

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

OCT 23, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Les Boulangers Associates, Inc.*

Serial No. 75/012,726

Bruce E. O'Connor of *Christensen, O'Connor, Johnson & Kindness* for *Les Boulangers Associates, Inc.*

Montia O. Givens, Trademark Examining Attorney, Law Office 101 (*R. Ellsworth Williams*, Managing Attorney).

Before *Cissel*, *Seeherman* and *Hairston*, Administrative Trademark Judges.

Opinion by *Hairston*, Administrative Trademark Judge:

Les Boulangers Associates, Inc. has filed an application to register the mark PARIS SNACKS (SNACKS is disclaimed) for goods which were subsequently identified as "frozen bread and pastry products, namely, ready-to-eat breadsticks, focaccia, croissants, crepes, scones, puff

pastry, strudel pie and tart pastry shells, cookies, and bread having a meat, cheese, and/or vegetable filling."¹

Registration has been finally refused under Section 2(a) of the Trademark Act on the ground that the mark is geographically deceptive and, in the alternative, under Section 2(e)(3) on the ground that the mark is geographically deceptively misdescriptive. It is the Examining Attorney's position that purchasers would mistakenly believe that applicant's frozen bread and pastry products originate in Paris, and that this misunderstanding would be a material factor in the purchasing decision.

Applicant has appealed. Briefs have been filed, but no oral hearing was requested.

The test for determining whether a mark is geographically deceptive is set forth in *Institut National des Appellations D'Origine v. Vintners International Co. Inc.*, 958 F.2d 1574, 22 USPQ2d 1190, 1195 (Fed.Cir. 1992). The test consists of three elements, the first two of which comprise the test for determining whether a mark is geographically deceptively misdescriptive. The elements are as follows:

¹ Application Serial No. 75/012,726 filed October 31, 1995; based on a bona fide intention to use the mark in commerce.

1. Whether the primary significance of the mark as it is used is a generally known geographic place;
2. Whether purchasers are likely to believe, mistakenly, that the goods or services sold under applicant's mark have their origin in or are somehow connected with the geographic place named in the mark and, if so;
3. Whether a purchaser's mistaken belief as to the geographic origin of the goods or services would materially affect the purchaser's decision to buy the goods or services sold under the mark.

At the outset, we note that applicant has stated that its goods "do not come from, and will not come from, Paris." (January 2, 1997 response, p. 6). We should also note that there is no dispute that Paris is a well-known geographical place. In urging reversal of the refusal to register, applicant maintains that its mark PARIS SNACKS is fanciful and suggestive, and that the term PARIS, as used in the mark, does not denote geographic origin, but rather hints at a desirable aura of the products. Further, applicant argues that purchasers are not likely to believe that frozen bread and pastry products originate in France, and that the Trademark Examining Attorney has not made out a goods/place association between Paris and applicant's

frozen bread and pastry products. In particular, applicant contends that:

Although the Trademark Attorney included excerpts from over one hundred articles regarding baked goods and various locations in France, only two of these articles out of the million of articles searched in the LEXIS/NEXIS search discussed both Paris and frozen bakery goods.
(Brief, p. 3)

As correctly noted by the Examining Attorney, to establish a primarily geographically descriptiveness bar, the Office must show only a reasonable basis for concluding that the public is likely to believe the mark identifies the place from which the goods originate; not that the place is well known or noted for the specific goods. In this case, the Examining Attorney has made of record numerous NEXIS excerpts which demonstrate that Paris is recognized as a culinary center for, in particular, bread and pastries. Examples are set forth below:

Established in Paris in 1895, Le Cordon Bleu is considered the world's ultimate cuisine and pastry school, with locations in Paris, London and Tokyo. (The Times-Picayune, June 22, 1995);

From bread to pastries to wine, the French capital offers delicious dining. (Milwaukee Journal Sentinel, October 15, 1995);

...raves from Eastern reviewers, including former New York Times food critic Craig Claiborne, who compared them favorably to the breads of Paris. (The Seattle Times,

February 1, 1995);

Richard got his start working in the revered pastry shop of Gaston Lenotre in Paris, and the training shows beautifully in his eye-catching plates and bold flavors. (Sacramento Bee, November 22, 1995);

Order the country, currant or walnut breads from Deborah's Country French Bread to enjoy the legendary breads of Paris. Quick-frozen in France, the country bread is a pale wheat color inside and has a thick, dark crust . . . (Chicago Sun-Times, December 4, 1996); and

Originally from Versailles, Philippe Ducrocq studied in a Parisian culinary school and worked in Paris pastry shops before becoming the Beverly Hills Hotel pastry chef in the late 1980's. (The Kansas City Star, January 8, 1997).

In view of the foregoing, we find that the Examining Attorney has established a prima facie case that the public would make a goods/place association, that is, that the public would be likely to believe that frozen bread and bakery products do originate in Paris. We disagree with applicant that because its bread and pastry products are frozen, consumers would be unlikely to believe that such products originate in Paris. To the contrary, given that fresh bread and pastry products become stale quickly, consumers are more likely to believe that bread and pastry

products sold in the United States come from Paris if such products are frozen, rather than fresh.

As to applicant's contention that the use of PARIS in its mark merely hints at a desirable aura of the products, we disagree. Here, PARIS projects a primarily geographic significance inasmuch as applicant has simply combined it with SNACKS, a highly descriptive/generic term for applicant's goods.

In sum, we find that purchasers and prospective purchasers encountering the mark PARIS SNACKS for frozen breads and pastry products are likely to believe, mistakenly as it turns out, that the products have their origin in Paris.

The final question, then, is whether the geographical misdescription created by PARIS SNACKS would be material to the purchase of frozen bread and pastry goods bearing the mark. We believe that it would. The evidence put forth by the Examining Attorney demonstrates the fame of Paris as a culinary center. Its reputation for exceptional breads and pastries is legendary. Thus, there is no doubt that such goods emanating from Paris would be more appealing or desirable to prospective purchasers, and thus, this factor would be material to the decision to purchase such

Ser No. 75/012,726

products. See In re Juleigh Jeans Sportswear Inc., 24
USPQ2d 1694 (TTAB 1992).

Decision: The refusal to register under Section
2(e)(3) and 2(a) of the Trademark Act is affirmed.

R. F. Cissel

E. J. Seeherman

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

Ser No. 75/012,726