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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vina Lo Miranda Limitada

Serial No. 75/818,989

Patrick M. Boucher of Townsend and Townsend and Crew LLP for Vina Lo Miranda Limitada.

Zhaleh Sybil Delaney, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney).

Before Seeherman, Wendel and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Applicant, Vina Lo Miranda Limitada, has appealed from the final refusal of the Trademark Examining Attorney to register the mark STELLA SOLARIS for "wines and liqueurs."¹ The application includes an English translation of STELLA SOLARIS as "solar star."

¹ Application Serial No. 75/818,989 filed, as corrected, on October 30, 1999 and alleging a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, when applied to applicant's goods, so resembles the registered mark SOLARIS for "wine" as to be likely to cause confusion.² The registration does not contain a translation of SOLARIS.

When the refusal was made final, applicant appealed. Briefs have been filed, but an oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976) and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

Applicant's goods (wines and liqueurs) and registrant's goods (wines) are in part identical. Applicant does not dispute the identity of the goods but argues that because of the differences in the manner in which the wines are actually marketed, confusion is not likely to occur. Specifically, applicant contends that wine shops and merchants organize wines

primarily according to geographical regions of vineyards and by grape varieties, that applicant's and registrant's wines are from different varieties and different geographical regions, that the "likelihood is small" that the two wines will be presented to customers of wine in any similar fashion, and that as a result "there will not be a realistic opportunity for confusion to occur."³ (Brief, p.6).

These arguments are not persuasive. The respective goods are directly competitive products. In the absence of any restrictions in the application or cited registration, applicant's and registrant's wines must be deemed to originate in the same geographic region, to include the same varietal grapes, and to be marketed in the same manner to the same purchasers. See, e.g., *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994).

We turn then to the marks, keeping in mind that when marks would appear on identical goods, as in this case, the degree of similarity between the marks necessary to support a finding of likely confusion declines. *Century 21 Real Estate v. Century Life*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

² Registration No. 2,160,811; issued May 26, 1998.

³ To support this contention, applicant has attached to its appeal brief an article discussing registrant's company and its wines. We agree with the Examining Attorney that this evidence is both untimely and unpersuasive.

The Examining Attorney contends that the marks STELLA SOLARIS and SOLARIS are similar in sound, appearance and meaning because they both contain the term SOLARIS. meaning "solar" or "sun." The Examining Attorney has submitted a dictionary definition of "solar" as "proceeding from the sun" and of "sun" as "a star that is the center of a planetary system." Relying on these definitions the Examining Attorney reasons that the addition of STELLA, meaning star, to the registered mark SOLARIS which is "nothing more than a star" does not change the overall commercial impression created by the marks. The Examining Attorney further argues that out of the three third-party registrations relied on by applicant, only one, SOLAR for wine, is still in existence. The Examining Attorney maintains that this evidence does not establish that SOLARIS is weak in the field of wines or that those marks coexist in the marketplace.

Applicant, on the other hand, contends that the marks, when viewed in their entireties, are different in sound, appearance and commercial impression. It is applicant's position that the STELLA portion of its mark

is completely different in sight and sound from anything in the "SOLARIS" mark, and only extremely loosely connected in meaning, with "SOLARIS" translating into English as the naked adjective "solar" and "STELLA SOLARIS" translating into the adjective-noun phrase "solar star." (Brief, p.9).

Applicant further argues that the shared term "SOLARIS" is "arguably suggestive of the fact that quality wine is often

affected by exposure of grapes to appropriate sunlight"; and that the coexistence of a third-party registration for SOLAR for wine and the cited registration for SOLARIS for wine demonstrates that "the root term 'SOLAR' is weak"; that as used in connection with wine, the term is "not at all uncommon"; and that marks having that root may readily coexist in the marketplace without confusion." (Brief, pp. 4,5,8). Applicant concludes that the dominant portion of its mark is STELLA, and that since the shared portion of the two marks is weak, confusion is not likely.

When compared in their entireties, applicant's mark STELLA SOLARIS and the cited mark SOLARIS, while not identical, are similar in sound, appearance and commercial impression. The term SOLARIS is registrant's entire mark and is visually and aurally a significant portion of applicant's mark. Although applicant's mark also includes the word STELLA, purchasers who are familiar with SOLARIS, alone, for wine, are likely to remember that word upon hearing or seeing applicant's mark STELLA SOLARIS at a later time.

Contrary to applicant's contention, the addition of STELLA to SOLARIS does not significantly change the meaning or commercial impression applicant's mark conveys. Applicant has included a translation of the words STELLA SOLARIS in the application presumably because they are foreign (Latin) words with no English-dictionary meaning. However, it is not

reasonable to assume that the average purchasers of wine are familiar with Latin and that they would translate the words in the mark as "solar star." To most purchasers, the word SOLARIS is likely to be perceived as either a purely fanciful word or an unusual variation of the recognized word "solar." Either way, because of the uniqueness of SOLARIS, purchasers are likely to assume that STELLA SOLARIS identifies a different variety of registrant's SOLARIS wine rather than a different source for the wine.

Even if purchasers would recognize the word "solar" in both marks, we disagree that "solar" or "solaris" is suggestive of wines, much less highly suggestive of those goods. Moreover, the existence of a single third-party registration for the mark SOLAR is hardly sufficient to show common use or registration of SOLARIS for wines or that the term is in any way weak in relation to those goods.⁴

Applicant has, in effect, added the word STELLA to the distinctive word SOLARIS. It is generally held that the addition of another word to one of two otherwise similar marks will not

⁴ Third-party registrations, even if in existence, are not evidence that the marks therein are in use or that the marks coexist without confusion in the marketplace. See *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268 (CCPA 1973). Clearly then, the two "dead" registrations relied on by applicant are not probative of use of the marks therein.

serve to avoid a likelihood of confusion.⁵ See *Henry Siegel Co. v. M & R International Mfg. Co.*, 4 USPQ2d 1154 (TTAB 1987) and *In re The United States Shoe Corporation*, 229 USPQ 707 (TTAB 1985).

Finally, there is no evidence that purchasers of wines would be sophisticated or discriminating in their purchases, as applicant seems to suggest. [On the contrary, it is reasonable to assume that purchasers of wine may be, but are not necessarily discriminating or knowledgeable about those products.] Many purchasers of wine are members of the general public who would not necessarily be likely to exercise the high degree of care necessary to prevent confusion.

In view of the similarity of the marks and because the goods, as well as the trade channels, markets and purchasers for the goods are identical, confusion is likely.

Decision: The refusal to register is affirmed.

⁵ This is particularly true where, as here, the additional word does not significantly change the meaning the terms convey. See *In re Champion International Corporation*, 196 USPQ 48 (TTAB 1977). See also *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735 (TTAB 1991), affirmed in unpublished opinion, Appeal No. 92-1086 (Fed. Cir. June 5, 1992); *In re Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985) and *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979).