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Mailed:
March 14, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fine Estates from Spain, Inc.

Serial No. 78703072

Gary E. Lambert of Lambert and Associates for Fine Estates from Spain, Inc.

Kevin Chisholm, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

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

Opinion by Ritchie de Larena, Administrative Trademark Judge:

Fine Estates from Spain, Inc. ("Applicant") filed an application to register the mark TIERRA DE FUEGO in international class 33 for "wines, sparkling wines, and distilled spirits."[1] Applicant included a translation statement that TIERRA DE FUEGO means "land of fire."

[1] Application Serial No. 78703072, filed August 30, 2005, alleging a bona fide intention to use the mark in commerce pursuant to Section 1(b) of the Trademark Act, 15 USC §1051(b).

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that Applicant's mark TIERRA DE FUEGO, when used in connection with "wines, sparkling wines, and distilled spirits," so resembles the registered mark TIERRA DEL FUEGO, when used in connection with "wines," as to be likely to cause confusion.[2]

Upon final refusal of registration, Applicant filed a timely appeal. Both Applicant and Examining Attorney filed briefs. For the reasons discussed herein, the Board affirms the final refusal to register.[3]

Our determination of likelihood of confusion 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. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA

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[2] Registration No. 2605525, issued August 6, 2002; Section 8 affidavit accepted.

[3] The Board observes that Examining Attorney did not mention the applicability of Section 2(a) to this application, although Applicant appears to be contemplating sale of wine from a geographical region other than that indicated by the mark. 15 USC §1052(a) provides an exception to trademark registration where a mark "consists of or comprises . . . a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods". Applicant admits in its brief that TIERRA DEL FUEGO is a region of Argentina, but asserts that Applicant's wine is or would be "produced in Spain." Since the Board is affirming Examining Attorney's refusal to register under Section 2(d), however, we find it unnecessary to remand for further proceedings.

1973). *See also, In re Majestic Distilling Company, 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 goods. *See Federated Foods, Inc. v. Fort Howard 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"). We consider each of the factors as to which Applicant or Examining Attorney presented arguments or evidence.

1. *Appearance, Sound, Connotation and Commercial Impression.*

We first consider and compare the appearance, sound, connotation and commercial impression of the marks at issue. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In this case, the marks are effectively identical in appearance and sound. Visually, Applicant's TIERRA DE FUEGO mark is the same as registrant's TIERRA DEL FUEGO mark, with the absence of the letter "L" in the middle. Even discerning consumers may easily overlook that

minor distinction. Phoentically also, the absence of the letter "L" is likely to be unnoticed.

Applicant argues that the marks have different English translations, and therefore different commercial impressions. However, despite some mischaracterization in the briefs, the marks actually have the exact same English translation, "land of fire."[4] Since the marks have identical English translations, it is not necessary for the Board to consider Applicant's argument that insertion of the word "the" would in any way change the meaning or commercial impression of the existing TIERRA DEL FUEGO mark.[5] Nevertheless, to the extent the TIERRA DEL FUEGO mark could be translated as "land of the fire" rather than simply "land of fire," the Board finds that minor difference to be insignificant.

Applicant further argues that there are numerous registrations with the term "tierra" and several with the term "fuego" and that therefore the existing TIERRA DEL FUEGO mark is weak or merely descriptive. However, Examining Attorney offered evidence that there is in fact

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[4] Applicant offered some evidence that the TIERRA DEL FUEGO mark should be translated as "land of the fire," but as discussed in this section, the Board does not consider that evidence to be relevant.

[5] The doctrine of foreign equivalents does not apply here since both marks are in Spanish. *See Palm Bay Imports Inc.*, 73 USPQ2d at 1692.

only one mark containing both "tierra" and "fuego" for wines. In regard to the first *du Pont* factor therefore, the Board finds the appearance, sound, connotation and commercial impression to be effectively identical and therefore weighs in favor of finding a likelihood of confusion.

2. Similarity or Dissimilarity of the Goods.

Applicant is seeking registration for wines. The cited registration also covers wines. Because there are no restrictions or limitations as to the type of wines in the cited registration, we must presume that it includes all types of wines, including sparkling wines. *Squirtco v. Tomy Corp.,* 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"); *In re Linkvest S.A.,* 24 USPQ2d 1716, 1716 (TTAB 1992); *In re Elbaum,* 211 USPQ 639, 640 (TTAB 1981).

To the extent that the application and the cited registration both include wine, the goods in the application and cited registration are, in part, identical. The fact that there are some differences in the

descriptions of goods for the application and cited registration does not obviate the fact that both descriptions of goods are in part identical. *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.,* 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981). In view of the foregoing, the second *du Pont* factor weighs in favor of finding that there is a likelihood of consumer confusion.

3. Similarity or Dissimilarity of Trade Channels.

Because the goods in the application and the cited registration are in part identical, we must presume that the channels of trade and classes of purchasers at least in part are the same. *Genesco Inc. v. Martz,* 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade"); *In re Smith and Mehaffey,* 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers"). In view of the foregoing, the third *du Pont* factor weighs in favor of finding that there is a likelihood of consumer confusion.

4. Conditions of Sale and Sophistication of Purchasers.

Applicant argues that its target customers will be sophisticated, and will know the difference between its wine and that offered under the existing TIERRA DEL FUEGO mark. However, since there is no restriction or limitation in the registrant's description of goods, evidence that Applicant's products will be sold to discriminating purchasers cannot be considered. *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (evidence demonstrating that particular wines sold under marks are expensive, high-quality wines sold in high-quality wine and spirit stores to discriminating, sophisticated purchasers who would be likely to be familiar with French vineyard-naming customers must be disregarded because there are no such restrictions in the application or registration limiting goods to particular channels of trade or classes of consumers). In view of the foregoing, the fourth *du Pont* factor weighs in favor of finding that there is a likelihood of consumer confusion.

5. *Balancing the factors.*

Considering all of the evidence of record as it pertains to the *du Pont* factors, we conclude that a likelihood of confusion exists because the marks are virtually identical, they have the same translation, they

are used on the same products, and they move in the same channels of trade.

Decision: The refusal to register is affirmed.