

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 26, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Miguel Torres, S.A.
v.
Advantage Wine Group

Request for Reconsideration--Correction

Opposition No. 101,101
to application Serial No. 74/600,257
filed on November 17, 1994

Robert G. McMorrow of Sughrue, Mion, Zinn, McPeak & Seas for
Miguel Torres, S.A.

Thomas F. Smegal, Jr. of Knobbe, Martens, Olson & Bear,
L.L.P. for Advantage Wine Group.

Before Hanak, Chapman and Bucher, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Opposer seeks reconsideration of this Board's opinion
of November 23, 1999. Opposer contends (1) that the Board
improperly dissected the marks by focusing "exclusively on
the differences between DONA and VIÑA rather than comparing

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the overall marks, VIÑA SOL and DONA SOL"; (2) that "this improper dissection caused another omission, namely, failure to identify and afford more weight to SOL as the dominate VIÑA component of both marks"; and (3) that "the Board failed to give proper weight to the very near identity in pronunciation of the marks at issue."

At the outset, we note that in comparing the marks VIÑA SOL and DONA SOL, we compared the marks in their entireties. Moreover, our comparison was based upon all three relevant factors, namely, visual appearance, sound (pronunciation) and connotation or meaning.

At page five of our original opinion, we stated that the differences in visual appearance were "quite obvious." We wish to elaborate upon this point. Opposer has used and registered its mark VIÑA SOL in the highly stylized form shown below. Indeed, the stylization is so great that the first letter of the SOL portion of opposer's mark bears a striking resemblance to a dollar sign. Thus, comparing VIÑA SOL in its highly stylized form with DONA SOL, there are clear dissimilarities in terms of visual appearance.

As for meaning or connotation, we pointed out at pages five and six of our opinion that even opposer's witness acknowledged that the two marks had significantly different meanings. Opposer's witness testified that VIÑA SOL means "sun vineyard" and that DONA SOL means "Madam Sol." Moreover, we further pointed out at page six of our opinion that we believed that American consumers would readily understand that the mark VIÑA SOL would refer to wine or "vino," and that, at a minimum, DONA SOL would be perceived as referring to, if not a lady in general, then a lady named Dona or Donna.

In its request for reconsideration, it should be noted that at no point has opposer criticized the Board for its analysis of the two marks in their entireties with regard to differences in visual appearance and meaning or connotation. Rather, opposer seems to fault the Board for failing "to give proper weight to the very near identity in pronunciation of the marks at issue." Opposer argues that both marks consist of three syllables; that the second and third syllables would be pronounced the same in both marks; and that the first syllable in both marks consists of just two letters, a noun followed by a verb. We do not take issue with opposer's mechanical comparison of the two marks. Moreover, we acknowledge that the two marks are somewhat

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similar in sound. However, such a mechanical approach ignores the marketplace realities. Numerous words sound alike, such as "duck" and "luck." However, this does not mean that a consumer would confuse DUCK brand wine with LUCK brand wine. Moreover, such similarity as there is in sound between the two marks must be balanced against the fact that the two marks are quite dissimilar in terms of visual appearance and that the two marks have significantly different meanings.

Finally, as for opposer's contention that SOL is the dominant component of both its mark and applicant's mark, suffice it to say that we simply disagree with opposer's assertion, at least with regard to applicant's mark DONA SOL. As applied to wine, the DONA portion of applicant's mark is totally arbitrary and thus is entitled to as much weight, if not more weight, than the SOL portion. Indeed, because opposer's own witness testified that SOL means "sun," and because the sun, obviously, is necessary for the ripening of grapes which make wine, we find that if anything, the DONA portion of applicant's mark is the dominant portion of said mark.

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Decision: Opposer's request for reconsideration is denied.

E. W. Hanak

B. A. Chapman

D. E. Bucher
Administrative Trademark
Judges, Trademark Trial and
Appeal Board