

TTAB

GARDERE

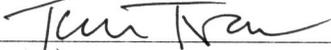
Kay Lyn Schwartz
Writer's Direct Dial: 214-999-4702
Direct Fax: 214-999-3702
E-mail: kschwartz@gardere.com

VIA FIRST CLASS MAIL

December 28, 2015

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, Virginia 22313-1451

Re: Texas Health Resources
Mark: NORTH TEXAS COMMUNITY HEALTHCARE COALITION
Serial No.: 76/716800
Our File No.: 067393-3087

Certificate of Mailing	
I hereby certify that this document is being deposited with Federal Express in an envelope addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, Madison East, Concourse Level Room C 55, Alexandria, VA 22313-1451 on December 28, 2015.	
Thomas Tran	_____
(Name of Person Mailing Document)	
	_____
(Signature)	

Dear Sir:

Enclosed for filing with the Patent and Trademark Office Trademark Trial and Appeal Board, please find the following:

1. Notice of Appeal;
2. Copy of Request for Reconsideration after Final Action filed with the Trademark Office;
3. Return Postcard; and
4. Credit Card Authorization Form in the amount of \$200

The Commissioner is hereby authorized to charge any additional fees which may be required by this paper to Deposit Account 070153.

Respectfully submitted,


Kay Lyn Schwartz
LRH: max
Enclosures

7426520v.1



01-04-2016

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

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

In re Application of: Texas Health Resources
Serial Number: 76/716800
Filing Date: August 22, 2014
Mark: NORTH TEXAS COMMUNITY HEALTHCARE COALITION
Classes: 35 and 44
Examining Attorney: Robert J. Struck
Trademark Examining Attorney
Law Office: 109
571-272-1513

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
Madison East, Concourse Level Room C 55
600 Dulany Street
Alexandria, Virginia 22313-1451

Certificate of Mailing
I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, Madison East, Concourse Level Room C55, 600 Dulany Street, Alexandria, VA 22313-1451 on December 28, 2015.
Thomas Tran
(Name of Person Mailing Document)

NOTICE OF APPEAL

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney dated June 25, 2015, refusing registration. A Request for Reconsideration after Final Action was also filed on today's date, December 28, 2015 with the Trademark Office. Applicant requests suspension of the appeal pending reconsideration of the response filed to the Final Office Action.

A credit card authorization form in the amount of \$200.00 is attached hereto for payment of the appeal fee. It is believed that no additional fee is due. If this is incorrect, the Commissioner is hereby authorized to charge any fees which may be required by this paper to Deposit Account No. 07-0153.

Respectfully submitted,

GARDERE WYNNE SEWELL LLP


Kay Lynn Schwartz

Date: 12/28/15

3000 Thanksgiving Square
1601 Elm Street
Dallas, Texas 75201
(214) 999-4702 (Office)
(214) 999-3702 (Facsimile)

01 FC:6403

00000001 76716800

200.00 0P



01-04-2016

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76716800
LAW OFFICE ASSIGNED	LAW OFFICE 109
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/76716800/large
LITERAL ELEMENT	NORTH TEXAS COMMUNITY HEALTHCARE COALITION
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	

RESPONSE TO FINAL OFFICE ACTION

Applicant has carefully reviewed the issue raised by the Examiner in the Final Office Action issued on June 25, 2015 and believes the objection by the Examiner is resolved by the arguments and analysis set forth below, making the application in condition for acceptance. Below are Applicant's arguments in response to the Geographically Descriptive refusal asserted by the Examiner.

Geographically Descriptive Refusal

The Examining attorney has refused registration of Applicant's mark NORTH TEXAS COMMUNITY HEALTHCARE COALITION under § 2(e)(2) of the Lanham Act, on the ground that "the mark is primarily geographically descriptive of the applicant's services." Reconsideration of this refusal is earnestly requested.

The Lanham Act provides in relevant part that no trademark shall be refused registration on the Principal Register on the account of its nature *unless* it is *primarily* geographically descriptive. 15

Input Field

Entered

U.S.C. § 1052(e)(2). Pursuant to the plain language of the statute, the burden is on the Patent and Trademark Office to prove that the mark is primarily geographically descriptive.

The Standard Test

The three-prong test used by the TTAB to determine whether a mark is geographically descriptive, may be summarized as:

1. the primary significance of the mark is that of the name of a place generally known to the public;
2. that the public would make a goods/place or services/place association, that is, believe that the goods or services for which the mark is sought to be registered originate in that place;
3. the goods or services come from the place named by or in the mark.

See *In re JT Tobacconists* 59 USPQ2d 1080 (2001). However, the Examiner has failed to demonstrate how Applicant's mark and the services with which it is associated, meet this test. Below is a discussion of how this mark fails the test.

According to the first prong of the test, the mark must contain the name of a place and this place is known generally to the public. The Examiner has submitted evidence of news reports referring to North Texas. One can make an assumption about where the geographical location of "NORTH TEXAS" is, but the fact is that most people describe much of the northern portion of the state of Texas as "North Texas". However, residents of Dallas and Fort Worth generally refer to "North Texas" as the area east of Abilene, south of Oklahoma and north of Waco. Therefore, the general public may have a general idea of where "North Texas" is, but the definition varies based on who is making the reference. Accordingly, the general public, expanding to everyone who may encounter the mark, will not have knowledge of exactly what is meant by "North Texas." This means that the first prong of the test fails, as North Texas may be considered a geographical location, but the exact area referred to by a consumer, will vary. Secondly, the Examiner has failed to show that North Texas is well known for healthcare services. This is where that mark fails to meet the second prong of the test.

According to the second prong of the test, in order for a mark to be considered geographically descriptive, the public would have to make a goods/place association. In other words, the consumer would have to believe that Applicant's services relating to a coalition of health services providers, or advocacy services to promote healthcare awareness, or

Input Field

Entered

healthcare services originates in North Texas and that consumers associate Texas with healthcare services. Here, the Examiner has defined the terms HEALTHCARE, COALITION, and COMMUNITY, but there is no evidence that consumers would believe that Texas is generally known for a coalition of health services providers, or advocacy services to promote healthcare awareness, or providing healthcare services. Texas is certainly known for its Dallas Cowboys professional football team and the Dallas Mavericks professional basketball team, but it is not widely known for a coalition of health services providers, or advocacy services to promote healthcare awareness, or providing healthcare, especially healthcare originating from North Texas. Clearly, there is no goods/place association. Hence, the mark fails to meet the second portion of the test.

The third prong of the test is that the services are actually provided in the place named in the mark. This prong of the test is met.

In order for Applicant's mark to be found to be geographically descriptive, it is not sufficient for the Examiner to establish simply that the mark is the name of a place generally known by the public.... the Examiner must also establish that the public associates the goods or services with the place which the mark names. See *In re Jacques Bernier Inc.*, 894 F.2d 389, 13 USPQ2d 1725, 1726 (Fed. Cir. 1990). Accordingly, simply satisfying the third prong of the test does not make a mark primarily geographically descriptive.

Based on the foregoing and the fact that the first and second prongs of the test are not met, Applicant asserts that the mark is not primarily geographically descriptive and requests that this ground for refusal be withdrawn.

Further support can be found in *In re Trans Continental Records, Inc.*, 62 USPQ 2d 1541, (TTAB 2002) ("O-TOWN' is not geographically descriptive of entertainment services originating in Orlando, Florida: it is a "relatively obscure geographic reference to Orlando." These cases are analogous to the instant case in that North Texas is not geographically descriptive of "healthcare services" because it is not associated with "healthcare services." If buyers don't really care whether the goods come from the place named then this is evidence that the mark is being used in an arbitrary sense. MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, © 2004 WEST, A THOMSON COMPANY, § 14:7. Here, an ill person would not care whether the

Input Field

Entered

treatment he is receiving comes from North Texas. Therefore, the mark is being used in an arbitrary sense.

The Restatement (Third) of Unfair Competition §14, comment d (1995) states that the issue in determining whether a particular designation is likely to be perceived by consumers as geographically descriptive, is whether a significant number of prospective purchasers are likely to understand the term as descriptive of geographic origin or location. In response to this question with regard to the present case, one would answer no because North Texas is not known for healthcare services. Thus, the designation NORTH TEXAS COMMUNITY HEALTHCARE COALITION cannot be deemed primarily geographically descriptive.

Conclusion

Applicant contends that its mark is not primarily geographically descriptive and respectfully submits that the Application is in condition for allowance and publication for registration on the Principal Register. It is believed that all issues outlined by the Examiner regarding registrability have been addressed.

SIGNATURE SECTION

RESPONSE SIGNATURE	/Lisa R. Hemphill/
SIGNATORY'S NAME	Lisa R. Hemphill
SIGNATORY'S POSITION	Attorney of Record, Texas Bar Member
SIGNATORY'S PHONE NUMBER	214.999.4682
DATE SIGNED	12/28/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO

Your Request for Reconsideration after Final Action Was Submitted Successfully

Success! [View/Save E-Receipt as PDF file](#)

We have received your form for serial number 76716800. You can open and save a PDF version of the filing receipt by clicking on the button, above, and this will serve as your official confirmation copy. We will also separately send an e-mail summary of the form to "ip@gardere.com,kschwartz@gardere.com,lhemphill@gardere.com". For electronically submitted forms, the USPTO will not mail an additional paper confirmation.

NOTE: Do **NOT** send a duplicate paper copy of this filing to the USPTO, as it will interfere with the proper processing of the electronic submission.

Thank you.

TEAS Support Team

STAMP: USPTO/RFR-66.28.98.10-20151228170940978525-76716800-550e1be785c8b966b5dbe106c8f3935adc1951695c55616358a9419f5b3e158bcca-N/A-N/A-20151228165138235332



Trademark Electronic Application System (TEAS) service
U.S. Patent and Trademark Office
Please refer questions or comments to: teas@USPTO.gov