

**THIS OPINION IS NOT A  
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Mailed:  
February 22, 2011

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Napa Valley Foods Inc.

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Serial Nos. 77627932, 77627933, 77627934 and 77627935

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Jeffrey M. Furr of Furr Law Firm for Napa Valley Foods Inc.

Amy E. Hella, Trademark Examining Attorney, Law Office 110  
(Chris A. F. Pedersen, Managing Attorney).

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Before Seeherman, Ritchie and Wolfson, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Napa Valley Foods Inc. (hereafter "applicant"), a UK corporation, has filed four trademark applications, two for NAPA FOODS in standard character format,<sup>1</sup> and two for Napa Foods and design, as shown below:

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<sup>1</sup> The standard characters in which the mark is depicted show the initial letters in upper case and the remaining letters in lower case, i.e., Napa Foods.



This mark is described as consisting of "the words 'NAPA FOODS' with a mountain and sun design in an oval." Color is not claimed as a feature of the mark.

All four applications were filed on December 6, 2008, pursuant to Section 44(e), based on Nigerian registrations, and are for the following goods:

Application Serial No. 77627932 for NAPA FOODS and Application Serial No. 77627935 for NAPA FOODS and design are both for "baking powder, beef and chicken seasoning, bread improvers, namely, leavening agents, baking powder, cream of tartar for bread baking purposes, chocolate powder, coffee, corn flakes, powder for making custard, lollipops, mayonnaise, salad cream in the nature of dressings, spices, tea bags, tomato ketchup, yeast, processed oats."

Application Serial No. 77627933 for NAPA FOODS and Application Serial No. 77627934 for NAPA FOODS and design are both for "tomato paste in tins and in sachet form, seafood, namely, canned pilchards, baked beans, bouillon cubes, canned fruits, canned mixed vegetables, canned peas, canned sardines in flat and round can forms, cooking oils, corned beef, evaporated milk, flaked tuna fish, mackerel, margarine, milk powder, olive oil, tuna chunks.

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All four applications have been refused pursuant to Section 2(e)(3) of the Trademark Act, 15 U.S.C.

§ 1052(e)(3), on the ground that applicant's marks are primarily geographically deceptively misdescriptive of the identified goods.

Applicant has appealed the refusals of all four applications, and filed appeal briefs. After the examining attorney filed her brief in Application Serial No. 77627935 she filed a request to consolidate all four appeals. Because the appeals involve common questions of law and fact, the Board granted the request, and the examining attorney filed a consolidated appeal brief for the remaining three appeals. Applicant did not submit reply briefs.

Section 2(e)(3) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them. The PTO must deny registration under §1052(e)(3) 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 bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation is a

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material factor in the consumer's decision. See *In re California Innovations Inc.*, 329 F.3d 1334, 66 USPQ2d 1853, 1858 (Fed. Cir. 2003).

With respect to the first requirement of the test for whether a mark is primarily geographically deceptively misdescriptive, it is the examining attorney's position that "NAPA" is a generally known geographic place, referring to a "city, county and region in California known for their wines, foods, produce and cattle." Brief, unnumbered p. 4. In support of her position that the primary significance of the mark is a generally known place, the examining attorney has submitted a gazetteer entry and numerous articles taken from the NEXIS database and from various websites, including the following:

Napa, city (17 sq mi/44 sq km, 1990 pop. 61,842) Napa co., W Calif, 33 mi/53 km NNE of San Francisco, on the Napa R; 33°18'N 122°18'W. Mfg. (wineries/ medical equip., electronic equip., beverages, computer prods., apparel, plastic prods., wood prods.; printing and publishing). Grapes and other fruits (esp. citrus fruit) are grown in the adjacent Napa valley, which is famous for the wines that have been made here since the late 1870s. Numerous wineries in the region. Growing city, almost doubled in pop. bet. 1970 and 1990. Seat of Napa Valley Co. (2-year). Napa Co. Airport to S. Inc. 1872.  
The Columbia Gazetteer of North America, © 2000.

7 Day Napa Cooking, Wine & Dine (title)  
...Come along and explore the Napa Valley  
with us and discover the distinct  
personalities of this world famous food  
and wine region.  
www.tourgate.com

...Since the 1980s Napa Valley has been a  
destination for food and wine  
aficionados. Locals brag that it is  
the second most popular tourist  
destination in California, behind only  
Disneyland.  
"The Kansas City Star," May 14, 2008

While not disputing the geographic significance of  
"Napa Valley," applicant asserts that "NAPA" is not the  
same as "Napa Valley," and therefore the mark does not  
identify a generally known geographic place or location.  
Applicant relies on definitions of "napa" as meaning "a  
very soft glove leather made from the skin of a sheep, kid  
or goat" and "Chinese cabbage." Applicant also points out  
that NAPA is an acronym for National Academy of Public  
Administration and National Association of Performing  
Artists, and that Google searches for Napa retrieve  
references to an auto care chain, the National Academy of  
Public Administration, National Asphalt Pavement  
Association, National Association for the Practice of  
Anthropology and software systems. Applicant states that  
the mark was "chosen by the client due to the fact that it

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is easy to pronounce in many languages." Brief, unnumbered p.2.

We are not persuaded by applicant's arguments. First, applicant's explanation as to why it chose the mark is, to say the least, disingenuous in view of the fact that applicant's corporate name is Napa Valley Foods, Inc. Second, even if applicant's motives in adopting the mark were totally innocent, applicant may still not register a mark if it is primarily geographically deceptively misdescriptive. As for the other meanings that applicant puts forth for its mark, the logical extension of applicant's arguments that the consuming public for its identified goods would associate NAPA with any of these organizations or companies is that applicant's mark cannot be registered because it falsely suggests a connection with one of these entities. We feel confident that applicant does not want us to adopt this position. In any event, the examining attorney has explained, and has cited case law in support of her position, that "the fact that the mark may have other meanings in other contexts does not alter its geographic significance in the context of the application." Brief, unnumbered p. 9. If used in connection with the goods identified in the application, the various meanings for NAPA claimed by applicant, including a soft glove and

Chinese cabbage, are not the meanings that the relevant public would ascribe to the mark.

Rather, the evidence submitted by the examining attorney, including numerous articles which describe Napa Valley as being famous for food and wine, persuades us that consumers viewing the term NAPA for the identified food products would understand NAPA to refer to the geographic location, Napa Valley.<sup>2</sup> In this connection, we note that "Napa Valley" is frequently referred to as Napa. See, for example, the headline "A nose for Napa—and Sacramento" ("Sacramento Bee," March 4, 2009); "The calendar shows the bare essence of Napa and is an entertaining and subtly revealing look at Napa agriculture" ("Vallejo Times Herald," Oct. 13, 2007); "What happened in Napa several years ago is now happening here [Long Island]" ("The New York Times," April 25, 1991). Thus, the Office has met the first part of the test, that the mark's primary significance is a generally known geographic location, i.e., Napa Valley, CA.

The second requirement for showing that NAPA is primarily geographically deceptively misdescriptive is that

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<sup>2</sup> Although the Columbia Gazetteer entry submitted by the examining attorney lists "Napa" as a city and county in California, the articles discussing the geographic region, including its connection with food, concentrate on the Napa Valley, which is adjacent to the city.

the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place. There is no dispute that applicant's goods do not come from Napa Valley. As for showing a goods/place association between Napa and the goods identified in the applications, the examining attorney has submitted a number of articles and webpages that show a connection between Napa Valley and food, including the following:

Harris says the big advantages Napa has as a home for great restaurants include all the local foodstuffs from one of the planet's singular agricultural valleys and the extremely high standards set by so many of the region's restaurants and wineries. "This is literally a quiet rural place, yet the driving force in Napa is food and wine," she said. "Sacramento Bee," March 4, 2009

Much of the great cooking in Napa is taking place at the wineries, some of which have chefs on the premises and others of which use the stupendous caterers who have been drawn to the area.

. . .  
Napa's food rivals any produced in France these days. "Akron Beacon Journal," Sept. 18, 1996

... Napa, Sonoma and other food-famous regions. "Sacramento Bee," Nov. 25, 2006

Interest isn't limited to foodie capitals like Napa Valley and New Orleans, he added.

"Detroit Free Press," April 16, 2009

Food in Napa (title)

Napa is a fantastic destination for foodies. From restaurants, farmers markets and food festivals to culinary schools and food-and-wine pairings, Napa offers a wealth of opportunities to enjoy, explore, and celebrate food. The Napa Valley is known for hosting an excellent collection of restaurants, both in quality and variety...

Yountville in particular is known as a gourmet destination, with excellent restaurants such as The French Laundry and Bouchon...

[www.destination360.com](http://www.destination360.com)

Wine and weather provide two reasons to travel to Napa; Food is another. The golden valley is a mecca for forward-thinking chefs, whipping California ingredients into Mediterranean shape.

"The Columbian," Oct. 15, 1996

Clearly there is not only an association between Napa and food, but Napa is known for its food; as the articles state, it is a destination for foodies where the food rivals any produced in France. Applicant argues, however, that Napa Valley is not well known in association with the specific goods which are identified in its applications. We acknowledge that the examining attorney has not pointed out the specific items in the applications for which she claims a goods/place association; her position is that because of the recognition and indeed renown of Napa Valley

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for food, the consuming public is likely to believe that any food items sold under the trademark NAPA come from that geographic area. Although we do not necessarily agree that a goods/place association would exist between any food and Napa, we also recognize that it is not necessary for the examining attorney to demonstrate such an association with each of the items listed in each of the applications. If that were the case, an applicant could obtain exclusive rights to a primarily geographically deceptively misdescriptive term merely by including in its identification of goods an item for which the term is not geographically deceptively misdescriptive. Thus, the examining attorney will have met her burden as long as she can show a goods/place association between at least one of the goods in each single-class application, and Napa. Cf. *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (unpublished) (registration is properly refused if the subject matter for registration is generic of any one of the goods for which registration is sought); *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005), *quoting*, *Application of Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) ("Our predecessor court ... has stated that registration should be refused if

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the mark is descriptive of any of the goods for which registration is sought").

We find that the evidence of record amply demonstrates a goods/place association between Napa and at least some of the goods identified in each of applicant's applications. Application Serial Nos. 77627933 and 77627934 include, in their identifications, canned fruits and olive oil. The Gazetteer entry states that "[g]rapes and other fruits (esp. citrus fruit)" are grown in Napa Valley, and several articles refer to olive oil as a locally produced product (emphasis added):

Food, Wine Top Lists in Napa Valley  
(headline)

In California, olive oil has nearly as many variables as wine--vintage, estate, flavor, type of olive.

...

Katz and Co., a Napa food company, features eight new releases, including B.R. Cohn Estate Sonoma Valley oil in a numbered, hand-etched bottle.

"South Bend Tribune," Oct. 14, 1996

The food was simple but lovely--grilled chicken breasts with rosemary, platters of homemade sausages, baby lettuces with **locally produced olive oil**, and baskets of the wonderful, crusty bread that is made in at least a half-dozen serious bakeries in the valley.

"Akron Beacon Journal," Sept. 18, 1996

Another of the popular Napa food festivals is the gourmet A Taste of Yountville festival in mid-March, during which more than 35 local

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wineries, restaurants, and **olive oil**  
and mustard producers offer tastings.  
[www.destination360.com](http://www.destination360.com)

... there truly is a rich agricultural  
history here, from hundreds of acres of  
fruit and nut trees, to cattle, goat  
and sheep farming and on to cheese,  
**olive oil** and other distinctive Napa  
food products.  
[www.napavalleyslowfood.org](http://www.napavalleyslowfood.org)

As for the goods in Applications Serial Nos. 77627932  
and 77627935, the identifications include spices, beef and  
chicken seasoning, ingredients for making bread, i.e.,  
leavening agents and cream of tartar, yeast, baking powder,  
salad cream in the nature of dressings, mayonnaise, tea  
bags and tomato ketchup. One of the articles submitted by  
the examining attorney specifically mentioned the "baskets  
of the wonderful, crusty bread that is made in at least a  
half-dozen serious bakeries in the valley," "Akron Beacon  
Journal," Sept. 18, 1996. Other articles feature other  
items (emphasis added):

The downtown Napa farmers market is a  
great place to sample great food in  
Napa. The market is held on Tuesdays  
and Saturdays, and you'll want to  
arrive early to enjoy the biggest  
selection--the first buyers show up at  
7:30 am, and the market wraps up at  
lunchtime. Among the varied products  
at the market, you'll find fruits,  
vegetables, olive oil, **baked goods**,  
chocolates, jams and preserves, **tea**,  
and flowers.  
[www.destination360.com](http://www.destination360.com)

Back then there wasn't much good, casual food in the Napa Valley. The popularization of the farm-to-table menus that now pepper the valley can be partly attributed to her. On her first menu, for example, she made her own **ketchup** with tomatoes from the garden, and smoked her own ham for the ham and Yarlsburg [sic] cheese sandwiches. "The San Francisco Chronicle," Jan. 3, 2009

The evidence of the "serious bakeries" in Napa Valley supports a finding of a goods/place association between the ingredients for baking listed in the applications, namely, cream of tartar, leavening agents, yeast and baking powder. The articles are also replete with mentions of the farm-to-table culture of Napa and of restaurants making their dishes with locally grown ingredients, including the ketchup mentioned in the "Chronicle" article about Mustard's Grill. Moreover, the evidence about the fame of Napa Valley restaurants, and their gourmet nature,<sup>3</sup> shows a goods/place relationship, because of the food that is created in these restaurants, between seasonings, salad dressings and spices, and Napa Valley. As the Court stated in *In re Save Venice Inc.*, 259 F.3d 1346, 59 USPQ2d 1778, 1784 (Fed. Cir. 2001):

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<sup>3</sup> "Napa Valley has also developed into a region that is renowned for its creativity in the culinary arts. Gourmet chefs from all around the world have moved to Napa Valley so that they can test their gourmet talents." [www.streetdirectory.com](http://www.streetdirectory.com), article about "Napa Valley Wine Tasting Tours."

Because we consider that consumers may assume that geographic regions, like other commercial actors, are likely to expand from their traditional goods or services into related goods or services, we hold that the registrability of a geographic mark may be measured against the public's association of that region with both its traditional goods and any related goods or services that the public is likely to believe originate there. The essence of the test is whether consumers are likely to be confused by the source of the related goods identified by a distinctive geographic mark.

Because applicant's food items are related to the restaurant services for which Napa Valley is famous and are related to the food items sold in Napa, consumers are likely to believe that the source of the goods identified in applicant's applications is Napa Valley. Thus, we find that there is a goods/place association between applicant's goods and the geographic place named in the mark.

This brings us to the final requirement that must be met to show that a mark is primarily geographically deceptively misdescriptive, whether the misrepresentation is a material factor in the consumer's decision. Applicant contends, with respect to this point, only that "the mark does not refer to a geographic location and the goods are not similar to the goods associated with the geographic location referred to by the examining attorney." Brief,

unnumbered p.3. We have already found that NAPA would be understood as referring to Napa Valley, and we have already found that there is a goods/place association between at least some of the goods in each application and the geographic place named in the mark.

We also find that the Office has met its burden of proving materiality. The record is replete with references to Napa being a food mecca, and we have already quoted many of the articles and websites in this opinion. A finding that a geographic place is noted for or renowned for goods supports a finding of materiality. There is no question that Napa is famous for food, and because of this renown, consumers are likely to buy food bearing the NAPA mark because they think that the goods come from Napa Valley. As the Court stated in *In re California Innovations Inc.*, 66 USPQ2d at 1857, in reviewing prior cases finding marks to be geographically deceptive:

"[I]f there is evidence that goods like applicant's or goods related to applicant's are a principal product of the geographical area named by the mark, then the deception will most likely be found material and the mark, therefore, deceptive." *House of Windsor*, 221 USPQ at 57. "[I]f the place is noted for the particular goods, a mark for such goods which do not originate there is likely to be deceptive under §2(a) and not

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registrable under any circumstances."  
*Loew's Theatres*, 769 F.2d at 768, n.6.

Because we find that the Office has met its burden of proving that the primary significance of NAPA is a generally known geographic location; that the consuming public is likely to believe that NAPA indicates the origin of applicant's goods when in fact the goods do not come from Napa; and the misrepresentation is a material factor in the consumer's decision to buy the goods, we find that applicant's mark is primarily deceptively geographically deceptive.

Decision: The refusal of registration of all four applications is affirmed.