

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
February 20, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board  
—

*Geo G. Sandeman Sons & Co., Limited*  
*v.*  
*A V Investment Group LLC.*  
—

Opposition No. 91202087  
Serial No. 85301875  
—

Ryan Andrew McGonigle of Baker and Rannells, PA  
for Geo G. Sandman Sons & Co., Limited.

Morris E. Turek of YourTrademarkAttorney.com  
for A V Investment Group LLC.  
—

Before Mermelstein, Adlin and Gorowitz Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

A V Investment Group LLC's ("Applicant") predecessor-in-interest, Clarence Bradley, filed an application to register the mark ARMADALE, in standard characters, for "liquor and liqueur beverages, namely, vodka" in Class 33.<sup>1</sup> Geo G. Sandman Sons & Co., Limited ("Opposer") opposed the application on the ground of

—  
<sup>1</sup> Application Serial No. 85301875, filed April 22, 2011, on the basis of intent-to-use, pursuant to Section 1(b) of the Trademark Act; assigned to Applicant on January 25, 2012.

likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Opposer specifically alleges ownership of Registration No. 90925 for the stylized mark ARMADA as shown below for “sherry wine.”<sup>2</sup>



Applicant filed an answer denying all salient allegations in the notice of opposition.

This case is fully briefed.

**The Record.**

The record includes the pleadings, and by operation of Trademark Rule 2.122(b), 37 CFR § 2.122(b), the application file. In addition, the parties introduced the following evidence:

A. Opposer’s evidence.

Opposer introduced the following evidence by notice of reliance:

1. Title and status copy of its pleaded Registration No. 90925 printed from the USPTO database;
2. Excerpts from books: (1) about vodkas, infusions and liqueurs; and (2) containing cocktail recipes;
3. Web pages related to vodka, wine (including sherry) and the alcoholic beverage industry;
4. Webpages primarily from vineyards and wineries selling both wine and vodka;
5. Copies of third-party registrations printed from the USPTO database covering both “sherry” and “vodka”; and

---

<sup>2</sup> Registration No. 90925 issued on April 1, 1913; sixth renewal January 30, 2013.

6. Webpages containing recipes for mixed drinks containing both “sherry” and “vodka.”

B. Applicant’s evidence.

Applicant introduced the following evidence by notice of reliance:

1. Copy of cancelled third-party Registration No. 2602636 for the mark ARMADALE printed from the USPTO database;
2. Copies of third-party registrations for marks commencing with the letters ARM for alcoholic beverages;
3. Dictionary definition of ARMADA and dictionary search for ARMADALE;
4. Dictionary definition of vodka; and
5. Webpages containing information regarding third-party sales of ARMADALE Vodka.

**Evidentiary Issues.**

In its Brief, Opposer moved to strike Applicant’s first, second and sixth notices of reliance (“NOR”), consisting of: a copy from the USPTO’s database of cancelled Registration No. 2602636 for the mark ARMADALE, owned by Armadale Ventures Holding, LLC (NOR1); fourteen third-party registrations for marks beginning with the letters ARM for alcoholic beverages (NOR2); and Internet materials referring to ARMADALE vodka (NOR6). Opposer bases its motion on the following allegations: (1) Reg. No. 2602636 is an expired registration, which was owned by a third-party; (2) the fourteen third-party registrations beginning with the letters “ARM” do not constitute competent evidence for the purpose of establishing dilution or weakness of Opposer’s mark; and (3) the Internet documents do not establish use of the ARMADALE mark or public recognition of the

mark. Applicant argues that the evidence has been properly introduced under notice of reliance. We agree. Trademark Rule 2.122(e) permits the introduction of uncertified copies of official records of the Patent and Trademark Office by Notice of Reliance. 37 CFR § 2.122(e). *See* Trademark Board Manual of Procedure (TBMP) § 704.03(b)(1)(B). Thus, the registrations introduced under the first and second notices of reliance were properly made of record. Further, the Internet materials introduced under the sixth notice of reliance were also properly made of record since they were publically available and each document identified its source (URL) and the date it was accessed. *See Safer, Inc. v. OMS Investments, Inc.*, 94 USPQ2d 1031, 1039 (TTAB 2010). More importantly and substantively, the Board is capable of weighing the relevance and strength or weakness of the objected-to testimony and evidence, including any inherent limitations, and there is therefore no need to strike the evidence.

**Standing.**

Opposer has properly made its registration of record, with evidence that its registration is subsisting and owned by Opposer. Accordingly, Opposer has established its standing in this proceeding. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

**Priority.**

Opposer is the owner of pleaded Registration No. 90925 for the mark ARMADA in stylized form for “sherry wine.” Opposer’s ownership of this pleaded registration

removes priority as an issue with respect to sherry wine. *Top Tobacco LP v. North Atlantic Operating Co.*, 101 USPQ2d 1163, 1169 (TTAB 2011), citing *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 82 USPQ 108 (CCPA 1974). In addition, Applicant has conceded Opposer's priority. Appeal Brief 6, 54 TTABVUE.

**Likelihood of Confusion.**

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also, In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). Opposer bears the burden of establishing that there is a likelihood of confusion by a preponderance of the evidence. *Cunningham*, 55 USPQ2d at 1848. We consider the likelihood of confusion factors about which the parties introduced evidence, and treat the remaining factors as neutral.

**The similarity or dissimilarity of the marks.**

We start our analysis with the first *du Pont* factor, the similarity or dissimilarity of the marks. In comparing the marks we must consider the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

The marks at issue are ARMADA and ARMADALE. The term ARMADA is defined as:

- 1 : a fleet of warships
- 2 : a large force or group usually of moving things  
<an armada of fishing boats><sup>3</sup>

Opposer argues that “‘armada’ is an unusual, if not outright rare word in the English language – which can be nothing less than arbitrary for an alcoholic beverage product.” Opposer’s Brief, pp. 15-16, 51 TTABVUE 16-17. While we agree that ARMADA is an arbitrary term when used in connection with an alcoholic beverage product, purchasers would know that ARMADA is an ordinary word, but would not recognize ARMADALE, which according to the record is not a word.

Opposer correctly states that “the only difference between the marks is the ‘LE’ at the end of Applicant’s mark. Opposer’s Brief, p. 13, 54 TTABVUE 14. In this case, however, the difference is significant. The suffix of the mark would not be seen as the letters “LE,” but rather as the word “dale,” which means “valley.”<sup>4</sup> The use of the word “dale” as a suffix creates the impression that ARMADALE is a geographic location, thus creating a connotation different from armada (a fleet of warships or a

---

<sup>3</sup> *Armada Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/armada>, Applicant’s Third Notice of Reliance, 44 TTABVUE.

<sup>4</sup> We take judicial notice of the definition of “dale.” *Dale Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/dale>.

The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

large group of moving objects). Thus, the connotations of the marks are quite different.

Further, the “LE” at the end of Applicant’s mark compels a difference in the pronunciation of the marks. “Armada,” being an actual word is pronounced \är-  
'mä-də, -'mä- *also* -'ma-\.<sup>5</sup> It is highly unlikely that this word would be mispronounced. On the other hand, Applicant’s mark could not easily be pronounced “ARMADA” “LE” and would most likely be pronounced “ARMA” “DALE.”

We acknowledge that there is some similarity in the appearance of the marks, however, the differences outweigh this similarity. The addition of the LE at the end of the mark ARMADALE changes the emphasis of the unitary term. As discussed, *supra*, ARMADALE is likely to be viewed as ARMA + DALE rather than ARMADA + LE.

Given, the differences in the connotation and pronunciation of the two marks, we find that the first *du Pont* factor strongly favors a finding that there is no likelihood of confusion.

**The similarity or dissimilarity of the parties’ goods,  
channels of trade and class of purchasers.**

We next consider the similarity or dissimilarity of the parties’ goods, as well as the channels of trade in which they travel and the class of purchasers to whom they are sold. We base our determination on Opposer’s registration alone, because Opposer proffered no evidence of use.

---

<sup>5</sup> See footnote 3.

Our evaluation must be based on the goods as identified in the involved application and pleaded registration (liquor and liqueur beverages, namely, vodka; and sherry wine). *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 76 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Canadian Imperial Bank v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

These goods are clearly not identical. However, the goods need not be identical or even competitive to support a finding of likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000). The respective goods need only be “related in some manner and/or the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

Sherry is “a Spanish fortified wine<sup>6</sup> with a distinctive nutty flavor.”<sup>7</sup> Fortified wines are “beverages in which some of the alcohol is derived from yeast and some

---

<sup>6</sup> We take judicial notice of the definition of “wine, which is “the alcoholic fermented juice of fresh grapes used as a beverage,” *Wine Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/wine>.

<sup>7</sup> We take judicial notice of the definition of “sherry,” *Sherry Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/sherry>.

from the addition of distilled spirits.”<sup>8</sup> Vodka is “a colorless liquor of neutral spirits distilled from a mash (as of rye or wheat).”<sup>9</sup> Opposer introduced evidence that at least one brand of vodka, Ciroc, is derived from grapes. Opposer’s Fifth Notice of Reliance, 35 TTABVUE, 5-14.<sup>10</sup> Applicant has objected to this evidence on the ground that it constitutes hearsay. The objection is overruled because the evidence is not offered for the truth of the matter asserted, but rather to establish that the public is exposed to this information.

To illustrate that the goods are the type of alcoholic beverages that are consumed together, Opposer relies on a number of cocktail recipes which include both sherry and vodka:

*Bloody Mary Recipe*<sup>11</sup>

1 part Vodka  
1part Sherry  
splash Worcestershire Sauce  
dash salt  
splash Tabasco® Sauce  
dash pepper  
1 celery stalk  
1 lime wedge;

*Fino Mandrino Martini*<sup>12</sup>

---

<sup>8</sup> A.H. ROSE, et. al., ECONOMIC MICROBIOLOGY (Vol. 1) ALCOHOLIC BEVERAGES 478 (1977). Opposer’s Eighth Notice of Reliance, 38 TTABVUE, 6.

<sup>9</sup> *Vodka Definition*, FREE MERRIAM-WEBSTER DICTIONARY, [http://dictionary.reference.com/ browse/vodka](http://dictionary.reference.com/browse/vodka). Applicant’s Fifth Notice of Reliance, 46 TTABVUE, 5.

<sup>10</sup> CIROC, <http://en.wikipedia.org/wiki/Ciroc>, (pp 5-7);

ROB WALKER, *The Vodka Tonic*, N.Y. Times, September 26, 2004. [http://www.nytimes.com/2004/09/26/magazine/26 CONSUMER.html](http://www.nytimes.com/2004/09/26/magazine/26_CONSUMER.html). (pp 8-11); and

Ciroc Vodka, Snap Frost, 5 times Distilled, <http://www.wegmans.com/webapp/wcs/stores/servlet/ProductDisplay?productID=679005> (pp 11-13).

<sup>11</sup> Paul Knorr, 10,000 Drinks: 27 Years’ Worth of Cocktails! (2007), Opposer’s Third Notice of Reliance, 33 TTABVUE, 5

2 ounces orange vodka  
1/2 ounce Grand Marnier  
1 ounce dry sherry  
Twist of orange peel; and

Vodka and Sherry Martini<sup>13</sup>

4 ounces of Absolut Vodka  
1 ounce of Jerez cream sherry  
1 tablespoon of fresh squeezed lemon juice  
1 tablespoon of green olive brine  
2 thin lemon slices.

Applicant argues that the existence of these recipes “does not mean that the person following the recipe believes that some or all of the ingredients come from the same source.” Applicant’s Brief, pp. 10-11, 54 TTABVUE 11-12. We agree that the recipes alone do not establish that the goods are related. “If two ingredients, however, are found to be complementary in that they are sold in the same stores to the same consumers for the same, related or complementary end use, consumers are likely to be confused upon encountering the goods under the same or similar marks even though the goods may be found in different areas within a store.” *In re Davia*, 110 USPQ2d 1810, 1816 (TTAB 2014).

In this case, Opposer has also proffered evidence that vodka and wine may be offered under the same mark. See:

Charbay Winery & Distillery (wine and vodka sold under the trademark CHARBAY) <sup>14</sup>;

---

<sup>12</sup> SheKnows Food & Recipes, <http://www.sheknows.com/food-and-recipes/articles/8-12983/sherry-cocktails>, Opposer’s Fifth Notice of Reliance, 35 TTABVUE, 26

<sup>13</sup> The Recipe Link, <http://www.foodnetwork.com/recipes/bobby-flay/sherry-cocktail-recipe/index.html>, Opposer’s Fifth Notice of Reliance, 35 TTABVUE, 39

<sup>14</sup> [www.charbay.com](http://www.charbay.com), 39 TTAB 7-10.

Koenig Distillery and Winery (wine and vodka sold under the trademark KOENIG<sup>15</sup>; and

L'Chaim Kosher Vodka (wine and vodka sold under the trademark L'CHAIM;<sup>16</sup>

Further, the parties agree that the channels of trade for both sherry and vodka can be the same,<sup>17</sup> which Opposer notes include: supermarkets, liquor stores, and bars and restaurants;<sup>18</sup> and that “some of the purchasers of the products offered by Applicant and Opposer are of ordinary sophistication and would exercise ordinary care in selecting and purchasing such products.” *Id.* “

Accordingly, these *du Pont* factors slightly favor a finding of likelihood of confusion.

**The conditions under which sales are made.**

Opposer has split the fourth *du Pont* factor into two categories: the buyers to whom sales are made (discussed *supra*), and the conditions under which sales are made.

With respect to the conditions under which sales are made, the parties spend time arguing about what happens in crowded bars, but provide no evidence of this and fail to focus on other methods of sale, such as stores and quiet restaurants. In short, the evidence on this point is not persuasive in either direction.

---

<sup>15</sup> www.koenigdistilleryandwinery.com, 39 TTABVUE 12-14.

<sup>16</sup> www.lchaimhoshervodka.com, 39 TTABVUE 24-25.

<sup>17</sup> Applicant's Brief, 7, 54 TTABVUE 8

<sup>18</sup> Opposer bases its argument on the fact that the products are alcoholic beverages and there are no restrictions in the channels of trade in either Opposer's registration or Applicant's application.

**Prior third-party use of the mark ARMADALE for vodka and cancelled registration for the mark ARMADALE for vodka.**

Arguing the thirteenth *du Pont* factor (any other established fact probative of the effect of use), Applicant contends that because cancelled third-party Registration No. 2602636 for the mark ARMADALE for vodka co-existed with Opposer's registration, Applicant's mark should also be allowed to co-exist. Applicant's contention presumes that the prior registration of a particular term should be of some persuasive authority in handling later applications involving similar marks. Nonetheless, such registrations are entitled to little, if any weight in determining the likelihood of confusion. "The existence of these registrations is not evidence of what happens in the market place or that customers are familiar with them nor should the existence on the register of confusingly similar marks aid an applicant to register another likely to cause confusion, mistake or to deceive." In any event, the '636 Registration is cancelled. Cancellation "destroys the Section [7(b)] presumptions" to which an existing registration is entitled, *In re Hunter Publ'g Co.*, 204 USPQ 957, 963 (TTAB 1979), so it cannot even be presumed that the prior registration was valid when registered.

Applicant also submitted pages from seven websites mentioning ARMADALE vodka to show a public recognition of a vodka named ARMADALE. We note that the websites do not quantify sales or any advertising of any products. Therefore, the webpages neither establish nor disprove the extent, if any, of public recognition of the third-party use of ARMADALE vodka. Accordingly, we find this *du Pont* element to be neutral.

**Conclusion.**

Having considered all the evidence and argument on the relevant *du Pont* factors, whether specifically discussed herein or not, we conclude that primarily because of the differences between the marks, there is no likelihood of confusion between Applicant's use of the mark ARMADALE for liquor and liqueur beverages, namely vodka and Opposer's use of the mark ARMADA for sherry.

**Decision:** The opposition on the ground of likelihood of confusion under Section 2(d) of the Trademark Act is dismissed.