



## Popular Trends in Geographic Naming Preclude Trademark Enforcement

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The Fourth Circuit ruled that “OBX” is a generic or geographically descriptive designation for “Outer Banks” in *OBX-Stock, Inc. v. Bicast, Inc.*, Case No. 2:04-cv-000450BO (E.D.N.C.), *aff’d* Case Nos. 06-1769, 06-1887 (4th Cir. 2009). On appeal from the Eastern District of North Carolina’s decision against enforcement of the OBX marks by OBX-Stock, Inc., the panel consisted of Judges Niemeyer, Agee, and O’Grady (US District Judge for the Eastern District of Virginia, sitting by designation). OBX-Stock, whose founder claims to have invented “OBX” as an abbreviation for “Outer Banks,” filed suit for trademark infringement against Bicast, Inc. based on its sale of stickers with the text “OB Xtreme.”

Prompted by similar abbreviations on automobile stickers in Europe, OBX-Stock originally developed the OBX mark, intending that it become a popular designation for the Outer Banks. However, fame is a double-edged sword. OBX quickly came to be used by many businesses and residents of the Outer Banks to refer to the geographical area, with local headlines reading “An OBX Institution Says Goodbye” and “Contest winner fell under OBX spell.” By 2005, thousands of website domain names incorporated OBX into their name, from [obxnews.com](http://obxnews.com) to [obxnightclubs.com](http://obxnightclubs.com).

The Court found it pure fortune that OBX-Stock had obtained federal registrations for its OBX marks, because the Patent & Trademark Office (“PTO”) had repeatedly rejected OBX-Stock’s applications until North Carolina’s congressional delegation got involved to get four of the OBX-Stock marks registered with the PTO for various entertainment and merchandise related goods and services.

In finding that OBX was a geographically descriptive or generic term for Outer Banks, the

district court had relied on the lack of evidence showing that “any consumer associates OBX with Plaintiff’s products or Plaintiff itself.” The Fourth Circuit agreed, finding that the lack of any secondary meaning associated with the OBX marks, the fact that OBX-Stock actually intended that OBX would suggest the Outer Banks, and the overwhelming evidence that OBX had actually become an everyday abbreviation for the Outer Banks would prevent OBX-Stock from claiming any exclusive interest in the geographically descriptive or generic designation.

## **Related People**

- Amy G. Pruett – 434.951.5720 – [apruett@williamsmullen.com](mailto:apruett@williamsmullen.com)