

This Opinion is Not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Buffalo Bayou Distilleries, LLC

Serial No. 86583137

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for Buffalo Bayou Distilleries, LLC.

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Before Cataldo, Hightower, and Lynch,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

I. Background

Buffalo Bayou Distilleries, LLC (“Applicant”) seeks registration on the Principal Register of the mark EAST END in standard characters for “Alcoholic beverages,

except beers, ales, stouts, ciders and wines; alcoholic beverages, namely, distilled spirits, vodka” in International Class 33.¹

The Examining Attorney refused registration of the mark as primarily geographically descriptive under Trademark Act Section 2(e)(2), 15 U.S.C. § 2(e)(2). Applicant requested reconsideration and appealed. After the Examining Attorney denied reconsideration, Applicant and the Examining Attorney briefed the appeal.

II. Primarily Geographically Descriptive Refusal

Establishing that a term is primarily geographically descriptive under Section 2(e)(2), 15 U.S.C. § 1052(e)(2), requires a showing that:

1. the primary significance of the term in the mark sought to be registered is the name of a place generally known to the public;
2. the source of the goods is the place named in the mark; and
3. the public would make an association between the goods and the place named in the mark by believing that the goods originate in that place.

In re Newbridge Cutlery Co., 776 F.3d 854, 113 USPQ2d 1445, 1448 (Fed. Cir. 2015); *see also In re Societe Generale des Eaux Minerals de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1451-52 (Fed. Cir. 1987); *In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1853 (TTAB 2014). The third inquiry, or goods-place association, can be presumed when the goods do in fact emanate from the place named in the mark. *Hollywood Lawyers Online*, 110 USPQ2d at 1853; *In re JT Tobacconists*, 59 USPQ2d

¹ Application Serial No. 86583137 was filed March 31, 2015 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of intent to use the mark in commerce.

1080, 1082 (TTAB 2001) (“[W]here there is no genuine issue that the geographical significance of a term is its primary significance, and where the geographical place named by the term is neither obscure nor remote, a public association of the goods or services with the place may ordinarily be presumed from the fact that the applicant’s goods or services come from the geographical place named in the mark.”). As clarified by the Federal Circuit, the refusal applies “only to those marks for which the geographical meaning is perceived by the relevant public as the primary meaning and ... the geographical significance of the mark is to be assessed as it is used on or in connection with the goods.” *Newbridge Cutlery*, 113 USPQ2d at 1448.

In responding to an inquiry from the Examining Attorney, Applicant stated that EAST END has no geographical significance.² However, Applicant’s website and Facebook page, both introduced by the Examining Attorney, state that Applicant is “located in Houston’s Historic East End, just 2 miles from Downtown Houston.”³ Applicant’s response thus appears to be in error, inasmuch as EAST END clearly has geographical significance, but as set forth above, the inquiry under Section 2(e)(2) is more involved.

To support refusing the mark as primarily geographically descriptive, the Examining Attorney submitted a variety of evidence. The record includes a Wikipedia page for “East End, Houston,” identifying it as “a district in eastern Houston, Texas, United States, located between the eastern edge of downtown to the Port of Houston

² TSDR July 30, 2015 Response to Office Action at 1.

³ TSDR July 7, 2016 Office Action at 8-9 (facebook.com), 11-12 (buffalobayoudistilleries.com).

and South to Hobby Airport.”⁴ The record also contains webpages of the Greater East End Management District of Houston, including references to “East End Super Bowl Festivities” and “East End Green Line Officially Opens to Riders,” as well as logos for “East End Market” and “EastEnd Foundation.”⁵ The Visit Houston website includes a page entitled “EaDo/East End,” although the text refers to the area as “East Downtown, or EaDo.”⁶ The website of Houston Historical Tours promotes, under “Specialty Tours,” “East End Tours,” with a description of the area that concludes with, “You will have a great time exploring an area of Houston in which you may not be familiar or rediscovering an up and coming vibrant part of Houston!”⁷

Applicant argues that every town has an East end, and that each consumer’s understanding of the term EAST END likely would be the East end of his or her own town. To shed light on the general meaning of “East End” to U.S. consumers, Applicant submitted a list of the first 10 Google search results for “east end usa,”⁸ the first four of which are: Wikipedia entries for “East End, U.S. Virgin Islands,” “East End Historic District (Newburgh, New York),” “East End, Arkansas,” and “East End (Long Island).” The ninth result appears to refer to the East End in Houston, in the context of a local educational initiative. The Examining Attorney introduced a list of

⁴ TSDR July 7, 2016 Office Action at 2-7 (Wikipedia.com).

⁵ TSDR January 31, 2017 Office Action at 8-9 (greatereastend.com).

⁶ *Id.* at 10-11 (visithoustontexas.com).

⁷ *Id.* at 15-16 (houstonshistoricaltours.com).

⁸ TSDR June 10, 2016 Response to Office Action at 3 (google.com).

Google search results⁹ and a list of Zoo.com search results¹⁰ for “east end and texas,” showing references to Houston’s East End. To the extent these search engine result lists have probative value, we find Applicant’s more persuasive because the applied-for mark contains no indicia pointing to Texas, in particular. Therefore, the search results for “east end usa” are more relevant to general U.S. consumer exposure to and perception of EAST END, standing alone, than search results for “east end and texas.” Also, presumably to indicate that third parties have conceded the geographic descriptiveness of the term “East End,” the Examining Attorney submitted two third-party registrations that include disclaimers of, or claims of acquired distinctiveness as to, “East End.”¹¹ Interestingly, however, at least one of the marks, and possibly both, appear to refer to different “East End” locations, not in Houston, Texas. One mark that includes the wording “East End Oysters” also includes a map described in the description as “the Eastern End of Long Island.”¹² The second registration for EAST END BREWING COMPANY shows a Pennsylvania corporation with a Pittsburgh address as the owner.¹³

Considering the record as a whole, we remain unconvinced that “East End” primarily identifies a geographic location in Houston that is “known generally to the American purchasing public.” *See Newbridge Cutlery*, 113 USPQ2d at 1450. We take

⁹ TSDR July 7, 2016 Office Action at 21-22 (google.com).

¹⁰ TSDR September 10, 2015 Office Action at 2-3 (zoo.com).

¹¹ TSDR January 31, 2017 Office Action at 2-16.

¹² *Id.* at 2-4.

¹³ *Id.* at 5-7.

account of the Federal Circuit's guidance in *Newbridge Cutlery*, which reversed a Section 2(e)(2) refusal for lack of substantial evidence showing that Newbridge, Ireland was generally known to the relevant American public. *Id.* According to the court, although internet evidence may be relied on to establish that a location is generally known, "the fact that Newbridge, Ireland, is mentioned on some internet websites does not show that it is a generally known location. The internet (and websites such as Wikipedia) contains enormous amounts of information: some of it is generally known, and some of it is not." *Id.* The Court also held that evidence of "other meanings, both geographical and non-geographical," rendered it less likely that the term is generally known as the name of a place. *Id.* at 1451.

In this case, the record reflects that "East End" can refer to numerous geographic locations, suggesting that its primary significance is not referring to the area in Houston, Texas. Also, the quantity and nature of the evidence regarding the East End of Houston does not establish that it is generally known to U.S. consumers. We lack persuasive evidence showing, for example, that the East End of Houston has a sizable population, a well-known historical significance, is a popular tourist destination, or has a widely recognized reputation for some other reason. Rather, we find a similarity to the situation in *Societe Generale des Eaux Minerals de Vittel*, 3 USPQ2d at 1452, where the Court stated, "[t]here can be no doubt that the PTO has established that Vittel is in fact the name of a small town in the Voges mountain region of France ... but how many people in this country know that?" The first prong of the inquiry under

Section 2(e)(2), that the primary significance of the term in the mark sought to be registered is the name of a place generally known to the public, is not satisfied.

III. Conclusion

Decision: The refusal to register Applicant's mark is reversed.