

Applicant has duly noted the Examining Attorney's position that the application of the doctrine of 'foreign equivalents' should apply in this instance, in which foreign words from common modern languages are translated into English to determine their degree of confusing similarity to English word marks (2 J. McCarthy, Trademarks and Unfair Competition, Section 23:14 at page 78 (2d ed. 1984)). Applicant respectfully disagrees with the Examining Attorney for the following reasons.

Although words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline. *In re N. Paper Mills*, 20 C.C.P.A. 1109, 64 F.2d 998, 999 (1933); *McCarthy on Trademarks*, at § 11:34. The doctrine should be applied only when it is likely that the ordinary American purchaser would "stop and translate [the word] into its English equivalent." *In re Pan Tex Hotel Corp.*, 190 U.S.P.Q. 109, 110 (T.T.A.B.1976). In *Palm Bay Imports v. Veuve Clicquot Ponsardin*, 396 F. 3d 1369, Court of Appeals, Federal Circuit 2005, the Court agreed with the TTAB that it was improbable that the ordinary American purchaser would stop and translate "VEUVE" into "widow." Similarly, in the instant case, it is highly unlikely that the average American purchaser, even one proficient in the French language, would stop and translate "COLLECTION LA MARQUE" into "THE BRAND COLLECTION." That French is a modern language is not disputed by applicant. However, the number of Americans who are French speaking is very low, being approximately 2.7 million. In this regard, the Examining Attorney is directed to the extracts taken from the online source, Wikipedia, attached hereto, which presents the total French speaking population of the US as being 2.7 million from a total US population in 2014 of approximately 317 million. In other words, only approximately .73% of Americans are French speaking, being less than 1%.

Applicant also submits, for the Examining Attorney's consideration, the fact that in Canada, where applicant's original trademark registration was obtained, and where applicant is based, COLLECTION LA MARQUE was allowed, with no disclaimed word(s) (see attached extract from the Canadian Intellectual Property Office ("CIPO") database for Registration number TMA873678). The French speaking population of Canada is over 22% (see Wikipedia extract, attached), French being the second most-spoken language after English, and yet CIPO did not deem COLLECTION LA MARQUE to be merely descriptive, nor refuse to register this mark. While applicant appreciates that decisions of foreign trademark offices are not binding on the USPTO, this information is being offered for consideration by the Examining Attorney and for further probative value into how even a French speaking consumer, and French speaking trademark examiners would perceive the subject mark.

The Examining Attorney is further directed to the recent USPTO trademark registration of "LE MARQUE" as USPTO Registration No. 4262996 (screen capture of TESS database attached) for beers and other alcoholic beverages. A review of the USPTO file history of that registration reveals that there was no descriptiveness refusal issued by the Examining Attorney.

As stated by the United States Court of Customs and Patent Appeals in the case of *In re Colonial Stores, Inc.* 394 F. 2d 549 (cited by the Examining Attorney), in reversing the refusal to register "SUGAR & SPICE" for baked goods:

"While it may be true that each of the individual words in the present applicant's mark are generic and thus independently unregistrable, it seems to me that their unusual association or arrangement in the applicant's mark results in a unique and catchy expression which does not, *without some analysis* and rearrangement of its components suggest the contents of applicant's

goods. I am constrained to disagree with the examiner's holding in the present case that the applicant's mark is incapable of functioning as a trade mark to distinguish the applicant's goods in commerce.”

With respect, the instant case of COLLECTION LA MARQUE is also distinguishable from those cited by the Examining Attorney, in which the marks THE BREATHABLE MATTRESS and GROUP SALES BOX OFFICE were refused under 2(e)(1). In each of those cases, the component words accurately describe the goods and services in question. THE BREATHABLE MATTRESS is a “mattress” that is “breathable” and GROUPS SALES BOX OFFICE is simply that: a ticket sales office that specializes in group sales. COLLECTION LA MARQUE, on the other hand, does not describe applicant’s leather goods and other clothing; the trademark term could just as easily refer to any goods at all: baked goods, mattresses, or virtually anything else. Applicant submits that COLLECTION LA MARQUE is therefore a suggestive mark, which should be considered in its totality as having the required level of distinctiveness to function as a trademark for applicant’s goods.

Suggestive marks are those that, when applied to the goods or services at issue, require imagination, thought, or perception to reach a conclusion as to the nature of those goods or services. Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services. *See In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread); *In re The Noble Co.*, 225 USPQ 749 (TTAB 1985) (NOBURST for liquid antifreeze and rust inhibitor for hot-water-heating systems found to suggest a desired result of using the product rather than immediately informing the purchasing public of a characteristic, feature, function, or attribute); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of anti-perspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an anti-perspirant and deodorant for the feet would be described).

For all of the foregoing reasons, applicant respectfully submits that COLLECTION LA MARQUE be considered to be as it is, a suggestive or fanciful mark, and further requests that the Examining Attorney withdraw the 2(d) refusal of the application and approve the application for publication.