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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 87104371  |
| Applicant              | Red Flags Fly, Inc.   |
| Applied for Mark       | ANAHEIM HILLBILLIES   |
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| Date                   | 06/11/2018  |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

Red Flags Fly, Inc.

Serial No: 87/104,371

Filed: July 14, 2016

Class: 25

Mark:



**RFF**  
Gillbillies

Examining Attorney

Morgan L. Meyers

Law Office: 117

**APPLICANT'S REPLY BRIEF**

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Applicant Red Flags Fly, Inc. (“Applicant”) hereby submits this reply brief in support of its appeal of the Examining Attorney’s refusal to register Applicant’s mark ANAHEIM HILLBILLIES (Stylized) without a disclaimer of ANAHEIM on the ground that ANAHEIM is allegedly primarily geographically descriptive of the origin of Applicant’s goods, namely, “clothing, namely, aprons, bandanas, beach cover-ups, bolo ties, cardigans, culottes, do rags, dresses, infantwear, jackets, jeans, jerseys, leggings, lingerie, loungewear, neckwear, overalls, overcoats, pants, ponchos, rainwear, robes, sarongs, sashes, scarves, shawls, shirts, shorts, skirts, skiwear, sleepwear, socks, surf wear, suspenders, sweat bands, sweaters, sweatpants, sweatshirts, swimwear, tank tops, track pants, t-shirts, undergarments, and vests, belts; footwear; and headwear” in Class 25.

**I. THE EXAMINING ATTORNEY’S REFUSAL TO REGISTER APPLICANT’S MARK WITHOUT A DISCLAIMER OF ANAHEIM SHOULD BE REVERSED**

The Examining Attorney has failed to demonstrate any of the elements necessary to establish a *prima facie* case for the disclaimer of the ANAHEIM portion of Applicant’s mark ANAHEIM HILLBILLIES as primarily geographically descriptive. The Examining Attorney has not shown that ANAHEIM identifies a place known generally to the American public, nor has the Examining Attorney shown that Applicant’s goods originate in Anaheim, California, nor has the Examining Attorney shown that the public would make the necessary goods/place association when Applicant uses the ANAHEIM HILLBILLIES mark for its clothing, headwear, or footwear products. Instead, the Examining Attorney presumes, based on an article from the *Columbia Gazetteer of the World* located in New York, New York, that (1) Anaheim is a well-known geographic area because it is purportedly a suburb of Los Angeles (anyone who has been to both places knows Anaheim is not a suburb of Los Angeles), (2) because Disneyland is located in Anaheim and clothing is sold at Disneyland, Anaheim is therefore known for selling clothing; and (3) Applicant’s clothing originates in or near Anaheim. The Examining Attorney is wrong on all fronts.

**A. The Primary Significance of the Term ANAHEIM is Not a Generally Known Geographic Location**

The Examining Attorney states that, “applicant supplies no evidence of its own to support a finding that ANAHEIM is not a well-known geographic location.” (Examining Attorney’s Brief at 4.) Applicant respectfully notes that Applicant is not required to make such a showing. It is the Examining Attorney’s burden to establish that ANAHEIM is generally known to the relevant American public as a geographic location, and the Examining Attorney has failed to meet that burden. TMEP § 1210.02. It is not Applicant’s burden to disprove an element of the Examining Attorney’s refusal to prevail.

The Examining Attorney’s submission of, and reliance on, an online article with no identified author, about “Los Angeles” in *The Columbia Gazetteer of the World* is insufficient to demonstrate that ANAHEIM is generally known to the relevant American public as a geographic location. (Office Action, June 2, 2017) “A gazetteer entry alone, or a description of the place on the internet, does not necessarily evidence that a place is generally known to the relevant American consuming public.” TMEP § 1210.02, citing *In re Newbridge Cutlery*, 776 F.3d 854, 862, 113 USPQ2d 1445, 1450 (Fed. Cir. 2015). “Such evidence must, therefore, be supported by evidence showing the extent to which relevant American consumers would be familiar with the location.” TMEP § 1210.02, citing *In re Newbridge Cutlery*, 776 F.3d at 862, 113 USPQ2d at 1450 (Fed. Cir. 2015). The reference to “Anaheim” in the *Columbia Gazetteer* article that the Examining Attorney relies on is the statement: “Other attractions in the region include the Santa Anita and Hollywood Park racetracks, Knott’s Berry Farm, and Disneyland (at Anaheim).” (Office Action, June 2, 2017.) The writer presumably had to specify where Disneyland was located in parenthesis because his/her readers would not immediately know the city in which Disneyland is located. Importantly, *The Columbia Gazetteer* is not even located in Southern California. It is located in New York, New York. As a result, the article relied upon the Examining Attorney lacks foundation, and indicates a lack of personal knowledge by the author – whoever that may be. Applicant, on the other hand submitted evidence from local residents in

Orange County, California and Los Angeles County, highlighting the distinct areas that Los Angeles and Orange County (where Anaheim is located) are. (Req. for Recon., Exs. A & B; December 4, 2017).

The Examining Attorney's remaining evidence of record, namely, (i) a Google search result showing a short "Quick Facts" paragraph about Anaheim, (ii) postings from social media site Twitter showing results for #anaheimhillbillies search, and (iii) an online article from entertainment website <people.com> dated October 13, 2016 about Applicant's officer Gwen Stefani's visit to Anaheim, California, also falls well short of demonstrating that the primary significance of the term ANAHEIM is geographic to the average American consumer. The Examining Attorney's evidence shows that at most, some people already familiar with the entertainment amusement park Disneyland or with Applicant's officer Gwen Stefani might be familiar with the City of Anaheim.

In short, the first prong of the geographic descriptiveness test is not met.

**B. Applicant's Goods Do Not Originate in Anaheim**

The Examining Attorney has failed to demonstrate that Applicant's goods will originate in Anaheim, California. TMEP § 1210.03. Goods or services are considered to "originate" from a geographic location if, for example, they are manufactured, produced, or sold there. *Id.*

The Examining Attorney has produced no evidence of record that Applicant's clothing, headwear, or footwear are manufactured, produced or sold in Anaheim, California. TMEP § 1210.03. The Examining Attorney merely concludes, "given the fact that consumer goods such as clothing are frequently manufactured in Anaheim and applicant's business location, it is likely that the goods will originate from the geographic location of Anaheim." (Examining Attorney's Brief at 5.) The Examining Attorney's sole evidence of record appears to be a sentence in *The Columbia Gazetteer of the World* article stating, in part, "Los Angeles is one of the country's largest center [sic] of the clothing and textile industries." (Office Action, June 2, 2017.) This is irrelevant to the question of whether Applicant's goods will originate from Anaheim, California.

The Examining Attorney stresses that Applicant's goods "originate" from Anaheim, California because (i) Applicant's address of record (which is Los Angeles, California) is sufficient to constitute "origination" of Applicant's goods and (ii) Los Angeles encompasses the City of Anaheim. (Examining Attorney's Brief at 5.) These are twin errors.

First, the TMEP acknowledges that, "[g]oods and services do not always originate in the applicant's place of business. TMEP § 1210.03 (citations omitted.) In other words, the mere fact that Applicant's business address is located in Los Angeles, California does not automatically mean that Applicant's goods are or will be manufactured, produced, or sold in Los Angeles, California. Second, Anaheim is *not* part of the City of Los Angeles, but a city located in Orange County, well south of the City of Los Angeles and the County of Los Angeles and worlds away. (Response to Office Action, Nov. 29, 2017, Exs. A-C.) In short, based on an out-of-state article by an unknown author, the Examining Attorney posits and concludes that Anaheim is synonymous with Los Angeles. The people of Southern California beg to differ. They are very distinct areas with distinct business environments and cultures.

Thus, the second prong of the geographic descriptiveness test is not met.

**C. Purchasers Are Not Likely to Believe that Applicant's Goods Originate in Anaheim, California**

The Examining Attorney has also failed to demonstrate the third prong of the geographic descriptiveness test, namely, that there is a goods/place association such that purchasers would be likely to believe that Applicant's goods originate in Anaheim, California. TMEP § 1210.04.

The Examining Attorney merely makes the conclusory statement that, "[p]urchasing clothing goods is one of the biggest sellers for Los Angeles purveyors, and the applicant is using that geographic indication as such." (Examining Attorney's Brief at 6.) The Examining Attorney's only evidence to support this conclusory statement is (i) many tourists visit Los Angeles and (ii) "[t]he world famous Disney Resort hosts millions of people a year". *Id.* At best, the Examining Attorney's scant evidence of record demonstrates that Los Angeles and Disneyland are recognized as tourist destinations, not destinations for clothing. Again, this is



irrelevant to the issue of whether the City of *Anaheim* is commonly known to the American public as a location for *clothing, headwear, or footwear*. There is no goods/place association and the Examining Attorney has proffered no evidence to the contrary.

The Examining Attorney also errs in attempting to link Applicant's officer Gwen Stefani to the City of Anaheim. The Examining Attorney states, "Without the geographic indicator, the direct association with the famous celebrity is lost." (Examining Attorney's Brief at 7.)

However, Anaheim's purported recognition as the hometown of Applicant's officer Gwen Stefani is irrelevant to the inquiry of Anaheim's recognition as the source of clothing, headwear, or footwear. *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 1343, 104 USPQ2d 1330, 1332 (Fed. Cir. 2012) (affirming Board's holding that applicant's goods did not "originate" in Paris merely because applicant's designer was from Paris). This is insufficient to establish a goods/place association between Applicant's goods and the ANAHEIM element of Applicant's composite mark.

#### **D. Applicant's Mark is a Composite Mark**

Finally, Applicant's mark is a **composite mark** incorporating the arbitrary term HILLBILLIES with ANAHEIM. If, when viewed as a whole, a composite mark is not likely to be perceived as identifying the geographic origin of the goods or services (i.e., the mark is not primarily geographically descriptive), the mark is regarded as arbitrary, fanciful or suggestive. TMEP § 1210.02(c)(iii). This is true for Applicant's mark.

The Examining Attorney states that "the additional wording does not obviate the primary geographic significance of the term Anaheim, and in fact serves to enhance the geographic significance of the ANAHEIM port of the mark by adding a 'humorous' reference to the geographic location." (Examining Attorney's Brief at 8.) However, the question is not whether HILLBILLIES "enhances" the geographic significance of ANAHEIM, but whether the composite mark as a whole creates a unitary, humorous or play on words mark. *In re Sharky's Drygoods Co.*, 23 USPQ2d 1061, 1062-63 (TTAB 1992) (finding PARIS BEACH CLUB not geographically deceptively misdescriptive or geographically deceptive of clothing because the

juxtaposition of Paris with Beach Club results in an incongruous phrase, such that purchasers will view PARIS BEACH CLUB as a humorous mark, with the word “Paris” in the mark being a facetious rather than a geographic reference).

Applicant’s mark ANAHEIM HILLBILLIES is a unitary mark because it is an incongruous phrase. The word “Hillbillies” means “someone who lives in the countryside, especially someone who is not very well educated”. (Response to Office Action, Nov. 29, 2017, Ex. D.) The juxtaposition of ANAHEIM and HILLBILLIES is humorous and incongruous because Orange County (which encompasses Anaheim) is a well-populated urban region that includes a generally affluent and well-educated population. (*Id.*, Ex. A-C.) One would not expect to find “hillbillies” in Orange County or Anaheim. The relevant consumers for Applicant’s clothing, headwear, and footwear will understand ANAHEIM HILLBILLIES to be a humorous play on words, just as the relevant consumers for the applicant’s clothing in *In re Sharky’s Drygoods* found PARIS BEACH CLUB to be a humorous joke.

Applicant’s mark ANAHEIM HILLBILLIES is a unitary, humorous mark, and a disclaimer of ANAHEIM should not be required.

## **II. CONCLUSION**

For the reasons stated above, and in all of Applicant’s other documents and evidence, Applicant requests that the Board reverse the decision of the Examining Attorney and allow the mark to proceed to publication without a disclaimer.

Respectfully submitted,

Dated: June 11, 2018

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that **APPLICANT'S REPLY BRIEF** is being submitted electronically to: Commissioner for Trademarks, Attn: Trademark Trial and Appeal Board, through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 11th day of June, 2018.

/LaTrina A. Glenn/

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