

<p>This Opinion is Not a Precedent of the TTAB</p>

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Federacion Regional de Sociedades Cooperativas
de la Industria Pesquera, Baja California, F.C.L.*

Serial No. 85835945

Federacion Regional de Sociedades Cooperativas de la Industria Pesquera, Baja California, F.C.L. pro se,¹

Tasneem Hussain, Trademark Examining Attorney, Law Office 118,
Thomas G. Howell, Managing Attorney.

Before Seeherman, Bergsman and Greenbaum,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Federacion Regional de Sociedades Cooperativas de la Industria Pesquera, Baja California, F.C.L. (“Applicant”) seeks registration on the Principal Register of the mark REY DEL MAR and Design, shown below, for “Abalones; Ark-shells; Lobsters; Oysters” in International Class 29.²

¹ Applicant’s briefs as well as its Response to the first Office Action were signed by Edgar Alonso Aguilar Castillo, Applicant’s “Principal.”

² Application Serial No. 85835945 was filed on January 30, 2013, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as October 15, 1986.



The application includes the following translation: The English translation of “REY DEL MAR” in the mark is “KING OF THE SEA.” In addition, the application includes the following description of the mark:

The mark consists of the words “REY DEL MAR”. The letter “Y” is represented by a stylized design of a three-pronged spear. The silhouette of a man wearing a laurel leaf crown is on top of the spear.

The Examining Attorney has refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), having determined that Applicant’s mark so resembles the previously registered mark KING OF THE SEA (in standard characters) for “seafood” in International Class 29³ that use of Applicant’s mark in connection with Applicant’s goods is likely to cause confusion, to cause mistake, or to deceive.

After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. Applicable Law

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Viterra Inc.*, 671 F.3d 1358,

³ Registration No. 4093682 for KING OF THE SEA issued on the Principal Register on January 31, 2012.

101 USPQ2d 1905 (Fed. Cir. 2012); and *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

A. Relatedness of the Goods, Channels of Trade and Conditions of Purchase

We begin with the *du Pont* factors of the relatedness of the goods, channels of trade and conditions of purchase. We base our evaluation on the goods as they are identified in the application and registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 76 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002).

In this case, the goods identified in the cited registration are “seafood,” which must be considered to be legally identical to or to encompass the abalones, ark-shells, lobsters and oysters identified in the application. As such, the goods must also be deemed to travel in the same channels of trade, such as grocery stores and seafood markets, and be sold to the same classes of purchasers. *Viterra*, 101 USPQ2d at 1908 (absent restrictions in an application and/or registration, the identified goods are “presumed to travel in the same channels of trade to the same class of purchasers.”), *quoting Hewlett-Packard*, 62 USPQ2d at 1005. Further, because of the nature of the goods, they will be purchased by the public at large, who cannot be presumed to have any degree of sophistication.

Applicant argues that it offers non-kosher goods which originate from Mexico, while Registrant sells only “kosher tuna,” and that the goods are different and move

in different channels of trade.⁴ We cannot consider these purported limitations on the scope of Registrant's goods because no such limitations are reflected in the registration. In considering the scope of the cited registration, we are bound by the identification in the registration itself and not to extrinsic evidence about Registrant's goods. *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008). As the Examining Attorney correctly states,

the issue is whether “seafood” (the goods specified in registrant’s identification of goods) is related to applicant’s goods, not whether “kosher tuna” is related to applicant’s goods. Applicant’s arguments regarding registrant’s goods as (a) limited to “tuna” or “kosher tuna,” (b) “not from Mexico,” or (c) “canned” or not are irrelevant and moot.

Ex. Att. Br. at 11.

These *du Pont* factors of the similarity of the goods, channels of trade and the conditions of purchase favor a finding of likelihood of confusion.


B. Comparison of the Marks

We next turn to the first *du Pont* factor focusing on the similarity between the marks. We must compare the marks in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), *quoting du Pont*,

⁴ Applicant suggests that Registrant no longer uses the mark KING OF THE SEA for seafood as Registrant’s website appears to be “disconnected.” Br. at 10. To the extent Applicant is attempting to claim that Registrant has abandoned its mark, this would be considered an impermissible collateral attack. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997).

177 USPQ at 567. “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). 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).

In comparing the marks, we are mindful that where, as here, the goods are legally identical, the degree of similarity between the marks necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs.*, 101 USPQ2d at 1721; *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

Although the marks do not look or sound alike, the Examining Attorney contends that, under the doctrine of foreign equivalents, the meanings are the same in that  comprises Spanish words that translate directly into the English words KING OF THE SEA. The Examining Attorney further contends that the design of the man wearing a crown and the three-pronged spear representing the letter “y” connote Neptune or Poseidon, the mythological “king of the sea” and his

trident, thereby reinforcing the similarity of the marks in terms of meaning and commercial impression.⁵ The Examining Attorney submitted an official “true and accurate translation” statement from the Translations Service Center of the USPTO in which the translator states, “I certify that I am fluent in the Spanish language, and that the wording *rey del mar* means ‘king of the sea.’” In addition, as noted above, the application includes a translation of the literal portion of Applicant’s mark, REY DEL MAR, as “KING OF THE SEA,” which was provided by Applicant.

By contrast, Applicant argues that the doctrine of foreign equivalents does not apply here because the words are not exact equivalents. Despite Applicant’s own translation in the application, Applicant contends that the common translation of REY DEL MAR is SEA KING, rather than KING OF THE SEA, and that “mar” also commonly translates to “ocean” and “briny.” As for REY, Applicant asserts that “the Spanish word ‘REY’ can be translated into the English word NOUN, and is also a city in Iran,” and also can

be used as a surname throughout the world, or as a given name for both males and females, sometimes as an alternative to “Raymond.” Moreover, the word “REY” can alternatively be translated in to [sic] the English language words RULER or MONARCH.

⁵ “Neptune” is defined as: “[Greek name Poseidon] The Roman and Greek god who ruled the sea. Note: Neptune is frequently portrayed as a bearded giant with a fish’s scaly tail, holding a large three-pronged spear, or trident.” <dictionary.com> based on *The American Heritage New Dictionary of Cultural Literacy*, Third Edition (2005). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

Br. at 8. Further, Applicant contends that the marks are dissimilar in appearance and sound, and that the design element helps distinguish its mark from the cited mark.

“Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine ... similarity of connotation in order to ascertain confusing similarity with English word marks.” *Palm Bay*, 73 USPQ2d at 1696. The doctrine of foreign equivalents is applied when it is likely that “the ordinary American purchaser would ‘stop and translate [the term] into its English equivalent.’” *Id.* at 1696, quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976). See also *In re Thomas*, 79 USPQ2d 1021 (TTAB 2006). “The ‘ordinary American purchaser’ in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language.” *Id.* at 1024. See also *La Peregrina*, 86 USPQ2d at 1647-48. In this case, the average purchaser is a Spanish speaking American who eats seafood, and there is no dispute that there are a significant number of Spanish speakers in the United States who would understand the phrase.

Applicant takes issue only with the correct translation of REY DEL MAR, not with whether purchasers would “stop and translate” the phrase. Thus, this is not a situation such as in *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1984), where TIA MARIA was found not similar to AUNT MARY’S because consumers would not stop and translate TIA MARIA. See also *Cont’l Nut Co. v. Le Cordon Bleu S.a.r.l.*, 494 F.2d 1395, 1396-97, 191 USPQ 646, 647 (CCPA 1974) (although CORDON BLEU


literally translates as BLUE RIBBON, American public would not stop and translate because the two terms create different commercial impressions, CORDON BLEU having been adopted in the English language and acquiring a different meaning from BLUE RIBBON).

Based on the official translation from the USPTO Translations Service Center and Applicant's own translation statement in the application, we find that REY DEL MAR is a direct and exact translation of KING OF THE SEA. *See In re Hub Distrib., Inc.*, 218 USPQ 284, 284-285 (EL SOL is "direct foreign language equivalent" of SUN); *In re Perez*, 21 USPQ2d 1075 (TTAB 1991) (EL GALLO is Spanish equivalent of ROOSTER). Applicant's suggested alternate meaning for REY DEL MAR, SEA KING, is the equivalent of KING OF THE SEA, while its suggested meanings for the individual words, e.g., REY is a city in Iran or a surname or a shortened form of Raymond, would not have these meanings when used in the phrase REY DEL MAR; thus, they have no impact on the equivalency between REY DEL MAR and KING OF THE SEA. *Cf. In re Buckner Enterprises Corp.*, 6 USPQ2d 1316 (TTAB 1987) (PALOMA, meaning both "dove" and "pigeon," not confusingly similar to DOVE). Moreover, the design element in Applicant's mark visually represents Neptune or Poseidon, the mythological "king of the sea" who is frequently depicted carrying a trident, and reinforces the meaning of REY DEL MAR as KING OF THE SEA.

Thus, despite the differences in appearance and sound, because of the identity in connotation, and therefore similarity in commercial impression, we find the marks

to be confusingly similar. *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987).

C. Conclusion

We have carefully considered the entire record, including all arguments and the evidence submitted, even if not specifically addressed in this opinion. We find that because REY DEL MAR and KING OF THE SEA are foreign equivalents and, thus, the marks are identical in meaning and commercial impression, because the goods and channels of trade are legally identical, and because the goods are consumer items purchased by the general public without great care, confusion is likely to occur in the marketplace. Bilingual (English and Spanish) consumers familiar with Registrant's seafood sold under the mark KING OF THE SEA are likely to believe, upon encountering the Spanish equivalent  for abalones, ark-shells, oysters and lobsters, that the goods originated with or are associated with or sponsored by the same entity, with the English mark directed to English-speaking consumers, and the Spanish mark directed to Spanish-speaking consumers. *Id.* at 1460.

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