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Mailed:
Sept. 12, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Namibia Breweries Limited

Serial No. 77761812
Serial No. 77761817

William C. Wright of Epstein Drangel LLP for Namibia
Breweries Limited.

Angela Micheli, Trademark Examining Attorney, Law Office
101 (Ronald R. Sussman, Managing Attorney).

Before Grendel, Zervas and Ritchie, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Introduction.

Namibia Breweries Limited (applicant) has appealed the
Trademark Examining Attorney's final refusals of
registration in the two above-captioned applications.

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Because the two appeals involve common issues of law and fact, we shall decide them together in this single opinion.

In application Serial No. 77761812, applicant seeks registration on the Principal Register of the mark **WINDHOEK LAGER** (in standard character form; LAGER disclaimed) for goods identified in the application as "beers."¹

In application Serial No. 77761817, applicant seeks registration on the Principal Register of the mark **WINDHOEK LIGHT** (in standard character form; LIGHT disclaimed) for goods identified in the application as "beers."²

In each of the applications, the Trademark Examining Attorney has issued a final refusal to register the mark on the ground that the mark is primarily geographically descriptive of the goods. See Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2). Specifically, the Trademark Examining Attorney contends that applicant's marks WINDHOEK LAGER and WINDHOEK LIGHT are primarily geographically descriptive of applicant's goods, i.e.,

¹ The application was filed on June 17, 2009. The application is based on applicant's asserted bona fide intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

² The application was filed on June 17, 2009. The application is based on applicant's asserted bona fide intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

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"beers," because the goods originate in the city of Windhoek (pronounced VINT-huk³), Namibia.

Applicant has appealed the final refusal in each of the applications. The appeals are fully briefed.

After careful consideration of all of the evidence of record, we **REVERSE** the refusal to register in each of the applications.

Section 2(e)(2) Refusal.

Trademark Act Section 2(e)(2) bars registration of a mark which "when used on or in connection with the goods of the applicant is primarily geographically descriptive of them." To maintain a refusal to register an applicant's mark on the ground that it is primarily geographically descriptive, the Office bears the burden of establishing that the primary significance of the mark is that of the name of a place generally known to the relevant purchasing public, and, if so, that the relevant purchasing public would make a goods/place association, that is, they would believe that the goods identified in the application originate in the place named in the mark. If both of these

³ The Columbia Gazetteer of the World Online (<http://www.columbiagazetteer.org>), entry for "Windhoek." (April 15, 2010 Final Office Action).

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elements are met, and the applicant's goods in fact originate in that place named in the mark, then the mark will be found to be primarily geographically descriptive of the goods. See *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821 (TTAB 2006); *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1309 (TTAB 2006).

Initially with respect to these elements of the Section 2(e)(2) refusal, there is no dispute, and we find, that Windhoek, Namibia is a geographical place, i.e., a city in Namibia. (See discussion below.) Additionally, there is no dispute that applicant is located in Windhoek, Namibia and that its goods ("beers") originate in and from Windhoek, Namibia.

Thus, the disputed Section 2(e)(2) issues in this case are (1) whether the primary significance of the marks WINDHOEK LAGER and WINDHOEK LIGHT is that of a name of a place, i.e., Windhoek, Namibia, that is generally known to the relevant purchasing public, and, if so, (2) whether there is a goods/place association between Windhoek, Namibia and the "beers" identified in the applications.

Primary Significance of the Marks.

We turn first to the determination of whether the primary significance to the relevant purchasing public of

each of applicant's marks, WINDHOEK LAGER and WINDHOEK LIGHT, is its geographical significance.

To support a finding under Section 2(e)(2) that the primary significance of a mark consisting of or including a place name is its geographical significance, it must be shown that the place named in the mark is a place that is or would be generally known to the relevant purchasers, and not a place that is remote or obscure. See *In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1821; *In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1309. That is, it must be shown that relevant purchasers would readily recognize that the allegedly geographical designation at issue (be it the mark as a whole or the relevant portion thereof) is in fact the name of a geographical place, and would not view it instead merely as an arbitrary term which is being used as a trademark.⁴

⁴ See *In re Societe Generale des Eaux Minerals de Vittel S.A.*, 3 USPQ2d 1450 at 1452 ("We think the evidence is inadequate to show that [relevant purchasers] would upon seeing the word Vittel on a bottle of skin lotion or the like, conclude that it is a place name and that the lotion came from there, rather than simply a trademark or trade name of a manufacturer like Chanel, Bourgeois, or Vuitton"); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820 at 1827 ("Here, 'Balashi' would be perceived as an arbitrary term which would serve to identify and distinguish applicant's goods because its geographical significance is essentially unknown to the relevant public, given that the record contains insufficient

In the present case, the Trademark Examining Attorney contends that Windhoek, Namibia is a geographical place that is generally known to the relevant purchasing public, and that the primary significance of the word WINDHOEK to such purchasers for purposes of Section 2(e)(2) therefore is its geographical significance, i.e., its significance as the name of the city of Windhoek, Namibia. Applicant, for its part, contends that although WINDHOEK is the name of a geographical place, i.e., Windhoek, Namibia, that place is not generally known to the relevant purchasing public, i.e., ordinary American beer purchasers, but rather is so remote and obscure that the primary significance of the word WINDHOEK to those purchasers would not be that of the name of a geographical place.

We find, first, that the relevant purchasing public for the goods at issue ("beers") consists of average American beer purchasers. *See In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820 at 1829 (for purposes of Section 2(e)(2), the relevant purchaser of goods identified as "beer" is "the average American beer consumer and not the

evidence to show that American beer consumers would in fact readily recognize 'Balashi' as a geographical name"); *In re Brauerei Aying Franz Inselkammer KG*, 217 USPQ 73, 75 (TTAB 1983) ("We would add that where the geographic significance of a name is lost on the public because of obscurity, there too, the usage becomes arbitrary.")

unusually well-traveled tourist or even the aficionados of foreign beers").

Additionally, although we are considering the marks in their entireties, our findings and analysis on this issue (like the applicant's and Trademark Examining Attorney's arguments) will be focused on the primary significance of the word WINDHOEK, in itself. We find that the generic and disclaimed words LAGER and LIGHT in the respective marks have essentially no probative significance in our determination of whether the primary significance of the marks under Section 2(e)(2) is their geographical significance. See, e.g., *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1620 (TTAB 2007); *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820 at 1821.

The evidence of record submitted by the Trademark Examining Attorney establishes that Windhoek is the capital city of the Republic of Namibia (hereinafter "Namibia"). Namibia is a country located in southern Africa (abutting the countries of South Africa, Angola, Zambia and Botswana), with a population of 2.1 million.⁵ In addition

⁵ U.S. Department of State website:, "Background Note: Namibia" (<http://www.state.gov>) (Sept. 19, 2009 Office Action); The Columbia Gazetteer of the World Online (entry for "Windhoek," (<http://www.columbiagazetteer.org>) (April 15, 2010 Final Office Action). See also the entry for "Namibia" from The World Factbook, a publication of the U.S. Central Intelligence Agency

to being Namibia's capital city, Windhoek is Namibia's largest city, with a population of 233,000. Windhoek also is Namibia's administrative, educational, communications, and economic center. Windhoek is a regional transportation hub, linked with South Africa's railroad network.⁶

The evidence of record further establishes that Windhoek is a tourist center for the southern Africa region. Windhoek has an international airport, to and from which several regional airlines in southern Africa operate. Windhoek's international airport serves 400,000 passengers per year, the majority of whom are from the Southern Africa region. It is a two-hour flight from Windhoek to Johannesburg, South Africa, where connections to and from other (presumably international) cities may be made.⁷

(submitted by applicant with its March 19, 2010 Response to Office Action).

⁶ The Columbia Gazetteer of the World Online (entry for "Windhoek," (<http://www.columbiagazetteer.org>) (April 15, 2010 Final Office Action).

⁷ Entry for "Windhoek" from the online encyclopedia Wikipedia, <http://en.wikipedia.org/wiki/Windhoek>, (accessed by the Trademark Examining Attorney on April 15, 2010 and attached to the April 15, 2010 Final Office Action). In its main appeal brief, applicant argues that this Wikipedia evidence should be excluded because it is unreliable. However, this Wikipedia evidence was attached to the Trademark Examining Attorney's Final Office Action, and applicant had the opportunity to submit evidence challenging the accuracy of this evidence with its Request for Reconsideration, but did not do so. See *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1032 (TTAB 2007). We therefore shall consider this Wikipedia evidence for whatever probative

In addition to this Internet evidence from the U.S. State Department website, The Columbia Gazetteer Online, and Wikipedia (see above at footnotes 5-7), the Trademark Examining Attorney has made of record a number of Internet websites which make some mention of Windhoek. These websites are:

- (1) a page from the website of the U.S. Embassy in Namibia (which is located in Windhoek);⁸
- (2) the home page from the website of the City of Windhoek, Namibia;⁹
- (3) a page from the website of Camelthorn Brewery, a local brewpub and restaurant in Windhoek;¹⁰
- (4) a website displaying webcam views of the current weather in Windhoek;¹¹
- (5) a "World Clock" website showing the current time and weather in Windhoek;¹²

value it may have. See *In re Spirits of New Merced LLC*, 85 USPQ2d 1614 at 1617 n.2.

⁸ <http://windhoek.usembassy.gov> (April 15, 2010 Final Office Action).

⁹ <http://www.windhoekcc.org.na/> (April 15, 2010 Final Office Action).

¹⁰ <http://www.camelthornbrewing.com> (April 15, 2010 Final Office Action).

¹¹ <http://www.namibiaonline.net> (April 15, 2010 Final Office Action).

¹² <http://www.timeanddate.com/worldclock/city> (April 15, 2010 Final Office Action).

- (6) an article about the geography of Windhoek from a website called "howstuffworks";¹³
- (7) an article about the history of Windhoek from the website of The African Executive magazine;¹⁴
- (8) an article (about applicant) from the website of a Zambian magazine, The Financial Mail;¹⁵
- (9) an article from the website of a Namibian newspaper called New Era ("Newspaper For a New Namibia") about a South African brewery's future plans to open a brewery in Namibia 70 kilometers from Windhoek;¹⁶
- (10) another article about the same South African brewery and its plans for the new brewery in Namibia, from the African news agency Afrol News ("The only independent news agency dedicated exclusively to Africa");¹⁷
- (11) a Namibia travel guide from a company located in Namibia called The Namibia Cardboard Box Travel Shop;¹⁸
- (12) a Windhoek Travel Guide from a travel company located in South Africa called Siyabona Africa;¹⁹

¹³ <http://geography.howstuffworks.com> (Nov. 8, 2010 Denial of Request for Reconsideration).

¹⁴ <http://www.africanexecutive.com> (April 15, 2010 Final Office Action).

¹⁵ <http://secure.financialmail.co.za>

¹⁶ <http://www.newera.com.na> (November 8, 2010 Denial of Request for Reconsideration).

¹⁷ <http://www.afrol.com>. (Nov. 8, 2010 Denial of Request for Reconsideration).

¹⁸ <http://www.namibian.org> (April 15, 2010 Final Office Action).

¹⁹ <http://namibia.hotelguide.co.za> (April 15, 2010 Final Office Action).

(13) a page from the website of a South African travel company (Essential Travel Info) about Windhoek hotels;²⁰

(14) a page from NamibWeb.com, ("The online guide to Namibia"), describing various monuments and historical buildings to visit in Windhoek (including applicant's former brewery building);²¹

(15) a page from the Lonely Planet online travel website describing a tourist attraction (applicant's former brewery building) in Windhoek;²²

(16) a Namibia travel guide from a company called Highline Travel Guides;²³ and

(17) a page about travel to Namibia from the website of an adventure travel company called Kensington Tours ("Private Guided Travel Worldwide").²⁴

We find that the evidence submitted by the Trademark Examining Attorney does not establish that the primary significance of WINDHOEK to average American beer purchasers would be its geographical significance. The evidence does not establish that these purchasers have had

²⁰ <http://www.essentialtravelinfo.com> (April 15, 2010 Final Office Action).

²¹ <http://www.namibweb.com> (Nov. 8, 2010 Denial of Request for Reconsideration).

²² <http://www.lonelyplanet.com> (April 15, 2010 Final Office Action). The site also invites "member reviews" of the referenced attraction; the page indicates that it has had "no member reviews yet."

²³ <http://www.namibia-travel.net> (April 15, 2010 Final Office Action).

²⁴ <http://www.kensingtontours.com> (Nov. 8, 2010 Denial of Request for Reconsideration).

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any significant exposure to the designation WINDHOEK, and thus any basis for readily recognizing its geographical significance, when they encounter applicant's marks.

For example, there is no evidence that Windhoek, Namibia (or Namibia in general) is commonly mentioned or reported on in the American press or other mass media such that, as a result of such coverage, American consumers will have been exposed to the designation "Windhoek" and thus would know of its geographical significance when they encounter applicant's marks. *Compare In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305 at 1310 (finding that the record was "replete with numerous references to BAIKAL in various publications for various cities throughout the United States"). We note that the record includes the websites (listed above as nos. 7-10) of various African news sources, but these clearly are directed primarily if not solely to readers in Namibia and southern Africa (and to business-oriented readers at that). Although the websites of these African news sources (like all websites) are accessible to American consumers via the Internet, we find it to be unlikely that average American beer consumers would actually be searching for and accessing them. We therefore accord them limited probative value in

determining the primary significance of WINDHOEK to relevant purchasers in the United States.

The evidence of record does not show that Windhoek (or Namibia, or southern Africa) is a common or likely tourist or travel destination for American consumers, particularly average American beer purchasers, such that the geographical significance of "Windhoek" would be generally known to such consumers by that means.²⁵

More specifically with respect to tourism and travel, there is no evidence showing how many U.S. tourists or travelers (if any) visit or have visited Windhoek. The record shows that Windhoek is a tourist center for the southern Africa region, but it is likely that the majority of its tourists come from that region because, as noted above, the majority of travelers using Windhoek's international airport come from the southern Africa region.²⁶

²⁵ Even if we were to assume (without evidence) that Windhoek, Namibia might be a destination for or familiar to "unusually well-traveled" tourists, they are not the relevant purchasers in this case, i.e., average American beer purchasers. Cf. *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 3 USPQ2d 1450 at 1452; *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820 at 1829.

²⁶ It also appears from the record that Windhoek is a popular destination for German tourists. See, e.g., the website of Highline Travel Guides (listed as website no. 16 above). However, German tourists to Windhoek are not among the relevant

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Additionally with respect to tourism and travel, the evidence does not suffice to show that there has been significant advertising or promotion in the United States of Windhoek as a tourist or travel destination. The record includes the websites (listed above as nos. 11-14) of several travel agencies or travel-oriented companies which clearly are located in southern Africa, i.e., in Namibia and in South Africa, but these companies likely cater primarily to the majority of Windhoek's tourists, who, again, are visiting Windhoek from other countries in southern Africa. The record also includes the websites (listed above as nos. 15-17) of several other travel agencies or travel-oriented companies which mention Windhoek, but it is not clear where these companies are located (whether in Africa or elsewhere) and to what extent, if any, their services are actually marketed to and utilized by American consumers.

As to all of these various travel-oriented websites, while they (like all websites) are accessible to American consumers via the Internet, the record does not show that average American beer consumers are likely to actually be searching for and accessing them. We therefore accord them

purchasers (average American beer purchasers) with whom we are concerned in this case.

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limited probative value in determining the primary significance of WINDHOEK to relevant purchasers in the United States.

There is no evidence showing that there are a significant number of American citizens or residents (and average American beer purchasers in particular) who, upon encountering applicant's marks, would know of the geographical significance of "Windhoek" because they, or their relatives, or other persons with whom they might have connections, are from Windhoek, or from Namibia, or from southern Africa. *Compare In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1310.

There is no evidence of any significant trade relations, scientific or cultural exchanges, or other connections between Windhoek (or Namibia) and the United States, by means of which American consumers would be aware of the geographical significance of "Windhoek." *Compare In re Joint-Stock Co. "Baik"*, 80 USPQ2d 1305, 1309.

The record includes several websites (listed above as nos. 2-4) which appear to be directed to and of interest primarily to local residents of Windhoek, not to American consumers. These are the official website of the city of Windhoek, the website with webcam views of current Windhoek weather, and the website of a local Windhoek restaurant.

We accord these local Windhoek websites limited probative value in determining the primary significance of WINDHOEK to relevant purchasers in the United States.

For these reasons, we find on this record that Windhoek, Namibia is a relatively obscure and remote place which would not be generally known to average American beer purchasers. The record shows that information about Windhoek, Namibia is generally available if one were to search for "Windhoek" on the Internet (as the Trademark Examining Attorney has done).²⁷ However, the fact that information about a place is generally available if one were to search for it on the Internet does not in itself make the place generally known, for purposes of Section 2(e)(2). Cf. *In re Societe Generale des Eaux Minerals de Vittel S.A.*, 3 USPQ2d 1450 at 1452 (relevant purchasers for purposes of Section 2(e)(2) are not "computer operators checking out the meaning of strange words on NEXIS"). We find it to be unlikely that average American beer

²⁷ Such information would include information obtained from geographical reference sources like those located by the Trademark Examining Attorney, which are likely to have entries for and provide information about essentially any particular place in the world. These would include general reference resources like The Columbia Gazetteer of the World Online and Wikipedia (see footnotes 5-7 above), and more specialized reference sources like the "World Clock" website (the website listed above as no. 5), the "howstuffworks" website (the website listed above as no. 6), the U.S. Embassy website (the website listed above as no. 1), and the U.S. State Department website.

purchasers would have been exposed to the geographical significance of the designation WINDHOEK to such an extent that, when they encounter applicant's marks, they will readily recognize WINDHOEK to be a place name, rather than view it as an arbitrary designation being used as a trademark for the goods.

We therefore find that the first element of the Section 2(e)(2) refusal, i.e., the requirement that the primary significance of applicant's marks is that of a generally known geographic place, has not been established, and that the Trademark Examining Attorney's Section 2(e)(2) refusal fails on that basis.

In view thereof, we need not reach the second element of the Section 2(e)(2) refusal, i.e., whether there exists a goods/place association between Windhoek and "beers."²⁸

Decision: The refusal to register in each of the applications on appeal is REVERSED.

²⁸ See *Grand Canyon West Ranch LLC v. Hualapai Tribe*, 88 USPQ2d 1501 at 1505 (TTAB 2008) ("The two questions are bound together, that is, there can be no services-place association if the place named is so obscure or remote that purchasers of the service at issue would not recognize it as a place."); *In re Trans Continental Records Inc.*, 62 USPQ2d 1541 at 1544 (TTAB 2002) (where the place named in mark is obscure, such that the primary significance of the mark is not that of a geographical place, then the existence of a goods/place association, vel non, is "of no moment").