

This Opinion is not a
Precedent of the TTAB

Mailed: April 13, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gulf Breeze Treatment Center, LLC

Serial No. 88900074

Tye Biasco of Patterson Thuente Pedersen, P.A.,
for Gulf Breeze Treatment Center, LLC.

Jessica Hilliard, Trademark Examining Attorney, Law Office 120,
David Miller, Managing Attorney.

Before Lykos, Heasley, and Lebow,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

Gulf Breeze Treatment Center, LLC (“Applicant”) seeks registration on the Principal Register of the proposed mark **TRAUMACARE** (in standard characters) for services ultimately identified as “addiction treatment services; addiction treatment services, namely, alcohol addiction and chemical dependency treatment services; addiction treatment services, namely, substance abuse treatment services,” in International Class 44.¹

¹ Application Serial No. 88900074 was filed on May 4, 2020, based on a declared intention to use the proposed mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

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 of mere descriptiveness.

I. Background

Applicant originally applied to register TRAUMACARE for:

Addiction treatment services; alcohol addiction and chemical dependency treatment services; substance abuse treatment services; trauma therapy; mental health therapy for post-traumatic stress disorder (PTSD); behavioral health services in the nature of treatment of depression, mood disorders, pain disorders, chronic pain, post-traumatic stress disorder (PTSD).

The Examining Attorney issued a nonfinal refusal on the ground that the proposed mark was merely descriptive of the identified services, which were indefinite and required clarification.² In an effort to circumvent the refusal, Applicant amended its identified services to:

Addiction treatment services; addiction treatment services, namely, alcohol addiction and chemical dependency treatment services; addiction treatment services, namely, substance abuse treatment services; behavioral health services in the nature of treatment of depression and mood disorders.³

In view of this amendment, Applicant argued that "[t]he services to be provided under the mark will be limited to addiction and behavioral health services, not to

Citations to the prosecution file refer to the USPTO's Trademark Status & Document Retrieval ("TSDR") system and identify the documents by title, date, and page in the downloadable .pdf version. References to the briefs and other materials in the appeal record refer to the Board's TTABVue online docketing system.

² Aug. 5, 2020 Office Action.

³ Feb. 5, 2021 Response to Office Action at TSDR 3.

physical injuries. Therefore, the use of the term ‘trauma’ in the mark will only be suggestive.”⁴

The Examining Attorney accepted the amendment of services, but maintained and made final the mere descriptiveness refusal.⁵

Applicant appealed and filed a request for reconsideration in which it limited its identification of services even further, to its present form, “Addiction treatment services; addiction treatment services, namely, alcohol addiction and chemical dependency treatment services; addiction treatment services, namely, substance abuse treatment services.” It argued, once again, that because its services were not directed specifically to treatment of trauma, it should avoid the mere descriptiveness refusal.⁶

The Examining Attorney denied the request for reconsideration.⁷ This appeal resumed, and is now fully briefed.

II. Analysis

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, . . . when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them....” 15 U.S.C. §§ 1052(e)(1), 1053. A proposed mark is merely descriptive if it immediately conveys information regarding the nature, function, or purpose of

⁴ Feb. 5, 2021 Response to Office Action at TSDR 4.

⁵ Feb. 26, 2021 Office Action at 2-3.

⁶ Aug. 26, 2021 Response to Office Action (request for reconsideration) at 3, 5.

⁷ Sept. 25, 2021 Office Action (response to request for reconsideration).

goods or services. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)). *See also DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (“a mark is merely descriptive if it ‘conveys information regarding a function, or purpose, or use of the goods [or services].’”) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

By contrast, a mark is suggestive if “imagination, thought, or perception is required to reach a conclusion on the nature of the goods [or services].” *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Suggestive marks, unlike merely descriptive terms, are registrable on the Principal Register without proof of acquired distinctiveness. *See Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1180-81 (Fed. Cir. 2004).

Applicant’s proposed mark consists of TRAUMA and CARE joined without a space between them. “It is almost too well established to cite cases for the proposition that an otherwise merely descriptive term is not made any less so by merely omitting spaces between the words.” *Minnesota Mining & Mfg. Co. v. Addressograph-Multigraph Corp.*, 155 USPQ 470, 472 (TTAB 1967). *See, e.g., In re Finisar Corp.*, 78 USPQ2d 1618 (TTAB 2006), *aff’d per curiam*, 223 Fed. App’x 984 (Fed. Cir. 2007) (SMARTSFP held merely descriptive of optical transceivers). “Trauma” means “physical injury” or “emotional shock following a stressful event or a physical injury, which may be associated with physical shock and sometimes leads to long-term

neurosis.”⁸ And “care” means “[t]he provision of what is necessary for the health, welfare, maintenance, and protection of someone....”⁹

Applicant argues that in view of its winnowed identification, “[t]he services to be provided under the mark will be limited to addiction treatment services, not to physical or psychological injuries. Therefore, the use of the term ‘trauma’ in the mark will only be suggestive.”¹⁰ “The test for whether a mark is descriptive or suggest[ive] is the mark **in relation to the services identified in the application** (not other services that may be provided by the applicant),” it argues (citing *Nautilus Grp. v. ICON*, 71 USPQ2d at 1183 (the determination of whether a mark is descriptive or suggestive demands ‘how immediate and direct ... the thought process [is] from the mark to the particular product.’) Applicant respectfully maintains that even i[f] a consumer knew ... the services (addiction treatment services) that linking the term ‘trauma’ to the associated services would still require some imagination to connect the two.”¹¹

Applicant’s argument, however, ignores the context in which it renders its services. “Descriptiveness must be evaluated ‘in relation to the particular goods or services for which registration is sought, the context in which the mark is used, and the possible significance the term would have to the average consumer because of the

⁸ Lexico.com, Aug. 5, 2020 Office Action at 5-6. *See also* AMERICAN HERITAGE SCIENCE DICTIONARY, Trauma: “Severe bodily injury, as from a gunshot wound or a motor vehicle accident. Psychological or emotional injury cause by a deeply disturbing experience.” Dictionary.com, Aug. 26, 2021 Response to Office Action at 11.

⁹ Lexico.com, Aug. 5, 2020 Office Action at 9.

¹⁰ Applicant’s brief, 6 TTABVUE 5.

¹¹ *Id.* (boldface substituted for underlining).

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)). The question is whether someone who knows what the services are will understand the proposed mark to convey information about them. *DuoProSS*, 103 USPQ2d at 1757 (citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

Here, as the Examining Attorney correctly notes, Applicant’s identified services are part and parcel of trauma care: they provide care for patients suffering from addictions caused by trauma.¹² Applicant’s website reveals how trauma can lead to drug or alcohol addiction:

The genesis of **addiction** is a search for a “better feeling.” This search creates motivation for a person to “reach out” for something that will generate relief of a “good feeling.” Many suffering with **trauma** may find that relief, albeit temporary, through **drugs, alcohol**, etc. ...

The tragedy is that, slowly over time, **drug and alcohol** use creates a much larger problem and yet greater source of pain. ...

Just as the **traumatic** event and the feelings associated continually resurfaces over and over, so does the illusion that a **drug and/or alcohol** can still be a solution. ...¹³

Applicant’s website further describes how its services provide care for patients with trauma-based addictions:

It is now recognized that a multi-faceted, individualized, holistic approach using a variety of therapies give those suffering from **addiction with underlying trauma** a much greater chance of finding contentment and recovery. ...

¹² Examining Attorney’s brief, 8 TTABVUE 5-9.

¹³ GulfBreezeRecovery.com, Feb. 26, 2021 Office Action at 7-8 (emphases added).

[Applicant's] **“traumacare” program is designed for those who have experienced traumatic events.**

The program utilizes a multi-faceted holistic approach in treating those suffering with the co-occurring disorders of alcoholism/addiction (Substance Use Disorder or SUD) and Post Traumatic Stress Disorder (PTSD). ... All of the therapies listed in this track are pieces designed to work in conjunction with each other to form the whole.

The ultimate goal of the program is to help those suffering with **trauma** find relief and start reclaiming their lives. Relief will begin by utilizing various therapies to **address the underlying cause and reduce the negative impacts that started and further the alcoholism/addiction problem. Once a person begins to experience relief from PTSD, hope for liberation from the alcohol/addiction problem follows.** ...

The entirety of **“traumacare” is designed to lessen the impact of traumatic memories** by using a multifaceted approach of therapeutically-sound methods. ... It also enables the person to truly **address the alcohol/drug problem** and to insightfully “see” it for what it really is, which is an innocent attempt to find relief.¹⁴

As Applicant's website makes clear, trauma and addiction can go hand in hand, and Applicant treats addiction by addressing the underlying trauma that caused it. So TRAUMACARE immediately describes the function and purpose of Applicant's services, and a potential patient who knows what the services are will understand the term to convey information about them. *DuoProSS*, 103 USPQ2d at 1757.

Proof that a term is merely descriptive to the relevant consuming public may be obtained from any competent source, such as websites, publications and advertising materials. *In re Fallon*, 2020 USPQ2d 11249, at *7-8 (TTAB 2020). Applicant's website, quoted above, is one such source. *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (Board appropriately reviewed

¹⁴ GulfBreezeRecovery.com, Feb. 26, 2021 Office Action at 9-10 (emphases added).

applicant's website for context to understand the generic meaning of the mark); see also *In re Promo Ink*, 78 USPQ2d 1301, 1303 (TTAB 2006) (examining attorney may introduce evidence that applicant's own website supports descriptiveness of term, even though application based on intent-to-use). "[A]n applicant's own website or marketing materials may be probative, or even ... 'the most damaging evidence,' in indicating how the relevant public perceives a term." *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018) (quoting *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

Competing caregivers' websites are to the same effect. *Fallon*, 2020 USPQ2d 11249 at *7-8. The Examining Attorney submits evidence of nine websites offering "trauma care" to relieve addiction.¹⁵ For example:

FHEHealth—Trauma in Childhood May Increase Risk of Addiction

Addicts who've experienced childhood traumas and go to an addiction treatment center for care will also receive treatment for the symptoms that have arisen from those traumas. ... The statistics on trauma and addiction for men and women consistently show that it dramatically influences their drug use. Addiction treatment center now embed childhood trauma counseling into treatment plans.¹⁶

HazeldenBettyFord Foundation—Trauma Informed Care for Substance Abuse Counseling: A Brief Summary Considering that there is a high co-occurrence between substance use and trauma, it is recommended that individuals functioning as substance abuse counselors understand the implications of trauma informed care in order to provide the highest level of care to their patients.¹⁷

¹⁵ Feb. 26, 2021 Office Action at 12-15; Sept. 25, 2021 Office Action (response to request for reconsideration) at 2-9.

¹⁶ FHERehab.com, Feb. 26, 2021 Office Action at 12 (emphasis added).

¹⁷ HazelBettyFord.org, Feb. 26, 2021 Office Action at 13 (emphasis added).

Anaheim Lighthouse—Trauma & Addiction Often Go Hand In Hand Our trauma care is offered to people who are appropriate after meeting with licensed staff. Our therapists work with them to recognize the trauma and how it can attract sobriety. This therapy is integrated into their drug addiction treatment plan. ...Clinical Studies Link Addiction and Trauma. Several research studies have shown the link between addiction and trauma. ... Trauma and Addiction Treatment Deals With Core Issues.¹⁸

BeWellRecovery—Trauma Care Throughout the years, research has shown that trauma is often a major contributor to the development of addiction and mental health conditions. ... Trauma is...Very Common Among Those who Struggle with Addictive Behaviors. ... Get Trauma Care Treatment through BeWell Recovery Residential Inpatient Drug Rehabs....¹⁹

As this third-party evidence shows, “trauma care” is a general term for health care services intended to treat the effects of physical or emotional trauma in patients.²⁰ Applicant is one of many caregivers offering trauma care to people suffering from trauma-based addiction. “The commercial context here demonstrates that a consumer would immediately understand the intended meaning of [TRAUMACARE]. In other words, the evidence shows that the mark is less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods or services.” *In re N.C. Lottery*, 866 F.3d 1353, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). Such “descriptive terms are in the public domain and should be free for use by all who can truthfully employ them to describe their goods [or services].” *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 57 USPQ2d 1720, 1722 (Fed. Cir. 2001) (citing

¹⁸ AnaheimLighthouse.com, Sept. 25, 2021 Office Action (response to request for reconsideration) at 4 (emphasis added).

¹⁹ BeWellRecovery.com, Sept. 25, 2021 Office Action (response to request for reconsideration) at 5 (emphasis added).

²⁰ Examining Attorney’s brief, 8 TTABVUE 9.

Estate of P.D. Beckwith, Inc. v. Comm’r of Patents, 252 U.S. 538, 543-44 (1920)).

III. Conclusion

For these reasons, we find that Applicant’s proposed mark is merely descriptive of its services. 15 U.S.C. § 1052(e)(1).

Decision: The refusal to register Applicant’s proposed mark is affirmed.