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Mailed: March 24, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Henrik Sargsyan

Serial No. 86232575

Matthew H. Swyers of The Trademark Company, PLLC for Henrik Sargsyan.

Heather D. Thompson, Trademark Examining Attorney, Law Office 109 (Michael Kazazian, Managing Attorney).

Before Zervas, Bergsman and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Henrik Sargsyan (“Applicant”) seeks a Principal Register registration for the proposed mark SPIRITS SPRAY, in standard characters and with SPIRITS disclaimed, for:

Alcoholic beverages, namely, very superior old pale Cognac, Alcoholic aperitif bitters; Alcoholic beverage produced from a brewed malt base with natural flavors; Alcoholic beverages of fruit; Alcoholic beverages, namely, tequila and whiskey; Alcoholic bitters; Alcoholic cocktails containing milk; Alcoholic egg nog; Alcoholic essences; Alcoholic extracts; Alcoholic fruit cocktail drinks; Alcoholic malt coolers; Alcoholic punch; Alcoholic tea-based beverage; Aperitifs with a distilled alcoholic liquor base;

Cognac; Distilled Spirits; Prepared alcoholic cocktail; Rum;
Vodka; wine.¹

The Examining Attorney refused registration on the ground that Applicant's proposed mark is merely descriptive of the identified goods under Section 2(e)(1) of the Act. After the refusal became final, Applicant appealed and Applicant and the Examining Attorney filed briefs.

A mark is deemed to be merely descriptive, within the meaning of Section 2(e)(1), if it immediately conveys knowledge of a quality, feature, function, characteristic or purpose of the goods for which it is used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (quoting *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009)); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re Chamber of Commerce of the United States of America*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204

¹ Application Serial Nos. 86232575, filed March 26, 2014 based on an intent to use the proposed mark in commerce under Section 1(b) of the Trademark Act.

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).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive. *See e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services); *In re Tower Tech*, 64 USPQ2d at 1314 (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putman Publishing Co.*, 39 USPQ2d 2021

(TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in the food processing industry).

The Examining Attorney introduced the following dictionary definitions of the proposed mark's constituent terms:

SPIRIT—“any distilled alcoholic liquor such as brandy, rum, whisky, or gin”²

SPRAY—“a jet of vapor or finely divided liquid” and “a device (as an atomizer or sprayer) by which a spray is dispersed or applied”³

Office Action of June 29, 2014. She also introduced evidence of products which deliver “spirits” via a “spray,” including the following:



² <http://www.collinsdictionary.com/dictionary/english/spirits>. This dictionary's definition does not necessarily reflect the precise meaning of the term in the United States. See *In re Manwin/RK Collateral Trust*, 111 USPQ2d 1311, 1313 n.18 (TTAB 2014). However, “Applicant concedes the descriptiveness of the term ‘spirits’ as it is used in conjunction with spirits (liquors),” Applicant’s Appeal Brief at 12, and disclaimed the term, and we accordingly find that a spirit is an alcoholic liquor.

³ <http://www.merriam-webster.com/dictionary/spray>.

Vermouth for Your Ver-mouth

Monday, August 20th, 2012 by Collin Wittman

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Mixology

Pump it Up with Spirit Sprays

May 6, 2014

By: [Kelly Magyarics](#)

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Bartenders add enticing aromas and subtle flavors when they spritz, shake and serve.

The traditional way for a bartender wishing to add just a whiff of flavor or aroma to a cocktail is with a rinse. Adding a small amount of a spirit, liqueur or other potent ingredient to a glass, swirling it around, and then pouring it out renders a subtle hint of the ingredient's profile—an absinthe rinse for a Sazerac is a classic example. But mixologists wishing to ramp up a drink's aromatics and taste are increasingly turning to another method of delivery, one that gets its origins from the fragrance industry.

Mindy Trafman, general manager at the two locations of **Lush** wine bars in Chicago, has been using a sprayer or atomizer to add aromas to elixirs. "It is quick and coats evenly," she explains. "You can use the sprayer to put a coating of a Vermouth or bitters on top of a Martini, which creates a very aromatic sensation." (An olive juice or lemon oil spritz also works well.) And her version of the Sazerac tops Whistle Pig Rye, Peychaud's bitters and simple syrup with a spritz (or more, to taste) of Kübler Absinthe.



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by Paula Forbes Nov 4 2011, 7:00a | COMMENT

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New Designer Spray Delivers a Spritz of Alcohol for a Quick Buzz

By Vanessa Wong | May 30, 2012

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Photograph courtesy: Quantum Sensations

Let's say you have a presentation to give. You need a quick hit of liquid courage but can't reasonably pull out a flask. This is the type of situation where you could use WAH Quantum Sensations, a chapstick-sized aerosol can of flavored alcohol. A single spritz into the mouth immediately delivers a light-headedness similar to that experienced while drinking. The feeling fades almost as quickly as it arrives, an

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Office Actions of June 29, 2014 and January 13, 2015.

The Examining Attorney also provided background information on devices which “spray” spirits. An August 20, 2004 article in the New York Post entitled “Pols Fume as Booze-Mist Machine Debuts” states “Drinkers tired of massive hangovers and equally sized beer guts have reason to rejoice – the as-yet-unseen in America ‘Alcohol Without Liquid Machine’ arrives in New York City today.” The article refers to the machine as a “vaporizer” and states that it “turns alcohol from liquid into mist.” Office Action of January 13, 2015. A September 28, 2005 Arizona Republic article about the same machine, entitled “Don’t Breathe Easier with Inhaled Liquor,” states “A relatively new device known as the AWOL Machine – which stands for ‘Alcohol Without Liquid’ – diffuses spirits with oxygen to create a boozy mist that is inhaled through the mouth” *Id.*

This evidence establishes that SPIRITS SPRAY is merely descriptive of both alcoholic beverages in “spray” (or vapor or mist) form rather than the typical liquid form, and a method of delivering alcoholic beverages, either directly into a consumer’s mouth or into a receptacle for the purpose of making a cocktail. In fact, the title of the Nightclub & Bar article reproduced above uses a minor variation of the proposed mark generically (“Pump It Up With Spirit Sprays”). Similarly, the Eater article reproduced above refers to an “alcohol spray” which is consumed directly, and a product sold via the Amazon listing reproduced above is called the “Martini Spray” or “Martini Mister,” further establishing that alcohol is often sold or consumed in “spray” form.

When the terms “spirits” and “spray” are combined, “the mark as a whole, i.e., the combination of the individual parts,” does not convey “any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *In re Oppedahl & Larson*, 71 USPQ2d at 1372. To the contrary, from “the perspective of a prospective purchaser or user” of alcoholic beverages, “because ... the combination of the terms does not result in a composite that alters the meaning of [any] of the elements ... refusal on the ground of descriptiveness is appropriate.” *In re Petroglyph Games*, 91 USPQ2d at 1341. Indeed, the evidence reveals that the term “spray” is often used by Applicant’s competitors and the media in connection with terms describing alcoholic beverages, including the term “spirit.”

Applicant asserts that “there is no evidence of record showing [Applicant’s] liquor is sold as a spray nor has the Applicant conceded this at any point on the record in this matter.” Applicant’s Appeal Brief at 12. This assertion directly contradicts Applicant’s response to the Examining Attorney’s January 13, 2015 information request under Trademark Rule 2.61(b). In his response to that request, Applicant described the goods he intends to offer as follows:

There is no (sic) any limitation or restriction of spraying function capacity ...With a typical drink containing 40 to 60ml of alcohol; it would take a thousand sprays to get the equivalent amount of alcohol into your system. The advantage of Spirits spray is to enjoy the drunk sensation with none of the harmful effects of alcohol on the body.

Office Action Response of June 29, 2015. Applicant included with his response to the information request the “fact sheet” about his product reproduced below:

PROWOOD WINE & SPIRITS



This is the best choice of spirit for the population of 21+ ages, who feels uncomfortable to drink 40% alcohol, so they will just spray it into their mouth.

There is no any limitation or restriction of spraying function capacity. It delivers just a miniscule dose of alcohol - 0.075 ml - directly into your mouth, but due to the aerosol effect, the effect is instantaneous.

This “fact sheet” displays Applicant’s goods, alcoholic beverages, packaged in spray bottles, which allow consumers to “spray” the alcohol or “spirits” into mouths. Therefore, the proposed mark “spirits spray” is merely descriptive.

Decision: The refusal to register Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act is affirmed.