

LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Citation: 2016 TMOB 40**  
**Date of Decision: 2016-03-08**

**IN THE MATTER OF AN OPPOSITION**

<b>Patron Spirits International AG</b>	<b>Opponent</b>
<b>and</b>	
<b>Destileria 501, S.A. DE C.V.</b>	<b>Applicant</b>
<b>1,513,754 for GRAN PADRE</b>	<b>Application</b>

Editor's Note: Corrigendum release on 2016-05-11. Original decision has been corrected with text of corrigendum appended.

FILE RECORD

[1] On February 3, 2011, Destileria 501, S.A. DE C.V. filed an application to register the trade-mark GRAN PADRE for use in association with:

tequila.

The application is based on (i) use and registration of the mark in Mexico, and (ii) proposed use in Canada. The applicant advised the Registrar that the English translation (from Spanish) of GRAN PADRE is "great father:" see s.29(a) of the *Trade-marks Regulations*, SOR/96-195.

[2] The subject application was advertised for opposition purposes in the *Trade-marks Journal* issue dated September 26, 2012 and was opposed by Patron Spirits International AG on November 23, 2012. The Registrar forwarded a copy of the statement of opposition to the applicant on December 6, 2012, as required by s.38(5) of the *Trade-marks Act*, R.S.C. 1985, c.

T-13. The applicant responded by filing and serving a counter statement generally denying the allegations in the statement of opposition.

[3] The opponent's evidence consists of the affidavit of Mathew A. Carroll and certified copies of the opponent's registrations for the marks GRAN PATRON; GRAN PATRON PLATINUM; and GRAN PATRON BURDEOS. From an inspection of the registrations I note that (i) each mark is used in association with tequila and, (ii) when the applications were filed, the opponent had advised the Registrar that the English translation of GRAN is "grand or great;" the English translation of PATRON is "landlord, protector or boss;" and the English translation of BURDEOS is "bordeaux, burgundy, maroon or deep red."

[4] The applicant's evidence consists of the affidavits of Jennifer Leah Stecyk and Aleem Abdula.

#### STATEMENT OF OPPOSITION

[5] The opponent pleads that it is the owner of the registered marks GRAN PATRON; GRAN PATRON PLATINUM; and GRAN PATRON BURDEOS, each mark for use in association with tequila.

[6] The grounds of opposition are pleaded succinctly and are reproduced substantially in full below. Presumably, (i) the references to the "Opponent's Trade-marks" are to the three above mentioned marks, and (ii) the references to "the Trade-mark" are to the applied-for mark GRAN PADRE, although the opponent has not explicitly specified those terms in its pleadings.

#### Section 38(2)(a)

Pursuant to Section 38(2)(a) of the Act [the *Trade-marks Act*], the Application does not conform to the requirements of Section 30. In particular, the Applicant fails to comply with Section 30(d) as the Trade-mark [GRAN PADRE] was not in use in Mexico prior to the filing date of the Application.

The Applicant further fails to comply with Section 30(e) as it, by itself or through a licensee, or by itself and through a licensee, does not intend to use the Trade-mark in Canada.

Moreover, the Applicant does not comply with Section 30(i) as the Applicant could not have been satisfied that it was, or is, entitled to use the trade-mark GRAN PADRE in Canada in association with the[sic] "*alcoholic beverages, namely tequila*", because the Applicant knew or ought to have known of the existence of the Opponent's trade-marks . . . containing GRAN PATRON for "*Alcoholic beverages, namely, distilled spirits and liquors namely, tequila*" . . . which had been previously registered.

Section 38(2)(b)

The Trade-mark is not registrable pursuant to Section 12(1)(d) of the Act because it is confusing with the Opponent's Trade-marks.

Section 38(2)(c)

Applicant is not the person entitled to registration in view of Sections 16(2)(a) and 16(3)(a), since at the date of filing of the Application, the Trade-mark was confusing with the Opponent's Trade-marks which were previously used in Canada by the Opponent.

Section 38(2)(d)

Applicant's Trade-mark is not distinctive, as defined in Section 2, because it does not actually distinguish nor is it adapted to distinguish the wares of the Applicant from the wares of the Opponent in that the Trade-mark is confusing with the Opponent's Trade-marks.

[7] Before assessing the allegations in the statement of opposition, I will first review the parties' evidence, the evidential burden on the opponent, the legal onus on the applicant, the meaning of confusion within the context of the *Trade-marks Act*, and the factors to be considered in assessing the issue of confusion.

OPPONENT'S EVIDENCE

*Matthew Carroll*

[8] Mr. Carroll identifies himself as the Chief Marketing Officer of the opponent company. The opponent manufactures the PLATINUM and BURDEOS tequila products through its subsidiary, Patron Spirits Mexico. Another subsidiary company (Patron Spirits) located in Las Vegas, Nevada purchases the products from the opponent and sells the products to a Canadian alcohol distributor, namely Alloy Brands Inc., for distribution in Canada.

[9] As noted by the applicant at para. 20 of its written argument, there are salient omissions in Mr. Carroll's evidence:

Patron Spirits International manufactures the GRAN PATRON PLATINUM and GRAN PATRON BURDEOS tequila products (the "GRAN PATRON Tequila Products") through its subsidiary, Patron Spirits Mexico, S.A. de C.V. There is no evidence that the Opponent has licensed Patron Spirits Mexico, S.A. de C.V. to manufacture the GRAN PATRON Tequila Products or that the Opponent in any way controls the character or quality of such goods.

[10] The consequence of these evidentiary omissions is that use of the marks in Canada cannot inure to the benefit of the opponent (see s.50 of the *Trade-marks Act*) because a subsidiary is a legal entity separate and apart from its parent. For the purposes of this proceeding, use of the marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS in Canada is use by a third party.

[11] In his affidavit Mr. Carroll refers to "GRAN PATRON tequilas" collectively, which, as I understand from his testimony, refers to the two brands GRAN PATRON PLATINUM and GRAN PATRON BURDEOS but not the brand GRAN PATRON.

9. GRAN PATRON tequilas have been sold in at least the following Canadian provinces: in British Columbia, since December 2007; in Alberta, since December 2007; and in Ontario, since November 2009.

10. Between 2008 and 2012, The Patron Spirits Company has received in excess of \$300,000 from wholesale sales of GRAN PATRON tequilas to Canada.

11. Haleybrooke International is the importer/distributor of GRAN PATRON tequila products in the duty-free channels in Canada. GRAN PATRON tequilas are sold in thirty-two (32) border crossings and nine (9) airports in Canada.

GRAN PATRON tequilas are also sold in numerous countries world-wide.

[12] I would mention at this point that Mr. Carroll's lack of specificity concerning which particular brands of GRAN PATRON tequilas are sold in Canada is unfavourable to the opponent's case, aside from the control/licensing issues raised by the applicant in para. 6, above, because it does not permit inferences concerning the acquired distinctiveness of a particular brand, as will be discussed later.

[13] Mr. Carroll's affidavit also serves to introduce into evidence, by way of exhibits, examples of the opponent's advertising and promotion of its tequila products, discussed below:

Exhibit 3 provides an example of promotion for the GRAN PATRON BURDEOS product. The promotion appears in a May/June issue of an online magazine, namely *Liquor Canada Magazine* (now defunct).

Exhibit 4 provides an example of promotion for the GRAN PATRON BURDEOS product. The promotion appears in the November 2011 edition of an online magazine, namely *Spirits Review*. As of mid-2013 the magazine had about 250,000 hits and 17,000 unique visitors per week worldwide.

Exhibit 5 is an extract from the September 2009 issue of the online magazine *Travel Markets*. The selected article refers to sales of PATRON tequilas in Canadian duty free border stores. The article does not refer to any of the three particular brands GRAN PATRON; GRAN PATRON PLATINUM; or GRAN PATRON BURDEOS.

Exhibit 6 is an extract (in Spanish) from the April 2011 publication *Elixer*. The extract is a promotion for the GRAN PATRON BURDEOS product.

Exhibit 7 is an extract from *Sharp Canada's Magazine for Men* dated June 2009. The magazine appears in print and is also available online. The opponent's GRAN PATRON PLATINUM product is featured. The magazine has a bi-monthly national circulation in Canada of over 152,000 readers.

Exhibit 8 is an extract from the *Snap Niagara Falls* newspaper dated December 2011 referencing a donation of a bottle of GRAN PATRON BURDEOS, by Patron Spirits, to a charity event. The newspaper distributes 14,000 copies of per month.

Exhibit 9 is an extract from a Christmas brochure of a high-end retail store in Hong Kong. The opponent's GRAN PATRON PLATINUM product, as well as other of the opponent's alcohol products, are featured. The GRAN PATRON PLATINUM product retails for \$2,500 for a 750 ml bottle.

Exhibit 10 is a two-page extract from a 2011 Singapore Christmas catalogue featuring the GRAN PATRON PLATINUM and GRAN PATRON BURDEOS products. They retail for 600 and 1200 Singapore dollars, respectively.

Exhibit 11 is a drinks menu from a restaurant located in Whistler, British Columbia. The menu lists a mixed drink, namely a Gran Margarita, comprised in part of "Gran Patron Platinum."

Exhibit 12 consists of pages from a website advertising the opponent's GRAN PATRON PLATINUM and GRAN PATRON BURDEOS products.

[14] I note that none of the exhibits references the GRAN PATRON tequila product.

APPLICANT'S EVIDENCE

*Jennifer Stecyk*

[15] Ms. Stecyk identifies herself as a trade-mark searcher employed by the firm representing the applicant. She conducted a search of the Canadian trade-marks register to identify active registrations and applications for marks containing the element GRAN for use in association with alcoholic beverages. The results of her search are presented *en liasse* as Exhibit A to her affidavit. Similar searches, for the terms GRAN PADRE and GRAN PATRON, were conducted for the Internal Market of the European Union and for Mexico; the results of those searches are presented *en liasse* as Exhibits B and C, respectively.

[16] The applicant has summarized Exhibit A into a conveniently readable format in Schedule 1 of its written argument. From my inspection of Schedule 1, I note that 85 marks were located, almost all of them registrations rather than applications. About 23 of the marks are comprised of the prefix GRAN *per se*, as in, for example, GRAN BARON (for wine and liqueurs); GRAN CENTENARIO (for tequila); GRAN BLASON (for distilled alcoholic beverages); and GRAN CORONAS (for wine). I have also noted that groups of those 23 marks are in the name of single owners. About 33 marks are comprised of the prefix GRAND *per se*, as in, for example GRAND COURBET (for wines, tequila and other products) and GRAND MARNIER (for liqueurs). Again, groups of marks belong to single owners. I do not consider that the remaining marks, where the term GRAN forms part of another term, as in, for example, GRANGALA; GRANGE; and GRANVILLE ISLAND, further the applicant's case. Nor do I consider that Exhibits B and C are of any significant probative value to the issues in this proceeding.

*Aleem Abdulla*

[17] Mr. Abdulla identifies himself as an articling student employed by the firm representing the applicant. His affidavit serves to introduce in evidence his findings on attending at a LCBO (Liquor Control Board of Ontario) retail store in downtown Ottawa. His findings are fairly summarized at paras. 16-17 of the applicant's written argument, shown below:

16. Tequila is sold is[sic] association with the GRAN PATRON Marks in LCBO retail stores located in Ontario, namely GRAN PATRON PLATINUM SILVER TEQUILA with a retail price of \$349.95 per 750 mL bottle, and GRAN PATRON BURDEOS ANEJO TEQUILA with a retail price of \$699.95 per 750 mL bottle.

*Abdulla Affidavit*, paragraphs 2 to 4, Exhibits "A" and "B"

17. The names "The Patron Spirits Company", "PATRON SPIRITS MEXICO, S.A. DE C.V.", and "Francisco" are displayed on the bottle and/or packaging for GRAN PATRON PLATINUM SILVER TEQUILA. There are no references to the Opponent, Patron Spirits International AG, or to any other entity on the GRAN PATRON PLATINUM SILVER TEQUILA bottle, box or accompanying booklet.

*Abdulla Affidavit*, paragraphs 4 to 6, Exhibit "B"

I note from Exhibit A of Mr. Abdullah's affidavit that the LCBO website indicates "Patron Spirits Company" as the source for both the PLATINUM and BURDEOS products. I assume that the LCBO has merely simplified the name of the opponent's subsidiary mentioned in para. 6, above.

#### Legal Onus and Evidential Burden

[18] As mentioned earlier, before considering the grounds of opposition, it is necessary to review (i) the evidential burden on the opponent to support the allegations in the statement of opposition and (ii) the legal onus on the applicant to prove its case.

[19] With respect to (i) above, there is in accordance with the usual rules of evidence, an evidential burden on the opponent to prove the facts inherent in its allegations pleaded in the statement of opposition: see *John Labatt Limited v. The Molson Companies Limited*, 30 CPR (3d) 293 at 298 (FCTD). The presence of an evidential burden on the opponent with respect to a particular issue means that in order for the issue to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist. With respect to (ii) above, the legal onus is on the applicant to show that the application does not contravene the provisions of the *Trade-marks Act* as alleged by the opponent in the statement of opposition (for those allegations for which the opponent has met its evidential burden). The presence of a legal onus on the applicant means that if a determinate conclusion cannot be reached once all the evidence is in, then the issue must be decided against the applicant.

#### GROUND OF OPPOSITION BASED ON S. 30

[20] The grounds pursuant to s. 30 challenge the validity of the application. They allege that (1) the applied-for mark GRAN PADRE was not used in Mexico, and (2) the applicant had no intention, by itself or through a licensee, to use the applied-for mark GRAN PADRE in Canada. The opponent has not led any evidence to meet the burden on it to put either ground into issue, and therefore the first two grounds are rejected.

[21] The third ground of opposition, pursuant to s. 30(i), alleges that the applicant could not have been satisfied that it is entitled to use the applied-for GRAN PADRE mark in Canada. Such a pleading requires the opponent to allege fraud on the part of the applicant or that specific federal statutory provisions (other than those already pleaded) prevent the registration of the applied-for mark: see *Sapodilla Co. Ltd. v. Bristol-Myers Co.* (1974), 15 CPR (2d) 152 at 155 (TMOB) and *Canada Post Corporation v. Registrar of Trade-marks* (1991), 40 CPR (3d) 221. In the instant case no such allegations have been made and therefore the pleadings do not support a ground of opposition pursuant to s.30(i), which ground is therefore rejected.

#### GROUND OF OPPOSITION BASED ON S.12(1)(D)

[22] The fourth ground alleges that the applied-for mark GRAN PADRE is confusing with the opponent's registered GRAN PATRON marks. The material time to assess the issue of confusion under s. 12(1)(d) is the date of decision.

#### *Meaning of Confusion*

[23] Trade-marks are confusing when there is a reasonable likelihood of confusion within the meaning of s.6(2) of the *Trade-marks Act*, shown below:

The use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the goods or services . . . associated with those trade-marks are manufactured . . . or performed by the same person, whether or not the goods or services . . . are of the same general class.



[24] Thus, s. 6(2) does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by s. 6(2) is whether consumers shopping for tequila would believe that the applicant's tequila, sold under the mark GRAN PADRE, was made by the opponent, or that the applicant was authorized or licensed by the opponent, whose tequila is sold under its three marks with the formative prefix GRAN PATRON. The legal onus is on the applicant to show, on the usual civil balance of probabilities standard, that there would be no reasonable likelihood of confusion.

#### *Test for Confusion*

[25] The test for confusion is one of first impression and imperfect recollection. Factors to be considered, in making an assessment as to whether two marks are confusing, are “ all the surrounding circumstances including” those specifically mentioned in s.6(5)(a) to s.6(5)(e) of the *Act*: the inherent distinctiveness of the marks and the extent to which they have become known; the length of time each has been in use; the nature of the wares, services or business; the nature of the trade; the degree of resemblance in appearance or sound of the marks or in the ideas suggested by them. This list is not exhaustive and all relevant factors are to be considered. Further, all factors do not necessarily have equal weight as the weight to be given to each depends on the circumstances: see *Gainers Inc. v. Tammy L. Marchildon and The Registrar of Trade-marks* (1996), 66 CPR(3d) 308 (FCTD). However, as noted by Mr. Justice Rothstein in *Masterpiece Inc. v. Alavida Lifestyles Inc.* (2011), 92 CPR(4th) 361 (SCC), although the degree of resemblance is the last factor cited in s.6(5), it is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion.

[26] I will first consider the issue of confusion with respect to the opponent's registered mark GRAN PATRON.

#### *Consideration of Section 6(5) Factors*

##### *Factors 1 & 2- Inherent and Acquired Distinctiveness; Length of Time in Use*

[27] The term GRAN PADRE possesses a fair degree of inherent distinctiveness owing mostly to the prefix GRAN which, in context, would be perceived as a coined word rather than as the colloquial word meaning “grandmother.” The second component of the mark, namely

PADRE, is a Spanish word meaning “father,” which word has entered into the English lexicon meaning “a Christian clergyman.”

[28] The state of the register evidence, discussed in para. 16, above, shows that there are numerous marks for alcoholic beverages beginning with the terms GRAN and GRAND. The inherent distinctiveness of the mark GRAN PADRE must therefore be discounted as I may infer that there is use of at least some of those marks in the marketplace, and consequently that consumers are to some extent familiar with the term GRAN as a prefix for marks used in association with alcoholic products: see *Ports International Ltd. v. Dunlop Ltd.* (1992), 41 CPR(3d) 432 (TMOB); *Del Monte Corporation v. Welch Foods Inc.* (1992), 44 CPR(3d) 205 (FCTD); *Kellogg Salada Canada Inc. v. Maximum Nutrition Ltd.* (1992), 43 CPR(3d) 349 (FCA). The inherent distinctiveness of the applied-for mark GRAN PADRE is also further lessened to the extent that consumers of alcoholic beverages would perceive the prefix GRAN as a laudatory term, that is, as a truncation of the laudatory word GRAND.

[29] Similarly, the opponent’s registered mark GRAN PATRON possesses a fair degree of inherent distinctiveness owing mostly to the component GRAN. The second component of the mark, namely PATRON, is the English language word whose primary meaning is “a person who gives money or support to an artist or organization.” The inherent distinctiveness of the mark as a whole must be discounted owing to the state of the register evidence as discussed in para. 28, above.

[30] While the opponent has shown some use of the marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS in Canada, the opponent has not shown any use of its mark GRAN PATRON in Canada. Similarly, the applicant has not shown any use of the applied-for mark GRAN PADRE in Canada. Thus, the first factor, which is the combination of inherent and acquired distinctiveness, cannot be said to favour either party. Similarly, the second factor cannot be said to favour either party as neither party has evidenced use of their marks in Canada.

*Factors 3 & 4 - The Nature of the Goods, Services or Business; The Nature of the Trade*

[31] The parties' goods are the same and, in the absence of evidence to the contrary, I assume the parties' tequila products would travel through the same channels of trade – with a high likelihood of being sold side by side in retail outlets. The third and fourth factors therefore favour the opponent.

*Factor 5 – Resemblance*

[32] The marks GRAN PADRE and GRAN PATRON resemble each other to a fair extent visually and aurally owing mostly to the prefix GRAN. However, taking into consideration the opponent's state of the register evidence, such resemblance must be discounted to the extent that consumers are already familiar with distinguishing among marks, for alcohol products, beginning with the component GRAN. The marks in issue are more different than alike in the ideas that they suggest as the components PADRE and PATRON suggest different ideas, namely, a clergyman and a supporter of the arts, respectively. I find that when all three aspects of resemblance are considered, namely visual resemblance, aural resemblance and ideas suggested, and discounting to some extent the first component GRAN, the marks in issue are more different than alike. The fifth factor therefore favours the applicant.

[33] Having regard to the above, and considering all the factors together, I find that the applicant has met the onus on it to show that the balance of probabilities weighs slightly in its favour on the issue of confusion. I would add that the opponent would have strengthened its case considerably had it been able to demonstrate a significant reputation for its mark GRAN PATRON in Canada.

[34] Similar analyses for the individual registered marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS also lead to findings of no confusion because (i) the opponent is unable to claim a reputation for either mark for itself having regard to the licensing/control issues discussed previously, and (ii) the fifth factor favours the applicant to a greater extent in respect of the marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS as those marks resemble the mark GRAN PADRE to a lesser extent than the mark GRAN PATRON. Even if use of the marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS inured the

benefit of the opponent, I would be unable to attribute any significant acquired distinctiveness to either mark owing to the lack of specificity in Mr. Carrol's evidence, discussed in para.12, above.

[35] The ground of opposition based on s.12(1)(d) is therefore rejected.

#### GROUND OF OPPOSITION BASED ON S.16(2)(A) AND S.16(3)(A)

[36] The material time to assess the issue of confusion with respect to the above grounds is the date of filing the application, in this case February 3, 2011. The opponent is unable to rely on its marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS because the opponent has not established that the use of those marks inure to its benefit. The determinative issue then becomes whether the applied-for mark GRAN PADRE is confusing with the opponent's mark GRAN PATRON. Again, a prerequisite for the opponent to rely on its mark GRAN PATRON is to establish use of the mark in Canada prior to February 3, 2011. In this regard, the registration page included as Exhibit 1 of Mr. Carroll's affidavit indicates that the mark was used in Canada "since at least as early as April 2006." In the absence of evidence to the contrary, such evidence satisfies the requirement for the opponent to establish prior use. However, as no other evidence of use has been submitted, I am unable to accord any acquired distinctiveness to the mark GRAN PATRON at any material time. The considerations for the confusion analysis between the two marks GRAN PATRON and GRAN PADRE, at the material date February 3, 2011, are the same as for the analysis under s.12(1)(d), above, and the same result follows, that is, I find that the applicant has met the onus on it to show that the balance of probabilities weighs slightly in its favour on the issue of confusion. The grounds of opposition pursuant to s.16 relying on the use of the opponent's three GRAN PATRON marks are therefore rejected.

#### GROUND OF OPPOSITION BASED ON S.2

[37] The material time to assess a ground of opposition based on s. 2 is the date of opposition, in this case January 29, 2013: for a review of case law concerning material dates in opposition proceedings see *American Retired Persons v. Canadian Retired Persons* (1998), 84 CPR(3d) 198 at 206 - 209 (FCTD).

[38] The ground of opposition based on s.2, as pleaded, relies on the opponent's use of its marks rather than on any third party's use of the marks GRAN PATRON; GRAN PATRON PLATINUM; or GRAN PATRON BURDEOS. As discussed earlier, the opponent is precluded from relying on use of the marks GRAN PATRON PLATINUM and GRAN PATRON BURDEOS. The determinative issue then becomes whether the applied-for mark GRAN PADRE is confusing with the opponent's mark GRAN PATRON. In this regard, the considerations for the confusion analysis at the material date January 29, 2013 are the same as for the analysis under s.12(1)(d), above, and the same result follows, that is, the ground of opposition is rejected.

DISPOSITION

[39] As each of the grounds of opposition has been rejected, the opposition is rejected.

[40] This decision has been made pursuant to a delegation of authority by the Registrar of Trade-marks under s.63(3) of the *Trade-marks Act*.

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Myer Herzig, Member,  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

**APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE:** 2015-11-25

**APPEARANCES**

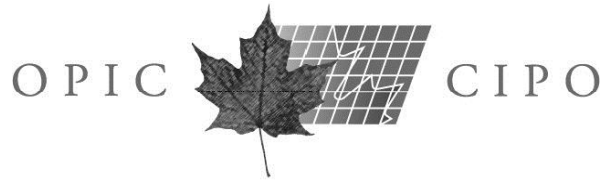
Scott Fraser  
Donna White

FOR THE OPPONENT  
FOR THE APPLICANT

**AGENTS OF RECORD**

Osler  
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FOR THE OPPONENT  
FOR THE APPLICANT



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Citation: 2016 TMOB 40**  
**Date of Decision: 2016-05-11**

**IN THE MATTER OF AN OPPOSITION**

**Patron Spirits International AG**

**Opponent**

**and**

**Destileria 501, S.A. DE C.V.**

**Applicant**

**1,513,754 for GRAN PADRE**

**Application**

[1] It has come to my attention that my decision recently issued in the above-noted opposition (2016 TMOB 40) contains errors in paragraph 24, where the words PATRON and PADRE were inadvertently transposed.

[2] Accordingly, para. 24 of my decision dated March 8, 2016 is amended to read:

[24] Thus, s. 6(2) does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by s. 6(2) is whether consumers shopping for tequila would believe that the applicant's tequila, sold under the mark GRAN PADRE, was made by the opponent, or that the applicant was authorized or licensed by the opponent, whose tequila is sold under its three marks with the formative prefix GRAN PATRON. The legal onus is on the applicant to show, on the usual civil balance of probabilities standard, that there would be no reasonable likelihood of confusion.

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