

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: June 7, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

E. & J. Gallo Winery
v.
Wade

Cancellation No. 92063116

Steven M. Weinberg of Holmes Weinberg PC
for E. & J. Gallo Winery.

Kathy Wade, *pro se*.

Before Quinn, Kuczma, and Pologeorgis,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

E. & J. Gallo Winery (“Petitioner”) seeks to cancel a registration owned by Kathy Wade (“Respondent”) for the mark MIROSA (in standard characters) for “beer, ale, lager, stout, porter, shandy” in International Class 32.¹ As grounds for cancellation pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), Petitioner asserts that Respondent’s mark, when used in connection with Respondent’s goods, so

¹ Registration No. 4881049, issued January 5, 2016.

resembles Petitioner's previously used and registered mark MIRASSOU (in typed letters) for "wine" in International Class 33,² as to be likely to cause confusion. Petitioner also asserts a second ground, namely, that Respondent is not the owner of the registered mark and, therefore, the registration is void *ab initio*.

Respondent, in her answer, admitted that Petitioner "is the legal and sole owner" of the pleaded registration (5 TTABVUE 2), but essentially denied the remaining salient allegations asserted in the petition for cancellation.

The Record

The parties filed a joint stipulation to have this case decided by the accelerated case resolution ("ACR") procedure.³ The Board, on February 24, 2017, approved the stipulation. The stipulation provided that in lieu of a trial, the Board may resolve any issues of material fact and consider the parties' cross-motions for summary judgement as the parties' briefs on the case, and may issue a final decision thereon.⁴ The parties also agreed that Respondent could supplement the record with a declaration from Respondent's witness Stephen Stone, and that Respondent could respond to the declaration.

The Board, in an order dated April 20, 2017, deferred consideration of certain evidentiary motions and objections. Before turning to the merits of the petition for cancellation, we direct our attention to these matters. Respondent timely filed the

² Registration No. 1068671, issued June 28, 1977; renewed. Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (Apr. 2017).

³ 18 TTABVUE.

⁴ The Board denied the parties' cross motions for summary judgement on November 10, 2016.

Stone declaration on February 19, 2017, but then subsequently filed additional evidence on March 11, 2017 and March 15, 2017. Petitioner filed a motion to strike the additional evidence on March 17, 2017.

Respondent contends that the additional evidence comprises “supporting proof” for the Stone declaration, and that the materials “were uploaded to the court’s electronic site over the course of a couple of days.” 29 TTABVue 3. Respondent’s additional evidence was filed outside of the time constraint imposed by the stipulation and, thus, is untimely. Moreover, the evidence goes beyond the supplementation limit imposed by the stipulation. Accordingly, the additional evidence is stricken, and has not been considered in reaching our decision.⁵

The record consists of the pleadings; the file of the involved registration; Courtney O’Brien’s declaration with related exhibits, and counsel Michael Salvatore’s declarations with related exhibits, all of which accompanied Petitioner’s filings related to Respondent’s motion for summary judgment.⁶ On summary judgment, Respondent introduced Kathy Wade’s declaration with related exhibits, and Stephen Stone’s declaration; and excerpts of various websites. We have considered the briefs on summary judgment to be the briefs at final hearing.

Standing

Standing is a threshold issue that must be proven by the plaintiff in every *inter partes* case. Any person who believes it is or will be damaged by registration of

⁵ According to Respondent, the evidence relates to Petitioner’s second ground for relief, namely lack of ownership.

⁶ Several factual details regarding Petitioner’s use of its mark (*e.g.*, sales revenue, advertising expenditures, and the like) have been designated as “confidential.”

a mark has standing to file a petition for cancellation. Trademark Act Section 14, 15 U.S.C. § 1064. Our primary reviewing court has enunciated a liberal threshold for determining standing, namely that a plaintiff must demonstrate that it possesses a “real interest” in a proceeding beyond that of a mere intermeddler, and “a reasonable basis for his belief of damage.” *Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014) (quotation omitted), *cert. denied*, 135 S. Ct. 1401 (2015). A “real interest” is a “direct and personal stake” in the outcome of the proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999). A claim of likelihood of confusion that “is not wholly without merit,” including prior use of a confusingly similar mark, may be sufficient. *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

Respondent does not dispute Petitioner’s standing. Moreover, Petitioner’s ownership of Registration No. 1068671, which is valid and subsisting, supports a finding that Petitioner’s claim of priority and likelihood of confusion “is not wholly without merit.” We find Petitioner established its standing.

Priority

Section 2(d) permits cancellation on the basis of prior use of “a mark or trade name previously used in the United States by another and not abandoned.” Petitioner must establish its priority of use, a necessary element of any claim under Section 2(d).

Respondent does not dispute Petitioner’s priority of use. In any event, the record establishes that Petitioner and its predecessor in interest have used the mark

MIRASSOU for wine in commerce since at least as early as 1940. 11 TTABVUE 28. This first use predates by decades the earliest date upon which Respondent may rely.

Accordingly, Petitioner established its priority of use.

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Petitioner must establish that there is a likelihood of confusion by a preponderance of the evidence. In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). Varying weights may be assigned to each *du Pont* factor depending on the evidence presented. *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687-88 (Fed. Cir. 1993). The relevant *du Pont* factors in this proceeding are discussed below.

Similarity of the Goods, Trade Channels and Purchasers

“[I]t is not necessary that the products of the parties be similar or even competitive to support a finding of likelihood of confusion.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012), citing *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007). Instead, likelihood of confusion can be found “if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they

could give rise to the mistaken belief that they emanate from the same source.” *Id.* The issue here, of course, is not whether purchasers would confuse beer and wine, but rather whether there is a likelihood of confusion as to the source of these goods. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). There is no *per se* rule mandating that alcoholic beverages be deemed similar goods. *In re White Rock Distilleries*, 92 USPQ2d 1282, 1285 (TTAB 2009). Each case must be decided on its own facts. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

In the past the Board has found that beer and wine are similar for purposes of a likelihood of confusion determination. *See, e.g., Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1826-27 (TTAB 2015); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265-66 (TTAB 2011); *In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992). Moreover, beer has been held related to other alcoholic beverages by both the Board and our reviewing courts. *See, e.g., In re Chatam Int’l Inc.*, 71 USPQ2d 1944, 1947-48 (Fed. Cir. 2004) (“Indeed, the goods [tequila and beer or ale] often emanate from the same source because ‘both are alcoholic beverages that are marketed in many of the same channels of trade to many of the same consumers.’”) (quoting *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003) (“malt liquor and tequila are similar by virtue of the fact that both are alcoholic beverages that are marketed in many of the same channels of trade to many of the same consumers,” despite the fact that “malt liquor is a brewed product, whereas tequila is distilled”)). In fact, the parties have not cited any

precedential decision holding beer and wine unrelated for purposes of a likelihood of confusion analysis, and we are not aware of any. While each case must be decided on its own record, these decisions make clear that beer and wine (among other alcoholic beverages) certainly can be, and frequently are, found to be related.

As evidence that the goods are related, Petitioner submitted websites of 7 third parties that operate as a combination winery/microbrewery, offering both wine and beer under the same mark at the same establishment. The marks include the following: CENTRO; GOLD HILL; SCHILLINGBRIDGE; SCHNEBLY; SCHRAM; 2 WITCHES; and COPP. 11 TTABVUE 67-84.

Further, there are several third-party, use-based live registrations showing the same mark registered for both wine and beer: Reg. No. 4978590 (FEASTY); Reg. No. 4978543 (BREWVO); Reg. No. 4978216 (ENDURE); Reg. No. 4932847 (THE MINT 400); Reg. No. 4896450 (PLANK WALKER); Reg. No. 4887801 (REVER); Reg. No. 4838384 (ROADIES); Reg. No. 4832965 (JESTER & JUDGE); Reg. No. 4707076 (KIRKLAND SIGNATURE); Reg. No. 4588757 (SKULL CAMP); Reg. No. 3685473 (WILDFIRE); Reg. No. 3099373 (SCHILLINGBRIDGE); and Reg. No. 1100905 (HONG MEI and design). 11 TTABVUE 103-125. “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck*

Mustard Co., 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988). *See also L'Oreal S.A. v. Marcon*, 102 USPQ2d at 1439-40; *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

As shown by the record, entities have marketed beer and wine under the same mark. The evidence of record shows at least an interest among producers of alcoholic beverages in combining the production of both beer and wine within a single business. The fact that small producers of the type shown by Petitioner's evidence may represent only a small segment of the entire beer or wine market does not, in our view, reduce the potential for trademark confusion from "likelihood" to a mere possibility, especially where the marks are similar and Petitioner's mark is strong (*see discussion, infra*).

Given that the goods are alcoholic beverages, we presume that they move in all channels of trade that would be normal for such goods. *See Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992) (in the absence of trade channel restrictions in the identifications of goods, "[t]he issue of likelihood of confusion is resolved by considering the 'normal and usual channels of trade and method of distribution.'" (citations omitted)). Normal trade channels for both beer and wine would include, at a minimum, restaurants, bars, liquor stores, and convenience stores. In any event, the record establishes that Petitioner's wine and Respondent's beer are sold, in fact, in these same types of trade

channels. 11 TTABVUE 27-28; 91. Further, beer and wine are sold to the same classes of purchasers, including ordinary consumers.

These similarities weigh in favor of a finding of a likelihood of confusion.

Conditions of Sale

In the absence of any evidence to the contrary in this case, we take judicial notice that beer and wine are often relatively inexpensive, subject to impulse purchase, and often ordered orally in a bar or restaurant.⁷ See *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005) (“Moreover, general consumers, not just connoisseurs, occasionally purchase champagne or sparkling wines on celebratory occasions, with little care or prior knowledge.”).

“When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984). Thus, the *du*

⁷ Because the respective identifications include “beer” and “wine” without any limit regarding a particular price point, we must treat the goods as including inexpensive as well as more costly beers and wines, and therefore presume that purchasers for “beer” and “wine” include ordinary consumers who may buy inexpensive beer and wine on impulse. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014) (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”). See also *In re Sailerbrau Franz Sailer*, 23 USPQ2d at 1720 (finding that all purchasers of wine may not be discriminating because while some may have preferred brands, “there are just as likely to be purchasers who delight in trying new taste treats.”).

Pont factor of the conditions of sale weighs in favor of a finding of a likelihood of confusion.

Similarity of the Marks

With respect to the first *du Pont* factor, we must compare the marks in their entireties as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imps. Inc.*, 73 USPQ2d at 1691 (quoting *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567). “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.” *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721 (citation omitted). The appropriate emphasis is on the recollection of the average customer, who normally retains a general rather than a specific impression of trademarks or service marks. *Spoons Restaurants, Inc. v. Morrison, Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991) (citations omitted), *aff’d.*, No. 92-1086 (Fed. Cir. June 5, 1992). See *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014). As previously stated, the average purchasers include ordinary consumers who drink beer and wine.

The marks MIRASSOU and MIROSA are somewhat similar in appearance. Both begin with the letters “MIR-” followed by a mix of the shared letters “A,” “O” and “S.”

Although the marks are specifically different, we find that the differences are outweighed by the similarities, and that there is a general similarity in appearance.

As to sound, the marks, when spoken, have somewhat similar pronunciations. In saying this, we recognize that there is no correct pronunciation of a trademark, and consumers may pronounce a mark differently than intended by the mark's owner. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012); *Interlego AG v. Abrams/Gentile Entm't Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002) (finding similarity between LEGO and MEGO, despite the applicant's contention that consumers would pronounce MEGO as “me go”). Nevertheless, the marks MIRASSOU and MIROSA sound alike when spoken; as suggested by Petitioner, the marks may be similarly pronounced as “MË-RÖ-SÁ and MË-RÖ-SOO,” respectively. 11 TTABVUE 19. Moreover, to the extent that there are specific, minor differences in sound, we are not persuaded that any such differences would even be noticed by prospective purchasers when they hear the marks. Beer and wine are often ordered by name, in a noisy bar or restaurant. Further, if the beer is served in a glass because it is a draft beer from a keg, or the wine is served in a glass after being poured from a bottle at the bar, the consumer may never actually see a label displaying the mark; rather, the only representation of the mark may be in a verbal form. In sum, any minor differences in the sound of the marks may go undetected by consumers and, therefore, are not sufficient to distinguish the marks.

Insofar as meaning is concerned, there is nothing in the record to indicate that either MIRASSOU or MIROSA have a meaning, in English or a foreign language.

Thus, consumers are likely to view the marks as arbitrary or coined marks for the wine and beer, respectively.

Given the similarities in sound and appearance, we find that the marks engender overall commercial impressions that are similar.

The similarity of the marks is a factor weighing in favor of a finding of a likelihood of confusion.

Strength of Petitioner's Mark

The fame of a mark is not “an all-or-nothing measure” when considered in the context of likelihood of confusion. *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, ___ F.3d ___, ___ USPQ2d ___, No. 2016-1089 (Fed. Cir. May 24, 2017). Rather, likelihood of confusion fame “varies along a spectrum from very strong to very weak.” *Palm Bay Imps. Inc.*, 73 USPQ2d at 1694 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)). In examining the strength of Petitioner's mark, the applicable viewpoint is that of the relevant market, that is, of consumers of like products. *Id.* (“[A] mark's renown within a specific product market is the proper standard.”). The “stronger” or more “well known” a plaintiff's mark, the greater the likelihood that use or registration for even minimally related products will cause confusion. “The stronger the mark, the more likely it is that encroachment on it will produce confusion.” *Champions Golf Club v. Champions Golf Club*, 78 F.2d 1111, 38 USPQ2d 1161, 1164 (6th Cir. 1996). As noted by the Seventh Circuit:

What is intended by references to “strong” and “weak” marks is the effect of such marks upon the mind of the

consuming public. A mark that is strong because of its fame or uniqueness, is more likely to be remembered and more likely to be associated in the public mind with a greater breadth of products and services than is a mark that is weak because relatively unknown or very like similar marks or very like the name of the product.

James Burrough Ltd. v. Sign of Beefeater, Inc., 540 F.2d 266, 192 USPQ 555, 563 (7th Cir. 1976). Similarly, the Restatement observes the following:

The distinctiveness or “strength” of a mark measures its capacity to indicate the source of the goods or services with which it is used. The greater the distinctiveness of the mark, the greater the likelihood that prospective purchasers will associate the same or a similar designation found on other goods, services, or businesses with the prior user. “Strong” marks that have a high degree of distinctiveness are thus protected against the use of similar marks on a wider range of goods or services than are “weak” designations that have less distinctiveness or market recognition.

Restatement Third, Unfair Competition § 21, comment i (1995). *See generally*, 2 J.T. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 11:73 (Author’s Note: “The Federal Circuit uses the term ‘fame’ instead of ‘strength.’”; 24:49 (4th ed. June 2017).

The commercial strength of a mark may be measured indirectly by the volume of sales of and advertising expenditures for the goods identified by the marks, the length of time those indicia of commercial awareness have been evident, widespread critical assessments, notice by independent sources of the goods, and the general reputation of the goods. *In re Mr. Recipe*, 118 USPQ2d 1084, 1086 (TTAB 2016) (citing *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305-06, 1309 (Fed. Cir. 2002).

Petitioner introduced evidence that its mark MIRASSOU is very well known in the wine market among wine drinkers. According to Courtney O'Brien, Petitioner's director of marketing, the mark was first used in 1940, and it has been in continuous use in connection with wine for over 75 years. Petitioner's wine sold under the mark has become one of the top selling wines in the United States. The MIRASSOU brand line consists of 8 varietals of red and white wine: Pinot Noir, Red Blend, Chardonnay, Pinot Grigio, Cabernet Sauvignon, Merlot, Moscato and Sauvignon Blanc. 11 TTABVUE 27. The wine is sold in over 18,000 on-premise retailers (restaurants and bars) and over 50,000 off-premise retailers (liquor stores and convenience stores). 11 TTABVUE 28. As indicated earlier, Petitioner's sales and advertising numbers are confidential, but suffice it to say that they are substantial. Tens of millions of bottles have been sold since 2009 (with annual numbers in the eight figures), and total sales revenue over a recent 5 year period are in the hundreds of millions of dollars. The number of glasses of Petitioner's wine poured in on-premise locations is in the seven figures. Since 2010, total advertising expenditures have been in the tens of millions of dollars. Petitioner has promoted its wine under the mark in national advertising campaigns on television, social media (over 200,000 "likes" on Facebook), and printed publications. 11 TTABVUE 28-29.

Ms. O'Brien points out that Petitioner's wine has been the subject of numerous accolades from wine critics, and the record includes favorable reviews from various critics. 11 TTABVUE 30. Petitioner's wine won the Gold Medal at the 2007 Critics Challenge at the International Wine Competition. *Id.* According to Ms. O'Brien:

“MIRASSOU is a top 10 premium wine brand according to the industry leading market research firm IRI, and many of its varietals are category leaders. For example, MIRASSOU Pinot Noir is the #3 selling pinot noir in the entire wine category and #2 among premium pinot noirs, and MIRASSOU Moscato is the #5 selling premium white Moscato.” *Id.*

The record is devoid of any evidence showing third-party uses or registrations of similar marks for similar goods. *Cf. Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1134 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015).

We find that the record shows wide exposure of the mark to the consuming public, and that the wine industry appreciates the quality of Petitioner’s wine. In sum on this factor, the record establishes that Petitioner’s mark MIRASSOU for wine is very well known, and is a mark of considerable strength. This factor “warrants reasonable weight, among the totality of circumstances” in favor of a finding of likelihood of confusion. *See Joseph Phelps Vineyards, supra.*

Actual Confusion

We acknowledge Respondent’s statement that there has been no actual confusion between the marks despite their contemporaneous use. The absence of actual confusion evidence between the marks is entitled to very little weight. First, it is not necessary to show actual confusion in order to establish likelihood of confusion. *Herbko Int’l Inc. v. Kappa Books Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed.

Cir. (2002); *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840, 1842-43 (Fed. Cir. 1990), *aff'g HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989). Second, the extent of use of Respondent's mark is unknown, and so we are at a disadvantage to gauge the opportunity for actual confusion to have occurred in the marketplace. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000); *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1039-40 (TTAB 2016). Accordingly, the eighth *du Pont* factor, the length of time during and conditions under which there has been contemporaneous use of the marks without evidence of actual confusion, is neutral.

Conclusion

We have considered all of the evidence properly made of record pertaining to the likelihood of confusion issue, as well as all of the arguments related thereto, including any evidence and/or arguments (numerous arguments on behalf of Respondent) not specifically discussed in this opinion.⁸ In the circumstances of this case, we conclude that consumers familiar with Petitioner's wine sold under the mark MIRASSOU will be likely to mistakenly believe, upon encountering Respondent's mark MIROSA for

⁸ By way of example, we point to Respondent's statement, which is immaterial to our likelihood of confusion determination: "[I]f it will please the court and help to settle this matter, Respondent hereby stipulates on the record that it will NEVER produce a wine brand nor sell a wine product having anything to do with the MIROSA brand name." (emphasis in original). 12 TTABVue 3. It is well established that we must look to the goods as identified in the respective registrations. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 USPQ2d at 1162, quoting *Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

beer, that these alcoholic beverages originate from or are associated with or sponsored by the same entity.

In view of our decision on likelihood of confusion, we need not consider the merits of the pleaded ground related to ownership. *See American Paging Inc. v. American Mobilphone Inc.*, 13 USPQ2d 2036 (TTAB 1989), *aff'd*, 923 F.2d 869, 17 USPQ2d 1726 (Fed. Cir. 1990).

Decision: The petition for cancellation grounded on likelihood of confusion is granted. Registration No. 4881049 will be cancelled in due course.