

This Opinion is Not a
Precedent of the TTAB

Mailed: December 21, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Menard, Inc.

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Serial No. 90111538

Charles J. Meyer of Woodard, Emhardt, Henry, Reeves & Wagner LLP,
for Menard, Inc.

John S. Yard, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Kuhlke, Heasley and Coggins,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Menard, Inc. (“Applicant”) seeks registration on the Principal Register for the mark CHIPPEWA VALLEY FARMS in standard characters for “canned vegetables” in International Class 29.¹

¹ Application Serial No. 90111538, filed on August 13, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of an intent to use in commerce. Subsequently, Applicant filed an Amendment to Allege Use (AAU) based on allegations of first use and first use in commerce on September 3, 2021. The AAU was accepted on March 25, 2022. March 25, 2022 Office Action, TSDR 1. Citations to the examination record refer to the USPTO’s online Trademark Status and Document Retrieval system (TSDR).

Citations to TTABVue throughout the decision are to the Board’s public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2), on the ground that Applicant's mark is primarily geographically descriptive of the goods identified in the application.

When the Section 2(e)(2) refusal was made final, Applicant appealed, requested reconsideration, filed an amendment to allege use, and requested, in the alternative, amendment to the Supplemental Register. The Examining Attorney denied the request for reconsideration, accepted the Amendment to Allege Use and noted "the application is now in a condition to be accepted on the Supplemental Register should applicant wish to make amendment to the same."² Thereafter briefs were filed. We affirm the refusal to register on the Principal Register.

I. Primarily Geographically Descriptive

A mark is primarily geographically descriptive if: (1) the primary significance of the mark is the name of a place that is generally known; (2) the goods or services originate in the place identified in the mark; and (3) the relevant purchasers would associate the identified services with the place named, i.e., the public would believe that the services come from the place named. *See In re Nantucket, Inc.*, 677 F.2d 95, 213 USPQ 889, 891 (CCPA 1982); *see also In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448-49 (Fed. Cir. 2015); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *In re*

number represents the docket number in the TTABVUE electronic case file and the second represents the page number(s).

² March 25, 2022 Reconsideration Letter.

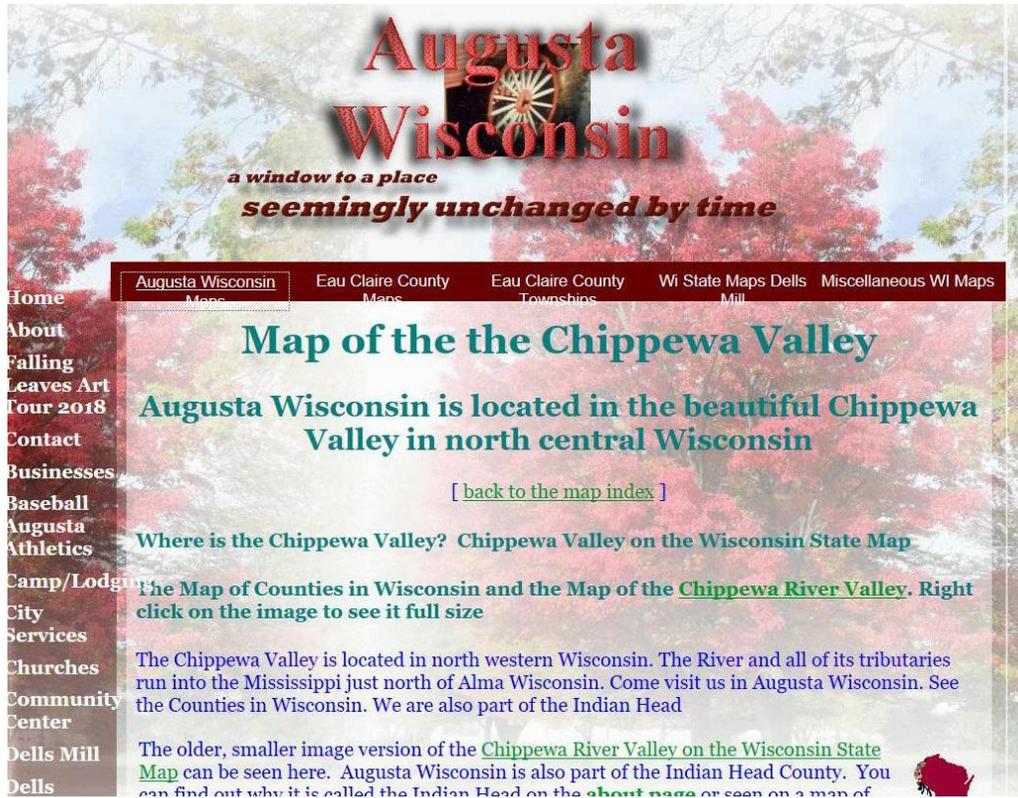
JT Tobacconists, 59 USPQ2d 1080, 1081 (TTAB 2001). The “relevant public is the purchasing public in the United States of [the] types of goods” identified in the involved application, here the identified goods are canned vegetables and the relevant public is the general public nationwide. *See Newbridge Cutlery*, 113 USPQ2d at 1449.

A. The Record

In support of the refusal the Examining Attorney submitted the following:

- Excerpt from Wikipedia titled “Chippewa Valley,” describing Chippewa Valley, Wisconsin as “the drainage basin of the Chippewa River and its tributaries, the name is more often applied to the Eau Claire-Chippewa Falls metropolitan area and the surrounding area-including communities not located within the Chippewa River’s watershed.”³
- Excerpts from the Augusta, Wisconsin website:

³ September 18, 2020 Office Action, TSDR at 54 ([Wikipedia.org/wiki/Chippewa Valley](https://www.wikipedia.org/wiki/Chippewa_Valley)).



⁴ *Id.* at 56 (augustawi.com).



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Augusta Wisconsin Map of the Chippewa Valley

The Beautiful Chippewa Valley in Central North Western Wisconsin. Wisconsin county locations too. Visit the Lower Chippewa Valley to see the variety of recreations available. Augusta Wisconsin is in Eau Claire County and the in the Town of Bridge Creek (Town of BridgeCreek). Visit the maps home page to see directions. See our About Augusta for more tidbits about Augusta Wisconsin



Amish Buggies and modern automobiles share our country roads. Please drive especially carefully when mounting hills and rounding corners on our country roads, there may be an Amish buggy just out of site.

The Lower Chippewa Valley region in Wisconsin is more populated and more suited for dairy farming, orchards and the like. It is peppered with deciduous forests, hills, valleys and scenic country roads

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⁵ *Id.* at 57.

⁶ *Id.* at 58.

- Dictionary definition for Eau Claire as “A city of west-central Wisconsin at the confluence of the Chippewa River and the Eau Clair River, a tributary about 110 km (70 mi) long. Founded in the 1840s, the city grew as a lumbering center.”⁷
- Dictionary definition for Chippewa as a “geographical name” relating to a “river 183 miles (294 kilometers) long in northwestern Wisconsin flowing south into the Mississippi River.”⁸
- The following excerpt from the Chippewa Valley Technical College website:



- The following excerpt from the Chippewa Valley museum:

⁷ *Id.* at 59 (ahdictionary.com).

⁸ August 31, 2021 Office Action, TSDR at 29 (www.merriam-webster.com).

⁹ *Id.* at 33 (www.cvtc.edu).



- Excerpts from the Chippewa Valley Business Report referring to various businesses and organizations in the Chippewa Valley¹¹
- Excerpts from various local businesses and organizations that include the geographic designation Chippewa Valley in their names (Chippewa Valley Home Builders Association, Chippewa Valley Real Estate & Property Management, Chippewa Valley Theatre Guild, Chippewa Valley Church, Chippewa Valley Tours, Chippewa Valley Endodontics, Chippewa Valley Cremation Services, Chippewa Valley Electric Cooperative, Chippewa Valley Railroad)¹²
- Excerpts from Wikipedia for Eau Claire-Chippewa Falls metropolitan area explaining that “These three counties, especially the cities of Chippewa

¹⁰ *Id.* at 36 (www.cvmuseum.com).

¹¹ *Id.* at 42 (chippewa.com).

¹² *Id.* at 41-90.

Falls, Eau Claire and Menomonie comprise the economic and cultural core of west-central Wisconsin's Chippewa Valley region" and further noting that Applicant Menards is a company based in Eau Claire, Wisconsin, with stores in 15 states.¹³

The record also includes a third-party registration for the mark CHIPPEWA VALLEY FARMS in stylized form with the wording CHIPPEWA VALLEY FARMS disclaimed for, among other things, vegetarian-fed meats and cheeses¹⁴ and Applicant's consent agreement submitted to overcome a Section 2(d) refusal that was based on this registration but subsequently withdrawn.¹⁵

B. The First Element – Primary Significance

Applicant argues that the CHIPPEWA VALLEY is not a generally known geographic place, but rather "is obscure outside of the local area." App. Brief, 6 TTABVue 4. Further, Applicant argues that "the primary significance of CHIPPEWA relates to the Native America[n] tribe [citation omitted] such that there is no particular geographic connection because the range of the Chippewa or Ojibwa people spanned more than a thousand miles across what is now Canada and the U.S." *Id.*

However, we are not considering the word CHIPPEWA by itself but the wording CHIPPEWA VALLEY FARMS. Applicant acknowledges that CHIPPEWA VALLEY

¹³ *Id.* at 91-96.

¹⁴ September 18, 2020 Office Action, TSDR at 2.

¹⁵ July 1, 2021 Response, TSDR at 10-12.

“is the name of an obscure valley in Wisconsin” but notes that the critical question is, “how many people in this country know that?” 6 TTABVUE 5 (quoting *Societe Generale des Eaux Minerales de Vittel*, 3 USPQ2d at 1452). Drawing on *In re Broken Arrow Beef and Provision, LLC*, 129 USPQ2d 1431, 1443 (TTAB 2019), Applicant argues that where the goods are not limited in their geographic distribution, “[t]he relevant issue, however, is not whether ‘locals’ in and around” the geographic area at issue recognize the geographic term, “but rather whether [] consumers throughout the entire United States would understand that... [the wording] in the mark relates to a geographic place.” App. Brief, 6 TTABVUE 5.

In *Broken Arrow*, the Board found that the record did not show that BA is a generally known geographic term; the relevant public was nationwide and the evidence did not demonstrate that the public nationwide knew of the term BA. *Broken Arrow*, 129 USPQ2d at 1444. The facts and record in this case are very different. First, in *Broken Arrow* the term at issue was a local abbreviation for the area, whereas here, it is the proper name of the region. Second, the *Broken Arrow* record demonstrated multiple non-geographic meanings of the term at issue. Third, while the record presented here includes local websites, it also includes evidence indicating nationwide exposure to the geographic name. In addition to the Wikipedia pages, some of the websites are directed to the public nationwide. For example, the museum website reveals the non-local scope of their services: “We tell surprising, entertaining stories to illuminate the Chippewa Valley for those near and far, and help tell the

larger story of America.”¹⁶ As the Examining Attorney points out “many of the websites in evidence feature services such as tourism, travel, education and relocation, which would attract and even target non-local residents.”¹⁷ In addition, the word CHIPPEWA is listed in the dictionary as a “geographical place” relating to a river in northwestern Wisconsin.¹⁸ The area surrounding a river basin is a valley. Also, the added word FARMS informs consumers of canned vegetables where the canned vegetables come from: CHIPPEWA VALLEY FARMS. Finally, we observe CHIPPEWA VALLEY FARMS is disclaimed in the once conflicting third-party registration.

C. The Second Element – Origin of the Goods

We next consider whether Applicant’s goods originate from the location, i.e., Chippewa Valley. Goods are considered to originate from a geographic location when the record shows that the applicant is located there or the goods are, for example, sold there, manufactured or produced there, or packaged and shipped from there. *See, e.g., In re Nantucket Allserve, Inc.*, 28 USPQ2d 1144 (TTAB 1993) (Product labeling clearly suggested to buyers that NANTUCKET NECTARS soft drinks were not only formulated on Nantucket Island (which they were, and corporate headquarters was also located there), but also manufactured there, whereas they were really manufactured in Worcester, Massachusetts.); *JT Tobacconists*, 59 USPQ2d at 1083

¹⁶ August 31, 2021 Office Action, TSDR 41.

¹⁷ Ex. Att. Brief, 8 TTABVUE 11.

¹⁸ *Id.* at 29.

(holding applicant's cigars, cigar cases, and humidors originated from MINNESOTA because they were packaged and shipped from MINNESOTA, and applicant's business was located in MINNESOTA). Here, the record establishes that Applicant's address of record is in Eau Claire, Wisconsin which is in the Chippewa Valley¹⁹ and the specimen of use shows the can of beans is available for pick up at the store in Eau Claire West. Applicant did not present argument on this element. Thus, we find that Applicant's goods originate in the Chippewa Valley.

D. The Third Element – Goods/Place Association

We now consider the goods/place association. When the geographic significance of a term is its primary significance and the geographic place is neither obscure nor remote, for purposes of Section 2(e)(2) of the Trademark Act, the goods/place association may ordinarily be presumed from the fact that Applicant's goods originate in or near the place named in the mark. *See e.g., In re Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007) (YOSEMITE BEER held geographically descriptive of beer produced and sold in a brewpub in Merced, California, the Board stating that “[s]ince the goods originate at or near [Yosemite National Park], we can presume an association of applicant's beer with the park.”); *JT Tobacconists*, 59 USPQ2d at 1082 (“[W]here there is no genuine issue that the geographical

¹⁹ September 18, 2020 Office Action, TSDR at 54 ([Wikipedia.org/wiki/Chippewa Valley](https://www.wikipedia.org/wiki/Chippewa_Valley)). *See also* July 1, 2021 Response, TSDR at 10 (consent agreement including the assertion that Applicant has “a principle place of business at ... Eau Claire, Wisconsin”); August 31, 2021 Office Action TSDR 90-91 (Wikipedia entry for Menards noting it is located in Eau Claire, Wisconsin).

significance of a term is its primary significance, and where the geographical place named by the term is neither obscure nor remote, a public association of the goods or services with the place may ordinarily be presumed from the fact that the applicant's goods or services come from the geographical place named in the mark.”). Other than asserting CHIPPEWA VALLEY is obscure, Applicant has presented no argument on this point. Accordingly, having found that the first two elements are met, we may presume that the third element is also met.²⁰

II. Conclusion

In sum, we find that CHIPPEWA VALLEY is not obscure or remote; the addition of the descriptive term FARMS does not remove the geographic significance of the term; Applicant is located in Chippewa Valley; and we presume the relevant consumers will make a goods/place association. In view thereof, CHIPPEWA VALLEY FARMS as a whole is primarily geographically descriptive.

Decision: The refusal to register Applicant's mark on the Principal Register is affirmed under Section 2(e)(2) of the Trademark Act, and the application will issue on the Supplemental Register.

²⁰ In addition, the Wikipedia entry for Chippewa Valley supports the goods/place association acknowledging it is an agricultural region and pointing to some of the agricultural products that “include milk, cheese, horseradish, kidney beans, apples, pumpkins, beef and poultry.” September 18, 2020 Office Action, TSDR at 54.