

This Opinion is Not a  
Precedent of the TTAB

Mailed: October 30, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Blue Lotus Lifestyle LLC*

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Serial No. 85937447

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Matthew H. Swyers, of The Trademark Company, PLLC,  
for Blue Lotus Lifestyle LLC.

Katherine Stoides, Trademark Examining Attorney, Law Office 101,  
Ronald R. Sussman, Managing Attorney.

—  
Before Bucher, Cataldo and Mermelstein,  
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Blue Lotus Lifestyle LLC (“Applicant”) seeks registration on the Principal Register of the mark **LOTUS** (*in standard character format*) for the following goods identified, as amended, “drinking water with vitamins and botanicals” in International Class 32.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85937447 was filed on May 20, 2013, based upon Applicant’s claim of first use anywhere since at least as early as July 12, 2010, and use in commerce since at least as early as October 15, 2011.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of The Trademark Act, 15 U.S.C. § 1052(e)(1), because it is merely descriptive of a feature of Applicant's goods.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

#### **A. Applicable Law**

A term that is merely descriptive of the applicant's goods may not be registered on the Principal Register without a showing of acquired distinctiveness. Trademark Act §§ 2(e)(1), 2(f). "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009-10 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods 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 Dev. 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 whether someone who knows what the goods are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); *In re Patent & Trademark*

*Servs. Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *Coach Servs. Inc. v. Triumph Learning LLC*, 96 USPQ2d 1600, 1616 (TTAB 2010) (quoting *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978)), *vacated-in-part on other grounds*, 668 F.3d 1356, 101 USPQ2d 1713 (Fed. Cir. 2012).

## B. Arguments and Evidence

In her Office Action of October 28, 2013, the Trademark Examining Attorney placed into the record screen prints of articles found on the Internet demonstrating the use of lotus flowers and leaves in beverages:

### Health Benefits of Lotus Tea

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Scott Kessman, Yahoo! Contributor Network  
May 28, 2010 "Share your voice on Yahoo! websites. Start Here."

The health benefits of lotus tea have been known to cultures in South and Southeast Asia for generations. Hindu and Buddhist writings have linked the lotus flower with serenity and purity. The lotus is a perennial water plant that is native to India and Vietnam, where it represented in the national symbols of both nations.

The beneficial lotus tea is made using the lotus flowers. The blossoms are available in various shades of pink and they have a distinctive seedpod with a circular shape. Lotus plants are popular in water gardens. The roots attach to the soil in the bottom of rivers or ponds, and the leaves float on the water's surface. The plant grows to be roughly 150 centimeters tall, and the leaves normally have a 60 centimeter

diameter. Lotus flowers grow in stems above the water and are 20 centimeters in diameter.

Lotus tea has diuretic, astringent and calming health benefits due to the antioxidant compounds lotusine, demethyl coclaurine, neferin and nuciferine found in the lotus plant. The digestive benefits of lotus tea are used to manage diarrhea and cramping. The tea is also used to treat the symptoms associated with gastric ulcers and relieve the pain associated with hemorrhoids.

Lotus tea is particularly beneficial to women; it is used to help lower heavy flows during menstruation and treat post-partum bleeding. Drinking lotus tea may also prevent premature ejaculation.

The health benefits of lotus tea are useful in treating certain health conditions. Lotus tea is often used to combat syphilis and other diseases. Some people attribute the improvement of several different heart conditions to drinking lotus tea. Some research indicates that the compounds found in the lotus flower might have cancer-fighting properties, although this information is fairly recent.

To reap the health benefits of lotus tea, try making it at home. Lotus tea requires dried lotus leaves and dried lotus flowers. Mix two teaspoons of the tea in 500 ml of water and allow it to steep for roughly five minutes. Remove the flowers and leaves and enjoy everything that lotus tea has to offer.

<sup>2</sup> <http://voices.yahoo.com/health-benefits-lotus-tea-6093152.html>, See also <http://www.livestrong.com/article/261839-health-benefits-of-lotus-tea/>, both as accessed by the Trademark Examining Attorney in October 2013.



## Tea Benefits: The Lotus Leaf

by Nikki Mason | Tuesday, October 9<sup>th</sup>, 2012

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The lotus flower is absolutely stunning, vibrant and magnificent. We all love to look at the flower, but what is the leaf good for? Surely the leaf can't just be good for nutrients to the soil/pond once the plant dies! Nope, sure isn't! This amazing piece of the plant has many uses all varying in what they are great for!

The leaves can reach a diameter of a whopping eighteen inches! They are collected twice a year in the summer and fall. When they are collected some are dried and some are processed into an herbal extract which is a great astringent! As an astringent, lotus leaf has the ability to stop bleeding, and is used to treat conditions such as blood in urine, blood in vomit, excessive menstrual bleeding.

Lotus Leaf Tea helps with anxiety, stress and, helping your liver to be healthy. According to Chinese medicinal history it invigorates the blood and stops internal bleeding for such conditions as blood in the urine.

Lotus Leaf Tea also helps with cardiovascular health because it is full of lots of great anti-oxidants and can increase coronary blood flow and lower blood pressure!

Lotus leaf is also great for fighting against ringworm! Thus meaning it is an anti-fungal! So rub a little bit on those toes of yours if you are an athlete!

If you are looking to lose weight this leaf can be a great edition [sic] to your diet! Studies have shown that this leaf can decrease the absorption of carbs and fats!! This wonderful plant will also increase your metabolism! Those aren't the only things though! The lotus leaf is classified as a bitter herb and bitter herbs, trigger the production of bile which stimulates digestion. It also triggers hydrochloric acid and the combination of the two being triggered help ease flatulence! Did you know that bile helps assists in the break down of fats? Bile is also a liver tonic, weird huh?

When the lotus leaf works as a

fat blocker, it breakdown [sic] current fat and prevents new fat by blocking of [sic] triglyceride formation. The lotus leaf extract is even used with l-carotene to help obese people start to lose weight in "professional" medical fields!

The lotus leaf also has sedative and antispasmodic properties which aid in digestion. It is also filled with Flavonoids and tannins which are alkaloids that are powerful antioxidants that protect your heart!

The lotus leaf can also help assist you in your current detox regimen! You see the leaf has the ability of the extract to stimulate and tonify [sic] the liver and spleen! It's even used in some over the counter detox supplements!

The lotus leaf is an all-around great part of the plant with [sic] is also effective as a cardio tonic, anti-febrile agent, hypotensive, resolvent, styptic, tonic and vasodilator. So ask an herbalist or your doctor if it's a great plant to add to your regimen! Its beautiful flower to paint, smell, touch and its leaf is even better for you!

The Trademark Examining Attorney also found advertisements for a number of Japanese and Chinese beverages variously described as supplement drinks, collagen beauty drinks, and diet teas, each having some form of lotus flowers, leaves, extract, etc.:

<sup>3</sup> <http://organicherbsandtea.com/tea-benefits-the-lotus-leaf.html> as accessed by the Trademark Examining Attorney in October 2013.



... white *lotus* ...<sup>4</sup>



... derived from botanical extracts including *lotus* seed germ extract ...<sup>5</sup>



... contains the extracts of *lotus* leaves ...<sup>6</sup>



... *lotus* leaf ...<sup>7</sup>

Applicant also included a dictionary definition of “Lotus” as follows:

**lotus** *noun*

a type of flowering plant that grows on the surface of water

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Nonetheless, in response to Office actions, Applicant explicitly stated that the term “Lotus” had no significance in relation to this product. In spite of the showing by the Trademark Examining Attorney, Applicant, in its brief, continues to argue that the record as a whole establishes that its “Lotus” mark is arbitrary, or at worst suggestive, as applied to its “drinking water with vitamins and botanicals.” We disagree.

<sup>4</sup> <http://www.vivazen.com/> as accessed by the Trademark Examining Attorney in October 2013.

<sup>5</sup> <http://www.peonexhealthline.com/> and <http://lifestreamgroup.com/tsubaki-collagen-dx-p-411.html?tab=4> as accessed by the Trademark Examining Attorney in October 2013.

<sup>6</sup> [http://wuhanjst.en.ec21.com/Regulate\\_Blood\\_Fat\\_Peptide\\_Oral--7295371\\_7304581.html](http://wuhanjst.en.ec21.com/Regulate_Blood_Fat_Peptide_Oral--7295371_7304581.html) as accessed by the Trademark Examining Attorney in October 2013.

<sup>7</sup> <http://chaoji.co.uk/> as accessed by the Trademark Examining Attorney in October 2013.

<sup>8</sup> THE MERRIAM-WEBSTER UNABRIDGED DICTIONARY, as attached to Applicant’s response of February 10, 2014, at 23 of 42.

### **C. Discussion**

In addition to the above evidence clearly showing a usage of various forms of the lotus plant, and parts thereof, as ingredients of beverages, Applicant actually stated in its response of February 10, 2014, that “there is some lotus extract in some of the product.” In any case, even without such an acknowledgement, as noted by the Trademark Examining Attorney, inasmuch as Applicant’s identification of goods has no restriction on the vitamins and botanicals included in the applicant’s drinking water, we must presume these listed goods include drinking water with vitamins and botanicals of all kinds and in all forms, including drinking water having lotus extracts. *See In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660 (TTAB 1988).

The record shows that extracts of lotus leaves and of lotus flowers are touted as providing a variety of health benefits, and lotus extract is an ingredient in Applicant’s goods herein. Hence, the weight of the evidence of record directly contradicts Applicant’s repeated assertion that the record is devoid of any evidence that the term “Lotus” describes a feature of these goods. When the word “Lotus” is used in connection with drinking water containing lotus extract, we have no doubt that this applied-for mark is merely descriptive of an ingredient thereof.

Applicant also argues that the existence of a number of registered marks including the term “Lotus” establishes that this term has been treated as inherently distinctive of the respective goods or services. Of course, an applied-for mark that is merely descriptive does not become registrable simply because other seemingly

similar marks appear on the register. *See In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977). Moreover, some of these third party registrations appear consistent with our result herein. For example, in the Blue Lotus Chai composite mark shown at right, which is registered for chai tea, all three of these words have been disclaimed.<sup>9</sup> In other registrations, it may be the case that the involved goods or services did not include lotus, or that the composite marks contained additional matter that obviated any descriptive nature of the word “Lotus.”



Finally, applicant’s ownership of a registration for the mark **Blue Lotus Lifestyle** for “energy drinks”<sup>10</sup> does not require a different result herein. As noted earlier, we are not bound by the decision of an earlier Trademark Examining Attorney to approve for registration an assertedly similar mark for other goods based upon a unique evidentiary record. *See In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330 (TTAB 2014). In any event, in the case at bar we find that the single word “Lotus” identifies the lotus extract ingredient, and as applied to the named goods, cannot be inherently distinctive. The Trademark Examining Attorney takes the position in her brief that Applicant’s three-word house mark ending in the word “Lifestyle” contains more amorphous imagery creating an entirely different commercial impression. While we

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<sup>9</sup> Registration No. 4200886 issued on September 4, 2012. No claim is made to the exclusive right to use the words “Blue Lotus Chai” apart from the mark as shown.

<sup>10</sup> Registration No. 3714881 issued on November 24, 2009.

are not privy to the record in this previous prosecution, we find that these third-party registrations and Applicant's prior registration are not persuasive of a different result herein.

*Decision:* The refusal to register Applicant's mark **LOTUS** under Section 2(e)(1) of The Lanham Act is hereby affirmed.