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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Danos Seasoning LLC

Serial Nos. 98316492 and 98470064

Michael W. Schroeder and Leslie Reyes, Reyes & Schroeder Associates, P.C., for Danos Seasoning LLC.

Angela Duong, Trademark Examining Attorney, Law Office 130, John Lincoski, Managing Attorney.

Before Wellington, Cohen, and O'Connor, Administrative Trademark Judges.

Opinion by O'Connor, Administrative Trademark Judge:

Danos Seasoning LLC ("Applicant") seeks registration on the Principal Register of the proposed standard character marks **TAC-O**[1] and **TAC-O LIFE**[2] for:

[1] Application Serial No. 98316492 was filed on December 15, 2023 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's claim of a bona fide intent to use the proposed mark in commerce.

[2] Application Serial No. 98470064 was filed on March 27, 2024 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's claim of a bona fide intent to use the proposed mark in commerce.

Although the cases have not been consolidated, we issue a single decision because the issues are nearly the same and the records in the appeals are essentially the same. *In re Pohl-Boskamp GmbH & Co.*, Ser. No. 85007428, 2013 TTAB LEXIS 7, at *11 (TTAB 2013) (two appeals involving common issues of law and fact decided in a single opinion). Except where

Seasonings; Spices; Seasoning mixes; Spice Mixes; Seasoning rubs; Spice rubs; Spice blends; Dried herbs; Seasonings comprising salt blends; Seasoned salt; Sauces; Hot sauce; Barbeque sauce; Dipping sauces; Grilling sauces; Ketchup; Mustard; Salsa; Salad dressings; Multigrain based snack foods; Grain-based snack foods; Rice-based snack foods; Corn-based snack foods; Corn chips; Rice chips; Crackers; Popcorn; Jellies, namely, jelly confectionery, fruit jelly candy and royal jelly for food purposes, in International Class 30;

Online retail store services featuring food seasonings, spices, spice blends, sauces, condiments for food, mixes and rubs, snack foods, dips, jellies, jams, cooking accessories, grills, barbecue smoker accessories, cooking and grilling utensils, knives, flatware, tableware, pots, pans, cups, mugs, insulated sleeve holders for beverages, cookbooks, magazines and books in the field of diet, health, wellness, exercise and fitness, clothing,[3] stickers and keychains, in International Class 35;

Entertainment and education services, namely, providing a continuing series of on-line non-downloadable audio and audio-visual programs in the field of food, cooking, recipes, meal preparation, culinary arts, entertaining, culture, diet, exercise, fitness, wellness and health lifestyles, accessible by means of the Internet, web-based applications, mobile phone applications and computer networks; Entertainment services, namely, providing online non-downloadable videos featuring food, cooking, recipes, meal preparation, culinary arts, entertaining, culture, diet, exercise, fitness, wellness and healthy lifestyles; Production and distribution of videos for others in the fields of food, cooking, recipes, meal preparation, culinary arts, entertaining, culture, diet, exercise, fitness, wellness and healthy lifestyles; Providing a website featuring entertainment information in the fields of cooking, entertaining, culture, diet, exercise, fitness, wellness and

indicated otherwise, all citations to the record (TTABVUE and TSDR) are to the record for TAC-O, Ser. No. 98316492, and are to the downloaded .pdf versions of the documents. Each proceeding retains its separate character and as indicated below, a separate judgment is issued in each proceeding.

[3] "Clothing" does not appear in the identification for TAC-O LIFE, Ser. No. 98470064.

> lifestyle, namely, providing information about exercise and fitness via a website, providing instructional information about cooking techniques via a website, and providing instructional information about how to entertain guests while hosting social entertainment events via a website; Providing online non-downloadable tutorial videos featuring food, cooking, recipes, meal preparation, culinary arts, entertaining, diet, exercise, fitness, wellness and healthy lifestyles; Cooking instruction; Entertainment services in the nature of the creation, development, and production of films, videos and television programming for others; Education and entertainment services, namely, creation, development and production of ongoing television programs in the fields of food, cooking, recipes, meal preparation, culinary arts, entertaining, culture, diet, exercise, fitness, wellness and healthy lifestyles; Educational services, namely, conducting classes, courses, seminars, workshops, lectures and conferences in the fields of food, cooking, recipes, meal preparation, culinary arts, diet, fitness, exercise, wellness and healthy lifestyles, and distribution of course materials in connection therewith; Providing educational demonstrations in the fields of cooking, meal preparation, culinary arts, diet, fitness, exercise, wellness and healthy lifestyles; Entertainment services in the nature of organizing social entertainment events, in International Class 41; and
>
> Providing a website featuring information in the fields of food preparation, cooking, recipes, meal preparation and the culinary arts of preparing, cooking, presenting and serving food, in International Class 43.

The Examining Attorney finally refused registration of TAC-O under Section 2(e)(1) of the Act, 15 U.S.C. § 1052(e)(1), on the basis that the proposed mark merely describes a characteristic of Applicant's goods and services.

As to Applicant's proposed mark TAC-O LIFE, the Examining Attorney issued a final requirement for a disclaimer of TACO, under Section 6(a) of the Act, 15 U.S.C. § 1056(a), on the basis that it is a novel spelling or intentional misspelling of the word "taco," which is merely descriptive of Applicant's goods and services within the

meaning of Section 2(e)(1).

After the Examining Attorney made the refusal and the requirement final,[4] Applicant appealed and requested reconsideration in both cases. The Examining Attorney denied both requests for reconsideration and the appeals were resumed and have now been fully briefed. For the reasons discussed below, we affirm the refusal to register the proposed mark TAC-O under Trademark Act Section 2(e)(1) and the refusal to register the TAC-O LIFE mark absent a disclaimer of TACO under Trademark Act Section 6(a).

I. Preliminary Issues

Before reaching the merits, we address two preliminary issues. First, Applicant asks that we take judicial notice of applications or registrations for ten other marks owned by Applicant that were not submitted during prosecution, attaching TSDR printouts and registration certificates for these marks to its brief.[5] For one of the marks, WE PUT THE "O" IN TAC-O!, Applicant contends that the Examining Attorney "has consented" to submission of the application, because Applicant made arguments based on this application in its Request for Reconsideration, which the Examining Attorney addressed without objection.[6] The Examining Attorney notes

[4] As Applicant points out, in the Final Office Action, the Examining Attorney referred to attempts by Applicant to prove acquired distinctiveness under Section 2(f), which Applicant never asserted. These misstatements are of no moment, as the Examining Attorney fully addressed Applicant's arguments that TAC-O is not merely descriptive because it is a double entendre, both in denying reconsideration and on appeal.

[5] 6 TTABVUE 16, n.1; 22-33, Exhibit A (TSDR printout for Ser. No. 98433752, WE PUT THE "O" IN TAC-O!); 34-50, Exhibit B (copies of registration certificates for eight marks and TSDR printout for Ser. No. 98645900).

[6] 6 TTABVUE 17 (citing March 17, 2025 Denial of Request for Reconsideration, TSDR 4).

that the Board does not take judicial notice of application or registration records and objects to Applicant's "new evidence" as untimely.[7]

Generally, "[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." *In re Seminole Tribe of Fla.*, Ser. No. 87890892, 2023 TTAB LEXIS 184, at *8 (TTAB 2023) (quoting Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d)) (internal quotation marks omitted); *see* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1203.02(e) (2025) ("Exhibits attached to a brief that were not made of record during examination are untimely, and generally will not be considered."). The proper procedure to introduce additional evidence after an appeal has been filed is to file a written request with the Board to suspend the appeal and remand the application for further examination. *See, e.g.*, *In re Adlon Brand Gmbh & Co.*, No. 85831682, 2016 TTAB LEXIS 526, at *30 (TTAB 2016) (good cause required); *see also* TBMP §§ 1207.02, 1209.04. Applicant has provided no reason for an exception to this general rule, and thus the application and registration documents are untimely. Moreover, it is the Board's well-established practice not to take judicial notice of registrations that are not the subject of the appeal. *In re Seminole Tribe of Fla.*, 2023 TTAB LEXIS 184, at *8-9; *see* TBMP §§ 1208.02; 1208.04 (explaining reasons for this practice); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 710.03 (May 2025) (Board does not take judicial notice of registrations or contents of application and registration files). Accordingly, we sustain the objection and will

[7] 8 TTABVUE 3-4.

not consider any of the ten records attached to Applicant's brief or arguments based on those records.

However, inasmuch as the Examining Attorney responded substantively, without objection, to Applicant's arguments during prosecution regarding Ser. No. 98433752 for WE PUT THE "O" IN TAC-O!, we consider those arguments and the information contained therein for whatever probative value they may have. *Cf. In re Mayweather Promotions, LLC*, Ser. No. 86753084, 2020 TTAB LEXIS 467, at *12-13 n.17 (TTAB 2020) (failure to advise applicant of insufficiency of list of registrations when proffered during examination, which examining attorney discussed in next Office action, waived objection); *In re Broyhill Furniture Indus., Inc.*, Ser. No. 75473959, 2001 TTAB LEXIS 612, at *6 n.3 (TTAB 2001) (considering list of third-party registrations "for whatever limited probative value such evidence may have").

Second, Applicant requests, for the first time in its brief, that if we find the proposed TAC-O mark to be merely descriptive, Applicant be allowed to file a statement of use and amend its application to the Supplemental Register.[8] This request is untimely. To seek an amendment, in the alternative, to the Supplemental Register after filing the notice of appeal, Applicant was required to file a request to suspend the appeal and remand the application for further examination pursuant to Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). Applicant's unsupported contention that "[t]he Board may, and frequently does, grant such alternative relief when raised

[8] 6 TTABVUE 20.

clearly in an appeal"[9] is incorrect. Trademark Rule 2.142(g) states that "[a]n application which has been considered and decided on appeal will not be reopened except for the entry of a disclaimer under section 6 of the Act of 1946 or upon order of the Director…." 37 C.F.R. § 2.142(g). "[O]ur prior precedents are clear that once the Board has rendered a final decision, a request to amend to the Supplemental Register is not possible." *In re Integrated Embedded*, Ser. No. 86140341, 2016 TTAB LEXIS 470, at *25 (TTAB 2016) (citing cases); *see also In re Taverniti, SARL*, Ser. No. 73397073, 1985 TTAB LEXIS 98, at *6 n.3 (TTAB 1985) (it has been practice of the Commissioner [now Director] to refuse to reopen an application after final decision for amendment to the Supplemental Register); TBMP § 1218. Thus, Applicant's alternative request to allege use and amend its application to the Supplemental Register if we find the proposed mark TAC-O to be merely descriptive is denied.

II. Mere Descriptiveness

In the absence of acquired distinctiveness, which Applicant does not claim, Section 2(e)(1) of the Trademark Act 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." 15 U.S.C. § 1052(e)(1). A term 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 N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir.

[9] 9 TTABVUE 3.

2017) (citing *In re Bayer A.G.*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *see also In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012). In contrast, a mark is suggestive if it requires imagination, thought, or perception to arrive at the qualities or characteristics of the goods or services. *In re Gyulay*, 820 F.2d 1216, 1217 (Fed. Cir. 1987). Suggestive marks, unlike merely descriptive terms, are registrable on the Principal Register without proof of acquired distinctiveness. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 1341 (Fed. Cir. 2001).

Whether a proposed mark is merely descriptive is determined in relation to the goods or services for which registration is sought, not in the abstract. *In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015). "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 and 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).

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 AG*, 488 F.3d at 964, websites, publications and use "in labels, packages, or in advertising material directed to the goods." *In re N.C. Lottery*, 866 F.3d at 1368. "It is the Examining Attorney's burden to show, prima facie, that a mark is merely descriptive of an applicant's goods or services." *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *5 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d

at 1217).[10] If the Examining Attorney establishes a prima facie case, the burden shifts to the applicant to rebut that case. *Id*. (citation omitted).

A. The Examining Attorney's Evidence

The Examining Attorney argues that "TAC-O" is an intentional misspelling of the word "taco" and that it is merely descriptive of Applicant's goods and services in the nature of seasonings in Class 30, online retail store services featuring food seasonings in Class 35, and various cooking-related services in Classes 41 and 43. In support, the Examining Attorney relies on evidence including the following:

Dictionary definition

- Taco, noun: "a crispy or soft corn or wheat tortilla that is folded or rolled and stuffed with a mixture (as of seasoned meat, cheese, and lettuce)."[11]

Evidence of use by Applicant

- Printout from www.walmart.com offering DAN-O'S TAC-O Seasoning product states "We put the 'O' in Tac-O!™: Dan-O's Tac-O™ is taco seasoning done right, crafted with real chili peppers, garlic, cumin, oregano, cilantro, and hints of lemon and rosemary, all balanced with the perfect amount of sea salt. This is why we put the 'O' in Tac-O™ - we're making it the way it should be made."[12]

- Printout from www.kxan.com with press release titled "Dan-O's Seasoning Unveils Tac-O Seasoning: Elevate Your Meals, Embrace the Tac-O Life" stating that "Dan-O's Seasoning introduces its latest

[10] Applicant incorrectly describes the Examining Attorney's burden as requiring "clear evidence." 6 TTABVUE 4. A "clear evidence" standard applies in genericness cases, not descriptiveness cases. *See, e.g., In re Mecca Grade Growers*, Ser. No. 86358219, 2018 TTAB LEXIS 64, at *20-21 (TTAB 2018) (applying "clear and convincing evidence" standard to genericness refusal, but not descriptiveness refusal).

[11] July 19, 2024 Nonfinal Office Action, TSDR 4 (MERRIAM-WEBSTER DICTIONARY).

[12] November 6, 2024 Final Office Action, TSDR 6.

addition, Tac-O Seasoning, to their flavor-full lineup!"[13]

Evidence of third-party uses of TAC-O or TAC O'

- Printout from www.yelp.com showing Mexican/Tex-Mex restaurant named Tac-O The Town;[14]
- Printout from https://order-nourishtoheal.com offering vegan taco-inspired bowl called "Something to Tac O' Bout."[15]

Evidence of third-party uses of "taco" for seasoning or other products

Printout from www.amazon.com showing products including:[16]

- McCormick Original Taco Seasoning Mix; and
- Lawry's Taco Seasoning Mix;

Printout from www.target.com showing products including:[17]

- Old El Paso Taco Seasoning Mix; and
- Siete Mild Taco Seasoning.

Listings on Walmart website for

- Doritos taco flavor tortilla chips;[18] and
- Chex Mix zesty taco flavor snack mix.[19]

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[13] *Id.* at 31-32.

[14] *Id.* at 19.

[15] *Id.* at 4.

[16] July 19, 2024 Nonfinal Office Action, TSDR 13-14, 16.

[17] *Id.* at 30-34.

[18] March 17, 2025 Denial of Request for Reconsideration, TSDR 22. In view of Applicant's failure to object, we have considered website evidence submitted by the Examining Attorney without the URL or access date. *See In re Mueller Sports Med., Inc.*, Ser. No. 87209946, 2018 TTAB LEXIS 156, at *5 (TTAB 2018) ("[I]f an examining attorney fails to include the website URL and the date that the webpage was accessed but the applicant fails to lodge an objection on that ground, then the Board will consider the website for whatever probative value it may have."); *see also* TMEP § 710.01(b).

[19] March 17, 2025 Denial of Request for Reconsideration, TSDR 23.

Evidence of third-party uses of "taco" for entertainment, educational and restaurant services

- Advertisement for Netflix documentary series titled "TACO Chronicles Cross the Border" stating "[m]any of the most popular taco styles have long, rich, little-known histories. Explore some of them in this eye-opening, mouth-watering food adventure.";[20]

- Aura Cocina Mexicana advertisement for "Mexican Street Taco" cooking classes;[21]

- YouTube video from Epicurious titled "The Very Best Tacos You can Make at Home;"[22] and

- Advertisement for Twisted Taco restaurant with article titled "History of the Taco" describing tacos as "America's favorite comfort food...."[23]

Publications

- Article titled "Behind the Seasoning: Taco Seasoning – Uses and Recipes" stating "Taco Seasoning is one of the most well-known spice mixes across America.... Taco Seasoning has masa harina, salt, chilies, tomato powder, garlic, cumin, California paprika, onion, white sugar, Mexican oregano, allspice.... Taco Seasoning is the classic flavor of American style ground beef tacos...."[24]

- Hot Pan Kitchen recipe for "3-ingredient taco salad dressing" stating that "[t]angy lime juice pairs with sour cream and taco seasoning for a savory, slightly smoking flavor."[25]

- Printout from www.allrecipes.com with recipe for homemade taco seasoning stating that "[t]aco seasoning is a savory spice blend that's used to add warm, spicy, and smoky flavor to all kinds of dishes, from tacos to soups and casseroles."[26]

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[20] *Id.* at 5.

[21] *Id.* at 6.

[22] *Id.* at 7.

[23] *Id.* at 16-20.

[24] *Id.* at 8-9.

[25] *Id.* at 24.

[26] July 19, 2024 Nonfinal Office Action at 41-44.

Based on this evidence, the Examining Attorney argues that "taco" is a well-recognized food and flavor profile, used to refer to both a type of food and the flavor of seasonings, spices, sauces, dressings and snacks, as well as television and informational programming in the field of cooking. In concluding that TAC-O is merely descriptive, the Examining Attorney reasons that the use of common punctuation such as a hyphen before the "O" resulting in the slight misspelling of "taco" does not alter its commercial impression or negate its mere descriptiveness, citing cases such as *In re Vanilla Gorilla, L.P.*, Ser. No. 76561135, 2006 TTAB LEXIS 234, at *10 (TTAB 2006) ("the addition of punctuation marks to a descriptive term would not ordinarily change the term into a non-descriptive one").

Despite the addition of a hyphen between the O and the rest of the letters, we believe consumers encountering the proposed mark in the context of Applicant's goods and services would perceive TAC-O as a mere misspelling of the word "taco." "[A] descriptive term is not made arbitrary by hyphenating or misspelling it." *In re Wyandotte Chem. Corp.*, 1967 TTAB LEXIS 134, at *3 (TTAB 1967) (TES-TED merely descriptive of detergents that have been subjected to tests); *see also American Druggists' Syndicate v. United States Indus. Alcohol Co.*, 2 F.2d 942, 943 (D.C. Cir. 1924) ("'Al-Kol' is merely a phonetic or misspelling of the word 'alcohol,' and is descriptive of the goods."); *cf. Weiss Noodle Co. v. Golden Cracknel and Specialty Co.*, 290 F.2d 845, 846-47 (CCPA 1961) ("HA-LUSH-KA" generic equivalent of Hungarian word "haluska"; words are pronounced the same and "merely to hyphenate the phonetic version does not destroy its identity").

As in cases where the punctuation or misspelling was deemed insignificant, TAC-O and "taco" are phonetically equivalent and visually very similar. *See, e.g.*, *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 1118 (Fed. Cir. 1987) (affirming Board's finding that "FirsTier" is phonetic equivalent of "first tier," which is merely descriptive of banking services); *In re Calphalon Corp.*, Ser. No. 86356713, 2017 TTAB LEXIS 98, at *29 (TTAB 2017) (SHARPIN "evokes an immediate association with the phonetically-identical and otherwise virtually-identical word 'sharpen,'" which is not incongruous for applicant's cutlery knife blocks with built-in sharpeners); *In re Noon Hour Food Prods. Inc.*, Ser. No. 78618762, 2008 TTAB LEXIS 23, at *2 n.2 (TTAB 2008) (noting that minor variations in display of a generic term typically are legally insignificant; finding BOND-OST generic for bondost type of cheese). The hyphen in TAC-O does not change the meaning of the word or disturb its immediate association with "taco."[27] This is supported by Applicant's use of "Tac-O" as a proxy for the word "taco" in its press release ("Dan-O's Seasoning introduces its latest addition, Tac-O Seasoning, to their flavor-full lineup!").

The evidence detailed above shows that "taco" is used to refer to seasonings and spices used in making tacos or a flavor that is featured in Applicant's Class 30 goods including seasonings, spices and grain-based snack foods, which themselves are featured in Applicant's online retail store services in Class 35. *See, e.g.*, *In re Pencils,*

[27] The case cited by Applicant in support of its argument, 6 TTABVUE 9, that punctuation may change the commercial impression of a mark is inapposite, as it involved both a different type of refusal and a change found to transform the mark's appearance, pronunciation and meaning. *In re Guitar Straps Online, LLC*, Ser. No. 85047191, 2012 TTAB LEXIS 287, at *8 (TTAB 2012) (proposed amendment to add question mark to the end of GOT STRAPS was material alteration within meaning of Trademark Rule 2.72).

Inc., Ser. No. 73638299, 1988 TTAB LEXIS 49, at *3 (TTAB 1988) (affirming disclaimer requirement for "pencils" because it is merely descriptive of an item sold through applicant's stationery and office supply store services). The evidence also shows that "taco" is used to refer to a food item that can be the subject of Applicant's "entertainment services, namely, providing online non-downloadable videos featuring food, cooking, recipes, meal preparation, culinary arts, entertaining, culture…" in Class 41 and "providing a website featuring information in the fields of food preparation, cooking, recipes, meal preparation and the culinary arts of preparing, cooking, presenting and serving food" in Class 43. *See, e.g.*, *In re Viventia Biotech Inc.*, Ser. No. 76424575, 2006 TTAB LEXIS 221, at *10 (TTAB 2006) ("A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1) of the Trademark Act, if, as applied to the goods or services in question, it describes ... [the] subject matter of such goods or services."); *In re Putman Publ'g Co.*, Ser. No. 74452456, 1996 TTAB LEXIS 8, at *4 (TTAB 1996) (FOOD & BEVERAGE ON-LINE directly conveys information about applicant's "news and information service updated daily for the food processing industry," namely, their subject matter).

"Taco" immediately conveys information about a feature or characteristic of Applicant's goods and services and is descriptive of them. The same is true of TAC-O. This is again supported by promotional statements about Applicant's product such as "Dan-O's Tac-O™ is taco seasoning done right," which indicate that consumers would immediately understand TAC-O as referring to a flavor. *See, e.g., In re N.C. Lottery*, 866 F.3d at 1369 (evidence including applicant's website showed "that the

mark is less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods or services," supporting descriptiveness).

We find that the Examining Attorney has shown prima facie that consumers will perceive TAC-O as simply a misspelling of "taco," and thus as merely descriptive of Applicant's goods and services.

B. Applicant's Asserted Rebuttal

Applicant "does not dispute that the term 'taco' is descriptive in the context of Applicant's goods and services."[28] Rather, Applicant argues that evidence showing use of "taco" is not probative because Applicant uses "the uniquely and unusually hyphenated, proprietary term 'TAC-O', which has a clear and readily identifiable, dictionary defined, double meaning."[29] Applicant contends that use of a hyphen in "TAC-O" changes the "O" into an interjection or exclamation, creating a double-entendre that is not merely descriptive but suggests "both a taco flavor profile and an outburst of overwhelming emotion, surprise or desire."[30]

"'Double entendre' is defined as 'ambiguity of meaning arising from language that lends itself to more than one interpretation.'" *In re The Place, Inc.*, Ser. No. 76436826, 2005 TTAB LEXIS 451, at *9-10 (TTAB 2005) (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993)). "For trademark purposes, a double entendre is an expression that has a double connotation or significance as applied to the goods or

[28] 6 TTABVUE 13.

[29] *Id.*

[30] *Id.* at 13-14.

services....” TMEP § 1213.05(c) (emphasis omitted). A mark that comprises a double entendre will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods or services. *In re Leonhardt*, Ser. No. 78666879, 2008 TTAB LEXIS 46, at *21 (TTAB 2008) (citing, inter alia, *In re Colonial Stores, Inc.*, 394 F.3d 549 (CCPA 1968) (SUGAR & SPICE registrable for bakery products)).

The multiple meanings that make an expression a double entendre must be readily apparent from the mark itself in the context of the applied-for goods and services. *See, e.g., In re Yarnell Ice Cream, LLC*, Ser. No. 86824279, 2019 TTAB LEXIS 208, at *23-24 (TTAB 2019) (SCOOP not a double entendre for ice cream; applicant made no showing that public likely to perceive term as indicating a news scoop in addition to a serving size). “If the alleged second meaning of the mark is apparent to purchasers only after they view the mark in the context of the applicant’s trade dress, advertising material or other matter separate from the mark itself, then the mark is not a double entendre.” *In re The Place Inc.*, 2005 TTAB LEXIS 451, at *10.

In support of its argument that the hyphenated “-O” in TAC-O creates a double entendre, Applicant relies on dictionary definitions of “Oh” and “O” as an interjection or exclamation “used to express an emotion (such as surprise or desire).”[31] According to Applicant,

> The hyphen between ‘TAC’ and ‘O’ in Applicant’s Mark visually disrupts the term ‘taco,’ encouraging consumers to

[31] 6 TTABVUE 10-11.

> consider each element. This is not a phonetic or typographic accident, but a deliberate cue suggesting a play on words. The combination of food and feeling, namely, 'taco' and 'oh!,' creates an emotional resonance and brand identity akin to the consumer joy elicited upon encountering or tasting Applicant's products or experiencing Applicant's services. … Consequently, not only would the public be able to properly identify Applicant's alleged meaning of '-O', as used as an interjection by Applicant, but it is also the only defined meaning attributable to the use of 'O' as an interjection in published dictionaries.[32]

We do not find that the second meaning urged by Applicant would be readily apparent to consumers encountering TAC-O in the context of the involved goods and services, for several reasons. First, the most direct reading of "O" in this context is as the last letter of the word "taco." This is consistent with Applicant's dictionary evidence, in which the first definition provided of "O" is a variable noun, "the fifteenth letter of the English alphabet."[33] The hyphen alone does not necessarily signify use of O as an interjection or exclamation. Evidence of Applicant's use indicates that, rather than expressing emotion, the "-O" is a play on the first letter of the surname of Applicant's founder, Dan Oliver.[34] Moreover, Applicant's dictionary evidence states that "O" is less commonly used than "Oh"; the entry cited for "Oh" as an interjection states "or less commonly O," and the entry cited for "O" states "used to express

[32] 6 TTABVUE 11.

[33] January 24, 2025 Request for Reconsideration, TSDR 23 (screenshot from www.collinsdictionary.com). As noted by the Examining Attorney, the dictionary evidence reflects a variety of definitions for "O." *See id.* at 23-37.

[34] *See* November 6, 2024 Final Office Action, TSDR 32 (press release quoting "Dan 'Dan-O' Oliver, founder of Dan-O's Seasoning").

surprise, wonder, fear, pain, etc., now usually oh."[35] Although it is possible that consumers encountering TAC-O could take a "mental leap" and perceive an emotional interjection,[36] this association is too attenuated, and the descriptive meaning of "taco" too direct, for any such double entendre to be readily apparent. *Cf. In re Vanilla Gorilla*, 2006 TTAB LEXIS 234, at *12 ("While in the abstract, the term may have several meanings, when one is a prospective purchaser of car wheel rims, the term '3-O'S' would immediately describe a characteristic or feature of the goods, i.e., that they are 30 inches in diameter.").

The cases cited by Applicant are distinguishable because they involved alterations in spelling of a word that clearly introduced a second, non-descriptive meaning. *See, e.g.*, *In re Tea & Sympathy*, *Inc.*, Ser. No. 77054914, 2008 TTAB LEXIS 31, at *5-6 (TTAB 2008) (THE FARMACY was play on "farm" and "pharmacy" that conveyed dual meaning); *In re Grand Metro. Foodservice, Inc.*, Ser. No. 74073517, 1994 TTAB LEXIS 5, at *4 (TTAB 1994) (MufFuns would not be perceived merely as a

[35] *See* 6 TTABVUE 10-11 (citing January 24, 2025 Request for Reconsideration, TSDR 11, 25.) Applicant's dictionary evidence is cut off in places, *see id*. at 24-25, 31-32, and one of the cited pages, *id*. at 40, shows the British English definition of "O," which is not necessarily probative of the understanding of United States consumers. *See In re Manwin/RK Collateral Trust*, Ser. No. 85532448, 2014 TTAB LEXIS 270, at *6 n.18 (TTAB 2014). We have considered the visible portions of Applicant's dictionary evidence reflecting American English definitions.

[36] 6 TTABVUE 12-13 (arguing, inter alia, that "[c]onsumers must make the mental leap to understand that Applicant's Mark suggests its goods and services elicit desire, surprise, and excitement"). The fact that Applicant repeatedly uses "Oh" in its brief to convey the proffered second meaning is telling; if this meaning were readily apparent from "-O," there would be no need to elucidate it this way. *See id*. at 11 (discussing the "combination of food and feeling, namely, 'taco' and 'oh!'"); 12 (asserting "two separate meanings, namely, 'taco' and 'O'/'Oh'"); 13 (TAC-O is "a play on 'taco' and 'oh!'").

misspelling of "muffins" given suggestive reference to the "fun" aspect of the product). TAC-O has no such impression beyond that of the descriptive word "taco."

Several of Applicant's other arguments warrant brief mention. Applicant contends that the Examining Attorney's evidence falls short of showing descriptiveness because most of it shows descriptive use of "taco", not TAC-O, and the few examples showing Tac-O or Tac O' actually support Applicant's double entendre arguments.[37] We disagree. "[T]here 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 Fat Boys Water Sports*, 2016 TTAB LEXIS 150, at *10; TMEP § 1209.02 (examining attorney must support refusal with "appropriate evidence"). And in the examples provided by the Examining Attorney, "Tac-O The Town" and "Something to Tac O' Bout," the dual meaning of Tac-O or Tac O' is only apparent from the context of the full phrase in which the term is used. Contrary to Applicant's argument, these examples do not show that consumers view the hyphenated term TAC-O itself in a manner that is inherently distinctive.

Nor does the allowance of Applicant's pending application for WE PUT THE "O" IN TAC-O! without disclaimer of "taco" support Applicant's arguments. Pending applications are evidence only that an application was filed on a certain date. *See, e.g., In re Team Jesus LLC,* Ser. No. 88105154, 2020 TTAB LEXIS 503, at *17 n.29 (TTAB 2020) (citations omitted). The record does not show whether this mark was

[37] 6 TTABVUE 14-16.

ultimately registered. Moreover, "[t]he Board must decide each case on its own merits." *In re Nett Designs*, 236 F.3d at 1342. That principle is apt here, given that WE PUT THE "O" IN TAC-O! has a different structure and includes punctuation not found in either TAC-O or TAC-O LIFE.

Lastly, Applicant urges that any doubts as to registrability should be resolved in its favor, but the record in this case leaves us with no doubt.

Having considered all of the evidence and arguments, we find that the addition of a hyphen before the letter "O" in "taco" does not alter the descriptive impression of TAC-O when considered in the context of Applicant's involved goods and services. The term TAC-O immediately conveys information about a quality or characteristic of Applicant's goods and services, that they feature tacos or taco flavoring. Applicant has failed to rebut the Examining Attorney's prima facie case of descriptiveness. Accordingly, the refusal to register TAC-O under Trademark Act Section 2(e)(1) is affirmed.

III. Disclaimer Requirement

Under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), an applicant may be required to disclaim an unregistrable component of a mark otherwise registrable. "The PTO can condition the registration of a larger mark on an applicant's disclaimer of an 'unregistrable component of a mark otherwise registrable.'" *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1335 (Fed. Cir. 2015) (quoting 15 U.S.C. § 1056(a)). Failure to provide the required disclaimer constitutes a ground for refusing registration. *Id.* (citing *In re Stereotaxis Inc.*, 429 F.3d 1039, 1041 (Fed. Cir. 2005)).

As discussed above, we find that the term TAC-O is merely descriptive of Applicant's identified goods and services and therefore subject to disclaimer. Although disagreeing that WE PUT THE "O" in TACO! is a unitary slogan for disclaimer purposes, Applicant argues that, if it is, then TAC-O LIFE also is unitary and disclaimer of TACO is not required.[38] A disclaimer of an otherwise unregistrable element is not required if it is combined or merged together with other elements of a composite mark, so that they form a unitary whole having a single and distinct commercial impression. *In re Slokevage*, 441 F.3d 957, 962 (Fed. Cir. 2006) (citing *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1561 (Fed. Cir. 1991)); *In re EBS Data Processing, Inc.*, Ser. No. 73145310, 1981 TTAB LEXIS 110, at *4 (TTAB 1981); *see* TMEP § 1213.05.

Applicant does not point to any evidence in support of its alternative argument that TAC-O LIFE is a unitary slogan. The record contains evidence supporting a finding that TAC-O LIFE is not unitary, such as Applicant's separate application to register the word TAC-O and use of TAC-O LIFE directly in connection with adding taco flavor to food.[39] *Cf. In re Slokevage*, 441 F.3d at 963 (evidence supporting finding that composite trade dress mark was not unitary included applicant's earlier registration for words "FLASH DARE!," which also appeared in the composite). On this record, we do not find that the combination of TAC-O and LIFE creates a unitary

[38] 6 TTABVUE 18, Ser. No. 98470064.

[39] *See, e.g.*, November 6, 2024 Final Office Action, TSDR 6 (product listing reads "**TAC-O™ LIFE**: Get ready to sprinkle the magic of taco flavors on everything you love!") (bold in original).

whole with a distinct commercial impression in which the descriptive significance of TAC-O is lost. *See, e.g.*, *In re Lean Line, Inc.*, Ser. No. 73480000, 1986 TTAB LEXIS 103, at *2 (TTAB 1986) ("Combining 'LEAN' with 'LINE' does not alter the descriptive significance of 'LEAN' in relation to applicant's goods."; affirming disclaimer requirement for LEAN); *In re Kraft, Inc.*, Ser. No. 73283428, 1983 TTAB LEXIS 134, at *5 (TTAB 1983) (in LIGHT N' LIVELY "the merely descriptive significance of the term 'LIGHT' is lost in the mark as a whole"; reversing disclaimer requirement for LIGHT).

The refusal to register TAC-O LIFE absent a disclaimer under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), of the word "TACO" apart from the mark as shown, is affirmed. As conceded by Applicant in its reply brief, the disclaimer must be of "TACO" in its correct spelling.[40] *See In re Omaha Nat'l Corp.*, 819 F.2d at 1119.

Decision: The refusal to register TAC-O (application Serial No. 98316492) under Trademark Act Section 2(e)(1) is affirmed.

The refusal to register TAC-O LIFE (application Serial No. 98470064) based on Applicant's failure to disclaim "TACO" under Trademark Act Section 6(a) is affirmed. However, if Applicant submits the required disclaimer within thirty (30) days from the date of this decision, the refusal of this mark will be set aside, the disclaimer will be entered, and the application will proceed to publication.[41]

[40] 9 TTABVUE 3, Ser. No. 98470064.

[41] The proper format for the disclaimer is: No claim is made to the exclusive right to use "TACO" apart from the mark as shown. *See* TMEP § 1213.08(a)(i).