

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: July 8, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Gabriel Sezanayev*  
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Serial No. 90641384  
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Ursula B. Day of the Law Firm of Ursula B. Day,  
for Gabriel Sezanayev.

Tara Nielson, Trademark Examining Attorney, Law Office 127,<sup>1</sup>  
Mark Pilaro, Managing Attorney.

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Before Shaw, Pologeorgis, and Allard,  
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:<sup>2</sup>

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<sup>1</sup> A different Trademark Examining Attorney examined the involved application prior to appeal, and issued the final refusal to register and the denial of the request for reconsideration. The application was assigned after appeal to Tara Nielson, who filed the brief of the United States Patent and Trademark Office (“USPTO”). In this opinion, we will refer to both Ms. Nielson and her predecessor as the “Examining Attorney.”

<sup>2</sup> This decision cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board and the Director, this decision cites to the LEXIS legal database. TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2024). The proceeding or application number for cited Board decisions is also provided. Practitioners are encouraged to adhere to the citation form recommended in TBMP § 101.03.

Gabriel Sezanayev (“Applicant”) seeks registration on the Principal Register of the mark THE ORIGINAL PINEAPPLE (in standard characters) for goods identified as “Alcoholic beverages, namely, distilled spirits, cocktails from distilled spirits, liqueurs.”<sup>3</sup>

The Trademark Examining Attorney refused registration of the proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of Applicant’s identified goods.

When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied Applicant’s Request for Reconsideration and in it, the Examining Attorney advised Applicant of the potential to amend the application to seek registration on the Supplemental Register, if the request was also accompanied by an amendment to allege use.<sup>4</sup> In her appeal brief, Applicant stated that “the undersigned learned just recently that the mark has been in use for months,” and requested that “applicant be allowed to transfer the application to the Supplemental Register[.]”<sup>5</sup> The Board construed this as an

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<sup>3</sup> Application Serial No. 90641384 was filed on April 13, 2021, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the mark in commerce.

<sup>4</sup> October 2, 2023 Denial of Request for Reconsideration at TSDR 3.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (TSDR) system. Citations to the record throughout the decision include references to TTABVUE, the Board’s online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry. *See Made in Nature, LLC v. Pharmavite LLC*, Opp. No. 91223352, 2022 TTAB LEXIS 251, at \*2 n.1 (TTAB 2022). All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO Case Viewer.

<sup>5</sup> 6 TTABVUE 4.

embedded request for remand for consideration of an amendment to the Supplemental Register, and informed Applicant that it could not remand the application to the Examining Attorney until Applicant filed an amendment to allege use for consideration by the Examining Attorney.<sup>6</sup> The proceedings were suspended to allow Applicant time to file such proof of use.<sup>7</sup> After Applicant informed the Board that proof of use would not be filed,<sup>8</sup> the appeal resumed.<sup>9</sup> Both Applicant and the Examining Attorney filed briefs.<sup>10</sup> We affirm the refusal to register.

### **I. Evidentiary Issue**

Applicant attached to her brief a copy of a trademark registration for a certain pineapple design mark (Reg. No. 6064931), which is also registered to Applicant.<sup>11</sup> This evidence was not made of record during examination and, in her brief, the Examining Attorney objects to it.<sup>12</sup> The record in an application should be complete prior to the filing of an appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). Therefore, the Examining Attorney's objection is sustained, and this evidence, together with any arguments based on it, have been given no consideration. *See In re Inn at St. John's, LLC*, Ser. No. 87075988, 2018 TTAB LEXIS 170, at \*3-5 (TTAB

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<sup>6</sup> 8 TTABVUE 1, January 25, 2024 Board Order.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> 9 TTABVUE 2.

<sup>9</sup> 10 TTABVUE 1.

<sup>10</sup> Applicant's brief appears at 6 TTABVUE and the Examining Attorney's brief appears at 11 TTABVUE.

<sup>11</sup> 6 TTABVUE 5-6.

<sup>12</sup> 11 TTABVUE 2.

2018), *aff'd per curiam*, 777 F. App'x 516 (Fed. Cir. 2019); *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A.*, Ser. No. 79099154, 2014 TTAB LEXIS 29, at \*11 (TTAB 2014).

## II. Mere Descriptiveness

“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, 1300 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *In re Gyulay*, 820 F.2d 1216, 1217 (Fed. Cir. 1987).<sup>13</sup> “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.” *In re Chamber of Commerce*, 675 F.3d at 1300 (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346 (Fed. Cir. 2001)). *See also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173 (Fed. Cir. 2004) (“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.”) (citing *In re Dial-A-Mattress*, 240 F.3d at 1346).

Whether a particular term is merely descriptive is determined in relation to the goods or services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978); *In re Omniome, Inc.*, Ser. No. 87661190, 2019 TTAB LEXIS 414, at \*11 (TTAB 2019). In other words, the question is whether someone

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<sup>13</sup> A term that is merely descriptive of the identified goods and services may not be registered on the Principal Register without a showing of acquired distinctiveness. Sections 2(e)(1), 2(f) of the Trademark Act, 15 U.S.C. §§ 1052(e)(1), 1052(f). Applicant does not claim that its proposed mark (or any of its individual terms) has acquired distinctiveness; we therefore do not consider the issue.

who knows what the goods or services are will understand the mark to convey information about them. *In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012). Conversely, a mark is suggestive if it requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services. *In re Omniome, Inc.*, 2019 TTAB LEXIS 414, at \*10-11 (citing *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1378 (Fed. Cir. 2017) (contrasting merely descriptive from suggestive marks) and citing *In re Franklin Cty. Historical Soc’y*, Ser. No. 77699113, 2012 TTAB LEXIS 326, at \*3-4 (TTAB 2012) (same)).

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase. *In re Phoseon Tech., Inc.*, Ser. No. 77963815, 2012 TTAB LEXIS 306, at \*4 (TTAB 2012). A mark comprising a combination of merely descriptive components is registrable if “the combination of the component words of Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at \*14-15 (TTAB 2016) (quoting *In re Oppedahl*, 373 F.3d at 1174-75).

However, if each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See, e.g., In re Oppedahl*, 373 F.3d at 1174-75 (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);

*see also In re Phoseon Tech.*, 2012 TTAB LEXIS 306, at \*3 (“When two or more merely descriptive terms are combined, ... [i]f each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive.”).

Thus, our determination as to whether the proposed mark THE ORIGINAL PINEAPPLE is merely descriptive is based on an analysis of the proposed mark as a whole. *DuoProSS*, 695 F.3d at 1252 (“When determining whether a mark is merely descriptive, the Board must consider the commercial impression of a mark as a whole.”). “The Board, to be sure, may ascertain the meaning and weight of each of the components that makes up the mark[,]” so long as it ultimately considers the mark as a whole. *Id.* at 1253.

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries,” *In re Bayer*, 488 F.3d at 964, as well as “advertising material directed to the goods[.]” *In re Abcor Dev.*, 588 F.2d at 814. It also may be obtained from websites and publications. *In re N.C. Lottery*, 866 F.3d 1363, 1368 (Fed. Cir. 2017); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341-42 (Fed. Cir. 2001). Evidence that a term is merely descriptive similarly may come from an applicant’s own usage. *See, e.g., In re Chamber of Commerce*, 675 F.3d at 1301 (content of applicant’s website, along with articles discussing the activities of chambers of commerce, constituted substantial evidence supporting the Board’s mere descriptiveness finding). Additionally, evidence that a term is descriptive may be found in its third-party usage in connection with products or services similar or

related to those at issue. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1378 (Fed. Cir. 2012).

### **III. Evidence of Mere Descriptiveness**

The record contains the following evidence.

- A dictionary definition of the term “pineapple,” which defines it as “the large edible multiple fruit of the pineapple that consists of the sweet succulent fleshy inflorescence.”<sup>14</sup>
- A printout from Applicant’s own website (1) displaying the mark THE ORIGINAL PINEAPPLE at the top of the page and describing its Piñaq Original Liquor as containing “hints of pineapple,” (2) linking to posts for cocktail recipes, including one with a pineapple flavor, and (3) describing one of Applicant’s liquor’s as “infused with pineapple.”<sup>15</sup>
- Third-party websites showing pineapple flavored alcohol: pineapple flavored rum (drizly.com); pineapple flavored vodka (Smirnoff.com); and pineapple jalapeno margaritas (drnxmyth.com).<sup>16</sup>

### **IV. Discussion**

In assessing the possible descriptiveness of the proposed mark as a whole, we are “required to examine the meaning of each component individually, and then

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<sup>14</sup> December 14, 2021 Office action at TSDR 4 (attachment consisting of a printout from the MERRIAM-WEBSTER DICTIONARY at merriam-webster.com).

<sup>15</sup> August 4, 2022 Office action at TSDR 5-9.

<sup>16</sup> *Id.* at TSDR 11-24.

determine whether the mark as a whole is merely descriptive.” *DuoProSS*, 695 F.3d at 1255. The components include the words THE ORIGINAL PINEAPPLE.

We begin with the term PINEAPPLE. The dictionary evidence shows and Applicant acknowledges that “pineapple” is defined as the “fruit of the pineapple that consists of the sweet succulent fleshy inflorescence.”<sup>17</sup> As shown by Applicant’s own website, its Piñaq Original liquor, which appears on a webpage under the phrase THE ORIGINAL PINEAPPLE, is pineapple flavored, and separately Applicant promotes a liquor that is pineapple flavored.<sup>18</sup> The evidence of record also shows that third-parties offer pineapple flavored alcohol, such as rum and vodka, and pineapple flavored cocktails, such as pineapple jalapeno margaritas.<sup>19</sup> Applicant’s own website shows that it uses the term PINEAPPLE in a descriptive manner to describe the flavor, or at least one of the flavors, of its liquor. Based on this evidence of record, we find that the term PINEAPPLE is merely descriptive of Applicant’s identified goods.

Turning next to the term ORIGINAL, we take judicial notice that it means “(a) Not derived from something else; fresh and unusual: **an original play, not an adaptation**; and (b) Showing a marked departure from previous practice; new: **a truly original approach**.”<sup>20</sup> The Examining Attorney argues that the term is

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<sup>17</sup> December 14, 2021 Office action at TSDR 4 (attachment consisting of a printout from the MERRIAM-WEBSTER DICTIONARY, merriam-webster.com); 6 TTABVUE 3.

<sup>18</sup> August 4, 2022 Office action at TSDR 5-9.

<sup>19</sup> *Id.* at TSDR 11-24.

<sup>20</sup> MERRIAM-WEBSTER DICTIONARY (merriam-webster.com), accessed on July 3, 2024 (italics in original, bold here). *Monster Energy Co. v. Lo*, Opp. No. 91225050, 2023 TTAB LEXIS 14, at \*27 n.41 (TTAB 2023) (“The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions.”)



laudatory, and that marks that are merely laudatory and descriptive of some alleged merit of a product are considered merely descriptive, as these terms are regarded as a condensed form of describing the character or quality of the goods.<sup>21</sup>

Applicant describes its passion fruit liqueur, which contains pineapple flavoring, as “like no other” and “exciting.”<sup>22</sup> Applicant adds that its Piñaq Original liqueur, which also contains pineapple favoring, is “as unique as it is exciting.”<sup>23</sup> Here, Applicant seeks to convey that its liquors are new, fresh and unusual, all consistent with the dictionary definition of the term “original.” Accordingly, we find that the term ORIGINAL is laudatory and merely descriptive. *See e.g., Gen. Foods Corp. v. Ralston Purina Corp.*, Opp. No. 64072, 1984 TTAB LEXIS 199, at \*14 (TTAB 1984) (finding that “the designation ORIGINAL BLEND possesses nothing more than a merely descriptive significance, that of conveying the information to purchasers that the cat food to which it is applied is the first in a line of flavor varieties and the fact that this first-of-its-kind variety is a blend of flavors”).

Lastly, turning to the term THE, which is merely a definite article, we find that this term, as it appears in Applicant’s proposed mark, is insignificant and does not add any source-identifying significance or otherwise change the descriptive nature of the other terms in the mark. *See, e.g., In re Nett Designs*, 236 F.3d at 1342 (finding

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(citing *In re Cordua Rests. LP*, Ser. No. 85214191, 2014 TTAB LEXIS 94, at \*6 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594 (Fed. Cir. 2016)).

<sup>21</sup> 11 TTABVUE 5.

<sup>22</sup> August 4, 2022 Office action at TSDR 9.

<sup>23</sup> *Id.* at TSDR 9.

THE ULTIMATE BIKE RACK to be merely descriptive); *In re Boston Beer Co. LP*, 198 F.3d 1370, 1374 (Fed. Cir. 1999) (finding THE BEST BEER IN AMERICA so highly laudatory and descriptive as applied to beer and ale that it is incapable of acquiring distinctiveness); *In re The Consumer Prot. Firm PLLC*, Ser. No. 87445801, 2021 TTAB LEXIS 67, at \*23-24 (TTAB 2021) (holding THE CONSUMER PROTECTION FIRM generic for legal services, and that the definite article “the” did not add any source-indicating significance); *In re The Place, Inc.*, Ser. No. 7643682, 2005 TTAB LEXIS 451, at \*3, 19 (TTAB 2005) (holding THE GREATEST BAR is laudatory and merely descriptive of restaurant and bar services; “the definite article THE ... add[s] no source-indicating significance to the mark as a whole”).

Having found that the individual terms ORIGINAL and PINEAPPLE each are merely descriptive of Applicant’s goods, and that THE has no source indicating significance, we must decide whether the proposed mark THE ORIGINAL PINEAPPLE as a whole is merely descriptive. As we said above, if each component of the proposed mark retains its merely descriptive significance in relation to Applicant’s goods, the combination results in a composite that is itself merely descriptive. *In re Oppedahl*, 373 F.3d at 1174-75; *In re Phoseon Tech.*, 2012 TTAB LEXIS 306, at \*3-4. We find that, when used in connection with Applicant’s goods, the elements ORIGINAL and PINEAPPLE retain their merely descriptive significance in relation to those goods. The combination of terms (THE ORIGINAL PINEAPPLE) does not create a unitary mark with a non-descriptive meaning, nor does the composite have a bizarre or incongruous meaning as applied to Applicant’s

goods. Recalling, for example, that Applicant's own website describes its pineapple flavored liqueurs as "like no other,"<sup>24</sup> "exciting,"<sup>25</sup> and "as unique as it is exciting,"<sup>26</sup> we find that, as a whole, the applied-for mark THE ORIGINAL PINEAPPLE is a laudatory phrase which is merely descriptive of Applicant's identified goods, i.e., "Alcoholic beverages, namely, distilled spirits, cocktails from distilled spirits, liqueurs."

Applicant argues that its mark is suggestive because its mark creates a juxtaposition with its pineapple-shaped bottle, because its bottle is not a real pineapple.<sup>27</sup> However, Applicant's identified goods are not glass bottles but rather alcoholic beverages. The evidence of record shows that alcoholic beverages, including those of Applicant's and third-parties', are often pineapple flavored, thus we are not persuaded that there is a juxtaposition and instead find that the mark retains its descriptive meaning in relation to the identified goods.

Applicant's offer to disclaim the term PINEAPPLE in order to render the mark registerable<sup>28</sup> is not helpful. Because we have found the entire mark to be merely descriptive, simply disclaiming the term PINEAPPLE does not render the mark otherwise registerable on the Principal Register. Moreover, as Applicant has not filed proof of use, registration on the Supplemental Register is not an option.

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<sup>24</sup> August 4, 2022 Office action at TSDR 9.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 6 TTABVUE 3.

<sup>28</sup> *Id.*

Applicant reliance upon third-party registrations where the mark was allowed to register after a disclaimer of the term PINEAPPLE is misguided.<sup>29</sup> These registered marks present dissimilar circumstances, as some include design elements or contain other distinctive terms. Regardless, the fact that third-party registrations exist for marks with a similar disclaimed term is not conclusive on the issue of registration. *See In re Nett Designs*, 236 F.3d at 1342 (“Even if some prior registrations had some characteristics similar to ... [Applicant’s mark], the [US]PTO’s allowance of such prior registrations does not bind the Board or ... [the Federal Circuit].”). Applicant argues that this evidence of past treatment of identical terms should be considered persuasive.<sup>30</sup> “And why should it not[?] We look to passed [sic] case law, to past experience, we then also look to the past registrations, what gets disclaimed and why?”<sup>31</sup> The answer was explained in the *Nett Designs* decision: “[We] must assess each mark on the record of public perception submitted with the application.” *Id.* at 1342. As each mark and its corresponding record is different, results similarly vary.

**Decision:**

The refusal to register Applicant’s proposed mark THE ORIGINAL PINEAPPLE (Serial No. 90641384) on the ground of mere descriptiveness, pursuant to Section 2(e)(1) of the Trademark Act, is affirmed.

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<sup>29</sup> 6 TTABVUE 3-4; February 2, 2023 Request for Reconsideration at TSDR 9-12.

<sup>30</sup> 6 TTABVUE 3-4.

<sup>31</sup> *Id.* at 4.