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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gregory Gowasack

Application Serial No. 78721011

Albert A. Chapar, Jr. of The Chapar Firm for Gregory
Gowasack.

Anne Farrell, Examining Attorney, Law Office 105, Thomas G.
Howell, Managing Attorney).

**Before Walsh, Taylor, and Mermelstein, Administrative
Trademark Judges.**

Opinion by Mermelstein, Administrative Trademark Judge:

Applicant seeks registration of the mark CASACREOLE (in
standard characters) for "restaurant services, namely,
providing food and drink" in International Class 43.¹
Registration has been finally refused under Trademark Act
§ 2(e)(1); 15 U.S.C. § 1052(e)(1), on the ground that the
proposed mark is merely descriptive of the identified goods.

We affirm.

I. Applicable Law

A term is merely descriptive if it immediately conveys
knowledge of a significant quality, characteristic,

¹ Filed September 27, 2005, based on the allegation of a *bona fide* intent to use the mark in commerce.

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function, feature or purpose of the goods 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 Dev. 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 Serv. 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).

"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 Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980). Even where individual terms are descriptive, combining them 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.*, 64 USPQ2d at 1317-1318.

II. Discussion

We begin by considering the meaning of the words comprising applicant's mark. The examining attorney contends that "casa" means "house," a term that can describe a restaurant, and that "creole" is a type of cuisine. The examining attorney submitted the following definitions with the first Office action:

house

. . . .

5.a. A facility, such as a theater or restaurant that provides entertainment or food for the public....

The American Heritage Dictionary of the English Language (4th ed. 2000) (online ed. www.yourdictionary.com (March 30, 2006)).

Creole

. . . .

n.

1. A person or European descent born in the West Indies or Spanish America.

. . . .

adj.

1. Of, relating to, or characteristic of the Creoles.

Id.

In addition, the examining attorney submitted a translation indicating that the word "casa" in Spanish means

"house" in English, Babel Fish Translation, <http://world.altavista.com/tr> (March 30, 2006), and several third-party registrations, all including "restaurant services," and a disclaimer of "casa" (six registrations²) or "creole" (four registrations).

Applicant admits that "'casa' translates literally to 'house...,'" Reg. for Recon. at 1-2, but argues that the Babel Fish translation does not capture the nuance of the word "casa," citing a definition from a Spanish dictionary found at www.diccionarios.com. Applicant submitted a copy of this definition, which is all in Spanish and more than a page long, comprising what appears to be eleven different meanings or senses of the word. Applicant also submitted its own Babel Fish translation of a small portion of the Spanish definition of "casa." From this evidence, applicant argues that "casa" means "set of the members of a family, specially those that the same address or the most direct relatives lives in [sic]."

We attach little probative weight to applicant's definition of "casa." As is common with words in English,

² We have not considered Registration No. 2212119. This registration was issued under the provisions of Trademark Act § 44, which does not require use of the mark in U.S. commerce prior to registration. Such registrations may normally be relied upon for these purposes once the registrant files an allegation of use pursuant to Trademark Act § 8. However, although a Section 8 filing has been made and accepted with respect to the '119 Registration, it was based on an allegation of excusable nonuse. Because there is no indication that the mark has been used in U.S. commerce, we do not consider it probative of the

it appears that the word "casa" has a number of meanings or senses in Spanish. When considering whether a mark is descriptive, we are not concerned with what a word may mean in the abstract or in relation to other goods or services. Instead, we must determine whether the mark has a descriptive meaning in relation to the identified goods or services. Applicant's submission of a translation of only a small part of a Spanish dictionary entry for the word does not undercut the examining attorney's argument, because we cannot determine whether this particular part of the definition is most relevant to applicant's services.

We agree with the examining attorney that "casa" would readily be understood to mean "house," and in particular, that it has the same meaning as the English word "house" when used in relation to a restaurant. It can hardly be disputed that "casa" is an extremely common Spanish word that would be immediately familiar to and understood by those with even a minimal grasp of that language. Indeed, it is arguable that the word has become a part of the English language, and needs no translation at all.³

meaning of "casa" in the United States.

³ See Dictionary.com Unabridged (v 1.1), based on RANDOM HOUSE UNABRIDGED DICTIONARY, (2006) (online ed. <http://dictionary.reference.com/browse/casa>) ("**casa** ... -noun Southwestern U.S. a house"); WEBSTER'S REVISED UNABRIDGED DICTIONARY (1998) (online ed. <http://dictionary.reference.com/browse/casa>) ("A house or mansion"). 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

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Moreover, the third-party registrations submitted by the examining attorney make clear that like the word "house," "casa" is descriptive of restaurant services.⁴

Applicant does not dispute that "creole" is a type of cuisine, and has in fact submitted its own evidence about creole cuisine. Applicant's disagreement with the examining attorney centers around just what creole cuisine is, and whether it is the same as the cuisine served in applicant's restaurant. While the examining attorney argues that Caribbean food can be considered "creole," applicant contends that American consumers are more likely understand "creole" food to be that of the French-Louisiana tradition. Applicant's chief argument is that its restaurant serves Caribbean, not French or French-Louisiana cuisine, and that the mark is therefore not descriptive of applicant's restaurant services. App. Br. at 6. As stated in applicant's request for reconsideration:

If one imagines an American consumer looking through the phone book and seeing an entry for CaSaCreole, the consumer will not know if it is a restaurant, hotel, or a furniture store or the type of goods or services it provides. The consumer will think "Creole House, what could that be?" Since the test requires that one understands what the goods and services are, the

printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁴ Applicant has submitted one pending application and one registration seeking registration of the word CRIOLLO, one for "wine" and one for "entertainment services. These records for a different mark and different goods and services have no bearing on whether applicant's mark is descriptive of applicant's restaurant services.

American consumer now flips through the Yellow Pages and sees an entry under restaurants for CaSaCreole. Applicant has included evidence that Americans understand Creole to be French Creole generally from Louisiana. Therefore, even the consumer who knows that CaSaCreole is a restaurant will likely think that it is a Louisiana French Creole restaurant. The consumer would be wrong. Creole in CaSaCreole conveys the rich ethnic roots associated with all parts of the Caribbean. This uncertainty and strong American association of French influences with Creole leave no doubt that CaSaCreole is a suggestive mark.

Req. for Recon. At 2-3.

We think that the examining attorney and applicant both miss the point. As applicant acknowledges, descriptiveness must be determined in relation to the identified services, and not in the abstract. App. Br. at 2-3; see *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). The proper test thus looks to the services recited in the application, and not to whatever applicant's actual services may prove to be.⁵ By the same token, when services are broadly stated in an application, they must be construed to include all such services, and not just those which applicant actually offers. *E.g.*, *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006) ("If the cited registration describes goods or services broadly, ... it is presumed that the registration

⁵ We note that applicant has applied for registration under the "intent to use" provisions of the Trademark Act, and has not yet filed an allegation of use. Nonetheless, we gather from applicant's argument and evidence that applicant is in fact using its mark.

encompasses all goods or services of the type described...,“
citing *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992)).

Considered in the correct legal perspective,
applicant’s argument about whether “creole” describes the
type of food actually served in its restaurant is of no
relevance. Applicant’s services are broadly described as
“restaurant services, namely, providing food and drink.”
Because applicant’s services are not limited to any
particular cuisine, we must construe them to involve
providing all types of food and drink, including creole.
Accordingly, we need not decide whether Caribbean cuisine is
“creole” or not. Applicant does not dispute that “creole”
is a type of cuisine which is served in restaurants, and we
must consider it to be within the scope of applicant’s
services for purposes of our descriptiveness analysis.

III. Conclusion

After careful consideration, we find that applicant’s
mark, CASACREOLE, is merely descriptive of the restaurant
services recited in its application. Although not
specifically addressed by applicant, we agree with the
examining attorney that the combination of merely
descriptive terms in applicant’s mark does not create a non-
descriptive composite. Instead, the evidence of record
establishes that potential purchasers would immediately, and
without further conjecture, understand applicant’s mark to

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refer to a restaurant serving creole cuisine. That applicant's restaurant does not actually serve creole cuisine is not relevant because the subject application is not limited to any particular type of restaurant services.

Applicant correctly points out that in a descriptiveness case, it is entitled to the benefit of any doubt. Nonetheless, we have no doubt that applicant's mark is merely descriptive of the recited services. Registration is accordingly barred under Trademark Act § 2(e)(1).

Decision: The refusal to register is affirmed.