

**THIS DECISION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB**

Mailed: 9/28/2005

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Jack D. Whiteman

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Serial No. 78281418

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Mary M. Lee, Esq. for applicant.

Lana H. Pham, Trademark Examining Attorney, Law Office 115  
(Tomas V. Vlcek, Managing Attorney).

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Before Quinn, Chapman and Walsh, Administrative Trademark  
Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Jack Whiteman to register  
the mark GRAPE RANCH for "wine."<sup>1</sup>

The trademark examining attorney refused registration  
under Section 2(e)(1) of the Trademark Act on the ground  
that applicant's mark, if used in connection with  
applicant's wine, would be merely descriptive thereof.

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<sup>1</sup>Application Serial No. 78281418, filed July 31, 2003, based on an  
allegation of a bona fide intention to use the mark in commerce.

When the refusal was made final, applicant appealed.<sup>2</sup> Applicant and the examining attorney filed briefs. An oral hearing was not requested.

The examining attorney, relying on dictionary definitions, maintains that the mark merely describes "wine that is produced on a large farm where grapes are grown." In addition to the dictionary evidence, the examining attorney submitted two articles retrieved from the Internet showing third-party uses of the term "grape ranch," and other articles showing uses of the term "Ranch" in the trade names of third-party wine producers; and third-party registrations covering wines wherein the term "Ranch" is disclaimed.

Applicant argues that its mark is suggestive. To most Americans, applicant contends, a "ranch" is a place where cowboys wrangle steers and other livestock, whereas wine is produced by a winery and grapes for wine are grown in a vineyard. In this connection, applicant points to the logo for his vineyard located in Oklahoma, a cluster of grapes in place of a steer's head hanging from a set of horns, asserting that customers would view GRAPE RANCH as an amusing and incongruous term conjuring up the image of

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<sup>2</sup>The examining attorney also refused registration under Section 2(d) on the ground of likelihood of confusion with a previously registered mark. The refusal was subsequently withdrawn.

cowboys herding grapes instead of livestock. In response to the examining attorney's evidence, applicant contends that "grape ranch" is an obscure term that has been used very rarely to denote a farm on which grapes are grown; that such uses are synonymous with "grape farm," which denotes a place where grapes are grown, but that has no meaning relative to a winery; and that even assuming ordinary wine consumers recognize that "grape ranch" refers to a farm on which grapes are grown, the term, according to applicant, is one step removed from being merely descriptive as used in connection with wine. Although grapes may be grown on a "grape ranch," applicant maintains that the record does not show any use of the term "grape ranch" to describe a place where wine is made. In this connection, applicant asks: "Would 'barley farm' be merely descriptive of beer or ale, because beer is made from malt, which is made from barley? Would 'cattle ranch' be merely descriptive of shoes or baseballs, because these items are made of leather made from the hide of cows? Would 'sheep ranch' be merely descriptive of wool sweaters?" (Reply Brief, pp. 1-2).

In sum, applicant states that its mark GRAPE RANCH is too general or broad to describe wine with any degree of specificity, and that the mark is a whimsical or

incongruous term suggesting sprawling western land on which grapes are raised instead of cattle. In support of his position, applicant submitted dictionary definitions of the term "ranch," portions of his Internet website, and the results (first fifty hits) of a search of the term "grape ranch" using the GOOGLE database.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it

is being used or is intended to be used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use or intended use. That a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

When two or more descriptive terms are combined, the determination of whether the composite mark also has a descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive. See, e.g., In re Tower Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) [SMARTTOWER merely descriptive of commercial and industrial cooling towers].

The examining attorney submitted dictionary definitions of the terms "grape" and "ranch" retrieved from The American Heritage Dictionary of the English Language (3d ed. 1992). This dictionary defines "grape" as "the fleshy, smooth-skinned, purple, red, or green berry of a grape, eaten raw or dried as a raisin and widely used in winemaking." The term "ranch" means, inter alia, "a large

farm on which a particular crop or kind of animal is raised." The examining attorney also introduced dictionary definitions of "wine" indicating that wine may be made from grapes.

As pointed out by applicant, however, the first meaning of "ranch" listed in the dictionary is "[a]n extensive farm, especially in the western United States, on which large herds of cattle, sheep, or horses are raised." The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000). Other dictionary definitions of record show similar meanings that are consistently listed first: "a large farm for raising horses, beef cattle, or sheep" Merriam-Webster Online Dictionary (2004); "livestock farm on rangeland: a farm where cattle, sheep, horses or other livestock are raised on large tracts of open land, especially in North and South America and Australia" MSN Encarta World English Dictionary (2004); "an extensive farm, especially in the western United States, on which large herds of cattle, sheep, or horses are raised" Dictionary.com (2004); and "large farm devoted chiefly to raising and breeding cattle, horses, sheep, and goats." The Columbia Encyclopedia (6<sup>th</sup> ed. 2001).

In looking at the dictionary definitions, we recognize that the term "ranch" is broad enough to encompass a farm

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on which grapes are raised. It would appear, however, that this meaning is not the primary meaning, and that, to most consumers, a "ranch" is primarily a place where livestock is raised, and not primarily where grapes are grown or wine is made.

Although the examining attorney states that she submitted evidence showing that the term "grape ranch" is "often used to describe a farm where grapes, including wine grapes, are grown" (Brief, p. 3), the record reveals only two such uses. One is a book review by an alumnus of Mississippi State University. The reviewer is identified as follows: "Thomas W. Moore is a former president of the ABC television network, retiring in 1985. He now operates a wine grape ranch in California's Napa Valley." ([www.msuinfor.msstate.edu](http://www.msuinfor.msstate.edu)). The second use is taken from an article about a book author: "Clay Jacobsen was born in 1956, brought up on a grape ranch in the San Joaquin Valley of California." ([www.clayjacobsen.com](http://www.clayjacobsen.com)).

The mere two instances of record where "grape ranch" is arguably used in a descriptive manner do not show that consumers would be accustomed to such meaning. Moreover, these two examples do not show use of the term in the trade, but rather in a news context, which could be misuses by journalists and writers.

The examining attorney also submitted several excerpts of web sites retrieved from the Internet showing that various wineries and vineyards use the term "ranch" in their names: Blackjack Ranch Vineyards and Winery; Pelican Ranch Winery; Deerfield Ranch Winery; MacMurray Ranch; Bismark Ranch; Nicholson Ranch Vineyards and Winery; Los Pinos Ranch Vineyards; Hendry Ranch Winery; and Maple Ranch.

We agree with applicant that for most consumers "the land on which grapes are cultivated commonly is referred to as a 'vineyard' and wine is bottled in a 'winery.'" (Brief, p. 10). As shown above by the Internet evidence, several entities use "Ranch" in their trade names, but the trade names are followed in most instances by "Vineyards" and/or "Winery." The uses of "Vineyards" and/or "Winery" immediately after "Ranch" suggest that the term "Ranch" is not merely descriptive for wines. Thus, the term "grape ranch" is only suggestive of wine. Additional thought or imagination would be required on the part of prospective purchasers in order to perceive any significance of the mark GRAPE RANCH as it relates to wine.

The record also includes the results of a search of "grape ranch" using the GOOGLE database. Applicant acknowledges that there are "a few instances where 'grape

ranch' is used to refer to farms on which grapes are raised for wine and other uses," but "in none of these is 'grape ranch' used to describe wine." (August 17, 2004 response). In fact, as applicant points out, most of the "grape ranch" hits are references to applicant, and none of the hits show descriptive use of "grape ranch" in relation to wine.

In reaching our decision, we have considered the third-party registrations of marks for wines that include disclaimers of the term "Ranch." Suffice it to say, that each case must be decided on its own merits, and the Board is not bound by the prior actions of the Office. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to [applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court."].

Based on the record before us, our view is that the term "grape ranch" is incongruous when used in connection with wine. We find language in a prior Board decision to be equally applicable to the situation herein:

The concept of mere descriptiveness, it seems to us, must relate to general and readily recognizable word formulations and meanings, either in a popular or technical usage context, and should not penalize coinage of hitherto unused and somewhat incongruous word combinations

whose import would not be grasped without some measure of imagination and "mental pause." In the Board's view, that is the situation before us and, of course, incongruity is one of the accepted guideposts in the evolved set of legal principles for discriminating the suggestive from the descriptive mark. [citation omitted] Moreover, applicant appears to have applied a suggestive and imaginative twist to a product name that rises above the level of mere descriptiveness and whose use would hardly remove a desired or apt descriptive characterization from the trade repertoire of other makers and sellers of [the goods].

In re Shutts, 217 USPQ 363, 364-65 (TTAB 1983) [SNO-RAKE not merely descriptive of snow removal hand tool]. See also, In re Grand Metropolitan Foodservice Inc., 30 USPQ2d 1974 (TTAB 1994)[MUFFUNS (stylized) is not merely descriptive of baked muffins]. Given the primary meaning of "ranch" as relating to livestock, the incongruity of "grape ranch" catches one's attention, and the meaning, as applied to wine, requires some imagination and mental pause.

In sum, we find that GRAPE RANCH is an incongruous term when used in connection with wine. It has long been acknowledged that there is often a very narrow line between terms that are merely descriptive and those that are suggestive, and the borderline between the two is hardly a clear one. See In re Atavio, 25 USPQ2d 1361 (TTAB 1992).

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We concede that the present case is a close one, but find that the mark falls on the suggestive side of the line. In this connection, the Board has noted in the past that if there is doubt about the merely descriptive character of a mark, that doubt is resolved in applicant's favor, permitting publication of the mark so that an interested third party may file an opposition to develop a more comprehensive record. See *In re Atavio Inc.*, supra; *In re Morton-Norwich Products, Inc.*, 209 USPQ 791 (TTAB 1981); and *In re Gourmet Bakers Inc.*, 173 USPQ 565 (TTAB 1972).

**Decision:** The refusal to register is reversed.