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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
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Paper No. 9  
AD

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Big Steaks, Inc.

Serial No. 75/759,404

Mark B. Harrison of Venable, Baetjer, Howard & Civiletti,  
LLP for Big Steaks, Inc.

Linda B. Mickleburgh, Trademark Examining Attorney, Law  
Office 106 (Mary Sparrow, Managing Attorney).

Before Hohein, Wendel and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

On July 22, 1999, Big Steaks, Inc. (applicant) filed  
an intent-to-use application for the mark MANHATTAN STEAK  
HOUSE (typed form) for "restaurant services" in  
International Class 42. Applicant has disclaimed the words  
"steak house." On May 23, 2000, applicant filed an  
Amendment to Allege Use that alleged a date of first use  
and a date of first use in commerce of June 1999.

The Examining Attorney ultimately refused to register the mark on the ground that the mark is primarily geographically deceptively misdescriptive of restaurant services. After the refusal was made final, this appeal followed. Applicant and the Examining Attorney have submitted briefs. An oral argument was not requested.

The Examining Attorney submits that the primary meaning of the mark is geographic, that New York is known for steak houses, that it is logical to make an association between Manhattan and New York, and that applicant's services do not originate in Manhattan. The Examining Attorney asks the Board to take judicial notice<sup>1</sup> of a definition of "Manhattan" from *Merriam-Webster's Geographical Dictionary*, 3rd edition, which reads in part:

[C]hartered as one of the five boroughs comprising the city of New York 1898; containing main financial and commercial and important residential sections of the city.

The Examining Attorney also included printouts from an electronic database to show that there is a type of steak house referred to as a New York style steak house and noted that applicant's specimens refer to a "New York Style" Valentine's Day Celebration in applicant's restaurant.

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<sup>1</sup> We do take judicial notice of this definition. University Of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Based on this evidence, the Examining Attorney concludes that the mark is primary deceptively geographically descriptive for applicant's steak house restaurant services that do not originate in Manhattan, New York.

In response, applicant argues that there is no evidence that "anyone travels to Manhattan just for its food, or that Manhattan is associated with steak houses" or that "MANHATTAN and NEW YORK are synonymous." Applicant's Br. at 4-5. Applicant also speculates that New York style "could just as easily refer to New York State."

Applicant's Br. at 5. Finally, applicant contends that Manhattan suggests "a certain sophistication or affluent style ... [and] is suggestive of a sophisticated or 'high class' restaurant." Applicant's Br. at 5-6.

After considering the applicant's and the Examining Attorney's arguments and the evidence, we affirm the Examining Attorney's refusal to register applicant's mark on the ground that it is primarily geographically deceptively misdescriptive of applicant's restaurant services.

Our primary reviewing court has set out the standard for determining whether a term is primarily geographically deceptively misdescriptive:

For a mark to be primarily geographically deceptively misdescriptive, the mark must (1) have as its primary significance a generally known geographic place, and (2) identify products that the purchasers are likely to believe mistakenly are connected with that location.

In re Wada, 194 F.3d 1297, 52 USPQ2d 1539, 1540 (Fed. Cir. 2000).

A mark is primarily geographically deceptively misdescriptive if "the public would likely believe the mark identifies the place from which the goods originate and that the goods do not come from there." In re Loew's Theaters, 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985).

First, we must determine whether Manhattan is a geographical term. The Examining Attorney's definition of "Manhattan" makes it clear that it is a well-known geographical term. According to that entry, Manhattan contains the main commercial and financial section of New York City, the United Nations, and numerous colleges and universities. Its population in 1990 was nearly 1.5 million people. In addition, the *Columbia Lippincott Gazetteer of the World* (1962), pp. 1138-39, notes that "Manhattan" and "New York" are "virtually synonymous."<sup>2</sup> It is clear that Manhattan is a geographic location that is

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<sup>2</sup> We take judicial notice of this definition.

not remote or obscure.<sup>3</sup> The addition of the generic words "steak house" to the geographical term "Manhattan" does not take away from or otherwise alter the primary geographical significance of the mark. Wada, 52 USPQ2d at 1540-41 (The addition of the words WAYS GALLERY to NEW YORK did not change the mark's geographical significance). The additional words in this case simply emphasize the association of steak house restaurants with New York and Manhattan.

We also find that there is a services/place relationship between Manhattan and restaurant services. Based on the evidence, we find that it is reasonable that consumers encountering applicant's MANHATTAN STEAK HOUSE mark will mistakenly believe that the services have their origin in Manhattan or are otherwise connected with Manhattan. Applicant relies heavily on the In re Municipal Capital Markets Corp. case, 51 USPQ2d 1369 (TTAB 1999). That case held that an "Examining Attorney must present evidence that does something more than merely establish that services as ubiquitous as restaurant services are offered in the pertinent geographic location." 51 USPQ2d

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<sup>3</sup> We also take judicial notice that New York City is "a vibrant center for commerce and business and one of the 3 'world cities' along with London and Tokyo that control world finance" and that Manhattan is "the heart of the city." *The Columbia Gazetteer of the World* (1998), p. 2167.

at 1371. In that case, the presence of some restaurants in the town of Cooperstown, New York, was insufficient to establish a services/place relationship with the word COOPERSTOWN.

Here, the Examining Attorney has submitted evidence that New York is so noted for steak houses that restaurants across the country are referred to as "New York style steak houses."

Eric Kurtz's head turns every time someone comes through the door of his New York Style steak house on Broad Street. *Asbury Park Press*, April 20, 2000, p. F8.

[T]hey set out to recreate the quintessential New York style steak establishment. *Nation's Restaurant News*, April 17, 2000, p. 26.

It's a brash, New York-style steak house, but don't let that keep you away from the succulent prime beef, lobster bisque and wonderful wine list offering more than 500 selections. *Waste Age*, April 1, 2000, p. 126.

... and the Rock Center Café, a New York-style steak house that replaces the American Festival Cafe. *Nation's Restaurant News*, January 17, 2000, p. 4.

When we finally found the sign for L.A. Prime, the hotel's new New York-style steakhouse, we waved over one of our party who had strayed. *Los Angeles Times*, July 13, 2000, p. F43.

We're not quite sure why little old Annapolis needs three New York style steak houses. *The Entertainment Guide*, May 19, 2000, p. 2.

The evidence demonstrates the "something more" that the Examining Attorney needs to establish a services/place

relationship at least between New York and restaurant services.<sup>4</sup>

Unlike Cooperstown, New York is so known for steak houses that its name is associated with a type of steak house. The only question remaining is whether Manhattan, the financial and commercial center of New York City, would also be associated with steak houses. There is one reference that describes a restaurant as a "Modern, Manhattan-style steak house." *The New York Times*, December 18, 1988, Section 12LI, p. 37. The term "Manhattan" is virtually synonymous with "New York." Applicant's specimen emphasizes that restaurant's connection with New York ("Romance New York Style"). Thus, applicant's MANHATTAN STEAK HOUSE suggests a restaurant with a connection with Manhattan in New York City and not simply a sophisticated or affluent place.

Moreover, the Examining Attorney did not have to establish that there is "such a thing as a 'MANHATTAN STYLE' steak house" as applicant suggests. Reply Br. at 2. Similarly, the Examining Attorney did not need to establish that Manhattan is noted for, or suggestive of, a particular

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<sup>4</sup> We fail to see any significance to applicant's argument that these references to New York may be to the State of New York. Manhattan is in the City of New York, which is, of course, in the State of New York.

style of steak houses. See In re The Cookie Kitchen, Inc., 228 USPQ 873, 874 (TTAB 1986) ("It is not, as applicant asserts, a question of whether Manhattan is famous or noted for cookies").

The term "Manhattan" is a geographical term that is not remote and obscure. Not only do restaurant services originate in Manhattan, but also steak houses are a well-known type of restaurant that are associated with New York, the city and state where Manhattan is located. Manhattan, the heart of New York City, would have a services/place connection with these restaurants. Applicant has not submitted evidence that rebuts the Examining Attorney's prima facie case. Based on these facts, we conclude that the public would mistakenly believe that applicant's restaurant services rendered under applicant's mark MANHATTAN STEAK HOUSE originate in Manhattan or are otherwise connected with Manhattan. When the services do not, in fact, originate in Manhattan, the mark is primarily geographically deceptively misdescriptive.

Decision: The refusal to register the mark under Section 2(e)(3) of the Trademark Act is affirmed.