

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

Mailed: April 22, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Ana Rosa Neto Celestino Compina  
and Carlos Alberto Damiaõ Barroqueiro*

—  
Serial No. 85867859  
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Paulo A. de Almeida of Patel & Almeida PC,  
for Ana Rosa Neto Celestino Compina and Carlos Alberto Damiaõ Barroqueiro.

Zachry R. Sparer, Trademark Examining Attorney, Law Office115,  
John Lincoski, Managing Attorney.

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Before Bergsman, Gorowitz and Hightower,  
Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Ana Rosa Neto Celestino Compina and Carlos Alberto Damiaõ Barroqueiro  
("Applicants") seek registration on the Principal Register of the mark



for "hotel and restaurant services" in International Class 43.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85867859 was filed on March 6, 2013, based upon Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that

Applicant's mark so resembles the registered marks  <sup>2</sup> and  <sup>3</sup> for "restaurant services," (both owned by the same party), as to be likely to cause confusion.

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

#### I. Discussion

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 Palm Bay Imps., 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 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 [or services] and differences in the marks." *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24

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<sup>2</sup> Registration No. 2006347, issued October 8, 1996; renewed March 22, 2007.

<sup>3</sup> Registration No. 2019165, issued November 26, 1996; renewed March 22, 2007.

(CCPA 1976). *See also In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

A. Similarity of the Services and Channels of Trade.

We start by looking at the services at issue. Our evaluation of the services is based on the services as identified in the registration and application. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F. 3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Further,

where the goods [and services] in a cited registration are broadly described and there are no limitations in the identification of [services] as to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the registration encompasses all goods [and services] of the nature and type described, that the identified goods [and services] move in all channels of trade that would be normal for such goods [and services], and that the goods [and services] would be purchased by all potential customers.

*In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

Applicant does not contest the basis for our analysis. In fact, “Applicant does not argue any difference between the ‘restaurant services’ recited in the application and the registration; [and] Applicant recognizes that the restaurant services are identical as recited and therefore presumed to travel in all normal channels of trade, and are available to the same class of customers.” Appeal Brief, p. 9, 14 TTABVUE 10. Applicant attempts to distinguish the services based on the purported differences in the meanings of the marks. Such distinction, if any, is irrelevant to our determination of the relationship between the services, since as

Applicant admitted, we must determine the relationship between the services on the basis of the identifications. Thus, Applicant's and Registrant's "restaurant services" are identical.

It is settled that likelihood of confusion must be found if there is likely confusion with respect to any item that comes within the identification of goods within a particular class in the application and the registration. *See Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found as to the entire class if there is likely to be confusion with respect to any item in the identification of goods or services for that class).

B. Similarity of the marks.

The legally identical nature of Applicant's and Registrant's restaurant services and their overlapping channels of trade not only weighs heavily in favor of a finding of likelihood of confusion, but also reduces the degree of similarity of the marks necessary to find a likelihood of confusion. *In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010).

With that in mind, we turn to the first *du Pont* factor, the similarity of the

marks. Applicant's mark is  and Registrant's marks are

 and .

Because the design element in one of the cited marks contains an additional point of difference with Applicant's mark, we confine our analysis to the issue of likelihood of confusion between Applicant's mark and the cited registration for the mark in stylized form. If confusion is likely between those marks, there is no need for us to consider the likelihood of confusion with the cited registration for the mark with the design elements, while if there is no likelihood of confusion between Applicant's mark and the cited mark in stylized, then there would be no likelihood of confusion with the mark with the design elements. *See, e.g., In re Max Capital Group Ltd.*, 93 USPQ2d at 1245.

We consider the similarity between the marks  and , and compare them "in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc.*, 73 USPQ2d at 1691 (*quoting du Pont*, 177 USPQ at 567). To evaluate the similarities between

marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009) (citing *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975)). Since the services at issue are restaurant services, the average purchaser is an ordinary consumer.

While “the similarity or dissimilarity of the marks is determined based on the marks in their entireties ... there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties.” *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In this case, Applicant’s mark is a composite mark consisting of a verbal or literal portion and a design. When evaluating a composite mark containing both words and designs, the verbal portion of the mark is most likely to indicate the origin of the goods to which it is affixed because it is the verbal portion of the mark that consumers would use to refer to or request the goods. *In re Viterra Inc.*, 101 USPQ2d at 1908, 1911. This principle is especially important in cases involving restaurant services in view of the propensity of persons to try restaurants based upon word-of-mouth recommendations. *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987). Thus, although the design portion of Applicant’s mark is larger than the literal portion, the most dominant portion of the mark is the

phrase CASA DO FADO. Moreover, it is the words that consumers are most likely to remember.

With respect to this phrase, Applicant argues that “CASA DO” is the dominant feature since it is the first part of the phrase. We disagree. “Casa” is defined in Portuguese as “house.”<sup>4</sup> Further, the meaning of the word “casa” as “house” has become so well known in the United States that it is included in multiple dictionaries, which suggests that it has become incorporated into American English.<sup>5</sup> Thus the phrase “CASA DO,” which means “house of,” modifies the word FADO and is subordinate thereto. As discussed *supra*, the dominant feature of a mark is given more weight than a subordinate feature. Moreover, dominant feature of both marks is legally identical.<sup>6</sup>

The presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical. *In re Mighty Leaf Tea*, 601 F3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010), and cases cited therein. This

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<sup>4</sup> “CASA DO’ ... means ‘house of’ in Portuguese.” Appeal Brief, p. 8, 14 TTABVUE 9.

<sup>5</sup> Definitions of “casa” include:

“A house.” casa.Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/casa> (accessed: April 20, 2015).

“A house or mansion.” *Webster’s Revised Unabridged Dictionary*. S.v. “casa.” <http://www.thefreedictionary.com/Casa> (accessed: April 20, 2015).

<sup>6</sup> We acknowledge that the mark FADÓ in the cited registration has an accent mark over the letter “O.” However, as discussed *infra*, any difference between this mark and the word FADO is *de minimus*. See *Conwood Corp. v. S.A. Bongrain-Gerard*, 190 USPQ 155, 158 (TTAB 1976) (in considering applicant’s mark GÉRAMONT, “the average member of the American purchasing public would not normally be aware of the significance of the accent mark appearing over the letter ‘E’ of applicant’s mark, and hence would not be apt to place too much significance or reliance on this feature of the mark as a recognition factor. The accent mark would, in any event, be lost when the mark is used orally to order applicant’s cheese.”).

principle is specifically applicable in cases such as this, where the additional terms are subordinate to the term in the cited mark.

Applicant also argues that the meanings of the marks differ because “FADO” is a Portuguese word associated with a type of music and “FADÓ” is an Irish Gaelic term. Appeal Brief, p. 9, 14 TTABVUE 10. With respect to this contention, Applicant further argues that

the Examining Attorney should not assume that consumers will fail to distinguish the meanings of CASO DO FADO and FADO (with accent) – or at least notice that they are from different languages and may have different meanings when applied to restaurant services.

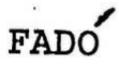
*Id.* Even if we accept Applicant’s argument, it applies to consumers familiar with Portuguese and Irish Gaelic languages. The vast majority of ordinary consumers are not familiar with either of these languages.

Moreover, there is no evidence that consumers will either know that these terms are from different languages or that they will distinguish the meanings of these terms. Punctuation, such as the accent mark over the letter “O” in the cited mark does not per se change the character of the mark. *See In re Champion International Corp.*, 196 USPQ 48, 49 (TTAB 1977) (holding that no distinction can be drawn between “CHECK MATE” with or without a hyphen between the words); *see also Black and Decker Manufacturing Co. v. Big Yank Corp.*, 231 USPQ 484, 486 (TTAB 1986); *Winn’s Stores, Inc. v. Hi-Lo, Inc.*, 203 USPQ 140 (TTAB 1979). Further, since there is no correct pronunciation of a trademark, one can assume that the pronunciation of the dominant portion of Applicant’s mark could be identical to the pronunciation of the cited mark. *StonCor Grp., Inc. v. Specialty*

*Coatings, Inc.*, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014) (“there is no correct pronunciation of a trademark that is not a recognized word”).

Accordingly, we find that the similarity between the marks outweighs any differences and thus we find that the marks are confusingly similar.

C. Conclusion

Having considered all the evidence and argument on the relevant *du Pont* factors, we find that Applicant’s mark, used in connection with “hotel and restaurant services” is likely to cause confusion with the cited mark  for “restaurant services.”

**Decision:** The refusal to register Applicants’ mark  is affirmed.