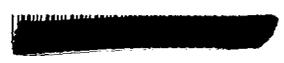


TTAB

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re trademark application of:)
)
Consolidated Specialty Restaurants, Inc.)
)
Serial No.: 75/857,797)
)
Filed: November 24, 1999)
)
COLORADO STEAKHOUSE)
And Design)

Examining Attorney:)
Michael J. Souders)
)
Law Office 115)
)
)
)
)
March 31, 2003)



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APPLICANT'S REPLY BRIEF

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Dr., Arlington, VA 22202-3513 on
March 31, 2003
(Date of Deposit)
Scott J. Stevens
Name of Registered Representative
Signature
March 31, 2003
Date of Signature

To the Trademark Trial and Appeal Board:

The Examining Attorney, in his Appeal Brief, states that a services/place association exists in connection with the mark COLORADO STEAKHOUSE because Colorado is known for its steaks, and that "consumers dining in the applicant's restaurants will expect that the services or the items featured on the menu originate in Colorado." *Examining Attorney's Appeal Brief*. The Examining Attorney goes further and states that décor and artwork evoking a Colorado theme, and restaurant fixtures and decorations originating in Colorado, do not serve to identify the geographic location from which the services originate, but only further the geographically deceptively misdescriptive nature of the mark. Based on these comments,

Applicant wonders what factors, in the Examining Attorney's mind, would establish the origination of services in Colorado, besides the food itself. The origin of the food alone should not be the sole criteria for establishing a services/place association, but the Examining Attorney does not suggest any other factors in his Appeal Brief that would satisfy this requirement. The registration of Applicant's mark is being sought for services, namely restaurant services, not goods. The factors used to determine the geographic origin of restaurant services should be more than just goods, i.e., food. The mark sought to be registered is COLORADO STEAKHOUSE, not "Colorado Steaks." The theme, ambience, décor, furnishings and decorations are all as important in defining a restaurant as is the food, and they should be given appropriate weight in determining the registrability of Applicant's mark. The Examining Attorney apparently gives them no weight.

The Examining Attorney, during the prosecution of this mark, has been inconsistent in his assessment of the factors which determine the geographic origin of restaurant services. In the Office Action of April 21, 2000, the Examining Attorney focused only on the location of Applicant's address. The Examining Attorney stated that Applicant's services do not originate in Colorado because the Applicant's address is in Indianapolis, Indiana. Under that analysis, the mere fact that a restaurant's company headquarters were located in Colorado would be sufficient to allow "Colorado" to be registered for restaurant services, even if nothing about the restaurant, or items in the restaurant, including presumably the food, came from or originated in Colorado. Applicant submits that its restaurants operating under the mark COLORADO STEAKHOUSE have more of an association with Colorado than merely the location of a company headquarters, even though the latter would be sufficient to grant registration in the opinion of the Examining Attorney. Applicant believes that if the various factors which make up or comprise restaurant services are given appropriate weight, including

the origin of the theme, décor, recipes, decorations, and atmosphere, Applicant clearly meets the requirements for a showing that its services do in fact originate in Colorado.

In the alternative, the nature of restaurant services deal primarily with establishing a theme or ambience. For that reason, restaurant customers dine in restaurants that have themes which appeal to them, and which match their idea and imagination of what a certain geographic location symbolizes to them, whether or not the restaurant's headquarters or food comes from that geographic location. Customers need not believe that the food in that restaurant comes from, or the restaurant headquarters are located in, a particular geographic location to find registrability of a geographic-based trademark. It is only sufficient that the restaurant's ambience satisfies the customer's expectation of what the restaurant's name suggests; customers do not care where the furniture or food actually originate. It is only the customer's own imagination that determines whether a style of cooking matches the geographic location in the restaurant's name. As an example, food prepared in a Chinese restaurant in the United States may meet the Examining Attorney's definition of "Chinese-style of cooking," but food served in restaurants in China is not prepared the same way or style. It is only a U.S. customer's expectation of what constitutes "Chinese-style of cooking" that is met or satisfied. Trademarks including the word "CHINA" are allowed registration in the United States for restaurant services when the services, as defined by the Examining Attorney, do not necessarily originate in China. It is unimportant if a consumer believes that a restaurant's food or headquarters address actually originate in the location of the restaurant's name, as long as the nature of the services satisfies the customer's expectations of that geographic location. No actual services/place association is necessary in the mind of the consumer as long as the consumer's expectation of a restaurant's geographic connotation is

met. In that case, if there is no services/place association, it is unnecessary to prove that any of the services originate in that geographic location for the mark to be registrable.

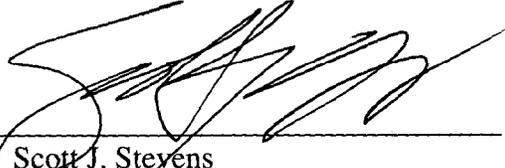
In summary, consumers either believe: 1) that COLORADO STEAKHOUSE restaurant's services, such as the theme, decorations, furnishings, come from Colorado, and in fact they do come from Colorado as has been shown by Applicant, or 2) in the alternative, consumers do not believe that the services actually originate from Colorado as long as their imagination's expectation is met, and in that case the actual origin of services is immaterial. In either case, the name COLORADO STEAKHOUSE should be registrable.

For all of the above reasons, Applicant submits that the Examining Attorney's refusal to register the mark COLORADO STEAKHOUSE and Design on the basis of Section 2(e)(3) of the Trademark Act is in error and should be reversed. Applicant submits that continued refusal to register the mark would do an injustice to the Applicant and that Applicant's mark is not geographically deceptively misdescriptive of the services identified. Applicant therefore respectfully requests that the Trademark Trial and Appeal Board reverse the decision of the Examining Attorney, and allow the Applicant's mark COLORADO STEAKHOUSE and Design to pass to publication.

March 31, 2003

Respectfully Submitted

By: _____


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