

**This Opinion is Not a
Precedent of the TTAB**

Mailed: February 9, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Millbrook Distillery, LLC
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Serial Nos. 85924732 and 85954556
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Charles H. Knull of Knull P.C.,
for Millbrook Distillery, LLC.

Jillian R. Cantor, Trademark Examining Attorney, Law Office 117,
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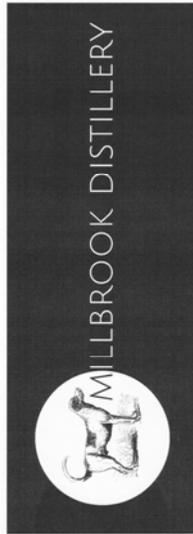
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Before Seeherman, Kuhlke and Masiello,
Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Millbrook Distillery, LLC has filed two applications on the Principal Register, one for the mark MILLBROOK DISTILLERY in standard characters, with DISTILLERY disclaimed,¹ and one for MILLBROOK DISTILLERY and design,

¹ Application Serial No. 85954556, filed June 8, 2013. The application was initially based on Section 1(b) of the Trademark Act; however, on May 31, 2014, Applicant filed an amendment to allege use asserting first use and first use in commerce as early as December 1, 2013.

with MILLBROOK DISTILLERY disclaimed (hereafter the “design mark”), as shown below.²



The design mark is described as consisting “of the wording MILLBROOK DISTILLERY partially overlapping a circle with a dog in it, all of the foregoing over a shaded rectangle.” Both applications identify the goods as “whiskey” in Class 33.

Registration of both marks has been refused pursuant to Section 2(d) of the Trademark Act, on the ground that Applicant’s marks so resemble the mark MILLBROOK in typed format for wine in Class 33³ that, when used on Applicant’s goods, they are likely to cause confusion or mistake or to deceive. The Examining Attorney has also refused registration of the standard character mark pursuant to Section 2(e)(2) on the ground that it is primarily geographically descriptive.

² Application Serial No. 85924732, filed May 6, 2013, based on Section 1(b) of the Trademark Act, asserting a bona fide intent to use the mark in commerce.

³ Registration No. 2307051, issued January 11, 2000; Section 8 affidavit accepted; Section 15 affidavit acknowledged; renewed. Prior to November 2, 2003, “typed” was the term used for standard character drawings. *See* TMEP § 807.03(i).

After the appeals were filed, and Applicant submitted its appeal briefs, the Examining Attorney moved to consolidate the appeals, a motion the Board granted. Therefore, we decide both appeals in a single opinion.

Likelihood of Confusion

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also, In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

With respect to the *du Pont* factor of the similarity or dissimilarity of the marks, we must consider the marks in their entirety as to appearance, sound, connotation, and commercial impression. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005). Nevertheless, there is nothing improper in stating that more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). The cited mark is MILLBROOK. MILLBROOK is the dominant element of Applicant's standard

character mark; the only other element in the mark, the disclaimed word DISTILLERY, is descriptive of a place where whiskey is made, and therefore has little or no source-indicating significance.⁴ Thus, the marks are very similar in appearance, pronunciation, connotation and commercial impression. As for the design mark, for the reasons discussed above, MILLBROOK is the dominant element in the word portion of the mark. Although this mark also includes a design element of a dog and a background geometric shape, it is the word portion that is dominant because it is by the words that consumers will refer to and call for the goods. *See In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987) (if a mark comprises both a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods or services).

Applicant does not dispute the similarity of the marks, but argues that the relative lack of strength of the cited registration, the conditions of purchase, and the differences between the goods obviate the likelihood of confusion.

We therefore turn to a consideration of the goods, keeping in mind that the greater the similarity between an applicant's mark and the cited registered mark, the less the degree of similarity between the applicant's goods or services and the registrant's goods or services that is required to support a finding of likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001), cited with

⁴ Although the Examining Attorney submitted a definition for "distillery" as "a place where alcoholic drinks, etc. are made by distillation," this definition is from the Collins English Dictionary, which does not necessarily reflect usage in the United States. However, we have confirmed that this is the meaning ascribed to the term in the United States as well. We take judicial notice of the definition of "distillery": "a place or establishment where distilling, especially the distilling of liquors, is done," found in Dictionary.com Unabridged, based on the Random House Dictionary (2015).

approval in *In re Coors Brewing Co.*, 343 F.3d 1340, 68 USPQ 1059 (Fed. Cir. 2003). Moreover, the goods and/or services of the applicant and registrant need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods and/or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used or intended to be used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each of the parties' goods and/or services. *In re Iolo Technologies LLC*, 95 USPQ2d 1498, 1499 (TTAB 2010).

The Examining Attorney has submitted a substantial amount of evidence to show the relatedness of whiskey and wine. First, the Examining Attorney has made of record numerous third-party registrations showing that a single mark has been adopted for both products. See, for example, Registration Nos. 4091655, 4119091, 4001218, 3992552, 4104493 and 4296244, all for, *inter alia*, wine and whiskey. Although third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them, nevertheless third-party registrations which individually cover a number of different items and which are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988), and cases cited therein; *In re Albert Trostel & Sons Co.*, 29

USPQ2d 1783 (TTAB 1993). Although the Board has consistently followed this principle, see *In re Sela Prods., LLC*, 107 USPQ2d 1580, 1586 (2013), *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012) for recent examples, Applicant takes issue with it. Applicant contends that the third-party registrations purporting to show the relatedness of the goods in fact do not because the specimens submitted in connection with the underlying applications, or with the Section 8 affidavits, do not show the use of the mark on both wine and whiskey. Further, although Applicant claims that it is not collaterally attacking these registrations, at the same time it points out that it has reviewed the third parties' websites and they do not show the use of the involved mark on all of the goods listed in the registrations.

We are not persuaded by Applicant's arguments that we should, in effect, overrule all of those cases in which this principle has been applied, or no longer apply it to future cases. We think it inappropriate to draw any conclusion from Applicant's assertions that the specimens in these registrations do not show use of the particular mark for all of the goods, since that was not a requirement at the time the specimens were submitted. Nor do we give any credence to Applicant's report that it was unable to find evidence that the marks are in use on all of the goods listed in the identifications. Whether or not Applicant chooses to call it a collateral attack on these registrations, saying that the marks are not in use on all of the goods and at the same time pointing out that "[r]egistrations not filed with a bona fide use on all the goods claimed in the registrations, or supported by false

declarations of use, or supported by false declarations under section 8 are subject to cancellation” (response filed January 1, 2014⁵) comes awfully close to attacking such registrations.

In any event, the case law makes clear that third-party registrations are not evidence that the marks shown therein are in commercial use, and therefore whether or not the registrants are currently using their marks for each of their identified goods is not the basis for considering the registrations as evidence of the relatedness of the goods. Moreover, the third-party registrations are not the only evidence made of record by the Examining Attorney to show that whiskey and wine are related.

The Examining Attorney has provided substantial evidence of third parties that operate both wineries and distilleries, and many of them make this clear by including both the words “winery” and “distillery” in their trademarks/trade names. See, for example, Warwick Valley Winery & Distillery, Warwick, NY, pp. 4-6; Charbay Distillery & Winery, Napa Valley, CA, pp. 7-8; Koenig Distillery & Winery, Caldwell, ID, p. 9; Sweetgrass Farm Winery & Distillery, Union, ME, pp. 15-16; and Don Quixote Distillery & Winery, NM, pp. 19-20.⁶ Many of the websites show that these entities produce wine and spirits, including whisky. See, for example, the website for Woodstone Creek, in Cincinnati Ohio, which states that the company produces wine, bourbon, single malt whisky and other spirits, pp. 17-18 of

⁵ Unless otherwise indicated, citations to the record refer to statements and evidence in both applications.

⁶ These webpages were attached to the August 26, 2013 Office action.

August 26, 2013 Office action; the website for Flag Hill winery and distillery of Lee, NH, which states that it makes both wines and spirits, and sells both types of products under the FLAG HILL mark, pp. 22-32;⁷ the Nashoba Valley Winery in Massachusetts, which advertises itself as being a “winemaking and distillation facility” that makes “Nashoba ‘Single Malt’ Whiskey” and a variety of wines, pp. 40-46; Edgefield Distillery, in Troutdale, OR, makes spirits including whiskey pp. 33-37, while their Edgefield Winery, according to their website, makes more than 25,000 cases of wine annually, pp. 38-39; and the website for Ransom in Oregon, pp. 52-58 shows RANSOM whiskey and RANSOM wines.

Applicant’s response to this evidence is that the Examining Attorney provided no context as to how many combination distillery-wineries exist, versus how many standalone wineries and standalone distilleries exist. As a result, “Applicant does not believe that this evidence of joint winery-distilleries supports a general inference that consumers of alcoholic beverages when, for example, visiting a winery, would expect to be able to order the winery’s whiskey....” Appeal briefs, 4 TTABVue 4. However, the question is not whether consumers would expect to order whiskey at a winery, but whether wine and whiskey are so related that purchasers would expect these goods to emanate from the same source if they were sold under the same or confusingly similar marks. In that respect, the issue is not the number of stand-alone wineries and distilleries that exist as compared to how many businesses produce both wine and spirits, but whether consumers would be

⁷ This evidence, as well as the website evidence referenced in the rest of the paragraph, was attached to the January 10, 2014 Office action.

familiar with the fact that there are combination wineries and distilleries, or companies that produce both types of goods, such that they would assume a connection between the two products. *Cf. In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009), in which the Board stated, in connection with a similar argument regarding third-party registration evidence:

there is no requirement for goods to be found related that all or even a majority of the sources of one product must also be sources of the other product. Therefore, evidence showing only that the source of one product may not be the source of another product does not aid applicant in its attempt to rebut the evidence of the examining attorney.

Here, the Internet evidence shows that there are a number of combination wineries and distilleries, and/or companies that produce both wine and spirits, including whiskey, and that these companies are located throughout the country, including California, Idaho, Iowa, Massachusetts and Maine. This evidence is sufficient for us to find that the goods are related.

Whiskey and wine are also sold in the same channels of trade, namely liquor stores, and they can be advertised together. See request for reconsideration filed June 1, 2014, p. 52, advertising on the same webpage/newsletter wines and bourbon at Village Wine & Spirits. Applicant acknowledges that the trade channels can be the same, although it asserts that the goods would occupy separate shelf space. Assuming this to be the case, the goods could still be encountered by the same customers, and perhaps bought in the course of a single shopping trip, such as while obtaining alcoholic beverages for a party.

Applicant argues that the cited registration is entitled to only a limited scope of protection that does not extend to wine. It has submitted some of the papers from the file of the cited registration, and particularly the arguments of the then-applicant as it attempted to overcome a refusal based on two registrations owned by the same entity, No. 1273784 for MILLBROOK for what was then “bakery products, namely, bread for stuffing, cake, cookies, corn patties, donuts, fruit cake and rolls”⁸ and No. 1405182 for MILLBROOK FARMS for “bread.” The then-applicant argued, *inter alia*, that it had a previous registration that had been cancelled because of its inadvertent failure to file a Section 8 affidavit, and that its previous registration and the two cited registrations had coexisted on both the Principal Register and in the marketplace without any evidence of actual confusion. The then-applicant also pointed out that there were a number of third-party registrations for marks containing the term MILLBROOK.

The current applicant has attempted to analogize its situation to that involving the cited mark, and has even repeated a number of the arguments made by the cited registrant in 1999. What the registrant said in attempting to obtain registration of the currently cited mark may be considered as “illuminative of shade and tone in the total picture confronting the decision maker.” *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978). However, we give the cited registrant’s statements little weight, as the prior situation is different from the situation now before us. In particular, the goods of

⁸ Registration No. 1273784 was subsequently amended, and the identification now is just “bread and rolls.”

the earlier cited registrations, bread and bakery products, are very different from the whiskey identified in Applicant's applications. Thus, any views of the cited registrant about the lack of likelihood of confusion between its mark MILLBROOK for wine and the MILLBROOK/MILLBROOK FARMS marks for bread and bakery products cannot be deemed to reflect the cited registrant's views on the likelihood of confusion between Applicant's MILLBROOK DISTILLERY and MILLBROOK DISTILLERY and design marks for whiskey and the registrant's mark MILLBROOK for wine. Certainly its experience of lack of instances of actual confusion with the marks used for bread and bakery products cannot translate to what the situation would be for the MILLBROOK DISTILLERY marks for whiskey. *Cf. In re Majestic Distilling Co.*, 65 USPQ2d at 1205-06, in which the Court pointed out that the cited registrant's consent agreements with third parties "are several years old and may not reflect current views," and the registrant "may now have knowledge of incidents of actual confusion, and may no longer hold the same view with respect to likelihood of confusion as it did ... when it argued to the PTO that there was no likelihood of confusion."

Applicant has also attempted to rely on an argument made by the cited registrant by pointing to a number of third-party registrations for marks containing the term MILLBROOK. However, as previously noted, third-party registrations are not evidence that the marks are in use or the public is familiar with them. To the extent they have probative value, they can be used in the manner of a dictionary, to show that a term has a significance in a particular industry. *See Tektronix, Inc. v.*

Daktronics, Inc., 534 F.2d 915, 189 USPQ 693, 694-95 (CCPA 1976). The third-party registrations submitted by Applicant (and for that matter, by the cited registrant during prosecution of its application), are generally for goods and services so different from those at issue herein⁹ that they have no probative value to show that MILLBROOK has a meaning for alcoholic beverages, and as such should be accorded a narrower scope of protection. Applicant has also submitted two third-party registrations for wine. One is for MILLS, Registration No. 1679593, which has a connotation different from MILLBROOK, and the other is for MILL CREEK, Registration No. 1089846. Although the latter has certain similarities to MILLBROOK, we cannot say on the basis of this single third-party registration that MILLBROOK has a significance for wine. We also point out that even if these two third-party registrations could show that “mill” has a meaning for these goods, Applicant’s mark does not merely include the term MILL, but uses the entirety of the cited mark, MILLBROOK, to which it has added the descriptive word DISTILLERY in its word mark and the non-dominant design of a dog and a geometric background in its design mark.

We have also considered Applicant’s argument (which seems to undercut its position regarding the geographic refusal) that MILLBROOK is a geographic term and is a surname (the latter based on the statement that there were 159

⁹ For example, Registration No. 1245444 for MILBROOK for non-textile wallcoverings; Registration No. 3539828 for handbags; Registration No. 3812420 for manufacture of kitchen cabinets to the order and specification of others; and Registration No. 3826123 for MILLBROOK and design for beef, luncheon meats, etc. Also, some of the third-party registrations submitted by Applicant have since been cancelled or expired; such registrations have no probative value.

occurrences of this name in the 2000 census).¹⁰ We point out that the cited registration issued pursuant to Section 2(f), and we therefore treat it as having acquired distinctiveness.

Applicant has also submitted approximately 100 instances or listings of third-party use of MILLBROOK marks or trade names. The sixth *du Pont* factor is the number and nature of similar marks in use on similar goods (and services). Most of the third-party uses shown by Applicant are for goods and services very different from those at issue, and therefore they have no probative value. For example, Applicant has submitted webpages advertising the Bank of Millbrook, p. 29, Millbrook Family Eyecare, p. 31, Millbrook Floral Design, p. 34, Millbrook Cabinetry & Design, p. 36, and the Millbrook Rod & Gun Club, p. 71-73.¹¹ Most of these businesses are apparently located in Millbrook, NY.¹²

Significant third-party usage of a particular term in trademarks for similar goods and services can result in a conclusion that consumers will look to other elements of a mark to distinguish one mark from another, or will recognize that the inclusion of a particular term within several marks does not indicate that the marks all represent a single source for the goods or services. That would be the case with the many third-party uses of MILLBROOK by the businesses located in Millbrook,

¹⁰ Information found in Mongabay.com, submitted at p. 139 of request for reconsideration filed May 31, 2014.

¹¹ All of this evidence was submitted with the request for reconsideration.

¹² As our primary reviewing court said in another context, “It is indeed remarkable to see the thoroughness with which NEXIS can regurgitate a placename casually mentioned in the news.” *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USOQ2d 1450, 1451 (Fed. Cir. 1987).

NY. Consumers would recognize that the inclusion of MILLBROOK in the various trade names and trademarks is a reference to the fact that the companies are located in the town of Millbrook, and they would not assume that the Bank of Millbrook, Millbrook Family Eye Care and the Millbrook Rod & Gun Club, for example, were all associated with each other.

However, the evidence submitted by Applicant is not sufficient for us to reach such a conclusion when it comes to alcoholic beverages. There is only one possible third-party use of MILLBROOK in connection with alcoholic beverages, represented by a listing for Millbrook Wine & Liquor in Windsor, CT in YELP, which has a single review. Request for reconsideration, p. 83. Aside from the fact that a single third-party use is not sufficient for us to find that consumers distinguish between various MILLBROOK marks in the alcoholic beverage field, we cannot conclude from this single mention in YELP that there has been any significant public exposure to this mark or trade name in the field of alcoholic beverages.

Applicant has also asserted that Village Wine & Spirits, located in the Village of Millbrook, sells both Applicant's and the registrant's products. Request for reconsideration filed June 1, 2014, p. 1. The webpages at pp. 51-54 of the request for reconsideration indicate that this store carries wines from the Millbrook Winery, p. 53, but we have been unable to find any reference to Applicant's MILLBROOK DISTILLERY whiskey in the evidence submitted by Applicant. Even if we had such evidence, it has very limited persuasive value. As we previously said, people in the village of Millbrook are not likely to believe that every mark or trade name that

contains the name MILLBROOK identifies goods and services emanating from a single source. Moreover, even if this single store does in fact carry both wines sold under the mark MILLBROOK and whiskey sold under Applicant's MILLBROOK DISTILLERY marks, we cannot conclude based on the experience of a single store that there has been a significant opportunity for confusion to occur, if it were likely to occur. As the Court stated in *In re Majestic Distilling Co.*, 65 USPQ2d at 1205, the applicant's "uncorroborated statements of no known instances of actual confusion are of little evidentiary value. ... The lack of evidence of actual confusion carries little weight."

The next *du Pont* factor we consider is the conditions under which and buyers to whom sales are made, i.e., "impulse" vs. careful, sophisticated purchasing. Applicant concedes that wine "may be the subject of an impulse purchase by an ordinary consumer without a great degree of sophistication," and that "the average consumer may quickly pick up a \$10-\$20 bottle or wine ...for a dinner or a party." Reply briefs, 9 TTABVUE 2. On the other hand, Applicant asserts that whiskey has a high price point and a specific flavor and aroma that does not appeal to all consumers, so that the purchaser of whiskey will exercise a higher degree of care. The problem with Applicant's position is that it is not supported by the evidence. As noted, Applicant concedes that a \$10-\$20 bottle of wine may be purchased without great care. The evidence of record shows that whiskey can be sold in this same price range. See Edgefield website, p. 34 of January 10, 2014 Office action, showing White Dog Whiskey retailing for \$17.50 a bottle, and Monkey Puzzle malt whiskey

retailing for \$19.75. We have no doubt that a consumer of expensive wine or whiskey will exercise care in selecting it, but because wine and whiskey can be sold at lower price points as well, we cannot assume that all customers for these goods will be careful purchasers. Similarly, although a whiskey aficionado may well have a favorite brand or want a particular taste and aroma, not everyone who purchases whiskey or wine will be that discriminating. People may not buy wine or whiskey for themselves, but may purchase it as a gift or, as previously stated, will want these beverages as supplies for a party, and therefore the aroma or taste of the product will not be important. Because we must assess the likelihood of confusion for all consumers of the goods, we find that wine and whiskey may be bought by ordinary purchasers who have no particular sophistication about the products, and who buy them without exercising great care.

Having considered all the relevant *du Pont* factors and the evidence relating thereto, we conclude that Applicant's use of its marks for whiskey is likely to cause confusion with the cited registration. We affirm the refusal of registration of each application based on Section 2(d) of the Trademark Act.

Primarily Geographic Refusal

The Examining Attorney has refused registration of Applicant's word mark, MILLBROOK DISTILLERY, pursuant to Section 2(e)(2) of the Trademark Act, on the ground that the mark is primarily geographically descriptive. Applicant disclaimed the wording MILLBROOK DISTILLERY in its design mark, so the geographic refusal pertains solely to the word mark application.

In its request for reconsideration, Applicant broached the possibility of amending the application to the Supplemental Register. In responding to this offer, the Examining Attorney explained that amendment to the Supplemental Register was not an option because registration had been refused under Section 2(d). In its appeal brief, Applicant stated that, “if the Board accepts Applicant’s position on Section 2(d) likelihood of confusion but finds that the mark is nonetheless geographically descriptive, that Applicant would accept amendment to the Supplemental Register....” 4 TTABVUE 2-3. In her brief the Examining Attorney confirmed that “if the Board finds that the Section 2(d) refusal is without merit, the application may move forward to registration on the Supplemental Register.” 8 TTABVUE 11.

As a point of clarification, the Examining Attorney did not mean, in her denial of the request for reconsideration, that Applicant was prohibited from amending its application, in the alternative, to the Supplemental Register, only that such an amendment would not overcome the refusal based on Section 2(d). It is permissible, in trying to overcome a refusal under Section 2(e)(2), for an applicant to argue against the refusal but to also, in the alternative, amend the application to the Supplemental Register in order to obviate the Section 2(e)(2) refusal.

Applicant expressed the alternative claim somewhat differently in this case, because the amendment to the Supplemental Register was not to maintain that option in case the Board affirmed the refusal under Section 2(e)(2). Nonetheless, it is clear what Applicant seeks, and the Examining Attorney’s position is also clear;

she has agreed that, insofar as the Section 2(e)(2) refusal is concerned, it would be obviated by Applicant's amendment to the Supplemental Register.

Section 2(e)(2) prohibits the registration of a mark that when used on or in connection with the goods of the applicant is primarily geographically descriptive of them. To establish that a mark is primarily geographically descriptive, the Office must show that "the mark sought to be registered is the name of a place known generally to the public, the public would make a goods/place association, i.e., believe that the goods for which the mark is sought to be registered originate in that place, *Vittel*, 3 USPQ2d at 1452, and the source of the goods is the geographic region named in the mark. *In re Jacques Bernier, Inc.*, 894 F.2d 389, 213 USPQ 889 (Fed. Cir. 1990).

With respect to the first prong of the test, the Examining Attorney has submitted as evidence that Millbrook is a place known generally to the public an entry from Wikipedia (Office action mailed August 26, 2013, pp. 75-78) that states it is a village in Dutchess County, New York, in the Hudson Valley with a total area of 1.9 square miles. In 2010 it had a population of approximately 1400. The Examining Attorney, citing the Wikipedia entry, and Internet evidence from the websites millbrooknyonline.com, city-data.com, tripadvisor.com and millbrooknewyork.net, states "Millbrook is a geographic location in upstate New York that is located in the 'scenic Hudson Valley' and 'referred to as the low-key version of the Hamptons, and is one of the most affluent towns in New York State.'" Based on this, the Examining

Attorney asserts that “it is a generally known geographic location.” Brief, 8 TTABVUE 12.

Most of the Examining Attorney’s arguments are devoted to a comparison of Millbrook and Balashi, the place name considered in *In re Brouweji Nacional Balashi NV*, 80 USPQ2d 1820 (TTAB 2006), in which the Balashi neighborhood of the Santa Cruz District of Aruba was found to be obscure. For example, the Examining Attorney asserts that Millbrook has elementary, middle and high schools, a library, town hall and court, churches, bands, a fire department and restaurants and hotels. In *Balashi*, the evidence specifically showed that there were no public or private schools in Balashi, or churches, or local government, or hotels, and only a single restaurant. *Id.* at 1825. The Examining Attorney also points out that Millbrook is located in the United States.

We are not persuaded by the Examining Attorney’s evidence that Millbrook is not an obscure geographic location. It is a “village,” which by definition is “a small community or group of houses in a rural area, larger than a hamlet and usually smaller than a town....”¹³ Although the city-data.com website (which contains various demographic information and appears to be useful for someone considering moving to Millbrook) indicates that the village has, *inter alia*, two elementary schools and a middle school and a free library, and the Trip Advisor website shows that it has a motel and three bed and breakfasts, these features do not necessarily

¹³ Dictionary.com, based on Random House Dictionary, 2015. The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

show that a place is not an obscure geographic location. People must know of a place in order to make a goods-place association. Simply because a place has a school or library or town hall or motel does not mean that the public is aware of the geographic location. If that were the case, no place could be considered obscure unless it literally did not contain any public buildings.

Therefore, we must consider whether the public has been exposed to Millbrook, NY, in a way that would cause them to associate the term Millbrook with the village. The evidence of the city-data.com website, the Trip Advisor website, the millbrookonline.com website and the millbrooknewyork.net website do not persuade us that the public would be aware of Millbrook as a geographic place. These websites do not show public exposure to Millbrook; rather, only someone who knew of Millbrook and was looking for further information about it would be likely to encounter these websites. As for the Wikipedia article, there are certain inconsistencies in the article that give us some concern about the accuracy of the statements. For example, within a single section of the article there is a discrepancy about the number of households, it stating variously that there are 678 and 878. We do note that the entry lists a number of celebrities under the heading “Notable people,” and if there were indeed evidence of articles about famous people living in Millbrook this might indicate the public is aware of the geographic place. However, such evidence is not of record, and the Wikipedia entry has the indicator “[edit source],” presumably indicating that the author[s] of the entry were unable to supply the factual bases for these “notable people” listings.

In short, it is the Office's burden to show that Millbrook, NY is the name of a place known generally to the public, and not remote or obscure. On the record before us we find that the Office has not met that burden. In view of the Office's failure to meet the first prong of the test, we need not consider whether the Office has met the other prongs. Because the Office has not shown that Millbrook is the name of place generally known to the public, it has not proven that MILLBROOK DISTILLERY is primarily geographically descriptive. In view thereof, the request, in the alternative, to amend to the Supplemental Register is moot.

Decision: The refusal to register Application Serial No. 85924732 for MILLBROOK DISTILLERY and design on the ground of likelihood of confusion is affirmed; the refusal to register Application Serial No. 85054556 for MILLBROOK DISTILLERY in standard characters on the ground of likelihood of confusion is affirmed; the refusal to register that mark on the ground that it is primarily geographically descriptive is reversed.