

This Opinion is not a
Precedent of the TTAB

Mailed: September 19, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re American Cloud, LLC

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Serial Nos. 97582004 & 97582005

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Evan Brown, of Neal & McDevitt, LLC,
for American Cloud, LLC.

George Pelletier II, Trademark Examining Attorney, Law Office 132,
Brandon Marsh, Managing Attorney.

—
Before Lynch, Casagrande, and Stanley,
Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

American Cloud, LLC (“Applicant”) filed two applications to register the mark AMERICAN CLOUD (in standard characters) on the Principal Register. In both applications, Applicant disclaims exclusive rights in the term CLOUD apart from the entire mark. Application Serial No. 97582004 (the ’004 Application) currently identifies the following services:

Providing access to remotely hosted operating systems and computer applications through the internet; providing access to cloud based computing resources; providing access to databases;

providing virtual private network (VPN) services, all in International Class 38.¹

Application Serial No. 97582005 (the '005 Application) currently identifies the following services:

Computer services, namely, remote management of the Information technology (IT) systems of others; Computer services, namely, cloud hosting provider services; cloud computing hosting services; computer services, namely, cloud hosting provider services; hosting of digital content on the Internet; cloud hosting of electronic databases and virtual computing environments; server hosting; computer time-sharing services; providing virtual computer systems and virtual computer environments through cloud computing; computer services, namely, hosting virtual application, web, file, database and storage servers of variable capacity of others; scaling services, namely, providing variable computing and electronic storage capacity to others; hosting databases and virtual computing environments for others; computer services, namely, enforcing, restricting and controlling access privileges of users of computing and network resources based on assigned credentials, all in International Class 42.²

The two applications were assigned to the same Trademark Examining Attorney, who refused both applications under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2), on the ground that the mark is primarily geographically descriptive. After the Examining Attorney made the refusals final,³ Applicant appealed.⁴

¹ The '004 Application was filed on September 7, 2022, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

² The '005 Application similarly was filed on September 7, 2022, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

³ See October 24, 2023, Final Office Actions in each file. Citations in this opinion to the application records refer to the versions of those records downloaded in .pdf format from the USPTO's Trademark Status and Document Retrieval ("TSDR") database.

⁴ See 1 TTABVUE in each file. References to the briefs and appeal record cite to the Board's TTABVUE electronic docket system. The number preceding "TTABVUE" represents the

Applicant filed briefs,⁵ as did the Examining Attorney.⁶ The cases are now ready for decision. For the reasons explained below, we affirm the refusals to register.

I. Preliminary matter

The issues raised by the two appeals are nearly identical, as are the briefs. The evidentiary records appear identical as well. Accordingly, although the appeals have not been formally consolidated, we address both appeals in a single opinion. *See, e.g., In re Consumer Protection Firm*, Ser. No. 87445801, 2021 WL 825503, at *1-2 (TTAB 2021) (“[E]ach proceeding retains its separate character and will result in the entry of a separate judgment for each appealed application; a copy of this decision shall be placed in each proceeding file.”);⁷ *see also* TBMP § 1214 (2024).

II. Analysis

Section 2(e)(2) of the Trademark Act prohibits registration of a mark that “when used on or in connection with the goods [or services] of the applicant is primarily geographically descriptive of them” 15 U.S.C. § 1052(e)(2). A refusal under this subsection of the Act is appropriate when: (1) the mark is the name of a place known

docket number assigned to the cited filing in TTABVUE and any number immediately following “TTABVUE” identifies the specifically-cited page(s), if any.

⁵ *See* 5 TTABVUE in each appeal file.

⁶ *See* 8 TTABVUE in the '004 file and 7 TTABVUE in the '005 file.

⁷ This opinion is issued as part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases. Westlaw (WL) citations are used for decisions of the Board, and only precedential Board decisions are cited. Decisions of the U.S. Court of Appeals for the Federal Circuit and its predecessor, the U.S. Court of Customs and Patent Appeals, are cited only to the Federal Reporter (e.g., F.2d, F.3d, or F.4th). This opinion thus conforms to the practice set forth in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2024).

generally to the public; (2) the source of the goods or services is the named place; and (3) the consuming “public would make a goods/place [or services/place] association, i.e., believe that the goods [or services] for which the mark is sought to be registered originate in that place.” *In re Newbridge Cutlery Co.*, 776 F.3d 854, 861-62 (Fed. Cir. 2015) (citations omitted); *accord City of London Distillery, Ltd. v. Hayman Grp. Ltd.*, No. 91235280, 2020 WL 7258359, at *7-8 (TTAB 2020). A presumption that the third-listed element—the goods/place or services/place association—is satisfied arises where the named place is neither obscure or remote, the primary significance of the term is geographic, and the goods or services originate in the named place. *See, e.g., In re Am. Furniture Warehouse Co.*, Ser. No. 86407531, 2018 WL 1942214, at *3 (TTAB 2018); *see also Newbridge Cutlery*, 776 F.3d at 862 (noting the Board’s long-standing use of this presumption). A refusal under Section 2(e)(2) is not necessarily a death knell for a proposed mark, however, because, once used, it may be registered if the applicant can prove acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f). *See, e.g., In re Cal. Innovations, Inc.*, 329 F.3d 1334, 1337 (Fed. Cir. 2003).

Applicant argues that the primary significance of the term AMERICAN to the public is not geographic.⁸ The record here contains two dictionary definitions of the adjective “American.” The Merriam-Webster Dictionary defines “American” as “of or relating to America” or, alternatively, “of or relating to the U.S. or its possessions or

⁸ *See* 5 TTABVUE 3-4 in the ’004 appeal. Because the briefs in the two appeals make the same arguments, this opinion, from now on, will cite only to the briefs in the ’004 appeal.

original territory.”⁹ And the American Heritage Dictionary defines “American” as “[o]f or relating to the United States of America or its people, language, or culture.”¹⁰ These definitions show that the primary meaning of the term is geographic. Applicant does not contest these definitions, but insists that its website primarily uses “American” in a non-geographic way because it “shows [Applicant’s] commitment to ‘American’ values dealing with freedom, innovation and persistence.”¹¹ While Applicant’s website does say “The Internet was built on American values” and touts Applicant’s services as facilitating innovation (“Easy to INNOVATE”),¹² we fail to see how these vague laudatory statements detract from the primary geographic significance of the term “AMERICAN” in the proposed mark AMERICAN CLOUD. Moreover, the two webpages Applicant submitted both feature Applicant’s logo, a stylized version of the American flag with a cloud graphic replacing the stars:



.¹³ This flag logo reinforces the geographic significance of the term “AMERICAN” in Applicant’s proposed mark. *See, e.g., In re N.C. Lottery*, 866 F.3d 1363, 1367-68 (Fed. Cir. 2017) (evidence of public perception of a proposed mark “may

⁹ *See* Oct. 24, 2023, Final Office Action, at TSDR 9, in the ’004 file; Oct. 24, 2023, Final Office Action, at TSDR 10, in the ’005 file.

¹⁰ *See* Oct. 24, 2023, Final Office Action, at TSDR 18, in the ’004 file; Oct. 24, 2023, Final Office Action, at TSDR 19, in the ’005 file.

¹¹ *See* 5 TTABVUE 3, 4.

¹² *See* Sept. 26, 2023, Response to Nonfinal Office Action, at TSDR 8, 9 in the ’004 file, and at TSDR 9-10 in the ’005 file.

¹³ *See id.*

include websites, publications, and use in labels, packages, or in advertising material directed to the goods”) (cleaned up; citations omitted).

We further note that, when the Examining Attorney inquired, pursuant to Rule 2.61(b), 37 C.F.R. § 2.61(b), whether Applicant’s services will be rendered in America, Applicant responded affirmatively.¹⁴

Because America is a universally-known place, the primary significance of the term “AMERICAN” in this case is geographic, and Applicant’s services are rendered in America, the Examining Attorney appropriately presumed that consumers will make the services/place association. *See, e.g., Am. Furniture Warehouse*, 2018 WL 1942214, at *3.

Applicant’s argument that it rebutted the presumption lacks evidentiary support. It consists simply of a denial that the primary significance of the term “AMERICAN” in this case is geographic and Applicant’s website’s vague reference to innovation¹⁵—arguments we rejected above.¹⁶

¹⁴ *See* June 27, 2023, Nonfinal Office Action, at TSDR 7, in the ’004 file (inquiry); Sept. 26, 2023, Response to Nonfinal Office Action, at TSDR 4, in the ’004 file (Applicant’s response); June 26, 2023, Nonfinal Office Action, at TSDR 7, in the ’005 file (inquiry); Sept. 26, 2023, Response to Nonfinal Office Action, at TSDR 5, in the ’005 file (Applicant’s response).

¹⁵ *See* 5 TTABVUE 4.

¹⁶ We note that Applicant does not argue that the disclaimed term “CLOUD” detracts from or alters the geographic significance of the term “AMERICAN” in the proposed mark as a whole. *See, e.g., In re Hollywood Lawyers Online*, Ser. No. 85662420, 2014 WL 1827022, at *1 (TTAB 2014) (“the 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”) (citation omitted); *In re U.S. Cargo Inc.*, Ser. No. 74663449, 1998 WL 993663, at *2 (TTAB 1998) (same).


The bulk of Applicant’s brief consists of brief summaries of Board and court decisions involving other marks, for other goods or services, based on other evidentiary records.¹⁷ Despite these differences, Applicant argues that “the examining attorney did not give proper weight to these cases, and instead failed to properly apply their holdings to the present situation.”¹⁸ We disagree not only that they point to a different conclusion here but also, more fundamentally, with the assertion that these decisions are relevant at all to the factual issue we must decide in this case.

The factual question before us is whether AMERICAN CLOUD is primarily geographically descriptive for the services Applicant identified in the two applications. That question, like so many factual questions in trademark law, concerns consumer perception. *See, e.g., In re Chalk’s Int’l Airlines Inc.*, Ser. No. 73807082, 1991 WL 332565, at *2 (TTAB 1991) (“It is the perception of the public as

¹⁷ See 5 TTABVUE 5-7, summarizing the decisions of the following cases: *In re Jim Crockett Promotions Inc.*, Ser. No. 73554358, 1987 WL 123871 (TTAB 1987) (THE GREAT AMERICAN BASH for promoting, producing and presenting professional wrestling matches); *In re Morinaga Nyugyo K.K.*, Ser. No. 86338392, 2016 WL 5219811 (TTAB 2016) (



for milk- and coffee-related products); *In re Cotter & Co.*, Ser. No. 73214385, 1985 WL 71963 (TTAB 1985) (WESTPOINT for firearms); *In re Int’l Taste Inc.*, Ser. No. 75314626,

2000 WL 177409 (TTAB 2000) ( , for french fries and restaurant services); *In re Urbano*, Ser. No. 74441447, 1999 WL 696010 (TTAB 1999) (SYDNEY 2000 for advertising, business, and communication services); *In re Dixie Ins. Co.*, Ser. No. 73282622, 1984 WL 63579 (TTAB 1984) (DIXIE for property and casualty underwriting services); *Hyde Park Clothes, Inc. v. Hyde Park Fashions, Inc.*, No. Civ. 56–74, 1951 WL 5291 (S.D.N.Y. 1951) (HYDE PARK for men’s suits), *aff’d*, 204 F.2d 223 (2d Cir. 1953).

¹⁸ See 5 TTABVUE 7.

to the geographical significance of the mark which controls whether registration should be refused pursuant to Section 2(e)(2)”) (quoting *In re Cal. Pizza Kitchen Inc.*, Ser. No. 73580581, 1988 WL 252402, at *2 (TTAB 1988)). And to make findings about consumer perception, we depend on evidence that bears on how consumers would perceive the mark at issue in connection with the goods or services at issue. *See, e.g., Newbridge Cutlery*, 776 F.3d at 859 (Section 2(e)(2) refusals apply to “marks for which the geographical meaning is perceived by the relevant public as the primary meaning” and is “to be assessed as [the proposed mark] is used on or in connection with the goods”) (original emphasis deleted).

Findings in other cases concerning other marks, other goods or services, and on different evidence—some made decades ago—have no bearing on what findings we make on the evidence in this case concerning this mark and these services. *See, e.g., In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 526 n.8 (CCPA 1980). Precedential decisions of the Federal Circuit and the Board set forth legal principles we must follow in making our findings, but Applicant doesn’t cite these cases to show that the Examining Attorney made a legal error in making the refusals here. Indeed, it appears to us that the Examining Attorney applied the governing principles correctly. We therefore find Applicant’s “other cases” argument entirely unconvincing.

Decision: The refusals to register are affirmed.