

Blog Post

# How Many Types of Wines Are There: BIG SIX? Really?

September 4, 2019

The Trademark Trial and Appeal Board recently affirmed the refusal to register a trademark application for BIG SIX for wine on the ground that the term is generic or descriptive of wines. *In re Plata Wine Partners, LLC*, Serial No. 87292254 (August 22, 2019) [not precedential]

Applicant filed an intent to use trademark application for BIG SIX for wine, which was initially refused on the ground that “Big Six” is a term of art in the wine industry referring to six common types of wine: Riesling, Sauvignon Blanc, Chardonnay, Pinot Noir, Merlot, and Cabernet Sauvignon. The Office Action further advised the Applicant that the mark may be *generic* for wine, which would mean that the Applicant could not argue that the mark acquired distinctiveness and could not register BIG SIX on the Supplemental Register.

The Applicant submitted arguments and evidence in support of registration, which were rejected. The Applicant appealed final refusal to the Board, which affirmed the refusal.

To determine whether a mark is generic, the Board identifies the genus of goods at issue and then assesses whether the public understands the mark, as a whole, to refer to that genus. The test is the same regardless of whether the mark is a compound term or a phrase. See *Princeton Vanguard, LLC v. Frito-*

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*Lay N. Am. Inc.*, 786 F.3d 960, 114 USPQ2d 1827 (Fed. Cir. 2015) (blogged [here](#)). Thus, in this case, the Board analyzed whether the relevant consumer would understand BIG SIX to refer to wines.

The Board examined the evidence of record. The Examining Attorney submitted excerpts from various websites, as well as results from a Google search, demonstrating use of “big six” in reference to wines. The Board noted that sometimes the list of six wines varies: e.g., Syrah is substituted for Merlot, Pinot Grigio is substituted for Sauvignon Blanc, and Zinfandel is substituted for Riesling, but these variances did not change the Board’s analysis.

Applicant’s argument that the evidence showed that the term “Big Six” referred to the grape varieties, rather than the wine itself, was unavailing. The evidence demonstrated that “Big Six” was used interchangeably to identify both the types of grapes and the types of wine produced by the grapes. As far as consumers are concerned, “it is common knowledge that when one orders a glass of wine, they generally do not ask for a glass of white wine comprising the chardonnay varietal grape; instead, they merely order a glass of chardonnay.” The Board further noted that, even if “Big Six” solely referred to grape varieties, it would still be generic because the generic name of an ingredient of the goods still cannot function as a trademark for the goods.

Applicant argued that “Big Six” is not the commonly understood word for wine because it is not found in the dictionary. The Board disagreed, noting that there is no affirmative requirement that a word be found in the dictionary to be refused as generic. Indeed, many compound words like SCREENWIPE (*In re Gould Paper Corp.*, 834 F.2d 1017 (Fed. Cir. 1987)) and GASBUYER (*In re Planalytics, Inc.*, 70 USPQ2d 1453 (TTAB 2004)) were found to be generic though they were not listed in the dictionary.

Applicant further submitted Google search results purporting to show BIG SIX functioned as a source

indicator. The Board was unimpressed, finding that the Google search results were too truncated to provide proper context. The Board also noted that there was no indication whether the websites were still operative, nor was there any evidence regarding the number of consumer views. Finally, some of Applicant's search results in fact supported the genericness refusal because they appeared to show use of the designation "Big Six" generically for wines or the grape varieties that are the ingredients for wine.

Therefore, the Board found that consumers "would understand the designation BIG SIX primarily to refer to 'wines' or a key aspect, type of ingredient of 'wines.'" The Board also ruled in the Examining Attorney's favor on the alternative refusal, that the term was merely descriptive of Applicant's wines because it "clearly describes a feature or characteristic of Applicant's wines, namely, the category of wines offered for sale or the types of varietal grapes used to produce Applicant's wines."

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One may wonder whether the case would have gone the other way if there were more evidence in the record concerning consumers and their perceptions of the trademark BIG SIX. Perhaps a consumer survey could have shown that the vast majority of consumers have no idea that "Big Six" refers to popular varieties of wine. The Board's decision properly was based solely on the evidence in the record, and that evidence pertained largely to what "big six" means within the wine industry or to wine aficionados.

The case makes clear, however, that if a trademark applicant has any notion that the public understands the mark, as a whole, to refer to the genus of the goods, or gets such an objection by the examiner, it should supplement the record and/or choose a different mark. And to the extent that a company is choosing a potential mark in which to invest labeling

and advertising dollars, careful analysis of the genericness question is paramount.

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