

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 1/13/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Paul A. DeRidder

Serial No. 74/621,411

Robert E. Strauss of Plante, Strauss & Vanderburgh for
applicant.

Mitchell Front, Trademark Examining Attorney, Law Office 111
(Craig Taylor, Managing Attorney).

Before Simms, Hohein and McLeod, Administrative Trademark
Judges.

Opinion by McLeod, Administrative Trademark Judge:

An application has been filed by Paul A. DeRidder to
register the mark PARK CITY for "beverages, particularly
drinking water and soft drinks."¹

The Trademark Examining Attorney has finally refused
registration under Section 2(e)(2) of the Trademark Act, 15
U.S.C. §1052(e)(2), on the ground that applicant's mark is

¹ Application Serial No. 74/621,411, filed January 17, 1995,
under Section 1(b) of the Trademark Act, 15 U.S.C. Section

primarily geographically descriptive of the identified goods.²

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested. We affirm.

The Examining Attorney contends that the term "Park City" is geographic, and that applicant's goods come from the place named in the mark. According to the Examining Attorney, the words "Park City" appear in large letters across the front of applicant's labels, along with the wording: "Pure, clear spring water from the mountains of Utah - for the adventurer in you." (Examining Attorney's Br. at 3). Based upon the labels, the Examining Attorney concludes that applicant's business operations are in Park City, Utah, and that consumers will assume the goods originate there.

Applicant, on the other hand, argues that the term PARK CITY is "minor, obscure, remote and unconnected with the

1051(b). On July 24, 1997, applicant filed a statement of use alleging dates of use in commerce of April 1997.

² During prosecution, both applicant and the Examining Attorney addressed the issue of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f). As noted by the Examining Attorney, however, applicant has never specifically amended its application to seek registration based upon acquired distinctiveness and applicant makes no mention of this issue on appeal. Accordingly, the issue of acquired distinctiveness has been given no consideration.

goods." (Applicant's Br. at 3). Applicant submits, contrary to the Examining Attorney's position, that the source of the goods is not Park City, Utah. Rather, applicant contends that the source of the goods is identified on the product label as "Uinta Mountain Spring Water" bottled by "SMSW."³

A mark is primarily geographically descriptive under Section 2(e)(2) if (i) the primary significance of the mark sought be registered is the name of a place known to the public and (ii) the public would make a goods/place association, that is, believe that the goods for which the mark is sought to be registered originate in the place named in the mark. *See In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *In re John Harvey & Sons, Ltd.*, 32 USPQ2d 1452, 1453 (TTAB 1994). Where there is no genuine issue that the geographical significance of a term is its primary significance and the geographical place named in the mark is neither obscure nor remote, a public association of the

³ Applicant, in its appeal brief, relies upon the declaration of Paul A. DeRidder, which was submitted in support of applicant's request for reconsideration dated December 7, 1998. The Board earlier denied a remand to allow consideration of applicant's declaration and request for reconsideration. The Examining Attorney now objects to Mr. DeRidder's declaration as untimely under Trademark Rule 2.142(d). The Examining Attorney's objection is sustained. The Board has, however, considered the evidence of record submitted prior to appeal, including the declaration of Mr. DeRidder and accompanying exhibits dated February 19, 1998.

goods with the place may generally be presumed from the fact that applicant's goods come from the geographic place named in the mark. See *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848, 850 (TTAB 1982).

There is no question that "Park City" is the name of a geographical place generally known to consumers. In fact, ordinary dictionary definitions refer to "Park City" as a resort city in Summit County, Utah, *Webster's New Geographical Dictionary* 928 (1988), known as the "site of Winter Olympics, Alpine Events 2002" and "largest ski center in state." *The Columbia Gazetteer of the World*, Vol. 3, 2368 (1998).⁴ It is clear from this evidence that Park City is neither remote nor obscure.

This brings us to the question of whether "the public would make a goods/place association, i.e., believe that the goods for which the mark is sought to be registered originate in that place." *Societe Generale*, 824 F.2d at 959, 3 USPQ2d at 1452. As noted by the Examining Attorney, the facts and arguments in this case are analogous to those in *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144 (TTAB 1993). Applicant therein argued that the term "Nantucket

⁴ The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Nectars" for soft drinks was not primarily geographically descriptive because the goods were manufactured and bottled in Worcester, Massachusetts, rather than the Island of Nantucket, Massachusetts. The Board determined, however, that the term was primarily geographically descriptive based upon the content of such applicant's soft drink labels.

Nantucket Allserve, 28 USPQ2d at 1145. In particular, the Board concluded that statements on the labels, such as "Born on the Faraway Isle, Nantucket Nectars", "Distributed by Nantucket Nectars", and "Straight Wharf, Nantucket, MA 02554", would cause consumers to make a goods/place association. *Id.*

The same analysis applies to this case. We agree with the Examining Attorney that consumers, upon viewing applicant's beverage labels, would make the requisite goods/place association. As shown below, applicant's label

displays the mark "Park City" along with the image of two snow skiers. The label also contains, among other things, a distributor address at P.O. Box 981446, Park City, Utah, 84098-1446, and an informational telephone number in Utah ((801)-655-0209). This evidence indicates that applicant's business operations, including distribution and customer service, are located in Park City, Utah.

Moreover, contrary to applicant's contention, the reference to "Uinta Mountains Spring Water" and "from the mountains of Utah" on applicant's label underscore, rather than obscure, the primary geographic significance of the mark "Park City." Both the Uinta Mountain range and Park City are located in Summit County, Utah. See *Webster's New Geographical Dictionary* 1244. It is therefore reasonable for consumers to believe, based upon the location of the Uinta Mountains and information on applicant's label, that applicant's beverages are formulated in and distributed from Park City, Utah.⁵

Finally, while it is true that applicant's correspondence address is in Newport Beach, California,

⁵ The Board notes that at least one geographic dictionary lists "beverages" as one of two primary manufacturing industries in Park City, Utah. See *The Columbia Gazetteer of the World* 2368. This factor supports the conclusion that consumers are accustomed to a goods/place association between beverages, such as applicant's, and Park City, Utah.

neither applicant nor the evidence of record suggests that the goods have any connection to that area. Applicant's labels do not mention any other geographic location such as, for example, Newport Beach, California. In fact, the only geographic location clearly identified on applicant's beverage labels is Park City, Utah.

Based upon the evidence of record, we conclude that the applied-for mark is primarily geographically descriptive of applicant's goods.⁶

Decision: The refusal to register is affirmed.

R. L. Simms

G. D. Hohein

L. K. McLeod
Administrative Trademark
Judges, Trademark
Trial and Appeal Board

⁶ Although some of applicant's arguments may suggest that the applied-for mark may be primarily geographically deceptively misdescriptive, there is no reason to remand this case for issuance of an alternative refusal under Section 2(e)(3), 15 U.S.C. §1052(e)(3), because we have found the term primarily geographically descriptive under Section 2(e)(2).

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