

THIS OPINION IS NOT A  
PRECEDENT OF THE T.T.A.B.

Mailed: May 14, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Helen Trimarchi and Michael Merr

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Serial No. 77222086

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Jeffrey A. Trimarchi of O'Melveny & Myers, LLP for Helen Trimarchi and Michael Merr.

Janice L. McMorrow, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

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Before Seeherman, Drost and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Helen Trimarchi and Michael Merr, joint applicants, have filed an application to register the mark shown below for "golf shirts; polo shirts; shirts; short-sleeved or long-sleeved t-shirts; short-sleeved shirts; sport shirts; sports shirts with short sleeves; sweat shirts; t-shirts; yoga shirts" in International Class 25 and "on-line retail store services featuring exercise clothing, support tops, bras, sneakers, socks, shirts, sweat suits, biking clothing, yoga wear, swim wear, fitness wear, running wear,

golf wear, bicycle speedometers; jogging computers, hats, gym bags; retail apparel stores; retail clothing boutiques; retail clothing stores; retail stores featuring exercise clothing, support tops, bras, sneakers, socks, shirts, sweat suits, biking clothing, yoga wear, swim wear, fitness wear, running wear, golf wear, bicycle speedometers, jogging computers, hats, gym bags" in International Class 35.<sup>1</sup>



Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicants' mark, when used in connection with their identified goods and services, so resembles the registered mark GO GIRL (in typed form), with GIRL disclaimed, for "clothing and headgear for women and girls, namely, hats, caps, sweatshirts, sweatpants, leggings, t-shirts, shirts and shorts" in International Class 25,<sup>2</sup> as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. The appeal is fully briefed. We reverse the refusal.

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<sup>1</sup> Serial No. 77222086, filed July 4, 2009, 15 U.S.C. §1051(b), amended to allege a bona fide intention to use the mark in commerce under Trademark Act Section 1(b).

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to a consideration of the goods and services identified in the application and the cited registration. We must consider applicants' goods and services and the cited registrant's goods as they are described in the application and registration and we cannot read limitations into those goods and services. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987). If the application and cited registration describe goods and services broadly, and there

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<sup>2</sup> Registration No. 2227005, issued March 2, 1999; section 8 and 15 affidavits accepted and acknowledged; renewed.

is no limitation as to the nature, type, channels of trade or classes of purchasers, it is presumed that the application and registration encompass all goods and services of the type described, that they move in all channels of trade normal for these goods and services, and that they are available to all classes of purchasers for the described goods and services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

The application includes goods that are identical to or encompassed by registrant's goods (shirts, t-shirts, sweatshirts; golf shirts; polo shirts; short-sleeved or long-sleeved t-shirts; short-sleeved shirts; sport shirts; sports shirts with short sleeves; yoga shirts). In addition, applicant's on-line retail services offer goods that are identical, encompassed by or closely related to registrant's goods. As a result, we find applicants' goods and services to be related to the registrant's goods. See *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (mark for retail women's clothing store services and clothing held likely to be confused with mark for uniforms); *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (mark for distributorship services in the field of health and beauty aids held likely to be confused with mark for skin cream). In addition, the examining attorney submitted

third-party use-based registrations that show numerous entities have adopted a single mark for the goods and services identified in applicant's application and the goods identified in registrant's registration. See, e.g., Reg. No. 2480720 (PLASTER for, inter alia, t-shirts, shirts and retail clothing stores); Reg. No. 2634605 (NAARTJIE for, inter alia, shirts and retail clothing stores); Reg. No. 2674842 (DECKY for, inter alia, t-shirts and retail clothing stores, namely, mail order catalog services featuring clothing); and Reg. No. 3301129 (SUGAR & ROX for, inter alia, shirts, t-shirts and online retail store services featuring clothing, retail clothing stores). See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) (third-party registrations serve to suggest that the goods and/or services listed therein are of a kind that may emanate from a single source). Applicants do not dispute that their goods and services are related to registrant's goods and that their channels of trade and classes of purchasers overlap.

In view thereof, we find that the goods and services are related and the channels of trade and classes of purchasers overlap.

We turn now to the du Pont factor of whether applicants' mark  and registrant's mark GO GIRL are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. We make this determination in accordance with the following principles. The test, under this du Pont factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Finally, "[u]nder the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine...similarity of connotation in order to ascertain confusing similarity with English word marks." *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1377 (Fed. Cir. 2005). The doctrine of foreign equivalents is applied when it is likely that "the ordinary American purchaser

would 'stop and translate [the term] into its English equivalent.'" Palm Bay, 73 USPQ2d at 1696, quoting In re Pan Tex Hotel Corp., 190 USPQ 109, 110 (TTAB 1976). See also In re Thomas, 79 USPQ2d 1021 (TTAB 2006). "The 'ordinary American purchaser' in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language." In re Thomas, supra at 1024.

Although the examining attorney states that "applicants' mark is highly similar in appearance, meaning, connotation and commercial impression to the registered mark," her analysis relies entirely on the element of connotation based on her application of the doctrine of foreign equivalents.

We agree that the wording ALLEZ FILLES is the dominant element of applicants' mark. In re Dakin's Miniatures Inc., 59 USPQ2d 1593, 1596 (TTAB 1999). We also agree that the stylization of the words in applicants' mark cannot serve to distinguish the marks inasmuch as registrant's mark is in typed form, In re Pollio Dairy Products Corp., 8 USPQ2d 2012, 2015 (TTAB 1988), and the fact that FILLES is the plural form also does not distinguish the marks, In re Pix of Am., Inc. 225 USPQ 691, 692 (TTAB 1985). Our agreement with the examining attorney's analysis stops there. These marks are obviously different in sound and

appearance - quite substantially different. Thus, the only way confusing similarity could be found between these marks is if they are equivalent in meaning to such an extent that this equivalency overwhelms any other differences.

The examining attorney asserts that GO GIRL is the exact translation of ALLEZ FILLES. In support of this assertion she relies on: 1) applicants' translation "GO GIRLS!" that was provided when they filed the application; 2) the translation from French to English of "allez filles" to "go girls" from the online service [babelfish.altavista.com/tr](http://babelfish.altavista.com/tr);<sup>3</sup> and 3) an email from the Technical Translator of the USPTO Translations Branch which reads in its entirety "Yes, the translation of ALLEZ FILLES is 'Go Girls.'"

Applicants contend that:

[T]he phrase "allez filles!" is not proper French. A consumer with knowledge of French would likely interpret "allez filles!" as the proper French phrase - "allez les filles!" - which will be commonly translated as "let[']s go girls!" "Let's go girls!" is also dissimilar from the registered mark GO GIRL both literally and substantively. "Lets go girls!" connotes a directive or command to a group of females, while "go girl" has no similar connotation. In fact, when used in this manner, the verb "aller" will connote a command to "hurry up!" or "come along or "get a move on." See Harrap's New College

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<sup>3</sup> We note that this online computerized translation service will provide literal translations that may not translate the actual meaning of a phrase or idiom.



French and English Dictionary, Harrap Limited (1987). In addition, the verb "aller" has many different meanings associated with it, such as "to suit" or "to fit", as with clothes, or "go well with" or "to match" as with colors. Id. "Go Girl", on the other hand, has an "urban" connotation to it, such as the "you go girl" phrase made popular by Oprah Winfrey. With respect to "filles," this word is the plural form of the French word "fille" which translates primarily to "daughter." Id. The secondary translation is "girl," "little girl" or "child." Id. As such, at best, the word "filles" translates to "girls" and does not translate to "girl" as determined by the Examining Attorney.

App. Br. p. 6. See also App. April 9, 2008 Response.

In support of this argument, applicants presented dictionary translations of the words allez and filles.

We find that the evidence merely supports a finding that GO GIRLS is only the literal translation of ALLEZ FILLES and that ALLEZ FILLES is not the *equivalent* of the idiomatic phrase GO GIRL. We take judicial notice of the following dictionary definitions for the phrase GO GIRL:<sup>4</sup>

go girl! See GO ON GIRL  
go on, girl/go girl! excl. [1990s] (orig. US black campus) an excl. of encouragement among women.

The Cassel Dictionary of Slang (1998).

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<sup>4</sup> The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

By contrast, there is no dictionary definition for ALLEZ FILLES as an idiomatic phrase, nor is there a declaration from the USPTO translation department that it carries the same idiomatic meaning of "encouragement among women" as does the phrase GO GIRL in English. These facts are distinct from cases where the marks involve only one word or where the phrase has the same idiomatic meaning. For example, in *In re Thomas*, 79 USPQ2d 1021, the Board found that the marks MARCHE NOIR and BLACK MARKET were similar based on the fact that they had the same connotation under the doctrine of foreign equivalents as demonstrated by dictionary definitions translating the specific phrase "marche noir" as "black market" with "no other qualifying information for either term." *Id.* at 1025. In view of the dictionary definitions there was no question that "MARCHE NOIR is the exact French equivalent of the English idiom BLACK MARKET." *Id.*

The cases cited by the examining attorney involve either a single word, e.g., *In re Ithaca Industries, Inc.*, 230 USPQ 720 (TTAB 1986) (*LUPO v. WOLF*), where a literal translation is also the equivalent meaning, or a phrase that has a recognized, equivalent meaning which would be found in a dictionary entry, e.g., *In re American Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987) (*BUENOS DIAS v. GOOD*

MORNING). ALLEZ FILLES has not been shown to be the equivalent in meaning or have the same "connotative flavor" as GO GIRL, see, e.g., In re Pan Tex Hotel Corp., 190 USPQ at 110 ("while 'LA POSADA' may be literally translated as 'the inn', it is not likely that purchasers would stop and translate said notation into its English equivalent; moreover, while 'LA POSADA' may be literally translated as 'the inn', nevertheless, it is clear from the Board's discussion in its prior decision of the various dictionary definitions thereof that such designation carries the added implication of a home or dwelling, and thus has a connotative flavor which is slightly different from that of the words 'the inn'.")<sup>5</sup>

Literal translations of idiomatic phrases cannot fully capture the connotation, which diminishes the weight to be given that element. For example, the English phrase "peace

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<sup>5</sup> The dissent cites to In re La Peregrina, 86 USPQ2d 1645 (TTAB 2008). This case also involves a single word mark "La Peregrina." The Board found "la peregrina" equivalent in meaning to the translation "the pilgrim" based on an entry in Cassel's Spanish-English English-Spanish Dictionary (1978), the translation from babelfish.altavista.com and applicant's translation. The Board also found that applicant's submission of four declarations was insufficient to support a finding that all Spanish speakers know of a famous pearl called La Peregrina and thus there was insufficient evidence to find that there is an alternative meaning. Thus, in that case there was no question that the equivalent of Peregrina was pilgrim and the issue was whether there was a recognized alternative meaning; while in the case before us, the USPTO has not shown that ALLEZ FILLES and GO GIRL are equivalents.

out," meaning goodbye, would translate literally into French as "paix dehors"; however, this literal translation does not capture the meaning of the English phrase and as such is not its equivalent.<sup>6</sup> See Dictionnaire Larousse Francais Anglais Anglais Francais (2007).

In *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111 (Fed. Cir. 1983), the Federal Circuit stated:

such similarity as there is in connotation must be weighed against the dissimilarity in appearance, sound, and all other factors, before reaching a conclusion on likelihood of confusion as to source...[w]e do not, of course, rule out the possibility that likelihood of confusion may be shown between an English word mark and a foreign word mark which are not exact synonyms, just as two English word marks need not be exact equivalents in meaning to create a likelihood of confusion. But where the only similarity between the marks is in connotation, a much closer approximation is necessary than has been shown here to justify a refusal to register on that basis alone where the marks otherwise are totally dissimilar.

*Id.* at 113. See also *In re Buckner Enterprises Corp.*, 6 USPQ2d 1316 (TTAB 1987) (PALOMA, meaning both "dove" and "pigeon," not confusingly similar to DOVE). The Court further noted that "We do not hold that equivalency

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<sup>6</sup> In this regard, applicant's provision of a literal translation does not operate as an admission of equivalency for the purposes of applying the doctrine of foreign equivalents. As discussed above, although the words may translate literally to GO GIRLS, the connotative meaning would be "let's go," "hurry up" or "get a move on." This is not a contradiction of a literal translation, but rather an illustration of the difficulty in capturing the exact meaning of a phrase in translation.

necessarily means there is a likelihood of confusion, but only that the initial fact of equivalency was not here established." *Id.* fn. 5. Thus, even where there is equivalency in meaning, that does not dictate a finding of similarity of the marks to support a determination of likelihood of confusion.

In addition, it is not clear that French speakers would even stop and translate this phrase because it is grammatically incorrect and they may simply "take it as it is." *Palm Bay*, 73 USPQ2d at 1696 citing *In re Tia Maria, Inc.* 188 USPQ 524 (TTAB 1984).

Finally, in *In re L'Oreal S.A.*, 222 USPQ 925 (TTAB 1984), the Board found that applicant's mark HAUTE MODE, which the applicant translated as HIGH FASHION, although "essentially equivalent in connotation does not, of course, in and of itself, determine the question of likelihood of confusion in this case... Other factors to be considered in this case are the dissimilarity in overall appearance and pronunciation of the marks, the differences in the goods to which the marks are applied [hair coloring cream shampoo and finger nail enamel], and the degree of suggestiveness of applicant's mark and the cited mark (whether rendered in French or in English) as applied to the respective goods." *Id.* at 926. As noted above, the

involved goods are identical in this case; however, the marks are different in sound and appearance and are suggestive in that both suggest that the goods are directed toward females.

The Federal Circuit has cautioned that the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline.<sup>7</sup> *Palm Bay*, 73 USPQ2d at 1696 (no substantial evidence that the average American purchaser would stop and translate "VEUVE" into "widow").

In view of the lack of equivalency based on the nonsensical translation from a grammatically incorrect French phrase and the idiomatic meaning of registrant's mark, we find that any similarity due to the literal translation does not outweigh the stark differences in sound and appearance and does not create an overall

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<sup>7</sup> We note the recent decision from the Court of Appeals for the Federal Circuit, *In re Spirits International, N.V.*, \_\_\_ USPQ2d \_\_\_, 2008-1369 Ser. No. 74382759 (Fed. Cir. 2009), wherein the Court addressed the application of the doctrine of foreign equivalents in the context of a refusal based on geographic deceptive misdescriptiveness under Section 2(e)(3) of the Trademark Act. In that case, the Court held that a complete analysis of the element of materiality in a Section 2(e)(3) refusal must include a finding of whether a "substantial portion of the relevant consumers would be materially influenced in the decision to purchase the product or service by the geographic meaning of the mark." *Id.* at 15. The court explicitly reserved judgment as to "the scope of the doctrine of foreign equivalents in other contexts." *Id.* n. 5. Hence, we have not considered, in reaching our conclusion, the potential number of consumers of these general consumer products who speak or understand French in terms of proportion to all consumers of these goods. We accept that French is a well-known and common foreign language.

commercial impression that is confusingly similar to GO GIRL. Thus, taking into consideration the vast differences in sound, appearance, and overall commercial impression, and the lack of equivalency in meaning, we find the marks to be dissimilar.<sup>8</sup>

Moreover, in this case we find that the dissimilarity of the marks is dispositive. See *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive"). Applicants' mark used on their identified goods is not likely to cause confusion with the cited registration.

**Decision:** The refusal to register under Section 2(d) is reversed.

Drost, J., dissenting,

I dissent because I believe that there is a likelihood of confusion in this case.

Applicant has applied to register the term ALLEZ FILLES! and design. Applicant's goods are identical to the registrant's goods inasmuch as both include women's and girls' shirts. "When marks would appear on virtually

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<sup>8</sup> While we must resolve doubt in favor of registrant, before we reach that point there must be sufficient equivalency in meaning for the one element of connotation to outweigh the elements of sound, appearance and commercial impression.

identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992). In addition, applicant's services involve selling some of registrant's identical items of clothing and these goods and services are closely related.

The only aspect of this case which is unusual is that the marks sought to be registered are for services while the prior registration on which their registration is refused is for wares. Considering the facts (a) that trademarks for goods find their principal use in connection with selling the goods and (b) that the applicant's services are general merchandising -- that is to say selling -- services, we find this aspect of the case to be of little or no legal significance.

*In re Hyper Shoppes*, 837 F.2d 463, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Regarding the marks, the examining attorney has submitted evidence from an online translation that shows that applicant's mark is translated as "go girls." [www.babelfish.altavista.com](http://www.babelfish.altavista.com). The U.S. Patent and Trademark Office's Translation Branch agreed that "the translation of ALLEZ FILLES is 'Go Girls.'" Email from Steven Spar dated 28 April 2008. If there were any doubt about the correct translation of the term, applicant advised the Office that the mark was translated as "Go Girls!" when it filed the



application. Therefore, the only dispute about the translation of the mark occurred after applicant was refused registration under Section 2(d). Applicant's argument that a "consumer with knowledge of French would likely interpret 'Allez filles!' as proper French phrase - 'allez les filles!' - which will be commonly translated as 'let's go girls!' is, of course, contradicted by applicant's own initial translation and the other translations of the phrase that are of record.

The examining attorney has submitted significant evidence that the expression "Allez Filles" is translated as "Go Girls." Applicant has responded with argument of counsel and dictionary definitions of the individual terms. These definitions and argument are much less persuasive. Indeed, even when an applicant submitted several declarations of alternative meanings of a term, the board nonetheless affirmed a likelihood of confusion refusal based on the doctrine of foreign equivalents. *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1649 (TTAB 2008). Any time that two words are combined in a language there is a possibility that there can be more than one meaning. However, in this case, the U.S. Patent and Trademark Office's translation branch, the online translation, and even this application are unanimous that applicant's phrase

ALLEZ FILLES, as opposed to the individual words, is translated exactly as "Go Girls." Under these circumstances, I would hold that the examining attorney has shown that the marks have the same meaning. "Thus, this case is distinguishable from *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 112 (Fed. Cir. 1983), finding that none of the dictionary definitions showed 'second chance' to be the exact translation of the French term 'repechage.'" *In re Thomas*, 79 USPQ2d 1021, 1025 (TTAB 2006).

I would also find that the term "Allez Filles" is the type of term that prospective purchasers would stop and translate. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.2d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) ("The doctrine should be applied only when it is likely that the ordinary American purchaser would stop and translate [the word] into its English equivalent"). The line between foreign words that consumers would stop and translate is not always clear, but, as a general guideline, it should be assumed that people familiar with a foreign language will translate the words in that language unless there is a specific reason for not translating the term, such as the term is the name of another noteworthy object or it has another recognized meaning in the language. *See, e.g., Palm Bay*, 73 USPQ2d at

1696 ("[W]ords from modern languages are generally translated into English...") and *La Peregrina*, 86 USPQ2d at 1649 (TTAB 2008) ("We agree that if the relevant purchasing public viewed 'La Peregrina' as the name of a pearl, this would be a situation where purchasers would not translate the name (in the way that the public would not translate the woman's name 'Blanche' as 'white,' but would view 'Blanche' as a name in its own right").

It is important that we consider not only the term's literal meaning in the foreign language but also the foreign term's significance in the United States.

While there might be literal identity between an English word and a French term, the meaning, the significance, and the impressions may be considerably different. To illustrate, *crêpes suzette* translates literally as "Susy's pancakes", but it is so apparent that the public would not recognize that "Susy's pancakes" means pancakes folded or rolled and heated in a sauce of butter, sugar, orange or lemon juice and grated rind, and a liqueur with added cognac, curacao or rum, usually set ablaze for serving.

What does "Cordon Bleu" really mean to the American public and what does "Blue Ribbon" mean? The French term is not so unusual to the American public because it is defined in American dictionaries. *Funk & Wagnalls New Standard Dictionary of the English Language* defines that term as "the blue ribbon of the order of the Holy Ghost, the highest order of the old French monarchy", and as "a person regarded as entitled to a badge of eminent distinction; specif., a first class cook, particularly a woman cook." *Webster's Third New International Dictionary*, 1965, similarly defines the term "Cordon Bleu" and indicates the applicability of said term to a cook of great skill.

The term "Blue Ribbon" figuratively refers to an honor or award gained for prominence and, literally, signifies a blue ribbon awarded the first place winner in a competition.

On the basis of dictionary definitions, we are of the opinion that "Blue Ribbon" and "Cordon Bleu" would not have the same significance to the American public and that the marks "BLUE RIBBON" and "CORDON BLEU" create different commercial impressions.

*Le Cordon Bleu, S.A.R.L. v. Continental Nut Co.*, 177 USPQ 734, 735 (TTAB 1973) (some citations omitted), *aff'd*, 181 USPQ 646 (CCPA 1974).

This case involves a term in the French language that has been literally translated as GO GIRLS and it has not been shown that its significance in the United States would be different. The board has previously found that "French is a common foreign language spoken by an appreciable segment of the population. Indeed, applicant's own evidence shows that of the foreign languages with the greatest number of speakers in the United States, French is ranked second only to Spanish." *Thomas*, 79 USPQ2d at 1024. Furthermore, the mark is composed of two simple French words. The first is the common French word that is a form of the verb "Go" and the second is the French word for "Girls," which can have the same meaning in English.<sup>9</sup> See

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<sup>9</sup> Indeed, even the term "allez" can be a slang English word meaning, inter alia, "to go." See *Random House Historical*

*Webster's New International Dictionary of the English Language (unabridged)* (2d ed. 1959) (Fille - "daughter; girl").<sup>10</sup> These terms would be understood, not only by those who are fluent in French, but also by many who would have only a brief exposure to the French language. These words, "Allez Filles," are much more common than the French word "veuve," which is less likely to be recognized by as many purchasers in the United States as the simple French words "Allez" for "Go" and "Filles" for "Girls." See *Id.* ("This court agrees with the T.T.A.B. that it is improbable that the average American purchaser would stop and translate 'VEUVE' into 'widow'"). In that case, the Court also noted that the board made inconsistent findings:

In comparing VEUVE ROYALE with VEUVE CLICQUOT PONSARDIN and VEUVE CLICQUOT, the Board found that "an appreciable number of purchasers are unlikely to be aware that VEUVE means 'widow' and are unlikely to translate the marks into English." In comparing VEUVE ROYALE with THE WIDOW, however, the Board found that "[A]n appreciable number of purchasers in the United States speak and/or understand French, and they will translate applicant's mark into English as ROYAL WIDOW." An appreciable number of U.S. consumers either will or will not translate VEUVE into "widow," and the Board was inconsistent in its application of the doctrine of foreign equivalents.

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*Dictionary of American Slang* (1994) ("allez var. ALLAY" and "allay v. [F. allez! Go!] Mil. to go, hurry, run").

<sup>10</sup> This definition, which indicates the word is of French origin, is the same definition that applicant asserts the term "fille" has in French. See Applicant's Brief at 6.

*Id.* at 1696 (citations to record omitted).

As a result the Court held that "[s]ubstantial evidence does not support the Board's finding regarding the doctrine of foreign equivalents. This court, therefore, reverses the Board's finding of likelihood of confusion for THE WIDOW." *Id.* In the present case, there is significant evidence that supports the examining attorney's position and I would find that a non-de minimis number of purchasers would stop and translate the French terms ALLEZ FILLES into English. In addition, I fail to see that there is any significant difference between the meanings of the two marks. The majority has taken judicial notice of the meaning of "Go Girl!" as "an excl. of encouragement among women" and describes the term as an idiomatic expression. The phrase "Go Girl" even as described in the slang dictionary as an exclamation of encouragement among women hardly seems much different than the way the word "go" is commonly used in exclamations of encouragement such as "GO CAPS,"<sup>11</sup> "GO USA," or "GO Team." It is not clear how "Allez Filles!" would not have the identical meaning except in the plural.<sup>12</sup>

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<sup>11</sup> A short form name of the Washington Capitals National Hockey League team.

<sup>12</sup> The term "fille" can apply to a "young unmarried woman." *Cassel's French-English English French Dictionary* (1951).

It has long been held that we are to resolve doubts on the issue of likelihood of confusion in favor of the registrant. There is no case law that indicates that this principle does not apply in cases of foreign equivalents. *La Peregrina*, 86 USPQ2d at 1650 (LA PEREGRINA, the foreign equivalent of PILGRIM, doubt resolved in favor of registrant). See also *In re Ithaca Industries*, 230 USPQ 702, 704 (TTAB 1986) ("[W]e think that the arbitrary nature of the marks involved [WOLF and the Italian word for wolf, LUPO], combined with the close relationship in the clothing goods to which the marks are applied and the identity of connotation of the marks outweigh the dissimilarity of appearance and pronunciation of the parties' marks"). Considering the evidence of record, a significant number<sup>13</sup> of prospective purchasers will stop and translate applicant's mark exactly as applicant itself has expressly

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<sup>13</sup> In a recent case, the Federal Circuit reversed the board's determination in a case involving whether a mark was primarily geographically misdescriptive because the board's test failed to establish that there was "some indication that a substantial portion of the relevant consumers would be materially influenced in the decision to purchase the product or service by the geographic meaning of the mark." *In re Spirits International, N.V.*, \_\_\_ F.3d \_\_\_, \_\_\_ USPQ2d \_\_\_ (Fed. Cir. April 29, 2009), slip op. at 15. In likelihood of confusion cases, there can be confusion if a non-de minimis number of purchasers are likely to be confused. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993) ("Even if the overlap between consumers of registrant's RIGHT-A-WAY services and Shell's RIGHT-A-WAY services were small in relation to the total number of Shell customers, it is not de minimis in relation to the registrant's customers").

submitted the mark will be translated: "Go Girls." To the extent that there is any doubt, it must be resolved in registrant's favor. Indeed, the result in this case, unless there is a successful opposition, is that the mark GO GIRL and the French words that the registration will translate as GO GIRLS will exist on the register for identical goods.<sup>14</sup>

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<sup>14</sup> There is no statutory requirement to print the required translation statement on the registration certificate. See 37 CFR § 2.32(a)(9). It may be better to eliminate the statement on registration certificates in cases such as this where the marks on the register would read "Your Mark" followed by "Your Mark" on identical goods in another common language owned by your competitor. See TMEP § 809.02 (5<sup>th</sup> ed. 2007) ("When an examining attorney determines that a translation should not be printed because it is unnecessary, the examining attorney must ensure that the translation is deleted from the TRAM database, and enter a note to the file indicating that the translation has been deleted").