

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing:
December 6, 2012

Mailed:
February 6, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lydia Anne Juge.

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Serial No. 76704219

Cary J. Deaton, Esq. for Lydia Anne Juge.

Karen P. Severson, Trademark Examining Attorney, Law Office 117 (J. Brett Golden, Managing Attorney).

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Before Zervas, Bergsman and Shaw, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Lydia Anne Juge (“applicant”) filed a use based application to register the mark ANTIQUES OF PARIS, in standard character form, for “retail store services featuring international antiques,” in Class 35. Applicant disclaimed the exclusive right to use the word “Antiques.”

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that the mark ANTIQUES OF PARIS in connection with retail store services in the field of antiques is merely descriptive. The Examining Attorney also refused registration

on the ground that applicant failed to comply with his requirement for additional information pursuant to Trademark Rule 2.61(b). Specifically, applicant was requested to indicate the nature of the goods offered the retail store services and whether applicant's services are affiliated with a Paris antique dealer. In view of the fact that the recitation of services is for "retail store services featuring international antiques" which encompasses antiques from Paris, the requirement for additional information does not add anything to the prosecution of this application, and we give it no further consideration.

To support the descriptiveness refusal, the Trademark Examining Attorney introduced the following evidence:

1. A definition of the word "antique" from the Merriam-Webster dictionary (m-w.com).¹ An "antique" is defined as follows:

- 1: a relic or object of ancient times
- 2: a:
a work of art, piece of furniture, or decorative object made at an earlier period and according to various customs laws at least 100 years ago
- b:
a manufactured product (as an automobile) from an earlier period

2. A definition of the word "Paris" from the Merriam-Webster dictionary (m-w.com).² "Paris" is identified as a city in northeastern Texas and as a city in France along the Seine river.

¹ December 15, 2010 Office action.

² December 15, 2010 Office action.

3. An excerpt from the *Discover France!* Website (discoverfrance.net) providing links to antique markets in Paris, France.³

4. A copy of a news article appearing in the online version of *The Telegraph* newspaper (telegraph.co.uk) featuring a story about the antique markets of Paris, “Paris: touring the city’s antiques markets,” posted on September 3, 2009.⁴

5. A copy of applicant’s home page (aop.tsdwebsites.com) featuring the Eiffel Tower, a Parisian landmark, and other photos conjuring-up impressions of Paris, France.⁵

In addition, the **ENCYLOPAEDIA BRITANNICA** identifies Paris as the capital city of France, noting that “[f]or centuries [sic] Paris has been one of the world’s most important and attractive cities” and that it “has retained its importance as a centre for education and intellectual pursuits.”⁶

“A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term

³ May 12, 2011 Office action.

⁴ May 12, 2011 Office action. Although the source is a newspaper and website in the United Kingdom, the face of the website indicates that there is a North American version and an American shopper is, in part, the subject of the story. Accordingly, we have considered this news story as being available to American readers.

⁵ November 29, 2011 Office action.

⁶ “Paris,” **ENCYCLOPAEDIA BRITANNICA** (2013). We may take judicial notice of information from encyclopedias. Fed. R. Evid. 201; *Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 n.61 (TTAB 2011).

is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and

information services in the food processing industry). In this regard, we must consider the issue of descriptiveness by looking at the mark in its entirety.

However, “if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). In this regard, “incongruity is one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark.” *In re Shutts*, 217 USPQ at 365.

A consumer encountering an antique store with the name ANTIQUES OF PARIS will immediately know, without having to resort to any thought, analysis or guesswork, that the proprietor is selling antiques from Paris, France. Any other interpretation defies credulity. In this regard, we note that applicant’s trade dress features a French theme. The specimen of use shows the mark ANTIQUES OF PARIS superimposed over a fleur-de-lis design. A fleur-de-lis is the heraldic bearing of the royal family of France.⁷

Applicant argues that ANTIQUES OF PARIS has a dual meaning: Paris, France and a first name, such as Paris Hilton. We disagree. When the mark

⁷ *Dictionary.com* derived from the **RANDOM HOUSE DICTIONARY** (2013). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

ANTIQUES OF PARIS is used in connection with retail store services in the field of antiques, the first and foremost impression engendered by the mark is antiques emanating from Paris, France, not from an individual named Paris.

Applicant also presses upon the Board the fact that she has been issued a Louisiana state trademark registration. However, in proceedings before the Trademark Trial and Appeal Board, state registrations are not controlling on the federal registrability of a mark because the Board's determination regarding the registrability of the mark under the Trademark Act of 1946 is predicated on the facts before us in this application, not on the basis of a decision by the State of Louisiana on an unknown set of criteria. *Philip Morris Inc. v. Liggett & Myers Tobacco Co.*, 139 USPQ 240, 243-244 (TTAB 1963) ("COUPON" held merely descriptive of cigarettes containing premium redemption coupons despite state registration). *See also, In re Anania Associates, Inc., aka, Off the Rack*, 223 USPQ 740, 742 (TTAB 1984); *In re Illinois Bronze Powder & Paint Co.*, 188 USPQ 459 (TTAB 1975) (slogan mark held not registrable on basis of secondary meaning despite submission of state registration, 5-year use declaration, and litigation consent agreement).

In view of the foregoing, we find that the mark ANTIQUES OF PARIS for "retail stores services featuring international antiques" is merely descriptive.

Decision: The refusal to register is affirmed.