

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Jacques Bernier, Inc.

In re Jacques Bernier, Inc., 894 F.2d 389 (Fed. Cir. 1990) · No. 89-1457 · Decided January 24, 1990

SUMMARY

The Federal Circuit reversed the TTAB's refusal to register RODEO DRIVE for perfume under Lanham Act §2(e)(2), holding the mark was not primarily geographically deceptively misdescriptive. The court ruled that to establish a prima facie case for refusal, the PTO must show the public associates the goods with the geographic place named in the mark—not merely that the place is well-known. Because no evidence indicated consumers would believe the perfume was manufactured, produced, or sold on Rodeo Drive, the mark was deemed arbitrary or suggestive of high quality rather than geographic origin.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Friedman; Markey; Mayer
JURISDICTION	Federal
DECIDED	January 24, 1990
DOCKET	89-1457
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from the Trademark Trial and Appeal Board's refusal to register the mark RODEO DRIVE for perfume.
STANDARD OF REVIEW	The court did not explicitly state the standard of review, but reviewed the Board's legal conclusion de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Jacques Bernier, Inc. v. Commissioner of Patents and Trademarks (represented by the Solicitor)

TOPICS

- intellectual property
- appellate procedure

PRACTICE AREAS

- Intellectual Property
- Trademark

QUESTIONS PRESENTED

1. Whether the mark RODEO DRIVE is primarily geographically deceptively misdescriptive when applied to perfume under Section 2(e)(2) of the Lanham Act, 15 U.S.C. § 1052(e)(2).

HOLDINGS

1. The mark RODEO DRIVE is not primarily geographically deceptively misdescriptive because the Patent and Trademark Office failed to establish that the public would associate Rodeo Drive with the source of the perfume.

KEY QUOTATIONS

“Contrary to applicant's contention, it is not necessary that goods be manufactured or produced at the geographic site for its name to be precluded from registration. That they be sold there is sufficient.”
(Paragraph 6 (quoting Board's opinion))

“To establish a prima facie case for refusal to register a mark as 'primarily geographically deceptively misdescriptive,' it is not sufficient for the Patent and Trademark Office (PTO) to establish simply that the mark is the name of a place known generally by the public.” (Paragraph 14)

FACTUAL BACKGROUND

Jacques Bernier, Inc. applied to register the mark RODEO DRIVE for perfume. Rodeo Drive is a famous shopping street in Beverly Hills, California, known for expensive stores selling costly consumer items such as clothing, perfume, and jewelry. Bernier's perfume is not manufactured, produced, or sold on Rodeo Drive. The Board found that Rodeo Drive is a well-known geographic location associated with expensive goods. Bernier argued that the mark indicates high quality, not geographic origin. There was no evidence that the consuming public would associate Rodeo Drive with the source of the perfume.

PROCEDURAL HISTORY

The Trademark Trial and Appeal Board affirmed the examining attorney's refusal to register the mark RODEO DRIVE for perfume under Section 2(e)(2) of the Lanham Act, holding that the mark is primarily geographically descriptive or deceptively misdescriptive. The applicant, Jacques Bernier, Inc., appealed to the Federal Circuit.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The decision of the Trademark Trial and Appeal Board is reversed. The case is presumably remanded for further proceedings consistent with the opinion, though not explicitly stated.

CASES CITED

- In re Nantucket, Inc., 677 F.2d 95 (CCPA 1982)

- In re Societe Generale des Eaux Minerales De Vittel, S.A., 824 F.2d 957 (Fed. Cir. 1987)
- In re Loew's Theaters, Inc., 769 F.2d 764 (Fed. Cir. 1985)
- World Carpets, Inc. v. Dick Littrell's New World Carpets, 438 F.2d 482 (5th Cir. 1971)

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