This Opinion is Not a Precedent of the TTAB

Mailed: June 18, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re IV Science, LLC
d/b/a Green & Co.

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Serial No. 85609906

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Clifford D. Hyra of Symbus Law Group, LLC,
for IV Science, LLC.

Cheryl Clayton, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

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Before Kuhlke, Gorowitz and Hightower,
Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

IV Science, LLC, d/b/a Green & Co. ("Applicant") seeks registration on the Principal Register of the mark TEA QUILA (in standard characters) for

> Alcoholic beverages except beer in International Class 33.[1]

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

[1] Application Serial No. 85609906 was filed on April 26, 2012 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

ground that Applicant's mark is merely descriptive. After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.,* 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Chamber of Commerce of the U.S.,* 102 USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The burden is on the United States Patent and Trademark Office to make a prima facie showing that the mark in question is merely descriptive. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005) (citing *In re Abcor Development*); *see also In re Merrill Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir.

1987). The Examining Attorney asserts that the term "TEAQUILA" is used as the name of a drink made with tea and tequila and has submitted evidence thereof. Recipes for several alcoholic beverages containing both tea and tequila were submitted with the Office Action dated June 12, 2012. Examples include:

Tea-quila Toddy

(No Ratings Yet)

dotw-staff | Tuesday, December 14, 2010

Save Recipe

Created by Raul Yrastorza, courtesy of Cabo Wabo Tequila.

Ingredients

- 1 hibiscus tea bag
- Agave nectar to taste
- Cinnamon stick
- Fresh cilantro or basil
- 3–6 cloves
- 2 oz Cabo Wabo tequila blanco
- 8 oz water

Instructions

Heat water in a sauce pan or tea kettle until hot, but be careful not to boil. Remove from heat, add one tea bag and three cloves, and steep for 2–3 minutes. In a large glass tea cup, combine Cabo Wabo Tequila with a cinnamon stick, one clove, cilantro and orange slice. Remove tea bagfrom the hot tea, and pour into mug.

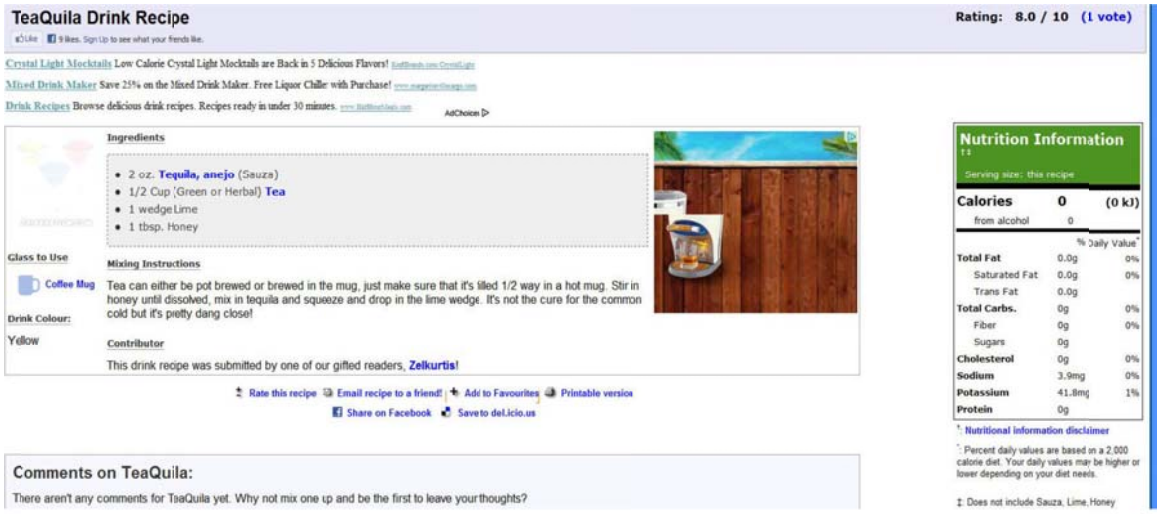
Tags: agave nectar, blanco, christmas, cilantro, cinnamon stick, cloves, Holiday Drinks, Holidays, Hot Drinks, tea, Tequila, Cabo Wabo

← El Diablo del Invierno

Citrus Winter Warmer →

How was this recipe? Please post a review!

Drink of the Week - www.drinkoftheweek.com - accessed 6-4-12;



DRINKNATION.COM – www.drinknation.com - accessed 6/4/12

Star Chefs.com – www.starchefs.com – accessed 6/4/12

(This recipe also appeared on the Fine Cooking website at www.finecooking.com and was attached to the Office Action dated April 16, 2013.)

This evidence establishes that the term TEA QUILA describes an alcoholic beverage made with tea and tequila. Applicant argues that the Examining Attorney's submission of "a few online drink recipes with titles including the wording Tea – quila or TeaQuila" does not establish that the mark TEA QUILA is descriptive because "each of these [recipes] is [for] a very different drink." Appeal

Brief, p. 5. Applicant's argument is not persuasive, particularly since each recipe includes both tea and tequila.

Applicant also asserts that the Examining Attorney has the burden of showing that the term TEA QUILA "does nothing but describe the goods or services with which it is used" and that such burden has not been met. Appeal Brief, p. 3 (emphasis supplied). This is an incorrect interpretation of the law. As discussed, *supra,* the context in which it is being used on or in connection with the goods, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Chamber of Commerce of the U.S.,* 102 USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Applicant also argues that the mark TEA QUILA is a double entendre. "A 'double entendre' is a word or expression capable of more than one interpretation. For trademark purposes, a 'double entendre' is an expression that has a double connotation or significance *as applied to the goods or services.* The mark that comprises the 'double entendre' will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services." TMEP § 1213.05(c) (April 2014).

Applicant specifically argues that the term TEA QUILA "can be interpreted first as a type of Quila, where Tea modifies Quila (which may be interpreted as a coined

or nonsense term, and is also type of bamboo, a city, and in Hindi/Urdu a fort or fortress)." Appeal Brief, p. 4. Applicant has submitted no evidence supporting its definition of "quila." Moreover, Applicant has submitted no evidence that anyone would interpret TEA QUILA as "tea" + "bamboo, or city, or fort, or fortress." Further, unless Applicant can establish that this interpretation of TEA QUILA has significance *as applied to the goods*, it is not a double entendre. *See* TMEP § 1213.05(c) (April 2014). In this case, TEA QUILA incorporates a simple misspelling of the alcoholic beverage tequila, that gives the TEA QUILA the meanings of both tea and tequila, which, as the record demonstrates, may be combined to create a mixed drink. Thus, far from being incongruous or a double entendre, the proposed mark merely describes the ingredients or features of its goods.

Applicant also argues that the term TEA QUILA sounds like tequila and that the mark could be interpreted as such. *See* Appeal Brief, p. 4. We agree. "Tequila" is defined as "a strong clear alcoholic drink from Mexico."[2] Thus, the term "tequila" is merely descriptive of alcoholic beverages. Further, as discussed *supra,* the Examining Attorney has established that TEA QUILA is the name of a drink made from tea and tequila

[2] We take judicial notice of the definition of "tequila" from Merriam-Webster On-Line Dictionary (www.m-w.com) . The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

In conclusion, we find the mark TEA QUILA to be merely descriptive of applicant's "alcoholic beverages."

Decision: The refusal to register Applicant's mark TEA QUILA is affirmed.