

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Gabriel Meffre¹

v.

María y Adelina S.A.

Opposition No. 91164878
against Serial No. 78303363

Brooks R. Bruneau of Mathews Shepherd McKay & Bruneau for
Gabriel Meffre.

María y Adelina S.A., *pro se.*²

Before Hohein, Bucher and Taylor, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

María y Adelina S.A., a corporation of Argentina, seeks
registration on the Principal Register of the mark **SAURUS**
(*in standard character format*) for goods identified in the
application, as amended, as "wines, distilled spirits,

¹ Formerly Etablissements Gabriel Meffre Societe des Grands
Vins de Gigondas.

² A patent agent, Henri Misrahi, of Aventura, FL is listed as
applicant's domestic representative and U.S. correspondent, while
most of applicant's electronic submissions filed with the United
States Patent and Trademark Office were executed by an authorized
corporate representative, Roberto Schroeder.

cordials, liqueurs, aperitifs with a wine base" in International Class 33.³

Gabriel Meffre has opposed the application on the ground of priority of use and likelihood of confusion, alleging that applicant's mark, when used in connection with the identified goods, so resembles opposer's previously used mark, **LAURUS** (*also in standard character format*) registered on the Principal Register by opposer for goods identified as "alcoholic beverages, namely wines" in International Class 33,⁴ as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Lanham Act.

Applicant, in its answer, has denied the salient allegations in the opposition.

By operation of the rules, the record includes the pleadings and the file of the opposed application. Opposer, as part of its case-in-chief, has made of record its pleaded registration by submitting a certified status and title copy of the registration showing that it is subsisting and is

³ Application Serial No. 78303363 was filed on September 22, 2003 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. No allegation of use has been filed.

⁴ Registration No. 2341092 issued to Etablissements Gabriel Meffre Societe des Grands Vins de Gigondas, a corporation of France, on April 11, 2000, based upon an application filed on May 14, 1999, containing allegations of first use anywhere at least as early as September 28, 1994 and first use in commerce at least as early as April 1998. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged. Several subsequent name changes have been duly recorded with the Assignment Division of the United States Patent and Trademark Office.

owned by opposer. Opposer, also as part of its case-in-chief, has made of record the testimonial deposition (along with attached exhibits) of Mr. Thomas Lambert-Laurent, Executive Vice President for Vranken America, opposer's exclusive distributor in the United States, and a subsidiary of Vranken Pommery Monopole (France); and the testimonial deposition (along with accompanying exhibits) of Mr. Anthony Yarborough, Vice President of Robert Jackson & Associates, a private investigation firm. Opposer, in addition, has filed a brief on the case. Applicant, however, submitted no evidence in this proceeding and did not file a brief.

Opposer is a French wine company that produces and sells a variety of wines, many of which are sold in the United States. There are twenty different varieties of opposer's **LAURUS** brand of wines sold in the U.S. by Vranken America. Each bottle bears the **LAURUS** mark as do the cases holding the bottles of wine. Vranken America, opposer's exclusive U.S. distributor of **LAURUS** brand wines, sells that product through wholesalers and directly to retailers, restaurants, hotels and other individual accounts. Distributors and wholesalers who receive **LAURUS** wine from Vranken America in turn sell it to the retail market, such as wine or liquor stores, restaurants or hotels.

LAURUS wines are advertised nationally, regionally and locally in the United States. Advertisements made of record include ones appearing in national magazines like Wine Spectator, and national newspapers such as The New York Times. Depending upon the varietal of wine, opposer's **LAURUS** brand wines are offered at the retail level at a broad spectrum of price points, ranging from twelve to sixty dollars a bottle.

Opposer's standing is a threshold inquiry made by the Board in every *inter partes* case. In Ritchie v. Simpson, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999), the Court of Appeals for the Federal Circuit enunciated a liberal threshold for determining standing, i.e., whether one's belief that one will be damaged by the registration is reasonable and reflects a real interest in the case. See also Jewelers Vigilance Committee Inc. v. Ullenberg Corp., 823 F.2d 490, 2 USPQ2d 2021, 2023 (Fed. Cir. 1987); and Lipton Industries, Inc. v. Ralston Purina Company, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). We find that opposer has established its standing in view of its demonstrated ownership of its subsisting **LAURUS** registration.

With regard to the issue of priority in relation to the goods set forth in opposer's pleaded registration, because opposer has established that it owns a valid and subsisting

registration of its pleaded mark, the issue of priority does not arise. See King Candy Company v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); and Carl Karcher Enterprises Inc. v. Stars Restaurants Corp., 35 USPQ2d 1125 (TTAB 1995).

We turn, then, to the issue of likelihood of confusion under Section 2(d) of the Trademark Act. Specifically, the focus of our determination is on the issue of whether applicant's **SAURUS** mark, when used in connection with wines, distilled spirits, cordials, liqueurs, and aperitifs with a wine base, so resembles opposer's **LAURUS** mark as to be likely to cause confusion, to cause mistake or to deceive as to source or sponsorship.

Our determination of likelihood of confusion must be based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also In re Majestic Distilling Company, 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 and differences in the marks."

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).

Turning first to the goods, applicant seeks to register and use its mark in connection with wine - the precise goods listed in the cited registration. The other alcoholic beverages that applicant lists, including drinks having a wine base, are closely related to opposer's wine.

We turn next to several related du Pont factors, such as channels of trade and conditions of sale. Inasmuch as there are no limitations as to the channels of trade in either applicant's application or in opposer's registration, we must assume that the parties' alcoholic beverages would be sold in the same channels of trade and to the same classes of consumers. See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) [the question of likelihood of confusion must be determined based on an analysis of the mark as applied to the goods recited in applicant's application vis-à-vis the goods recited in an opposer's registration]; see also, Pennwalt Corp. v. Center Lab., Inc., 187 USPQ 599, 601 (TTAB 1975); and Sterling Drug Inc. v. Merritt Corp., 119 USPQ 444, 445 (TTAB 1958).

As to the conditions under which the goods are sold to consumers, opposer makes the interesting argument that imbibing consumers may have even less ability than the general consuming public at large to make distinctions between or among such similar marks:

Finally, Gabriel Meffre wishes to point out to the Board that sales of its LAURUS wines do take place at restaurants and hotels... Accordingly, selection and purchase of wine and other alcoholic products can take place by consumers after they have imbibed such products or other alcohol, further inhibiting any potential claimed discrimination by consumers. Accordingly, the conditions under which sales are made are in fact ripe to create consumer confusion given the strong similarity between the marks.

Opposer's brief, p. 19.

We are in agreement that these factors related to the relationship of the goods - the channels of trade and conditions of sale - also favor the position taken by opposer.

We turn next to examine the similarity or dissimilarity of the parties' marks in their entireties as to appearance, sound, connotation and commercial impression (See Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005)), bearing in mind that "[w]hen marks would appear on virtually identical goods or services, the degree of similarity [of the marks] necessary to support a conclusion of likely

confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994).

In this context, opposer argues that the parties' marks are confusingly similar as to appearance, sound and meaning.

As to appearance, both marks are six letters long, and there is only one letter difference between the two marks. We find that the striking, overall similarities are much more critical than is the difference between the first letters. And of course, the test is not whether applicant's mark can be distinguished from opposer's mark when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the goods offered under the respective marks is likely to result. 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).

As to the strong similarity in sound, opposer argues that this is a case where the similarity in sound alone is sufficient to find a likelihood of confusion. Molenaar, Inc. v. Happy Toys, Inc., 188 USPQ 469 (TTAB 1975); and In Re Cresco Manufacturing Co., Inc., 138 USPQ 401 (TTAB 1963).

We agree that when sounded out in their entireties, there is great similarity in the sound of the respective marks. The fact that the leading letter will inevitably result in a perceptible aural difference is simply not enough for us to find that the marks are sufficiently dissimilar in sound to overcome a likelihood of confusion.

Opposer argues that the term "LAURUS" has absolutely no meaning in relation to the goods other than the strong source identifying significance this arbitrary designation has achieved in this field.⁵ Applicant argued in its answer that "saurus" comes from Latin and "refers to animals of the family of dinosaur..."⁶ In spite of applicant's arguments to the contrary, we find on this record that **SAURUS** is an arbitrary term without any meaning. Accordingly, as to connotation and commercial impression, both marks represent arbitrary terms as applied to wines and other alcoholic beverages.

⁵ Applicant argued in its answer that "[i]n [L]atin, 'Laurus' means 'Triumph,' whereas in English, 'Laurus' refers to a plant." Of course, this has not been shown as applicant presented no supportive evidence of this meaning during the testimony period.

⁶ Again, this has not been shown, as applicant presented no supportive evidence of this meaning during the testimony period. Furthermore, opposer points out that WEBSTER'S NEW WORLD DICTIONARY (Third college ed.) does identify "-saurus" as a suffix drawn from the Latin word for "lizards" and "used to form the scientific means of certain genera of reptiles." However, used alone, it is not an English-language word, and opposer argues that there is no demonstration that this suffix alone would be recognized by consumers as suggesting dinosaurs.

Hence, we find that in spite of the difference in leading letters, the two marks are highly similar as to appearance, sound, connotation and commercial impression.

As to the du Pont factor focusing on the length of time during and conditions under which there has been contemporaneous usage without evidence of actual confusion, inasmuch as **SAURUS** is an intent-to-use application and the record contains no proof that applicant has ever used this mark in the U.S. on wines, or in connection with any other alcoholic beverage, we find that there have been no opportunities for consumer confusion to have occurred. This factor is therefore neutral.

In conclusion, we find that the goods herein are identical and otherwise closely related, that the channels of trade and potential customers are presumed to be substantially the same, if not identical, and that the marks are confusingly similar as to appearance, sound, connotation and commercial impression. Hence, we find that there is a likelihood of confusion.

Decision: The opposition based upon Section 2(d) of the Lanham Act is hereby sustained, and registration to applicant is refused.