

This Opinion is Not a
Precedent of the TTAB

Mailed: November 28, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Chatam International Inc.

v.

M Chapoutier

Opposition No. 91228479

Paul M. Lewis for Chatam International Inc.

Lisa C. Pavento of Meunier Carlin & Curfman LLC for M Chapoutier.

Before Taylor, Goodman, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

M Chapoutier (“Applicant”) has filed a request for the extension of protection of its international registration to the United States through registration on the Principal Register of the mark VIA SAINT JACQUES in standard characters for goods identified as “wines with the appellation of origin Alsace.”¹

¹ Application Serial No. 79167561 was filed on May 4, 2015 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, on the basis of Applicant’s International Registration No. 1252664. The application states that the English translation of VIA SAINT JACQUES is “The Way of Saint James.” We take judicial notice that the word Alsace in the identification of goods refers to a region in eastern France that borders on Germany and Switzerland. *See*

Chatam International Inc. (“Opposer”) has opposed registration on the ground of priority and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on its ownership of (1) the registered mark JACQUIN’S in a typed drawing for “brandy, gin, rum, alcoholic cordials and liqueurs, whiskey, prepared alcoholic cocktails and vodka,”² and (2) the registered stylized mark depicted below



for “brandy, gin, rum, and alcoholic cordials and liqueurs.”³

Both parties submitted evidence, Applicant filed a brief, and Opposer filed a reply brief.⁴ For the reasons discussed below, we dismiss the opposition.

In re Morinaga Nyugyo K.K., 120 USPQ2d 1738, 1744 n.4 (TTAB 2016) (the Board may take judicial notice of geographic locations).

² Registration No. 1245562 issued on July 12, 1983 under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), and was last renewed on July 25, 2013. Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. § 2.52, was amended to replace the term “typed drawing” with the term “standard character drawing.” A mark depicted in a typed drawing is the legal equivalent of a standard character mark. *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1236 n.5 (TTAB 2015).

³ Registration No. 435863 issued on January 13, 1948 and was last renewed on January 25, 2018.

⁴ Opposer did not file a main brief, but “[i]t is not the policy of the Board to enter judgment against a plaintiff for failure to file a main brief on the case if the plaintiff still wishes to obtain an adjudication of the case on the merits.” *Vital Pharm. Inc. v. Kronholm*, 99 USPQ2d 1708, 1710 (TTAB 2011) (discharging order to show cause under Trademark Rule 2.128(a)(3) why judgment should not be entered for failure to file a main brief, but dismissing case because opposer failed to submit evidence sufficient to establish a prima facie case). Opposer submitted evidence and filed a reply brief, and clearly has not lost interest in the case. At the same time, Opposer’s reply brief “must be confined to rebutting [Applicant’s] main brief” and “limited to the key points in [Applicant’s] brief which [Opposer] believes require clarification or response.” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) Section 801.03 (2018); see also *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066,

I. Evidentiary Record

The record consists of:

1. the pleadings;⁵
2. the file history of Applicant's application, by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1);
3. Opposer's testimony affidavits of Norton J. Cooper, the President of both Opposer and Opposer's wholly-owned operating subsidiary Charles Jacquin et Cie., Inc. ("Jacquin"),⁶ 16 TTABVUE 2-5 ("Cooper Aff."); Kevin O'Brien, Jacquin's Vice President, Sales, 16 TTABVUE 6-8 ("O'Brien Aff."); Emma King, Jacquin's Sales Coordinator, 16 TTABVUE 9-10 ("King Aff.");⁷ and Stanton Remer, Treasurer and Chief Financial Officer of both Opposer and Jacquin, 16 TTABVUE 11-12 ("Remer Aff.");
4. Opposer's Notice of Reliance on its two pleaded registrations, 16 TTABVUE 13-21, and the results of a search in the [MERRIAM-WEBSTER](#)

1077 (TTAB 2011) (opposer's claim that its mark was famous, which was not discussed by applicant in its brief and which was raised for the first time in opposer's reply brief, was improper rebuttal argument). Accordingly, we will consider Opposer's reply brief only to the extent that it rebuts Applicant's arguments in its brief.

⁵ Applicant's answer asserted four putative affirmative defenses. 4 TTABVUE 4-5. Only the second enumerated affirmative defense listing laches, acquiescence, waiver, or estoppel contained actual affirmative defenses, and to the extent that those defenses apply in an opposition, *see* TBMP Section 311.02(b) n.6 and cases cited therein, they were waived because Applicant did not pursue them at trial. *Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1422 (TTAB 2014).

⁶ Mr. Cooper testified that Opposer owns the registered marks and licenses them to Jacquin, which applies them to the goods sold under the marks. Cooper Aff. ¶¶ 2-6.

⁷ Ms. King's affidavit was submitted in redacted form in the publicly accessible TTABVUE docket entry to protect the confidentiality of certain sales figures. We have reviewed the confidential figures and discuss them below in very general terms.

online dictionary (merriam-webster.com) of the term “JACQU,” 16 TTABVUE 22-25;

5. Applicant’s Notice of Reliance on third-party registrations of, and applications to register, marks containing the word JACQUES for various goods in Class 33, 20 TTABVUE 2-173 ; and
6. Applicant’s testimony declaration of Mary Margaret Cogburn, a paralegal at Applicant’s counsel’s firm, and exhibits thereto. 20 TTABVUE 174-202 (“Cogburn Decl.”).

II. Standing

A threshold issue in every inter partes case is the plaintiff’s standing to challenge registration. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014), *cert. denied*, 135 S. Ct. 1401 (2015); *John W. Carson Found. v. Toilets.com Inc.*, 94 USPQ2d 1942, 1945 (TTAB 2010). The plaintiff must show that it possesses a real interest in the proceeding beyond that of a mere intermeddler, and that it has a reasonable basis for its belief of damage resulting from registration of the involved mark. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Opposer has standing because it properly made of record registrations of its marks, which give Opposer a real interest in the proceeding and a reasonable belief of damage from registration of Applicant’s mark, *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000), based on a likelihood of confusion claim. *See, e.g., Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

III. Section 2(d) Analysis

Section 2(d) of the Trademark Act prohibits the registration of a mark that “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1052(d). To prevail on its § 2(d) claim, Opposer must prove, by a preponderance of the evidence, that it has priority in the use of its mark and that Applicant’s use of its mark is likely to cause confusion, mistake, or deception as to the source or sponsorship of Applicant’s goods. *Cunningham*, 55 USPQ2d at 1848.

A. Priority

Because Opposer’s pleaded registrations are of record and Applicant did not counterclaim to cancel them, priority is not at issue with respect to the goods identified in the registrations. *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1436 n.7 (TTAB 2012).

B. Likelihood of Confusion

Our determination of the issue of likelihood of confusion under Section 2(d) considers all of the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), “for which there is record evidence,” but it “may focus . . . on dispositive factors, such as the similarity of the marks and relatedness of the goods.” *Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 119 USPQ2d 1286, 1288 (Fed. Cir. 2016) (quoting *Herbko Int’l, Inc. v.*

Kappa Books, Inc., 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002) (internal quotation omitted)). In every likelihood of confusion analysis, two key factors are the similarities or dissimilarities between the marks and between the goods or services. See *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”).

Applicant focuses its arguments on the first *du Pont* factor, the similarity of the marks, and also discusses the fifth and sixth *du Pont* factors, the alleged fame of Opposer’s marks, and the number and nature of similar marks in use on similar goods. 21 TTABVUE 10-24. In its reply brief, Opposer rebuts Applicant’s arguments on those factors. 22 TTABVUE 6-13. We will address those factors and the second *du Pont* factor, the similarity or dissimilarity between the goods, and the third *du Pont* factor, the similarity or dissimilarity of established, likely-to-continue trade channels, *du Pont*, 177 USPQ at 567, because while Applicant does not discuss these factors in its brief, the record contains some evidence on them.⁸

1. The Strength of Opposer’s Marks

Applicant argues that Opposer “has failed to establish that JACQUIN(S) is a famous mark entitled to broad protection.” 21 TTABVUE 17. Opposer replies that its evidence shows “the extensive use and penetration of the market by Opposer, through

⁸ Opposer’s reply brief discusses the channels of trade for the goods. Because Applicant’s brief does not address this factor, we will only consider Opposer’s evidence regarding it, not Opposer’s arguments.

[Jacquin],” such that Opposer’s marks are “well-known and entitled to broader protection.” 22 TTABVUE 8. Because the “fame of the prior mark, when present, plays a ‘dominant’ role in the process of balancing the *DuPont* factors,” *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000) (citing *Kenner Parker Toys Inc. v. Rose Art. Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)), we will address this *du Pont* factor first.

“[L]ikelihood of confusion 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 *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (internal quotation omitted)). Because Opposer submitted evidence regarding the claimed strength of its marks, we must place them somewhere along that spectrum so that we can assign some “discernable weight” to this *du Pont* factor “among the totality of the circumstances.” *Id.* at 1735.

“A very strong mark receives a wider latitude of legal protection in the likelihood of confusion analysis,” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017), while a very weak mark receives a narrower scope of protection. A mark in the middle of the spectrum receives an intermediate scope of protection. *Bell’s Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1347 (TTAB 2017) (finding that opposer’s marks were entitled to “the normal scope of protection to which inherently distinctive marks are entitled”).

In determining the strength of a mark under the fifth *du Pont* factor, “we consider both inherent strength, based on the nature of the mark itself, and commercial strength or recognition.” *Id.* at 1345 (citing *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014)). We assess the inherent or conceptual strength of a mark in terms of where it falls on the spectrum of distinctiveness, *UMG Recordings Inc. v. Mattel Inc.*, 100 USPQ2d 1868, 1882-83 (TTAB 2011), and the commercial strength of a mark by the degree of its marketplace recognition. *Am. Lebanese Syrian Associated Charities, Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

a. Conceptual Strength

Opposer’s stylized JACQUIN mark was registered in 1948 on the Principal Register without a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). 16 TTABVUE 18. A “mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim in the registration, that the mark is inherently distinctive for the goods.” *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006). There is no evidence in the record that JACQUIN “is used in everyday parlance or is used by other providers in conjunction with similar goods or services to impart the same kind of information,” *Bell’s Brewery*, 125 USPQ2d at 1346, and no evidence of any third-party use or registration of JACQUIN that might suggest that it is conceptually weak because it has “a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that [it] is relatively weak.” *Juice*

Generation, Inc. v. GS Enters. LLC, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (quoting 2 MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 11:90 (4th ed. 2015)). We find that Opposer’s stylized mark is inherently distinctive and thus conceptually strong.

Opposer obtained registration of its JACQUIN’S mark in 1983 by showing that the mark had acquired distinctiveness under § 2(f), 16 TTABVUE 15, which is a concession that that mark is not inherently distinctive. *Cold War Museum Inc. v. Cold War Air Museum Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009). We thus find that Opposer’s typed drawing mark is conceptually weak.

b. Commercial Strength

Commercial strength (recognition) of Opposer’s marks “may be measured indirectly by the volume of sales and advertising expenditures in connection with the [goods] sold under the mark[s]” and “other factors such as the length of time of use of the mark[s]; widespread critical assessments; notice by independent sources of the [goods] identified by the marks; and the general reputation of the [goods].” *Tao Licensing*, 125 USPQ2d at 1056. We must assess the commercial strength of the marks from the viewpoint of consumers of the alcoholic beverages identified in the registrations. *Joseph Phelps Vineyards*, 123 USPQ2d at 1735.

Opposer’s evidence of commercial strength consists primarily of Mr. Cooper’s testimony that the marks have been used by Jacquin continuously since the early 1980s, Cooper Aff. ¶¶ 3-4, Ms. King’s testimony regarding Jacquin’s confidential annual sales figures for goods bearing the marks from 2013 through December 13,

2017, King Aff. ¶ 3, and Mr. Remer's testimony regarding pre-2013 sales. Remer Aff. ¶ 4.⁹

Mr. Cooper's testimony regarding the length of use of Opposer's marks has limited probative value on consumer recognition of the marks and is insufficient, by itself, to show extensive public recognition of the marks. As discussed below, the record is devoid of competent evidence regarding the level of sales at any point before 2013, and we thus cannot determine the extent of the marks' exposure to the relevant purchasing public through sales for the vast majority of the nearly 40 years of their use.

Ms. King testified that Jacquin had total dollar sales of products bearing Opposer's marks in the very low nine figures between 2013 and the end of 2017. King Aff. ¶ 3. Mr. Remer's affidavit purports to augment Ms. King's testimony. He testified that based on his "knowledge of the financial affairs" of Opposer and Jacquin "for periods of time prior to January 1, 2013," the "aggregate sales volumes in dollars for products of Jacquin, including sales of products bearing the trademarks 'JACQUIN' and/or 'JACQUIN'S' would support sales of products of similar levels to those levels contained in" Ms. King's affidavit. Remer Aff. ¶ 4. There are two significant problems with his testimony.

First, Mr. Remer has been Jacquin's Treasurer and CFO only since 2012, *id.* at ¶ 1, and he did not establish that he has the personal knowledge required under Rule

⁹ Mr. O'Brien testified that goods bearing Opposer's marks are sold throughout the United States in the majority of states, but he did not provide other information regarding the duration and extent of sales. O'Brien Aff. ¶ 2.

602 of the Federal Rules of Evidence to testify about matters that occurred prior to his employment. “In certain cases, testimony by a person that his job responsibilities require him to be familiar with the activities of the company that occurred prior to his employment may be sufficient to lay a foundation for his subsequent testimony,” *City Nat’l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1673 (TTAB 2013), but beyond Mr. Remer’s general statement that “I am responsible for the financial affairs of the companies,” Remer Aff. ¶ 2, he did not explain why his job duties require him to have “knowledge of the financial affairs” of Opposer and Jacquin for those “periods of time prior to January 1, 2013” before he joined the company in 2012. *Id.* at ¶ 4. He also did not explain the basis for his claimed knowledge, including whether he reviewed historical business records that might provide information regarding pre-employment sales.

Second, even if Mr. Remer adequately established his personal knowledge of pre-2013 sales, his testimony lacks specificity, as he did not define the “periods of time prior to January 1, 2013,” or the claimed “similar levels” of sales. Thus, we do not know how far back before 2013 his testimony purports to cover, or how comparable pre-2013 annual sales were to their post-2013 counterparts. His testimony simply does not establish any pre-2013 sales of goods bearing Opposer’s marks.¹⁰

¹⁰ Such historical sales information presumably would be known to or readily available to both Mr. Cooper, Jacquin’s President since 1980, Cooper Aff. ¶ 1, and Mr. O’Brien, Jacquin’s Vice President of Sales since 1980, O’Brien Aff. ¶ 1, who specifically claimed “knowledge of the sale of the products to all customers of Jacquin throughout the United States,” *id.* at ¶ 2, but their affidavits are silent on the subject.

Moreover, while the sales figures between 2013 and December 2017 testified to by Ms. King are impressive, “[w]e have no context for [them], such as how [they] . . . compare with [those] for other brands” of alcoholic beverages over the same period. *Lebanon Seaboard Corp. v. R&R Turf Supply Inc.*, 101 USPQ2d 1826, 1831 (TTAB 2012). “[R]aw numbers alone may be misleading” and “[s]ome context in which to place raw statistics may be necessary (e.g., the substantiality of the sales or advertising figures for comparable types of products or services).” *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1408 (TTAB 2010) (citing *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1309 (Fed. Cir. 2002)). Such context could be supplied by evidence of Jacquin’s relative market share or the means by which Opposer and Jacquin sell, advertise, and promote the products, or by evidence showing their general reputation, *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, ___ F.3d ___, 2018 WL 5985963, *3-4 (Fed. Cir. Nov. 15, 2018) (precedential), but there is no such contextual evidence in the record.

Ms. King’s testimony is silent regarding Jacquin’s relative market share, and the record is also notably devoid of evidence of any examples of, or information about, print, electronic, or other advertising or promotion of products bearing Opposer’s marks, or any evidence of consumer appreciation of and the renown of the products of the sort that showed in *Omaha Steaks* that “the consuming public has been regularly exposed to Omaha Steaks’ marks on a nationwide scale,” 2018 WL 5985963 at *4, and that showed in *Joseph Phelps Vineyards* “extensive recognition and accolade” for the opposer’s wines. 122 USPQ2d at 1734-35. *See also Tao Licensing*,

125 USPQ2d at 1056 (evidence of “advertising expenditures and examples, unsolicited media coverage, and awards and distinction within and without the restaurant industry” showed “the renown of the mark” for restaurant services and the “widespread consumer exposure to and recognition of [the] mark”). On this record, we cannot find that either of Opposer’s marks is commercially strong.

In placing Opposer’s marks “along a spectrum from very strong to very weak,” *Joseph Phelps Vineyards*, 122 USPQ2d at 1734, we must consider the evidence “pertaining to both conceptual and commercial strength.” *Bell’s Brewery*, 125 USPQ2d at 1347. Opposer’s JACQUIN’S typed drawing mark is conceptually weak, while its JACQUIN stylized mark is conceptually strong, and, on this record, we can find at most that both marks have average commercial strength. Contrary to Opposer’s claim that its marks are “well-known and entitled to broader protection,” 22 TTABVUE 8, we find that they are entitled at best to a normal scope of protection. This *du Pont* factor is thus neutral in our analysis of likelihood of confusion.

2. The Similarity or Dissimilarity of the Marks

We must compare the parties’ marks, in their entireties, for similarities and dissimilarities in appearance, sound, connotation, and commercial impression. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Because we must consider the marks in their entireties, our analysis cannot be predicated on a dissection of the marks into their various components, although “there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided

the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (quoting *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985)).

In assessing similarity, “[t]he 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) (quotation omitted). “The proper focus is on the recollection of the average customer, who retains a general rather than a specific impression of the marks.” *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018).¹¹

a. Appearance¹²

Applicant argues that “[t]here is a significant visual difference between VIA SAINT JACQUES and JACQUIN’S or JACQUIN” because “VIA SAINT JACQUES

¹¹ The record contains no evidence about the characteristics of the average customer of alcoholic beverages. In the absence of such evidence, we will assume that the average customer of the alcoholic beverages identified in Opposer’s registrations is a member of the general public of legal drinking age, *In re White Rock Distilleries, Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009) (assuming “that vodka and wine are sold to the same class of purchasers, namely persons of legal drinking age”), and that the average purchaser of Applicant’s wines from the Alsace region of France “is an ordinary wine drinker.” *Aquitaine Wine*, 126 USPQ2d at 1184 (considering ordinary purchaser of French wines).

¹² Because Applicant’s VIA SAINT JACQUES mark is a standard character mark, it “could be used in any typeface, color, or size, including the same stylization actually used by [Opposer], or one that minimizes the differences or emphasizes the similarities between the marks.” *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1823 (TTAB 2015). Accordingly, we will assume in our analysis that Applicant’s mark could appear in the same stylization in which JACQUIN appears in Opposer’s registration. *Aquitaine Wine*, 126 USPQ2d at 1186.

contains three terms, not one, and begins with the term VIA,” which Applicant claims is the most prominent portion of its mark because “it is the first word in the mark,” 21 TTABVUE 11, and because the marks have “no shared word, only shared letters.” *Id.* at 12.

Opposer replies that “the term ‘JACQUES’ is the eye-catching, salient portion of applicant’s mark,” 22 TTABVUE 12, and that “the commercial impression to the ordinary consumer of confusing similarity between the respective marks of the parties” lies in “the identity of the portion of the respective marks of the unusual in English combination of letters JACQU in each (and in the case of the JACQUIN’S mark . . . essentially all letters, except for the ‘U’ in the one and ‘E’ in the other).” *Id.* at 9. Opposer argues that “marks may be confusingly similar in appearance where there are similar terms or phrases or *similar parts of terms or phrases* appearing in both applicant’s mark and registrant’s mark,” *id.* at 11, and that beyond the common presence of the letters JACQU in all of the marks, “there is even more confusing similarity between applicant’s mark and Opposer’s JACQUIN’S mark with the existence of the ‘S’ at the end so that such mark and applicant’s mark contain the almost identical element with the exception of an ‘E’ in applicant’s mark in place of ‘IN’ in Opposer’s registered mark, JACQUIN’S.” *Id.* at 12.

The parties’ respective marks contain the common letters JACQU, but Opposer acknowledges that this letter string “is uncommon in the English language,” *id.* at 11, and Opposer provides no evidence that JACQU would be viewed by American consumers as a discernable, discrete feature of either the name JACQUES or the

name JACQUIN.¹³ When the marks are viewed in their entirety, the similarity of the embedded JACQU letter string is far less significant to their overall appearance than are the other elements of the marks, even assuming that VIA SAINT JACQUES appears in the same stylization as JACQUIN.¹⁴ Applicant's mark consists of three words and a consumer viewing the mark would read the words VIA SAINT in front of JACQUES, the part of the mark in which the five-letter string is embedded. We have often found that "it is the first portion of a mark that is more likely to make an impression on potential purchasers," *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752, 1755 (TTAB 2009),¹⁵ and the first portion of Applicant's mark, the words VIA SAINT,

¹³ Indeed, in focusing on the "unusual in English combination of letters JACQU" that is embedded in the marks, 22 TTABVUE 9, Opposer is guilty of doing what it accuses Applicant of doing, "dissecting the respective marks with a scalpel . . ." *Id.* at 6.

¹⁴ Opposer cites multiple cases in which marks sharing words or phrases have been found to be confusingly similar. 22 TTABVUE 11. It has long been the law that "past decisions on confusing similarity are of little assistance in new fact situations wherein entirely different marks and products are involved," *Medicated Prods. Co. v. Alice Jewelry Co.*, 255 F.2d 408, 118 USPQ 90, 91 (CCPA 1958), but the cited cases provide no aid to us here because the shared elements in the marks in those cases were far more significant to the overall appearance of the marks there than are the shared letters JACQU to the overall appearance of the marks here. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom., Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); and *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX).

¹⁵ For the reasons discussed below, we do not agree with Applicant that "VIA is the most prominent feature of [its] mark as it is the first word in the mark," 21 TTABVUE 11, but the presence of the words VIA and SAINT at the beginning of the mark is significant to the visual dissimilarity of the marks in their entirety because those first words in Applicant's mark have no counterparts in Opposer's marks. *Cf. Detroit Athletic Co.*, 128 USPQ2d at 1049 (finding that the marks DETROIT ATHLETIC CO. and DETROIT ATHLETIC CLUB were confusingly similar because both "consist of three words beginning with the identical phrase 'Detroit Athletic' and ending with one-syllable 'C' words" and the "identity of the marks'

causes the mark to differ in appearance from Opposer's single-word JACQUIN and JACQUIN'S marks. Given the structure and contents of the marks, we find that they are quite dissimilar in appearance. *See Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (affirming Board's findings that the applicant's various CAPITAL CITY BANK marks were dissimilar to the opposer's famous CITIBANK mark and other CITI-prefix formative marks in all means of comparison, in part because the opposer's "marks are single words and all feature the C-I-T-I spelling").

b. Sound

The parties' briefs do not say much about the aural similarity or dissimilarity of the marks. Applicant argues simply that there "is a significant difference in the sounds of the marks" because its mark has five syllables while Opposer's marks have only two, 21 TTABVUE 12, and Opposer's brief is silent on the subject. Opposer's witnesses, however, opine about the pronunciation of both parties' marks.

Mr. Cooper testified that the "name 'JACQUIN' has been pronounced alternatively as 'zhok-quin' or 'jack-quin' and the name 'JACQUIN'S' has been pronounced alternatively as 'zhok-quins' or 'jack-quin's' by the customers of Jacquin's and the customers of the retailers to whom the 'JACQUIN' and 'JACQUIN'S' products are sold." Cooper Aff. ¶ 7. He also opined that "in the dominant element of Applicant's mark, 'JACQUES' . . . such dominant element is pronounced either 'zhok' or 'jack'

initial two words is particularly significant because consumers typically notice those words first").

identically to the alternative pronunciations of both Registered Trademarks, ‘JACQUIN’ and ‘JACQUIN’S.’” *Id.* at ¶ 8. Mr. O’Brien offered virtually identical testimony that “[i]n the marketplace, the name ‘JACQUIN’ has been pronounced alternatively as ‘zhokquin’ or ‘jackquin’ and the name ‘JACQUIN’S’ has been pronounced alternatively as ‘zhokquins’ or ‘jackquin’s’ by the customers of Jacquin and the customers of the retailers to whom the ‘JACQUIN’ and ‘JACQUIN’S’ trademark products are sold.” O’Brien Aff. ¶ 6. He too opined that “in the dominant element of Applicant’s mark, ‘JACQUES’ . . . such dominant element of Applicant’s applied-for mark is pronounced either ‘zhok’ or ‘jack’ identically to the alternative pronunciations of both registered trademarks, ‘JACQUIN’ and ‘JACQUIN’S.’” *Id.* at ¶ 7. This testimony is not helpful to our analysis of the aural similarity or dissimilarity of the marks for three reasons.

First, assuming that Messrs. Cooper and O’Brien have personal knowledge of how Opposer’s marks have been pronounced due to their involvement in Jacquin’s sales, they make no showing that they have personal knowledge about how JACQUES will be pronounced when Applicant’s mark as a whole is verbalized.¹⁶ They also do not claim that they are qualified “by knowledge, skill, experience, training, or education,” Fed. R. Evid. 702, to opine on that subject as experts in linguistics or consumer behavior. *Cf. The Mennen Co. v. Yamanouchi Pharm. Co., Ltd.*, 202 USPQ 302, 305

¹⁶ Their lack of knowledge of how the word JACQUES is pronounced in Applicant’s mark precludes them from providing lay opinion testimony on the subject, which must be “rationally based on the witness’s perception.” Fed. R. Evid. 701 (a). *See Kohler Co. v. Honda Giken K.K.*, 125 USPQ2d 1468, 1484-85 n.34 (TTAB 2017).

(TTAB 1979) (considering testimony of professors of linguistics and English on pronunciations and visual perceptions of parties' marks); *Fisons Ltd. v. UAD Labs., Inc.*, 219 USPQ 661, 663 (TTAB 1983) (considering testimony of professor of linguistics regarding pronunciation of parties' marks). Their testimony about the pronunciation of the word JACQUES in Applicant's mark is purely speculative, and it is entitled to no weight.

Second, "there is no correct pronunciation of a trademark, and consumers may pronounce a mark differently than intended by the brand owner," *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1912 (Fed. Cir. 2012),¹⁷ and we cannot assume that the historical pronunciations of Opposer's marks discussed by Messrs. Cooper and O'Brien are the definitive, or only, ones. Moreover, both witnesses testified that both JACQUIN and JACQUES can be pronounced in two different ways, and even assuming that we credited the witnesses' testimony that these are the only pronunciations, the witnesses acknowledge that the words JACQUIN and JACQUES in the marks could be pronounced differently by the same consumers.

Finally, and ultimately most importantly, Opposer's witnesses focus solely on the word JACQUES in Applicant's mark, and simply ignore the words VIA SAINT that precede it. We must consider the marks in their entireties in assessing their aural similarity, and because of the presence of the words VIA SAINT in Applicant's three-

¹⁷ The exception to this principle is when a mark or a portion of a mark consists of an ordinary English-language word. *See, e.g., Research in Motion Ltd. v. Defining Presence Mktg. Grp. Inc.*, 102 USPQ2d 1187, 1193 (TTAB 2012). The exception applies to the English-language words VIA and SAINT in Applicant's mark.

word, four- or five-syllable VIA SAINT JACQUES mark, it does not sound like Opposer's one-word, two-syllable JACQUIN(S) marks, even assuming that JACQUES and JACQUIN are both pronounced identically. We find that the marks are quite dissimilar in sound when considered in their entireties.

c. Connotation and Commercial Impression

Applicant argues that "VIA SAINT JACQUES is a French term that translates as 'The Way of Saint James,'" which "refers to a group of walking trails across Spain and France that lead to a cathedral in Spain where the remains of Saint James, the Apostle to Christ, are said to lie." 21 TTABVue 13. Applicant invokes the doctrine of foreign equivalents, under which Applicant claims that "the VIA SAINT JACQUES mark should be translated to the English 'The Way of Saint James' for purposes of comparing connotation in the likelihood of confusion analysis." *Id.* at 14 (citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016)). Applicant argues alternatively that "no translation is required for an American consumer not proficient in French to understand the religious connotation of VIA SAINT JACQUES" because dictionary definitions in the record show that "[t]he meanings of 'via' and 'saint' are identical in French and English," *id.* at 16, and "[k]nowing the English meanings, a consumer would surmise that 'Saint Jacques' refers to one of two Christian Saints, Saint James or Saint John." *Id.* According to Applicant, a consumer considering Applicant's mark in the context of its goods, wine with the appellation of origin Alsace, "would understand the mark to be a French term referring to a religious

figure, a Christian saint” *id.*, and Opposer’s marks have “no religious connotation or affiliation,” but rather are “merely a French surname relating to Charles Jacquin.”

Opposer does not address Applicant’s arguments regarding the doctrine of foreign equivalents, the religious connotations of the VIA SAINT JACQUES mark, or the overall connotation and commercial impression of the marks generally, but merely argues opaquely that VIA SAINT JACQUES and JACQUIN “have French derivation.” 22 TABVUE 11-12.

Opposer’s witnesses acknowledge that Opposer’s JACQUIN and JACQUIN’S marks are forms of the surname of Charles Jacquin, the namesake of Opposer’s predecessor-in-interest Charles Jacquin et Cie, Inc. Cooper Aff. ¶¶ 3, 7 (describing Opposer’s predecessor as “the Old Jacquin” and discussing pronunciation of “[t]he name ‘JACQUIN’”); O’Brien Aff. ¶ 6 (discussing pronunciation of “[t]he name ‘JACQUIN’”). The typed drawing mark JACQUIN’S is the possessive form of JACQUIN, which “is consistent with perception of [JACQUIN] as a surname.” *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1481 (TTAB 2017).¹⁸ Opposer’s marks thus connote a family with the surname “Jacquin.”

Applicant’s mark VIA SAINT JACQUES has a meaning that is roughly the same regardless of whether the mark is viewed as a French or English phrase. The mark is translated from French into English in the opposed application as “The Way of Saint James,” but its constituent elements are familiar words to non-French speaking

¹⁸ As discussed above, Opposer was required to show that its JACQUIN’S mark had acquired distinctiveness to secure registration on the Principal Register.

consumers in the United States.¹⁹ The words VIA and SAINT are English words that mean, respectively, “by way of,”²⁰ and “one officially recognized especially through canonization as preeminent for holiness,”²¹ and the name “Jacques” is familiar to Americans as “a male given name” and “the French form of Jacob . . . or James.”²² The evidence is sufficient to show, and Opposer does not dispute, that an American consumer of Applicant’s wines will likely “immediately understand[] without hesitation that ‘Jacques’ is a male first name, likely of French origin.” 21 TTABVUE 20.

In either language, Applicant’s mark focuses attention on, and is dominated by, the name SAINT JACQUES, which identifies a specific saint, Jacques in French or James in English. The presence of the words SAINT JACQUES in Applicant’s mark imbues it with a religious meaning, even for consumers of Applicant’s French wines who are not themselves religious or knowledgeable about St. Jacques/St. James, or his “way.”²³

¹⁹ As a result, we need not decide whether it is appropriate to apply the doctrine of foreign equivalents here, where Applicant’s mark is a phrase in French and Opposer’s mark is a French surname. *Cf. Brown Shoe*, 90 USPQ2d at 1756 (declining to apply the doctrine where both marks were Spanish words and “[i]n English the words have no meaning . . .”).

²⁰ 20 TTABVUE 191 (MERRIAM-WEBSTER DICTIONARY (merriam-webster.com)).

²¹ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com, last accessed on November 26, 2018). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed form or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

²² 20 TTABVUE 200 (dictionary.com). This dictionary entry lists several well-known persons with the first name Jacques, including Jacques Cartier, Jacques Cousteau, and Jacques Barzun. *Id.* at 201.

²³ The record contains Internet webpages that discuss a religious pilgrimage, known in English as “The Way of St. James,” which has traditionally begun in France and ended at a

Even assuming that the parties' marks would be understood to share "French derivation," as Opposer claims, 22 TTABVUE 11-12, Opposer's marks have a secular commercial impression relating to a family business, while Applicant's mark has a distinct religious connotation, and Applicant's mark consists of the familiar words VIA SAINT JACQUES, while Opposer's marks contain forms of the unfamiliar surname JACQUIN. *See Oakville Hills Cellar*, 119 USPQ2d at 1200 (holding that "the Board correctly found that the unfamiliar [word] MAYARI is distinguishable from the familiar [word] MAYA"). The marks are quite different in meaning when considered in their entireties. *See Champagne Louis Roederer S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459, 1460 (Fed. Cir. 1998) (affirming dismissal of opposition on basis of Board's finding that marks CRISTAL for champagne and CRYSTAL CREEK for wine "evoked very different images in the minds of relevant consumers" involving, respectively, "the clarity of the wine within the bottle or glass of which the bottle itself was made" and "a very clear (and hence probably remote from civilization) creek or stream"); *cf. In re Chatam Int'l*, 380 F.3d 1340, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004) (affirming Board's finding that JOSE GASPAR GOLD for tequila was confusingly similar to GASPAR'S ALE for ale

cathedral in Santiago de Compostela, Spain, where the remains of the Christian apostle St. James are said to lie. Cogburn Decl. ¶¶ 2-4; Exs. A-C (20 TTABVUE 174-188). The record does not show the extent of the exposure of these materials to American consumers of wine from the French region of Alsace. To the extent that such consumers are familiar with this pilgrimage from these sources or otherwise, Applicant's mark would have the specific religious meaning that is reflected in Applicant's translation statement, but as discussed above, Applicant's mark has a general religious significance on its face even to those without knowledge of the pilgrimage.

in appearance, sound, and connotation and commercial impression where dominant features of both marks was GASPAR).

The marks are quite dissimilar in appearance, sound, and connotation and commercial impression when considered in their entireties. This *du Pont* factor weighs strongly against a finding of a likelihood of confusion.

3. The Similarity or Dissimilarity of the Goods

This *du Pont* factor concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration.” *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1159 (Fed. Cir. 2014). Our analysis is based on a comparison of the goods identified in the opposed application and in Opposer’s pleaded registrations. *Id.* at 1162; *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Goods need not be identical or even competitive to find a likelihood of confusion. *See, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000). “[L]ikelihood of confusion can be found ‘if the respective goods are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)).

The goods identified in the opposed application are “wines with the appellation of origin Alsace,” while the goods identified in Opposer’s registrations are “brandy, gin, rum, alcoholic cordials and liqueurs, whiskey, prepared alcoholic cocktails and vodka”

(typed drawing mark) and “brandy, gin, rum, and alcoholic cordials and liqueurs” (stylized mark). The alcoholic beverages identified in Opposer’s registrations are various types of distilled spirits and cocktails, and on the face of the identifications, they do not encompass wines from Alsace.

We have long held that “[t]here is no per se rule that holds that all alcoholic beverages are related.” *White Rock Distilleries*, 92 USPQ2d at 1285 (finding that the examining attorney’s evidence failed to show that wine and energy vodka infused with caffeine are related); *see also Innvopak*, 115 USPQ2d at 1827 (“beer and wine (among other alcoholic beverages) certainly can be, and frequently are, found to be related,” but “each case must be decided on its own record”). Accordingly, we must examine the record to determine whether Opposer proved that any of its alcoholic beverages are related to the wines from the French region of Alsace identified in the opposed application, because they emanate from the same source under the same mark, *White Rock Distilleries*, 92 USPQ2d at 1285, because they are complementary products that are used together, *In re Davia, Inc.*, 110 USPQ2d 1810, 1815 (TTAB 2014), or for other reasons. *Coach Servs.*, 101 USPQ2d at 1722.

The only record evidence regarding the relatedness of the identified alcoholic beverages is the conclusory statement of Mr. Cooper that “Applicant’s mark being filed in International Class 33 for Wines is in the identical class of Opposer’s Registered Trademarks for goods which are identical or closely related to the Applicant’s goods and which are distributed in the same channels of trade as Opposer’s goods,” Cooper Aff. ¶ 9, and two subsisting third-party registrations (made

of record by Applicant for another purpose) that cover goods broadly identified as “alcoholic beverages, except beer,”²⁴ which have limited probative value on the issue of relatedness. *Compare In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265-66 (TTAB 2011) (20 third-party registrations covering wine and beer sufficient to demonstrate relatedness), *with Innvopak*, 115 USPQ2d at 1827 (six third-party registrations covering wine and beer found to be “some evidence” of relatedness).

Given the specific types of alcoholic beverages here, the presence in the record of only two registrations whose broad identifications of goods cover all alcoholic beverages except beer, and the absence from the record of evidence of third-party registrations covering French wines from Alsace and distilled spirits or evidence showing that those goods actually emanate from the same source under the same mark, we find that Opposer did not show that the identified alcoholic beverages are related. *Cf. White Rock Distilleries*, 92 USPQ2d at 1285 (Internet webpages showing that vodka and wine are offered on the same website to the same consumers, and that several vodkas were made with wine grapes, were “hardly sufficient to convince [the Board] that applicant’s energy vodka infused with caffeine and registrant’s wines are related”). This *du Pont* factor weighs against a finding of a likelihood of confusion.

4. Channels of Trade

The third *du Pont* factor considers “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *Stone Lion*, 110 USPQ2d at 1061. Opposer’s witnesses testified that its goods are sold to “wholesale distributors of alcoholic

²⁴ 20 TTABVUE 52-61 (Registrations Nos. 5308366 and 5382618).

beverages, distilled spirits, wines and, depending upon [the] State, beer, who, in turn, sell [the] products to retail sellers of alcoholic beverages,” Cooper Aff. ¶ 6, and appear at retail in “liquor stores, [state-controlled alcoholic beverage stores], supermarket chains, food stores, as well as restaurants and bars in all of which other alcoholic beverage products, specifically including wines, are sold.” O’Brien Aff. ¶ 5. This testimony is sufficient to establish that alcoholic beverages are sold through common channels of trade to presumably overlapping ordinary purchasers, and we find that this *du Pont* factor weighs in favor of a finding of a likelihood of confusion. *Chatam Int’l*, 71 USPQ2d at 1948; *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003) (finding that third *du Pont* factor supported refusal of registration where record showed that malt liquor and tequila were sold in many of the same trade channels).

5. Third-Party Registrations

The sixth *du Pont* factor is the “nature and number of similar marks in use on similar goods.” *du Pont*, 177 USPQ at 567. Applicant made of record 10 subsisting, use-based third-party registrations of marks containing the name JACQUES (or the variant JACQUE) for various alcoholic beverages, including wines and brandy.²⁵ Third-party marks may be used to show “the strength or weakness of an opposer’s mark.” *Juice Generation*, 115 USPQ2d at 1674 (considering impact of use and registration of various marks containing the words PEACE and LOVE on issue of

²⁵ 20 TTABVue 10-35, 42-61. Applicant also made of record multiple cancelled or expired registrations, *id.* at 62-117, which “are not evidence of anything except that they issued.” *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1335 n.11 (TTAB 2014).

strength or weakness of opposer's family of PEACE & LOVE marks in opposition to registration of stylized PEACE LOVE AND JUICE mark). Applicant did not introduce evidence of third-party use or registration of JACQUIN-formative marks per se, but argues that the third-party registrations show that "JACQUES is not a unique or arbitrary word, and a mere portion of that word 'JACQU' is not a strong source indicator." 21 TTABVUE 20. Opposer criticizes this evidence on the ground that "the existence of third-party registrations is not evidence of use of those marks in the marketplace or that consumers are familiar with them," and that "[w]hile third-party registrations may be used to determine that a portion of a mark is suggestive or descriptive, they cannot be used to justify the registration of another confusingly similar mark." 22 TTABVUE 13.

We agree with Opposer that the third-party registrations do not show the commercial weakness of Opposer's marks, or of the letter string JACQU. "As to *commercial* weakness, [t]he probative value of third-party trademarks depends entirely upon their usage." *Tao Licensing*, 125 USPQ2d at 1059 (quoting *Palm Bay Imps.*, 73 USPQ2d at 1693). The "real evidentiary value of third party *registrations* per se is to show the sense in which . . . a mark is used in ordinary parlance," *Juice Generation*, 115 USPQ2d at 1675 (quoting 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:90 (4th ed. 2015)), and "[t]hird-party registrations are relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well recognized meaning, leading to the conclusion that that segment is relatively weak." *Id.* (quoting MCCARTHY § 11:90). The parties'

marks do not share the name JACQUES, however, and Applicant's evidence of third-party registrations of JACQUES-formative marks at most merely corroborates Applicant's dictionary evidence indicating that American consumers would understand JACQUES to be a first name when it appears in Applicant's mark. We find that this *du Pont* factor is neutral in our analysis.

6. Conclusion

We have found that Opposer's marks JACQUIN and JACQUIN'S and Applicant's mark VIA SAINT JACQUES are quite dissimilar in appearance, sound, connotation, and commercial impression when considered in their entireties, and "[a] single *DuPont* factor may be dispositive in a likelihood of confusion analysis, especially when that factor is the dissimilarity of the marks." *Oakville Hills Cellar*, 119 USPQ2d at 1290 (affirming Board's conclusion that dissimilarity of marks MAYA and MAYARI for wine was sufficient to make confusion unlikely even though the goods were identical and would travel through the same channels of trade to the same classes of customers) (internal quotation omitted). The evidence on the remaining *du Pont* factors is insufficient to make confusion likely given the dissimilarity of the marks. Although alcoholic beverages travel in the same channels of trade, and may be purchased by the same customers, and Opposer's marks are entitled to a normal scope of protection, Opposer did not show that distilled spirits and cocktails, and wines from the Alsace region of France, are related goods because they are commonly manufactured or sold by the same companies under the same marks, or are complementary goods, or because "the circumstances surrounding their marketing

are such that they could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722. We find, on the basis of the record as a whole, that Opposer failed to prove by a preponderance of the evidence that Applicant’s use of its VIA SAINT JACQUES mark is likely to cause confusion as to the source or sponsorship of Applicant’s goods.

Decision: The opposition is dismissed.