

This Opinion is Not a
Precedent of the TTAB

Mailed: August 4, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Eric Fessell

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Serial No. 90263552

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Mark C. Johnson of Johnson Dalal,
for Eric Fessell.

Matt Einstein, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Cataldo, Kuczma, and Dunn,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Eric Fessell (Applicant) seeks registration on the Principal Register of the mark

MOTHER NATURE (in standard characters) for:

International Class 16

Children's books; Series of fiction books; A series of fiction works, namely, novels and books featuring the adventures of the hero: Mother Nature.

International Class 25

Beanies; Hats; Shirts; Socks; T-shirts; Athletic shirts; Bottoms as clothing; Hoodies; Jackets; Shirts for men and women; Sweat shirts; Tops as clothing.

International Class 41

Entertainment services in the nature of production of videos and animations of the fictional character: Mother Nature; Entertainment services, namely, providing ongoing television programs in the field of the fictional hero: Mother Nature, via a global computer network; Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring the fictional hero: Mother Nature.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark MOTHER NATURE is merely descriptive of a feature or characteristic of Applicant's goods and services.

When the refusal was made final, Applicant requested reconsideration. After the Examining Attorney denied the request for reconsideration, Applicant appealed to this Board. We affirm the refusal to register.

I. Refusal as Merely Descriptive of the Goods and Services

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e)(1). A term is "merely descriptive" within the meaning of Section 2(e)(1) if it "immediately conveys

¹ Application Serial No. 90263552 filed October 19, 2020, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere since at least as early as June 27, 2012 and use in commerce since at least as early as September 26, 2020 for the International Class 16 goods, and under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant's allegation of a bona fide intention to use the mark in commerce with the goods in International Class 25 and the services in International Class 41.

References to the application are to the downloadable .pdf version of documents available from the TSDR (Trademark Status and Document Retrieval) database. The TTABVue citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness must be assessed “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 Bayer AG*, 82 USPQ2d at 1831. We find that the average purchaser of Applicant’s goods and services is the general public.

“A mark need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods [or services].” *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)). The names of a fictional public-domain character and historical figure have been held merely descriptive of an applicant’s goods that depict or represent that character or person. See *In re United Trademark Holdings, Inc.*, 122 USPQ2d 1796, 1799, 1800 (TTAB 2017) (holding LITTLE MERMAID merely descriptive of dolls); *In re Carlson Dolls Co.*, 31 USPQ2d 1319, 1320 (TTAB 1994) (holding MARTHA WASHINGTON merely descriptive of historical dolls). The merely descriptive refusal does not require that the mark is merely descriptive as applied to every item listed in each class; it is sufficient if the mark is merely descriptive of any of the goods or services identified

in a single class to affirm the refusal as to that class. *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988) (“[I]t is a well settled legal principle that where a mark may be merely descriptive of one or more items of goods in an application but may be suggestive or even arbitrary as applied to other items, registration is properly refused if the subject matter for registration is descriptive of any of the goods for which registration is sought”), *aff’d without pub. op.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Dictionaries, newspapers, or surveys may provide evidence of mere descriptiveness. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1300; *In re Bayer*, 82 USPQ2d at 1831. In addition, sources may include websites, publications, and use “in labels, packages, or in advertising material directed to the goods.” *In re N.C. Lottery*, 123 USPQ2d at 1710; *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

II. Analysis

The term MOTHER NATURE is defined as “the personification of nature as a powerful and nurturing woman”² and “nature personified as a woman considered as the source and guiding force of creation.”³ The second definition, submitted by

² April 30, 2021 Office Action TSDR 3, citing the American Heritage online dictionary.

³ September 28, 2021 Response TSDR 54, citing Merriam-Webster online dictionary.

Applicant, states that the “first known use” of the term as defined occurred in 1551.⁴ The term “personification” is defined as the “attribution of personal qualities especially: representation of a thing or abstraction as a person or by the human form.”⁵ The term “character” is defined as “one of the persons of a drama or novel.”⁶ Based on these definitions, we find that a personification may serve as a character, with the person representing the abstraction serving as a person in a creative work.

The website for “Public Domain Super Heroes” includes an entry for “Mother Nature” as “a common personification of nature that focuses on the life-giving and nurturing aspects of nature by embodying it in the form of the mother,” states the creator of the character is unknown, but the character appeared in the public domain comics “Airboy Comics,” “Pep Comics,” and “Supermouse.”⁷

The Wikipedia entry for the term MOTHER NATURE offers a similar definition (“a personification of nature that focuses on the life-giving and nurturing aspects of nature by embodying it in the form of the mother”), and includes a listing of works from popular culture (television shows, books, films, and music) in which Mother

⁴ Id.

⁵ October 8, 2021 Office Action, TSDR 4, citing Merriam-Webster online dictionary.

⁶ *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/character>. Accessed 3 Aug. 2022. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

⁷ October 8, 2021 Office Action TSDR 11-12, citing Merriam-Webster online dictionary.

Nature appears or is mentioned.⁸ More specifically, the Wikipedia entry lists the 1974 television special “*The Year Without a Santa Claus*” and its two spin-off specials, *The Earth Day Special*; the television series *The Smurfs*, *The New Woody Woodpecker Show*, *Stargate SG-1*, *Once Upon a Time*, and *The Masked Singer*; the books *John Hancock* by Bo Bisset, *Guardians of Childhood* series by William Joyce; the films *Happily Ever After*, *Epic*, *The Santa Clause 2*, and *The Santa Clause 3: The Escape Clause*; and the songs *Mother Nature* by the Temptations, *Death of Mother Nature Suite* by Kansas; and *It’s Raining Men* by the Weathergirls.⁹

Applicant’s brief cites Trademark Manual of Examining Procedure (TMEP) §710.01(b) (July 2022) to contend that this information derived from Wikipedia has limited probative value, and later cites the same Wikipedia entry to assert that MOTHER NATURE is also referred to as MOTHER EARTH.¹⁰ In view of Applicant’s reliance on the evidence, the fact that the Wikipedia entry is corroborated by other record evidence, and the fact that the Wikipedia entry was attached to the first Office action, providing Applicant with ample opportunity to rebut it, we find the Wikipedia entry is probative as to the public perception of Mother Nature as a character as well as a personification. *See, e.g., In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1032 (TTAB 2007).

⁸ April 30, 2021 Office Action, TSDR 5-7. The entry also lists advertisements for tampons and margarine, the latter of which features Mother Nature, informed that what she thinks is butter is actually margarine, saying: “It’s not nice to fool Mother Nature.” *Id.* at 6.

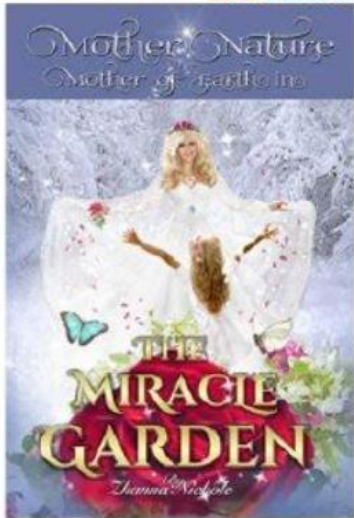
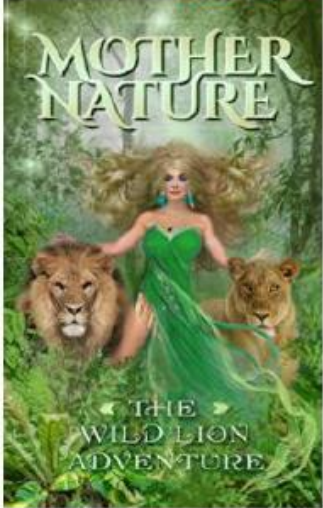
⁹ *Id.* at 6-7.

¹⁰ 6 TTABVUE 7, 9.

As set forth in the identification of goods, Applicant uses his MOTHER NATURE mark on, among other International Class 16 goods, “novels and books featuring the adventures of the hero: Mother Nature,” and intends to use his MOTHER NATURE mark in connection with International Class 41 “Entertainment services in the nature of production of videos and animations of the fictional character: Mother Nature; Entertainment services, namely, providing ongoing television programs in the field of the fictional hero: Mother Nature, via a global computer network; Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring the fictional hero: Mother Nature.” Use of a term in the identification of goods also serves as evidence that the term is merely descriptive. *See In re Taylor & Francis (Publishers) Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) (“Applicant’s identification of goods expressly states that the series of non-fiction books upon which applicant uses its mark are ‘in the field of psychology.’ The word PSYCHOLOGY therefore is merely descriptive of the subject matter of applicant’s books, as identified in the application ...”).

The specimen of use for Applicant’s International Class 16 goods is described in the application as “Electronic Display; Product Label,” comprises Amazon pages featuring two books for sale, and includes photographs of the books’ covers: ¹¹

¹¹ October 19, 2020 Specimen, TSDR 1 and 3.

<p>Mother Nature The Mother of Earth in the Miracle Garden</p>	<p>Mother Nature The Wild Lion Adventure (Mother Nature Adventures Book 2)</p>
	

Corroborating the identification of goods, the book covers make clear that Mother Nature is a character in the book.

In consideration of the record evidence, including how Applicant himself uses the term Mother Nature to define his goods and services, we find that the average purchaser of books and television shows featuring the character Mother Nature, and clothing which may feature Mother Nature and so promote the book and television show, will perceive the term MOTHER NATURE as merely describing the character depicted in the book, movie, or clothing. *See Turner Ent. Co. v. Nelson*, 38 USPQ2d 1942, 1944-1945 (TTAB 1996) (“It is common knowledge and, in the present case, undisputed that video games, t-shirts, beach towels, caps and other logo-imprinted

products are used as promotional items for a diverse range of goods and services, not to mention for specific television shows and movies.”).

Applicant makes several arguments against the refusal, but we are not persuaded. To argue that MOTHER NATURE is not immediately descriptive because some imagination and thought is needed to understand the nature of the goods mistakes the relevant test.¹² As noted above, in determining whether a mark is merely descriptive, the Board must consider the mark in relation to the goods and services for which it is to be registered. “The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

We find the consumer seeking books or television shows in which Mother Nature is a character, or clothing promoting such books or shows, will encounter the mark MOTHER NATURE and find that it immediately conveys information about the character depicted in the book or television show, or on the clothing.

We are not convinced by Applicant’s argument that the Board’s December 30, 2013 final decision affirming a different refusal of registration in *In re Mother Earth Brewing, LLC*, application Serial No. 77716598, presents such similar facts that it is

¹² 6 TTABVUE 10-11.

“instructive and relevant” here.¹³ In that decision, with respect to that part of the likelihood of confusion analysis assessing the strength of the term MOTHER EARTH as applied to beer, the Board found “Based on the dictionary definition, we cannot agree that MOTHER EARTH immediately and directly describes beer that is composed of organic ingredients. At most, the term somewhat suggests that the registrant’s beer is made of natural ingredients.”¹⁴ In this case, MOTHER EARTH immediately and directly describes the hero of Applicant’s books and television shows as described in Applicant’s identification of goods and services.

Applicant contends that third party registrations for marks including the term MOTHER NATURE demonstrate that the mark is suggestive and not merely descriptive:¹⁵

Third-party registrations, while admittedly not conclusive on the question of descriptiveness, are nonetheless relevant and probative to demonstrate that MOTHER NATURE is used by a plethora of third parties in connection with different goods and services and, therefore, is suggestive as opposed to descriptive of the goods and services sold thereunder.

We fail to see – and Applicant does not explain - how the third-party registrations of MOTHER NATURE with different goods and services has any bearing on whether the term MOTHER NATURE is merely descriptive of books and television shows specified to feature Mother Nature, or clothing which may be used to promote the books and shows. “While third-party registrations may be considered to show that a

¹³ 6 TTABVUE 8.


¹⁴ Id. at 9.

¹⁵ Id. at 13. Attaching copies of the third-party registrations previously submitted to Applicant’s brief is not helpful. See *Life Zone Inc. v. Middleman Grp., Inc.*, 87 USPQ2d 1953, 1955 n.4 (TTAB 2008).

registered mark is weak or that a portion thereof is descriptive or highly suggestive, the indiscriminate citation of third-party registrations without regard to the goods involved cannot be indicative of weak marks or suggestive or descriptive connotations.” *In re Ralston Purina Co.*, 179 USPQ 638, 639 (TTAB 1973). *Accord In re Thor Tech Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009) (third-party registrations for goods that appear to be in fields which are far removed from the goods at issue are of limited probative value). We have reviewed the third-party MOTHER NATURE registrations, none of which feature goods and services which overlap with Applicant’s books and televisions shows. While there are a few MOTHER NATURE registrations for clothing, as shown below, the marks include matter in addition to the common term MOTHER NATURE, and so have no relevance to whether the mark MOTHER NATURE is descriptive as applied to Applicant’s clothing.¹⁶

Reg. No.	Mark
4147159	MOTHER NATURE MADE IT. WE MADE IT BETTER.
5307530	MOTHER NATURE, LET’S DO THIS
5699582	MOTHER NATURE PLAYED FAVORITES

¹⁶ September 28, 2021 Response TSDR 58-215. We do not list expired registrations. An expired registration has no probative value other than to show that it once issued. *In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1264 (TTAB 2011).

5957741	
6435404	MOTHER NATURE IS WATCHING

Applicant errs in arguing that the merely descriptive refusal is inappropriate because the cases finding a character mark descriptive referred to fictional characters or historical figures rather than a “personification” such as MOTHER NATURE.¹⁷ *In re United Trademark Holdings, Inc.*, (holding LITTLE MERMAID merely descriptive of dolls) and *In re Carlson Dolls Co.*, (holding MARTHA WASHINGTON merely descriptive of historical dolls), *supra*. The record shows that “Mother Nature” in addition to being a personification, also is a fictional character in comic books, books, films, and songs. However, even if applicant were the first to use Mother Nature as a character in a book, this does not preclude the prospective purchaser from perceiving the term Mother Nature as describing the character depicted in the book or show or clothing. “The fact that an applicant may be the first and only user of a merely descriptive designation does not justify registration if the only significance conveyed by the term is merely descriptive.” See *In re Fat Boys Water Sports LLC*, 118 USPQ2d

¹⁷ 6 TTABVue 7-8.

1511, 1514 (TTAB 2016). In view of the presence of the term in the dictionary, and Applicant's description of his books and television shows as featuring Mother Nature, the prospective purchaser will perceive the term MOTHER NATURE as accurately describing the character depicted in the book and television show and on the clothing.

Applicant also argues that "the policy that no single entity may monopolize descriptive language is not implicated where, as here, Applicant's use of the Mark does not deprive would-be competitors from using apt or commonly used expressions to describe their own goods and services."¹⁸ The sweeping conclusion has no basis in fact. Any competitor seeking to use Mother Nature as a character in its book or television show, and to promote the book or show through the sale of clothing needs to describe its Mother Nature book, Mother Nature show, or Mother Nature clothing. *See In re Classic Media, Inc.*, 78 USPQ2d 1699 (TTAB 2006) (SATURDAY MORNING T.V. merely descriptive of "entertainment in the nature of on-going television programs in the field of comedy."). *See also In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 67 USPQ2d 1778 (Fed. Cir. 2003) (MONTANA SERIES and PHILADELPHIA CARD merely descriptive of a feature or characteristic of the "credit card services featuring credit cards depicting scenes or subject matter of, or relating to," the state of Montana or the city of Philadelphia).

We have carefully considered Applicant's arguments but find they do not detract from the evidence that the term MOTHER NATURE will be perceived by the relevant public when used in connection with Applicant's books, television shows, and

¹⁸ *Id.* at 12.

clothing, as immediately informing the relevant public of a significant feature of the goods and services, namely that the goods and services depict Mother Nature.

III. Decision

The refusal to register Applicant's mark MOTHER NATURE in all three classes on the ground that it is merely descriptive under Trademark Act Section 2(e)(1) of Applicant's goods and services is affirmed.