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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Anselmi S.R.L.

Serial No. 78154141

David A. Weinstein, Esq. for Anselmi S.R.L.

Scott M. Oslick, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Seeherman, Chapman and Rogers, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On August 14, 2002, Anselmi S.R.L. (an Italian joint stock company) filed an application to register on the Principal Register the mark ANSELM I for "wines, sparkling wines, brandy, grappa, liqueurs, rum, vodka, whiskey, alcoholic fruit distillates, alcoholic grape distillates, wine distillates." The application is based on a claimed date of first use and first use in commerce of December 31, 1976.

In response to a refusal to register the mark on the basis that it is primarily merely a surname, applicant amended the application to include a claim of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f). The Examining Attorney accepted applicant's claim of acquired distinctiveness and withdrew his refusal on the basis of Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4).

The Examining Attorney made final his refusal to register the mark under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its identified goods, so resembles the registered mark shown below

Père Anselme

for "wines,"¹ as to be likely to cause confusion, mistake or deception.

Applicant appealed, and briefs have been filed, but an oral hearing was not requested.

¹ Registration No. 1420369, issued December 9, 1986 to Etablissements Brotte & Armenier (a company of France), Section 8 affidavit accepted, Section 15 affidavit acknowledged. The registration includes the statement: "The English translation of the words 'Pere Anselme' in the mark is 'Father Anselme.'" The claimed dates of first use and first use in commerce are 1930 and 1945, respectively.

We affirm the refusal to register. In reaching this conclusion, we have followed the guidance of the Court in *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 any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

Applicant explains its position as follows
(applicant's brief, p. 7):

Regardless that Applicant's goods include those the Cited registration covers, differences between the marks themselves are sufficient to avoid a likelihood of confusion. This was and is the case regarding the four registered marks applicant cites, noting they are all for the same or similar goods.

Applicant specifically contends that the marks are different in sound (two words compared to one word, one beginning with a "P" and the other an "A"), appearance (only one includes the beginning word "PÈRE"), meaning (one meaning Father Anselme, who was assertedly "a celebrated

French priest born in 1652" (applicant's brief, p. 5) and the other having no noted meaning of record) and commercial impression; that the registered mark must be considered as a whole, not dissected into two words; and that the addition of the word PERE in the cited registration and the differing last letter makes the marks different enough to avoid a likelihood of confusion, as shown by four third-party registrations made of record by applicant.²

These third-party registrations are (i) Registration No. 1161223 for the mark PÈRE PATRIARCHE for "wines"; (ii) Registration No. 1806327 for the mark CORON PÈRE & FILS (in stylized lettering and with a design) for "wines and brandies," "The English translation of the words 'PÈRE & FILS' is 'father and son'"; (iii) Registration No. 2150451 for the mark PERE ALESSANDRO for "red and white wines," "The English translation of the mark is "Father Alexander"; and (iv) Registration No. 2720657 for the mark FAMIGLIA ANSELMA for "red wines, white wines, sparkling wines,

² In its response filed December 26, 2003, applicant had argued that the cited mark and applicant's mark "have co-existed for a number of years without conflict." As evidence thereof applicant refers to co-existence in Italy for 26 years and co-existing International registrations for these marks in many countries (e.g., Austria, Hungary, Monaco). To whatever extent this was offered as an argument of no actual confusion, it is unpersuasive because the co-existence in other nations is not relevant here. There is no information in the record regarding co-existence of applicant's and registrant's involved marks in the United States without any consumer confusion.

distilled sprits, vermouths, aromatized wines, liquors, brandys," "The English translation of 'FAMIGLIA' is 'family.'"

The Examining Attorney argues that the goods are partially identical ("wines") and are otherwise closely related; and that the marks are highly similar in sound, appearance, meaning and commercial impression. Specifically, the Examining Attorney argues that the dominant feature of the registered mark is ANSELME; that the term "PÈRE," meaning "Father," functions merely to identify an individual's title, such as "Mr." or "Mrs.";³ that the only other difference is applicant's mark ends in an "I" and registrant's in an "E"; that there is no correct pronunciation of a trademark, although ANSELM and ANSELME could be pronounced the same; that both marks are similar in meaning because both connote surnames; that the co-existence of the four third-party registrations supports the Examining Attorney's position that the inclusion of the title "PÈRE" has little impact on the commercial impression

³ The Examining Attorney requested in his brief (p. 4) that the Board take judicial notice of The American Heritage Dictionary (Third Edition 1992) definition of "father" as "10. Or Father. A church father. 11. Abbr. Fr. a. A priest or clergyman in the Roman Catholic or Anglican churches. b. Used as a title and form of address with or without the clergyman's name." The Examining Attorney's request for judicial notice is granted. See TBMP §704.12 (2d ed. rev. 2004).

created by a mark; that each case must be decided on its own merits; and that these marks, ANSELM I and PÈRE ANSELME, create similar commercial impressions.

We turn first to a consideration of applicant's goods and those of the cited registrant. We find that applicant's goods are in part identical (wines) and applicant's other listed goods are closely related to the only item of goods in the cited registration. Applicant did not argue to the contrary.

Likewise, applicant did not argue, and we do not find, any differences in the channels of trade or purchasers for the common goods, wines. We must presume, given the identifications (neither of which is limited), that the goods travel in the same channels of trade (e.g., liquor stores, wine stores, grocery stores), and are purchased by the same classes of purchasers (general public, wine connoisseurs). See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

"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).

Turning then to a consideration of the marks, it is well settled that marks must be considered in their entirety because the commercial impression of a mark on an ordinary consumer is created by the mark as a whole, not by its component parts. This principle is based on the common sense observation that the overall impression is created by the purchaser's cursory reaction to a mark in the marketplace, not from a meticulous comparison of it to others to assess possible legal differences or similarities. See 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §23:41 (4th ed. 2001). See also, *Dassler KG v. Roller Derby Skate Corp.*, 206 USPQ 255 (TTAB 1980).

The proper test in determining likelihood of confusion does not involve a side-by-side comparison of the marks, but rather must be based on the similarity of the general overall commercial impressions engendered by the involved marks. That is, the test involves considering the likely recollection of the average purchaser, who normally retains a general rather than specific impression of the many trademarks encountered; and a purchaser's fallibility of memory over a period of time must also be kept in mind. See *Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller*, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); and *Spoons Restaurants*

Inc. v. Morrison, Inc., 23 USPQ2d 1735 (TTAB 1991), aff'd unpub'd (Fed. Cir. June 5, 1992). This is particularly true for goods such as those involved herein which can be inexpensive and may be purchased without great care.

In this case, there are specific differences in the marks: the word PÈRE in registrant's mark; the last letter difference between registrant's mark and applicant's mark; and the stylized lettering in registrant's mark. Consumers are not, however, likely to note the slight difference in the last letters of the words ANSELM I and ANSELME. The word PÈRE in registrant's mark does not serve to distinguish the marks; rather, consumers will regard PÈRE ANSELME and ANSELM I simply as variant marks indicating origin in a single source. See *In re Dixie Restaurants Inc.*, supra.

Because there is no "correct" pronunciation of a trademark, someone who has heard (rather than seen) the mark ANSELM I for wines and sees PÈRE ANSELME for wine may well pronounce ANSELME the same as the word ANSELM I and, again, believe that the marks are variants of each other. See *In re Belgrade Shoe*, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969); *Interlego v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002); and *In re Lamson Oil Co.*, 6 USPQ2d 1041 (TTAB 1987).

Although applicant asserts that Père Anselme was "a celebrated French priest," there is no evidence in the record to support a finding that Père Anselme is a famous historical figure that consumers would recognize, such that, when viewing the mark PÈRE ANSELME, they would see it as having the connotation of that individual. Because we acknowledge that we are not aware of the historical figure, we cannot take judicial notice that he was a famous individual, or that consumers are likely to be aware of him. Thus, we are not persuaded on this record that consumers seeing PÈRE ANSELME for wines will think of a particular historical figure.

When considered in their entirety, we find that the respective marks are sufficiently similar in overall commercial impression that, when used on the identical goods involved herein, confusion as to source is likely. See *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

With regard to the third-party registrations submitted by applicant, the three which include the word PERE (or PÈRE) reinforce our view that it is the other words, and not PERE, that differentiate those marks from one another.

In any event, as to all four third-party registrations, as often noted by the Board and the Courts,

each case must be decided on its own merits. We are not privy to the records of the third-party registration files and, moreover, the determination of registrability of those particular marks by Trademark Examining Attorneys cannot control the merits in the case now before us. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). See also, *In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); and *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001).

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