

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Alaska Airlines, Inc.

Serial No. 74/722,676

Lynne E. Graybeal of Foster Pepper & Shefelman for
Applicant.

David H. Stine, Trademark Examining Attorney, Law Office
103 (Michael Szoke, Managing Attorney).

Before Simms, Chapman and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Alaska Airlines, Inc., a Washington state
corporation, has filed an application for registration of
the mark "THE LAST GREAT AIRLINE" for "air transportation
services."¹

The Trademark Examining Attorney has refused
registration under Section 2(e)(1) of the Act, 15 U.S.C.

¹ Serial No. 74/722,676, filed August 29, 1995, alleging use
since May 7, 1995.

§1052(e)(1), arguing that the mark sought to be registered consists of a laudatory term. He contends that the analysis is straightforward. If one takes the ordinary meaning of words like "LAST" and "GREAT" in the context of this composite, the phrase attributes an extra level of quality, excellence, or tradition to applicant's air transportation services, thereby making the alleged mark equivalent to any other descriptive term.

It is applicant's position that this mark, "THE LAST GREAT AIRLINE," is "a catchy, clever, double entendre" for Alaska Airlines. Applicant contends that because the state of Alaska is sometimes known as "The Last Great Frontier,"² "The Last Great Wilderness," "The Last Great Adventure," and the like, this mark is suggestive of quality as well as conjuring up images of Alaska. Applicant argues that its mark, therefore, would not be perceived by consumers as simply describing the airline's quality or excellence.

Applicant argues that the record supports a direct connection between this slogan and the state of Alaska. The unique features of Alaska and its peoples are an

² We take judicial notice that the "States and other areas of the U.S." section of the 1998 World Almanac and Book of Facts, Robert Famighetti (Editor), refers to Alaska's "unofficial" nickname as simply "The Last Frontier" without the word, "Great." This is also consistent with evidence in the record reflecting the fact that Alaskan's license plates extol "the Last Frontier."

integral aspect of applicant's marketing of its services -- all the way to emphasizing Alaska's native peoples by painting them in figurative elements on the tails of its aircraft. In promotional materials, "The Last Great Airline" is always used in close proximity to "Alaska Airlines." Applicant argues then that its mark has a different commercial impression or connotation from that conveyed by a merely descriptive term.

After careful consideration of the arguments of the attorneys, we begin our analysis with the fact that this mark does comprise a laudatory phrase. Furthermore, we agree with the Examining Attorney that applicant's argument concerning any alleged double entendre is unpersuasive. As a result, we find the asserted mark to be merely descriptive of applicant's services.

First, there is no dispute that a laudatory term which attributes quality or excellence to a product or service is merely descriptive. We concur with the conclusion of the Examining Attorney that the ordinary laudatory meaning of the phrase "THE LAST GREAT AIRLINE" is readily apparent. Indeed, applicant does not appear to dispute the laudatory, merely descriptive, connotation of this phrase. In its appeal brief, p. 6, applicant states:

... A descriptive mark, by comparison, "immediately tells something about the goods or services." ... Here, THE LAST GREAT AIRLINE does both. It describes a certain quality or excellence of Applicant's services; and it is also suggestive of the State of Alaska, also known as "The Last Great Frontier"...

See also applicant's Response, filed September 12, 1996, p.

5. Similarly, in applicant's reply brief, p.2, applicant does not dispute that the asserted mark could be perceived as laudatory and therefore descriptive. See also applicant's reply brief, p.5 ("...the common laudatory meaning indicating the quality of Applicant's airline services and a meaning which is suggestive or reminiscent of the commonly known "LAST GREAT" nicknames for the State of Alaska.... It is descriptive of a certain quality or excellence of Applicant's services..."). The record shows that applicant has indeed been positioning itself as "the highest-quality West Coast carrier."³

As stated above, it is applicant's position that "The Last Great Frontier" is a commonly known phrase such that applicant's asserted mark, which contains three of those four words, involves a completely different connotation because of its play on words. Accordingly, applicant argues that the asserted mark is both suggestive of the

³ See applicant's exhibit 10, "In marketing dogfight, Alaska Air to highlight amenities," Business Journal - Portland, Vol. 12, No. 15, Sec. 1, p. 12, June 9, 1995.

state of Alaska as well as being merely descriptive of its services. The problem with applicant's argument is that, unlike well-known phrases such as those taken from nursery rhymes (e.g., like "sugar and spice"), applicant's whimsical reference is not nearly as universally known. Moreover, as the Examining Attorney has pointed out, applicant's advertisements -- which have been made a part of this record and have been carefully reviewed -- do nothing to evoke a reference to any of the several cited nicknames for areas or aspects of the state of Alaska (e.g., "The Last Great Frontier," "The Last Great Wilderness," "The Last Great Adventure," et al.).

As can be seen from the highlighted text of the following advertisements, applicant's marketing projects the image of applicant's airline as restoring the golden age of commercial aviation, hence strongly reinforcing the laudatory, descriptive connotation of the asserted mark. For example, beneath a picture of the back of a young woman (dressed in 1950's style attire) seeming to gaze out over a large bay, with the words "Arrive with a relaxed state of mind. No Extra Charge" emblazoned across the page, are the words:

"What is the price of tranquility? How much should friendliness cost? To all those who expect **a fair price** and to be **treated like a**

human being, we have something we'd like to say. Welcome aboard. For the same price, you just get more. Alaska Airlines. The last great airline. For reservations call your travel agent or 1-800-426-0333." ⁴

Similarly, another page-length advertisement in the same magazine comprised the picture of a youth of an earlier era, holding a large-scale model airplane, with the words "For centuries, people dreamed of flying. We see no reason they should stop now" emblazoned across the center of the page. Underneath it is located the following text:

"What happened to **the dream of flying**? What happened to **giving people a fair price and treating them with common decency**? In the blink of an eye something changed. Everywhere you look today standards are lower. People care less. Has the dream disappeared? Not quite. Alaska Airlines still believes in **a world where a smile counts for something**. We believe in **a world that treats people like human beings**. And we believe this world shouldn't cost more. Where can you find this perfect world? Only in the clouds. For the same price, you just get more. Alaska Airlines. The last great airline. For reservations call your travel agent or 1-800-426-0333." ⁵

In the same vein, the recorded advertisements for radio and television are carefully calculated to evoke nostalgia for the 1940's and 1950's. Here, "service comes

⁴ See full page advertisement in the Alaska Airlines Magazine, August 1995, page 22.

⁵ See full-page advertisement in the Alaska Airlines Magazine, August 1995, page 41.

with a smile and the food tastes great, no extra charge." ⁶
All of these good-natured commercials are designed to take potential customers back to the kinder and gentler days of early commercial flight. The atmospherics of this entire campaign are consistent with the laudatory connotation of this slogan.

In fact, as used in all of applicant's advertisements reviewed above, the applied for mark would arguably be equally appropriate for any commercial air carrier, including ones having no association with the state of Alaska.

As the Examining Attorney has indicated, the advertising materials fail to make any reference to the nicknames of the state of Alaska, which may well help place another meaning before prospective customers.

...In making this determination, it is both necessary and appropriate to evaluate the specific context of the applicant's own use of the mark, as evidenced by the record, to evaluate the connotation of the proposed mark and the likely reaction of potential purchasers as they encounter the term in question...

Review of the record clearly indicates that applicant has made no effort to specifically

⁶ In the television commercials released on the West Coast in May 1995, applicant recreates a world "in which milk is still delivered, women wear white gloves, all the paper boys are named Rusty, and everyone smiles." See applicant's exhibit #11, "To stand out in the present, Alaska Airlines uses a retro-chic campaign that embraces past," *The New York Times*, p. D-7, May 9, 1995.

associate its use of the laudatory phrase "The Last Great Airline" with the allegedly similar nicknames attributed to Alaska. None of applicant's advertising copy makes any reference to these other slogans. Moreover, it is clear that applicant is merely assuming that the relevant purchasing public is both familiar with the Alaskan nicknames and able to create an association between applicant's Alaskan flights and the applicant's use of the laudatory phrase "The Last Great Airline..."

It is respectfully suggested that the claim of a readily apparent "double entendre" [sic] is, at best, wishful thinking. Absent a direct and clear tie-in to other allegedly similar slogans, in the relevant context of use, the clearly laudatory connotation of the phrase "The Last Great Airline" is obviously dominant.

See Trademark Examining Attorney's brief, p.3.

Like the Trademark Examining Attorney, we are not persuaded that an appreciable share of applicant's customers will recognize this clever connection with Alaska's various nicknames as outlined by applicant. Hence, we do not believe that this mark will be perceived as projecting a dual meaning.

In spite of our decision, we note that this application will nonetheless proceed on to publication in the Trademark Official Gazette. In an Office action issued November 5, 1997, the Trademark Examining Attorney indicated that in the event the Board should find the asserted mark "THE LAST GREAT AIRLINE" to be merely

Ser No. 74/722,676

descriptive, he was willing to accept applicant's *prima facie* claim of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. §1052(f), as sufficient to permit registration on the Principal Register.

Decision: The refusal of registration under Section 2(e)(1) is affirmed. Nonetheless, this application will be forwarded to the Trademark Publication Branch of the Patent and Trademark Office for publication under Section 2(f) of the Act.

R. L. Simms

B. A. Chapman

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board