

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 14, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Riverence Holdings LLC

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Serial No. 90674544

Michelle L. Wisniewski and Carlo F. Van den Bosch of Sheppard
Mullin Richter & Hampton LLP for Riverence Holdings LLC.

Jason Turner, Trademark Examining Attorney, Law Office 108,
Kathryn Coward, Managing Attorney.

—
Before Cataldo, Dunn and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

I. Background

Applicant, Riverence Holdings LLC, seeks a Principal Register registration of the standard-character mark BREEDING FOR VIGOR for “Fish, live” (in International Class 31) and “Agricultural services, namely, the cultivation and breeding of plants or animals in a water environment” (in International Class 44).¹

¹ Application Serial No. 90674544 was filed on April 27, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), and is based on an allegation of an intent to use the mark in commerce.

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 it is merely descriptive of the proposed services and therefore is not registrable on the Principal Register without a showing of acquired distinctiveness.²

After the refusal was made final, Applicant appealed and requested reconsideration, thus suspending the appeal. Upon denial of the request for reconsideration, the appeal resumed, Applicant and the Examining Attorney filed their respective briefs, and the appeal is ready for decision.

For the reasons discussed below, we affirm the refusal to register.

II. Mere Descriptiveness

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration of a mark which, when used on or in connection with an applicant's goods or services, is merely descriptive of them, unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1051(f). A term is merely descriptive of goods or services if it immediately conveys information concerning a quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *3 (TTAB 2020) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123

² Applicant does not claim acquired distinctiveness in the mark. Nor does Applicant argue that the mark is capable of registration on the Supplemental Register.

USPQ2d 1707, 1709 (Fed. Cir. 2017)).

The term need not describe each feature of the identified goods or services to be found descriptive. *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. It is enough if the term describes a single significant feature, quality, characteristic, function, ingredient, purpose or use of the goods or services. *Id.*; see also *Omniome*, 2020 USPQ2d 3222, at *3; *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016). Whether a term is merely descriptive is determined in relation to an applicant's goods and services, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) ("The commercial impression that a mark conveys must be viewed through the eyes of a consumer."); *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020). The question is whether someone who knows the goods or services will understand the term to convey information about them. *Real Foods Pty Ltd. v. FritoLay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018); *Fallon*, 2020 USPQ2d 11249, at *7. A mark is suggestive rather than 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., *Fallon*, 2020 USPQ2d 11249, at *7; *Fat Boys*, 118 USPQ2d at 1515.

"Evidence of the public's understanding of [a] term . . . may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications." *Real Foods*, 128 USPQ2d at 1374 (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127

USPQ2d 1041, 1046 (Fed. Cir. 2018)). “These sources may include Websites, publications, and ‘... advertising material directed to the goods [and services].” *N.C. Lottery*, 123 USPQ2d at 1710 (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA)).

III. Evidence and Argument

A. Dictionary Evidence

Dictionary definitions reflect the common usage of terms and, therefore, are evidence of the public’s understanding of a term. *Real Foods*, 128 USPQ2d at 1374 (quoting *Royal Crown Cola Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046 (Fed. Cir. 2018)). The record includes the following pertinent definitions from Dictionary.com:

- “Breeding” is “the improvement or development of breeds of livestock, as by selective mating and hybridization”; and
- “Vigor” is the “healthy physical or mental energy or power; vitality.”³

Applicant does not dispute the accuracy of the definitions. Applicant takes issue with the Examining Attorney’s reliance on these definitions, “**independently** to conclude that the composite phrase ‘breeding for vigor’” describes its recited goods and services, asserting that such reliance is “improper” (emphasis added).⁴ Applicant cites *Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 543-44, 40 S. Ct. 414, 64 L. Ed. 705, 1920 Dec. Comm’r Pat. 471 (1920) (“The commercial

³ September 14, 2021 Office action, TSDR 4-5.

⁴ 9 TTABVUE 3 (Applicant’s Reply Brief) (emphasis added).

impression of a trade-mark is derived from it as a whole, not from its elements separated and considered in detail.”) and *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993) (“[M]arks must be considered in the way they are perceived by the relevant public.”) as support for its contention.⁵

We find nothing improper about the Examining Attorney’s reliance on the meanings of the individual terms in the mark in the course of reaching his ultimate conclusion. “In considering a mark as a whole, the Board [and examining attorneys] 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 LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004), citing *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). “Indeed, we are required to examine the meaning of each component, **individually**, and **then** determine whether the mark as a whole is merely descriptive.” *Zuma Array Ltd.*, 2022 USPQ2d 736, *6-7 (TTAB 2022) (quoting *DuoProSS*, 103 USPQ2d at 1758) (emphasis added). *See also In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1051 (TTAB 2006) (“Nor has the examining attorney engaged in impermissible dissection of a mark by determining that one term in the mark is descriptive and another generic. This is all part and parcel of routine examination of a multiword mark”).

B. Third-Party Evidence Showing Descriptive Use of “Breeding” for “Vigor”

The record includes seven third-party articles or publications, as well as a

⁵ *Id.*

screenshot of a third-party YouTube video page, which the Examining Attorney contends make descriptive use of the wording in Applicant's BREEDING WITH VIGOR mark. For example:

1. Two articles from the State News Service, one titled "Hybrid Wheat Breeding Gets Almost \$1 Million USDA Investment," the other titled "'Hybridized Wheat: 7 Years in the Making[,] Texas A&M Agrilife, Nebraska Wheat Breeders Work to Maximize Crop's Potential," discuss the hybridization of wheat. Both explain that "[f]or wheat, past conventional **breeding** efforts increased hybrid **vigor** about 10 percent...."⁶

2. An article from Countryside & Small Stock Journal titled "Best Beef Cattle Breeds: Which One is Right for You" discusses the pros and cons of different beef cattle breeds. Discussing one particular breed, "Red Poll," the author explains: "Since this breed is not closely related to other beef breeds, it can be utilized in a **crossbreeding** program to obtain exceptional hybrid **vigor**."⁷

3. An article from the Bethany Republic-Clipper (Missouri) titled "Hybrid vigor desired in cow breeding; but not so much in viral microbe herds; Hometown boy" discusses the author's "farm interest" that arose following news that the Covid-19 virus came from animals. According to the author, "We see shifting populations of viruses every year. ... In beef cow herds we like to take advantage of **crossbreeding**

⁶ September 14, 2021 Office action, TSDR 8-9, 20-22 (emphasis added).

⁷ *Id.* at 10-14 (emphasis added).

of different breeds. That adds **vigor**, plus better genetics.”⁸

4. An article from the Salt Lake Tribute titled “Scientists Breeding Water-Efficient Crops That Can Weather Warmer Climes; Crops That Can Take the Heat” explains that scientists are “devising ways to breed crops that use water more efficiently.” In the course of its discussion, the article explains how an official from the Australian government’s Commonwealth Scientific and Industrial Research Organization “outlined efforts to **breed** ‘high **vigor**’ wheats that grow fast and have broader leaves, providing better ground cover to reduce water evaporation from soil.”⁹

5. An article on frontiers.org (title unknown) has a paragraph titled “**Breeding for Vigor** and Broad Adaptation,” which explains that the world’s major crops have grown beyond their origin, and suggests that candidate species of future crops “should be evaluated in multiple environments to identify those capable of broad adaptation or those with genetic variation that yield stability in multiple years and environments.”¹⁰

6. A screen shot from a YouTube video titled “Selecting and **Breeding For Vigor**” purportedly explains “how to improve your flock by selecting and **breeding for** increased **vigor**.”¹¹

Applicant takes issue with this evidence, asserting that “only *three pieces* of third

⁸ *Id.* at 15-16 (emphasis added).

⁹ *Id.* at 17-19 (emphasis added).

¹⁰ *Id.* at 19 (emphasis added).

¹¹ *Id.* at 17 (emphasis added).

party evidence feature[es] th[e] phrase [BREEDING FOR VIGOR] as a whole.”¹² Applicant’s contention is unpersuasive. While not all of the references use the exact phrase “breeding for vigor,” they all discuss breeding for vigor, which supports the Examining Attorney’s position that the individual terms in the mark retain their descriptive significance when combined in Applicant’s mark.

C. Applicant’s Use of BREEDING and VIGOR on its Website

“Evidence of the context in which a mark is used [by an applicant] ... in advertising material directed to the goods [or services] is probative of the reaction of prospective purchasers to the mark.” *Abcor Dev.*, 200 USPQ at 218. *See also In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006) (“[A]pplicant’s own use of the term ERGONOMIC ... highlights the descriptive nature of this term ...”).

The Examining Attorney introduced printouts of several pages from Applicant’s website, which make descriptive use of the terms “breeding” and “vigor” in the mark via the following statements:

- “We work hard to provide the highest quality [fish] eggs on the mark with excellent growth & **vigor**, superior survival rates, backed by data from a variety of rearing environments”;
- “Routine operational statistics and performance of sentinel groups deployed here are used to benchmark [Applicant] genetics and make **vigor-based breeding** decisions”; and

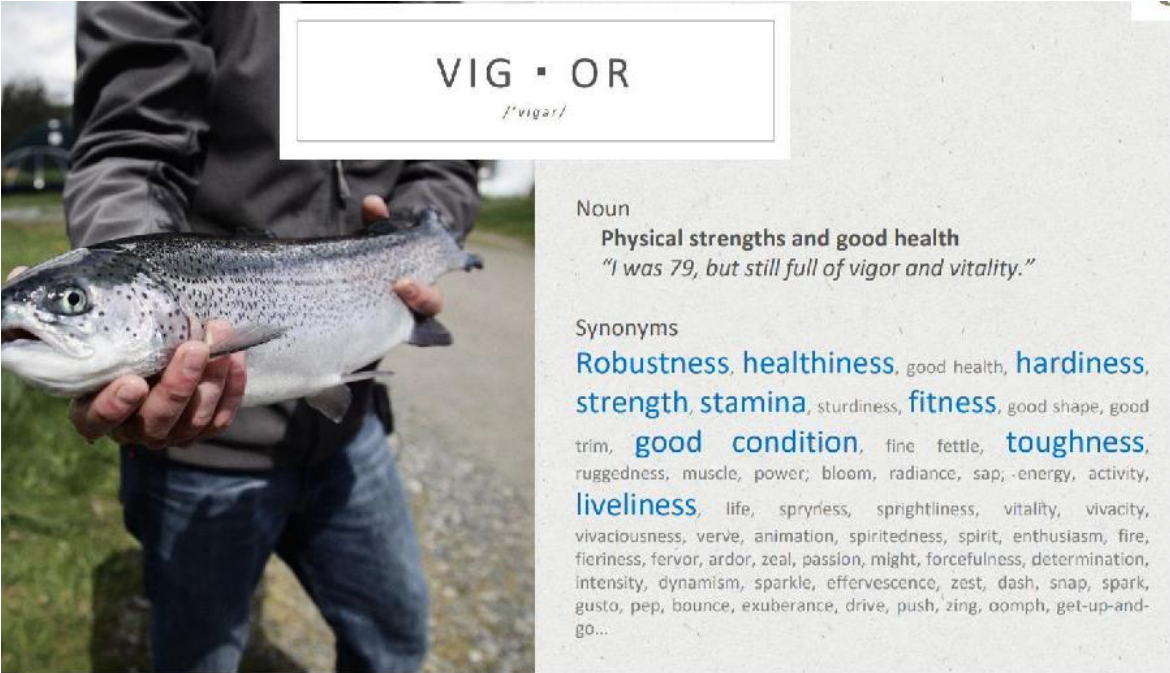
¹² 9 TTABVUE 4 (Applicant’s Reply Brief).

○ “LOOKING AHEAD The Future of Salmonid **Breeding**]” “Artificial selection is a powerful tool, but the future lies in retaining **vigor** while shaping the attributes of salmonids to meet the demands of modern aquaculture.”¹³

The Examining Attorney also introduced a PowerPoint presentation (shown with the same background as Applicant’s website) authored by Applicant’s Director of Science titled “BREEDING FOR VIGOR Thoughts for the Future of Genetic Improvement in Aquaculture” which, among other things:

- explains, under the heading “RETHINKING **BREEDING**” (emphasis added) that “**Vigor** and fitness” [emphasis in original] are the driving principles of natural selection”; and that it provides “**Breeding for vigor**, not traits *du jour*, by harnessing natural selection in range of environments and rearing environments”; and “[i]ndirect approach is slower, but lets real-world conditions drive selection and can help identify **vigor** traits retrospectively” (emphasis added); and
- provides a definition of, and numerous synonyms for, “vigor.”

¹³ April 20, 2022 Office action, TSDR 5-7 (emphasis added).



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Not all of the synonyms shown in the excerpt are easy to read, so we repeat them below, with the same emphasis made by Applicant:

Robustness, healthiness, good health, **hardiness, strength, stamina,** sturdiness, **fitness,** good shape, good trim, **good condition,** fine fettle, **toughness,** ruggedness, muscle, power; bloom, radiance, sap; energy, activity, **liveliness,** life, spryness, sprightliness, vitality, vivacity, vivaciousness, verve, animation, spiritedness, spirit, enthusiasm, fire, fieriness, fervor, ardor, zeal, passion, might, forcefulness, determination, intensity, dynamism, sparkle, effervescence, zest, dash, snap, spark, gusto, pep, bounce, exuberance, drive, push, zing, oomph, get-up-and go...

Applicant argues that this evidence “supports Applicant’s position that the term ‘vigor’ is *not* a set of defined traits by demonstrating that what constitutes the concept of ‘vigor’ greatly differ across differs across biological fields.”¹⁵ This argument strains

¹⁴ November 16, 2022 Reconsideration Letter, TSDR 9-12 (emphasis added except where indicated).

¹⁵ 9 TTABVUE 4-5 (Applicant’s Brief).

credulity. Applicant's website descriptions of its live fish and breeding services, and the presentation by a member of Applicant's staff leave no doubt that Applicant breeds for vigor.

Applicant also argues that it "does not use the phrase" BREEDING FOR VIGOR "as a term of art or other specifically defined phrase," but rather, "has adopted that phrase to espouse its goals and values,"¹⁶ namely, "to do what is good for humans, good for the environment, and good for wild salmon."¹⁷ This argument is unavailing. Whether or not BREEDING FOR VIGOR is an established term of art or a specifically defined phrase in Applicant's industry is not controlling. Rather, the issue is whether the term is shown to be merely descriptive.¹⁸ *Fat Boys*, 118 USPQ2d at 1514 ("The fact that Applicant may be the first or only user of a term does not render that term distinctive, if it otherwise meets the standard set forth in *In re Gyulay*, *In re Chamber of Commerce*, and *DuoProSS*."). See also *Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 47 C.C.P.A. 1165, 1960 Dec. Comm'r Pat. 503, 126 USPQ 397, 398 (CCPA 1960) (even novel ways of referring to a product may nonetheless be merely descriptive).

D. Applicant's Conflation of the Services Identified in the Application With the Services It Actually Provides

We reiterate that the goods and services identified in the application are:

- "Fish, live" in Class 31, and

¹⁶ *Id.* at 4.

¹⁷ Applicant's "mission" is seen on a page of Applicant's website, which the Examining Attorney made of record with his April 20, 2022 final Office action, TSDR 10.

¹⁸ "Likewise, the fact that a compound word mark is not found in the dictionary does not mean that it is not descriptive." *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977).

- “Agricultural services, namely, the cultivation and breeding of plants or animals in a water environment” in Class 44.

As the Examining Attorney observes, Applicant, “makes several arguments and statements about the services that do not appear to be congruent with the identified services in the application.”¹⁹ For example, though Applicant correctly recites the services identified in the application, immediately thereafter, Applicant asserts that “[t]he Application covers only live fish in Class 31. In Class 44, the Application covers the cultivation of a healthy water habitat for fish.” A couple of pages later, Applicant asserts that “the Application does not cover fish breeding services for others. Rather, it recites only: (1) live fish; and (2) water cultivation services. ... Applicant seeks registration for live fish and aquaculture cultivation, not for fish breeding services.”²⁰ We consider these statements in Applicant’s brief with the statements Applicant made in response to the Examining Attorney’s first Office action during prosecution: “In this case, Applicant *does not* provide actual fish breeding services for third parties such as kennels provide for dogs” and “*has not* applied for the Proposed Mark in connection with fish breeding services for others.”²¹

Putting aside Applicant’s flatly erroneous assertions about what the identification of goods and services actually covers, Applicant further statements seem to indicate that, in actuality, to the extent Applicant breeds fish (or other animals), it does so for itself and not for the benefit of others, to facilitate its sale of live fish and fish eggs. If

¹⁹ 8 TTABVue 4 (Examining Attorney’s Brief).

²⁰ *Id.* at 6.

²¹ February 22, 2022 Office action response, TSDR 9 (emphasis in original).

that is the extent of Applicant's breeding of animals, it is not a protectible service. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURES (TMEP) (2022) §§ 1402.11 (to constitute a service "as contemplated by the Trademark Act," services recited in an application must "not merely refer to collateral or related activities associated with rendering the services"), 1301(a)(i) (the recited service "must be performed to the order of, or for the benefit of, someone other than applicant" and "must be qualitatively different from anything necessarily done in connection with the sale of Applicant's goods").

Applicant also contends that:

The Examiner concluded that because Applicant breeds fish for subsequent sale, the phrase "breeding for vigor" is merely descriptive. If the Application recited fish breeding services, this logic would appear straightforward. However, the Application does not cover fish breeding services for others.²²

We take this as a concession by Applicant that BREEDING FOR VIGOR is merely descriptive of Applicant's services, as the application indeed encompasses fish breeding services in its "cultivation and breeding of plants or animals in a water environment."

E. Third Party Registrations

Applicant introduced printouts of copies of 11 registration certificates from the Office's Trademark Status and Document Retrieval (TSDR) database for a number of third-party marks that are (or were) registered on the Principal Register without

²² 6 TTABVue 6 (Applicant's Brief).

a disclaimer[s] of “breeding” [or “vigor”] and “without a showing of secondary meaning” to support its contention that “[t]he Trademark Office regularly deems ‘breeding’ marks distinctive for breeding services and their resulting livestock and plants.” The introduced registrations (and cancelled registrations)²³ include,²⁴

as to “breeding.”

- Reg. No. 2540111 [cancelled] for the mark BREEDING THE BEST. BETTER. for use in connection with “cattle semen” in Class 5 – which shows the term “breeding” used as part of a unitary term”;
- Reg. No. 2941768 [cancelled] for the mark HARVEST PLUS BREEDING CROPS FOR BETTER NUTRITION for use in connection with educational services relating to “the use of plant breeding to combat micronutrient deficiencies” in Class 41”;
- Reg. No. 3718739 for the mark QUALITY INSIDE STRAIGHT FROM THE BREEDER and Design for use in connection with “vegetable plants for agricultural purposes, namely, ... onion plants” in Class 31;
- Reg. No. 4680324 for the mark FLORITEC BREEDING BY DESIGN and Design for use in connection with “grains and agricultural, horticultural and forestry products” such as “live trees” in Class 31;
- Reg. No. 5304539 for the mark SMITH BONSMARA – BORN TO BREED. BORN TO LEAD. for use in connection with “livestock, namely, cattle embryos” in Class 31;
- Reg. No. 5221246 for the mark BREEDING A TEXAS LEGEND for breeding services relating to Texas Longhorn cattle in Class 44;

²³ Cancelled registrations are only probative to the extent they are relevant to show that they once issued. *See e.g., In re Brown-Forman Corp.*, 81 USPQ2d 1284, 1286 n.3 (TTAB 2006) (“Expired and/or cancelled registrations generally are evidence only of the fact that the registrations issued.”). We list them here because this is one of those cases where showing that registrations were issued is relevant to Applicant’s argument.

²⁴ February 22, 2022 Office action response, TSDR 20-25 (Exhibit B); 6 TTABVUE 15 (Applicant’s Brief). Although Applicant’s brief only refers to these registrations supporting its contention about the term “breeding” in making its argument, Applicant’s response to the Office action refers to both “breeding” and “vigor,” so we add “vigor” here.

- Reg. No. 6398655 for the stylized mark NEOBREEDER for use in connection with various goods and services in Classes 5 and 31, including, as emphasized by Applicant, “live animals” (Class 5); and,

as to “vigor,”

- Reg. No. 2020641 for the mark VIGORLINER for “living trees” in Class 31;
- Reg. No. 2031678 for the mark BALL VIGOR INDEX for “flower, ornamental and vegetable seeds of enhanced quality” in Class 31;
- Reg. No. 5868371 for the mark HIGH VIGOR for use in connection with goods and services, including “live shrimp for broodstock and seedstock” in Class 31;²⁵ and
- Reg. No. 5693295 for the mark VIGORMAX for use in connection with “live cattle” in Class 31.

Five of the 12 registrations listed above are not probative. Those for the marks SMITH BONSMARA – BORN TO BREED. BORN TO LEAD., BREEDING A TEXAS LEGEND, NEOBREEDER, VIGORLINER, and VIGORMAX comprise unitary marks that would not have been subject to a disclaimer requirement during prosecution. A fifth, the registration for QUALITY INSIDE STRAIGHT FROM THE BREEDER, is also not probative because. While it shows descriptive use of the term “breeder,” it does not reflect that “breeding” is descriptive in that context. That leaves three third-party registrations for marks where the term “breeding” (or a modified form) is used descriptively (BREEDING THE BEST. BETTER., HARVEST PLUS

²⁵ Applicant lists the goods in this registration as “shrimp and shrimp breeding,” which is not what the identification actually identifies. Applicant’s interpretation of “live shrimp **for** breedstock and seedstock” (emphasis added) in that registration as constituting both a good (shrimp) and service (breeding), is similar to Applicant’s interpretation of its services in this case; both are erroneous.

BREEDING CROPS FOR BETTER NUTRITION, and FLORITEC BREEDING BY DESIGN), and two where “vigor” is used descriptively (BALL VIGOR INDEX and HIGH VIGOR). This evidence hardly suffices to demonstrate that the Office “regularly deems ‘breeding’ [or vigor marks] distinctive for breeding services and their resulting livestock and plants. Regardless, as the Examining Attorney notes citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016), “[i]t is well established that each case is decided on its own facts, and each mark stands on its own merits.”²⁶

F. Applicant’s Argument that the Terms “BREEDING” and “VIGOR” Have Multiple Meanings

Referring to the dictionary definitions introduced by the Examining Attorney, Applicant argues that because the terms “breeding” and “vigor” each have multiple meanings, it follows that Applicant’s mark, BREEDING FOR VIGOR “cannot as a composite be merely descriptive.”²⁷ At most, it argues, the mark is suggestive.²⁸ This argument is unavailing because we must consider the meaning of Applicant’s proposed mark to consumers who know Applicant’s goods and services. *See, e.g., DuoProSS*, 103 USPQ2d at 1757, quoting *In re Tower Tech. Inc.*, 64 USPQ2d 1314, 1316-17 (“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

²⁶ 8 TTABVUE 8 (Examining Attorney’s Brief).

²⁷ 6 TTABVUE 8-12, quotation at 10 (Applicant’s Brief).

²⁸ *Id.* at 10-15.

information about them.”). *See also Fallon*, 2020 USPQ2d 11249, at *7.

Contrary to Applicant’s unsupported contentions, consumers of Applicant’s goods or services will not have to guess or process through the various definitions for the terms “breeding” and “vigor” to determine which definitions are pertinent. *See In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018) (“That a term may have other meanings in different contexts is not controlling.”); *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (“The fact that [a term] has multiple meanings, some of which are not descriptive, is not controlling or relevant to the descriptiveness analysis. So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.”). Rather, they will immediately understand, in the context that they are used, that the terms are descriptive; they need not engage in any multi-step reasoning to understand that “breeding” and “vigor” in the mark refer to Applicant’s purpose to breed and providing fish that have vigor (or “vitality,” as the term is defined). The connection is straightforward and immediate.

G. Applicant’s Argument that the Mark As A Whole Does Not Describe its Goods and Services

As to the services, Applicant argues that:

[T]he phrase “breeding for vigor” does not describe Applicant’s aquaculture services, which consist of creating and maintaining a clean, healthy water environment in which to cultivate its fish. These services produce high quality fish to sell and also support its stewardship activities, which have nothing to do with “breeding.” Applicant is not literally “breeding” a healthy environment by selectively mating and hybridizing plants within the environment. Rather, it selects water sources and rearing systems suitable for fish culture and, through its operations and monitoring activities, maintains on-farm environmental quality. ... [E]ven if “breeding for vigor” describes Applicant’s goals and philosophy, it does not describe its efforts to cultivate and maintain the

farming environment enabling Applicant's fish to thrive.²⁹

As noted above, Applicant's description of its breeding services does not comport with the breeding services recited in its application. Applicant's actual activities with respect to breeding – including, as argued here, that it breeds fish in water that is “clean and healthy” and in doing so “selects water sources and rearing systems suitable for fish culture” (in other words, water that is not dirty) for subsequent sale – do not constitute services as contemplated by the Trademark Act.

Applicant attempt to distinguish between its “goals and philosophy” (which it concedes are described by the mark) and its “efforts” to “cultivate” (breed), fails. As noted above, a term is merely descriptive of goods or services if it immediately conveys information concerning a purpose of the goods or services. *Abcor Dev.*, 200 USPQ at 216 (GASBADGE is merely descriptive because it “immediately and unequivocally describes the purpose and function of appellant's goods.”); *In re Omniome*, 2020 USPQ2d 3222, at *3 (SEQUENCE BY BINDING is merely descriptive because it “immediately describes the function and purpose of Applicant's goods and services”). A “purpose” is “goal.”³⁰

As to the **goods**, Applicant argues that:

[T]he phrase “breeding for vigor” does not describe live fish. Fish do not breed for vigor. Indeed, they cannot be described as breeding for

²⁹ 6 TTABVUE 7 (Applicant's Brief).

³⁰ [ahdictionary.com/word/search.html?q=purpose](https://www.ahdictionary.com/word/search.html?q=purpose) (accessed August 11, 2023) (“purpose” is “[t]he object toward which one strives or for which somethings exists; an aim or goal.”). The Board may take judicial notice of dictionary definitions. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

anything. Fish breed simply out of instinct. They certainly cannot be said to breed for the purpose of promoting “vigor” or “healthy physical or mental energy or power, vitality” as initially proffered by the Examiner. ... “[B]reeding for vigor” might describe Applicant’s business goals and values. But it does not describe Applicant’s fish themselves.³¹

However, as noted above, the fact that BREEDING FOR VIGOR describes Applicant’s purpose or goal in providing its goods is sufficient for us to find that it is descriptive of Applicant’s goods.

H. Conclusion

As demonstrated by the dictionary definitions of record, the terms “breeding” and “vigor” are merely descriptive of Applicant’s proposed “Fish, live” and “Agricultural services, namely, the cultivation and breeding of plants or animals in a water environment.” The third-party evidence showing descriptive use of “breeding” and “vigor,” as well as some descriptive use of the term “breeding for vigor” as a whole, corroborates this finding. Applicant’s own descriptive use of the terms “breeding” and “vigor” on its website puts a final nail in the coffin. We further find that the terms “breeding” and “vigor” retain their significance when they are combined in Applicant’s mark BREEDING FOR VIGOR, “resulting in a composite mark that is itself merely descriptive.” *Fat Boys*, 118 USPQ2d at 1516.

Decision: The refusal under Section 2(e)(1) is affirmed.

³¹ 6 TTABVUE 7-8 (Applicant’s Brief) (citations to the record omitted).