

<p>This Opinion is not a Precedent of the TTAB</p>
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Mailed: March 17, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Night Shift Brewing, Inc.

Serial No. 87321948

Heather E. Balmat of Balmat Law, PLLC
for Night Shift Brewing, Inc.

Evelyn Bradley, Trademark Examining Attorney, Law Office 104,
Zachary Cromer, Managing Attorney.

Before Wellington, Greenbaum, and Heasley,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, Night Shift Brewing, Inc., seeks registration on the Principal Register of the mark BEAN PORTER (in standard characters) for “beer; porter,” in International Class 32.

The Trademark Examining Attorney has refused registration of Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive or deceptively misdescriptive of Applicant’s identified goods.

We affirm the refusal to register because the mark is merely descriptive of the goods. In light of this ruling, we do not need to reach the issue of deceptive misdescriptiveness.

I. Prosecution History

Applicant filed Application Serial No. 87321948 on February 2, 2017, based on its allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act. 15 U.S.C. § 1051(b). The Examining Attorney initially refused registration on the ground that the proposed mark, BEAN PORTER, was merely descriptive of Applicant's goods: porter beer infused with vanilla beans and coffee beans.¹ Applicant disputed this ground of refusal, arguing that the term "BEAN" is suggestive, as "a consumer encountering the applicant's BEAN PORTER mark will not automatically know what types of beans are involved ... in the applicant's goods."² When the Examining Attorney made the refusal final,³ Applicant appealed and requested reconsideration.⁴ The Board suspended the appeal and remanded the application to the Examining Attorney for consideration of the request.⁵ The Examining Attorney then issued a nonfinal Office Action superseding the prior final Office Action.⁶ This nonfinal Office Action maintained the descriptiveness refusal and

¹ May 1, 2017 Office Action at TSDR 2. Page references to the application record are to the downloadable .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs, motions and orders on appeal are to the Board's TTABVue docket system.

² Oct. 31, 2017 Response to Office Action at 2.

³ Dec. 25, 2017 Office Action.

⁴ June 25, 2018 request for reconsideration. 4 TTABVue.

⁵ 2 TTABVue.

⁶ Aug. 8, 2018 Office Action.

added another basis for refusal: that the applied-for mark is deceptively misdescriptive of Applicant goods under Section 2(e)(1), as “it is plausible that the specified goods would contain vanilla or coffee beans. However, applicant has indicated that it may use its mark for goods other than those flavored with vanilla or coffee beans.”⁷ The Office Action also required Applicant to provide the following information:

- (1) Explain whether the wording in the mark “BEAN” has any meaning or significance in the trade or industry in which applicant’s goods and/or services are manufactured or provided, or if such wording is a term of art within applicant’s industry.
- (2) Applicant must explain whether all the identified goods are/will be flavored with some type of bean. If so, applicant must indicate the type of beans that are/will be used.

See 37 C.F.R. §2.61(b); TMEP §814.⁸

The Office Action also suggested the following substitute wording for Applicant’s identification of goods: “Beer; porter; **the foregoing flavored with vanilla beans and/or coffee beans**”⁹

Applicant responded to the requests for information:

- (1) The word “BEAN” has no meaning or significance in the trade or industry in which applicant’s goods and/or services are manufactured or provided, and the word is not a term of art within applicant’s industry.
- (2) Applicant currently makes a beer, a porter, that contains vanilla and coffee flavors. As the Examining Attorney knows, vanilla and coffee come from types

⁷ *Id.* at 6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 7.

of beans. Applicant cannot say whether all of its goods will be flavored with some type of bean, as this is an intent-to-use application, and such specificity is not required under the four corners of the application and the eventual registration (and under the ID Manual discussed below). However, Applicant has applied for the mark BEAN PORTER in connection with the goods “beer; porter,” and will only use such mark on such claimed goods.¹⁰

The Examining Attorney made final the refusal based on mere descriptiveness and deceptive misdescriptiveness,¹¹ and the appeal resumed.

II. Mere Descriptiveness

Section 2(e)(1) of the Lanham Act provides that a term is unregistrable on the Principal Register if it “[c]onsists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them....” 15 U.S.C. § 1052 (e)(1), *cited in In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). The statute’s use of the term “mark” is anomalous, “[f]or if it is ‘merely descriptive,’ it is **not** a trademark, and this is so even though the user intends it to be a trademark.” *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 209 USPQ 40, 44 n.3 (CCPA 1981).

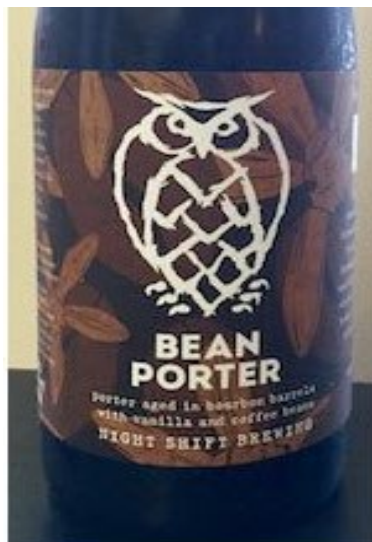
“A designation is considered to be merely descriptive under Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *See In re Chamber of Commerce of the United States of America*, 675 F.3d 1297, 102 USPQ2d 1217 (Fed. Cir. 2012). The wording

¹⁰ Feb 8, 2019 Response to Office Action at 1-2.

¹¹ March 7, 2019 Office Action. 5 TTABVUE. In her final Office Action, the Examining Attorney maintained the requirement that Applicant amend its identification of goods. *Id.*, 5 TTABVUE 5. In her brief on appeal, however, the Examining Attorney states that she “has withdrawn the requirement pertaining to the identification of goods.” 9 TTABVUE 2.

need not immediately convey an idea of each and every specific feature of the applicant's goods in order to be considered merely descriptive; it is enough that the terminology describes one significant attribute or function of the goods." *Apollo Medical Extrusion Technologies, Inc. v. Medical Extrusion Technologies, Inc.*, 123 USPQ2d 1844, 1849 (TTAB 2017).

Here, there is no dispute that PORTER describes the goods, identified in part as porter—a dark colored beer.¹² The issue is whether the mark as a whole, BEAN PORTER, is merely descriptive. The Examining Attorney argues that BEAN describes the vanilla and coffee beans used as flavoring ingredients of Applicant's porter.¹³ Applicant's bottle label touts its "porter aged in bourbon barrels with vanilla and coffee beans":



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¹² Webstaurantstore.com June 24 request for reconsideration at 39; Applicant's brief, 7 TTABVUE 9 ("In sum, the generic term for Applicant's goods is beer, and the descriptive term for Applicant's goods is porter."); Examining Attorney's brief, 9 TTABVUE 8 ("Applicant has indicated that its goods are a porter style beer. Therefore, the term "PORTER" in Applicant's mark identifies the goods in the application.").

¹³ May 1, 2017 Office Action.

¹⁴ BeerAdvocate.com, *id.* at 5.

Reviews of Applicant's BEAN PORTER beer note that it is "infused with vanilla beans and coffee beans":

Night Shift Bean Porter



overall **97**

style: Porter - **Top 50**

Everett, Massachusetts USA

Serve in English pint, Shaker

bottling unknown on tap unknown distribution unknown

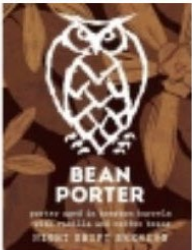
send corrections | shelftag | edit barcodes | update pic

RATINGS: 36 MEAN: 3.82/5.0 WEIGHTED AVG: 3.73/5 SEASONAL: Special EST. CALORIES: 195 ABV: 6.5%

* picture credits
copyright may apply

COMMERCIAL DESCRIPTION
A collaboration we did with Boston's own Bean Snowboards, this is a bourbon & rye whiskey barrel-fermented porter infused with vanilla beans and coffee beans; the ideal slopeside warmer for the trails ahead.

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SEE ALL

Bean Porter (2014)

Vintage of Bean Porter

Night Shift Brewing

Porter - Other

No ABV

No IBU

(3.76)

40 Ratings

Added 01/02/16

This beer is no longer being produced by the brewery.

Bourbon barrel-aged porter infused with vanilla beans and coffee beans.

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¹⁵ RateBeer.com, *id.* at 7.

¹⁶ Untappd.com, *id.* at 18.

The Examining Attorney has also submitted third-party website evidence showing that vanilla and/or coffee beans are frequently used as flavor extracts for beer, particularly porter, e.g.:

Vanilla Bean Porter

APRIL 20, 2016 | BEERS, SPECIALTY

Rich, dark and creamy with a sweet, buttery aroma

[READ MORE →](#)



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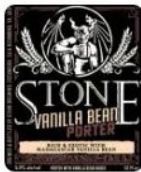


Harpoon Vanilla Bean Porter

Categories: [Beer](#), [Beer\(Ale\)](#)

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Stone Vanilla Bean Porter



Brewed by **Stone Brewing**

Style: Porter

Escondido, California USA

Serve in English pint, Shaker



[send corrections](#) | [shelftag](#) | [edit barcodes](#) | [update pic](#)

RATINGS: 48 WEIGHTED AVG: 3.5/5 IBU: 53 EST. CALORIES: 177 ABV: 5.9%

* picture credits
copyright may apply

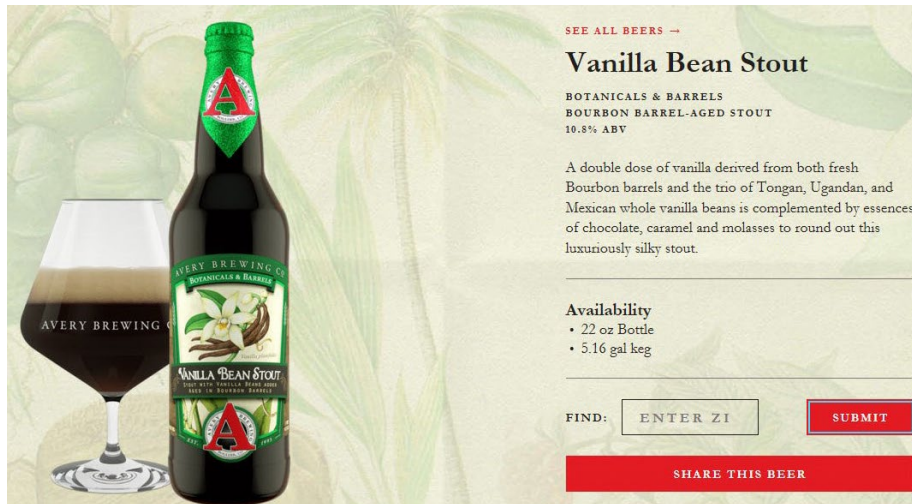
COMMERCIAL DESCRIPTION

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¹⁷ CapeCodBeer.com, *id.* at 11.

¹⁸ WilliamsDistributing.com, *id.* at 13.

¹⁹ RateBeer.com, Dec. 25, 2017 Office Action at 7.



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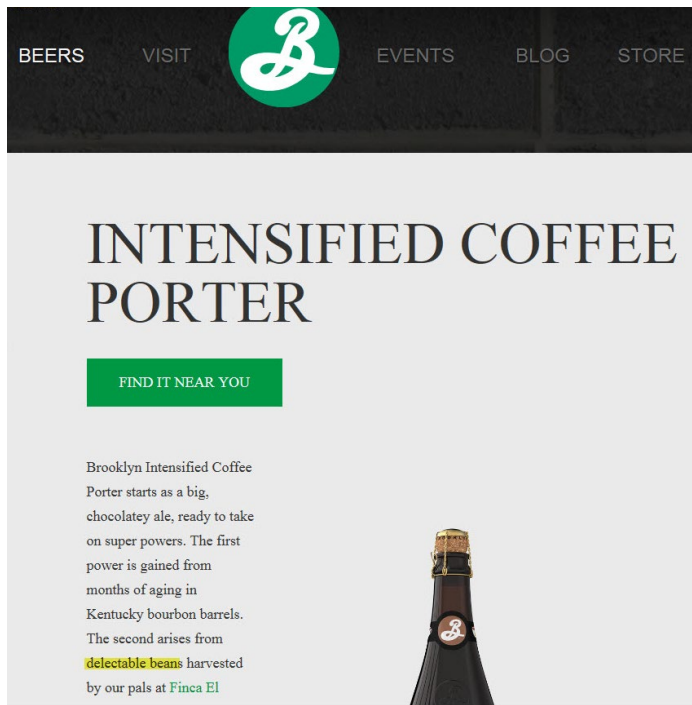
Brew Review – Coffee and Vanilla Bean Porter by Pinellas Ale



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²⁰ AveryBrewing.com, *id.* at 15.

²¹ FloridaBeerBlog.wordpress.com, Aug. 8, 2018 Office Action at 16-17.



Philadelphia Joe Porter with Eithiopian Coffee Beans

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In almost every case, the third-party webpages emphasize the beans from which the vanilla or coffee flavor emanates. The Examining Attorney adds—almost unnecessarily—dictionary evidence showing that coffee and vanilla come from beans, e.g.:

²² BrooklynBrewery.com, *id.* at 25.

²³ BeerMenus.com, *id.* at 26.

²⁴ CraftBeerAustin.com *id.* at 47

Bean: “3. Beans such as coffee beans or cocoa beans are the seeds of plants that are used to produce coffee, cocoa, and chocolate.”²⁵

vanilla in American

(vəˈnɪlə ; venilˈə)

Word Frequency ●●●

noun

1. any of a genus (*Vanilla*) of climbing tropical American orchids with fragrant, greenish-yellow flowers
2. the podlike, immature capsule (**vanilla bean**) of some of these plants
3. an extract of these capsules, used as a flavoring in cooking, confections, etc.
4. of or flavored with vanilla

vanilla ice cream

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Thus, the Examining Attorney concludes, “BEAN,” when used on or in connection with Applicant’s goods, particularly porter, merely describes ingredients used in Applicant’s BEAN PORTER.²⁷ See, e.g., *Real Foods Pty Ltd. v. Frito-Lay North America, Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1375 (Fed. Cir. 2018) (“Indeed, the terms corn and rice in Real Foods’ proposed marks [CORN THINS and RICE THINS] are descriptive because they identify ‘ingredients,’ which are ‘qualities or properties’ of Real Foods’ goods.”); *In re TriVita*, 114 USPQ2d 1574 (holding NOPALEA merely descriptive of dietary and nutritional supplements containing nopal juice, an extract of the nopalea plant); *In re Andes Candies Inc.*, 478 F.2d 1264, 178 USPQ 156 (CCPA 1973) (holding CREME DE MENTHE merely descriptive of candy’s flavor); *Flowers Indus., Inc. v. Interstate Brands Corp.*, 5 USPQ 2d 1580 (TTAB 1987) (holding HONEY WHEAT merely descriptive of bread containing honey and wheat).

²⁵ COLLINS ENGLISH DICTIONARY CollinsDictionary.com Aug. 8, 2018 Office Action at 56.

²⁶ Collins English Dictionary CollinsDictionary.com, *id.* at 60.

²⁷ Examining Attorney’s brief, 9 TTABVUE 7.

Applicant counters that the third-party examples all state the flavors, VANILLA BEAN or COFFEE BEAN; they do not use BEAN alone to describe the style of beer.²⁸ Unlike those examples, it argues, BEAN is too broad, general and ambiguous to be descriptive:

“BEAN” cannot be considered descriptive, as it is too broad and general when it comes to describing Applicant’s goods. The term “BEAN,” even when viewed in conjunction with Applicant’s goods, may suggest a variety of different flavors or ingredients, and does not describe any specific flavor with immediacy and particularity. “BEAN” could refer to cacao, coffee, vanilla, Romano, or black cardamom or any other types of beans one might want to use in a beer (separately or in combination). At most it evokes the flavors of something that comes in bean form, but does not tell a customer immediately what ingredients or flavors the beer may have.

...

[H]ow would a consumer know the flavors were coffee and vanilla from the word BEAN? It is true, as the evidence has shown, that vanilla is a common flavor used in certain types of beer, like stouts and porters. It is also true that coffee is a common flavor used in certain beers. However, the combination is not necessarily common. ... Moreover, chocolate is another common ingredient in certain types of beer, such as porters and stouts, and that also comes from a bean. A consumer simply cannot know what flavor a beer is by the word “BEAN” alone. It requires imagination, and mental leaps to get from the mark to the actual nature of the goods, and therefore the mark is suggestive....²⁹

We disagree. Applicant’s theory gained some acceptance in an early Board decision, *RJR Foods, Inc. v. Ocean Spray Cranberries, Inc.*, 174 USPQ 244 (TTAB 1972), which found GRAPEBERRY not merely descriptive of a beverage consisting of

²⁸ Applicant’s brief, 7 TTABVUE 9.

²⁹ *Id.* at 11, 13. Applicant also devotes part of its brief to whether its proposed mark is generic. *Id.* at 6-9. The Examining Attorney maintains, however, that “at no point during the prosecution of this application did the Examining Attorney refuse registration of Applicant’s mark based on genericness. As such, no arguments or evidence regarding the genericness of the mark were necessary. The reference to genericness [in the Office Actions] was merely advisory and was intended to inform Applicant that an amendment under Section 2(f) or on the Supplemental Register could not be recommended since the mark appeared to be generic as used with the specified goods.” Examining Attorney’s brief, 9 TTABVUE 14. Hence, we focus on the descriptiveness *vel non* of the proposed mark.

concord grape juice, cranberry juice, water and lesser ingredients. The Board declared, “The mark tells us that applicant’s product comprises a blend of grape and some type of berry juice. But which berry, strawberry, boysenberry, raspberry, hip of the rose or perhaps cranberry? As applicant states ‘a term which leaves so much unsaid is scarcely merely descriptive.’ ... A registration to applicant of ‘GRAPEBERRY’ could in no way prevent opposer from making a fair use of the individual components of said mark, “grape” and “berry” to describe its goods.” *Id.* at 245-46. This viewpoint, however, was short-lived.

The next year, the Court of Customs and Patent Appeals issued *In re Keebler Co.*, 479 F.2d 1405, 178 USPQ 155 (CCPA 1973):

This is an appeal from the decision of the Trademark Trial and Appeal Board ... sustaining the examiner’s refusal to register RICH ‘N CHIPS for “cookies.” The specimen filed by appellant shows the use of the mark on a package of chocolate chip cookies...

...

Appellant contends that where the average purchaser has to mentally sort through various meanings of the words which comprise the trademark to arrive at that meaning which is descriptive of the goods to which the mark applies, the mark cannot be considered merely descriptive in the sense of § 2(e). Such a proposition cannot be held to be either universally true or universally false.

...

We agree that as applied to chocolate chip cookies, the phrase RICH ‘N CHIPS plainly conveys the impression that the cookies are abundant in the chips which they contain, i. e. chocolate chips. The phrase therefore describes to the consumer a purported quality of the product which would tend to entice the purchase of the product. As such, we agree that the phrase would not inherently serve to distinguish appellant’s goods from similar goods of others, but rather would be recognized as connoting a common quality which all such goods could be asserted to have.

Id. at 155-56 (emphasis added).

Years later, in *In re Entenmann's Inc.*, 15 USPQ2d 1750 (TTAB 1990), an applicant, relying on *RJR Foods*, argued that its mark, OATNUT for bread, was not descriptive because the term OATNUT “does not tell purchasers which type of nut is used in the bread, for example, walnuts, almonds or pecans.” The Board rejected this approach:

While it is true that in order to be held merely descriptive, a term must describe with some particularity a quality or ingredient of the product in question, it need not describe it exactly.

...

We believe that the term OATNUT readily informs purchasers, with the required degree of particularity, of two not inconsequential ingredients in applicant's bread. By way of analogy, the term “nut bread” does not inform purchasers of the particular type of nuts found in a particular loaf of nut bread. Nevertheless, the fact that the term “nut bread” does not inform purchasers of the precise type of nuts in the bread does not mean that the term “nut bread” is not descriptive of, and indeed generic for, bread. **To the extent that our 1972 decision in *RJR Foods* sets forth a rule of law that in order to be held merely descriptive, a term must describe with absolute exactness an ingredient of the product, we decline to follow that rule.**

Id. at 1751 (emphasis added).

Similarly, Applicant cannot avoid a finding of descriptiveness by omitting the exact wording “VANILLA” and “COFFEE” before BEAN PORTER. “Descriptiveness must be evaluated ‘in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.’” *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)). Here, it is apparent from the third-party evidence that average purchasers are frequently exposed to descriptive uses of vanilla

and coffee bean as ingredients in porter, and would understand the applied-for mark as another example of such use. Indeed, Applicant’s own labeling touts its use of “vanilla and coffee beans” as brewing ingredients.³⁰ See *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (“Evidence of the context in which a mark is used on labels, packages, or in advertising material directed to the goods is probative of the reaction of prospective purchasers to the mark.”).

Moreover, third-party competitors’ advertising and labeling, shown above, indicates that these “descriptive terms are in the public domain and should be free for use by all who can truthfully employ them to describe their goods.” *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 57 USPQ2d 1720, 1722 (Fed. Cir. 2001) (citing *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 543-44 (1920)). “The major reasons for not protecting such [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.” *In re Abcor*, 200 USPQ at 217, *quoted in In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089-90 (Fed. Cir. 2005) and *Apollo Medical Extrusion Technologies, Inc. v. Medical Extrusion Technologies, Inc.*, 123 USPQ2d 1844, 1851 (TTAB 2017). Registering BEAN PORTER would pose a broad risk to competition, as it could preempt competitors’ use of “vanilla bean porter,” “coffee bean porter,” or any other

³⁰ BeerAdvocate.com, *id.* at 5.

flavor extracted from beans. That would clearly contravene the purpose of Section 2(e)(1).

Applicant submits evidence of four third-party marks on the Principal Register containing the word “bean” for beer where “bean” is not disclaimed: BEAN GENE (Reg. No. 4,419,951), BEAN COUNTER (Reg. No. 5,124,456), PORK & BEANS (Reg. No. 5,059,548), and BEAN MACHINE (Reg. No. 5,261,158). “Such registrations demonstrate that the USPTO has found ‘bean’ to be inherently distinctive when used in connection with beer,” Applicant argues.³¹

However, these third-party marks use “BEAN” in different senses; that is, two marks play on the phrases “bean counter” and “pork & beans,” and the other two modify the rhyming words “GENE” and “MACHINE.” In BEAN PORTER, by contrast, “BEAN” is an adjective directly modifying “PORTER.” The words describe an ingredient frequently used in porter. Competitors use the words that way, and consumers would perceive the words that way. Each component of the mark retains its descriptive significance in relation to the goods at issue and thus, the mark as a whole is merely descriptive. *See In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372, 1374 (Fed. Cir. 2004); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (“The Board, however, ultimately must consider the mark as a whole and do so in the context of the goods or services at issue.”). As the Federal Circuit has made clear, “The Board must decide each case on its own merits. ... Even if some prior registrations had some

³¹ Applicant’s brief, 7 TTABVUE 14; June 25, 2018 Response to Office Action at 18, 53-158.

characteristics similar to [the present] application, the PTO's allowance of such prior registrations does not bind the Board or this court." *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). None of the third-party marks establish that BEAN, as used in BEAN PORTER, is anything other than descriptive.³²

Applicant, during examination of its application, asserted that its proposed mark is a double entendre. Applicant contends the word BEAN evokes the city of Boston (oft nicknamed "Beantown"), as it is located in Everett, Massachusetts, on the outskirts of the greater Boston metropolitan area, and uses BEAN PORTER in collaboration with Bean Snowboards, also located in the Boston area.³³ "For trademark purposes, a 'double entendre' is an expression that has a double connotation or significance as applied to the goods or services." TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1213.05(c), *cited in In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017). As the Examining Attorney correctly observes, the multiple interpretations that make an expression a 'double entendre' must be associations that the public would make fairly readily, and must be readily apparent from the mark itself. *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1105 (TTAB 2018); *In re Calphalon*, 122 USPQ2d at 1163-64; TMPEP § 1213.05(c). Nothing about

³² Applicant also cites to a dozen third-party Principal Register registrations of marks that contain "bean" for coffee or coffee-related goods and services, yet do not disclaim "bean." *E.g.*, BEAN STREET (Reg. no. 4,845,122), THE BEAN MAGAZINE (Reg. no. 5,662,908), and JITTER BEAN (Reg. no. 5,478,319). Applicant's brief, 7 TTABVUE 15; Feb. 8, 2019 Response to Office Action at 45-68. But these third-party registrations, like those cited for beer, do not use "bean" in the same context as the applied-for mark, which describes a common ingredient in a generic good. They are similarly unavailing.

³³ Applicant's brief, 7 TTABVUE 14; June 25, 2018 Response to Office Action at 6, 45-52; Feb. 8, 2019 Response to Office Action at 6-7, 24-42.

the mark itself suggests Applicant's location; it does not mention "Beantown" or a collaboration with another entity; nor does it mention "snowboards." Consequently, we find that BEAN PORTER is not a double entendre.

III. Conclusion

Applicant's proposed mark, BEAN PORTER, is merely descriptive within the meaning of Section 2(e)(1). Because the proposed mark merely describes an ingredient of Applicant's porter—vanilla and coffee bean flavoring—the proposed mark is unregistrable as to Applicant's entire class of identified goods in International Class 32: "beer; porter." *See In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd without pub. op.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class), *cited in In re White Jasmine LLC*, 106 USPQ2d 1385, 1391 (TTAB 2013). In view of this ruling, we find it unnecessary to reach the issue of deceptive misdescriptiveness. *In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) ("Having found that Applicant's mark is merely descriptive of a feature or characteristic of the goods, we need not reach the alternative ground for refusal that Applicant's mark is deceptively misdescriptive.").

Decision: The refusal to register Applicant's proposed mark is affirmed on the ground of mere descriptiveness under 15 U.S.C. § 1052(e)(1).