

This Opinion is not a  
Precedent of the TTAB

Mailed: July 22, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Super Salt, LLC*  
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Serial No. 88143498  
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Kaitlyn M. Garvin of Saunders & Silverstein LLP,  
for Super Salt, LLC.

Carolyn R. Detmer, Trademark Examining Attorney, Law Office 127,  
Mark Pilaro, Managing Attorney.

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Before Shaw, Goodman and Coggins,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Super Salt, LLC (“Applicant”) seeks registration on the Principal Register of the mark SUPERSALT (in standard characters) for “Dietary supplements” in International Class 5.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88143498 was filed on October 4, 2018, based upon Applicant’s assertion 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). An allegation of use was filed on May 28, 2020, alleging August 23, 2019 as the first use anywhere and as the first use in commerce dates.

Citations to the examination record refer to the Trademark Office’s online Trademark Status and Document Retrieval system (TSDR) database, by online database page number. References to the briefs on appeal refer to the Board’s TTABVUE docket system. Applicants

The Trademark Examining Attorney has refused registration of Applicant's mark as merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).<sup>2</sup>

After the Examining Attorney maintained the final Section 2(e)(1) refusal, Applicant appealed and requested reconsideration, alternatively requesting amendment to the Supplemental Register.<sup>3</sup> After the Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register and accept Applicant's alternative amendment to the Supplemental 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, is merely descriptive of them. "A term is merely descriptive if it immediately conveys knowledge of a quality,

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brief is at 6 TTABVUE and the reply brief is at 9 TTABVUE. The Examining Attorney's brief is at 8 TTABVUE.

<sup>2</sup> During prosecution, the Examining Attorney also issued a final refusal under Section 2(d), 15 U.S.C. § 1052(d). Applicant sought reconsideration of the Section 2(d) final refusal, advising the Examining Attorney that a Board cancellation proceeding had been instituted against the cited registration. The Examining Attorney then suspended the application pending disposition of the Board cancellation proceeding. After the cancellation was granted, the suspension was lifted by the Examining Attorney. The Examining Attorney then withdrew the Section 2(d) refusal, while maintaining the Section 2(e)(1) refusal.

<sup>3</sup> Nov. 29, 2021 Request for Reconsideration at TSDR 4. The Examining Attorney apparently did not acknowledge the alternative request in the denial of reconsideration but did acknowledge the alternative request in her brief. 8 TTABVUE 3. In addition, the Examining Attorney did mention in earlier Office Actions that amendment to the Supplemental Register was available. Oct. 5, 2020 Office Action at TSDR 1. ("Applicant may respond to the [Section 2(e)(1)] refusal by submitting evidence and arguments in support of registration and/or by amending the application to seek registration on the Supplemental Register. ... Amending to the Supplemental Register does not preclude applicant from submitting evidence and arguments against the refusal."); Aug. 23, 2021 Office Action at TSDR 1 (same).

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). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Descriptiveness must be evaluated “in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *In re Bayer*, 82 USPQ2d at 1831. The fact that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). The determination of mere descriptiveness must not be made in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). The question is whether someone who knows what the goods are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Medical 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, 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); *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1173 (TTAB 2013) (SUPERJAWS is merely descriptive of “machine and hand tools, including ‘jaws’ for ‘precision clamping’ and ‘metal vice jaws.’”).

“Marks that are merely laudatory and descriptive of the alleged merit of a product are also regarded as being descriptive. ... Self-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods.” *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (quoting 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:17 (4th ed. 1996)).

“With respect to marks which contain the word ‘super,’ there have been a number of cases holding such marks to be either merely descriptive or suggestive.” *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1051 (TTAB 2002) (citing cases). Thus, “[t]here is no *per se* rule on how the United States Patent and Trademark Office should treat the word ‘super’ in composite marks” as the cases are fact specific. *In re Positec*, 108 USPQ2d at 1171. In *Positec*, the Board noted that some “helpful guidance on the sometimes unclear line of demarcation between such [Super] marks that would

be found merely descriptive and those that are, at worst, suggestive” was provided in *In re Phillips-Van Heusen Corp.*, 63 USPQ2d at 1052 which set out the following approach:

A general proposition which may be distilled from the foregoing cases is that if the word ‘super’ is combined with a word which names the goods or services, or a principal component, grade or size thereof, then the composite term is considered merely descriptive of the goods or services, but if such is not strictly true, then the composite mark is regarded as suggestive of the products or services. Here, joining the laudatory word ‘super’ with the generic fabric name ‘silk’ to form the term SUPER SILK results in a composite which plainly has a meaning identical to the meaning which ordinary usage would ascribe to such words in combination. *See, e.g., In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-12 (Fed. Cir. 1987).

*Id.* Thus, “under the principles articulated in *Phillips-Van Heusen*, when the leading word ‘Super’ is joined with a suggestive term ... the combination remains suggestive,” not descriptive. *In re Positec*, 108 USPQ2d at 1172.

## II. Evidence

The Examining Attorney submitted dictionary evidence for “super” and “salt”:<sup>4</sup>

su per | \ 'sü-pər \

Definition of super

1a: of high grade or quality

b—used as a generalized term of approval

a super cook

2: very large or powerful

a super atomic bomb

3: exhibiting the characteristics of its type to an extreme or excessive degree

super secrecy

salt (sôlt)

n.

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<sup>4</sup> Feb. 19, 2020 Office Action at TSDR 2-3; Merriam-Webster Dictionary, merriam-webster.com (super); American Heritage Dictionary, ahdictionary.com (salt).

1. A usually whitish crystalline solid, chiefly sodium chloride, used extensively in ground or granulated form as a food seasoning and preservative. Also called common salt, table salt.
2. An ionic chemical compound formed by replacing all or part of the hydrogen ions of an acid with metal ions or other cations.
3. salts Any of various mineral salts used as laxatives or cathartics.
4. salts Smelling salts.
5. often salts Epsom salts.
6. An element that gives flavor or zest.
7. Sharp lively wit.
8. Informal A sailor, especially when old or experienced.
9. A saltcellar.

The Examining Attorney submitted an excerpt from a Food and Drug Administration (FDA) web page relating to using magnesium salt as a binder in supplements, a news story about an FDA warning about cesium salt supplements, and a web page from Amazon to show “salt” is a common ingredient in dietary supplements. Excerpts follow.<sup>5</sup>

“If I use Magnesium Salt as a Binder Where Must I Declare It? ... You Must List the specific magnesium salt in the ingredient statement below the Supplement Facts Panel ...”

“The FDA issued a warning to consumers to avoid dietary supplements containing cesium chloride or any other cesium salt due to what it called significant safety risks...”

“Best Sellers in Sodium Mineral Supplements.”

The Examining Attorney also submitted third-party examples of salt supplements that are electrolyte replacements or replenishers:<sup>6</sup>

Unived offers “Unived Salt Caps” “Electrolyte Replacement for Runners, Cyclists and Athletes from Other Sports” with 213 mg. sodium, “the major electrolyte that is found in extracellular fluid.”

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<sup>5</sup> Feb. 19, 2020 Office Action at TSDR 4-6 (fda.gov, nutraceuticalsworld.com, amazon.com).

<sup>6</sup> Oct. 5, 2020 Office Action at TSDR 2, 3, 6, 8, 9, 16, 19, 27 (biopureus.com, purevitamin.com, unived.us, walmart.com).

Walmart offers “Sodium Chloride ... Normal Salt Tablets. • Salt Tablets for Solution or Oral Use • Electrolyte Replenisher.”

BioPure US offers “Matrix Electrolyte” that “closely matches natural mineral & salt balance found in the extracellular matrix of our cells.”

Pure Vitamin Club offers “Ultra Salt Electrolyte Complex” a “unique formulation of the purest most absorbable bio-available forms of sodium, potassium, magnesium, and calcium, along with 60 trace minerals.” The description of goods states:

When you sweat, you lose not only water but salt and other minerals your body needs to function well. The main component of sweat is salt, but not all salt is created equal. The same is true for other supplements ... Pure Vitamin Club’s Ultra Salt Electrolyte Complex is designed to provide the optimal forms of the six main Electrolytes .... Pure Vitamin Club’s Ultra Salt Electrolyte Complex features Redmond Real Salt, the only natural, unprocessed, unbleached, ancient pink sea salt mined in the USA. This unique, ethically mined salt also contains over 60 trace minerals, the composition of which closely mirrors that of human blood.

A portion of Applicant’s specimen, filed May 28, 2020, in connection with the Amendment to Allege Use, is reproduced below.



The specimen indicates that Applicant’s goods are “electrolyte salt” in the form of “Salt Replacement Tablets,” are made from “pink salt” and the “main ingredient is

Real Salt, the only sea salt from an ancient deposit in Utah,” containing “+60” “natural minerals” and providing “High Performance Rehydration” and “Rapid Oral Rehydration.”

In its Aug. 13, 2020 Response to Office Action, Applicant provided printouts of Principal Register third-party registrations for marks that are comprised in part of the term “super,” mostly for dietary and nutritional supplements, some of which contain a suggestive term combined with “super” and some of which contain a disclaimed descriptive term combined with “super.”<sup>7</sup> The chart, reproduced below, was incorporated in Applicant’s brief and Applicant’s Aug. 13, 2020 response.

Applicant also submitted in its Nov. 29, 2021 Request for Reconsideration additional TSDR printouts of Principal Register third-party registrations for non-supplement goods that contain the term “super.”<sup>8</sup> The attached chart, reproduced further below, also was incorporated in Applicant’s brief and in its request for reconsideration.

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<sup>7</sup> Aug. 13, 2020 Response to Office Action at TSDR 4-6, 13-68.

<sup>8</sup> Nov. 29, 2021 Request for Reconsideration at TSDR 3-4, 5-35.

Mark	Reg. No.	Goods
SUPER CELERY "CELERY" disclaimed	6025280	"Dietary and nutritional supplements, all made in whole or significant part of celery" in Cl. 5
SUPER D OMEGA*3 "D OMEGA 3" disclaimed	5368470	"Dietary and nutritional supplements containing Cod liver oil; Edible fish oils for medical purposes; all containing Vitamin D and Omega 3" in cl. 5
SUPERROOT	5129818	"Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; dietary food supplements; vitamins and minerals for use as dietary supplements; dietary supplemental drinks; food supplements, namely, anti-oxidants; food supplements, namely, ginger root, turmeric root, and beet root in liquid form" in Cl. 5  "Juice, namely, orange juice, acai juice, mangosteen juice, goji juice, coconut juice, herbal juice, edible root-based juice; Fruit and vegetable juice; fruit and vegetable juice concentrates; juice comprised of ginger root, turmeric root, and beet root" in Cl. 32
SUPER TEA BOOSTER "TEA" disclaimed	4106467	"Herbal tea powder in the nature of a dietary and nutritional supplement for use in the preparation of smoothies" in Cl. 5  "Tea powder used in the preparation of smoothies" in Cl. 30
SUPERPLANTS	4542083	"Herbal tea for medicinal purposes; dietary supplements; herbal supplements" in Cl. 5  "Herbal tea; herbal tea preparations, namely, blends in the nature of dried herbs and herbal tea extracts, and herbal tea preparation, namely, mixes in the nature of concentrates, syrups or powders used in the preparation of tea based beverages" in Cl. 30
SUPERVISION	2645268	"Nutritional supplements in capsule, tablet, powder or liquid form, containing bilberry extract and marigold extract in the form of lutein to support eye function" in Cl. 5
SUPER T "T" disclaimed	3027816	"Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for scientific and research use, nucleic acid detection, genetic analysis, and synthesis of oligopolymers, together with instruction manuals therefor packaged as a unit" in Cl. 1

Mark	Reg. No.	Goods
		"Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for medical and pharmaceutical use, together with instruction manuals therefor packaged as a unit" in Cl. 5
SUPER G "G" disclaimed	3027815	"Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for scientific and research use, nucleic acid detection, genetic analysis, and synthesis of oligopolymers, together with instruction manuals therefor packaged as a unit" in Cl. 1  "Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for medical and pharmaceutical use, together with instruction manuals therefor packaged as a unit" in Cl. 5
SUPER A "A" disclaimed	3027814	"Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for scientific and research use, nucleic acid detection, genetic analysis, and synthesis of oligopolymers, together with instruction manuals therefor packaged as a unit" in Cl. 1  "Phosphoramidites of modified bases, nucleoside triphosphates of modified bases, activated monomers of modified bases, modified nucleotide bases, oligonucleotide conjugates, DNA primers, oligonucleotides, and oligomer probes, for medical and pharmaceutical use, together with instruction manuals therefor packaged as a unit" in Cl. 5
SUPER 1 DAILY "1 DAILY" disclaimed	2760536	"VITAMIN SUPPLEMENTS" in Cl. 5
SUPER 2 DAILY "2 DAILY" disclaimed	3479473	"Vitamin supplements" in Cl. 5
SUPER BERRY "BERRY" disclaimed	2894898	"nutritional supplements" in Cl. 5
<b>SUPERCURE</b>	2536640	"DENTAL RESTORATION COMPOUNDS, NAMELY, LIGHT ACTIVATED COMPOSITE DENTAL MATERIAL" in Cl. 5
SUPERFIT	2219305	"incontinence garments, namely, diapers and pants" in Cl. 5
SUPER FLEX	2203323	"dietary supplements" in Cl. 5

Mark	Reg. No.	Goods and Services
SUPERSTEAM	3725894	“Superheated steam ovens for household use” in Class 11
SUPER RETINA XDR	6344703	“Electronic display screens featuring a tactile display interface sold as integral components of smartphones” in Class 9
SUPER LINT “LINT” disclaimed	5860844	“Lint removers, electric or non-electric; Lint removing sheets for personal use; Battery-operated lint removers; Electric lint removers” in Class 21
SUPER SWEAT “SWEAT” disclaimed	5985452	“non-medicated topical gel for water weight loss; non-medicated topical gel for improvement of circulation; non-medicated topical gel for calorie burning; non-medicated topical gel for workout enhancement; non-medicated topical gel for acceleration and exacerbation of the sweating process; non-medicated topical gel for increased energy levels and muscular activity; non-medicated topical gel for creation of a breathable barrier allowing the body to release heat by sweating; non-medicated topical gel for the prevention and treatment of injury and muscle fatigue; non-medicated topical gel for the relief of aches and pain” in Class 5
SUPER SPORTS “SPORTS” disclaimed	5712271	“Education services, namely, providing classes in the fields of the fundamentals of sports, agility, coordination, balance, strength, and teamwork; Instruction in the nature of gymnastics, agility, obstacle courses, lacrosse, volleyball, baseball, tee ball, golf, basketball, ultimate disc, disc golf, soccer, hockey, football, lacrosse, and track and field clinics; Instruction in the nature of agility, coordination, balance, strength, and teamwork lessons” in Class 41
SUPER COOL	4904180	“Bed pillows; Mattress toppers; Mattresses” in Class 20
SUPER SOLID	6434736	“Flooring, namely, engineered hardwood flooring” in Class 19
SUPER SNIPER “SNIPER” disclaimed	5748202	“small arms and rifles” in Class 13
SUPER CHEF “CHEF” disclaimed	5449554	“Edible oils; cooking oils; vegetable oil for culinary purposes; olive oil for culinary purposes; blended oil for food; shortening; margarine; salad oil; processed cherries; processed olives; pickled fruits and vegetables” in Class 29  “Salad dressing; mustard; mayonnaise; vinegar; marinades; sauces; relish; tartar sauce” in Class 30

### III. Arguments

Applicant argues that SUPERSALT is a unitary mark that is suggestive of the goods. 9 TTABVUE 3; 6 TTABVUE 4. Applicant asserts that the mark “informs through suggesting that Applicant’s goods contain more electrolyte salts than others or that these electrolyte salts are somehow of better quality than other salts” and that consumers will perceive SUPERSALT as a trademark. 6 TTABVUE 7, 12. Applicant argues that consumers will use a “multistep reasoning process” or “employ roundabout reasoning to understand how SUPERSALT pertains to hydration supplements because not all salts are electrolytes and salts are not always related to or contained in supplements.” *Id.* at 7, 12.

Applicant submits that the SUPERSALT combination “creates a unique and unitary commercial impression separate from its individual components due to its distinct structure and cadence” signaling to consumers that the mark is a source indicator. 9 TTABVUE 3; 6 TTABVUE 5-6. In particular, Applicant points to the visual and aural aspects of the mark, namely, the combination of “super” and “salt” creating the compound SUPERSALT, as well as the alliteration that results from the “repeating ‘s’ sound” and the “flowing cadence.” 6 TTABVUE 6. Applicant submits that these “noteworthy” visual and aural cues make consumers pause and think about the goods. *Id.*

Although “Applicant does not dispute that SUPER-formative marks may be considered descriptive in connection with certain goods and services,” it asserts that “Applicant’s Mark, however, is a nuanced exception to the rule ... due to its overall

suggestive meaning in connection with dietary supplements.” 6 TTABVUE 6-7, 11-12; 9 TTABVUE 4. Applicant argues that “[t]he “Examining Attorney’s apparent conclusion that more recent Board decisions create an indiscriminate rule for all marks incorporating the word ‘SUPER’ with some other non-registrable component therefore appears to be erroneous.” 9 TTABVUE 4. Applicant relies on the case *In re Occidental Petroleum Corp.*, 167 USPQ 128, 128 (TTAB 1970), in which SUPER IRON for soil supplements containing a 17% iron component was found suggestive. 6 TTABVUE 6-7.

Applicant also relies on third-party Principal Register SUPER-formative registrations. Applicant submits that “these registrations [for supplements and other Class 5 products] demonstrate that the Office has previously considered marks that incorporate ‘SUPER’ along with another, potentially less distinctive term, to be capable of registration on the Principal Register in connection with supplements or other Class 5 products.” 6 TTABVUE 10. Applicant submits that these third-party registrations as a whole demonstrate “nuanced situations in which the word SUPER combined with another term can be considered suggestive rather than descriptive.” 6 TTABVUE 11, 9 TTABVUE 4. While recognizing “that the USPTO is not necessarily bound by prior decisions,” Applicant submits that “these registrations do nevertheless illustrate that the USPTO has recognized nuance in SUPER formative marks in the past.” 9 TTABVUE 4. Applicant asserts that any doubt as to whether SUPERSALT is merely descriptive should be resolved in its favor. 6 TTABVUE 12.

In response, the Examining Attorney argues that SUPERSALT is merely descriptive of Applicant's dietary supplements which specifically include electrolyte salts. 8 TTABVue 6. The Examining Attorney argues that regardless of whether SUPERSALT is unitary, the mere combination of descriptive wording, or the combination of descriptive and laudatory wording, does not defeat the descriptive nature of the overall mark. *Id.*

As to the term SALT, the Examining Attorney argues that "salt" "is commonly used as an ingredient in dietary supplements" and that "applicant's specimen demonstrates that the applied-for dietary supplements contain 'electrolyte salts,' demonstrating that 'salt'" "is a principal component of the applied-for goods" and "directly descriptive of those goods." *Id.* at 6, 8. As to the term SUPER, the Examining Attorney argues that "super" is "merely laudatory" and descriptive. *Id.*

The Examining Attorney asserts that

[w]hether or not all salts are electrolytes, or all supplements contain salt is not the issue; the issue is if applicant's dietary supplements include salt as a principal component, which they clearly do. Indeed, applicant's specimen specifically states in the description that salt is the "main ingredient" and calls the goods "electrolyte salt" in a large font on the front of the goods.

*Id.* at 7.

As to prior Board cases relied on by Applicant, the Examining Attorney asserts that those cases "are from the 1970's, predating decades of more recent precedent" "where the Board has determined that if the word 'super' is combined with a word [that] names the goods or services, or a principal component, grade or size thereof, then the composite term is considered merely descriptive of the goods or services." *Id.*

As to the third-party registrations submitted by Applicant to support the suggestiveness of SUPERSALT, the Examining Attorney asserts that each case must be decided on its own facts, and these third-party registrations are “not conclusive on the issue of descriptiveness” due to different records. *Id.* The Examining Attorney concludes that “the potential guidance provided by the prior registrations is muddy at best” and that the third-party registrations simply reinforce that each case must be decided on its own facts. *Id.* at 8.

#### IV. Analysis

The term SALT in Applicant’s mark is defined as “a usually whitish crystalline solid, chiefly sodium chloride, used extensively in ground or granulated form as a food seasoning and preservative. Also called common salt, table salt.”<sup>9</sup> Applicant’s specimens show the goods are identified as “electrolyte salt,” and are a pink sea salt (Real Salt) obtained from an ancient deposit in the state of Utah in the United States.<sup>10</sup> The third-party use evidence shows that electrolyte replacement or replenisher supplements may be in the form of “salt caps” or “salt tablets.”<sup>11</sup> Pure Vitamin, one of the third-party users offering a salt electrolyte complex, apparently sources its salt from the same ancient deposit that Applicant uses. Pure Vitamin describes its salt electrolyte supplement as featuring “Redmond Real Salt, the only natural, unprocessed, unbleached, ancient pink sea salt mined in the USA.”<sup>12</sup> Based

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<sup>9</sup> Feb. 19, 2020 Office Action at TSDR 3.

<sup>10</sup> Specimen May 28, 2020.

<sup>11</sup> Oct. 5, 2020 Office Action at TSDR 2, 3, 6, 8, 9, 16, 19, 27.

<sup>12</sup> Oct. 5, 2020 Office Action at TSDR 8, 9.

on Applicant's specimen, the definition of salt in the record, and the evidence of third-party salt supplements for electrolyte replacement or electrolyte replenishment, we find that "salt" is descriptive of Applicant's electrolyte salt dietary supplements.

As to the term SUPER, this term is defined as "of high grade or quality" or "very large or powerful."<sup>13</sup> Applicant's specimen shows that the "main ingredient is Real Salt, the only sea salt from an ancient deposit in Utah," containing "natural minerals (+60)" and providing "High Performance Rehydration."<sup>14</sup>

The word SUPER in Applicant's mark is descriptive of Applicant's electrolyte salt dietary supplement as it describes the main ingredient, pink sea salt, as being superior, first-rate, and high quality. In particular, the salt used in Applicant's supplement is claimed to be specially sourced in the USA from an ancient deposit in Utah, is an unrefined, natural sea salt and has a much higher mineral content than refined salt used in many salt tablets or capsules. In addition, SUPER also may describe Applicant's dietary supplements as "large and powerful" in that the main ingredient in the electrolyte salt supplement is identified as "salt" and Applicant describes its supplement as offering "high performance rehydration" and "rapid oral rehydration" since the unrefined sea salt contains +60 natural minerals for electrolyte replenishment.

When these words are combined as SUPERSALT, the constituent elements retain their descriptive significance. SUPERSALT itself is merely descriptive of Applicant's

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<sup>13</sup> Feb. 19, 2020 Office Action at TSDR 2.

<sup>14</sup> Specimen May 28, 2020.

goods in that it conveys, in a laudatory manner, that Applicant's electrolyte salt dietary supplements are superior, first rate, or high quality and/or contain a larger amount of salt as its main ingredient with more minerals, making it a more powerful electrolyte replacement supplement.

We are not persuaded by Applicant's arguments that multi-step reasoning will be required for a consumer "to understand how SUPERSALT pertains to hydration supplements because not all salts are electrolytes and salts are not always related to or contained in supplements." 6 TTABVUE 7, 12. As the Examining Attorney points out, that "is not the issue; the issue is if applicant's dietary supplements include salt as a principal component, which they clearly do." 8 TTABVUE 7. The question is whether consumers who know what the goods are will be required to undertake multi-step reasoning to reach a conclusion as to the nature of the involved goods. We find they would not since there is nothing in SUPERSALT that requires imagination or mental thought for purchasers of and prospective customers for Applicant's goods to readily understand the nature of the goods (i.e., electrolyte salt supplements). The individual components SUPER and SALT each retain their descriptive meaning when combined in the mark, and the combination does not convey any distinctive source-identifying impression contrary to the descriptiveness of the individual parts. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (when "each component retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive.").

We also see no merit in Applicant's contention that the visual and aural aspects of the purported alliteration in the SUPERSALT mark, resulting from the repeated letter "s" for each term in the mark, creates a unique commercial impression (i.e., "creates a unique and unitary commercial impression separate from its individual components due to its distinct structure and cadence"). 9 TTABVUE 3; 6 TTABVUE 6. There is nothing distinctive resulting from the combination, and there is nothing about the alliteration or sound quality of Applicant's mark that creates a distinct commercial impression such the mark loses its descriptive significance when viewed by the consumer, or that a consumer would focus on the alliteration formed by SUPERSALT, or that the alliteration would require a consumer to undertake mental thought to discern the nature of the goods. *See, e.g., DuoProSS Meditech Corp.*, 103 USPQ2d at 1758 (SNAP SIMPLY SAFER merely descriptive for cannulae, needles, and syringes despite alliteration); *In re Lean Line, Inc.*, 229 USPQ 781, 782 (TTAB 1986) (LEAN LINE not considered unitary; "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."). SUPER and SALT, when combined as SUPERSALT do not lose their descriptive significance because of the visual and aural aspects created by the repeating letter "s" as the first letter of each term forming Applicant's compound mark.

We also disagree with Applicant's argument that the combination of "super" and "salt" creates a unique mark. 9 TTABVUE 3; 6 TTABVUE 5-6. Rather, Applicant's

mark, SUPERSALT when used in connection with Applicant's identified goods, immediately describes, without conjecture or speculation, a significant feature or characteristic of Applicant's goods, as discussed. *See In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012) ("If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself descriptive").

Although Applicant argues that its SUPERSALT "mark is a nuanced exception to the rule," relying on the third-party SUPER-formative registrations to demonstrate "nuanced situations in which the word SUPER combined with another term can be considered suggestive rather than descriptive," (6 TTABVUE 6-7, 11-12; 9 TTABVUE 4), we are not persuaded.

To the extent the third-party registrations may be considered probative, none of the third-party registrations of record is determinative of a contrary finding in this case, nor do they singly or collectively serve to create any doubt as to the mere descriptiveness of the term SUPERSALT when used in connection with Applicant's dietary supplements. What many of the registrations tend to show is that when "super" is coupled with an apparently suggestive word, the resulting mark is considered to be suggestive (e.g., Superfit (incontinence garments), Supercure (dental restoration compounds), Super Flex (dietary supplements), Supervision (nutritional supplements), Superplants (herbal tea), Superoot (dietary supplements, juice beverages), Super Cool (bed pillows, mattresses), Supersolid (flooring)).

As to the third-party Super-formative registrations on the Principal Register that contain disclaimed matter with SUPER carrying the mark, (*see* among others, Super Berry (“berry” disclaimed, dietary supplements), Super 1 Daily (“1 daily” disclaimed, vitamin supplements), Super Sniper (“sniper” disclaimed, small arms and rifles), Super Chef (“chef” disclaimed, cooking oils, salad oils and salad dressing)), this evidence also is not persuasive of a different result in this case. While uniform treatment under the Trademark Act is an administrative goal, the Board’s task in an *ex parte* appeal is to determine, based on the record before us, whether Applicant’s mark is merely descriptive. As the Board in *Positec* noted, “we are faced with a task of deciding the descriptiveness (or not) of the term that follows ‘SUPER.’ To the extent the third-party registrations do not meet this level of consistency, they are not relevant.” *In re Positec*, 108 USPQ2d at 1172 n.54 (*citing In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [Applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”)). We are not privy to the records of the third-party registration files and, moreover, the determination of registrability of those particular marks by the trademark examining attorneys cannot control the merits in the case now before us.

Applicant, although recognizing that the USPTO is not necessarily bound by prior Board decisions, also relies on the case *In re Occidental Petroleum Corp.*, 167 USPQ 128 (TTAB 1970), in which SUPER IRON was determined suggestive in connection with soil supplements that contained iron as a component. 6 TTABVUE 6-7. In

*Occidental Petroleum*, the Board found that iron as a component of the goods was not descriptive because “it takes some roundabout reasoning to make a determination ... that the product contains a larger amount of iron than most soil supplements or that this iron ... ingredient ... is superior in quality to iron found in other soil supplements.”<sup>15</sup> *Id.* at 128.

However, we do not find a similar circumstance here. It is clear from the specimen that the main ingredient is Real Salt, a pink sea salt from an ancient deposit in Utah which is claimed to be superior to regular salt, as it contains +60 natural minerals. Although Applicant asserts that the mark informs through suggestion regarding the nature of the goods, given that salt is a major component of Applicant’s electrolyte salt supplements, we find that the combination SUPERSALT immediately describes a significant feature or characteristic of the goods and is therefore merely descriptive.

## V. Conclusion

When considered in its entirety, the term SUPERSALT would in a laudatory fashion immediately describe, without conjecture or speculation, a significant quality, characteristic or feature of Applicant’s dietary supplements. In particular, purchasers and potential customers who know what Applicant’s goods are would plainly understand that SUPERSALT designates a dietary supplement made of an

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<sup>15</sup> Looking to case law and past practice of the Office in respect to third-party registrations, the word SUPER has been found to be, in different contexts, either a suggestive word or a descriptive word. What is clear, after reviewing the various cases and third-party registrations, is that the question of whether the term SUPER is merely descriptive or is suggestive must be determined on a case-by-case basis, considering the marks, the goods, and the evidence of the particular record.

excellent, first-rate, or superior grade of salt, containing as its main component salt, and offering a more powerful form of electrolyte replacement since the salt making up the supplement has a higher mineral content. Therefore, we find that SUPERSALT describes rather than suggests these characteristics of Applicant's goods.

#### VI. Alternative Request to Amend on the Supplemental Register

Having found that Applicant's mark is merely descriptive, we now address Applicant's alternative request to amend the application to seek registration on the Supplemental Register. The Examining Attorney indicated in her Aug. 23, 2021 and Oct. 5, 2020 Office Actions that the application was eligible to seek registration on the Supplemental Register, and reiterated that determination in her brief, ("it is noted that applicant has amended the application to seek registration on the Supplemental Register in the alternative. The examining attorney has determined that this application is eligible for registration on the Supplemental Register."). 8 TTABVue 3. Accordingly, Applicant's request, in the alternative, is granted, and the application is hereby amended to the Supplemental Register.

**Decision:** The refusal to register SUPERSALT on the Principal Register is affirmed. However, Applicant's mark will be registered on the Supplemental Register in due course.