

This Opinion is not a  
Precedent of the TTAB

Mailed: February 21, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Blue Equity Int'l, LLC*  
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Serial No. 86623172  
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Julie Gregory Ray, Middleton Reutlinger,  
for Blue Equity International, LLC.

April E. Reeves, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

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Before Taylor, Wellington, and Larkin,  
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Blue Equity International, LLC (“Applicant”) seeks registration on the Principal  
Register of the mark shown below



for the following services:

Business management and talent agency services for performing artists, sports and entertainment celebrities, coaches, broadcasters, and athletes; publicity agents; marketing and promotion of performing artists, sports and entertainment celebrities, coaches, broadcasters, and athletes; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with celebrities, coaches, broadcasters, performing artists, athletes, sports competitions, sporting activities, or events of others; marketing consultation for others; marketing, and promoting sports competitions, musical and entertainment productions, and other live or prerecorded events, or events of others, and merchandise related thereto; production and distribution of radio and television commercials; on-line retail store services featuring downloadable pre-recorded music and videos, clothing, general consumer merchandise, memorabilia, collectibles, playthings, videos, films, live and pre-recorded programing, CDs, DVDs, artist and tour-related merchandise, and printed publications; advertising and marketing services; business development and business management of musical, theatrical, sports, and entertainment events; business management services, namely, operation and management of sports and entertainment venues for others; business services, namely, operations management of sporting and entertainment venues and facilities; business management, event planning and management for marketing, branding, promoting or advertising the goods and services of others, and business marketing and consulting services in the fields of sports, news and entertainment; sponsorship search services, namely, the solicitation and securing of sponsorships; business management services in the nature of securing naming rights and/or sponsorship agreements for sports and entertainment venues; business advising and consulting services in the fields of music, sports and entertainment; in International Class 35;

Streaming of audio, video, and audiovisual material on the Internet; in International Class 38;

Entertainment services, namely, providing information in the fields of current events, music, motion picture films, television shows, radio shows, sports, and entertainment by way of television broadcasts, webcasts, podcasts, radio broadcasts, web-based applications, mobile phone applications, over computer networks and the Internet; entertainment services, namely, providing continuing programs in the fields of sports, music, news, and entertainment accessible by means of radio, television, satellite, audio, video, web-based applications, mobile phone applications, and computer networks; providing an on-line computer database featuring information in the fields of music, sports, and entertainment-related topics; publishing of electronic publications; electronic publishing services, namely, publication of text and graphic works of others on CDs, DVDs, on-line, and wireless networks, featuring news, music, motion picture films, television, radio, sports, and entertainment; on-line journals, namely, blogs in the fields of news, music, motion picture films, television, radio, sports, and entertainment; special event planning and coordination; theatrical booking agency services; talent booking agency services; entertainment services, namely, personal appearances by movie stars, television stars, radio personalities, sports celebrities, coaches, broadcasters, musical performing artists, theatrical performing artists, athletes, artists, singers, and dancers; entertainment services in the nature of organizing sporting events, athletic games, sporting and athletic competitions, sporting and athletic tournaments, live musical performances, parties and social entertainment events; entertainment services, namely, production and distribution of television programs, radio programs, films, film clips, videos, motion pictures, podcasts, and webcasts featuring sports, entertainment, music, musical performances and musical artists; music production; production of sound and video recordings; music publishing services; audio recording and production services; production and distribution of television programs, radio programs, films, film clips, videos, motion pictures, podcasts, webcasts, and live and recorded performances, all transmitted via wired, wireless or digital communication devices; entertainment services, namely, production of television, radio, and film programs, live or prerecorded, featuring sporting, entertainment and cultural events,

celebrities, sports figures and musical artists; entertainment services, namely, providing podcasts and webcasts in the fields of sports, music, entertainment, and current events; organizing entertainment events, namely, live musical performances, film festivals, celebrity appearances, sporting events, art shows, talent shows and cultural events; providing a website featuring non-downloadable books, magazines, photos, audio recordings, video recordings, and audiovisual recordings, all in the fields of sports and entertainment; non-downloadable electronic and digital publications, namely, books and magazines, all in the fields of sports and entertainment, in International Class 41; and

Providing a website featuring technology that enables users to view and listen to audio recordings, video recordings, television programs, and motion picture films; providing a website featuring technology that enables users to exchange messages and information, all in the fields of sports and entertainment, in International Class 42.<sup>1</sup>

The mark is described as consisting of the words “BEST BLUE EQUITY SPORTS TELEVISION” situated under the fanciful design of a star.” Applicant has disclaimed the exclusive right to use “SPORTS TELEVISION” apart from the mark as shown.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the word “BEST” in Applicant’s mark is merely descriptive of the identified services, and must also be disclaimed. After the Examining Attorney made the refusal final, Applicant timely appealed and requested reconsideration, which was denied. The case is fully briefed. We reverse the refusal to register.

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<sup>1</sup> Application Serial No. 86623172 was filed on May 8, 2015 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), on the basis of Applicant’s allegation of a *bona fide* intention to use the mark in commerce.

## **I. Prosecution History and Record on Appeal**

Applicant initially filed to register its proposed mark for services in Classes 35 and 41 only. The Examining Attorney issued a first Office Action on June 17, 2015 in which she requested that Applicant disclaim the exclusive right to use the words “BEST,” “EQUITY,” and “SPORTS TELEVISION,” and clarify and possibly reclassify its services. The Examining Attorney made of record a definition of the word “best” from the Merriam-Webster Dictionary ([merriam-webster.com](http://merriam-webster.com)) as “better than all others in quality or value,” as well as third-party Registration Nos. 3001381, 4147149, 4013508, 4258397, 4163469, 4308323, 4356823, 4549996, 4595463, and 4542482 of marks in which the word “best” had been disclaimed, either alone or as part of disclaimed matter. June 17, 2015 Office Action at 2, 9-38.

Applicant responded to the Office Action on December 16, 2015, amended the identification of its services in Classes 35 and 41, and reclassified some of its services into Classes 38 and 42. Applicant disclaimed the exclusive right to use “SPORTS TELEVISION,” but traversed the requests for disclaimers of “BEST” and “EQUITY.”

The Examining Attorney issued a second Office Action on January 12, 2016 in which she withdrew the requirement of a disclaimer of “EQUITY,” but made final the requirement of a disclaimer of “BEST.” She made of record additional dictionary definitions of the word “best” as the superlative of the word “good” and meaning “of the highest quality, excellence or standing” ([dictionary.com](http://dictionary.com)) and “surpassing all others in excellence, achievement, or quality” ([ahdictionary.com](http://ahdictionary.com)). January 12, 1026 Office Action at 8-9. The Examining Attorney also made of record pages from Internet

websites at tomsguide.com, groupme.com, consumeraffairs.com, huffingtonpost.com, nettop20.com, stream-seo.com, and awwwards.com, which she claimed showed that the word “best” is commonly used in connection with services similar to those identified in the application to mean that the services are better than all others in quality. January 12, 2016 Office Action at 10-24.

Applicant filed this appeal on July 8, 2016 and simultaneously requested reconsideration.<sup>2</sup> On the Request for Reconsideration, Applicant amended the identification of its services in Classes 35, 38, and 41, and argued further against the disclaimer requirement, making of record various acronyms consisting of “BEST” from acronymfinder.com.<sup>3</sup> Applicant also stated that it would consent to the entry of a disclaimer if the Examining Attorney would not approve the application without one, but that it “reserve[d] all rights and remedies in and to the term/acronym BEST, including all arguments in support of the distinctiveness and registrability of that term as used in the applied-for mark.” 4 TTABVUE 14.

The Examining Attorney denied the Request for Reconsideration as to the requirement of a disclaimer of “BEST” on August 12, 2016 and made of record additional pages from dictionary.com regarding the meaning of “best” as the superlative of the word “good” in its adjective form, and additional Internet pages

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<sup>2</sup> The Board instituted the appeal, suspended it, and remanded the application to the Examining Attorney for consideration of the Request for Reconsideration. 2 TTABVUE.

<sup>3</sup> Some of these acronyms are identified as referring to persons, entities, or terms outside the United States, such as Board of European Students of Technology, Bahamas Environmental Science and Technology, Belize Enterprise for Sustainable Technology, and Bombay Electric Supply and Transport Company. 4 TTABVUE 15-17. These foreign acronyms are not relevant to our analysis of the significance of BEST in Applicant’s mark in the United States.

showing use of the word “best” as a superlative in connection with various services. 5 TTABVUE 4-2; 6 TTABVUE 2-25; 7 TTABVUE 2-24; 8 TTABVUE 2-18. The appeal was resumed on August 15, 2016. 9 TTABVUE.

## II. Disclaimer Analysis

Under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable.” Failure to comply with a disclaimer requirement is a basis for refusing registration. *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400 (Fed. Cir. 2006); *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

The Examining Attorney has asserted mere descriptiveness under Section 2(e)(1) of the Trademark Act as the basis for the requirement of a disclaimer of “BEST.” A term is “merely descriptive” within the meaning of § 2(e)(1) if it “immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Whether a mark is merely descriptive is determined in relation to the goods or services for which registration is sought, not in the abstract or on the basis of guesswork. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016). “The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med.*

*Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

“It is the Examining Attorney’s burden to show, *prima facie*, that a mark is merely descriptive of an applicant’s goods or services.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)). If the Examining Attorney establishes a *prima facie* case, the burden shifts to the applicant to rebut that case. *Id.* “The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant.” *Id.* at 1512 (citing *In re Stroh Brewery*, 34 USPQ2d 1796, 1797 (TTAB 1994)).

Applicant makes three arguments in support of its claim that “BEST” should not be disclaimed: (1) Consumers will recognize “BEST” to be an acronym for the words “BLUE EQUITY SPORTS TELEVISION” and not as a claim of superior quality, 10 TTABVUE 10; (2) the evidence of third-party use of BEST as an acronym shows that BEST is not always known or perceived as a laudatory term, and Applicant’s use of BEST “conveys a degree of ingenuity” and makes the word suggestive, 10 TTABVUE 12-13; and (3) BEST is a double entendre as it appears in the mark. 10 TTABVUE 14.

The Examining Attorney argues that BEST is merely descriptive of Applicant’s services “because it is laudatory (attributes quality or excellence) and thus merely describes the alleged merit of applicant’s services.” 12 TTABVUE 4. She argues that “wording such as ‘ultimate,’ ‘best,’ ‘greatest,’ and the like are generally considered laudatory and descriptive of an alleged superior quality of the goods and/or services,”



12 TTABVUE 4, cites the dictionary definitions and Internet webpages in the record as evidence that the word “best” is commonly used to indicate that the services identified in the application are of the highest quality, and argues that “others need to use ‘best’ to describe the applicant’s type of services.” 12 TTABVUE 5-7.

In response to Applicant’s “main argument . . . that ‘BEST’ is not merely descriptive because it is intended to be an acronym for ‘BLUE EQUITY SPORTS TELEVISION,’” 12 TTABVUE 8, the Examining Attorney argues that

The proximity of “BEST” and “BLUE EQUITY SPORTS TELEVISION” does not conclusively convey that “BEST” is an acronym. “BEST” in the mark is larger and more eye-catching than “BLUE EQUITY SPORTS TELEVISION,” which separates the words visually. Additionally, other indicia of an acronym are not present: There are no periods between the letters in “BEST,” “BLUE EQUITY SPORTS TELEVISION” is not arranged so that the initial letter of each word lines up to form “BEST,” and the letters in “BEST” do not align with the words they purportedly represent, e.g., the “E” in “BEST” straddles the space between “EQUITY” and “SPORTS,” and the “S” in “BEST” straddles the space between “SPORTS” and “TELEVISION.” For these reasons, it is unlikely that consumers would perceive “BEST” as an acronym. Rather, consumers would perceive “BEST” to be laudatory for applicant’s services.

12 TTABVUE 8.

We find that the dictionary definitions, third-party registrations, and Internet webpages made of record by the Examining Attorney establish that the word “best” is laudatory when it is used in its dictionary sense as part of a mark. Marks containing the word “best” used in its dictionary sense thus may be unregistrable in their entireties, or unregistrable without a disclaimer of the word. *See generally In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (BEST BEER

IN AMERICA unregistrable for beer and ale because “[m]arks that are merely laudatory and descriptive of the alleged merit of a product are also regarded as being merely descriptive . . .”) (internal quotation omitted); *In re Best Software Inc.*, 58 USPQ2d 1314, 1317 (TTAB 2001) (BEST required to be disclaimed in marks BEST! SUPPORTPLUS PREMIER and BEST! SUPPORTPLUS for membership services in the nature of software consultation and support because it was a merely descriptive laudatory word).

Applicant does not contend otherwise. Instead, it argues that the “manner in which the letters BEST are placed in association with the words BLUE EQUITY SPORTS TELEVISION underscores the fact that the BEST is used as an acronym for the words BLUE EQUITY SPORTS TELEVISION,” 10 TTABVue 10, and not in its laudatory, descriptive sense to indicate that Applicant’s services are of superior quality. We agree.

“[U]sers of language have a universal habit of shortening full names — from haste or laziness or just economy of words. Examples are: automobile to auto; telephone to phone; necktie to tie; gasoline service station to gas station.” *In re Abcor Development Corp.*, 588 F.2d 511, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring). Similarly, “companies are frequently called by shortened names, such as Penney’s for J.C. Penney’s, Sears for Sears and Roebuck (even before it officially changed its name to Sears alone), Ward’s for Montgomery Ward’s, and Bloomies for Bloomingdales.” *Anthony’s Pizza & Pasta Int’l Inc. v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271,

1280 (TTAB 2009) (quoting *Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992)).

Acronyms serve a similar function in identifying source. *Amica Mut. Ins. Co. v. R. H. Cosmetics Co.*, 204 USPQ 155, 163 (TTAB 1979) (opposer's adoption of AMICA mark was "as an acronym from the name of opposer's initial predecessor [Automobile Mutual Insurance Company of America] to avoid a 'mouthful']"). Applicant made of record multiple examples of the use of BEST as an acronym for persons, entities, or terms in the United States. 4 TTABVUE 15-18.<sup>4</sup> We find that as used in Applicant's mark, BEST would be perceived as an acronym for the "mouthful" BLUE EQUITY SPORTS TELEVISION that provides a means for consumers to indulge in their "universal habit of shortening full names." *Abcor*, 200 USPQ at 219.

BEST would be perceived as an acronym for several reasons. For ease of reference in following our analysis, we again reproduce Applicant's mark below:



First and foremost, of course, is the positioning of the letters forming BEST directly above the words BLUE EQUITY SPORTS TELEVISION, in a one-to-one correspondence of each of the letters to one of the words. We agree with the

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<sup>4</sup> Examples include Black Employee Strategy Team (NASA), Building Excellent Schools Today (Colorado), Building Engagement, Strengths and Talent (US FEMA), and Benefit Eligibility Screening Tool (US Social Security).

Examining Attorney that “‘BEST’ in the mark is larger and more eye-catching than ‘BLUE EQUITY SPORTS TELEVISION,’” 12 TTABVUE 8, but that by itself does not negate the status of BEST as an acronym for the words immediately beneath it. Given the positioning of the letters forming BEST directly above the words BLUE EQUITY SPORTS TELEVISION, we find that consumers would not “perceive ‘BEST’ to be laudatory for applicant’s services,” 12 TTABVE 8, at least as the primary meaning of the word.<sup>5</sup>

Second, the four letters comprising BEST in the mark are separated somewhat from one another. While they clearly form the word BEST when viewed, the separation of the letters accentuates their status as an acronym for the words immediately below them, which begin with the corresponding letters “B,” “E,” “S,” and “T,” respectively. That is so even though “the letters in ‘BEST’ do not align with the words they purportedly represent, e.g., the ‘E’ in ‘BEST’ straddles the space between ‘EQUITY’ and ‘SPORTS,’ and the ‘S’ in ‘BEST’ straddles the space between ‘SPORTS’ and ‘TELEVISION.’” 12 TTABVUE 8. We agree with Applicant that “recognizing that the words BLUE, EQUITY, SPORTS, and TELEVISION do not contain the same number of letters, the letters BEST are positioned as closely as

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<sup>5</sup> Even if Applicant’s use of BEST in its mark evokes an expression of superiority in the dictionary sense of the word, a disclaimer is not required because BEST functions as a double entendre, which is “an expression that has a double connotation or significance as applied to the goods or services.” Trademark Manual of Examining Procedure Section 1203.05(c). “The multiple interpretations that mark an expression a ‘double entendre’ must be associations that the public would make fairly readily, and *must be readily apparent from the mark itself.*” *Id.* (emphasis in original) (citations omitted). BEST primarily serves to abbreviate BLUE EQUITY SPORTS TELEVISION, giving it a second, non-descriptive association that “the public would make fairly readily” because it is “readily apparent from the mark itself.” *Id.*

possible to the respective word (i.e., B for BLUE, E for EQUITY, S for SPORTS, and T for TELEVISION) which that particular letter represents.” 13 TTABVUE 3.

Finally, the letters in BEST are depicted in a rightward slant that roughly corresponds to the rightward slant of the letters that form the words BLUE EQUITY SPORTS TELEVISION directly beneath BEST. This too accentuates the status of the letters as an acronym for the corresponding words immediately below them.

The Examining Attorney argues that certain “indicia of an acronym are not present,” including “periods between the letters in ‘BEST.’” 12 TTABVUE 8. The Examining Attorney cites no evidence or legal authority to support her claim that the use of periods between letters is a necessary indicium that the letters form an acronym. There are obviously situations where periods are used in acronyms (though none is in the record here), but we take judicial notice that acronyms are commonly used without them.<sup>6</sup> Well-known examples include NATO (North Atlantic Treaty Organization), POTUS (President of the United States), SCUBA (Self-contained underwater breathing apparatus), and UNICEF (United Nations International Children’s Emergency Fund). The absence of periods in BEST does not detract from its status as an acronym in the context of Applicant’s mark as a whole.

The Examining Attorney correctly notes that “an acronym or initialism cannot be descriptive unless *the wording it stands for* is merely descriptive of the goods or services, and the acronym or initialism is readily understood by relevant purchasers

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<sup>6</sup> The Oxford Dictionary ([oxforddictionaries.com/punctuation/punctuation-in-abbreviations](http://oxforddictionaries.com/punctuation/punctuation-in-abbreviations)) states that “[i]n both American and British English, if you are using initial letters to represent words, you don’t normally need to put a full stop/period after: NBC.”

to be ‘substantially synonymous’ with the merely descriptive wording it represents.”  
12 TTABVUE 8 (emphasis in original). Because the wording BLUE EQUITY SPORTS  
TELEVISION for which BEST stands is not merely descriptive of Applicant’s  
services, the acronym BEST is not itself merely descriptive, and need not be  
disclaimed.

**Decision:** The refusal to register without a disclaimer of “BEST” is reversed.