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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Consorzio Prosciutto di Carpegna

Serial No. 87811048

Brian A. Tollefson, of Tollefson IP,
for Consorzio Prosciutto di Carpegna.

Lisa Papale, Senior Attorney, Law Office 121,
Richard White, Managing Attorney.

Before Wellington, Thurmon, and Casagrande,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

Consorzio Prosciutto di Carpegna (Applicant) appeals the refusal of its application to register, on the Principal Register, the collective trademark



for "Prosciutto from the Carpegna region of Italy made in accordance with specific standards," in International Class 200.[1] Applicant has disclaimed the entire wording in the mark, PROSCIUTTO DI CARPEGNA.

The application states that "[t]he color(s) red, white, green, black, and gray is/are claimed as a feature of the mark." The current description of the mark reads:

> The mark consists of the words PROSCIUTTO DI CARPEGNA in stylized black letters, with the word "PROSCIUTTO" at the top of the mark in an arc with gray shadows on the letters "SCIUTTO", with the words "DI CARPEGNA" beneath the word "PROSCIUTTO" at a slight diagonal angle, with a stylized flourish under the word "CARPEGNA", having a green and a red hash mark with a gap therebetween as part of the stylized flourish, all on a white background.[2]

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[1] Application Serial No. 87811048 was filed on February 26, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intent to use the mark in commerce. The April 4, 2024, Final Office Action required that Applicant change the International Class from 200 to 29. In its appeal brief, Applicant states that it will do so after this appeal is decided. *See* 4 TTABVUE 7. The Examining Attorney's subsequent answering brief does not address this requirement. Accordingly, we consider that requirement mooted by Applicant's representation. *See In re Broyhill Furniture Indus. Inc.*, No. 75473959, 2001 WL 940421, at *1 n.2 (TTAB 2001).

Please note that citations to the application record refer to the version of the documents as downloaded in .pdf format from the USPTO's Trademark Status and Document Retrieval (TSDR) database. Further, references to the briefs and appeal record cite to the Board's TTABVUE electronic docket system. The number preceding "TTABVUE" is the docket number assigned to the cited filing in TTABVUE, and any number immediately following "TTABVUE" identifies the specifically-cited page(s), if any.

[2] Applicant amended the description during prosecution. Applicant initially had described the mark as follows:

> The mark consists of the words "PROSCIUTTO DI CARPEGNA" in stylized black letters, with the word "PROSCIUTTO" at the top of the mark in an arc, with the words "DI CARPEGNA" beneath the word "PROSCIUTTO" at a slight diagonal angle, with a stylized underline of the word "CARPEGNA", containing the Italian flag in green, white and red as a part of the stylized underline.

The Examining Attorney found that the mark includes a depiction of the Italian flag and refused registration under Section 2(b) of the Trademark Act, 15 U.S.C. § 1052(b).

After the Examining Attorney made the refusal final,[3] Applicant appealed.[4] Applicant and the Examining Attorney each filed briefs,[5] and Applicant filed a reply brief.[6] The case is now ready for decision. For the reasons explained below, we affirm the refusal to register.

ANALYSIS

Section 2(b) requires refusal of any mark that "[c]onsists of or comprises the flag … of any foreign nation, or any simulation thereof." "[T]he word 'comprises' in the clause '[c]onsists of or comprises' means 'includes.'" *In re Ala. Tourism Dep't*, No. 87599292, 2020 WL 2301221, at *2 (TTAB 2020) (citing *In re Family Emergency Room LLC*, No. 86709923, 2017 WL 1345063, at *1 n.2 (TTAB 2017)). Section 2(b) thus "prohibits registration of a mark that includes a flag … or any simulation thereof." *Id.* (citation omitted). The word "simulation" in the statute "is used ... in its usual and generally understood meaning, namely to refer to something that gives the appearance or effect or has the characteristics of an original item." *Family Emergency Room*, 2017 WL 1345063, at *2 (citation omitted). Whether matter included in a mark is, or includes, a flag "is determined by a visual comparison of the matter and the

[3] *See* April 4, 2025, Final Office Action.

[4] *See* 1 TTABVUE.

[5] *See* 4 TTABVUE (Applicant); 6 TTABVUE (Examining Attorney).

[6] *See* 7 TTABVUE.

actual flag." *Id.* (citation omitted). As with most things trademark (except, notably, functionality), our comparison focuses on the perception of the relevant consumers *Ala. Tourism Dep't*, 2020 WL 2301221, at *3.

Here is the Italian flag:

[7]

The Italian flag is rectangular, wider than it is tall, with equal width vertical parallel stripes of green, white, and red (one each).

And here is Applicant's drawing of the mark:



The relevant matter in the mark has green, white, and red parallel stripes (one each), arrayed almost vertically. It is not depicted as a rectangle, but, depending on one's perspective, looks either like a tilted rectangle (i.e., parallelogram[8]) or, more likely,

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[7] *See* (June 13, 2024, Nonfinal Office Action, at TSDR 5 (from www.britannica.com)); *see also* Apr. 4, 2025, Subsequent Final Office Action, at TSDR 6 (from www.pbslearningmedia.org)

[8] We take judicial notice of the dictionary definition of parallelogram: "a flat shape that has four sides. The two sets of opposite sides are parallel and of equal length to each other." *See* https://dictionary.cambridge.org/us/dictionary/english/parallelogram (checked June 10,

like a rectangle as seen from an angle, rather than head-on. We find that consumers will perceive the matter as the Italian flag or a close simulation—i.e., something that gives the appearance or effect of the Italian flag. *Cf. Family Emergency Room*, 2017 WL 1345063, ay *3 (tilted red square with white cross "would likely be perceived as a square viewed from a slight angle" and thus consumers would associate it with the Swiss flag).

As noted in fn. 2, *supra*, Applicant originally described this feature of its mark as "the Italian flag in green, white and red as a part of the stylized underline" of the word Carpegna.[9] Applicant now insists, however, that consumers won't recognize the matter as a flag at all. Applicant argues that "the Mark is dominated by the words PROSCIUTTO and CARPEGNA."[10] Applicant further highlights that "the applied-for Mark merely includes only stylized flag elements, red and green vertical stripes, and is incomplete. There is no border around it and the middle section is merely a gap." According to Applicant, it's neither a flag nor "a simulation" of a flag: it's just part of a "flourish."[11]

That other elements are larger than the flag, or even "dominate" the commercial impression of the mark, is irrelevant to the question of whether the mark

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2025). *See, e.g.*, *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988).

[9] Applicant changed the description only in response to the Section 2(b) refusal. *See* December 13, 2024, Response to Office Action, at TSDR 1, 5.

[10] *See* 4 TTABVUE 6.

[11] *See id.* at 7. We take judicial notice that one definition of the noun "flourish" is "a curved line or shape added to a piece of writing with a pen." https://dictionary.cambridge.org/us dictionary/english/flourish (checked June 10, 2026).

"comprises"—meaning "includes"—a flag or a simulation of a flag. While we frequently examine what elements of a mark may be "dominant" as part of our inquiry in, for example, a Section 2(d) likelihood-of-confusion analysis into the commercial impression of a mark as a whole, the question here is different. We're determining whether the mark **includes** a flag, or a simulation of a flag. Period. Unless the matter is so small or obscured that consumers wouldn't even notice that it was included—which is not the case here—size does not matter.

We are not swayed by Applicant's insistence that, because there's no "border" around it, the design is not of a green, white, and red stripes but rather is a green stripe, then a "gap," and then a red stripe. As Applicant's amended description states, the entire mark is portrayed "all in a white background." While the flag might be incrementally easier to spot against, for instance, a gray or black background, it still looks like a flag even against a white background (as Applicant stated in its original description). In addition, the relevant consumers here are consumers of "Prosciutto from the Carpegna region of Italy," which predisposes them to viewing the mark through an Italian lens.[12]

Applicant next argues:

> When a color combination (green + red, or green + white + red) appears on dozens and dozens of national flags, the design is inherently incapable of functioning as a simulation of any single foreign nation's flag. Thus, the refusal should be withdrawn because the flag-like elements

[12] We note that Applicant, in prosecution, emphasized that Prosciutto di Carpegna "is a world-renowned Italian specialty," *see* March 1, 2021, Response to Office Action, at TSDR 6, citing articles about it in American publications, and that "Prosciutto" and "Carpegna" are Italian words, *see* March 8, 2019, Response to Office Action, at TSDR 2, 5.

> in the applied for Mark are merely common elements which relate to more than one nation's flag.[13]

The statutory language used in Section 2(b)—that any mark that "[c]onsists of or comprises the flag … of any foreign nation, or any simulation thereof" may not be registered—leaves no room for Applicant's extra-textual interpretation. Further, because so many country flags use common colors (red, white, and blue flags spring to mind), its breadth would render it the exception that swallows the statute. We emphatically reject this argument as inconsistent with the statute.

Applicant's final argument is that:

> the TMEP advises, stylized flag designs are not to be refused when the flag design is used to form a letter, number, or design. Here, the hashes do just that; they form part of the "flourish" underlining the Carpegna in script. Thus, the refusal should be withdrawn for this second, independent reason.[14]

It is true that the TMEP (the USPTO's TRADEMARK MANUAL OF EXAMINING PROCEDURE) states that if "the flag design is used to form a letter, number, or design," examining attorneys will not refuse registration.[15] But it does not state "as part of a design." Indeed, the examples the TMEP includes as composite marks that run afoul of Section 2(b) include marks where the flag is only "part of" the design (as in Applicant's mark), e.g.:

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[13] *See* 4 TTABVUE 7.

[14] 6 TTABVUE 8.

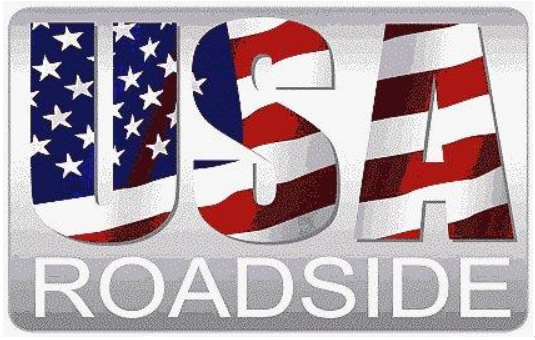
[15] *See* TMEP § 1204.01(b). (May 2026 update). We note that the Federal Circuit has held that, "[w]hile the TMEP does not have the force and effect of law, it sets forth the guidelines and procedures followed by the examining attorneys at the PTO." *W. Fla. Seafood, Inc. v. Jet Rests., Inc.*, 31 F.3d 1122, 1127 n.8 (Fed. Cir. 1994).



and  .

In the examination guideline Applicant cites, the examples the TMEP provides of acceptable marks are these:



and 

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In the first one, the elements of the flag are used as fill for the shape of the contiguous United States. In the second, the elements of the flag are used as fill for the thickly-styled letters "USA." In neither example are the elements of the flag depicted in their entirety in a flag shape.

These examples of acceptable designs differ materially from Applicant's mark containing the Italian flag. In Applicant's mark, the flag elements (the sequenced green, white, and red colors) are not used as fill for the flourish. Rather, the design

element at issue in Applicant's mark is portrayed as a quadrilateral composed of one each of roughly-vertical parallel green, white, and red stripes that breaks up the black flourish. In other words, it appears as a flag.

We think that Applicant's use of the flag in a flag-like shape is more akin to this example, which the same section of the TMEP advises should be refused under Section 2(b):



In sum, we find that the Examining Attorney correctly found that the mark includes an Italian flag, or simulation of an Italian flag, and correctly determined that the application must be refused under Section 2(b).

Decision: The refusal to register Applicant's mark is affirmed.