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Mailed:
November 30, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re China Direct North America Co. Ltd.

Serial No. 76608782

David R. Fairbairn of Kinney & Lange, P.A. for China Direct North America Co. Ltd.

Amy Gearin, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

Before Hairston, Zervas and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

On August 23, 2004, China Direct North America Co. Ltd. filed an intent-to-use application for the mark ARTISAN CREATIONS, in standard character format, for goods ultimately identified as "beverage glassware and wine racks," in International Class 21 (Serial No. 76608782). During the prosecution of the application, applicant explained that its products were hand-blown glassware and handcrafted metal wine racks.¹

¹ Applicant's April 27, 2006 Response.

The Examining Attorney finally refused registration under Section 2(e)(1) of Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that the mark ARTISAN CREATIONS when used in connection with "beverage glassware and wine racks" is merely descriptive. The Examining Attorney contends that the mark ARTISAN CREATIONS directly conveys to consumers the fact that artisans create applicant's products. The Examining Attorney introduced the following evidence in support of the descriptiveness refusal:

1. A dictionary definition of the word "artisan" which means "a craftsman";²
2. A dictionary definition of the word "creations" which means "an original product of human invention or artistic imagination";³
3. An excerpt from the *Austin360.com* website promoting the Austin Architectural Artisans, local Austin architectural craftsmen who produce pieces in stone, glass, metal, and other materials. The excerpt includes the following phrase:

To see what you could have in your own home, click the links below to browse images of the artisans' creations.

² American Heritage Dictionary of the English Language (3rd ed. 1992).

³ *Id.*

4. An article from *The Virginia-Pilot* (June 14, 1996) with the following headline:

'People' Pins Created By 5 Girls Who Decided To Benefit Others The Young Artisans' Creations Are Designs To Be Worn On Shirt Collars Or Lapels.

5. An excerpt from the ASMP/Atlanta - Juried Photography Exhibit website (www.beoriginalart.com). The website is an online art gallery. The website includes the following information:

Online Gallery - The best in original fine art at your fingertips . . . select from hundreds of paintings, photographs, sculpture and artisan creations . . . and learn about the artists behind the artwork.

6. An excerpt from the Petite Patchwork entry on the eBay website that sells dollhouse miniature furniture and accessories. The excerpt has the following information about the products:

Items labeled Petite Patchwork are unique artisan creations by seller, they are one-of-a-kind exclusives, or hand made in limited numbers.

7. An excerpt from the eMosaïque website (emosaique.com), a website that sells arts and crafts. The website provides the following information:

eMosaïque is proud to open a new virtual doorway to premium quality artisan creations of Provence. Most of

the arts and crafts are hand-crafted by
the best artisans in their specialty.

8. An unidentified website at www.woyaa.com that lists links for arts and crafts. There is a link to Blanche and Guy Designs in the Bronx, New York. The introduction to the link provides the following information:

Handmade Glass Beads made by Guy in our studio in NYC! Awesome, fanciful, whimsical creations for you to create your own jewelry or purchase already made artisan creations!

9. An excerpt from the Hudson Valley General Store website (www.hvgeneralstore.com). The website provides the following information:

From the most delicious condiments and gourmet items to hand crafted artisan creations, everything available in the Hudson Valley General Store is special.

10. A press release from a Bermuda company published in Onlinepressreleases.com announcing that TreasureLane.com was launching a new website to sell "unique handcrafted artisan creations from North America, the United Kingdom and Europe." The press release describes the website as an international website that will accept U.S. currency.

11. Excerpts from 25 news articles retrieved from the LexisNexis database that allegedly show the descriptive use

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of the term "artisan creations." A representative sample of the news articles include the following excerpts:

Farrar's work is displayed in her nearby gallery - which is next door to her workshop - with other artisans' creations.

Bangor Daily News (June 19, 2006).

One source of different candlesticks and stands is Blue Tulip in the Shoppes at Farmington Village in Canton. The artisans' creations there are handmade, each with its own appeal.

Hartford Courant (November 25, 2005).

Artisans' faire

This is a one-day event featuring area artisans' creations including jewelry, pottery, paintings, candles and handmade crafts sponsored by the Episcopal Church Women.

St. Louis Post-Dispatch (October 9, 2003).

[T]here are inviting stops all along the way for vistas and an appealing array of artisan creations, from pottery and quilts to glass and hand-cast wind and door bells.

Dayton Daily News (September 21, 2003).

Join the fun at Courthouse Square, where you'll find demonstrations of basketweaving, pottery, glass and jewelry making, craft booths featuring local artisans creations, an antique auto parade and food.

Chicago Tribune (August 25, 2002).

To spend time with Zeisel, just two months shy of her 95th birthday, is to enter the world of a remarkable artisan whose creations span the chasm between dime-store drinking glasses and fine porcelain for the Museum of Modern Art.

Washington Post (September 13, 2001).

On the other hand, applicant contends that the mark ARTISAN CREATIONS is not merely descriptive because the Examining Attorney failed to prove that it directly conveys information regarding beverage glassware and wine racks, in particular, failed to prove that competitors use the term ARTISAN CREATIONS, and failed to prove that competitors need to use the term ARTISAN CREATIONS. Specifically, applicant argues that "[t]he mark ARTISAN CREATIONS does not provide any hint that the goods are beverage glassware or wine racks."⁴ Moreover, because the word "artisan" has been registered many times for a myriad of goods, "the mere use of 'artisan' as part of a mark does not imply that the product is handmade."⁵ Applicant submitted copies of 12 registrations that include the word "artisan" on the Principal Register, without a disclaimer, as evidence that the word "artisan" is suggestive.⁶ Accordingly, applicant

⁴ Applicant's Brief, p. 4.

⁵ Applicant's Brief, p. 8.

⁶ Applicant also submitted copies of 4 applications that have been approved for publication, but not yet registered. Applications are probative only of the fact that an application has been filed.

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concludes that mark ARTISAN CREATIONS is suggestive, not merely descriptive, because it does not describe any ingredient, quality, characteristic, function, feature, purpose or use of the goods.⁷

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the services with which it is used. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the products for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the issue is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of*

⁷ Applicant's Brief, p. 8

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Greenville, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978). *See also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). Even where individual terms are descriptive, combining them together may evoke a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, without the combination of terms creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. *In re Tower Tech., Inc.*, 64 USPQ2d 1314, 1317-1318 (TTAB 2002).

In the case *sub judice*, the evidence clearly shows that the term ARTISAN CREATIONS is readily used by others and understood by consumers to refer to products made by craftsmen. *In re Major League Umpires*, 60 USPQ2d 1059, 1060 (TTAB 2001) ("[i]t is well established that a term which describes the provider of goods or services is also merely descriptive of those goods and services"). At the

risk of repeating the evidence of record, we point specifically to the following as representative of the use and meaning of ARTISTAN CREATIONS (emphasis added):

Online Gallery - The best in original fine art at your fingertips . . . select from hundreds of paintings, photographs, sculpture and **artisan creations** . . . and learn about the artists behind the artwork.⁸

Items labeled Petite Patchwork are unique **artisan creations** by seller, they are one-of-a-kind exclusives, or hand made in limited numbers.⁹

Handmade Glass Beads made by Guy in our studio in NYC! Awesome, fanciful, whimsical creations for your to create your own jewelry or purchase already made **artisan creations!**¹⁰

The problem with applicant's analysis is that it starts with the mark ARTISAN CREATIONS and asks whether "it provides any hint that the goods are beverage glassware or wine racks."¹¹ As indicated *supra*, the proper analysis should start with the mark ARTISAN CREATIONS and inquire whether that term describes "beverage glassware and wine racks." The evidence shows that ARTISAN CREATIONS means

⁸ An excerpt from the ASMP/Atlanta - Juried Photography Exhibit website (www.beorignialart.com).

⁹ An excerpt from the Petite Patchwork entry on the eBay website.

¹⁰ Link to Blanche and Guy Designs in the website at www.woyaa.com.

¹¹ Applicant's Brief, p. 4.

products made by craftsmen and that it is readily used and understood as such.

Applicant argues that the evidence relied on by the Examining Attorney does not include beverage glassware or wine racks.¹² However, the evidence shows that the term ARTISAN CREATIONS is used in connection with a myriad of products without restriction (e.g., pieces in stone, glass, metal or other materials, decorative shirt pins, paintings, photographs, sculpture, dollhouse furniture and accessories, arts and crafts, jewelry, candles, and pottery). In fact, three references specifically include glass products (emphasis added):

[T]here are inviting stops all along the way for vistas and an appealing array of artisan creations, from pottery and quilts to glass and hand-cast wind and door bells.

Dayton Daily News (September 21, 2003).

Join the fun at Courthouse Square, where you'll find demonstrations of basketweaving, pottery, glass and jewelry making, craft booths featuring local artisans (sic) creations, an antique auto parade and food.

Chicago Tribune (August 25, 2002).

To spend time with Zeisel, just two months shy of her 95th birthday, is to enter the world of a remarkable artisan whose creations span the chasm between

¹² Applicant's Reply Brief, p. 2.

dime-store drinking glasses and fine
porcelain for the Museum of Modern Art.

Washington Post (September 13, 2001). The essence of applicant's argument is based on the false premise that while consumers may perceive the term ARTISAN CREATIONS as describing only the products identified in the Examining Attorney's evidence, they will not recognize it as describing beverage glassware and wine racks because those products were not specifically identified in the Examining Attorney's evidence. To limit the descriptiveness of the mark ARTISAN CREATIONS in such a manner stretches credulity.

With respect to applicant's argument that "[t]here is no evidence that ARTISAN CREATIONS has been used by anyone other than Applicant in conjunction with these goods either as a mark or as a way of describing the goods,"¹³ it is well established that the fact that applicant may be the first and only user of ARTISAN CREATIONS does not alter its descriptive significance and bestow upon applicant any proprietary rights. *In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001); *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985) ("A descriptive term used first or even only by

¹³ Applicant's Reply Brief, p. 2.

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an applicant is not registrable as long as the purchasing public perceives the term as describing goods"). A term need not be in common usage in a particular industry before it can be found to be merely descriptive. *In re Sun Microsystems Inc., supra.* Anyone who makes or sells beverage glassware and wine racks may wish to use the term "artisan creations" to convey the fact that such goods are made by an artisan.

Finally, with respect to applicant's argument that the third-party registrations prove that the word "artisan" is suggestive, not merely descriptive, we note that in determining the issue of descriptiveness, prior decisions are of little value because each case must be determined on its own facts. *In re Nett Designs Inc.*, 236 F.2d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application [LOAD LLAMA THE ULTIMATE BIKE RACK], the PTO's allowance of such prior registrations does not bind the Board or this court"]; *In re Quick-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). Even if we considered the registrations, we would not change our decision because as used in the registrations, the word "artisan" means "craftsman," and it conveys that commercial impression. When used in connection with

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ARTISAN CREATIONS it directly conveys the fact that the products were made by craftsmen. This is especially the case because applicant has acknowledged that its glassware is "hand-blown" and that its wine racks are "handcrafted."

It is therefore concluded that ARTISAN CREATIONS is merely descriptive when used in connection with "beverage glassware and wine racks."

Decision: The refusal to register is affirmed.