To:	Big Canoe Company, LLC (ipatl@alston.com)
Subject:	TRADEMARK APPLICATION NO. 78945130 - BIG CANOE - N/A
Sent:	10/25/2006 4:11:50 PM
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/945130

APPLICANT: Big Canoe Company, LLC

78945130

CORRESPONDENT ADDRESS:
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Alston & Bird LLP
1201 W. Peachtree Street
Atlanta GA 30309-3424

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: BIG CANOE

CORRESPONDENT'S REFERENCE/DOCKET NO : N/A

CORRESPONDENT EMAIL ADDRESS:
ipatl@alston.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at http://tarr.uspto.gov/, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/945130

The assigned examining attorney has reviewed the referenced application and determined the following.

Search Results

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02. However, the registration of application is refused under the following ground(s).

2(e)(2) - Geographically Descriptive Refusal

Registration is refused because the mark is primarily geographically descriptive of the origin of applicant's goods and/or services. Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2); TMEP §§1210.01(a) and 1210.04 *et seq*.

A three-part test is applied to determine whether a mark is primarily geographically descriptive of the goods and/or services within the meaning

of Trademark Act Section 2(e)(2):

(1) the primary significance of the mark must be geographic, i.e., the mark names a particular geographic place or location;
(2) purchasers would be likely to make a goods-place or services-place association, i.e., purchasers are likely to believe the goods or services originate in the geographic location identified in the mark; and
(3) the goods and/or services originate in the place identified in the mark.

TMEP §1210.01(a); *See In re MCO Properties, Inc.*, 38 USPQ2d 1154 (TTAB 1995); *In re California Pizza Kitchen,* 10 USPQ2d 1704 (TTAB 1989).

The attached web pages and applicant's own specimen show that the primary significance of the term "BIG CANOE" in the mark is the name of a geographic location. Purchasers are likely to believe the goods and/or services originate in that geographic location because the specimen indicates that the goods and/or services are provided there. Thus there is a presumed services-place association in this case. *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001); *In re U.S. Cargo, Inc.*, 49 USPQ2d 1702 (TTAB 1998); *In re Carolina Apparel,* 48 USPQ2d 1542 (TTAB 1998); *In re Chalk's International Airlines Inc.* , 21 USPQ2d 1637 (TTAB 1991); *In re California Pizza Kitchen,* 10 USPQ2d 1704 (TTAB 1989); *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848 (TTAB 1982); TMEP §1210.04.

When the geographic significance of a term is its primary significance and the geographic place is neither obscure nor remote, the goods/place or services/place association will ordinarily be presumed from the fact that the applicant's goods or services originate in the place named in the mark. *In re JT Tobacconists*, 59 USPQ2d 1080 (TTAB 2001) (MINNESOTA CIGAR COMPANY primarily geographically descriptive of cigars); *In re Chalk's International Airlines Inc.* , 21 USPQ2d 1637 (TTAB 1991) (PARADISE ISLAND AIRLINES held primarily geographically descriptive of the transportation of passengers and goods by air); *In re California Pizza Kitchen Inc.,* 10 USPQ2d 1704 (TTAB 1988) (CALIFORNIA PIZZA KITCHEN held primarily geographically descriptive of restaurant services).

Remoteness or obscurity is determined from the perspective of the average American consumer. *See In re Societe Generale des Eaux Minerales de Vittel, S.A.,* 824 F.2d 957 3 USPQ2d 1450 (Fed. Cir. 1987) (VITTEL and design held not primarily geographically descriptive of cosmetic products because of lack of goods/place association between the goods and the applicant's place of business in Vittel, France). However, the significance of the term is determined not in the abstract, but from the point of view of the consumers of the particular goods or services identified in the application. *In re MCO Properties Inc.*, 38 USPQ2d 1154 (TTAB 1995) (FOUNTAIN HILLS held primarily geographically descriptive of real estate development services rendered in Fountain Hills, Arizona, where the record showed that Fountain Hills was the name of the town where the applicant was located and rendered its services, and that the purchasers who came in contact with the mark would associate that place with the services).

Although the trademark examining attorney has refused registration on the Principal Register, applicant may respond to the stated refusal(s) under 2(e)(2) by amending the application to seek registration on the Supplemental Register. Trademark Act Section 23, 15 U.S.C. §1091; 37 C.F.R. §§2.47 and 2.75(a); TMEP §§801.02(b), 815 and 816 *et seq*.

Although Supplemental Register registration does not afford all the benefits of registration on the Principal Register, it does provide the following advantages:

- The registrant may use the registration symbol ®;
- The registration is protected against registration of a confusingly similar mark under §2(d) of the Trademark Act, 15 U.S.C. §1052(d);
- The registrant may bring suit for infringement in federal court; and
- The registration may serve as the basis for a filing in a foreign country under the Paris Convention and other international agreements.

Finally, although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Section 2(f) -- Acquired Distinctiveness

The record indicates that applicant has used its mark for a long time; therefore, applicant may seek registration on the Principal Register under Trademark Act Section 2(f), 15 U.S.C. §1052(f), based on acquired distinctiveness. To amend the application to Section 2(f) based on five years use, applicant should submit the following written statement claiming acquired distinctiveness, if accurate:

> The mark has become distinctive of the goods and/or services through applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

Applicant must verify this statement with a notarized affidavit or a signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §2.41(b); TMEP §1212.05(d).

The burden of proving that a mark has acquired distinctiveness is on applicant. *See Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.,* 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988); *In re Meyer & Wenthe, Inc.*, 267 F.2d 945, 122 USPQ 372 (C.C.P.A. 1959). Applicant must establish that the purchasing public has come to view the proposed mark as an indicator of origin. Allegations of sales and advertising expenditures cannot per se establish that a term has acquired significance as a mark. It is necessary to examine the advertising material to determine how the term is used, the commercial impression created by such use, and the significance the term would have to prospective purchasers. The ultimate test in determining acquisition of distinctiveness under Trademark Act Section 2(f) is not applicant's efforts, but applicant's success in educating the public to associate the claimed mark with a single source. *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); *Congoleum Corp. v. Armstrong Cork Co.,* 218 USPQ 528 (TTAB 1983); *Bliss & Laughlin Industries Inc. v. Brookstone Co.*, 209 USPQ 688 (TTAB 1981).

Section 2(f) – Prior Registration

Because applicant has two prior registrations for similar marks for similar goods and services, applicant may choose to register the mark on the Principle Register under 2(f) based on prior registration No. 1521251.

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HOW TO RESPOND TO THIS OFFICE ACTION:

- ONLINE RESPONSE: You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at http://www.uspto.gov/teas/index.html. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE**.
- REGULAR MAIL RESPONSE: To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at http://tarr.uspto.gov.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at http://portal.uspto.gov/external/portal/tow.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at http://www.uspto.gov/main/trademarks.htm

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

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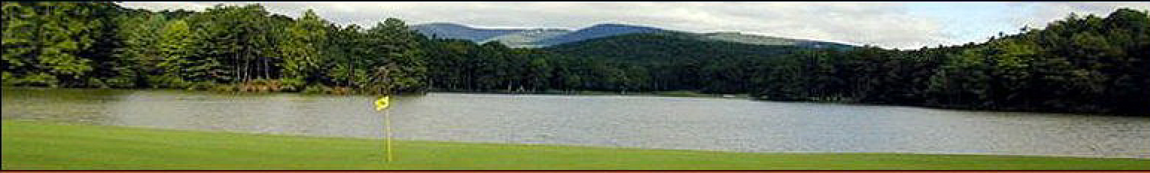

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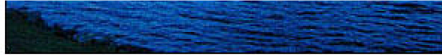

Big Canoe is a private community offering golf real estate in a private golf community. So, if you're looking for a mountain home for sale, a Georgia Mountain Cabin or some Georgia Mountain Property, plan a visit to Big Canoe, Georgia now.

Big Canoe, GA also has lakefront real estate located on three lakes. This North Georgia Mountain Resort community is also considered one of the finest Georgia Retirement Communities in the Southeast. Real Estate in Big Canoe is North Georgia's premier golf community.

We at Terrell Griffin Realtors, hope you'll come see our Georgia Mountain Getaway. The seasons are mild, the people are friendly. Some have come for a weekend and stayed for a lifetime.

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Big Canoe, Georgia

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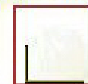

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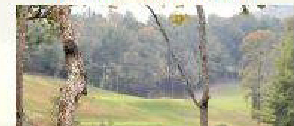

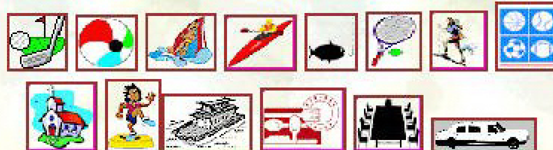

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Big Canoe Georgia is composed of thousands of acres of pristine North Georgia Real Estate mountain property, with seven mountains with elevations up to 3,000+ feet. Big Canoe Georgia is the Atlanta

property, with seven mountains with elevations up to 3,000+ feet. Big Canoe Georgia is the Atlanta area's finest mountain community, conveniently located about one hour north of Atlanta. The private school, Wildwood Christian Academy, is located within one mile of Big Canoe's Georgia main gate.

Big Canoe Georgia has four spectacular seasons: mild winters, cool summers, lovely springs and colorful autumns. Many of the amenities include 27 holes of championship golf, fitness center, tennis and fishing. Because the environment of Big Canoe Georgia is so extraordinary, a wealth of year round outdoor amenities exists for the privileged residents.

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