

This Opinion is Not a
Precedent of the TTAB

Mailed: June 7, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

—————
Trademark Trial and Appeal Board

—————
In re The Vita Coco Company, Inc.

—————
Serial No. 97081204

—————
R. Glenn Schroeder of Schroeder Law PC for The Vita Coco Company, Inc.

Eddie Nolasco Arias, Trademark Examining Attorney, Law Office 116,
Elizabeth F. Jackson, Managing Attorney.

—————
Before Lynch, Acting Deputy Chief Administrative Trademark Judge, and
Pologeorgis and English, Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

The Vita Coco Company, Inc. (“Applicant”) seeks registration on the Principal Register of the standard-character mark THE HANGOVER SHOP (SHOP disclaimed) for “On-line retail store services featuring drinks, beverages, snack foods, prepared meals, and headache treatment preparations” in International Class 35.¹

¹ Application Serial No. 97081204 was filed on October 19, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of a bona fide intent to use the mark in commerce.

The Trademark Examining Attorney refused registration on the ground that Applicant's proposed mark is merely descriptive of the services identified in Applicant's application under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). When the refusal was made final, Applicant appealed. The appeal is fully briefed. For the reasons explained, we affirm the refusal to register.²

I. Decision

A. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration of a proposed mark that, 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).³ 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, 1300 (Fed. Cir. 2012); *see also In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015); *In re Omniome, Inc.*, 2019 WL

² As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion varies from the citation form recommended in the TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2023). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion employs citation to the Westlaw (WL) database. Until further notice, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

Citations in this opinion to the briefs refer to TTABVUE, the Board's online docket system. Citations to documents contained in the Trademark Status & Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents.

³ Applicant has not claimed acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), in an attempt to overcome the descriptiveness refusal.

7596207, at *4 (TTAB 2019) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017)).

Whether a proposed mark is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the proposed mark is being used on or in connection with those goods or services, and the possible significance that the proposed mark would have to the average purchaser of the goods or services because of the manner in which it is used or intended to be used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963 (Fed. Cir. 2007); *see also DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1253 (Fed. Cir. 2012) (“The commercial impression that a mark conveys must be viewed through the eyes of a consumer.”); *In re Zuma Array Ltd.*, 2022 WL 3282655, at *3 (TTAB 2022). The question is whether someone who knows the goods or services will understand the proposed mark to convey information about them. *Real Foods Pty Ltd. v. FritoLay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018); *In re Zuma Array*, 2022 WL 3282655, at *3.

“[A] mark need not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper ‘if the [proposed] mark is descriptive of any of the [services] for which registration is sought.’” *In re Chamber of Commerce of the U.S.*, 675 F.3d at 1300 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 1041 (Fed. Cir. 2005)); *In re Positec Grp. Ltd.*, 2013 WL 5467010, at *8 (TTAB 2013) (“[I]f the [proposed] mark is descriptive of some of the identified items – or even just one – the whole class of goods [or services] may still be refused by the examiner.”).

In analyzing a refusal under Section 2(e)(1) of the Trademark Act, we must consider the proposed mark as a whole. *In re Positec Grp. Ltd.*, 2013 WL 5467010, at *3 (citing *DuoProSS*, 695 F.3d at 1252). When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If 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. *See, e.g., In re Zuma Array Ltd.*, 2022 WL 3282655, at *4 (“Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase. If the words in the proposed mark are individually descriptive of the identified goods, we must determine whether their combination ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’”) (cleaned up; internal citations omitted); *In re Positec Grp.*, 2013 WL 5467010, at *10 (“[W]e find that prospective consumers of the identified goods would readily understand that applicant’s applied-for mark [SUPERJAWS] describes a superior vice system for grasping and holding work pieces.”). On the other hand, a proposed mark comprising a combination of merely descriptive components is registrable if the combination of terms creates a unitary mark with a unique, nondescriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services. *See, e.g., In re Colonial Stores Inc.*, 394 F.2d 549, 552-53 (CCPA 1968) (SUGAR & SPICE held not merely descriptive of bakery products); *In re Shutts*, 1983

WL 51780, at *2 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow removal hand tool).

B. Evidence

Evidence that a term is merely descriptive “may be obtained from any competent source,” including dictionaries, advertising, and websites. *See, e.g., In re Bayer Aktiengesellschaft*, 488 F.3d at 964 (competent sources of the purchasing public’s understanding of a term include dictionaries and newspapers); *In re N.C. Lottery*, 866 F.3d at 1367-68 (“[T]he public’s understanding of a [proposed] mark can be evidenced by ... [w]ebsites, publications, and use ‘in labels, packages, or in advertising material directed to the goods [or services].’”) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978)). Applicant’s own marketing materials “and any explanatory text included therein” also is relevant. *In re N.C. Lottery*, 866 F.3d at 1368. We “must consider a [proposed] mark in its commercial context to determine the public’s perception.” *Id.*

1. Dictionary Definitions

The record includes the following dictionary definitions:

Hangover: “A temporary, unpleasant physical condition, typically characterized by a headache and nausea, following the consumption of an excessive amount of alcohol”;⁴ and

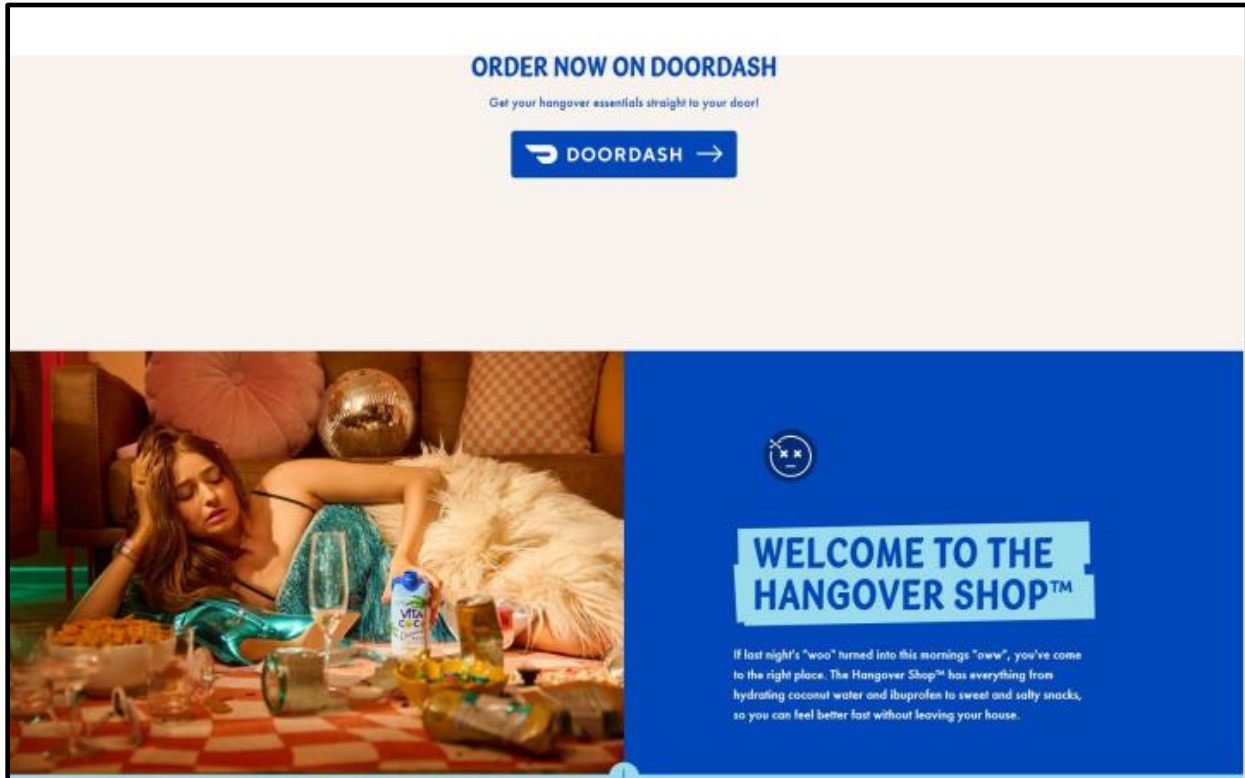
Shop: “A small retail store or specialty department in a large store.”⁵

⁴ July 22, 2022 Office Action, TSDR 5 (THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE).

⁵ *Id.* at 7.

2. Screenshots from Applicant's website

The Examining Attorney introduced screenshots from Applicant's website, an excerpt of which is below:⁶



The text reads:

ORDER NOW ON DOORDASH

Get your hangover essentials straight to your door!

WELCOME TO THE HANGOVER SHOP™

If last night's "woo" turned into this morning's "oww", you've come to the right place. The Hangover Shop™ has everything from hydrating coconut water and ibuprofen to sweet and salty snacks, so you can feel better without leaving your house.

⁶ March 3, 2023 Final Office action, TSDR 8. We have cropped this image. *See also* Appeal Brief, 4 TTABVUE 8 (acknowledging that the Final Office Action attached printouts from Applicant's website).

3. Press Releases/Articles

The record also includes three press releases/articles about Applicant, pertinent excerpts of which are below:

On February 14, Vita Coco is teaming up with REEF Kitchens to launch **The Hangover Shop**, your **one-stop-shop** for everything you need to remedy **your hangover** and get back on track. Consumers can shop for their go-to hangover recovery items, including Advil, DiGiorno frozen pizza, Vita Coco and more, from the comfort of their couch and expect deliveries to their doorstep within minutes.⁷

* * *

Leading coconut water brand Vita Coco's ... **digital storefront, The Hangover Shop™**, and local commerce platform DoorDash are teaming up to provide free **hangover essentials** for DashPass members nationwide[.] ... The Hangover Shop™ offers touchdown-worthy hangover remedies, delivering custom relief to consumers' doorsteps. Customers can build their own hangover fix, with The Hangover Shop™ options including Vita Coco coconut water for electrolyte-packed hydration, salty and sweet snacks, and over-the-counter remedies like pain relievers and antacids.⁸

* * *

There is a new solution to the problem of Super Bowl hangovers, recently announced by DoorDash and Vita Coco. The delivery giant and coconut water company are collaborating to open **a digital store aptly named The Hangover Shop**, which will offer free or discounted remedies for the nation's beleaguered workforce[.] ... [T]his year the two companies are going nationwide, **offering convenience hangover solutions** delivered straight to the door or desk of DoorDash's DashPass subscription members. The remedies, which include Vita Coco coconut water, revivifying snacks, and aspirin and antacids, are free for DashPass members (up to \$15) with a limited time offer.⁹

⁷ *Id.* at 12 (February 8, 2022 press release on the GlobalNewsWire) (emphasis added).

⁸ *Id.* at 24-25 (February 9, 2023 press release on Yahoo.com) (emphasis added).

⁹ *Id.* at 46-48 (February 10, 2023 article on tastingtable.com) (emphasis added).

4. Third-Party Products

The record further demonstrates that a number of third parties promote various pills, drinks, drink powders and patches as curing or preventing hangovers:

- BLOWFISH FOR HANGOVERS: “Effervescent tablets” promoted as providing “Hangover relief. Guaranteed.”; “Blowfish is real medicine that’s specifically formulated for hangovers”;¹⁰
- OVER EZ: a pill promoted as an “All Natural Hangover Prevention”; “A next generation alcohol aid that’s engineered to prevent hangovers *before* you get them”;¹¹
- SALUD: Identified as a “Hangover Cure” beverage;¹²
- ALKA-SELTZER HANGOVER RELIEF: “effervescent tablets ... [f]ormulated to treat the symptoms of your worst hangovers by restoring mental alertness and providing pain relief through a combination of maximum strength aspirin with caffeine”;¹³
- RU-21 HANGOVER RELIEF tablets: “Since 2002, RU-21 has been about one thing: vanquishing hangovers”;¹⁴
- GAMECHANGER: Identified as “hangover patches”; “GameChanger Patches are a two-part system. Wear WarmUp during the day and PostGame at night while you sleep for maximum hangover protection”;¹⁵
- VITAPOD: Promoted as “The Hangover Relief Kit[.]” “The bundle comes with a 30 pod pouch of Sports+ Arctic Blast and a 30 pod pouch of Energy + Orange Zest”;¹⁶
- RECESS: A “mood powder” promoted as a “hangover remedy”;¹⁷

¹⁰ *Id.* at 51-61.

¹¹ *Id.* at 83.

¹² *Id.* at 85.

¹³ *Id.* at 87.

¹⁴ *Id.* at 90, 93.

¹⁵ *Id.* at 95-96.

¹⁶ *Id.* at 105-06.

¹⁷ *Id.* at 109-11.

- FULL LEAF TEA CO.: offering an “organic hangover relief tea”;¹⁸
- REBOUND: Identified as a “hangover patch”;¹⁹ and
- THE DRINKERS VITAMIN: a pill promoted as “a revolutionary alcohol supplement designed to reduce alcohol’s negative impact on the liver, while doubling as something to ease symptoms of a hangover.”²⁰

5. Blogs Discussing Hangover Cures

Finally, the Examining Attorney introduced two articles that discuss hangover cures.

- Undated blog titled 11 All-Natural (backed by science) Hangover Cures that Actually Work on the website ez-lifestyle.com: Listing various hangover cures including “milk thistle tea” and “red ginseng tea”;²¹ and
- Undated article on besthangoverremedies.com, reviewing “hangover aid[s],” consisting of drinks and patches.²²

C. Analysis

Applicant’s compliance with the Examining Attorneys’ requirement that it disclaim the word SHOP is a concession that the term is descriptive or generic for Applicant’s online retail store services. *See, e.g., In re Six Continents Ltd.*, 2022 WL 407385, at *8 (TTAB 2022) (recognizing the applicant’s disclaimer of “suites” in compliance with the Examining Attorney’s requirement was a concession that the word was “not inherently distinctive” for Applicant’s services); *In re DNI Holdings*

¹⁸ *Id.* at 120.

¹⁹ *Id.* at 132-33.

²⁰ *Id.* at 138-39.

²¹ *Id.* at 62-82. Although the blog does not bear a date, the screenshot includes the date of capture.

²² *Id.* at 126-31. Although the article does not bear a date, the screenshot includes the date of capture.

Ltd., 2005 WL 3492365, at *8 (TTAB 2005) (“[I]t has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term ... at the time of the disclaimer.”). Applicant does not argue to the contrary.

Further, the record discussed above demonstrates: that a “hangover” is “[a] temporary, unpleasant physical condition, typically characterized by a headache and nausea, following the consumption of an excessive amount of alcohol”;²³ that consumers are likely to encounter products in the market that are promoted as treating and/or preventing hangovers; and that Applicant promotes its online retail store services as featuring such products. We thus find that the word HANGOVER immediately informs consumers that Applicant’s online retail store services feature products, namely, headache treatment preparations, food and beverages, intended to alleviate a hangover.

Applicant argues that “only one” of the definitions for the word HANGOVER “pertains to alcohol” and “[t]he recited services do not include alcohol, and therefore do not cause or promote hangovers.”²⁴ 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.” *In re Chopper Indus.*, 1984 WL 63033, at *2 (TTAB 1984); *see also, In re IP Carrier Consulting Grp.*, 2007 WL 2972211, at *2 (TTAB 2007). Moreover, Applicant’s services need not “promote hangovers” for the word HANGOVER to be merely descriptive of Applicant’s services. The record amply supports that the word

²³ July 22, 2022 Office Action, TSDR 5 (THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE).

²⁴ Appeal Brief, 4 TTABVUE 7.

HANGOVER is merely descriptive of Applicant's online retail services featuring products promoted as hangover remedies.

We now consider whether the combination of the words HANGOVER and SHOP, preceded by the definite article THE, results in a composite that is itself merely descriptive or whether THE HANGOVER SHOP as a whole evokes a new and unique commercial impression that is at least suggestive of Applicant's services.

Applicant argues that the Examining Attorney conducted a "multistep reasoning process to conclude that the term 'hangover' in Applicant's mark actually means 'hangover relief.'"²⁵ In support of this assertion, Applicant points to the evidence of third party products arguing that "the vast majority of the actual terms being used are 'hangover relief,' 'hangover cure,' and 'hangover remedy' – and not 'hangover' alone as suggested by the Examining Attorney."²⁶ We disagree that omission of the word "relief," "cure" or "remedy" makes the proposed mark THE HANGOVER SHOP suggestive of Applicant's services. Consumers encountering Applicant's online retail store services featuring, inter alia, "headache treatment preparations" will immediately understand that Applicant's online shop features hangover remedies or cures. *See Remington Prods. Inc. v. N. Am. Philips Corp.*, 892 F.2d 1576, 1579 (Fed. Cir. 1990) (TRAVEL CARE, the "short form" of "travel personal care" "is still descriptive and is merely a somewhat broader category of goods, not being limited to *personal care*, but inclusive of the care of anything while traveling. Viewed in the

²⁵ Reply Brief, 7 TTABVUE 3.

²⁶ *Id.*

context of its use, with the showing of the products, its meaning is perfectly clear and far from arbitrary or merely suggestive.”); *In re Abcor Dev.*, 588 F.2d at 813 (GASBADGE merely descriptive of a badge that detects gaseous pollutants even though appellant’s advertising literature also referred to the product as a “gas monitoring badge service”). That is, when the proposed mark THE HANGOVER SHOP is viewed in the context of Applicant’s specific online retail store services, the word “relief,” “remedy” or “cure” would be readily understood.

Applicant also argues that the Examining Attorney conducted a “multistep reasoning process” because “the Examining Attorney was forced to look to language in Applicant’s press release to determine what services might be offered under the mark because this could not be accomplished from looking at the mark alone.”²⁷ Again, we disagree. We must consider whether the proposed mark is merely descriptive in relation to the identified services, not in the abstract. In other words, “[t]he 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*, 695 F.3d at 1254 (quoting *In re Tower Tech, Inc.*, 2002 WL 992268, at *3 (TTAB 2002)). As discussed, we find that the merely descriptive meaning of the proposed mark THE HANGOVER SHOP is immediately apparent in the context of Applicant’s online retail store services without resort to explanatory text. Applicant’s website and promotional materials support our finding that consumers

²⁷ Appeal Brief, 4 TTABVUE 9.

encountering the proposed mark THE HANGOVER SHOP will immediately understand that Applicant's online retail store services feature goods to treat a hangover, including preparations for treating headaches, a typical hangover symptom. Indeed, as set out above, one article acknowledges that Applicant's "digital store [is] aptly named The Hangover Shop[.]"²⁸

Applicant's argument that "whether or not it is promoting and touting its services in its own press release has little, if anything, to do with the question of whether consumers in the marketplace would indeed immediately understand the descriptive significance of Applicant's mark"²⁹ is without merit. "Evidence of the context in which a mark is used ... in advertising material ... is probative of the reaction of prospective purchasers to the mark." *In re Abcor Dev.*, 588 F.2d at 814; *see also In re N.C. Lottery*, 866 F.3d at 1367 ("[T]he TTAB 'must consider a mark in its commercial context to determine the public's perception'"); *In re Fallon*, 2020 WL 6255423, at *10 (TTAB 2020) ("[W]e find that the text used on [Applicant's] website is the most compelling evidence of the mere descriptiveness of Applicant's proposed mark[.]"); *cf. In re Gould*

²⁸ In arguing that one must engage in "a multi-step reasoning process before reaching any conclusion about the nature of the recited services" Applicant asserts that "[t]he mentioned 'hangover essentials' could just as easily be a 6-pack of beer." 4 TTABVUE 8. Applicant's argument, however, supports that the proposed mark is merely descriptive. Consuming an alcoholic beverage (i.e. "hair of the dog") is a known hangover treatment, and Applicant's recitation of services is broad enough to encompass the retail sale of beer. *See* MERRIAM-WEBSTER DICTIONARY, defining "hair of the dog (that bit you)" as an idiom meaning as "an alcoholic drink taken by someone to feel better after having drunk too much at an earlier time." <https://www.merriam-webster.com/dictionary/hair%20of%20the%20dog%20%28that%20bit%20you%29> (last visited June 5, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *See, e.g., In re Omniome, Inc.*, 2019 WL 7596207, at *3 n.17.

²⁹ Reply Brief, 7 TTABVUE 4.

Paper Corp., 834 F.2d 1017, 1018 (Fed. Cir. 1987) (applicant’s specimen showed SCREENWIPE generically referred to a wipe for screens).

Finally, Applicant argues that its proposed mark is incongruous because “it is abundantly clear that consumers do not shop for a hangover.”³⁰ Applicant elaborates:

In response to Applicant’s argument that “consumers do not shop for a hangover”, the Examining Attorney responds in the final Office Action that such consumers “do shop for cures or remedies to a hangover.” This argument misses the mark. If the applied-for mark was “The Hangover Cure Shop” or the “The Hangover Remedy Shop” or the “The Hangover Recovery Shop”, then such an argument might carry some weight. But the applied-for mark is “THE HANGOVER SHOP” – and consumers do not shop for hangovers!”³¹

As explained above, we find that in the context of Applicant’s services, consumers will readily understand from Applicant’s proposed mark THE HANGOVER SHOP that Applicant’s online retail store services feature hangover remedies or cures. The absence of the generic word “remedy” or “cure” from the proposed mark does not result in an incongruous, registrable mark.

The record sufficiently supports that when the words THE HANGOVER SHOP are combined, they immediately inform relevant consumers that Applicant’s online retail store services feature goods intended to relieve a hangover. The addition of the definite article THE does not change that immediacy of that meaning or otherwise add any source-indicating significance to the composite. *In re Paper Warehouse, Inc.*, 1984 WL 63092, at *1 (TTAB 1984) (holding THE PAPER WAREHOUSE merely

³⁰ Appeal Brief, 4 TTABVUE 7.

³¹ *Id.* at 9.

descriptive for “retail store and outlet services in the field of paper products”); *In re Comput. Store, Inc.*, 1981 WL 40483, at *2 (TTAB 1981) (definite article THE did not transform THE COMPUTER STORE for “computers and computer book outlet services” into a registrable mark); *see also In re Place Inc.*, 2005 WL 2874744, at *1 (TTAB 2005) (finding THE GREATEST BAR merely descriptive of restaurant and bar services; “the definite article THE ... add[s] no source-indicating significance to the mark as a whole”); *In re Weather Channel, Inc.*, 1985 WL 72050, at *3 (TTAB 1985) (“It is apparent then, that applicant’s [proposed] mark is descriptive of a function and result of its service, namely the cable television program, THE WEATHER CHANNEL.”); *Conde Nast Publ’ns Inc. v. Redbook Publ’g Co.*, 1983 WL 51778, at *1 (TTAB 1983) (“The fact that the slogan [THE MAGAZINE FOR YOUNG WOMEN] also includes the article ‘The’ is insignificant. This word cannot serve as an indication of origin, even if applicant’s magazine were the only magazine for young women.”); *Cf. In re Consumer Prot. Firm PLLC*, 2021 WL 825503, at *9 (TTAB 2021) (holding THE CONSUMER PROTECTION FIRM generic for legal services; adding the definite article “the” did not affect the term’s genericness).

II. Conclusion

Based on the record before us, we find that the proposed composite mark THE HANGOVER SHOP immediately describes that Applicant’s online retail store services feature hangover remedies in the nature of drinks, beverages, snack foods, prepared meals, and headache treatment preparations.

Serial No. 97081204

Decision: The refusal to register Applicant's proposed mark under Section 2(e)(1) of the Trademark Act is affirmed.