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Mailed:
June 18, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ad.com Interactive Media

Serial No. 77832668

Tal Grinblat of Lewitt Hackman Shapiro Marshall & Harlan
for ad.com Interactive Media.

Thomas M. Manor, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Cataldo, Bergsman and Kuczma
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

ad.com Interactive Media a/k/a Ad Media ("applicant")
filed a used-based application for the mark ADMEDIA, as
amended, in standard character form, for the following
services in Class 35:

Advertising agencies; Advertising and
advertisement services; Advertising and
marketing; Advertising and publicity
services; Advertising consultation;
Advertising services, namely, cost-per-
action on-line advertising; Advertising
services, namely, promoting the books
of others in the field of law by means
of news and reviews regarding same;
Advertising via electronic media and
specifically the internet; Advertising,
marketing and promotion services;

Mediation of advertising; On-line advertising services for others; Pay per click (PPC) advertising management services; Placing advertisements for others; Preparation and realization of media and advertising plans and concepts; Preparing advertisements for others; Providing and rental of advertising space on the internet; Provision of space on websites for advertising goods and services; Rental of advertising space on web sites; Services of advertising agencies.

Registration was initially refused pursuant to § 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of applicant's services; applicant was also advised that the mark appeared to be generic. In response, applicant submitted evidence of distinctiveness and sought to amend its application to include a claim of acquired distinctiveness under § 2(f). Applicant's evidence of distinctiveness was deemed to be insufficient, and the refusal under § 2(e)(1) was maintained along with a new refusal on the ground that the mark was generic for applicant's services. Applicant subsequently amended its application to seek registration on the Supplemental Trademark Register. The examining attorney issued a final refusal to register the mark on the Supplemental Register pursuant to § 23(c), 15 U.S.C. § 1091(c), on the ground that the mark is generic for applicant's services also

noting that registration was refused under § 2(e)(1) on the grounds of descriptiveness.¹

Issue on Appeal

The only issue on appeal is whether the term ADMEDIA is generic for the recited services. Descriptiveness is not an issue in this case, where applicant has already acknowledged, by seeking registration of ADMEDIA on the Supplemental Register, and by seeking registration under § 2(f), that its mark is not inherently distinctive.²

Genericness Refusal

Determining whether a mark is generic involves a two-step inquiry: First, what is the genus of goods or

¹ In his appeal brief, the examining attorney apologized and acknowledged he erred in interchangeably referencing § 2(e)(1) and § 23(c) and the term "descriptive" for the term "generic." See Examining Attorney's Appeal Brief p. 4 (unnumbered). Despite the examining attorney's confusion, the grounds for the refusal were clear as evidenced by the Issue articulated in applicant's appeal brief (Brief for Appellant at pp. 1-2 hereafter referred to as "applicant's appeal brief"). We note that applicant's statement of the final refusal on p. 1 of its appeal brief erroneously includes the word "not" instead of the word "now," i.e., ". . . Applicant amended the application to the Supplemental Register which is no[w] subject to the Final refusal."

² Registration on the Supplemental Register is *prima facie* evidence that, at least at the time of registration, the registered mark was merely descriptive. *In re Central Soya Co., Inc.*, 220 USPQ 914, 917 (TTAB 1984). By claiming distinctiveness under § 2(f), applicant conceded the descriptiveness of the mark. See *Cold War Museum, Inc. v. Cold War Air Museum Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009) ("Where an applicant seeks registration on the basis of Section 2(f), the mark's descriptiveness is a nonissue; an applicant's reliance on Section 2(f) during prosecution presumes that the mark is descriptive.").

services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of services? *H. Marvin Ginn Corp. v. International Assoc. of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

To deny the registration of a mark as generic, the USPTO has the burden of "substantial[ly] showing . . . that the matter is in fact generic . . . based on clear evidence of generic use." *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832, 1835 (Fed. Cir. 1999); and *In re Trek 2000 International Ltd.*, 97 USPQ2d 1106, 1108 (TTAB 2010).

1. Definition of Genus

We begin by determining the appropriate genus of services at issue in this case. The genus proposed by the examining attorney, i.e., "advertising services presented and/or delivered through media," does not encompass all of the services recited in the application.³ The genus proposed by applicant, "services to optimize the distribution of advertising and provide results-based

³ Examining Attorney's Appeal Brief p. 7 (unnumbered).

interactive marketing," fares no better.⁴ While applicant is apparently providing such services, these services are but a narrow sliver of the advertising services recited in its application.

Applicant's substitute specimen consisting of a portion of its website advertises "Cost Effective Advertising Solutions" and indicates that applicant has "developed an extensive list of advertising tools so that there is an option for every type of campaign . . . Admedia can create a successful campaign based on your needs . . . AdMedia reporting keeps you on top of your accounts by allowing you to track campaign results on one page."⁵

Applicant's ad that was published in the Spring 2010 issues of Search Marketing and Revenue Performance magazines advertises the breadth of applicant's services: "AdMedia, the one stop shop for everything Advertising!" explaining that "AdMedia is here with solutions to all of your marketing problems. . . AdMedia offers a variety of Advertising solutions that fit every size, style and budget

⁴ Applicant's Appeal Brief p. 8.

⁵ Exhibit 3 to Declaration of Daniel Khoshnood submitted with applicant's 6/7/2010 Response to Office Action. Although the substitute specimen submitted with the Khoshnood Declaration attested that the substitute specimen was in use in commerce at least as early as the [September 23, 2009,] filing date of the

. . . Tracking your campaign results is also made easier than ever" Applicant's radio commercial similarly advertises applicant as "Your one stop source for full service solutions is admedia.com."⁶ The Declarations of applicant's customers state that "when [they] see the 'AdMedia' name, [they] recognize it as the company [they] use to provide advertising services. To [them] the 'AdMedia' name signifies a dependable advertising company."⁷ The foregoing evidence demonstrates the inadequacies of the genera⁸ proffered by both the examining attorney and applicant.

Accordingly, we find that the genus is appropriately defined by the description of services recited in the application, re-organized and condensed as follows:

Advertising agencies; and Services of advertising agencies
Preparing and placing advertisements for others;
Preparation and realization of media and advertising plans and concepts;

application, it is noted that the copyright notice on the substitute specimen is dated 2010.

⁶ Exhibit 1 to Declaration of Daniel Khoshnood submitted with applicant's 6/7/2010 response to Office Action.

⁷ Exhibit 2 to Declaration of Daniel Khoshnood submitted with applicant's 6/7/2010 response to Office Action.

⁸ "Genera" is the plural form of "genus." *Webster's Third New International Dictionary of the English Language Unabridged*, copyright 1993 by Merriam-Webster Inc.

Advertising, advertisement, marketing,
promotion and publicity services;
Advertising consultation;

On-line advertising services for
others;

Advertising services, namely, promoting
the books of others in the field of law
by means of news and reviews regarding
same;

Advertising services, namely, cost-per-
action on-line advertising;
Advertising via electronic media and
specifically the internet;
Pay per click (PPC) advertising
management services;

Providing and rental of advertising
space on the internet and websites;

Provision of space on websites for
advertising goods and services;

Mediation of advertising.

Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551,
1552 (Fed. Cir. 1991) (“[A] proper genericness inquiry
focuses on the description of [goods or] services set forth
the in the [application or] certificate of registration.”).
More succinctly, the genus includes “advertising,
marketing, promotion and publicity services.” As discussed
above, the record supports the appropriateness of this
genus.

2. Primary Significance to Relevant Public

Next, we must determine whether the primary significance of applicant's ADMEDIA mark is understood by the relevant public primarily to refer to that genus of services. *Marvin Ginn*, 228 USPQ at 530. The "relevant public" for goods sold in the marketplace is limited to actual or potential purchasers of the services. *Magic Wand*, 19 USPQ2d at 1552-53.

Neither the examining attorney nor applicant has defined the relevant public. Based on the evidence in the record, the relevant public consists of those entities who advertise and market their products and services whether through traditional means or via online or digital methods. This includes a variety of industries that specialize in e-retailing such as retail, catalog, manufacturing and consumer services. It also includes "affiliate" marketers, i.e., website publishers, bloggers and application developers. Based on the venues and contents of applicant's advertising, the trade shows which it has attended, the substitute specimen from its website, and the declarations from its President and three of its customers,

there is no evidence that the relevant public includes the end consumer or the general public.⁹

In assessing the relevant public's understanding or perception of the ADMEDIA mark, evidence may be considered from any competent source such as consumer surveys, purchaser testimony, catalogs, and listings in dictionaries, trade journals, magazines, newspapers and other publications. See *In re Merrill Lynch, Pierce, Fenner and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985); and *Dan Robbins & Associates, Inc. v. Questor Corp.*, 599 F.2d 1009, 202 USPQ 100, 105 (CCPA 1979).

We now turn to the evidence of record to determine the public's understanding of the ADMEDIA mark.

a) **Meaning of Mark**

Any inquiry into the relevant public's understanding of the ADMEDIA mark requires consideration of the mark as a whole, not from its elements separated and considered in detail. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1811 (Fed. Cir. 2001) citing *Estate*

⁹ See Declaration of Daniel Khoshnood and the accompanying Exhibits 1-3, submitted with applicant's June 7, 2010 response to Office Action.

of *P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 545-46, (1920). In the absence of any evidence that "admedia" is a word in the English language, the examining attorney identified the individual components of applicant's mark as "ad" for advertisement/advertising, and "media," and submitted the following definitions:

1) *Encarta*[®] *World English Dictionary*: North American Edition, defines in relevant part(s):

Ad: noun. Definition: marketing (informal). Same as advertisement. [Mid-19th century. Shortening]

Media: noun. Definition: television, newspapers, and radio collectively: the various means of mass communication considered as a whole, including television, radio, magazines, and newspapers, together with the people involved in their production (takes a singular or plural verb) Definition: Plural of medium [Early 20th century. Plural of medium]¹⁰

2) <http://www.businessdictionary.com/definition/advertising-media.html>

Advertising media: various means (advertising vehicles) such as billboards, magazines, newspapers, radio, television and internet by which promotional messages are communicated to the public using words, speech and pictures.¹¹

The examining attorney argues that these definitions indicate that to the average consumer, the term AD MEDIA

¹⁰ See 12/8/2009 Office Action.

¹¹ See 7/6/2010 Office Action. Applicant also submitted the same definition from www.businessdictionary.com with its 12/23/2010 response to Office Action.

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immediately conveys that "advertising media" services are being offered by applicant. We find that the foregoing evidence establishes that "ad" is a variant for "advertising," that "ad" and "media" are generic terms, and that "advertising media" is a well-established term. This does not end our inquiry. Even if each of the constituent words in a compound mark such as ADMEDIA is generic, the combination is not generic unless the entire formulation does not add any meaning to the otherwise generic mark. *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005), citing to *American Fertility Society*, 51 USPQ2d at 1836.

Applicant argues that the term ADMEDIA cannot be generic because it does not appear in any dictionary. According to applicant, if the term does not have any meaning, it cannot be said that the public understands applicant's mark to be generic.¹²

However, the fact that a compound descriptive word/term is not in the dictionary is not controlling on the question of registrability. See *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111-12 (Fed. Cir.

¹² See Applicant's Appeal Brief p.5; and Declaration of Nicholas Kanter submitted with applicant's 12/23/2010 response to Office Action. Mr. Kanter states that he checked 5 online dictionaries and found no listings for the term "AdMedia."

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1987); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977); and TMEP § 1209.03(b) (8th Ed.). Where a term is a "compound word" (such as "ADMEDIA"), the USPTO may satisfy its burden of proving a term generic by producing evidence that each of the constituent words is generic, and that "the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound." *Gould*, 5 USPQ2d at 1111-12.

This *Gould* test is applicable only to "compound terms formed by the union of words" where the public understands the individual terms to be generic for a genus of goods or services, and the joining of the individual terms into one compound word lends "no additional meaning to the term." *American Fertility*, 51 USPQ2d at 1837. Here, the joinder of the words "ad" and "media" into a single term creates no additional meaning, impression or nuance other than the meaning associated with the individual words as used together. Viewers would recognize the mark as consisting of the separate elements AD and MEDIA. *See Gould*, 5 USPQ2d at 1112 (SCREENWIPE generic for a wipe for cleaning television and computer screens); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978) (GASBADGE at least descriptive for gas monitoring badges; three judges concurred in finding that term was the name of the goods);

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In re Cox Enterprises Inc., 82 USPQ2d 1040, 1043 (TTAB 2007) (“THEATL is simply a compressed version of the descriptive term THE ATL without a space between the two words. Without the space, THEATL is equivalent in sound, meaning and impression to THE ATL and is equally descriptive of applicant's goods”); and *In re Planalytics Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) (GASBUYER merely descriptive of providing on-line risk management services in the field of pricing and purchasing decisions for natural gas; the absence of the space does not create a different meaning or perception of the term).

In further support of the genericness of ADMEDIA, the examining attorney also introduced evidence pertaining to the definitions of advertising terminology as set forth in third-party websites:

Advertising Media: the means by which an advertising message is carried to potential customers, including Internet, magazine, newspaper, radio, signage and television.
<http://www.morethanjustsigns.com/glossary.htm>

Advertising Agency: company that creates, prepares and places advertising in various media, working as agent for its client (advertiser).

Advertising Media: in advertising the term “media” refers to communication vehicles such a magazines/journals, newspapers, radio, television, billboards, direct mail and new media (internet, SMS, etc.). Advertisers use media to convey commercial messages to their target audiences, and depend to different degrees on advertising revenues to cover the cost of their operations. Each advertising media has its own terminology, target audience, measurement methods, costing structures, and auditing bodies.
<http://www.myadbase.com/cgi-bin/terminology.cgi>¹³

¹³ See 7/6/2010 Office Action.

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The masthead of the foregoing myadbase.com site reinforces the close association between advertising media and ad agency services:

your advertising marketplace. **myadbase.com** Where Buyers
Find Advertising Media And Agency Services

In view of the foregoing, there is some basis for the relevant public to perceive ADMEDIA as merely a common name for advertising and marketing services rather than a mark identifying the source of applicant's services. Little is left for speculation or conjecture as the compound term ADMEDIA immediately describes the nature of the advertising and marketing services identified in the genus.

b) Published Articles

The examining attorney also submitted portions of 30 articles from a *Lexis-Nexis* search evidencing generic use of the term "ad media" consistent with the definitions of "advertising media" in the record.¹⁴ Articles retrieved from *Lexis-Nexis* are competent evidence of, *inter alia*, genericness. See *In re Web Communications*, 49 USPQ2d 1478, 1479-80 (TTAB 1998); and *In re Shiva Corp.*, 48 USPQ2d 1957, 1958 (TTAB 1998). These articles provide sufficient evidence that the term "ad media" is commonly used as a

shortened form of the term "advertising media."¹⁵ For example:

HEADLINE: More Advertising Dollars Are Going Online

... Also, online advertising is much more measurable. The new technology makes it easy to determine just how many people respond to the ad, making it easier to compute a return on investment as compared to traditional **ad media**. ... Advertisers are taking notice and moving their ad dollars away from newspapers, radio and TV and putting a bigger share online."

January 1, 2008. Wisconsin State Journal (Madison, WI)

Several of the articles use the term "ad media" in connection with related services:

HEADLINE: New Metrics for a New Age: A Battle With Complexities

... No matter what the final outcome, just as we will never return to watching black-and-white TV, advertising, **ad media** and the metrics we use to value them will never be the same.

April 9, 2007 Television Week

[shows relatedness of advertising, ad media and evaluating effectiveness]

HEADLINE: Better Measure for Web Ads: "... [in context text of discussing web ads] Not all exposures are engaged exposures, and we want our measurement of **ad media** to account for the difference. ... "

January 14, 2008 The Washington Post

[ad media is measured]

HEADLINE: InsightExpress Appoints Marc Ryan to its Executive Committee as Senior Vice President, Chief Research Officer

Marc has a broad understanding of the digital world and has been previously responsible for the development of many online services such as substantially increasing **ad/media** measurement revenue through product innovation, and directing product management and related strategy for custom survey businesses.

January 27, 2010 Business Wire

[references measurement of ad media as a service]

HEADLINE: Dex One reports loss, sees ad sales falling: As advertisers shift their advertising away from traditional media, Dex is positioning itself as a "marketing services company." It has been expanding ... as well as offering services such as search engine optimization ... In all the company now has seven "platforms" for generating

¹⁴ See evidence submitted with 7/6/2010 Office Action.

¹⁵ Newswire stories have probative value because of the increasing use of the personal computer to obtain news and information. See *In re Cell Therapeutics Inc.*, 67 USPQ2d 1795, 1798 (TTAB 2003).

revenue. Moreover, it no longer sells print-only ads, choosing instead to bundle print ads with other **ad media**.”

March 5, 2010 The News & Observer (Raleigh, NC)

[shows relationship of advertising and marketing; also shows relationship of search engine optimization (genus defined by applicant) to ad media].

(emphasis and bracketed comments added).

Additionally, several articles provide evidence that the term “ad media” is used to identify far more than merely a means of communicating promotional messages:

HEADLINE: Dove to air consumer’s do-it-yourself ad during Oscars; Commercial time will go for about \$1.7 million: “I like the fact that Dove is doing a preamble,” says John Moore of **ad media** buyer mediaHUB.

February 23, 2007 USA Today

[refers to the type/nature of company mediaHUB as an “ad media buyer”]

HEADLINE: Agencies Must Compromise on Question of Rating Commercials: . . . Both faculty and students must be educated about the opportunities in the **ad media** business..

March 5, 2007 Television Week

[shows use of ad media to refer to industry]

HEADLINE: Huge profit to Hellman on DoubleClick

“Given that ad revenues are a huge part of Google’s business and DoubleClick is a leader in the space, it makes sense for them to move further into the **ad media** realm and put some of their case to use.” Bowers said.

April 17, 2007 Daily Deal/The Deal

[shows broader use of ad media than just to refer to an ad medium]

BOOK EXCERPT HEADLINE: Who’s Selling, Who’s Buying, who’s counting; Verklin/Kanner Book Takes a Behind-the-Scenes Look at the Constantly Changing Landscape of Media Advertising: David Verklin burst upon the **ad media** scene almost 20 years ago . . .

June 4, 2007

[broader reference to ad media, referencing industry]

DATELINE: San Diego HEADLINE: Tata Indicom And Mast Mobile Media Partner to Launch First-Ever Interactive Mobile eMbiance Licenses Mobile Advertisement Platform: Tata Indicom, India’s premiere telecom operator and Mast Mobile Media Pvt. Ltd., an India-based mobile **ad media** and technology company, today announced the distribution of interactive advertisements in . . .”

June 20, 2007 Business Wire

[refers to type of company as a mobile ad media and technology company]

HEADLINE: Hated, Dead Ex Worth \$20M: . . . At the time of her death, Amy – president of an **ad media** firm whose clients included . . .

September 29, 2007 The New York Post

["ad media" is used to identify the type of a firm or business]

HEADLINE: Michael Smerconish: The "Missing" Ingredient: It would be easy to condemn the **ad media** for the disparity . . .

February 21, 2008 The Philadelphia Daily News

[use of term "ad media" to refer to the industry].

(emphasis and bracketed comments added).

In its December 23, 2010 response to Office Action, applicant argues "assuming arguendo that 'ad media' means advertising media," it is not a generic term because advertising media is generally understood to refer to an advertising medium or means of advertising which does not describe applicant's genus. As demonstrated by the foregoing articles, not only is the term "ad media" used as a variant of "advertising media," it also is used in a broad sense to refer to an industry which provides the types of services offered by applicant and covered in the genus established for this case.

The article entitled: "Advertising Media Planning: A Primer" by Hairong Li, of Michigan State University, submitted by the examining attorney also provides support for the broad application of the term "advertising media" in connection with and to identify media and the

advertising industry.¹⁶ The following excerpts from the article provide further insight into the breadth of the term "advertising media:"

(1. Introduction) Media planners are playing an increasingly important role in today's advertising industry because of the continuing proliferation of new media options and the increased complexity of media and audience research . . . (2. Media Objectives) How is a media plan developed? Media planning is a four-step process which consists of 1) setting media objectives in light of marketing and advertising objectives, 2) developing a media strategy for implementing media objectives, 3) designing media tactics for realizing media strategy, and 4) proposing procedures for evaluating the effectiveness of the media plan . . . (3. Media Strategies) Media planners make three crucial decisions; where to advertise (geography), when to advertise (timing), and what media categories to use (media mix) . . . (4. Designing Media Tactics) Establishing media objectives and developing media strategies are the primary tasks of media planners . . . (End of article: This article described the media planning process, starting from establishing media objectives through to developing media strategies and tactics and finally evaluating the effectiveness of the media plan

Use of "advertising media" within the context of the foregoing article is evidence which strongly supports finding that the relevant public would understand the term "admedia" to identify the services in the defined genus.

c) Third Party Registrations

The examining attorney made of record 28 third-party registrations for various marks registered for a variety of advertising and marketing services and incorporating the

¹⁶ See 2/3/2011 Office Action. The article indicates that it is from "Google's cache of <http://www.admedia.org>." It is notable that this website contains the compound term "admedia." Printouts of articles down loaded 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. *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370-71 (TTAB 1998).

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terms "ad," "advertising" and/or "media" which are disclaimed.¹⁷ As shown in the summary chart below, the disclaimers of the words "ad" and "media" for the identified services evidence that the public is likely to understand such terms to be generic for a variety of services that are the same as those set forth in the defined genus:

Registration No.	Mark	Goods/Services	Disclaimer
2663192	AD PEPPER & Design	Development and dissemination of online advertising for others; consultation in the field of the development and dissemination of online advertising for others (Class 35)	Ad
2907479 (cancelled)	PINPOINT INTERACTIVE MEDIA	ELECTRONIC WEBSITE ADVERTISING SERVICES, NAMELY, CREATING ONLINE ADVERTISEMENTS FOR OTHERS, PLACING ADVERTISEMENTS AND PROMOTIONS FOR OTHERS ON THE INTERNET, ONLINE MEDIA BUYING AND ONLINE MEDIA PLANNING INCLUDING BANNERS, SPONSORSHIPS AND E-MAIL VEHICLES (Class 35)	Interactive Media
3003776	CRUSADE MEDIA	ADVERTING AND PROMOTIONAL SERVICES, NAMELY, PLACING ADVERTISEMENTS FOR OTHERS, ADVERTISING CONSULTANCY, MARKET RESEARCH AND MARKETING RESEARCH STUDIES, ANALYSIS OF ADVERTISING RESPONSE AND MARKET RESEARCH; BUSINESS ADVISORY SERVICES; COMPUTERIZED DATA-BASED MANAGEMENT SERVICES; DATA PROCESSING (Class 35)	Media

¹⁷ See attachments to 12/8/2009 Office Action.

3040286	AD XL PROMOTIONAL ADVERTISING & MARKETING, INC. & Design	Advertising and marketing (Class 35)	Ad and Promotional Advertising & Marketing, Inc.
3083732	THE AD KITCHEN & Design	Advertising agency (Class 35)	The Ad
3104486	MADAVOR MEDIA	Providing advertising space in magazines and on websites for the goods and services of others (Class 35)	Media
3147337	MIGHTY INTERACTIVE MEDIA & Design	Advertising, marketing and promotion services, via the Internet (Class 35)	Interactive Media
3198557	CRUNCH AD	Advertising and commercial information services, via the internet (Class 35)	Ad
3200906	AD CHAMPION	Business marketing, promotion and consulting services for others in the field of search engine marketing; developing search engine strategies to increase business presence on the internet; promoting the goods and services of others through research engine referral traffic analysis and reporting; developing marketing strategies for others using search engine and email (Class 35)	Ad
3202668	THE AD ANIMAL	Advertising agency services, namely developing marketing strategies and promotional campaigns for the goods and services of others (Class 35)	Ad
3293310	ADWINGS MEDIA	Electronic advertisement and messaging display unit with multi-networking (TCP/IP) capabilities and remote connectivity (Class 9) Advertising and advertisement services; Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on- line medium; Advertising particularly services for the promotion of goods; Advertising via electronic media and specifically the	Media

		internet; Creating and updating advertising material; Dissemination of advertising for others via an on-line communications network on the internet; Dissemination of advertising for others via the Internet; Electronic billboard advertising; Preparation of custom advertisements for others; Preparation of custom or non-custom advertising for businesses for dissemination via the web, CD or DVD for optional upload or download to a computer; Preparing and placing advertisements for others; Providing and rental of advertising space on the internet; Providing space at a web site for the advertisement of the goods and services of others (Class 35)	
3321910	DEAD HORSE MEDIA	Publishing of electronic publications; publishing of books and magazines (Class 35)	Media
3335173	ROAD RAGE MEDIA	Advertising and publicity services, namely, promoting the goods, services, brand identity and commercial information and news of third parties through print, audio, video, digital and on-line media (Class 35)	Media
3444462	THE AD CORRAL	Advertising and business management consultancy (Class 35)	Ad
3453554	PADMA MEDIA	Public relations and marketing consulting services (Class 35)	Media
3511374	GD AD DESIGN & Design	Advertising and advertisement services; Advertising and marketing; Advertising and promotional services; Advertising services; Advertising services, namely, creating corporate and brand identity for others; Advertising services, namely, creating corporate logos for others; Business card design services; Creating and updating advertising material; Creative marketing design services; Design of advertising flyers for others; Design of advertising materials for others; Layout services for advertising purposes; Preparation of custom advertisements for	Ad Design

		others; Preparing advertisements for others (Class 35)	
3561958	THE AD CHICK	Business marketing services; Creative marketing design services; Development of marketing strategies and concepts; Advertising agencies, namely, promoting the goods and services of others; Public relations (Class 35)	The Ad
3598337	AT AD TRENDS ADVERTISING, INC. & Design	Advertising agencies; Advertising agencies, namely, promoting the goods and services of others; Advertising consultation; Advertising, marketing and promotion services; Marketing consulting (Class 35)	Ad and Advertising, Inc.
3626378	LEADCLICK MEDIA	on-line advertising, marketing and promotion services (Class 35)	Media
3630236	AD SHOPPE & Design	Advertising agencies, namely, promoting the goods and services of others (Class 35)	Ad
3703385	GREENROAD MEDIA	Promotion, marketing and advertising services (Class 35)	Media
3707829	TRIAD DIGITAL MEDIA	Website advertising and marketing services, namely, providing advertising and marketing consulting in relation to websites; website monetization in the nature of evaluating the online advertising and marketing performance of the websites of others and providing advertising and marketing consulting to increase website performance; providing advertising and marketing consulting in relation to search engines; and evaluating the online marketing performance of the websites of others (Class 35)	Digital Media

In view of the foregoing, it is reasonable to conclude that the relevant public is familiar with the use of the words "ad" "advertising" and "media" as used in connection with a

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wide range of services, including those provided by applicant.

Conclusion

The critical issue in genericness cases is not only whether the relevant public would use ADMEDIA to describe the genus, but also whether the relevant public would *understand*, when hearing the term ADMEDIA, that it refers to the services in the defined genus. *Marvin Ginn*, 228 USPQ at 530, and *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009).

Despite the minimal evidence of use of the compound term "admedia," there is ample evidence to support the relevant public's understanding of the term ADMEDIA to refer to the genus of services. The recitation of services relates to a wide variety of advertising, marketing, promotion and publicity services. By their nature, such services necessarily include developing media strategy, the selection and placement of advertising/ad media, as well as the "preparation and realization of media and advertising plans and concepts." Thus, within the broad categories set forth in the genus of services are services that are directly related to and encompassed by the advertising/ad media services identified by the evidence.

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Because applicant's mark is generic with respect to at least some of the services in the genus, registration is properly refused. *In re Greenliant Systems Ltd.*, 97 USPQ2d 1078, 1082 (TTAB 2010) citing *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd without pub. op.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (registration is properly refused if the subject matter for registration is generic of any one of the goods [or services] for which registration is sought). *Cf. In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005) (PTO may require disclaimer as a condition of registration if the mark is merely descriptive for at least one of the products or services involved in the application) quoting *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975) (the law is settled that registration should be refused if the mark is descriptive of any of the goods for which registration is sought).

Decision: The refusal to register the mark on the Supplemental Register is affirmed.