Mailed: December 19, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Asthetik Skin LLC

Serial No. 98004456

Jason B. Elster of Elster & McGrady LLC, for Asthetik Skin LLC.

Rebecca Smith, Trademark Examining Attorney, Law Office 110,
Loksye Lee Riso, Managing Attorney.

Before Wellington, Lebow, and Bradley,
Administrative Trademark Judges.

Opinion by Bradley, Administrative Trademark Judge:

Asthetik Skin LLC ("Applicant") seeks registration on the Principal Register of the standard-character mark ÄSTHETIK for the following goods and services (collectively, "Applicant's Identified Goods and Services"):

> Eye gels; Lip balm; Non-medicated skin toners; Skin care products, namely, non-medicated skin serum; Skin cleansers; Skin masks; Skin moisturizer, in International Class 3; and

> Cosmetic skin care services, namely, facials, chemical peels, microdermabrasion; Health spa services for health and wellness of the body and spirit, namely, providing massage, facial and body treatment services, cosmetic body care services; Permanent makeup services in International Class 44.[1]

The Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark is merely descriptive of the applied-for goods and services. After the Examining Attorney issued a final refusal, Applicant appealed and requested reconsideration.[2] The Examining Attorney denied the request for reconsideration,[3] and the appeal resumed. The appeal is fully briefed.[4] We affirm the refusal to register.

I. Evidentiary Issues

Applicant filed 14 exhibits with its appeal brief consisting of screenshots of various Internet materials and a chart of third-party registrations.[5] The Examining Attorney objects to "applicant's new evidence [that] was untimely submitted during an appeal," and specifically identifies third-party registrations and "Internet evidence that was

---

[1] Application Serial No. 98004456 was filed on May 19, 2023, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use anywhere and first use in commerce since at least as early as May 12, 2020 for both classes.

[2] 1 TTABVUE; November 5, 2024 Request for Reconsideration.

Citations in this opinion to the briefs and other materials in the appeal docket refer to TTABVUE, the Board's online docketing system. Page references to the application file refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloaded .pdf versions of the documents.

[3] 4 TTABVUE.

[4] 6 TTABVUE (Applicant's brief); 8 TTABVUE (Examining Attorney's brief); 9 TTABVUE (Applicant's reply brief).

[5] 6 TTABVUE 2-43.

not made of record prior to the filing of the appeal."[6] The Examining Attorney recognizes that "some exhibits included with the appeal brief were included in the prior responses," but argues that "some exhibits constitute new evidence that should not be considered."[7]

At the outset, we emphasize that "[t]he 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." Trademark Rule 2.142(d); 37 C.F.R. § 2.142(d). Additionally, applicants should not resubmit evidence previously filed during prosecution as exhibits to their appeal briefs:

> Exhibits to briefs that merely duplicate evidence already in the record are of little or no use in an ex parte proceeding. . . . When considering an appeal for final disposition, the entire record is readily available to the panel. Because we must determine whether such attachments are properly of record, citation to the attachment requires examination of the attachment and then an attempt to locate the same evidence in the record developed during prosecution, requiring more time and effort than would have been necessary if citations were directly to the prosecution record.

In re Info. Builders Inc., No. 87753964, 2020 TTAB LEXIS 20, at *5 n.4 (TTAB 2020).

We first address Applicant's proffered evidence of third-party registrations. In its request for reconsideration, Applicant included a list of 11 third-party registrations (identifying them only by registration number and mark).[8] In her denial of the request for reconsideration, the Examining Attorney was silent and did not raise any

[6] 8 TTABVUE 2-3.

[7] 8 TTABVUE 3.

[8] November 5, 2024 Request for Reconsideration at 11-12.

objection to this list.[9] In its appeal brief, Applicant again included the same list of 11 third-party registrations,[10] and also attached a chart of 11 additional third-party registrations which listed the mark, registration number, and the goods and services.[11] In its reply brief, Applicant argues that the Examining Attorney waived its objection to the third-party registrations listed in its request for reconsideration because the denial of the request for reconsideration did not include any objection or advise Applicant that the listing was insufficient.[12] Applicant also for the first time submitted copies of the registration certificates for the 11 third-party registrations referenced in its request for reconsideration, but not for the additional third-party registrations listed in the chart attached to its appeal brief.[13]

We agree with Applicant that the Examining Attorney waived her objection to the **list** of 11 third-party registrations that Applicant previously included in its request for reconsideration.[14] *In re City of Houston*, No. 77660948, 2012 TTAB LEXIS 1, at *5 (TTAB 2012) ("examining attorney's failure to advise applicant of the insufficiency of the list of registrations when it was proffered during examination constituted a waiver of any objection to consideration of that list"). However, as explained in *City of Houston* (cited by Applicant[15]), "a different conclusion" is necessary for the **copies**

[9] 4 TTABVUE.

[10] 6 TTABVUE 57.

[11] 6 TTABVUE 24-26 (Exhibit K).

[12] 9 TTABVUE 4-5.

[13] 9 TTABVUE 12-34 (Exhibit A).

[14] 6 TTABVUE 57; November 5, 2024 Request for Reconsideration at 11-12.

[15] 9 TTABVUE 5.

of third-party registrations in that list that Applicant first attached to its reply brief which we will not consider because such evidence is "manifestly untimely" and the examining attorney had no "opportunity to examine the new evidence and respond to it." *Id.* at 5-6 (citation omitted).

Nor will we consider the chart of other third-party registrations that Applicant submitted for the first time with its appeal brief because those registrations "were not listed during examination . . . so the examining attorney could not have objected to them and the lack of any such objection cannot be construed as a waiver."[16] *In re Gov't of the Dist. of Columbia*, No. 77643857, 2012 TTAB LEXIS 2, at *8 n.5 (TTAB 2012); *In re Boyd Gaming Corp.*, No. 75541256, 2000 TTAB LEXIS 831, at *5 n.4 (TTAB 2000) (considering only third-party registrations referenced during prosecution to which the examining attorney did not object, but finding registrations first noted in applicant's appeal brief not to be of record). Accordingly, we consider only the information included in the list of 11 third-party registrations in Applicant's appeal brief "for whatever limited probative value such evidence may have." *City of Houston*, 2012 TTAB LEXIS 1, at *5 (citation omitted).

Applicant did not respond to the Examining Attorney's objection to the other evidence attached to its appeal brief. Our review demonstrates that most of the exhibits attached to Applicant's appeal brief consist of updated screenshots with new dates (and in some cases new content) of Internet evidence it submitted during

[16] 6 TTABVUE 24-26 (Exhibit K).

prosecution.[17] We will consider only the versions of these screenshots submitted during prosecution, and not the new versions attached to Applicant's appeal brief. However, several other exhibits are entirely new and we will not consider that untimely evidence.[18] *See, e.g.*, *In re Fallon*, No. 86882668, 2020 TTAB LEXIS 464, at *8 (TTAB 2020) ("submission of the patent drawing with [a]pplicant's appeal brief is untimely, and we have given the patent drawing no consideration in our decision").

We raise two other issues with Applicant's evidence. First, Applicant attached screenshots of the opening screen of videos from YouTube and Bab.la and appears to rely on those exhibits for the content of the videos, specifically for how to pronounce the word "ästhetik."[19] But "providing only a link and screenshot to a video is insufficient to make its content of record due to the transitory nature of websites." *In re Jimenez*, No. 97551823, 2025 TTAB LEXIS 441, at *5 (TTAB 2025) (giving no consideration to "hyperlinks to the videos embedded in [a]pplicant's appeal brief, the screenshots themselves, and any arguments associated therewith").[20] Accordingly, we do not consider those exhibits or the associated arguments. Second, Applicant

[17] This includes the screenshots in Exhibits A-D, F-J, and M. 6 TTABVUE 2-9, 12-23, 29-40. Many of the screenshots in these exhibits are also too small rendering the content illegible and unreadable, and we remind Applicant of its "duty to ensure that the evidence it submit[ted] is legible." *In re Sausser Summers, PC*, No. 88626569, 2021 TTAB LEXIS 204, at *28 n.59 (TTAB 2021) (citation omitted).

[18] Exhibits E, L, and N. 6 TTABVUE 10-11, 27-28, 41-43.

[19] 6 TTABVUE 6-7 (Exhibit C - YouTube screenshot), 8-9 (Exhibit D - Bab.la screenshot), 45 and 47 (Applicant's arguments based on Exhibits C and D).

[20] "[A]pplicants may make video files of record during prosecution by submitting them in one of the formats designated as acceptable by the USPTO, such as .wav, .wmv, .wma, .mp3, .mpg, or .avi format, and in a size not to exceed 30 MB." *Jimenez*, 2025 TTAB LEXIS 441, at *5-6.

included links to two articles that appear to be from medical journals in its brief.[21] However, "providing hyperlinks to internet materials is insufficient to make such materials of record." *In re Weiss*, No. 88621608, 2024 TTAB LEXIS 277, at *3-4 (TTAB 2024). And the articles would further be untimely as Applicant provided the information for the first time in its appeal brief. As such, we do not consider these articles or any "unsupported arguments based upon this excluded evidence." *Id.* at *4.

II. Merely Descriptive -- 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 of the applicant is merely descriptive . . . of them," unless the mark has acquired distinctiveness under Section 2(f) of the Act.[22]

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 Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 963 (Fed. Cir. 2007)). "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.* at 1300 (cleaned up; citation omitted).

[21] 6 TTABVUE 54.

[22] Applicant does not claim the proposed mark is registrable because it has acquired distinctiveness. Thus, Section 2(f) is not pertinent to our decision.

"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 Com.*, 675 F.3d at 1300 (quoting *Bayer AG*, 488 F.3d at 963-64). Descriptiveness is not considered "in the abstract or on the basis of guesswork." *In re Fat Boys Water Sports, LLC*, No. 86490930, 2016 TTAB LEXIS 150, at *4 (TTAB 2016) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978)). "The question is not whether someone presented with only the mark could guess what the goods or services are. 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. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012) (citation omitted).

"Whether a mark is merely descriptive or not is determined from the viewpoint of the relevant purchasing public." *In re Stereotaxis, Inc.*, 429 F.3d 1039, 1043 (Fed. Cir. 2005) (citation omitted). Applicant's Identified Goods and Services establish that the relevant consumers are purchasers of skincare products and services, which include members of the general public.

III. Arguments and Analysis

A. Doctrine of Foreign Equivalents is Not Applicable

Both Applicant and the Examining Attorney appear to argue for and against

application of the doctrine of foreign equivalents.[23] "The doctrine of foreign equivalents is used to ascertain if a non-English word mark is impermissibly . . . descriptive by translating the mark into English and then considering its . . . descriptiveness." *In re Vetements Grp. AG*, 137 F.4th 1317, 1322 (Fed. Cir. 2025) (*petition for cert. filed sub nom*., *Vetements Grp. AG v. Stewart*, No. 25-215 (Aug. 19, 2025)). However, "[w]hen it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied." *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005) ("the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline").

We find that the doctrine of foreign equivalents is not applicable here and agree with the Examining Attorney's argument that:

> [C]onsumers would not need to actually stop and translate the term since the mark ASTHETIK is so highly similar to the term AESTHETIC or ESTHETIC that no knowledge of German or translation would be required to conclude the term is a form of the terms AESTHETIC or ESTHETIC which are interchangeable and refer to goods or services designed to improve or enhance beauty and or health.[24]

"Ästhetik" is nearly indistinguishable from English word "aesthetic." Therefore, consumers are unlikely to stop and translate "ästhetik" into English.

Additionally, the record lacks evidence regarding whether "an appreciable number of purchasers are likely to be aware what the foreign word means in English."

[23] 6 TTABVUE 49-52 ("the doctrine of foreign equivalents is inapplicable"); 9 TTABVUE 6 (argument based on foreign translation of the proposed mark); 8 TTABVUE 4-6 ("the doctrine of foreign equivalents could be applied . . .").

[24] 8 TTABVUE 4-5.

Vetements, 137 F.4th at 1326 (quotation omitted). The Examining Attorney states that, "a large number of the U.S. population are of German descent or otherwise speak and understand German," but does not provide any evidence in support.[25] In contrast, in *Vetements*, the Federal Circuit held "substantial evidence in the record" supported translation including:

> [A]s of 2010, French (including all French dialects) was the fourth most common language spoken in the United States and 2.1 million Americans over the age of five spoke French at home. French was taught to 14% of all students enrolled in foreign languages in elementary grades through high school, and 12.4% of all American university foreign-language students.

Vetements, 137 F.4th at 1327 (cleaned up). No such evidence is of record here.

Further, the context in which the word "ästhetik" appears, i.e., in connection with cosmetic skin care, body care, and makeup services and products, would not cause the ordinary American consumer to translate the term. *See id.* at 1328. Rather, consumers would see "ästhetik" as a misspelling of "aesthetic" as discussed below.

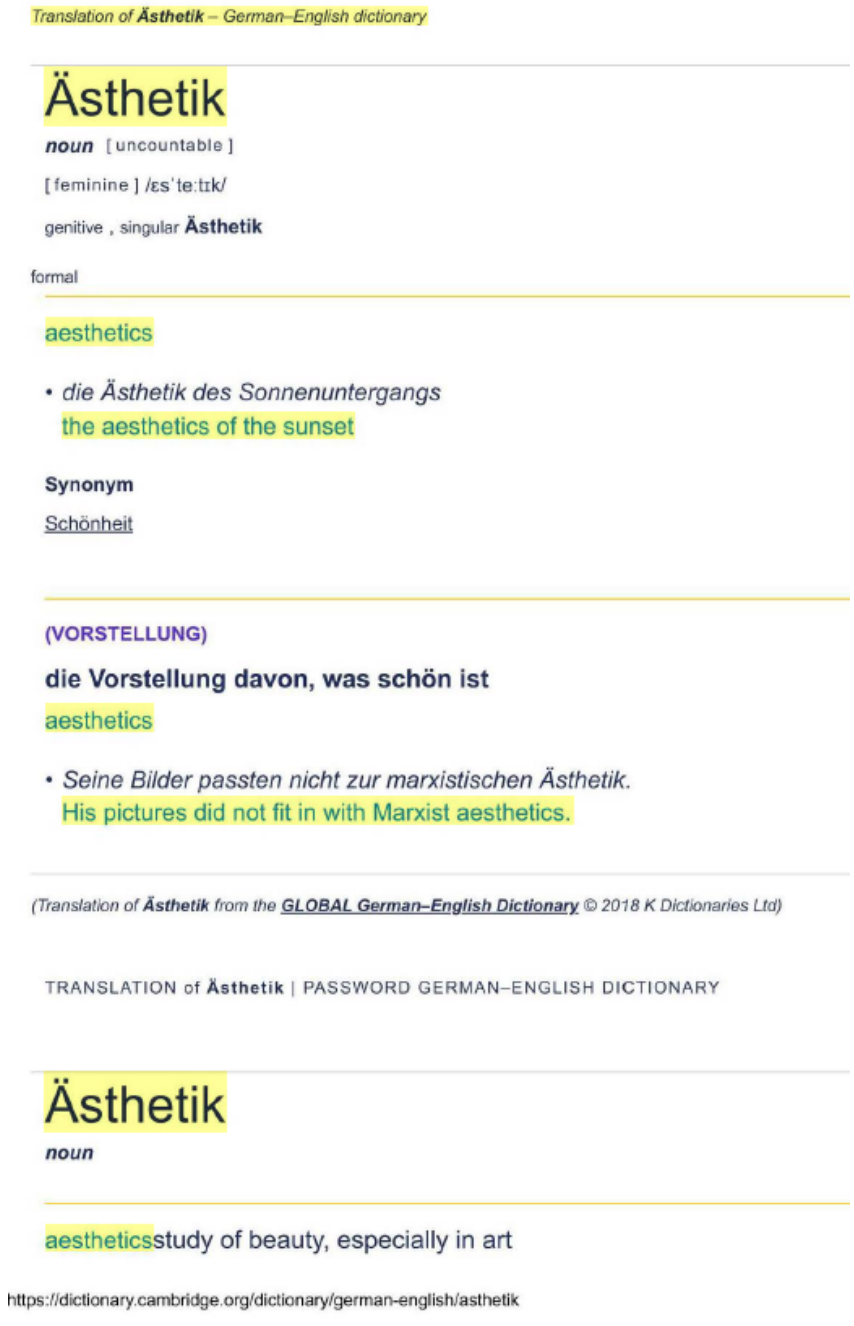
Applicant argues that the translation evidence it submitted shows that "the accurate English translation [of ÄSTHETIK] is '[the] study of beauty, especially in art'"[26] which "is not a perfect and exact match to the American English word 'AESTHETIC'" and as such "the doctrine of foreign equivalents is inapplicable due to the differing connotations between 'ÄSTHETIK' and 'AESTHETIC.'"[27] We agree with

[25] 8 TTABVUE 6. Applicant merely cites the Examining Attorney's statement and does not provide any evidence in support. 9 TTABVUE 5.

[26] 9 TTABVUE 6.

[27] 6 TTABVUE 50, 52.

Applicant that the doctrine of foreign equivalents is inapplicable as explained above. However, our review of Applicant's evidence shows that the English translation of the German term "ästhetik" is "aesthetics", the plural form of "aesthetic", with varying definitions:[28]



*Translation of **Ästhetik** – German–English dictionary*

Ästhetik

noun [uncountable]

[feminine] /ɛsˈteːtɪk/

genitive , singular **Ästhetik**

formal

aesthetics

- *die Ästhetik des Sonnenuntergangs*
  the aesthetics of the sunset

Synonym

Schönheit

(VORSTELLUNG)

die Vorstellung davon, was schön ist

aesthetics

- *Seine Bilder passten nicht zur marxistischen Ästhetik.*
  His pictures did not fit in with Marxist aesthetics.

*(Translation of **Ästhetik** from the **GLOBAL German–English Dictionary** © 2018 K Dictionaries Ltd)*

TRANSLATION of **Ästhetik** | PASSWORD GERMAN–ENGLISH DICTIONARY

Ästhetik

noun

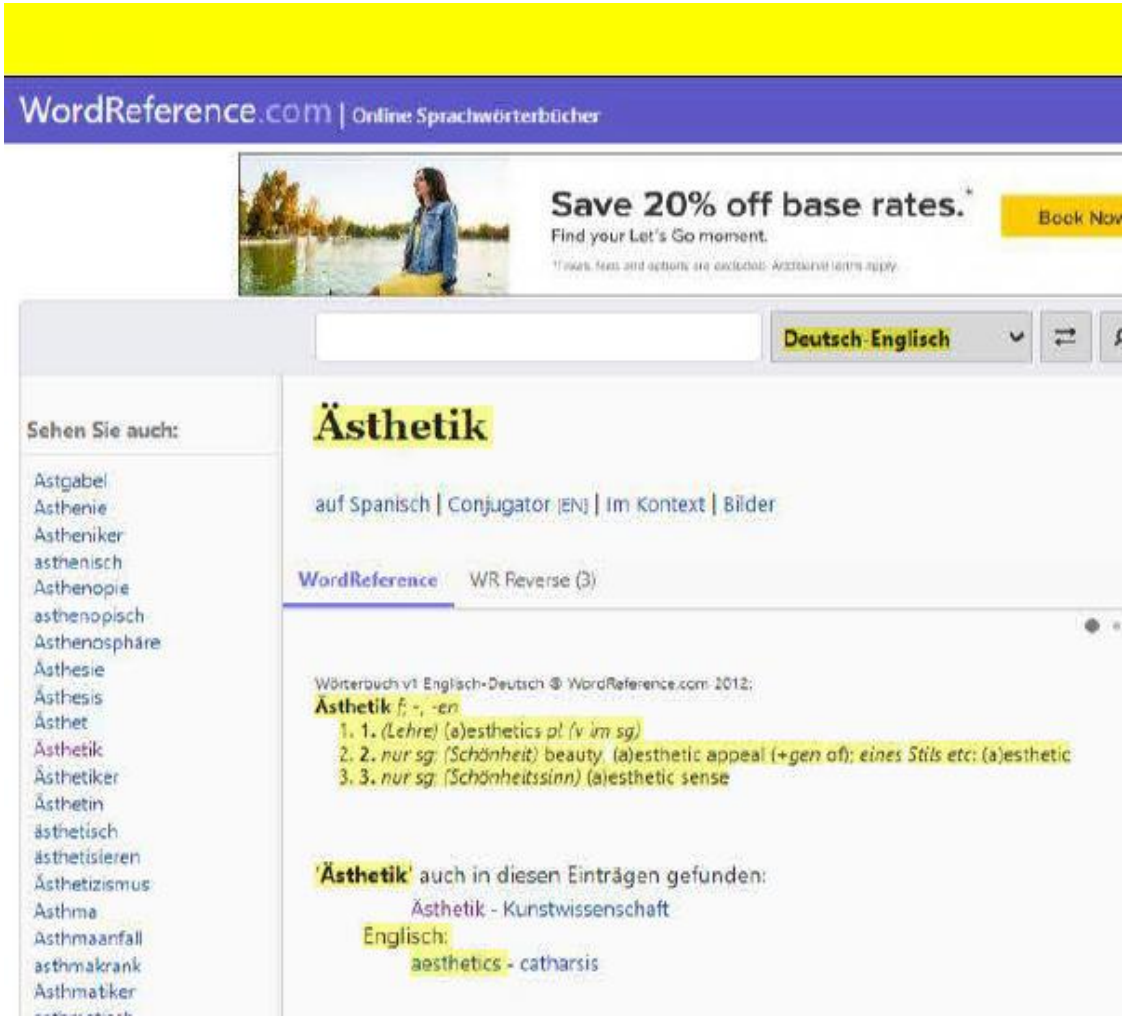
aestheticsstudy of beauty, especially in art

https://dictionary.cambridge.org/dictionary/german-english/asthetik

[28] November 5, 2024 Request for Reconsideration at 15 (highlighting added).

Applicant's argument focuses on one of the listed definitions, but it does not follow that this is the appropriate definition upon which we should focus. Rather, the evidence shows the English translation of the German term "ästhetik" is "aesthetics."

The Examining Attorney also provided evidence showing that the German term "ästhetik" translates to "aesthetics" or "esthetics" in English with varying definitions including "beauty":[29]



[29] August 6, 2024 Final Office Action at 118 (highlighting added). Applicant asserts that the Examining Attorney misapplied the doctrine of foreign equivalents by "argu[ing] that the German term 'ÄSTHETIK' translates into the United Kingdom English term 'ESTHETICS,' which in turn is a synonym for the American English term 'AESTHETIC.'" 6 TTABVUE 49. Applicant cites no evidence in support of its argument, and our review of the record does not reveal that the Examining Attorney made this argument.

The close similarity between the German term "ästhetik" and the English translation "aesthetics" is further support that consumers are unlikely to stop and translate.

Finally, Applicant argues that "[w]hile the definition of 'ÄSTHETIK' has a philosophical connotation of beauty, the definition of 'AESTHETIC' is broader and additionally encompasses the act of improving a person's appearance. As such, 'ÄSTHETIK' has a different connotation than the term 'AESTHETIC.'"[30] We are not persuaded. Considering Applicant's and the Examining Attorney's evidence together shows that the various definitions of the translated term include the concept of beauty generally which, as discussed below, encompasses meanings that are descriptive of Applicant's skincare products and services.[31] Although this meaning is literal and direct, when considered in relation to the other factors above which weigh against applying the doctrine of foreign equivalents, we conclude it is unnecessary to apply the doctrine here.

B. Consumers Will Perceive ÄSTHETIK as a Variant of "Aesthetic"

A misspelling, novel spelling, or variation of a descriptive term does not transform it into a registrable mark. *See Bayer AG*, 488 F.3d at 963 (affirming Board's finding that "the term ASPIRINA is merely descriptive of analgesic goods as a variation or

[30] 6 TTABVUE 51.

[31] Applicant also argues that "[t]he TTAB has consistently reinforced the principle that, where a foreign term does not exactly translate into a term that is descriptive of the goods and services, the foreign term is only suggestive, not descriptive of the applied-for goods and services." 6 TTABVUE 51-52; 8 TTABVUE 6-7. But here we have found that the translation of ästhetik is literal and direct and is descriptive. And most of the cases Applicant cites in support applied the doctrine of foreign equivalents and we have determined (and Applicant has argued that) the doctrine of foreign equivalents is inapplicable here.

misspelling of aspirin"); *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 526 n.9 (CCPA 1980) (QUIK-PRINT merely descriptive of printing and copying services, finding "[t]here is no legally significant difference here between 'quik' and 'quick"); *In re Ginc UK Ltd.*, No. 78618843, 2007 TTAB LEXIS 83, at *6 (TTAB 2007) ("The generic meaning of 'togs' is not overcome by the misspelling of the term as TOGGS in applicant's mark. A slight misspelling is not sufficient to change a descriptive or generic word into a suggestive word.").

In determining whether ÄSTHETIK is sufficiently similar to AESTHETIC that consumers will perceive Applicant's proposed mark as a variation of the term "aesthetic," we consider "the relevant features of the mark . . . including appearance, sound, and meaning." *Bayer AG*, 488 F.3d at 964. We agree with the Examining Attorney that "[c]onsumers encountering the mark [ÄSTHETIK] in association with the goods and services would easily recognize the mark as an alternate spelling of the term AESTHETIC or ESTHETIC and would understand the goods and services to be for improving one's appearance and/or beauty."[32] The visual differences between "ästhetik" and "aesthetic" are minor, consisting of an addition of an umlaut, deletion of the first silent "e", and substituting a "k" for a "c". *Id.* at 965 ("Adding an 'a' to aspirin results in virtually no distinction with respect to the visual impressions of the terms."); *In re Carlson*, No. 78752616, 2009 TTAB LEXIS 438, at *16 (TTAB 2009) ("URBANHOUZING in standard character form, will be immediately and directly

[32] 8 TTABVUE 4.

perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING . . .").

Applicant argues that "[d]ue to the prominent use of an umlaut on the 'A,' even to non-German speakers, this term is recognizable as a German term, not an American English term."[33] Yet there is no evidence in the record that United States consumers are familiar with an "umlaut," and its appearance is inconspicuous and not likely to make an impact beyond perhaps being considered a design. *See In re Protek AG*, No. 73330190, 1986 TTAB LEXIS 148, at *8 (TTAB 1986) ("'While MÜLLER' is slightly different insofar as it has an umlaut over the letter 'U', . . . [it] would be perceived by purchasers in the United States, where umlauts are not ordinarily used, as the equivalent of 'MULLER'.").

With regard to sound, Applicant argues that "ÄSTHETIK" "is not pronounced like the English word 'AESTHETIC.' Instead, ÄSTHETIK, which is a German term, is pronounced using the German pronunciation: /ˈʔɛstetik/."[34] However, the evidence Applicant cites in support consist of pronunciation videos that Applicant failed to properly make of record as discussed above, so we cannot consider them.[35] Given the close visual similarity between the words "ästhetik" and "aesthetic", United States consumers are likely to view them as phonetically identical and pronounce them the same. *See In re Organik Techs., Inc.*, No. 74553323, 1997 TTAB LEXIS 2, at *14

[33] 6 TTABVUE 48.

[34] 6 TTABVUE 47.

[35] 6 TTABVUE 6-7 (Exhibit C - YouTube screenshot), 8-9 (Exhibit D - Bab.la screenshot).

(TTAB 1997) ("ORGANIK . . . is the phonetic equivalent of the term 'organic'"); *In re Calphalon Corp.*, No. 86356713, 2017 TTAB LEXIS 98, at *34 (TTAB 2017) (proposed mark SHARPIN was descriptive because it is "the phonetic equivalent of the word 'sharpen,' which the record shows means 'to make or become sharp or sharper'").

On meaning, Applicant again argues the meaning it advanced in its arguments on the doctrine of foreign equivalents that "'ÄSTHETIK' is a noun in German, which means '[the] study of beauty, especially in art'" which is "used in a purely philosophical context."[36] But we determined that the translation evidence of record shows various definitions for the word ästhetik that include the concept of beauty generally which overlaps with the meaning of the term aesthetic as discussed below.[37] Applicant also argues that "Applicant's use of a German term is a meaningful aspect of Applicant's brand identity [because] [t]he owner of the company is of German descent and chose this name in tribute and to honor her German 'Oma,' or grandmother."[38] But Applicant provides no evidence in support and cites only to attorney argument made in response to the initial office action which are not evidence, and are not probative. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371

[36] 6 TTABVUE 48.

[37] Applicant also argues that there are other terms in German closer to the meaning of aesthetic which "illustrates that in German there are two separate terms for what is just one word with multiple definitions in American English: 'AESTHETIC.'" 6 TTABVUE 48. However, as discussed *supra* in Section I, Applicant's Exhibit E (which it relies on for this argument) was submitted for the first time on appeal, and is thus untimely and we will not consider it. The only remaining evidence of record involves the German term "kosmetikerin" which applicant argues is the equivalent of the American term "aesthetician," but this term is not at issue in this appeal, and we do not find this evidence probative.

[38] 6 TTABVUE 49.

(Fed. Cir. 2018) (citation omitted) ("assertions of fact" in a brief are "not evidence under any of the relevant rules").

Accordingly, the evidence of record establishes that given the similarities in sight, sound, and meaning consumers will perceive Applicant's proposed mark ÄSTHETIK as a variant of the word "aesthetic," and we will analyze whether Applicant's mark is descriptive accordingly.

C. Analysis of Mere Descriptiveness

Applicant's Identified Goods and Services are for various skincare products and services including eye gels, lip balm, non-medicated skin toners, cosmetic skin care services, namely, facials, chemical peels, microdermabrasion, cosmetic body care services, and permanent makeup services. We determined that consumers will perceive Applicant's proposed mark ÄSTHETIK as a variant of the word "aesthetic." The Examining Attorney submitted dictionary evidence defining "aesthetic" as an adjective to mean:

- "done or made to improve a person's appearance or to correct defects in a person's appearance" and
- "of, relating to, or dealing with aesthetics of the beautiful."[39]

Additionally, the dictionary evidence also shows "aesthetics" and "esthetics" are synonyms, a plural form of "aesthetic," and similarly are defined as a noun to mean "a pleasing appearance or effect: beauty."[40] *See Bayer AG*, 488 F.3d at 964 ("Evidence that a term is merely descriptive to the relevant purchasing public may be obtained

[39] February 21, 2024 Office Action at 5-6.

[40] February 21, 2024 Office Action at 6.

from any competent source, such as dictionaries . . . .") (citation omitted). Both as an adjective and a noun the term relates to beauty and means improving appearance or a pleasing appearance.

Applicant's skincare products and services such as eye gels, lip balm, cosmetic body care services and permanent makeup services are used and provided to improve a person's appearance, correct defects in a person's appearance, and provide a pleasing appearance or effect. Further, several of Applicant's services are identified as "cosmetic" which means "of, relating to, or making for beauty especially of the complexion" and "done or made for the sake of appearance: such as correcting defects especially of the face."[41] As such, Applicant' proposed mark merely describes a feature or function of Applicant's Identified Goods and Services.

Applicant admits that "many of the goods and services offered under [its] Mark provide benefits and improvements to the appearance of the user."[42] However, Applicant argues that its proposed mark is suggestive because not all of its products and services provide such benefits, some of its services provide other benefits such as reducing stress levels and improving circulation, and even for goods and services that do improve appearance that is not their "sole[]" or "only" benefit.[43] But "a mark need

[41] MERRIAM-WEBSTER DICTIONARY (2025) (https://www.merriam-webster.com/dictionary/cosmetic), accessed December 19, 2025. The Board may take judicial notice of dictionary evidence, *In re Cordua Rests. LP*, No. 85214191, 2014 TTAB LEXIS 94, at *6 n.4 (TTAB 2014), aff'd, 823 F.3d 594 (Fed. Cir. 2016), including from online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, No. 75788830, 2006 TTAB LEXIS 136, at *6-9 (TTAB 2006).

[42] 6 TTABVUE 55.

[43] 6 TTABVUE 54-55.

not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper if [as Applicant admitted here] the mark is descriptive of any of the [goods or services] for which registration is sought." *Chamber of Com.*, 675 F.3d at 1300 (citation omitted). Additionally, "[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.* (citation omitted). Again, Applicant admits that "many" of Applicant's Identified Goods and Services provide the feature or function of improving the appearance of the user.[44] This is confirmed by Applicant's specimen of use which:

- Describes benefits of its products as "delay[ing] the appearance of wrinkles and fine lines and makes the skin smoother, softer, and younger";[45]
- Advertises, "[a] daily lip treatment that covers your lips in nourishing hydration, visibly smooths lip wrinkles, and boosts the look of lips";[46]
- Promotes, "[t]he facials offered at asthetik will help you hone in on the treatment that's perfect for your skin, which is the secret to seeing an instant transformation";[47] and
- Advertises, "[m]icrodermabrasion is a non-invasive treatment that can work on improving skin's health and appearance in a number of way including: . . . brightening complexion[,] . . . exfoliating acne scars, fine

[44] Applicant also argues that "many products and services not offered by the Applicant can be considered as suggestive of "improving a person's appearance," noting a variety of examples including dentistry products and services, clothing styling services and tailoring, dietary supplements, and exercise classes which demonstrates "the mental leaps a consumer must make between the Mark and Applicant's Offerings." 6 TTABVUE 55. However, as Applicant recognizes, descriptiveness "must be determined not in the abstract, but in relation to the goods and services for which registration is sought." 6 TTABVUE 53 (citing TMEP § 1209.01(b)); *see also Chamber of Com.*, 675 F.3d at 1300.

[45] May 19, 2023 Specimen at 5.

[46] May 19, 2023 Specimen at 5.

[47] May 19, 2023 Specimen at 21.

> lines, and wrinkles[,] [and] promote circulation to the skin, and give it a serious glow.[48]

See In re N.C. Lottery, 866 F.3d 1363, 1367-68 (Fed. Cir. 2017) (applicant's specimen of use and any explanatory text included therein is relevant evidence of descriptiveness).

The Examining Attorney also provided evidence of 46 third-party use-based registrations for goods and services similar to Applicant's Identified Goods and Services showing the terms "aesthetic" or the synonym "esthetic", of the plural forms thereof disclaimed.[49] Such evidence supports a conclusion that ÄSTHETIK is descriptive of Applicant's Identified Goods and Services. *See Sweats Fashions, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1564-65 (Fed. Cir. 1987) ("third-party registrations for marks incorporating SWEATS in which the word 'sweats' is disclaimed, all support [applicant's] position that 'sweats' is a generic or descriptive word for sweatshirts and sweatpants"); *In re Box Solutions Corp.*, No. 76267086, 2006 TTAB LEXIS 176, at *6-7 (TTAB 2006) ("Third-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry."; finding "the term 'SOLUTIONS' has been regarded as merely descriptive in a number of third-party marks, the registrations of which include disclaimers of the term 'SOLUTIONS'"). Further confirming the descriptiveness of Applicant's proposed mark, 14 of the third-party registrations use the term "aesthetic" or its

[48] May 19, 2023 Specimen at 22.

[49] *See* August 6, 2024 Office Action at 7-117. The Examining Attorney's evidence included 57 third-party registrations, but we have not considered registrations that have been cancelled or registrations that covered goods/services that were not similar enough to Applicant's Identified Goods/Services. *Id.* at 13, 19, 42, 53, 79, 85, 87, 96, 102, 108, 114.

plural "aesthetics" in the identification of goods and services.[50] *See In re NextGen Mgmt., LLC*, No. 88098031, 2023 TTAB LEXIS 1, at *12 (TTAB 2023) ("Use of a term in an application's recitation of services strongly suggests that the term is merely descriptive.").

Applicant responds that "there are numerous third-party registrations in International Classes 3 and 44, where the terms 'AESTHETIC' and 'ESTHETIC' were not disclaimed, indicating that these terms are not merely descriptive of goods and services related to beauty."[51] However, as discussed *supra* in Section I, the only evidence Applicant provided regarding these registrations that is properly of record is a list showing the mark and registration number. There is no evidence of record showing any information about disclaimers or the lack thereof.[52]

Applicant also argues that "[t]he term 'AESTHETIC' has a wide variety of definitions as both a noun and an adjective" which preclude a finding of descriptiveness and that "several of the definitions for 'AESTHETIC' are suggestive of a quality of Applicant's Offerings."[53] However, "[t]hat a term has different meanings in different contexts is not controlling." *In re Omniome, Inc.*, No. 87661190, 2019 TTAB LEXIS 414, at *12 (TTAB 2019). We determine descriptiveness in relation

[50] August 6, 2024 Office Action at 9, 11, 17, 23, 33, 39, 43, 51, 55, 63, 77, 92, 100, 104.

[51] 6 TTABVUE 56-57.

[52] *See* 6 TTABVUE 57. For the same reason Applicant's argument about the "wide variety of goods and services" in these registrations lacks any evidentiary support. Additionally, the registrations Applicant points to in the chart in Exhibit K are not of record and we do not consider them.

[53] 6 TTABVUE 57-58; 9 TTABVUE 8-9.

to Applicant's Identified Goods and Services. *Chamber of Com.*, 675 F.3d at 1300. And when so considered, the meaning directly applicable is descriptive, that is done or made to improve a person's appearance or to correct defects in a person's appearance. Applicant stretches to apply other meanings to its goods and services and label them suggestive, but we do not find the arguments persuasive and they also lack evidentiary support. For example, Applicant argues that the definition "'a branch of philosophy dealing with the nature of beauty, art, and taste and with the creation and appreciation of beauty' is suggestive of Applicant's focus on 'real ingredients, real skin, real people.'"[54] But the screenshots from Applicant's website that it cites in support were submitted for the first time with Applicant's appeal brief so they are untimely and we have not considered them.[55] And there is nothing in the quoted definition that relates to Applicant's Identified Goods and Services focused on skincare products and services. Moreover, "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.*, No. 87209946, 2018 TTAB LEXIS 156, at *18 (TTAB 2018).

Applicant further argues that its mark is a double entendre because "multiple different definitions for 'AESTHETIC' are suggestive of different qualities and traits of Applicant's Offerings" and "[t]hese definitions create incongruity and result in

[54] 6 TTABVUE 58.

[55] *See supra* Section I and n.18. Applicant's Exhibit L was excluded from consideration as untimely.

consumers using their imagination to perceive the nature of Applicant's Offerings."[56] But as Applicant recognizes, a "double entendre is an expression that has a double connotation or significance **as applied to the goods or services**."[57] Additionally, "[t]he multiple interpretations that mark an expression a 'double entendre' must be associations that the public would make fairly readily, and **must be readily apparent from the mark itself**." *Calphalon*, 2017 TTAB LEXIS 98, at *30 (citation omitted; italics in original, bold here). Here, the alternate meanings Applicant points to are strained and not ones the public would make fairly readily. Moreover, Applicant relies on the advertising on its website to invoke such meanings[58] and "[i]f the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the [A]pplicant's . . . advertising materials or other matter separate from the mark itself, the mark is not a double entendre." *In re Yarnell Ice Cream, LLC*, No. 86824279, 2019 TTAB LEXIS 208, at *23 (TTAB 2019).

Finally, Applicant argues that "'AESTHETIC' is popularly used, both as a noun and an adjective, in areas such as fashion, interior design, and even gourmet cuisine" and that "[t]his evidence of a wide variety of modern usage of the term 'AESTHETIC' strongly indicates that consumers do not view the term as solely connected to cosmetics but rather view the term 'AESTHETIC' as connected to expansive offerings under the general umbrella of beauty."[59] But the fact that "aesthetic" may be used in

[56] 6 TTABVUE 58-59.

[57] 6 TTABVUE 58 (citing TMEP § 1213.05(c) (italics in original, bold here).

[58] 6 TTABVUE 57-58.

[59] 6 TTABVUE 59-60.

connection with other types of goods or services does not detract from the descriptiveness when considered in relation to Applicant's Identified Goods and Services which we must do so here. Consumers viewing Applicant's proposed mark ÄSTHETIK in connection with Applicant's Identified Goods and Services -- which include eye gels, lip balm, non-medicated skin toners, cosmetic skin care services, cosmetic body care services, and permanent makeup services -- will understand the term to describe a feature or function of the goods and services to improve a person's appearance and/or provide a pleasing appearance or effect.

IV. Conclusion

Upon consideration of the applicable law, the evidence of record, and the arguments of Applicant and the Examining Attorney, we find that Applicant's proposed mark ÄSTHETIK immediately conveys to consumers a feature or function of Applicant's Identified Goods and Services, and as such is merely descriptive of Applicant's Identified Goods and Services.

Decision: We affirm the refusal to register Applicant's proposed mark ÄSTHETIK under Section 2(e)(1) of the Trademark Act.