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**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

July 22, 2003
Paper No. 24
GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Cross Country Bank
v.
Cross Country Financial Corp.

Opposition No. 114,039 to application Serial No. 75/387,134
filed on November 10, 1997

Robert W. Whetzel and Thomas H. Kovach of Richards, Layton &
Finger, P.A. for Cross Country Bank.

Paul A. Hoffman of Law Offices of Paul E. Greenwald & Associates
for Cross Country Financial Corp.

Before Hohein, Walters and Bucher, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Cross Country Financial Corp. has filed an application
to register the mark "CROSS COUNTRY FINANCIAL CORPORATION" for
the services of "lease-purchase financing and collection of
retail installment sales contracts and consumer credit
transactions."¹

¹ Ser. No. 75/387,134, filed on March 19, 1997, which alleges a date of
first use anywhere of October 5, 1990 and a date of first use in
commerce of November 1, 1991. The words "FINANCIAL CORPORATION" are
disclaimed.

Cross Country Bank has opposed registration on the ground of priority of use and a hypothetical pleading of likelihood of confusion. Specifically, opposer alleges in its notice of opposition that since July 1, 1996, it has continuously used the mark "CROSS COUNTRY BANK" in connection with banking services; that on July 20, 1997, it filed application Serial No. 75/312,097, which seeks federal registration of such mark for its services; that in Opposition No. 112,717, such application has been opposed by the applicant herein on the basis of priority of use of the mark which is the subject of this proceeding and a likelihood of confusion with the mark of the opposer herein; that while opposer "believes that registration of Opposer's mark will not create any likelihood of confusion," if "it is determined in the Pending Opposition that Opposer's Mark is not entitled to registration ... due to Applicant's mark, then registration of Applicant's mark will damage Opposer and therefore Opposer opposes registration of Applicant's mark"; and that "on information and belief, Opposer's first use date of Opposer's Mark predates Applicant's first use date" for applicant's mark.

Applicant, in its answer, has admitted the allegations of the notice of opposition which constitute a hypothetical pleading of likelihood of confusion, but has denied the remaining salient allegations thereof, including that of priority of use.²

² Although the answer also purports to set forth various affirmative defenses, including equitable defenses such as laches, acquiescence, estoppel and unclean hands, the defenses were not pursued at trial nor argued in applicant's brief. Such defenses, therefore, will not be given further consideration.

The record consists of the pleadings; the file of the opposed application; and, as opposer's case-in-chief, notices of reliance under Trademark Rule 2.122(e) on dictionary definitions, third-party registrations, certain telephone directory listings, excerpts from various other directories, and certificates of good standing issued by the Delaware Secretary of State. Each notice of reliance, in compliance with such rule, expressly indicates, however, that the relevance of the accompanying evidence is that it reflects that the term "cross country" is a merely descriptive and/or primarily geographically descriptive term, notwithstanding that the sole pleaded ground for opposition is the above noted claim of priority of use and likelihood of confusion. Applicant, as evidence in its behalf, took the testimony, with exhibits, of its president and chief executive officer, Christopher J. Lank, to which opposer offered no rebuttal evidence. Briefs have been filed and an oral hearing, attended by counsel for the parties, was held. In addition, just prior to the oral hearing, opposer filed a motion pursuant to Trademark Rule 2.107 and Fed. R. Civ. P. 15(b) "to amend the pleadings to conform to the evidence that has been presented in this matter" so as "to include [mere] descriptiveness and [primary] geographic descriptiveness as bases for ... Opposition." Applicant has opposed the motion.³

Preliminarily, by way of background, although this proceeding had been consolidated with prior filed Opposition No.

³ Applicant's accompanying motion to reopen the time for timely filing its response is granted inasmuch as opposer states in reply thereto that it "will not take issue with ... [the] late filing" and in any

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112,717, that opposition was sustained by the Board, in an order issued on May 4, 2001, pursuant to Trademark Rule 2.135 when the applicant therein (who is the opposer in this proceeding) filed an abandonment of its involved application Ser. No. 75/312,097 without the written consent thereto of the opposer therein (who is the applicant in this proceeding). While the judgment so entered in Opposition No. 112,717 necessarily determined the claim of priority of use and likelihood of confusion in favor of the opposer therein and thereby would serve, under the doctrine of res judicata, as a defense for the applicant herein barring re-litigation of the same claim by the opposer herein, the Board in its May 4, 2001 order nonetheless allowed this proceeding to go forward by resetting the discovery and testimony periods. The Board, in taking such action, noted that in connection with this proceeding it was in receipt of the above mentioned notices of reliance previously filed by opposer. The Board also noted, however, that opposer "has not amended its pleading in Opposition No. 114,039 to add a claim of [mere] descriptiveness or [primary] geographical descriptiveness and [that] the only pleaded ground before the Board is [thus priority of use and] likelihood of confusion." No objection to consideration of the issues of mere descriptiveness and primary geographical descriptiveness was ever raised by applicant until it filed its brief on the case in this proceeding, which objection, opposer asserts, prompted the filing of its pending motion to amend out of "an abundance of caution."

event excusable neglect has been shown. Fed. R. Civ. P. 6(b) and Trademark Rule 2.127(a).

Turning, therefore, to the merits of the contested motion to amend the pleadings to conform to the evidence, opposer points out that TBMP §507.03(a), which cites Fed. R. Civ. P. 15(b), provides that when evidence is objected to "on the ground that it is not within the issues raised by the pleadings, the Board, upon motion, may allow the pleadings to be amended, and will do so freely when the presentation of the merits of the case will be subserved thereby and the objecting party fails to satisfy the Board that the admission of such evidence would prejudice it in maintaining its action or defense upon the merits." We further observe, however, that TBMP §507.03(b) provides that "[i]mplied consent to the trial of an unpleaded issue can be found only where the nonoffering party (1) raised no objection to the introduction of evidence on the issue, and (2) was fairly apprised that the evidence was being offered in support of the issue."

According to opposer, the requested amendment "is appropriate to allow the presentation of the merits" because applicant "has had more than sufficient notice" of the "descriptiveness allegations and ample opportunity to present its case on those issues." Opposer consequently urges that applicant "is unable to demonstrate that amendment will prejudice [applicant] in maintaining its defense." Among other things, opposer asserts that it "seeks an amendment of its Notice of Opposition to restate the allegations already asserted in its express abandonment," maintaining that:

After additional factual investigation and a review of relevant authority, [opposer] concluded that it should abandon its application because "Cross Country" was merely descriptive or primarily geographically descriptive. [Opposer] unequivocally asserted its allegations of descriptiveness in this Opposition when it expressly abandoned its own application on December 20, 2000.

Opposer also argues that, "[i]n further support of the importance of the descriptiveness allegations, [it] ... stated that the evidence submitted in its Notices of Reliance is relevant to the Opposition because it reflects the merely descriptive or primarily geographically descriptive nature of 'Cross Country.'"

Opposer insists, in view thereof, that applicant had sufficient notice of opposer's claims that the term "CROSS COUNTRY" is merely descriptive and/or primarily geographically descriptive of applicant's services and therefore is not prejudiced by opposer's "delay in seeking to formally amend its pleadings." Opposer further contends that applicant had "a full and fair opportunity to present its case on the descriptiveness issues," accurately pointing out that "[t]he discovery period closed on July 15, 2001, and ... [that applicant's] testimony period closed [on] December 21, 2001 -- both well after ... [opposer's] express abandonment of its application on descriptiveness grounds (December 20, 2000) and ... submission of its Notices of Reliance (April 12 [and 20], 2001) alleging descriptiveness. Opposer insists, therefore, that applicant "had ample opportunity to take discovery or introduce evidence of its

own concerning descriptiveness" and that "the interests of full adjudication on the merits support amendment."

Applicant, on the other hand, contends in its response that it is too late for opposer to move to amend the pleadings to conform to the evidence and that allowance of the requested amendment would severely prejudice applicant. However, as to the former, TBMP §507.03(b) provides that "[w]hen issues not raised by the pleadings are tried by the express or implied consent of the parties, the Board will treat them in all respects as if they had been raised in the pleadings. Any amendment of the pleadings necessary to cause them to conform to the evidence and to raise the unpleaded issues may be made upon motion of any party at any time, even after judgment, but failure to so amend will not affect the result of the trial of these issues." Consequently, it is not the failure of opposer to bring its motion sooner than it did which is dispositive; rather, what matters is whether the presentation of the merits of the case will be subserved by allowing the amendment and whether applicant, as the party objecting thereto, fails to satisfy the Board that allowance of the requested amendment would prejudice it in maintaining its action or defense upon the merits of any additional claims.

Applicant asserts that it will be severely prejudiced by allowance of the motion to amend because "the discovery and testimony periods in this proceeding, which were reset several times, are now closed" and that it "was relying on the pleadings (as confirmed by this Board's May 4, 2001 order)." Applicant contends that, if the pleadings had been amended earlier, it

"could have had its President, Christopher Lank, address issues relating to descriptiveness in his testimony deposition."

We concur with opposer that the claims which opposer seeks to raise by its motion were tried by the implied consent of the parties and thus the requested amendment to conform the pleadings to the evidence should be granted. Applicant plainly had full and fair notice of opposer's assertions of its claims that applicant's mark "CROSS COUNTRY FINANCIAL CORPORATION" is merely descriptive and/or primarily geographically descriptive of applicant's services of "lease-purchase financing and collection of retail installment sales contracts and consumer credit transactions," yet offered no objection to consideration thereof until after the trial in this matter had concluded and opposer had filed its initial brief on the case. As previously noted, each of the notices of reliance filed by opposer clearly and explicitly states, as required by Trademark Rule 2.122(e), that the relevance of the evidence which accompanies such notice is that it reflects that the term "cross country" is a merely descriptive and/or primarily geographically descriptive term. The Board's May 4, 2001 order, as also indicated previously, pointed out the receipt of opposer's notices of reliance and, while further noting the absence of any amendment by opposer to add a claim of mere descriptiveness or primary geographical descriptiveness, so that the only pleaded ground herein was a claim of priority of use and likelihood of confusion, reset the discovery and trial dates in this proceeding. Applicant, therefore, had a full and fair opportunity to take discovery with

respect to the additional claims which plainly were being asserted by opposer and to present its own evidence with respect thereto, including possible proof by testimony and exhibits that its mark has acquired distinctiveness and thus is entitled to registration on the Principal Register.

Accordingly, contrary to its contention of prejudice, applicant was fully and fairly apprised of the purpose for which opposer's evidence was being offered and had a full and fair opportunity to meet such evidence. As opposer persuasively observes in its reply to applicant's response:

If [applicant] truly believed such evidence was improper, it had full opportunity to seek clarification at an earlier time through a motion to strike, rather than to wait and complain during the briefing in the matter. Any claimed prejudice to [applicant] is prejudice of its own making, since [applicant] did not raise any objection at the time of [opposer's] offering of evidence on descriptiveness. In any event, [applicant] has fully presented its case on the merits through its extensive briefing on the descriptiveness allegations. Accordingly, because [applicant] had notice, opportunity and briefed the matter, [applicant] has not been prejudiced in the presentation of its defense.

Opposer's motion to amend the pleadings to conform to the evidence is therefore granted inasmuch as presentation of the merits of this case will be subserved thereby and applicant, as the party objecting thereto, has failed to satisfy the Board that allowance of the requested amendment prejudices it in maintaining its defense upon the merits of the additional claims. Trademark Rule 2.107 and Fed. R. Civ. P. 15(b).

With respect to the merits of the claims herein, it is clear that opposer cannot prevail on its originally pleaded claim of priority of use and likelihood of confusion because, as shown by the record, priority of use of the respective marks of the parties lies with applicant rather than opposer. Specifically, the testimony and exhibits presented by applicant's witness, Mr. Lank, establish that applicant, which was incorporated as a California corporation on October 5, 1991, is "a sales finance company that specializes in financing and collecting subprime retail installment sales contracts." (Lank dep. at 7.) As such, it "finances consumer purchases of automobiles and other household items" and "first used the name Cross Country Financial Corporation ... on or before November 1st, 1991 while financing automobiles for customers outside of California." (Id. at 7 and 10, respectively.) Since that date, applicant has continuously used such name "as a service mark in connection with marketing and advertising the company's sales financing services," using the mark on "fliers, mailers, letterhead, business cards, payment books, Yellow Pages advertising, toll-free directory listings, signs ... and numerous other items" including, in recent years, Internet advertising. (Id. at 14.) Applicant's November 1, 1991 date of first use of its service mark "CROSS COUNTRY FINANCIAL CORPORATION" for the services set forth in its involved application is thus earlier than any date on which opposer could arguably rely in this proceeding, including the June 20, 1997

filing date of its now abandoned application Ser. No. 75/312,097 for the mark "CROSS COUNTRY BANK" for "banking services."⁴

The record also fails to substantiate opposer's claims of mere descriptiveness and primary geographic descriptiveness. Opposer, relying principally on one of the dictionary definitions which it submitted of the term "cross-country,"⁵ argues in its initial brief, however, that:

A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ 2d 1009 (Fed. Cir. 1987). The examination of whether or not a mark is merely descriptive requires consideration of the context in which the mark is used or intended to be used in connection with the goods or services. See, e.g., In re Omaha Nat'l Corp., 819 F.2d 1117, 2 USPQ 2d 1859 (Fed. Cir. 1987).

⁴ Counsel for opposer, moreover, acknowledged at the oral hearing that in view thereof opposer does not contest that applicant has prior use of its mark for the services recited in the involved application and that opposer's claim of priority of use and likelihood of confusion therefore fails.

⁵ Of the seven excerpts from various dictionaries, the most pertinent (insofar as the meaning of a word to consumers in the United States is concerned) are the definitions of "cross-country" from (a) Webster's Third New International Dictionary, which defines such term as (1) an adjective meaning "**1** : extending or moving across a country <a cross-country railroad> <a cross-country concert tour> **2 a** proceeding over countryside (as across fields and through woods) and not by roads or paths <a cross-country race> **b** : having to do with cross-country sports <a cross-country champion>," (2) a noun signifying "cross-country sports <interest in cross-county is growing in eastern colleges>; *specif* : a cross-country event (as in skiing, horse racing, distance running)" and (3) an adverb connoting "across the countryside <a river meandering cross-country> : by a course going directly over the countryside <a group of tanks moving cross-country>," and (b) the Random House Dictionary of the English Language, which similarly lists the term as (1) an adjective meaning "**1.** directed or proceeding over fields, through woods, etc., rather than on a road or path: a cross-country race. **2.** from one end of the country to the other: a cross-country flight" and (2) a noun signifying "a cross-country sport or sports: to go out for cross-country."

In the present case, Cross Country is merely descriptive of the characteristic of the scope of financing and consumer credit transactions available to potential customers. The sole reason to pick a name such as Cross Country Financial Corporation is to describe the characteristic or feature of the services offered by Applicant. In accord with In re Omaha Nat'l [Corp.], the Mark CROSS COUNTRY FINANCIAL CORPORATION should be viewed in the context of the use of the Mark by Applicant to promote its financing and consumer credit transactions. Here, "Cross Country" merely describes a feature of the financing services of Applicant -- that these services extend or are movable across the country. Cross Country is defined in Webster's Third New International Dictionary ... as "extending or moving across a country." As the "Cross Country" portion of the CROSS COUNTRY FINANCIAL CORPORATION Mark merely describes a characteristic or feature of the service, such a mark is merely descriptive. See In re Gyulay, 3 USPQ 2d 1009.

Relying, in addition, on its submission of certain telephone directory listings and excerpts from various other directories,⁶ opposer further contends in its initial brief that:⁷

⁶ Other than showing descriptive use of the term "cross country," in the sense of its meaning of a kind of sports activity, as part of the names of entities which would seem to be engaged in such cross-country sports as skiing and running, only a relatively few of the roughly 550 directory listings even arguably demonstrate descriptive use of the term "cross country," in the sense of its connoting something which extends or moves across a country or from one end thereof to the other, in connection with the names of firms which would appear to be providing various services (e.g., "BROWN'S CROSS COUNTRY TRUCK LINE INC.," "CROSS COUNTRY COURIER," "CROSS COUNTRY WIRELESS," "CROSS COUNTRY PIPELINE SUPPLY," "CROSS COUNTRY CONTRACTORS," "CROSS COUNTRY FREIGHT LINE," "CROSS COUNTRY AVIATION," "CROSS COUNTRY TOURS," "CROSS COUNTRY DISTRIBUTING," "CROSS COUNTRY TRUCKING," "CROSS COUNTRY BOAT TRANSPORT," "CROSS COUNTRY TRUCK DRIVING," "CROSS COUNTRY PET TRANSPORTERS," "CROSS COUNTRY VAN LINES," "CROSS COUNTRY EQUINE TRANSPORT," "CROSS COUNTRY COMMUNICATIONS," "CROSS COUNTRY RELOCATION INC." and "CROSS COUNTRY TRANSPORTATION"). However, none of the latter--with the sole exception of several listings for applicant--would seem to involve such services as the kinds of installment sales financing and/or consumer credit transactions rendered by applicant.

In our case, the significance of "Cross Country" can be only descriptive or primarily geographically descriptive. When considering the definition of Cross Country in Webster's Third New International Dictionary, any other significance does not make sense in the context of financing and consumer credit transactions. The only definition with a significance that fits Applicant's use of the Mark is "extending or moving across a country." Selecting "Cross Country" generates an impression of operations throughout the country. The Cross Country Financial Mark will cause customers to think that Applicant's services originate all across the country. Furthermore, many other entities operate using the term "Cross Country" in a primarily geographically descriptive way.

Opposer concludes, in view thereof, that applicant's mark is not registrable absent a showing of acquired distinctiveness.

Moreover, none of the instances in which applicant's name is listed even arguably demonstrates use of the term "cross country" in a descriptive manner.

⁷ Curiously, opposer never refers, in either its briefs on the case or its motion to amend and reply in support thereof, to its submission of various certificates of good standing issued by the Delaware Secretary of State and which, as asserted in the associated notice of reliance thereon, "reflect the use by many entities of the term 'cross country' as a descriptive term or as a primarily geographically descriptive term." Nonetheless, it is pointed out that while, as also stated in the associated notice of reliance, the certificate of good standing for opposer shows "the existence of Cross Country Bank as a Delaware corporation under the name 'Cross Country Bank'" and thus bears upon proof of opposer's standing to bring this proceeding, none of the certificates of good standing demonstrates descriptive use of the term "cross country" as contended by opposer. Moreover, it is noted that except for mentioning in its initial brief the fact that, among other things, it also filed a notice of reliance on several third-party registrations for the mark "CROSS COUNTRY," opposer never argues or otherwise asserts in its initial brief that such evidence serves to establish the claimed descriptiveness of applicant's mark. Instead, only in its motion to amend does opposer advance the argument that such evidence, along with the evidence referred to above, "reflects the merely descriptive or primarily geographically descriptive nature of 'Cross Country.'"

We concur with applicant that, as indicated previously, there is a failure of proof in this case. Specifically, as applicant points out in its brief (*italics in original*):⁸

[Opposer] quotes one of the numerous Webster's Dictionary definitions of the word "cross-country" as "*extending or moving across a country*" and then attempts to argue that [applicant's] mark is merely descriptive because "*Cross Country merely describes a feature of the financing services of Applicant -- that theses services extend or are movable across the country.*" However, this argument makes no sense because it is clear on its face that such a definition is not in any way associated with consumer purchase financing services because these services are not associated with movement and cannot "extend" or "move" in any kind of physical or geographical way. Such a definition can only be descriptive of services associated with a "moving" action such as skiing instruction, airline travel, truck driving schools, etc.

Even assuming *arguendo* that financing services could be associated with "moving", the words "cross country" are still limited in geographic scope because they in no way imply *throughout a country* or *countrywide* in scope. Instead, the words "cross country" simply describe moving from one point in a country to another point in the same country. Thus, it is odd, bizarre and incongruous to attempt to describe financing services that "extend or are movable." Therefore even using the definition [opposer] asserts in support of its ... claim, [applicant's] mark is not merely descriptive.

[Opposer] also ... argue[s] that [applicant's] mark is descriptive because "*Cross Country generates an impression of operations throughout the country.*" In

⁸ While applicant, in such brief, has also raised a host of objections to opposer's notices of reliance and much of the evidence submitted in connection therewith, applicant's objections need not be decided inasmuch as consideration of all of the evidence furnished by opposer still fails to provide proof of opposer's claims.

support of this ... statement, [opposer] again quotes the same Webster's dictionary definition of the term "cross country" as "*extending or moving across a country.*" However, by comparing [opposer's] statement to the Webster's definition, it is obvious that [opposer] has inaccurately broadened the scope of the actual definition by falsely indicating that "cross country" refers to "*throughout the country*" instead of "*across a country.*" The actual definition of "cross country" is limited in geographic scope to only "extending or moving **across** a country" (emphasis added) and in no way implies **throughout** a country or countrywide in scope and, thus, clearly does not encompass an entire country.

....

[Opposer] also ... argue[s] that [applicant's] mark is descriptive because the mark "*will cause customers to think that Applicant's services originate all across the country.*" Once again, [opposer] has ... attempted to broaden the scope of the actual definition The actual definition of "cross country" is limited in geographic scope and the word "all" is not included in that definition. Therefore, [applicant's] mark is not merely descriptive.

Furthermore, besides opposer's improper attempts to twist and stretch one of the several dictionary definitions which it made of record, applicant also correctly notes in its brief that none of the various dictionary definitions of the term "cross-country" has been shown by opposer to be "in any way associated with consumer purchase financing services or with banking and financial services, in general." Consequently, rather than being merely descriptive of any significant feature or characteristic of applicant's services of "lease-purchase financing and collection of retail installment sales contracts" and its "consumer credit transactions," the mark "CROSS COUNTRY

FINANCIAL CORPORATION" is, at most, no more than suggestive of the nationwide availability or scope of operation of such services.

Thus, contrary to opposer's arguments, applicant's mark stands in stark contrast to marks which, for example, consist of or contain such terms as "NATIONAL" or "INTERNATIONAL," which have been found to be merely descriptive. In particular, as set forth in TMEP §1209.03(o):

The terms "NATIONAL" and "INTERNATIONAL" have been held to be merely descriptive of services that are international or nationwide in scope. See *Jefferson Bankshares Inc. v. Jefferson Savings Bank*, 14 USPQ2d 1443 (W.D. Va. 1989) (NATIONAL BANK merely descriptive of banking services); *National Automobile Club v. National Auto Club, Inc.*, 365 F. Supp. 879, 180 USPQ 777 (S.D.N.Y. 1973), *aff'd*, 502 F.2d 1162 (2d Cir. 1974) (NATIONAL merely descriptive of auto club services); *In re Institutional Investor, Inc.*, 229 USPQ 614 (TTAB 1986) (INTERNATIONAL BANKING INSTITUTE for organizing seminars for bank leaders of major countries held incapable); *In re Billfish International Corp.*, 229 USPQ 152 (TTAB 1986) (BILLFISH INTERNATIONAL CORPORATION merely descriptive of corporation involved with billfish on an international scale); *In re National Rent A Fence, Inc.*, 220 USPQ 479 (TTAB 1983) (NATIONAL RENT A FENCE merely descriptive of nationwide fence rental services); *BankAmerica Corp. v. International Travelers Cheque Co.*, 205 USPQ 1233 (TTAB 1979) (INTERNATIONAL TRAVELERS CHEQUE merely descriptive of financial consulting services that are international in scope); *National Fidelity Life Insurance v. National Insurance Trust*, 199 USPQ 691 (TTAB 1978) (NATIONAL INSURANCE TRUST merely descriptive of services of handling administrative matters in locating suitable insurance coverage for attorneys).

Here, nothing in the record establishes that the term "cross-country" is identical in meaning to, or otherwise so synonymous

with the word "national," that applicant's mark would immediately convey a merely descriptive significance to consumers of applicant's services.⁹

As to opposer's remaining claim that applicant's mark is primarily geographically descriptive of applicant's services, we agree with applicant that, as pointed out in its brief (italics and underlining in original):

Pursuant to TMEP sec. 1210.02, "***a mark is primarily geographic if it identifies a real and significant geographic location***, and the primary meaning of the mark is the geographic meaning." Further, pursuant to TMEP sec. 1210.02(a), "***[a] geographic location may be any term identifying a country, city, state, continent, locality, region, area or street***." TMEP sec. 1210.02(a) also states that "[v]ague, geographic terms (e.g., 'Global', 'National',

⁹ We judicially notice, in this regard, that Webster's Third New International Dictionary (1993) at 1505 defines "national" in relevant part as an adjective meaning "1 : of or relating to a nation: as a : of, affecting, or involving a nation as a whole esp. as distinguished from subordinate areas ... b : of, relating to, or affecting one nation as distinguished from several nations or a supranational group ... c : identified with or symbolic of a specific nation ... d : having a size or importance of significance for a nation as a whole ... 2 : NATIONALIST ... 3 : of, having the characteristics of, or being a nationality ... 4 : of, maintained, or sponsored by the government of a nation" Similarly, The Random House Dictionary of the English Language (2d ed. 1987) lists such term in pertinent part as an adjective connoting "1. of, pertaining to, or maintained by a nation as an organized whole or independent political unit: *national affairs*. 2. owned, preserved, or maintained by the federal government: *a national wildlife refuge*. 3. peculiar or common to the whole people of a country: *national customs*. 4. devoted to one's own nation, its interests, etc.; patriotic: *to stir up national pride*. 5. nationalist. 6. concerning or encompassing an entire nation: *a national radio network*. 7. limited to one nation." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n. 7 (TTAB 1981).

'International', or 'World') are not considered to be primarily geographic."

In the present case, [opposer] simply cannot point to any specific geographic location which is described by the words "cross country." The words "cross country" ... do not in any way identify a country, city, state, continent, locality, region, area or street. Further, even assuming arguendo that the word "country" was improperly extracted from the word "cross country", the word "country" is a vague and ambiguous term that is not considered to be primarily geographic. Therefore, [applicant's] service mark, "Cross Country Financial Corporation"[,] is clearly not in any way primarily geographically descriptive of ... [applicant's] consumer purchase financing services.

The sole bit of evidence which, at first glance, might seem to provide some support for opposer's primary geographical descriptiveness claim is the five third-party registrations which it made of record for the mark "CROSS COUNTRY."¹⁰ While such registrations, which are for a variety of services directed chiefly to motorists, including auto club services, emergency police, medical and fire dispatch services, fulfillment services with respect to requests for brochures, emergency roadside services rendered to motor vehicle owners and travel information services provided to motor vehicle owners, indicate that they each issued upon a showing of acquired distinctiveness pursuant to the provisions of Section 2(f) of the Trademark Act, copies of

¹⁰ Although opposer, by the same notice of reliance, also submitted a sixth third-party registration for the mark "CROSS COUNTRY," which issued on the Supplemental Register for goods identified as "shoes," it is obvious that such registration has no probative value as to the claims of descriptiveness with respect to applicant's mark inasmuch as the term "CROSS COUNTRY" is being used in its sense of having to do with the cross-country sport of running.

the file histories were not provided. Consequently, and because it is not readily apparent from the face of each registration, there simply is no way of knowing why the term "CROSS COUNTRY" was seemingly considered unregistrable in each instance without resort to a claim of acquired distinctiveness. Moreover, four of these registrations issued to the same registrant, with the underlying applications having been examined by the same Examining Attorney, while the fifth such registration, although examined at the application stage by a different Examining Attorney, appears to have issued to a predecessor in interest to the owner of the other four registrations.¹¹ Additionally, as applicant accurately observes in its brief, none of these registrations is for services which, on their face, "are even close to [applicant's] consumer purchase financing services," nor are they "even close to banking and financial services, in general."

In view of the above, it is plain that such evidence is speculative and of virtually no probative value. It thus is insufficient to establish opposer's claim that applicant's "CROSS COUNTRY FINANCIAL CORPORATION" mark is primarily geographically (or otherwise) descriptive of applicant's services of providing "lease-purchase financing and collection of retail installment

¹¹ In particular, four of the registrations issued to The Cross Country Group, LLC, which is indicated to be a Massachusetts limited liability company having an address of 4040 Mystic Valley Parkway, Boston, MA 02155. The fifth registration, which registered over ten years prior to the other four, issued to Cross Country Motor Club, Inc., which is indicated to be a Massachusetts corporation having an address of 270 Mystic Avenue, Medford, MA 02155. All five registrations claim ownership of another third-party registration (which was not made of record), namely, Reg. No. 1,320,699.

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sales contracts and consumer credit transactions." Given the absence from the record of any other evidence which serves to support opposer's descriptiveness claims, it is clear that opposer has not met its burden of proof and that the opposition must fail.

Decision: The opposition is dismissed.