

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
September 9, 2008
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Champagne Montaudon

Serial No. 79028383

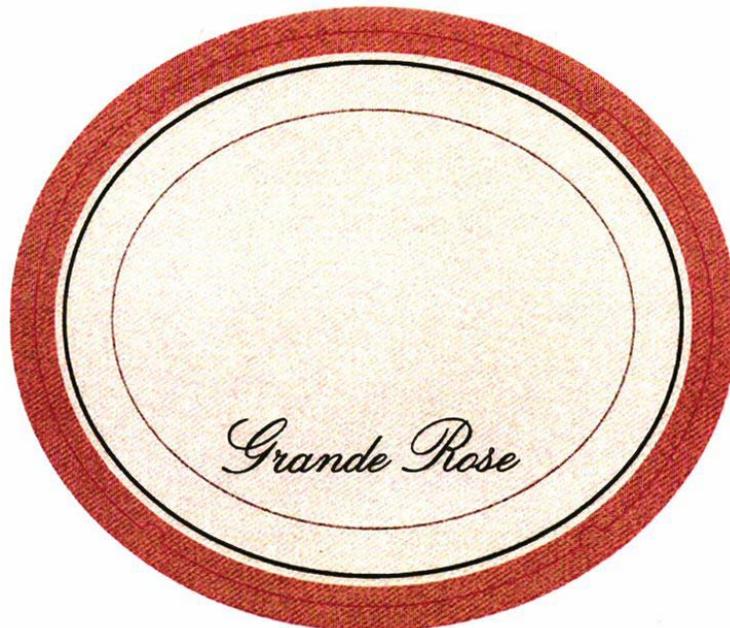
William C. Wright of Epstein Drangel Bazerman & James, LLP
for Champagne Montaudon.

Andrea Koyner Nadelman, Trademark Examining Attorney, Law
Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Walters, Bucher and Walsh, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Champagne Montaudon seeks registration on the Principal
Register of the following composite mark:



for goods identified in the application, as amended, as follows:

"alcoholic beverages, namely, alcoholic punch and rum; alcoholic beverages, namely prepared alcoholic cocktails and aperitifs, digesters in the nature of liqueurs and potable spirits, eaux-de-vie, alcoholic beverages of fruit, alcoholic fruit extracts, liqueurs, distilled and potable spirits, wine, French wine, namely champagne" in International Class 33.¹

The Trademark Examining Attorney refused registration on the ground that the word "Rose" is merely descriptive of the goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), and therefore requires a disclaimer within the meaning of Section 6 of the Trademark Act, 15 U.S.C. § 1056.

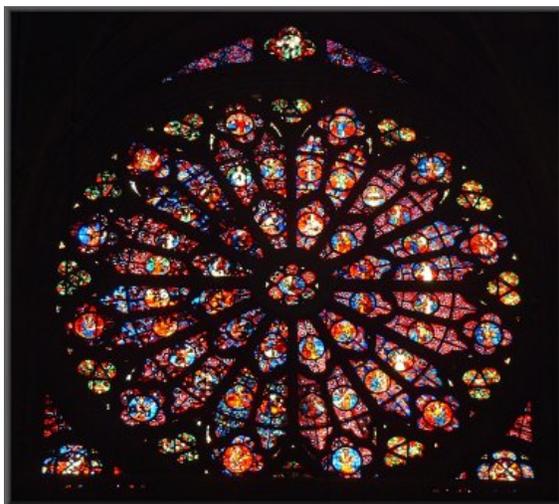
After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board. We affirm the refusal to register.

Applicant argues that the two-word term, "Grande Rose," is unitary and hence a disclaimer of the word "Rose" is not

¹ On August 3, 2006, applicant made a Request for Extension of Protection, seeking registration on the Principal Register. On October 19, 2006, the application was forwarded to the United States Patent and Trademark Office, and assigned application Serial No. 79028383. The mark is comprised of an oval device consisting of two concentric ovals. The first oval (located in external circumference) is pale orange and includes in its middle a fuchsia concentric edging with small half-circles at regular intervals. The second oval (located inside the first oval) is pink and includes two oval concentric lines, one of which is black and located at the circumference, the second is grey and nearer the center. At the bottom of the second oval are the words "Grande Rose" in italic black lettering. The colors pale orange, fuchsia, pink, black and grey are claimed as a feature of the mark.

necessary. Applicant discusses two well-known, readily-perceived meanings for this combined term.

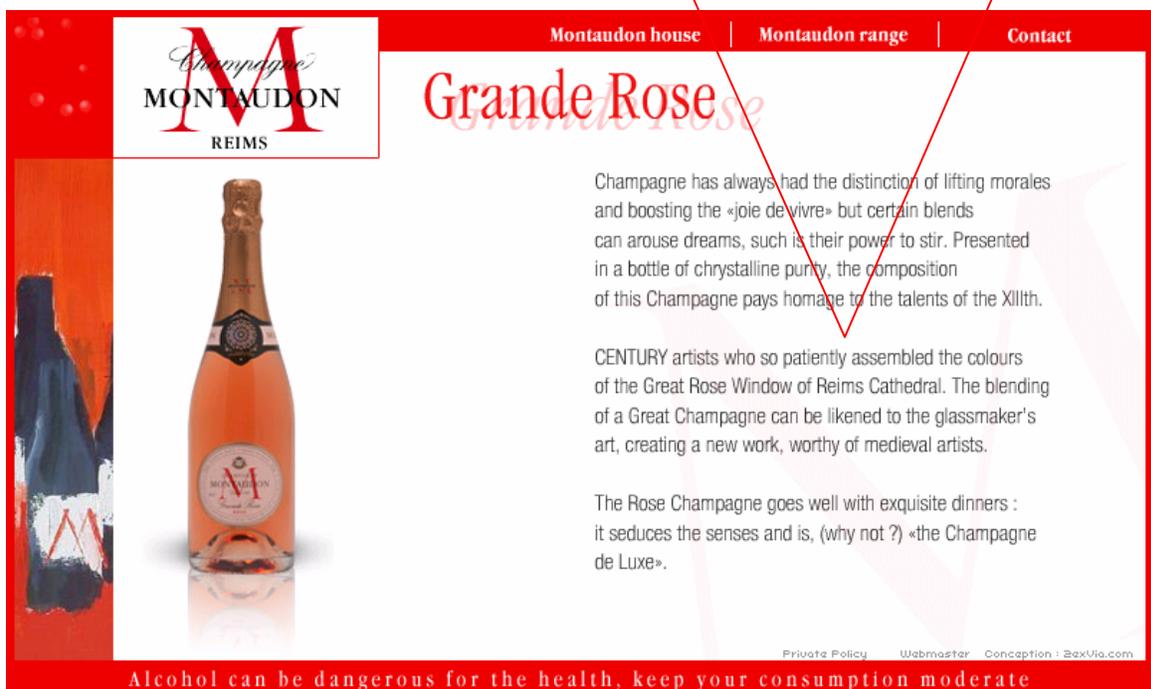
Applicant cites to the teachings of the Court of Appeals for the Federal Circuit in *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 1561, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991). When a composite mark has certain observable characteristics that make its elements inseparable, the mark is unitary. Specifically, these observable characteristics combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements.



The first meaning that applicant contends will be readily-perceived by consumers in the United States is "The Great Rose Window" or "Le Grande Rose," referring to a decorated circular window found in French Gothic architecture, such as the one in nearby Reims Cathedral. [see Exhibit #1, response of May 30, 2007; "L'Assomption" also available at

<http://catreims.free.fr/rel019.html>]. In this vein, applicant argues that it reinforces this meaning of the term "Grande Rose" on its wine labels:

CENTURY artists who so patiently assembled the colours of the Great Rose Window of Reims Cathedral. The blending of a Great Champagne can be likened to the glassmaker's art, creating a new work worthy of medieval artists.



Alternatively, applicant argues that even if the applied for mark does not have a well-known meaning to the average American consumer, it still has a readily-perceived and inherently unitary significance, namely a rose flower, that is long or great, i.e., exceptionally beautiful. Applicant goes on to argue that this latter interpretation is in fact supported by the omission of an *accent aigu* over the

letter "e" in the word "Rose." As a French company, if applicant intended to use the term "Rosé" to denote the color or type of wine being sold under its applied for mark, it would clearly have done what consumers would have expected for it to have done, namely, employing the word "Rose" - the French word that denotes a light-red wine.

By contrast, the Trademark Examining Attorney argues that the evidence of record clearly demonstrates that the word "Rose" identifies both the color of, and a particular type of wine, including sparkling French wine. She points to third-party registrations showing that it is the practice of the United States Patent and Trademark Office to disclaim the descriptive word "Rose" (or "Rosé") when it is used in connection with a variety of alcoholic products such as those for which applicant seeks an extension of protection.

We turn first to the evidence placed into the record by the Trademark Examining Attorney demonstrating that the word "Rose" is merely descriptive of applicant's particular wine products in that it identifies both the color (rose or pink) and the type of wine (rosé wine). She begins by pointing out that the evidence in this case includes materials from the GOOGLE® search engine in which the term "Rose Wine" appeared in over 7.7 million GOOGLE stories. Excerpts from websites include:

- <http://www.wisegeek.com/> Answers the question "What is Rose Wine?" The article states "Rose wines, often referred to as Blush wines or written Rosé, are wines which are not truly red, but have enough of a reddish tinge to make them assuredly not white.
- www.answers.com/ Provides a definition of rose wine: The noun *rose wine* has one meaning: Meaning #1: pinkish table wine from red grapes whose skins were removed after fermentation began. Synonyms: blush wine, pink wine, rose.
- <http://www.missionliquors.com/> Provides a description of rose wines: Rose wines have an excellent balance and great finesse ... [t]he cultivation of rose wine exists throughout the entire world.
- www.foodreference.com/ Provides commentary about rose wines, including: Excellent rose wines come from Provence and southern Cotes du Rhône (both in France), Catalonia, Navarra (both in Spain) and also from Ontario and B.C.
- <http://www.progressivegrocer.com/> Provides information about rose wine sales: Consumers tastes for wine are becoming increasingly upscale, driving sales of premium-priced rose wines up 45 percent in the past year.
- <http://home.howstuffworks.com/> Provides information on how to remove rose and red wine stains from a variety of products.
- <http://www.blogowogo.com/> Provides personal opinions about rose wine: The weather is perfect, school is nearly out, baseball season's in full swing, and the rose wines have arrived.
- <http://www.ladieswholaunch.com/> Provides excerpts from a book that includes information on Enjoying rose wines: Finally the nice weather is upon us (let's hope it stays!) and what better on a sunny spring day than a glass of refreshing Rose wine.
- www.professorbainbridge.com/ Provides reviews of Wine-California-Rose.

Even more narrowly than all blush or pink wines, the Trademark Examining Attorney also argues that the evidence

in this case includes materials from the GOOGLE® search engine in which the word "Rose" (or "Rosé") appears close to the word "Champagne" in approximately 412,000 stories. Excerpts from these websites include:

- <http://www.drinkon.com/> Provides information about rose champagne: Rose champagne has a reputation for romance, glamour and sophistication and our range of pink champagne is one of the best you'll find anywhere.
- <http://splendidtable.publicradio.org/> Provides commentary about rose champagne for Valentine's Day: Wine guy and author Jay McInerney (Bacchus and Me), think Rose Champagne is the perfect sip for Valentine's Day.
- www.weddingsandcourtships.com/ Provides a recipe for La Vie en Rose with the following ingredients: 1/2 shot glass rose water, 1 sugar cube (or 1 tsp sugar), Rose Champagne.

Accordingly, she argues that this evidence demonstrates that the word "Rose" identifies applicant's particular wine products as well, namely, sparkling wine from France. Similarly, the following third-party registrations reflect past United States Patent and Trademark Office practice of having trademark owners disclaim the word "Rose" (or Rosé) when used in connection with alcoholic products such as those listed by applicant:

ÉTOILE ROSÉ	Registration No. 0980477 for rose wines. The word "Rosé" is disclaimed
ROSE DE SAIGNEE	Registration No. 2465997

for wine. The word "Rose" is disclaimed. The English translation of the term "Saignee" is "to bleed."



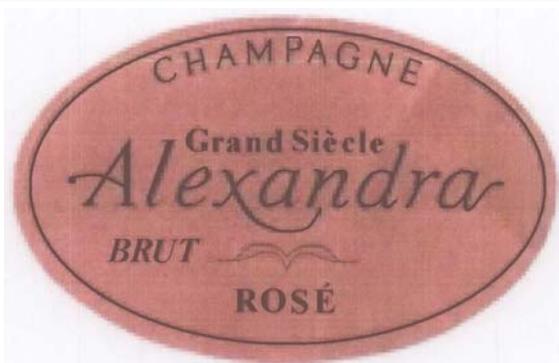
Registration No. 2349543 for champagne. The words "Brut Rosé" and "Champagne" are disclaimed.



Registration No. 2697137 for champagne. The words "Champagne Brut" and "Cuvée Rosé Brut" are disclaimed.

RENDEZVOUS ROSE

Registration No. 2815135 for bottled wine. The word "Rose" is disclaimed.



Registration No. 3181111 for champagne with protected label of origin. The words "Champagne" and "Brut Rosé" are disclaimed.

The Trademark Examining Attorney contends that applicant has not proffered any evidence that supports the assertion that consumers would be aware of Gothic architecture styles that appear in European cathedrals, and hence, that this combined term does not have a separate, unitary meaning readily recognizable in the United States. As to applicant's alternative argument, the Trademark Examining Attorney argues that the term "rose" is not something that would normally be described as "grande," that American consumers do not have reason to use the phrase "grande rose," nor does this two-word expression have a unitary meaning for these consumers.

Analysis

As stated clearly by our principal reviewing Court, in a case cited with favor in applicant's brief: "A unitary mark simply has no 'unregistrable component,' but is instead an inseparable whole." See *Dena Corp. v. Belvedere International Inc.*, 21 USPQ2d at 1051. The *Belvedere* Court, reviewed the practice of the United States Patent and Trademark Office and the statutory history of the policy of exempting unitary marks from the disclaimer requirement. In short, because a unitary mark does not fit the 'unregistrable

component' language of 15 U.S.C. §1056(a),² the Director cannot require a disclaimer in such a case.

The Federal Circuit discussed the lack of unitariness in the EUROPEAN FORMULA & design mark as follows:

A unitary mark has certain observable characteristics. Specifically, its elements are inseparable. In a unitary mark, these observable characteristics must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression ...

... An examination of the mark discloses that its elements are not so merged together that they cannot be regarded as separate (citation omitted). The words EUROPEAN FORMULA are separate from the circular design. These two elements are not connected by any lines or design features.

Nothing melds EUROPEAN FORMULA with the circular design to create a single indivisible symbol.

In addition, no particular meaning in the words EUROPEAN FORMULA or the circular design links these detached features... The observable characteristics of Belvedere's mark show that its elements are not 'so merged together that they cannot be regarded as separable elements.' (citation omitted).

The mere proximity of EUROPEAN FORMULA to the unrelated design feature does not endow the whole with a single, integrated, and distinct commercial impression. No evidence suggests that a potential purchaser would perceive this mark to convey a single inseparable impression. In the absence of such evidence, EUROPEAN FORMULA in large type appears to stand out and convey a meaning wholly unrelated to the circular design.

²

§ 6 (15 U.S.C. § 1056). Disclaimers

(a) The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

We find the teachings of *Belvedere* to be most applicable in this case. As in that case, we also find an absence of unitariness herein. If we were to paraphrase the third recited paragraph above from the Court in *Belvedere*, it might be to say that "Nothing melds the word 'Grande' with the word 'Rose' to create a single indivisible symbol." There is no evidence that prospective customers, upon seeing this composite mark, would get a single commercial impression of decorated circular window found in Gothic architecture or of an exceptionally beautiful, long-stemmed rose.

While we find the reasoning of *Belvedere* to be most



relevant, the
respective



composite marks are not at all analogous.

The *Belvedere* composite involved wording and a design feature, while here we are

faced with the unity or separability of two words.

The determinative question before us is whether or not the word "Rose" in the context of "Grande Rose" placed on a label affixed to a bottle of sparkling, blush wine will be seen as referring to the wine itself.

While it may be true that the oenophile fluent in the French language would readily distinguish between the word "Rosé" (i.e., suggesting a type of wine) and the term "Rose"

(i.e., suggesting a flower, a color or, in the context of "Grande Rose," possibly a medieval window), neither the excerpts drawn from the Internet nor the disclaimer practice of the United States Patent and Trademark Office has made such a distinction. As applied to wines, the term is disclaimed in third-party registrations irrespective of the presence or absence of the *accent aigu* over the letter "e."

Accordingly, we agree with the Trademark Examining Attorney that wine purchasers in the United States will not view "Grande Rose" as a unitary expression. We instead find that purchasers encountering the words "Grande Rose," as applied to applicant's wine, will view "Grande" as the brand name, and "Rose" as the color or type of wine. Applicant's combining the word "Grande" with the word "Rose" does not suffice to eliminate or negate the merely descriptive significance of the word "Rose" as applied to wine, and the word "Rose" therefore must be disclaimed apart from the mark as shown.

Decision: The refusal to register absent a disclaimer of the word "Rose" is hereby affirmed. However, this decision will be set aside if, within thirty days of the mailing date of this order, applicant submits to the Board a proper disclaimer of the word "Rose." See Trademark Rule

2.142(g), 37 U.S.C. § 2.142(g); and TBMP § 1218 (2d ed. rev. 2004). A proper disclaimer would read as follows: "No claim is made to the exclusive right to use the word 'Rose' apart from the mark as shown."