

This Opinion is not a
Precedent of the TTAB

Mailed: October 11, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Yahya Kemal Gungor

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Serial No. 86263642

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Nihat Deniz Bayramoglu of Bayramoglu Law Offices LLC,
for Yahya Kemal Gungor.

Seth Dennis, Trademark Examining Attorney, Law Office 113,
Odette Bonnet, Managing Attorney.

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Before Kuhlke, Bergsman, and Ritchie,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

On April 25, 2014, Yahya Kemal Gungor (“Applicant”) filed an application to register on the Principal Register the mark **MERSIN (and design)**, as shown below, for goods ultimately identified as “cheese, namely, mild cream cheese, kasari cheese, hellim cheese, and feta cheese; garnish, namely, frozen peas, diced carrots, and diced potatoes,” in International Class 29, and “dough, pastry, namely kunefe, an oven shredded pastry filled with soft cheese and in thick syrup,” in International Class 30:¹

¹ Application Serial No. 86263642, filed under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use in commerce.



The Trademark Examining Attorney required a disclaimer of the term MERSIN under Section 6(a) of the Trademark Act of 1946, 15 U.S.C. § 1056(a), on the ground that the term is primarily geographically descriptive of the origin of Applicant's goods under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2).

When the requirement was made final, Applicant appealed and requested reconsideration. After the Trademark Examining Attorney denied the Request for Reconsideration, the appeal was resumed.² The appeal is now fully briefed. For the reasons discussed below, the requirement is affirmed.

Evidentiary Discussion

Between them, Applicant and the Examining Attorney submitted many hundreds of pages of evidence into the record. In his brief, Applicant discussed the evidence

² The Examining Attorney requested remand in order to make final a refusal on Applicant's claim of acquired distinctiveness. Applicant then withdrew the claim and requested that the appeal be resumed.

submitted by the Examining Attorney, and its respective “probative value.” As noted by the Examining Attorney on brief, this discussion appears to be a discussion as to the probative value of the evidence, rather than objections as to its admissibility. Furthermore, there is nothing shown to be inadmissible in the Examining Attorney’s evidence. Thus, we consider each item in the record for such probative value as it may have.

Primarily Geographically Descriptive

The elements of a Section 2(e)(2) geographically descriptive claim are as follows:

(1) the primary significance of the mark is a generally known geographic location; and

(2) purchasers would be likely to believe the goods or services originate in the geographic place identified in the mark;

In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987). *See also In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448 (Fed. Cir. 2015).

Primary Significance

With regard to the first prong, the Examining Attorney has submitted evidence to show that Mersin is the name of a city in Turkey as well as a province thereof, with entries from *The Columbia Gazetteer of the World (2005)* and *Wikipedia*. The latter notes, in relevant part:

Mersin is a large city and a port on the Mediterranean coast of southern Turkey. . . . Mersin is an important hub of Turkey’s economy, and Turkey’s largest seaport is located in the city. . . . Mersin is the provincial capital of the eponymous Mersin Province of Turkey. According to the Turkish Statistical Institute, the Mersin Metropolitan Municipality had a population of 913,958 as of 2011.

Applicant argues that Mersin is obscure and remote and thus the primary significance is not a geographically known location. *See In re the Newbridge Cutlery Co.*, 113 USPQ2d 1445 (town of Newbridge, Ireland, with less than 20,000 occupants found to be too obscure to be primary geographic location to U.S. consumers). To this end, Applicant submitted four maps of Turkey with his March 31, 2015 Response to Office Action, that do not identify Mersin. Applicant describes these as “travel maps and political maps of Turkey available online.” No further sources or information about the maps are provided. The Examining Attorney, in turn, submitted a number of maps of Turkey to show that Mersin is commonly identified. Of approximately 18 maps of Turkey submitted by the Examining Attorney, 17 identified Mersin.³

Applicant acknowledges in the March 31, 2015 Response that the population of Mersin is about 940,000, while that of Newbridge was closer to 20,000. Applicant argues that this should be viewed relative to the size of the country. However, in *Newbridge*, unlike here, the Court found that the term had other meanings, of which none are here of record or otherwise discussed. Furthermore, the Court noted that a place with a “sizeable” population and/or one to which consumers have ties is assumed to be generally known, using as an example Durango, Mexico per *In re Loew’s Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985). Indeed, the population size of Durango, Mexico, as discussed in *Loew’s*, is just a little bit less than that of Mersin. Thus, with a sizeable population, and no alternative meaning,

³ April 10, 2015 Final Office Action at 17-29. A number of the maps were illegible, even when enlarged 400%. Several did not label any cities at all, but were only blank outlines of the country. Of those that were legible and that labeled cities, 17 out of 18 identified Mersin.

we find that the primary significance of Mersin is a generally known geographic location.

Goods/Place Association

Next, we consider whether consumers are likely to make a goods/place association between Applicant's identified goods and the location of Mersin, Turkey.

In response to an information requirement regarding the origin of the goods, Applicant responded in the February 5, 2015 Response to Office Action as follows:

The goods will be manufactured, packaged, shipped from and sold in Mersin. The goods will also be manufactured, packaged, shipped from and sold in other cities within Turkey as well. In other words, the goods claimed will not be exclusively manufactured, packaged, shipped from and sold in the geographic location of Mersin in the mark.

Applicant argues in his brief that some of the goods are not manufactured in Mersin, but are "only packaged in Mersin, Turkey."⁴ Shipping labels submitted by Applicant show goods being shipped through Mersin, Turkey, for further international distribution.⁵ Although some of the goods may in some cases be manufactured or grown in another country, Applicant's statements and evidence are sufficient to show a nexus with Mersin. *See In re Joint-Stock Co.*, 80 USPQ2d 1305, 1307, n.2 (TTAB 2006) (refusal for BAIKALSKAYA affirmed where vodka derived from Lake Baikal). We may also thus presume a goods/place association. *See In re Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007) (YOSEMITE BEER held geographically descriptive of beer produced and sold in a brewpub in Merced,

⁴ 12 TTABVUE 20.

⁵ September 17, 2015 Request for Reconsideration at 176.

California, the Board stating that "[s]ince the goods originate at or near [Yosemite National Park], we can presume an association of applicant's beer with the park.>").

To further support a goods/place association, the Examining Attorney has submitted evidence to show that Turkey, and specifically, Mersin, are known for some of the goods in the identification. Applicant argues that the relevant consumers comprise the very small subgroup of Arab Americans, which constitute about 1.2 million people in the United States according to the U.S. Census Bureau.⁶ Those of Turkish ancestry are estimated to comprise an additional half million.⁷ We note that these numbers are not insubstantial. Nevertheless, the consumers of Applicant's goods, of course, are not limited to any particular ethnic or national origin and include all those who are interested in consuming foods of this type.

The Examining Attorney submitted web evidence to show that relevant consumers have associated kunefe and other food products with both Turkey and with Mersin in particular, as shown in the following excerpts:

Turkish Food Passion: Kunefe is considered to be one of the most delicious Turkish desserts . . . Although kunefe shops are very common throughout Hatay, Kilis, Adana, Mersin, and Gaziantep provinces, the city of Antakya in Hatay is known for the best kunefe in Turkey. . . . As you may guess, kunefe is not widely available in the States except the packaged, prepared kind found in Middle Eastern stores.
Mediterraneanturkishfoodpassion.blogspot.com; Attached to April 10, 2015 Final Office Action at 63.

Turkish cuisine is famous for its sweet syrupy desserts like baklava . . . Did you know that it's equally famous for a luscious, cheesy dessert from the southeastern region of Turkey called kunefe . . . Kunefe is native to the southeastern parts of Turkey that border the Mediterranean sea.

⁶ September 17, 2015 Request for Reconsideration at 181.

⁷ September 17, 2015 Request for Reconsideration at 168.

Kunefe is a great example of regional Turkish cuisine. . . . Important southeastern cities like Mersin . . . all have their own variations of the dessert.

Turkishfood.about.com; Attached to April 10, 2015 Final Office Action at 65.

Mersin: Eat: kunefe is also another dessert completely unique to the arabic influented areas [sic].

Travyde.com; Attached to October 29, 2015 Denial of Request for Reconsideration at 94-97.

janeyinmersin: Let's talk about Kunefe baby: A couple of minutes drive through the back streets of Mersin brought us to an amazing little *pastenesi* (cake shop) just west of Carsi We sat and dessert was supplied – *Kunefe*.

Janeyinmersin.com; Attached to April 10, 2015 Final Office Action at 56.

TSNN Trade Show News Network: Mersin 6th International Food, Food Technologies and Packaging Fair: Mersin 6th International Food, Food Technologies and Packaging Fair will be held on 12-15 April 2012 by Forza Fairs and Organization Co. Inc. together with the cooperation of Mersin Chamber of Commerce and Industry. Last Advances in Food Sector of Turkey. Food & Beverage sector is one of the biggest production sectors in Turkey. . . . Mersin is the Middle East's main gate which is opening to the world from East Mediterranean for especially Iraq, Syria, Turkish Republic of Northern Cyprus and Iran.

Tsnn.com; Attached to April 10, 2015 Final Office Action at 36.

Other articles from the *Pittsburgh Post-Gazette*, *Miami Herald*, *Dallas News*, *Sacramento Bee*, and *Chicago Sun Times*, discuss Mersin in the context of local eateries that serve cheeses and other goods identified in the application.⁸ We find, therefore, that there is a goods/place association.

⁸ October 29, 2015 Denial of Request for Reconsideration at 5-13.

Other arguments by Applicant

Applicant argues that his application should be allowed in any regard since (1) there are various third-party registrations that include the names of Turkish cities; and (2) Applicant has registered this mark in other jurisdictions. Regarding the first argument, all but two of the registrations referenced by Applicant are registered with a claim of Section 2(f) acquired distinctiveness. This indicates that indeed they have been recognized by the respective applicants and examining attorneys as being primarily merely geographically descriptive. Furthermore, we are not bound by those registrations. *See In re Cordua Restaurants, Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement”); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 1174, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) (“Even if all of the third-party registrations should have been refused registration . . . , such errors do not bind the USPTO to improperly register Applicant’s marks.”) (citation omitted); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”). Regarding Applicant’s other registrations, it goes without saying that these are in other jurisdictions, which of course have different laws, and again, do not bind us in our findings.

Conclusion

We find the primary significance of MERSIN to be associated with Mersin, Turkey, a geographical location that is generally known to United States consumers, and which has no other meaning. Because the origin of the goods includes Mersin and due to the renown of Turkish cuisine, and the association of kunefe and certain other foods with Mersin, we find that the relevant consumers are likely to make a goods/place association. In view thereof, MERSIN is primarily merely geographically descriptive of the goods in the application under Section 2(e)(2) of the Trademark Act.

Decision: The requirement for a disclaimer of MERSIN under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), on the ground that the term is primarily geographically descriptive of the origin of Applicant's goods under Section 2(e)(2), 15 U.S.C. § 1052(e)(2) is affirmed.

However, if applicant submits the required disclaimer to the Board within two months of the mailing date of this decision, then the decision will be set aside, and the application will proceed to publication.