

This Opinion is Not a
Precedent of the TTAB

Mailed: February 25, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Rich Marks, LLC

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Serial Nos. 85784407, 85789870 and 85789873

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on Request for Reconsideration

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Joel R. Feldman, Kristen L. Fancher and Jess L. Rosen of Greenberg Traurig, LLP,
for Rich Marks, LLC.

April K. Roach, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

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Before Bucher, Kuhlke and Wolfson,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant, Rich Marks, LLC, has filed a timely request for reconsideration of the Board's decision dated January 6, 2015, affirming the refusals to register Applicant's marks **REDNECK RIVIERA** and **REDNECK RIVIERA FEST** under Section 2(e)(2) of the Lanham Act, 15 U.S.C. § 1052(e)(2).

The premise underlying a request for reconsideration of a Board decision, under 37 C.F.R. § 2.144, is that based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. The request may not be used to introduce additional evidence, nor should it be devoted simply to a re-argument of the points presented in the requesting party's brief. Rather, the request normally should be limited to a demonstration that based upon the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. *See* TBMP §§ 1219.01 and 543 (2014) and the authorities cited therein. *See also Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Applicant advances three arguments, which we consider in turn.

❶ Applicant argues that the Board should

... reconsider its analysis of evidence from THE COLUMBIA ENCYCLOPEDIA and "The Rise and Decline of the Redneck Riviera: An Insider's History of the Florida-Alabama Coast" and conclude that this evidence supports Rich Marks' evidence from UrbanDictionary.com that "redneck Riviera" is "[a] general term indicating a waterfront region that is distinguished by a wealth of natural and scenic beauty, where the residents are primarily products of the working class (working poor)."

Applicant in its earlier briefing had alleged that the Trademark Examining Attorney failed to enter into the record *reliable* sources of information. Applicant's reply brief at 1-7. Accordingly, in our decision of January 6, we did not rely solely on collaborative website sources like UrbanDictionary.com or personal, "amateurish" sites. *In re Trans Continental Records, Inc.*, 62 USPQ2d 1541, 1544 (TTAB 2002) ("... the evidence from [www.angelfire.com] is not persuasive that O-TOWN is

generally known as a geographic location. There is no evidence as to whether this website has been accessed by a significant number of people. And, in view of the *amateurish* nature of the text ..., we cannot regard the author's view of 'O-TOWN' as a nickname for Orlando to be indicative of the perception of the public at large"). Instead, we used these merely to corroborate the dozen references upon which we relied that included national, regional and specialty periodicals, and major broadcast networks, including ABC News, CBS News, *The New York Times*, *The Miami Herald*, *The Seattle Times*, the *Augusta Chronicle*, and *Food & Wine* magazine, as well as articles of record referring to a scholarly work of historic research about the Florida-Alabama Gulf Coast prominently titled "Redneck Riviera" (which book itself is not part of the record), and finally, taking notice of an entry in THE COLUMBIA ENCYCLOPEDIA.

Without reciting to all of the individual pieces of evidence in the record, we reaffirm our earlier finding that the term "Redneck Riviera," for American consumers, is a real, significant geographical place along the northwest coastline of the Gulf of Mexico stretching from southeastern Mississippi to the Florida panhandle beaches east of Panama City. Certainly this named place of sufficiently defined boundaries is neither remote nor obscure, and the term "Redneck Riviera" has been an important part of the Southern vernacular for decades.

We hold to this position in spite of, for example, Jed Bob's 2007 submission to UrbanDictionary.com suggesting that the term "Redneck Riviera" is a general reference to the ambiance of any waterfront region of scenic beauty having poor

residents. Applicant latches onto this broader connotation, describing this as a pop-culture, slang term – having already acquired a separate, readily-understood, non-geographical meaning – reflecting any beautiful beach having inhabitants displaying the “redneck” habits of poor, lower-class persons, thus evocative of a lifestyle beyond any particular zip code. To the extent that some persons may well derive from the ordinary meaning of these individual words a more generalized, non-geographical connotation related to ambiance or life-style, that possibility does not overcome the historical, primary geographical significance of the term “Redneck Riviera.” For a long time, the “Redneck Riviera” has named a real place, which name combines two characteristics of this region – a unique cultural stereotype of the laid-back, rural south juxtaposed against the stunning beauty of the Gulf seascapes. As seen in the articles of record, the history and characteristics of the northwest Gulf Coast reflect incredibly beautiful beaches, tacky trinkets, new high-rise condominiums, southern folkways and honky-tonks.

We accept that the Florida panhandle and Alabama Gulf Coast region is not totally homogeneous, and has locations like Seaside and Navarre Beach. The latter is protected from development by federal law. As to the former, the fact that the urban planners and architects who founded Seaside wanted to contrast their planned community with the stereotypical sprawl of many surrounding developments does not contradict the conclusion that many residents of, and visitors to, these Gulf beaches readily recognize “Redneck Riviera” as the name of that region of the country. The pieces of evidence in the record point to a variety of

different municipalities and beaches, but together they form one large region known as the “Redneck Riviera,” not many separate “redneck Rivas.”

② Applicant also argues that our conclusion that members of the relevant public would principally view the term “Redneck Riviera,” when used in connection with Applicant’s recited services, as designating a specific geographic region widely known by that name, is *not supported by substantial evidence*, citing to recent criticisms contained in the decision of *In re The Newbridge Cutlery Company (t/a Newbridge Silverware)*, ___ F.3d ___, 113 USPQ2d 1445 (Fed. Cir. 2015). We disagree with this contention. Looking at the evidence in this record *in toto*, as approved by our primary reviewing court, we find that the Trademark Examining Attorney has set out a *prima facie* case that the term “Redneck Riviera,” is known generally to the relevant public as a geographical region:

- ABC News: “ ... a play on *the long-held nickname for the region*”
- *The Seattle Times*: “ ... long been called “the Redneck Riviera”
- *Augusta Chronicle*: “ ... Flora-Bama[,] *Ground Zero on the Redneck Riviera*, the place where songster Jimmy “Margaritaville” Buffett spent a lot of time wasting away ... ”
- *New York Times*: “ ... the region – sometimes referred to as the ‘Redneck Riviera’ ... ”
- CBS News: “ ... why *generations of Southerners* have flocked to the stretch of northern Gulf Coast *affectionately called the ‘redneck Riviera’* ... ”
- *The Miami Herald*: “Living it up on the ‘Redneck Riviera’: History professor affectionately recounts creation and changes along the Gulf Coast.”

- *Food and Wine* magazine: “On a drive along the Gulf Coast’s Redneck Riviera, ambitious new restaurants are turning up next to classic seafood joints and fried-chicken spots.”

Applicant particularly relies on the following comment in *Newbridge Cutlery*, 113 USPQ2d at 1450 that “... it is simply untenable that any information available on the internet should be considered known to the relevant public.” This statement simply recognizes the fact that an Internet search may elicit many disparate results, some of which are not particularly probative or capable of supporting a *prima facie* case. Unlike in *Newbridge Cutlery*, which involved a foreign place name and a mixed record of evidence that included atlases that did not list the geographical place, here the overall evidence placed into the record by the Trademark Examining Attorney and by Applicant cannot be said to be evenly “mixed.” Further, unlike in *Trans Continental Records*, which included a local newspaper and a website entry of an amateurish nature, here there is a consistent showing of “Redneck Riviera” as naming a specific geographical region by serious news outlets like ABC News, CBS News, *The New York Times*, *The Miami Herald*, *The Seattle Times*, the *Augusta Chronicle*, and *Food & Wine* magazine. Viewed with a most critical eye, the evidence in national publications and broadcast television stories shows that this is a long-held, name for this specific geographical region of which residents and visitors alike would clearly be aware.

Applicant tries to diminish the probative value of this evidence by arguing that these newspaper and magazine articles “are simply Internet printouts, not contextualized press clippings.” However, like persons the world over, potential

visitors to this part of the country are consuming an ever-increasing volume of newspaper and magazine content in the very online context Applicant is criticizing as inherently lacking in probative value. As the Trademark Examining Attorney who prosecuted the **DURANGO** case at the TTAB (*In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 USPQ 865 (Fed. Cir. 1985)), I recognize that in the Internet age, more may be required of the Trademark Examining Attorneys in a refusal under Section 2(e)(2) than simply a single gazetteer entry. However, nowhere does Applicant provide support for the proposition that the *Newbridge Cutlery* decision places on the Trademark Examining Attorney the additional burden of providing evidence as to the number of eyeballs that perused “the ‘Journeys’ portion of the ‘Travel’ section of a Wednesday edition of the *New York Times*...” (Applicant’s request for reconsideration at 10), either in the context of a hard copy publication or in the newer online format. U.S.-based publications that simultaneously print in hard copy and online typically use very similar content for both. Thus, one may presume that the websites of large urban newspapers are reaching many thousands of domestic consumers every day. This most probative of evidence provides a contrast with a number of travel-oriented websites that may occasionally be referenced by a much smaller group of individuals planning a trip abroad that were relied upon by the Trademark Examining Attorney in making a *prima facie* case before the Board in its *Newbridge Cutlery* decision.¹ Additionally, some of the Nexis articles in the

¹ <http://www.newbridge.ie/>, <http://kildare.ie/>, <http://www.discoverireland.com/gb/ireland-places-to-go/>, <http://www.discoverireland.ie/>, <http://www.whitewatersc.ie/Newbridge-and->

Newbridge Cutlery case did include off-handed references to births, deaths or the homes of foreign exchange students. By contrast, all of the articles in the case at bar were focused squarely on restaurants, attractions and other things in the Redneck Riviera, which articles discussed the named place in a broader and deeper sense.

③ Finally, Applicant relies upon a non-precedential decision involving the term **TINSELTOWN** used in connection with items of clothing. See *In re Topson Downs of California, Inc.*, Ser. No. 85067696 (TTAB December 4, 2012).²

On the facts of that case, the Board reversed the refusal, finding that the **TINSELTOWN** nickname referred much more strongly to the motion picture industry than it did to a specific geographic location. On the facts of the case at bar, we find that the term **REDNECK RIVIERA** refers much more strongly to a real, significant geographical place along the northwest coastline of the Gulf of Mexico than it does to an ambience.

Furthermore, Applicant has reserved its right to offer all of its listed services in the specific area of the Florida Panhandle, Alabama Gulf Coast and Mississippi's southeastern coast – a region widely known as the “Redneck Riviera.” Presumably over the years, the hypothetical visitor to Gulf Shores, Alabama, for example – located in the heart of the Redneck Riviera – would readily know that this entire area is known by that name. Hence, when confronted in the future with the term **REDNECK RIVIERA** for an array of entertainment services such as musical

<http://www.greganchauffeurireland.ie/chauffeur-ireland-kildare-tour.htm>,
<http://www.irishtourist.com/kildare/towns/newbridge/>, and <http://www.newbridgetown.com/>.

² e-foia.uspto.gov/85067696-12-04-2012

concerts, amusement parks and theme parks, or themed restaurants, bars and hotels positioned along the Gulf coast, the immediate perception of this designation as a mere place name would be reinforced. Under these circumstances, it is likely that consumers would reasonably expect that services bearing the designation “Redneck Riviera” originate in that region.

By contrast, as in *Topson Downs of California*, wares such as outerwear/clothing sold around the country at retail outlets are not inherently tied to the geographic location named in the associated mark. Purchasers of clothing, as with many other goods, are not restricted to buying the branded products at a specific location, whereas the services recited in Applicant’s application have this inherent geographical connection as a prompt. *See In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1857-58 (TTAB 2014) (**HOLLYWOOD LAWYERS ONLINE** is geographically descriptive when used in connection with attorney referrals, providing a website featuring business information in form of audio and video interviews, transcripts and other educational materials, and providing an online video business directory).

In conclusion, we note that as with any geographical designation, the term “Redneck Riviera” will likely be used to signify this geographical area if not forever, at least for the foreseeable future, and should Applicant secure ownership of this term in the form of federal registrations for the requested service marks, Rich Marks, LLC could appropriate exclusive rights to usage of this long preexisting

designation in connection with entertainment and hotel services operating in this very region for years without end.

The purpose of reconsideration is to point out errors made by the Board in reaching its decision. The bases for the Board's decision have been carefully reviewed in light of Applicant's Request for Reconsideration and we do not find any error in the Board's determination affirming the refusal to register the subject marks **REDNECK RIVIERA** and **REDNECK RIVIERA FEST** based upon the ban of Section 2(e)(2) of the Lanham Act. In view of the foregoing, Applicant's Request for Reconsideration of the Board's Decision is **DENIED**, and the decision of January 6, 2015, stands.