

This Opinion is not a
Precedent of the TTAB

Mailed: November 21, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Salad Town, LLC

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Serial Nos. 86414039 and 86414055

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H. Michael Drumm of Drumm Law LLC,
for Salad Town, LLC.

Colleen Mulcrone, Trademark Examining Attorney, Law Office 108,
Andrew Lawrence, Managing Attorney.

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Before Taylor, Kuczma and Lynch,
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Salad Town, LLC (“Applicant”) seeks registration on the Principal Register of the
marks **THE SALAD STATION** (in standard characters) and

 (THE SALAD STATION and Design) both for:

Restaurant services in International Class 43.¹

¹ Application Serial Nos. 86414039 and 86414055 were filed on October 3, 2014, based upon Applicant’s claim of first use anywhere and use in commerce of both marks since at least as early as June 4, 2012. Application Serial No. 86414055 includes the following description: “The mark consists of the word “THE” inside the top curve of a large “S” that stands tall

The Trademark Examining Attorney refused registration of Applicant's THE SALAD STATION mark (Application Serial No. 86414039) under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive and, as regards the THE SALAD STATION and Design mark (Application Serial No. 86414055), required a disclaimer of the wording in the mark pursuant to Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), because it is merely descriptive of the identified services. After the refusals were made final, Applicant timely appealed and filed Requests for Reconsideration which were denied. The appeal is fully briefed. For the reasons set forth below, the refusals to register are affirmed.

I. Consolidation of Appeals

We have considered the arguments and evidence filed in both cases. The applied-for marks, refusals to register, as well as the records and the briefs, are very similar and involve many of the identical factual and legal issues. Thus, the appeals are therefore consolidated and addressed in this single opinion.

II. Grounds of Refusal

The issues in this appeal are: (1) whether the wording THE SALAD STATION is merely descriptive of Applicant's restaurant services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and (2) if the wording THE SALAD STATION is merely descriptive of Applicant's services, whether a disclaimer under Sections

enough to begin the word "SALAD" and "STATION" with the "O" in "station" in the form of a tomato.

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2(e)(1) and 6 of the Trademark Act, 15 U.S.C. §§ 1052(e)(1) and 1056(a), is required for registration of THE SALAD STATION and Design mark.

A. Descriptiveness Under § 2(e)(1)

For a term to be merely descriptive within the meaning of § 2(e)(1), it is not necessary that the term describe each feature of the goods or services, only that it conveys a single, significant ingredient, quality, characteristic, feature, function, purpose or use of the goods or services with which it is used. *See, e.g., In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

Registration of the marks THE SALAD STATION and THE SALAD STATION and Design have been refused on the ground that the wording “The Salad Station” is merely descriptive, in whole or in part, of the applied-for services. The Examining Attorney relies on the definition of “salad station” as a term commonly used to describe a restaurant feature, which is also known as a “salad bar,” consisting of a self-service selection of various salad ingredients and toppings, allowing customers to construct their own salad.² Additionally, the Examining Attorney submitted screenshots from thirteen third-party websites demonstrating that the term “salad

² We grant the Examining Attorney’s request that we take judicial notice of the dictionary definition of “salad bar” from the American Heritage Dictionary at <https://www.ahdictionary.com/word/search.html?q=salad+bar>. The TTAB may take judicial notice of dictionary definitions that are the electronic equivalent of a print reference work. *See Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Driven Innovations, Inc.*, 115 USPQ2d 1261, 1267 n.18 (TTAB 2015); *see also*, TBMP §§1208.03-1208.04 (2016).

station” is commonly used to describe such a feature of a restaurant, including the following uses from the Internet:

- The Barile’s Planet Pizza Family Restaurant: “Beat the heat with a tossed or chopped salad from our awesome salad station!”³
www.planetpizzanewburgh.com
- The menu and costs of Court Order Deli’s “salad station.”⁴
www.courtorderdeli.com
- The menu and costs of Garden Gourmet Delicatessen’s “Fresh Salad Station.”⁵
www.gardengourmet.net
- The menu and costs of Caviar’s “Salad Station.”⁶
www.trycaviar.com
- Sebastian’s restaurant website: “Did you know we have a Totally Vegan salad station at our Summer Street! That’s right all the wonderful topping from our salad station w/out all the dairy & meat products!”⁷
www.sebastians.com
- Blendz Fun Fresh Food: “At our Salad Station you can choose from an exciting variety of toppings and dressings to satisfy your mood and taste buds.”⁸
www.blendz.com
- Aliano’s Express pizzeria: “Lighter fare is top quality too at our salad station. As with our pizza entrees, Aliano’s salad ingredients are authentic.”⁹
www.alianosexpress.com
- Item on Minutello’s Restaurant & Lounge menu: “Calzone stuffed with mozzarella, ricotta, tomato sauce, and two items from our salad station.”¹⁰
www.mintellosrestaurant.com

³ See non-final Office action dated January 30, 2015, at p. 7.

⁴ See non-final Office action dated January 30, 2015, at p. 8.

⁵ See non-final Office action dated January 30, 2015, at p. 9.

⁶ See non-final Office action dated January 30, 2015, at p. 10.

⁷ See final Office action dated September 27, 2015, at p. 9.

⁸ See final Office action dated September 27, 2015, at p. 12.

⁹ See final Office action dated September 27, 2015, at p. 13.

¹⁰ See final Office action dated September 27, 2015, at p. 14.

- Chadwick’s brunch buffet menu, which includes a “Salad Station.”¹¹ www.mychadwicks.com
- Chicago Prime Italian’s brunch buffet menu, which includes a “Salad Station.”¹² www.chicagoprimeitalian.com
- Henrietta’s Table brunch buffet menu, which includes a “Grilled vegetable and salad station with weekly salad specials.”¹³ www.henriettastable.com
- Outer Banks Brewing Station’s menu, featuring a “Salad Station.”¹⁴ www.obbrewing.com
- The Warehouse Restaurant’s brunch buffet menu, which includes a “Salad Station.”¹⁵ www.mdrwarehouse.com

Based on the foregoing evidence, consumers are accustomed to seeing the term “salad station” used to describe a feature of a restaurant that provides a selection of various salad ingredients and toppings, allowing customers to construct their own salad, *i.e.*, a salad bar. Thus, the wording “salad station” merely describes a feature of a restaurant.

Additionally, adding the term “THE” to a descriptive term such as “SALAD STATION” does not add any source-indicating significance or otherwise affect the term’s descriptiveness. *See In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (holding THE GREATEST BAR merely descriptive of restaurant and bar services; “the definite article THE . . . add[s] no source-indicating significance to the mark as

¹¹ See denial of Request for Reconsideration dated April 11, 2016, at p. 4-5.

¹² See denial of Request for Reconsideration dated April 11, 2016, at p. 7.

¹³ See denial of Request for Reconsideration dated April 11, 2016, at pg. 8.

¹⁴ See denial of Request for Reconsideration dated April 11, 2016, at pg. 10.

¹⁵ See denial of Request for Reconsideration dated April 11, 2016, at pg. 13.

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a whole”); *Conde Nast Publ’ns Inc. v. Redbook Publ’g Co.*, 217 USPQ 356, 357 (TTAB 1983) (“[t]he fact that the slogan [THE MAGAZINE FOR YOUNG WOMEN] also includes the article ‘The’ is insignificant. This word cannot serve as an indication of origin, even if applicant’s magazine were the only magazine for young women.”); *In re The Computer Store, Inc.*, 211 USPQ 72, 74-75 (TTAB 1981) (holding THE COMPUTER STORE merely descriptive of, and the common descriptive name for, computer-related services).

A screenshot from Applicant’s website shows that a feature of Applicant’s services is a salad bar:

Our Salad bar is prepared fresh daily with over 80 items to choose from. ... Our concept is a self-service Salad, Potato, Soup and Beverage Bar.”¹⁶

Applicant argues that although its restaurant contains a salad bar, THE SALAD STATION does not describe the restaurant in general, stating “according to the meaning ascribed to it by the Examining Attorney, it would describe only the salad bar within the restaurant, not the restaurant itself.”¹⁷ Applicant contends that the salad bar within THE SALAD STATION restaurant is only one aspect of a full service fast casual restaurant. Its restaurant also serves soups, baked potatoes, side dishes, and beverages, and provides menu items “to go” which do not involve patrons utilizing the salad bar within the restaurant.¹⁸

¹⁶ See 1/30/2015 Office Action pp. 2, 4.

¹⁷ Applicant’s Brief p. 3 (7 TTABVUE 6).

¹⁸ Applicant’s Brief p. 3 (7 TTABVUE 6) referring to Exhibit A to March 28, 2016 Request for Reconsideration.

A mark may be merely descriptive even if it does not describe the “full scope and extent” of Applicant’s services. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). As stated, it is enough that the term describes only one significant function, attribute, or property of the services. *In re The Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219; *In re H.U.D.D.L.E.*, 216 USPQ 216 USPQ 358, 359 (TTAB 1982); *see also In re Oppedahl & Larson LLP*, 71 USPQ2d at 1371. Therefore, the wording “The Salad Station” is merely descriptive of Applicant’s restaurant services because, at the very least, it describes a significant feature of Applicant’s restaurant services, even if Applicant also offers soups, spuds and beverages in addition to a salad station.

Marks that consist of a featured food of a restaurant have been held to be merely descriptive of the restaurant services provided by the restaurant. *See beef & brew, inc. v. Beef & Brew, Inc.*, 389 F.Supp. 179, 185 USPQ 531, 534 (D. Ore. 1974) (a name that tells the diner what his dinner will be is descriptive; thus, previous BEEF & BREW held merely descriptive of restaurant services of both parties); *In re France Croissant, Ltd.*, 1 USPQ2d 1238, 1239 (TTAB 1986) (holding LE CROISSANT SHOP merely descriptive of an eating establishment where croissants are the principal attraction, even though other items are available); *In re Le Sorbet, Inc.*, 228 USPQ 27, 28 (TTAB 1985) (holding LE SORBET descriptive of restaurant and carryout shops which serve fruit ices); *Steak N Shake, Inc. v. Steak and Ale*, 171 USPQ 175, 178 (TTAB 1971) (STEAK, common portion of STEAK N SHAKE and STEAK N’ ALE,

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held descriptive of restaurant services); *see also Longchamps, Inc. v. Eig*, 315 F.Supp. 456, 167 USPQ 81, 83 (S.D.N.Y. 1970) (STEAK & BREW held descriptive, albeit protectable based on acquired secondary meaning); *In re Gen'l Franchising Corp.*, 169 USPQ 55, 56 (TTAB 1971) (the identification of a restaurant by the name of the food which is the specialty of the house is merely descriptive of the restaurant; the mark LA CREPE being the French term for a special variety of delicate, thin Brittany pancakes, was registrable for restaurant services based on acquired secondary meaning).

The question is not whether someone presented only with the proposed mark THE SALAD STATION could guess the activities listed in the identification of services. Rather, the question is “whether someone who knows what the [services] are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)); *In re Swatch Group Management Services AG*, 110 USPQ2d 1751, 1762 n.54 (TTAB 2014). A descriptive term immediately and directly conveys some information about the services. *See Stoncor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014) (citing *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 103 USPQ2d at 1755). If, on the other hand, THE SALAD STATION requires imagination, thought, and perception to arrive at the qualities or characteristics of the services, then the mark is suggestive. *In re MBNA America*

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Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003); *In re Franklin County Historical Society*, 104 USPQ2d 1085, 1087 (TTAB 2012).

Applicant argues that THE SALAD STATION, when used in connection with its restaurant services, is suggestive because “the consumer would see that THE SALAD STATION is actually the name of the restaurant itself. The consumer then needs to use a reasoning process to determine that THE SALAD STATION is actually a full-service restaurant that offers more than a salad bar.”¹⁹

Applicant’s mark THE SALAD STATION immediately conveys information about a feature of Applicant’s services. As discussed above, due to third-parties’ use of the term “salad station” to identify a salad bar, consumers would immediately understand that “salad station” used in Applicant’s mark identifies a feature of Applicant’s restaurant consisting of a selection of various salad ingredients and toppings, allowing customers to construct their own salad. No imagination, thought, or perception is needed to understand that a feature of Applicant’s restaurant is a salad station.

Applicant also submitted copies of third-party registrations for marks containing the term “station,” arguing that these “marks use the name of a station as a brand or moniker for the products or services offered as a whole” and have been allowed to register, and therefore Applicant’s mark should also be allowed to register. Applicant submitted copies of the following Registrations²⁰:

¹⁹ Applicant’s Brief p. 7 (7 TTABVUE 10).

²⁰ Applicant’s Brief pp. 4-6 (7 TTABVUE 7-9). Applicant submitted copies of third-party registrations with its 7/29/2015 Response to Office Action, pp. 12-37. Registration Nos.

Mark	Registration No(s).	Disclaimer of “... station”	Goods/Services
Snack Station	4538195; 4538196; 4538197		Display units for merchandising snack food products; cookies, corn-based snack foods, crackers, popped popcorn, pretzels; potato chips, processed nuts
The Growler Station	4129595		Retail store services featuring 64 oz. beer growlers to go
Mountain Coffee Station & Design	3901180	“coffee station”	Coffee shops
Coffeestation & Des.	4621228	“coffeestation”	Food services, namely, restaurants and cafes
Fill'er Up Coffee Station & Des.	4033757	“coffee station”	Coffee and juice bar services; coffee and tea bars; coffee bars; coffee shops; coffee-house and snack-bar services
Water Station & Des.	3837483	“water station”	Drinking water filtration, purification and dispensing units for domestic, commercial and industrial use
The Donut Station	3440155		Coffee shops
Brewstation	3025178		Electric coffee makers
Tea Station & Des.	2415304		Restaurant services, catering services, snack bars, and cafeterias

1275017 for COFFEE STATION and 1350078 for THE YOGURT STATION were cancelled for non-renewal, and Registration No. 3017554 for JAVA STATION and Design was cancelled for failure to file an acceptable declaration under § 8, so those Registrations have not been considered. Additionally, although Applicant lists Registration Nos. 4544339 for DRINKSTATION, 3971026 for MOUNTAIN COFFEE STATION and Design, and 1548494 for GRILLING STATION, no copies of these Registrations were submitted and accordingly they have not been considered.

Taco Station & Des.	3021405		Restaurant services
Chianti Station	2196034		Wines
Grilling Station	2097416		Heating unit for heating and displaying prepared foods
Pizza Station	1113824		Restaurant services

The fact that third-party registrations exist for marks allegedly similar to Applicant’s mark because they contain the word “station” is not conclusive on the issue of descriptiveness. *See In re theDot Commc’ns Network LLC*, 101 USPQ2d 1062, 1067 (TTAB 2011) (holding .music merely descriptive for, inter alia, on-line social networking services, domain registration services, interactive hosting services, electronic publishing, recording, and production services, online retail store and promotional services, and downloadable files and recordings, despite the presence of third-party registrations for marks consisting of “dot ____” or “.____”); *In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977) (holding SCHOLASTIC merely descriptive of devising, scoring, and validating tests for others despite the presence of other marks on the Register using the word “Scholastic”).

Eight of the fifteen active third-party registrations for marks containing the word “station” submitted by Applicant are not relevant as they cover miscellaneous goods which differ from Applicant’s restaurant services. Moreover, in three of the seven remaining registrations covering restaurant services or coffee bars, the term “coffee station” was considered merely descriptive and disclaimed. Thus, Applicant relies on only four registrations for service marks that include the word “station,” and we have no indication that the records in those cases for phrases such as “taco station” and

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“chianti station” included the same type of descriptiveness evidence we have of “salad station.” It is well settled that each case must be decided on its own facts and the Trademark Trial and Appeal Board is not bound by prior decisions involving different records. *See In re Nett Designs, Inc.*, 236 F. 3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014). The question of whether a mark is merely descriptive is determined based on the evidence of record at the time each registration is sought. *In re theDot Commc’ns Network LLC*, 101 USPQ2d at 1064; *see In re Nett Designs, Inc.*, 57 USPQ2d at 1566.

Regardless, an applied-for descriptive mark such as THE SALAD STATION does not become registrable simply because four other arguably similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ at 519. Therefore, although other marks containing the term “station” have been registered, the refusal under § 2(e)(1) should be upheld because this record shows that the mark “THE SALAD STATION” is merely descriptive of restaurant services.

Lastly, Applicant argues that any doubt regarding the marks’ descriptiveness should be resolved on Applicant’s behalf. *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987); *In re Grand Forest Holdings, Inc.*, 78 USPQ2d 1152, 1156 (TTAB 2006). However, in this case, the evidence of record leaves no doubt that the wording THE SALAD STATION merely describes a feature of Applicant’s restaurant services. As such, Applicant’s applied-for standard character mark, THE SALAD STATION, is merely descriptive and thus not entitled to registration.

III. Disclaimer

Merely descriptive terms are unregistrable, under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), and, therefore, are subject to disclaimer if the mark is otherwise registrable. Thus, the Examining Attorney properly required Applicant to disclaim “the salad station” component of its otherwise registrable mark in Serial No. 86414055 because it merely describes a characteristic or feature of Applicant’s services and thus is an unregistrable component of the mark. Trademark Act Section 6(a), 15 U.S.C. § 1056(a). Failure to comply with a disclaimer requirement is grounds for refusal of registration. *See In re Omaha Nat’l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975); *In re Ginc UK Ltd.*, 90 USPQ2d 1472 (TTAB 2007); *In re Nat’l Presto Indus., Inc.*, 197 USPQ 188 (TTAB 1977).

Decision: The refusal to register Applicant’s mark THE SALAD STATION, Serial No. 86414039 under § 2(e)(1) is affirmed.

The requirement for a disclaimer of “The Salad Station” which resulted in the refusal of registration of the THE SALAD STATION and Design mark, Serial No. 86414055, based on Applicant’s failure to submit such disclaimer, is also affirmed. However, in the event that Applicant submits the required disclaimer²¹ within thirty (30) days from the date of this decision, the refusal to register application Serial No.

²¹ The proper format for the disclaimer is: “No claim is made to the exclusive right to use THE SALAD STATION apart from the mark as shown.”

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86414055 will be set aside, the disclaimer will be entered, and that application will proceed to publication. *See* Trademark Rule 2.142(g), 37 C.F.R. § 2.142 (g).