

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

Mailed: August 18, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Intermex Products USA, Ltd.

v.

Tron Hermanos, SA de CV

Opposition No. 91166834
to application Serial No. 78491821
filed on September 29, 2004

Seth A. Horwitz of Glast, Phillips & Murray for Intermex
Products USA, Ltd.

John S. Egbert of Harrison & Egbert for Tron Hermanos, SA de
CV.

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

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Tron Hermanos, SA de CV, seeks registration
of the mark LA TORRE (in standard character form) for goods
identified in the application as "edible oils and fats,
lard, butter" in International Class 29.¹ The application

¹ Serial No. 78491821, filed September 29, 2004, alleging the
year 1928 as its date of first use and use in commerce under
Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a).

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includes a translation statement that "the mark translates into English as THE TOWER."

Opposer, Intermex Products USA, Ltd., has opposed registration of applicant's mark on the ground that, as applied to applicant's goods, the mark so resembles opposer's previously used and registered LA TORRE marks for a variety of food products as to be likely to "deceive or cause confusion or mistake among members of the public as to the source or sponsorship of Applicant's goods in relation to Opposer" within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). Notice of Opposition ¶ 8.

Applicant has filed an answer by which it has denied the salient allegations.

The evidence of record consists of the pleadings herein and the file of the opposed application. In addition, opposer submitted, under a notice of reliance, certified copies of opposer's three pleaded registrations, which show that the registrations are subsisting and owned by opposer. Opposer also submitted the testimony depositions of Sandy Eastep, opposer's Director of Business Operations; Fernando Soto, President of opposer's licensee Dynamic Trade; and Juan Carlos Lorenzo, opposer's CEO and President, with accompanying exhibits. Applicant did not take any testimony, file a notice of reliance or file a brief.

PRIORITY AND LIKELIHOOD OF CONFUSION

The pleaded registrations made of record, which are in full force and effect and are owned by opposer, are summarized as follows:

Registration No. 1476098 for the mark shown below



for "canned food products, namely jalapenos, pineapple, mangos, guavas, cream of coconut, tomatoes, mushrooms, chic peas, refried beans, chili with beans, and chili without beans" in International Class 29, with the translation statement that LA TORRE translates to THE TOWER, issued on February 9, 1988, renewed;

Registration No. 2960754 for the mark LA TORRE (in typed form) for "canned sardines and canned fruits" in International Class 29, with the translation statement that LA TORRE translates to THE TOWER, issued on June 7, 2005; and

Registration No. 2974670 for the mark LA TORRE (in typed form) for "pasta and cookies" in International Class 30, with the translation statement that LA TORRE translates to THE TOWER, issued on July 19, 2005.

Because opposer has made the pleaded registrations summarized above properly of record, opposer has established its standing to oppose registration of applicant's mark and its priority is not in issue. See King Candy Co., Inc. 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 probative facts

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in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). Two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Another important factor, when presented, is the fame of the mark. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005).

We first address opposer's assertion that its mark is famous. Fame can play "a 'dominant role' in the process of balancing the du Pont factors." *Recot Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). The record shows that opposer owns three registrations for the LA TORRE marks for various canned food products, pasta and cookies and they have been continuously registered since 1988. There is also testimony regarding advertising expenditures, sales revenue, sales in at least 28 states and continuous sales since 1974. See, e.g., *Soto Test.* pp. 7-8, 13; and *Lorenzo Test.* pp. 8-10, 20. However, on this record, we cannot say that opposer has provided sufficient evidence about the extent of its use of the mark, or its sales under the mark such that we can conclude that

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opposer's LA TORRE mark can be considered a famous mark. See *Kenner Parker Toys Inc. v. Rose Art Industries Inc.*, 963 F.2d 350 22 USPQ2d 1453 (Fed. Cir. 1992). However, although not famous, the term LA TORRE is arbitrary in connection with these goods and is "conceptually strong as a trademark." *Palm Bay*, 73 USPQ2d at 1692. Moreover, the record does show extensive use of the mark over a long period of time on a wide variety of products, including cookies, canned mushrooms, canned fruit, refried beans, pasta and canned sardines.

We now consider the similarity or dissimilarity of the marks when compared in their entireties in terms of appearance, sound, connotation and commercial impression.

The mark, LA TORRE, in two of opposer's registrations is identical to applicant's mark LA TORRE. As to the third registration, the addition of the tower design, rather than distinguishing opposer's mark from applicant's mark, serves to reinforce the common connotation of THE TOWER.

Thus, all of opposer's LA TORRE marks are identical or highly similar in appearance, sound, connotation and commercial impression to applicant's mark LA TORRE and this factor weighs heavily in favor of a likelihood of confusion.

We turn now to a consideration of the goods, channels of trade and class of purchasers. We must make our determinations under these factors based on the goods as

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they are recited in the registrations and application. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). The goods need not be identical or directly competitive in order for there to be a likelihood of confusion. Rather, the respective goods need only be related in some manner or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. In *re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984). Finally, where the respective marks are identical, the relationship between the goods need not be as close to support a finding of likelihood of confusion as would be required in a case where there are differences between the marks. *Ancor, Inc. v. Ancor Industries, Inc.*, 210 USPQ 70, 78 (TTAB 1981).

The goods listed in opposer's registration include a wide variety of canned food products, pasta and cookies. In addition, the record shows that opposer also sells edible vegetable oil under the LA TORRE mark. While the record does not establish that opposer began use of the mark in connection with vegetable oil prior to applicant's September 29, 2004 filing date,² such use does support a finding that

² Although applicant asserted an earlier use date in its application, inasmuch as applicant has not submitted proof of this use date applicant may only rely on the filing date of the

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opposer's registered goods are related to applicant's goods in that, at a minimum, applicant's goods are within opposer's zone of expansion. Given the wide variety of opposer's canned goods, including basic staples such as beans, opposer's expansion into edible oils, and the identical nature of the marks, we find applicant's and opposer's goods to be related.

Considering the channels of trade and class of purchasers, because there are no limitations as to channels of trade or classes of purchasers in either the application or opposer's registrations, it is presumed that the registrations and application encompass all of the goods of the type described in the description of goods, that the identified goods move in all channels of trade normal for those goods, and that the products are available to all classes of purchasers for the listed products. See *In re Linkvest S.A.*, 241 USPQ2d 1716 TTAB 1992).

In addition, because the goods are closely related and because there are no limitations in either the registrations or the subject application, we must presume that applicant's and opposer's goods will be sold in the same channels of trade and will be bought by the same classes of purchasers. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Canadian Imperial*

application. Trademark Rule 2.122(b)(2); *Levi Strauss & Co. v.*

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Bank v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); Genesco Inc. v. Martz, 66 USPQ2d 1260, 1268 (TTAB 2003) and In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB 1994). All of the involved goods are general food items that would be sold in grocery stores.

In view of the above, the du Pont factors of the similarity of the goods, the channels of trade and class of purchasers favor a finding of likelihood of confusion.

With regard to the conditions of sale, these goods include general food products that would not be purchased with a great deal of care or require purchaser sophistication, which increases the likelihood of confusion. See Recot, supra, 54 USPQ2d at 1899 ("When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care") (citations omitted). See Exhs. 3, 4, 5 and 10. Thus, this factor also favors opposer.

Thus, considering the marks in their entireties, we conclude that the evidence of record as it pertains to the relevant du Pont factors supports a finding of a likelihood of confusion as between applicant's LA TORRE mark and opposer's LA TORRE marks, such that registration of applicant's mark is barred under Trademark Act Section 2(d).

R. Josephs Sportswear Inc., 28 USPQ2d 1464, 1467 (TTAB 1993).

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As noted above, applicant has not submitted any evidence, taken any testimony or presented any legal argument to rebut opposer's showing.

Decision: The opposition is sustained as to opposer's claim of priority and likelihood of confusion under Section 2(d) of the Trademark Act.