

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

Mailed: June 8, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Laura's Lean Beef Company LLC

Serial No. 77712445

Andrew D. Dorisio of King & Schickli PLLC for Applicant.

James A. Rauen, Trademark Examining Attorney, Law Office
109 (Dan Vavonese, Managing Attorney).

Before Kuhlke, Bergsman, and Wolfson, Administrative
Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Laura's Lean Beef Company LLC has filed an application for the standard character mark NORTH AMERICAN RANGE for "beef" in International Class 29.¹ The examining attorney refused registration of applicant's mark under the provisions of 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 of the origin of

¹ Filed April 13, 2009, on the basis of applicant's bona fide intent to use the mark in commerce.

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applicant's goods." *Examining Attorney's Brief*,
(unnumbered) p. 1. The appeal has been fully briefed.

In order for a mark to be primarily geographically descriptive under Section 2(e)(2), it must be shown that (1) the mark's primary significance is a generally known geographic location; and (2) that the relevant public would be likely to make a goods/place association, that is, the public would likely believe that the goods originate in the place named in the mark. See *In re Nantucket*, 677 F.2d 95, 213 USPQ 889, 891892 (CCPA 1982); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821 (TTAB 2006); *In re JT Tobacconists*, 59 USPQ2d 1080, 1081-1082 (TTAB 2001); and *In re California Pizza Kitchen, Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988).

Moreover, where there is no genuine issue that the geographical 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 by or in the mark. See, e.g., *In re JT Tobacconists*, 59 USPQ2d at 1082; *In re Carolina Apparel*, 48 USPQ2d 1542, 1543 (TTAB 1998); *In re California Pizza Kitchen Inc.*, 10 USPQ2d at

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1705; *In re Handler Fenton Westerns, Inc.*, 214 USPQ2d 848, 850 (TTAB 1982); and TMEP § 1210.04. In addition, 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. See, e.g., *In re JT Tobacconists*, 59 USPQ2d at 1082; *In re Carolina Apparel*, 48 USPQ2d at 1543; *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1662 (TTAB 1986); and *In re BankAmerica Corp.*, 231 USPQ 873, 875 (TTAB 1986).

The Evidence

1. Dictionary Definitions

The examining attorney has made of record copies of dictionary definitions for the terms "range" and "North America."²

Range: 1a(1) ... (2) : a series of mountains ... 3a : a place that may be ranged over b : an open region over which animals (as livestock) may roam and feed ...³

² The Board cannot condone the piecemeal fashion in which the examining attorney presented his evidence. With the first Office Action, he provided a dictionary definition of the word "range." With the second Office Action, he provided a definition of the term "North America." Then, with his denial of applicant's request for reconsideration, the examining attorney provided another dictionary definition of the term "range," along with copies of third-party registrations and Internet references. Clearly, the better practice is to present all available evidence with the initial Office Action.

³ Merriam-Webster OnLine Dictionary, <http://www.merriam-webster.com/dictionary/range>, printed 6/30/2009.

North America: continent in the western hemisphere, extending northward from northwestern South America to the Arctic Ocean.

- **North A·mer·i·can** *adjective, noun*⁴

We note that the Examining Attorney did not introduce any evidence from a dictionary or gazetteer that the term "North American Range" is recognized as a distinct geographical location.

2. Internet Evidence

The examining attorney submitted copies of articles from the Internet that contain the phrase "range beef," "range beef cows," or "range cattle." The following are illustrative (emphasis supplied):

"Two studies, using 138 crossbred, multiparous beef cow grazing native winter and spring rangeland, were conducted ... Late-calving cows (Study 1) were individually fed supplement while grazing native range."

Dhuyvetter, D.V., et. al. (1993).
Reproductive Efficiency of **Range Beef Cows**
Fed Different Quantities of Ruminally
Undegradable Protein Before Breeding,
Journal of Animal Science, Vol. 71(10),
2586-2593.

"Maintaining a yearly calving interval is imperative for a beef cow to remain a profitable calf producer in the herd, and can be a demanding task for young **range beef cows**."

⁴ MSN Encarta Dictionary,
<http://encarta.msn.com/encnet/features/dictionary/DictionaryResult.aspx?refid=1861683807>, printed 2/3/2010.

Endecott, Rachel (2010). Strategic Supplementation of Young Cows for Reproduction, *Montana Beef Network*, <http://www.mtbeefnetwork.org/article/health/stratsup.html>.

"Range beef cattle production depends on the nutritional quality and quantity of available forage species."

New Mexico State University (2010). Range Beef Cow Supplementation Information and Strategies, <http://coronasc.nmsu.edu/range-cow-nutrition.html>.

"The coming of the **range-cattle industry** to southeastern Oregon was tied to events in California, where the state legislature enacted a series of herd and fence laws in the 1860s that sharply restricted access to the open range."

Oregon History Project (2010). The Coming of **Range Cattle**, <http://www.ohs.org/the-oregon-history-project/narratives/this-land-oregon/resettlement-new-economy/coming-of-range-cattle.cfm>.

"Research Project: Low risk management strategies for sustaining **range beef cattle** production systems....

Objective:

1. Quantify relative impacts of climatic variation and livestock grazing on sustainability of Northern Great Plains rangeland ecosystems...."

USDA United States Department of Agriculture Agricultural Research Service (2010), http://www.ars.usda.gov/research/projects/projects.htm?accn_no=406900.

We note that the Examining Attorney did not introduce any Internet evidence using the term "North American Range" as a geographical location.

3. Third-party Registrations

Applicant has submitted copies of the following five registrations including the term "range":

RANGE CALVED - RANGE RAISED for "livestock" in Class 31;⁵

OPEN RANGE for "chilled and frozen beef cuts; meat extracts" in Class 29;⁶

NATURE'S RANGE for "meat; beef" in Class 29;⁷

MOUNTAIN RANGE FARMERS MARKET for "eggs" in Class 29;⁸

and

GOLDEN RANGE for "meats" in Class 29.⁹

Applicant argues that these registrations show that existing USPTO practice is to register marks that include the word "range" as trademarks for meat products. Each of the above registrations issued on the Principal Register without a disclaimer to the term "range."

The examining attorney submitted copies of registrations for marks including the term "free range" for meat goods in which that term is disclaimed, or where the mark is registered under Section 2(f) of the Act, or on the

⁵ Reg. No. 3420547, issued April 29, 2008.

⁶ Reg. No. 2615459, issued September 3, 2002.

⁷ Reg. No. 3561001, issued January 13, 2009.

⁸ Reg. No. 3509529, issued September 30, 2008.

⁹ Reg. No. 2911506, issued December 14, 2004.

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Supplemental Register. The examining attorney argues that these registrations show that the Office treats the word "range" as geographically descriptiveness.

It is well settled that third-party registrations are not conclusive on the question of descriptiveness, including geographic descriptiveness. Each case must stand on its own merits. A mark that is merely descriptive should not be registered on the Principal Register simply because other marks that share those characteristics appear on the register. TMEP § 1209.03(a); see *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977) ("we are not so much concerned with what has been registered, but rather what should or should not be registered").

The question of whether a mark is merely descriptive must be determined based on the evidence of record at the time registration is sought, and "the Board has the duty to place this term in its proper context within the mark and to determine the public's perception." *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). The Board is not bound by prior decisions of examining attorneys. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1395 (TTAB 1987).

The third-party registrations are not conclusive on the question of whether the mark NORTH AMERICAN RANGE is

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merely descriptive for the goods. None of the registrations submitted by the examining attorney, with the exception of two for the mark ROCKY THE RANGE CHICKEN,¹⁰ and the two owned by applicant,¹¹ utilize the term "range" alone. We note that the Examining Attorney did not introduce any third-party registrations using the term "North American Range."

We similarly find the registrations submitted by applicant do not show the Office's consistent treatment of "range" as a suggestive term. None of the registrations submitted by applicant modify the word "range" with a geographic term. In the sole exception, the registration for the mark RANGE CALVED - RANGE RAISED, the word "range" itself is being used as a modifier.

Thus, although we have considered the third-party registrations, they have little persuasive value.

Primary Significance

The first prong of the test for geographic descriptiveness requires a showing that the mark's primary

¹⁰ Reg. No. 3523301 for ROCKY THE RANGE CHICKEN for "chicken and chicken parts"; disclaimer to "chicken" and Section 2(f) statement as to "the range chicken."

Reg. No. 3519318 for ROCKY THE RANGE CHICKEN and Design for "chicken and chicken parts"; disclaimer to "chicken" and Section 2(f) statement as to "the range chicken."

¹¹ Reg. Nos. 3216634 and 3358239.

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significance is a generally known geographic location. Where the geographic meaning is minor, obscure, remote, or unconnected with the goods or services, there is no showing of geographic "primary significance." *In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539, 1540 (Fed. Cir. 1999); *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865, 867 (Fed. Cir. 1985) (use of a geographic term in a fictitious, arbitrary or fanciful manner, is not "primarily" as a geographic designation); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d at 1824. Thus, registration should not be refused where, for example, the place named in the mark is so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods to which the mark is applied; or an admittedly well-recognized term has other meanings, such that the term's geographical significance may not be the primary significance to prospective purchasers. *See In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1986).

As shown by the evidence, "North America" is a continent in the western hemisphere, extending northward from northwestern South America to the Arctic Ocean. Also shown by the evidence is the fact that "North American" is the adjectival form of the name of the continent. In this form, "North American" is still likely to be perceived as a

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geographic term. See *In re Joint-Stock Co. "Baik,"* 80 USPQ2d 1305, 1310 (TTAB 2006) ("The fact that BAIKALSKAYA is the adjectival form of a geographic term does not diminish its geographic significance"). See also, TMEP §1210.02(a) ("A particular, identifiable region (e.g., 'Midwest' or 'Mid-Atlantic') is a geographic location"); and *In re Pan-O-Gold Baking Co.,* 20 USPQ2d 1761, 1762 (TTAB 1991) (primary significance of "New England" is geographic). "North American" defines a well-recognized geographic region.

On the other hand, applicant contends that "North American Range" does not define a known geographic location, but rather a "mystical location contrived by the Applicant, which is readily evident when the mark is considered as a whole." *Applicant's Brief*, p. 2.

As noted, the examining attorney's evidence falls short of showing that the combined term "North American Range" has been used to identify a distinct geographical location. Nonetheless, the mark combines a geographically descriptive term with a merely descriptive term without creating a unitary composite with a "unique, nondescriptive[,] ... bizarre or incongruous meaning" when combined, and used in connection with "beef." TMEP § 1209.03(d) (7th ed. 2011). See *In re Handler Fenton*

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Westerns, Inc., 214 USPQ 848, 850 (TTAB 1982) (The "mark 'DENVER WESTERNS,' when applied to western-style shirts that, according to the application, have their geographical origin in Denver, is primarily geographically descriptive"); and *In re U.S. Cargo Inc.*, 49 USPQ2d 1702, 1704 (TTAB 1998) (U.S. CARGO held primarily geographically descriptive for towable trailers for carrying cargo and vehicles for commercial purposes).

In considering the mark as a whole, we are guided by the definition provided by the examining attorney for "range" that references "an open region over which animals (as livestock) may roam and feed." In keeping with this definition, it follows that the term "North American Range" refers to a large area of land in North America where cows or other animals may be kept for the production of beef. This impression is underscored by the Internet references provided by the examining attorney that identify a type of cattle known as "range beef cattle," or "range beef cows," and the article discussing the 25-year period in American history known as the "range era," when ranchers and cowboys herded cattle across the range in such states as Texas, Oregon, and California.

The traveler who views the wheat fields of western Kansas in 1931 can see little sign that this region, within the span of a generation, was

once dominated as completely by cattle as it now is by wheat. ...

The industry during the open range era was never stabilized. The period was less than twenty-five years in duration. ... Toward the close of the range period the appeal of the subject to eastern readers created a substantial demand for magazine articles dealing with the various phases of the cattle business. ...

[T]he next book deals with the high-plains country of the Texas Panhandle where ranching was developed near the end of the open-range period.

...

The story of this enterprise illustrates effectively how the range herds were built up into high-grade Hereford and Angus cattle, superior to much of the stock produced on the farms of the corn belt during the eighteen nineties.

Malin, James C. (1931). *Notes on the Historical Literature of the Range Cattle Industry*, reprinted by the Kansas State Historical Society (2010) at http://www.kshs.org/publicat/khg/1931/31_1_malin-cattle.htm.

Based on the dictionary definitions of "North American" and "range," coupled with the Internet evidence, we find the term "North American Range" as a whole is primarily geographically descriptive for beef that comes from range beef cattle. The existence of the third-party Principal Register registrations for marks that include the term "range" do not evidence otherwise. None of them include geographically significant elements that point to a particular location. When viewed as a whole, the composite

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mark NORTH AMERICAN RANGE would be likely to be perceived as identifying the geographic origin of the goods.

Goods/Place Association and Origin of the Goods

The examining attorney presumes a goods/place association exists because applicant is located in Kentucky, which is in North America, and "North America" is neither obscure nor remote. Applicant does not dispute that its goods will originate in North America, but argues that a goods/place association cannot be presumed because the term NORTH AMERICAN RANGE is obscure, and because North America is so vast that it "could conceivably be the source of a wide range of goods." *Brief*, p. 8. Given the definition of "range" and the Internet references to "range cattle," particularly those that discuss the "range cattle industry" as encompassing open regions, the term NORTH AMERICAN RANGE is not obscure or remote. Potential consumers will view the mark as designating the entire North American region. Accordingly, we find that there is a goods/place association such that the public is likely to believe that the goods originate in the place identified in the mark.

Decision: The refusal to register under Section 2(e)(2) is affirmed.