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Subject: U.S. TRADEMARK APPLICATION NO. 85527029 - WTC - N/A - Request for Reconsideration Denied - Return to TTAB - Message 4 of 5

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STEVEN FLETZER/GETTY IMAGES

Officials for the World Trade Centers Association say the 27-year-old deal with the Port Authority speaks for itself.

But officials for the World Trade Centers Association — a global business alliance — said the 27-year-old deal was no secret and was renewed by both groups in 2006.

"I think the 1966 agreement speaks for itself," said WTCA's head legal counsel Scott Richie. "It was signed by the appropriate officer of the Port Authority."

The 1,776-foot 1 WTC tower — already the tallest building in the U.S. — is slated to open next year.

COMMENTS (15)

[Discussion Guidelines]

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15 Comments

Mergatrod99 219 days ago

Abhh, in the life the insiders always get the golden deal and prime info before anyone else...

1 reply

OBI 219 days ago

MERG, Property transfer cannot be done for free. Ten dollars is the usual amount used for 'free' transfers.

E 219 day (Reply)

Compuion in government? NO WAY!

It always surprises me when the rejects laugh at my desire to cut taxes and government power. People for some weird reason hate politicians but trust government.

Whatever most people are either too trusting, naive or are just plain suckers.

(VOX)

EDITOR'S PICKS

Brooklyn's teen kitchen stars shine in city-wide competition

The culinary whiz kids have just cooked their way to the top. Melanie Vives, 17, of



Co-location pits adults vs. kids

Continuing education students at Mid-Manhattan Adult Learning Center in Harlem saw the recent arrival of a charter school in



EXCLUSIVE: Rangel's re-election chances are toast: Weiner

Charles Rangel is toast, says former Rep. Anthony Weiner. The dean of New York's congressional



EXCLUSIVE: News campaigning to save carriage horses

The Daily News is launching a campaign to save the city's beloved carriage horses. The 156-



Gonzalez: Charles Rangel nearing end of political career

Legendary Harlem Congressman Charles Rangel is nearing the end of his political career. Bronx



Grimm's ex-girlfriend Diana Durand still not implicating him in fundraising investigation

Michael Grimm's ex-girlfriend still won't give him



Ex-Sprint manager swiped \$325G in customer rebate checks: suit

The ex-manager of a Sprint cell phone store in Queens rang him off up more than



SEE IT: Brooklyn's Bishop Ford HS to be shuttered

Bishop Ford Central Catholic High School will close its doors after 52 years when the school



Man, woman found dead in hot tub with nearly empty gallon of vodka nearby: sources

Alicia Wlazorski, 66, and Jack Cross, 58,



Arsonists set fire to Astoria mailbox twice in 10 days

Injured Astoria residents are fuming over a pack of teenage miscreants who have been starting fires in



have been starting fires in

NEWYORKCITIZEN 218 days ago
Does anyone know that World Trade Center is a famous brand internationally long before 911 tragedy happened? When I travel to Asia and other part of the world, I see World Trade Center in many cities. It is not just one demolished building. For New Yorkers, it is a name we should remember and be proud of.
[Reply](#)

HEATHERG208 219 days ago
Mike tell me one NON PROFIT that doesn't pay it's staff PENNIES, stiffs them on bonuses and OT and yet the nice board of trustees gets a fat pay check each week for the little that they contribute to "NON PROFIT" org.

Noo Yoka 219 days ago
How are they able to have \$500K worth of office space in a building that was completely destroyed? This is a NEW structure built on the same site. If I demolish a rocky old shack and build an apartment house on it, do you get a rent-free space because you once owned the shack?

Ari Christophaga 219 days ago
Is a different name. WTC has a bad vibe for New Yorkers anyway. How about the New York Middle
[Reply](#)

Noo Yoka 219 days ago
[Reply](#)
I think it might be time for a rename, especially since it is a brand new structure. How about naming it after one of the dead?

Ivan Bedk 219 days ago
What Bloomberg did in Coney Island alone should land him in prison. Everything Mike does is like insider trading! EX: since Coney was zoned for amusements, the property wasn't worth much. Mike told his rich pals he would recon it, so BUY IT UP NOW for pennies on the dollar. They did. He then announced he'd recon it, DID, and suddenly his friends made out like bandits, now that they can build luxury condos, hotels, etc on the Atlantic ocean! Because of the uproar over this corruption, Mike then pulled another fast one: he used OUR TAXDOLLARS to BUY some of the land back from his pals (who made tens of millions in just a few days, not bad!) and announced "I saved Coney Island from greedy developers!" And a few NYers still believe this criminal wasn't so bad!

Ivan Bedkbol 219 days ago
THIS IS HOW ALL GOVT IS RUN. Secret deals you rarely hear about. EX: Bloomberg spent \$4 million taxpayers to rename the logically-named 59th St Bridge to the pointless (and confusing) to out of town drivers) "Ed Koch" bridge. bc Ed Koch was a radio host at Bloomberg News at the time. You could ARREST Mike for this! A HIDDEN TAX on our Con Ed bills funds 100% of Madison Square Garden's electricity bill! Mike just sold the PUBLIC land under the Times Square Marriott to them for 100 million LESS than it was appraised for! (No big press conference for THAT one, Mike. Why not? Aren't you PROUD of your [Reply](#)?) WHEN MIKE announced he was going to plant a million trees (a lie, btw) NO ONE in media thought to ask "HOW much are we being charged per tree, and WHO will be getting rich off it?" WHY did

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(6) *Consumer Surveys.*

§ 12:14 Surveys to determine genericness

The Importance of Survey Evidence. Consumer surveys have become almost de rigueur in litigation over genericness.¹ Judges are now used to survey evidence and often expect to receive evidentiary assistance by surveys in resolving generic disputes.² A litigant who alleges that a designation is not a valid trademark because it is perceived as a generic name of a product or service and does not introduce a survey to support this challenge may be viewed as less than serious by some judges. As Judge Will stated in frustration, “Neither side in this case has produced any consumer surveys or other similar evidence. Both sides are at fault for such laxness.”³ But there is no need for a survey if other evidence overwhelmingly proves that the disputed designation is a ge-

[Section 12:14]

¹See Folsom & Teply, “Surveying ‘Genericness’ in Trademark Litigation,” 78 Trademark Rep. 1 (1988) (critique of existing survey models to test for generic usage, proposing a new model); Swann & Palladino, “Surveying ‘Genericness’: A Critique of Folsom & Teply,” 78 Trademark Rep. 179 (1988); Folsom & Teply, “A reply to Swann & Palladino’s Critique of Folsom & Teply’s Model Survey,” 78 Trademark Rep. 197 (1988); Oddi, “Assessing ‘Genericness’: Another View,” 78 Trademark Rep. 560 (1988) (Proposing a survey question: “What is the primary significance of [trademarked name] to you? (a) The name of a product from a single source or (b) The name of a product.”); Jay, *Genericness Surveys in Trademark Disputes: Evolution of Species*, 99 Trademark Rep. 1118 (2009).

²See discussion of survey evidence at §§ 32:158 et seq. See also *Magic Wand, Inc. v. RDB, Inc.*, 940 F.2d 638, 19 U.S.P.Q.2d 1551 (Fed. Cir. 1991) (rejected challenge that TOUCHLESS is a generic name for a type of auto wash services, in part because the challenger introduced no survey evidence); *Heroes, Inc. v. Boomer Esiason Hero’s Foundation, Inc.*, 43 U.S.P.Q.2d 1193 (D.D.C. 1997) (rejected challenge that HEROES was generic name of charitable services assisting surviving family of police and firefighters killed in line of duty because, in part, “defendant has introduced no consumer surveys”); *Hermes Intern. v. Lederer De Paris Fifth Avenue, Inc.*, 50 F. Supp. 2d 212, 50 U.S.P.Q.2d 1257 (S.D.N.Y. 1999), rev’d on other grounds, 219 F.3d 104, 55 U.S.P.Q.2d 1360 (2d Cir. 2000) (challenger failed to conduct genericness survey in opposition to the survey of the mark owner: summary judgment of genericness was denied).

³*Gimix, Inc. v. JS&A Group, Inc.*, 213 U.S.P.Q. 1005 (N.D. Ill. 1982). But see *Nestle Co. v. Chester’s Market, Inc.*, 571 F. Supp. 763, 219 U.S.P.Q. 298 (D. Conn. 1983), rev’d, 756 F.2d 280, 225 U.S.P.Q. 537 (2d

neric name.⁴

Asking Relevant Questions. A survey must be directed at the issue of consumer perception as to the significance and meaning of the designation in issue. A survey that merely tests for consumer awareness of the designation is irrelevant.⁵ Similarly, asking a question that is not directly relevant to the issue of genericness is irrelevant.⁶ However, logic dictates that if a survey shows that only a small percentage of the relevant group is even aware of the disputed term, then this is evidence that the term is not used as a generic name by a majority of the relevant group.

The Thermos and Teflon Models. Two preferred models of surveys to test for genericness have been approved by the courts: the Thermos Model and the Teflon Model. They are explained and discussed in the following sections.⁷ They are the formats most often used by those who raise the genericness challenge and are also often used by those who seek to negate that challenge and prove trademark status for the designation.

Other Models of Genericness Surveys. Depending on the circumstances, other survey formats can also be relevant to the issue of trademark significance. That is, surveys that

Cir. 1985 (The court granted summary judgment finding "ball house" a generic name for chocolate chip cookies, explicitly rejecting an irrelevant two surveys modeled on the Thermos and Teflon surveys. The court relied on other "surveys" and plaintiff's own generic-type usage. In the author's opinion, in rejecting widely used models of surveys, the court seemed to have already made up its mind that "ball house" was a generic name.)

⁴*Narsten Corp. v. STMiscroelectronic, Inc.*, 305 F.3d 397, 44 U.S.P.Q.2d 1761, 2002 FED. App. 9541P (9th Cir. 2002), cert. denied, 122 S. Ct. 1486, 155 L. Ed. 2d 277 (U.S. 2002). ("Thus, the overwhelming evidence in this case obviates the need for [defendant] to have conducted a consumer survey.") *Call Defense LLC v. Bushmaster Firearms, Inc.*, 438 F.3d 701, 84, 82 U.S.P.Q.2d 1719 (1st Cir. 2007) (term was found to be a generic name without the need for a survey).

⁵*Hobbsburg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 245 F.3d 832, 57 U.S.P.Q.2d 1929 (9th Cir. 2001). ("Simply asserting consumer awareness of the term begs the question.")

⁶*See, e.g., Tea Board of India v. Republic of Yve, Inc.*, 80 U.S.P.Q.2d 1881, 2008 WL 2405188 (T.T.A.R. 2008) (asking respondents "What is Darjeeling tea?" to determine if it is a generic name did not elicit relevant responses).

⁷*See* §§ 12-15, 12-16.

test for secondary meaning⁸ and likelihood of confusion⁹ may yield relevant results that point towards or away from trademark significance. For example, if there is strong evidence of secondary meaning, then that is evidence that those surveyed perceive the designation as a trademark.¹⁰ Conversely, if a Teflon-type survey shows that a significant percentage of respondents identify a designation as a "brand name," that is not only evidence that it is not a generic name, it is also evidence that the designation has acquired a secondary meaning.¹¹

If there is strong evidence of a likelihood of confusion, then that is evidence that those surveyed perceive the designation as a trademark, for there cannot be true "confusion" unless those persons perceive the senior user's designation as a trademark.¹²

⁸See §§ 32:180, 32:191.

⁹See §§ 32:174 to 32:178, 32:188.

¹⁰See §§ 12:46, 12:5, 12:11. The logic is that evidence that customers associate the designation with a single source is evidence that they perceive that designation as a trademark, not as a generic name of the product or service. See *Trump v. Casino World, Inc.*, 448 F. Supp. 1011, 1020-1021, 230 U.S.P.Q. 984 (D.N.J. 1986), judgment *aff'd* without opinion, 835 F.2d 1125, 2 U.S.P.Q.2d 1908 (3d Cir. 1987) (Survey for the meaning of "palace" for a casino tended to disprove genericness. "This survey tends to negate Trump's contention that 'palace' is a generic term for accommodation and tends to support the contention that in the context of gambling activity in general, palace is indicative of a source of such services").

¹¹*March Madness Athletic Ass'n, L.L.C. v. Madfan, Inc.*, 210 F. Supp.2d 786, 803-804 (N.D. Tex. 2003), judgment entered, 2003 WL 22172259 (N.D. Tex. 2003) and *aff'd*, 120 Fed. Appx. 545, 72 U.S.P.Q.2d 1899 (9th Cir. 2005) (Because a majority of respondents answered in a "Teflon brand" survey that they thought that MARCH MADNESS was a mark and not a generic name, then that also proved the evidence of secondary meaning.) In re Country Music Association, Inc., 150 U.S.P.Q.2d 1824, 2011 WL 5600219 (T.T.A.B. 2011) (CONVENTRY MUSIC ASSOCIATION was held not to be a generic name. The Teflon survey was relied on as evidence in support of a secondary meaning.)

¹²The lawyer, to be deceived, must be looking for some symbol which she thinks identifies a single, albeit anonymous, source: a trademark. *Spangler Candy Co. v. Crystal Pure Candy Co.*, 235 F. Supp. 18, 27, 243 U.S.P.Q. 34 (N.D. Ill. 1964), judgment *aff'd*, 352 F.2d 641, 147 U.S.P.Q. 434 (7th Cir. 1965) ("The lawyer to be deceived, must be looking for something").

§ 12.15 Consumer surveys—Thermos survey

Two general models of a genericness survey have evolved.¹ The first has become known as a "Thermos Survey" because it is based on a survey used to prove "Thermos" was a generic name.² A Thermos Survey set of questions generally describes the product, puts the respondent in an imaginary situation walking into a store and asks how the respondent would ask for the product. A highly edited portion of the Thermos Survey follows:

Are you familiar with the type of container that is used to keep liquids, like soup, coffee, tea and ketchup, hot or cold for a period of time?

If you were going to buy one of these containers tomorrow—that is, the type that keeps food and beverages hot or cold—what type of store would you select to make your purchase?

What would you ask for—that is, what would you tell the clerk you wanted?

In answer to the last question, 75% of the some 3,000 persons interviewed said "Thermos," 11% said "Vacuum Bottle" and, as a result of follow-up questions, 12% said they thought that "Thermos" had some trademark significance. The court said that these results supported the conclusion that "thermos" had become a generic name to a majority of the public and that minority perception was to be taken into the balance only in framing a decree.³

(Section 12.15)

¹See Simonson, "An Empirical Investigation of the Meaning and Measurement of 'Genericness,'" 34 *Trademark Rep.* 199 (1984) (comparing and examining the built-in bias of the Thermos and Teflon survey methods).

²*American Thermos Products Co. v. Aladdin Industries, Inc.*, 207 F. Supp. 9, 134 U.S.P.Q. 99 (D. Conn. 1962), *aff'd*, 321 F.2d 577, 133 U.S.P.Q. 349 (3d Cir. 1963).

³See § 12.14. Plaintiff in the Thermos case also introduced the results of a survey in which 2,655 people were asked: "Please name any trademark or brand names, with which you are familiar, for vacuum bottles, insulated bottles or other containers, which keep the contents hot or cold." One third of the respondents answered "Thermos" or "thermos." The court said that the survey corroborated the conclusion that there was an appreciable minority segment of consumers who know and recognize "Thermos" as a trademark. *American Thermos Products Co. v. Aladdin Industries, Inc.*, 207 F. Supp. 9, 21, 134 U.S.P.Q. 98 (D. Conn. 1962), *aff'd*, 321 F.2d 577.

The drawback of a "Thermos Survey" is that for a very strong trademark, respondents with brand loyalty may answer with the trademark and drop what they consider to be a generic name, because it's so obvious to them.¹³⁸ For example, one of the 75% that answered "Thermos" might say, "I said 'Thermos' because that's the brand I would buy. I don't like those other inferior brands of vacuum bottles." In the Thermos Survey, defendant tried to ferret out such responses by follow-up questions like:

Can you think of any other words that you would use to ask for a container that keeps liquids hot or cold?

Do you know the names of any manufacturers who make these containers that keep liquids hot or cold?

Can you name any trademarks or brand names that are used on these containers?

Thus, the Thermos "what would you ask for" question is a blunt weapon that must be used carefully.¹³⁹

The Thermos-type of genericness survey is a recognized methodology that has been allowed into evidence.¹⁴⁰

§ 1216 Consumer surveys—Teflon survey

The second popular genericness survey model is known as a "Teflon Survey" because it was used to prove that TEFLON was not a generic name.¹⁴¹ A "Teflon Survey" is essentially a mini-course in the generic versus trademark distinction, fol-

¹³⁸ U.S.P.Q. 345 (3d Cir. 1983).

¹³⁹ See discussion of this common phenomenon at §§ 1216 to 1218.

¹⁴⁰ See *Anti-Monopoly, Inc. v. General Mills Fun Group*, 684 F.2d 1216, 224 U.S.P.Q. 548 (9th Cir. 1982), cert. denied, 459 U.S. 1217, 75 L. Ed. 2d 468, 103 S. Ct. 1254 (1983), where the court enthusiastically embraced the results of a "Thermos Survey" without considering the possibility of brand loyalty coloring responses.

¹⁴¹ *Nightlight Systems, Inc. v. NiteLite Franchise Systems, Inc.*, 2007 WL 4603773 (N.D. Cal. 2007) (disputing motion to exclude expert testimony supporting a Thermos-type survey); *E.T. Brown Drug Co. v. Concoate Products, Inc.*, 538 F.3d 146, 87 U.S.P.Q.2d 1403 (3d Cir. 2008) (Thermos-type survey created a question of fact as to the genericness of the designation "new better formula" for personal care and beauty products).

[Section 1216]

¹ *I. De Pont de Nemours & Co. v. Yoshida International, Inc.*, 393 F. Supp. 592, 183 U.S.P.Q. 997 (E.D.N.Y. 1975). See Greenbaum, Ginsberg & Weinberg, "A Proposal for Evaluating Genericness After 'Anti-

loved by a test.

The Teflon Survey was conducted by Burke Marketing Research Inc. over the telephone of respondents of both sexes who represented themselves to be over 18 years of age. They were then told:

I'd like to read 8 names to you and get you to tell me whether you think it is a brand name or a common name; by brand name, I mean a word like *Chrysler* which is made by one company; by common name, I mean a word like automobile which is made by a number of different companies. So if I were to ask you, "Is *Chrysler* a brand name or a common name?", what would you say?
 Now, if I were to ask you, "Is washing machine a brand name or a common name?", what would you say?
 [If respondent understands continue. If not understand, explain again.]
 Now, would you say — is a brand name or a common name?

The respondent was then asked to categorize eight examples.¹ When the survey was conducted of 314 men and 517 women on the evening of June 4, 1973, in 20 cities, the results were as follows:

NAME	BRAND'S COMMON	DON'T KNOW'S
STP	90	5
THERMOS	51	46
MARGARINE	9	91
TEFLON	68	31
JELLO	75	25
REFRIGERA-TOR	6	94
ASPIRIN	13	86

¹Monopoly, 73 Trademark Rep. 101, 119 (1962); *Jacob Zimmerman v. National Association of Mailmen*, 70 U.S.P.Q.2d 1423, 2004 WI, 702936 (T.T.A.B. 2004) (Defects in the structure and administration of a Teflon-type survey (such as failing to provide a "don't know" response) resulted in the survey being accorded "very little weight.");

²*Eagle Snacks, Inc. v. Nabisco Brands, Inc.*, 625 F. Supp. 971, 238 U.S.P.Q. 625 (D.N.J. 1985) (a Teflon-type survey was discounted for including very strong marks which might lead respondents to think that a "brand" name had to be very strong; 65% generic results were discounted but found supportive of conclusion that term was descriptive).