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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Boyar International Limited

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Serial No. 78054440

W. Thad Adams, III and J. Scott Evans of Adams & Evans for  
Boyar International Limited.

Ann E. Sappenfield, Trademark Examining Attorney, Law Office  
112 (Janice O'Lear, Managing Attorney).

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Before Simms, Walters and Chapman, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

Boyar International Limited has filed an application to  
register the mark BLUERIDGE FROM BOYAR ESTATES<sup>1</sup> on the  
Principal Register for "wines," in International Class 33.<sup>2</sup>

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<sup>1</sup> The mark as it presently appears in the record was amended by  
applicant to telescope the original first two words, BLUE RIDGE, to form  
the compound word BLUERIDGE.

<sup>2</sup> Serial No. 78054440 was filed March 22, 2001 based on an allegation of  
a bona fide intention to use the mark in commerce and asserting a claim  
of priority, under Section 44(d) of the Trademark Act, based on the  
filing of an application on February 23, 2001 in the United Kingdom.  
Subsequently, applicant deleted its application basis under Section 1(b)  
of the Trademark Act and submitted, under Section 44(e) of the Trademark  
Act, a certified copy of its United Kingdom registration that issued  
from its priority application.

The Trademark Examining Attorney has issued a final refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so resembles the mark BLUE RIDGE for "beer [and] soft drinks," in International Class 32,<sup>3</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.

Regarding the marks, the Examining Attorney contends that the telescoping of the words BLUE and RIDGE into BLUERIDGE in applicant's mark does not distinguish this portion of applicant's mark from the registered mark, BLUE RIDGE; and that, regardless of the telescoping, the words as they appear in each mark will have the same connotation and sound and will have substantially the same appearance. She states, further, that the FROM BOYAR ESTATES portion of applicant's mark is its house mark; that applicant's mark consists of the registered mark in its entirety with the

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<sup>3</sup> Registration No. 1999022 issued September 10, 1996 to Frederick Brewing Co. [Sections 8 (6 year) and 15 affidavits accepted and acknowledged, respectively]. The final refusal was also based, under Section 2(d), on Registration No. 2068233; however, as the Examining Attorney noted in her brief, that registration has been cancelled under Section 8 of the Trademark Act. Thus, the refusal based on Registration No. 2068233 is moot and has not been considered.

addition of a house mark<sup>4</sup>; and that the FROM BOYAR ESTATES portion of applicant's mark is insufficient to distinguish the marks. The Examining Attorney also argues that the registered third-party marks, submitted by applicant and containing the term BLUE RIDGE for a wide variety of goods and services, none including beverages, do not establish that BLUE RIDGE is a weak mark with respect to the specific beverages involved in this case.

Regarding the goods, the Examining Attorney states that the third-party registrations submitted with her final refusal establish that several single marks are registered to single entities for wine, beer and soft drinks and, thus, that the goods are related. She contends, further, that by not addressing the issue, applicant has conceded that the respective goods are related.

Applicant contends that the visual and phonetic differences between the marks, including applicant's telescoping of BLUERIDGE, the addition of the phrase FROM BOYAR ESTATES, and the different commercial impressions of the marks considered in their entireties, obviate any likelihood of confusion; that applicant has not merely added a house mark to the term BLUE RIDGE; and that applicant's submission of third-party registrations for various marks

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<sup>4</sup> We note that there is no evidence establishing this as applicant's house mark and, therefore, we have given this argument no further consideration.

including the term BLUE RIDGE for a variety of goods and services establishes that the term BLUE RIDGE "is popular as a mark in all markets" (Brief, p. 11); that BLUE RIDGE is a weak term entitled to only a narrow scope of trademark protection; and that the refusal to register in this case is inconsistent with past treatment of the phrase BLUE RIDGE by the USPTO.

Regarding the difference in commercial impressions, applicant makes the following statement (Brief, pp. 7-8):

The mark listed in the cited registration, BLUE RIDGE, creates no discernable commercial impression. At best, it may call to the mind of the viewer the Blue Ridge mountain range located in the southeastern United States. In contrast, appellant's mark BLUERIDGE FROM BOYAR ESTATES does create a unique commercial impression. The fact that the mark contains the phrase FROM BOYAR ESTATES clearly conveys that the term BLUERIDGE does not refer to the Blue Ridge Mountains of the southeastern United States.

In support of its position, applicant submitted copies of third-party registrations,<sup>5</sup> as noted above, as well as copies of third-party trademark applications<sup>6</sup> and excerpts from Internet websites, all of which include the term BLUE RIDGE as a portion of different marks for various goods and services. Applicant presents no argument with respect to

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<sup>5</sup> The Examining Attorney's objection to applicant's submission of several registrations that are cancelled and an application that is abandoned is not well-taken. This evidence was properly submitted; however, we have accorded it little probative weight.

<sup>6</sup> The pending applications establish nothing other than that they were filed with the United States Patent and Trademark Office.

the involved goods and, therefore, we presume that applicant does not contest the Examining Attorney's contention that the involved goods ("wines" and "beer [and] soft drinks") are related.

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 & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 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); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein. The factors deemed pertinent in this proceeding are discussed below.

Regarding the goods involved in this case, the evidence supports a finding that the goods are related. In this regard, we note the general rule that goods or services need

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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 some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, 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 has made of record copies of third-party registrations which include in their recitations of goods both applicant's and registrant's identified goods. Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods and services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988), *aff'd as not citable precedent*

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88-1444 (Fed. Cir. November 14, 1988). We have considered only those third-party registrations that are still active and are based on use in commerce and find sufficient evidence to conclude that consumers are likely to believe that, if identified by confusingly similar marks, applicant's wine and registrant's beer and soft drinks come from the same or a related source. For example, see *In re Majestic Distilling Company, Inc.*, *supra* [finding likelihood of confusion when RED BULL identifies both malt liquor and tequila, which are found to be similar products, sold in many of same channels of trade to many of same consumers, and relatively inexpensive products that are likely to be purchased on impulse].

We turn, next, 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 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.*

Serial No. 78054440

*Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, 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).

We agree with the Examining Attorney that applicant's telescoping of the BLUE RIDGE portion of its mark to create the compound word BLUERIDGE does not distinguish this portion of the mark from the registered mark. The mere difference in spacing of the two words does not alter the essentially identical nature of this portion of applicant's mark and the registered mark.

However, we must consider the marks in their entirety. Regarding the strength of the registered mark, the evidence of third-party registrations and Internet use of BLUE RIDGE alone is not sufficiently widespread to compel the conclusion that it is a weak mark in the beverage industry. See *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059 (Fed. Cir. 2003).

Further, there is no evidence in the file that either BLUERIDGE or BLUE RIDGE would be perceived as geographically descriptive, and thus weak, in connection with the

respective goods. However, the additional wording in applicant's mark, FROM BOYER ESTATES, is likely to be perceived, in connection with wines, as descriptive of the winery that is the source of the wine. Considering the mark as a whole, BLUE RIDGE FROM BOYAR ESTATES is likely to be perceived as indicating a variety of wine, i.e., "BlueRidge wine from the Boyar Estates, a winery." Thus, we find that BLUERIDGE is the dominant portion of applicant's mark.

It is also likely that prospective purchasers familiar with registrant's mark, BLUE RIDGE for beer and soft drinks, will understand applicant's mark as indicating that BLUERIDGE FROM BOYAR ESTATES wine comes from a winery connected with registrant.

We conclude that the marks are sufficiently similar that, if registered in connection with the related goods in this case, confusion as to source is likely.

We are not convinced otherwise by the third-party registrations or printouts from Internet websites submitted by applicant. The majority of these third-party marks contain additional terms that create commercial impressions different from the two marks involved in this case. Moreover, none of the registrations include beverages or the specific beverages involved herein.<sup>7</sup> The record does not

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<sup>7</sup> For example, applicant has not proffered any evidence establishing a relationship between the beverages in this case and the hotel and

establish any relationship between the goods and services in the third-party registrations and the beverages involved in this case.

Finally, to the extent that applicant contends that the refusal to register the mark in this application is inconsistent with the USPTO's registration of other marks containing the term BLUE RIDGE, we must decide each case on its own unique set of facts. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's application], the PTO's allowance of such prior registrations does not bind the Board or this court."]. See also, *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991); and *In re Inter-State Oil Co., Inc.*, 219 USPQ 1229, 1231 (TTAB 1983).

Therefore, we conclude that in view of the significant similarity in the commercial impressions of applicant's mark, BLUERIDGE FROM BOYAR ESTATES, and registrant's mark, BLUE RIDGE, their contemporaneous use on the closely related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

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

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restaurant services recited in several of the third-party registrations. See *In re Coors Brewing Co.*, *supra*.