This Opinion is Not a Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board

In re Amuse Bouche LLC

Application No. 77965809 Filed: March 23, 2010

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Edward S. Wright, Law Offices of Edward S. Wright, for applicant.

Scott Bibb, Trademark Examining Attorney, Law Office 109, Dan Vavonese, Managing Attorney.

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Before Holtzman, Kuhlke, and Mermelstein, Administrative Trademark Judges.

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of **PRÊT À BOIRE** (in standard characters) for "wine" in International Class 33, on the Supplemental Register. Registration has been finally refused on the ground that the applied-for mark is a generic designation for the goods, and is therefore not capable of distinguishing applicant's goods or services. Trademark Act § 23(a); 15 U.S.C. § 1091(a).

We reverse.

# I. Procedural Background

A brief history of the prosecution of the subject application will be helpful. This application was filed seeking to register the mark **PRETABOIRE** on the Principal Register for "wine," upon the allegation of an intent to use the mark in commerce. The examining attorney refused registration, on the ground that the mark was the

equivalent of the English phrase "ready to drink," which he alleged is merely descriptive of the identified goods. After applicant responded, the examining attorney issued a final refusal to register.<sup>1</sup>

After the final refusal, applicant filed a notice of appeal, as well as a request for reconsideration, accompanied by an amendment to allege use (which included an amendment of the mark to PRÊT À BOIRE).<sup>2</sup> The appeal was stayed and the case remanded to the examining attorney. Rejecting applicant's arguments and evidence, the examining attorney denied reconsideration, adhering to the refusal on the ground of descriptiveness. The appeal was resumed and applicant and the examining attorney each filed a brief.

Shortly after the examining attorney's brief was filed, applicant filed with the Board an amendment to seek registration on the Supplemental Register. Treating the amendment as a request for remand, the Board again sent the case back to the examining attorney for consideration of the amendment. In response, the examining attorney issued a new refusal, this time on the ground that the applied-for mark is generic.<sup>3</sup> Applicant responded to the refusal, and the examining attorney again is-

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<sup>&</sup>lt;sup>1</sup> In the first Office action, the examining attorney also refused registration on the ground that the applied-for mark "is informational matter; it does not function as a trademark to identify and distinguish applicant's goods." Ofc. Action (June 23, 2010). This ground for refusal was withdrawn upon reconsideration after final refusal. Recon. Denied (Aug. 28, 2011).

<sup>&</sup>lt;sup>2</sup> The drawing amendment was submitted as part of the Amendment to Allege Use (AAU), filed July 18, 2011. The AAU was accepted, although the examining attorney never explicitly accepted the amendment to the mark. In his August 28, 2011, denial of reconsideration, the two Office actions that followed, and in his brief, the examining attorney has argued the case as if the amendment had been accepted, and we will consider it to have been.

<sup>&</sup>lt;sup>3</sup> This Office action and the final refusal which followed continued to include arguments (continued...)

sued a final refusal to register. The appeal was again resumed, and applicant and the examining attorney filed new briefs.

Although the ground for refusal has changed, we have considered all of the evidence of record, regardless of when and for what purpose it was submitted.

#### II. Genericness—Applicable Law

The Supplemental Register is available for registration of

[a]ll marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services. . . .

Trademark Act § 23(a). Thus, a mark which is "merely descriptive" and prohibited by Trademark Act § 2(e)(1) from registration on the Principal Register may none-theless be registered on the Supplemental Register, but only if it is "capable of distinguishing applicant's goods or services." Trademark Act § 23(a).

on the ground of descriptiveness was rendered moot.

that the mark is descriptive. We have disregarded these arguments because descriptiveness is not a valid ground for refusal of registration on the Supplemental Register. In light of applicant's unconditional amendment to the Supplemental Register, the refusal to register

<sup>&</sup>lt;sup>4</sup> The examining attorney's position is that **PRÊT** À **BOIRE** is generic for wine. Although there is no mention in § 23 of genericness, it is well-settled that generic terms may not be registered on either register because they are categorically incapable of distinguishing an applicant's goods or services. *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1534 (Fed. Cir. 2009) ("generic terms by definition are incapable of indicating source"); *Merrill Lynch*, 4 USPQ2d at 1142; *H. Marvin Ginn*, 228 USPQ at 530. While it is possible that generic terms are not be the only type of material which is not "capable of distinguishing applicant's goods or services," *see*, *e.g.*, *In re Boston Beer Co. L.P.*, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA deemed "so highly laudatory and descriptive . . . that the slogan does not and could not function as a trademark . . . and serve as an indication of origin"), the refusal to register in this case was limited to genericness, and so our review is accordingly limited. *See also* TMEP § 1204.04.

A mark is a generic name if it refers primarily to the class, genus, or category of services in connection with which it is used. See In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (citing H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)). In determining whether a mark is generic, the appropriate focus is its primary significance to the relevant public. Trademark Act § 14(3); Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552–53 (Fed. Cir. 1991); H. Marvin Ginn, 228 USPQ at 530.

To determine whether a mark is generic, we apply "a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?" *H. Marvin Ginn*, 228 USPQ at 530. Whether a mark is generic is a question of fact, *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533–34 (Fed. Cir. 2009), and the examining attorney bears the burden of establishing by clear evidence that a mark is generic and thus unregistrable. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Evidence of the relevant public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. *See In re Northland Aluminum Prods.*, *Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

#### III. Evidence

While we have examined all of the evidence of record, we briefly note some of the evidence bearing on the significance of the mark to the relevant public.

### A. Examining Attorney's Evidence

The examining attorney has submitted a considerable amount of internet evidence showing use of the terms "prêt à boire" and (more often) "ready to drink" on a range of websites. The large majority of this evidence shows use of both terms to denote whether a wine requires further aging before reaching a peak in quality. (It is clear from many of the web pages that some wines are believed to benefit from aging after bottling.) When a wine will be "ready to drink" appears to be a common topic of discussion, with merchants, wine critics, and wine purchasers often commenting on when they think a particular wine will be at its best. For example, one site notes that the Condado de Haza 2006 Ribera del Duero Crianza is "Ready to drink now and over the next 2-3 years." Wine Skinny.com, www.wineskinny.com (visited Jan. 21, 2011). And on another site, a wine enthusiast posted his tasting notes for the 2003 Fontodi Chianti Classico, indicating that the wine was "[e]x-cellent, ready to drink/prêt-à-boire." www.cellartracker.com/wine.asp?Wine=403731 (visited Aug. 28, 2011).

Often the terms at issue are simply used in a sentence about wine. In one blog post, a noted wine critic lamented that "[t]he problem for wine buyers . . . is finding good to great red bordeaux that is both available to buy by the bottle and ready to drink." http://www.jancisrobinson.com/articles20061209\_6.html (visited Jan. 21, 2011). And one winemaker describes his 2008 red wine as "A blend of the two classic varietals. Created in a ready to drink style this wine expresses bight [sic] red fruits and earthy aromas. . . . " Virginia Wineworks, http://www.michaelshapswines.com/virginiawineworks.html (visited April 11, 2012).

Three webpages used the words "prêt à boire" or "ready to drink" in an apparent reference to how some wine is packaged and sold. One discussed "ready-to-drink wine by-the-glass." From the truncated excerpt in the record, it appears that this product may be an individual serving of wine for sale in a sealed wine glass. The implication is that when the wine is purchased and the glass unsealed, it is "ready to drink." Idea Sandbox, Sandblog (Aug. 9, 2007), http://www.idea-sandbox.com/blog/2007/08/ready-to-drink-rtd-wine-by-the-glass/ (visited Jan. 21, 2011). Lastly, two websites indicated use of PRÊT À BOIRE by others as a trademark in connection with packaging for wine. Pret A Boire, *Packaging*, http://www.pretaboire.com/english/ecological.htm (visited Aug. 28, 2011); Betty Carlson, Wine Sediments, *Is this wine ready to drink? A new definition of 'prete a boire'* (Oct. 15, 2006), http://winesediments.net/2006/10/15/is\_this\_wine\_ready\_to\_drink\_a\_new\_defini/ (visited Aug. 28, 2011).<sup>5</sup> (It is not known whether these two websites are referring to the same company and product.)

A few of the websites in the record show use of "prêt à boire" or its English equivalent in somewhat different ways. One website devoted to tea included a definition of "Ready-to-Drink (RTD)" as "pre-bottled or packaged drinks that require no further brewing." Worldteaexpo, http://www.worldteaexpo.com/index.php?option=com\_content&view=article&id=891&itemid=457 (visited June 23, 2010). Another

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<sup>&</sup>lt;sup>5</sup> This posting explicitly acknowledges the usual meaning of "prêt à boire": "A big question for wine lovers in France and, indeed, all over the world, is whether a bottle is ready to drink, or *prêt à boire*." The author then goes on to discuss a "French company, Prêt à boire, [which] specializes in stand up spout packages, a packaging format that presents numerous advantages. . . ."

website posted a "Ready-To-Drink (RTD) Cocktails Fact Sheet," listing mixed drinks packaged in individual-serving bottles, Cocktail Times, http://www.cocktailtimes. com/indepth/rtd/rtd.shtml (visited June 23, 2010), and yet another advertised a muscle-building nutritional supplement as MYOPLEX® CARB CONTROL™ READY-TO-DRINK. EAS, http://eas.com/product/myoplex-carb-control-ready-to-drink (visited June 23, 2010).

And finally, one website appears to use prêt à boire in the manner of a trademark (despite the copyright symbols) for wine, or possibly for its packaging:

# PRÊT À BOIRE© MINI WINE PACK©

Chardonnay 250 ml

Company Name: ERIC COMTE SELECTION

Vintage Current Vintage

Format 250 ml Color White Category Still Wine

Country/Region France, Languedoc-Roussillon

Appellation Vin de pays d'Oc Type of vine Chardonnay Classification Vin de pays

Global Wine & Spirits, www.globalwinespirits.com/catalog/WINE/READY+TO+DRINK+Chardonnay+250+ml+/31033816/CL251925772-en.jsa (visited Aug. 28, 2011).

# B. Applicant's Evidence

In response to the examining attorney, applicant submitted a number of items.

First, as evidence of how applicant itself uses the applied-for mark, applicant provided an advertisement for its wine (apparently from applicant's website):

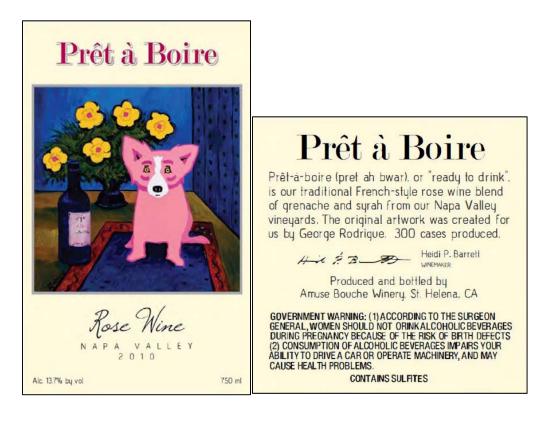
# Prêt à Boire Rose Napa Valley 2010

Et voila . . . we are pleased to announce the inaugural release of Prêt à Boire Rose 2010 Napa Valley.

Pronounced "Pret Ah Bwar," this stunning French-style rose, a dry, full-bodied blend of 30% Grenache and 70% Syrah, literally and figuratively is READY TO DRINK! We picked these grapes on October 18 from our vineyards in the east Rutherford Hills AVA.

Amuse Bouche Napa Valley (date and URL unknown<sup>6</sup>) (emphasis in original).

Applicant submitted a copy of its Application for . . . Label Approval filed with the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB), including a copy of the front and back label for applicant's wine:



<sup>&</sup>lt;sup>6</sup> The URL and the date on which the website was visited should appear on each page of evidence or be provided in an Office action or response. *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 n.6 (TTAB 2010). Nonetheless, because the examining attorney did not object, we have considered this evidence.

With its request for reconsideration, applicant submitted sixty-one third-party registrations, each in the form of "PRÊT À \_\_\_\_\_" or "READY TO \_\_\_\_\_," in an effort to show that its mark is registrable. The following are a few examples: PRET A MANGER for "restaurant services . . ." (Reg. No. 2071984); PRET-A-HABITER for "furniture, interior decorating . . .," (Reg. No. 3140992); Prêt à Parté (Party disclaimed) for "entertainment services . . ." (Reg. No. 3355669); READY-TO-GO for "computer software for data collection . . ." (Reg. No. 2809494); READY-TO-SERVE for "fire trucks . . ." (Reg. No. 3034696); READY TO PLAY for "soccer uniforms . . ." (Reg. No. 2976248); and READY TO TANQUERAY? for "alcoholic beverages, namely, distilled spirits" (Reg. No. 3335044).

And lastly, applicant submitted the declaration of Rhett Gadke. Mr. Gadke is identified as "the Wine Director of Bounty Hunter Rare Wine & Provisions" in Napa, California. He has been in the retail wine business for seventeen years. Gadke Dec. ¶ 1; Resp. to Ofc. Action (Oct. 11, 2012). Mr. Gadke states that he has sold two vintages of applicant's wine under the **PRÊT À BOIRE** mark, and adds that "[w]hen I and others in the business and our customers see the Prêt à Boire name

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<sup>&</sup>lt;sup>7</sup> As will be seen, there is no need to consider these third-party registrations. It should be noted, however, that they are entitled to very little weight: Twenty-two of the proffered registrations have been cancelled, and a cancelled registration is evidence of nothing but the fact that it once issued. Sunnen Prods. Co. v. Sunex Int'l Inc., 1 USPQ2d 1744, 1747 (TTAB 1987). None of the registrations is for the mark PRÊT À BOIRE or READY TO DRINK nor are any of them registered for goods including wine. At best, they suggest that marks including PRÊT À \_\_\_\_ or READY TO \_\_\_\_ are not categorically ineligible for registration, a point that is not in contention. And finally, even if the third-party registrations were relevant to the issue at hand, we must still base our decision on the record developed in this case; we are not bound by prior decisions of examining attorneys to register similar marks. See In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

on the label or hear it spoken, we immediately recognize it as referring to the wine from Amuse Bouche. Gadke Dec. ¶ 2.

Yet Mr. Gadke also indicates that he recognizes the descriptive significance of prêt à boire:

I am aware that prêt à boire is a French term that means "ready to drink" and that it is sometimes used in an informational manner to indicate that a particular wine or other beverage is ready to drink. However, now that the Prêt à Boire brand has been on the market for about 18 months, when I see Prêt à Boire on the label or hear someone refer to Prêt à Boire wine, I immediately associate Prêt à Boire with the wine from Amuse Bouche and do not think of it as indicating that the wine is ready to drink.

Gadke Dec. ¶ 3.

# IV. Doctrine of Foreign Equivalents

"Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine genericness, descriptiveness, as well as similarity of connotation in order to ascertain confusing similarity with English word marks." Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citations omitted); In Re Sambado & Son Inc., 45 USPQ2d 1312, 1315 (TTAB 1997) (FRUTTA FRESCA is equivalent to "fresh fruit" and thus generic and unregistrable for goods including "fresh fruits"). The doctrine is not an absolute rule, however, and is subject to several limitations. It does not apply to words from dead or obscure languages, In re Spirits Int'l N.V., 563 F.3d 1347, 90 USPQ2d 1489, 1491 (Fed. Cir. 2009) (citing 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair

COMPETITION § 11:34 (4th ed. 2009)), and caution is indicated when the foreign term and the English to which it is compared are not exact synonyms, *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983). As a general principle, the doctrine of foreign equivalents is limited to situations in which an American consumer is likely to "stop and translate" the foreign words into their English equivalent. (*Palm Bay*, 73 USPQ2d 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)).

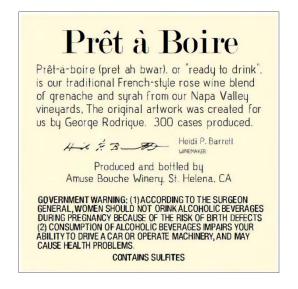
In this case, the applied-for mark is **PRÊT À BOIRE**<sup>8</sup> for "wine." The examining attorney argues that we should apply the doctrine of foreign equivalents and thereby consider applicant's mark to be the equivalent of the English phrase "ready to drink." It appears there is no longer any dispute that the phrase "prêt à boire" is French for "ready to drink." The application as originally filed volunteered that as the translation of the mark, and the record includes numerous examples of third-party use of "prêt à boire," making its meaning clear. See Recon. Denied (Aug. 28, 2011). Moreover, to the extent that applicant's customers are not familiar with the

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<sup>&</sup>lt;sup>8</sup> As noted, the drawing in the original application depicted the mark as **PRETABOIRE**, but was later amended to **PRÊT À BOIRE**. As the examining attorney points out, the mark as amended appears to be orthographically correct, and thus even easier for French-speaking U.S. consumers to recognize and translate. Ofc. Action (April 11, 2012) (referencing evidence of the use of "prêt à boire").

<sup>&</sup>lt;sup>9</sup> Both applicant and the examining attorney submitted evidence from online translators, in both cases prior to applicant's amendment of the mark to its current form. Applicant's evidence indicates no translation for either "pret-a-boire" or "pretaboire." On the other hand, the examining attorney's search for "prêt-à-boire" resulted in a translation of "ready-to-drink." To the extent applicant still contests the translation or meaning of "prêt à boire," we find the examining attorney's evidence more convincing; his search for "prêt-à-boire" is nearly identical to the mark as it was subsequently amended. Moreover, the presence or absence of hyphens separating the words of the mark would have virtually no effect on its impression upon consumers.

French phrase, the back label approved by the TTB for applicant's use includes its own translation:



Resp. to Ofc. Action (Dec. 23, 2010).

In its brief, applicant readily acknowledges that **PRÊT À BOIRE** means "ready to drink":

[T]he Examining Attorney has provided evidence that Prêt à Boire may translate to "ready to drink," a fact acknowledged by applicant. He then goes on to argue that consumers would immediately recognize that the applicant's wine is ready to drink and that the phrase is commonly used within the wine industry and the wine retail industry to denote a wine as being ready to drink. While such evidence might be a basis for arguing that the mark is descriptive of a characteristic of the wine, it falls far short of establishing that Prêt à Boire is perceived as the common or class name for wine.

App. Br. at 3.

We find it appropriate to apply the doctrine of foreign equivalents in this case. There is no evidence of record suggesting that that the translation in this application is inaccurate, that "prêt à boire" is so obscure that it would not be easily recognized and translated by French speakers in the U.S. marketplace, or that it is an idiom which is not equivalent to its direct English translation. As noted, the evidence of record shows both the French term and its English translation in use (sometimes side-by-side) in connection with wine. And there can be no doubt that French is a common, modern language. Wine drinkers familiar with French are thus likely to "stop and translate" prêt à boire when encountering it used in connection with wine. We therefore find applicant's mark to be equivalent to the English phrase "ready to drink" for purposes of determining genericness.

#### V. Discussion

#### A. What is the Genus of the Goods at Issue?

"[A] proper genericness inquiry focuses on the description of services set forth in the certificate of registration." *Magic Wand Inc.*, 19 USPQ2d at 1552 (citing *Octocom Sys.*, *Inc.* v. *Houston Computers Servs.*, *Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)). Applicant's goods are identified as "wine," and the examining attorney suggests that "wine" is the appropriate genus for purposes of the generic-

<sup>&</sup>lt;sup>10</sup> Prior to amendment of its application to seek registration on the Supplemental Register (and the ensuing refusal to register on the ground of genericness), applicant contended that the doctrine of foreign equivalents was inapplicable, arguing variously that purchasers would not "stop and translate" the mark; that the term is not in common use in the United States; that United States consumers are used to seeing French words used in connection with wine; that the mark is "not at all similar to its English equivalent, and that prêt has various meanings in French." See, e.g., Req. for Recon. (July 20, 2011). But once the genericness refusal was issued, applicant did not argue against application of the doctrine of foreign equivalents, instead acknowledging that the correct translation of the mark is "ready to drink." We thus consider applicant's earlier arguments on the applicability of the doctrine of equivalents or the accuracy of the examining attorney's translation to be abandoned. In any event, applicant's arguments against the applicability of the doctrine of foreign equivalents are contradicted by the evidence of record.

ness test. Ex. Att. Br. at 6 (unnumbered). (Applicant did not address this issue in its brief.) We agree with the examining attorney that "wine" is the appropriate genus.

#### B. Does the Mark Refer Primarily to the Genus of Goods?

By virtue of its amendment of the application to seek registration on the Supplemental Register, applicant admits that PRÊT À BOIRE is at least descriptive of wine. Perma Ceram Enters. Inc. v. Preco Indus. Ltd., 23 USPQ2d 1134, 1137 n. 11 (TTAB 1992). The question at hand is whether the evidence demonstrates that it is also a generic name for wine and thereby precluded from registration on the Supplemental Register. Of the distinction between descriptive and generic terms, the Court of Appeals for the Federal Circuit has noted—with some understatement—that "[t]he infinite variety of language will on occasion cause the boundry to be fuzzy." In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994) (citing In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987)).

The applied-for mark is **PRÊT À BOIRE**, which means "ready to drink." The evidence of record makes quite clear that as used in connection with wine, it is an adjectival phrase referring to a point in time when a particular wine will be at its peak in quality. For instance, it might be said that a wine is or will be "prêt à boire" or "ready to drink" now or in two years. (And sadly, one might even find out that

<sup>&</sup>lt;sup>11</sup> Both the applied-for mark and its English equivalent are phrases. We note that the examining attorney has clearly satisfied the requirement to "conduct an inquiry into the meaning of the disputed phrase as a whole." *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (internal quotation marks omitted) (citing *In re Am. Fertility Soc'y*, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999)).

that bottle of wine in the closet was ready to drink five years ago.)

While it has sometimes been said that descriptive terms are adjectives and generic names are nouns, that is—at best—an oversimplification. In fact, many adjectives have been held generic. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 12:10 (4th ed. updated Sept. 2013). In In re Central Sprinkler Co., 49 USPQ2d 1194 (TTAB 1998), the Board considered the registrability on the Supplemental Register of ATTIC for "automatic sprinklers for fire protection":

Here, we recognize that applicant's mark does not present the classic case of a generic noun, but rather a generic adjective. In this case, because the term ATTIC directly names the most important or central aspect or purpose of applicant's goods, that is, that the sprinklers are used in attics, this term is generic and should be freely available for use by competitors.

### *Id.* at 1199.

The second prong of the *Marvin Ginn* test asks whether "the term sought to be registered . . . [is] understood by the relevant public primarily to refer to th[e] genus of goods or services?" *H. Marvin Ginn*, 228 USPQ at 530. As applied to this case, does **PRÊT À BOIRE**, or its English equivalent, "ready to drink," refer primarily to wine? Careful consideration of the record leads us to answer in the negative.

While some of the evidence of record suggests that "ready to drink" might refer to a particular style of wine (e.g. "[c]reated in a ready to drink style this wine expresses bright red fruits and earthy aromas . . ." (emphasis added)) the bulk of the examining attorney's evidence shows use of "prêt à boire," or "ready to drink" in describing a characteristic or attribute of wine. These terms are not used as the

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"name" of wine or a sub-genus of it (such as "red," "sparkling," or "chardonnay").

Although we imagine a wine collector may speak about the wines in her cellar that

are "ready to drink," the evidence of record tends to show that the term is used pri-

marily to say something about wine, rather than to name or categorize it. And al-

though we have recognized that like nouns, adjectives can be generic when they "di-

rectly name[] the most important or central aspect or purpose of the goods," Central

Sprinkler, 49 USPQ2d at 1199, the evidence does not show that the relevant public

views "prêt à boire," or "ready to drink" as a most important or central aspect of

wine. Rather, it merely signifies a point in time when the wine is estimated to be at

its best.

VI. Conclusion

Although the record shows that PRÊT À BOIRE is highly descriptive,12 and

that the term is frequently used by others to describe wine, the examining attorney

has not met his burden to show by clear evidence that the applied-for mark is gener-

ic. See Merrill Lynch, 4 USPQ2d at 1143.

**Decision:** The refusal to register is REVERSED.

<sup>12</sup> As a practical matter, it might be difficult for applicant to show acquired distinctiveness in this term at any time in the near future. But whether this mark is ever likely to become a trademark is not the same as whether it is understood to be the generic name of the goods.

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