

This Opinion is Not a
Precedent of the TTAB

Mailed: August 13, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Advanced Nutritional Supplements
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Serial No. 88766676
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Jeffrey Sturman of Sturman Law, LLC,
for Advanced Nutritional Supplements.

Peter Dang, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

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Before Lykos, Lynch and Hudis,
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Advanced Nutritional Supplements (“Applicant”) seeks registration on the Principal Register of the proposed mark QUAD-MASS (in standard characters) for “dietary and nutritional supplements” in International Class 5.¹ The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that the mark

¹ Application Serial No. 88766676 was filed on January 21, 2020 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use of the mark anywhere since at least as early as January 12, 2020, and first use in commerce since at least as early as January 20, 2020.

is merely descriptive of a purpose and function of the identified goods. After the Examining Attorney made the refusal final, Applicant appealed to this Board. The appeal is fully briefed. We affirm the refusal to register.

I. Applicable Law on Mere Descriptiveness

In the absence of acquired distinctiveness, a mark may not be registered on the Principal Register if, “when used on or in connection with the goods of the applicant[,]” the mark is “merely descriptive ... of them” Trademark Act Section 2(e)(1). “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007); *see also, DuoProSS Meditech Corp. v. Invivo Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173 (Fed. Cir. 2004) (quoting *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 543 (1920))).

The determination of whether a proposed mark is merely descriptive is made in relation to an applicant’s goods, not in the abstract. *DuoProSS*, 103 USPQ2d at 1757. “The question is not whether someone presented with only the mark could guess what the goods ... are. Rather, the question is whether someone who knows what the goods ... are will understand the mark to convey information about them.” *Id.* (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

“The line between a mark that is merely descriptive and may not be registered absent secondary meaning,^[2] and one that is suggestive and may be registered, is that a suggestive mark ‘requires imagination, thought and perception to reach a conclusion as to the nature of the goods,’ while a merely descriptive mark ‘forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods.’” *DuoProSS*, 103 USPQ2d at 1755 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (quoting *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976))).

Any competent source suffices to show the relevant purchasing public’s understanding of a contested term, including dictionary definitions, trade journals, newspapers and other publications, and consumer surveys. *In re Chamber of Commerce of U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer AG*, 82 USPQ2d at 1831; *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (citing *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986)), as well as “advertising material directed to the

² Applicant did not request, in the alternative, to register its proposed mark on the Supplemental Register or on the Principal Register with a claim of acquired distinctiveness, i.e., secondary meaning, under Trademark Act Section 2(f), 15 U.S.C. § 1052(f). In fact, Applicant affirmatively states that its proposed “trademark is eligible for registration on the Principal Register without a showing of secondary meaning.” Applicant’s Brief, 4 TTABVUE 21.

Page references herein to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. References to the briefs on appeal refer to the Board’s TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, if applicable.

goods.” *In re Abcor*, 200 USPQ at 218. The public’s understanding of the term also may be obtained from websites and publications, and an applicant’s own specimens of use and any explanatory text included therein. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

“When determining whether a mark is merely descriptive, the Board must consider the commercial impression of a mark as a whole. ... Because a mark must be considered as a whole, the Board may not ‘dissect’ the mark into isolated elements.” *DuoProSS*, 103 USPQ2d at 1756 (internal citation omitted). On the other hand, we may consider the significance of each element separately in the course of evaluating the proposed mark as a whole. *Id.* at 1757 (noting that “[t]he Board to be sure, can ascertain the meaning and weight of each of the components that makes up the mark.”).

“In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *In re Oppedahl & Larson*, 71 USPQ2d at 1372. Thus, “[w]hen two or more merely descriptive terms are combined ..., [i]f each component retains its merely descriptive significance in relation to the goods ..., the combination results in a composite that is itself merely descriptive.” *In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012). Another way of stating this analysis is that if a combination retains the descriptive significance of the individual parts, the combination must be considered merely descriptive. *In re Petroglyph*

Games Inc., 91 USPQ2d 1332, 1337 (TTAB 2009) (BATTLECAM merely descriptive for computer game software). Only where the combination of descriptive terms creates a mark with a unique, incongruous, or otherwise non-descriptive meaning in relation to the goods is the combined mark registrable. *See In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382, 384 (CCPA 1968); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1162-63 (TTAB 2013).

II. Examination of the Record on the Question of Mere Descriptiveness

In view of the above principles, we now review the record to determine the relevant purchasing public's understanding of the terms "QUAD" and "MASS," as well as the proposed QUAD-MASS mark as a whole.

A. The Relevant Purchasing Public

"Whether a mark is merely descriptive or not is 'determined from the viewpoint of the relevant purchasing public.'" *In re Stereotaxis*, 77 USPQ2d at 1090 (quoting *In re Bed & Breakfast*, 229 USPQ at 819). In its Application, Applicant identifies its goods bearing the proposed QUAD-MASS mark as "dietary and nutritional supplements." While this description is sufficiently broad to include Applicant's actual goods, it does not fully convey what Applicant's goods really do.

Shown below is one of the specimens of use submitted with Applicant's use-based Application (described as a "photo of a product bottle"):³

³ Application of January 21, 2020 at TSDR 2, 8.



And on its website, describing its product, Applicant says: “users will experience lean muscle gains while also increasing ... fat loss”⁴

Except for parroting the identification of goods, Applicant, in its appeal briefs, provides no further explanation of its identified goods bearing the proposed mark or the purpose(s) for which the product is used. All Applicant cryptically says is that its proposed mark “may elude [sic] to (or is indicative of) a desired result through use of Applicant’s goods.”⁵ We therefore fall back to rely on Applicant’s specimen of use and online advertising to find that the relevant purchasing public are those persons who desire to gain muscle size by, at least in part, ingesting Applicant’s dietary and nutritional supplements.

B. Definitions

The Examining Attorney made of record the following definitions:

⁴ Website page provided with Office Action Response of January 7, 2020 at TSDR 14.

⁵ Applicant’s Brief, 4 TTABVUE 21; Applicant’s Reply Brief, 7 TTABVUE 5.

- QUAD – slang for a quadriceps muscle (online AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (“AMERICAN HERITAGE”)).⁶
- QUAD – quadriceps : usually used in the plural (online MERRIAM-WEBSTER dictionary (“MERRIAM-WEBSTER”)).⁷
- QUADRICEPS – the large four-part extensor muscle at the front of the thigh (“AMERICAN HERITAGE”).⁸
- QUADRICEPS – the greater extensor muscle of the front of the thigh that is divided into four parts (“MERRIAM-WEBSTER”).⁹
- MASS – the physical volume or bulk of a solid body (“AMERICAN HERITAGE”).¹⁰
- MASS – a quantity or aggregate of matter usually of considerable size : expanse, bulk (“MERRIAM-WEBSTER”).¹¹

Applicant criticizes the Examining Attorney for citing to, and relying upon, these definitions to the exclusion of other definitions that might be applicable.¹² This argument is not persuasive. As already noted, the determination of whether a proposed mark is merely descriptive is made in relation to an applicant’s goods, not in the abstract. *In re Bayer AG*, 82 USPQ2d at 1831; *DuoProSS*, 103 USPQ2d at 1757. “That a term may have other meanings in different contexts is not controlling” *Robinson v. Hot Grabba Leaf, LLC*, 2019 USPQ2d 149089, at *5 (TTAB 2019) (citing *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018)). “[S]o long as any one of the meanings of a term is descriptive, the term may be considered to be

⁶ Office Action of April 13, 2020 at TSDR 7.

⁷ *Id.* at TSDR 11.

⁸ *Id.* at TSDR 8.

⁹ *Id.* at TSDR 12.

¹⁰ *Id.* at TSDR 4

¹¹ *Id.* at TSDR 5.

¹² Applicant’s Brief, 4 TTABVUE 12, 17; Applicant’s Reply Brief, 7 TTABVUE 6.

merely descriptive.” *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)).

Applicant also urges the Examining Attorney’s dictionary evidence is deficient because it does not include a definition of the composite term QUAD-MASS.¹³ However, the fact that the combined wording “QUAD-MASS” is not found in a dictionary is not controlling on the question of registrability. *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at *8 (TTAB 2019) (citing *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1603 (TTAB 2014)). *See also, In re Gould Paper Corp.*, 834 F.2d 1017, 1018, 5 USPQ2d 1110, 1111-12 (Fed. Cir. 1987) (“[T]he [US]PTO has satisfied its evidentiary burden if ... it produces evidence including dictionary definitions 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.”).

C. Applicant’s Online Advertising

On its website, Applicant describes the benefits of its “QUAD-MASS™ EXTREME MUSCLE*” product as including to “help to increase lean muscle **mass** and power output” and to “give[] the effects of increased muscle strength and **mass**, endurance, recovery, and lean gains.”¹⁴ On Applicant’s Facebook social media page, it states: “QUAD-MASS is now available to help you pack on those lbs. [pounds] of **mass** and strength.”¹⁵

¹³ Applicant’s Brief, 4 TTABVUE 12, 19; Applicant’s Reply Brief, 7 TTABVUE 6.

¹⁴ Office Action of October 23, 2020 at TSDR 92-93. (emphasis added).

¹⁵ *Id.* at TSDR 95. (emphasis added).

D. Third-Party Uses

The Examining Attorney further introduced evidence – summarized below – of the use of “QUAD,” “QUADRICEPS,” “MASS” and QUAD MASS by dietary and nutritional supplement producers, and the health and fitness media (with emphasis that we added to all references). In this connection, Applicant concedes in its Brief that “QUAD” and “MASS” are common terms.¹⁶

1. Quad / Quadriceps

- “I’m stacking on extra weights for chest and shoulder presses. But the most profound change is in recovery. The throbbing **quads** and calves I’d suffer after long runs? Gone.” ... “Squats break down **quads**, which respond by rebuilding themselves bigger and stronger—a process that protein amplifies.”¹⁷
- “The **quadriceps** are an important group of muscles around your knee that are vital to movement. Strengthening your **quads** with a healthy regimen of exercise and nutrition, including getting enough protein from energy bars and snacks, can help you improve athletic performance, and avoid knee injury and pain.” ... “Your **quadriceps**, or **quads**, are a group of muscles located on the front of your thighs. The **quads** consist of the vastus intermedius, vastus medialis, vastus lateralis, and rectus femoris muscles.” ... “Strengthening **quads** is particularly important to athletes who put a lot of wear and tear on these muscles. By strengthening the **quadriceps**, athletes not only reduce the risk of injuries to those muscles, they also reduce the risk of injury to other muscles, such as the hamstrings.”¹⁸

2. Mass

- “In order to build **mass**, you need to go above and beyond in your workout sessions. This means lifting heavier and more often. But that’s not all – besides upping your exercise, you need to use supplements for building **mass**” ... “Not all whey protein powders are the same. Here at BPN, we proudly offer supplements for building **mass** that are made from the highest quality, most effective ingredients available.” ... “As you know, protein is one of the most crucial supplements for building **mass**.” ... “Creatine is one of the go-to

¹⁶ Applicant’s Brief, 4 TTABVUE 21.

¹⁷ You’re Not Eating Nearly Enough Protein, MEN’S JOURNAL, Office Action of October 23, 2020, at TSDR 22-32.

¹⁸ Four Exercises to Build Massive **Quads**, PROMAX PROTEIN BARS, *Id.* at TSDR 33-35.

supplements for building **mass** because it maximizes power output, strength, endurance, and overall performance ...” “Shop Supplements for Building **Mass** Now.”¹⁹

- “Pack on the **Mass**: If you’re trying to get big, all that extra **mass** has to come from somewhere. Your strength and power workouts go a long way toward fortifying your muscle **mass**, but if you’re after relentless gains, the fuel that nourishes your frame is key.” ... “Try a **mass** gainer with or between meals to help you get the calories you need to convert into muscle gains. Most **mass** gainers include protein and creatine, which are key for both muscle rebuilding and muscle energy.” ... “Taking at least three grams of creatine every day for about four weeks can lead to optimal levels of it in your muscles. Combine this with a resistance training regimen and, over time, you may see a noticeable increase in muscle **mass** and strength.”²⁰
- “[W]e’ve compiled a rundown of the 11 best **mass**-gain supplements on which to spend your hard-earned cash.” ... “Whey tops the list of **mass**-gain supplements because it’s the most crucial for pushing protein synthesis.” ... “Casein also makes you feel less full, which makes it a great snack for those who want to pack on muscle **mass**.” ... “One recent study found that subjects who took beta-alanine along with creatine gained more muscle **mass** and lost more bodyfat than subjects who took only creatine.”²¹
- “[W]e’ve compiled 11 of the best **mass**-gain supplements worth your hard-earned cash.” ... “Why ... [whey protein powder] made the list: Whey tops the list of **mass**-gain supplements because it’s the most crucial for pushing protein synthesis.”²²
- 5 Best Supplements to Add Muscle **Mass** Faster!²³

3. **Quad Mass, or Quad/ Quadriceps and Mass used in Proximity**

- “MEGA MUSCLE 3 Muscle **Mass** Support. Muscle Endurance, Growth, Repair & Recovery Support.” ... “Build BIG Powerful Legs with Chisled **Quads**, Hamstrings and Calves.”²⁴

¹⁹ Best Bodybuilding Supplements for Building Mass, BARE PERFORMANCE NUTRITION, *Id.* at 36-41.

²⁰ How to Supplement: Tips for Bulking Up and Gaining **Mass**, GNC LIVING WELL, *Id.* at TSDR 42-43.

²¹ 11 Best Supplements for Building Muscle **Mass**, MUSCLE AND FITNESS, *Id.* at 45-53.

²² 11 Best Supplements for Building Muscle **Mass**, MEN’S JOURNAL, *Id.* at 54-60.

²³ Alpham channel, YOUTUBE, *Id.* at 61.

²⁴ Vimulti Mega Muscle 3, AMAZON, *Id.* at TSDR 7.

- “[T]he legs are very simple in their structure: the front part of the thigh (**quadriceps**), the back part (biceps), buttocks and calf muscles.” “Whey protein is a really good [diet] supporter if you can eat enough amount of carbohydrates, but if you can't, **mass** gainer will be a perfect supplement for you.”²⁵
- “Drinking a casein shake just before overnight sleep increases gains in muscle mass and strength in response to resistance exercise.” “[Studies] have fueled the idea that over a longer period, a pre-sleep protein supplement can maximize the strength and muscle **mass** gains during regular resistance exercise training.” “The training [in the study] was effective - both groups ended with a bigger squat (one rep max) and bigger **quads** – but the protein-before-bed group gained significantly more muscle strength and size.”²⁶
- “According to a new study ..., [r]esearchers found that vegetarian protein is just as beneficial for muscle **mass** and strength as animal protein.” ... “Researchers looked at ... health records ... as well as [filled out] food questionnaires” “[Researchers] ... also looked at participants’ lean muscle **mass**, bone mineral density, and **quadriceps** strength – all measures that are important for fitness, health, and better functioning, especially as we get older.”²⁷
- “Since the **quads** are 70 percent of the size of your legs that makes them of vital importance to your overall look.” ... “The **quads**, along with the back, are the muscles that are most subject to constant tension.” ... “Unless you are a world-class sprinter ... most of the fiber in your **quads** will consist of slow-twitch endurance fiber.” ... “The **quadriceps**, following the logic of counting, has four different heads. The outer head ... is called the vastus lateralis” “Way on the other side is the vastus medialis or inner head which ... provides the separation between the **quads** and hams in leg” “Somewhat included in **quad**-training is hitting the behind as well.” ... “When performing squats some say to elevate your heels so you can isolate the **quads**” “The leg press has its niche in your leg training as well, but not as an alternative for squats. An advanced lifter can opt to alternate the two from week to week, but an advanced lifter has the **mass** and skill to do this.” ... “There is a limit to how much you can do to help your **quad mass** along, but with the squat in there [.]”

²⁵ How to get Bigger Leg Muscles, 5BESTSUPPLEMENTS.COM, *Id.* at 8-13.

²⁶ Bedtime Protein for Bigger Gains? Here’s the Scoop, FRONTIERS SCIENCE NEWS, *Id.* at 14-17.

²⁷ Does Plant Protein Build Muscle as Well as Meat?, HEALTH.COM, *Id.* at TSDR 18-21.

there is little chance of selling yourself short. If you learn to do that one correctly, you have got it made. **Mass** will come eventually.²⁸

- “Training the **quads** is probably the most challenging thing you’ll ever do in the gym.” ... In this article, we’ll present you with a variety of **quad** training programs that zero in on the **quads** ..., in order to create ideal quad development.” ... “Best **Quad** Exercises with Weights” ... “Take a look at a picture of a top bodybuilder’s **quads** and you will immediately see what the teardrop is. It is the area above the knee that is officially called the vastus medialis.” ... “You will feel a fantastic stretch on the upper **quads** as you go down and you’ll be amazed at how hard the quads have to work to get you back up again.” ... “Front Squats- Best for Targeting the **Quads**” ... “You want to maintain tension on the **quads** throughout the entire set, so only come up three quarters of the way.” ... “The Goblet Squat - Best for Glutes and **Quads** Together” ... “[T]he front barbell squat allows you to more closely approximate the weight that you can get up to on the back squat. The result is that you can get stronger and build more **quad mass** with the front squat than you can with the goblet squat.” ... “This powerful lower body strengthener and **quad mass** builder is often performed in such a way as to place undue stress on the knees or lower back.”²⁹
- “Use these four ultra-effective tips and try out Arnold [Schwarzenegger's] workout to explode your **quads**.” ... “There are so many unique training principles you can use to build bigger, stronger **quads**.” ... “I succeeded in creating a great pair of **quads** that helped me win seven Mr. Olympia titles.” ... “You’ll never maximize **quad mass** doing half squats.” ... “Supersets are great for building **quad mass**.”³⁰
- “The complete guide on how to squat properly to build glute and **quad mass** and strength! Learn proper powerlifting form and technique to get bigger, stronger legs.” ... “The Squat is known as the ‘King of All Exercises’ because it builds muscle **mass** throughout your entire body and tests your full body strength all in one powerful lift.”³¹
- “I made huge gains in **quad mass**, strength, and overall health when I began to break my **quad** training exercise menu into bilateral and unilateral movements.” ... “In my previous article, I talked about ways the ‘sacred-cow’ of **quad** training, the barbell squat, adds compression, torque, and shear on the spine.” ... “First, we’ll go over some personal favorites with bilateral **quad**

²⁸ I.C.E. Program #10 - Training The **Quadriceps!**, BODYBUILDING.COM, *Id.* at TSDR 62-68.

²⁹ **Quad** Workouts that Actually Work, HOMEGYMR, *Id.* at TSDR 69-75.

³⁰ 4 Arnold-Approved Tips to Build Bigger **Quads**, MUSCLE AND FITNESS, *Id.* at TSDR 76-81; *see also*, Arnold Schwarzenegger’s Tips for Bigger **Quads**, MUSCLE AND FITNESS, *Id.* at TSDR 86-87, which appears to be a portion of the same article under a different title.

³¹ Tag: **Quad** Exercises, MATHIAS METHOD, *Id.* at TSDR 82-84.

training. The baseline of bilateral **quad** training is learning to be comfortable in a bodyweight squat.”³²

- Reverse Leg Press for **Quad Mass**.³³

III. Discussion and Analysis on the Question of Mere Descriptiveness

Having reviewed the record in its entirety, for the reasons that follow, we find that, as a whole, QUAD-MASS is merely descriptive of Applicant’s goods.

Viewing the definitions made of record in the context of Applicant’s identified goods, QUAD denotes a shortened form of QUADRICEPS, which is the large four-part extensor muscle at the front of the thigh. MASS refers to the physical volume or bulk of a solid body, and in this case that solid body is the four-part quad or quadriceps muscle.

Applicant challenges the Internet articles made of record by the Examining Attorney as having low probative value, because (1) we can only consider these hearsay articles for what they say on their face but not for the truth of what is stated in them, and (2) no proof was submitted regarding consumer exposure to these articles.³⁴ In the context of an ex parte appeal, these criticisms of the Examining Attorney’s submissions to not diminish the probative value of this evidence.

Although under Trademark Rule 2.122(a), 37 C.F.R. § 2.122(a), inter partes proceedings are governed by the Federal Rules of Evidence, including the rule against hearsay, Fed. R. Evid. 802, there is no corresponding evidence rule for ex parte

³² Expanding Your **Quad** Exercises, Max Effort, *Id.* at TSDR 85.

³³ Ziegler Monster channel, YOUTUBE, *Id.* at TSDR 88.

³⁴ Applicant’s Brief, 4 TTABVUE 10-11.

proceedings. *See, e.g., In re Epstein*, 32 F.3d 1559, 31 USPQ2d 1817, 1821 (Fed. Cir. 1994) (hearsay rule inapplicable in ex parte examination). We still may consider the hearsay nature of evidence in assessing its probative value in an ex parte proceeding, but the Board frequently has noted that it “generally takes a somewhat more permissive stance with respect to the admissibility and probative value of evidence in an ex parte proceeding than it does in an inter partes proceeding” *In re Canine Caviar*, 126 USPQ2d at 1597; *In re Hudson News Co.*, 39 USPQ2d 1915, 1920 n.10 (TTAB 1996), *aff'd without op.*, 114 F.3d 1207 (Fed. Cir. 1997) (“Although there is a hearsay element to this evidence, there is no bias in the evidence which was not prepared for purposes of this case.”).

Thus, third-party articles published on the Internet are “relevant to [the] consumer perception of” terms or phrases that comprise the mark in question. *In re Embiid*, 2021 USPQ2d 577, at *2 n.19 (TTAB 2021); *see also, In re Bayer AG*, 82 USPQ2d at 1833 (“Internet evidence is generally admissible and may be considered for purposes of evaluating a trademark”); *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1733 (TTAB 2018) (“Material obtained through the Internet generally is acceptable as evidence in ex parte proceedings.”). *In re Country Music Ass’n, Inc.*, 100 USPQ2d 1824, 1829 (TTAB 2011) (printouts from web pages are not per se incompetent to show a term is generic).

More particularly, because website contents are accessible by the consuming public, they constitute evidence of potential public exposure without the Examining Attorney having to prove the extent to which these references have been read. *See,*

e.g., In re Mr. Recipe, LLC, 118 USPQ2d 1084, 1087 n.4 (TTAB 2016) (stories found on the Internet are probative of the perceptions of the authors and of the content received by the readers); *In re Fitch IBCA, Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002) (web site contents constitute evidence that the public may be exposed to certain terms or phrases); *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1157 (TTAB 2019) (examining attorney not required to establish that a particular online source or website “has significant web traffic” to establish its competence just as there is no requirement to establish the circulation or actual readership of a magazine or newspaper; applicants are free to challenge the probative value of a particular website and even websites that are not frequently visited may demonstrate how the authors use the term and how it will be perceived by the readers).

Applicant next proceeds to critique the Examining Attorney’s Internet articles evidence one-by-one – asserting that certain articles contain one term (“quad” or “mass”) but not the other, some articles do not specifically discuss dietary or nutritional supplements, and still other articles do not provide sufficient context in which “quad,” “mass” or “quad mass” is/are used. These critiques are not persuasive. Overall, we find the Internet article probative, and provide sufficient context, to determine how these terms – separately or together – are used and considered by the relevant purchasing public: bodybuilders.

More precisely, we find from a collective review of the Examining Attorney’s evidence that the term QUAD (whether in the dictionary or in the cited literature) means the QUADRICEPS leg muscle grouping; MASS clearly refers to muscle mass;

and QUAD MASS refers to efforts (whether through diet, nutrition or exercise) to increase the size or bulk of one's quadriceps leg muscle group. Applicant's bottle label and online advertising reinforce the notion to relevant consumers that ingesting its product will contribute to enhanced quadriceps muscle mass. Applicant has not provided any evidence to the contrary.

Thus Applicant's proposed mark QUAD-MASS consists merely of words that immediately and particularly describe a purpose and function of Applicant's dietary and nutritional supplements – adding mass to one's quads. The proposed mark is made up of two descriptive terms. When combined, each component retains its descriptive significance in relation to Applicant's goods. In this connection, we give no probative value to the fact that the proposed mark is a compound of two words separated by a hyphen. "The inclusion of a hyphen in Applicant's mark has no effect on the mere descriptiveness of the mark as a whole." *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1955 (TTAB 2018) (citing *In re Vanilla Gorilla, L.P.*, 80 USPQ2d 1637, 1640 (TTAB 2006)). The combination of QUAD and MASS results in a composite that is itself merely descriptive of the goods. No amount of imagination, thought or perception is required to reach a conclusion as to the nature of Applicant's goods.

Applicant argues that where doubt exists as to whether a trademark is merely descriptive, that doubt should be resolved in its favor by publishing the proposed mark for potential opposition. *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955

(TTAB 2006).³⁵ Here, the evidentiary record leaves no doubt – Applicant’s mark is merely descriptive of the identified goods.

Decision:

The refusal to register Applicant’s proposed mark QUAD-MASS on the grounds that it is merely descriptive pursuant to Trademark Act Section 2(e)(1) is affirmed.

³⁵ Applicant’s Reply Brief, 7 TTABVUE 8.