

**This Opinion is Not a
Precedent of the TTAB**

Hearing: September 24, 2014

Mailed: October 3, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Ren Acquisition, Inc.
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Serial No. 85787527
Serial No. 85787531
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Sanford E. Warren, Jr. of Akin Gump Strauss Hauer & Feld LLP,
for Ren Acquisition, Inc.

Simon Teng, Trademark Examining Attorney, Law Office 105,
Susan Hayash, Managing Attorney.

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Before Zervas, Bergsman and Wellington,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Ren Acquisition, Inc. (“Applicant”) seeks registration on the Principal Register of the mark BLEND^S (Serial No. 85787527) and BLEND^S, INC. (Serial No. 85787531) (both in standard characters) for

Marketing, advertising and promoting the sale of wine, in
International Class 35.¹

¹ Application Serial Nos. 85787527 and 85787531 were filed on November 26, 2012, based upon applicant’s allegation of a *bona fide* intention to use the marks in commerce under Section 1(b) of the Trademark Act.

Applicant has disclaimed the exclusive right to use the term “Inc.” in the BLENDS, INC. application.

The Trademark Examining Attorney has refused registration of Applicant’s marks under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1) on the ground that BLENDS and BLENDS, INC. are merely descriptive of marketing, advertising and promoting the sale of wine because the word “Blends” refers to a wine composed of two or more grape varieties and, therefore, the mark BLENDS merely describes the product being marketed, advertised and promoted.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed.² We affirm the refusal to register.

I. Applicable Law

“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 Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only with the mark could guess the services listed in the identification of services.

² In an order dated February 27, 2014, the appeals were consolidated.

Rather, the question is whether someone who knows what the services are will understand the mark to convey information about them. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Accordingly, we must determine how the relevant customers for wine marketing, advertising and promoting services will perceive the word “Blends.”

In determining whether the mark is merely descriptive, it is not necessary that a term describe all of the purposes, functions, characteristics, or features of a service to be considered merely descriptive; it is enough if the term describes one significant function, attribute, or property. *In re Chamber of Commerce*, 675 F.3d at 1300, 102 USPQ2d at 1219; *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services,” citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); *Gyulay*, 820 F.2d at 1218, 3 USPQ2d at 1010; *In re Positec Group Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) (“[I]f the mark is descriptive of some identified items – or even just one – the whole class of goods still may be refused by the examiner.”); *In re Cox Enters. Inc.*, 82 USPQ2d 1040 (TTAB 2007). *See also In re Stereotaxis Inc.*, 429 F.3d 1039, 1041, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)

(“[T]he Trademark Office may require a disclaimer as a condition of registration if the mark is merely descriptive for at least one of the products or services involved.”)

We focus our analysis on the word “Blends” because business entity names such as “Inc.” have no trademark significance and are free for all to use. *In re Cell Therapeutics, Inc.*, 67 U.S.P.Q.2d 1795, 1796 (TTAB 2003) (“Inc.” has no trademark significance); *In re Patent & Trademark Services Inc.*, 49 U.S.P.Q.2d 1537, 1539 (TTAB 1998) (the designation “Inc.” has no trademark or service mark significance because it merely “indicates the type of entity that performs the services.”); *In re Packaging Specialists, Inc.*, 221 U.S.P.Q. 917, 919 (TTAB 1984) (the designation “Inc.” has no source indication or distinguishing capacity).

The evidence shows that the term “Blends” identifies wine made from two or more varieties of grapes.³ Applicant argues that “Blends” is not descriptive of marketing, selling and promoting wines.

Simply, the Examiner has confused “services” and “goods.” Applicant’s subject application is neither requesting a mark specifically for wine nor is the mark for retail services selling wine. Each and every piece of evidence offered by the Examiner is specifically for wine or the retail sale of wine by either a winery or a retail

³ At the oral hearing, Applicant would not concede that the word “Blends” is merely descriptive of wine. However, in the September 13, 2013 Office action, the Trademark Examining asked Applicant whether the word “Blends” has any significance in the wine industry and whether Applicant markets, advertises and promotes wine blends. In its November 1, 2013 request for reconsideration, Applicant stated that “blends could represent a wine made of two or more different wine grapes. However, Applicant’s mark is not being used for wine. Applicant’s mark is a service for a variety of wines, which may or may not include blended wine.” (Emphasis in the original). Applicant also stated that “some of the wines marketed, advertised promoted could be blended wine.” (Emphasis in the original).

store selling wine. ... The significant function, purpose, feature, and/or characteristic of the mark is to “market, advertise, and promote.” Marketing, advertising, and promoting the “sale” of wine is considerably different than the act of selling wine or producing wine. Again, the Examiner has only submitted evidence against the wine itself and or [sic] the physical selling of the wine.⁴ (Emphasis in the original).

The evidence listed below proving that “Blends” is descriptive of wines is representative of the evidence in the record.

A. March 8, 2013 Office action

1. Wine Enthusiast Magazine Glossary of Wine Terms (winemag.com)

Blend is defined as “[t]he process whereby two or more grape varieties are combined after separate fermentation; common blends include Cotes de Rhone and red and white Bordeaux.”

2. Lovetoknow Wine website (livetoknow.com)

What Is a Wine Blend

* * *

All About Wine Blends

At its most basic, vintners blend wine made from different grapes in order to add more complexity to the flavor and texture of a wine. The goal of blending wine made in different vintages is more to balance out the flavor characteristics. Both reds and whites can be made from blends of varietals. In some cases, they may even blend whites and reds together to create the best possible combination of aromas and flavors. ...

* * *

Vintage Wine Blends

⁴ Applicant’s Brief, p. 6.

Vintage wine blends are different grapes grown in the same vintage, or year. This may something as simple as a vintage Cabernet Sauvignon-Merlot blend, or it may be something as complex as blending up to 13 different grapes to create a Châteauneuf-du-Pape.

Non-vintage Blends

Some wines, such as Port and Champagne, among others, blend grapes grown in different vintages in order to balance flavors, tannins, and other wine characteristics. These wines are typically labeled NV or non-vintage, and there will not year listed on the label. While this practice is most common in sparkling wines and ports, other winemakers may utilize this technique as well.

3. HuffPost Taste (huffingtonpost.com), “5 Facts About Blended Wines for Beginners” (March 8, 2013)

... Blends are some of the most complex and interesting types of wine. ...

1. Difference between varietals and blends: A standard varietal like Malbec, Chardonnay etc., is made from the same grape. ...

Blends are what their name suggests. They typically consist of at least 40-50 percent of one type of grape and a smaller mix of two or more grapes.

4. Winetasting.com website advertises “Red Wine Blends.”



B. September 16, 2013 Office action

1. The Total Wine website (totalwine.com) advertises “Red Blends” which “can be a mix of Cabernet Sauvignon, Cabernet Franc, Sangiovese, Syrah, Merlot or any red wine.”

2. The Grape Stompers website (grapestompers.com) features an article entitled “Blending Wine” which provides that “[b]y definition, blending wine simply means you are combining two or more wines to create a new one.”

3. The wine entry for Wikipedia (wikipedia.org) provides the following information:

Wine is usually made from one or more varieties of the European species *Vitis vinifera*, such as Pinot noir, Chardonnay, Cabernet Sauvignon, Gamay and Merlot. When one of these varieties is used as the predominant grape (usually defined by law as minimums of 75% to 85%), the result is a “varietal” as opposed to a “blended” wine. Blended wines are not considered inferior to varietal wines, rather they are a different style of winemaking; some of the world’s most highly regarded wines, from regions like Bordeaux and the Rhone Valley, are blended from different grape varieties.

C. November 18, 2013 Office action

1. The 14 Hands Vineyards website (14hands.com) advertises the sale of its 2011 Hot to Trot Red Blend. The label is shown below:

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In addition, 14 Hands Vineyards has links to its “varietal” and “blends.”

2. The Apothic website (apothic.com) advertises the sale of Apothic blends. The label for this wine is shown below.



3. The Barefoot Wine & Bubbly website (barefootwine.com) advertises the sale of its Barefoot Impression Red Blend. The label for this wine is shown below:



We find that the word “Blends” describes the products which Applicant is marketing, advertising and/or promoting and, as such, it should remain available to any company rendering these services. *See In re Pencils Inc.*, 9 USPQ2d 1410, 1411 (TTAB 1988) (“While applicant's stores may carry a variety of products, pencils are one of those products, and, thus, the term “pencils” is merely descriptive as applied to retail stationery and office supply services.”). *See also In re Cordura Rests. LP*, 110 USPQ2d 1227, 1231 (TTAB 2014) (“where the matter sought to be registered identifies goods that are a primary or central focus of the store or distributorship service, we have considered the term to be generic”); *In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, 1157 (TTAB 2009) (“A term that names the central focus or subject matter of the services is generic for the services themselves.”); *In re Lens.com, Inc.*, 83 USPQ2d 1444, 1447 (TTAB 2007) (“Because “lens” is a name for the contact eyewear which comprises the subject matter of applicant's services, the term is likewise a generic name for the retail Internet store services themselves.”).

Applicant argues that when used in connection with marketing, advertising and promoting, the word “Blends” could refer to many things, not just wine.⁵ However, as indicated above, the determination of whether a mark is merely descriptive is not considered in the abstract but in connection with the services at issue. In this case, those services are the marketing, promoting and advertising of wine. In fact, as

⁵ Applicant's Brief, p. 6. We note that in its November 1, 2013 request for reconsideration, Applicant submitted an excerpt from its website (Exhibit D) wherein Applicant described itself as “a family of wine estates from around the world. ... We are committed to maintaining and enhancing the quality of our wines, investing resources to grow our wines in the market and becoming the easiest supplier to do business with by delivering superior service, responsiveness and profitability to our distributor and trade partners.”

noted above, in its November 1, 2013 request for reconsideration, Applicant stated that it could market, advertise, and promote blended wines.

Further, the fact that the word “Blends” may have different meanings in different contexts is not controlling. *See In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) (“It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.”); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979) (“since the question of descriptiveness must be determined in relation to the goods or services for which registration is sought, the fact that a term may have meanings other than the one the Board is concerned with is not controlling on the question.”); *In re Champion Int’l Corp.*, 183 USPQ 318, 320 (TTAB 1974).

Decision: The refusal to register Applicant’s marks BLENDS (Serial No. 85787527) and BLENDS, INC. (Serial No. 85787531) is affirmed.