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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91247192
Party	Plaintiff Tarian's
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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Bottorff

THIS OPINION IS CITABLE
AS PRECEDENT OF
THE T.T.A.B.

Opposition No. 97,417

The Institut National Des
Appellations d'Origine
and The Bureau National
Interprofessionel du
Cognac

v.

Brown-Forman Corporation

MAILED

MAY 29 1998

PAT. & T.M. OFFICE

Before Sams, Seeherman and Walters, Administrative Trademark
Judges.

By the Board.

INTRODUCTION

This case now comes up on (a) applicant's motion for
summary judgment¹ dismissing opposers' Section 2(a) and
Section 2(d) claims; (b) opposers' cross-motion for partial
summary judgment as to its ownership of COGNAC as a common
law certification mark; and (c) opposers' motion for leave

¹ Applicant's motion is presented as a motion to dismiss under
Fed. R. Civ. P. 12(b)(6) and/or a motion for summary judgment.
Because both parties have submitted evidentiary materials
outside the pleadings and have treated the motion as one for
summary judgment, the Board shall treat the motion likewise.
See Fed. R. Civ. P. 12(b).

to amend the notice of opposition to add a res judicata claim. Each of these motions is contested.

BACKGROUND; PLEADINGS

On May 24, 1994, applicant Brown-Forman Corporation filed intent-to-use application Serial No. 74/528,394, seeking to register the mark CANADIAN MIST AND COGNAC for goods identified as "an alcoholic beverage consisting primarily of a mixture of Canadian whiskey and cognac." Applicant has disclaimed the exclusive right to use the words CANADIAN and COGNAC apart from the mark as shown. In an Amendment to Allege Use filed on September 27, 1994, applicant alleges first use of the mark anywhere and first use in commerce on September 14, 1994. Applicant has claimed ownership of Registration No. 750,984, issued June 11, 1963, which is of the mark CANADIAN MIST (CANADIAN disclaimed) for goods identified as "Canadian whiskey," and of Registration No. 970,915, issued October 16, 1973, which is of the mark CANADIAN MIST and maple leaf design (CANADIAN disclaimed), also for "Canadian whiskey."

On June 8, 1995, a combined notice of opposition to registration of applicant's mark was filed by The Institut National Des Appellations d'Origine (hereinafter INAO) and by The Bureau National Interprofessionel du Cognac (hereinafter BNIC). Opposers allege that INAO is an agency

of the French government's Ministry of Agriculture, and is responsible for establishing, maintaining and protecting, both in France and internationally, France's "appellations of origin" system. Opposers assert that, under French law, an "appellation of origin" refers to a geographical designation (country, region, or locality) that serves to designate a product originating therein, the quality and characteristics of which are due exclusively or primarily to the geographic environment, including natural and human factors. Opposers further assert that certain products identified and classified according to this system, including wines and spirits, bear "appellations of controlled origin" (AOC), each of which is recognized by a decree which delimits the specific area to which the appellation pertains but also specifies the grape variety or varieties, and methods of planting, harvesting, and production to be used. Opposers allege that COGNAC is an AOC that has been recognized and protected by INAO and the French government for many decades.

Opposer BNIC is asserted to be an organization comprised of wine and spirits growers, producers and merchants representing growers, producers and merchants from the Cognac region of France. BNIC's function is to act on behalf of the Cognac region's wine and spirits growers, producers and merchants by promoting sales domestically and

internationally, by promoting and protecting the COGNAC appellation of origin, and by otherwise representing the economic and legal interest of growers, producers and merchants of Cognac wines and spirits.

In their notice of opposition, opposers allege, inter alia, that COGNAC is a well-known, distinctive appellation of origin designating a popular and high quality product; that French law restricts use of the name COGNAC to distilled spirits products that meet prescribed standards of quality and content, and that are produced in the Cognac region at locations, and under conditions, specified and regulated by French law, as supervised and enforced by the INAO; that the COGNAC appellation has for many years been known among the relevant purchasing public in the United States; that Cognac products meeting the exacting standards of the French AOC system have been validly and continuously sold in the United States under labels bearing the COGNAC name since well prior to applicant's first alleged use of its mark on September 14, 1994; that the COGNAC name is a uniquely French term, which the public associates solely with opposers and their members, the regulated producers of genuine Cognac brandy; that the name also is symbolic of the extensive goodwill and consumer recognition built up through the substantial efforts and investments of the INAO and the BNIC in the "appellation of origin" system and the COGNAC

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