

**FARM TO TABLE held to be not distinctive
United States - Meunier Carlin & Curfman**

**Examination/opposition
Registration**

November 14 2017

- **Fowles Wine Pty Ltd sought to register the phrase ‘farm to table’ for wine in Class 33**
- **TTAB affirmed the examining attorney’s refusal to register the standard character mark FARM TO TABLE**
- **Held that the mark is descriptive and would prevent competitors from using the phrase to sell their own locally sourced food and wine products**

US company Fowles Wine Pty Ltd sought to register the phrase ‘farm to table’ for wine in International Class 33. So-called ‘farm-to-table’ or ‘farm-to-fork’ programmes in the United States and elsewhere are an extension of a social movement that promotes serving local food at restaurants, preferably through direct acquisition from the local producer. Although wine and alcohol products are the subject of significant regulation in the United States, there are no centralised or official criteria by which ‘farm-to-table’ is defined.

In September 2017 the US Trademark Trial and Appeal Board (TTAB) affirmed the examining attorney’s refusal to register the standard character mark FARM TO TABLE as used for wine on the grounds that the phrase failed to function as a trademark and was merely descriptive (see *In re Fowles Wine Pty Ltd* (Serial 791557017)).

Failure to function as a trademark

Sections 1, 2 and 45 of the Lanham Act require that a trademark must “identify and distinguish applicant’s goods from those manufactured or sold by others and... *indicate the source of the goods*, even if that source is unknown” (15 USC Section 1127) (emphasis added). A key consideration is the commercial impression the mark makes on the relevant public.

The examining attorney first refused registration on the grounds that ‘farm to table’ was not a trademark. In so doing he relied on multiple web pages and newspaper articles showing ‘farm to table’ used descriptively, or even generically, for various food products, including wine. For example, the examining attorney cited articles that referenced “Farm to Table Wines . . .”, “Farm to Table Wine Dinners . . .” and “the complete process [of wine making] from farm to table is accomplished in our local area”. In response, the applicant submitted a screenshot from its own web page displaying wine offered under the ‘farm to table’ designation with its house mark FOWLES WINE displayed on the bottle. The applicant argued that consumers would rely on ‘farm to table’ to distinguish the applicant’s wine from those of others. The applicant also submitted several third party registrations for FARM TO TABLE for various food products. The examining attorney was not persuaded and issued a final rejection.

On appeal, the TTAB agreed with the examining attorney that the phrase ‘farm to table’ is primarily informational and denotes locally sourced wine products. The TTAB determined that while the applicant’s web page evidence may have demonstrated trademark rights in FOWLES WINE, it failed to do so in ‘farm to table’. The TTAB found little probative value in the applicant’s third party registrations, largely because they did not indicate acquired distinctiveness in the applicant’s use of the phrase.

Merely descriptive

The TTAB also affirmed the examining attorney’s refusal to register the mark under Section 2(e)(1) of the Lanham Act (15 USC Section 1052(e)(1)). The TTAB ruled that the examining attorney’s evidence demonstrated that ‘farm to table’ merely describes a feature or characteristic of the applicant’s wines – namely, that the wines are locally sourced (ie, made with grapes from local vineyards). The TTAB also found that ‘farm to table’ was not suggestive – there was no need to exercise mature thought to determine such a feature or characteristic of the goods.

The TTAB emphasised that registration of ‘farm to table’ would prevent competitors from using that phrase to sell their own locally sourced food and wine products. As consumers continue to gravitate towards purchasing locally sourced foods, companies looking to market their wine under a ‘farm to table’ label will be free to do so, at least under this TTAB decision.

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