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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kelly's Cajun Grill Franchise Corporation

Serial No. 74/622,815

Charles E. Baxley of Hart, Baxley, Daniels & Holton for
Kelly's Cajun Grill Franchise Corporation.

Angela Bishop Wilson, Trademark Examining Attorney, Law
Office 111 (Craig Taylor, Managing Attorney).

Before Simms, Hanak and Hairston, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Kelly's Cajun Grill Franchise Corporation (applicant),
a Florida corporation, by assignment from Cajun & Grill of
America, Inc., has appealed from the final refusal of the
Trademark Examining Attorney to register the asserted mark
BOURBON CHICKEN for "food item, namely, a poultry dish for
consumption on or off the premises."¹ The Examining

¹ Application Serial No. 74/622,815, filed January 19, 1995,
claiming first use in commerce since December 9, 1992. In the

Attorney has refused registration under Section 2(e)(1) of the Act, 15 USC § 1052(e)(1), stating, in the final refusal, that applicant's asserted mark is merely descriptive "if not generic" for its goods.² It is the Examining Attorney's position that the evidence made of record indicates that "bourbon chicken" refers to a type of prepared chicken dish and that consumers are likely to recognize applicant's asserted mark as a type of food item rather than as an indication of origin.

Aside from the recipes for "bourbon chicken" obtained from the Nexis computer database, the Examining Attorney has made of record a number of articles which refer to "bourbon chicken" or "Bourbon Chicken." Some of them are set forth below:

Roger Young of North Charleston wants the recipe for the bourbon chicken served at the Cajun Café in the food court at Northwoods Mall.
The Post and Courier, Dec. 22, 1996

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application, applicant has disclaimed the term "CHICKEN" apart from the mark.

² Upon being told by applicant that applicant's goods contain no bourbon, the Examining Attorney at one time refused registration on the basis that applicant's asserted mark is deceptively misdescriptive, also pursuant to Sec. 2(e)(1). The Examining Attorney later withdrew that refusal. The Examining Attorney also advised applicant of the pendency of a previously filed application to register the mark SWEET BOURBON SALMON for fish served in a restaurant. That potential bar under Section 2(d) was withdrawn.

"When my husband and I went to Stoney River Steak House for dinner, he knew he wanted prime rib and I knew I wanted chicken. I asked the waiter for suggestions, and he told me his favorite was the grilled bourbon chicken. It came served on a bed of garlic mashed potatoes and a huge order of mushrooms. It was delicious. It didn't taste like bourbon, but had a little bit of a sweet taste...

The Atlanta Constitution, Nov. 22, 1996

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Q: Your column is great! I'm hoping you can get two recipes for me. Cajun and Grill, a restaurant at South Station, has the most marvelous bourbon chicken. I don't believe they'll give it out, but I'd like to try...

The Boston Herald, Oct. 9, 1996

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Hungry shoppers waited in long lines for such delectables as bourbon chicken, cajun-style.

The Denver Post, Sept. 1, 1996

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His theory: While all the lines at the Peacock Café's food court are long, the one to the Bourbon Street Grill moves the quickest because the food -- red beans and rice, bourbon chicken and blackened beef -- is already cooked...

The Detroit News, Aug. 29, 1996

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Home Run Grill...

What we got: Bourbon chicken over rice...

St. Petersburg Times, May 9, 1996

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Also, Volume will contract with local vendors to sell their products in the Dome's planned Taste of Tampa Bay food court, he said. He mentioned such items as Mrs. B's sweet potato pie, Big Easy

bourbon chicken and offerings from the Columbia restaurants among the possibilities.
St. Petersburg Times, May 4, 1996

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For those who are not buffet minded, Between Friends offers a fairly diverse lunch menu...

Some of the available dishes are... "Bourbon Chicken" for \$12.50...
The Legal Intelligencer, Apr. 12, 1996

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Vienna's Grille inspires this hope...

... Other noteworthy entrees are the bourbon chicken glazed with brown sugar and a pan-fried chicken roulade stuffed with corn bread and andouille and served with a yellow-pepper sauce.
Washingtonian, Apr. 1996

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Saturdays during March, Café at the Palm Court at the Omni Netherland Plaza (Fifth and Race streets downtown) serves a pasta bar including salad, bread and cookies... The Café also has introduced a spring menu, featuring fricassee of wild mushrooms in puff pastry, New Orleans Bourbon Chicken...
The Post and Courier, Mar. 17, 1996

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In addition to the big portions, Cajun Grill offers loads of flavor. Visitors are greeted by a steam table featuring three chicken entrees and a fourth dish that, depending on the day, will vary between Salisbury steak, Cajun roast pork or spicy noodles and chicken seasoned with cayenne pepper.

The Bourbon chicken (named after the famous street in New Orleans) is perhaps the most

popular. It comes in inch-thick chunks that have been marinated in wine, pepper and other spices...
St. Petersburg Times, Jan. 4, 1996

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At the Food Court on the second floor of Roosevelt Field, I usually opt for one of two choices. There's The Big Easy, whose bourbon chicken (always giving out samples) is marvelous, even if the accompanying vegetables are watery and bland...

Newsday, November 3, 1995

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It begins with beignets and ends with bourbon chicken, the aroma mingling with the sounds of the bayou in downtown Clearwater.

St. Petersburg Times, Oct. 21, 1995

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Looks like the almost repetitive display at the Big Easy Cajun counter. Bourbon Chicken (ask to sample a bite) at Big Easy is not much different from its sesame and soy counterpart at the Chinese stall...

The Washington Times, May 25, 1995

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Bourbon chicken is another recipe that is making Stanley's the place to go for homestyle cooking.

"We have a unique concept here, a bourbon bar with the largest selection of bourbons in the country -- 90 bourbons. If it's made, we have it. So we wanted to work bourbon into the menu..."

Chicago Sun-Times, Jan. 26, 1995

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... include recipes for a variety of African-inspired foods, including African Chicken and Greens, Praline Yams, Cajun Bourbon Chicken and Ginger Beer.

The San Diego Union-Tribune, Dec. 18, 1994

* * * * *

Most generous freebie: The guy handing out toothpicked samples of Manchu Wok's bourbon chicken. I snagged four servings before he suggested I actually buy something.

The Times Union, Oct. 14, 1994

The Examining Attorney notes that the asserted mark is not found in the standard dictionary but argues that the fact that a term is not in the dictionary is not controlling. Further, the Examining Attorney maintains:

The applicant contends that many of the Nexis stories contained references to its restaurants. However, only eleven of the forty-four stories reference the applicant... The majority of the stories refer to BOURBON CHICKEN as a type of entrée, with several stories referencing BOURBON CHICKEN as a staple at Cajun food stands commonly found at shopping malls. As such, it appears that BOURBON CHICKEN is commonly used by consumers to identify a type of poultry dish. Furthermore, it appears that persons in the trade widely use BOURBON CHICKEN to identify a chicken entrée. In fact, there are references to the following restaurants that all provide BOURBON CHICKEN as a menu item: Home Run Grill (story number 3); Big Easy (stories number 4, 18, 29 and 38); Between Friends (story number 19); Coyote's Steakhouse (story number 43); and Manchu Wok (story number 39 in KWIC format).

Examining Attorney's brief, 5-6.

Applicant, on the other hand, contends that the limited references made of record by the Examining Attorney do not provide conclusive evidence that the mark sought to

be registered is commonly used to refer to a food item. Applicant contends that the evidence does not support "widespread and uncontrolled use" of this term. Applicant's attorney points out that some of the articles refer to applicant and applicant's chicken. Further, applicant contends that the term "Bourbon" has other meanings. It is applicant's position that the word "BOURBON" in its mark suggests spicy Cajun cooking with a French influence.

The BOURBONS were rulers of France from 1589... to 1793 and from 1814 to 1830, rulers of Spain from 100 [sic]... to 1808, from 1814 to 1868 and from 1875 to 1931... A BOURBON is a person who clings obstinately to social and political ideas of an old order of things. Let's say that a BOURBON is a reactionary or a conservative, such as an extremely conservative member of the Democratic Party.

BOURBON identifies a rose of compact upright growth with shining leaves, prickly branches and clustered flowers. BOURBON also signifies many geographic locations, one being a french [sic] island in the Indian Ocean and another being a street in New Orleans which is involved with Mardi Gras and jazz music. Another BOURBON location is Bourbon County in Kentucky whence cometh a whisky by that name.

As she had done in prior Office Actions, the Examining Attorney in the Fourth Office Action may have once again paid more attention to the whisky from Bourbon County in Kentucky than to roses, Mardi Gras, jazz music or the BOURBON dynasties that ruled much of Europe from the Renaissance to recent times. The chicken product of Applicant neither contains nor is flavored by or like whisky from Bourbon County in Kentucky.

That consumers referred to in the print media articles may have a recipe for cooking chicken in bourbon, should not have been a basis for the Examining Attorney[’s] conclusion that BOURBON CHICKEN is a term which is merely descriptive. It is believed that Applicant’s mark BOURBON CHICKEN is only suggestive of the goods it identifies without being merely descriptive...

Applicant submits that people more likely would associate the word BOURBON with a member of a French family by that surname, as a social or political reference, or to a type of rose, then [sic] they would to a chicken dish...

... Similarly, one does not usually associate BOURBON CHICKEN with a chicken recipe. Potential consumers need to make an additional mental step or engage themselves in a multi-staged reasoning process starting with the idea of a member of a French family, a politician or a rose and moving to the concept of cajun food. Thus, the mark BOURBON CHICKEN is suggestive, not merely descriptive, of Applicant’s goods.

Applicant’s brief, 6, 10 and 12. Applicant concludes by indicating that the dictionary does not define “bourbon” as a type of cooked chicken, that BOURBON CHICKEN is ambiguous and could mean many things, and that any doubt should be resolved in favor of publication.

Upon careful consideration of this record, we agree with the Examining Attorney that this record adequately supports the conclusion that the asserted mark is, at the very least, merely descriptive of applicant’s goods. It appears from this record that “bourbon chicken” may refer either to a chicken dish prepared with bourbon or to a

Ser. No. 74/622,815

spicy Cajun dish of prepared chicken, apparently named after Bourbon Street in New Orleans. In either case, we believe that consumers, encountering applicant's asserted mark in connection with its prepared chicken dish, would not attribute to the mark any origin-indicating significance. Rather, they are likely to perceive the term as indicating the nature of the goods sold under the asserted mark. Accordingly, the refusal under Section 2(e)(1) is affirmed.

Decision: The refusal of registration is affirmed.

R. L. Simms

E. W. Hanak

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