

This Opinion is Not a  
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re The Country Vintner*

Serial No. 85567206

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Judith M. Helfman, Trademark Examining Attorney, Law Office 114, K. Margaret Le, Managing Attorney.

Before Seeherman, Adlin and Hightower, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

The Country Vintner (“Applicant”) seeks a Supplemental Register registration for the proposed mark THE VINTNER GROUP, in standard characters, for “Import agency and wholesale distributorship featuring wine.”<sup>1</sup> The Examining Attorney finally refused registration under Section 23(c) of the Act on the ground that Applicant’s proposed mark is a generic term for a “wholesale distributorship

<sup>1</sup> Application Serial No. 85567206 was filed on March 12, 2012 and originally sought registration on the Principal Register based on an intent to use the proposed mark in commerce under Section 1(b) of the Act. It was later amended to allege first use dates of March 8, 2012 and to seek registration on the Supplemental Register.

featuring wine,”<sup>2</sup> and thus incapable of distinguishing those services. Applicant appealed and requested and was granted a remand so that the Examining Attorney could consider additional evidence, but after considering the additional evidence, the Examining Attorney maintained and continued the final refusal. Applicant and the Examining Attorney filed briefs.

### **The Evidence**

The Examining Attorney relies in large part on the following definitions of the constituent terms of Applicant’s proposed mark:

**THE**—“Used before singular or plural nouns and noun phrases that denote particular, specified persons or things: *the baby; the dress I wore.*”

**VINTNER**—“A wine merchant.”

**GROUP**—“An association of companies under a single ownership and control, consisting of a holding company, subsidiary companies, and sometimes associated companies.”

Office Action of March 16, 2013.<sup>3</sup> In addition, the Examining Attorney relies on the following definitions of terms included in Applicant’s identification of services:

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<sup>2</sup> In the August 31, 2012 Office Action, the Examining Attorney found the proposed mark generic for “wholesale distributorship featuring wine” only, and gave Applicant the option of dividing out “import agency” services, but Applicant declined.

<sup>3</sup> The definitions of “the” and “vintner” are from the American Heritage Dictionary of the English Language and the definition of “group” is from Collins English Dictionary. We recently pointed out that “[t]he Collins Dictionary, although in the English language, is published in Glasgow, Scotland. Because it appears that this dictionary and website use definitions that are not necessarily the meaning of the words in the United States,” definitions from this dictionary “are of little or no probative value.” *In re Manwin/RK Collateral Trust*, 111 USPQ2d 1311, 1313, n.18 (TTAB 2014). Nevertheless, we take judicial notice of an essentially equivalent definition of “group” from the MacMillan Dictionary as “an organization that consists of several companies or other institutions” (<http://www.macmillandictionary.com/us/dictionary/american/group>). The Board may take

**WHOLESALE**—“Of, relating to, or engaged in the sale of goods in large quantities for resale: *a wholesale produce market; wholesale goods; wholesale prices.*”

**DISTRIBUTOR**—“One that markets or sells merchandise, especially a wholesaler.”

Office Action of August 31, 2012.<sup>4</sup>

The Examining Attorney also introduced a number of third-party registrations of marks for: (1) distributorship services, many of which involve wine, in which the word “group” is disclaimed; and (2) wine or wine-related services in which the word “vintner” or a variation thereof is disclaimed, is registered under Section 2(f) or is registered on the Supplemental Register. Office Actions of June 20 and August 31, 2012.<sup>5</sup> Similarly, the Examining Attorney relies on a number of website printouts which reveal that wine associations, merchants and regulators commonly use the term “vintner,” with associations and merchants sometimes using the term in their names. Office Actions of June 20 and August 31, 2012 and March 16, 2013; Denial of Request for Remand of December 15, 2013.

The Examining Attorney also points out that Applicant’s specimen of use, a printout from its website, indicates that Applicant is “comprised of the wholesaler

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judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>4</sup> Both definitions are from the American Heritage Dictionary of the English Language.

<sup>5</sup> Registration Nos. 1405339, 2117174, 2263978, 2292478, 2601872, 2603381, 2711923, 2812159, 2837762, 2885946, 3031473, 3054089, 3061777, 3076231, 3200856, 3379793, 3522141, 3536390, 3559989, 3578266, 3614152, 3663096, 3665955, 3687807, 3724707, 3868764, 3924101 and 3999125. We note that the Supplemental Register registration of KOSHER VINTNERS ASSOCIATION (Reg. No. 3578266) includes a disclaimer of “vintners association,” and the Supplemental Register registration of SONOMA ESTATE VINTNERS (Reg. No. 3687807) includes a disclaimer of “vintners.”

and importer *The Country Vintner* [i.e. Applicant], the wholesaler and importer *Stacole Fine Wines*, the national import operation *Craft + Estate* and *The American Still Life Collection*, a portfolio of craft spirits.” In other words, “Applicant is an association of wine merchants, specifically, wine wholesalers.” Examining Attorney’s Appeal Brief at 9.

Finally, the Examining Attorney relies on the following articles and website printouts:<sup>6</sup>

An October 24, 2013 posting to the “Wine Making from Grapes” message board on “winemakingtalk.com,” in which an unidentified user asks “Is it legal to make commercial labrusca wine in Canada?” The poster explains that the question is based on a presentation “by a Canadian researcher” at an unidentified conference, and then asks “Is it possible the presenter was referring to a **vintner group** (e.g., VQA) that disallowed production from those grapes?”

An October 9, 2012 press release entitled “California Vintners Embark on Asia-China Trade Mission: Launch new Consumer Website for China,” which states “**The vintner group** represents a dozen California wine regions which will present more than 110 brands at a slate of consumer, media and trade events.”

A February 1938<sup>7</sup> article from the Lodi News-Sentinel entitled “Statewide **Vintner Group** On Stabilization to Meet in Lodi Friday, March 4,” which states “A state-wide committee of 27 vintners will meet in Lodi Friday afternoon, March 4, for the purpose of discussing a

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<sup>6</sup> The words “vintner group” are highlighted in some but not all of the Examining Attorney’s evidence, but the highlighting appears to have been added by the Examining Attorney herself after retrieving the materials; the words do not appear to be highlighted in the actual articles or websites themselves. For consistency and convenience, the words “vintner group” appear in bold in the excerpts quoted herein, whether or not they are highlighted in the Examining Attorney’s evidence.

<sup>7</sup> The exact date of the article is illegible in the copy provided by the Examining Attorney.

stabilization program, it was announced yesterday in San Francisco following the annual meeting of the Wine Institute.”

An article from the June 2007 Traverse City Business News (“tcbusinessnews.com”) entitled “Michigan Grapevine: **Vintner group** uncorks partnership with promoters,” which states “The Leelanau Peninsula Vintners Association has a new marketing face for the first time since the wineries organized seven years ago, but the same challenge: Convince wine drinkers the Grand Traverse region is as good or better than Napa, the Loire Valley, Bordeaux and other renown (sic) wine regions around the world.”

A September 28, 1988 Los Angeles Times article entitled “New **Vintner Group** to Lobby for Industry: Wine Interests Outside California Need Promotion, Group’s Chief Says,” which states “A group of Washington lobbyists have formed the capital-based National Vintners Assn. to promote, service and represent in Congress the wine interests of the 43 wine-producing states, including California.”

An article from the “inside-sonoma.com” website entitled “New **Vintners Group** Brings Another Reason to Celebrate Wine and Food,” which states “Put Occidental on the map: the tiny west county town now has its very own culinary gala, brought together by the brand new West Sonoma Coast Vintners organization.”

A printout from the “**vintnersgroup.com**” website which states that the group “founded in 1999, is a premium wine distributor and educator dedicated to introduce American wines to Hong Kong and other parts of Asia.”

An article from SF Gate (“sfgate.com”) entitled “Lesser-Known Varietals Take Their Stand Among Grapes,” which states “A few years ago, a **vintner group** known as the Rhone Rangers, discovered that Mataro was, in fact, Mourvedre, a red variety commonly thought to be native to southern France.”

A printout of an article from “tizwine.com” entitled “HB vintners celebrating 30 years,” which states “In 1979, eight Hawke’s Bay wineries established the first regional **vintner’s group**, Hawke’s Bay Vintners. This year, its descendant organization, Hawke’s Bay Winegrowers Inc. has invited current members to celebrate 30 years of winemaking and related activities.”

An August 24, 2005 article from SF Weekly (“sfweekly.com”) entitled “Discount Dynasty,” which includes, in reference to the Napa Valley Vintners Association, this passage: “they’re a bunch of whiners,” declares Franzia, who doesn’t conceal his disdain for the Napa **vintner group**, even though he insists that some of its 275 members are his friends.”

A November 24, 2004 article from *The Star-Ledger* of Newark, New Jersey entitled “After you’ve had your fill of fowl ...,” which states “These days, most major wineries, and regional **vintner groups** like the Russian River Valley Winegrowers, host Web sites, and more often than not, those sites contain a recipe section.”

A July 4, 2003 article from *The Boston Herald* entitled “Wine sale bans costly, FTC says,” which states “**Vintner groups** say it would also give consumers access to many wines they won’t likely find in their local wine or liquor store.”

The June 23, 2006 “N Brief” column from the Salinas, California *The Californian*, which states “**Vintner group** releases wine country map,” in reference to The Monterey County Vintners and Growers Association.

An article from *The Sacramento Bee* dated October 2, 2013 and entitled “Dunne on Wine: Navarro Vineyards,” which states “Not surprisingly, therefore, Mendocino WineGrowers Inc., the grower and **vintner group** that sponsors the yearly wine competition, gives an award not only for best white wine and best red wine but for best ‘green’ wine ....”

A September 25, 2012 article from *The Tribune* (“sanluisobispo.com”) entitled “Paso Robles groundwater

basin savings is just a drop in the bucket,” which states “Agricultural and **vintner groups** have threatened to withdraw from cooperative efforts to reduce groundwater pumping if the new ordinance was adopted, Mecham said.”

Denial of Request for Remand of December 15, 2013; Office Action of June 20, 2012.

For its part, Applicant relies on third-party Supplemental Register registrations for marks in the same format as its proposed mark, *i.e.*, THE XXXXX GROUP, specifically:

THE CONTRACTS LAW GROUP for “legal services” (Reg. No. 4188283).

THE FOOD GROUP for marketing and advertising services in the food and beverage industry (Reg. No. 4177239).

THE FINANCIAL COACH GROUP for informational, educational and management services in finance-related fields (Reg. No. 4085411).

THE SPEAKERS GROUP for providing motivational and educational speakers (Reg. No. 3621226).

THE CONFERENCE GROUP for workshop, seminar and symposium-related services (Reg. No. 3328079).

THE NEWS GROUP for “wholesale distributorship featuring books and magazines” (Reg. No. 2122521).

THE MASONRY GROUP for masonry services (Reg. No. 3350523).

THE TECHNOLOGICAL LITERACY GROUP for educational goods and services related to various technologies (Reg. No. 2673344).

THE WEALTH MANAGEMENT GROUP for investment consulting and management services (Reg. No. 1836459).

THE CONNECTICUT PALLIATIVE PHYSICIANS GROUP for palliative-related healthcare services (Reg. No. 3214170).

THE AWARD GROUP for “custom manufacture of trophies” (Reg. No. 3383524).

THE REAL ESTATE LEARNING GROUP for “providing educational workshops and programs in the field of real estate” (Reg. No. 3137388).

THE MILITARY LAW GROUP for “legal services” (Reg. No. 2921858).

THE LEGAL SOLUTIONS GROUP for “law firm providing legal/attorney services” (Reg. No. 2918256).

THE BUILDING GROUP for “real estate services, namely, leasing and offering for sale of real estate and real estate management” (Reg. No. 2560592).

Response of February 28, 2013; Request for Remand of November 11, 2013. Applicant also relies on third-party registrations on both the Principal and Supplemental registers which: (a) include descriptive wording combined with the words ASSOCIATION, SOCIETY or COMMITTEE, with “association,” “society” or “committee” either being disclaimed or registered under Section 2(f), specifically AMERICAN HEART ASSOCIATION, THE HEALTH CARE INDUSTRY COMMITTEE, RADIO MUSIC LICENSE COMMITTEE & Design, NURSE PRACTITIONER SOCIETY, CALIFORNIA RETIRED TEACHERS ASSOCIATION, THE NORTH AMERICAN MENOPAUSE SOCIETY;<sup>8</sup> or (b) include the term VINTNER or a variation thereof combined with descriptive or laudatory terms, and which are used for wine-related goods or services, specifically VINTNER’S MARK,

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<sup>8</sup> Registration Nos. 1091140, 2029400, 3542832, 4284843, 4349107, 4270859, respectively.



VINTNER'S CIRCLE, VINTNER'S RESERVE, VINTNER'S COLLECTIVE and VINTNER'S BEST.<sup>9</sup>

Applicant further relies on the results of Google searches for “wholesale wine distributors” and “wine distributors” which do not reveal any trade names including the word “vintner” or variations thereof, and which, according to Applicant, “demonstrate that neither Applicant’s competitors nor third parties need to use Applicant’s Mark to accurately describe their services.” *Id.*

Applicant relies on eight news articles in wine and alcohol industry publications concerning its recent acquisitions or distribution agreements. Most describe Applicant as expanding, and indicate that it is a wine wholesaler and/or distributor. Applicant’s Request for Remand of November 11, 2013. Applicant introduced an Affidavit of Clay Farmer, its Director of Marketing (“Farmer Aff.”), who testifies that Applicant “does not sell to the general public or to the end purchaser of alcoholic beverages. Instead, the consumer base for services offered under Applicant’s proposed mark is comprised of retailers, restaurants, hotels and other entities that, in turn, sell wine to members of the general public.” Applicant’s customers also include other wine wholesalers. Farmer Aff. ¶¶ 4, 6. Finally, Applicant relies on six letters from wine and spirit suppliers which “partner with” Applicant. They all refer to Applicant’s proposed mark THE VINTNER GROUP as a brand, or as “unique” or “special,” several praise Applicant’s “reputation” and all

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<sup>9</sup> Registration Nos. 4238105, 3522141, 2263978, 2962218 and 3280002, respectively.

claim that Applicant has provided valuable assistance resulting in increased sales. Applicant's Request for Remand of November 11, 2013.<sup>10</sup>

### **Decision**

Marks "capable of distinguishing the applicant's goods or services" are eligible for registration on the Supplemental Register. 15 U.S.C. § 1091(c). By contrast, "[g]eneric terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services." *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2011) (citations omitted). The ultimate test for determining whether a term is generic is the primary significance of the term to the relevant public. *See* Section 14(3) of the Act. *See also In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB, Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991). The Examining Attorney bears the burden of making a "strong" showing, with "clear evidence," that the applicant's proposed mark is generic. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). *See also In re K-T Zoe Furniture, Inc.*, 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). "[D]oubt on the issue of genericness is resolved in favor of the applicant." *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437

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<sup>10</sup> Some of the letters reference services Applicant provided prior to its claimed date of first use of the applied-for mark, under a previous name, and to that extent, these letters are of no probative value. While one of the letters is from an Italian entity, it concerns Applicant's services "in multiple States of the East coast," both before and after Applicant claims to have first used the applied-for mark; to the extent it references Applicant's services provided under the applied-for mark after its claimed date of first use, this letter has some relevance to United States use and perception of the proposed mark.

(TTAB 2005). Registration is properly refused if the proposed mark is generic for any of the services identified in a particular class. *In re Analog Devices Inc.*, 6 USPQ2d 1801, 1810 (TTAB 1988), *aff'd*, 10 USPQ2d 1879 (Fed. Cir. 1989).

We must make a two-step inquiry to determine whether THE VINTNER GROUP is generic: First, what is the genus (category or class) of goods or services at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services? *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

Here, there is no dispute over the genus of services for which the Examining Attorney claims that the mark is generic. Applicant and the Examining Attorney agree that it is coextensive with Applicant's identification of services, *i.e.*, a "wholesale distributorship featuring wine." Applicant's Appeal Brief at 4 n.1; Examining Attorney's Appeal Brief at 4; *see also Magic Wand Inc.*, 19 USPQ2d at 1551 ("a proper genericness inquiry focuses on the description of services set forth in the certificate of registration," or, in this case, the involved application).<sup>11</sup>

There is a dispute, however, concerning the "relevant public." The Examining Attorney argues that the relevant public consists of "retailers and those working for retailers, restaurants, hotels and other entities that, in turn, sell wine to members of the general public, as well as consumers from the general public ...."

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<sup>11</sup> Although Applicant's identification of services also includes "import agency featuring wine," the Examining Attorney need only show that the applied-for mark is generic for one of the services, *i.e.*, "wholesale distributorship featuring wine" in order for us to affirm the refusal to register the entire application.

Examining Attorney's Appeal Brief at 7. By contrast, Applicant argues that the relevant public consists only of winemakers and retailers. Applicant's Appeal Brief at 5. We agree with Applicant. While the Examining Attorney is correct that registrability is determined based on the identification of services in an application, here, as the Examining Attorney's dictionary definition of "wholesale" makes clear, Applicant's identification of services does not encompass sales to the general public because "wholesale" refers to the sale of goods "for resale," *i.e.* the sale of goods to retailers. Office Action of August 31, 2012 (American Heritage Dictionary definition of "wholesale").<sup>12</sup>

Accordingly, we find that the relevant public consists of winemakers and retailers, including restaurants and hotels. Farmer Aff. ¶ 4 ("The Vintner Group does not sell to the general public or to the end purchaser of alcoholic beverages. Instead, the consumer base for services offered under Applicant's proposed mark is comprised of retailers, restaurants, hotels and other entities that, in turn, sell wine to members of the general public."). Evidence of this relevant public's understanding of the term at issue may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

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<sup>12</sup> Even if the Examining Attorney's suggestion that Applicant may be permitted by law to sell to the general public in certain states under certain circumstances is correct, that is irrelevant because Applicant's identification of services does not encompass the retail sale of wine.

Before considering the evidence, we must first classify Applicant's proposed mark, because the type of proof required of the Examining Attorney depends on whether THE VINTNER GROUP is found to be a "compound term" or a "phrase." Specifically,

[w]here a term is a "compound word" (such as "Screenwipe"), the Director may satisfy his burden of proving it generic by producing evidence that each of the constituent words is generic, and that "the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound." *In re Gould Paper Corp.*, 834 F.2d 1017, 1018, 5 USPQ2d 1110, 1110 (Fed. Cir. 1987). However, where the proposed mark is a phrase (such as "Society for Reproductive Medicine"), the board "cannot simply cite definitions and generic uses of the constituent terms of a mark"; it must conduct an inquiry into "the meaning of the disputed phrase as a whole." *In re The Am. Fertility Soc'y*, 188 F.3d at 1347, 51 USPQ2d at 1836. The *In re Gould* test is applicable only to "compound terms formed by the union of words" where the public understands the individual terms to be generic for a genus of goods or services, and the joining of the individual terms into one compound word lends "no additional meaning to the term." *Id.* at 1348-49, 51 USPQ2d at 1837.

*In re Dial-A-Mattress*, 57 USPQ2d at 1810.

We find that THE VINTNER GROUP is a phrase such as AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE, rather than a compound term such as SCREENWIPE. "*Gould* is limited, on its facts, language, and holding, to compound terms formed by the union of words." *In re American Fertility Society*, 51 USPQ2d at 1837. Here, there is no union of THE, VINTNER and/or GROUP into a compound term, nor is there a joinder (as described in *American Fertility*) of the "most pertinent and individually generic terms applicable" to Applicant's services.

Therefore, we find that THE VINTNER GROUP is not an “ordinary compound.” *Id.* Ample precedent supports our finding that Applicant’s proposed mark is a phrase rather than a compound term. *Compare In re Tennis Industry Association*, 102 USPQ2d 1671 (TTAB 2012) (TENNIS INDUSTRY ASSOCIATION is a phrase), *In re Country Music Association Inc.*, 100 USPQ2d 1824 (TTAB 2011) (COUNTRY MUSIC ASSOCIATION is a phrase) and *In re Cell Therapeutics, Inc.*, 67 USPQ2d 1795 (TTAB 2003) (CELL THERAPEUTICS INC. is a phrase) *with In re Hotels.com, L.P.*, 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009) (HOTELS.COM is a compound term). Although the Examining Attorney relies on *In re Wm. B. Coleman Co., Inc.* 93 USPQ2d 2019 (TTAB 2010), in which we applied the *Gould* analysis to hold ELECTRIC CANDLE COMPANY generic, that case is distinguishable, because in that case there was a great deal of evidence and “no dispute that the term ‘electric candle’ is the name of a type of lighting fixture.” *Id.* at 2025 (the evidence included the applicant’s own use of “electric candle” as a unitary generic term and an entry for “electric candles” in the Office’s Trademark Manual of Acceptable Identifications of Goods and Services). Here, the evidence does not support a finding that THE VINTNER GROUP or any component thereof is a compound term, and it is essentially in the same form as other proposed marks found to be phrases.

Turning to the evidence, the dictionary definitions, third-party registrations, websites and Applicant’s own specimen make clear that THE VINTNER GROUP is merely descriptive of Applicant’s services. It is also quite apt for wholesale distributorship services featuring wine. But aptness “is not the correct test for

genericness.” *In re American Fertility Society*, 51 USPQ2d at 1836. Rather, we must determine whether the evidence establishes that the relevant public refers to wholesale distributorship services featuring wine as THE VINTNER GROUP. *In re Dial-A-Mattress Operating Corp.*, 57 USPQ2d at 1811 (evidence did not support finding that 1-888-M-A-T-R-E-S-S is generic, because “[t]here is no record evidence that the relevant public refers to the class of shop-at-home telephone mattress retailers as ‘1-888-M-A-T-R-E-S-S’”); *In re American Fertility Society*, 51 USPQ2d at 1837 (vacating finding that AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE is generic in part because “the PTO produced no evidence at all of the public’s understanding of the phrase as it relates to the Society’s services”). We find, as in *American Fertility Society*, *Tennis Industry Association* and *Country Music Association*, that the evidence falls short.

Indeed, we do not regard the 15 articles and website uses of “vintner group” upon which the Examining Attorney relies as particularly persuasive. First, at most only two (the “vintnersgroup.com” website and the “tizwine.com” article) clearly refer to wine wholesalers or distributors, and to the extent that “vintnersgroup.com” is a wholesaler or distributor, its activities are focused on “Hong Kong and other parts of Asia,” and there is no evidence of its use of the term in the United States. Second, at least 13 use “vintner group” or variations thereof to refer to groups providing traditional trade association services, such as marketing and lobbying, rather than the wholesale distributorship services for which Applicant seeks registration. Third, none reveals the relevant public’s – *i.e.*,

winemakers' and retailers' -- perception of the term, with the possible exception of "vintnersgroup.com," which, as stated, does not appear to use the term in the United States. Finally, none uses "the vintner group," the exact phrase at issue. See, *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 4 USPQ2d at 1143 (Office did not show "by clear evidence, that the financial community views and uses the term CASH MANAGEMENT ACCOUNT as a generic, common descriptive term for the brokerage services to which Merrill Lynch first applied the term"); *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1763 (TTAB 2013) ("Petitioner submitted no evidence of use from a printed publication of the phrase 'Annapolis tours' per se as a generic designation for respondent's services."); *In re Country Music Association*, 100 USPQ2d at 1829 ("we are not convinced that the examining attorney's evidence of use of the phrase 'Country Music Association' suffices as clear evidence that the relevant purchasers perceive the phrase as naming the genus of the services at issue"); *In re Failure Analysis Associates*, 1 USPQ2d 1144, 1146 (TTAB 1986) ("None of the evidence submitted by the Examining Attorney demonstrates convincingly that consumers of these services would use the term 'FAILURE ANALYSIS ASSOCIATES' to refer to the category of services rendered by applicant .... There is no evidence that the three-word phrase 'FAILURE ANALYSIS ASSOCIATES' has been used by other entities to render the type of services rendered by applicant ...."). In fact, the only evidence of use in the United States of THE VINTNER GROUP, the phrase at issue here, for wholesale distributorship services is in reference to Applicant (see printouts from Bloomberg



Businessweek, Shanken News Daily and “stolpmanvineyards.com” attached to Denial of Request for Remand mailed December 15, 2013), “which is, of course, insufficient to render the mark generic.” *American Fertility Society*, 51 USPQ2d at 1834 n.4.<sup>13</sup>

In short, there is not the requisite “clear evidence” that relevant consumers perceive the phrase at issue as generic. *See, e.g., In re Merrill Lynch*, 4 USPQ2d at 1143; *Alcatraz Media*, 107 USPQ2d at 1763. Furthermore, many of the uses of “vintner group” upon which the Examining Attorney relies, such as the 1938 Lodi News-Sentinel article, the Traverse City Business News article and the posting to “winemakingtalk.com,” are relatively “obscure.” *In re Country Music Association*, 100 USPQ2d at 1830. Much of the Examining Attorney’s evidence appears to illustrate little more than “the thoroughness with which NEXIS [and the Internet] can regurgitate a [term] casually mentioned in the news.” *In re Merrill Lynch*, 4 USPQ2d at 1143 n.1 (quoting *In re Societe Generale Des Eaux Minerales De Vittel S.A.* 824 F.2d 957, 3 USPQ2d 1450, 1451 (Fed. Cir. 1987)).

### **Conclusion**

This is a close and difficult case, and we acknowledge that on a different record, such as might be adduced in an *inter partes* proceeding, we might well reach

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<sup>13</sup> Even if we were to find THE VINTNER GROUP to be a compound term, rather than a phrase, the result would be the same. While the dictionary definitions, Applicant’s specimen of use of the proposed mark and the other evidence of record make clear that THE VINTNER GROUP is at least highly descriptive, the evidence does not meet the *Gould* standard. In fact, unlike in *Gould*, Applicant does not use *the proposed mark* generically to refer to *wholesale distributorship services*, even if it is clear that Applicant provides those services under the proposed mark, and the dictionary definitions of the proposed mark’s constituent terms do not support a finding that the relevant public would understand THE VINTNER GROUP as referring to “wholesale distributorship services.”

a different result. However, on the present record, we are compelled to find that the Office has not met its burden of clearly showing that the relevant public understands THE VINTNER GROUP as generic for wholesale distributorship services featuring wine. Once registered on the Supplemental Register, “those in the industry can decide for themselves whether or not they believe that [continued] registration” of the proposed mark on the Supplemental Register “will inhibit their right to compete with applicant.” *In re Waverly Inc.*, 27 USPQ2d 1620, 1623 (TTAB 1993).<sup>14</sup>

**Decision:** The refusal to register is reversed.

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<sup>14</sup> Of course, mere registration on the Supplemental Register does not mean that the term will ever acquire service mark status, or that it will ever be entitled to registration on the Principal Register.