

THIS OPINION IS NOT A  
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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 D'Andrea Family Limited Partnership*

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Serial No. 85834204

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Gregg R. Zegarelli of Zegarelli Technology & Entrepreneurial Ventures Law Group,  
P.C. for D'Andrea Family Limited Partnership.

Cynthia Rinaldi, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop,  
Managing Attorney).

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Before Kuhlke, Ritchie, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

D'Andrea Family Limited Partnership ("Applicant") filed an application for registration on the Principal Register of the mark ARCATA in standard character form for "Wine," in International Class 33.<sup>1</sup>

The Examining Attorney refused registration under Trademark Act § 2(e)(3), 15 U.S.C. § 1052(e)(3), on the ground that the mark is primarily geographically

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<sup>1</sup> Application Serial No. 85834204 was filed on January 28, 2013 under Trademark Act § 1(a), 15 U.S.C. § 1051(a), stating the date of first use and first use in commerce as January 1, 2005. Applicant claims ownership of Reg. No. 2805972 on the Supplemental Register for the mark ARCATA for "Wine." The claimed registration issued January 13, 2004 and has been renewed.

deceptively misdescriptive of Applicant's goods. After the Examining Attorney made her refusal final, Applicant filed a request for reconsideration and, later, a notice of appeal. When the Examining Attorney denied the request for reconsideration, proceedings in this appeal resumed. Applicant and the Examining Attorney have filed briefs and Applicant has filed a reply brief.

1. Evidentiary matter.

Applicant, in its brief at 12-14,<sup>2</sup> requests that the Board take judicial notice of certain web pages of the U.S. Alcohol and Tobacco Tax and Trade Bureau ("TTB"); certain cited United States statutes; and certain provisions of the Code of Federal Regulations. The Examining Attorney objects to the admission of the web page evidence as untimely.<sup>3</sup>

Under Fed. R. Evid. 201, "The [Board] may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the [Board's] territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." The content found on internet web sites is generally a particularly unsuitable subject of judicial notice because it is changeable and evanescent. For this reason, it is well established that the Board will not utilize a link or reference to a website's internet address to consider content that may appear there. *In re HSB Solomon Associates LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012); TBMP § 1208.04. In this case, Applicant included in its brief partial quotations from web pages of the TTB, with citations to the URLs of the web

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<sup>2</sup> 7 TTABVUE 14-16.

<sup>3</sup> Examining Attorney's brief, 9 TTABVUE 3-4.

pages. Applicant did not include a copy of the web pages that it wished the Board to notice. While we do not wholly exclude the possibility of taking judicial notice of official government records that are published online, the materials quoted by Applicant (descriptions of the “mission” and “goals” of the TTB and comments relating to viticultural areas) are not sufficiently fixed and definite to be considered the type of matter that can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Accordingly, the Board has given no consideration to the web page content quoted by Applicant in its brief. However, because federal statutes and regulations can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned, the Board will consider those relevant provisions that are cited by Applicant.

2. Refusal under Section 2(e)(3).

A mark that is primarily geographically deceptively misdescriptive is unregistrable, as provided by Trademark Act § 2(e)(3). A mark is primarily geographically deceptively misdescriptive 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 would be a material factor in a consumer's decision to purchase the goods.

*In re Miracle Tuesday LLC*, 695 F.3d 1339, 104 USPQ2d 1330, 1332 (Fed. Cir. 2012); *In re California Innovations, Inc.*, 329 F.3d 1334, 66 USPQ2d 1853 (Fed. Cir. 2003).

Applicant admits, in its brief at 3, that “Arcata is a geographical location in California.”<sup>4</sup> There is much evidence of record, to be discussed below, relating to the city of Arcata in northern California; and it is clear that this city is neither obscure nor remote. Applicant does not contend that the term ARCATA has any meaning other than its geographic significance. Accordingly, we find that the primary significance of ARCATA is that of a generally known geographic location. Applicant has also admitted that its wine “is not produced in Arcata.”<sup>5</sup> Accordingly, the questions remaining for determination are whether consumers would believe that Applicant’s wine originates in Arcata; and whether this incorrect impression would be a material factor in a consumer’s decision to purchase the goods.

(a) “Goods/place association.”

In *Miracle Tuesday*, our principal reviewing Court stated:

[T]he PTO is not required to establish an “*actual* goods/place association.” ... Instead, the PTO need only “establish ‘a *reasonable predicate* for its conclusion that the public would be *likely* to make the particular goods/place association on which it relies.”

104 USPQ2d at 1333 (*quoting In re Pacer Technology*, 338 F.3d 1348, 67 USPQ2d 1629, 1631 (Fed. Cir. 2003) and *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir. 1985)). The Court continued:

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<sup>4</sup> 7 TTABVUE 5.

<sup>5</sup> *Id.*

we have held that “the goods-place association often requires little more than a showing that the consumer identifies the place as a known source of the product.” *In re Les Halles de Paris J.V.*, 334 F.3d 1371, 1374 [67 USPQ2d 1539, 1541] (Fed. Cir. 2003) (citations omitted).

*In re Miracle Tuesday*, 104 USPQ2d at 1333.

The Examining Attorney has made of record evidence of three wineries having addresses in Arcata, California, namely, Robert Goodman Winery, Curtis & David, and Ed Oliveira Winery.<sup>6</sup> The evidence indicates that Robert Goodman Winery has a tasting room in Arcata, and that tastings may be arranged at Ed Oliveira Winery by appointment.<sup>7</sup>

It is not necessary to demonstrate that a place is “well-known or noted for the goods” in order to demonstrate a goods/place association. It is sufficient to show “only a reasonable basis for concluding that the public is likely to believe the mark identifies the place from which the goods originate.” *In re Loew's Theatres, Inc.*, 226 USPQ at 868. The evidence showing that Arcata is known to be the site of several wineries is sufficient to demonstrate such a reasonable basis. Accordingly, we find that the Examining Attorney has demonstrated the requisite goods/place association, *i.e.*, that customers seeing the mark ARCATA on wines would likely believe that the wines originate in Arcata.

(b) Materiality.

Next we consider whether a consumer’s misimpression that Applicant’s goods originate in Arcata would be a material factor in his or her decision to purchase the

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<sup>6</sup> Office Action of July 29, 2013 at 15-22 and 27.

<sup>7</sup> *Id.* at 15 and 27.

goods. We find that the Examining Attorney has not demonstrated this required element of materiality. The relevant question is:

“whether a substantial portion of the relevant consumers is likely to be deceived” by the mark's misrepresentation of a goods/place association. ... In *Spirits International*, we held that, “to establish a prima facie case of materiality there must be some indication that a substantial portion of the relevant consumers would be materially influenced in the decision to purchase the product or service by the geographic meaning of the mark.” *Id.* at 1357.

*In re Miracle Tuesday*, 104 USPQ2d at 1334 (quoting *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1493, 1495 (Fed. Cir. 2009)). Because a finding of geographic, deceptive misdescriptiveness results in “the harsh consequence of non-registrability,” the Federal Circuit has required that we focus on the likelihood of “actual misleading of the public.” *In re California Innovations*, 66 USPQ2d at 1857. The Court has stated that the required finding of materiality under Section 2(e)(3) is essentially the same as the required finding of materiality in the context of a refusal on grounds of deceptiveness under Section 2(a), 15 U.S.C. § 1052(a). *In re Spirits International*, 90 USPQ2d at 1493 (“Since the NAFTA Act, the deceptiveness of the mark must be material under subsection (e)(3) just as it is under subsection (a).”) In *Loew's Theatres, supra*, which was a case under Section 2(e)(3), the Court stated that “[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 registrable under any circumstances.” 226 USPQ at 868, n.6. In *California Innovations*, the Court noted with approval the Board's statement in *In re House of Windsor* (a Section 2(a) case) that “[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.” *In re House of Windsor*, 221 USPQ 53, 57 (TTAB 1983). In *In re Save Venice New York, Inc.* 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001), the Court found that the goods at issue were of a type traditionally originating in the place named; and the Court later indicated that the *Save Venice* record “satisfies the test for deception.” *In re California Innovations Inc.*, 66 USPQ2d at 1858.

In light of the guidance discussed above, we proceed to consider whether the Examining Attorney has shown that Arcata is “noted for” wine; that wine is a “principal product” of Arcata; that wine is a product “traditionally originating” in Arcata; or that, for any other reason, a substantial portion of customers for wine would be materially influenced in the decision to purchase wine by a misrepresentation that the goods originate in Arcata.

The entry for Arcata from <columbiagazetteer.com> states that Arcata is a city in Humboldt county in northwestern California, having a population of 16,651.

The salient portion of the entry states:

Railroad junction; timber; manufacturing (fertilizers, apparel, textile products, paper mills, light consumer goods). Seat of Humboldt State University. Bret Harte lived here, 1857-1860. Arcata Airport to N; Azalea Reserve to N; Patrick’s Point State Park and Trinidad State Beach to N; Hoopa Valley Indian Reservation to NE; Redwood National Park to N; Six Rivers National Forest to E.<sup>8</sup>

The entry for Arcata from <wikipedia.org> describes the city as follows:

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<sup>8</sup> Office Action of July 29, 2013 at 14.

This college town ... is home to Humboldt State University. Arcata is also the location of the Arcata Field Office of the Federal Bureau of Land Management, which is responsible for the administration of natural resources, lands, mineral programs, including the Headwaters Forest....<sup>9</sup>

For many years the timber industry dominated Arcata's economy. Today, the majority of Arcata jobs come from government (including schools and Humboldt State University), the city's many owner-resident small businesses, some lumber and food manufacturing, and a wide variety of service industries (ranging from professional services to restaurant and hospitality). A large but unmeasurable cannabis economy employs many in Arcata and the surrounding area.<sup>10</sup>

### **Culture**

The heart of Arcata is the Plaza. In the 1850s the Plaza was where goods destined for the Trinity County mines were loaded onto mule trains. ... The Plaza is surrounded by stores, bars, coffee shops, restaurants, and live music venues. The Plaza is also the center of Humboldt County's largest farmer's market (April through November), and serves as a major venue for local Fourth of July festivities, the Arcata Main Street Oyster Festival, the start of the Kinetic Sculpture Race, and the North Country Fair. The North Country Fair Samba Parade has been a community favorite since 1986. ... The annual Explorations in afro-cuban dance and drum workshop is held every summer on the HSU campus. ...

Arcata also features a large number of original Victorian structures, many of which have been restored.

Arcata's Minor Theater is one of the oldest movies-only theaters in the United States which is still in operation.<sup>11</sup>

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<sup>9</sup> Applicant's response of June 11, 2013 at 23.

<sup>10</sup> *Id.* at 26.

<sup>11</sup> *Id.* at 27-28.



The entry's list of "Events" refers to the "Kinetic Sculpture Race," the county fair, the Samba Parade, a birding event, two arts events, the oyster festival, the farmer's market, a Fourth of July Jubilee, a mountain bike race, and a block party.<sup>12</sup> The entry's list of 22 "Notable residents" includes no reference to a wine maker.<sup>13</sup>

The entry for Humboldt County from <wikipedia.org> refers to Arcata as "the smaller college town of Arcata, site of Humboldt State University."<sup>14</sup> The entry's listing of "Events" includes seven events in Arcata, all of which were mentioned in the "Arcata" entry discussed above except for a film festival and Humboldt Pride.<sup>15</sup> Notably absent from all of the above geographic references is any mention of wine in connection with Arcata.

The Examining Attorney argues:

The record shows that the origin of wine is a material factor in a consumer's purchasing decision. Northern California wines are known for their quality and Humboldt County wines, including those from Arcata, are known for their distinctiveness. ... Characteristics attributed to all Humboldt County wines will necessarily be characteristics attributed to wines from Arcata because it is located in Humboldt County.<sup>16</sup>

... California wine country lacks well-defined boundaries. It is a general region of Northern California that has and will continue to grow with time and discovery of arable lands and climates that support various varieties. As the evidence referenced above states, the area is "generally regarded as the combined counties of Napa, Sonoma and

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<sup>12</sup> *Id.* at 32.

<sup>13</sup> *Id.* at 31-32.

<sup>14</sup> Applicant's request for reconsideration of October 30, 2013 at 24.

<sup>15</sup> *Id.* at 39-40.

<sup>16</sup> Examining Attorney's brief, 9 TTABVue 10.

Mendocino. However, some references include part of Lake in the term Wine Country.”<sup>17</sup>

The Examining Attorney’s argument somewhat overstates what the evidence shows with respect to Arcata and Humboldt County. The entry for “Wine Country (California)” from <wikipedia.org> does not refer to either Humboldt County or Arcata:

There are over 400 wineries in the area north of San Francisco, mostly located in the area’s valleys including Napa Valley in Napa County, and the Sonoma Valley, Alexander Valley, Dry Creek Valley, Bennett Valley, and Russian River Valley in Sonoma County. Wine grapes are also grown at higher elevations, such as Atlas Peak and Mount Veeder AVAs. ...

Communities associated with the Wine Country include Santa Rosa, Kenwood, Healdsburg, Sonoma, Napa, Yountville, St. Helena, Calistoga, Geyserville, Petaluma, Sebastopol, Guerneville, historic Fort Ross and Ukiah.<sup>18</sup>

Applicant’s president has stated in the record:

10. Importantly, the geographical area known as “Arcata” is not an American Viticultural Areas, [*sic*] as contained in part 9 of the TTB regulations (27 CFR part 9)....

11. Arcata, CA is not in the mountain region or in Napa or Napa Valley which are south, but is effectively on the Northern coast itself, in Northern California. ...

12. Wine purchasers are sophisticated. ... And, if the purchasers are sophisticated, the purchasers will know that Arcata is not known for wine production or as a viticultural area, because it is not, in fact, a [*sic*] known for wine or a viticultural area.<sup>19</sup>

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<sup>17</sup> *Id.* at 11.

<sup>18</sup> Office Action of July 29, 2013 at 40.

<sup>19</sup> Affidavit of John D’Andrea, Applicant’s response of June 11, 2013 at 11.

The record shows that the special appeal of “Wine Country” to consumers of wine derives from the distinguishing features of the geographic area that have an impact on the quality of wine grapes that may be grown there. These features include the climate, the geology, the soils, other physical features, and the elevation of the area. *See, e.g.*, 27 C.F.R. 9.122(a)(3) (federal regulations relating to the establishment of an American Viticultural Area). However, the evidence shows that the wineries located in Arcata obtain the grapes for their wines in other places. The website of Robert Goodman wines states, “The majority of our production is our Cabernet Sauvignon, made from grapes from the award-winning Beatty Ranch on Howell Mountain, Napa Valley, California.”<sup>20</sup> A third-party website says of the Robert Goodman winery’s location in Arcata that it “is not suitable for growing grapes.”<sup>21</sup> The website of Curtis & David states, “Our quest for smaller carefully managed vineyards has led us to work with grapegrowers in the Ukiah area of Mendocino County and several locations in Napa County.”<sup>22</sup> The wines of the Ed Oliveira Winery are made from grapes grown not in Arcata, but in Dry Creek Valley (Sonoma County) and Willow Creek (Humboldt County).<sup>23</sup> Accordingly, the record does not suggest that customers would be induced to purchase a wine because it was made with grapes grown in Arcata.

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<sup>20</sup> Office Action of July 29, 2013 at 17.

<sup>21</sup> *Id.* at 27.

<sup>22</sup> *Id.* at 18-19.

<sup>23</sup> *Id.* at 27.

We are not persuaded by the Examining Attorney's argument in her brief at 10 that "Characteristics attributed to all Humboldt County wines will necessarily be characteristics attributed to wines from Arcata...." On the basis of the evidence before us, we cannot conclude that every place in Humboldt County has a reputation for wine of good quality. The evidence shows that Humboldt County is a very large area that is not particularly noted for its wines. The introduction of the Wikipedia entry for "Humboldt County, California" does not mention wine.<sup>24</sup> Its section on "Agriculture" refers to "its impressive redwood trees, and many acres of private redwood timberland mak[ing] Humboldt the top timber producer in California" and historic production of "abundant apples and other fruit"; and closes with, "More recently vineyards have been planted in the Trinity, Klamath, Mattole and upper Eel river valleys."<sup>25</sup>

Although Humboldt County does have at least one American Viticultural Area, called Willow Creek, the county has only 26 wineries and appears to be struggling to establish recognition for itself as a source of wines:

Insultingly, the North Coast American Viticultural Area (AVA) terminates at the Mendocino County line, with still 162 miles of California real estate above it. Humboldt is a place unto itself, apparently too far north to merit the designation.

"After 25 years as a member of the Wine Institute, I finally got them to revise their California winery map to

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<sup>24</sup> Applicant's request for reconsideration of October 30, 2013 at 24.

<sup>25</sup> *Id.* at 31.

include Humboldt County,” says Andrew Morris of Briceland Vineyards....<sup>26</sup>

Readers’ online comments in response to the above-quoted article further suggest that Humboldt County is not well-known:

Thanks for a fine article about our off the beaten path wine region. ... We look forward to more interaction with the outside world.<sup>27</sup>

Another brilliant regional study by Clark Smith .... The end of the article also incisively frames the reason why (short of making the trek to Humboldt County) I probably never will have the opportunity to taste these wines.<sup>28</sup>

We note also that the lengthy and detailed article quoted above makes no mention of Arcata.

We need not – and do not – make any finding as to whether the name “Humboldt” would induce customers of wine to make a purchase. However, on this record, the fact that Arcata is in Humboldt County is insufficient to persuade us that the name ARCATA would induce customers to purchase wine.

Having carefully reviewed the record, we see no indication that Arcata is “noted for” wine, that wine is a “principal product” of Arcata, or that wine is a product that customers perceive as “traditionally originating” in Arcata. Arcata does not appear to be a suitable place for growing wine grapes. Although there are three wineries located in Arcata, they acknowledge to the market (or the marketplace takes note) that their wine is made from grapes that are grown

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<sup>26</sup> “Humboldt County: Is Too Much Terroir Possible?,” Office Action of July 29, 2013 at 44.

<sup>27</sup> *Id.* at 55.

<sup>28</sup> *Id.* at 56.

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elsewhere. Although Arcata is located in Humboldt County, a place with a developing viticultural industry, Arcata itself is known as a university town. Accordingly, we find that the Examining Attorney has not established that a substantial portion of the relevant consumers would be materially influenced in the decision to purchase Applicant's goods by the geographic indicator ARCATA. Inasmuch as the required element of materiality has not been shown, the refusal under Section 2(e)(3) cannot be sustained.

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