

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 8, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re New Africa Ventures, Inc.
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Serial No. 90330813
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Andrea H. Evans of The Law Firm of Andrea Hence Evans, LLC,
for New Africa Ventures, Inc.

Drew Ciurpita, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

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Before Taylor, Wellington, and Coggins,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

New Africa Ventures, Inc. (“Applicant”) seeks registration on the Principal Register of the mark SOUL FOOD MARKET (in standard characters) for “online retail grocery store services; retail grocery stores” in International Class 35.¹

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is

¹ Application Serial No. 90330813 was filed on November 19, 2020, 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.

merely descriptive of Applicant's services. When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. For the reasons explained below, we affirm the refusal to register.

I. Merely Descriptive

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 [or services] of the applicant is merely descriptive . . . of them," unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).² A mark is "merely descriptive" within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). On the other hand, a mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods or services are to reach a conclusion about their nature from the mark. *See, e.g., In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1515 (TTAB 2016).

"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

² Applicant does not claim that if the proposed mark is found to be merely descriptive, it is registrable because it has acquired distinctiveness.

it describes one significant attribute, function or property of the goods [or services].” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

Whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods [or services] 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 [or services] because of the manner of its use or intended use,’” *Chamber of Com. of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “whether someone who knows what the goods and services are will understand the mark to convey information about them.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012)).

Where a proposed mark consists of multiple terms, the mere combination of descriptive terms does not necessarily create a non-descriptive word or phrase. *In re Zuma Array Ltd.*, 2022 USPQ2d 736, *7 (TTAB 2022); *In re Omniome, Inc.*, 2020 USPQ2d 3222, *5 (TTAB 2019). A mark comprising a combination of merely descriptive components is registrable if the combination of terms functions as an indication of more than a mere description of a feature or characteristic of the services on which the mark is used, *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382,

385 (CCPA 1968), or results in the “coinage of hitherto unused and somewhat incongruous word combinations whose import would not be grasped without some measure of imagination and ‘mental pause’.” *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983).

If the words in the proposed mark are individually descriptive of the services, we must then determine whether their combination “conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *Fat Boys*, 118 USPQ2d at 1515-16 (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004)). If each word instead “retains its merely descriptive significance in relation to the goods [or services], the combination results in a composite that is itself merely descriptive.” *Id.* at 1516 (citing *In re Tower Tech., Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)); *see also In re NextGen Mgmt., LLC*, 2023 USPQ2d 14, *7 (TTAB 2023); *In re Fallon*, 2020 USPQ2d 11249, *7 (TTAB 2020); *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1953-55 (TTAB 2018); *In re Phoseon Tech.*, 103 USPQ2d 1822, 1823 (TTAB 2012) (“When two or more merely descriptive terms are combined, . . . [i]f each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive.”).

In determining how the relevant consuming public may perceive Applicant’s proposed mark in connection with its identified services, we may consider any competent source, including dictionary definitions, websites, and publications. *See N.C. Lottery*, 123 USPQ2d at 1709-10; *Bayer*, 82 USPQ2d at 1831.

A. The Relevant Public

Neither Applicant nor the Examining Attorney identifies who the relevant purchasing public may be. Because the question of whether a mark is merely descriptive is determined from the viewpoint of the relevant purchasing public, *see In re Omniome, Inc.*, 2020 USPQ2d 3222, at *5 (citing *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005)), we must first determine who the relevant consumers are. The services identified in the application are “online retail grocery store services; retail grocery stores,” without limitation as to any type of food or household supply.³ Accordingly, we find that the relevant purchasing public for the services includes all grocery shoppers.

B. Mere Descriptiveness of the Mark and its Components

The Examining Attorney argues that “both the individual components and the composite result are descriptive of” the services. Specifically, he argues the evidence of record demonstrates that SOUL FOOD “refers to traditional southern African American foods” and MARKET “refers to a retail store that sells agricultural produce.” The Examining Attorney contends that “[w]hen combined, this wording

³ A “grocery store” is “a store that sells food and household supplies.” MERRIAM-WEBSTER (merriam-webster.com), accessed January 26, 2023. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *Shenzhen IVPS Tech. Co. Ltd. v. Fancy Pants Prods., LLC*, 2022 USPQ2d 1035, at *27 n.41 (TTAB 2022).

refers to a retail store featuring traditional southern African American foods” and thus “merely describes a feature” of grocery stores.⁴

Applicant argues that “SOUL FOOD has no direct meaning in relation to its actual identified services, as the services make no reference to ‘soul food’.” Applicant also argues that soul food is an “ethnic cuisine” – where “[c]uisine” is defined as a style of cooking” – and because “cuisine involves cooking and restaurant services” and “there is no indication that there will be any cooking under Applicant’s recitation of [grocery store] services,” SOUL FOOD “does not convey any information about a retail store with the particularity required to maintain a mere descriptiveness refusal.”⁵

1. Mere Descriptiveness of the Component SOUL FOOD

Turning to the first term in the mark, the Examining Attorney made of record the following definitions of SOUL FOOD from multiple dictionaries:

- Food, such as ham hocks and collard greens, traditionally eaten by southern African Americans;⁶
- Food (such as chitterlings, ham hocks, and collard greens) traditionally eaten by southern Black Americans;⁷
- Items of food popular originally in the South, esp. among blacks, such as chitterlings, ham hocks, yams, corn bread, and collard greens;⁸ and

⁴ Examiner’s Brief, p. 3 (9 TTABVUE 4). Citations to the briefs in the appeal record refer to the TTABVUE docket system. Citations to the prosecution record refer to the .pdf version of the TSDR system. *See In re Integra Biosciences Corp.*, 2022 USPQ2d 93, *7 (TTAB 2022).

⁵ Appeal Brief, p. 3 (7 TTABVUE 7).

⁶ AMERICAN HERITAGE DICTIONARY (ahdictionary.com), May 10, 2021 Office action at 4.

⁷ MERRIAM-WEBSTER (merriam-webster.com), August 9, 2021 Office action at 6.

⁸ COLLINS (collinsdictionary.com), August 9, 2021 Office action at 9.

- Traditional southern African American food.⁹

Based on these dictionary definitions, the Examining Attorney argues that “the wording ‘SOUL FOOD’ refers to food items and ingredients, such as ham hocks and collard greens, that are commonly sold in grocery stores.” He concludes that SOUL FOOD “merely describes a feature of [A]pplicant’s services,” that is, Applicant’s grocery stores may sell soul food items such as chitterlings, ham hocks, yams, corn bread, and collard greens.¹⁰

Applicant made of record a Wikipedia entry for “Soul food” which describes soul food as “an ethnic cuisine traditionally prepared and eaten by African Americans, originating in the Southern United States,”¹¹ and which explains that “[m]any of the foods integral to the cuisine originate from the limited rations given to enslaved people by their planters and masters. Enslaved people were typically given a peck of cornmeal and 3-4 pounds of pork per week, and from those rations come soul food staples such as cornbread, fried catfish, barbecued ribs, chitterlings, and neckbones.”¹² The article explains that “[t]raditional soul food cooking is seen as one of the ways enslaved Africans passed their traditions to their descendants once they were brought to the US, and . . . [t]he bountiful vegetables that were found in Africa[] were substituted in dishes down south with new leafy greens consisting of dandelion, turnip, and beet greens. Pork . . . was introduced into several dishes in the form of

⁹ LEXICO (lexico.com), August 9, 2021 Office action at 5.

¹⁰ 9 TTABVUE 6.

¹¹ WIKIPEDIA (wikipedia.org), July 6, 2021 Response to Office Action at 27.

¹² WIKIPEDIA, July 6, 2021 Response to Office Action at 28.

cracklins from the skin, pig's feet, chitterlings, and lard”¹³ “Recipes considered soul food are popular in the South due to the accessibility and affordability of the ingredients.”¹⁴

The Examining Attorney made of record excerpts from several websites that he argues demonstrate “that the wording SOUL FOOD is commonly used to describe a category of food sold at grocery stores.”¹⁵ One example, using “soul food” as a category tab, is reproduced below:¹⁶

Lowery's Meat & Seafood

Home Specials Fish & Seafood **Soul Food** Meat Bundles Directions Facebook

Contact Work Here!

Soul Food

9AM-7 PM.BEST DEAL 04/04/-04/08/22 E B T CARDS FROM EVERY STATE CREDIT CARDS DEBIT U.S.A. BEEF PORK CHICKEN

NO CHECKS FOR GOODS [Print This Page](#)

Thank you for shopping at Lowery's Meat and Seafood.

CHICKEN PARTY WINGS 5LB \$16.99	CHITTERLINGS PORK \$3.99LB	CHICKEN GIZZARDS 5LB\$5.95	CAT FISH\$4.59LB 30LB BOX \$119.99
TURKEY WINGS DRUMS- 10LB 19.90	SMOKED TURKEY WING- NECK 10LB \$27.90	TURKEY KNUCKLES 10LB \$15.90	AUNT BESSIE CHIITS 5LB \$23.99 LIMIT 3 PER CUST
PORK NECK BONES 10lb12.90/30LB \$35.70	SMOKED PORK NECK BONES 10LB\$19.90	SMOKED PORK HOCKS 10LB\$21.90	PIG FEET 10LB \$14.90
U.S.A FRESH U.S.D.A. CHICKEN & TURKEY	U.S.A - U.S.D.A. CHOICE BEEF	U.S.A. GRADE- A PREMIUM PORK	U.S.A. PREMIUM U.S.D.A. INSPECTED PRIME BEEF
BEEF LIVER 10LB \$15.90	OX TAILS \$7.99LB	SLAB BACON \$3.99LB	JOWL BACON \$2.99LB
BEEF NECK BONES 10 \$19.90	BEEF ribs center cut 10LB \$29.90	PORK RIBLETS 10LB \$19.90	BUFFALO FISH 2.99LB
SALT PORK \$3.99LB	SMOKED PORK CHOPS 10LB \$34.90	SMALL CHICKEN WINGS 10LB \$29.90 40LB \$118.00	CHICKEN LEG 1/4S 10LB\$5.90 40LB \$22.99
COW HEADS \$32.50	HOG HEADS 1.50LB	VEAL HEADS \$28.50	HOG MAWS \$2.99

* LOWERY'S HAS THE RIGHT TO LIMIT QUANTITY AND IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS.

¹³ WIKIPEDIA, July 6, 2021 Response to Office Action at 31.

¹⁴ WIKIPEDIA, July 6, 2021 Response to Office Action at 31.

¹⁵ 9 TTABVUE 5.

¹⁶ April 12, 2022 Reconsideration Letter at 17 (lowerysmeatandcrocery.com/soul-food).

In addition to demonstrating that grocery stores categorize certain food items as “soul food” and advertise them as such, this website corroborates the portion of the Wikipedia article explaining that soul food includes chitterlings, cat fish, neck bones, pork hocks, pig feet, and ribs, among other foods.

Applicant points to a different portion of the Wikipedia entry which describes soul food as “an ethnic cuisine traditionally prepared and eaten by African Americans, originating in the Southern United States.”¹⁷ Applicant also made of record the definition of “cuisine” as a “manner of preparing food : style of cooking,”¹⁸ and in its brief repeatedly relies on the “cuisine” aspect of SOUL FOOD as a manner or style of cooking – insisting that “[a]lthough the term ‘soul food’ refers to cuisine, it does not bring to mind grocery store services.”¹⁹ Instead, rejecting the “dictionary definition[s] referring only to food,” Applicant posits that “[t]he expression SOUL FOOD suggests that services are black owned or that they are targeting the Black community.”²⁰

We take judicial notice that “cuisine” is not only a style of cooking, but is also, simply, “food” and “fare.”²¹ We agree with the Examining Attorney that the record

¹⁷ 7 TTABVUE 7, quoting without cites WIKIPEDIA, July 6, 2021 Response to Office Action at 27.

¹⁸ MERRIAM-WEBSTER (merriam-webster.com), July 6, 2021 Response to Office Action at 7.

¹⁹ 7 TTABVUE 8.

²⁰ 7 TTABVUE 13, 14. *See also* 7 TTABVUE 13 for Applicant’s argument “that the first impression [of SOUL FOOD] refers to culture and [Black] ownership” of a business (citing Exhibits A and B to the January 25, 2022 Request for Reconsideration, comprising what Applicant calls several “[a]rticles identifying soul food as a type of black owned business as well as an historical time period.” 7 TTABVUE 6).

²¹ Definition of “cuisine” from the AMERICAN HERITAGE DICTIONARY (ahdictionary.com), accessed January 24, 2023.

demonstrates SOUL FOOD describes not merely a manner or style of cooking, but also “refers to food items and ingredients, such as ham hocks and collard greens, that are commonly sold in grocery stores.”²² The multiple dictionary definitions alone establish that SOUL FOOD is merely descriptive of traditional southern African American food. The record further demonstrates that soul food items are sold in grocery stores, and as such SOUL FOOD is merely descriptive of a feature and characteristic of grocery store services.

2. Mere Descriptiveness of the Component MARKET

Turning now to the term MARKET, the Examining Attorney made of record the following definitions of “market” from multiple dictionaries:

- A store or shop that sells agricultural produce: *bought vegetables from the corner market*;²³ and
- A retail establishment usually of a specified kind // *a fish market*.²⁴

In addition, in the application as filed Applicant disclaimed the word MARKET,²⁵ and the record is replete with third-party registrations submitted by both Applicant and the Examining Attorney identifying retail store services, and particularly grocery store services, that include disclaimers of the word MARKET.²⁶ *See In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1442 (TTAB 2005) (“[I]t has long been held that the

²² 9 TTABVUE 6.

²³ AMERICAN HERITAGE DICTIONARY (ahdictionary.com) May 10, 2021 Office action at 5.

²⁴ MERRIAM-WEBSTER (merriam-webster.com), August 9, 2021 Office action at 7.

²⁵ November 19, 2020 Application at 2.

²⁶ *See* July 6, 2021 Response to Office Action at 17-26; January 25, 2022 Request for Reconsideration at 55-58, April 12, 2022 Reconsideration Letter at 40-49.

disclaimer of a term constitutes an admission of the merely descriptive nature of that term . . . at the time of the disclaimer.”); *Gen. Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1277 (TTAB 1972) (“Although the registrations are not evidence of use, the registrations show the sense in which the term ‘fiber’ is employed in the marketplace, similar to a dictionary definition.”). The record demonstrates that MARKET is merely descriptive of a feature and characteristic of grocery store services.

3. Mere Descriptiveness of the Proposed Mark as a Whole

When the individually descriptive terms SOUL FOOD and MARKET are combined into the proposed mark SOUL FOOD MARKET, the term SOUL FOOD is an attributive noun modifying MARKET. In the context of the services identified in the application, the phrase “soul food market” on its face refers to a retail establishment that sells soul food. The record reflects the public’s understanding of the phrase in this manner, and the definition of “market” from MERRIAM-WEBSTER DICTIONARY, above, is particularly instructive:²⁷ a retail establishment – here, a market – usually of a specified kind – here, soul food.

The Examining Attorney introduced an article from CUISINE NOIR magazine with the headline “Owners of Acclaimed Indigo Open Soul Food Market in Houston.”²⁸ The article describes how, in the wake of COVID-19, chef Jonny Rhodes and his general manager wife Chana Rhodes, pivoted from their “neo-soul” restaurant Indigo to a

²⁷ MERRIAM-WEBSTER (merriam-webster.com), August 9, 2021 Office action at 7.

²⁸ CUISINE NOIR (cuisinenoirmag.com), April 12, 2022 Reconsideration Letter at 4.

grocery store. They took their restaurant inventory and became “a self-sustaining grocery store” that “sells food based on Indigo’s culinary focus and the palates of people of African heritage who love soul food,” using “fresh produce from Indigo’s garden and farm” and with plans to supplement their stock with produce from local farms.²⁹ The use of “Soul Food Market” in the headline is highly probative of how consumers would perceive Applicant’s proposed mark.

Applicant offers multiple arguments against the Examining Attorney’s prima facie case. First, as mentioned above, Applicant argues that “‘soul food’ refers to [a specific] cuisine, but Applicant can provide a variety of grocery products at its stores. Given the variety of products available at a grocery store, ‘soul food’ does not immediately tell the consumers anything.”³⁰ When services in an application are broadly described, “we must presume that the services encompass all services of the type identified.” *In re Country Oven, Inc.*, 2019 USPQ2d 443903, * 4 (TTAB 2019) (quoting *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015)). Furthermore, “a mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *Oppedahl*, 71 USPQ2d at 1371 (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). It is enough if a mark describes only a single feature of the services. *Chamber of Com. of the U.S.*, 102 USPQ2d at 1219 (citing *In re Dial-A-Mattress*, 57 USPQ2d at 1812). Applicant’s identification of “retail grocery stores” has

²⁹ April 12, 2022 Reconsideration Letter at 5-6.

³⁰ 7 TTABVUE 8.

no restriction as to type of grocery goods that will be sold, and these services are broad enough to include the sale of food items, such as chitterlings, ham hocks, yams, corn bread, collard greens, and any other items which, as the record reflects, are categorized as soul food. We must, therefore, presume that Applicant's grocery stores will sell items considered soul food.

Applicant also argues that “‘soul food’ has several connotations” beyond the “dictionary definition referring only to food.” It argues that the term “has a significant connotation referring to a black owned business. . . . The meaning of ‘soul food’ in connection with grocery stores is different than it is for actual cuisine, in that the first impression refers to [Black] culture and ownership.”³¹ In support of this argument, Applicant points to an article from the TENNESSEE LOOKOUT titled “Soul food: From the trauma of slavery came beautiful cuisine” which explains the origins of soul food “during the tragic years of slavery in the South, when slaves would get cuts of meat and vegetables that were considered inedible,” and concludes by noting that “how, under horrible conditions, African-American cooks created something beautiful and delicious;”³² and various other articles mentioning that there has been “a resurgence in black-owned soul food restaurants” in the Twin Cities of Minneapolis and Saint

³¹ 7 TTABVUE 13. *See also* Applicant's argument that “[t]he expression SOUL FOOD suggests that services are black owned or that they are targeting the Black community.” 7 TTABVUE 14.

³² January 25, 2022 Request for Reconsideration at 45, 46. Applicant's website evidence in this application lacks the required URL and date. *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1587 (TTAB 2018). However, because the Examining Attorney did not object we consider the material for whatever probative value it may have. *Id.*

Paul, Minnesota,³³ as well as a “return of black-owned soul food restaurants” and other “black-owned business” to “Seattle’s historically black Central District,”³⁴ a listing of “The Best Black-Owned Southern and Soul Food Restaurants in the U.S.,”³⁵ and evidence of a national directory of “over 1000 black-owned culinary businesses.”³⁶

While some of the evidence of record demonstrates that soul food – as a cuisine – may carry for some African Americans significant emotional and historical connections relating to slavery, family, and community, the internet evidence does not define SOUL FOOD in any manner inconsistent with the dictionary definitions of record. Instead, the connotations Applicant points to depend on the dictionary definitions. That is, soul food, the cuisine, raises emotional and historical connections precisely because it refers to, as defined in multiple dictionaries, the food traditionally eaten by southern African Americans.

In assessing the merely descriptive refusal, we are concerned with the perception of the relevant purchasing public. *In re N.C. Lottery*, 123 USPQ2d at 1709 (“[T]he TTAB ‘must consider a mark in its commercial context to determine the public’s perception.’”). Here, that is anyone shopping for groceries. Accepting Applicant’s reasoning of culture and ownership, arguendo, the possibility that SOUL FOOD could have multiple connotations when used in the proposed mark SOUL FOOD MARKET is not controlling on the issue of whether Applicant’s mark is merely descriptive of

³³ January 25, 2022 Request for Reconsideration at 9.



³⁴ January 25, 2022 Request for Reconsideration at 14, 15, 18.

³⁵ January 25, 2022 Request for Reconsideration at 22.

³⁶ January 25, 2022 Request for Reconsideration at 36.

Applicant’s identified services. *In re Franklin Cnty. Historical Soc’y*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)); TMEP § 1209.03(e). “It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.” *Mueller Sports Med.*, 126 USPQ2d at 1590 (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)).

Applicant also argues that there are third-party registrations for “[m]arks incorporating ‘market’ with actual types of food [that] have routinely registered in connection with grocery stores and retail outlets,” and such third-party evidence demonstrates that such marks “lack descriptiveness in connection with retail stores.”³⁷ In its brief, Applicant points to the following third-party registrations on the Principal Register, all with MARKET disclaimed:³⁸

Mark	Registration No.	Relevant Services
	6255947	Wholesale and retail store services featuring convenience store items and gasoline
FLOUR MARKET	6301586	Retail bakery shops
CRABAPPLE MARKET	5368535	Retail store services featuring household furnishings and apparel
	5113701	Retail convenience stores
PLUM MARKET	3532490	Retail grocery stores; retail supermarkets

³⁷ 7 TTABVUE 10.




³⁸ 7 TTABVUE 9-10. *See also* July 6, 2021 Response to Office Action at 17-26 (third-party registrations).

It is immediately apparent that only one of these registrations (PLUM MARKET) identifies grocery store services. Of the remaining four, one (HONEYSUCKLE MARKET) does not name a food or type of cuisine in the mark, one (FLOUR MARKET) is for bakery services, one (CRABAPPLE MARKET) is for retail stores selling furnishings and clothing, and one (APPLE MARKET) is for convenience stores. At best, only two of these registrations (APPLE MARKET and PLUM MARKET) could be considered analogous to Applicant's mark. Contrary to Applicant's assertion, the existence of two registrations does not establish a routine pattern or policy of registering such marks for retail grocery stores.

Moreover, even if two prior registrations may have characteristics similar to Applicant's application, the existence of the prior registrations does not bind the Board. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *Curtice-Burns, Inc. v. Nw. Sanitation Prods., Inc.*, 530 F.2d 1396, 189 USPQ 138, 141 (CCPA 1976) (“[A]s we shall evidently have to continue saying ad nauseam: . . . ‘prior decisions on other marks for other goods are of very little help one way or the other in cases of this type. Each case must be decided on its own facts and the differences are often subtle ones.’”) (citation omitted); *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 n.10 (TTAB 2017) (prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and the Trademark Trial and Appeal Board is not bound by prior decisions involving different records); *see also In re Datapipe, Inc.*, 111 USPQ2d 1330,

1336 (TTAB 2014). Indeed, where an applicant cites registrations where the factual record is unknown, those references “have no precedential value.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 632 (CCPA 1975). At best, this evidence merely reflects that there is no per se legal rule against marks comprising an item of food and the word MARKET serving as trademarks in some circumstances for some types of retail stores. Even if we were to consider the above registrations instructive, the Examining Attorney rebutted Applicant’s argument and evidence by submitting a larger number of relevant third-party registrations for grocery store services demonstrating that the Office has more often determined that analogous marks are descriptive.³⁹

Similarly, Applicant points to the following third-party registrations:

Mark	Registration No.	Relevant Services
	3376875	Retail grocery stores
	3638664	Retail grocery stores
 (MARKET disclaimed)	4963665	Retail grocery stores
BOMBAY BAZAAR (BAZAAR disclaimed)	5488091	Retail grocery stores

which it argues “refer to a style of food” and are registered on the Principal Register without disclaimers or under Section 2(f).⁴⁰ These third-party registrations are even

³⁹ See 9 TTABVUE 8-9 (listing registrations; in particular MARESCO’S ITALIAN MARKET, WILD ONION MARKET, SWAHILI MARKET, EXOTIC MEAT MARKET, and VEG MARKET); April 12, 2022 Reconsideration Letter 24-57 (registration information).

⁴⁰ 7 TTABVUE 16. See also January 25, 2022 Request for Reconsideration at 51-60 (third-party registrations). We do not consider Registration No. 4914363 because it has been cancelled. *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018) (quoting *In re*

less probative than those discussed just above. Only one registered mark contains the word MARKET, and more importantly Applicant has offered no evidence demonstrating that “Vallarta,” “Swiss,” “Rio Ranch,” or “Bombay” refers to a style of food or is otherwise descriptive of a cuisine or grocery items. We see no discrepancy between the registrations for these suggestive marks and the merely descriptive refusal made for Applicant’s proposed mark SOUL FOOD MARKET. Applicant’s own arguments, explaining the connection between a term in the marks and food (e.g., that Vallarta is a region in Mexico, and could relate to Mexican food), demonstrate how those terms in the registered marks are suggestive. *See, e.g., Fallon*, 2020 USPQ2d 11249, *7 (“A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the [services] are to reach a conclusion about their nature from the mark.”).

Finally, Applicant argues that any “doubt as to whether a (food) ‘market’ mark is to be considered descriptive for retail and grocery stores” should be resolved in Applicant’s behalf.⁴¹ To be sure, when the Board has doubt on the issue of descriptiveness, it resolves such doubt in favor of the applicant. *In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1783 (Fed. Cir. 2003); *Zuma Array*, 2022 USPQ2d 736, at *8. However, based on our review of the record as a whole, we have no doubt that grocery shoppers would immediately understand that SOUL FOOD MARKET describes a feature and characteristic of Applicant’s services. On

Kysela Pere et Fils Ltd., 98 USPQ2d 1261, 1264 (TTAB 2011)) (“‘dead’ or cancelled registrations have no probative value at all.”), *aff’d mem.*, 777 F. App’x 516 (Fed. Cir. 2019).

⁴¹ 7 TTABVue 9, 12.

this record, there is no doubt to resolve in Applicant's favor. *See MBNA Am. Bank*, 67 USPQ2d at 1783 ("Without any indication by the Board that it entertained any doubt, the rule of resolving doubt in favor of the applicant does not apply.").

4. Conclusion on Mere Descriptiveness of the Proposed Mark

After consideration of all of the evidence and argument, we find that SOUL FOOD MARKET is merely descriptive of Applicant's identified services. In this case, the combination SOUL FOOD MARKET does not "convey[] any distinctive source-identifying impression contrary to the descriptiveness of the individual parts." *Fat Boys*, 118 USPQ2d at 1515-16. Instead, each of the terms SOUL FOOD and MARKET "retains its merely descriptive significance in relation to the [services]," and "the combination results in a composite that is itself merely descriptive." *Id.* at 1516. Although Applicant repeatedly points out that doubt should be resolved in its favor, we have no doubt on this record.

II. Decision

The refusal to register Applicant's proposed mark SOUL FOOD MARKET is affirmed.