

This Opinion is not a
Precedent of the TTAB

Mailed: September 26, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Christopher Coles
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Serial No. 87570785
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Kerry A. Brennan of Brennan Law Firm PLLC,
for Christopher Coles, dba Cubestone Creative.

Yatsye I. Lee, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

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Before Zervas, Ritchie and Goodman,
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Christopher Coles dba Cubestone Creative (“Applicant”) seeks registration on the Principal Register of the mark BREW SCIENCE (in standard characters) for “Entertainment services, namely, on-line non-downloadable videos, in the field of beer, beer accessories and the beer industry; provision of entertainment, namely, on-line non-downloadable videos concerning beer, beer accessories and the beer industry” in International Class 41.¹

¹ Application Serial No. 87570785 was filed on August 16, 2017, under § 1(a), 15 U.S.C. § 1051(a), alleging August 13, 2017 as his date of first use and first use in commerce.

The Trademark Examining Attorney has refused registration of Applicant's mark on the ground that BREW SCIENCE is merely descriptive in relation to the identified services, under § 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).²

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

I. Mere Descriptiveness

Section 2(e)(1) of the Trademark Act prohibits the registration of a mark which, when used on or in connection with an applicant's goods or services, is merely descriptive of them. "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 AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Descriptiveness is analyzed in relation to an applicant's identified goods or services, "the context in which the [term] is being used, 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 or intended use"; that a term may have

Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

² Applicant amended the first portion of the identification based on the Examining Attorney's suggestion. November 22, 2017 Office Action at TSDR 1; Response to Office Action at TSDR 1. The Examining Attorney also issued a misdescriptiveness refusal in the February 15, 2018 Office Action at TSDR 1 but that refusal was later withdrawn in the January 9, 2019 Office Action at TSDR 1.

other meanings in different contexts is not controlling. *In re Bayer*, 82 USPQ2d at 1831. Descriptiveness is not considered in the abstract. *Id.* The question is whether someone who knows what the goods or services are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012).

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 & 1374 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents and for tracking the status of the records by means of the Internet).

The Examining Attorney argues that the term “brew science” is merely descriptive of Applicant’s identified services because it immediately conveys knowledge about a feature or subject matter of Applicant’s services, namely that the subject matter of the non-downloadable videos is broad enough to include the body of knowledge and information about the brewed beverage beer, as well as brewing beer. Applicant, by contrast, argues that “brew science” is arbitrary and fanciful and not merely descriptive because the term is not immediately associated with entertainment services.

A. Evidence

The Examining Attorney submitted evidence to show that “‘brew science’ refers to information about beer and brewing beer.” 6 TTABVUE 6.

The Examining Attorney provided the following dictionary definitions:

Brew (v.):³

1. : to prepare (beer, ale, etc.) by steeping, boiling, and fermentation or by infusion and fermentation
1. : to brew beer or ale

Brew (v.):⁴

1. To make (ale or beer) from malt and hops by infusion, boiling, and fermentation

Brew (n.):⁵

- a: a brewed beverage (such as beer)
- c: something produced by or as if by brewing

³ November 22, 2017 Office Action at TSDR at 2; February 15, 2018 Office Action at TSDR 3; January 9, 2019 Office Action at TSDR 2. MERRIAM-WEBSTER DICTIONARY, merriam-webster.com.

⁴ February 15, 2018 Office Action at TSDR 2, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th Ed. 2018), Ahdictionary.com.

⁵ February 15, 2018 Office Action at TSDR 3; January 9, 2019 Office Action at TSDR 2, MERRIAM-WEBSTER DICTIONARY, merriam-webster.com.

Science (n.):⁶

: something (such as sport or technique) that may be studied or learned like systemized knowledge, have it down to a science

: knowledge or a system of knowledge covering general truths of the operation of general laws especially as obtained and tested through scientific method

Science (n.):⁷

1. A systematic method or body of knowledge in a given area: the science of marketing

The Examining Attorney submitted articles relating to brew science programs at universities and colleges:

The students learned a lot about brew pub operations, **brew science**, brew marketing and the rules and regulations that govern local breweries.⁸

... White was prompted to start the Professional **Brew Science** Program at South College in 2013, and more recently, the Brewing+Distilling Center.⁹

⁶ November 22, 2017 Office Action at TSDR at 3; February 15, 2018 Office Action at TSDR 5; January 9, 2019 Office Action at TSDR 4, MERRIAM-WEBSTER DICTIONARY, merriam-webster.com.

⁷ February 15, 2018 Office Action at TSDR 4; January 9, 2019 Office Action at TSDR 3, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th Ed. 2018), Ahdictionary.com.

⁸ January 9, 2019 Office Action at TSDR 18, Kathryn Moschella, *Culinary students at University of South Florida Sarasota-Manatee Take the Art of Beer Science Seriously*, The Bradenton Herald (April 25, 2015).

⁹ January 9, 2019 Office Action at TSDR 19, Rachel Toten, *Brewing+Distilling Center Launches 13-week Certification Program*, The Daily Times (May 4, 2017).

Almost a decade ago, the idea of teaching beer as a science was untapped at Florida International University. ...In 2007, the **brew science** course was only an elective in the university's Chaplin School of Hospitality and Tourism Management and had about three students. ...Now there are multiple courses dedicated to the science and chemistry of making craft brews ...¹⁰

Lyle Farrell, who has been in the beer industry for 17 years and has a **brew science** degree from UC Davis, is still heading up the beer program, which will primarily feature local beers.¹¹

The Examining Attorney submitted web pages from colleges that provide information related to their brew science programs:

The Craft Brewing program provides an overview of the craft brewing business ... The certificate program is structured to help students learn **brew science** theory through hands-on experience in the brew laboratory and local breweries.¹²

The University of Richmond School of Professional and Continuing Studies "offers a beer brewer professional certificate for those interested in entering or advancing in the growing craft beer industry." The program offers 11 modules with 6 modules in "**Brew Science** and Brewery Process."¹³

¹⁰ February 15, 2018 Office action at TSDR 19-24, Lance Dixon, *Craft Beer Festival Celebrates Fifth Year with New Sponsor and Plenty of Brews*, Miami Herald (November 14, 2016).

¹¹ January 9, 2019 Office Action at TSDR 17, Stephanie Tudor, *Buzzworks Sports and Beer Bar Plans Overload of Screens and Craft Beers*, Eater.com (June 29, 2016).

¹² February 15, 2018 Office Action at TSDR 34-36, "Craft Brewing," catalog.skagit.edu.

¹³ February 15, 2018 Office Action at TSDR 37-41 "Beer Brewer Professional Certificate," spcs.richmond.edu.

The Examining Attorney submitted web pages from brewing companies that mention brew science:

We have two brewers, both with degrees in **brew science**.¹⁴ (HR Brewing).

If you ask Head Brewer John Syms and his team, they'll tell you Wynkoop's secret sauce lies in the longstanding tradition of craft beer pioneering and pushing the envelope ... John's take on 'craft beer unrest meets nerdy **brew science**' has yielded some exceptional batches of very tasty beer.¹⁵

The Examining Attorney submitted evidence of use of the term brew science in connection with experimenting when brewing beer:

The article about Petoskey Brewing discusses the "brew team's unconventional experiments" that have resulted in a "cult favorite" brew and mentions that the "**brew science** experiments, however, sometimes require artistic improvisation to deliver delicious beer from unexpected results."¹⁶

A blog titled **Brew Science – Home Brewing Blog**," discusses brewing experiments.¹⁷ For example, the blogger describes his experimentation:

I began brewing experiment beers for a yeast class that I taught at Brooklyn Homebrew. Ben and Danielle were kind

¹⁴ February 15, 2018 Office action at TSDR 6-8, hrbrewingco.com.

¹⁵ February 15, 2018 Office Action at TSDR 42-45, *Pioneering the Golden Age of Craft beer with Wynkoop Brewing Co.*, wynkoop.com.

¹⁶ February 15, 2018 Office action at TSDR 25-33 Tim Tebeau, *A Craft Beer Revival for One of Michigan's Oldest Breweries, Petoskey Brewing*, mynorth.com (September 28, 2017).

¹⁷ November 22, 2017 Office Action at TSDR 5, sciencebrewer.wordpress.com.

enough to provide resources and space for my scientific curiosities that kept brewing.¹⁸ ...

This beer was an experiment. I never did a cereal mash before and wanted to see if there was a noticeable flavor difference between flaked wheat and raw wheat. ... I did not notice a difference from past brews, although the best experiment would be to brew another beer with flaked wheat side-by-side.¹⁹

The website Braukaiser, The Science of Making Beer, has posts under “Brewing Science”²⁰ and discusses experiments:

Yeast Growth in Hopped Wort. In this experiment I looked at the influence that iso-alpha acids have on yeast growth. This was motivated by curiosity and the fact that there are a number of brewers, like me, who are using leftover wort from brewday for future starters.

The Examining Attorney submitted an excerpt from the HomeBrew Handbook, a book about brewing beer at home, that has a chapter on brew science:

A Little More **Brew Science**. Although homebrewing beer is essentially a simple, step-by-step process, there is a certain amount of science involved in it.²¹

The Examining Attorney submitted web pages from website forums that include topics related to brew science:

The website forum at Homebrewtalk.com includes topics under “Brew Science.”²²

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ February 15, 2018 Office Action at TSDR 49, braukaiser.com.

²¹ February 15, 2018 Office action at TSDR 9-11, David Law and Beshlie Grimes HomeBrew Handbook, books.google.com.

²² November 22, 2017 Office Action at TSDR at 4, www.homebrewtalk.com/forum.

The Brewing Network has forum posts under the category “Brew Science: Chemistry Help.”²³

The Examining Attorney submitted a page from a YouTube video related to “Brew Science”:

Brew Science – Episode 1. Published January 6, 2012. Washington brewer Marvin Dyck is joined by George Eagleson (of F&M Brewery) in the first video of our “Brew Science” series looking at the science of brewing. In this short video Marvin shows how we prepare beer samples in the lab for microbiological testing.²⁴

The Examining Attorney provided web pages and blog pages using the terms “brew science”:

Bootleg Brew Science. What’s more local than making homebrew with yeast isolated from your own backyard? Come learn how anyone can be a ‘bootleg’ yeast wrangler, using proven homebrew methods, basic-level lab techniques and a paper clip.²⁵

Brewing Science – Everything Homebrew Related. This section is about **brewing science**. It is a collection of topics that spans the entire homebrewing hobby. ...**Brewing science** involves biology, chemistry, mechanics and physics.²⁶

²³ November 22, 2017 Office Action at TSDR 8, thebrewingnetwork.com.

²⁴ February 15, 2018 Office Action at TSDR 46; January 9, 2019 Office Action at TSDR 5, YouTube.com, wellingtonbrewery.com.

²⁵ February 15, 2018 Office Action at TSDR 50, homebrewersassociation.org.

²⁶ February 15, 2018 Office Action at TSDR 51, winning-homebrew.com.

The website Book Cliff Home Brew Club has web pages on “**Brew Science** 5 ways to improve your Mash Efficiency.”²⁷

The website Brewing-tips.com has web pages about “**Brew Science** How To Harvest Yeast for Brewing.”²⁸

The Life Fermented, Experiments in Fermentation and Life blog has blog posts filed under “Brew Science.”²⁹

The “Sui Generis Brewing blog has blog posts under the topic “Brew Science” and states “[t]hese articles will explain how many of the procedures we use in brewing work – and hopefully provide sufficient information on how to make us [sic] of these tests/processes in your own brewing.”³⁰

The Precision Fermentation website posted a White Paper “The Connected Brewer” under Brew Science.”³¹

The Kegerator website states “[a]nyone can make beer equal to those lining your local bottle shop. It’s not rocket science it’s **brew science** and ... ‘whispering’ you don’t even have to know the science bit to do it.”³²

²⁷ January 9, 2019 Office Action at TSDR 14, bookcliffbrewclub.com.

²⁸ January 9, 2019 Office Action at TSDR 15, brewing-tips.com.

²⁹ November 22, 2017 Office Action at TSDR 6, lifefermented.wordpress.com.

³⁰ November 22, 2017 Office Action at TSDR 7, suigenerisbrewing.blogspot.com.

³¹ January 9, 2019 Office Action at TSDR 12-13, precision fermentation.com.

³² February 15, 2018 Office action at TSDR 12-18, learn.kegerator.com.

The Examining Attorney submitted a webpage from Applicant's website to show that the subject matter of Applicant's videos is information about beer and brewing beer. The Examining Attorney points out that "applicant's own website mentions the knowledge and information, e.g., the science, aspect of applicant's videos on beer." 6 TTABVUE 13.

Rad Scientists!

A beer show reviewing everything from macro to micro, IIIPA to Gose, and anything else we can get our hands on. But we couldn't rightfully go around calling ourselves scientists if we didn't also do sciencey type stuff like experiments and whatnot, could we?

Well, lucky for you, we take our job very seriously.

Ever wondered if pairing a chocolate stout with a banana bread beer would taste like a chocolate covered banana? So have we.

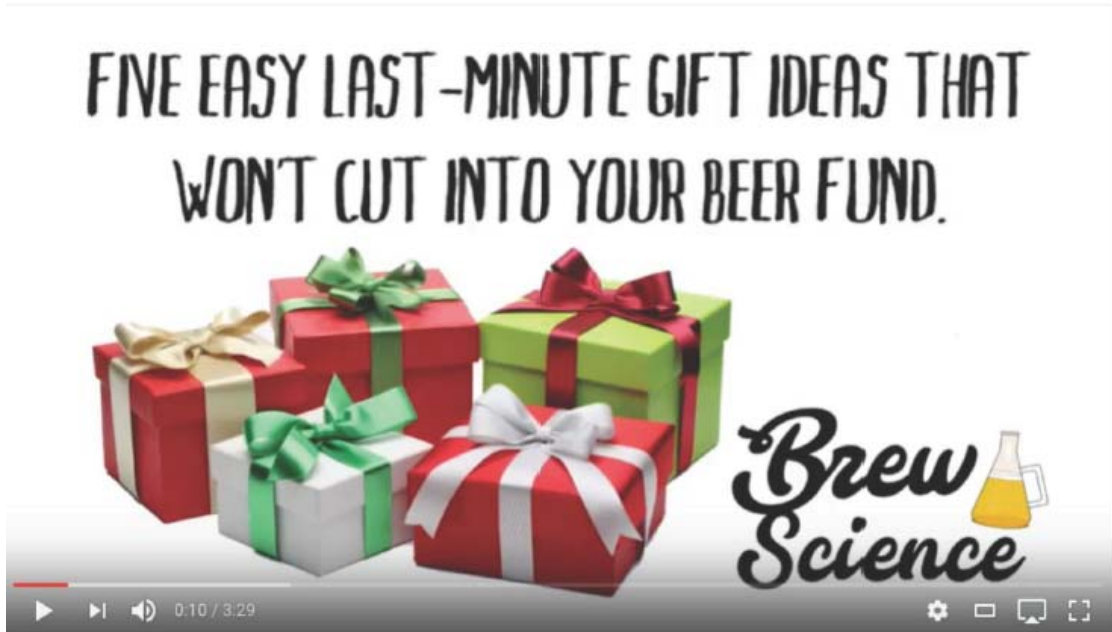
Ever wanted to know if you would whip together a last minute coffee stout out of a regular stout and home-brewed coffee? So have we.

We are committed to ensuring that no beer-related query (a buery, if you will) goes un-answered.³³

Applicant's specimen is a screen shot of one of its YouTube videos which shows the term BEER SCIENCE next to chemistry labware or glassware, (i.e, an Erlenmeyer Flask with a handle).³⁴

³³ January 9, 2019 Office Action at TSDR 22, www.brewscience.tv

³⁴ August 16, 2017, Specimen.



II. Analysis

Based on the evidence of record, the applied-for mark BREW SCIENCE is merely descriptive of providing non-downloadable videos “in the field of beer, beer accessories and the beer industry.”

The record establishes that the definition for “brew” is a brewed beverage (such as beer). Applicant’s entertainment services are in the field of beer, beer accessories and the beer industry. Therefore, we find that “brew” merely describes the field or subject matter of the non-downloadable videos that are provided in connection with the entertainment service. While acknowledging that “brew” means beer, Applicant points out that “brew” also has other meanings. However, as noted above, our mere descriptiveness determination must be based on the significance of the term in connection with Applicant’s services, not in the abstract.

The record establishes that the definition for “science” is “a systematic method or body of knowledge in a given area.” Therefore, “science” in the context of Applicant’s services, describes a body of knowledge about beer or brewing beer. Applicant argues that his use of the term “science” is in a “playful” manner and that his videos are “comedic” and not scientific or educational. 4 TTABVUE 4, 13. However, Applicant’s own web page references “Ricardo and Chris” as “rad scientists” that do “sciencey type stuff” such as experimenting with beer flavors (chocolate stout combined with banana bread beer, and regular stout combined with home-brewed coffee) and suggests that viewers “tune into our YouTube channel To have your mind scientifically blown.”³⁵ Additionally, the subject matter of Applicant’s entertainment service, i.e., providing non-downloadable videos in the field of beer, beer accessories, and the beer industry, is broad enough to include providing non-downloadable videos concerning the science of beer and the science of brewing beer.

Applicant also argues that third-party registrations incorporating the term “science” are indicative of a lack of descriptiveness of the term. Applicant submits that various “science” marks for entertainment services have been registered, including marks having “nothing to do with scientific knowledge.” 4 TTABVUE 11-12. In his brief, Applicant incorporated a table and list that he submitted during prosecution to support these arguments.³⁶

³⁵ January 9, 2019 Office Action at TSDR 22, www.brewscience.tv.

³⁶ This same table and list of registrations were incorporated into Applicant’s responses (November 23, 2018 Response to Office Action at TSDR 7-9 and April 16, 2018 Response to Office Action at TSDR 8-9); only the table was incorporated into the January 19, 2018 Response to Office Action at TSDR 5-6. The Examining Attorney did not advise the Applicant in any of the Office Actions that listing the registrations does not make them of record and

We find the table and list to be of extremely limited probative value, as we have no information regarding whether the third-party “science” registrations include any disclaimed matter or Section 2(f) claims, whether the marks are on the Principal or Supplemental Registers, and the exact nature of the identified entertainment services. Additionally, “[n]either the Trademark Examining Attorney nor the Board is bound to approve for registration an Applicant’s mark based solely upon the registration of other assertedly similar marks for other goods or services having unique evidentiary records.” *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (the Board must decide each case on its own merits; prior decisions in other applications are not binding on the Board and each case is evaluated on its own record). Accordingly, we are not persuaded by these arguments. We find that “science” also describes the subject matter of Applicant’s service of providing non-downloadable videos in the field of beer, beer accessories, and the beer industry, especially since the identification is broad enough to include providing non-downloadable videos concerning the science of beer and the science of brewing beer.

In addition to the dictionary meanings of the merely descriptive terms “brew” and “science,” we find that the terms “brew” and “science” retain their descriptive significance when combined into BREW SCIENCE. The Internet evidence shows that the term “brew science” is used in the beer industry, by home brewers, by educational

discussed them in the February 15, 2018 and January 9, 2019 Office Actions, as well as discussing the table and list in the brief. Therefore, we consider the table and list stipulated into the record.

institutions, by bloggers and on websites in discussing beer, including the brewing of beer, and making craft brews. In addition, Applicant's website confirms that the videos will feature "sciencey type stuff" relating to beer. Thus, we disagree with Applicant's conclusion that BREW SCIENCE is "fanciful," "word play," or a "play-on-words" (4 TTABVue 4, 8, 13) and find that when considered in connection with Applicant's services, the combined term BREW SCIENCE is just as descriptive as the terms "brew" and "science" are individually.

Applicant contends that his specimen shows that the proposed mark is not used in connection with science matters, as the particular video shown in the specimen is about "5 last minute gifts." However, Applicant's web page confirms that BREW SCIENCE is at least, in part, the subject matter of the non-downloadable videos in that applicant provides content concerning "sciencey type stuff" related to beer. The issue of mere descriptiveness is decided on the basis of the services as set forth in the application. *In re Allen Elec. and Equip. Co.*, 458 F.2d 1404, 173 USPQ 689, 690 (CCPA 1972) ("while applicant contends that the specimen shows that the mark is not in fact applied to scanning antennas, trademark cases must be decided on the basis of the identification of goods as set forth in the application. ... Since the goods are described merely as 'antennas' and that term is broad enough to encompass 'scanning antennas,' the mark SCANNER as applied to the goods is merely descriptive" of antennas). Thus, we must view the proposed mark BREW SCIENCE in the context of the identified services, namely, the subject matter of the non-downloadable videos Applicant provides in connection with his entertainment

services. When we look to the identification, the subject matter of the videos is broadly identified as featuring content relating to beer, beer accessories and the beer industry, and we must assume, for purposes of our legal analysis, that Applicant's entertainment services include providing non-downloadable videos about the science of beer or the science of brewing beer.

Applicant also argues that BREW SCIENCE is not merely descriptive because it does not suggest "entertainment services" or "media services." 4 TTABVUE 13. However, as stated, BREW SCIENCE is merely descriptive of the subject matter of Applicant's service of providing non-downloadable videos in the field of beer, beer accessories and the beer industry, which is a sufficient basis to find Applicant's proposed mark merely descriptive. *See, e.g., In re Putman Publ'g Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in the food processing industry).

Applicant also submits that "[j]ust because Applicant talks about experimenting with beer or jokingly references Albert Einstein does not mean there is anything scientific, by definition, on the videos." 4 TTABVUE 4. However, the evidence shows that the term "brew science" is used descriptively by third parties to refer to experimenting with beer or brewing beer. For example, as mentioned above, the Brew Science – Home Brewing Blog and the website Braukaiser, The Science of Beer, both discuss their brewing experiments in connection with beer, and the article about Petoskey Brewing discusses brew science experiments that result in unique craft beers. In addition, the Kegerator.com website states that one of the reasons to start

home brewing is experimentation: “You can experiment in avenues that never make it to commercial shelves. ... Have you always wondered what a particular herb might taste like in a beer; now’s your chance to find out.”³⁷ Applicant’s web page evidences the mere descriptiveness of the term BREW SCIENCE as Applicant mentions that his provision of non-downloadable video content includes “sciencey type stuff” and his videos will include beer experiments such as making a chocolate covered banana beer and a coffee stout beer.

Finally, Applicant asks that any doubt as to descriptiveness be resolved in his favor. 4 TTABVUE 13-14. Applicant is correct that when there is doubt as to the mere descriptiveness of a proposed mark, we must resolve such doubt in favor of an applicant. In the present case, however, we have no doubt that Applicant’s mark is merely descriptive.

III. Conclusion

The evidence submitted by the Examining Attorney establishes that the composite BREW SCIENCE is a merely descriptive term related to a body of knowledge about beer or brewing beer. When BREW SCIENCE is used in connection with Applicant’s identified entertainment services, “namely, on-line non-downloadable videos, in the field of beer, beer accessories and the beer industry; provision of entertainment, namely, on-line non-downloadable videos concerning beer, beer accessories and the beer industry,” it immediately tells consumers about a feature of those services, namely, that the entertainment provided in the form of non-downloadable videos

³⁷ February 15, 2018 Office action at TSDR 15, learn.kegerator.com.

featuring beer and the beer industry includes videos related to the science of beer, or
BREW SCIENCE.

Decision: The refusal to register BREW SCIENCE under Section 2(e)(1) is affirmed.