

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Punita Leathers, Inc.*

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Serial Nos. 85394069 and 85374486<sup>1</sup>

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Clifford D. Hyra of Symbus Law Group LLC for Punita Leathers, Inc.

Dominick J. Salemi, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

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Before Quinn, Grendel and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Punita Leathers, Inc., seeks registration on the Principal Register of the mark BLUE RIDGE in standard characters for goods identified as “towels; washcloths,” in International Class 25<sup>2</sup> and “all-purpose carrying bags; athletic

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<sup>1</sup> Inasmuch as the issues raised by the above-listed appeals are similar, the Board is addressing them in a single opinion. Citations to the briefs and record refer to the briefs and record filed in application Serial No. 85394069, unless otherwise noted; however, we have, of course, considered all arguments and evidence filed in each case.

<sup>2</sup> Application Serial No. 85394069, filed on August 10, 2011, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging March 18, 2010, as the date of first use and first use in commerce.

bags; backpacks; duffel bags; shoulder bags; travel bags; wallets,” in International Class 18.<sup>3</sup> The application lists applicant’s address in Chantilly, Virginia.

In each application, the examining attorney refused registration under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2), on the ground that applicant’s mark is primarily geographically descriptive of its goods.

When the refusal was made final, applicant appealed and requested reconsideration. On November 1, 2012, the examining attorney denied the request for reconsideration, the appeal was resumed and briefs have been filed.<sup>4</sup> We reverse the refusal to register under Section 2(e)(2).

In maintaining the refusal, the examining attorney argues that the primary significance of BLUE RIDGE is a generally known geographic place. The examining attorney supports this conclusion with the following evidence:

Wikipedia excerpt on the “BLUE RIDGE MOUNTAINS” describing the mountain range as located “in the eastern United States, starting at its

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<sup>3</sup> Application Serial No. 85374486, filed on July 19, 2011, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging May 4, 2003, as the date of first use and first use in commerce.

<sup>4</sup> We note that in applicant’s request for reconsideration, applicant requested that “[i]n the event that the finding that the mark is primarily geographically descriptive is ultimately upheld ... Applicant asserts, in the alternative, that the mark has become distinctive of the goods under section 2(f) by virtue of over five years of continuous and substantially exclusive use in commerce. Applicant wishes to appeal and is merely making the evidence of record at this time so that if the [Board] upholds the Examining Attorney’s refusal under Section 2(e)(2) said evidence of secondary meaning may be offered to the Board in the alternative.” In denying the request, the examining attorney asserted that the request does not “raise a new issue.” To the contrary, we find applicant’s statements sufficiently raise the issue of registration under Section 2(f) in the alternative. See TMEP § 1212.02(c) (2013). Although the request in the alternative is deficient without a supporting declaration, the request warranted a non-final Office action. However, in view of our ultimate determination, we decline to remand the case for consideration of the Section 2(f) request.

southern-most portion point Georgia, then ending northward in Pennsylvania” and referring to it as the “Blue Ridge”;<sup>5</sup>

An excerpt from “The Free Dictionary” (www.dictionary.com) listing “Blue Ridge” as “A range of the Appalachian Mountains extending from southern Pennsylvania to northern Georgia”;<sup>6</sup>

An excerpt from “Virginia Visitors Network” (www.virginavisitorsnetwork.com) showing “the Valley area” of Virginia noting that it “lies against the Blue Ridge in the east”;<sup>7</sup>and

A map showing “the blue ridge area of Virginia” (maps.google.com).<sup>8</sup>

Next the examining attorney contends that because applicant “lists its central business location in Chantilly, Virginia ... it can be safely said or argued that its goods are, at the very least, ‘shipped’ and/or ‘packaged’ from that location [and] [i]f one had any doubts as to this a visit to applicant’s website would dispel such misgivings as therein one would find applicant and its ordering catalog and applicant on its home page describing itself as a manufacturer and supplier ‘based’ in Chantilly, Virginia.”<sup>9</sup> The examining attorney asserts that Chantilly, Virginia is “within or part of the Blue Ridge Mountain area.” The examining attorney relies on the following evidence in support of this determination:

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<sup>5</sup> First Office Action (August 31, 2011), TDRS pp. 2-5.

<sup>6</sup> Final Office Action (March 26, 2012), TDRS pp. 2-4.

<sup>7</sup> Final Office Action (March 26, 2012) (Ser. No. 85374486), TDRS p. 4. This area does not include Fairfax County where Chantilly, Virginia is located.

<sup>8</sup> Final Office Action (March 26, 2012) (Ser. No. 85374486), TDRS p. 6. The map does not show Chantilly, Virginia.

<sup>9</sup> E. A. Br. pp. 6-7. The examining attorney did not make applicant’s website of record and we give this statement no probative value.

Driving directions retrieved from mapquest.com showing a distance of approximately seventy miles between Chantilly, Virginia and Luray, Virginia;<sup>10</sup> and

An excerpt from the BostonGlobe.com titled “Things To Do in Chantilly” listing as activities, *inter alia*, (1) Skyline Drive distance 63.7 miles “The Skyline Drive runs 105 miles north and south along the crest of the Blue Ridge Mountains,” (2) Chesapeake Beach Fishing Charters distance 50.6 miles in Chesapeake Beach Maryland, (3) Old State House, “The Green” in Dover, Delaware distance 104.1 miles, (4) Bunky’s Charter Boats in Solomon’s Island, Maryland distance 65.4 miles, and (5) Chesapeake Bay Maritime Museum distance 65.5 miles.

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Finally, the examining attorney points to applicant’s expired registration for a composite mark that apparently included a disclaimer for the wording BLUE RIDGE SPORTS.<sup>12</sup> The examining attorney asserts that this prior disclaimer

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<sup>10</sup> Final Office Action (March 26, 2012) (Ser. No. 85374486) TDRS pp. 7.

<sup>11</sup> Final Office Action, TDRS p. 5.

<sup>12</sup> We first note that, again, the examining attorney did not make this prior registration of record. Further, while a disclaimer made in a registration may be viewed as an admission that the term is merely descriptive, *Bass Pro Trademarks, LLC v. Sportsman’s Warehouse, Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008), a review of Office records indicates that this registration has expired. An expired registration “is not evidence of anything except that the registration issued.” TBMP § 704.03(b)(1)(A) and cases cited therein. Moreover, a prior disclaimer does not “moot the request for an inherent distinctiveness registration.” *In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1685 (Fed. Cir. 2010). Although, applicant may have agreed to disclaim the term in prosecuting a prior application, we do not know the circumstances of that prosecution and only have the present record upon which to make our determination. *In re John Harvey & Sons Ltd.*, 32 USPQ2d 1451, 1455 (TTAB 1994) (“Applicant’s prior registrations which include disclaimers or claims of acquired distinctiveness are of little moment. We are not privy to the files of these registrations; moreover, the Board is not bound by any such prior determinations by the Office.”) Even if we ignore that the prior registration is not of record and expired, and view the prior disclaimer as “illuminative of shade and tone in the total picture,” *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978), we still find this record not only insufficient to support the refusal but actually supports applicant’s position.

“constitutes an admission of the merely descriptive, or in this case, geographically descriptive nature of a term.”<sup>13</sup>

“In order for a mark to be considered primarily merely 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 goods/place association, that is, would be likely to believe that the goods originate in the place named in the mark.” *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1616 (TTAB 2007). *See also In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); and TMEP 1210.01(a) (2013) (“To establish a prima facie case for refusal to register a mark as primarily geographically descriptive, the examining attorney must show that: (1) the primary significance of the mark is a generally known geographic location, (2) the goods or services originate in the place identified in the mark; and (3) purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark.”)

We begin by finding that the relevant purchasing public for the goods at issue (wash cloths, towels and various bags) consists of the general public interested in purchasing such goods.

With regard to the primary significance of the term “Blue Ridge,” we find that it is a generally known geographic location. The evidence shows that the term

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<sup>13</sup> Final Office Action (March 26, 2012), TDRS p. 1.

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“Blue Ridge” refers to a geographic location, namely a specific mountain range that runs from Georgia to Pennsylvania, going through Virginia. In addition, the Blue Ridge contains known national parks and other tourist destinations such as Luray Caverns.

Next we consider whether the goods come from the area and whether the public would make a goods/place association; that is, would the public be likely to believe that the goods originate in the place named in the mark. When “there is no genuine issue that 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 own goods come from the geographical place named in the mark.” *In re Handler Fenton Western, Inc.*, 214 USPQ 848, 850 (TTAB 1982). *See also In re Mankovitz*, 90 USPQ2d 1246 (TTAB 2009).

Applicant first contends that the “Blue Ridge” does not “encompass the location of the applicant.”<sup>14</sup> Second, applicant states that its goods are manufactured outside of the United States, and there is nothing in the record to contradict this statement. Applicant characterizes Chantilly, Virginia as its “headquarters.”

We first find that the record does not establish that Chantilly, Virginia is within the “Blue Ridge area.” Nothing in the record shows Chantilly, Virginia as within the Blue Ridge. Moreover, the mere fact that Chantilly, Virginia is 63 miles away from Skyline Drive in the Blue Ridge does not automatically link it to or

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<sup>14</sup> App. Br. p. 3.

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associate it with the Blue Ridge. *In re Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007) (“Yosemite has a significant relationship to the source of applicant’s goods. Applicant’s business is located in a city whose economy, and largely its identity, center around its association with Yosemite National Park, an association that the city has fostered and promoted for more than a century.”) *See also In re Joint-Stock Co. “Baik,”* 80 USPQ2d 1305, 1310-11 (TTAB 2006) (applicant manufactured its vodka in a city close to Lake Baikal and used water from Lake Baikal). By that calculation, the words Chesapeake (50 miles distance) and Solomon’s Island (65 miles distance) would be geographically descriptive of Chantilly, Virginia. *See Bostonglobe.com, supra.* As applicant states, Chantilly, Virginia “is in the heart of Fairfax County, a robust and populous suburb of Washington D.C.”<sup>15</sup>

Moreover, there is nothing in the record to establish that the goods may be considered to originate from Chantilly, Virginia. Applicant has clearly stated they are not manufactured there, there is nothing in the record to establish that they are packaged or shipped from there, and the mere fact that Chantilly is the corporate headquarters is not necessarily sufficient. *John Harvey & Sons Ltd.*, 32 USPQ2d at 1454 (“The mere fact that applicant’s headquarters are in Bristol, England does not mandate a finding here that a goods/place association should be presumed”). *But see In re Nantucket Allserve, Inc.*, 28 USPQ2d 1144 (TTAB 1993) (NANTUCKET NECTARS primarily geographically descriptive of beverages where, although manufactured elsewhere, applicant’s headquarters, and research and development

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<sup>15</sup> App. Br. p. 4.

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were in Nantucket, and the labels fostered a goods/place association among purchasers.)

Finally, there is nothing in the record to establish that the Blue Ridge is known for the goods in issue, wash cloths, towels and bags. While “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 in the mark,” *JT Tobacconists*, 59 USPQ2d at 1082, the record does not establish that they come from the place and, in addition, the Blue Ridge is not a well-known geographic location, such as France, from which we could assume that a wide variety of goods and services originate. *In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652 (Fed. Cir. 1993). *See also Mankovitz*, 90 USPQ2d 1246 (MONTECITO DIET not primarily geographically descriptive of books, on-line journals and health information where only evidence of association was applicant’s address located in Montecito, California). In fact, the record points to the opposite, revealing that much of the Blue Ridge consists of national parks devoid of any commercial activity aside from tourism, which does not encompass textile or bag manufacturing.

The facts of this case are distinct from those presented in *New Merced*, 85 USPQ2d at 1621, where the record established not only proximity of the city of Merced to Yosemite Park but also established that the city of Merced fostered and promoted an association with Yosemite, and *Joint-Stock Co. “Baik,”* 80 USPQ2d

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1310, where applicant made its vodka located in a city close to Lake Baikal using water from Lake Baikal.

We find these facts more in line with *In re Gale Hyman Inc.*, 15 USPQ2d 1478, 1479 (TTAB 1990) where the Board noted that:

The mere fact that applicant's principal offices are in Century City, close to Sunset Boulevard, does not mandate a finding that a goods/place association should be presumed. Sunset Boulevard itself would have to be associated with the products in such a way that the consuming public would be likely to assume that Sunset Boulevard was the place in which the perfume and cologne originated. Nothing in the record, however, indicates or even suggests that purchasers would believe that Sunset Boulevard was the place of manufacture or production of the perfume and cologne.

In view of the above, the Office has not satisfied its burden to establish that BLUE RIDGE is primarily geographically descriptive of applicant's goods.

**Decision:** The refusal to register is reversed.