

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
Feb. 28, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Cooperativa Vitivinicola Del Ribeiro  
v.  
Bacio Divino Cellars, LLC

Opposition No. 91162697  
to application Serial No. 76521453  
filed on June 9, 2003

Melanie Bradley of Kirkpatrick & Lockhart LLP for  
Cooperativa Vitivinicola Del Ribeiro.

Scott W. Petersen of Holland & Knight LLP for Bacio Divino  
Cellars, LLC.

Before Grendel, Kuhlke and Cataldo, Administrative Trademark  
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Bacio Divino Cellars, LLC (applicant) seeks  
registration on the Principal Register of the mark PAZZO (in  
standard character form) for goods identified in the  
application as "wine."<sup>1</sup> The application includes the

<sup>1</sup> Serial No. 76521453, filed June 9, 2003. The application is  
based on use in commerce under Trademark Act Section 1(a), 15  
U.S.C. §1051(a), and November 24, 2002 is alleged to be the date

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following translation statement: "The word 'PAZZO' is an Italian word meaning 'mad,' 'insane' or 'crazy.'"

Cooperativa Vitivinicola Del Ribeiro (opposer) has opposed registration of applicant's mark on the ground that applicant's mark, as applied to applicant's goods, so resembles opposer's mark PAZO, previously registered (in standard character form) for goods identified as "wines,"<sup>2</sup> as to be likely to cause confusion, to cause mistake or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d). Opposer's pleaded registration includes the following translation statement: "The term 'PAZO' is Spanish for 'Galician country house.'"

The evidence of record includes the file of the involved application, the pleadings herein, and a status and title copy of opposer's pleaded registration, submitted by opposer via notice of reliance.<sup>3</sup> The case is fully briefed. We sustain the opposition.

Because opposer has properly made its pleaded registration of record, and because opposer's likelihood of

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of first use of the mark anywhere and the date of first use of the mark in commerce.

<sup>2</sup> Registration No. 2683616, issued February 4, 2003.

<sup>3</sup> We sustain opposer's objection to applicant's notice of reliance on certain of applicant's marketing materials; such materials may not be made of record by notice of reliance. See, e.g., *Boyd's Collection Ltd. v. Herrington & Co.*, 65 USPQ2d 2017 (TTAB 2003). We have given these materials no consideration. (We note in any event that even if we had considered these materials, they would not have affected our decision herein.)

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confusion claim is not wholly without merit, we find that opposer has established its standing to oppose registration of applicant's mark. See *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); see also *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000).

Moreover, because opposer's pleaded registration is of record, Section 2(d) priority is not an issue in this case as to the mark and goods covered by said registration. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & 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 Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We find, first, that applicant's goods as identified in the application, i.e., "wine," are identical to the goods identified in opposer's registration, i.e., "wines." We

further find that these identical goods are or would be marketed in identical trade channels to identical classes of purchasers. Neither applicant's nor opposer's identification of goods includes any limitations or restrictions as to the nature, trade channels or purchasers for the goods, and we therefore presume that the identified goods include all types of wine, and that they are marketed in all normal trade channels and to all normal classes of purchasers for such goods. *In re Elbaum*, 211 USPQ 639 (TTAB 1981). For these reasons, we find that the second and third *du Pont* factors (similarity of goods, similarity of trade channels) weigh in favor of a finding of likelihood of confusion.

We also find that the fourth *du Pont* factor (conditions of purchase) likewise favors opposer in this case. Wines are ordinary consumer goods, often inexpensive, that are purchased by ordinary purchasers without a great deal of care.

We turn next to the first *du Pont* factor, which requires us to determine the similarity or dissimilarity of the marks when viewed in their entirety in terms of appearance, sound, connotation and overall commercial impression. *Palm Bay Imports, Inc., supra*. The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison,

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but rather whether the marks are sufficiently similar in terms of their overall 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).

Moreover, in cases such as this, where the applicant's goods are identical to the opposer's goods, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the goods were not identical. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

Applying these principles in the present case, we find, first, that applicant's PAZZO mark is similar to opposer's registered PAZO mark in terms of appearance. The presence in applicant's mark of the additional "Z" does not suffice to distinguish the marks visually. We also find that the marks are similar in terms of sound. Again, the presence in applicant's mark of the additional "Z" does not suffice to distinguish the marks aurally. Moreover, it is settled that there is no "correct" pronunciation of trademarks. See, e.g., *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461 (TTAB 1985).

In terms of connotation, we find that to the extent that the connotations of these marks would be apparent at all to purchasers, they are similar. There is no evidence in the record which establishes any foreign language meanings of these words,<sup>4</sup> and no evidence that purchasers would readily translate the words in any event. See *Palm Bay Imports, supra*, 73 USPQ2d at 1696 ("When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied." See also *Safeway Stores Inc. v. Bel Canto Fancy Foods Ltd.*, 5 USPQ2d 1980, 1982 (TTAB 1987) ("[T]his Board does not think it proper to take the French expression 'bel air' and the Italian expression 'bel aria' and then convert both into English and compare the English translations...").

In terms of overall commercial impression, we find that the marks are highly similar. The commercial impressions of both marks are that they are vaguely foreign-looking and foreign-sounding words which purchasers are likely to take as they are, and which purchasers are likely to confuse due to the obvious similarities in appearance and sound.

For these reasons, we find that the marks are similar rather than dissimilar, under the first *du Pont* factor. The

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<sup>4</sup> The translation statements appearing in the application and the registration, respectively, are not in themselves actual evidence of the meanings of the words.

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marks certainly are similar enough that confusion is likely to result if both marks were to be used on the identical goods involved herein. *See Century 21 Real Estate Corp., supra.*

In summary, we find that the parties' respective marks are similar, that their respective goods are identical, and that the goods are or would be marketed in the same trade channels and to the same classes of purchasers. Balancing all of the relevant *du Pont* factors, we conclude that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of our conclusion, we resolve such doubts against applicant. *See Century 21 Real Estate Corp., supra; Ava Enterprises Inc. v. Audio Boss USA Inc., 77 USPQ2d 1783 (TTAB 2006); and Baseball America Inc. v. Powerplay Sports Ltd., 71 USPQ2d 1844 (TTAB 2004).*

Decision: The opposition is sustained.