

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
July 6, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Joseph Phelps Vineyards, LLC
v.
Fairmont Holdings, LLC

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Cancellation No. 92057240
Registration No. 4213619

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Thomas Schneck of Law Office of Thomas Schneck
for Joseph Phelps Vineyards, LLC.

Kimberly Koblack of Law Offices of Kimberly Koblack
for Fairmont Holdings, LLC.

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Before Zervas, Ritchie and Gorowitz Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Joseph Phelps Vineyards, LLC (“Petitioner”) has petitioned to cancel a registration owned by Fairmont Holdings LLC, (“Respondent”) for the mark ALEC BRADLEY STAR INSIGNIA in standard characters for “cigars, tobacco, cigar boxes, cigar cutters and cigar tubes” in Class 34.¹ The term STAR INSIGNIA is disclaimed in the registration. Petitioner is the owner of Registration No. 1123429 for the mark

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¹ Registration No. 4213619, issued on September 25, 2012.

INSIGNIA (in typed form)² for “wines” in Class 33.³ Petitioner also asserts common-law use of the INSIGNIA mark for over thirty (30) years. The petition alleges likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

Respondent filed an answer denying all salient allegations in the notice of opposition and asserting eight affirmative defenses. However, Respondent did not present arguments or evidence in support of the affirmative defenses. Thus, they are deemed waived.

The case has been fully briefed.

The Record.

The record includes the pleadings, and by operation of Trademark Rule 2.122(b), 37 CFR § 2.122(b), the file of the registration sought to be cancelled. The parties stipulated to the introduction of testimony by declarations and through notice of reliance. Subject to this stipulation, the parties introduced the following:

² Effective November 2, 2003, Trademark Rule 2.52, 37 C.F.R. §2.52, was amended to replace the term “typed” drawing with “standard character” drawing. Applicants who seek to register a mark without any claim as to the manner of display must submit a standard character drawing that complies with the requirements of Trademark Rule 2.52(a), 37 C.F.R. §2.52(a).

³ Registration No. 1123429 issued on July 31, 1979; second renewal June 20, 2009.

A. Petitioner's evidence.⁴

1. Webpages of third-parties for establishments selling both wine and cigars (Notice of Reliance 1);
2. Webpages of third-parties related to wine and cigar pairings (Notice of Reliance 2);
3. Webpages of third-parties related to flavored cigars (Notice of Reliance 3);
4. Certified copy of pleaded Registration No. 1123429 (Notice of Reliance 4);
5. Copy of specimen from registration file of Registration No. 4213619 (Notice of Reliance 5);
6. Article from October 21, 2013 issue of CIGAR AFICIONADO entitled *The Art of Wine and Cigars* (Notice of Reliance 6);
7. Webpages of third-parties regarding Respondent's ALEC BRADLEY STAR INSIGNIA products (Notice of Reliance 7); and
8. Declaration of William H. Phelps, President and CEO of Petitioner and exhibits thereto (Phelps Dec.).

B. Respondent's evidence.

1. Declaration of Alan Rubin, President of Respondent and exhibits thereto (Rubin Dec.);
2. Petitioner's responses to Respondent's first set of interrogatories (Notice of Reliance A);
3. Petitioner's responses to Respondent's first request [sic] for admission (Notice of Reliance B);

⁴ Petitioner submitted its evidence by mailing a paper copy to the USPTO. The documents were out of order, e.g. the first notice of reliance is at 11 TTABVUE 3 - 4 and 78 -472; the second notice of reliance is at 11 TTABVUE 5 - 6 and 55 - 77; the third notice of reliance is at 11 TTABVUE 7 and 20 - 76; and the seventh notice of reliance is at 11 TTABVUE 17 - 19. A number of the pages are oriented in different directions and a number of pages are barely legible.

4. Petitioner's List of Cancellations/Oppositions Filed (Notice of Reliance C);
5. Copy of Registration No. 1394292 for the mark COACH INSIGNIA from USPTO database, specimen from registration file and various unauthenticated webpages (Notice of Reliance D); and
6. Copy of documents from USPTO database relating to Application No. 86182796 including specimen and various webpages (Notice of Reliance E).

Standing.

Petitioner has made its pleaded registration of record showing it is extant and owned by Petitioner, and further has shown, evidence of its use of the pleaded mark for the goods in recited in the registration. Petitioner therefore has established that it has a personal stake in the outcome of this proceeding. Based thereon, we find that Petitioner has established its standing. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

Priority.

Since both Petitioner and Respondent own registrations, priority is at issue. *See King Candy Company v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Therefore, petitioner must establish that it has prior rights in its mark. *Brewski Beer Co. v. Brewski Brothers Inc.*, 47 USPQ2d 1281, 1284 (TTAB 1998). Petitioner may not rely on the first use date set forth in its registration but may, for this purpose, rely on the filing date of its application which issued into its pleaded registration. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28

USPQ2d 1464, 1467(TTAB 1993) (without proof of use, application filing date not dates of use alleged in the application is the earliest use date on which the applicant may rely), *recon. denied*, 36 USPQ2d 1328 (TTAB 1994).

As noted, Petitioner has made of record its registration for the mark INSIGNIA for wines, Registration No. 1123429, which issued on July 31, 1979 from an application filed on July 19, 1978.

Respondent's registration, which is the subject of this proceeding, issued from a use-based application, Serial No. 85544573 that was filed on February 16, 2012 and which alleged use since December 1, 2010. Respondent did not introduce evidence establishing use of the mark ALEC BRADLEY STAR INSIGNIA prior to December 1, 2010, but its President, Alan Rubin, testified that "ALEC BRADLEY INSIGNIA and STAR INSIGNIA have been in use since as early as December 1, 2010." Rubin Dec. par. 22, 12 TTABVUE 4. Petitioner's underlying application was filed prior to both Respondent's asserted first use in 2010 and the filing date of Respondent's application. Therefore, Petitioner has priority. *See Brewski*, 47 USPQ2d at 1284 (Petitioner or Respondent may rely on its registration for the limited purpose of proving that its mark was in use as of the application filing date).

Likelihood of Confusion.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (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/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The fame of Petitioner’s mark.

We start our analysis with the fifth *du Pont* factor, the fame of the prior mark. Fame for confusion purposes arises as long as a significant portion of the relevant consuming public ... recognizes the mark as a source indicator.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F3d 1369, 73 USPQ2d 1689, 1695 (Fed. Cir. 2005). Petitioner defines its customers as “every type and class of consumer and end user that appreciates fine wine, or is capable of appreciating fine wine.”⁵ Thus, and considering that petitioner’s identification of goods extends to all “wine,” the relevant consuming public consists of those who purchase wine.

To establish recognition of its mark, Petitioner testified that its predecessor’s first use of the mark INSIGNIA for wine was in the spring of 1978 when it released several hundred cases for sale across the United States. Phelp’s Dec., par. 4, 11 TTABVUE 474. Since 2000, sales of its INSIGNIA wine have “ranged between 10,000 to 15,000 cases per year representing revenue between \$13 million to \$20 million per year.” *Id.*, par. 7. Petitioner also testified that it sells its product through

⁵ Respondent’s Notice of Reliance A – Petitioner’s response to interrogatory no. 3B9, 14 TTABVUE 10.

“wine distributors, directly to house accounts that are mainly restaurants and bars, through a JBV Wine Club ... and through a company store at the JBV winery. Wine distributors sell mainly to stores, restaurants, hotels, bars and other retailers.” Phelps’s Dec., par. 8, 11 TTABVUE 475. Information about INSIGNIA wine appears on Petitioner’s website, www.josephphelps.com, and the wine can be purchased thereon. *Id.* par. 9. Petitioner further testified that its 2005 INSIGNIA wine won the WINE SPECTATOR⁶ wine of the year award, and that its “JPV INSIGNIA wine” has appeared in “dozens, if not hundreds of news articles” over the years. *Id.* pars. 14 - 15, 11 TTABVUE 476. In particular, Petitioner refers to “newsworthy” newspaper articles in the October 13, 1993 issues of NY Times and San Jose Mercury News. *Id.*, Par. 15. While Petitioner’s INSIGNIA wine was mentioned in both articles, the articles were not about Petitioner’s wine. The subject matter of the NY Times article entitled *Wine Talk*, is the benefit of California wine makers using proprietary names [trademarks], namely to “blend grapes as they see fit” rather than identifying the wine solely by the grapes from which it is made.⁷ In particular, the author discusses Joseph Phelps, the creator of the first blended grape wine and his use of trademarks, including INSIGNIA, EISELE, and BACKUS.⁸ A similar

⁶ According to Petitioner, “WINE SPECTATOR is a popular monthly magazine for wine lovers.” *Id.* par. 14, 11 TTABVUE 476.

⁷ Frank J. Prial, *Wine Talk*, N.Y. TIMES, October 13, 1993. Exhibit I to Phelps Dec., 11 TTABVUE 704.

⁸ *Id.*

subject is discussed in the article from the San Jose Mercury News, which is entitled *Phelps is pioneer of Bordeaux blend.*”⁹

As such, while it appears that Petitioner’s INSIGNIA branded wine has met with success in the marketplace, we are not persuaded on this record that Petitioner’s mark is a famous mark.¹⁰

The similarity or dissimilarity of the marks.

Next, we look at the first *du Pont* factor, the similarity or dissimilarity of the marks. In comparing the marks we must consider the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692. While “the similarity or dissimilarity of the marks is determined based on the marks in their entireties ... there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties.” *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

To evaluate the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than

⁹ Anthony Dias Blue, *Phelps is pioneer of Bordeaux blends*, SAN JOSE MERCURY NEWS, October 13, 1993. Exhibit J to Phelps Dec., 11 TTABVUE 707.

¹⁰ Petitioner also argues that it has acquired exclusive rights by policing its mark. The evidence introduced consists of cease and desist letters sent to three companies in 2006 and 2007; and follow-up letters regarding one of the companies. Petitioner’s reference to four oppositions is not supported by any evidence and hence is not further considered. Petitioner’s cease and desist and follow up letters only reflect limited policing efforts.

specific, impression of trademarks. *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009), citing *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

In this case Petitioner's mark consists solely of word, INSIGNIA while Respondent's mark is the composite phrase, ALEC BRADLEY STAR INSIGNIA, which is in standard character format.¹¹ Petitioner argues that in Respondent's mark, the word INSIGNIA is larger than the preceding word STAR. Because the depiction of the mark is in standard character format and Respondent is not limited to any particular presentation, the format in which Respondent currently uses its mark is not at issue.

Petitioner contends that the dominant part of Respondent's mark, which should be afforded greater weight, is the word INSIGNIA. We disagree. As viewed in its entirety, Respondent's mark consists of its house mark, ALEC BRADLEY, and the unitary term STAR INSIGNIA.

There have been numerous cases over the years that have reached different conclusions on whether the addition of a house mark avoids confusion. It has long been held that the addition of a trade name or house mark to a registered mark does not generally avoid confusion. *Menendez v. Holt*, 128 U.S. 514, 521 (1888). "However, there is no arbitrary rule of law that if two product marks are confusingly similar, likelihood of confusion is not removed by use of a company or house mark [sic] in association with the product mark." *New England Fish*

¹¹ Registrations in standard character format are "federal mark registrations that make no claim to any particular font style, color, or size of display and, thus, are not limited to any particular presentation." *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011).

Company v. The Herwin Company, 511 F.2d 562, 184 USPQ 817, 819 (CCPA 1975) (BLUE MOUNTAIN KITTY O's and KITTY not similar). In these cases, we must, of course, consider the entire marks, including the presence of the house mark in applicant's mark in light of the evidence of record.

In re Fiesta Palms LLC, 85 USPQ2d 1360, 1364 (TTAB 2007). Generally, if the product marks are identical, the addition of the house mark does not avoid confusion, however, “where there are some recognizable differences in the asserted product marks ...the addition of a house mark and/or other material to the assertedly conflicting product mark has been determined to render the marks as a whole sufficiently distinguishable.” *Id.*, quoting *In re Christian Dior, S.A.*, 226 USPQ 533, 534 (TTAB 1985). In this case, since there are recognizable differences in the product marks, STAR INSIGNIA and INSIGNIA, the house mark ALEC BRADLEY does distinguish the marks. *See In re Avent, Inc.*, 195 USPQ 185, 187 (TTAB 1977) (no likelihood of confusion between CHANNEL MASTER CHROMA-KING for television antennas and COLOR KING for television picture tubes). Moreover, the product mark, STAR INSIGNIA is a unitary phrase with the word “star” modifying “insignia.” “Insignia” is defined as:

- 1: a badge of authority or honor;
- 2: a distinguishing mark or sign.¹²

Thus, the commercial impression of Opposer's mark INSIGNIA is simply an “insignia” or mark, and the commercial impression of Applicant's mark ALEC

¹² We take judicial notice of the definition of “insignia” from *Merriam-Webster* on-line, <http://www.merriam-webster.com/dictionary/insignia>.

BRADLEY STAR INSIGNIA is one of a star shaped mark or sign identifying the source of a product produced by ALEC BRADLEY.

Based thereon, we conclude that the marks, as viewed in their entireties, differ in appearance, sound, connotation and commercial impression.

The similarity or dissimilarity of the parties' goods.

Next, we consider the similarity or dissimilarity of the parties' goods. It is well established that in a proceeding such as this, the similarity of the goods must be determined on the basis of the goods as identified in the registration. *See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, NA*, 811 F.2d 1490, 1 USPQ2d 1813, 1814 (Fed. Cir. 1987). *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 76 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Further, when analyzing the similarity of the goods, it is not necessary that the products of the parties be similar or even competitive to support a finding of likelihood of confusion. Instead, likelihood of confusion can be found "if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source." *Coach Services Inc. v. Triumph Learning LLC*, 668 F3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012).

Petitioner argues that wine and cigars are complementary products and as such are related.

To establish that wine and cigar are complementary products, Petitioner submitted documents from numerous websites which advertise or promote cigar bars, cigar stores, wine bars, wine stores and events featuring wine and cigars. This evidence establishes that the products are sold in the same channels of trade. See for example,

The Cigar Bar and Grill (www.cigarbarandgrill.com) website states that “The Cigar Bar and Grill is more than just a smoking bar – we’re also a wine bar.” Wines are listed on the first four pages of the exhibit (pages 88-92) followed by promotional information regarding events. Four brands of cigar are listed on the last two pages of the exhibit (pages 97-98). Petitioner’s First Notice of Reliance, 11 TTABVUE 88 – 98’

Old Oaks Cigar & Wine Co. (<http://neighborhoodinc.org/California-Directory-Coupons/old-oaks-cigar-wineco>). This site also separates sales of cigars from sales of wine and other liquor: “Welcome to the Old Oaks Cigar & Wine Company website. We have been serving the Conejo Valley since 1996 with premium handmade cigars from manufacturers such as Cohiba, Asthon, Partagas, Punch, and many more. We carry a wide selection of humidors, ashtrays, lighters, and other cigar accessories for your smoking experience. We also have a long list of fine wines from many local and private vineyards and a wide selection of single malt scotch, rums, brandies and tequilas.” - Petitioner’s First Notice of Reliance, 11 TTABVUE 114;

Everything Wine & Cigars, retail, bar and bistro (<http://everythingwineandcigars.com>) whose website indicates that it sells cigars. There are five pages of wines listed at the end of the site. Petitioner’s First Notice of Reliance, 11 TTABVUE 119 -125;

Renwood Winery (<http://plymouthcalifornia.com/amador-sierra-foothill-wineries/winetasting/116--winery-of-t>) a winery that sells “a selection of Renwood merchandise, gift items and its [own] Renwood cigars” in its giftshop

Petitioner's Second Notice of Reliance, 11 TTABVUE 65 – 68;

Bellaterra Ranch (<http://www.bellaterraranch.com/storefront/cms.php?id>), which produces wine at its ranch in Sonoma, California and cigars in Nicaragua - Petitioner's Second Notice of Reliance, 11 TTABVUE 75 – 77; and

Marco V Cigar Wine (www.marcovcigars.com/MarcoVCigarWine.html) cigar company that co-brands cigars with wine (THE VINTAGE wine from Chateau St. Croix Winery), coffee, (DOM CAFÉ coffee), and infused cigars (INFUZE cigars) - Petitioner's Third Notice of Reliance, 11 TTABVUE 33.

Petitioner also submitted evidence of sales of flavored cigars, which are infused with different flavorings, including wine. Examples of flavored cigars include:

- CF Dominicana, which makes its own Gourmet Cigars which are the 'CF Dominicana' cigars with added Vanilla, Amaretto, Cognac Chocolate or Wine extract – <http://www.cfcigars.com/flavoredcigars.htm> - Petitioner's Third Notice of Reliance, 11 TTABVUE 21;
- Game Cigars by Garcia Vega, which are “among the most popular brands in the United States ... the Honey, Vanilla, the newer Wine, Peach, and White Grape selections are flavored cigars” – <http://www.famous-smoke.com/grand/garcia+y+vega+game+cigars> - Petitioner's Third Notice of Reliance, 11 TTABVUE 24 - 25; and
- Guy & Lady Barrel, which are “[h]and rolled Dominican tobacco aged in American white oak barrels infused with alcohol...Bourbon, Whiskey, Orange Brandy, Apple Brandy, Spice Rum, Port Wine, Golden Mead, and Apple Pie Moon Shine – www.guyandladybarrel.com/Products.html - Petitioner's Third Notice of Reliance, 11 TTABVUE 35.

- “Messina Hof Private Reserve Papa Paulo Port” – Hight Cigars infused with Messina Hof Port - Petitioner’s Second Notice of Reliance, 11 TTABVUE 57;
- “Reserva Decadencia” – Toraño Cigars infused with Wilson Creek Winery’s Decadencia Chocolate Port – Petitioner’s Second Notice of Reliance, 11 TTABVUE 59; and
- Santiago Cigars infused with Deer Run Winery’s “Noiret” and “Dockside” - Petitioner’s Second Notice of Reliance, 11 TTABVUE 68.

The evidence suggests that cigars and wine can be used together. However, there is negligible evidence of use of the same mark on both cigars and wine.

As the Federal Circuit observed, “used together” is not alone determinative, but must be considered in the overall mosaic of evidence: The test is not that the goods and services must be related if used together but merely that that finding is part of the underlying factual inquiry as to whether the goods and services at issue... can be related in the mind of the consuming public as to the origin of the goods. Thus, the mere fact that two goods are used together in the same setting or venue does not, in and of itself, demand a finding that confusion is likely.

4 McCarthy on Trademarks and Unfair Competition § 24:26 (4th ed.) (2015). *See Shen Mfg. Co. Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1355 (Fed. Cir. 2004) (No likelihood of confusion between RITZ for kitchen towels and aprons and RITZ for cooking classes, even though the goods and services are used together). In this case, the products differ in numerous ways, including the differences in the raw ingredients used to manufacture the products, the differences in the methods of manufacture and the negligible amount of evidence of use of the same mark on both cigars and wine. In light of these differences, and the minimal

evidence of a single source of both goods, we are not persuaded by Petitioner's arguments that the goods are related. Moreover, the facts in this case are similar to the infringement case discussed by the Board in *In re Opus One Inc.*, 60 USPQ2d 1812, 1814 (TTAB 2001), wherein the Board concluded that with respect to the marks OPUS ONE for wine and OPUS X for cigars, the marks are not related and/or the goods are not related.¹³

Thus, the evidence suggests that the goods are sold in the same channels of trade to the same purchasers but does not establish a relationship between the goods.

The conditions under which and the buyers to whom sales are made.

Respondent argues that "wine drinkers and cigar smokers are sophisticated purchasers. Respondent bases its argument regarding the sophistication of wine drinkers on evidence that Petitioner's INSIGNIA wine costs between \$158.00 - \$275 per 750 ml bottle¹⁴ and on Respondent's assertion that "[d]rinkers of wine this expensive are going to be familiar with and knowledgeable regarding the Joseph Phelps Vineyard's origin of this costly wine when purchasing it." Respondent's Brief, p. 15, 17 TTABVUE 16. Respondent bases its argument regarding the

¹³ The Appeal involved Applicant's mark OPUS ONE for restaurant services and Registrant's mark OPUS ONE for wine. While finding likelihood of confusion, in its discussion of the sixth *du Pont* factor (the number and nature of similar marks in use on similar goods), the Board noted the 1998 dismissal of an infringement action by Opus One Winery against the use by Fuente of OPUS X for cigars. From this dismissal, the Board concluded that OPUS X and OPUS ONE are not similar marks and/or that cigars and wine are not similar goods.

¹⁴ Respondent's Second Notice of Reliance – Response to Interrogatory No. 2, 15 TTABVUE 8.

sophistication of smokers of its cigars on the declaration of Alan Rubin, President of Respondent. *Id.* In his declaration, Mr. Rubin testifies that “Alec Bradley is a highly reputable manufacturer, producer, seller and distributor of quality cigars ...”¹⁵ and that in his opinion: “ALEC BRADLEY cigars are considered to be cigars of high quality;”¹⁶ “ALEC BRADLEY STAR INSIGNIA cigars are considered to be cigars of high quality;”¹⁷ “Smokers of high quality cigars are sophisticated consumers;”¹⁸ “Smokers of ALEX BRADLEY cigars are sophisticated consumers;”¹⁹ and “Smokers of ALEX BRADLEY STAR INSIGNIA cigars are sophisticated consumers.”²⁰

While we acknowledge that the parties target sophisticated customers, we are constrained to consider the parties’ goods as they are identified in the relevant registrations. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014). Neither party’s goods are restricted to “expensive” or “high-end” products and thus, we must consider the sophistication of all potential consumers of wine and cigars, including those who purchase “inexpensive,” “low-end” products.”

No actual confusion.

Respondent argues that despite concurrent use of their respective marks for a period of over four years, neither Petitioner nor Respondent has encountered

¹⁵ Rubin Dec., par. 4, 12 TTABVUE 2.

¹⁶ Rubin Dec., par. 26, 12 TTABVUE 4.

¹⁷ Rubin Dec., par. 27, 12 TTABVUE 4.

¹⁸ Rubin Dec., par. 29, 12 TTABVUE 4.

¹⁹ Rubin Dec., par. 30, 12 TTABVUE 4.

²⁰ Rubin Dec., par. 31, 12 TTABVUE 4.

evidence of confusion. While a showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion, the opposite is not true. The lack of evidence of actual confusion carries little weight, *J.C. Hall Co. v. Hallmark Cards, Inc.*, 340 F.2d 960, 964, 144 USPQ 435, 438 (CCPA 1965).

Conclusion.

Having considered all the evidence and argument on the relevant *du Pont* factors, whether specifically discussed herein or not, we conclude that, particularly in light of the differences in the marks and the differences in the goods, there is no likelihood of confusion between Petitioner's use of the mark INSIGNIA for wine and Respondent's use of the mark ALEC BRADLEY STAR INSIGNIA for cigars, tobacco, cigar boxes, cigar cutters and cigar tubes.

Decision: The petition for cancellation on the ground of likelihood of confusion under Section 2(d) of the Trademark Act is denied.