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TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

Ferrell/Bukrinsky

January 24, 2023

Opposition No. 91274194

Jackson Family Farms, LLC

v.

Grands Domaines Du Littoral

**Before Cataldo, Lykos, and Lebow
Administrative Trademark Judges.**

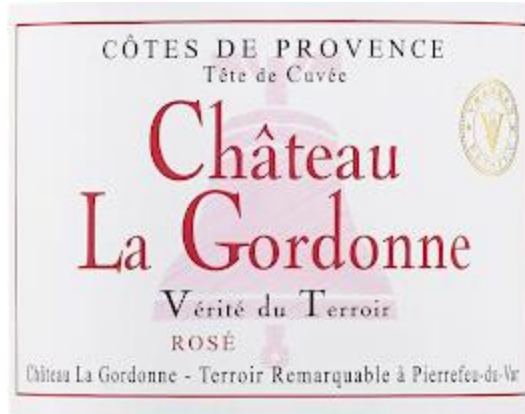
By the Board:

This proceeding comes before the Board on Applicant's motion, filed September 26, 2022, for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). 7 TTABVUE. The motion is fully briefed. *See* 8, 10 TTABVUE.

I. Background

By way of background, Applicant seeks to register the composite mark shown below, for "wines made from grapes from Côtes de Provence in accordance with adapted standards" in International Class 33."¹

¹ Application Serial No. 90184859, filed September 16, 2020 pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The English translation of "TÊTE DE CUVÉE", "LA", "VÉRITÉ DU" and "TERROIR REMARQUABLE À PIERREFEU-DU-VAR" in the mark is "BEST FIRST PRESSED GRAPES OF THE VAT", "THE", "TRUTH OF THE" and "REMARKABLE TERROIR IN PIERREFEU-DU-VAR". The description of the mark is as follows: "The mark consists of an enclosed red square with a faded image of a pink bell on the background. The stylized wording 'CÔTES DE PROVENCE' appears in black at the top with



On January 27, 2022, Opposer filed a notice of opposition opposing registration of Applicant's involved mark on the sole ground of likelihood of confusion pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). 1 TTABVUE. In support of its entitlement to bring the proceeding and claim, Opposer pleaded ownership of Registration No. 4962678 for the standard character mark VÉRITÉ in connection with "alcoholic beverages except beers" in International Class 33² and prior common law rights in the same mark for wine. *Id.* at 4.

the stylized wording 'TÊTE DE CUVÉE' in black directly below. The stylized wording 'CHÂTEAU LA GORDONNE' appears in large red lettering in the center of the box. The bottom portion of the mark has the stylized wording 'VÉRITÉ DU TERROIR' in black, 'ROSÉ' in red and 'CHÂTEAU LA GORDONNE - TERROIR REMARQUABLE À PIERREFEU-DU-VAR' in black. The right top portion of the mark has an enclosed gold circle with the wording 'VRANKEN ESTATES' in gold with a stylized gold 'V' in the center circle; all of the foregoing on a white background." "CÔTES DE PROVENCE", "TÊTE DE CUVÉE", "ESTATES", "CHÂTEAU LA", "ROSÉ" AND "TERROIR REMARQUABLE À PIERREFEU-DU-VAR" are disclaimed. The colors pink, red, gold, black, and white are claimed as a feature of the mark.

² Filed April 13, 2015 and issued May 24, 2016 pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The English translation of "VERITE" in the mark is "TRUTH, VERITY, SOOTH, CERTAINTY" and "GENUINENESS". Opposer's Section 8 and 15 declaration was accepted on September 11, 2021.

On April 7, 2022, Applicant filed its answer to the notice of opposition. 6 TTABVUE, which denied the salient allegations in the notice of opposition.³ *Id.* at 3.

On September 7, 2022, Applicant filed its motion for judgment on the pleadings. 7 TTABVUE.

II. Legal Standard

Applicant's motion for judgment on the pleadings is timely inasmuch as it was filed after the close of pleadings, but prior to the day of the deadline for pretrial disclosures for the first testimony period. *See Shared, LLC v. Shared Space of Atlanta, LLC*, 125 USPQ2d 1143, 1143-44 (TTAB 2017); Fed. R. Civ. P. 12(c).

A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board takes judicial notice. *See Media Online Inc. v. El Clasificado Inc.*, 88 USPQ2d 1285, 1288 (TTAB 2008). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 504.02 (2022) and cases cited therein. For purposes of the motion, all well-pleaded factual allegations of the non-moving party must be accepted as true, while those allegations of the moving party which have been denied (or which are taken as denied, pursuant to Fed. R. Civ. P. 8(b)(6), because no responsive pleading thereto is required or permitted) are deemed false. *Media Online*, 88 USPQ2d at 1288. Conclusions of law are not taken as admitted. *Id.* All reasonable inferences from the pleadings are drawn in favor of the nonmoving party. *Id.* Judgment on the pleadings

³ Applicant admitted that it applied to register its mark for the goods described above and that the application published for opposition on December 7, 2021. *Id.* at 3.

may be granted only where, on the facts as deemed admitted, there is no genuine issue of material fact to be resolved and the moving party is entitled to judgment on the substantive merits of the controversy as a matter of law. *Id.*

III. Analysis and Decision

The evidentiary factors we consider in determining likelihood of confusion are set out in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). These factors include, inter alia, the similarity of the marks, the relatedness of the goods and/or services, the channels of trade and classes of purchasers for the goods and/or services, the number and nature of similar marks in use on similar goods, the nature and extent of any actual confusion, and the fame of the prior mark. *Id.* See also TBMP § 309.03(c)(2)(B).

For purposes of its motion, Applicant concedes priority as well as the *du Pont* factors of relatedness of the goods and classes of purchasers. 7 TTABVUE 5-6. Applicant then asks us to find that, based on the single factor of dissimilarity of the marks, Opposer cannot prevail as a matter of law, even if all of the other *du Pont* factors weigh in favor of Opposer. *Id.* In view thereof, for purposes of the motion, we presume that **all** *du Pont* factors, other than similarity of the marks, weigh in favor of Opposer.⁴

⁴ Contrary to Applicant's argument, 10 TTABVUE 4-5, Opposer was not required to plead each *du Pont* factor to rely on those factors in its likelihood of confusion claim. See *Wet Seal, Inc. v. FD Mgmt., Inc.*, 82 USPQ2d 1629, 1639 n.21 (TTAB 2007) ("Opposer is not required to specifically plead every factual component of a likelihood of confusion claim.").

In addition to asserting that the marks are completely different in sight and sound, Applicant asks us to take judicial notice that the word “vérité” translates from French to English as “truth”, and that “[t]he word ‘terroir’ translates to English as ‘region or location,’” and argues based on these definitions that the marks have different meanings, and that overall the marks create distinct commercial impressions. *Id.* at 8.

In response, Opposer maintains that the marks are similar because “Applicant’s mark completely encompasses Opposer’s distinctive VÉRITÉ mark” and that VÉRITÉ “is the dominant portion of Applicant’s alleged ‘tag line’ and is most likely to be impressed upon the minds of consumers because it comes first.” *Id.* at 6. Opposer also asks the Board to take judicial notice of Applicant’s previously abandoned application for the mark VÉRITÉ DU TERROIR as evidence that this “wording creates a commercial impression separate from CHATEAU LA GORDONNE and functions as a standalone trademark.” *Id.* at 8.

“One *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks.” *Ava Enters. v. P.A.C. Trading Grp., Inc.*, 86 USPQ2d 1659, 1660 (TTAB 2008) (quoting *Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375, 47 USPQ2d 1459, 1460-61 (Fed. Cir. 1998)). The similarity or dissimilarity of the marks must be analyzed by comparing the marks in their entirety, as to appearance, sound, connotation and commercial impression. *In re E.I. duPont de Nemours & Co.*, 177 USPQ at 567. *See also Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d

1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). No element of a mark can be ignored when analyzing the likelihood of confusion issue. *In re Electrolyte Labs., Inc.*, 929 F.2d 645, 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) (citing *Spice Islands, Inc. v. Frank Tea & Spice Co.*, 505 F.2d 1293, 184 USPQ 35 (CCPA 1974)).

The sole allegations Opposer makes in the notice of opposition pertaining to likelihood of confusion are that “Applicant’s COTES DE PROVENCE TETE DE CUVÉE VRANKEN ESTATES CHATEAU LA GORDONNE VÉRITÉ DU TERROIR ROSE CHATEAU LA LA GORDONNE - TERROIR REMARQUABLE A PIERREFEU-DU-VAR and Design mark is likely to cause confusion, mistake or to deceive the public because it is virtually identical to Opposer’s VÉRITÉ mark and the goods on which Opposer uses Opposer’s VÉRITÉ mark are virtually identical, substantially similar or related to the goods identified in Applicant’s Application and said goods are purchased by the same group of consumers.” 1 TTABVue 4. As the non-moving party, each “well-pleaded” factual allegation must be accepted as true, and all inferences from the pleadings are drawn in favor of Opposer. *Media Online*, 88 USPQ2d at 1288.

Here, we find based on the pleadings, that this case can be determined on the basis of dissimilarity of the marks alone. There is no genuine dispute of material fact that the marks at issue are distinct in appearance. While the marks share the identical term VÉRITÉ, in Opposer’s mark this term stands alone, whereas in Applicant’s mark it appears as part of a phrase – VÉRITÉ DU TERROIR – alongside several other words and phrases. In particular, Applicant’s mark comprises twenty-

two (22) words and creates a markedly different visual appearance than Opposer's mark comprising a single word. Further, it is undisputed that the wording CHATEAU LA GORDONNE in Applicant's mark is displayed in a much larger and different color font when compared to all of the other wording in the mark, including the wording VÉRITÉ DU TERROIR, making CHATEAU LA GORDONNE the dominant wording that consumers are likely to recall. *See DC Comics v. Cellular Nerd LLC*, 2022 USPQ2d 1249, at *56 (TTAB 2022) (“[T]he term CELLULARNERD.com is the dominant part of the mark because it appears prominently in large font[.]”); *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 USPQ2d 1102, 1116 (TTAB 2015) (OLÉ was the dominant element of the mark containing other wording and design elements due to its “size and placement”); *Bass Pro Trademarks, L.L.C. v. Sportsman's Warehouse, Inc.*, 89 USPQ2d 1844, 1857-58 (TTAB 2008) (“[T]he term SPORTSMAN'S WAREHOUSE is the dominant element of the mark because it is the largest part of the mark and it is that part of the mark that consumers will use in calling for respondent's services.”). Finally, in terms of overall appearance, the design elements of Applicant's mark, in combination with the larger wording CHATEAU LA GORDONNE, results in a mark which is “visually readily distinguishable from” Opposer's mark. *See Truescents LLC v. Ride Skin Care, L.L.C.*, 81 USPQ2d 1334, 1341 (TTAB 2006). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a dominant element, provided the ultimate conclusion rests on a consideration of the

marks in their entireties.⁵ *Cellular Nerd LLC*, 2022 USPQ2d at *56 (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012)); *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985)).

For the foregoing reasons, we conclude that a likelihood of confusion cannot exist as a matter of law and that this case should be decided based on the first *du Pont* factor alone as being dispositive. *See Ava Enters. Inc.*, 86 USPQ2d at 1660. *Cf. Kellogg Co. v. Pack'Em Enters.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (dissimilarity of marks outweighed all other *du Pont* factors, despite opposer's evidence of fame, entitling applicant to summary judgment); *Champagne Louis Roederer, S.A.*, 47 USPQ2d at 1460-61. In other words, even if all the other *du Pont* factors were to be considered in Opposer's favor, the marks in this case are too dissimilar to support a finding of likelihood of confusion as a matter of law.

In view of the foregoing, Applicant's motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is granted, and the opposition is hereby **dismissed**.

⁵ Regarding Opposer's argument that the Board should take judicial notice of Applicant's previously abandoned application for the word mark VERITE DU TERROIR, it is well-settled that the Board does not take judicial notice of such records. *See, e.g., Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012) ("The Board does not take judicial notice of registrations or applications residing in the Office."). In any event, Applicant's attempt to register a different mark and the United States Patent and Trademark Office's (USPTO) refusal of that application is not relevant to our consideration of likelihood of confusion with respect to this particular mark. As has frequently been stated, we must decide each case on its own merits. *See, e.g., In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Wilson*, 57 USPQ2d 1863, 1871 (TTAB 2001).