

<p>This Opinion is not a Precedent of the TTAB</p>
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Mailed: April 13, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re IMH LR Clubhouse, LLC

Serial No. 86338122

Bradley P. Hartman of Hartman Titus PLC,
For In re IMH LR Clubhouse, LLC

Karen K. Bush, Trademark Examining Attorney, Law Office 108,
Andrew Lawrence, Managing Attorney.

Before Kuhlke, Cataldo and Goodman,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

In re IMH LR Clubhouse, LLC (“Applicant”) seeks registration on the Principal
Register of the mark LAUGHLIN RANCH (in standard characters) for

Retail store services featuring golf products and apparel in
Class 35;

Golf club services; Golf courses in Class 41;

Restaurant and bar services; Catering services in Class 43;

Health spa services; Hair salon services; Hair styling and cutting services; Manicure and pedicure services in Class 44.¹

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(2), 15 U.S.C. § 1052(e)(2), on the basis that Applicant's mark is primarily geographically descriptive of Applicant's services. When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. The Board then remanded the application to the Examining Attorney to allow Applicant to submit a verified Section 2(f) claim of acquired distinctiveness for Applicant's Section 2(f) claim in the alternative.² The Examining Attorney accepted the revised statement and declaration and this appeal resumed. We affirm the refusal to register on the Section 2(e)(2) ground.

I. Preliminary Matter

The Examining Attorney's request for judicial notice of the Columbia Gazetteer of the World is granted.³ *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1617 n.3 (TTAB 2007) (Board may take judicial notice of reference works in online or printed format).

¹ Application Serial No. 86338122 was filed on July 15, 2014, based upon Applicant's claim of first use anywhere and use in commerce since at least as early as September 2005 for Classes 35 and 41 and upon Applicant's claim of first use anywhere and use in commerce since at least as early as November 2005 for Classes 43 and 44.

² The Examining Attorney indicated in Office Actions that "the application record indicates that applicant has used its mark for a long time; therefore applicant can seek registration on the Principal Register under Trademark Act Section 2(f) based on acquired distinctiveness." December 1, 2015 Office Action p. 1; October 28, 2014 Office Action p.1.

³ Nonetheless, we would be remiss not to note that the Examining Attorney could easily have introduced this reference into the record during prosecution of the involved application.

II. Section 2(e)(2) Primarily Geographically Descriptive

The test for determining whether a term is primarily geographically descriptive is whether (1) the primary significance of the term in the mark sought to be registered is the name of a place generally known to the public, (2) the public would make an association between the goods or services and the place named in the mark, that is, believe that the goods or services for which the mark is sought to be registered originate in that place, and (3) the source of the goods or services is the geographic region named in the mark. *See In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448-9 (Fed. Cir. 2015), citing *In re Societe Generale Des Eaux Minerales De Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987), *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 104 USPQ2d 1330 (Fed. Cir. 2012), *In re Jacques Bernier, Inc.*, 894 F.2d 389, 213 USPQ 889 (Fed. Cir. 1990).

1. Whether the source of the services is the geographic region named in the mark.

Applicant acknowledges “that its services originate from Laughlin, Arizona.” (13 TTABVue 4). In addition, Applicant’s website indicates that the community overlooks “Laughlin’s bustling city and casinos.” (October 28, 2014 Office Action, p. 3).

WELCOME TO LAUGHLIN RANCH

Perched high atop the mountain range, overlooking the Mighty Colorado River and the nightlights of Laughlin's bustling city and casinos, sits the 10,000 acre Laughlin Ranch community. Nestled in the center of the community is the award-winning Championship Golf Course, award-winning Clubhouse and one of the top Spa facilities in the state.

The Clubhouse is the heart of our Championship Golf Course and Master Planned Community. Amenities include: Pro Shop, Full Service Restaurant, Banquet and Meeting Rooms, Bar & Grill, Swimming Pool, Workout Facilities and a World-Class Day Spa.

Thus, the source of the services is the geographic region named in the mark, namely, LAUGHLIN.

2. Whether the primary significance of the term in the mark sought to be registered is the name of a place generally known to the public.

We observe that Applicant's applied-for mark LAUGHLIN RANCH is a composite mark. "Under the first prong of the test —whether the mark's primary significance is a generally known geographic location —a composite mark such as applicant's proposed mark must be evaluated as a whole. ... It is not erroneous, however, for the examiner to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole." *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778, 1782 (Fed. Cir. 2001) (internal citations omitted). "[T]he presence of generic or highly descriptive terms in a mark which also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole." *In re JT Tobacconists*, 59 USPQ2d 1080, 1082 (TTAB 2001). *See, e.g., In re Carolina Apparel*, 48 USPQ2d 1542, 1543 (TTAB 1998) ("It is clear that the primary significance of the designation CAROLINA APPAREL, APPAREL being generic and disclaimed by applicant, is geographic."). In other words, "[h]ighly descriptive or generic wording does not convert a geographically descriptive term into a non-geographic term." *In re Mankovitz*, 90 USPQ2d 1246, 1248 (TTAB 2009) (citing *In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652 (Fed. Cir. 1993) (stylized mark FRENCH LINE primarily geographically descriptive of goods and services from France)); *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1662 (TTAB 1986) (CAMBRIDGE DIGITAL and

design primarily geographically descriptive when applicant's place of business is Cambridge, Massachusetts).

On appeal "Applicant acknowledges that the word LAUGHLIN is geographically descriptive of Laughlin, Arizona."⁴ (13 TTABVUE 4). The record shows that LAUGHLIN is the name of the southernmost (unincorporated) town in Nevada, and that it is the third largest gambling venue in Nevada, with many hotels.⁵ (15 TTABVUE 15). This evidence, coupled with Applicant's concession, show that term LAUGHLIN is a geographic name of a place generally known to the public.

As to the term RANCH, the Examining Attorney asserts that the addition of the descriptive term RANCH does not obviate the primary geographic significance of the term LAUGHLIN. However, Applicant submits that RANCH is "not generic or so highly descriptive as to make the mark geographically descriptive overall." (13 TTABVUE 4).

To support her position, the Examining Attorney provided third-party registrations incorporating the term RANCH to show the Office's treatment, as merely descriptive, of the term RANCH for the same or similar services as those in the application. Third-party registrations can be used as in the manner of a dictionary definition to illustrate how the term is perceived in the trade or industry. "Such third party registrations show the sense in which the word is used in ordinary parlance and may show that a

⁴ In its responses to the Office Actions, Applicant did not contest the Examining Attorney's assertion that LAUGHLIN identifies a geographic location and that Applicant renders its services in Laughlin. April 28, 2015 Response to Office Action, p. 1; July 15, 2014 Response to Office Action, p 1.

⁵ This evidence also states that Laughlin is located near the Colorado River and Bullhead City, Arizona. 15 TTABVUE 15.

particular term has descriptive significance as applied to certain goods or services.” *Institut National Des Appellations D'Origine v. Vintners International Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992).

Applicant argues that the third-party registrations cited by the Examining Attorney do not establish the descriptiveness of the term RANCH. Applicant asserts that the third-party registrations “deal with different facts and [or] different goods/services identifications from those at issue in the present application” and that the Examining Attorney “is simply following the path taken by prior examiners and requiring a disclaimer of RANCH without showing that the word ‘ranch’ is actually descriptive of Applicant’s specific services.” (13 TTABVUE 9). Applicant points to the file histories of these third-party registrations,⁶ and argues that

[n]othing the Examining Attorney cites in the third-party registrations – when viewed with reference to the particular services and the evidence, arguments and specimens of record in the particular file – shows that RANCH is descriptive of Applicant’s services. (13 TTABVUE 10).

In response to these arguments, the Examining Attorney submits that Applicant’s assertions as to why these third parties disclaimed RANCH (or claimed Section 2(f) or filed on the Supplemental Register) is speculation and notes that Applicant has not provided any third-party registrations to rebut the sampling of registrations

⁶ We have reviewed the file histories provided by Applicant of the third-party registrations identified by the Examining Attorney. June 1, 2016 Request for Reconsideration, pp. 2-1335. As Applicant has pointed out, the records show that these registrants entered voluntary disclaimers of RANCH based on an Examining Attorney’s requirement, or disclaimed RANCH on filing the application, or filed under Section 2(f), or amended to Section 2(f) (after a refusal or requirement), or filed for registration on the Supplemental Register.

provided by the Examining Attorney. The Examining Attorney asserts that the third-party registrations “demonstrate the term RANCH is commonly used in the industry to describe resorts and facilities that offer services such as golfing, restaurants, spa services, etc.” (15 TTABVUE 9).

While third-party registrations are not conclusive on the question of mere descriptiveness, we find that those third-party registrations in the record which identify the same services as Applicant have some probative value as to the descriptiveness of the term RANCH. However, Applicant is correct that to the extent any of the third-party registrations recite different services than those identified herein (e.g., cattle ranches, educational services etc., dogs and dog training) they have no probative value.

Both the Applicant and the Examining Attorney also provided dictionary definitions to support their respective positions. In this regard, the definitions in the record for RANCH include “a large farm for raising horses, beef cattle, or sheep,”⁷ “a farm or area devoted to a particular specialty,”⁸ “a large farm, especially in the western US and Canada, where cattle or other animals are bred and raised,”⁹ and “a large farm that produces a particular crop or animal.”¹⁰

Applicant argues that the dictionary definitions provided by both the Applicant and the Examining Attorney do not support “a definition of ‘ranch’ that includes golf services, hotel resort services, retail store services, health spa services, or a facility

⁷ April 28, 2015 Office Action, p. 2 Merriam-Webster dictionary, www.merriam-webster.com.

⁸ *Id.*

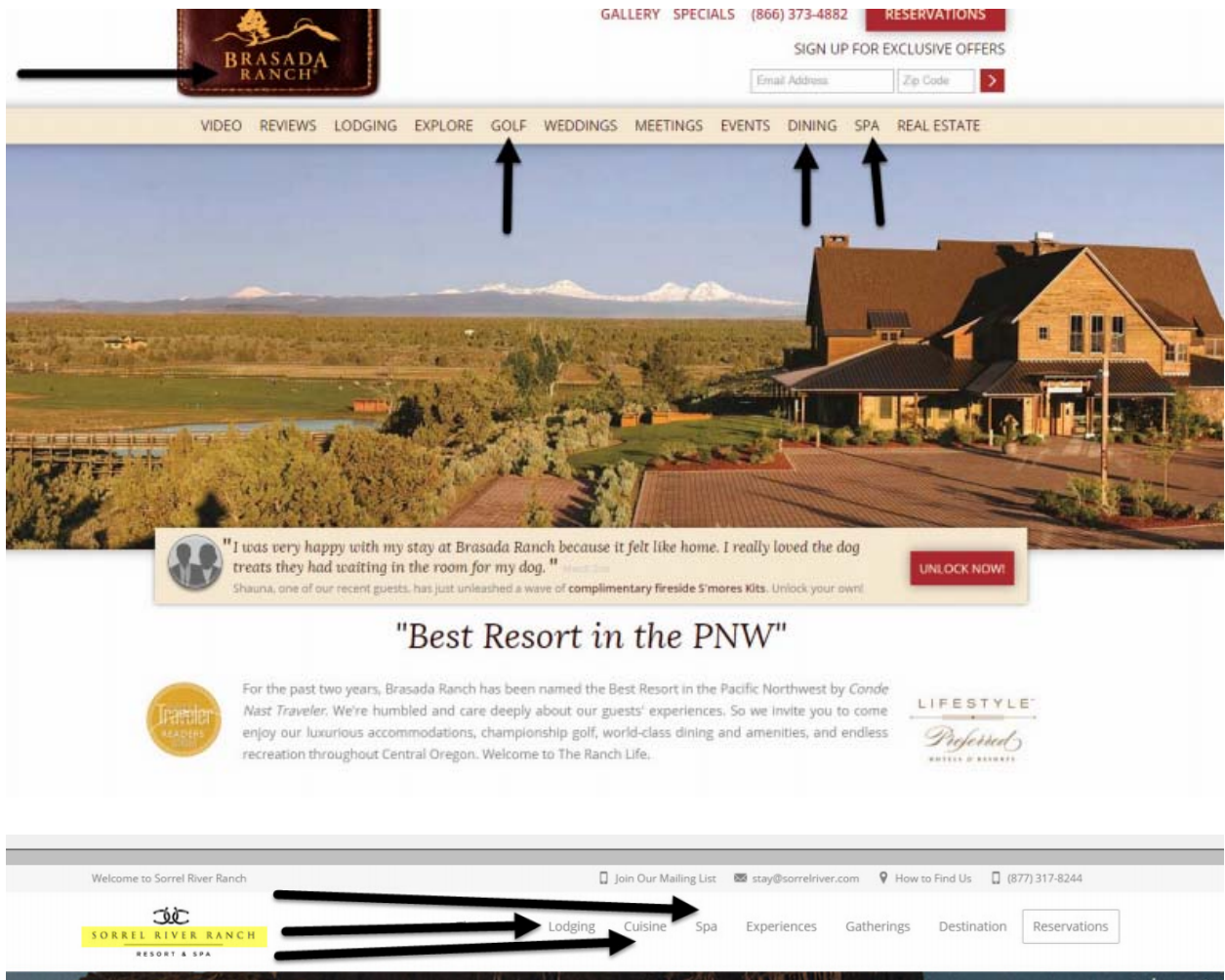
⁹ *Id.* at 7, Oxford Advanced Learner’s Dictionary, www.oxforddictionaries.com.

¹⁰ *Id.* at 5, Macmillan Dictionary, www.macmillandictionary.com.


that offers all of the foregoing services at a common location.” (13 TTABVUE 11). The Examining Attorney contends, on the other hand, that the dictionary definition “area devoted to a particular specialty” is merely descriptive of Applicant’s services in that “applicant has an area devoted to a particular specialty, namely golf courses, hotel resort services, retail store services, health spa services, and/or a facility that offers all of these specialties.” We find, however, that this dictionary definition is too vague to be probative evidence of mere descriptiveness.

The Examining Attorney also provided website evidence shown below (highlighting in the form of arrows or in orange supplied by the Examining Attorney) of third parties using the term RANCH in connection with golf club, dining, spa services, and retail store services. The Examining Attorney asserts that RANCH “is a term of art that identifies resorts and communities located on large areas of land in which various activities, such as golfing, restaurants, spa services etc. are offered.”¹¹ (20 TTABVUE 6.)

¹¹ June 30, 2016 Denial of Reconsideration pp. 2-12.




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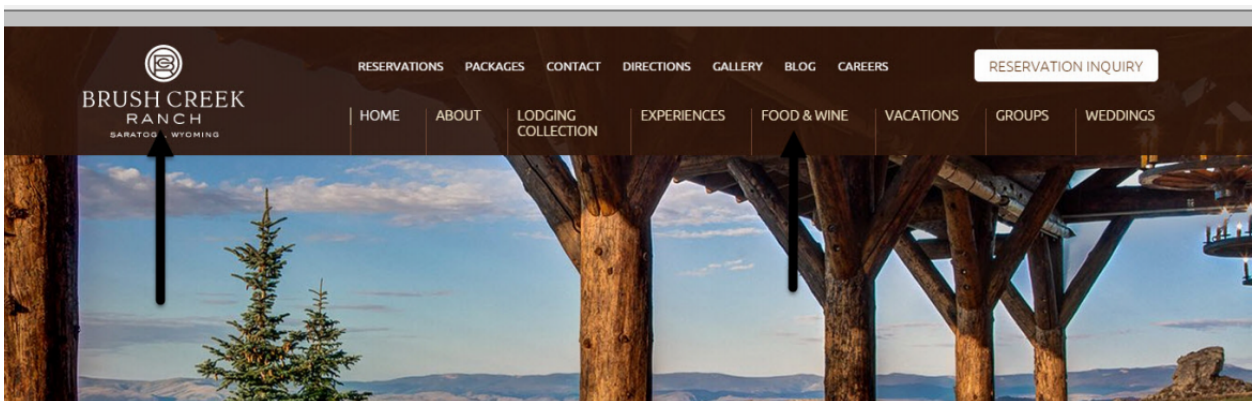
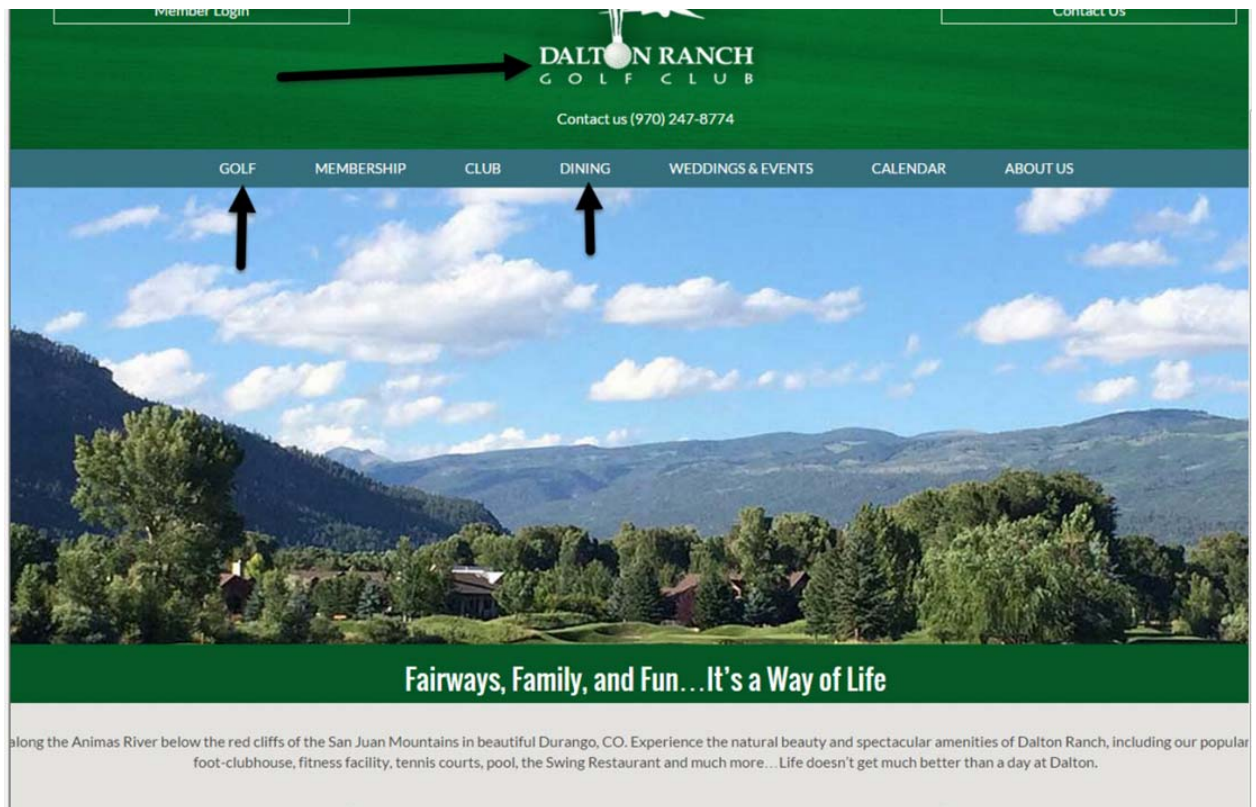


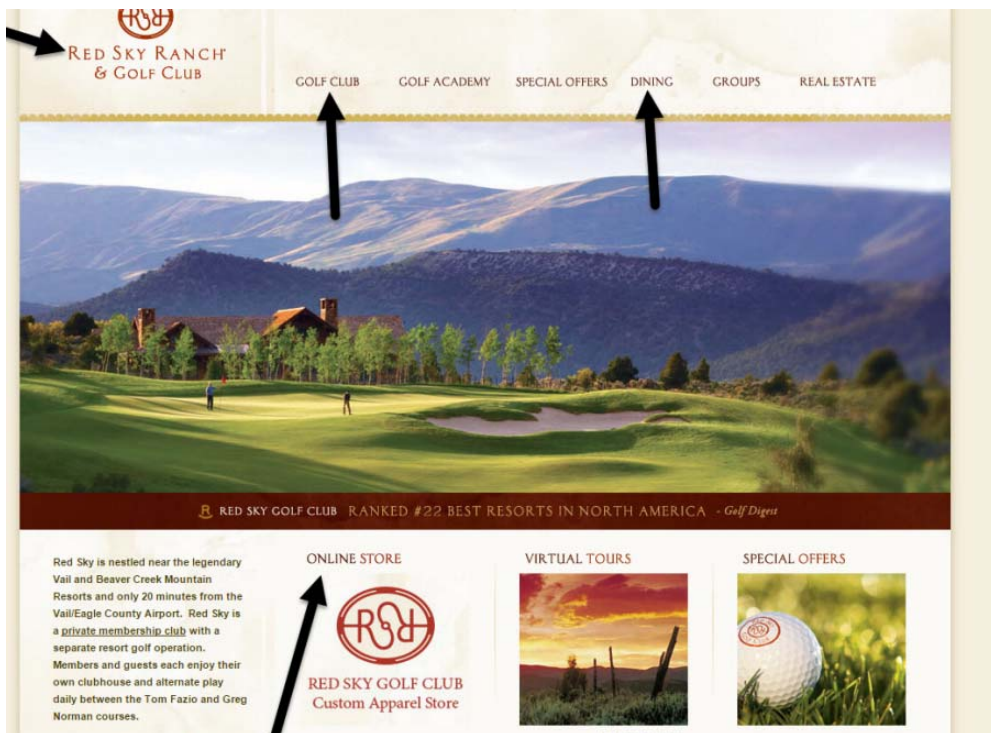
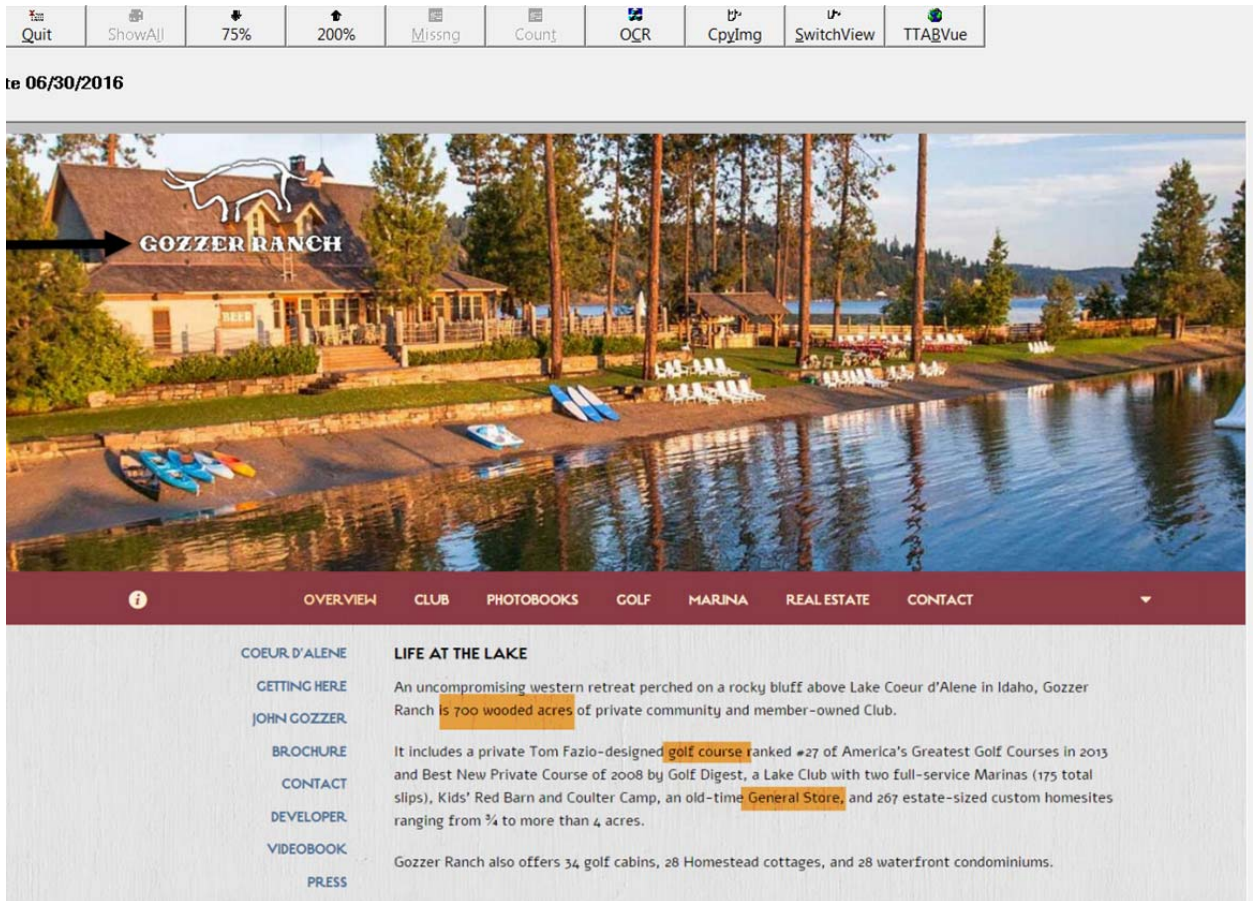
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We find that the aforementioned evidence establishes that RANCH is a highly descriptive term as used in connection with ranch-style resorts and communities that offer golf, dining, spa and retail store services.

We further note that in connection with Applicant's specimen for dining services, the menu headings and logo further emphasize the connection with a ranch-style resort or ranch community:¹²



¹² Filed April 28, 2015.



We conclude that when the highly descriptive term RANCH is combined with the geographically descriptive term LAUGHLIN, it does not detract from the primary geographical significance of the mark as a whole.

3. Whether the public would make an association between the services and the place named in the mark, that is, believe that the services for which the mark is sought to be registered originate in that place.

We now consider whether purchasers would make a services/place association between Applicant's services and the place named in the mark. Where the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a services/place association may ordinarily be presumed from the fact that the applicant's services actually originate (or will originate) from or near the geographic place named in the mark. *See In re Spirits of New Merced, LLC*, 85 USPQ2d at 1621 (YOSEMITE BEER primarily geographically descriptive of beer produced and sold in Merced, California, a city located 80 miles from Yosemite National Park, where the goods originated in an area associated with and "located near YOSEMITE"); *In re MCO Properties Inc.*, 38 USPQ2d 1154 (TTAB 1995) (FOUNTAIN HILLS primarily geographically descriptive

of real estate development services rendered in Fountain Hills, Arizona). The evidence demonstrates that Laughlin, as the third largest gambling venue in Nevada, is a generally known geographic location, and that the source of Applicant's services is the geographic region named in the mark, Laughlin. As a result, we may presume that purchasers would make a services/place association between Applicant's services and Laughlin, a geographic location that is neither obscure nor remote. *See e.g., In re MCO Properties*, 38 USPQ2d at 1156 (finding services/place association for term FOUNTAIN HILLS for real estate development services rendered in Fountain Hills and noting that "people are aware (or will become aware) of the fact that 'FOUNTAIN HILLS' is the name of that place where applicant is located.").

Accordingly, we find that the applied-for mark LAUGHLIN RANCH is primarily geographically descriptive.

Decision: The refusal to register Applicant's mark LAUGHLIN RANCH on the ground that the mark is primarily geographically descriptive is affirmed. The mark will proceed to publication under Section 2(f) of the Trademark Act with Applicant's claim of acquired distinctiveness.