

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: October 26, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joint-Stock Company "Baik"

Serial No. 78341041

Request for Reconsideration

James C. Wray of Law Offices of James C. Wray for Joint-Stock Company "Baik".

Esther Belenker, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Zervas, Kuhlke and Walsh, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

On June 16, 2006 applicant filed a request for reconsideration of the Board's decision issued on June 8, 2006, wherein the Board affirmed the refusal to register applicant's mark BAIKALSKAYA (in standard character form) under Section 2(e)(2) of the Trademark Act, 15 U.S.C.

§1052(e)(2), on the ground that applicant's mark is primarily geographically descriptive of its goods.¹

Applicant argues that the Board's decision is incorrect because 1) "the Russian language translator at the PTO is non-existent" inasmuch as he is a translator from "German & the principal Germanic languages"; 2) the "'Aide-Memoire' shows that some different Russian word, not Baikalskaya, was translated as "Baikal's vodka"; 3) "the examining attorney's unsupported conclusion that Baikalskaya means 'from Baikal' was adopted at the top of page 3 without considering the evidence"; and 4) "the excerpt from a Russian/English dictionary is illegible and non-probative [because] Baikalskaya does not even appear in the dictionary excerpt [and] skaya does not appear, because the only thing that is legible is Б, б which are capital and small letters B, b."

We first note that applicant did not object at any time to the examining attorney's translation of Baikalskaya or the evidence which supports this translation, and in fact appears to concede that BAIKALSKAYA means of or from Baikal. See e.g., Response to Office Action p. 4 and App.

¹ The Board regrets the delay in issuing this order, the request for reconsideration was only recently associated with the Board's electronic case file.

Br. p. 5 ("Additionally, the average American consumer does not speak or understand Russian, and thus would be highly unlikely to understand the meaning of the expression "Baikalskaya.") As stated in the decision "[a]pplicant has not contended and the record does not reflect that the words BAIKAL and BAIKALSKAYA have any other meaning." The literal translation "Baikal's" as shown on the Aide Memoire is an adjectival form of Baikal, thus "of" or "from" Baikal fall within the translation "Baikal's." As noted by the examining attorney it is "equivalent to words such as 'Bostonian,' 'Californian,' and the like." Br. p. 5.

The fact that the USPTO translator for translating Russian into English happens to be located in the "German & principal Germanic languages" department does not rebut the ability of that translator or the accuracy of the translation. The "different Russian word" that applicant must be referring to on the Aide Memoire is BAIKALSKAYA written in the Cyrillic alphabet. As to the dictionary excerpt, to the extent it is illegible we take judicial notice of the dictionary entry on page 12 of the College Edition Harper Collins Russian Dictionary (1994): БАЙКАЛ - Lake Baikal. Thus, the examining attorney's conclusion that Baikalskaya means "from Baikal" is supported by the evidence of record and has not been rebutted by applicant.

We note that applicant has attached online dictionary excerpts to its request. These submissions are untimely and we do not take judicial notice of purely online material.² We further note that applicant submitted a "supplemental response" after filing its reply brief that included a purported untranslated Russian trademark registration for Baikalskaya. Applicant did not request remand or show good cause for remand to consider this otherwise untimely evidence. See *In re Big Wrangler Steak House, Inc.*, 230 USPQ 634, 635 n. 4 (TTAB 1986) ("[I]f applicant wished the Board to consider such evidence, the proper procedure would have been to request a suspension of the appeal and a remand of the application to the Examining Attorney for consideration of the additional evidence. See Trademark Rule 2.142(d). Moreover, applicant would have been obliged to explain why the late-filed evidence was not offered prior to the appeal. Since applicant has neither requested a remand nor submitted any explanation as to the reason for its late-filed evidence, said evidence has been excluded."); and TBMP §1207.02 (2d ed. rev. 2004). Moreover, this untranslated foreign registration

² We add that even if we were to consider these excerpts, they do not serve to rebut the translation of record. The fact that the word "from" standing alone translates to "ot" in Russian and that no translation was found for "Baikalskaya" or the suffix "skaya"

unsupported by information as to the type of registration (e.g., whether based on acquired distinctiveness) or its status (live or dead) based on foreign law and issued by a foreign agency is of no probative value as to the consideration of primary geographic descriptiveness under U.S. trademark law.

The purpose of reconsideration is to point out errors made by the Board in reaching its decision. The basis for the finding that the involved mark is primarily geographically descriptive is clearly articulated therein and we do not find any error in reaching that finding. Thus, we do not find any error in our determination thereof. In view thereof, applicant's request for reconsideration of the Board's decision is denied, and the decision of June 8, 2006 stands.

on this particular website is not sufficient to rebut the translation of record.