

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: July 28, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*Bureau National Interprofessionnel du Cognac and
Institut National Des Appellations d'Origine*

v.

Cologne & Cognac Entertainment

Opposition No. 91250532

J. Scott Gerien and Joy L. Durand of Dickenson Peatman & Fogarty,
for Institut National Des Appellations d'Origine and Bureau National
Interprofessionnel du Cognac.

Richard Gearhart and James Klobucar of Gearhart Law, LLC,
for Cologne & Cognac Entertainment.

Before Wellington, Lykos, and Thurmon, Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

As explained more fully, *infra*, the Board issued a final decision (“Prior Decision”) in this proceeding.¹ The Prior Decision was reversed by the U.S. Court of Appeals for

¹ See 23 TTABVUE (Board’s Prior Decision).

Citations to TTABVUE throughout this decision are to the Board's public online database that contains the opposition file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVUE electronic case file and the second, if provided, represents the page number(s).

the Federal Circuit (“Federal Circuit”).² This proceeding is now back before the Board on remand from the Federal Circuit for a final decision in accordance with the Federal Circuit’s decision.

Applicant, Cologne & Cognac Entertainment, seeks registration on the Principal Register of the composite mark depicted below (“Entertainment” disclaimed):



for

“Audio and video recordings featuring music and artistic performances; compact discs featuring music; digital materials, namely, CDs and downloadable digital audio recordings featuring music; digital music downloadable from the internet; downloadable video recordings featuring music; musical sound recordings; musical video recordings” in International Class 9; and

“Music composition services; production of musical videos; entertainment in the nature of live performances by musical artists; entertainment information services, namely, providing information and news releases about a musical artist; entertainment services by a musical artist and producer, namely, musical composition for others and production of musical sound recordings; entertainment services, namely, non-downloadable pre-recorded music and graphics presented to mobile communications devices via a global computer network and wireless networks; entertainment services, namely, providing non-downloadable prerecorded music, information in the field of music, and commentary and articles about music, all on-line via a global computer network; film and video film production; providing a website featuring non-

² See 26 TTAVUE (Federal Circuit decision).

downloadable videos in the field of music; record master production” in International Class 41.³

Bureau National Interprofessionnel du Cognac (“BNIC”) and Institut National Des Appellations d’Origine (“INAO”) (jointly “Opposers”), oppose the registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), claiming priority and likelihood of confusion with their common-law regional certification mark COGNAC for brandy that comes from the Cognac region of France and is produced in accordance with prescribed standards. Opposers also allege that COGNAC is famous, and that Applicant’s mark, by creating an association with Opposers’ mark, is likely to cause dilution through blurring under Section 43(c) of the Trademark Act (“the Act”), 15 U.S.C. § 1125(c).⁴

³ Application Serial No. 88329690 was filed on March 7, 2019, based upon Applicant’s allegations of use under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). For the International Class 9 goods, Applicant alleges first use and first use in commerce of at least as early as January 21, 2019; and for the International Class 41 services, Applicant alleges first use of its mark in association with those services at least as early as November 7, 2018, and first use in commerce at least as early as January 21, 2019. The description of the mark reads: “The mark consists of a cologne bottle to the left of a bottle with music notes on it. Both previously mentioned bottles are within a sun-style burst with rays extending outward. The wording ‘Cologne & Cognac’ is written below the previously mentioned bottles in a stacked format. The wording ‘Entertainment’ is written below the previously mentioned wording ‘& Cognac’.” Color is not claimed as a feature of the mark.

⁴ In their Notice of Opposition, Opposers claim that Applicant’s mark “falsely suggests a connection with BNIC” under Trademark Act Section 2(a), 15 U.S.C. §1052(a). As Opposers did not pursue the claim in their brief, it was considered waived in the final decision. *See Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013) petitioner’s pleaded descriptiveness and geographical descriptiveness claims not argued in brief deemed waived; respondent’s affirmative defense of failure to state a claim not argued in brief deemed waived), *aff’d*, 565 F. App’x 900 (Fed. Cir. 2014) (mem.); *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1426 n.3 (TTAB 2013) (claim not argued in brief is considered waived). On the ESTTA Notice of Opposition cover sheet, Opposers list “deceptiveness” and “dilution by tarnishment” as additional grounds for sustaining the opposition. These claims were also not actually pleaded in the body of the Notice of Opposition or argued in Opposers’ brief and are thus were not given consideration in the Prior Decision.

Applicant, in its Answer, denied the salient allegations of the Notice of Opposition and asserted various affirmative and putative defenses, including that Opposers failed to state a claim upon which relief can be granted.⁵

I. Board's Prior Decision and Federal Circuit Decision

On August 25, 2022, the Board issued the Prior Decision, finding Opposers had demonstrated that they were each entitled to a statutory cause of action and had established priority in connection with their certification mark and the likelihood of confusion ground for opposition.⁶ However, in a split decision, the Board dismissed the opposition because: (1) Opposers did not prove by a preponderance of the evidence their likelihood of confusion ground for opposition based on the Board's underlying findings that the first, second and third *DuPont* factors each weighed against a likelihood of confusion and that Opposers' COGNAC certification mark was not famous under the fifth *DuPont* factor;⁷ and (2) Opposers' dilution claim was not

⁵ 8 TTABVUE 4. The assertion that Opposers failed to state a claim was deemed waived in the Board's Prior Decision because Applicant did not file a formal motion to dismiss during the interlocutory phase of this case or raise the issue at trial. Fed. R. Civ. P. 12(h)(2); *see, e.g., Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1422 (TTAB 2014) ("As applicant did not pursue the affirmative defenses of failure to state a claim and unclear hands, either in its brief or by motion, those defenses are waived."). In the Prior Decision, the Board deemed Applicant's further allegations in its Answer as "not true affirmative defenses, but rather mere amplifications of Applicant's denials of Opposers' claims." *Societe Des Produits Nestle S.A. v. Taboada*, 2020 USPQ2d 10893, *2 (TTAB 2020).

⁶ 23 TTABVUE.

⁷ The test for determining likelihood of confusion, often referred to as the *DuPont* analysis, derives from the seminal case setting forth possible probative factors. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

In the Prior Decision, the Board determined that the conditions of sale, actual confusion and bad faith *DuPont* factors are neutral. The Federal Circuit, in the Appellate Decision did not find error in the Board's treatment of these factors.

sufficiently pleaded nor was it tried, either expressly or by implied consent by the parties under Fed. R. Civ. P. 15(b), and thus was not before the Board.⁸

Opposers appealed the Board's Prior Decision to Federal Circuit. On August 6, 2024, the Federal Circuit issued a decision "vacat[ing] the Board's holding of no likelihood of confusion and remand[ing] for reconsideration of that issue in light of [the Federal Circuit's] opinion." *Bureau Nat'l Interprofessionnel du Cognac v. Cologne & Cognac Entm't*, 110 F.4th 1356, 1372 (Fed. Cir. 2024) (this decision is hereinafter referred to as the "Appellate Decision" and cited to, in short, as "*Cologne & Cognac*").⁹ In the Appellate Decision, the Federal Circuit found error in the Board's likelihood of confusion analysis as to the first, second, third and fifth *DuPont* factors.

The Federal Circuit also held that Opposers' dilution claim was sufficiently pleaded and remanded the case to the Board for consideration of that claim and, in doing so, specifically "vacate[d] the Board's finding that COGNAC is not famous for purposes of dilution." *Id.* at 1374.

We now revisit this proceeding and make new determinations as to Opposers' likelihood of confusion and dilution grounds for opposition.¹⁰

⁸ The Prior Decision included a concurrence in part and dissent in part from Administrative Trademark Judge Wolfson, who stated her position that Opposers had established a likelihood of confusion between the parties' marks. Judge Wolfson has retired and is substituted by Administrative Trademark Judge Thurmon.

⁹ See 26 TTABVUE (copy of Federal Circuit *Cologne & Cognac* decision); and 23 TTABVUE (Board's Prior Decision).

¹⁰ The Federal Circuit did not address the Board's findings in the Prior Decision regarding Opposers' entitlement to a statutory cause of action or that Opposers have proven priority of use in connection with their COGNAC certification mark vis-à-vis Applicant's mark. Accordingly, we maintain these findings in this decision.

II. The Record

The record comprises the pleadings, the file of Applicant's opposed Application under Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), and the following:

Opposers' Evidence

- Declaration of Amandine Duthilleul, counsel for BNIC, with accompanying Exhibits A1-E7.¹¹
- First Declaration of Joy L. Durand, an associate with the law firm of Dickenson, Peatman & Fogarty, Opposers' counsel, with accompanying Exhibits E8-KKK.¹²
- Second Durand Declaration, with accompanying Exhibits LLL-RRR.¹³

Applicant's Evidence

- Declaration of Travis Davis, Applicant's founder and musical recording artist and songwriter, with accompanying Exhibits A-H. 18 TTABVUE.

III. Geographic Certification Marks

Because this proceeding involves a geographic certification mark, also known as a "regional" certification mark, it is useful to review the provisions of the Trademark Act regarding such marks. Section 4 of the Trademark Act, provides for the registration of "certification marks, including indications of regional origin." Section 45 of the Act defines a certification mark to include "any word, name, symbol, or device, or any combination thereof ... used by a person other than its owner ... to certify regional ... origin ... of such person's goods or services..." 15 U.S.C. § 1127. A geographical certification mark is used to certify "that authorized users' goods or

¹¹ 12-13 TTABVUE.

¹² 14-16 TTABVUE.

¹³ 17 TTABVUE.

services originate in a specific geographic region.” *In re St. Julian Wine Co., Inc.*, 2020 USPQ2d 10595, *2 (TTAB 2020) (finding applicant’s mark REAL MICHIGAN for wine and hard cider likely to cause confusion with the Michigan Appeal Committee’s registered regional certification marks MICHIGAN APPLES and design for “apples”). *See also Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477 (TTAB 2017) (TEQUILA is a regional certification mark for spirits distilled from blue tequilana weber variety of agave plant of Mexican origin); *Swiss Watch Int’l, Inc. v. Fed. of the Swiss Watch Ind.*, 101 USPQ2d 1731 (TTAB 2012) (SWISS and SWISS MADE certify geographic origin of watches, clocks and their components made in Switzerland). *See also, e.g., Cmty. of Roquefort v. William Faehndrich, Inc.*, 303 F.2d 494, 133 USPQ 633 (2d Cir. 1962) (ROQUEFORT for cheese from a municipality in France); *State of Fla., Dep’t of Citrus v. Real Juices, Inc.*, 330 F. Supp. 428, 171 USPQ 66 (M.D. Fla. 1971) (SUNSHINE TREE for citrus from Florida); *Bureau Nat’l Interprofessionnel Du Cognac v. Int’l Better Drinks Corp.*, 6 USPQ2d 1610 (TTAB 1988) (COGNAC for distilled brandy from a region in France).

Section 4 of the Act provides for the registration of certification marks “in the same manner and with the same effect as are trademarks, . . . and when registered they shall be entitled to the protection provided in this chapter [as] in the case of trademarks.” 15 U.S.C. § 1054. However, if registered, Section 14(5) of the Act provides that the registration may be cancelled:

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) **permits the use of the certification mark for**

purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

In other words, a registration for a certification mark may be cancelled at any time if the owner of the certification mark allows use of the certification mark for goods or services not being certified.

In the context of opposition proceedings before the Board, an opposer may also rely upon prior common law rights in an unregistered certification mark. *Bureau Nat'l Interprofessionnel Du Cognac*, 6 USPQ2d at 1614 (citing *Stabilisierungsfonds für Wein v. Zimmermann-Graeff KG*, 199 USPQ 488, 489 (TTAB 1978) (“A federal registration is merely the recognition of a common law right in a mark that existed prior to registration. Section 45 of the Act includes the term ‘certification mark’ in its definition of ‘mark’.”)). However, as explained in *Cmty of Roquefort*, 133 USPQ at 635:

A geographical name does not require a secondary meaning in order to qualify for registration as a certification mark. It is true that section 1054 provides that certification marks are “subject to the provisions relating to the registration of trademarks, so far as they are applicable....” But section 1052(e)(2), which prohibits registration of names primarily geographically descriptive, specifically excepts “indications of regional origin” registrable under section 1054.

A certification mark does not indicate commercial source or distinguish the goods or services of one person from those of another person, but “indicates that the goods or services of authorized users are certified as to a particular aspect of the goods or services.” *St. Julian Wine Co.*, 2020 USPQ2d 10595 at *2; see TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1306.01(b) (May 2025) (“A certification mark

does not indicate origin in a single commercial or proprietary source the way a trademark or service mark does. Rather, the same certification mark is used on the goods or services of many different producers.”). Because the owner of certification mark owner does not, itself, use the mark on the goods or services, the question of whether there is a likelihood of confusion between the certification mark and that of another is based on a consideration of the manner in which the mark is used by the certification mark users. *St. Julian Wine Co.*, 2020 USPQ2d 10595 at *3 (“the analysis is based on the authorized users’ goods”).

The public need not be expressly aware of the certification process which controls use of the designation. It is sufficient that the public recognizes that the designation indicates the geographic region from which the goods or services originate. “The issue is not whether the public is expressly aware of the certification function of the marks or the certification process underlying use of the marks, but rather is whether the public understands that goods bearing the marks come only from the region named in the marks.” *Swiss Watch*, 101 USPQ2d at 1743 (citing *Institut Nat’l des Appellations d’Origine v. Brown-Forman Corp.*, 47 USPQ2d 1875, 1885 (TTAB 1998) (“whether the public is aware of the significance of the designation COGNAC as a certification of regional origin, as opposed to merely an indication of regional origin, simply is not material to our determination of whether the designation is a regional certification mark.”)).

IV. COGNAC as a Geographic Certification Mark

Opposers submitted the testimony declaration of BNIC's counsel, Amandine Duthilleul, who, based upon her personal knowledge, testified that:¹⁴

2. [INAO] is an administrative agency within the French Ministry of Agriculture, Food and Forestry. For over eighty years, INAO has been responsible for establishing, maintaining and protecting, both in France and internationally, France's "appellations of origin" system.

3. COGNAC is a well-known AOC ["appellation of controlled origin"] that has been recognized and protected by INAO and the French government for decades.

5. The COGNAC AOC is used to represent to consumers that a product bearing the COGNAC AOC comes from a defined region of France and was produced in accordance with the local and customary production method now codified in the various Decrees of the Republic of France relating to the production of products bearing the COGNAC AOC.

9. The AOC system is characterized by cooperation between the INAO, producers and merchants, and their interprofessional associations or unions which are known as "interprofessions."

10. BNIC is the interprofessional union of all growers and producers and negociants or merchants who grow, produce or deal in COGNAC *eaux-de-vie* (which is French for "wine spirit") as defined by Article L631-1 et seq. of the French Rural Code. All parties who are engaged in the production, processing and trade of COGNAC are required by law to be a member of BNIC.

15. BNIC also fulfills a number of public functions, such as monitoring stocks of COGNAC, verifying the age of COGNAC and issuing certificates of age and origin. Certificates of origin certify that the COGNAC product has met the exacting standards governing the COGNAC AOC and must accompany every shipment of COGNAC outside of the European Union. In this way, BNIC controls the COGNAC certification mark in the U.S. for wine spirits.

¹⁴ 12 TTABVUE 2-5.

Applicant concedes that “Opposers control a common law certification mark for ‘cognac’ to be used in conjunction with distilled spirit products that meet prescribed standards of quality and content, and that are produced in the Cognac region of France at locations, and under conditions, specified and regulated by French law.”¹⁵

Based on the foregoing record evidence and Applicant’s concession, we find that Opposers have rights in the mark, COGNAC, as a regional certification mark used by growers, producers, and merchants to represent to consumers that a product bearing the COGNAC mark comes from a defined region of France; and was produced in accordance with local and customary production standards now codified in the various Decrees of the Republic of France, treaty provisions between the United States and the European Union, and implementing regulations of the United States, all relating to the production of goods bearing the COGNAC mark.¹⁶

V. Entitlement to a Statutory Cause of Action

Opposers must prove their entitlement to a statutory cause of action. *See Meenaxi Enter., Inc. v. Coca-Cola Co.*, 2022 USPQ2d 602, at *2 (Fed. Cir. 2022) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014) (2014)); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, *3 (Fed. Cir. 2020) (also citing *Lexmark Int’l, Inc.*).

¹⁵ 20 TTABVUE 7.

¹⁶ We further note that, in prior proceedings before the Board, it has been determined that Opposers have rights in the term COGNAC as a regional certification mark. *See Institut Nat’l des Appellations d’Origine*, 47 USPQ2d at 1891 (“undisputed facts of record establish as a matter of law that COGNAC is a common law regional certification mark”); *Bureau Nat’l Interprofessionnel Du Cognac*, 6 USPQ2d at 1614 (“it is clear that the designation ‘COGNAC’ serves as a certification of regional origin, as well as of the quality of the brandy products entitled to bear the designation under French law and regulations. . .”).

In the Prior Decision, the Board found that Opposers met their burden of proof and “established their entitlement to a statutory cause of action.”¹⁷ We stand by this conclusion and incorporate herein to this decision.¹⁸

VI. Priority

In the Prior Decision, the Board found that Opposers met their burden of proof and “have established prior common law rights in the mark COGNAC in the United States.”¹⁹ We stand by this conclusion and incorporate herein this finding, as well as the discussion of evidence and reasoning from the Prior Decision.²⁰

VII. Likelihood of Confusion

The test for determining likelihood of confusion with respect to certification marks is the same as that applied to trademarks, i.e., the *DuPont* analysis derived from the seminal case setting forth possible probative factors.²¹ *In re Accelerate s.a.l.*, 101 USPQ2d 2047, 2049 (TTAB 2012) (quoting *Motion Picture Ass’n of Am., Inc. v. Respect Sportswear, Inc.*, 83 USPQ2d 1555, 1559-60 (TTAB 2007)). We have considered each *DuPont* factor for which there is evidence and argument of record.

¹⁷ 23 TTABVUE 9; and 23 TTABVUE 8-9 (discussion of evidence and basis for conclusion). The issue of Opposers’ entitlement to a cause of action was not before the Federal Circuit on appeal and thus it was not addressed in the Appellate Decision.

¹⁸ 23 TTABVUE 9-12 (discussion of evidence and basis for conclusion as to priority). We further note that the Federal Circuit did not address the issue of priority in the Appellate Decision.

¹⁹ 23 TTABVUE 12.

²⁰ 23 TTABVUE 9-12 (discussion of evidence and basis for conclusion as to priority). We further note that the Federal Circuit did not address the issue of priority in the Appellate Decision.

²¹ *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

See In re Guild Mortg. Co., 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination”).

A. Commercial Strength or Fame of the COGNAC Certification Mark

The fifth *DuPont* factor involves “[t]he fame of the prior mark (sales, advertising, length of use).” *DuPont*, 177 USPQ at 567. The fame or commercial strength of a mark is not a binary factor, but varies along a spectrum from very strong to very weak. *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015). A very strong mark receives a wider latitude of legal protection in the likelihood of confusion analysis, *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017), while a very weak mark receives a narrower scope of protection. A mark in the middle of the spectrum receives an intermediate scope of protection. *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017) (finding that opposer’s marks were entitled to “the normal scope of protection to which inherently distinctive marks are entitled”).

Fame, if present, plays a dominant role in a likelihood of confusion analysis because of the broad scope of protection afforded famous or strong marks. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002);

Kenner Parker Toys Inc. v. Rose Art Indus. Inc., 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992). However, fame for likelihood of confusion purposes arises only so long as a “significant portion of the relevant consuming public ... recognizes the mark as a source indicator,” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 369 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005), or, more precisely stated for the context of the mark at issue here, as an indicator that the brandy that comes from the Cognac region of France and is produced in accordance with prescribed standards.

Opposers are successful in the United States to the extent that 102.4 million bottles of the brandy, certified as COGNAC, were shipped in 2019, valued at approximately \$1,803,900,000.²² Figures for prior years (from 2007 to 2019) show U.S. sales values ranging from \$474,900,000 to \$1,367,400,000 per year.²³ Between 2010 and 2018, Opposer BNIC “spent more than \$650,000 promoting COGNAC in the United States, resulting in more than 660,000,000 media impressions.”²⁴ Ms. Duthilleul also avers that “[i]ndependently, and through partnerships with public relations agencies, [Opposer] BNIC’s marketing efforts in the United States include media and trade relations, events, and robust social media campaigns. BNIC’s marketing efforts showcase the COGNAC AOC and educate on the region’s history, terroir, diversity of products and expertise of its growers and merchants.”²⁵ The

²² 12 TTABVUE 11 (Duthilleul Decl. ¶ 32).

²³ *Id.*

²⁴ *Id.*; ¶ 33.

²⁵ *Id.*; ¶ 34.

record also includes a number of articles from U.S. publications describing a strong sales market for Cognac products.²⁶ Opposer argues that, “[a]s a result of all of the above, the COGNAC certification mark has become famous around the world and in the United States.”²⁷

Applicant disputes Opposers’ claim that COGNAC is a famous certification mark by asserting that “a certification mark does not function as a source identifier” because it “does not distinguish the goods or services of one company from those of another producer, . . . [but] in the Opposers’ case, is **only used** to certify the geographic origin of the products (e.g. spirits).”²⁸ (Emphasis in original). In support, Applicant points to the statutory definition of what constitutes a famous mark, for dilution purposes, namely, “if [the mark] is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner.”²⁹ Applicant focuses on the definition’s ‘designation of source of the goods’ language and asserts that “Opposer[s]’ common law certification mark is, by its very nature, not a source identifier.”³⁰ To further make its point, Applicant raises a hypothetical scenario involving a particular brand of Cognac – “If

²⁶ We do not rely upon this material for the truth of any statements contained therein, but consider them for their likely impact on the U.S. consumer, which appears to make consumers aware of Cognac as a growth market product from 2010 to the present. *WeaponX Performance Prods.*, 126 USPQ2d 1034, 1038 (TTAB 2018).

²⁷ 19 TTABVUE 31.

²⁸ 20 TTABVUE 24.

²⁹ Section 43(c) of the Act, 15 U.S.C. § 1125(c)(2)(A). Applicant frames its arguments that Opposers’ mark is not famous in the context of the dilution ground. Proving fame for likelihood of confusion purposes is not the same as that for dilution, which requires a more stringent showing. *Palm Bay Imports*, 73 USPQ2d at 1694; *Toro Co. v. ToroHead Inc.*, 61 USPQ2d 1164, 1170 (TTAB 2001).

³⁰ 20 TTABVUE 24.

Opposers' argument were that Applicant is utilizing the mark COLOGNE & HENNESSEY [sic] (or another well-known trademarked brand of cognac) that would be a separate issue to which the Applicant would not condone."³¹

In the Prior Decision, the Board rejected Applicant's argument that "there is an absolute bar to any certification mark acquiring fame because it does not indicate the source of goods or services."³² However, the Board considered the possibility that "any popularity or commercial success of the products is more likely to result in the source-identifying mark becoming famous, and less so for the certification mark."³³ The Board acknowledged that determining fame based on sales figures is difficult in such cases and that it is "not an 'either ... or' proposition and, indeed, popularity based on sales volume and advertising may inure to benefit of both the certification mark and source-identifying marks, we must look closer at the evidence and how the marks are presented to the consumer on the goods and in the advertising."³⁴ In doing so, the Board observed that "the record presented in this case reflects that users of Opposers' certification mark, such as Hennessy, often use the term 'Cognac' or 'cognac' (with a lowercase 'c') in advertisements or on the bottles ... inconspicuously or in a manner that is not likely to heighten consumer awareness to the certification status of the term COGNAC."³⁵ Ultimately, after reviewing the evidence and argument of the

³¹ *Id.*

³² 23 TTABVUE 16.

³³ 23 TTABVUE 16-17.

³⁴ 23 TTABVUE 18.

³⁵ 23 TTABVUE 18 (examples (photographs) of such use).

parties, the Board concluded in the Prior Decision that Opposers' COGNAC certification mark is "distinctive and entitled to a normal scope of protection."³⁶

In the Appellate Decision, the Federal Circuit identified errors in the Board's analysis regarding the strength or fame of Opposers' mark. In particular, the Federal Circuit held that it was not proper for the Board to determine whether, and to what degree, the consuming public is aware of COGNAC as a certification mark because "there is no statutory requirement that consumers be aware of the 'certification status' of the mark" and that "such a requirement could be impractical and inconsistent with ordinary purchasing behaviors." *Cologne & Cognac*, 110 F.4th 1366-1367. "The Board should therefore have considered whether or not the mark was famous as an indicator of its geographic origin, but it did not do so." *Id.* at 1367.

The Federal Circuit also took issue with how the Board weighed Opposers' evidence of sales and advertising expenditures for bottles of brandy bearing both a brand name, e.g., Hennessy, as well as the Cognac certification mark. *Id.*³⁷ Specifically, "it was legal error for the Board to require 'unequivocal' evidence that the volume of sales was driven by the COGNAC mark to rebut the presumption it applied that the commercial evidence was attributable to the house mark alone." *Id.* at 1368. Instead, "the Board should have determined, based on the context-specific

³⁶ 23 TTABVue 23.

³⁷ The Federal Circuit pointed out that the "issue of how to address [this type of evidence] is an issue of first impression for [the Federal Circuit]." *Cologne & Cognac*, 110 F.4th 1367. The Federal Circuit then likened the analysis of fame in this case to situations where a "product mark" and a "house mark" are placed on the same product, citing *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 1371 (Fed. Cir. 2002). The Federal Circuit noted that, in *Bose*, the "commercial evidence supported a finding that the product mark was famous even though it accompanied a famous house mark." *Id.* at 1368.

evidence, whether a portion of the sales and advertising evidence could be attributed to the COGNAC mark such that that evidence was indicative of fame for the certification mark.” *Id.* The Board should also “properly credit” other types of “context-specific” evidence, such as news and industry articles reflecting the renown of Cognac as a brandy from France, in order to determine “whether a portion of the sales and advertising evidence could be attributed to the COGNAC [certification] mark.” *Id.*

After reviewing and weighing the evidence in accordance with the guidance provided in the Appellate Decision, we have come to a different conclusion as to the strength of Opposers’ certification mark from that reached in the Prior Decision.³⁸ We find that the evidence establishes that COGNAC is very well-known in connection with brandy throughout the United States and enjoys a strong reputation as a prestigious and quality brandy. Opposers’ COGNAC certification mark is placed at the higher end of the fame or commercial strength spectrum, thus enjoying a wider than normal scope of protection. The fifth *DuPont* factor weighs strongly in favor of finding confusion likely.


B. Similarity of the Marks

Under the first *DuPont* factor, we determine the similarity or dissimilarity of the marks in their entirety, considering their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567; *Palm Bay*, 73 USPQ2d at 1692.

³⁸ The parties’ arguments and discussions of the evidence regarding the strength of the mark, including whether it is famous, are omitted from this decision, but may be found in the Prior Board Decision. See 23 TTABVUE 13-23 (Prior Decision discussion summarizing parties’ arguments and evidence regarding the strength of COGNAC certification mark).

“Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014), *aff’d mem.*, (Fed. Cir. Sept. 13, 2019). *Accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted). “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 2020 USPQ2d 10914, *18 (TTAB 2020) (citing *Coach Servs. Inc. v. Triumph, Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)).

In the Board’s Prior Decision, we found that “although Applicant’s mark



incorporates the term COGNAC, it engenders a different appearance, sound, commercial impression and connotation from Opposers’ certification mark.”³⁹ Specifically, we found that “Opposers’ certification mark, COGNAC, as used by Opposers’ certified users, informs consumers that the brandy being sold by the certified users comes from the Cognac region of France,” whereas “Applicant’s mark ... when viewed in the context of musical goods and services

³⁹ 23 TTABVUE 24.

conjures a different connotation and projects an image of sophistication and elegance.”⁴⁰

In the Appellate Decision, the Federal Circuit cautioned that, “[t]o the extent that the Board reached its conclusion that the connotations of the marks are different because Opposers’ mark is a certification mark, we find that to be legal error.” *Cologne & Cognac*, 110 F.4th 1370. And, “[f]or the Board to have limited COGNAC’s ‘connotation’ to its certification function was error.” *Id.*

The Federal Circuit also stated that “[m]ore importantly, the record shows that Applicant’s mark ‘projects an image of sophistication and elegance’ precisely *because* of its use of COGNAC.” *Id.* at 1370 (italics in original). Thus, the Federal Circuit held that the Board’s “conclusion that the marks have different connotations is contradicted by the record evidence and by the Board’s own findings that COGNAC is associated with affluent and upper-class consumers” and “is therefore not supported by substantial evidence.” *Id.* at 1371. In further making this point, the Federal Circuit cites to language in the dissenting opinion of the Board’s Prior Decision regarding the void of evidence associating the term “cologne” with “affluence, refinement, or the upper class.” *Id.*

Analyzing Applicant’s mark now, we find the phrase COLOGNE & COGNAC is the dominant element. The stacked alliterative phrase, COLOGNE & COGNAC, appears prominently above the smaller and merely descriptive or generic term ENTERTAINMENT. The terms COLOGNE and COGNAC are not only joined with

⁴⁰ 23 TTABVUE 24.

an ampersand, but also possess strong alliterative sound and spelling similarities. Consumers are likely to call for Applicant's goods and services by this catchy and melodious combination. It more clearly and readily identifies the source of Applicant's goods and services than the design. *See, e.g., In re Vittera Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012) ("[T]he verbal portion of a word and design mark likely will be the dominant portion"); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 2001) ("words are normally accorded greater weight because they would be used by purchasers to request the goods"). *See also In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression."). The design elements of a spray container and a bottle will likely be interpreted by consumers as stylized representations of cologne spray bottle and a bottle for brandy, further reinforcing the phrase COLOGNE & COGNAC.

In terms of meaning, the combination of terms "cologne" with "Cognac" creates an image of a person wearing cologne and drinking brandy, projecting a certain lifestyle, such as one of leisure and high-living.⁴¹ With respect to the Federal Circuit's point regarding the lack of evidence showing any connotation that may be attributed to the term "cologne," it is common knowledge that cologne, like any other fragrance,

⁴¹ Several materials introduced by Opposers show how Cognac is perceived as having a reputation for being a drink for an older or affluent clientele, e.g., "For many, the word 'cognac' brings up an image of an older person drinking an amber-coloured liquid from an expensive piece of glassware, with classical music playing softly in the background." 14 TTABVUE 144. Advertisements for the Hennessy brand of Cognac describe it as "The world's most civilized spirit." *Id.* at 154. A copy of an article from Slate magazine, also introduced by Opposers, discusses a long tradition of Americans drinking "cognac" and references "deliveries of cognac to the U.S. during the 19th century, where its refined smoothness was a favorite drink of the upper class ..." *Id.* at 172.

is typically worn to enhance one's image and project a more pleasant appearance in the company of others. Thus, we find, as we did in the Prior Decision, that each term in the phrase, "Cologne & Cognac," and Applicant's mark overall, creates a commercial impression of an affinity for brandy and cologne and, in doing so, suggests an air of sophistication or elegance.

With respect to the connotation and commercial impression of Opposers' certification mark, COGNAC, we are mindful of the aforementioned Federal Circuit's admonition that it was wrong for the Board to conclude Applicant's use of the term "cognac" helps convey a different connotation from Opposers' certification mark, COGNAC. We also keep in mind prior Federal Circuit guidance and the well-established principle that determinations as to a mark's commercial impression must be made in the context of the goods or services and manner in which the mark will be encountered by consumers. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1176 (Fed. Cir. 2004) ("The Board must, of course, determine the commercial impression of a mark in the proper context of the goods or services associated with that mark."). *See also Embarcadero Tech. Inc. v. RStudio Inc.*, 2013 WL 2365029, at *11 (TTAB 2013) ("Our analysis concerning the similarity of the marks, however, does not end with their appearance and sound. Rather, we must also look at any commercial impressions or connotations created by the marks and, in doing so, we consider the marks in relation to the identified goods and services."). Thus, in determining the marks' overall commercial impressions in this case, we determine how a consumer will perceive the term "cognac," as it is used in Applicant's overall mark and in connection with musical recordings and music entertainment. And, we

also look to Opposers' mark, COGNAC, to determine how a consumer will perceive that term, by itself, in connection with brandy.

On remand and in accordance with the recent Federal Circuit guidance, we find the marks share a similarity in sound and appearance inasmuch as Opposers' mark, COGNAC, is one of the more distinctive literal components of Applicant's mark,



In addition, and in accordance with the Federal Circuit's finding that the records shows that Applicant's mark evokes an affluent or sophisticated lifestyle "precisely because" of its inclusion of the term "cognac," that same meaning must be attributed to Opposers' COGNAC mark. Accordingly, the parties' marks share this connotation and consumers may perceive similar commercial impressions being conveyed by the marks.

The aforementioned similarities are countered or tempered by the dissimilarities between the marks based on the additional wording and design elements found in Applicant's mark. Viewed in its entirety, Applicant's composite mark has a "distinct meaning of its own independent of the meaning of its constituent elements." *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991).

Upon reconsideration of the aforementioned similarities and dissimilarities and in view of the Federal Circuit's Appellate Decision, we find the parties' marks are overall more similar than not. When one party incorporates the entire distinctive mark of another, as is the case here, "the inclusion of a significant, nonsuggestive element will not necessarily preclude a likelihood of confusion." *Wella Corp. v. Cal.*

Concept Corp., 558 F.2d 1019, 1022 (CCPA 1977). The first *DuPont* factor therefore weighs more in favor of finding confusion likely in this case.

C. Relatedness of the Goods and Services; Trade Channels; Consumers

We next address the second *DuPont* likelihood of confusion factor focusing on the comparison of the goods and services identified in Applicant's application vis-à-vis the goods certified under Opposers' common law COGNAC certification mark. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Hous. Computs. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Because Opposers' mark is a regional certification mark, we bear in mind that it is not used by its owners, 15 U.S.C. § 1127, but is instead used by authorized users. Accordingly, our analysis is based on the authorized users' goods, which in this case is brandy from the Cognac region of France and produced in accordance with prescribed standards. *See St. Julian Wine Co.*, 2020 USPQ2d 10595 at *3 (citing *E. I. DuPont de Nemours & Co. v. Yoshida*, 393 F. Supp. 502, 185 USPQ 597, 608 (E.D.N.Y. 1975) ("proximity [of products] may be measured against that of the certification mark user...").

Applicant's goods are "audio and video recordings featuring music and artistic performances; compact discs featuring music; digital materials, namely, CDs and downloadable digital audio recordings featuring music; digital music downloadable from the internet; downloadable video recordings featuring music; musical sound recordings; musical video recordings" in International Class 9; and its services are described as "Music composition services; production of musical videos; [various

related entertainment services]; film and video film production; and providing a website featuring non-downloadable videos in the field of music; record master production.”

Opposers argue that “COGNAC certified product has an intimate and legendary history with music, particularly rap and hip hop music, in the United States,”⁴² and that Cognac or the brand names of authorized users (Hennessy, Remy Martin, Courvoisier) are commonly the subject matter of song titles and song lyrics. In support, Opposers submitted copies of several news articles discussing the appearance of the term “Cognac” or brand names of Cognac in hip-hop or rap music lyrics.⁴³ Opposers have also shown that brand owners such as Hennessy have partnered with various musical artists, in particular hip-hop and rap artists, to market Cognac in the United States.⁴⁴

Ms. Duthilleul testified that four musicians have produced “a certified COGNAC product” under a personal brand: CONJURE (by Ludacris with maker Birkedal Hartmann), AFTERMATH (by Dr. Dre with Domaines Francis Abecassis), D’USSE (by Jay-Z with Chateau de Cognac) and BRANSON (by 50 Cent with Raymond Ragnaud).⁴⁵ Opposers also submitted copies of seven third-party registrations (or

⁴² 12 TTABVUE 13,

⁴³ We focus on those articles that predate Applicant’s constructive first use date of March 7, 2019 and repeat that we do not accept the articles for the truth of the matter stated therein, but only for what they show on their face, i.e., public exposure to the references as of the dates released.

⁴⁴ 12 TTABVUE 13 (Duthilleul Decl.)

⁴⁵ *Id.* at 14.

pairs of third-party registrations) for these goods and services in order to show that companies have registered such under a single mark.⁴⁶

In the Prior Decision, the Board held that the probative value of Ms. Duthilleul's testimony regarding musicians involved in the production of Cognac-certified brandy was "limited" because the musicians "only do so under a source-identifying mark distinct from both the musician's name or mark, e.g., CONJURE, AFTERMATH, D'USSÉ and BRANSON" and thus consumers would be encountering "a distinct brand name which serves as its own trademark" and would not necessarily associate the musician with Opposers' certification mark.⁴⁷ In the Appellate Decision, however, the Federal Circuit held that this approach to be "improper[]" and that the fact that the musicians were involved with a Cognac brandy "under a personal brand does not negate their undisputed relationship with certified COGNAC products." *Cologne & Cognac*, 110 F.4th at 1372. The Federal Circuit also instructed the Board to consider certain admissions made by Applicant, including statements made by Applicant's counsel to the Federal Circuit during the appellate oral argument. *Id.*⁴⁸

⁴⁶ 14 TTABVUE 87-142. Two of the seven carry no weight because they issued under Section 44(e) or Section 66(a) of the Trademark Act with no claim of use in commerce.

⁴⁷ 23 TTABVUE 28.

⁴⁸ Specifically, the Federal Circuit referred to a statement from Applicant's principal that "the association between cognac and the music industry is commonplace and has resulted in increased cognac sales." 18 TTABVUE 6 (Davis Decl.). The Federal Circuit also refers to several statements made by Applicant's counsel during the appellate oral argument. *See, e.g., Cologne & Cognac*, 110 F.4th at 1372 ("at oral argument, Applicant's counsel once again reiterated that the record shows that 'the COGNAC houses,' such as REMY and MARTEL, 'are engaging with the hip-hop industry,' ... and that 'there are some players, there are some celebrities who are involved with [the COGNAC industry],' ... Indeed, Applicant's counsel ultimately acknowledged that 'there is an association' between the hip-hop industry and COGNAC.") (internal citations to oral argument omitted). In accordance with the Appellate Decision, we have considered these statements for purposes of this decision.

With respect to Opposers' third-party registration (or pairs of registrations) evidence, the Board made the determination in the Prior Decision that these "only show relatively few entities have sought to adopt the same mark for musical recordings or entertainment services, e.g., SINATRA, MOTORHEAD, AC/DC, etc., and alcoholic beverages" and that it was "unclear how this type of evidence is relevant for purposes of showing that consumers may mistakenly believe Applicant would be involved with Opposers, who are responsible for certifying others to use the term COGNAC for brandy being sold under a different name."⁴⁹ Here, too, the Federal Circuit found "error for the Board to discount that evidence completely" and characterized the evidence as "undoubtedly relevant to the relatedness of goods, services, and trade channels." *Id.* at 1371.⁵⁰ Thus, the evidence showing musicians, mainly rap and hip-hop artists, endorse various brands of Cognac and frequently use the term in song lyrics or titles demonstrates an overlap of trade channels. It also shows that an appreciable number of consumers of Cognac brandy are enthusiasts of a music genre that celebrates different brands of Cognac, and thus there is an overlap of relevant purchasers.

Based on our renewed review of the record evidence, and construing this evidence in accordance with the Appellate Decision, we find that there is a sufficient relationship between COGNAC brandy and Applicant's music-related goods and services, as well as the trade channels and classes of consumers for these goods and

⁴⁹ 23 TTABVUE 28.

⁵⁰ The Federal Circuit also included Opposers' evidence showing use of brands of Cognac being used in lyrics and song titles within the type of evidence that is "undoubtedly relevant to the relatedness of goods, services, and trade channels." *Id.*

services. The evidence shows that an appreciable number of consumers encountering



Applicant's mark in association with recorded music and music-related entertainment services are likely to believe that Applicant's use of the mark has been authorized or endorsed by Opposers, or even if anonymous, the same authority that authorizes the certified users of COGNAC to use that certification mark brandy.

For these reasons, the *DuPont* factors of the relatedness of the goods and services, trade channels, and classes of consumers, all favor a finding of a likelihood of confusion.

D. Balancing the *DuPont* Factors – Conclusion

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument; “explain the results of that weighing;” and “the weight [we] assigned to the relevant factors.” *In re Charger Ventures LLC*, 65 F.4th 1375, 2023 USPQ2d 451, *7 (Fed. Cir. 2023).⁵¹

Opposers' COGNAC certification mark is placed at the higher end of the spectrum in terms of commercial strength spectrum, entitling it to a wider than normal scope of protection. That factor weighs particularly heavy in conjunction with our finding that Applicant's mark is overall similar to Opposers' certification mark in terms of sound, appearance, connotation and commercial impression. The parties' respective

⁵¹ As noted, *supra* (see Note 5), the *DuPont* factors involving the conditions of sale and possible consumer sophistication, actual confusion and bad faith were addressed in the Prior Decision, and all were decided to be neutral in our likelihood of confusion analysis. The Federal Circuit, in the Appellate Decision did not find error in the Board's treatment of these factors. We maintain herein that these are factors are neutral.

goods and services are related and they travel in similar trade channels to an appreciable number of overlapping consumers.

With these factors in mind, on balance, Opposers have established by a preponderance of the evidence that a likelihood of confusion exists. That is, consumers are likely to mistakenly presume a connection, sponsorship, or affiliation between Applicant's goods and services and Opposers' previously-used COGNAC certification mark on brandy, as sold by Opposers' authorized users.

In view thereof, the Section 2(d) claim is sustained.

VIII. Dilution By Blurring

As noted, *supra*, the Federal Circuit reversed the Board's Prior Decision holding that Opposers had not adequately pleaded their certification mark had become famous prior to Applicant's actual or constructive date of first use of its mark. The Federal Circuit explicitly determined that "Opposers' dilution claim was sufficiently pleaded." *Cologne & Cognac*, 110 F.4th at 1374.⁵² In addition, the Federal Circuit "vacate[d] the Board's finding that COGNAC is not famous for purposes of dilution ... [and] remand[ed] for consideration of that issue on the merits." *Id.*

However, because we sustain Opposers' opposition to registration of Applicant's mark on the likelihood of confusion ground, we need not and do not reach the dilution claim. *See, e.g., Tequila Cuadra S. de RL de CV v. Manufacturera de Botas Cuadra, S.A. de C.V.*, 2025 USPQ2d 729, *1 (TTAB 2025) (Board did not reach likelihood of

⁵² As the Federal Circuit also observed, because the dilution claim is considered sufficiently pleaded, this necessarily overrides the Board's determination that the claim was not tried by implied consent under Fed. R. Civ. P. 15(b)(2). *Id.*

confusion claim because proceeding was resolved on another claim), citing *Yazhong Inv. Ltd. v. Multi-Media Tech Ventures, Ltd.*, 126 USPQ2d 1526, 1540 n.52 (TTAB 2018) (“Board has ‘discretion to decide only those claims necessary to enter judgment and dispose of the case,’ as our ‘determination of registrability does not require, in every instance, decision on every pleaded claim.’”). Specifically, we make no determination as to Applicant’s argument that Opposers cannot prevail on the dilution claim because, as a certification mark, Opposers’ use of COGNAC does not satisfy the statutory definition of what constitutes a famous mark in the context of dilution.⁵³

Decision: The opposition is sustained under Section 2(d) of the Act and Applicant’s mark is refused registration.

⁵³ Section 43 of Act provides the following relevant definition in the context of dilution:

[A] mark is famous if it is widely recognized by the general consuming public of the United States **as a designation of source of the goods or services of the mark’s owner.**

Section 43(c) of the Act, 15 U.S.C. § 1125(c)(2)(A) (emphasis provided). Applicant argues that “a certification mark also does not distinguish the goods or services of one company from those of another producer” and that in “Opposer’s case, [the mark] is only used to certify the geographic origin of the products (e.g. spirits).” 20 TTABVUE 24.