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*Decision Mailed:
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Kellogg North America Company

Serial No. 78724957

Geoffrey D. Aurini, Counsel for Kellogg North America Company.

Renee McCray, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Hohein, Bucher and Grendel, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Kellogg North America Company has filed an application to register on the Principal Register in standard character form the mark "CRAZY GOOD" for "toaster pastries, [and] fruit preserve filled pastry product[s]" in International Class 30.¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's goods, the mark "CRAZY GOOD" is merely descriptive thereof.

¹ Ser. No. 78724957, filed on October 3, 2005, which is based on an allegation of a bona fide intention to use such mark in commerce.

Applicant has appealed and briefs have been filed. The refusal to register is reversed.

It is well settled that a mark is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a mark 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 mark describes a significant attribute or idea about them. Moreover, whether a mark 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 intended to be used on or in connection with those goods or services and the possible significance that the mark would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

However, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning

process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. See, e.g., In re Abcor Development Corp., supra at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347, 1349 (TTAB 1984). As has often been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. See, e.g., In re Atavio, 25 USPQ2d 1361 (TTAB 1992) and In re TMS Corp. of the Americas, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. See In re George Weston Ltd., 228 USPQ 57, 58 (TTAB 1985).

While, in this case, the Examining Attorney states in her brief that she "initially required applicant [only] to disclaim the term GOOD under Section 6(a) [of the Trademark Act, 15 U.S.C. §1056(a),] on the ground that it is laudatory and merely descriptive under Section 2(e)(1) of the Act," she further notes that, in response, applicant argued that the mark "CRAZY GOOD" is unitary and thus no disclaimer should be required. In view thereof, and "[b]ased upon a reconsideration of the record, the Examining Attorney [asserts that she] then withdrew the disclaimer requirement, and ultimately made final[,] the refusal to register the mark under Section 2(e)(1) of the Act because the mark as a whole is laudatory and therefore merely descriptive" of applicant's goods. In particular, she maintains that "the

evidence of record comprising dictionary listings and excerpted articles from the Internet and Lexis-Nexis clearly establishes that the mark as a whole, CRAZY GOOD, would be perceived by the relevant purchasing public as a laudatory phrase inasmuch as it immediately and directly conveys that applicant's baked goods are 'extremely good' or 'good to an exceeding degree'" (italics in original).

Specifically, with respect to the dictionary listings, the record shows that the Examining Attorney's initial search of the website "Dictionary.com" located the following definitions of the adjective "crazy" (emphasis in original):

1. Affected with madness; insane.
2. Informal. Departing from proportion or moderation, especially:
 - a. Possessed by enthusiasm or excitement: *The crowd at the game went crazy.*
 - b. Immoderately fond, infatuated: *was crazy about boys.*
 - c. Intensely involved or preoccupied: *is crazy about cars and racing.*
 - d. Foolish or impractical; senseless: *a crazy scheme for making quick money.*

Such search also located a definition of the idiom "like crazy" as meaning (emphasis in original): "Informal To an exceeding degree. *They were running around like crazy.*" A search of the "Dictionary.com" website for the adjective "good" retrieved definitions of such term as variously meaning "1. Being positive or desirable in nature; not bad or poor: *a good experience; good news from the hospital*"; "4. a. Superior to the average; satisfactory: *a good student*"; "5. a. Of high quality: *good books*"; and "16. a. Pleasant, enjoyable: *had a good time at the*

party." The source of the above definitions, in the case of each search, is listed as The American Heritage Dictionary of the English Language (4th ed. 2000).

A second search of the "Dictionary.com" website, done by the Examining Attorney a year later, found the following definitions of the adjective "crazy" along with the following definitions of the expression "the crazies" and the idiom "like crazy" (emphasis in original):

1. mentally deranged; demented; insane.
2. senseless, impractical, totally unsound:
a crazy scheme.
3. *Informal.* intensely enthusiastic;
passionately excited: *crazy about
baseball.*
4. *Informal.* very enamored or infatuated
(usually fol. by about): *He was crazy
about her.*
5. *Informal.* intensely anxious or eager;
impatient: *I'm crazy to try those new
skis.*
6. *Informal.* unusual; bizarre; singular: *She
always wears a crazy hat.*
7. *Slang.* wonderful; excellent; perfect:
That's crazy, man, crazy.
8. likely to break or fall to pieces.
9. weak, infirm, or sickly.
10. having an unusual, unexpected, or random
quality, behavior, result, pattern,
etc.: *a crazy reel that spins in either
direction.*
11. *Slang.* an unpredictable, nonconforming
person; oddball: *a house full of
crazies who wear weird clothes and come
in at all hours.*
12. **the crazies**, *Slang.* a sense of extreme
unease, nervousness, or panic; extreme
jitters: *The crew was starting to get
the crazies from being cooped up below
decks for so long.*
--Idiom
13. **like crazy**,
 - a. *Slang.* with great enthusiasm or
energy; to an extreme: *We shopped
like crazy and bought all our
Christmas gifts in one afternoon.*

- b. with great speed or recklessness: *He drives like crazy once he's out on the highway.*

Listed as the source of the above definitions is the Random House Unabridged Dictionary (2006). While the second search also found the same definitions of the adjective "crazy" from The American Heritage Dictionary of the English Language (4th ed. 2000) which were located by the first search of the "Dictionary.com" website, there is no corresponding definition from such dictionary of the idiom "like crazy." An additional search of the word "good," however, was not conducted, given that there has been no contention by applicant that such term is not merely descriptive of its goods in a laudatory sense.

Besides the above, the Examining Attorney has made of record and relies upon definitions of the term "crazy good" from the online Urban Dictionary, which as retrieved on October 13, 2006, defines such term as meaning "[s]omeone who is really good at something" and "[s]omething that is amazingly tasty," and lists the following examples of usage (emphasis in original): "Man that guy is **crazy good!**"; "I'm **crazy good** today!"; and "That Pizza was **Crazy good!**" The website for such dictionary states that: "Urban Dictionary is a slang dictionary with your definitions. Define your world."

As to the various excerpted articles from the Internet and Lexis-Nexis database upon which the Examining Attorney also relies, the following would appear to be the most pertinent inasmuch as the term "crazy good" is used in connection with

foods or food related services such as restaurants (emphasis added) :

"Crazy-Good Ice Cream

....
I'm pretty open about the fact that I like to make as many foods as possible from scratch, but when it comes to Ben & Jerry's ice cream flavors, I'm a fool for whatever they're offering. A new flavor on the block, "Cinnamon Buns" ice cream, also known as-- according to the packaging--'caramel ice cream with cinnamon bun dough and a caramel streusel swirl,' is just ridiculously delicious." -- Disney family.com BETA, April 2, 2007 (product review available online at family.go.com/blogpost/Joe_LoCiecero/....);

"Crazy Good Bread Sticks

....
A delicious cross between Olive Garden and Little Caesars! It's just a simple pizza dough recipe, brushed with garlic sauce and topped with cheese." -- RECIPE ZAARI, April 4, 2007 (recipe available online at www.recipezaar.com/219519);

"Crazy Cheap, Crazy Good

First-rate Cantonese food and cut rate prices at Best Panda" -- SF Weekly, October 17, 2006 (restaurant review published on April 12, 2006 and available online at www.sfweekly.com/issues/2006-04-12/-dining/eat.html);

"HOMEMADE Fresh Peach Jelly Crazy Good!!

....
This is a new addition to our Jelly and jam making this year. it's unbelievably good!" -- eBay, October 17, 2006 (item advertised online at cgi.ebay.com/HOMEMADE-Fresh-Peach-Jelly-Crazy-Good);

"Have dinner at The French Laundry

Crazy good - 4 months ago" -- 43 Things, October 22, 2006 (article describing restaurant experience and available online at www.43things.com/entries/view/909990);

"Crazy Good beer lineup

It could be dangerous to start listing events serving great Belgian and Belgian-

inspired beers, but check out this lineup for the second Belgian festival ... at Max's in Baltimore" -- Brew Like A Monk, October 17, 2006 (article listing draft beers and available online at www.brewlikeamonk.com/2006/01/31/crazy-good-beer-lineup);

"crazy good mystery mesclun

Back in June I got some mesclun at the farmer's market, and this curly little wonder was part of it. It's delicious, a bit tangy, a bit spicy, curly and dark green with markings of dark reddish color." -- FoodNerd!, August 12, 2006 (article published on August 25, 2005 and available online at www.paisleysky.net/foodnerd/archives/000235.html); and

"Years ago, I heard the late, great architect Charles Moore refer to a dish he'd just eaten as '**crazy good.**' (It was the wonderfully ersatz chile relleno at the original Spanish Village, but that's another story.) I remember being charmed by the locution; it captured perfectly a sense of involuntary admiration, a certain wild-eyed abandonment to the pleasures of the moment.

It has been a long time since I thought of the phrase. But last week at Pico's Kirby Drive location, I ate some off-the-menu soft-shell crabs that were certifiably **crazy good.**" -- Houston Press (Texas), April 14, 1994.

With respect to other excerpted articles, of a more generalized nature, from the Internet and Lexis-Nexis database upon which the Examining Attorney additionally relies, such evidence includes the following (emphasis added):

"crazy good cds" -- Amazon, April 1, 2007 (caption of selected list of compact discs advertised online at www.amazon.com/crazy-good-cds/lm);

"Crazy good week

....
It was easily the best conference that I have been to. I was moved by ... modern hymn writers. Absolutely amazing time of worship. If you have never been to this conference,

get on board for next year. I plan to be there again." -- Serendipity, March 29, 2007 (blog of religious conference available online at www.scopeland.blogspot.com/2007/02/crazy-good-week.html);

"A bit odd and unusual but **crazy good** movies" -- Amazon, October 24, 2006 (caption of selected list of horror films advertised online at www.amazon.com/odd-unusual-crazy-good-movies/lm);

"How to look **crazy good**, by Microsoft Look **crazy good**[™] everywhere you go! FREE XBOX 360[™] KNIT HAT Free by mail with 3 UPCs and Official Order Form inside this box.

....
Hey kids[,] youths and adults, are you tired of looking *crazy bad* everywhere you go? There it was, like the Nintendo Kraft whoring of the 90's - a Pop-Tarts-n-Microsoft schwag solution for my fashion woes. How do I get my **crazy good** looking Xbox 360(tm) hat? Apparently I have to spend \$20 in pop-tarts. In exchange for your narrow breakfast endurance Microsoft will send you a 100% acrylic advertisement you can wear on your forehead in 4-6 weeks

....
8 Responses to "How to look **crazy good**, by Microsoft."

....
But the sooner I get one, the sooner I look **Crazy Good**[™].

....
I like how '**crazy good**' has been trademarked. I'm just going to start trademarking every single stupid phrase since the early 80's just to keep all bases covered and sue corporations for trying to bring them back. They are dead for a reason." -- Destructoid, October 21, 2006 (blog of free product offer and responses thereto available online at www.destructoid.com/how-to-look-crazy-good-by-microsoft);

"VM Optimizer automatically reduces your Microsoft[®] Windows[®] ... based virtual machines to their smallest possible size and enhances the performance of your Microsoft Windows-based virtual machines.

....

[Ed. I've used this product and it's **crazy good**. Meaning it's crazy how well it crunches down Windows VMs - it just doesn't seem possible to shed 2.5 gigs on a 5 gig VM and have everything keep working.]" -- Jsequeira, October 15, 2006 (review of "Invirtus Vm Optimizer" and available online at www.jsequeira.com/cgi-bin/virtualization/-InvirtusVmOptimizer);

"feel **crazy good**™ with Original Dr. Scholl's®

Have it all, at least in your footwear. Our fall line gives a whole new meaning to retail therapy with features that make you feel as good as you look.

Feel **Crazy Good**™ Facts:

....
Heels are made for walking. Linings are plush and soft. Try on a pair of Original Dr. Scholl's® and you'll truly know what it is to feel **crazy good**.™" -- feel crazy good™, October 14, 2006 (footwear advertisement available online at www.drschollsshoes.com/-feel_crazy_goog.asp);

"In one article, Britney Spears declared that, 'Sex is **crazy good**' during pregnancy. In another article, a young finalist in a national spelling bee was characterized as 'just **crazy-good**' at spelling.

Coincidentally, in the very same edition, a front-page story described a bill before the Legislature to allow convenience stores in Louisiana to sell frozen mixed drinks over the counter. What are these people thinking? That it's a crazy-good idea to actually promote drinking and driving?" -- The Advocate (Baton Rouge, Louisiana), June 11, 2005 (article headlined "Convenience store bill a 'crazy-bad' idea"); and

"Gypie is now our fourth guitar player, and I don't miss any of the guitar histrionics [sic] because Gypie is **crazy good**--and you couldn't have a Yardbirds without a **crazy good** guitar player. He's terribly creative and he never plays the same thing twice." -- Guitar Player, June 1, 2003.

The Examining Attorney insists that the above evidence shows that it is not the case that "the dictionary definitions which specifically define 'crazy' as meaning 'to an exceeding degree' are remote and idiomatic," as contended by applicant. Moreover, contrary to applicant's assertion that because the online slang dictionary definitions were provided by users of such dictionary, the definitions should be given little or no weight, the Examining Attorney submits that "the very fact" that such definitions were "provided by members of the public is compelling evidence of the likely perception by the purchasing public as to the laudatory connotation of 'crazy good.'" She further maintains that "whether the phrase ['crazy good'] is a slang or idiomatic expression does not detract from the fact that[,] as applied to applicant's goods, it has a laudatory meaning which is readily understood by the relevant purchasing public." In addition, as to applicant's argument that, in light of the various meanings of the word "crazy," the mark "CRAZY GOOD" is incongruous instead of merely descriptive, the Examining Attorney urges that (*italics in original*):

[A]lthough the term CRAZY, standing alone, may have multiple meanings in the abstract, the question of mere descriptiveness must be determined on the basis of a consideration of the mark *as a whole* and in the particular context of applicant's goods. Indeed, the term "GOOD" has multiple meanings, e.g., "well-behaved; obedient," that are simply irrelevant as applied to the goods in question. However, under the applicant's analysis, the phrase "crazy good" could therefore be likely interpreted to mean "insanely well-behaved[,]" which clearly would not make any sense when applied to applicant's goods. Here, the evidence of record clearly shows that the mark as a

whole, "crazy good," is widely used and understood by the relevant purchasing public to mean "extremely good" or "good to an exceeding degree." Indeed, the record is completely devoid of any evidence that shows that the phrase "crazy good" means anything else. Thus, although the terms taken individually may have multiple meanings in the abstract, in the context of applicant's identified goods, there is nothing indefinite, unexpected or incongruous about the combination of these words, and no amount of imagination, thought or perception is required to determine the particular quality or attribute of applicant's goods to which the phrase refers, e.g., that applicant's baked goods are "crazy good" or "good to an exceeding degree."

Applicant, while acknowledging in its initial brief that "[l]audatory terms, or those which attribute *quality* or *excellence* to goods or services, are equivalent to other [merely] descriptive terms under Trademark Act Section 2(e)(1)" (*italics in original*), maintains on the other hand that in this case its mark is suggestive of its goods. Specifically, according to applicant (*italics and bold in original*):

[T]he term "crazy" and therefore its CRAZY GOOD mark clearly falls in the suggestive category where imagination, thought and perception are required to glean what the mark means. When average consumers see the trademark CRAZY GOOD on Applicant's goods, they will not immediately view "crazy" and/or "crazy good" as attributing quality or excellence to Applicant's products.

In order to reach the strained finding that the proposed CRAZY GOOD mark does attribute quality or excellence to Applicant's goods and is ... merely descriptive, the Examiner has parceled out one very remote "idiom" meaning of the term "crazy" ("to an exceeding degree") and introduced evidence of mostly *non-trademark*, slang use of "crazy good". Some of the Examiner's evidence even shows third parties using CRAZY GOOD in a trademark sense with

accompanying trademark symbols (Feel Crazy Good™ with Dr. Scholl's® ... and Look crazy good™ everywhere you go! ...). Other evidence might even be construed as further distinctive use (where Crazy Good is used with initial caps such as Crazy-Good Ice Cream ...). Despite this evidence which at best is neutral in making the Examiner's case, and in order to reach the strained result that Applicant's proposed mark *trademark* of CRAZY GOOD is ... merely descriptive, the Examiner attempts to rely on a remote dictionary definition and the above noted non-trademark idiomatic use and/or speech. The Examiner's strained multi-step reasoning should be viewed as reinforcing the conclusion that Applicant's mark is suggestive and not laudatory/merely descriptive.

The Examiner does also point to a slang dictionary definition of "crazy good" ... to make the case for [mere] descriptiveness. Applicant simply disagrees that this is competent, probative evidence establishing that its mark will be viewed as laudatory by average purchasers and merely descriptive as applied to the recited goods. The slang dictionary is an online dictionary with definitions provided by users and should be given little to no weight as to the likely reaction by average consumers.

Put another way, [neither of the terms] "crazy" and "crazy good" is ... laudatory/descriptive in the way that commonly used terms like "exquisite", "preferred", "world class" and "America's Best" or "America's Favorite" are. Rather, "crazy" has a typical and recognized defined meaning and is incongruous when used in connection with ["]good["] and suggestive of something unique or distinctive. Therefore, and given the **primary and commonly understood meaning** of "crazy" (infected with madness; insane), the **incongruity** of using this term in connection with "good" ... [is such that] the Examiner's argument is tenuous at best.

In addition, applicant contends that as shown by certain third-party registrations on the Principal Register,

including registrations for the mark "CRAZY TASTY (Reg. No. 2858581) for *processed meat, poultry* registered June 29, 2004 ('TASTY' disclaimed)" and "WICKED GOOD (Reg. No. 1925715) for cookies registered October 10, 1995 (no disclaimer),"² "relevant

² Although applicant, in its initial brief, has also specifically referred to another such registration, namely, one for the mark "WICKED FINE (Reg. No. 3063[3]38) for chocolate sauce registered Feburary [sic] 28, 2006 ('FINE' disclaimed)," the Examining Attorney asserts in her brief that applicant "has submitted evidence for the first time on appeal in the form of a list of information from two registrations without actual copies of the registrations." In particular, while acknowledging that a copy of the registration for "the mark WICKED GOOD (Reg. No. 1925715) for cookies" is "the only registration that was properly made of record" and therefore may be considered, as to the other two registrations specifically mentioned above she "objects to introduction of this new evidence under TMEP Section 710.01(c) because it has not been submitted in proper form, citing *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1456 n.2 (TTAB 1998) and TMEP Section 710.03.

Ordinarily, a mere list of third-party registrations is insufficient to make such registrations properly of record. The Board does not take judicial notice of third-party registrations, *see, e.g.*, *In re Duofold Inc.*, 184 USPQ 638, 640 (TTAB 1974), and thus the proper procedure for making information concerning such registrations of record is to submit either copies of the actual registrations or the electronic equivalents thereof, i.e., printouts of the registrations which have been taken from the U.S. Patent and Trademark Office's own computerized database. *See, e.g.*, *In re Consolidated Cigar Corp.*, 35 USPQ2d 1290, 1292 n. 3 (TTAB 1995); *In re Smith & Mehaffey*, 31 USPQ2d 1531, 1532 n. 3 (TTAB 1994); and *In re Melville Corp.*, 18 USPQ2d 1386, 1388 n. 2 (TTAB 1991). Moreover, and in any event, the submission of a list of third-party registrations for the first time with a brief on the case is untimely under Trademark Rule 2.142(d). While, in this case, applicant's reference to the third-party registration for the mark "WICKED FINE" is untimely because applicant did not mention such registration until it filed its initial brief, a review of the file history reveals that applicant referred to the third-party registration for the mark "CRAZY TASTY" in its response to the second Office action even though it did not provide a copy thereof. However, in reply thereto, the Examining Attorney in her final refusal failed to advise applicant of such deficiency and thus waived her subsequent objection to the lack of a copy thereof. Accordingly, the Examining Attorney's objection is granted to the extent that the information concerning the registration for the mark "WICKED FINE" will not be given further consideration, but the information regarding the registration for the mark "CRAZY TASTY" has been considered, for whatever probative value it may have, along with the copies of various other third-party registrations for which applicant timely furnished copies thereof with its response to the initial Office action, including the registration for the mark "WICKED GOOD." *See* TBMP §1208.02 (2d ed. rev. 2004).

past practice of the Trademark Office indicates that CRAZY marks (and like marks) are ... registrable on the Principal Register." A further example thereof, although not mentioned by applicant, is the third-party registration on the Principal Register for the mark "CRAZY GOOD MEXICAN FOOD!" and design (Reg. No. 2566535) for *restaurant and bar services* registered May 7, 2002 ("GOOD MEXICAN FOOD" disclaimed), as made of record by the Examining Attorney with her initial Office action.³ Applicant, while acknowledging that "practice in previous cases does not bind the Trademark Office," argues that "the treatment of these similar marks should be given some weight" in that "the fact that these marks were allowed Principal Register status," without resort to a showing of acquired distinctiveness pursuant to Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), "underscores the suggestive nature of these and Applicant's mark." In particular, applicant insists that (*italics in original*):

The above marks were appropriately found suggestive thereby allowing for registration on the Principal Register. This despite the fact that dictionary definitions exist for these terms and that these terms undoubtedly are meant to *suggest positive features* of the recited goods [or services]. In other words, these marks as well as applicant's mark, read as a whole, do not ... merely describe an important ingredient, quality, characteristic, function, feature, purpose or use of applicant's goods. Rather, some imagination, thought or perception is required to reach the Examiner's interpretation. Applicant's mark then really does differ from a [merely] descriptive mark,

³ Such action, as mentioned previously, required only a disclaimer of the word "GOOD." Applicant, in its initial brief, notes that it "continues to be willing to disclaim GOOD apart from the mark as a whole in order to advance prosecution of its application."

which immediately and directly tells something significant or fundamental about the goods or services.

Finally, applicant urges that upon consideration of the evidentiary record herein, there is doubt as to whether its mark would be understood by consumers as laudatory and hence merely descriptive of its goods. Applicant consequently requests that, in accordance with Board practice, such doubt be resolved in favor of the publication of its mark for opposition.

As noted, for instance, in *In re The Place Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005):

Laudatory terms, those that attribute quality or excellence to goods or services, generally are deemed to be merely descriptive under Trademark Act Section 2(e)(1). See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK is "a laudatory descriptive phrase that touts the superiority of Nett Designs' bike racks"); *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA for "beer and ale" found to be laudatory and incapable of distinguishing source).

However, determining whether a term permissibly suggests quality or excellence or is laudatory in that it merely describes such presents considerable difficulty, including the quantum of proof necessary to establish the latter. Especially difficult to resolve is whether a case presents a suggestive mark in that the mark is in essence hyperbole or similar aggrandizement, or instead involves a merely descriptive term which is sufficiently definitive of a degree of quality or excellence of a product or service. Although a close question at first blush, the record in this case is on the whole indicative that applicant's "CRAZY

GOOD" mark is a highly suggestive figure of speech, which would be understood by consumers as an exaggeration or extravagant statement of the goodness of applicant's toaster pastries and fruit preserve filled pastry products rather than a literally true term which merely describes goods which are exceedingly or otherwise superlatively good in some particular way or manners such as in their taste and/or value. At a minimum, the record herein is insufficient to demonstrate satisfactorily that the term "CRAZY GOOD" would be viewed by consumers of applicant's toaster pastries and fruit preserve filled pastry products as describing with particularity only the highest or most extreme level of quality or excellence of such products. Stated otherwise, there is doubt on this record with respect to the latter for the reasons expressed below and hence, in accordance with settled Board practice, such doubt is resolved in favor of the publication of applicant's mark for opposition.

Specifically, a careful review of the record reveals that only one dictionary definition which arguably can evenly be said to support the Examining Attorney's position and that definition is one from the online Urban Dictionary, which among other things, as noted previously, defines "CRAZY GOOD" as meaning "[s]omething that is amazingly tasty" and sets forth the following example of usage (emphasis in original): "That Pizza was **Crazy good!**" The fact that the website for such dictionary states that "Urban Dictionary is a slang dictionary with your definitions," and thus has its content defined by users thereof, while problematic, does not necessarily mean that, as contended

by applicant, the definition therein should be given little to no weight as to the likely reaction to its mark by average consumers because it is not competent, probative evidence which tends to establish that its mark will be viewed as laudatory by such purchasers and merely descriptive as applied to applicant's goods.⁴ Rather, the problem, and the concomitant doubt created

⁴ As the Board, in *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1032 (TTAB 2007), recently observed with respect to user generated reference sources such as "Wikipedia" (footnote omitted):

In responding to the descriptiveness refusals applicant submitted the Wikipedia entry for "Internet Service Provider" to show that the most common abbreviation for "Internet Provider" is "ISP." This raises the issue as to whether Internet sources in general, and Wikipedia in particular, is admissible evidence. There are inherent problems regarding the reliability of Wikipedia entries because Wikipedia is a collaborative website that permits anyone to edit the entries. See *in re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1475-1476 (TTAB 1999) (information retrieved from the Internet is probative to the extent that it is information available to the public, and of the way in which a term is used by the public, but the weight given to such evidence must be carefully evaluated because the source is often unknown). In fact, the "About Wikipedia" section of wikipedia.org warns users that articles can be edited by anyone with access to the Internet. That section further explains that editors do not need any specialized qualifications to contribute. As a result, entries, especially newer entries and recent edits, may contain significant misinformation, false or debatable information, "unencyclopedic" content, unexpected oversights and omissions, vandalism, or unchecked information that requires removal. At any given time an article may be in the middle of an edit or controversial rewrite. The editors provide the following warning: "Therefore, a common conclusion is that it [Wikipedia] is a valuable resource and provides a good reference point on its subjects, but like any online source, unfamiliar information should be checked before relying on it."

On the other hand, Internet evidence is generally admissible and may be considered for purposes of evaluating a trademark. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007). See also TMEP §710.01(b) (4th ed. 2005) ("Articles downloaded from the Internet are admissible as evidence of information available to the general public, and of the way in which a term is being used by the public. However the weight given to this evidence must be carefully evaluated because the source is often

by the record herein, is that none of the other dictionary definitions for the word "crazy" is in agreement with the slang dictionary definition recited above. Instead, as pointed out by applicant, the Examining Attorney "has parceled out one very remote 'idiom' meaning of the term 'crazy' ('to an exceeding degree')" from the definitions of the idiomatic expression "like crazy," which as noted earlier is defined by The American Heritage Dictionary of the English Language (4th ed. 2000) as meaning (emphasis in original) "Informal To an exceeding degree. *They were running around like crazy*" and is similarly defined by the Random House Unabridged Dictionary (2006) as signifying "*Slang. with great enthusiasm or energy; to an extreme: We shopped like crazy and bought all our Christmas gifts in one*

unknown"). In an analysis of the reliability of Internet sources in support of an expert opinion, the district court in the Southern District of New York determined that "the information provided there [Wikipedia] is not so inherently unreliable as to render inadmissible any opinion that references it" especially when the opposing party may "apply the tools of the adversary system to his report." *Alfa Corp. v. OAO Alfa Bank*, 475 F.Supp.2d 357, 362 (S.D.N.Y. 2007).

In view of the foregoing, the Board will consider evidence taken from Wikipedia so long as the non-offering party has an opportunity to rebut that evidence by submitting other evidence that may call into question the accuracy of the particular Wikipedia information. Our consideration of Wikipedia evidence is with the recognition of the limitations inherent with Wikipedia (e.g., that anyone can edit it and submit intentionally false or erroneous information). In this case, applicant submitted the Wikipedia information for "Internet Service Provider" in its requests for reconsideration, and the examining attorney had an opportunity to rebut that evidence if she believed that the entry was incorrect. Accordingly, we have considered the Wikipedia entry.

Likewise, in this case, applicant could have submitted definitions of the term "crazy good" if it believes those from the Urban Dictionary made of record by the Examining Attorney to be questionable or otherwise unreliable in any significant manner.

afternoon." Applicant's mark, however, is not "LIKE CRAZY GOOD" or even "GOOD LIKE CRAZY"; it is instead "CRAZY GOOD."

Here, none of the dictionary definitions of the term "crazy" *per se* support the Examining Attorney's position that such term, when combined with the word "good" to form the mark "CRAZY GOOD," results in a mark which, "as a whole, ... would be perceived by the relevant purchasing public as a laudatory phrase inasmuch as it immediately and directly conveys that applicant's baked goods are 'extremely good' or 'good to an exceeding degree.'" None of the most common meanings of the term crazy, such as "[a]ffected with madness; insane" or "mentally deranged; demented; insane," much less "[d]eparting from proportion or moderation"; "senseless, impractical, totally unsound"; "*Informal.* intensely enthusiastic; passionately excited"; "*Informal.* very enamored or infatuated"; "*Informal.* intensely anxious or eager; impatient"; "*Informal.* unusual; bizarre; singular"; or even "*Slang.* wonderful; excellent; perfect," immediately convey the sense, when combined with the ordinary meanings of the word "good," result in a term which literally signifies a product which is "extremely good" or "good to an exceeding degree." Instead, the possible literal meanings of the combined term "CRAZY GOOD" are incongruous (e.g., "insanely good" or "impractically good") or ambiguous (e.g., "infatuated goodness" or "excellent goodness"). Such infirmities likewise may be said to characterize the slang dictionary definition of "crazy good" as connoting "amazingly tasty," given the disparate

or vague notion engendered by the combination of the adverb "amazingly" with the adjective "tasty."⁵

Thus, as applicant persuasively points out in its reply brief with respect to the Examining Attorney's contention that, under applicant's contentions, its mark could likely be interpreted as meaning, *inter alia*, what she characterizes as the nonsensical "insanely well-behaved":

Actually, the Examiner's interpretation is entirely and reasonably possible. Even more likely than the Examiner's [mere descriptiveness] scenario. That is, will consumers pedantically work through remote dictionary definitions and immediately conclude the mark must mean "good to an exceeding degree"? Or will consumers reasonably think that the mark is intended to mean "insanely good"? Or perhaps "insanely well-behaved"? These reasonable and possible interpretations illustrate the inherent distinctiveness or suggestiveness of Applicant's mark. The thought process that consumers will undergo illustrates that there is something more here than that of a merely descriptive mark. The use of CRAZY and GOOD juxtaposed results in an unusual, ambiguous mark that is not merely descriptive.

Moreover, aside from the dictionary evidence, which as indicated tends to show that applicant's mark is suggestive or at least that there is doubt that it is merely descriptive, the same can be said for the various excerpted articles from the Internet and Lexis-Nexis database upon which the Examining Attorney also relies. In particular, as accurately observed by applicant, the manners of usage exhibited therein variously show "third parties

⁵ Perhaps, due to the constant bombardment of superlatives in advertising, one may tend to regard terms like "crazy good" and "amazing tasty" as superlatives, but upon analysis such terms literally have no definitive connotation and therefore are suggestive rather than merely descriptive of a laudatory quality of a product.

using[,] in some instances, CRAZY GOOD in a trademark sense with accompanying trademark symbols (Feel Crazy Good™ with Dr. Scholl's® ... and Look crazy good™ everywhere you go! ...) while other instances may "be construed as further distinctive [or trademark] use (where Crazy Good is used with initial caps such as Crazy-Good Ice Cream ... [and Crazy Good Bread Sticks])." See, e.g., Plyboo America Inc. v. Smith & Fong Co., 51 USPQ2d 1633, 1638 (TTAB 1999) ["the term 'plyboo' is clearly used as a trademark for applicant's goods--in that the first letter of such term (like a proper noun or proper adjective) is capitalized, or the term is otherwise set off by quotation marks, and the term is followed (or preceded) by generic terminology for the goods"]. Concededly, several of the excerpts utilize the term "crazy good" in the manner of a merely descriptive term rather than as a trademark, but even in those instances--of which there are notably only a few which pertain to foods or food items--the usage is just as consistent with such term being understood as hyperbole or a highly suggestive figure of speech rather than simply laudatory (e.g., "HOMEMADE Fresh Peach Jelly Crazy Good!!" referred to as being "unbelievably good!"). In other excerpts, especially those of a more generalized nature, the context is so truncated that it is simply not possible to definitively know whether the meaning conveyed is meant to be descriptive or overblown--and hence suggestive--puffery (e.g., "crazy good cds" and "'Sex is crazy good' during pregnancy"). One excerpt, by referring to "crazy good" as a "single stupid phrase" trademarked

in "the early 80's" which is currently "dead for a reason," even suggests that such term "crazy good" is so antiquated that, whatever significance it may have once had, it is no longer part of the current vernacular and thus that consumers would not be familiar with the meaning of the term.

In short, the excerpts made of record by the Examining Attorney are insufficient to demonstrate satisfactorily that the mark "CRAZY GOOD" would immediately convey, without speculation or conjecture, only a merely descriptive, laudatory significance to consumers of applicant's toaster pastries and fruit preserve filled pastry products. Plainly, as to evidence of actual use of the term "crazy good" as shown by the excerpts from the Internet and Lexis-Nexis database, it is not the case that "the evidence of record clearly shows that the mark as a whole, 'crazy good,' is widely used and understood by the relevant purchasing public to mean 'extremely good' or 'good to an exceeding degree,'" as contended by the Examining Attorney. Such evidence, at best, leaves reasonable doubt as to the asserted mere descriptiveness of the mark "CRAZY GOOD" when used in connection with applicant's goods.

Lastly, with respect to the several third-party registrations of record for marks arguably similar to applicant's mark, it is noted that while consistency of treatment is indeed a goal, our principal reviewing court in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), nonetheless has pointed out that "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ...

allowance of such prior registrations does not bind the Board or this court." See also, In re Broyhill Furniture Industries Inc., 60 USPQ2d 1511, 1514 (TTAB 2001); and In re Pennzoil Products Co., 20 USQP2d 1753, 1758 (TTAB 1991). The existence of such registrations on the Principal Register, in essence, is irrelevant to the registrability of applicant's mark and those registrations have therefore not been relied upon in reaching the decision in this appeal.

Accordingly, for the reasons discussed above, it is found from the record herein that applicant's "CRAZY GOOD" mark would most likely be understood by consumers of its goods as a highly suggestive figure of speech or hyperbole in that it would be regarded as an exaggeration or extravagant statement of the goodness of applicant's toaster pastries and fruit preserve filled pastry products rather than being taken literally as a term which merely describes goods which are extremely or otherwise exceedingly or superlatively good in some particular way or ways. However, it is also found that, at a minimum, the record herein is insufficient to demonstrate satisfactorily that the term "CRAZY GOOD" would be viewed by consumers of applicant's toaster pastries and fruit preserve filled pastry products as describing with particularity only the highest or most extreme level of quality or excellence of such products and thus there is doubt as to the asserted mere descriptiveness of applicant's mark. In view thereof, such doubt is resolved, in accordance with the Board's settled practice, in favor of the publication of applicant's mark for opposition. See, e.g., In re Rank

Organization, Ltd., 222 USPQ 324, 326 (TTAB 1984); In re Conductive Systems, Inc., 220 USPQ 84, 86 (TTAB 1983); In re Morton-Norwich Products, Inc., 209 USPQ 791, 791 (TTAB 1981); and In re Gourmet Bakers, Inc., 173 USPQ 565, 565 (TTAB 1972).

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

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Bucher, Administrative Trademark Judge, concurring:

Burden of proof

On behalf of the United States Patent and Trademark Office, the Trademark Examining Attorney has the burden of establishing a *prima facie* case that the term **CRAZY GOOD** is merely descriptive for pastries.

Resolving doubt over an unclear line

Because the line between merely descriptive and suggestive terms can be quite nebulous, we must resolve any doubt in favor of applicant. Competitors will still have the opportunity to oppose this application once it is published in the *Trademark Official Gazette*, and may well be able to present evidence that is not present in this *ex parte* record.¹

¹ *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972) [**THE LONG ONE** for bread held not descriptive]; *In re Morton-Norwich Products, Inc.*, 209 USPQ 791 (TTAB 1981) [**COLOR CARE** for laundry bleach]; *In re Conductive Systems, Inc.*, 220 USPQ 84 (TTAB 1983) [unlike the situation in resolving §2(d) likely confusion disputes, doubts under § 2(e) about the merely descriptive nature of a term are resolved in favor of the applicant]; *In re Aid Laboratories, Inc.*, 221 USPQ 1215

Pure "Puffery" evaluated under four different tests

Should all three members of this panel agree that the involved term is pure "puffery," I turn to determine how this term should fare under each of the tests that various tribunals have employed to decide mere descriptiveness:

- (a) **Dictionary test:** The dearth of findings of this precise term in dictionaries is itself not determinative. However, the position of the Trademark Examining Attorney is further hurt by the absence of other evidence demonstrating that the term clearly conveys a descriptive meaning in the context of applicant's goods. The evidence is of relatively rare uses of this term as a dated, vernacular expression. Accordingly, upon encountering this term, the potential consumer of applicant's pastries will be left with a vague feeling that applicant is puffing its pastries, not with an accepted understanding of a feature or characteristic of the goods.² Furthermore, the third-party uses and

(TTAB 1983) [**PEST PRUF** for animal shampoo with insecticide held on the suggestive side of the line].

² See *In re Ralston Purina Co.*, 191 USPQ 237, 238 (TTAB 1976) [the Board reversed the Trademark Examining Attorney's requirement that applicant disclaim the word "Super" in **RALSTON SUPER SLUSH** (the word "Slush" is disclaimed), holding the term suggestive of a "concentrate used to make a slush-type soft drink" since the term, in the context of "modern day advertising where [the term] is used as mere puffery and product manufacturers use it, *not to describe size or other attributes of the product*, but merely to connote a vague desirable characteristic or quality allegedly connected with the product," it is not merely descriptive (*emphasis added*)]; *In re Occidental Petroleum*

registrations of similar composite marks noted by Judge Hohein do nothing to support the conclusions of the Trademark Examining Attorney.

(b) Imagination test: The more imagination that is required on the customer's part to get some direct description of the product from the term, the more likely the term is suggestive, not descriptive. Thus, while a descriptive term directly and clearly conveys information about the ingredients, qualities or characteristics of the product or service, the "suggestive" term only indirectly suggests these things.

As to the thought process of the potential consumer seeing the word "good" alone applied to food items, the link is immediate and direct to assume "good taste" or "good for you." However, the involved term is a combination of two common English words where a

Corp., 167 USPQ 128 (TTAB 1970) [**SUPER IRON** found suggestive of "soil supplements" since "it takes some roundabout reasoning to make a determination ... that the product contains a larger amount of iron than most soil supplements or that this iron ... ingredient ... is superior in quality to iron found in other soil supplements"]; *In re Polytop Corp.*, 167 USPQ 383 (TTAB 1970) [**LOC-TOP** not merely descriptive for bottle closure caps inasmuch as the spouts on applicant's closures may be closed but they cannot be locked]; *Colgate-Palmolive Co. v. House for Men, Inc.*, 143 USPQ 159 (TTAB 1964) [**RAPID-SHAVE** does not immediately describe any characteristic or function of a shaving cream]; *Playtex Products, Inc. v. Georgia-Pacific Corp.*, 390 F.3d 158, 73 USPQ2d 1127 (2d Cir. 2004) [the term **WET ONES** is not merely descriptive for pre-moistened wet wipes inasmuch as it is too generalized to directly describe this product].

certain amount of creative imagination is required to intuit from this term a specific attribute of the pastries.³

While applicant makes much of the alleged incongruity of these two words appearing together, I find that a reversal in this appeal does not necessarily turn on finding incongruity. While incongruity is clearly a strong indicator of suggestiveness, apart from any alleged incongruity between the two words, this term requires mature thought simply given the nature of the expression.

(c) Competitors' need test: Without a doubt, self-laudatory common phrases and slogans should be freely available to all competitors in any given field to refer to their products or services.⁴ However, unlike reported cases

³ *Worthington Foods, Inc. v. Kellogg Co.*, 732 F. Supp. 1417, 14 USPQ2d 1577 (S.D. Ohio 1990) [**HEARTWISE** for low-fat, low-cholesterol foods is suggestive because it requires imagination and a multi-stage reasoning process to reach the conclusion that such food is "wise for the heart"]; *In re Colgate-Palmolive Co.*, 149 USPQ 793 (TTAB 1966) [**HANDI WIPES** not merely descriptive for dusting cloths].

⁴ *In re Boston Beer Co. Ltd. Partnership*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) [the designation **THE BEST BEER IN AMERICA** is highly laudatory and descriptive]; see also *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) [**THE ULTIMATE BIKE RACK** is a self-laudatory descriptive term that touts the superiority of the product]; *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 57 USPQ2d 1720 (Fed. Cir. 2001) [the slogan **NUMBER ONE IN FLOORCARE** for vacuum cleaners is self-laudatory and merely descriptive]; and *In re The Place Inc.*, 76 USPQ2d 1467 (TTAB 2005) [self-laudatory designation **THE GREATEST BAR** is merely descriptive for bar and restaurant services].

with terms claiming different superlative qualities, there is no indication in the record that competitors would need to use the instant term in describing their own pastries.

(d) Competitors' use test: The final test of descriptive-suggestive connotations in support of a reversal herein is the lack of evidence that others currently use the term "Crazy Good" to describe the goods involved herein.⁵ The record does not reveal any instances where applicant or any of its competitors in the trade have made descriptive uses of this term. Although the record shows that several sellers of other, largely unrelated products may have made trademark use of this term, we certainly cannot draw any inferences of descriptiveness from such infrequent, parallel uses as source-indicators for unrelated goods.

Hence, I conclude that the phrase **CRAZY GOOD** is not merely descriptive under any of the various tests for mere descriptiveness. Accordingly, on this record, I would argue that the term **CRAZY GOOD** seems to be mere puffery which would leave customers for the pastries to speculate as to what particular quality, characteristic or function the term refers.

⁵ *Johnston Foods, Inc. v. Carnation Co.*, 159 USPQ 624 (TTAB 1968) [**FRUIT SUNDAE** not merely descriptive for yogurt; inasmuch as no third-party competitors use the word "Sundae" in connection with yogurt].

Accordingly, despite the apparent lack of unanimity on this panel, I agree with Judge Hohein that this refusal should be reversed.

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Grendel, Administrative Trademark Judge, dissenting:

I must respectfully dissent. I dissent because I find that the evidence submitted by the Trademark Examining Attorney suffices to establish that CRAZY GOOD would be perceived by purchasers as nothing but a laudatory and thus merely descriptive phrase as applied to applicant's goods.

GOOD clearly is a laudatory adjective. The dictionary evidence of record establishes that CRAZY likewise can be a laudatory term, albeit slang, meaning "wonderful; excellent; perfect." The combination of these two laudatory words creates a unitary composite which itself is nothing but laudatory. I do not believe it to be dispositive that there are other definitions of "crazy" which, when combined with "good" and applied to applicant's goods, might create an incongruous or meaningless composite like "insanely well-behaved," to use the example suggested by applicant and Judge Hohein. Whether a mark is merely descriptive must be determined by considering the mark as applied to the goods, not in the abstract. On this record and as applied to applicant's goods, I see no other connotation of CRAZY GOOD than its laudatory connotation.

Indeed, the Internet and NEXIS excerpts made of record by the Trademark Examining Attorney establish that "crazy good" already is used by the public in a non-trademark sense as a laudatory slang expression, including in connection with food products and restaurant services. CRAZY GOOD is no less laudatory for being slang.

I cannot agree with Judge Hohein's conclusion that CRAZY GOOD is not a merely descriptive laudatory term because it is likely to be regarded by purchasers as "overblown--and hence suggestive--puffery" or because it would be understood by purchasers

as a highly suggestive figure of speech or hyperbole in that it would be regarded as an exaggeration or extravagant statement of the goodness of applicant's toaster pastries and fruit preserve filled pastry products rather than being taken literally as a term which merely describes goods which are extremely or otherwise exceedingly or superlatively good in some particular way or ways.

Under that standard, it would appear that GOOD itself could not be considered laudatory because it is not sufficiently literal or particular as to what it is about the product or service that is "good." Also, Judge Hohein's finding that CRAZY GOOD is not laudatory because it would be regarded merely as "overblown...puffery," "hyperbole" and "an exaggeration or extravagant statement of the goodness of applicant's toaster pastries and fruit preserve filled pastry products" seems to me to be a finding that the term in essence is too laudatory to be laudatory. I note that if CRAZY GOOD in fact is mere puffery, then it is incapable of distinguishing source and thus is

Ser. No. 78724957

unregistrable even on the Supplemental Register. See *In re Boston Beer Co. L.P.*, 47 USPQ2d 1914, 1919 (TTAB 1998), *aff'd*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999).

In short, I find that CRAZY GOOD is a laudatory and thus merely descriptive phrase which should remain available for others to use in connection with their goods and services. Therefore, I would affirm the Trademark Examining Attorney's refusal of registration under Trademark Act Section 2(e)(1).