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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

K. Hov IP II, Inc.
v.
Jonathan Benner-Ortega d/b/a Metro Living

Opposition No. 91185619
to application Serial No. 78668494
filed on 7/12/05

James L. Vana of Perkins Coie for K. Hov IP II, Inc.

Erik M. Pelton and Mark L. Donahey of Erik M. Pelton &
Associates for Jonathan Benner-Ortega.

Before Quinn, Cataldo and Taylor,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Jonathan Benner-Ortega filed an intent-to-use
application to register the mark shown below



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for "real estate brokerage services" (in International Class 36). The application includes the following description of the mark: "The mark consists of stylized capital letters with the images of famous Washington D.C. buildings next to the words, namely the U.S. Capital [sic] Building, the Washington Monument and the Lincoln Memorial. Applicant does not claim any particular size or color."

K. Hov IP II, Inc. opposed registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark, when used in connection with applicant's services, is merely descriptive thereof; and under Section 2(e)(2), 15 U.S.C. §1052(e)(2), on the ground that applicant's mark, when used in connection with applicant's services, is primarily geographically descriptive thereof.

Applicant, in his answer, denied the salient allegations. Applicant also asserts that opposer lacks standing to bring the opposition on the two pleaded grounds.

The Record

The record comprises the pleadings; the file of the involved application; testimony, with related exhibits, taken by opposer; portions of a discovery deposition of applicant with related exhibits, applicant's responses to opposer's discovery requests, third-party registrations, excerpts from printed publications, and excerpts of third-

party websites, all introduced by way of opposer's notice of reliance; and third-party registrations, other official records, certain of opposer's responses to applicant's discovery requests, excerpts of opposer's and third-parties' websites, excerpts of printed publications, and additional portions of applicant's discovery deposition, all of which applicant introduced through his notices of reliance.¹ The parties filed briefs, and both were represented by counsel at an oral hearing.

The Parties

Opposer is a homebuilder and, in connection therewith, opposer offers related services such as real estate brokerage and financing, and home design.

Applicant is a licensed real estate agent serving the Washington, D.C. metropolitan area.

The Issues

Opposer, in its brief, states that it "has opposed registration as to the Alleged Mark in its entirety on geographic descriptiveness grounds, and as to registration of the Alleged Mark absent a disclaimer of the descriptive wording METRO LIVING, on descriptiveness grounds." (Brief, p. 1). Opposer summarizes the case as follows: "[I]t is

¹ Some of the evidence (e.g., Internet websites) is not proper subject matter for introduction by way of a notice of reliance. As pointed out by applicant (Brief, p. 3), neither party has objected to any of the evidence, and accordingly we will treat all of it as being properly of record for our consideration.

clear that the Alleged Mark is primarily geographically descriptive in its entirety, and that the word component METRO LIVING is merely descriptive. Further, the evidence of record shows that METRO LIVING is used by numerous parties to convey its immediately descriptive meaning in connection with real estate. As a result, registration of the Alleged Mark should be refused in its entirety, or at least refused absent a disclaimer of METRO LIVING." (Brief, pp. 11-12). With respect to mere descriptiveness under Section 2(e)(1), opposer exclusively focuses its attention on the word portion, METRO LIVING, of applicant's mark; opposer attacks the inherent distinctiveness of the design element only in terms of primarily geographic descriptiveness. As opposer reiterates: "[I]t is clear that the Disputed Term [METRO LIVING] is merely descriptive and that the Alleged Mark [METRO LIVING and design] is primarily geographically descriptive in its entirety...As a result, registration of the Alleged Mark should be refused in its entirety, or at least refused absent a disclaimer of the Disputed Term METRO LIVING." (Reply Brief, pp. 8-9).

Standing

To establish standing, opposer must show that it is not an intermeddler, but has a real interest in the proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). Generally, where a claim of mere descriptiveness or

primarily geographic descriptiveness is asserted, it is sufficient to establish that the plaintiff is engaged in the sale of the same or related goods and/or services, that is, is a competitor. *Anheuser-Busch Inv. v. Holt*, 92 USPQ2d 1101, 1103 (TTAB 2009); *Plyboo America, Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633 (TTAB 1999); and *Binney & Smith, Inc. v. Magic Marker Industries, Inc.*, 222 USPQ 1003, 1010 (TTAB 1984).

Opposer has filed three applications to register marks that include METRO LIVING as a part thereof; in each case, applicant's application was cited as a potential bar under Section 2(d) to the registration of opposer's mark. Further, opposer is using the term METRO LIVING in connection with various services, including real estate brokerage services; and, thus, opposer is a competitor of applicant.

Accordingly, contrary to applicant's arguments (Brief, pp. 9-13), opposer clearly has established its standing to be heard on the pleaded grounds for relief.

Mere Descriptiveness

The Law

Opposer bears the burden of showing, by a preponderance of the evidence, that the designation sought to be registered is merely descriptive. *Goodyear Tire & Rubber Co. v. Continental General Tire Inc.*, 70 USPQ2d 1067, 1070

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(TTAB 2003). A mark is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [and/or services]."

Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976) (emphasis added). See *In re Abcor Development Corp.*, 616 F.2d 525, 200 USPQ 215 (CCPA 1978). Moreover, in order to be descriptive, the mark must immediately convey information about the qualities, features or characteristics of the goods and/or services with a "degree of particularity." *Plus Products v. Medical Modalities Associates, Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981). See *In re Diet Tabs, Inc.*, 231 USPQ 587, 588 (TTAB 1986); *Holiday Inns, Inc. v. Monolith Enterprises*, 212 USPQ 949, 952 (TTAB 1981); *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

A term need not immediately convey information about each and every specific feature of the applicant's goods and/or services in order to be considered merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of the goods and/or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought, the context in which it is being used on or in connection with the goods and/or services, and the possible significance that the term would have to the average purchaser of the goods and/or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

The Parties' Arguments

Opposer argues that each of the component terms comprising METRO LIVING has a clear and commonly understood English meaning, and each describes a feature or characteristic of applicant's services. The word portion of applicant's mark, opposer contends, "immediately conveys the message that Applicant's services assist home buyers in finding housing that provides an attractive lifestyle in a metropolitan area." (Brief, p. 10). According to opposer,

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the design element makes clear that METRO is intended to identify the greater Washington, D.C. metropolitan area.

Applicant contends, on the other hand, that the wording METRO LIVING is remote and indirect, not immediately describing any particular quality of his services of helping clients buy homes from or sell homes to others. Thus, applicant urges, his mark is just suggestive of a vague aspiration or result that consumers may hope to achieve with a new home itself, rather than immediately describing a significant feature, function or characteristic of applicant's real estate brokerage services. In applicant's words:

Opposer incorrectly suggests that upon seeing "METRO LIVING," as used in applicant's mark, prospective purchasers will make a clear and immediate connection between their ambitions for their lifestyle, the role their home could play in their lifestyle, and the fact that people often employ brokers to help them buy or sell homes, in order to conclude without resorting to "imagination, thought or perception," that their choice of real estate broker is really a lifestyle choice. Such a chain of reasoning is too remote and subtle to be anything but suggestive. (Brief, p. 20).

Dictionary Definitions

The parties submitted various dictionary entries (*Oxford English Dictionary Online* and www.education.yahoo.com/reference/dictionary) for the terms "metro" and "living." We highlight the most relevant

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meanings in the context of the involved services, and the ones relied upon by opposer in its brief. (Brief, pp. 4-5).

The term "metro" is a shortened form of "metropolitan" meaning "of, relating to or characteristic of a major city; of or constituting a large city or urbanized area, including adjacent suburbs and towns."

The term "living" is defined as "a manner or style of life."

These commonly understood and recognized meanings are confirmed by the testimony of opposer's witnesses. Although applicant offered additional meanings of the terms, he essentially conceded that the meanings relied upon by opposer could be the ones perceived by consumers. (Benner-Ortega disc. dep., p. 120).

Applicant's Use

Opposer highlights some examples of what it characterizes as applicant's own descriptive use of the term "metro": "Welcome to Metro Living at RE/MAX Supreme Properties, your source of DC Metro Area real estate."; "With Metro Living behind you, you are guaranteed top notch results, whether buying or selling in the DC Metro Area."; and "[t]he DC metro area encompasses the counties that almost theoretically touch the District of Columbia and the Beltway."

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Opposer does not point to any merely descriptive use by applicant of the wording "metro living" in its entirety other than as used in the proposed mark.

Mr. Benner-Ortega testified that he chose the mark to evoke thoughts about a lifestyle for prospective clients (Benner-Ortega disc. dep., p. 148), and that lifestyles are choices, whether urban, suburban or rural. (Benner-Ortega disc. dep., p. 150).

Opposer's Use

Laura VanVelthoven, opposer's vice president of sales and corporate marketing, testified about opposer's use of its house mark K HOVNANIAN in conjunction with METRO LIVING to form the mark K HOVNANIAN'S METRO LIVING. Ms.

VanVelthoven states that the term "metro living" means: "living in a metropolitan city or area around a metropolitan area. Living is the living that you do within that metropolitan area, the amenities and the conveniences that living in a metropolitan area affords the purchaser or buyer." (VanVelthoven dep., p. 28). As Ms. VanVelthoven tells it, "location and where you live is just as important as how you live. They go hand in hand." (VanVelthoven dep., p. 36). As indicated above, opposer owns three pending applications to register the mark K. HOVNANIAN'S METRO LIVING for a variety of real estate services, including real estate brokerage services. In those

applications, which are currently suspended pending the final outcome of this case, neither did the examining attorney require a disclaimer of METRO LIVING nor did opposer voluntarily disclaim the wording.

Ms. VanVelthoven stated that she does not know if there "is a general term in the industry for the type of properties K. Hovnanian's Metro Living offers." (VanVelthoven dep., p. 90). None of opposer's advertisements show any merely descriptive uses of "metro living" by opposer.

Third-Party Use

Opposer highlights six third-party uses of the term "living" paired with the terms "urban" and "country" in conjunction with real estate services. The uses include: "Welcome to the #1 source for urban living!"; "The San Diego Urban Living Specialists"; and "Country living specialists."

Insofar as third-party use of the combination "metro living" is concerned, opposer points to ten such uses as part of a domain name: chicagometroliving.com; phillymetroliving.com; austin-metro-living.com; nymetroliving.com; houstonmetroliving.com; minneapolis-metro-living.com; portlandmetroliving.com; seattlemetroliving.com; metrolivingny.com; and irvinemetroliving.com.

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Opposer also introduced additional third-party uses of "metro living" on various websites dealing with real estate services: "Metro living in the heart of downtown Dadeland."; "Every detail of the condo interior reflects sophisticated metro living."; "Experience the hottest metro living in America...Downtown San Diego!"; "The hustle and bustle of New York metro living."; "Exciting metro living in the city of Denver."; "North metro living at its best."; "Your choice for metro living."; and "Take a look at the market, some of the hottest projects and an insight into the future of metro living."

Further, opposer relied upon third-party uses of "metropolitan living" on real estate websites: "America's leading developer of sophisticated metropolitan living."; "Anchorage blends modern metropolitan living with gorgeous, rugged, unspoiled wilderness."; "It is truly an all-inclusive metropolitan living experience."; and "We provide a number of services and specialize in Metropolitan living and condos in the Atlanta and Miami areas."

Sandra Matson, a third-party real estate agent who owns the domain name "chicagometroliving.com", testified that "[w]hen you are selling a home, you're selling a lifestyle. They [consumers] choose locations based on their lifestyle, how they live, what they do, their activity. I think lifestyle is very basic to selling homes." (Matson dep.,

pp. 20-21). She also stated that she personally considers METRO LIVING to mean "a general term...for a lifestyle...within a metropolitan area." (Matson dep., p. 19). According to Ms. Matson, "it can mean different things." (Matson dep., pp. 17-18).

Applicant for his part introduced the results of a search of "metro living" in the LEXIS/NEXIS U.S. Publications Database (which, according to opposer, does not include advertisements such as those of real estate agents or brokers) for a recent three year period; the search yielded just three instances of what it perceives to be descriptive use.² The three uses are the following: "cutting-edge, attractively priced metro living at..."; "chic metro living anchored by the new stadium"; and "opportunity for 'metro living with retro living' has enticed a younger demographic." Further, applicant showed that the term "metro living" does not appear as an entry in five different glossaries of real estate terms.

Third-Party Registrations

Opposer submitted several third-party registrations of marks such as ALPINE LIVING, SOPHISTICATED URBAN LIVING, IN TOWN LIVING, FAIRWAY LIVING, DESERT LIVING, REVITALIZED WATERFRONT LIVING and LUXURY BAREFOOT LIVING. The

² The search yielded seven hits, of which four showed use of METRO LIVING in a capitalized form, arguably as a source indicator.

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registrations cover real estate services or publications related to real estate services, and all either include a disclaimer of "LIVING" or reside on the Supplemental Register.

Applicant countered with his own evidence of third-

party registrations to support his contention that neither "metro" nor "living" are merely descriptive when used in connection with real estate brokerage services. None of the registrations relied upon by applicant include a disclaimer of "metro" or "living," nor did any include a claim of acquired distinctiveness under Section 2(f); and none issued on the Supplemental Register.

There are numerous registrations of marks incorporating the term METRO covering real estate services and brokerage services. Examples include the following: METRO REALTY; METRO RESIDENTIAL REALTY; METRO COMMERCIAL REALTY; METRO BROKERS REAL ESTATE; and METRO ESTATES.

Examples of third-party registrations of marks which comprise, in part, the term LIVING for real estate services include the following: RESORT LIVING; RESORTLIVING.COM; URBAN LIVING PERFECTED; TROPICAL LIVING; (SUB)URBAN LIVING; NORTHWEST LIVING; MANSIONETTE LIVING; GREENWICH LIVING; SONOMA COAST LIVING; QUALITY INDY LIVING; FINE AUSTIN LIVING; DC LIVING; CHITOWNLIVING; SANTA FE LIVING; THE ART OF CITY LIVING; and LEADERS IN URBAN LIVING.³

³ The record also includes one third-party registration of a mark that comprises both the terms METRO and LIVING. Registration of the mark METROLIVING issued for "magazines and printed guides on the subject of real estate." A check of Office records reveals that the registration was cancelled by the Office for failure to file a Section 8 affidavit of continued use.

Analysis

We acknowledge at the outset that this is a fairly close case. After review of the record, we find that the record falls short of establishing, by a preponderance of the evidence, that METRO LIVING merely describes applicant's real estate brokerage services. Rather, we find the mark to be only suggestive.

There is often a fine line between merely descriptive marks and those which are just suggestive. These determinations are often subjective, this case being no exception. The determination of whether a mark is descriptive or suggestive is not an exact science. Our primary reviewing court has observed:

In the complex world of etymology, connotation, syntax, and meaning, a term may possess elements of suggestiveness and descriptiveness at the same time. No clean boundaries separate these legal categories. Rather, a term may slide along the continuum between suggestiveness and descriptiveness depending on usage, context, and other factors that affect the relevant public's perception of the term.

In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

Applicant's mark METRO LIVING and design falls on the suggestive side of the line. The term "metro" is susceptible of various, albeit similar meanings, including "a large, sprawling metropolitan area" or "urbane,

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sophisticated, excitingly varied, cosmopolitan." Likewise, the term "living" may be perceived as "dwelling in a particular place" as well as "conducting one's life in a particular manner." The mark does not immediately describe any specific characteristic or feature of applicant's real estate brokerage services with any degree of particularity. At most, the mark suggests that use of applicant's real estate brokerage services may result in some undefined, amorphous urban lifestyle.

It is not fatal that a mark is informational. One may be informed by suggestion as well as by description. *In re Reynolds Metals Company*, 480 F.2d 902, 178 USPQ 296 (CCPA 1973). That is to say, the terms "descriptive" and "suggestive" are not mutually exclusive. There is some description in any suggestion or the suggestive process does not occur. Applicant's mark is no exception.

The mark at issue, METRO LIVING and design, is typical of so many marks that consumers encounter in the marketplace: a suggestive mark that tells consumers something general about the services, without being specific or immediately telling consumers anything with a degree of particularity. The information given by applicant's mark is indirect and vague. The mark here conjures up indirect mental associations in the consumer's mind about a perceived lifestyle. The visions of such a lifestyle in a

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metropolitan area would be as numerous and varied as the number of consumers seeking to live in an urban environment. The thought process beginning with the mark METRO LIVING and design and leading to a characteristic or feature of real estate brokerage services is neither immediate nor direct.

When confronting the mark METRO LIVING and design in connection with real estate brokerage services, the ordinary consumer will pause and reflect on the use of the mark before understanding anything specific about a feature or characteristic of the services. One must exercise thought or engage in a multi-step reasoning process to determine what attribute of the services may be identified by the mark. The mark does not, in any clear or precise way, serve to immediately describe a particular characteristic or feature of the real estate brokerage services with any degree of particularity. As just noted, the meaning of the term "metro living" may well vary from consumer to consumer. The mark METRO LIVING does not serve to directly tell a consumer anything other than to suggest that utilization of the services will result in an undefined lifestyle in an urban environment. The mark is an ephemeral concept and consumers are likely to have various ideas about what specifically constitutes a "metropolitan lifestyle." That is, the mark conveys a nebulous and amorphous concept.

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At worst, METRO LIVING can be said to be broadly suggestive of applicant's services, but the term is in no way immediately descriptive, in any clear or precise manner, of any characteristic or feature of real estate brokerage services.

A few additional points are noteworthy. The record is devoid of any use of "metro living" by applicant in a merely descriptive manner. *Cf. In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) (applicant's own use in a generic [or merely descriptive] manner is strong evidence that the term is generic [or merely descriptive]). As to third-party uses, we view them in the same fashion as we view applicant's use, namely as suggestive wording to evoke some vague notion of an urban lifestyle. And, insofar as the third-party registrations are concerned, this evidence can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry. *See In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987) ("Said third-party registrations are of use only if they tend to demonstrate that a mark or a portion thereof is suggestive or descriptive of certain goods [or services] and hence is entitled to a narrow scope of protection. Used in this limited manner, 'third-party registrations are similar to dictionaries showing how language is generally used.'"). We view this registration

evidence as decidedly in favor of applicant's position that METRO LIVING is just suggestive. In any event, third-party registrations are not conclusive on the question of mere descriptiveness. Each case must stand on its own merits, and a mark that is merely descriptive must not be registered on the Principal Register simply because other such marks appear on the register. See *In re Nett Designs Inc.*, 57 USPQ2d at 1566.

We find, based on the record before us, that opposer has not established by a preponderance of the evidence that METRO LIVING and design is merely descriptive of real estate brokerage services. In reaching our conclusion we have considered all of the evidence pertaining to the issue of mere descriptiveness, as well as all of the parties' arguments with respect thereto (including any evidence and arguments not specifically discussed in this opinion). Lastly, any doubt has been resolved in applicant's favor. See *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006).

Primary Geographic Descriptiveness

Opposer spends barely one page in discussing this ground. Opposer states that the design feature of applicant's mark consists of three structures in Washington, D.C.: the Lincoln Memorial, the Washington Monument and the

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U.S. Capitol. These landmark memorials, opposer urges, would be recognized by a significant portion of applicant's customers as being located in the District of Columbia, thereby informing customers that applicant's services are provided and relate to properties located in the greater Washington, D.C. area. Thus, opposer concludes, because the wording "metro living" is merely descriptive, applicant's mark "is primarily geographically descriptive of the location (metropolitan Washington, D.C.) where applicant's services are provided." (Brief, p. 12). Applicant readily concedes that the design element of its mark "features a stylized composite silhouette of the U.S. Capitol building, the Lincoln Memorial, and the Washington Monument." (Brief, p. 4).

To establish that a mark is primarily geographically descriptive under Section 2(e)(2), 15 U.S.C. §1052(e)(2), opposer must show that: 1)the primary significance of the mark is a generally known geographic location; 2)the goods or services originate in the place identified in the mark; and 3)purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark (i.e., a services/place association).

As is the case with the claim of mere descriptiveness discussed above, opposer has the burden of proving this claim of primarily geographic descriptiveness by a

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preponderance of the evidence. Further, any doubts are resolved in favor of applicant.

Opposer's case fails with respect to the first required element, namely that to be *primarily* geographic, the *primary* significance of the mark must be that of a geographic location. See, e.g., *In re Wada*, 194 F.3d 1297, 52 USPQ2d, 1539 (Fed. Cir. 1999). The fact that the mark has meaning or usage other than as a geographic term does not necessarily alter its primarily geographic significance; if the geographic design present in applicant's mark has another meaning, it must still be determined whether the *primary* significance is geographic. However, if the most prominent meaning or significance of the mark is not geographic, or if the mark creates a separate readily understood meaning that is not geographic, then registration of the mark is not precluded under Section 2(e)(2). See, e.g., *In re International Taste Inc.*, 53 USPQ2d 1604, 1605-06 (TTAB 2000) (finding doubt as to the primary significance of HOLLYWOOD because of other prominent, significant meaning of HOLLYWOOD as referring to the entertainment industry in general, with the doubt resolved in favor of the applicant); *In re Urbano*, 51 USPQ2d 1776, 1780 (TTAB 1999) (finding the primary significance of SYDNEY 2000, used for advertising, business, and communication services, is as a reference to the Olympic Games, not to the name of a place); *In re Jim*

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Crockett Promotions Inc., 5 USPQ2d 1455, 1456 (TTAB 1987) (finding that the primary significance of THE GREAT AMERICAN BASH for promoting, producing, and presenting professional wrestling matches, is to suggest something of a desirable quality or excellence rather than to describe the geographic origin of the services; *In re Dixie Insurance Co.*, 223 USPQ 514, 516 (TTAB 1984) (DIXIE held not primarily geographically descriptive of property and casualty underwriting services, where the examining attorney provided no evidence to show that the geographical significance of DIXIE was its primary significance).

The fact that applicant's mark includes additional matter that clearly is not geographic in nature is not dispositive; a geographic composite mark, composed of geographic matter coupled with additional wording, may still be precluded under Section 2(e)(2) if the primary significance of the composite is geographic. See *In re Save Venice New York Inc.*, 259 F.3d 1346, 59 USPQ2d 1778 (Fed. Cir. 2001).

In the present case, we do not view the design element, let alone the entire mark, to be primarily geographically descriptive. As both opposer and applicant agree, a graphic design element of a mark may serve the same purpose as a geographic word, but that element must likewise be primarily geographically descriptive to be precluded under the Act.

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See In re Canada Dry Ginger Ale, 86 F.2d 830, 32 USPQ 49 (CCPA 1936). In applicant's mark, however, we agree with applicant's assessment that the primary significance of the design is "varied and ambiguous." (Brief, p. 30).

In that connection, applicant contends that the design evokes other nongeographic connotations. Indeed, opposer's proofs fall short of establishing that the primary meaning of the image is the geographic location Washington, D.C. "A mark that has a popular significance apart from its geographical meaning is not, in most cases, 'primarily' geographical." J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, §14:28 (4th ed. 2012). The landmarks of the Nation's Capital depicted in applicant's mark create a separate readily understood meaning that is not geographic. Among the ideas evoked by the design are national pride and patriotism, the federal government, the seat of power in the United States, and the memory of historical persons and events that have shaped this country. These ideas flow from the importance of these structures as national symbols. The nongeographic significance of these national landmarks is made abundantly clear in the materials submitted by opposer. (Opposer's notice of reliance, TTAB docket entry nos. 37 and 38). *See, e.g.*, "The United States Capitol in Washington, D.C. is a symbol of the American people and their

government, the meeting place of the nation's legislature."
www.visitthecapitol.gov.

Inasmuch as the design in applicant's mark evokes nongeographic ideas that are as strong and likely as any geographic significance, we cannot say, based on the meager record adduced by opposer, that the design, let alone the entire mark, is *primarily* geographically descriptive. Any doubt as to the primary significance of the design has been resolved in applicant's favor. *In re International Taste Inc.*, 53 USPQ2d at 1606.

Accordingly, opposer's claim under Section 2(e)(2) fails.

Decision

The opposition grounded on Sections 2(e)(1) and 2(e)(2) is dismissed.