

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      JULY 16, 97

Paper No. 16  
RLS/CCR

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Charles A. Bruning**

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Serial No. 74/**497,740**

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**Marshall A. Burmeister** for **Charles A. Bruning**.

**Mark Mullen**, Trademark Examining Attorney, Law Office 101  
(**Chris Wells**, Managing Attorney)

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Before **Simms**, Hohein and Hairston, Administrative Trademark  
Judges.

Opinion by **Simms**, Administrative Trademark Judge:

Charles A. Bruning (applicant) has appealed from the final refusal of the Trademark Examining Attorney to register the mark AMERICAN DEPOSITORS INSURANCE CORPORATION for brokering, selling or servicing insurance policies for depositors against failure of a depositee to fulfill its contract with depositors.<sup>1</sup> The Examining Attorney has refused registration under Section 2(e)(2) of the Act, 15

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<sup>1</sup> Application Serial No. 74/497,740, filed March 7, 1994, based upon applicant's bona fide intention to use the mark in commerce under Section 1(b) of the Act, 15 USC Section 1051(b). Applicant has disclaimed exclusive right to use the words "DEPOSITORS INSURANCE CORPORATION" apart from the mark.

USC Section 1052(e)(2), arguing that applicant's mark is or will be primarily geographically descriptive of applicant's services. Applicant's attorney and the Examining Attorney have submitted briefs but no oral hearing was requested.

According to applicant's attorney, applicant will offer a unique kind of insurance product which will protect that portion of a depositor's deposit which exceeds the portion protected by the Federal Deposit Insurance Corporation. Essentially, it is the Examining Attorney's position that applicant's mark is primarily geographically descriptive because it describes the origin of applicant's services. The Examining Attorney argues that the wording "DEPOSITORS INSURANCE CORPORATION" is a descriptive entity designation--that is, the term "DEPOSITORS INSURANCE" indicates a type of insurance provided for depositors--and that the mark as a whole signifies depositors insurance that emanates from America or is of American origin. Brief, 4. Because applicant is domiciled in the United States and insures depositors only in American banks, the Examining Attorney maintains that the term AMERICAN used in applicant's mark primarily denotes the United States as the origin or scope of applicant's services.

Applicant, on the other hand, argues that his mark will not have the significance that the Examining Attorney ascribes to applicant's mark. More particularly, applicant argues that, in accordance with good grammar, the term "AMERICAN" modifies the noun immediately following it,

namely, the word "DEPOSITORS," and that this latter word, being plural and not possessive, negates ownership of the "INSURANCE CORPORATION" by the "DEPOSITORS."

Hence, the mark means an "INSURANCE CORPORATION" for that group of people described as "AMERICAN DEPOSITORS"...

...It is interesting to note that one may be a foreigner and own deposits in the United States, as is not uncommon, and hence it is not necessary for a depositor to be an American to be an "AMERICAN DEPOSITOR". The applicant seeks to provide insurance products which will extend insurance to those FDIC insured depositors above the upper limit of FDIC protection. Since FDIC insurance to protect deposits is a United States phenomenon, the phrase "AMERICAN DEPOSITORS" has the inference, when considered in relation to applicants [sic] narrow range of services, of "FDIC INSURED DEPOSITOR". The mark AMERICAN DEPOSITORS INSURANCE CORPORATION is thus suggestive of an organization for providing insurance for depositors protected by the Federal Deposit Insurance Corporation...

...The phrase "AMERICAN DEPOSITORS" is simply used by the applicant to suggest a group consisting of those persons who own deposits in United States banking institutions. It is the applicant's position that the phrase "AMERICAN DEPOSITORS" is not used in a geographic sense. This fact becomes even more clear when one recognizes that some of these members of the group are not residents or citizens of the United States. Those persons who have deposits in United States banking institutions are not confined to any geographical area. (Applicant's brief, 2-4)

Applicant thus concedes that his customers ("AMERICAN DEPOSITORS") include persons who do not reside in the United

States and may not be citizens of this country. Applicant also argues that his mark would not be perceived as primarily geographically descriptive because the purchasing public is a relatively sophisticated and knowledgeable group of people, because his proposed services are not common insurance services but new services occupying a very narrow niche in the insurance industry and because the term "AMERICAN" in his mark is a modifier of "DEPOSITORS" and suggests the nature of the insurance rather than the location of the source of the insurance services.

Further, if the term "AMERICAN" is construed to be geographic as used in the mark AMERICAN DEPOSITORS INSURANCE CORPORATION, the rejection should still be reversed because a services/place relationship has not been established, and there is no reason to believe that the purchasing public would care about the location of the source of applicant's services. (Brief, 8)

In order for registration to be properly refused under Section 2(e)(2), it is necessary for the Office to establish that (1) the primary significance of the mark sought to be registered is the name of a place generally known to the public and (2) the public would make a goods or services/place association, that is, believe that the goods or services for which the mark is sought to be registered originate in that place. See *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *University Bookstore v. University of*

Wisconsin Board of Regents, 33 USPQ2d 1385, 1402 (TTAB 1994); and In re California Pizza Kitchen Inc., 10 USPQ2d 1704, 1705 (TTAB 1988).

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's mark is primarily geographically descriptive of applicant's services. That the term "AMERICA or "AMERICAN" primarily signifies the name of a place generally known to the public may be assumed. We also believe that the public, who encounter applicant's services rendered in this country to depositors in American banks, will correctly believe that applicant's depositors insurance services emanate from America.

While we have considered applicant's argument concerning his belief as to the significance of his mark to the purchasing public, we cannot subscribe to that argument. For applicant's argument to have any validity it would seem to us that the expression "AMERICAN DEPOSITORS" would be argued to signify depositors who are American citizens or who at least reside in this country. However, applicant does not contend that this is the significance of that part of his mark. Rather, applicant argues that this expression will signify those people of any citizenship who own deposits in American banks. It seems to us more plausible that the general public will perceive applicant's mark as signifying a corporation that is of American origin that offers insurance to depositors. Accordingly, we believe

**Ser. No. 74/497,740**

that the primary significance of applicant's mark, as applied to his services, is geographic in nature. See also In re Cambridge Digital Systems, 1 USPQ2d 1659 (TTAB 1986) and In re BankAmerica Corporation, 231 USPQ 873 (TTAB 1986).

Decision: The refusal of registration is affirmed.

R. L. Simms

G. D. Hohein

P. T. Hairston  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board

Ser. No. 74/497,740