

**THIS OPINION IS NOT A  
PRECEDENT OF  
THE T.T.A.B.**

Mailed: November 7, 2008

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Bodegas Portia, S.L.

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Serial No. 79032493

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Justin R. Young of Dineff Trademark Law Limited for Bodegas Portia, S.L.

Daniel Brody, Trademark Examining Attorney, Law Office 115  
(J. Brett Golden, Acting Managing Attorney).

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Before Holtzman, Cataldo and Taylor,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

An application was filed by Bodegas Portia, S.L. to register on the Principal Register the mark shown below for "alcoholic beverages, namely, wines."<sup>1</sup>

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<sup>1</sup> Application Serial No. 79032493 was filed on October 20, 2006 seeking an extension of protection under Section 66(a) of the Trademark Act as amended, based upon International Registration No. 0907488, issued on October 20, 2006.



The trademark examining attorney refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, as used in connection with applicant's goods, so resembles the mark SUMMA VINEYARD, previously registered on the Principal Register in typed or standard character form for "wine"<sup>2</sup> as to be likely to result in confusion as to the source of those goods.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed main briefs and applicant filed a reply brief.

#### **Likelihood of Confusion**

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d

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<sup>2</sup> Registration No. 2222858 issued on February 9, 1999 with a disclaimer of VINEYARD. Section 8 affidavit accepted; Section 15 affidavit acknowledged.

1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, *supra*.

The Goods

First, we turn to the second *du Pont* factor, i.e., the similarity or dissimilarity between the recited goods. In making our determination, we look to the goods as identified in the involved application and cited registration. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.") See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the

issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods.")

In this case, applicant's goods, identified as "alcoholic beverages, namely, wines" are virtually identical to registrant's "wine." We are not persuaded by applicant's argument that because its wine originates in Spain and registrant's wine originates in California, consumers are likely to distinguish between them based upon differences in their labeling, marketing, and relative locations in retail outlets. Because there are no restrictions recited either in applicant's or registrant's identification of goods, the wine identified in both must be considered to be identical; and we must therefore presume that applicant's and registrant's wines are sold in the same channels of trade to the same classes of purchasers. See *Octocom, supra*; and *Paula Payne, supra*. We note, in addition, that applicant "concedes that it may be true that both [its] and Registrant's goods are related and may be sold through similar or same channels of distribution" (brief, p. 4).

The Marks

We turn then to the first *du Pont* factor, i.e., whether applicant's mark and the mark in the cited registration are similar or dissimilar when compared in

their entireties in terms of appearance, sound, connotation and commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The test, under this *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In this case, we note that applicant's mark,



is similar to the cited mark, SUMMA VINEYARD, in appearance to the extent that both contain the word SUMMA. However, the marks are dissimilar in appearance in that applicant's mark prominently contains the word PORTIA in bold letters in its center, surrounded by a circle and rectangle design, with the word SUMMA in much smaller and fainter letters beneath the right portion of the word PORTIA. A potential consumer viewing applicant's mark will be drawn first to the word PORTIA, displayed in large size and bold presentation, then to the large geometric design, prior to noticing the small and faint word SUMMA. As such, the word PORTIA is the dominant portion of applicant's mark, and its presence, as well as that of the distinctive design element therein, renders applicant's mark notably dissimilar from that of registrant in appearance. The marks are further dissimilar in appearance in that the mark in the cited registration contains the word VINEYARD which, while

disclaimed and obviously descriptive of registrant's goods, nonetheless is absent from applicant's mark.

With regard to sound, we note that applicant's mark is similar to the mark in the cited registration in that there is nothing in the record to suggest that SUMMA would not be identical in pronunciation in both marks. However, the marks are dissimilar in sound due to the presence of the dominant word PORTIA in applicant's mark and the word VINEYARD in that of registrant. Thus, the word portion of applicant's mark, i.e., PORTIA SUMMA, differs in sound from registrant's mark, SUMMA VINEYARD.

With regard to the overall impression conveyed by the marks, we note that the meaning or connotation of a mark must be determined in relation to the recited goods. See *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312 (TTAB 1987); and *In re British Bulldog, Ltd.*, 224 USPQ 854 (TTAB 1984). In this case, applicant's mark is similar to that of registrant in that the word SUMMA in both conveys the notion of the highest part.<sup>3</sup> However, the marks are dissimilar in that the applicant's mark also contains the seemingly arbitrary woman's name PORTIA, and thus conveys

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<sup>3</sup> In that regard, applicant made of record dictionary definitions from archives.nd.edu and freedict.com, both of which define "summa" as the highest part; whole; sum.

the notion that Portia is the highest, whereas registrant's mark connotes the highest vineyard.

In addition, applicant relies upon evidence taken from commercial Internet websites in which the term SUMMA appears in the context of wine. The following examples are illustrative:

2006 Sauvignon Blanc, Summa Quies Vineyard  
(Okanagan Valley)  
(appellationamerica.com/wine-reviews);

2002 Campus Oak Lodi Summa Cum Laude Old Vine  
Zinfandel  
(openbottles.com/wine);

Marques de Grinon Summa 2002  
(wine.com);

A new edition of high profile Summa tasting took place in picturesque Magre that is located in Alto Adige in the north-east of Italy... .  
(eleonorascholes.ru); and

Summa Vitis  
Summa Vitis is dedicated to seeking out and distributing the best examples of excellence in Italian artisinal wine-making... .  
(summavitis.com).

We note that the probative value of this evidence is limited because applicant presented no evidence concerning the extent to which these third-party designations containing the word SUMMA are used in commerce. *See Palm Bay Imports, supra*. Nonetheless, the evidence suggests that the term SUMMA is not unique to registrant in the



field of wine, and is used by others to identify their wineries, wines, and wine tasting events.

Based upon the foregoing, we find that the dissimilarities between applicant's mark and the mark in the cited registration outweigh the similarities, particularly given presence of other dominant, distinctive matter in applicant's mark as well as the relative weakness of SUMMA, the only element common to both. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108, 110 (CCPA 1974). See also *Colgate-Palmolive Co. v. Carter-Wallace, Inc.*, 432 F.2d 1400, 167 USPQ 529 (CCPA 1970); and *Sure-fit Products Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295 (CCPA 1958). Thus, the first *du Pont* factor regarding the dissimilarity of the marks strongly favors applicant.

Thus, we find that despite the identity of the goods, the marks are sufficiently dissimilar that confusion is not likely between applicant's mark and the mark in the cited registration.

Decision: The refusal to register is reversed.