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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re MMDT Stretch, LLC

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Serial No. 85930329

Daniel S. Latter of Marquee Law Group, APC for MMDT Stretch, LLC.

Sean Crowley, Trademark Examining Attorney, Law Office 116 (Christine Cooper, Managing Attorney).

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Before Zervas, Wolfson, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

MMDT Stretch, LLC (“Applicant”) filed an application for registration on the Principal Register of the mark STRETCH LA in standard character form for “Therapeutic stretching services,” in International Class 44.¹ The Examining Attorney refused registration under Trademark Act Section 2(e)(2), 15 U.S.C. § 1052(e)(2), on the ground that the mark is primarily geographically descriptive of Applicant’s services. When the Examining Attorney made his refusal final,

¹ Application Serial No. 85930329 was filed on May 13, 2013 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), on the basis of Applicant’s asserted *bona fide* intention to use the mark in commerce.

Applicant filed a request for reconsideration and a notice of appeal. After the Examining Attorney denied the request for reconsideration, this appeal proceeded. Applicant and the Examining Attorney have filed briefs and Applicant has filed a reply brief.

A mark that is primarily geographically descriptive is unregistrable, as provided by Trademark Act § 2(e)(2). To refuse registration under Section 2(e)(2), the Examining Attorney must show that:

- (1) “the mark sought to be registered is the name of a place known generally to the public”;
- (2) “the public would make a [services]/place association, i.e., believe that the [services] for which the mark is sought to be registered originate in that place”; and
- (3) “the source of the [services] is the geographic region named in the mark.”

See In re Newbridge Cutlery Co., 776 F.3d 854, 113 USPQ2d 1445, 1448-9 (Fed. Cir. 2015), *citing In re Societe Generale Des Eaux Minerales De Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987), *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 104 USPQ2d 1330 (Fed. Cir. 2012), and *In re Jacques Bernier, Inc.*, 894 F.2d 389, 213 USPQ 889 (Fed. Cir. 1990).

Applicant admitted during prosecution and in its brief that the designation LA “connotes Los Angeles.”² Applicant also stated during prosecution and in its brief that it intends to offer its services “within and outside of the greater Los Angeles area.”³ Applicant’s business address, as stated in the application, is in Beverly Hills,

² Applicant’s response of March 4, 2014 at 1; Applicant’s brief, 7 TTABVUE 4.

³ Applicant’s response of September 30, 2014 at 1.

California. The Examining Attorney has made of record a gazetteer entry for Beverly Hills, indicating that it is a California city in Los Angeles county, and 8 miles from downtown Los Angeles.⁴

In order to show that Los Angeles is “the name of a place generally known to the public,” the Examining Attorney has submitted a gazetteer entry for Los Angeles, indicating that it is a California county having a “mediterranean climate” and “resorts” that “have long attracted ... year-round tourists.” An important industry of the county is “motion pictures at Hollywood, Culver City, and Burbank”; and it includes the “noted resort” of Santa Catalina.⁵ We find this evidence sufficient to show that Los Angeles is a place generally known to the public. Combining this evidence with Applicant’s admission that LA is a term that “connotes Los Angeles” and that Los Angeles is “known as LA,”⁶ we find that LA is the name of a place that is generally known to the public. We note also that “Applicant concedes that ‘LA’ identifies a real and significant geographic location ...”⁷

Applicant contends, however, that “the primary meaning of the mark is not the geographic meaning,” pointing out that the Examining Attorney must demonstrate the primary significance of the composite mark.⁸ Applicant argues that the primary element of its mark is the term STRETCH; that the term LA “is associated with

⁴ Entry from THE COLUMBIA GAZETTEER OF THE WORLD, Office Action of September 5, 2013 at 8.

⁵ *Id.* at 6-7.

⁶ Applicant’s brief, 7 TTABVUE 4.

⁷ *Id.*, 7 TTABVUE 5-6.

⁸ *Id.*, 7 TTABVUE 6.

fitness, as the inhabitants of Los Angeles are generally thought to be in better physical shape than those that reside elsewhere in the United States”; that “the primary significance of ‘LA’ is to denote a healthy lifestyle that Applicant believes consumers would associate with Los Angeles”; and that therefore, as used in the mark LA “suggest[s] a level of fitness, rather than being primarily geographic.”⁹

Inasmuch as Applicant’s services are identified in the application as “therapeutic stretching services,” it is clear that the term STRETCH is generic in the context of the services. Although we do not ignore the word STRETCH in our analysis of the mark as a whole, customers would readily expect competitors of Applicant to use the word “stretch” in connection with their services; accordingly, the word STRETCH in Applicant’s mark has extremely little ability to indicate the source of Applicant’s services. As for the mark as a whole, Applicant’s arguments do not set forth a clear, alternate, non-geographic meaning of the mark, but only a vague suggestion that the term LA has favorable associations for those interested in fitness. In the context of Applicant’s services, as identified, customers are likely to perceive the mark as designating stretching services associated with Los Angeles. “[T]he 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.” *In re JT Tobacconists*, 59 USPQ2d 1080, 1082 (TTAB 2001). *See also In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652 (Fed. Cir. 1993). There is no evidence of record showing

⁹ Applicant’s brief, 7 TTABVUE 6-7.

that the term LA has any non-geographic significance with respect to therapeutic stretching. Accordingly, there is no basis for finding that the primary significance of the mark as a whole is something other than its geographic significance.

Applicant next argues that the Examining Attorney has failed to demonstrate that Applicant's services originate in Los Angeles. However, Applicant's arguments on this point actually address the different question of whether customers would believe that Applicant's services originate in Los Angeles, *i.e.*, the question of whether there is a services-place association. We will address these arguments in our discussion of the services-place association. That Applicant's services originate in Los Angeles is sufficiently demonstrated by the facts, discussed above, that Applicant is located in Los Angeles county and intends to offer its services in Los Angeles.

We turn then to the question of whether customers would believe that Applicant's services originate in Los Angeles. Applicant argues:

[T]here is nothing for customers in Portland, for instance, to believe that the services originate in Los Angeles, They will be provided at a local location and there will be no nexus to "L.A." This is similar to a customer sitting in a restaurant in New York that claims to be a French bistro.

...

It is respectfully submitted that while the services are intended to be provided at locations within and without the greater Los Angeles area, a customer receiving the services will not be confused as to their origin.¹⁰

¹⁰ Applicant's brief, 7 TTABVUE 9.

As Applicant admits, it intends to provide its services in Los Angeles. Moreover, Applicant seeks a registration that would be evidence of Applicant's exclusive right to use its mark in nationwide commerce, including Los Angeles, a market in which Applicant's competitors may wish to describe their services as "stretch" services originating in "LA." The traditional rationale for refusing registration of geographically descriptive marks has been expressed as follows:

Terms that are descriptive of the geographic location or origin of goods and services are regarded by the law as not being "inherently distinctive" marks. Since geographically descriptive terms are not inherently distinctive, they can be protected as trademarks only upon proof that through usage, they have become distinctive. Such an acquisition of distinctiveness is referred to as "secondary meaning."

MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION (Fourth ed.) § 14:1. Professor

McCarthy points to the Supreme Court as support:

And it is obvious that the same reasons which forbid the exclusive appropriation of generic names or of those merely descriptive of the article manufactured and which can be employed with truth by other manufacturers, apply with equal force to the appropriation of geographical names, designating districts of country. Their nature is such that they cannot point to the origin [personal origin] or ownership of the articles of trade to which they may be applied. They point only at the place of production, not to the producer.

Delaware & Hudson Canal Co. v. Clark, 80 U.S. 311, 324 (1872). Consistent with this rationale, the Board has stated that "where goods come from or services are rendered both in the geographical place named and outside the geographical area, registration would normally be refused under Section 2(e)(2) ..." *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1706 n.2 (TTAB 1988). See also *In re Spirits of*

New Merced, LLC, 85 USPQ2d 1614, 1620 (TTAB 2007) (“Where the geographical significance of a term is its primary significance and where the geographical place is neither obscure nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that the applicant's own goods come from the geographical place named in the mark.”). Accordingly, the fact that Applicant intends to provide some of its services outside of the Los Angeles area does not alone remove it from the scope of a refusal under Section 2(e)(2).

The Federal Circuit has noted that demonstrating a “services-place association” is somewhat more difficult than demonstrating a “goods-place association.” In a case in which the services were *not* provided in the geographic place named in the mark (because the place named was in a foreign country), the court explained:

A customer typically receives services, particularly in the restaurant business, at the location of the business. Having chosen to come to that place for the services, the customer is well aware of the geographic location of the service.

...

Thus, a services-place association in a case dealing with restaurant services, such as the present case, requires a showing that the patrons of the restaurant are likely to believe the restaurant services have their origin in the location indicated by the mark.

In re Les Halles De Paris J.V., 334 F.3d 1371, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003). The court stated that a mere showing that a place is “known for” the service or that services of the type are offered by others in the pertinent location would be insufficient. The court then described the necessary showing as one “that might give

restaurant patrons an additional reason *beyond the mark itself* to identify the services as originating in the relevant place.” *Id.* at 1542 (emphasis added).

The case now before us differs from *In re Les Halles*, because Applicant’s services will be provided in the place named in the mark.¹¹ Therefore, the customer, “having come to [Los Angeles] for the services,” will be “well aware of the geographic location of the service” and will have “an additional reason beyond the mark itself” to believe that the services “have their origin in the location indicated by the mark.” We note that Professor McCarthy, in his discussion of *In re Les Halles*, distinguishes from it cases, like ours, in which the service is provided in the place named. MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION (Fourth ed.) § 14:33.50.¹²

We have considered the evidence showing that the USPTO has issued registrations of the mark LA FITNESS¹³ and Applicant’s argument comparing its own mark to LA FITNESS. This evidence, consisting of registration certificates and certain application files, does not include any expression of a rationale for registration of the mark; and the mere existence of a registration cannot be taken as evidence of a USPTO policy or rationale relating to the registration of other similar marks. The evidence does not support Applicant’s argument that, in the mark LA

¹¹ Indeed, the issuance of a registration of unrestricted geographic scope contemplates that the mark will be used throughout the United States and its territories.

¹² In a note marked “Author’s Opinion,” he states that, absent countervailing evidence, “it seems inevitable that for many restaurants named by a place such as a well-known city or town, there will be a service-place association. A restaurateur who seeks exclusive rights to place names such as ST. LOUIS, NEBRASKA or SEATTLE for a restaurant located in those places should have to prove secondary meaning to acquire exclusive rights.”

¹³ Applicant’s request for reconsideration of April 23, 2015 at 7-43.

FITNESS, the term LA is used “to connote fitness and good health, in all likelihood.”¹⁴ In any event, we must decide each case on its own merits and “[e]ven if some prior registrations had some characteristics similar to [applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board.” *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Having carefully reviewed all of the arguments and evidence, including those not specifically discussed herein, we have found that LA is a recognized abbreviation of the name LOS ANGELES; that LOS ANGELES is the name of a place known generally to the public and that Applicant’s mark, as a whole consists primarily of this geographic place name; that Applicant’s services originate in LA; and that the public would believe that Applicant’s services originate there. Accordingly, we find that Applicant’s mark, as used in connection with Applicant’s services, is primarily geographically descriptive of them within the meaning of Section 2(e)(2).

Decision: The refusal to register is affirmed.

¹⁴ Applicant’s brief, 7 TTABVUE 7.