

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 19, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re TA Operating Corporation

Serial No. 75/121,998

Todd R. Tucker and Jeanne E. Longmuir of Calfee, Halter &
Griswold for TA Operating Corporation.

Matthew C. Kline, Trademark Examining Attorney, Law Office
104 (Sidney Moskowitz, Managing Attorney).

Before Hairston, Chapman and Wendel, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

TA Operating Corporation has filed an application to
register the mark TRAVELCENTERS OF AMERICA for "truck
fueling, repair and maintenance service and gasoline
service station services" in Class 37 and "restaurant
services and professional truck stop services" in Class 42.¹

¹ Serial No. 75/121,998, filed June 19, 1996, based on a bona
fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(e)(2) of the Trademark Act, on the ground that the mark is primarily geographically descriptive of the services involved. Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

In order for registration to be refused under Section 2(e)(2) of the Trademark Act, on the ground that the mark is primarily geographically descriptive of the goods or services, it must be established that

- (1) the mark sought to be registered is the name of a place known generally to the public, and
- (2) the public would make a goods/place (or in this case, services/place) association, i.e., would believe that the services originate from this place.

See *In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704 (TTAB 1988). Where there is no question but that the geographic significance of a term is its primary significance, and the place named is neither obscure nor remote, a public association of the goods (or services) with the place may be presumed if, in fact, the goods (or services) originate from the geographic place named in the mark. See *In re California Pizza Kitchen Inc.*, *supra*; *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982). Moreover, the

addition of highly descriptive matter to a geographic term does not detract from the mark's primary significance as being geographically descriptive. See *In re U.S. Cargo, Inc.*, 49 USPQ2d 1702 (TTAB 1998); *In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1986).

In the present case, the Examining Attorney argues that the primary significance of the term AMERICA is geographic, indicating origin in the United States, and that since applicant's services originate from the United States, a public association of the services and the place can be presumed. He maintains that the term TRAVELCENTERS is highly descriptive of applicant's services and, thus, the addition of this term does not obviate the geographic descriptiveness of the mark as a whole. To support his position that TRAVELCENTERS is highly descriptive of truck stop areas and the services offered in these areas, the Examining Attorney has made of record several excerpts from the LEXIS/NEXIS database showing use of the term "travel center" in reference to truck stop areas.

Applicant argues that the term TRAVELCENTERS is not highly descriptive of its services, but rather is a term which prospective purchasers might associate with several different meanings, such as a travel agency, a seller of trailers and campers, or perhaps even a campsite offering

hookups and the like to campers. As a result, applicant contends that the addition of the term TRAVELCENTERS to OF AMERICA is sufficient to remove the mark as a whole from the geographically descriptive category. Applicant points to its prior registration of the mark TRUCKSTOPS OF AMERICA for similar services as evidence of applicant's ownership of a family of marks which should influence the registrability of its mark TRAVELCENTERS OF AMERICA.

The word AMERICA is obviously well known to the United States public as the name of a geographic location. The only question is whether the addition of the term TRAVELCENTERS is sufficient to render the mark as a whole other than a descriptor of the geographic origin of applicant's services.

Looking to the evidence made of record by the Examining Attorney, we note that several of the Nexis excerpts show use of the term "travel center" in connection with a specific truck stop or road side stop, as in the following:

Truck drivers at the Pilot Travel Center off Interstate 85 in Duncan said they like being able to get something to eat while on the road. (*Spartanburg Herald-Journal*, Sept. 8, 1996);

A few miles down the highway at Sierra Sid's Travel Center, the place is hopping around the clock...with truckers playing black-jack and wolfing down chicken-fried steak. (*U. S. News*

and World Report, Aug. 26, 1996).

While it might be argued that uses such as this are proprietary, and fail to demonstrate generic or descriptive use of the term, the following excerpt makes it clear that the term "travel center" has become accepted as, at the very least, a highly descriptive term in general use with respect to truck stops and the services offered there:

... A sign of the times: Over the past few years, more than a quarter of the USA's estimated 2,000 truck stops have changed their names to "travel centers" or "travel plazas." (*Asheville Citizen-Times*, June 9, 1996).

We find this more than adequate evidence that the term TRAVELCENTERS as used by applicant in its mark is highly descriptive of applicant's truck stop services, as well as the restaurant services and gasoline station services which are often offered at such places.

While applicant argues that the term might be interpreted differently by prospective purchasers, applicant appears to overlook the fact that the meaning of the term TRAVELCENTERS, as used in its mark, must be considered in connection with applicant's services. It is well established that the descriptiveness of a term is not determined in the abstract, but rather in relation to the goods or services for which registration is being sought.

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See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990). Thus, we cannot agree with applicant that prospective purchasers upon viewing the mark TRAVELCENTERS OF AMERICA, when used by applicant in connection with its truck stop services, might think that applicant was a travel agency, a seller of campers or anything other than a truck stop.

Accordingly, we find the term TRAVELCENTERS to be highly descriptive of applicant's services and not a term which would detract from the primary significance of the mark TRAVELCENTERS OF AMERICA as being geographically descriptive. The situation here is similar to that in *In re BankAmerica Corp.*, 231 USPQ 873 (TTAB 1986), as cited by the Examining Attorney, wherein we found BANK OF AMERICA to primarily signify that the applicant's financial services originated from an American bank or from a bank in the United States. Here the mark TRAVELCENTERS OF AMERICA primarily indicates that applicant's truck stop and related services originate in the United States.

Insofar as applicant's existing registration for TRUCKSTOPS OF AMERICA is concerned, we can only point out that the registered mark is not the same mark and the fact that that mark was allowed to register on the Principal

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Register with only a disclaimer of TRUCKSTOPS is not binding upon us in the present case. See In re National Novice Hockey League, Inc., 222 USPQ 638 (TTAB 1984). Furthermore, we fail to see how applicant can claim ownership of a family of marks based on use of one prior mark.

Decision: The refusal to register under Section 2(e)(2) is affirmed.²

P. T. Hairston

B. A. Chapman

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board

² While applicant has requested, in the alternative, that its mark be registered on the Supplemental Register, the Examining Attorney was entirely correct in pointing out that a mark in an application filed under Section 1(b) is not eligible for registration on the Supplemental Register until either an amendment to allege use or a statement of use has been filed, since there must have been lawful use of the mark in commerce. See Section 23 of the Trademark Act; 37 CFR 2.47(c).