

This Opinion is Not a
Precedent of the TTAB

Mailed: January 29, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Seven Seas Cruises S. de R.L.
—

Serial No. 97219378
—

Nicole M. Meyer and Cindy A. Villanueva of Dickinson Wright PLLC,
for Seven Seas Cruises S. de R.L.

Lourdes Ayala, Trademark Examining Attorney, Law Office 106,
Mary Sparrow, Managing Attorney.

—
Before Taylor, Lykos and Larkin,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Seven Seas Cruises S. de R.L. (“Applicant”) seeks to register the proposed mark

UNRIVALED LUXURY in standard characters on the Principal Register for

Cruise ship services; cruise ship services, namely, the transportation of passengers by ship; arranging transport for travelers for shore excursions, for travel tours, and for recreational activity sightseeing tours for cruise ship passengers; providing transport for travelers for shore excursions, for travel tours, and for recreational activity sightseeing tours for cruise ship passengers; travel agency

services, namely, making reservations and bookings for transportation by ship, in International Class 39.¹

The Trademark Examining Attorney refused registration on the following two grounds: (1) that the mark is merely descriptive of Applicant's identified services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and (2) that the mark is a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment under Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051-1053, 1127.²

When the refusals were made final, Applicant appealed and filed a Request for Reconsideration that was denied. Applicant and the Examining Attorney have filed briefs. We affirm the mere descriptiveness refusal and do not reach the failure to function refusal.

¹ Application Serial No. 97219378, filed on January 14, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce.

Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system in .pdf format. References to the briefs on appeal refer to the Board's TTABVUE docket system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020); *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

² In its brief, Applicant argues that its mark is not generic for the identified services. To be clear, the Examining Attorney merely advised Applicant during prosecution that its mark may be generic in the event it sought to amend to the Supplemental Register or seek registration on the Principal Register under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). *See* May 10, 2023 Denial of Request for Reconsideration at TSDR 6. Applicant pursued neither option, and a genericness advisory is not a refusal. *In re Nat'l Ass'n of Veterinary Technicians in Am., Inc.*, 2019 USPQ2d 269108, at *2 (TTAB 2019).

I. Mere Descriptiveness – Applicable Law

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act prohibits registration of a mark on the Principal Register that, when used in connection with an applicant's goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). "A term is merely descriptive if it immediately conveys 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)). See also *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). By contrast, a mark is suggestive if it "requires imagination, thought, and perception to arrive at the qualities or characteristics of the [goods or services]." *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. *Chamber of Commerce*, 102 USPQ2d at 1219; *Bayer*, 82 USPQ2d at 1831. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that the mark would have to the average purchaser of the services in the marketplace. *Chamber of Commerce*, 102 USPQ2d at 1219; *Bayer*, 82 USPQ2d at 1831; *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). In other words, the question is not whether someone presented only with the mark could guess the goods or services listed in the identification. Rather, the question is whether someone who

knows what the goods or 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)).

“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). It is not necessary that a term describe all of the purposes, functions, characteristics, or features of a product or service to be considered merely descriptive; it is enough if the term describes one significant function, attribute, or property. *Chamber of Commerce*, 102 USPQ2d at 1219 (citing *Dial-A-Mattress*, 57 USPQ2d at 1812).

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys,” *Bayer*, 82 USPQ2d at 1831, as well as “labels, packages, or in advertising material directed to the [services].” *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). It may also be obtained from websites and publications. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1565 (Fed. Cir. 2001).

“Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase.” *In re Zuma Array Ltd.*, 2022 USPQ2d 736, at *6 (TTAB 2022) (quoting *In re Omniome, Inc.*, 2020

USPQ2d 3222, at *4 (TTAB 2019)). “[T]he PTO must . . . determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *Oppedahl & Larson*, 71 USPQ2d at 1372 (citing *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384 (CCPA 1968)); accord *Zuma Array*, 2022 USPQ2d 736, at *6; *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020); and *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016)). “If each component retains its descriptive significance in relation to the [goods or services], the combination results in a composite that is itself merely descriptive.” *Zuma Array*, 2022 USPQ2d 736, at *6 (quoting *Fallon*, 2020 USPQ2d 11249, at *7); see, e.g., *In re Calphalon Corp.*, 122 USPQ2d 1153, 1164 (TTAB 2017) (finding nothing incongruous about the use of the word sharpen or its phonetic equivalent SHARPIN to describe the function of knife blocks with built-in sharpeners that automatically sharpen knives); *DuoProSS*, 103 USPQ2d at 1753 (SNAP SIMPLY SAFER merely descriptive for medical devices). Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the services is the mark registrable as suggestive. See *Oppedahl & Larson*, 71 USPQ2d at 1372 (citing *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 750-51 (Fed. Cir. 1985)); see also *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983) (“A mark comprising a combination of merely descriptive components is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services.”). Compare

In re Tennis in the Round Inc., 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND held not merely descriptive for providing tennis facilities, the Board finding that the association of applicant's marks with the phrase "theater-in-the-round" created an incongruity because applicant's tennis facilities are not at all analogous to those used in a "theater-in-the-round") *with In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1955 (TTAB 2018) (MECHANICALLY FLOOR-MALTED merely descriptive of malt for brewing and distilling and processing of agricultural grain).

"It is the Examining Attorney's burden to show, prima facie, that a mark is merely descriptive of an applicant's goods or services." *Zuma Array*, 2022 USPQ2d 736, at *8 (internal quotations and quotation marks omitted). "If such a showing is made, the burden of rebuttal shifts to the applicant." *Id.* (internal quotations and quotation marks omitted); *see also In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). "The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant." *Id.* (internal quotations and quotation marks omitted).

II. Analysis

We focus our analysis on the following services in International Class 39: "Cruise ship services; cruise ship services, namely, the transportation of passengers by ship." A descriptiveness refusal must be affirmed if the proposed mark is merely descriptive of any of the services identified in the application. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (citing *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) ("Our predecessor court ... has stated that

‘registration should be refused if the mark is descriptive of any of the goods for which registration is sought.’’’)).

Applicant argues that the applied-for mark UNRIVALED LUXURY is suggestive, not merely descriptive of the identified services, because it is “an inventive composite mark that requires some imagination to arrive at a conclusion about the mark’s significance in connection with the identified cruise ship and travel tour services for cruise ship passengers.”³ Applicant contends that the Examining Attorney is impermissibly engaging in multi-step reasoning by relying on dictionary definitions for the terms and ignoring other plausible definitions. Applicant maintains that the Examining Attorney “has taken pieces”⁴ of the dictionary definitions of “unrivaled” and “luxury” to conclude that its proposed mark is merely descriptive. In Applicant’s view, the vagueness and lack of particularity of the phrase UNRIVALED LUXURY when considered in the context of the identified services makes it suggestive and not merely descriptive.

We disagree. The Examining Attorney made of record evidence to support a finding that UNRIVALED LUXURY is laudatory, not suggestive, of a significant feature of Applicant’s services. Laudatory words or phrases that attribute quality or excellence to services are generally considered merely descriptive. *See Nett Designs*, 57 USPQ2d 1564 (holding THE ULTIMATE BIKE RACK a laudatory, descriptive phrase that touts the superiority of applicant’s bicycle racks). *See also In re Best*

³ Applicant’s Brief, pp. 5-6; 8 TTABVUE 11-12.

⁴ Applicant’s Brief, p. 10; 8 TTABVUE 16.

Software Inc., 58 USPQ2d 1314 (TTAB 2001) (BEST and PREMIER in mark BEST! SUPPORTPLUS PREMIER merely descriptive of computer consultation and support services and thus subject to disclaimer); *In re Dos Padres Inc.*, 49 USPQ2d 1860 (TTAB 1998) (QUESO QUESADILLA SUPREME merely descriptive of cheese).

The word “unrivaled,” when used as an adjective, is defined as “having no rival, incomparable, supreme.”⁵ The noun “luxury” is defined as “a condition of abundance or great ease;” “something adding to the pleasure or comfort but not absolutely necessary;” or “an indulgence in something that provides pleasure, satisfaction or ease.”⁶ The combination of the two words as “unrivaled luxury” has no unique or incongruous meaning in relation to cruise ship services other than as a superlative. Contrary to Applicant’s assertions, no mental leap or multi-stage reasoning is required to understand that Applicant intends to market high-end cruise services. To state the obvious, other definitions of these words exist; however, within the context of cruise ship services, these definitions are the most pertinent. Applicant is reminded that the fact that a term may have other meanings in different contexts is not controlling. *Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Taken together, the adjective “unrivaled” modifies the noun “luxury” to create a laudatory phrase that immediately conveys to consumers that Applicant’s cruises have amenities that are

⁵ THE MERRIAM-WEBSTER DICTIONARY (www.merriam-webster.com) definition of “unrivaled” submitted with May 10, 2023 Denial of Request for Reconsideration at TSDR 18.

⁶ THE MERRIAM-WEBSTER DICTIONARY (www.merriam-webster.com) definition of “luxury” submitted with May 10, 2023 Denial of Request for Reconsideration at TSDR 10.

of superior or exceptional quality. Thus, based on the dictionary evidence alone, Applicant's mark is merely descriptive.

Our finding is bolstered by the record evidence showing that it is not uncommon for competitors in the cruise ship industry to use the phrase "unrivaled luxury" to tout lavish features and amenities. A competitive need to use a phrase is probative but not required to finding that a phrase is merely descriptive. *Fat Boys*, 118 USPQ2d at 1514 ("Under the current standard, there is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it, although such proof would be highly relevant to an analysis under Section 2(e)(1)."); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (competitor need is not the test for descriptiveness). We note the following website evidence describing other cruise ship services as providing "unrivaled luxury" along with photos of extravagant surroundings:

Carnival Cruises advertises to potential consumers that they can upgrade their cruise to the "elevated luxury experience of the Retreat where a dedicated team of butlers and concierges make sure you don't lift a finger throughout your all-inclusive cruise."⁷

⁷ March 14, 2022 Office Action at TSDR 27-28



Everything about a vacation should be easy, especially the planning stage. That's why we make our booking process simple by making sure drinks, WiFi, and tips are always included.

Our all-inclusive cruises elevate your luxury cruising experience to the next level. With our standard rate, you'll get to enjoy a stay in one of our spacious staterooms, delicious gourmet meals at our restaurants, and a slate of activities and entertainment shows, plus unlimited drinks, Wi-Fi, and daily gratuities—without ever worrying about the tab.

If you want to take your vacation one step further, you can also upgrade to one of our customized cruise vacation packages. Our Elevate and Indulge packages include premium drinks, shore excursion credits, and onboard credits. We also have a number of cruise and flight packages, Alaska cruise and land tours, and our unrivaled luxury vacation experience at The Retreat, where a dedicated team of butlers and concierges makes sure you don't lift a finger throughout your all-inclusive cruise.

All-Inclusive Cruise Amenities

-  **Drinks**
Choose from an incredible array of
-  **Wi-Fi**
We know staying in touch is
-  **Tips**
We've got you covered. Just sit back

beers, spirits, cocktails, liqueurs, frozen drinks, wines by the glass, sodas, juices, and bottled water.

important, so we've included internet access for two devices. Browse the web, check email, and use messaging apps

and relax while we make your vacation as memorable as possible.

Make your vacation extra special by treating yourself to one of our premium cruise vacation packages. Our Elevate Package comes with all of the perks included in our standard rate, as well as unlimited specialty drinks and up to \$200 to spend on shore excursions. Sip on craft beers, premium wines, or freshly squeezed juices in our restaurants and bars. Use your credits to sign up for thrilling



Elevate package, as well as unlimited streaming Wi-Fi and up to an additional \$200 per person in onboard credit, which you can spend in any way you want. Rest easy knowing the kids can watch their favorite TV shows and movies. Spend your onboard credits to book the entire family on an exciting shore excursion. Treat your loved one to a delicious meal in any of

- FAMILY CRUISES
- SHORT CARIBBEAN GETAWAYS
- POPULAR CRUISES
- GALAPAGOS ADVENTURES

The travel industry trade journal Travel Professional News describes Crystal Cruise as a “leader in **unrivaled luxury** cruising for 30 years” that “distinguishes its ships and voyages with fine details that make a big impact for discerning travelers.” It states that Crystal Cruise’s trans-Atlantic Voyage on the Crystal Symphony offers “luxurious amenities,” “Michelin level cuisine,” and “personalized service.”⁸



Crystal Cruises Announces New Trans-Atlantic Voyage on Crystal Symphony

[accPnths@go](#)



MIAMI, September 29, 2021 – Today Crystal Cruises announced [Trans-Atlantic Indulgence](#), a new 11-night journey from Miami to Lisbon aboard *Crystal Symphony* departing March 26, 2022. The ocean-spanning voyage will call in the colorful harbor of Cruz Bay, St. John, U.S. Virgin Islands, known for its pristine beaches, lush hills and vibrant coral reefs, before setting off on its Atlantic crossing. Featuring nine relaxing days at sea, the voyage offers travelers the chance to recharge body and soul with blissful, schedule-free days to enjoy the ship’s luxurious amenities, Michelin-level cuisine and the personalized service of Crystal’s award-winning staff. *Crystal Symphony’s Trans-Atlantic Indulgence* is open for reservations today.

⁸ *Id.* at TSDR 37-38.

<https://www.travelprofessionalnews.com/crystal-cruises-announces-new-trans-atlantic-voyage-on-crystal-symphony/>
03/10/2022 07:58:23 AM

All-inclusive cruise fares for *Trans-Atlantic Indulgence* start at \$1,999 per guest, including Book Now Savings of \$1,000 when booked by November 3, 2021. Returning guests will enjoy Crystal Society Savings of 2.5 percent, and travelers with Future Cruise Credits and Future Cruise Payments may redeem them on this sailing. All guests will enjoy reduced deposits of 15 percent and an extended final payment date of 60 days prior to sailing.

A leader in unrivaled luxury cruising for 30 years, Crystal Cruises distinguishes its ships and its voyages with fine details and nuances that make a big impact for discerning travelers. The all-inclusive experience features award-winning entertainment, diverse enrichment options, acclaimed Michelin-inspired dining in multiple specialty venues, unlimited pours of fine wines, beers and premium spirits and an unwavering standard of genuine, personal service for each guest.

About Crystal

Only the world-renowned Crystal Experience offers an unwavering, unparalleled standard of excellence and luxury across three distinct cruising options: Crystal Cruises, the World's Most Awarded Luxury Cruise Line; Crystal River Cruises, the World's Most Luxurious River Cruise Line; and Crystal Expedition Cruises, taking Crystal's acclaimed elegance to the farthest reaches of the world on bold adventures. Crystal has been recognized with top honors in the *Condé Nast Traveler* Readers' Choice Awards for a record 27 years including, in 2019, for Best Medium-Ship Cruise Line for Crystal Cruises and Best River Cruise Line for Crystal River Cruises. Crystal was also voted "World's Best" by the readers of *Travel + Leisure* for 24 years, including, in 2017 and 2020, Best River Cruise Line for Crystal River Cruises; and won "Cruise Line of the Year" and "Most Luxurious Guest Experience" by *Virtuoso* for 2018 & 2019. Crystal is proud to be a platinum partner of the advisors of ASTA.

For more information and Crystal reservations, contact a travel advisor, call 888.799.2437, or visit www.crystalcruises.com. Join the hundreds of thousands who subscribe to the *Crystal Insider* blog, follow *Crystal Cruises'* Facebook page; @crystalcruises on Twitter and Instagram; @crystalrivercruises on Instagram; and engage in the conversation with #crystalcruises, #crystalrivercruises and #WhereLuxuryIsPersonal.

Fareconnect.com describes Scenic Luxury Cruises and Tours as “truly all-inclusive luxury” offering “small guest numbers,” “unrivaled luxury,” and “world-class amenities.”⁹

<http://www.fareconnectcruise.com/scenic-luxury-cruises-and-tours> 03/10/2022 08:03:00 AM



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SCENIC^o
LUXURY CRUISES & TOURS

When you travel with Scenic Luxury Cruises & Tours, the experience is in a class of its own.

We specialize in moments of wonder that will enrich your world and create memories to last a lifetime. Whether you're cruising past castles on Europe's rivers, experiencing the rich culture of South East Asia, or on a voyage of discovery in Antarctica, extraordinary moments beckon.

Truly all-inclusive luxury – Luxurious holidays should be about exploring, unwinding and indulging. With Scenic, truly all-inclusive luxury means we have taken care of all details for you. All on board dining,

⁹ *Id.* at TSDR 43-44

<http://www.fareconnectcruise.com/scenic-luxury-cruises-and-tours> 03/10/2022 08:03:00 AM

premium beverages, excursions, transfers, tipping plus more are all included.

Experience the best in small-ship cruising – Delight in the small-ship experience on board the luxury Scenic Space-Ships in Europe, boutique vessels in South East Asia and the ultra-luxury Scenic Eclipse Discovery Yacht. **Small guest numbers of no more than 228 mean you can relax in unrivalled luxury and enjoy the world-class amenities.**

Cruise with Confidence – For over 35 years, our award-winning reputation, state-of-the-art ships and best-in-class crew have made Scenic the number one choice for small-ship luxury cruising. Our commitment to the health, safety and wellbeing of our guests and crew remains our key priority.


FEATURED OFFERS



Great Deals, Free Air and New Themed River Cruises on Scenic in

Travel Industry News announces that Cunard is building a fourth “Queen” to add to its royal fleet, offering “**unrivalled luxury**” similar to its sister ships.¹⁰


¹⁰ *Id.* at TSDR 126-128.




Home > Travel Industry News

ALL HAIL! CUNARD IS BUILDING A 4TH QUEEN

Will she be Queen Bertha? Queen Anne? Queen Caroline? Or maybe, erm, Queen Catherine (yes, she's a Duchess now but maybe Cunard is looking long term)?

 **Newsroom**
26 Sep 2017


Cruise, Travel Industry News

will (in the next five years) be big sisters to a 3,000-passenger vessel.

 large-1

Arriving in 2022, the currently unnamed vessel will be the first new ship for Cunard in over 12 years, making her an important investment in the company's future.

Her arrival also means that for the first time since 1998, the cruise line will have four ships operating simultaneously, giving cruisers access to more Cunard beds.



While interior and exterior details of the Queen remain under wraps for the moment, the cruise line's Senior Vice President, Simon Paletorpe, said travellers can expect her to offer "unrivaled luxury ocean experiences" similar to her sisters.

AffordableTours.com advertises Uniworld’s river cruise with “**unrivaled luxury**, exceptional service” and “extraordinary cuisine.”¹¹ Uniworld’s river cruise ships in its European fleet “exemplify true artistry” and “stylish flair.”¹² “By blending old world elegance and the newest technology, these floating boutique hotels are meticulously designed with the signature touches from floor to ceiling.”¹³

The screenshot shows the AffordableTours.com website. The header includes the logo and navigation links: HOME, DESTINATIONS, FOOD & CULTURE, TRAVELER REVIEWS, TRAVEL GUIDE, and CURRENT DEALS. The main content area features a large image of a Uniworld river cruise ship on a river in Paris, with the Eiffel Tower in the background. Below the image is a text block that reads: "When unrivaled luxury, exceptional service, extraordinary cuisine and nautical excellence come together, the result is unmistakably Uniworld. With more than 4 decades of experience in river cruising, rest assured that you will receive the most consistently exceptional experience. See how Uniworld all-inclusive river cruise goes above and beyond to deliver a truly exceptional vacation." To the right of the main content are two promotional banners. The top banner says "FIND YOUR ESCAPE" and "ESCAPES BY GLOBUS". The bottom banner says "NOW SAILING SUMMER 2021" and "30% OFF ALL CRUISES + free OPEN BAR & MORE".

¹¹ October 17, 2022 Final Office Action at TSDR 275-278.

¹² *Id.* at 276.

¹³ *Id.*



Each Uniworld ship features stylish restaurants where guests can dine on a fine multi-course meal, relax on an expansive sun deck, and enjoy unlimited beverages (all-inclusive premium spirits) at the plush lounges with full-service bar. Internet and Wi-Fi is available ship-wide so you can stay connected while on your vacation. An onboard trained fitness instructor hosts exercises and yoga classes. Take advantage of insightful signature lectures and entertainment all throughout your journey.

Uniworld travels globally, around Asia, Europe Russia, Egypt and India. Uniworld's highly trained and dedicated staff philosophy revolves around the sentiment, "no request too large, no detail too small." No matter which Uniworld all-inclusive river cruise ship you're on, you'll be treated to a one-of-a-kind experiences aboard an authentic, award winning boutique cruise ship.



Uniworld iconic river cruising ships exemplify true artistry. Each ship in the European fleet has a stylish flair inspired by the rivers upon which they cruise. By blending old world elegance and the newest technology, these floating boutique hotels are meticulously designed with the signature touches from floor to ceiling. They are truly one-of-a-kind, with their own distinctive theme and color palette, original art and lavish furnishings and antiques.

This evidence not only shows “unrivaled luxury” as a superlative used by third parties to describe upscale cruise ship services but also demonstrates that consumers shopping for cruises specifically look for superior amenities when making purchasing decisions. Competitors in the cruise ship field should be free to continue to use this merely descriptive language when describing their own cruise ship services to the public in advertising and marketing materials.¹⁴ See *Abcor Dev. Corp.*, 200 USPQ at 217; *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

¹⁴ However, as noted earlier, we do not apply the competitor need test to reach our determination.

Applicant also points to over 35 registered marks that include the word “unrivaled” or “luxury” either alone or in conjunction with another merely descriptive or generic term on the Principal Register without disclaimer and or claim of acquired distinctiveness.¹⁵ Applicant emphasizes that this number includes four previously registered marks owned by Applicant containing the word “unrivaled” or “luxury” for the exact same services: AN UNRIVALED EXPERIENCE, Registration No. 5823372;¹⁶ UNRIVALED SPACE AT SEA, Registration. No. 6938966;¹⁷ LUXURY PERFECTED, Registration No. 5866574;¹⁸ and LUXURY GOES EXPLORING, Registration No. 2661799.¹⁹ However, none of the third-party registrations or prior registrations consist of marks containing both UNRIVALED and LUXURY. We hasten to add that the USPTO is not bound by a decision of a Trademark Examining Attorney who examined and allowed the application for a previously registered similar mark, based on a different record. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement ... even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.”). Trademark rights are not static, and eligibility for registration must be determined on the basis of the facts and evidence of record that exist at the

¹⁵ April 17, 2023 Request for Reconsideration, Exhibits D-G (registration printouts from TESS database) at TSDR 47-110.

¹⁶ *Id.* at 47-48.

¹⁷ *Id.* at 49-50.

¹⁸ *Id.* at 52-53.

¹⁹ *Id.* at 54-55.

time registration is sought. *See In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 213 USPQ 9 (CCPA 1982); *In re Thunderbird Prods. Corp.*, 406 F.2d 1389, 160 USPQ 730 (CCPA 1969).

III. Conclusion

Based on the foregoing evidence, the combination UNRIVALED LUXURY, when considered as a whole, immediately conveys, without conjecture or speculation, or any multi-step reasoning, the superlative and extravagant nature of Applicant's cruise ship services. As a result, we find Applicant's proposed standard character mark to be merely descriptive of the identified services.

Decision: The mere descriptiveness refusal under Section 2(e)(1) is affirmed. We therefore need not reach the failure to function refusal to register under Sections 1, 2, 3, and 45 of the Trademark Act. *See, e.g., In re SIPCA Holding SA*, 2021 USPQ2d 613, at *10-11 (TTAB 2021) (Board affirmed refusal to register for failing to provide a definite identification and to respond to information requirements, but declined to reach likelihood of confusion refusal).