

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Sugarlands Distilling Company, LLC
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Serial No. 85818277
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Mark S. Graham of The Graham Law Firm, PLLC,
for Sugarlands Distilling Company, LLC.

Theodore McBride, Trademark Examining Attorney, Law Office 103,
Michael Hamilton, Managing Attorney.

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Before Kuhlke, Wellington and Goodman,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Sugarlands Distilling Company, LLC (“Applicant”) seeks registration on the Principal Register of the mark SUGARLANDS DISTILLING COMPANY (in standard characters, DISTILLING COMPANY disclaimed) for the following goods ultimately identified as “craft moonshine beverages,” in International Class 33.¹

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2), on the ground

¹ Application Serial No. 85818277 was filed on January 8, 2013, based upon Applicant’s allegation of a *bona fide* intent to use the mark in commerce under Section 1(b) of the Trademark Act.

that Applicant's mark is primarily geographically descriptive of its goods. In addition, the Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified goods, so resembles the mark SUGARLAND CELLARS (in standard characters, CELLARS disclaimed) registered on the Principal Register for "wines" in International Class 33,² as to be likely to cause confusion, mistake or deception.

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We reverse the refusal under Section 2(e)(2) and affirm the refusal under Section 2(d).

Primarily Geographically Descriptive

"In order for a mark to be considered primarily geographically descriptive under Section 2(e)(2), it must be shown that (1) the mark's primary significance is a generally known geographic location; and (2) that the relevant public would be likely to make a goods/place association, that is, would be likely to believe that the goods originate in the place named in the mark." *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1616 (TTAB 2007). *See also In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); and TMEP 1210.01(a) (October 2015)

² Registration No. 4226505, issued on October 16, 2012.

(“To establish a prima facie case for refusal to register a mark as primarily geographically descriptive, the examining attorney must show that: (1) the primary significance of the mark is a generally known geographic location, (2) the goods or services originate in the place identified in the mark; and (3) purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark.”)

The Examining Attorney argues that “[t]he evidence of record shows that SUGARLANDS is a valley in the north-central Great Smoky Mountains. It is also the location of a national park which features the ‘Sugarlands Visitor Center.’ Given these facts, the geographic location SUGARLANDS, while remote and obscure enough to conduct moonshining during the turn of the century, is not a location that is now so remote and obscure that consumers wouldn’t recognize it as a geographic location.” 14 TTABVUE 13. The Examining Attorney further argues that “[t]here is a good[s]/place association between SUGARLANDS and Applicant’s goods by virtue of the fact that Applicant’s goods originate from the SUGARLANDS area (Knoxville TN is roughly 25 miles from the SUGARLANDS area).” 14 TTABVUE 14. In support of the refusal the Examining Attorney submitted a single Wikipedia entry for “The Sugarlands.” The entry describes the Sugarlands as:

[A] valley in the north-central Great Smoky Mountains, located in the Southeastern United States. Formerly home to a string of small Appalachian communities, the valley is now the location of the Great Smoky Mountains National Park headquarters and the Sugarlands Visitor

Center. Lying just south of Gatlinburg, the Sugarlands is one of the park's most popular access points.³

The excerpt from Wikipedia also comments on the association of moonshining in the area:

By 1900, moonshining had become rampant throughout the Smokies. The dense forest, isolated coves, and ready availability of corn made mountain valleys such as the Sugarlands the perfect places to hide and operate illegal stills. ... While moonshining no doubt occurred, Kephart's account is probably exaggerated. Gladys Trentham Russell, who grew up in the Fighting Creek area, estimated that less than 20% of mountain families ever engaged in the practice. Those who consumed moonshine often did so for medicinal purposes. Russell did acknowledge, however, that 'bootleggers' and 'bad men' made the far reaches of the Sugarlands too dangerous for women and children.⁴

We begin by finding that the relevant purchasing public for the goods at issue consists of the general public interested in purchasing distilled spirits, including whiskey.

With regard to the primary significance of the term "SUGARLANDS," we find that the record does not support a finding that it is a generally known geographic location. The evidence consists solely of an excerpt from one Wikipedia entry. While the Wikipedia excerpt has probative value, without other evidence to support the proposition that consumers have been exposed to this term and are aware of its geographic significance, we cannot find that it is a generally known geographic location. *In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1450-51

³ April 24, 2013 Office action, TSDR p. 4.

⁴ April 24, 2013 Office action, TSDR p. 6.

(Fed. Cir. 2015) (“The internet (and websites such as Wikipedia) contains enormous amounts of information: some of it is generally known, and some of it is not. ... [T]he mere entry in a gazetteer or the fact that a location is described on the internet does not necessarily evidence that a place is known generally to the relevant public.”); *See also In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032-33 (TTAB 2007) (“The better practice with respect to Wikipedia evidence is to corroborate the information with other reliable sources, including Wikipedia’s sources.”). The facts of this case are distinct from those presented in *In re New Merced*, 85 USPQ2d 1614 (TTAB 2007) wherein the evidence of record, consisting of entries from multiple websites and reference works, established that Yosemite is the name of a well-known geographic region that is clearly not obscure or remote.

Inasmuch as the evidence does not support the first factor, we need not address the goods/place association.⁵ In view thereof, we find on this record that SUGARLANDS is not primarily geographically descriptive of Applicant’s goods.

Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (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, two key considerations are the similarities between the marks and the

⁵ However, we note that the historical reference associating this location with “moonshining” dates back to 1900 and by itself is not sufficiently probative of current consumers’ awareness of this connection.

similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Similarity of the Goods/Channels of Trade/Consumers

With regard to the goods, channels of trade and classes of consumers, we must make our determinations under these factors based on the goods as they are identified in the registration and application. *See In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant argues the goods are not related and specifically asserts:

It has not been shown that the relevant consumers of craft moonshine beverages sold under the mark SUGARLAND DISTILLERY would have any reasonable experiential basis to confuse the source of such goods with that of wine sold under the mark SUGARLAND CELLARS; in fact, ordinary common sense shows that people would readily recognize from the marks themselves that they come from commercially unrelated sources.

12 TTABVUE 4.

However, the record supports a finding that Applicant's goods "craft moonshine beverages" are sufficiently related to Registrant's "wine," that when used under a very similar mark, confusion is likely. We begin by sorting out the nature of Applicant's goods. Applicant's initial identification for the goods was "alcoholic beverages and spirits." In response to a requirement issued by the Examining

Attorney, Applicant initially amended its identification of goods to “distilled spirits and alcoholic beverages containing distilled spirits,” but later further refined its identification to “craft moonshine beverages.” “Moonshine” is defined as “smuggled or illicitly distilled liquor, especially corn liquor as illicitly distilled chiefly in rural areas of the southern U.S.”⁶ and “intoxicating liquor; esp: illegally distilled corn whiskey.”⁷ “Corn whiskey” is defined as “whiskey made from a mash having at least 80 percent corn.”⁸ By contrast, “bourbon” is defined as “a whiskey distilled from a mash made up of not less than 51 percent corn plus malt and rye,”⁹ and “rye whiskey” is defined as “a whiskey distilled from rye or from rye and malt.”¹⁰ Applicant’s goods presumably are not “smuggled” or “illegally distilled,” we therefore interpret this identification as meaning whiskey, including corn whiskey that is made from 80 percent corn mash.¹¹

⁶ Dictionary.com (www.dictionary.reference.com) based on the RANDOM HOUSE DICTIONARY (2015). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁷ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1998). *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594.

⁸ Dictionary.com (www.dictionary.reference.com) based on RANDOM HOUSE DICTIONARY (2015). *In re Red Bull GmbH*, 78 USPQ2d at 1377.

⁹ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1998). *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594.

¹⁰ *Id.*

¹¹ The definition does not definitively exclude other types of whiskey and we note the record shows Applicant produces rye spirits and bourbon. See November 3, 2014 Response, TSDR p. 3 (newspaper report of awards given to Applicant in the flavored whiskey and bourbon category for its rye spirits).

Applicant is correct in its observation that there is no *per se* rule that all alcoholic beverages are related; rather, we look to the record to make that determination.¹² Here, the record contains several examples of wineries also distilling and selling various spirits, including whiskey. Moreover, many of them make this clear by including both the words “winery” and “distillery” in their trademarks/trade names. For example, Montezuma Winery, in addition to wine, also produces and sells vodka, brandy and whiskey;¹³ Warwick Valley Winery & Distillery offers wine, distilled spirits, and distilling classes for those “wanting to learn about distilling and the craft industry ... and all aspects of brandy, gin and whiskey production”;¹⁴ Cedar Ridge Winery & Distillery produces and sells wine

¹² We note, however, that the Court of Appeals for the Federal Circuit and the Board have repeatedly held various alcoholic beverages, including whiskey and wine to be related. *See, e.g., In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1947-8 (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 *Majestic Distilling*, 65 USPQ2d at 1204 (finding malt liquor related to tequila given the identity of trade channels despite the fact that “malt liquor is a brewed product, whereas tequila is distilled”)); *In re Salierbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (beer and wine related); *Monarch Wine Co., Inc. v. Hood River Distillers, Inc.*, 196 USPQ 855 (TTAB 1977) (whiskey related to wine); *In re AGE Bodegas Unidas, S.A.*, 192 USPQ 855 (wine related to whiskey); *Ex Parte American Wine Company*, 90 USPQ 14, 15 (Comm’r Pat. 1951) (wine related to whiskey). As specifically addressed in *Monarch Wine Co.*, “[T]he products of both parties are alcoholic beverages which flow through the same channels of trade to the same class of purchasers, and we believe that a prospective purchaser of an alcoholic beverage upon entering and browsing through the various alcoholic products located or displayed on the various shelves or counters in retail liquor establishments would, upon encountering a whiskey, rum, brandy or vodka identified by the term “MONARCH”, and then continuing on his jaunt to another counter or section of the same store and seeing a wine or champagne sold under the identical mark “MONARCH”, be likely to believe that both products originated with the same producer.” *Monarch Wine Co., Inc. v. Hood River Distillers, Inc.*, 196 USPQ at 857.

¹³ February 3, 2014, TSDR p. 5.

¹⁴ *Id.* p. 11-13.

and “Griff’s Cowboy Whiskey”;¹⁵ Nashoba Valley Winery produces and sells wine and single malt whiskey;¹⁶ and Charbay Distillery & Winery produces and sells wine and “small-batch whiskey.”¹⁷ The Internet evidence shows that there are a number of combination wineries and distilleries, and/or companies that produce both wine and spirits, including whiskey, and that these companies are located throughout the country, including New York, Iowa, Massachusetts and California. This evidence is sufficient for us to find that the goods are related.

Moreover, because there are no limitations or restrictions as to trade channels or classes of purchasers in the respective identifications of goods, we presume that the goods are or would be marketed in all normal trade channels for such goods and to all normal classes of purchasers of such goods. *See Packard Press Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1357 (Fed. Cir. 2000). The trade channels for both Applicant’s and Registrant’s goods would include liquor stores, bars and restaurants, and the alcoholic beverages sections of retail outlets. The relevant class of consumers for both goods includes connoisseurs as well as ordinary consumers who consume alcoholic beverages. *See Somerset Distilling, Inc. v. Speymalt Whiskey Distribs. Ltd.*, 14 USPQ2d 1539, 1542 (TTAB 1989). The evidence reveals another trade channel, *i.e.*, on site at the winery/distillery. Based on this evidence, we find that whiskey, including craft whiskey, and wine travel in the same channels of trade and are offered to the same classes of consumers.

¹⁵ *Id.* p. 14.

¹⁶ *Id.* p. 18.

¹⁷ *Id.* p. 23.

In view of the above, these *du Pont* factors weigh in favor of a likelihood of confusion.

Similarity of the Marks

We consider the marks SUGARLANDS DISTILLING COMPANY and SUGARLAND CELLARS and compare them “in their entireties 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). In making our determination we focus on the recollection of the average purchaser who normally retains a general rather than specific impression of the trademarks. *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 73 USPQ2d at 1695 (“[G]eneral consumers, not just connoisseurs, occasionally purchase champagne or sparkling wines on celebratory occasions, with little care or prior knowledge”).

The Examining Attorney finds the marks confusingly similar because the common element, SUGARLAND(S), is the dominant portion of both marks, as the additional wording in each mark, DISTILLING COMPANY and CELLARS, is merely descriptive and disclaimed. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the

ultimate conclusion rests on consideration of the marks in their entirety.”). *See also Dixie Rests., Inc.*, 41 USPQ2d at 1533-34. In addition, the Examining Attorney notes that marks in plural and singular form are essentially identical. *Weider Publ’ns, LLC v. D & D Beauty Care Co.*, 109 USPQ2d 1347, 1355 (TTAB 2014).

Applicant argues that confusion is not possible because the respective products “cannot even be lawfully sold to the general public under the same roof” and “they are branded under distinguishable marks that explicitly say the products come from fundamentally different types of enterprises.” 12 TTABVUE 3.

With regard to Applicant’s first point, there is no evidence of record to support the statement that such goods may not be sold under the same roof, and as discussed above, the normal trade channels for wine and whiskey include liquor stores. In addition, as discussed above, the evidence of record shows wine and whiskey sold at the same venue. While it is not clear that the tasting rooms and stores for wine and whiskey are in the same building on the property, the products are emanating from the same source at the same location.

On the second point, the record includes examples of wineries being referenced as producers of distilled spirits or include in their name both words winery and distillery. Thus, the wording DISTILLING COMPANY and CELLARS does not indicate they are from “fundamentally different types of enterprises” such that they distinguish source.

Viewing the marks SUGARLANDS DISTILLING COMPANY and SUGARLAND CELLARS we find that the similarities outweigh the dissimilarities. The marks

begin with the common element which adds to the prominence of that term in both marks. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 USPQ2d at 1692; *Presto Prods., Inc. v Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). The additional wording is merely descriptive and lacks source-identifying significance. That the wording DISTILLING COMPANY may indicate to the consumer that the goods are spirits does not eliminate likely confusion in a marketplace where wineries are producing distilled spirits. Moreover, in view of our finding above, the record does not support a finding that the term SUGARLAND is weak. While it is possible there may be some consumers in the United States that have heard of the SUGARLANDS and its connection with “moonshine,” it could still be connected by those consumers with Registrant’s mark SUGARLAND also located in Tennessee.

In view thereof, this *du Pont* factor weighs in favor of finding a likelihood of confusion.

Balancing of Factors

In conclusion, because the marks are similar, the goods are related and the channels of trade and consumers overlap, we find that confusion is likely between Applicant’s mark SUGARLANDS DISTILLING COMPANY and SUGARLAND CELLARS in the cited registration.

Decision: The refusal to register under Section 2(e)(2) is reversed. The refusal to register under Section 2(d) is affirmed.