

This Opinion is Not a
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

In re Chase Investments, Inc.

Serial No. 88042209

Reine Rooney of LegalForce RAPC Worldwide P.C.
for Chase Investments, Inc.

Christina M. Sobral, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Wolfson, Adlin and English, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Chase Investments, Inc. seeks registration of the proposed mark CAVIAR & CASHMERE, in standard characters, for non-medicated skin care and related personal care and cosmetic products.¹ The Examining Attorney refused

¹ Application Serial No. 88042209, filed July 18, 2018 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged bona fide intent to use the proposed mark in commerce. Applicant filed an Amendment to Allege Use on March 18, 2020, but it does not appear that the Office has acted on the amendment. The identification of goods in its entirety is: “Non-medicated skin care preparations; Fragranced face care preparations, namely, facial cleansers, non-medicated facial moisturizers, non-medicated facial serums, and facial toners; Eye cream; Body lotion; Body creme; Facial oils; Essential oils; Exfoliant creams; Make-up remover; Wipes impregnated with a skin cleanser; Sun block; Astringents for cosmetic purposes; Beauty masks; Lip glosses; Lotions for cosmetic purposes; Skin whitening creams; Cosmetic preparations for skin care; Sun-tanning preparations; Sunscreen preparations; Non-medicated hair treatment preparations for cosmetic purposes; Dry shampoos; Hair

registration on the ground that the proposed mark is deceptive in violation of Section 2(a) of the Trademark Act, in that it misdescribes the goods as containing caviar when they do not. In the alternative, the Examining Attorney required Applicant to disclaim CAVIAR under Sections 2(e)(1) and 6(a) of the Act, because it is deceptively misdescriptive of the goods. After the refusal became final, Applicant appealed and Applicant and the Examining Attorney filed briefs.

I. Evidence

“Caviar,” the term in question, is defined as “the salted eggs of a fish called a sturgeon.” November 9, 2018 Office Action TSDR 18.² When eaten, caviar is a delicacy. However, caviar is also said to have beneficial effects on human skin, and perhaps also human hair and nails.

For example, the Examining Attorney introduced an Elle article entitled “Why You Should Put Caviar On Your Face,” which quotes a dermatologist as saying “there is some data showing that caviar extracts can help slow skin aging ... It’s loaded with vitamins and amino acids that provide building blocks for skin cells to function optimally.” *Id.* at 5-6. The article goes on to discuss a number of “skin caviar products,” including: La Prairie’s Skin Caviar Dermo Beads and Skin Caviar Essence-In-Lotion; Kerstin Florian’s Caviar Age Defense Serum; Alterna’s Caviar “range”; and Nails Inc.’s Kensington Caviar. *Id.* at 5-8. The article concludes that caviar’s “long-

lotions; Hair waving preparations; Hair spray; Pomades for cosmetic purposes; Hair shampoos; Hair conditioners; Hair gels; Non-medicated hair serums,” in International Class 3.

² <https://www.collinsdictionary.com/dictionary/english/caviar>.

purported benefits, from making skin glow to giving hair gleam, are more, it appears, than a big-fish story.” *Id.* at 8. *See also id.* at 12-17 (article from “thefashionspot.com” entitled “Here’s Why Caviar-Infused Beauty Products Are Worth the Hype”).

This evidence is not at all unique. To the contrary, the Examining has supported it with corroborating evidence from a number of sources, showing that caviar is perceived as having benefits for the skin, and that many skin care products include caviar as an ingredient. Articles about caviar’s benefits appear on the ACSP Shop, Beverly Hills MD, Caviar of Switzerland and Women’s Health websites. December 19, 2019 Office Action TSDR 6-22, 26-33.

The following examples are representative of the evidence that many skin, hair and nail care products include caviar as an ingredient:



La Sienne Luxurious Firming & Lifting Serum (With Caviar Extract)

\$118.00 from Amazon.com - Seller

★★★★★ 2 product reviews

FIRMS LIFT HYDRATES, IMPROVED AND ENRICHED WITH CAVIAR EXTRACT. *La Sienne, for ...

Face · Anti-aging · For All Skin Types · Serum



Bergamo / Luxury Gold Collagen & Caviar Wrinkle Care Repair An

\$16.96 from Amazon.com - Seller

• Made in Korea • Luxury Gold Ampoule | 13ml * 2ea : Keep your skin moist with ple

Bergamo · For All Skin Types



Bella Schneider Beauty Culminé Caviar & Carat Complete Anti-Aging Collection Intense Hydration, Restores Nutrients, Skin

\$79.20 from 4 stores

Unearth your skin's natural glow with our richly synergistic anti-aging crème, formulated with precious Face · Anti-aging · For All Skin Types · Day · 8 fl oz



Skin Chemists Advanced Caviar Hand Moisturizer at HauteLook - Creams

\$14.97 from HauteLook, A Nordstrom Company

Achieve noticeable results with the Advanced Caviar Hand Moisturizer from skinChe skinChemists · Foot · Anti-aging · For Dry Skin · 1.69 fl oz · Cream

Other options: Wild - Wild Caviar (\$15)



Lancer Caviar Lime Acid Peel 1.7 oz/ 50 mg

\$90.00 from 10+ stores

★★★★★ 368 product reviews

Lancer Skincare's Caviar Lime Acid Peel is an innovative .

Lancer Skincare · Face · Wrinkle Reduction · All Skin Type

May 30, 2019 Office Action TSDR 18-19. The Examining Attorney's search of Sephora's website for "caviar" yielded 68 skincare and related products, and the same search of Ultra Beauty's website yielded 72. December 19, 2019 Office Action TSDR 38-55.

While Applicant uses CAVIAR & CASHMERE in connection with skincare and haircare products, Applicant stated in response to the Examining Attorney's information requests that its goods "do not and will not contain caviar extract as an ingredient." December 2, 2019 Office Action response TSDR 11.

For its part, Applicant relies on dictionary definitions of the proposed mark’s constituent terms. “Caviar” is defined not only as the salted roe of a sturgeon or other large fish, but also as “something considered the best of its kind.”³ “Cashmere” is defined as “fine wool from the undercoat of the cashmere goat,” and “a soft twilled fabric made or originally from cashmere.”⁴ May 9, 2019 Office Action response TSDR 15-16.

Applicant also relies on third-party registrations of marks containing the term CAVIAR, along with evidence that several of these marks are in use for the goods identified, as follows:

<u>Mark/Reg. No.</u>	<u>Goods/Services</u>	<u>Register/Disclaimer/2(f)</u>
CAVIAR & BANANAS Reg. No. 5202821	caffeine-free coffee ... grain-based food bars ... trail mix ... bottled drinking water ... retail grocery stores catering for the provision of food and beverages ... restaurant services	Principal
LASH CAVIAR Reg. No. 5460865	cosmetics, namely, eye lash cosmetics in the nature of eye shadow, mascara and eye liner	Supplemental LASH disclaimed
ZWYERCAVIAR Reg. No. 4416522	personal care products containing caviar, namely, soaps, perfumery, essential oils, cosmetics, hair lotions, dentrifices	Principal

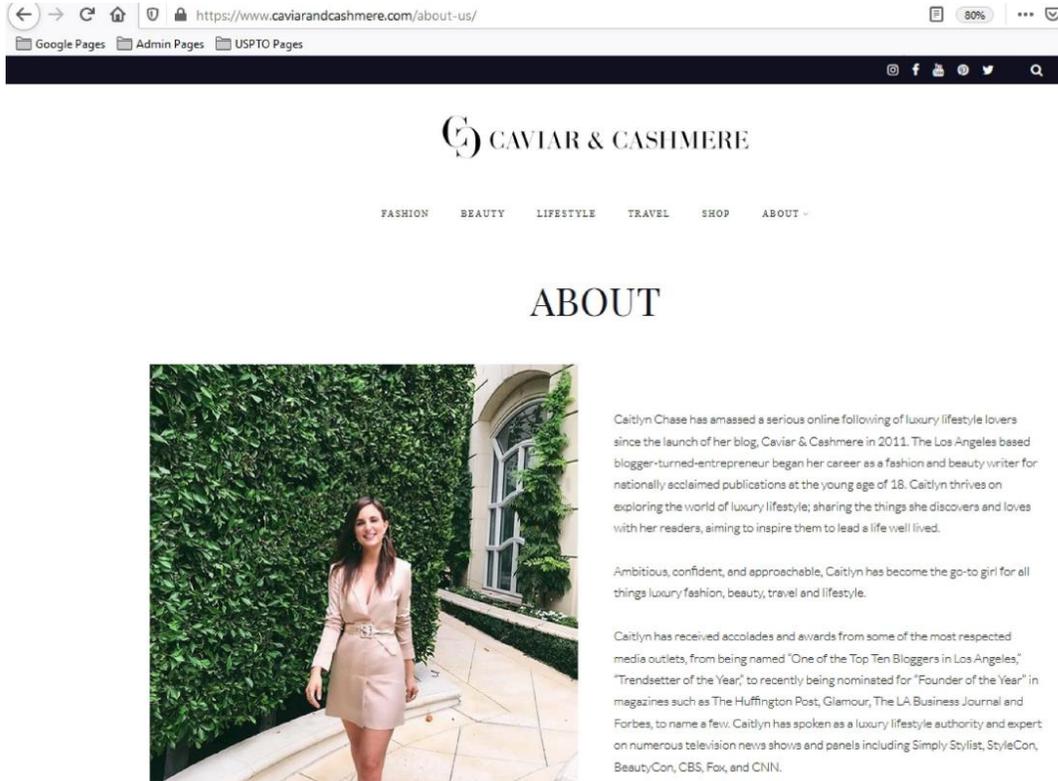
³ <https://www.merriam-webster.com/dictionary/caviar>.

⁴ <https://www.merriam-webster.com/dictionary/cashmere>.

<u>Mark/Reg. No.</u>	<u>Goods/Services</u>	<u>Register/Disclaimer/2(f)</u>
MYOXY-CAVIAR Reg. No. 3254121	skin care creams and lotions; face creams ...	Principal
COCKTAIL CAVIAR Reg. No. 5117818	distilled spirits	Principal COCKTAIL disclaimed
CAVIAR LIME Reg. No. 5439927	distilled spirits; vodka; gin	Supplemental LIME disclaimed
VELVET CAVIAR Reg. No. 5025867	on-line retail store services featuring apparel, bags, jewelry, home décor and accessories therefore (sic)	Principal
CANINE CAVIAR Reg. No. 5558557	animal foodstuffs; pet food; pet treats	Principal CANINE disclaimed
 Reg. No. 4496155	processed sunflower seeds	Principal SUNFLOWER disclaimed
CAVIAR Reg. No. 2838497	cigars	Principal

Id. at 26-113.

Applicant introduced evidence that it is affiliated with fashion and beauty blogger and “influencer” Caitlyn Chase, who since 2011 has used CAVIAR & CASHMERE for her blog:



December 2, 2019 Office Action response TSDR 17, 25-28. Ms. Chase and her blog have apparently been the subject of a number of news articles and television reports. *Id.* at 19-21. Caviar & Cashmere has its own Facebook page and Ms. Chase's Instagram and Twitter accounts display the proposed mark CAVIAR & CASHMERE. *Id.* at 22-24. Applicant also relies on background information about caviar (as a food) and cashmere. *Id.* at 29-41. After Applicant launched its CAVIAR & CASHMERE skin care line, the line and Ms. Chase received additional media attention. March 18, 2020 Office Action response TSDR 27-63, 176-179, 183.

II. Arguments

The Examining Attorney contends that CAVIAR misdescribes Applicant's goods because while many skincare and haircare products contain caviar, Applicant's goods do not. 6 TTABVue 6-7. Furthermore, because caviar is an "appealing or desirable"

ingredient of skincare and haircare goods, consumers would not only believe the misdescription inherent in CAVIAR & CASHMERE, but also be more likely to purchase Applicant's CAVIAR & CASHMERE goods because of that misdescription. *Id.* at 7-11.

Applicant argues, based in large part on *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590 (TTAB 2018), that "caviar" does not convey that its goods contain caviar. Rather, in using CAVIAR in connection with its goods, Applicant "is attempting to evoke a feeling of superiority and luxury." 4 TTABVUE 9. In any event, even if consumers perceived the term CAVIAR as conveying fish eggs, "the caviar in skin care products is seldom if ever used, so it is likely that consumers would not believe that CAVIAR & CASHMERE contained actual caviar." *Id.* In fact, Applicant's entire mark does not immediately describe Applicant's goods, and consumers would be unlikely to believe that the goods contain caviar, because consumers will not believe that skincare products contain a mixture of "goat's hair and fish eggs," but will instead "conclude that neither caviar nor cashmere are main ingredients as cashmere is not an ingredient in skin products." *Id.* at 10.

Applicant also contends that CAVIAR & CASHMERE is: (1) a double entendre, suggesting "the chic, luxuriousness of cashmere and caviar;" (2) incongruous, because caviar "is not a common ingredient in skin care;" and (3) unitary, because it "has 6 syllables and appears in a pleasing symmetrical structure – both portions beginning with 'CA' and relating to luxury goods." *Id.* at 11, 16. Finally, Applicant argues that

the refusal to register CAVIAR & CASHMERE is inconsistent with how the Office has treated allegedly similar third-party marks. *Id.* at 12-14.

III. Analysis

Under Section 2(a) of the Act, registration must be refused when a mark is deceptive concerning the goods or a feature or ingredient thereof. Specifically, a mark is deceptive when:

- (1) it misdescribes the character, quality, function, composition or use of the goods;
- (2) prospective purchasers are likely to believe that the misdescription actually describes the goods; and
- (3) the misdescription is likely to affect the purchasing decision of a substantial portion of consumers.

See In re Budge Mfg. Co., Inc., 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988) and *In re E5 LLC*, 103 USPQ2d 1578, 1579 (TTAB 2012). *See also In re Spirits Int'l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1493 (Fed. Cir. 2009) (finding in the context of Section 2(e)(3) that “the appropriate inquiry for materiality purposes is whether a substantial portion of the relevant consumers is likely to be deceived, not whether any absolute number or particular segment of the relevant consumers ... is likely to be deceived”). “It is well established that a mark may be found deceptive on the basis of a single deceptive term that is embedded in a larger mark” *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 (TTAB 2013).

A. CAVIAR AND CASHMERE Misdescribes the Goods

There is no dispute that in at least some contexts, “caviar” means salted fish eggs. November 9, 2018 Office Action TSDR 18. It is also clear from the record, despite

Applicant's arguments to the contrary, that a number of skincare products contain caviar (salted fish eggs), or extracts thereof. *Id.* at 5-8; May 30, 2019 Office Action TSDR 18-19; December 19, 2019 Office Action TSDR 6-22, 26-33, 38-55. Applicant concedes that its goods do not contain caviar, however. December 2, 2019 Office Action response TSDR 11. Thus, the term CAVIAR in Applicant's proposed mark CAVIAR & CASHMERE misdescribes Applicant's goods. *In re ALP of South Beach, Inc.*, 79 USPQ2d 1009, 1010 (TTAB 2006) ("We find that the word CAFETERIA used in connection with restaurant services that explicitly exclude cafeteria-style restaurants does *misdescribe* the services.").

Applicant's argument that CAVIAR & CASHMERE evokes "superiority and luxury" is not well-taken. The problem is that we must consider misdescriptiveness not in the abstract, but in the context of the goods, in this case skincare products. *See In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002) (analyzing descriptiveness in the context of the goods). Here, the record includes extensive evidence that many skincare products contain caviar, an ingredient which has been found, and is perceived, to be beneficial in these types of products. In fact, many of these products have names, marks or labels which prominently display and use the term "caviar" descriptively, such as: La Prairie's Skin Caviar Dermo Beads and Skin Caviar Essence-In-Lotion; Kerstin Florian's Caviar Age Defense Serum; Alterna's Caviar "range"; Nails Inc.'s Kensington Caviar; La Sienne Luxurious Firming & Lifting Serum (With Caviar Extract); Bergamo / Luxury Gold Collagen & Caviar Wrinkle Care Repair; Bella Schneider Beauty Culminé Caviar & Carat Complete

Anti-Aging Collection All-Day Crème; Skin Chemists Advanced Caviar Hand Moisturizer; and Lancer Caviar Acid Peel, among others. In this type of commercial environment, in which many skincare products contain (and tout) caviar as an ingredient, many consumers will misperceive the term CAVIAR in CAVIAR & CASHMERE as describing an ingredient in Applicant's goods. *See In re White Jasmine*, 106 USPQ2d at 1392 (“tea purchasers will clearly understand that because white tea is a type of tea, the word ‘White’ in the term WHITE JASMINE designates that the tea is white tea or at least contains white tea”).

We recognize that both “caviar” and “cashmere” are luxury goods, and that because they do not appear to have anything in common, the proposed mark CAVIAR & CASHMERE in its entirety could convey, at least in the abstract, “a feeling of superiority and luxury.” Nonetheless, because our task is not to consider the mark in the abstract, but in the context of skincare goods (which according to the record often include caviar), we find that at least one meaning of the proposed mark is misdescriptive. *Cf. In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007) (“So long as any one of the meanings of a word is descriptive, the word may be merely descriptive.”); *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Furthermore, it is significant in this case that “a feeling of superiority and luxury” would be entirely consistent with, and an apt description of, skincare products containing caviar. Indeed, several articles indicate that caviar is an expensive and luxurious ingredient of skincare products, as well as functionally superior to other

ingredients. November 9, 2018 Office Action TSDR 6, 7 (quoting a dermatologist as saying “caviar is expensive to eat, and expensive to have in your skin care, but there is some data showing that caviar extracts can help slow skin aging” and mentioning “La Prairie’s super-indulgent \$1,000 caviar facial at the Ritz-Carlton in New York City”) and 14 (stating that caviar is a “great moisturizer,” “boasts antioxidant properties that protect skin,” and “if you’re looking to maintain elasticity, caviar should be your skin care go-to”); December 19, 2019 Office Action TSDR 6 (mentioning caviar extract’s “moisturizing, nourishing, vitamin, and retexturing qualities”); *id.* at 10-15 (discussion of “luxury caviar skincare,” asking whether “the skin benefits [are] so amazing to justify the hefty price tag?” and concluding that they are “[i]f you’re comfortable with possibly spending a little more (or sometimes a lot more”); *id.* at 27 (stating that “[t]hey may not be the cheapest buys, but man, caviar-infused products can deliver some gorgeous results” for the skin). In other words, even if CAVIAR & CASHMERE conveys “a feeling of superiority and luxury” to some consumers, that may simply reinforce the message that Applicant’s skincare goods contain caviar, a luxury good used in skincare products. Indeed, a number of expensive, luxurious competing products contain caviar. And while we agree with Applicant that consumers are unlikely to infer that Applicant’s goods contain cashmere, that does not mean consumers would also discount the possibility that the goods contain caviar, which is known to be a fairly common ingredient of skincare products.

We are not persuaded that CAVIAR & CASHMERE is a double entendre, or incongruous. In fact, because the evidence reveals that caviar is commonly used in

skincare products, even if the proposed mark calls to mind “the chic, luxuriousness of cashmere and caviar,” consumers would still immediately misunderstand the nature of Applicant’s goods, and assume they contain caviar when they do not.

Nor are we persuaded that CAVIAR & CASHMERE is unitary. The elements of a unitary mark are “inseparable,” in that “the mark has a distinct meaning of its own independent of the meaning of its constituent elements.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991). That is not the case here. In fact, Applicant has “failed to cite any evidence, and the record contains none, supporting its view that the alliteration in [CAVIAR & CASHMERE] creates a commercial impression that is more than merely” misdescriptive. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 12147, 103 USPQ2d 1753, 1758-59 (Fed. Cir. 2012); *In re Lean Line, Inc.*, 229 USPQ 781, 782 (TTAB 1986) (“there is nothing in the record to suggest that the mere fact that both words which form the mark begin with the letter ‘L’ would cause purchasers to miss the merely descriptive significance of the term ‘LEAN’ or consider the entire mark to be a unitary expression”). And we should point out that we recently rejected the argument that CANINE CAVIAR is unitary, because there was no argument that it had an additional meaning beyond luxury dog food, and the alliterative nature of the term was not enough to make it unitary. *In re Canine Caviar*, 126 USPQ2d at 1599-1600.

Here, we find that CAVIAR & CASHMERE “is not an expression, like ‘LIGHT ‘N LIVELY’ or ‘SUGAR & SPICE’ ... which has any known use or application apart from the goods in question.” *In re Lean Line*, 229 USPQ at 782. Rather, the proposed mark

is merely the name of Ms. Chase's blog.⁵ It contains a term which misdescribes Applicant's skincare goods, because they do not contain caviar, a fairly common ingredient in skincare products.⁶ Consumers unfamiliar with Ms. Chase's blog, and even some familiar with the blog, could easily be deceived by the mark into believing that Applicant's goods do contain caviar. In short, CAVIAR & CASHMERE is misdescriptive of Applicant's goods.

⁵ While the blog has received some unsolicited media attention, there is no evidence that the proposed mark is used for any other goods or services, has any other meaning or that it is widely known.

⁶ Applicant's reliance on third-party registrations for marks containing CAVIAR is misplaced. Most of them are for unrelated goods or services, and thus not probative concerning the misdescriptiveness of CAVIAR for skincare products. Of the three which are registered for related products, one is on the Supplemental Register, and thus reveals nothing about the treatment of CAVIAR under Section 2(e)(1). That leaves two third-party Principal Register registrations for similar or identical goods, but there is no evidence concerning why these marks were registered or whether or why the marks were not found to be misdescriptive. Furthermore, one of these two, ZWYERCAVIAR (Reg. No. 4416522) is registered for "personal care products containing caviar," and that mark and the second registration (MYOXY-CAVIAR, Reg. No. 3254121) could have been considered unitary. In any event, neither the existence of third-party registrations nor any of the evidence in their prosecution records (when it is of record) compels a specific result in later, allegedly analogous cases. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1377 (Fed. Cir. 2018) ("these prior registrations do not compel registration of [Applicant's] proposed mar[k]") (citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016)) ("The [US]PTO is required to examine all trademark applications for compliance with each and every eligibility requirement, . . . even if the [US]PTO earlier mistakenly registered a similar or identical mark suffering the same defect."); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) ("Even if all of the third-party registrations should have been refused registration under section 1052(a), such errors do not bind the USPTO to improperly register Applicant's marks."); *In re Cooper*, 254 F.2d 611, 117 USPQ 396, 401 (CCPA 1958) ("the decision of this case in accordance with sound law is not governed by possibly erroneous past decisions by the Patent Office"). As we recently stated, "[w]e do not believe that our decision here is inconsistent with the registration of the third-party marks cited by Applicant, but to the extent that it is, it is the decision required under the statute on the record before us." *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485 at *11 (TTAB 2020).

B. Prospective Purchasers Would Believe the Misdescription

Prospective purchasers would be likely to believe the misdescription. Indeed, the record reveals that caviar is a fairly common ingredient in skincare products, so consumers would believe that “caviar” identifies an ingredient in Applicant’s goods as well, even though it does not. *See e.g., In re White Jasmine*, 106 USPQ2d at 1392 (“Given the various types of teas (*e.g.* black, green, white and oolong), their popularity and specific attributes, it is quite likely that customers of applicant’s products would believe that applicant’s tea is white tea when it could be any of the above-noted teas.”); *In re E5*, 103 USPQ2d at 1583 (where applicant sought registration of an acronym used to identify copper even though its goods do not contain copper, “[w]e find that, because the evidence shows that copper is a common supplement or ingredient in dietary supplements, consumers will believe, based on the mark and the goods at issue, that applicant’s goods contain copper”).

Applicant’s reliance on *In re Canine Caviar* is misplaced. There we found that CANINE CAVIAR is not deceptive for pet food, in large part because while there was a scintilla of evidence that caviar was on rare occasions offered to pets, “this is overwhelmed by the countervailing evidence that caviar is almost never used as an ingredient in pet food, and that after 20 years of use of CANINE CAVIAR, consumers have not mistakenly believed it to contain caviar.” *In re Canine Caviar*, 126 USPQ2d at 1597. Here, notwithstanding Applicant’s contention that caviar is an uncommon ingredient in skincare products, the record establishes the opposite. Caviar is

commonly used in skincare products, which is why consumers will be likely to believe the misdescription.

C. The Misdescription is Likely to Affect Purchasing Decisions

Finally, because the record includes ample evidence that caviar is perceived as beneficial for the skin, “the misdescription would make the product or service more appealing or desirable to prospective purchasers.” *In re White Jasmine*, 106 USPQ2d at 1392-94; *In re E5*, 103 USPQ2d at 1584 (“Since the evidence shows that copper has important and desirable health benefits, we find that its presence as an ingredient ... would be material to the decision of consumers to purchase applicant’s dietary supplements.”); *In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694, 1698-99 (TTAB 1992).

IV. Conclusion

Applicant’s proposed mark misdescribes Applicant’s goods as containing caviar, a commonly-used and desirable ingredient of skincare products, and therefore some consumers would not only believe the misdescription but be likely to purchase Applicant’s goods as a result of it. The proposed mark is therefore deceptive. Alternatively, even if the misdescription would not affect consumers’ purchasing decisions, as set forth above the term CAVIAR in the proposed mark is deceptively misdescriptive, because it misdescribes the goods and consumers would believe the misdescription.

Decision: The refusal to register Applicant's proposed mark because it is deceptive under Section 2(a) of the Trademark Act is affirmed. Alternatively, the refusal to register under Sections 2(e)(1) and 6(a) of the Trademark Act in the absence of a disclaimer of CAVIAR is affirmed, because that term is deceptively misdescriptive of the goods. The Sections 2(e)(1) and 6(a) refusal only will be set aside if, within thirty days of the mailing date of this order, Applicant submits to the Board a proper disclaimer of CAVIAR. The disclaimer should be worded as follows: "No claim is made to the exclusive right to use 'CAVIAR' apart from the mark as shown." Any setting aside of the Sections 2(e)(1) and 6(a) refusal as a result of Applicant submitting a disclaimer will not affect the Section 2(a) refusal.