

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: September 29, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Commonwealth Care Alliance, Inc.

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Serial No. 88661627
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Steven A. Abreu of Sunstein LLP,
for Commonwealth Care Alliance, Inc.

Andrea B. Cornwell, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Pologeorgis, Larkin, and Coggins,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Commonwealth Care Alliance, Inc. (“Applicant”) seeks registration on the
Principal Register of the proposed standard character mark EL CUIDADO
EXCEPCIONAL for the following services:¹

Insurance consulting in the field of health insurance; insurance
administration; claims administration services in the field of health
insurance; providing information in insurance matters; insurance
services, namely, insurance eligibility review and verification and
consultation in the health industry; insurance services, namely, review

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¹ Application Serial No. 88661627, filed on October 21, 2019, based on an allegation 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). The application includes the following translation statement: “The English translation of EL CUIDADO EXCEPCIONAL in the mark is UNCOMMON CARE.”

and verification of Medicaid and Medicare eligibility status and related information, in International Class 36; and

Health care; managed health care services, in International Class 44.

The Trademark Examining Attorney applied the doctrine of foreign equivalents to refuse 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 Applicant's proposed mark is merely descriptive of the identified services because it is laudatory in nature. Additionally, the Examining Attorney refused registration under Trademark Rule 2.32(a)(9), 37 C.F.R. § 2.32(a)(9), on the basis that Applicant is required to provide an accurate English translation of its proposed mark.

When the refusals were made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, this appeal resumed. The appeal is fully briefed.² For the reasons explained below, we affirm the refusal under Section 2(e)(1) of the Trademark Act.³

I. Mere Descriptiveness – Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), 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,” unless the

² In her appeal brief, the Examining Attorney withdrew the refusal based on providing a proper translation of Applicant's mark. *See* Examining Attorney's Brief, p. 1; 10 TTABVUE 2. Accordingly, the only issue for our consideration on appeal is the Section 2(e)(1) refusal.

³ The TTABVUE and Trademark Status & Document Retrieval (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .pdf version of the documents.

mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).⁴

“A mark is ‘merely descriptive’ within the meaning of Section 2(e)(1) ‘if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.’” *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *3 (TTAB 2020) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). “A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *Id.* (quoting *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012)).

“Marks that are merely laudatory and descriptive of the alleged merit of a product [or service] are . . . regarded as being descriptive” because “[s]elf-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods [or services].” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1256, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012) (quoting *In re Boston Beer Co.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999)); *see also In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (holding THE ULTIMATE BIKE RACK merely laudatory and descriptive of applicant’s bicycle racks being of superior quality); *Boston Beer Co.*, 53 USPQ2d at 1058-59 (holding THE BEST BEER IN AMERICA merely laudatory and descriptive of applicant’s beer and ale being of superior quality); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1209.03(k) (July 2021). In fact, “puffing, if anything, is more likely to render

⁴ Applicant does not claim that its proposed mark has acquired distinctiveness.

a mark merely descriptive, not less so.” *DuoProSS Meditech Corp.*, 103 USPQ2d at 1759.

II. Applicability of the Doctrine of Foreign Equivalents

The foreign equivalent of a merely descriptive English term is also merely descriptive. *In re N. Paper Mills*, 64 F.2d 998, 17 USPQ 492, 493 (CCPA 1933); *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270 (TTAB 2016) (quoting *In re Optica Int’l*, 196 USPQ 775, 777 (TTAB 1977)). Under the doctrine of foreign equivalents, marks with foreign terms from common, modern languages are translated into English to determine descriptiveness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); *see also* TMEP § 1209.03(g).

The doctrine is applied only when it is likely that the ordinary American purchaser would stop and translate the wording into its English equivalent. *Palm Bay Imps., Inc.* 73 USPQ2d at 1696. The “ordinary American purchaser” “includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009).

As the Board has observed:

The purpose of the Trademark Act is two-fold: to protect business and to protect the consumer. ... The doctrine of foreign equivalents is fundamental to this protection. It extends the protection of the Act to those consumers in this country who speak other languages in addition to English.

...

At least one significant group of “ordinary American purchasers” is the purchaser who is knowledgeable in English as well as the pertinent foreign language.

In re Spirits Int’l N.V., 86 USPQ2d 1078, 1083-85 (TTAB 2008), *rev’d on other grounds*, 90 USPQ2d 1489 (Fed. Cir. 2009), *quoted in* 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:34 (5th ed. June 2021 update) (“[t]he rationale of the doctrine is to protect the perceptions of ordinary American consumers who are multilingual.”).

Because Spanish is a common modern language, the doctrine of foreign equivalents applies to marks displayed in Spanish. *Highlights for Children*, 118 USPQ2d at 1271 (“Spanish is a modern language that is widely spoken in the United States.”).

In this regard, the Examining Attorney submitted evidence from the U.S. Census Bureau demonstrating that Spanish is spoken by a sizeable population in the United States.⁵ The Examining Attorney also submitted the following online dictionary definitions demonstrating that the English translations of the Spanish terms “cuidado” and “excepcional” are “care” and “exceptional,” respectively:⁶

- WordReference primarily translates CUIDADO as “care” and EXCEPCIONAL as “exceptional.”
- SPANISHD!CT primarily translates EXCEPCIONAL as “exceptional” and CUIDADO as “care.”

⁵ February 3, 2020 Office Action, at TSDR p. 20.

⁶ February 3, 2020 Office Action, at TSDR pp. 5-19; August 21, 2020 Final Office Action, at TSDR pp. 5-15 and 23-26; and March 12, 2021 Denial of Request for Reconsideration, at TSDR pp. 4-8.

- Collins Dictionary primarily translates EXCEPCIONAL as “exceptional.”
- USPTO’s Scientific and Technical Information Center shows “EL CUIDADO EXCEPCIONAL” translated as “the exceptional care” by a USPTO-employed translator.
- Cambridge Dictionary primarily translates EXCEPCIONAL as “exceptional.”
- Lexico (Oxford Dictionary) primarily translates EXCEPCIONAL as “exceptional.”
- Webster’s Spanish-English Dictionary for Students primarily translates EXCEPCIONAL as “exceptional.”

Additionally, the Examining Attorney submitted the following Internet evidence purportedly showing that third parties commonly use the phrase “el cuidado excepcional” or its English equivalent “exceptional care” to describe the quality of healthcare and health insurance services such as those offered by Applicant:⁷

- Linguee website excerpts show that, particularly in the context of health services, EL CUIDADO EXCEPCIONAL is overwhelmingly translated as EXCEPTIONAL CARE.
- Mayo Clinic website excerpts show a healthcare provider article in English and Spanish language versions for English- and Spanish-speaking consumers, discussing its “high-quality patient care”, in which EL CUIDADO EXCEPCIONAL is translated as EXCEPTIONAL CARE.
- Driscoll Children’s Hospital website excerpts show a hospital website in English and Spanish language versions for English- and Spanish-speaking consumers, discussing the “world-class physicians, treatments and cutting-edge technologies” offered by the hospital, in which EL CUIDADO EXCEPCIONAL is translated as EXCEPTIONAL HEALTHCARE.

⁷ August 21, 2020 Final Office Action, at TSDR pp. 24-26; and March 21, 2021 Denial of Request for Reconsideration, at TSDR pp. 11-44.

- East Boston Neighborhood Health Center website excerpts show a healthcare provider article in English and Spanish language versions for English- and Spanish-speaking consumers, discussing its “high-quality care”, in which CUIDADO EXCEPCIONAL is translated as EXCEPTIONAL CARE.
- Wentworth-Douglass Hospital website excerpts show a patient handout English and Spanish language versions for English- and Spanish-speaking consumers, discussing “high-quality, compassionate, personalized health care”, in which CUIDADO EXCEPCIONAL is translated as EXCEPTIONAL CARE.
- Geisinger website excerpts show use of the phrase EXCEPTIONAL CARE to describe the high number of qualified doctors, hospitals and clinics included in its health insurance network.
- UPMC Health Plan website excerpts show use of the phrase EXCEPTIONAL CARE to describe the high quality of care provided by its in-network health care providers and hospitals.
- Cision website excerpts show use of the phrase EXCEPTIONAL CARE to describe a health insurance plan’s honors for in-network health care providers demonstrating the “highest quality of care.”
- Partner MD website excerpts show use of the phrase EXCEPTIONAL CARE to describe the high quality of health care and personal medical attention provided by its practice.
- Aurora Health Care website excerpts show use of the phrase EXCEPTIONAL CARE to describe its “world class doctors and caregivers, innovative solutions, outstanding outcomes, and leading-edge research and clinical trials.”
- Innovation Health website excerpts show use of the phrase EXCEPTIONAL CARE to describe the “high-quality, affordable and convenient care” provided by its in-network health care providers.

Based on the foregoing evidence, we find that relevant consumers would likely stop and translate EL CUIDADO EXCEPCIONAL into its English equivalent “exceptional care.” To be sure, exceptions have arisen from time to time in which relevant consumers would not “stop and translate” words from common, modern

languages. *See, e.g., Cont'l Nut Co. v. Cordon Bleu*, 494 F.2d 1397, 181 USPQ 647 (CCPA 1974) (finding that the French term CORDON BLEU had such a well-established meaning that even French speakers would not translate it to “blue ribbon.”); *In re Tia Maria, Inc.*, 188 USPQ 524 (TTAB 1975) (holding confusion unlikely between AUNT MARY’s for canned fruits and vegetables and TIA MARIA, as the Spanish mark named a particular person in the context of restaurant services).

Those exceptions are inapplicable here. There is no evidence that EL CUIDADO EXCEPCIONAL is so commonly used among English speakers, like CORDON BLEU, that translation becomes unnecessary. *See In re Thomas*, 79 USPQ2d 1021, 1025 (TTAB 2006) (“This situation ... differs from those cases in which it was found that the mark would not be translated because of the inherent nature of the mark.”). Also, there are no personal names, like TIA MARIA and AUNT MARY, to differentiate the marks. *See Ricardo Media Inc. v. Inventive Software, LLC*, 2019 USPQ2d 311355, at *7 (TTAB 2019) (RICARDO distinguishable from RICHARD).

Quite simply, the evidence of record shows that Applicant’s proposed mark immediately describes and lauds a feature or quality of Applicant’s identified services, namely, that Applicant provides above average attentive assistance or treatment to those in need of health care and health care insurance services.

Applicant argues that its proposed mark is not merely descriptive and laudatory of the identified services because the translation statement of record translates EL CUIDADO EXCEPCIONAL as UNCOMMON CARE, and Applicant already owns a trademark registration for UNCOMMON CARE for the same services identified in

its currently involved application.⁸

We do not find Applicant's argument persuasive. First, as with disclaimers and descriptions of the mark set forth in an application, consumers are almost certainly unaware of the translation statement of record, and would not be influenced by that fact in their understanding of the mark. *Cf. Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 73 USPQ2d 1350, 1355 (Fed. Cir. 2004) ("confusion is evaluated from the perspective of the purchasing public, which is not aware that certain words or phrases have been disclaimed" in a registration); *In re Aquitaine Wine USA*, 118 USPQ2d 1181, 1188 (TTAB 2018) ("the public is unaware of disclaimers that 'quietly reside' in the records of the Office.") (quoting *In re Wada*, 48 USPQ2d 1689, 1692 (TTAB 1998)); *In re Medline Indus., Inc.*, 2020 USPQ2d 10237, at *11 n.38 (TTAB 2020) ("consumers are unaware of the descriptions [of the mark set forth in applications]"). Second, with regard to Applicant's prior registration, each case is decided on its own facts, and each mark stands on its own merits. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (citing *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009)); *Nett Designs, Inc.*, 57 USPQ2d at 1566. The mark at issue here is not UNCOMMON CARE, but a Spanish language mark, EL CUIDADO EXCEPCIONAL, which must be considered in its own right.

Applicant also discusses at length its intention that EXCEPCIONAL translate to

⁸ Applicant's Appeal Brief, pp. 1 and 4; 8 TTABVUE 5 and 8. Applicant submitted a status and title copy of its claimed prior registration for the mark UNCOMMON CARE. See February 19, 2021 Request for Reconsideration, at TSDR pp. 20-22.

UNCOMMON in its marketing materials and on its website.⁹ In support thereof, Applicant submitted a Certificate of Accuracy from the Translation Company of New York which attests to the accuracy of the English translation of the Spanish wording “el cuidado excepcional” to be “uncommon care” in Applicant’s marketing materials.¹⁰

Applicant’s intentions, however, do not dictate how Spanish-speaking consumers will understand the service mark. Rather, the overwhelming evidence of record shows that the average Spanish-speaking consumer will understand EL CUIDADO EXCEPCIONAL to mean EXCEPTIONAL CARE in the context of Applicant’s health insurance and healthcare services. This is particularly true where (1) the English and Spanish versions of the word are nearly identical in appearance and pronunciation, i.e., EXCEPCIONAL looks and sounds like the English word EXCEPTIONAL, and (2) Applicant itself submitted two dictionary translations of the Spanish term “excepcional” where the term is translated as the English word “exceptional.”¹¹

Additionally, Applicant argues that a Section 2(e)(1) refusal is inappropriate unless UNCOMMON CARE, as a possible alternate meaning, is shown to be descriptive. Applicant’s argument is unavailing. “It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.” *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)).

⁹ Applicant’s Appeal Brief, pp. 2-6; 8 TTABVUE 6-10.

¹⁰ February 19, 2021 Request for Reconsideration, at TSDR p. 66.

¹¹ July 31, 2020 Response to Office Action, at TSDR pp. 9-10.

Moreover, even if we were to find that the English translation of EL CUIDADO EXCEPCIONAL is “uncommon care,” as argued by Applicant, we would nonetheless find that this translation is also laudatory in nature. The term “uncommon,” when viewed in the context of the identified services, is defined as “above the ordinary,” “exceptional; remarkable.”¹² The fact that there may be additional definitions of the term “uncommon” is of no consequence. As previously noted, so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.

Applicant also argues that the Examining Attorney failed to submit any evidence demonstrating use of either “exceptional care” or “cuidado excepcional” in the field of health insurance services and, thus, has failed to demonstrate that its mark is merely descriptive of Applicant’s health insurance services in Class 36.¹³ Applicant is mistaken. The Examining Attorney did submit evidence demonstrating that at least one third-party health insurance company uses the phrase “exceptional care” in advertising their services, as illustrated below:

- www.innovationhealth.com¹⁴

¹² March 12, 2021 Denial of Request for Reconsideration, at TSDR pp. 9-10. We also note that the evidence of record demonstrates that the Spanish translation of the English term “uncommon” is “raro” or “poco común,” and not “excepcional.” See August 21, 2020 Final Office Action, at TSDR pp. 21-22.

¹³ Applicant’s Reply Brief, p. 6; 11 TTABVUE 7.

¹⁴ March 12, 2021 Denial of Request for Reconsideration, at TSDR pp. 41-44.

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Notwithstanding, we find the wording “exceptional care” to be inherently laudatory for Applicant’s health insurance services.

Finally, Applicant argues that since the Examining Attorney withdrew her requirement to provide an accurate translation of Applicant’s mark, Applicant’s original translation of EL CUIDADO EXCEPCIONAL to “uncommon care” remains in place.¹⁵ For this reason Applicant maintains that the Examining Attorney’s evidence regarding third party use of “exceptional care,” in English, and the

¹⁵ Applicant’s Reply Brief, p. 2; 11 TTABVUE 3.

translation of “exceptional care” from English to Spanish, is not relevant. In view thereof, Applicant concludes that the mere descriptiveness refusal cannot stand because, when the mark is properly translated as “uncommon care,” the descriptiveness refusal is both unsupported by the evidentiary record and contrary to the Office’s prior determination to allow Applicant’s UNCOMMON CARE mark to register.¹⁶

We are unpersuaded by Applicant’s argument. The fact that the Examining Attorney withdrew the requirement to provide an accurate translation of Applicant’s proposed mark does not negate the wealth of evidence in the record, including evidence submitted by Applicant itself, showing that the English translation of the phrase “el cuidado excepcional” is “exceptional care.” Moreover, even if we were to adopt Applicant’s English translation of “uncommon care,” we would still find the Spanish wording in the mark to be laudatory in nature for the reasons explained above. Also, as previously noted, the fact that Applicant already owns a registration for the English mark UNCOMMON CARE for the same services identified in its currently involved application does not alter our analysis in this appeal. As already noted, the mark at issue here is not UNCOMMON CARE, but a Spanish language mark, EL CUIDADO EXCEPCIONAL, which must be considered in its own right.

While we have not ignored Applicant’s evidence that the Spanish phrase EL CUIDADO EXCEPCIONAL may be translated into English to mean “uncommon care,” we find, on balance, that the evidence of record clearly demonstrates that the

¹⁶ *Id.*

principal English translation is “exceptional care.” In sum, under the doctrine of foreign equivalents, we find that that the record amply demonstrates that a potential or actual consumer of Applicant’s health insurance and health care services familiar with the Spanish language would immediately translate the wording EL CUIDADO EXCEPCIONAL as “exceptional care.” Because we further find that the wording “exceptional care” is laudatory in nature in the context of Applicant’s identified services, Applicant’s proposed mark is merely descriptive of such services.

Decision: The refusal to register Applicant’s proposed EL CUIDADO EXCEPCIONAL mark under Section 2(e)(1) of the Trademark Act because it is laudatory in nature is affirmed.