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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Barriga

Serial No. 76624363

Pamela S. Burt of Weiner & Burt, P.C. for Cristian Cremaschi Barriga.

Napoleon K. Sharma, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).[1]

Before Quinn, Hairston and Walters, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Cristian Cremaschi Barriga has filed an application to register the mark ARAUCO (in standard character form) for "wines originating in Chile" in International Class 33.[2]

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[1] A different examining attorney examined the application; the application was assigned to the present examining for preparation of the appeal brief.

[2] Application Serial No. 76624363 was filed on December 9, 2004, based upon applicant's allegation of a bona fide intention to use the mark in commerce (Section 1(b) of the Act) and under Section 44(e) of the Act, based upon Chilean Registration No. 701,748, which issued on August 30, 2004. The application includes a statement that "The English translation of 'Arauco' is 'water clay.'"

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with applicant's goods, so resembles the mark ARAUCANO, which is registered for "wines,"[3] as to be likely to cause confusion, mistake or deception.

Applicant and the examining attorney have filed briefs.

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 Company, Inc., 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and In re Dixie Restaurants Inc., 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See

[3] Registration No. 3073723, issued March 28, 2006. The registration includes a statement that "The English translation of the mark is 'ARAUCANIAN,' a word to designate people who come from Araucania, a part of Chile."

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Considering first the goods, because registrant's "wines" encompass applicant's "wines originating in Chile," the goods are legally identical. Applicant has not argued to the contrary. Moreover, in the absence of any limitations in the respective identifications of goods as to channels of trade and classes of purchasers, we must presume that the respective goods would move through the same channels of trade (e.g., wine shops and grocery stores) to the same classes of purchasers (e.g., wine connoisseurs as well as ordinary purchasers). See In re Elbaum, 211 USPQ 639 (TTAB 1981). Indeed some wines are relatively inexpensive, and therefore, may be bought without a great deal of purchasing care or deliberation. Thus, the factors of the similarity of the goods, trade channels, and conditions under which and purchasers to whom sales are made favor a finding of likelihood of confusion.

Turning next to a consideration of the marks, we keep in mind that when marks would appear on identical goods, the degree of similarity in the marks necessary to support a conclusion of likely confusion declines. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

The trademark examining attorney contends that the marks are similar in appearance and sound because each begins with "ARAUC." Further, it is the examining attorney's position that the marks are highly similar in meaning and commercial impression because "Arauco" identifies a province in Chile that once covered the territory occupied by the "Araucano" people. In this regard, the examining attorney submitted an excerpt from the "Answers.com" web site (http://www.answers.com) which states as follows:

> Arauco Province
> Arauco, a coastal province of southern Chile, bounded N., E. and S. by the provinces of Concepcion, Bio-Bio, Malleco and Cautin. Area, 2448 sq. mi.; pop. (est. 1902) 70,635. The province originally covered the once independent Indian territory of Araucania, but this was afterwards divided into four provinces.

In addition, the examining attorney submitted an Internet printout from applicant's web site which states in pertinent part, that:

> The Viñedos Arauco winery comes with a strong backing. Its name recalls the strength and vitality of Chile's original inhabitants, the Araucanos, which means "men of the earth" and reflects their concern with nature, forests, mountains, the sun and the moon.

Applicant, in urging reversal of the refusal to register, argues that the marks have different meanings. Applicant contends that in the original language of the

natives of Chile, applicant's mark ARAUCO means "water clay," while the cited registered mark ARAUCANO means "Araucanian," which designates people who come from Araucania, a part of Chile.

In terms of sound, applicant argues that its mark ARAUCO has only three syllables, with the accent on the second syllable, whereas the cited registered mark ARAUCANO has four syllables, with the accent on the third syllable. In terms of appearance, applicant argues that the marks differ because they have different endings. Thus, it is applicant's position that on close inspection, the marks are not similar in sound or appearance.

With respect to the marks, we must determine whether applicant's mark and the cited registered mark, when compared in their entireties, are similar or dissimilar in terms of sound, appearance, connotation and commercial impression. Furthermore, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks.

See Sealed Air Corp. v. Scott Paper Co., 190 USPQ 106 (TTAB 1975). This is particularly true for goods such as those involved herein which can be inexpensive and may be purchased without great care.

In this case, we find that the marks ARAUCO and ARAUCANO are similar in appearance and sound. As the examining attorney points out, both marks begin with "ARAUC." In our view, the differences in the endings of the two marks ARAUCO and ARAUCANO are slight, and consumers are not likely to note such differences. Further, if one sounds out the marks ARAUCO and ARAUCANO, the aural differences are not substantial. In this regard, it must be remembered that there is no correct pronunciation of a trademark. See In re Belgrade Shoe, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969).

In terms of meaning, although applicant asserts that the marks have different meanings when translated, we are not persuaded that an appreciable number of American consumers would be familiar with the meanings of either of the marks. As applicant itself has noted, the translation of ARAUCO as "water clay" is based on the <u>original language</u> of the natives of Chile. Also, we note that applicant submitted printouts from the <u>Spanish Language Academy</u> dictionary and <u>Random House Webster's Unabridged Dictionary</u>

which show the absence of entries for the term "Arauco." Thus, consumers are not likely to be aware of the meaning of applicant's mark ARAUCO. With respect to the cited registered mark, the translation statement in the registration indicates that ARAUCANO designates people who come from Araucania, a part of Chile. Again, however, consumers are not likely to be aware of the part of Chile known as Araucania, much less the name of its inhabitants. Thus, we are not persuaded that consumers seeing ARAUCO for wines from Chile will think of "water clay" or consumers seeing ARAUCANO for wines will think of people from Araucania, Chile. Rather, we believe most Americans would perceive both ARAUCO and ARAUCANO as arbitrary terms, or possibly as words from a foreign language, probably Spanish, when used in connection with wines.

Thus, when considered in their entireties, we find that the marks ARAUCO and ARAUCANO are similar in sound, appearance and overall commercial impression. The factor of the similarity of the marks favors a finding of likelihood of confusion.

An additional argument made by applicant requires comment. Applicant contends that both its mark and the cited registered mark are the subject of Chilean and European Community Trademark registrations and that the

coexistence of such registrations is "strong proof" that there is no likelihood of confusion between the respective marks. (Brief at p. 11) Applicant submitted copies of these registrations. Suffice it to say that the existence of these foreign registrations does not obviate the requirements under the Trademark Act that no likelihood of confusion exist between applicant's mark and a prior registered mark.

In view of the foregoing, we conclude that purchasers who are familiar with the cited registered mark ARAUCANO for wines would be likely to believe, upon encountering the similar mark ARAUCO for wines from Chile, that such legally identical goods emanate from the same source.

To the extent we have any doubt, we resolve it as we must, in favor of the registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); In re Pneumatiques, Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

Decision: The refusal to register under Section 2(d) is affirmed.