

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

Lykos

Mailed: July 20, 2004

Opposition No. 91158374

Cesari S.r.L.

v.

Peju Province

Before Simms, Hohein and Hairston, Administrative Trademark Judges.

By the Board:

On February 10, 2003, Peju Province ("applicant") filed an intent-to-use application to register the mark LIANA for "wine" in International Class 33.¹ Cesari S.r.L.

("opposer") has opposed registration on the ground that applicant's applied-for mark so resembles opposer's previously used and registered mark LIANO for "wines" in International Class 33 that it is likely to cause confusion, mistake, or deceive prospective consumers.²

¹ Application Serial No. 76489316.

² Registration No. 2671495, registered on the Principal Register under Section 2(f) on January 7, 2003, alleging January 26, 1989 as the date of first use anywhere and in commerce.

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This case now comes up for consideration of opposer's motion (filed February 17, 2004) for judgment on the pleadings. Applicant filed a brief in opposition thereto.³

At the outset, we note that inasmuch as opposer submitted a certified status and title copy of its pleaded registration with its motion, the Board will treat the motion as one for summary judgment under Fed. R. Civ. P. 56. See TBMP § 504.03 and authorities cited therein.

Opposer, in its motion, argues that its use of the registered trademark LIANO for wines predates applicant's constructive use date of February 10, 2003; that applicant's applied-for mark LIANA is virtually identical to opposer's mark; and that the goods in question are identical.

In response thereto, applicant contends that the parties' respective wines are distinguishable inasmuch as opposer's wine is "an Italian red Sangiovese/Cabernet Sauvignon," and applicant's wine originates from Napa Valley and is "a late harvest Chardonnay Dessert wine."

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). A party moving for summary judgment has the burden of demonstrating the

³ The Board hereby discharges the previously issued notice of default judgment entered against applicant under Fed. R. Civ. P. 55(a), and notes applicant's answer as timely filed.

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absence of any genuine issue of material fact, and that it is entitled to a judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986). In a motion for summary judgment, the evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993).

Based on the submissions of the parties, we find that opposer has met its burden of demonstrating that there are no genuine issues of material fact, and that opposer is entitled to judgment as a matter of law.

There is no genuine issue of fact as to opposer's priority because opposer has made of record a status and title copy of its pleaded Registration No. 2671495 showing that the registration is subsisting and is owned by opposer. See *King Candy Co. v. Eunice King's Kitchen*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

With respect to the issue of likelihood of confusion, we are guided by the factors set forth in the case of *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). Considering first the parties' 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

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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 USPQ 106 (TTAB 1975). In this case, opposer's pleaded mark LIANO and applicant's mark LIANA, are almost identical. The sole distinction between the two marks is the last letter, which is insufficient to distinguish the marks' high degree of similarity.

With regard to the goods of the pleaded registration and involved application, there is no genuine issue that the parties' goods are identical. Applicant's assertion that its wine is distinguishable because it is a dessert wine is unpersuasive. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"). Here, neither opposer's pleaded registration nor the involved application has restrictions as to the channels of trade or purchasers.

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Accordingly, inasmuch as there is no genuine issue of material fact and opposer is entitled to a judgment as a matter of law, opposer's motion for summary judgment is granted. See Fed. R. Civ. P. 56(e).

In view of the foregoing, the opposition is sustained, and registration of applicant's mark is refused.