

THIS OPINION IS NOT
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OF THE TTAB

Mailed: March 21, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re California Green Clean Development Company, LLC

Serial No. 77342688

California Green Clean Development Company, LLC through
Angela D. Arthur, its Managing Member.

Daniel Capshaw, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Holtzman, Bergsman and Wolfson,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

California Green Clean Development Company, LLC
("applicant"), through its predecessor-in-interest, filed an
intent-to-use application to register the mark CALIFORNIA GREEN
CLEAN, in standard character form, for "janitorial services;
maid services," in Class 37.

The trademark examining attorney refused registration under
Section 2(e)(2) of the Trademark Act of 1946, 15 U.S.C.
§1052(e)(2), on the ground that applicant's mark CALIFORNIA

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GREEN CLEAN, as applied to the services in the application, is primarily geographically descriptive.

Applicant filed its appeal brief on July 30, 2010. The examining attorney filed his brief on September 23, 2010 and, therefore, applicant's reply brief was due on October 13, 2010. Trademark Rule 2.142(b)(1) (applicant's reply brief is due 20 days after the mailing date of the examining attorney's brief). Applicant filed its reply brief on December 23, 2010. Applicant's reply brief is untimely and we will not consider it.¹ Applicant is advised, however, that the Board renders its decisions based on the evidence of record. The brief is merely an opportunity for applicant to present in a systematic and coherent manner a discussion of the facts in light of the law.

In its brief, applicant for the first time sought to amend, in the alternative, its application to the Supplemental Register. Applicant requested that if its mark is found to be primarily geographically descriptive, that it be allowed to amend its application to the Supplemental Register. In his brief, the examining attorney pointed out that "as stated in the 5-19-09 office action, the application is not eligible for registration on the Supplemental Register as it is based on

¹ We note that on November 1, 2010, applicant filed a request to suspend the appeal and remand to consider additional evidence. In an order dated December 10, 2010, the Board denied the request to suspend and remand.

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Section 1(b), intent to use, and no allegation of use has been filed. Thus, such an amendment is unacceptable because the proposed mark is not in use in commerce, as required by Trademark Act Section 23."² On October 4, 2010, applicant filed an Amendment to Allege Use. Despite filing an amendment to allege use, applicant's amendment, in the alternative, to the Supplemental Register is not timely. The examining attorney issued a final refusal to register the mark on the ground that it is primarily geographically descriptive under Section 2(e)(2) of the Trademark Act. Applicant appealed that ground of refusal, and that ground only. To seek an amendment, in the alternative, to the Supplemental Register after filing the notice of appeal, applicant was required to file an Amendment to Allege Use and a request to suspend the appeal and remand the application for further examination pursuant to Trademark Rule 2.142(d). This should have been done prior to filing applicant's brief.

Finally, we wish to acknowledge the organized manner in which the examining attorney made his evidence of record. Although he submitted voluminous materials from many different sources, he organized the evidence regarding the different points into separate groups, and he referred to the particular attachments in connection with arguments he made in his brief.

² Examining Attorney's Brief, unnumbered page 22.

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Particularly, the examining attorney identified and summarized the most pertinent evidence in his brief, and we commend the clear and concise manner in which he did this.

In order for a mark to be primarily geographically descriptive under Section 2(e)(2), it must be shown that (1) the mark's primary significance is a generally known geographic location; and (2) that the relevant public would be likely to make a services/place association, that is, the public would likely believe that the services originate in the place named in the mark. See *In re Nantucket*, 677 F.2d 95, 213 USPQ 889, 891-892 (CCPA 1982); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080, 1081-1082 (TTAB 2001); *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988). Provided these conditions are met and the services originate from the place named by or in the mark, the mark is primarily geographically descriptive.

Moreover, where there is no genuine issue that the geographical significance of a term is its primary significance, and where the geographical place named by the term is neither obscure nor remote, a public association of the goods or services with the place may ordinarily be presumed from the fact that the applicant's goods or services come from the geographical place named by or in the mark. See, e.g., *In re JT Tobacconists*,

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59 USPQ2d at 1082; *In re Carolina Apparel*, 48 USPQ2d 1542, 1543 (TTAB 1998); *In re California Pizza Kitchen Inc.*, 10 USPQ2d at 1705; and *In re Handler Fenton Westerns, Inc.*, 214 USPQ2d 848, 850 (TTAB 1982). In addition, the presence of generic or highly descriptive terms in a mark which also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole. See, e.g., *In re JT Tobacconists*, 59 USPQ2d at 1082; *In re Carolina Apparel*, 48 USPQ2d at 1543; *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1662 (TTAB 1986); and *In re BankAmerica Corp.*, 231 USPQ 873, 875 (TTAB 1986).

In its brief, applicant conceded that "California" is a geographical term and that its "headquarters and sole current business location are in California." However, applicant contends that as used in connection with janitorial and maid services, the mark CALIFORNIA GREEN CLEAN is a unitary term composed of the distinctive word "California" and suggestive term "Green Clean," and, therefore, the mark in its entirety is suggestive.

We affirm the refusal for the reasons discussed below.

Evidence

The examining attorney submitted the evidence set forth below to show that the term "green clean" is

descriptive when used in connection with janitorial and maid services.

1. Excerpts from applicant's website displaying the term "Green Clean" used descriptively.³ For example,

a. On its home page, applicant writes the following:

Many thanks to the Sacramento Natural Food Coop for hosting a class on Green Cleaning on April 18th. Angela, owner of California Green Clean, was thrilled that so many folks attended to learn about the importance of GREEN cleaning.

In describing the services, applicant writes that "Our system, combined with a staff of cleaning professionals that are well trained in how to effectively green clean, ensures that your home is cleaned in a superior manner."

b. On the "Why Clean Green" webpage, applicant writes "Why Clean Green? Safety, Safety, Safety!"

c. On the "California Green Clean Difference" webpage, applicant writes "our housekeepers enter training where they learn the methods, products, and principles of green cleaning."

2. Thirty news articles retrieved from the LexisNexis database referencing the term "Green Clean" in connection with janitorial or maid services.⁴ Excerpts from representative news articles are set forth below (emphasis added).

³ May 19, 2009 Office Action.

⁴ *Id.*

a. *The Arizona Republic* (November 5, 2008)

Daughter listened, now runs custodial firm

* * *

Green cleaning tips

Green cleaning is defined as cleaning while protecting health without harming the environment. In the commercial-cleaning industry, it includes everything from cleaning equipment and restroom supplies to cleaning methods. Here are five key areas you can "**green clean**" at your home or office.

b. *Bangor Daily News* (August 7, 2008)

Local cleaning service offers green alternative

A local maid service is offering its clients a way to go green while they clean. Maine Maid to Clean owner Julie Watkins has added a **green cleaning** service to her Frankfort-based business, which serves more than a dozen towns in Waldo, Penobscot and Hancock counties.

* * *

There is no price difference for the **green clean** service, she said. If they want, customers can combine the **green clean** method with traditional cleaning products.

c. *The Oklahoman* (March 19, 2009)

Area Cleaning Businesses Embrace 'Green' Methods

For an all-over clean, Maid Brigade in Tulsa can do a once-a-year spring cleaning to keep the dust bunnies away from your home on a regular basis.

Bobbie Haddock, owner of the Tulsa branch of the national franchise, said the company uses microfiber cloths instead of paper towels and Green Seal Certified cleaning products instead of products that contain bleach.

Most customers don't seek out Maid Brigade for a **green clean**, but it has been good for return business, she said.

* * *

Do-it-yourselfers can find a variety of **green cleaners** in retail stores, including at Home Depot and Walmart.

d. *Florida Today* (November 2, 2008)

Business Newsmakers

Fox Janitorial earns green certification
Janice Fox, owner of Fox Janitorial Services of Melbourne, has completed extensive training in **green clean** principals of the Green Clean Institute and is certified regarding building maintenance. The certification indicates the janitorial firm's ability to deliver **Green Clean** services to its customers.

3. Numerous excerpts from websites using the term "green clean" to describe environmentally friendly cleaning products and services.⁵ The websites described below are representative.

⁵ *Id.* and December 16, 2009 Office Action

- a. *Consumer Reports Health Blog* (consumereports.org) (March 5, 2009) presents an article entitled "7 ways to green clean - and cut costs."
- b. Amy Roffman New, "Green Clean Your Home" from *Natural Health* (September/October, 1994) reprinted in the *NaturoDoc* website (naturodoc.com). The author advises that "[t]he best solution is to make your own 'green' cleaning kit" with easily available ingredients.
- c. The Maid Brigade website (maidbrigade.com). This company provides "green cleaning" services.

Green Cleaning Standards

Maid Brigade's Green Clean Certified® cleaning system is the only house cleaning system that uses green cleaning solutions certified by Green Seal for a safe, yet thorough cleaning.

* * *

We've developed our Green Clean Certified system to respond to the growing evidence that traditional cleaning methods do not promote a healthy home or a healthy environment. Because there is currently no third party recognized green cleaning standard Maid Brigade researched and developed its own, proprietary standard.

When a Maid Brigade franchise displays our Green Clean Certified® logo, you can rest assured they are adhering to the highest standard for a safe, yet thorough Green Cleaning.

- d. The *Going, Going, Green!* website (completegreencleaning.com) advertising a book by John Marshall entitled Going, Going, Green!: A Practical Guide For Green Cleaning Your Home. This is a book

"dedicated to providing green cleaning solutions for organic cleaning problems found in your home."

In its April 20, 2009 Response, applicant submitted 15 third-party registrations incorporating the term "Green Clean" for environmentally friendly products and/or services.⁶ Of those 15 registrations,

1. Registration No. 3428963 for the mark SF GREENCLEAN for, *inter alia*, laundry services was registered on the Supplemental Register;

2. Registration No. 3317634 for the mark GREEN CLEAN for "environmentally sensitive cleaning preparations" was registered pursuant to Section 2(f) of the Trademark Act;

3. The term "Green Clean" was disclaimed in Registration No. 3597801 for the mark CERTIFIABLY GREEN CLEAN, Registration No. 3322654 for the mark BIO GREEN CLEAN, Registration No. 3503630 for the mark GREEN CLEAN SERVICES, INC. and design.

The remaining 11 registrations were registered on the Principal Register without a disclaimer or 2(f) notation

⁶ We did not include Registration No. 3479416 for the mark SIMPLE GREEN CLEAN BUILDING (stylized) in our analysis because the way in which the mark is displayed "Simple Green" functions as the source indicator and the term "Clean Building" is descriptive. The exclusive right to use "Clean Building" is disclaimed. Also, we did not consider the copies of the applications incorporating the term "Green Clean" submitted by applicant because pending applications have little probative value. They are evidence only that the applications have been filed. See *Interpayment Services Ltd. v. Docters & Thiede*, 66 USPQ2d 1463 (TTAB 2003).

for the term "Green Clean." Such third-party registrations may be considered to show the meaning of a term in a particular industry. Used in this manner, third-party registrations are similar to dictionaries showing how language is used. See *J. M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1988). The sizeable number of third-party registrations for marks that include "Green Clean" shows that the term has a recognized meaning in the field and corroborates the evidence of descriptiveness submitted by the examining attorney.

Applicant submitted a declaration by Angela Arthur, its Managing Member.⁷ Ms. Arthur testified as follows:⁸

12. Having experience working for cleaning services using traditional techniques, equipment and cleaning products and also having experience in providing "green" cleaning services, i.e., employing products and methods that minimally impact health and the environment, it is my perception and conclusion that customers seeking "green" cleaning services are much more conscientious in choosing maid and janitorial services than those who do not appreciate the premium value in the health and environmental benefits of the type of service California Green Clean offers.

13. California Green Clean's existing prospective customer pool is comprised

⁷ Applicant's April 20, 2009 Response.

⁸ Applicant was responding a Section 2(d) likelihood of confusion refusal.

of individuals having generally more education and higher income than the customer pool for non-"green" cleaning services. ...

15. [sic] ... Thus, the likelihood of California Green Clean's prospective and existing customers confusing California Green Clean's services with those of another provider of "green" cleaning services is exceedingly low.

16. ... There is little likelihood that prospective or existing customers of California Green Clean, or customers of other cleaning services offering "green" cleaning techniques and products, would be confused as to the identity of the provider of the services just because the word combination "green clean" is found in the business names and service marks of both.

Applicant attached evidence of third-party use of term "green clean" in connection with janitorial and cleaning services and products to the Arthur Declaration. The third-party use includes, *inter alia*, the following:

1. Hunter and Halpin, Green Clean: The Environmentally Sound Guide to Cleaning Your Home (2005);
2. Findley and Formichelli, The Complete Idiot's Guide to Green Cleaning (2nd ed. 2009); and
3. Goldsmith and Sheldon, Green Cleaning for Dummies (2009).

Primary Significance

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As to the first part of the test, a mark is not "primarily" geographic where the geographic meaning is minor, obscure, remote, or unconnected with the services. *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539, 1540 (Fed. Cir. 1999); *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 867 (Fed. Cir. 1985) (use of a geographic term in a fictitious, arbitrary or fanciful manner, is not "primarily" as a geographic designation); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d at 1824.

Thus, registration should not be refused where, for example, the place named in the mark is so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods to which the mark is applied; or an admittedly well-recognized term has other meanings, such that the term's geographical significance may not be the primary significance to prospective purchasers. See *In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1986).

There is no real dispute, and the evidence submitted by the examining attorney shows, that "California" is "the most populous state in the United States."⁹ See *California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988) ("there can be no dispute that California, one of the largest and most populous states in the United States, is a place known generally to the

⁹ Encarta World English Dictionary [North American Edition] (2009) attached to the May 19, 2009 Office Action.

public and is neither remote nor obscure"). We find that the term "California," alone, conveys a readily recognizable geographic significance that is not obscure or remote but rather is generally known to the public.

As indicated above, applicant argues to the contrary that as "it relates to applicant's maid and janitorial services, 'California' is distinctive."¹⁰

What "California," in the context of applicant's mark, primarily designates is: a high quality, progressive, environmentally-attuned kind or style of maid and janitorial services, rather than primarily providing information about geographic origin.¹¹

Applicant supports this contention with articles in magazines and websites "supporting the view that California is a leader in renewable, sustainable and non-polluting energy and technology; in protection of the environment and its ecology; and, in the health-conscious lifestyles of its residents."¹² For example, the articles refer to California as, *inter alia*, the "greenest and most diverse state," "its green image," and a "leader in solar, wind and battery patents." Accordingly, applicant concludes that "California" has a non-geographic meaning when considering the mark in its entirety and applied to the janitorial and cleaning services.

¹⁰ Applicant's Brief, p. 6.

¹¹ *Id.* at p. 7.

¹² Applicant's November 25, 2009 Response, p. 4.

[B]oth applicants and the consumers who use applicant's maid and janitorial services are: more knowledgeable; more environmentally aware; more progressive; "ahead of the curve"; on the forefront of cleanliness and safety for their families; and, sensitive to the fragility of urban, rural and wild environments alike, and the needs for their preservation and protection. Applicant's marks suggest a camaraderie between applicant and consumers in that ethos.¹³ (Emphasis in the original).

Finally, applicant contends that the mark CALIFORNIA GREEN CLEAN is a unitary mark which in its entirety engenders a commercial impression separate and apart from its purportedly geographic and descriptive components.¹⁴ According to applicant, CALIFORNIA GREEN CLEAN is unitary because "when spoken, [it] follows a memorable, elementary musical rhythm and rhyme"¹⁵ and because the three components of the mark have "internal cross-suggestivity": that is, each of the three words is suggestive of the other two.¹⁶

We disagree with applicant's analysis of its mark. There is nothing in the record to support applicant's argument that the term "California" is anything other than a geographic term. The evidence that applicant has produced regarding its environmentally conscious population does not change the connotation of the term "California." We have no reasonable

¹³ *Id.* at p. 5.

¹⁴ Applicant's Brief, pp. 2-6.

¹⁵ Applicant's Brief, pp. 2-5.

¹⁶ Applicant's Brief, pp. 5-6.

basis for holding that "California" is capable of any interpretation other than as a geographic indicator.

Furthermore, we find that the primary significance of CALIFORNIA GREEN CLEAN, in its entirety, is geographic. The addition of a descriptive term ("Green Clean") to a geographical term does not overcome the primary geographic significance of the mark as a whole. See *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d at 1821; *In re JT Tobacconists*, 59 USPQ2d at 1082; and *In re Cambridge Digital Systems*, 1 USPQ2d at 1662. The term "Green Clean" is merely descriptive for janitorial and maid services and the combination of that term with "California" does nothing to alter the geographic significance of "California" alone. Accordingly, we find that the primary significance of applicant's mark CALIFORNIA GREEN CLEAN is that applicant's janitorial and maid services originate from a California-based company.

**Services/Place Association
and Origin of the Services**

Where the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's services come from the geographical place named in

the mark. See *In re Carolina Apparel*, 48 USPQ2d at 1543; and *In re California Pizza Kitchen Inc.*, 10 USPQ2d at 1705.

Applicant concedes that it is a California-based entity and that its "sole business location are [sic] in California."¹⁷ Accordingly, California has significance as the geographical source of applicant's services. Applicant is obviously using the term "California" in its mark, not in any distinctive sense as applicant claims, but rather to reflect its association as a California-based company in the field of "green cleaning."

Thus, we find that the services originate in California, the place named in the mark. Since the services originate at the place named in the mark, we can presume an association of applicant's services with California. See, e.g., *In re Joint-Stock Company "Baik,"* 80 USPQ2d 1305, 1310 (TTAB 2006) ("we presume a goods/place association [of vodka with BAIKALSKAYA meaning "from Baikal"] because applicant is located near Lake Baikal, in the city of Irkutsk"). Moreover, we find that consumers for applicant's services would reasonably believe that those services originate from a California-based entity.

Under the circumstances, nothing more need be shown by the examining attorney in order to establish a services/place association. See *In re Opryland USA Inc.*, 1 USPQ2d 1409, 1413 (TTAB 1986) ("[I]n that the evidence shows a substantial part of

¹⁷ Applicant's Brief, p. 6.

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appellant's commercial activities emanate from or are related to Nashville, Tennessee, and that city is not obscure or remote, it is unnecessary for the Examining Attorney to establish by other evidence that a services/place relationship exists between appellant's services and the city of that name").

We find that consumers are likely to believe that applicant's services have their origin in or are in some way connected to California.

Decision: The refusal to register under Section 2(e)(2) is affirmed.