

THIS DECISION IS NOT  
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OF THE TTAB

Mailed:  
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joseph W. Cotchett

Serial No. 78208878

Paul W. Reidl, Esq. for Joseph W. Cotchett.

Howard Smiga, Trademark Examining Attorney, Law Office 102  
(Thomas V. Shaw, Managing Attorney).<sup>1</sup>

Before Hohein, Drost and Walsh, Administrative Trademark  
Judges.

Opinion by Walsh, Administrative Trademark Judge:

On January 30, 2003, Joseph W. Cotchett (applicant)  
filed an intent-to-use application to register HALF MOON  
BAY WINERY and design, as shown below, on the Principal  
Register for "wines."

<sup>1</sup> Examining Attorney Erica D.B. Glembocki acted on the  
application initially, and Examining Attorney Smiga took over the  
application prior to this appeal.



Applicant has disclaimed "winery."

The examining attorney required a disclaimer of HALF MOON BAY under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), on the ground that it is primarily geographically descriptive of the goods under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2). Applicant declined to do so; the examining attorney repeated the requirement; and applicant appealed.

The sole issue on appeal is whether the disclaimer requirement is proper, that is, whether HALF MOON BAY is primarily geographically descriptive of wines.

To determine whether HALF MOON BAY is primarily geographically descriptive of wines we must determine: (1) whether the primary significance of the mark is as the name of a place which is generally known; and (2) whether the wine-purchasing public would associate the goods of the applicant with the place named, that is, whether the public would believe that the goods come from the place named. In re Societe Generale des Eaux Minerales de Vittel S.A., 824

F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); In re JT Tobacconists, 59 USPQ2d 1080, 1081 (TTAB 2001); In re California Pizza Kitchen Inc., 10 USPQ2d 1704, 1705 (TTAB 1988). The two questions are bound together, that is, there can be no goods-place association if the place named is so obscure or remote that purchasers for the product at issue would not recognize it as a place. Vittel, 3 USPQ2d at 1452.

In a concurring opinion in In re Nantucket, Inc., 677 F.2d 95, 213 USPQ 889, 895 (CCPA 1982), Judge Nies discussed the common law origins of the Trademark Act treatment of geographic terms:

Basic to consideration of the registrability and protectability of geographic terms as a trademark is the routine commercial practice of merchants, whether they are growers, manufacturers, distributors, or local retailers in placing the name of their location on their goods or using the name in their trade name. Because the public would be aware of common trade practice, the common law originally deemed all use of geographic names wholly informational and unprotectible. It was believed such names could not function, and in any event, should not be recognized as the identification of a single source. Thus we must start with the concept that a geographic name of a place of business is a descriptive term when used on the goods of that business. There is a public goods/place association, in effect, presumed.

However, as with other terms which are descriptive when first used, it came to be recognized that through substantially exclusive and extensive use, a merchant might develop a protectible good will in such a geographically descriptive name upon proof that the

name ceased being informational to the public and came to indicate a source of goods.

Applicant observes that, in fact, "The wine industry commonly uses geographic place names as trademarks." Applicant's Brief at 9. And, in particular, applicant indicates further that, ". . . applicant's winery is located in Half Moon Bay, California." Id. at 3.

With his January 18, 2005 office action, the examining attorney provided evidence relevant to both the primary geographic significance of HALF MOON BAY and the association of wines with that place. The evidence comes from numerous web sites including the site of the Half Moon Bay Coastside Chamber of Commerce and Visitors Bureau at [www.halfmoonbaychamber.org](http://www.halfmoonbaychamber.org), the site of the San Francisco Chamber of Commerce at [www.sfchamber.com](http://www.sfchamber.com) and the site of the City of Half Moon Bay at [www.half-moon-bay.ca.us](http://www.half-moon-bay.ca.us). All sites emphasize that both Half Moon Bay and the City of Half Moon Bay offer a wide range of amenities and activities for visitors, as well as a wide range of goods and services. Applicant acknowledges that, "The purchasing public, inasmuch as it is familiar with Half Moon Bay, California, recognizes this place as a seaside resort and weekend getaway." Applicant's Brief at 5.

The San Francisco Chamber of Commerce web site indicates that Half Moon Bay is 30 miles south of San Francisco, and it specifically refers to Half Moon Bay's two wineries while a related site discusses applicant's winery, in particular. The discussion notes applicant's association with a major local event, the Pumpkin Festival, and highlights the special wines applicant offers, noting that the wines are "named after famous locations or characteristics of the Coastside." The sites also note the availability of golf courses, nature preserves and beaches at Half Moon Bay; they tout Half Moon Bay as "the hottest surfing location in the world"; the San Francisco Chamber of Commerce site also notes the availability of numerous hotels, including a five-star Ritz Carlton® hotel at Half Moon Bay. The City of Half Moon Bay site reports a 2000 population for the city of 11,842. The site refers to the Half Moon Bay public-use airport and Half Moon Bay State Beach. In view of this and other evidence, it is obvious that Half Moon Bay is a place of significant size located on the Pacific coast near San Francisco, that it is a significant center for tourism in its own right, and that it is home to two wineries.

All in all, the evidence points to the conclusion that HALF MOON BAY refers to a known geographical location which

is neither obscure nor remote, and an association of that location with wine.

Applicant argues that HALF MOON BAY has a suggestive, nongeographical meaning, and therefore, is not primarily geographically descriptive. Applicant's Brief at 3. However, there is simply no basis to conclude, as applicant urges, that the mark will conjure up in the minds of wine drinkers "the image of enjoying Applicant's product in the moonlight by the water" rather than a place. Id. If we were to adopt applicant's view, we would be compelled to find virtually any place name derived from suggestive terminology, such as Clearwater or Palm Springs, not primarily geographically descriptive. This argument is merely another way of asserting that a place name is obscure, and therefore, would not be perceived as a place name. Furthermore, there is no evidence here to establish an alternative, overriding meaning which the public would associate with HALF MOON BAY.

This case is also not at all like other cases where the Board has found that a suggestive meaning, growing out a strong association of the place named with an industry or institution, overrides the geographical significance when the mark is applied to certain goods or services. In re International Taste Inc., 53 USPQ2d 1604, 1605 (TTAB 2000);

In re Municipal Capital Markets Corp., 51 USPQ2d 1369, 1371 (TTAB 1999); In re Cotter & Co., 228 USPQ 202, 205 (TTAB 1985). Simply put, HALF MOON BAY is not Hollywood, Cooperstown or West Point. We have concluded that, on this record, HALF MOON BAY is neither remote nor obscure and that there is no established, alternative primary meaning for HALF MOON BAY in the public mind.

We also reject the suggestion that the association of the place primarily with tourism somehow negates the primary geographical meaning as applied to wines. In re Nantucket Allserve Inc., 28 USPQ2d 1144, 1145 (TTAB 1993).

Applicant also argues that there are other places known as HALF MOON BAY, and therefore, the mark is not primarily geographically descriptive of Half Moon Bay, California. In both the main brief and reply brief applicant notes the existence of "other" Half Moon Bays in Australia, New Zealand, St. Kitts and Antigua.<sup>2</sup> The only support applicant provides to demonstrate the existence of these places are web addresses. In providing the web addresses applicant apparently presumed that the content of

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<sup>2</sup> In his first office action response applicant referred to additional potential Half Moon Bays, including a bay on a lake in Grand Teton National Park, a swamp in South Carolina and a bay in Jamaica, also without providing any supporting documentation. It is unclear whether applicant intended to maintain these references as part of its argument, but we find these no more persuasive than those applicant cites in its brief.

the associated sites would become of record. The examining attorney objected to the form of this evidence. In his reply brief applicant continues to urge acceptance of this "evidence" and argues further that the Board can independently verify applicant's assertions by consulting an atlas. However, applicant neither identifies nor provides pages from any atlas for this purpose.

The identification of web addresses alone is insufficient to make content provided on those web sites of record. The content of web sites changes constantly, in many instances minute by minute. Web addresses also change constantly. Indeed, entire web sites can disappear without notice, and likewise web addresses can be rendered inactive without notice. Consequently, the provision of a mere web address in an attempt to make the content of the associated site of record does not afford any of the certainty or permanence required to establish a record. In re Planalytics Inc., 70 USPQ2d 1453, 1457-58 (TTAB 2004).

Therefore, we have not considered any content from the web sites which may be associated with the web addresses to which applicant refers in its papers. The record on appeal is limited to materials properly made of record either by applicant or the examining attorney prior to appeal. 37 C.F.R. § 2.142(d). If an applicant wishes to rely on

content from a web site, the applicant must print out the relevant content and submit it for the record prior to appeal with appropriate information as to the source.

With regard to applicant's suggestion that the Board take judicial notice of an unidentified atlas, we note that applicant could have made material from an atlas of record but did not do so. The Board may, in its discretion, take judicial notice of certain sources. In this case, we decline to do so.

Turning to the merits of applicant's arguments that there are other places known as HALF MOON BAY, the only basis we have for finding that such places exist is applicant's assertion. Applicant's assertion is insufficient for this purpose. Even if applicant had supported this assertion with evidence, the existence of these other apparently obscure places outside the United States known as Half Moon Bay would be insufficient to refute the conclusion that the primary geographic significance of HALF MOON BAY is the place where applicant is located. The mere existence of other places of the same name is generally insufficient to negate a finding that a place name is primarily geographically descriptive. In re Loew's Theatres Inc., 769 F.2d 764, 226 USPQ 865, 868 (Fed.

Cir. 1985); In re Cambridge Digital Systems, 1 USPQ2d 1659, 1662 (TTAB 1986).

Lastly, Applicant argues that the issuance of registrations for two marks, LIVINGSTON CELLARS and WOODBRIDGE, for wines supports registration in this case. Applicant argues that each of these marks identifies the place in California where the respective wines are produced.<sup>3</sup> We reject this argument as well. Applicant provided no evidence to support its contention that Livingston and Woodbridge are place names. More importantly, we must determine whether a particular place name is "primarily geographically descriptive" according to the unique facts of each case. Neither the Board nor the examining attorney is bound by the prior actions of the Office in cases which involve different facts. In re Nett Designs, Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). One could just as readily identify registrations for geographical place names for wine issued on the basis

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<sup>3</sup> In his brief the examining attorney objected to applicant's submission of the full electronic records regarding these registrations with applicant's brief. Applicant had referred to the registrations in the response to the first office action. The examining attorney did not object to the references in the next action, but only in his appeal brief. Accordingly, we have considered the information applicant provided in the office action, but not the full electronic copies applicant provided with its brief. This submission was untimely. 37 C.F.R. § 2.142(d). TBMP § 1208.02 (2d ed. rev. 2004).

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of acquired distinctiveness, consistent with the common law practice now codified in the Trademark Act which Judge Nies described. Nantucket, 213 USPQ at 895.

In conclusion, we have considered all of the evidence which is properly of record in this case and determined that HALF MOON BAY is primarily geographically descriptive for wines. Half Moon Bay, California is a place which is neither obscure nor remote, but rather a place which would be generally known to the purchasers of wine. And HALF MOON BAY is also a place which is associated with wines.

Decision: The requirement for a disclaimer of HALF MOON BAY is affirmed. However, if applicant submits the required disclaimer within thirty days of this decision, the decision will be set aside and the application will be published for opposition. See 37 C.F.R. § 2.142(g).