

This Opinion is not a  
Precedent of the TTAB

Mailed: August 5, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Alpha Link Trading Ltd.*

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Serial No. 88617904

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Stephen J. Driscoll of FisherBroyles LLP,  
for Alpha Link Trading Ltd.

Lourdes Ayala, Trademark Examining Attorney, Law Office 106,  
Mary I. Sparrow, Managing Attorney.

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Before Kuczma, Goodman and Lebow,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Alpha Link Trading Ltd. (“Applicant”) seeks registration on the Principal Register of the mark BLOOD SUGAR PREMIER (in standard characters) for dietary supplements in International Class 5.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88617904 was filed on September 16, 2019, 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).

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. Applicant’s brief is at 4 TTABVUE. The Examining Attorney’s brief is at 8 TTABVUE.

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

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

### I. Evidentiary Issue

In her brief, the Examining Attorney has requested the Board take judicial notice of the dictionary definition of "premier" from The American Heritage Dictionary and Merriam-Webster dictionary, but did not provide a copy of those definitions."<sup>3</sup> Additionally, Applicant, in its brief, referenced the Google Search Dictionary definition from "Oxford Languages" of "premier" as "first in importance, order, or position; leading," attaching a copy of that definition and other documents as part of several exhibits filed with the Board before it filed its appeal brief.<sup>4</sup> Neither the Examining Attorney nor Applicant followed the proper procedures.

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<sup>2</sup> The Examining Attorney also refused registration under Section 2(d), 15 U.S.C. § 1052(d). However, the Examining Attorney advised in her brief that the Section 2(d) refusal has been withdrawn. 8 TTABVUE 3.

<sup>3</sup> The Examining Attorney did provide links to Merriam-Webster dictionary and American Heritage Dictionary. However, "the Board will not utilize a link or reference to a website's Internet address to consider content that may appear there." TRADEMARK MANUAL AND APPEAL BOARD MANUAL OF PROCEDURE (TMEP) (June 2021). *See also In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1195 n.21 (TTAB 2018) ("we do not consider websites for which only links are provided").

<sup>4</sup> 4 TTABVUE. The Board advised Applicant that it was giving no consideration to this filing. 5 TTABVUE. "The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal. If the appellant or the examining attorney desires to introduce additional evidence after an appeal is filed, the appellant or the examining attorney should submit a request to the Board to

Nevertheless, because the meaning of “premier” is important to our analysis and is not a fact subject to reasonable dispute, we will take judicial notice of the definition of “premier” as “best or most important,” and “first in importance, rank, or position; chief, leading, foremost” from the Cambridge and Oxford dictionaries.<sup>5</sup> *In re Jonathan Drew, Inc.*, 97 USPQ2d 1640, 1642 n.4 (TTAB 2011) (The Board may take judicial notice of dictionaries, including online dictionaries which exist in print format).

## II. 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, 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).

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suspend the appeal and to remand the application for further examination.” Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d).

<sup>5</sup> Cambridge Dictionary ([dictionary.cambridge.org](http://dictionary.cambridge.org)); Oxford Dictionary ([oed.com](http://oed.com)), both accessed August 2, 2021.

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).

Lastly, “[m]arks 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)).

### III. Evidence and Arguments

The Examining Attorney’s evidence consists of a Wikipedia article titled “blood sugar level.” (December 17, 2019 at TSDR 19-27).<sup>6</sup> The article states that “blood sugar level” is “the concentration of glucose present in the blood of humans and other animals.” *Id.* TSDR 19. The Wikipedia article discusses units (how to measure blood sugar level), normal value range of blood sugar level in humans and animals, the body’s regulation of blood sugar level, abnormalities of blood sugar level (high and low blood sugar) and glucose measurement techniques.

In connection with the now withdrawn Section 2(d) refusal, Applicant submitted two live third-party registrations showing disclaimers of the term “premier” covering dietary supplements, or dietary food supplements, herbal supplements and nutritional supplements. June 17, 2020 Response to Office Action at TSDR 2-3, 6-7.<sup>7</sup>

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<sup>6</sup> In connection with the withdrawn Section 2(d) refusal, the Examining Attorney submitted website evidence relating to dietary supplements to show that the same entity commonly provides the relevant goods and markets the goods under the same mark. December 17, 2019 Office Action at TSDR 1, 3-18.

<sup>7</sup> The Applicant also submitted an expired third-party registration, which is not evidence of anything other than that it issued. See *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ 1816, 1819 n.4 (TTAB 2015), citing *Sunnen Prods. Co. v. Sunex Int’l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987). Applicant submitted a list of third-party registrations and applications containing the term PREMIER obtained from the USPTO’s Trademark Electronic Search System database (TESS). June 17, 2020 Office Action at TSDR 8-9. Because the Examining Attorney did not advise Applicant that the listing of registrations and applications was insufficient to make them of record, as well as discussed the list in her

We find this evidence relevant to the Examining Attorney’s descriptiveness refusal. See *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006) (“[T]hird party registrations show the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services.”) (citing *Inst. Nat’l des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992)).

Relying on the Google Search Dictionary definition of “premier” as “first in importance, order, or position,” that is not of record, Applicant argues that “the notion that blood sugar is first [in importance] is nonsensical” as blood sugar can be “high,” “low” or “okay” and that this notion (“blood sugar is first”) “has no relationship to or in any way describes the goods—i.e., dietary supplements.” 6 TTABVUE 6. Applicant also argues that the Wikipedia article submitted by the Examining Attorney identifies “blood sugar level, blood sugar concentration, or blood glucose level concentrations present in the blood of humans and other animals” which “equates to various different meanings—*none of which describe a dietary supplement.*” (emphasis in original) 6 TTABVUE 5.

The Examining Attorney argues that

BLOOD SUGAR refers to the blood sugar level, blood sugar concentration, or blood glucose level concentrations present in the blood of humans and other animals and the dietary supplements in question are designed to help regulate a person’s blood sugars. The word PREMIER merely refers to something that is first or paramount and connoting the alleged merit of the product. The word PREMIER

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final office action, the Examining Attorney has waived any objection to the list. *In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2010). We consider the list but only insofar as the information provided by Applicant. *Id.*

describes a character or quality of the goods that does not add trademark value to the mark and therefore the mark as a whole is considered descriptive. 8 TTABVUE 7.

Together the wording BLOOD SUGAR PREMIER relays and implies to consumers that Applicant's dietary supplements are the best, leading or top of the line in the market place for blood sugar control. An average consumer who sees this mark and/or comes across the mark on a shelf in the marketplace will get the commercial impression that Applicant's dietary supplements are the foremost or best in the industry to control blood sugar levels. 8 TTABVUE 8.

The Examining Attorney concludes that "[b]ased on the evidence in this case, the mark BLOOD SUGAR PREMIER comprised of the descriptive wording BLOOD SUGAR plus the laudatory word PREMIER is descriptive as a whole as the [sic] mark and relays and implies to consumers that the dietary supplements are the best or leading in the market place for blood sugar control." 8 TTABVUE 9.

#### IV. Analysis

Our primary reviewing court, the Federal Circuit Court of Appeal, and this Board have held that other marks which arguably denote "high quality," "excellence" and "superior quality" are laudatory and thus merely descriptive. These include the term PREMIER in *In re Best Software Inc.*, 58 USPQ2d 1314, 1317 (TTAB 2001) (finding, in connection with an application to register BEST! SUPPORTPLUS PREMIER and BEST! SUPPORTPLUS for computer consultation services, "that the words 'BEST' and 'PREMIER' are merely descriptive laudatory words which should be disclaimed"), the term BEST, in *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058-59 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA for "beer and ale" found to be laudatory and incapable of distinguishing source), and the term ULTIMATE in *In re*

*Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK is “a laudatory descriptive phrase that touts the superiority of Nett Designs’ bike racks”).

In this case, the definition of PREMIER as “best” and “first in rank,” attributes superiority to the identified goods, and supports a finding that this term is laudatory and merely descriptive in connection with Applicant’s dietary supplements. The third-party registrations for dietary supplements submitted by Applicant with disclaimers of “premier” lend further support to this finding.

As to the term BLOOD SUGAR, as indicated, the Wikipedia article provides that “blood sugar level, blood sugar concentration, or blood glucose level is the level of glucose present in the blood of human and other animals” and is regulated by the body. December 17, 2019 Office Action at TSDR 19, 21. The article also indicates that many factors affect blood sugar levels and that blood sugar levels outside the normal range can be an indicator of a medical condition or disease. *Id.* at 19-23.

The Wikipedia evidence submitted by the Examining Attorney supports a finding that the term BLOOD SUGAR is descriptive when used in connection with Applicant’s goods, as it is common knowledge, and the record reflects, that dietary supplements are used in connection with supporting body health. December 17, 2019 Office Action at TSDR 3-17 (showing supplements offered to support brain health, digestive health, heart health, energy management, inflammation management; nutrients for supporting energy, immunity and metabolism; liver cleanse and joint health). *See also In re Carvel Corporation* 223 USPQ 65, 69 (TTAB 1984) (“Both in



terms of normal dictionary meaning and on the basis of common knowledge, “fresh” or “freshest” as applied to ice cream would, we believe, be readily perceived as a common and normal descriptive/superlative characterization (just as “smooth”, “creamy”, “delicious” or “flavorful” would, by applicant’s concession, be so perceived).”). We are not persuaded by Applicant’s argument that BLOOD SUGAR has multiple meanings due to the Wikipedia article identifying blood sugar level as being referred to synonymously as “blood sugar concentration” or “blood glucose level.” Even if other terms or phrases exist to refer to blood sugar level, that would not prevent the term BLOOD SUGAR from being merely descriptive of Applicant’s product. *See Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc.*, 299 F.2d 855, 132 USPQ 627, 632 (CCPA 1962).

We also find that the terms BLOOD SUGAR and PREMIER when combined to form BLOOD SUGAR PREMIER do not lose their descriptive significance. The combination BLOOD SUGAR PREMIER does nothing more than tout the superiority of Applicant’s dietary supplements used to assist in blood sugar level management.

Further, although Applicant argues that BLOOD SUGAR PREMIER is nonsensical, the juxtaposition of the terms where PREMIER follows BLOOD SUGAR does not change the result. This combination does not create an incongruous non-descriptive meaning different from a “premier blood sugar” dietary supplement. *See In re Away Chemical Corp.*, 217 USPQ 275, 276 (TTAB 1982) (“the transposition of ‘tablets for pans’ to ‘pan-tablets’” is insufficient to overcome “basic descriptive cast” of the involved mark); and *In re Dairimetrics, Ltd.*, 169 USPQ 572, 573 (TTAB 1971)

(ROSE MILK, though not found in any dictionaries, is synonymous in meaning to the “recognized descriptive name” “Milk of Roses” for a rose scented cosmetic preparation). *See also In re Copytele Inc.*, 31 USPQ2d 1540, 1542 (TTAB 1994) (“While applicant is correct that a non-descriptive trademark may be fashioned from the incongruous combination of several words that are, individually, merely descriptive of an applicant’s goods, we fail to see anything incongruous in the combination of the words ‘SCREEN FAX PHONE.’”). Therefore, the transposition of “blood sugar” and “premier” to form BLOOD SUGAR PREMIER evokes substantially the same if not identical meaning and commercial impression as “premier blood sugar.”

In view of the foregoing, we find that Applicant’s proposed designation BLOOD SUGAR PREMIER is merely descriptive of its dietary supplements.

#### V. Conclusion

We find that the combined term BLOOD SUGAR PREMIER identifies a significant characteristic, feature, purpose, function or use of the goods identified in the application and is merely descriptive.

**Decision:** The refusal to register Applicant’s mark BLOOD SUGAR PREMIER is affirmed.