

This Opinion is not a  
Precedent of the TTAB

Mailed: March 9, 2018

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**

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*In re Raphael Dal Bo AG*  
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Serial No. 79204613  
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Andrew N. Spivak of Mosaic Legal Group PLLC  
for Raphael Dal Bo AG.

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Before Ritchie, Adlin and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Raphael Dal Bo AG (“Applicant”) filed a request for extension of protection of International Registration No. 1337946 for the mark RAPHAEL DAL BO LA VITA È BELLA, in standard characters, for “alcoholic beverages except beers.”<sup>1</sup> The Examining Attorney refused registration under Section 2(d) of the Trademark Act on the ground that Applicant’s mark so resembles the registered mark VITABELLA, in standard characters, for, *inter alia*, “Alcoholic beverages containing fruit; aperitifs;

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<sup>1</sup> Application Serial No. 79204613, filed December 28, 2016, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a). According to the application’s translation statement, “The English translation of VITA È BELLA in the mark is LIFE IS BEAUTIFUL.”

liqueurs; pre-mixed alcoholic beverages, other than beer-based; spirits; wine; red wines; rose wines; sparkling wines; white wines,”<sup>2</sup> that use of Applicant’s mark in connection with Applicant’s goods is likely to cause confusion or mistake or to deceive. After the refusal became final, Applicant appealed and filed a request for reconsideration which was denied. Applicant and the Examining Attorney filed briefs. We affirm the refusal.

### **I. Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). 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, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

#### **A. Relatedness of Goods/Similarity of Trade Channels and Classes of Purchasers**

Turning first to the goods and channels of trade, they are legally identical, because Applicant’s “alcoholic beverages except beers” encompasses all of

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<sup>2</sup> Registration No. 4824266, issued October 6, 2015. According to the registration’s translation statement, “The English translation of ‘VITABELLA’ is ‘beautiful life’.”

Registrant's "alcoholic beverages containing fruit; aperitifs; liqueurs; pre-mixed alcoholic beverages, other than beer-based; spirits; wine; red wines; rose wines; sparkling wines; white wines." Because Applicant's and Registrant's goods are legally identical, we must presume that the channels of trade and classes of purchasers for those goods are also the same. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are identical goods, the channels of trade and classes of purchasers are considered to be the same).

The legal identity of Applicant's and Registrant's goods and their overlapping channels of trade not only weigh heavily in favor of finding a likelihood of confusion, but also reduce the degree of similarity between the marks necessary to find a likelihood of confusion. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010).

#### **B. Similarity of the Marks**

We next consider the marks "in their entirety as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). Here, the product (as opposed to house) mark portion of Applicant's mark, LA VITA È BELLA, is obviously quite similar to Registrant's mark VITABELLA in sound and appearance, with the only differences

being that Applicant displays VITA and BELLA as two words rather than as a compound, and adds the relatively insignificant “LA” before the words and “È” in between them.<sup>3</sup> Notwithstanding Applicant’s vigorous arguments to the contrary, the marks are also quite similar in meaning, as according to the involved application VITA È BELLA translates to “life is beautiful,” while according to the cited registration, Registrant’s mark translates to “beautiful life.” Thus, both marks connote the “beauty” of “life.”

Just as obviously, the marks are different inasmuch as Applicant’s mark begins with what it refers to as its “house” and “primary and original” brand, RAPHAEL DAL BO, 8 TTABVUE 5, while Registrant’s mark in its entirety is VITABELLA.

As both Applicant and the Examining Attorney acknowledge, oftentimes the addition of a house mark to a term confusingly similar to a registered mark is insufficient to avoid confusion. In fact, sometimes it is found to be “an aggravation, and not a justification.” *Menendez v. Holt*, 128 U.S. 514, 521 (1888). *See, e.g., In re Toshiba Medical Systems Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1367 (TTAB 2007); *In re Christian Dior, S.A.*, 225 USPQ 533 (TTAB 1985). Other times, however, such as “when there are some recognizable differences between the assertedly conflicting product marks,” or where

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<sup>3</sup> Applicant’s focus on the words “la” (which it contends means “the” in English) and “è” in its mark is misplaced. These terms have minimal impact on the mark’s appearance or sound as they consist of three letters in total, and the evidence reveals that LA VITA È BELLA means “life is beautiful,” which is consistent with the application’s translation statement. Office Action of April 13, 2017 (printout from Reverso Context). *See also In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (finding WAVE and THE WAVE to be confusingly similar, stating “[t]he addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance.”); *In re Narwood Productions, Inc.*, 223 USPQ 1034 (TTAB 1984).

the registered term is conceptually weak, the addition of a house mark may be sufficient to avoid a likelihood of confusion. *In re C.F. Hathaway Co.*, 190 USPQ 343, 344 (TTAB 1976); *see also Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313 (TTAB 2005) and TMEP §1207.01(b)(iii) (Oct. 2017) (upon which Applicant relies).

Here, we find that despite coming first, Applicant's house mark is not enough to avoid confusion, even though, as Applicant points out, LA VITA È BELLA is not exactly the same as VITABELLA. In an analogous case, finding MENNEN SKIN SAVER for hand and body lotion confusingly similar to SKIN SAVERS for face and throat lotion, we stated:

Where the marks are otherwise virtually the same, the addition of a house mark or, as in this case, a surname, is more likely to add to the likelihood of confusion than to aid to distinguish the marks. Trademarks are intended to designate a single, albeit an anonymous source. It is likely not only that the two products sold under these marks would be attributed to the same source but also that purchasers would mistakenly assume that both were products of respondent by virtue of its use of "MENNEN" with the common mark.

*Key West Fragrance & Cosmetic Factory, Inc. v. Mennen Co.*, 216 USPQ 168, 170 (TTAB 1982); *see also, In re Riddle*, 225 USPQ 630, 632 (TTAB 1985) (consumers encountering ACCU-TUNE for automotive testing equipment and RICHARD PETTY'S ACCU TUNE for automotive service centers "would likely believe that Richard Petty endorsed or was in some way associated with both the goods and the services").

The same is true here, where the involved application itself reveals both that "the

mark identifies RAPHEAL DAL BO,” an individual, and that Applicant itself is named Raphael Dal Bo AG. As Applicant argues, RAPHAEL DAL BO “is the name and [house] mark that Applicant’s consumers already know Applicant by,” *see* Request for Reconsideration of July 28, 2017, and is “clearly an individual’s name,” 8 TTABVUE 5, so to Applicant’s customers, it is clear that the product mark, LA VITA È BELLA, which is modified by RAPHAEL DAL BO, refers to the particular Raphael Dal Bo AG alcoholic beverages being offered or sold. If those consumers encounter Registrant’s VITABELLA alcoholic beverages in a liquor store or elsewhere, they could very well be confused. Conversely, consumers familiar with Registrant’s mark, upon encountering the same goods offered under Applicant’s mark, may simply assume that RAPHAEL DAL BO identifies the company while LA VITA È BELLA identifies the particular product. *See In re Champion Int’l Corp.*, 196 USPQ 48, 49 (TTAB 1977); *see also Toshiba Medical Systems*, 91 USPQ2d at 1271; *In re Apparel Ventures, Inc.*, 229 USPQ 225, 226 (TTAB 1986). Indeed, we must focus on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Geigy Chemical Corp. v. Atlas Chemical Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971) (finding a likelihood that doctors would confuse HYGROTON and HYDRONOL, given that it is necessary to consider “the fallibility of memory over a period of time, not merely whether one can distinguish the marks at a given moment”); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Applicant is correct that we must consider the wording RAPHAEL DAL BO, which, because it comes first, would often be treated as the dominant feature of the mark. In cases such as this, however, the product mark is often more important, and the basis upon which to find a likelihood of confusion. *In re Toshiba Medical Systems*, 91 USPQ2d at 1271; *In re Fiesta Palms*, 85 USPQ2d at 1360 (affirming refusal to register CLUB PALMS MVP based on prior registration of MVP, finding consumers “likely to believe that the CLUB PALMS MVP casino services is simply the now identified source of the previously anonymous MVP casino services”); *In re Riddle*, 225 USPQ at 630 (affirming refusal to register RICHARD PETTY’S ACCU TUNE & Design based on registration for ACCU-TUNE); *Key West Fragrance*, 216 USPQ at 168 (finding likelihood of confusion between SKIN SAVERS for face and throat lotion and MENNEN SKIN SAVER for cosmetic and toilet preparations, namely, hand and body lotion); *In re C.F. Hathaway*, 190 USPQ at 343 (affirming refusal to register HATHAWAY GOLF CLASSIC based on registration of GOLF CLASSIC).

Applicant’s product mark is more important here because Registrant’s mark consists only of the product mark, and does not include a house mark or any other features which would meaningfully distinguish it from Applicant’s product mark given the fallibility of human memory; nor is there any evidence that VITABELLA is anything other than arbitrary. Thus, while RAPHAEL DAL BO is a difference between the marks, it is likely to be perceived by a significant number of consumers exactly as Applicant variously describes it – a “primary and original”/“house” brand and “individual’s name” – and thus be perceived as the previously unidentified source

of VITABELLA alcoholic beverages. In Applicant's mark, RAPHAEL DAL BO, "the name and mark that Applicant's consumers already readily associate with Applicant," 8 TTABVUE 8, clearly modifies LA VITA È BELLA, thus drawing consumers' attention to the similarities between the marks and highlighting their shared commercial impression. *See generally, In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (Fed. Cir. 2004) (finding JOSE GASPAR GOLD for tequila confusingly similar to GASPAR'S ALE for beer, based in large part on affirming findings that "the first name JOSE and the word GOLD both simply modify the name GASPAR" and that JOSE "simply reinforces the impression that GASPAR is an individual's name," and thus "does not alter the commercial impression of the mark"). While Applicant focuses on the number of words in RAPHAEL DAL BO, that is less relevant given that RAPHAEL DAL BO is unitary, and its commercial impression is of one specific individual and company.

Consumers would be most likely to ask for Applicant's goods by their product name, in this case LA VITA È BELLA, because to ask for RAPHAEL DAL BO, by Applicant's admission, is not specific, but instead refers to the "house" which offers a number of different, specific products. This case might very well be different if Registrant's mark also included a house mark or other distinguishing features, but because it is VITABELLA alone, RAPHAEL DAL BO, which modifies LA VITA È BELLA in Applicant's mark, is insufficient to distinguish the two marks.

This case might also be different if there was some evidence that VITABELLA, "beautiful life" or variations thereof are weak for alcoholic beverages, but there is

none. *Cf. Knight Textile Corp. v. Jones Investment Co., Inc.*, 75 USPQ2d 1313 (TTAB 2005) (finding no likelihood of confusion between NORTON MCNAUGHTON ESSENTIALS and ESSENTIALS for women's clothing because evidence established that ESSENTIALS is "highly suggestive"); TMEP §1207.01(b)(iii) ("Additions or deletions to marks may be sufficient to avoid a likelihood of confusion if ... the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted."). In this case, consumers would perceive Registrant's mark VITABELLA as distinguishing source because it is arbitrary and the entirety of Registrant's mark.

## **II. Conclusion**

In short, because Applicant's and Registrant's goods are identical and move in the same channels of trade to the same consumers, the marks need not be as close as they would in a case where the goods are different. The marks in this case are sufficiently similar for confusion to occur, because Applicant's mark consists of a close approximation of Registrant's entire mark, preceded by Applicant's house mark, which, Applicant concedes, consumers would perceive as such.

***Decision:*** The Section 2(d) refusal to register Applicant's mark is affirmed.