

**This Disposition Is not
Citable as Precedent of
the TTAB**

Paper No. 37
GFR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re G.H. Martel et Cie

Serial No. 74/293,358

Arnold S. Weintraub of Plunkett & Cooney, P.C. for G.H.
Martel et Cie.

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(Meryl Hershkowitz, Managing Attorney).

Before Seeherman, Quinn and Rogers, Administrative
Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Applicant G.H. Martel et Cie [Martel] seeks to
register the mark shown below for "champagne wines."



The application includes a disclaimer of the right to use "CO." apart from the mark as shown. It also includes a statement that "G.H. MARTEL" is not a particular living individual. Finally, the application includes a statement that "[t]he lining shown in the drawing of the mark is a feature thereof, and is not intended to indicate color."

The mark applicant seeks to register is the label applied to its bottles of champagne. The application is based on applicant's ownership of a French registration for the label.¹ This particular label, as applicant has shown, is the main or body label for its bottles. In a related application that was the subject of a separate appeal (Serial No. 75/002,400), applicant² sought joint registration of the combined main or body label and the label applied to the neck of its bottles.

In both applications, the examining attorney refused registration of applicant's mark under Section 2(d) of the

¹ The French registration shows the label with a more detailed display of information (i.e., volume of bottle, percent of alcohol in bottle, and information about the applicant). The application before the Office deletes these items from the mark and seeks to register the basic label.

² In the other application, applicant is denominated as S.A. G.H. Martel et Cie. The S.A. clearly stands for "Societe Anonyme," an entity designation which, although not included in applicant's name in this application, is referenced in the application. There is no question that the applicant is the same in each of the two applications. In particular, we note that the same

Lanham Act, 15 U.S.C. §1052(d). In each, the examining attorney reasoned that there exists a likelihood of confusion or mistake or deception among consumers, in view of the prior registration of a wide variety of marks incorporating the term MARTELL, each registered, apparently by the same entity (see footnote 3 in our decision on the appeal in Serial No. 75/002,400) for "cognac" or "cognac brandy" or "brandy."

When the refusal was made final, applicant filed an appeal. Applicant subsequently sought and was granted two remands to make additional evidence of record. Each time, the examining attorney considered the evidence but adhered to the final refusal. Briefs were filed and applicant requested an oral argument. Later, however, the Board granted applicant's request to suspend this appeal, pending examination of, inter alia, the noted related application.

After the Board issued its October 29, 2002 decision in the appeal of Serial No. 75/002,400, proceedings in this appeal were resumed. Applicant was granted an opportunity to file a supplemental brief, in view of both the long period of suspension for this appeal and the decision in the related application. Applicant has expressly declined

declaration has been made of record in each application, in support of applicant's arguments for registration.

to file a supplemental brief and has waived the earlier-requested oral hearing. Accordingly, the appeal is now ready for consideration as originally briefed.

The examining attorney's basis for refusal in this application is essentially the same as it was in application Serial No. 75/002,400.³ Similarly, the arguments in support of registration are essentially the same. Finally, the records created in each application are essentially the same.⁴

The reasoning articulated in our decision affirming the refusal of registration of the body and neck labels in Serial No. 75/002,400 (copy attached) is equally applicable to this application seeking registration of only the body label. We will not burden this opinion by restating that reasoning here, but merely state that, for the same reasons

³ One registration cited in the related application (Reg. No. 555,941) was not cited as a bar to this application. Two of the registrations cited as bars to this application (Reg. Nos. 328,095 and 330,844) have expired, and three others (Reg. Nos. 1,167,575, 1,656,994, and 1,675,576) have been cancelled under Section 8 of the Trademark Act. The eight other (and still current) registrations cited as bars to this application (Reg. Nos. 773,880, 1,261,887, 1,261,888, 1,321,155, 1,665,191, 1,665,193, 1,669,678, and 1,672,733) were also cited as bars to the related application.

⁴ In the related application, applicant introduced a copy of a letter from French counsel that was not introduced in support of this application.

Ser No. 74/293,358

articulated in the related application, the refusal of registration in this appeal also is affirmed.

Decision: The refusal of registration under Section 2(d) of the Trademark Act is affirmed.