

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB          JUNE 2, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Calidad Holdings Pty Ltd**

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Serial No. 75/046,615

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**Stephanie K. Wade of Dickinson, Wright, Moon, Van Dusen & Freeman**  
for **Calidad Holdings Pty Ltd**.

**Raul F. Cordova**, Trademark Examining Attorney, Law Office 108,  
(David Shallant, Managing Attorney).

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Before Hohein, Walters and Wendel, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

**Calidad Holdings Pty Ltd** has filed an application to register the term "CALIDAD" as a trademark for "toner for laser printers; [and] ink jet cartridges and ink jet cartridge refills for printers" in International Class 2 and "inked ribbons for typewriters, printers, cash registers and adding machines" in International Class 16.<sup>1</sup> Applicant states in the application that: "The English translation of the word 'calidad' is 'quality.'"

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that, when used in connection with applicant's goods, "CALIDAD" is a laudatory term and, thus, is merely descriptive of them.

Applicant has appealed. Briefs have been filed,<sup>2</sup> but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function,

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<sup>1</sup> Ser. No. 75/046,615, filed on January 22, 1996, which is based upon an asserted bona fide intention to use.

<sup>2</sup> Applicant, with its appeal brief, has submitted "printouts ... from the Patent and Trademark Office CD-ROM" of what it characterizes as the "two most recently issued registrations containing the word CALIDAD [which] issued on the Principal Register without a disclaimer of the word CALIDAD and without resort to Section 2(f)" of the Trademark Act, 15 U.S.C. §1052(f). According to applicant, "these registrations ... represent the Trademark Office's prevailing view ... not [to] treat the word CALIDAD as laudatory and [hence merely] descriptive." While we note that the submission of such evidence at this stage is ordinarily considered to be untimely under Trademark Rule 2.142(d), the Examining Attorney in his brief has considered the evidence "and[,] to complete the record and rebut applicant's contention concerning Office practice as to the treatment of the term CALIDAD, ... [has] attached to this appeal brief [three] recently issued third[-]party registrations of trademarks containing the term CALIDAD where the term ... is either disclaimed or the registration was issued under Trademark Act Section 2(f)". Inasmuch as applicant has raised no objection to consideration of such evidence, even thought it is likewise untimely under Trademark Rule 2.142(d), we have treated the third-party registrations furnished by applicant and the Examining Attorney as forming part of the record in this appeal for whatever probative value such evidence may have. *See, e.g.,* In re Consolidated Cigar Co., 35 USPQ2d 1290, 1292 (TTAB 1995) at n. 4. Moreover, and in any event, each case must be decided on its own merits and, while uniform treatment under the Trademark Act is desirable, a merely descriptive term is not made registrable simply because other similar (or arguably so) marks appear on the register. *Id.* at 1295.

purpose or use of the goods or services. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or aspect about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is to be used in connection with those goods or services 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. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

Classified within the category of merely descriptive designations set forth above are those which Professor McCarthy refers to as "self-laudatory terms". As explained in 2 J. McCarthy, McCarthy on Trademarks & Unfair Competition §11.17 (4th ed. 1999) (footnotes omitted):

Marks that are merely "laudatory" and descriptive of the alleged merit of a product are also regarded as being "descriptive." This includes such terms as ... PREFERRED, DELUXE, GOLD MEDAL, BLUE RIBBON, SUPER BUY, and the like.

Since each tangible product carries with it a "psychic load" of intangible consumer psychological expectations about the product, a mark could be "descriptive" of the product itself or those intangible expectations, or both. Self-laudatory or "puffing" marks are regarded as a condensed form of describing the character or quality of the goods. ....

Furthermore, whether a term is laudatory or otherwise merely descriptive, it is well established that the foreign equivalent of such a term generally is itself merely descriptive and thus is no more registrable than the English word would be. See, e.g., *In re Optima International*, 196 USPQ 775, 777 (TTAB 1977) and cases cited therein.

Applicant argues, however, that the fact that the term "CALIDAD" can be translated as meaning "QUALITY" does not mean that "consumers are capable of translating it or, if capable, that CALIDAD is a word that would be translated by consumers." Citing *In re Tia Maria, Inc.*, 188 USPQ 524, 525 (TTAB 1975), applicant maintains that, as stated therein, "there are foreign expression that even those familiar with the language will not translate, accepting the term as it is ...." Likewise, in this case, applicant asserts its belief that consumers would not translate the term CALIDAD and would, as in *Tia Maria*, just accept the term as it is.

The Examining Attorney, on the other hand, points out that, on this record, there is nothing which indicates that the term "CALIDAD" would have any other significance than its acknowledged meaning of "QUALITY". Specifically, the Examining Attorney observes that, "[i]n the filing of the application, applicant offered a proper translation of CALIDAD" as meaning "QUALITY" and argues that applicant cannot, "at this stage, collaterally attack the meaning" of its own definition. We agree with the Examining Attorney that, unlike the case relied upon by applicant, in which the Board held that circumstances in the

marketplace were such that the mark "TIA MARIA" for restaurant services would not be literally translated by Spanish speakers as "AUNT MARY" and thus be likely to cause confusion with the mark "AUNT MARY'S" for canned fruits and canned vegetables, there is nothing to substantiate applicant's belief that those who are acquainted with or fluent in the Spanish language would not translate the term "CALIDAD" into its English equivalent of "QUALITY". To the contrary, we judicially notice<sup>3</sup> in this respect that Cassell's Spanish-English English-Spanish Dictionary (1978) at 125 and 946 respectively lists "calidad" as solely meaning "quality" and vice versa. We see no reason, therefore, for consumers, including in particular the large number of Spanish-speaking persons in the United States, to accept the term "CALIDAD" "as it is" instead of regarding it as signifying its English equivalent of "QUALITY".

In view thereof, we also concur with the Examining Attorney that the term "CALIDAD" "represents a self-laudatory attribute" of applicant's goods in that "it serves to call attention to the ... superiority of the ... goods". Citing, in particular, the definition of the word "quality," which The American Heritage Dictionary of the English Language (2d coll. ed.) at 1013 sets forth as meaning, in pertinent part, "**3. a.** Superiority of kind: *an intellect of unquestioned quality.* **b.** Degree or grade of excellence: *yard goods of low quality,*" the

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<sup>3</sup> Judicial notice may properly be taken of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

Examining Attorney persuasively contends that "applicant's use of the term CALIDAD on its goods is clearly intended to denote that the goods are of a superior kind and represent a degree of excellence." Plainly, such term forthwith conveys, without conjecture or speculation, that applicant's "laser printer toner, ink jet cartridges and refills, and inked ribbons are quality products.

We find, therefore, that the term "CALIDAD," when used in connection with applicant's goods, is laudatory and merely descriptive of such products because it directly indicates a desirable trait thereof, namely, their asserted excellence. As stated by the Board in *In re Erwin*, 1 USPQ2d 1665, 1667 (TTAB 1986): "The long and short of it is that common and laudatory terms of this character must remain available for the trade and competitive use to which they are so relentlessly put and, at least in the absence of demonstrated secondary meaning, cannot be accepted as registrable under the Trademark Act."<sup>4</sup> Competitors of applicant, especially those seeking to market their laser printer toner, ink jet cartridges and refills, and inked ribbons to Spanish-speaking consumers in the United States, would plainly need to utilize the term "CALIDAD" to tout their goods as quality products. See, e.g., *In re San Miguel Corp.*, 229 USPQ 617, 618 (TTAB 1986) [term "SELECTA," being Spanish equivalent of the word

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<sup>4</sup> As to the marks in the two third-party registrations referred to by applicant, we note that we disagree with applicant that such evidence, particularly in light of the marks in the third-party registrations relied upon by the Examining Attorney, establishes a pattern or policy by the Patent and Trademark Office of treating the term "CALIDAD" as suggestive rather than descriptive of the identified goods.

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"SELECT," is merely laudatorily descriptive of beer because, as commonly used in the trade, it designates that such product "is a superior or premium beer"].

**Decision:** The refusal under Section 2(e)(1) is affirmed.

G. D. Hohein

C. E. Walters

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board