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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alfredo International Inc.

Serial No. 76659790

John S. Hale for Alfredo International Inc.

Daniel Brody, Trademark Examining Attorney, Law Office 115
(Tomas V. Vlcek, Managing Attorney).

Before Seeherman, Zervas and Ritchie de Larena,
Administrative Trademark Judges.

Opinion by Ritchie de Larena, Administrative Trademark
Judge:

Alfredo International Inc., applicant herein, seeks registration on the Principal Register of the mark ITALIAN SUSHI, in the stylized form shown below, for goods identified in the application as "food items consisting of seafood, namely, salmon, tuna, calamari and lobster and cheese, namely, mozzarella, gorgonzola, ricotta and prosciutto combined with other ingredients served in a roll

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and ring form for on or off premises sales" in
International Class 30¹:

ITALIAN SUSHI

The trademark examining attorney refused registration on the ground that applicant's mark is merely descriptive of the identified goods under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Applicant appealed the final refusal. Both applicant and the examining attorney filed briefs. After careful consideration of all of the the arguments and evidence of record, we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18

¹ Serial No. 796659790, filed on May 8, 2006, under Trademark Act Section 1(a), 15 U.S.C. §1051(a), with date of first use and date of first use in commerce of February 1, 2005, disclaiming the exclusive right to use "ITALIAN" apart from the mark as shown.

(CCPA 1978).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *See also In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

We consider a composite mark in its entirety. The composite is registrable only if as a unitary mark it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR

& SPICE not merely descriptive of bakery products). Thus, we consider whether the words "ITALIAN SUSHI" have a descriptive meaning as a unitary phrase. We have taken judicial notice of the dictionary definitions of the separate words "Italian," and "sushi."²

DEFINITIONS:

ITALIAN: Relating to Italy or its people, language or culture. *American Heritage Dictionary* (4th ed. 2000)

SUSHI: Cold cooked rice dressed with vinegar that is shaped into bite-sized pieces and topped with raw or cooked fish, or formed into a roll with fish, egg, or vegetables and wrapped in seaweed. *American Heritage Dictionary* (4th ed. 2000)

To show the meaning of "Italian" and "sushi" together as a unitary phrase, the examining attorney submitted evidence of at least 16 Internet articles, restaurant reviews, and menu items all referring to the term "Italian sushi" as a type of food that combines Italian-style food with sushi-style presentation. Here we set forth a sampling of some of the uses of the term "Italian sushi" as descriptive of a particular type and style of food:

² The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd* 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

WEB EXCERPTS:

Opened in Fall 2005, Bar Crudo is a modern raw bar with a little edge, contributing to the short list of San Francisco restaurants featuring crudo, the "Italian sushi" trend that hit large recently in New York. *SF Station review of Bar Crudo, December 16, 2005; www.sfstation.com*

Italian sushi is best forgotten. This jarring cross-cultural mistake, consisting of a warm roll enclosed in a rubbery ring of calamari, won no converts at our table. *The New York Times review of Villa Doria June 11, 2000; <http://nytimes.com>*

"We're going to have a lounge and serve Italian sushi with a Chinese flair, like P.F. Changs-type food," says Busalacchi . . . "In Sicily, where I'm from, there's a lot of fish, even raw fish, and there's a place in Milano that serves Italian sushi, with oils and garlic. That's what I want to re-create here." *The Ultimate Dining Guide 2005 review of Casino Pauma;*

These articles demonstrate that the relevant public understands the term "Italian sushi" to refer to and describe a particular type and style of food. Applicant argues that an imaginative step is required to understand ITALIAN SUSHI to mean an Italian form of sushi. We find, however, that in view of the evidence that the term "Italian sushi" is used to describe food items or dishes, ITALIAN SUSHI forthwith conveys a characteristic of the

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food items offered by applicant. See *In re Gyulay*, 3 USPQ2d at 1009; *In re Abcor Development Corp.*, 200 USPQ at 217-18. It is clear that a consumer would understand ITALIAN SUSHI used in connection with applicant's goods, namely, "food items consisting of seafood, namely, salmon, tuna, calamari and lobster and cheese, namely, mozzarella, gorgonzola, ricotta and prosciutto combined with other ingredients served in a roll and ring form for on or off premises sales," as conveying information about them. See *In re Tower Tech Inc.*, 64 USPQ2d at 1316-17. Accordingly, we affirm the refusal to register.

Decision: We affirm the refusal to register under 2(e)(1).