

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: December 10, 2024

Mailed: December 20, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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In re SuccessfulMatch.com, Inc.

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Serial No. 97354248

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Farah P. Bhatti of Buchalter, A Professional Corporation,
for SuccessfulMatch.com, Inc.

Rebecca Eubank,¹ Trademark Examining Attorney, Law Office 116,
Elizabeth Jackson, Managing Attorney.

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Before Zervas, Pologeorgis, and Lavache,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

SuccessfulMatch.com (“Applicant”) seeks registration on the Principal Register of the standard character mark CERTIFIED SUGAR DADDY for the following goods and services:

Downloadable software application for use in social networking,
introduction and dating; downloadable mobile application for use in

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¹ Trademark Examining Attorney Joseph Demarco from Law Office 133 represented the Office during the oral hearing in this matter. *See* TRADEMARK AND TRIAL APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1216 (2024) (“If the applicant requests an oral hearing, the examining attorney who issued the Office action from which the appeal was taken, or another examining attorney who has been designated for the purpose by a supervisory or managing attorney, must appear at the hearing and present an oral argument.”).

social networking, introduction and dating; downloadable software application for sharing personal ads to facilitate on-line dating and introductions and information regarding on-line personals, social introduction and social networking activities and services, in International Class 9; and

Computer dating and introduction services; internet based social networking, introduction, and dating services, namely, providing an on-line database of personal ads to facilitate on-line dating and introductions and information regarding on-line personals, social introduction and social networking activities and services; dating services; computer dating services; dating services provided via mobile application, in International Class 45.²

The Trademark Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of Applicant's identified goods and services. Applicant argued against the refusal and, in the alternative, claimed acquired distinctiveness, in part, under Trademark Act Section 2(f), 15 U.S.C. § 1052(f), based on its ownership of prior U.S. Registration No. 6656114 for the standard character mark SUGARDADDYMEET for purportedly similar goods and identical services as the subject application. The Examining Attorney ultimately issued a final refusal under Section 2(e)(1), finding that the mark, as a whole, is merely descriptive and that it has not acquired distinctiveness under Section 2(f).

When the refusal was made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, Applicant filed its

² Application Serial No. 97354248 was filed April 8, 2022, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

appeal brief on December 1, 2023.³ Thereafter, on February 2, 2024, the Examining Attorney requested remand to address an additional argument regarding Applicant's claim of acquired distinctiveness,⁴ which was granted by the Board.⁵ The Examining Attorney then issued a subsequent final refusal.⁶ The Board allowed Applicant the opportunity to submit a supplemental appeal brief on the same additional issue regarding its claim of acquired distinctiveness,⁷ which Applicant filed on August 9, 2024.⁸ The Examining Attorney filed her brief on August 30, 2024. An oral hearing on this appeal was held on December 10, 2024.

For the reasons explained below, we affirm the refusal under Section 2(e)(1) of the Trademark Act on the ground that Applicant's CERTIFIED SUGAR DADDY mark, as a whole, is merely descriptive of the identified goods and services and lacks acquired distinctiveness under Section 2(f).

³ 6 TTABVUE. The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents. Additionally, as part of an internal Board pilot program to broaden acceptable forms of legal citation in Board cases, citations in this opinion are in the form recommended in TBMP § 101.03. 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 by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For opinions of the Board, this opinion uses citations to the Westlaw legal database and cites only precedential decisions, unless otherwise noted.

⁴ 9 TTABVUE.

⁵ 10 TTABVUE.

⁶ 11 TTABVUE.

⁷ 12 TTABVUE.

⁸ 14 TTABVUE.

I. Mere Descriptiveness – Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), 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 acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f). A term is merely descriptive of goods or services if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 972 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017)).

Whether a term 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 term is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner in which the term is used or intended to be used. *In re Bayer A.G.*, 488 F.3d 960, 963-64 (Fed. Cir. 2007). The question is whether someone who knows what the goods or services are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012).

“We must, however, consider the mark as a whole and ask whether the combination of the component words of Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Fat Boys Water Sports LLC*, (Ser. No. 86490930), 2016 WL 3915986, at

*6 (TTAB 2016)) (quoting *In re Oppedahl*, 373 F.3d 1171, 1175 (Fed. Cir. 2004)). “In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *Oppedahl*, 373 F.3d at 1174. Indeed, we are “required to examine the meaning of each component individually, and then determine whether the mark as a whole is merely descriptive.” *DuoProSS*, 695 F.3d at 1255. Where a mark consists of multiple words, as is the case here, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase. *In re Omniome, Inc.*, (Ser. No. 87661190), 2019 WL 7596207, at *5 (TTAB 2019). “If the words in the proposed mark are individually descriptive of the identified goods and services, we must determine whether their combination ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Zuma Array Ltd.*, (Ser. No., 79288888), 2022 WL 3282655, at *4 (TTAB 2022) (quoting *Fat Boys*, 2016 WL 3915986, at *6). However, 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. *Id.* (quoting *Fat Boys*, 2016 WL 3915986, at *6).

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., StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332 (Fed. Cir. 2014); *Fat Boys*, 2016 WL 3915986, at *5.

II. Evidence, Arguments, and Analysis

Evidence of the relevant purchasers' understanding of a term or phrase "may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications." *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018)). "These sources may include [w]ebsites, publications and use 'in labels, packages, or in advertising materials directed to the goods [or services]." *In re N.C. Lottery*, 866 F.3d 1363, 1368 (Fed. Cir. 2017) (quoting *Abcor*, 588 F.2d at 814). In addition, evidence of an applicant's own usage beyond those noted above may also be considered when determining descriptiveness. *See Omniome*, 2019 WL 7596207, at *6.

Turning to our analysis, we first consider the meaning of the component terms of Applicant's proposed mark, and then determine whether the proposed mark as a whole is merely descriptive. *DuoProSS Meditech Corp.*, 695 F.3d at 1255. If CERTIFIED and SUGAR DADDY⁹ are each individually merely descriptive of the identified goods and services, we assess whether their combination in "Applicant's mark 'conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.'" *Fat Boys*, 2016 WL 3915986, at *6 (quoting *Oppedahl*, 373 F.3d at 1175).

⁹ We do not consider the terms SUGAR and DADDY separately because, as shown below, the evidence of record demonstrates that SUGAR DADDY is a recognized term in and of itself.

The record includes the following dictionary definitions of the component terms in the proposed mark:

- CERTIFIED: “to confirm formally as true, accurate, or genuine.”¹⁰
- SUGAR DADDY: “A wealthy, usually older man who gives money or gifts to a younger person in return for sexual favors or companionship.”¹¹

With regard to the term CERTIFIED, the evidence of record also includes screenshots of various reviews of Applicant’s own dating and social introduction website which demonstrate that users seeking a specific type of romantic or companionship relationship may have their income “certified.” For example, one review claims that “[e]very member can upload a readable copy of clear ID to get photo verified. Sugar daddy can upload any documents which proves net assets are over \$1 million U.S. dollars to get income certified. Then, you will get two badges “Photo Verified” & “CERTIFIED SUGAR DADDY, which can increase chances to be recommended to others and receive more recommendations of verified members.”¹² Another review of Applicant’s dating and social introduction website states that “Sugar Daddy Meet also offer Sugar Daddies to verify their income. This is a Premium feature that will give you a “Certified Sugar Daddy” badge in the bottom left corner [of the user’s profile page].”¹³ And yet another review of Applicant’s website states that if a potential consumer chooses their profile to go under an exhaustive review,

¹⁰ January 27, 2023 Office Action, TSDR p. 31.

¹¹ *Id.* at p. 29.

¹² October 3, 2023 Denial of Request for Reconsideration, TSDR p. 8.

¹³ *Id.* at p. 33.

they can earn the title of “CERTIFIED SUGAR DADDY” or “Verified Sugar Baby,” “offering other members even more trust and reassurance that you’re the real deal.”¹⁴

Additionally, the pertinent review webpages state the following:¹⁵

- “SUGAR DADDIES upload income proof to get the “CERTIFIED SUGAR DADDY” Badge on your profile. You will be listed above others in search results, & be listed on the “CERTIFIED SUGAR DADDY” page, and increase chances to be recommended to others and receive more recommendations of verified members.”
- “CERTIFIED SUGAR DADDY. You can verify your income, which will give you a special badge on your profile. This will make you stand out and attract way more Sugar Babies.”
- “If you choose to have your profile go under an exhaustive review, you can earn the title of “CERTIFIED SUGAR DADDY” or “Verified Sugar Baby”, offering other members even more trust and reassurance that you're the real deal.”
- “Become a CERTIFIED SUGAR DADDY and view CERTIFIED SUGAR DADDY lists.”
- “To be a CERTIFIED SUGAR DADDY you have to have your personal information verified, which is your income, occupation, age, and a photo has to be sent in to Sugar Daddy Meet, then verified.”

The foregoing evidence demonstrates that the term “certified” is descriptive of a feature of Applicant’s goods and services, namely, a premium status bestowed on a consumer who has had certain information about themselves verified, including their income.

Additionally, the record includes a copy of Applicant’s prior U.S. Registration No. 5222924 for the standard character mark CERTIFIED MILLIONAIRE for services

¹⁴ *Id.* at 49.

¹⁵ *Id.* at 4-65.

including social introduction and dating services.¹⁶ The underlying application sought registration under Section 2(f) for the mark in its entirety, an admission that the wording in the mark is descriptive and, thus, not inherently distinctive. *See Mini Melts, Inc. v. Reckitt Benckiser LLC*, (Opposition No. 91173963), 2016 WL 3915987, at *17 (TTAB 2016) (citing *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 1358, (Fed. Cir. 2009)); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPE) §1212.02(b)-(c) (Nov. 2024). Accordingly, Applicant’s prior registration is probative to show that the similar structure and wording between Applicant’s CERTIFIED MILLIONAIRE and CERTIFIED SUGAR DADDY marks demonstrate that the term “certified,” by itself, is not inherently distinctive in this case. *See In re Thomas Nelson, Inc.*, (Ser. No. 76681269), 2011 WL 481341, at *7 (TTAB 2011).

During the oral hearing, Applicant argued that it does not certify any information provided by its consumers; instead, Applicant maintained that it verifies certain information, including income, for some its consumers. As such, Applicant contends that the term “certified” is not descriptive of Applicant’s identified goods or services.

We are not persuaded by Applicant’s argument. We find that the words “certify” and “verify” are synonymous terms evoking very similar, if not identical, connotations and overall commercial impressions.¹⁷ Notwithstanding, although Applicant may

¹⁶ March 23, 2023 Final Office Action, TSDR, pp. 29-32.

¹⁷ We take judicial notice of the thesaurus definition of “certify” which includes the term “verify.” *See* Cambridge Dictionary, American English Thesaurus, <https://dictionary.cambridge.org/us/dictionary/essential-american-english/certify> (last

claim that it only verifies information provided by its intended users, Applicant nonetheless does bestow a “certified” status on intended users who get their information verified. As such, we find that the term “certified” merely describes a feature of Applicant’s goods and services.

With regard to the wording SUGAR DADDY, Applicant argues, in contradiction to the evidence of record, that the wording is a “colloquial phrase” that “has no defined meaning.”¹⁸ Applicant ignores the dictionary evidence of record, which indicates that the phrase does have a meaning, and does not identify it as colloquial. Applicant further argues that “this is not a commonly used term and is not used literally.”¹⁹ However, third-party social introduction and dating service providers do use the term literally, indicating that consumers will understand the phrase "SUGAR DADDY" is descriptive in relation to such services. For example, the evidence of record includes screenshots from various third-party websites that also provide dating and social introduction services featuring “sugar” relationships and using the term SUGAR DADDY to identify an individual for dating featured on the website. The third-party websites provide as follows:

- “SUGAR DADDY websites range from effective to terrible.”²⁰

visited December 15, 2024). The Board may take judicial notice of thesaurus and dictionary entries, including those that exist in printed format. *See, e.g., In re Wells Fargo & Co.*, 231 USPQ 116, 117 (TTAB 1986) (taking judicial notice of thesaurus entry).

¹⁸ December 1, 2023 Applicant's Brief p. 5.

¹⁹ *Id.* at p. 7.

²⁰ January 27, 2023 Non-Final Action, TSDR p. 38.

- The dating website SecretBenefits.com advertises “free SUGAR DADDY dating.”²¹
- The dating website SugarDaddy.com claims to be the “world's best SUGAR DADDY dating website.”²²
- The dating website Sugardaddie.com asserts they “are the best SUGAR DADDY site that is recognized by the global media.”²³

Applicant’s own website demonstrates use of the wording SUGAR DADDY descriptively by claiming that “it has been in the sugar daddy dating business for 15 years” and that it is “the No. 1 sugar daddy dating brand.”²⁴

The third-party uses of the wording “SUGAR DADDY,” as well as Applicant’s own use, to describe the individual who is the subject of the dating relationship established through their social introduction and dating services clearly demonstrates that the wording is descriptive of a feature of such dating and introduction services. Applicant claims to have coined the term,²⁵ but the third-party evidence identified above clearly indicates that consumers are accustomed to seeing the phrase “SUGAR DADDY” used to describe a person interested in a specific type of relationship. Thus, consumers will understand the term, as used in Applicant’s mark, is descriptive of the intended user or the type of person sought for a relationship via Applicant’s social introduction and dating services and accompanying software.

²¹ May 25, 2023 Final Action, TSDR p. 6.

²² *Id.* at p. 10.

²³ *Id.* at p. 25.

²⁴ January 27, 2023 Office Action, TSDR p. 36.

²⁵ Applicant’s Appeal Brief, p. 8, 6 TTABVUE 15.

Based on this evidence, each component term in the proposed mark merely describes a feature or characteristic of Applicant's identified goods and services. Specifically, the term CERTIFIED is descriptive inasmuch it indicates that certain users of Applicant's goods and services have gone, or may go, through a certification process which verifies, among other things, the income of older, male users of Applicant's goods and services. The wording SUGAR DADDY is also descriptive of Applicant's goods and services because it describes an intended user of Applicant's goods and services, as well as the type of person who is sought for a relationship by some of Applicant's consumers.

When these individually descriptive components are combined, the result, CERTIFIED SUGAR DADDY, is also merely descriptive. *See DuoProSS*, 695 F.3d at 1255 (assessing the descriptiveness of the combined individual terms as a whole). Specifically, the wording "CERTIFIED SUGAR DADDY," when used in connection with Applicant's services and software, immediately conveys information about specific users. These users are seeking or offering a specific type of relationship, referred to as a "sugar" relationship. Going through Applicant's verification or "certification" process increases the user's likelihood of successfully using Applicant's services and software to identify other individuals interested in finding or becoming a "sugar daddy." Thus, when used in connection with Applicant's dating and social introduction services and associate software, consumers will view the mark, as a whole, as merely descriptive of a feature of such goods and services.

III. Acquired Distinctiveness of SUGAR DADDY

Applicant argues, in the alternative, that if its applied-for mark is found to be merely descriptive, it has nonetheless acquired distinctiveness as to the SUGAR DADDY portion of its proposed mark based on its ownership of a prior registration for the mark SUGARDADDYMEET (in standard characters) for similar goods and identical services as identified in the involved application.²⁶

Because we have found that Applicant's CERTIFIED SUGAR DADDY mark, as a whole, is merely descriptive, a successful claim of acquired distinctiveness, in part, as to SUGAR DADDY would not, by itself, obviate the Section 2(e)(1) refusal here, because the descriptive word CERTIFIED remains. Nonetheless, we consider the claim both for completeness and because, if we find that SUGAR DADDY has acquired distinctiveness, the proposed mark may proceed to registration upon entry of an appropriate disclaimer of any remaining descriptive or generic matter not covered by the Section 2(f) claim. See Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g) ("An application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under section 6 of the Act of 1946.").

"To show that a mark has acquired distinctiveness, an applicant must demonstrate that the relevant public understands the primary significance of the mark as identifying the source of a product or service rather than the product or service itself." *Apollo Med. Extrusion Techs. Inc., v. Med. Extrusion Techs. Inc.*, 123 USPQ2d 1844, 1852 (TTAB 2017) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 75

²⁶ Applicant's Supplemental Appeal Brief, pp. 4-5, 14 TTABVUE 8-9.

USPQ2d 1420, 1422 (Fed. Cir. 2005) and citing *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1729 (Fed. Cir. 2012)).

Trademark Rule 2.41(a), 37 C.F.R. § 2.41(a), provides that ownership of a registration of “the same mark” on the Principal Register may be accepted as prima facie evidence of acquired distinctiveness. In relying on this rule, an applicant is essentially seeking to “tack” the use of the registered mark to its use of the present mark for purposes of transferring distinctiveness to the new mark. *See In re Flex-O-Glass, Inc.*, (Ser. No. 71210228), 1977 WL 22504 (TTAB 1977). Thus, the analysis used to determine whether the SUGAR DADDY portion of Applicant’s present mark is “the same mark” as its previously registered mark, for purposes of the rule, is the analysis used in tacking cases, i.e., whether the marks are legal equivalents. *See Van Dyne-Crotty, Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 1159 (Fed. Cir. 1991) (“The previously used mark must be the legal equivalent of the mark in question or indistinguishable therefrom, and the consumer should consider both as the same mark). To meet the legal equivalents test, the marks must be indistinguishable from one another or create the same, continuing commercial impression such that the consumer would consider both as the same mark. *Id.*

Applicant’s burden is heavy because it bases its application on intent to use, not actual use of its proposed mark. Section 2(f) of the Trademark Act provides in pertinent part that “nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce.” 15 U.S.C. § 1052(f) (emphasis added). Consequently, “[a] claim of

distinctiveness under Section 2(f) is normally not filed in a Section 1(b) application before the applicant files an amendment to allege use or a statement of use, because a claim of acquired distinctiveness, by definition, requires prior use.” *In re Nielsen Bus. Media, Inc.*, (Ser. No. 77223725), 2010 WL 667942, at *2 (TTAB 2010). On the other hand:

[A]n applicant can establish acquired distinctiveness in an intent-to-use application where it can show that ‘same mark’ acquired distinctiveness for related goods or services, and that this acquired distinctiveness will transfer to the goods or services specified in the application when the mark is used in connection with them.

In re Dial-A-Mattress Operating Corp., 240 F.3d 1341, 1347 (Fed. Cir. 2001).

As a threshold matter, we must first determine whether Applicant’s claim of acquired distinctiveness in part as to the wording “SUGAR DADDY” is appropriate. *See* TMEP § 1212.02(f)(ii) (“Appropriate/Inappropriate Situations for Claiming § Section 2(f) in Part”). In evaluating claims of acquired distinctiveness in part,

[g]enerally, the element that is the subject of the §2(f) claim must present a separate and distinct commercial impression apart from the other elements of the mark. That is, it must be a separable element in order for the Applicant to assert that it has acquired distinctiveness as a mark.

Id.

Applying these guidelines, we find that the term “SUGAR DADDY” in Applicant’s mark, presents a “separate and distinct commercial impression” apart from the remaining literal element, i.e., the term CERTIFIED. Indeed, the term “certified” merely modifies the wording “sugar daddy.”

Given that the facts of the case establish that Applicant may rely on a claim of Section 2(f) in part because the term “SUGAR DADDY” is separable, we must now

examine whether Applicant has satisfied its burden of proving acquired distinctiveness in this portion of its mark. *See Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1576 (Fed. Cir. 1988).

As previously noted, a claim of distinctiveness under Section 2(f) normally is not raised in a Section 1(b) application before the applicant files an amendment to allege use or a statement of use because a claim of acquired distinctiveness, by definition, requires prior use. *In re Binion*, (Ser. No. 76590702), 2009 WL 5194952, at *9 (TTAB 2009). However, “[a]n intent-to-use applicant may assert a claim of acquired distinctiveness under § 2(f) as to part of a mark prior to filing an acceptable allegation of use if the applicant has already used the relevant part of the mark in commerce on or in connection with the specified goods or services, or related goods or services.” *See* TMEP § 1212.09(b).

“When an applicant is claiming §2(f) in part as to only a portion of its mark, [as is the case here] the mark in the claimed prior registration must be the same as or the legal equivalent of the portion of the mark for which the applicant is claiming acquired distinctiveness.” TMEP § 1212.02(f)(ii)(B); *see also* Trademark Rule 2.41(b). “A mark is the legal equivalent of another if it creates the same, continuing commercial impression such that the consumer would consider them both the same mark.” *Dial-A-Mattress*, 240 F.3d at 1347. Whether two marks are legal equivalents is a question of law, not fact. *Id.* In addition, a claim of ownership of one or more prior registrations on the Principal Register of the relevant portion of the mark must be

for goods or services that are either the same as or related to those named in the pending application. TMEP §§ 1212.04-1212.04(e).

Applicant argues that given that Applicant's prior registration for SUGARDADDYMEET and the subject application both contain the term SUGAR DADDY, and can be considered legal equivalents because they have the same commercial impression, the relevant portion of its CERTIFIED SUGAR DADDY mark, i.e., the phrase SUGAR DADDY, has therefore acquired distinctiveness.²⁷ In other words, Applicant believes that the relevant purchasers of its identified goods and services have come to view SUGAR DADDY as a distinctive source indicator for its identified goods or services based on what it claims is the dominant portion of its prior registered and unitary mark SUGARDADDYMEET.

Applicant's argument is unpersuasive. First, Applicant is mistaken in its belief that the mark in which it seeks acquired distinctive in part need only be the legal equivalent of the **dominant** portion of the prior registered mark. (emphasis added). The mark in the prior registration, as a whole, must be the legal equivalent of the portion of the mark in which it bases acquired distinctiveness, not just a portion of it. See TMEP § 1212.02(f)(ii)(B) ("when an applicant is claiming §2(f) in part as to only a portion of its mark, the mark in the claimed prior registration must be the same as or the legal equivalent of the portion of the mark for which the applicant is claiming acquired distinctiveness.).

²⁷ Applicant's Appeal Brief, p. 15, 6 TTBVUE 22.

Notwithstanding the foregoing, we find that the inclusion of the term MEET in the prior registered and unitary mark SUGARDADDYMEET, when compared to the SUGAR DADDY portion of Applicant's CERTIFIED SUGAR DADDY mark, results in two marks that are distinguishable from one another, create different commercial impressions, and cannot be considered "the same" for purposes of Trademark Rule 2.41(b). More specifically, the inclusion of the term MEET in the prior registered mark evokes a connotation that consumers will meet or be introduced to a "sugar daddy." This connotation is absent from the wording SUGAR DADDY alone in Applicant's proposed CERTIFIED SUGAR DADDY mark.

Because the marks are not the same, Trademark Rule 2.41(b) cannot be used to establish that the SUGAR DADDY portion of Applicant's CERTIFIED SUGAR DADDY mark has acquired distinctiveness as a mark for the goods and services for which registration is now sought. Thus, it is unnecessary to consider the relationship between the goods for which the mark has been registered and the services identified in the application.²⁸

In further support of its claim of acquired distinctiveness in part, Applicant argues that "the term SUGARDADDY, as the dominant word in the mark SUGARDADDYMEET, has become distinctive of the services through Applicant's substantially exclusive and continuous use of the word SUGARDADDY, as both the dominant part of the mark SUGARDADDYMEET and as an independent mark

²⁸ The Examining Attorney has conceded that the goods and services in the prior registration are sufficiently related to the goods and services in Applicant's current application. See June 13, 2024 Final Office Action, 11 TTABVUE 3.

SUGARDADDY, in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of the distinctiveness claim.”²⁹

Applicant also maintains that it “commenced use of the mark SUGARDADDYMEET in October 2007 as noted in the records of the U.S. Trademark Office and the Examining Attorney has already admitted that the respective goods and services in both the registration and Applicant’s subject application are sufficiently similar.”³⁰

Applicant, however, did not submit any affidavit or declaration attesting to the exclusivity of use or the extent of time it has used the phrase SUGAR DADDY alone or in conjunction with its SUGARDADDYMEET mark. Mere attorney argument is not evidence. *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017) (“Attorney argument is not evidence.”).

Moreover, while we acknowledge that a copy of Applicant’s prior registration of the mark SUGARDADDYMEET is of record that states dates of first use, Applicant may not rely on the dates of use alleged in the prior registration, as those dates are not evidence of such use. *See* Trademark Rule 2.122(b)(2), 37 C.F.R. § 2.122(b)(2) (“The allegation in an application for registration, or in a registration, of a date of use is not evidence on behalf of the applicant or registrant; a date of use of a mark must be established by competent evidence.”).

²⁹ Applicant’s Supplemental Brief, pp. 3-4, 14 TTABVUE 7-8.

³⁰ *Id.* at 8.

In view of the above, we find that Applicant has failed to establish that the wording SUGAR DADDY has acquired distinctiveness based on its prior registration for the mark SUGARDADDYMEET or by any other competent evidence.

IV. Conclusion

Viewed in its entirety, in the context of the identified goods and services and the record before us, we find that CERTIFIED SUGAR DADDY is merely descriptive of a feature of Applicant's goods and services and lacks acquired distinctiveness under Section 2(f).

Decision: The refusal to register Applicant's CERTIFIED SUGAR DADDY mark based on mere descriptiveness under Section 2(e)(1) of the Trademark Act and lack of acquired distinctiveness as to the SUGAR DADDY portion of Applicant's mark under Section 2(f) is affirmed.