

This Opinion is not a  
Precedent of the TTAB

Mailed: February 19, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*Karma Fine Beverages, Inc.*

*v.*

*Amy Goetz*

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Opposition No. 91207088

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*Patrick S. Wilson*

*v.*

*Amy Goetz*

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Opposition No. 91207094

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Gary L. Eastman of Gary L. Eastman APLC,  
for Karma Fine Beverages, Inc. and Patrick Wilson.

Elaine D. Papas of The Law Offices of Elaine D. Pappas,  
for Amy Goetz.

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Before Bucher, Mermelstein and Bergsman,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Amy Goetz (“Applicant”) filed an intent-to-use application to register the mark KARMA CRAFT BEER, in standard character form, for “beer,” in Class 32. Applicant disclaimed the exclusive right to use the word “beer.”

Karma Champagne, Inc., predecessor of Karma Fine Beverages, Inc. (hereinafter “Karma”), opposed the registration of Applicant’s mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d) (Opposition No. 91207088). Karma alleged prior, common law use of the mark KARMA, KARMA CALIFORNIA BRUT, and KARMA BY PATRICK WILSON for sparkling wines, as well as ownership of Registration No. 4146895 for the mark KARMA BY PATRICK WILSON, in standard character form, for “alcoholic cocktail mixes; natural sparkling wines; sparkling wines; wine coolers; wines; wines and liqueurs; wines and sparkling wines; alcoholic beverages except beers; spirits; distilled spirits of rice (awamori); spirits and liqueurs,” in Class 33.<sup>1</sup> In the registration, Karma identified “Patrick Wilson” as an individual whose consent is of record.

Patrick Wilson, the owner of Karma (hereinafter “Wilson”), also opposed the registration of Applicant’s mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d) (Opposition No. 91207094). The underlying allegations for Wilson’s likelihood of confusion claim are identical to the allegations pleaded by Karma, including the claim of ownership of Registration No. 4146895.

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<sup>1</sup> Issued May 22, 2012.

Applicant in her Answers, denied the salient allegations in the Notices of Opposition.

In an Order dated September 9, 2014, proceedings were consolidated. Karma and Wilson collectively will be referred to as Opposer. References to the record will be to Opposition No. 91207088 unless otherwise indicated.

Citations to the record in this opinion are to the TTABVUE docket entry number and the electronic page number where the document or testimony appears. Because the Board primarily uses TTABVUE in reviewing evidence, the Board prefers that citations to material or testimony in the record that has not been designated confidential include the TTABVUE docket entry number and the TTABVUE page number. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

I. Evidentiary Issues

A. Evidence attached to Opposer's brief.

Opposer attached exhibits to its brief. Many litigants believe that attaching previously-filed evidence to a brief (and citing to the attachments, rather than to the record) is a courtesy or a convenience to the Board. It is neither. When considering a case for final disposition, the entire record is readily available to the panel. To be able to rely on attachments to a brief, the Board would have to determine whether they are copies of evidence properly of record. Citation to the attachment by Opposer requires the Board to examine the attachment and then an attempt to locate the same evidence in the record developed during the testimony period of the party proffering the evidence, requiring more time and effort than would have been necessary if citations were directly to the prosecution history of the

proceeding. We have not considered the exhibits attached to Opposer's brief in this proceeding unless they were properly made of record during Opposer's testimony period.

B. Opposer's Notice of Reliance.

On January 4, 2014, Opposer filed a Notice of Reliance consisting of 26 exhibits.<sup>2</sup>

1. Opposer's pleaded registration.<sup>3</sup>

In the Notice of Reliance, Opposer states that it introduced "a copy of said registration taken from the Trademark Status and Document Retrieval ('TSDR') database for the U.S. Patent and Trademark Office ('USPTO') as Exhibit 1."<sup>4</sup> Opposer's Exhibit 1 is a copy of the original certificate of registration issued May 22, 2012.

Trademark Rule 2.122(d) regarding the introduction of pleaded registrations in *inter partes* proceedings reads as follows:

(1) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if the opposition or petition is accompanied by an original or photocopy of the registration prepared and issued by the United States Patent and Trademark Office showing both the current status of and current title to the registration, or by a current printout of information from the electronic database records of the USPTO showing the current status and title of the registration.

(2) A registration owned by any party to a proceeding may be made of record in the proceeding by that party by appropriate identification and introduction during the

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<sup>2</sup> 16 TTABVUE.

<sup>3</sup> 16 TTABVUE 12-13.

<sup>4</sup> 16 TTABVUE 2.

taking of testimony or by filing a notice of reliance, which shall be accompanied by a copy (original or photocopy) of the registration prepared and issued by the Patent and Trademark Office showing both the current status of and current title to the registration. The notice of reliance shall be filed during the testimony period of the party that files the notice.

There is a discrepancy between Trademark Rule 2.122(d)(1) and Trademark Rule 2.122(d)(2) in that the former allows for proof of a pleaded registration by the submission of USPTO records with a pleading while the latter appears to preclude use of such records during trial. The Board resolved that discrepancy in *Motion Limited v. NBOR Corporation*, 92 USPQ2d 1926, 1928 (TTAB 2009) by permitting proof of a pleaded registration by the submission of a printout of information from the electronic database records of the USPTO through a notice of reliance.

Opposer's copy of the original certificate of registration is not in compliance with Trademark Rule 2.122(d) as modified by *Motion Limited v. NBOR Corporation* because it does not show the *current* status of and *current* title to the registration. The registration copies "prepared and issued by the United States Patent and Trademark Office showing both the current status of and current title to the registration," as contemplated by 37 CFR § 2.122(d), are printed copies of the registration on which the Office has entered the information it has in its records, at the time it prepares and issues the status and title copies, about the current status and title of the registration. That information includes information about the renewal, cancellation, publication under Trademark Act § 12(c), 15 U.S.C. § 1062(c); affidavits or declarations under Trademark Act § 8, Trademark Act § 15, and Trademark Act § 71, 15 U.S.C. § 1058, 15 U.S.C. § 1065 and 15 U.S.C. § 1141; and

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recorded documents transferring title. *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1041 (TTAB 2014); *Peters Sportswear Co., Inc. v. Peter's Bag Corp.*, 187 USPQ 647 (TTAB 1975) (“status and title copies” amount to an acknowledgement by the Office as to what the Office records show with respect to a particular registration *as of the time of the mailing of the copies*).

Opposer merely introduced a copy of the original certificate of registration issued in 2012. A plain copy of the registration is not sufficient to establish current status and title. *See Syngenta Crop Protection Inc. v. Bio-Chek LLC*, 90 USPQ2d 1112, 1116-17 (TTAB 2009); *Industrial Adhesive Co. v. Borden, Inc.*, 218 USPQ 945, 947-48 (TTAB 1983). *See also Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1713 (Fed. Cir. 1991). The Board has routinely held that the submission of such a copy of a pleaded registration, by itself, is insufficient for purposes of establishing the continuing subsistence and the current title of the registration and, therefore, does not suffice to make the registration of record. *United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d at 1041. *See also Teledyne Techs., Inc. v. Western Skyways, Inc.*, 78 USPQ2d 1203, 1206 (TTAB 2006) (“[i]nasmuch as the copy attached to the petition is not a status and title copy prepared by the Office, the submission does not conform to Rule 2.122(d)”).

Nor is the issue date for Opposer’s pleaded registration (May 22, 2012) substantially contemporaneous with the filing of the Notice of Reliance (January 4, 2014), such that the copy of the registration alone would be sufficient because the date the registration was issued was very near the date the Notice of Reliance was

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filed. *See* TBMP § 704.03(b)(1)(A) (2014); *compare United Global Media Grp., Inc. v. Tseng*, 112 USPQ2d at 1042-43 (copies of registrations issued several years earlier not “substantially contemporaneous”) *with Royal Hawaiian Perfumes, Ltd. v. Diamond Head Prods. of Haw., Inc.*, 204 USPQ 144, 146 (TTAB 1979) (status and title copy of pleaded registration mailed by USPTO on January 12, 1977 was reasonably contemporaneous with the notice of opposition filed on March 14, 1977).

In view of the foregoing, we find that Opposer failed to properly introduce its pleaded registration.

2. Opposer’s written discovery.

Opposer introduced its First Set of Interrogatories (Exhibit 5),<sup>5</sup> its First Set of Requests for Product of Documents (Exhibit 6),<sup>6</sup> and its First Set of Requests for Admission (Exhibit 7).<sup>7</sup> Opposer asserts that Applicant failed to serve responses to these discovery requests. Opposer’s Exhibit 26 is a letter from Opposer’s counsel to Applicant’s counsel demanding Applicant’s responses to Opposer’s written discovery, failing which Opposer threatened to file a motion to compel discovery.<sup>8</sup> Although applicant’s responses were apparently not forthcoming, Opposer did not file a motion to compel discovery.

If a party that served a request for discovery receives a response thereto which it believes to be inadequate (or no response at all), but fails to file a motion to

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<sup>5</sup> 16 TTABVUE 27-34.

<sup>6</sup> 16 TTABVUE 36-44.

<sup>7</sup> 16 TTABVUE 46-50.

<sup>8</sup> 16 TTABVUE 89.

challenge the sufficiency of the response, it may not thereafter be heard to complain about the sufficiency thereof. *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1719 (TTAB 2008) (“By failing to serve any response to applicant's discovery requests, opposer in no way led applicant to believe that there were no documents responsive to its requests. If applicant was unsatisfied with opposer's failure to respond to its discovery requests, it was required to file a motion to compel discovery,<sup>9</sup> failing which applicant waived its right to object to ... testimony and evidence on the ground that it was not produced during discovery. In this situation, applicant's own inaction ensured that applicant would not see opposer's evidence for the first time until trial. Under such circumstances, applicant cannot claim unfair surprise.”); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1656 (TTAB 2002) (having failed to file motion to compel, defendant will not later be heard to complain that interrogatory responses were inadequate); *Linville v. Rivard*, 41 USPQ2d 1731, 1733 (TTAB 1996) (objections that discovery requests are, for example, ambiguous or burdensome, are not of a nature which would lead propounding party to believe that the requested information does not exist and party should have filed motion to compel), *aff'd*, 133 F.3d 1446, 45 USPQ2d 1374 (Fed. Cir. 1998). In view thereof, Opposer's Exhibits 5 and 6 have no probative value and will be given no further consideration.

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<sup>9</sup> Note that any motion to compel discovery “must” be filed prior to the opening of the first testimony period. Trademark Rule 2.120(e)(1). Final briefing is far too late to raise a complaint about a failure to respond (or respond fully) to discovery.



On the other hand, if a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R. Civ. P. 36(b), and granted by the Board. *See Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306, 1307 (TTAB 2007) (contrasting standard of review for motion to reopen time to respond to requests for admission and for motion to withdraw requests that stand admitted); *Hobie Designs, Inc. v. Fred Hayman Beverly Hills, Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990). In view thereof, Opposer's Exhibit 7 will be considered for whatever probative value it may have.

3. Opposer's application for the mark KARMA CALIFORNIA BRUT.<sup>10</sup>

Opposer introduced a copy of its application Serial No. 77876479 for the mark KARMA CALIFORNIA BRUT as Opposer's Exhibit 3. Opposer's Exhibit 4 is a copy of the specimen filed in the above-noted application.<sup>11</sup> Pending applications are evidence only that the applications were filed on a certain date; they are not evidence of use of the marks. *Nike Inc. v. WNBA Enterprises LLC*, 85 USPQ2d 1187, 1193 n.8 (TTAB 2007); *Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003); *In re Juleigh Jeans Sportswear, Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992). *See also Olin Corp. v. Hydrotreat, Inc.*, 210 USPQ 62, 65 n.5

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<sup>10</sup> 16 TTABVUE 17-23.

<sup>11</sup> 16 TTABVUE 25.

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(TTAB 1981) (“Introduction of the record of a pending application is competent to prove only the filing thereof.”).

Opposer’s specimen submitted as part of its pending application is likewise not evidence of Opposer’s priority or that Opposer has used the mark. Trademark Rule 2.122(b)(2). Although the application and its contents are admissible as an official record of the USPTO, Trademark Rule 2.122(e), it is competent to prove only that it has been filed, and therefore of little or no use in this case. *See Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847-1848 n.10 (TTAB 2004). Accordingly, the copy of Opposer’s application Serial No. 77876479, including the specimen, will be given no further consideration.

## II. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant’s application file. Opposer did not take any testimony. Opposer filed a Notice of Reliance, discussed above, which consists of the following items that were properly made of record:

1. The specimen from Opposer’s pleaded registration;<sup>12</sup>
2. Opposer’s First Set of Request for Admissions, which are deemed admitted;<sup>13</sup> and
3. Articles from publications in general circulation pursuant to Trademark Rule 2.122(e) (Opposer’s Exhibits 8-25).<sup>14</sup>

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<sup>12</sup> 16 TTABVUE 15. Like the specimen in Opposer’s pending application, the specimen in Opposer’s pleaded registration is of little consequence since it is not evidence of Opposer’s priority or that its mark is in use.

<sup>13</sup> 16 TTABVUE 46-50.

Applicant did not take any testimony, introduce any evidence, or file a brief.

### III. Standing

Applicant admitted that before she filed the application for her mark KARMA CRAFT BEER, she had knowledge of Opposer's marks KARMA BY PATRICK WILSON, KARMA CALIFORNIA BRUT, and KARMA for the goods sold under those marks.<sup>15</sup> In the instructions accompanying Opposer's requests for admission, Opposer defined "Opposer's Marks" as KARMA BY PATRICK WILSON, KARMA CALIFORNIA BRUT, and KARMA "as used in connection with the alcoholic beverages continuously sold by OPPOSER since 2007."<sup>16</sup>

In view thereof, we find that Opposer has proven that it has a real interest in this proceeding and that it has standing.

### IV. Priority

As noted above, Applicant admitted that before she filed the application for her mark KARMA CRAFT BEER, she had knowledge of Opposer's marks KARMA BY PATRICK WILSON, KARMA CALIFORNIA BRUT, and KARMA for the alcoholic beverages since 2007.<sup>17</sup> In view thereof, we find that Opposer has established priority for the marks KARMA BY PATRICK WILSON, KARMA CALIFORNIA BRUT, and KARMA.

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<sup>14</sup> 16 TTABVUE 52-87.

<sup>15</sup> 16 TTABVUE 48.

<sup>16</sup> 16 TTABVUE 47.

<sup>17</sup> 16 TTABVUE 48.

V. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). These factors, and any other relevant *du Pont* factors in the proceeding now before us, will be considered in this decision.

A. The similarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont*, 177 USPQ at 567. We focus on Opposer’s KARMA mark because it is the mark that is most similar to Applicant’s mark. That is, if Applicant’s mark KARMA CRAFT BEER is similar to Opposer’s KARMA mark, there is no need for us to consider the similarity of Applicant’s mark with Opposer’s other marks, while if Applicant’s mark KARMA CRAFT BEER is not similar to Opposer’s KARMA mark, then Applicant’s mark

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would not be similar to Opposer's other marks. *See, e.g., In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

In a particular case, "finding of similarity as to any one factor (sight, sound or meaning) alone 'may be sufficient to support a holding that the marks are confusingly similar.'" *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (citations omitted). *See also In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that "[t]he proper test 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." *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, 972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The dominant element of Applicant's mark is the word "Karma" because the term "Craft Beer" is merely descriptive when used in connection with "beer." It is well-settled that disclaimed, descriptive matter may have less significance in

likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (*quoting In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1983)); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often “less significant in creating the mark’s commercial impression”).

While noting that the word “Karma” is the dominant element of Applicant’s mark, we are cognizant that the similarity or dissimilarity of the marks is determined based on the marks in their entirety and that the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *In re National Data Corp.*, 224 USPQ at 751. However, 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 a consideration of the marks in their entirety. *Id.* at 751.

The position of the word “Karma” as the first word of the mark KARMA CRAFT BEER further reinforces the importance of “Karma” as the dominant element of the mark. *See Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“it is often the first part of a mark which is most likely to be

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impressed upon the mind of a purchaser and remembered”). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word).

Opposer’s mark KARMA and the dominant element KARMA of Applicant’s mark KARMA CRAFT BEER are identical. In similar circumstances, where the Applicant’s mark incorporates a senior user’s entire mark, the Board and its reviewing court have often found that the marks are similar. *See Coca-Cola Bottling Co. of Memphis, Tennessee, Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (applicant’s mark BENGAL LANCER for club soda, quinine water and ginger ale is likely to cause confusion with BENGAL for gin); *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (applicant’s mark EBONY DRUM for hairdressing and conditioner is likely to cause confusion with EBONY for cosmetics); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) (applicant’s mark HEAD START COSVETIC for vitamins for hair conditioners and shampoo is likely to cause confusion with HEAD START for men’s hair lotion and after-shaving lotion).

In view of the foregoing, we find that Applicant’s mark KARMA CRAFT BEER is similar to Opposer’s mark KARMA.

B. The similarity or dissimilarity and nature of the goods.

As noted in the discussion regarding evidentiary issues, Opposer did not properly introduce its pleaded registration into the record and, therefore, Opposer may not rely on it. Opposer did not take any testimony or introduce any admissible evidence describing its goods. However, as noted above, by failing to respond to Opposer's requests for admission, Applicant admitted that Opposer used its marks in connection with alcoholic beverages.

"Beer" is defined as "an alcoholic beverage usually made from malted cereal grain (as barley), flavored with hops, and brewed by slow fermentation."<sup>18</sup> Since beer is an alcoholic beverage, the goods are related.

C. Established, likely-to-continue channels of trade.

Applicant admitted that "the target population of the goods or services offered, rendered and/or sold under APPLICANT'S MARK [beer] is consumers and re-sellers of alcoholic beverages."<sup>19</sup> Accordingly, we find that the goods move in the same channels of trade because they are marketed to the same consumers.

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<sup>18</sup> *Merriam-Webster* online (merriam-webster.com). See also **ENCYCLOPAEDIA BRITANNICA** (2014) ("Beer, alcoholic beverage produced by extracting raw materials with water, boiling (usually with hops), and fermenting.").

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). Also, the Board may take judicial notice of information from encyclopedias. *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1721 (Fed. Cir. 1988) ("dictionaries and encyclopedias may be consulted"); *Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 n.61 (TTAB 2011); *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511, 1514 n.4 (TTAB 2001) (dictionary entries and other standard reference works).

<sup>19</sup> 16 TTABVUE 49.



D. Balancing the factors.

Because the marks are similar, the goods are related and are marketed to the same consumers, we find that Applicant's "beer" is similar to Opposer's marks KARMA, KARMA BY PATRICK WILSON, and KARMA BRUT CHAMPAGNE for alcoholic beverages.

***Decision:*** The opposition is sustained.