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April 30, 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Modern Consulting Solutions

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Serial No. 77509514

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Jason Gambert, pro se for Modern Consulting Solutions.

Midge Butler, Trademark Examining Attorney, Law Office 107  
(J. Leslie Bishop, Managing Attorney).

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Before Hairston, Kuhlke and Walsh, Administrative Trademark  
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Modern Consulting Solutions, a sole proprietorship  
composed of Jason Gambert, has filed an application to  
register SEARCH ENGINE OPTIMIZATION in standard characters  
on the Principal Register for services ultimately  
identified as "providing advertising, marketing and  
promotional services, namely development of advertising

campaigns for use on computers and related consulting" in International Class 35.<sup>1</sup>

The examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e), on the ground that applicant's proposed mark is merely descriptive of applicant's services.

In addition, the examining attorney has refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's proposed mark SEARCH ENGINE OPTIMIZATION, when used in connection with its recited services so resembles the registered mark SEARCH ENGINE OPTIMIZATION ENGINE (SEARCH ENGINE disclaimed) for "providing on-line non-downloadable computer search engine software" in International Class 42,<sup>2</sup> as to be likely to cause confusion, mistake or deception.

Finally, the examining attorney has refused registration under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1127, on the ground that the specimen of

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<sup>1</sup> Application Serial No. 77509514, filed June 27, 2008, alleging July 26, 1997 as the date of first use and first use in commerce, under Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a).

<sup>2</sup> Supplemental Registration No. 3518607, issued on October 14, 2008.

use does not show use of the mark in the sale or advertising of the services.<sup>3</sup>

The appeal has been fully briefed. We affirm the refusals to register.

Refusal Based on Mere Descriptiveness Under Section 2(e)(1)

"A mark is merely descriptive if it 'consist[s] merely of words descriptive of the qualities, ingredients or characteristics of' the goods or services related to the mark." In re Oppendahl & Larson LLP, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004), quoting, Estate of P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 543 (1920). See also In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. In re Engineering Systems

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<sup>3</sup> The examining attorney also issued a final refusal based on her requirement that applicant amend the identification of services because it was indefinite. In the request for reconsideration, applicant expressly adopted the examining attorney's suggested amendment and did not present it as an alternative, while reserving the right to argue that the applicant's identification was acceptable. Once an identification has been limited, it cannot be expanded later. See In re Swen Sonic Corp., 21 USPQ2d 1794 (TTAB 1991); In re M.V Et Associates, 21 USPQ2d 1628 (Comm'r Pats. 1991). Therefore, we have not considered applicant's arguments regarding the earlier identification of services.

Corp., 2 USPQ2d 1075 (TTAB 1986); In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978).

The examining attorney argues that SEARCH ENGINE OPTIMIZATION "is a specialized process that involves analyzing a website's underlying code, architecture, visible content, and link popularity and making enhancements so that the site returns more prominently in the search results of relevancy-based, algorithm-driven search engines...[and] works to improve the volume and quality of traffic to a web site from search engines via search results and can also target different kinds of

searches." Br. p. 7. The examining attorney observes that applicant's "substitute specimen demonstrates that the purpose and function of applicant's marketing service is to provide its customers with the benefits of search engine optimization...[and] it is clear that the purpose and function of the applicant's advertising, marketing, and promoting services involves providing search engine optimization for its customers and to provide them with a means of ensuring that their webpage is accessible to search engines and that they are focused in specific ways that will help improve their chance of being discovered...[i]n other words, the applicant develops advertising campaigns for use on computers by utilizing the process of search engine optimization." Br. pp. 8-9.

In support of her position, the examining attorney provided printouts from various websites wherein "search engine optimization" is used as the generic name of a process that improves the volume and quality of traffic to a web site. A few excerpted examples are set forth below:

Search engine optimization (SEO) is the process of improving the volume of and quality of traffic to a web site from search engines via "natural" ("organic" or "algorithmic") search results. Usually, the earlier a site is presented in the search results, or the higher it "ranks," the more searchers will visit that site. SEO can also target different kinds of searches, including image search, local search, and

industry-specific vertical search engines. As an Internet marketing strategy, SEO considers how search engines work and what people search for. Optimizing a website primarily involves editing its content and HTML coding to both increase its relevance to specific keywords and to remove barriers to the indexing activities of search engines...The acronym "SEO" can also refer to "search engine optimizers," a term adopted by an industry of consultants who carry out optimization projects on behalf of clients and by employees who perform SEO services in-house. Search engine optimizers may offer SEO as a stand-alone service or as a part of a broader marketing campaign. (en.wikipeida.org);

Welcome to the second part of a two-part article that strives to give an overview of search engine optimization for beginners...If you're new to the world of search engine optimization, you may not know where to start. You may be fascinated with the idea of doing business around the world, but the reality is that you have to be seen before you can sell. (seochat.com);

Intro to Search Engine Optimization ... Search engine optimization means ensuring that your Web pages are accessible to search engines and are focused in ways that help improve the chances they will be found. (searchenginewatch.com);

What is Search Engine Optimization ... Search engine optimization means a lot of things to a lot of people but really what is search engine optimization? First off it's not search engine marketing or sem. Search engine marketing is the ability for advertisers, ad agencies, marketing firms and the like to pay for a sponsored listing in cpc (cost per click) search engines like Overture and via Google AdWords Programs. Search engine marketing is the quick fix to driving targeted traffic to a web site but it's also the most expensive to get search engine traffic. SEO on the other hand is the technique employed by web site owners to make their web site more search engine friendly. ... A good search engine optimization firm can get you to the top

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of the search engines and will keep you there.  
(Globalpromoter.com); and

Search Engine Optimization ... More people use organic (natural) search results to locate information, products, and services on the Web than any other means. Search Engine Optimization SEO has grown into a billion dollar industry, with companies working to increase their organic search engine rankings and increase Web exposure. (vizioninteractive.com).

In addition, the examining attorney has submitted the following identification of services listed in the USPTO Manual of Acceptable Identifications of Goods and Services:



Computer services, namely, search engine optimization; and

Consultation services in the field of search engine optimization.

Finally, she relies on applicant's specimens of use which appear to consist of emails and excerpts from its web page set forth below.

Return-Path: <72880...@aol.com>  
From: 72880...@aol.com  
Date: Sun, 27 Jul 97 03:09:22 EST  
To: t...@tosonoe875.com  
Subject: The Truth About Internet Marketing  
Reply-To: r...@tosonoe875.com  
X-PMFLAGS: 59762846 8  
Comments: Authenticated sender is <r...@tosonoe875.com>

For more information on our **search engine Optimization service**,  
Go To: <http://www.ascella.net/gotham/search.html>

If you wish to discuss the optimization of your web site with a live web site Optimization specialist call  [850.385.0499](tel:850.385.0499) 



FIRST METHOD - Purchase Internet Advertising on search engines. The problem with this is it requires a large advertising budget that runs into the thousands of dollars per month. For most of us, this isn't a viable option

so we will move on to realistic cost effective approaches.

SECOND METHOD - This is what we call **Search Engine Optimization**.

What we mean by this is the Optimization of your web site to make the search engine(s) think your web site is one of the most relevant web sites in it's index for the relevant key word(s). Let's elaborate: Search engines

are trying to serve their customers as best they can. Search Engines make their money by selling advertising, they're not charitable or public service

entities. The more people that use search engines, the more money the search engine they can charge for their advertising. You see, the search

engines spam you with ads when you do a search. Well, the search engines

want to do the best job for those who use their search engine, so the customers

will keep using their search engine.

We have developed State Of The Art technology to convince the large search engines, such as INFOSEEK, LYCOS, ALTA VISTA , MAGELLEN and YAHOO, to place web sites for our customers in the first 10 listings.

This

completely changes things and all of a sudden you begin to see all kinds of hits,

inquiries and orders. Results are often noticeable in 48 hours. In

99% of

the cases there is no noticeable change in the appearance or function of your

actual web site and there is no need to move your web site to another location.

If you're concerned about keeping your position we offer low cost maintenance

service, but it is very common to hold the FIRST TEN spots in major search engines for 3-6 months. We're are so confident in our abilities we even guarantee our work.

For more information on our **search engine Optimization service**,

Go To: <http://www.ascella.net/gotham/search.html>

We also take judicial notice of the following definition of the term Search Engine Optimization:<sup>4</sup>

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<sup>4</sup> University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).



Designing a Web site so that search engines easily find the pages and index them. The goal is to have your page be in the [first] 10 results of a search. Optimization includes the choice of words used in the text paragraphs and the placement of those words on the page, both visible and hidden inside meta tags. Search engines use different criteria for indexing, and those criteria may change. Thus, it becomes increasingly difficult to satisfy every one equally. Yahoo! And other directory-oriented search sites manually index a Web site, which may provide the best results for the user.

McGraw Hill Computer Desktop Encyclopedia 977 (9<sup>th</sup> ed. 2001).

When we consider the dictionary definition of the term "search engine optimization," the use of "search engine optimization" in the third-party websites, and the example of applicant's own descriptive use of that phrase, we find that SEARCH ENGINE OPTIMIZATION is, at a minimum, descriptive of a significant feature of applicant's services, namely, that applicant offers advertising services that include the provision of or consulting on search engine optimization.

Moreover, the combination of the terms "search" "engine" and "optimization" does not create any double entendre, incongruity, or any other basis upon which we can find the composite any more registrable than its separate elements. In re Microsoft Corp., 68 USPQ2d 1195 (TTAB

2003); see also *In re Martin Container Inc.*, 65 USPQ2d 1058 (TTAB 2002).

Applicant argues that it is the first to use this term. Even if that were the case in 1997, the mere fact that someone is the first to use a term or combination of words does not mean that the term or phrase is not descriptive. *In re National Shooting Sports Foundation Inc.*, 219 USPQ 1018 (TTAB 1983). Moreover, the evidence of record establishes that, now, eleven years later it is widely used by third parties and defined, since at least 2001, as a method of drawing more traffic to a website.

Applicant does not seem to dispute that search engine optimization is the name of a "process" but argues that:

As attached in the refusal were printouts from various websites demonstrating, the term "search engine optimization" and being used to describe the process. Applicant emphasizes here at the significant point of interest being the known user defined definition that exists for "search engine optimization," currently as a process not a service. When the reviewing attorney is considering the proposed mark in relation to the goods, it is clear the applicant's services differ in every characteristic to the "goods," or "process," of any aspect of "search engine optimization" as currently being understood. Respectfully, the reviewing attorney incorrectly defines applicants marketing services as "A means of ensuring that a business webpage is accessible to search engines and is focused in ways that help improve the chance they will be discovered." The reviewing attorney in other words states, "The proposed mark describes both the use and function of the applicant's marketing services."

The applicant again brings to the attention the correct service definition of the mark "search engine optimization," as; "Marketing Services in the Field of Computers in the Nature of Providing Marketing Services for the Benefit of others by compiling advertising campaigns, promotional services, and consulting for customers." This definition of the mark differs drastically from the assumed service definition of the reviewing attorney...Search Engine Optimization as currently understood to the general public as being a process...The difference between a service and a process is the distinguishing factor when reviewing Applicants application.

App. Br. p. 4.

Applicant seems to argue that because its identification is for services and not a process SEARCH ENGINE OPTIMIZATION is not descriptive in that context. This argument is unpersuasive. It is appropriate for an examining attorney to review applicant's specimen of use "to inform [her] understanding of the term." In re Reed Elsevier Properties Inc., 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007), citing, In re Steelbuilding.com, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005). In the case before us, the examining attorney used the specimen of use submitted by applicant to inform her understanding of applicant's services. As is clear from the specimen of use, a significant feature of applicant's advertising services is the provision of or consulting about this process called search engine optimization.

Applicant's argument is similar to arguments presented in *In re DNI Holdings Ltd.*, 77 USPQ2d 1435 (TTAB 2005) (*SPORTS BETTING.COM* held to be generic for "provision of casino games on and through a global computer network wherein there are no actual monetary wagers; provision of contests and sweepstakes on and through a global computer network; providing a web site on and through a global computer network featuring information in the fields of gaming, athletic competition and entertainment"). In *DNI Holdings*, the Board characterized the applicant's argument as follows:

Applicant argues that even if it is true that applicant is providing services through its website wherein consumers are actually able to wager money on sports, applicant is not seeking registration for these services. In fact, it specifically limited the claimed services so as to exclude monetary wagering. As a result, applicant argues that the Trademark Examining Attorney's refusal to register its mark, based upon genericness for services not claimed by applicant, cannot stand.

*DNI Holdings*, 77 USPQ2d at 1437.

In response to this argument the Board stated, "[I]t is clear that the analytical focus on the recitation of services is based on the premise that the recitation accurately reflects actual conditions of use of the involved term." *Id.* at 1438. Finally, the Board noted that even if it were "constrained to ignore the realities

of use actually made by applicant because applicant has purposely drafted a description omitting that use ... applicant's recitation of services includes the providing of a website 'featuring information in the fields of gaming, athletic competition and entertainment'... [and this recitation] still clearly includes that of providing information regarding sports and betting." Id. at 1438.

Similarly, here, as noted above, even without looking at applicant's actual use, the broadly defined services in the identification, "development of advertising campaigns for use on computers and related consulting," encompass the uses for which the wording SEARCH ENGINE OPTIMIZATION is descriptive, i.e., providing or consulting on search engine optimization. Applicant is correct in its statement of the law that our determination must be made in relation to the goods or services for which registration is sought, not in the abstract. We add that an application for registration must be made in relation to the goods or services which applicant uses or has a bona fide intent to use, not in the abstract.

We are persuaded that SEARCH ENGINE OPTIMIZATION when used in connection with the recited services would immediately inform the potential customers of a significant aspect of those services, i.e., that by using "what

[applicant] call[s] Search Engine Optimization" applicant will optimize the customer's "web site to make the search engine(s) think [the customer's] web site is one of the most relevant web sites in its index for the relevant key word(s)" by using its "State Of The Art technology to convince the large search engines... to place web sites for [its] customers in the first 10 listings." See Applicant's Specimen of Use. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for prospective customers of applicant's advertising services to perceive readily the merely descriptive significance of the term SEARCH ENGINE OPTIMIZATION as it pertains to applicant's services. In view thereof, we find that SEARCH ENGINE OPTIMIZATION is merely descriptive.<sup>5</sup>

Refusal Based on Likelihood of Confusion Under Section 2(d)

Although we have found applicant's mark to be merely descriptive and therefore unregistrable, we will, in order to render a decision on all the issues before us, now turn

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<sup>5</sup> Applicant's arguments based on its co-pending application for SEO which was approved for publication do not persuade us of a different result. First, the subject matter of that application, SEO, is different from the proposed mark in this application, SEARCH ENGINE OPTIMIZATION. Second, decisions made by examining attorneys in prior applications are not binding on the Board. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("the Board...must assess each mark on the record of public perception submitted with the application.")

to a consideration of the refusal based on the ground of likelihood of confusion.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We analyze the similarity or dissimilarity of marks in terms of their appearance, sound, connotation and commercial impression. It is well settled that the proper test in determining likelihood of confusion is not on a side-by-side comparison of the marks, rather, the determination must be based on the recollection of the average purchasers, who normally retain a general rather than specific impression of the many trademarks encountered. See *Spoons Restaurants Inc. v. Morrison*,

Inc., 23 USPQ2d 1735 (TTAB 1991). Applicant's proposed mark SEARCH ENGINE OPTIMIZATION is nearly identical in appearance, sound, connotation and commercial impression to registrant's mark SEARCH ENGINE OPTIMIZATION ENGINE. The presence of the disclaimer in registrant's mark does not remove that matter for purposes of evaluating the similarity of the marks. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("The technicality of a disclaimer in National's application to register its mark has no legal effect on the issue of likelihood of confusion. The public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO.") The addition of ENGINE at the end of registrant's mark is not sufficient to distinguish the otherwise identical marks. Therefore, the factor of the similarity of the marks favors a finding of likelihood of confusion.

We also find the services to be sufficiently related that, if identified by similar marks, consumers would mistakenly believe the services emanate from the same source. It is well settled that goods or services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods or services



themselves, but rather whether purchasers are likely to confuse the source of the goods or services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider the cited registrant's goods or services as they are described in the registration and we cannot read limitations into those goods or services. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); and *Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987).

Both applicant's services "providing advertising, marketing and promotional services, namely development of advertising campaigns for use on computers and related consulting" and registrant's services "providing on-line non-downloadable computer search engine software" involve search engine optimization. As shown on the registrant's website, a significant feature of registrant's non-downloadable software is to provide search engine optimization. October 20, 2008 Office Action. As the examining attorney explains "[t]he services of the respective parties are thereby related since they both involve a means of providing a search engine marketing technique that seeks to promote websites by increasing their visibility and effectiveness." Br. p. 6.

If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all channels of trade normal for these goods or services, and that they are available to all classes of purchasers for the described goods or services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992). Inasmuch as the recitations of services in the application and registration are not limited to any specific channels of trade, we presume an overlap in trade channels and that the services would be offered to all normal classes of purchasers.

In view of the above, the du Pont factors of the similarity of the services and the channels of trade favor a finding of likelihood of confusion as to the cited registration.

As to the du Pont factor of the strength of the mark, while the fact that the cited registration is on the Supplemental Register does not constitute an admission that the mark has not acquired distinctiveness, 15 U.S.C. §1095, it is an implied admission that the registered term was descriptive at least at the time of the registrant's first use of the term. *Perma Ceram Enterprises Inc. v. Preco*

Industries, Ltd., 23 USPQ2d 1134 n.11 (TTAB 1992). See also In re Rosemount Inc., 86 USPQ2d 1436, 1439 (TTAB 2008). That being said, weak marks are entitled to protection against registration by a subsequent applicant of the same or similar mark for the same or closely related goods or services. King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974); and Hollister Inc. v. IdentAPet, Inc., 193 USPQ 439 (TTAB 1976). Due to the highly similar nature of the marks and closely related services, the record in this case supports a finding of likelihood of confusion.

Applicant's argument that it has priority over the registrant is misplaced. In the context of an ex parte refusal, priority is not an issue. In re Calgon Corp., 168 USPQ 278, 280 (CCPA 1971) (Section 2(d) "proscribes registration of a trademark which so resembles, inter alia, a *mark registered* in the Patent Office ... that portion of §2(d) does not speak of priority but of a 'mark registered'"). This applies equally to Supplemental Registrations. Section 23(a) explicitly makes Section 2(d) applicable to Supplemental Registrations:

All marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of

this title, which are in lawful use in commerce...may be registered on the supplemental register..."

15 U.S.C. §1091. See also In re The Clorox Company, 198 USPQ 337, 339-340 (CCPA 1978) (in discussing a prior version of Section 23 the court stated:

"Section 2(d)'s absence from the enumeration of statutory provisions made inapplicable to the Supplemental Register establishes unequivocally its applicability to 'registrations on the supplemental register.'").

Applicant's recourse is the filing of a petition to cancel the registration; the Board may not cancel a registration in an ex parte proceeding.

In conclusion, we hold that because the marks are highly similar, the services are closely related, and the channels of trade are the same or overlapping, confusion is likely between applicant's mark and the mark in the cited registration.

Specimen Does Not Show Use of the Mark Under Section 45

Section 1 of the Trademark Act requires that the subject matter presented for registration be a trademark or service mark. Section 45 defines a service mark as "any word...used...to identify and distinguish the services of one person..." 15 U.S.C. §1127. Thus, subject matter

that due to its inherent nature or the manner in which it is used, does not function as a mark to identify and distinguish the applicant's services cannot be registered. "While a service mark does not have to be displayed in any particular size or degree of prominence, it must be used in a way that makes a commercial impression separate and apart from the other elements of the advertising matter or other material upon which it is used, such that the designation will be recognized by prospective purchasers as a source identifier." TMEP §1301.02 (6<sup>th</sup> ed. 2009). See also *In re Universal Oil Products CO.*, 476 F.2d 653, 177 USPQ 456 (CCPA 1973) (a term that identifies only a process does not function as a service mark).

As the examining attorney states, a "specimen must show use of the mark in a manner that would be perceived by potential purchasers as identifying the applicant's services and indicating their source." The examining attorney takes the position that the term SEARCH ENGINE OPTIMIZATION "is buried in the text of the email to such a degree that the impression made by the term on the purchasing public is simply that of an informational or descriptive statement about the function or purpose of applicant's services and thus, it would not be perceived as an indicator of source. Moreover, there is no

distinguishing feature between this designation and the other facts outlined in the message. In other words, there is nothing that sets this particular entry apart from the remaining text which would lead a consumer to thin[k] that the wording serves as a source identifier for the particular services offered by applicant." Br. pp. 10-11.

We discern no error in the examining attorney's analysis as to the email specimens. In addition, the proposed mark appears in the website specimen of use as part of a list of generic names for various services, including web design, website marketing, e-commerce and search engine optimization. Upon review of the various specimens of use, we find that they do not serve to identify and distinguish the services of one person, and, as such, do not show use of SEARCH ENGINE OPTIMIZATION as a service mark.

**Decision:** The refusals to register under Sections 2(e)(1), 2(d), 1 and 45 of the Trademark Act are affirmed.<sup>6</sup>

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<sup>6</sup> In addition, to the extent applicant's arguments regarding the requirement for an amended identification served to preserve this issue for appeal, the requirement to amend the identification of services is also affirmed.