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Mailed:
January 26, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Licores Veracruz, S.A. de C.V.

Serial No. 77753913

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101 (Ronald R. Sussman, Managing Attorney).

Before Bergsman, Wellington and Lykos,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Licores Veracruz, S.A. de C.V. ("applicant") filed an application to register the mark MOCAMBO, in standard character form, for "rum," in Class 33. In the application, applicant stated that "[t]he wording MOCAMBO has no meaning in a foreign language," and that it "has no significance in the relevant trade or industry ... or any geographical significance."

The 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, when used in

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connection with rum, so resembles the registered mark MOCAMBO, in typed drawing form, for "cigars," in Class 34, as to be likely to cause confusion.¹

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 likelihood of confusion.

In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 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. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

A. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression and the strength of the registered mark.

The marks are identical. In addition, we note that applicant stated in its application that "[t]he wording MOCAMBO has no meaning in a foreign language," and that it "has no significance in the relevant trade or industry ... or any geographical significance." There is nothing in the

¹ Registration No. 1434163, issued March 24, 1987; renewed.

record to indicate that MOCAMBO is anything other than a fanciful or arbitrary term and, therefore, it is entitled to a broad scope of protection or exclusivity of use.

B. The similarity or dissimilarity and nature of the goods, channels of trade and classes of consumers.

In comparing the similarity of the goods, we are mindful that the greater the degree of similarity between the applicant's mark and the registered mark, the lesser the degree of similarity between the applicant's goods and registrant's goods that is required to support a finding of likelihood of confusion. *In re Opus One, Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001); *In re Concordia International Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). Even when goods are not intrinsically related, the use of identical marks can lead to the assumption that there is a common source. *In re Shell Oil Co.*, 992 F.2d 1024, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). In this regard, the issue is not whether the goods will be confused with each other, but whether the public will be confused about their source or origin. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 186 USPQ 476, 480 (CCPA 1975).

The examining attorney argues that the goods are related because they are complementary products that are

marketed together for simultaneous consumption.² To support her argument, the examining attorney submitted the following evidence:

1. An article entitled "Tasting Cigars and Rum" appearing in the CIGAR AFICIONADO website (*cigaraficionado.com*).³ The first sentence of the article reads as follows: "Given that rum and cigars are so often created in proximity, they are the most perfect companions." The editors of CIGAR AFICIONADO reported on their tasting of 13 rums and 3 cigars for purposes of pairing the products for simultaneous consumption (e.g., Bacardi 8 Reserva Superior rum is best matched with the Hoyo cigar "bringing out its earthy and leather notes").

2. An article (undated) in the *Cigars4Dummies.com* website entitled "Rum and Cigars."⁴ As in the above-noted article in the CIGAR AFICIONADO, the author of this article suggests rum and cigar pairings. The introduction of to the article reads, in pertinent part, as follows:

Cigars and rum ... mmm - a divine
combination. I'm sure this pair sounds

² Examining Attorney's Brief, unnumbered page 5.

³ September 14, 2009 Office Action. The article has a date of September 14, 2009, but the information on the top of the page states that the printout is a "snapshot of the page as it appeared on September 7, 2009." However, when the examining attorney submitted her third copy of this article in the February 22, 2011 Office Action, the article featured a December 31, 1969 date.

⁴ July 19, 2010 Office action.

familiar to you. ... Still when you feel nostalgic, there's nothing more calming and relaxing than a glass of fine Cuban (and not only) rum and a good qualitative stogie.

As you probably know, Cuba is rum's motherland as it is for cigars. ... this article is written not only to suggest the idea but also give some ready-to-use pairings.

The author also examined how the taste of the rum and cigar interacted. For example,

Hoyo de Monterrey Epicure No. 2 showed itself as a perfect pair to this rum. This cigar is light to medium bodied with mighty tobacco palate mixed with cocoa, dried fruit and cinnamon. The rum saturated the stogie with spiciness and regained it from the stick. As the rum revealed itself and the cigar became mightier, they appeared to be good partners leading to a kind of conversation together.

3. An excerpt from the *Beerliquors.com* website advertising the sale of rum and cigars; specifically, COHIBA rum and COHIBA cigars.

4. An excerpt from the MINISTRY OF RUM website forum (*ministryofrum.com*).⁵ The title to the forum thread is "Rum & Cigars." One of the threads is entitled "Camacho Cigars partners with Matusalem [a rum brand]" and another is "Rum and Cigar pairings."

⁵ July 19, 2010 Office Action.

5. An article posted on August 26, 2009 on the STOGIE LIFE website (*stogielife.com*) entitled "Rum and Cigars ~ A Perfect Pairing." The article states the following: "If you haven't tried rum with your cigar, you should."

6. Advertisements for the sale of "rum cigars" (e.g., Tatiana Classic Rum Cigars, Cojimar Senioritas Rum Cigars and Backwoods Wild Rum Cigars).⁶ These are cigars that feature a rum flavor.

In addition, the Mission Wine & Spirits website (*missionliquor.com*) and the *BEERLIQUORS.com* website advertise the sale of rum and cigars.⁷

Evidence of complementary use, as presented here, is relevant in determining whether the goods are related for purposes of likelihood of confusion. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984). Our holding in *In re Vienna Sausage Manufacturing Co.*, 230 USPQ 799 (TTAB 1986) is instructive regarding complementary products.

Turning to the goods, it is obvious that sausage and cheese are specifically different products. However, the Examining Attorney has made of record copies of pages from certain cookbooks which contain recipes

⁶ February 22, 2011 Office Action.

⁷ July 19, 2010 Office Action.

for dishes having cheese and sausage as principal ingredients. The dishes include pizza with cheese and sausage, shirred eggs with sausage and cheese, sausage and spaghetti with cheese sauce, and chiles [sic] rellenos (stuffed chilies) stuffed with finely chopped boneless pork and covered with a walnut sauce with cheese. Moreover, it is a matter of common knowledge that sausage (of which salami and bologna are types) and cheese are frequently used together as sandwich ingredients, or as cold cuts, or in hors d'oeuvres. Further, these are goods which may very well be purchased in the same store, such as a grocery store or delicatessen (where goods of this nature are often displayed in close proximity to one another) during the course of a single shopping trip, for a subsequent complementary or conjoint use of the type described above. Under the circumstances, and since registrant's mark "SALZBERG" is not a weak mark, we are of the opinion that the contemporaneous use of applicant's mark "SALZBURG" for sausage and registrant's mark "SALZBERG" for cheese is likely to cause confusion, mistake or deception as to source.

Id. at 799-800. See also *Polo Fashions, Inc. v. La Loren, Inc.*, 224 USPQ 509, 511 (TTAB 1984) (applicant's bath sponges are complementary in nature to the personal products sold by opposers and, therefore, "these respective products would go hand in hand and would be sold to the same customer through the same marketing channels"). Likewise, in this case, the evidence presented by the examining attorney establishes that rum and cigars are

consumed together (e.g., magazines advising on rum and cigar pairings) and sold in the same channels of trade. When those facts are considered in conjunction with the arbitrary nature of the mark MOCAMBO, we find that cigars and rum will be encountered by the same consumers under circumstances that could, because of the identity of the marks, give rise to the mistaken belief that they originate from the same source.

Applicant contends that rum and cigars are very different goods in spite of the evidence establishing their complementary nature:⁸

Applicant respectfully submits that this notion is too stretched and exaggerated. Persons that drink rum and smoke wear clothing when they carry out the activity of drinking rum, or of smoking a cigar, or even both. Does this mean that one would believe that pants or shoes branded MOCAMBO being worn by a person that is drinking MOCAMBO wine or smoking a MOCAMBO cigar come from the same source as the rum or as the cigar?⁹

Applicant's contention is untenable because it fails to address the facts and circumstances brought out by the record before us; in other words, applicant has ignored the evidence submitted by the examining attorney establishing a

⁸ Applicant's Brief, p. 2.

⁹ Applicant's Brief, p. 2.

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relationship between cigars and rum (e.g., rum and cigar pairings are the subject to magazine/website articles and that they are sold in the same channels of trade). The record in this application reveals circumstances and conditions whereby applicant's rum and registrant's cigars could be encountered in a market environment that could rise to a likelihood of confusion because of the identity of the marks.

The circumstances of this case are similar to those in the case of *John Walker & Sons Limited v. Tampa Cigar Company, Inc.*, 124 F.Supp. 254, 103 USPQ 21 (DC Fla., 1954), *aff'd* 222 F.2d 460, 105 USPQ 351 (5th Cir. 1955), in which the Court found a likelihood of confusion and enjoined defendant from using the mark JOHNNIE WALKER for cigars in view of plaintiff's mark JOHNNIE WALKER for whiskey:

Whiskey and cigars are closely related in distribution and use. Hotels, restaurants and bars supply cigars as well as whiskey to their guests and customers. People frequently smoke cigars while drinking whiskey. Pictures of Johnnie Walker smoking a cigar have been used in advertisements of JOHNNIE WALKER whiskey. Ashtrays and books of matches with the JOHNNY WALKER name and picture on them have been used to advertise JOHNNIE WALKER whiskey.

103 USPQ at 22.

Likewise, in the case of *Geo. A. Nickel Co. v. Stephano Brothers*, 155 USPQ 744 (TTAB 1967), the Board sustained an opposition brought by the owner of the mark CASCADE for whiskey against an application to register CASCADE for cigarettes.

But regardless of precedents, we entertain considerable doubt on the basis of the present record that the mark "CASCADE" can be used for both whisky [sic] and cigarettes without causing confusion or mistake or deception, and such doubts as we have in the matter must be resolved in favor of opposer, the prior user.

155 USPQ at 745. *But see, Schenley Distillers, Inc. v. General Cigar*, 427 F.2d 783, 166 USPQ 142, 143 (CCPA 1970) (rejecting appellant's contention that it has been recognized as a principle that the use of the same mark on tobacco and alcoholic beverage products results in likelihood of confusion). To be clear, we are not finding that rum and cigars are related based upon some abstract similarity between alcohol and tobacco. The record in this case establishes that cigar and rum are complementary products sold in the same channels of trade to the same classes of consumers.

C. Balancing the factors.

In view of the facts that the marks are identical and are a fanciful or arbitrary term, and the goods are

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related, move in the same channels of trade and are sold to the same consumers, we find that applicant's mark MOCAMBO for "rum" is likely to cause confusion with the mark MOCAMBO for "cigars."

Decision: The refusal to register is affirmed.