

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

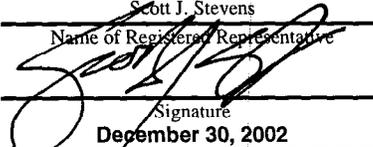
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U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

December 30, 2002

APPLICANT'S APPEAL 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	
December 30, 2002	
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Scott J. Stevens	
Name of Registered Representative	
	
Signature	
December 30, 2002	
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 to register the mark COLORADO STEAKHOUSE and Design under Section 2(e)(3) of the Trademark Act. The refusal was made on the grounds that Applicant's mark is geographically deceptively misdescriptive of the identified services. Applicant maintains its belief that the above-identified mark is entitled to registration, and submits this 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 that components of the services do originate in Colorado, and that the Examining Attorney had not established that there was a services/place association with the mark. The Examining Attorney continued the refusal and submitted articles from the internet that referenced Colorado as being known for its beef. Applicant responded by arguing that the term "origin of restaurant services" required more than a mere demonstration that the location given in the name was known for the type of food suggested by the name, and that origin of services required more detailed analysis than was given by the Examining Attorney. 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 "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 its origin 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.

ARGUMENT

THE REFUSAL TO REGISTER UNDER SECTION 2(e)(3) OF THE TRADEMARK ACT IS IMPROPER BECAUSE SERVICES IDENTIFIED BY THE MARK DO ORIGINATE IN COLORADO AND BECAUSE THE MARK IS NOT DECEPTIVE

Applicant submits that the standard for determining the origin of goods is fundamentally different than the standard for determining the origin of services, particularly restaurant services. Goods must naturally occur, or be manufactured, in a particular place, and customers expect that a geographic trademark used to identify goods is 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. As recognized in prior opinions cited in the record of this case, the "origin" of restaurant services involves 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, 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 not every element need come from Colorado, which ones must, and how many are sufficient? Under the Examining Attorney's reasoning, a chain of 1000 national restaurants with only one restaurant in the State of Colorado would pass the test for registrability, as would a restaurant chain that had its corporate headquarters in Colorado, but no restaurants in that state. This reasoning runs totally counter to the way in which the general consumer views a restaurant.

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 trademark CHINA BOWL is registered for restaurant services (U.S. Reg. No. 2,435,358, a copy of the registration information as downloaded by the undersigned attorney for Applicant from the USPTO's TESS website being attached). It would not be realistic to expect that customers believe that the food prepared in that restaurant in the United States was imported from China, or that the fixtures or building materials came from China, or that a restaurant of the same name first started in China. The name evokes the ambience of what the customer believes a restaurant in China would be like, or what food served in China would be like. The great majority of customers who visit the CHINA BOWL restaurant have never been to China, or will never go to China, yet they have certain notions of what they believe Chinese restaurant should be like. The term "CHINA" in the name of the restaurant indicates to consumers that these types of features can be expected to be found there. By the same token, a restaurant by the name COLORADO STEAKHOUSE evokes a certain perception of a particular ambience in the mind of consumers. Just as it would be unreasonable to expect that food for a Chinese restaurant in Nebraska would come from China, it is unreasonable to expect that food in a COLORADO STEAKHOUSE is shipped from Colorado to every location in the United States where such a restaurant would be located. The cost of shipping and the general availability of food throughout the country suggests that this analysis is flawed. Although it might be reasonable to expect that a COLORADO STEAKHOUSE in Wyoming might get its beef from Colorado, it is not realistic to expect that a COLORADO STEAKHOUSE in Texas, where huge quantities of beef are raised, would incur the shipping expense of bringing in beef from Colorado when large quantities of beef are available locally. The narrow view of what constitutes restaurant services as argued by the Examining Attorney does not make sense when evaluating each of the elements that actually make up the services offered by a restaurant. Applicant submits

that if the style and atmosphere of a geographically-named restaurant meets the expectations of consumers' beliefs concerning that geographic location, then the name is not geographically deceptively misdescriptive.

The burden is on the Examining Attorney to establish that the proposed mark is geographically deceptively misdescriptive. The Examining Attorney has never stated what elements of a restaurant must come from, or originate in, the geographic location appearing in the name, other than the food. This analysis appears to break down, as described above, when either the location in which the restaurant is located is at least as well known for the type of food as is the location appearing in the name, or the place of the restaurant is so distant from the geographic name as to make it unreasonable to assume that food would be shipped that far. In the present application, the style of cooking, the atmosphere, the concept, and at least some of the fixtures and decorations come from or originate in Colorado. Applicant believes that this is sufficient to show that its restaurant services originate in Colorado, and the Examining Attorney has not stated exactly what or how many factors must be present to qualify for registration. Absent a listing of factors, and proof that the factors named are the only, or the most important, factors relied upon by consumers in evaluating the nature of restaurant services, Applicant believes that the Examining Attorney has not met the burden of proof required of the USPTO is denying registration to Applicant.

The Examining Attorney has stated that there is no evidence that there is a Colorado-style of cooking, but yet he presents evidence that Colorado is known for its beef. Applicant submits that a region or state that is known for beef and steaks certainly suggests a style of cooking, i.e., the manner in which steaks are normally prepared.

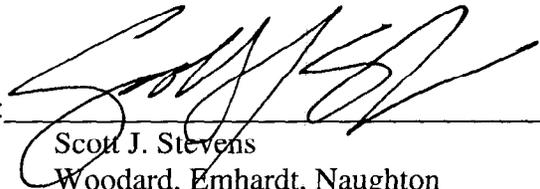
CONCLUSION

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.

December 30, 2002

Respectfully Submitted

By: _____



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UNITED STATES PATENT AND TRADEMARK OFFICE

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Typed Drawing

Word Mark	CHINA BOWL
Goods and Services	IC 042. US 100 101. G & S: Restaurant Services. FIRST USE: 19980620. FIRST USE IN COMMERCE: 19980620
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76023109
Filing Date	April 11, 2000
Published for Opposition	December 19, 2000
Registration Number	2435358
Registration Date	March 13, 2001
Owner	(REGISTRANT) Tran Family Corporation CORPORATION TENNESSEE 7620 Highway 70 South #176 Nashville. TENNESSEE 37221
Attorney of Record	John P. Williams
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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