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**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

*In re FN Cellars, LLC*

Serial No. 88902267

Mark G. Kachigian of Head, Johnson, Kachigian & Wilkinson, PC  
for FN Cellars, LLC.

Cierra McGill, Trademark Examining Attorney, Law Office 110,  
Chris A.F. Pedersen, Managing Attorney.

Before Greenbaum, Heasley, and Coggins  
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, FN Cellars, LLC, seeks to register the standard character mark  
QUARRY VINEYARD (with “VINEYARD” disclaimed) on the Principal Register for  
“wine” in International Class 33.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88902267 was filed on May 5, 2020 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and in commerce since at least as early as 2014.

The TTABVUE and Trademark Status & Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .pdf version of the documents.

The Trademark Examining Attorney applied the doctrine of foreign equivalents to refuse registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the registered mark PEDRERA (in standard characters) for "wines" in International Class 33.<sup>2</sup> The registration states that the English translation of the Spanish word "PEDRERA" is "quarry."

The appeal is fully briefed. For the reasons set forth below, we affirm the refusal to register.

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

Section 2(d) of the Trademark Act provides that a trademark may be refused registration if it "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive...." 15 U.S.C. § 1052(d). Its purposes are to prevent buyer confusion as to the source of the goods, and to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *In re Country Oven*, 2019 USPQ2d 443903, \*2-3 (TTAB 2019) (citing *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993)).

To determine whether there is a likelihood of confusion between the marks under Section 2(d), we analyze the evidence and arguments under the *DuPont* factors. *In re*

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<sup>2</sup> Registration No. 4132584, issued on the Principal Register on April 24, 2012.

*E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). We consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1161-62 (Fed. Cir. 2019).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services.” *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (Fed. Cir. 2004), cited in *Ricardo Media v. Inventive Software*, 2019 USPQ2d 311355 at \*5 (TTAB 2019). In this case, both considerations weigh in favor of refusal, as does the third *DuPont* factor, channels of trade.

#### **A. Comparison of the Goods and Channels of Trade**

The second *DuPont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...” and the third *DuPont* factor concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567.

“In reviewing the second factor, we consider the applicant’s goods as set forth in its application, and the [registrant’s] goods as set forth in its registration.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017) (internal punctuation omitted) quoted in *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018).

In this case, Applicant’s and Registrant’s identified goods, wine(s), are identical. Consequently, we must presume that they would be marketed to the same classes of customers—ordinary adult wine drinkers and purchasers—through the same channels of trade, such as liquor stores, bars, and restaurants. *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (Absent restrictions in an application and/or registration, identical goods are “presumed to travel in the same channels of trade to the same class of purchasers.”) *quoted in Zheng Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) and *Stawski v. Lawson*, 129 USPQ2d 1036, 1054-55 (TTAB 2018).

The second and third *DuPont* factors thus weigh heavily in favor of finding a likelihood of confusion.

#### **B. Comparison of the Marks under the Doctrine of Foreign Equivalents**

Under the first *DuPont* factor, we determine the similarity or dissimilarity of Applicant’s and Registrant’s marks in their entireties, taking into account their appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) *aff’d* 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)). Because Applicant’s and Registrant’s identified goods, wine(s), are identical, less similarity between their marks is needed to find a likelihood of confusion. *Zheng Cai v. Diamond Hong*, 127 USPQ2d at 1800; *In re Mighty Leaf Tea*,

601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) *cited in Stawski v. Lawson*, 129 USPQ2d at 1052.

We compare the Spanish PEDRERA with the English QUARRY VINEYARD under the doctrine of foreign equivalents. “Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine ... similarity of connotation in order to ascertain confusing similarity with English word marks.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005). The doctrine is applied only when it is likely that the ordinary American purchaser would stop and translate the word into its English equivalent. *Id.* The “ordinary American purchaser” “includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009).

As the Board has observed:

The purpose of the Trademark Act is two-fold: to protect business and to protect the consumer. ... The doctrine of foreign equivalents is fundamental to this protection. It extends the protection of the Act to those consumers in this country who speak other languages in addition to English.

...

At least one significant group of “ordinary American purchasers” is the purchaser who is knowledgeable in English as well as the pertinent foreign language.

*In re Spirits Int’l N.V.*, 86 USPQ2d 1078, 1083-85, (TTAB 2008), *rev’d on other grounds*, 90 USPQ2d 1489, *quoted in* 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:34 (5th ed. June 2021 update) (“[t]he rationale of the doctrine is to protect the perceptions of ordinary American consumers who are multilingual.”).

The Board has consistently found that Spanish is a common, modern language in the United States, and has routinely applied the doctrine of foreign equivalents to Spanish-language marks. *See, e.g., Ricardo Media v. Inventive Software*, 2019 USPQ2d 311355, at \*7; *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1127 (TTAB 2015). As in *Ricardo Media* and *Aquamar*, we note that Spanish is the most commonly spoken language in the nation, after English, and that over 12% of the United States population over five years of age speaks Spanish.<sup>3</sup> “[T]here is no question that Spanish is a common, modern language.” *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) *quoted in In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016). Under the doctrine of foreign equivalents, we must consider the meaning of the mark PEDRERA to those who speak Spanish.

The Examining Attorney has demonstrated through dictionary evidence that “PEDRERA” means “quarry” in English.<sup>4</sup> The words are literal and direct equivalents. *See generally* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1207.01(b)(vi)(C) (Oct. 2018) (“If the examining attorney has sufficient evidence to show that foreign wording comprising a mark has a relevant, literal, and direct English translation such that the foreign wording has an English language equivalent, then the doctrine generally should be applied.”).

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<sup>3</sup> Nov. 24, 2020 Office Action at TSDR 9-10. “Table 1. Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013. Release Date: October 2015.” [Census.gov/data/tables/2013/demo/2009-2013-lang-tables.html](https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html).

<sup>4</sup> [CollinsDictionary.com/us/dictionary/spanish-english/pedrera](https://www.collinsdictionary.com/us/dictionary/spanish-english/pedrera); [SpanishDict.com/translate/pedrera](https://www.spanishdict.com/translate/pedrera), July 15, 2020 Office Action at 7-8; Nov. 24, 2020 Office Action at 7-8.

Applicant argues that:

[T]he number of people in the U.S. who speak a language is not the proper test under the doctrine of foreign equivalents. The proper test is whether an ordinary American purchaser would stop and translate the foreign word. ...

The doctrine of foreign equivalents has evolved into a guideline, not an absolute rule, and is applied only when the “ordinary American purchaser” would “stop and translate” the foreign wording in a mark into its English equivalent. TMEP §1207(b)(vi)(A); *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (reversing holding of likelihood of confusion where the marks, which were also for alcoholic beverages, were VEUVE ROYALE (the French equivalent of “Royal Widow”) and THE WIDOW, deeming it improbable that ordinary American purchasers would stop and translate “VEUVE” into “widow”). ...

The Applicant submits that an ordinary American purchaser of wine would not stop and translate the uncommonly used word term “PEDRERA” into English. ...

The Applicant asserts that the wine industry often uses foreign words as marks for wine as evidenced by the case law and by the current record. Accordingly, when purchasing wine, an ordinary American purchaser or consumer will likely take the mark as is and not find it necessary to translate the term into English.

Applicant submits that – much like the word “VUEVE” in the context of wine – it is improbable that ordinary American purchasers when shopping for wine would stop and translate a rare foreign word like “PEDRERA” into “QUARRY.”<sup>5</sup>

Applicant’s attorney argument, however, is “no substitute for evidence.” *Zheng Cai v. Diamond Hong*, 127 USPQ2d at 1799 (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005)). The number of people in the U.S. who speak Spanish is relevant because “a word in one of the common,

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<sup>5</sup> Applicant’s brief, 4 TTABVUE 5-7.

modern languages of the world will be spoken or understood by an appreciable number of U.S. consumers for the goods at issue.” *In re La Peregrina*, 86 USPQ2d at 1648. For that reason, the doctrine of foreign equivalents has been routinely applied to Spanish words. *Id.* at 1648 (finding LA PEREGRINA confusingly similar to THE PILGRIM). *See also In re Aquamar*, 115 USPQ2d at 1127 (finding MARAZUL confusingly similar to BLUE SEA); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987) (finding BUENOS DIAS for soap confusingly similar to GOOD MORNING for shaving cream); *In re Perez*, 21 USPQ2d 1075, 1076 (TTAB 1991) (finding EL GALLO for fresh vegetables likely to be confused with ROOSTER for fresh fruit).

In this case, as in those, relevant consumers would likely stop and translate PEDRERA into its English equivalent, “QUARRY.” To be sure, exceptions have arisen from time to time in which relevant consumers would not “stop and translate” words from common, modern languages. For example, in *Cont’l Nut Co. v. Cordon Bleu*, 494 F.2d 1397, 181 USPQ 647 (CCPA 1974) the French term CORDON BLEU had such a well-established meaning that even French speakers would not translate it to “blue ribbon.” *Id. cited in Spirits Int’l*, 90 USPQ2d at 1492. Or in *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1975), the Board deemed confusion unlikely between AUNT MARY’s for canned fruits and vegetables and TIA MARIA, as the Spanish mark named a particular person in the context of restaurant services. *Id.* at 525-26.

But those exceptions are inapplicable here. There is no evidence that PEDRERA is so commonly used among English speakers, like CORDON BLEU, that translation



becomes unnecessary. *See In re Thomas*, 79 USPQ2d 1021, 1025 (TTAB 2006) (“This situation ... differs from those cases in which it was found that the mark would not be translated because of the inherent nature of the mark.”). There are no personal names, like TIA MARIA and AUNT MARY, to differentiate the marks. *See Ricardo Media v. Inventive Software*, 2019 USPQ2d 311355, at \*7 (RICARDO distinguishable from RICHARD). And there is no exception for alcoholic beverages. *See Rosenblum v. George Willsher & Co.*, 161 USPQ 492, 492-93 (TTAB 1969) (RED BULL for Scotch whiskey likely to be confused with TORO ROJO for rum, in large part because “toro rojo” means “red bull” in Spanish) *cited in In re Aquamar*, 115 USPQ2d 1122 at \*1127. The goods, wine(s), are identical and sold in the context of the same channels of trade.

The dictionary evidence shows that “PEDRERA” translates literally and directly into “quarry.”<sup>6</sup> There is no evidence that “PEDRERA” is rare or uncommon. *See In re La Peregrina*, 86 USPQ2d at 1648 (“There is also no question that the translated meaning of LA PEREGRINA is not obscure.”). “The doctrine [of foreign equivalents] is applicable in this case because the record shows that the relevant English translation is literal and direct, the word comes from a common, modern language, and there is no contradictory evidence of another relevant meaning. *See* TMEP § 1207.01(b)(vi).” *In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1485 (TTAB 2012).

Even though the doctrine of foreign equivalents is applicable, Applicant nevertheless maintains that the marks are dissimilar when compared in their

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<sup>6</sup> CollinsDictionary.com/us/dictionary/spanish-english/pedrera, July 15, 2020 Office Action at 7; Nov. 24, 2020 Office Action at 7.

entireties. In sight and sound, Applicant maintains, PEDRERA differs from QUARRY VINEYARD. And in connotation, it argues:

the English term QUARRY has multiple definitions, the first being “game” or “one that is sought or pursued.” See for example Merriam-Webster, Quarry. Only a second definition “an open excavation usually for obtaining building stone, slate, or limestone” translates to the foreign word PEDRERA. *Id.* There is even a third and lesser-known definition “a diamond-shaped pane of glass, stone, or tile.” *Id.* Even if a consumer were to translate PEDRERA into QUARRY there still will be room for confusion as to the source of the goods because Applicant’s English term has multiple different connotations.<sup>7</sup>

...

The Applicant’s mark has a second, disclaimed term, VINEYARD. A disclaimer does not remove the disclaimed matter from the mark. The mark must still be regarded as a whole, including the disclaimed matter, in evaluating similarity to other marks. ... Therefore, a consumer would likely view the full mark QUARRY VINEYARD and conclude the mark is the name of a wine from a vineyard.<sup>8</sup>

While we must, and do, consider Applicant’s mark as a whole, we find Applicant’s arguments unavailing. “[A]s in a number of prior cases with similar facts, the equivalency in meaning of the marks outweighs the differences in how the marks look and sound.” *In re Aquamar*, 115 USPQ2d at 1128 (citing, e.g., *In re La Peregrina*, 86 USPQ2d at 1649-50 (“LA PEREGRINA and PILGRIM [both for jewelry] are foreign equivalents and, thus, the marks are identical in meaning. This factor outweighs the differences in appearance and pronunciation.”); and *In re Am. Safety Razor*, 2 USPQ2d at 1460 (“While the marks [BUENOS DIAS for soap and GOOD MORNING for shaving cream] are concededly distinguishable in their appearance and

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<sup>7</sup> Applicant’s brief, 4 TTABVUE 9.

<sup>8</sup> Applicant’s brief, 4 TTABVUE 8.

pronunciation, it is our view that the equivalency in meaning or connotation is sufficient, in this case, to find likelihood of confusion.”)).

While the English word “QUARRY” may have several meanings, “PEDRERA” has one of those meanings: “an open excavation usually for obtaining building stone, slate, or limestone.” A Spanish-English dictionary illustrates: “El camion salio de la **pedrera** cargado de rocas” means “The truck came out of the **quarry** full of rocks.”<sup>9</sup> “PEDRERA” and “QUARRY” thus yield the same commercial impression for their identical goods: wines from grapes grown in a rocky terroir. Applicant’s other proffered definitions do not flow from the Spanish “PEDRERA,” and have no bearing on wines.

“QUARRY,” the first word in Applicant’s mark, is the prominent, dominant part of that mark—the part consumers are most likely to notice and remember. *In re Detroit Athletic*, 128 USPQ2d at 1049 (citing *Palm Bay Imps.*, 73 USPQ2d at 1692 (VEUVE remains a prominent feature as the first word in the mark)). “VINEYARD,” its disclaimed, descriptive suffix, does not serve to distinguish the marks, as it merely describes “an area of land where grape vines are grown in order to produce wine.”<sup>10</sup> Because both goods are wines that would originate from a vineyard, it is unlikely that purchasers would rely on this term to distinguish the marks. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1185 (TTAB 2018) (disclaimed word “CHATEAU” merely describes a location where wine is produced) (citing *Cunningham v. Laser Golf*

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<sup>9</sup> SpanishDict.com/translate/pedrera, July 15, 2020 Office Action at 8; Nov. 24, 2020 Office Action at 8 (emphasis added).

<sup>10</sup> CollinsDictionary.com, July 15, 2020 Office Action at 9.

*Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (“Regarding descriptive terms, this court has noted that the ‘descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.’”) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)).

In sum, under the doctrine of foreign equivalents, we find that PEDRERA and QUARRY VINEYARD are similar in connotation and commercial impression, and that this similarity outweighs the marks’ dissimilarity in appearance and pronunciation. The first *DuPont* factor thus weighs in favor of finding a likelihood of confusion.

## **II. Conclusion**

Because the marks are similar, and the identified goods and channels of trade are identical, we find that there is a likelihood of confusion under Section 2(d). 15 U.S.C. § 1052(d).

**Decision:** The refusal to register Applicant’s mark QUARRY VINEYARD is affirmed.