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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Heineken Brouwerijen, B.V.

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Serial No. 74/722,331

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John M. Keene of Graham, Campaign P.C., for Heineken  
Brouwerijen, B.V.

Michael S. Levy, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney).

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Before Hohein, Chapman and Bucher, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Heineken Brouwerijen, B.V., a company  
organized under the laws of The Netherlands and having its  
headquarters in Amsterdam, has filed an application for  
registration of the mark "CAFE AMSTERDAM" for "restaurant

and bar services." Applicant has disclaimed the word "CAFE" apart from the mark as shown.<sup>1</sup>

The Examining Attorney issued a final refusal to register pursuant to Section 2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), as made applicable by Section 3, 15 U.S.C. §1053, on the ground that applicant's mark, "CAFE AMSTERDAM," is primarily geographically descriptive as applied to applicant's restaurant and bar services.

Applicant has appealed the final refusal to register. Briefs have been filed, but applicant did not request an oral hearing. After a careful review of the law as applied to the facts herein, we affirm the refusal to register.

Section 2(e)(2) of the Trademark Act provides in relevant part as follows:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it --

- (e) Consists of a mark which ...
  - (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them...

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<sup>1</sup> Serial No. 75/722,331, in International Class 42, filed August 28, 1995, based upon an allegation of a *bona fide* intention to use the mark in commerce.

In order for registration to be properly refused under Section 2(e)(2), it is necessary to show that the mark sought to be registered is the name of a place known generally to the public, and that purchasers are likely to believe that the goods or services sold under the mark have their origin in, or are somehow connected with, the geographic place named in the mark. In re Nantucket, Inc., 677 F.2d 95, 213 USPQ 889 (CCPA 1982); In re California Pizza Kitchen, Inc., 10 USPQ2d 1704 (TTAB 1988), citing In re Societe Generale des Eaux Minerals de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987). Applicant and the Examining Attorney disagree over whether the Office has met its initial burden of proof. Alternatively, applicant contends that it has been able to rebut the Trademark Examining Attorney's *prima facie* case "either with argument based on the evidence in the case, or with just plain common sense." (Applicant's Reply Brief, p. 4).

With regard to the first prong of the test, we find that the primary significance of "AMSTERDAM" is geographical. The record shows that Amsterdam is the largest city in The Netherlands. Applicant admits that Amsterdam is a place known generally to the public and is neither remote nor obscure.

While conceding that Amsterdam is generally known, applicant argues that the geographical significance might well not be the primary connotation of the term to its customers -- airport travelers. In particular, the record shows that applicant has been operating a café in an airport in the Netherlands, and has now opened a restaurant and bar in the John F. Kennedy International Airport in New York.<sup>2</sup> Moreover, applicant contends that under the roll-out of its current business plan, all of its restaurants will be located in the international departure lounges of major airports in the United States, even though, we note, there is not any such restriction in applicant's recitation of services. According to applicant, the term "Amsterdam," within its composite mark, could be seen as suggestive or even arbitrary as used in conjunction with applicant's restaurants and bars. Specifically, applicant argues:

... that the mark CAFE AMSTERDAM is not primarily geographically descriptive, but rather is suggestive of a restaurant and bar which will have a relaxing, European-style atmosphere...

(Applicant's response of August 12, 1996 to the first Office action, p. 3).

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<sup>2</sup> Applicant's response of August 12, 1996 contains the following sentence: "Applicant respectfully notes that the applicant has been running the AMSTERDAM CAFE at the Schipol Airport in Holland..."

We find, however, that the mark primarily conveys a geographic meaning. The Board, in an analogous case, found the term "Nashville" to be primarily geographically descriptive even though it conveyed imagery other than merely the city of Nashville. In re Opryland USA Inc., 1 USPQ2d 1409 (TTAB 1986). Alternative meanings for a geographical term thus do not necessarily alter the primacy of its geographical significance. As the Board found in the Opryland USA case:

...Appellant's argument that the term "Nashville" is not primarily geographical because it has other imagery than the city of Nashville, e.g., education, i.e., the "Athens of the South"; country music; Printer's Alley; a particular musical sound, i.e., "The Nashville Sound", etc., is not persuasive. Because a term may have other meanings does not necessarily alter the primacy of its geographical significance. See, e.g., In re Cookie Kitchen, Inc., 228 USPQ 873 (TTAB 1986) [That "MANHATTAN" is the name of an alcoholic cocktail does not alter the primary significance of that term as a borough of New York City.]

Even if applicant had established an association between the word "Amsterdam" and a particular "atmosphere" or "image," such an association might well enhance, rather than diminish, the primary geographic connotation of the

term precisely because of the significance of Amsterdam as a city in The Netherlands.

Furthermore, the word "Cafe" is highly descriptive, if not generic, when used in connection with applicant's restaurants and bars, and applicant has disclaimed the word "CAFE" in its application. The combination of the generic word "CAFE" with a geographical term "AMSTERDAM," does not detract from the primary geographic significance of the composite mark. See, In re Chalk's International Airlines Inc., 21 USPQ2d 1637, 1639 (TTAB 1991) ["PARADISE ISLAND AIRLINES" held primarily geographically descriptive of the transportation of passengers and goods by air]. Accordingly, we conclude that the primary connotation of the composite mark "CAFE AMSTERDAM" is its geographical significance.

We turn now to the second prong of the legal test for geographical descriptiveness -- whether members of the general public are likely to make a services/place association between the geographic place named in applicant's mark and the identified services. On this point, applicant and the Examining Attorney strongly disagree.

Specifically, applicant asserts that:

It is the second prong of this test which the trademark examining attorney has fallen far short of satisfying, i.e., that a public association of the services with the place named in the mark is to be presumed from the fact that applicant's services come from the place named in the mark.

(Applicant's Appeal Brief, p.3). Applicant argues that the Examining Attorney has not established by sufficient evidence that restaurant patrons will draw an association between the place named in applicant's mark (i.e., Amsterdam, The Netherlands) and applicant's restaurant and bar services which are offered in the United States.

Applicant argues that there is no logical or factual reason to find a services/place association between its restaurant and bar services and the city of Amsterdam; and that no prudent patron in an airport bar in the United States would believe that the restaurant and bar services originate in Amsterdam:

To the U.S. international air traveler ... "airport restaurants" invariably present the image of "fast food" establishments complete with all of the negative impressions that that image portends. This image derives from the simple fact that most airport restaurants are of the fast food variety...

From these facts, one hardly debatable inference freely and fairly flows; no reasonably intelligent and well-informed international air traveler

waiting for his or her flight in a departure lounge possibly could form a mental association between any portion of the food, beverages or services to be found in -- e.g., a Sbarro's establishment, and Italy as their actual source. The same can be said with equal certitude with respect to CAFE AMSTERDAM and the city of Amsterdam in the Netherlands...

(Applicant's reply brief, pp. 6-7).

Applicant also makes the following argument based upon the planned location of these restaurants and bars:

In the final analysis, CAFE AMSTERDAM arguably might be capable of fomenting the services/place association that is requisite to a legally correct Section 2(e)(2) final refusal were applicant's restaurant/bars slated for installation on uptown Fifth or Madison Avenues in New York City, or indeed even in upscale suburban locations. If that were the case, it might be reasonable to conclude that customers could associate the mark with the place named in it as the source of the services.

Applicant's restaurant/bars, however, are and will be located solely in airport international departure lounges, and thus will be subject to the same negative consumer impressions which affect all other similarly situated "fast food and beverage" facilities. One of which most assuredly is that the geographic source of the services available in them are, and must of logical necessity be, exclusively domestic. Accordingly, both the record evidence and plain common sense completely rebut any presumption that a services/place association exists in this case.

(Applicant's reply brief, pp. 7-8).

Applicant continues by pointing out that substantially nothing in its restaurants originates in its corporate home in Amsterdam; that the operation of its restaurants is run under license with a food services subsidiary of the Marriott Corporation (hereinafter "Marriott"); and that Marriott and its vendors will be supplying nearly all of the food items and beverages (except for the beer), recipes, menus and décor. Applicant concludes that absent any strong underlying factors linking this service to The Netherlands, no reasonable person would form a mental association between applicant's fast food restaurants in airport terminals in the United States and an admittedly well known metropolitan area in The Netherlands.

Furthermore, applicant argues that the location of its corporate headquarters in Amsterdam, The Netherlands, is irrelevant because purchasers will not know or care about the headquarter's location of an anonymous service mark provider.

Arguing that its services, consequently, are not "rendered" in or from Amsterdam, applicant relies heavily on the logic and holding of In re John Harvey & Sons Ltd., 32 USPQ2d 1451 (TTAB 1994). There, in the composite mark, "HARVEYS BRISTOL CREAM," for "bakery goods, namely cakes"

the word "Bristol," when applied to applicant's goods, was held not primarily geographically descriptive under Section 2(e)(2) of the Act. This was the holding even though applicant's headquarters were in Bristol, England, and sherry was bottled there at one time. Nonetheless, the evidence of record did not show that Bristol, England, was associated with cakes flavored with sherry wine in any manner that would cause members of the American public to assume that Bristol is the cakes' place of origin.

Here, there is nothing in the record that indicates, or even suggests, that American purchasers would believe that Bristol, England was or is now the place of production of applicant's cakes flavored with sherry wine (the wine, in point of fact, now being blended, bottled and distributed in Spain while the cakes are produced in Conshohocken, Pennsylvania).

*In re John Harvey & Sons Ltd.*, *supra*, at 1454.

The Examining Attorney, in support of his position, made of record the following evidence: an excerpt from *The Columbia Lippincott Gazetteer of the World* (1962) indicating that Amsterdam is the largest city of The Netherlands, with explicit mention of brewing and food processing; *Fodor's Guide to Holland* (1980) reviewing some of the restaurants, bars and cafes in Amsterdam (pp. 135-137); and "The Internet Guide to Amsterdam" (June 20, 1997) featuring current information on similar dining options.

The Examining Attorney relies heavily upon the logic of the Board in the case of California Pizza Kitchen, supra at 1706-1707 (another case involving a service mark for restaurants), arguing that the results in that case should determine the outcome herein:

...[W]e think a services/place association can be presumed from the nature of the services and the particular geographical place named in the mark. That is, restaurant services are so ubiquitous and a state is such a large, significant geographic area that it can be treated as a matter of common knowledge that restaurant services are rendered throughout every state of the United States, including California. In view of the foregoing, we have no hesitation in concluding that consumers would assume restaurant services rendered under the mark "CALIFORNIA PIZZA KITCHEN" have their origin in California...

In re California Pizza Kitchen, Inc., supra, at pp. 1706-1707.

The Examining Attorney contends that a services/place association does not turn on whether any food served in applicant's restaurants and bars literally comes from Amsterdam. Rather, he points out that under the terms of the restaurant management contract between applicant and Marriott, the nature and quality of the food and beverage services are, by definition, controlled from applicant's headquarters in Amsterdam.

The Examining Attorney also argues that it is significant that applicant is a corporation of The Netherlands actually having its corporate headquarters in Amsterdam.

A goods/place or services/place association supporting a refusal to register under Section 2(e)(2) of the Act is not limited to instances where the place is well known or noted for the goods or services. Rather, to establish such an association, the Examining Attorney must show a "reasonable basis" for concluding that the public is likely to believe that the mark identifies the place from which the goods or services originate. *In re Loew's Theatres, Inc.*, 769 F.2d 764, 767-68, 226 USPQ 865, 868 (Fed. Cir. 1985); *In re Nantucket, Inc.*, 677 F.2d 95, 213 USPQ 889, at 894-95 (Nies, J., concurring).<sup>3</sup>

In a seminal case involving geographical descriptiveness, the Court of Appeals for the Federal Circuit provided the following guidance on the sufficiency of evidence needed:

The cited Gazetteer shows tobacco to be one in a short list of principal crops of the region. No more can be expected from the PTO in the way of proof... The

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<sup>3</sup> See also *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982); *In re Societe Generale, supra*].

practicalities of the limited resources available to the PTO are routinely taken into account in reviewing its administrative action.

*In re Loew's Theatres, Inc.*, *supra* at 768.

Legal precedent demonstrates that the location of an applicant's corporate headquarters is a factor bearing upon a finding of geographical descriptiveness, particularly if combined with additional factors reasonably suggesting a connection. For example, contents of labels<sup>4</sup> or applicant's center for research and development may be decisive:

While it is true that applicant's NANTUCKET NECTARS soft drinks are manufactured in Worcester, applicant's corporate headquarters and, perhaps more importantly, applicant's center for research and development are located on Nantucket... Thus, a principal origin, if not the principal origin, of applicant's products is Nantucket...

Moreover, even assuming for the sake of argument that the public does not believe that NANTUCKET NECTARS soft drinks are actually manufactured on Nantucket (and of course they are not), nevertheless, these goods originate from a company that has its headquarters and, more importantly, its research and development center on Nantucket.

See *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144 (TTAB 1993) ["NANTUCKET NECTARS," is primarily geographically

descriptive of applicant's soft drink products].

Similarly, in another setting, the general reputation of a particular area of the country for being the home of high technology companies might cause reasonably informed purchasers in the market for computer systems and parts to believe that equipment sold under mark "CAMBRIDGE DIGITAL" emanates from Cambridge, Massachusetts. See In re Cambridge Digital Systems, 1 USPQ2d 1659 (TTAB 1986).

Consistent with the approach in the Loew's Theatres and California Pizza Kitchen decisions, *supra*, the Examining Attorney has made of record sufficient relevant evidence to establish an association between Amsterdam and applicant's restaurant and bar services.

In deciding issues of geographical descriptiveness, it is important to look at the specific facts in each case.<sup>5</sup> In particular, the exact services for which an applicant seeks registration must be the basis for determining whether the subject mark should be refused registration

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<sup>4</sup> See further discussion of the relevance of the labels in the "NANTUCKET NECTARS" case, at pp. 20-21 of this decision, *infra*.

<sup>5</sup> ...Suffice it to say that each case must be decided upon its own merits and that cases decided because of a lack of evidence that the public would believe that the place named in the mark was the manufacturing location of certain goods are not especially helpful in determining the appropriate result in this case...

Chalk's International Airlines, *supra*, at 1639.

under Section 2(e)(2) of the Act. See In re Loew's Theatres, Inc., supra; In re Nantucket, Inc., supra; In re Handler Fenton Westerns, Inc., supra; and In re Norfolk Wallpaper, Inc., 216 USPQ 903, 904 (TTAB 1983). As applicant notes, it is important for us to focus on the perceptions of the relevant members of the public. Cf. In re MCO Properties Inc., 38 USPQ2d 1154 (TTAB 1995). Applicant goes to the heart of this inquiry by questioning what reasonable assumptions consumers will make about the source of restaurant and bar services based primarily upon the service mark selected for any given restaurant.

In the California Pizza Kitchen case cited above, the Board concluded that restaurant patrons in Atlanta, for example, were likely to believe applicant's restaurant services had their origin in, or were somehow connected with, California. If consumers would readily assume that a restaurant concept or recipes can cross the North American continent, in an age of international commerce, does it truly fly in the face of common sense and logic, as the current applicant argues, to assume that a cafe concept, recipes or perhaps even some of the specific food or beverage items available might well cross the Atlantic Ocean? We think it does not.

Moreover, while applicant's recitation of services is in no way limited, even if we were to accept applicant's focus on international air travelers, common sense and logic would suggest that in light of applicant's mark, "CAFE AMSTERDAM," a person sitting in an international airport restaurant/bar would be *more likely* than a person having dinner in an uptown restaurant to assume a services/place association with Amsterdam. This association would certainly be reinforced if the same traveler had been to applicant's "AMSTERDAM CAFE" in the Schipol Airport in The Netherlands.

As the Trademark Examining Attorney contends, applicant controls the nature and quality of its restaurant services in the United States through a restaurant management contract with the Marriott Corporation. This fact is consistent with a finding of geographical descriptiveness because in a broad sense, the services are thereby "rendered" from Amsterdam. (Trademark Examining Attorney's Appeal Brief, p. 10). As stated in the California Pizza Kitchen case:

[R]estaurant services would include the restaurant concept, menu, recipes, etc., and even though a customer in Atlanta, Georgia, would obviously recognize that the particular branch of

the restaurant was physically located outside of California, he would be likely to assume that the restaurant services such as the concept, recipes and even possibly the food originated in the state of California.

When it has been demonstrated that the primary significance of the term is geographic, and the services of the applicant are in fact rendered from the place the term names, case law holds that a public association of the services with the place will be presumed. *In re Handler Fenton Westerns, Inc.*, supra; *California Pizza Kitchen*, supra at 1706.

Furthermore, while applicant makes much of the fact that a food services subsidiary of Marriott is the licensee for applicant's restaurants, it is not clear how consumers would have any way of knowing of Marriott's involvement, or how this is relevant to consumers' likely perceptions.

In turning to the issue of the location of applicant's headquarters, applicant is correct that the mere fact that its headquarters are located in The Netherlands does not by itself establish that a services/place association exists. See *In re John Harvey & Sons Ltd.*, supra at 1454 [United Kingdom city-name, "Bristol," within composite mark HARVEYS BRISTOL CREAM is not primarily geographically descriptive of cakes flavored with sherry wine]; and *In re Gale Hayman*

Inc., 15 USPQ2d 1478, 1479 (TTAB 1990) [merely because applicant's principal offices are close to Sunset Boulevard, does not by itself establish a goods/place association between perfume/cologne and "SUNSET BOULEVARD."]. However, in this case, we accord some weight to the location of applicant's headquarters when combined with the other factors involved herein.

Curiously, applicant bases its argument against consumers making a services/place association, in part, on an asserted negative consumer association with fast food establishments. The instant application is one based upon intent to use, and applicant has introduced no evidence of how applicant actually uses its service mark. In any event, applicant has an unrestricted recitation of services. That is, applicant's restaurant and bar services are not restricted in any way as to type (e.g., fast food, up-scale), location (e.g., international departure lounges in airports, downtown locations in major cities), or décor (e.g., Dutch theme-restaurant, 1950's art deco bar).

Hence, the entire range of eating establishments, including an upscale restaurant having Dutch themes, would clearly be available to applicant and encompassed within the broad identification of "restaurant and bar services." As we

have seen, applicant admits this might cause restaurant patrons to make the services/place association.<sup>6</sup>

As to the Examining Attorney's reliance upon the California Pizza Kitchen case, applicant argues that the

...fatal flaw in the Examining Attorney's evidentiary proffer at bar is that it falls significantly short of the proffer in *In re California Pizza Kitchen, Inc.*, which the Board in that case held to the "absolute minimum necessary to establish a *prima facie* case"...

(Applicant's brief, p. 12). We note that unlike the service mark application involved in the California Pizza Kitchen case, *supra*, the instant application is based upon applicant's intention to use the mark in commerce. Hence, we cannot peruse a menu from applicant's restaurant to determine whether the menu features Dutch cuisine or has a theme strongly connected to The Netherlands. We cannot look at photographs of the entrance to applicant's restaurant or the internal decor to see whether the restaurant has a Dutch motif. Such specimens would be useful

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<sup>6</sup> See full quotation on page 8, *supra*: "CAFE AMSTERDAM ... might be capable of fomenting the services/place association ... were applicant's restaurant/bars slated for installation on uptown Fifth or Madison Avenues in New York City, or indeed even in upscale suburban locations. If that were the case, it might be reasonable to conclude that customers could associate the mark with the place named ...."

(footnote continues on next page → )

evidence if this Board were making a similar geographical descriptiveness determination on an appeal in a use-based application (or even following substantive review of specimens accompanying a later statement of use in an intent-to-use application like this one). However, absent a showing of acquired distinctiveness, the result under the law herein should be the same irrespective of whether the service mark has yet been used at the point where this determination is being made by the United States Patent and Trademark Office.

The instant case can be distinguished from In re John Harvey & Sons Ltd., *supra* [the HARVEYS BRISTOL CREAM case] in that here, a salient fact is the sale of Heineken brand beer (a beer known to be imported into the United States from The Netherlands) in applicant's restaurants and bars, a factor without counterpart in the John Harvey & Sons case. For this reason, the instant case is closer to the facts of the NANTUCKET NECTARS soft drink case, in which the soft drink labels proved decisive. See In re Nantucket Allserve Inc., *supra* [NANTUCKET NECTARS, is primarily

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geographically descriptive of applicant's soft drink products]:

We believe that applicant's labels for its NANTUCKET NECTARS soft drinks, which applicant submitted as specimens, would cause the consuming public to make a goods/place association. These labels bear the mark NANTUCKET NECTARS above a picture of Nantucket Town, and contain, among other things, the following statements:

Born on the Faraway Isle,  
Nantucket Nectars™ were created during the long winter months of 1990. Their flavor embodies the wholesome quality of the Island whose name they bear...

The sale of applicant's Heineken brand beer in applicant's "CAFE AMSTERDAM" restaurant and bar is analogous to the "NANTUCKET NECTARS" labels. Applicant acknowledges, as previously noted, that the beer served in its restaurants will be Heineken brand beer, but would have us gloss over this fact. Whether the Heineken brand beer being served at applicant's restaurants and bars in the United States is actually brewed in Amsterdam or elsewhere is immaterial to our conclusion. The average consumer would know that Heineken brand beer is not a domestic brand and most beer-drinkers would recognize it as an imported brand of beer from The Netherlands. In fact, the prototypical world-traveler (as described at length by applicant) should readily know that Heineken is a brand of

beer originating from The Netherlands and its largest city, Amsterdam, without even needing to read the informational label on the bottle. Hence, we find this fact to be another significant indicator of a services/place association between applicant's restaurant and bar services and the city of Amsterdam.

In conclusion, based upon the generally understood meaning of the term "Amsterdam," applicant's unrestricted recitation of services, the location of applicant's headquarters, and the fact that applicant sells Heineken brand beer in its restaurants and bars, we conclude that the mark CAFE AMSTERDAM for restaurant and bar services is primarily geographically descriptive within the meaning of the statute.

*Decision:* The refusal under Section 2(e)(2) of the Act is affirmed.

G. D. Hohein

B. A. Chapman

D. E. Bucher

Ser. No. 74/722,331

Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board