

To: Colin Newberry(Colin@haylegal.com)
Subject: U.S. Trademark Application Serial No. 97119779 - ALBERT FREAKING TEXAS
Sent: August 23, 2022 04:59:38 PM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[AHDtx](#)
[AHDtexas](#)
[TSHAalbert](#)
[TEalbert](#)
[APP1albert1892](#)
[APP2albert1892.jpg](#)
[dom1](#)

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97119779

Mark: ALBERT FREAKING TEXAS

Correspondence Address:

COLIN NEWBERRY
HAY LEGAL
611 W 5TH ST SUITE 300
AUSTIN TX 78701 UNITED STATES

Applicant: Albert Ice Dance Partners, LLC

Reference/Docket No. N/A

Correspondence Email Address: Colin@haylegal.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office

action.

Issue date: August 23, 2022

The application has been reviewed by the assigned examining attorney.

Summary of Issues

Applicant must respond timely and completely to the issues below:

1. Disclaimer Required
2. Specimen Shows Ornamental Use in International Class 16 - Registration Refused
3. Drawing and Specimen Do Not Match in International Class 16 - Registration Refused
4. Applicant's Domicile Address Required

15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search Results

The trademark examining attorney has searched the USPTO database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

1. Disclaimer Required

Applicant must disclaim the wording "ALBERT" and "TEXAS" because it is primarily geographically descriptive of the origin of applicant's goods and/or services. *See* 15 U.S.C. §1052(e)(2); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1451-52 (Fed. Cir. 1987); TMEP §§1210.01(a), 1210.06(a), 1213.03(a).

The attached evidence from <https://www.tshaonline.org/handbook/entries/albert-tx> and <http://www.texasescapes.com/TexasHillCountryTowns/Albert-Texas.htm> shows that "ALBERT" is a town in Texas. "TEXAS" is a state in the southern United States. *See* attached definition from the online American Heritage Dictionary. In this case, the goods and services originate in Albert, Texas.. Thus, "ALBERT" and "TEXAS" identify a generally known geographic place or location. *See* TMEP §§1210.02 *et seq.*

The goods and/or services for which applicant seeks registration originate in this geographic place or location as shown by the attached from applicant's website at <https://www.alberttexas.com/> listing applicant's address as "Albert-Stonewall, TX."^[1] *See* TMEP §1210.03.

Because the goods and/or services originate in this place or location, a public association of the goods and/or services with the place is presumed. *See In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1858 (TTAB 2014) (citing *In re Spirits of New Merced, LLC*, 85 USPQ2d 1614, 1621 (TTAB 2007)); TMEP §§1210.02(a) 1210.04.

Applicant may respond to this issue by submitting a disclaimer in the following format:

No claim is made to the exclusive right to use “ALBERT” and “TEXAS” apart from the mark as shown.

For an overview of disclaimers and instructions on how to provide one using the Trademark Electronic Application System (TEAS), see the [Disclaimer webpage](#).

2. Specimen Shows Ornamental Use in International Class 16 - Registration Refused

Registration is refused because the applied-for mark as used on the specimen of record is merely a decorative or ornamental feature of the goods and, thus, does not function as a trademark to indicate the source of applicant’s goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127; *see In re Villeroy & Boch S.A.R.L.*, 5 USPQ2d 1451, 1454 (TTAB 1987); TMEP §§904.07(b), 1202.03 *et seq.*

Whether a designation functions as a mark depends on the commercial impression it makes on the relevant public; that is, whether purchasers would likely regard it as a source-indicator for the goods. *See In re Keep A Breast Found.*, 123 USPQ2d 1869, 1879 (TTAB 2017) (quoting *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010)); TMEP §1202. The specimen and any other relevant evidence of use is reviewed to determine whether an applied-for mark is being used as a trademark. *In re Bose Corp.*, 546 F.2d 893, 897, 192 USPQ 213, 216 (C.C.P.A. 1976); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1459 (TTAB 1998).

In this case, the mark as shown on the specimen would be perceived as merely a decorative or ornamental feature of the goods because it appears in large type and covers a large portion of the surface of the sticker. The size, location, dominance, and significance of the alleged mark as used on the goods are all relevant factors in determining the commercial impression of the applied-for mark. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1403 (TTAB 2018) (quoting *In re Hulting*, 107 USPQ2d 1175, 1178 (TTAB 2013)); *In re Lululemon Athletica Can. Inc.*, 105 USPQ2d 1684, 1687 (TTAB 2013) (quoting *In re Right-On Co.*, 87 USPQ2d 1152, 1156 (TTAB 2008)); TMEP §1202.03(a).

In appropriate circumstances, applicant may overcome this refusal by satisfying one of the following options:

- (1) Submit a different specimen (a verified [“substitute” specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application (or prior to the filing of an amendment to allege use) and (b) shows proper trademark use for each international class identified in the application or amendment to allege use.
- (2) Amend to the [Supplemental Register](#), which is a second trademark register for marks not yet eligible for registration on the Principal Register, but which may become capable over time of functioning as source indicators.
- (3) Claim acquired distinctiveness under Trademark Act Section 2(f) by submitting [evidence](#) that the applied-for mark has become distinctive of applicant’s goods; that is, proof that applicant’s extensive use and promotion of the mark has allowed consumers now directly to associate the mark with applicant as the source of the goods.
- (4) Submit evidence that the applied-for mark is an [indicator of secondary](#)

[source](#); that is, proof that the mark is already recognized as a source indicator for *other* goods or services that applicant sells/offers.

(5) Amend the filing basis to [intent to use under Section 1\(b\)](#). This option will later necessitate additional fee(s) and filing requirements.

For an overview of the response options above and instructions on how to satisfy each option online using the Trademark Electronic Application System (TEAS) form, see the [Ornamental Refusal webpage](#).

Applicant is advised that options 1-4 above do not resolve the matching issue below.

3. Drawing and Specimen Do Not Match in International Class 16 - Registration Refused

Mark shown on drawing does not match mark on specimen. Registration is refused because the specimen does not show the mark in the drawing in use in commerce in International Class(es) 16, which is required in the application or amendment to allege use. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(g)(i). The mark appearing on the specimen and in the drawing must match; that is, the mark in the drawing “must be a substantially exact representation of the mark” on the specimen. *See* 37 C.F.R. §2.51(a)-(b); TMEP §807.12(a).

The drawing of the mark is "ALBERT FREAKING TEXAS" while the specimen shows the mark incorporated into the phrase "I'M ON MY WAY TO ALBERT FREAKIN' TEXAS" and with an apostrophe instead of the "G". Applicant has thus failed to provide the required evidence of use of the mark in commerce. *See* TMEP §807.12(a).

Response options. Applicant may respond to this refusal by satisfying one of the following:

(1) **Submit a different specimen** (a verified [“substitute” specimen](#)) for each applicable international class that (a) shows the mark in the drawing in actual use in commerce for the goods and/or services in the application or amendment to allege use, and (b) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use.

Examples of specimens. Specimens for goods include a photograph of (1) the actual goods bearing the mark; (2) an actual container, packaging, tag or label for the goods bearing the mark; or (3) a point-of-sale display showing the mark directly associated with the goods. *See* 37 C.F.R. §2.56(b)(1), (c); TMEP §904.03(a)-(m). A webpage specimen submitted as a display associated with the goods must show the mark in association with a picture or textual description of the goods and include information necessary for ordering the goods. TMEP §904.03(i); *see* 37 C.F.R. §2.56(b)(1), (c).

Any webpage printout or screenshot submitted as a specimen must include the webpage’s URL and the date it was accessed or printed on the specimen itself, within the TEAS form that submits the specimen, or in a verified statement under 37 C.F.R. §2.20 or 28 U.S.C. §1746 in a later-filed response. *See* 37 C.F.R. §2.56(c); TMEP §§904.03(i), 1301.04(a).

(2) **Submit a request to amend the filing basis** to [intent to use under Section](#)

[1\(b\)](#) (which includes withdrawing an amendment to allege use, if one was filed), as no specimen is required before publication. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen.

The USPTO will not accept an amended drawing submitted in response to this refusal because the changes would materially alter the drawing of the mark in the original application or as previously acceptably amended. *See* 37 C.F.R. §2.72(a)-(b); TMEP §807.14. Specifically, adding the wording "I'M ON MY WAY TO" would change the impression to be a phrase indicating a person's actions.

For more information about drawings and instructions on how to satisfy these response options using the online Trademark Electronic Application System (TEAS) form, see the [Drawing webpage](#).

4. Applicant's Domicile Address Required

Applicant must clarify its domicile street address because the domicile address of record identifies “c/o” or in “care of” another party’s address and does not appear to be applicant’s permanent legal place of residence or principal place of business. *See* 37 C.F.R. §§2.11(b), 2.189; TMEP §601.01(b)(1). The application lists the same address for the applicant and the attorney of record, and the attached from <https://haylegal.com/contact-us/> shows that the address "611 W 5th St Suite 300 Austin TX 78701" is the address of The Hay Legal Group, PLLC. A domicile address must identify either (1) the permanent legal place of residence, which is the place an individual applicant resides and intends to be the applicant’s principal home; or (2) the principal place of business, which is the juristic applicant’s headquarters where its senior executives or officers ordinarily direct and control the entity’s activities. *See* 37 C.F.R. §2.2(o)-(p); TMEP §803.05(a). All applications must include the applicant’s domicile address, which is required for a complete application. *See* 37 C.F.R. §§2.22(a)(1), 2.32(a)(2), 2.189.

In this case, the application record lists applicant as a juristic entity and specifies applicant’s domicile as “c/o” or in “care of” another party’s address. In most cases, an address that is listed as “c/o” or in “care of” another party’s address is not acceptable as a domicile address because it does not identify the location of applicant’s headquarters where the entity’s senior executives or officers ordinarily direct and control the entity’s activities. *See* 37 C.F.R. §2.2(o)-(p); TMEP §601.01(b)(1).

Response options. Applicant must provide its domicile street address. *See* 37 C.F.R. §2.32(a)(2), 2.189; TMEP §803.05. Alternatively, applicant may provide (1) documentation showing that the listed address is, in fact, applicant’s domicile, or (2) a detailed explanation supporting that applicant has no fixed physical address. *See* 37 C.F.R. §2.11(b); TMEP §601.01(b)-(b)(1).

To provide applicant’s domicile street address. After opening the correct Trademark Electronic Application System (TEAS) response form and entering the serial number, (1) answer “yes” to question 5 and click “Continue;” (2) on the “Owner Information” page, in the “Domicile Address” field, uncheck the box stating the domicile and mailing address are not the same; and (3) below the checkbox provide applicant’s domicile street address. Applicant’s domicile street address will be hidden from public view if it is entered into the “Domicile Address” field. However, any street address listed in the “Mailing Address” field will be publicly viewable.

To provide documentation to support applicant’s domicile address. Applicant should provide the most recent documentation showing that the address is the applicant’s business headquarters, for example one of the following: (1) the most recent final annual or quarterly report or other similar report; or (2) a current, valid signed rental, lease, or mortgage agreement for office space. TMEP

§601.01(b)-(b)(1); *see* 37 C.F.R. §2.11(b). Submitted documentation must show the name, listed domicile address, and the date of the document but should redact other personal and financial information.

To provide this documentation, open the correct TEAS response form and enter the serial number, answer “yes” to question 3, and on the “Additional Statement(s)” page, below the “Miscellaneous Statement” field, click the button below the text box to attach documentation to support the U.S. street address.

To provide a detailed explanation that applicant has no fixed physical address. If applicant has no physical headquarters where its senior executives or officers ordinarily direct and control the business (e.g., because the business is conducted virtually), applicant should state for the record that applicant has no fixed physical address and provide a detailed explanation of the circumstances.

To provide this explanation, open the correct TEAS response form and enter the serial number, answer “yes” to question 3, and on the “Additional Statement(s)” page, in the “Miscellaneous Statement” field, enter the referenced explanation in the text box.

Response Information

Please call or email the assigned trademark examining attorney with questions about this Office action.

How to respond. [Click to file a response to this nonfinal Office action.](#)

/April Roach/
April Roach
Trademark Examining Attorney
Law Office 115
(571) 272-1092
april.roach@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant’s ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.

- If needed, find [contact information for the supervisor](#) of the office or unit listed in the signature block.

End Notes

1. See attached definition from the online American Heritage Dictionary showing "TX" is an abbreviation for "Texas."



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THE USAGE PANEL

The Usage Panel is a group of nearly 200 prominent scholars, creative writers, journalists, diplomats, and others in occupations requiring mastery of language. Annual surveys have gauged the acceptability of particular usages and grammatical constructions.

THE PANELISTS

TX

abbr.
Texas

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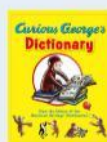
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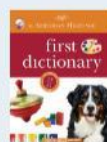
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THE PANELISTS

Tex·as (tĕk'səs) Abbv. TX or Tex.

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A state of the south-central United States. It was admitted as the 28th state in 1845. Explored by the Spanish in the 1500s and 1600s, the region became a province of Mexico in the early 1800s. Texans won their independence in 1836 after a gallant but losing stand at the Alamo in February and a defeat of Santa Anna's forces at the Battle of San Jacinto (April 21). Denied admission as a state by antislavery forces in the US Congress, the leaders of Texas formed an independent republic that lasted until 1845. Austin is the capital.

Tex'an adj. & n.

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tex·as (tĕk'səs)

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n.

A structure on a river steamboat containing the pilothouse and the officers' quarters.

[After **Texas** (from the fact that steamboat cabins were named after states and the officers' quarters were the largest).]

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Albert, TX

By: [Martin Donell Kohout](#)

Type: General Entry

Published: 1952

Updated: November 1, 1994

ALBERT, TX. Albert is on Williams Creek sixteen miles southeast of Fredericksburg and one mile west of the Blanco county line in southeastern Gillespie County. The earliest known settlers in the area were George Cauley, Ben White, Sr., and a man named Jacobs. The town dates from 1877, when Fritz Wilke, George Maenius, and John Petri moved from Fredericksburg seeking new grazing lands for their cattle. Wilke, a blacksmith, bought his land from a man named Elmeier, who was murdered in a robbery several years later. The town was originally called Martinsburg after an early settler and was a stop on the Fredericksburg-Blanco stage route. The Martinsburg post office operated from 1877 to 1886, when mail was routed through nearby Hye in Blanco County. In 1892, however, Martinsburg got a new post office and a new name, thanks to Albert Luckenbach, who sold his store in Luckenbach, moved to Martinsburg, and opened a new post office, which he registered as Albert. The first local school was established in 1891, and in 1897 postmaster Otto Schumann opened the town's first store. The Albert Echo, a singing society, was founded the following year. In 1900 a new school building was erected; there the young [Lyndon Baines Johnson](#) was enrolled for a year. A local Lutheran mission was established in 1902 and eventually grew into what was often called the Lutheran Church of Stonewall, which Johnson attended. Albert had fifty residents in 1925, four in 1964, and twenty-five in 1972. By 1985 the store had been torn down, the school was a community club, and the town's dance hall was partitioned and used for storage; Albert still had twenty-five residents and two businesses. The reported population in 1990 and again in 2000 was twenty-five.

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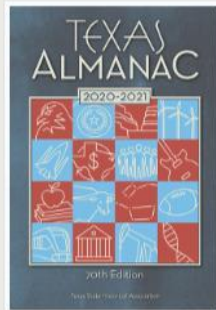
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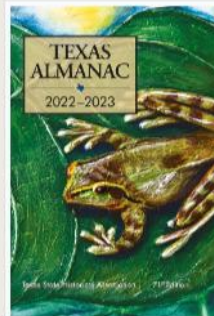
[Published](#)

Kathleen Bauer, "Settlement and Progress of the Albert Community," *Junior Historian*, September 1968.

Related Book(s):



[Texas Almanac 2020-2021](#) [↗](#)



[Texas Almanac 2022-2023](#) [↗](#)



Town Fields

Has post office: No

Is Incorporated: No

Belongs to

Gillespie County

Associated Names

Place

Albert

Currently Exists

Yes

Place Type

Town

USGS ID

1377922

Associated Names

Martinsburgh

Williams Creek

Coordinates

Latitude: 30.19381540°

Longitude: -98.60169580°

Population Counts

People	Year
25	2014



Adoption Status: ☒

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1 Mile W of the [Blanco County](#) Line
16 Miles SE of [Fredericksburg](#) the county seat
SE of [Stonewall](#)
Population: (Estimated at 25 since 1972)

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Albert city limits on FM 1623.
Photo courtesy [Terry Jeanson](#), November 2007
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History in a Pecan Shell

Settlers from [Fredericksburg](#) moved here around 1877 in

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search of greener pastures for their livestock. The town was originally named **Martinsburg** and was on the Blanco-Fredericksburg stage line.

Martinsburg had a post office from 1877 to 1886, when the mail was rerouted through [Hye](#) in [Blanco County](#). But when Albert Luckenbach, (see [Luckenbach, Texas](#)) moved here after selling his store there, he applied for a post office under his first name. It was approved in 1892. In a rare switch of priorities, Albert got its post office five years before it opened its first store (1897).

A new school replaced an earlier building in 1900. Lyndon Baines Johnson was a student here, albeit for only one year. From 50 residents in 1925, it reached rock-bottom in the mid 1960s with only four residents. In the early 1970s when [Luckenbach](#) was finally being appreciated as an endangered [Hill Country](#) "lifestyle," Albert, Texas had increased its population to 25. The store was demolished in the 1980s, and the old school put to another use.

The population figure of 25 has been in use ever since and the 13-acre town became a single property. In November of 2007, the town was put up for auction with a minimum acceptance price of 2.5 million.

On November 24th, 2007, it was reported that "someone in Italy" had won the town with a bid of \$3.8 million.



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Albert Dance Hall
Photo courtesy [Michael Barr](#), June 2019
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Albert Ice House

Photo courtesy [Michael Barr](#), June 2019

[Drinking Beer Under the Trees at Albert](#) by Michael Barr

A hot summer day in the Texas Hill Country can give Lucifer a heat rash, but in Albert, where the beer is cold, the music is lively and a gentle breeze stirs the air under the giant oak trees behind the Albert icehouse, even a sultry Texas afternoon can be downright pleasant.... [more](#)



The Williams Creek School, aka the Albert School, was once attended by a young Lyndon B. Johnson
Recorded Texas Historic Landmark
- [Terry Jeanson](#), November 2007 photo



WILLIAMS CREEK SCHOOL
 ESTABLISHED TO SERVE THE RURAL ALBERT
 COMMUNITY, THE WILLIAMS CREEK SCHOOL,
 ALSO KNOWN AS THE ALBERT SCHOOL,
 BEGAN IN 1890-91 NEAR THE CREEK. IN 1897,
 TRUSTEES APPROVED CONSTRUCTION OF A
 SCHOOLHOUSE AT THIS SITE. THEY

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YOUNG LYNDON BAINES JOHNSON, AN
 AREA NATIVE, ATTENDED THE SCHOOL,
 WHICH MERGED WITH STONEWALL IN 1950,
 AND THE BUILDING HAS SINCE PROVIDED
 SPACE FOR A COMMUNITY CLUB, WHICH
 MEETS REGULARLY, AS WELL AS OTHER LOCAL
 EVENTS.

RECORDED TEXAS HISTORIC LANDMARK - 2002

Williams Creek School Marker
 Photo courtesy [Terry Jeanson](#), November 2007
 More [Texas Schoolhouses](#)

Historical Marker: 5501 South RR 1623

Williams Creek School

Established to serve the rural Albert community, the Williams Creek School, also known as the Albert School, began in 1890-91 near the creek. In 1897, trustees approved construction of a stone schoolhouse at this site. They enlarged the school to two rooms in 1922, constructing a frame addition clad in brick-faced metal siding. A dogtrot separates the two main rooms, and the original bell tower became a central feature. For one year, the young Lyndon Baines Johnson, an area native, attended the school, which merged with [Stonewall](#) in 1950, and the building has since provided space for a community club, which meets regularly, as well as other local events.

Recorded Texas Historic Landmark - 2002



Downtown Albert

Photo courtesy [Terry Jeanson](#), November 2007





Riders of beast and machine congregate in Albert most weekends.

- [Terry Jeanson](#), November 2007 photo



Photo courtesy [Terry Jeanson](#), November 2007

[[Drinking Beer Under the Trees at Albert](#) by Michael Barr]

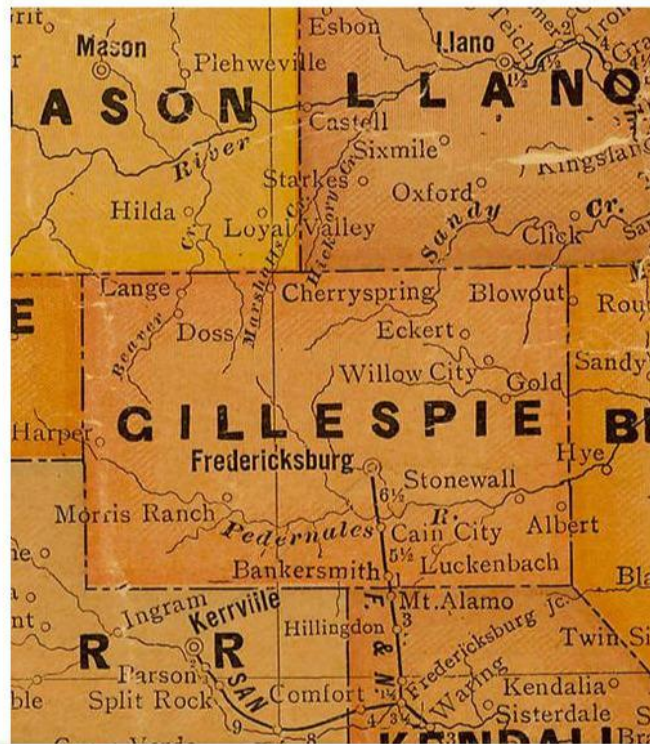
Historical Marker: 6141 South Ranch Road

Wilke Cemetery at Albert, Texas

This burial ground served the rural community of Albert (originally Martinsburg), which was named for Albert Luckenbach, who opened a new post office in the town in

1892. Blacksmith and rancher Friedrich August Wilke, Sr., a native of Germany, conveyed this property for cemetery use in 1907. The first burial was of Constantine A. Kleinert (1892 - 1894), who was reinterred from a ranch that year. Cemetery features include interior fencing, Masonic gravestones and extensive curbing. In 1980, the Wilke Cemetery of Albert, Texas Association formed. Today, the cemetery association continues to maintain the burial ground, which as a vestige of the Albert Community, serves as a reminder of the area's early pioneers.
2010

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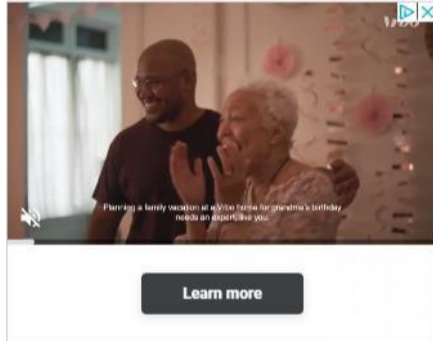
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In 1892, when Albert and Minnie Luckenbach sold their store in Luckenbach and moved 20 miles east to Martinsburg, the little town of Martinsburg was renamed "Albert". The first local school was established in 1891, and in 1897, then Postmaster Otto Schumann opened the town's first general store. By 1900, a new school building was erected that the young LBJ would attend.

The Albert Dance Hall was built in 1922 by Max Beckman, and provided the community a place for Saturday night dances and social gatherings. It featured German brass bands rotating between the Luckenbach, Hye and Weinheimer Dance Halls of the time.

Located just south of Highway 290, halfway between Fredericksburg and Johnson City, the tradition of community gatherings and dancing continues. We're always happy to see familiar faces or make a new friend, so stop on by and enjoy a little taste of Texas tradition and a cold beer or cocktail while you're at it. We've got live music most nights and our Icehouse is open everyday!

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CONTACT

(830) 644-2042
5435 S. R.R. 1623
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info@alberttexas.com



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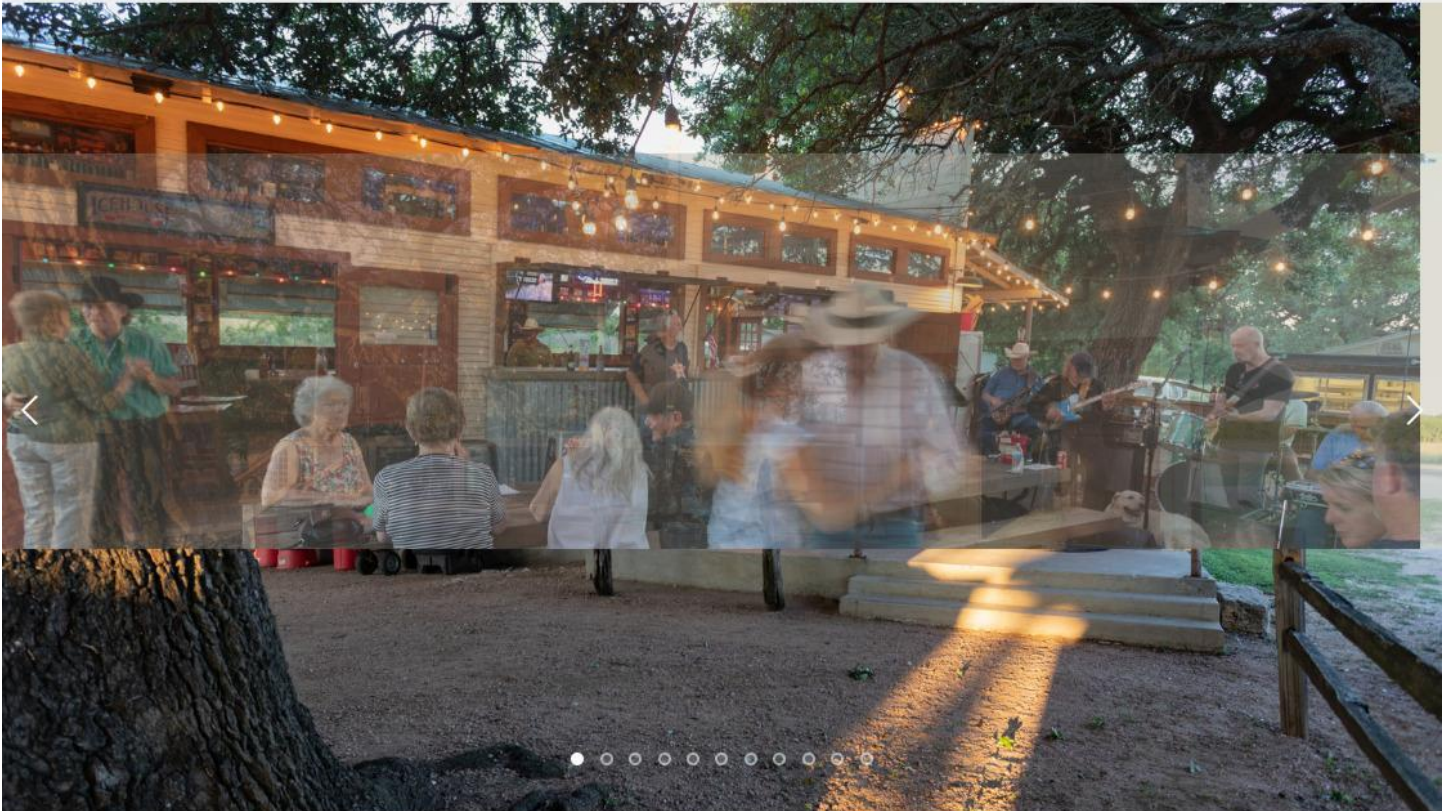
Devin Baize
AUG 25, 2022



Lindsey Lane Band
AUG 26, 2022



Many Lowry
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PRIVATE EVENTS & WEDDINGS:

Amy Peacock
Special Events Manager
830-554-8000
amy@alberttexas.com



Michael Miller
General Manager
512-466-1879
michael@alberttexas.com

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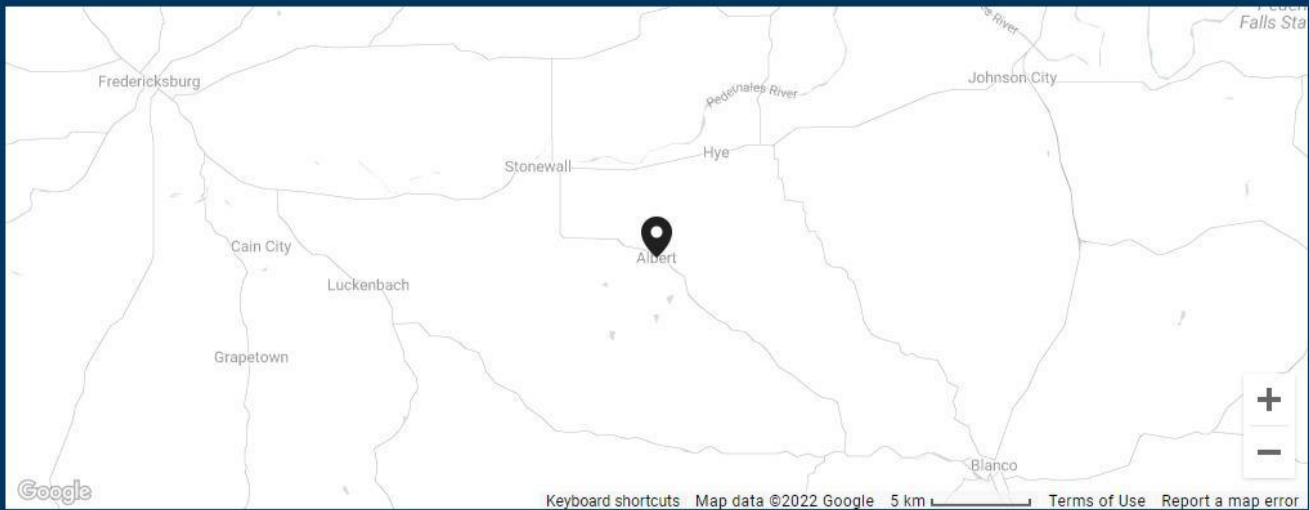
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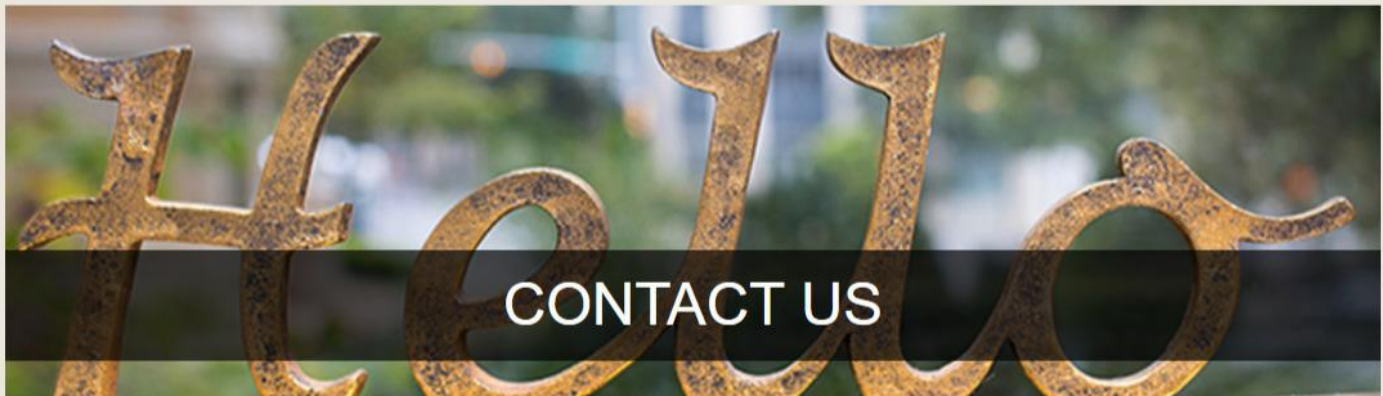
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Office Action (Official Letter) has issued
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