

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: August 22, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Plata Wine Partners, LLC
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Serial No. 87292254
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John B. Dawson of Carle, Mackie, Power & Ross LLP,
for Plata Wine Partners, LLC.

Samuel R. Paquin, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

—————
Before Bergsman, Pologeorgis, and English,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Plata Wine Partners, LLC (“Applicant”) seeks registration of the designation BIG SIX (in standard characters) for “wines” in International Class 33.

The application originally sought registration on the Principal Register, and was filed under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim that it had a bona fide intention to use the proposed mark in commerce. The Examining Attorney initially refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the term BIG SIX is “a term of art in the wine industry” and as such is merely descriptive of

Applicant's goods.¹ In the same initial Office Action, the Examining Attorney also found that Applicant's applied-for mark appears to be generic in connection with the identified goods and, therefore, incapable of functioning as a source-identifier for Applicant's goods.² As such, the Examining Attorney advised that neither an amendment to proceed under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), nor an amendment to the Supplemental Register could be recommended.³

In response to the Examining Attorney's initial Office Action, Applicant, in addition to arguing against the mere descriptiveness refusal, disagreed with the assertion that Applicant's applied-for mark is generic of Applicant's goods.⁴ While not conceding that the applied-for mark is merely descriptive and "in an abundance of caution," Applicant filed an Amendment to Allege Use, seeking to amend its application to the Supplemental Register.⁵

In a subsequent Office Action, the Examining Attorney refused registration on the Supplemental Register under Trademark Act Sections 23(c) and 45, 15 U.S.C. § 1091(c) and 1127, on the ground that BIG SIX is generic for "wines" and thus incapable of distinguishing Applicant's goods.⁶ Additionally, the Examining Attorney,

¹ March 30, 2017 Office Action.

² *Id.*

³ *Id.*

⁴ October 2, 2017 Response to Office Action.

⁵ October 2, 2017 Amendment to Allege Use. We construe Applicant's request to amend its application to seek registration on the Supplemental Register as an alternative request in the event the mere descriptiveness refusal is affirmed.

⁶ October 18, 2017 Office Action.

in the alternative, refused registration on the ground that Applicant's applied-for mark is merely descriptive of the identified goods. After the Examining Attorney made the genericness and mere descriptiveness refusals final, Applicant appealed to this Board and filed a request for reconsideration, which was denied.

Both Applicant and the Examining Attorney have filed briefs. We affirm the refusals to register.⁷

I. Preliminary Issue – Evidentiary Objection

We first turn to an evidentiary objection lodged by the Examining Attorney regarding evidence presented by Applicant for the first time with its appeal brief.⁸ Specifically, the Examining Attorney objects to the inclusion of sales and revenue information and an affidavit from Applicant's attorney.⁹

It is well-settled that the record in an ex parte proceeding should be complete prior to appeal. Trademark Rule 2.142(d); 37 CFR § 2.142(d). Exhibits or other evidentiary material that are attached to or included with a brief but not made of record during examination are untimely, and will not be considered. *See In re Fitch IBCA, Inc.*, 64 USPQ2d 1058, 1059 n.2 (TTAB 2002); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") §§ 1203.02(e) and 1207.01 (2019). To the extent Applicant wished to introduce additional evidence after its appeal had been filed, Applicant should have filed a written request with the Board to suspend the appeal

⁷ All TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations reference the docket and electronic file database for Application Serial No. 87292254. All citations to the TSDR database are to the downloadable .PDF version of the documents.

⁸ Examining Attorney's Brief, p. 13, 9 TTABVUE 13.

⁹ *Id.*

and remand the application for further examination pursuant to Trademark Rule 2.142(d). Applicant did not do so. Accordingly, the Examining Attorney's evidentiary objection is sustained, and we give the new evidence submitted with Applicant's appeal brief no further consideration in our analysis.

II. Genericness - Applicable Law

We first address the genericness refusal. A mark proposed for registration on the Supplemental Register must be capable of distinguishing the applicant's goods or services. 15 U.S.C. § 1091. "Generic terms do not so qualify." *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017); *see also Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1372 n.3 (Fed. Cir. 2018) (citing *In re Am. Fertility Soc'y*, 188 F.3d 1341, 51 USPQ2d 1832, 1833 (Fed. Cir. 1999)); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (generic terms "are by definition incapable of indicating a particular source of the goods or services").

The Office must demonstrate a term is generic by "clear evidence" of generic use. *See In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009). "[R]egistration is properly refused if the word is the generic name of any of the goods or services for which registration is sought." *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (quoting 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:57 (4th ed. 2016)).

A generic term "is the common descriptive name of a class of goods or services." *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827,

1830 (Fed. Cir. 2015) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)). There is a two-part test used to determine whether a designation is generic: (1) what is the genus (class or category) of goods or services at issue?; and (2) does the relevant public understand the designation primarily to refer to that genus of goods or services? *Princeton Vanguard*, 114 USPQ2d at 1803 (citing *Marvin Ginn*, 228 USPQ at 530); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1462 (TTAB 2014). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Marvin Ginn*, 228 USPQ at 530.

Any term that the relevant public uses or understands to refer to the genus of goods, or a key aspect or subcategory of the genus, is generic. *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018). “[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Cordua*, 118 USPQ2d at 1638 (holding CHURRASCOS, a word that is generic for a type of grilled meat, to be generic for restaurant services because it referred to a key aspect of those services); *see also In re Nordic Naturals, Inc.*, 755 F.3d 1340, 111 USPQ2d 1495 (Fed. Cir. 2014) (CHILDREN’S DHA generic for DHA supplements for children); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) (BUNDT generic for ring cake mixes, *i.e.*, the subcategory “bundt cakes.”).

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown*, 127 USPQ2d at 1046 (quoting *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987)); *see also Cordua*, 118 USPQ2d at 1634; *Princeton Vanguard*, 114 USPQ2d at 1830; *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (finding third-party websites competent sources for determining what the relevant public understands mark to mean).

A. What is the Genus of the Goods at Issue?

Our first task is to determine the proper genus. In defining the genus, we commonly look to the identification of goods in the application. *See Reed Elsevier*, 82 USPQ2d at 1380; *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) (a proper genericness inquiry focuses on the identification set forth in the application or certificate of registration); *In re Serial Prodcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018) (proper genus generally is “set forth by the recitation of services in each subject application.”). Applicant has identified its goods as “wines.” There is no dispute that the identification of goods adequately defines the genus.

B. Who are the Relevant Purchasers?

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of

goods or services. “The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard LLC*, 124 USPQ2d 1184, 1187 (TTAB 2017) (citing *Magic Wand*, 19 USPQ2d at 1552); *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013)). Because there are no restrictions or limitations to the channels of trade or classes of consumers for Applicant’s identified goods, the relevant consuming public consists of the public at large, namely, ordinary consumers who purchase and imbibe wine or who purchase wine for others.

C. How does the Relevant Public Perceive BIG SIX?

The Examining Attorney argues that the phrase BIG SIX refers to six common types of wine, namely, Riesling, Sauvignon Blanc, Chardonnay (white), Pinot Noir (red), Merlot, and Cabernet Sauvignon and which the Examining Attorney contends comprise approximately 80 percent of the world’s wines.¹⁰ In support of his argument, the Examining Attorney submitted excerpts from numerous websites, as well as results from a Google search of “big six’ wine,” showing use of the designation BIG SIX. The evidence is summarized below:¹¹

- the Rochester, NY Democrat & Chronicle website (www.democratandchronicle.com)¹² - “However, for some reason, there

¹⁰ *Id.* at p. 6, 9 TTABVUE 6.

¹¹ We recognize that the evidence submitted by the Examining Attorney does not identify the identical type of wines or varietal of grapes under the BIG SIX designation. For example, in some instances, Syrah is substituted for Merlot, Pinot Grigio is substituted for Sauvignon Blanc, and Zifandel is substituted for Riesling. While the evidence is inconsistent as to what wines or varietal grapes comprise the BIG SIX, this does not detract from our analysis as to whether the designation is generic for “wines” in general.

¹² March 30, 2017 Office Action, TSDR, p. 4.

seems to be universal agreement among wine educators that the ‘**Big Six**,’ as they are fondly called, are a great place to start when learning about wine flavors and styles. Someone once told me that once you master the **Big Six**, you are on your way to understanding 80 percent of the world’s wines. ... Three of the grapes are white: Riesling, Sauvignon blanc and Chardonnay. Three of the grapes are red: Pinot [N]oir, Merlot and Cabernet Sauvignon.”;

- (www.lakeandsumterstyle.com)¹³ - An article titled “THE WINE WORLD’S **BIG SIX**.” The article states: “Walk into any wine shop or supermarket and you can’t miss the **Big Six** – the grapes that Master Sommelier Andrea Immer Robinson calls the ‘power elite.’ Although there are hundreds of grape varieties used in winemaking, these six – Chardonnay, Sauvignon Blanc, Riesling, Cabernet Sauvignon, Merlot, and Pinot Noir – are the nobility in the wine world because of their reputations for making outstanding wines.”
- (www.grapehaven.com)¹⁴ - An article titled “‘**BIG SIX**’ Wine Grape Varieties.” “The **Big Six** Wine Grape Varieties are: (white) Chardonnay, Riesling, Sauvignon Blanc and (red) Cabernet Sauvignon, Merlot and Pinot Noir. These **Big Six** Wine Grape Varieties make up about 80% of all wines made from around the world.”
- (www.foodnetwork.com)¹⁵ - An article titled “The Top Six Wine Varietals.” “Learning the basics of wine begins with becoming familiar with the **big six** varietals, which are the grapes that comprise the majority of the world’s wines.” The article discusses the attributes of the **big six** wines which the article identified as Chardonnay, Sauvignon Blanc, Riesling, Cabernet Sauvignon, Merlot and Pinot Noir.
- (www.realsimple.com)¹⁶ – An article titled “Basic Wine Varieties A guide to the **big six** – the most common grape varieties found in the United States – and foods to pair them with.”
- (www.cityweekly.net)¹⁷ – An article titled “The Six Pack, Part 1” – “Wine columns like this one can, at times, get a bit technical and wine geeky. So, I though this week we’d go back to the basics and talk about the

¹³ *Id.*, TSDR p. 5.

¹⁴ *Id.*, TSDR p. 6.

¹⁵ *Id.*, TSDR p. 7.

¹⁶ *Id.*, TSDR pp. 8-9.

¹⁷ October 18, 2017 Office Action, TSDR p. 6.

wines that constitute the large majority of all wines sold and consumed. There are six of them – the **big six** wine-grape varieties. ... So, what are the six big varieties” There are three white grape varieties (Chardonnay, Sauvignon Blanc and Riesling) and three reds (Cabernet Sauvignon, Merlot and Pinot Noir.) Usually, with the **big six** varieties, they are easy to identify in the wine store because the wine bottles say ‘Chardonnay,’ ‘Merlot,’ ‘Pinot Noir’ and so on.”

Also from the same website an article titled “The Six-Pack, Part 2 Getting to know the rest of the **big six** wine grapes.”

- (www.vino-sphere.com)¹⁸ – An article titled “**Big Six** Grape Varieties” – “We have been traveling the globe – so while we recover from jet lag, we are republishing one of our first posts. A look at the **Big Six** wine grapes.”
- (www.miamidadeculinary.com)¹⁹ – Summarizing a culinary course offered: “Becoming an Expert with the **Big Six** – In this class we focus on **six wines** to give participants an advanced knowledge when Ordering or discussing these wines. We will taste Cabernet Sauvignon, Pinot Noir and Syrah for Reds and Chardonnay, Sauvignon Blanc and Riesling for Whites and discuss food pairings when ordering or cooking at Home.”
- (www.wine-girl.net)²⁰ – Advertisement for wine tasting program – “I will be pouring the **big six** grapes. The tasting will be Riesling, Pinot Grigio, Chardonnay, Pinot Noir, Cabernet Sauvignon, and Syrah. The **big six** wine tasting will get you to: taste the difference between each grape varietal, taste the difference between light, medium, and full bodied wines.”
- (www.kobrandwineandspirits.com)²¹ – Advertisement for tasting program – “KOBAND EDUCATION SERIES 101 – **BIG SIX TASTING** – Interactive wine tasting and evaluation that incorporates common varieties and learnings from the previous KES 101 modules.”

¹⁸ *Id.*, TSDR p. 8.

¹⁹ *Id.*, TSDR p. 9

²⁰ *Id.*, TSDR p. 10.

²¹ *Id.*, TSDR p. 11.

- Excerpt from the book titled *Great Wine Made Simple: Straight Talk from a Master Sommelier*: “The ‘Power Elite’ of the Wine World – The **Big Six** Wine Grapes. There are hundreds of wine grapes, but we’re going to focus on just a handful of them, the white and red grape types that I call the **Big Six**.”²²
- Excerpt from the book titled *Wine for Dummies*: “The number of wineries in California has exploded to more than 2,000, and the map of wine regions has expanded to include pockets of vineyard land that were literally off the map only 15 years ago. What’s more, California now grows dozens of grape varieties beyond its traditional **Big Six** fine-wine mainstays (Chardonnay, Sauvignon Blanc, Cabernet Sauvignon, Merlot, Pinot Noir, and Zinfandel).”²³
- (www.wiley.com)²⁴ – Advertisement for book titled *California Wine for Dummies* – Description of book includes the following: “Open the Bottle – become fluent in the **Big Six**: Chardonnay, Sauvignon Blanc, Cabernet Sauvignon, Merlot, Pinot Noir, and Zinfandel.”
- (www.wine-tasting-reviews.com)²⁵ Article titled “What Are the **Big Six** Wine Grapes?” – “If you are going to learn very much about wine, you need to learn about – and get to know – the so-called ‘**Big Six**’ wine or grape varieties. The **Big Six** wine grapes are: Riesling, Sauvignon Blanc, Chardonnay, Pinot Noir, Merlot, and Cabernet Sauvignon.”
- (www.learningwithexperts.com)²⁶ Advertisement for course on wines describing it as an “[i]ntro to the ‘**Big 6**’ The best foundation for learning about wine is the **Big Six** grapes: the 3 white grapes and 3 red grapes.”
- (www.justwineapp.com)²⁷ Article titled Wine Club Series “The **Big Six**” featuring discussion on Cabernet Sauvignon.

²² *Id.*, TSDR p. 4.

²³ *Id.*, TSDR p. 5.

²⁴ May 3, 2018 Final Office Action, TSDR p. 6.

²⁵ *Id.*, TSDR p. 7.

²⁶ *Id.*, TSDR p. 8.

²⁷ *Id.*, TSDR p. 9.

- (www.inforum.com)²⁸ Article titled “World of Wine: Knowing the **big six** varietals of the wine world.” “Most have been mentioned in previous World of Wine columns, but I thought this would be a good opportunity to cover each of the ‘**Big Six**’ on the wine world. Wines in America and in most of the southern hemisphere are labeled with varietal names of grape. While there are hundreds of wine grapes, we seems [sic] to focus on Riesling, sauvignon blanc, Chardonnay, pinot noir, merlot and cabernet sauvignon. These varietals make up about 80 percent of all the wines made around the world.”
- (www.winecentury.com)²⁹ – website for wine enthusiasts that states, among other things: “Uncommon Grape Varieties? The common grape varieties are typically considered the ‘**big six.**’ Cabernet Sauvignon, Merlot, Pinot Noir, Chardonnay, Sauvignon Blanc and Riesling.”
- (www.savannahwinecellar.com)³⁰ – website of retail store selling wine offering a class on wine: “Class Forming! Intro to Wine: **The Big Six** ... We designed this class to be a fun way to learn about the six most common grape grape [sic] varieties. By trying these wines sides [sic] by side, it give you the whole picture of the different body styles as well as the flavors of the **Big Six.**”
- (www.balabanswine.com)³¹ – website of wine retailer offering a class on wines titled: “The ‘**Big Six**’ Grape Varietals.”
- (www.chefstablecos.com)³² - website of third party offering a class on wines titled: “Wine 101: **The Big Six.**” “The ‘**Big Six**’ Grape Varietals.” “More than 80% of the quality wine produced in the world is from only 6 varietals. Learn the characteristics of these, and you’ll have a handle on most of the wine out there! We’ll taste and compare Riesling, Sauvignon Blanc, Chardonnay, Pinot Noir, Merlot and Cabernet Sauvignon.”

²⁸ *Id.*, TSDR p. 10.

²⁹ *Id.*, TSDR p. 11.

³⁰ *Id.*, TSDR p. 12.

³¹ *Id.*, TSDR p. 13.

³² *Id.*, TSDR p. 14.

In traversing the refusal, Applicant argues that the designation BIG SIX refers to grape varieties used to make wine and not as a generic designation for wine itself.³³ We find Applicant's argument unpersuasive. The ample amount of evidence submitted by the Examining Attorney clearly demonstrates that the designation BIG SIX is used interchangeably to identify both the types of grapes used to ferment wine, as well as the types of wine produced by such grapes. Indeed, it is common knowledge that when one orders a glass of wine, they generally do not ask for a glass of white wine comprising the chardonnay varietal grape; instead, they merely order a glass of chardonnay. However, even assuming arguendo that the designation BIG SIX only refers to the varietal of grapes used to make wine, the designation would still be generic for wine because the generic name of an ingredient of the goods is incapable of identifying and distinguishing their source and is thus unregistrable on either the Principal or Supplemental Register. *See Cordua*, 118 USPQ2d at 1637-38 (affirming the Trademark Trial and Appeal Board's holding of CHURRASCOS (a type of grilled meat) generic for restaurant services)); TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 1209.03(v) (Oct. 2018); *see also A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 292, 1 USPQ2d 1364, 1365 (3d Cir. 1986) (holding CHOCOLATE FUDGE generic for diet sodas); *In re Ricci-Italian Silversmiths, Inc.*, 16 USPQ2d 1727, 1729-30 (TTAB 1990) (holding ART DECO generic for flatware); *In re Hask Toiletries, Inc.*, 223 USPQ 1254, 1255 (TTAB 1984) (holding HENNA 'N' PLACENTA generic for hair conditioner).

³³ Applicant's Appeal Brief, pp. 5-6, 7 TTABVUE 9-10.

Applicant also argues that because the designation BIG SIX is not found in the dictionary or in wine glossaries, it cannot be generic for wines.³⁴ Applicant is mistaken. The fact that a word or term is not found in the dictionary is not controlling on the question of registrability when the word or term has a well understood and recognized meaning, as the evidence of record demonstrates. *See In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) [SCREENWIPE held generic for wipes that clean computer and television screens although not found in dictionary]; *In re Gen'l Permanent Wave Corp.*, 118 F.2d 1020, 49 USPQ 184, 186 (CCPA 1941) (“Because appellant has combined two common English words, which in combination are not found in the dictionaries, is wholly immaterial.”); *In re Planalytics, Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) (GASBUYER held merely descriptive, no dictionary definition of term); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTOWER merely descriptive, no dictionary definition of term); *see also* TMEP § 1209.03(b). The evidence of record clearly shows the wording BIG SIX being used generically for wines or varietal grapes used to make wine by a number of third parties.

Finally, Applicant argues that consumers view the designation BIG SIX as a source indicator for its wines.³⁵ In support of its argument, Applicant has submitted (1) the results of a Google search for the phrase “BIG SIX WINE” purportedly showing that the consuming public overwhelmingly recognizes the phrase BIG SIX as

³⁴ *Id.* at p. 6, 7 TTABVUE 10.

³⁵ *Id.* at 8-10, 7 TTABVUE 12-14.

referring to a specific brand of wine Applicant produces,³⁶ and (2) consumer reviews of its wines sold under the BIG SIX moniker.³⁷

We do not find the Google search results submitted by Applicant to be very probative in our analysis since the printouts are too truncated to provide context in which the designation BIG SIX is used on the listed web pages. *See In re Bayer Aktiengesellschaft*, 488 F.3d 960, 967, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (GOOGLE search results that provided very little context of the use of ASPIRINA deemed to be “of little value in assessing the consumer public perception of the ASPIRINA mark.”); *In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1715 (TTAB 2011) (“search summary of results from the Google search engine” given no consideration); *In re Tea and Sympathy, Inc.*, 88 USPQ2d 1062, 1064 n.3 (TTAB 2008) (truncated GOOGLE search results entitled to little probative weight without additional evidence of how the searched term is used); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060 (TTAB 2002) (noting that “[e]vidence of actual use of a phrase by a website has far greater probative value” than a search summary); *see also* TMEP § 710.01(b). Even if Applicant had provided the full search results, such results would not necessarily demonstrate consumer perception of the phrase BIG SIX as a source indicator of Applicant’s wines because there is no additional evidence showing whether the listed web pages are still operative or the extent to which consumers have viewed the individual web pages. We further note that many of the Google

³⁶ Applicant’s November 5, 2018 Request for Reconsideration, TSDR pp. 20-30.

³⁷ Applicant’s April 18, 2018 Response to Office Action, Exhs. M & N, TSDR pp. 69-80.

search results, even in their truncated form, appear to support the Examining Attorney's genericness refusal, i.e., they seem to show the use of the designation BIG SIX generically for wines or the grape varieties that are the ingredients for wine. As example:³⁸

Wine Types - The "big 6" wine grapes that you should know

<https://andreawine.com/wine-course-intro-to-the-big-6/> ▼

There are literally hundreds of wine grapes, but to get a really strong start in understanding quality wine, get familiar with what I call "the big six" wine grapes: ...

You've visited this page 3 times. Last visit: 11/5/18

THE WINE WORLD'S BIG SIX | MaryAnnDeSantis.com

www.maryanndesantis.com/the-wine-worlds-big-six/ ▼

Jan 1, 2017 - Walk into any wine shop or supermarket and you can't miss the **Big Six**—the grapes that Master Sommelier Andrea Immer Robinson calls the ...

Wine 101: The Big Six – Chef's Table Colorado Springs

<https://www.chefstablecos.com/new-events/2016/1/31/wine-101-the-big-six> ▼

Jan 31, 2016 - More than 80% of the quality wine produced in the world is from only 6 varieties. Learn the characteristics of these, and you'll have a handle on ...

As for the consumer reviews, only one refers to the designation BIG SIX as a source indicator for Applicant's wines. As such, it is unclear from this evidence whether consumers recognize the designation BIG SIX as an indicator of source for Applicant's wines or whether they view the phrase generically or descriptively as a particular type or variety of wine.

D. Conclusion

Taken as a whole, the evidence of record clearly indicates that the relevant public

³⁸ *Id.*, TSDR pp. 20-22.

would understand the designation BIG SIX primarily to refer to “wines” or a key aspect, type or ingredient of “wines.” As such, the term is generic “and should be freely available for use by competitors.” *In re Cent. Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998). *See generally Cordua*, 118 USPQ2d at 1635; *Marvin Ginn*, 228 USPQ at 530; *In re 1800Mattress.com*, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009).

III. Mere Descriptiveness – Applicable Law

Although we have found the applied-for mark to be generic, we consider the Examining Attorney’s alternative refusal of mere descriptiveness. A designation is merely descriptive under Section 2(e)(1) of the Trademark Act if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). The wording need not immediately convey an idea of each and every specific feature of the applicant’s goods or services in order to be considered merely descriptive; it is enough that the terminology describes one significant attribute or function of the goods or services. *See In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Furthermore, a term that describes an ingredient of the goods is merely descriptive. *See In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574 (Fed. Cir. 2015) (holding NOPALEA merely descriptive of dietary and nutritional supplements containing nopal juice); *In re Keebler Co.*, 479 F.2d 1405, 178 USPQ 155 (C.C.P.A. 1973) (holding RICH 'N CHIPS merely descriptive of chocolate chip cookies); *In re Andes Candies Inc.*, 478 F.2d 1264, 178 USPQ 156 (C.C.P.A. 1973) (holding CREME DE MENTHE merely descriptive of candy); *In re Entenmann's, Inc.*, 15 USPQ2d 1750 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts); *Flowers Indus., Inc. v. Interstate Brands Corp.*, 5 USPQ 2d 1580 (TTAB 1987) (holding HONEY WHEAT merely descriptive of bread containing honey and wheat); *see also* TMEP § 1209.01(b).

Here, the record leaves no doubt that the designation BIG SIX is merely descriptive of Applicant's wines. The designation clearly describes a feature or characteristic of Applicant's wines, namely, the category of wines offered for sale or the types of varietal grapes used to produce Applicant's wines. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. *See In re Sterotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089-90 (Fed. Cir. 2005) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978) ("The major reasons for not protecting such [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the

possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.”)); *see also In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

Decision: The refusals to register Applicant’s applied-for BIG SIX mark on the Supplemental Register on the ground that the designation is generic for the identified goods under Sections 23(c) and 45 of the Trademark Act, and also on the alternative ground that the applied-for mark is merely descriptive under Section 2(e)(1) of the Trademark Act, are affirmed.³⁹

³⁹ In light of our finding that Applicant’s applied-for mark is generic for the identified goods, Applicant’s alternative request to amend its application to seek registration on the Supplemental Register is deemed moot.