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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91268532
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 88/496,247
For the mark: RASASVADA
Published: February 2, 2021

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Rasa Vineyards, LLC, :
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 : Opposition No.
 Opposer, : 91268532
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 v. :
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 Rasasvada, LLC, :
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 Applicant. :
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ACR Rebuttal Brief for Opposer Rasa Vineyards, LLC - REDACTED

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Opposer hereby responds in rebuttal to Applicant's ACR brief and evidence.

A. The Similarity of the Marks.

As set forth in Opposer's ACR Brief, the dominant portion of Applicant's Mark is identical to Opposer's Mark. 34 TTABVUE 10-13. The overall commercial impression of Applicant's Mark is similar to that of Opposer's Mark. 34 TTABVUE 13-14.

Applicant emphasizes the difference between the marks. 45 TTABVUE 9-13. However, Applicant's claims regarding the sounds of the marks as compared to other words is pure attorney argument, not supported by evidence. *Id.* at 9. Applicant observes that INSPIRED BREWING could not block the registration of INNOVATION BREWING (*id.*), but *Bells' Brewery, Inc. v. Innovation Brewery* is inapposite because the conflicting marks in that case shared only the syllable "IN." The conflicting marks in this case share the term "RASA"—which is Opposer's entire mark and comprises the dominant portion of Applicant's Mark. 34 TTABVUE 10-14. Applicant argues that the marks have different meanings in Sanskrit (*id.* at 10), but since U.S. consumers do not speak or read Sanskrit, the English translations of either mark have little bearing on their respective commercial impressions. 34 TTABVUE 25.

Applicant argues that the additional letters and sounds in Applicant's Mark are sufficient to prevent confusion. However, as the Board has previously explained, especially in the context of goods that are requested orally, additional letters and sounds in an Applicant's Mark for alcoholic beverages weigh in favor of confusion when consumers reference Applicant's Mark using a shortened, dominant portion of the Mark:

Restaurant and bar patrons are likely to place verbal orders for Applicant's and Registrant's alcoholic beverages, and because customers have a propensity to shorten marks when referring to them, it is foreseeable that consumers will use the dominant term "Dolcevita" to request or refer to Applicant's wine. *In re Aquitaine Wine*, 126 USPQ2d at 1188 ("[C]onsumers often have a propensity to shorten marks when ordering [goods] orally[.]"); *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (finding ML likely to be

perceived as a shortened version of ML MARK LEES when used on the same or closely related skin care products); *Big M Inc. v. U.S. Shoe Co.*, 228 USPQ 614, 616 (TTAB 1985) (“[W]e cannot ignore the propensity of consumers to often shorten trademarks[.]”); *see also In re Viterra Inc.*, 101 USPQ2d at 1908 (“In the case of a composite mark containing both words and a design, ‘the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.’”). Bar and restaurant patrons also are unlikely to see Applicant's label before ordering, and may never see the label if Applicant's wine is served by the glass, as wine often is served in bars and restaurants. *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1961 (TTAB 2016).

In Re Sensi Vigne & Vini Srl, No. 79201501, 2020 WL 1166461, at *5 (Feb. 21, 2020) (holding that Applicant’s stylized presentation of ‘Dolcevita’ as one word, the additional wording *dei SENSI*, ‘of the senses’, along with the distinctive floral elements and the wording ‘FAMILY OF WINEMAKERS SINCE 1890’ failed to distinguish over cited registration DULCE VITA). Similarly, in *In Re Clipper City Brewing Co., Lp*, 2017 WL 412405, at *4 (Jan. 10, 2017), the Board affirmed refusal to register BLACKBEARD’S BREAKFAST over a registration for BLACKBEARD’S ALE with design because “[c]onsumers ordering Applicant's or Registrant’s beer from a bartender or a server would tend to ask for the drink by name, without having the opportunity to see a label. [] And these consumers, who retain a general rather than specific impression of the marks [] would naturally tend to shorten their pronunciation to the first, most memorable, part of each mark.” 2017 WL 412405, at *4 (Jan. 10, 2017). That principle applies squarely to this case. The record is replete with examples of Applicant referring to itself and to Applicant’s Mark by the shortened form “Rasa.” 34 TTABVUE 10-14 (collecting citations).

Applicant relies on *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1374-1375 (Fed. Cir. 1998) and on *ETW Corp. v. Sunburst Products, Inc.*, 2001 WL 12839, *7 (TTAB 2001) (45 TTABVUE 10-11), but neither of those cases addressed the context of verbal orders for Applicant’s and Registrant’s goods. The context of verbal requests for the

dominant portion of the mark. Nor does it prohibit use of the dominant portion of the mark in comparing two marks. Where the record shows that a portion of Applicant's mark dominates consumer perception of the mark, a fair assessment of likelihood of confusion gives due weight to consumer perception by comparing the dominant portion of the mark to the registered mark: "[T]here 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. Indeed, this type of analysis appears to be unavoidable." *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (refusing registration).

Opposer cited *Am. Rice v. H.I.T.*, *Nw. Golf v. Acushnet*, and *In re Ari Brands* to show relevance of Applicant's use of a shortened form of the mark to determining the commercial impression of Applicant's Mark. 34 TTABVUE 8-9. Although Applicant tries to distinguish these cases "because, in each case, the Board considered the applicant's use to rebut Applicant's arguments relating to the meaning or commercial impression of its mark" (45 TTABVUE 25-26), that is exactly the point for which Opposer cites these cases. 34 TTABVUE 8-9. Applicant has taken a position in this proceeding that the meaning or commercial impression of Applicant's mark is distinct from RASA, yet Applicant's own use of "Rasa" as a form of Applicant's Mark in several varied consumer-facing contexts rebuts that position and demonstrates that the meaning or commercial impression of Applicant's Mark includes "Rasa." 27 TTABVUE 103, 104, 107, 109, 68, 72 (RASA000350, 351, 354, 356, 144, 148) (Applicant's Website content); Stip. ¶ 32 (Applicant's Website URL); Stip ¶ 34 (Applicant's Instagram); 28 TTABVUE 26-53 (RASA00054-81) (Applicant's recipe cards); 28 TTABVUE 100 (RASASVADA0001089); 29 TTABVUE 14, 17 (RASASVADA0000199, 202); 30 TTABVUE 6 (RASASVADA0000210); 32 TTABVUE 32 (RASASVADA0000444); 32 TTABVUE 10 (RASASVADA0000422); 31

TTABVUE 16-18 (RASASVADA000091-93); 31 TTABVUE 25 (RASASVADA0000471)

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B. The Strength of Opposer’s RASA Mark.

Applicant argues that Opposer’s RASA Mark is weak, but the record does not support this argument. 45 TTABVUE 13-17. Applicant argues that English and Sanskrit dictionaries translate “Rasa” as “flavor” or “sap, juice.” *Id.* at 14. But Applicant’s evidence translates “rasa” as a term used “in Hindu aesthetics” (40 TTABVUE 72, 74) rather than to describe food or drink. Applicant’s dictionary evidence should be set aside as inconsistent with Applicant’s stipulation that “rasa” has dozens of meanings in English translation from Sanskrit. *Stip. Fact.* ¶46.

Furthermore, Opposer argued, and Applicant did not dispute, that the doctrine of foreign equivalents has no application to Opposer’s Mark. *Id.*; 45 TTABVUE 14. Potential purchasers of Opposer’s goods are not familiar with Sanskrit words generally. 34 TTABVUE 25. Therefore, Opposer’s argument that “Rasa” and “Rasasvada” are similar in sight, sound, and meaning (34 TTABVUE 14) does not undermine the evidence indicating “Rasa” is arbitrary or fanciful with respect to wine, the goods in Opposer’s registered Mark. 34 TTABVUE 25, 305-316. Applicant’s reference to *Nina Ricci* is inapplicable because the term “L’Air,” in that case, was shown to be recognizable by English language speakers as a dressed-up form of the word “air”—suggestive of perfume. 45 TTABVUE 14. No such facts are present in this case.

Applicant argues that third party registrations have weakened Opposer’s Mark. 45 TTABVUE 14. However, Applicant’s argument overreaches and lacks support. First, Applicant argues that “RASA and RASA formative marks have been registered by numerous third parties for alcohol and alcohol-related products.” *Id.* Yet, none of the registrations cited in Applicant’s

brief are for alcohol or alcohol-related goods. *Id.* Second, Applicant argues that “RASA and formatives is also in use for beer and numerous restaurants and related goods.” *Id.* 14-15. Yet, Applicant admitted in response to Opposer’s request for admission that Applicant is “not aware of any marks that begin with the term “rasa” used in connection with alcoholic beverages in the United States other than Opposer’s Mark” (28 TTABVUE 86 (Response to RFA 55)), and the parties stipulated that “[n]either party is aware of anyone else currently using the mark RASA or a confusingly similar variant thereof for alcoholic or alcohol-related beverages in the United States.” Stip. Fact. ¶ 38.

Applicant’s attorney declaration (Exs. 1-9) as to the alleged use of RASA for beer, restaurants, and related goods, must be set aside to the extent it is inconsistent with Applicant’s admission in response to Opposer’s request for admission that Applicant is “not aware of any marks that begin with the term “rasa” used in connection with alcoholic beverages in the United States other than Opposer’s Mark.” 28 TTABVUE 86 (Response to RFA 55). Indeed, Applicant has admitted, and the parties have stipulated, that there is no current use of “Rasa” for alcoholic beverages but Opposer’s. 28 TTABVUE 86; Stip. Fact. ¶ 38. Applicant’s reference to *PAC Worldwide* is unavailing as the evidence in that case included several current uses by third parties of the registered “PAC” mark for identical goods and services. 45 TTABVUE 15. Such evidence is not present here.

Applicant argues that Opposer’s RASA Mark lacks commercial strength because Opposer’s sales are not “in the hundreds of millions.” 45 TTABVUE 16. This is not an appropriate standard for measuring commercial strength, and Applicant cites no authority.¹

¹ Of course, Opposer has not alleged that its RASA mark is famous.

Applicant argues that Opposer did not produce digital or print advertisements as related to commercial strength and goes on to say that Opposer “barely introduced any evidence concerning use of its mark.” 45 TTABVUE 16. *Id.* This point is entirely inconsistent with the parties’ stipulations regarding Opposer’s use of Opposer’s Mark. The parties stipulated that Opposer markets its goods and services under Opposer’s RASA Mark through digital and print advertisements, among other means. Stip. Fact ¶ 19. Since this point was stipulated, there is no reason for Opposer to produce advertisement. Further, the parties stipulated that Opposer’s goods have been offered for sale under Opposer’s mark to consumers in all 50 states and are currently distributed to retailers and restaurants in eleven states. *Id.* ¶ 18; *id.* ¶¶ 14-17 (further stipulations regarding Opposer’s use of the RASA Mark). Applicant’s counsel agreed to stipulate to these facts after Opposer produced evidence of its substantial and continuous use of Opposer’s Mark since 2009. *See* 48 TTABVUE 1-46 (RASA000296-342). Applicant mis-states the volume of Opposer’s sales (45 TTABUVE 15) which exceeded [REDACTED] *annually* in 2020 and again in 2021—no small achievement in years when tasting rooms and travel were closed or limited by Covid-19. 31 TTABVUE 7-10. Critically, Applicant’s arguments against Opposer’s commercial activity do not recognize or respond to the unrebutted evidence of public recognition of Opposer’s use of its mark, for example more than two dozen rankings from *Wine Spectator* and a place in the *New York Times* review of 20 wines under \$20. *See* 27 TTABVUE 18, 23-24, 30, 86-91; 28 TTABVUE 17 (RASA000016; RASA000021-22; RASA000028; RASA000280-RASA000285; RASA000045).

C. Lack of Actual Confusion is Irrelevant with Intent to Use Application.

Although Applicant argues an absence of actual confusion (45 TTABVUE 17), the Application was filed as intent-to-use, and Applicant has not begun using Applicant’s Mark in connection with the goods and services set forth in the Application. Stip. ¶¶ 8, 29. In the absence

of any use of Applicant's Mark in connection with the goods and services set forth in the Application, the absence of actual confusion carries no weight.

D. Trade Channels, Consumer Sophistication, and Product Pricing

Applicant argues that the parties' goods are in different channels of trade and that the sophistication of the relevant consumers weighs against confusion. 45 TTABVUE 17-20. However, neither the Application nor Opposer's registration is limited to any particular channel of trade or group of consumers. Stip. ¶ 7, Stip. ¶ 3.. "[W]here the applicant seeks a registration not restricted to sales to any particular class of customers or channels of trade, it is error to place weight on evidence showing the goods are bought only by a particular class of customers." *McCarthy, supra*, § 20:15. In fact, Opposer's use of Opposer's mark is not limited to any particular class of consumers. 34 TTABVUE 16, 23; Stip. Fact. ¶¶ 16-17; 27 TTABVUE 86-92 (RASA000280-285); 27 TTABVUE 3 (RASA000001).

Similarly, Applicant argues that the price of the parties' respective goods and services weighs against confusion. 45 TTABVUE 18-20. However, neither the Application nor Opposer's registration is limited to products of any particular price range. Stip. ¶ 7, Stip. ¶ 3. In fact, Opposer's products are sold at a wide range of prices, from \$_ to \$___. 34 TTABVUE 16; Stip. Fact. ¶ 16; 27 TTABVUE 86-92 (RASA000280-285); 27 TTABVUE 3 (RASA000001). More importantly, the price range of Applicant's goods, as relevant to this opposition, is not known. Those goods are not yet for sale.

E. The Relatedness of the Parties' Respective Goods and Services Supports a Finding of Likelihood of Confusion.

Applicant states that the parties' goods and services are dissimilar. 45 TTABVUE 20-23. Applicant offers little evidence to support this statement, however.. Without evidence, Applicant argues distinctions between wine and spirits in their manner of marketing, sales locations, and

infrequent use of wine brands on spirits and *vice versa*. *Id.*, 20. None of these arguments cite evidence. *Id.* In fact, the record evidence shows that wine brands are often used for spirits and *vice versa*. Stip. Fact ¶ 42; 34 TTABVUE 38-41, 273-304 (third parties using same mark to designate wine and spirits).

Applicant disregards Opposer's evidence showing relatedness of wine and Applicant's Class 40 services by stating that only two of Opposer's cited registrations are "for wine." 45 TTABVUE 21. To the contrary, all the registrations cited by Opposer show an overlap between wine and Application's goods and services, even where wine is not expressly listed, for example by reciting "alcoholic beverages except beer" together with "distillery services." 34 TTABVUE 20, 29-30, 44-59, 63; 27 TTABVUE 61-64 (RASA000128-131). Despite Applicant's denial, (45 TTABVUE 22) Opposer's argument is unrebutted that Applicant's Class 40 services including "preservation of drink; rental of machines and apparatus for processing beverages; treatment of materials in the nature of botanical products" are worded so broadly as to encompass wine-making, which is commonly used and registered with wine under the same mark. 34 TTABVUE 21, 65-235 (use), 236-272 (registration).

CONCLUSION

Accordingly, Opposer requests that the Board deny the Application.

Dated this 3rd of June, 2022

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APPENDIX FOR EVIDENTIARY OBJECTIONS

A. Response to Applicant's Objections

Applicant argues that the evidence showing Applicant's use of RASA fails to show the allegedly present RASASVADA mark and thus is "taken out of context" and "misleading." 45 TTABUVE 28. This is not an objection under the Rules of Evidence but rather an argument going to the weight of the evidence. Applicant's objection is misplaced for several reasons. First, the intermingling of RASA with RASASVADA on Applicant's website does not support Applicant's position that confusion is unlikely. Rather it confirms Opposer's argument that consumers will perceive RASA as referring to the Applicant's Mark. Second, nothing in the Application limits Applicant's use of Applicant's Mark to the form shown on Applicant's website. The Applicant is for a standard character mark. Thus, the examples of Applicant's website (45 TTABVUE 29-32) are not limiting on the Application. Nor do they overcome the evidence that Applicant intends for consumers to conceptualize Applicant's Mark as RASA. *E.g.* 29 TTABVUE 14, 17 ([REDACTED] 32 TTABVUE 32 [REDACTED] [REDACTED]). Third, Applicant uses RASA alone even on the internet. *See e.g.* 28 TTABVUE 31-37, 41-53 (Instagram posts). Fourth, Applicant stipulated to the authenticity of the documents cited in Opposer's Brief. 23 TTABVUE 4-5 (Stipulation of Authenticity); 27 TTABVUE 103, 104, 107, 109, 68, 72 (RASA000350, 351, 354, 356, 144, 148). Applicant cannot at this late stage fairly maintain that the documents are misleading.

Applicant argues that the evidence showing Applicant's use of RASA and evidence of purported intent is irrelevant but cites no authority. 45 TTABVUE 32. Opposer cited several

cases showing the relevance of Applicant's intent as to consumer perception of Applicant's Mark. 34 TTABVUE 8-9, 12. This objection also is meritless.

B. Opposer's Objections to Applicant's Evidence

Applicant's Brief makes broad factual assertions that, if read at their full breadth, are inconsistent with the parties' fact stipulations in this case. 24 TTABVUE. As noted above, Applicant offers dictionary evidence regarding the meaning of "rasa" as a term used "in Hindu aesthetics." 40 TTABVUE 72, 74; *see also* 45 TTABVUE 14, 23 (Applicant's Brief). Applicant uses this evidence to argue that "RASA essentially mean[s] juice." 45 TTABVUE 23. This is inconsistent with the parties' fact stipulation that there are many possible meaning for "rasa" in English. Stip. Fact ¶ 46. When a party submits evidence and arguments that contradict stipulated facts, that undermines the purpose of the fact stipulations to simplify the proceedings and resolve issues that the parties have agreed are not in dispute. It also undermines the efficiency of the ACR stipulation in general (see 11, 12 TTABVUE for the parties' ACR stipulation) and, if unchecked, leaves room for gamesmanship inasmuch as a party may enter into a stipulation and then ambush another party with contrary facts and arguments. Accordingly, Opposer requests that little weight, if any, be afforded to Applicant's evidence and arguments for a particular meaning of "rasa."

Also noted above, Applicant argues that Opposer did not produce digital or print advertisements as related to commercial strength and goes on to say that Opposer "barely introduced any evidence concerning use of its mark." 45 TTABVUE 16. This point is entirely inconsistent with the parties' stipulations regarding Opposer's use of Opposer's Mark. The parties stipulated that Opposer markets its goods and services under Opposer's RASA Mark through digital and print advertisements, among other means. Stip. Fact ¶ 19. Since this point

was stipulated, there is no reason for Opposer to produce advertisements. Applicant’s counsel agreed to stipulate to these facts after Opposer provided evidence of Opposer’s digital or print promotion of Opposer’s Mark since 2009. *See e.g.* 48 TTABVUE 1-46 (RASA000296-342). While the Stipulation of Fact permits the parties to challenge the weight of the evidence, Applicant goes too far by arguing a negative inference from failure to produce evidence to support a stipulated fact. Stip. Fact ¶ 19 (“Opposer markets the goods and services associate with Opposer’s Mar . . . through digital and print advertisements”). The object of fact stipulations is to reduce the burden of discovery and the volume of documents submitted into evidence. The parties did that in this case with respect to Opposer’s digital and print advertisements. Thus, the Board should not credit Applicant’s argument on this point.

Dated this 3rd of June, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2022, I caused a true and correct copy of **OPPOSER'S ACR REBUTTAL BRIEF - REDACTED** to be served by email upon the following attorneys of record for Applicant:

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