

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 Leiper's Fork Distillery, LLC
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Serial No. 86894726
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Ryan J. Letson of Maynard Cooper & Gale PC,
for Leiper's Fork Distillery, LLC.

Kelly Trusilo, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Zervas, Ritchie, and Kuczma,
Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Leiper's Fork Distillery, LLC ("Applicant") seeks registration on the Principal Register of the mark LEIPER'S FORK DISTILLERY, in standard character form, for "insulating sleeve holders for beverage cans," in International Class 21; "baseball caps and hats; clothing, namely, shirts; sweatshirt; t-shirts," in International Class

25; and “alcoholic beverages except beers; blended spirits; bourbon; distilled spirits; whiskey,” in International Class 33.¹

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

When the refusal was made final, Applicant appealed and requested reconsideration. After the Trademark Examining Attorney denied the Request for Reconsideration, the appeal was resumed. The appeal is now fully briefed. For the reasons discussed below, we affirm the refusal to register.

I. Primarily Geographically Descriptive

The elements of a Section 2(e)(2) geographically descriptive claim are as follows:

- (1) the primary significance of the mark is a generally known geographic location;
- (2) the source of the goods is the geographic region named in the mark; and
- (3) purchasers would be likely to believe the goods or services originate in the geographic place identified in the mark.

See In re Newbridge Cutlery Co., 776 F.3d 854, 113 USPQ2d 1445, 1448-49 (Fed. Cir. 2015); *citing In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987).

¹ Serial No. 86894726, was filed on February 2, 2016, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in all classes, and disclaiming the exclusive right to use the term “DISTILLERY” as to Class 33.

A. Primary Significance

With regard to the first prong, the Examining Attorney submitted evidence that Leiper's Fork is a location in Williamson County, Tennessee.

Wikipedia: Leiper's Fork, Tennessee: Leiper's Fork is an unincorporated rural village in Williamson County, Tennessee. It has a population of about 650 on an area of about 1,100 acres (450 ha). The village, located on the Natchez Trace Parkway, is listed on the National Register of Historic Places as a historic district.

En.wikipedia.org. Attached to May 24, 2016 Office Action, at 2.

The Examining Attorney also submitted negative dictionary evidence to show that there is no other meaning of the term Leiper's Fork, other than as a village in Tennessee.² (Attached to January 19, 2017 Final Office Action at 25, 28). Applicant does not dispute this.

Applicant argues, however, that Leiper's Fork is "an obscure location which, even if members of the general public were aware existed, would not have led them to believe Applicant's Goods originate there." 15 TTABVUE 7. In this regard, Applicant cites *Newbridge Cutlery*, 113 USPQ2d at 1449, in which the Federal Circuit, our primary reviewing court, noted that where "the geographic meaning of a location is 'minor, obscure [or] remote,' [cites omitted]" that "indicates that the location is not generally known." As Applicant acknowledges, the court went on to note, however, that "[o]f course, there are many probative factors to the question of whether a location is generally known." *Id.*

² "Negative" dictionary evidence has been defined as "evidence showing that the dictionaries searched do not have an entry for the term." *In re Olin Corp.*, 124 USPQ2d 1327, 1332 (TTAB 2017).

In this case, while Leiper's Fork may have a small population, it has a large draw. Internet evidence submitted by the Examining Attorney indicates that Leiper's Fork is a tourist destination of growing popularity in Williamson County; it is listed on the National Historic Registry with the National Park Service; and that well known musicians and artists sometimes come from nearby Nashville to take part in the village's cultural scene. TripAdvisor refers to it as "#7 of 59 things to do in Franklin," January 19, 2017 Final Office Action, at 8, and reviews include comments like "Must see" and "My favorite Sunday place." *Id.* at 10, 11. Another website refers to Leiper's Fork as Williamson County's "hidden gem." January 19, 2017 Final Office Action, at 17. And, several other websites refer to the vibrant culture of the town. January 19, 2017 Final Office Action, at 34, 40, 57. National mentions of the local culture and businesses of Leiper's Fork have been included in such publications as USA Today and Harper's Bazaar, which listed the Moonshine Hill Inn located in Leiper's Fork as a "Top 10 B&B/Inn In the Country." September 13, 2017 Denial of Request for Reconsideration, at 163. Apparently, the allure of Leiper's Fork has been noticed by others as well, as indicated in the following excerpt:

Country Living: You'll Never Believe Which Celebrity Might Be Moving to Leiper's Fork: He just bought more than 100 acres of land in the small Tennessee community. July 7, 2015: When we heard that one big-time celebrity just made a major purchase in Leiper's Fork, Tennessee, we admit, we weren't expecting this: Singer and actor Justin Timberlake recently paid a hefty \$4 million for 126.63 acres of land in the small Southern community.
Countryliving.com; January 19, 2017 Final Office Action, at 43.

Overall, we find that this case is distinguishable from *Newbridge Cutlery*. There is no dispute that Leiper's Fork has no other meaning than to refer to the village in Tennessee. While it may be a small town or village, Leiper's Fork has built up a reputation that is not remote or obscure. Of course, Applicant's mark is LEIPER'S FORK DISTILLERY. Applicant has disclaimed the term "DISTILLERY" as to its Class 33 goods, which include "alcoholic beverages except beers; blended spirits; bourbon; distilled spirits; whiskey." The addition of the descriptive or generic term "DISTILLERY" does not alter the applicability of the refusal. *See In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001) (MINNESOTA CIGAR COMPANY held primarily geographically descriptive of cigars); *In re Carolina Apparel*, 48 USPQ2d 1542, 1543 (TTAB 1998) (CAROLINA APPAREL primarily geographically descriptive of retail clothing store services).

Thus, we find that the primary significance of LEIPER'S FORK DISTILLERY is a generally known geographic location.

B. Origin of the Goods

Next, we consider whether the goods originate from the location. Applicant does not dispute that it is located in Franklin, Tennessee, which neighbors Leiper's Fork, as noted in its address of record. As such, we have found that (1) Leiper's Fork is a generally known location; (2) that the term's primary significance is the village of Leiper's Fork, and (3) the goods do originate from this location. *See In re Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007) (YOSEMITE BEER held geographically descriptive of beer produced and sold in a brewpub in Merced,

California, the Board stating that “[s]ince the goods originate at or near [Yosemite National Park], we can presume an association of applicant’s beer with the park.”).

Thus, we find that the goods originate from this location.

C. Goods/Place Association

In considering whether there is a goods/place association, we note that where the first two prongs of the test have been satisfied, the third may be presumed. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1920 (TTAB 2008); *see also* Trademark Manual of Examination Procedure (TMEP) § 1210.04 (October 2017).³

Moreover, Applicant also does not dispute that Tennessee is generally known for its whiskey and distilled spirits.⁴ Applicant included a Wikipedia entry noting that “Tennessee whiskey is one of the top ten exports of Tennessee.” July 19, 2017 Request for Reconsideration, at 72, and another website noting “Tennessee whiskey, defined by state law and bound by a rigid distilling process, remains one of the state’s top exports and is increasing its overall market share.” *Id.* at 81.⁵ Popular, well-known brands include Jack Daniels and George Dickel. *Id.* at 72.

³ In *Newbridge Cutlery*, the Federal Circuit noted that “This presumption may well be proper, but, as this case can be decided on other grounds, we do not address its propriety and leave it for another day.” *In re Newbridge Cutlery Co.*, 113 USPQ2d at 1449.

⁴ A place within a greater region known for particular goods may also be known for such goods. *See Corporacion Habanos S.A. v. Guantanamera Cigars Co.*, 102 USPQ2d 1085, 1100 (TTAB 2012) (where Cuba is well-known for cigars and cigar tobacco is produced in Guantanamo, Cuba, “we need not require evidence that Guantanamo itself is famous or otherwise known in the United States for cigars or cigar tobacco.”).

⁵ See also January 19, 2017 Final Office Action, at 67-76. It was not necessary for Applicant to resubmit all of the evidence already submitted by the Examining Attorney. It was already of record for reference by either the Examining Attorney or Applicant.

One website regarding applicant indicates:

Leiper's Fork Distillery aims to revive the history and heritage of small batch whiskey production in Williamson County, which was once known for its moonshine.

January 19, 2017 Final Office Action, at 40-41. [See also July 19, 2017 Request for Reconsideration, at 46].

Applicant's own website similarly states:

It is our aim to resurrect the lost history and heritage of small batch whiskey production in Williamson County. . . . To that end, Leiper's Fork Distillery is creating high end premium whiskeys using local ingredients and pure limestone filtered water, resulting in superior whiskeys with a signature taste.

September 13, 2017, Denial of Request for Reconsideration, at 80-81.

These websites indicate that there is a history of whiskey production in Williamson County, in which Leiper's Fork Distillery lies, as noted by Applicant itself.

We find that there is a goods/place association.

D. Other Arguments by Applicant

Applicant argues that its application should be allowed in any regard since (1) there are third-party registrations on the Principal Register that were approved for "various geographic locations together with the term 'distillery,'" and (2) Applicant has two other applications with the term Leiper's Fork. 15 TTABVUE 21.

Regarding Applicant's co-pending applications, Applicant filed Application No.



86894770 for

, and Application No. 86894747 for



. Both

identify the same goods as in the present application. Both, however, disclaim the

exclusive right to the term “LEIPER’S FORK.” Thus, if anything, they are evidence that Applicant has previously disclaimed the term.

As for the third party registrations cited by Applicant, these include the following,⁶ all for alcohol or related goods and services: NEW WORLD DISTILLERY (Registration No. 5220000, and disclaiming DISTILLERY); GLENDALOUGH DISTILLERY, and design (Registration No. 5216501, and disclaiming GLENDALOUGH DISTILLERY); CLEAR CREEK DISTILLERY ORE USA, and design (Registration No. 5150006 and disclaiming DISTILLERY and “ORE USA”); KILIMANJARO DISTILLERY (Registration No. 5161703, and disclaiming DISTILLERY); DUMPLIN’ CREEK DISTILLERY (Registration No. 5110242, and disclaiming DISTILLERY); and GOLD RIVER DISTILLERY (Registration No. 4954240, and disclaiming DISTILLERY).

As pointed out by the Examining Attorney, despite the evidence submitted by Applicant, we do not have the full files of these registrations, and we cannot determine that they are primarily merely geographically descriptive. Furthermore, we are not bound by prior registrations. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement . . .”); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) (“Even if all of the third-party registrations should have been refused registration . . . , such errors do not bind the USPTO to improperly register

⁶ Attached to July 19, 2017 Request for Reconsideration, at 99-109.

Applicant's marks.") (citation omitted); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("Even if some prior registrations had some characteristics similar to Nett Designs' application, the PTO's allowance of such prior registrations does not bind the Board or this court.").

The Examining Attorney, meanwhile, submitted numerous third-party registrations⁷ for marks having a geographic term followed by "DISTILLERY" for alcohol or related goods and services, and registered on the Supplemental Register. These include⁸: DOOR COUNTY DISTILLERY (Registration No. 4340127, and disclaiming DISTILLERY); DINGLE DISTILLERY, Registration No. 4736842, and disclaiming DISTILLERY); COOPERSTOWN DISTILLERY (Registration No. 5287997, and disclaiming DISTILLERY); ROCK TOWN DISTILLERY (Registration No. 4437760, and disclaiming DISTILLERY); OZARK DISTILLERY (Registration No. 4527263, and disclaiming DISTILLERY); ST AUGUSTINE DISTILLERY CO., and design (Registration No. 4693600, and disclaiming DISTILLERY CO.); CANNERY ROW DISTILLERY (Registration No. 4683027, and disclaiming DISTILLERY); APPALACHIAN GAP DISTILLERY (Registration No. 4915541, and disclaiming DISTILLERY); LITCHFIELD DISTILLERY (Registration No. 4990570, and disclaiming DISTILLERY); NAPA VALLEY CRAFT DISTILLERY, Registration No. 4943408 and disclaiming CRAFT DISTILLERY); DAYTON DISTILLERY (Registration No. 5014961, and disclaiming DISTILLERY); BOSTON HARBOR

⁷ Which is not to say that we find these third-party registrations any more persuasive than those submitted by Applicant.

⁸ Attached to September 13, 2017 Denial of Request for Reconsideration, at 11-46.

DISTILLERY (Registration No. 5130763, and disclaiming DISTILLERY); and LOS ANGELES DISTILLERY (Registration No. 5258044, and disclaiming DISTILLERY).

Thus, we find Applicant's arguments to be unavailing.

E. Request for Remand to Supplemental Register

In its brief, Applicant included a request, in the alternative, that in the event the refusal is affirmed, that the application be remanded for registration on the Supplemental Register. 15 TTABVUE 23. There are a few problems with this request. First, a request for remand should not be buried in a brief. Second, Applicant has not submitted a statement of use in this application. Third, a request for remand to consider an amendment, such as this, will be considered "upon a showing of good cause." Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 1205.01 (June 2017). However, considering the late point at which Applicant filed the request, the alternative nature of the request, and the fact that Applicant has not yet filed a Statement of Use, the request is denied.

F. Conclusion

We find the primary significance of LEIPER'S FORK DISTILLERY to be Leiper's Fork, Tennessee, a geographical location that is generally known to the relevant United States consumers, and which has no other meaning. Because the origin of the goods is in the vicinity of Leiper's Fork, Tennessee, we find that the relevant consumers are likely to make a goods/place association. This is especially so, due to the renown of Tennessee whiskey, and the association of whiskey with Tennessee, and indeed, Applicant's own reference to the historical past of whiskey in Williamson

County where Leiper's Fork is located. In view thereof, LEIPER'S FORK DISTILLERY is primarily merely geographically descriptive of the goods in the application under Section 2(e)(2) of the Trademark Act.

Decision: The Section 2(e)(2) refusal to register Applicant's mark is affirmed.