

This Opinion is Not a
Precedent of the TTAB

Mailed: February 21, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re BRTM Holdings LLC
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Serial No. 97503026
—

Robert P. Michal of Carter Deluca & Farrell LLP,
for BRTM Holdings LLC.

Tejbir Singh, Trademark Examining Attorney, Law Office 106,
Mary Sparrow, Managing Attorney.

—
Before Kuhlke, Heasley, and Dunn,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

BRTM Holdings LLC (Applicant) seeks registration on the Supplemental Register of the mark BRILLIANT ROSE (in standard characters) for “diamonds, laboratory grown diamonds and jewelry” in International Class 14.¹

¹ Application Serial No. 97503026 filed July 14, 2022 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce. On November 13, 2023, the application basis was amended to claim Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), as the basis for the application with Applicant’s claim of first use anywhere and use in commerce since at least as early as January 25, 2023.

The Trademark Examining Attorney ultimately refused registration of Applicant's proposed mark BRILLIANT ROSE on the ground that it is generic as applied to, and incapable of distinguishing, the goods under Trademark Sections 23 and 45, 15 U.S.C. §§ 1091(c), and 1127. After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board.

We affirm the refusal to register.

I. Genericness

“Generic terms, by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 599 (Fed. Cir. 2016)² (citation omitted). *Accord USPTO v. Booking.com B.V.*, 591 U.S. 549, 554 (2020) (*Booking.com*) (“Indeed, generic terms are ordinarily ineligible for protection as trademarks at all.”). Applicant's contention that its proposed mark BRILLIANT ROSE may reside on the Supplemental Register serves as an admission that the term is not inherently distinctive. *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 1299 (1972) (“We also agree with the observation of the board that, when appellant sought registration of SUPER BLEND on the Supplemental Register, it admitted that the term was merely descriptive of its

The Trademark Status and Document Retrieval (TSDR) citations refer to the downloadable .pdf version of the documents available from the electronic file database for the involved application. The TTABVue citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second, if applicable, the page within the entry.

² As part of an ongoing pilot, 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 decisions of the Board, this opinion cites to the LEXIS legal database and cites only precedential decisions, unless otherwise noted. Practitioners should also adhere to the practice set forth in TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03(a) (2024).

goods....”).³ Whether a particular term is generic is a question of fact. *Id.* at 599. Resolution of that question depends on the primary significance of the term to the relevant public. *Booking.com*, 591 U.S. at 556 (“the relevant meaning of a term is its meaning to consumers”).

The genericness inquiry is a two-part test: “First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 990 (Fed. Cir. 1986). *See also Princeton Vanguard, LLC v. Frito-Lay North Am., Inc.*, 786 F.3d 960, 966 (Fed. Cir. 2015) (“there is only one legal standard for genericness: the two-part test set forth in *Marvin Ginn*”).

A. Genus

“[A] proper genericness inquiry focuses on the description of goods set forth in the [application or] certificate of registration.” *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640 (Fed. Cir. 1991). Generally, the application’s (or registration’s) description of the goods and services adequately defines the genus. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342 (Fed. Cir. 2014) (“The Board found that the relevant goods were adequately defined by Nordic’s description: ‘nutritional supplements containing DHA.’”). *See also Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992)

³ In fact, Applicant’s reply brief in essence concedes that BRILLIANT ROSE describes a cut of diamond: “In this case, if ‘brilliant rose’ is seen as merely describing a type of cut or quality of diamonds, wouldn’t it then be viewed as descriptive?” 10 TTABVUE 8.

("[G]eneric marks ... refer to the genus of which the particular product is a species.")
(citation omitted).

In this case, the identification lists the goods as "diamonds, laboratory grown diamonds and jewelry," and we find this to be an adequate definition of the genus at issue.⁴

B. Perception of the proposed mark BRILLIANT ROSE by relevant consumers

We turn to the issue of whether the relevant public understands the proposed mark BRILLIANT ROSE primarily to refer to the genus of goods comprising "diamonds, laboratory grown diamonds and jewelry."

1. Relevant Consumers

To determine what the record reveals about the relevant public's understanding of a proposed mark requires us first to define the relevant public. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1367 (Fed. Cir. 2018) ("the parties do not dispute the Board's determination of the relevant consuming public as 'ordinary consumers who purchase and drink soft drinks, energy drinks, or sports drinks.']"). The relevant consumer for a genericness determination refers to the purchasing or consuming public for the identified goods or services. *Magic Wand, Inc.*, 940 F.2d at 641 ("the TTAB properly rejected Magic Wand's assertion that the relevant public comprises solely operators and manufacturers of car wash equipment. According to the certificate of registration, the TOUCHLESS mark applies to automobile washing

⁴ Applicant describes the genus as "diamonds and jewelry" (7 TTABVUE 8) and we find the slight variation in wording inconsequential.

services, not automobile washing equipment. Thus, the relevant purchasing public for automobile washing services encompasses automobile owners and operators.”).

Because Applicant’s goods are diamonds, laboratory grown diamonds and jewelry, and its genus is the same, we find that the relevant consumers consist of consumers who buy or use diamonds, laboratory grown diamonds and jewelry.

2. Perception of the proposed mark BRILLIANT ROSE

Whether a term is generic “turns on whether that term, taken as a whole, signifies to consumers the class of [] services.” *Booking.com*, 591 US at 557. *Accord In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005) (“An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole.”).

[W]hen a firm wishes to string together two or more generic terms to create a compound term ... courts must determine whether the combination of generic terms conveys some distinctive, source-identifying meaning that each term, individually, lacks. If the meaning of the whole is no greater than the sum of its parts, then the compound is itself generic.

Booking.com, 591 U.S. at 567. Evidence of the relevant consumer’s understanding of the proposed mark may be obtained from any competent source. *In re Cordua Rests.*, 823 F.3d at 599.

a. Evidence that component elements of BRILLIANT ROSE are perceived as generic

Where a mark comprises dictionary terms, the definition generally supplies its meaning and connotation. *Stratus Networks, Inc. v. UBTA-UBET Commc'ns Inc.*, 955 F.3d 994, 996 (Fed. Cir. 2020) (“The Board relied on dictionary definitions of the terms ‘stratus’ and ‘strata’ to evaluate similarities in the connotation of each mark.”); *Bourns, Inc. v. Gen. Scientific Corp.*, 361 F.2d 482, 483 (CCPA 1966) (“The

dictionaries which are available to us * * * do not indicate that the terms ‘quick’ and ‘easy’ are synonyms or even have similar suggestive connotations.”). The term BRILLIANT is defined as “a gem (such as a diamond) cut in a particular form with numerous facets so as to have special brightness or brilliance” and “ROSE CUT” is defined as “a form in which gems (such as diamonds) are cut that usually has a flat circular base and facets in two ranges rising to a point.”⁵ The record includes corroborative definitions supplied during examination, specifying:

A brilliant is a diamond or other gemstone cut in a particular form with numerous facets so as to have exceptional brilliance. The shape resembles that of a cone and provides maximized light return through the top of the diamond,⁶

and

About the middle of the 16th century, the rose or rosette was introduced in Antwerp: it also consisted of triangular facets arranged in a symmetrical radiating pattern, but with the bottom of the stone left flat--essentially a crown without a pavilion.⁷

As shown by the excerpts below, the record also includes articles explaining the development of the cut of the diamond in the jewelry industry, its importance in the selection of diamonds and other faceted stones, the origin of the BRILLIANT and ROSE cuts, and the availability of new cuts through laser tools and computer-aided design. Also shown below are corroborative industry references by jewelers indicating

⁵ Both definitions from *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/>. Accessed 19 Feb. 2025. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 2014 TTAB LEXIS 94, at *6 n.4, *aff'd*, 823 F.3d 594 (Fed. Cir. 2016).

⁶ May 8, 2023 Office Action TSDR 5, citing Wikipedia.

⁷ *Id.* at TSDR 17, citing Wikipedia.

that BRILLIANT is the most popular diamond cut, the ROSE cut generally is less expensive, and mixed cuts generally include features of the BRILLIANT cut.

Wikipedia entry for “diamond cut”:⁸

A diamond cut is a style or design guide used when shaping a diamond for polishing such as the brilliant cut. Cut does not refer to shape (pear, oval), but the symmetry proportioning and polish of a diamond. The cut of a diamond greatly affects a diamond’s brilliance - a poorly-cut diamond is less luminous. In order to best use a diamond gemstone’s material properties, a number of different diamond cuts have been developed. A diamond cut constitutes a more or less symmetrical arrangement of facets, which together modify the shape and appearance of a diamond crystal. Diamond cutters must consider several factors, such as the shape and size of the crystal when choosing a cut. The practical history of diamond cuts can be traced back to the Middle Ages, while their theoretical basis was not developed until the turn of the 20th century. Design, creation and innovation continue to the present day: new technology--notably laser cutting and computer-aided design--has enabled the development of cuts whose complexity, optical performance, and waste reduction were hitherto unthinkable.

The most popular of diamond cuts is the modern round brilliant, whose facet arrangements and proportions have been perfected by both mathematical and empirical analysis. Also popular are the fancy cuts, which come in a variety of shapes, many of which are derived from the round brilliant. A diamond’s cut is evaluated by trained graders, with higher grades given to stones whose symmetry and proportions most closely match the particular “ideal” used as a benchmark. The strictest standards are applied to the round brilliant; although its facet count is invariable, its proportions are not. Different countries base their cut grading on different ideals: one may speak of the American Standard or the Scandinavian Standard (Scan. D.N.).

Many large, famous Indian diamonds of old (such as the Orloff and Saucy) also feature a rose-like cut: there is some suggestion that Western cutters were influenced by Indian stones, because some of these diamonds may predate the Western adoption of the rose cut. However, Indian “rose cuts” were far less symmetrical as their cutters had the primary interest of conserving carat weight, due to divine status of the diamond in India. In either event, the rose cut continued to evolve, with its depth, number and arrangements of facets being tweaked.

⁸ September 7, 2023 Office Action TSDR 9-11.

Around 1900, the development of diamond saws and good jewelry lathes enabled the development of modern diamond cutting and diamond cuts, chief among them the round brilliant cut. In 1919, Marcel Tolkowsky analyzed this cut: his calculations took both brilliance (the amount of white light reflected) and fire into consideration, creating a delicate balance between the two. Tolkowsky's calculations would serve as the basis for all future brilliant cut modifications and standards.

In the 1970s, Bruce Harding developed another mathematical model for gem design. Since then, several groups have used computer models and specialized scopes to design diamond cuts.

Premier Jewelry Designs:⁹

If you are looking to get engaged and need a beautiful diamond ring to propose with, you have many options. Everyone has preferences when it comes to how they want their engagement ring to look. However, one of the best and most extravagant diamond cuts is the mixed cut.

Mixed brilliant cut diamonds are fairly new to the game, but they make a definitive statement and offer a ton of sparkle. There are reasons these gems have gained popularity over the past few decades in both the engagement and wedding ring markets.

Evolution of Mixed Brilliant Cut Diamonds

To truly understand the growing popularity of the mixed cut, it's important to know the history of diamond cuts. Dating back to the first days of the sparkling gems, the brilliant and step cuts are the conventional diamond cuts. Many of the standard diamonds you have no doubt seen involve sharp, angular facets. The brilliant cut features triangular cuts that allow for the maximum amount of shine and sparkle from essentially any angle. The step cut, however, is more subtle and takes into consideration the carat weight. They also don't feature the same sparkle as the brilliant cut.

Enter the mixed brilliant cut. It first appeared in the 1960s and combined the best features of both the step and brilliant cuts, eventually becoming the most popular diamond cuts available. A few beloved styles were also born out of this creation, with the round cut being the most popular of all. The mixture of cuts also allowed for the retention of carat weight and more affordable price tags.

ILA Jewelers webpage:¹⁰

Brilliant Cut vs Rose Cut Diamonds

⁹ May 13, 2024 Office Action TSDR 62.

¹⁰ May 8, 2023 Office Action TSDR 9-15.

Are you considering a rose cut diamond for your engagement ring. or maybe you are curious what the difference is between a Brilliant Cut and a Rose Cut diamond? You're not alone. Rose Cuts have become more widely used by designers for their vintage appeal. Rose Cuts do come in all shapes, with round, pear, oval, and marquise shape being the most popular. Let's dive into a comparison of these two popular diamond cut styles to help figure out the perfect diamond for you.

Facets

The individual flat surfaces on a diamond are called "facets", which diamond cutters use to control the way light interacts with the diamond. The fewer facets of a Rose Cut diamond (24 in a round shape) result in the subtle beauty of a soft diffused light, while the modern Brilliant Cut's 58 facets allow for a brighter, flashier sparkle. The art and science of faceting is so important that GIA (the Gemological Institute of America) dedicated one of their famous 4Cs of diamonds grading to the Cut quality of Brilliant Cut diamonds.

Carat Weight vs. Visual Size

Another significant difference between these two diamond cutting styles is that Rose Cuts are flat on the bottom and domed on top, while Brilliant Cuts have culets (pointy bottoms) and tables (flat tops). This means that Brilliant Cut diamonds carry a lot of their weight in the bottom of the stone however, the depth of the culet does contribute to the diamond's overall brilliance. Since Rose Cuts have flat bottoms, the top-down view of a 1-carat round Rose Cut has a much larger circumference compared to a 1-carat Brilliant Cut. If size is more important than sparkle when it comes to your engagement ring (or, you just love vintage styles), you might prefer a Rose Cut.

Q: Are you on a tight budget!

A. Yes- Rose Cut diamonds cost less per-carat and, as mentioned, give you a larger face-up size compared to Brilliant Cuts of similar carat weight.

A2 No- Brilliant Cut diamonds are more expensive because they require such a large amount of precision work to create the ideal cut and also result in more loss of rough material compared to a Rose Cut.

Brian Gavin Diamonds webpage:¹¹

The round brilliant cut is the most researched and the most popular diamond shape available. Generations of diamond cutters over the last century have developed theories on light behavior and have developed precise mathematical calculations to optimize the fire and brilliance in a round diamond. Generally, the round brilliant shape will give you optimum flexibility for balancing cut,

¹¹ May 13, 2024 Office Action TSDR 83.

color, and clarity grades while still delivering the brilliance and fire that most people desire.

Antique Jewelry University webpage:¹²

Diamonds as We Know Them

When we think of a diamond, most of us will form an image in our mind which closely resembles the image above. This cutting design has become the ultimate standard and almost all of the rough diamonds that are found these days end up being fashioned in this style. We call it the Brilliant, the Standard Round Brilliant to be exact. The term 'brilliant' refers to the optimal light return this cutting design produces. When light falls onto a transparent gemstone it enters the stone and undergoes refraction. In order for the observer of a diamond to experience the stone's 'brilliance', light needs to be reflected within the gem so that it leaves the stone in the direction from which it came allowing it to reach the observer's eye. The Brilliant is the result of optimizing this effect by fashioning the diamond in a specific way.

Ritani Jewelers webpage:¹³

So why are brilliant-cut stones more sparkly?

The size and arrangement of the facets in brilliant-cut diamonds are what make them so sparkly. They allow light to perfectly enter and exit them for maximum scintillation. Brilliant-cut stones typically have 33 facets on the crown and 25 on the pavilion.

Round-cut diamonds are the most sparkly diamond shape due to their cone-like shape. They're also the most sought-after. The round-cut comes with a heftier price tag because of this and because they produce the most rough diamond waste. Round-cut diamonds will flatter any finger when placed in a ring and are perfect for earrings, pendants, and more for their versatile and timeless shape.

Ken and Dana Design webpage:¹⁴

History of Rose Cut Diamonds

Popular in the Georgian and Victorian eras when many diamond shapes originated in the Dutch region of Europe, the rose cut diamond was a hit for a very long time. At this time in the 16th century, diamonds were still measured and cut by hand and the rose cut diamond was designed to look like the spiral of petals in a rose bud.

The rose cut fell out of favor with the advent of newer jewelry trends and was completely lost to the popularity of brilliant cut diamonds in the 20th century.

¹² May 13, 2024 Office Action TSDR 14.

¹³ May 13, 2024 Office Action TSDR 22.

¹⁴ May 13, 2024 Office Action TSDR 36.

In the time of the rose cut, diamonds were cut to maximize carat weight using simpler tools. With the evolution of technology whose purpose was to bring out the full sparkle of the gemstone, revealing brilliance and fire in a stone became more prized.

Single Stone webpage:¹⁵

ROSE CUTS

Originating in India in the 18th century, rose cut diamonds dazzled in the candle-lit courts of the Mughals. Flat bottomed with a domed, faceted top, rose cut diamonds can have any silhouette; it is the triangular “rose-like” facet pattern on the top of the diamond that distinguishes a rose cut from any other diamond shape. The beauty of a rose cut diamond is in the subtlety of its shine - much like light reflecting off the surface of water. Our designs incorporate both antique and mindfully sourced modern rose cut diamonds.

Melanie Casey webpage:¹⁶

Rose Cut Engagement Rings

With a low profile and fewer facets than brilliant cut stones, a rose cut diamond ring has a soft glow.

Based on the definitions, articles, and industry evidence, we find that the relevant consumer of diamonds and jewelry perceives the terms BRILLIANT and ROSE as naming diamonds and other jewelry of a certain cut.

Applicant does not dispute the evidence that the terms BRILLIANT and ROSE identify jewelry cuts but states, inarguably, that both terms also have meanings unrelated to jewelry.¹⁷ Applicant points to 33 third-party use-based registrations for jewelry, all of which have the term ROSE in the registered mark (ROSE AVENUE, NAVY ROSE and design, SUNDAY ROSE, MIDNIGHT ROSE COLLECTION, SUMMER ROSE, ROSE LIFE, DURHAM ROSE, CROWN ROSE, JAIPUR ROSE,

¹⁵ May 13, 2024 Office Action TSDR 44.

¹⁶ May 13, 2024 Office Action TSDR 55.

¹⁷ 7 TTABVUE 15.

DIDI ROSE, ROSE & REMINGTON, TANGLED ROSE and design, ROSE D'ORO and design, VALLEY ROSE, ROSE CARDINAL and design, ROY ROSE JEWELRY, DREAM ROSE, FIFTEEN ROSES, GEM OF ROSES, GYPSY ROSE, LA VIE EN ROSE, LOVE AMETHYST ROSE, PIAGET ROSE, RED ROSE JEWELS, ROSE D'AMOUR, ROSE DIOR BAGATELLE, ROSE METAL PRODUCTS, SAILOR ROSE, SOUL OF THE ROSE and design, THE UNBLOSSOMED ROSE, AQUA ROSE LOVELY THINGS and design, AUTUMN ROSE, ROSE ART).¹⁸

Applicant contends “if prior registrations which are more descriptive than the terms of the present application or on the same alleged spectrum of genericness and they were allowed to register, they may constitute evidence of the present applications ability to register at the least on the Supplemental Register as well, and that as part of the record as a whole, such evidence should be considered.”¹⁹ The registrations have been considered, but do not rebut our finding that the relevant consumer will perceive the ROSE in BRILLIANT ROSE as naming a ROSE cut when applied to jewelry. Applicant submits no evidence in support of its generalization that the third-party marks “are more descriptive than the terms of the present application or on the same alleged spectrum of genericness,” and none of the third-party marks seem descriptive on their face.

To state what we think is obvious, because they combine ROSE with additional non-descriptive (or non-generic) terms, none of the third-party marks are comparable

¹⁸ November 13, 2023 Response TSDR 14-55. This evidence includes the smaller number of third-party registrations accompanying Applicant’s September 7, 2023 Response.

¹⁹ 10 TTABVUE 8.

to the proposed mark BRILLIANT ROSE, and so their registration does not provide useful guidance. The third-party marks refer to a ROSE flower (such as FIFTEEN ROSES), color (such as ROSE METAL PRODUCTS), or surname (such as ROY ROSE JEWELRY). In none of the third-party marks has ROSE been combined with another name for a type of jewelry cut and found to be registrable. Cf. *In re Integrated Embedded*, 2016 TTAB LEXIS 470, *28 (“The probative value of Applicant’s evidence is further diminished inasmuch as many of the third-party registrations, as discussed above, also include additional wording and design elements not found in the cited registration or involved application, that engender a different commercial impression from either mark.”). Accordingly, the third-party registrations cover marks that overall create a different commercial impression than Applicant’s proposed mark, and are entitled to little probative weight.

Applicant has not rebutted the evidence that BRILLIANT and ROSE are generic terms for diamonds and jewelry of a certain cut.

b. Evidence that BRILLIANT ROSE as a whole is perceived as generic

Turning to the proposed mark as a whole, we address how the relevant consumers of diamonds, laboratory grown diamonds and jewelry will perceive the compound term BRILLIANT ROSE. More specifically, we consider whether the combination of generic terms results in a term which is more than the sum of its parts. See *Booking.com* at *7 (“A compound of generic elements is generic if the combination yields no additional meaning to consumers capable of distinguishing the goods or services.”).

The record shows that there is a diamond cut developed over the last twenty years that combines characteristics of the brilliant and rose diamond cuts:

An Interview with “Diamond Wizard” Maarten de Witte:²⁰

It started more than 20 years ago when de Witte stumbled upon a rare 20th Century cut, also known as the Jubilee cut. This design honored Queen Victoria’s jubilee, the 60th year of her reign.

He played with the diamond and added his own styling over the years. Eventually, he began playing with round and brilliant cuts to develop his creation, the American Rose Brilliant Cut. Combining the best features of the antique rose cut and the best optical performance of modern rounds, deWitte’s cut is a rose on top with a brilliant bottom.

The record also includes excerpts from Applicant’s website:²¹

66 Facets

The secret behind the allure of Brilliant Rose lies in its 66 geometrically precise facets. A breakthrough in the diamond cutting industry, the perfect symmetry of 8 additional facets at its pavilion is mathematically determined to significantly alter the path of light entering the diamond and reflecting an unparalleled brilliance from its core axis.

Made with Passion

The makers of the Brilliant Rose diamond put together over 30 years of experience in the field of diamonds, to discover and develop the breakthrough cut. With passion and determination, the arduous process of its inception was fuelled by their passion and commitment. The result of that relentless effort remains held in admiration and cherished for generations, with each Brilliant Rose diamond.

Master Artisans

The rigorous demand of skill and artistry required to shape the Brilliant Rose means only the most experienced master diamond cutters can craft the magnificent Brilliant Rose. Devoting years of research and countless experimental trials to their craft every master artisan at Brilliant Rose is tirelessly dedicated to the art of shaping the ultimate diamond sparkling more brilliantly than any other ideal cut diamond.

²⁰ September 7, 2023 Office Action TSDR 29-32, <https://www.gemsociety.org/article/american-rose-brilliant-cut-interview>

²¹ September 7, 2023 Office Action TSDR 20, 21, 24, 25.

The record also includes advertisements of brilliant rose cut jewelry (**emphasis added**):

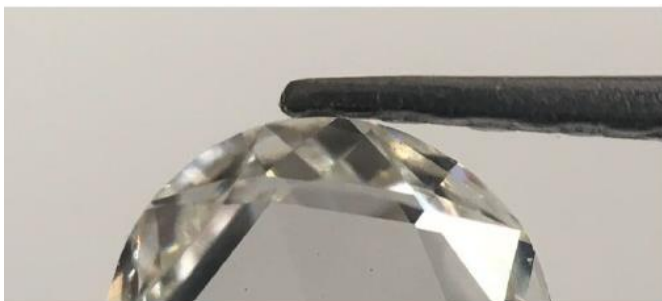
<https://alchemyjeweler.com/blog/news/ruby/22>



Excerpt from text accompanying picture:

With their luscious vibrancy, it's easy to see why rubies have been revered so long. For example, this stunning unheated 1.17ct **brilliant rose** cut Umba ruby faceted by the amazing @ptgems! And this ring!! (Swipe to see it in action!) What a beauty our dear friends at @alchemyjeweler created setting this ruby into a spectacular @templestclair pave bezel design.

Etsy²³





²² September 7, 2023 Office Action TSDR 38, 42.

²³ February 15, 2024 Office Action TSDR 9, <https://www.etsy.com/listing/6899214405/040-ct-white-color-brilliant-rose-cut>.

Glamira²⁴



Women's Ring **Brilliant Rose 6 mm**

6.0 mm

\$713.00 excl. TAX

This price is up to 55% lower in comparison to traditional jewelry shops.

Apply 10% Coupon

No Yes

Configurable Price Range from \$147.00 - \$6,730.00

Quick Configuration

Width (6.0 mm)

+

Color / Metal (14K White Gold)

+

Women's Ring Stone Type (Diamond - VS)

+

Profile (B)

+

Finish (Polished)

+

Thickness (1.4 mm)

+

Engraving

+

Ring Size

Size Guide

[https://www pagesargisson.com/products/old-mine-cut-knife-edge-engagement-ring](https://www.pagesargisson.com/products/old-mine-cut-knife-edge-engagement-ring)²⁵



²⁴ February 15, 2024 Office Action TSDR 50, <https://www.glamira.com/women-s-ring-brilliant-rose-6-mm>.

²⁵ February 15, 2024 Office Action TSDR 93. Arrows added for emphasis.

Details



Diamonds: 0.89 carat cushion modified brilliant rose cut diamond, 0.89 carat, J color, SI2 clarity, GIA certification. 7.20 x 5.24 millimeters in dimension, GIA certification.

Dimensions: 2 millimeter wide smooth half round ring band which tapers to a knife edge, the diamond sits 2.84 millimeters high above the finger

<https://simonbjewels.co/products/tiffany-co-mtro-rose-cutdiamond-eternity-18k-rose-gold-band-ring>²⁶



18K Rose Gold

Measurement:

Approx. 4mm

Diamonds:



Brilliant Rose cut approx. 1.13ctw

Diamond Quality:

E, F color VVS clarity

Hallmarks:

© T&Co Au 750

<https://scosha.com/products/indira-brilliant>²⁷

²⁶ February 15, 2024 Office Action TSDR 31, 33-34.

²⁷ February 15, 2024 Office Action TSDR 102-104. Highlighting added during examination.



Featuring five brilliant rose cut diamonds in prong settings, designed to allow each facet to catch the light at every angle. This curved diamond band will complete any ring stack, and the generous curve leaves plenty of room to stack with all different shapes.

<https://www.fitzgeraldjewelry.com/products/pave-6mm-peridot>²⁸

Pave / 6mm Peridot

\$1,100

An alternative engagement ring featuring a brilliant rose cut peridot set between pave grey diamonds. It's no wonder that the spellbinding allure of this green-yellow stone can be traced back to the the age of the Ancient Egyptians. An instant heirloom to be prized in this lifetime and the next.

<https://eragem.com/rem19802.html>²⁹



1930s Modified Brilliant Rose Cut Diamond Engagement Ring Platinum 1.27ct G/SI1 GIA

REF. REM19802

\$10,400

²⁸ February 15, 2024 Office Action TSDR 110.

²⁹ May13, 2024 Office Action TSDR 94.

<https://ambajewel.com/products/0-40-ct-white-color-brilliant-rose-cut-natural-loose-diamond-h-color-5-45-mm-x-1-39-mm-vst-clarity-natural-diamond-for-jewelry-sj39-19>³⁰

Amba Jewel
0.40 Ct White Color Brilliant Rose Cut
Natural Loose Diamond, H color 5.45 mm x
1.39 mm VS1 Clarity Natural Diamond For
Jewelry SJ39/19

\$687.00

<https://www.ebay.com/itm/326108682852?chn=ps&mkevt=1&mkcid=28&srsid=AfmBOoqbNvs8AFfFX3LMCNDc2t2aWjXjhkll5tpZk5QuMi5vDhwWgjWchE> ³¹

 **G-VVS1 Grade Natural Diamond Loose Brilliant**
Rose Cut 0.129 Ct Single Gemstone

 **De Super Diamond India LLP** (1397)
100% positive · [Seller's other items](#) · [Contact seller](#)

US \$199.86
or Best Offer

<https://www.qvc.com/brilliant-rose-by-fire-light-lab-grown-14k-gold-115ctw-diamond-ring-product.J420931.html?colorId=171&sizeId=348&ref=GBA> ³²

³⁰ May13, 2024 Office Action TSDR 97.

³¹ May13, 2024 Office Action TSDR 108.

³² May13, 2024 Office Action TSDR 115-116.

Don't take your eyes off this one – and then notice, no one else will be able to either. This stunning ring showcases a brilliant rose-cut *lab-grown* diamond that speaks to your contemporary sensibilities and love of all things uncommonly beautiful. From Brilliant Rose by Fire Light Lab Grown Diamond Jewelry.

<https://ringsearth.com/product/1-41-carat-f-vs1-igi-certified-marquise-brilliant-rose-cut-lab-grown-diamond-solitaire-engagement-ring-solitaire-ring->

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1.41 carat F/VS1 IGI Certified Marquise Brilliant/Rose Cut Lab Grown Diamond Solitaire Engagement Ring, Solitaire ring RE346

 available for orders between \$1 - \$2,000 ⓘ

~~USD \$2,155.00~~ excl. VAT

USD \$1,400.75 excl. VAT

<https://blumoondiamonds.com/light-diamond/mercedes-rose-cut-shape-diamond/323>

34

³³ May13, 2024 Office Action TSDR 131.

³⁴ May13, 2024 Office Action TSDR 152-153.

PRODUCT DETAILS		
PACKET ID	CARAT WEIGHT	SHAPE
BMLGD- 19346	1.45 CT	ROUND BRILLIANT ROSE CUT
SHAPE	MEASUREMENTS	CERTIFICATE NO
ROUND BRILLIANT ROSE CUT	7.28X7.36X3.10	LG11213106
CARAT WEIGHT	DEPTH	GIRDLE
1.45	42.3	FACETED
COLOR	TABLE	GIRDLE CONDITION
K	80	MEDIUM TO SLIGHTLY THICK
CLARITY	POLISH	CULET
VVS2	GD	POINTED
CUT	SYMMETRY	FLUORESCENCE
EX	GD	NONE

<https://diamondrensu.com/products/antique-round-rose-cut-lab-created-diamond-flat-cut-diamond-for-ring>

35

Our Round Rose Cut Lab Grown Diamond is perfect for crafting a unique Custom Engagement Ring. This brilliant rose cut diamond is of lab-created origin and its mesmerizing sparkle is guaranteed to make your special piece extraordinary. Perfectly cut for maximum brilliance, this gem is guaranteed to dazzle.

In view of the evidence of record, the meaning of the individual terms BRILLIANT and ROSE as cuts of diamonds in the jewelry industry, the mixed cuts of diamonds made possible by technology, and the burgeoning third-party use of BRILLIANT ROSE to designate a type of diamond, we find that the Examining Attorney has carried his burden of demonstrating that the relevant consumer of diamonds and

³⁵ May13, 2024 Office Action TSDR 155-156.

jewelry understands BRILLIANT ROSE to refer to the genus of cut diamonds or jewelry.

Applicant contends that the "limited evidence" of third-party uses is insufficient in number to demonstrate generic use.³⁶ The sufficiency of evidence does not relate to quantity, especially where the industry evidence indicates that technology advances are creating new goods. So long as the evidence shows that the term is perceived as generic by the relevant consumer, the proposed term may be in exclusive use by a few early adopters of the new technology and still be found to be generic. *See In re Pennington Seed, Inc.*, 466 F.3d 1053, (Fed. Cir. 2006) ("To allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.") (citation omitted).

Applicant also contends that the relevant public would not perceive BRILLIANT ROSE as generic because they also are exposed to trademark use of BRILLIANT ROSE.³⁷ Applicant cites six alleged trademark uses of BRILLIANT ROSE, two by competitors and four of its own. As shown below, neither of the third-party uses, and only one of Applicant's uses are possibly trademark uses. There is no use of the TM symbol, and the term BRILLIANT is positioned to deliver information about the goods rather than the source. Below are the two competitor uses:

³⁶7 TTABVUE 10.

³⁷ 7 TTABVUE 10.

Serial No. 97503026

<https://jogigems.com/product/1-81-ct-elongated-pear-shaped-crystal-clear-brilliant-rose-step-cut-loose-natural-ij>³⁸



HOME / ROSE CUT DIAMONDS / PEAR SHAPE ROSE CUT DIAMOND

**1.81 CT Elongated Pear Shaped Crystal
Clear Brilliant Rose Step Cut Loose
Natural IJ Color Diamond Si Clarity made
for Ring**

\$3,385.00

1 in stock

ADD TO CART

<https://www.rajfewels.com/antique-diamonds/gia-certified-205-carat-d-vvs2-oval-modified-brilliant-rose-cut-diamond> ³⁹



**GIA Certified 2.05 Carat D-VVS2 Oval Modified
Brilliant Rose Cut Diamond**

Of Applicant's four uses of BRILLIANT ROSE with the goods, the first has two uses, only one of which (From Brilliant Rose) is trademark use. Another use, referring to "Brilliant Rose Diamond" is not clearly trademark use, and the other two show

³⁸ February 15, 2024 Office Action TSDR 69.

³⁹ February 15, 2024 Office Action TSDR 95.

generic use by Applicant because they specifically name the cut of the diamond as BRILLIANT ROSE.

<https://www.qvc.com/brilliant-rose-110-cttw-lab-grown-diamond-necklace%2C-14k-gold-product.J432478.html> ⁴⁰



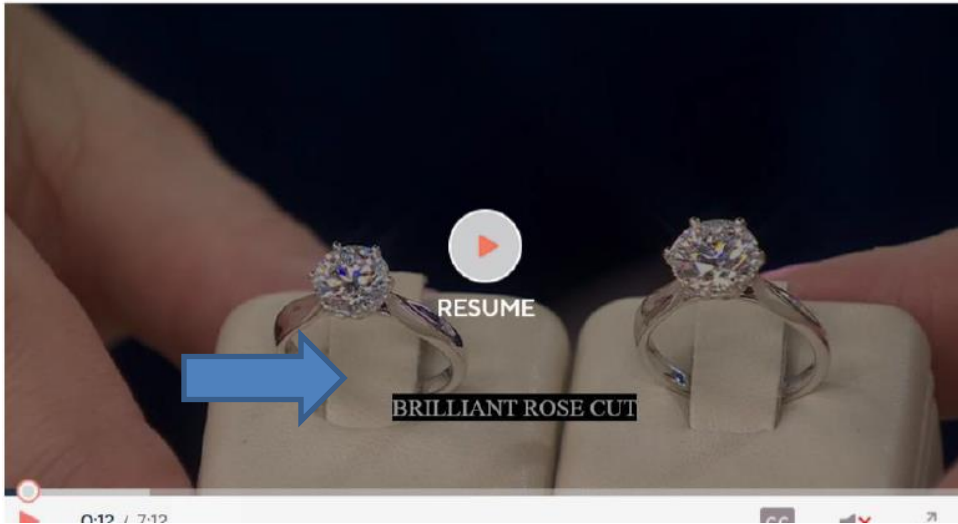
Showcase your romantic side by donning this beautiful necklace adorned with a centerpiece that sparkles with lab-grown diamonds. From Brilliant Rose.

<https://www.qvc.com/brilliant-rose-byfire-light-lab-grown-diamond-ring%2C-200cttw52C-14Kproduct> ⁴¹

⁴⁰ February 15, 2024 Office Action TSDR 61.

⁴¹ February 15, 2024 Office Action TSDR 73.

Brilliant Rose by Fire Light Lab Grown Diamond Ring, 2.00ctw, 14K



\$6,731.00

Price Details >

Size:

4 5 6 7
11

Quantity:

- 1 +

Pay in 3 Installments of \$2,2

Add To Cart

<https://www.carousell.sg/p/brilliant-rose-diamond-gia-certified-1-13cts-i-color-si-1-1174012760/>

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Brilliant Rose Diamond GIA Certified 1.13Cts I Color SI 1

S\$12,800

Details

Condition
Like new ①

Category
In [Rings](#)

Description

Preloved Authentic

Brilliant Rose Diamond

GIA Certified

1.13Cts

I Color

SI 1

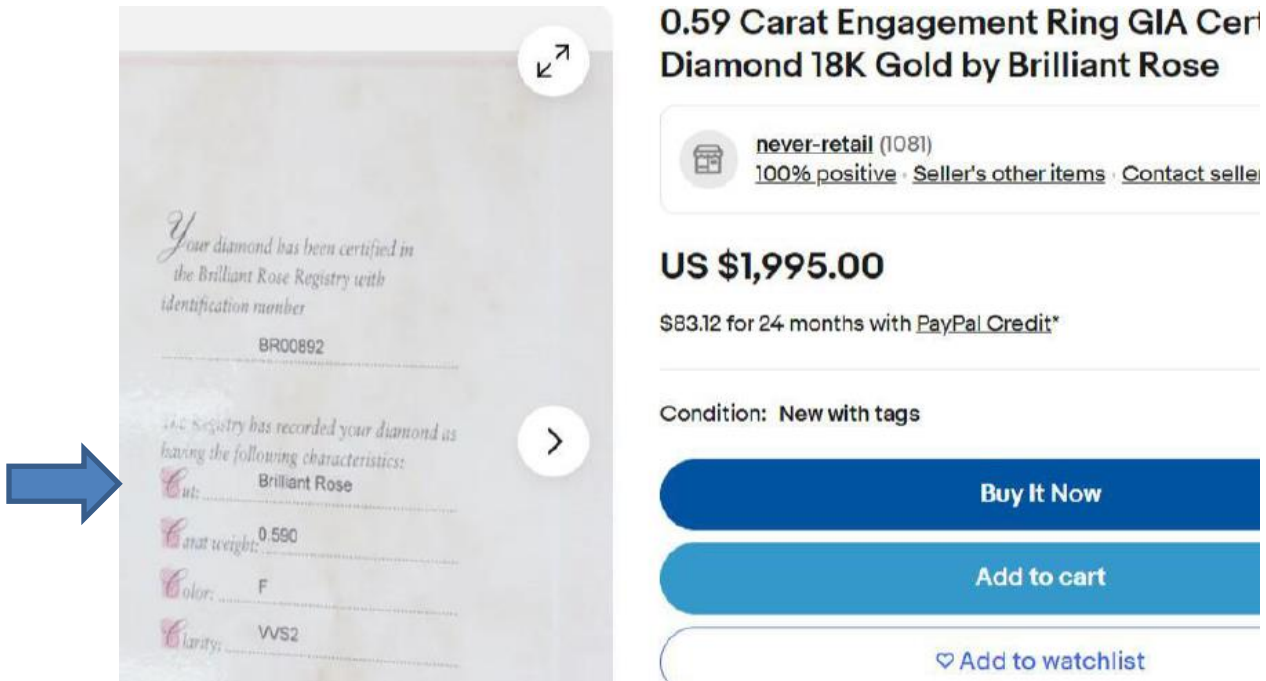
#Diamond #yanholuxury #PrelovedLuxury #Prelovedbags #Prelovedwatch

#PrelovedJewellery

\$12800

⁴² February 15, 2024 Office Action TSDR 16.

Ebay listing for Applicant's goods:⁴³



We find Applicant's evidence reinforces rather than contradicts our conclusion that the relevant consumer will perceive BRILLIANT ROSE as naming the genus of diamond of a particular cut.

II. Decision

The refusal to register Applicant's proposed mark BRILLIANT ROSE on the Supplemental Register on the ground of genericness is affirmed.

⁴³ February 15, 2024 Office Action TSDR 97.