

This Opinion is Not a
Precedent of the TTAB

Mailed: November 3, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re TriarQ Health, LLC
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Serial No. 88149951
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Christopher A. Mitchell, Dickinson Wright PLLC,
for Fetal Life, LLC.

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Before Cataldo, Lykos and Johnson,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, TriarQ Health, LLC, seeks registration on the Principal Register of the mark ONE TEAM CARE (in standard characters), identifying “providing temporary use of online non-downloadable cloud computing software for coordinating the provision of healthcare among caregivers and patients,” in International Class 42.¹

¹ Application Serial No. 88149951 was filed on October 10, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intent to use the mark in commerce.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that ONE TEAM CARE merely describes a function or purpose of the identified services. Applicant and the Examining Attorney filed briefs.

I. Mere Descriptiveness

In the absence of acquired distinctiveness,² Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is “merely descriptive” within the meaning of Section 2(e)(1) 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 TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978); *see also In re Gyulay*, 3 USPQ2d at 1009.

² Applicant has not made a claim of acquired distinctiveness. Accordingly, the question of whether Applicant's ONE TEAM CARE mark has acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f), is not before us.

A term need only describe a single feature or attribute of the identified goods or services to be descriptive. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). Whether a mark is merely descriptive cannot be determined in the abstract or on the basis of guesswork. Descriptiveness must be evaluated “in relation to the particular goods [or services] 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 [or services] because of the manner of its use or intended use.” *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). The question is not whether a purchaser could guess the nature of the goods or services from the mark alone. Rather, we evaluate whether someone who knows what the goods or services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). To be merely descriptive, a term must forthwith convey an immediate idea of a quality, feature, function, or characteristic of the relevant goods or services with a “degree of particularity.” *The Goodyear Tire & Rubber Co. v. Cont’l Gen. Tire, Inc.*, 70 USPQ2d 1067, 1069 (TTAB 2008) (citing *In re TMS Corp. of the Americas*, 200 USPQ 57, 59 (TTAB 1978) and *In re Entenmann’s Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990)).

In her brief,³ the Examining Attorney argues:

³ 6 TTABVUE 4.

All citations to documents contained in the Trademark Status and Document Retrieval (TSDR) database are to the downloadable .pdf versions of the documents in the USPTO TSDR

The proposed mark is a combination of descriptive terms that immediately conveys a feature of applicant's services, namely, software services that coordinate a "one team" method or strategy of care for patients.

In support of this contention, the Examining Attorney introduced into the record with her January 22, 2019 First Office Action⁴ dictionary definitions, including the following, of the terms comprising the mark:

ONE – "being a single unit or thing; constituting a unified entity of two or more components;"

TEAM – "a number of persons associated together in work or activity;"

CARE – "charge; supervision (under a doctor's care); to give care (care for the sick.)"

In further support of her contention, the Examining Attorney introduced into the record with her January 22, 2019 First Office Action⁵ and November 1, 2019 Final Office Action⁶ screenshots from the following seven websites from healthcare providers and medical trade journals utilizing the term "one team" in the context of various aspects of health care: (emphasis added)

industry-era.com/vendor-2017-healthcare-changing-healthcare-with-tripleaim.php – A healthcare industry article discussing Applicant TRIARQ HEALTH, and information provided by its Chairman, Mike Sappington. The article states in part:

Case Viewer. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the page references, if applicable.

⁴ At 5-32.

⁵ At 33-41.

⁶ At 7-30.

TRIARQ's value-based services help [medical] practices leverage current payer value based programming by working directly with payers and providers to create unique value programs, by building patient-centered engagement and care coordination solutions. On the other hand, TRIARQ's Transformations provides advisory and informatics services and is a strategic catalyst for changing the way health care is paid and delivered. This is achieved by inspired thought leaders and the application of their expertise using **One Team Care** approach. Their holistic approach includes performance management, technology and everything a practice needs to be successful on the road to value-based care. "We offer an all-inclusive partnership that includes expertise, software, services, and technologies that enables practices to not only survive, but thrive in the transition to value-based care. One complete Solution, One expert Partner, One simple Price," says Mike Sappington, Chairman, Managing Partner of TRIARQ.

thieme-connect.com – A healthcare industry article titled "One Team-Patient, Family, and Health Care Providers: An Interprofessional Education Activity Providing Collaborative and Palliative Care" discusses an approach to building inter-professional education and practice opportunities in palliative and hospice care.

modernhealthcare.com – In an article titled, "A '**One Team**' Culture Makes This Hospital a Success," Steve Allen, MD, CEO of Nationwide Children's Hospital in Columbus, Ohio discusses the hospital's listing on the U.S. News and World Report Honor Roll of best children's hospitals as a reflection of the hospital's "**One Team**" values.

nationwidechildrens.org – The same hospital describes its values by noting that, as "**one team**," members of the hospital staff:

- Do the right thing
- Create a Safe Day Every Day
- Promote Health and Well Being
- Are Agile and Innovative
- Get Results

allonehealth.com/one-team

ONE TEAM

We bring together a team of doctors, nurses, health coaches, mental health counselors, IT professionals, HR experts and wellness experts to ensure your workforce is ready and able to perform. An experienced team of occupational health certified physicians and nurses, in house MRO's and master's level counselors; your AllOne Health® team consists of experts in the field of occupational medicine, emergency medicine, public health and well-being. Our physicians have expertise in all pertinent regulatory areas including:

DOT, OSHA, PHSMSA, and HIPAA and take great pride in making a difference to the employees and organizations we serve. Our dedication is rewarded with many long-term relationships we've maintained with our clients – some that date back to our founding in 1971.

[nam.edu/wp-content/uploads/2018/09/Implementing-Optimal-Team-Based-Care-to-Reduce-Clinician-Burnout.pdf](https://www.yale.edu/wharton/wp-content/uploads/2018/09/Implementing-Optimal-Team-Based-Care-to-Reduce-Clinician-Burnout.pdf) 1 – a healthcare industry article that states in part:

Team-based health care has been linked to improved patient outcomes and may also be a means to improve clinician well-being. The increasingly fragmented and complex health care landscape adds urgency to the need to foster effective team-based care to improve both the patient and team's experience of care delivery. This paper describes key features of successful health care teams, reviews existing evidence that links high-functioning teams to increased clinician well-being, and recommends strategies to overcome key environmental and organizational barriers to optimal team-based care in order to promote clinician and patient well-being.

[careoneteam.com](https://www.careoneteam.com)

We are a clinical contact center providing Virtual Team Based Care: virtual clinical staff using telehealth technology and unified communications in partnership with traditional on-site healthcare delivery services.

Applicant essentially argues that its ONE TEAM CARE mark is ambiguous and only suggests a function, feature or characteristic of its services. In support of its position, Applicant introduced into the record with its July 22, 2020 Response to Office Action⁷ copies of nine third-party registrations for ONE TEAM and ONE TEAM formative marks issued to different entities and identifying a variety of goods and services, including the following registrations identifying services most closely related to Applicant's services:

ONE TEAM. ONE FOCUS. LIFE identifying “medical diagnosis and treatment of cancer;”

⁷ At 9-24.

ONE CENTER. ONE FOCUS. ONE TEAM. identifying “medical services, namely, medical imaging, surgery and treatment services;” and

ONETEAM.BUILD identifying “providing temporary use of on-line, non-downloadable software for use...in the field of residential and commercial design and construction” and related activities.

The Examining Attorney’s evidence, excerpted above, includes only four third-party uses of the term “one team” in medical journals or journals discussing medical practice and training, and use of ONE TEAM CARE as a mark in a trade journal article about Applicant. The website excerpts from the Modern HealthCare and Nationwide Children’s Hospital uses the term “one team” in the context of a particular hospital’s culture and approach to pediatric care, which suggests the term has some significance in connection with medical services. The excerpt from the AllOne Health article uses the term “one team” in the context of occupational health and employee assistance services provided by a range of healthcare professionals to healthcare employees and organizations. The excerpt from the National Academy of Medicine discussion paper mentions “team-based healthcare” in the context of improved patient outcomes and also the well-being of healthcare providers. The excerpt from the medical journal article from Thieme Seminars in Speech and Language discusses training and coaching provided to nursing, medical and communications sciences students in the field of end-of-life care. Finally, the Care One Team article discusses a clinical contact center offering virtual team based care in addition to on-site healthcare. This evidence shows limited use of the term “one team” in connection with various services related to providing a multidisciplinary

approach to medical and health related services and training. We observe that Applicant's services may be used, inter alia, to coordinate the provision of healthcare among a "team" of caregivers to patients.

However, the evidence of record, consisting of dictionary definitions of the terms comprising the mark and pages from seven medical and scientific internet websites, falls short of demonstrating that ONE TEAM CARE merely describes a function, feature or characteristic of Applicant's software services in the field of healthcare with the required degree of particularity. We acknowledge that the evidence shows four instances of various aspects of health care and training being referred to generally as provided by "one team." However, we agree with Applicant that the Examining Attorney's evidence is insufficient to show that ONE TEAM CARE merely describes a particular function or feature of Applicant's services. At least three of the journal articles are technical in nature and there is no indication regarding the extent of their circulation or readership, even among medical or healthcare professionals who might be the purchasers or end users of the identified services. "One team" is a nebulous or, at worst, suggestive term in all of the articles in which it appears. The only use of ONE TEAM CARE is as a mark in a trade journal article discussing Applicant and its services. Such evidence certainly does not support a finding that "one team care" is merely descriptive of the identified services. It is impossible from the evidentiary record to determine whether use of "one team" or "one team care" simply represents use of the term in context, or indicates use of the term to describe some particular aspect of Applicant's medical software services. As a result, the

Examining Attorney's slim record evidence fails to demonstrate that "one team care" describes a significant feature, aspect or characteristic of the recited services or their purpose such that the mark ONE TEAM CARE as a whole may be merely descriptive of thereof. To the extent that Applicant's software services may be used, inter alia, to facilitate a "one team" approach to medical care, imagination or additional thought is required to reach that conclusion. *See, e.g., In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread)

With regard to the third-party registrations introduced into the record by Applicant, as is often noted by the Board and the courts, each case must be decided on its own merits. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *see also In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); *In re Wilson*, 57 USPQ2d 1863 (TTAB 2001). This evidence nonetheless suggests that, based upon the evidentiary records presented in the underlying applications, the marks and services identified thereby were allowed to register. However, these registrations are not dispositive on the issue under appeal herein.

Finally, to the extent that any "doubts exist as to whether [the] term is descriptive as applied to the . . . [services] for which registration is sought, it is the practice of this Board to resolve doubts in favor of the applicant and pass the mark to publication with the knowledge that a competitor of applicant can come forth and initiate an opposition proceeding in which a more complete record can be established." *In re*

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Stroh Brewery Co., 34 USPQ2d 1796, 1797 (TTAB 1994); *see also In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.3d 1567, 4 USPQ2d 1141, 1144 (Fed. Cir. 1987) (citing *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972)).”

Decision: The refusal to register Applicant’s mark under Section 2(e)(1) on the basis that the mark ONE TEAM CARE is merely descriptive of the identified services is reversed.