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11-18-2002

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

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American Italian Pasta Company)
)
Petitioner,)
)
v.)
)
Homestead, Inc. & New World Pasta)
Company)
)
Respondent)
)
)

Cancellation No. 26,165
Opposition No. 107,599
Opposition No. 110,644

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UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this document is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Trademarks Box ITAB 2900 Crystal Drive, Arlington, VA 22202-3513, on this 15th day of November, 2002.

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By [Signature]

BRIEF OF PETITIONER
AMERICAN ITALIAN PASTA COMPANY

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

American Italian Pasta Company)	
(by substitution from Gooch Foods, Inc.))	
)	
Petitioner,)	Cancellation No. 26,165
)	Opposition No. 107,599
v.)	Opposition No. 110,644
)	
Homestead, Inc. & New World Pasta)	
Company)	
)	
Respondent)	
)	
)	

PETITIONER'S BRIEF

I. STATEMENT OF FACTS

This proceeding involves a consolidation of Cancellation No. 26,165, Opposition No. 107,599 and Opposition No. 110,644. The cancellation and two oppositions were consolidated, by agreement of the parties, being effective by the Board's Order dated March 26, 2002. American Italian Pasta Company has recently acquired the asserted registrations from Gooch Foods, Inc. by assignment submitted for recordation on October 3, 2002 and is moving concurrently herewith for substitution as the Petitioner/Opposer (hereinafter "Petitioner" or "AIPC").

Petitioner instituted the Cancellation proceeding by a filing a Notice of Cancellation based upon its prior use and registration of the following marks: LA ROSA & Design, Reg. No. 313,418 for alimentary paste products, filed on January 20, 1934; LA ROSA & Design, Reg. No. 389,868 for butter, macaroni products, noodles and pastina, a macaroni product cut up in small fanciful shapes, filed on December 26, 1940; LA ROSA (STYLIZED), Reg. No. 623,197 for alimentary

pastes, pizza pie mix, and canned sauce therefor, canned spaghetti sauces, with meat, without meat, with mushrooms and marinara, ravioli with meat in sauce, meat balls in sauce, and sausage links with sauce, filed on February 28, 1955; LA ROSA & Design, Reg. No. 651,541 for alimentary pastes, pizza pie mix, and canned sauce therefor, canned spaghetti sauces, with meat, without meat, with mushrooms and marinara, ravioli with meat in sauce, and cheese ravioli in sauce, meat balls in sauce, sausage links with sauce, and canned soups, filed on December 17 1956; LA ROSA & Design, Reg. No. 1,390,117, for spaghetti, lasagna, macaroni, noodles and bread crumbs, filed on June 5, 1985; and LA ROSA, Reg. No. 1,396,003 for alimentary pastes and bread crumbs, filed on August 28, 1985. (Petitioner's marks hereinafter collectively referred to as "LA ROSA" marks).

As stated in Reg. Nos. 623,193, 651,541, 1,390,117 and 1,396,003 the terms "LA ROSA" translated into English means "The Rose."

The Cancellation proceeding was implemented against Respondent's Registration of the mark LA BELLA ROSA BRAND & Design, Reg. No. 1,818,079 for dry pasta, filed on October 28, 1992.

Petitioner initiated an Opposition proceeding by a filing a Notice of Opposition based upon its prior use and registration of Petitioner's marks as set forth above in the second paragraph. The Opposition proceeding was implemented against Respondent's application for registration of the mark LA BELLA ROSA & Design, Serial No. 75/194,595 for dry pasta filed on November 7, 1996.

Petitioner initiated a second Opposition proceeding by a filing a Notice of Opposition based upon its prior use and registration of Petitioner's mark as set forth above in the second paragraph. The Opposition proceeding was implemented against Respondent's application for registration of the mark LA BELLA ROSA, Serial No. 75/368,367 for dry pasta filed on October 6, 1997.

(Respondent's Registration and Applications hereinafter collectively referred to as "LA BELLA ROSA marks").

As stated in the Reg. No. 1,818,079, and Application Numbers 75/194,595 and 75/368,367 the English translation of "LA BELLA ROSA" is "The Beautiful Rose."

Petitioner, American Italian Pasta Company is the successor to the original petitioner in these proceedings, Gooch Foods, Inc. and the previous registrant of the LA ROSA marks, set forth in the second paragraph. It should be noted for the record that Gooch Foods, Inc. by an Assignment document executed September 30, 2002, transferred all the stated registered marks to American Italian Pasta Company. This document was forward to the U.S. Patent and Trademark Office for recording on October 4, 2002, but has not as yet been returned with recording data. A motion for substitution of parties was filed with this Board on November 14, 2002. Thus, Petitioner requests that it be considered as American Italian Pasta Company, notwithstanding the fact that formal recording has not been completed, as is usually required by the Patent and Trademark Office prior to officially accepting a change of ownership.

Respondent has filed an Answer to the Notice of Cancellation and both Notices of Opposition in the form of a general denial and has asserted four affirmative defenses.

Appropriate discovery was undertaken by the parties, but none of the results of discovery have been placed in evidence pursuant to Rule 2.120(3)(i). Therefore, the only evidence in connection with these proceedings is the pleadings and the registrations and applications identified above. Petitioner's registrations were made of record pursuant to Rule 2.122(d)(1). Two status and title copies of the registrations issued by the PTO were attached to the Petition for Cancellation and each Notice of Opposition.

Pursuant to the Scheduling Order of June 20, 2002, the discovery and the testimony periods are now closed in accordance with the stipulated motion filed October 5, 2001. This brief is submitted on behalf of the Petitioner as Plaintiff in the oppositions and cancellation, the brief as defendant in the counterclaim and reply being due January 15, 2003.

II. ISSUES

The issue for determination in this proceeding is whether or not there is a likelihood of confusion between Petitioner's LA ROSA marks and Respondent's Registration and Applications for the marks LA BELLA ROSA BRAND and LA BELLA ROSA.

III. ARGUMENT AND AUTHORITIES

There is no issue as to priority in this case. It is clear from the Registrations and Applications in evidence, that Petitioner's filing and registration dates are well before those of Respondent's. Petitioner's first application for registration of its mark, LA ROSA & Design, Reg. No. 313,418 for alimentary paste products was filed on January 20, 1934 and Petitioner last application for registration of the word mark LA ROSA, Reg. No. 1,396,003 for alimentary paste and bread crumbs was filed on August 28, 1985. Respondent first filed for registration of its mark, LA BELLA ROSA BRAND & Design, Reg. No. 1,818,079 for dry pasta on October 28, 1992, seven years after Petitioner filed its last application for registration of its marks. No additional evidence as to first dates of actual use has been supplied by either party aside from the filing dates of the registrations and applications of both parties.

In determining whether there is a likelihood of confusion between Petitioner's marks, LA ROSA and Respondent's marks LA BELLA ROSA, this Board is not bound by the decision of the Examining Attorney in concluding that Respondent's marks are entitled to registration. This Board

has the authority to reach whatever decision is supported by the evidence of record now before it. See McDonald's Corp. v. McClaim, 37 U.S.P.Q.2d 1274 (TTAB 1995).

The issue of likelihood of confusion is a question of fact. See In re E.I. DuPont DeNemours & Co., 177 U.S.P.Q. 563, 476 F.2d 1357 (CCPA 1973). The DuPont case which is widely recited and relied upon by this Board and other Tribunals outlines several factors to be considered when determining a likelihood of confusion under Section 2(d). Id. at 567. The evidence of record must be measured against the relevant factors as set forth in the DuPont decision. Accordingly, Petitioner believes that it is appropriate to consider the following relevant DuPont factors, in light of the evidence in this case. Any doubt on the question of likelihood of confusion must be resolved against the newcomer as the newcomer has the opportunity of avoiding confusion and is obligated to do so. See Kimberly-Clark Corp. v. H. Douglass Enterprises, Ltd., 227 U.S.P.Q. 541 (Fed. Cir. 1985); See also In re Hyper Shoppes (Ohio), Inc., 6 U.S.P.Q.2d 1025 (Fed. Cir. 1988).

1. The similarity of the goods.

The goods recited in the registrations and applications at issue in this proceeding are identical. As shown above, Petitioner's LA ROSA marks, Reg. Nos. 313,418, 623,197, 651,541 and 1,396,003 represent "alimentary paste products" or "alimentary pastes", while Reg. No. 389,868 represents "macaroni products, noodles, and pastina, a macaroni product cut up in small fanciful shapes" and Reg. No. 1,390,117 represents "spaghetti, lasagna, macaroni, and noodles." Respondent's marks represent "dry pasta."

The Petitioner respectfully requests that the Board take judicial notice that "alimentary paste products" or "alimentary pastas" is synonymous with pasta. As noted in La Fara Importing v. F. Lli de Cecco, "[a]limentary paste is defined as 'a shaped and dried dough (as macaroni, spaghetti and

vermicelli) prepared from semolina, farina, or wheat flour or a mixture of these with water or milk and with or without egg or egg yolk” 8 U.S.P.Q.2d 1143, 1144 n. 2 (TTAB 1988) (citing Webster’s Third International Dictionary, Unabridged, copyright 1976). Moreover, Petitioner requests that the Board take judicial notice that "macaroni products, noodles, spaghetti, and lasagna," are all specific forms of the general category "pasta." The Board may take judicial notice of such dictionary definitions regardless of whether the definition was submitted in evidence. Texas Digital Systems, Inc. v. Telegemics, Inc., 308 F.3d 1193, 1203 (Fed. Cir. 2002).

The significance of identical goods was noted by the Federal Circuit in the case, Century 21 Real Estate Corp. v. Century Life of America, 23 U.S.P.Q.2d 1698 (Fed. Cir. 1992). "When marks appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines," Id. at 1700.

2. The similarity of dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

Respondent’s marks, LA BELLA ROSA are almost identical to Petitioner’s marks LA ROSA. These marks are not only similar in appearance, sound and meaning, but also are sufficiently similar in terms of their overall commercial impression that confusion as to the source of goods offered under the respective marks is likely to result. Petitioner’s asserted Registrations include both the words "la rosa" in a stylized or design format (Reg. Nos. 313,418; 389,868; 623,197; 651,451; and 390,117) and a typed form for the words LA ROSA *per se* (Reg. No. 1,396,003). Even the design element of Reg. Nos. 313,418; 389,868; 651,541; and 1,390,117 includes a picture of a rose, thereby emphasizing the meaning of the word portion of the mark.

First, the meaning of the marks at issue are substantially similar. Petitioner’s mark LA

ROSA is a unique and arbitrary Italian name for pasta products, meaning "The Rose," in English. Respondent's mark LA BELLA ROSA is identical to Petitioner's except that it includes an adjective modifying the noun "ROSA" or "Rose." Respondent has essentially added the term BELLA, meaning "beautiful" to Petitioner's mark. Thus, the meaning of Respondent's mark in English is "The Beautiful Rose."

The appearance of the mark at issue are also substantially similar. Both Petitioner's and Respondent's marks, are composite marks, with the dominant portion of both marks, the word, ROSA being identical. In addition, both marks begin with the preposition LA. Although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another and it is not improper to give more weight to this dominant feature in determining whether confusion would be likely. See In re National Data Corp., 224 U.S.P.Q. 749 (Fed. Cir. 1985). Further, the marks are similar because both not merely are similar in meaning, but are presented in Italian rather than English.

In addition to the similarity of appearance of the words contained in the mark, both the Petitioner's and Respondent's design marks contain an illustration of a rose. This illustration of a rose merely reinforces the dominance of the arbitrary designation of a rose for pasta products and the similarity of the marks. See In re Wilson, 57 U.S.P.Q.2d 1863, 1865 (TTAB 2001).

The sound of the marks is sufficiently similar. The marks are both in the Italian language and not English. Thus, the identical parts of the mark would be pronounced the same. Moreover, it should be noted that likelihood of confusion, is determined from the perspective of the ordinary consumer. J&J Snack Foods Corp. v. McDonald's Corp., 98 U.S.P.Q.2d 1889,1892 (Fed. Cir. 1991). As such, the Board has recognized in many cases that most American consumers are not

conversant in a foreign language. As a result, foreign terms contained in a mark may not have any meaning other than they are foreign-sounding words and thus it may be more difficult for the consumer to distinguish differences in the respective marks.

In the case of Bottega Veneta, Inc. v. Volume Show Corporation et al., 226 U.S.P.Q. 964 (TTAB 1985), the Board held there was a likelihood of confusion between the marks BOTTEGA VENETA and BORSA VENETO for identical goods, namely handbags. In its decision, the Board recognized that most American consumers were not conversant in Italian. Id. As such, the terms contained in the marks BOTTEGA VENETA and BORSA VENETO, had no meaning at all other than that they were Italian-sounding words, and thus were less distinguishable. Id.

There are several other cases in which the Board has held there to be a likelihood of confusion between similar foreign marks for identical goods. For example in the case, Jules Berman & Associates, 202 U.S.P.Q. 67 (TTAB 1979), the Board held that the marks KAHLUA and CHULA for identical goods, namely coffee liquors, were similar enough in appearance and sound to rise to a level of likelihood of confusion. In this case, the term "Kahlua" had no recognized meaning in the Spanish language or in any other language, but had a Spanish or Mexican sound, while the mark CHULA, is the feminine form of the Spanish word CHULO which has several meanings, including "pretty." The Board held that although the Spanish word means pretty, to the average purchaser, the word would not have any meaning other than as a mark with a Spanish or Mexican overtone. Id. at 70. Thus, the meaning would not have a significant effect on distinguishing the mark from KAHLUA Id. at 71

In another similar case, Ceccato v. Manifattura Lane, 32 U.S.P.Q.2d 1192, 1197 (TTAB 1994), the Board held that confusion was likely between applicant's mark DUCA D'AREZZO and

opposer's mark DUCA D'AOATA for identical goods, namely men's clothing, even though the opposer's mark contained design elements in addition to the words and the typestyle used in the marks was different. The Board held that as a result of the similarity in the marks, consumers were likely to believe that the marks, as used on identical goods, identified two different lines of clothing manufactured and sold by a single entity. Id.

In the most recent case, Miguel Torres S.A. v. Casa Vinicola Gerardo Cesari S.R.L., 49 U.S.P.Q.2d 2018 (TTAB 1998), the Board found that applicant's mark DUE TORRI & Design which means "two towers," was sufficiently similar in sound and connotation to opposer's marks, TORRES, TORRES & Design, and TRES TORRES, which mean "towers" and "three towers," to be likely to cause confusion when the marks are used in connection with identical and closely related goods, namely wine and brandy. The Board noted that even though the mark DUE TORRI was in Italian and the marks TORRES, TORRES & Design, and TRES TORRES were in Spanish, they may be pronounced in very similar manners. Id. at 2020. As a result, ordinary consumers not familiar with either Spanish nor Italian may well believe that opposer was selling a new wine (DUE TORRI) to complement its TORRES and TRES TORRES wine and brandy, despite the minor differences in the marks. Id.

In the present situation, Petitioner's mark LA ROSA and Respondent's mark LA BELLA ROSA contain identical terms, identical illustrations of a rose in the design marks, and the marks are both in Italian. The only noted difference is the insertion of the modifier BELLA or "beautiful." However, to the average prospective purchaser who is not fluent in Italian, the term used in the marks would have no significant meaning and therefore the insertion of the term "Bella" would not be an effective attempt to distinguish Respondent's marks from those of Petitioner. Such similarity

between the marks would clearly constitute an effort to create confusion rather than a fulfillment of Respondent's obligation to avoid confusion.

Moreover, while the marks at issue are similar in sound, appearance and meaning, it is well settled that the marks need not be similar in all of the elements, but rather similarity in one element may be sufficient to find a likelihood of confusion. See In re Mack, 197 U.S.P.Q. 755 (TTAB 1977), as clarified in the Board's later decision of In re Lamson Oil Co., 6 U.S.P.Q.2d 1041 (TTAB 1988), the later clarification stating the rule to be that "taking into account all of the relevant facts of a particular case, similarity as to one factor (sight, sound or meaning) alone 'may be sufficient to support a holding that the marks are confusingly similar.'"

3. The similarity of trade channels

By the mere fact that the goods are identical, the goods may be deemed to travel in the same channels of trade and to be sold to the same class of consumers. See Ceccato v. Manifattura Lane, 32 U.S.P.Q.2d 1192, 1197 (TTAB 1994) (citing Interco Inc. v. Acme Boot Company, Inc., 181 U.S.P.Q. 664 (TTAB 1974)). In the present case, Petitioner's goods and Respondent's goods, are identical, namely pasta products. Therefore, both Petitioner's and Respondent's goods would utilize the same trade channels and be encountered by the same customers.

4. The conditions under which and buyer to whom sales are made.

As can be seen from the records, the goods consist of inexpensive food products, namely pasta products. It is well established by the Federal Circuit that purchasers of relatively inexpensive goods such as ordinary grocery store foods are held to a lesser standard of purchasing care. See Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 223 U.S.P.Q. 1281 (Fed. Cir. 1984) (buyers of tea) See also In re Martin's Famous Pastry Shoppe, Inc., 223 U.S.P.Q. 1289 (Fed. Cir. 1984)

(bread and cheese). As the Federal Circuit recently observed: "When the products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care. Recot, Inc. v. Becton, 54 U.S.P.Q.2d 1894 (Fed. Cir. 2000).

5. The fame of the prior mark.

Petitioner's mark, LA ROSA & Design, was filed in the United States Patent and Trademark Office on January 20, 1934. As such, petitioner's mark has been in the marketplace nearly seventy years and can be presumed to be a famous mark.

6. The variety of goods on which the marks are used.

Respondent's mark is only used for "dry pasta" as indicated in the registrations and applications. Petitioner's mark is used for pasta products as well as a variety of other food products used in Italian cooking, namely pizza pie mix, and canned sauce therefor, canned spaghetti sauces, with meat, without meat, with mushrooms and marinara, ravioli with meat in sauce, and cheese ravioli in sauce, meat balls in sauce, sausage links with sauce, canned soups and bread crumbs. Petitioner's use of the mark on multiple products reinforces the likelihood of confusion in that consumer's would likely view the LA BELLA ROSA pasta of Respondent to be simply a variety or sub-brand of Petitioner's brand line of Italian food products.

7. Summary of Likelihood of Confusion Factors.

The evidence of record in this case clearly sets forth facts meeting the requirements of the DuPont test. Similarity in appearance, sound and meaning is striking in the present case and is submitted to be sufficient to find a likelihood of confusion, particularly when the second comer is used on identical products, sold in identical outlets to identical consumers.

In applying the DuPont factors, the conclusion is clear that Respondent, with long knowledge of Petitioner's famous LA ROSA marks used for 70 years in connection with pasta products identical and directly competitive to the product of Respondent, chose to adopt for such product a mark that is confusing similar in sound and appearance and meaning. Such similarity cannot be tolerated for its permits the Respondent to capitalize upon the reputation and good will which Petitioner has created in pasta products for its LA ROSA marks through seventy years of use. Any doubt in this regard must be resolved against the newcomer, who, in a situation like this, "has no excuse for ever approaching the well-know trademark of a competitor."

8. The Affirmative Defenses Have Not Been Established.

In addressing the affirmative defenses set forth by Respondent, it is clear Respondent has not met its burden of proof necessary to support any of the asserted defenses. Respondent bears the burden of proof on any affirmative defenses and has failed to submit any evidence. Acquion Partners, L.P. v. Envirogard Products Ltd., 43 U.S.P.Q.2d 1371, 1373 (TTAB 1997).

As its first defense Respondent asserts that Petitioner is precluded by laches, waiver and estoppel from objecting to Respondent's registration of the LA BELLA ROSA BRAND & Design mark, Reg. No. 1,818,079. However, this Board has consistently found that in likelihood-of-confusion cases, laches is not defense where the likelihood of confusion is clear because the protection of the consumer outweighs any damage to a defendant caused by the Petitioner's failure to take any action against Respondent. See Allstate Ins. Co. v. DeLibro, 6 U.S.P.Q.2d 1220 (TTAB 1988). Moreover, Respondent bears the burden of proof to establish both unreasonable delay of the Petitioner and prejudice to the Respondent. NCTA v. American Cinema Editors, 19 U.S.P.Q.2d 1431, 1432 (Fed. Cir. 1991).

In the present case, Respondent cannot assert the defense of laches, waiver and estoppel, because as can be seen from the proceeding arguments, likelihood of confusion between Petitioner's mark and Respondent's marks is clear. In addition, Respondent has not met its burden of proof required to establish a defense of laches, waiver and estoppel because Respondent has not submitted any evidence in support of unreasonable delay by Petitioner or prejudice.

The second affirmative defense asserted by the Respondent is that there is no likelihood of confusion between the marks. In support of this defense, the Respondent states that ROSA or LA ROSA is a common element of marks used and registered by many third parties for a variety of food and beverage items, therefore Petitioner's marks should receive only the limited protection provided to weak marks. However, Respondent has made no offer of evidence in this proceeding of any third-party registrations. Therefore, the Board should not consider this a valid affirmative defense.

In its defense, Respondent also states that Respondent's mark was approved for registration, thus the Patent and Trademark Office did not perceive a likelihood of confusion between Respondent's marks and Petitioner's mark.

In determining whether there is a likelihood of confusion between Petitioner's marks, LA ROSA and Respondent's marks LA BELLA ROSA, this Board is not bound by the decision of the Examining Attorney in concluding that Respondent's marks are entitled to registration. This Board has the authority to reach whatever decision is supported by the evidence of record now before it. See McDonald's Corp. v. McClaim, 37 U.S.P.Q.2d 1274 (TTAB 1995).

Furthermore, Respondent states that since it began using the mark, LA BELLA ROSA BRAND & Design, there has been no actual confusion between Respondent's use of the LA BELLA ROSA BRAND & Design and Petitioner's use of its various LA ROSA marks.

It is well settled in the law that actual confusion is not a required element in proving that confusion is likely. See McDonald's Corp. V. McClaim, 37 U.S.P.Q.2d 1274 (TTAB 1995). Yet further, as indicated in McDonald's, neither party is obligated, in a proceeding before the Board to spend the effort and expense to obtain survey evidence and Petitioner does not have a duty to conduct a survey to buttress its likelihood of confusion claim. A survey would be a factor to consider only if one had been conducted. Again, Respondent has failed to present any evidence and thus has failed to satisfy its burden of proof.

Lastly in support of the defense that there is no likelihood of confusion, Respondent states that it did not intend to create confusion between its mark and Petitioner's LA ROSA marks in the minds of consumers.

Proof of defendant's good faith and lack of intention to confuse the public is merely one factor to be considered in weighing the issue of likelihood of confusion. See Seabrook Foods, Inc. v. Bar-Well Foods Ltd., 192 U.S.P.Q. 797 (TTAB 1976). The fact that Respondent did not intend to cause confusion when it selected its mark is not determinative of the issue of whether confusion is likely. Additionally, Respondent has offered no evidence regarding the selection of the marks at issue or any other evidence of the issue of intent. Therefore, Respondent's assertion that it did not intend to cause confusion is unsubstantiated and, lacking on evidentiary basis, and should not be considered a factor in determining a likelihood of confusion.

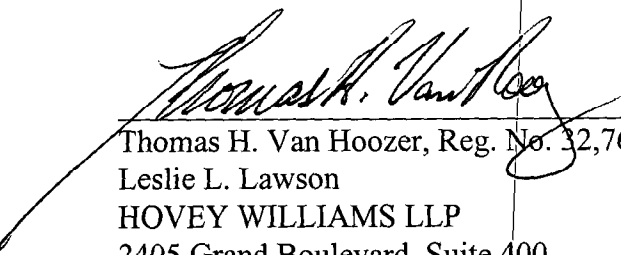
The third affirmative defense asserted by Respondent is that the Petitioner is barred on the grounds of laches, waiver, estoppel and acquiescence because Petitioner has not objected to many other third party marks incorporating "ROSA" or variations thereof for use in connection with food or beverages. As previously stated by Petitioner, Respondent has not offered any evidence of third

party registrations. Such an assertion, moreover, is merely a restatement of the rejected *jus tertii* defense. Stock Pot Restaurant v. Stockpot, Inc., 222 U.S.P.Q. 665, 669 (Fed. Cir. 1984), Maytag Co. v. Luskin's, Inc., 228 U.S.P.Q. 747, 750 (TTAB 1986). Therefore, the defense is unsubstantiated and should not be considered by the Board.

The last affirmative defense is that the Petitioner failed to state a claim upon which relief may be granted. Failure to state a claim is not a valid defense in these proceedings. In the present case, the cancellation and opposition proceedings were filed on the basis of a likelihood of confusion between Petitioner's prior registered marks and Respondent's registration and application. Likelihood of confusion is a statutory basis for challenge to a registration or application, and requires no further discussion here.

V. CONCLUSION

For the reasons herein above set forth and based upon the application of the relevant law to the facts in this case it is submitted that the cancellation and the oppositions must be sustained.


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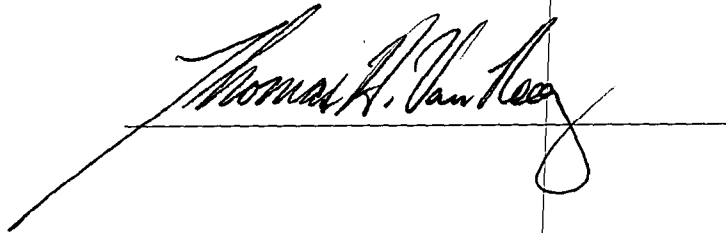
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Brief was served upon attorneys for Applicant this 15th day of November, 2002, by forwarding a copy via first class mail, postage prepaid, addressed to the following:

Cory M. Amron
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A handwritten signature in black ink, appearing to read "Thomas A. Van Hee", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.