

THIS OPINION IS  
NOT A PRECEDENT  
OF THE TTAB

Oral Hearing: October 22, 2009

Mailed: January 28, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Milwaukee Institute, Inc.

Serial No. 77476467

Charles Schwartz of Quarles & Brady LLP for Milwaukee Institute, Inc.

Simon Teng, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

Before Holtzman, Kuhlke and Taylor, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Milwaukee Institute, Inc. to register on the Principal Register the standard character mark US PATIENT REGISTRY for "providing a database of health and medical information" in Class 44.<sup>1</sup> The wording PATIENT REGISTRY is disclaimed.

The trademark examining attorney has refused registration on

<sup>1</sup> Serial No. 77476467, filed May 16, 2008, alleging a bona fide intention to use the mark in commerce.

the ground that applicant's mark is primarily geographically descriptive of its services under Section 2(e)(2) of the Trademark Act.

When the refusal was made final, applicant appealed. Both applicant and the examining attorney have filed briefs. An oral hearing was held.

In order for a mark to be considered primarily geographically descriptive of the services under Section 2(e)(2), it must be shown that (1) the mark's primary significance is a generally known geographic location; and (2) the relevant public would be likely to make a services/place association, that is, would be likely to believe that the services originate in the place named in the mark. See *In re Save Venice New York, Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001); *In re Nantucket*, 677 F.2d 95, 213 USPQ 889 (CCPA 1982); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); and *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704 (TTAB 1988).

As to the first part of the test, the examining attorney essentially argues that US is an abbreviation for United States, a generally known geographic location; and that PATIENT REGISTRY, which is highly descriptive of applicant's database featuring medical records of individuals receiving medical treatment, does not overcome the geographic meaning of the mark as a whole. The

examining attorney submitted definitions of "U.S." as "3. United States"; "patient" as "somebody given medical treatment"; and "registry" as "records office: a place where registers and other records are kept."<sup>2</sup>

Applicant maintains that the primary significance of US is not geographic. Applicant contends that "US" without periods, as distinguished from "U.S." with periods, imparts a meaning of "the objective case of 'we,'" and that its mark denotes "a patient registry for all of us." According to applicant, this meaning "is consistent with the prioritization of US meanings by dictionaries where the primary significance of US is shown in each" as the objective case of "we." We take judicial notice of the following entries for "us" and "US" attached to applicant's brief:<sup>3</sup>

us

- "pronoun 1. the objective case of WE, used as a direct or indirect object: *They took us to the circus. She asked us the way.*"

US

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<sup>2</sup> *Encarta World English Dictionary* (2007) (encarta.msn.com).

<sup>3</sup> The Board may take judicial notice of dictionaries, including online dictionaries, which exist in printed format. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1791 n.3 (TTAB 2002). However, we have not considered the two third-party registrations which applicant submitted for the first time with its brief. We agree with the examining attorney that this evidence is untimely. See Trademark Rule 2.142(d). Contrary to applicant's contention, the Board will not take judicial notice of registrations residing in the Office. See *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994). We add however that even if we did consider this evidence it would not change the outcome of this case.

"1. United States."

*Dictionary.com* based on *The Random House Unabridged Dictionary* (2006) ([dictionary.reference.com](http://dictionary.reference.com)).

US

Pronoun

1. The persons speaking, regarded as an object; ourselves; -- the objective case of we."

*Webster's Revised Unabridged Dictionary* (1913) ([websters-online-dictionary.org](http://websters-online-dictionary.org)).

The dictionary listings submitted by both the examining attorney and applicant show that US, in capital letters, with or without periods, denotes the United States, obviously a generally known geographic location.<sup>4</sup> Indeed, contrary to applicant's contention regarding the order of the definitions, applicant's own submission from *Dictionary.com* shows the first (and only) entry for "US" in capital letters as United States.

In addition, the examining attorney submitted printouts of news articles from online publications showing usage by the media of "US" as denoting the United States and that the public would understand and recognize it as meaning the United States.

Examples of these articles are set forth in part below:

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<sup>4</sup> Applicant contends that the record does not even establish that "U.S." has a primarily geographic meaning, arguing that the geographic meaning "is only the third most significant definition (behind two other non-geographical meanings)" including "Uncle Sam." Suffice it to say, as noted in *In re U.S. Cargo Inc.*, 49 USPQ2d 1702, 1704 (TTAB 1998), "the

Voice of America

Headline: **US** Presses Iraq to Accept Draft Forces Agreement

Body: The United States on Wednesday pressed the Iraqi government to accept the draft agreement completed last week governing the future presence of U.S. troops in that country.

voanews.com October 23, 2008

REUTERS

Headline: **US** STOCKS-Wall St opens up as energy shares rebound

Body: U.S. stocks opened higher on Thursday as investors snapped up beaten-down energy shares...

uk.reuters.com October 23, 2008

THE WALL STREET JOURNAL, Digital Network

MarketWatch

"Today's announcement confirms that US Airways' financial footing is solid," said Chairman and CEO Doug Parker. "As a result of these financings our total cash position relative to annual revenues ranks solidly among the highest of the largest **US** carriers. ..."

marketwatch.com

Applicant argues that the references to "US" in these articles are always followed by the term "U.S." or "United States." That is not the case with respect to at least one of the articles, but in any event, it is clear from the manner and context of use of US in these stories that no one would need to look beyond that reference to understand its meaning.

The examining attorney has also made of record a number of third-party registrations wherein the term US has been disclaimed, indicating that US has been regarded by the Office as a geographic

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exclusive significance of 'U.S.' to most purchasers would be the geographic area."

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term. Some examples of these registrations are as follows:

Registration No. 3338264 for the mark US ENERGY and design (US ENERGY disclaimed) for non-alcoholic beverages; Registration No. 3402818 for the mark ICE CLEAR US (US disclaimed) for services including financial services "in the nature of providing an exchange for commodities"; Registration No. 3377811 for the mark US MOTION (US disclaimed) for goods including acceleration, pressure and proximity sensors; Registration No. 3417715 for the mark US VS T O U R (US VS TOUR disclaimed) for services including "educational services in the nature of tournaments and contests, namely, reading, writing, and arithmetic"; Registration No. 3479492 for the mark US CONSUMER PROTECTION WWW.USP.ORG US CONSUMER PROTECTION PROTECTING CONSUMERS . . . REFERRING BETTER BUSINESS! and design (US CONSUMER PROTECTION" disclaimed) for services including "providing general information regarding consumer laws and regulations"; and Registration No. 3519651 for the mark US HOTELS and design (US HOTELS disclaimed) for "hotels, motels, inns, restaurants, bars, and catering services."

As applicant notes, some of the registered marks include what applicant describes as indicia denoting the United States, such as flags, stars or shields. However, this evidence only shows that the presence of certain symbols may reinforce an association with the United States, not that the absence of such symbols alters the meaning of US as a geographic term.

We find that the term US denotes the United States, a well known geographic location, and moreover, that the geographic meaning is its primary meaning.<sup>5</sup> We acknowledge that "US" also means "we." However, the question of whether the mark's primary significance is a geographic location must be determined not in the abstract but in the context of the mark, in relation to the services with which the mark is used, and from the perspective of the relevant public for those services. See *Save Venice*, supra at 1782 ("a composite mark such as applicant's must be evaluated as a whole."); *In re MCO Properties Inc.*, 38 USPQ2d 1154 (TTAB 1995); and *In re Jim Crockett Promotions Inc.*, 5 USPQ2d 1455, 1456 (TTAB 1987) ("a mark must be considered in the context of its use and the meaning it would have for the relevant public when so used").

While "US" standing alone may be subject to another interpretation, we find that the mark US PATIENT REGISTRY considered as a whole and in relation to the services conveys a primarily geographic meaning. In response to the examining attorney's initial inquiry regarding the nature of applicant's services and how they are rendered, applicant explained that it

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<sup>5</sup> Applicant has objected to the examining attorney's reliance on the non-precedential case, *In re Miriam Jacob and Norma Sawdy*, 2004 TTAB LEXIS 725 (December 17, 2004), regarding a disclaimer of US in the mark US ANGEL as geographically descriptive of clothing. The Board has changed its policy regarding non-precedential decisions and now a decision designated as not precedential, while not binding on the Board, "may be cited for whatever persuasive value it might have." See *Official Gazette* Notice dated January 23, 2007. Nevertheless, we have not relied on that case in rendering our decision herein.

intends to develop and maintain a database of electronic medical records for patients who wish to participate, where the patient's records can be accessed by the patient or by anyone else authorized by the patient, for example, a doctor. Applicant states that patients could be provided with a card which is needed to authorize access to the patient's records, and when a patient goes to a new doctor or other service provider, the card would be swiped into a reader, possibly with a PIN number to provide access to the records on the system. Applicant notes that the services would thereby reduce the need for service providers to maintain or transfer patient medical files.

Based on the dictionary definitions noted earlier and the information provided by applicant, the term PATIENT REGISTRY is highly descriptive of applicant's database of patient records. When US is combined with PATIENT REGISTRY, the mark as a whole connotes a geographic meaning. The relevant public is likely to believe that applicant's database provides access to patient records anywhere in the United States or throughout the United States.

In support of its contention that US is likely to be perceived as meaning "we" and as "a patient registry for 'all of us,'" applicant argues in its brief that a "main focus" of its services is that the medical records will be authorized "to be accessible...by researchers who will then be able to 'mine' the



data for trends in medical health developments and/or the efficacy of particular clinical protocols, often for particular subpopulations." In particular, applicant contends that:

It is the formation of such subpopulations that will become a distinctive characteristic of the Applicant's data base. By aggregating medical information of subpopulations in a cyberspatial context, the services will provide patients with a community of interest based on common experiences/attributes of those suffering from the same disease. A sense of belonging to this community is a key aspect of what the applicant is intending to accomplish with the use of 'US', the objective case of 'we.'"

We are not persuaded by this argument. First, applicant's identification is not limited to this claimed aspect of the services, and clearly includes the service as initially described by applicant, as an efficient and readily accessible format for maintaining patient records. Furthermore, construing the term as the pronoun "us" in US PATIENT REGISTRY is not only grammatically awkward, but we believe it would be quite a stretch for the relevant public, such as patients and their doctors, to associate a database for maintaining medical records with a sense of belonging to a community. Rather, we find that the mark as a whole, even as applied to a database used for research or tracking health trends, is far more likely to be perceived as a national,

i.e., United States, patient registry, thereby conveying a geographic meaning.<sup>6</sup>

The second part of the test is whether there is an association between the place and the services. Where the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a services/place association may ordinarily be presumed from the fact that the applicant's services actually originate (or will originate) from the geographic place named in the mark.<sup>7</sup> See *In re Carolina Apparel*, 48 USPQ2d 1542, 1543 (TTAB 1998). The presumption applies here. Applicant's headquarters are located in the United States (in Wisconsin) and, moreover, there is no dispute that applicant's services will be rendered, at least in part, in the United States.<sup>8</sup> See *MCO Properties*, supra at 1156

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<sup>6</sup> We also note that along with its response to the examining attorney's request for information, and to provide the examining attorney with some idea of what "a company somewhat like Applicant will be using its database for," applicant submitted promotional literature from the Cystic Fibrosis Foundation for a brochure entitled "Cystic Fibrosis Patient Registry Annual Data Report." The literature states that the Foundation started as "a national patient registry to track the health of people with cystic fibrosis (CF) across the United States."

<sup>7</sup> Applicant's reliance on TMEP §1210.04(b) and *In re Municipal Capital Markets, Corp.*, 51 USPQ2d 1369 (TTAB 1999), arguing that "something extra" is required to show a services/place association, is misplaced. That case and section of the TMEP relate to establishing a services/place association in cases involving geographically deceptively misdescriptive marks. Obviously, the presumption of a services/place association would not apply if the services do not come from the place named in the mark.

<sup>8</sup> Notwithstanding applicant's statement that it "has not yet decided where the services will originate from" (Reply Brief, p. 9), we presume

(FOUNTAIN HILLS geographically descriptive of "the name of the town where applicant is located and renders its [real estate development] services."); In re Chalk's International Airlines Inc., 21 USPQ2d 1637, 1638 (TTAB 1991) (PARADISE ISLAND AIRLINES primarily geographically descriptive of air transportation services that are performed at least in part on Paradise Island); and *California Pizza Kitchen*, supra (CALIFORNIA PIZZA KITCHEN primarily geographically descriptive of restaurant services rendered in California). In any event, it would be reasonable for the relevant public to believe that the United States is at least one of the geographic sources of applicant's services. See In re *Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652, 1655 (Fed. Cir. 1993) ("Board did not err in finding that 'France, a major manufacturing and commercial nation, would be perceived as the source of the numerous goods and services listed in the applications if the mark is primarily geographical [citation omitted]'; "Certainly, all of the goods and services would either originate in France or should be considered as if they did because they are sold by a French company.").

Contrary to applicant's contention, it is not significant that the server housing applicant's database may not be located in

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from applicant's asserted bona fide intention to use the mark in commerce that applicant's services will indeed be rendered in the United States.

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the United States or that registering patients may reside anywhere in the world. It is the perception of the public as to the geographical significance of the mark which controls whether the mark is primarily geographically descriptive, not whether an applicant also renders the service or part of the service outside of the geographical area named in the mark. See *Chalk's International Airlines*, supra at 1638; and *California Pizza Kitchen*, supra at 1706.

**Decision:** The refusal to register under Section 2(e)(2) of the Trademark Act is affirmed.