

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

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Aug. 5, 2003

Paper No. 16
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Magasin Chateau d'Ivoire Inc.

Serial No. 76/085,630

Theodore A. Breiner of Breiner & Breiner, L.L.C. for
Magasin Chateau d'Ivoire Inc.

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

Before Simms, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark depicted below, for goods and services
identified in the application, as amended, as "jewelry" in
Class 14; "retail and wholesale distributorship in the

field of jewelry" in Class 35; and "custom manufacture of jewelry" in Class 40.¹



The application includes the following translation statement: "The English translation of the word "chateau" in the mark is "castle." The English translation of the word "ivoire" is "ivory," and the English translation of the letter "d" is "of."

In response to the Trademark Examining Attorney's inquiry during examination, applicant stated that its goods and services did not include or involve ivory. Pursuant to the Trademark Examining Attorney's requirement, applicant has disclaimed the exclusive right to use D'IVOIRE apart from the mark as shown.

¹ Serial No. 76/085,630, filed on July 10, 2000. The application filing basis is Trademark Act Section 44(e), based on applicant's ownership of Canadian Registration No. TMA469,628. The application originally included an intent-to-use filing basis under Trademark Act Section 1(b), but applicant subsequently withdrew that basis and elected to proceed solely on the basis of Section 44(e).

The Trademark Examining Attorney has issued and maintained a final refusal to register applicant's mark on the ground that the mark is deceptively misdescriptive under Trademark Act Section 2(e)(1). Applicant has appealed that final refusal. The appeal has been fully briefed, and an oral hearing was held.

We find that the evidence of record fails to establish that applicant's mark, as a whole, is deceptively misdescriptive of the identified goods and services. Applicant has disclaimed D'IVOIRE, which on this record is the only portion of the mark that might be deemed to be unregistrable. With such disclaimer, the mark otherwise appears to be registrable on the Principal Register, and we are unaware of any other reason why the disclaimer is not sufficient to overcome the "deceptively misdescriptive" refusal.

Decision: The Section 2(e)(1) deceptive misdescriptiveness refusal is reversed. The application, with its disclaimer of D'IVOIRE, shall proceed to publication.