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Mailed: January 30, 2003  
Paper No. 9  
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re USBANCORP, Inc.

Serial No. 76/150,864

David V. Radack of Eckert Seamans Cherin & Mellott LLC for  
USBANCORP, Inc.

Michael P. Keating, Trademark Examining Attorney, Law  
Office 107 (Thomas S. Lamone, Managing Attorney).

Before Cissel, Hairston and Holtzman, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

USBANCORP, Inc., a Pennsylvania corporation located in  
Johnstown, Pennsylvania, has filed an application to  
register the mark AMERICA'S FINANCIAL MART for the  
following services:

business consultation services; accounting services;  
income tax preparation services; asset and liability  
management services in class 35;

banking services; corporate, institutional and  
personal trust services; financial planning and

portfolio management; financial guarantee and surety services; brokerage in the fields of stocks, bonds, commodities, insurance, annuities and mutual funds; mortgage banking, lending and brokerage services; travel agency services, namely issuing travelers checks; business brokers; estate administration services; title insurance services; maintaining mortgage escrow accounts; loan processing services; insurance underwriting in the field of life, health, accident, medical and property; credit life reinsurance services; and debt recovery and collection agency services in class 36;

travel agency services, namely making reservations and booking for transportation in class 39; and

hosting the websites of others on a computer server for a global computer network; printing services; concierge services for others comprising making requested personal arrangements and reservations and providing customer-specific information to meet individual needs rendered together in a bank; travel agency services, namely making reservation and booking for temporary lodging in class 42.<sup>1</sup>

The Trademark Examining Attorney has finally refused registration under Section 2(e)(2) of the Trademark Act, §15 U.S.C. 2(e)(2), on the ground that, if used in connection with the identified services, the mark would be primarily geographically descriptive of them.

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<sup>1</sup> Serial No. 76/150,864, filed on October 20, 2000, which alleges a bona fide intention to use the mark in commerce.

Applicant has appealed. Briefs have been filed, but no oral hearing was requested. We affirm the refusal to register.

Applicant argues that the wording AMERICA'S FINANCIAL MART "functions primarily as a slogan and not as the name of [applicant's] organization," and therefore is not primarily geographically descriptive. (emphasis in original). Also, applicant maintains that because it intends to use the mark in connection with some services, that are "somewhat outside the realm of financial services," the mark, at least for these services, is not primarily geographically descriptive. (Applicant's brief, p. 3).

In order for registration to be properly refused under Section 2(e)(2), it is necessary to establish that (i) the primary significance of the mark sought to be registered is the name of a place generally known to the public and (ii) the public would make a goods/place association, that is, believe that the goods for which the mark is sought to be registered originate in that place. See, e.g., *University Book Store v. University of Wisconsin Board of Regents*, 33 USPQ2d 1385, 1402 (TTAB 1994); and *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988), citing *In re Societe Generale Des Eaux Minerales de Vittel S.A.*, 824

F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987). Provided that these conditions are met, and the goods come from the place named by or in the mark, the mark is primarily geographically descriptive.

Further, where 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 with the place may ordinarily be presumed from the fact that the applicant's goods come from the geographical place named in the mark. See, e.g., *In re California Pizza Kitchen Inc.*, supra; and *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848, 850 (TTAB 1982). In addition, the presence of a generic or highly descriptive term in a mark that also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole. See, e.g., *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1662 (TTAB 1986); and *In re BankAmerica Corp.*, 231 USPQ 873, 875 (TTAB 1986).

As shown by the dictionary definitions accompanying the Examining Attorney's brief,<sup>2</sup> the word "America" is defined in Webster's Third New International Dictionary (1993) as "1. of or from No. America or So. America: of the kind or style prevalent in North America or So. America ... 2. of or from the U.S. [United States]: of the kind or style prevalent in the U.S. [United States]" and is listed in Random House Webster's Unabridged Dictionary (1998) as "1. See "United States." Moreover, it is clear that the area described by such word is neither remote nor obscure. In fact, every member of the general public would certainly know the meaning of the word. Consequently, and in view of the fact that applicant is based and incorporated in the State of Pennsylvania, there is simply no doubt that the term "AMERICA'S" particularly signifies origin in the United States of America.

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<sup>2</sup> In his brief, the Examining Attorney requests that the Board take judicial notice of the accompanying definitions of the term "America." It is well settled that judicial notice may properly be taken of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Foods Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). In view thereof, the Examining Attorney's request is approved and we have considered the dictionary definitions submitted with his brief.

Turning then to the term "financial mart," the Examining Attorney has submitted two stories from the NEXIS database wherein "financial mart" is used to refer to a supermarket branch of a bank or savings and loan. Applicant has not disputed this, and in fact, has entered a disclaimer of the term. Thus, "FINANCIAL MART" clearly constitutes a highly descriptive or generic term for, at the very least, the banking and related financial services in applicant's application.

The primary significance of the mark AMERICA'S FINANCIAL MART, when considered as a whole, is therefore geographical in connection with banking and related financial services. We note that the Examining Attorney has made of record four third-party registrations of marks consisting of "AMERICA'S" and highly descriptive or generic terms.<sup>3</sup> Each of these registrations issued on the Supplemental Register with a disclaimer of the highly descriptive or generic terms. These registrations suggest that the Office has considered marks of this type to be primarily geographically descriptive.

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<sup>3</sup> The marks are AMERICA'S LABOR INSURANCE COMPANY (LABOR INSURANCE COMPANY is disclaimed); AMERICA'S PET FOOD STORE ON THE WEB (PET FOOD STORE ON THE WEB is disclaimed); AMERICA'S BENEFITS SPECIALISTS (BENEFIT SPECIALISTS is disclaimed); and AMERICA'S PUB (PUB is disclaimed).

Moreover, even if "FINANCIAL MART" is arbitrary as used in connection with the other services listed in applicant's application, the term does not detract from the primary geographic significance of the mark as whole. See e.g., In re Wada [NEW YORK WAYS GALLERY is primarily geographically deceptively misdescriptive of hand bags, luggage and related goods even if the words "WAYS GALLERY" are arbitrary].

Additionally, although this is an intent-to-use application, there appears to be no question that the services listed in the application will come from the United States of America. Thus, a public association of the services with this country is presumed. Applicant has offered no explanation as to why its various services would not be associated by the purchasing public with the United States of America if sold under the mark AMERICA'S FINANCIAL MART.

Finally, with respect to applicant's contention that the mark AMERICA'S FINANCIAL MART would be viewed by consumers simply as a slogan and not as connoting geographic origin, we recognize that there have been instances in which "AMERICA" or "AMERICAN" has been found to have a non-geographic connotation. However, the applicant's mark does not fit into any of these exceptions.

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This most often occurs in the case of marks where "AMERICA" or "AMERICAN" is used in a nebulous or suggestive manner. See, e.g., *In re Jim Crockett Promotions Inc.*, 5 USPQ2d 1455 (TTAB 1987) [THE GREAT AMERICAN BASH held not primarily geographically descriptive of wrestling exhibitions].

**Decision:** The refusal to register under Section 2(e)(2) is affirmed.