

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 Montussan Apertifs SAS

Serial No. 86172886

Michael J. Leonard of Fox Rothschild LLP for Montussan Apertifs SAS.

John Hwang, Trademark Examining Attorney, Law Office 114 (K. Margaret Le,
Managing Attorney).

Before Cataldo, Ritchie and Masiello,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Montussan Apertifs SAS, filed an application to register on the Principal Register the mark MONTUSSAN (in standard characters) for “alcoholic beverages containing fruit; alcoholic cocktail mixes; alcoholic cordials; aperitifs; hard cider; liqueurs; prepared alcoholic cocktail; spirits; wines and fortified wines” in International Class 33.¹

¹ Application Serial No. 86172886 was filed January 23, 2014 under Section 44(e) of the Trademark Act, asserting Registration No. 012057188, issued on January 6, 2014 by the European (EU) Office for Harmonization in the Internal Market (OHIM).

The Trademark Examining Attorney refused registration under Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), on the basis that Applicant's mark is primarily geographically descriptive of its goods.

When the refusal was made final, Applicant filed a request for reconsideration and appealed the final refusal. The Examining Attorney denied the request for reconsideration. The refusal has been fully briefed by Applicant and the Examining Attorney.

Evidentiary Matter

Applicant attached nearly 40 pages of exhibits to its appeal brief. The Examining Attorney, while objecting to these submissions as untimely, also submitted nearly 50 pages of exhibits to his brief.

The record in the application should be complete prior to the filing of an appeal. The Trademark Trial and Appeal Board will ordinarily not consider additional evidence filed with the Board by the appellant or by the examiner after the appeal is filed.

Trademark Rule 2.141(d); 37 C.F.R. §2.141(d). Any of the evidence attached to either of the appeal briefs that was not previously submitted is untimely and we give it no consideration.² See, e.g., *In re Fiat Marketing & Corporate Communications S.p.A.*, 109 USPQ2d 1593, 1596 (TTAB 2014). See also TBMP §1203.02(e) (2015) and authorities cited therein.

² We further observe that any of the evidence attached to the appeal briefs that was previously submitted is duplicative and unnecessary. See *In re Sela Products, LLC*, 107 USPQ2d 1580, 1584 (TTAB 2013). See also TBMP §1203.01 (2015) and authorities cited therein.

Legal Standard

The test for determining whether a mark is primarily geographically descriptive is whether (1) the mark (or a portion thereof) is the name of a place known generally to the public, and (2) the public would make a goods/place association, that is, believe that the goods identified in the application originate in that place. *See In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987). *See also In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445 (Fed. Cir. 2015); *In re Joint-Stock Co. “Baik”*, 80 USPQ2d 1305 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001). If the goods do in fact originate from the place named in the mark, the requisite goods/place association can be presumed. *See In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982). The examining attorney bears the burden of establishing that an applicant’s mark is primarily geographically descriptive. *In re Spirits of New Merced LLC*, 85 USPQ2d 1614 (TTAB 2007).

Discussion

Turning to the question of whether MONTUSSAN is the name of a place generally known to the public, we look to the *Vittel* decision wherein our primary reviewing Court, the Court of Appeals for the Federal Circuit, held that “it is necessary that the purchasers perceive the mark as a place name and this is where the question of obscurity or remoteness comes to the fore.” 3 USPQ2d at 1452. Based upon the record in that case, the Federal Circuit found “Vittel” is the name of a small town in France, and posed the question, “how many people in this country

know that?” and ultimately found the evidence “insufficient to show the likelihood of [the relevant consuming public] thinking that Vittel refers to a place where the goods come from.” *Id.* In *Newbridge*, the Federal Circuit stated

Regarding the first prong of the test, that the population of the location is sizable and/or that members of the consuming public have ties to the location (to use the example in *Loew's*: that Durango, Mexico, would be recognized by “the Mexican population of this country”) is evidence that a location is generally known. *See Loew's*, 769 F.2d [764] at 766, 768 [226 USPQ 865 (Fed. Cir. 1985)]. By contrast, that the geographic meaning of a location is “minor, obscure [or] remote” indicates that the location is not generally known. *See Nantucket*, 677 F.2d [95] at 99 [213 USPQ 889 (CCPA 1982)] (internal quotations omitted). Of course, there are many probative factors to the question of whether a location is generally known, and these are just a few examples.

113 USPQ2d at 1449.

In support of his position that the term MONTUSSAN is primarily geographically descriptive of Applicant's goods, the Examining Attorney introduced into the record a screenshot from the Internet website france-voyage.com indicating that Montussan is a town of 2991 inhabitants in the Gironde department of France, located approximately 15 kilometers from the city of Bordeaux, featuring vineyards and at least one company providing lessons in viniculture.³ This evidence is corroborated by a screenshot from the Internet website Wikipedia.org noting that Montussan is a commune in the Gironde department in Aquitaine in southwestern France, with a population in 2008 of 2,620.⁴ Screenshots from Tripadvisor.com,

³ July 25, 2014 final Office Action, p. 43-6.

⁴ April 29, 2014 Office Action, p. 4. The Board gives guarded consideration to evidence taken from Wikipedia, bearing in mind the limitations inherent in this reference work, so long as the non-offering party has an opportunity to rebut the evidence by submitting other evidence that may call its accuracy into question. *See In re IP Carrier Consulting Group*, 84

Airbnb.com, Expedia.com and Yelp.com further corroborate that Montussan is a town near Bordeaux with one “bed and breakfast” style hotel and additional accommodations in private homes.⁵ Based upon the evidence of record, there is no dispute that “Montussan” is the name of a small town in the Gironde department of France. The Examining Attorney asserts that

Montussan is not a remote or obscure geographic location from the point of view of American consumers, purchasers and distributors of wine and, by inference, especially to those Americans originally from France or with other connections to France or to the Bordeaux region of France.⁶

The Examining Attorney also submitted excerpts from the results of his search of Google.com for the term “Montussan.”⁷ However, the results summaries are truncated to such an extent that they contain insufficient information upon which we may ascertain the nature of the use, if any, of the term “Montussan” therein. It is well-settled that truncated results from search engines are entitled to little weight. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007). Second, many of the results are listed in the French language and thus have no probative value absent any evidence that these apparently foreign sources have any relevance to the perceptions of consumers in the United States. “Articles

USPQ2d 1028, 1032 (TTAB 2007). In the case before us, the Wikipedia evidence was submitted with the Examining Attorney’s initial Office action, and Applicant had an opportunity to rebut it.

⁵ February 2, 2015 Office Action, p. 8-27.

⁶ 10 TTABVUE 5. Record citations are to TTABVUE, the Trademark Trial and Appeal Board’s publically available docket history system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Citations to the prosecution history are by date and page number.

⁷ July 25, 2014 Office Action, p. 6-7.

submitted by opposer from foreign publications (e.g., *The Economist*) have not been considered insofar as opposer did not provide evidence of U.S. circulation.” *Chanel, Inc. v. Makarczyk*, 110 USPQ2d 2013, 2021, Fn 9 (TTAB 2014). *See also* TBMP §1208.03 (2015) and authorities cited therein.

Upon review of the totality of the record, we find the evidence does not support the Examining Attorney’s contention that the town of Montussan in France is generally known to the relevant consuming public, namely, prospective purchasers of wine and spirits. Rather, the evidence reflects that Montussan is very much an obscure location and would likely be unknown to the relevant American consumer. At most, the evidence shows that the town of Montussan might be known to individuals who traveled to the town itself or have another reason to be familiar with the wines and spirits originating there. We note the absence in the record of evidence of such consumer recognition among American consumers. Similarly, there is no evidence in the record of any recognition of Montussan among Americans of French ancestry or those with connections to France, the Bordeaux region, or French winemaking. Simply put, there is no evidence in the record that consumers of wine in the United States are familiar with Applicant, its products, or the town of Montussan. The only reviews in the record are of the single bed and breakfast hotel in the town, the accommodations available in private homes in town, and a single company that provides viniculture classes in a vineyard setting.

In further support of his contentions, the Examining Attorney submitted the results of his search of Google Maps indicating that Montussan is located

approximately 9 miles from Bordeaux, and a printout from Wikipedia.org regarding Bordeaux wine.⁸ The Examining Attorney argues that

given the nine mile proximity between Montussan and the city of Bordeaux and Montussan being geographically within the Gironde department, applicant's wine qualifies as a wine from the Bordeaux region. Bordeaux wine has such fame and recognition among American purchasers of French and Bordeaux wine that these American purchasers would likely know of Montussan as a geographic place in the Bordeaux region that produces Bordeaux wine.⁹

However, the Examining Attorney has provided no evidence to support his contention that American consumers would recognize Montussan as a source of Bordeaux wines. The mere proximity of Montussan to Bordeaux does not impart any of the latter's fame as a winemaking region to Applicant or its mark without evidence of such association. The notoriety of the city of Bordeaux and its wines are not at issue in this case. We observe nonetheless that while Booking.com lists 33 hotels and vacation properties available in and around Montussan, Google.com lists 327 hotels in Bordeaux with over 100 million user reviews.¹⁰ The location of this town of less than 3000 inhabitants 9 miles from a much larger and more prominent city reveals nothing about what the relevant American purchaser might perceive the word "Montussan" to mean, and is too insignificant to show that Montussan is a place known generally to the American purchasing public.

The evidence of record in the case before us establishes only that Montussan is a small town in France. The record is silent as to the recognition of Montussan among

⁸ July 25, 2014 Office Action, p. 23-7, 50-7.

⁹ 10 TTABVUE 6-7.

¹⁰ July 25, 2014 Office Action, p. 36, 49.

American consumers. The mere fact that a small number of users of Tripadvisor.com has been to the one bed and breakfast hotel in the town, or the fact that the location of the town can be found on the Internet, does not necessarily evidence that a place is known generally to the relevant American purchasing public. As such, the term Montussan does not convey a readily recognizable geographical significance to the average American consumer, but rather simply denotes the name of an obscure or remote geographic location. *See, e.g., Newbridge*, 113 USPQ2d at 1450; *In re Bavaria St. Pauli Brauerie Ag*, 222 USPQ 926 (TTAB 1984); *In re Brauerie: Aying Franz Inselkammer KG*, 217 USPQ 73 (TTAB 1983).

In sum, the record does not establish that the relevant American consumer is generally aware of the town of Montussan in France and, thus, we find that the consumer, upon encountering the mark “Montussan” on wine and spirits, would not believe this term is a geographic reference to the origin thereof. The first part of the test for primarily geographically descriptive marks is therefore not met. Accordingly, we need not and do not separately consider whether a goods/place association exists.

Decision: The refusal to register the mark MONTUSSAN under Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2), on the ground that the mark is primarily geographically descriptive of the goods is reversed.