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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Champagne Chanoine Freres, Depuis 1730

Serial No. 75/448,727

Lawrence E. Abelman of Abelman, Frayne & Schwab for applicant.

Carol A. Spils, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney).

Before Seeherman, Quinn and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Champagne Chanoine Freres, Depuis 1730 has filed a trademark application to register the mark TSARINE for "champagne."¹ The application record includes the statement that TSARINE is a French word meaning "czarina."

The Trademark Examining Attorney has finally refused registration under Section 2(d) of the Trademark Act, 15

¹ Serial No. 75/448,727, in International Class 33, filed March 12, 1998, based on an allegation of a bona fide intention to use the mark in commerce. Applicant amended its application to assert as its basis, under Section 44(e) of the Trademark Act, French Registration No. 92/404,956, issued February 10, 1992, and expiring February 10, 2002.

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U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark CZARINA, previously registered for vodka,² that, if used 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.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See, *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion in this case, two key considerations are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

² Registration No. 724,585 issued November 28, 1981, in International Class 33. The registration issued originally to Barton Distilling Company and the current owner of record is Barton Brands, Ltd. [Registration renewed for a period of twenty years from November 28, 1981; Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The Examining Attorney contends that the marks are similar in appearance and pronunciation. Both the Examining Attorney and applicant agree that CZARINA refers to the wife of a Russian czar. We take judicial notice of the following definitions in *The American Heritage Dictionary*, 2nd College Edition (1985):

czar - 1. A king or emperor, especially one of the former emperors of Russia.

czarina - The wife of a czar.

tsar - Variant of czar.

The Examining Attorney contends that, under the doctrine of foreign equivalents, both applicant's and registrant's marks are identical in connotation; and that, in connection with the respective goods, the marks are arbitrary.

Applicant contends, on the other hand, that the marks differ in sight and sound, in view of their different spellings; and that the marks differ in connotation because CZARINA "calls to mind the association between vodka and its country of origin, [whereas] use of TSARINE on

champagne is fanciful and does not call to mind any such connection."

In determining the extent of any similarities between the marks, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See, *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

There is no question that TSARINE is the foreign equivalent of CZARINA. 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. See *In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992) and cases cited therein. The evidence supports the conclusion that CZARINA is a recognized word in the English language; that it is a feminine form of the word "czar," and that a "czarina" is "an empress"; and that an alternative English language spelling of the word "czar" is

"tsar." Clearly, the two marks have the same connotation. Further, the appearance and likely pronunciation of the two marks, CZARINA and TSARINE, are very similar, particularly in view of the fact that the root of TSARINE, i.e., TSAR, is an alternative spelling of the root of CZARINA, i.e., CZAR.

In view of the foregoing, we find that applicant's mark, TSARINE, is identical in connotation to registrant's mark, CZARINA, and it is substantially similar to registrant's mark in appearance, sound and overall commercial impression.

Turning our consideration to the goods, we note the general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be seen by the same people under circumstances which could give rise, because of the marks used in connection with them, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re*

Melville Corp., 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

The Examining Attorney argues that champagne and vodka are both alcoholic beverages that are sold to the same purchasers through the same channels of trade.

Applicant contends that the goods are "significantly different in their nature and likely customers," stating that champagne is a costly "glamour wine," whereas vodka "is a distilled spirit from potatoes or from the least expensive grain available"³; that "[c]hampagne is usually imbibed by itself, while vodka is frequently mixed with juice or other mixers or served over ice"; and that champagne and wine are sold in different areas of a retail establishment. Applicant argues that its mark is French, and France is well known for champagnes, whereas the registered mark is Russian and Russia is "perceived by the public as the origin of most vodkas."

Applicant points out that there is no *per se* rule that requires us to find that all alcoholic beverages are closely related, and we agree. However, neither applicant's nor registrant's identifications of goods contain any limitations and, thus, applicant's arguments as

³ This distinction is inapposite. The alleged cost of the raw products from which vodka may be made is not evidence of either the cost of, or the "glamour" accorded to, the finished product.

to alleged distinctions regarding price, use of the respective products and discrimination of purchasers are not well taken. The identifications of goods encompass all price ranges of champagne and vodka, and both discriminating and undiscriminating purchasers. Further, contrary to applicant's contentions, there is no reason why both champagne and vodka could not be used in cocktails with other ingredients. We find that the goods are sufficiently related that, if identified by substantially similar marks, confusion is likely.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, TSARINE, and registrant's mark, CZARINA, their contemporaneous use on applicant's "champagne" and registrant's "vodka" is likely to cause confusion as to the source or sponsorship of such goods.

Moreover, to the extent that we have any doubts regarding the likelihood of confusion in this case in view of the differences that do exist between the respective alcoholic beverages, we resolve that doubt, as we must, in favor of the registrant. See *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed Cir. 1988); and *W.R. Grace & Co. v.*

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Herbert J. Meyer Industries, Inc., 190 USPQ 308 (TTAB
1976).

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

E. J. Seeherman

T. J. Quinn

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