

**THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB**

Mailed:  
January 22, 2010  
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Gennaro Auricchio S.p.A.

v.

Trademark Management Company

Opposition No. 91161200  
against Serial No. 78212909

Marsha G. Ajhar of Hartman & Craven LLP for Gennaro Auricchio  
S.p.A.

Timothy P. Fraelich of Jones Day for Trademark Management  
Company.

Before Bucher, Grendel and Zervas, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Trademark Management Company seeks registration on the  
Principal Register of the mark **CATELLI** (*in standard character  
format*) for "pasta sauces" in International Class 30.<sup>1</sup>

Registration has been opposed by Gennaro Auricchio S.p.A.  
As its grounds for opposition, opposer asserts that

<sup>1</sup> Application Serial No. 78212909 was filed on February 10, 2003  
based upon applicant's allegation of a *bona fide* intention to use  
the mark in commerce.

applicant's mark when used in connection with its goods so resembles opposer's previously used and registered marks, **LOCATELLI** (*in standard character format*), for "cheese,"<sup>2</sup> and the design mark shown below:



registered for "cheese" in International Class 29,<sup>3</sup> as to be likely to cause confusion, to cause mistake or to deceive under Section 2(d) of the Lanham Act.

Applicant, in its answer, has denied the essential allegations in the opposition.

### **The Record**

In addition to the pleadings, the file of opposed application Serial No. 78212909 is part of the record without

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<sup>2</sup> Registration No. 1092901 issued to The Nestle Company, Inc. on June 6, 1978; assigned to Societe Des Products Nestle S.A. on December 21, 1982; assigned to opposer, Gennaro Auricchio S.p.A. on March 20, 1997; renewed.

<sup>3</sup> Registration No. 3059989 issued to opposer, Gennaro Auricchio S.p.A., on February 21, 2006. The underlying application was filed on April 28, 2004, soon after Registration No. 2054657 (for the identical design mark) was cancelled under Sec. 8 of the Act on January 24, 2004.

any action by the parties. Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b). Additionally, opposer introduced the following evidence:

(i) opposer's notice of reliance on (a) certified status and title copies of the above identified registrations; (b) certain of applicant's responses to opposer's interrogatories and requests for admission, (c) portions of the discovery deposition of Kristen Clark on July 28, 2005, Marketing Director of The H.J. Heinz Company, applicant's Fed. R. Civ. P. 30(b)(6) witness, and (d) copies of third-party U.S. trademark registrations showing registration of marks registered in connection with food items including cheese and pasta sauce; and,

(ii) the trial testimony of Mary Anna Rose Ajemian and Philip Marfuggi, President and Vice-president / director of sales and marketing, respectively, for The Ambriola Company, Inc. ("Abriola") -- the exclusive licensee and distributor of opposer's LOCATELLI cheese products in the United States, with exhibits.

Applicant introduced into the record the following evidence:

(i) applicant's notice of reliance of April 8, 2008 on (a) portions of the discovery deposition of Mary Anna Rose Ajemian on January 12, 2007, opposer's Fed. R. Civ. P.

30(b)(6) witness; (b) certain of opposer's responses to applicant's interrogatories and requests for admission; and (c) the entirety of Ms. Kristen Clark's discovery deposition of July 28, 2005, to which opposer did not object; and

(ii) the trial testimony of Christine Shea, earlier associate director for the Classico pasta sauce business, and more recently, Director of Global Health and Wellness for The H.J. Heinz Company, taken on March 25, 2008.

The parties each filed a brief in the case.

### **Factual Findings**

Trademark Management Company ("TMC") is a holding company for trademarks owned by the H.J. Heinz Company. Pursuant to an asset purchase agreement of June 2001, BF Foods International Corporation ("Borden Foods") assigned its U.S. rights in the **CATELLI** mark to TMC in July 2001.<sup>4</sup>

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<sup>4</sup> The Assignment documents referred to two then-pending applications that the assignee inadvertently allowed to become abandoned for failure to file Statements of Use:

(1) Application Serial No. 75381034 for "pasta; and tomato based sauces" was filed by BFC Investments, L.P. / Borden Foods Corp. on October 28, 1997, abandoned November 2001, failure to file a Statement of Use.

(2) Application Serial No. 75381037 for "pasta; and tomato based sauces" was filed by BFC Investments, L.P. / Borden Foods Corp. on October 28, 1997, abandoned June 2002, failure to file a Statement of Use.



H.J. Heinz Company of Canada owns the **CATELLI** mark in Canada and markets **CATELLI** brand dry pasta and pasta sauces in Canada. From its Canadian operations, **CATELLI** pasta is exported to thirteen countries worldwide. Although the record does not reflect that applicant has used the mark **CATELLI** in connection with the sale of goods in commerce in the United States, the product sold by Heinz Canada is produced in the United States in a manufacturing plant in New Jersey, owned and operated by H.J. Heinz Company, L.P., a trademark licensee of applicant. The **CATELLI** labels are applied by Heinz L.P. at the New Jersey manufacturing plant before the product is shipped to Canada.

It was applicant's intention first to introduce this as a mainstream pasta sauce brand in the United States, positioned to compete with popular mainstream brands like **PREGO** and **RAGU**. In response to opposer's interrogatories, applicant indicated that it has a *bona fide* intention eventually to use the **CATELLI** mark in the United States on pasta sauces, but also on pesto, olive oil, bruschetta, frozen meals and entrees.

At the time of the asset purchase and trademark assignment, H.J. Heinz Company, TMC and other Heinz affiliates also granted a license back to Borden Foods Canada Corporation

to use the **CATELLI** mark worldwide, including in the United States.

As noted earlier, Societe Des Products Nestle S.A. assigned the **LOCATELLI** and **LOCATELLI** (and design) United States registrations, both for "cheese," to opposer, Gennaro Auricchio S.p.A., on March 20, 1997 (the "Main Agreement"). Gennaro Auricchio S.p.A., a family-owned cheese producer is the owner of the **LOCATELLI** brand sheep's milk (or "*pecorino*") romano cheeses in Italy. Opposer claims to have used its **LOCATELLI** mark in commerce in the United States (including through its predecessors in interest) for more than a hundred years (since 1904), and the **LOCATELLI** (and design) mark in commerce in the U.S. since March 1984. According to a second agreement of the same date, a "sole sale contract," "Abriola"<sup>5</sup> is the sole importer and exclusive manufacturer's distributor of opposer's *pecorino* romano cheese products in the U.S.<sup>6</sup> In 2007, Abriola imported and sold more than three million pounds of LOCATELLI cheese in the United States.<sup>7</sup> Within a third agreement between Nestle and Auricchio entitled "Trademark

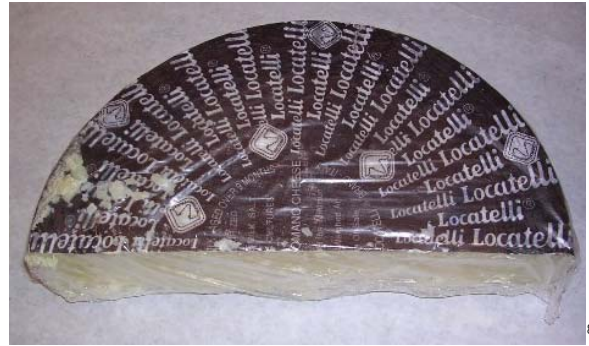
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<sup>5</sup> In its case-in-chief, opposer relies upon the testimony of two principals of "Abriola."

<sup>6</sup> Trial testimony of Mary Anna Rose Ajemian, at 11 - 12, Exhibit 3.

<sup>7</sup> *Id.* at 43.

License Agreement," also executed on the same date, the **LOCATELLI** and **LOCATELLI** (and design) marks are again identified as the relevant trademarks. According to this confidential document, opposer agrees to use the Locatelli trademarks only in connection with *pecorino* cheese and only in the United States. In



return, opposer granted to Nestle a license to use the Locatelli Trademarks in the United States for cheese other than *pecorino* cheese.<sup>9</sup> Finally, the record reveals that Nestle no longer maintains any rights in this mark.<sup>10</sup>

### ***Standing and priority***

As a preliminary matter, we find that opposer has established its standing by alleging and submitting status and title copies of its registrations. Because opposer has made of record copies of its valid and subsisting registrations,

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<sup>8</sup> [http://www.salamisbymail.com/zcstore/index.php?main\\_page=product\\_info&products\\_id=8](http://www.salamisbymail.com/zcstore/index.php?main_page=product_info&products_id=8), Trial testimony of Christine Shea, at 67 - 69, Exhibit CC.

<sup>9</sup> However, Nestle has evidently not used the **LOCATELLI** mark in the United States on these other non-*pecorino* types of cheeses. Opposer's responses to applicant's second set of interrogatories, ## 26 - 46.

<sup>10</sup> Trial testimony of Mary Anna Rose Ajemian of January 12, 2007, at 130-31, 142-43.

the issue of priority does not arise. See *King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Moreover, applicant has not contested opposer's claim of priority.

### **Likelihood of Confusion**

We turn then to the issue of likelihood of confusion. Our determination of likelihood of confusion must be based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

The salient question to be determined is not whether the involved goods and/or services of the parties are likely to be confused, but rather whether there is a likelihood that the relevant purchasing public will be misled to believe that the goods and/or services offered under the involved marks originate from a common source. See *J.C. Hall Company v. Hallmark Cards, Incorporated*, 340 F.2d 960, 144 USPQ 435 (CCPA 1965); and *The State Historical Society of Wisconsin v.*



*Ringling Bros.-Barnum & Bailey Combined Shows, Inc.*, 190 USPQ  
25 (TTAB 1976).

**The Marks**

Opposer's mark that is the closest to applicant's applied-for mark is the word **LOCATELLI** in standard character format. Applicant's mark **CATELLI** also consists of a single word.

There are readily-discernible differences in the appearance of these two marks given opposer's leading syllable, "Lo-." On the other hand, this difference in appearance between applicant's mark and opposer's mark may well not be recalled by purchasers seeing the marks at separate times. Furthermore, as to applicant's argument regarding the appearance of applicant's stylized mark as actually used in Canada, the fact that applicant is applying for its mark in standard character format in the involved application means that any overall visual differences growing out of this stylization are irrelevant.

As to sound, applicant has adopted the final three of the four syllables in opposer's marks, which begin with a soft sounding "Lo-" while the balance is dominated by a hard sounding "C," as is applicant's mark.

Opposer argues that despite the fact that both marks would seem to be arbitrary terms as applied to these goods, the prefix "Lo-" in the Italian language means "the," such that "Locatelli" could be seen as "The Catelli." Furthermore, opposer argues that both "Locatelli" and "Catelli" fit an established branding "pattern" in the United States for selecting "Italian-sounding" terms in the food sector for goods often associated with Italian cuisine. In support of this conclusion, opposer's counsel simply points to well-known brand names such as PREGO, CLASSICO, RONZONI, BARILLA, BERTOLLI and SAN PELLEGRINO. Even without accepting opposer's argument that there is such a "pattern" at work in this field, we find that the words **LOCATELLI** and **CATELLI**, to the extent they may well be seen as Italian surnames, will leave prospective consumers with similar connotations. In view of the foregoing, we find that the parties' marks will engender similar commercial impressions. See *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999). While this factor is not clear-cut, we do find the marks to be more similar than dissimilar, and this *du Pont* factor is resolved in opposer's favor.

**The Goods**

It is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); and *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

Additionally, opposer has made of record the following third-party registrations which show that the same mark has been registered by a single entity for both cheese and pasta sauce.



Reg. No. 1559979 issued on October 10, 1989; renewed.



Reg. No. 1838948 issued on June 7, 1994; renewed.

**NATURAL GOODNESS FROM CALIFORNIA**

Reg. No. 1922244 issued on September 26, 1995; renewed.

**DELALLO**

Reg. No. 2071448 issued on June 17, 1997; renewed.

**BELLETTIERI'S**

Reg. No. 2328919 issued on March 14, 2000; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

**DE VECCIO**

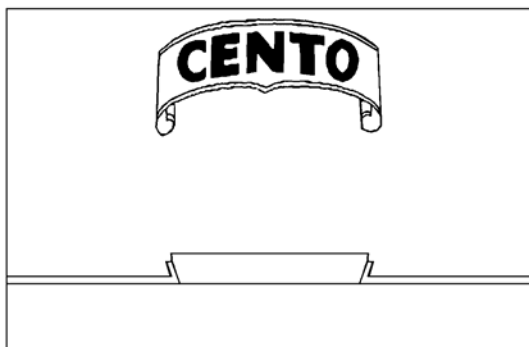
Reg. No. 2507774 issued on November 13, 2001; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.



Reg. No. 2604769 issued on August 6, 2002; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.



Reg. No. 2661501 issued on December 17, 2002; Section 8 affidavit (six-year) accepted.



Reg. No. 2751749 issued on August 19, 2003; Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.

**CONAGRA FOODS**

Reg. No. 2889507 issued on September 28, 2004.



Reg. No. 2926511 issued on February 15, 2005.

**AUTHENTIC ITALIAN COOKING  
BEGINS WITH CENTO**

Reg. No. 2937287 issued on April 5, 2005.



Reg. No. 2969737 issued on July 19, 2005.

**WILD OATS**

Reg. No. 2990840 issued on September 6, 2005.

**RACCONTO**

Reg. No. 3017274 issued on November 22, 2005.

**ROSELI**

Reg. No. 3020308 issued on



November 29, 2005.

Reg. No. 3032241 issued on  
December 20, 2005.

ST. JAMES WINERY

Reg. No. 3034607 issued on  
December 27, 2005.

**BELLINO**

Reg. No. 3210005 issued on  
February 20, 2007.

**TRUST YOUR FAMILY WITH OUR  
FAMILY**

Reg. No. 3210006 issued on  
February 20, 2007.

**CENTO**

Reg. No. 3210011 issued on  
February 20, 2007.



Reg. No. 3212469 issued on  
February 27, 2007.

Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. *See In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

Although applicant argues that opposer has introduced no evidence that these trademarks were actually used by third parties, opposer does point to a variety of third-party marks used on Internet websites, including registered marks listed above such as Cento, DeLallo, etc. These include sites that

offer both pasta sauces and sheep's milk cheese as separate items, and tomato-based pasta sauces whose ingredients include such cheese:



**CENTO**  
SAN MARZANO  
PASSATA  
TOMATO SAUCES

*New from Cento® Fine Foods... "fresh from the vine" authentic San Marzano Passata™ and pasta-based flavored tomato sauces.*

*Made in Italy from a traditional processing only the finest Italian San Marzano tomatoes, our passata is served into glass jars.*

*Today, passata is the preferred tomato base choice in kitchens throughout Italy where cooks insist on freshness and appropriate convenience.*

*With our dried and cured an ideal base, our famous Marinara, Puttanesca are ready to use.*

[http://www.cento.com/prod\\_new\\_pass.html](http://www.cento.com/prod_new_pass.html)



**ACADEMIA BARILLA**  
POMODORINI PELATI  
PEELED CHERRY TOMATOES

<http://www.shop.academiabarilla.com/>



**Emeril's**  
THREE CHEESE  
PASTA SAUCE

**Emeril's™ Three Cheese 25 oz -**  
This rich, aromatic sauce is loaded with Parmesan, Ricotta and Pecorino-Romano.

<http://www.famousfoods.com/emthcpasa25.html>



**Imported Locatelli Romano**  
Sold only by the piece in 1 lb. increments

Imported from Italy. Has a sharp flavor. Great for grating or as a table cheese

Product ID: 002030  
Price: \$7.00  
Case Price: Contact us for case or quantity discounts!  
\* Perishable Item - requires next day shipping.  
Brand: DeLallo

<http://www.delallo.com/>



**DE LALLO**  
Pasta Sauce

**Newman's Own Five Cheese Sauce**  
*All Natural Ingredients*  
Ingredients: Tomato Puree ... Romano Cheese Blend ... Pecorino Romano Cheese (Pasteurized Sheep's Milk)

[http://www.newmansown.com/product\\_detail.aspx?productid=29](http://www.newmansown.com/product_detail.aspx?productid=29)



**Barilla Restaurant Creations**

Each Restaurant Creations sugo recipe was inspired by the distinctive and authentic Italian flavors and tastes of a particular region.

From Lazio and the Eternal City of Rome Sugo alla Romana, with hearty Romano and Ricotta cheeses, olive oil and herbs.

[http://www.barillaus.com/Home/pages/Restaurant\\_Creations.aspx](http://www.barillaus.com/Home/pages/Restaurant_Creations.aspx)

**Williams-Sonoma Pasta Sauces**  
... Our sauce features four varieties - Parmesan, Asiago, Provolone and Pecorino Romano

<http://www.williams-sonoma.com/products/>

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Hence, we note that third parties are selling pasta sauces explicitly touting pecorino romano cheese as an ingredient. Similarly, several of the pasta sauces marketed

<sup>11</sup> Trial testimony of Mary Anna Rose Ajemian of January 12, 2007, Exhibits 9A, 9B, 9C and 10.

under the Classico® brand, a premium brand under the province of Kristen Clark of The H.J. Heinz Company, contain as an ingredient "imported pecorino romano cheese."<sup>12</sup>

Nonetheless, applicant argues that in a pasta sauce product sold at mainstream price points, this ingredient would certainly not be an expensive type of cheese. It is in this context that applicant argues that opposer's **LOCATELLI** brand *pecorino* romano cheese is a premium or even "super-premium" product, allegedly selling for \$24.<sup>99</sup> per pound, with limited availability in mainstream supermarkets across the United States. Opposer, in response, alleges that it is a national brand sold in all fifty states, that opposer's **LOCATELLI** brand is a well-known mark within the cheese delis of both speciality shops and supermarkets, and is even available at discount prices through club stores such as Costco.

Opposer has shown that cups of its hard, grated cheese are often sold in supermarkets on stand-alone displays, or "shippers," placed in the produce section, in store aisles

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<sup>12</sup> Trial testimony of Mary Anna Rose Ajemian of January 12, 2007, Exhibit 11.



with dry pasta and pasta sauces, and/or in the deli area. According to the testimony of Ms. Ajemian, **LOCATELLI** brand *pecorino romano* cheese is a hardy cheese that could be kept in the store aisle in an air-conditioned supermarket during the day if refrigerated at night.<sup>13</sup> Opposer has shown that grated cheeses, including its own, are sold in the store aisle with pasta sauces, and that sometimes pasta and pasta sauces are cross-marketed close to the deli section or specialty cheese department in a supermarket.<sup>14</sup>



## LOCATELLI BRAND PECORINO ROMANO

Our favorite spokesperson, **MARCELLO**, known for his good taste and good sense presents a little history:

Pecorino Romano is one of the world's oldest cheeses, dating back to Roman times when it was made for the Caesars. It actually goes back to Romulus and Remus, the founders of Rome.

Locatelli Brand Pecorino Romano was first produced by the Locatelli family over 500 years ago. Unique in quality and uniformity, Locatelli is made from the finest grade sheep's milk and aged at least nine months to develop its unique flavor and texture.

**MARCELLO'S** favorite cooking and grating cheese, can also be enjoyed as an excellent snacking experience.

Freshly grated Locatelli Brand Pecorino Romano adds an exciting touch to soups, salads, eggs, vegetables, and especially to pasta.

It can definitely replace salt as a zesty flavor enhancer. Available in Pre-Cut wedges and freshly grated and shredded cups, **MARCELLO** says, "**ALWAYS TOSS IN THE LOCATELLI**".

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Nonetheless, applicant argues that we should focus on the fact that *pecorino* cheese is generally refrigerated, and sold

<sup>13</sup> Trial testimony of Mary Anna Rose Ajemian of January 12, 2007, at 28 - 32, Exhibit 6, Bates No. GA00361.

<sup>14</sup> Trial testimony of Philip Marfuggi of April 24, 2007, at 13 - 90, Exhibits 3 - 17.

<sup>15</sup> <http://www.ambriola.com/locatelliproducs.html> submitted as Exhibit 7, Trial testimony of Mary Anna Rose Ajemian of January 12, 2007.

from the deli, in specialty foods section at the perimeter of grocery, in the cheese section of warehouse stores, and furthermore that given the price points of opposer's cheese, it clearly falls into the premium or even "super premium" category of food products.

However, in addition to the fact that opposer supports retailers in placing grated **LOCATELLI** cheese on shippers in grocery aisle right next to pasta and pasta sauces, a determination of the issue of likelihood of confusion between the applied-for and the registered marks must be made on the basis of the goods as they are identified in the involved application and registration. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1848 (Fed. Cir. 2000). In such circumstances, if there are no limitations in the identification, we must presume that the "registration encompasses all goods of the nature and type described." *In re Elbaum*, 211 USPQ 639 (TTAB 1981).

In view of the foregoing, and based on the evidence of record and identifications of goods, we find that the parties' goods are related, and resolve this factor too in opposer's favor.

**Trade Channels**

Inasmuch as the identifications of goods in both the registration and the application do not include any limitations with respect to trade channels, we assume that both parties' goods move through the same trade channels, namely all trade channels normal for food items, such as delis, supermarkets and club stores. *Elbaum*, 211 USPQ at 640. In response to opposer's interrogatories, applicant indicated that it planned to utilize retail trade channels including retail grocery stores, convenience stores, drug stores, dollar stores, club stores and super centers, commissary channels and food service channels, but not gourmet or specialty food stores. This provides a clear overlap in trade channels with those opposer has been using. Thus, we resolve this factor in opposer's favor.

**The conditions under which and buyers to whom sales are made**

Applicant argues that opposer is selling "expensive goods," purchased by sophisticated purchasers after careful consideration. However, the record shows **LOCATELLI** cheese wrapped in small, seven-ounce, deli wedges, and sealed in small cups of grated cheese stacked on grocery aisle shippers. These are not expensive items, and will likely be purchased casually, the same as would applicant's mainstream

goods. In any case, as noted above, we must presume that the registration encompasses all goods of the nature and type described. Accordingly, apart from any extrinsic evidence of "extra-premium" goods, registrant's "cheese" must be considered to include inexpensive goods purchased without much care. Thus, we resolve this *du Pont* factor in opposer's favor as well.

**Strength of Opposer's Mark**

Opposer has enjoyed many years of exclusive use of the **LOCATELLI** mark in connection with cheese in the United States. Opposer's licensee, Abriola, imported and sold more than three million pounds of **LOCATELLI** cheese in the United States during 2007. According to the testimony of opposer's president, "... currently [opposer is] the 800-pound gorilla ... of the cheese deli. No question."<sup>16</sup> In support of its prominent position in the U.S. marketplace, opposer expended more than \$2 million in promotional costs in 2007.<sup>17</sup> Given this long and successful history of sales in the United States, we find that this mark has achieved a notable degree of renown in the field, and this factor weighs in opposer's favor.

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<sup>16</sup> Trial testimony of Mary Anna Rose Ajemian of January 12, 2007, at 44.

<sup>17</sup> *Id.* at 46.

**Limits on opposer's U.S. rights**

Opposer is the owner of two cited registrations listing simply "cheese" in the identification of goods. The assignment of these registrations conveyed to opposer all the legal rights and presumptions accorded to Nestle, the assignor, prior to the date of transfer. These include the statutory presumptions of Section 7(b) of the Trademark Act, including the presumption of an exclusive right to use the mark in commerce in the United States on cheese. The fact that on the same day, opposer licensed back to Nestle the right to use the mark on non-*pecorino* cheeses, and in the same agreement promised Nestle that it would not seek further to register the **LOCATELLI** mark in United States for any food items, does not lessen the right opposer has to exclude third parties from the use or registration of similar marks on related goods. Apart from the details of this past contractual relationship with Nestle, this factual pattern is easily distinguishable from situations where multiple third parties using similar marks may have the impact of weakening or boxing-in a potential plaintiff. Rather, in this *inter partes* context, opposer has sufficiently demonstrated a fairly significant right to exclude third-parties from the use and registration of the **LOCATELLI** mark for cheese and related food items. Hence, at worst for opposer, this is a neutral fact.

**Conclusion**

We conclude, based upon a preponderance of the evidence, and particularly in view of the similarities between the marks, the strength of opposer's marks, and the relatedness of the respective goods as identified in the identifications of goods, that there is a likelihood of confusion when **LOCATELLI** and **CATELLI** are used contemporaneously on the parties' cheese and pasta sauces, respectively.

Nonetheless, given the acknowledged differences between the appearances of the marks, we consider this to be a somewhat close case. To the extent that we have doubts as to the proper resolution of this case, we consider it appropriate to resolve such doubt against the newcomer (applicant) and in favor of the prior user and registrant (opposer). See *In re Pneumatiques, Caoutchouc Manufacture*, 487 F.2d 918, 179 USPQ 729 (CCPA 1973). See also *TBC Corp. v. Holsa Inc.*, 126 F.3d 1470, 44 USPQ2d 1315 (Fed. Cir. 1997); and *In re Hyper Shoppes*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988).

*Decision:* The opposition is sustained based upon the ground of likelihood of confusion under Section 2(d) of the Lanham Act, and registration to applicant is hereby refused.