

**THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB**

Mailed: February 27, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re United States Distilled Products Company

Serial No. 78847965

Paulette R. Carey of Buchman Law Firm for United States
Distilled Products Company.

Heather A. Sapp, Trademark Examining Attorney, Law Office
108 (Andrew Lawrence, Managing Attorney).

Before Quinn, Walters and Hairston, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

United States Distilled Products Company has filed an
application to register the standard character mark CARLISLE
REEF on the Principal Register for "rum," in International
Class 33.¹

The examining attorney has issued a final refusal to
register under Section 2(d) of the Trademark Act, 15 U.S.C.
1052(d), on the ground that applicant's mark so resembles

¹ Serial No. 78847965, filed March 28, 2006, based on an allegation of a
bona fide intention to use the mark in commerce.

Serial No. 78847965

the mark CARLISLE, previously registered for wine,² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Our determination 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 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 Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *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 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 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*

² Registration No. 2363262 issued June 27, 2000. Sections 8 and 15 affidavits accepted and acknowledged, respectively.

Azteca Restaurant Enterprises, Inc., 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression.

The examining attorney contends that CARLISLE is the dominant term in applicant's mark; and that the only difference between the two marks is the additional wording REEF in applicant's mark. We take judicial notice of the definition from *Webster's Third New International Dictionary* (1986) submitted by the examining attorney with her brief of "reef" as "a chain or range of rocks or ridge of sand lying at or near the surface of the water." The examining attorney states that rum is a distilled beverage made from sugarcane by-products³; that it is produced primarily in and around the Caribbean; that the REEF portion of applicant's mark "suggests tropical island drinks, perhaps made from rum" (brief, unnumbered p. 7); and that, therefore, CARLISLE will be perceived as a house mark identifying various alcoholic beverages, including wine, and CARLISLE REEF will be perceived as the rum produced by the CARLISLE brand. She

³ The examining attorney made of record an excerpt from www.wikipedia.com detailing the nature and history of rum.

concludes that the marks are highly similar in sound, appearance and overall commercial impression.

Applicant contends that the examining attorney has improperly dissected its mark; that CARLISLE is no more dominant than REEF in its mark because REEF is not suggestive, rather, it is entirely arbitrary in connection with rum. Applicant argues, further, that the connotations and commercial impressions of the two marks are entirely different because the registered mark, CARLISLE, will be perceived as a surname, whereas, applicant's mark will be perceived as identifying a particular reef. Applicant concludes that the significant differences between the marks are dispositive and, thus, there is no likelihood of confusion.

There is no evidence in the record of use or registration of CARLISLE in connection with any alcoholic beverages except for the cited registration. Thus, on this record, we find that the registered mark, CARLISLE, is arbitrary and a strong mark in connection with the identified goods. Applicant has merely taken registrant's mark in its entirety and added the word REEF. We find the examining attorney's analysis of applicant's mark based on the characteristics of rum and the definition of "reef" to be overwrought and unnecessary. However, we also find applicant's contention that the word CARLISLE would have the

connotation of a surname in the registered mark, but not in applicant's mark is not well taken. Rather, we find that, regardless of whether it is understood as a surname, the connotation of CARLISLE in the two marks is the same, notwithstanding the fact that it is followed by the word REEF in applicant's mark.

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 overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. Moreover, 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). Therefore, we find that, while the marks are not identical, they are sufficiently similar in overall commercial impression that, if used in connection with related goods, confusion as to source is likely.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian*

Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1661 (TTAB 2002); and *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

The examining attorney contends that "the goods are related because they are similar alcoholic beverages which would pass through the same channels of trade" (brief, unnumbered p. 10), citing several cases in which the Board or the court have found various alcoholic beverages to be related for purposes of determining likelihood of confusion.

The examining attorney submitted copies of eight use-based third-party registrations which include, among the identified goods, rum, wine and other alcoholic beverages.⁴

Having concluded that the dissimilarities between the marks are dispositive, applicant claims, in its reply brief, that any relationship between the respective goods is irrelevant. However, having reached a different conclusion with respect to the marks, we consider the goods. Despite the cases cited by the examining attorney, there is no per se rule that alcoholic beverages, or wine and rum, are related. In this case, we find sufficient evidence in this record to conclude that wine and rum are related goods.

Further, inasmuch as the identifications of goods in both the involved application and the cited registration are not limited to any specific channels of trade, we find that these alcoholic beverages will be offered in all ordinary trade channels for these goods and to all normal classes of purchasers. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992). In other words, the goods will move in the same trade channels to the same general consumers who purchase alcoholic beverages.

When we consider the record and the relevant likelihood of confusion factors, and all of applicant's arguments

⁴ Two additional third-party registrations include both rum drinks or liqueurs and wine coolers or dessert wines. One other third-party

relating thereto, including those arguments not specifically addressed herein, we conclude that in view of the similarity in the commercial impressions of applicant's mark, CARLISLE REEF, and registrant's mark, CARLISLE, their contemporaneous use on the related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts against applicant. *See Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992); *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844 (TTAB 2004).

Decision: The refusal under Section 2(d) of the Act is affirmed.

registration is not based on use in commerce and is, therefore, not probative and has not been considered.