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Mailed: 10/19/07

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cuban Cigar Brands, N.V.

Serial Nos. 78554795 and 78554967

Charles W. Grimes and Jessica S. Rutherford of Grimes & Battersby for Cuban Cigar Brands, N.V.

James A. Rauhen, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Quinn, Rogers and Kuhlke, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Cuban Cigar Brands, N.V. filed applications to register the marks CLASSIC COLLECTION and MONTECRISTO CLASSIC COLLECTION for "cigars, little cigars, roll-your-own tobacco, pipe tobacco and smokeless tobacco" in International Class 34.<sup>1</sup>

<sup>1</sup> Application Serial Nos. 78554795 and 78554967, respectively, both filed January 27, 2005, and both alleging a bona fide intention to use the mark in commerce. The foreign word "Montecristo" in one of applicant's marks translates into English as "Mountain of Christ."

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In application Serial No. 78554795, the trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act because the mark CLASSIC COLLECTION is merely descriptive of the goods. The trademark examining attorney refused registration in application Serial No. 78554967 due to applicant's failure to comply with a requirement to disclaim the merely descriptive words "Classic Collection" apart from the mark.

When the refusals were made final, applicant appealed. Applicant and the examining attorney filed briefs.

Because the two appeals involve common questions of law and fact, and they were presented on the same record, we will decide the appeals in this single opinion.

The essence of applicant's argument is that the terms "classic" and "collection," and, in turn, the combination "classic collection," do not describe the goods with any degree of particularity. Applicant contends that the words are "so broad and amorphous" that they cannot be considered to be merely descriptive when applied to applicant's goods.

The examining attorney maintains that the words "classic collection" are merely descriptive of applicant's tobacco products. In relying on dictionary definitions, the examining attorney finds that the words describe two characteristics of the goods, namely that "they are of a

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well-known type (as opposed to being 'contemporary,' or 'modern,' or 'avante-guard' [sic]) and they are grouped together (as opposed to being one-of-a-kind items)." The examining attorney also submitted excerpts from printed publication articles retrieved from the NEXIS database showing uses of "classic cigar" and "cigar collection." Based on this evidence, the examining attorney finds that the words "classic collection" will convey a descriptive meaning to potential purchasers of applicant's tobacco products.

An evidentiary point requires our attention before consideration of the merits of the appeals. In connection with its argument that the words "classic collection" are not merely descriptive, applicant submitted several third-party registrations for tobacco products showing registered marks comprising, in part, the word "CLASSIC," but without any disclaimer thereof. Other registrations are of marks comprising, in whole or in part, "CLASSIC COLLECTION" for goods in a variety of different classes; each registration is on the Principal Register (some of the registrations include a disclaimer of "collection"). The copies of the registrations, retrieved from the PTO's TARR database, were submitted for the first time with applicant's appeal brief. The examining attorney, in his brief, objected to the

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evidence as untimely. In its reply brief, applicant again refers to this evidence, but offers no response to the examining attorney's objection.

Trademark Rule 2.142(d) provides that the record in an application should be complete prior to the filing of an appeal, and that the Board will ordinarily not consider additional evidence filed after the appeal is filed. Accordingly, the examining attorney's objection is sustained, and the third-party registrations have not been considered in reaching our decision.

We now turn to the substantive merits of the appeals. The Examining Attorney bears the burden of showing that a mark is merely descriptive of the relevant goods. *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). A mark is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976) (emphasis added). See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the ingredients, qualities or characteristics of the goods with a "degree of particularity." *Plus Products v.*

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*Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981). See also *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952 (TTAB 1981); and *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978).

The term "classic" is defined as "of a well-known type; typical." The term "collection" means "a group of objects or works to be seen, studied, or kept together." The American Heritage Dictionary of the English Language (3d ed. 1992).

We find that the words "classic collection," when applied to applicant's goods, are suggestive and more in the nature of mere puffery as opposed to being merely descriptive. There is a certain amorphous quality about the words, and no specific information about any quality or characteristic of the goods is conveyed with a degree of particularity. Additional thought or imagination would be required on the part of prospective purchasers in order to perceive any significance of the words "classic collection" as they relate to applicant's goods. See *Wynn Oil Co. v. Thomas*, 839 F.2d 1183, 5 USPQ2d 1944 (6th Cir. 1988)

[CLASSIC CAR WASH for car wash services is a "relatively strong mark"]; and *In re Classic Beverage, Inc.*, 6 USPQ2d 1383 (TTAB 1988) [CLASSIC COLA is not merely descriptive of

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soft drinks; the evidence does not link the meaning of "classic" to soft drinks, or indicate any definite information about applicant's soft drinks].

The NEXIS evidence does not persuade us to reach a contrary result. We recognize that the articles show use of the words "classic cigar(s)" and "cigar collection" in connection with cigars. But, these uses are very general and broad in nature, and such uses do not impart any specific information about cigars. That is to say, based on the record before us, the words "classic" and/or "collection" do not appear to have any particular meaning in the trade for tobacco products. Our view remains that neither the individual words "classic" and "collection," nor the combination "classic collection" impart information about applicant's tobacco products with any degree of particularity.

The Board has noted on a number of prior occasions that there is a thin line of demarcation between a suggestive and a merely descriptive designation. Although we find that the mark sought to be registered falls in the suggestive category, to the extent that the Examining Attorney's arguments cast doubt on our finding, such doubts are to be resolved in applicant's favor. See, e.g., *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992); *In re Morton-Norwich*

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*Products, Inc.*, 209 USPQ 791 (TTAB 1981); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

**Decision:** The refusals to register are reversed.