

This Opinion is not a
Precedent of the TTAB

Mailed: June 17, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Aquei Technologies LLC
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Serial No. 86034765
—

Anthony Tacconi of IPCL Group PLC,
for Aquei Technologies LLC.

Edward Nelson, Trademark Examining Attorney, Law Office 106,
Mary Sparrow, Managing Attorney.

—
Before Bucher, Kuhlke and Adlin,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Aquei Technologies LLC (hereinafter “Applicant”) seeks registration on the Supplemental Register of the term **Sustainable Water** (*in standard character format*) for “sustainable on-site water recycling and wastewater treatment services” in International Class 40.¹

¹ Application Serial No. 86034765 was filed on the Principal Register on August 12, 2013, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as June 1, 2010. Registration was originally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the basis that **Sustainable Water** is merely descriptive of Applicant’s services. Subsequently, Applicant filed an amendment on June 4, 2014, to seek registration on the Supplemental Register.

The Trademark Examining Attorney has refused registration of Applicant's applied-for mark under Section 23 of the Trademark Act, 15 U.S.C. § 1091, on the ground that the term **Sustainable Water** is incapable of identifying Applicant's services. After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

When a proposed term is refused registration as generic, the Trademark Examining Attorney has the burden of proving genericness by "clear evidence." *In re Hotels.com, LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009); *In re Merrill Lynch Pierce Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987).

The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of services in question. *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women's Publ'g Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *H. Marvin Ginn*, 228 USPQ at 530.

Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. *Merrill Lynch*, 4 USPQ2d at 1143, and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

“An inquiry into the public's understanding of a mark requires consideration of the mark as a whole. Even if each of the constituent words in a combination mark is generic, the combination is not generic unless the entire formulation does not add any meaning to the otherwise generic mark.” *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005)).

We find that the genus of services at issue in this case is adequately defined by Applicant's recitation of services, specifically, “sustainable on-site water recycling and wastewater treatment services.” The Trademark Examining Attorney has placed into the record several screen prints from Applicant's website showing that indeed Applicant provides project implementation services for institutional facilities involving water reclamation and water management.² Thus, the term **Sustainable Water** is generic if the relevant public understands it to refer to this type of water recycling and wastewater treatment services. *See 1800Mattress.com*, 92 USPQ2d at 1684 (genus of services is “online retail store services in the field of mattresses,

² Office Action of July 8, 2014, at 5-7 of 17; Office Action of September 26, 2014, at 6-8 of 17.

beds, and bedding ... [a]ccordingly, the mark is generic if the relevant public understands **MATTRESS.COM** to refer to such online services.”)

Turning to the second inquiry, Applicant takes issue with the showing made by the Trademark Examining Attorney:

Applicant is not seeking trademark protection for the sale of water, sustainable or otherwise, under the mark. Rather, Applicant is providing a service that is indirectly related to the words “SUSTAINABLE WATER.” This relationship between the mark and the service make this mark suggestive or, at the very least, descriptive.

Applicant contends that its applied-for term is a noun, and that it is not generic because third-party uses show this term used as an adjective “in different contexts and with additional word(s).” In short, Applicant argues that the Trademark Examining Attorney failed to prove genericness by clear and convincing evidence.

We note initially that Applicant’s own recitation of services (“sustainable on-site water recycling and wastewater treatment services”) relies upon the words “sustainable” and “water,” seemingly used in their ordinary dictionary meanings:

sustainable *adjective*

1. capable of being sustained
2. a. designating, of, or characterized by a practice that sustains a given condition, as economic growth or a human population, without destroying or depleting natural resources, polluting the environment, etc.: *sustainable* agriculture
- b. governed or maintained by, or produced as a result of, such practices: *sustainable* growth

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³ We note that the excerpt placed into the record by the Trademark Examining Attorney from the *COLLINS ENGLISH DICTIONARY* cites to the “British English” entry rather than the “American English” entry. Hence, we have chosen to notice other dictionary entries. See *WEBSTER’S NEW WORLD COLLEGE DICTIONARY*, <http://www.yourdictionary.com/sustainable>. This Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ

sustainable *adjective*

1. capable of being sustained.
2. capable of being continued with minimal long-term effect on the environment:
sustainable agriculture.

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water *noun*

1. A clear, colorless, odorless, and tasteless liquid, H₂O, essential for most plant and animal life and the most widely used of all solvents. ...
2. a. Any of various forms of water: *waste water.*
...
4. a. A supply of water: *had to turn off the water while repairing the broken drain.*
b. A water supply system.
...
...

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Also consistent with these dictionary entries, Applicant's website shows that it is in the business of "water reclamation and reuse," the result of which would be to make the "water" supply of large water users, like college campuses and manufacturing centers, "sustainable":



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One of the articles placed into the record by the Trademark Examining Attorney refers to the "Science of sustainable water":

505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁴ *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE*, 5th ed.

⁵ *Id.*

⁶ <http://sustainablewater.com/>



The School of Continuing Education, in partnership with the Earth Institute and the Columbia Water Center, is offering a Certification of Professional Achievement in **Sustainable Water** Management. This new certification equips professionals with the skills to conduct integrated water management and water systems analysis.

According to the United Nations Development Programme, nearly 900 million people lack access to safe water and over 2.7 billion lack access to basic sanitation. As the world's population continues to grow in excess of 7 billion people, the demand for access to water has risen. At the same time, the impacts of climate change are making it more difficult to ensure the supply of safe water to the populations that need it most. Severe weather events ravage some parts of the world with floods, while devastating others with droughts. Skilled sustainability professionals are needed in order to create effective solutions to the world's water problems. Students of this program leave equipped with skills to guide communities and companies in issues of water management.

The Certification of Professional Achievement in **Sustainable Water** Management program will cover concepts of hydrology, water policy and regulation, economics, finance and conflict resolution. It is designed to provide sophisticated and multidisciplinary training in water issues—the nexus of natural science, social science and public policy. The program teaches skills applicable to a wide-range of professions including urban planning, manufacturing, sanitation, and NGO professionals domestic and abroad.

Students will gain a fundamental understanding of the science of the hydrological cycle. They will learn best practices in water systems management, identifying who uses water, quantifying how much water is used, and optimizing how that water is used. Students will learn how to develop reliable water supplies given diverse sources and variability in climate and water quality. Water issues are not only a matter of managing systems. They are also economic and political in nature. Students of this program will learn the intricacies of water financing, how it is priced and how large-scale water projects are funded. Other topics that will be covered include policy mechanisms to determine water allocation and water rights, as well as access and privatization.

The Curriculum

Students complete three required courses focused on the science, policy, and management of water systems: **The Science of Sustainable Water**, Water Governance, and Water Systems Analysis. Students will complete one elective course, with elective offerings including water in agriculture, water quality and health, water and energy security, and urban infrastructure.

The curriculum of the Certification of Professional Achievement in **Sustainable Water** Management program has been designed by experts from the [Columbia Water Center](#).

Courses are offered in the evening to accommodate the schedules of students working full-time. The certification can be completed through part-time enrollment. Students enrolled on a part-time basis can complete the certification requirements in as few as four semesters.

The Certification of Professional Achievement in **Sustainable Water** Management program can be taken as a compliment to the [Masters of Science in Sustainability Management](#), or it can be taken separately as a stand-alone certification.

Students are required to maintain an overall minimum GPA of 3.0 (B). Every course creditable toward the certification must be taken for a letter grade.

To Apply

Prospective students interested in learning about the program are encouraged to contact [Allison Ladue](#), assistant director. To apply to **Sustainable Water** Management program, follow the [program application instructions](#).

⁷ <http://ce.columbia.edu/certificates/sustainable-water-management-certificate>

Moreover, third-parties in Applicant's field also use the term "Sustainable Water" in their trade names, domain names and/or in describing their own services in this same general field:



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⁸ <http://www.sustainablewatersolutions.com/aliaxis-group/>.

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The Economics of Clean Water: Part 3 [read more](#)

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Fri, June 13, 2014 By: Alice Urban
Your son is very sick. He's not eating, and his teacher says he's falling behind in school. She suggests you take him to the clinic – a 24-mile drive down winding, rutted mountain roads. But you have no vehicle, and even if you did, you...
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⁹ <http://www.purewaterfortheworld.org/>



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Sustainable Water Infrastructure Coalition

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Committed to Rebuilding America's Water Infrastructure

Who We Are

The Sustainable Water Infrastructure Coalition (SWIC) is an alliance of corporations, public organizations, industry trade associations and others representing private and public water and wastewater service providers, construction contractors, equipment manufacturers and distributors, engineering companies, labor unions, financing institutions, and business organizations working to advance sustainable water and wastewater infrastructure policy through public awareness, education and advocacy.

SWIC has been the lead organization in efforts to advance the Sustainable Water Infrastructure Investment Act, which would open the door for up to \$5 billion annually in private investment in water and wastewater infrastructure projects by lifting these projects from under the state volume cap on private activity bonds (PABs).

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¹⁰ <http://sustainablewatertech.com/>

¹¹ <http://sustainablewaterinfrastructure.org/>

This latter webpage was placed online by the Sustainable Water Infrastructure Coalition – an alliance whose members include “private and public water and wastewater service providers,” and it refers to federal legislation known as the “Sustainable Water Infrastructure Investment Act.”

In spite of this extensive showing, Applicant contends that the term “Sustainable Water” must be deemed, at worst, to be merely descriptive – not generic – because it is an adjective used in connection with other nouns. Applicant seems to point to a distinction employed by some that generic names are nouns and descriptive terms are adjectives. “However, this ‘part of speech’ test does not accurately describe the case law results.” *In re Central Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998), referencing 2 J.T. McCarthy, *MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION*, Section 12:10 (4th ed. 2015). In other words, Applicant cannot overcome this refusal simply because it is not selling water itself. Conversely, in examining the examples above, it is not the end of the inquiry when one discovers that the term “Sustainable Water” is often followed by other nouns like “Management,” “Solutions,” “Infrastructure,” “filters,” etc.

To the contrary, the Board has often held that a term that names the “central focus” or “key aspect” of a service is generic for the service itself, and the Board’s principal reviewing court has approved this approach. *See In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1535 (Fed. Cir. 2009) (“hotels” identified the “central focus” of online lodging information and reservation services and therefore **HOTELS.COM** found generic). *See also In re Meridian Rack & Pinion*, 114 USPQ2d

1462, 1464-65 (TTAB 2015) (**buyautoparts.com** is generic for “on-line retail store services featuring auto parts.”). *In re Tires, Tires, Tires Inc.*, 94 USPQ2d 1153, 1157 (TTAB 2009) (where “tires” was the generic name of the goods sold in retail stores, being a “key aspect” of such services, **TIRES TIRES TIRES** was found generic for retail tire stores); *In re Candy Bouquet International, Inc.*, 73 USPQ2d 1883, 1891 (TTAB 2004) (“candy bouquet” is generic name for a certain type of gift package; therefore, **Candy Bouquet** is generic for retail, mail, and computer order services in the field of gift packages of candy); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895, 1900 (TTAB 2001) (a term that is generic for a particular class of goods is also deemed generic for the services of selling those goods; **RUSSIANART** is generic for the services of selling such art); *In re Log Cabin Homes Ltd.*, 52 USPQ2d 1206 (TTAB 1999) (**LOG CABIN HOMES** is generic for a type of building and is also generic for architectural design services directed to that type of building and for retail outlets featuring kits for construction of that type of building); *In re Web Communications*, 49 USPQ2d 1478 (TTAB 1998) (**WEB COMMUNICATIONS** is generic for publication and communication via the web, and also for consulting services directed to assisting customers in setting up their own websites for such publication and communication); and *In re Harcourt Brace Jovanovich, Inc.*, 222 USPQ 820 (TTAB 1984) (**LAW & BUSINESS** is generic for services of arranging and conducting seminars in the field of business law).

The evidence reveals that the term “Sustainable Water” directly names the most important or central aspect or purpose of Applicant’s services, which are treating,

recycling and reusing water. “Sustainable Water” is nothing more than the sum of its two generic parts and “the entire formulation does not add any meaning to the otherwise generic mark.” *1800Mattress.com*, 92 USPQ2d at 1684. The generic components produce a generic composite and signify nothing more than services focused ultimately on the production of “sustainable water” as that term is ordinarily and commonly used by the public and others in the industry. Hence, the term sought to be registered is understood by the relevant public primarily to refer to that genus of services, the term is generic, and should be freely available for use by competitors. *See also In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961, (Fed. Cir. 1985) (**BUNDT** for coffee cake held generic); *In re Sun Oil Co.*, 426 F.2d 401, 165 USPQ 718 (CCPA 1970) (**CUSTOMBLENDED** for gasoline held generic because category of gasoline was blended personally for the motorist); *In re Helena Rubinstein, Inc.*, 410 F.2d 438, 161 USPQ 606 (CCPA 1969) (**PASTEURIZED** for face cream held generic); *In re Preformed Line Products Co.*, 323 F.2d 1007, 139 USPQ 271 (CCPA 1963) (**PREFORMED** for preformed electrical equipment held generic); *Roselux Chemical Co., Inc. v. Parsons Ammonia Co., Inc.*, 299 F.2d 855, 132 USPQ 627 (CCPA 1962) (**SUDSY** for aqua ammonia containing a synthetic detergent held generic); *Servo Corp. of America v. Servo-Tek Products Co.*, 289 F.2d 955, 129 USPQ 352 (CCPA 1961) (**SERVO** for servomechanisms held generic); *J. Kohnstam, Ltd. v. Louis Mark & Co.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960) (**MATCHBOX** for toy vehicles held generic because that category of toy cars was sold in matchbox-sized boxes); *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628

(TTAB 1998) (**MASSFLO** is a generic noun when used as the name of a measurement taken by mass flowmeters and as a generic adjective when used with the mass flowmeters that measure mass flow of liquids); In re *Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991) (**MULTI-VIS** for multiple viscosity motor oil held generic); In re *Reckitt & Colman, North America Inc.*, 18 USPQ2d 1389 (TTAB 1991) (**PERMA PRESS** for soil and stain removers held generic); In re *National Patent Development Corp.*, 231 USPQ 823 (TTAB 1986) (**ULTRA PURE** for biological interferons for medical use held generic); *Fluid Energy Processing & Equipment Co. v. Fluid Energy, Inc.*, 212 USPQ 28 (TTAB 1981) (**FLUID ENERGY** for hydraulic/pneumatic equipment held generic); *Copperweld Corp. v. Arcair Co.*, 200 USPQ 470 (TTAB 1978) (**COPPERCLAD** for copper-coated carbon electrodes held generic); In re *Demos*, 172 USPQ 408 (TTAB 1971) (**CHAMPAGNE** for salad dressing held unregistrable); and *Ethicon, Inc. v. Deknatel, Inc.*, 183 USPQ 503 (TTAB 1963) (**COTTONY** for sutures held generic).

Even if we were to presume that some third-parties in this field may have adopted similar versions of this same terminology subsequent to Applicant's first use thereof, such usage does not justify registration provided that the evidence shows that the term is indeed generic. See *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1604 (TTAB 2014) (**CLOUDTV** is generic for a video-on-demand service providing television to consumers with electronic devices having screens, which devices are connected to the Internet); *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010) (Term **NANDrive** is generic for applicant's electronic

integrated circuits); and *In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983) (**SHOOTING, HUNTING, OUTDOOR TRADE SHOW AND CONFERENCE** is generic for applicant's trade shows).

Finally, we recognize that our review “requires an examination of the record as a whole, taking into account both the evidence that justifies and detracts” from our ultimate opinion. *Falkner v. Inglis*, 448 F.3d 1357, 79 USPQ2d 1001, 1005 (Fed. Cir. 2006). However, in the face of the overwhelming case of genericness put forward by the Trademark Examining Attorney, and Applicant’s failure to present convincing contradictory *evidence* (as opposed to mere argument), we find that Applicant has failed to call into question our ultimate finding. *Cf. Princeton Vanguard, LLC v. Frito-Lay North America, Inc.*, ___ F.3d ___, 114 USPQ2d 1827, 1834 (Fed. Cir. 2015) (Board erred in assessing whether the term **PRETZEL CRISPS** is generic for pretzel crackers).

Decision: The refusal to register Applicant’s proposed mark, **Sustainable Water**, on the basis that it is generic for Applicant’s services under Section 23 of the Lanham Act is hereby affirmed.