

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Corby Distilleries Limited
v.
Augusto Ramon Lopez, Eva Maria Lopez
and Maximo Ignacio Lopez

Opposition No. 91180144
to application Serial No. 77046563
filed on November 17, 2006

James D. Weinberger of Fross Zelnick Lehrman & Zissu, P.C.
for Corby Distilleries Limited.

Augusto Ramon Lopez, Eva Maria Lopez and Maximo Ignacio
Lopez, *pro se*.

Before Bucher, Grendel and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Augusto Ramon Lopez, Eva Maria Lopez and Maximo Ignacio
Lopez ("applicants") filed an intent-to-use application on
the Principal Register for the mark LAM, in standard
character form, for "rum," in Class 33.

Corby Distilleries Limited ("opposer") filed a notice
of opposition against the registration of applicant's mark
on the grounds of priority of use and likelihood of
confusion pursuant to Section 2(d) of the Trademark Act of

1946, 15 U.S.C. §1052(d).¹ Opposer alleged that it has been continuously selling LAMB'S rum in the United States since the early 1980's and that applicant's mark is likely to cause confusion with opposer's mark. Opposer also alleged ownership of the following registered marks:

1. Registration No. 0580457 for the mark LAMB'S, shown below, for rum.²



2. Registration No. 1677813 for the mark ALFRED LAMB, shown below, for "alcoholic beverage; namely, rum."³



3. Registration No. 1872733 for the mark LAMB'S NAVY RUM, typed drawing form, for "alcoholic beverage, namely, rum."⁴

¹ Opposer also pleaded a dilution claim pursuant to Section 43(c) of the Trademark Act of 1946, 15 U.S.C. §1125(c). However, because opposer did not reference dilution in its brief, we consider that claim to be waived.

² Issued September 29, 1953; Sections 8 and 15 affidavits accepted and acknowledged; third renewal.

³ Issued March 3, 1992; Sections 8 and 15 affidavits accepted and acknowledged; renewed.

⁴ Issued January 10, 1995; Sections 8 and 15 affidavits accepted and acknowledged; renewed. Opposer disclaimed the exclusive right to use the term "Navy Rum."

Applicant, in its answer, denied the salient allegations in the notice of opposition.

The Record

By rule, the record includes applicant's application file and the pleadings. Trademark Rule 2.122(b), 37 CFR §2.122(b). In addition, opposer introduced the following testimony and evidence:

1. A notice of reliance on certified copies of opposer's pleaded registrations showing the current status and title to the registrations; and,

2. The testimony deposition of Howard Charles Kirke, opposer's Vice President of External Affairs, with attached exhibits.

Applicant did not submit any testimony evidence, nor did applicant file a brief on the case.

Standing

Because opposer has properly made its pleaded registrations of record, opposer has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

Priority

Because opposer has properly made its pleaded registrations of record, Section 2(d) priority is not an

issue in this case as to the marks and the goods covered by the registrations. *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*,

476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks").

A. The similarity or dissimilarity and nature of the goods described in the application and registrations.

The goods in the application and opposer's registrations are identical: rum.

B. The similarity or dissimilarity of likely-to-continue trade channels and classes of consumers.

Because the goods described in the application and the cited registration are identical, we must presume that the

channels of trade and classes of purchasers are the same. *See Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) (“Given the in-part identical and in-part related nature of the parties’ goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade”); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) (“Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers”).

C. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 9 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1988). In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there

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is a recognizable disparity between the services. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007).

Furthermore, the 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 and services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than a specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The terms LAMB'S and LAM are phonetically similar. They are also visually similar because they both begin with

the letters L-A-M.⁵ There is little, if any, trademark significance in the apostrophe letter "s" in opposer's mark. See *Winn's Stores, Incorporated v. Hi-Lo, Inc.*, 203 USPQ 140 (TTAB 1979) ("little if any trademark significance can be attributed to the apostrophe and the letter 's' in opposer's mark" WINN'S when compared to applicant's mark WIN-WAY). See also *Calvin Klein Industries Inc. v. Calvins Pharmaceuticals Inc.*, 8 USPQ2d 1269, 1271 (TTAB 1988) (the addition of the letter "s" at the end of applicant's mark CALVINS does little distinguish it from opposer's mark CALVIN); *In re Curtice-Burns, Inc.*, 231 USPQ 990, 992 (TTAB 1986) (MCKENZIE'S and MCKENZIE are nearly identical). When used in connection with rum, LAMB'S (or LAMB) and LAM are equally arbitrary, and thus they engender the same commercial impression. Accordingly, we find that the marks are similar in appearance, sound, meaning and commercial impression.

F. Balancing the *du Pont* factors.

In view of the similarity of the marks, the identity of the goods and the presumption that the channels of trade and classes of consumers are the same, we find that applicants'

⁵ With respect to opposer's registered mark LAMB'S NAVY RUM, we find that the name "Lamb's" is the dominant part of that mark because the term "Navy Rum" is descriptive. See *Kirke Dep.*, p. 15 ("Navy rum traditionally was given a tot . . . which is a ration that they would give the naval officers and the seaman on the . . . ships"). We also note that opposer disclaimed the exclusive right to use "Navy Rum."

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registration of their mark LAM for rum is likely to cause confusion with opposer's marks LAMB'S (stylized) and LAMB'S NAVY RUM registered for rum.⁶

Decision: The opposition is sustained and registration to applicant is refused.

⁶ Because we find that applicant's mark is likely to cause confusion with the marks LAMB'S (stylized) and LAMB'S NAVY RUM, we do not have to determine whether there is a likelihood of confusion with opposer's ALFRED LAMB (stylized) mark.