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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Veuve Clicquot Ponsardin, Maison Fondée en 1772

v.

Palm Bay Imports, Inc.

Opposition No. 115,438
to application Serial No. 75/477,014
filed on April 30, 1998

Marie V. Driscoll of Fross Zelnick Lehrman & Zissu, P.C.
for Veuve Clicquot Ponsardin, Maison Fondée en 1772.

Edmund J. Ferdinand, III of Grimes & Battersby LLP for
Palm Bay Imports, Inc.

Before Quinn, Hairston and Bottorff Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration of the mark VEUVE
ROYALE, (in typed form) for goods identified in the

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application as "alcoholic beverages, namely sparkling wine."¹

Opposer has opposed registration of applicant's mark, asserting, as grounds therefor, priority of use and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. §1052(d), and dilution under Trademark Act Sections 13(a) and 43(c), 15 U.S.C. §§1063(a) and 1125(c). Specifically, opposer alleges that Section 2(d) bars registration because applicant's mark, as applied to the goods identified in the application, is likely to cause confusion vis-à-vis opposer's previously used trademark and trade name VEUVE CLICQUOT, and vis-à-vis its registered marks VEUVE CLICQUOT PONSARDIN (in typed form) for "champagne wines,"² THE WIDOW (in typed form)

¹ Application Serial No. 75/477,014, filed April 30, 1998. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b). The application includes the following statement: "The English translation of VEUVE ROYALE is 'Royal Widow.'"

² Registration No. 1,201,370, issued July 13, 1982. Affidavits under Sections 8 and 15 accepted and acknowledged. The Office's automated records show that the registration has been renewed for a term of ten years from July 13, 2002. The registration includes the following statement: "The French word 'Veuve' means 'widow' or 'widower' in English."

In the notice of opposition, opposer also alleged ownership of another registration (Reg. No. 151,004), which is for a design mark depicting its wine bottle label on which the wording VEUVE CLICQUOT PONSARDIN prominently appears. The Office's automated records show that this registration expired on October 12, 2002, and opposer has not relied on it in its trial briefs.

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for "wines,"³ and LA VIUDA (in typed form) for "champagne wines."⁴ In support of its dilution ground, opposer claims that applicant's use of the VEUVE ROYALE mark will dilute the distinctive quality of opposer's VEUVE CLICQUOT mark, which opposer asserts is distinctive and famous and had become famous prior to any acquisition by applicant of rights in the mark VEUVE ROYALE.

Applicant filed an answer by which it denied the salient allegations of the notice of opposition.

Both parties presented testimony and other evidence at trial. The matter is fully briefed, but no oral hearing was requested. After careful consideration of the evidence of record, the parties' arguments, and the relevant authorities, and for the reasons discussed below, we sustain opposer's Section 2(d) ground of

³ Registration No. 797,567, issued October 12, 1965. Section 8 affidavit accepted. Renewed for a term of twenty years from October 12, 1985.

⁴ Registration No. 1,708,535, issued August 18, 1992. Section 8 affidavit accepted. The Office's automated records show that the registration has been renewed for a term of ten years from August 18, 2002. The registration includes the following statement: "The English translation of the term 'LA VIUDA' in the mark is 'the widow.'" We note that in the March 2, 2001 status and title copy of the registration made of record by opposer at trial, the identification of goods in the registration reads "wines, sparkling wines, champagne wines." We take judicial notice that the Office's automated records currently show that "wines, sparkling wines" have been deleted from the identification of goods, leaving only "champagne wines."

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opposition with respect to opposer's pleaded marks VEUVE CLICQUOT, VEUVE CLICQUOT PONSARDIN, and THE WIDOW, but we dismiss opposer's Section 2(d) ground with respect to its mark LA VIUDA. In view of our decision on the Section 2(d) ground, we deem opposer's dilution ground of opposition to be moot and reach no decision with respect thereto.

The evidence of record in this case consists of the following: the parties' pleadings; the file of the opposed application; the testimony deposition of opposer's officer Stephen Lewin and exhibits thereto; opposer's notice of reliance on status and title copies of opposer's pleaded registrations; opposer's stipulated submission of copies of certain WIPO arbitration decisions; opposer's notice of reliance on status and title copies of certain third-party registrations; opposer's notice of reliance on excerpts from the discovery depositions of applicant's officers David Taub and Ian Ribowsky; the testimony deposition of applicant's officer David Taub and exhibits thereto; the testimony deposition of applicant's officer Ian Ribowsky and exhibits thereto; the testimony deposition of applicant's counsel Russell Dize and exhibits thereto; the testimony deposition of applicant's investigator Thomas Freeman and

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exhibits thereto; applicant's notice of reliance on certain third-party registrations and on certain dictionary and encyclopedia excerpts; applicant's notice of reliance on excerpts from the discovery deposition of opposer's officer Stephen Lewin and exhibits thereto; opposer's notice of reliance on further excerpts from the discovery deposition of opposer's officer Stephen Lewin; opposer's notice of reliance on certain printed publications; and opposer's stipulated affidavit testimony of opposer's counsel's paralegal Mario Ortiz, and exhibits thereto.

Opposer has submitted status and title copies of its pleaded registrations, and has presented evidence that it is the prior user of those registered marks and of the trademark and trade name VEUVE CLICQUOT. In view of this evidence of opposer's interest in its marks, and because opposer has asserted a likelihood of confusion claim that is not wholly without merit, we find that opposer has established its standing to oppose registration of applicant's mark. *See generally Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

We turn now to consideration of opposer's Section 2(d) ground of opposition, starting with the question of

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priority. In view of opposer's submission of status and title copies of its three extant pleaded registrations, priority is not an issue in this proceeding insofar as those registered marks (i.e., VEUVE CLICQUOT PONSARDIN, THE WIDOW and LA VIUDA) are concerned. See *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). As for opposer's pleaded Section 2(d) claim based on its unregistered trademark VEUVE CLICQUOT, we find that opposer has proven its Section 2(d) priority with respect thereto. The evidence shows that opposer has been marketing champagne bearing the VEUVE CLICQUOT mark in the United States since prior to the April 30, 1998 filing date of applicant's intent-to-use application, which is the earliest date upon which applicant can rely for priority purposes. (Lewin Testimony Depo. at p. 7, and at Exh. Nos. 38 and 39.)

We next must determine whether a likelihood of confusion exists, i.e., whether applicant's mark VEUVE ROYALE, as applied to the goods identified in the application ("alcoholic beverages, namely sparkling wine"), so resembles any of opposer's registered or previously-used marks as to be likely to cause confusion, to cause mistake, or to deceive. See Trademark Act Section 2(d). Each of opposer's pleaded marks forms the

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basis of an independent Section 2(d) claim, and we shall consider each of those claims in turn, beginning with opposer's registration of the mark VEUVE CLICQUOT PONSARDIN for "champagne wines" and its previously-used mark and trade name VEUVE CLICQUOT.

Our likelihood of confusion determination is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he 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." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We first find, under the second and third *du Pont* evidentiary factors, that the goods identified in applicant's application, i.e., "alcoholic beverages, namely sparkling wine," are highly similar, if not legally identical, to the goods identified in opposer's registration, i.e., "champagne wines," and that these respective goods are marketed in the same trade channels and to the same potential purchasers.

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We take judicial notice that Webster's II New Riverside University Dictionary (1988) defines "sparkling wine" (at 1114) as "an effervescent wine, as champagne, produced by fermentation in the bottle," and that it defines "champagne" (at 247) primarily as "a sparkling white wine produced in Champagne, a region of France," but also as "a similar wine made elsewhere."⁵ Similarly, in the excerpt from The New Encyclopaedia Britannica (15th ed. 1997) made of record by applicant, "champagne" is identified (at Vol. 3, page 72) as "classic sparkling wine named for the site of its origin and exclusive production, the traditional region of Champagne in northeastern France. The term champagne is also applied generically, with restrictions, outside France, to many white or rose wines that are characterized by effervescence."

It appears from these definitions and from testimony in the record that use of the term "champagne" most properly is limited to sparkling wines which originate in the Champagne region of France, and that sparkling wines which do not originate from that region properly are

⁵ The Board may take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); see also TBMP §704.12 (2d ed. June 2003).

called "sparkling wine," not "champagne." (Ribowsky Testimony Depo. at 18-19; Taub Testimony Depo. at 10-11; Lewin Discovery Depo. at 69-70.) See also *G.H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635, 1636 at n.1 (Fed. Cir. 1990). We shall observe this geographic distinction when we refer to "champagne" and to "sparkling wine" in this opinion.⁶

⁶ We note, however, that there is evidence in the record which would support a finding that this technical geographic distinction between "champagne" and "sparkling wine" may not be understood or recognized by a significant number of sparkling wine consumers in the United States. Apparently, sparkling wine products marketed in the United States currently may be called "champagne" regardless of their geographic origin, and some sparkling wines at the lower end of the price scale in fact are marketed and known in the United States as "champagne." (Ribowsky Testimony Depo. at 18-19 (citing the example of the Andre Champagne brand); Lewin Discovery Depo. at 69-71.) Applicant's president David Taub identified four segments of the sparkling wine market in the United States: champagnes from the Champagne region of France; "high image" sparkling wines from California; Spanish and Italian sparkling wines; and bulk-produced California "champagnes" and French sparkling wines from regions other than the Champagne region. (Taub Testimony Depo. at 10-11.) He also testified that eighty-five percent of consumers of sparkling wine products in the United States are unaware of this market segmentation (*id.* at 22-23), and that "at the consumer level," the term "champagne" signifies a particular type of bottle closure. (*Id.* at 11-12.) On the other hand, when opposer's vice-president Stephen Lewin was asked in his discovery deposition, "[w]ould you say the designation champagne carries a certain significance to the consumer separate and apart from sparkling wine?," he answered, "[y]es ... [i]t reflects the method of production and the region. Champagne, true champagne is made in the champagne region which is 90 miles northeast of Paris. Anything made outside of those borders of the Champagne region is in most people's minds sparkling wine, regardless of what country it's from." (Lewin Discovery Depo. at 69-70.) We note, however, that this exchange took place in the context of Mr. Lewin's testimony that sparkling wine

We find that the "sparkling wine" identified in applicant's application is legally identical to the "champagne wines" identified in opposer's registration. The above-referenced dictionary and encyclopedia definitions show that champagne is sparkling wine, albeit a specific type of sparkling wine from a specific geographic region. We must presume that the "sparkling wine" identified in applicant's application encompasses all types of sparkling wine, including the "champagne wines" identified in opposer's registration. See, e.g., *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *In re Opus One Inc.*, 60 USPQ2d 1812, 1817 (TTAB 2001). To the extent of such legal identity, the trade channels and classes of purchasers for the parties' respective goods also must be deemed to be legally identical. *Id.*

Their legal identity aside, we find that applicant's and opposer's respective goods are highly similar and

produced in the United States can be and sometimes is called "champagne," and that opposer considers those sparkling wines, and all other sparkling wine brands, to be opposer's competitors in the marketplace. (*Id.* at 69-71.)

We need not resolve the question of whether and to what extent consumers in the United States are aware of the technical geographic definition of "champagne," however. Regardless of how that question is answered, the evidence of record clearly shows that champagne and sparkling wine are closely related goods in the marketplace.

closely related in the marketplace in any event.

Opposer's vice-president Mr. Lewin testified that champagne and other sparkling wines are similar to each other, and different from other wines, because of their bubbles, which result from the second fermentation of the wine in the bottle. Consumers who want "bubbly" wine can purchase either champagne or non-champagne sparkling wine, and champagnes and sparkling wines compete for those consumers. (Lewin Testimony Depo. at 25, 55-56.)⁷

Other evidence in the record establishes that consumers encounter champagne and sparkling wines together as competitive goods in the marketplace. Champagnes and sparkling wines can be and are displayed in the same sections of retail liquor and wine stores, on adjacent shelves or even on the same shelf. (Freeman Testimony Depo., Exh. Nos. 4 and 8; Lewin Testimony Depo. at 34-35.) Champagnes and sparkling wines are offered and advertised together on the same or consecutive pages of retailer catalogs (Lewin Testimony Depo., Exhibit Nos. 31-34 and 39) and Internet sites (*id.* at applicant's Exhibit Nos. 3 and 5-6), and are listed together or adjacent to each other on restaurant wine lists (*id.* at

⁷ Applicant's objection to this testimony on the ground of lack of foundation is overruled.

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Exhibit Nos. 17 and 19 and applicant's Exhibit Nos. 4 and 7; Ortiz stipulated affidavit testimony, Exhibit C).

The record also shows that champagne and sparkling wine are types of goods which are marketed by a single source under the same or a similar mark. For example, the champagne house that produces Mumm Champagne also markets a sparkling wine under the brand Mumm Cuvee Napa; the maker of Louis Roederer Champagne also markets a sparkling wine under the brand Roederer Estate; and the maker of Moet & Chandon Champagne also markets a sparkling wine under the brand Chandon. (Lewin Testimony Depo. at 35-36, and at Exh. No. 31 (2001 Sherry-Lehmann retail catalog at 24-26).) Opposer also has made of record third-party registrations, owned by a single entity, of the marks MOET & CHANDON for champagne and CHANDON for sparkling wine. (Opposer's December 20, 2001 notice of reliance.)⁸ In view of this evidence, we find that purchasers encountering champagne and sparkling wine marketed under similar marks are likely to assume, and

⁸ These registrations are probative evidence to the extent that they suggest that the goods identified therein are of a type which may emanate from a single source under a single mark. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467 (TTAB 1988).

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would have a reasonable basis for assuming, that the two products originate from a single source. In these circumstances, and contrary to applicant's contention, it is not dispositive that opposer itself does not market a sparkling wine at this time. Purchasers familiar with the fact that other champagne houses (like Mumm, Roederer and Moet & Chandon) sell sparkling wines under marks similar to their champagne marks are likely to assume, upon encountering a sparkling wine sold under a mark which is similar to the mark under which opposer sells its champagne, that there is a source, sponsorship or other affiliation between opposer and such sparkling wine.

Applicant argues that opposer's champagne is a high-priced luxury product, that applicant's sparkling wine is a low-priced mass market product, and that the parties' respective goods therefore are not marketed to the same consumers and are not competitive with each other. This argument is unavailing for three reasons. First, as noted above, the record shows that a higher-priced champagne and a lower-priced sparkling wine can be and are marketed under similar marks by a single source. Thus, even if purchasers might not confuse the two products (due to price differences), they are likely to

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be confused as to the source of those products. See, e.g., *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

Second, we are persuaded by opposer's contention that purchasers of expensive champagne also are purchasers of less-expensive sparkling wines. That is, the same purchaser might purchase an expensive champagne for a more intimate celebratory occasion, and a less expensive sparkling wine for larger gatherings or more everyday occasions. (Lewin Testimony Depo. at 56 and 91-93;⁹ see also the printout from the Bacchus Cellars Internet site (applicant's Exh. No. 5 to the Lewin Testimony deposition), in which purchasers are encouraged to consider sparkling wine "as an alternative to Champagne" for "winter weddings" and "Sunday brunch mimosas.") *Cf. Krug Vins Fins de Champagne v. Rutman Wine Company*, 197 USPQ 572, 574 (TTAB 1977) (German still white wines and champagne "may be purchased by same classes of purchasers, namely, those that may like an inexpensive white dinner wine and on occasion or a special occasion, a champagne wine").

Finally, and more fundamentally, the actual price of the parties' respective goods is not material here,

⁹ Applicant's objection to this testimony on the grounds of hearsay and lack of foundation is overruled.

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inasmuch as no such price restrictions appear in either applicant's or opposer's respective identifications of goods. Thus, we are comparing "champagne" and "sparkling wine," not the parties' actual goods as currently marketed. See *In re Opus One Inc.*, *supra*. The record shows that although champagnes generally are more expensive than other sparkling wines, the retail prices for these products can overlap. (Lewin Testimony Depo. at 55, and at Exh. Nos. 31-32.) This case thus is distinguishable from *G.H. Mumm & Cie v. Desnoes & Geddes Ltd.*, *supra*, heavily relied on by applicant, in which the court found beer and champagne to be unrelated goods due to their inherent price-point differences.

For the reasons discussed above, we find that the "sparkling wine" identified in applicant's application and the "champagne wine" identified in opposer's registration are products which are legally identical and otherwise highly similar and closely related, and that they are marketed in the same trade channels to the same classes of purchasers. This is so regardless of any differences in the current actual prices for the parties' respective goods or in the parties' current actual marketing strategies. We conclude that the second

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and third *du Pont* factors weigh heavily in opposer's favor in our likelihood of confusion analysis.

We next find, under the fourth *du Pont* evidentiary factor, that champagne and sparkling wine are not necessarily expensive goods which are always purchased by knowledgeable, sophisticated purchasers who exercise a great deal of care in making their purchases. Certainly, some champagnes can be quite expensive, but the record shows that champagnes also can sell for around twenty-five dollars a bottle, and sparkling wines often cost less than ten dollars a bottle. We must consider all of these price points in our analysis in this case. See *In re Opus One Inc.*, *supra*. Likewise, the purchasers of these goods must be presumed to include not only knowledgeable wine connoisseurs, but also general consumers who, with little care or prior knowledge, might purchase a bottle of champagne or sparkling wine on a celebratory occasion. Even as to purchasers who are more knowledgeable and careful than such impulse purchasers, there is no basis in the record for concluding that they necessarily are sophisticated as to trademarks, or that their knowledge of wine would protect them from source confusion when they encounter a sparkling wine sold under a mark which is similar to a mark used on a champagne.

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See *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). Indeed, their knowledge may include knowledge of the fact, discussed above, that a single champagne house may offer both types of products under similar marks. For these reasons, we are not persuaded by applicant's contention that the fourth *du Pont* factor weighs in its favor in our likelihood of confusion analysis; instead, we find that factor to be neutral, at best.

The fifth *du Pont* evidentiary factor requires us to consider evidence of the fame of opposer's mark, and to give great weight to such evidence if it exists. See *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303, 1309 (Fed. Cir. 2002); *Recot Inc. v. Benton*, 214 F.3d 1322, 54 F.2d 1894 (Fed. Cir. 2000); *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992).

Fame of an opposer's mark or marks, if it exists, plays a "dominant role in the process of balancing the *DuPont* factors," *Recot*, 214 F.3d at 1327, 54 USPQ2d at 1456, and "[f]amous marks thus enjoy a wide latitude of legal protection." *Id.* This is true as famous marks are more likely to be remembered and associated in the public mind than a weaker mark, and are thus more attractive as targets for would-be copyists. *Id.* Indeed, "[a] strong mark ... casts a long shadow which

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competitors must avoid." *Kenner Parker Toys*, 963 F.2d at 353, 22 USPQ2d at 1456. A famous mark is one "with extensive public recognition and renown." *Id.*

Bose Corp. v. QSC Audio Products Inc., *supra*, 63 USPQ2d at 1305.

Opposer's sales volume and advertising expenditures since 1990 with respect to its VEUVÉ CLICQUOT marks, submitted under seal pursuant to the parties' confidentiality agreement, appear to be substantial. (Lewin Testimony Depo. (confidential) at 6, 24-25, and Exh. No. 5.) Opposer's VEUVÉ CLICQUOT champagne is the second-leading brand of champagne in the United States market. (Lewin Discovery Depo. at 57-58.) It is offered in 8,000 restaurants nationwide, as well as in liquor stores, wine shops, and other retail establishments where such products are sold. (Lewin Testimony Depo. at 91, 12.) Opposer advertises and promotes the brand in general interest magazines such as Vanity Fair and in wine specialty magazines such as The Wine Enthusiast and Quarterly Review of Wine, in radio advertisements on classical and news radio stations, in retail catalogs, in point-of-sale displays, through in-store and in-restaurant wine tastings and events, through sponsorship of art, music, and theater festivals and events, and on

its Internet website, where it also offers branded collateral merchandise for sale.

In addition to these advertising and promotional activities directly undertaken by opposer in support of the brand, opposer and its champagnes often have been featured in articles and reviews in both food and wine magazines and in general interest magazines. The April 2001 issue of Wine and Spirits magazine, which includes the results of its annual poll of "the 50 most popular wines in America's favorite restaurants," informs readers that in the 363 restaurants responding to the survey, opposer's VEUVE CLICQUOT champagne was the most-ordered wine in the "sparkling wine" category. The article states that "sparkling wine represents only 2.3 percent of our respondents' top-selling wines," but that "when Americans drink sparkling wine, they know what they like - Champagne rules. And within Champagne, Veuve Clicquot has been at the top of the list five years running."

(Lewin Testimony Depo., Exh. No. 7.)¹⁰ In the Wine and

¹⁰ We accord probative value to this magazine article not for its truth or for the accuracy or validity of the magazine's poll results, but for the article's impact on the relevant purchasing public. That is, we are not relying on this article as "survey" evidence establishing that opposer's champagne is, in fact, the best-selling champagne in these restaurants for five years running, but rather as evidence that the readers of the magazine, who are among the relevant purchasing public, are informed by the article that such is the case, a fact which is

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Spirits Buying Guide 1999, Champagne Veuve Clicquot was named the "Top Champagne House of 1998" and its champagnes received critical acclaim. (*Id.*, at Exh. No. 50.) Similarly, opposer and its VEUVE CLICQUOT champagne were the subject of articles in the January 1997 issue of Food & Wine magazine, the January 1998 issue of La Revue du Champagne in English (on the cover of which a bottle of opposer's champagne is depicted), the June 1997 issue of Wired magazine, and the April 14, 1997 issue of BusinessWeek magazine, and were the subject of a lengthy cover story in the March 1, 1997 issue of American Way, the in-flight magazine of American Airlines. (*Id.*, at Exh. Nos. 53-57.) Opposer's champagne also has been mentioned favorably in articles in other publications, such as The New York Times, the Boston Globe, Money magazine and the Detroit News. (*Id.*, at Exh. No. 46.)

In addition, various wine encyclopedias and other reference works by noted wine authorities devote entire sections or entries to opposer and its champagnes, with uniformly high critical praise. These include Hugh Johnson's book Wine and his Modern Encyclopedia of Wine

relevant to our determination of the fame of opposer's mark. Applicant's objections to the article on the grounds that it is hearsay and/or an improper or invalid "survey" are overruled.

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(*id.*, at Exh. Nos. 21-23), and Serena Sutcliffe's book Champagne (*id.*, at Exh. No. 20).

In most if not all of these articles, reviews and entries in magazines and in wine reference books and encyclopedias, opposer's VEUVE CLICQUOT mark is prominently noted. Many of these articles also offer high critical praise for opposer's wines bearing the mark, a fact which corroborates Mr. Lewin's testimony (which is unrebutted in any event) that opposer's VEUVE CLICQUOT products enjoy an excellent reputation for quality. (Id. at 26-27, 48-49.) This evidence of the favorable publicity and overall reputation enjoyed by opposer and its champagnes bolsters opposer's evidence regarding its sales and advertising expenditures, and provides "confirmatory context" for a finding that opposer's mark is a famous mark among purchasers of the goods at issue in this case, for purposes of the fifth *du Pont* likelihood of confusion factor. *Bose Corp. v. QSC Audio Products Inc.*, *supra*.¹¹

¹¹ Opposer also has presented testimony and documentary evidence that its champagne has "appeared" in numerous movies and television shows. (Lewin Testimony Depo. at 45, 49, and Exh. Nos. 12 and 45.) However, we cannot determine from the record the manner in which opposer's mark, per se, was used in these productions. Without proof that the mark was prominently featured, either visually or in dialogue, we cannot conclude that the appearance of opposer's champagne in these productions

Finally, we note that applicant's president David Taub, in his discovery deposition (at page 42), admitted that opposer's mark is famous. He attempted to retreat from that admission during his subsequent testimony deposition (at pages 22-23), explaining that he had meant that opposer's mark is famous and well-known to purchasers of high-end champagnes but not to purchasers of sparkling wines in general. We are not persuaded by this purported distinction, however. As discussed above, the evidence of record shows that high-end champagnes and less-expensive sparkling wines are marketed in the same trade channels to the same consumers. Purchasers of high-end champagnes also purchase less-expensive sparkling wines, and vice versa; applicant's attempt to segregate the purchasers of these goods into two mutually

has had any effect on the public's familiarity with the mark. We therefore accord little probative value to this evidence.

Opposer also has submitted copies of several WIPO domain name arbitration decisions rendered in its favor against cybersquatters who had registered domain names identical or similar to opposer's mark. These decisions include findings by the arbitrator that opposer's mark is famous. We do not deem such findings themselves to be direct evidence in this case that opposer's mark is famous among purchasers in the United States. However, the WIPO decisions and their findings are entitled to some probative value to the extent that they provide further "confirmatory context" for opposer's other evidence of fame. See *Bose Corp. v. QSC Audio Products Inc.*, *supra*. Moreover, the fact that opposer's mark apparently has been targeted repeatedly by cybersquatters certainly does not detract from opposer's claim that the mark is famous and valuable.

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exclusive camps is not persuasive. Moreover, opposer's advertising and marketing efforts reach not only purchasers of high-end champagne, but also are encountered by persons seeking to purchase less-expensive sparkling wines. A person looking for sparkling wines in retailers' catalogs and circulars or in his or her local wine store is likely to see opposer's advertisements and point-of-sale materials promoting its champagne.

Likewise, it is not just consumers of high-end champagne who are likely to encounter the wine magazines, wine books and other publications in which opposer's champagne is favorably reviewed or mentioned; nothing in the record suggests that purchasers of sparkling wine do not also read these publications.

In short, his attempted backpedal notwithstanding, Mr. Taub's admission that opposer's mark is famous corroborates our finding, based on the evidence discussed above, to the same effect. For purposes of the fifth *du Pont* likelihood of confusion factor,¹² we find that opposer's mark is famous and well-known to the relevant purchasing public, i.e., to purchasers of champagne and

¹² Because we need not and do not reach opposer's dilution claim in this case (see *supra* at p. 3), we make no finding as to whether opposer has proven that its mark possesses the degree of fame required to make out such a claim, or has proven that such

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sparkling wine. This factor weighs heavily in opposer's favor, and indeed is a dominant factor, in our likelihood of confusion analysis. *Recot Inc. v. Becton, supra.*

The sixth *du Pont* factor requires us to consider evidence pertaining to "the number and nature of similar marks in use on similar goods." Applicant, in its brief, has identified seven third-party marks allegedly containing the term VEUVE or some variant thereof for wines and other alcoholic beverages, and argues that the existence of these marks in the marketplace renders opposer's VEUVE CLICQUOT mark, or at least the VEUVE portion thereof, weak and entitled only to a narrow scope of protection. We are not persuaded.

One of the third-party marks cited by applicant, VOUVRAY, is irrelevant because it is not a "similar mark" for purposes of this *du Pont* factor. Even if it were deemed to be a similar mark, the evidence of its use is de minimis, i.e., a single restaurant wine list. (Ortiz Affidavit, Exh. C.) As to five of the remaining six third-party marks cited by applicant, i.e., VEUVE AMIOT or VVE. AMIOT (champagne),¹³ VIUDA DE ROMERO (tequila),

fame was achieved prior to applicant's first use (or constructive use) of its mark.

¹³ Applicant also has submitted a French-English dictionary which shows that "vve" is an abbreviation for "veuve."

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VEUVE CASTARDE BAS ARMAGNAC (brandy), VEUVE ROTH BRANDY (brandy), and VEUVE DE LALANDE (sparkling wine), the record fails to establish the nature and extent of use of such marks, or even that they are in use at all, and they therefore are of no probative value under the sixth *du Pont* factor.¹⁴

More specifically as to these third-party marks, applicant has submitted copies of federal registrations for the VVE. AMIOT and VIUDA DE ROMERO marks, but such registrations are not evidence that the marks are in use or that purchasers are aware of them, and they have no probative value under the sixth *du Pont* factor. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). Applicant also has submitted excerpts from the May 1995 and February 2002 issues of Beverage Media, a trade publication directed to New York alcoholic beverage retailers (restaurants and stores), which include listings for the VIUDA DE ROMERO, VEUVE CASTARDE BAS ARMAGNAC, VEUVE ROTH BRANDY, and VEUVE DE LALANDE products. However, this publication appears on this record to be an industry publication that is not

¹⁴ We need not and do not decide whether tequila and brandy are "similar goods" for purposes of the sixth *du Pont* factor in this case.

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distributed to and would not be encountered by consumers. (Lewin Testimony Depo., pp. 32-33; Freeman Testimony Depo., p. 48; Ribowsky Testimony Depo., pp. 31-35.) The fact that these product listings appear therein is not evidence of consumer awareness of the listed brands. The most that can be assumed from these listings is that products bearing these marks have been marketed to restaurants and retailers by wholesalers and distributors; the listings are not evidence of the extent, if any, to which consumers actually encounter and are aware of these brands in the marketplace.¹⁵ They therefore are of no probative value under the sixth *du Pont* factor. See *Scarves by Vera, Inc. v. Todo Imports, Ltd.*, 544 F.2d 1167, 192 USPQ 289 (2d Cir. 1976) ("The significance of third-party trademarks depends wholly upon their usage. Defendant introduced no evidence that these trademarks were actually used by third parties, that they were well promoted or that they were recognized by consumers.").¹⁶

¹⁵ Indeed, it appears that one of these brands, VEUVE DE LALANDE, is listed in the February 2002 issue even though the product was not available in stores at that time.

¹⁶ In view of our rejection of this evidence, opposer's objections to applicant's reliance thereon (on the ground that the documents were not produced in discovery) are moot.

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Thus, of the seven third-party marks cited by applicant, we find that probative evidence under the sixth *du Pont* factor exists only as to one, i.e., VEUVE DU VERNAY for sparkling wine. For the reasons discussed above, we accord no probative value to the copy of the federal registration of this mark submitted by applicant or to its listing in the Beverage Media trade publication. However, there is evidence which shows that this product actually is marketed at the retail level, i.e., in retail liquor stores and wine shops (six of the twelve New York-area stores visited by Mr. Freeman, applicant's investigator, displayed the product for sale),¹⁷ on Internet wine sites, and on restaurant wine lists. The exact nature and extent of use of the VEUVE DU VERNAY mark is disputed by the parties and is not clear from the record, but we find that its use in the retail marketplace is more than de minimis and that it therefore is relevant under the sixth *du Pont* factor.

We find, however, that the presence in the marketplace of this single third-party mark does not warrant a finding that the sixth *du Pont* factor is entitled to any significant weight in applicant's favor

¹⁷ Opposer's objections to this testimony and accompanying photographic exhibits are overruled.

in our likelihood of confusion analysis. "The purpose of a defendant introducing third party uses 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 basis of minute distinctions.'" J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition (4th ed. 2001) at §11:88, quoting from *Standard Brands, Inc. v. RJR Foods, Inc.*, 192 USPQ 383, 385-86 (TTAB 1976). In *Standard Brands*, as in the present case, the defendant's evidentiary showing under the sixth *du Pont* factor consisted of a single third-party mark in use on similar goods. Such a de minimis showing did not suffice, in *Standard Brands*, to establish that the opposer's mark was weak or entitled to a narrowed scope of protection, nor does it suffice in this case.

In short, there is no basis in the record for finding that the strength of opposer's mark has been compromised by the presence in the marketplace of similar marks in use on similar goods. We find that the sixth *du Pont* factor essentially is neutral in this case.

We turn next to a determination, under the first *du Pont* factor, of whether applicant's mark VEUVE ROYALE and

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opposer's marks VEUVE CLICQUOT and VEUVE CLICQUOT PONSARDIN,¹⁸ when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. 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 impression that confusion as to the source of the goods 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

¹⁸ For purposes of our comparison of the parties' marks, we are not persuaded by opposer's contention that it has trademark or other proprietary rights in the term VEUVE, per se. It does not appear from the record that opposer has used VEUVE, per se, as a trademark. Opposer claims that consumers know and refer to opposer's champagne simply as VEUVE, but we find the evidence on that score (i.e., a few isolated references by retailers and in the press) to be de minimis and insufficient to support the claim. We note as well in this regard that opposer has registered the "nicknames" THE WIDOW and LA VIUDA, "[i]n recognition of the public's desire to find shorthand ways of referring to its mark." (Opposer's opening brief at 26). However, opposer has not registered VEUVE alone as a trademark, a fact from which it might be inferred that opposer heretofore has not deemed VEUVE to be among the public's "shorthand ways" of referring to opposer's mark. For these reasons, our analysis under the first *du Pont* factor does not include a comparison of applicant's VEUVE ROYALE mark with VEUVE, per se. We consider opposer's rights in the term VEUVE only insofar as that term appears in opposer's marks VEUVE CLICQUOT and VEUVE CLICQUOT PONSARDIN.

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USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In terms of appearance, we find that applicant's mark VEUVE ROYALE and opposer's marks VEUVE CLICQUOT and VEUVE CLICQUOT PONSARDIN obviously look identical to the extent that they start with the word VEUVE, but that they otherwise look different. However, we reject applicant's arguments regarding the differences in the stylization and lettering of the marks as they currently appear on the parties' respective labels and packaging. Those arguments are unavailing, because applicant seeks to register its mark in typed form and thus would not be restricted in the manner in which it can display its mark on its products. Likewise, opposer's VEUVE CLICQUOT PONSARDIN mark is registered in typed form, not in a particular stylized display. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir.

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2000); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937 (Fed. Cir. 1983).

In terms of sound, we find that applicant's mark and opposer's marks sound identical to the extent that they start with the word VEUVE, but that they otherwise sound different.

In terms of meaning or connotation, applicant's mark, in translation from the French, means "royal widow," and opposer's marks (in translation) mean "the Widow Clicquot" and "the Widow Clicquot Ponsardin." Thus, in translation, opposer's marks connote a specific widow, i.e., the widow named Clicquot, while applicant's mark connotes a more generalized widow, i.e., a widow of royal heritage or position. However, we also 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. The slight difference in the "widow" connotations of the respective marks in translation, i.e., "the Widow Clicquot" versus "royal widow," would 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*

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Shoe Corporation et al., 226 USPQ 964 (TTAB 1985).

Purchasers who do not know the meaning of the word VEUVE also are more likely to ascribe a laudatory significance, rather than a source-distinguishing significance, to the word ROYALE in applicant's mark.

Viewing the marks in their entirety in terms of appearance, sound and connotation, we find that the general similarity which results from the fact that both parties' marks begin with the word VEUVE or "widow" outweighs the specific points of dissimilarity between the marks, and we conclude that the marks therefore are more similar than dissimilar in their overall commercial impressions, for purposes of the first *du Pont* factor. That is, the fact that both parties' marks begin with and prominently feature the word VEUVE and the concept of "widow" is more significant, and more noticeable and memorable to purchasers, than the fact that the marks might not connote exactly the same widow or use "widow" in exactly the same way.

VEUVE or "widow" is an arbitrary term as applied to champagne and sparkling wine. Moreover, and as discussed above, we have found that VEUVE or "widow" is a commercially strong term that has not been weakened or diluted in the marketplace by third-party uses. The

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strength and source-indicating distinctiveness of this term, which appears prominently in both marks, weigh significantly in favor of a finding of confusing similarity. The strength and distinctiveness of the term VEUVE also distinguish this case from the cases relied on by applicant, in which no confusion was found because the term common to both marks at issue was a generic, descriptive or otherwise non-distinctive term. See, e.g., *Keebler Company v. Murray Bakery Products, Inc.*, 866 F.2d 1386, 9 USPQ2d 1736 (Fed. Cir. 1989)(PECAN SHORTEES vs. PECAN SANDIES); *Kellogg Co. v. Pack 'Em Enterprises, Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991)(FROOTEE ICE vs. FROOT LOOPS); and *General Mills, Inc. v. Health Valley Foods*, 24 USPQ2d 1270 (TTAB 1992)(FIBER ONE vs. FIBER 7 FLAKES).

Applicant argues that opposer views and treats its house mark CLICQUOT, and not the word VEUVE, as the dominant feature in its marks, and that opposer often identifies itself and its products merely as CLICQUOT. Even so, however, the term VEUVE remains as a prominent feature in the commercial impression created by opposer's marks. It is a highly distinctive term as applied to the goods. Moreover, it appears as the first word in the mark, and is therefore the portion of the mark which is

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most likely to be noticed and recalled by purchasers. See, e.g., *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). We are not persuaded by applicant's contention that we should discount (or that purchasers would discount) the significance of the word VEUVE in the commercial impression created by opposer's marks. Nor are we persuaded by applicant's contention that confusion would be unlikely because applicant's mark does not include opposer's house mark CLICQUOT.

Moreover, VEUVE, or "widow," clearly is the dominant feature in the commercial impression created by applicant's mark. It appears as the first word in the mark. The word ROYALE, or "royal," is less significant in applicant's mark because it merely modifies and refers back to VEUVE or "widow." In the translated mark "royal widow," the word "royal" is not, as opposer argues, completely laudatory; it does not connote that the product is "royal" or fit for royalty, but rather that it is the "widow" mentioned in the mark who is royal. However, we agree with opposer that the term ROYALE or "royal," by its nature, is somewhat laudatory and certainly of less source-indicating significance than the word VEUVE or "widow," and that it therefore contributes

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much less to the mark's commercial impression than does the arbitrary term VEUVE. And, as noted above, the laudatory nature of the term ROYALE would be even more pronounced to those purchasers who do not know that VEUVE means "widow" or that the mark as a whole is translated as "royal widow."

In short, we find that the word VEUVE or "widow" is the dominant feature in the commercial impression created by applicant's mark, and that it is a prominent feature in the commercial impression created by opposer's marks. The presence of this strong, distinctive term as the first word in both parties' marks renders the marks similar, a similarity which is not dispelled by the dissimilarities in the remainders of the respective marks (especially given the rather laudatory nature of the word ROYALE). *Cf. Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). Purchasers are likely to assume, based on the presence of the distinctive word VEUVE or "widow" in both marks and notwithstanding the differences in the remainders of the marks, that a source or sponsorship connection exists between goods bearing the marks, i.e., that VEUVE ROYALE sparkling wine is an addition to opposer's line of products.

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Our finding on this first *du Pont* factor is bolstered by the well-settled principle that where, as in the present case, the marks would appear on virtually identical goods, the degree of similarity between the marks which is necessary to support a finding of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). Likewise, the fame of opposer's marks enhances the scope of protection to be afforded those marks. "A strong mark casts a long shadow which competitors must avoid." *Kenner Parker Toys, supra*, 22 USPQ2d at 1456.

Applicant argues that there is no evidence of any instances of actual confusion between applicant's mark and opposer's marks. However, it also is apparent from the record that applicant's sales have been quite limited both geographically and in terms of quantity, and that applicant does not advertise to retail consumers. In these circumstances, we conclude that there has been no meaningful opportunity for actual confusion to have occurred, and that the absence of evidence of actual confusion therefore is neither factually surprising nor legally significant. Thus, the seventh and eighth *du Pont* factors are essentially neutral in this case. See

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Gillette Canada Inc. v. Ranir Corp., 23 USPQ2d 1768 (TTAB 1992).

Finally, opposer argues that applicant adopted its VEUVÉ ROYALE mark in bad faith and with the intention of trading on opposer's goodwill in its famous VEUVÉ CLICQUOT marks. Evidence of bad faith adoption is pertinent to our likelihood of confusion analysis under the thirteenth *du Pont* factor. After careful consideration of opposer's arguments and the evidence on this issue, however, we are not persuaded that applicant adopted its mark in bad faith or that applicant's intent weighs against applicant in our likelihood of confusion analysis in this case.

First, applicant's mere prior knowledge of opposer's mark does not establish that applicant adopted its mark in bad faith. Second, even though we have rejected, for purposes of the sixth *du Pont* factor, most of applicant's evidence of alleged third-party uses of VEUVÉ marks (because there is no evidence of consumer awareness of those uses), it nonetheless appears that applicant's principals were aware of third-party uses of VEUVÉ marks for champagne and were under the impression that the term was available for applicant's use. We note as well that applicant also commissioned a trademark search which

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confirmed that several other VEUVÉ marks had been registered. Third, we are not persuaded by opposer's contentions regarding applicant's alleged bad faith in selecting the color and design of applicant's original label, or that those circumstances support a finding that applicant adopted its mark in bad faith. Likewise, opposer's president Mr. Taub's admitted ignorance of the meaning of the initialisms ("V.C.A.F." and "P.S.F.A.F.") which appear on applicant's label would appear to belie, rather than support, a finding that applicant knowingly and intentionally places those initialisms on the label for the purpose of deceiving or confusing purchasers.

Thus, we cannot conclude on this record that applicant adopted its mark in bad faith. Of course, applicant's apparent adoption of its mark in good faith does not serve as a defense to opposer's Section 2(d) ground of opposition.

In summary, we have carefully considered all of the evidence of record pertaining to the relevant *du Pont* factors, as well as all of the parties' arguments with respect thereto (including any arguments not specifically discussed in this opinion), and we conclude that opposer has proven its Section 2(d) ground of opposition. Given the fame and commercial strength of opposer's marks, and

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the high degree of similarity, if not legal identity, in the parties' goods, trade channels and classes of purchasers, we find that applicant's mark VEUVE ROYALE is sufficiently similar to opposer's marks VEUVE CLICQUOT and VEUVE CLICQUOT PONSARDIN that confusion is likely. To the extent that any doubts as to this conclusion might exist (and we have none), such doubts must be resolved against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984). Accordingly, opposer's Section 2(d) claims based on its prior use of the mark and trade name VEUVE CLICQUOT and on its registration of the mark VEUVE CLICQUOT PONSARDIN (Reg. No. 1,201,370) are sustained.

We also sustain opposer's Section 2(d) claim based on its registration of the mark THE WIDOW for "wines" (Reg. No. 797,567). We first find that applicant's mark VEUVE ROYALE is more similar than dissimilar to opposer's registered mark THE WIDOW. The dissimilarity of the marks in terms of appearance and sound is outweighed, in our comparison of the marks' overall commercial impressions, by the similarity in the marks' meanings under the doctrine of foreign equivalents. See *In re*

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Perez, 21 USPQ2d 1075 (TTAB 1991). An appreciable number of purchasers in the United States speak and/or understand French, and they will translate applicant's mark into English as ROYAL WIDOW. As discussed above, WIDOW is an arbitrary and commercially strong term as applied to wines, and it dominates the commercial impression created by applicant's mark. The word ROYAL merely modifies and refers back to WIDOW, and it moreover is a rather laudatory term. Its presence in applicant's mark does not suffice to distinguish the marks.

Purchasers encountering wines sold under the mark THE WIDOW and under a mark the English equivalent of which is ROYAL WIDOW are likely to assume that a source connection exists.

The goods identified in opposer's registration, "wines," encompass and are legally identical to the goods identified in applicant's application, i.e., "alcoholic beverages, namely, sparkling wines," and the trade channels and classes of purchasers for these respective goods likewise are legally identical. The second and third *du Pont* factors therefore weigh in opposer's favor. We find that the fourth *du Pont* factor regarding the care sophistication of purchasers is essentially neutral, for the reasons discussed above. As for the fame of

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opposer's mark THE WIDOW, the evidence shows that opposer, in marketing its champagne, clearly and repeatedly emphasizes the story of "the widow" who founded the company. "The widow's" story likewise has been repeated in the magazines and other publications in which opposer and its champagne have been featured. There also is some evidence that purchasers and the press have referred to opposer and its champagne by the "nickname" THE WIDOW. In view thereof, we find that THE WIDOW has achieved a certain degree of fame for purposes of the fifth *du Pont* factor, and to the extent of such fame, the scope of protection to be afforded opposer's mark necessarily must be enhanced. Finally, we find that the sixth *du Pont* factor (regarding third-party use of similar marks on similar goods) is neutral, as are the seventh and eighth factors (regarding actual confusion) and the thirteenth factor (regarding applicant's intent).

Weighing all of the *du Pont* factors, we conclude that a likelihood of confusion exists as between opposer's registered mark THE WIDOW for "wines" and applicant's mark VEUVE ROYALE for "alcoholic beverages, namely, sparkling wines." Again, any doubts as to the correctness of that conclusion must be resolved against

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applicant. See *In re Hyper Shoppes (Ohio) Inc.*, *supra*; *In re Martin's Famous Pastry Shoppe, Inc.*, *supra*.

However, we are not persuaded that opposer has made out its Section 2(d) claim with respect to its final pleaded registration, which is of the mark LA VIUDA for "sparkling wines" (Reg. No. 1,708,535). Despite the legal identity of the parties' goods, trade channels and classes of customers, we find that the marks LA VIUDA and VEUVE ROYALE are sufficiently dissimilar that no confusion is likely to result. The marks are dissimilar in terms of appearance and sound. In comparing the marks in terms of meaning, we deem it inappropriate to apply the doctrine of foreign equivalents in this situation. The marks are in two different foreign languages, i.e., Spanish and French, and we cannot conclude that an appreciable number of purchasers in this country are sufficiently familiar with both languages that they would be able or likely to translate both marks into English for purposes of comparing their meanings. See *Safeway Stores, Inc. v. Bel Canto Fancy Foods, Ltd.*, 5 USPQ2d 1980 (TTAB 1987). Also, the evidence does not support a finding that opposer's mark LA VIUDA is a famous mark in this country, so the fifth *du Pont* factor does not weigh

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in opposer's favor in our analysis as it does with respect to opposer's other marks.

Decision: Opposer's Section 2(d) claims based on its Registration Nos. 1,201,370 (VEUVE CLICQUOT PONSARDIN) and 797,567 (THE WIDOW), and on its prior use of the mark and trade name VEUVE CLICQUOT, are sustained. Opposer's Section 2(d) claim based on its Registration No. 1,708,535 (LA VIUDA) is dismissed. Opposer's dilution claim is dismissed as moot.