

This Opinion is not a
Precedent of the TTAB

Hearing: Jan. 22, 2019

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re LedgerDomain LLC

Serial No. 87159899

Martin Schwimmer and Lauren Beth Emerson of Leason Ellis LLP,
for LedgerDomain, LLC

N. Gretchen Ulrich, Trademark Examining Attorney, Law Office 113,
Myriah Habeeb, Managing Attorney.

Before Adlin, Heasley, and Coggins,
Administrative Trademark Judges.

Opinion by Heasley, Administrative Trademark Judge:

LedgerDomain, LLC (“Applicant”) seeks registration on the Principal Register of
the mark LEDGERDOMAIN (in standard characters) for

Downloadable software for creating, managing, and
analyzing data on blockchains, distributed ledgers and
peer-to-peer payment networks in the fields of financial
management, asset management, resource management
and decentralized applications in International Class 9;

and

Application service provider featuring application
programming interface (API) for developing mobile and
web-based applications in the fields of blockchains,

distributed ledgers and peer-to-peer payment networks in the fields of financial, asset management, resource management and decentralized applications for creating, managing, and analyzing data on blockchains, distributed ledgers and peer-to-peer transaction and payment networks; Software as a service (SAAS) services, namely, software development tools developing mobile and web-based internet applications and client interfaces in the fields of blockchains, distributed ledgers and peer-to-peer payment and transaction applications for creating, managing, and analyzing data on blockchains, distributed ledgers and peer-to-peer transaction and payment networks; Platform as a service (PAAS) featuring computer software platforms for use in developing software in the fields of blockchains, distributed ledgers and peer-to-peer payment and transaction networks and decentralized applications for creating, managing, and analyzing data on blockchains, distributed ledgers and peer-to-peer transaction and payment networks in International Class 42.¹

The Trademark Examining Attorney refused registration of Applicant's proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of Applicant's identified goods and services.

When the refusal was made final, Applicant appealed and requested reconsideration.² The Examining Attorney denied the request for reconsideration, and the appeal resumed. The Board then granted Applicant's request to suspend the appeal and remand the application to the Examining Attorney for further

¹ Application Serial No. 87159899 was filed on Sept. 2, 2016, based on 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).

Page references to the application record are to the downloadable .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs, motions and orders on appeal are to the Board's TTABVUE docket system.

² 1 and 4 TTABVUE.

examination in light of additional evidence Applicant wished to make of record.³ Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). The Examining Attorney maintained the refusal, adding evidence in support thereof, and the appeal once again resumed.⁴ We reverse the refusal to register.

I. Mere Descriptiveness

A. Applicable Law

Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with an applicant's goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). "A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). "The major reasons for not protecting such [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products." *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

³ Applicant's request to suspend and remand, 23 TTABVUE; Board Order suspending appeal and remanding application to Examining Attorney, 24 TTABVUE.

⁴ June 10, 2018, Office Action, 25-33 TTABVUE; proceedings resumed, 34 TTABVUE.

It is the examining attorney's burden to show that a term is merely descriptive of an applicant's goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Once a prima facie case is established, the burden of rebuttal shifts to Applicant. *Id.*; *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016).

B. Arguments of the Examining Attorney and Applicant

The Examining Attorney contends that LEDGERDOMAIN combines the words LEDGER and DOMAIN.⁵ "LEDGER" describes a "collection of financial accounts of a particular type,"⁶ she contends, and "DOMAIN" describes "a sphere of activity, influence, or knowledge."⁷ Applicant's software goods and services are intended for the sphere of activity of distributed ledgers (that is, to record financial transactions on an electronic ledger that is distributed over a decentralized group of computers, not a centralized computer base).⁸ "As Applicant's software is for use in the sphere of activity of distributed ledgers, the individual components [LEDGER and DOMAIN] and the composite result [LEDGERDOMAIN] are descriptive of the field of use of Applicant's goods and services, and thus a feature and characteristic of them," the Examining Attorney concludes.⁹

⁵ Examining Attorney's brief, 37 TTABVUE 8.

⁶ OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/us/ledger>, 12/20/2016, Dec. 20, 2016 Office Action TSDR 6; Examining Attorney's brief, 37 TTABVUE 9.

⁷ AMERICAN HERITAGE DICTIONARY, YourDictionary.com 3/13/2018, March 13, 2018 Office Action TSDR 100, Examining Attorney's brief, 37 TTABVUE 10.

⁸ *See generally* Aug. 17, 2017 Office Action, TSDR 75-76, March 13, 2018 Office Action, TSDR 88.

⁹ Examining Attorney's brief, 37 TTABVUE 10.

In support of this conclusion, the Examining Attorney adduces Internet evidence of third parties using the terms “ledger” and “domain” together. In her brief, she cites, for example:

- “Someone created an electronic **ledger domain** (a blockchain), and let the world know they could use high-powered computers, all tied together like miners filing down a mineshaft, to mine other computers to find bitcoins.”¹⁰
- “In fact, this technology could affect a wide range of offerings and practices in financial services:... More startups in the distributed **ledger domain**.”¹¹
- “So why did I take us through this analysis? Because it gets us to the heart of the distributed **ledger domain**: the thing that is genuinely new is the emergence of platforms, shared across the Internet between mutually distrusting actors, that allow them to reach consensus about the existence and evolution of facts shared between them.”¹²
- “Blockchain remains on the agenda everywhere. However distribution of elucidation is not broadly available outside a few **ledger domain** experts & now the BWJ (‘Bandwagon Jumpers’ – keep up at the back!) vendors of ignorance will be eagerly distributing their myopia amongst the regulators....”¹³
- “Provided that there isn’t any manner of deciding objectively which blockchain should be favoured over the other, the Bitcoin protocol implements a specific fork-alternative technique stipulating that, if there is a battle some place on the network, the longest chain shall win....As a result [] it will get us to the guts of the distributed **ledger domain**: the thing that’s genuinely new is the

¹⁰ “These Two Rules for Trading Bitcoin Could Save Your Wallet” ZenithTradingCircle.com 10/4/2017, downloaded 3/6/2018, March 13, 2018 Office Action TSDR 26-27, Examining Attorney’s brief, 37 TTABVUE 10 (emphasis added in all quotes).

¹¹ “A Strategists’ Guide to Blockchain” Strategy-Business.com 1/11/2016, downloaded 8/17/2017, Aug. 17, 2017 Office Action TSDR 13-28, Examining Attorney’s brief, 37 TTABVUE 11.

¹² “Introducing R3 Corda™: A Distributed Ledger Designed for Financial Services” R3cev.com/blog 4/5/2016 downloaded 8/17/2017, Aug. 17, 2017 Office Action TSDR 29-38.

¹³ Exchange Invest – The Daily Newsletter of Market Infrastructure, ExchangeInvest.com 2/23/2016, Aug. 17, 2017 Office Action TSDR 62.

emergence of platforms, shared throughout the Internet between mutually distrusting actors, that permit them to succeed in consensus in regards to the existence and evolution of information shared between them.”¹⁴

- **“Ledger domain:** Blockchain technology could be disruptive or merely transformative, but it’s coming to a financial institution near you.”¹⁵

Applicant agrees that the word LEDGER in its applied-for mark potentially describes a feature of its goods and services that pertain to distributed ledger databases.¹⁶ It contends, however, that the word DOMAIN has too broad a meaning to describe a feature. DOMAIN “by itself, is not descriptive, needing another word, preferably a subject, to be meaningful,”¹⁷ Applicant argues, “in ordinary diction, the word ‘domain’ is not readily used as a substitute for ‘subject’ or ‘field’ in ordinary

¹⁴ Portuguese Uniao de Mocidade da Assembleia de Deus Ministerio de Belem (Union of the Youth of the Assembly of God, Belem Brazil), UMADEMB site: www.UMADEMB.com, 5/7/2016, Aug. 17, 2017 Office Action TSDR 64.

¹⁵ IB In Business, Madison, Wisconsin, IBMadison.com 5/2017, downloaded 8/17/2017, Aug. 17, 2017 Office Action TSDR 8-12, Examining Attorney’s brief, 37 TTABVUE 12. Not cited in the Examining Attorney’s brief, but included in the record, are some other website examples: “Ledger Domain–Entity-Relationship” [Github.com/rafaelturon/blockchain-investments](https://github.com/rafaelturon/blockchain-investments) 8/17/2017, “Research Project supervisor in the Distributed Ledger domain (Block chain)” [Au.LinkedIn.com/in/dewaalesterhuyse](https://au.linkedin.com/in/dewaalesterhuyse) 8/17/2017, “In a few months this guy will be forced back to his Ledger domain, abandoning amateur blockchain magic for good.” www.reddit.com/r/Bitcoin/comments 8/17/2017, “Namecheap provides the best .3 bitcoin for sale web bitcoin price hosting of any Bitcoin ledger domain registrar and web host.” Google cache of www.AmericasLocalMarketingExperts.biz/bitcoin-nc posted 6/15/2017, “Once exclusively the *bitcoin ledger* domain of tech-savvy libertarians,...”, Google cache of www.OrfeoSpeaker.com/bitcoin-160 posted 6/19/2017, “All of the transactional details in the RMG network will be published on a public ledger domain but identities behind the transaction will be encrypted by use of blockchain technology.” [Cryptoground.com](https://cryptoground.com) 3/6/2018, “A blockchain-based cross-domain solution is likely to be less complex...” www.ibm.com 3/6/2018, “The project, developed at MIT, removes central authorities altogether and uses the blockchain as a distributed ledger of domains and their associated public keys.” [Venturebeat.com](https://venturebeat.com) 3/6/2018, Aug. 17, 2017 Office Action TSDR 48, 50-51, 54, 57-58, March 13, 2018 Office Action TSDR 11, 15, 21.

¹⁶ Applicant’s brief, 35 TTABVUE 7 n. 2, Applicant’s reply brief, 38 TTABVUE 3.

¹⁷ Applicant’s brief, 35 TTABVUE 8.

commercial speech. Expressions such as ‘This product is in the automotive domain’ or ‘We provide accounting domain software services,’ are not common.”¹⁸ In fact, Applicant points out, based on the evidence adduced by the Examining Attorney, there are at least nine dictionary definitions of “domain.” For example:

domain

1. (**networking**) A group of computers whose **fully qualified domain names** (FQDN) share a common suffix, the "domain name".

The **Domain Name System** maps **hostnames** to **Internet address** using a hierarchical **namespace** where each level in the hierarchy contributes one component to the FQDN. For example, the computer foldoc.doc.ic.ac.uk is in the doc.ic.ac.uk domain, which is in the ic.ac.uk domain, which is in the ac.uk domain, which is in the uk **top-level domain**.

A domain name can contain up to 67 characters including the dots that separate components. These can be letters, numbers and hyphens.

2. An **administrative domain** is something to do with **routing**.

3. **Distributed Operating Multi Access Interactive Network**.

4. (**mathematics**) In the theory of functions, the set of argument values for which a **function** is defined.

See **domain theory**.

5. (**programming**) A specific phase of the **software life cycle** in which a developer works. Domains define developers' and users' areas of responsibility and the scope of possible relationships between products.

6. The subject or market in which a piece of software is designed to work.

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¹⁸ Applicant’s brief, 35 TTABVUE 9.

¹⁹ FREE ON-LINE DICTIONARY OF COMPUTING, Foldoc.org 12/20/2016, Dec. 20, 2016 Office Action TSDR 10.

do·main  (dō-mān) Share: [Tweet](#)

n.

1. A territory over which rule or control is exercised.
2. A sphere of activity, influence, or knowledge: the domain of history. See Synonyms at **field**.
3. Mathematics
 - a. The set of all possible values of an independent variable of a function.
 - b. An open connected set that contains at least one point.
4. Computers A group of networked computers that share a common communications address.
5. Physics Any of numerous contiguous regions in a ferromagnetic material in which the direction of spontaneous magnetization is uniform and different from that in neighboring regions.
6. Biology Any of three primary divisions of organisms, consisting of the eukaryotes, bacteria, and archaea, that rank above a kingdom in taxonomic systems based on similarities of DNA sequences.
7. Law The land of one with paramount title and absolute ownership.

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Applicant argues that the broad and disparate meanings of the term “DOMAIN” suggest that it functions like the word “TECHNOLOGY” as discussed in *In re Hutchinson Technology*.²¹ In that case, where the applicant applied to register HUTCHINSON TECHNOLOGY for electronic and mechanical computer components but was refused based on the Board’s ruling that the mark as a whole was primarily merely a surname, the Board had found that the word “technology” was descriptive and thus did not detract from the surname significance of “Hutchinson.” *In re Hutchinson Tech., Inc.*, 852 F.2d 552, 7 USPQ2d 1490, 1491 (Fed. Cir. 1988). The

²⁰ AMERICAN HERITAGE DICTIONARY, AHDictionary.com 8/17/2017, Aug. 17, 2017 Office Action, TSDR 121. The Examining Attorney has submitted a multiplicity of other dictionary definitions of “domain.” See, e.g., Webopedia.com, YourDictionary.com, Wiktionary, WEBSTER’S NEW WORLD TELECOM DICTIONARY, WEBSTER’S NEW WORLD COLLEGE DICTIONARY, WEBSTER’S NEW WORLD LAW DICTIONARY, COMPUTER DESKTOP ENCYCLOPEDIA, March 13, 2018 Office Action TSDR 92, 99-100, 102, 109-113.

²¹ Applicant’s reply brief, 38 TTABVUE 6.

Federal Circuit reversed, noting that, in finding that “Technology” was descriptive, “the board solely relied on Hutchinson’s concession that ‘technology’ is used on many goods similar to those listed in Hutchinson’s application.” *Id.* at 1492. But the Court held that “the fact that the term ‘technology’ is used in connection with computer products does not mean that the term is descriptive of them. Many other goods possibly may be included within the broad term ‘technology,’ but that does not make the term descriptive of all of those goods.” *Id.* at 1492.²²

Applicant goes beyond the situation presented in *Hutchinson* and argues that the third-party quotes on which the Examining Attorney relies illustrate the broad, disparate and imprecise use of the term “domain” in the general field of computers and information. Some examples of the broad, disparate and imprecise uses supporting Applicant’s position are summarized by Applicant as follows:

- Several of the Examining Attorney’s quotes use “domain” to modify the term “**distributed** ledger,” and not “ledger,” as Applicant’s applied-for mark does. The difference is significant, Applicant argues, as a “ledger,” which can be centralized, has a materially different connotation from a “distributed ledger.”²³
- Some quotes use “domain” to mean “industry,” as in “More startups in the distributed ledger domain.”²⁴
- Other quotes use “domain” to modify “experts,” as in “a few ledger domain experts....”²⁵

²² The Court noted that the Board had affirmed the examining attorney’s requirement that “Technology” be disclaimed, *id.* at 1491 n.5, and the Court remanded to the USPTO for entry of the disclaimer. *Id.* at 1493.

²³ Applicant’s brief, 35 TTABVUE 10 n. 5; *see* Applicant’s reply brief, 38 TTABVUE 5.

²⁴ “A Strategists’ Guide to Blockchain” Strategy-Business.com 1/11/2016, downloaded 8/17/2017, Aug. 17, 2017 Office Action TSDR 13-28, Applicant’s brief, 35 TTABVUE 11.

²⁵ Exchange Invest – The Daily Newsletter of Market Infrastructure, ExchangeInvest.com 2/23/2016, Aug. 17, 2017 Office Action TSDR 62, Applicant’s brief, 35 TTABVUE 11.

- Still other quotes use “domain” as a “subset of computers,” as in “Someone created an electronic ledger domain....”²⁶
- And some quotes are unclear as to precisely what is meant, as in “Because it gets us to the heart of the distributed ledger domain....”²⁷

Given these vague, imprecise uses of the term “domain,” Applicant concludes, the Examining Attorney has not met her burden of establishing prima facie that “ledger domain” has a merely descriptive meaning that immediately conveys information concerning a feature or characteristic of Applicant’s software goods and services.²⁸

In any event, Applicant maintains, LEDGERDOMAIN is a double entendre, a play on the word “legerdemain.” The word means sleight of hand, such as that performed by a magician, and suggests skill or adroitness.²⁹ In support of this argument, Applicant cites the MERRIAM-WEBSTER dictionary:

Definition of LEGERDEMAIN

- 1 : SLEIGHT OF HAND • displays *legerdemain* with cards and coins
- 2 : a display of skill or adroitness
 - a remarkable piece of diplomatic *legerdemain* — Anthony West

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²⁶“These Two Rules for Trading Bitcoin Could Save Your Wallet” ZenithTradingCircle.com 10/4/2017, downloaded 3/6/2018, March 13, 2018 Office Action TSDR 27, Applicant’s brief, 35 TTABVUE 11.

²⁷ “Introducing R3 Corda™: A Distributed Ledger Designed for Financial Services” R3cev.com/blog 4/5/2016 downloaded 8/17/2017, Aug. 17, 2017 Office Action TSDR 29-38, Applicant’s brief, 35 TTABVUE 11.

²⁸ Applicant’s brief, 35 TTABVUE 12.

²⁹ Applicant’s brief, 35 TTABVUE 12-14; Applicant’s reply brief, 38 TTABVUE 7-8.

³⁰ Merriam-Webster.com/dictionary/legerdemain 6/12/2017; June 20, 2017 Response to Office Action TSDR 10-11.

The Examining Attorney responds that even though the term “domain” has multiple meanings, some of which are not descriptive, that is beside the point. “So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.”³¹ The issue, she insists, is not whether “ledger” and “domain” combine to convey a precise aspect of Applicant’s intended goods and services, but whether the average purchaser—someone seeking software goods or services to enable participation in an electronic distributed ledger—would understand the applied-for mark to convey information about them.³² And since the relevant purchaser will understand that Applicant’s goods and services are for use in the domain of distributed ledgers, she maintains, the proposed mark LEDGERDOMAIN conveys information about them, namely their field of use.³³

As for Applicant’s double entendre argument, the Examining Attorney argues, “[t]he multiple interpretations that make an expression a ‘double entendre’ must be associations that the public would make fairly readily, and must be readily apparent from the mark itself.”³⁴ For example, in *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968), the Court of Customs and Patent Appeals wrote, “[t]he immediate impression evoked by the mark [SUGAR & SPICE for bakery goods] may

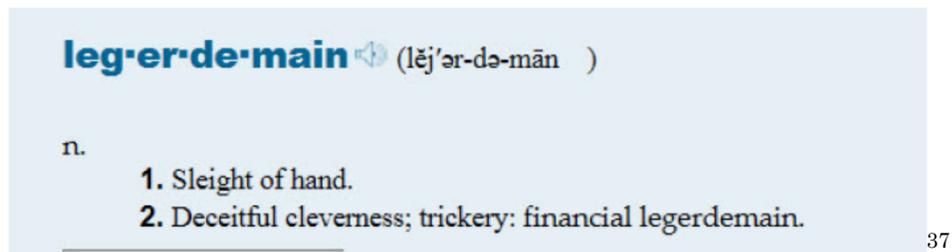
³¹ Examining Attorney’s brief, 37 TTABVUE 13, quoting *In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (2007).

³² Examining Attorney’s brief, 37 TTABVUE 13-14, citing *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012).

³³ Examining Attorney’s brief, 37 TTABVUE 14-15.

³⁴ Examining Attorney’s brief, 37 TTABVUE 17, quoting the TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPEP) § 1213.05(c) (Oct. 2018).

well be to stimulate an association of ‘sugar and spice’ with ‘everything nice.’ As such, on the record below, the mark, along with the favorable suggestion which it may evoke, seems to us clearly to function in the trademark sense and not as a term merely descriptive of goods.” *Id.* at 385. In this case, the Examining Attorney contends, “there is nothing associated with the applied-for mark that would elicit ‘legerdemain’ in the minds of consumers. Unlike SUGAR & SPICE, the term ‘legerdemain’ does not evoke a pleasant connotation....”³⁵ Indeed, she argues, “legerdemain” carries a negative connotation in relation to financial matters.³⁶ According to the AMERICAN HERITAGE DICTIONARY, it is defined as:



In asking consumers to see “legerdemain” in LEDGERDOMAIN, Applicant assumes that consumers would disassociate their established knowledge of the term “ledger domain” — which has a neutral or positive meaning in relation to the applied-for goods and services — and associate it with a term that generally has negative connotations in relation to fields other than magic, the Examining Attorney argues.³⁸ For these reasons, the Examining Attorney concludes, the double entendre argument

³⁵ Examining Attorney’s brief, 37 TTABVUE 18.

³⁶ Examining Attorney’s brief, 37 TTABVUE 18 n. 37.

³⁷ AMERICAN HERITAGE DICTIONARY, March 13, 2018 Office Action TSDR 163.

³⁸ June 10, 2018 Office Action TSDR 4.

must fail, and the applied-for mark is merely descriptive.

C. Analysis

There is no dispute that LEDGERDOMAIN contains one term, “LEDGER,” that is descriptive. The issue is whether adding the other term, “DOMAIN,” renders the applied-for mark, taken as a whole, merely descriptive.

In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components. ... [I]f ... two portions individually are merely descriptive of an aspect of appellant’s goods [or services], the PTO must also determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.

In re Oppedahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

If each component retains its merely descriptive significance in relation to the goods or services, then the mark as a whole is merely descriptive. *Id.* at 1374; *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1955 (TTAB 2018). And if the mark as a whole is merely descriptive, the omission of a space between the two components would not diminish its descriptiveness. “It is almost too well established to cite cases for the proposition that an otherwise merely descriptive term is not made any less so by merely omitting spaces between the words...” *Minn. Mining & Mfg. Co. v. Addressograph-Multigraph Corp.*, 155 USPQ 470, 472 (TTAB 1967). *See also In re Aquamar, Inc.*, 115 USPQ2d 1122, 1125 (TTAB 2015); *In re Carlson*, 91 USPQ2d 1198, 1200 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, consultation and listing services); *In re A La Vieille Russie Inc.*, 60

USPQ2d 1895, 1897n. 2 (TTAB 2001) (“the compound term RUSSIANART is as merely descriptive as its constituent words, ‘Russian Art’”).

Even if we were to assume, without finding, that the word DOMAIN also retains a descriptive significance in relation to the goods or services, we find that when LEDGER and DOMAIN are combined, the term LEDGERDOMAIN lends itself to more than one interpretation: as a double entendre. This was illustrated in *In re Wilderness Group*, where the Board found that the mark LET YOUR HIPS SHOULDER THE LOAD for backpacks:

has multiple connotations or a “double entendre”. Under these circumstances and in the absence of evidence to suggest that the slogan constitutes phraseology commonly employed by others in the industry to describe the operative mode of their goods, it is concluded that the slogan “LET YOUR HIPS SHOULDER THE LOAD” is not merely descriptive of applicant’s goods and does, in fact, serve as a trademark to identify and distinguish applicant’s goods in commerce.

In re Wilderness Grp., Inc., 189 USPQ 44, 46 (TTAB 1975).

Here, as in that case, we have found that LEDGERDOMAIN has an alternative meaning that would be readily perceived by consumers as a double entendre on the word “legerdemain.” A “double entendre” is defined as “ambiguity of meaning arising from language that lends itself to more than one interpretation.” *In re The Place Inc.*, 76 USPQ2d 1467, 1470 (TTAB 2005) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993)). “For trademark purposes, a ‘double entendre’ is an expression that has a double connotation or significance as applied to the goods or services.” TMEP § 1213.05(c), cited in *In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB

2017).

A double entendre may arise where a combination of descriptive components creates a readily-understood alternative meaning. *In re Leonhardt*, 109 USPQ2d 2091, 2098 (TTAB 2008). For example:

- SUGAR & SPICE for bakery products;³⁹
- THE SOFT PUNCH for noncarbonated soft drink;⁴⁰
- NO BONES ABOUT IT for boneless pre-cooked ham;⁴¹
- LET YOUR HIPS SHOULDER THE LOAD for backpacks;⁴²
- HAY DOLLY for self-loading trailers for hauling bales;⁴³ and
- NAPSACK for baby carriers.⁴⁴

The multiple interpretations that make an expression a ‘double entendre’ must be associations that the public would make fairly readily, and must be readily apparent from the mark itself. *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1105 (TTAB 2018); *In re Calphalon*, 122 USPQ2d at 1163-64; TMEP § 1213.05(c). So even though Applicant’s chief executive officer, Benjamin James Taylor, attests that “I selected LEDGERDOMAIN as our mark in 2016 because, in my view, it is a wry and clever play on the term ‘legerdemain,’ which refers to sleight of hand,”⁴⁵ it is the public’s

³⁹ *In re Colonial Stores Inc.*, 157 USPQ 382.

⁴⁰ *In re Del. Punch Co.*, 186 USPQ 63 (TTAB 1975).

⁴¹ *In re Nat’l Tea Co.*, 144 USPQ 286 (TTAB 1965).

⁴² *In re Wilderness Grp.*, 189 USPQ 44.

⁴³ *In re Priefert Mfg. Co. Inc.*, 222 USPQ 731, 733 (TTAB 1974).

⁴⁴ *In re Happy Baby Carrier Co.*, 179 USPQ 864 (TTAB 1973).

⁴⁵ Taylor declaration ¶ 5, May 7, 2018 request for remand, 23 TTABVUE 5.

perception, not Applicant’s intent, that controls. Moreover, even though Applicant has considered and used logos to reinforce its brand’s association with magic, logos



such as ⁴⁶ and ⁴⁷, we must limit our consideration to the mark as applied for, i.e., the standard character mark LEDGERDOMAIN itself. “A mark thus is deemed to be a double entendre only if both meanings are readily apparent *from the mark itself*. If the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the applicant’s trade dress, advertising materials or other matter separate from the mark itself, then the mark is not a double entendre.” *In re The Place*, 76 USPQ2d at 1470, *quoted in In re Carlson*, 91 USPQ2d at 1202.

Disregarding Applicant’s logos, we find that LEDGERDOMAIN readily conjures an association with “legerdemain.” The two terms are visually similar, differing only in two letters. The two terms are also aurally similar—almost phonetic equivalents. *See In re Priefert*, 222 USPQ at 733 (HAY DOLLY phonetically equivalent to the expression “Hey Dolly”). “Legerdemain” is a familiar word that has long been a part of the English lexicon. According to the MERRIAM-WEBSTER DICTIONARY, English speakers borrowed “legerdemain” from the French in the fifteenth century and began

⁴⁶ Taylor decl. ¶ 6, May 7, 2018 request for remand, 23 TTABVUE 5-6, 36.

⁴⁷ Taylor decl. ¶ 6, May 7, 2018 request for remand, 23 TTABVUE 5-6.

using it as an alternative to the older “sleight of hand” to denote dexterity or skill in using one’s hands. “In more modern times, a feat of legerdemain can even be accomplished without using your hands, as in, for example ‘an impressive bit of financial legerdemain.’”⁴⁸ Indeed, as shown above, the AMERICAN HERITAGE DICTIONARY also uses the example “financial legerdemain.”⁴⁹ *See In re Virtual Indep. Paralegals*, 2019 USPQ2d 111512, *2 (TTAB 2019) (“Evidence of the public’s understanding of a term may be obtained from ‘any competent source, such as ... dictionaries, newspapers and other publications.’”) (quoting *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015)).

The relevant public can readily be expected to grasp the double entendre. Applicant’s goods and services are directed toward customers seeking software to participate in financial transactions on electronic distributed ledgers. In addition to the “financial legerdemain” examples used in MERRIAM-WEBSTER and AMERICAN HERITAGE DICTIONARY, customers of that sort—a financially sophisticated group—have been exposed to financial publications using the term “legerdemain.” To illustrate:

- “Blockchain Could Make You—Not Equifax—the Owner of Your Data” Investopedia.com 5/3/2018, (“But no technological **legerdemain** can overcome the fact that once the buyer has your data....”);
- “Bored With Banking, This Former Citi Trader Went Full Crypto” Bloomberg.com 2/1/2018 (“[B]lockchain, an open digital ledger that records and reveals every transaction executed with Bitcoin, ensures greater transparency than the crooks’ usual offshore **legerdemain**.”);

⁴⁸ Merriam-Webster.com/dictionary/legerdemain 6/12/2017, June 20, 2017 Response to Office Action TSDR 12.

⁴⁹ AMERICAN HERITAGE DICTIONARY, March 13, 2018 Office Action TSDR 163.

- “Expensive Research and Cheap Hedge Funds” Bloomberg.com 2/28/2017 (quoting Warren Buffet: “There are many ways for practitioners to perform this **legerdemain**.”).
- “China’s Fiscal **Legerdemain**” Wall Street Journal 3/14/2011, downloaded from WSJ.com 6/10/2018;
- “How UBS Profited from Lehman’s Accounting Duplicity” SeekingAlpha.com 3/18/2010, downloaded 6/10/2018 (“To dress up its balance sheet, Lehman engaged in a myriad of ‘Repo 105’ transactions, a financial **legerdemain** that allowed the company to raise cash by parking assets at rival overseas firms and booking the sham swaps as ‘sales.’”);
- “Option-Income CEFs May Be a Smarter Choice” Kiplinger.com 2/1/2012 downloaded 6/10/2018 (“Last month I whistled a flagrant foul on closed-end funds that use **legerdemain** to pay fat distributions (not dividends per se) but do so at the cost of the erosion of the funds’ asset values.”)⁵⁰

Even if “legerdemain” sometimes has a negative connotation of “deceitful cleverness” in these financial publications,⁵¹ it also has positive connotations of skill or adroitness.⁵² It can convey the connotation that Applicant’s software goods and services enable one to engage in transactions swiftly and dexterously—in a snap, as if by digital prestidigitation. This is consistent with a connotation of skill or adroitness, and with a main function of distributed ledgers: to facilitate transactions. Moreover, even if LEDGERDOMAIN evokes a negative connotation among some members of the relevant public, that alternative connotation is still being evoked; that is to say, the customer must ‘get’ the alternative connotation “legerdemain” in

⁵⁰ 23 TTABVUE 170-202; June 10, 2018 Office Action TSDR 91, 94, 97 (emphases added).

⁵¹ AMERICAN HERITAGE DICTIONARY (5th ed. 2018), March 13, 2018 Office Action TSDR 164, Examining Attorney’s brief, 37 TTABVUE 18.

⁵² Merriam-Webster.com/dictionary/legerdemain 6/12/2017; June 2- 2017 Response to Office Action TSDR at 10-11.

order to attach a positive or negative significance thereto.⁵³ Thus, we do not agree with the Examining Attorney that the possible negative connotation invalidates it as a double entendre. Given the obvious play on words, the double entendre would be readily apparent to prospective purchasers. *See In re Grand Metropolitan Foodservice Inc.*, 30 USPQ2d 1974, 1976 (TTAB 1994) (because applicant’s inventive *MufFuns* mark for baked mini muffins is “an obvious play on the word ‘muffin’ and the word ‘fun,’ we believe that the meaning or commercial impression of applicant’s mark will be more than that simply of the word ‘muffins.’ Therefore, applicant’s mark is not merely descriptive.”).

A true double entendre is a rarity—an uncommon creative exception to the general run of applied-for marks—yet Applicant’s proposed mark so qualifies. LEDGERDOMAIN readily conveys an alternative meaning, “legerdemain,” which may be positive or negative, but is not merely descriptive in relation to its identified goods and services. *See In re White Swan Ltd.*, 8 USPQ2d 1534, 1535-36 (TTAB 1988) (“[A]pplicant’s mark SHAKE SCATTER & GROW probably does for some consumers bring to mind a song. ... In appropriate cases, the fact that a descriptive word has a double meaning may indicate that the word is not ‘merely descriptive’ of the goods or services.”) (citations omitted); *In re Comp. Bus. Sys. Grp.*, 229 USPQ 859, 859-60 (TTAB 1985) (“When a term or phrase, as applied to the goods or services in question, possesses double meaning; suggests something more than a characteristic of the goods; and functions as more than a mere description of the goods; it is not merely

⁵³ *See* Applicant’s reply brief, 38 TTABVUE 8.

descriptive....”).

II. Conclusion

Upon consideration of the applicable law, the evidence and the arguments of Applicant and the Examining Attorney, including those not specifically discussed in this opinion, we find that Applicant’s proposed mark LEDGERDOMAIN is a double entendre. Thus, it is not merely descriptive under Section 2(e)(1).

Decision: The refusal to register Applicant’s proposed mark LEDGERDOMAIN is reversed.

Opinion by Adlin, Administrative Trademark Judge, dissenting:

I respectfully dissent because we “must consider the mark as a whole and do so **in the context of the goods or services at issue.**” *DuoProSS*, 103 USPQ2d at 1757 (emphasis added); *In re Calphalon*, 122 USPQ2d at 1162. The majority’s treatment of the evidence of record does not fully account for the “context” of Applicant’s identified goods and services.

I therefore part from the majority for three reasons, each related to the nature and “context” of Applicant’s blockchain-related goods and services. First, the majority considered several dictionary definitions of the term DOMAIN, but was not persuaded that they establish that the proposed mark is descriptive; I find the definitions probative and persuasive. Second, the majority considered but found unpersuasive fairly extensive evidence of third-party use of DOMAIN with LEDGER in the context of blockchain-related goods and services; I find this evidence compelling. Third, the majority found that LEDGERDOMAIN is a double entendre because its second meaning would be readily apparent to consumers; I disagree that

the second meaning would be apparent, because it is inconsistent with one of blockchain technology's main functions: security and verification of transactions.

Applicant acknowledges that it intends to use LEDGERDOMAIN "in connection with a wide array of blockchain-related goods and services (which goods and services concern, inter alia, the use of distributed ledger databases)." 35 TTABVUE 3 (Applicant's Appeal Brief at 2) (parenthetical in original). In fact, all of the goods and services identified in the involved application – from the "downloadable software" in Class 9 to the "application service provider," "software as a service" and "platform as a service" services in Class 42 – specifically relate to the fields of "blockchains" and "distributed ledgers." Thus, blockchain technology is the prism through which we must consider whether the proposed mark has been shown to be merely descriptive.

Descriptiveness of DOMAIN.

Applicant and the majority recognize that LEDGER is descriptive, but find DOMAIN too vague to be descriptive. In my view, the dictionary definitions of record, when given proper weight, reveal otherwise. The following dictionary definitions of DOMAIN are relevant here:

The definition of a domain is a group of workgroups within the same company or organization that governs the ability of all the computers to communicate with other groups of computers both within and outside of the organization

1. *An example of a domain is the overall decision point that defines which resources on the network are accessible to a given user and keeps track of login and password information for all users within a set of workgroups in an organization ...*

noun

1. The definition of a domain is the area a given person or people rules or an area of knowledge ...

March 13, 2018 Denial of Request for Reconsideration, TSDR 109 (“yourdictionary.com/domain”). The same “yourdictionary.com” entry also includes definitions from other sources:

(computing) A collection of information having to do with a domain, the computers named in the domain, and the network on which the computers named in the domain reside

(computing) The collection of computers identified by a domain’s domain names

(data processing) a form of technical metadata that represent the type of data item, its characteristics, name, and usage

id. at 111 (from Wiktionary); and

(computer definition) Sphere of influence

id. at 112 (from Webster’s New World Telecom Dictionary); and, perhaps most importantly here:

- (1) In a LAN, a subnetwork made up of a group of clients and servers under the control of one security database. Dividing LANs into domains improves performance and security.
- (2) In a communications network, all resources under the control of a single computer system.
- (4) In database management, all possible values contained in a particular field for every record in the file.
- (7) In a hierarchy, a named group that has control over the groups under it, which may be domains themselves.

Id. at 112-113 (from Computer Desktop Encyclopedia).

While many of these definitions are technical and may be difficult to parse, at the same time they make clear that whether used to describe a network, a database, a computer hierarchy or sphere of influence, an industry, or a collection of computers or information, DOMAIN describes features of blockchain/distributed ledger software. In other words, while the evidence reveals that DOMAIN has multiple meanings, most if not all of those meanings are descriptive of Applicant's identified goods and services.

Use of DOMAIN with LEDGER in the context of blockchain goods and services.

While the question is whether the proposed mark LEDGERDOMAIN in its entirety is merely descriptive, the third-party uses in the record show that it is. For example, the “zenithtradingcircle.com” article states “Someone created an **electronic ledger domain** (a blockchain)” March 13, 2018 Office Action TSDR 26-27 (emphasis added). This use of parentheses around “a blockchain” makes clear that the publication defines “electronic ledger domain” as a blockchain, which is an undisputed (and primary) feature of Applicant's software and identified services. The “strategy-business.com” article (“A Strategist's Guide to Blockchain”) refers to “More startups in the **distributed ledger domain.**” August 17, 2017 Office Action TSDR 21 (emphasis added). This makes clear that “distributed ledger domain” describes the field of distributed ledgers/blockchain. The “exchangeinvest.com” article about Blockchain refers to “**ledger domain experts**” *Id.* at 62 (emphasis added).⁵⁴

⁵⁴ While some evidence of record is from foreign sources, that should not prevent us from considering the evidence, especially given the highly technical nature of Applicant's software and services. *See e.g. In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007); *In re Well Living Lab Inc.*, 122 USPQ2d 1777, 1781 n.10 (TTAB 2017); *In re Int'l Bus.*

There are many other similar examples.

While the majority is correct that in some of the examples of record the term “domain” does not modify “ledger,” there are more than enough examples where “domain” does clearly modify “ledger” to support a finding of descriptiveness. Moreover, even in the examples where “domain” does not appear to necessarily modify “ledger,” the terms are used in such a way that the composite “ledgerdomain” would appear to have a merely descriptive meaning to the relevant consumers of Applicant’s blockchain-related goods and services. Whether that meaning is a computer network or database featuring distributed ledgers, or the distributed ledger field or industry, it is still descriptive. Moreover, the evidence reveals use of “electronic ledger domain,” “public ledger domain,” “digital ledger domain” and “distributed ledger domain” as phrases, and in the context of Applicant’s identified goods and services, the terms “electronic,” “public,” “digital” and “distributed” are, if not generic, then at best merely descriptive of the referenced ledger domain. These uses of record also reveal the merely descriptive nature of “ledger domain.”

Machines Corp., 81 USPQ2d 1677, 1681 n.7 (TTAB 2006) (“it is reasonable to consider a relevant article” regarding computer technology from a foreign English-language website); Indeed, we must consider whether LEDGERDOMAIN is descriptive to purchasers of Applicant’s distributed ledger software and services, by definition a technologically sophisticated group which would be expected to consider materials about their highly specialized field from many sources, foreign and domestic. *See In re Cell Therapeutics Inc.*, 67 USPQ2d 1795, 1797-98 (TTAB 2003); *In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) (“it is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium”).

LEDGERDOMAIN is not a double entendre

As for whether LEDGERDOMAIN is a double entendre sufficient to overcome the descriptiveness refusal, we must keep in mind that “[a] double entendre is registrable only if the second, non-descriptive meaning would be readily apparent to the consumer from the mark itself.” *In re S. Malhotra*, 128 USPQ2d at 1105; *In re Calphalon* 122 USPQ2d at 1163 (“The multiple interpretations that mark an expression a ‘double entendre’ must be associations the public would make fairly readily”). In this case, Applicant’s proffered secondary meaning is inconsistent with one of the most important features of blockchains and distributed ledgers, and perhaps even their “key differentiating attribute” – security and trust, arising from the decentralized nature of blockchain technology and the “indelible record” it creates. August 17, 2017 Office Action TSDR 14 (article stating “decentralized verification” is “the key differentiating attribute” of blockchains). This feature has been repeatedly noted by the evidence of record:

a digital database containing information (such as records of financial transactions) that can be simultaneously used and shared within a large decentralized, publicly accessible network; *also*: the technology used to create such a database

– The technology at the heart of bitcoin and other virtual currencies, *blockchain* is an open, distributed ledger that can record transactions between two parties efficiently and **in a verifiable and permanent way**.

– Marco Iansiti and Karim R. Lakhani

March 13, 2018 Denial of Request for Reconsideration, TSDR 88 (“merriam-webster.com/dictionary/blockchain”) (emphasis added).

A blockchain is a digitized, decentralized, public ledger of all cryptocurrency transactions ... Originally developed as the accounting method for the virtual currency Bitcoin, blockchains — which use what’s known as distributed ledger technology (DLT) — are appearing in a variety of commercial applications today. Currently, the technology is **primarily used to verify transactions** Doing so creates an **indelible record that cannot be changed**; furthermore, **the record’s authenticity can be verified** by the entire community using the blockchain instead of a single centralized authority.

June 10, 2018 Request for Remand — Reconsideration Denied, TSDR 48 (“Investopedia.com/terms/b/blockchain/asp”) (emphasis added).

Applicant focuses on this key attribute on its website, in offering “to bring the power **and security** of blockchain to enterprises and trading communities across the globe.” June 10, 2018 Request for Remand—Reconsideration Denied TSDR 18 (emphasis added). Because most or all relevant purchasers of blockchain and distributed ledger software and services are interested in security and trust, the alleged “second, non-descriptive meaning” of LEDGERDOMAIN would not be readily apparent, even to those familiar with the term “legerdemain.”⁵⁵ *See In re Polo Int’l Inc.*, 51 USPQ2d 1061, 1063 (TTAB 1999) (“If applicant produced goods related to the medical field, or specifically related to physicians, then the term ‘DOC’ would be readily understood by the public as referring to ‘doctor.’ However, here applicant’s goods are computer software for document management, and ‘DOC’ will be readily understood as referring to documents.”); *cf. In re RiseSmart, Inc.*, 104 USPQ2d 1931,

⁵⁵ Dictionaries include many obscure words, and here there is no evidence regarding how many relevant United States consumers are familiar with the term “legerdemain.”

1934 (TTAB 2012) (“the fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness”).⁵⁶ That is, sleight of hand is exactly the opposite of what relevant purchasers would be looking for, and as Applicant uses the term LEDGERDOMAIN, it is spelled the same way as it is in the third party uses of record in which the term “ledger domain” refers to blockchains and distributed ledgers.⁵⁷ In short, Applicant’s proffered second meaning would not be “readily apparent” from the proposed mark itself. *In re S. Malhotra*, 128 USPQ2d at 1105; *In re Calphalon*, 122 USPQ2d at 1163.

This case calls to mind *In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156 (TTAB 2003), in which we affirmed a Section 2(e)(1) refusal to register ETHNIC ACCENTS for television programs in the field of home décor, over the Applicant’s “double entendre” arguments, which were closely analogous to those Applicant makes here.

... To have a double entendre, both meanings must be readily apparent, but the meaning suggested by applicant is not apparent upon seeing the mark in connection with the services. Contrary to applicant’s illogical contention, the Examining Attorney’s “failure to understand the double entendre created by Applicant’s mark” does not “demonstrate that the mark is not merely descriptive.” (Reply brief, p. 2). On the contrary, it shows that the mark does not create a double entendre.

⁵⁶ While an apparently secondary definition of “legerdemain” is “skill and adroitness,” that is not the meaning Applicant claims that consumers would perceive, except perhaps in its “deceptive sense.” 35 TTABVUE 16. In any event this secondary meaning would be laudatory and thus also descriptive.

⁵⁷ This differentiates Applicant’s proposed mark from the misspelled terms in several of the double entendre cases upon which the majority relies.

Similarly, that applicant can take the dictionary definitions of the individual words in the term and come up with a meaning that makes no sense in connection with the services recited in the application does not mandate a different conclusion on the issue of mere descriptiveness.

Applicant's argument that the term is too broad to identify with any specificity or particularity the subject of its programs is not well taken either. We do not dispute the fact that there are a great number of ethnicities, nor do we dispute the fact that each may have its own distinctive racial, national, religious, linguistic or cultural heritage, but we cannot adopt applicant's argument that because of this fact, "ethnic" describes virtually everyone, and therefore does not describe anything with the specificity or particularity required in order for the refusal under Section 2(e)(1) to be appropriate in this case.

Id. at 1158-59.

As there, so here. I would affirm.