

This Opinion Is Not a
Precedent of the TTAB

Mailed: November 8, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
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Baccarat S.A.

v.

Stefan H. Laux

—
Opposition No. 91227407
—

Mark S. Leonardo of Brown Rudnick LLP for Baccarat S.A.

Christian W. Liedtke of Acuminis PC for Stefan H. Laux.

—
Before Bergsman, Lykos and Heasley, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Stefan H. Laux (Applicant) seeks registration on the Principal Register for the mark BACCARAT, in standard character form, for “alcoholic beverages, namely, vodka,” in Class 33.¹

Baccarat S.A. (Opposer) filed a Notice of Opposition against the registration of Applicant’s mark on the grounds of likelihood of confusion, dilution, deceptiveness,

¹ Application Serial No. 86639975 was filed on May 23, 2015, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

and false suggestion of a connection. Sections 2(a), 2(d) and 43(c) of the Trademark Act, 15 U.S.C. §§ 1052(a), 1052(d), and 1125(c). In its Notice of Opposition, Opposer pleaded ownership of 20 BACCARAT registrations, including Registration No. 1144212 for BACCARAT, in typed drawing form, for “glass service comprising water, wine, champagne and aperitif goblets and glasses, jugs and decanters, and glass candelabra, in Class 21,² and for BACCARAT (stylized), reproduced below, in the following three registrations:

The image shows the word "Baccarat" written in a highly stylized, elegant cursive script. The letters are interconnected, with a prominent, sweeping flourish on the initial 'B' that extends downwards and to the left. The overall appearance is that of a classic, high-end brand logo.

- Registration No. 1406761 for inter alia “crystal and glassware, namely, glasses, bottles, containers, cups, decanters, and vases,” in Class 21;³
- Registration No. 1765572 for “jewelry, glasses, champagne buckets, and carafes,” in Class 14;⁴ and

² Registered December 23, 1980; second renewal.

Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R § 2.52, was amended to replace the term “typed” drawing with “standard character” drawing. A typed mark is the legal equivalent of a standard character mark. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1909 n.2 (Fed. Cir. 2012) (“until 2003, ‘standard character’ marks formerly were known as ‘typed’ marks.”).

³ Registered August 26, 1986; second renewal.

⁴ Registered April 20, 1993; second renewal.

• Registration No. 1810807 for, inter alia, crystal, namely, jugs, candlesticks, decanters, cups, pitchers, ice buckets, beverage ware, goblets, wine glasses and shotglasses, tea caddies, tea services, and teapots, in Class 21.⁵

Applicant, in his Answer, denied the salient allegations in the Notice of Opposition. In addition, Applicant asserted eight “affirmative defenses.” Applicant’s first affirmative defense (abandonment), fourth affirmative defense (“Opposer’s alleged marks lack distinctiveness”), and fifth affirmative defense (“Opposer’s alleged marks are descriptive and/or generic”) are attacks on the validity of Opposer’s pleaded registrations, which may not be asserted unless Applicant files a counterclaim to cancel Opposer’s pleaded registrations. *See* Trademark Rules 2.106(b)(3)(i) and (ii), 37 C.F.R. §§ 2.106(b)(3)(i) and (ii). Applicant did not file any counterclaims to cancel Opposer’s pleaded registrations, so Applicant’s first, fourth, and fifth affirmative defenses will not be heard. Applicant’s second affirmative defense, bad faith, was not litigated. Applicant’s third and sixth affirmative defenses are amplifications of his defense as to why there is no likelihood of confusion. Applicant’s seventh affirmative defense, failure to state a claim upon which relief can be granted is not an affirmative defense and it is not well taken.⁶

Applicant’s eighth affirmative defense, “Opposer’s claims are barred in whole or in part by the doctrines of acquiescence, laches, estoppel and unclean hands,” is not

⁵ Registered December 14, 1993; second renewal.

⁶ Insofar as Applicant neither filed a formal motion to dismiss pursuant to Fed R. Civ. P. 12(b)(6) during the pretrial phase of this proceeding, nor argued this defense in his main brief, the defense is deemed waived. *See Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1752 n.6 (TTAB 2013), *aff’d* 565 Appx. 900 (Fed. Cir. 2014).

applicable in an opposition. Because laches begins to run when an applicant's mark is published for opposition, there is no undue delay. *See Nat'l Cable Tele. Ass'n v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991) (laches begins to run from the time action could be taken against the acquisition by another of a set of rights to which objection is later made); *DAK Indus. Inc. v. Daiichi Kosho Co. Ltd.*, 25 USPQ2d 1622, 1624 (TTAB 1992) ("in an opposition proceeding, laches cannot begin to run until the mark is published for opposition.").

Moreover, Applicant alleges that Opposer's claims are barred by acquiescence, laches, estoppel and unclean hands "because there already exist more than two-dozen registrations for substantially similar or identical marks for the same or substantially identical services" and Opposer has failed to take any action against them.⁷ Acquiescence, laches, estoppel and unclean hands are personal defenses, which may not be asserted by a third party, such as applicant in this case, who lacks privity with the entities entitled to assert the defenses. *Calvin Klein Indus. Inc. v. Calvins Pharm. Inc.*, 8 USPQ2d 1269, 1271 n.6 (TTAB 1988); *The Procter & Gamble Co. v. Keystone Auto. Warehouse, Inc.*, 191 USPQ 468, 474 (TTAB 1976); *Plus Prods. v. General Mills, Inc.*, 188 USPQ 520, 522 (TTAB 1975).

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.R.F. § 2.122(b), Applicant's application file. The record also includes the testimony and evidence introduced by the parties listed below:

⁷ 4 TTABVUE 19.

A. Opposer's testimony and evidence.

1. Notice of reliance on copies of Opposer's pleaded registrations printed from the USPTO electronic database showing the current status of and title to the registrations;⁸
2. Notice of reliance on legal decisions of the World Intellectual Property Organization, the National Arbitration Forum, and the Trademark Trial and Appeal Board regarding Opposer's rights in the BACCARAT mark;⁹
3. Notice of reliance on examples of unsolicited media attention of Opposer's BACCARAT mark;¹⁰
4. Notice of reliance on examples of unsolicited media attention of Opposer's BACCARAT mark;¹¹
5. Notice of reliance on entries for the term BACCARAT in dictionaries, encyclopedias, and other standard references;¹²
6. Notice of reliance on U.S. government reports that refer to Opposer's BACCARAT mark and products;¹³
7. Notice of reliance on books and news articles referring to Opposer's BACCARAT mark and products;¹⁴
8. Notice of reliance on industrial publications that refer to Opposer's BACCARAT mark and products;¹⁵
9. Notice of reliance on books and news articles that refer to Opposer's BACCARAT mark and products;¹⁶
10. Notice of reliance on Opposer's advertising featuring the BACCARAT mark and products;¹⁷

⁸ 22 TTABVUE.

⁹ 23 TTABVUE.

¹⁰ 24-25 TTABVUE.

¹¹ 24-25 TTABVUE.

¹² 26 TTABVUE 13-94.

¹³ 26 TTABVUE 96-109.

¹⁴ 26 TTABVUE 111-337 and 27 TTABVUE 2-183.

11. Notice of reliance on Internet evidence featuring Opposer's BACCARAT mark and products;¹⁸
12. Notice of reliance on Applicant's responses to Opposer's interrogatories;¹⁹
13. Notice of reliance on copies of third-party registrations for the goods and services of both parties;²⁰
14. Testimony declaration of Daniella Riccardi, Opposer's Chief Executive Officer;²¹
15. Rebuttal testimony declaration of Daniella Riccardi;²²
16. Rebuttal testimony declaration of Jim Shreve, President and Chief Executive Officer of Baccarat Inc. and Baccarat North America, Opposer's subsidiaries;²³
17. Rebuttal testimony declaration of James T. Berger, Opposer's survey expert;²⁴ and
18. Rebuttal notice of reliance on Internet evidence referring to Opposer's BACCARAT mark and products.²⁵

B. Applicant's testimony and evidence.

1. Notice of reliance on third-party registrations that include the word "Baccarat";²⁶

¹⁵ 27 TTABVUE 185-262.

¹⁶ 27 TTABVUE 263-328.

¹⁷ 28 TTABVUE.

¹⁸ 29 TTABVUE.

¹⁹ 30 TTABVUE.

²⁰ 31 TTABVUE.

²¹ 32 TTABVUE.

²² 41 TTABVUE.

²³ 42 TTABVUE.

²⁴ 43 TTABVUE.

²⁵ 44 TTABVUE.

²⁶ 36 TTABVUE 13-115.

2. Notice of reliance on copies of three file histories for third-party registrations that include the word “Baccarat”;²⁷
3. Notice of reliance on Opposer’s responses to Applicant’s interrogatories;²⁸
4. Notice of reliance on Internet materials featuring the use of the name BACCARAT by third parties;²⁹
5. Applicant’s testimony declaration;³⁰ and
6. Testimony declaration of Michal Matukin, Applicant’s consumer survey expert.³¹

Only Opposer filed a brief.

II. Standing

Standing is a threshold issue in every inter partes case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). To establish standing in an opposition or cancellation proceeding, a plaintiff must prove that it has a “real interest” in the proceeding and a “reasonable” basis for its belief of damage. *See Empresa Cubana*, 111 USPQ2d at 1062; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (TTAB 1982).

²⁷ 36 TTABVUE 117-292 and 37 TTABVUE 12-179.

²⁸ 37 TTABVUE 181-230.

²⁹ 37 TTABVUE 232-251 and 38 TTABVUE 12-70.

³⁰ 39 TTABVUE.

³¹ 40 TTABVUE.

Opposer has established its standing to bring a Section 2(d) claim by properly introducing into evidence its pleaded registrations. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (plaintiff's two prior registrations suffice to establish plaintiff's direct commercial interest and its standing); *N.Y. Yankees P'ship v. IET Prods. & Servs., Inc.*, 114 USPQ2d 1497, 1501 (TTAB 2015).

Once a plaintiff has shown standing on one ground, it has the right to assert any other ground in an opposition. *See Poly-America, L.P. v. Illinois Tool Works Inc.*, 124 USPQ2d 1508, 1512 (TTAB 2017) (if petitioner can show standing on the ground of functionality, it can assert any other grounds, including abandonment); *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1479 (TTAB 2017) (standing established based on surname claim sufficient to establish standing for any other ground); *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1481 (TTAB 2017) (opposer established its standing as to genericness ground of certification mark and was entitled to assert any other ground).

III. Priority

Because Opposer's pleaded registrations are of record, priority in the opposition proceeding is not at issue with respect to the marks and goods and services identified therein. *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)).

IV. Likelihood of Confusion

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 likelihood of confusion. *In re 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); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant or for which there is evidence of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). “[E]ach case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973) (internal citations removed). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); see also *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is

record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)). These factors and others are discussed below.

A. Fame of Opposer’s BACCARAT mark.

This *DuPont* factor requires us to consider the fame of Opposer’s mark. Fame, if it exists, plays a dominant role in the likelihood of confusion analysis because famous marks enjoy a broad scope of protection or exclusivity of use. A famous mark has extensive public recognition and renown. *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992).

Fame may be measured indirectly by the volume of sales of and advertising expenditures for the goods and services identified by the marks at issue, “the length of time those indicia of commercial awareness have been evident,” widespread critical assessments and through notice by independent sources of the products identified by the marks, as well as the general reputation of the products and services. *Bose Corp. v. QSC Audio Prods. Inc.*, 63 USPQ2d at 1305-06 and 1309. Raw numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be necessary, for example, market share, sales, or advertising figures for comparable types of goods. *Id.* at 1309.

In the likelihood of confusion analysis, “fame ‘varies along a spectrum from very strong to very weak.’” *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003)).

Opposer introduced the evidence discussed below to prove that BACCARAT is a famous mark:

1. Opposer’s predecessors-in-interest began producing glass products in February 16, 1764, after King Louis XV of France authorized the Bishop of Metz to found a glassworks in the town of Baccarat, located in the Lorraine region of northeast France. By 1768, the glassworks were called “Verreries de Baccarat,” which translates to “Glassworks of Baccarat.”³²
2. “In 1892, Opposer established an import agency in New York.”³³
3. “During the American prohibition years of 1919 through 1933, though [Opposer’s] sales of stemware in the U.S. saw a decrease, sales of other glassware in the U.S. remained steady. Likewise, despite the U.S. stock market crash of 1929 and subsequent years of depression in the United States, Baccarat continued to sell goods in the U.S. Of note, during this period in the midst of the Great Depression, Baccarat supplied tableware to the White House during the presidential administration of U.S. President Franklin D.

³² Riccardi Testimony Decl. ¶7 (32 TTABVUE 4).

³³ *Id.* at ¶14 (32 TTABVUE 5).

Roosevelt, and also continued to supply tableware to several subsequent presidential administrations.”³⁴

4. “Following World War II, by 1948, sales of Baccarat glassware in the U.S. had rebounded, and [Opposer] subsequently opened a wholesale and retail store in New York, resulting in [Opposer’s] first American affiliate.”³⁵
5. In the 1930s, Opposer began producing glassware and perfume bottles for other brands, including ELIZABETH ARDEN and HENNESSY. In the late 1940’s, Opposer began producing bottles for CHRISTIAN DIOR.³⁶ In the 1980s, Opposer began producing bottles for GIANNI VERSACE, the design for which was awarded the City of Paris’ First Prize for Creation (1989).³⁷ In 2012, Opposer manufactured the glass bottles for the French perfume LA PETITE ROBE NOIRE by GUERLAIN.³⁸ In 2016, Opposer collaborated with Francis Kurkdjian to create BACCARAT 540 fragrance sold in BACCARAT crystal perfume bottles.³⁹ Opposer also has produced bottles for CARTIER.⁴⁰

³⁴ *Id.* at ¶16 (32 TTABVUE 6).

³⁵ *Id.* at ¶18 (32 TTABVUE 6).

³⁶ *Id.* at ¶20 (32 TTABVUE 7).

³⁷ *Id.* at ¶22 (32 TTABVUE 7).

³⁸ *Id.* at ¶23 (32 TTABVUE 7).

³⁹ *Id.*

⁴⁰ *Id.* at ¶48 (32 TTABVUE 16).

6. Since the 1900s, Opposer has produced crystal decanters and bottles for cognac and other alcoholic beverages for Hine, Camus, Chabasse, Remy Martin, Courvoisier, Delmain, Johnnie Walker, Woodford Reserve, and Grey Goose.⁴¹
7. In 2008, [Opposer] collaborated with EVIAN, the French water company that produces bottled spring water sold worldwide. As a part of this collaboration, [Opposer] designed and produced a limited number of glass water bottles containing EVIAN water.” In 2009, Opposer and Evian prominently displayed the bottles internationally and auctioned them to the public for tens of thousands of dollars. The proceeds of these sales benefitted a charitable organization.⁴²
8. Opposer provides crystal trophies for sporting events. For example, Opposer designs and provides the crystal trophy for the Indian Wells Tennis Tournament held annually in California that draws more than 300,000 fans each year, as well as for the Formula 1 racing tour.⁴³
9. “Since as early as the early 1800s, Baccarat’s crystal wares and goods have been entered and exhibited in numerous national and international expositions and competitions, including World’s Fairs, to promote the progress of Baccarat’s craftsmanship, artistry, and design,” including, but not limited to, the High Prize at the Universal Exhibition in St. Louis (1904), New York

⁴¹ *Id.* at ¶51 (32 TTABVUE 17); Riccardi Rebuttal Decl. ¶¶14-15 (41 TTABVUE 6-7).

⁴² *Id.* at ¶53 (32 TTABVUE 18).

⁴³ *Id.* at ¶56 (32 TTABVUE 18). *See* 32 TTABVUE 51-146 for news articles throughout the United States reporting on other events presenting BACCARAT crystal awards.

World's Fair Outside Competition (1939), Neiman Marcus Fashion Award for elegance in American luxury products (1979), and the International Table Top Award prize of design in Dallas, Texas (1989).⁴⁴

10. Opposer's works are celebrated for their artistry, design and historical value in numerous fine art, fashion, and museum exhibits, including bicentenary exhibition at the Musée des Arts Décoratifs at the Musée du Louvre in Paris in 1964, as well as a retrospective exhibition to mark Baccarat's 250th anniversary at the Grandes Galeries at the Petit Palais in Paris in 2014. The 2014 exhibit featured a selection of over 500 BACCARAT pieces on loan from the Musée d'Orsay, the Musée du Louvre, the Musée des Arts Décoratifs, the Cité de la Céramique, the Musée des Arts et Métiers, the Château de Compiègne and the Musées de Nancy.⁴⁵

11. From 2000-2017, Opposer's U.S. sales of its BACCARAT branded products and services totaled \$458,430,809 (an annual average of \$24,468,360).⁴⁶

12. From 2005-2017, Opposer's U.S. advertising expenditures totaled \$33,996,270 (an annual average of \$2,883,023).⁴⁷

13. Opposer's advertises its BACCARAT branded products and services in magazines such as Vanity Fair, Harper's Bazaar, Elle, Architectural Digest, Brides, Elle Decor, The Knot, and others. It also advertises in the New York

⁴⁴ *Id.* at ¶30 (32 TTABVUE 8-12).

⁴⁵ *Id.* at ¶31 (32 TTABVUE 12).

⁴⁶ *Id.* at ¶60 (32 TTABVUE 19).

⁴⁷ *Id.* at ¶63 (32 TTABVUE 20).

Times, The Los Angeles Times, Maxim magazine, and Forbes magazine, among others.⁴⁸ Finally, Opposer has a social media presence through Facebook and YouTube.⁴⁹

14. “As recently as 2013, based on historical data for sales of crystal wares, including tableware, stemware, barware, and crystal products for the home including bottles, perfume bottles, carafes, pitchers, decanters, vases, statuettes, sculptures, and figurines, [Opposer] held approximately 13% U.S. market share among moderately-priced goods.”⁵⁰ Opposer also has a “significant share” of the U.S. market for crystal lighting products, and “a small, but growing share” of U.S. market share for crystal jewelry products.⁵¹

15. Opposer’s BACCARAT products receive unsolicited publicity through articles published in newspapers, journals, and magazines in print and online.⁵² The examples listed below are representative of publicity introduced by Opposer:

- Amazon.com accessed March 8, 2018 advertising a book “Baccarat: Two Hundred and Fifty Years.” The book review states,

The first book on the house of Baccarat, one of the oldest and most preeminent luxury brands in the world, renowned for its fine crystal creations. Baccarat celebrates more than 250 years as one of the most important and prestigious luxury houses. Acclaimed for its high-quality traditional craftsmanship of fine crystal stemware, barware, candelabra, perfume bottles, and jewelry,

⁴⁸ *Id.* at ¶64 (32 TTABVUE 20); 28 TTABVUE.

⁴⁹ *Id.* at ¶69 (32 TTABVUE 21); 29 TTABVUE 515-551.

⁵⁰ *Id.* at ¶65 (32 TTABVUE 20).

⁵¹ *Id.* at ¶69 (32 TTABVUE 21).

⁵² *Id.* at ¶71 (32 TTABVUE 22).

Baccarat is known the world over as a symbol of quality and refinement.⁵³

- Forbes Magazine (forbes.com) (July 10, 2017)

New York's Latest Five-Star Hotel The Baccarat Shares The City's Parisian Secrets

The Baccarat Hotel & Residences marks the first hotel from France's eponymous crystal brand.⁵⁴

- Forbes Travel Guide (Forbestravelguide.com) (2018)

Baccarat Hotel and Residences

Famed crystal company Baccarat dazzled even the most jaded traveler when it opened its first hotel in New York City in 2015.⁵⁵

- The Wall Street Journal (wsj.com) (October 17, 2013)

Looking Back at 250 Years of Baccarat

Many know Baccarat as the French purveyor of pristine crystal, but few are aware of its eccentric history.⁵⁶

- Interior Design Magazine (interiordesign.net) (August 26, 2013)

Baccarat Celebrates 250 Years with First-Ever Book

Baccarat 1746: Two Hundred and Fifty Years ... a book which celebrates the legacy and enduring craftsmanship of the purveyor of the world's finest crystal works. ... *Baccarat 1746* traces the history of the iconic brand and showcases over 300 unique pieces of crystal. ... the brand

⁵³ 29 TTABVUE 130.

⁵⁴ 44 TTABVUE 109; *see also* Forbes Magazine (forbes.com) (February 25, 2017) ("The grand crystal tradition thrives at The Bar of the Baccarat Hotel New York where every piece is maintained with the unparalleled standards synonymous with the 253-year old luxury brand."). 29 TTABVUE 121.

⁵⁵ 44 TTABVUE 118.

⁵⁶ 24 TTABVUE 32; 29 TTABVUE 34.

has received commissions from history's elite since its formation in 1764.⁵⁷

- SuperYacht World Magazine (liveyachting.com) (September 30, 2013)

News: First Baccarat SuperYacht World Trophy for luxury yacht MALTESE FALCON by Perini Navi

The trophy, created by Baccarat in its tradition of perfection, was handed over to the owner of the sailing yacht Maltese Falcon by SuperYacht World editor Paul Ashton in from of a gathering of industry heads.⁵⁸

- Financial Times (ft.com) (December 5, 2014)

How the Harcourt glass by Baccarat became a design classic

Among crystal's stemware, the Harcourt glass, created by the French company Baccarat in 1841, stands apart.⁵⁹

- Forbes Magazine (forbes.com) (November 26, 2013)

Grey Goose and Baccarat - - A Match Made In Heaven

Take one part smooth French vodka and one part fine French crystal. Mix and stir. Voilà. This month marks the first collaboration between Grey Goose and Baccarat: the "Always Stirred, Never Shaken" martini kit.

... As it turns out, Grey Goose's exceptionally smooth tasting vodka and Baccarat's world-class crystal glassware are quite comparable.⁶⁰

- Architectural Digest (architecturaldigest.com) (August 2013)

For craftsmanship to be truly timeless, it must be not only consistently brilliant in execution but also adaptive in spirit, keeping pace with shifting tastes. Such agility has

⁵⁷ 25 TTABVUE 3.

⁵⁸ 25 TTABVUE 137.

⁵⁹ 25 TTABVUE 23; 29 TTABVUE 142.

⁶⁰ 44 TTTABVUE 85.

long been mastered by Baccarat, the venerable French crystal company which will celebrate its 250th anniversary next year.

* * *

... As [Rafael de] Cárdenas [an international architect] says of Baccarat's legendary workmanship, "They certainly don't cut corners."⁶¹

- The Free Library (thefreelibrary.com) (accessed September 9, 2011)

A Brief History of Baccarat Crystal

Baccarat is famous for its wonderful paperweights, its superb crystal glass tableware, for 19th century colored lead crystal glass and opaline ware, for beautiful decanters and bottles, and for superb lead crystal structures of animals and birds.

* * *

... All things considered, Baccarat Crystal lives up to its legend.⁶²

- Cognac Expert Blog (blog.cognac-expert.com) (December 16, 2010)

Baccarat and Cognac: The Relationship between Crystal and Brandy

The other day we discovered the Baccarat store close to the Place Vendome in Paris, and we were wondering: What is it about 'Baccarat'?

The name itself brings to mind exquisite creations of crystal and glass over the centuries. ...

Baccarat [is] one of the world's leading names for fine crystal, and along with [its] timeless tableware pieces, [is] also known for such diverse items as millefiori

⁶¹ 29 TTABVUE 68-69.

⁶² 29 TTABVUE 42-43.

paperweights, chandeliers, rare sculptures, barware, perfume bottles, jewellery, and of course cognac.⁶³

• Design & Display Ideas (March 1, 2004)

Baccarat, the elegant French doyen of the luxury market, has a brilliant new image, with the opening of its Paris flagship store in a historic mansion, the 240 year-old company has partnered with design icon Phillippe Starck to create a symbol of its renowned brand that responds to its heritage while presenting the store as a true work of French art.⁶⁴

• The Official Price Guide to Glassware (4th ed. 2007) refers to Opposer as “known for producing some of the finest crystal, colored glass and paperweights being made in the world today.”⁶⁵

16. Opposer’s BACCARAT products receive further publicity in television programming in the United States such as the Public Broadcasting Service series “Antiques Roadshow,” the History Channel series “Pawn Stars,” as well as in movies such as “Talladega Nights” (2006) and “Spy” (2015).⁶⁶

17. Some dictionaries list BACCARAT as a trademark. For example, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (UNABRIDGED) (1993) has an entry for Baccarat glass “(*fr.* *Baccarat* a trademark) fine blown, molded, and cut glass made at Baccarat, France from

⁶³ 44 TTABVUE 29-30.

⁶⁴ 27 TTABVUE 165.

⁶⁵ 27 TTABVUE 187.

⁶⁶ Riccardi Testimony Decl. ¶71 (32 TTABVUE 22).

1765 to the present time.”⁶⁷ THE WORLD BOOK ENCYCLOPEDIA also has an entry for Baccarat:

Baccarat glass: The glass works at Baccarat, France, produced some of the best cut glass made in Europe in the 1800's. ... Baccarat glass is still being produced. Today, it includes specially designed crystal sculptures, as well as bowls, table service, and vases.⁶⁸

Encyclopedia.com (accessed September 9, 2011) also has an entry for BACCARAT:

The name Baccarat has become nearly synonymous with luxury. For more than 200 years, this company has produced and distributed some of the world's finest luxury crystal.⁶⁹

“When a trademark attains dictionary recognition as part of the language, we take it to be reasonably famous.” *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1720 (Fed. Cir. 1988); *quoted in B.V.D. Licensing Corp. v. Florencio Rodriguez*, 83 USPQ2d 1500, 1506 (TTAB 2007).

Based on the combination of Opposer's long use of the BACCARAT mark in the United States, commercial success, including a 13% market share, extensive licensing and partnerships with other products, and very favorable publicity (e.g., “one of the

⁶⁷ 26 TTABVUE 20; *see also* THE WORLD BOOK DICTIONARY (1996) (26 TTABVUE 24).

⁶⁸ 26 TTABVUE 28; *see also* Baccarat Glass, ENCYCLOPEDIA BRITANNICA accessed October 28, 2019 (“glassware produced by an important glasshouse founded in 1765 at Baccarat, France.”). The Board may take judicial notice of information from encyclopedias. *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 6 USPQ2d 1719, 1721 (Fed. Cir. 1988) (“dictionaries and encyclopedias may be consulted”); *Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 n.61 (TTAB 2011); *In re Broyhill Furniture Indus. Inc.*, 60 USPQ2d 1511, 1514 n.4 (TTAB 2001) (dictionary entries and other standard reference works).

⁶⁹ 29 TTABVUE 455.

oldest and most preeminent luxury brands,” “eponymous crystal brand,” “the world’s finest crystal works,” etc.), we find that Opposer’s BACCARAT mark is famous for crystal glass products for purposes of the likelihood of confusion analysis.

Applicant argues otherwise. To counter Opposer’s evidence that BACCARAT is a famous mark, Applicant authorized Neurohm Sp. z.o.o. Sp.k. (Neurohm), a global market research firm, to conduct a survey to determine whether Opposer’s BACCARAT mark is famous.⁷⁰ The survey respondents “were a representative sample of 1008 American citizens both male and female, aged 18-65.”⁷¹ Michal Matukin, in his expert survey report, expressly pointed out that he took “special care” to insure the respondents “were selected across thirty-nine (39) geographically dispersed markets.”⁷² Mr. Matukin’s testimony makes clear that Neurohm was testing for dilution fame rather than for likelihood of confusion.

As indicated in 15 U.S. Code § 1125(c)(2)(A) of the Lanham Act, “a mark is famous if it is *widely recognized* by the *general consuming public* of the United States as a designation of source of the goods or services of the mark’s owner.”⁷³

Neurohm did not restrict the universe of respondents to purchasers of crystal products and, therefore, the results of the survey are not meaningful for purposes of

⁷⁰ Matukin Decl. ¶3 (40 TTABVUE 3).

⁷¹ Matukin Expert Survey Report p. 5 (40 TTABVUE 15). Neurohm included “Additional Questions about experience with tested categories” where it asked whether the respondent had purchased or been given crystal glassware in the past and whether the respondent plans to purchase crystal glassware in the future. (40 TTABVUE 21). However, Neurohm did not differentiate the responses from the respondents answering in the affirmative from the respondents who answering in the negative.

⁷² Matukin Expert Survey Report p. 5-6 (40 TTABVUE 15-16).

⁷³ Matukin Expert Survey Report p. 5-6 (40 TTABVUE 6-7).

our likelihood of confusion analysis. “[T]he proper legal standard for evaluating the fame of a mark under the fifth DuPont factor is the class of customers and potential customers of a product or service, and not the general public.” *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005).

Although Mr. Matukin testified that Neurohm’s survey “was designed to establish whether or not the alleged ‘BACCARAT’ mark is famous or well-known based on the correct legal standard for fame which also included an appropriate qualifier, limiting the participants to those with an interest in the subject matter,”⁷⁴ there is nothing in Mr. Matukin’s testimony or the expert consumer survey report explaining how Neurohm restricted or calculated the responses limited to survey respondents who purchased or had been given crystal glassware in the past or to respondents planning to purchase crystal glassware in the future. Neurohm’s survey results incorporate responses from all 1008 respondents regardless of their experience with crystal products.⁷⁵

⁷⁴ *Id.*

⁷⁵ Berger Rebuttal Testimony Decl. ¶25 (43 TTABVUE 13) (“[T]here is no evidence in the Matukin Report or the attached survey materials and results indicating that any such qualifier or limitation was in fact employed to limit the respondents to his survey. Moreover, Mr. Matukin also does not provide any detail or explanation of how he purported to ‘limit[] the participants to those with an interest in the subject matter,’ and does not attempt to define or explain what characteristics comprise an ‘interest in the subject matter,’ or what the purported “subject matter” is. For these reasons, based on my prior experience and knowledge regarding survey protocols, Mr. Matukin has failed to appropriately screen or qualify his respondents, and his survey results therefore cannot draw any conclusions with regard to the the [sic] fame of the Marks.”).

The Federal Judicial Center's 2011 REFERENCE MANUAL ON SCIENTIFIC EVIDENCE

emphasizes that:

A survey that provides information about a wholly irrelevant population is itself irrelevant. Courts are likely to exclude the survey or accord it little weight . . . Coverage error is the term used to describe inconsistencies between a sampling frame and a target population.⁷⁶

By selecting an overly broad universe that included respondents without any knowledge of crystal products, Neurohm skewed the results of the survey in Applicant's favor. American citizens, both male and female, aged 18-65 is too broad a universe because there are respondents who may not purchase or never have purchased crystal products, may not know anything about crystal products, or may not care anything at all about crystal products.

In sum, Opposer's BACCARAT mark has achieved a high degree of fame for crystal glass products under Section 2(d), and this *DuPont* factor weighs in favor of finding that there is a likelihood of confusion.

B. The number and nature of similar marks in use on similar goods.

Applicant introduced copies of 24 third-party registrations whose marks include the word "Baccarat" to prove that Opposer's BACCARAT mark is a weak mark.⁷⁷ The third-party registrations that Applicant introduced are of little probative value because they do not cover crystal glass products. They are registered for, inter alia, casino services, card games, cigars, and flowers. *See Omaha Steaks Int'l v. Greater*

⁷⁶ Reference Manual on Scientific Evidence, 377-378 (Federal Judicial Center 3rd ed. 2011).

⁷⁷ 36 TTABVUE 4 and 13-292 and 37 TTABVUE 13-179.

Omaha Packing Co., 908 F.3d 1315, 128 USPQ2d 1686, 1694 (Fed. Cir. 2018) (error to rely on third-party evidence of similar marks for dissimilar goods, as Board must focus “on goods shown to be similar”); *In re i.am.symbolic, LLC*, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration); *Key Chem., Inc. v. Kelite Chem. Corp.*, 464 F.2d 1040, 175 USPQ 99, 101 (CCPA 1972) (“Nor is our conclusion altered by the presence in the record of about 40 third-party registrations which embody the word ‘KEY’. The great majority of those registered marks are for goods unrelated to those in issue, and there is no evidence that they are in continued use. We, therefore, can give them but little weight in the circumstances present here.”); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009) (the third-party registrations are of limited probative value because the goods identified in the registrations appear to be in fields which are far removed from the goods at issue).

Applicant also introduced excerpts from third-party websites showing use of the word “Baccarat” as a mark but for products far removed from crystal glass products.⁷⁸

Because none of the third-party registrations or uses are for products similar to Opposer’s crystal glass products, this *DuPont* factor is neutral.

C. The similarity or dissimilarity of the marks.

Applicant’s mark is BACCARAT in standard character form and Opposer’s marks are BACCARAT in typed drawing form and stylized form reproduced below:

⁷⁸ 37 TTABVUE 232-251 and 38 TTABVUE 12-59.



The marks are visually and phonetically identical.

With respect to their connotation and commercial impression, Applicant stated that he “created his arbitrary, if not fanciful or coined, mark to pay homage to his personal ancestry and, possibly, to allude to the quality of the water used in his distillation process without any awareness of Opposer’s alleged but non-existent conflicting trademark rights.”⁷⁹ Applicant is referring to Baccarat, France, because his ancestors are from the Baccarat region of France.⁸⁰ Also, Applicant did not introduce any evidence or testimony regarding his association with Baccarat the card game. Therefore, the marks have the same meaning and engender the same commercial impression.

We find that the marks are identical in sight, sound, connotation and commercial impression.

D. The similarity or dissimilarity and nature of the goods.

Applicant is seeking to register its mark for vodka while Opposer has registered its marks for inter alia, crystal and glassware including glasses, bottles, containers, cups, decanters, carafes, and vases. Opposer introduced copies of six use-based, third-

⁷⁹ Applicant’s response to Opposer’s Interrogatory No. 3, 30 TTABVUE 15 and 63.

⁸⁰ Applicant’s Testimony Decl. ¶5 (39 TTABVUE 3).

party registrations comprising both glassware and spirits (4) or wines (3).⁸¹ Third-party registrations that individually cover a number of different goods that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods are of a type that 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).

Mark	Reg. No.	Pertinent Goods
BALLAST POINT	3693175	Beverage glassware; distilled spirits
DUCK POND	2374286	Beverage glassware; wine
COINTREAU POLITAN	3655439	Beverage glassware; distilled spirits
BEL-AIR	4513512	Beverage glassware; sparkling wine
SCUDERIA-ITALIA	4647039	Drinking glasses, vases, goblets, carafes, decanters, crystal beverage glassware; wines, sparkling wines, liqueurs, spirits
THE DISTILLERY	4130821	Beverage glassware; alcoholic beverages

From its inception, Opposer produced glassware and tableware, including drinking glasses, wine and liquor bottles, pitchers and bowls.⁸² Opposer produces “hundreds” of different decanters, bottles, pitchers, glasses for wine, spirits, and liqueurs, including crystal vodka shot glasses and crystal vodka service sets.⁸³ However, Opposer did not stand still; it expanded its product line. In the 1800s, Opposer began producing light fixtures, including candlesticks, candelabras, small table lamps, and giant chandeliers.⁸⁴ In 1993, Opposer began a line of crystal

⁸¹ 31 TTABVUE.

⁸² Riccardi Testimony Decl. ¶43 (32 TTABVUE 15).

⁸³ *Id.* at ¶44 (32 TTABVUE 15-16).

⁸⁴ *Id.* at ¶45 (32 TTABVUE 16).

jewelry.⁸⁵ As noted above, Opposer has produced lines of glass bottles for perfumes, including Elizabeth Arden, Christian Dior, Cartier, Guerlain, and Versace,⁸⁶ as well as bottles and decanters for Hine, Camus, Chabasse, Remy Martin, Courvoisier, Delmain, and Grey Goose.⁸⁷ “In 2008, Opposer collaborated with EVIAN, the French water company that produces bottled spring water sold worldwide. As a part of this collaboration, Opposer designed and produced a limited number of glass water bottles containing EVIAN water. In 2009, the bottles were prominently displayed in cities around the globe and auctioned to the public for tens of thousands of dollars. The proceeds of these sales benefitted a charitable organization.”⁸⁸ Opposer also makes crystal trophies for sporting events, including the Indian Wells Tennis Tournament, and races on the Formula 1 tour.⁸⁹ In March 2015, Opposer opened the first Baccarat Hotel & Residences in Manhattan, New York, directly across from the Museum of Modern Art.⁹⁰

In light of the fame of Opposer's mark and the expansion of its product line, the use of the identical mark in connection with vodka may well be perceived as another of Opposer's commercial activities capitalizing on its BACCARAT mark. *See Harley-Davidson Motor Co. v. Pierce Foods Corp.*, 231 USPQ 857, 862 (TTAB 1986). This

⁸⁵ *Id.* at ¶46 (32 TTABVUE 16).

⁸⁶ *Id.* at ¶48 (32 TTABVUE 16)

⁸⁷ *Id.* at ¶¶51-52 (32 TTABVUE 17).

⁸⁸ *Id.* at ¶53 (32 TTAABVUE 18).

⁸⁹ *Id.* at ¶¶56-57 (32 TTABVUE 18-19).

⁹⁰ *Id.* at ¶58 (32 TTABVUE 19).

leads us to consider what, in our view, is the crux of the likelihood of confusion issue in this case, namely, whether persons having knowledge of the long used and extensively promoted BACCARAT mark for crystal products, and having encountered the expansion of Opposer's commercial activities as noted above, are apt to assume, erroneously, that BACCARAT vodka emanates from the same source.

The goods at issue may be related if the public, being familiar with Opposer's use of its mark, and seeing Applicant's mark on vodka, is likely to believe that Opposer has expanded its use of its mark, directly or under license, to vodka. *See, e.g., Shen Mfg. Co. v. Ritz Hotel, Ltd.*, 393 F.3d 238, 73 USPQ2d 1350, 1355-56 (Fed. Cir. 2004) (the underlying factual inquiry is whether the goods are related in the mind of the consuming public as to the origin of the goods); *Recot*, 54 USPQ2d at 1898 (goods may be found related, even though they are different, where a consumer would likely think that FRITO-LAY produced, sponsored, or licensed its mark for use for pet snack products); *Tuxedo Monopoly, Inc. v. General Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) ("likelihood of confusion must be found if the public, being familiar with [plaintiff's] use of MONOPOLY for board games and seeing the mark on *any item* that comes within the description of goods set forth by [applicant] in its application, is likely to believe that [plaintiff] has expanded its use of the mark, directly or under license."); *Harley-Davidson Motor Co.*, 231 USPQ at 862; *Berghoff Rest. v. Washington Forge, Inc.*, 225 USPQ 603, 608 (TTAB 1985) (the fame and inherent nature of Opposer's mark may be important factors in evaluating the relatedness of the goods); *Bridgestone Co. v. Bridgestone Trading Co.*, 221 USPQ

1012, 1014 (TTAB 1984) (“we believe that opposer’s use of the mark on tires, bicycles, tennis and golf balls, and on a wide variety of promotional items including clothing, together with the established renown and long use of this arbitrary mark demonstrate that purchasers, upon encountering applicant’s BRIDGESTONE mark on shoes, are likely to mistakenly believe that this is another product produced, sponsored or otherwise associated with opposer.”); *Broadway Catering Corp. v. Carla Inc.*, 215 USPQ 462, 465 (TTAB 1982) (the renown of opposer’s mark and nature of the products at issue influence the analysis regarding whether the goods and services are related); *Hurst Performance, Inc. v. Torsten Hallman Racing, Inc.*, 207 USPQ 671, 675 (TTAB 1980) (“Thus, the conditions and circumstances surrounding the activities of opposer in relation to the sale and promotion of its automotive products and those normally expected of a party selling, as in applicant’s case, racing apparel, are such as to be conducive to creating situations from which confusion or mistake as to the source of those products could arise if the marks of the parties are sufficiently similar so as to foster a misleading association or connection.”). As shown by the record evidence, Opposer’s mark BACCARAT is famous and used in connection with a diverse product line.

Finally, there is no evidence suggesting that Opposer would not or could not use or license BACCARAT in connection with vodka, especially because Opposer has already collaborated with Grey Goose vodka, as well as other producers of wine and spirits. In these instances, consumers encounter both marks at the same time inasmuch as the products are sold together.

We find that the goods are related.

E. Established, likely-to-continue channels of trade and classes of consumers.

Opposer's products are available for purchase from exclusive retail stores operated by Opposer in cities across the United States, including in Greenwich, Connecticut; New York, New York; Houston, Texas; Las Vegas, Nevada; Orange County, California; and Palm Desert, California, as well as Orlando, Florida.⁹¹ Opposer's products are also available through major retailers nationwide, including Barneys, Bergdorf Goodman, Bloomingdales, Gearys, Gumps, Neiman Marcus, Macys, and Saks 5th Avenue.⁹² Opposer's products are also sold on a limited basis at Costco locations nationwide, and as of 2018, were available in 145 independent retailers across the United States.⁹³

Beginning in 2012, Opposer began retail sales of its goods to consumers in the United States through its website at Baccarat.com.⁹⁴ Opposer's products are also available through several online retailers, such as Amazon.com and Sears.com.⁹⁵ As previously noted, because Baccarat goods are often collected for their historical value, craftsmanship, and artistry, Baccarat goods are also frequently available for sale

⁹¹ Riccardi Testimony Decl. ¶40 (32 TTABVUE 14-15).

⁹² *Id.*

⁹³ *Id.* at ¶¶40-41 (32 TTABVUE (32 TTABVUE 14-15)).

⁹⁴ *Id.* at ¶41 (32 TTABVUE 15).

⁹⁵ *Id.*

through traditional and contemporary auction houses throughout the U.S. and online.⁹⁶

Opposer has collaborated with alcoholic beverage companies, such as Grey Goose (vodka), Hine, Chabasse, Rémy Martin, Courvoisier, and Delamain, for which Opposer has designed and produced crystal bottles, decanters, and other barware. The wines and spirits are advertised as special offers in conjunction with Opposer's crystal bottles, decanters, or glasses.⁹⁷

Applicant did not introduce any evidence regarding its prospective channels of trade. Nevertheless, because Applicant is seeking to register its mark for vodka without any restrictions or limitations as to channels of trade and classes of consumers, we presume that Applicant will sell its vodka in all the channels of trade and to all the classes of consumers that normally purchase vodka, and that would include some of Opposer's consumers. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).

We find that Applicant's vodka and Opposer's crystal products are sold to some of the same classes of consumers.

⁹⁶ *Id.* at ¶42 (32 TTABVUE 15).

⁹⁷ 29 TTABVUE 189-192, 194-196, 263-264, 266-267, 273-277, and 279-283.

F. Conclusion

Because Opposer's BACCARAT mark is famous for purposes of the likelihood of confusion analysis, the marks are identical, the goods are related and are sold to some of the same classes of consumers, we find that Applicant's mark BACCARAT for "alcoholic beverages, namely, vodka" is likely to cause confusion with Opposer's mark BACCARAT for inter alia, crystal and glassware including glasses, bottles, containers, cups, decanters, carafes, and vases.

Because we have found for Opposer on its Section 2(d) likelihood of confusion claim, we need not reach the merits its claims under Sections 2(a) (deceptiveness and false suggestion of a connection) and 43(c) (dilution) of the Trademark Act, 15 U.S.C. §§ 1052(a) and 1125(c).

Decision: The opposition is sustained and registration to Applicant is refused.