

This Opinion is not a  
Precedent of the TTAB

Mailed: May 29, 2020

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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*In re Monsalvat Farm Holdings LLC*

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Serial Nos. 88073251  
88073254  
88075987  
88075991

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Brian J. Winterfeldt of Winterfeldt IP Group  
for Monsalvat Farm Holdings LLC

Kevin G. Crennan, Trademark Examining Attorney, Law Office 113,  
Myriah Habeeb, Managing Attorney.

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Before Mermelstein, Heasley, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Applicant, Monsalvat Farm Holdings LLC, has filed four applications to register  
the following marks on the Principal Register:

- The standard character mark MONSALVAT FARM and the composite mark



, each based on actual use in commerce on “honey; maple syrup” in Class 30;<sup>1</sup> and the same two marks:

- The standard character mark MONSALVAT FARM and the composite mark



, each based on intent to use on “beeswax for use in further manufacture; beeswax for use in the manufacture of cosmetics” in Class 4, “alpaca hair” in Class 22, and “yarn” in Class 23.<sup>2</sup>

The Trademark Examining Attorney has refused registration of Applicant’s marks under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), on the ground that Applicant must disclaim the word “FARM” in each application as merely descriptive.

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<sup>1</sup> Application Serial Nos. 88075987 and 88075991 were filed on August 13, 2018, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere as of May 20, 2008 and use in commerce since at least as early as July 6, 2018. The composite mark is described as follows: “The mark consists of the word ‘MONSALVAT FARM’ in stylized font above a twelve sided polygon enclosing a chalice bearing a Templar cross above a stylized letter ‘M’.” Color is not claimed as a feature of the mark.

<sup>2</sup> Application Serial Nos. 88073254 and 88073251 were filed on August 10, 2018, based on Applicant’s allegation of a *bona fide* intention to use the marks in commerce under Section 1(b) of the Trademark Act. 15 U.S.C. § 1051(b).

When the refusals were made final, Applicant appealed and requested consolidation of the appeals, which was granted.<sup>3</sup> In this consolidated appeal, Applicant argues that the word “FARM” need not be disclaimed, as it is not merely descriptive, and is part of unitary marks. We disagree, and affirm the refusals to register, absent a disclaimer.

### I. Mere Descriptiveness

The Trademark Act provides that the USPTO can “require the applicant to disclaim an unregistrable component of a mark otherwise registrable.” 15 U.S.C. § 1056(a). A mark or component is unregistrable if, “when used on or in connection with the goods of the applicant,” it is “merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). Thus, the PTO “may require a disclaimer as a condition of registration if the mark is merely descriptive for at least one of the products or services involved.” *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). Failure to comply with a disclaimer requirement is a basis for refusal. *Id.*; *In re UST Global (Singapore) Pte. Ltd.*, 2020 USPQ2d 10435, \* 2 (TTAB 2020).

“Disclaiming unregistrable components prevents the applicant from asserting exclusive rights in the disclaimed unregistrable terms.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (quoting *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1265 (Fed. Cir. 2015)). Because other commercial entities need to be able to use the wording in marketing

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<sup>3</sup> 4-5 TTABVUE. References to the briefs, motions and orders on appeal are to the Board’s TTABVUE docket system. Page references to the application record are to the downloadable .pdf version of the USPTO’s Trademark Status & Document Retrieval (TSDR) system.

similar goods or services, no single trademark owner may appropriate exclusive rights to the descriptive wording. “The major reasons for not protecting such [merely descriptive wording] 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 Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

The disclaimer requirement furthers this purpose:

The Lanham Act’s disclaimer requirement strikes a statutory balance between two competing trademark principles. On the one hand, it provides the benefits of the Lanham Act to applicants for composite marks with unregistrable components. On the other hand, the Act prevents an applicant from claiming exclusive rights to disclaimed portions apart from composite marks. The applicant’s competitors in the same trade must remain free to use descriptive terms without legal harassment.

*Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991).

A. The Examining Attorney’s Evidence of Descriptiveness

The Examining Attorney maintains that the word “FARM” is merely descriptive because it describes a feature, quality, or characteristic of Applicant’s goods. *See, e.g., In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

Specifically, the Examining Attorney contends:

[A] term that describes the provider of a product may also be merely descriptive of the product. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1301, 102 USPQ2d 1217, 1220 (Fed. Cir. 2012) (affirming Board’s finding that NATIONAL CHAMBER was merely descriptive of online service providing directory information for local and state chambers

of commerce and business and regulatory data analysis services to promote the interest of businessmen and businesswomen); *In re Major League Umpires*, 60 USPQ2d 1059, 1060 (TTAB 2001) (holding MAJOR LEAGUE UMPIRE merely descriptive of clothing, face masks, chest protectors and shin guards); TMEP §1209.03(q).<sup>4</sup>

The Examining Attorney adduces three kinds of evidence—dictionary definitions, third-party websites, and third-party registrations—to show that “FARM” is not inherently distinctive, and thus is not registrable matter.

The dictionary definitions establish that a farm is a “tract of land devoted to agricultural purposes” or a “tract of land cultivated for the purpose of agricultural production.”<sup>5</sup> “In light of these definitions,” the Examining Attorney maintains, “FARM” in the Applicant’s marks merely describe a feature, quality, characteristic, or provider of the identified goods, namely, that they originate from a tract of land devoted to agricultural purposes or cultivated for the purpose of agricultural production.”<sup>6</sup>

Additionally, the Examining Attorney submits 39 website excerpts showing third-parties using “farm” to describe a feature, quality, characteristic, or provider of the same sort of farm products as Applicant identifies.<sup>7</sup> For example:

- Abeille Alaska: “Our products are unique because of the source of our beeswax and honey from our farm”;<sup>8</sup>

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<sup>4</sup> Examining Attorney’s brief, 8 TTABVUE 5.

<sup>5</sup> Merriam-Webster.com, Dec. 6, 2018 Office Action at TSDR 4; AHDictionary.com, May 8, 2019 Office Action at 7, Serial No. 88075987.

<sup>6</sup> Examining Attorney’s brief, 8 TTABVUE 5.

<sup>7</sup> Ser. No. 88075987, Dec. 6, 2018 Office Action at 5-7, May 8, 2019 Office Action at 8-30; Ser. No. 88073254, Dec. 6, 2018 Office Action at 5-9, April 20, 2019 Office Action at 8-40.

<sup>8</sup> Ser. No. 88073254, AbeilleAlaska.com Dec. 6, 2018 Office Action at 5-6.

- Chase Stream Farm: “Choose from a variety of our farm products to include ... honey”;<sup>9</sup>
- Collins Tree Farm And Sugarhouse: “Our maple syrup is produced from a single source, meaning that all the sap comes exclusively from trees on our farm”;<sup>10</sup>
- Davidson’s Farm: “We stock a seasonal variety of products made right here on our farm. Selections include honey, jam, beeswax....”;<sup>11</sup>
- Empty Pockets Alpaca Farm: “Our farm is currently home to 47 alpacas. Our yarn is 100% alpaca made from our animals”;<sup>12</sup>
- Faerie Springs Farm: “Our Farm Products” “NATURAL HONEY”;<sup>13</sup>
- Gooserock Farm: “Visitors are welcome to visit the Honey House, where honey and other farm products are offered for sale”;<sup>14</sup>
- High Ridge Meadows Farm: “Our farm products include ... maple syrup”;<sup>15</sup>
- Next to Nature Farm: “We are a small family farm committed to offering all of our products in their most natural form” and offering honey and beeswax;<sup>16</sup>
- Zinniker Family Farm: “Our honey tastes like no other.... Bees are an important part of any farm.”<sup>17</sup>

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<sup>9</sup> Ser. No. 88075987, ChaseStreamFarm.com May 8, 2019 Office Action at 13.

<sup>10</sup> Ser. No. 88075987, CollinsVermontMaple.com Dec. 6, 2018 Office Action at 6.

<sup>11</sup> Ser. No. 88073254, DavidsonsFarm.com April 20, 2019 Office Action at 12-13.

<sup>12</sup> Ser. No. 88073254, EmptyPocketsAlpacas.com Dec. 6, 2018 Office Action at 7.

<sup>13</sup> Ser. No. 88075987, FaerieSpringsFarm.com May 8, 2019 Office Action at 12.

<sup>14</sup> Ser. No. 88073251, GooseRockFarm.com April 20, 2019 Office Action at 14.

<sup>15</sup> Ser. No. 88075987, HighRidgeMeadowsFarm.com May 8, 2019 Office Action at 20-21.

<sup>16</sup> Ser. No. 88073254, NextToNatureFarm.com April 20, 2019 Office Action at 9-11.

<sup>17</sup> Ser. No. 88075987, ZinnikerFarm.com Dec. 6, 2018 Office Action at 5.

Moreover, the Examining Attorney submits over 25 third-party registrations in which the wording “FARM(S)” was disclaimed.<sup>18</sup> For example:

Reg. No.	Mark	Relevant Goods
4918571	BAVARIA FARMS, LLC & Design (“FARMS” disclaimed)	Alpaca hair yarn
5725087	FINDING HOME FARMS (“FARMS” disclaimed)	Maple syrup
5604383	BIG TREE FARMS & Design (“FARMS” disclaimed)	Honey
5585561	MERCURIO FARMS (“FARMS” disclaimed)	Honey; Maple syrup
5717815	HONEYFLOW FARM’S BEESWAX CANDLE SHOP (“FARM’S BEESWAX CANDLE SHOP” disclaimed)	Beeswax candles
5589134	SPOON FULL FARM (“FARM” disclaimed)	Honey
4711283	JUNIPER MOON FARM (“FARM” disclaimed)	Knitting yarn
5704548	12 STONES FARM (“FARM” disclaimed)	Honey

As with the dictionary definitions and third-party use evidence, the Examining Attorney contends that these third-party registrations with disclaimers are probative evidence of FARM’s descriptiveness, warranting its disclaimer.

#### B. Applicant’s Arguments

Applicant argues that no disclaimer should be required because “FARM” is at least suggestive, not descriptive of its goods. The word only vaguely suggests something about the goods, it maintains, without forthwith conveying an immediate idea of their

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<sup>18</sup> Ser. No. 88075987, April 17, 2019 Office Action at 31-85; Ser. No. 88073254, April 20, 2019 Office Action at 41-62.

ingredients, qualities or characteristics with any particularity.<sup>19</sup> Such vague, expansive language encompassing a broad range of goods has been found suggestive, it points out. *Citing, e.g., In re Hutchinson Tech. Inc.*, 852 F.2d 552, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988) (reversing a surname refusal of HUTCHINSON TECHNOLOGY for electronic components, noting that “[m]any other goods possibly may be included within the broad term ‘technology,’ but that does not make the term descriptive of all of those goods.”); *In re Automatic Radio Mfg. Co.*, 404 F.2d 1391, 160 USPQ 233, 236 (CCPA 1969) (reversing 2(e)(1) refusals of AUTOMATIC and AUTOMATIC RADIO for radios); *In re the House Store, Ltd.*, 221 USPQ 92 (TTAB 1983) (reversing a Section 2(e)(1) refusal of THE HOUSE STORE for furniture and houseware store services) (“STORE” disclaimed).

Applicant applies this reasoning to the Examining Attorney’s evidence, arguing that the dictionary definitions of “farm,” “a tract of land devoted to agricultural purposes” or a “tract of land cultivated for the purpose of agricultural production,” are too vague and highly generalized to describe Applicant’s goods. “The Examining Attorney must show that those meanings immediately lead a consumer to a single, particular idea about those goods without a further thought,” Applicant argues. “He must show that this idea would inform the consumers about a significant attribute of the goods.”<sup>20</sup>

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<sup>19</sup> Applicant’s brief at 5-6, citing *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012).

<sup>20</sup> Applicant’s brief, 6 TTABVUE 10.



Applicant further contends that the Examining Attorney's third-party website excerpts do not contain any evidence of "farm" used descriptively. Rather, the excerpts show "farm" used:

- to describe other goods or services (such as "farm days," "shop farm products," or "farm store"); or
- as parts of trademarks, which may weaken their strength as source-identifiers, without rendering them descriptive (e.g., "a brand of Earthworks Farm, Alaska," or "Walker Honey Farm" as a source of honey); or
- as part of descriptive phrases (such as "honey and other farm products," "Farm Products" including "Yarn & Fiber," or advertising "a variety of farm products to include ... honey"); or
- combined with other descriptive or suggestive language about the quality of the goods, but not descriptive standing alone (for example, websites explaining that "[w]e stock a seasonal variety of products made right here on our farm. Selections include ... beeswax," or advertising products for sale "From Our Farm to Your Home," or stating "[w]e have bee hives on the farm and nearby allowing for the natural pollination of our vegetables, berries, and wildflowers.").<sup>21</sup>

Applicant concludes that none of the third-party website excerpts show use of "farm" to describe the goods. As for the third-party registrations disclaiming "FARM"

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<sup>21</sup> Applicant's brief, 6 TTABVUE 11-19.

or “FARMS,” Applicant quotes Federal Circuit and Board decisions for the proposition that they are not binding, as “[t]he Board must decide each case on its own merits.”<sup>22</sup> *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1567 (Fed. Cir. 2001); *In re Thomas H. Wilson*, 57 USPQ2d 1863, 1871 (TTAB 2001) (“the Board is not bound by prior decisions of Trademark Examining Attorneys, and ... each case must be decided on its own merits and on the basis of its own record, in accordance with relevant statutory, regulatory and decisional authority.”). After all, Applicant argues, we do not have information from the registration files as to why the examining attorneys required or why the registrants agreed to disclaim “Farm.” “Where those registrations identify goods other than those identified in the Applications, it is possible that a disclaimer was required because “farm” was deemed descriptive of goods that are not at issue in this appeal.”<sup>23</sup>

For these reasons, Applicant concludes that the record does not contain any evidence of “Farm” used to describe the goods in a relevant sense.

### C. Discussion and Analysis

A term is “merely descriptive” within the meaning of 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.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). “A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need

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<sup>22</sup> Applicant’s brief, 6 TTABVUE 19.

<sup>23</sup> Applicant’s brief, 6 TTABVUE 20.

only describe a single feature or attribute.” *In re Chamber of Commerce*, 102 USPQ2d at 1219, *quoted in In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, \*6 (TTAB 2019).

One such feature is the type of provider of the goods. “It is well-established that a term which describes the provider of goods or services is also merely descriptive of those goods and services. *In re E. I. Kane Inc.*, 221 USPQ 1203 (TTAB 1984), and cases cited therein.” *In re Major League Umpires*, 60 USPQ2d 1059, 1060 (TTAB 2001). *See also In re Omaha Nat’l Bank*, 819 F.2d 1117, 2 USPQ2d 1859, 1861 (Fed. Cir. 1987) (rejecting argument that descriptiveness should be limited to a quality or characteristic of the good or service itself and holding that it includes a designation descriptive of the service provider); *In re Chamber of Commerce*, 102 USPQ2d 1217, 1220 (NATIONAL CHAMBER held descriptive of “traditional chambers of commerce activities” of “promoting the interests of businessmen and businesswomen”); *see generally* 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:16 (5th ed. March 2020) (“A mark is ‘descriptive’ if it is descriptive of ... the provider of the goods or services.”).

This rule serves the fundamental purpose of descriptiveness refusals: it protects competitors’ freedom to describe the type of providers they are. *See In re Martin’s Famous Pastry Shoppe, Inc.*, 221 USPQ 364, 368 (TTAB 1984) (disclaimer requirement of PASTRY SHOPPE upheld. “The words PASTRY SHOPPE, like “bakery” and “dairy,” are descriptive designations which should be freely available to competitors to use as component parts of marks for goods or services emanating from these types of businesses.”). For this reason, terms that identify the source or provider

of a product or service may be merely descriptive under 15 U.S.C. §1052(e)(1) or generic. *See, e.g., In re Wm. B. Coleman Co.*, 93 USPQ2d 2019, 2027 (TTAB 2010) (ELECTRIC CANDLE COMPANY for lighting fixtures “incapable of identifying source for electric candles because it is a term a purchaser would understand and could use to refer to the type of company that sells electric candles, and must be left available for use by other such companies selling electric candles”); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1209.03(q) (Oct. 2018).

This rule has already been applied, in another context, to an applied-for mark containing the word “FARMS.” In *In re Southland Corp.*, 162 USPQ 465 (TTAB 1969), the examining attorney refused registration to MIDWEST FARMS for milk and ice cream on the ground that it was primarily geographically descriptive. The Board explained:

Applicant concedes that the term “MIDWEST” is primarily geographically descriptive but urges that the word “FARMS” is in no way geographically descriptive. It is then urged that the composite mark cannot be held primarily geographically descriptive even if the word “FARMS” may be merely descriptive and therefore may be barred from registration by another part of Section 2(e) of the Trademark Act.

The examiner states that the term “farms”, like “dairies”, is merely another term pointing to the location from which applicant’s goods emanate, and that the addition of this term merely adds to the specific geographic location for applicant’s goods.

Since applicant has conceded that “MIDWEST” is primarily geographically descriptive and we agree therewith, we cannot perceive how the addition of the word “farms”, or words of similar import, such as “dairies”, would be sufficient to overcome the examiner’s refusal to register. ...

It is concluded that “MIDWEST FARMS”, as applied to milk and ice cream, is primarily geographically descriptive or misdescriptive of applicant’s goods.

*Id.* at 466.

Thus, as the Examining Attorney maintains, “FARM” merely describes a “tract of land devoted to agricultural purposes” from which farm products emanate. Applicant does not dispute that its identified products emanate from a farm: “To say that any honey, maple syrup, beeswax, wool or yarn comes from a farm does not distinguish that product from any other honey, maple syrup, beeswax, wool or yarn, because all of these goods are by their nature products of agriculture—their origin on a farm is implicit in the understanding of what they are.”<sup>24</sup>

Applicant’s argument that the dictionary definitions of “FARM” are too vague and general to be descriptive, and that “[t]he Examining Attorney must show that those meanings immediately lead a consumer to a single, particular idea about those goods without a further thought,”<sup>25</sup> was rejected in the above case law. In *In re Major League Umpires*, the applicant raised the same argument, arguing that “marks designating providers are merely descriptive of the goods or services only if the mark itself is descriptive of the goods or services.” Rejecting this argument, the Board held:

[T]he general rule, as enunciated in *Kane*, does not require the interpretation suggested by applicant. Certainly, “doctor’s diet” for a diet plan would be understood by consumers as describing a diet designed or provided by a doctor, even though “doctor” does not describe the qualities or mechanics (e.g., low fat, low carbohydrate) of the diet plan. Further, the Board found, in *In re Old Boone Distillery Co.*, 172 USPQ 697 (TTAB 1972), that DISTILLER’S LIGHT was merely descriptive of scotch whisky.

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<sup>24</sup> Applicant’s brief, 6 TTABVUE 10-11.

<sup>25</sup> Applicant’s brief, 6 TTABVUE 10.

Obviously DISTILLER'S describes the provider of the whisky, not the whisky itself.

*In re Major League Umpires*, 60 USPQ2d at 1060-61.

Applicant's cited cases do not contravene *Major League Umpires* or like decisions finding types of providers descriptive. *Hutchinson Technology* did not concern a type of provider, but the broad term "technology," which the Court found not descriptive of that applicant's electronic goods. The Court reversed the surname refusal against the applied-for mark HUTCHINSON TECHNOLOGY, and affirmed the requirement that "TECHNOLOGY" be disclaimed. 7 USPQ2d at 1493 n.5. In *In re Automatic Radio*, the Court found that AUTOMATIC and AUTOMATIC RADIO were descriptive of radios, not generic, and could acquire distinctiveness; the case did not concern a type of provider. 160 USPQ at 236. And in *In re House Store*, the Board found THE HOUSE STORE suggestive of the applicant's retail store services in the field of furniture and houseware; "STORE," indicating the type of provider, was disclaimed. 221 USPQ 92. Hence, the case law on which Applicant relies is distinguishable.

The website evidence shows third parties using "farm" in many different ways: to advertise their "farm store[s]," to promote their "Farm Products," to indicate that their products emanate from their farms: "[w]e stock a seasonal variety of products made right here on our farm. Selections include ... beeswax," or advertising products for sale "From Our Farm to Your Home," or as parts of trademarks, e.g., "Walker Honey Farm." These varied uses merely indicate that this descriptive term is "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*, 252 U.S. 538, 543-44 (1920)). “The use by third parties on their websites further shows that there is a competitive need for the terms....” *In re Franklin County Historical Society*, 104 USPQ2d 1085, 1088-89 (TTAB 2012). As the Examining Attorney correctly observes, “Even if the evidence does not show “farm” being used alone, the evidence nonetheless is relevant because third-parties are referring to the identified goods as “farm products” or emanating from a farm, which is indicative of how consumers in the marketplace are likely to perceive “FARM” in the Applicant’s marks, namely, that the Applicant’s goods are farm products and originate from a farm.”<sup>26</sup>

As for the 25-plus third-party registrations disclaiming “FARM,” “[t]hird-party registrations are admissible and competent to negate a claim of exclusive rights in [a term] and the disclaimers are evidence, albeit not conclusive, of descriptiveness of the [disclaimed] term.” *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1797 n.1 (Fed. Cir. 1987). We are aware that “the Board is not bound by prior decisions of Trademark Examining Attorneys, and ... each case must be decided on its own merits and on the basis of its own record, in accordance with relevant statutory, regulatory and decisional authority.” *In re Thomas H. Wilson*, 57 USPQ2d at 1871. But in this case, we find that the third-party registrations—identifying farm products that are the same as or similar to Applicant’s—in addition

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<sup>26</sup> Examining Attorney’s brief, 8 TTABVUE 14.

to the dictionary evidence and the third-party website evidence, clearly establish, under relevant statutory and decisional authority, that “FARM” is at least merely descriptive of a provider of farm products.

## II. Unitariness

Applicant contends that it need not disclaim “FARM” because “[t]he juxtaposition of ‘Monsalvat’ with ‘farm’ in the Marks gives rise to an incongruous, unitary phrase.”<sup>27</sup> “Monsalvat is popularly known as the fictional magical castle and resting place of the holy grail in Richard Wagner’s opera Parsifal,” Applicant explains, so viewed together, “MONSALVAT” and “FARM” “give rise to a fanciful and incongruous notion of a lofty and holy site like Monsalvat having some relationship to a humble and utilitarian farm. In the case of the composite mark applications ... shown below, this incongruous association of a farm with such lofty and holy imagery is reinforced by the design elements, which depict the holy grail as a chalice bearing a Templar’s cross.”<sup>28</sup>



Applicant concludes that because the phrase “MONSALVAT FARM” is incongruous and unitary, “FARM” need not be disclaimed. *Citing, e.g., Dena v. Belvedere Int’l*, 21 USPQ2d at 1052 (no disclaimer required for unitary marks); *In re*

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<sup>27</sup> Applicant’s brief, 6 TTABVUE 21.

<sup>28</sup> 6 TTABVUE 24.



*Sharky's Dry Goods*, 23 USPQ2d 1061, 1062-63 (TTAB 1992) (PARIS BEACH CLUB incongruous because there is no beach in Paris); *In re Lamex Foods Inc.*, 2016 WL 7646386, at \*3 (TTAB 2016) (not precedential) (finding RANGE FARMS (with "FARMS" disclaimed) suggestive, not descriptive of "poultry" because "The idea of a 'range farm' is an incongruous or strange way to identify a place for breeding poultry in that the terms 'Range' and 'Farms' can be used interchangeably.").

Applicant and the Examining Attorney differ on how many purchasers are familiar with the fictional castle Monsalvat in the opera *Parsifal*, but that is unimportant. On consideration of all the arguments and evidence, we find that the marks are not unitary.

In a unitary mark, "the descriptive and nondescriptive elements are so merged together that they cannot be regarded as separable elements." *Dena v. Belvedere Int'l*, 21 USPQ2d at 1050. "A unitary mark cannot be separated into registrable and nonregistrable parts." *Id.* at 1051. This test for unitariness requires the Board to determine "how the average purchaser would encounter the mark under normal marketing of such goods and also ... what the reaction of the average purchaser would be to this display of the mark." *Id.* at 1052 (quoting *In re Magic Muffler Serv.*, 184 USPQ 125, 126 (TTAB 1974)), *quoted in In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1476 (TTAB 2007). "In some cases, in addition to the mark itself, the specific arrangement and placement of all the elements of the phrase and the manner of use and presentation on the specimen, on applicant's website, in promotional materials, and in connection with other goods or services may all demonstrate how the phrase is presented to and perceived by consumers." TMEP § 1213.05(b) (Oct. 2018).

In this case, the average purchaser could encounter Applicant's mark on its goods as shown on its specimen:



We have no doubt that the relevant public, shoppers in supermarkets and grocery stores, will immediately understand “FARM” is a separable term, conveying the information that this is a farm product. *See In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1600 (TTAB 2018). The elements MONSALVANT and FARM are “not so merged together that they cannot be regarded as separate.” *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1406 (TTAB 2018) (quoting *Dena v. Belvedere Int’l*, 21 USPQ2d at 1052).

Although MONSALVANT is arbitrary or fanciful with respect to farm goods, that does not differentiate Applicant's mark from a variety of other marks that have joined arbitrary or fanciful terms with the disclaimed word “FARM(S).” For example:

- Reg. No. 4711283 JUNIPER MOON FARM (FARM disclaimed) for Knitting yarn
- Reg. No. 5257644 MESA LAVENDER FARMS (FARMS disclaimed) for Candles; Honey

- Reg. No. 5514848 VELVET SHEEP FARM (FARM disclaimed) for Spun wool; Wool yarn
- Reg. No. 5534238 BRICK STREET FARMS (FARMS disclaimed) for Honey
- Reg. No. 5589134 SPOON FULL FARM (FARM disclaimed) for Honey
- Reg. No. 5585561 MERCURIO FARMS (FARMS disclaimed) for Honey; Maple syrup.<sup>29</sup>

Disclaimers in similar third-party registrations indicate that a term is not unitary. *In re Canine Caviar Pet Foods*, 126 USPQ2d at 1600. These third-party registrations provide evidence that purchasers would tend to attribute the ordinary dictionary meaning of “farm” to Applicant’s farm products bearing that term. *In re Ginc*, 90 USPQ2d at 1475. The words’ proximity to the design shown on Applicant’s specimen do not endow the whole with a single, integrated, and distinct commercial impression. *See Dena v. Belvedere Int’l*, 21 USPQ2d at 1052. The words in question — MONSALVANT FARM — have the same meaning whether considered individually or as a whole; neither changes the other, nor is the whole any more (or less) than the sum of its parts. As the Examining Attorney succinctly puts it, “[i]n the end, a farm is a farm.”<sup>30</sup>

We find accordingly that Applicant’s marks are not unitary.

### III. Conclusion

For the foregoing reasons, we conclude that the word “FARM”, as used in Applicant’s marks, is merely descriptive, and that the marks are not unitary.

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<sup>29</sup> Examining Attorney’s brief, 8 TTABVUE 9-11. Ser. No. 88075987, April 17, 2019 Office Action at 31-85; Ser. No. 88073254, April 20, 2019 Office Action at 41-62.

<sup>30</sup> Ser. No. 88075987, May 8, 2019 Office Action at 5.

**Decision:** The refusal to register Applicant's marks absent a disclaimer of the word "FARM" is affirmed. However, if Applicant submits a disclaimer of "FARM" in each application to the Board within thirty days, the requirement for disclaimer will have been met and each application will proceed. Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1218 (2019). Each disclaimer should read as follows: "No claim is made to the exclusive right to use FARM apart from the mark as shown."