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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wente Bros.

Serial No. 77068855

Request for Reconsideration

Edward S. Wright for Wente Bros.

Ingrid Eulin, Trademark Examining Attorney, Law Office 111
(Craig D. Taylor, Managing Attorney).

Before Quinn, Grendel and Ritchie de Larena, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Board, in a decision dated September 22, 2008,
affirmed the refusal to register under Section 2(d) of the
Trademark Act, 15 U.S.C. §1052(d). Applicant has filed a
timely request for reconsideration of the decision.

Applicant contends that the Board failed to consider
the differences between the marks SOMERSET and SUMMERSET,
both for "wine," in terms of appearance, meaning and

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commercial impression. The Board also erred, according to applicant, in overlooking the fact that the term "wine" encompasses more than just inexpensive wine. Applicant states that the term "wine" encompasses a far greater number of wines bought by connoisseurs and other sophisticated purchasers who select their wines very carefully. Lastly, applicant argues that the Board missed the significance of the listing of COLAS (Certificates of Label Approval) provided by applicant.

Applicant's arguments on reconsideration are not persuasive.

At the outset of comparing the marks SOMERSET and SUMMERSET, we noted that they would be used in connection with the identical goods, "wine," and that when marks are used in connection with identical goods, the degree of similarity between the marks that is necessary to support a finding of likely confusion declines. Given this guideline, and even accepting applicant's contention that the marks may convey different meanings, especially among less sophisticated buyers, this difference is outweighed by the similarities in sound, appearance and overall commercial impression. In so finding, we also recognized the fallibility of the average purchaser who normally retains a general rather than a specific impression of

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trademarks. Applicant's arguments do not persuade us that we erred in our analysis.

Applicant's identification of goods does not indicate that its wine is expensive or that it is bought by "connoisseurs and other sophisticated purchasers who select their purchases very carefully." Rather, applicant's identification of goods simply reads "wine." Given this broad term, it is well settled that the identification encompasses all types of wine, including inexpensive wine subject to impulse purchase. The identity in the goods, trade channels and classes of purchasers weighs heavily in favor of a finding of likelihood of confusion.

Lastly, applicant's evidence relating to Certificates of Label Approval does not compel us to reach a different result. We reiterate that the record is devoid of any evidence relating to the extent of this asserted use or that consumers are familiar with any of the listed brand names.

In sum, we stand by our decision that the marks SOMERSET and SUMMERSET, both for wine, are likely to cause confusion among consumers in the marketplace.

To the extent that any of applicant's arguments cast doubt on this conclusion, that doubt is required to be resolved in favor of the prior registrant.

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The request for reconsideration is denied. The
September 22, 2008 decision stands.