

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

Mailed: August 24, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Global Growers Foods Company Limited
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Serial No. 87036671
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Joshua Gerben and Eric J. Perrott of Gerben Law Firm PLLC,
for Global Growers Foods Company Limited.

Deirdre G. Robertson, Trademark Examining Attorney, Law Office 111,
Robert L. Lorenzo, Managing Attorney.

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Before Bergsman, Gorowitz and Hightower,
Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Global Growers Foods Company Limited (“Applicant”) seeks registration on the Principal Register of the mark GLOBAL GROWERS (in standard characters) for, as amended,

Frozen fruits; Frozen vegetables in International Class 29.¹

¹ Application Serial No. 87036671 was filed on May 13, 2016, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) on the ground that the mark is merely descriptive of Applicant's frozen fruits and vegetables. When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We reverse the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). In other words, we evaluate whether someone who knows what the goods are will understand the mark to convey information about

them. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 103 USPQ2d at 1757; *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

On the other hand,

a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation.

Anheuser-Busch Inc. v. Holt, 92 USPQ2d 1101, 1105 (TTAB 2009); *see also Plyboo America Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1640 (TTAB 1999) (citations omitted).

A finding of mere descriptiveness requires that each word in a mark be descriptive, with the combination also having a descriptive significance. *See DuoProSS* 103 USPQ2d at 1756; *see also In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016).

The Examining Attorney argues that the term “GLOBAL”² is descriptive because it merely indicates that the goods are offered on an international market,”³ and “GROWERS”⁴ is descriptive because it merely indicates that the goods come from a person or entity that grows the fruits and vegetables.”⁵

The Examining Attorney submitted the following excerpts from Applicant’s website to establish that the mark is descriptive:

Global Growers Foods is a unique company in that we bring the source to our customers. We are growers, sourcing and logistic professionals dedicated to delivering more than 100 items from the bounties of the earth to every continent.

Our Mission is Simple:

Provide each customer the finest quality, safest products, at the most competitive prices on the world market.

² The definition of “GLOBAL” from The American Heritage Dictionary is “of, relating to or involving the entire earth; worldwide: global war, global monetary policies.”

August 31, 2016 Office Action, The American Heritage Dictionary of the English Language (5th ed. 2016), www.ahdictionary.com, TSDR p. 6.

All citations to the Trademark Status and Document Retrieval (TSDR) database are to the PDF version of the documents.

³ Examining Attorney’s Brief, 10 TTABVUE 5.

⁴ The definition of GROWERS from MacMillan Dictionary is “a person, company, or place that grows a type of plant or crop.”

August 31, 2016 Office Action, MacMillan Dictionary (2016) (American version), www.macmillandictionary.com, TSDR p. 13.

⁵ Examining Attorney’s Brief, 10 TTABVUE 5.



While it can be inferred from the use of the word “global” in the mark that Applicant’s goods are “offered on an international market” or “emanate from a global market,” such inference does not immediately convey any ingredient, quality, characteristic, feature, function, purpose or use of the goods. To the contrary, the word “global” in the mark may convey meaning not about the goods but about the Applicant, namely that it is an international company. This is particularly true when combining GLOBAL with GROWERS. The word “growers” conveys an impression of a person, company or place that grows the fruits and vegetables. However, it does not immediately convey an impression of any ingredient, quality, characteristic, feature, function, purpose or use of frozen fruits and vegetables themselves. Rather, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required to connect the international company/person who grow the fruits and vegetables with the end product (frozen fruits and vegetables). Based thereon, we find the mark GLOBAL GROWERS to be suggestive rather than descriptive.

Similarly, the other evidence introduced by the Examining Attorney establishes use of “global,” “grower,” and “global grower” as descriptions of the producer of fruits

⁶ *Id.*, TSDR p. 8.

and vegetables, not of any ingredient, quality, characteristic, feature, function, or purpose of the fruits and vegetable themselves. The following examples were submitted with the February 22, 2017 Denial of Applicant's Request for Reconsideration:

- **Sunrise Growers** at <http://www.sunrisegrowers.com/growers/global-grower-network>, stating: "Sunrise Growers has an extensive grower and processing network that allows us to freeze and ship fresh fruit worldwide. Because fresh fruit is perishable and highly vulnerable to weather events and transportation delays, we've developed relationships with partner processors and shippers to ensure access to freezing facilities within a few hours of all growing regions. We've also created regional crop redundancies within our network to maintain an uninterrupted supply of fresh fruit." 6 TTABVUE 3;
- **BerryWorld** at <http://berryworld.com/group/home/>, stating: "BerryWorld has over 20 years' experience in developing the soft fruit market, the BerryWorld Group works with a dedicated global grower base and as a presence in multiple retail sectors around the world. We are a trusted berry provider to leading retailers and food and catering specialists, bringing the best new soft fruit varieties to market." 6 TTABVUE 4.
- **Vision Import Group** at <http://visionimportgroup.com/AboutUs.html>) stating: "Vision Import Group LLC has established global grower partnerships to provide the highest quality products and service to our customers ... [and] [w]e have worked hard with our growers and distributors to create brands for our products that are the definition of quality. These brands allow customers at all levels in the industry to easily identify the best product. We offer year round availability of Limes, Lemons, Mangos, Pineapples, and Carrots." *Id.*

Finally, we acknowledge that both the Examining Attorney and the Applicant submitted third-party registrations to establish either that "global" or "grower" is descriptive of fruits and vegetables and therefore disclaimed or that neither is

descriptive and thus should not be disclaimed. The Examining Attorney addressed this issue in the brief, where she stated:

The fact that third-party registrations exist for marks allegedly similar to Applicant's mark is not conclusive on the issue of descriptiveness. *In re Scholastic Testing Serv., Inc.*, 196 USPQ at 519; TMEP §1209.03(a). An applied-for mark that is merely descriptive does not become registrable simply because other seemingly similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ at 519; TMEP §1209.03(a).

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, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); TMEP §1209.03(a). 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 1062, 1064 (TTAB 2011); TMEP §1209.03(a); *see In re Nett Designs, Inc.*, 236 F.3d at 1342, 57 USPQ2d at 1566.

Examining Attorney's Brief, 10 TTABVUE 10. We agree and find that the existence of the third-party registrations of record does not affect the outcome of this appeal.

Based on the evidence of record, we find that the mark GLOBAL GROWERS is suggestive, but not descriptive of Applicant's frozen fruits and vegetables.

Decision: The refusal to register Applicant's mark GLOBAL GROWERS is reversed. The application will be published for opposition in due course.