

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
March 8, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

Comité Interprofessionnel du Vin de Champagne
and
Institut National de l'Origine et de la Qualité
v.
Shlomo David Jehonadav

—
Opposition No. 91195709
—

Peter M. Brody of Ropes & Gray LLP for Comité Interprofessionnel du Vin de Champagne and Institut National de l'Origine et de la Qualité.

Sergei Orel of Law Office of Sergei Orel LLC for Shlomo David Jehonadav.

—
Before Holtzman, Mermelstein and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Shlomo David Jehonadav, an individual, filed an application to register the mark CHAMPARTY (in standard character form) for goods identified as “Alcoholic beverages except beers.”¹

—
¹ Application Serial No. 77713059 filed on April 13, 2009, under Trademark Act § 44(d), 15 U.S.C. § 1126(d), with a claimed priority filing date of November 10, 2008. Applicant

Comité Interprofessionnel du Vin de Champagne (“CIVC”) and Institut National de l’Origine et de la Qualité (“INAO”² and, collectively with CIVC, “opposers”) opposed registration of the mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), asserting that applicant’s mark, when applied to applicant’s goods, so resembles the controlled appellation of origin and certification mark CHAMPAGNE, previously used by opposers, as to be likely to cause confusion, mistake or deception. In the notice of opposition, opposers also alleged grounds for opposition under Trademark Act Sections 2(e)(1) (deceptive misdescriptiveness), 2(e)(3) (geographic deceptive misdescriptiveness), and 43(c) (dilution); however, opposers elected not to pursue those claims.³

Applicant denied the salient allegations of the notice of opposition, but has otherwise made minimal efforts to defend himself in this proceeding. Applicant served no discovery requests, took no testimony, made no other evidence of record,⁴ and filed no brief on the case. Opposers, for their part, served no discovery requests but did take testimony, made other evidence of record, and filed a brief on the case.

The Record

subsequently asserted a basis for registration under Trademark Act § 44(e), 15 U.S.C. § 1126(e), with reliance upon Finland registration No. 245309, issued on March 31, 2009.

² This opposer’s preferred acronym, INAO, derives from the opposer’s earlier official name, “Institut National des Appellations d’Origine.”

³ Opposers’ brief at 7, n. 3.

⁴ The day after applicant filed his answer, he filed two pieces of evidence in the form of a copy of a U.S. trademark registration and an article from a website. This evidence was not properly made of record in accordance with Board procedures and, accordingly, we have not considered it.

The record includes the pleadings and, by operation of Trademark Rule 2.122, 37 C.F.R. § 2.122, the application file for the opposed mark. The record also includes the following testimony and evidence made of record by opposers:

1. Testimony deposition upon written questions of Jean-Luc Barbier, Director-General of CIVC (“Barbier dep.”).
2. Testimony deposition of Sam Heitner, Director of the U.S. Champagne Bureau, the U.S. representative of CIVC, with exhibits (“Heitner dep.”).
3. Opposers’ notice of reliance upon the following documents:
 - (a) copies of various advertisements for CHAMPAGNE wines;
 - (b) marketing and promotional materials for CHAMPARTY wines;
 - (c) marketing materials of authorized users of opposers’ asserted certification mark;
 - (d) excerpt of the website of the Champagne Bureau;
 - (e) excerpt of online wine retailer’s website.

Standing

Opposers’ witness testified that INAO was created under the laws of France and granted regulatory powers to establish and define controlled appellations of origin.⁵ French law also created CIVC as an association of growers, producers and merchants who grow, produce and/or deal in wines bearing the controlled appellation of origin CHAMPAGNE (hereinafter, the “AOC CHAMPAGNE”).⁶ Opposers state that “The CIVC represents and promotes the common interest of all

⁵ Barbier dep. at 13-14.

⁶ *Id.* at 15.

those who grow, produce and deal in AOC ‘CHAMPAGNE’ wines,”⁷ and under French law “the CIVC has official power to make regulations for the champagne trade which have the force of law.”⁸ Opposers contend that the designation CHAMPAGNE is a certification mark that is protectable in the United States under the common law, and that under French law they are charged with the control, promotion, and protection of that certification mark in the United States and elsewhere. Opposers have thus shown that they are not mere intermeddlers and have established their standing to oppose registration of the applicant’s mark. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

The Merits

Opposers contend that under the laws of France, the AOC CHAMPAGNE may be used only on products produced in a specified area within the Champagne region of France and in accordance with conditions specified in laws and regulations relating to the appellation of origin CHAMPAGNE.⁹ Such laws and regulations govern “everything from the planting of the grapes to the picking of the grapes to the multiple steps of production and storage....”¹⁰ Opposers state that the AOC CHAMPAGNE, as applied to sparkling wines, enjoys a highly favorable reputation

⁷ *Id.* at 18.

⁸ *Id.* at 17.

⁹ Opposers’ brief at 10; Barbier dep. at 20-21.

¹⁰ Heitner dep. at 9.

in the United States, and that wines offered under the AOC CHAMPAGNE, as authorized by opposers, enjoy a unique positioning in the United States market and are associated in the minds of customers with luxury, “the finer moments in life, celebration and high, high quality.”¹¹ Opposers contend that products bearing the certification mark CHAMPAGNE “have been continuously sold in the United States since the earliest days of the Republic....”¹² Records of opposer CVIC indicate that “Just in the past 10 years, nearly 200 million bottles of AOC ‘CHAMPAGNE’ wines have been exported to the U.S., generating estimated retail sales on the order of 6 to 8 billion dollars.”¹³ Opposers state that the “houses” that offer sparkling wine under the AOC CHAMPAGNE, as authorized by opposers, spend “many millions of dollars” annually on advertising in the United States; and that the largest houses, including Moet & Chandon, Taittinger, Veuve Clicquot, and Perrier-Jouet, “each spend millions of dollars a year in advertising in the U.S.”¹⁴ Opposers state that AOC CHAMPAGNE products are sold in the U.S. through “a wide variety of channels, from the high-end wine store to online to some supermarkets, some local stores, general product stores, as well as in duty-free shops,” liquor stores, restaurants and bars.¹⁵ Products authorized by opposers “routinely are sold side-by-side with other wine and sparkling wine products, spanning a wide variety of

¹¹ *Id.* at 19.

¹² Barbier dep. at 25.

¹³ *Id.* at 26.

¹⁴ Opposers’ brief at 13; Barbier dep. at 26.

¹⁵ Heitner dep. at 20-23.

prices,”¹⁶ and “the reality of American shelving practice is that sparkling wines are often mixed together, and CHAMPAGNE will be in among sparkling wines or immediately next to other sparkling wines.”¹⁷ Opposers indicate that the relevant customers for AOC CHAMPAGNE “include adults over the age of 21, across varying ages and income levels.”¹⁸ They note that “virtually all demographic groups that drink wine will buy sparkling wine,” and that consumption of CHAMPAGNE, sparkling wines, and still wines is growing among U.S. consumers between the ages of 21 and 45 years old.¹⁹

As noted above, applicant has made only minimal efforts to defend himself in this proceeding and has not meaningfully controverted opposers’ testimony. Nevertheless, even assuming, without deciding, that opposers have the right to control the use of the asserted certification mark CHAMPAGNE in the United States and that opposers have priority of use, we find that contemporaneous use of the marks by the parties is not likely to cause 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). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

¹⁶ Opposers’ brief at 15.

¹⁷ Heitner dep. at 22.

¹⁸ *Id.* at 27.

¹⁹ *Id.* at 25-26.

the goods at issue. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). In this case, opposers have presented arguments and evidence regarding trade channels, classes of consumers, the fame of opposers' mark, third-party uses of similar marks, market interface, the extent of potential confusion, and applicant's alleged intent to trade on the reputation of opposers' mark. As opposers' claim a certification mark, we compare the respective marks as applied to the goods of applicant and the goods of those users authorized by opposers to use the asserted certification mark. For convenience, we will refer to the goods of authorized users of opposers' mark as "opposers' goods."

Addressing first the parties' goods, we find they are legally identical. Applicant's goods, as identified, include all "Alcoholic beverages except beer." We must presume that applicant's goods include all goods of the type described, including within their scope sparkling wines of all levels of quality and price, including sparkling wines identical to those certified by opposers. *Octocom Syst. Inc. v. Houston Computers Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Moreover, we must presume that those goods move in all channels of trade normal for those goods and are available to all classes of purchasers for those goods, including the trade channels and customers of opposers' certified producers. *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

We next consider the similarity or dissimilarity of the marks at issue as to appearance, sound, meaning or connotation, and overall commercial impression. We note opposers' argument that applicant's mark CHAMPARTY differs from the designation CHAMPAGNE only by virtue of its last three letters. Opposers argue that the similar appearance of the two marks is enhanced by the fact that, if the last three letters of each mark are set forth in lower-case presentation, the Y of applicant's mark would "distend[] below the line in the same way that a G would distend below the line [in] that same place so that, at a quick look, it could... certainly be mistaken as CHAMPAGNE."²⁰ Opposers also appear to argue that the dominant portion of the applicant's mark is CHAMPA-, the very letters that are common to both marks.²¹

We find it unlikely that customers of average perceptual abilities would mistake one mark for the other or find the marks to be significantly similar, even if they are used in connection with identical goods. A salient feature of the applicant's mark is the common English word "party" which forms the latter part of the mark. It is highly likely that customers would notice the distinct impression made by this feature of the mark and the suggestion of the word "party." Opposers themselves admit the salience of this feature of the mark, with their suggestion that "the 'CHAMPARTY' mark is likely a combination of 'Champagne' and 'Party.'"²² In view

²⁰ Opposers' brief at 21; Heitner dep. at 31.

²¹ Opposers' brief at 20.

²² *Id.* at 21.

of the salient nature of the element –PARTY, we do not perceive the dominant portion of the mark to be CHAMPA-, inasmuch as this formative has no meaning in English and there is no other reason to view these letters as a unit. Alternatively, consumers may likely perceive CHAMPARTY as a “telescoped” form of CHAMP and PARTY, with a shared letter P. Regardless of the precise interpretation of the mark, the –PARTY component, which is absent from opposers’ mark, is likely to counteract the visual similarities between the two marks in the perceptions of consumers.

Neither can we agree with opposers’ contention that applicant’s mark “implicitly incorporat[es] the entirety of the AOC ‘CHAMPAGNE.’”²³ The designation CHAMPAGNE simply is not included within the applicant’s mark.

The marks are also unlikely to give rise to phonetic confusion. While there is no single “correct” pronunciation for a coined mark like CHAMPARTY, U.S. consumers will likely give the –PARTY portion of the mark a pronunciation similar to that of the common word “party.” By contrast, when CHAMPAGNE is pronounced as it usually is in English, the second syllable rhymes with the English word “pane,” a sound that is not likely to be confused with the sound of –PARTY. If CHAMPAGNE is pronounced according to French standards, it has a sound that is nearly unique in the U.S. market, as the formative –GNE is a rare one in the English language. If consumers perceive the common English word “champ” in the

²³ *Id.*

applicant's mark, they would pronounce it in a manner substantially different from the first syllable of the word CHAMPAGNE.

As to the meanings and connotations of the marks, the designation CHAMPAGNE is well-known to U.S. consumers as a term for a type of sparkling wine.²⁴ CHAMPARTY by contrast, is without any literal meaning. Customers are likely to appreciate this distinction. Opposers suggest that the connotation of "celebration" inherent in the word PARTY might suggest a connection with CHAMPAGNE which, they assert, "has always been... associated with... celebration... in the minds of the consumer..."²⁵ However, there is no evidence to indicate that CHAMPAGNE is more closely associated with celebrations than any other alcoholic beverage, or that the suggestion of a "party" would increase the likelihood that consumers would view the mark CHAMPARTY as similar to CHAMPAGNE.

Overall, we find the marks at issue dissimilar in appearance, sound, meaning and connotation. We see no reason why average customers would perceive applicant's product as "one among numerous brands of AOC 'CHAMPAGNE' sparkling wine";²⁶ the evidence of record shows that wines certified by opposers are typically marketed under highly distinctive brands, not under marks that are built upon a CHAMPA- formative (e.g., Taittinger, Perrier-Jouet, and Veuve Clicquot).

²⁴ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) p. 372. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

²⁵ Opposers' brief at 11.

²⁶ *Id.* at 22.

Neither are customers likely to view the applicant's mark as "a sort of 'brand extension' of the AOC 'CHAMPAGNE'";²⁷ there is no evidence of record to suggest that opposers have ever sought to extend their brand by authorizing the use of an altered form of the CHAMPAGNE appellation. Nor do we see any other reason for consumers to perceive a relationship or other connection between the two marks or between opposers and applicant.

Opposers' claim that the AOC CHAMPAGNE is famous is supported only by the conclusory statements of opposers' witnesses and a small selection of advertisements for certified goods. Moreover, it is impossible from this record to determine to what extent the sales and advertising of certified products by houses such as Moet & Chandon, Taittinger, Veuve Clicquot, and Perrier-Jouet increase the reputation of opposers' mark rather than the reputations of the individual house brands. The record contains insufficient evidence of fame to have a bearing on our assessment of the strength of opposers' mark. *Lacoste Alligator S.A. v. Maxoly Inc.*, 91 USPQ2d 1594, 1597 (TTAB 2009) ("[B]ecause of the extreme deference that we accord 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 that its mark is famous to clearly prove it.").

We note opposers' argument that the record contains no evidence of third-party use of the designation CHAMPAGNE on similar goods.²⁸ In view of

²⁷ *Id.* at 23.

²⁸ *Id.* at 27.

applicant's minimal defensive efforts in this action, the record is undeveloped on this point and we decline to view this as a factor that favors a finding of likelihood of confusion. We accordingly view this factor as neutral.

Finally, we are not persuaded by opposers' effort to show that applicant intended to trade upon the good will represented by opposers' asserted certification mark. Opposers have introduced no direct evidence of applicant's intent to trade off its goodwill, and the mere fact that the marks share some features does not support such an inference. The formation of the mark from the elements CHAM- and - PARTY does not demonstrate such intent, especially in light of our finding that the resulting mark is not similar to opposers' claimed mark. Contrary to opposers' claims, applicant's references to "luxury," "passion," and "refreshing, high-quality wine" in his advertising can indeed be "reasonably... explained as coincidental or innocent."²⁹ Neither do we find applicant's label design to be so highly similar to the artwork associated with the certified products under the Perrier-Jouet brand as to suggest an intentional effort to cause confusion or falsely suggest a connection with that brand.

Having considered the evidence of record and all relevant *du Pont* factors, including those not specifically discussed herein, we find that applicant's mark, as applied to applicant's goods, differs substantially from opposers' asserted certification mark, so as not to be likely to cause confusion, mistake or deception as to the source of applicant's goods.

²⁹ *Id.* at 30.

Opposition No. 91195709

Decision: The opposition is dismissed with prejudice.