

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 8, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

MHCS

v.

Les Grands Chais De France
—

Cancellation No. 92075021
—

John P. Margiotta and Kimberly B. Frumkin
of Fross Zelnick Lehrman & Zissu PC for MHCS.

Bruce S. Londa, David H. Siegel, and Stephanie S. Spangler
of Norris McLaughlin P.A., for Les Grands Chais De France.
—

NOTICE OF CORRECTION

By the Board:

The decision that issued on February 27, 2024 is corrected as follows: (1) page 2, footnote 5, add an end quote to the end of the last sentence; (2) page 4, footnote 13, in the last sentence, change “above” to “herein”; and (3) page 30, second paragraph, change “sixth” to “fifth”. Attached hereto is a corrected decision.

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Before Wellington, English, and Allard,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

Les Grands Chais De France (“Respondent”) owns a registration on the Principal Register for the mark VEUVE OLIVIER (in standard characters) for “sparkling wines” in International Class 33.¹

¹ Registration No. 5046283, issued on Sep. 20, 2016; Section 8 accepted.

Citations to the record and brief reference TTABVUE, the Board’s online docket system. *See, e.g., New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page number(s) of the docket entry where the cited material(s) appears.

MHCS (“Petitioner”) seeks to cancel the involved registration on the ground of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Petitioner pleads ownership of the following previously used marks registered on the Principal Register:²

- VEUVE CLICQUOT PONSARDIN (typeset form) for “Champagne wines” in International Class 33;³
- VEUVE CLICQUOT (typeset form) for “champagne” in International Class 33;⁴
- LA VEUVE (standard characters) for “sparkling wines, champagne wines” in International Class 33;⁵
- THE WIDOW (typeset form) for “wines” in International Class 33;⁶
- LA VIUDA (typeset form) for “champagne wines” in International Class 33;⁷

² Printouts from the USPTO’s Trademark Status and Document Retrieval (TSDR) database accompanied the petition to cancel showing active status and Petitioner’s ownership of each of the pleaded marks. 1 TTABVUE 11-75.

³ Reg. No. 1,201,370, issued on July 13, 1982; renewed. The registration includes the following statement: “The French word ‘Veuve’ means ‘widow’ or ‘widower’ in English.” “Typeset” form is equivalent to standard character format. *DC Comics v. Cellular Nerd LLC*, 2022 USPQ2d 1249, at *4 (TTAB 2022).

⁴ Reg. No. 2,333,257, issued on March 21, 2000; renewed. The registration includes the following statement: “The English translation of ‘VEUVE’ is ‘widow’.”




In the chart in its brief, Petitioner indicates that this mark is registered in “stylized” form. 35 TTABVUE 17. This is not correct, as it is registered in “typeset” form (1 TTABVUE 22-30), which is equivalent to standard character format. *DC Comics*, 2022 USPQ2d 1249, at *4.

⁵ Reg. No. 4,260,381, issued on December 18, 2012; renewed. The registration includes the following statement: “The English translation of ‘LA VEUVE’ in the mark is ‘the widow’.”

⁶ Reg. No. 797,567, issued on October 12, 1965; renewed.

⁷ Reg. No. 1,708,535, issued on August 18, 1992; renewed. The registration includes the following statement: “The English translation of the term ‘LA VIUDA’ in the mark is ‘the widow’.”

collectively referred to by Petitioner as the “Veuve Marks”, and it alleges ownership of the following three registrations for composite marks:⁸

-  for “Champagne” in International Class 33;⁹
-  for “Champagne” in International Class 33,¹⁰ and
-  for “wines, sparkling wines, champagne wines” in International Class 33.¹¹

Additionally, Petitioner alleges that continued registration of Respondent’s mark “is likely to dilute Petitioner’s VEUVE Marks by impairing the distinctiveness of Petitioner’s VEUVE Marks to identify exclusively goods from Petitioner[.]”¹²

⁸ 1 TTABVUE 5, para. 7.

⁹ Reg. No. 2,895,039, issued on October 19, 2004; renewed. The registration includes the following translation: “The English translation of the word ‘VEUVE’ in the mark is ‘widow.’” Color is not claimed as a feature of the mark.

¹⁰ Reg. No. 2,432,192, issued on February 27, 2001; renewed. The registration includes the following translation: “The word ‘VEUVE’ means ‘widow.’”

¹¹ Reg. No. 1,751,483, issued on February 9, 1993; renewed. The registration includes the following translation: “The English translation of the term ‘VEUVE’ in the mark is ‘widow.’”

¹² 1 TTABVUE 7-8, para. 20. In its pleading, Petitioner asserts its dilution claim under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). *Id.* However, in its brief, Petitioner properly argues its dilution claim under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). 35 TTABVUE 19. *NFL v. DNH Mgmt., LLC*, 85 USPQ2d 1852, 1853 n.2 (TTAB 2008) (“[I]n Board proceedings, a claim of dilution falls under Section 43(c) of the Lanham Act as

In its answer, Respondent denies the salient allegations of the petition for cancellation and asserts several affirmative defenses.¹³ Respondent did not pursue the purported affirmative defenses as it did not submit any evidence or file a brief in this case. We therefore consider any affirmative defenses waived or forfeited. *In re Google Techs. Holdings, LLC*, 980 F.3d 858, 2020 USPQ2d 11465, at *4 (Fed. Cir. 2020); *NT-MDT LLC v. Kozodaeva*, 2021 USPQ2d 433, at *5 n.8 (TTAB 2021).

Additionally, Respondent counterclaims to cancel some of Petitioner's registered marks on the grounds of fraud and abandonment.¹⁴ In its answer to the counterclaims, Petitioner, as the counterclaim defendant, denies the salient allegations.¹⁵

Only Petitioner filed a brief.¹⁶ Having considered the evidentiary record, the Petitioner's arguments and applicable authorities, we grant the petition for

amended.”). As noted by the Board in the *NFL* decision, “The last sentence of Section 2(f) addresses dilution but only insofar as it precludes issuance of a refusal of registration on dilution grounds in an ex parte context.” *Id.*

¹³ 8 TTABVUE. In addition to laches, waiver, acquiescence, estoppel and unclean hands, Respondent also alleges the “affirmative defense” of failure to state a claim upon which relief can be granted and it alleges a reservation of rights to assert further affirmative defenses, neither of which is a true affirmative defense. *See, e.g., Sabhnani v. Mirage Brands, LLC*, 2021 USPQ2d 1241, at *4, n.5 (TTAB 2021) (failure to state a claim is not a true affirmative defense) (citing *U.S. Olympic Comm. v. Tempting Brands Neth. B.V.*, 2021 USPQ2d 164, at *4 (TTAB 2021)); *Made in Nature, LLC v. Pharmavite LLC*, 2022 USPQ2d 557, at *6 (TTAB 2022) (reservation of rights to add affirmative defenses is improper under the federal rules because it does not give fair notice of the affirmative defense). Regardless, these purported affirmative defenses have been waived, as addressed herein.

¹⁴ 8 TTABVUE 7-12. Respondent/Counterclaim Plaintiff seeks to cancel Reg. Nos 797567; 1708535; 1751483; 2895039; and 4260381. *Id.*

¹⁵ 10 TTABVUE.

¹⁶ Petitioner's brief was submitted in both redacted and unredacted versions: the publicly available version is at 35 TTABVUE and the confidential version is at 34 TTABVUE.

cancellation on the ground of likelihood of confusion. We decline to reach Petitioner's claim of dilution. We further deny Respondent's counterclaims with prejudice because Respondent failed to pursue its counterclaims at trial.

I. The Record

The record consists of the pleadings, and, by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), the file history of Respondent's registration, as it is the subject of the petition for cancellation, and the file histories of Petitioner's registrations that are the subject of the counterclaims (Reg. Nos 797567; 1708535; 1751483; 2895039; and 4260381).¹⁷

Additionally, Petitioner introduced the following evidence:

- Testimony of Anne-Sophie Stock, Vice President Core Bubbles at Moët Hennessy USA, Inc., the U.S. distributor for VEUVE branded products and subsidiary of Petitioner, and related exhibits;¹⁸
- Notice of reliance on TSDR printouts of Petitioner's pleaded registrations;¹⁹
- Notice of reliance on Respondent's discovery responses;²⁰
- Notice of reliance on printed publications;²¹ and

¹⁷ 8 TTABVUE 7-12.

¹⁸ Ms. Stock's testimony was submitted in both redacted and unredacted versions. The publicly available version is at 29 TTABVUE and the confidential version appears at 26 TTABVUE.

¹⁹ 28 TTABVUE. It was unnecessary for Petitioner to introduce its pleaded registrations under notice of reliance because it already introduced them when it filed the petition for cancellation. *See* n.2 above.

²⁰ This notice of reliance was submitted in both redacted and unredacted versions. The confidential version appears at 30 TTABVUE and the publicly available version appears at 31 TTABVUE.

²¹ 32 TTABVUE.

- Notice of reliance on Internet materials.²²

Respondent made no testimony or other evidence of record. This does not result in a concession of Petitioner's cancellation action because Respondent, as the defendant in that proceeding, is not required to take testimony or submit evidence. *See Yazhong Investing Ltd. v. Multi-Media Tech. Ventures, Ltd.*, 126 USPQ2d 1526, 1531 n.13 (TTAB 2018) ("Because Respondent, as defendant herein, is under no obligation to submit evidence or a brief, we do not construe Respondent's failure to do so as a concession of the case."). This is not true, however, of Respondent's counterclaims.

II. Preliminary Matter

At the time of institution of this proceeding, the involved registration covered "wines and sparkling wines." On March 15, 2022, over 18 months after the petition for cancellation was filed, Respondent filed its Section 8 declaration in connection with its involved registration. This declaration did not include a statement of continuing use for "wines," "thereby effectively cancelling ["wines"] from the registration[]." *Orange Bang, Inc. v. Olé Mexican Foods, Inc.*, 116 USPQ2d 1102, 1009 (TTAB 2015). Trademark Rule 2.134(b), 37 C.F.R. § 2.134(b), authorizes the Board to treat such a cancellation as "the equivalent of a cancellation by request of respondent without the consent of the adverse party," resulting in entry of judgment against the respondent with respect to the deleted goods. While the rule provides that the Board may, in its discretion, issue an order allowing the respondent to show cause why the cancellation should not result in entry of judgment against it, "[a]t this

²² 33 TTABVUE.

point, with briefing having been completed, there would be no point in issuing an order to show cause[.]” *Orange Bang*, 116 USPQ2d at 1110.

The purpose of this rule “is to prevent a cancellation proceeding respondent from being able to moot the proceeding, and avoid judgment, by deliberately failing to file a required affidavit of use under Trademark Act §[] 8[.]” TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 602.02(b) (June 2023) and cases cited therein. *See also Orange Bang*, 116 USPQ2d at 1110.

Here, the goods that remain in the registration, i.e., “sparkling wines,” we find to encompass Petitioner’s goods and, as a result, the second *DuPont* factor favors a likelihood of confusion. Because goods sufficient to support a finding of likelihood of confusion remain in the involved registration, the deletion of “wines” in Respondent’s Section 8 declaration does not appear on this record to be an obvious attempt to avoid judgment by mooting the action.

Petitioner, for its part, acknowledged Respondent’s deletion of the goods but did not request judgment on that basis, nor did Petitioner allege that Respondent’s deletion was an attempt to avoid judgment.²³ For all these reasons, the petition to cancel the registration insofar as these deleted goods (“wines”) are concerned is dismissed without prejudice as moot.

²³ 35 TTABVUE 19.

III. Counterclaims

Respondent, as plaintiff on its counterclaims for cancellation, bears the burden of proving, by a preponderance of the evidence, its asserted claims of abandonment and fraud. *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1267 (TTAB 2003).

As for its entitlement to a statutory cause of action as counterclaim plaintiff, Respondent's entitlement is inherent in its position as defendant in the underlying cancellation proceeding. *Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1428-29 (TTAB 2014) (applicant has established its entitlement based on opposers' assertion of their marks and registrations against applicant).

Turning to the merits of Respondent's counterclaims, as mentioned earlier, Respondent failed to introduce any testimony or other evidence. Therefore, it failed to meet its burden of proof. In addition, because Respondent did not file a brief to pursue the counterclaims, they have been waived. *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011) ("Claims, counterclaims, or defenses which are not argued in a party's brief are considered waived."), *judgment set aside on other grounds*, 110 USPQ2d 1679 (TTAB 2014). Accordingly, we deny Respondent's counterclaims with prejudice. *See, e.g., Harry Winston*, 111 USPQ2d at 1435, 1448 (counterclaim to cancel pleaded registrations, which were not addressed in applicant's brief, dismissed with prejudice and deemed waived).

IV. Petitioner's Petition for Cancellation

Petitioner, as plaintiff in the cancellation proceeding, bears the burden of proving, by a preponderance of the evidence, its asserted and pursued grounds of: (i) priority and likelihood of confusion; and (ii) dilution.

A. Entitlement to a Statutory Cause of Action

Entitlement to a statutory cause of action is an element of the plaintiff's case in every inter partes case. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *6-7 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021). To establish entitlement to a statutory cause of action, Petitioner must demonstrate: (i) an interest falling within the zone of interests protected by the statute, and (ii) proximate causation. *See Corcamore*, 2020 USPQ2d 11277, at *4; *Kimberley Kampers IP Pty Ltd v. Safiery Pty Ltd*, 2022 USPQ2d 1036, at *3-4 (TTAB 2022). Stated another way, a plaintiff is entitled to bring a statutory cause of action by demonstrating a real interest in the proceeding and a reasonable belief of damage. *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020); *see also Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014).

Petitioner has demonstrated through the TSDR printouts of its pleaded registrations made of record with its petition for cancellation and its notice of reliance that it is the owner of its pleaded registrations for the goods identified therein and

that the registrations are valid and subsisting.²⁴ Trademark Rule 2.122(d)(1)-(d)(2), 37 C.F.R. §§ 2.122(d)(1)-(d)(2). The pleaded registrations establish Petitioner’s direct commercial interest and real interest in the proceeding and its reasonable belief in likely damage, establishing its entitlement to petition to cancel Respondent’s registration. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000) (pleaded registrations “suffice to establish ...direct commercial interest”; a belief in likely damage can be shown by establishing a direct commercial interest); *Monster Energy Co. v. Lo*, 2023 USPQ2d 87, at *11 (TTAB 2023) (pleaded registrations establish entitlement to oppose on the ground of likelihood of confusion).

Thus, Petitioner has established its entitlement to bring a Section 2(d) claim. Having established its entitlement to petition to cancel on the ground of likelihood of confusion, Petitioner can assert any other grounds for cancellation in the proceeding, such as dilution. *See e.g., DC Comics*, 2022 USPQ2d 1249, at *20.

B. Section 2(d) Claim

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), prohibits the registration of a mark that

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used

²⁴ 1 TTABVUE 11-75; 28 TTABVUE. Petitioner’s registrations (Reg. Nos 797567; 1708535; 1751483; 2895039; and 4260381) are also of record because they are the subject of Respondent’s counterclaim. 8 TTABVUE 7-12. *See e.g., Orange Bang*, 116 USPQ2d at 1107 (plaintiff’s pleaded registration is of record by operation of Trademark Rule 2.122(b)(1) because it is the subject of a counterclaim).

on or in connection with the goods of the [Respondent], to cause confusion, or to cause mistake, or to deceive[.]

We consider each element of this claim, priority and likelihood of confusion, in turn below.

1. Priority

“In a cancellation proceeding such as this one where both parties own registrations, priority is in issue.” *Double Coin Holding Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at *4 (TTAB 2019) (quoting *Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1474 (TTAB 2014)). Here, Respondent did not submit evidence or file a brief; nonetheless, in order to prevail Petitioner, on its Section 2(d) claim, must still establish priority. As discussed in more detail below, we focus on Petitioner’s Registration No. 2,333,257 for VEUVE CLICQUOT (the “’257 Registration”) for purposes of the Section 2(d) claim; because this registration is properly of record,²⁵ Petitioner may rely on the filing date of the underlying application as a constructive use date for purposes of priority. *See* Section 7(c) of the Trademark Act, 15 U.S.C. § 1057(c); *see also* *Coach/Braunsdorf Affinity*, 110 USPQ2d at 1477. Petitioner’s ’257 Registration issued from an application filed June 22, 1999.²⁶ This is prior to the January 16, 2015 filing date of Respondent’s underlying application, which is the earliest date on which Respondent is entitled to rely, given the absence of any evidence of earlier use or prior common law rights. Accordingly, Petitioner has established priority with respect to the mark and goods set out in its

²⁵ 1 TTABVue 22-30.

²⁶ *Id.*

'257 Registration. Similarly, priority is not an issue in this proceeding insofar as Petitioner's other asserted and registered marks (referred to by Petitioner as its "VEUVE Marks")²⁷ are concerned, i.e., VEUVE CLICQUOT PONSARDIN, LA VEUVE, LA VIUDA, and THE WIDOW that issued from applications filed before Respondent filed the application underlying its involved registration.

2. Likelihood of Confusion

Having established priority, the remaining issue is likelihood of confusion. Our analysis is based on all of the probative evidence of record. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument.²⁸ *See, e.g., In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). Varying weights may be assigned to each *DuPont* factor depending on the evidence presented. *See Citigroup Inc. v. Cap. City Bank Grp., Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) ("[T]he various evidentiary factors may play more or less weighty roles in any particular determination.").

²⁷ 1 TTABVUE 5, para. 3.

²⁸ Ms. Stock testified in part about Petitioner's "family of VEUVE-inclusive trademarks" (29 TTABVUE 2, para. 2) and Petitioner mentions a "family of VEUVE-inclusive trademarks" one time in its brief (35 TTABVUE 8). However, Petitioner did not plead a family of marks or argue in any meaningful way its existence in its brief. Rather, Petitioner appears to assume a family's existence due to its multiple registrations for VEUVE-formative marks. However, this is insufficient to establish ownership of a family of marks. *New Era Cap*, 2020 USPQ2d 10596, at *6-7. Therefore, we give this no further consideration.

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See, e.g., In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

We focus our analysis on Petitioner’s VEUVE CLICQUOT mark for “Champagne,” i.e., the ’257 Registration, because this mark has the most points in common with Respondent’s mark. *See e.g., New Era Cap*, 2020 USPQ2d 10596, at *9-10 (confining analysis to fewer than all pleaded marks) (citing *In re Max Cap. Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010) (confining likelihood of confusion analysis to one of two cited marks)). If we find a likelihood of confusion as to this mark, we need not find it as to the other pleaded marks.

a. Similarity or Dissimilarity and Nature of the Parties’ Goods, Channels of Trade and Class of Consumers

We begin with the second *DuPont* factor, which concerns the “similarity or dissimilarity and nature of the goods or services as described in an application or registration...,” and the third *DuPont* factor, which concerns the “similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567; *Stone Lion Cap. Partners, LP v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). We make our determination based on the goods as they

are identified in Respondent's involved registration and Petitioner's '257 Registration.

Respondent's VEUVÉ OLIVIER mark is registered for "sparkling wines." The mark of the '257 Registration covers "champagne".²⁹ We take judicial notice that "champagne" is defined as "A sparkling white wine made from a blend of grapes, especially Chardonnay and Pinot, produced in Champagne[.]"³⁰ We also take judicial notice that "sparkling wine" is defined as "Any of various effervescent wines, such as champagne, produced by a process involving fermentation in the bottle."³¹

As an unrestricted identification, we must presume that the "sparkling wine" identified in Respondent's registration encompasses all types of sparkling wine, including the "champagne" identified in the '257 Registration. *See, e.g., In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) ("Applicant's broadly worded identification of 'furniture' necessarily encompasses Registrant's narrowly identified 'residential and commercial furniture.>"). Thus, we find that the "sparkling wine" identified in Respondent's registration is broad enough to encompass and is legally identical, at least in part, to the "champagne" identified in the '257 Registration, as the above-discussed dictionary definitions show that Champagne **is**

²⁹ 28 TTABVUE 48-51.

³⁰ THE AMERICAN HERITAGE DICTIONARY, <https://ahdictionary.com>, accessed on February 15, 2024. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

³¹ THE AMERICAN HERITAGE DICTIONARY, <https://ahdictionary.com>, accessed on February 15, 2024.

a type of sparkling wine. *Double Coin Holdings*, 2019 USPQ2d 377409, at *6 (citing *Hughes Furniture*, 114 USPQ2d at 1137).

Turning to the third *DuPont* factor, having found that the parties' goods are legally identical, at least in part, "we must presume that the channels of trade and classes of purchasers are the same as to those legally identical [goods]." *Monster Energy Co.*, 2023 USPQ2d 87, at *17 (citing *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)).

Thus, the second and third *DuPont* factors weigh heavily in favor of a likelihood of confusion.

b. The Strength of Petitioner's Mark of the '257 Registration

We now consider the strength of Petitioner's mark in order to evaluate the scope of protection to which it is entitled. *DuPont*, 177 USPQ at 567. In determining the strength of a mark, we consider both its inherent strength, based on the nature of the mark itself, and its commercial strength or marketplace recognition. *Made in Nature*, 2022 USPQ2d 557, at *21; *see also In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) ("A mark's strength is measured both by its conceptual strength (distinctiveness) and its marketplace strength (secondary meaning).").

Commercial strength is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Bd. of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006). In the context of likelihood of confusion, commercial strength of the mark is assessed on a spectrum from very strong to very weak. *Joseph Phelps*

Vineyards, LLC v. Fairmont Holdings, LLC, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017). “Famous marks enjoy wide latitude of legal protection’ since they are more likely to be remembered and associated in the public mind than weaker marks, and are thus more attractive as targets for would-be copyists.” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005) (quoting *Recot, Inc. v. Becton*, 214 F.3d 1322, 1327 USPQ2d 1894, 1897 (Fed. Cir. 2000)). “Indeed, ‘[a] strong mark ... casts a long shadow which competitors must avoid.” *Palm Bay Imps.*, 73 USPQ2d at 1694 (quoting *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992)).

i. Conceptual Strength

Petitioner argues that its VEUVE CLICQUOT mark is inherently strong and entitled to a broad scope of protection.³² To determine the conceptual strength of Petitioner’s mark, we evaluate its intrinsic nature, that is, where the mark lies “along the generic-descriptive-suggestive-arbitrary (or fanciful) continuum of words.” *In re Davia*, 110 USPQ2d 1810, 1814 (TTAB 2014).

Because the mark is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of Trademark Act, 15 U.S.C. § 1052(f), it is presumed to be inherently distinctive for the identified goods. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511 (TTAB 2016) (quoting *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007) (“inasmuch as the cited mark is registered on the

³² 35 TTABVUE 22.

Principal Register, we must assume that it is at least suggestive”). VEUVE or its English translation, “widow,”³³ is an arbitrary term as applied to Champagne and therefore is conceptually strong.

ii. Commercial Strength

Market, or commercial, strength of a mark is the extent to which the relevant public recognizes a mark as denoting a single source. *Tea Bd. of India*, 80 USPQ2d at 1899. 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, Petitioner has the duty to prove the alleged fame of its VEUVE CLICQUOT mark clearly. *Made in Nature*, 2022 USPQ2d 557, at *31 (citing *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1720 (Fed. Cir. 2012)).

Market strength may be measured indirectly by the volume of sales and advertising expenditures in connection with the goods sold under the mark, and other factors such as length of time of use of the mark; widespread critical assessments; notice by independent sources of the goods identified by the mark; and the general reputation of the goods. *Omaha Steaks Int’l, Inc. v. Greater Omaha Packing Co., Inc.*, 908 F.3d 1315, 128 USPQ2d 1686, 1689-90 (Fed. Cir. 2018); *Bose Corp. v. QSC Audio Prods. Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1308 (Fed. Cir. 2002) (recognizing indirect evidence as appropriate proof of strength even in absence of market share statistics where other indicia point to strength); *Tea Bd. of India*, 80 USPQ2d at 1899

³³ 28 TTABVUE 48.

("[T]he fame of a mark 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.")

Raw numbers alone may be misleading, however. Thus, some context in which to place raw statistics may be necessary, for example, market share or sales or advertising figures for comparable types of goods. *Bose*, 63 USPQ2d at 1309. Other ways Petitioner can place its raw financial data in context include evidence of the general reputation of the Champagne sold under the VEUVE CLICQUOT mark, or other contextual evidence of the type of advertisements and promotions Petitioner uses to gain sales to show that the consuming public has been regularly exposed to Petitioner's mark on a nationwide scale. *See, e.g., Omaha Steaks*, 128 USPQ2d at 1690 ("Market share is but one way of contextualizing ad expenditures or sales figures.").

Petitioner argues that its marks have "enormous marketplace strength" due to their use for over "well over a century[.]"³⁴ While Petitioner's brief collectively discusses all of its VEUVE-formative marks to support its contention that its marks are commercially strong, our decision focuses on only one mark: VEUVE CLICQUOT. Therefore, we limit our discussion of Petitioner's evidence to this mark and, while evidence relating to it is a subset of Petitioner's total evidence, the evidence of the mark's commercial strength is still significant.

³⁴ 35 TTABVUE 22-23.

By way of background, Petitioner was founded in “1772 by Phillippe Clicquot-Muiron and was originally called Clicquot-Muiron et Fils (Clicquot Muiron 7 Son).”³⁵ In 1798, Phillippe Clicquot-Muiron’s son, Francois Clicquot, married Barbe Ponsardin.³⁶ Francois joined the family business, and his wife, Barbe, worked alongside him.³⁷ However, Francois succumbed at a young age to typhoid, leaving behind his widow, Barbe Clicquot.³⁸ Barbe Clicquot convinced her father-in-law not to sell the business but to turn it over to her instead; eventually, she became the first woman Champagne producer.³⁹ Barbe Clicquot became known as *Veuve Clicquot*, which, literally translated, means *Widow Clicquot*.⁴⁰

Petitioner offers a wide array of Champagne products in the United States, including Rich, Demi-Sec, Rose, Yellow Label, Extra Brut Extra Old, Vintages, and La Grande Dame.⁴¹ Petitioner features the VEUVE CLICQUOT mark prominently on the front label and the mark is also sometimes displayed on the neck of the bottle, as shown below:

³⁵ 29 TTABVUE 3, para. 4.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 4, para. 6; *Id.* at 14-22 (Ex. VC1).



42

“Except during Prohibition and World War II, when importation of alcoholic beverages temporarily ceased, [Petitioner] and its predecessors have now used the VEUVE Marks continuously in the United States in connection with its business and its branded products for almost 175 years.”⁴³ Specifically, Petitioner has used its VEUVE CLICQUOT mark in the United States since 1994.⁴⁴

Petitioner’s VEUVE CLICQUOT brand Champagne is sold everywhere in the United States, through both online and brick-and-mortar stores.⁴⁵ Ms. Stock, Vice President Core Bubbles at Moët Hennessy USA, Inc., U.S. distributor for VEUVE CLICQUOT, and subsidiary of Petitioner, testified that VEUVE CLICQUOT

⁴² *Id.* at 15, 16 (arrows added).

⁴³ *Id.* at 3-4, para. 5.

⁴⁴ *Id.* at 2-3, 5, paras. 2, 3, 9.

⁴⁵ *Id.* at 4, para. 8.

Champagne can be purchased via Petitioner’s official website, via link to third-party sellers, and through third-party online wine and spirits purveyors such as Drizly, Minibar, and Reserve Bar.⁴⁶ In terms of brick-and-mortar stores, Petitioner’s VEUVE CLICQUOT Champagne is currently sold at over 50,000 establishments in all 50 states and the District of Columbia.⁴⁷ Ms. Stock’s testimony declaration includes numerous photographs of displays of Petitioner’s goods at various retail stores, such as in-store displays. Ms. Stock also testified that Petitioner advertises its mark through “street advertising ..., often with large displays and advertisements in the windows of liquor stores[,]” and photographs attached to her testimony show the VEUVE CLICQUOT mark prominently displayed, sometimes together with bottles of Champagne with labels bearing the mark.⁴⁸ The following are representative:

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 36-168, 179-82.



49



50

⁴⁹ *Id.* at 47.

⁵⁰ *Id.* at 51.



51

Ms. Stock testified that Petitioner’s “VEUVE brand products are supported by strategic, high-profile advertising, promotions, and public relations programs.”⁵² Specifically, Petitioner advertises and promotes its VEUVE CLICQUOT mark through a variety of media, including “newspapers and magazines; online streaming services; on billboards and social media; point-of-sale displays; and on [Petitioner’s] Website.”⁵³ Additionally, Petitioner promotes its VEUVE CLICQUOT branded

⁵¹ *Id.* at 164.

⁵² *Id.* at 6, para. 10.

⁵³ *Id.*

Champagne through Champagne tastings in stores, restaurants, and bars, as well as through sponsorships of high-profile, celebrity-studded events and programs.⁵⁴

Regarding print advertisements, Petitioner has placed print advertisements featuring the mark in *The New York Times* and *Los Angeles Times*, as well as general interest magazines, such as *Modern Luxury*, *The Atlantic*, *Vogue*, and *Harper's Bazaar*, along with specialty magazines such as *Wine Spectator* and *Beverage Industry Magazine*.⁵⁵ Petitioner's mark and its Champagne have also been featured and/or have appeared on *cnn.com*,⁵⁶ *Travel + Leisure*,⁵⁷ *Forbes*,⁵⁸ *eonline.com*,⁵⁹ *The Observer*,⁶⁰ and *The Aspen Times*.⁶¹

Petitioner also places advertisements for its VEUVE CLICQUOT brand on the internet.⁶² For example, Petitioner has placed banner and video advertisements for its VEUVE CLICQUOT brand products on many third-party websites and online platforms.⁶³ Attached as an exhibit to Ms. Stock's testimony declaration are examples

⁵⁴ *Id.* Printouts of Petitioner's website appear at 211-42.

⁵⁵ *Id.* at 6-7, para. 11; *Id.* at 170-78.

⁵⁶ *Id.* at 277-78.

⁵⁷ *Id.* at 279-81, 310-11, 360-63.

⁵⁸ *Id.* at 282-86, 356-59.

⁵⁹ *Id.* at 312, 341-42.

⁶⁰ *Id.* at 350-55.

⁶¹ *Id.* at 368-70.

⁶² *Id.* at 7, para. 12.

⁶³ *Id.*

of some of these advertisements prominently featuring the VEUVE CLICQUOT mark.⁶⁴

Petitioner also prominently features its VEUVE CLICQUOT brand on its website.⁶⁵ Attached to Ms. Stock's testimony declaration are select pages from Petitioner's website featuring the mark.⁶⁶ "In 2021, more than 272,962 unique visitors visited" Petitioner's website.⁶⁷ As for social media, Petitioner advertises and promotes its mark on Facebook, where it has 1.1 million followers;⁶⁸ Instagram, where there are 827,000 followers of @veuvecliquot and @veuvecliquotusa;⁶⁹ Twitter, where it has 62,000 followers of @VeuveClicquot;⁷⁰ and YouTube.⁷¹ On each platform, the VEUVE CLICQUOT mark appears as the profile picture and in the account name or handle.

Ms. Stock testified that "Veuve Clicquot has also become known for hosting high-profile events that attract celebrities and press attention."⁷² The Veuve Clicquot Polo Classic, held in New York and Los Angeles each year since 2008 (other than during the Covid pandemic), is one such event.⁷³ According to Ms. Stock, "[t]hese polo classics

⁶⁴*Id.*; *Id.* at 194-209 (Ex. VC5).

⁶⁵ *Id.* at 7, para. 13.

⁶⁶ *Id.* at 211-42.

⁶⁷ *Id.* at 7, para. 13.

⁶⁸ *Id.* at 246-49, 256.

⁶⁹ *Id.* at 250-52, 255.

⁷⁰ *Id.* at 253.

⁷¹ *Id.* at 254.

⁷² *Id.* at 7, para. 14.

⁷³ *Id.*

draw more than 10,000 spectators and [Petitioner treats] them to a day of competitive polo with [Petitioner's] marketing materials for VEUVE CLICQUOT posted throughout the event space.”⁷⁴ “Prince Harry made headlines by playing in the event twice.”⁷⁵ Other celebrities who have attended include Madonna, Kate Hudson, Marc Jacobs, LL Cool Jay, Donna Karan, Charlize Theron, Gabrielle Union, and Neil Patrick Harris.⁷⁶

Petitioner's sponsorship of the polo classic is widely covered by the media, and the mark is often featured in the headline, i.e., “Veuve Clicquot Polo Classic Turns 10,” published in the *Women's World Daily*, is one representative headline.⁷⁷ A similar headline, “What to Expect at the 2018 Veuve Clicquot Polo Classic,” appeared in *Town & Country*.⁷⁸ This article includes a photo of Nicole Kidman attending Petitioner's Rosé Garden, where each guest received a bottle of VEUVE CLICQUOT rosé as a gift.⁷⁹ Similar articles describing Petitioner's sponsorship of the Polo Classic have appeared in *Vogue*,⁸⁰ *Harper's Bazaar*,⁸¹ *Just Jared*,⁸² *PopSugar*,⁸³ *The*

⁷⁴ *Id.* at 7-8, para. 14.

⁷⁵ *Id.* at 8, para. 14.

⁷⁶ *Id.*

⁷⁷ *Id.* at 258-60.

⁷⁸ *Id.* at 261.

⁷⁹ *Id.* at 262.

⁸⁰ *Id.* at 268-69, 302-04, 321-22, 327-28.

⁸¹ *Id.* at 270-73, 332-35.

⁸² *Id.* at 274-76.

⁸³ *Id.* at 287-301.

Hollywood Reporter,⁸⁴ *Essence*,⁸⁵ *Refinery29*,⁸⁶ *People*,⁸⁷ *Glamour*,⁸⁸ and *Business Insider*.⁸⁹

Petitioner also sponsored the Veuve Clicquot Carnaval in Miami, “another star-studded event,” which was held annually between 2014 and 2018.⁹⁰ The record shows that this event was featured in *Haute Living*⁹¹ and *W Magazine*.⁹²

As for unsolicited media, to the extent not addressed above, Ms. Stock testified that Petitioner’s VEUVE CLICQUOT Champagne has been featured in *Town & Country*, *The New York Times* and *Martha Stewart Living*; and photocopies of the articles, many of which include a photo of a Champagne bottle bearing the VEUVE CLICQUOT mark, are attached as exhibits.⁹³ Other articles made of record under a notice of reliance, include:

- A Forbes article dated April 11, 2022 titled, “Veuve Clicquot Celebrates 250 Years of Distinguished Champagne,” which appears on forbes.com and which prominently features the mark;⁹⁴
- A Harper’s Bazaar article dated January 25, 2022 titled, “The story of Veuve Clicquot, the woman who invented the champagne market,” which

⁸⁴ *Id.* at 305-06.

⁸⁵ *Id.* at 307-09.

⁸⁶ *Id.* at 313-16.

⁸⁷ *Id.* at 329-31.

⁸⁸ *Id.* at 336-38.

⁸⁹ *Id.* at 339-40.

⁹⁰ *Id.* at 8, para 15.

⁹¹ *Id.* at 343-49, 364-65.

⁹² *Id.* at 365-67.

⁹³ *Id.* at 11, para. 22; *Id.* at 506-36 (Ex. VC17).

⁹⁴ 33 TTABVUE 68-72.

appears on harpersbazaar.com and which prominently features bottles of Champagne bearing the mark;⁹⁵ and

- A Smithsonian Magazine article dated November 5, 2013 titled, “The Widow Who Created the Champagne Industry,” which appears on smithsonianmag.com and which prominently displays Petitioner’s label bearing the mark.⁹⁶

Ms. Stock testified about annual revenues⁹⁷ and annual advertising expenditures⁹⁸ for the years 2011-2021 for Petitioner’s “VEUVE brand” Champagnes, and while the exact amounts are under seal, suffice it to say that they are substantial by any measure. Indeed, while sales figures for 2016 are robust, the sales amounts for the year 2021 are almost 50% higher than the annual revenues reported in 2016. To provide context for these raw figures, Ms. Stock, in non-confidential testimony, testified that Petitioner’s “VEUVE brand Champagnes are the number two selling Champagnes in the entire world, and the number two Champagne brand sold in the United States as well.”⁹⁹ Ms. Stock, in her testimony, also points to industry articles that describe Petitioner’s Champagne as highly rated by critics and collected.¹⁰⁰ However, Ms. Stock’s testimony and supporting documentary evidence fall short in that they do not specifically address the amount of Champagne sold under the

⁹⁵ 33 TTABVUE 117-20.

⁹⁶ *Id.* at 121-26.

⁹⁷ 26 TTABVUE 11, para. 21; 26 TTABVUE 519.

⁹⁸ *Id.* at 517.

⁹⁹ 29 TTABVUE 11, para. 21.

¹⁰⁰ *Id.* at 11, para. 23; *Id.* at 538-83 (Ex. VC18). We note that portions of Ex. VC18 did not print clearly and cannot be read due to missing characters and odd formatting. *See, e.g., id.* at 544-45, 548-50.

VEUVE CLICQUOT mark, specific amounts spent advertising the VEUVE CLICQUOT mark, or its particular ranking in the United States.

As for enforcement efforts, Ms. Stock testified that “Petitioner expends significant resources to closely monitor the marketplace for violations of its VEUVE Marks and sends numerous cease-and-desist letters and takedown notices to parties who are improperly using the VEUVE Marks ... and that [r]ecipients of these letters very frequently agree to cease the accused activity cooperatively and immediately.”¹⁰¹ She also testified that Petitioner “routinely monitors USPTO filings for potentially infringing marks.”¹⁰² Specifically, documentary evidence attached to her testimony declaration show that from 1999 to 2022, Petitioner has asserted its registered VEUVE CLICQUOT mark in at least 5 **inter partes** proceedings before the Board, all of which resulted in the abandonment of the subject applications or the cancellation of the disputed registration.¹⁰³

iii. Conclusion Regarding Strength

In summary, because we find Petitioner’s VEUVE CLICQUOT mark to be arbitrary for the identified goods, the mark is conceptually strong. Petitioner demonstrated that it has used its VEUVE CLICQUOT mark since 1994, that the mark has been widely advertised and promoted, and that it has enjoyed high sales for the years since 2011, and has been the subject of numerous unsolicited media

¹⁰¹ *Id.* at 12, para. 26.

¹⁰² *Id.*

¹⁰³ *Id.* at 585-94 (selected portions of Ex. VC19).

articles. However, Petitioner did not provide any indication as to how much of the total sales or advertising amounts is properly attributable to Champagne sold under the VEUVE CLICQUOT mark specifically, as opposed to all of what Petitioner defines as its “VEUVE Marks.”¹⁰⁴ Additionally, while Petitioner offered testimony evidence that its Champagnes are the “number two selling Champagnes in the entire world, and the number two Champagne brand sold in the United States as well[.]”¹⁰⁵ this testimony is tempered by the fact that it relates to Petitioner’s “VEUVE brand Champagnes,” and does not address the VEUVE CLICQUOT brand specifically.

Petitioner’s evidence demonstrates that the VEUVE CLICQUOT is a conceptually strong mark and that overall the mark has substantial commercial strength and falls on the stronger side of the spectrum from very strong to very weak. *Joseph Phelps Vineyards*, 122 USPQ2d at 1734. As a result, it is entitled to an enhanced scope of protection.

The fifth *DuPont* factor weighs in favor of confusion.

c. Similarity or Dissimilarity of the Marks

The first *DuPont* factor is “the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps.*, 73 USPQ2d at 1691 (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In*

¹⁰⁴ 29 TTABVUE 11, para. 21.

¹⁰⁵ *Id.*

re Inn at St. John's, LLC, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *Davia*, 110 USPQ2d at 1812), *aff'd mem.*, 777 F. App'x. 516 (Fed. Cir. 2019).

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

Further, the marks “must be considered ... in light of the fallibility of memory” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quotation omitted). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Bay State Brewing Co., Inc.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (citing *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991)), *aff'd per curiam*, 972 F.2d 1353 (Fed. Cir. 1992). “Similarity is not a binary factor but is a matter of degree.” *St. Helena Hosp.*, 113 USPQ2d at 1085 (quoting *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1062 (Fed. Cir. 2003)).

When considering the similarity of the marks, we keep in mind that the degree of similarity between the marks which is necessary to support a finding of likely confusion declines when the goods are, as here, legally identical. *Viterra*, 101 USPQ2d at 1912 (“It is [] well established that, when the goods at issue are identical, ‘the degree of similarity necessary to support a conclusion of likely confusion declines.’”)

(quoting *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992)).

In terms of appearance and sound, we find that Respondent's VEUVE OLIVIER mark and Petitioner's VEUVE CLICQUOT mark obviously look and sound identical to the extent that they each start with the word VEUVE but they otherwise look and sound different.

In terms of meaning or connotation, Petitioner's mark when translated means "Widow Clicquot." The USPTO records show that Respondent entered a translation statement that the word "veuve" means "widow," but it did not provide a translation for "Olivier". Olivier is likely to be perceived as a name, such that Respondent's mark could be translated by consumers to "Widow Olivier," if the consumer made a translation at all. Thus, in translation, Petitioner's mark and Respondent's mark each could connote a specific widow, i.e., the widow named Clicquot and the widow named Olivier, respectively. We find that an appreciable number of purchasers are unlikely to be aware that VEUVE means "widow" and are unlikely to translate the marks into English. *Palm Bay Imps.*, 73 USPQ2d at 1696 ("This court agrees with the T.T.A.B. that it is improbable that the average American purchaser would stop and translate 'VEUVE' into 'widow.'"). The slight difference in the "widow" connotations of the respective marks in translation, i.e., "the Widow Clicquot" versus "Widow Olivier," would likely be lost on these purchasers, and it will not aid such purchasers in distinguishing the marks. They will perceive only that the same French-looking and French-sounding word, VEUVE, appears as the first term in both

marks. *See, e.g., Bottega Veneta, Inc. v. Volume Shoe Corp.*, 226 USPQ 964, 970 (TTAB 1985). These similarities cause the marks to engender similar commercial impressions.

Moreover, VEUVE, or “widow,” clearly is the dominant term in each party’s mark because it is the first term in each mark. The word OLIVIER is less significant in Respondent’s mark because it merely modifies and refers back to VEUVE or “widow.” Additionally, Petitioner has introduced evidence that it has made VEUVE a theme of its marketing efforts because of the history, and the widow Clicquot herself, connected with the origins of the company.¹⁰⁶ The presence of this strong distinctive term as the first word in each party’s mark further substantiates the marks’ similarities.

Viewing the marks in their entirety in terms of sight, sound, meaning and commercial impression, we find that the marks are similar due to the shared initial term VEUVE. This shared dominant element outweighs the specific points of dissimilarity between the marks due to the terms that follow, i.e., CLICQUOT and OLIVIER.

The first *DuPont* factor weighs in favor of likelihood of confusion.

d. Summary of Factors

Petitioner has established its priority of use of its VEUVE CLICQUOT mark for Champagne and that its mark is conceptually strong and has substantial commercial

¹⁰⁶ *Palm Bay Imps.*, 73 USPQ2d at 1372. *See e.g.*, 32 TTABVUE 2-3, 27-29, 50, 52-57 (Exs. VC30, VC32 and VC33); 33 TTABVUE 117-29 (Exs. VC54, VC55, VC56).

strength; as a result, it is entitled to an enhanced scope of protection. Petitioner has also established the identity of the parties' goods, their trade channels and classes of consumers, and that the marks are similar. As all of these factors weigh in favor of a likelihood of confusion, and no factor weighs against it, we find that Petitioner has proved priority and likelihood of confusion by a preponderance of the evidence.

V. Decision

As Respondent failed to submit evidence or a brief, we deny Respondent's counterclaims with prejudice. We grant the petition for cancellation on the ground that Respondent's mark VEUVE OLIVIER (Reg. No. 5046283) is likely to cause confusion with Petitioner's registered VEUVE CLICQUOT mark (Reg. No. 2333257) under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). We do not reach Petitioner's claim of dilution.

Accordingly, Respondent's registration (Reg. No. 5046283) will be canceled in due course.