

THIS OPINION
IS NOT A PRECEDENT OF
THE T.T.A.B.

Mailed: 9/23/08

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Societe Comptoir Mediterranee de L'Olive "Comolive"

Serial No. 79023892

John A. Clifford and Danielle I. Mattessich of Merchant & Gould for Societe Comptoir Mediterranee de L'Olive "Comolive".

Scott K. Bibb, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

Before Quinn, Rogers and Cataldo, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Societe Comptoir Mediterranee de L'Olive "Comolive" filed an application to register the mark BELDI for "tinned olives."¹

The trademark examining attorney refused registration under Section 2(e)(1) on the ground that applicant's mark,

¹ Application Serial No. 79023892, filed April 4, 2006 under the Madrid Protocol, Section 66(a) of the Trademark Act, 15 U.S.C. §1141(f), based on International Registration No. 0337453.

when applied to applicant's goods, is merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

The examining attorney maintains that the proposed mark is commonly used in the gourmet olive market to describe a particular type of olive, namely a small, fruity brine-cured olive from Morocco. The examining attorney finds that consumers seeking to purchase olives from specialty stores are accustomed to seeing the term "Beldi" or "beldi" used to identify a type of olive from Morocco that comes from a variety of sources, rather than used as a trademark for an olive originating from a single source. Thus, the examining attorney asserts, an American consumer shopping for olives would perceive BELDI as identifying actual Beldi-type olives from Morocco, not as a source-indicating mark of applicant. In support of the refusal the examining attorney introduced excerpts of several third-party websites.

Applicant argues that the examining attorney's evidence is flawed, and that the third-party uses of "Beldi" shown therein are misuses of applicant's mark. Applicant asserts that the term "Beldi" is used in connection with a wide variety of goods and/or services,

ranging from a vacation village resort in Turkey, to a type of cutlery, to a Tunisian folkdance. Thus, applicant argues, the Office has not met its burden in establishing that the purchasing public recognizes "Beldi" as a "variety" of olives. In support of its arguments, applicant submitted excerpts of several third-party websites, a certificate issued by the Kingdom of Morocco, and a copy of a judgment from the Paris Regional Court upholding the French trademark registration that is the base registration for the International registration upon which the present U.S. application is based.

A term is deemed to be merely descriptive of goods or services, within the meaning of 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. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007); and *In re Abcor Development*, 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; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. *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 on or in connection with the 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. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). The "average" or "ordinary" consumer is the class or classes of actual or prospective customers of applicant's goods or services. *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987).

We note, at the outset, that the present record does not include any dictionary definitions of the term "Beldi." However, the examining attorney's Internet evidence shows numerous third-party uses of the term to identify a

particular type of olive. The excerpts of these third-party web pages include the following:

Varieties of olives

Beldi

A small, fruity olive from Morocco. Brine-cured, it is often used in olive mixes and in cooking.²

(www.wholefoodsmarket.com)

Beldi

The main olive variety harvested for preserves in Morocco is the Beldi. It is the ideal olive for preserving because of the firm texture and thickness of its flesh.

(www.olives-tramier.com)

At Olive Harvest our superior cultivars of olives, namely Beldi and Souri are carefully handpicked...

(www.oliveharvest.com)

Morocco: "Nomads" - earthy, lush Beldi olives...

(www.oliveoilturkey.com)

Beldi olives marinated in herbs de Provence

(www.1800gourmet.com)

Olives

Try a pink Beldi. Cured in coriander and lemon juice, these olives provide a very intense, briny flavor—truly for the olive fanatic.

(www.hgtv.com)

Green Olives in Harissa Sauce

Beldi olives marinated in a North African type hot sauce. Tasty but not overly spicy.

(www.3e.com)

² Also listed are "varieties" such as Kalamata, Manzanilla, Nicoise and Picholine.

So I asked said olive expert for advice, and he suggested using Beldi olives.

(www.weathershenker.com)

These olives are made from gorgeous reddish-purple olives known as beldi in Morocco.

(www.amazon.com)

Red Bigaradier Olives commonly known as Beldi Olives are reddish-purple. They are softer than green olives and have a delicious, slightly nutty flavor and a hint of bitterness on the finish.

(www.tagines.com)

...assorted beldi olives, nicoise olives, green chiles, red pepper, garlic, fava beans in an herb sauce.

(www.martinpreferredfoods.com)

Moroccan Purple Beldi Olives are grown in the remote Atlas mountain range of Morocco, where the climate, rich soil and the ancient groves produce these savory olives.

(www.zamourispices.com)

Applicant's competing Internet evidence shows the use of the term "Beldi" in connection with a variety of goods and services, including a ClubMed resort in Turkey; cutlery; computer software; pottery; cosmetics; a Tunisian dance; mineral mines in the UK; and a geographic location.

We find that the Internet evidence weighs in favor of a finding of mere descriptiveness. As pointed out by the examining attorney, the proposed mark must be considered in the context of applicant's goods, namely, "tinned olives."

As noted earlier, that applicant's mark may have meanings in different contexts, as shown by its evidence, does not detract from the mere descriptiveness of the term for olives.

We also find that applicant's criticisms of the examining attorney's evidence have no basis in the record:

The evidence relied upon to reject the application consists of an editorial copy from websites offering to sell olives in an on-line environment. The authors of such copy are typically junior advertising personnel or clerical employees with no special training, skill or experience. It is unknown what, if anything, such copy writers are looking at when writing these materials, and it is entirely possible that they simply "cut and paste" their copy from the work of others. If they copy from a site offering BELDI branded olives, they could easily repeat the term in their own copy. Applicant submits that this type of error is the source of the evidence relied upon to reject this application, and is the reason such "evidence" is unreliable and should be discounted to [sic] disregarded.

These Internet excerpts merely demonstrate the improper usage of Applicant's trademark, and are not persuasive of the Office's contention regarding the nature and extent of the BELDI mark as a varietal name for olives.

Firstly, Internet evidence is acceptable for submission in a Board proceeding as it constitutes evidence of potential

public exposure. *In re Bayer Aktiengesellschaft*, 82 USPQ2d at 1833; *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002). See TBMP §1208.03 (2d ed. rev. 2004); TMEP §710.01(b) (5th ed. 2007). Secondly, applicant did not produce any probative evidence that contravenes the reliability of the web pages. Further, applicant did not indicate that it has taken any action against these alleged "improper" uses of applicant's mark.

Applicant equates the unreliability of the examining attorney's Internet evidence with Wikipedia evidence. Indeed, the Board has noted in the past that there are inherent problems regarding the reliability of Wikipedia entries because Wikipedia is a collaborative website that permits anyone to edit the entries. Nevertheless, the Board has considered such evidence with certain caveats. For example, although the Board encourages additional evidence to corroborate Wikipedia evidence, "the Board will consider evidence taken from Wikipedia so long as the non-offering party has an opportunity to rebut the evidence by submitting other evidence that may call into question the accuracy of the particular Wikipedia information." *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1032 (TTAB 2007). In the same manner herein, while applicant criticizes the Internet evidence introduced by the

examining attorney, it did not avail itself of the opportunities to rebut the evidence by submitting other probative evidence that would call into question the accuracy of the information contained in the web pages. Thus, we have no reason to discount or disregard the evidence. Even assuming *arguendo* that BELDI is a trademark of applicant's, the public exposure in this country appears to be that of a type of kind of olive, rather than an olive exclusively originating from applicant. As stated by the examining attorney, "[c]onsumers seeking to purchase olives from specialty food stores are accustomed to seeing the word 'beldi' used to identify a type of olive from Morocco that comes from a variety of sources, rather than being used as a trademark for an olive coming from a single source." (Brief, p. 7).

The other evidence of record does not persuade us to reach a contrary decision. Applicant introduced a "Certificate" issued by the Kingdom of Morocco's Independent Establishment for Export Control and Coordination, dated March 24, 2005. The certificate indicates that the name "Beldi" has been filed internationally as a trademark and that "said name is not included among the varieties of olives recognized by the

ITO (International Trade Organization), viz. *Meslala, Picholine Marocaine, Haouzia and Menara.*"

Firstly, this document reflects the view of a foreign governmental entity, and is not probative of the purchasing public's perception of the proposed mark in this country. Secondly, as pointed out by the examining attorney, the document is over three years old, and the status of the term "Beldi," even in the view of this Moroccan governmental entity, may have changed in the interim.

Also of record is a document captioned "Enforceable Writ of Judgment" issued by the Paris Regional Court on March 19, 2007. The case involved applicant as a plaintiff against Federation des Industries Condimentaires de France over the use of "Beldi." Applicant successfully defended its claim to trademark rights in BELDI against a claim by the French government agency that the term should be reserved to identify a variety of olives in Morocco. Although we have considered this evidence, it is well settled that the findings of a foreign tribunal are not relevant to the issues in a proceeding concerning the right to register a trademark in the United States. See, e.g., *Societe Civile Des Domaines Dourthe Freres v. S.A. Consortium Vinicole De Bordeaux Et De La Gironde*, 6 USPQ2d 1205, 1207 n. 6 (TTAB 1988).

Ser No. 79023892

Based on the record before us, we find that the term BELDI, when applied to tinned olives, merely describes a type or kind of olive.

Decision: The refusal to register is affirmed.