

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
December 17, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Punita Leathers, Inc.

Serial No. 85322001

Clifford D. Hyra of Symbus Law Group, LLC for Punita Leathers, Inc.

Dominick J. Salemi, Trademark Examining Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).

Before Quinn, Ritchie and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Punita Leathers, Inc. (“applicant”) seeks registration of ASHBURN, in standard characters, for “Bed blankets; Blanket throws; Lap blankets.”¹ The examining attorney refused registration of the mark under Section 2(e)(2) of the Act, on the ground that the mark is primarily geographically descriptive of applicant’s goods. Applicant’s address, according to both the application and applicant’s Appeal Brief, is in Chantilly, Virginia.

¹ Application Serial No. 85322001, filed May 16, 2001, alleging first use in August 2010.

Applicant argued against the refusal, and, in the alternative, claimed that the mark has acquired distinctiveness under Section 2(f) of the Act based on applicant's ownership of Registration No. 2969452. The examining attorney accepted applicant's alternative claim of acquired distinctiveness,² but maintained the geographic descriptiveness refusal, and gave applicant the option of having the mark published under Section 2(f), which applicant declined.

After the refusal became final, applicant appealed, its request for reconsideration was denied and applicant and the examining attorney filed briefs. We reverse the refusal to register in the absence of the alternative claim of acquired distinctiveness; applicant's alternative claim under Section 2(f) is therefore unnecessary and will not be entered.

The test for determining whether a mark is primarily geographically descriptive under Section 2(e)(2) of the Act is whether: (1) the mark (or a portion thereof) is the name of a place known generally to the public; and (2) the public would make a goods/place association, that is, believe that the goods identified in the application originate in that place. *See, In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re Mankovitz*, 90 USPQ2d 1246 (TTAB 2009). The examining attorney bears the burden of establishing that applicant's mark is primarily geographically descriptive. *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1616 (TTAB 2007).

² Office Action of May 8, 2012.

In this case, the examining attorney's evidence is sparse. It consists, in its entirety, of the following:

- a Wikipedia entry for Ashburn, Virginia which indicates that Ashburn is located 30 miles northwest of Washington, DC in Loudon County, Virginia and provides conflicting information about the town's population (in one section indicating that in 2010 it was 43,511 and in another section indicating that in 2010 it was 88,397); Office Action of June 7, 2012;
- a printout from the "ashburnweb.com" website which indicates that Ashburn "has over 50,000 citizens;" *id.*
- a printout from the "ashburnonline.com" website which contains three paragraphs of local news; *id.*;
- a printout from the Google Maps website ("google.com/maps") revealing the results of a search for "chantilly and ashburn virginia," specifically a map showing that Ashburn is north and slightly west of Chantilly and business listings for car dealerships and a hotel in Chantilly; Denial of Request for Reconsideration, April 22, 2013; and
- a printout from the "distancebetweencities.net" website which indicates that Chantilly and Ashburn are 12 miles apart. *Id.*

None of this evidence mentions, or indicates that Ashburn has any association with, blankets or related products, nor does any of the evidence indicate that Chantilly, where applicant is located, is associated in any way with Ashburn. This evidence is insufficient to meet the examining attorney's burden of proof.³

³ The evidence attached to the examining attorney's brief is untimely under Trademark Rule 2.142(b) and is duplicative of evidence already properly of record. It was inappropriate to submit evidence with the brief and was unnecessary to resubmit evidence already of record. *See* TBMP § 1203.02(e) (3rd ed. Rev. 2 2013).

In fact, while there is no evidence that ASHBURN is anything other than a geographical location, the question here, as in *Societe Generale*, is “how many people in this country know that?” *Societe Generale*, 3 USPQ2d at 1452. While the evidence does not answer that question specifically, there is no evidence that a significant number of people are aware of Ashburn, Virginia. To the contrary, here, as in *Societe Generale*, the evidence establishes that Ashburn “is remote and we deem the evidence produced by the PTO insufficient to show that it is not obscure.” *Id.*; see also, *In re Brouwerij Nacional Balashi NV*, 80 USPQ2d 1820, 1824 (“we agree with applicant that ‘Balashi’ is so obscure or remote that purchasers of beer in the United States would typically fail to recognize the term as indicating the geographical source of applicant’s goods”); *In re Bavaria St. Pauli Brauerei AG*, 222 USPQ 926, 927 (TTAB 1984) (the primary significance of JEVER to American consumers “is not of the geographic location from which the goods emanate”); *In re Brauerei Aying Franz Inselkammer KG*, 217 USPQ 73 (TTAB 1983). The mere fact that Ashburn is approximately 30 miles from Washington, D.C. does not necessarily mean that it is known generally to the public.

Because there is at the very least a genuine issue as to whether ASHBURN “is so obscure or remote that purchasers would fail to recognize the term as indicating the geographical source of the goods,” the examining attorney was required to “submit evidence to establish a public association of the goods with that place.” *Societe Generale*, 3 USPQ2d at 1451 (quoting with approval Board’s discussion of the requirement); *Brauerei Aying*, 217 USPQ at 75. The evidence in

this case falls short, however. Indeed, none of the examining attorney's evidence even mentions blankets (or related products), much less relates them in any way to Ashburn (or Chantilly), Virginia. *In re Mankovitz*, 90 USPQ2d at 1251 (“... there is no connection between Montecito and applicant's goods and services other than applicant's address. The limited information in this application does not convince us that applicant's goods or services originate in Montecito, California, or that the public will assume that these goods or services are from Montecito”); *In re Gale Hayman, Inc.*, 15 USPQ2d 1478, 1479 (TTAB 1990) (“Sunset Boulevard itself would have to be associated with the products in such a way that the consuming public would be likely to assume that Sunset Boulevard was the place in which the perfume and cologne originated.”) Moreover, as applicant points out, it is not even located in Ashburn, it is located in Chantilly, 12 miles away.⁴

In short, while the record establishes that Ashburn is a geographic location, there is at the very least a genuine issue regarding whether Ashburn is remote and obscure. Accordingly, the examining attorney was required to establish that consumers associate applicant's goods with Ashburn, Virginia, but he failed to do so.

⁴ *In re Spirits of New Merced* does not support a finding that applicant's mark is geographically descriptive. In that case, Yosemite National Park was shown to be “a well-known, if not famous, geographic region,” and YOSEMITE BEER was accordingly found to be geographically descriptive even though applicant was based in Merced, California, 80 miles away. A goods/place association was found in that case because Merced was touted as the “Gateway to Yosemite,” and “[a]pplicant's business is located in a city whose economy, and largely its identity, center around its association with Yosemite National Park, an association that the city has fostered and promoted for more than a century.” 85 USPQ2d at 1620-21. Here, by contrast, there is no evidence that Chantilly associates itself with Ashburn, or that its economy or identity “center around” any association with Ashburn. Rather, the evidence is that Chantilly and Ashburn are simply two locations, 12 miles apart.

Serial No. 85322001

To the extent there is any doubt as to whether ASHBURN is geographically descriptive, we resolve it in applicant's favor. *In re John Harvey & Sons Ltd.*, 32 USPQ2d 1451, 1455 (TTAB 1994).

Decision: The refusal to register applicant's mark absent a showing of acquired distinctiveness under Section 2(f) of the Act is reversed.