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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Gregory W. Wires, d.b.a. Fish Minnesota

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Serial No. 75/428,998

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Marvin L. Beekman of Skinner and Associates for Gregory W.  
Wires, d.b.a. Fish Minnesota.

Rebecca A. Smith, Trademark Examining Attorney, Law Office  
110 (Chris A. F. Pedersen, Managing Attorney).

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Before Cissel, Seeherman and Bucher, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Gregory W. Wires, d.b.a. Fish Minnesota, has appealed from the final refusal of the Trademark Examining Attorney to register FISH MINNESOTA as a trademark for "printed publications, namely, magazines in the field of fishing."<sup>1</sup> Registration has been refused pursuant to Section 2(e)(2) of the Trademark Act, 15 U.S.C. 1052(e)(2), on the ground

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<sup>1</sup> Application Serial No. 75/428,998, filed February 5, 1998, and asserting a bona fide intention to use the mark in commerce.

that applicant's mark is primarily geographically descriptive of its identified goods.

The appeal has been fully briefed;<sup>2</sup> an oral hearing was not requested.

We reverse the refusal of registration.

In **In re California Pizza Kitchen Inc.**, 10 USPQ2d 1704, 1705 (TTAB 1988), the Board set forth the test for determining whether registration of a mark should be refused on the basis that it is primarily geographically descriptive:

Section 2(e)(2) provides that registration shall not be refused unless a mark is primarily geographically descriptive of the applicant's goods or, as made applicable by Section 3, its services. In order for registration to be properly refused on this basis, 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 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. **In re Societe Generale des Eaux Minerals de Vittel S.A.**, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987). Where there is no genuine issue that the geographical significance of a term is its primary significance and where the

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<sup>2</sup> With its appeal brief, applicant has submitted a copy of a pending application for a third-party mark. The Examining Attorney has objected to this exhibit as having not been properly made of record during the prosecution of the application. The Examining Attorney's objection is well taken, and the application has not been considered. See Trademark Rule 2.142(d).

geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark. **In re Handler Fenton Westerns, Inc.**, 214 USPQ 848 (TTAB 1982).

We turn first to the initial prong of the test, namely, whether the mark is the name of a place known generally to the public. This in turn involves the question of whether the geographical significance of the mark is its primary significance.

Obviously, Minnesota is a geographic name which is neither remote nor obscure. The Examining Attorney has submitted evidence showing that Minnesota is a north central state of the United States.<sup>3</sup> Moreover, applicant has acknowledged that the term Minnesota references a place that is not obscure or remote and does not have other popular meanings. Appeal brief, p. 9.

However, not all marks which are composed of or which contain geographical terms are barred from registration by Section 2(e)(2) of the Trademark Act. For example, if the geographical meaning of the term is minor, obscure, remote or unconnected with the goods, the mark is treated as an arbitrary one and registration is permitted on the

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<sup>3</sup> Webster's New Geographical Dictionary, © 1988.

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Principal Register. **In re Sharky's Drygoods Company**, 23  
USPQ2d 1061` (TTAB 1992).

In this case, applicant's mark is not the word  
MINNESOTA per se, but rather, it is the combined term, FISH  
MINNESOTA. The Examining Attorney in effect dismisses the  
significance of the word FISH by pointing out that it is  
descriptive of applicant's identified goods--magazines in  
the field of fishing. Citing **In re BankAmerica Corp.**, 231  
USPQ 873 (TTAB 1986) and **In re Cambridge Digital Systems**,  
1 USPQ2d 1659 (TTAB 1986), she states that the addition of  
a generic or highly descriptive term to a geographic term  
does not obviate a determination of geographic  
descriptiveness.

We agree with the Examining Attorney that, in general,  
the addition of a highly descriptive or generic term will  
not detract from the primary geographic significance of a  
mark. However, we think it is too formulaic to say that  
because MINNESOTA is a geographic term, and because FISH is  
descriptive of a fishing magazine, the resulting mark FISH  
MINNESOTA also has a primarily geographical significance.

The mere fact that a mark contains a geographical  
term, even one which is well known and which names the  
geographical area from which the goods or services  
originate, does not automatically render the mark

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unregistrable under Section 2(e)(2). **In re Jim Crockett Promotions**, 5 USPQ2d 1455, 1456 (TTAB 1987). (THE GREAT AMERICAN BASH held not primarily geographically descriptive for the service of promoting, producing and presenting professional wrestling matches). The mark must be considered in the context of its use and the meaning it would have for the relevant public when so used. Id. In **In re International Taste, Inc.**, 53 USPQ2d 1604 (TTAB 2000), the Board found that the term HOLLYWOOD in the mark HOLLYWOOD FRIES and design was not primarily geographically descriptive for french fries, and therefore need not be disclaimed, noting that the star design in applicant's mark increased the commercial impression of the term as referring to the entertainment industry and not merely to the geographical place. See also **In re Venice Maid Co., Inc.**, 222 USPQ 618 (TTAB 1984) (VENICE MAID more likely to be perceived as fanciful and suggestive of the method of food preparation favored in Italy than to be perceived as "Venice-made"; mark held not primarily geographically deceptively misdescriptive of canned foods); **In re Sharky's Drygoods Company**, supra (PARIS BEACH CLUB found to be not geographically deceptively misdescriptive and therefore held not deceptive of T-shirts and sweatshirts not originating in France).

In this case, we think that the impact of FISH MINNESOTA is greater than the sum of its constituent elements, the geographic term "Minnesota" and the descriptive term "fish." By ordering the words as FISH MINNESOTA, the commercial impression of the mark is that of a command, namely, the imperative direction that one should go fishing in Minnesota; this connotation is different from merely informing purchasers that the fishing magazines originate in Minnesota. See **In re Texsun Tire and Battery Stores, Inc.**, 229 USPQ 227, 229 (TTAB 1986) (design consisting of map of Texas encircled by a tire found not primarily geographically descriptive of retail tire store services; "while the mark sought to be registered may consist of several component parts which, by themselves, may be unregistrable, we think the composite mark results in a mark which is more than the sum of its components and which engenders a distinctive commercial impression").

Accordingly, we find that the primary significance of the mark FISH MINNESOTA for magazines is not geographical. In reaching this conclusion, we have considered the various third-party registrations submitted by the Examining Attorney for marks containing the word MINNESOTA, in which that word was either disclaimed, or the mark was registered pursuant to Section 2(f) or on the Supplemental Register.

We certainly do not dispute that a mark which contains the word MINNESOTA may be found to be primarily geographically descriptive; the question, however, is whether the geographical significance of a particular mark is its primary significance. Therefore, the third-party marks, which generally use MINNESOTA as an adjective describing the goods (e.g., MINNESOTA MONTHLY for a regional magazine), are not helpful in showing that FISH MINNESOTA should be regarded as a primarily geographical mark. The one mark which is analogous, GOLF MINNESOTA, was registered by the current applicant on the Supplemental Register for golf magazines. However, applicant has explained that he agreed to the amendment to the Supplemental Register for business reasons, so that we cannot regard the registration as an admission that that mark, and by implication, the mark which is the subject of the subject application, is primarily geographically descriptive.

It should also be noted that, although the dissent makes reference to "a number of trademark applications for composite marks having a similar construction" which were registered pursuant to Section 2(f) or in which the geographic term was disclaimed, p. 19, 20, 23, those registrations (except applicant's registration for GOLF MINNESOTA) are not of record, nor were they even referred

to by applicant or the Examining Attorney. Accordingly, we think it inappropriate for the dissent to make reference to them, or rely on them in any manner to support its conclusion. It is so well established that it requires no citation that decisions as to registrability must be made on the basis of the record before the Board. Moreover, it is also well established that the Board does not take judicial notice of registrations residing within the Office records. **In re Duofold Inc.**, 184 USPQ 638 (TTAB 1974).

In view of our finding that the primary significance of FISH MINNESOTA for magazines in the field of fishing is not geographical, we need not consider the second prong of the test, namely, whether the Examining Attorney has established a goods/place association between applicant's mark and the goods with which he intends to use the mark.<sup>4</sup>

To the extent that the existence of a dissent in this case indicates that there is doubt on the question of whether FISH MINNESOTA is primarily geographically descriptive, such doubt must be resolved in favor of applicant. **In re John Harvey & Sons Ltd.**, 32 USPQ2d 1451,

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<sup>4</sup> In view of this finding, we see no need to comment on that portion of the dissent which discusses the goods/place association prong of the test.

1455 (TTAB 1994), and cases and treatises cited therein in support of this proposition.

Finally, while we have no intention of commenting on all of the statements made in the dissent, we think it important to confirm that, given our finding that the primary significance of the mark FISH MINNESOTA as a whole is not geographic, a disclaimer of MINNESOTA is not required. As the cases cited herein show, when a mark is found not to have a geographic significance, no disclaimer of the geographic terms within the mark have been required, just as no disclaimer of merely descriptive words in marks with double entendres are required. See, for example, **In re Sharky's Drygoods Company**, supra (PARIS not disclaimed in PARIS BEACH CLUB; **In re Jim Crockett Promotions**, supra (AMERICAN not disclaimed in THE GREAT AMERICAN BASH); **In re Colonial Stores Ind.**, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), cited by the dissent (SUGAR & SPICE not disclaimed). Although disclaimers of the geographic and descriptive terms were not required in these other registrations, just as a disclaimer of MINNESOTA is not required in the present application, it is obvious that neither the owners of those registrations, nor applicant herein, would be entitled to exclusive use of the geographic or descriptive terms. It is simply part of U.S. Patent and Trademark Office practice

that, when geographic and descriptive terms are used as parts of marks which project a non-geographic or non-descriptive significance, disclaimers of the individual elements are not required.

The dissent also comments, at page 19, that the section of the Lanham Act dealing with the registration of geographic terms "was altered significantly as a result of NAFTA implementing legislation." That alteration created different treatment for primarily geographically descriptive marks and primarily geographically deceptively misdescriptive marks, in that the latter, as a result of that change, cannot be registered pursuant to Section 2(f) of the Act. However, that alteration does not have an impact on our decision herein, which involves a refusal based on the ground that the mark is primarily geographically descriptive.

The dissent also speculates that the mark is "arguably merely descriptive," and suggests that "in light of the majority's decision on Section 2(e)(2), this case should have been remanded to the Trademark Examining Attorney for consideration of a refusal based upon Section 2(e)(1) of the Lanham Act." pp. 22, 23. An application may not be remanded for further examination once a final decision issues. Trademark Rule 2.142(g). Therefore, if the

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dissenting judge had believed that the application should have been remanded to the Examining Attorney to consider whether registration should have been refused pursuant to Section 2(e)(1), he should have raised that concern much earlier in the decision-making process. In any event, we confirm that we do not believe that the application should have been remanded to consider a Section 2(e)(1) refusal.

Decision: The refusal of registration is reversed.

R. F. Cissel

E. J. Seeherman  
Administrative Trademark Judges  
Trademark Trial and Appeal Board

Bucher, Administrative Trademark Judge, dissenting:

Although the legal standard for determining whether a geographical term is unregistrable is rather simple to state, the application of that test to any given trademark containing a geographical place name can be quite complex. After much soul-searching, I respectfully disagree with the reasoning and the resulting decision of the majority herein.

The first question facing us is whether the composite mark, "FISH MINNESOTA," indicates a geographical place of origin to the average consumer. In order to establish whether this matter is primarily geographically descriptive when applied to applicant's goods, the U.S. Patent and Trademark Office must show that the mark has as its primary significance the connotation of a generally known geographic place. In practical terms, we know that "... the mark must be judged on the basis of its role in the marketplace." In re Nantucket, Inc., 677 F.2d 95, 213 USPQ 889 (CCPA 1982).

Clearly, the word "MINNESOTA" is an indication of origin, and is a prominent portion of this mark. Applicant agrees, as it must, that this term creates for the consumer

an immediate and unmistakable reference to a state in the north-central portion of the United States

I agree with the majority that this shared conclusion is not the end of the query. Clearly, not every mark that contains a geographical element is barred from registration by Section 2(e)(2). Adding material to an otherwise unregistrable geographical term may well make that term registrable. In order for a composite mark to run afoul of this section of the statute, we must look at the mark in its entirety. For example, the Supreme Court held in Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 60 L.Ed. 629, 36 S.Ct. 269 (1916) that "THE AMERICAN GIRL" is an arbitrary designation for shoes because the ordinary geographical significance of the word "AMERICAN" had been eclipsed by the connotation of the mark as a whole.

On the other hand, our primary reviewing court recently confirmed that the addition of descriptive matter to a term which is primarily geographically deceptively misdescriptive does not necessarily avoid a refusal under Section 2(e)(3) of the Act. In re Wada, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999) ["NEW YORK WAYS GALLERY" is primarily geographically deceptively misdescriptive in

connection with wallets, luggage, backpacks, leather bags, etc.].<sup>5</sup>

In this case, applicant's identification of goods specifies "...magazines in the field of fishing." Hence, this is a periodical about fishing in Minnesota. "FISH" is the first of two words in this mark, and the sport of fishing is clearly the subject matter of the periodical. The majority focuses on the specific ordering of these two words ("FISH" before "MINNESOTA") and agrees with applicant that the imperative slogan should be construed as implying "you should fish in Minnesota." However, the real question is whether the primary geographical significance of the word "MINNESOTA" is lost within the composite mark "FISH MINNESOTA." In this context, the word "FISH" is not distinctive as applied to a fishing publication, whether employed in the form of an imperative verb or a simple

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<sup>5</sup> This was an affirmation of the identical position taken by this Board. In re Wada, 48 USPQ2d 1689 (TTAB 1998). In fact, the Board has consistently held that the addition of highly descriptive or generic matter to the name of a geographic location generally does not alter the primary significance of the mark. See also In re Chalk's International Airlines Inc., 21 USPQ2d 1637, 1639 (TTAB 1991) ["PARADISE ISLAND AIRLINES" is primarily geographically descriptive of transporting passengers and goods by air]; and In re Cambridge Digital Systems, 1 USPQ2d 1659, 1662 (TTAB 1986) [CAMBRIDGE DIGITAL is primarily geographical descriptive of computer systems]; and In re Biesseci S.p.A., 12 USPQ2d 1149 (TTAB 1989) ["AMERICAN SYSTEM and design" is nothing more than a primarily geographically descriptive term as applied to applicant's items of outer clothing].

noun. Applicant's adding the word "FISH" to the front of "MINNESOTA," the geographical indication of origin herein, in no way detracts from, or overwhelms, this immediate and unmistakable connection. The fact that applicant elected to use the imperative verb form and to place these two words in this order in the mark sought to be registered cannot avoid the refusal. See In re U.S. Cargo Inc., 49 USPQ2d 1702 (TTAB 1998). In a recent decision where the composite mark contained a number of other nuances at least as significant as the imperative verb construction herein, the Board nevertheless held the primary significance of the overall matter was still the city of Venice:

We are convinced by the Trademark Examining Attorney's evidence that this image of the Lion of St. Mark simply reinforces the geographical significance of the overall mark as primarily connoting Venice, Italy. This conclusion rests upon the continuing prominence of this symbolic lion throughout the art and culture of Venice...

In re Save Venice New York Inc. 54 USPQ2d 1106, 1108 (TTAB 2000). The showing of the Trademark Examining Attorney is not merely "formulaic" as derided by the majority, but rather seems to me entirely logical. Purchasers and prospective purchasers of applicant's periodicals are likely to believe that the mark "FISH MINNESOTA" projects a primarily geographic significance when applied to these

periodicals. Hence, I conclude that "FISH MINNESOTA," a periodical about fishing in the state of Minnesota, points immediately and unmistakably to a single, geographical place.

Applicant urges us 'not to lose sight of the forest for the trees,' and analogizes to the overall continuum of alleged source-indicating matter, from arbitrary matter to generic terms. In this regard, I turn briefly to look at an analogous registrability decision under Section 2(e)(1) of the Act. Specifically, the Office recognizes that to the extent any mark creates another meaning (e.g., an incongruity or a double entendre) as applied to the goods or services, the mark comprising the incongruity or double entendre will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services. For example, from the oft-cited decision of the predecessor to our principal reviewing court [*In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968)], the term "SUGAR & SPICE" was held not to be merely descriptive of bakery products. The Court found this matter clearly functioned as a trademark because "sugar and spice" is a well-known phrase taken from a nursery rhyme. The composite mark is inherently distinctive as applied to bakery products

containing these two ingredients, precisely because this combination from the nursery rhyme is familiar to anyone seeing or hearing this mark.

Similarly, marks containing geographical indicators refused as unregistrable by a Trademark Examining Attorney should also be held by the Board to be registrable provided that there is a straightforward way to articulate this incongruity, double entendre or humorous meaning. The majority cites to cases involving the marks "THE GREAT AMERICAN BASH" and "PARIS BEACH CLUB." The Board concluded in Jim Crockett Promotions Inc., *supra* (1) that the term "Great American" suggests something of desirable quality or excellence, and (2) that the word "Bash" (as either a noun or as a verb) was also suggestive (not descriptive) of services involving wrestling matches. Similarly, the Board held (Sharky's Drygoods Co., *supra*) that the juxtaposition of "Paris" with "Beach Club" results in an incongruous phrase, and purchasers would view "PARIS BEACH CLUB" as a humorous mark in which "Paris" is used facetiously rather than as geographic reference:

The issue is whether purchasers are likely to make a goods/place association. Thus, if purchasers would not, upon seeing the mark, conclude that it imparts information about the geographical origin of the goods, the mark is arbitrary...

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... Consumers, viewing the mark in connection with T-shirts and sweatshirts, will understand it to be a joke, and will not regard it as providing any information as to the nationality of the manufacturer.

These cases involving geographical elements demonstrate that the context (i.e., the mark in connection with the goods applied for) may render the composite mark fanciful, or that an applicant's unique combination of descriptive and/or geographical elements may nonetheless be deemed to be inherently distinctive. I simply differ from the majority in concluding that the instant case does not fit this paradigm.

I reject applicant's contention that merely because "FISH MINNESOTA" is an imperative slogan, it deserves registration. Neither applicant nor the members of the majority have articulated any alternate associations that the public would make fairly readily. Applicant's position is not convincing, it is not capable of a clear articulation, and has no foundation in decisional law. I fear that we enter upon a slippery slope unless we place a heavier onus on the applicant in such a situation. I conclude that the majority should have demanded a clearer articulation of the rationale for favorable registrability

decisions under Section 2(e)(2) [and by implication, under Section 2(e)(3)] of the Lanham Act.<sup>6</sup>

Naturally, in determining whether a term is primarily geographical in its entirety under this first prong of the test, we apply an identical test for domestic and foreign denominations of origin. Hence, the criticality of requiring a clear and consistent rule under our national law is heightened by the recognition that the weight of international jurisprudence favors strict limitations on the registrability of geographical indicators, particularly if they are misleading. In fact, in 1993, this very section of the Lanham Act was altered significantly as a result of NAFTA implementing legislation (The "North American Free Trade Agreement Implementation Act," Public Law 103-182, 107 Stat. 2057).

Our national trademark register shows that the U.S. Patent and Trademark Office has been faced with a number of trademark applications for composite marks having a similar construction, where the marks are applied to magazines. For example "TRACKING TEXAS" and "SKI WEST VIRGINIA" are both registered pursuant to Section 2(f) of the Act. "SKI

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<sup>6</sup> This prong of the test is identical whether one is dealing with matter deemed to be geographically descriptive or geographically deceptively misdescriptive.

NEW MEXICO" is disclaimed apart from the composite mark as a whole, which composite contains a prominent design feature. "GOLF WEST VIRGINIA,"<sup>7</sup> like applicant's own "GOLF MINNESOTA," was forced onto the Supplemental Register.

In view of my having decided the first prong of the test in the affirmative, I turn now to the second prong of the legal test -- whether the Trademark Examining Attorney has made the case that the average consumer would make a goods/place association when faced with the mark "FISH MINNESOTA" on a magazine whose contents will deal exclusively with fishing in the state of Minnesota.

The average angler who sees a periodical called "FISH MINNESOTA" on a shelf with other fishing magazines would think this publication comes from Minnesota, or even if the printing and mailing operations were located elsewhere, was put out under the direction of Minnesotans. Although this is an intent-to-use application, the identification of goods suggests a periodical published regularly. In

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<sup>7</sup> My references to these third-party registrations are taken from the records of our own agency, the United States Patent and Trademark Office (USPTO). However, technically they do consist of evidence outside the record before this Board. Given the ease with which one can search the records of the Office electronically in the year 2000, I would argue that multiple instances of past practice in the USPTO should be seen as confirmation in arriving at the proper determination in complex cases such as this one, even where such references may be inappropriate alone to support one's conclusion.

contrast to a printed publication like a travel book, one would naturally assume that the information in a periodical will be updated much more frequently based upon an abundance of current, first-hand information. It stands to reason that the more frequently a printed publication is put out, the more likely it is that consumers would assume the publication actually comes from the place named in the mark. With respect to publications, it is apparently applicant's position that unlike articles of clothing or fashion accessories, consumers could care less where a magazine is edited or published. However, there is certainly no evidence in the record to cause me to believe that consumers assume that periodic magazines about certain geographic areas come from places other than the places named in the titles.

In fact the Trademark Examining Attorney has made a reasonable showing that consumers would make a goods/place association in the present case. The Trademark Examining Attorney points out that applicant is from Minnesota and his principal place of business is located in Minnesota. Furthermore, vacationers have long been attracted to Minnesota, known nation-wide (from the designation on its license plates) as "The Land of 10,000 Lakes." Furthermore, the state of Minnesota borders on the

Mississippi, Minnesota and St. Croix Rivers, and mighty Lake Superior is located on its eastern border. The record in this case confirms that an abundance of fish in the state's many rivers, lakes and streams provide excellent fishing. Furthermore, applicant cannot dispute the fact that Minnesota is a large state widely recognized as a manufacturing, trading and industrial center, and a likely source of a wide variety of products, including periodicals.

Combining the weight of all this evidence contained in the record, I conclude that the Trademark Examining Attorney has demonstrated the reasonableness of consumers' making a goods/place association in the instant case.

Even though the majority concludes that this composite does not fit the prohibitions of Section 2(e)(2) of the Act, given the overall connotation of this mark as applied to these goods, surely they must acknowledge a degree of discomfort with the Office's registering this mark as it is on the Principal Register, without a disclaimer and without a showing of acquired distinctiveness.

Although the Trademark Examining Attorney chose to refuse this mark as violative of Section 2(e)(2) of the Act, this mark is arguably merely descriptive because it directly conveys the contents of this magazine as fishing

in Minnesota. Perhaps in light of the majority's decision on Section 2(e)(2), this case should have been remanded to the Trademark Examining Attorney for consideration of a refusal based upon Section 2(e)(1) of the Lanham Act.

Finally, in light of the position taken by the Trademark Examining Attorney that the entire mark is geographically descriptive, there was no need to explore, in the alternative, the possibility of disclaiming the geographical term, "MINNESOTA," apart from the mark as shown. Perhaps the majority also concurs with applicant that this is an inventive, imperative, unitary phrase where a disclaimer of this geographical component would be inappropriate under Office examination policy and practice. However, even in registered marks constructed identically to the mark in the instant case (i.e., those where the Trademark Examining Attorney did not deem the entire phrase to be primarily geographically descriptive), the place name following the imperative verb is invariably disclaimed apart from the mark as shown ("PLANT ILLINOIS," "EXPERIENCE KANSAS CITY," "PICTURE MONTANA," "DESIGN NEW YORK," "SHOP NEW JERSEY," "DISCOVER WISCONSIN," "TEE-UP MICHIGAN," etc.)<sup>8</sup>.

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<sup>8</sup> Again, these registrations consist of evidence outside the record before this Board. See also footnote 7.

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In conclusion, I believe the statute and decisional law support our affirming the Trademark Examining Attorney's refusal to register the instant mark under Section 2(e)(2) of the Lanham Act. This would be the wiser approach under our national law, and accord much better with international jurisprudence. It is also likely that if this application were to be remanded, the entire mark would be refused as being merely descriptive. Under the structure of the Lanham Act, if found to be violative of either subsection of the statute, it could be published upon an allegation of use and a showing of acquired distinctiveness. As a last resort, it seems as though Office practice should require, at a bare minimum, a disclaimer of the clearly geographical term, "Minnesota."

D. E. Bucher  
Administrative Trademark Judge  
Trademark Trial and Appeal Board