

This Opinion is not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Creation Power Limited

Serial Nos. 87229478 and 87229760

Perry M. Fonseca of the Law Office of Perry M. Fonseca, PC,
for Creation Power Limited

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Before Ritchie, Shaw, and Heasley,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Creation Power Limited (“Applicant”) has filed two applications seeking
registration on the Principal Register of the proposed mark

Toddler
C O P E N H A G E N

(with COPENHAGEN disclaimed) for

tableware, namely, forks, knives, spoons, razors; hunting
knives in International Class 8; and

household or kitchen utensils and containers; glassware, porcelain and earthenware not included in other classes in International Class 21.¹

The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(e)(3) of the Trademark Act, 15 U.S.C. § 1052(e)(3), on the ground that the mark, when used on or in connection with the goods of the Applicant, is primarily geographically deceptively misdescriptive of them.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register as to both applications.²

I. Applicable Law

Under Section 2(e)(3) of the Trademark Act, a mark may not be registered on the principal register if the mark, "when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them." 15 U.S.C. § 1052(e)(3). *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 104 USPQ2d 1330, 1332 (Fed. Cir. 2012). A mark is primarily geographically deceptively misdescriptive, and thus barred from registration, if:

¹ Application Serial Nos. 87229478 and 87229760 were filed on November 8, 2016, based on Applicant's allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act. In each application, the proposed mark is described as follows: "The mark consists of 'Toddler' in bold lettering above a grayscale 'COPENHAGEN'". Color is not claimed as a feature of the proposed mark.

Page references to the application record are to the downloadable .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs, motions and orders on appeal are to the Board's TTABVUE docket system.

² We consolidate the appeals because they involve common issues of law and fact and the records are substantially similar. *See In re Anderson*, 101 USPQ2d 1912, 1915 (TTAB 2012) (Board *sua sponte* consolidated two appeals); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2018).

- 1) The primary significance of the mark is a generally known geographic place;
- 2) The goods or services do not originate in the place identified in the mark;
- 3) Purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark; and
- 4) The misrepresentation would be a material factor in a substantial portion of the relevant consumers' decision to buy the goods or use the services.

Id. (stating same requirements in three elements); *In re Compania de Licores Internacionales S.A.*, 102 USPQ2d 1841, 1843 (TTAB 2012); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1210.05(b) (Oct. 2018).

A. Primary Significance a Generally Known Place

Under the first element of the Section 2(e)(3) refusal, it is undisputed that the primary significance of Applicant's mark is that of a generally known geographic location, Copenhagen. As the Examining Attorney points out, Copenhagen is Denmark's chief commercial, industrial, and cultural center.³ Applicant does not dispute that Copenhagen is a generally known place.⁴ And there is no suggestion that the addition of the word TODDLER or the stylization or design of the proposed mark detracts from its primary geographical significance. *See In re Consol. Specialty Rests., Inc.*, 71 USPQ2d 1921, 1927 (TTAB 2004) ("Neither the addition of the generic word 'steakhouse' nor the addition of the design feature (including a mountain) detracts from the primary geographical significance of the mark [including the word

³ Examining Attorney's brief, 6 TTABVUE 6 (citing, e.g., www.columbiagazetteer.org 7/26/2017, July 26, 2017 Office Action at 33-34).

⁴ Applicant's brief, 4 TTABVUE 6.

COLORADO].”). Hence, we find that the primary significance of the proposed mark is a generally known geographic place.

B. The Goods do not Originate There

Applicant also concedes that its identified goods do not originate in Copenhagen,⁵ so the second element is satisfied, as well. *See In re Premiere Distillery, LLC*, 103 USPQ2d 1483, 1485 (TTAB 2012) (“[W]e first note that there is no dispute that the goods [identified in application to register REAL RUSSIAN] do not emanate from Russia.”).

C. Goods/Place Association

The third element inquires whether the proposed mark would be used in connection with goods that purchasers are likely to believe are associated with the geographic location in question. *In re Save Venice New York, Inc.*, 259 F.3d 1346, 59 USPQ2d 1778, 1783 (Fed. Cir. 2001). The Examining Attorney need only show a “reasonable predicate” for her conclusion that the purchasing public would be likely to make the goods/place association, not an “actual” association in consumers’ minds. *In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1449 (Fed. Cir. 2015); *In re Loew’s Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 868 (Fed. Cir.1985). Where, as here, an application involves goods rather than services, “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, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003) *quoted in In re Miracle Tuesday*, 104 USPQ2d

⁵ *Id.*

at 1333. To establish a goods/place association, the examining attorney may provide evidence such as excerpts from telephone directories, gazetteers, encyclopedias, geographic dictionaries, the LexisNexis database, or the results of an Internet search. *In re Compania de Licores*, 102 USPQ2d at 1847; *see, e.g., In re Loew's Theatres*, 226 USPQ at 866 (gazetteer and dictionary showed that tobacco was a crop originating in Durango, Mexico); TMEP § 1210.04.

In the present case, the identified goods are, essentially, tableware, such as forks and spoons, cutlery, such as knives, and household or kitchen utensils and containers, such as glassware, porcelain and earthenware. The Examining Attorney has adduced evidence showing that Copenhagen is a known source of designer cutlery, tableware, glassware, porcelain ware and dinnerware products—all of which are part of Copenhagen's broader reputation as a design capital. *Harpers Bazaar* describes "Copenhagen as the city known for modern design...."⁶ According to other sources, "Denmark and Copenhagen are famous for design and style,"⁷ "Copenhagen has a booming and globally recognized design/architecture/fashion scene...."⁸ According to the late Anthony Bourdain, "Copenhagen [is] not only the capital of the happiest country on Earth — officially — but also probably the center of the designer goods universe." He further noted that "Copenhagen is rich with design-led stores selling trendy lights, ingenious **kitchenware**, cheerful home furnishings and exquisite

⁶ *Harpers Bazaar* Aug. 8, 2014, [HarpersBazaar.com 7/26/2017](#), July 26, 2017 Office Action at 5.

⁷ [TheCopenhagenTales.com 5/14/2014](#), downloaded 7/26/2017, July 26, 2017 Office Action at 13.

⁸ [UrbanLifeCopenhagen.weebly.com 7/26/2017](#), July 26, 2017 Office Action at 31.

glass and ceramics.⁹ One example he cites is Royal Copenhagen: “Founded in 1775, this august company is best known for its classic blue and white hand-painted **dinnerware**,”¹⁰ which the Columbia Gazetteer describes as “the celebrated Copenhagen ware.”¹¹ Architectural Digest reports that Copenhagen is:

long known as the Scandinavian epicenter of midcentury modernism. Synonymous with high quality and minimalist silhouettes, Danish design is, in fact, almost hard to avoid when navigating Copenhagen. Whether you’re after vintage furniture or delicate contemporary **ceramics**, sleek **cutlery** or innovative **glassware**, there are plenty of great Danish goods to haul home straight from the source.¹²

We find the Examining Attorney’s evidence sufficient to establish prima facie, a goods/place association. “If the Trademark Examiner establishes ... a prima facie case, an applicant may rebut this showing with evidence ‘that the public would not actually believe the goods derive from the geographic location identified by the mark.’” *In re Newbridge Cutlery*, 113 USPQ2d at 1449 (quoting *In re Save Venice New York*, 59 USPQ2d at 1783). Applicant takes the position that:

In the instant case, as Applicant repeatedly related to the Examining Attorney, “Copenhagen” as used in Applicant’s mark is a reference to the “Copenhagen style,” not to the geographic location itself, but rather to the well-known, world-wide “Copenhagen” or Nordic style of products.¹³

Applicant, however, did not adduce evidence in support of this contention until it filed its appeal brief, to which it attached three exhibits—printouts from

⁹ “Visiting Copenhagen? 10 Things to know about Denmark,” CNN.com/travel/article/Copenhagen-travel-bourdain-10-things/index.html 3/20/2017, downloaded 7/26/2017, July 26, 2017 Office Action at 23, 26-27 (emphasis added).

¹⁰ *Id.*

¹¹ ColumbiaGazetteer.org 7/26/2017, July 26, 2017 Office Action at 33 (emphasis added).

¹² ArchitecturalDigest.com 2/28/2018, Feb. 28, 2018 Office Action at 8 (emphasis added).

¹³ Applicant’s brief, 4 TTABVUE 6, Applicant’s July 6, 2017 Response to Office Action at 1.

Pinterist.com, and from NordicKnives.com.¹⁴ The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 CFR § 2.142(d). Exhibits attached to a brief that were not made of record during examination are untimely, and will not be considered. *Id. In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1734 (TTAB 2018); TBMP §§ 1203.02(e) and 1207.01; TMEP § 710.01 (Oct. 2018). Consequently, even though no objection was raised, neither these exhibits nor any new evidence attached to the Examining Attorney's brief will be considered. We hasten to add that even if they had been considered, they would not affect the outcome.

Applicant's position is legally insufficient, as well. *In In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999), the applicant advanced a similar argument:

Wada contends that consumers would not view the mark [NEW YORK WAYS GALLERY] as identifying a place connected with the goods, but rather would see the mark as evoking an aura of status or prestige. The Board refuted Wada's argument by pointing to evidence that New York is a world renowned fashion center and is well-known as a place where goods of this kind are designed, manufactured, or sold. ... Thus, the Board concluded that there is a goods/place association between the goods identified in Wada's application and New York. Once again, we see no reason to disturb the Board's factual findings on this issue.

Id. at 1541.

Here, as in *In re Wada*, the Examining Attorney has adduced evidence that Copenhagen "is not an obscure geographical term and that it is known as a place where the goods at issue here are designed, manufactured, and sold." *Id.* at 1540.

¹⁴ 4 TTABVUE 8-45.

Absent evidence controverting this showing, we find that the goods/place association has been established.

D. Material Factor

“The ... final element of a Section 2(e)(3) refusal focuses on materiality and asks ‘whether a substantial portion of the relevant consumers is likely to be deceived’ by the mark’s misrepresentation of a goods/place association.” *In re Miracle Tuesday*, 104 USPQ2d at 1334 (quoting *In re Spirits Int’l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1493 (Fed. Cir. 2009)); see also *In re Premiere Distillery*, 103 USPQ2d at 1487; *In re Jonathan Drew, Inc.*, 97 USPQ2d 1640, 1644 (TTAB 2011) (finding KUBA KUBA primarily geographically deceptively misdescriptive for cigars, tobacco, and related products). As with the goods/place association, “[t]he Office must establish a reasonable predicate that the misrepresentation of the geographic origin of the goods would be a material factor in a significant portion of the relevant consumers’ decision to purchase the goods.” *In re Compania de Licores*, 102 USPQ2d at 1850. “It is well settled that evidence of what the relevant public understands a term to mean may be shown not only by direct evidence, such as consumer testimony and surveys, but it may also be inferred from indirect or circumstantial evidence, such as gazetteer entries and third-party websites....” *Id.* (quoting *In re Jonathan Drew*, 97 USPQ2d at 1645-46). For goods, the Examining Attorney may raise an inference in favor of materiality with evidence that the place is famous as a source of the goods at issue, or that the goods are a principal product of that place. *In re Compania de Licores*, 102 USPQ2d at 1850. (evidence that the place is “famous,” “renowned,” well known,” or “noted for” the goods, or that the goods are a “principal or traditional” product of that

place may be useful to establish materiality.); *In re Les Halles de Paris*, 67 USPQ2d at 1542.

In this case, Applicant's position that "'Copenhagen style' is well-understood in design"¹⁵ merely serves to underscore the materiality of the COPENHAGEN designation. Consumers recognize a "Copenhagen Style" because Copenhagen is globally recognized as a center of design. Here, the Examining Attorney has established that Copenhagen has a "globally recognized design/architecture/fashion scene,"¹⁶ and is "probably the center of the designer goods universe."¹⁷ As the Board put it in *In re Wada*, "Even if applicant had established an association between New York and a particular style, such association would not be inconsistent with the primary geographic significance of the mark, as the association may be made precisely because of the primary significance of New York as a city in the United States." *In re Wada*, 48 USPQ2d 1689, 1691 n.5 (TTAB 1998) *aff'd* 52 USPQ2d 1539. As in *In re Miracle Tuesday*, "the fact that Paris is famous for fashion and design gives rise to an inference that a substantial portion of relevant customers would be deceived into thinking the goods identified came from Paris. *Miracle Tuesday* points to no evidence that would rebut this inference." 104 USPQ2d at 1335.

This "style" argument has been raised by applicants in other appeals, and has failed. *See In re Calif. Innovations, Inc.*, 329 F.3d 1334, 66 USPQ2d 1853, 1858 (Fed.

¹⁵ Applicant's brief, 4 TTABVUE 7.

¹⁶ UrbanLifeCopenhagen.weebly.com 7/26/2017, July 26, 2017 Office Action at 31.

¹⁷ "Visiting Copenhagen? 10 Things to know about Denmark," CNN.com/travel/article/Copenhagen-travel-bourdain-10-things/index.html 3/20/2017, downloaded 7/26/2017, July 26, 2017 Office Action at 23.

Cir. 2003) (“Even if the public may associate California with a particular life-style, the record supports the Board’s finding that the primary meaning [of CALIFORNIA INNOVATIONS (and design)] remains focused on the state of California.”); *In re Premiere Distillery*, 103 USPQ2d at 1484 (“Applicant’s alternative contention that RUSSIAN simply connotes the ‘style’ of vodka (which if that were the case would have prompted a refusal under Section 2(e)(1) based on mere descriptiveness) is not supported by the record.”); *In re Bacardi & Co. Ltd.*, 48 USPQ2d 1031, 1034 (TTAB 1997) (“[E]ven if applicant had established an association between HAVANA and a particular lifestyle, such association would not contradict the primary geographic significance of the term, as the association may be made precisely because of the primary significance of HAVANA as a city in Cuba.”).


The Examining Attorney has thus established materiality, and Applicant has failed to rebut the Examining Attorney’s record evidence. *See In re Broyhill Furniture Indus., Inc.*, 60 USPQ2d 1511, 1513 (TTAB 2001) (“There is no evidence, however, which substantiates applicant’s assertions.”).

Because Applicant’s use of COPENHAGEN would be materially deceptive to consumers, its disclaimer of that place name, which would not be apparent to those consumers, does not suffice to overcome the Examining Attorney’s refusals. *See In re Wada*, 52 USPQ2d at 1542 (“Primarily geographically deceptively misdescriptive marks, like deceptive marks, mislead the public even with a disclaimer.”). “The Trademark Board has held that a § 2(e)(3) rejection of a composite designation containing a geographic term cannot be offset by a disclaimer of the geographic term. The Board said that it would be contrary to the spirit and intent of the 1993 NAFTA

amendments to allow registration of a geographically descriptive misdescriptive mark merely upon the filing of a disclaimer with the PTO, an event of which the public knows nothing.” 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 14:31 (5th ed. June 2019 update) (citing *In re Wada*, 48 USPQ2d at 1692).

II. Conclusion

For the above reasons, we find that the Examining Attorney has established that Applicant’s proposed mark, as used in connection with the goods identified in both applications, is primarily geographically deceptively misdescriptive under Section 2(e)(3).

Decision: The refusal to register Applicant’s proposed mark  is affirmed as to both applications.