

This Opinion is Not a
Precedent of the TTAB

Mailed: June 9, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The School Board of Palm Beach County, Florida

Serial No. 98321285

Mark Terry of Mark Terry PA,
for The School Board of Palm Beach County, Florida.

R. Austin Blakeslee, Trademark Examining Attorney,¹ Law Office 123,
Susan Hayash, Managing Attorney.

Before Greenbaum, Thurmon, and Myles,
Administrative Trademark Judges.

Opinion by Myles, Administrative Trademark Judge:

The School Board of Palm Beach County, Florida (“Applicant”) seeks to register the proposed standard character mark YOUR BEST CHOICE on the Principal Register for the following services in International Class 41:²

¹ The involved application was reassigned after Applicant filed its appeal brief. We refer to both Examining Attorneys generally as the “Examining Attorney” in this opinion.

² Application Serial No. 98321285, filed December 19, 2023, under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), claiming December 17, 2014 as both the date of first use and the date of first use in commerce.

All citations to documents contained in the Trademark Status & Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents.

Computer education training services; Education services, namely, providing kindergarten through 12th grade (K-12) classroom instruction; Educational counseling services to assist students in planning and preparing for further education; Educational services, namely, providing courses of instruction at the early childhood, primary, secondary level; Educational services, namely, providing courses of instruction at the early childhood, primary, and secondary level and distribution of course material in connection therewith; Encouraging amateur sports and physical education by organizing, sanctioning, conducting, regulating and governing amateur athletic programs and activities; Physical education services; Providing information about education.

The Examining Attorney refused registration on the ground that the proposed mark fails to function as a source indicator under Sections 1, 2, 3, and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53, 1127, because it 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.

When the refusal was made final, Applicant requested reconsideration and appealed. After the Examining Attorney denied the request for reconsideration, the appeal resumed. Applicant and the Examining Attorney each filed briefs.³ For the reasons explained below, we affirm.

I. Failure to Function

“Consistent with trademark law’s basic purpose, the lead criterion for registration is that the mark in fact serves as a ‘trademark’ to identify and distinguish goods [or services].” *Jack Daniel’s Props., Inc. v. VIP Prods. LLC*, 599 U.S. 140, 146 (2023)

³ 6 TTABVUE (Applicant’s appeal brief) and 8 TTABVUE (Examining Attorney’s appeal brief).

Citations in this opinion to the record and briefs refer to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

(internal citation omitted).⁴ Indeed, the Trademark Act’s very definition of a trademark “describes every trademark’s ‘primary’ function: ‘to identify the origin or ownership of the article to which it is affixed.’” *Id.* at 145-46 (citing 15 U.S.C. § 1127); *see also id.* at 156-57 (“From its definition of ‘trademark’ onward, the Lanham Act views marks as source identifiers—as things that function to ‘indicate the source’ of goods, and so to ‘distinguish’ them from ones “‘manufactured or sold by others.’”). Accordingly, the USPTO “is statutorily constrained to register matter on the Principal Register if and only if it functions as a mark.” *In re The Ride, LLC*, Ser. No. 86845550, 2020 WL 564792, at *7 (TTAB 2020).

“The critical inquiry in determining whether matter proposed as a mark can function as a trademark or service mark is how the relevant public perceives the phrase sought to be registered.” *Univ. of Ky. v. 40-0, LLC*, Opp. No. 91224310, 2021 WL 839189, at *13 (TTAB 2021) (internal citation omitted). When “there are no limitations on the channels of trade or classes of consumers of the [services] identified in the application, the relevant consuming public comprises all potential purchasers of [such services] ...” *In re Mayweather Promotions*, Ser. No. 86753084, 2020 WL 6689736, at *3 (TTAB 2020). Here, the relevant public comprises all potential consumers or users of Applicant’s identified education services. *See In re Team Jesus LLC*, Ser. No. 88105154, 2020 WL 7312021, at *3 (TTAB 2020).

⁴ This opinion cites to decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board and the Director of the United States Patent and Trademark Office (USPTO), this opinion cites to the Westlaw (WL) legal database. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). Practitioners should also adhere to the citation form recommended in TBMP § 101.03.

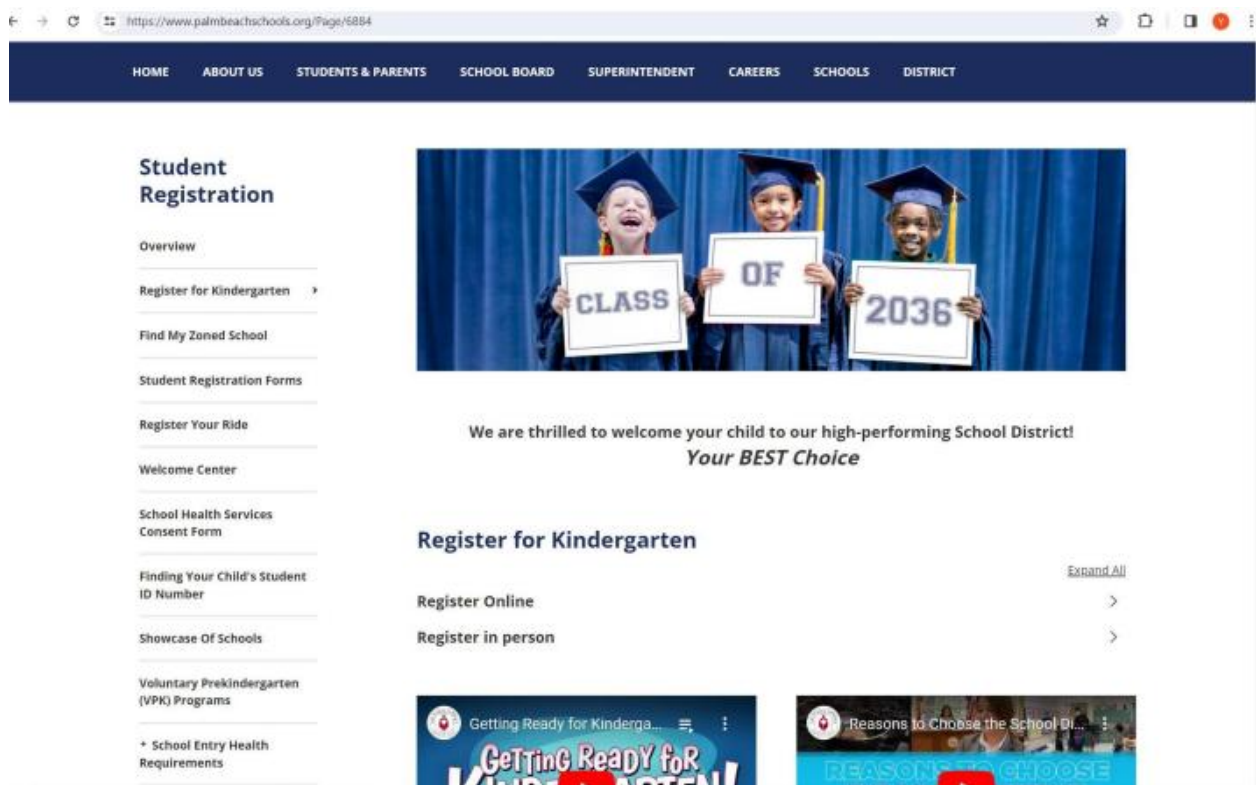
To determine whether a proposed mark functions as a mark, “we look to the specimens and other evidence of record showing how the designation is actually used in the marketplace.” *In re Texas With Love, LLC*, Ser. No. 87793802, 2020 WL 6689657, at *3 (TTAB 2020) (quoting *In re Eagle Crest Inc.*, Ser. No. 77114518, 2010 WL 3441109, at *2 (TTAB 2010)). “Matter that is widely used to convey ordinary or familiar concepts or sentiments, or social, political, religious, or similar informational messages that are in common use, would not be perceived as indicating source and is not registrable as a mark.” *Team Jesus LLC*, 2020 WL 7312021, at *3 (citations omitted). “Such widely used messages will be understood as merely conveying the ordinary concept or sentiment normally associated with them, rather than serving any source-indicating function.” *In re Lizzo*, Ser No. 88466264, 2023 WL 1507238, at *4 (TTAB 2023) (citation omitted). The more commonly a phrase is used by many, the less likely that it will be recognized by purchasers as “identify[ing] and distinguish[ing] the services of one person ... from the services of others,” as the Trademark Act defines a trademark. *See id.*; *see also Mayweather Promotions*, 2020 WL 6689736, at *1 (“Widely used commonplace messages are those that merely convey ordinary, familiar concepts or sentiments and will be understood as conveying the ordinary concept or sentiment normally associated with them, rather than serving any source-indicating function.”); *Eagle Crest, Inc.*, 2010 WL 3441109, at *2 (“Because consumers would be accustomed to seeing this phrase [ONCE A MARINE, ALWAYS A MARINE] displayed on clothing items from many different sources, they

could not view the slogan as a trademark indicating source of the clothing only in applicant.”).

II. Evidence and Analysis

The Examining Attorney contends that YOUR BEST CHOICE cannot act as a source indicator, because it is a widely-used commonplace message that conveys “a claim of high quality and of being the superior option amidst competitors of goods or services to convey a common laudatory and self-touting advertising message.”⁵

We first consider Applicant’s use of its proposed mark on its specimen:⁶



As seen above, Applicant’s use of its proposed mark is more consistent with conveying an informational or laudatory message than with signifying a brand or

⁵ 8 TTABVUE 4.

⁶ December 19, 2023 Specimen.

source indicator. On the first page of Applicant’s specimen, when viewed in context, Applicant uses the phrase as part of an overall laudatory message praising Applicant’s educational services: “We are thrilled to welcome your child to our high-performing School District! Your BEST Choice.” While YOUR BEST CHOICE appears in italics and in a slightly larger font, it would be read in conjunction with the preceding sentence, conveying information that Applicant’s educational services are “your best choice” for elementary education. *Cf. In re Boston Beer Co. L.P.*, Ser. No. 74464118, 1998 WL 650077 (TTAB 1997), *aff’d*, 198 F.3d 1370 (Fed. Cir. 1999).

The Examining Attorney made of record numerous examples of third-party use of the phrase YOUR BEST CHOICE in connection with schools and educational services, each of which again conveys an informational or laudatory message touting the educational services or schools as the consumers’ “best choice”:

- Arvida Middle School: “Why Arvida is your best choice”;⁷
- Metropolitan State University: “Your Best Choice for Affordable Accredited Online Colleges”;⁸
- Highland High School Salt Lake City: “Your best choice in education is the Salt Lake City School District”;⁹
- Villa Freinet Multicultural School: “From Preschool to High School, WE ARE YOUR BEST CHOICE”;¹⁰
- Southwest Tennessee Community College: “Prospective students learn why Southwest is Your Best Choice at Campus Day 2018”;¹¹

⁷ May 16, 2024 Office Action at 5.

⁸ *Id.* at 7.

⁹ *Id.* at 23.

¹⁰ *Id.* at 25.

¹¹ *Id.* at 29.

- Richmond Heights Middle School: “RHMS: Your Best Choice”;¹²
- GOAL High School: “Your Best Choice for Flexible Online Instruction with Face-to-face support...”;¹³
- Office of Human Capital Management Miami-Dade County Public Schools: “Join Miami Dade County Public Schools – Your Best Choice for a teaching career...”;¹⁴
- Penn State: “The Penn State School of International Affairs is your best choice for pursuing a career in International affairs...”;¹⁵
- Magnolia School District: “When it’s time to make your choice, please watch this video to see why your best choice is Magnolia Public Schools!”;¹⁶
- QSI International School of Zhuhai: “There are two features to a QSI education that make QSI your best choice”;¹⁷
- Barstow Unified School District: Your BEST Choice for Academic Success!”;¹⁸
- School of Rock: “Why School of Rock is Your Best Choice in Music Education”;¹⁹
- Rockhurst University: “[D]iscover why the Helzberg School of Management is your best choice in business education”;²⁰
- Tennessee Truck Driving School: “Why is Tennessee Truck Driving School your best choice for CDL training?”;²¹
- Maxwell Electric: “Your BEST Choice”;²²

¹² *Id.* at 34.

¹³ *Id.* at 37.

¹⁴ *Id.* at 41.

¹⁵ *Id.* at 44.

¹⁶ *Id.* at 49.

¹⁷ *Id.* at 53-54.

¹⁸ *Id.* at 56.

¹⁹ *Id.* at 60.

²⁰ *Id.* at 66.

²¹ *Id.* at 69.

²² *Id.* at 71.

- J.C. Bermudez Doral Senior High School: “M-DCPS Your Best Choice Parent Survey”;²³
- Metropolitan State University of Denver: “Your Best Choice for Affordable Accredited Online Colleges”;²⁴
- Benoist Farms Elementary School: “We are thrilled to welcome your child to our high-performing School District! Your BEST Choice”;²⁵
- Cadence Education: “What Makes Our Preschool Program Your Best Choice?”;²⁶
- Carsonville-Port Sanilac Schools: “What makes CPS your best choice”;²⁷
- Glen Oaks Community College: “Glen Oaks is your best choice for post-secondary education in South West Michigan!”;²⁸
- Florida Atlantic University College of Education: “Why is FAU College of Education Your Best Choice?”;²⁹
- Hampden Dubose Academy: “Your Best Choice in Private Education”;³⁰
- Rappahannock Community College: “Affordable education and training, tuition assistance, and scholarships makes RCC your best choice!”;³¹
- Santa Monica College: “Why SMC is Your Best Choice”;³²
- University of South Carolina: “If you want to become a leader of a higher educational organization, the Higher Education administration Ph.D. is your best choice”;³³
- Verto Education: “Here’s Why Verto Is Your Best Choice”;³⁴

²³ August 21, 2024 Final Office Action at 25.

²⁴ *Id.* at 71.

²⁵ *Id.* at 94.

²⁶ *Id.* at 97.

²⁷ *Id.* at 105.

²⁸ *Id.* at 109.

²⁹ *Id.* at 111.

³⁰ *Id.* at 120.

³¹ *Id.* at 134.

³² *Id.* at 142.

³³ *Id.* at 151.

³⁴ December 3, 2024 Request for Reconsideration Denied at 4.

- Roya Virtual School: “Your best choice in virtual education”;³⁵
- NBI: “Why Continuing Legal Education Matters (and Why NBI is Your Best Choice)”;³⁶
- Moraine Valley Community College: “See Why Moraine Valley is Your Best Choice”;³⁷
- Genesis Real Estate School: “Why Genesis Real Estate School in Boise Idaho is Your Best Choice for Real Estate Education”;³⁸ and
- Fredericksburg Christian School: “Your Best Choice For Education In Fredericksburg”.³⁹

The Examining Attorney also submitted numerous examples of YOUR BEST CHOICE in use across a variety of other industries, each of which conveys the same informational or laudatory message, i.e. that the goods or services identified are the consumers’ “best choice”:

- DentiStar: “Why DentiStar Is Your Best Choice”;⁴⁰
- Driver Ed in a Box: “Why Driver Ed in a Box is your best choice for teaching your teen to drive”;⁴¹
- Dental for Everyone: “Your Best Choice Dental Plan might be a PPO”;⁴²
- Best Choice Real Estate: “We are your Best Choice to help you achieve your real estate goals in the Brookings, SD area!”;⁴³
- McLaughlin Studios: “Why McLaughlin is Your Best Choice”;⁴⁴

³⁵ *Id.* at 12.

³⁶ *Id.* at 14-15.

³⁷ *Id.* at 23.

³⁸ *Id.* at 25.

³⁹ *Id.* at 30.

⁴⁰ August 21, 2024 Final Office Action at 28.

⁴¹ *Id.* at 35.

⁴² *Id.* at 38-39.

⁴³ *Id.* at 41-42.

⁴⁴ *Id.* at 69.

- Maxwell Electric: “Your BEST Choice”;⁴⁵
- Frontier Research: “Are we really your best choice?”;⁴⁶
- Toyota: “10 Reasons Why Toyota is Your Best Choice”;⁴⁷
- NorthBay Health: “Your Best Choice”;⁴⁸
- Mazuma Capital: “Why Mazuma Capital Is Your Best Choice”;⁴⁹ and
- Etsy: “worldwidelabel is your best choice!”⁵⁰

Applicant argues that “in almost every case, the words YOUR BEST CHOICE is[sic] used in a full sentence...as part of promotional or descriptive language tailored to specific entities or offerings” and demonstrates that YOUR BEST CHOICE “is regular English with a regular English meaning.”⁵¹ Applicant’s description of the third-party uses of the phrase YOUR BEST CHOICE is accurate; however, this fact actually supports the failure-to-function refusal. Each of these third parties is using the phrase to convey its ordinary informational or laudatory meaning—that the items, goods, services, or businesses are the best choice. *See, e.g. In re Volvo Cars of N. Am. Inc.*, Ser. No. 74212578, 1998 WL 239298, at *3-5 (TTAB 1998) (finding “that the primary significance of the phrase DRIVE SAFELY, as used by applicant, and as likely to be perceived by purchasers and prospective purchasers, is merely that of an everyday, commonplace safety admonition” and considering third-party uses of the phrase “drive safely” conveying that sentiment); *In re Wakefern Food Corp.*, 1984 WL

⁴⁵ *Id.* at 80.

⁴⁶ *Id.* at 85.

⁴⁷ December 3, 2024 Request for Reconsideration Denied at 42.

⁴⁸ *Id.* at 51.

⁴⁹ *Id.* at 55.

⁵⁰ *Id.* at 75.

⁵¹ 6 TTABVUE 7-8.

63023, at *3 (TTAB 1984) (finding that WHY PAY MORE would not be perceived by the public as a service mark, but as a widely used phrase meaning that the applicant's stores had better prices and considering third-party advertisements using the same phrase to convey the same message).

Applicant made of record numerous registrations for marks containing the phrases “your best” and “best choice” in support of its argument that marks containing similar phrases have been registered by the USPTO and are capable of acting as source identifiers.⁵² Prior decisions and actions of trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”). We must assess the registrability of Applicant’s proposed mark on its own merits and on its own record. *See id.* (“The Board must decide each case on its own merits.”); *In re USA Warriors Ice Hockey Program, Inc.*, Ser. No. 86489116, 2017 WL 2572815, at *4 n.10 (TTAB 2017). The registration of different marks on different records is therefore not persuasive.

Having considered all of the evidence and argument of record, we find that the phrase YOUR BEST CHOICE, as used by Applicant, would be perceived as merely that of a common laudatory or informational message conveying the sentiment that

⁵² *Id.* at 11-12.

Applicant's services are the consumers' "best choice." We therefore find that Applicant's proposed mark YOUR BEST CHOICE fails to function as a mark for Applicant's identified services.

Decision: The refusal to register on the ground that Applicant's proposed mark fails to function as a service mark is affirmed.