

This Opinion is not a
Precedent of the TTAB

Mailed: July 16, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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*Oakville Hills Cellar, Inc.,
dba Dalla Valle Vineyards*

v.

Georgallis Holdings, LLC

—
Opposition No. 91211612
—

J. Scott Gerien and Christopher J. Passarelli of Dickenson Peatman & Fogarty,
for Oakville Hills Cellar, Inc.

Gregory Scott Smith of GSS Law Group,
for Georgallis Holdings, LLC.

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Before Bucher, Mermelstein and Masiello,
Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Georgallis Holdings, LLC (“Applicant”) filed an application to register the mark
MAYARI in standard characters for “Wine,” in International Class 33.¹

¹ Application Serial No. 85735694, filed on September 21, 2012, under Trademark Act § 1(a), 15 U.S.C. § 1051(a), stating August 2010 as the date of first use anywhere and first use in commerce. The application contains the statement, “The wording ‘MAYARI’ has no meaning in a foreign language.”

Oakville Hills Cellar, Inc. (“Opposer”), doing business as Dalla Valle Vineyards, opposed registration of the mark on the ground that the mark, as used in connection with the identified goods, so resembles Opposer’s registered mark MAYA as to be likely to cause confusion, mistake or deception, under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Opposer pleaded ownership of Registration No. 2508401 for the mark MAYA in typed form for “Wine,” in International Class 33.² Applicant, in its answer, denied the salient allegations of the notice of opposition. The case has been fully briefed.

I. The record.

The record includes the pleadings and, by operation of Trademark Rule 2.122, 37 C.F.R. § 2.122, the application file for the opposed mark.

Opposer’s pleaded registration was made of record under a notice of reliance, in the form of a current printout of information from the electronic database records of the USPTO showing current status and title of the registration.³ Opposer also filed a notice of reliance (9 TTABVUE) and a rebuttal notice of reliance (33 TTABVUE) on the following evidence:

Evidence relating to the meanings of MAYA and MAYARI from the following sources:

Walker, Barbara G., *The Woman’s Encyclopedia of Myths and Secrets* (HarperSanFrancisco 1983).

² Reg. No. 2508401 issued November 20, 2001. Section 8 affidavit accepted; Section 15 affidavit acknowledged; renewed. Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. A typed mark is the legal equivalent of a standard character mark. *See* TMEP § 807.03(i) (2015).

³ 9 TTABVUE 9-10. Applicant also made the pleaded registration of record. 32 TTABVUE 72-80.

<babynames.merschat.com>

<lowchensaustralia.com/names/Philippines.htm>

<read-legends-and-myths.com/mayari-myths.html>

<urbananito.wikispaces.com/Deities>

Philippines Mythology and Folklore,
at <https://sites.google.com/site/philmys/lesson-2>

Press notices from Wine Spectator magazine and Wine Spectator Online.

Opposer's web page from <dallavallevineyards.com>.

Excerpts of James Halliday, *Wine Atlas of California* (Viking 1993).

Applicant filed 16 notices of reliance on the following evidence:

Information from the Social Security Administration regarding the popularity rankings of baby names (10 TTABVUE).

Information regarding third-party U.S. trademark registrations and applications (22-25 and 29-32 TTABVUE).

Online dictionary searches for MAYA and MAYARI (11 TTABVUE).

Online offerings of wines, including those of Applicant and Opposer (12-13 TTABVUE).

Opposer's written responses to document requests, interrogatories, and requests for admission (14-16 TTABVUE).

Excerpts from websites of Applicant and Opposer (17 TTABVUE).

Federal regulations relating to the labelling, advertising, and marketing of wine (26-28 TTABVUE).

A stipulation, with attached documents, made of record in a prior opposition proceeding brought by Opposer against a third party (21 TTABVUE).

Information regarding awards won by Applicant's wines under the marks MAYARI and KISSOS (18 TTABVUE).

Information from the USPTO database regarding the marks of Applicant and Opposer (19 TTABVUE).

Public records relating to Applicant's adoption of the fictitious names KISSOS and KISSOS WINE (20 TTABVUE).

II. Standing.

Opposer has properly made of record its pleaded registration and has thus established its standing to oppose registration of Applicant's mark. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

III. Opposer's claim under Section 2(d).

Opposer brings its opposition under Trademark Act § 2(d) on the ground of likelihood of confusion. In view of Opposer's ownership of a valid and subsisting registration of its pleaded mark, priority is not in issue with respect to the mark and the goods identified in the registration. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination of likelihood of confusion is based on an analysis of all probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

A. The goods.

Turning first to the similarity or dissimilarity of the goods at issue, we find that they are identical, being identified as “wine” in both the application and the pleaded registration. Although there is evidence of differences in the specific nature of the wines of Applicant and Opposer and of a substantial difference in price, we do not consider those facts in comparing the parties’ goods. In the context of an opposition proceeding, the question of registrability of an applicant’s mark must be decided on the basis of the identifications of goods set forth in the application and registration at issue. *See Octocom Syst. Inc. v. Houston Computers Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *Kalart Co., Inc. v. Camera-Mart, Inc.*, 119 USPQ 139 (CCPA 1958); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Applicant has requested a registration applicable to all kinds of wine in all price ranges; and Opposer’s registration covers use of its mark on all kinds of wine. Accordingly, the *du Pont* factor regarding the similarity or dissimilarity of the goods weighs in favor of a finding of likelihood of confusion.

B. Channels of trade.

We next consider the parties’ established and likely to continue channels of trade. Because the parties’ goods are identical, we must presume that they move through the same channels of trade and are sold to the same classes of purchasers. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith and Mehaffey*, 31

USPQ2d 1531, 1532 (TTAB 1994). As there are no limitations as to channels of trade in the identifications of goods in the registration and application, we presume that the parties' goods move in all channels of trade that are normal for such goods. *See Octocom*, 16 USPQ2d at 1787; *Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Accordingly, the *du Pont* factor of trade channels weighs in favor of a finding of likelihood of confusion.

C. Buyers.

Applicant argues that “[t]he sophistication of wine consumers clearly mitigates against a likelihood of confusion in this case,” and that “any likelihood of confusion is further decreased by the expensive nature of Opposer’s products.”⁴ The evidence indicates that Opposer’s goods may cost between \$175 and \$365 per bottle; and that Applicant’s wine has been offered at \$25.⁵ However, we must consider purchasers of wine at all price levels, because the application and registration state no limits as to the price of the parties’ respective goods.

Opposer argues that ordinary purchasers of wine have “little sophistication” and suggests that they are “impulse buyers” who “would not necessarily be likely to exercise [a] high degree of care.”⁶ We assume that the goods include inexpensive wines that are offered to all normal classes of customers for inexpensive wine. *In re Elbaum*, 211 USPQ at 640. Such customers include persons of no special

⁴ Applicant’s brief at 19, 35 TTABVUE 25.

⁵ Applicant’s notice of reliance No. 6, 12 TTABVUE; and Opposer’s answer to interrogatory No. 17, 15 TTABVUE 11.

⁶ Opposer’s brief at 7, 34 TTABVUE 12.

sophistication who would apply only an ordinary degree of care in selecting the goods. This *du Pont* factor favors a finding of likelihood of confusion.

D. The marks at issue.

We next consider the similarity or dissimilarity of the marks at issue, in their entireties, in terms of appearance, sound, meaning, and overall commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In doing so, we bear in mind that “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). Moreover, the marks ‘must be considered ... in light of the fallibility of memory ...’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014), quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ 1 (CCPA 1977). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). In comparing the marks, we are mindful that “[w]hen marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.” *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed.

Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007).

The marks at issue are MAYA and MAYARI. In appearance, they resemble each other in that they share the initial four letters MAYA, which constitute the entirety of Opposer's mark. Opposer argues that "[i]t is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered," quoting *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988); and refers to MAYA- as "a dominant ... root" of the mark.⁷ While there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985), in the present case we see no reason to perceive any separation, visual or otherwise, between the MAYA- and -RI portions of Applicant's mark. The letters RI, alone, have no relevant meaning, providing no reason for a customer to view the mark logically as MAYA *plus* RI, rather than as a single unitary expression.

We bear in mind that Applicant seeks registration of its mark in standard characters, and therefore it is not limited to any particular font, size, style or color. See *In re Viterra Inc.*, 101 USPQ2d at 1909; *Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011). Opposer points out that "the bottle label will inevitably appear to read 'MAYA' at certain

⁷ Opposer's brief at 8, 10, 34 TTABVUE 13, 15.

orientations relative to an observer,”⁸ suggesting that the vagaries of product placement on a shelf may conspire to obscure a part of Applicant’s mark from the customer. While this is a type of “mistake” encompassed within the statutory language of Section 2(d), the *likelihood* of such a mistake remains a matter of speculation, absent evidence regarding the occurrence or regularity of mistakes of this sort.

In sound, we note Opposer’s statement that it “does not intend that the MAYA mark be pronounced in any particular manner.”⁹ Dictionary definitions of MAYA indicate that the word is pronounced with the emphasis on the first syllable, as “**mah-yuh**” or “ ’ma:ya:.”¹⁰ We also consider the possibility that the first syllable may be pronounced to rhyme with “hay” or “weigh.” There is nothing in the record to indicate how MAYARI would be pronounced. To the extent that both marks include the letters MAYA, they could be pronounced the same; however, we consider the possibility that MAYARI might be pronounced with the emphasis on its second or third syllables, and that the –YAR- syllable might be salient.

Opposer, while acknowledging that “it is impossible to predict how the public may pronounce a particular mark,” urges:

[T]he marks only differ by two letters that can be easily obscured when spoken ...

Furthermore, given that the wines at issue must be presumed to move through all channels of trade, including bars, there is an increased likelihood of confusion based

⁸ *Id.* at 11, 34 TTABVUE 16.

⁹ Opposer’s response to interrogatory No. 25, 15 TTABVUE 15.

¹⁰ Applicant’s notice of reliance No. 3, 11 TTABVUE 6-7, 13.

on the similarity in sound of the marks as the small difference of the letters “RI” will not differentiate the marks where the goods are ordered by name in a bar under noisy, chaotic conditions.¹¹

The parties have vigorously contested the meaning or connotation of the marks. Applicant’s dictionary definitions indicate that MAYARI has no meaning, and that MAYA has several salient meanings, primarily (a) the Hindu concept of “the power, as of a god, to produce illusions” (or the name of a goddess embodying this power); (b) the pre-Columbian civilization of the Yucatan Peninsula; and (c) a member of a modern American Indian people of southern Mexico, Guatemala, and parts of Honduras.¹²

Opposer contends that MAYA is a “given name for girls” having its origins in the name of a Hindu goddess.¹³ Opposer further contends that MAYARI is “a Filipino lunar goddess” and a given female name.¹⁴ Both names appear on “baby name” websites, MAYA noted as being of “Latin” origin and MAYARI noted as being of “Filipino” origin.¹⁵ MAYARI also appears on an Internet list of “Filipino Names” under the rubric of “Gods, Goddesses and Deities of the Philippines,”¹⁶ and on certain websites that discuss Tagalog myths.¹⁷ Opposer contends that since both marks may signify given female names and goddesses, “the marks must be found to

¹¹ Opposer’s brief at 12, 34 TTABVUE 17.

¹² Applicant’s notice of reliance No. 3, 11 TTABVUE.

¹³ Opposer’s brief at 12-13, 34 TTAVUE 17-18.

¹⁴ *Id.* 34 TTABVUE 18.

¹⁵ Opposer’s first notice of reliance, 9 TTABVUE 19-23.

¹⁶ *Id.*, 9 TTABVUE 25-26.

¹⁷ *Id.*, 9 TTABVUE 29-38.

be similar in connotation.”¹⁸ Applicant refers to Opposer’s attempt to connect MAYA with Hindu mythology and MAYARI with Filipino mythology as “tenuous” and “without any support or evidence that consumers would make such a tenuous connection.”¹⁹ Referring to searches of a “Popular Baby Names” website of the Social Security Administration, Applicant argues that in each year between 2000 and 2013, MAYA has ranked between 113th and 57th in popularity; while MAYARI has not appeared among the top 1000 most popular names in any of the last 100 years.²⁰ Applicant also argues that any meaning that MAYA may have is lost in Applicant’s mark MAYARI.

Although the letters MAYA are contained in Applicant’s MAYARI mark, MAYA is so merged or integrated into the MAYARI mark that it “loses its individual identity therein.” *See Castle & Cooke, Inc. v. Oulevay, S.A.*, 152 USPQ 115 (CCPA 1967) ... As a result, consumers will not view MAYA as having a separate meaning apart from the MAYARI mark as a whole. ... [T]he meaning of MAYA is completely lost when the additional letters ‘RI’ are added ...²¹

Considering all of the foregoing, we note that the marks are visually similar only in part; no evidence shows that they would be pronounced alike, and they may well be pronounced quite differently. With respect to meaning, we are not persuaded that customers would be aware of the more esoteric meanings of the marks; rather, we find that most customers would likely perceive MAYA as a female personal

¹⁸ Opposer’s brief at 13, 34 TTABVUE 18.

¹⁹ Applicant’s brief at 10, 35 TTABVUE 16.

²⁰ Applicant’s first notice of reliance, 10 TTABVUE 6-8.

²¹ Applicant’s brief at 9-10, 35 TTABVUE 15-16.

name or the name of the pre-Columbian civilization, while most customers would perceive MAYARI as a coinage without meaning. In this regard, customers would likely find the term MAYA to be somewhat familiar, while finding MAYARI unfamiliar. *See Jacobs v. International Multifoods Corporation*, 668 F.2d 1234, 212 USPQ 641, 642 (CCPA 1982) (“the familiar is readily distinguishable from the unfamiliar”). Overall, we find that the marks create significantly different commercial impressions. Accordingly, the *du Pont* factor of the similarity or dissimilarity of the marks weighs against a finding of likelihood of confusion.

E. The fame of Opposer’s mark.

Opposer maintains that its mark is famous, having been “featured time and again in premiere wine industry publications, including Wine Spectator, and hav[ing] received critical acclaim over a sustained period of time from at least 1995.”²² For purposes of a claim of likelihood of confusion, fame arises if a “significant portion of the relevant consuming public ... recognizes the mark as a source indicator.” *Palm Bay Imports Inc.*, 73 USPQ2d at 1694. If it exists, fame plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection. Accordingly, it is the duty of the party asserting that its mark is famous to clearly prove it. *Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1904 (TTAB 2007).

²² Opposer’s brief at 14, 34 TTABVUE 19.

The relevant portions of the record, consisting primarily of excerpts from Wine Spectator magazine,²³ are too scant to support a finding that Opposer's mark is famous. Wine Spectator is a specialty publication that regularly gives notice to dozens of brands of wines. Although the accolades accorded to Opposer's brand in this publication are a meaningful form of evidence, such evidence does not alone suffice to demonstrate public recognition of Opposer's mark among "a significant portion" of the relevant public, namely, purchasers of wine. We find that Opposer has not demonstrated fame for purposes of a likelihood of confusion analysis. We treat the *du Pont* factor of fame as neutral.

F. Federal labelling requirements.

Applicant points out that federal labelling requirements applicable to wine require that a wine label include "the name and address of the bottler or packer of the wine, the place where the wine was bottled or packed (e.g., 'Bottled by Dalla Valle Vineyards Oakville California USA'), and the class, type, or other designation (which can be satisfied by including an appellation of origin (e.g., 'Napa Valley')," citing 27 CFR Part 4 and 13.²⁴ Applicant argues that this information, included on both parties' labels, will assist in distinguishing the parties' goods from each other. Generally, other matter that is currently required by government regulations to appear on a product label will not reliably serve to distinguish confusingly similar trademarks from each other. As the Board stated in *In re Merck & Co., Inc.*, 189 USPQ 355, 356 (TTAB 1976):

²³ Opposer's first notice of reliance, 9 TTABVUE 40-88.

²⁴ Applicant's brief at 14-15, 35 TTABVUE 20-21.

[T]he regulations of the Federal Food and Drug Agency are of no significance on the question here before the Board. ... [T]he issue under consideration in this appeal is whether the applicant may be permitted to register its mark in view of a prior registration of an allegedly confusingly similar mark. The presence of other matter on the label of the particular product here involved can have no bearing on the decision as to said marks.

Id. Moreover, Applicant's argument does not apply to uses of the parties' trademarks otherwise than on labels. We treat this factor as neutral.

G. Similar marks in use.

In accordance with *du Pont*, we consider any evidence of record regarding "the number and nature of similar marks in use on similar goods." *Du Pont*, 177 USPQ at 567. Applicant has shown that the marks MAYACAMAS and TAMAYA are in use on wines, and that both marks have appeared on commercial websites together with Opposer's MAYA wine.²⁵ However, we agree with Opposer that the marks TAMAYA and MAYACAMAS are substantially different in commercial impression from Opposer's mark and do not demonstrate that Opposer's mark is weak.²⁶ Applicant has also shown that the mark GRAND MAYAN is in use for tequila; however, we find this fact to be of minimal relevance to the strength of Opposer's mark.

Applicant has submitted third-party registrations and applications for registration of MAYA-formative marks relating to beverages, both alcoholic and

²⁵ Applicant's notice of reliance No. 7, 13 TTABVUE.

²⁶ Opposer has submitted evidence to show that MAYACAMAS refers to a mountain range in California's wine country. (Opposer's second notice of reliance, 33 TTABVUE.)

non-alcoholic, and mostly for beverages other than wine.²⁷ For purposes of demonstrating the weakness of a mark, we give little weight to third-party registrations because they are not evidence that the marks are in use. *Productos Lacteos Tocumbo S.A. de C.V. v. Paeteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 (TTAB 2011). We find the *du Pont* factor of similar marks in use on similar goods to be neutral.

H. Absence of actual confusion.

Opposer has admitted that it is not aware of any instances of actual consumer or trade confusion involving the parties' marks.²⁸ However, on the present record it is not clear that there has been a meaningful opportunity for confusion to occur. There is little evidence of the actual extent of marketing and promotion of the parties' marks. Although both parties' goods have enjoyed some level of success and have won awards (in different venues), the extreme difference in the prices of the parties' respective goods (\$25 versus \$200-\$300 per bottle) indicates that these marks may currently occupy different commercial spheres, such that they have not necessarily crossed paths in an environment where confusion could occur. Under the circumstances, we find the lack of evidence of actual confusion to be a neutral factor in our analysis. *Cf. Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff'd*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011)

²⁷ Applicant's notices of reliance Nos. 4 and 5, 22-25 TTABVUE.

²⁸ Opposer's responses to interrogatory No. 26, 15 TTABVUE 16; and request for admissions No. 2, 16 TTABVUE 6.

(Board found lack of confusion probative where parties operated numerous branch banks nearby each other).

I. Right to exclude others from use.

Opposer argues that the eleventh *du Pont* factor, “the extent to which [Opposer] has a right to exclude others from use of its mark on its goods,” weighs in Opposer’s favor. In support of this argument, Opposer refers only to the fact that its mark is registered and is entitled to the effect of Section 33 of the Trademark Act, 15 U.S.C. § 1115. Subsection (b) of that section provides that an incontestable registration is “conclusive evidence ... of the registrant’s exclusive right to use the registered mark in commerce.” However, the Act provides that “Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement ...” 15 U.S.C. § 1115(b). Our review of this case gives full regard to the evidentiary significance of Opposer’s registration under the Trademark Act. However, absent further evidence of the extent of Opposer’s rights and an explanation as to how the extent of its rights increases the likelihood of confusion, Opposer’s registration alone does not serve as an additional factor weighing in Opposer’s favor in a *du Pont* analysis. Accordingly, we consider this factor to be neutral.

J. Extent of potential confusion.

Under the rubric of the extent of potential confusion (the 12th *du Pont* factor), Opposer describes a number of scenarios in which confusion between the marks could occur. The 12th *du Pont* factor is intended to address whether the potential for confusion is “de minimis or substantial.” *Du Pont*, 177 USPQ at 567. Opposer does

not address that specific issue in its argument or in its evidentiary submissions. We find this factor to be neutral.

IV. Conclusion.

We have considered all of the evidence of record relevant to the *du Pont* factors and all arguments of the parties, including those not specifically discussed herein. The parties' goods are identical and would travel through the same channels to the same classes of customers, some of whom would exercise no more than an ordinary degree of care in selecting the goods. However, the marks are visually similar only in part; are only possibly similar, in part, in their pronunciation; and would likely be perceived to have different meanings and overall commercial impressions. On this record, we find that the marks are sufficiently different that, under normal commercial conditions for the sale of wines, confusion is not likely.

Decision: The opposition is dismissed.