

<p>This Opinion is Not a Precedent of the TTAB</p>

Mailed: December 1, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Brats Berlin, Inc.

Serial No. 87055289

Erik M. Pelton of Erik M. Pelton & Associates PLLC,
for Brats Berlin, Inc.

Samuel R. Paquin, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

Before Cataldo, Mermelstein and Shaw,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Brats Berlin, Inc. (“Applicant”) seeks registration on the Principal Register of the mark CREPES BONAPARTE (in standard characters, CREPES disclaimed) for “food truck services; mobile catering services” in International Class 43.¹

The Trademark Examining Attorney issued a refusal of registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of

¹ Application Serial No. 87055289 was filed on May 31, 2016, based upon Applicant’s assertion of May 2008 as a date of first use of the mark anywhere and in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

likelihood of confusion with Registration No. 4670082, issued on the Principal Register of the mark displayed below (CAFÉ disclaimed) for “restaurant services” in International Class 43.²



When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). We discuss the *du Pont* factors for which Applicant and the Examining Attorney have presented evidence and arguments.

Strength of the Mark in the Cited Registration

Applicant asserts that the similarities and differences between the marks at issue must be viewed in light of the surname significance of the term BONAPARTE common to both. Specifically, “Applicant argues that surnames, regardless of what

² Issued on January 13, 2015. “Color is not claimed as a feature of the mark.” “The mark consists of the words ‘CAFÉ BONAPARTE’ above which is the letter ‘B’ partially encircled within a wreath.”

they refer to, are weak indicators of source and that the cited mark is entitled to only a limited scope of trademark protection because it consists primarily of a surname.”³

In support of its contention, Applicant made of record with its October 11, 2016 response to the Examining Attorney’s first Office Action a printout of surnames from the 2016 U.S. Census showing over 2,000 individuals with the surname “Bonaparte”.⁴

We agree that the term BONAPARTE has surname significance; however, a term with surname significance may not be primarily merely a surname if that term also identifies a historical place or person. *See Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F. Supp. 329, 331, 165 USPQ 459, 461 (S.D.N.Y. 1970) (DA VINCI); *In re Pyro-Spectaculars Inc.*, 63 USPQ2d 2022, 2024 (TTAB 2002) (SOUSA); *Michael S. Sachs Inc. v. Cordon Art B.V.*, 56 USPQ2d 1132, 1136 (TTAB 2000) (“M.C. ESCHER names a specific individual of considerable renown, and [we] are persuaded that the mark “M.C. ESCHER” is not primarily merely a surname”). *Cf., for example, In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1551-52 (TTAB 2017) (“[A]lthough John and Jim Belushi are widely known to Americans, the evidence does not show that they qualify as historical figures closely associated with Applicant’s services”). We hereby take judicial notice of the fact that the famed general and emperor of France,

³ 7 TTABVUE 10.

Applicant adds that it “does not mean to argue that either its mark or the cited mark have primarily surname significance.” *Id.* The issue of whether Applicant’s mark is primarily merely a surname under Trademark Act Section 2(e)(4), 15 U.S.C. § 1052(e)(4) is not before us.

⁴ At .pdf 51-3.

Napoleon I, was named Napoleon Bonaparte.⁵ We further note that on this record there is no evidence BONAPARTE has any other meaning or significance relevant to Applicant's services or those of the cited registration. Thus, the term BONAPARTE denotes both a surname and famous historical figure, and while not primarily merely a surname, is conceptually a slightly weaker source indicator than a fanciful term.

Applicant further made of record screenshots from the internet websites of three third parties using the terms CAFÉ BONAPARTE and BONAPARTE'S RETREAT in connection with restaurants, and BONAPARTE BREADS in connection with a bakery.⁶ Of the three third-party uses introduced into the record by Applicant, we observe that only one of them comprises the mark CAFÉ BONAPARTE in the cited registration. BONAPARTE'S RETREAT includes the additional term RETREAT that creates visual, aural and connotative dissimilarities from the involved marks. BONAPARTE BREAD includes the term BREAD that clearly connotes the bakery services identified thereby. While Applicant has not presented specific evidence concerning the extent and impact of these uses, it nevertheless presented "evidence of these marks being used in internet commerce" for the parties' services and related services. *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co.*

⁵ Dictionary.com, based on the *Random House Dictionary* (2017).

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 Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

⁶ At .pdf 14-7, 54-8.

KGAA v. New Millenium Sports, S.L.U., 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *see also Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1072 (TTAB 2011) (internet printouts “on their face, show that the public may have been exposed to those internet websites and therefore may be aware of the advertisements contained therein”). However, unlike cases in which voluminous evidence of third-party use and other evidence in the record was found to be “powerful on its face” inasmuch as “a considerable number of third parties use [of] similar marks was shown,” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015), Applicant has presented only three such uses, well short of the volume of evidence found convincing in *Jack Wolfskin* and *Juice Generation*.

The totality of the evidence presented by Applicant fails to show that the term BONAPARTE as it appears in the marks is significantly weak or diluted in connection with the involved services. Therefore, while we can agree based upon the surname and historical name evidence of record and limited third-party uses that the term BONAPARTE in the cited mark may be afforded a slightly narrower scope of protection than that afforded a fanciful term, the evidence does not show that it should be afforded such a narrow scope of protection that it would allow registration of Applicant’s mark.

Similarities and Dissimilarities of the Marks

We turn to a comparison of Applicant’s CREPES BONAPARTE mark in standard characters and the



mark in the cited registration for similarities and dissimilarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 USPQ2d at 1160 (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Profrls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)). The similarity or dissimilarity of the marks is determined based on the marks in their entireties, and the analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on the entire marks, not just part of the marks. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); see also *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion”). While we have placed the marks in close proximity to one another for comparison purposes, consumers may not necessarily encounter the marks in such proximity and must rely upon their recollections thereof. *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988).

Applicant argues that the marks at issue “use the shared name BONAPARTE in different manners and contexts, resulting in different sounds, appearances, meanings and overall impressions.”⁷ In particular, Applicant argues that the marks

rely on widely recognized naming conventions within the food and hospitality industry. The cited mark relies on a widely used [TERM FOR RESTAURANT] + [NAME] convention. For example, Applicant submitted evidence of restaurants with names such as KAFE LEOPOLD, numerous CAFÉ MOZARTs, and a second CAFÉ BONAPARTE, demonstrating not only this naming convention, but the coexistence of these restaurants in the market. *See* Office Action of Oct. 11, 2016, Exhibits A, B, D, and E. Applicant’s mark, on the other hand, uses a naming convention common in naming a specific food item, the [FOOD ITEM] + [NAME] convention commonly used in naming particular styles of food preparation. Applicant submitted a list of such dishes, including examples such as “eggs benedict,” said to be named after either banker Lemuel Benedict or Commodore E.C. Benedict; “fettucine alfredo,” named for chef Alfredo Di Lelio; “bananas foster,” named after Richard Foster; “pizza margherita,” named for Queen Margherita of Savoy; “peach melba,” named for singer Dame Nellie Melba; “beef wellington,” named for Arthur Wellesley, 1st Duke of Wellington; and “chicken (or turkey) tetrazzini,” named for Italian opera star Luisa Tetrazzini.⁸

Applicant concludes that

Because of these familiar naming conventions, consumers are likely to perceive each mark in their entirety as a unitary whole, rather than focusing on one particular term or another. Consumers encountering Applicant’s mark and the cited mark are likely to react differently to each mark and the commercial impressions that the marks convey. This is compounded by the weakness of the name BONAPARTE as a source identifier. Consumers are likely to recognize the source-identifying significance of the *entire* marks without assuming that the term BONAPARTE alone identifies a particular source.⁹

⁷ 7 TTABVue 12.

⁸ *Id.* at 14.

⁹ *Id.* at 14-5.

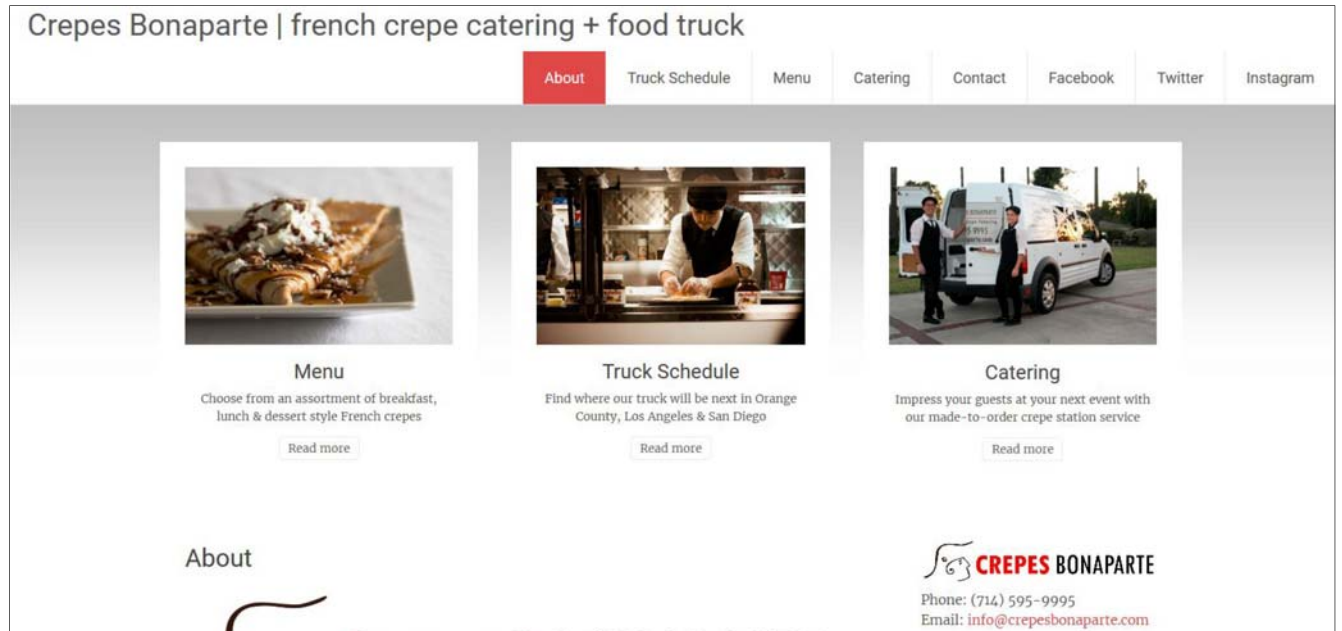
In support of this contention, Applicant introduced into the record with its October 11, 2016 response to the Examining Attorney's first Office Action an article from the open source internet encyclopedia Wikipedia.org containing a list of foods named after people and webpages from third-party internet websites for two restaurants coexisting with the names CAFÉ MOZART as well as one named MOZART CAFÉ.¹⁰

We agree with Applicant that the involved marks must be viewed in their entireties when considering their similarity or dissimilarity. *In re Nat'l Data Corp.*, 224 USPQ at 751. However, it is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Id.* In this case, Applicant's CREPES BONAPARTE mark



is similar to the registered mark *Café* BONAPARTE inasmuch as both feature the term BONAPARTE as the most prominent feature thereof. The disclaimed term CREPES in Applicant's mark is, at best, merely descriptive of food truck services and mobile catering services without limitation as to cuisine and thus are presumed to feature crepes, and indeed, do feature crepes as indicated in Applicant's specimen of record, reproduced in part below.

¹⁰ At .pdf 30-50, 18-29.



The registered mark, *Café* BONAPARTE consists of the term BONAPARTE, the disclaimed term CAFÉ, which is a generic term for a type of restaurant, the letter “B” and the design of a wreath. The letter “B” appears to reinforce and draw additional attention to the term BONAPARTE. The wreath design, though substantial in size, is used like a carrier or frame for the letter “B,” see *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (“the design is an ordinary geometric shape that serves as a background for the word mark”); *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011) (“the oval designs in the marks are merely background or ‘carrier’ elements, and do not make a strong commercial impression”), and is less likely to be relied upon by consumers of registrant’s services than the more distinctive wording BONAPARTE. It is settled that where, as here, a mark is comprised of both words and a design, the words are usually accorded greater weight,

in part because consumers are likely to remember and use the words to request the services. *In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1911 (Fed. Cir. 2012) (“the verbal portion of a word and design mark likely will be the dominant portion”); *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987) (holding that “if one of the marks comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services” and “because applicant’s mark shares with registrant’s mark that element responsible for creating its overall commercial impression, the marks are confusingly similar”).

Thus, even given its significance as indicating a surname and historical personage, BONAPARTE is the most distinctive portion of the marks at issue, and forms the dominant impression of each mark when it is considered as a whole. Applicant’s CREPES BONAPARTE mark certainly connotes a French-theme food truck or



catering service featuring crepes, and the registered mark *Café* BONAPARTE connotes a similarly French-themed café. Both suggest French cuisine. Even if we accept Applicant’s argument that the marks follow familiar naming conventions in the food and food service industries – consisting of a term for a food item plus a name versus a term for a restaurant plus a name – we observe that these are similar naming conventions. Both utilize a descriptive or generic term for a type of food or restaurant followed by a given name, surname, or name of a historical individual. The marks thus are similarly constructed, leading them to be more, rather than less, similar. In

addition, there is nothing to suggest that consumers encountering Applicant's mark and the mark in the cited registration will perceive the term BONAPARTE as having a different meaning applied to one mark as opposed to the other.

Applicant also introduced into the record with its March 7, 2017 request for reconsideration copies of assertedly similar third-party registrations for marks, none of which contain the term BONAPARTE, for restaurant and related food services.¹¹ The following chart displaying some of these marks, presented by Applicant in its request for reconsideration and also its brief, is illustrative:¹²

¹¹ At .pdf 15-93.

¹² At .pdf 10; 7 TTABVUE 19-20.

FRANKEY'S	4864018	FRANKIE'S SCALOPPINE	3522086
ANTIQUE TACO	4954960	ANTIQUE CAFE	4866678
MESA FRESH	3543380	MESA VERDE	3522278
Black Mesa	3921572	MESA LLENA	3904917
Mesa Grande Taqueria	5107889		5138679
RED MESA GRILL	5136528		
PARIS CREPE CAFÉ	3924046	CREPES DE PARIS	4936207
PARIS CREPES	4241520		
	3087204		
	2111429		4754841
EL FENIX	1238903	THE PHOENIX	2132516
	2790579		

However, as discussed above, Applicant introduced into the record internet evidence of only a single example of a third party using CAFÉ BONAPARTE in

connection with a restaurant, one third-party use of BONAPARTE'S RETREAT in connection with a restaurant, and BONAPARTE BREADS in connection with a bakery. In light of this very limited use, we find that the registered mark does not exist in a crowded field of the same or similar marks, and does not support a finding that the cited mark should receive a narrow scope of protection.

Furthermore, Applicant's evidence of registration of pairs or groups of food-related marks that are not related to the marks at issue does not compel a finding that the



registered mark *Cafe* BONAPARTE is weak or subject to a limited scope of protection.

Applicant cites to no authority for its apparent position that we should extrapolate from this evidence that the marks at issue herein should also be allowed to coexist on the register. It is well-settled that we simply are not bound by the decisions of examining attorneys. The Board must make its own findings of fact, and that duty may not be delegated by adopting the conclusions reached by an examining attorney. *In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994); *In re BankAmerica Corp.*, 231 USPQ 873, 876 (TTAB 1986). "It has been said many times that each case must be decided on its own facts." *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (internal citation omitted). This is particularly the case where, as here, the marks in the registrations relied upon are dissimilar from Applicant's mark and the cited mark.

Longstanding precedent holds that "the existence of confusingly similar marks already on the register will not aid an applicant to register another confusingly

similar mark.” *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967). The pairs of registrations offered by Applicant in this case are for entirely different marks than those actually at issue, and thus have less relevance to our decision than the third-party registrations of similar marks offered in *Lilly Pulitzer*. Whatever other marks may coexist on the trademark register (or more importantly, in the marketplace) the question before us is whether *Applicant’s mark* so resembles *Registrant’s mark* as to be likely to cause confusion. Applicant’s registration pairs do not significantly aid our analysis.

In coming to our determination on the similarity of the marks, we again emphasize that the applicable test is not whether the marks can be distinguished when subjected to a side-by-side comparison. *Spoons Rests, Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). Rather, the proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). While we fully recognize their differences, we find



that the marks CREPES BONAPARTE and *Café* BONAPARTE are similar in appearance and sound, and similar in connotation, respectively suggesting French cuisine featuring crepes or a French-themed café. Considered as a whole, the marks are more similar than dissimilar “in their entirety as to appearance, sound, connotation and

commercial impression.” *Palm Bay*, 73 USPQ2d at 1691 (quoting *du Pont*, 177 USPQ at 567).

Relatedness of the Services, Trade Channels and Classes of Purchasers

Next, we turn to the *du Pont* factors involving the similarity or dissimilarity of Applicant’s services and the services in the cited registration, their channels of trade and purchasers. It is settled that in making our determination, we must look to the services identified in the application vis-à-vis those recited in the cited registration. *See Stone Lion*, 110 USPQ2d at 1161; *Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Integrated Embedded*, 120 USPQ2d 1504, 1514 (TTAB 2016); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

It is not necessary that the respective services be competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the services are related in some manner, or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from the same producer. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984). The issue here is not whether purchasers would confuse the services,

but rather whether there is a likelihood of confusion as to the source of these services. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In support of his contention that the services identified in the involved application and the cited registration are related, the Examining Attorney introduced into the record with his September 13, 2106 first Office Action copies of screenshots from the internet websites of seven third parties that offer catering, food trucks, or both services in addition to restaurant services.¹³ The following examples are illustrative.

¹³ At .pdf 10-21.

Border Grill

MODERN MEXICAN

SIGN UP FOR OUR NEWSLETTER
Your email address 

ABOUT ▾ LOCATIONS & MENUS ▾ GROUPS & SPECIAL EVENTS ▾ NEWS & RECIPES CATERING ▾ MERCH VIP CLUB SEND A GIFT

MAKE A RESERVATION



BORDER GRILL CATERING

Let us Bring the Party to You!



BORDER BRUNCH

Available every Saturday & Sunday. Unlimited small plates and bottomless mimosas in Santa Monica, Downtown LA, and Las Vegas!

Border Brunch is now available at [The Forum Shops](#) in Las Vegas.




[Brunch Menus](#)

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Find out where the Truck is headed this week and follow us on Twitter [@BorderGrill](#) for the latest updates and specials!

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Brick & Mortar Restaurants

Akash and Rana Kapoor started Curry Up Now with a mission to bring the Indian street foods from their childhood to the Bay Area. With no formal training and a huge appetite they were able to turn one food truck into four brick & mortar restaurant locations. Our food is a unique take on Indian street favorites, mixed in with flavors Akash and Rana love from around the world. We serve the dishes they grew up on with a Curry Up Now twist. We don't mind if you can't pronounce some of the names right, we just hope you enjoy the food as much as we do.

QUESTIONS OR COMMENTS? We'd love to hear from you! Fill out our feedback form [here](#).

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SAN MATEO


PALO ALTO

SAN JOSE

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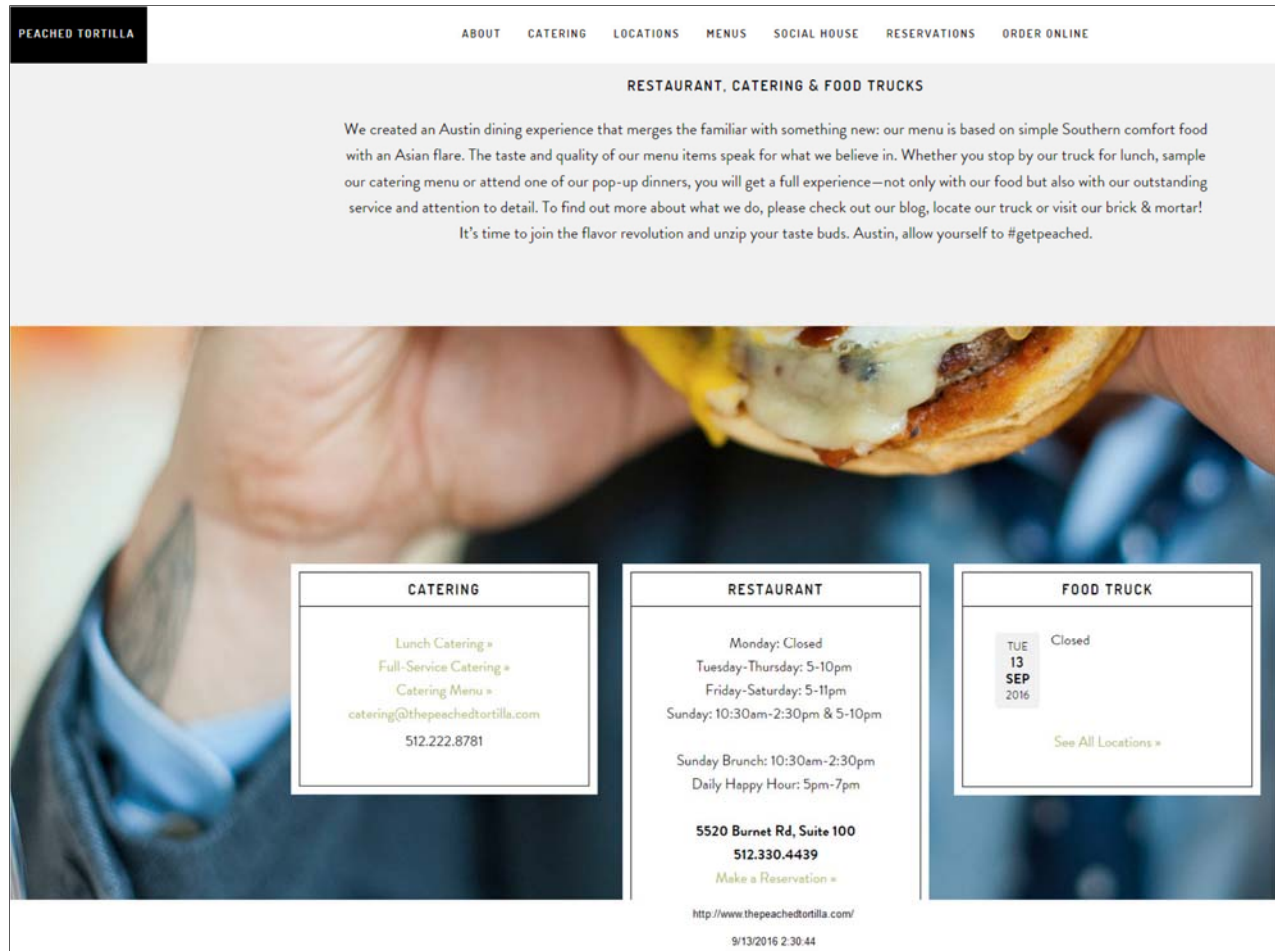
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The Examining Attorney further introduced into the record with his November 1, 2016 final Office Action screenshots from an additional eleven third parties providing restaurant, catering and food truck services.¹⁴ The following example is illustrative.

¹⁴ At .pfd 5-22.



In addition, the Examining Attorney introduced into the record with his March 15, 2017 denial of Applicant's request for reconsideration copies of eighteen use-based, third-party registrations for marks identifying both food truck and catering services as well as restaurant services. The following examples are illustrative:¹⁵

¹⁵ At .pdf 3-40.

Registration No. 4774262 for the mark THE CHICKEN & RICE GUYS for “providing food and beverages from a mobile food truck; restaurant and catering services.”

Registration No. 5016156 for the mark FAMOUS HOMEMADE HOT SALAMI SINCE 1918 GIOIA’S DELI for “restaurant services; catering services; mobile food truck services.”

Registration No. 5030243 for the mark BANAN and design for “providing food and beverages from a mobile food truck; restaurant and catering services.”

As a general proposition, although use-based, third-party registrations alone are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless may have some probative value to the extent they may serve to suggest that the goods are of a kind that emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck*, 6 USPQ2d at 1470 n.6.

Applicant argues that while it “acknowledges that both Applicant and registrant use their marks in connection with food service, the services offered in connection with each mark are not identical.”¹⁶ We agree. However, the evidence discussed above clearly shows that Applicant’s food truck and mobile catering services may emanate from the same sources as the restaurant services identified in the cited registration and be identified under the same marks. In addition, and as noted above, Applicant’s services need not be identical, or even competitive, with the services in the cited registration in order to support a finding of likelihood of confusion.

¹⁶ 7 TTABVUE 22.

Applicant further argues it “submitted evidence that, out of more than 50,000 registrations on the Principal Register for restaurants, only 36 registrations identified both ‘restaurant’ and ‘food truck’ services—less than one tenth of one percent—several of which are redundant as to owner.”¹⁷ Applicant goes on to argue that, as a result, “the relationship between food trucks and restaurants is not so obvious that consumers would believe that food truck services and restaurant services originate from the same source without something more.” Applicant cites *In re St. Helena Hosp.*, 113 USPQ2d 1082 (Fed. Cir. 2014) in support of its position.

We find Applicant’s reliance upon *St. Helena Hosp.* to be misplaced. First, unlike the facts of *St. Helena Hosp.*, which involved the relatedness of health care services in the field of weight and lifestyle rendered in a residential hospital program versus printed materials in the field of physical activity and fitness promotion services, Applicant and the owner of the cited registration both provide food services. Applicant’s food services are rendered through a food truck and mobile catering and registrant’s services are provided at a restaurant. As a result, we do not find the facial relatedness of the services to be so obscure to be “not evident, well-known or generally recognized.” *In re St. Helena Hosp.*, 113 USPQ2d at 1087. Nor is this a case in which restaurant services have been cited as a bar to registration of food items, or vice versa. *See Jacobs v. Int’l Multifoods Corp.*, 668 F.2d 1234, 212 USPQ 641, 642 (CCPA 1982); *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ2d 1059, 1064 (Fed. Cir. 2003). Second, the number of registrations reciting both restaurant and food truck services

¹⁷ *Id.*

compared to the overall number of extant registrations does not compel or even suggest an inference that the relatedness between food trucks and mobile catering services and restaurants is somehow obscure or remote. The mere distinction that Applicant's food services are mobile in nature and provided in different locations versus stationary restaurant services does not obviate their relatedness, as reflected by the evidence of third-party use and registration of a single mark to identify both types of food services across a variety of cuisines and ethnic food types. As we noted in connection with a similar argument based on third-party registrations, i.e., that there were many third-party registrations for the goods of the applicant that did not include the goods identified in the cited registration, and vice versa:

There is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product. Therefore, evidence showing only that the source of one product may not be the source of another product does not aid applicant in its attempt to rebut the evidence of the examining attorney.

In re G.B.I. Tile and Stone Inc., 92 USPQ2d 1366, 1370 (TTAB 2009).

As discussed above, the Examining Attorney introduced into the record screenshots from eighteen internet websites, promoting and offering restaurant, food truck and catering services on the same webpages. While it is not necessary that the respective services move in the same channels of trade to support a holding of likelihood of confusion, this evidence shows that the services at issue are offered and marketed in at least one common trade channel to the same consumers. We further observe that in the absence of any recited limitations in the respective identifications, the services would be encountered in the usual channels of trade therefor and available to the

usual classes of consumers, which in this case would include the full range of consumers for the products of food trucks, mobile catering services, and restaurants. In addition, there is nothing inherent in restaurant, food truck or catering services that suggests that they will be marketed to a sophisticated clientele, but rather are available to the general public.

Based upon the evidence of record, we find that Applicant's services are related to the services identified in the cited registration, and may be encountered in the same channels of trade.

Summary

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. In view of the similarity of Applicant's CREPES BONAPARTE mark and the registered mark; the evidence of the relatedness of Applicant's services and the services in the cited registration, their trade channels and classes of consumers, we find that Applicant's mark so closely resembles the registered mark as to be likely to cause confusion, mistake or deception as to the source of Applicant's services. Applicant's evidence regarding the asserted weakness of the mark in the cited registration is not sufficient to mitigate in favor of a finding that confusion is unlikely.

Decision: The refusal to register Applicant's mark CREPES BONAPARTE is affirmed.