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December 20, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Trilliant Food and Nutrition, LLC

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Serial No. 86947151

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Kyle T. Peterson of Patterson Thuente Petersen, PA for Trilliant Food and Nutrition, LLC.

Peter Dang, Trademark Examining Attorney, Law Office 121 (Michael W. Baird, Managing Attorney).

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Before Cataldo, Wellington, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Trilliant Food and Nutrition, LLC (“Applicant”) filed an application for registration on the Principal Register of the mark MONARCH ROASTING in standard characters for “coffee sold in cartridges for use in single serve brewing machines,” in International Class 30.¹ The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the

¹ Application Serial No. 86947151 was filed on March 21, 2016 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), on the basis of Applicant’s asserted *bona fide* intention to use the mark in commerce. No claim is made to the exclusive right to use ROASTING apart from the mark as shown.

ground that Applicant's mark, as used in connection with Applicant's goods, so resembles the registered mark LA MONARCA BAKERY & CAFE in standard characters as to be likely to cause confusion, or to cause mistake, or to deceive. The cited mark is registered for "Retail bakery shops," in International Class 35; and "Restaurant and café services," in International Class 43.² When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration and this appeal proceeded. Applicant and the Examining Attorney have filed briefs.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion as set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services at issue. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

(a) The goods and services.

We first consider the similarity or dissimilarity of the goods and services as identified in the application and the cited registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161-62 (Fed. Cir. 2014); *Octocom Sys. Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Registrant's services include restaurant and café services,

² Reg. No. 4784522, issued August 4, 2015. No claim is made to the exclusive right to use BAKERY & CAFE apart from the mark as shown.

and Applicant's goods are coffee sold in cartridges. In order to demonstrate that these goods and services are commercially related, the Examining Attorney has made of record internet evidence showing that businesses that operate restaurants and cafes also offer single-serving coffee cartridges, under the same mark, online. Among these, we note Caribou Coffee, Dunkin' Donuts, and Starbucks;³ Green Mountain Coffee, Tim Hortons, and Uncommon Coffee Roasters Café & Bakery.⁴

The Examining Attorney also submitted copies of the following use-based third-party registrations:⁵

<u>Reg. No.</u>	<u>Mark</u>	<u>Relevant goods</u>	<u>Relevant services</u>
4434007	SPRING FOR COFFEE	Coffee, tea or cocoa contained in plastic cartridges for use in brewing machines; coffee pods	Café, coffee house
4704867	ASCENSION	Coffee capsules containing coffee for brewing; coffee pods	Coffee bars; coffee shops; restaurant and cafe services
49337	SUPERCROWN COFFEE	Coffee pods	Café and restaurant services; coffee shops
4689751	NOBLETREE	Coffee pods	Café and restaurant services; cafes; retail bakery shops
4711780	ERIE ISLAND COFFEE CO.	Coffee capsules containing coffee for brewing; coffee pods	Café and restaurant services; coffee bars; coffee shops

³ Office Action of June 17, 2016 at 14-36.

⁴ Office Action of July 9, 2016 at 11-25.

⁵ Office Action of August 1, 2016 at 45-56, 60-65. We have not considered other submitted registrations that were not issued on the basis of use in commerce.

4827680	WHITE ELEPHANT COFFEE COMPANY	Coffee capsules containing coffee for brewing	Café-restaurants; cafes; coffee shops; restaurant and café services
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Third-party registrations which individually cover different goods and services and are based on use in commerce may serve to suggest that the listed goods and services are of types which may emanate from the same source. *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

The internet evidence and the third-party registrations submitted by the Examining Attorney suffice to persuade us that customers would readily believe that coffee cartridges and café services offered under confusingly similar marks emanate from the same source. Thus, the *du Pont* factor of the similarity or dissimilarity of the goods and services weighs in favor of a finding of likelihood of confusion.

(b) Trade channels.

The Examining Attorney has submitted evidence to indicate that coffee cartridges are offered for sale in restaurants and cafés. An advertisement for Green Mountain Coffee Roasters Visitor Center and Café states, “In our gift shop, browse beverage options for your Keurig brewer ...”⁶ As noted above, Green Mountain Coffee puts its own mark on such “K-Cup® Pods.” A 2013 news article about Tim Hortons states that the company “said it will sell 14-packs of the single-serve cups for \$8.99 at

⁶ Office Action of July 9, 2016 at 11.

participating Tim Hortons Café & Bake Shop restaurants ...”⁷ An advertisement for “Uncommon Coffee Roasters 100% compostable single serve coffee cups” states that they are “Available exclusively at Uncommon Coffee Roasters.”⁸ A 2016 article about Dunkin’ Donuts states, “the stores now offer ... Dunkin’ Donuts K-Cup® pods, ...”⁹ and an advertisement states that such goods are available not only online but “in select retail locations ...”¹⁰ The Starbucks website states, “beginning June 12, most Starbucks Stores in the U.S. will carry two varieties of K-Cup® packs ...”¹¹ This evidence is sufficient to persuade us that the trade channels for the goods and services at issue overlap. Accordingly, this *du Pont* factor favors a finding of likelihood of confusion.

(c) The marks.

We next consider the similarity or dissimilarity of the marks at issue in their entireties as to 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). In this case, the two marks have obvious differences in appearance and sound, arising from the words LA and BAKERY & CAFE in Registrant’s mark and the word ROASTING in Applicant’s mark. The words MONARCA and MONARCH are quite similar in appearance, but they would likely be pronounced differently.

⁷ *Id.* at 14.

⁸ *Id.* at 25.

⁹ Office Action of June 17, 2016 at 23.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 35.

With respect to the meanings of the two marks, the Examining Attorney contends that the dominant portions of the marks are MONARCH and MONARCA, respectively; and that these terms should be considered equivalent under the doctrine of foreign equivalents. The Examining Attorney has established that MONARCA is the Spanish equivalent of the word MONARCH and is applicable to either a male or female monarch;¹² and that LA is a Spanish definite article meaning, essentially, “the.”¹³ The Examining Attorney has also shown U.S. census figures indicating that in 2014 there were over 39 million speakers of Spanish in the United States.¹⁴

Our primary reviewing Court has stated:

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine genericness, descriptiveness, as well as similarity of connotation in order to ascertain confusing similarity with English word marks. [Citations omitted.] When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied. ...

Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline. [Citations omitted.] The doctrine should be applied only when it is likely that the ordinary American purchaser would “stop and translate [the word] into its English equivalent.”

Palm Bay Imports v. Veuve Clicquot Ponsardin, 73 USPQ2d at 1696. The Court and the Board have recognized that, in some contexts, even a person familiar with the

¹² Office Action of August 1, 2016 at 6-7.

¹³ Office Action of June 17, 2016 at 9.

¹⁴ Office Action of August 1, 2016 at 10.

foreign language at issue will not “stop and translate,” but rather “take it as it is.” In *In re Spirits International N.V.*, 563 F.3d 1347, 90 USPQ2d 1489 (Fed. Cir. 2009), the Court stated that in some cases, “the literal translation is irrelevant” to customers (providing the examples of VEUVE CLICQUOT and CORDON BLEU); or the context in which the marks appear may render translation unlikely (providing the example of TIA MARIA Mexican restaurant *versus* AUNT MARY canned vegetables). *Id.*, 73 USPQ2d at 1492. See *In re Tia Maria, Inc.*, 188 USPQ 524, 525-26 (TTAB 1975).

Marks that are expressed in different languages are confusingly similar under Section 2(d) when customers would perceive them as representing the same business. The mark now before us, LA MONARCA BAKERY & CAFE, is a combination of Spanish and English words, in which the words that describe the nature of the business are in English and the arbitrary portion of the mark is in Spanish. Clearly, this mark is directed to an English-language market, and is not an attempt to translate another mark for the purpose of reaching the Spanish-language market. Customers are likely to appreciate this fact, and those that speak Spanish would be unlikely to believe that LA MONARCA is intended as a translation of an English-language mark. In our view, in this context, customers would take the Spanish wording “as it is,” rather than translate it for the purpose of associating it with another mark. We therefore find that, in this case, it is not appropriate to apply the doctrine of foreign equivalents for the purpose of treating MONARCA and MONARCH as equivalents. However, even though we do not apply

the doctrine in this case, we do nonetheless take into consideration that the two words have similar meanings.

Turning to the marks in their entirety, we do not agree with the Examining Attorney's argument that "the words 'ROASTING,' 'LA,' and 'BAKERY AND CAFE' have no source-indicating function ..." Although we do not doubt that the Examining Attorney has considered the marks in their entirety, he goes too far in his assessment of the descriptive and generic wording of the marks. Even descriptive and generic terms have some impact on the overall commercial impression created by the marks. *See Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1676 (Fed. Cir. 2015) (Board paid insufficient heed to the word JUICE in context of juice bar services). Overall, we find that there are sufficient differences in appearance, sound, meaning, and commercial impression between LA MONARCA BAKERY & CAFE and MONARCH ROASTING to render confusion as to source unlikely. Accordingly, the *du Pont* factor of the similarity or dissimilarity of the marks weighs against a finding of likelihood of confusion.

(d) Conclusion.

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. The Examining Attorney has shown that the goods and services at issue are related, and that café services like those of Registrant are a trade channel through which coffee cartridges are marketed. However, in this case, the dissimilarity of the marks outweighs the other *du Pont* factors. *See Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21

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USPQ2d 1142 (Fed. Cir. 1991). Accordingly, we find that a likelihood of confusion has not been shown.

Decision: The refusal under Section 2(d) is reversed.