

THIS OPINION IS A  
PRECEDENT OF THE TTAB

Mailed:  
March 5, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re White Jasmine LLC*  
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Serial No. 77115548  
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Tricia L. Schulz of Foley & Lardner LLP for White Jasmine LLC.

Christine C. Martin, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).  
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Before Holtzman, Bergsman and Adlin, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

White Jasmine LLC (“applicant”) filed a use-based application to register on the Principal Register the mark WHITE JASMINE and design, shown below, for “beverages made of tea; black tea; flavourings of tea; spice blends; spices,” in Class 30.



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Applicant has acknowledged that its goods contain neither white tea, nor white jasmine, and has claimed that the term “White Jasmine” has acquired distinctiveness.

The Trademark Examining Attorney refused registration on the following grounds:

1. The word “White” in the mark is deceptive under Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a); and
2. The term “White Jasmine” must be disclaimed under Sections 2(e)(1) and 6 of the Trademark Act because the term “White Jasmine” as used by applicant is either deceptively misdescriptive, and without acquired distinctiveness, or generic.

The examining attorney submitted the following evidence, which demonstrates that WHITE JASMINE refers to a type of tea, and that this type of tea is made of white tea, scented or flavored with jasmine:

1. *ShiphewanaShops.com* website advertising the sale of Asian Jasmine White Tea.<sup>1</sup>

Asian Jasmine White Tea

Tea Name: Asian Jasmine White Tea (White Tea Collection).

2. *Shopwiki.com* website advertising the sale of White Jasmine Tea, including Choice Organic White Jasmine Tea, Flowering Teas White Jasmine, Asian White Jasmine, and Jasmine White Tea.<sup>2</sup>

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<sup>1</sup> September 16, 2008 Office action.

3. *MyVitaNet.com* website advertising the sale of White Tea – Jasmine (i.e., Choice Organic White Jasmine Tea).<sup>3</sup>

4. *ChoiceOrganicTeas.com* website “Organic White Teas” webpage.<sup>4</sup> The webpage describes white teas as follows:

White teas are the least processed of all teas. Tender buds and leaves are hand plucked, gently withered, and dried. This minimal handling results in the characteristic light and delicate flavor.

The webpage also identifies “White Jasmine Tea” as follows:

We marry specially plucked organic white tea leaves and buds with ambrosial jasmine-scented green tea to create a delicate and sweet cup with mild hints of fragrant flowers.<sup>5</sup>



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<sup>2</sup> September 16, 2008 Office action.

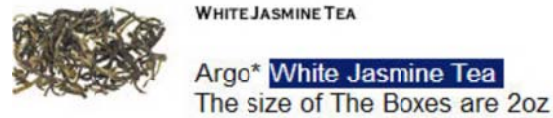
<sup>3</sup> September 16, 2008 Office action.

<sup>4</sup> August 31, 2009 Office action.

<sup>5</sup> See also the *Amazon.com* website advertising the sale of Choice Organic White Jasmine Tea (June 18, 2007 Office action and September 8, 2010 Office action) and *Cooks'Nook.com* website webpage advertising CHOICE ORGANIC White Jasmine Tea (August 31, 2009 Office action). The webpage describes the product as follows:

Choice Organic White Jasmine Tea is the result of specially-plucked organic white tea leaves with jasmine scented organic green teas to create a delicate and sweet cup with mild hints of fragrant flowers.

5. *FoodLocker.com* website webpage advertising ARGO White Jasmine Tea.<sup>6</sup>



6. *ChinaStore.radio86.com* website webpage advertising “White Jasmine Spring Bud.”<sup>7</sup>

Our White Jasmine Spring Bud tea was harvested from the mountain areas of Fujian province in the spring of 2007. Made only from the most tender leaves, it is one of the best varieties of white jasmine tea.

7. *GoldenStarTea.com* website webpage advertising Golden Star White Jasmine Sparkling Tea, “a unique beverage that invites you to change your expectations about how you enjoy tea.”<sup>8</sup> This product was reviewed in January 7, 2009 issue of *The New York Times*: “It’s made from organic white jasmine tea.”<sup>9</sup>

8. *Etsy.com* website advertising the sale of “White Jasmine Tea – All Organic,” and displaying a depiction of a package of “White Jasmine Tea” whose label lists “white peony tea” and “jasmine buds” among the product’s ingredients.<sup>10</sup>

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<sup>6</sup> August 31, 2009 Office action.

<sup>7</sup> August 31, 2009 Office action. Although the prices are listed in pounds, the website indicates that the online retailer ships product worldwide.

<sup>8</sup> August 31, 2009 Office action.

<sup>9</sup> Trademark Examining Attorney’s Supplemental Brief. *See also* the article posted on the *SFGate.com* website (January 1, 2009) reviewing the Golden Star White Jasmine Sparkling Tea. (March 5, 2010 Office action).

<sup>10</sup> September 8, 2010 Office action.



9. *Pure-Essential-Oils.us* website advertising the sale of jasmine tea, including white jasmine tea.<sup>11</sup> (Emphasis added).

#### Jasmine Tea Collection

When tea is processed in the presence of right-blooming flowers, the delicate sweet aroma infuses each tea leaf. We've created a jasmine tea collection that will delight jasmine tea enthusiasts: jasmine pearl, jasmine green and jasmine white.

Also known as Dragon Phoenix pearl tea, our jasmine oolong pearls combine delicate and unopened buds which delight all the senses as they unfurl while steeping. Our jasmine green uses top quality whole leaf tea to create a highly flavored green tea. The distinctive silver needle white is the basis of *white jasmine* tea.

10. An article posted on the *BrightHub.com* website (July 31, 2009).<sup>12</sup> (Emphasis added).

#### Health Benefits of Jasmine Tea

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Jasmine tea is made from tea leaves (green, oolong, white, or black) that have been flavored with jasmine flowers.

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<sup>11</sup> September 8, 2010 Office action

<sup>12</sup> August 31, 2009 Office action.

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