

This Opinion is Not a
Precedent of the TTAB

Mailed: May 8, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re V & C, LLC

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Serial No. 86321427

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Mark W. Hendricksen of Wells St. John P.S.
for V & C, LLC.

Andrea P. Butler, Trademark Examining Attorney, Law Office 124,
Lydia Belzer, Managing Attorney.

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Before Lykos, Kuczma, and Masiello,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

V & C, LLC (“Applicant”) has filed an application to register the mark ROSSO GRANATO in standard characters on the Principal Register for “wine” in International Class 33.¹ The application includes the following translation statement:

“The English translation of ‘ROSSO GRANATO’ in the mark is ‘RED GARNET’.”

Applicant has disclaimed ROSSO apart from the mark as shown.

¹ Application Serial No. 86321427, filed June 26, 2014, originally under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). During prosecution, on October 30, 2015, Applicant amended the filing basis to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a) by submitting an amendment to allege use.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of Applicant's identified goods; and under Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§ 1051-1053, 1127, on the ground the mark is merely informational and constitutes a common term that is used by those in Applicant's particular trade or industry, and does not function as a trademark to indicate the source of Applicant's goods and to identify and distinguish them from others. When the refusals were made final, Applicant appealed. The appeal is now fully briefed.

For the reasons set forth below, we affirm both refusals to register.

I. Mere Descriptiveness

First we consider the descriptiveness refusal. In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with the applicant's goods, is merely descriptive of them. 15 U.S.C. § 1052(e)(1).² "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). *See also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). By contrast,

² "No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it . . . (e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them"

a mark is suggestive if it “requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods.” *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive must be made in relation to the goods for which registration is sought, not in the abstract. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Bayer*, 82 USPQ2d at 1831. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods, and the possible significance that the mark would have to the average purchaser of the goods in the marketplace. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Bayer*, 82 USPQ2d at 1831; *In re Omaha Nat’l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987). In other words, the question is not whether someone presented only with the mark could guess the goods listed in the identification. Rather, the question is 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) (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). See also *In re Patent & Trademark Servs. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass’n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys” (*In re Bayer*, 82 USPQ2d at 1831) as well as “labels, packages, or in advertising

material directed to the goods.” *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). It may also be obtained from Applicant’s own website and specimen of use and any explanatory text included therein. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1565 (Fed. Cir. 2001).

It is well settled that the foreign equivalent of a merely descriptive U.S. English term is also merely descriptive. “[A] word taken from a well-known foreign modern language, which is, itself, descriptive of a product, will be so considered when it is attempted to be registered as a trademark in the United States for the same product.” *In re N. Paper Mills*, 64 F.2d 998, 17 USPQ 492, 493 (CCPA 1933). Under the doctrine of foreign equivalents, marks with foreign terms from common, modern languages are translated into English to determine descriptiveness. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)).

Thus, as a threshold issue, we consider whether it was proper for the Examining Attorney to invoke the doctrine of foreign equivalents to translate ROSSO GRANATO from Italian to English as “red garnet.”

Applicant contends that the doctrine of foreign equivalents is merely a guideline and not an absolute rule. In Applicant’s view, the doctrine should not be applied in this case because the “ordinary American purchaser” which “includes all American

purchaser[]s” would not stop and translate the Italian wording “rosso” to “red” or “granato” to “garnet.”³ Elaborating further, Applicant asserts:

[T]hat not only is there no evidence or basis of record to support the position that an ordinary American purchaser would stop and convert Rosso to red or Granato to garnet, but that because of the multiple potential meanings of Granato for example (such as a gemstone of different potential colors, or even a surname), it is Applicant’s position that it is not likely that an ordinary American purchaser would do so, especially in the context of its combination with ROSSO (which already means RED). There is no factual basis for the Examining Attorney’s unsupported conclusion on this issue.⁴

Applicant’s arguments reflect a misunderstanding of the doctrine. The doctrine of foreign equivalents applies when the term is from a common modern language and it is likely that “the ordinary American purchaser would ‘stop and translate [the term] into its English equivalent.” *Palm Bay*, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)). “The ‘ordinary American purchaser’ in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language. . . . [Defining ‘ordinary American purchaser’ as the ‘average American buyer’] would write the doctrine out of existence.” *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006) (citations omitted). *See also In re Spirits Int’l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009) (“The ‘ordinary American purchaser’ . . . includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.”). As such, the proper inquiry is not whether the “ordinary American

³ Applicant’s Brief, p. 4; 4 TTABVUE 5.

⁴ *Id.*

purchaser” is familiar with Italian; rather, the correct inquiry is whether the ordinary U.S. consumer familiar with Italian would “stop and translate” “ROSSO GRANATO” to the English equivalent of “red garnet.” The doctrine has been applied in instances where the foreign wording does not look or sound like the English language equivalent but the English translation is a literal and exact translation of the foreign wording. *See e.g., In re Thomas*, 79 USPQ2d at 1025 (holding MARCHE NOIR for jewelry likely to be confused with the cited mark BLACK MARKET MINERALS for retail jewelry and mineral store services where evidence showed that MARCHE NOIR is the exact French equivalent of the English idiom “Black Market,” and the addition of MINERALS did not serve to distinguish the marks); *In re Ithaca Indus., Inc.*, 230 USPQ 702 (TTAB 1986) (holding applicant’s mark LUPO for men’s and boys’ underwear likely to be confused with the cited registration for WOLF and design for various clothing items, where LUPO is the Italian equivalent of the English word “wolf”).

The Board has previously held that Italian is a common modern language, finding that “it does not require authority to conclude that Italian is a common, major language in the world and is spoken by many people in the United States.” *In re Ithaca Indus.*, 230 USPQ at 704-705. *See also, In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) (“We presume that a word in one of the common, modern languages of the world will be spoken or understood by an appreciable number of U.S. consumers for the goods at issue”). The Examining Attorney submitted the following

evidence to show that Italian continues to be a common modern language in the United States:

- U.S. Census Bureau, Camille Ryan, “Language Use in the United States: 2011,” (Aug. 13, 2013) Table 1 and Table 2, Italian among the 300 languages spoken in the United States and among the 17 common languages spoken at home.⁵

- Information provided by Core Languages website, a business that offers language instruction and translation for business professionals and their families, indicates that Italian is one of the top ten foreign languages spoken in the United States, stating that “it remains among the top five languages taught in public schools across the country and is one of the largest ethnic markets in America.”⁶

- Excerpts from the Campus Explorer website shows the top ten (10) out of 112 colleges that offer programs that focus on the Italian language and related dialects, for example, Middlebury College in Middlebury, Vermont; New York University (NYU) in New York, New York; University of Pittsburgh in Pittsburgh, Pennsylvania; University of Colorado in Boulder, Colorado; and the University of Washington in Seattle, Washington.⁷

Applicant criticizes this evidence as showing that only a small percentage of U.S. consumers speak Italian, with the numbers in decline. While the percentage may be small, we do not think that means that Italian is not a well-known, modern foreign language. In addition, the Examining Attorney submitted evidence that U.S. consumers of wine, especially those in the younger demographic, are more likely to seek out the meaning of foreign wording on a wine label. *See Wine Region Law Blog* article “In the News: Wine and Millennials (The Wine Drinkers of Today and

⁵ December 12, 2015 Office Action at 62-77. Page references to the ex parte examination history refer to the USPTO’s Trademark Status & Document Retrieval (TSDR) system.

⁶ July 9, 2016 Office Action at 46-49.

⁷ *Id.* at 59-63.

Tomorrow.”⁸ This desire of U.S. consumers to become more knowledgeable about Italian wine terminology is reflected in the availability of reference materials such as the *Italian Wine Central Glossary of Italian Wine Terms*. The glossary shows GRANATO meaning “garnet (color)” and ROSSO meaning “red.”⁹

We therefore agree with the Examining Attorney’s assessment that ordinary U.S. consumers familiar with Italian would “stop and translate” Applicant’s mark to “red garnet,” and that there is a strong possibility that U.S. wine enthusiasts unfamiliar with Italian would seek to educate themselves on the translation and meaning of “ROSSO GRANATO.” Accordingly, the Examining Attorney’s application of the doctrine of foreign equivalents was appropriate.

Having established that the ordinary U.S. purchaser will likely translate ROSSO GRANATO to “red garnet”, we analyze the evidence of record to ascertain whether “red garnet” is merely descriptive of “wine.” As noted above, Applicant has disclaimed ROSSO; nonetheless, we consider the mark as a whole in making our determination. In support of the descriptiveness refusal, the Examining Attorney submitted evidence relating to the common use of “red garnet” to describe an attribute of wine, namely a particular shade of red. By way of illustration, we highlight the following examples:

- Chateau Morrisette Winery and Restaurant, Red Wines, 5 Red Grapes described as “a deep red garnet in the glass, this youthful, aromatic wine is loaded with cherry & graham crackers.”¹⁰

⁸ December 12, 2015 Office Action at 85-86.

⁹ July 9, 2016 Office Action at 64-70.

¹⁰ April 30, 2015 Office Action at 6-8.

- Cross Keys Vineyards, Tavern wine, “This red garnet wine is our version of the famous aperitif port wine.”¹¹
- Monte De Oro Winery & Vineyards, 2010 Syrah described as “This 2010 Syrah offers a nice deep ruby red/garnet and oxblood color with slow moving, narrow tears.”¹²
- Plano Civic Chorus Wine Pull event, wines offered at the event wherein the 2010 Domaine Grand Veneur “Clos de Sixte” Lirac is described as follows: “This wine is made of 50% Grenache, 35% Syrah and 15% Mourvedre. It has an intense red garnet color.”¹³
- Only Great Wines.Com, S. Joseph – Rosso Piceno D.O.P. described as follows: “Color hue is ruby red tending towards the red garnet.”¹⁴
- Italy Farmhouses Rental, Italian Wines – Italy wine guide, Wine name: Vino nobile di Montepulciano, Characteristics and tasting notes: “Red garnet tending towards brown with aging, dry, woody aftertaste, soft flavor and bodied.”; Wine name: Aleatico di Gradoli, Characteristics and tasting notes: “Red garnet, fresh, mellow, sweet, aromatic, refined taste.”¹⁵
- Southern Hemisphere Wine Center, Tasting Notes regarding Vina Alicia Winery, Vina Alicia Morena 2008, “This is a dark red garnet wine, of good structure and excellent body.”¹⁶
- Arte Restaurant wine list: Barbaresco, Batasiolo 65 [an] “[i]ntense red garnet, which with time is enriched with nuances of orange. Characteristic, pleasant, and reminiscent of dry roses.”¹⁷
- Horton Vineyards Red Wine, Lot 14 Eclipse Red, Sweet Party Red, is described as “Red garnet colored, semi-sweet wine loaded with cherry and tropical aromas and flavors.”¹⁸

¹¹ *Id.* at 9-10.

¹² *Id.* at 15.

¹³ *Id.* at 34-36.

¹⁴ *Id.* at 53.

¹⁵ *Id.* at 56-57.

¹⁶ *Id.* at 83-84.

¹⁷ July 9, 2016 Office Action at 145.

¹⁸ *Id.* at 94-95.

- Il Localino restaurant red wine list, Batasolio Barbaresco 2004 described as “The wine has an intense red garnet color, and a dry, full-bodied flavor.”¹⁹
- Robledo Family Winery, Gold Medal – 2012 “Los Braceros” Red Blend, Sonoma Valley described as “A beautiful clear bright red garnet color.”²⁰
- Sylla Sebaste wines: Barolo Bussia Docg – “This wine has a red garnet and shades of ruby red color which tends to turn to orange as the years go by.”²¹
- Winederlusting.com, The Travel Community for Wine Lovers article “Discover Grenache Wine” describes Grenache wines as follows: “Like its Spanish cousin Tempranillo, Grenache wines will have a lower viscosity than, for example, a Syrah. It typically maintains a black cherry and red garnet color in the glass while being aromatic with strawberry and plum on the nose.”²²

Some in the industry use both the Italian “rosso granato” and the English equivalent “red garnet” to describe a particular hue of red wine:

- The Vinissimo.co website shows both the English and Italian description of the Barbaresco DOCG Serragrilli and Barbaresco DOCG Tradizione wines. Under Tasting Notes, the English description of the Serragrilli reads “Garnet red colour with ruby reflections...” and the Italian description of the Serragrilli reads, “Vino di colore rosso granato intenso, con sfumature rubino”. The Tradizione is described in English as follows: “the color is garnet red with ruby hues” and in Italian as “Vino di colore rosso granato, con sfumature rubino.”²³
- L’Arco vineyards, Pietrus Rosso Veronese – IGT wine, described in English as “Extraordinary wine, red garnet colored...”, and in Italian as “Vino straordinario, di colore rosso granato...”²⁴

¹⁹ *Id.* at 97.

²⁰ *Id.* at 102-103.

²¹ *Id.* at 104-106.

²² *Id.* at 113.

²³ *Id.* at 18-20.

²⁴ *Id.* at 21-22.

•Madonna dell'UVA vineyard, Colline Novaresi D.O.C. Croatina, described in Italian as, "...Ha un colore rosso granato, rubino...", and in English as "...It has a red garnet, Ruby."²⁵

This evidence of mixed use of English and Italian in close proximity bolsters our determination that "red garnet" is merely descriptive of "wine" and that the ordinary U.S. consumer may encounter both the English and Italian versions of this term to describe a particular shade of red wine.²⁶

In the face of this evidence, Applicant argues that

[i]t does not make sense to construe Garnet only in its definition as a color when in fact it also identifies a gemstone. In the context of the combination of Red and Garnet, Garnet would be read as a red jewel or stone and not as the second indicator of the color red. The term red Garnet is used in many situations relating to a red colored jewel or stone – such as a red garnet gemstone.²⁷

Applicant's own web site, however, explains "'Rosso Granato', in Italian meaning 'Red Garnet' embodies the beautiful color of this Petite Syrah and Zinfandel blend."²⁸ Thus, Applicant in its own words confirms that its wine is "red garnet" in color, and that "garnet" within this context does not refer to a gemstone. *See In re N.C. Lottery*, 123 USPQ2d at 1710 ("the TTAB did not err by considering the explanatory text of the specimens in the descriptiveness inquiry.").

²⁵ *Id.* at 25-26.

²⁶ These websites are foreign based; nonetheless, given the evidence that U.S. consumers are increasingly inclined to seek out the meaning of foreign wording used in connection with wine, we think that these foreign based websites have probative value regarding the meaning of ROSSO GRANATO. *See In re Bayer*, 82 USPQ2d at 1835; *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 1208.01 (JUNE 2017).

²⁷ Applicant's Brief p. 5; 4 TTABVUE 6.

²⁸ July 9, 2016 Office Action at 10.

In sum, Applicant's proposed mark immediately conveys, without need for conjecture or speculation, an attribute of Applicant's goods, namely the color or hue of the wine. Accordingly, we find Applicant's proposed standard character mark ROSSO GRANATO merely descriptive of "wine."

II. Failure to Function

We proceed now to the other ground for refusal. Section 45 of the Trademark Act defines a "trademark" in relevant part as "any word, name, symbol, or device, or any combination thereof used by a person ... to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown." 15 U.S.C. § 1127. "[N]ot every designation that is placed or used on or in connection with a product necessarily functions ... as a trademark for said product; not every designation adopted with the intention that it performs a trademark function and even labeled as a trademark necessarily accomplishes that purpose; and there are certain designations that are inherently incapable of functioning as trademarks to identify and distinguish the source of the products in connection with which they are used." *Am. Velcro, Inc. v. Charles Mayer Studios, Inc.*, 177 USPQ 149, 154 (TTAB 1973); *see also In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 215 (CCPA 1976) ("The Trademark Act is not an act to register mere words, but rather to register trademarks. Before there can be registrability, there must be a trademark and unless words have been so used they cannot qualify."). In contrast to marks that are merely descriptive, marks that fail to function are unregistrable.

“The critical inquiry in determining whether a designation functions as a mark is how the designation would be perceived by the relevant public.” *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010). “To make this determination we look to the specimens and other evidence of record showing how the designation is actually used in the marketplace.” *Id.* (citation omitted); *see also Bose*, 192 USPQ at 216 (“[T]he manner in which an applicant has employed the asserted mark, as evidenced by the specimens of record, must be carefully considered in determining whether the asserted mark has been used *as a trademark* with respect to the goods named in the application.”). “[T]he size, location, dominance and significance of the alleged mark as applied to the goods’ are all relevant factors in determining whether it” performs the function of a trademark. *In re Hulting*, 107 USPQ2d 1175, 1177 (TTAB 2013) (citation omitted). “Although there is no prescribed method or place for affixation of a mark to goods, the location of a mark on the goods ‘is part of the environment in which the [mark] is perceived by the public and ... may influence how the [mark] is perceived.’” *Id.* (citation omitted).

With regard to the particular goods at issue here, *In re AOP LLC*, 107 USPQ2d 1644, 1654 (TTAB 2013) is instructive. In that case, the applicant sought to register AOP, an acronym for “appellation d’origine protégée,” which translates from French as “protected designation of origin” as a trademark for wine. The Board found that the proposed mark was merely informational in nature and affirmed the examining attorney’s failure to function refusal.²⁹ In reaching its decision, the Board took into

²⁹ The Board also found the mark AOP merely descriptive.

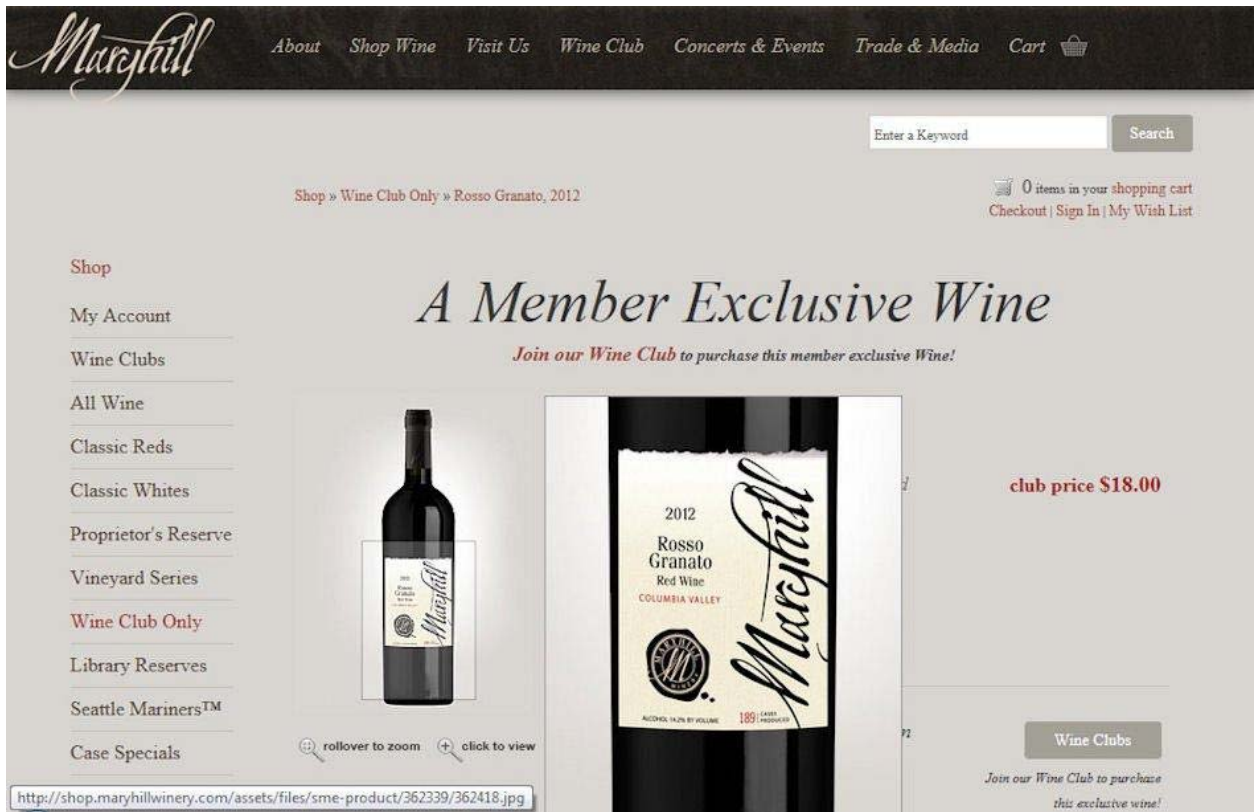
consideration the placement of the term AOP on Applicant's wine label as well as Applicant's own use of the term:

In the first submitted specimen, the term "AOP" appears at the bottom of the label, directly below the phrase "Product of the USA" and above the phrase "14.7% ALC/VOL." Set in the midst of other clearly informational matter, and far from the mark naming the wine itself, this use of the term "AOP" does indeed convey nothing more than information itself and would not likely be perceived as a mark. In the substitute specimen, the term "AOP" appears again far from the name of the wine. Again it appears amongst and between other informational matter, "CELLIER AOP No. 3" which translates as "Cellar AOP No. 3." (*www.babylon.com*). The other items set forth on this side of the wine label, clearly separate from the mark "Julia," are also informational, with French/English translations "International wine negotiant" and "New World Wine/Product of USA." Indeed, as noted above, applicant itself refers to its use of "an AOP" as reflecting a "quality and identification for the wine industry." *www.aopwine.com*. Attached to June 19, 2012 Office Action, p. 10. Applicant's website further states, regarding the AOP term: "The product label should include an 'Electronic stamp: AOP APPELLATION D'ORIGINE PROTEGEE issued by AOP LLC, which guarantees the origin and authenticity of the wine." Applicant also stated in its September 15, 2011 Response to an earlier Office Action that goods labeled under its "AOP" designation "have been deemed by Applicant to meet its high standards for quality, craftsmanship, and satisfaction of all applicable rules and regulations pertaining to the origin and authenticity of the wine." These excerpts present the term in an informational manner to inform consumers about a certification process rather than as a source identifier. In short, it is likely to be perceived as informational.

Id. at 1654-55.

Consistent with the guidance set forth above, we shall examine whether Applicant's proposed mark ROSSO GRANATO is "used in a source-identifying manner, or rather in a manner that simply conveys information to the consumer." *Id.*

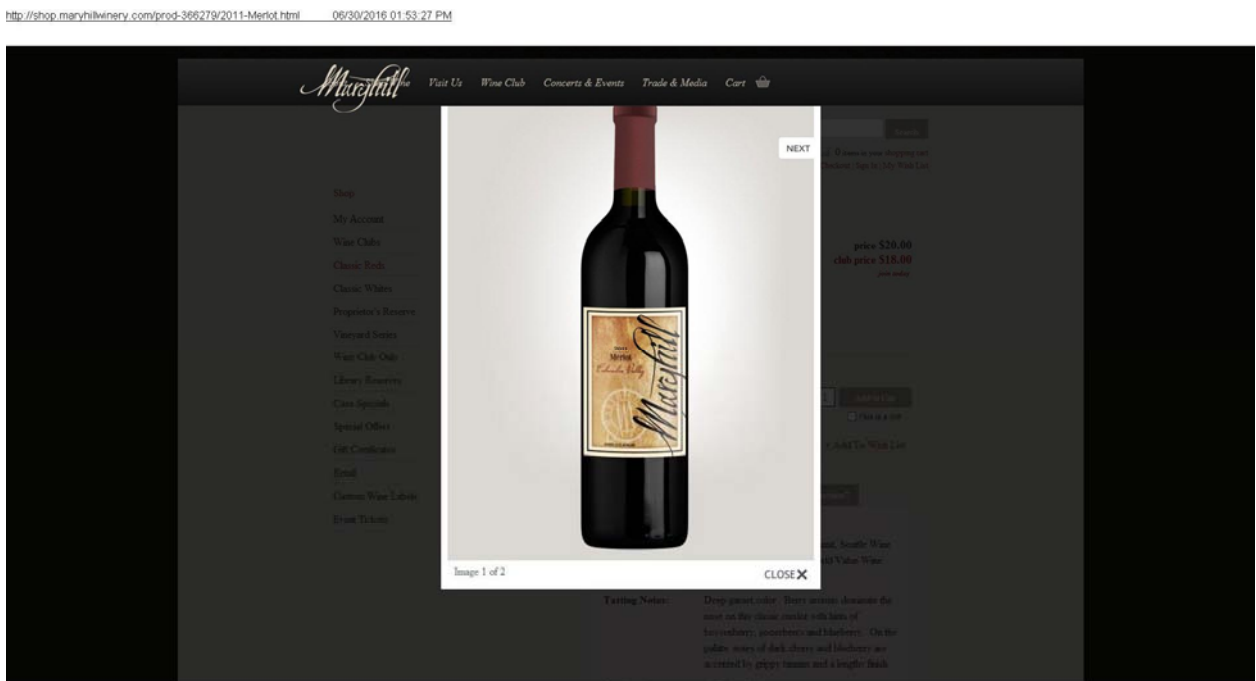
1654. Applicant's current specimen of record, consisting of a web excerpt displaying a labeled bottle, is reproduced below:³⁰



The term ROSSO GRANATO is grouped together on the left side of the label with other informational matter, below the year “2012” and above “Red Wine” and “Columbia Valley.” Opposite on the other side appears Applicant’s mark MARYHILL in relatively larger stylized lettering. While “a product label or in the case of a service mark, an advertisement or similar material can bear more than one mark without

³⁰ This is the substitute specimen submitted on November 13, 2017. The original specimen Applicant submitted was rejected on the basis that it appeared to be a “provisional sample,” i.e. “a digitally altered image or a mock-up of the intended depiction of the mark on the goods or their packaging for future use in commerce.” May 12, 2017 Office Action.

diminishing the identifying function of each,” the “salient question is whether the designation in question, as used, will be recognized in itself as an indication of origin for the particular product or service.” *In re Morganroth*, 208 USPQ 284, 287 (TTAB 1980). The predominance of the mark MARYHILL on Applicant’s wine label makes it unlikely that the “Rosso Granato” “will be recognized in itself as an indication of origin for the particular product” *Id.* Indeed, this pattern of displaying informational matter to the left is consistent with Applicant’s labeling and marketing of other wines such as the bottle of merlot reproduced below:³¹



Thus, similar to the mark at issue in *In re AOP*, Applicant’s proposed mark appears “[s]et in the midst of other clearly informational matter”, and is

³¹ July 9, 2016 Office Action at 4.

“present[ed] ... in an informational manner to inform consumers about [the color] rather than as a source identifier.” *In re AOP LLC*, 107 USPQ2d at 1654-55. Its close proximity to the other informational matter on the label, coupled with the translation and explanatory text on Applicant’s website means that ROSSO GRANATO is likely to be perceived as merely conveying information about the color of the wine and not as a source indicator.

“To be a mark, a term must be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for the goods in question. Mere intent that a term function as a trademark is not enough in and of itself, any more than attachment of the trade-mark symbol would be, to make a term a trademark.” *In re Manco, Inc.*, 24 USPQ2d 1938, 1941 (TTAB 1992) (quoting *In re Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987)). In sum, based on the record evidence, we find that Applicant’s proposed mark as used on the specimen is devoid of source-identifying significance and therefore fails to function as a trademark.

Decision: Both refusals to register are affirmed.