

**THIS DECISION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re VRBIA, Inc.

Serial No. 78263738

David Bogart Dort of Dort Close IP Law Group for applicant.

John T. Lincoski, Jr., Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).

Before Quinn, Hairston and Bottorff, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

VRBIA, Inc. filed an application to register the mark NOT MADE IN FRANCE for "clothing: T-shirts, hats, armbands, headbands, socks, jackets [and] scarves."¹

The trademark examining attorney refused registration on the ground that applicant's mark, if used in connection with applicant's goods, would be merely descriptive of them under Section 2(e)(1) of the Trademark Act.²

¹ Application Serial No. 78263738, filed June 18, 2003, alleging a bona fide intention to use the mark in commerce.

² In making the refusal, the examining attorney also put applicant on notice that, if a statement of use were ever filed, applicant might face an ornamentation or informational slogan

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.³ An oral hearing was not requested.

Applicant argues that the applied-for mark is not merely descriptive of the goods, but rather is "irrelevant to the associated goods, which are intended to be clothing with good-natured humorous statements or icons (such as the French flag in a universal "NO" symbol), regarding the current condition of Franco-American relations." (Brief, p. 1). Applicant contends that, although it is possible that the goods could be manufactured in France, the mark does not immediately indicate any information about the goods such as quality, function, feature or purpose. Applicant further states that its mark is a "satirical application of the country of origin label included on most goods," and that "the public would need to use imagination

refusal. Slogans that are considered to be merely informational in nature are not registrable. See *In re Remington Products Inc.*, 3 USPQ2d 1714 (TTAB 1987) [PROUDLY MADE IN USA for electric shavers held incapable of functioning as a mark].

³ Applicant, in its brief, notes that the only issue on appeal is mere descriptiveness, and that the issues of geographical descriptiveness or geographical misdescriptiveness were not raised by the examining attorney. Indeed, the only issue before us in this appeal is mere descriptiveness under Section 2(e)(1). See TMEP §1210.02(c)(3d ed. rev. 2 2003)[when a geographic term appears in a mark, the distinction of whether the mark should be considered geographic or descriptive "can be a particularly difficult one"]. See *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999).

to reach the conclusion that NOT MADE IN FRANCE is a satirical use of the ubiquitous country of origin label included in most goods." According to applicant, "the entire point of the obtaining protection for the mark NOT MADE IN FRANCE is that the mark will attract goodwill because it will be recognized as a humorous satire on the country of origin label." (Brief, p. 3).

In issuing the refusal, the examining attorney points to applicant's statement that "[a]lthough the Applicant concedes that France is not likely to be the country of origin for this clothing line, there is no reason that it will not be." The examining attorney thus concludes that since applicant's clothing likely will not originate in France, the mark NOT MADE IN FRANCE is merely descriptive of the clothing. That is, the mark describes clothing manufactured or otherwise originating in nations other than France. To the extent that the mark conveys a humorous statement relating to the current decline in Franco-American relations over the war in Iraq, the examining attorney contends that this meaning is not discernable without reference to other slogans or features on the clothing, but which are not part of the mark. Assuming that the mark will properly be used as a trademark on clothing, the purchasing public, according to the examining

attorney, will not readily associate the mark with this commentary on Franco-American relations. In support of the refusal, the examining attorney submitted excerpts retrieved from an electronic database showing uses of the phrase "not made in France" in connection with products originating anywhere other than France, as well as a page from a third-party's Internet web site.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought. That a term may have other

meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

The record includes many excerpts showing uses of the phrase "not made in France" to describe products having their origins from somewhere other than France. The examples submitted by the examining attorney show descriptive uses of the phrase "not made in France" in connection with a variety of products, including food, wine, and artwork. Also of record is an excerpt from an Internet web site offering for sale a t-shirt bearing a message in support of the United States' military efforts in the Middle East. The advertisement indicates as follows: "NOT made in France. Naturally!"

Based on the record before us, we find that the mark sought to be registered is merely descriptive. As applicant readily concedes, its clothing items likely will not originate in France; thus, the phrase "not made in France," on its face, immediately describes this fact. The mark immediately informs, without speculation or conjecture, prospective customers that applicant's goods are not made in France.

Applicant's principal argument is, of course, that the average consumer will not perceive the mark as descriptive, but rather that the consumer will view the mark as a

satirical or humorous play on the country of origin labels applied to clothing. The argument essentially is that the mark has a double entendre by virtue of the current state of affairs in Franco-American relations.

Applicant's main argument is not persuasive. As pointed out by the examining attorney, the question of mere descriptiveness is determined on the basis of the mark itself, and not on the basis of intended usage with other ornamental slogans, designs or icons. The proposed mark fails, on its face, to produce the additional meaning suggested by applicant. The effect of other indicia (that might appear on the clothing) on consumer perceptions cannot be considered in our determination of mere descriptiveness. See *In re Wells Fargo & Co.*, 231 USPQ 95 (TTAB 1986). In the absence of these other indicia, such as the humorous sayings regarding Franco-American relations to which applicant refers, we find it unlikely that the average consumer will make the association suggested by applicant. TMEP §1213.05(c) (3d ed. rev. 2 2003).

Decision: The refusal to register is affirmed.