

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE  
TTAB

April 30, 1997

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

---

Trademark Trial and Appeal Board

---

In re Celliers du Monde, Inc.

---

Serial No. 74/462,760

---

Molly Buck Richard of Strasburger & Price for applicant.

Donna Mirman, Trademark Examining Attorney, Law Office 101  
(Christopher Wells, Managing Attorney).

---

Before Seeherman, Hanak and Walters, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Celliers du Monde, Inc. has filed a trademark  
application to register the mark CABALLERO DE CHILE for  
"wine."<sup>1</sup>

The Trademark Examining Attorney has finally refused  
registration under Section 2(d) of the Trademark Act, 15  
U.S.C. 1052(d), on the ground that applicant's mark so

---

<sup>1</sup> Serial No. 74/462,760, in International Class 33, filed November 24,  
1993, under Section 44(e), based on Canadian Registration No. 384,373  
(issued May 10, 1991 with an expiration date of May 10, 2001). The  
application includes a disclaimer of the term CHILE apart from the mark

resembles the mark CABALLERO DE LA CEPA, previously registered for wines,<sup>2</sup> that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

In a likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. As applicant's and registrant's goods are identical, we turn our consideration to the similarities between the marks, noting the premise that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

The Examining Attorney contends that CABALLERO is, essentially, arbitrary in connection with wine; that the CHILE portion of applicant's mark is geographically descriptive and, thus, of less significance; and that the

---

as a whole and a statement that the English translation of the mark is "Gentleman from Chile" or "Knight of Chile."

<sup>2</sup> Registration No. 1,930,369 issued October 31, 1995, to Finca Flichman S.A., in International Class 33. The registration includes a statement that the English translation of the mark is "Knight of the Vine." This registration issued from application Serial No. 74/246,545, which originally issued, on November 3, 1992, as Registration No. 1,729,712. The registration was canceled as inadvertently issued, restored to

CEPA portion of registrant's mark, which translates as "vine," is less significant as it is merely descriptive in connection with wine and is a commonly used term in connection with wine products. The Examining Attorney concludes that, CABALLERO is the dominant portion of both marks and, thus, the overall commercial impression of the two marks is substantially similar.

On the other hand, applicant argues that the Examining Attorney has not considered the respective marks in their entireties. First, applicant argues, essentially, that the commercial impressions of the two marks differ because the connotations of the two marks as translated differ.

Applicant states that CABALLERO DE CHILE would be understood to mean a "knight from Chile," whereas CABALLERO DE LA CEPA would be understood to mean a "winemaker."<sup>3</sup>

Second, applicant argues that both CABALLERO and CHILE, while Spanish words, are also commonly recognized, without the need for translation, in English-speaking countries;<sup>4</sup>

---

pendency, republished for opposition and issued as the registration noted herein.

<sup>3</sup> The record contains no evidence to support the statement that the connotation of the registered mark would be of a "winemaker."

<sup>4</sup> We take notice of the fact that CHILE is the same word in English and Spanish. In support of the contention that CABALLERO is understood by English speakers, applicant submitted the following unidentified excerpt, which applicant indicates is from an English language dictionary: "CABALLERO - n. 1. Knight; cavalier 2. *chiefly Southwest*: Horseman." However, we found no entry for CABALLERO in either *The Random House Dictionary of the English Language, Second Edition, Unabridged* (1987) or *Webster's Third New International Dictionary, Unabridged* (1976). Thus, absent additional evidence, we cannot conclude that, as alleged by applicant, English speaking consumers in the United States would understand the meaning of the term CABALLERO without the necessity of translation from the Spanish.

and that the commercial impressions of the marks differ because consumers would associate CABALLERO DE CHILE with the country of Chile or South America, while Spanish-speaking consumers would associate CABALLERO DE LA CEPA with a winemaker and non-Spanish-speaking consumers would associate CABALLERO DE LA CEPA with a place of origin different from CHILE.

The record indicates that both applicant's mark, CABALLERO DE CHILE, and registrant's mark, CABALLERO DE LA CEPA, are Spanish phrases. The record contains a statement that applicant's mark translated into English means "gentleman from Chile" or "knight of Chile." The cited registration includes a statement that the English translation of CABALLERO DE LA CEPA is "knight of the vine." Additionally, we take notice of the fact that the translation of CABALLERO in several English-Spanish dictionaries includes "gentleman," "nobleman," and "knight"; and the translation of CEPA includes "vine" and "stock" (as in either "root stock" or "lineage").<sup>5</sup> We note, further, that the Spanish term for "winegrower" is "vinicultor."<sup>6</sup> None of the dictionaries consulted contains a listing in Spanish for the phrase CABALLERO DE LA CEPA.

---

<sup>5</sup> *Larousse Gran Diccionario, Español-Inglés* (1983); *Simon and Schuster's International Dictionary, English/Spanish, Spanish/English* (1973); and *The Concise American Heritage Larousse - Spanish/English- Spanish Dictionary* (1989).

<sup>6</sup> *The Concise American Heritage Larousse - Spanish/English- Spanish Dictionary* (1989).

In considering the meaning and connotation of a mark in the context of a determination of either likelihood of confusion or descriptiveness, there is no distinction between English terms and their foreign equivalents, despite the fact that the foreign term may not be commonly known to members of the general public in the United States. See, *In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992) and cases cited therein. However, the equivalency in connotation between two marks does not, in and of itself, determine the question of likelihood of confusion. *In re Ithaca Industries, Inc.*, 230 USPQ 702 (TTAB 1986). While translation of the foreign words in one or both marks may indicate similarity in meaning, this factor must be weighed with all other factors, including similarity or dissimilarity in appearance and sound of marks, before reaching a conclusion. *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983). See, for example, *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1975) [no likelihood of confusion between TIA MARIA for restaurant services and AUNT MARY'S for canned vegetables - despite similarity of meaning as translated, Board found, in this case, American consumers encountering AUNT MARY'S canned fruits and vegetables in a supermarket unlikely to translate that phrase into TIA MARIA and associate those products with applicant's restaurant]; *In re Ness & Co.*, 18 USPQ2d 1815 (1991) [no likelihood of confusion between GOOD-NESS and

LABONTE, both for cheeses, despite similarity in meaning of terms as translated, in view of stylized format of GOODNESS, which emphasizes applicant's name, common laudatory nature of applicant's mark, and fact that marks are totally different in sound and appearance]; and *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987) [likelihood of confusion found between applicant's BUENOS DIAS for soaps and registration of GOOD MORNING and sun design for shaving cream - Board found dissimilarity in marks' sound and appearance to be outweighed by identical connotation of marks, arbitrary nature of marks, and fact that products are closely related grooming aids]. Even where, as herein, both marks consist of foreign words, the English meaning of the marks is a factor that must be considered. *In re Lar Mor International, Inc.*, 221 USPQ 180 (TTAB 1983).

In the case before us, the two marks share the common term CABALLERO. The format of both marks is the same - the noun CABALLERO appears first and is followed by a term which describes and modifies CABALLERO. There is no evidence in the record that CABALLERO, or its English equivalent,<sup>7</sup> is either a commonly used term in the wine industry or a descriptive or suggestive term in connection with wine. Additionally, there is no evidence in the record that third-parties in the wine industry have adopted, used or

registered marks incorporating the term CABALLERO.<sup>8</sup> Thus, we conclude that CABALLERO and its English equivalent are arbitrary terms in connection with wine.

Further, we agree with the Examining Attorney's position, which applicant does not dispute, that, in addition to modifying CABALLERO in the respective marks, the term CHILE is geographically and/or merely descriptive in connection with wine and the term LA CEPA, when translated into English to mean "vine," is merely descriptive or highly suggestive in connection with wine.

We agree with applicant that in reaching a conclusion on the issue of likelihood of confusion, the marks must be compared in their entireties. However, we are guided equally by the well-established principle that "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 entireties." *In re*

---

<sup>7</sup> By "its English equivalent" we refer to any and all of the noted definitions - "knight," "gentleman," and "nobleman."

<sup>8</sup> The Examining Attorney submitted a copy of her search of the records of the Patent and Trademark Office (PTO) to establish that the term CABALLERO is not commonly a part of third-party registered marks for wine. It is well-established that third-party registrations may be competent to show, *inter alia*, that others in a particular area of commerce have adopted and registered marks incorporating a particular term, although such registrations are incompetent, in and of themselves, to establish that the marks shown therein are in use. *In re Hamilton Bank*, 222 USPQ 174 (TTAB 1984) and cases cited therein. With her submission, the Examining Attorney is attempting to show the negative of this proposition. While we find her submission alone inconclusive, we note that applicant has not submitted any evidence indicating either that third parties **have** used or registered marks containing the term

*National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Thus, we agree, also, with the Examining Attorney's conclusion that CABALLERO is the dominant portion of both marks, regardless of whether we consider the Spanish marks as presented or their English equivalents, and that the commercial impression of both marks is substantially similar.

For the reasons already stated herein, we are not persuaded otherwise by applicant's arguments that CABALLERO is not the dominant portion of either mark and that the marks viewed in their entireties are significantly different, or by applicant's contentions regarding the possible different connotations to be attributed to the respective marks by consumers with different proficiencies in Spanish. As previously stated, we do not agree that the Spanish word CABALLERO is sufficiently familiar to English-speaking consumers that it need not be translated. Thus, we are not comparing marks which appear in different languages or marks that are a unique combination of English and non-English words. Rather, we have before us two Spanish language marks, both of which contain the term CABELLERO in the identical format. Thus, our conclusion remains the same regardless of whether consumers translate all, part or none

---

CABALLERO in connection with wine or that the term CABALLERO has any significance in the wine industry.

of either mark, and regardless of whether consumers attribute a geographic meaning to the term DE LA CEPA. In each case, in view of the arbitrary nature of the dominant term CABALLERO, the marks will be perceived as variants of each other so that consumers are likely to believe that the goods emanate from the same source.

We note, further, that applicant has not alleged or shown that the marks, viewed in their entirety, differ in connotation because either mark, as a whole, has an idiomatic meaning that is distinct from the meaning of the individual words comprising each mark; or that either mark is a double entendre in either English or Spanish.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, CABALLERO DE CHILE, and registrant's mark, CABALLERO DE LA CEPA, their contemporaneous use on the same goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

Serial No. 74/462,760

Decision: The refusal under Section 2(d) of the Act is affirmed.

E. J. Seeherman

E. W. Hanak

C. E. Walters  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board