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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Suvir Saran

Serial No. 78713958

Andy I. Corea of St.Onge Steward Johnston & Reens LLC for
Suvir Saran.

Janice L. McMorrow, Trademark Examining Attorney, Law
Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Grendel, Kuhlke and Wellington, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Suvir Saran, applicant herein, seeks registration on
the Principal Register of the mark AMERICAN MASALA (in
standard character form) for goods and services identified
in the application as "foodstuff product lines, namely,
sauces, spices, spice blends, food flavorings, seasonings,
curry powder, prepared entrees consisting primarily of

rice," in Class 30, and "restaurant services" in Class 43.¹ Regarding the word MASALA, applicant has supplied the following translation statement: "The foreign wording in the mark translates into English as 'Spice'." Applicant has disclaimed the exclusive right to use MASALA apart from the mark as shown.

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark, when used on or in connection with the identified goods and services, is primarily geographically descriptive of them. Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2). Applicant has appealed the final refusal.

After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

A mark is deemed to be primarily geographically descriptive, and thus unregistrable under Trademark Act Section 2(e)(2), if (i) the primary significance of the mark is the name of a place known generally to the public, and (ii) the public would make a goods/place association, that is, believe that the goods or services for which the

¹ Serial No. 78713958, filed on September 15, 2005. The application is based on applicant's asserted bona fide intention to use the mark in commerce. Trademark Act Section 1(b), 15 U.S.C. §1051(b).

mark is sought to be registered originate in that place. If those two elements are met, and if the applicant's goods and/or services in fact originate in or from the place named, then the mark is primarily geographically descriptive, and registration must be refused under Section 2(e)(2). See *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305 (TTAB 2006); *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704 (TTAB 1988).

For the reasons discussed below, we find that the Trademark Examining Attorney has submitted evidence sufficient to make out a prima facie case that applicant's mark is primarily geographically descriptive of applicant's goods and services. We further find that applicant has failed to rebut the Trademark Examining Attorney's prima facie showing.

First, we find that the primary significance of the mark AMERICAN MASALA is that of a generally known geographic place, i.e., the United States of America, because the mark merely combines the geographic term AMERICAN with the generic or descriptive word MASALA. See *In re J.T. Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); *In re Carolina Apparel*, 48 USPQ2d 1542 (TTAB 1998); *In re California Pizza Kitchen, Inc.*, *supra*.

AMERICAN is the adjectival form of AMERICA, a generally known geographic place. The word is defined as "of or relating to the United States of America or its people, language, or culture." (The American Heritage Dictionary of the English Language (4th ed. 2000)).² The adjectival form of a geographic term is itself a geographic term for purposes of our geographic descriptiveness analysis. See *In re Joint-Stock Co. "Baik"*, *supra*; *American Paper & Plastics Products, Inc. v. American Automatic Vending Corp.*, 152 USPQ 117 (TTAB 1966).

Applicant's translation statement in the application indicates that MASALA means "spice," and applicant has disclaimed the word. The Trademark Examining Attorney has submitted dictionary evidence which defines "masala" as "a mixture of spices ground into a paste or powder and used in Indian cookery." (Compact Oxford English Dictionary). Also of record is a glossary entry of "masala" which, in pertinent part, describes it as "spices, herbs and other seasonings ground or pounded together. When wet ingredients like water, vinegar, yogurt etc. are added to the spice mixture it is appropriately called a 'wet

² The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

masala.' Dry spice mixtures are also called 'Garam masala' or commonly known in the world as 'Curry powder.'"

(Glossary of Indian Food & Cooking Terms, at www.cuisinecuisine.com.)

Based on this evidence, we find that MASALA is generic for certain of applicant's Class 30 goods, i.e., "spices, spice blends, food flavorings, seasonings, curry powder," and that it at the least is merely descriptive of applicant's Class 43 "restaurant services," which must be presumed to include restaurants serving Indian dishes which feature masala.

Having considered the words AMERICAN and MASALA separately, we further find that the composite AMERICAN MASALA would be perceived primarily as the name of the place of origin of applicant's goods and services. It primarily connotes "masala in or from America," i.e., "American masala." For all of these reasons, we find that the Trademark Examining Attorney has established, prima facie, the first element of her Section 2(e)(2) refusal.

Applicant attempts to rebut this prima facie showing, arguing that the composite AMERICAN MASALA "creates a popular, separate, non-geographic meaning."

First, applicant contends that MASALA "has prominent meanings other than 'a mixture of spices.'" Specifically,

applicant contends that the term MASALA "has evolved far beyond this singular meaning to encompass much more, including the blending of [Indian] art, entertainment, literature and cuisine." In support of this contention, applicant relies on references to "masala" from six Internet websites.

The first reference appears at www.masala.de, to what appears to be a musical group based in Germany named "Masala. The text on the webpage reads: "Masala is an outstanding global music and dance experience, where music, dance and rhythm are joint [sic] together in a perfect manner, enhanced by special light and stage effects. Music elements from jazz, pop and rock are blended here together in a perfect manner with the most sophisticated classical music and dance forms of South India."

The second Internet reference to "masala" upon which applicant relies is found at www.thecore.nus.edu, consisting of an undated article entitled "The 'Masala' Film Recipe." The text of the article includes: "At the end of the seventies this film genre was nicknamed masala, which in Hindi means an assortment of spices used to prepare what is commonly known as curry. The term masala alludes to the whole range of genres and emotions that one can expect to find in a Bollywood film."

Applicant's third Internet reference to "masala" is found at www.amazon.co.uk, consisting of a listing for a paperback book titled "Gypsy Masala." Nothing other than the title appears in the listing.

The fourth Internet reference to "masala" is found at www.imdb.com ("Earth's Biggest Movie Database"), and consists of an entry for the 1991 American movie called "Mississippi Masala," starring Denzel Washington. The entry includes reviews or comments from viewers of the movie, but there is nothing in the entry referring specifically to or using the term "masala."

The fifth reference is found at www.hollywoodmasala.com. The nature of this website is not clear, but it appears to be a website for aspiring actors from India. Aside from the domain name, no other reference to "masala" appears.

The final Internet reference to "masala" upon which applicant relies is found at <http://altnet.org>, which consists of an April 30, 2004 article entitled "Bollywood Ain't 'World Cinema.'" This article, which is fairly long and apparently academic in nature, has three scattered references to "masala" in connection with Indian film:

Perhaps because of its traditional storyline and epic scale, *Devdas* was selected to be screened at

the prestigious Cannes Film Festival in 2002, becoming one of the only popular Bollywood masala flicks to ever make it to this exclusive Euro-snooty art-house arena;

If Americans watching Indian films expect to see some sensitive high-art treatment of poor or premodern natives, then what happens when they are confronted with the cultural pastiche and masala of those musical-style spectacles churned out by the decidedly non-high-culture film factory for the masses that is Bollywood?; and

Over here in the US that set of interpretations tends to either reinforce tropes of classic Orientalism, freeze modern Indian masala culture into kitschy spectacle (as in the opening sequence of the indie classic Ghost World), or take the high-handed road of rejecting cultural hybridization as an unacceptable example of the McDonalidization of art.

Based on this evidence, applicant argues that MASALA has a meaning other than "spice," i.e., a connotation of "Indian culture," which would be perceived readily by purchasers in America, especially persons of Indian descent.

Applicant next argues that this second meaning of MASALA, when combined with the word AMERICAN, results in a composite which has a non-geographic significance. "In fact, the previous analysis shows that 'MASALA' has evolved to change the commercial impression of the proposed mark from 'American spice-blends' to 'Indo-American cultural blends.'" "As such, those familiar with the term

(especially those of Indian descent currently living in America) may broadly associate AMERICAN MASALA with products originating in India and reflecting the Indian culture in America." Applicant argues that "...by incorporating 'MASALA' and its various definitions, the mark AMERICAN MASALA clearly creates a readily and globally understood meaning which is non-geographic - it refers to the artistic expression of Indian culture through the lens of the American culture." Applicant further argues that "[w]hen used in connection with the goods of the Applicant, AMERICAN MASALA acquires a desirable connotation of rich Indian culture, cuisine, and entertainment. The Applicant's creative combination of 'AMERICAN' and 'MASALA' symbolizes the merge of two cultures to create a unique culinary experience." Similarly, "...when considered in its entirety, the primary significance of the AMERICAN MASALA mark is a reference to the unique blend of the American and Indian cultures."

We have carefully considered applicant's argument, but we find that the evidence applicant has submitted fails to support the argument. Specifically, we find that these few and fleeting references to "masala" in the Internet evidence submitted by applicant fall far short of establishing that the American public, upon encountering

the term used in connection with food products and restaurant services presumably featuring masala, would readily understand "masala" to refer to Indian culture generally, rather than to its obvious and primary culinary significance. We also find that the "double meaning" applicant asserts for the composite AMERICAN MASALA, i.e., that it reflects the blending of Indian and American cultures, would be much too subtle and tenuous to be readily understood by relevant purchasers.

In short, we find that notwithstanding applicant's Internet evidence, the primary significance of AMERICAN MASALA to the American purchasing public, *as applied to applicant's goods and services*, would be its geographic significance, i.e., food products and restaurant services featuring Indian spices or masala, which originate in or from America. Applicant's evidence is insufficient to rebut the Trademark Examining Attorney's prima facie showing under the first element of the Section 2(e)(2) refusal that the primary significance of the mark is that of a generally known place.

The second element of the refusal also is established in this case. It appears from the application that applicant is located in New York City; applicant does not contend otherwise. New York City is located in America.

Because applicant is located in America, and because America is not an obscure or remote place, we may presume that a goods/place and services/place association exists between applicant's goods and services and the place named in the mark. See *In re Joint-Stock Co. "Baik"*, *supra*; *In re Carolina Apparel*, *supra*. Nothing in the record rebuts such a presumption.

Because the primary significance of the mark is that of a generally known place, and because there exists a goods/place and services/place association between applicant's goods and services and the place named in the mark, and because applicant's goods and services in fact originate in or from the place named in the mark, we conclude that applicant's mark is primarily geographically descriptive of applicant's goods and services, and that registration therefore must be refused under Trademark Act Section 2(e)(2).

Decision: The refusal to register is affirmed.