<sup>1</sup>  
Travis Wheatley, Managing Attorney.

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Before Greenbaum, Larkin, and Elgin,  
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

SA Consumer Products, Inc. (“Applicant”) seeks registration on the Principal  
Register of the mark shown below

The logo for 'Sanctuary PLATINUM' features the word 'Sanctuary' in a large, elegant, blackletter-style serif font. Below it, the word 'PLATINUM' is written in a smaller, all-caps, sans-serif font. A thin horizontal line runs across the page behind the text.

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<sup>1</sup> The application was originally examined by Trademark Examining Attorney Elaine Xu, who issued the final refusal to register from which this appeal was taken. The application was reassigned to Mr. Wood on appeal. We will refer to both Ms. Xu and Mr. Wood as the “Examining Attorney.”

for “safes” in International Class 6.<sup>2</sup>

The Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that it so resembles the standard-character mark PLATINUM, registered on the Principal Register for “metal safes for the storage of firearms and other valuables,”<sup>3</sup> as to be likely, when used in connection with the “safes” identified in the application, to cause confusion, to cause mistake, or to deceive.

When the Examining Attorney made the refusal final, Applicant appealed and simultaneously requested reconsideration, which was denied. The case is fully briefed.<sup>4</sup> We affirm the refusal to register.

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<sup>2</sup> Applicant Serial No. 90544627 was filed on February 24, 2021 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claimed first use of the mark and first use of the mark in commerce at least as early as November 23, 2019. Applicant describes its mark as follows: “The mark consists of the word ‘Sanctuary’ in a fanciful font and the word ‘PLATINUM’ appearing below the word ‘Sanctuary’ with a decorative line and diagonal wavy lines separating the words.”

<sup>3</sup> The cited Registration No. 5253930 issued on August 1, 2017 under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), and has been maintained.

<sup>4</sup> Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at \*2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s appeal brief appears at 6 TTABVUE and its reply brief appears at 10 TTABVUE. The Examining Attorney’s brief appears at 9 TTABVUE.

**I. Record on Appeal<sup>5</sup>**

The record on appeal includes (1) Applicant's specimen of use;<sup>6</sup> (2) USPTO electronic records regarding the cited registration;<sup>7</sup> (3) USPTO electronic records regarding Applicant's registration of SANCTUARY in standard characters and SANCTUARY DIAMOND and design for "safes";<sup>8</sup> (4) copies of certificates of third-party registrations of marks for various goods containing a disclaimer of the word "platinum" (alone or in connection with other words and phrases);<sup>9</sup> (5) third-party webpages displaying the words "platinum edition" or "platinum series" in connection with various goods and services;<sup>10</sup> (6) dictionary definitions of the words "sanctuary" and "platinum";<sup>11</sup> and (7) USPTO electronic records regarding third-party registrations of PLATINUM-formative marks without a disclaimer of the word PLATINUM.<sup>12</sup>

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<sup>5</sup> Citations in this opinion to the application record are to pages in the Trademark Status & Document Retrieval ("TSDR") database of the United States Patent and Trademark Office ("USPTO").

<sup>6</sup> February 24, 2021 Application at TSDR 3-5.

<sup>7</sup> August 31, 2021 Office Action at TSDR 2-3.

<sup>8</sup> *Id.* at TSDR 4-5; March 11, 2022 Final Office Action at TSDR 2-5. It was unnecessary for the Examining Attorney to make Applicant's registration of SANCTUARY of record twice.

<sup>9</sup> September 9, 2022 Request for Reconsideration at TSDR 6-100.

<sup>10</sup> *Id.* at TSDR 101-44.

<sup>11</sup> *Id.* at TSDR 145-49.

<sup>12</sup> October 11, 2022 Denial of Request for Reconsideration at TSDR 2-27.

## II. Analysis of Likelihood of Confusion

“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 [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 2023 USPQ2d 451, at \*2 (Fed. Cir. 2023) (cleaned up). Our determination of the likelihood of confusion under Section 2(d) of the Trademark Act 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*”). *Id.*, at \*4. 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 any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services.” *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at \*20 (TTAB 2022) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976)). Applicant focuses almost entirely on the first *DuPont* factor, arguing that there is no likelihood of confusion “because of the inherently weak nature of the only similar term, PLATINUM, and the obvious differences in appearance, sound, connotation and commercial impression of the marks.” 6 TTABVUE 12. Applicant also briefly discusses the fourth *DuPont* factor, the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing,” *DuPont*, 177 USPQ at 567, 6 TTABVUE 20-21, and

mentions the sixth factor, the “number and nature of similar marks in use on similar goods and services,” *DuPont*, 177 USPQ at 567, in passing. 6 TTABVUE 12.<sup>13</sup>

**A. Similarity or Dissimilarity of the Goods, Channels of Trade, and Classes of Consumers**

“We begin with the second and third *DuPont* factors, which respectively consider ‘[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration,’ and ‘the similarity or dissimilarity of established, likely-to-continue trade channels.’” *Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at \*19 (TTAB 2021) (quoting *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051-52 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567)). Applicant did not address these factors in its brief.

The goods identified in the application are “safes,” while the goods identified in the cited registration are “metal safes for the storage of firearms and other valuables.” “[W]here the goods in an application or registration are broadly described, they are deemed to encompass ‘all the goods of the nature and type described therein.’” *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413 (TTAB 2018) (quoting *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006)). The goods broadly described in

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<sup>13</sup> Applicant quotes *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015), a case discussing the sixth *DuPont* factor at length, for the proposition that “evidence of third-party use bears on the strength or weakness of an opposer’s mark” and that “[t]he weaker an opposer’s mark, the closer an applicant’s mark can come without causing a likelihood of confusion . . . .” 6 TTABVUE 12. As noted below, however, Applicant does not discuss its evidence of third-party use of PLATINUM-formative marks, and third-party registrations of such marks in which the word PLATINUM has been disclaimed, under the sixth factor per se, but rather under the first factor, *id.* at 12-17, arguing that “[b]ecause PLATINUM is laudatory and therefore weak, the other elements of Applicant’s mark set it apart from the mark cited by the Examining Attorney.” *Id.* at 17.

the application as “safes” encompass the particular safes described in the cited registration as “metal safes for the storage of firearms and other valuables.” This is confirmed by Applicant’s specimen of use, which states that its safes “provide a sanctuary for all your valuables, like documents, guns, and jewelry.”<sup>14</sup> *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.’”). The goods thus are legally identical and the second *DuPont* factor strongly supports a conclusion that confusion is likely. *In re Medline Indus., Inc.*, 2020 USPQ2d 10237, at \*4 (TTAB 2020).

“Because the goods are legally identical, and there are no limitations in the respective identifications as to the channels of trade or classes of consumers, we must also presume that the channels of trade and classes of consumers are identical.” *Id.* “The third *DuPont* factor thus also strongly support a finding of a likelihood of confusion.” *Id.*

## **B. Similarity or Dissimilarity of the Marks**

“Under the first *DuPont* factor, we consider ‘the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.’” *In re Embiid*, 2021 USPQ2d 577, at \*11 (TTAB 2021) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005)). “Similarity in any one of these elements may

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<sup>14</sup> February 24, 2021 Application at TSDR 4.

be sufficient to find the marks confusingly similar.” *Id.* (quoting *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019) (quoting *In re Davia*, 110 USPQ2d 1801, 1812 (TTAB 2014)).

“The proper test regarding similarity ‘is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that persons who encounter the marks would be likely to assume a connection between the parties.’” *Id.* (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (internal quotation omitted)). “The proper perspective on which the analysis must focus is on the recollection of the average customer, who retains a general rather than a specific impression of marks.” *Id.* (quoting *In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1630 (TTAB 2018)). The average consumers here include purchasers of various types of safes for various uses, including metal safes for the storage of firearms and other valuables.

Applicant argues that the word PLATINUM that is common to the marks “is self-laudatory, thus falling into the descriptive category of marks which are inherently weak source identifiers,” 6 TTABVUE 12-13, because it “simply describes the quality of a product or service and suggests that the product or service is superior.” *Id.* at 13. Applicant cites multiple regional circuit and district court cases, as well as the Board’s non-precedential decision in *In re First Nat’l Bank of Omaha*, Opp. No. 75069999 (TTAB Feb. 24, 1999), in support of its position. *Id.* at 13-14. Applicant also points to numerous third-party registrations in which the word PLATINUM has been disclaimed. *Id.* at 14-17. Applicant argues that “[b]ecause PLATINUM is laudatory

and therefore weak, the other elements of Applicant's mark set it apart" from the cited mark. *Id.* at 17.

Applicant further argues that "[b]ecause the only commonality between the Cited Mark and Applicant's mark is the inherently weak term 'PLATINUM,' as well as the fact that 'Sanctuary' is the prominent portion of Applicant's design mark, consumers are unlikely to confuse the marks." *Id.* at 18. Applicant notes that its mark

includes the word "SANCTUARY" in a large fanciful font above the word "PLATINUM" in a smaller font, with the words separated by a decorative line. The Examining Attorney has acknowledged that the consumers could see the mark and believe that the wording "SANCTUARY" is the main product line, with a sub-line of products identified as "PLATINUM" falling under the "SANCTUARY" umbrella. This is a good example of the significance of the word "SANCTUARY" in the mark. The Examining Attorney acknowledges that consumers are likely to see Applicant's mark and understand that the word SANCTUARY is the primary source identifier and the word PLATINUM is just a "sub-line" of products.

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If that is true, that is even more support that consumers will differentiate Applicant's mark from the cited mark. When consumers perceive that a mark includes a main product line identifier with a sub product line identifier, they are not likely to confuse it with a different mark that makes no mention of the main product line.

*Id.* at 19 (citations omitted). According to Applicant, "the word SANCTUARY is clearly the dominant portion of the mark if consumers would recognize it as the main product line" and "[i]f consumers see Applicant's mark and believe it identifies a sub-brand of products under a SANCTUARY main line, they will not confuse it with the Cited Mark, which makes no reference to a SANCTUARY main line." *Id.* at 19-20.



Finally, Applicant argues that the marks have different commercial impressions because “[c]onsumers seeing Applicant’s mark are left with the impression of ‘protection or a safe place’ due to the word SANCTUARY being the prominent portion of the mark,” while “consumers seeing the Cited Mark will understand PLATINUM as a laudatory term, touting the quality of some unknown product” or perhaps “will have an impression of metal.” *Id.* at 20 (citations omitted).

The Examining Attorney’s core argument is that the marks are confusingly similar because they are identical in part. 9 TTABVUE 3. He argues that “the applied-for mark completely incorporates the entirety of the registered mark” and that “[i]ncorporating the entirety of one mark within another does not obviate the similarity between the compared marks, as in the present case, nor does it overcome a likelihood of confusion under Section 2(d).” *Id.* He further argues that in Applicant’s mark, there is “a separation between the terms [Sanctuary and Platinum] such that they are not unitary in nature, but rather . . . separable distinctive terms, such as a main brand and a sub brand or line of goods that fall under the main brand.” *Id.* at 4. According to the Examining Attorney, “[t]his separation of words is further exaggerated by the inclusion of the horizontal ‘decorative line and diagonal wavy lines separating the words’” discussed in Applicant’s description of its mark. *Id.*

The Examining Attorney also argues that the registered standard-character PLATINUM mark could be displayed in the same font style as the word “Platinum” in Applicant’s mark, *id.*, and that “neither the simple design of a horizontal line with

and the minimal stylization of 'PLATINUM' in the applied-for mark are insufficient to avoid the similarity of the marks due to the identical wording." *Id.* at 5.

According to the Examining Attorney, "the wording 'SANCTUARY' is added to the registered mark as a form of 'house mark,'" *id.*, and this addition does not obviate a likelihood of confusion because "consumers may use a shorthand for a mark that leaves off a house mark and only refers to the sub brand that refers to the specific line of goods" and "[i]f this were true in the present case, consumers would refer to applicant's safes by the sub brand, 'PLATINUM,' which once again, is identical to the registered mark." *Id.*

Finally, the Examining Attorney argues that "the minor differences between the applied-for mark and the registered mark (e.g., stylization, additional wording) is [sic] minimized by the legally identical nature of applicant's and registrant's goods . . . ." *Id.*

The Examining Attorney rejects Applicant's arguments that PLATINUM is inherently weak, arguing that the third-party registrations of marks containing disclaimers of PLATINUM offered by Applicant are for goods and services other than safes (many of which are for goods or services relating to jewelry and contain "platinum" in the identifications) and do not show that PLATINUM is weak for safes, *id.* at 6-7, and that PLATINUM has not been disclaimed in many other third-party registrations of marks containing the word in Class 6. *Id.* at 7-8. The Examining Attorney similarly rejects Applicant's third-party evidence of use of the word

PLATINUM in connection with various goods and services other than safes. *Id.* at 8.<sup>15</sup>

Alternatively, the Examining Attorney argues that the cited mark is worthy of protection even if the word PLATINUM is weak, *id.* at 9, and that because the cited registrant owns “the only live registration in International Class 006 for safes that includes the term ‘PLATINUM’ in the mark, registrant is at least owed protection against consumer confusion for legally identical goods for marks that completely encompass the registered mark, as this the case here.” *Id.*

In its reply brief, Applicant argues that “[w]hen Applicant’s mark is considered in its entirety—not only the last word in the mark—there are far more differences than similarities between the marks,” including “1) the marks have different first words, 2) Applicant’s mark has twice as many words, 3) Applicant’s mark includes a design element, and 4) Applicant’s design emphasizes the first word in Applicant’s mark.” 10 TTABVUE 5. According to Applicant, the “Examining Attorney barely addresses these differences and instead focuses on the one similarity—the self-laudatory word PLATINUM.” *Id.* Applicant further argues that consumers will focus on

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<sup>15</sup> On June 26, 2023, the Federal Circuit decided *Spireon, Inc. v. Flex Ltd.*, \_\_\_ F.4th \_\_\_, 2023 USPQ2d 737 (Fed. Cir. 2023), in which the court held that the Board had erred in analyzing “conceptual strength under the first *DuPont* factor, the similarity of the marks, rather than under the sixth *DuPont* factor.” *Id.*, at \*4. Without the benefit of *Spireon*, the Examining Attorney and Applicant both discussed the conceptual strength of the cited PLATINUM mark under the first factor, but as explained below, we have not relied on their third-party use and registration evidence on the issue of the conceptual strength of the cited mark in any event. The cited registration issued under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), indicating that PLATINUM for “metal safes for the storage of firearms and other valuables” is not inherently distinctive, and the involved goods are identical and there is no evidence of any third-party uses or registrations of PLATINUM-formative marks for safes of any kind.

SANCTUARY in its mark because it is the first word and that the word SANCTUARY and the word PLATINUM that comprises the cited mark “are completely different and carry completely unrelated meanings and connotations.” *Id.* at 6.

Applicant also claims that “certain wording can ‘dominate’ over other wording, such as when one word is larger and more prominent than another word” and that “the sounds of the marks should be compared by reading the literal elements of the marks, starting with the first words,” and that “[f]or these reasons, it is clear that Applicant’s mark is not confusingly similar to the cited mark.” *Id.* at 9. According to Applicant, SANCTUARY “is the dominant portion of [its] mark,” *id.*, and “[g]iven the dominant SANCTUARY, consumers are unlikely to confuse Applicant’s mark with the cited mark PLATINUM.” *Id.* Applicant concludes that its mark “SANCTUARY PLATINUM (and design) is not similar in appearance, sound, connotation or commercial impression to the PLATINUM mark cited by the Examining Attorney.” *Id.* at 10.

Although the marks must be considered in their entirety, “in 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.” *Sabhnani*, 2021 USPQ2d 1241, at \*30-31 (quoting *Detroit Athletic Co.*, 128 USPQ2d at 1050 (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985))).

We agree with Applicant that the word Sanctuary is the dominant portion of its mark because of its size and positioning in the mark. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184-85 (TTAB 2018) (finding that the word LAROQUE was the dominant portion of the applicant’s composite word-and-design mark because of its size and positioning at the top of the mark above a design and a geographically descriptive term). As a result, in comparing the marks in their entireties, it is appropriate to give greater weight to the word Sanctuary than to the other elements of Applicant’s mark, including the word PLATINUM.

That conclusion is not dispositive of the issue of the similarity or dissimilarity of the marks, however, because we also agree with the Examining Attorney that the dominant word Sanctuary in Applicant’s mark functions as Applicant’s house mark for various lines of safes. The record includes a copy of Applicant’s registration of the standard-character mark SANCTUARY for “safes,”<sup>16</sup> as well as a copy of Applicant’s registration of the composite mark shown below for “safes”:



which is identical in structure to the mark involved in this appeal. The structure of Applicant’s applied-for mark, and Applicant’s registration of the other marks, make

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<sup>16</sup> August 31, 2021 Office Action at TSDR 4-5.

<sup>17</sup> March 11, 2022 Final Office Action at TSDR 4-5.

it clear that Applicant uses Sanctuary as its primary identifier (i.e., as a house mark) and PLATINUM and DIAMOND as subsidiary brands for particular safes.<sup>18</sup>

The fact that the word Sanctuary is Applicant's house mark is significant in our analysis of the similarity or dissimilarity of the marks because the Board often finds that "the addition of a trade name or house mark to one of two otherwise confusingly similar marks will not serve to avoid a likelihood of confusion between them." *In re C.F. Hathaway Co.*, 190 USPQ 343, 344 (TTAB 1976). For example, in the *C.F. Hathaway* case decided almost 50 years ago, the Board found that the mark shown below for men's shirts

**Hathaway**  
**GOLF CLASSIC**

was confusingly similar to the mark GOLF CLASSIC for men's hats. The Board concluded that "purchasers confronted by 'GOLF CLASSIC' men's hats and 'HATHAWAY GOLF CLASSIC' men's knitted sport shirts are likely to assume that both products emanate from or are in some way associated with applicant" because "this is one of those cases where the addition of the house mark is an 'aggravation rather than a justification.'" *Id.* at 345 (citing *Menendez v. Holt*, 128 U.S. 514, 521 (1888)).

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<sup>18</sup> As noted by the Examining Attorney, 9 TTABVUE 8, Applicant did not disclaim the exclusive right to use PLATINUM apart from its mark as shown in the involved application, and it did not disclaim the exclusive right to use DIAMOND apart from its composite mark shown above.

The Board has employed the same analysis in numerous subsequent cases. *See, e.g., In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (“Applicant has taken registrant’s mark [TITAN] and added its ‘product mark’ to it. It is not clear why the addition of the word VANTAGE would avoid confusion. It is more likely to be considered another product from the previously anonymous source of TITAN medical diagnostic apparatus, namely, medical ultrasound devices.”); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1367 (TTAB 2007) (affirming refusal to register CLUB PALMS MVP based on registration of MVP and finding that consumers are “likely to believe that the CLUB PALMS MVP casino services is simply the now identified source of the previously anonymous MVP casino services”); *Key West Fragrance & Cosm. Factory v. Mennen Co.*, 216 USPQ 168, 170 (TTAB 1982) (finding that the marks SKIN SAVERS for face and throat lotion and MENNEN SKIN SAVER for hand and body lotion were confusingly similar because “[w]here the marks are otherwise virtually the same, the addition of a house mark or, as in this case, a surname, is more likely to add to the likelihood of confusion than to aid to distinguish the marks” in that “[t]rademarks are intended to designate a single, albeit an anonymous source” and “[i]t is likely not only that the two products sold under these marks would be attributed to the same source but also that purchasers would mistakenly assume that both were products of respondent by virtue of its use of ‘MENNEN’ with the common mark.”).

As discussed above, both the Examining Attorney and Applicant strive mightily to advance their respective positions on the conceptual strength or weakness of the

word “platinum” as a source-identifier for various goods and services, but their arguments and evidence miss the mark. The cited registration of PLATINUM for safes issued under Section 2(f) of the Trademark Act,<sup>19</sup> and “[a] claim of distinctiveness under Section 2(f), whether made in the application as filed or in a subsequent amendment, may be construed as a concession that the matter to which it pertains is not inherently distinctive and, thus, not registrable on the Principal Register absent proof of acquired distinctiveness.” *DC Comics v. Cellular Nerd LLC*, 2022 USPQ2d 1249, at \*26 (TTAB 2022) (citations omitted). Accordingly, regardless of what the record shows about the inherent nature of, and the USPTO’s and the Board’s treatment of, the word “platinum” when used as a mark for other goods and services, we must assume here that the word PLATINUM is not inherently distinctive for “metal safes for the storage of firearms and other valuables.”<sup>20</sup>

At the same time, however, we must give effect to the USPTO’s determination, in registering PLATINUM for “metal safes for the storage of firearms and other valuables” on the Principal Register under Section 2(f), that PLATINUM had acquired distinctiveness as the registrant’s mark for those goods. Even though

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<sup>19</sup> August 31, 2021 Office Action at TSDR 4.

<sup>20</sup> We do not know why the USPTO considered PLATINUM not to be inherently distinctive for “metal safes for the storage of firearms and other valuables” because the file history of the cited registration is not in the record. *See In re Sela Prods LLC*, 107 USPQ2d 1580, 1583 (TTAB 2013) (unlike in an opposition or cancellation proceeding, the file history of a cited registration is not automatically of record). But the record here shows that “platinum” is “a chemical element that is an extremely valuable silver-colored metal, used in jewelry and in industry,” September 9, 2022 Request for Reconsideration at TSDR 148 (CAMBRIDGE DICTIONARY), and it appears likely that PLATINUM was deemed descriptive of the particular metal used in the “metal safes” identified in the cited registration.



“platinum” is not inherently distinctive for those goods, the cited registration gives the registrant the exclusive nationwide right to use its mark in commerce in connection with those goods. 15 U.S.C. § 1057(b). We have found above that the involved goods are legally identical, which makes proof of third-party uses and registrations of PLATINUM-formative marks for other goods and services essentially irrelevant. *Omaha Steaks Int’l Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693-95 (Fed. Cir. 2018) (where the involved goods were both meat products, use of OMAHA-formative marks on other foods and beverages were not uses on goods that were “similar” to meat products). *See also Nat’l Cable Television Ass’n v. Am. Cinema Eds., Inc.*, 937 F.3d 1572, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991) (“None of the third party marks and uses of ACE made of record are nearly as closely related to the activities of the parties as the virtually identical uses of the parties are to each other.”) The record does not show any third-party use or registration of a PLATINUM-formative mark for safes of any kind, and the absence of such evidence increases the potency of PLATINUM as the registrant’s mark for those goods. *Cf. Knight Textile Corp. v. Jones Inv. Co.*, 75 USPQ2d 1313, 1316 (TTAB 2005) (finding that NORTON MCNAUGHTON ESSENTIALS for ladies’ sportswear was not confusingly similar to ESSENTIALS for women’s clothing where the record contained 23 third-party registrations of ESSENTIALS-formative marks for clothing, which corroborated that the word ESSENTIALS was highly suggestive for those goods and led the Board to conclude that “applicant’s addition of its house mark therefore suffices to distinguish the two marks when they are viewed in their entireties.”).

We compare the marks in their entireties from the standpoint of a consumer familiar with the cited mark PLATINUM for safes who separately encounters Applicant's composite mark for legally identical goods. As noted by the Examining Attorney, because the cited mark PLATINUM is a standard-character mark, we must consider that it "may be presented in any font style, size or color, including the same font, size and color as the literal portions of Applicant's mark." *Aquitaine Wine USA*, 126 USPQ2d at 1186. Accordingly, we must assume that the impression of the cited mark residing in the mind's eye of a consumer could be that of the word PLATINUM displayed in the same font and size as it is displayed in Applicant's mark, shown below:

P L A T I N U M

When that consumer separately encounters Applicant's mark, shown again below:



Sanctuary  
P L A T I N U M

he or she will surely notice the presence of the dominant word Sanctuary and the minor design element in Applicant's mark as differences (in appearance and sound) from PLATINUM alone, as we agree with Applicant that "[t]here is no reason to think that consumers will skip over the rest of Applicant's mark and focus on the word [PLATINUM] in small font at the end of the mark." 10 TTABVUE 5. But because "the common part of the marks is identical, purchasers familiar with the registrant's mark are likely to assume that the [Sanctuary] house mark simply identifies what had previously been an anonymous source" of PLATINUM brand safes. *Fiesta Palms*, 85

USPQ2d at 1364. “Consumers familiar with registrant’s [PLATINUM] mark for [metal safes for the storage of firearms and other valuables] are likely to believe that there is some association or sponsorship with” Applicant’s safes sold under its mark. *Id.* at 1367. Given the nature of Applicant’s mark, which closely resembles the mark in *C.F. Hathaway* in structure, and the absence of any evidence of third-party PLATINUM-formative marks for safes, we find that “this case falls squarely within the general rule that the addition of a trade name or house mark to one of two otherwise confusingly similar marks will not serve to avoid a likelihood of confusion between them.” *C.F. Hathaway*, 190 USPQ at 345. The first *DuPont* factor supports a conclusion that confusion is likely.

**C. The Conditions Under Which and Buyers to Whom Sales Are Made**

The fourth *DuPont* factor considers the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful sophisticated purchasing.” *DuPont*, 177 USPQ at 567. Applicant argues that the “greater the value of an article or service, the more careful the typical consumer can be expected to be,” and that “[i]f a consumer is shopping for a safe, it means that they have something valuable to protect” and the “consumer is unlikely to buy a safe without first doing research and comparing products.” 6 TTABVUE 20. Applicant concludes that “[c]onsumers give careful attention in selecting safes and are unlikely to make hasty decisions about such goods” and that “[r]ecognizing that the sophistication of the consumers will be high, they are unlikely to be confused between the Applicant’s mark and the Cited Mark.” *Id.* at 21.

The only record evidence that supports Applicant's arguments is Applicant's specimen, which consists of webpages displaying safes offered for between \$372 and \$1,689,<sup>21</sup> but the Examining Attorney does not dispute Applicant's arguments regarding the sophistication of purchasers of safes, as he responds only that "even sophisticated consumers are likely to have confusion when the goods are identical and the marks are also identical in-part." 9 TTABVUE 10.

Given the apparently significant cost of safes, and their function (as demonstrated by Applicant's specimen of use) in protecting valuables, including firearms, which are stored in safes for safety purposes, we find that consumers of safes are likely to exercise something more than ordinary care in purchasing, and the fourth *DuPont* factor thus slightly supports a conclusion that confusion is not likely.

#### **D. Weighing the *DuPont* Factors**

The first, second, and third *DuPont* factors support a conclusion that confusion is likely. The goods, channels of trade, and classes of consumers are legally identical, which reduces the degree of similarity between the marks required for confusion to be likely, *Sabhnani*, 2021 USPQ2d 1241, at \*39 (citations omitted), and the marks' similarity in connotation and commercial impression, resulting from the perception that Applicant's mark identifies "Sanctuary" as the specific and previously anonymous source of PLATINUM brand safes, outweighs the marks' differences in appearance and sound.

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<sup>21</sup> February 24, 2021 Application at TSDR 3, 5.

The fourth *DuPont* factor regarding the conditions under which sales of safes are made weighs slightly against a conclusion that confusion is likely, but while “[s]ophistication of buyers and purchaser care are relevant considerations, [they] are not controlling on this factual record,” *In re Rsch. & Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), where the goods, channels of trade, and classes of consumers are identical, and the marks are similar because Applicant’s mark may be assumed to identify the previously anonymous source of the registrant’s PLATINUM safes. *See also Weiss Assocs. v. HRL Assocs.*, 902 F.2d 1546, 14 USPQ2d 1840-41 (Fed. Cir. 1990).

We conclude, on the basis of the record as a whole, that consumers familiar with the registrant’s PLATINUM mark for “metal safes for the storage of firearms and other valuables” who separately encounter Applicant’s composite mark for “safes” are likely to believe mistakenly that Applicant’s mark identifies the specific source of the registrant’s PLATINUM line of safes.

**Decision:** The refusal to register is affirmed.