

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 75/857797

APPLICANT: Consolidated Specialty Restaurants, Inc.

CORRESPONDENT ADDRESS:

GREGORY B COY
WOODARD EMHARDT NAUGHTON MORIARTY ET AL
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INDIANAPOLIS IN 46204

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom115@uspto.gov

MARK: COLORADO STEAKHOUSE

CORRESPONDENT'S REFERENCE/DOCKET NO: 37004-8

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RE: Serial Number 75/857797

The examining attorney requested that this case be remanded for reconsideration in light of the new standards set forth in *In re California Innovations, Inc.*, 329 F.3d 1334; 66 USPQ 2d 1853 (Fed. Cir. 2003) for determining whether a mark is primarily geographically deceptively misdescriptive under Trademark Act Section 2(e)(3), 15 U.S.C. Section 1052(e)(3).

The appeal has been suspended and the case remanded to the examining attorney for reconsideration under the applicable standards.

Mark is Primarily Geographically Deceptively Misdescriptive

Registration was refused under Trademark Act Section 2(e)(3), 15 U.S.C. §1052(e)(3), because the subject matter for which registration is sought is primarily geographically deceptively misdescriptive of the identified services.

The applicant applied to register the mark COLORADO STEAKHOUSE and design for "restaurant services." A mark is geographically deceptively misdescriptive under Section 2(e)(3) if, (1) the primary significance of the mark is a generally known geographic location, (2) the consuming public is likely to believe the place identified by the mark indicates the

origin of the goods or services bearing the mark, when in fact the goods or services do not come from that place, and (3) the misrepresentation is a material factor in the consumer's decision. *In re California Innovations, Inc.*, 329 F.3d 1334; 66 USPQ 2D 1853 (Fed. Cir. 2003).

The primary significance of the term "COLORADO" is geographic. The examining attorney made of record a definition of the word "Colorado" in the Office Action of April 21, 2000.

Turning to the second prong of the test, the mark is geographically deceptively misdescriptive because the consuming public is likely to believe that the place identified by the mark indicates the origin of the services, when in fact the services do not come from that place. In establishing a services-place association under the second prong of the test a showing that the geographic location is known for performing the service is not sufficient. *In re Les Halles De Paris J.V.*, 67 USPQ2d 1539, 1542 (Fed. Cir. 2003). The examining attorney must demonstrate that the patrons of the applicant's restaurant services are likely to believe that the services have their origin in Colorado. The examining attorney might establish a services-place association by demonstrating that patrons of the restaurant services "would believe the food served by the restaurant was imported" from the geographic location named in the mark. *Id* at 1543.

The examining attorney submitted evidence in the Office Action of March 8, 2001 and in the Office Action of October 28, 2002, that "Colorado steaks" are known for their quality. Because steaks from Colorado are known for their quality, consumers associate "steaks" with Colorado. Because of this association of Colorado with steaks, consumers patronizing the applicant's restaurants are likely to believe that the steaks served in the applicant's steakhouse are imported from Colorado. The evidence submitted establishes that a services-place association between "Colorado" and "restaurant services" exists.

Lastly, the misrepresentation must be a "material factor" in the consumer's decision to patronize the services. The examining attorney must demonstrate a "heightened association between the services and the relevant geographic denotation" *Id* at 1543. Again, in order to establish materiality, the Court suggests that the record "might show that customers would patronize the restaurant because they believed the food was imported from, or the chef was trained in, the place identified by the restaurant's mark." *Id* at 1543. As noted above, the examining attorney has submitted evidence establishing that "Colorado steaks" are a known commodity desired for their quality. The examining attorney has attached additional evidence from several websites which bolsters the argument that Colorado is known for the quality of its steaks. The evidence was found during a search of the Internet using the *Google* search engine on November 5, 2003.

Because Colorado is known for the quality of its steaks, the presence of the geographic term "Colorado" in the applicant's mark will be a material factor in the consumer's decision to patronize the applicant's restaurants. Consumers are more likely to purchase the applicant's services because the mark contains the geographically deceptively misdescriptive word "Colorado." The mark is refused as primarily geographically deceptively misdescriptive.

The applicant's file will be returned to the Trademark Trial and Appeal Board and appeal proceedings will be resumed in due course.

Michael Souders
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To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Darius Ecker wrote:

> I'd be interested in seeing your complete Colorado List. I'm going out to
> Colorado for a week in August.

For sure, you'll want to take the ABA/Lane "Birders Guide to Colorado"
by Harold Holt. It was re-done in 1997 and is really super. The
"Specialties of Colorado" section starting on p.310 is invaluable.

If you want to visit the ABA HQ and sales room in Colorado Springs, be
sure to copy the map shown on the back of the most recent catalog. It's
located at 720 W. Monument, which is damn nigh impossible to find, since
Monument is interrupted by a railway right-of-way. If convenient, go in
the afternoon when the view back over the Springs is quite
remarkable....hardly looks like Colorado.

Here's what we've seen:

Buena Vista: Mountain Bluebird, Pinyon Jay, Black-headed Grosbeak,
Rufous Hummer, and Broad-tailed Hummer (the metallic whirring of the
male BTH's wings is really amazing!)

St. Elmo: Steller's Jay, Gray-headed junco, calliope hummer (and many
broad-tailed), and Black-throated Gray Warbler.

Salida: (mostly in the brush at the fishing pond by the Spiral Drive
turnoff from 291) Wilson's Warbler, MacGillivray's Warbler, Bohemian
Waxwing, and, in one of the ponds near the old smelter, Franklin's Gull

Arkansas River near Cotopaxi: White-throated swift, Pectoral Sandpiper

Mountain road west from Beulah: Golden Eagles

Garden of the Gods: Spotted Towhee, white-throated swift, black-headed
Grosbeak

USAF: Mountain Plover

.....and as Holt says, if you don't see black-billed Magpies in
Colorado, you may want to take up another avocation....

Best meals-

Salida: Il Vicino brewpub & pizzeria: Laughing Ladies

Poncha Springs: Jackson Hotel (outstanding Colorado steakhouse)

Colorado Springs: Il Vicino, Phantom Canyon brewpub

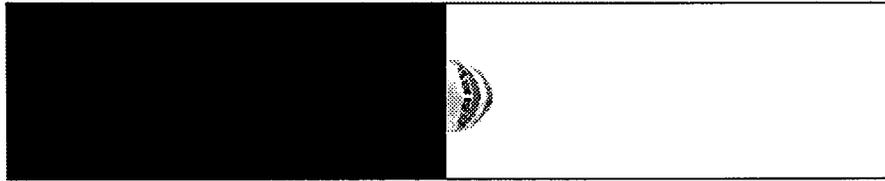
B&Bs:

Buena Vista: Meister House (particularly the "Room by the River"); tell



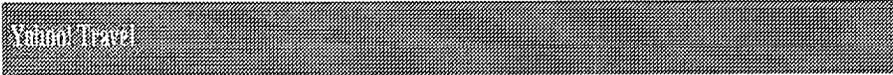
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Buckhorn Exchange 1000 Osage St., tel. 303/534-9505

If hunting makes you queasy, don't enter this Denver landmark, a shrine to taxidermy where 500 pairs of eyes stare down at you from the walls. The handsome men's-club decor -- with pressed-tin ceilings, burgundy walls, red-checker tablecloths, rodeo photos, shotguns, and those trophies -- probably looks the same as it did when the Buckhorn first opened in 1893. Rumor has it Buffalo Bill was to the Buckhorn what Norm Peterson was to *Cheers*. The dry-aged, prime-grade Colorado steaks are huge, juicy, and magnificent, as is the game. For an appetizer, try the smoked buffalo sausage or navy bean soup. AE, D, DC, MC, V. No lunch weekends. \$15 - \$30

ADVERTISEMENT



Denver ChopHouse & Brewery 1735 19th St., tel. 303/296-0800

This is the best of the many LoDo brewpubs and restaurants surrounding the Coors Field ballpark. Housed in the old Union Pacific Railroad warehouse, the restaurant has a clubby atmosphere, with dark wood paneling and exposed brick. The food is basic American, and there's plenty of it: steaks, seafood, and chicken served with hot corn bread and honey butter, and "bottomless" salads tossed at the table. AE, DC, MC, V. \$15 - \$30

Palm Restaurant 1672 Lawrence St., tel. 303/825-7256

This Denver outpost of the longtime New York steak house serves meat, seafood, pork chops, and other American dishes à la carte. The walls are bedecked with caricatures of local celebrities, and there's a chance you might see one in person -- the restaurant is a



Fodor's Colorado
from \$9.49

...of local ponies, chickens, and ducks, and with good reason. The steaks and the portions are both superlative. AE, D, DC, MC, V. No lunch west of ... \$20 - \$30

The Fort U.S. 285 and Rte. 8, tel. 303/697-4771

This adobe structure, complete with flickering luminarias and a piñon bonfire in the courtyard, is a perfect replica of Bent's Fort, a Colorado fur trade center. Buffalo meat and game are the specialties; the elk with huckleberry sauce and tequila-marinated quail are especially good. Intrepid eaters might try the buffalo bone-marrow appetizer, jalapeños stuffed with peanut butter, or Rocky Mountain oysters. Costumed characters from the fur trade wander the restaurant, playing the mandolin and telling tall tales. AE, D, DC, MC, V. \$20 - \$30

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Media Release

FOR IMMEDIATE RELEASE

July 23, 2002

Contact: Tim Larsen (303) 239-4114

Taiwan delegation visiting Colorado to learn about sunflower industry

LAKEWOOD, Colo. – Twelve media representatives from six of the largest television networks in Taiwan will tour Colorado sunflower fields beginning Saturday, July 27.

"Colorado is an ideal location to feature the best sunflowers in the country," said Tim Larsen, international marketing specialist for the Colorado Department of Agriculture. "The state's climate is perfect for growing sunflowers, and we have some of the best processing facilities nationwide."

The delegation will begin their three-day visit with a tour of sunflower fields, owned by Leon Zimelman of Keenesburg, Colo. He is one of the growers in Weld County, which produces 15 million pounds of sunflowers annually. The Colorado Sunflower Administrative Committee will also host a pitchfork fondue, cooking **Colorado steaks** and potatoes with a new sunflower oil called NuSun.

Exports of NuSun sunflower oil to Taiwan have increased from \$250,000 in 1995 to \$5 million in 2001. The National Sunflower Association expects Taiwan to be the first country to convert all of their sunflower oil purchases to NuSun.

Colorado produces more than 200 million pounds of sunflower each year. The Colorado Sunflower Administrative Committee, which was established in 2001, is the newest marketing order in the state. The international tour is being sponsored by the National Sunflower Association and the Colorado Sunflower Administrative Committee.

For more information, contact Tim Larsen at (303) 239-4114

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509 E. Eighth Street
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HAGGARD'S BLACK DOG TAVERN

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259-5657

K-BOB'S STEAKHOUSE

361 S. Camino del Rio
Durango, CO 81301
247-1940

Family steakhouse with great salad wagon, barbecue, children's menu, senior discount. Open daily at 11am.

DURANGO MOUNTAIN RESORT

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Durango, CO 81301
385-2185

Three on-mountain restaurants: Dante's, Powderhouse and Cafe de los Pinos. Slopeside in the village; Village Coffee Company, Joey's Italian Cafe, Purgys and Mountain Market & Deli. The Columbine Station cabin serves breakfast, lunch and cocktails.

FIESTA MEXICANA

2850 Main Avenue
Durango, CO 81301
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Authentic Mexican dining in a family atmosphere. "Best margaritas in the southwest!"

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619 Main Avenue
Durango, CO 81301
247-4098

New Mexican and Mexican specialties, Southwest appetizers, steaks, chicken, pasta, salads, seafood. Full bar. Senior discount. Open daily 11am; Sunday only breakfast 9am. *(major credit cards)*

GOLDEN DRAGON

992 Main Avenue
Durango, CO 81301
259-0856

Authentic Chinese cuisine. Szechwan, Mandarin, Hunan. Full bar. Open daily 11am to 9:30pm; lunch buffet 11am-2pm.

JOEY'S ITALIAN CAFE

#1 Skier Place (Durango Mountain Resort)
Durango, CO 81301
385-0208

Fresh, homemade Italian cuisine. Local favorites include lasagna, veal picatla, chicken marsala, [Colorado steaks](#). Full bar, excellent wine list, kid's menu. Lunch and dinner daily 11am to 9pm.

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December 18, 2000

Honorable David Armstrong
601 West Jefferson Street
Louisville, KY 40202

Dear Mayor Armstrong,

I always enjoy a little friendly competition, so as a staunch CSU Ram fan, I am happy to accept your Liberty Bowl Game challenge.

Should the CSU Rams lose the game, I offer one of the following two wagers:

Option #1: Twelve tender **Colorado steaks**, along with a nice set of steak knives, complete with CSU insignias.

Option #2: Three gallons of "Cardinal Crusher" ice cream, specially developed by Poudre Valley Creamery, along with CSU ice cream serving dishes and Mary's Mountain cookies on the side.

Enjoy the game, and I hope to hear from you soon.

Sincerely,

Ray Martinez
Mayor

KD/khh

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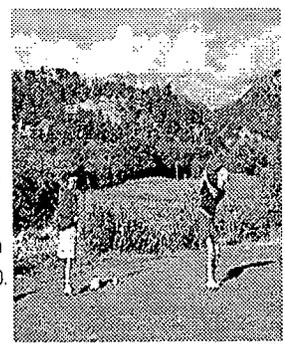
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SELF SERVICE

**Estes Park Golf Course:
Welcome to the Rocky Mountains**

By **Derak Duncan**, Senior Writer ESTES PARK, CO - The town of Estes Park lies at the eastern entrance to Rocky Mountain National Park and is the symbolic portal to the Rocky Mountains of Northern Colorado. Its 18-hole golf course also serves as the gateway to mountain golf in Colorado. It is one of the oldest and the most accessible mountain course for those who live on the Front Range, and provides a tantalizing hint of what great mountain golf is all about.



The course has a long, unique history. The original core of holes were laid out in 1917, though there might not have always been a full nine. The holes underwent several growths and alterations over the years but remained basically in tact until the mid-1950's when Henry Hughes was commissioned to expand the facility to 18 holes.

In 1956, however, nine of these holes were leveled to make way for an airport that operated on the property, which operated for approximately one year. In 1958 Colorado architect Dick Phelps was hired to redesign the course, making it once again an 18 hole layout. Estes Park played to this design until the early 1990's when Phelps was brought back to make several alterations to a design that needed updating.

From the tips Estes Park is a short and nifty par 70, playing 6,400 yards. The men get the course at par 71 and 5,969 yards, and women see it at 5,250 yards. The product of this brevity of length and the 7,600-foot elevation is a course that overpowers no one. Indeed for the longest of players most holes, even some of the par fives, play little more than a drive and a pitch.

The thin air at this high elevation accounts for at least a one-club difference compared to the Front Range, and those who have traveled from sea level will notice a two, maybe three club difference. Hitting a wedge 150 yards is an empowering feeling, but distance control is the key to scoring at Estes Park.



Though this course is old and short, lacking the glamour of the newer mountain resort-style courses deeper into the Colorado Rockies, do not overlook it. This is enchanting, intriguing mountain golf. There is something so undeniably life-affirming in golf in the Rockies, from a sleepy nine-hole track in an old mining town to the glamorous power-courses such as River Valley Ranch or Haymaker, that any course is worthy of a visit. Estes Park, despite its quiet nature, still weighs in toward the top end of the scale of mountain courses.

The crisp mountain air, the steady breeze, the scent of pine that never abates - these are what set the tone when stanning from the car and are the harbinners of a deep

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sensory experience. Though the course is adjacent to the southern edge of town, make no mistake - you are in the Rockies. Pine trees and large rock outcroppings recur throughout the course and surround the practice area, and the log-cabin clubhouse, built in 1917, reflects the mountainous flavor of the region. Views of the Rocky Mountains surround the course 360°, highlighted by the bold Longs Peak to the south.

Most of the holes at Estes Park are interior - only a handful are located at the barrier of the property. This lends to the feeling of openness and serenity - homes and condos never crowd the fairways as is common with many mountain courses.

There is nothing tricky or inherently difficult about Estes Park; the course does not attempt to overwhelm. Its key defense is subtlety. The greens, having been constructed at different times through the years and designed by different architects, display variant features on each hole. Some, such as the fourth, have pronounced tiers. Several are relatively flat (9 and 18).

Several more, including the sixth and the seventeenth, feature maddening undulation. Others have severe slope, most notably back to front. On these greens, such as three, ten, and thirteen, getting down in two from above the hole is a murderous task. The only common trait to these greens is that the majority of putts break toward Fish Creek. After you've sucked in the beauty and the invigorating mountain oxygen, locate Fish Creek.

The greatest aid to playing Estes Park is probably a little local knowledge. For those who have total command of their game, those who can control it long and straight, the course can be simply overpowered. For the rest there are certain areas that are absolute jail. More subtlety.

At first glance, most of the holes seem to be there for the taking, but shots that are slightly miss-hit have a way of finding common trouble spots, black holes where escape is anywhere but toward the green.

These magnets look benign, but being in them is the surest way to elevate the score. An innocent appearing cluster of trees blocks approach shots to the green for anything left of the tee on the 409-yard third hole. At the 398-yard fifth hole, as tee shots play away from the OB to the right, the fairway kicks otherwise well placed shots left toward a grove of trees and a depression. The conservative play is to lay back off the tee.

A forest of pines awaits everything right all the way to the green on the 540-yard sixth. The short par four 11th slopes right toward Fish Creek, slinging balls into a no man's land of brush, scrub, and water - the proper play high up the left side. Going right on the 13th is death, one of the most un-recoverable regions on the course. In fact, almost every hole has an x-factor, a place it is necessary to steer away from. But you might not know it by looking.

The back nine at Estes Park measures only 2,976 yards from the championship tees, but it might be the most enjoyable sub-3,000-yard nine you'll play. There is tremendous opportunity to make up strokes and play some thrilling, adventurous shots.

The tenth is a downhill par three of 175 yards that plays in front of the gallery of the clubhouse. It is protected by a pond short and left, and balls seem to hang in the air forever, posing in front of the backdrop of the mountain across the valley, before descending rapidly to the green. There is really no place to miss here but short right.

The next four holes are what golfers look forward to, the make-or-break time in the round. They are all short par fours, reachable to long hitters, and great chances to make birdie.



ESTES PARK

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Eleven is 332 yards. The fairway rolls and occasionally dangerously tossing shots to the right, and the green sits slightly elevated on its own. Twelve is a 352-yarder where the fairway descends abruptly then rises again just as quickly, so the tee shot plays more or less level. Balls that are not hit toward the upslope across the nadir will have a blind, uphill second.



Thirteen is the climactic visual hole of the round. This is a tasty looking treat that plays 312 yards, all downhill. The tee shot from this launching pad is majestic. Drives are pounded out toward the dramatic vistas beyond; white orbs rocket in silhouette, pristine, cannoned weightlessly into the high American west, beautiful. Beautiful, that is, as long as they find the fairway. Right is jail, left is OE.

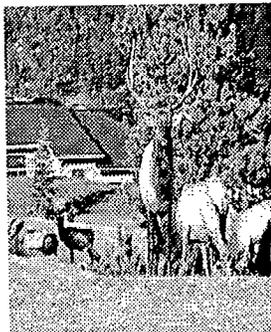
This reachable green is very slick and guarded right and left by bunkers. And finally this exciting quartet of holes finishes with an uphill par four of 269-yards. The fairway is wide and with a straight drive this is the best chance for birdie in the entire round.

The personality and mountain atmosphere of Estes Park will have charmed most golfers by this point in the day. So many of the holes are quietly impressive, memorable far beyond the end of the round. The 17th, a warping, downhill, 541-yard par five with an approach across Fish Creek can yield dozens of experiences, all different.

The sixteenth, a dogleg right of 361-yards, offers a chance for bravado if the player is willing to cut the corner over an out-of-bounds area. Every hole here seems to have a character unto itself, which is more than can be said for far too many layouts in the area.

It is pure pleasure to play a course so thoroughly self-possessed and fun. There is something for everybody at Estes. Low handicappers will find excitement in the scoring opportunities. Some will love its benign nature and accessibility. High handicappers will feel they are playing like the big boys. Everyone will enjoy the views. Estes Park is an utterly enjoyable, refreshing round of golf.

While in town head to the downtown area and stop in at The Wheel Bar, an Estes Park institution for more than half a century. Enjoy their great **Colorado steaks**, beverages, sports, and a lively bar atmosphere. The Stanley Hotel is another Estes landmark. This large, stately hotel overlooks the town and Lake Estes and was the inspiration for the hotel in Stephen King's *The Shining*. Stay there while visiting, brunch there, or simply drive up to take a look around the grounds at this impressive landmark.



Estes Park Golf Course is generally open from April to October. Depending on the season and the time of day you play, you might be accompanied by a herd of elk or other mountain wildlife. It all adds to the experience of the gateway course to Colorado mountain golf. Summer green fees are \$33 and carts are \$22. Call to inquire about fall rates.

To get to Estes Park Golf Course turn east at the golf course entrance from Highway 7, 1 mile south of the Holiday Inn off US 36.

Estes Park Golf Course
P.O. Box 1379
Estes Park, CO 80517
970-586-8146

Tees Blue: Rating 69.0 Slope: 121
White Rating: 66.8 Slope: 112

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Red: Rating 68.3 Slope 125

Green Fees:

open April 14th thru October 30

\$36.00 for 18 holes for non-resident

\$27.00 for 18 Holes for Resident

Power Carts:

\$12.00 per rider for 18 holes

Lake Estes: Nine-Hole Golf Course

Tees

Men: Rating: 60.2 Slope: 96

Ladies: Rating: 61.6 Slope: 105

Green Fees:

Resident:

\$11.00 - 9 Holes \$16.00 - 18 Holes

Non-Resident

\$13.00 - 9 Holes \$18.00 - 18 Holes

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... complex built to resemble a ski lodge with wood beam ceilings, stone fireplaces and a gigantic waterfall. Nordstrom, Dillard's, Lord & Taylor, Gap, Limited, J. Crew, and Disney.

Denver Pavilions is located downtown on the 16th Street Mall and has 50 shops and restaurants in a two-square-block complex with Barnes & Noble superstore, Virgin Records Megastore and Nike Town.

Prime Outlets at Castle Rock is Colorado's largest outlet center with more than 130 brand name shops featuring world-class merchandise at tremendous savings.

Larimer Square is a restored section of Denver's oldest street and offers a variety of shops and restaurants in restored Victorian buildings.

The Tabor Center is a two-block long glass enclosed shopping center on the 15th Street Mall in the heart of downtown.

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Dining Tour

Tour Options: (Denver has over 2,000 restaurants serving all varieties of cuisine).

Buffalo & Steak are two excellent local choices. **Colorado steaks are known the world over for their outstanding quality.** An interesting alternative choice is buffalo meat. Buffalo meat has less calories than chicken and can be found in many area restaurants.

Southwestern Dishes are another specialty. Mexican restaurants abound in Denver, and there are many variations that offer a distinctive Denver southwestern flair.



Beer. More beer is brewed in Denver than in any other city with over 80 different types of beer brewed in Denver alone. Popular brands include: Railyard, Fat Tire, Denver Pale Ale and, of course, Coors.

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**Sundance Steakhouse
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970-484-1600

*The Fun Never Sets
at the Sundance!*

The Sundance Saloon is the
country western landmark of

The Sundance Saloon is Colorado's favorite for dinner and dancing! In addition to having the finest steaks in town, the Sundance offers live entertainment, dancing, family night, and banquet facilities.

Food— Premium, hand-cut Colorado steaks are the Sundance's fame. The Sundance's exceptional menu includes filet minion, buffalo steaks, prime rib, smoked salmon, jumbo shrimp, etcetera. All dinner entrees are served with garden fresh salads or soup and home baked bread. The Sundance Saloon is uniquely qualified to serve both groups and romantic dinners for two.

Live Entertainment— After you're satisfied from the Sundance's kitchen, you can enjoy live entertainment Tuesday through Saturday nights. Feet will stomp, and the music will spin its magic until you can't help but dance.

Dancing— Country western dancing swings every night we're open. Free country dance instructions are given Sunday, Tuesday and Wednesday nights. Learn how to 2-step, 3-step, waltz or swing with the best of them. Instructors are available upon request for groups and parties too; please let us know when you call in your reservation.

Banquets— Whether you are having a wedding or a party, the Sundance is the place to celebrate. Private parties, large and small, can choose from our unique menus and rooms. Our stage can even be of service if the occasion necessitates.

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