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Precedent of the TTAB

Mailed: February 19, 2015

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re World of Wine Events, LLC

Serial No. 86013688

Rob G. Leach of Charmasson Buchaca & Leach LLP for World of Wine Events, LLC.

Betty Chang, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

Before Kuhlke, Cataldo and Wellington,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

World of Wine Events, LLC (“Applicant”) seeks registration on the Principal Register of the mark SAN DIEGO BAY WINE & FOOD FESTIVAL in standard characters for

arranging, organizing, conducting, and hosting social entertainment events; conducting entertainment exhibitions in the nature of food and wine festivals; consultation in the field of special event planning for social entertainment purposes; entertainment services, namely, wine and food tastings

in International Class 41.<sup>1</sup> Applicant filed the involved application with a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), and a disclaimer of the exclusive right to use the term WINE & FOOD FESTIVAL apart from the mark as shown.

The Trademark Examining Attorney has refused registration of Applicant's mark on the ground of a likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), in view of the mark SAN DIEGO BAY, registered to San Diego Unified Port District on the Supplemental Register for

promoting business and tourism, namely, providing information concerning events, attractions, accommodations, retail-shop locations, harbor activities, marine activities, and boating activities and services therefor on and around San Diego Bay consisting of 27 miles of waterfront along the five cities of San Diego, Coronado, Chula Vista, Imperial Beach, and National City

in International Class 35;<sup>2</sup> and registered by the same entity on the Principal Register with a claim of acquired distinctiveness under Trademark Act Section 2(f) for

Promoting the economic development in the waterfront area of San Diego and promoting business, namely, providing information concerning events, attractions, accommodations, retail-shop locations, harbor activities, marine activities, and boating activities and services therefor on and around the bay area consisting of 34 miles of waterfront along five cities of San Diego, Coronado, Chula Vista, Imperial Beach, and National

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<sup>1</sup> Application Serial No. 86013688 was filed on July 18, 2013, based upon Applicant's allegation of first use of the mark anywhere and in commerce on December 1, 2004, under Section 1(a) of the Trademark Act.

<sup>2</sup> Registration No. 2652995 issued on November 19, 2002. Section 8 affidavit accepted. Renewed.

City; Promoting tourism in the San Diego waterfront area and promoting business, namely, providing information concerning events, attractions, accommodations, retail-shop locations, harbor activities, marine activities, and boating activities and services therefor on and around the bay area consisting of 34 miles of waterfront along five cities of San Diego, Coronado, Chula Vista, Imperial Beach, and National City area

in International Class 35.<sup>3</sup>

Applicant filed a request for reconsideration and appealed the final refusal. The Examining Attorney denied the request for reconsideration. The refusal has been fully briefed by Applicant and the Examining Attorney, including a reply brief from Applicant.

### **Likelihood of Confusion**

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 considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

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<sup>3</sup> Registration No. 3540205 issued on December 2, 2008.

*Registration No. 3540205*

For purposes of the *du Pont* factors that are relevant to this appeal we will consider Applicant's involved mark and the mark that is the subject of cited Registration No. 3540205. If likelihood of confusion is found as to the mark and services in this registration, it is unnecessary for us to consider the other cited registration because the identical mark identifies services that essentially are encompassed by those recited in Registration No. 3540205. Conversely, if likelihood of confusion is not found as to the mark and services in this registration, we would not find likelihood of confusion as to the mark and services in the other cited registration.

*Scope of Protection Accorded the Cited Mark*

As Applicant notes, this mark is registered on the Principal Register with a claim of acquired distinctiveness under Section 2(f). Applicant argues that registrant's "mark is geographically descriptive and weak, entitling the mark to only a narrow scope of protection, meaning that the marks and services must be *substantially identical* for a likelihood of confusion." 4 TTABVue 6.<sup>4</sup>

While we find the marks to be conceptually weak, Applicant misstates the standard for the scope of protection to be accorded such a mark. Rather, it is settled that the scope of protection to be afforded a mark issued on the

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<sup>4</sup> Record citations are to TTABVue, the Trademark Trial and Appeal Board's publically available docket history system. See *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

Supplemental Register, cited as a bar to registration on the ground of likelihood of confusion, “has been limited to the substantially identical notation and/or to the subsequent use and registration thereof for substantially similar goods” in order for us to find a likelihood of confusion.<sup>5</sup> See *Hunke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975); see also *In re Clorox Co.*, 578 F.2d 305, 198 USPQ 337 (CCPA 1978). With regard to cited Registration No. 3540205,

The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that merely descriptive and weak designations may be entitled to a narrower scope of protection than an entirely arbitrary or coined word. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005); *Giersch v. Scripps Networks, Inc.*, 90 USPQ2d 1020, 1026 (TTAB 2009); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1957-58 (TTAB 2006); *In re Cent. Soya Co.*, 220 USPQ 914, 916 (TTAB 1984). However, even a weak mark is entitled to protection against the registration of a similar mark for closely related goods or services. See *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974).

TMEP § 1207.01(b)(ix) (January 2015). As a result, we must determine herein whether the Applicant’s involved mark and the mark in cited Registration No. 3540205, issued on the Principal Register with a claim of acquired distinctiveness, are similar and identify services that are closely related.

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<sup>5</sup> This standard of comparison for likelihood of confusion purposes would apply to cited Registration No. 2652995, issued on the Supplemental Register.

*The Services*

We turn now to the *du Pont* factor involving the relatedness of Applicant's services and Registrant's services. It is settled that in making our determination, we must look to the services as identified in the application vis-à-vis those recited in the cited registration. *See Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). It is also not necessary that the respective services be competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective services are related in some manner, or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originated from the same producer. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

In this case, Applicant arranges, organizes, conducts and hosts entertainment events and exhibitions, including wine and food festivals, and provides consultation in connection therewith. Registrant promotes tourism, economic development and business in the San Diego waterfront area by providing information concerning events, attractions, accommodations, retail shops, and marine-related events. The Examining Attorney argues that "the evidence of record shows that the same entity commonly arranges, organizes

or conducts events related to food and wine events and provide[s] information about those or other events under the same marks.”<sup>6</sup> In support of her position, the Examining Attorney has submitted, with her January 7, 2014 final Office Action, evidence in the form of the following Internet webpages purporting to demonstrate that services of the types identified in the application and the cited registration have been offered by a single company under the same mark.

S and B Events conducts and provides information about Alexandria’s Food and Wine Festival.  
[alexandriafoodandwine.com/contact-us-2](http://alexandriafoodandwine.com/contact-us-2) and  
[alexandriafoodandwine.com](http://alexandriafoodandwine.com);

Trigger Agency produces “Fine Wine, Beer and Spirits Events” and provides information about them.  
[triggeragency.com/about](http://triggeragency.com/about) and  
[drinkeatreax.com/events](http://drinkeatreax.com/events);

Coastal Luxury Management (CLM) “operates several annual multi-day events with offerings from wineries, celebrity chefs, tastings and cooking demos” and provides information about Pebble Beach Food & Wine, Los Angeles Food & Wine Festival, and others.  
[inc.com/profile/coastal-luxury-management](http://inc.com/profile/coastal-luxury-management) and  
[pbfw.com/index.cfm/clm\\_ventures.htm](http://pbfw.com/index.cfm/clm_ventures.htm);

Austin Food and Wine Alliance fosters “awareness and innovation in the Central Texas culinary community through grants, education, programming and events” and provides information about the events Live Fire!, Wine & Swine Annual Pig Roast and Chef Wine & Dine Series.  
[austinfoodwinealliance.org](http://austinfoodwinealliance.org);

Charleston Wine + Food Festival is a non-profit organization that conducts the Festival and other events, and provides information about them.  
[charlestonwineandfood.com/about-the-festival](http://charlestonwineandfood.com/about-the-festival);

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<sup>6</sup> 6 TTABVue 14.

Ashville Wine & Food Festival conducts the Festival and provides information about it.  
[ashevillewineandfood.com/about-festival](http://ashevillewineandfood.com/about-festival);

The Big Sur Food and Wine Festival “is a giving organization that holds events to promote Big Sur as a culinary destination” and provides information about the Festival.  
[bigsurfoodandwine.org/about](http://bigsurfoodandwine.org/about);

Brandywine Valley Wine Trail conducts the Brandywine Food and Wine Festival and provides information about it.  
[pawinefestival.com](http://pawinefestival.com);

The Tourism Leadership Council conducts the Savannah Food & Wine Festival and provides information about it.  
[savannahfoodandwinefest.com/index.html](http://savannahfoodandwinefest.com/index.html);

Gourmet Shows produces the Philadelphia Taste Festival of Food Wine and Spirits, and provides information about it and other events.  
[philly.gourmetshows.com](http://philly.gourmetshows.com) and  
[gourmetshows.com](http://gourmetshows.com); and

Cecil County Food and Wine Festival, LLC conducts the Festival and provides information about it.  
[cecilwinefest.com](http://cecilwinefest.com).

With her November 5, 2013 first Office Action, the Examining Attorney made of record the following Internet evidence purporting to show that “the same entity commonly provides the relevant services unrelated to food and wine, under the same or similar marks.”<sup>7</sup>

Plan Ahead Events provides on-site event management services and markets events by providing information.  
[planaheadevents.com/onsite-eventmanagement.html](http://planaheadevents.com/onsite-eventmanagement.html);

The Great Event.com plans events and markets them by providing information.  
[thegreatevent.com](http://thegreatevent.com); and

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<sup>7</sup> 6 TTABVue 15.



The Event Group International plans corporate events including marketing the events.  
teginternational.com/Corporate-Event-Planners/corporate-eventplanning-packages.

With one possible exception, all of the Examining Attorney's evidence appears to show that a single entity plans, organizes and conducts, *inter alia*, wine and food festivals and provides information about those events. However, this evidence fails to demonstrate that a single entity conducts wine and food festivals and other entertainment events and also provides information about events other than the ones they themselves conduct. In other words, the Examining Attorney's evidence shows only that entities conducting entertainment events including wine and food festivals may also provide information about those entertainment events. But only two of the Internet websites (philly.gourmetshows.com and gourmetshows.com) may be read as indicating that the same entity also provides information about other entertainment events; and it is not at all clear that these sites provide information in relation to promoting business, tourism and economic development. As a result, we find insufficient support for the Examining Attorney's position that the services are sufficiently related for purposes of our likelihood of confusion determination.

Accordingly, we find that the *du Pont* factor of the similarity or dissimilarity of the services favors a finding of no likelihood of confusion.

*The Marks*

Next we consider the similarity or dissimilarity of the marks at issue in their entireties as to appearance, sound, connotation and commercial impression. *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). While we consider each mark in its entirety, 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 that our ultimate conclusion rests upon a comparison of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The Examining Attorney contends that Applicant's mark merely adds the generic wording WINE & FOOD FESTIVAL, which serves no source-identifying function, to the cited mark. Applicant, for its part, contends that the cited mark consists of a weak, geographically descriptive term, and that

It would be a severe and unfair limitation on free enterprise to deprive others from using "San Diego Bay" in combination with other words and terms in their trademarks, especially over such an enormous geographical area in which there are numerous such businesses. If that was the case, [Registrant] would have an unfair monopoly on the descriptive words "San Diego Bay", spanning an enormous territory surrounding San Diego Bay in which businesses need to fairly compete, including the use of the same geographically descriptive words, but in combination with other words to draw a distinction between the various marks.<sup>8</sup>

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<sup>8</sup> 4 TTABVue 8.

In support of its contention, Applicant made of record with its June 13, 2014 Request for Reconsideration the following Internet evidence showing use of SAN DIEGO BAY-formative designations for various services.

San Diego Bay Parade of Lights, “a time-honored holiday tradition brought to San Diego by the boating community” featuring “more than 80 boats lavishly decorated according to a new theme every year.”  
sdparadeoflights.org;<sup>9</sup>

San Diego Bayfair, a hydroplane powerboat race  
sandiegobayfair.org;

San Diego Bay Adventures, providing personal watercraft, boat and standup paddleboard tours of San Diego Bay  
sdbayadventures.com; and

San Diego Bay Cruises and Private Yacht Charters, providing power and sailing yacht cruises and boatels (hotels located onboard boats) in San Diego  
sandiegobaycruises.com.

Applicant further made of record a copy of third-party Registration No. 3439438, issued on the Principal Register for the mark displayed below



with a claim of acquired distinctiveness, in part, as to SAN DIEGO BAY PARADE OF LIGHTS, and with PARADE OF LIGHTS disclaimed, for

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<sup>9</sup> This event is sponsored in part by “Unified Port of San Diego,” which appears to be related to San Diego Unified Port District, owner of the cited registrations.

“entertainment, namely, production of a parade; entertainment services, namely, fireworks displays; entertainment in the nature of a parade.”<sup>10</sup>

We note initially that neither Applicant nor the Examining Attorney made of record a definition of SAN DIEGO BAY. We hereby take judicial notice of the commonly known fact that SAN DIEGO BAY describes the bay and waterfront area adjacent to the city of San Diego, California.<sup>11</sup> Thus, as to both Applicant’s mark and that in the cited registrations, the term SAN DIEGO BAY is inherently a weak source indicator because it is geographically descriptive, identifying a well-known area surrounding San Diego, California. Customers would therefore readily entertain the possibility that the term SAN DIEGO BAY might be adopted by any merchant located in the San Diego waterfront area. Nonetheless we agree that SAN DIEGO BAY is the dominant portion of Applicant’s mark, because FOOD & WINE FESTIVAL is the generic name of certain of the recited services and, alone, has no source-indicating capacity.

Because the similarity or dissimilarity of the marks is determined based on the marks in their entirety, the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin*

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<sup>10</sup> This registration subsequently cancelled on January 9, 2015.

<sup>11</sup> The Board may take judicial notice of commonly known facts that are not reasonably in dispute. *See, e.g., In re Brown-Forman Corp.*, 81 USPQ2d 1284, 1286 (TTAB 2006) (Baton Rouge is the capital of Louisiana).

*Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 23, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion”). Thus, we look to the entirety of Registrant’s SAN DIEGO BAY mark and Applicant’s SAN DIEGO BAY WINE & FOOD FESTIVAL mark to determine their similarity and dissimilarity.

The two marks at issue are obviously similar to the extent that Applicant’s mark incorporates the entirety of that of Registrant as its only distinctive – albeit inherently weak – part. Nonetheless, we find that they create different commercial impressions when they are considered in their entireties in the context of the offered services. Applicant’s mark would be perceived as a source of wine and food tastings identified by the designation SAN DIEGO BAY WINE & FOOD FESTIVAL. Registrant’s mark would be perceived as promoting business, tourism and economic development in the nature of information services regarding events, attractions, accommodations, marine activities and shopping in the waterfront area of San Diego, California. Because of these differences in commercial impression, the distinction between the wording SAN DIEGO BAY and SAN DIEGO BAY WINE & FOOD FESTIVAL warrants attention in our determination of whether the marks are likely to engender confusion. We note Applicant’s argument that

the additional words in the Applicant’s mark convey a commercial impression about particular event services, as

opposed to a much broader, non-specific impression conveyed by [Registrant's] mark. In other words, consumers seeing both marks will perceive the additional words in the Applicant's mark as significant and distinguishing because "San Diego Bay" is entirely nonspecific, while "San Diego Bay Wine & Food Festival" is particular to event services, and even to a particular event.<sup>12</sup>

There is sufficient distinction between the ideas suggested by the plain meaning of the words SAN DIEGO BAY used in connection with the specified information services and SAN DIEGO BAY WINE & FOOD FESTIVAL used in connection with the specified event services that we think it unlikely that consumers of the respective services would perceive a commercial relationship between these two marks. Accordingly, we find that the *du Pont* factor of the similarity or dissimilarity of the marks weighs somewhat against a finding of likelihood of confusion.

### *Conclusion*

We have considered all of the arguments and evidence of record, including those not specifically discussed herein,<sup>13</sup> and all relevant *du Pont* factors. In view of the weakness of the respective marks and the different commercial impressions created by the marks at issue when considered in the context of the parties' dissimilar services, we find that Applicant's mark is not likely to cause confusion, mistake or deception as to the source of Applicant's services.

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<sup>12</sup> 4 TTABVue 9.

<sup>13</sup> In view of our determination, we find it unnecessary to consider Applicant's arguments and evidence relating to Registrant's purported implied consent to the registration of Applicant's mark.

**Serial No. 86013688**

*Decision:* The refusal to register is reversed.