

**This Opinion is Not a  
Precedent of the TTAB**

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**United States Patent and Trademark Office**

Trademark Trial and Appeal Board

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*In re Proximo Spirits, Inc.*

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Serial No. 85865962

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Inc.

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Before Mermelstein, Wolfson and Gorowitz, Administrative Trademark Judges.  
Opinion by Wolfson, Administrative Trademark Judge:

Proximo Spirits, Inc. (“Applicant”) seeks registration on the Principal  
Register of the mark COCOMO (in standard characters) for “tequila; tequila  
based prepared cocktails,” in International Class 33.<sup>1</sup> The Trademark  
Examining Attorney has refused registration of Applicant’s mark under

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<sup>1</sup> Application Serial No. 85865962 was filed on March 4, 2013, based on an allegation  
of Applicant’s bona fide intent to use the mark in commerce.

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), contending that Applicant's use of its mark for its identified goods is likely to cause confusion with the mark KOKOMO (in standard character format) for "wine" in International Class 33.<sup>2</sup>

When the refusal was made final, Applicant appealed and filed a request for reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *see also In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

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<sup>2</sup> Reg. No. 3115343; registered July 11, 2006; Sections 8 & 15 combined declaration accepted and acknowledged.

## I. The Marks

In a likelihood of confusion analysis, we compare the marks for similarities and dissimilarities in appearance, sound, connotation and commercial impression. *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Palm Bay*, 73 USPQ2d at 1692. “[T]he test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result.” *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1727 (TTAB 2008). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988). *See also In re 1st USA Realty Prof’ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007) (“Similarity in sound alone may be sufficient for a finding of likelihood of confusion.”).

In terms of how the marks are spoken, it is settled that “there is no correct pronunciation of a trademark that is not a recognized word.” *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014). However, in this case, the evidence of record suggests that the pronunciation of the marks would be identical. According to the Dictionary.com “IPA Pronunciation” key submitted by the Examining Attorney with her final Office Action, the letter “C” in Applicant’s mark is

likely to be pronounced as a hard “C,” which is identical to the pronunciation of the letter “K.” Accordingly, adhering to the general rules of English pronunciation, COCOMO and KOKOMO are phonetic equivalents.<sup>3</sup> The phonetic equivalence is especially important in this case, where the goods may be requested verbally, as at a bar or restaurant, without prior reference to a menu. *See Guinness United Distillers & Vintners B.V. v. Anheuser-Busch Inc.*, 64 USPQ2d 1039, 1044 (S.D.N.Y. 2002) (noting “the often chaotic conditions under which alcoholic beverages are purchased in bars”). *Cf. Miles Labs., Inc. v. Whorton Pharm. Co.*, 199 USPQ 758 (TTAB 1978) (finding phonetic similarity a very important consideration where goods would be recommended by word-of-mouth). The marks are also similar in appearance, as each is formed of three syllables of two letters each, the last of the pair being the letter “O,” and the last of the three syllables being the same, i.e., “MO.” The pattern made by the repetition of the letter “O,” concluding with “MO” in both marks, contributes to their visual similarity.

Applicant attempts to draw a distinction between the marks in terms of meaning. Both Applicant and the Examining Attorney submitted evidence<sup>4</sup> to

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<sup>3</sup> The key shows how to pronounce the letter “K” by referring to the words “can,” “speaker” and “stick.” Applicant also introduced a dictionary definition of “coco” showing its pronunciation as “\’ko-(,)ko\.”

<sup>4</sup> Applicant submitted new evidence with its opening brief. *See* 7 TTABVUE 9-30. Although this evidence is untimely and, pursuant to Trademark Rule 2.142(d) normally would not be considered, we will consider it in this case to the extent the Examining Attorney did not object but rather addressed it in her brief. *In re*

show that “Kokomo” is a city in central Indiana,<sup>5</sup> which Applicant argues is the hometown of Registrant’s owner.<sup>6</sup> Applicant argues that its mark, on the other hand, will bring to mind the idea of “coconuts.” In this regard, Applicant submitted a dictionary definition that defines “coco” as “the coconut palm; *also* : its fruit.”<sup>7</sup> However, in determining the likely connotations created by the marks, we must consider the marks in relation to the parties’ identified goods, and there is nothing in the record to suggest that consumers of Registrant’s wine recognize KOKOMO as a city in Indiana or are aware of any connection between the city name and Registrant’s goods. Assuming Applicant’s mark could evoke the idea of coconuts, the initial “koko” in Registrant’s mark, if it were perceived as merely a variant spelling of “coco”

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*Litehouse Inc.*, 82 USPQ2d 1471, 1475 n.2 (TTAB 2007); *In re Homeland Vinyl Products Inc.*, 81 USPQ2d 1378, 1381 n.5 (TTAB 2006); *In re Pencils Inc.*, 9 USPQ2d 1410, 1411 (TTAB 1988) (Board considered exhibits submitted for first time with applicant’s appeal brief where examining attorney discussed the evidence without objection).

<sup>5</sup> At <http://dictionary.reference.com>, attached to Examining Attorney’s first Office Action. Applicant also submitted a definition of Kokomo from Wiktionary that defines Kokomo as a city in Indiana as well as an “unincorporated community in Mississippi.” Applicant’s Request for Reconsideration.

<sup>6</sup> Applicant’s Brief, Exhibit B, 7 TTABVue 12-13. This argument is not supported by timely submitted evidence, inasmuch as the Examining Attorney did not discuss the article referring to Registrant’s owner that Applicant attached to its brief. Nonetheless, it would have very little probative value even if we did consider it, because Applicant has not shown that the relevant purchasing public would be aware of Registrant’s purported connection to Kokomo city in Indiana.

<sup>7</sup> At [www.merriam-webster.com](http://www.merriam-webster.com), attached to Applicant’s Request for Reconsideration. Applicant also submitted a reader’s contribution to the Urban Dictionary that suggests “mo” is a slang term for “more,” but we have not considered this entry because it was not timely submitted nor discussed by the Examining Attorney in her brief.

might equally evoke a reference to coconuts. Similarly, both terms might evoke a reference to cocoa or coca.<sup>8</sup> Nonetheless, there is nothing in the record to suggest that Applicant's mark *when used with the identified goods* has anything to do with coconut, cocoa, or coca. There is also nothing in the record to support a finding that tequila may contain coconut flavoring. *See In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1373 (Fed. Cir. 2004) ("The Board must, of course, determine the commercial impression of a mark in the proper context of the goods or services associated with that mark."); *Embarcadero Techs. Inc. v. RStudio Inc.*, 105 USPQ2d 1825, 1835 (TTAB 2013) (finding that ER/STUDIO and RSTUDIO engender different commercial impressions when considered in the context of the involved goods and services) (*citing Coach Servs., Inc. v. Triumph Learning LLC*, 96 USPQ2d 1600 (TTAB 2010), *aff'd, in relevant part*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (COACH for educational software differs in meaning and commercial impression from COACH for handbags, luggage, and the like)).

Submitted with its brief, and as discussed in the Examining Attorney's brief, Applicant provided copies of Internet print-outs showing use of nine

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<sup>8</sup> In this regard, we note that two of the Internet print-outs Applicant submitted (discussed *infra*) show the use of two marks in connection with beverages with a coconut flavor: KONA KOKO BROWN (beer) "brewed with real toasted coconut" (at 7 TTABVUE 25) and "KOKO KANU COCONUT RUM, Jamaica" (at 7 TTABVUE 26).

marks for alcoholic beverages that incorporate the term “coco” or “koko.” These marks are: COCOVINO for wine, COCOBON for wine, EL COCO for wines and spirits, COCO POLADA for wine, MADAME COCO for Brut wine, TE KOKO for wine, KOKO RED MERITAGE for wine, KONA KOKO BROWN for beer, and KOKO KANU for coconut rum. While evidence of third-party use of similar marks may show that customers have “been educated to distinguish between different marks on the bases of minute distinctions,” *Palm Bay*, 73 USPQ2d at 1694, where, as here, the only difference between the marks at issue is the substitution of the letter “C” for the letter “K,” the evidence does not support a finding that the cited mark is relatively weak and entitled to only a narrow scope of protection. Further, each mark contains additional matter that distinguishes it from the cited mark, and from Applicant’s mark, and none of the third-party marks contain the suffix “MO.” Even widespread use of these marks would not therefore educate the public to disregard the “coco” or “koko” component, and rely upon the other elements to remember and recall the marks. Moreover, there is nothing in the record to indicate the extent to which any of these third-party marks may have achieved public recognition. The fact that Applicant has shown that two of these marks (COCOVINO for wine and TE KOKO for wine) are also registered does not help Applicant because registration is not

evidence that those two marks are in use on a commercial scale<sup>9</sup> or that the public has been exposed to the marks. Accordingly, there is no evidence establishing that the cited mark is only entitled to a narrow scope of protection.

Given the close similarity in sound and appearance, as well as in the plausible connotations of each mark, we find that the marks engender very similar overall commercial impressions. The first *du Pont* factor weighs in favor of a finding of likelihood of confusion.

## II. The Goods, Trade Channels, and Classes of Consumers

We next turn our attention to a comparison of the similarity or dissimilarity and nature of the goods described in the application and registration. We base our evaluation on the goods as they are identified therein. *Octocom Sys., Inc. v. Houston Computers Servs. 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 re Risesmart, Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012).

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<sup>9</sup> We disregard the registration for the mark COMO for wine, as it has been cancelled. Any benefits conferred by the registration, including the evidentiary presumptions afforded by Section 7(b) of the Trademark Act, were lost when the registration expired. *See, e.g., Time Warner Entertm't Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002); *In re Hunter Publ'g Co.*, 204 USPQ 957, 963 (TTAB 1979).

We further disregard the pending application for COCOVO for “alcoholic beverages except beers,” as applications are proof of nothing more than the fact that they were filed. *Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012).



Applicant's goods are "tequila, tequila based prepared cocktails." The goods identified in the cited registration are "wine." While it is clear that tequila and wine are both beverages that contain alcohol, not even an unsophisticated purchaser would mistakenly buy one expecting the other. However, the evidence of record supports a finding that a purchaser of both wine and tequila sold under a similar trademark would likely believe that the goods share a common source. It is settled that 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 goods themselves, but rather whether they would be confused as to the source of the goods. *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264-65 (TTAB 2011); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). 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 Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

The Board discussed this point in *Monarch Wine Co. v. Hood River Distillers, Inc.*:

As to the distilled alcoholic beverages of applicant, and the wines and champagnes of opposer, we are fully aware of the

specific differences between them such as appearance, flavor, aroma, alcoholic content, cost, consumer recognition, and even the fact that distilled alcoholic beverages are separated from wines and champagnes and sold at different counters in different sections in retail liquor stores. However, the issue before us is not the likelihood of confusion as between the specific products of applicant and opposer, but rather the likelihood of confusion as to the source of such products. The fact that purchasers may be aware of the differences between the goods does not necessarily preclude the likelihood that they would confuse one trademark for another, and thereby be misled into believing that the goods have a common origin.

*Monarch Wine*, 196 USPQ 855, 857 (TTAB 1977) (internal citations omitted).<sup>10</sup>

Because there are no limitations or restrictions as to trade channels or classes of purchasers in the respective identifications of goods, we presume that the goods are or would be marketed in all normal trade channels for such goods and to all normal classes of purchasers of such goods. *See Packard*

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<sup>10</sup> *See also Schieffelin & Co. v. Molson Companies Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989) (finding malt liquor and Cognac brandy to be related under the second *du Pont* factor, even though “we have no doubt that purchasers are not likely to consume a malt liquor thinking that it is Cognac brandy”); and *Monarch Wine*, 196 USPQ at 857:

In the case before us there is no doubt but that purchasers could readily distinguish the products of opposer from those of applicant. However, the products of both parties are alcoholic beverages which flow through the same channels of trade to the same class of purchasers, and we believe that a prospective purchaser of an alcoholic beverage upon entering and browsing through the various alcoholic products located or displayed on the various shelves or counters in retail liquor establishments would, upon encountering a whiskey, rum, brandy or vodka identified by the term “MONARCH”, and then continuing on his jaunt to another counter or section of the same store and seeing a wine or champagne sold under the identical mark “MONARCH”, be likely to believe that both products originated with the same producer.

*Press Inc. v. Hewlett-Packard Co.*, 56 USPQ2d at 1357. The trade channels for both Applicant's and Registrant's goods would include liquor stores, bars and restaurants, and the alcoholic beverages sections of retail outlets. The relevant class of consumers for both goods includes connoisseurs as well as ordinary consumers who consume alcoholic beverages, or purchase different types of alcoholic beverages as gifts or to stock a bar at home. *See Somerset Distilling, Inc. v. Speymalt Whiskey Distribs. Ltd.*, 14 USPQ2d 1539, 1542 (TTAB 1989) ("While we realize that certain purchasers of alcoholic beverages may be aficionados and know not only 'their brands' but which companies make which trademarked products, we also realize that other consumers may not be as knowledgeable, and may purchase Scotch whisky, gin or vodka as gifts, or to stock a bar for their guests."). Accordingly, the trade channels and classes of consumers for the goods are the same (at least in significant part), and consumers would not necessarily be sophisticated.

The Court of Appeals for the Federal Circuit and the Board have repeatedly held spirits and wine to be related. *See, e.g., In re Chatam Int'l Inc.* 380 F.3d 1340, 71 USPQ2d 1944, 1947-8 (Fed. Cir. 2004) ("Indeed, the goods [tequila and beer or ale] often emanate from the same source because 'both are alcoholic beverages that are marketed in many of the same channels of trade to many of the same consumers.'") (*quoting Majestic Distilling*, 65 USPQ2d at 1204 (finding malt liquor related to tequila given the identity of

trade channels despite the fact that “malt liquor is a brewed product, whereas tequila is distilled”)); *Salierbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (beer and wine related); *Monarch Wine*, 196 USPQ 855 (distilled spirits related to wine); *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 326 (TTAB 1976) (wines related to whiskey). The Board has noted that different types of alcoholic beverages are related in that “[a] typical consumer of alcoholic beverages may drink more than one type of beverage and may shop for different alcoholic beverages in the same liquor store. Moreover, a person may serve more than one kind of alcoholic beverage before or during a meal or at a party.” *Schieffelin*, 9 USPQ2d at 2073.

Applicant argues that it is “common knowledge” that wineries sell only wine and not any other type of alcoholic beverage. Applicant has submitted evidence showing that Registrant is a winery, that by definition a “winery” is a place where wine is made, and that six wineries, whose website home pages Applicant has submitted, advertise only wine.<sup>11</sup> Based on this evidence, Applicant argues that wineries limit their production to wine. Although we have considered other evidence submitted for the first time with Applicant’s brief, *supra*, we need not address this specific evidence submitted for the first time with Applicant’s brief, because it was not discussed by the Examining Attorney in her brief. Trademark Rule 2.142(d); TBMP § 1203.02(e).

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<sup>11</sup> Exhibit D to Applicant’s Brief, 7 TTABVue 16. Applicant argues that these wineries are representative of all wineries.

Nonetheless, even if true, the fact that wineries do not apparently sell other types of alcoholic beverages does not sufficiently rebut the Examining Attorney's showing that consumers would assume a connection between tequila and wine sold under similar trademarks. Further, the Examining Attorney has submitted third-party registrations demonstrating the relatedness of wine and tequila. The registrations, while not evidence of use, have probative value to the extent that they serve to suggest that the identified goods are products which are produced or marketed by a single source under a single mark. *See Venture Out Props. LLC v. Wynn Resorts Holdings LLC*, 81 USPQ2d 1887, 1893 (TTAB 2007). The following active registrations were submitted:<sup>12</sup>

Reg. No. 1803376 for the mark BANDOLERO for "wines and spirits; namely, tequila";

Reg. No. 2488097 for the mark COMPADRE for "tequila, mezcal, gin, vodka, brandy, whiskey, rum and wine";

Reg. No. 2791187 for the mark CHARBAY for, *inter alia*, "aperitif wines," "aperitifs with a wine base," "cooking wine," "prepared alcoholic cocktail," and "tequila";

Reg. No. 3632066 for the mark FRUITION for *inter alia*, "wines" and "tequila";

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<sup>12</sup> We have disregarded Reg. No. 3326272 for the mark EL AMO and Reg. No. 3399844 for the mark WHITE GOLD and design because the identifications of goods in these registrations were amended to delete "wines." We have also disregarded Reg. No. 3703348 for the mark GOLMAR for "spirits and liqueurs; and wine" because the identification of goods in this registration was amended to delete "tequila."

Reg. No. 3209611 for the mark MORGENSTER for “Wines, liqueurs, ports, distilled spirits, rum, tequila, brandy, vodka, cognac, gin, cordials, bourbon, whisky, aperitifs with a distilled alcoholic base, aperitifs with a wine base, alcoholic beverages containing fruit, alcoholic beverages containing fruit extracts, and prepared alcoholic cocktails”;



Reg. No. 3624987 for the mark for “alcoholic beverages, excluding beer, namely distilled liquor, wine, wine coolers, prepared alcoholic cocktails and aperitifs, and alcoholic drinks, namely liqueurs, hard cider, brandy spirits, distilled liquors, distilled spirits, gin, wine, whiskey, vodka, rum, tequila, anisette aguamiel, aguardiente;” and

The Examining Attorney has also submitted Internet evidence showing that some third parties distribute and sell both wine and tequila, that restaurants and bars offer wine and tequila pairings, and that wine and tequila may be mixed together as ingredients in drink recipes.<sup>13</sup>

#### A. Retailers and Distributors of both wine and tequila

1. At <http://www.missionliquor.com>, the online retailer “Mission Wine & Spirits” advertises “Liquor Spirits Scotch Vodka Whiskey Wine Rum Tequila Cigars.”

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<sup>13</sup> The bulk of this evidence was submitted by the Examining Attorney with her first Office Action. A substantial amount of it was unnecessarily duplicated in her final Office Action, and in the case of several of the third-party references, two identical copies of each were submitted with the final Office Action. Suffice it to say, the Board considers the entire record in making its determination and the submission of duplicative papers only serves to delay processing and wastes the Board’s already limited resources. There is no question, however, that all this evidence is properly of record, however many times individual items may have been submitted.

2. At <http://www.crownwineandspirits.com>, the online retailer “Crown” advertises wines and spirits, including tequila.
3. At <http://www.wineandalcohol.com>, the online retailer “Wine and Alcohol” provides, under the tab “alcohol,” links to Champagne, gin, cognac, liqueur, rum, tequila, vodka, whiskey, and wine.
4. At <http://www.brown-forman.com>, the online retailer “Brown-Forman” offers for sale “tequila” (including tequila cocktails) and “wines-California.”
5. At <http://www.luxco.com>, under “categories,” several types of alcoholic beverages are listed, including wines and tequila. According to the website, the company bottles, markets and distributes tequila and wines as “one of the top beverage alcohol suppliers in the country.”
6. “VIN garage,” self-described as “a boutique distributor of wines & spirits,” advertises liquor and wine together on the same page under the heading “Our Wine & Tequila Producers.”<sup>14</sup>
7. The “Wine Zap” website lists “over 1000 retailer items” under the heading “Sauza Tequila Wine Prices & Retailers.” This list includes “Short Hills Wine,” in Short Hills, New Jersey as a retailer of Sauza Tequila.<sup>15</sup>

B. Wine and tequila pairings; Restaurants that offer wine and tequila

1. Online article about a wine and tequila-pairing dinner at Blackbird restaurant (location unspecified) entitled “A Surprising pairing at Blackbird: Wine & Tequila.” The author notes the event was hosted by Michael Mondavi of Mondavi Family Wines and Gary Shansby of Partida Tequila, and explains that “the dinner explored the surprising relationship between tequila and wine.” A flight of tequila was served to “sip throughout the meal”

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<sup>14</sup> At <http://www.wingarage.net>.

<sup>15</sup> At <http://www.winezap.com>.

and glasses of wine were poured as each course was presented.<sup>16</sup>

2. At the “allmenus.com” website, the menu for a Chicago eatery is provided. Although the menu doesn’t include beverages, the name of the restaurant is “Xel-ha Tequila and Wine Bar,” suggesting that the restaurant specializes in wine and tequila.<sup>17</sup>

3. A webpage for Miguel’s Mexican Seafood & Grill advertises “come see our extensive selection of Fine Wine” as well as offering “over 20 different Tequila shots.” The webpage links to a “sample of our Tequila/Wine Menu.”<sup>18</sup>

4. As reported by the Sun-Sentinel (Florida), at the 2011 “Las Olas Food & Wine Festival,” ticket holders were able to sample signature Tequila Herradura cocktails during the event and each received a VIP gift bag containing a bottle of wine and other sponsor items. Patrons were further entitled to two complimentary drinks courtesy of Tequila Herradura, offering tequila, and Barefoot Wine and Bubbly, offering wine.<sup>19</sup>

#### C. Wine and tequila mixed together in drinks

1. A recipe calling for tequila and wine to be mixed with other ingredients to make up a “Sour Patch” cocktail, per web article, “How to mix a Sour Patch tequila and wine cocktail.”<sup>20</sup>

2. A recipe calling for tequila and white wine to be mixed together to make a sangria, per web article, “Fat and Happy: Mexican Tequila White Wine Sangria.”<sup>21</sup>

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<sup>16</sup> At Google’s cache of <http://www.chicagonow.com/>.

<sup>17</sup> At <http://www.allmenus.com>.

<sup>18</sup> At <http://www.miguelscafe.com>.

<sup>19</sup> At Google’s cache of <http://articles.sun-sentinel.com>.

<sup>20</sup> At Google’s cache of <http://www.wonderhowto.com/>.

<sup>21</sup> At <http://gozamos.com>.



3. Online article about making “wine cocktails” entitled “Wine cocktails add sophisticated refreshment to summer” suggests mixing tequila and wine as a “summer refresher.” Included with the article is a recipe for “Cactus Berry” that mixes merlot and tequila with Cointreau, limes and lime juice.<sup>22</sup>

4. Online article entitled “Champagne & Wine Cocktails” lists ingredients for several drinks made with Champagne, three of which include tequila.<sup>23</sup>

5. Online listing of recipes for 33 drinks containing red wine, including their ingredients. Three are made by mixing tequila and wine: “Cactus Berry,” made with lemon lime soda, lime juice, red wine, sour mix, tequila and triple sec; “Hina Blast,” made with bananas, cola, Dom Perignon, orange juice, raisings, red pepper, red wine and tequila; and “Pour Man’s Punch” made with fruit juice, lemonade, red wine and tequila.<sup>24</sup>

The above evidence corroborates our finding that wine and tequila are related. It also shows that wine and tequila are complementary products. *See, e.g., In re Davia*, 110 USPQ2d 1810, 1816 (TTAB 2014) (finding different condiments used for same flavoring purpose in recipes, complementary); *McCormick & Co., Inc. v. Granny Goose Foods*, 144 USPQ 449, 451 (TTAB 1964) (finding potato chips and seasonings used as ingredients for cheese dip, complementary due to “conjoint use which may result in their being purchased at the same time to be used together”). In view of the above, the second and third *du Pont* factors favor a finding of likelihood of confusion.

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<sup>22</sup> At Google’s cache of <http://www.jsonline.com/>.

<sup>23</sup> At Google’s cache of <http://cocktails.about.com/>.

<sup>24</sup> At <http://www.barnonedrinks.com>.

### III. Conclusion

We have carefully considered all of the evidence and arguments of record, including any which we have not specifically discussed. In view of the facts that the marks are similar, the goods related and likely to be sold through identical trade channels to the same customers, including under conditions where they would be purchased and used together for conjoint purposes as complementary products, we find that Applicant's registration of the mark COCOMO for tequila and tequila based prepared cocktails is likely to cause confusion with the registered mark KOKOMO for wine.

***Decision:*** The refusal to register Applicant's mark COCOMO under Section 2(d) is affirmed.