

**This Opinion is Not a
Precedent of the TTAB**

Hearing: April 26, 2018

Mailed: May 25, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re gebana AG
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Serial No. 79189309
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Micah Corbin Gunn of Oppedahl Patent Law Firm LLC
for gebana AG.

Cynthia Y. Rinaldi, Trademark Examining Attorney,¹ Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Mermelstein, Masiello, and Hightower,
Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

gebana AG (“Applicant”) filed an application² for extension of protection to the United States of its International Registration of the standard character mark GLOBAL FARMERS’ MARKET for the following goods:

¹ At oral hearing, David Hoffman, Trademark Examining Attorney, argued for the USPTO.

² Application Serial No. 79189309 was filed on May 18, 2016 under Trademark Act Section 66(a), 15 U.S.C. § 1141f(a), based on International Registration No. 1303386 dated May 18, 2016, with a priority filing date of December 2, 2015.

Meat, fish, poultry and game, not live; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and dairy products excluding ice cream, ice milk, and frozen yogurt; edible oils and fats, in International Class 29;

Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals, namely, cereal bars; bread, pastry and confectionery made of sugar; ices for food, namely, fruit ice; sugar, honey, golden syrup; yeast, baking powder; salt; mustard; vinegar, condiments, namely, sauces; spices; ice for refreshment, in International Class 30;

Live animals; fresh fruits and vegetables; plant seeds; natural plants and flowers; foodstuffs for animals; malt for brewing and distilling, in International Class 31.

The Trademark Examining Attorney refused registration under Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of the goods. The Examining Attorney made the refusal final and denied Applicant's request for reconsideration. Applicant then appealed to this Board. The case is fully briefed, and an oral hearing was held on April 26, 2018. We reverse the refusal.

A mark is merely descriptive of goods within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought and the context in which the mark is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, we evaluate whether someone who

knows what the goods are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods. See *In re Gyulay*, 3 USPQ2d at 1010; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Further, a mark need not describe every one of the identified goods in an application in order to be considered merely descriptive. A descriptiveness refusal is proper with respect to all of the identified goods in an International Class if the mark is descriptive of any of the goods in that class. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). It is the Examining Attorney's burden to show, *prima facie*, that the mark is merely descriptive of Applicant's goods. *In re Gyulay*, 3 USPQ2d at 1010; *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016).

The Examining Attorney's position is that GLOBAL FARMERS' MARKET merely describes the provider of the goods. The Examining Attorney points to dictionary definitions showing that "global" means "relating to the whole world";³ and "farmers' market" means "a market at which farm produce is sold directly to the public by the producer," and "a market where food growers sell their produce directly to the

³ Definition from COLLINS ENGLISH DICTIONARY at <collinsdictionary.com>, Office Action of September 7, 2016 at 5. All citations to the TSDR are to the pdf version.

public.”⁴ The Examining Attorney has also provided internet evidence⁵ showing use of the expression “farmers market” by three organizations that conduct such markets: Westover Farmers Market, Columbia Pike Revitalization Organization farmers market, and Arlington Farmers Market.⁶ All three of these markets are venues, operating only on Sunday mornings, for the retail sale of foods by numerous vendors.

The Examining Attorney argues that GLOBAL is “merely descriptive of services that are worldwide in scope”; that FARMERS’ MARKET “is highly descriptive, if not generic, referring to a market where farmers sell to consumers”; and that the mark as a whole “refers to a marketplace where farmers from around the world can sell their goods, and in this case, describes the provider of the goods.”⁷ The Examining Attorney appears to argue that the mark describes the goods because Applicant, the source of the goods, is a “global farmers’ market.” The facts do not support this argument, because Applicant is not a “farmers’ market” at all, according to the Examining Attorney’s definition of that term.⁸ However, the term “farmers’ market”

⁴ Definitions from COLLINS ENGLISH DICTIONARY and COBUILD ADVANCED BRITISH ENGLISH DICTIONARY at <collinsdictionary.com>, *id.* at 9. Although the source of the second definition is identified as a “British English” dictionary, Applicant did not object, so we have considered it.

⁵ With respect to the internet evidence submitted with the Office Action of September 25, 2017, the Examining Attorney set forth in her Office Action the URLs where the evidence was found but did not set forth the date on which the web pages were accessed. When submitting web page evidence, examining attorneys must include the URL of the website and the date the excerpt was accessed. TMEP § 710.01(b) (October 2017). As Applicant has not objected, we have considered the Examining Attorney’s evidence.

⁶ Office Action of September 25, 2017 at 4-6.

⁷ Examining Attorney’s brief, 9 TTABVUE 7.

⁸ The evidence shows that Applicant is an international importer and distributor of foods, not “a market at which farm produce is sold directly to the public by the producer.” *See* the

might be perceived as descriptive of an aspect of the goods if Applicant sells them through farmers' markets or if Applicant obtains the goods from farmers' markets before selling them as its own.

Applicant, referring to the definition of "farmers' market" proposed by the Examining Attorney, argues that its mark is registrable as follows:

In combination, the terms "Global" and "Farmers' Market" are so inherently contradicting that the mark GLOBAL FARMERS' MARKET would be considered an oxymoron to the relevant consumer. . . . Practically speaking, a "Farmers' Market", by necessity, must be located in proximity to the actual place where its goods are produced or "farmed", otherwise, the farmer would not be capable of selling directly to the public. In contrast, a "Global Market" typically requires shippers, distributors, warehouses, customs agents and a plethora of other parties to get the goods from the hands of a producer located in a particular country to a consumer . . . The contrast between a "Farmers'" market and a "Global" market gives the mark an incongruous and otherwise non-descriptive meaning.

Indeed, at the very least, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required to connect the international company/place that sells the goods with the actual products⁹

While we appreciate the relevance of the individual words of Applicant's mark to a business that markets the produce of farmers on an international basis, as the Examining Attorney urges, we agree with Applicant that the combination of GLOBAL with FARMERS' MARKET creates an incongruity, and that customers encountering Applicant's mark on food products will experience a mental pause in

description of Applicant's business on Applicant's website, Office Action of September 25, 2017 at 7-8.

⁹ Applicant's brief at 11-12, 4 TTABVUE 12-13.

their effort to connect the meaning of the mark with the goods. *See In re Getz Found.*, 227 USPQ 571, 572 (TTAB 1985); *In re Shutts*, 217 USPQ 363, 364–65 (TTAB 1983); *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978).

We note the Examining Attorney’s argument that “there is a competitive need by others in the farming and agricultural food industry to use the wording ‘GLOBAL FARMERS’ MARKET’”¹⁰ However, the three examples of third-party use of the term do not persuade us. The one actual competitor, Fair Trade USA, which offers branded produce and seafood, uses “global farmers market” in its advertising copy, not to literally describe its foods or itself, but to say that its goods provide “that feeling year round” of the experience of a “local farmers market”; in other words, the company touts that its goods are *like* those that come from a farmers’ market.¹¹ The entity described in “Howard County Global Farmers Markets Rules & Procedures,” states that it “creates and operates producer-only farmers markets in Howard County Maryland.”¹² That is, it actually organizes and runs “farmers’ markets” as defined by

¹⁰ Examining Attorney’s brief, 9 TTABVUE 10. An examining attorney need not demonstrate that competitors need to use a term in order to demonstrate that it is merely descriptive, although such evidence, when it is available, can be relevant to an analysis under Section 2(e)(1). *Fat Boys Water Sports*, 118 USPQ2d at 1514.

¹¹ Office Action of September 7, 2016 at 12. The relevant text is as follows:

WELCOME TO THE GLOBAL FARMERS MARKET!

Warm days, fresh local fruits and veggies, . . . these are just a few reasons why we love our local farmers market. . . . The good news is you can find that feeling year round with Fair Trade That friendly logo on your favorite banana or mango is a signal that your product was grown with care by farmers working to build sustainable livelihoods and thriving communities.

It’s a global farmers market! Enjoy these special products and tasty recipes from the Fair Trade Farmers Market.

¹² *Id.* at 21, 23.

the Examining Attorney. It does not need to use the words “Global Farmers Market” as a descriptor for foods. The entity called “Global Farmers Market” in Alpharetta, Georgia, is described by a Yelp commentator as a “little grocer” and “an interesting little store that carries all of those special ingredients you need to make that Middle Eastern inspired meal.”¹³ A small retail store is not a “farmers’ market” as defined by the Examining Attorney; this trade name does not illustrate use of descriptive wording by necessity.

Finally, we note that the Examining Attorney has submitted copies of 14 third-party registrations of marks for food products (in the names of 11 different registrants), in which the registrants have disclaimed the exclusive right to use FARMERS MARKET apart from the mark as a whole.¹⁴ The goods and services identified in these registrations, besides produce, include pasta sauce, fruit beverages, food preparation services, television programs, reusable tote shopping bags, and deli sandwiches. The Examining Attorney argues, “Third party registrations featuring goods the same as or similar to applicant’s goods are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed”¹⁵ Third-party registrations can “show the sense in which ... a mark is used in ordinary parlance” and “are relevant to prove that some segment of the composite [mark] . . . has a normally understood and well recognized descriptive or suggestive

¹³ *Id.* at 18-19.

¹⁴ Office Action of September 25, 2017 at 9-46.

¹⁵ Examining Attorney’s brief, 9 TTABVUE 9.

meaning.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015). While the disclaimers are evidence that the term “farmers market” has been deemed merely descriptive of produce and other foods, in view of the fact that we have found Applicant’s mark as a whole to contain an incongruity, this evidence does not alter our determination that Applicant’s mark is not merely descriptive of Applicant’s goods.

Decision: The refusal on the ground that the mark merely describes Applicant’s goods is reversed.