

THIS OPINION IS A
PRECEDENT OF THE TTAB

Mailed:
July 18, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Premiere Distillery, LLC

Serial No. 77928717

Michael G. Kelber of Neal Gerber & Eisenberg LLP for
Premiere Distillery, LLC.

Ramona Ortiga Palmer, Trademark Examining Attorney, Law
Office 117 (Brett Golden, Managing Attorney).

Before Holtzman, Kuhlke and Mermelstein, Administrative
Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Premiere Distillery, LLC has filed an application to
register the mark REAL RUSSIAN in standard character format
on the Principal Register for "vodka" in International
Class 33.¹

The examining attorney has refused registration on the
ground that the mark is primarily geographically

¹ Application Serial No. 77928717, filed February 5, 2010, under
Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on
an allegation of a bona fide intention to use the mark in
commerce.

deceptively misdescriptive under Trademark Act Section 2(e)(3), 15 U.S.C. § 1052(e)(3).

To maintain a refusal under Section 2(e)(3), the Office must establish that (1) the primary significance of the mark is a generally known geographic location, (2) the relevant public would be likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation would be a material factor in the consumer's decision to purchase the goods. In re California Innovations Inc., 329 F.3d 1334, 66 USPQ2d 1853, 1858 (Fed. Cir. 2003).

Primary Significance

The examining attorney has established that Russia is a geographic location known to the relevant public. See, e.g., <http://dictionary.reference.com> based on Random House Dictionary (2011);² and www.wikipedia.org "Russia" attached to January 12, 2011 Office Action.

In evaluating the likely meaning of REAL RUSSIAN we must consider the mark in relation to the goods with which

² The examining attorney's request for judicial notice of the dictionary definition attached to her brief is granted. The Board may take judicial notice of dictionary definitions. In re Red Bull GmbH, 78 USPQ2d 1375, 1378 (TTAB 2006). See also University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Serial No. 77928717

the mark is (or will be) used and from the perspective of the relevant purchasers. In re Jonathan Drew Inc., 97 USPQ2d 1640, 1643 (TTAB 2011). Applicant has applied for the phrase REAL RUSSIAN for use in connection with vodka.

Applicant argues that the primary significance of RUSSIAN is not a generally known geographic location because the definitions of record "include multiple meanings for the term 'Russian,' ... [and] geography is merely one of a number of meanings the term can have." Br. p. 5. Without evidentiary support, applicant argues:

the Mark refers to various aspects of Applicant's heritage, business model and goods. For example, Applicant's distillery is the only American distillery known to Applicant that is completely owned by persons of Russian ancestry ... [and] according to the evidence submitted by the Examining Attorney, the term "Russian" can, and often does, refer to a specific ethnic group, which is exactly the case in this matter. Because Applicant's Mark creates a separate, readily understood meaning that does not refer to geography, but rather ethnicity, it should not be refused registration.

App. Br. 2-3.

The definitions of record include the following:

Russian *noun* 1 a : a native or inhabitant of Russia b: a member of the dominant Slavic-speaking ethnic group of Russia c : a person of Russian descent 2 : a Slavic language of the Russian people spoken as a second

language by many non-Russian ethnic groups of the Soviet Union and its successor states; Russian *adjective*;³ and

Russian *adjective* 1 Of or pertaining to Russia, an empire in eastern Europe with large possessions in northern and central Asia, or the Russians or their language.⁴

The fact that the word RUSSIAN may have other meanings in other contexts does not alter its geographic significance in the context of the relevant goods. See *In re Opryland USA Inc.*, 1 USPQ2d 1409 (TTAB 1986). Moreover, the other meanings, a language or ethnic group, ultimately relate back to the geographic location, Russia. *Id.* at 1413 (“While Nashville may have other connotations, these meanings are all so closely connected to the city of Nashville that they do not, in our opinion, obviate that term’s primary geographical sense.”) Finally, considered in the context of the goods, the relevant consumers would view REAL RUSSIAN used on vodka as meaning “of or pertaining to Russia.” *Id.* It is well-established that adjectival forms of geographic terms are also considered primarily geographically descriptive. *In re Joint-Stock Co. “Baik,”* 80 USPQ2d 1305 (TTAB 2006) (BAIKALSKAYA

³ Office Action (May 15, 2010) Merriam-Webster Online Dictionary.

⁴ Office Action (January 11, 2011) Wordnik www.wordnik.com.

Serial No. 77928717

equivalent of "from Baikal" primarily geographically descriptive of vodka); In re Jack's Hi-Grade Foods, Inc., 226 USPQ 1028, 1029 (TTAB 1985) (NEAPOLITAN for sausage emanating from United States primarily geographically deceptively misdescriptive); Ex Parte La Union Agricola Sociedad Anonima, 73 USPQ 233 (Comm'r Pats. 1947) (La Tarragonesa adjectival form of Tarragona indicating something from Tarragona geographically descriptive of brandy from Tarragona). Vodka emanating from Russia would be called Russian vodka; thus, the adjectival form retains the primary geographic significance. This is particularly true here given the strong historical and cultural connection of vodka with Russia. See *infra*.

Applicant's alternative contention that RUSSIAN simply connotes the "style" of vodka (which if that were the case would have prompted a refusal under Section 2(e)(1) based on mere descriptiveness) is not supported by the record. The excerpts simply discuss the various components of vodka generally used in different vodka producing regions (Russia, Poland, Sweden, etc.). For example, the excerpt submitted by applicant from the website Tastings.com includes the following:

Vodka is the dominant spirit of Eastern Europe. ... Rye and wheat are the classic grains for Vodka, with most of

the best Russian Vodkas being made from wheat while in Poland they are mostly made from a rye mash. Swedish and Baltic distillers are partial to wheat mashes. Potatoes are looked down on by Russian distillers, but are held in high esteem by some of their Polish counterparts. Molasses, a sticky, sweet residue from sugar production, is widely used for inexpensive, mass-produced brands of Vodka. American distillers use the full range of base ingredients. ... There are no uniform classifications of Vodka ... In Russia Vodka that is labeled *osobaya* (special) usually is a superior-quality product that can be exported, while *krepkaya* (strong) denotes an overproof Vodka of at least 56% ABV. ... Vodka Regions ... Eastern Europe is the homeland of Vodka production. Every country produces Vodka, and most also have local flavored specialties. Russia, Ukraine and Belarus produce the full range of Vodka types, and are generally acknowledged to be the leaders in Vodka production. ... Vodka in Russia ... Russians firmly believe that Vodka was created in their land. ... Vodka production became an integral part of Russian society. ... By the 18th and well into the 19th century the Russian Vodka industry was probably the most technologically advanced industry in the nation. ... Vodka production in the current Russian Federation has returned to the pre-Revolutionary pattern.⁵

Rather than discussing a "style" of vodka the article points to how vodka is distinguished depending on the geographic origin.

⁵ Applicant Response (November 12, 2010) Exh. A (*All About Vodka*, www.tastings.com/spirits/vodka.html).

The determination of whether a mark is geographically deceptively misdescriptive (or geographically descriptive) must be based on the mark as a whole. In re Sharky's Drygoods Co., 23 USPQ2d 1061 (TTAB 1992). To the extent there would be any doubt that the primary significance of the word RUSSIAN used on vodka is a geographic location, the addition of the word REAL serves to underscore the meaning of geographic origin. REAL is defined as "not artificial, fraudulent, or illusory : genuine" and "being precisely what the name implies."⁶ Far from detracting from the primary geographic significance, the word REAL emphasizes the geographic significance by underscoring that the vodka is genuinely of RUSSIAN origin.

In view of the above, we find that the primary significance of the mark REAL RUSSIAN used in connection with vodka is geographic.

Goods/Place Association

Turning then to consider the goods/place association, we first note that there is no dispute that the goods do not emanate from Russia. See Applicant's Response dated August 27, 2008 ("...Applicant states that its goods will not be manufactured or originate in or have any other geographic connection with the locations named in the

⁶ Office Action (May 15, 2010) Merriam-Webster Online Dictionary.

mark.") The connection between vodka and Russia has been considered by this Board on several occasions. See, e.g., Joint-Stock Co. "Baik," 80 USPQ2d 1305. Not surprisingly, the evidence of record here overwhelmingly supports a finding that Russia is extremely well known for vodka. We begin by observing that the word "vodka" in the English language is adopted from the Russian language.⁷

In support of this element, the examining attorney submitted excerpts from various online sources showing vodka linked with Russia. A few representative samples are produced below:

Russian Vodka is a famous alcoholic beverage of exceptional quality, which is loved and enjoyed by millions of people around the World. There are hundreds of vodka brands and cocktail recipes, still some of the best vodka is top quality Russian Vodka. ... Vodka is a Russian word, a diminutive of "water";⁸

Russia, with its long, cold winters, is known for vodka...;⁹

Russia is famous for vodka;¹⁰ and

⁷ Merriam-Webster's Collegiate Dictionary (10th ed. 1999) Vodka n [Russ. fr. Voda water].

⁸ Office Action (May 15, 2010) www.russianvodka.com.

⁹ Office Action (January 12, 2011) www.world66.com.

¹⁰ Id. www.wordiq.com.

While Russians are most famous for
vodka...¹¹

The examining attorney also submitted excerpts from
newspaper articles from across the United States
referencing Russian vodka, including the following:

Adding sugar is forbidden with Polish
but common with Russian vodkas.;¹²

The Nets announced a five-year
sponsorship agreement with Russian
vodka Stolichnaya last week and on
Sunday stopped in Moscow as part of the
NBA's European preseason tour ...;¹³

Enchanted by that signature Shultz
hospitality, the president and his wife
extended the Shultzes an open
invitation to visit Russia. "If that
ever happens, I asked the president to
promise me something," Shultz said
later, with a laugh. "That our visit
would include Russian caviar and
Russian vodka.";¹⁴

The neighbors were heading to a Maya
Azucena concert at the Blue Note, and
since Wanda was just finishing up her
salsa class nearby, they impulsively
invited her for a meal. "It's New
York," Wanda said. "Salsa music. Thai
food. Then, who knows, maybe some
Russian vodka a little later.";¹⁵

¹¹ Id. www.travelallrussia.com.

¹² Id. "Sun-Times Media" (December 29, 2010).

¹³ Id. "Sun-Sentinel" (October 12, 2010).

¹⁴ Id. "San Francisco" Chronicle (July 11, 2010).

¹⁵ Id. "New York Times" (May 30, 2010).

Party Animals Spirits of the wild
Guests mingle gingerly with zoo
creatures at Wild Wines of the World
benefit ... Perhaps the addition of
Russian vodka, margaritas in Mexico,
Caribbean mai tais and a German
biergarten brought the animal (lover)
out in a few more people...;¹⁶

Americans have been warming up to
Russian vodka since the beginning of
the Cold War. The first kiss started
in 1946, when Stolichnaya imported the
wheat-based vodka to the States.;¹⁷ and

Everyone knows Russian vodka is the
stuff (the bartender at Irina's
recommended Quadro \$3 on Thursdays),
but we were on a quest to try Russian
beers.¹⁸

Applicant argues that the examining attorney's
evidence merely shows that the term RUSSIAN is often used
in connection with vodka, but not that consumers believe
that all vodkas sold in connection with a mark comprised,
in part, of the term RUSSIAN originate in Russia. In
support of its position, applicant relies on Pernod Picard
USA LLC v. Bacardi USA, Inc., 653 F.3d 241, 99 USPQ2d 1553
(3rd Cir. 2011). However, that case involved a claim of
false advertising under Section 43(a)(1)(B), 15 U.S.C. §
1125, wherein the court stated that "even if the words

¹⁶ Id. "Arkansas Democrat-Gazette" (May 23, 2010).

¹⁷ Id. "Plain Dealer" (January 15, 2010).

¹⁸ Id. "Des Moines Register" (August 19, 2009).

'Havana Club,' taken in isolation, may be understood as indicating a product's geographic origin in Havana, Cuba, those same words cannot mislead a reasonable consumer who is told in no uncertain terms that 'Havana Club' is a brand of rum made in Puerto Rico." *Id.* at 1560. The court specifically distinguished the circumstances before it in considering the entire label from circumstances where the challenged words are considered alone:

Pernod counters, however, that the words "Havana Club" are misleading as to the geographic origin of the rum. If we were dealing with those words in isolation, we might agree. There are administrative decisions that do. ... But, as we have already emphasized, we are not dealing with those words in isolation. This is not a trademark case, and certainly not one addressing trademark registration ... We are obligated in this false advertising case under §43(a)(1)(B) to look at the words "Havana Club" in the context of the entire accused advertisement, the label of the rum.

Id. at 1559-1560.

Applicant argues that the labels associated with its vodka would, in any regard, dispel any misunderstanding, because they include the wording "Hand Made in the U.S.A." However, this is of no assistance to applicant in this case. In determining registrability, we make our analysis based on the applied-for mark, which consists solely of the

words REAL RUSSIAN. Other matter appearing on the label or specimens "cannot negate the geographic deceptive misdescriptiveness that may be conveyed by the mark itself." In re Compania de Licores Internacionales S.A., 102 USPQ2d 1841, 1848-49 (TTAB 2012) (rejecting application of *Pernod* in similar circumstances). See also In re Budge, 857 F.2d 1988, 8 USPQ2d 1259, 1261 (Fed. Cir. 1988) (finding wording of advertising not relevant to trademark significance in deceptiveness analysis).

Applicant also contends that the Court reasoned that "Havana Club rum has a Cuban heritage, and therefore, depicting such a heritage is not deceptive." App. Br. p. 2. In fact, it was the District Court that made that finding. The Court of Appeals stated that it "may not agree with every aspect of the [District Court's] analysis" and, regarding the issue of whether "geographic origin" could include the concept of "heritage," the Court of Appeals questioned such an analysis and specifically declined to decide that issue. *Id.* at 1558 n. 11. Again, the Court's finding was made in the context of reviewing the label overall, including the wording "made in Puerto Rico," while we may consider only what applicant seeks to register.

The examining attorney's evidence clearly shows that Russia is well-known for vodka. Based on the record, we find that there is a strong goods/place association between vodka and Russia.

Materiality

"[I]n order to establish a prima facie case of materiality there must be some indication that a substantial portion of the relevant consumers would be materially influenced in the decision to purchase the product or service by the geographic meaning of the mark." In re Spirits International N.V., 563 F.3d 1347, 90 USPQ2d 1489, 1495 (Fed. Cir. 2009).

The evidence submitted establishes that vodka is an important product of Russia and that both the public in general, and vodka drinkers in particular, would be aware that Russia is well-known for vodka. In view of this demonstrated fame and reputation of Russian vodka to the relevant public, we may infer that a substantial portion of consumers who encounter REAL RUSSIAN on applicant's vodka are likely to incorrectly believe that the vodka comes from Russia and that such mistaken belief would materially influence their decision to purchase the vodka. California Innovations, 66 USPQ2d at 1857-58 (noting that evidence showing that the goods are, for example, a "principal

Serial No. 77928717

product" of the place named in the mark, or that the place is "noted for" or "renowned for" the goods, has been sufficient to satisfy the test for materiality).

Conclusion

In view of the above, we conclude that the proposed mark REAL RUSSIAN for use in connection with applicant's vodka is primarily geographically deceptively misdescriptive.

Decision: The refusal under Section 2(e)(3) is affirmed.