

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
August 15, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Bites of Boston Food Tours, LLC*

Serial Nos. 85376420 and 85397975

Kenneth C. Otis of Hendrick & Bryant LLP for Bites of Boston Food Tours, LLC.

Allison P. Schrody, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

Before Kuhlke, Shaw, and Gorowitz, Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Applicant has appealed the final refusals to register its marks BITES OF BOSTON (in standard character form)<sup>1</sup> and BITES OF BOSTON FOOD TOURS & design, as set forth below for “entertainment and educational services, namely, conducting cultural and culinary guided walking tours of neighborhoods, restaurants, and specialty food shops”

---

<sup>1</sup> Application Serial No. 8537640, filed July 20, 2011, based on Section 1(b) of the Trademark Act (intent-to-use).



2

on the ground of likelihood of confusion pursuant to Section 2(d) of the Trademark Act with the mark BITE OF SEATTLE for “organizing, conducting, and supervising food festivals.”<sup>3</sup>

The appeals have been consolidated. With the exception of the marks, the issues are identical.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192

---

<sup>2</sup> Application Serial No. 85376420, filed August 15, 2011, based on Section 1(b) of the Trademark Act (intent-to-use).

<sup>3</sup> Registration No. 1563882, issued October 31, 1989, renewed November 2, 2009.

Serial Nos. 85376420 and 85397975

USPQ 24 (CCPA 1976). *See also, In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We first evaluate the similarity or the dissimilarity of the marks in their entireties and the strength thereof and starting with the mark in Serial No. 85376420, BITES OF BOSTON in standard character format. The prefatory language, “BITES OF,” in applicant’s mark is similar to the prefatory portion of registrant’s mark, “BITE OF SEATTLE.” In relation to registrant’s services, “BITE OF” has the same meaning as “TASTE OF,” a term frequently used in connection with food festivals, i.e. “Taste of Chicago,” (referenced *infra*), Annual Taste of the Deerfield Valley (Exhibit to Denial of Request for Reconsideration) and Taste of the Beach (Examining Attorney’s Brief, p. 7). When used in connection with food festivals “BITE OF” and “TASTE OF” refer to the tasting of local foods. As such, the term “BITE OF” in the registrant’s mark is highly suggestive. The terminal portion of registrant’s mark supplies the name of the local area in which the festival is held, in this case “Seattle.”

When the common elements of conflicting marks [BITES OF and BITE OF] are words that are suggestive (i.e., “weak”), this reduces the likelihood of confusion. *See, e.g., Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 9 USPQ2d 1736 (Fed. Cir. 1989) (PECAN SANDIES and PECAN SHORTEES); *Magnaflux Corp. v. Sonoflux Corp.*, 231 F.2d 669, 109 USPQ 313 (CCPA 1956) (MAGAFLUX and SONOFLUX); and *Land-O-Nod Co. v. Paulison*, 220 USPQ 61 (TTAB 1983) (CHIROPRACTIC and CHIRO-MATIC). As such, since the cited mark is weak, it is

Serial Nos. 85376420 and 85397975

entitled to a narrow scope of protection and the services will need to be closely related to establish likelihood of confusion.

There is even less similarity between BITE OF SEATTLE and the mark in Serial No. 8537640, BITES OF BOSTON FOOD TOURS & design, as set forth below:



We turn next to the du Pont factor of the similarity or dissimilarity of the services. As set forth in the *Dixie Restaurants* case:

Likelihood of confusion must be determined based on an analysis of the mark as applied to the ... services recited in applicant's application vis-a-vis the ... services recited in [a] ... registration, rather than what the evidence shows the...services to be.

*In re Dixie Restaurants Inc.*, 41 USPQ2d at 1534, quoting *Canadian Imperial Bank v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

Applicant's services are identified as "entertainment and educational services, namely, conducting cultural and culinary guided walking tours of neighborhoods, restaurants, and specialty food shops." A "tour is a trip with visits to various places of interest for business, pleasure, or instruction," or "a group

organized for such a trip or for a shorter sightseeing excursion”<sup>4</sup> and a “walking tour is a tour on which you walk rather than using [sic] transport.”<sup>5</sup> With respect to applicant’s services, a “tour” is a short sightseeing excursion, on which the participants walk.

The services in the cited registration are identified as “organizing, conducting, and supervising food festivals.” A “food festival is a festival,<sup>6</sup> usually held annually, that uses food, often produce, as its central theme.”<sup>7</sup>

The examining attorney asserts that the “services are closely related in that food festivals and cultural and culinary tours commonly emanate from a single source. In particular, food festivals commonly feature cultural or culinary tours as events.” Examining Attorney’s Brief, p. 6. To support her position, the examining attorney has submitted ten third-party registrations. However, none of the registrations include both festivals and guided walking tours of neighborhoods, restaurants and specialty food shops. To the contrary, to the extent that any

---

<sup>4</sup> “The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. Published by Houghton Mifflin Company, accessed through The Free Dictionary. Com (www.thefreedictionary.com). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

<sup>5</sup> “Collins English Dictionary” © 2013 Collins, accessed through One Look Dictionary Search (www.onelook.com).

<sup>6</sup> A festival is an event, usually and ordinarily staged by a local community, which centers on and celebrates some unique aspect of that community and the Festival. “The Free Dictionary by Farlex” © 2013 Farlex, Inc. (www.thefreedictionary.com)

<sup>7</sup> *Id.* The largest food festival in the United States (and the world) is the Taste of Chicago held in Chicago, Illinois. *Id.*

registration includes both food festivals and tours, the tours are primarily tours of wineries.<sup>8</sup>

The examining attorney also submitted web pages from a number of different sites. Some of the web pages relate to various festivals. All of the festivals are annual events held at the same time each year. While a number of the events offer tours, none of the events offer guided walking tours. To wit, the examining attorney relied on the following: Outer Banks Restaurant Association's Taste of the Beach (a food festival offering brewery tours); Shelburne Vineyard 3rd Annual Autumn Wine and Food Festival, (a wine and food festival at a winery, which offers tours of the winery); New York City Wine & Food Festival, (a food festival offering a tour of a butcher's warehouse); and Mananyunk StrEAT Food Festival, (the kick-off of the five day Restaurant Week; which offers foods from "some of Philadelphia's best food trucks" and includes a restaurant tour which highlights "apple/fall time specialties by our Manayunk restaurants and eateries" and is all on one street."). The following webpages, also submitted by the examining attorney, constitute evidence that food festivals are longer than one day and that guided walking tours are not offered: the Scottsdale Culinary Festival, held April 5-10, 2011 (Office Action dated November 16, 2011 and The Summit Wine & Food Festival, held September 2011 (Office Action dated June 8, 2012)

---

<sup>8</sup> Reg. No. 3855912 for the mark SAVOR THE CENTRAL COAST also includes guided tours of local farmers markets and gardens; and of culinary facilities.



# SIX FUN DAYS OF FOOD, WINE & MUSIC

# APRIL 5-10 2011

## SCOTTSDALE CULINARY FESTIVAL

[Home](#) | [Menu of Events](#) | [Festival Participants](#) | [Get Involved](#) | [About Us](#) | [Merchandise](#) | [Press Room](#) | [Contact Us](#)



Thank You for  
another great year!

See you  
April 17-22, 2012



2011 Event Photos



### STAY CONNECTED



Get Festival  
Email Updates





### A FESTIVAL FOR ALL TASTES!

The grills are firing up for **33rd Annual Scottsdale Culinary Festival**. This year you can look forward to numerous talented chefs, a larger variety of foods to savor and even more captivating entertainment.

With a menu of luxurious dinners, chic cocktail parties, and casual feasting favorites, the Scottsdale Culinary Festival has something to satisfy every palate.

Join us in tasting new culinary creations, sipping fine wine and spirits and basking in the ideal Arizona weather.

### FESTIVAL EVENTS

#### Signature Weekend Events

Fri, Apr 8	Eat, Drink & Be Pretty Party
Apr 9-10	Cooks & Corks
Apr 9-10	Great Arizona Picnic
Tue, Apr 5	The Kick Off Party
Tue, Apr 5	Arizona Culinary Ball of Fame
Wed, Apr 6	Chef Tribute Dinner
Thu, Apr 7	The Chocolate & Wine Experience
Thu, Apr 7	Friends of James Beard Dinner
Sat, Apr 9	Chef Wine Dinners
Sun, Apr 10	Wine Country Brunch
Sun, Apr 10	Best of the Fest



[HOME](#)  
[SUBSCRIBE](#)  
[ADVERTISE](#)

[About Us](#)
[Counties](#)
[Recipes](#)
[Restaurants](#)
[Events](#)

You are here: [Home](#) > [Events](#) > [A Tour of The Summit Wine & Food Festival](#)

September 27, 2011 | 0 Comments

## A Tour of The Summit Wine & Food Festival



Last week I attended the [Third Annual Summit Wine & Food Festival](#). The three-day schedule showcased celebrity chefs, sommeliers, local and international wine makers and competitive mixologists at a sophisticated and educational event at the Grand Summit Hotel. I attended three sessions on the third and last day and got just a tiny taste of all that this festival has to offer to foodies and wine connoisseurs.

After a busy morning with my family, including various sports and religious commitments, and a September 11 memorial service, I headed up the big hill to Summit. I didn't have much of an appetite and figured that I'd hold out for the big foodie fest. Why eat my standard bagel or oatmeal when countless gourmet goodies were certainly waiting for me. They were not. I had assumed there would be a big room where local artisan bakers, cheesemakers and chocolatiers would be offering. No such luck, but something they may want to consider for next year. My two choices were beer [tasting](#) or wine [tasting](#), but I knew I could do neither on an empty stomach.

On any day the choice between a Cheese and Beer [Tasting](#) and an East Coast Cult Wines [Tasting](#) is a good problem to have. But I was sad, nostalgic and hungry. So odd as it sounds, I started my time at the Wine & [Food festival](#) spending \$18 at the brunch buffet at the [Hat Tavern](#), conveniently located on the lower level at the [Summit Grand Hotel](#). I couldn't be too annoyed since I was invited to the festival as a guest and my return would be well worth the investment. I accepted my fate and figured I had 20 minutes to work the buffet. Wanting to best leverage the \$18, I passed over the omelet station and pasta salads, and instead filled my plate with items from the rawbar and some grilled vegetables. The oysters on the half shell were plump and succulent and just the right amount of indulgent. I was about to sip some pricey wines and wanted to start my journey off on the right epicurean note.

I selected the wine [tasting](#) and entered the room just as [Darren Palace](#) was finishing his introduction about the

Weinberger Law Group  
wants you to be prepared for what's ahead.

Click here to watch a  
**FREE DIVORCE WEBINAR.**



RisksOfDivorce.com



**SUNDAY, MAY 27**  
**MONMOUTH PARK RACETRACK**

SPONSORED IN PART BY A GRANT FROM THE NJ DEPARTMENT OF STATE, DIVISION OF TRAVEL AND TOURISM

**CATEGORIES**

**NEW JERSEY BLOG ROLL**

[A Cook's \[Tour\]\(#\)](#)

[A Hungry Teacher](#)

[All I Eat Food](#)

As exhibits to the denial of the request for reconsideration, the examining attorney submitted documents from the website, “Food Tour Finder” ([www.foodtourfinder.com](http://www.foodtourfinder.com)).<sup>9</sup> The site is an “impartial site [which] compiles culinary tours (walking, cooking, overnight-whatever!) from around the world. Listings are

<sup>9</sup> Denial of Request for Reconsideration dated January 4, 2013.



Serial Nos. 85376420 and 85397975

all unpaid. Information is taken from the tour operators' websites." These web pages clearly differentiate guided walking food tours from festivals. The walking tours are all short in duration (generally 2-3 hours), are offered several times a week, and include both culinary and cultural information. See, for example,

### **Eating Asheville: Downtown Walking Tour,**

Hungry for a taste of Asheville, but don't know where to start? Join our Asheville Tour as we explore downtown's culinary scene. **Eating Asheville's walking food tour** leads you through an orchestration of the finest and most delicious sights and tastes that the city has to offer. Join us for an Asheville tour of the city's unique food culture. You'll visit 5 to 7 restaurants, enough for lunch. We support independently owned restaurants. All of our partner restaurants implement a "farm to table" concept, supporting our local family farms, thus keeping the food fresh, amazing, and local! See examples of restaurants visited [here](#).

**What to Expect:** Our 2.5 hour guided food tasting and **cultural tour** combines delicious food and drink tastings with some serious fun in historic Downtown Asheville. Our tours are truly educational and delectable! Our tours run several days a week from 2-4:30. Advanced tickets are required. Eating Asheville tours serves enough food for most guests, lunch afterwards is not necessary. You can expect numerous small offerings at 6-9 stops.

**Price:** The ticket cost of \$47 is all inclusive.

### **Colorado Springs Food Tour: Manitou Spring Food Tour, and**

Experience this eclectic town's most enjoyed culinary flavors in the heart of downtown Manitou Springs! On this fun walking food tour, you will dine and drink at up to six diverse dining destinations in addition to tasting the world famous mineral springs said to have brought health and happiness to visitors for centuries. Gain historical and cultural insights into this magical community at the base of Pikes Peak as you delve into the lively food scene that characterizes it today. This tour also includes a behind-the-scenes tour of a Manitou's only winery. Alcohol is served to guests 21 and older (substitutes are available for those underage or those who would rather not partake).

**Tuesdays, 5:30pm – 8:00pm**  
**Historic Downtown Manitou Springs**  
**\$49 per person**

## **The Miami Culinary Tours: South Beach Food Tour**

Experience a Fun and Engaging Architectural, Historical & Culinary Walking Tour - With a Pronounced Cultural Aspect. From five-star gourmet to hole-in-the-wall delicious, if you really want to get a taste of Miami's melting-pot with its predominate Latin and European influences, join us as we'll uncover the hotspots for Ceviche, authentic Empanadas, true French Lobster Bisque, the classic Cuban sandwich, Pisco Sour and so much more.

We bring together people from all over the world to bond in the common interest of great culinary findings. This tour is a "melting pot of cultures" and we'll be sitting down at half of the restaurants we visit – and savor different bites standing and on the go. At the South Beach Food Tour, we will show you the hidden treasures inside the beating heart of the beach.

**PRICE:** \$59 per person (includes all food and beverages)

**LUNCH TOUR:** Daily at 12:00 pm [Book Now](#)

**DINNER TOUR:** Daily at 6:00 pm [Book Now](#)

**FOOD STOPS:** 7-8 food stops with tastings at each location.

**MEETING POINT:** South Beach (two blocks from Ocean Drive, exact location disclosed with ticket purchase).

**DURATION:** 2 1/2 hours

**WALKING DISTANCE:** One mile of leisurely strolling with plenty of seated restaurant breaks and stops covering the unique history and fun local facts.

**WHO:** all ages and fitness level.

**DRESS:** wear comfortable shoes and elastic pants (just kidding)

The Food Tour Finder also includes information related to tours consisting of trips with visits to various places of interest for business, pleasure, or instruction. These tours were of longer duration and were more expensive. See, for example: Travelimes: Peru With Gusto (11 day tour which costs \$4600.00 (CAD), TripFeast: Taste of South India (14 day tour which costs £1695), and TripFeast: Delicacies of North India (15 day tour which costs £1995).

http://webcache.googleusercontent.com/search?q=cache:qe\_hNs8s3zoJ:foodtourfinder.wordpress.com/tag/restaurant/+%22cultural+tour%22+and+%22food+festival%22&cd=19&hl=en&ct=clnk&gl=us 01/04/2013 10:27:36 AM

10  
MAY

## Travelimes: Peru with Gusto

11 days Lima – Cusco – Lima

Participate in hands-on cooking classes of signature Peruvian dishes with Chefs and locals. Travel off the beaten path to cook in unique settings. Dine at high end restaurants and modest huariques. Visit local markets, sample products and learn about Peru's diverse ingredients and gastronomy developed over the centuries by natives, Spanish, Asian, European immigrants and African slaves. Get a lesson on Peruvian coffee and Pisco, sign up for a chocolate-making workshop and explore world heritage sites such as Cuzco and Machu Picchu.

**Price:** From \$4,600.00 (CAD)

[More info and reservations](#)

COMMENTS

Leave a Comment

CATEGORIES

International, International Tours,  
Multi Day Culinary Tours, Peru,  
Search by Location

6  
MAY

## TripFeast: Taste of South India

Once fought over by colonial powers for its exotic spices, South India still plays a vital role in today's **Spice Route**. Blessed by two stunning coastlines, you will travel from east to west, **from the Indian Ocean to the Arabian Sea**. Along the way, our expert chefs will have you serving up spicy **Chettinad** seafood and vegetarian dishes enjoyed in Tamil Nadu, and delicious **dosas and idlis**, South India's signature food. With a visit to spice and pepper plantations, ancient temples and forts, and cooking lessons on the banks of Kerala's **shimmering backwaters** and in the lawns of our idyllic homestays, this will be a culinary experience like no other!

Highlights

- Turkey
- Uruguay
- Vietnam
- Las Vegas

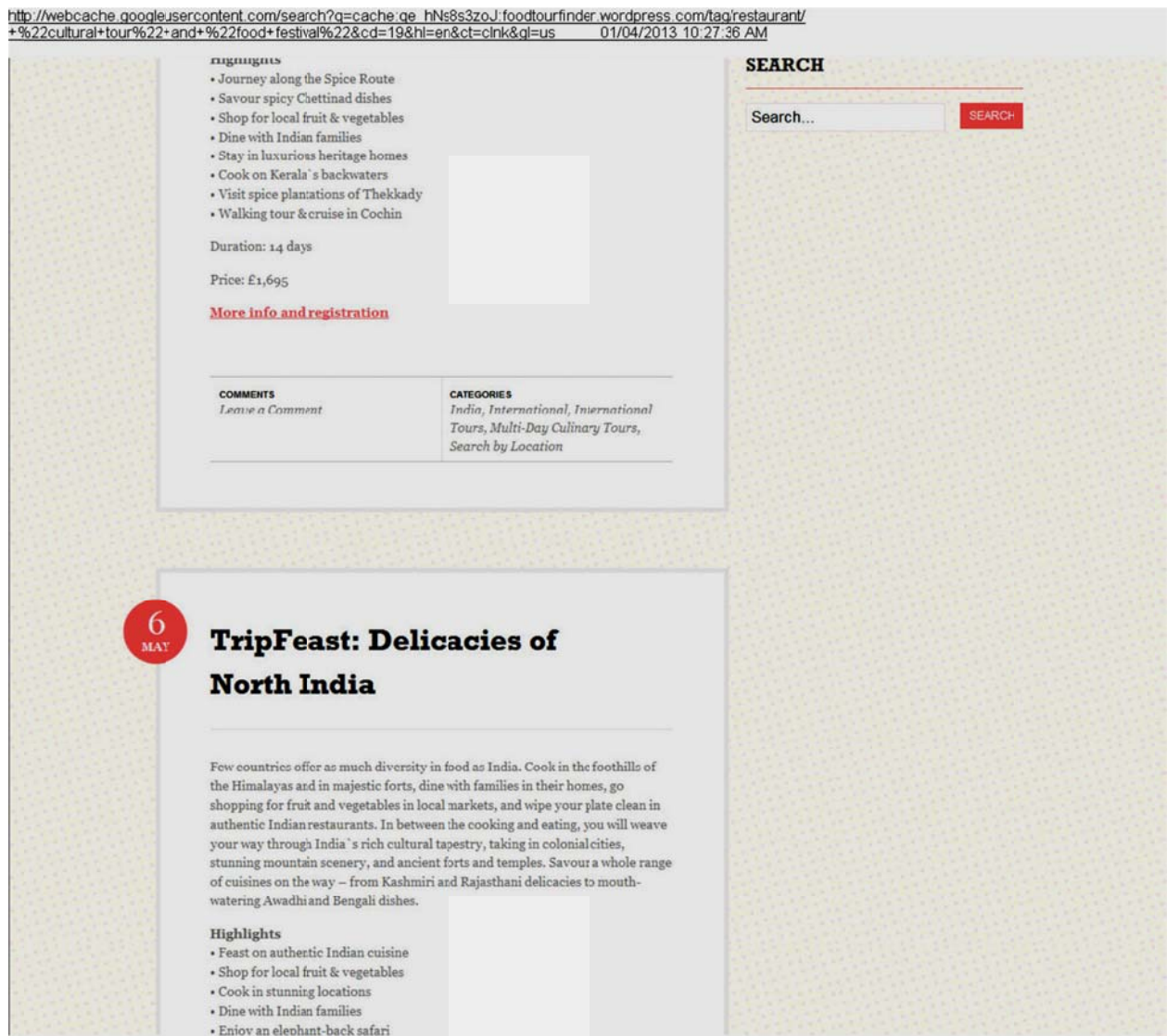
Search by Location

- Asheville Tours
- Boston Tours
- Charleston Tours
- Chicago Tours
- Colorado Tours
- Detroit Tours
- Florida Tours
- Houston Tours
- International Tours
- Las Vegas Tours
- Los Angeles Tours
- Louisville Tours
- Miami Tours
- Milwaukee Tours
- N. Carolina Tours
- Napa Tours
- New Orleans Tours
- New York Tours
- Norfolk, VA, Tours
- Philadelphia Tours
- Portland, ME, Tours
- Portland, OR, Tours
- S. Carolina Tours
- Sacramento Tours
- San Francisco Tours
- Seattle Tours
- Washington, DC, Tours

- Uncategorized

11





Some of the longer culinary tours may be planned around or include stops at food festivals. See, for example, the web page from South America Travel News, (www.SouthAmerica.travel) consisting of an article entitled “Indulge in the Peruvian Food Festival Mistura on a Culinary Peru Tour.” (Denial of Request for Reconsideration dated January 4, 2013).



The same festival appears in The Food Tour Finder, where a 7 day tour called “Travelimes: Mistura & Machu Picchu” is listed. The tour includes a visit to the Mistura festival. The examining attorney also refers to two other tours, which include attendance of food festivals: Kerala Travel Tours (“an online travel tour company offering tours which attend food festivals featuring “authentic Cuisine of Kerala and India”) and South India Temple Tours, (“an online travel tour company offering tours which attend food festivals, such as a food festival in Pondicherry, India and a French Food Festival”) (the evidence reveals that most of the festivals included in the South India Temple Tours are religious and that the French Food Festival is the only food festival offered.) Examining Attorney’s Appeal Brief, p. 9.

The crux of this matter is the definition of “tour.” All of the evidence offered by the examining attorney to establish that festivals and tours are related and travel in the same channels of trade, relate to the tours discussed above, which consist of the longer, more expensive trips with visits to various places of interest for business, pleasure, or instruction. With only one exception, there is no evidence that guided walking tours and food festivals are offered in the same channels of trade.<sup>10</sup>

All in all, the evidence does not establish that food festivals and culinary/cultural guided walking tours are offered by the same entities. Neither is there evidence that consumers would expect culinary and cultural guided walking tours, which are of short duration and are not limited to specific dates, to emanate from the same source as or to be associated with food festivals, which are of longer duration and generally occur annually at the same time of year.

Having considered all the evidence and arguments on the relevant *du Pont* factors, and in particular the highly suggestive nature of the cited mark and the differences in the services, we find that applicant’s marks are not likely to cause confusion with the registrant’s mark BITE OF SEATTLE.

*Decision:* The refusals to register Serial Nos. 85376420 and 85397975 are reversed.

---

<sup>10</sup> The exception is the seven day tour called “Travelimes: Mistura & Machu Picchu,” discussed supra, which appears on The Food Tour Finder website.