

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

Mailed:  
June 26, 2012

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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Duca di Salaparuta S.p.A

v.

Corvus Cellars LLC

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Opposition No. 91191848  
to application Serial No. 77652324  
filed on January 19, 2009

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G. Franklin Rothwell and Anne M. Sterba of Rothwell, Figg,  
Ernst & Manbeck P.C. for Duca di Salaparuta S.p.A.

Anthony M. Verna III of Kravitz & Verna LLC for Corvus  
Cellars LLC

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Before Seeherman, Cataldo and Shaw, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Duca di Salaparuta S.p.A. has opposed the application of Corvus Cellars LLC to register CORVUS and design, as shown below, for wine.<sup>1</sup>



The application contains the following description:

The mark consists of a circle that has a tan 'C' on the left hand side of the circle with the 'C' opening to the right side. There is a copper background and a black raven that fills the lower two thirds of the circle. In the black area that makes up the raven, there is an ivory star, the raven's eye in ivory and the word 'CORVUS' in ivory. The colors black, copper, tan, ivory are claimed as a feature of the mark.

The opposition has been brought on the ground of likelihood of confusion, Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).<sup>2</sup> Specifically, opposer has alleged that since prior to the priority date of applicant's application opposer has used and advertised the mark CORVO in the United States for wine; that it owns a registration

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<sup>1</sup> Application Serial No. 77652324, filed January 19, 2009, asserting first use in November 2006 and first use in commerce in March 2007.

<sup>2</sup> Opposer initially pleaded the ground of dilution as well, Section 43(c) of the Trademark Act, but in its trial brief it withdrew this claim.

for CORVO for wines that was registered in 1950; that its mark is famous and that it acquired such fame prior to applicant's use; that November 2006 is the earliest possible date that applicant can rely on; and that applicant's mark so resembles opposer's previously used and registered mark CORVO that its use on wines is likely to cause confusion or mistake or to deceive.

In its answer applicant has admitted opposer's ownership of its pleaded registration, No. 532892, registered on October 31, 1950, for CORVO for wines; that this registration is valid, subsisting and incontestable; and that applicant has no connection with opposer.<sup>3</sup> Applicant has otherwise denied the allegations in the notice of opposition. Applicant has also made certain assertions in amplification of its denial that its mark is likely to cause confusion. One of these assertions is that opposer "produces, and is known for producing, only Sicilian wines," ¶ 2, and that opposer "is a large company with an international presence." ¶ 9.<sup>4</sup>

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<sup>3</sup> The registration, which was made of record with opposer's notice of opposition, was issued on October 31, 1950. Section 8 and 15 affidavits have been respectively accepted and acknowledged, and the registration has been renewed three times.

<sup>4</sup> One of the allegations made by applicant in these "defenses" is that "CORVO is a descriptive mark for a type of wine (a dry white or red wine from Sicily)." At the discovery conference held between the parties, at which a Board interlocutory attorney participated, the Board attorney explained that an attack on a

By operation of the rules, the record includes the pleadings and the file of the opposed application. Opposer has also made of record, by notice of reliance, applicant's responses to one interrogatory; applicant's responses to certain of opposer's requests for admission; Internet printouts; and articles from printed publications. Opposer also submitted by notice of reliance an additional copy of its pleaded registration. Applicant did not submit any evidence. Opposer and applicant filed trial briefs, and opposer filed a reply brief.<sup>5</sup>

Standing

Opposer has made its registration for CORVO for wine of record. In view thereof, opposer has shown a personal stake in this proceeding, and has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

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pleaded registration can only be made by way of a counterclaim or petition to cancel the registration, and that, because opposer's registration is more than five years old, it could not be cancelled on the ground of mere descriptiveness. The parties agreed that they would not go forward on the affirmative defense and on November 25, 2009 the Board struck the defense of mere descriptiveness.

<sup>5</sup> In opposer's reply brief it makes the statement that applicant's trial brief was untimely and should be stricken. Opposer is advised that a request to strike a brief should be made by separately captioned motion, not included within the body of a brief. Nonetheless, it is noted that the Board accepted applicant's brief in its January 17, 2012 order, and the brief has been considered.

Likelihood of confusion

There are two elements to a claim of likelihood of confusion under Section 2(d) of the Trademark Act: priority and likelihood of confusion. With respect to priority, applicant has admitted opposer's priority. Response to request for admission 7. In addition, in view of opposer's registration for CORVO for wine, priority is not in issue. *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

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, two key considerations are the similarities between the marks and the similarities between the goods and/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).

Applicant has admitted that the parties' goods are identical, response to request for admission No. 8, and

that neither its application nor the opposer's registration have any limitation in the identifications as to the channels of trade, response to request for admission No. 9. The parties' goods are identified in the application as "wine" and in the registration as "wines." Despite these admissions and the identical identifications of the goods, applicant asserts that the goods have a different target market because of the price points, type of wine represented and geography of the fruit, and channels of advertising and sales. Brief, p. 2. We are not persuaded by this argument. As applicant has admitted, the goods as identified are identical and the identifications contain no limitations as to channels of trade. Therefore, the goods must be treated as legally identical, and we must assume that the parties' wines can be the same type, made from fruit from the same geographic locations, sold at the same price points, be directed to the same classes of purchasers, and be advertised in the same media and sold 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). The du Pont factors of the

similarity of the goods and the channels of trade favor opposer.

As for the factor of the conditions of purchase, wine is purchased by the adult members of the public at large. They include both those who are knowledgeable about wine, and those who are not. Moreover, wine can be sold at various price points, including inexpensive, mass market wines that may be purchased by indiscriminating purchasers without great care. See *In re Jacob Demmer KG*, 219 USPQ 1199, 1201 (TTAB 1983) (one can concede an enormous growth in recent years of buyer sophistication in wine purchasing without conclusion that this would obviate likelihood of confusion or transform all buyers into discriminating purchasers immune from source confusion). Although applicant argues that its "\$50 wines cannot be considered an impulse purchase," applicant's identification is not limited to wines sold at this price point. The du Pont factor of the conditions of purchase favors opposer.

We next consider the fame or strength of opposer's mark. Opposer has submitted several hundred articles taken from both general circulation and trade journals for the period from 1978 until 2009, in which its CORVO wine is mentioned. Many of these mentions are casual, for example, a restaurant review for Ristorante Sergio in the October

26, 1984 "Arkansas Democrat-Gazette" says, in the fifth paragraph, "Corvo, an enjoyable but undistinguished Sicilian wine, costs \$14.50 a fifth. A July 3, 1999 article in "The Houston Chronicle" about how to make Sicilian pizza includes on the second page the sentences, "With Sicilian pizza, why not try Sicilian wine? Corvo, a modern winery located there, makes good red and white wines that are available in most wine shops and many supermarkets." A small number of other articles are about opposer and its CORVO wine, e.g., a May 24, 1995 article in the "Birmingham News," discusses Corvo winemaker Franco Giacosa and the history of Corvo wines. Although the articles show that CORVO wine has received some mention throughout the years, the evidence falls far short of establishing that CORVO is a famous mark. Opposer has not submitted any evidence of its sales or its advertising expenditures, or any examples of its direct advertising of CORVO wines, such that we can determine that there have been extensive sales and advertising, or widespread recognition of the mark by the consuming public. Because of the extreme deference accorded to a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting fame to

clearly prove it. *Lacoste Alligator S.A. v. Maxoly Inc.*, 91 USPQ2d 1594, 1597 (TTAB 2009); *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007). The references in the articles are not sufficient to show that CORVO is a famous mark for wine. See *Hard Rock Café Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1407 (TTAB 1998) (articles appearing in newspapers and periodicals throughout the United States in late 80s and early 90s that are about or include references to Hard Rock Café restaurants or clothing and other promotional items not sufficient to prove mark famous).

Although we do not treat opposer's mark as famous, on this record we must find it to be a strong mark. Based on this record, CORVO, which means "raven" in Italian, is an arbitrary mark for wine. There is no evidence of any third-party use of CORVO marks. Nor is there any evidence of third-party registrations that would indicate "corvo" has a significance for wine.<sup>6</sup>

We next turn to a consideration of the marks, keeping in mind certain principles of law. First, when marks would

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<sup>6</sup> In its brief, at p. 6, applicant asserts that there are third-party marks for "very different goods and services" and "a number of similar marks in [sic] similar and related goods in the USPTO database." No evidence of such use or registrations has been made of record, and therefore we give this unsupported assertion no weight.

appear on virtually identical goods or services, as they do here, the degree of similarity 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, 1700 (Fed. Cir. 1992). Second, the owner of a registration in typed or standard character format is entitled to depictions of the mark regardless of font style, size, or color. *Citigroup Inc. v. Capital City Bank Group Inc.*, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011). Third, 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). A particular feature of a mark may be more obvious or dominant. *Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992).

Again, opposer's mark is CORVO, registered in typed form, and applicant's mark is shown below:



Because opposer's mark is registered in typed format, opposer is entitled to use its mark in any format, including the lower case lettering used by applicant in its mark. As for applicant's mark, although it includes a prominent design element, we view CORVUS as the dominant element of the mark because it is the only word in the mark, and therefore the part of the mark that can be articulated. As a result, consumers will refer to or call for the product by the term CORVUS, and this portion will therefore make a greater impression upon purchasers. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (If a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services). Thus, the presence of the design element in applicant's mark is not sufficient to distinguish this mark from opposer's mark. Although consumers may note the design element, they are not likely to regard the design as

indicating a separate source for the goods. Likewise, the stylized letter "C" is integrated into the design and serves as a border for both the design and the word CORVUS. It thus is unlikely that consumers would articulate the letter "C" but rather would view it as part of the design.

We recognize that opposer's mark is CORVO and applicant's mark is CORVUS. However, the very small difference in last letter/two letters of the words, like the design element in applicant's mark, is not sufficient to distinguish the marks. The four identical letters that begin the marks make a much greater impact.

Thus, although the marks have some differences in appearance, when they are compared in their entireties the similarities outweigh the differences. We are not persuaded by applicant's argument that in comparing the marks we should consider the manner in which opposer's mark is shown in the specimens submitted with its renewal applications. First, the specimens of use submitted by opposer in connection with the renewals of its registration are not of record. Second, opposer's mark is registered as a typed drawing and therefore, as pointed out above, opposer is entitled to use the mark in any typestyle.

As for pronunciation, because the marks begin with the same syllable, and most two-syllable English words are

pronounced with the accent on the first syllable, the marks are very similar in sound. With respect to the meaning of the marks, opposer points to applicant's admissions that CORVUS refers to a constellation known as "The Crow," response No. 5; that "corvo" translates as "raven", Response No. 6; that a raven is a black bird, response No. 7; and that the design portion of applicant's mark includes a black bird, response No. 3. We are not convinced that most purchasers of opposer's and applicant's products would be aware that CORVO means raven and CORVUS is the name of the Crow constellation, let alone that they would make a connection between raven and crow because each is a black bird and applicant's mark includes the design of a black bird, and therefore view both marks as conveying a similar meaning. We think it more likely that consumers would consider CORVO and CORVUS not to have a meaning at all, or to be made up words having the same "meaning." However, to the extent that consumers are aware that CORVO means raven, the black bird design in applicant's mark would certainly reinforce this meaning and therefore the connection with opposer's mark.

Because of the overall similarity of the marks, we find that this du Pont factor favors opposer.

Applicant points out that there is no evidence of actual confusion. However, it has often been recognized that such evidence is very difficult to obtain. *Lebanon Seaboard Corp. v. R&R Turf Supply Inc.*, 101 USPQ2d 1826, 1834 (TTAB 2012). Certainly we cannot infer from the lack of such evidence that confusion is not likely, since on this record we have no information as to the extent of either opposer's or applicant's sales or marketing, and therefore whether there has been an opportunity for confusion to occur. Thus, we treat the du Pont factors of evidence of actual confusion and lack of evidence of actual confusion as neutral.

As for the extent of potential confusion, because wine is a widely available consumer item, the extent of potential confusion is high. This factor favors opposer. We treat the remaining du Pont factors, to the extent that they are relevant, as neutral.

In summary, although there are certain differences between the marks, on the whole they convey similar commercial impressions because of the close similarity of the word elements. When this similarity of the marks is coupled with the other du Pont factors that strongly favor opposer, in particular, the legally identical goods and channels of trade, and unsophisticated purchasers, we find

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that applicant's use of its CORVUS and design mark for wine is likely to cause confusion with opposer's registered mark CORVO for wines.

Decision: The opposition is sustained.