UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Seven Seas Cruises S. de R.L.

Serial No. 97219378

Nicole M. Meyer and Cindy A. Villanueva of Dickinson Wright PLLC, for Seven Seas Cruises S. de R.L.

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

Before Taylor, Lykos and Larkin, Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Seven Seas Cruises S. de R.L. (“Applicant”) seeks to register the proposed mark UNRIVALLED LUXURY in standard characters on the Principal Register for

Cruise ship services; cruise ship services, namely, the transportation of passengers by ship; arranging transport for travelers for shore excursions, for travel tours, and for recreational activity sightseeing tours for cruise ship passengers; providing transport for travelers for shore excursions, for travel tours, and for recreational activity sightseeing tours for cruise ship passengers; travel agency
services, namely, making reservations and bookings for transportation by ship, in International Class 39.¹

The Trademark Examining Attorney refused registration on the following two grounds: (1) that the mark is merely descriptive of Applicant’s identified services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and (2) that the mark is a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment under Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051-1053, 1127.²

When the refusals were made final, Applicant appealed and filed a Request for Reconsideration that was denied. Applicant and the Examining Attorney have filed briefs. We affirm the mere descriptiveness refusal and do not reach the failure to function refusal.

¹ Application Serial No. 97219378, filed on January 14, 2022, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intent to use the mark in commerce. Page references to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. References to the briefs on appeal refer to the Board’s TTABVUE docket system. See New Era Cap Co. v. Pro Era, LLC, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020); Turdin v. Trilobite, Ltd., 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

² In its brief, Applicant argues that its mark is not generic for the identified services. To be clear, the Examining Attorney merely advised Applicant during prosecution that its mark may be generic in the event it sought to amend to the Supplemental Register or seek registration on the Principal Register under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). See May 10, 2023 Denial of Request for Reconsideration at TSDR 6. Applicant pursued neither option, and a genericness advisory is not a refusal. In re Nat’il Ass’n of Veterinary Technicians in Am., Inc., 2019 USPQ2d 269108, at *2 (TTAB 2019).
I. Mere Descriptiveness – Applicable Law

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act prohibits registration of a mark on the Principal Register that, when used in connection with an applicant’s goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). “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 TriVita, Inc., 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). By contrast, 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 Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. Chamber of Commerce, 102 USPQ2d at 1219; Bayer, 82 USPQ2d at 1831. This requires consideration of the context in which the mark is used or intended to be used in connection with those goods or services, and the possible significance that the mark would have to the average purchaser of the services in the marketplace. Chamber of Commerce, 102 USPQ2d at 1219; Bayer, 82 USPQ2d at 1831; In re Omaha Nat’l Corp., 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). In other words, the question is not whether someone presented only with the mark could guess the goods or services listed in the identification. Rather, the question is whether someone who
knows what the goods or services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Invro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). It is not necessary that a term describe all of the purposes, functions, characteristics, or features of a product or service to be considered merely descriptive; it is enough if the term describes one significant function, attribute, or property. *Chamber of Commerce*, 102 USPQ2d at 1219 (citing *Dial-A-Mattress*, 57 USPQ2d at 1812).

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys,” *Bayer*, 82 USPQ2d at 1831, as well as “labels, packages, or in advertising material directed to the [services].” *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). It may also be obtained from websites and publications. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017); *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1565 (Fed. Cir. 2001).

“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 Zuma Array Ltd.*, 2022 USPQ2d 736, at *6 (TTAB 2022) (quoting *In re Omniome, Inc.*, 2020
USPQ2d 3222, at *4 (TTAB 2019)). “[T]he PTO must . . . determine whether the mark as a whole, i.e., the combination of the individual parts, conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” Oppedahl & Larson, 71 USPQ2d at 1372 (citing In re Colonial Stores Inc., 394 F.2d 549, 157 USPQ 382, 384 (CCPA 1968)); accord Zuma Array, 2022 USPQ2d 736, at *6; In re Fallon, 2020 USPQ2d 11249, at *7 (TTAB 2020); and In re Fat Boys Water Sports LLC, 118 USPQ2d 1511, 1513 (TTAB 2016)). “If each component retains its descriptive significance in relation to the [goods or services], the combination results in a composite that is itself merely descriptive.” Zuma Array, 2022 USPQ2d 736, at *6 (quoting Fallon, 2020 USPQ2d 11249, at *7); see, e.g., In re Calphalon Corp., 122 USPQ2d 1153, 1164 (TTAB 2017) (finding nothing incongruous about the use of the word sharpen or its phonetic equivalent SHARPIN to describe the function of knife blocks with built-in sharpeners that automatically sharpen knives); DuoProSS, 103 USPQ2d at 1753 (SNAP SIMPLY SAFER merely descriptive for medical devices). Only where the combination of descriptive terms creates a unitary mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the services is the mark registrable as suggestive. See Oppedahl & Larson, 71 USPQ2d at 1372 (citing In re Nat’l Data Corp., 753 F.2d 1056, 224 USPQ 749, 750-51 (Fed. Cir. 1985)); see also In re Shutts, 217 USPQ 363, 364-65 (TTAB 1983) (“A mark comprising a combination of merely descriptive components is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services.”). Compare
In re Tennis in the Round Inc., 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND held not merely descriptive for providing tennis facilities, the Board finding that the association of applicant’s marks with the phrase “theater-in-the-round” created an incongruity because applicant’s tennis facilities are not at all analogous to those used in a “theater-in-the-round”) with In re Mecca Grade Growers, LLC, 125 USPQ2d 1950, 1955 (TTAB 2018) (MECHANICALLY FLOOR-MALTED merely descriptive of malt for brewing and distilling and processing of agricultural grain).

“It is the Examining Attorney’s burden to show, prima facie, that a mark is merely descriptive of an applicant’s goods or services.” Zuma Array, 2022 USPQ2d 736, at *8 (internal quotations and quotation marks omitted). “If such a showing is made, the burden of rebuttal shifts to the applicant.” Id. (internal quotations and quotation marks omitted); see also In re Pacer Tech., 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). “The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant.” Id. (internal quotations and quotation marks omitted).

II. Analysis

We focus our analysis on the following services in International Class 39: “Cruise ship services; cruise ship services, namely, the transportation of passengers by ship.” A descriptiveness refusal must be affirmed if the proposed mark is merely descriptive of any of the services identified in the application. In re Stereotaxis Inc., 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (citing In re Richardson Ink Co., 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) (“Our predecessor court ... has stated that
registration should be refused if the mark is descriptive of any of the goods for which registration is sought.”).

Applicant argues that the applied-for mark UNRIVALED LUXURY is suggestive, not merely descriptive of the identified services, because it is “an inventive composite mark that requires some imagination to arrive at a conclusion about the mark’s significance in connection with the identified cruise ship and travel tour services for cruise ship passengers.” Applicant contends that the Examining Attorney is impermissibly engaging in multi-step reasoning by relying on dictionary definitions for the terms and ignoring other plausible definitions. Applicant maintains that the Examining Attorney “has taken pieces” of the dictionary definitions of “unrivaled” and “luxury” to conclude that its proposed mark is merely descriptive. In Applicant’s view, the vagueness and lack of particularity of the phrase UNRIVALED LUXURY when considered in the context of the identified services makes it suggestive and not merely descriptive.

We disagree. The Examining Attorney made of record evidence to support a finding that UNRIVALED LUXURY is laudatory, not suggestive, of a significant feature of Applicant’s services. Laudatory words or phrases that attribute quality or excellence to services are generally considered merely descriptive. See Nett Designs, 57 USPQ2d 1564 (holding THE ULTIMATE BIKE RACK a laudatory, descriptive phrase that touts the superiority of applicant’s bicycle racks). See also In re Best

---

3 Applicant’s Brief, pp. 5-6; 8 TTABVUE 11-12.
4 Applicant’s Brief, p. 10; 8 TTABVUE 16.
Software Inc., 58 USPQ2d 1314 (TTAB 2001) (BEST and PREMIER in mark BEST! SUPPORTPLUS PREMIER merely descriptive of computer consultation and support services and thus subject to disclaimer); In re Dos Padres Inc., 49 USPQ2d 1860 (TTAB 1998) (QUESO QUESADILLA SUPREME merely descriptive of cheese).

The word “unrivaled,” when used as an adjective, is defined as “having no rival, incomparable, supreme.”5 The noun “luxury” is defined as “a condition of abundance or great ease;” “something adding to the pleasure or comfort but not absolutely necessary;” or “an indulgence in something that provides pleasure, satisfaction or ease.”6 The combination of the two words as “unrivaled luxury” has no unique or incongruous meaning in relation to cruise ship services other than as a superlative. Contrary to Applicant’s assertions, no mental leap or multi-stage reasoning is required to understand that Applicant intends to market high-end cruise services. To state the obvious, other definitions of these words exist; however, within the context of cruise ship services, these definitions are the most pertinent. Applicant is reminded that the fact that a term may have other meanings in different contexts is not controlling. Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Taken together, the adjective “unrivaled” modifies the noun “luxury” to create a laudatory phrase that immediately conveys to consumers that Applicant’s cruises have amenities that are


of superior or exceptional quality. Thus, based on the dictionary evidence alone, Applicant’s mark is merely descriptive.

Our finding is bolstered by the record evidence showing that it is not uncommon for competitors in the cruise ship industry to use the phrase “unrivaled luxury” to tout lavish features and amenities. A competitive need to use a phrase is probative but not required to finding that a phrase is merely descriptive. *Fat Boys*, 118 USPQ2d at 1514 (“Under the current standard, there is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it, although such proof would be highly relevant to an analysis under Section 2(e)(1).”); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (competitor need is not the test for descriptiveness). We note the following website evidence describing other cruise ship services as providing “unrivaled luxury” along with photos of extravagant surroundings:

Carnival Cruises advertises to potential consumers that they can upgrade their cruise to the “elevated luxury experience of the Retreat where a dedicated team of butlers and concierges make sure you don’t lift a finger throughout your all-inclusive cruise.”

---

7 March 14, 2022 Office Action at TSDR 27-28
Everything about a vacation should be easy, especially the planning stage. That’s why we make our booking process simple by making sure drinks, Wi-Fi, and tips are always included.

Our all-inclusive cruises elevate your luxury cruising experience to the next level. With our standard rate, you’ll get to enjoy a stay in one of our spacious staterooms, delicious gourmet meals at our restaurants, and a slate of activities and entertainment shows, plus unlimited drinks, Wi-Fi, and daily gratuities—without ever worrying about the tab.

If you want to take your vacation one step further, you can also upgrade to one of our customized cruise vacation packages. Our Elevate and Indulge packages include premium drinks, shore excursion credits, and onboard credits. We also have a number of cruise and flight packages, Alaska cruises and land tours, and our unliited luxury vacation experience at The Retreat, where a dedicated team of butlers and concierges makes sure you don’t lift a finger throughout your all-inclusive cruise.

All-Inclusive Cruise Amenities

Drinks
Choose from an incredible array of beers, spirits, cocktails, liqueurs, frozen drinks, wines by the glass, sodas, juices, and bottled water.

Wi-Fi
We know staying in touch is important, so we’ve included internet access for two devices. Browse the web, check email, and use messaging apps.

Tips
We’ve got you covered. Just sit back and relax while we make your vacation as memorable as possible.

Make your vacation extra special by treating yourself to one of our premium cruise vacation packages. Our Elevate Package comes with all of the perks included in our standard rate, as well as unlimited specialty drinks and up to $200 to spend on shore excursions. Sip on craft beers, premium wines, or freshly squeezed juices in our restaurants and bars. Use your credits to sign up for thrilling experiences, family entertainment, or on-water adventures. You can even spend your onboard credits on a relaxing spa treatment, a unique shore excursion, or unforgettable onboard activities. It’s your vacation, your way!
The travel industry trade journal Travel Professional News describes Crystal Cruise as a “leader in **unrivaled luxury** cruising for 30 years” that “distinguishes its ships and voyages with fine details that make a big impact for discerning travelers.” It states that Crystal Cruise’s trans-Atlantic Voyage on the Crystal Symphony offers “luxurious amenities,” “Michelin level cuisine,” and “personalized service.”

> The travel industry trade journal Travel Professional News describes Crystal Cruise as a “leader in **unrivaled luxury** cruising for 30 years” that “distinguishes its ships and voyages with fine details that make a big impact for discerning travelers.” It states that Crystal Cruise’s trans-Atlantic Voyage on the Crystal Symphony offers “luxurious amenities,” “Michelin level cuisine,” and “personalized service.”

---

8 *Id.* at TSDR 37-38.
Fareconnect.com describes Scenic Luxury Cruises and Tours as “truly all-inclusive luxury” offering “small guest numbers,” “unrivaled luxury,” and “world-class amenities.”

9 Id. at TSDR 43-44
Travel Industry News announces that Cunard is building a fourth “Queen” to add to its royal fleet, offering “unrivaled luxury” similar to its sister ships.\(^\text{10}\)

\(^{10}\) Id. at TSDR 126-128.
ALL HAIL! CUNARD IS BUILDING A 4TH QUEEN

Will she be Queen Bertha? Queen Anne? Queen Caroline? Or maybe, erm, Queen Catherine (yes, she’s a Duchess now but maybe Cunard is looking long term)?

Newsroom
26 Sep 2017

Arriving in 2022, the currently unnamed vessel will be the first new ship for Cunard is over 12 years, making her an important investment in the company’s future.

Her arrival also means that for the first time since 1998, the cruise line will have four ships operating simultaneously, giving cruisers access to more Cunard beds.

While interior and exterior details of the Queen remain under wraps for the moment, the cruise line’s Senior Vice President, Simon Palethorpe, said travellers can expect her to offer “unrivalled luxury ocean experiences” similar to her sisters.
AffordableTours.com advertises Uniworld’s river cruise with “unrivaled luxury, exceptional service” and “extraordinary cuisine.” Uniworld’s river cruise ships in its European fleet “exemplify true artistry” and “stylish flair.” “By blending old world elegance and the newest technology, these floating boutique hotels are meticulously designed with the signature touches from floor to ceiling.”

11 October 17, 2022 Final Office Action at TSDR 275-278.
12 Id. at 276.
13 Id.
Each Uniworld ship features stylish restaurants where guests can dine on a fine multi-course meal, relax on an expansive sundeck, and enjoy unlimited beverages (all-inclusive premium spirits) at the plush lounges with full-service bar. Internet and Wi-Fi is available ship-wide so you can stay connected while on your vacation. An onboard trained fitness instructor hosts exercises and yoga classes. Take advantage of insightful signature lectures and entertainment all throughout your journey.

Uniworld travels globally, around Asia, Europe Russia, Egypt and India. Uniworld’s highly trained and dedicated staff philosophy revolves around the sentiment, â€œno request too large, no detail too small.â€‌ No matter which Uniworld all-inclusive river cruise ship you’re on, you’ll be treated to a one-of-a-kind experience aboard an authentic, award-winning boutique cruise ship.
This evidence not only shows “unrivaled luxury” as a superlative used by third parties to describe upscale cruise ship services but also demonstrates that consumers shopping for cruises specifically look for superior amenities when making purchasing decisions. Competitors in the cruise ship field should be free to continue to use this merely descriptive language when describing their own cruise ship services to the public in advertising and marketing materials.\textsuperscript{14} See Abcor Dev. Corp., 200 USPQ at 217; In re Styleclick.com Inc., 58 USPQ2d 1523, 1527 (TTAB 2001).

\textsuperscript{14} However, as noted earlier, we do not apply the competitor need test to reach our determination.
Applicant also points to over 35 registered marks that include the word “unrivaled” or “luxury” either alone or in conjunction with another merely descriptive or generic term on the Principal Register without disclaimer and or claim of acquired distinctiveness.\textsuperscript{15} Applicant emphasizes that this number includes four previously registered marks owned by Applicant containing the word “unrivaled” or “luxury” for the exact same services: AN UNRIVALED EXPERIENCE, Registration No. 5823372;\textsuperscript{16} UNRIVALED SPACE AT SEA, Registration. No. 6938966;\textsuperscript{17} LUXURY PERFECTED, Registration No. 5866574;\textsuperscript{18} and LUXURY GOES EXPLORING, Registration No. 2661799.\textsuperscript{19} However, none of the third-party registrations or prior registrations consist of marks containing both UNRIVALED and LUXURY. We hasten to add that the USPTO is not bound by a decision of a Trademark Examining Attorney who examined and allowed the application for a previously registered similar mark, based on a different record. See In re Cordua Rests., Inc., 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement ... even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.”). Trademark rights are not static, and eligibility for registration must be determined on the basis of the facts and evidence of record that exist at the

\textsuperscript{15} April 17, 2023 Request for Reconsideration, Exhibits D-G (registration printouts from TESS database) at TSDR 47-110.

\textsuperscript{16} Id. at 47-48.

\textsuperscript{17} Id. at 49-50.

\textsuperscript{18} Id. at 52-53.

\textsuperscript{19} Id. at 54-55.

III. Conclusion

Based on the foregoing evidence, the combination UNRIVALED LUXURY, when considered as a whole, immediately conveys, without conjecture or speculation, or any multi-step reasoning, the superlative and extravagant nature of Applicant’s cruise ship services. As a result, we find Applicant’s proposed standard character mark to be merely descriptive of the identified services.

Decision: The mere descriptiveness refusal under Section 2(e)(1) is affirmed. We therefore need not reach the failure to function refusal to register under Sections 1, 2, 3, and 45 of the Trademark Act. See, e.g., In re SIPCA Holding SA, 2021 USPQ2d 613, at *10-11 (TTAB 2021) (Board affirmed refusal to register for failing to provide a definite identification and to respond to information requirements, but declined to reach likelihood of confusion refusal).