

This Opinion is not a
Precedent of the TTAB

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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 B & B Spirits, LLC

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Serial No. 86081482

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J. Rhoades White, Jr., of Dority & Manning PA
for B & B Spirits, LLC.

Andrea Koyner Nadelman, Trademark Examining Attorney, Law Office 110,
Chris A. F. Pedersen, Managing Attorney.

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Before Lykos, Gorowitz, and Masiello,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

On October 3, 2013, B & B Spirits, LLC (“Applicant”), a limited liability company located in Monks Corner, South Carolina, filed an application to register on the Principal Register the mark **CAROLINA’S SUMMER HUMMER** in standard characters for “alcoholic beverages, namely, distilled liquors and distilled spirits” in International Class 33.¹

¹ Application Serial No. 86081482, filed under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use in commerce.

The Trademark Examining Attorney refused registration under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e), on the ground that Applicant's mark is primarily geographically descriptive of its identified goods.

Applicant has appealed and both Applicant and the Examining Attorney have filed briefs. For the reasons set forth below, we affirm the refusal.

Section 2(e)(2) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with the goods or services of an applicant, is primarily geographically descriptive of them.² The test for determining if a mark is primarily geographically descriptive is whether (1) the primary significance of the mark as it is used is a generally known geographic place; and (2) the relevant public would be likely to make a goods/place association, i.e., believe that the goods for which the mark is sought to be registered originate in that place. *See In re Jacques Bernier Inc.*, 894 F.2d 389, 13 USPQ2d 1725 (Fed. Cir. 1990); *In re Societe General des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *In re Hollywood Lawyers Online*, 110 USPQ2d 1852 (TTAB 2014); *In re Spirits of New Merced LLC*, 85 USPQ2d 1614, 1616 (TTAB 2007). In instances where a geographic location is generally known, and the term's geographic significance is its primary significance, and the goods or services do, in fact, originate from the named location,

² Section 2(e)(2) of the Trademark Act reads in relevant part:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(e) Consists of a mark which . . . (2) when applied to the goods of the applicant is primarily geographically descriptive . . .

a goods/place association can be presumed. *In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1449 (Fed. Cir. 2015) (citations omitted).

Commencing with the first prong of analysis, we observe that Applicant's applied-for mark **CAROLINA'S SUMMER HUMMER** is a composite mark. "Under the first prong of the test — whether the mark's primary significance is a generally known geographic location — a composite mark such as applicant's proposed mark must be evaluated as a whole. ... It is not erroneous, however, for the examiner to consider the significance of each element within the composite mark in the course of evaluating the mark as a whole." *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778, 1782 (Fed. Cir. 2001) (internal citations omitted). "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." *In re JT Tobacconists*, 59 USPQ2d 1080, 1082 (TTAB 2001). *See, e.g., In re Carolina Apparel*, 48 USPQ2d 1542 (TTAB 1998) ("It is clear that the primary significance of the designation CAROLINA APPAREL, APPAREL being generic and disclaimed by applicant, is geographic."). In other words, "[h]ighly descriptive or generic wording does not convert a geographically descriptive term into a non-geographic term." *In re Mankovitz*, 90 USPQ2d 1246, 1948 (TTAB 2009) (citing *In re Compagnie Generale Maritime*, 993 F.2d 841, 26 USPQ2d 1652 (Fed. Cir. 1993) (stylized mark FRENCH LINE primarily geographically descriptive of goods and services from France)); *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1662 (TTAB 1986) (CAMBRIDGE

DIGITAL and design primarily geographically descriptive when applicant's place of business is Cambridge, Massachusetts).

We find that "Carolina" is a well-known geographic abbreviation for the U.S. state(s) of North and/or South Carolina.³ It is well settled that a recognized nickname or other informal name for a geographic location is considered the equivalent of the official or formal name for purposes of determining registrability of the geographic term. *See In re Carolina Apparel*, 48 USPQ2d at 1543 ("Here the evidence of record shows that "Carolina", in addition to being the name of an American colony, also is used to indicate either the state of North Carolina or the state of South Carolina."). *See also In re Charles S. Loeb Pipes, Inc.*, 190 USPQ 238, 246 (TTAB 1975) (OLD DOMINION is an accepted nickname for the State of Virginia). Furthermore, the geographical significance of the designation "Carolina" is not diminished by the fact that in Applicant's mark, it is presented in the

³ We take judicial notice of the following dictionary definition:

Carolina *noun*

1. a former English colony on the Atlantic coast of North America: officially divided into North Carolina and South Carolina in 1729.
2. North Carolina or South Carolina.
3. a city in NE Puerto Rico, SE of San Juan.
4. Also called the Carolinas. North Carolina and South Carolina.

Source: www.dictionary.com based on the Random House Dictionary (2015). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format, *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), as well as geographical abbreviations or acronyms. *In re U.S. Cargo Inc.*, 49 USPQ2d 1702, 1703 (TTAB 1998) ("[W]e may take judicial notice of the fact that 'U.S.' means the United States, and that the United States is a geographic area with defined boundaries. Indeed, we believe the exclusive significance of 'U.S.' to most purchasers would be the geographic area.").

possessive form. *Cf. In re Binion*, 93 USPQ2d 1531, 1537 (TTAB 2009). Indeed, the possessive form serves to enhance, not detract from, its geographical meaning.⁴

Applicant contends that even if “CAROLINA’S” is deemed geographically descriptive, because “SUMMER HUMMER” is inherently distinctive as applied to the goods, Applicant’s mark may be registered on the Principal Register.⁵ According to Applicant, the word “hummer” has a variety of meanings such as “one that hums,” “a hummingbird,” “a humdinger” or “a fastball.” Applicant’s Appeal Brief, p. 9; 4 TTABVUE 10. When viewed in relation to Applicant’s “alcoholic beverages, namely, distilled liquors and distilled spirits,” Applicant maintains that SUMMER HUMMER alludes to “a striking or extraordinary summer that results from the product, great summer memories, a great product for the summer, a liquor that hits you as hard as a fastball, and so on.” *Id.*

Applicant is in theory correct that if “Summer Hummer” were inherently distinctive, this would be sufficient to carry the mark. The record, however, reflects otherwise, showing that the term is highly descriptive in relation to Applicant’s goods.⁶ The Examining Attorney has submitted evidence demonstrating that a

⁴ Applicant in its appeal brief neither argued nor presented evidence showing that “Carolina’s” is not a geographic designation.

⁵ As correctly noted by the Examining Attorney during prosecution, because Applicant has applied to register its mark under Section 1(b) of the Act, resort to registration on the Supplemental Register was not an option.

⁶ “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). In addition to refusals or claims asserted under Trademark Act Section 2(e)(2), the question of whether a mark is highly

“Summer Hummer” is an alcoholic beverage made with distilled spirits and distilled liquors. *See, e.g.*, excerpts from Allrecipes.com, Whattodrink.com, Boozemixer.com, Recipetips.com, Idrink.com, Shot-cocktail-recipe.com, Slimkicker.com, Mademan.com, Thedrinkchef.com, and Chacha.com, each providing recipes for a “Summer Hummer” cocktail (Final Office Action dated September 9, 2014).⁷ The aforementioned evidence establishes that distilled liquors and distilled spirits are ingredients of the Summer Hummer drink.⁸ Accordingly, at least some of the items encompassed in Applicant’s identification of goods may be characterized as “summer hummer ingredients,” such that one of the purposes or uses of the goods is to make such drinks. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1220 (Fed. Cir. 2012) (“NATIONAL CHAMBER also

descriptive typically arises within the context of making determinations of registrability under Section 2(f) of the Trademark Act.

⁷ Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source, such as dictionaries, newspapers, or surveys. *In re Bayer*, 82 USPQ2d at 1831 (quoting *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986)). “Competent sources” include third-party web sites of all types. In this case, some of these third-party web sites are sponsored by larger Internet content and information providers, such as Allrecipes.com, while others appear to be the postings of smaller Q&A entities or perhaps even individuals. The probative value of web sites hosted by individuals may be more limited insofar as we do not know the extent of the reach to the public. Nonetheless, it is undisputed that the web sites are publicly available.

⁸ We acknowledge that some of the recipe excerpts noted above show use of the term “Summer Hummer” in initial capitalization which can in some circumstances be an indication of trademark usage. However, because initial capitalization is commonly used to identify the name of a particular cocktail (e.g., Bloody Mary, Long Island Ice Tea) in this case it does not constitute evidence of trademark usage. Similarly, any other such usage noted above merely reflects the ordinary rules of grammar for U.S. English.

We further add that in reaching our determination, we have not relied upon excerpts obtained from *Cocktail.uk.com* a United Kingdom web site, given the lack of evidence regarding exposure to the U.S. public. In addition, we agree with Applicant that excerpts from Applicant’s own website, *Hummerdrinks.com*, submitted by the Examining Attorney, are not probative.

describes the expressly recited function of the former service listed in the '745 application—i.e., that the service is performed ‘for the purposes of promoting the interests of businessmen and businesswomen.’”). We therefore find that the term SUMMER HUMMER in Applicant’s mark is highly descriptive⁹ of Applicant’s “alcoholic beverages, namely, distilled liquors and distilled spirits.” Thus, in accordance with our case law, the presence of the highly descriptive term “SUMMER HUMMER” in Applicant’s mark does not detract from the primary geographical significance of the mark as a whole.

We turn now to the second prong of the test, i.e., whether purchasers would make a goods/place association between Applicant’s goods and the place named in the mark. It is undisputed that “Carolina” is a “generally known” geographic designation.¹⁰ The application shows that Applicant’s business is located in Monks Corner, South Carolina. In addition, Applicant acknowledges that at least some of its goods are or will be sold in South Carolina. *See* Office Action Response dated August 19, 2013. Based on this evidence, Applicant’s goods originate in South Carolina, which is part of the “Carolinas,” and because “Carolina” is “generally known,” a goods/place association may be presumed. *Compare In re Newbridge Cutlery Co., supra* (substantial evidence does not support the conclusion that

⁹ Applicant in its appeal brief argues that the Examining Attorney has failed to demonstrate that the term “Summer Hummer” is generic as applied to Applicant’s goods. Under the relevant case law, this is not necessary. Rather, if the record shows that the non-geographical indicator(s) in a composite mark are highly descriptive, this suffices.

¹⁰ Applicant made no arguments in its appeal brief regarding the second prong of the test. Nonetheless, we think the fact that “Carolina” is a well-known abbreviation for two U.S. states renders it “generally known.”

Newbridge, Ireland is generally known to the relevant U.S. public). We hasten to add that Applicant has not presented any evidence to rebut this presumption of a goods/place association.

We have considered all of the arguments and evidence made of record by Applicant and the Examining Attorney, including any arguments and evidence not specifically discussed herein. We find that the primary significance of Applicant's mark **CAROLINA'S SUMMER HUMMER** is a well-known geographic location, and that purchasers would make a goods/place association between Applicant's "alcoholic beverages, namely, distilled liquors and distilled spirits" and the place named in the mark.

Decision: The Trademark Act Section 2(e)(2) refusal to register Applicant's mark **CAROLINA'S SUMMER HUMMER** as geographically descriptive is affirmed.