

THIS DISPOSITION IS NOT  
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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 Majunga Consolidated Holdings, Inc.

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Serial No. 75/295,866

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Michael J. Gross and Constance M. Jordan

of Shook, Hardy & Bacon L.L.P. for Majunga Consolidated  
Holdings, Inc.

Nicholas K. D. Altree, Trademark Examining Attorney, Law  
Office 109 (Ronald Sussman, Managing Attorney).

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Before Simms, Wendel and Rogers, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Majunga Consolidated Holdings, Inc. has filed an  
application to register the mark MAJUNGA in the stylized  
form shown below for "raffia fibers."<sup>1</sup>

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<sup>1</sup> Serial No. 75/295,866, filed May 21, 1997, based on an  
allegation of a bona fide intention to use the mark in commerce.  
An amendment to allege use was filed September 21, 1998, setting  
forth a date of first use and date of first use in interstate  
commerce of May 16, 1997. The application as filed included a  
disclaimer of the word "Majunga" apart from the mark as shown,

Registration has been finally refused under Section 2(e)(2) on the ground that the mark is primarily geographically descriptive of the goods involved.

Applicant and the Examining Attorney have filed briefs, but an oral hearing was not 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, 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 association, i.e., would believe that the goods 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 with the place may be presumed, if

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but the disclaimer was withdrawn in the request for

in fact, the goods 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).

It is the first prong of this test which raises a major issue in this case. Is the term MAJUNGA the name of a place or geographic location known generally to the public? The Examining Attorney initially relied upon geographic dictionary listings for Majunga as the name of a seaport on the island of Madagascar,<sup>2</sup> as well as of the surrounding province, found in *Webster's New Geographical Dictionary* (1988) and *The Columbia Lippincott Gazetteer of the World* (1962) and also introduced several excerpts from articles found on the Nexis database in which Majunga is mentioned. These, the Examining Attorney contends, support his argument that Majunga is the name of a geographic location and that this location is neither obscure nor remote. Applicant challenged this evidence, arguing that the place so identified, the seaport of Majunga, is in fact so obscure that it would not have a recognizable geographic

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reconsideration filed September 21, 1998.

<sup>2</sup> In *Webster's New Geographical Dictionary* the listing reads, in relevant part:

Majunga or now usu Mahajanga. Seaport town on Bombetoka Bay, NW coast of Madagascar; pop.(1975c) 65,864; important port for transshipment; food processing; soap; sugar; cement... .

meaning to consumers but rather would be arbitrary as applied to applicant's raffia fibers. Applicant cites the Board's decisions in *In re Bavaria St. Pauli Brauerei AG*, 222 USPQ 926 (TTAB 1984) and *In re Brauerei Aying Franz Inselkammer KG*, 217 USPQ 73 (TTAB 1983).

While there may have been some merit to applicant's argument based on the evidence originally introduced by the Examining Attorney, the situation changed drastically with applicant's filing of its amendment to allege use accompanied by specimens depicting the actual manner of use of its mark.<sup>3</sup> On these specimens, which apparently serve as containers for the raffia fibers, we find not only the explicit wording that "This raffia is hand braided in Majunga, a remote seaport on the island of Madagascar" but also an outline of the island of Madagascar with the location of the seaport Majunga shown thereon. In addition, the phrase "HAND MADE IN MADAGASCAR" is prominently displayed at the bottom of the packaging.

We agree with the Examining Attorney that this informational material included by applicant on its

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<sup>3</sup> Applicant points out that these specimens were not made of record until after the Examining Attorney had made the rejection under Section 2(e)(2) final. Nonetheless, since applicant has not withdrawn its amendment to allege use or the accompanying specimens, the specimens are part of the record as it now stands and the Examining Attorney was entirely proper in relying upon them in his brief.

packaging clearly communicates to purchasers the geographic significance of its mark MAJUNGA and even makes it apparent that applicant is specifically promoting the link between this geographic location and the origin of its raffia goods. Applicant's arguments that the outline map is indistinct or does not appear on all its goods are to no avail. The specimens of record are sufficient to make the connection between the term MAJUNGA as used by applicant and the seaport in Madagascar most clear.

This is not a situation similar to that in *In re Brauerei Aying Franz Inselkammer KG, supra*, where the only evidence with respect to the place name Aying, as might create an association of this German village with the mark AYINGER, was found on labels which had been used by the applicant solely in Germany and which made no explicit reference to Aying as the geographic source of the beer with which the mark was being used. Thus, in *Brauerei Aying*, the Board determined that the term Aying did not have sufficient geographic significance to purchasers to insure that there would be any association of this location with beer coming therefrom. As stated by the Board, "[W]here the geographic significance of a name is lost on the public because of obscurity, . . . , the usage becomes

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arbitrary." *Supra* at 75. The circumstances in the *Bavaria St. Pauli Brauerei* case were similar, there being insufficient evidence of record to show that the small town of Jever in West Germany would have any geographic significance to the purchasing public of America or that the public would expect beer to come from this location.

In contrast to these two cases, the present circumstances closely parallel those in *In re MCO Properties, Inc.*, 38 USPQ2d 1154 (TTAB 1995), where applicant's own promotional literature (submitted as a specimen) demonstrated both the geographic significance of the term sought to be registered and the association of that place name with the services being offered by the applicant. The specific references made in the promotional brochure to Fountain Hills as the name of a town in Arizona, taken in conjunction with certain Nexis database references to the town, were considered fully adequate to establish that the term FOUNTAIN HILLS was a geographic name with no other significance and that this place name would be recognized by potential purchasers as the site where applicant's real estate services were being rendered.

In the present case, the specimens of record similarly provide information which not only identifies the mark sought to be registered as a place name, but also makes it

clear that the goods with which the name is being used originate from this place. The manner of use of the mark by applicant, as shown by the specimens of record, is probative evidence of the likely perception of the geographic significance of the mark by the purchasing public. Cf. *In re Luis Caballero, S.A.*, 223 USPQ 355 (TTAB 1984)(specimens evidence that mark is presented to the public as a surname).<sup>4</sup>

Turning to the second prong of the test, we agree that because the goods do in fact originate in Majunga, a goods/place association may well be presumed. But such a presumption need not be relied upon in this case; the specimens themselves provide information which would cause purchasers to make the necessary goods/place association. Purchasers are not only shown the location of the seaport named Majunga; they are also informed that the raffia goods within the packaging are "hand braided in Majunga" and are "hand made in Madagascar." No more is necessary to make it obvious that the goods come from Majunga. See *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144 (TTAB 1993)(labels

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<sup>4</sup> Applicant also argues that since the listing provided by the Examining Attorney in *Webster's New Geographical Dictionary* shows that Majunga now goes by the name Mahajanga any geographic significance of Majunga has been blunted. We note, however, that most references to the seaport still list Majunga, either singly or in conjunction with the new name and applicant in its own name is still relying upon the original name.

for applicant's NANTUCKET NECTARS soft drinks contain statements which would cause consuming public to make a goods/place association with the place named Nantucket). In addition, the Examining Attorney has made of record at least one other reference, the *Lippincott Gazeteer*, showing "raphia" to be a chief export of Majunga.<sup>5</sup>

Finally, although we have no evidence before us as to potential purchasers of applicant's goods, only applicant's unsupported description of its target consumer as "female, 'artsy-craftsy' and probably not a career type," we cannot help but note that "raffia fibers" are goods which appear to be directed to a highly specific niche market. Applicant's packaging appears to be designed in such a manner as to attract purchasers by touting the geographic origin of its goods. Whether this particular class of purchasers would be sufficiently sophisticated to already recognize the geographic significance of the name Majunga as a source of genuine raffia fibers or whether

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<sup>5</sup> In view of the statements made on the specimens, we find no need to go into a detailed review of the various Nexis database excerpts introduced by the Examining Attorney and their evidentiary value, if any, with respect to a goods/place association. The Internet web site information attached by the Examining Attorney to his brief is not information of which we may take judicial notice and accordingly has been given no consideration. See *In re Total Quality Group Inc.*, 51 USPQ2d 1474 (TTAB 1999).

applicant simply educates them as to this fact is not known from this record. Regardless, the primary significance of the term MAJUNGA, as used by applicant, is its geographic descriptiveness of the origin of the goods with which it is being used.

Applicant has requested that, in the event the Board finds its mark primarily geographically descriptive under Section 2(e)(2), applicant be permitted to submit a disclaimer of the term MAJUNGA. Applicant's request is denied. Applicant cannot win registration for its otherwise nonregistrable mark by attaching an insignificant design element thereto. The primarily geographically descriptive component of applicant's mark is clearly the dominant feature and extends a nonregistrable meaning to the mark as a whole. Applicant cannot disclaim this feature and obtain registration based on the inseparable slightly stylized manner in which this feature is presented. See *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991).

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

R. L. Simms

H. R. Wendel

G. F. Rogers  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board

**Ser No.** 75/295,866