

**THIS OPINION IS NOT A  
PRECEDENT OF  
THE T.T.A.B.**

Mailed: September 4, 2008

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re The Naples Group

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Serial No. 78767372

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Craig Johnson and Jennifer F. Wisniewski of Kutak Rock for  
The Naples Group.

Sara N. Thomas, Trademark Examining Attorney, Law Office  
110 (Chris A.F. Pedersen, Managing Attorney).

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Before Quinn, Grendel and Cataldo,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

The Naples Group has filed an application on the  
Principal Register for the mark shown below for "restaurant  
services" in International Class 43.<sup>1</sup>

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<sup>1</sup> Application Serial No. 78767372 was filed on December 6, 2005, based upon applicant's assertion of November 21, 2005 as a date of first use of the mark in commerce. Applicant disclaimed "PIZZA & MUSSELS." Applicant further submitted the following description of the mark: "The mark consists of the words 'SISTERS PIZZA & MUSSELS' inside a stylized slice of pizza facing downward into an open mussel shell. The word 'SISTERS' is gold, the pizza slice is red, the mussel is black, the rectangle is green and the wording 'PIZZA & MUSSELS' is white."



Registration has been finally refused pursuant to Trademark Act §2(d), 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark displayed below in Registration No. 2799650,<sup>2</sup> issued to Woman's Club Reception Facility, Inc., for "food services, namely catering business meetings, banquets and wedding receptions" in International Class 42;



and the mark

SORELLA CAFFE (standard characters)

in Registration No. 2813426,<sup>3</sup> issued to John Molloy for "restaurant services" in International Class 43, as to be likely, if used on or in connection with the identified

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<sup>2</sup> Issued on December 30, 2003, with a disclaimer of "ESTABLISHED 1976" and "CATERING COMPANY."

<sup>3</sup> Issued on April 12, 2005 with a disclaimer of "CAFFE." The registration includes the following translation: "The English translation of SORELLA CAFFE is SISTER CAFÉ or SISTER COFFEE."

services, to cause confusion, to cause mistake, or to deceive. Applicant and the examining attorney have filed main briefs on the issue under appeal. In addition, applicant filed a reply brief.

**Evidentiary Matters**

With its main brief, applicant submitted for the first time an exhibit consisting of a specimen of use from the application underlying cited Registration No. 2799650. In addition, with its reply brief, applicant submitted for the first time exhibits consisting of search summaries from the Google Internet search engine as well as printouts from various Internet websites. Applicant also submitted with its reply brief dictionary definitions of "cater," "company," "mussel" and "pizza" from an unspecified edition of Webster's Dictionary. Applicant requests that the above evidence be entered into the record and that we take judicial notice of the referenced dictionary definitions.

As has often been stated, the record in the application should be complete prior to the filing of an appeal. See Trademark Rule 2.142(d). The exhibits attached to applicant's main brief and reply brief were not made of record during examination. Accordingly, their submission therewith is untimely, and we have not considered this evidence in reaching our decision. See

Trademark Rule 2.142(d) and TBMP §1203.02(e) (2d ed. rev. 2004) and the authorities cited therein.

Further, inasmuch as we have not relied upon the proffered dictionary definitions of "pizza," "company" or "mussel" in our determination herein, we decline to take judicial notice thereof.<sup>4</sup> However, we will exercise our discretion to take judicial notice of the following definition of "cater" submitted by applicant: "to provide food and service, as for parties."<sup>5</sup> In addition, we hereby take judicial notice of the following definition of "restaurant" submitted by the examining attorney with her brief: "a business establishment where meals or refreshments may be purchased."<sup>6</sup> The Board may take judicial notice of dictionary definitions, including online dictionaries which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002). See also *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Finally, during examination of the application at issue, applicant submitted copies of third-party

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<sup>4</sup> We hasten to add that even if we considered this evidence in our determination herein, the result would be the same.

<sup>5</sup> Webster's Dictionary, p. 73 (unspecified Ed.).

<sup>6</sup> Merriam-Webster Online, [www.merriam-webster.com](http://www.merriam-webster.com).

registrations and listings of additional third-party registrations obtained from the United States Patent and Trademark Office's (USPTO) Trademark Electronic Search System (TESS) database. We note that the examining attorney did not advise applicant that such listing was insufficient to make the additional third-party registrations of record at a point when applicant could have corrected the error. Accordingly, applicant's request that we deem the list of additional registrations to have been stipulated into the record is granted. See TBMP §1208.03 (2d ed. rev. 2004) and the authorities cited therein. However, we will only consider the information that applicant has provided in the list of additional third-party registrations for such probative value as it may possess. See *Id.*

#### **Likelihood of Confusion**

Our determination under Trademark Act §2(d) is based upon an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., 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 considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999), and cases cited therein.

We review the relevant *du Pont* factors as they apply to this case.

#### The Services

Turning to our consideration of the recited services, we must determine whether consumers are likely to mistakenly believe that they emanate from a common source. It is not necessary that the services at issue be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient instead that the respective services are related in some manner, and/or that the conditions and activities surrounding the marketing of the services are

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such that they would or could be encountered by the same persons under circumstances that could, as a result of similarity of the marks, give rise to the mistaken belief that they originate from the same producer. *See In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978).

In this case, applicant's "restaurant services" are identical to the services recited in Registration No. 2939414.

The services recited in Registration No. 2799650 are "food services, namely, catering business meetings, banquets and wedding receptions." As noted above, "cater" is defined as "to provide food and service, as for parties." "Restaurant" is defined above as "a business establishment where meals or refreshments may be purchased." Thus, as identified, applicant's services are related to those recited in Registration No. 2799650 in that both concern the provision of food or meals to customers.

In addition, the examining attorney has made of record twenty-four use-based third-party registrations which show that various entities have adopted a single mark for services that are identified in both applicant's

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application and cited Registration No. 2799650. *See, for example:*

Registration No. 3041484 for "restaurant, bar and catering services;"

Registration No. 3288710 for "restaurant services and catering services;"

Registration No. 3283685 for "catering, restaurant services;"

Registration No. 3287988 for "restaurant and catering services" and

Registration No. 3222887 for "restaurant services, carry-out and delivery restaurant services, catering services, food preparation services."

Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). In this case, the evidence of record supports a finding that the same marks are used to identify both applicant's services and those recited by registrant in Registration No. 2799650.

Applicant's reliance upon *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059 (Fed. Cir. 2003) and *Jacobs v. International Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641 (CCPA 1982) in support of its contention that restaurant

services are unrelated to catering services is misplaced. Both *Coors* and *Jacobs* involved the relationship between restaurant services on the one hand and beverage products, respectively, beer and tea, on the other. Neither case addresses the relationship between restaurants and catering services. Nor does applicant cite to any authority that the analysis or evidentiary showings relevant to those cases applies to a determination regarding the relationship between restaurants and catering services.

Thus, based upon the recitations thereof and the evidence of record, applicant's services are identical to and closely related to the respective services in the cited registrations, and this *du Pont* factor favors a finding of likelihood of confusion.

Channels of Trade

Neither applicant's services nor those of registrant recites any restrictions as to the channels of trade in which they are distributed or the class of purchasers to whom they are marketed. It is settled that in making our determination regarding the channels of trade, we must look to the services as identified in the involved application and cited registrations. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); and *Paula Payne Products v.*

*Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). Because there are no restrictions recited either in the involved application or cited registrations as to channels of trade, both applicant's and registrant's services are presumed to move in all normal channels of trade therefor and be available to all normal classes of potential consumers. See *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Because applicant's services are identical to the restaurant services in Registration No. 2939414, and have been found to be related to the catering services in Registration No. 2799650, the services must be deemed to move in the same channels of trade and encountered by the same classes of purchasers. Accordingly, this *du Pont* factor further favors a finding of likelihood of confusion.

Conditions of Sale

Applicant contends that purchasers of the catering services recited in Registration No. 2799650 are sophisticated. Even assuming arguendo that purchases of such services would involve a deliberate decision, this does not mean that the purchasers are immune from confusion as to the origin of the respective services, especially when, as we view the present case, the similarity of the marks and the relatedness of the services outweigh any sophisticated purchasing decision. See *HRL Associates*,

*Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) [similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods]. See also *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ["Human memories even of discriminating purchasers...are not infallible."]. As a result, we find this *du Pont* factor to neutral or to slightly favor a finding of likelihood of confusion.

Actual Confusion

Another *du Pont* factor discussed by applicant and the examining attorney is that of the lack of instances of actual confusion. We do not accord significant weight to applicant's contention, unsupported by any evidence, that there have been no instances of actual confusion despite contemporaneous use of the respective marks for the past three years. The Federal Circuit has addressed the question of the weight to be given to an assertion of no actual confusion by an applicant in an *ex parte* proceeding:

With regard to the seventh DuPont factor, we agree with the Board that Majestic's uncorroborated statements of no known instances

of actual confusion are of little evidentiary value. See *In re Bissett-Berman Corp.*, 476 F.2d 640, 642, 177 USPQ 528, 529 (CCPA 1973) (stating that self-serving testimony of appellant's corporate president's unawareness of instances of actual confusion was not conclusive that actual confusion did not exist or that there was no likelihood of confusion). A showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion. The opposite is not true, however. The lack of evidence of actual confusion carries little weight, [citation omitted], especially in an ex parte context.

*In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003).

Accordingly, while examples of actual confusion may point toward a finding of a likelihood of confusion, an absence of such evidence is not as compelling in support of a finding of no likelihood of confusion. Thus, we cannot conclude from the lack of instances of actual confusion that confusion is not likely to occur.

Moreover, the test under Section 2(d) is not actual confusion but likelihood of confusion. See *In re Majestic Distilling Co. supra*. See also *In re Kangaroos U.S.A.*, 223 USPQ 1025 (TTAB 1984); and *In re General Motors Corp.*, 23 USPQ2d 1465 (TTAB 1992). As a result, we find this *du Pont* factor, to the extent that it is applicable in this case, to be neutral.

Strength of the Cited Marks

Applicant contends that the term SISTERS is common in the food and restaurant industry and that, as a result, consumers are accustomed to distinguish between marks containing SISTERS in connection with restaurant and food services. In support of its contention, applicant has made of record twelve third-party registrations for SISTERS-formative and SORELLA marks for restaurants as well as food-related goods and services.<sup>7</sup> The following examples are illustrative:

Registration No. 2682979 for the mark shown below for "restaurant services;"



Registration No. 2892958 for the mark THE COURT OF TWO SISTERS for "restaurant services;"

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<sup>7</sup> Applicant further made of record several registrations based upon Section 44 of the Trademark Act. Because these registrations are not based on use in commerce they have no probative value in showing the relatedness of the services, and they have not been considered. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Applicant has also included several marks that have not registered. These applications are irrelevant. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002) ("While applicant also submitted a copy of a third-party application ..., such has no probative value other than as evidence that the application was filed").

In addition, and as noted above, applicant submitted listings of third-party applications and registrations. Such listings of registrations have almost no probative value because there is no indication of whether the marks identified thereby are based on use in commerce; or which goods or services are identified thereby. In accordance with the above authority, listings of pending applications are without probative value.

Registration No. 2963240 for the mark WINE SISTERS USA for "providing classes and seminars in the filed [sic] of wine and food tasting, organizing and conducting wine tasting events;"

Registration No. 2683435 for the mark 3 SISTERS' for "candy;"

Registration No. 2991974 for the mark SORELLA (translated into English as "sister") for "wines"; and

Registration No. 2791894 for the mark SORELLA (translated into English as "sister") for "cheese and edible oils."

However, applicant's evidence of third-party registrations is entitled to limited probative value. The registrations are not evidence of use of the marks shown therein. Thus, they are not proof that consumers are familiar with such marks so as to be accustomed to the existence of the same or similar marks in the marketplace. See *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462 (CCPA 1973); and *Richardson-Vicks, Inc. v. Franklin Mint Corp.*, 216 USPQ 989 (TTAB 1982). Moreover, the probative value of many of the third-party registrations is diminished by virtue of the fact that the trademarks cover a wide variety of goods (candy, wine, cheese and edible oils), which are not as closely related to the services identified in the cited registrations as applicant's services. See *Spoons Restaurants Inc. v.*

*Morrison Inc.*, 23 USPQ2d 1735, 1740 (TTAB 1991), *aff'd unpub.*, (Appeal No. 92-1086, Fed. Cir., June 5, 1992). In any event, even if we were to find, based on applicant's evidence, that registrants' marks are weak and entitled to a narrow scope of protection, the scope is still broad enough to prevent the registration of a highly similar mark for identical or closely related services. See *In re Farah Manufacturing Co., Inc.*, 435 F.2d 594, 168 USPQ 277, 278 (CCPA 1971).

In addition, applicant submitted Internet evidence of fourteen third-party uses of SISTERS-formative marks for restaurants. The following examples are illustrative:

THREE SISTERS CAFÉ, a restaurant located in Oakhurst, California  
([www.threesisterscafe.com](http://www.threesisterscafe.com));

SWEET SISTERS CAFÉ, a restaurant located in Pleasant Hill, California  
([www.sweetsisterscafe.com](http://www.sweetsisterscafe.com));

SISTER'S HOMESTYLE CAFÉ, a restaurant located in Phoenix, Arizona  
([www.azcentral.com](http://www.azcentral.com));

TWO SISTERS CAFÉ, a restaurant located in Babb, Montana  
([www.visitmt.com](http://www.visitmt.com));

MY SISTER'S CATERING AND CAFÉ, a restaurant and caterer located in Kenosha, Wisconsin  
([www.mysisterscateringandcafe.com](http://www.mysisterscateringandcafe.com)); and

SISTERS' CAFÉ, a restaurant located in Honolulu, Hawaii  
([www.thehawaiichannel.com](http://www.thehawaiichannel.com)).

Similarly, the probative value of this evidence is very limited because applicant presented no evidence concerning the extent to which these third-party designations are used in commerce. See *Palm Bay Imports, supra*. Moreover, unlike other cases in which the Board has found a term to be weak as a result of applicant's submission of evidence that, for example, "hundreds of restaurants and eating establishments" (brief, p. 22) use a particular term, applicant in this case has introduced only fourteen examples of use by third-parties of designations that include some form of the term SISTERS. Cf. *In re Broadway Chicken, Inc.*, 38 USPQ2d 1559 (TTAB 1996). Thus, applicant's evidence does not establish that there is widespread use of similar marks on restaurants and catering services such that registrants' marks are weak and entitled to only a narrow scope of protection. This factor, therefore, also favors a finding of likelihood of confusion.

The Marks

We now turn to the similarities or dissimilarities between applicant's mark and those in the cited registrations. In coming to our determination, we must compare the marks in their entirety as to appearance,

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sound, connotation and commercial impression. See *Palm Bay Imports, supra*. 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 their entireties that confusion as to the source of the goods offered under the respective marks is likely to result.

We further note that while we must base our determination on a comparison of the marks in their entireties, we are guided, equally, by the well established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Registration No. 2799650

Turning first to Registration No. 2799650 for the mark



we find that such  
applicant's mark

mark is similar to



in that both contain the word SISTERS as the most prominent feature thereof. SISTERS, as it appears in both marks, is identical in sound and meaning, and similar in appearance. We do not find that the presence of the apostrophe in registrant's mark results in a significant difference between SISTERS' therein and SISTERS as it appears in applicant's mark. Moreover, SISTERS appears to have the connotation in applicant's mark of a food establishment operated by sisters, and there is nothing in registrant's mark that suggests a different connotation.

The word SISTERS in applicant's mark is clearly the dominant element. It is displayed at the top of the mark and thus is the first word encountered therein. In addition, it is the only distinctive word in applicant's mark, PIZZA & MUSSELS being disclaimed and obviously descriptive of food products. Disclaimed wording typically is less significant in determining the similarity between marks. See *In re National Data Corp, supra*. Further, the simple and rather abstract pizza slice and mussel shell design acts primarily as a carrier for the disclaimed

wording in applicant's mark and makes less of a visual impression than SISTERS. It is settled that if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987).

Thus, SISTERS is the portion of applicant's mark to which the viewer is drawn, the portion that the viewer is most likely to remember, and the portion by which consumers will refer to or request the identified services. See *In re Appetito Provisions Co.*, *supra*. For these reasons, we consider SISTERS to be the dominant feature of the applied-for mark.

With regard to the mark in the cited registration, the word SISTERS' is also the dominant element. It is visually most prominent, and it is likely to be most noted and remembered inasmuch as it is the sole distinctive term in the mark. The disclaimed wording CATERING COMPANY appears in relatively smaller script below the word SISTERS' and is generic as applied to registrant's services and thus has little, if any, source identifying significance. Similarly, the disclaimed wording ESTABLISHED 1976 appears in very small script compared to the rest of the wording in the mark, and also has little, if any, source identifying

significance. Accordingly, it is by the word SISTERS' that customers would recognize and request the identified services. See *In re Appetito Provisions*, *supra*.

We noted above that SISTERS, the word which the marks share in common, and the only distinctive word element in either mark, is also the first word in the marks. It is "a matter of some importance since it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered." *Presto Products, Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). See also *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692 ("The presence of this strong distinctive term as the first word in both parties' marks renders the marks similar, especially in light of the largely laudatory (and hence non-source identifying) significance of ROYALE."). For the reasons articulated above, the disclaimed wording in both marks and the design elements in that of applicant are far less prominent than the word SISTERS. Consumers are likely to regard these elements of the marks as less important, and thus will refer to both marks as SISTERS, instead of pronouncing the remaining wording. See *Big M. Inc. v. United States Shoe Corp.*, 228 USPQ 614, 616 (TTAB

1985) (" [W]e cannot ignore the propensity of consumers to often shorten trademarks.")

Viewing the marks in the involved application and cited registration as a whole, we find that the identity of the dominant feature, namely, the word SISTERS, in sound, meaning and connotation results in the marks' conveying similar overall commercial impressions. We note that the test under the first *du Pont* factor 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 overall commercial impression that confusion as to the source of the goods or services 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). Accordingly, this *du Pont* factor favors a finding of likelihood of confusion as to the mark in Registration No. 2799650.

Registration No. 2939414

Next we turn to the mark SORELLA CAFFE in Registration No. 2939414, bearing in mind that where, as here, the services identified in the involved application are identical to those identified in an existing registration,

"the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine similarity of connotation with English word marks. See *Palm Bay Imports, supra*. The doctrine is applied when it is likely that "the ordinary American purchaser would 'stop and translate [the term] into its English equivalent.'" *Id.* at 1696, quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976).

The "ordinary American purchaser" in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language. See J.T. McCarthy, *MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION*, §23:36 (4th ed. 2006). In this case, such a purchaser would be knowledgeable in Italian. In addition, in *In re Ithaca Industries, Inc.*, 230 USPQ 702, 703 (TTAB 1986), we found that "it does not require any authority to conclude that Italian is a common, major language in the world and is spoken by many people in the United States" in our determination that the doctrine of foreign equivalents is applicable where the foreign word is in Italian.

As noted above, the cited registration includes a translation of the mark SORELLA CAFFE as SISTER CAFÉ or SISTER COFFEE. In addition, the examining attorney submitted a translation from an Internet-based dictionary which agrees with the translation of SORELLA provided by registrant. Based upon the above evidence and authorities, we find that Italian is a modern language which is not obscure. We further find that every translation made of record agrees that SORELLA means SISTER. We find, in view of the foregoing, not only that the Italian term SORELLA is the exact translation of "SISTER," but further that the mark would be translated by those who are familiar with the Italian language. This situation, thus, differs from those cases in which it was found that the mark would not be translated because of the inherent nature of the mark. Cf. *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1984); and *Le Continental Nut Co. v. Le Cordon Bleu S.A.R.L.*, 494 F.2d 1395, 181 USPQ 646 (CCPA 1974) (finding that CORDON BLEU, while literally translated as BLUE RIBBON, would not be translated by the American public because the two terms create different commercial impressions, CORDON BLEU having been adopted into the English language and acquiring a different meaning from BLUE RIBBON).

Accordingly, we find that the doctrine of foreign equivalents applies, and that the word SORELLA, while differing somewhat from the word SISTERS in sound and appearance, is identical in meaning conveys a highly similar, if not identical, commercial impression. We further find that the disclaimed word CAFFE in registrant's mark appears at best to be highly descriptive as applied to its services and thus possesses little, if any, source identifying significance. Thus, in accordance with the above discussion, the dominant portion of applicant's mark, namely, SISTERS, is identical to the dominant portion of registrant's mark, namely, SORELLA, in meaning and nearly so in commercial impression. The fact that the marks have same meaning, resulting in a highly similar overall commercial impression, is sufficient for us to conclude that confusion is likely, despite the differences in their appearance and sound. *See In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987). This is particularly the case given that the marks both are used to identify legally identical restaurant services. *See Century 21 Real Estate Corp. v. Century Life of Am.*, *supra*.

Finally, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior

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registrants. See *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 165, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision:** Based upon the foregoing, and in particular, considering the similarities between applicant's mark and the marks in the cited registrations, as well as the identity and close relationship between the services recited therein, the refusal to register under Trademark Act § 2(d) is affirmed both as to the mark in Registration No. 2799650 and as to the mark in Registration No. 2939414.