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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 Ramon E. Jaquez.

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Serial No. 76581665

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Myron Amer of Myron Amer, P.C. for Ramon E. Jaquez.

Tracy L. Fletcher, Trademark Examining Attorney, Law Office  
115 (Tomas Vlcek, Managing Attorney).

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Before Hairston, Rogers, and Drost, Administrative  
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On March 15, 2004, applicant, Ramon E. Jaquez, filed  
an application to register the mark CARIBBEAN RED ROCK in  
standard character form on the Principal Register for goods  
ultimately identified as "bottled fruit flavored water" in  
Class 32.<sup>1</sup> Applicant has disclaimed the term "Caribbean."

The examining attorney has refused to register  
applicant's marks under Section 2(d) of the Trademark Act

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<sup>1</sup> Serial No. 76581665. The application contains a statement that  
the mark was first used and first used in commerce on March 12,  
2004.

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(15 U.S.C. § 1052(d)) because of a prior registration for the mark RED ROCK in standard character form for "soft drinks and concentrates for making soft drinks" in Class 32.<sup>2</sup> After the examining attorney made the refusal final, this appeal followed.

When there is a question of likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). See also In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); and Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1896 (Fed. Cir. 2000). In considering the evidence of record on these factors, we must 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 start by comparing applicant's and registrant's marks as to the "similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression." Majestic Distilling, 65 USPQ2d at 1203. When we compare the marks, "there is nothing

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<sup>2</sup> Registration No. 2,675,869, issued January 21, 2003.

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improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Registrant's mark is for the term RED ROCK; applicant's mark is CARIBBEAN RED ROCK. Both marks are in standard character form. Both applicant's and registrant's marks contain the identical words RED ROCK in the same order. Inasmuch as applicant's mark otherwise includes registrant's mark in its entirety, the only difference is the presence of the word "Caribbean" in applicant's mark. While the term "Caribbean" cannot be ignored, applicant has disclaimed the term. Disclaimed matter is often "less significant in creating the mark's commercial impression." In re Code Consultants Inc., 60 USPQ2d 1699, 1702 (TTAB 2001). The term Caribbean would describe beverages originating from the Caribbean or of a Caribbean type or style. "Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'" Cunningham v. Laser Golf Corp., 222 F.3d 943,

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55 USPQ2d 1842, 1846 (Fed. Cir. 2000), quoting, In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985).

Here, both marks include the same term RED ROCK. It is the only term in registrant's mark and, as displayed on applicant's specimen, it is in larger and thicker type than the term CARIBBEAN. RED ROCK would be the dominant portion of both marks.

When we compare the marks in their entireties, we conclude that they are very similar in sound, appearance, meaning, and commercial impression. While undoubtedly the presence of the word "Caribbean" in applicant's mark is a difference, it would not significantly change the pronunciation, appearance, meaning, or commercial impression of the marks. Both marks would be dominated by the term RED ROCK and the word CARIBBEAN would likely be viewed as a term identifying a slightly different or new product sold under the RED ROCK mark. Thus, the mere addition of the word "Caribbean" does not create dissimilar marks. Wella Corp. v. California Concept Corp., 558 F.2d 1019, 194 USPQ 419, 422 (CCPA 1977) (CALIFORNIA CONCEPT and surfer design likely to be confused with CONCEPT for hair care products); In re Chatam International Inc., 380 F.3d 1340, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("With respect

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to JOSE, the Board correctly observed that the term simply reinforces the impression that GASPAR is an individual's name. Thus, in accord with considerable case law, the JOSE term does not alter the commercial impression of the mark." The marks JOSE GASPAR GOLD and GASPAR'S ALE were determined to be similar). We also note that if "the dominant portion of both marks is the same, then confusion may be likely notwithstanding peripheral differences." In re Denisi, 225 USPQ 624, 624 (TTAB 1985).

We add that the term RED ROCK does not appear to have any meaning when used in association with soft drinks or bottled water and there is no evidence that registrant's mark is entitled to only a narrow scope of protection. Furthermore, we reject applicant's argument that the examining attorney has improperly dissected the mark. Applicant's own specimen emphasizes the RED ROCK portion of its mark. In re Nationwide Industries, 6 USPQ2d 1882, 1884 (TTAB 1984) ("Thus, it is settled that evidence of the context in which a mark is used on labels, packaging, advertising, etc., is probative of the significance which the mark is likely to project to purchasers").<sup>3</sup> These

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<sup>3</sup> The fact that initially the examining attorney notified applicant of, and subsequently withdrew, a pending application for the mark CARIBBEAN RED for fresh fruits and vegetables excluding red fruits and vegetables, when applicant's goods were

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factors favor registrant in this likelihood of confusion determination.

We next look at whether applicant's and registrant's goods are related. Applicant's goods are bottled fruit flavored water while registrant's goods are soft drinks and concentrates for making soft drinks. We, of course, consider the goods as they are identified in their respective identifications of goods. Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods"). We also do not read limitations into the identifications of goods. Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"). For example, registrant's soft drinks could include fruit flavored soft drinks. Furthermore, the term "soft drink" does not exclude non-carbonated soft drinks. *Webster's English Dictionary for Home, School or*

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identified simply as "beverages" did not prevent the examining attorney from also citing the registration of record.

*Office* (2003) ("soft drink - a nonalcoholic drink"); *The Random House Dictionary of the English Language* (2d ed. 1987) (unabridged) ("soft drink - a beverage that is not alcoholic or intoxicating and is usually carbonated, as root beer or ginger ale") (emphasis added).<sup>4</sup> Therefore, the goods, which would include applicant's bottled fruit flavored water and registrant's fruit-flavored carbonated and non-carbonated soft drinks are closely related.

In addition to the inherent nature of the goods, the examining attorney has submitted other evidence to show the relationship between the goods. First, the examining attorney has provided copies of several registrations to show that the same entity has registered a common mark for soft drinks and water. In re Infinity Broadcasting Corp. of Dallas, 60 USPQ2d 1214, 1217-18 (TTAB 2001) ("The registrations show that entities have registered their marks for both television and radio broadcasting services. Although these registrations are not evidence that the marks shown therein are in use or that the public is familiar with them, they nevertheless have probative value to the extent that they serve to suggest that the services

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<sup>4</sup> We take judicial notice of these definitions. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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listed therein, including television and radio broadcasting, are of a kind which may emanate from a single source. See, e.g., In re Albert Trostel & Sons Co., 29 USPQ2d 1783, 1785-86 (TTAB 1993); and In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467, 1470 at n. 6 (TTAB 1988)". See, e.g., Registration No. 2,837,150 ("fruit-based soft drinks ... flavored drinking water"); No. 2,769,244 ("flavored water, and non-carbonated soft drinks, namely fruit flavored and fruit based soft drinks and sport drinks"); No. 2,833,172 ("soft drinks" and "bottled water"); No. 2,885,112 ("soft drinks" and "flavored waters"); No. 2,875,637 ("flavored and non-flavored sparkling water; catenated and non-catenated drinks, namely, soft drinks, namely, soft drinks with or without fruit flavoring"); and No. 2,853,674 ("flavored waters" and "soft drinks").

Second, the examining attorney introduced printouts that show that soft drinks and water are advertised as originating from the same source. For example, the Adirondack Beverages website indicates that "Adirondack Beverages has been producing both carbonated and non-carbonated beverages... We produce a wide array of sodas, seltzers, mixers, and bottled waters." The Coca-Cola website shows both bottled water and cola as originating

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from the same source and the Polar Beverages site pictures soda, such as birch beer and orange dry, and lists "spring water" among its other products.

When we consider the nature of applicant's and registrant's goods as well as the evidence that these goods are associated with a common source, we conclude that the goods are related. Furthermore, absent restrictions in the identification, we must assume that the goods travel in "the normal and usual channels of trade and methods of distribution." CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983). See also Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002); Kangol Ltd. v. KangaRoos U.S.A., 974 F.2d 161, 23 USPQ2d 1945, 1946 (Fed. Cir. 1992). There is no evidence that these goods are marketed in significantly different channels of trade or that their prospective purchasers would be different, and we conclude that the channels of trade and purchasers would at least overlap. Prospective purchasers of non-alcoholic beverages could easily encounter fruit flavored bottled water and soft drinks, which may be fruit flavored. If these purchasers see applicant's CARIBBEAN RED ROCK bottled water and registrant's RED ROCK soft drinks, they would likely

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believe that these beverages originate from a common source, and there would be a likelihood of confusion.

Decision: The examining attorney's refusal to register applicant's mark under Section 2(d) of the Trademark Act is affirmed.