

**This Opinion is Not a
Precedent of the TTAB**

Mailed: February 10, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Maestro Tequilero, S.A. de C.V.

v.

Gildardo Partida Hermosillo
—

Cancellation No. 92074808
—

Marie Anne Mastrovito, Jennifer Kwon, and Jacob Wharton, Womble Bond
Dickinson (US) LLP, for Maestro Tequilero, S.A. de C.V.

Johanna M. Wilbert, Christian G. Stahl, Nathan J. Oesch, and Elizabeth M.
Shirreff, Quarles & Brady LLP, for Gildardo Partida Hermosillo.

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Before Larkin, Allard, and O'Connor,
Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Maestro Tequilero, S.A. de C.V. (“Petitioner”) seeks cancellation of two registrations owned by Gildardo Partida Hermosillo (“Respondent”) for the mark LOTE MAESTRO in standard characters and LOTE MAESTRO and design in the



following form, , for “alcoholic beverages, except beer,”¹ in International Class 33² on the ground of likelihood of confusion under Trademark Act

¹ The identification for the word and design mark also includes “alcoholic beverages except beers,” which are legally equivalent to “alcoholic beverages, except beer.”


² The standard character mark is the subject of Registration No. 5846859, issued August 27, 2019 from an application filed August 9, 2018 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Respondent’s statement that it had a bona fide intention to use the mark in commerce with the identified goods. After allowance, Respondent filed a statement of use averring first use anywhere and in commerce at least as early as February 26, 2019. The registration includes a statement that “[t]he English translation of ‘LOTE MAESTRO’ in the mark is ‘MASTERFUL PLOT.’”

The word and design mark is the subject of Registration No. 5869770, issued September 24, 2019 from an application filed October 18, 2018 also based on intent to use. After allowance, Respondent filed a statement of use averring first use anywhere and in commerce at least as early as July 1, 2019. The description of the mark reads:

The mark consists of a three-dimensional configuration comprising a singular concave bottle with alternating right side up and upside down triangular shapes with the front facing upright triangle containing the stylized wording “LOTE” above the stylized wording “MAESTRO” with a stylized raised design of a plate having grapes and a skewered piece of crescent shaped food at the bottom of the front facing triangle. The bottle stopper is an overall diamond jewel shape. The broken lines depicting the neck of the bottle and the perimeter of the stopper indicate placement of the mark on the goods and are not part of the mark.

Color is not claimed as a feature of the mark. The word and design mark registration has the same translation statement as the standard character registration and a disclaimer of “the alternating triangular facets and tapered shape of the bottle and of the jewel-shaped faceted stopper.” Both of Respondent’s registrations have been maintained through the filing and acceptance of declarations of use under Section 8 of the Trademark Act, 15 U.S.C. § 1058.



Section 2(d), 15 U.S.C. § 1052(d), based on Petitioner’s previously used and registered marks containing the word MAESTRO. Petitioner relies on the following marks, each of which is registered on the Principal Register:³

Reg. No.	Mark	Goods ⁴
3624848	MAESTRO	Tequila
3624849	MAESTRO TEQUILERO (TEQUILERO disclaimed)	Tequila
4488885	MAESTRO DOBEL	Alcoholic beverages, namely, tequila
4122301	 (TEQUILERO disclaimed)	Tequila

³ Amended Petition for Cancellation, 20 TTABVUE 11-12; 125 TTABVUE 9-10; 47 TTABVUE at 2-109 (Notice of Reliance attaching status and title copies of pleaded registrations). Citations to the record and briefs reference TTABVUE, the Board’s online docket system. The number before TTABVUE corresponds to the docket entry number, and any numbers after TTABVUE refer to the page number(s) where the cited material appears.

The Amended Petition also listed Registration No. 5572507 for RESERVA DEL MAESTRO DOBEL DIAMOND and design, 20 TTABVUE 12, but that registration was cancelled on April 18, 2025. *See Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, No. 92051006, 2014 TTAB LEXIS 95, at *3 n.4 (taking judicial notice of changes in title and status of pleaded and proven registrations); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 704.03(b)(1) (2025). We therefore give this registration no consideration. *See Time Warner Entm’t Co. v. Jones*, No. 91112409, 2002 TTAB LEXIS 462, at *4 n.6. Petitioner has made maintenance filings for all of the remaining registrations listed in its amended petition for which such filings have come due. The ten active, pleaded registrations listed in the text are referred to collectively as “Petitioner’s Registrations” with the subject marks referred to collectively as “Petitioner’s Marks.”

⁴ Petitioner notes that, “[a]lthough all the MAESTRO marks are used in association with certified tequila, the descriptions in the registrations differ because ‘Tequila’ became a registered certification mark in the United States in 2017. Following the registration of the certification mark, the word ‘tequila’ could no longer be used in the identification of goods for a U.S. trademark application or registration. As a result, all applications which matured into registrations after the registration of the certification mark, and registrations that were renewed after this date, include the wording ‘distilled blue agave liquor’ instead of ‘tequila.’” 125 TTABVUE 9 n.1. The parties largely use “tequila” in their briefs, and we do the same here.

3442162	RESERVA DEL MAESTRO	Tequila
4660142		Tequila
5465261	MAESTRO DOBEL	Tequila
5775732	RESERVA DEL MAESTRO (RESERVA disclaimed)	Alcoholic beverages, namely, distilled blue agave liquor
5730611	 <p data-bbox="464 1465 1060 1728">("TEQUILA, SINGLE ESTATE TEQUILA, 100% DE AGAVE, REPOSADO EN BARRICAS DE ROBLE, OR RESERVA" disclaimed); claim of acquired distinctiveness under Trademark Act § 2(f) for MAESTRO TEQUILERO</p>	Distilled blue agave spirits
6311606	MAESTRO DOBEL HUMITO	Distilled blue agave liquor

Respondent's operative pleading asserts a counterclaim seeking to cancel Petitioner's Registration No. 3624848 for the mark MAESTRO (the "848 Registration") on grounds of abandonment,⁵ and otherwise denies the salient allegations of the operative Petition for Cancellation.

Petitioner denies the salient allegations of Respondent's counterclaim.⁶

The case is fully briefed.⁷ Each party must show its entitlement to a statutory cause of action, *Curtin v. United Trademark Holdings, Inc.*, 137 F.4th 1359, 1364

⁵ 31 TTABVUE 7-11, Respondent's Answer to First Amended Petition for Cancellation.

Respondent's earlier pleading included a second counterclaim that MAESTRO has become generic for tequila, 14 TTABVUE 16-18, prompting Petitioner to amend its petition to assert an alternative, conditional ground for cancellation that, if MAESTRO were found to be generic, then Respondent's registrations for marks incorporating MAESTRO with the descriptive term "lote" must be cancelled as merely descriptive. 20 TTABVUE 13-14. Respondent later withdrew its second counterclaim with prejudice. *See* 32 TTABVUE (consent motion), 34 TTABVUE (order). Petitioner did not further amend its petition for cancellation or affirmatively withdraw its alternative, conditional ground for cancellation, but the parties treated that ground as moot, with neither party addressing it in their trial briefs. Petitioner's alternative, conditional ground for cancellation, 20 TTABVUE 13-14, is therefore moot and is dismissed.

Respondent's operative answer sets forth five "Affirmative Defenses," 31 TTABVUE 6-7, of which the First, Fourth and Fifth defenses are not true affirmative defenses. *See, e.g., Shenzhen IVPS Tech. Co. v. Fancy Pants Prods., LLC*, No. 91263919, 2022 TTAB LEXIS 383, at *4-5 n.5 (failure to state a claim is not a true affirmative defense; amplifications of denials of likelihood of confusion are not true affirmative defenses). Nor do we consider Respondent's attempt to reserve "the right to add additional affirmative defenses as discovery develops." 31 TTABVUE 7; *see, e.g., Made in Nature, LLC v. Pharmavite LLC*, No. 91223352, 2022 TTAB LEXIS 228, at *3-4 (rejecting attempt to reserve right to add defenses). At trial, Respondent did not pursue its remaining Second affirmative defense of laches or Third affirmative defense of waiver, acquiescence and estoppel, thereby forfeiting or impliedly waiving those defenses. *See Heil Co. v. Tripleye GmbH*, No. 91277359, 2024 TTAB LEXIS 494, at *8 (citations omitted).

⁶ 33 TTABVUE. Petitioner's sole affirmative defense that it "has used the MAESTRO mark in U.S. commerce in connection with the registered goods since the date of registration, and the mark is currently in use on said goods," 33 TTABVUE 4, merely amplifies its denials.

⁷ *See* 125 TTABVUE (Petitioner's brief, public) (126 TTABVUE, confidential); 134 TTABVUE (Respondent's brief); 139 TTABVUE (Petitioner's rebuttal brief); 140 (Respondent's rebuttal

(Fed. Cir. 2025) (*petition for cert. filed*, No. 25-435 (Oct. 3, 2025)), and prove the elements of its substantive claim for cancellation by a preponderance of the evidence. *See, e.g., Stratus Networks, Inc. v. UBTA-UBET Commc'ns Inc.*, 955 F.3d 994, 998 (Fed. Cir. 2020); *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 1358 (Fed. Cir. 2009). Petitioner has met its burden to prove likelihood of confusion and we grant the operative Amended Petition for Cancellation based on the first ground therein. Respondent has not met its burden to prove abandonment by non-use and we deny Respondent's counterclaim to cancel Petitioner's '848 Registration.

I. The Record

The record includes the pleadings and, by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), the files of Respondent's registrations and of Petitioner's '848 Registration. In addition, the parties submitted the materials discussed below during their respective trial and rebuttal periods. *See* Trademark Rules 2.120, 2.122, 2.123, and 2.125, 37 C.F.R. §§ 2.120, 2.123, 2.122 and 2.125.

brief on counterclaim). The parties each submitted testimony and/or exhibits containing information designated confidential. For each such submission, we indicate where the confidential and redacted, publicly available versions are docketed. Unless otherwise noted, all citations herein to the briefs and record are to the publicly available documents.

Petitioner's submissions:

- Declaration of Dr. Alex Simonson, President of the marketing research firm Simonson Associates, Inc., Petitioner's proffered survey expert, with his Expert Report and exhibits, 45 TTABVUE.⁸
- Declaration of Noelle Beristain Kochanczyk ("Ms. Beristain"), Brand Director, Maestro Dobel Tequila, employed by Proximo Spirits, Inc., Petitioner's U.S. distributor, with exhibits, 44 TTABVUE (confidential), 46 TTABVUE (redacted public version).
- First Notice of Reliance, 47 TTABVUE, with Trademark Status and Document Retrieval (TSDR) printouts of Petitioner's pleaded Registrations.
- Second Notice of Reliance, 48 TTABVUE, Third through Seventh Notices of Reliance, 86 TTABVUE,⁹ and Eighth and Ninth Notices of Reliance, 87-88 TTABVUE, 94 TTABVUE 19 (addendum with English translation of document in Ninth Notice of Reliance), with printed publications, official records and Internet materials.
- Testimony Deposition of Kathryn Cox, Senior Investigator at Marksmen Brand Protection Services, with exhibits, 117, 122 and 132 TTABVUE.
- Testimony Deposition of Respondent Gildardo Partida Hermosillo, 118 TTABVUE (confidential), 119 TTABVUE (public).
- Testimony Deposition of Lucas Perez, U.S. Sales Director for Vitro Tequilera, S.A. de C.V., a company controlled by Respondent, with exhibits, 120 TTABVUE (public); 121 TTABVUE (confidential).
- Testimony Deposition of Joel K. Beth, Chief Executive Officer and Managing Partner for Pacific Edge Marketing Group, Inc., Respondent's U.S. distributor, with exhibits, 123 TTABVUE (public), 124 TTABVUE (confidential).

⁸ The record contains references to a rebuttal expert report by a Dr. Anderson, which Respondent apparently commissioned but opted not to submit as evidence at trial. *See, e.g.*, 81 TTABVUE 100, 274-302 (Simonson July 2022 Tr. and Ex. 3); 139 TTABVUE 62 n.7.

⁹ Exhibits 5, 6 and 7 to Petitioner's Fifth Notice of Reliance (Internet search summaries) were stricken, 96 TTABVUE, and we give them no consideration. Petitioner's Fourth and Sixth Notices of Reliance, originally submitted at 86 TTABVUE, were revised in accordance with the Board's May 29, 2024 Order, 96 TTABVUE, with the revised versions found at 97 and 98 TTABVUE, respectively. We consider only the revised versions.

Respondent's submissions:

- Testimony Declaration of Joel K. Beth with exhibits, 63 TTABVUE (public), 64 TTABVUE (confidential).
- Testimony Declaration of Lucas Perez with exhibits, 65 TTABVUE.
- Testimony Declaration of Gildardo Partida Hermosillo and English translation thereof, 68 TTABVUE.
- Testimony Declaration of Kathryn Cox with exhibits, 99 TTABVUE.
- First through Fourth Notices of Reliance, 59-62 TTABVUE, Fifth and Sixth Notices of Reliance, 66-67 TTABVUE, and Seventh through Eleventh Notices of Reliance, 69-73 TTABVUE, with printed publications, official records and Internet materials.
- Twelfth Notice of Reliance on the July 28, 2022 Discovery Deposition of Dr. Simonson as Trial Testimony and Exhibit A thereto, submitted by stipulation of the parties and approved by the Board (*see* 52, 58, 80 TTABVUE), 81 TTABVUE (public); 82 TTABVUE (confidential).
- Testimony deposition transcript of the February 15, 2023 Deposition of Noelle Beristain Kochanczyk with exhibits, 101 TTABVUE (public); 102 TTABVUE (confidential).
- Testimony deposition transcript of the February 7, 2023 deposition of Dr. Simonson with exhibits, 103 TTABVUE.

In its rebuttal period, Respondent also submitted:

- Thirteenth Notice of Reliance, 100 TTABVUE, with printed publications.

II. Evidentiary Issues

Each of the parties has objected to certain of the other party's submissions by way of motions to strike that were deferred until trial and objections set forth in appendices to their briefs. Before turning to the merits of the dispute, we address certain of these evidentiary issues.

A. Respondent's Objections

Respondent objects to the following declaration testimony of Ms. Beristain (and any associated deposition testimony) on grounds of lack of foundation, competence, and hearsay:¹⁰

55. I am aware that there has been actual confusion between the LOTE MAESTRO tequila product and Maestro Tequilero's MAESTRO branded tequila product.

56. Specifically, the LOTE MAESTRO tequila product has been confused with the MAESTRO DOBEL CRISTALINO. The image of the LOTE MAESTRO product was used in an advertisement for the MAESTRO DOBEL CRISTALINO in and around September 30, 2021. Beristain Exh. 14 (MT 00666 – 675).¹¹

The referenced Exhibit 14 is a printout of a website for Westchester Wine Warehouse with product listings found in a search for “Maestro Dobel Anejo Tequila,”¹² which was provided to Ms. Beristain by Petitioner's counsel.¹³ Ms. Beristain herself did not visit the website to create the exhibit, did not have communications with Westchester Wine Warehouse about use of a wrong picture, and could “only assume” that there were customers who thought they were purchasing Maestro Dobel Tequila and received Lote Maestro Tequila instead.¹⁴

¹⁰ See 53 TTABVUE (motion); 54 and 55 (confidential motion and exhibit); 58 TTABVUE (order deferring motion), 134 TTABVUE 60 (brief maintaining objection).

¹¹ 46 TTABVUE 13 (Beristain Dec.).

¹² See *id.* at 82-92.

¹³ 101 TTABVUE 31, 84 (Beristain Tr.).

¹⁴ *Id.* at 86-88.

We sustain the objection to paragraphs 55 and 56 of the Beristain declaration and any deposition testimony of Ms. Beristain concluding that there must have been actual confusion given the apparent use of an image of Respondent's product in a listing for Petitioner's MAESTRO DOBEL CRISTALINO product. Ms. Beristain had no personal knowledge of any consumer confusion and could only "assume" it, which is not a proper basis for testimony. *See, e.g., Double Coin Holdings, Ltd. v. Tru Dev.*, No. 92063808, 2019 TTAB LEXIS 347, at *6-13 (sustaining the petitioner's objection to testimony by the respondent's president regarding consumers' impression of mark based on lack of personal knowledge and insufficient foundation). However, the Internet materials at Exhibit 14 to the Beristain Declaration bear the URL and access date, and are admissible for what is shown on the face of the document, but not for the truth of its contents. *Hangzhou Mengku Tech. Co. v. Shanghai Zhenglang Tech. Co.*, No. 91272143, 2024 TTAB LEXIS 575, at *7 ("A URL and date appearing on the face of Internet documents submitted under cover of testimony . . . is sufficient to establish authentication.") (citation omitted); *cf.* Trademark Rule 2.122(e)(2), 37 C.F.R. § 2.122(e)(2). We also find it appropriate to consider Ms. Beristain's deposition testimony reflecting her personal observation that the product shown in the advertisement is not that of Petitioner.¹⁵

B. Petitioner's Objections

Petitioner requests that we strike the Testimony Declaration of Kathryn Cox, including her attached Investigative Report, on the ground that her testimony

¹⁵ *Id.* at 87-88.

constitutes untimely and improper expert opinion.¹⁶ Ms. Cox was retained to “investigate and determine the current (and if possible historical) use of the mark MAESTRO by itself on tequila.”¹⁷ Petitioner argues that Ms. Cox’s testimony is that of an expert, who was neither disclosed nor qualified as required by the Federal Rules of Civil Procedure, Federal Rules of Evidence, and Trademark Rules. *See* Fed. R. Civ. P. 26(a)(2)(D); Fed. R. Evid. 702; Trademark Rule 2.122(a), 37 C.F.R. § 2.122(a). The crux of the objection is that Ms. Cox’s testimony necessarily provides her opinion as to whether the uses of MAESTRO she found were by itself or always accompanied by an additional term or modifier, as reflected in her conclusion that

During my investigation and as stated in my report, I found no reference to the mark MAESTRO in connection with tequila or in connection with Maestro Tequilero or Proximo Spirits without modifiers. Any references of the mark MAESTRO I did find in my investigation was [sic] accompanied by some sort of modifier, additional word, or additional term.¹⁸

Having reviewed Ms. Cox’s testimony declaration and deposition, we deny Petitioner’s request to exclude the testimony. Ms. Cox testified about what she personally found in her investigation. For example, Sections 2 through 11 of her report detail the sources she searched and the results, attaching certain supporting documentation.¹⁹ To the extent Petitioner argues that Ms. Cox’s report fails to attach

¹⁶ 104 TTABVUE (Petitioner’s motion to strike); 111 TTABVUE (order deferring motion); 139 TTABVUE at 64-72 (maintaining objection).

¹⁷ 99 TTABVUE 10 (Cox Dec. attaching Investigative Report); 117, 122 TTABVUE (Cox Tr. and Exhibit).

¹⁸ 99 TTABVUE 3-4 (Cox Dec. ¶ 7).

¹⁹ *See id.* at 3-5 (Cox Dec. ¶¶ 3-11); 10-43 (Investigative Report).

copies of materials like websites about which she testifies or that her testimony is conclusory and not sufficiently detailed,²⁰ such matters go to weight and not admissibility and we keep them in mind as we consider the testimony. Fundamentally, however, Petitioner does not appear to disagree with the actual results of Ms. Cox's investigation, which we find to be of limited value to our ultimate conclusion because they do not tell us anything other than what Petitioner concedes to be the nature of its use of the MAESTRO mark.

We decline to make specific rulings on the parties' remaining objections, most of which concern the weight due the evidence rather than its admissibility, and none of which goes to evidence that is outcome-determinative. *Poly-America, L.P. v. Ill. Tool Works Inc.*, No. 92056833, 2017 TTAB LEXIS 392, at *4. "Because a cancellation proceeding is akin to a bench trial, the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence. As necessary and appropriate, we will point out any limitations in the evidence or otherwise note that we cannot rely on the evidence in the manner sought." *Peterson v. Awshucks SC, LLC*, No. 92066957, 2020 TTAB LEXIS 520, at *11-12 (citations omitted). Unless stated otherwise, we have considered all of the testimony and other evidence introduced into the record, bearing in mind the parties' objections and according the testimony and other evidence whatever probative value is warranted.

²⁰ See 139 TTABVUE 71-72.

III. Counterclaim for Abandonment of Petitioner's '848 Registration

We first consider Respondent's counterclaim seeking to cancel Petitioner's '848 Registration, which is among the registrations pleaded by Petitioner in support of its Amended Petition for Cancellation. Respondent's entitlement to a statutory cause of action as counterclaim plaintiff for this claim is inherent in its position as defendant in the underlying cancellation proceeding. *See Harry Winston, Inc. v. Bruce Winston Gem Corp.*, No. 91153147, 2014 TTAB LEXIS 284, at *27 (applicant established its "standing" (now referred to as entitlement) based on opposers' assertion of their marks and registrations against applicant).

A. Applicable Law

A mark is deemed to be abandoned when (1) use of the mark "has been discontinued," (2) "with intent not to resume such use." Trademark Act Section 45, 15 U.S.C. § 1127. A mark shall be deemed to be in use in commerce on goods when "it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto" and "the goods are sold or transported in commerce." *Id.* If Respondent shows three consecutive years of nonuse of the MAESTRO mark, it will establish a prima facie case of abandonment, creating a rebuttable presumption that Petitioner has ceased use of the mark with the requisite intent not to resume use. *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1087 (Fed. Cir. 2000). The burden would then shift to Petitioner to produce evidence that it has either used the mark or that it intended to resume use, with the ultimate burden of persuasion remaining on Respondent to prove abandonment by a

preponderance of the evidence. *Id.*; accord *Crash Dummy Movie, LLC v. Mattel, Inc.*, 601 F.3d 1387, 1391 (Fed. Cir. 2010). Abandonment is a question of fact. *On-Line Careline*, 229 F.3d at 1087.

B. Petitioner’s Alleged Nonuse of the Mark MAESTRO

In support of its claim of abandonment, Respondent contends that Petitioner does not use—and, indeed, has never used—the mark MAESTRO except as part of a unitary phrase such as MAESTRO TEQUILERO or MAESTRO DOBEL. Respondent argues that this is supported by the findings of its investigator, Ms. Cox, who searched U.S. import records, Certificate of Label Approval (“COLA”) records, archives, websites, social media, and the Internet at large,²¹ and that it is corroborated by Petitioner’s own specimens of use filed in 2009, 2015 and 2019 and its witness’s testimony.²²

To decide the counterclaim, we review the record evidence of Petitioner’s use of its mark. We begin with the testimony (and excerpted images from the associated exhibits) of Petitioner’s witness Ms. Beristain, who has worked as Brand Director for Petitioner’s brand at its U.S. distributor, Proximo Spirits, Inc., since August 1, 2017,

²¹ 99 TTABVUE (Cox Dec. & Exs. A-D); *see also* 117 TTABVUE 34-40 (Cox Tr. at 31-37).

²² 134 TTABVUE 18-21. Respondent intimates that bottles with wooden caps seen in the specimens for Petitioner’s 2009 statement of use were not sold in the United States but were only sold in Mexico, citing Ms. Beristain’s testimony about a photo in a 2021 article. *See* 134 TTABVUE 19 (citing 101 TTABVUE 104-06). This is not relevant because Respondent does not base its counterclaim on nonuse of MAESTRO at the time the statement of use was due, a ground for cancellation that was no longer available when this proceeding was filed, *see* 15 U.S.C. § 1064, or on fraud in procurement of the registration.

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and who is responsible for overseeing the advertising and promotion of the tequila sold under Petitioner's Marks.²³

16. Maestro Tequilero, through its distributor, Proximo Spirits, Inc. ("Proximo") has been selling tequila bearing the MAESTRO Marks throughout the U.S. since at least as early as 2008.

17. The invoice for the U.S. consignment of the first Maestro products bearing any of the MAESTRO Marks from Casa Cuervo S.A. de C.V. to Proximo dates back to March 12, 2008. A copy of this Invoice [Bates number omitted] is attached as Exhibit 1 to this declaration (hereinafter, "Beristain Exh. ___")



Casa Cuervo SA de CV
 CCU870622986
 Guillermo González Camarena 800 Piso 4
 Col. Santa Fe, Alvaro Obregón
 C.P. 01210 Ciudad de México Mexico
 Tels: 58032400


SAP ORDER : 5961875
 DELIVERY : 80375752
 SHIPMENT NUM. :83874
 STOR. LOCATION: 11X3

SOLD TO:			CONSIGNEE TO:					
PROXIMO SPIRITS INC 12627 SAN JOSE BOULEVARD UNIT 602 32223 JACKSONVILLE FLORIDA USA,12627 Florida,USA			PROXIMO SPIRITS INC. WESTERN CARRIERS 2400 83 RD STREET NORTH BERGEN NEW JERSEY USA,07047 New Jersey,USA					
			<table border="1"> <tr> <td>INVOICE</td> </tr> <tr> <td>10200016670</td> </tr> </table>				INVOICE	10200016670
INVOICE								
10200016670								
DATE	EXP.PLACE	CURR	VIA	CUSTOMER	SALES AREA	ORDER NO.(P.O)		
12 MAR 2008	Jalisco	USD	E.U.	5323	A05	PROX-DODIAMOND01		
KEY	QUANTITY	DESCRIPTION		%ALC	UNIT PRICE	TOTAL		
XUS377	5 CS	TEQUILA MAESTRO DOBEL REPOSADO 3/750ML REPOSADO 100% AGAVE 00108E046 5 CS		40				
		TOTAL						
<table border="1"> <tr> <td style="width: 50%;"></td> <td style="width: 50%;"></td> </tr> </table>								
PRODUCT MADE IN MEXICO / TRADEMARK REGISTERED								

SPOSICIONES FISCALES

18. It is my understanding that Proximo made its first sales of goods bearing the MAESTRO Marks in the United States in July 2008. Beristain Exh. 2 [Bates number omitted].

²³ 46 TTABVUE 2 (Beristain Dec. ¶¶ 2-3).

Please Remit Payment To: Proximo Spirits, Inc. 3 Second Street, Suite 1101 Jersey City, NJ 07302		 PROXIMO		Invoice 900003796 Invoice Date 06/22/2008 Please Include invoice # on check. NJ-I-15203 NJ-P-15158		
Bill to: BREAKTHRU BEVERAGE WISCONSIN LLC 500 W. North Shore Drive Hartland WI 53029 USA		Ship to: BREAKTHRU BEVERAGE WISCONSIN LLC 500 W. North Shore Drive Hartland WI 53029 USA		SAP Sales Order: 8004059 Outbound Delivery: 84803820		
Customer	Ship Via	Incoterms		Terms		
1000291		COLLECT		30 Days		
Purchase Order Number		Sales Person		Ship Date	Our Order Number	
S1225				07/22/2008	8004059	
Qty Shipped	Item Description		Customer Code		Unit Price	Extended Price
	Item Number	Liters	Loct	U/M	Discount %	Tax
408	TEQ.RESERVA DEL MAESTRO REP 40% 3/750 ML WXUS377	8,234,149.92	1030	CS	114.00	N

19. The MAESTRO Marks have been continuously used in U.S. commerce in connection with Petitioner’s Goods since that date.

20. Photographs showing Petitioner’s use of the MAESTRO Marks on several different product lines are attached. Beristain Exh. 3 [Bates numbers omitted].





21. Proximo also provides other goods for use in connection with the promotion of the tequila sold under the MAESTRO Marks including barware, bottle openers, tap handles and infusion barrels. The use of such goods serves to increase brand awareness of the MAESTRO products.

22. Maestro Tequilero and Proximo's use of the MAESTRO Marks, has been continuous from the respective dates of first use through the present day.²⁴

²⁴ *Id.* at 5-6, 16-24 (Beristain Dec. ¶¶ 16-22 and Exs. 1-3).

The only evidence Respondent offers in support of nonuse is the testimony of its investigator, Ms. Cox. However, Ms. Cox did not state that she uncovered no uses of Petitioner's Marks in connection with tequila products. Instead, Ms. Cox testified that all references she found for MAESTRO used with Petitioner's products had some other "sort of modifier, additional word, or additional term."²⁵ This includes her searches of U.S. import records, websites (including maestrodobel.com and proximospirits.com among many others), social media accounts (such as <https://www.facebook.com/dobeltequila>, <https://twitter.com/dobeltequila>, and <https://www.instagram.com/dobeltequila>) and archived news databases and retailer websites.²⁶ According to Ms. Cox, on social media, "[a]ny reference to MAESTRO on its own without any sort of modifier, additional word, or additional term was in reference to an individual, not a tequila."²⁷

Ms. Cox's testimony does not support a finding that Petitioner stopped using MAESTRO, but is consistent with Ms. Beristain's testimony about Petitioner's sales in the U.S.²⁸ This brings us to the heart of Respondent's counterclaim, whether Petitioner's manner of using MAESTRO is sufficient to avoid abandonment of trademark rights. We find that it is.

²⁵ 99 TTABVUE 3-6 (Cox Dec. ¶¶ 6-7, 9-11).

²⁶ *Id.* at 4-6 (Cox. Dec. ¶¶ 9-11).

²⁷ *Id.* at 5 (Cox. Dec. ¶ 11).

²⁸ *See, e.g., id.* at 4 (Cox Dec. ¶ 9), 12 (Cox Report ¶ 6.2) and 39-43 (Cox Report Ex. D) (spreadsheet with results of searches of U.S. maritime import records showing imports and exports of tequila with product descriptions including one or more of Petitioner's Marks from each of the years 2013 and 2015-2024); *see also* 117 TTABVUE 36-37, 55-61 (Cox Tr.).

It is well settled that a mark need not appear as the only mark—or even the most prominent mark—on the packaging for goods in order to constitute trademark use. *See Gen. Foods Corp. v. Ito Yokado Co., Ltd.*, No. 91063721, 1983 TTAB LEXIS 70, at *6, *aff'd mem.*, No. 84-517 (Fed. Cir. 1984) (“Nothing in the Trademark Act precludes an owner from using more than one trademark on a product and each may be separately registered and separately protected.”). The mere fact that two or more elements form a composite mark does not necessarily mean that those elements are inseparable for registration purposes. A mark owner has some latitude in selecting the mark it wants to register and “may seek to register any portion of a composite mark if that portion presents a separate and distinct commercial impression” which indicates the source of the goods and distinguishes them from the goods of others. *In re 1175856 Ontario Ltd.*, No. 78442207, 2006 TTAB LEXIS 468, at *4-5 (citing *Institut National des Appellations D’Origine v. Vintners Int’l Co. Inc.*, 958 F.2d 1574, 1582 (Fed. Cir. 1992); *In re Chem. Dynamics Inc.*, 839 F.2d 1569, 1571 (Fed. Cir. 1988)). “If the portion of the mark sought to be registered does not create a separate and distinct commercial impression, the result is an impermissible mutilation of the mark as used.” *1175856 Ontario*, 2006 TTAB LEXIS 468, at *5. The issue “all boils down to a judgment as to whether that designation for which registration is sought comprises a separate and distinct ‘trademark’ in and of itself.” *Chem. Dynamics*, 839 F.2d at 1571 (quoting 1 J.T. McCarthy, TRADEMARKS AND UNFAIR COMPETITION (McCarthy) § 909 (2d ed. 1984)).

In considering whether a designation makes a separate and distinct commercial impression, the circumstances vary widely and each case must be decided on its own facts. *Institut National Des Appellations D'Origine*, 958 F.2d at 1582. The mark “as actually used must not be so entwined (physically or conceptually) with other material that it is not separable from it in the mind of the consumer.” *In re Yale Sportswear Corp.*, No. 78653373, 2008 TTAB LEXIS 34, at *5.

We find that Petitioner’s evidence shows its use of MAESTRO as a trademark for tequila both alone and as part of one or more composite marks. As seen in the images above, the word MAESTRO appears in several places on the bottles for Petitioner’s products. In each instance, the word MAESTRO appears on a separate line from other

words, as in the following:



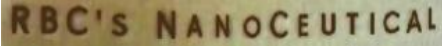
In some instances, MAESTRO appears in a different size font compared to the words around it, and is even in some instances followed by a trademark registration symbol, as in the examples below:



At a minimum, these uses of MAESTRO on a separate line, in a different size font, and at times with its own trademark registration symbol create a separate and distinct commercial impression from the other words and matter on the label and bottle sufficient to constitute use of the MAESTRO mark.

Respondent argues that MAESTRO does not create a separate and distinct commercial impression because it is always used to modify another word, such as DOBEL or TEQUILERO.²⁹ We are not persuaded. Even if Respondent's factual assertion were true, there is no absolute rule that a term that modifies or is modified by another term cannot be separately registered; instead, we must consider the mark's overall commercial impression based on the particular facts and circumstances before us. *See, e.g., Institut Nat'l Des Appellations D'Origine*, 958 F.2d at 1582-83 (no mutilation found by registering CHABLIS WITH A TWIST instead of

²⁹ 134 TTABVUE 25-26.

CALIFORNIA CHABLIS WITH A TWIST which appeared on specimen); *In re Royal Body Care, Inc.*, No. 78976265, 2007 TTAB LEXIS 30, at *7-8 (specimen showing  supported registration of NANOCEUTICAL because “the terms RBC’s and NANOCEUTICAL are separate, not connected. They do create two separate impressions....”); *In re Raychem Corp.*, No. 73690098, 1989 TTAB LEXIS 36, at *4-5 (TINEL-LOCK separately registrable where it appeared on specimen as TRO6AI-TINEL-LOCK-RING).

Nor do we regard MAESTRO as used on Petitioner’s goods to serve only as a modifier for other words. Respondent argues that

In Spanish, when used as an adjective referring to an object, the word “maestro” indicates the object is an exemplary version of the object (e.g. master work, master plan).... When used as a noun, “maestro” means “master” or “teacher.”...When used before another noun as a title, “Maestro” has meaning within the tequila industry: Before the term “tequilero,” as in “maestro tequilero,” it indicates a master tequila maker or a “master blender” of tequila.... The term “maestro,” when it precedes a noun, is also used as a title outside of the tequila industry, indicating a person who is an expert or a respected teacher in their particular industry or area of study.³⁰

Respondent contends that “[t]hroughout the alcohol industry, ‘maestro’ and its legal equivalents are used with proper nouns to identify the distiller of the relevant

³⁰ 134 TTABVUE 14-15 (internal citations to record omitted). Respondent submitted extensive dictionary evidence of the meanings of “maestro,” “master” and “mastro” in English, Spanish and Italian, along with its witnesses’ testimony about the meanings of certain of these terms, as pertaining to alleged abandonment, the similarities or differences of the marks, and Respondent’s contention that third-party marks using these words weaken Petitioner’s Marks. We consider Respondent’s evidence and proffered connotations with respect to each of the issues as appropriate.

alcohol associated with a brand (e.g. maestro ronero/master rum maker or maestro mezcalero/master mezcal maker).”³¹ Thus, Respondent argues, Petitioner’s uses of MAESTRO in MAESTRO TEQUILERO, MAESTRO DOBEL and its other asserted marks “are unitary phrases, conveying commercial impressions distinct from what would be conveyed by MAESTRO alone, so they do not support MAESTRO as a standalone mark.”³² We have considered all of Respondent’s arguments, but do not find that consumers would apply direct translations of the word MAESTRO or consider it only as modifying other words when used in Petitioner’s Marks.

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine issues such as genericness, descriptiveness and similarity of connotation when compared to English word marks. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005). “Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline,” with translation appropriate only when the ordinary American consumer would stop and translate the word into its English equivalent. *Id.* (cited in *In re Vetements Grp. AG*, 137 F.4th 1317, 1324-25 (Fed. Cir. 2025), *cert. denied*, No. 25-215, 2026 U.S. LEXIS 373). “When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of

³¹ *Id.* at 15.

³² *Id.* at 26.

foreign equivalents will not be applied.” *Palm Bay Imps.*, 396 F.3d at 1377 (citing *In re Tia Maria, Inc.*, 1975 TTAB LEXIS 130, at *41).

Translation is not required when the foreign word “has such a well established alternative meaning that the literal translation is irrelevant because even [foreign] speakers would not translate the mark.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 1352 (Fed. Cir. 2009); *accord Vetements*, 137 F.4th at 1323, 1331.

Petitioner’s witness testified, “[g]iven the presence and promotion of the MAESTRO branded goods at art, fashion and professional sporting events, and in a broad range of national media, Maestro Tequilero/Proximo’s target consumer for its MAESTRO branded goods is very broad. It generally consists of all male and female consumers in the public age 21 or older who have recently purchased tequila or intend to do so in the near future.”³³ This includes those who speak Spanish and those who do not. That Spanish is a common, modern language, *see infra* at 40, does not require translation of “maestro” under the doctrine of foreign equivalents because it is a known English word that ordinary consumers are unlikely to stop and translate. “Maestro” appears in multiple American English dictionaries, where it is defined to mean “a master in an art, especially a composer, conductor, or music teacher”³⁴ or

³³ 46 TTABVUE 10 (Beristain Dec. ¶ 41).

³⁴ *See, e.g.*, 73 TTABVUE 35-37 (THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2011). This case is different from *In re Magnesita Refractories Co.*, 2017 U.S. App. LEXIS 23845, at *2 (Fed. Cir. Nov. 27, 2017), cited by Respondent (134 TTABVUE 48), where there was no mention that MAGNESTIA was a known English word.

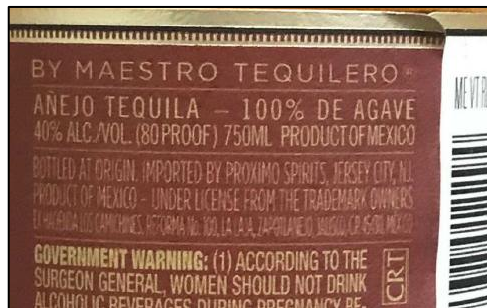
similar.³⁵ Consumers are not likely to translate the word MAESTRO to mean “teacher” or “master” as opposed to the known, more nuanced English meaning of a “master in an art.” *See, e.g., Cont’l Nut Co. v. Cordon Bleu*, 494 F.2d 1395, 1396 (CCPA 1974) (CORDON BLEU has a significance to the American public that is distinct from its literal translation BLUE RIBBON, precluding application of the doctrine of foreign equivalents). In the context of Petitioner’s ’848 Registration, we find it appropriate to treat MAESTRO as an English word.

Respondent does not offer persuasive arguments, or evidence, that the average consumer’s perception of the overall commercial impression of MAESTRO as used on Petitioner’s goods would be altered by some asserted uses of the word in a title. MAESTRO is used in multiple marks appearing on the same bottle, as seen below:

³⁵ *See, e.g., 73 TTABVUE 27-29* (MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2009) defining “maestro” as “a master, usu. in an art; esp : an eminent composer, conductor, or teacher of music”); *id.* at 31-33 (NEW OXFORD AMERICAN DICTIONARY (3d ed. 2010) defining “maestro” as “a distinguished musician, esp. a conductor of classical music; a great or distinguished figure in any sphere”); *id.* at 47-49 (WEBSTER’S NEW WORLD COLLEGE DICTIONARY (5th ed. 2018) defining maestro as “a master in any art; esp. a great composer, conductor, or teacher of music”).


Although there are similarities, these definitions of maestro are more nuanced than English translations of the Spanish word maestro, which include “teacher” or “master” in addition to “expert” or “maestro.” *See, e.g., 73 TTABVUE 7-9* (The OXFORD SPANISH DICTIONARY provides first meaning of maestro as “teacher, school-teacher” followed by other meanings including master in various disciplines); *Id.* at 15-17 (The UNIVERSITY OF CHICAGO SPANISH DICTIONARY provides meanings “(docente) (school) teacher; (artesano) master”).

The Italian-English dictionary entries Respondent provides for “maestro” are not relevant because consumers would understand that tequila originates in Mexico, a Spanish-speaking country, as indicated by the statement on the goods that they are made in Mexico.



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These uses include , “RESERVA DEL MAESTRO TEQUILERO TEQUILA 100% DE AGAVE” and “BY MAESTRO TEQUILERO.” Respondent submitted evidence that “maestro tequilero” refers to the person in charge of tequila

³⁶ 46 TTABVUE 42-47 (Beristain Dec. Ex. 6).

distilling or blending³⁷ and similar use of “maestro” to denote the person in charge of making mezcal (“maestro mezcalero”) and rum (“maestro ronero”).³⁸

It may be the case that some American consumers are aware of uses of “maestro tequilero” as a sort of term of art within the tequila industry. However, this does not mean that MAESTRO fails to make a separate and distinct commercial impression on the average consumer. As even Respondent argues, consumers can accept that a word may have slightly different connotations when used with some words than with others. Just because there are uses of the word for a blender or distiller of tequila in Mexico, the country of origin for tequila, does not preclude consumers from understanding MAESTRO as used in Petitioner’s marks to convey its commonly understood English meaning. Although not necessary to our conclusion, this understanding is supported by articles referring to Petitioner’s products as “Maestro Tequila” or the “Maestro Tequila brand.”³⁹

³⁷ See, e.g., 63 TTABVUE 7 (Joel Dec. ¶¶ 26, 27, 29); 68 TTABVUE 16 (Hermosillo Dec. ¶ 9 (“Maestro Tequilero’ is a title that refers to someone very knowledgeable in the tequila distillation process. Tequila distillers have one or more Maestro Tequileros at the distillery to oversee agave cultivation, develop new formulas, develop or modify the distillation process, the aging process, and generally oversee the production of one or more tequila formulas. These functions are analogous to the functions of a master in the distillation of whiskey or a master brewer in a brewery.”). See also 63 TTABVUE 9, 50-52 (Joel Dec. ¶ 39, Ex. F); 71 TTABVUE 13, 17, 44, 54 (examples of other uses of “maestro tequilero”).

³⁸ 63 TTABVUE 9-11, 53-62 (Joel Dec. ¶¶ 40-45 and Exs. G-H); 71 TTABVUE 21, 28, 49 (examples of uses with mezcal and rum).

³⁹ See 86 TTABVUE 11 (article stating “Maestro tequila is [a] Cuervo product”); 46 TTABVUE 70-74 (article referring to the “Maestro Tequila brand”). Respondent argues that at least one of these articles is foreign (see 134 TTABVUE 34-35) but both articles are written in English, accessible in the U.S., and are addressed broadly to people interested in travel to Mexico or tequila. We therefore consider the articles probative of consumer impressions generally, including those of U.S. consumers. See *In re Bayer AG*, 488 F.3d 960, 969 (Fed. Cir. 2007) (depending on the circumstances, “[i]nformation originating on foreign websites or in foreign

With respect to MAESTRO DOBEL, Respondent notes that Petitioner is owned by the Beckmann family, and reasons that

Its MAESTRO DOBEL brand refers to patriarch Juan Beckmann's son, Juan Domingo Beckmann Legorreta ("Dobel" is a portmanteau of his name: **D**omingo **B**eckmann **L**egorreta). "Maestro Dobel" translates to "Master Dobel" because "Dobel" is a proper noun.⁴⁰

Through Mr. Beth, Respondent submitted evidence about the origin of MAESTRO DOBEL including:

- Article in Detroit MetroTimes stating "The first-ever multi-aged clear tequila, Maestro Dobel is a fairly new player in the agave scene. Founded in 2008, the brand was created by Domingo 'Dobel' Beckmann, the 11th generation leader of Jose Cuervo. He worked with master tequila distillers Marco Anguiano and Luis Yerenas, which is where the 'maestro' in Maestro Dobel comes from."⁴¹
- Empire Wine website stating "Dobel was created by and named after Juan-Domingo 'Dobel' Beckmann, the eleventh-generation leader of Jose Cuervo tequilas, in collaboration with master distillers ('Maestros') Marco Anguiano and Luis Yerenas...."⁴²

These articles do not show that the words MAESTRO and DOBEL are inseparable; indeed, they state that MAESTRO refers to persons **other than** the scion of the Cuervo family. Petitioner's witness Ms. Beristain testified that Mr. Legoretta is

news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark"); *In re Well Living Lab Inc.*, No. 86440401, 2017 TTAB LEXIS 156, at *12 n.10 (discussing considerations including whether websites are in English and nature of the goods), *aff'd mem.* 749 Fed. Appx. 987 (Fed. Cir. 2018).

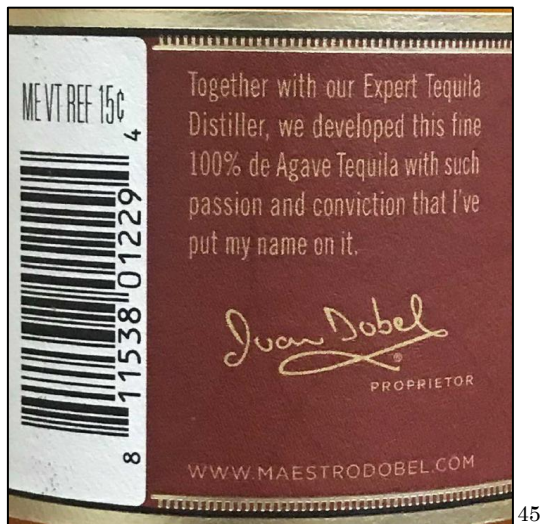
Evidence that consumers, and Petitioner itself at times, refer to the brand as DOBEL, *see, e.g.*, 134 TTABVUE 34 (noting that Petitioner uses social media handle "Dobel Tequila"), is not to the contrary, as nothing precludes use of more than one mark for a product.

⁴⁰ 134 TTABVUE 9 (emphasis in original).

⁴¹ 63 TTABVUE 8, 41-43 (Joel Dec. ¶¶ 35-36 and Ex. D).

⁴² *Id.* at 9, 46-49 (Joel Dec. ¶¶ 37-38 and Ex. E).

“referred to as ‘Juan Dobel’ for marketing purposes, an 11th generation tequila master descended directly from Jose Cuervo.”⁴³ But like the articles quoted above, the few pieces of record evidence where we find Petitioner publicly mentioning “Juan Dobel”⁴⁴ do not equate him with MAESTRO, as in a label on the back of Petitioner’s bottles indicating that the brand’s “Expert Tequila Distiller” is someone else:



As stated above, we do not believe MAESTRO should be translated to “master” (as in “master distiller”) in Petitioner’s Marks. And there is no evidence that “Dobel” is a known surname or of the extent to which consumers are aware of the significance of DOBEL in Petitioner’s Marks. MAESTRO DOBEL would not necessarily be perceived as unitary and inseparable, particularly by consumers unfamiliar with the derivation of DOBEL, or by consumers who are aware of the derivation but know that others are

⁴³ 46 TTABVUE 3 (Beristain Dec. ¶ 10).

⁴⁴ The only references we find to this significance on Petitioner’s goods are signatures appearing on the back of the bottle *See id.* at 42-49 (Beristain Dec. Ex. 6). Even articles about a marketing collaboration emphasizing DOBEL do not mention Mr. Legoretta or “Juan Dobel.” *See* 101 TTABVUE 44-46, 136-43 (Beristain Dep. and Exs. 4-6).

⁴⁵ 46 TTABVUE 47.

credited as being the “maestro” behind the brand. And “[e]ven terms that are connected may still create separate commercial impressions.” *Royal Body Care*, 2007 TTAB LEXIS 30, at *7. We find that to be the case here.

Respondent has failed to show Petitioner’s nonuse of the MAESTRO mark. The counterclaim for cancellation of Petitioner’s ’848 Registration based on abandonment is denied.

IV. Petitioner’s Claim Based on Likelihood of Confusion

A. Petitioner’s Entitlement and Priority

Entitlement to a statutory cause of action is a requirement that must be proven by the plaintiff in every inter partes case. *See Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 1303 (Fed. Cir. 2020). To do so, a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by registration of the mark in violation of the statute. *Curtin*, 137 F.4th at 1364-65, 1367 (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 120-37 (2014)). Section 14 of the Trademark Act, 15 U.S.C. § 1064, provides that a petition to cancel may be filed “by any person who believes that he is or will be damaged ... by the registration of a mark.” Under Trademark Act Section 14(1), a cancellation action may be brought on the ground of likelihood of confusion before a registration is five years old, *see* 15 U.S.C. § 1064(1), and this action is timely because Respondent’s involved registrations issued in August and September 2019 and the petition was filed in July 2020. The record includes status and title copies of Petitioner’s Registrations, which support a

plausible likelihood of confusion claim and establish Petitioner's entitlement to a statutory cause of action for cancellation of Respondent's registrations. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000) (pleaded registrations and products sold under the mark "suffice to establish ... direct commercial interest"; a belief in likely damage can be shown by establishing a direct commercial interest); *see also Look Cycle Int'l v. Kunshan Qiyue Outdoor Sports Goods Co.*, No. 92079409, 2024 TTAB LEXIS 289, at *7-8.

"In a cancellation proceeding such as this one where both parties own registrations, priority is in issue." *Double Coin*, 2019 TTAB LEXIS 347, at *14 (citation omitted). Petitioner must prove that it has a proprietary interest in its pleaded marks obtained before any date of priority on which Respondent may rely. *Sabhnani v. Mirage Brands, LLC*, No. 92068086, 2021 TTAB LEXIS 464, at *19. To do so, Petitioner may rely on the filing dates of the applications underlying its pleaded registrations. *See, e.g., Look Cycle*, 2024 TTAB LEXIS 289, at *9 ("Under Section 7(c) of the Trademark Act, 15 U.S.C. § 1057(c), a party may rely upon the filing date of the application underlying its registration for purposes of priority as its constructive use date."). Having not submitted evidence of earlier use,⁴⁶ Respondent may rely on the August 9, 2018 and October 18, 2018 filing dates of the applications underlying its LOTE MAESTRO standard character and LOTE MAESTRO word and design registrations, respectively. The latest filing date for any of Petitioner's

⁴⁶ *See, e.g.*, 68 TTABVUE 18 (Hermosillo Dec. ¶ 22) (LOTE MAESTRO brand launched in 2019).

Registrations is July 5, 2018,⁴⁷ preceding Respondent’s constructive use priority dates and establishing Petitioner’s priority.

B. Applicable Law

“The Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant [or registrant], to cause confusion [or] mistake, or to deceive.” *In re Charger Ventures LLC*, 64 F.4th 1375, 1379 (Fed. Cir. 2023) (cleaned up).

The determination under Section 2(d) involves an analysis of all of the probative evidence of record bearing on a likelihood of confusion under the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973) (“*DuPont*”). We consider all *DuPont* factors for which there is argument and evidence of record. *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 1379 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Charger Ventures*, 64 F.4th at 1381 (“In any given case, different *DuPont* factors may play a dominant role and some factors may not be relevant to the analysis.”) (citing *Bose Corp. v. QSC Audio Prods., Inc.*, 293 F.3d 1367, 1370 (Fed. Cir. 2002)).

“Each case must be decided on its own facts and the differences are often subtle ones.” *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 1199 (CCPA 1973). However, in any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated*

⁴⁷ 47 TTABVUE 6-103 (TDSR printouts showing application filing dates between August 29, 2003 and July 5, 2018 for each of Petitioner’s Registrations).

Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 1103 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

We focus on the standard character mark MAESTRO in Petitioner’s ’848 Registration, because this mark is most similar to Respondent’s involved marks. Because we find confusion likely as to Petitioner’s MAESTRO mark, we need not consider whether there is a likelihood of confusion between Respondent’s marks and Petitioner’s other pleaded marks. *See Heil Co.*, 2024 TTAB LEXIS 494, at *45.⁴⁸ Moreover, in view of the presumptions afforded Petitioner by the registration under Trademark Act Section 7(b), 15 U.S.C. § 1057(b), we can decide the claim without reaching the more fact-intensive considerations involved with common law rights in the same mark.

C. Similarity or Dissimilarity of the Goods, Trade Channels and Classes of Consumers, and the Conditions of Sale

Under the second, third and fourth *DuPont* factors, we consider the “similarity or dissimilarity and nature of the goods,” the “similarity or dissimilarity of established, likely-to-continue trade channels,” and the “conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing,” respectively. *DuPont*, 476 F.2d at 1361. We base our comparisons of the nature of the goods, channels of trade and classes of consumers on the goods as identified in the

⁴⁸ For this reason, we also need not decide whether Petitioner properly pled, or has proven, a family of MAESTRO marks. *See* 134 TTABVUE 79-81 (appendix to Respondent’s brief arguing that Petitioner did not plead ownership of a family of marks and objecting to consideration of a family). We do not rely on a family of marks in this case.

parties' registrations. *Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 1323-25 (Fed. Cir. 2014) (consumer sophistication must be based on identified goods and services, not on current use); *Sabhnani*, 2021 TTAB LEXIS 464, at *25 (“[A]s with the relatedness of the goods, the similarity or dissimilarity of the channels of trade must be determined based on the identifications of goods in the parties’ registrations rather than current real-world conditions.”).

The goods identified in Respondent’s registrations, “alcoholic beverages, except beer,” encompass the “tequila” identified in Petitioner’s ’848 Registration. *See Monster Energy Co. v. Lo*, No. 91225050, 2023 TTAB LEXIS 14, at *20 (“If an application or registration describes goods or services broadly, and there is no limitation as to their nature, it is presumed that the registration encompasses all goods or services of the type described.”) (cleaned up). Thus, the goods are legally identical in part. *See, e.g., In re Medline Indus., Inc.*, No. 87680078, 2020 TTAB LEXIS 16, at *13 (applicant’s “medical examination gloves” were legally identical to registrant’s “gloves for medical use” and “protective gloves for medical use”).

Neither identification contains any limitations on the channels of trade and because the goods are in-part legally identical, we must presume that they flow through the same trade channels to the same classes of consumers with respect to the legally identical goods. *See In re Viterra Inc.*, 671 F.3d 1358, 1362 (Fed. Cir. 2012) (“[I]t is well established that, absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers.”) (cleaned up), cited in *Cai v. Diamond Hong, Inc.*, 901

F.3d 1367, 1372 (Fed. Cir. 2018); *see also Stone Lion*, 746 F.3d at 1323 (Board correctly presumed that the trade channels and consumers were the same with respect to the parties' legally identical services).

Turning to purchasing conditions, purchaser sophistication and care may minimize likelihood of confusion while impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay Imps.*, 396 F.3d at 1376. Petitioner argues that, given this principle, "the Board must assume that the purchasers of the parties' goods include ordinary consumers who purchase goods on impulse,"⁴⁹ whereas Respondent argues that its tequila is priced as high as \$100 per bottle and "would tend to appeal to connoisseurs."⁵⁰

Because the identifications of goods in Respondent's and Petitioner's registrations do not include any price restrictions, we must consider that the parties' goods are sold at all of the normal price points for such goods. *Sock It To Me, Inc. v. Fan*, No. 91230554, 2020 TTAB LEXIS 201, at *24-25 (where there are no limitations in the identification, goods encompass "all goods of the type identified, without limitation as to their nature or price") (citation omitted).

The evidence shows that tequila may be offered at a wide range of prices. Lucas Perez, Brand Ambassador and U.S. Sales Director for Respondent's Mexican export

⁴⁹ 125 TTABVUE 48.

⁵⁰ 134 TTABVUE 45. We do not find the cases cited by Respondent to be persuasive because they are district court infringement cases where, unlike a Board proceeding, it is appropriate to consider "the full range of a mark's usages, not just those in the application." *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 145 (2015).

company, testified that he has seen tequila offered at Costco for under \$15 to over \$1,000 and at Total Wine & More for under \$10 to a couple thousand dollars.⁵¹

Respondent's argument that consumers of its higher-priced goods are sophisticated and less likely to be confused is misplaced. Because its goods are not restricted as to quality or price, they are presumed to include products offered across the range of typical prices for such goods. *Cf. In re Aquitaine Wine USA, LLC*, No. 86928469, 2018 TTAB LEXIS 108, at *29 ("Wine purchasers are not necessarily sophisticated or careful in making their purchasing decisions, and where, as here, the goods are identified without any limitations as to trade channels, classes of consumers or conditions of sale, we must presume that Applicant's and Registrant's wine encompasses inexpensive or moderately-priced wine."). The evidence here shows that the goods include both high priced goods and lower priced goods that could appeal to ordinary consumers purchasing on impulse, and we must base our decision on those least sophisticated potential purchasers. *Look Cycle*, 2024 TTAB LEXIS 289, at *13 (citing *Stone Lion*, 746 F.3d at 1325).

D. Similarity or Dissimilarity of the Marks

We turn now to the first *DuPont* factor, which considers "[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression." *DuPont*, 476 F.2d at 1361. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at*

⁵¹ See 120 TTABVUE 52-53 (Perez Tr.); 65 TTABVUE 2-3 (Perez Dec. ¶¶ 1, 3-8) (describing responsibilities).

St. John's, LLC, No. 87075988, 2018 TTAB LEXIS 170, at *13 (citation omitted), *aff'd mem.*, 777 Fed. App'x 516 (Fed. Cir. 2019). “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*, 901 F.3d at 1373 (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368 (Fed. Cir. 2012)) (cleaned up). “On the other hand, in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.” *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (quoted in *Coach Servs.*, 668 F.3d at 1368). We focus “on the recollection of the average customer, who retains a general rather than specific impression of the marks.” *Inter IKEA Sys. B.V. v. Akea, LLC*, No. 91196527, 2014 TTAB LEXIS 166, at *17-18 (citations omitted). In comparing the marks, we must consider marks in their entirety and in light of the fallibility of memory. *See, e.g., In re St. Helena Hosp.*, 774 F.3d 747, 751 (Fed. Cir. 2014). Where, as here, the goods are in-part legally identical, a lesser degree of similarity between the marks may be sufficient to give rise to a likelihood of confusion. *See Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877 (Fed. Cir. 1992) (“When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.”); *Alfacell Corp. v. Anticancer, Inc.*, No. 92032202, 2004 TTAB LEXIS 441,

at *12 (lesser degree of similarity required “when marks are applied to legally identical goods”).

Respondent’s marks are LOTE MAESTRO in standard characters and LOTE



MAESTRO and design

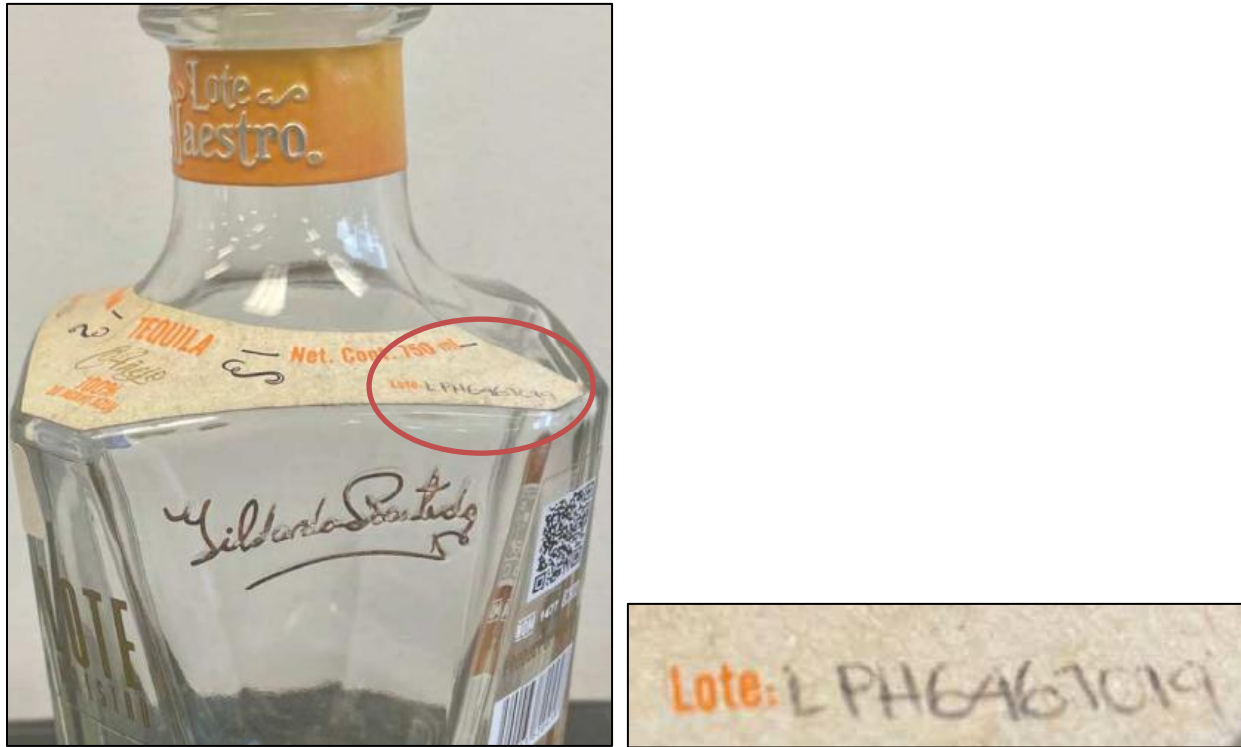
. Each mark incorporates Petitioner’s

MAESTRO mark in its entirety, creating similarities in appearance, sound and connotation from use of the identical word. *See Double Coin*, 2019 TTAB LEXIS 347, at *20 (although there is no explicit rule that such marks are similar, “[l]ikelihood of confusion often has been found where the entirety of one mark is incorporated within another”) (citation omitted).

We find that MAESTRO is the dominant element in both of Respondent’s marks. The record contains evidence that LOTE is a Spanish word meaning “batch,” “lot” or “plot” (of land).⁵² The evidence shows that LOTE has descriptive significance with

⁵² *See, e.g.*, 67 TTABVUE 6-20 (dictionary definitions for “lote”); 119 TTABVUE 25 (Hermosillo Tr.) (as used in LOTE MAESTRO, “the lote refers to a product or a group of products”).

respect to the goods, as reflected in its use on Respondent's product to identify the particular batch of tequila contained in the bottle:⁵³



Respondent concedes that in its marks “Lote” means “batch,” “lot,” or “plot,” and “lote maestro” means “masterful plot” or “masterful batch.”⁵⁴ LOTE, as used in LOTE

⁵³ See 123 TTABVUE 116-17 (Beth Tr.) (testifying that “Lote” in orange followed by a number is the batch number of that particular tequila); 168, 172 (excerpts of Beth Dep. Ex. 5) (oval added to indicate position of matter shown in close up). See also 119 TTABVUE 37-38 (Hermosillo Tr.) (lot designation preceded by “lote” appears on all bottles of LOTE MAESTRO tequila).

⁵⁴ 134 TTABVUE 9, 16. We agree that it is appropriate to translate at least the word LOTE in LOTE MAESTRO. The Board has consistently found that Spanish is a modern language commonly used in the United States. See, e.g., *Ricardo Media Inc. v. Inventive Software, LLC*, No. 91235063, 2019 TTAB LEXIS 283, at *19; *In re Aquamar, Inc.*, No. 85861533, 2015 TTAB LEXIS 178, at *12-13. As in those cases, we take judicial notice that, as of 2019, Spanish was the most spoken non-English language in the United States, with over 41 million speakers. See *Language Use in the United States: 2019*, <https://www.census.gov/library/publications/2022/acs/acs-50.html> (last visited February 2026); see also; 134 TTABVUE 48 (Respondent's arguments presume that Spanish is a common language). An ordinary American consumer who is familiar with both Spanish and English would perceive

MAESTRO, therefore has little source identifying significance. *Cf. Cunningham*, 222 F.3d at 947 (“the ‘descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion.’”) (quoting *Nat’l Data Corp.*, 753 F.2d at 1060). This is the case even though LOTE is the first word in the marks. *See, e.g., Double Coin*, 2019 TTAB LEXIS 347, at *22-23 (citing cases and reasoning that “ROAD WARRIOR looks, sounds, and conveys the impression of being a line extension of WARRIOR”).

When comparing the marks, we also consider any strength or weakness that has been shown for Petitioner’s mark. *Apex Bank v. CC Serve Corp.*, 156 F.4th 1230, 1236 (Fed. Cir. 2025). As explained below in our discussion of the fifth and sixth *DuPont* factors, *infra* at 46, we do not find that MAESTRO has commercial strength, or weakness, impacting our assessment of similarity. We find that MAESTRO is somewhat suggestive and not particularly strong conceptually, but it remains dominant as a source identifier compared to the concededly descriptive word “lote” in Respondent’s mark. *See, e.g., Sage Therapeutics, Inc. v. SageForth Psychological Servs., LLC*, No. 91270181, 2024 TTAB LEXIS 139, at *33 (citing *inter alia In re Great Lakes Canning, Inc.*, No. 73365360, 1985 TTAB LEXIS 75, at *7 (“the fact that a mark may be somewhat suggestive does not mean that it is a ‘weak’ mark entitled to a limited scope of protection”)).

LOTE as having its direct translation as batch, lot, or plot. *See Vetements*, 137 F.4th at 1327-28 (in an application for VETEMENTS for shirts, skirts and other clothing items, translation of “vetements,” “a simple and common word—the word for clothing” was appropriate because an appreciable number of Americans are capable of translating the term from French to English).

Respondent nonetheless argues that consumers would perceive the literal portions of the parties' marks differently due to differences in meaning and connotation:

The opening 'lote' in LOTE MAESTRO is a noun, and the following word 'maestro,' is an adjective modifying 'lote.' 'Lote' means 'batch,' 'lot,' or 'plot,' and modified by the adjective 'maestro,' or, 'masterful,' means 'master batch,' 'masterful batch,' 'masterful lot,' or 'masterful plot.' LOTE MAESTRO's meaning and commercial impression is therefore unlike the meaning of MAESTRO DOBEL, MAESTRO TEQUILERO, or RESERVA DEL MAESTRO. 'Maestro' in the phrases 'maestro tequilero' (master tequila maker) or 'Maestro Dobel' (Master Dobel), works in conjunction with the words that follow it to evoke a **person** who creates tequila, a meaning that is simply not available in LOTE MAESTRO, where the relevant noun is not a **person** but a **thing**—specifically a batch, lot, or plot. Similarly, 'maestro' in the descriptive phrase 'reserva del maestro'—as demonstrated by Petitioner's consistent use of it within the longer phrase 'reserva del maestro tequilero'—works in conjunction with the possessive 'del' to create a commercial impression in which 'maestro' is, again, a **person**.⁵⁵

We do not find that consumers would perceive such different connotations from the words in the respective marks. Consumers familiar with Spanish who understand LOTE MAESTRO to mean "masterful batch" would also be familiar with the more nuanced connotation of MAESTRO as a "master in an art." Yet consumers, including those members of the public age 21 and over who purchase tequila and other alcoholic beverages, retain general rather than specific impressions of marks and are unlikely to notice or recall the linguistic differences urged by Respondent. Comparing the standard character marks, MAESTRO and LOTE MAESTRO are obviously not

⁵⁵ 134 TTABVUE 43-44 (internal citations omitted, emphasis in original).

identical, but the test is not a side-by-side comparison. When considered in their entireties, we find that the overall impressions engendered by Petitioner's MAESTRO mark and Respondent's LOTE MAESTRO mark are quite similar in the context of the legally identical goods.

We next compare Petitioner's MAESTRO mark with Respondent's word and



design mark, , which “consists of a three-dimensional configuration comprising a singular concave bottle with alternating right side up and upside down triangular shapes with the front facing upright triangle containing the stylized wording ‘LOTE’ above the stylized wording ‘MAESTRO’ with a stylized raised design of a plate having grapes and a skewered piece of crescent shaped food at the bottom of the front facing triangle. The bottle stopper is an overall diamond jewel shape. The broken lines depicting the neck of the bottle and the perimeter of

the stopper indicate placement of the mark on the goods and are not part of the mark.”⁵⁶

Comparing the marks in their entireties, Respondent’s word and design mark contains additional features not present in Petitioner’s standard character MAESTRO mark, which create visual differences that might be noticed, particularly when the marks are viewed side-by-side. Respondent disclaimed exclusive rights in “the alternating triangular facets and tapered shape of the bottle and of the jewel-shaped faceted stopper.” The disclaimer does not remove this matter from the mark but effectively concedes that it is not inherently distinctive as applied to the goods. Disclaimed matter generally will not constitute the dominant part of a mark. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1309 (Fed. Cir. 2018). Visually, the raised food design is somewhat large, but it is placed near the bottom of the front facet and is both understated and decorative in appearance. Considering Respondent’s word and design mark in its entirety, the eye is drawn to the words appearing in dark font at the center of the bottle’s front facet.

As for sound, connotation and commercial impression, we consider that the words LOTE MAESTRO have greater source-identifying significance than the design elements because they are the only verbal elements and purchasers are more likely

⁵⁶ Registration No. 5846859. Respondent contends, in passing, that Petitioner waived its claim for cancellation of the LOTE MAESTRO and design mark “[b]y declining to offer any argument as to how GPH’s design mark is confusingly similar to Petitioner’s marks in its [opening brief].” 134 TTABVUE 39. We do not find that Petitioner waived its claim for cancellation of the LOTE MAESTRO and design mark, which was mentioned specifically in Petitioner’s opening brief, and also argued in Petitioner’s reply brief. 125 TTABVUE 11 (defining “LOTE MAESTRO Marks” to include both the standard character and word and design marks), 17; 139 TTABVUE 36-38.

to recall and use the words to ask for the goods. *See, e.g., Viterra*, 671 F.3d at 1362 (“In the case of a composite mark containing both words and a design, the verbal portion of the mark is the one most likely to indicate the origin of the goods to which it is affixed.”) (cleaned up). Under all of the circumstances, including the disclaimer of certain elements in Respondent’s composite mark, it is reasonable to accord the words greater weight in our analysis. *See, e.g., Charger Ventures*, 64 F.4th at 1382 (Board’s decision to focus on dominant portions of a mark was supported by substantial evidence).

As for the words, LOTE appears above and in a larger font than MAESTRO, likely emphasizing the connotation of the words as a high quality batch of tequila.⁵⁷ The visual prominence of LOTE is tempered somewhat by its descriptive meaning. The font itself is a simple one, and because Petitioner’s MAESTRO mark is in standard characters, it could be displayed in any presentation and font size or style, including that used in Respondent’s composite mark.

Ultimately, in comparing the marks, we are mindful that under actual marketing conditions, consumers do not necessarily have the luxury of making side-by-side comparisons, and must rely on their recollections of marks, which are normally general, rather than specific.

⁵⁷ *See, e.g.*, 119 TTABVUE 24 (Hermosillo Tr.) (“lote maestro” means a high-quality product); 65 TTABVUE 6 (Perez Dec. ¶ 26) (“the connotation of the LOTE MAESTRO brand is of a high quality batch of tequila, the cream of the crop, or the best of the best”).

E. Strength or Weakness of Petitioner’s MAESTRO Mark

“Two of the *DuPont* factors (the fifth and sixth) consider strength.” *Spireon, Inc. v. Flex Ltd.*, 71 F.4th 1355, 1362 (Fed. Cir. 2023). The fifth *DuPont* factor enables Petitioner to prove that its pleaded mark is entitled to an expanded scope of protection by adducing evidence of “[t]he fame of the prior mark (sales, advertising, length of use),” whereas the sixth *DuPont* factor allows Respondent to contract that scope of protection by adducing evidence of “[t]he number and nature of similar marks in use on similar goods [or services].” *Made in Nature*, 2022 TTAB LEXIS 228, at *23-24 (quoting *DuPont*, 476 F.2d at 1361).

In considering commercial strength, we assess the extent to which the relevant public recognizes a mark as denoting a single source. *See, e.g., Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 1324-1325 (Fed. Cir. 2017); *accord Palm Bay Imps.*, 396 F.3d at 1375 (fame for confusion purposes arises as long as a significant portion of the relevant consuming public recognizes the mark as a source indicator). Commercial strength, or fame, “may be measured indirectly, among other things, by the volume of sales and advertising expenditures of the goods traveling under the mark, and by the length of time those indicia of commercial awareness have been evident.” *Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 1319 (Fed. Cir. 2018) (quoting *Bose*, 293 F.3d at 1371). Commercial strength may also be measured by “widespread critical assessments; notice by independent sources of the goods or services identified by the marks; the general reputation of the goods or services; and social media presence.” *See Heil Co.*, 2024

TTAB LEXIS 494, at *51. If proven, fame “plays a dominant role in the process of balancing the *DuPont* factors.” *Palm Bay Imps.*, 396 F.3d at 1374 (cleaned up). “Because of the extreme deference that we accord a famous mark in terms of the wide latitude of legal protection it receives, and the dominant role fame plays in the likelihood of confusion analysis, it is the duty of the party asserting that its mark is famous to clearly prove it.” *Made in Nature*, 2022 TTAB LEXIS 228, at *35-36 (citing *Coach Servs.*, 668 F.3d at 1367).

Petitioner argues that its MAESTRO mark is well-known and famous and therefore enjoys a broad scope of protection. In support, Petitioner first points to its confidential advertising and sales figures, which it argues are comparable to prior cases in which a mark was found to be famous for purposes of the fifth *DuPont* factor.⁵⁸ Ms. Beristain testified in some detail about Petitioner’s advertising and promotion in the United States for its goods sold under the MAESTRO marks. This includes various types of mass media advertising, “tactical advertising” including tastings and sampling events, and sponsorships, such as the Official Tequila of the Professional Golfers Association (PGA) Tour and Miami’s Design Week.⁵⁹ According to Ms. Beristain, Petitioner’s tequila products have received a number of awards.⁶⁰ Ms. Beristain testified generally that sales of goods sold under Petitioner’s Marks have grown annually since the products were introduced in 2008, with sales nearly

⁵⁸ 125 TTABVUE 40-41.

⁵⁹ 44 TTABVUE 9-10 (confidential) (Beristain Dec. ¶¶ 33-40); 46 TTABVUE 9-10 (public).

⁶⁰ See 46 TTABVUE 11-12 (Beristain Dec. ¶ 47).

doubling between 2017 and 2022.⁶¹ She provided confidential U.S. sales and marketing figures for 2021 and estimated figures for 2022.⁶²

Defendant argues that “Petitioner’s uncontextualized sales and advertising numbers are insufficient on their own to show that Petitioner’s marks are strong, particularly because Petitioner primarily uses its trademarks all together, limiting the extent to which its numbers can ascribe strength to any one of its marks alone.”⁶³

We have considered Petitioner’s evidence and the caselaw cited in its brief, as well as Respondent’s arguments. We find the limited raw numbers provided by Petitioner to be appreciable, but there is no contextual evidence, such as market share, product rankings or information about the extent or reach of Petitioner’s advertising. When it comes to sales and advertising figures, “raw numbers alone in today’s world may be misleading.” *Bose*, 293 F.3d at 1375 (quoted in *Omaha Steaks*, 908 F.3d at 1320-21) (contextual evidence regarding the opposer’s advertising showed that consumers were regularly exposed to its marks on a nationwide scale). Petitioner provides evidence that its product is the “official tequila” of various PGA tournaments,⁶⁴ but offers no information about the reach of such advertising that could provide insight about the extent of consumer exposure to Petitioner’s brand. *See Keystone Consol. Indus. v. Franklin Inv. Corp.*, No. 92066927, 2024 TTAB LEXIS 290, at *49 (general

⁶¹ 46 TTABVUE 8 (Beristain Dec. ¶ 32).

⁶² 44 TTABVUE 8-9, 10, 26-28 (confidential) (Beristain Dec. ¶¶ 32, 35, 42-43 and Ex. 15).

⁶³ 134 TTABVUE 52 (citing *ProMark Brands, Inc. v. GFA Brands, Inc.*, No. 91194974, 2015 TTAB LEXIS 67).

⁶⁴ 46 TTABVUE 10, 66 (Beristain Dec. ¶ 40 and Ex. 10).

testimony about advertising was of limited probative value without evidence of the frequency, extent of distribution or reach of such advertising).

Although Petitioner does not offer evidence of the extent to which its sales and advertising figures are attributable to MAESTRO as opposed to other branding elements such as the word DOBEL, all of its tequila bottles bear MAESTRO in multiple places, and Petitioner provided evidence that in 2020 and 2021 it engaged in social media advertising featuring the word MAESTRO.⁶⁵ Between 2020 and 2022, when Petitioner's sales increased significantly, its MAESTRO-branded products received at least 20 awards, including medals at multiple competitions and the 2020 Bartender Spirits Tequila of the Year Award.⁶⁶

We find that, taken together, the evidence reflects at most a modest level of commercial success under the fifth *DuPont* factor.

Implicating the sixth *DuPont* factor, Respondent argues that “extensive third-party use renders Petitioner’s mark conceptually weak” because “‘Maestro’ and its legal equivalents have a common meaning as ‘master’ in the alcohol industry as well as in everyday parlance.”⁶⁷ Respondent contends that Petitioner acknowledged the weakness of its mark during prosecution of the application that matured into the '848 Registration.

⁶⁵ See, e.g., *id.* at 11, 50-60 (Beristain Dec. ¶ 46, Exs. 4 and 5; see also Ex. 7). The extent of this advertising is unclear, and may include advertising from Mexico, but at least one of the exhibits shows a Facebook post in English with the words “EXPERIENCE MAKES THE MAESTRO” above a bottle of Petitioner’s MAESTRO DOBEL HUMITO product. *Id.* at 51.

⁶⁶ See *id.* at 11-12 (Beristain Dec. ¶ 47).

⁶⁷ 134 TTABVUE 48.

“There are two prongs of analysis for a mark’s strength under the sixth factor: conceptual strength and commercial strength.” *Spireon*, 71 F.4th at 1362 (citing McCarthy § 11:80). “[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, 1345 (Fed. Cir. 2003).

Conceptual strength is a measure of a mark’s distinctiveness, “often classified in categories of generally increasing distinctiveness[:] ... (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *Spireon*, 71 F.4th at 1362. As noted above, the word MAESTRO appears in the dictionary, where its definitions include “a master in an art, especially a composer, conductor, or music teacher.” Petitioner’s ’848 Registration for the MAESTRO word mark is on the Principal Register without a claim of acquired distinctiveness, so the mark is presumed to be inherently distinctive for tequila. Trademark Act Section 7(b), 15 U.S.C. § 1057(b); *Brooklyn Brewery Corp. v. Brooklyn Brew Shop, LLC*, 17 F.4th 129, 147 n.7 (Fed. Cir. 2021).

“Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.” *Apex Bank*, 156 F.4th at 1235 (quoting *Palm Bay Imps.*, 396 F.3d at 1373). “The purpose of introducing evidence of third-party use is to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.” *Omaha Steaks*, 908 F.3d at 1324 (cleaned up). Such evidence tends to indicate a lack of commercial strength, while third-party registration evidence without proof of use

may bear on conceptual weakness if a term is commonly registered for similar goods. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 1374 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339-40 (Fed. Cir. 2015).

Respondent argues that “[c]onfusion between LOTE MAESTRO and Petitioner’s marks is unlikely because consumers have successfully distinguished between Petitioner’s marks and extensive use of ‘Maestro’ and its legal equivalents that are used in third-party trademarks throughout the same sales channels.”⁶⁸ Respondent also argues that “extensive third-party use renders Petitioner’s mark conceptually weak under factor 6.”⁶⁹ In support, Respondent submitted evidence of a number of third-party uses and/or registrations of marks with MAESTRO, MASTER and MASTRO for a wide variety of alcohol products, including beer, wine, and different types of spirits.⁷⁰ Respondent groups these marks in various ways to suit the argument being made, at times overstating their significance.⁷¹ Nonetheless, we have

⁶⁸ 134 TTABVUE 21.

⁶⁹ *Id.* at 48.

⁷⁰ *See* 60-62 TTABVUE (Internet evidence); 66 TTABVUE (third-party trademark registrations and applications); 70 TTABVUE (social media posts relating to the third-party goods). *See also* 63 TTABVUE 11-12, 76-98 (Beth Dec. ¶ 47) and Ex. L.

⁷¹ 134 TTABVUE 48-50. For example, in one place Respondent states “[t]here are 51 U.S.P.T.O. trademark records in the relevant classes of goods (i.e. classes 32 and 33) for marks **using the term ‘maestro,’** at least 29 of which have actual use,” *id.* at 49, while stating elsewhere that it “submitted 51 U.S.P.T.O. trademark records **using ‘maestro’ or a legal equivalent** in connection with alcoholic beverages and spirits.” *Id.* at 21 (emphasis added). The referenced submission contains evidence of 51 marks but only nine of them have the word MAESTRO. *See* 66 TTABVUE.

Respondent also fails to differentiate between marks asserted to be in use, potentially showing commercial weakness, and marks for which only registration evidence was provided,

culled this evidence in an effort to identify the marks most salient to potential commercial and/or conceptual weakness of Petitioner's MAESTRO mark.

As an initial matter, we disagree with Respondent that MASTER and MASTRO are "legal equivalents" of MAESTRO. For the reasons discussed above, it is not appropriate to translate Petitioner's MAESTRO mark under the doctrine of foreign equivalents because "maestro" is a known word in United States English meaning "a master in an art, especially a composer, conductor, or music teacher." Marks using the words MASTER or MASTRO are less similar to the involved marks than those marks are to each other and therefore are less probative of commercial weakness than marks using the word MAESTRO. *See, e.g., Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 675 (Fed. Cir. 1984) ("Applicant introduced evidence of eight third-party registrations for tea which contain the word 'SPICE', five of which are shown to be in use. None of these marks has a 'SPICE (place)' format or conveys a commercial impression similar to that projected by the SPICE ISLANDS mark, and these third-party registrations are of significantly greater difference from SPICE VALLEY and SPICE ISLANDS than either of these two marks [are] from each other."). In addition, many of the MASTER and MASTRO marks feature other, often distinctive, words or elements, further distancing them from the marks at issue here.⁷² *See Sabhnani*, 2021 TTAB LEXIS 464, at *32 (third-party registrations that

which themselves are not evidence of use, *see, e.g., Palm Bay Imports*, 396 F.3d at 1373, further complicating the analysis.

⁷² 61 TTABVUE 8-59, 79 (examples include BOWMORE MASTERS' SELECTION, BUCHANAN'S MASTER WHISKY, CONCERTMASTER, HENNESSY MASTER

are less similar than the involved marks and contain additional elements are less probative).

Moving on to those third-party marks with the word MAESTRO, Petitioner argues that they do not show weakness of its mark because they are either used with alcoholic beverages other than tequila or the evidence reflects modest, if any, use in the U.S.⁷³ We have considered all of Respondent's evidence of third-party marks used and/or registered for MAESTRO. Based on this review, we do not find that the evidence shows that consumers encounter so many similar marks for similar goods that they have become conditioned to distinguish the marks based on minute differences such that Petitioner's MAESTRO mark is commercially weak for tequila.

First, there are a few MAESTRO-formative marks used with beer, a good that is not included in either of the involved identifications. Other than both being alcoholic beverages, Respondent offers no reason why beer and tequila should be deemed similar for purposes of the sixth *DuPont* factor, and we find none in the record. *Cf. In re White Rock Distilleries, Inc.*, No. 77093221, 2009 TTAB LEXIS 601, at *7 (TTAB 2009) (“[t]here is no per se rule that holds that all alcoholic beverages are related” for purposes of the second *DuPont* factor). Three of the four beer references appear on specialty beer websites, and the one seen on totalwine.com (where Petitioner's product is also sold) is found under the beer/ale/barley-wine category as opposed to

BLENDER'S, JACK DANIEL'S MASTER DISTILLER). For most of the MASTRO-formative marks, it is part of a longer term, at least two (MASTROBERARDINO and MASTROGIANNIS) being surnames. *See* 62 TTABVUE 10-13, 17-25.

⁷³ 139 TTABVUE 32-35.

the spirits/tequila category.⁷⁴ *See Omaha Steaks*, 908 F.3d at 1324 (relevant inquiry is the “number and nature of similar marks in use on similar goods”).

Most of the MAESTRO-formative marks (about two dozen) are used (and in a few cases registered) for wine.⁷⁵ Respondent argues that both wine and tequila are alcoholic beverages and “[m]any of these alcohol products, such as brandy, rum, and wine are among Petitioner’s competitors,” citing testimony of Petitioner’s witness Ms. Beristain.⁷⁶ As Ms. Beristain explained, entities that sell wine are considered Petitioner’s competitors “because there is a share of stomach, as we call it, so a consumer can only drink so much alcohol, but I think that wine and distilled spirits are very, very clearly distinguished by consumers who consume both.”⁷⁷ This is consistent with the record evidence, which either shows wines offered on websites specializing in wine⁷⁸ or, like beer, in separate sections on websites offering a broader selection of alcohol.⁷⁹ There is evidence that third party goods, including wine, are advertised on the same social media platforms as Petitioner’s goods, but at most this

⁷⁴ *See* 60 TTABVUE 47-57, 225 (ALESONG MAESTRO ale on totalwine.com); 120 TTABVUE 168 (Perez Tr. Ex. 4) (Petitioner’s product on totalwine.com).

⁷⁵ *See* 60 TTABVUE 10-30, 59-72, 80-203, 222-23, 228-38 (Internet evidence); 70 TTABVUE; 66 TTABVUE.

⁷⁶ 134 TTABVUE 50 (citing 101 TTABVUE 107 (Beristain Tr.)).

⁷⁷ 101 TTABVUE 107 (Beristain Tr.).

⁷⁸ *See, e.g.*, 60 TTABVUE 11-15, 65-73, 80-110 (Vivino); 26-27 (Wine Express). Several of the products appear on the dedicated website or social media posts of a specific winery or store. *See, e.g.*, 60 TTABVUE 59; 70 TTABVUE 13, 29 (Instagram posts from Maestro Winery in Jacksonville, FL), 15-19, 23 (Instagram posts from Robert Mondavi brand regarding its MAESTRO wine); 40 (Instagram post from shop called “Wine Maestro Fine Wines and Craft Beer”).

⁷⁹ *See, e.g.*, 101 TTABVUE 145 (screenshot from binnys.com showing Petitioner’s product under Spirits / Tequila; page shows headings for each of “Wine,” “Spirits” and “Beer”).

shows that the products are among the many promoted using this ubiquitous means of advertising. *Cf. St. Helena Hosp.*, 774 F.3d at 754. As with beer, Respondent has not shown that wine is directed to the same purchasers or relevant public as tequila. *See Omaha Steaks*, 908 F.3d at 1325-26 (that goods can be grouped into broad buckets like food products does not render them similar).

Moreover, there is little evidence of the extent of use of the wine marks with MAESTRO in their names or of consumer exposure to such marks. For example, one of Respondent's exhibits is a printout from an online wine marketplace, *vivino.com*.⁸⁰ The printout shows the results of a search for "maestro" and lists a number of wines with MAESTRO in their names. But only some of the listings have an "Add to cart" button, some have a "View shops" option (without indicating the stores where the product is actually offered), and others have no price or availability information at all.⁸¹ Respondent's evidence also reflects significant variation in the manner of use of MAESTRO on the wine products, with some wines making prominent use but others emphasizing different words or graphics, with the word MAESTRO not even visible on some of the product images shown.⁸² At most this evidence shows that consumers seeking wine may encounter some number of wines with the word MAESTRO somewhere in their names and somewhere on their labels; it does not enable us to

⁸⁰ 60 TTABVUE 11-15.

⁸¹ *See, e.g.*, 60 TTABVUE 11-15. *See also id.* at 112-15 (listing on a European website which states that product is out of stock); 119-21 (shipping limited to NY state); 231-36 (product listings on website of specialty wine importer).

⁸² *See, e.g., id.* at 117 (showing close up of wine listing with word MAESTRO but word is barely visible on image of bottle and product is out of stock).

draw any conclusions about the extent of consumer exposure to these products. And even if the sheer number of products shows some commercial weakness of MAESTRO for wines, *see Juice Generation*, 794 F.3d at 1339 (evidence of a substantial number of third party uses of similar marks for similar goods “powerful on its face” even without evidence of extent of use), it does not show commercial weakness of MAESTRO for tequila.

Next we consider Respondent’s evidence of several third-party uses of MAESTRO-formative marks for rum, brandy or coffee liqueur.⁸³ Like tequila, these are alcoholic beverages and there is some evidence that rum and brandy also appear under the categories of “spirits” or “liquor” on retailer websites.⁸⁴ But again these uses do not show that consumers are exposed to a plethora of similar marks for similar goods as to condition them to distinguish among the marks based on minute differences. Respondent’s evidence leaves us to guess at how widely available the products are. For example, Respondent’s evidence of one of the rum products is a single 2019 blog article discussing a RON ALDEA MAESTRO rum product bottled in 2016; there is no information about availability or distribution of the product among U.S. consumers.⁸⁵ There is some evidence that the HAVANA CLUB SELECCIÓN DE

⁸³ *See* 60 TTABVUE at 31-34 (use of HAVANA CLUB SELECCIÓN DE MAESTROS for rum); 35-42 (use of BACARDI GRAN RESERVA MAESTRO DE RON for rum); 78 (blog article reviewing RON ALDEA MAESTRO rum); 44 (use of EL MAESTRO SIERRA with brandy); 70 TTABVUE 37-38 (social media page for MAESTRO CAFÉ coffee liquor product from Italy containing unspecified type of alcohol).

⁸⁴ *See* 60 TTABVUE 41 (screenshot from northendliquors.com with section at side of page for “liquor” listing rum, tequila, and other products).

⁸⁵ *Id.* at 78.

MAESTROS and BACARDI GRAN RESERVA MAESTRO DE RON rum products are currently available,⁸⁶ but each of these products bears other distinctive words or designs (like HAVANA CLUB and BACARDI).

Respondent submitted evidence of two marks with the word MAESTRO for tequila or other agave liquor products. The first is PUERTO MAESTRO, which is registered for distilled agave liquor based on a foreign registration under Trademark Act Section 44(e), 15 U.S.C. § 1126(e), for which use in commerce prior to registration is not required.⁸⁷ Petitioner submitted evidence, unrebutted by Respondent, that use of the mark has been limited to Mexico.⁸⁸ This mark is therefore not probative of commercial weakness. *Cf. Made in Nature*, 2022 TTAB LEXIS 251, at *30-31. Respondent also submitted evidence of use of the mark MEZCAL DEL MAESTRO with mezcal,⁸⁹ but Petitioner submitted evidence, again unrebutted, that this is a brand of Petitioner.⁹⁰ *Cf. id.* at *31-32 (“Applicant also made of record Opposer’s own active and cancelled

⁸⁶ 60 TTABVUE 32, 35-38, 205-210, 216 (products seen on websites); 70 TTABVUE 9 (Bacardi Facebook post from 2016); 25 (Havana Club Instagram screenshot from 2021).

⁸⁷ 66 TTABVUE 24-26. Respondent also submitted three applications for MAESTRO-formative marks for goods broad enough to include tequila. *See id.* at 21-22, 27-32. These applications have little to no probative value of weakness because they are evidence only that the applications were filed. *Made in Nature*, 2022 TTAB LEXIS 228, at *31. Moreover, the record shows that two of the applications were abandoned after refusal based on likelihood of confusion with several of Petitioner’s Marks. *See* 87 TTABVUE 30-39, 72-82.

⁸⁸ 98 TTABVUE 23, 42-44 (website not permitting change of region for shipping from Mexico).

⁸⁹ 63 TTABVUE 11, 77-78 (Beth Dec. ¶ 47 and Ex. L). We take judicial notice from COLLINS DICTIONARY that mezcal “is a strong alcoholic drink made from a type of plant called an agave.” <https://www.collinsdictionary.com/us/dictionary/english/mezcal>, accessed February 2026. *See Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imps. Co.*, No. 91061847, 1982 TTAB LEXIS 146, at *7 (“[T]he Board may take judicial notice of use of a term in dictionaries.”).

⁹⁰ 94 TTABVUE 22 (Mexico IP Office printout reflecting trademark registration for DEL MAESTRO in Petitioner’s name).

registrations and active and abandoned applications, as well as Applicant's own active and cancelled registrations and active and abandoned applications. By definition, these are not 'third-party registrations.'").

Taken as a whole, the evidence does not show that consumers have been exposed to so many uses of MAESTRO in trademarks for tequila or similar goods that they have become conditioned to distinguish among the marks based on minute differences. This is consistent with Respondent's testimony that he was unable to recall any other brands of tequila with MAESTRO in the name.⁹¹ Accordingly, we do not find that MAESTRO is commercially weak for tequila.

Based on the evidence, we do find, however, that MAESTRO is somewhat suggestive and not particularly strong conceptually for the involved goods. The definition of MAESTRO as "a master in an art, especially a composer, conductor, or music teacher" evokes the idea of a person of great skill in a creative endeavor, and the evidence shows that this significance has been leveraged for various types of alcohol including by both of the parties for their tequila.⁹²

There is also evidence that during prosecution of the application underlying the '848 Registration for MAESTRO, in response to an Office action, Petitioner's

⁹¹ 119 TTABVUE 36 (Hermosillo Tr. ("Q. So my question is, are you aware of any tequila names/brands that have maestro in that name or brand? A. In this time, at this moment, I don't remember.")). *See also* 46 TTABVUE 14 (Beristain Dec. ¶ 58) ("To my knowledge, except for LOTE MAESTRO, there are no third parties using MAESTRO as part of a trademark for tequila or blue agave spirits in the United States.").

⁹² *See* 46 TTABVUE 28 (Beristain Dec. Ex. 4) (advertising for Petitioner's product touts "Experience makes the Maestro"); 63 TTABVUE 28 (LOTE MAESTRO advertisement stating that "[t]he Partida family has dedicated over 100 years to 'The art of making tequila.'").

predecessor in interest argued that the cited mark MASTRO warranted limited protection because other marks showed that “MASTER, and its variations, are not particularly strong trademark terms and are not entitled to broad protection” and evidenced “the commercial attractiveness and popularity of MASTER/MAESTRO/MASTRO as trademark terms.”⁹³

As Petitioner argues, file wrapper estoppel (i.e., precluding a party from taking contrary positions to those taken during prosecution) does not apply in Board proceedings, and a party’s position taken during prosecution does not rise to the level of an admission against interest. *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 929 (CCPA 1978); *Anthony’s Pizza & Pasta Int’l, Inc. v. Anthony’s Pizza Holding Co.*, No. 91171509, 2009 TTAB LEXIS 718, at *35, *aff’d*, 415 Fed. App’x 222 (Fed. Cir. 2010). However, the Federal Circuit “ha[s] recognized that such comments have significance as facts illuminative of shade and tone in the total picture confronting the decision maker.” *Juice Generation*, 794 F.3d at 1340 (cleaned up). Thus, we consider that Petitioner’s prior statements provide some support for an argument that its exclusive rights do not extend beyond its “specific mark for specific goods.”⁹⁴

⁹³ 72 TTABVUE 123-24 (August 23, 2004 Response to Office Action). U.S. Application Serial No. 78981039, which issued as the ’848 Registration, was the child of U.S. Application Serial No. 78294122 resulting from a request to divide.

⁹⁴ *Id.* at 124.

F. Actual Confusion or Lack Thereof Despite Coexistence

The seventh *DuPont* factor considers the “nature and extent of any actual confusion.” *DuPont*, 476 F.2d at 1361. Petitioner argues that actual confusion has occurred, pointing to Westchester Wine Warehouse’s posting of an image of Respondent’s LOTE MAESTRO product in a listing for Petitioner’s MAESTRO DOBEL CRISTALINO product.⁹⁵ There is no evidence, however, that any consumers were actually confused. This single instance of alleged confusion does not play a significant role in our overall analysis. See *Nat’l Rural Elec. Coop. Ass’n v. Suzlon Wind Energy Corp.*, No. 92043377, 2006 TTAB LEXIS 134, at *17-18, *aff’d mem.*, 214 Fed. App’x 987 (Fed. Cir. 2007).

Nor do we consider Petitioner’s survey evidence probative of actual confusion per se, although we find that it corroborates our conclusion that confusion is likely. Petitioner commissioned a consumer survey by Dr. Alex Simonson comparing its MAESTRO DOBEL mark with Respondent’s LOTE MAESTRO mark.⁹⁶ The survey interviewed 400 respondents online, geographically dispersed across the country, male and female, 21 years of age and over.⁹⁷ The participants were divided into test and control groups, with the test group shown the names MAESTRO DOBEL and LOTE MAESTRO and the control group shown the names MAESTRO DOBEL and a

⁹⁵ 125 TTABVUE 33-34 (referencing Beristain Dec. Ex. 14).

⁹⁶ *Id.* at 34; 45 TTABVUE 8-9. The survey was a “*Squirt*”-style survey, which “measures aided awareness by exposing the respondent to the two marks in issue.” *ProMark*, 2015 TTAB LEXIS 67, at *54 (citing *Squirtco v. Seven-Up Co.*, 628 F.2d 1086 (8th Cir. 1980)). See also *Ava Enters., Inc. v. Audio Boss USA, Inc.*, No. 91125266, 2006 TTAB LEXIS 17.

⁹⁷ 45 TTABVUE 9.

control mark, LOTE MENTOR, each with the respective identified goods.⁹⁸ Dr. Simonson concluded that, after accounting for “noise” by subtracting the level of confusion reported for the control mark,⁹⁹ the survey yielded a net level of confusion as to source or affiliation between MAESTRO DOBEL and LOTE MAESTRO of approximately 30%.¹⁰⁰

Respondent argues that the survey should be disregarded, because methodological flaws render it irrelevant.¹⁰¹ We have considered all of the parties’ arguments as to whether the survey should be allowed and the weight, if any, it should be given. We do not find that the survey should be excluded, but in considering its weight we bear in mind Respondent’s arguments that the nature of the survey and its particular questions may have had a tendency to lead respondents toward a desired response, despite incorporating certain protections to make the survey non-leading and unbiased. These included asking respondents to complete a “distractor” task after viewing Petitioner’s mark and before viewing either Respondent’s mark or the control

⁹⁸ *Id.* at 9-10, 15-18.

⁹⁹ Dr. Simonson testified that “[t]he control name should excise the part of the name that is allegedly infringing (causing confusion) while maintaining similarity in other respects to the test name. Here, the Spanish word ‘MAESTRO’ in the test name ‘LOTE MAESTRO’ was substituted with another Spanish word starting with an M with similar meaning (‘MENTOR’). ... This method determines a level of ‘noise,’ meaning a level of stated confusion in the control cell due to factors such as guessing, or other similarities in the names such as font, style, look, or other similarities overall such as similar products being offered, regardless of name similarity.” *Id.* at 16.

¹⁰⁰ *Id.* at 10-11, 23.

¹⁰¹ 134 TTABVUE 68-79 (Respondent’s brief with evidentiary objections). Respondent does not take issue with Dr. Simonson’s qualifications, and we accept that he qualifies as an expert in the conduct and assessment of likelihood of confusion surveys.

mark to reduce short-term memory effects.¹⁰² Although there was no caution to avoid guessing, the questions about common source or affiliation let respondents answer “not sure/no opinion.”¹⁰³ Respondents stating that they believed the marks were from the same or affiliated sources were asked to explain why, with a number of narrative responses noting the shared word MAESTRO.¹⁰⁴ But the survey did not present an array of marks, which is more consistent with marketplace conditions. *See generally* Swann, *Likelihood of Confusion Studies and the Straightened Scope of Squirt*, 98 TRADEMARK REP. 739, 752 (2008) (noting that in “a subsequently developed variant [of the *Squirt*-style survey] to remove the spotlight from the brands at issue, respondents are shown an array (or sorting board) of marks”); *cf. ProMark*, 2015 TTAB LEXIS 67, at *55 (discounting survey in part because it asked a closed-ended question that spotlighted only the two marks at issue).

Despite its potential weaknesses, Petitioner’s survey showing a net confusion level of approximately 30% corroborates the similar impressions of the marks that we perceive due to the word MAESTRO. *See Carl Karcher Enters. Inc. v. Stars Rests. Corp.*, No. 91077850, 1995 TTAB LEXIS 2, at *23 (recognizing “that there is no such thing as a perfect survey”); *see* McCarthy § 32:188 (5th ed. December 2025 update) (“Generally, figures in the range of 25% to 50% have been viewed [by courts] as solid

¹⁰² 45 TTABVUE 20.

¹⁰³ *Id.* at 20-21; 81 TTABVUE 128-30 (Simonson Jan. Tr.).

¹⁰⁴ 45 TTABVUE 24-25.

support for a finding of likelihood of confusion.”). However, we would reach the same outcome in this case even without the survey evidence.

For its part, Respondent argues that Petitioner has failed to show any instances of actual confusion despite coexistence of the marks,¹⁰⁵ indicating that confusion is unlikely under the eighth *DuPont* factor, “[t]he length of time during and conditions under which there has been concurrent use without evidence of actual confusion.” *DuPont*, 476 F.2d at 1361. The absence of evidence of actual confusion receives little weight unless there is also evidence of a significant opportunity for confusion to have occurred. *See, e.g., Keystone*, 2024 TTAB LEXIS 290, at *76. Unlike the second, third and fourth *DuPont* factors, the eighth *DuPont* factor “requires us to look at actual market conditions, to the extent there is evidence of such conditions of record.” *In re Guild Mortg. Co.*, No. 86709944, 2020 TTAB LEXIS 17, at *19.

Petitioner’s products have been sold since 2008, and we have recounted to some extent the advertising and sales of its goods in the U.S., which “are sold through conventional channels of trade for liquor products such as in liquor stores, bars, duty free shops, restaurants and at sporting events.”¹⁰⁶ Respondent began selling its LOTE MAESTRO branded products in the U.S. more recently, in 2019. Its confidential sales history shows steady increase since then, but comparing the parties’ sales for 2021 and 2022 (actual or estimated) (the most recent years available and Respondent’s highest-selling years so far), Respondent’s sales measured by cases sold and dollar

¹⁰⁵ 134 TTABVUE 51-52.

¹⁰⁶ 46 TTABVUE 11 (Beristain Dec. ¶ 44).

sales were considerably lower than those of Petitioner.¹⁰⁷ Respondent's goods have been sold to wholesalers and retailers in approximately sixteen states,¹⁰⁸ have been promoted at events like the Wine & Spirits Wholesalers of America (WSWA), Latin Food Fest, San Diego Spirits Festival, and Monterey Bay Tequila & Cuisine, and have won several awards at the San Diego Spirits Festival International Spirits Competition.¹⁰⁹ LOTE MAESTRO tequila is promoted via social media on Facebook and Instagram, at local retailers such as Total Wine and Costco, and at tastings, festivals, trade shows, and events where it is an exhibitor.¹¹⁰ Each of Respondent's witnesses testified that he was unaware of any actual consumer confusion as to the source of the parties' respective products.¹¹¹

There is evidence that the parties' goods have been sold at some of the same retailers, including stores like Costco, Total Wine and Old Town Tequila.¹¹² But the evidence shows that Respondent's brand is much smaller than Petitioner's, with Mr. Beth testifying that "Lote Maestro is in about 100 accounts in the United States" and Petitioner's products are in "thousands and thousands."¹¹³

¹⁰⁷ See 64 TTABVUE 6-7 (Beth Dec. (confidential) ¶¶ 22-25); 44 TTABVUE 10-11, 26-28 (Beristain Dec. (confidential) ¶¶ 42-43 and Ex. 15).

¹⁰⁸ 64 TTABVUE 6 (Beth Dec. (confidential) ¶¶ 20, 23).

¹⁰⁹ 65 TTABVUE 7 (Perez Dec. ¶¶ 32, 34).

¹¹⁰ *Id.* at 8-12 (Perez Dec. ¶¶ 35-45).

¹¹¹ *Id.* at 13-14 (Perez Dec. ¶¶ 51-57); 63 TTABVUE 20 (Beth Dec. ¶¶ 71-73); 68 TTABVUE 21 (Hermosillo Dec. ¶¶ 35-36).

¹¹² See, e.g., 63 TTABVUE 20 (Beth Dec. ¶ 70).

¹¹³ 123 TTABVUE 101 (Beth Tr.).

We find that there has been some opportunity for confusion, but the record lacks evidence showing appreciable and continuous use of Respondent's marks in the same markets as Petitioner over a significant period of time. On this record, the absence of reported instances of consumer confusion is not particularly meaningful to our assessment of the likelihood of confusion between the respective marks. *See Citigroup Inc. v. Cap. City Bank Grp., Inc.*, No. 91177415, 2010 TTAB LEXIS 40, at *50 (“absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by applicant of its mark for a significant period of time in the same markets as those served by opposer under its marks”) (citation omitted), *aff'd*, 637 F.3d 1344 (Fed. Cir. 2011); *see also Kraft, Inc. v. Country Club Food Indus.*, No. 92013549, 1986 TTAB LEXIS 84, at *11 (absence of evidence of actual confusion was not proof that confusion is not likely “[i]n view of the limited scope of registrant's distribution and the relatively small promotional effort put forth on behalf of registrant's goods”). Moreover, it is well-settled that actual confusion is “hard to prove” and is not necessary to establish a likelihood of confusion. *See, e.g., Sunkist Growers, Inc. v. Intrastate Distribs., Inc.*, 144 F.4th 1376, 1381 (Fed. Cir. 2025) (“[T]he failure to prove instances of actual confusion is not dispositive against a trademark plaintiff, because actual confusion is hard to prove.”) (cleaned up).

G. Alleged Bad Faith Adoption by Respondent

Under the thirteenth *DuPont* factor, we may consider “[a]ny other established fact probative of the effect of use,” including a party's bad faith in adopting a mark. *QuikTrip West, Inc. v. Weigel Stores, Inc.*, 984 F.3d 1031, 1036 (Fed. Cir. 2021) (citing

DuPont, 476 F.2d at 1361). Petitioner argues that Respondent has promoted its products in a way that trades off of the goodwill of Petitioner’s marks by emphasizing the word MAESTRO and using the words DOBLE REPOSADO in addition to LOTE MAESTRO to create an association with Petitioner’s MAESTRO DOBEL mark.¹¹⁴ Respondent’s use includes a social media post with the hashtags #LoteMaestro and #doblereposado in close proximity.¹¹⁵ Respondent admitted that he was aware of the MAESTRO DOBEL mark when selecting the name LOTE MAESTRO,¹¹⁶ but argues that he did not intend to copy Petitioner’s marks or confuse consumers.¹¹⁷ Instead, Respondent contends that he used “doble reposado” with the Spanish word for “double” to describe a variety of his tequila.¹¹⁸

“[A]n inference of ‘bad faith’ requires something more than mere knowledge of a prior similar mark.” *Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1565 (Fed. Cir. 1987). “It requires an intent to confuse.” *QuikTrip*, 984 F.3d at 1036 (citing *Starbucks Corp. v. Wolfe’s Borough Coffee, Inc.*, 588 F.3d 97, 117 (2d Cir. 2009)

¹¹⁴ 125 TTABVUE 29-33. Contrary to Respondent’s contentions, we do not consider Petitioner’s arguments based on Respondent’s use of “doble reposado” as an unpleaded claim of “conjoint trademark use by GPH relevant to the likelihood of confusion.” 134 TTABVUE 56-57, citing *Bell’s Brewery, Inc. v. Innovation Brewing*, No. 91215896, 2017 TTAB LEXIS 452, at *24 (“a likelihood of confusion claim based on the claimant’s use of two marks conjointly must be pleaded clearly enough to provide fair notice of the claim to the defendant”). Petitioner does not rely on two of its marks in “conjoined” fashion to support a claim of likelihood of confusion with a registered mark of Respondent containing the conjoined elements. Instead, Petitioner argues that Respondent’s use of DOBLE reflects bad faith because it is similar to DOBEL.

¹¹⁵ 125 TTABVUE 31 (citing 59 TTABVUE 70, 74).

¹¹⁶ 119 TTABVUE 39 (Hermosillo Tr.).

¹¹⁷ 134 TTABVUE 55-56.


¹¹⁸ *Id.* at 55-57.

("[T]he only relevant intent is intent to confuse. There is a considerable difference between an intent to copy and an intent to deceive.")). We have considered all of Petitioner's arguments, but do not find the evidence of record sufficient to support an inference of bad faith. *See, e.g., Look Cycle*, 2024 TTAB LEXIS 289, at *24.

H. Weighing the Factors and Conclusion on Likelihood of Confusion

The final step in analyzing likelihood of confusion is to weigh the *DuPont* factors for which there has been evidence and argument and "explain the results of that weighing" and "the weight [we] assigned to the relevant factors." *Heil Co.*, 2024 TTAB LEXIS 494, at *95 (citing *Charger Ventures*, 64 F.4th at 1384). Petitioner's tequila and Respondent's "alcoholic beverages, except beer" are legally identical in part, and the channels of trade and classes of consumers are presumed to be the same to this extent, with these *DuPont* factors weighing heavily in favor of likelihood of confusion. The identified goods are unrestricted as to quality or price, and we must consider the perspective of the least sophisticated potential purchaser, not just purchasers of Respondent's higher priced offerings, with the fourth *DuPont* factor neutral in our analysis. Comparing Petitioner's MAESTRO mark and Respondent's LOTE MAESTRO standard character mark in their entireties, we find that they are quite



similar. Although MAESTRO and  are less similar when compared in their entireties, we still find that they are similar because both feature the dominant verbal element MAESTRO, and the degree of similarity needed for confusion to be likely is lower where, as here, the goods are legally identical in part. The first *DuPont* factor weighs in favor of likelihood of confusion with respect to both of Respondent's marks. Considering all of the evidence and arguments presented under the fifth and sixth *DuPont* factors, Petitioner's MAESTRO mark has at most modest commercial strength and is somewhat conceptually weak, with these factors, on balance, not swaying our likelihood of confusion analysis. No factor weighs against a likelihood of confusion.

Balancing the factors, we conclude that confusion is likely when Petitioner's and Respondent's marks are used with their respective identified goods.

Decision:

Respondent's counterclaim seeking to cancel Registration No. 3624848 for MAESTRO based on abandonment is denied. Petitioner's petition to cancel Registration No. 5846859 for LOTE MAESTRO and Registration No. 5869770 for

Cancellation No. 92074808



based on priority and likelihood of confusion under Trademark Act
Section 2(d), 15 U.S.C. § 1052(d), is granted.