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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Dikran M. Iskenderian

Serial No. 77266353
Filed: August 28, 2007

Benjamin Aydindzhyan of Ourfalian & Ourfalian for Dikran M. Iskenderian.

Angela Gaw, Trademark Examining Attorney, Law Office 104,
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**Before Rogers, Cataldo, and Mermelstein, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of MEDITERRANEAN MELT (in standard characters) for "sandwiches; panini" in International Class 30.¹

Registration has been finally refused pursuant to Trademark Act § 2(e)(1); 15 U.S.C. § 1052(e)(1), on the ground that applicant's mark is primarily merely descriptive of the identified goods.

We affirm insofar as the record shows MELT is at least descriptive of, if not generic for, the identified goods

and therefore the mark is not registrable in the absence of a disclaimer of such term.

I. Descriptiveness

A. Applicable Law

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue 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 Serv. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass'n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

¹ Based upon the allegation of a *bona fide* intent to use the mark in commerce.

"On the other hand, 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, 497 (TTAB 1978); see also *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980).

B. Discussion

Applicant's mark is MEDITERRANEAN MELT for "sandwiches; panini." In response to the Examining Attorney's request for information, applicant indicates that

Mediterranean Melt, is a pressed sandwich which consists of cheese and basturma. Basturma is a highly seasoned air-dried cured beef. Beef and preferably veal is the most common meat used for basturma and it is prepared by pressing the meat to squeeze out its water, then covering it with a cumin paste prepared with crushed cumin, garlic, hot paprika and air-drying it. It can be served as a mezze in thin slices, usually uncooked.

Response to Office Action at 3.

The Examining Attorney argues that MEDITERRANEAN MELT is merely descriptive of applicant's identified goods:

As a singular term, "MELT" is defined as "a sandwich with melted cheese." "MEDITERRANEAN" is defined as "of or relating to or characteristics of or located near the Mediterranean Sea." The Mediterranean can be divided into three culinary

regions: North Africa; eastern Mediterranean, which includes Egypt, Greece, Israel, Lebanon, Syria and Turkey[,] and southern Europe. Mediterranean food is characterized by the use of garlic, onion, tomatoes, artichokes, chickpeas[,] parsley and seafood. In light of the definitions of "MEDITERRANEAN" and "MELT" when in association with food, the Applicant's mark is merely descriptive of the identified goods because potential purchasers of the Applicant's good[s] would understand the term "Mediterranean Melt" as descriptive of a sandwich that consists of cheese and Mediterranean ingredients.

Ex. Att. Br. at 2 (citations omitted).

The examining attorney submitted, *inter alia*, the following dictionary definitions:

melt ... 14. a sandwich or other dish topped with melted cheese: *a tuna melt*

RANDOM HOUSE UNABRIDGED DICTIONARY (2006) (Dictionary.com Unabridged (v 1.1)).

melt ... n. ... 4. A usually open sandwich topped with melted cheese: *a tuna melt*.

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2006) (online ed.).

melt ... 3: a sandwich with melted cheese <a tuna melt>

MERRIAM-WEBSTER ONLINE DICTIONARY (2008).

Mediterranean

4. pertaining to, situated on or near, or dwelling about the Mediterranean Sea.
5. pertaining to or characteristic of the peoples native to the lands along or near the Mediterranean Sea.

RANDOM HOUSE UNABRIDGED DICTIONARY (2006) (Dictionary.com
Unabridged (v 1.1)).

Mediterranean ... The region surrounding the
Mediterranean Sea. Several important ancient
civilizations flourished in the region....

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed.
2006) (online ed.).

The Examining Attorney also submitted evidence of
several third-party uses of the term "Mediterranean Melt"
(or variations):

1. A recipe for a "Mediterranean Melt" sandwich,
including artichokes, olives, olive oil, garlic, parsley,
tomatoes, and Taleggio or Fontina cheese on focaccia bread.
www.marthastewart.com/recipe/mediterranean-melt (Jul. 11,
2008);

2. A recipe for a "Mediterranean Tuna Melt"
sandwich, comprising tuna, chickpeas, onion, olives,
capers, and Parmesan cheese on Italian bread.
www.yumsugar.com/1054222 (Jul. 11, 2008);

3. The "Grilled Mediterranean Melt," a menu item
from a San Francisco restaurant named "Oasis," consisting
of grilled mushrooms, red pepper, zucchini, lettuce,
tomatoes, feta cheese, Mediterranean seasonings, and
havarti cheese on lavash bread. The "Grilled Chicken
Mediterranean Melt" from the same restaurant is described

as "[s]liced chicken breast grilled with house vegetables, topped with havarti and feta cheeses, and sprinkled with house seasoning." www.sfoasisgrill.com/catering.htm.

In response, applicant argues that while the constituent terms of the mark have some meaning, its mark as a whole is at most suggestive, and is therefore registrable. We agree that the term MEDITERRANEAN is suggestive and the mark as a whole is registrable, with a disclaimer of MELT.

The evidence of record indicates that the term "MEDITERRANEAN" refers to the large geographic region surrounding the Mediterranean Sea and encompassing many countries and cultures. Indeed, as applied to food, the term is ambiguous, as there are at least three distinct cuisines, each employing many different ingredients and cooking techniques. www.cuisinenet.com/glossary/med.html (Dec. 5, 2007). At most, MEDITERRANEAN can be said to be broadly suggestive of certain types of ingredients and cooking styles, but as the application of the term "MEDITERRANEAN MELT" to vastly different sandwiches demonstrates, the term MEDITERRANEAN is in no way immediately descriptive of the features of sandwiches in general or of a particular sandwich; but the same applications also demonstrate that MELT does describe or

name a sandwich, regardless of its other ingredients, that includes cheese of some type.

The Examining Attorney's evidence clearly establishes that "melt" has specific relevance as applied to a sandwich, denoting a sandwich topped with melted cheese. Applicant does not contend otherwise and has produced no contrary evidence. Accordingly, we find that "MELT" is at least merely descriptive of applicant's goods, namely, "sandwiches; panini," insofar as this identification encompasses sandwiches and panini with melted cheese as an ingredient, and that this meaning would be understood by consumers immediately, and without further conjecture.

While the Examining Attorney did not require a disclaimer of the term "MELT" apart from the mark as a whole, she did clearly argue (and clearly establish) that this term is at least merely descriptive as applied to the identified goods. We find that although the mark as a whole is not descriptive under Trademark Act § 2(e)(1), disclaimer of "MELT" is clearly necessary under Trademark

Act § 6.² Accordingly, we affirm the refusal of registration in the absence of a disclaimer of MELT.

Decision: The refusal to register under Trademark Act § 2(e)(1) is affirmed in the absence of a disclaimer of MELT. However, this decision will be set aside if, within thirty days of the mailing date of this order, applicant submits to the Board a proper disclaimer of "MELT."³ See Trademark Rule 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1218 (4th ed. rev. 2004).

² Applicant's two-word word mark is not a unitary expression. See generally TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 1213.05 (5th ed. 2007).

³ An appropriate disclaimer is worded as follows: "No claim is made to the exclusive right to use MELT apart from the mark as shown."