

TTAB

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

In re trademark application of:)	Examining Attorney:
)	Michael J. Souders
Consolidated Specialty Restaurants, Inc.)	
)	Law Office 115
Serial No.: 75/857,797)	
)	
Filed: November 24, 1999)	
)	
COLORADO STEAKHOUSE)	
And Design)	January 16, 2004

01-20-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #78

APPLICANT'S SUBSTITUTE APPEAL BRIEF

BOX TTAB
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

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, Virginia 22202-3514 on

January 16, 2004

(Date of Deposit)
Gregory B. Coy

Name of Registered Representative

Gregory B. Coy

Signature
January 16, 2004

Date of Signature

To the Trademark Trial and Appeal Board:

INTRODUCTION

Applicant has appealed, by Notice of Appeal filed on September 9, 2002, the Examining Attorney's refusal under Section 2(e)(3) of the Trademark Act to register the mark COLORADO STEAKHOUSE and Design for use in connection with "restaurant services". The refusal was made on the grounds that Applicant's mark is geographically deceptively misdescriptive of the identified services. Applicant submitted its original Appeal Brief on December 30, 2002. The file was remanded to the Examining Attorney

for reconsideration in view of the recent CAFC decision in *In re California Innovations, Inc.*, 329 F.3d 1334 (CAFC 2003). The Examining Attorney has now maintained his refusal to register, and the appeal has been resumed. Applicant was subsequently given the opportunity to file a substitute appeal brief. Applicant maintains its belief that the above-identified mark is entitled to registration, and submits this substitute brief in support of its appeal. Applicant respectfully requests that the Trademark Trial and Appeal Board reverse the Examining Attorney's decision, and allow the mark to pass to publication.

FACTS

Applicant filed its application for registration of the mark COLORADO STEAKHOUSE and Design on November 24, 1999. The Examining Attorney refused registration under Section 2(e)(3) of the Trademark Act, arguing that the mark is geographically deceptively misdescriptive. Applicant responded to this refusal, arguing (1) that components of the services do originate in Colorado, and (2) that the Examining Attorney had not presented evidence sufficient to establish that there was a services/place association in this case. The Examining Attorney continued the refusal and submitted articles from the Internet that were asserted to show that Colorado is known for its beef. Applicant responded by arguing that deferring the origin of restaurant services required more detailed analysis than was given by the Examining Attorney and the Examining Attorney did not present sufficient evidence to support the refusal. Applicant also argued that it is inconsistent and improper to employ a narrow definition of "origin of restaurant services" in determining where such services originate and then to use a broader definition to support a conclusion that consumers would believe the restaurant services to originate there. The Examining Attorney continued and made final the refusal to register and stated

that: "the examining attorney attached excerpts from websites as well as LEXIS/NEXIS evidence [to a prior action] which demonstrates that steakhouses do exist in Colorado and, as a result, there is a services/place association." The Examining Attorney also stated in the Action that: "nothing about the applicant's services originate in Colorado." Applicant filed a Request for Reconsideration and a Notice of Appeal, arguing that the style and concept of a restaurant is an important consideration of the origin of restaurant services, that consumers of restaurant services understand what geographical terms in restaurant marks refer to and that the Examining Attorney was basing his refusal on too narrow a ground. The Examining Attorney was not persuaded and continued the final refusal, whereby the TTAB initiated the instant appeal. The appeal was then suspended to allow the application file to be remanded to the Examining Attorney for reconsideration in view of the recent CAFC decision in *In re California Innovations, Inc.*, 66 U.S.P.Q. 2d. 1853 (CAFC 2003); however, the Examining Attorney continued the final refusal to register on essentially the same grounds and the TTAB reinstated this appeal, giving Applicant permission to file a substitute brief.

SUMMARY OF ARGUMENTS

- I. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THERE IS NO EVIDENCE OF RECORD ESTABLISHING THAT THE CONSUMING PUBLIC IS LIKELY TO BELIEVE THAT COLORADO, THE PLACE IDENTIFIED BY THE MARK, IS THE PLACE OF ORIGIN OF THE BEEF SERVED IN CONNECTION WITH APPLICANT'S RESTAURANT SERVICES

- II. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THERE IS NO EVIDENCE OF RECORD ESTABLISHING THAT ANY SERVICES-PLACE ASSOCIATION IN THE MINDS OF CONSUMERS IS MATERIAL TO A CONSUMER'S DECISION TO PURCHASE APPLICANTS SERVICES, AS REQUIRED UNDER THE HEIGHTENED STANDARD ESTABLISHED BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN "IN RE CALIFORNIA INNOVATIONS, INC."

III. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THE CONSUMING PUBLIC IS NOT DECEIVED BY THE TERM "COLORADO" IN APPLICANT'S MARK, BUT RATHER ACCURATELY UNDERSTAND THAT CERTAIN COMPONENTS OF APPLICANT'S SERVICES IDENTIFIED BY THE MARK, NAMELY, THEME, STYLE AND CONCEPT OF THE SERVICES, DO ORIGINATE IN COLORADO

ARGUMENTS

In re California Innovations, Inc., 66 U.S.P.Q. 2d. 1853 (CAFC 2003), mentioned above, sets forth a new test for determining whether a mark, as applied to recited goods and/or services, is geographically deceptively misdescriptive under 15 U.S.C. § 1052(e)(3). *In re Les Halles De Paris J.V.*, 67 U.S.P.Q. 2d. 1539 (CAFC 2003), decided after *In re California Innovations*, specifically addressed the standard of geographically deceptively misdescriptive under 15 U.S.C. § 1052(e)(3) as it applies to services, and in particular, restaurant services. As such, it is especially relevant to the issues presented in this appeal. In *In re Halles*, the Court stated,

"This court [in *In re California Innovations*] stated: 'To ensure a showing of deceptiveness ... the PTO may not deny registration [under section 2(e)(3)] without a showing that the goods-place association made by the consumer is material to the consumer's decision to purchase those goods.' Under section 2(e)(3), therefore, a mark is primarily geographically deceptively misdescriptive 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 was a material factor in the consumer's decision.'" *Id* at 1541.

In view of the above quotation, it is clear that the CAFC has specifically placed a high standard of proof upon the U.S. Trademark Office in terms of refusing registration of a mark under 15 U.S.C. § 1052(e)(3).

Applicant submits that the present refusal to register the mark COLORADO STEAKHOUSE (and Design) is improper for the same reasons presented previously,

namely, the Examining Attorney has not established in the record that the consuming public would make a services-place association between Applicant's restaurant services and Colorado, and the Examining Attorney has not established that the consuming public would be deceived by the presence of the term "COLORADO" in Applicant's mark. In addition, and perhaps more importantly, in view of the recent CAFC decisions mentioned above, Applicant submits that the Examining Attorney has failed to present evidence that satisfies the heightened standard of materiality set forth in *In re California Innovations* and *In re Halles*. Further explanations regarding these points are set forth below.

I. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THERE IS NO EVIDENCE OF RECORD ESTABLISHING THAT THE CONSUMING PUBLIC IS LIKELY TO BELIEVE THAT COLORADO, THE PLACE IDENTIFIED BY THE MARK, IS THE PLACE OF ORIGIN OF THE BEEF SERVED IN CONNECTION WITH APPLICANT'S RESTAURANT SERVICES

A great deal of argument has been presented previously in this case regarding the legal standard for showing a services-place association with respect to a geographical term in a mark used in connection with restaurant services, and also regarding the realities of how such geographical terms are interpreted by the consuming public. Without re-stating this entire discussion, Applicant incorporates herein by reference its prior arguments regarding these points.

In addition, although Applicant has continuously asserted that the services-place analysis involves more than an inquiry into the locations of restaurants (or company headquarters) and source of food, the Examining Attorney has focused the analysis of this issue in the present case upon the following two questions: (1) what is the source of the beef served in Applicant's restaurants? and (2) what would consumers believe to be the

source of the beef? Without agreeing that this issue should be considered in such a narrow way (as further discussed in Section III, below), Applicant submits that the record fails to support a refusal even based upon this narrow analysis. The Examining Attorney has attempted to show a services-place association by citing evidence purportedly showing that Colorado is well-known for its beef and steaks, with the implication that consumers would therefore believe Applicant's beef to originate in Colorado. The cited evidence, however, does not establish a services-place association.

The primary substance of the evidence presented by the Examining Attorney comprises advertisements for Colorado restaurants, listing "Colorado steaks" as menu items, which are nothing more than descriptive designations and do not suggest, much less prove, notoriety. If anything, such designations could be construed to be an appeal to local consumers to support the local economy by purchasing "home-grown" products. Other items cited as evidence by the Examining Attorney include self-serving advertisements placed by restaurants or other organizations located in Colorado, which do not act to create a strong services-place association with consumers. As an example, one reference cited by the Examining Attorney includes the statement: "Colorado steaks are known the world over for their outstanding quality." However, this reference is a website page taken from the Official Denver Travel Guide (Attachment # 8 of the Office Action mailed November 10, 2003). This statement, coming from an organization whose purpose is to entice people to visit Denver, Colorado provides no support for the claim, and can hardly be viewed as objective evidence that establishes a strong services-place association with consumers. None of the examples or references cited by the Examining

Attorney establish with any factual basis that Colorado is better known for the quality of its steaks than any other state.¹

In the Examining Attorney's appeal brief, for the purpose of explaining what was meant by the assertion that "Colorado is known for its steaks," the Examining Attorney states that: "The fact that Colorado is known for steaks...means that Colorado is known for the high quality of beef produced by the cattle which graze there." This seems to imply that the meat from a Colorado steer somehow attains a higher quality due to the fact that it eats grass or hay grown in Colorado soil or the fact that it breaths Colorado air. There is simply no evidence of record in support of such a contention, and Applicant submits that no such evidence exists, because there is nothing about Colorado grass or Colorado air that results in cattle there producing higher quality meat.

It is also pertinent to consider whether consumers, correctly or incorrectly, have come to believe that there is something special about the quality of beef that is grown in Colorado; however, the evidence of record does not establish that consumers would believe this to be true. Absent evidence proving that beef raised in Colorado is significantly higher in quality or more sought after than beef from any other state, i.e., proof that a customer could tell the difference and would be upset if he or she received a steak from a Texas-raised steer rather than a Colorado-raised steer, there is no basis to conclude that customers would expect or believe that the term "COLORADO" in Applicant's mark means that only

¹ It is also worthy of note that Colorado is not a high-ranking state in terms of beef production. The most recent report on cattle inventory issued by the National Agriculture Statistics Service of the USDA, as downloaded and printed by the undersigned attorneys for Applicant (copy attached as Exhibit A), includes charts on page 4 that list cattle and calf populations by state for the years 2002 and 2003. According to this report, Colorado has only the 11th largest cattle population among the states, with states such as California, Missouri, Iowa, Montana, and Texas having larger cattle populations. The chart shows that Colorado's cattle population is less than one-fifth that of Texas and half that of Oklahoma. It is clear from this report that, based on cattle population, Colorado is not a particularly large source of beef. Absent additional evidence proving that beef raised in Colorado is significantly more sought after than beef from any other

beef from Colorado-raised cattle is served in Applicant's restaurant. Without such proof, which the Examining Attorney has heretofore not provided, the record does not support a finding that there is a services-place association in the present case, and the Examining Attorney's refusal to register must be overturned.

II. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THERE IS NO EVIDENCE OF RECORD ESTABLISHING THAT ANY SERVICES-PLACE ASSOCIATION IN THE MINDS OF CONSUMERS IS MATERIAL TO A CONSUMER'S DECISION TO PURCHASE APPLICANTS SERVICES, AS REQUIRED UNDER THE HEIGHTENED STANDARD ESTABLISHED BY THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN "IN RE CALIFORNIA INNOVATIONS, INC."

Even assuming, *arguendo*, that the evidence of record were found to establish a services-place association, Applicant submits that the Examining Attorney's refusal of the present application is still improper because the evidence of record in this case does not meet the heightened standard of proof set forth in *In re California Innovations* and *In re Halles*.

As pointed out by the Court in *In re California Innovations*, the NAFTA amendment to the Lanham Act had a very significant affect on section 2(e)(3). In particular, after the amendment, any mark being found to be geographically deceptively misdescriptive under section 2(e)(3) is entirely unregistrable notwithstanding any showing of acquired distinctiveness. Because a finding of geographic deceptive misdescriptiveness can no longer be overcome, the Court held the burden of proof required by the Examining Attorney to be elevated. In this regard, the Court stated that: "A mere inference... is not enough to establish the deceptiveness that brings the harsh consequences of non-registrability." *In re California Innovations, Inc.*, 66 U.S.P.Q. 2d. 1853 at 1857.

state, there is no basis to conclude that customers would believe that beef from Colorado-raised cattle is any more desirable than beef from any other source.

In *In re Halles*, the Court stated:

The court [in *In re California Innovations*] went on to say, “To raise an inference of deception or materiality for a service mark, the PTO must show some heightened association between the services and the relevant geographic denotation. . . . Without a particularly strong services-place association, an inference would not arise, leaving the PTO to seek direct evidence of materiality.” *Id* at 1542.

Applicant submits that, in the present case, the Examining Attorney has not established a services-place association at all for the reasons discussed in Section I, and certainly has not established a heightened services-place association in the present case that would be necessary to meet the *In re Halles* test. No facts have been presented indicating that consumers are likely to believe and expect that the beef in Applicant’s COLORADO STEAKHOUSE restaurants comes from Colorado, when in fact the beef does not come from Colorado. As such, the Examining Attorney has failed to establish a strong services-place association as required by the Court in *In re California Innovations* and *In re Halles*.

Absent such a showing, the only way for the Examining Attorney to meet the third prong of the *In re Halles* test is to seek and present “direct evidence of materiality,” i.e., direct evidence that the consumer’s belief that the beef comes from Colorado is material to his or her decision to purchase restaurant services from Applicant. In this case, there has been presented no direct evidence to establish such materiality. Because the evidence of record in this case fails on both accounts, as no facts were presented to prove a strong services-place association, and no facts were presented to prove that a misrepresentation was a material factor in the consumer’s choice of restaurants, Applicant submits that it is improper for the Examining Attorney to refuse registration of

this mark under section 2(e)(3). The Board is therefore respectfully urged to overturn the decision of the Examining Attorney.

III. THE REFUSAL TO REGISTER IS IMPROPER BECAUSE THE CONSUMING PUBLIC IS NOT DECEIVED BY THE TERM "COLORADO" IN APPLICANT'S MARK, BUT RATHER ACCURATELY UNDERSTAND THAT CERTAIN COMPONENTS OF APPLICANT'S SERVICES IDENTIFIED BY THE MARK, NAMELY, THEME, STYLE AND CONCEPT OF THE SERVICES, DO ORIGINATE IN COLORADO

The court in *In re Les Halles* made it clear that the standard for determining the origin of goods is different than the standard for determining the origin of services, particularly restaurant services. ("Having chosen to come to that place for services, the customer is well aware of the geographic location of the service. This choice necessarily implies that the customer is less likely to associate the services with the geographic location invoked by the mark rather than the geographic location of the service, such as a restaurant.") Goods must naturally occur, or be manufactured, in a particular place, and customers expect that a geographic trademark used to identify goods is closely associated with the location or origin of those goods, such as Maine lobsters or Wisconsin cheese. Restaurant services, on the other hand, are not so simply categorized. Indeed the Court in *In re Halles* stated that, if a geographical term in a mark used in connection with restaurant services merely "conjures up memories or images" of the geographical area, no services-place association has been shown because: "This scant association falls far short of showing a material services-place association." *Id.* at 1542.

As recognized in prior opinions cited in the record of this case, the "origin" of restaurant services can be considered to involve a variety of elements. For example, the origin of restaurant services includes the source of food, the origin of the recipes, the

origin of the restaurant concept, the place where the fixtures and decorations were made, the place where the staff lived or was trained, and/or the location of the company headquarters. It is unrealistic to expect that a mark would be registrable only if each and every category of items that comprises restaurant services originated in the geographic location appearing in the mark, in this case Colorado, but if every element need not come from Colorado, which ones must, and how many are sufficient? Under the Examining Attorney's reasoning in earlier Office Actions, a chain of 1000 national restaurants with only one restaurant in the State of Colorado would pass this test for registrability, as would a restaurant chain that had its corporate headquarters in Colorado, but no restaurants in that state. Applicant submits that the true test is whether the components originating from the identified location, if any, are the same components that consumers believe to originate from the identified location. If not, it is then pertinent whether the divergence between reality and customer expectation is a material factor in the customer's decision to purchase Applicant's services.

The Court in *In re Halles* states that: "a mark only invokes the prohibitions of section 2(e)(3) by deceiving the public with a geographic misdescription." *Id.* at 1541. Consumers, upon seeing a geographical term in a mark used in connection with restaurant services, would not typically assume that the food comes from the identified location, but rather that the restaurant has a style that the consumer would associate with his or her perceptions of the identified location. Consumers ascribe meaning to geographical names for restaurants based on their perceptions of what they believe a restaurant in the geographically-named location would be like. The atmosphere, style of cooking, and decorations all form a part of this perception. 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 sufficient that the restaurant's ambience and food 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.

In view of the above, Applicant submits that consumers of its services are not deceived in any way by the presence of the term "COLORADO" in its mark. In the present case, the style of cooking, the atmosphere, the concept, and at least some of the fixtures and decorations come from or originate in Colorado, and this is consistent with what consumers would expect. Applicant therefore submits that its mark cannot properly be found to be geographically deceptively misdescriptive under section 2(e)(3).

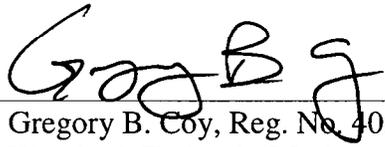
CONCLUSION

For all of the above reasons, Applicant submits that the Examining Attorney's refusal to register the mark COLORADO STEAKHOUSE and Design under 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.

January 16, 2004

Respectfully submitted,

By: 
Gregory B. Coy, Reg. No. 40,967
Woodard, Emhardt, Moriarty,
McNett & Henry LLP
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317)634-3456



Cattle

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Released July 18, 2003, by the National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture. For information on "Cattle" call Steve Anderson at 202-720-3040, office hours 7:30 a.m. to 4:00 p.m. ET.

July 1 Cattle Inventory Down 1 Percent

All cattle and calves in the United States as of July 1, 2003, totaled 103.9 million head, 1 percent below the 105.1 million on July 1, 2002 and 2 percent below the 105.8 million two years ago.

All cows and heifers that have calved, at 42.7 million, were slightly below the 42.9 million on July 1, 2002 and 1 percent below the 43.0 million two years ago.

- **Beef cows**, at 33.6 million, were down slightly from July 1, 2002 and 1 percent below two years ago.
- **Milk cows**, at 9.1 million, were down 1 percent from July 1, 2002 but were unchanged from two years ago.

Other class estimates on July 1, 2003 and the changes from July 1, 2002, are as follows:

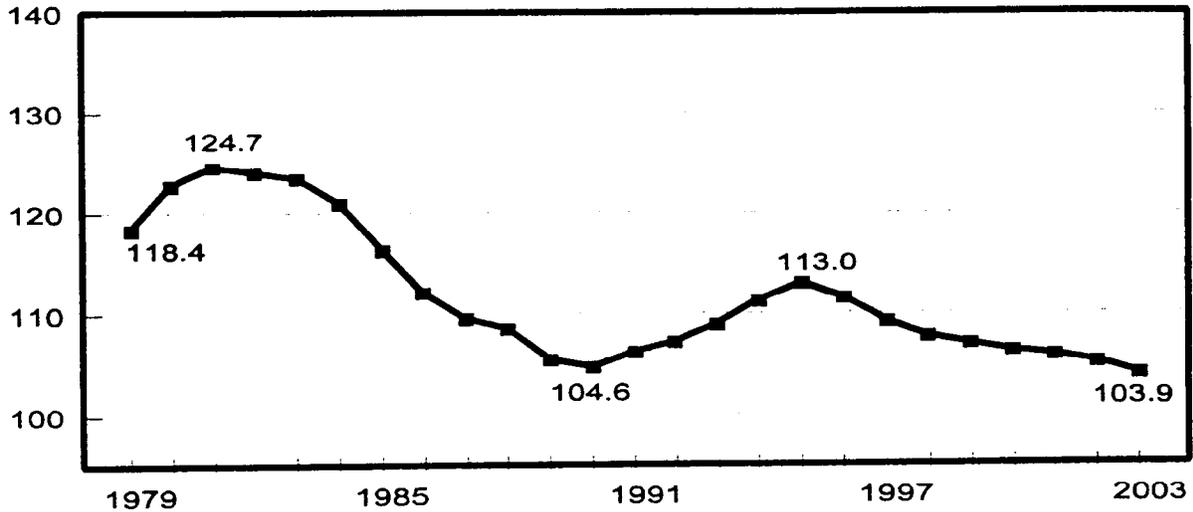
- **All heifers 500 pounds and over**, 15.9 million, down 2 percent.
- **Beef replacement heifers**, 4.6 million, unchanged.
- **Milk replacement heifers**, 3.6 million, down 3 percent.
- **Other heifers**, 7.7 million, down 3 percent.
- **Steers weighing 500 pounds and over**, 14.2 million, down 2 percent.
- **Bulls weighing 500 pounds and over**, 2.1 million, unchanged.
- **Calves under 500 pounds**, 29.0 million, down 1 percent.
- **All cattle and calves on feed for slaughter**, 11.7 million, down 6 percent.

Calf Crop Down 1 Percent

The 2003 calf crop is expected to be 38.0 million, down 1 percent from 2002 and down 1 percent from 2001. Calves born during the first half of the year are estimated at 27.7 million, down 1 percent from 2002 and down 1 percent from 2001.

United States Cattle Inventory July 1, 1979 - 2003

Million Head



This report was approved on July 18, 2003.

Acting Secretary of
Agriculture
Keith J. Collins

Agricultural Statistics Board
Chairperson
Rich Allen

**Cattle and Calves: Number by Class and Calf Crop,
United States, July 1, 2001-2003**

Class	2001	2002	2003	2003 as % of 2002
	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>
Cattle and Calves	105,800	105,100	103,900	99
Cows and Heifers That Have Calved	43,000	42,900	42,700	100
Beef Cows	33,900	33,750	33,600	100
Milk Cows	9,100	9,150	9,100	99
Heifers 500 Pounds and Over	16,400	16,200	15,900	98
For Beef Cow Replacement	4,600	4,600	4,600	100
For Milk Cow Replacement	3,600	3,700	3,600	97
Other Heifers	8,200	7,900	7,700	97
Steers 500 Pounds and Over	14,600	14,500	14,200	98
Bulls 500 Pounds and Over	2,100	2,100	2,100	100
Calves Under 500 Pounds	29,700	29,400	29,000	99
Calf Crop	38,280	38,193	38,000	99
Cattle on Feed	13,000	12,400	11,700	94

**Calf Crop: Number and Percent of Total by Six-Month Period,
United States, 2001-2002 and Preliminary Calf Crop, 2003**

Period	2001		2002		2003	
	Number	% of Total	Number	% of Total	Number	% of Total
	<i>1,000 Hd</i>	<i>Percent</i>	<i>1,000 Hd</i>	<i>Percent</i>	<i>1,000 Hd</i>	<i>Percent</i>
Jan 1 - Jun 30	28,100	73.4	27,900	73.0	27,700	72.9
Jul 1 - Dec 31	10,180	26.6	10,293	27.0	10,300	27.1
Total	38,280	100.0	38,193	100.0	38,000	100.0

**Cattle and Calves: Balance Sheet, United States,
January 1 - June 30, 2001-2003 ¹**

Item	2001	2002	2003
	<i>Million Head</i>	<i>Million Head</i>	<i>Million Head</i>
January 1 Inventory	97.3	96.7	96.1
Calf Crop and Imports	29.4	29.1	28.6
Total Supply ²	126.7	125.8	124.7
Slaughter	18.1	18.1	18.4
Deaths and Exports	2.7	2.5	2.5
Total Disappearance ²	20.8	20.7	20.9
Residual ²	-0.1	0.0	0.1
July 1 Inventory	105.8	105.1	103.9

¹ Preliminary.

² Totals may not add due to rounding.

**Cattle and Calves: Number by Class, State, and United States,
July 1, 2002-2003**

State	All Cattle and Calves			All Cows That Have Calved		
	2002	2003	2003 as % of 2002	2002	2003	2003 as % of 2002
	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>
CA	5,200	5,150	99	2,400	2,390	100
CO	3,050	2,750	90	880	810	92
IA	4,000	3,900	98	1,240	1,240	100
KS	6,550	6,600	101	1,650	1,670	101
MO	4,650	4,600	99	2,180	2,150	99
MT	3,350	3,400	101	1,480	1,500	101
NE	7,050	6,600	94	2,030	1,950	96
OK	5,600	5,600	100	2,100	2,100	100
SD	5,000	4,850	97	2,020	1,980	98
TX	15,000	15,500	103	6,100	6,200	102
WI	3,550	3,550	100	1,510	1,510	100
Oth Sts	42,100	41,400	98	19,310	19,200	99
US	105,100	103,900	99	42,900	42,700	100
	Beef Cows That Have Calved			Milk Cows That Have Calved		
	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>
CA	750	700	93	1,650	1,690	102
CO	776	710	91	104	100	96
IA	1,030	1,040	101	210	200	95
KS	1,547	1,568	101	103	102	99
MO	2,043	2,020	99	137	130	95
MT	1,462	1,482	101	18	18	100
NE	1,963	1,886	96	67	64	96
OK	2,012	2,014	100	88	86	98
SD	1,923	1,890	98	97	90	93
TX	5,795	5,888	102	305	312	102
WI	245	255	104	1,265	1,255	99
Oth Sts	14,204	14,147	100	5,106	5,053	99
US	33,750	33,600	100	9,150	9,100	99

Calf Crop: Number by State and United States, 2002-2003

State	2002	2003 ¹	2003 as % 2002
	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Percent</i>
CA	2,040	2,030	100
CO	820	740	90
IA	1,110	1,120	101
KS	1,510	1,520	101
MO	2,090	2,100	100
MT	1,490	1,500	101
NE	1,820	1,760	97
OK	1,930	2,000	104
SD	1,840	1,760	96
TX	5,000	5,200	104
WI	1,350	1,350	100
Oth Sts	17,193	16,920	98
US	38,193	38,000	99

¹ Preliminary.

Reliability of July 1 Cattle and Calves Estimates

Survey Procedures: A random sample of U.S. producers was surveyed to provide data for these estimates. Survey procedures ensured that all cattle producers, regardless of size, had a chance to be included in the survey. Data were collected during the first half of June from about 40,000 small and medium sized operations. These operators were contacted by face-to-face personal interviews. About 9,700 large producers and feedlots were contacted during the first half of July by mail, telephone, and face-to-face personal interviews. Operators were asked to report inventories as of the first of the month and calf crop for the entire year of 2003.

Estimating Procedures: These cattle estimates were prepared by the Agricultural Statistics Board after reviewing National and State indications and analysis. National and State survey data were reviewed for reasonableness with each other and with estimates from the previous year using a balance sheet. The balance sheet begins with the previous inventory estimate, adds to it estimates of births and imports for the first six months, and subtracts estimates of slaughter, exports, and deaths for the first six months of the current year. This indicated ending inventory level is compared to the Agricultural Statistics Board estimate for reasonableness.

Revision Policy: Revisions to previous estimates are made to improve year to year and item to item relationships. Estimates for the previous year are subject to revision when current estimates are made and when the January 1 cattle inventory estimates are made. The reviews are primarily based on livestock slaughter and additional foreign trade and survey data. Estimates will also be reviewed after data from the five-year Census of Agriculture are available. No revisions will be made after that date.

Reliability: Since all cattle operators are not included in the sample, survey estimates are subject to sampling variability. Survey results are also subject to non-sampling errors such as omissions, duplications, and mistakes in reporting, recording, and processing the data. The effects of these errors cannot be measured directly. They are minimized through rigid quality controls in the data collection process and through a careful review of all reported data for consistency and reasonableness.

To assist users in evaluating the reliability of estimates in this report, the "**Root Mean Square Error**" is shown for selected items in the following table. The "**Root Mean Square Error**" is a statistical measure based on past performance and is computed using the differences between first and latest estimates. The "**Root Mean Square Error**" for cattle inventory estimates over the past 20 years is 0.5 percent. This means that chances are 2 out of 3 that the final estimate will not be above or below the current estimate of 103.9 million head by more than 0.5 percent. Chances are 9 out of 10 that the difference will not exceed 0.9 percent.

The table below also shows a 20 year record of the range of differences between first and latest estimates for selected items. Using estimates of all cattle and calves as an example, changes between the first inventory estimate and the latest estimate during the past 20 years have averaged 397,000 head, ranging from 0 to 1,300,000 head. During this period the initial inventory estimate has been below the latest estimate 4 times, above the latest estimate 11 times, and unchanged 5 times. This does not imply that the July 1 estimate is likely to understate or overstate final inventory.

Reliability of July 1 Cattle Estimates ^{1 2}

Item	Root Mean Square Error	90 Percent Confidence Level		Difference Between First and Latest Estimates			Number of Years	
		Percent	Head	Average	Smallest	Largest	First Above Latest	First Below Latest
	<i>Percent</i>	<i>Percent</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>1,000 Head</i>	<i>Number</i>	<i>Number</i>
All Cattle	0.5	0.9	944	397	0	1,300	11	4
All Cows	0.9	1.5	630	217	0	1,100	8	5
Calf Crop	1.6	2.8	1,077	537	23	1,236	14	6

¹ Based on data from July 1983 through July 2002.

² Data in the above table do not reflect the 1-3 percent changes made during the 1989-93 historic revision period. The root mean square error's would be about 1 percentage point higher if these were included.

The next "Cattle" report will be released at 3 p.m. ET on January 30, 2004.

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