

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
July 8, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tequila Cuervo La Rojena, S.A. de C.V.

Serial No. 77455224

Lawrence E. Abelman of Abelman, Frayne & Schwab for Tequila Cuervo La Rojena, S.A. de C.V.

Mayur Vaghani, Trademark Examining Attorney, Law Office 102 (Karen M. Strzyz, Managing Attorney).

By the Board:

On June 21, 2010, the Board issued a decision in the above-captioned case affirming the refusal to register the mark TEQUINI for "alcoholic beverages, namely tequila and prepared alcoholic cocktails containing tequila." It has come to our attention that the decision was not mailed to applicant. Accordingly, we attach a copy of the decision to this notice and reset applicant's time to file a request for reconsideration or an appeal. In this regard, applicant has thirty days from the mailing date of this notice to file a request for reconsideration and sixty days to file an appeal. See Section 21(a)(1) of the Trademark

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Act of 1946, 15 U.S.C. §1071(a)(1); Trademark Rules 2.144
and 2.145(d).

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Before Quinn, Hairston and Bergsman,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Tequila Cuervo La Rojena, S.A. de C.V. ("applicant") filed an intent-to-use application on the Principal Register for the mark TEQUINI, in standard character form, for goods ultimately identified as "alcoholic beverages, namely, tequila and prepared alcoholic cocktails containing tequila," in Class 33.

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive. According to the

Examining Attorney, the mark TEQUINI "describes the goods themselves, namely a Martini containing tequila."¹

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products and services it identifies. *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 and services 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 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).

¹ The Examining Attorney's Brief, p. 3.

"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 Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

To support the descriptiveness refusal, the Examining Attorney submitted the following evidence:²

1. An excerpt from the *About.com* website discussing the Tequini cocktail: "The Tequini is simply a Martini made with a tequila base. Tequinis are a drier cocktail than what you may be used to for a tequila drink, but it's a fascinating concoction that allows the tequila to shine."³

² The Examining Attorney also submitted a third-party registration for the mark FRESH MEX TEQUINI for "distilled spirits and liqueurs" with the exclusive right to use the word "Tequini" disclaimed. This registration does not have any probative value because we do not know why the registrant disclaimed the word "Tequini." Section 6(a) of the Trademark Act provides that "[a]n applicant may voluntarily disclaim a component of a mark sought to be registered." *See also In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO allowance of such prior registrations does not bind the Board of this court").

³ *See also* tequilame.com.

2. Recipes for cocktails identified as a Tequini appear in the following websites:⁴

Drinks Mixer website (drinksmixer.com)

The Webtender website (webtender.com)

DrinkSwap.com

Cocktail.com

Drunk Man's Guide website (drunkmansguide.com)

Saintsandsinnerslounge.net

All Recipes website (allrecipes.com)

DrinkStreet website (drinkstreet.com)

WonderHowTo website (wonderhowto.com)

BigOven website (bigoven.com)

DFW Tequila Tastings website

(dfw.tequilatastings.com)

Food Down Under website (fooddownunder.com)

Bar None Drinks website (barnonedrinks.com)

123Drinks.net

Real Restaurant Recipes website (real-restaurant-recipes.com)

⁴ The recipe for a Tequini is essentially "[s]tir tequila, vermouth, and bitters with ice and strain into a cocktail glass. Add the twist of lemon peel, top with the olive, and serve." *The Webtender* website (webtender.com).

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Alex's Cocktail Recipies (sic) website
(cocktailmaking.co.uk)⁵

Casa Noble Tequila website (casanoble.com)

To show that TEQUINI is not merely descriptive, applicant submitted an excerpt from The Complete Bev-er-age Dictionary (2nd ed. 1996) and the Random House Webster's Unabridged Dictionary (2nd ed. 2001) which did not have a definition of the word "Tequini." Also, The Complete Bev-er-age Dictionary defined a "Martini" as "[a] cocktail consisting of gin or vodka and white dry vermouth, garnished with a lemon peel or green cocktail olive." Applicant argues that the word TEQUINI is not a recognized word in the English language and that the combination of the word "Tequila" and "Martini" to form TEQUINI is incongruous and would require consumers to think about what meaning is conveyed by TEQUINI.

That TEQUINI is not listed in the dictionary is not dispositive of whether the mark is merely descriptive. The fact that a term is not found in a dictionary is not controlling on the question of registrability if the examining attorney can show that the term has a well

⁵ Even though this is a website based in the United Kingdom, we will consider it because an Internet user in the United States looking for "Tequini" could retrieve and view this site.

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understood and recognized meaning. See *In re Mine Safety Appliances Co.*, 66 USPQ2d 1694, 1697 (TTAB 2002); *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977).

Based on the above-noted Internet evidence, we find that TEQUINI is merely descriptive of "alcoholic beverages, namely ... prepared alcoholic cocktails containing tequila." TEQUINI immediately describes and indeed is used as the name of a particular type of cocktail (*i.e.*, a tequila Martini). Nothing in the term is incongruous, indefinite or ambiguous when considered in relation to applicant's goods and, consequently, no imagination, cogitation or gathering of further information would be necessary in order for customers to perceive the merely descriptive significance of TEQUINI. TEQUINI immediately describes the nature of the product.

Decision: The refusal to register is affirmed.