

This Opinion is not a  
Precedent of the TTAB

Mailed: October 29, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Guillermo Camarena-Vazquez*  
—

Serial No. 87734668  
—

John Alunit of Alunit IP,  
for Guillermo Camarena-Vazquez.

Brent M. Radcliff, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

—  
Before Shaw, Goodman and Larkin,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Guillermo Camarena-Vazquez (“Applicant”) seeks registration on the Principal Register of the mark SE VENDE FOR SALE AMERICA (in standard characters, AMERICA disclaimed) for

Marketing consulting in International Class 35.<sup>1</sup>

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<sup>1</sup> Application Serial No. 87734668 was filed on December 26, 2017, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as July 2016 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). The English translation of the words “SE VENDE” in the mark is “FOR SALE.” Page references to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVue docket system.

The Trademark Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(e)(2), 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 services.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

I. The Record

The Examining Attorney submitted dictionary evidence pertaining to the meaning of the individual terms "for sale" and "America." Applicant submitted a dictionary definition for "sale," which also included a definition of the idiom "for sale." The terms are defined as follows.

America: "the United States"<sup>2</sup> and "used as the name of the United States."<sup>3</sup>

(up) for sale: "offered for purchase; to be bought."<sup>4</sup>

sale: "the act of selling; specifically : the transfer of ownership of and title to property from one person to another for a price."<sup>5</sup>

sale: "the act of selling."<sup>6</sup>

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<sup>2</sup> April 5, 2018 Office Action at TSDR 3, AMERICAN HERITAGE DICTIONARY, [ahdictionary.com](http://ahdictionary.com).

<sup>3</sup> May 7, 2018 Office Action at TSDR 5-6, OXFORD ENGLISH LIVING DICTIONARY, [en.oxforddictionaries.com](http://en.oxforddictionaries.com).

<sup>4</sup> May 7, 2018 Office Action at TSDR 7, OXFORD ENGLISH LIVING DICTIONARY, [en.oxforddictionaries.com](http://en.oxforddictionaries.com).

<sup>5</sup> May 7, 2018 Office Action at TSDR 8, MERRIAM-WEBSTER DICTIONARY, [merriam-webster.com](http://merriam-webster.com).

<sup>6</sup> October 30, 2018 Response to Office Action at TSDR 3, THE RANDOM HOUSE UNABRIDGED DICTIONARY (2018), [dictionary.com](http://dictionary.com).

for sale: “offered to be sold, made available to purchasers.”<sup>7</sup>

In the application, Applicant provided the following statement as to the meaning of “Se Vende”:

‘Se Vende’ appearing in the mark means or signifies or is a term of art for ‘for sale’ in the relevant trade or industry or as used in connection with the goods/services listed in the application.<sup>8</sup>

As noted above, Applicant has provided in his application that the English translation of the word SE VENDE in the mark is “for sale.”

Applicant submitted an article titled “What Does a Marketing Consultant do?”<sup>9</sup> The article identifies the responsibilities of a marketing consultant to include “evaluat[ing] existing marketing materials, social media and advertising, determining how successfully these target customers and generate sales.”<sup>10</sup> The article also states that marketing consultants “[m]anage email and social media marketing campaigns, online advertising, mobile and local marketing.”<sup>11</sup>

We take judicial notice of the following definition of marketing:

1. the act of buying or selling in a market.
2. all business activity involved in the moving of goods from the producer to the consumer, including selling, advertising, packaging, etc.<sup>12</sup>

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<sup>7</sup> October 30, 2018 Response to Office Action at TSDR 4, THE RANDOM HOUSE UNABRIDGED DICTIONARY (2018), dictionary.com.

<sup>8</sup> December 26, 2017 Application at TSDR 1.

<sup>9</sup> October 30, 2018 Response to Office Action at TSDR 5-8, brentpurves.com.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d

The Examining Attorney points to Applicant's listed physical address, which is in Nevada, to establish that the goods originate in America, or the United States. There is no dispute that Nevada is a state within America or the United States. *In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1744 (TTAB 2016).

Applicant's specimen shows his location in Las Vegas, Nevada and provides some explanation of his offered services.<sup>13</sup>

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1375, 1377 (TTAB 2006 WEBSTER'S NEW WORLD COLLEGE DICTIONARY, (4th Edition 2010), [www.collinsdictionary.com/us/dictionary/english/marketing](http://www.collinsdictionary.com/us/dictionary/english/marketing) (accessed October 23, 2019).

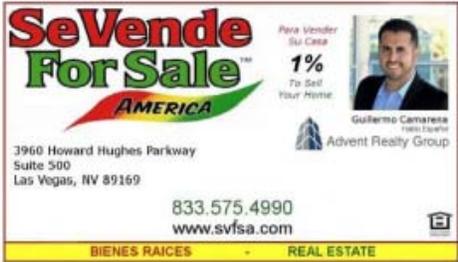
<sup>13</sup> December 26, 2017 Specimen.



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In addition, Applicant has disclaimed AMERICA, and this is a concession that the term AMERICA is geographically descriptive. *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972); *In re DNI Holdings*, 77 USPQ2d 1435, 1442 (TTAB 2005) (“[I]t has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term, as applied to the goods or services in connection with which it is registered, and

an acknowledgment of the lack of an exclusive right therein at the time of the disclaimer.”). In his brief, Applicant states that “[b]y applicant’s disclaimer of the wording ‘AMERICA,’ applicant concedes that the wording ‘AMERICA’ is descriptive of the origin of applicant’s services.” 4 TTABVUE 4.

## II. Arguments

Applicant argues that his mark is not primarily geographically descriptive because SE VENDE and FOR SALE are suggestive, not descriptive, of his marketing consulting services. Applicant contends that his “services involve consulting services for others so that ‘they’ may sell their goods/services. Applicant himself is not in the business of selling goods or services, nor has applicant identified retail, advertising, or subscription services.” 4 TTABVUE 4. Applicant submits that “[s]ince applicant’s mark suggests an end-result (i.e., consulting for others so that they may sell their goods or services), the mark is not merely descriptive, but suggestive.” 4 TTABVUE 4.

The Examining Attorney, on the other hand, argues that the inclusion of the additional descriptive wording SE VENDE FOR SALE does not diminish the geographic significance of the mark. The Examining Attorney argues that “the nature of a marketing consultant in a for-profit business is to sell, advertise or make something available for purchase.” 6 TTABVUE 4. The Examining Attorney asserts that “the marketing consultant provides various consultancy services which are ‘for sale’ to clients” and that “applicant’s own sample marketing materials are directed towards generating real estate sales.” *Id.* The Examining Attorney argues that

“Applicant actually offers his services for hire and those services, admittedly, originate in America. A consumer viewing Applicant’s mark would likely see the term AMERICA appearing below the terms meaning FOR SALE and understand that the Applicant is offering some type of good or service that is available for sale in America.”  
*Id.*

### III. Section 2(e)(2) Primarily Geographically Descriptive

The test for determining whether a term is primarily geographically descriptive is whether (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 public would make an association between the identified goods or services and the place named in the mark, that is, believe that the goods or services for which the mark is sought to be registered originate in that place, and (3) the source of the goods or services is the geographic region named in the mark. *See In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448-9 (Fed. Cir. 2015), citing *In re Societe Generale Des Eaux Minerales De Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987), *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 104 USPQ2d 1330 (Fed. Cir. 2012), and *In re Jacques Bernier, Inc.*, 894 F.2d 389, 213 USPQ 889 (Fed. Cir. 1990).

Where there is no question but that the geographic significance of a term is its primary significance, and the place named is neither obscure nor remote, a public association of the goods or services with the place may be presumed if, in fact, the goods or services originate from the geographic place named in the mark. *See In re*

*Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007); *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848, 850 (TTAB 1982).

- A. Whether the primary significance of the term in the mark sought to be registered is the name of a place generally known to the public.

“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) (citations omitted). In this connection, it is well settled that the addition of highly descriptive matter to a geographic term does not detract from the primarily geographically descriptive significance of the mark as a whole. *In re JT Tobacconists*, 59 USPQ2d 1080, 1082 (TTAB 2001) (MINNESOTA CIGAR COMPANY geographically descriptive of cigars and cigar products); *In re Monograms America Inc.*, 51 USPQ2d 1317, 1320 (TTAB 1999) (MONOGRAMS AMERICA geographically descriptive for embroidery stores); *In re Cambridge Digital Sys.*, 1 USPQ2d 1659, 1662 (TTAB 1986) (CAMBRIDGE DIGITAL geographically descriptive of computer systems).

First, we find that the word AMERICA in Applicant’s mark is the name of a place known generally to the American public, i.e., the United States. As the definitions indicate above, AMERICA is defined as “the United States.” The primary significance of AMERICA to the American public is a geographic location which is neither obscure nor remote. Applicant has conceded the descriptiveness of this term by his disclaimer.

The terms SE VENDE FOR SALE are highly descriptive of Applicant's marketing consulting services. Marketing encompasses business activity that involves the selling of products and services. Applicant's specimen includes sample marketing material for real estate and states "1% To Sell Your Home." In addition, Applicant's specimen reflects that a feature of his marketing consulting services is the developing of marketing material for the selling of products and services in the Hispanic market. Applicant acknowledges that selling is a feature of his services, stating "that applicant's services involve consulting services for others so that 'they' may sell their goods/services." 4 TTABVUE 4. Applicant also has conceded that "SE VENDE" is a term of art in the relevant trade or industry or as used in connection with the goods/services listed in the application. We find that SE VENDE FOR SALE is highly descriptive of a significant feature of Applicant's marketing consulting services, namely the business of marketing products and services that are "offered for sale" by others.

The combination of the highly descriptive terms SE VENDE FOR SALE with a geographical term AMERICA does not detract from the primary geographic significance of the composite mark as a whole. *See Monograms America*, 51 USPQ2d at 1320 (MONOGRAMS AMERICA primarily geographically descriptive for embroidery stores); *In re Chalk's Int'l Airlines Inc.*, 21 USPQ2d 1637, 1639 (TTAB 1991) (PARADISE ISLAND AIRLINES held primarily geographically descriptive of the transportation of passengers and goods by air); *Cambridge Digital Sys.*, 1 USPQ2d at 1662 (the addition of the descriptive word DIGITAL does not detract from

the primary geographic significance of CAMBRIDGE). Accordingly, we conclude that the primary connotation of the composite mark SE VENDE FOR SALE AMERICA is its geographical significance.

- B. Whether the public would make an association between the goods or services and the place named in the mark, that is, believe that the goods or services for which the mark is sought to be registered originate in that place.

As stated above, we presume such an association based on Applicant's location in America (the United States). In addition, Applicant has stated that the services originate in America and therefore they are rendered in America.

- C. Whether the source of the goods or services is the geographic region named in the mark

Applicant has a listed address in Las Vegas, Nevada, and his specimen reflects his Las Vegas, Nevada address. The state of Nevada is in America (the United States). In addition, Applicant has confirmed that his services originate in America. Thus, the source of the services is the geographic region named in the mark, namely, America.

- D. Conclusion

We find that the wording SE VENDE FOR SALE AMERICA in Applicant's mark identifies a well-known geographic location, that the source of the services is the geographic region named in the mark, and that purchasers would make a services/place association between Applicant's services and the geographic region named in the mark. Because the elements of the Section 2(e)(2) refusal have been

established, we find that the Examining Attorney has established, prima facie, that Applicant's mark is primarily geographically descriptive of Applicant's services. Applicant's arguments to the contrary are not persuasive.

E. Supplemental Register Request

In his brief, Applicant requests that he be afforded an opportunity to amend his application to the Supplemental Register if the Board affirms the Section 2(e)(2) refusal. Such a request, which asks that an amendment to the application be considered only after the Board has considered and decided the appeal, is by its terms untimely. The Board lacks the power to re-open the application to propose the amendment to the Examining Attorney. See Trademark Rule 2.142(g) ("An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer... or upon order of the Director"). Therefore, we deny this request.

**Decision:** The refusal to register Applicant's mark SE VENDE FOR SALE AMERICA as primarily geographically descriptive under Section 2(e)(2) is affirmed.