

Hearing:
August 28, 1997

Paper No. 10
SIMMS/MD

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JUNE 5, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Carolina Apparel

Serial No. 74/658,141

Larry L. Coats of Rhodes, Coats & Bennett, L.L.P. for
Carolina Apparel.

Michelle Mooney-Ritchey, Trademark Examining Attorney, Law
Office 103 (Michael Szoke, Managing Attorney)

Before Simms, Cissel and Hairston, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Carolina Apparel (applicant), a North Carolina
partnership, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark CAROLINA
APPAREL ("APPAREL" disclaimed) for retail clothing store
services.¹ The Examining Attorney has refused registration
under Section 2(e)(2) of the Act, 15 USC §1052(e)(2), on the

¹ Application Serial No. 74/658,141, filed April 10, 1995, based
upon applicant's bona fide intention to use the mark in commerce
under Section 1(b) of the Act, 15 USC §1051(b).

basis that applicant's mark is primarily geographically descriptive of applicant's services. Applicant and the Examining Attorney have submitted briefs and an oral hearing was held.

We affirm.

It is applicant's position that its asserted mark is not primarily geographically descriptive of its services. With respect to the geographic significance of the term "Carolina," applicant notes that the dictionary definition of record indicates that this was the name of an American colony that no longer exists and does "not reference any particular place that has meaning today." Brief, 2. In addition, applicant lists several third-party registrations which include the term "CAROLINA" without a disclaimer.² Applicant has also argued that "CAROLINA" is not known for

² The Board does not take judicial notice of third-party registrations, and the mere listing of them is insufficient to make them of record. See *In re Duofold*, 182 USPQ 638, 640 (TTAB 1974). If either applicant or the Examining Attorney wishes to rely on such registrations, paper copies (or computer printouts from Office records) of those registrations should have been made of record prior to appeal. See Trademark Rule 2.142(d). Even if these registrations had properly been made of record, however, they would not have changed the result we reach herein.

The Examining Attorney, on the other hand, has made of record a number of third-party registrations which include the term CAROLINA, where that term has been disclaimed or where the registration was allowed under Section 2(f) of the Act, 15 USC §1052(f).

apparel, but rather is used in an arbitrary sense.³ See applicant's Response, filed April 1, 1996, 2. Accordingly, although applicant acknowledges that its services are rendered in the state of North Carolina, *id.*, and brief, 5, the actual items of clothing may come from a variety of locations, applicant contends. It is applicant's position, therefore, that the asserted mark is not primarily geographically descriptive of its services.

Both applicant's attorney and the Examining Attorney agree that, in order to justify a refusal under Section 2(e)(2) of the Act, this Office must show that the mark sought to be registered is the name of a place generally known to the public and that the public would make a services/place association, i.e., believe that the services for which the mark is being registered originate in that place. See *In re California Pizza Kitchens, Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1989) and cases cited therein. Moreover, if a geographic term in a mark is neither remote nor obscure and the geographic significance is the primary connotation of the term, and where the goods or services actually originate from the geographic place designated in the mark, a public association of the goods or services with the place

³ At the oral hearing, however, applicant's counsel stated that he did not dispute that textile products are associated with North Carolina.

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may ordinarily be presumed. See *California Pizza Kitchens, supra*, and *In re Handler Fenton Westerns*, 214 USPQ 848 (TTAB 1982). Here, the evidence of record shows that "Carolina", in addition to being the name of an American colony, also is used to indicate either the state of North Carolina or the state of South Carolina. See Random House Unabridged Dictionary (2d ed. 1983). It is clear that the primary significance of the designation CAROLINA APPAREL, APPAREL being generic and disclaimed by applicant, is geographic. The addition of a generic term to a geographic term does not avoid the refusal of primary geographic descriptiveness. See *In re BankAmerica Corp.*, 231 USPQ 873 (TTAB 1986) and *In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1986). Inasmuch as the services admittedly do or will come from the place named in the mark, a public association of the services with the place named in the mark is presumed. In any event, the definitions of "North Carolina" and "South Carolina" from Webster's New Geographical Dictionary (1988), submitted with the Examining Attorney's brief, but of which we may take judicial notice, clearly demonstrate that clothing and textiles are among the chief products of both of these states. Accordingly, there is clearly an association of applicant's retail clothing store services with the place named in the mark.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

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

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