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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Quinn

Serial No. 78271634

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Midge F. Butler, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Hohein, Grendel and Zervas, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

Greg Quinn filed, on July 8, 2003, an application to register on the Principal Register the mark NEW YORK CURRANTS (in typed or standard character form) for goods ultimately identified as "currant based snack products and processed, canned, dried and preserved currants" in International Class 29; "unprocessed, raw or fresh currants" in International Class 31; and "beverages, namely, currant juice and currant flavored soft drinks" in International Class 32. The application is based on an

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allegation of a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. §1051(b). Applicant has disclaimed the word CURRANTS.

Registration has been finally refused under Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), on the ground that applicant's mark is primarily geographically descriptive of applicant's goods.

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

As a general proposition, in order for registration of a mark to be properly refused on the ground that it is primarily geographically descriptive of an applicant's goods or services, it is necessary to establish (i) that the primary significance of the mark is that of the name of a place generally known to the public, and (ii) that the public would make a goods/place or services/place association, that is, believe that the goods or services for which the mark is sought to be registered originate in that place. See *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); *University Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385 (TTAB 1994); and *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704 (TTAB 1988), citing *In re Societe Generale des Eaux Minerales de*

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Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987).

Provided that these conditions are met, and the goods or services come from the place named by or in the mark, the mark is primarily geographically descriptive. *In Re Brouwerij Nacional Balashi NV*, 2006 WL 2223449, ___ USPQ2d ___ (TTAB August 2, 2006).

Certainly, the goods come from the place named by or in the mark. Applicant has represented that "its business is based in New York State and that some portion of its goods originate in New York State." See response to first Office action.

Also, the primary significance of the mark is that of the name of a place generally known to the public. New York, of course, is one of the fifty states of the United States, and applicant does not dispute that NEW YORK identifies a geographic place generally known to the public. CURRANTS is either merely descriptive or generic of applicant's particular goods because it identifies or describes applicant's goods or an ingredient of applicant's goods. The presence of generic or highly descriptive terms in a mark which also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole. See *In*

re JT Tobacconists, supra at 1082; *In re Carolina Apparel*, 78 USPQ2d 1542 (TTAB 1998).

Applicant has argued that "the mark serves as a double entendre," arguing that CURRANTS, when preceded by "New York," "instantly brings to mind the hipness and electricity of New York City, [and] the word CURRANT is transformed in the consumer's mind into the word CURRENT, meaning both 'most recent' and 'a flow of electric charge.'" Brief at p. 4. It strains credulity, however, to contend that the connotation of NEW YORK in a mark in which NEW YORK is followed by the name of a fruit, used on containers holding the fruit, or on beverages made from the fruit, is "Manhattan" rather than the State of New York, and that the name of the fruit is transformed into another word meaning "both 'most recent' and 'a flow of electric charge.'" Thus, we are not persuaded by applicant's argument.

We now consider the whether the public would make an association between the goods recited in applicant's application and New York State. The examining attorney argues "there is a presumed goods-place association because applicant has acknowledged that its business is based in New York State and that some portion of its goods originate in New York State"; and because an article submitted by

applicant - which is about applicant - entitled *Is this New York's Idaho Potato; Entrepreneur has Grand Plans for Black Currants*, from *The New York Times* (published on October 16, 2003), explains the currants in applicant's products originate from New York.¹ Brief at p. 4. Additionally, the examining attorney concludes that "purchasers are likely to believe the goods will originate in that geographic location because the applicant is both located there and because the currants are grown in New York." *Id.* The examining attorney points out that in establishing a prima facie case that there is a good/place association between currants and New York, she need not show that the public would actually make the asserted association, but rather

¹ The article also states as follows:

The reason black currants never made it to the big time of the berry would here, as they did in Europe, is simple: they were banned nationwide for most of the last century. New York State, where black currants once thrived, declared them a public nuisance in 1911 and outlawed their planting, cultivation, sale and transport.

The concern was the role of black currants in carrying a disease that afflicted white pine trees, called white pine blister rust. But once Mr. Quinn got it into his head that black currants were destined to grow on his 135 acres, the ban was all but history.

Evidently, the ban on black currant farming in New York has been repealed. See excerpt from the August 7, 2003 edition of *Business Wire*, taken from the Nexis database, and submitted by the examining attorney with her final Office action, stating "... Ban on Black Currant Farming Is Officially Reversed in New York."

need only show a "reasonable basis" for concluding that the public would make the goods/place association, citing *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985).

Applicant, however, maintains that the examining attorney has failed to prove that the public would make a goods/place association between New York and currants, and currant-based products. According to applicant, "New York is known for many things, but currants and related products is simply not one of them." Brief at p. 2. As to *The New York Times* article submitted by the examining attorney with the May 5, 2005 Office action, applicant maintains that as the title indicates, "there is no association between New York and currants, distinguishing Idaho, which is known for potatoes." Brief at p. 3 (emphasis in original). Rather, applicant argues that "consumers associate New York with the hip, urban Manhattan ... and, therefore, while consumers associate New York with, for example fashion-related products ... they do not associate New York with farm products in general or currants in particular." Reply brief at p. 3.²

² Applicant further argues that "states other than New York are known for producing currants," citing articles first submitted with his reply brief. Reply brief at p. 3 (emphasis in original). Because the record must be complete prior to the filing of an appeal, see Trademark Rule 2.142(d), applicant's

Our case law is clear that where there is no genuine issue that the geographical significance of a term is its primary significance, and where the geographical place named by the term is neither obscure nor remote, a goods/place association may ordinarily be presumed from the fact that the applicant's goods or services come from the geographical place named by or in the mark. See, e.g., *In re JT Tobacconists*, *supra* at 1082; *In re Carolina Apparel*, *supra* at 1543 ("Inasmuch as the services admittedly do or will come from the place named in the mark, a public association of the services with the place named in the mark is presumed"); *In re California Pizza Kitchen Inc.*, *supra* at 1705; and *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982). Because applicant has acknowledged that his goods and services do come from New York, a place which is neither obscure nor remote, and because the article mentioned above and other evidence in the record indicates that it is applicant's intent to grow currants and produce goods made from currants grown in New York, we may presume a goods/place association.³

evidence submitted with his reply brief has been filed late, and is given no further consideration. As to applicant's argument, because it is without evidentiary support which we may consider, it is not persuasive.

³ Applicant has cited three cases in support of his contention that "the mere fact that a mark contains a geographical term, even one which is well-known and which names the geographical

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In view of the foregoing, we find that applicant's mark is geographically descriptive of applicant's goods.

Decision: The refusal to register under Section 2(e)(2) is affirmed.

area from which the goods or services originate, does not automatically render the mark geographically descriptive." Reply brief at p. 2. One of such cases, *In re Wires*, 2000 TTAB LEXIS 724 (TTAB Nov. 21, 2000) is a non-precedential case. The Board disregards citation to any non-precedential decision (unless, of course, it is asserted for res judicata, law of the case or other such issues.) See *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270 (TTAB 1992). The remaining two cases are distinguishable from this case in that they involved issues of geographic misdescriptiveness and geographic deceptiveness, not geographic descriptiveness.