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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Paris Croissant Co., Ltd.

Serial No. 78598734

James H. Walters for Paris Croissant Co., Ltd.

Henry S. Zak, Trademark Examining Attorney, Law Office 117
(Loretta C. Beck, Managing Attorney).

Before Grendel, Cataldo and Mermelstein, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant Paris Croissant Co., Ltd, a corporation of
the Republic of Korea, seeks registration on the Principal
Register of the mark depicted below



for goods identified in the application as "sandwiches; toast; biscuits; ice cream; cakes; bean jam buns; bread; green tea; coffee; coffee-based beverages," in Class 30.¹

Applicant has disclaimed the exclusive right to use BAGUETTE apart from the mark as shown. The application includes the following "Description of Mark" statement: The mark consists of the words PARIS BAGUETTE on a blue rectangular background with a red tower and red arc." The application also includes a "Colors Claimed" statement reading: The colors red and blue are claimed as a feature of the mark."

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that it is deceptive under Trademark Act Section 2(a), 15 U.S.C. §1052(a), and on the ground that it is primarily geographically deceptively misdescriptive under Trademark Act Section 2(e)(3), 15 U.S.C. §1052(e)(3).

Applicant and the Trademark Examining Attorney have filed main appeal briefs. After careful consideration of the evidence of record and the arguments of counsel, we affirm the Section 2(e)(3) refusal to register.

¹ Serial No. 78598734, filed on March 30, 2005. The application is based on applicant's claim of ownership of Korean Registration No. 40-0619878, under Trademark Act Section 44(e), 15 U.S.C. §1126(e).

Initially, because applicant's mark involves an allegedly deceptive geographic designation, we deem the pertinent ground for refusal in this case to be that the mark is primarily geographically deceptively misdescriptive under Section 2(e)(3), and not that the mark is deceptive under Section 2(a). See *In re California Innovations Inc.*, 329 F.3d 1334, 66 USPQ2d 1853 (Fed. Cir. 2003); *In re South Park Cigar, Inc.*, 82 USPQ2d 1507 (TTAB 2007).

The elements of a Section 2(e)(3) refusal are as follows: (1) the primary significance of the mark is a generally known geographic location; (2) the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark (i.e., that a goods-place association exists), when in fact the goods do not come from that place; and (3) the misrepresentation would be a material factor in the consumer's decision to purchase the goods. *California Innovations, supra*, 329 F.3d at 1341, 66 USPQ2d at 1858.

Under the first element of the Section 2(e)(3) refusal, we find that the primary significance of applicant's mark is that of a generally known geographic location, i.e., Paris, France. First, we find that Paris, the capital of France, is a famous city, neither obscure nor remote, and that it is generally known to purchasers in

the United States. Applicant does not contend otherwise. Second, we find that the word PARIS in applicant's mark would be directly and immediately perceived by purchasers in its geographic sense, as the name of the city of Paris, France. We are not persuaded by applicant's unsupported argument that the word PARIS in applicant's mark would be perceived as connoting merely the "ambiance" or "feel" of Paris. See *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999) (NEW YORK in NEW YORK WAYS GALLERY mark denotes geographic location, not a hypothetical "New York Style" of the goods at issue); *In re Bacardi & Co. Ltd.*, 48 USPQ2d 1031 (TTAB 1997) (HAVANA in various marks denotes geographic location, not hypothetical "free-wheeling lifestyle" of pre-Castro Cuba).

Third, we note that our analysis under the first element of the Section 2(e)(3) refusal must be based on an evaluation of the mark as a whole, but there is nothing improper in considering the significance and relative contribution of each element of the composite mark in making that evaluation. See *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001). We find that other elements in applicant's mark, i.e., the word BAGUETTE and the Eiffel Tower design, do not detract from or negate the primary geographic significance of the

mark as a whole which results from the presence of the word PARIS in the mark. We find that PARIS, and its geographic connotation, dominates the commercial impression of the mark. The word BAGUETTE is generic and disclaimed, and it does not detract from the mark's primary geographic significance. See *In re Consolidated Specialty Restaurants Inc.*, 71 USPQ2d 1921 (TTAB 2004) (generic word STEAKHOUSE in COLORADO STEAKHOUSE (and design) mark does not detract from primary geographic significance of mark). The Eiffel Tower is an iconic symbol of Paris, and its depiction in applicant's mark clearly refers back to and reinforces the dominant geographic significance of the word PARIS in the mark. See *In re Save Venice New York Inc.*, *supra* (Lion of St. Mark symbolizes Venice, Italy, and its presence as a design element in the mark reinforces dominant geographic significance of VENICE in the mark); *In re Consolidated Specialty Restaurants Inc.*, *supra* (image of mountain in mark reinforces dominant geographic significance of COLORADO in mark).

Viewing applicant's mark as a whole, we find that the primary significance of the mark is that of a generally known geographic location, i.e., the city of Paris, France. The first element of the Section 2(e)(3) refusal therefore is established.

The second element of the Section 2(e)(3) refusal requires a showing that the consuming public is likely to believe that the place identified by the mark indicates the origin of the goods bearing the mark (i.e., that a goods-place association exists), when in fact the goods do not come from that place.

Applicant admits that its goods "do not come from Paris." (Applicant's brief at 13.) Therefore, the question for determination under the second element of the Section 2(e)(3) refusal in this case is whether consumers are likely to believe that Paris is the origin of applicant's goods. We find that the requisite goods-place association has been established by the evidence of record.

"In a case involving goods, the goods-place association often requires little more than a showing that the consumer identifies the place as a known source of the product." *In re Les Halles De Paris J.V.*, 334 F.3d 1371, 1373-74, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003). The evidence of record in this case clearly establishes that consumers would identify Paris as a known source for the goods identified in applicant's application as "bread," a term which encompasses baguettes.

Of record are several Internet travel guides which inform purchasers who are traveling to Paris that the city

is home to and known for its many bakeries. See www.discoverfrance.net, which advertises a travel guide called "Boulangerie: A Pocket Guide to Paris' Famous Bakeries," a guide which "features 223 bakeries representing all 20 arrondissements of Paris, with directions on how to reach them on the Metro." The same website advertises another travel guide which offers travelers "a gastronomic tour of some of Paris' finest pastry shops and bakeries." The websites at www.radissondestinationguide.com and at www.parishotelreservations.com both include listings of what they deem to be the ten best bakeries in Paris. Likewise, an article at the website www.sallys-place.com subtitled "Where to find the best bread in Paris" lists seven bakeries.

Other websites of record likewise show that Paris is known for its bread products, including baguettes. For example:

(1) www.sallys-place.com - Article entitled "As Parisian as French Baguette":

The slim, two-foot long baguette and its heftier cousin, pain parisian, are as much a part of Parisian identity as the Arc de Triomphe or the Eiffel Tower. ... But luckily for lovers of real old-fashioned French bread, the pendulum seems to be swinging back toward traditional methods. ... Lionel Poilane is known by bread

lovers not only in Paris, but throughout the world. His round, hefty country-style bread - also dubbed a "miche" or "la boule" - is air-freighted daily to Tokyo, New York and other world capital cities."

(2) www.discoverfrance.net - Article entitled "Beware of the French Baguette!":

A baguette is a thin and crusty long loaf, so named from the word that means 'wand.' ... Though originating from Paris, baguettes can be found everywhere in France, and now (theoretically) anywhere in the world, as the demand has grown to a fever pitch. ... The image of the baguette as a symbol of Paris has even been popularized in the movies: in *Everybody Says I Love You*, we watched Woody Allen, this pure product of American culture so enamored with that of the Old World, walking - just like a "real Parisian" - on a bridge, his baguette unsanitarily held under his arm. ... To that I would counter that even a piece of stale bread tastes great at Kayser! As a reply, Damien merely smiles and says nothing: the line of 10 to 15 people waiting patiently is a better answer, as well as the other shops which have propagated from this place, selling his baguettes as far away as Miami (FL), Japan, and Israel.

(3) www.en-wikipedia.org - Entry for "baguette":²

... Baguettes are seen as closely connected to France and especially to Paris, even though they are by far not the only kind of French bread.

² We have considered this Wikipedia evidence because it essentially is cumulative of and is corroborated by the other evidence of record, and because it was made of record early enough to give applicant the opportunity to challenge or rebut it. See *In re IP Carrier Consulting Group*, ___ USPQ2d ___, 2007 Westlaw 1751192 (TTAB) (Serial Nos. 78542726 and 78542734, June 18, 2007). We also note that applicant itself has relied on this evidence in support of its contention that baguettes are available worldwide and thus are not exclusively associated with Paris. See discussion *infra*.

They are, however, available around the world. ... The French government recently codified into law a specific type of baguette, the "baguette de tradition," which can only be made using the original, pre-modern methods ... The key, Kaplan's research suggested, is the 18th century practice of allowing the yeast to develop overnight, which results in a baguette with a cream-colored interior (rather than the familiar white) and a much more pronounced flavor and smell which puts the modern baguette to shame.

(4) www.asymptomatic.net - Posting entitled "America Has No Bread":

I've gone to Wegman's twice since I've been back from France, looking for pastries and bread. After watching many Parisians walking through their city munching on just a loaf of bread, I wondered what the deal was. So on my final day in Paris, on my way to the airport, I stopped in a shop and fumbled through the French that would get me some kind of baguette. Boy, was that tasty. I carried half the large loaf all the way back to the States with me. Berta tried some, Abby tried some, and even Riley tried some. I think it was probably a little stale by the time they got to it, but it was still pretty tasty. And so I thought I would go to the only place that I know to create pastries anything like what I had seen in France to pick up something in the morning. But unfortunately, America has no bread. ... I remember standing at the airport in Philly waiting for Berta to pick me up and looking at everyone on the platform thinking, "I've got bread that was baked fresh this morning - in Paris." And I smiled like an idiot.

(5) www.metropolitanbakery.com:

Bread & Ingredient List ... Organic Country Miche - Inspired by the world famous bread of the Poilane bakery in Paris, this organic crusty loaf has a full sourdough flavor and a chewy, hearty texture. Weighing in at a delicious four pounds, this bread is France by way of Philadelphia.

We find that this evidence establishes that Paris is known for its bread products, and that the requisite goods-place association therefore exists. Applicant makes two arguments to the contrary, neither of which is persuasive.

First, citing the Internet excerpts numbered above as (2) and (3), applicant argues that French bread, including the baguette, is made and sold worldwide, and it therefore is not exclusive to Paris. However, the issue under the second element of the Section 2(e)(3) refusal in this case is simply whether Paris is known for or known as a source of bread products. *In re Les Halles De Paris J.V., supra.* Applicant cites no authority, and we are aware of none, for the proposition that the place named in the mark must be shown to be the only or exclusive source of the goods at issue.

Next, applicant argues that there is no goods-place association because United States purchasers of applicant's bread would not be deceived into thinking that the bread originates in Paris. This is because purchasers normally would understand and assume that bread, by its very nature, is produced and sold locally to ensure its freshness. Therefore, applicant argues, purchasers in the United States are not likely to believe or assume that applicant's

bread, purchased locally in the United States, was produced elsewhere, especially a place as distant as Paris, France.

The evidence of record does not support applicant's argument. Even if bread products typically are produced locally for the sake of freshness, we cannot conclude that purchasers would believe or assume that such products would never originate from and be imported from elsewhere, including Paris. Indeed, the Internet sources of record include articles which inform purchasers, if they did not already know, that bread freshly made in Paris by Lionel Poilane, assertedly Paris' most famous baker, in fact is regularly shipped to and available in the United States. See, e.g.:

(1) **www.fastcompany.com** - Article entitled "Give Us This Day Our Global Bread":

Think of a product that is so local, it could never go global. So basic, it could never be branded. So fundamental, it could never be reinvented. Now think about bread - Lionel Poilane's bread, that is. ... Lionel Poilane sells the most famous bread in Paris. In fact he sells 15,000 loaves of bread each day - 2.5% of all bread sold in Paris, by weight. ... The bread itself is decidedly old school; Thick, chewy, and rich with a dark fire-tinged flavor, Poilane's bread traces its heritage back to the original French bread. But his business is remarkably modern. Today, Poilane has a new shop in London and two older ones in Paris. And on the outskirts of the City of Light, he has his own global baking facility, where 40 bakers work at 16th-century ovens in teams of 2. Each day,

Poilane-branded bread travels by company-owned trucks to more than 2,500 shops and restaurants throughout Paris, and by FedEx delivery to Poilane aficionados in roughly 20 countries around the world. ... Poilane's global bread business developed as a natural response to customer demand; Stores and individuals started calling from abroad to ask Poilane to ship them bread, so he started to take advantage of the large FedEx hub at nearby Roissy-Charles-de-Gaulle airport. FedEx allows Poilane's bread to leave the bakery in the early morning and be on dinner tables in the United States the next night. All it takes is a quick warm-up in the oven to make the bread taste as good as it does in Paris. And the size of the basic Poilane loaf - about 4 pounds - helps the bread travel well and last longer. Global bread sales are growing: last year, exports were up 30%. Poilane has also long sold his loaves over the Internet.

(2) www.paris-anglo.com - Article entitled "Joanne Dandres Talks to France's Most Famous Baker, Lionel Poilane."

... Every week Poilane supplies the bread for 3 percent of the population in Paris and ships his crusty 1.9 kilo boules to over 5000 people worldwide. ... Poilane developed a special way of packaging his bread so that it stays fresh, and he ships it daily by Federal Express.

(3) www.sallys-place.com - Article entitled "As Parisian as French Baguette":

Lionel Poilane is known by bread lovers not only in Paris, but throughout the world. His round, hefty country-style bread - also dubbed a "miche" or "la boule" - is air-freighted daily to Tokyo, New York and other world capital cities.

Our finding that a goods-place association exists is further supported by evidence in the record which shows that purchasers reasonably might assume that bread baked

locally in the United States, including (presumably) applicant's bread, is baked according to the same or similar recipes as those used by Parisian bakers to make their breads. The website of Metropolitan Bakery (www.metropolitanbakery.com) advertises its

Organic Country Miche - Inspired by the world famous bread of the Poilane bakery in Paris, this organic crusty loaf has a full sourdough flavor and a chewy, hearty texture. Weighing in at a delicious four pounds, this bread is France by way of Philadelphia.

Based on the evidence of record, and for the reasons discussed above, we find that Paris, France is known for and is a known source of bread products, and that a goods-place association therefore exists as between Paris and applicant's goods identified as "bread." Because applicant's bread does not originate from Paris, the second element of the Section 2(e)(3) refusal is established.

The third and final element of the Section 2(e)(3) refusal requires a showing that the misrepresentation as to the geographic origin of applicant's goods which is created by applicant's mark (i.e., that the goods would be believed to come from Paris, when they do not) would be material to the consumer's decision to purchase the goods. We find that the evidence of record in this case establishes the materiality element of the refusal.

"For goods, the PTO may raise an inference in favor of materiality with evidence that the place is famous as a source of the goods at issue." *In re Les Halles De Paris J.V.*, *supra*, 334 F.3d at 1374, 67 USPQ2d at 1542. The evidence of record in this case establishes that Paris is famous for its bread. Indeed, bread, especially the baguette, has been regarded as a symbol of Paris. For example:

(1) **www.sallys-place.com** - Article entitled "As Parisian as French Baguette":

The slim, two-foot long baguette and its heftier cousin, pain parisian, are as much a part of Parisian identity as the Arc de Triomphe or the Eiffel Tower.

(2) **www.discoverfrance.net** - Article entitled "Beware of the French Baguette!":

The image of the baguette as a symbol of Paris has even been popularized in the movies: in *Everybody Says I Love You*, we watched Woody Allen, this pure product of American culture so enamored with that of the Old World, walking - just like a "real Parisian" - on a bridge, his baguette unsanitarily held under his arm.

The materiality to the purchasing decision which is established by Paris' fame as a source of bread is further established by evidence showing that bread from Paris is known to be of high and even superior quality, and is highly desirable for that reason. For example:

- (1) www.en-wikipedia.org - entry for "baguette":

... Baguettes are seen as closely connected to France and especially to Paris... The French government recently codified into law a specific type of baguette, the "baguette de tradition," which can only be made using the original, pre-modern methods ... The key, Kaplan's research suggested, is the 18th century practice of allowing the yeast to develop overnight, which results in a baguette with a cream-colored interior (rather than the familiar white) and a much more pronounced flavor and smell which puts the modern baguette to shame.

- (2) www.asymptomatic.net - Posting entitled "America Has No Bread":

And so I thought I would go to the only place that I know to create pastries anything like what I had seen in France to pick up something in the morning. But unfortunately, America has no bread. ... I remember standing at the airport in Philly waiting for Berta to pick me up and looking at everyone on the platform thinking, "I've got bread that was baked fresh this morning - in Paris." And I smiled like an idiot.

Moreover, the very fact that consumers in the United States are willing to pay a premium to have bread shipped directly from Paris establishes that the bread is highly desirable, and that such bread's origin in Paris is a material factor in the consumer's purchasing decision.

For these reasons, we find that the third element of the Section 2(e)(3) refusal, materiality, is established in this case.

Based on all of the evidence of record³ and for the reasons discussed above, we find that applicant's mark is primarily geographically deceptively misdescriptive as applied to the "bread" identified in applicant's application and that the Section 2(e)(3) refusal therefore is proper.⁴

Decision: The Section 2(e)(3) refusal to register is affirmed.

³ Though we have not specifically discussed the evidence submitted by applicant, we have carefully considered it and find it to be outweighed by the evidence discussed above which suffices to establish that applicant's mark is primarily geographically deceptively misdescriptive.

⁴ Because the refusal of registration under Section 2(e)(3) is proper as to at least one of the products listed in applicant's Class 30 identification of goods, we need not decide whether the mark is also unregistrable as to the other Class 30 goods identified in the application. *Cf. In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975) (if mark is merely descriptive of any of the goods in a particular class, refusal as to all of the identified goods in that class is proper). *Accord, In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505 (CCPA 1980); *In re Harry N. Abrams, Inc.*, 223 USPQ 832 (TTAB 1984).