

This Opinion is not a
Precedent of the TTAB

Mailed: January 4, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Rasa Vineyards, LLC

v.

Rasasvada, LLC

Opposition No. 91268532

Elliott J. Williams of Stoel Rives LLP,
for Rasa Vineyards, LLC.

Nancy J. Mertz of Mertz Law PLLC,
for Rasa Vineyards, LLC.

Before Shaw, Pologeorgis and Allard,
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

Rasasvada, LLC (“Applicant”), seeks to register on the Principal Register the standard character mark RASASVADA for:

spirits; blended spirits; aperitifs with a distilled alcoholic liquor base; Extracts of spirituous liquors; flavored tonic liquors, in International Class 33; and

alcohol and spirits distillery services; brewing services, namely, brewing of water-based beverages, fruit and vegetable juices containing non-alcoholic herbal and floral

extracts for others; preservation of drink; rental of machines and apparatus for processing beverages; treatment of materials in the nature of botanical products; providing a website featuring news and information in the field of craft brewing and distilling of alcohol and spirits; all of the foregoing excluding information about dietary supplements and vitamins, in International Class 40.¹

Opposer, Rasa Vineyards, LLC, opposes registration on the ground of priority and likelihood of confusion based on its ownership of the standard character mark RASA for “Wines,” in International Class 33,² as well as on common law rights in the mark for wine-related services.³ In its Answer, Applicant denied the salient allegations in the Notice of Opposition.⁴

The parties filed a joint stipulation to have this case decided by the accelerated case resolution (“ACR”) procedure discussed in Section 702.04 of the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (June 2021).⁵ Pursuant to the cross motion for summary judgment model of ACR, Opposer and Applicant filed both briefs and reply briefs. We sustain the Opposition.

¹ Application Serial No. 88496247, filed July 1, 2019 pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s bona fide intention to use the mark in commerce.

² Registration No. 3731872, issued December 29, 2009; renewed.

³ Notice of opposition, ¶¶ 4-8, 1 TTABVUE 4.

⁴ 4 TTABVUE. Applicant also asserted four affirmative defenses, and counterclaimed for cancellation of Opposer’s registration on the ground of fraud because Opposer, upon renewal, amended its registered mark from “RASA VINEYARDS” to “RASA.” Applicant’s “affirmative defenses” were stricken as improperly pleaded, not true affirmative defenses, or beyond the jurisdiction of the Board. 9 TTABVUE. Applicant’s counterclaim for cancellation was stricken on the ground that it was not pleaded with the particularity required of a fraud claim. *Id.* Applicant did not replead any of the defenses or the counterclaim.

⁵ 11 TTABVUE.

I. Evidentiary objections

In its brief, Opposer reproduces portions of Applicant's web pages showing Applicant's use of the term RASA as shorthand for, or an abbreviation of, the applied-for mark RASASVADA. On the full web pages, Applicant uses both RASA and RASASVADA in connection with other goods it offers for sale. The authenticity of the web pages was stipulated to by the parties and the complete web pages are properly of record.⁶

Applicant objects to the web page excerpts in Opposer's brief on the ground that they are misleading. According to Applicant, Opposer's evidence misrepresents the full context of the web pages because the images are improperly cropped so as to "exclude evidence of how Applicant uses [RASASVADA]. In fact, in *every* instance Opposer cited where Applicant abbreviated its mark to RASA, Applicant prominently used its RASAVADA [sic] mark in full in close proximity to the abbreviation."⁷ Applicant also objects to the excerpts as irrelevant.⁸ Opposer argues that Applicant's objection "is not an objection under the Rules of Evidence, but rather an argument going to the weight of the evidence."⁹

Applicant's objection is overruled. It is not improper for a party to highlight portions of evidence it views as important to its case, particularly, as here, where the highlighted text is taken from more comprehensive material properly of record.

⁶ 23 TTABVUE; 27 TTABVUE 65-78.

⁷ Applicant's Br., p. 26, 46 TTABVUE 28.

⁸ *Id.* at 30, 46 TTABVUE 32.

⁹ Opposer's Reply Br., p. 11, 50 TTABVUE 13.

Moreover, Applicant's use of the term RASA as shorthand for the applied-for mark RASASVADA is relevant to the likelihood of confusion analysis. Applicant has pointed out the nature of the evidence in its entirety, and we will accord the evidence whatever probative value it has. *See RxD Media, LLC v. IP Application Dev. LLC*, 125 USPQ2d 1801, 1804 (TTAB 2018) (“[T]he Board is capable of weighing the relevance and strength or weakness of the objected to testimony and evidence, including any inherent limitations.”).

II. The Record

The parties filed a stipulation that provides for, inter alia: waiver of pretrial and rebuttal disclosures; waiver of expert witnesses; limited written discovery including limiting the number of interrogatories to 25 and no discovery depositions; stipulations as to the authenticity of documents and facts; foregoing trial and oral hearings and submitting the case to the Board through ACR briefing in a cross motion for summary judgment format; and consent for the Board to resolve genuine disputes of material fact and issue a final ruling based on the parties' ACR submissions.

The record consists of the file of Applicant's involved application, by operation of Trademark Rule 2.122(b); the pleadings; and stipulations as to the authenticity of documents and facts.

The stipulation as to the authenticity of documents includes the following documents:¹⁰

1. Media articles about the parties' goods and services;
2. Third-party registrations and third-party web page excerpts;

¹⁰ Stipulation to the authenticity of documents, 23 TTABVUE.

3. Excerpts from the parties' web sites and social media sites;
4. An encyclopedia entry and a dictionary definitions of the term "rasa;"
5. Invoices and various business documents relating to Applicant's business;
and
6. Various product advertising and branding documents from Applicant,
including product labels.

The stipulation of facts includes the following facts:¹¹

1. Opposer owns U.S. Reg. No. 3731872 ("Opposer's Registration") for the standard character mark RASA ("Opposer's mark") for "wines" in Class 33;
2. Applicant owns Reg. No. 6464829 for the standard character mark RASASVADA for "Non-alcoholic water-based beverages; non-alcoholic distilled spirits; fruit and vegetable based juices; juice based concentrates; non-alcoholic cocktails; essences for making beverages in the nature of non-alcoholic beverages," in Class 32;
3. Opposer has used the mark RASA continuously for goods and services, including wines, wine-related services such as tasting, pairing, selection, mail-order clubs, and wine education, information and education services in the area of wine, since on or about May 1, 2009;
4. Opposer has offered wine in connection with Opposer's mark at a broad range of retail pricing including from less than \$20 up to and including \$115 per bottle of wine depending on the age and characteristics of each bottle;
5. Applicant sells "Spirit Restorative products" under the RASASVADA brand but has not yet commenced use of RASASVADA in connection with Applicant's applied-for goods and services listed in the Application;
6. A number of third-party RASA-formative marks are registered, but "[n]either party is aware of anyone else currently using the mark RASA or

¹¹ Stipulation of facts, 24 TTABVUE.

a confusingly similar variant thereof for alcoholic or alcohol-related beverages in the United States;”

7. A number of third-party marks with similar common word elements and goods similar to those of the parties’ are registered;
8. A PRACTICAL SANSKRIT DICTIONARY provides the following translations:
 - A. Rasa: “sap, juice (of plants), fruit-syrup; fluid, liquid; water; essence, pith (of anything); quicksilver; potion, elixir; poisonous draught; taste, flavour (as distinctive quality of fluids: six kinds are distinguished, viz. sweet, salt, bitter, sour, pungent, astringent); object of taste; organ of taste, tongue; relish, inclination, fondness or love for; desire; affection; pleasure, delight; charm; (flavor or keynote in poetry), sentiment; prevailing sentiment in human character;”
 - B. Asvada: “taste, enjoyment; flavour;” and
 - C. Rasasvada: “perception of pleasure.”

In addition, Opposer introduced the declaration of its counsel, Elliott Williams, with, inter alia, exhibits comprising TESS printouts of third-party registrations and internet excerpts from third-party web sites.¹² Applicant introduced the declaration of its counsel, Nancy Mertzal, with, inter alia, exhibits comprising web page excerpts from its web site as well as from third party websites and registrations, and two dictionary definitions of RASA.¹³

III. Entitlement to Statutory Cause of Action for Opposition

To establish entitlement to a statutory cause of action under Sections 13 or 14 of the Trademark Act, such as a cause of action for abandonment, a plaintiff must

¹² 33 TTABVUE 29-316.

¹³ 40 TTABVUE.

demonstrate a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1061-63 (Fed. Cir. 2014); *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1727 (Fed. Cir. 2012); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999).

Opposer has established its entitlement to bring this proceeding because it has a “real interest” and a “reasonable belief of damage.” *Australian Therapeutic*, 2020 USPQ2d 10837, at *4. Specifically, Opposer submitted a status and title copy of its pleaded registration for the RASA mark showing its ownership and that registration remains valid.¹⁴ This is sufficient to confer entitlement to a statutory cause of action. *Primrose Ret. Cmtys., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1032 (TTAB 2016) (standing established based on pleaded registration made of record). In addition, we note that Applicant does not dispute Opposer’s entitlement to bring this opposition.

IV. **Priority**

Because Applicant did not replead its stricken counterclaim to cancel Opposer’s pleaded registration, priority is not at issue with respect to the mark and goods identified therein.¹⁵ *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). In addition, the parties’ stipulation of facts

¹⁴ 27 TTABVUE 92-95.

¹⁵ 9 TTABVUE.

recognizes that Opposer has used its “RASA mark continuously for goods and services . . . since on or about May 1, 2009.”¹⁶

V. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record 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*”) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and 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 services] and differences in the marks.”). Opposer bears the burden of establishing that there is a likelihood of confusion by a preponderance of the evidence. *Eastman Kodak Co. v. Bell & Howell Document Mgmt. Prods. Co.*, 994 F.2d 1569, 26 USPQ2d 1912, 1918 (Fed. Cir. 1993) (“The challenger’s burden of proof in both opposition and cancellation proceedings is a preponderance of the evidence.”).

“Whether a likelihood of confusion exists between an applicant’s mark and a previously registered mark is determined on a case-by-case basis, aided by application of the thirteen *DuPont* factors.” *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689 (Fed. Cir. 2018). “In

¹⁶ Stipulation of facts, ¶ 15, 24 TTABVUE 4.

discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997) and *DuPont*, 177 USPQ at 567). “Not all *DuPont* factors are relevant in each case, and the weight afforded to each factor depends on the circumstances. Any single factor may control a particular case.” *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 2020 USPQ2d 10341, at *3 (Fed. Cir. 2020) (citing *Dixie Rests.*, 41 USPQ2d at 1533).

A. The goods and services, channels of trade, and classes of consumers

We first consider the similarity of the goods and services, channels of trade, and classes of consumers, keeping in mind that the goods and services need not be identical or even competitive in order to find likelihood of confusion. Rather, the question is whether the goods or services are marketed in a manner that “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)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same

goods can be related in the mind of the consuming public as to the origin of the goods”); *Kohler Co. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1109 (2007).

Applicant’s goods include “spirits” and “aperitifs with a distilled alcoholic liquor base.”¹⁷ Applicant’s services include “alcohol and spirits distillery services” and “providing a website featuring news and information in the field of craft brewing and distilling of alcohol and spirits.” Opposer’s registration identifies “wines,” and the parties’ stipulation of facts states that Opposer provides “wine-related services such as tasting, pairing, selection, mail-order clubs, and wine education, information and education services in the area of wine.”¹⁸

Regarding Applicant’s spirits and aperitifs and Opposer’s wines, Opposer argues that the respective goods are related because they “are often produced or marketed by a single source under a single mark.”¹⁹ In support, Opposer introduced ten third-party registrations encompassing wine as well as spirits, aperitifs, or liquors.²⁰ The following six examples are most relevant:

Mark	Reg. No.	Relevant Goods
JA (stylized)	4336103	Aperitifs, aperitifs with a distilled alcoholic liquor base, spirits, and wines
GUN FIGHTER	4373493	Aperitif wines, aperitifs with a distilled alcoholic liquor base, spirits and liqueurs, and wines

¹⁷ An aperitif is defined as “1 a small drink of alcoholic liquor taken to stimulate the appetite before a meal. 2 Also called **ap eritif wine**. a wine served as an appetizer or cocktail.” <https://www.dictionary.com/browse/aperitif> (emphasis added). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

¹⁸ Stipulation of facts, ¶ 15, 24 TTABVUE 4.

¹⁹ Opposer’s Br., p. 15, 33 TTABVUE 17.

²⁰ 27 TTABVUE 33-60.

Mark	Reg. No.	Relevant Goods
HELLA COCKTAIL CO.	5708818	Aperitifs, aperitifs with a wine base, and wine
KOUZIJIAO	5782136	Aperitifs, aperitifs with a distilled alcoholic liquor base, spirits, and wines
DAOHUAXIANG	5807303	Aperitifs, aperitifs with a distilled alcoholic liquor base, spirits, and wines
REGALO DE VIDA	5965160	Aperitifs, aperitifs with a distilled alcoholic liquor base, spirits, and wines

Opposer also introduced twenty-three third-party web page excerpts showing that some third parties use a single mark to designate the source of both wine and various spirits.²¹ These web pages, from combined wineries and distilleries open to the public such as Six Mile Creek, Cedar Ridge, Fiore, Sweetgrass, Flying Leap, and Hood Crest, show that these businesses provide winery and distillery operations via a single entity offering both wines and spirits to consumers under a single house brand.

As a general proposition, third-party registrations that cover goods and services identified in both a pleaded registration and an applicant's application are relevant to show that the goods and services are of a type that may emanate from a single source under one mark. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1307 128 USPQ2d 1047, 1051 (Fed. Cir. 2018); *Hewlett-Packard Co. v. Packard Press*, 62 USPQ2d at 1004; *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

Although third-party registrations are not evidence that the registered marks are actually in use or that the public is familiar with them, particularly in the absence of any evidence showing the extent of their use, we consider them for their probative value. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396

²¹ Exs. 66-89 to Williams Decl., 33 TTABVUE 273-304.

F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005) (citation omitted); *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 462-63 (CCPA 1973); *In re Midwest Gaming & Entm't*, 106 USPQ2d 1163, 1167 n.5 (TTAB 2013).

The third-party registrations encompassing wines, spirits, and aperitifs suggest that they are of a type that may emanate from a single source under one mark. Regarding the evidence from third-party combined wineries and distilleries, we note that while historically distilleries and wineries may have operated as separate entities, in recent years this line of demarcation has begun to blur. The third-party websites from combined wineries and distilleries made of record by Opposer reflects this trend. These combined wineries and distilleries often offer tastings and provide information about their products to prospective consumers. We find that the foregoing evidence suffices to establish that wines are related to both spirits and aperitifs.

Citing *In re White Rock Distilleries Inc.*, 92 USPQ2d 1282, 1285 (TTAB 2009), Applicant nevertheless argues that “[t]here is no per se rule that holds that all alcoholic beverages are related.”²² According to Applicant:

[W]ine and alcoholic spirits differ in many ways: First, wine and spirits are vastly different in alcoholic content. Wine typically has about 10% alcohol by volume (“ABV”) and spirits about 40% or greater ABV. Second, wine and spirits are generally marketed differently. . . . Wine is often sold in specialty wine stores, in tasting rooms, and in many states in supermarkets. In contrast, in most states spirits are generally sold only in liquor stores. Third, contrary to Opposer’s arguments, wine brands are not commonly used on alcoholic spirits and alcoholic spirits brands are not commonly used on wines. Fourth, the process for producing wines and spirits is very different. Wine is produced through fermentation of grapes, while alcoholic spirits are

²² Applicant’s Br., p. 19, 46 TTABVUE 21.

generally produced through distillation of, typically, grains.²³

None of these arguments are persuasive. Whether wine, spirits and aperitifs have the same alcoholic content or are produced in the same way is not the issue. In other words, the issue is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830, 831 (TTAB 1984). Moreover, the fact that wine is sometimes sold in specialty wine stores, in tasting rooms, and in many states in supermarkets does not preclude them also from being sold in liquor stores alongside spirits and aperitifs. Lastly, contrary to Applicant's argument, Opposer's evidence shows that some wines are, in fact, sold under the same brand as spirits and aperitifs. Indeed, the stipulated fact that Opposer "is preparing to offer fortified wines and dessert wines under Opposer's Mark" supports this finding.²⁴

Although we agree with Applicant that there is no per se rule that holds that all alcoholic beverages are related, we frequently have held that different types of alcoholic beverages may be related. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (Fed. Cir. 2004) (tequila and beer and ale related); *Majestic Distilling*, 65 USPQ2d at 1203 (holding RED BULL for tequila likely to be confused with RED BULL for malt liquor); *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1827-28 (TTAB 2015) (finding "beer and other alcoholic beverages

²³ *Id.* at 18, 46 TTABVUE 20.

²⁴ Stipulation of facts, ¶ 15, 24 TTABVUE 4.

(including wine) are sold to consumers in many of the same channels of trade, including retail outlets such as liquor stores, supermarkets, convenience stores, restaurants, and bars”); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261 (TTAB 2011) (wine and beer related); *Schieffelin & Co. v. Molson Cos.*, 9 USPQ2d 2069 (TTAB 1989) (holding BRAS D’OR for brandy likely to be confused with BRADOR for beer).

Applicant also argues that because some allegedly similar marks, owned by different third parties, coexist for different kinds of alcoholic beverages means its mark is entitled to registration as well. According to Applicant, “as demonstrated by the numerous similar third-party marks that coexist on the Principal register in the wine and distilled spirits industries . . . there is no reason that Applicant’s Proposed Mark and Opposer’s Mark cannot coexist without confusion to the consumer.”²⁵ For support, Applicant points to fifteen pairings of third-party registrations for similar marks for wine and other alcoholic beverages.²⁶ These marks include OASIS for wine and champagne and OASIS VODKA for vodka; SIN ZIN and design for zinfandel wine and SIN ULTRA PREMIUM VODKA and design for spirits; WOODBURY for wines and champagne and WOODBURY BREWING for beer and brewing services; and RENDEZVOUS ROSE for wine and RENDEZVOUS for distilled spirits.²⁷

We do not find the third-party registrations persuasive. The fact that some registrations for alcoholic beverage marks sharing common attributes may coexist

²⁵ Applicant’s Br., p. 20, 46 TTABVUE 22.

²⁶ Stipulation of facts, ¶ 41, 24 TTABVUE 11-20. Official copies of these registrations do not appear to be of record, however, inasmuch as the parties stipulated to their existence, we have considered the summary of the marks for what probative value it may have.

²⁷ *Id.*

does not mean that all such marks must coexist. Whatever probative value there is to Applicant's list of third-party registrations must be weighed against the evidence introduced by Opposer to show that wine and spirits are offered by a single source under the same mark. *Cf. In re Thor Tech, Inc.*, 113 USPQ2d 1546, 1548 (TTAB 2015) (fifty sets of co-existing third-party registrations submitted by applicant were considered by Board as evidence weighing against similarity of goods).

In addition, we have no information on the strength or weakness of the shared terms in these third-party marks, whether they registered pursuant to consent agreements or Board proceedings, or whether evidence was introduced to distinguish the respective goods. Regardless, prior decisions and actions of other examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Board. *In re Midwest Gaming & Entm't*, 106 USPQ2d at 1165 n.3 (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)); TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") (July 2022) § 1207.01(d)(vi). It has been noted many times that each case is decided on its own facts, and each mark stands on its own merits. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 177 USPQ 268, 269 (CCPA 1973); *In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009).

We next compare Applicant's "alcohol and spirits distillery services" and "providing a website featuring news and information in the field of craft brewing and distilling of alcohol and spirits" with Opposer's "wines" and "wine-related services such as tasting, pairing, selection, mail-order clubs, and wine education, information and education services in the area of wine."

Opposer argues that “Numerous use-based third-party registrations confirm the relatedness of [Applicant’s] Class 40 services to alcoholic beverages including wines.”²⁸ Opposer introduced thirteen third-party registrations encompassing alcoholic beverages or ciders in Class 33 and their manufacture in Class 40. The following nine registrations encompassing “alcoholic beverages”—which would include the parties’ wines and aperitifs—and Applicant’s “distillery services,” are most relevant:²⁹

Mark	Reg. No.	Relevant Goods and Services
CURRENT SPIRITS	6179280	Alcoholic beverages, except beers; Spirits distillery services
MGP	5367276	Alcoholic beverages except beers; Alcohol distillery services; Spirits distillery services
MY BATCH	4292470	Alcoholic beverages except beers; Alcohol distillery services
O.Z. TYLER	6290831	Distilled spirits; alcoholic beverages, except beer; alcohol distillery services
TANGLED ROOTS BREWING COMPANY and design	6583932	Alcoholic beverages, except beer; Spirits and liqueurs; Wine; Spirits distillery services
OWENSBORO DISTILLING COMPANY	6343829	Distilled spirits; alcoholic beverages, except beer; alcohol distillery services
ROCKIN' A	5408277	Alcoholic beverages, except beer; Spirits distillery services
SEACRETS DISTILLING COMPANY	5121135	Alcoholic beverages except beers; Distilled Spirits; Alcohol distillery services
STORYHOUSE	5740906	Liqueurs; Spirits; Alcoholic carbonated beverages, except beer; Alcohol distillery services; Spirits distillery services

We find that the foregoing third-party registrations support a finding that Applicant’s alcoholic beverages are related to distillery services. Although none of the

²⁸ Opposer’s Br., p. 17, 33 TTABVUE 19.

²⁹ Williams Decl. Exs. 1, 4-10, 33 TTABVUE 43-46, 49-59; 27 TTABVUE 61-64.

registration list wines, per se, the broadly worded term “alcoholic beverages” encompasses all alcoholic beverages including Opposer’s wines, as well as Applicant’s “aperitifs with a distilled alcoholic liquor base.”

Regarding the parties’ educational informational services, we find that Applicant’s provision of “a website featuring news and information in the field of craft brewing and distilling of alcohol and spirits” is related to Opposer’s “wine-related services,” particularly its “wine education, information and education services in the area of wine.” Broadly speaking, both of the parties’ services include the provision of information in the field of alcoholic beverages. The only relevant difference between the respective services is that Applicant’s information is in the field of “distilling of alcohol and spirits” whereas Opposer’s information is in the field of “wine.” However, as shown by the twenty-three third-party web page excerpts from combined wineries and distilleries, discussed above, some third parties use a single mark to designate the source of both wine and various spirits, and these services are promoted online.³⁰ Thus, consumers are conditioned to expect that information about wine and spirits provided under a similar mark, would originate from a common source.

Applicant nevertheless argues that its “services are even more distinct. Not only do they not cover wine-making, the services are not related to wine. Wine is fermented, not distilled, so ‘alcohol and spirits distillery services’ simply cannot apply to winemaking.”³¹ We disagree. As discussed above in the context of the parties’

³⁰ Exs. 66-89 to Williams Decl., 33 TTABVUE 273-304.

³¹ Applicant’s Br., p. 20, 46 TTABVUE 22.

goods, the issue is not whether distilling is the same as winemaking; rather, the issue is whether the information services are marketed in a manner that “could give rise to the mistaken belief that [they] emanate from the same source.” *Coach Servs.*, 101 USPQ2d at 1722; *L’Oreal*, 102 USPQ2d at 1439. Here, the record shows that consumers are exposed to a number of combined third-party wineries and distilleries that provide information online about wine and distilled spirit products.

The fact that some wineries may not distill spirits, as Applicant argues, does not overcome the fact that some wineries do distill spirits, and sell their spirits under the same house mark as their wines. Here, the record shows that consumers are exposed to establishments that produce and sell both wines and distilled spirits under the same mark, and advertise those products online.

In sum, we find the record establishes Applicant’s distillery services and provision of a website featuring news and information in the field of craft brewing and distilling of alcohol and spirits are related to Opposer’s wines and wine-related services such as tasting, pairing, selection, mail-order clubs, and wine education, information and education services in the area of wine.

Turning to the channels of trade and classes of consumers, we base our determination regarding their similarities on the goods and services as they are identified in the application and the cited registration. *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Neither Applicant’s nor Opposer’s identification of goods and services contain any restrictions on the channels of trade or classes of consumers. As a result, the parties’ goods and services are presumed to be sold in all normal trade channels to all the

normal classes of purchasers. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1750 (Fed. Cir. 2017) (“In the absence of meaningful limitations in either the application or the cited registrations, the Board properly presumed that the goods travel through all usual channels of trade and are offered to all normal potential purchasers.”).

Opposer sells its goods through a variety of means, including direct to consumer via its website, wine club tastings, mail order, and through restaurants and retail establishments.³² Applicant has not yet commenced sales of the applied-for goods and services, but it sells other RASASVADA goods through its website www.rasaspirit.com.³³ It also sells these other RASASVADA goods via, inter alia, restaurants and bars, social clubs, “specialty and fine food retailers,” and pop up retailers.³⁴

We find Applicant’s and Opposer’s channels of trade and classes of consumers to be similar, if not the same. That is, both Applicant and Opposer offer (or are likely to offer) their goods and services through traditional channels of trade typical for alcoholic beverages such as direct to consumers via websites, and through clubs, restaurants, and various retailers.

These *DuPont* factors weigh in favor of finding a likelihood of confusion.

³² Stipulation of facts, ¶ 17, 24 TTABVUE 5.

³³ *Id.* at ¶¶ 25, 32, 24 TTABVUE 6.

³⁴ Applicant’s Br., p. 16, 46 TTABVUE 18.

B. Strength or weakness of Opposer's mark

Before we evaluate the similarity or dissimilarity of the parties' marks, we first consider the strength or weakness of Opposer's RASA mark under the fifth and sixth *DuPont* factors as that may affect the scope of protection to which Opposer's mark is entitled. The fifth *DuPont* factor enables Opposer to expand the scope of protection afforded their pleaded mark by adducing evidence of "[t]he fame of the prior mark (sales, advertising, length of use)," while the sixth *DuPont* factor allows Applicant to contract that scope of protection by adducing evidence of "[t]he number and nature of similar marks in use on similar goods." See *Made in Nature v. Pharmavite*, 2022 USPQ2d 557, at *17 (TTAB 2022) (quoting *DuPont*, 177 USPQ at 567).

In determining the strength of a mark, we consider both its conceptual strength, based on the nature of the mark itself, and, if there is probative evidence in the record, its commercial strength, based on marketplace recognition of the mark. *New Era Cap v. Pro Era*, 2020 USPQ2d 10596, at *10; see also *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength . . . and its marketplace strength . . ."). "[T]he strength of a mark is not a binary factor, but varies along a spectrum from very strong to very weak." *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1063 (Fed. Cir. 2003). See also *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017).

Of course, because Opposer's mark is registered, it is presumptively valid and distinctive for the identified goods. Trademark Act Sections 7(b) and 33(a), 15 U.S.C. §§ 1057(b) and 1115(a); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007).

Nonetheless, we may acknowledge the weakness of a registered mark in the course of a *DuPont* analysis. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1517-18 (TTAB 2016).

1. Conceptual strength

As to the conceptual strength of Opposer's mark, "we evaluate [the mark's] intrinsic nature, that is, where it lies along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words." *In re Davia*, 110 USPQ2d 1810, 1815 (TTAB 2014). "Marks that are descriptive or highly suggestive are entitled to a narrower scope of protection, i.e., are less likely to generate confusion over source identification, than their more fanciful counterparts." *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). Conversely, word marks that are arbitrary, fanciful, or suggestive are "held to be inherently distinctive." *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 54 USPQ2d 1065, 1068 (2000).

A PRACTICAL SANSKRIT DICTIONARY provides the following translations of the term RASA, as agreed upon by the parties:

[S]ap, juice (of plants), fruit-syrup; fluid, liquid; water; essence, pith (of anything); quicksilver; potion, elixir; poisonous draught; taste, flavour (as distinctive quality of fluids: six kinds are distinguished, viz. sweet, salt, bitter, sour, pungent, astringent); object of taste; organ of taste, tongue; relish, inclination, fondness or love for; desire; affection; pleasure, delight; charm; (flavor or key-note in poetry), sentiment; prevailing sentiment in human character.³⁵

³⁵ Stipulation of facts, 24 TTABVUE 29; 27 TTABVUE 83.

The term RASA also appears in English dictionaries. Both THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE and Dictionary.com defines RASA as a noun meaning “(in Hindu aesthetics) flavor, sentiment, or emotion: regarded as one of the fundamental qualities of classical music, dance, and poetry.”³⁶

Applicant argues that RASA is weak because it is descriptive: “RASA appears in English dictionaries, leading with the definition of ‘flavor’ and appears in the Sanskrit dictionary, leading with the definition ‘sap, juice.’ Given that wine comes from grapes and their juice, RASA is descriptive or at best suggestive of wine, and is, to that extent a weak mark.”³⁷ Opposer argues that the definition of RASA from Sanskrit is inapposite inasmuch as Sanskrit is an obscure language unknown to most Americans. Thus, according to Opposer, “the placement of Opposer’s Mark RASA on the spectrum of distinctiveness should not be determined in relation to its meaning in Sanskrit. Rather, RASA must be viewed as arbitrary or fanciful in relation to wine.”

We agree that Sanskrit is an obscure language to most Americans who are therefore unlikely to be able to translate RASA from Sanskrit. The record establishes that Sanskrit is considered a classical Indian language akin to a dead language such as Latin.³⁸ According to the U.S. Census Bureau, Sanskrit is not spoken in any U.S. homes.³⁹ *Cf. In re Spirits Int’l, N.V.*, 563 F.3d 1347, 1351, 90 USPQ2d 1489, 1491

³⁶ Exs. 10 and 11 to Mertzcl decl., 40 TTABVUE 69-74.

³⁷ Applicant’s Br., p. 12, 46 TTABVUE 14.

³⁸ Ex. 91 to Williams decl., 33 TTABVUE 311-16.

³⁹ Ex. 90 to Williams decl., 33 TTABVUE 305-10.

(Fed. Cir. 2009) (indicating that the doctrine of foreign equivalents did not require that terms from dead or obscure languages be literally translated for the purpose of determining descriptiveness). However, the fact that RASA appears in current U.S. dictionaries makes the need to translate RASA unnecessary. *See* TMEP § 809.01(b)(i) (“It is generally unnecessary to provide a translation of a foreign term if the term appears in an English dictionary ...”).

Regardless of whether consumers would translate RASA, the fact that the definitions of RASA include “flavor,” “sap,” or “juice” does not support a finding that RASA is merely descriptive when used in connection with Opposer’s wines and related services. The translation from Sanskrit meaning “flavor” from Hindu aesthetics is far more nuanced than simply referring to the physical attributes of a beverage, as Applicant argues. RASA also can mean “pleasure,” “delight,” or “charm.”⁴⁰ Additionally, the fact that wine is made from the “sap” or “juice” of grapes is sufficiently removed from the end product, wine, so as to preclude these terms from being merely descriptive of Opposer’s goods and related services. Rather, RASA is, at most, suggestive of wines. Suggestive marks are inherently distinctive and should be accorded the scope of protection to which inherently distinctive marks are entitled. *See Maytag Co. v. Luskin’s, Inc.*, 228 USPQ 747, 750 (TTAB 1986); *In re Great Lakes Canning, Inc.*, 227 USPQ 483, 485 (TTAB 1985) (“[T]he fact that a mark may be somewhat suggestive does not mean that it is a ‘weak’ mark entitled to a limited scope of protection.”). Accordingly, we find RASA to be a conceptually strong mark.

⁴⁰ Exs. 10 and 11 to Mertzell decl., 40 TTABVUE 69-74.

2. Commercial strength

Opposer argues that its RASA mark “is commercially strong through long use, extensive sales, [and] favorable press coverage.”⁴¹ For support Opposer points to use since 2009, nationwide sales, extensive marketing, and favorable press coverage including from the New York Times and Forbes. Opposer’s sales under the RASA mark for the period since 2017, although confidential, reflect significant sales.

Commercial strength or fame of a mark for likelihood of confusion purposes “may be measured indirectly by the volume of sales and advertising expenditures in connection with the [goods or services] sold under the mark, and other factors such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the [goods and services] identified by the mark []; and the general reputation of the [goods and services].” *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1056 (TTAB 2017); *see also Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305-06 (Fed. Cir. 2002). Raw numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be necessary, for example, market share or sales or advertising figures for comparable types of goods and services. *Id.* at 1309.

We find deficiencies in Opposer’s evidence that preclude us from a finding of significant commercial strength or fame. Opposer claims use since 2009, but its early sales numbers are considerably smaller than its more recent sales numbers.⁴² Nor do

⁴¹ Opposer’s Br., p. 23, 33 TTABVUE 25.

⁴² 31 TTABVUE 1-12 (confidential).

we have any context to compare Opposer's sales with those of other vineyards, making the sales numbers less probative. We have no advertising expenditures. Although Opposer has sold its goods directly to consumers in all 50 states via its website, it only sells its RASA products through retailers and restaurants in eleven states. This suggests that consumer exposure to Opposer's RASA may be limited geographically. The unsolicited mentions in national publications are significant, but they are not so numerous as to suggest that Opposer's RASA products are more well-known than similar products from other vineyards.

Overall, the evidence presented by Opposer regarding the commercial strength of its RASA mark does not convince us that it is so commercially strong or famous such that it is entitled to a wide latitude of protection. Accordingly, we find Opposer's mark is of average commercial strength which entitles it to the same scope of protection to which inherently distinctive marks are entitled.

3. Third party use of RASA and RASA formative marks

Applicant argues that RASA is "weak because RASA and RASA formative marks have been registered by numerous third parties for alcohol and alcohol-related products."⁴³ Applicant argues further that "RASA and formatives [are] also in use for beer and numerous restaurants and related goods."⁴⁴ Applicant introduced copies of

⁴³ Applicant's Br., p. 12, 46 TTABVUE 14.

⁴⁴ *Id.* at 12-13, 46 TTABVUE 14-15.

the registration certificates for the following marks that contain the term RASA and are registered for “alcohol and alcohol-related products:”⁴⁵

Mark	Reg. No.	Relevant Goods and Services
RASA and RASA (stylized)	5504734 and 5628879	Bar services; restaurant and catering services
RASA	5735405	Herbal food beverages; Hot chocolate; Hot chocolate mixes; Mixes used in the preparation of tea based beverages; Oatmeal
RESA	6008414	Alcoholic beverages except beers
ROSA and “rose” design	6357655	Vodka; distilled spirits
RASASVADA (Applicant’s mark)	6464829	Non-alcoholic water-based beverages; non-alcoholic distilled spirits; fruit and vegetable based juices; juice based concentrates; non-alcoholic cocktails; essences for making beverages in the nature of non-alcoholic beverages
RASA	6511730	Creamers for beverages; Coffee creamer
ROSA	4401560	Ale
KING RASAFASSA	5041623	Beer
TABULA RASA TOASTED PORTER	5004406	Beer
RASA KOFFEE	5226189	Herbal teas for medicinal purposes; Medicinal tea; Coffee substitutes; Herbal tea; Vegetal preparations for use as coffee substitutes

Third-party registrations “may bear on conceptual weakness if a term is commonly registered for similar goods or services.” *Tao Licensing*, 125 USPQ2d at 1057; *see also In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010).

⁴⁵ 41 TTABVUE 1-56. We have not considered the pending third-party application introduced by Applicant. Pending applications are evidence only that the applications were filed on a certain date; they are not evidence of use of the marks. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009).

Applicant's evidence does not support its argument that RASA is conceptually weak for Opposer's goods and services. Of the eleven registrations relied on by Applicant, three do not contain the term RASA, and thus are virtually irrelevant. Five of the remaining registrations are for unrelated or marginally-related goods or services such as bar and restaurant services, coffee creamer, or non-alcoholic beverages. As a result, these registrations have limited probative value in our consideration of the strength of Opposer's RASA mark. *See Thor Tech*, 90 USPQ2d at 1639 (third-party registrations relating to goods or services different from and unrelated to the goods or services at issue "cannot be indicative of descriptive or suggestive connotations").

Only two of the third-party registrations are for use on arguably-related goods, namely beer: Registration No. 5041623, for the mark KING RASAFASSA, and Registration No. 5004406, for the mark TABULA RASA TOASTED PORTER. But two such registrations do not establish that RASA is weak, particularly because the marks have significantly different commercial impressions and are registered for beer which is less closely related to the goods and services of the parties. Nor does the fact that these two marks may have registered without opposition from Opposer weaken Opposer's RASA mark. *See McDonald's Corp. v. McKinley*, 13 USPQ2d 1895, 1899-1900 (TTAB 1989) (McDonalds' failure to object to some other "MC" formative marks did not weaken its mark.).

Applicant also submitted web page excerpts showing use of RASA for a craft beer, four restaurants (including the owner of the two RASA registrations for restaurant services listed above), a line of CBD products, and a coffee alternative beverage.⁴⁶

Under the sixth *DuPont* factor, which assesses the number and nature of similar marks in use on similar goods or services, a mark's strength may be curtailed by extensive third-party use of similar marks with similar goods or services. *Jack Wolfskin Austrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1135-1136 (Fed. Cir. 2015). As with Applicant's third-party registration evidence, however, these examples of third-party use are insufficient to show that RASA is weak for Opposer's goods and services because they are for differing goods or services, or are simply too few in number. Only the use of RASA for a craft beer is probative, but one example of RASA used on related goods is insufficient to establish that RASA is weak for Opposer's goods and services. *See, e.g., In re Inn at St. John's*, 126 USPQ2d 1742, 1746 (TTAB 2018) (four third-party registrations and no third-party uses were "a far cry from the large quantum of evidence of third-party use and third-party registrations that was held to be significant" in the Federal Circuit's decisions in *Jack Wolfskin* and *Juice Generation*).

In sum, we find that Opposer's RASA mark to be conceptually and commercially strong and entitled to the normal scope of protection due to a mark registered on the Principal Register.

⁴⁶ Exs. 1-9 to Mertzell decl., 40 TTABVUE 1-68.

C. Similarity of the marks

We turn next to the *DuPont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *Inn at St. John’s*, 126 USPQ2d at 1746, quoting *Davia*, 110 USPQ2d at 1812; accord *Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”) (citation omitted).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs.*, 101 USPQ2d at 1721).

Opposer’s mark is RASA in standard characters. Applicant’s mark is RASASVADA, also in standard characters. As discussed above, RASA is defined in English dictionaries as “flavor, sentiment, or emotion.”⁴⁷ The full Sanskrit dictionary, reproduced again, provides a broad definition of RASA as:

[S]ap, juice (of plants), fruit-syrup; fluid, liquid; water; essence, pith (of anything); quicksilver; potion, elixir; poisonous draught; taste, flavour (as distinctive quality of fluids: six kinds are distinguished, viz. sweet, salt, bitter, sour, pungent, astringent); object of taste; organ of taste, tongue; relish, inclination, fondness or love for . . . ; desire; affection; pleasure, delight; charm; (flavour or key-note in

⁴⁷ Exs. 10 and 11 to Mertzl decl., 40 TTABVUE 69-74.

poetry), sentiment (eight Rasas are generally distinguished: love, heroism, disgust, wrath, mirth, terror, pity, wonder, a ninth, quietism, and a tenth, tenderness, being sometimes added); prevailing sentiment in human character; sacred syllable om.⁴⁸

ASVADA is defined as “taste, enjoyment; flavour.”⁴⁹ RASASVADA is defined as “perception of pleasure.”⁵⁰ Thus, both RASA and RASASVADA are derived from related Sanskrit words.

Opposer argues that RASA and RASASVADA are similar for a variety of reasons:

Both Opposer’s Mark RASA and Applicant’s Mark RASASVADA begin with “RASA.” . . . The record shows that Applicant intends consumers to think of Applicant’s Mark as “RASA,” that Applicant itself refers to Applicant’s Mark as “RASA,” that Applicant has developed a branding strategy that uses “RASA” as the shortened form of Applicant’s Mark, that third parties refer to Applicant as “RASA,” and that the dominant portion of Applicant’s Mark is “RASA.” These facts, together with similarities of sight, sound, and meaning between the two marks, demonstrate that dominant portion of Applicant’s Mark is identical to Opposer’s Mark and that the overall commercial impression of Applicant’s Mark is similar to Opposer’s Mark.⁵¹

Applicant argues that “taken as a whole, RASASVADA looks different, sounds different and has a wholly different meaning than RASA.”⁵²

We find that RASA is the dominant portion of both marks. It forms the entirety of Opposer’s mark, and is the dominant portion of Applicant’s mark because it is the

⁴⁸ Stipulation of facts, ¶ 46, 24 TTABVUE 29; 27 TTABVUE 83.

⁴⁹ *Id.* at ¶ 47, 24 TTABVUE 29.

⁵⁰ *Id.* at ¶ 48, 24 TTABVUE 29.

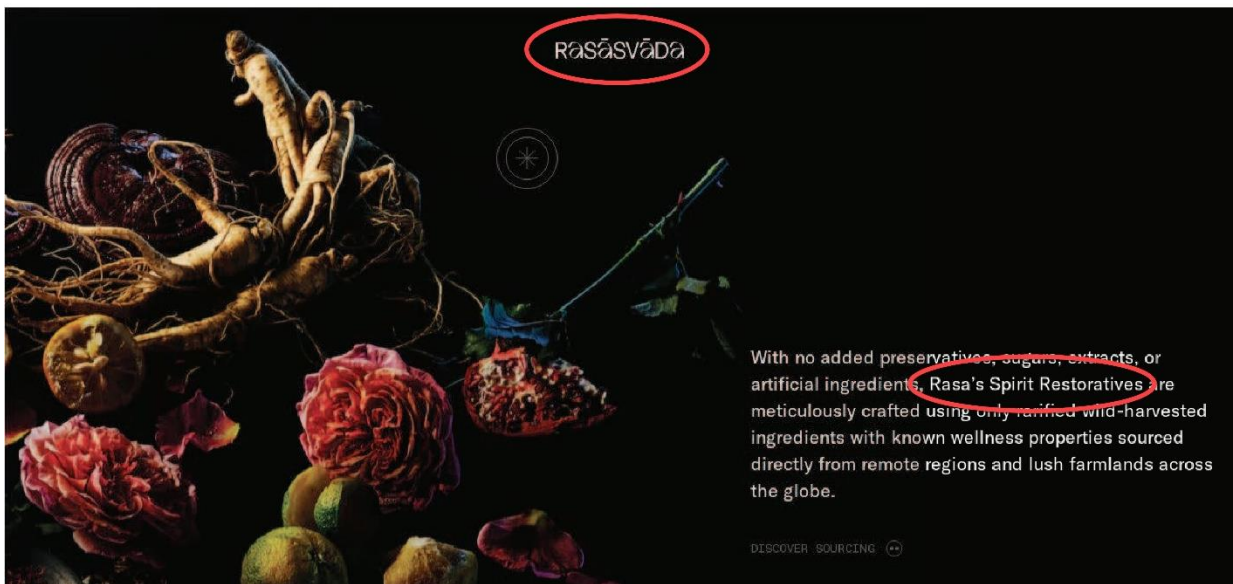
⁵¹ Opposer’s Br., p. 6, 33 TTABVUE 8.

⁵² Applicant’s Br., p. 11, 46 TTABVUE 13.

first portion of the mark and is the root term of the mark, RASASVADA. It is well accepted that the lead element of a mark is most likely to be impressed upon the mind of a purchaser and remembered. *Kangol, Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945, 1945 (Fed. Cir. 1992) (finding likely confusion between KANGAROOS and KANGOL: “Each mark includes a word beginning with the prefix “Kang” beneath the design of a kangaroo.”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead term); *Presto Prods Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”).

RASA also is the dominant portion of Applicant’s mark because consumers are likely to shorten RASASVADA simply to RASA. “[U]sers of language have a universal habit of shortening full names--from haste or laziness or just economy of words. Examples are: automobile to auto; telephone to phone; necktie to tie; gasoline service station to gas station.” *In re Abcor Dev. Corp.*, 588 F.2d 511, 200 USPQ 215, 219 (CCPA 1978) (J. Rich, concurring) (explaining that it is “inevitable” that consumers will call a gas monitoring badge a gas badge). Indeed, Applicant uses the term RASA in the URL of its website, rasaspirit.com, and on its webpages as shorthand for its RASASVADA “spirit restorative products” as shown in two representative examples below.⁵³

⁵³ 27 TTABVUE 67-68.



In addition, a magazine article discussing non-alcoholic beverages highlights Applicant's RASASVADA spirit restoratives and uses the term RASA to refer to Applicant, noting that “[i]n addition to Black Ginger, **Rasa’s** line of uber-sleek, zero-proof spirits includes Ruby Artemisia and Rose Bergamot.”⁵⁴

⁵⁴ *No Alcohol Doesn't Mean No Fun: Four Booze-Free Drinks To Know*, Coveteur.com, 28 TTABVUE 100 (emphasis added).

Applicant argues that the examples of its use of RASA from its website are “misleading and irrelevant”⁵⁵ because “[i]n every instance Opposer cited, Applicant used its full mark RASASVADA in close proximity to the abbreviation.”⁵⁶ This argument is unpersuasive. The fact that Applicant shortens RASASVADA to RASA at all, even in close proximity to RASASVADA, suggests that consumers also are likely to shorten RASASVADA to RASA when calling for Applicant’s goods. This supports a finding that RASA is the dominant portion of Applicant’s mark.

Citing *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985), Applicant further argues that “improper analysis of RASA apart from SVADA, violates the anti-dissection rule, which states that a likelihood of confusion ‘cannot be predicated on dissection of a mark, that is, on only part of a mark.’”⁵⁷ This argument is unpersuasive as well.

There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *Nat’l Data Corp.*, 224 USPQ at 751. Here, we note Applicant’s propensity to shorten RASASVADA to RASA simply for the purpose of determining the dominant portion of the mark. Our ultimate conclusion rests on a consideration of the marks in their entireties, i.e., RASA and RASASVADA.

⁵⁵ Applicant’s Br., p. 10, 46 TTABVUE 12.

⁵⁶ *Id.*

⁵⁷ *Id.* at 11, 46 TTABVUE 13.

In terms of connotation and commercial impression, both RASA and RASASVADA have similar meanings that encompass the concept of “pleasure.” The definition of RASA includes “affection; pleasure, delight; [and] charm” which is similar to RASASVADA’s meaning of “perception of pleasure.” We note that RASA has other meanings, but consumers familiar with the meanings of both RASA and RASASVADA would be unlikely to miss the similar connotations.

In terms of appearance, Applicant’s RASASVADA mark is a standard character mark, which “may be presented in any font style, size or color, including the same font, size and color as the literal portions of [Opposer’s] mark,” *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018), and in “the same stylization actually used or intended to be used by [Opposer], or one that minimizes the differences or emphasizes the similarities between the marks.” *Anheuser-Busch*, 115 USPQ2d at 1823 (citing *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1258-59 (Fed. Cir. 2011)). We thus must assume that Applicant’s mark may be displayed in a manner that emphasizes the dominant word RASA—and understates the word SVADA—for example, through the use of different letter cases, colors or fonts. *Abhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *34 (TTAB 2021).

With respect to sound, RASA and RASASVADA begin with the same dominant term, RASA, which is pronounced the same in both marks. We of course have not ignored the term SVADA at the end of Applicant’s mark, but because the dominant, first portion of Applicant’s mark is identical to Opposer’s mark RASA, Applicant’s mark RASASVADA sounds quite similar to Opposer’s mark RASA and could call it

to mind. Further, the addition of SVADA could be considered by consumers to refer to a related product of Opposer's goods and services. The presence of an additional term in the mark does not necessarily eliminate the likelihood of confusion if some terms are identical. *Mighty Leaf Tea*, 94 USPQ2d at 1260-61.

In sum, we find that the parties' respective marks are similar in appearance, sound, connotation and commercial impression in light of the shared term RASA. Applicant's mark encompasses the entirety of Opposer's mark, and likelihood of confusion is often found where the entirety of one mark is incorporated within another. *See Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY as a mark for women's dresses is likely to be confused with LILLI ANN for women's apparel including dresses); *Wella Corp. v. Cal. Concept Corp.*, 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT confusingly similar to CONCEPT); *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1660 (TTAB 2014) (Opposer's mark PRECISION DISTRIBUTION CONTROL contains the entirety of Applicant's mark PRECISION); *Johnson Publ'g Co. v. Int'l Dev. Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY confusingly similar to EBONY DRUM for cosmetic products).

The *DuPont* factor regarding the similarity of the marks weighs in favor of finding a likelihood of confusion.

D. Degree of care and consumer sophistication

The fourth *DuPont* factor concerns the conditions under which and buyers to whom sales are made, i.e. "impulse" versus careful, sophisticated purchasing. *DuPont*, 177 USPQ at 567. "Purchaser sophistication may tend to minimize likelihood

of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect.” *Bd. of Regents, Univ. of Tex. Sys. v. S. Ill. Miners, LLC*, 110 USPQ2d 1182, 1193 (TTAB 2014).

Applicant argues that “[t]he sophistication of the parties’ target consumers and the relatively high-end price points suggests that these products are not impulse buys and that consumers who purchase them are sophisticated, make careful choices when making purchases, and so will be unlikely to be confused.”⁵⁸ Opposer disagrees and argues that

[N]either the Application nor Opposer’s registration is limited to products of any particular price range. . . . In fact, Opposer’s products are sold at a wide range of prices More importantly, the price range of Applicant’s goods, as relevant to this opposition, is not known. Those goods are not yet for sale.⁵⁹

Because the descriptions of goods are not restricted by price point, we must presume that the parties offer or intend to offer various alcoholic beverages at all price points, including inexpensive ones, to the full range of usual consumers for such goods. *Stone Lion Cap. Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (stating that registrability must be decided based on the identification of goods or services “regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed”) (quoting *Octocom*, 6 USPQ2d at 1787); *In re Hughes Furn. Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015).

⁵⁸ Applicant’s Br., p. 17, 46 TTABVUE 19.

⁵⁹ Opposer’s Reply Br., p. 8, 50 TTABVUE 10.

Given our precedent which requires consumer care for likelihood of confusion purposes to be based “on the least sophisticated potential purchasers,” *Stone Lion*, 110 USPQ2d at 1163, we find the parties goods may be impulse purchases.

We find that the fourth *DuPont* factor favors a finding of likelihood of confusion.

E. Actual confusion

Applicant argues it has used RASASVADA in commerce in connection with its Spirit Restorative Products without any evidence of actual confusion with Opposer which “suggests that the marks RASASVADA and RASA can coexist without confusion when used on the goods and services in the Application.”⁶⁰

A lack of actual confusion is unavailing, particularly as here, where Applicant has not used the mark on the applied-for goods or services, and it is unclear whether there have been meaningful opportunities for confusion to have occurred among purchasers of Applicant’s other goods. *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 144 USPQ 435, 438 (CCPA 1965); *Nike Inc. v. WNBA Enters. LLC*, 85 USPQ2d 1187, 1202 (TTAB 2007).

We find the seventh and eighth *DuPont* factors regarding actual confusion to be neutral.

F. Conclusion Regarding Likelihood of Confusion

All of the *DuPont* factors about which there is evidence weigh in favor of finding a likelihood of confusion. The marks are similar, Applicant’s goods and services and Opposer’s goods and services are related, the trade channels and classes of consumers

⁶⁰ Applicant’s Br., p. 15, 46 TTABVUE 17.

are related, and consumers are unlikely to exercise a high degree of care in purchasing. We conclude that confusion is likely.

Decision: The opposition is sustained on Opposer's Section 2(d) claim. Registration of Applicant's mark is refused.