

THIS OPINION  
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OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Genghis Grill Franchise Concepts, LP

Serial No. 85372951

Dyan M. House of Carter Stafford Arnett Hamada & Mockler,  
PLLC for Genghis Grill Franchise Concepts, LP.

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110 (Chris A. F. Pedersen, Managing Attorney).

Before Zervas, Wellington, and Adlin,  
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Genghis Grill Franchise Concepts, LP, applicant, filed  
an application to register the mark BATTLEFIELD BLUE `RITA  
(in standard character form) on the Principal Register for  
"prepared alcoholic cocktail[s]" in International Class 33.<sup>1</sup>

The examining attorney has refused registration of  
applicant's mark pursuant to Section 2(d) of the Trademark  
Act, 15 U.S.C. 1052(d), on the ground that applicant's mark

<sup>1</sup> Application Serial No. 85372951 is an intent-to-use application  
filed under Section 1(b) of the Trademark Act.

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is likely to be confused with the previously registered mark BATTLEFIELD (in typed characters) for "beer" in International Class 32.<sup>2</sup>

Applicant has appealed the refusal and briefs have been filed.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & 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). In any likelihood of confusion analysis, however, two key, although not exclusive, considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the marks and, in doing so, examine the similarities and dissimilarities in their appearance, sound, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

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<sup>2</sup> Registration No. 1870762 issued December 27, 1994, renewed.

Here, applicant seeks to register a mark that incorporates the entirety of the registered mark, BATTLEFIELD, with the additional wording BLUE 'RITA. We are able to find that BATTLEFIELD, *i.e.*, the registered mark, is the dominant element of applicant's proposed mark. It appears first and it has not been argued, let alone shown, to have any significance in connection with prepared cocktails or beer. It is thus "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* 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Wet Seal Inc. v. FD Mgmt. Inc.*, 82 USPQ2d 1629, 1639 (TTAB 2007). The addition of the wording BLUE 'RITA in applicant's mark is a combination of descriptive and suggestive terms. Applicant has disclaimed the term BLUE and has acknowledged that its goods will be blue in color.<sup>3</sup> As the examining attorney explained in the Office actions and reiterated in her brief, it is well-settled that disclaimed, descriptive matter may have less significance in likelihood of

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<sup>3</sup> Admission made in applicant's March 22, 2012 response to Office action.

confusion determinations. See *In re Dixie Restaurants Inc.* 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (disclaimed term "cafe" in mark THE DELTA CAFE accorded less weight than dominant portion, "delta"); *In re Wm. B. Coleman Co., Inc.*, 93 USPQ2d 2019, 2026 (TTAB 2010) ("Tacking a company organizational designation such as 'Company,' or 'Inc.' or 'Partners' cannot transform a generic name into a protectable trademark."). While the term 'RITA has not been disclaimed, we agree with the examining attorney that it is certainly suggestive of a type of cocktail to the extent that it will be understood by consumers as an abbreviated form of "margarita."<sup>4</sup> Thus, it too is accorded less significance for purposes of distinguishing applicant's mark from the cited mark. Consumers viewing applicant's mark as a whole will understand BATTLEFIELD as being the major source-identifying element of the mark and are likely to perceive the wording BLUE 'RITA as merely indicating the color of applicant's prepared cocktails and suggestive of one type of prepared cocktail.

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<sup>4</sup> Although the examining attorney does not contend that 'RITA is descriptive, the record includes several printouts from different third party websites showing use of the term "rita" (by itself or in conjunction with other wording) as an abbreviated reference to a "margarita." See Office action dated May 7, 2012.

In sum, when we consider the marks in their entireties in terms of appearance, sound, connotation and overall commercial impression, we find them to be highly similar. Applicant essentially has appropriated the registrant's entire arbitrary mark BATTLEFIELD and has merely added to it the descriptive or suggestive wording BLUE 'RITA. The additional wording does not suffice to distinguish the two marks. This *du Pont* factor weighs in favor of finding a likelihood of confusion.

We turn now to the relatedness and nature of the goods, as well as their trade channels and classes of purchasers. In comparing the relatedness of the goods, it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. That is, the issue is not whether consumers would confuse the beer with prepared alcoholic cocktails, but rather whether they would be confused as to the source of these goods. The goods need only be sufficiently related that consumers would be likely to assume, upon encountering the goods under similar marks, that the goods originate from, are sponsored or authorized by, or are otherwise connected to the same source. See *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984).

Finally, one guiding principle, relevant to several arguments raised by applicant, is that where the goods in the application at issue and the cited registration are broadly identified as to their nature and type, such that there is an absence of any restrictions relating to the channels of trade and no limitations relating to the classes of purchasers, it is presumed that the identifications of goods encompass not only all the goods of the nature and type described therein, but that the identified goods are also offered in all channels of trade which would be normal therefor, and that they would be purchased by all potential buyers thereof. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Again, the goods identified in the application are prepared alcoholic cocktails and the goods identified in the registration are beer; there are no restrictions or limitations in the trade channels or classes of consumers. Thus, we disregard applicant's arguments that its prepared alcoholic cocktails will only be served in its restaurants, and likewise that registrant's beer will only be "offered at Registrant's brewery, pubs and the like." Brief, p. 4.

The Board and our reviewing court have found on many occasions different types of alcoholic beverages to be sufficiently related for purposes of a likelihood of

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confusion analysis; in doing so, it has been observed that certain alcoholic beverages, albeit different types, may share common uses, channels of trade, and customers. See, e.g., *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (beer and ale related to tequila); *In re Majestic Distilling*, 65 USPQ2d 1204 (malt liquor related to tequila); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265 (TTAB 2011) (beer related to wine); *In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (beer related to wine); *Somerset Distilling, Inc. v. Speymalt Whiskey Distribs. Ltd.*, 14 USPQ2d 1539, 1542 (TTAB 1989) (whiskey related to gin and vodka); *Schieffelin & Co. v. Molson Cos.*, 9 USPQ2d 2069, 2073 (TTAB 1989) (Cognac brandy related to malt liquor, beer and ale); *Monarch Wine Co. v. Hood River Distillers, Inc.*, 196 USPQ 855, 857 (TTAB 1977) (distilled spirits related to wine); *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 326 at 326 (TTAB 1976) (wines related to whiskey); *Rosenblum v. George Willsher & Co.*, 161 USPQ 492, 492 (TTAB 1969) (Scotch whisky related to rum).

Here, the examining attorney has submitted printouts of numerous use-based third-party registrations which include both beer and alcoholic cocktails in their

identifications of goods.<sup>5</sup> These registrations have probative value to the extent that they suggest that beer and alcoholic cocktails are goods which could be marketed by a single source under a single mark. See *In re Association of the United States Army, supra*, 85 USPQ2d 1264, 1270; *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc., supra*, 6 USPQ2d 1467, 1470 n.6.

The record created by the examining attorney also includes news articles, advertisements and recipes showing that beer may be used as an ingredient in alcoholic cocktails.<sup>6</sup>

In addition, the examining attorney has submitted evidence showing that beer and alcoholic cocktails may be offered in the same trade channels and to the same classes of consumers. Specifically, the evidence includes retail store advertisements and restaurant menus offering beer and alcoholic cocktails alongside each other.

In sum, the record shows that beer and prepared alcoholic cocktails are sufficiently related and they may be offered in the same trade channels to the same classes of consumers. Accordingly, the *du Pont* factors regarding

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<sup>5</sup> Submitted with Office action dated September 21, 2011.



relatedness of goods, trade channels and classes of consumers favor finding a likelihood of confusion.

Upon consideration of the entire record and all relevant likelihood of confusion factors, we find there is a likelihood of confusion. Beer is sufficiently related to prepared alcoholic cocktails such that when extremely similar marks are used for these goods, as with the marks involved in this appeal, we find confusion is likely. Because it has been shown that the respective beverages may emanate from a common source, consumers already familiar with BATTLEFIELD beer may, upon encountering BATTLEFIELD BLUE 'RITA-branded prepared alcoholic cocktails, mistakenly believe that a BATTLEFIELD BLUE 'RITA prepared cocktail is merely an extension of drink products from the same source as BATTLEFIELD beer. This likelihood of confusion prevents registration of applicant's proposed mark.

**DECISION:** The refusal to register the mark under Section 2(d) of the Trademark Act is affirmed.

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<sup>6</sup> Printouts from third-party websites submitted with Office actions dated September 21, 2011 and May 7, 2012.