

This Opinion is not a
Precedent of the TTAB

Mailed: July 7, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re ABK Betriebsgesellschaft der
Aktienbrauerei Kaufbeuren GmbH*

Serial No. 86937069

Marcus Luepke of Muncy, Geissler, Olds & Lowe, P.C.,
for ABK Betriebsgesellschaft der Aktienbrauerei Kaufbeuren GmbH

Marco Wright, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

Before Kuhlke, Adlin, and Heasley,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

ABK Betriebsgesellschaft der Aktienbrauerei Kaufbeuren GmbH (“Applicant”) seeks registration on the Supplemental Register of the mark ROSE (in standard characters) for “beer based mixed beverages” in International Class 32.¹

The Trademark Examining Attorney has refused registration of Applicant’s mark under Sections 23(c) and 45 of the Trademark Act, 15 U.S.C. §§ 1091(c) and 1127, on

¹ Application Serial No. 86937069 was filed on March 11, 2016, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as August 31, 2015.

the ground that Applicant's mark is generic and therefore incapable of distinguishing its goods.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register.

I. Analysis

In order to qualify for registration on the Supplemental Register, a proposed mark must be "capable of distinguishing the applicant's goods or services." 15 U.S.C. § 1091(c); see *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017). A generic term does not qualify for registration on the Supplemental Register, much less the Principal Register, because it is incapable of distinguishing an applicant's goods from those manufactured or sold by others, or of indicating a unique source of the goods. *Id.*; see *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1267 (Fed. Cir. 2015). "Generic terms, by definition incapable of indicating sources, are the antithesis of trademarks, and can never attain trademark status." *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987).

A proposed mark is generic if it refers to the class or category of goods and/or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (citing *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986)). A generic term is, in fact, "the ultimate in descriptiveness." *Marvin Ginn*, 228 USPQ at 530 quoted in *In re La. Fish Fry Prods.*, 116 USPQ2d at 1264. It can never attain

trademark status, *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016), because “[t]o allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold ... would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.” *Merrill Lynch*, 4 USPQ2d at 1142, quoted in *Dial-A-Mattress*, 57 USPQ2d at 1810.

Whether a particular term is generic is a question of fact. *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009). Resolution of that question depends on the primary significance of the term to the relevant public. “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (quoting *Marvin Ginn*, 228 USPQ at 530). The genericness inquiry is a two-part test: “First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (quoting *Marvin Ginn*, 228 USPQ at 530); see *Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1483 (TTAB 2017). The Examining Attorney bears the burden of proving genericness by clear and convincing evidence. *In re Cordua Rests.*, 118 USPQ2d at 1635; *In re Tennis Ind. Ass’n.*, 102 USPQ2d 1671, 1674 (TTAB 2012).

We find that the genus of goods in this case is adequately defined by Applicant’s identification of goods, namely “beer based mixed beverages.” See *In re Cordua Rests.*, 118 USPQ2d at 1632; *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110

USPQ2d 1458, 1462 (TTAB 2014). Applicant owns another mark for the same identified goods, “beer based mixed beverages” that is registered on the Principal Register:²



Applicant’s specimen is the label

depicted below:³



Although Applicant agrees that “[t]he relevant genus of goods for this determination can be defined by an applicant’s identification of goods and/or

² Registration No. 5159618, issued March 14, 2017 (ROSE disclaimed, among other words).

³ June 27, 2016 Office Action p. 22 (all references to the TSDR are to the .pdf format).

services,”⁴ it claims that the Examining Attorney’s definition of the genus seemed to fluctuate through the course of prosecution, leaving it unclear whether he considered the relevant genus to be “rose colored beer beverage mixed with fruits or fruit juices, extracts or syrups” or simply “rose colored fruit beers.”⁵

The Examining Attorney, however, states that Applicant’s identification of goods adequately defines the genus at issue,⁶ and we accept that definition of the genus. *Id.*; see also *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 92 USPQ2d 1682 (Fed. Cir. 2009) (defining the genus of goods or services as that for which the applicant sought protection in its application); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) (“[A] proper genericness inquiry focuses on the description of [goods or] services set forth in the [application or] certificate of registration.”); *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1761 (TTAB 2013) *aff’d*, 565 Fed. Appx. 900 (Fed. Cir. 2014); *In re Trek 2000 Int’l Ltd.*, 97 USPQ2d 1106, 1112 (TTAB 2010).

It is not necessary to broaden or narrow the genus from Applicant’s identified goods, “beer based mixed beverages.” Under the second part of the genericness test, “[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *In re Cordua Rests.*, 118 USPQ2d at 1638. See also *In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988) (where a mark is

⁴ Applicant’s brief p. 2, 7 TTABVUE 7.

⁵ Applicant’s brief p. 3, 7 TTABVUE 8.

⁶ Examining Attorney’s brief, 10 TTABVUE 5.

generic for some but not all of the goods identified in an application, registration is properly refused for all of the goods) *cited in Alcatraz Media*, 107 USPQ2d at 1761; RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 15 comment a (1995) (“A term that denominates a subcategory of a more general class, such as ‘light’ used with beer or ‘diet’ with cola, is also generic.”). Hence, it would make no difference if we broadened the genus to “beer” or narrowed it to “beer based mixed beverages that have a pinkish color”; the outcome would be the same.

The issue, then, is whether the relevant public—in this case, ordinary beer drinkers and other adult purchasers of alcoholic beverages—would understand the term ROSE primarily to refer to a subcategory of beer based mixed beverages, i.e., those that are rose or pink colored. Evidence of the relevant public’s understanding can be obtained from any competent source, including dictionary definitions, research databases, newspapers, and other publications. *See In re Cordua Rests.*, 118 USPQ2d at 1634; TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1209.01(c)(i) (April 2017).

“[A] term can be generic for a genus of goods or services if the relevant public...understands the term to refer to a key aspect of that genus...” *In re Cordua Rests*, 118 USPQ2d at 1637; *accord In re Emergency Alert Sols. Grp.*, 122 USPQ2d at 1090; *In re Meridian Rack & Pinion*, 114 USPQ2d 1462, 1464 (TTAB 2015). The Examining Attorney maintains that color is a key aspect of beer.⁷ Beer is often

⁷ Examining Attorney’s brief, 10 TTABVUE 7-9.

categorized by its color, such as amber, blonde, brown, dunkel, golden, pale, and red, the Examining Attorney notes, and “rose” is another key aspect.⁸

Applicant states that it “does not disagree with the Examining Attorney’s view that beers can be categorized by different characteristics and that their color is one of such criteria.”⁹ But these common beer colors do not currently include “rose,” it contends:¹⁰ “If there was already a common understanding that fruit beers with a pink color are a category of beers, then such category would have been listed on these websites [adduced by the Examining Attorney] as ‘rose’.”¹¹ “The term ‘rose’ merely describes one of several characteristics of certain beer beverages that have a pinkish color but it does not name the key aspect or ... the central focus of such beverages” within the meaning of *In re Hotels.com, supra* (which addressed key aspects of services) and similar genericness decisions.¹²

Applicant argues further that “rose” does not currently denote a category of beer as “rosé” does for wine:

Different to the field of wine, the evidence provided does not show that the general public when encountering the term ROSE in relation to beer does likely have the same association as it would have when the term ‘rosé’ is encountered in relation to wine; in the field of wine, the term ‘rosé’ by itself in this spelling and the corresponding pronunciation has been commonly used for a long time and is therefore understood to designate wines of rosé color as one of the three wine color categories and people just use the term by itself to order a rosé wine without adding the word ‘wine.’¹³

⁸ Examining Attorney’s brief, 10 TTABVUE 8-9, October 24, 2016 Office Action, pp. 22-30.

⁹ Applicant’s brief p. 8, 7 TTABVUE 13.

¹⁰ Applicant’s brief p. 8, 7 TTABVUE 13, Examining Attorney’s brief, 10 TTABVUE 13.

¹¹ Applicant’s brief p. 9, 7 TTABVUE 14.

¹² Applicant’s brief pp. 5, 6, 7 TTABVUE 10, 11.

¹³ Applicant’s brief p. 13, 7 TTABVUE 18.

Although the Examining Attorney, during the course of examination, adduced numerous instances of beer producers, retailers, reviewers and commentators using the terms “rose” or “rosé” for beer, Applicant maintains that “nearly all of these instances show a descriptive use of the term “rosé” or “rose” in combination with the term “beer” and are nearly all taken from beer blogs and articles targeting beer aficionados and/or are written by or experienced by people outside the U.S., but not by the general U.S. public. They are therefore not sufficient to show that the average U.S. American consumer will at this time clearly understand the term ROSE standing alone and without the term “beer” to identify a category of rosé colored (fruit) beers.”¹⁴

As the Federal Circuit has stated, however, “The test is not only whether the relevant public would itself *use* the term to describe the genus, but also whether the relevant public would *understand* the term to be generic.” *In re 1800Mattress.com*, 92 USPQ2d at 1685; TMEP § 1209.01(c)(i). The relevant public in this case is ordinary beer drinkers and other adult purchasers of alcoholic beverages. *See Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013) (“The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.”) (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1553 (Fed. Cir. 1991)); *cited in* TMEP § 1209.01(c)(i). The consuming public would be ordinary beer drinkers; and the purchasing public would include ordinary

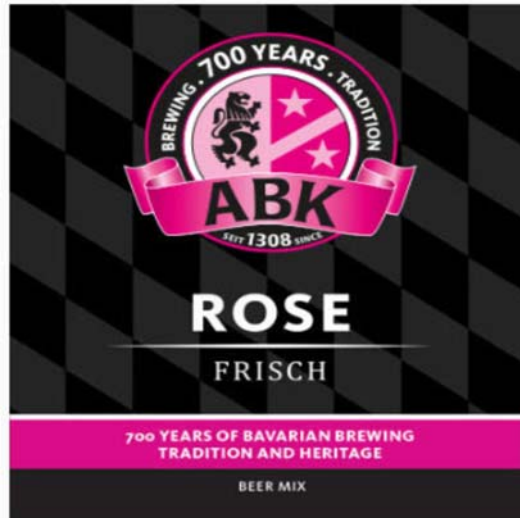
¹⁴ Applicant’s brief p. 12, 7 TTABVUE 17.

beer drinkers and other adult purchasers of alcoholic beverages. This is because “[a] typical consumer of alcoholic beverages may drink more than one type of beverage and may shop for different alcoholic beverages in the same liquor store.” *Schieffelin & Co. v. The Molson Co’s. Ltd.*, 9 USPQ2d 2069, 2073 (TTAB 1989). Purchasers of alcoholic beverages other than beer may still purchase beers for others “as gifts, or to stock a bar for their guests,” *Somerset Distilling Inc. v. Speymalt Whisky Dist. Ltd.*, 14 USPQ2d 1539, 1542 (TTAB 1989), or because they “serve more than one kind of alcoholic beverage before or during a meal or at a party.” *Schieffelin*, 9 USPQ2d at 2073. And people who usually drink other sorts of alcohol may decide to try something new. *In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (“While some may have preferred brands, there are just as likely to be purchasers who delight in trying new taste treats.”).¹⁵ The relevant public thus encompasses ordinary beer drinkers and other adult purchasers of alcoholic beverages.

This relevant public has already been exposed to a panoply of rosé wines made from different grape varieties, such as Grenache, sangiovese, pinot noir, tempranillo and others.¹⁶ And now, as the Examining Attorney points out, they are being exposed to producers and retailers marketing rose beer as a type of beer. For example, Applicant touts its beer’s “natural rose color”:

¹⁵ Although the *Schieffelin*, *Somerset*, and *Sailerbrau* decisions concern likelihood of confusion under Section 2(d) of the Trademark Act, they explain how the relevant purchasing public would encompass not only consumers of beer, but other adult purchasers of alcoholic beverages.

¹⁶ “What Rosé Should I Drink: A Guide to Styles of Rosé Wine” May 7, 2014 WineFolly.com, Oct. 24, 2016 Office Action pp. 18-20.



Rose

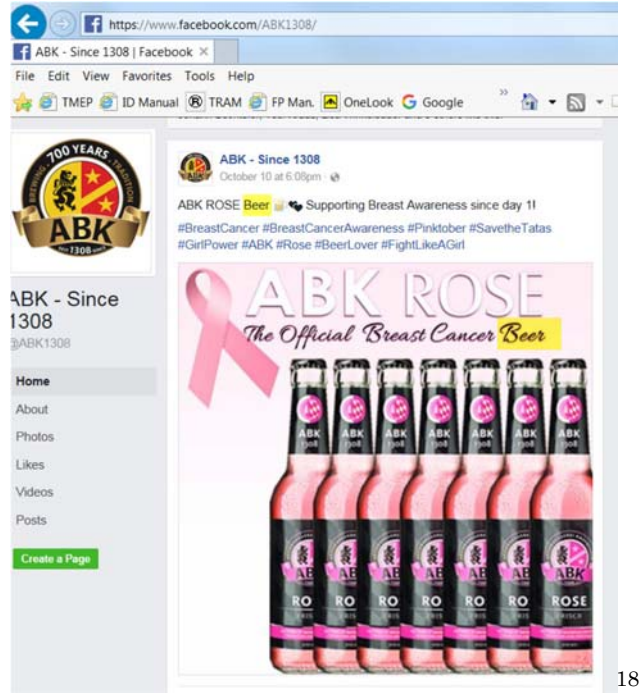
[2.8% ABV]

The ultimate summer time refreshment, Rose is a concoction of light ABK Beer and Organic Lemonade (brewed on-site) with a 100% natural rose colour.

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Applicant's Facebook page is to the same effect, advertising its rose pink beer in the context of a pink-themed anti-cancer campaign:

¹⁷ Oct. 24, 2016 Office Action p. 9.



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The way an applicant uses an alleged mark in promotional materials or packaging significantly affects how consumers will perceive the mark—as an indicator of source or as generic. *In re Am. Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999); *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1590 n. 22 (TTAB 2014). Moreover, Applicant is not the only beer producer that refers to its own beer as “rose.” California retailer K & L Wines reviewed Applicant’s beer—one in a line of three beers Applicant promotes—and referred to it as a type of rose beer:

¹⁸ Oct. 24, 2016 Office Action p. 10.

Ja wohl! Ich trinke ABK gern!

FRIDAY, MARCH 18, 2016 AT 03:27 PM



...

ABK Rose Bier, Germany (11.2oz) \$1.69 - One of the most shockingly-satisfying beers on our shelf is the rose beer from ABK. The ultimate summer time refreshment, Rose is a concoction of light ABK Beer and Organic Lemonade (brewed on-site) with a 100% natural rose color added from beets!

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Applicant’s competitors and other retailers use the same or similar terminology to refer to this type of beer, e.g.:

Witkekerke Rose

Type:	Top fermentation beer
Colour:	Translucent rose
Bottle:	25cl
Case:	24 bottles
Alcohol:	4.3% volume
Shelf Life:	1+ years

A blend of regular Witkekerke, the best Belgian wheat beer, known for its fruity aroma and taste, together with 10% of the purest Raspberry fruit, and a dash of the Petrus Aged Pale ale, the original mother beer that is aged in oak for up to 3 years. This combination is made in heaven, beer-heaven at the Bavik brewery in Belgium.



Witkekerke Rose History



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¹⁹ SpiritsJournal.KLWines.com, 3/18/2016, June 27, 2016 Office Action p. 23.

²⁰ BelgianBeersChiangmai.com, 6/25/2016, June 27, 2016 Office Action p. 6.

BEER INFO

Brewed by:
ShawneeCraft Brewing Company
Pennsylvania, United States | website


Style: American Wild Ale

Alcohol by volume (ABV): not listed


Availability: Limited (brewed once)

Notes / Commercial Description:
No notes at this time.

Added by ThatsThatDude on 07-11-2015



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Limburgse Rose

Type: Top Fermentation Unfiltered
Colour: Translucend Pink
Alcohol: 3.5% **Bottle:** 33cl

A blend of regular Limburgse Rose, the best Belgian wheat beer, known for its **fruity aroma and taste**, together with 10% of the purest Raspberry fruit. This combination is made in heaven, beer-heaven at the Sint Jozeph brewery in Belgium. **Lots of clumpy sediments** settles at the bottom of the glass after the pour. Random streaks of lace form on the glass on the drink down. Smell is of grains, spices, yeast, and some very fruity aromas. Taste is extremely fruity up front with some grain flavors on the finish. This beer has a crisp level of carbonation with a **bubbly mouthfeel**.

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1664 Rosé



Beer type
Aromatized pale lager

Alcohol by volume (ABV)
5.5%

Origin
Brasseries Kronenbourg, France

Available since
2013

Brewed with a touch of peach and raspberry, 1664 Rosé offers a perfect balance between sunny flavors of summer fruits and the subtle beer bitterness of a 1664 beer. 1664 Rosé is a beer at 5.5%, easy to drink and refreshing for a fun and savory moment with friends.

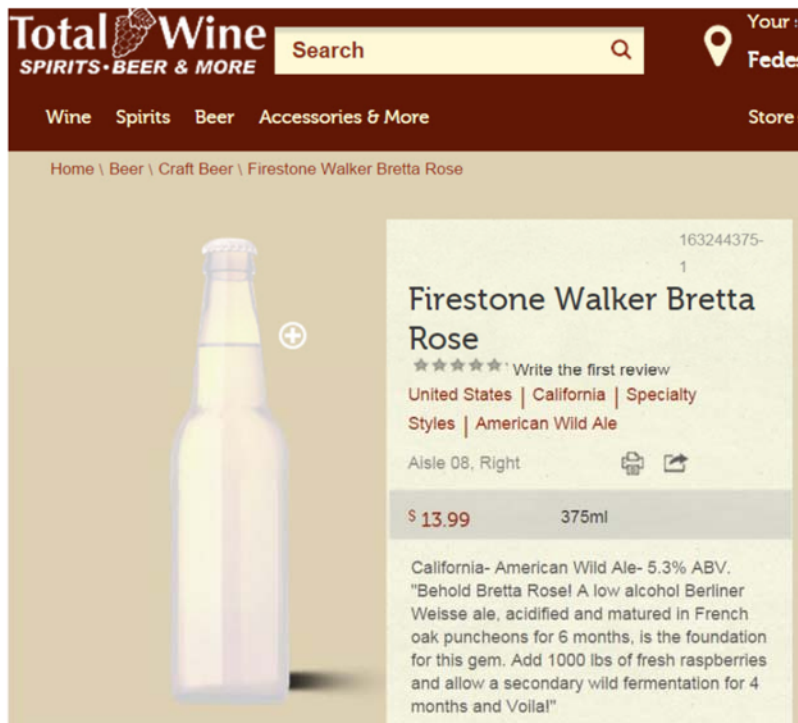
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²¹ BeerAdvocate.com, 6/25/2016, June 27, 2016 Office Action p. 9.

²² Belbevasia.com, 6/25/2016, June 27, 2016 Office Action p. 18.

²³ CarlsbergGroup.com, 6/25/2016, June 27, 2016 Office Action p. 19.

U.S. retailers such as Total Wine purvey beers of this sort:

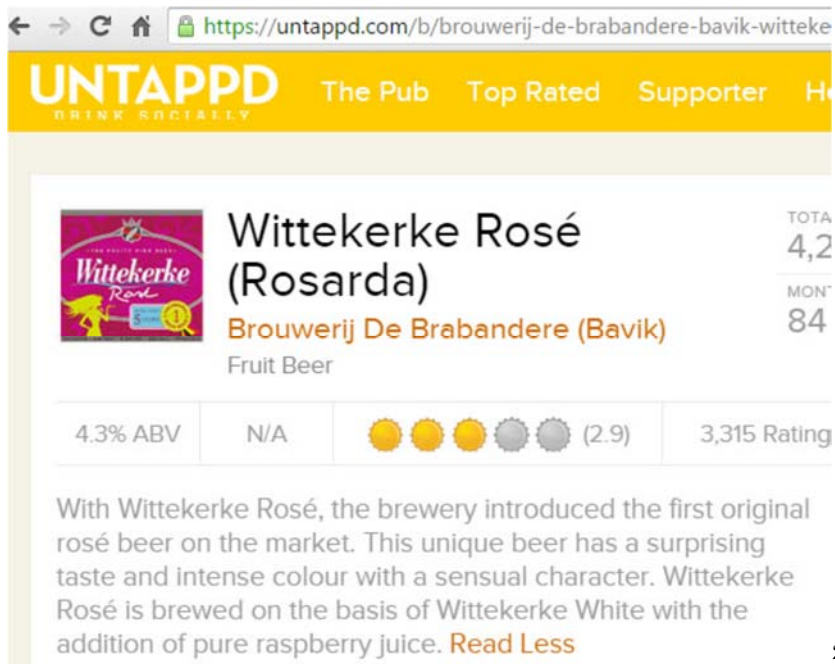


²⁴ TotalWine.com 10/23/2016, Oct. 24, 2016 Office Action p. 71.

²⁵ TotalWine.com 10/23/2016, Oct. 24, 2016 Office Action p. 72.

“[E]vidence of competitors’ use of particular words as the name of their goods or services is, of course, persuasive evidence that those words would be perceived by purchasers as a generic designation for the goods and services.” *Continental Airlines, Inc. v. United Air Lines, Inc.*, 53 USPQ2d 1385, 1395 (TTAB 1999). So is evidence of generic use in articles, on the Internet, and among members of the general public. *See In re Noon Hour Food Prods. Inc.*, 88 USPQ2d 1172, 1179 (TTAB 2008). Here the Examining Attorney has adduced articles, blogs, and Internet posts and comments discussing, reviewing, and rating rose beers:

- UNTAPPD.com, a networking service that allows beer drinking members of the public to rate beers they consume, contains this entry:



- RATEBEER.com, which maintains a forum for beer lovers to share opinions of beers, contains the following ratings of Schulten Brau Rosé Bier:

²⁶ Untappd.com 10/18/2016, Oct. 24, 2016 Office Action p. 40.

Hazy orange with a very low white head. Taste is more like a sparkly berry lemonade than a Rosé beer, even though it has some aftertaste bitterness. Not too bad as a daytime refresher, but below average for a rosé beer.

T Kolléke Rosé received the following ratings:

Orange to pinkish colour. Quite nice and original. Smells a bit sweet, but also like glue. Taste is like a badly made rootbeer. Palate is okay though. Not the best rosé beer out there.

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Tap at KBC, Den Bosch: Not so keen of the explosion of the sweet Rosé beers, but this one is different. Not so sweet as the commercials, but have some bitter in it.

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- BEERADVOCATE.com, founded in Boston in 1996, contained the following review of Schultenbrau Rosé:

I knew something was odd with this beer from the moment I opened the 6-bottle package and took a look at the bottle. The beer seemed to be too clear for a rose, even though I was looking at it while it was still in its brown bottle. The most Rosé beers I had till now were Wit beers with some strawberries/raspberries juice and/or a coloring agent, in order to get that characteristic pink colour. And because of that, those roses tend to be quite hazy and in most cases non transparent at all.

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Wieckse Rosé received the following review:

A: The beer is clear dark rosé in color and has a light to moderate amount of carbonation. It poured with a thin pink head that died down and left a collar around the sides of the glass.

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- CRUSHED.com, devoted to rosé wines, carried this article about rosé beers:

²⁷ RateBeer.com 10/18/2016, Oct. 24, 2016 Office Action p. 47.

²⁸ RateBeer.com 10/18/2016, Oct. 24, 2016 Office Action p. 48 (highlighting added by Examining Attorney).

²⁹ BeerAdvocate.com 10/24/2016, Oct. 24, 2016 Office Action p. 49.

³⁰ BeerAdvocate.com 10/24/2016, Oct. 24, 2016 Office Action p. 59.

The screenshot shows a web browser window with the URL crushed.com/the-new-rose/. The page title is "The new rosé?! - Cru". The website header features the "CRUSHED" logo and navigation links for HOME, SOCIAL, ARTICLES, and CONTACT. The main article is titled "The new rosé?!" and is dated August 21, 2016, by Nadia Dubeau. The article text includes phrases like "That's rosé beer!" and "Cheers to rosé beer!". The sidebar contains social media icons for email, Facebook, Twitter, Pinterest, and Instagram, along with a "Sign me up!" button. Below that, a "FROM OUR WRITERS" section lists several articles with dates and titles, such as "The Rosé Olympics", "A Rosé for Every Mood", "Awesome Vacation Destination Saint-Tropez", "Champagne Liébart-Régnier", "The Tour de France: Sip and Watch", and "Pinknic NYC".

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“These examples of competitors and commentators using the term ... as a category or type of product is persuasive evidence that the relevant consumers perceive the term as generic.” *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010).

³¹ Crushed.com 10/18/2016, Oct. 24, 2016 Office Action p. 60.

Here, the term “rose” is a generic adjective for a category or type of beer. *See, e.g., In re Cent. Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998) (ATTIC generic for sprinklers used in attics); *Sheetz of Del.*, 108 USPQ2d at 1366 (FOOTLONG generic for sandwiches, excluding hot dogs). Although some use the term “rosé beer” rather than “rose beer,”³² the examples above often use “rosé” and “rose” interchangeably to identify the products’ color. The two terms have similar definitions, with the color “rose” defined as “a moderate purplish red” and “rosé” defined as “pinkish.”³³ And relevant customers browsing through a beer aisle of a liquor store would be very unlikely to distinguish between the two. “[M]inor variations in the display of a generic term ... typically are legally insignificant.” *In re Noon Hour Food Prods.*, 88 USPQ2d at 1173n. 2 (TTAB 2008) (finding differences between “bondost,” “Bondost,” “Bond Ost,” and “Bond-Ost” cheese legally insignificant).

In sum, even if the relevant public does not currently use the term “rosé” or “rose” as often for beer as for wine, the evidence adduced by the Examining Attorney—including use of “rose” by Applicant, by its competitors, by retailers, by reviewers, and by members of the public—indicates that the relevant public would understand ROSE primarily to refer to a key aspect and a subcategory of beer based mixed beverages. *See generally In re Cordua Rests.*, 118 USPQ2d at 1635; *Marvin Ginn*, 228 USPQ at 530; *In re 1800Mattress.com*, 92 USPQ2d at 1685. “[T]his term is

³² *See* Applicant’s brief p. 9, 7 TTABVUE 14.

³³ Merriam-Webster.com 10/24/2016, Dictionary.reverso.net/French-english/rosé, Oct. 24, 2016 Office Action pp. 98-99.

generic and should be freely available for use by competitors.” *In re Cent. Sprinkler Co.*, 49 USPQ2d at 1199.

II. Conclusion

Based on our careful consideration of all the arguments and evidence of record, including those portions we have not mentioned, we conclude that the Examining Attorney has demonstrated by clear and convincing evidence that ROSE is generic for and incapable of distinguishing the goods identified in Applicant’s subject application. 15 U.S.C. §§ 1091(c), 1127.

Decision: The refusal to register Applicant’s mark ROSE is affirmed.