

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 14, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re National Association of Veterinary Technicians in America, Inc.

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Serial No. 87228944
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Anne E. Keenan-Yates of Fisherbroyles LLP,
for National Association of Veterinary Technicians in America, Inc.

Michael Engel, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Kuhlke, Hightower and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

National Association of Veterinary Technicians in America, Inc. (“Applicant”) seeks registration on the Principal Register of the mark AMERICAN VETERINARY NURSES ASSOCIATION (in standard characters) for “veterinary medicine services” in International Class 44.¹

¹ Application Serial No. 87228944, filed on November 7, 2016, based on an allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark 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 Applicant's mark, in its entirety, is primarily geographically descriptive of the identified services. When the refusal was made final, Applicant appealed and requested reconsideration.² After the Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register.

I. Primarily Geographically Descriptive – Applicable Law

In order for registration to be refused under Section 2(e)(2) of the Trademark Act, on the ground that the mark is primarily geographically descriptive of the goods or services, it must be established 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 services is the place named in the mark; and
3. the public would make an association between the services and the place named in the mark by believing that the services 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 Layers Online*, 110 USPQ2d 1852, 1853 (TTAB 2014). The third inquiry, or goods/services-place association, can

² The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations reference the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

By order dated April 16, 2018, the Board dismissed this appeal on the ground that Applicant did not file a timely appeal brief. *See* 7 TTABVUE. This order was issued in error inasmuch as Applicant did in fact file a timely brief. Accordingly, the Board's April 16, 2018 order dismissing this appeal is hereby vacated.

be presumed when the goods/services do in fact emanate from the place named in the mark. *Hollywood Lawyers Online*, 110 USPQ2d at 1853; *In re JT Tobacconists*, 59 USPQ2d 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 [or services].” *Newbridge Cutlery*, 113 USPQ2d at 1448. Moreover, the addition of highly descriptive matter to a geographic term does not detract from the mark’s primary significance as being geographically descriptive. See *In re U.S. Cargo, Inc.*, 49 USPQ2d 1702 (TTAB 1998); *In re Cambridge Digital Systems*, 1 USPQ2d 1659 (TTAB 1996).

Applicant argues that its composite mark, AMERICAN VETERINARY NURSES ASSOCIATION, must be considered in its entirety in determining whether it is primarily geographically descriptive. As such, Applicant maintains that the term AMERICAN is nebulous in nature in that it can connote any of the following when used as part of Applicant’s mark:³

1. an association of veterinary nurses living in the United States;

³ Applicant’s Appeal Brief, pp. 4-5; 8 TTABVUE 5-6.

2. an association of veterinary nurses from the United States (but perhaps no longer living in the United States); and
3. an association for veterinary nurses who speak English (vs. Chinese, French, etc.).

In view of these multiple and differing connotations, Applicant maintains that the term “AMERICAN,” as it appears in its mark, is suggestive to the point that Applicant’s mark is not primarily geographically descriptive.⁴

Applicant further contends that the overall commercial impression of its mark is not primarily geographically descriptive due to the mark’s non-descriptive nature. Specifically, Applicant maintains that it exclusively uses the term “VETERINARY NURSES” in connection with a strict credential and curriculum initiative that it oversees and certifies and, therefore, such wording is not merely descriptive of Applicant’s identified services.⁵ In support of its contention of exclusive use, Applicant submitted portions of its own website, as well as third-party veterinary-related websites that purportedly demonstrate that the wording “VETERINARY NURSE” is used exclusively in connection with Applicant and its certified medical services.

The Examining Attorney, on the other hand, maintains that Applicant’s mark is no more than the combination of the primarily geographic term, i.e., AMERICAN, with the highly descriptive or generic wording VETERINARY NURSES

⁴ *Id.*

⁵ *Id.* at pp. 5-6; 8 TTABVue 6-7.

ASSOCIATION. He argues that there is no other meaning which may be attributed to the mark as a whole nor would it project any other significance to the public. Instead, the public would view the mark as indicating that Applicant's veterinary medicine services are offered across the United States.

We are not persuaded by Applicant's arguments. With regard to Applicant's contention that its use of AMERICAN is nebulous and suggestive because it could theoretically be interpreted as a reference to an association of veterinary nurses living in the United States or from the United States, we find this argument unavailing. Even if this ambiguity is accepted, both interpretations are still a geographic meaning of the term, as opposed to any other type of meaning. The third interpretation suggested by Applicant, that AMERICAN could refer to an association of veterinary nurses who speak English, does not appear to be a plausible one under the circumstances of this case.

Furthermore, when U.S.-based companies use "AMERICA" or "AMERICAN" in the context of a composite mark, it is sometimes not deemed to be primarily geographically descriptive, provided the word takes on an arbitrary meaning. In the cases cited by Applicant in support of its contention that use of the term "AMERICAN" in its mark is only suggestive, the context of each composite mark in these cases provides a new, non-geographical meaning for the word "AMERICAN." *See, e.g., Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251 (1916) (THE AMERICAN GIRL held not primarily geographically descriptive for shoes); *Am. Plan Corp. v. State Loan & Fin. Corp.*, 365 F.2d 635, 150 USPQ 767 (3d Cir. 1966)

(AMERICAN PLAN CORPORATION held not primarily geographically descriptive for insurance brokerage services); *Wilco Co. v. Automatic Radio Mfg. Co., Inc.*, 255 F. Supp. 625, 151 USPQ 24 (D. Mass. 1966) (ALL AMERICAN held not primarily geographically descriptive); *In re Jim Crockett Promotions, Inc.*, 5 USPQ2d 1455 (TTAB 1987) (THE GREAT AMERICAN BASH held not primarily geographically descriptive of wrestling exhibitions). As discussed in these cases, the mere introduction of a subtle nuance may remove a mark from the primarily geographically descriptive category. That is, the overall commercial impression is no longer primarily geographic due to a new double meaning or another suggestive meaning. *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) §1210.08(a)(2) (Oct. 2017).

We find no new or double meanings, however, in Applicant’s mark. Applicant’s mark contains a geographical component, “AMERICAN,” that is primarily geographically descriptive of the services within the meaning of Section 2(e)(2) of the Trademark Act. Indeed, if Applicant’s arguments were accepted, virtually every use of the term AMERICAN would become suggestive. In this case, the mark presents a textbook example of the unadorned use of the term AMERICAN to primarily denote the United States as the origin of services. *See Am. Diabetes Ass’n, Inc. v. Nat’l Diabetes Ass’n*, 533 F. Supp. 16, 214 USPQ 231 (E.D. Pa. 1981), *aff’d*, 681 F.2d 804 (3d Cir. 1982) (AMERICAN DIABETES ASSOCIATION held primarily geographically descriptive); *Am. Paper & Plastic Products, Inc. v. Am. Automatic Vending Corp.*, 152 USPQ 117 (TTAB 1966) (AMERICAN AUTOMATIC VENDING

held primarily geographically descriptive); TMEP §1210.02(b)(iv); 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, §14:11 (5th ed. Sept. 2018 update) and cases cited therein.

With regard to Applicant's submitted evidence relating to its services, and its argument that its use of the wording VETERINARY NURSES is both exclusive and non-descriptive, we find Applicant's argument of exclusive use is not supported by the evidence of record. We initially note that Applicant's evidence does not demonstrate use of the wording "VETERINARY NURSES" in connection with the provision of Applicant's identified veterinary medicine services; instead, the phrase is used in connection with Applicant's credentialing of individuals to become veterinary nurses. Notwithstanding, the third-party veterinary-related websites submitted by Applicant use the wording VETERINARY NURSE(S) in a descriptive, if not generic, manner. See examples below:⁶

⁶ January 22, 2018 Request for Reconsideration, 5 TTABVUE 11-39. We note that Applicant failed to include the URLs and the date on which the websites were accessed. As a general matter, Internet evidence is acceptable in an ex parte case when the full web address (URL) for the page and the date on which the page was accessed and downloaded are provided. *In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1587 (TTAB 2018); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 1208.03 (2018). However, because Applicant submitted its evidence during prosecution of the involved application prior to our adoption of these requirements, we have considered the website information submitted with its request for reconsideration. *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1733 (TTAB 2018). We further note that the Examining Attorney did not object to these excerpts.

- October 17, 2017 Press Release from the North American Veterinary Community

The North American Veterinary Community Announces Repositioning of Official Journal: *Today's Veterinary Nurse*

ORLANDO, FL – October 17, 2017 – The North American Veterinary Community (NAVC) announced plans to introduce *Today's Veterinary Nurse*, an official publication of the NAVC, in support of the Veterinary Nurse Initiative Coalition led by the National Association of Veterinary Technicians in America (NAVTA). The Coalition is pursuing legislative amendments in all 50 states to establish credentialing of Registered Veterinary Nurses (RVN), to elevate both the standard and perception of the profession's invaluable veterinary technicians.

Endorsing these efforts, the NAVC will reposition *Today's Veterinary Technician* as *Today's Veterinary Nurse* with the same high quality, peer-reviewed educational content that has been its hallmark. The journal will be published on a quarterly basis beginning in Winter 2018 and will be supplemented with an increased emphasis on digital communications and a continuous supply of educational content throughout the year.

 "The NAVC fully supports a single credential for veterinary nurses nationwide and we believe it will improve the level of patient care, reduce pet owners' confusion and lead to an improved public perception for the great work these individuals are doing on a daily basis," said Tom Bohn, CAE, Chief Executive Officer of the NAVC.

- Online article from DVM360 Magazine:

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- **NAVTA seeks national
- veterinary nurse credential**
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- **Veterinary Nurse Initiative Coalition will pursue legislative
- amendments in all 50 states.**
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- May 22, 2017
- By dvm360.com staff
- DVM360 MAGAZINE



Photo: Getty Images.



The National Association of Veterinary Technicians in America (NAVTA) board of directors has created a coalition that will seek legislation in all 50 states establishing a credential of registered veterinary nurse (RVN). The new credential would be a substitute for the titles of registered veterinary technician (RVT), licensed veterinary technician (LVT), certified veterinary technician (CVT) and licensed veterinary medical technician (LVMT).

The Veterinary Nurse Initiative Coalition is currently defining its legislative strategy and targeting 2018 to begin initial legislation reform efforts, according to a NAVTA release. Along with a single title used nationwide, the association is also looking to unify credentialing requirements and scope of practice.

The title change and standardization of requirements will help the profession gain better recognition, increased job mobility and elevated practice standards, says Kara M. Burns, MS, MEd, LVT, VTS (nutrition), president-elect of NAVTA. "All of this will lead to better patient care and consumer protection," she says in the release.

- Online article from Veterinary Practice News:



The National Association of Veterinary Technicians in America^[1] (NAVTA) has formed the Veterinary Nurse Initiative Coalition to pursue legislative amendments in the 50 states to establish the credential of registered veterinary nurse, substituting registered veterinary technician (RVT), licensed veterinary technician (LVT), certified veterinary technician or licensed veterinary medical technician. NAVTA's board approved the action to unite the profession under a single title, credentialing requirements and scope of practice. The coalition is looking at 2018 to begin initial legislation reform efforts, according to the organization.



"Through the standardization and public awareness of the registered veterinary nurse credential, the entire profession will make significant strides toward better recognition, mobility and elevated practice standards," said Kara M. Burns, MS, MED, LVT, VTS (Nutrition) and NAVTA president-elect. "All of this will lead to better patient care and consumer protection."

U.S. veterinary technicians credentialing requirements, titles and scopes of practice vary, which can be confusing to pet owners; a single title and credential nationwide is the next step to improve patient care, align public perceptions and bring clarity to the field of veterinary medicine, said NAVTA in a statement.

The coalition will work with the American Veterinary Medical Association, the American Association of Veterinary State Boards, industry and professional veterinary organizations, and legislators to create common terminology, policies and procedures.

"Our goal is to reduce and remove the confusion associated with the designations for a veterinary technician," said Heather Prendergast, BS, RVT, CVPM, SPHR and coalition member. "Licensed veterinary technician, certified veterinary technician, registered veterinary technician and licensed veterinary medical

- Online article from American Veterinarian:

October 18, 2017

Veterinary Nurse Initiative Gains Ground



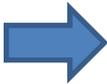
Several companies have announced their support of the title change from veterinary technician to veterinary nurse.

By Maureen McKinney



Three key industry partners and a publication dedicated to educating veterinary team members have announced their support of the Veterinary Nurse Initiative (VNI). Banfield Pet Hospital, Royal Canin USA, and BluePearl Veterinary Partners – all members of the Mars Inc. family of companies – now support and sponsor the VNI. In addition, the North American Veterinary Community (NAVC) has announced that it will reposition its peer-reviewed publication *Today's Veterinary Technician* as *Today's Veterinary Nurse*.

The VNI Coalition, spearheaded by the National Association of Veterinary Technicians in America (NAVTA), is actively pursuing legislative amendments in all 50 states to establish the name and credentialing of registered veterinary nurse (RVN).



"The commitment from veterinary organizations to recognize and promote the veterinary nurse and veterinary technician profession is necessary for the profession to continue thriving and be taken to another level," said NAVTA President Mary Berg, BS, LATG, RVT, VTS (Dentistry).

Kenichiro Yagi, MS, RVT, VTS (ECC, SAIM), co-chair of the VNI, agrees that industry support will give further momentum to the VNI. "The endorsement by these industry leaders demonstrates just how important we are to a hospital, our colleagues, and the communities in which we serve as professionals in veterinary nursing," he said.

- Online article from Petplan Pet Insurance:

NEWTON SQUARE, PA. (PRWEB) DECEMBER 18, 2017

Petplan pet insurance today announced their endorsement of and sponsorship support for the Veterinary Nurse Initiative (VNI), created and led by the National Association of Veterinary Technicians in America (NAVTA). VNI is actively pursuing nationwide legislative amendments to establish the name and credentialing of Registered Veterinary Nurses (RVN).

Petplan will sponsor the initiative primarily through the annual Veterinary Excellence Awards, an industry event designed to honor and promote the best and brightest in the veterinary industry, and with the launch of a new veterinary nurse-focused column in its quarterly pet health magazine, fetch!.

"We're so pleased to lend our support to this initiative," says Natasha Ashton, co-founder and co-CEO of Petplan.

Petplan and NAVTA have also partnered to collaborate on the new fetch! column, "The IV League," that will provide readers with an inside line to the advice and experience of some of the most hands-on members of their pet's health care team.



"Giving veterinary nurses a voice in a forum such as fetch! magazine is a really wonderful show of support for our efforts from Petplan,"



A campaign to make “registered veterinary nurse” the standard title and credential in the U.S. veterinary technician field has three corporate sponsors.

The National Association of Veterinary Technicians in America (NAVTA) reported Oct. 16 that Banfield Pet Hospital, Royal Canin USA and BluePearl Veterinary Partners have endorsed the Veterinary Nurse Initiative.



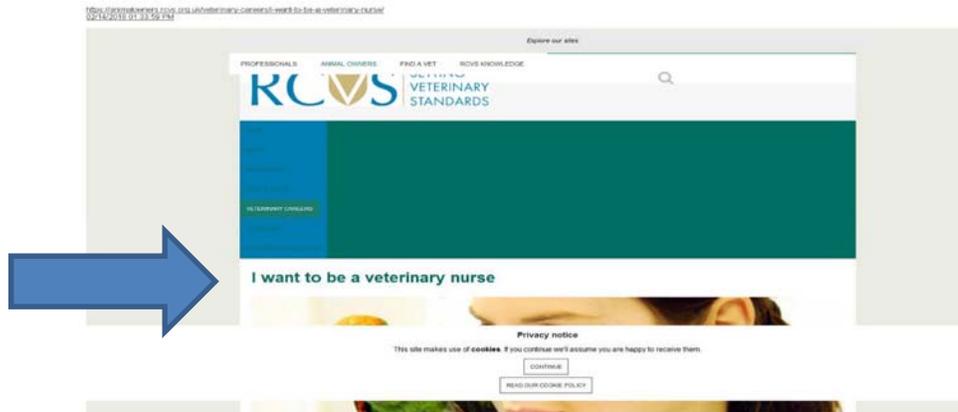
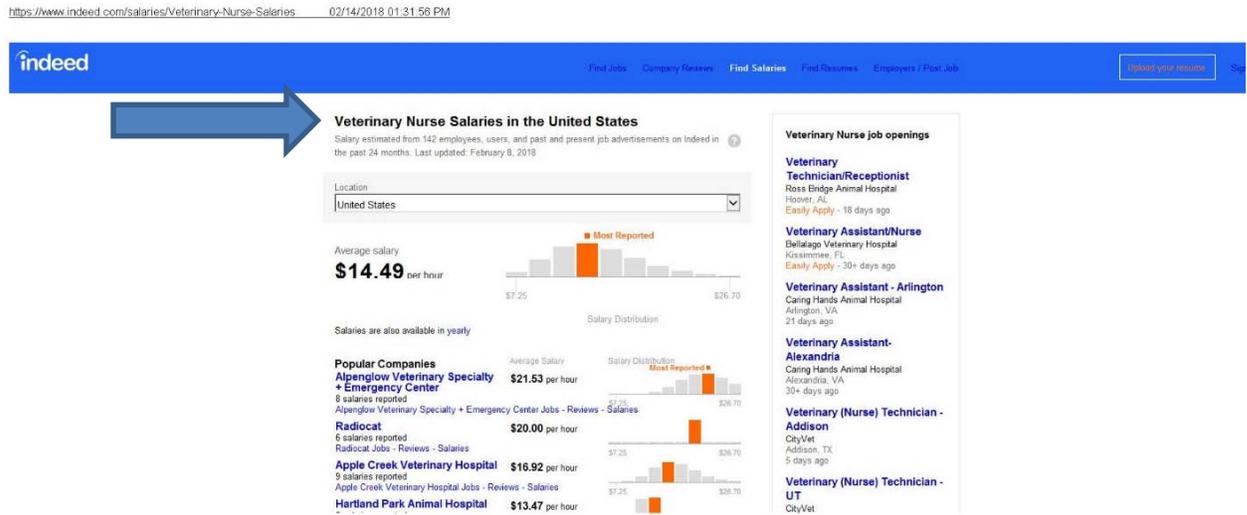
A coalition is working with legislators in all 50 states to create a nationwide registered veterinary nurse (RVN) designation. A hodgepodge of state laws means that veterinary technicians, depending on their location, now carry titles ranging from “certified” (CVT) or “licensed” (LVT) to “registered” (RVT) or “licensed veterinary medical technician” (LVMT).

Using “nurse” instead of “technician” would help correct the misconception in some clients’ eyes that technicians play a minor role in veterinary medicine.

We also note that the Examining Attorney submitted Internet evidence comprised of screenshots of portions of the websites www.indeed.com and www.animalowners.rcvs.org.uk⁷ which demonstrate that third parties use the

⁷ We note that this particular website is a British website and, therefore, we cannot ascertain the extent to which U.S. consumers have been exposed to it. Notwithstanding, we find that this U.K. website carries some probative value with respect to prospective consumer perceptions in the United States inasmuch as there are factors in particular situations where inferences regarding accessibility and familiarity with foreign publications may be made. For example, it is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving veterinary medical services, it is reasonable to consider a relevant article from an Internet web site, in English, about such services in another country, Great Britain in this case, because these medical veterinary services are likely to be of interest worldwide regardless of their country of origin. *See In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002).

wording “veterinary nurse” in a descriptive or generic manner.⁸ The screenshots are reproduced below:



This evidence undercuts Applicant’s argument that it exclusively uses the phrase “VETERINARY NURSES.” Even assuming that Applicant was the first to use this phrase in connection with its identified veterinary medicine services, or even for services consisting of credentialing veterinary technicians, such usage does not imbue

⁸ February 14, 2018 Denial of Request for Reconsideration, 4 TTABVUE 5-10.

the wording with source-identifying significance. *In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983) (the fact that the applicant may be the first to use a merely descriptive designation does not “justify registration if the term projects only merely descriptive significance”).

Finally, we note that the Examining Attorney submitted third-party registrations for marks using the term ASSOCIATION in connection with services related to those offered by Applicant where the term is disclaimed on the Supplemental Register.⁹ Third-party registrations featuring services the same as or similar to Applicant's services are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed, registered under Trademark Act Section 2(f) based on acquired distinctiveness, or registered on the Supplemental Register. *See Inst. Nat'l des Appellations D'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006). In light of this evidence, we find that the term ASSOCIATION in Applicant's mark is merely a synonym for “group,” and therefore lacks any independent source-indicating significance.

II. Conclusion

We have carefully considered all arguments and evidence of record, including any not specifically discussed. We find that that Applicant's AMERICAN VETERINARY NURSES ASSOCIATION mark identifies a well-known geographic location, and that purchasers would make a services/place association between Applicant's services and

⁹ December 21, 2016 Office Action, TSDR pp. 5-10.

the place named in the mark. The addition of the descriptive wording VETERINARY NURSES ASSOCIATION does not detract from the mark's primary significance as being geographically descriptive. Because the elements of the Section 2(e)(2) refusal have been established, we find that the Examining Attorney has demonstrated, prima facie, that Applicant's mark is primarily geographically descriptive of Applicant's identified services. Applicant's arguments to the contrary are not persuasive.

Decision: The refusal to register Applicant's AMERICAN VETERINARY NURSES ASSOCIATION mark under Section 2(e)(2) of the Trademark Act is affirmed.