THIS OPINION IS NOT A PRECEDENT OF THE TTAB

Hearing: January 5, 2016

Mailed: February 18, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Booking.com B.V.

Serial No. 85485097

Jonathan E. Moskin and Katherine Califa of Foley & Lardner LLP for Booking.com B.V.

Caitlin Watts-Fitzgerald, Trademark Examining Attorney, Law Office 111 (Robert L. Lorenzo, Managing Attorney).

Before Shaw, Adlin and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Booking.com B.V. ("Applicant") filed an application for registration on the Principal Register of the mark shown below:[1]

[1] Application Serial No. 85485097 was filed on December 1, 2011 under Trademark Act Sections 1(a) and 44(e), 15 U.S.C. §§ 1051(a) and 1126(e).

The colors white, light blue, and dark blue are claimed as features of the mark. The design to the left of the wording is described in the application as "a stylized depiction of the earth behind a briefcase."

The services identified in the application (as amended) are:

> Travel agency services, namely, making reservations for transportation; travel and tour ticket reservation services; travel agency services, namely, making reservations for transportation for tourists; provision of travel information; providing consultation related to making reservations for transportation, and travel and tour ticket reservation; all of the foregoing services rendered in-person and via the internet, in International Class 39;
>
> Making hotel reservations for others in person and via the internet; providing personalized information about hotels and temporary accommodations for travel in-person and via the Internet; providing on-line reviews of hotels; consultation services related to making hotel reservations for others, provision of personalized information about hotels and temporary accommodations for travel, and on-line reviews of hotels, in International Class 43.

With respect to the Class 39 services, the Application is based solely on Applicant's OHIM Registration No. 005752274, issued April 24, 2008, under Section 44(e). With respect to the Class 43 services, the Application is based on the above OHIM registration under Section 44(e) and on Applicant's use of the mark in commerce, under Section 1(a), claiming January 12, 2005 as the date of first use and first use in U.S. commerce.

The Examining Attorney required, as a condition of registration, that Applicant disclaim the exclusive right to use BOOKING.COM apart from the mark as shown, on the ground that this wording is merely descriptive of Applicant's services and, therefore, an unregistrable component of the mark under Trademark Act Section 6,

15 U.S.C. § 1056. When Applicant claimed, in the alternative, that BOOKING.COM has acquired distinctiveness and is entitled to registration under Section 2(f), 15 U.S.C. § 1052(f), the Examining Attorney maintained her requirement of a disclaimer on the ground that the wording in the mark is merely descriptive of Applicant's services and that Applicant's evidence is inadequate to demonstrate acquired distinctiveness; and on the ground that the wording in the mark is generic as applied to the services, and that therefore no amount of evidence purporting to demonstrate acquired distinctiveness could render the wording registrable. When the Examining Attorney made her refusals to register the mark final, Applicant appealed to this Board and requested reconsideration. The Examining Attorney denied the request for reconsideration and this appeal proceeded.

At Applicant's request, this case was consolidated with three other pending appeals of refusals to register the marks in Applicant's related application Serial Nos. 79122365, 79122366 and 79114998.[2] Applicant chose to address all four cases in a single set of briefs, having been granted leave to exceed the page limit for its main brief.[3] The cases were fully briefed, including extra supplemental briefs filed by both Applicant and the Examining Attorney. An oral hearing was held January 5, 2016. The evidentiary record in this case is sufficiently different from the records of the other applications that we find it appropriate to issue a separate decision.

The Director of the USPTO "may require the applicant to disclaim an unregistrable component of a mark otherwise registrable." Trademark Act Section

[2] Board order of December 12, 2014, 19 TTABVUE.

[3] Board order of January 30, 2015, 21 TTABVUE.

6(a). The USPTO may require a disclaimer as a condition of registration if the term at issue is merely descriptive of any of the identified goods or services. *In re Stereotaxis Inc.*, 429 F3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005). In this case, the Examining Attorney maintains that the wording BOOKING.COM is not only merely descriptive, but generic as applied to Applicant's services. A generic term is "the 'ultimate in descriptiveness.'" *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015).

A mark (or a component thereof) is generic if it refers to the class or category of goods or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.,* 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), *citing H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.,* 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986) ("*Marvin Ginn*"). The test for determining whether a mark is generic is its primary significance to the relevant public. *In re American Fertility Soc'y,* 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.,* 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *Marvin Ginn, supra.* Making this determination "involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered … understood by the relevant public primarily to refer to that genus of goods or services?" *Marvin Ginn*, 228 USPQ at 530. The examining attorney has the burden of establishing by clear evidence that a mark is generic. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.,* 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *In re American Fertility Soc'y, supra*; and *Magic Wand Inc., supra.* "Doubt on the issue of genericness is resolved in

favor of the applicant." *In re DNI Holdings Ltd.,* 77 USPQ2d 1435, 1437 (TTAB 2005).

1. The genus of Applicant's services.

Our first task under *Marvin Ginn* is to determine, based on the evidence of record, the genus of Applicant's services. Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, generally "a proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration." *Magic Wand*, 19 USPQ2d at 1552, *citing Octocom Sys., Inc. v. Houston Computer Servs.*, Inc., 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The recitations of services in Classes 39 and 43 can be accurately summarized as follows:

Class 39: Travel agency services, namely, making reservations for transportation and providing related information and consultation, including such services performed online.

Class 43: Making hotel reservations in person and via the internet, providing related information and consultation, and providing online reviews of hotels.

We consider the foregoing summaries to suitably express the genus of the services in each class.

2. Public understanding of the term BOOKING.COM.

We next consider whether BOOKING.COM would be understood by the relevant public primarily to refer to each genus of services discussed above. The relevant public consists of all persons having an interest, from time to time, in arranging a

reservation for transportation or for a room in a hotel, resort, or other lodging; in obtaining information or consultation regarding such reservations; and in reading online reviews of hotels. The Examining Attorney's refusal and supporting arguments focus almost exclusively on Applicant's *online* reservation services, and we will do the same.[4] Registration is properly refused if the mark is generic with respect to *any one* of the services for which registration is sought in a given International Class. *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989) (unpublished); *Cf. In re Stereotaxis Inc.*, 77 USPQ2d at 1089, *quoting, Application of Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 48 (CCPA 1975) ("Our predecessor court … has stated that registration should be refused if the mark is descriptive of any of the goods for which registration is sought."). In our deliberations, we have considered all of the evidence of record. We summarize below the evidence that we found most highly relevant and probative regarding the public's understanding of Applicant's mark.

(a) Salient evidence of record.

As evidence of the relevant public's understanding of Applicant's mark, the Examining Attorney and Applicant made of record various definitions of the word "booking," including:

> : an arrangement for a person or group (such as a singer or band) to perform at a particular place
>
> : an arrangement to have something (such as a room) held for your use at a later time

[4] While Applicant's brief refers to its "brick and mortar services," 22 TTABVUE 28, there is no evidence showing that Applicant's services are available otherwise than online.

…
: RESERVATION[5]

*****

1. an arrangement to buy a travel ticket, stay in a hotel room, etc. at a later date *Increasingly, travelers are using the Internet for both information and bookings.*

make a booking: *You can make a booking on the phone with a credit card.*

2. an arrangement made by a performer to perform at a particular place and time in the future.[6]

*****

1. An act of reserving accommodations, travel, etc., or of buying a ticket in advance:

'the hotel does not handle group bookings'

'early booking is essential'

1.1 An engagement for a performance by an entertainer:

'TV show bookings were mysteriously canceled'[7]

*****

the act of reserving (a place or passage) or engaging the services of (a person or group)

"wondered who had made the booking"

Synonyms: reservation[8]

*****

an engagement, as for a lecture or concert.[9]

---

[5] Definition at <merriam-webster.com>, Applicant's response of October 11, 2013 at 71.

[6] Definition at <macmillandictionary.com>, Office Action of May 23, 2014 at 69.

[7] Definition at <oxforddictionaries.com/us/definition/american_english>, *id*. at 61.

[8] Definition at <vocabulary.com>, *id*. at 73.

The Examining Attorney has also made of record the following definition of ".com":

> abbr.
>
> commercial organization (in Internet addresses).[10]

*****

The Examining Attorney made of record excerpts from numerous websites that use the term "booking" to describe Applicant's online services and similar online services provided by others. Notably, Applicant's own materials make liberal use of the term "booking." Applicant's specimen of use states:

> To notify Booking.com of an invalid credit card, please login to the Extranet and go to the Bookings tab. …All reservations will be listed there by booking and arrival date. …
>
> **Overbooking:**
>
> If the hotel is overbooked please make every effort to accommodate the guest at a different hotel.[11]

Applicant's own website uses "booking," both as a noun meaning a hotel reservation and as a verb meaning to make such a reservation:

> We'll match the price of the other deal if:
>
> 1. You contacted us immediately after booking with all the details of the other deal …
> …
> 4. The conditions of your booking with us still allow penalty-free cancellations and modifications.[12]

---

[9] Definition at <collinsdictionary.com/dictionary/American>, Applicant's response of October 11, 2013 at 68.

[10] THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (Fifth ed. 2011), Office Action of October 28, 2013 at 16.

[11] Application at 19.

[12] Office Action of October 28, 2013 at 22.

Applicant's website sets forth a selection of available hotels in various cities, indicating when the latest "booking" was made at the particular hotels:

> New York City
> 452 properties
> …
> Helmsley Park Lane Hotel **** from $325
> Score from 3590 reviews. *Very good, 8.1*
> Latest **booking**: 32 minutes ago
> There are 31 people looking at this hotel
>
> Four Points by Sheraton Midtown –
> Times Square *** from $299
> Score from 875 reviews. *Very good, 8*
> Latest **booking**: 13 minutes ago
> There are 26 people looking at this hotel[13]

Similarly, third-party websites also use the term "booking" in various formulations as the name of travel reservation services. Such services have been called (among other things), booking travel, booking travel online, booking, booking system, booking sites, booking websites, online bookings, travel-booking, travel-booking sites, travel-booking website, online travel booking sites, hotel bookings, hotel website booking engine, hotel booking services, online hotel booking, mobile booking engine, and internet booking engines. Examples of use follow:

> 3 Myths About Booking Travel From the Source
>
> … travelers who do not book directly with the airline will pay higher fees, … [T]he best deals I've found lately are the result of booking directly with a hotel or airline.[14]

---

[13] *Id*. at 17 (emphasis added).

[14] "3 Myths About Booking Travel From the Source," The New York Times, September 26, 2012. Office Action of November 28, 2012 at 16-17.

*****

Get your holiday off to a flying start by booking a cheap flight to hundreds of destinations ebookers offers.[15]

*****

Smart, Simplified Online Bookings

Checkfront is a hosted real-time booking system for Tours, Activities & Hospitality.[16]

*****

Booking Travel Online?

A couple of years ago, online travel-booking sites such as Expedia and Travelocity began issuing service-related manifestos …[17]

*****

The Shift in Desktop to Mobile & Tablet Continues to Transform Hotel Bookings in Q1 2014.[18]

*****

Hotel Reservation Solutions

Hotel Website Booking Engine

Mobile Booking Engine.[19]

*****

At InnLink Central Reservations, we do more than provide central reservations services … Featuring …

---

[15] <ebookers.com>, *id*. at 24.

[16] <checkfront.com>, *id*.at 26.

[17] "Booking Travel Online?," Travel+Leisure, April 2008, *id*. at 30.

[18] <genares.com>, Office Action of May 23, 2014 at 16.

[19] <genares.com>, *id*.at 19.

branded internet booking engines, mobile booking engines, …[20]

*****

Hotel Booking – Expedia Guarantees the Best Price
Book & Save on Hotel Booking.
…
Orbitz® Book Hotels – ORBITZ.com
…
6 best travel-booking tricks you're not using …A quirk of travel-booking systems is that they will show the lowest fare available to seat your entire party…
…
The Top Online Travel Booking Sites for January 2014[21]

*****

How to Save Money When Booking Travel Online
Websites like Expedia.com, Hotwire.com and Orbitz.com have all but eliminated the need for travel agents … [W]e persuaded CheapAir.com CEO Jeff Klee, Getaroom.com and Hotels.com co-founder Bob Diener, and Airfarewatchdog creator George Hobica to divulge their own travel booking secrets.
…
"A lot of booking sites have eliminated flexible search," … stressing that you should spend extra time looking at prices both on booking websites and directly on airline websites.[22]

*****

This Travel-Booking Website Loves it When You Call

… Plenty of people still want a fellow human for travel booking, …[23]

---

[20] <innlink.com>, *id.*at 21.

[21] <google.com> search results for "hotel booking," *id.*at 75, 78.

[22] "How to Save Money When Booking Travel Online," Huff Post Travel, October 22, 2013, Office Action of October 28, 2013 at 11-13.

[23] "This Travel-Booking Website Loves it When You Call," Bloomberg Businessweek Technology, August 22, 2013, *id.*at 26-27.

*****

> 2013 Best Hotel Booking Services Comparisons and Reviews
> …
> Hotel Booking Services Review
>
> Why Hotel Booking Services?
>
> … you will almost certainly benefit from using a hotel booking service to research the best lodging deals.[24]
>
> *****
>
> When it comes to the gold standard of online hotel booking, one site comes to mind. Marriott.com[25]
>
> *****
>
> Review or Cancel a Booking
>
> Review your booking
>
> Retrieve your booking to view/print your itinerary online
>
> If you made your booking with Air New Zealand through our website or over the telephone you can view your booking online.[26]
>
> *****
>
> Manage My Booking
>
> … Log in to your booking … Find my booking …[27]

The Examining Attorney has made of record evidence of third-party domain names and trade names that include the designation "booking.com":

---

[24] "2013 Best Hotel Booking Services Comparisons and Reviews," TopTen Reviews, *id*. at 30-31.

[25] <marriott.com>, *id*.at 39.

[26] <airnewzealand.com>, Office Action of November 28, 2012 at 22.

[27] <britishairways.com>, *id*.at 29.

Domain name	**Nature of use**
hotelbooking.com	website called hotelbooking.com, offering "your best hotel web search engine."[28]
instantworldbooking.com	website called Instant World Booking.com, offering "Online booking for hotels, youth hostels, and bed and breakfast accommodations at world heritage destinations."[29]
blinkbooking.com	website offering mobile application called Blink: "In just a few taps, you can book a room in Europe's best hotels: it's that simple!"[30]
francehotelbooking.com	website called Link Paris .com, offering to "find you a great Paris hotel" and hotel search for other French cities.[31]
ebooking.com	U.S. Reg. No. 3888087, for "Travel agency services, namely, making reservations and bookings for temporary accommodations for others by means of the Internet.[32]

Images of some of these websites are set forth below:

http://www.hotelbooking.com/en/index.html 10/28/2013 03:16:45 PM

[28] Website at <hotelbooking.com>, Office Action of October 28, 2013 at 41-42.

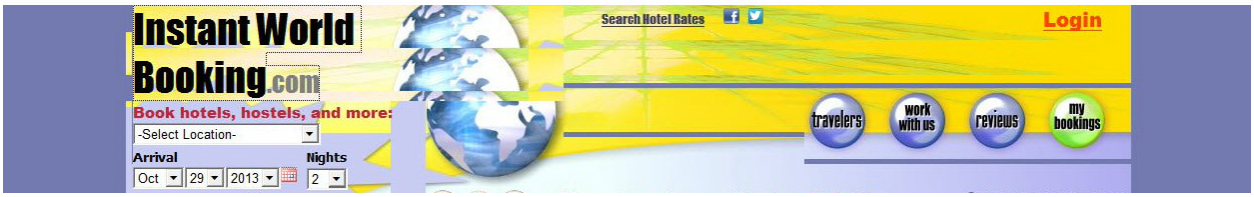
[29] *Id*. at 46-48.

[30] Office Action of November 28, 2012 at 14-15.

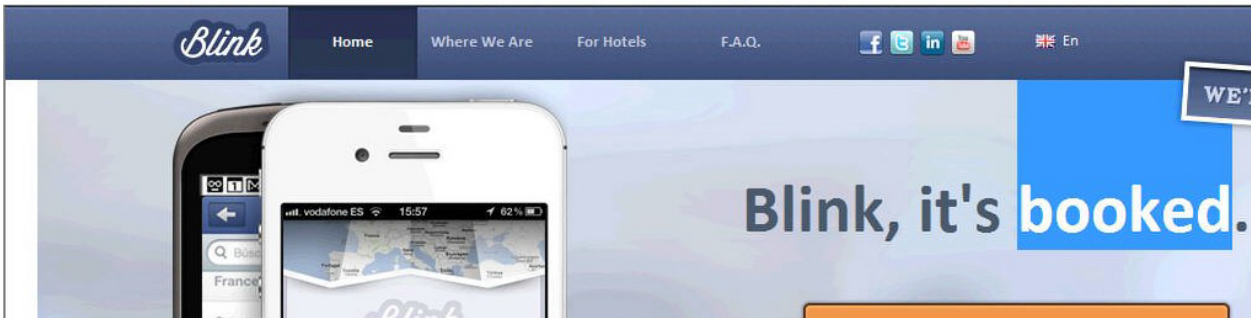
[31] Office Action of October 28, 2013 at 43-44.

[32] Office Action of May 23, 2014 at 37-39.

http://www.instantworldbooking.com/ 10/28/2013 03:19:23 PM



http://www.blinkbooking.com/ 11/26/2012 11:28:06 AM



http://www.francehotelbooking.com/ 10/28/2013 03:17:41 PM

The record also includes evidence of domain names that combine ".com" with various combinations of the words "booking" or "book," including the following: [33]

Bookingbuddy.com

[33] Office Action of October 28, 2013 at 34-38, 45, and Office Action of November 28, 2012 at 23-25.

Fastbooking-hotels.com

Hotelbookingsolutions.com

Ebookers.com

BOOKINGWIZ.COM[34]

To demonstrate public understanding of BOOKING.COM, Applicant has made of record and focuses heavily upon a two-page, 2012 J.D. Power & Associates press release relating to its rankings of independent travel websites based upon a consumer survey, accompanied by a one-page chart. Neither the survey itself nor any supporting or background material about the survey is of record. Salient excerpts of the press release are set forth below:

> **J.D. Power and Associates Reports:**
>
> **Pricing Is the Strongest Driver of Satisfaction with Independent Travel Websites**
>
> Booking.com Ranks Highest in Overall Satisfaction among Independent Travel Websites
>
> … Satisfaction with the price paid on a travel website drives high overall satisfaction among consumers with their overall website experience, according to the J.D. Power and Associates 2012 Independent Travel Website Satisfaction Report℠ released today.
>
> "… the highest-ranked travel websites in overall satisfaction all have significantly higher price satisfaction scores than the report average," said Sara Wong Hilton … "While other factors certainly affect overall satisfaction, 75 percent of online travel website consumers indicate price as a primary purchase reason, so there is no denying price greatly impacts the overall website experience."
>
> The report measures consumers' overall satisfaction with their purchase experience on an independent travel

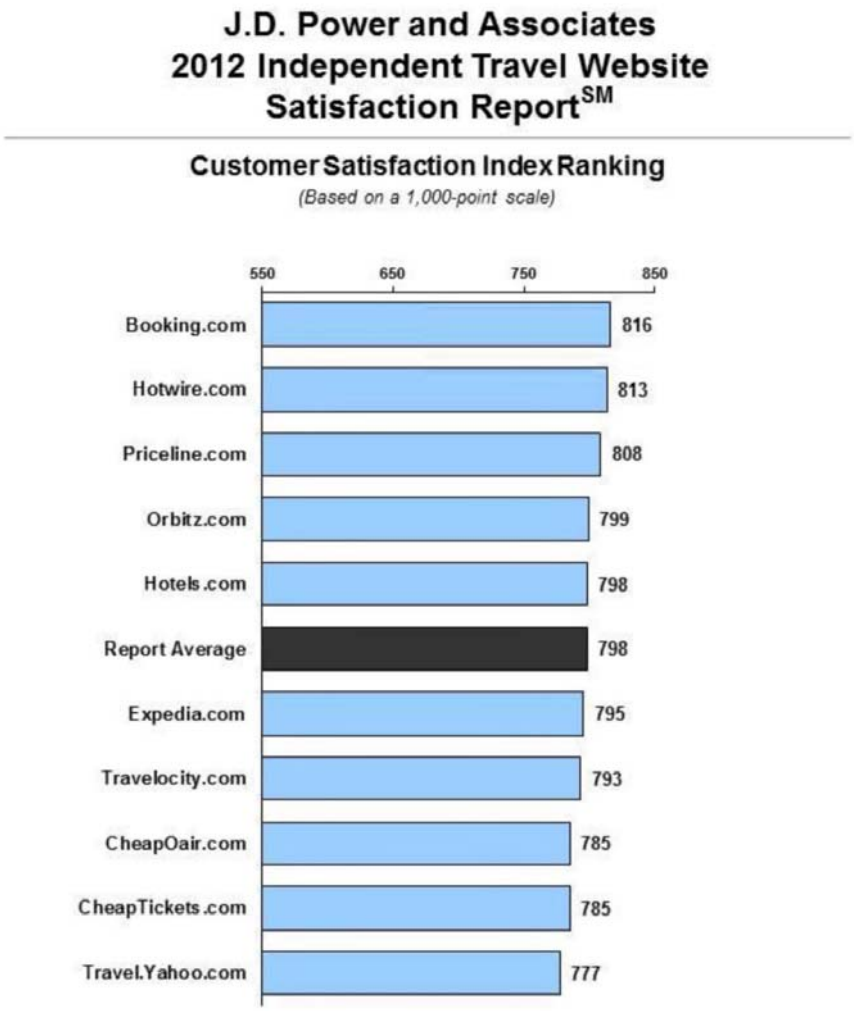
[34] Reg. No. 3634936, Office Action of May 23, 2014 at 32-33.

> website, which consists of a vacation package, flight, hotel or rental car. The report examines seven factors (listed in order of importance): competitiveness of pricing; usefulness of information; availability of booking/reservation options; website/online store; ease of booking/reserving; competitiveness of sales and promotions; and contact with customer service. …
>
> **Independent Travel Website Satisfaction Rankings**
>
> Booking.com ranks highest with a score of 816, performing particularly well in availability of booking/reservation options; ease of booking/reserving; and pricing. Following Booking.com in the rankings are Hotwire.com (813) and Priceline.com (808).
>
> The 2012 Independent Travel Website Satisfaction Report is based on responses from 2,009 consumers who made an online purchase from an independent travel website in the past 12 months. …[35]

The chart accompanying the press release is set forth below:[36]

[35] Applicant's response of April 29, 2014 at 82-83.

[36] *Id*. at 84.



The press release is supported by a declaration of Applicant's CFO, Olivier Bisserier, stating:

> Applicant's BOOKING.COM service has received numerous industry awards, including, for example:
>
> - J.D. Power and Associates, a premier research and analytics firm, ranked BOOKING.COM First in Consumer Satisfaction among independent travel websites based on a consumer survey (awarded in 2013); …[37]

[37] Declaration of Olivier Bisserier, ¶ 11, Applicant's response of April 29, 2014 at 75.

The Bisserier Declaration also states that Applicant has won awards for a 2013 advertising campaign; for "Best Tablet App"; and "Best Mobile Site."[38] It also sets forth figures for the following aspects of Applicant's business:

- countries served;
- accommodations-providers accessible via the service;
- transaction value (worldwide) of accommodation reservations made;
- unique monthly U.S. visitors to website;
- roomnights reserved daily (worldwide);
- languages in which the service is offered;
- U.S.-based subscribers to Applicant's newsletters;
- television channels on which commercials have been aired;
- American consumers reached through commercials in movie theatres and streamed internet commercials;
- Facebook "likes" and "talking about";
- Twitter followers;
- number of unsolicited news articles found in a Google News search.[39]

(b) Discussion.

It is clear from the dictionary definitions that an accepted meaning of "booking" is a reservation or arrangement to buy a travel ticket or stay in a hotel room; or the act of reserving such travel or accommodation. It is also clear from the Internet evidence that the term "booking" has been widely used to describe the service of

[38] *Id*.

[39] *Id*. at 83-90.

arranging reservations for hotel rooms or air travel, as described in Applicant's recitation of services and as comprehended by the applicable genera of services.

Applicant contends that the dictionary definitions show that the primary descriptive meaning of "booking" does not relate to travel, but to theatre bookings, referring to definitions such as "a contract, engagement, or scheduled performance of a professional entertainer"; "An engagement, as for a performance by an entertainer"; and "an arrangement for a person or group (such as a singer or band) to perform at a particular place." Applicant also refers to definitions from THE ONLINE SLANG DICTIONARY and URBAN DICTIONARY, showing that "book" as an adjective may mean "cool," that "to book" may mean "to leave quickly," and that "booking" may mean "running really fast."[40] Applicant argues:

> The existence of alternate meanings of the wording at issue precisely calls into question what is the "primary" significance of the term "booking" (not even BOOKING.COM) to consumers. … Indeed, it is fundamentally inconsistent for the Examiner both to assert that the Board should give weight to dictionary definitions of the word "booking" while at the same time telling the Board to shield its eyes from some of those definitions (including the *primary* definition) that undermine the Examiner's argument.[41]

Applicant's arguments are unavailing. The question before us is the understanding of "the relevant public," which in this case consists of persons having an interest in reservations for transportation or hotel rooms. Those persons would be exposed to the mark in the context of those services and, accordingly, that is the

[40] Applicant's brief at 21, fn5, 22 TTABVUE 22, referring to evidence submitted with Applicant's Response of May 15, 2014 at 56-59 in Application Serial No. 79122366.

[41] Applicant's reply brief at 12, 25 TTABUE 13.

context in which we must consider the primary meaning of the term at issue. In one of the most lucid discussions of this point, *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759 (2d Cir. 1976), the Court acknowledged that in the spectrum of distinctiveness (generic/descriptive/ suggestive/arbitrary/fanciful) "a term that is in one category for a particular product may be in quite a different one for another, … [and] a term may have one meaning to one group of users and a different one to others …," 189 USPQ at 764; and that "a word may have more than one generic use." 189 USPQ at 766.[42] *See also Gear Inc. v. L.A. Gear California Inc.,* 670 F. Supp. 508, 4 USPQ2d 1192, 1197 (S.D.N.Y. 1987) ("that the word 'gear' is more frequently used in its several other meanings than as a term for wearing apparel" does not save it from a finding of genericness for apparel; "the term at issue is still generic if its principal meaning in the relevant market is generic"), *vacated in part, dismissed*, 13 USPQ2d 1655 (S.D.N.Y 1989); *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1588 (TTAB 2014) (meteorological meanings of "cloud" irrelevant as to whether CLOUDTV is generic for computer goods and services); and *In re Rosemount Inc.*, 86 USPQ2d 1436, 1439 (TTAB 2008) ("It is well established that we must look to the meaning of the term within the context of the identified goods.").

Applicant correctly points out that we must consider its mark in its entirety.[43]

---

[42] In *Abercrombie*, the word "safari," as applied to apparel, was at issue. The fact that "safari" had a specific meaning in the unrelated context of "an expedition into the African wilderness" did not prevent the Court from finding the term generic in the field of fashion apparel. 18 USPQ at 766.

[43] We must point out that the Examining Attorney was wrong to say, in her brief, "Applicant is *incorrect* in its brief in claiming that the required standard for a finding of

Applicant argues further:

> In each of the Office Actions, the Examiners have submitted evidence showing descriptive use of "booking" and ".com" separately as evidence that the composite mark BOOKING.COM is generic. This analytical structure sets a lower bar for genericness for domain name marks than other marks, ignores the realities of the marketplace and is contrary to settled law.
>
> There is no evidence whatsoever that consumers isolate and separately consider "BOOKING" and ".COM" in Applicant's mark …[44]

We do not agree that the Examining Attorney's approach is improper. In *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532 (Fed. Cir. 2009), in which the mark HOTELS.COM was at issue, the Court said, "We discern no error in the Board's consideration of the word 'hotels' for genericness separate from the '.com' suffix." 91 USPQ at 1535. The Court implicitly approved the same approach in *In re Reed Elsevier Props. Inc.*, 77 USPQ2d 1649 (TTAB 2005), *aff'd*, 82 USPQ2d 1378 (Fed. Cir. 2007), in which the Board considered separate dictionary definitions of "lawyer" and ".com"; and the Court expressly approved this approach in *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) ("[T]he Board considered each of the constituent words, "mattress" and ".com," and determined that they were both generic. … The Board then considered the mark as a whole …") In all of these cases, the Court held to be generic marks that were similar in structure to the wording of Applicant's mark on the basis of evidence

---

genericness is that the *composite* mark BOOKING.COM as a full phrase be generic." 24 TTABVUE 12 (emphasis in original). The opposite is true: to affirm the Examining Attorney's refusal we must find that a mark, in its entirety, is generic.

[44] Applicant's brief at 7, 22 TTABVUE 8.

highly similar to that now before us. The fact that "booking" and ".com" appear in dictionaries separately, but not together, does not mean that their combination cannot be generic. The relevant analysis under *Marvin Ginn* is to determine what relevant customers would understand from the combination of these two terms. As the Court stated in *Hotels.com*, "the generic term 'hotels' did not lose its generic character by placement in the domain name HOTELS.COM." 91 USPQ2d at 1535.

Addressing the term BOOKING.COM as a whole, the Examining Attorney contends:

> Each of the terms BOOKING and .COM has a clear and readily understood meaning and the combined term communicates just as clearly and directly that Applicant operates a commercial website that provides its customers with *booking* information and reservation *booking* services.[45]

This contention is supported by the dictionary definitions, quoted above, indicating that "booking" means "reservation" or "an arrangement to buy a travel ticket, stay in a hotel room, etc. …" and that ".com" is an abbreviation meaning "commercial organization (in Internet addresses)." It is also supported by the Internet evidence showing how third parties use the words "booking" and the suffix ".com"; and how they use the combination "booking.com" as a component of domain names and trade names.

Applicant suggests that the question before us is as follows:

> … the Examiners must show that the "primary significance" of BOOKING.COM "to the relevant consuming public" is simply to designate the genus or

[45] Examining Attorney's brief, 24 TTABVUE 13 (emphasis in original).

> class of services identified in the applications [citing *Magic Wand*].[46]
>
> [The question is whether] the *entire term* is used or recognized by consumers to designate a genus of goods or services *and* that the *primary significance* of such usage is the generic designation. … BOOKING.COM is not literally a genus or class name, but it at most contains elements descriptive or suggestive of the class.[47]

The above formulations overstate the rule that we must apply. *Marvin Ginn* does not require that the public use a term to designate the genus; only that the public understand the term to refer to the genus. *Marvin Ginn* does not require that a term literally be the name of the genus; only that it be understood primarily to refer to the genus. This degree of flexibility was clear in *Marvin Ginn* and was restated with clarity by the Federal Circuit in *In re 1800Mattress.com*:

> The test is not only whether the relevant public would itself *use* the term to describe the genus, but also whether the relevant public would *understand* the term to be generic. *See H. Marvin Ginn*, 782 F.2d at 990 (describing the test as whether the term is "understood by the relevant public primarily to refer to [the appropriate] genus of goods or services"). Thus, it is irrelevant whether the relevant public refers to online mattress retailers as "mattress.com." Instead, as the Board properly determined, the correct inquiry is whether the relevant public would understand, when hearing the term "mattress.com," that it refers to online mattress stores.

92 USPQ2d at 1685 (emphasis in original). Thus, while it might be true that "it is impossible to use BOOKING.COM in a grammatically coherent way to refer generically to anything"; or that "it is not at all logical to refer to a type of product

[46] Applicant's brief at 5, 22 TTABVUE 6.

[47] *Id*. at 10, 22 TTABVUE 11 (emphasis in original).

or service as a 'booking.com'";[48] that does not mean that this term could not be understood primarily to refer to an online service for making bookings. In other words, the test is not whether the public can use the term in a grammatically correct sentence, but whether the public understands the term to refer to the genus.

The Examining Attorney's contentions as to the public's understanding of the combination BOOKING.COM are supported by the dictionary evidence; the Internet evidence showing how third parties use the words "booking" and the suffix ".com"; and, perhaps most importantly, the evidence of how third parties use the combination "booking.com" as a component of domain names and trade names in the field of travel and hotel reservations. We must, however, balance the Examining Attorney's evidence against Applicant's evidence of public perceptions, including the J.D. Power survey. Applicant argues:

> It defies logic that consumers would rank BOOKING.COM as the most trusted accommodations website if consumers failed to recognize BOOKING.COM as a source-identifier. Stated another way, if BOOKING.COM merely designated a type or category of services, consumers would not be able to attribute any particular level of quality to services offered under the designation. This is plainly not the case …[49]

It bears noting, before we proceed, that Applicant's characterization of the J.D. Power survey as showing that Applicant is "the most trusted accommodations website" is a substantial overstatement. As the press release, quoted above, indicates, the survey related to customers' "satisfaction," and trust was not one of

[48] *Id*. at 12, 22 TTABVUE 13.

[49] *Id*. at 3, 22 TTABVUE 4.

the seven factors measured by the survey. Even if we were to accept the J.D. Power press release for the truth of the matters asserted in it,[50] we find that it is at best a very indirect demonstration of what relevant customers understand "booking.com" to mean. The press release tells us that survey subjects were asked about seven factors – pricing; information provided; booking options; the online "store"; ease of booking; sales and promotions; and customer service – with respect to specific travel websites. These are not the types of questions that would be posed to subjects of a typical genericness survey (*e.g.*, a "Teflon" or "Thermos" survey), which would test whether subjects perceive a term as a brand or a generic term. *See E. I. Du Pont de Nemours & Co. v. Yoshida Int'l, Inc.*, 393 F. Supp. 502, 185 USPQ 597 (E.D.N.Y. 1975); *Am. Thermos Prods. Co. v. Aladdin Indus., Inc.*, 207 F. Supp. 9, 134 USPQ 98 (D. Conn. 1962), *aff'd sub nom. King-Seeley Thermos Co. v. Alladin Indus., Inc.*, 321 F.2d 577, 138 USPQ 349 (2d Cir. 1963). What the survey does tell us is that participants had used Applicant's website and expressed a higher level of satisfaction with it (based on some unknown combination of the seven factors) than with other competing websites. Although this survey tells us something about Applicant's business success – *i.e.*, that its customers are highly satisfied – it says little or nothing about what customers understand the term BOOKING.COM to mean. (Even if the survey had posed more directly relevant questions, the data presented to the Board are extremely non-specific: we do not know the actual

[50] "The Board generally takes a somewhat more permissive stance with respect to the admissibility and probative value of evidence in an *ex parte* proceeding than it does in an *inter partes* proceeding." TBMP § 1208.

questions that were posed to the survey subjects, nor do we have their responses or a tabulation of their responses, much less an expert's opinion on the validity and meaning of the survey's results.)

We have considered all of Applicant's evidence, including the testimony in its representative's declaration and the exhibits thereto. These materials demonstrate the scope of Applicant's business and the success that Applicant has achieved in marketing its services. However, compared to the J.D. Power survey, the information these materials provide is even farther afield from the crucial question: whether customers perceive BOOKING.COM as a brand or a generic term. The fact that Applicant has served many customers, or that its advertising and other communications have reached many customers and potential customers, does not answer this central question.

By contrast, the Examining Attorney's evidence is directly relevant to the question of public perception. We accept the dictionary definitions as evidence of the generally accepted meanings of the component terms of Applicant's mark; and the Internet evidence of actual third-party uses of the component terms and the combined term "booking.com" is presented with sufficient context to allow us to understand the use and public perception of these terms.

In *Hotels.com*, *supra*, where the USPTO relied on evidence of genericness similar to the Examining Attorney's evidence here, the applicant presented in rebuttal a "Teflon" genericness survey showing that 76% of respondents perceived the term at

issue as a brand name; together with 64 declarations of individuals stating that the term was not generic. Noting the Board's critique of the survey, the Court found:

> [O]n the entirety of the evidence before the TTAB, and with cognizance of the standard and burden of proof borne by the PTO, the TTAB could reasonably have given controlling weight to the large number of similar usages of "hotels" with a dot-com suffix, as well as the common meaning and dictionary definition of "hotels" and the standard usage of ".com" to show a commercial internet domain. We conclude that the Board satisfied its evidentiary burden, by demonstrating that the separate terms "hotel" and ".com" in combination have a meaning identical to the common meaning of the separate components. The Board's finding that HOTELS.COM is generic was supported by substantial evidence.

91 USPQ2d at 1537. The applicant's evidence in *Hotels.com* was far more extensive and supportive of allowing registration than is Applicant's evidence in this case.

In *In re Reed Elsevier Props. Inc.*, 82 USPQ2d 1378 (Fed. Cir. 2007), the Court found evidence similar to the evidence in this case sufficient to demonstrate genericness:

> [I]n determining what the relevant public would understand LAWYERS.COM to mean, the board considered eight websites containing "lawyer.com" or "lawyers.com" in the domain name, e.g., *www.massachusetts-lawyers.com, www.truckerlawyers.com, and www.medialawyer.com*. It discussed the services provided by these websites in order to illuminate what services the relevant public would understand a website operating under Reed's mark to provide. These websites are competent sources under *In re Merrill Lynch*, 828 F.2d at 1570, and they provide substantial evidence to support the board's finding.

82 USPQ2d at 1381. *See also In re 1800Mattress.com IP LLC*, 92 USPQ2d at 1684 ("[H]ere, the Board permissibly gave controlling weight to the large number of

similar uses of 'mattress.com' as well as the common meanings of 'mattress' and '.com.'").

Applicant argues that the existence of "ample readily available terms for the genus of services, such as 'travel agency' (or even 'travel site' or 'accommodation site')" constitutes "positive evidence the disputed term is *not* generic."[51] This is a fallacy. The existence of numerous alternative generic terms does not negate the genericness of any one of them. In *1800Mattress.com*, the Court said:

> We also disagree with Dial-A-Mattress's assertion that there can only be one generic term, which is "online mattress stores." Instead, any term that the relevant public understands to refer to the genus of "online retail store services in the field of mattresses, beds, and bedding" is generic.

92 USPQ2d 1685. The cases upon which Applicant relies, *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001); *Elliott v. Google Inc.*, 45 F. Supp.3d 1156 (D. Arizona 2014); and *Salton, Inc. v. Cornwall Corp.*, 477 F. Supp. 975 (D.N.J. 1979), do not support the principle that Applicant posits; they do not hold that a failure to show competitive need disproves genericness, but only that it lends no support to a claim of genericness. In any event, in the case before us there is evidence of competitors' use of the designation "booking.com" as a part of trade names and domain names that describe the nature of their services (*e.g.*, "hotelbooking.com," "instantworldbooking.com," and "francebooking.com," among others). If such businesses could not use "booking.com" as a part of their domain names or trade names, they could be meaningfully hampered in their ability to

[51] Applicant's brief at 6, 22 TTABVUE 7.

communicate the nature of their online booking services. In *Reed Elsevier*, the Board relied on similar evidence, 77 USPQ2d at 1657 ("In short, this case does not involve a perceived need for others to use a term, but involves a demonstrated use of the term by others."); and the Federal Circuit subsequently affirmed the finding of genericness. *Reed Elsevier*, 82 USPQ2d 1378.

Applicant argues that it is impossible for a term in the form of a domain name, like "booking.com," to identify an entire class or genus of goods or services precisely because "a specific URL can identify only one entity."[52] In fact, a URL points not to an *entity*, but to one specific Internet *address*, which can be occupied by any entity that secures the address by entering into an arrangement with the registrar of that address. As domain name registrations are not perpetual, Applicant may be supplanted as the registrant of that Internet address or may voluntarily transfer its domain name registration to another. Moreover, Applicant's argument ignores the use of "booking.com" by third parties to identify their internet addresses.

Applicant also argues that refusing to register its mark would be contrary to the policies underlying trademark law and the Trademark Act, stating that Congress's "two purposes" were (1) to protect the public from source confusion; and (2) to protect a business's investment of energy, time, and money from misappropriation by pirates.[53] Applicant argues:

> Given the stature of the brand among consumers, the purposes of trademark law are advanced by permitting Applicant to protect its great investment in its mark and

[52] Applicant's brief at 14; *see also id*. at 24, 22 TTABVUE 15, 25.

[53] *Id*. at 18, 22 TTABVUE 19

> to protect consumers against the confusion that would inevitably result if others were free to copy the name. Denying registration to the most trusted brand in the field undermines the purposes of trademark law by betraying the trust consumers place in the brand.[54]

Applicant's policy argument addresses the reasons for protecting *marks*, but neglects to mention the policy underlying the legal exclusion of generic matter from the category of "marks." That policy is based upon concerns relating to fair competition:

> Generic terms, by definition incapable of indicating sources, are the antithesis of trademarks, and can never attain trademark status. [Citation omitted.] The reason is plain:
>
> > To allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold, *even when these have become identified with a first user*, would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.

In re Merrill Lynch, 4 USPQ at 1142, *quoting CES Publ'g Corp. v. St. Regis Publ'ns, Inc.* ., 531 F.2d 11, 188 USPQ 612, 615 (2d Cir. 1975) (emphasis added). *See also In re Pennington Seed Inc.*, 466 F.3d 1053, 80 USPQ2d 1758, 1763 (Fed. Cir. 2006). As in *Merrill Lynch*, courts have repeatedly noted the possibility that a business might invest in, and acquire name recognition in, an unprotectable generic term:

> [N]o matter how much money and effort the user of a generic term has poured into promoting the sale of its merchandise *and what success it has achieved in securing public identification*, it cannot deprive competing manufacturers of the product of the right to call an article by its name.

[54] *Id*. at 3, 22 TTABVUE 4.

Abercrombie & Fitch, 189 USPQ at 764, *citing J. Kohnstam, Ltd. v. Louis Marx and Co.*, 280 F.2d 437, 126 USPQ 362, 364 (CCPA 1960) (emphasis added).

> While it is always distressing to contemplate a situation in which money has been invested in a promotion in the mistaken belief that trademark rights of value are being created, merchants act at their peril in attempting, by advertising, to convert common descriptive names, which belong to the public, to their own exclusive use. *Even though they succeed* in the creation of de facto secondary meaning, due to lack of competition or other happenstance, the law respecting registration will not give it any effect.

Weiss Noodle Co. v. Golden Cracknel and Specialty Co., 290 F.2d 845, 129 USPQ 411, 414 (CCPA 1961) (emphasis added).

Applicant seeks to demonstrate that the USPTO has registered numerous marks in the form of a domain name in which a generic term is combined with a top-level domain indicator like ".com."[55] Such demonstrations of purportedly inconsistent conduct of the USPTO are not persuasive, because we must decide each case on its own merits, *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 1127, 227 USPQ 417, 424 (Fed. Cir. 1985), and are not bound by the USPTO's allowance of prior registrations. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). In any event, in this case the proffered registrations do not support Applicant's position. That is, the purportedly "generic" terms are registered not for the services that the terms directly identify, but for other services that are obliquely related to the terms. For example, DICTIONARY.COM is not registered for

[55] *Id.* at 24-25, 22 TTABVUE 25-26; Applicant's response of April 29, 2014 at 52-69; Applicant's response of October 11, 2013 at 75-88.

providing an online dictionary, but for online games and promoting the goods and services of others. Reg. No. 4184950. ENTERTAINMENT.COM is not registered for providing entertainment of any kind, but for advertising services, promoting the goods and services of others, and discount programs. Reg. No. 4294532, registered under Section 2(f).

Applicant compares the present case to *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005), in which the Court reversed the Board's finding that STEELBUILDING.COM is generic. In that case, evidence before the Court persuaded it that the applicant's services, as identified in the application, included not only the retail sale of steel buildings but also the online, interactive design and manufacture of structures made of steel; and that in that context customers would appreciate the dual meaning of "steelbuilding" as used in the applicant's mark (*i.e.*, a building made of steel and the process of designing and constructing a structure with steel). In this case, Applicant urges that its services are not merely reservation services but also include "soliciting and collating user-generated content such as reviews of lodgings and other travel related items"; and that customers would appreciate that BOOKING.COM "conveys much more than mere 'reservation' services."[56] We do not agree that, in the context of Applicant's identified services, customers would perceive any ambiguity or dual meaning in the term BOOKING.COM. Rather, in that context, BOOKING.COM would be obviously and

[56] Applicant's brief at 27, 22 TTABVUE 28.

immediately understood as having the meaning of booking transportation and lodgings through an internet service.

We therefore find that the Examining Attorney's dictionary and usage evidence demonstrates, *prima facie*, by clear evidence, that relevant customers would understand the term BOOKING.COM to refer to an online reservation service for transportation and lodgings; and that Applicant's evidence of its business success and high level of customer satisfaction does not rebut this showing. Accordingly, we affirm the Examining Attorney's finding that BOOKING.COM is generic and, therefore, an unregistrable component of Applicant's mark within the meaning of Section 6 of the Trademark Act, and we affirm her refusal to register the mark absent a disclaimer of the exclusive right to use BOOKING.COM apart from the mark as shown.

3. <u>The requirement of a disclaimer on the alternative ground of mere descriptiveness</u>.

Bearing in mind the possibility that our finding that BOOKING.COM is generic may be reversed on appeal, we find it appropriate to consider the Examining Attorney's requirement of a disclaimer of BOOKING.COM on the alternative ground that it is merely descriptive of Applicant's services and that Applicant has failed to demonstrate that it has acquired distinctiveness.

The dictionary and usage evidence submitted by the Examining Attorney demonstrates, at the very least, that BOOKING.COM is very highly descriptive and would require significant evidence of acquired distinctiveness in order to allow registration of the mark without a disclaimer of the wording. *Yamaha Int'l Corp. v.*

Hoshino Gakki Co., 840 F.2d 1571, 6 USPQ2d 1001 1008 (Fed. Cir. 1988) (The kind and amount of evidence of acquired distinctiveness required to secure a registration will necessarily vary with the subject matter for which registration is sought.).

(a) Applicant's services in Class 39.

Initially we note that the application does not make any claim that Applicant has used its mark for any of the services identified in Class 39 (*i.e.*, services relating to reservations for *transportation*); and there is no evidence that Applicant has in fact provided reservation services relating to transportation of passengers. All of the evidence of record relates to reservation services for lodging. In particular, we note that the Bisserier declaration refers only to Applicant's "online hotel reservation service through which hotels all over the world can advertise their rooms for reservation and through which customers all over the world can make reservations."[57] Therefore, there is no evidence to support a finding that BOOKING.COM has acquired distinctiveness with respect to Applicant's identified services in Class 39. Accordingly, registration of Applicant's mark in Class 39 without a disclaimer of BOOKING.COM must be refused, and we affirm the Examining Attorney's refusal as to Class 39.

(b) Applicant's services in Class 43.

Applicant has made of record the following evidence showing the scope and success of its business in the field of reservations for hotels and other lodging:

- The J.D. Power survey discussed above.

[57] Bisserier declaration ¶ 2, Applicant's response of April 29, 2014 at 72.

- The Bisserier declaration stating that Applicant commenced use of BOOKING.COM in June, 2006; that Applicant's websites have averaged 10.3 million unique visitors from the United States per month; that there are over 2.2 million U.S.-based subscribers to Applicant's newsletters, which are distributed two or three times per month; that Applicant has advertised extensively on television, the internet, and in movie theatres; that in the first quarter of 2013, its movie theatre commercials reached over 20 million U.S. consumers; and its streamed advertisements on third-party internet websites reached 19 million U.S. consumers; and that Applicant's services under the BOOKING.COM mark have received notice in the press and in the hospitality and advertising industries. Mr. Bisserier also states his belief that BOOKING.COM "is recognized as a source-identifier and has become distinctive of Applicant's services through its substantial sales and great commercial success, as well as its substantially exclusive and continuous use of the mark in U.S. Commerce for many years."

  The declaration states the number of roomnights booked daily (625,000) and the transaction value of its reservations in 2012 and 2013 (exceeding $3 billion and $8 billion, respectively); however, these figures are not limited to services provided to U.S. customers. The declaration also sets forth figures for Twitter followers and Facebook "likes," but again these are not limited to U.S. persons.

- Charts from AttentionMeter,[58] showing the number of "Daily United States People" (apparently visitors to the <booking.com> website) between February 2, 2012 and July 30, 2012, ranging between less than 250,000 and more than 400,000. There are also charts purporting to show unique website visitors during unspecified periods between August 2011 and August 2012; however, they are not marked so as to indicate whether the visitors are U.S. persons or to indicate the period of time during which each measurement was made (*e.g.*, daily, weekly, monthly, *etc.*).

- Information (submitted as exhibits to the Bisserier declaration) regarding Applicant's receipt of a Gold level Adrian Award from Hospitality Sales & Marketing Association International; and "Best Tablet App" and "Best Mobile Site" awards for 2014 from Mobile Travel & Tourism.

[58] Applicant's response of September 24, 2012 at 21-23.

- Five news items taking note of Applicant's business (from NBCNews.com; Orlando Business Journal; Adweek; Los Angeles Times; and Hospitality Net).

- The non-verified declaration of Applicant's outside counsel, stating that the mark has become distinctive through Applicant's "substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement [September 24, 2012]."[59]

This evidence would not under any circumstances render a generic term registrable. *See In re Northland Aluminum Prods., Inc.,*777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985). Assuming for the sake of analysis that BOOKING.COM is not generic, but highly descriptive, we must consider whether the evidence suffices to render the term a registrable component of Applicant's mark.

The Examining Attorney's evidence showing that third parties make use of the term "booking.com" in their trade names and domain names seriously undercuts Applicant's claim to have made "substantially exclusive" use of the term, as well as Applicant's claim to have acquired distinctiveness. *See Levi Strauss & Co. v. Genesco, Inc.*, 742 F.2d 1401, 222 USPQ 939, 940-1 (Fed. Cir. 1984) ("When the record shows that purchasers are confronted with more than one (let alone numerous) independent users of a term or device, an application for registration under Section 2(f) cannot be successful, for distinctiveness on which purchasers may rely is lacking under such circumstances."); and *In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 11058 (Fed. Cir. 1999) ("The examples of use of the phrase by others in its descriptive form support the board's conclusion that the

[59] *Id.* at 9 (this statement of outside counsel apparently relates to the entire word-and-design mark that Applicant seeks to register).

mark had not acquired distinctiveness.") Such evidence confirms what is suggested by the evidence of the meanings of the terms "booking" and ".com" and the ways in which people use these terms: that is, the combination of these terms not only appears to be a likely way for people to describe reservation services provided online, but has actually already been adopted for that purpose by businesses in Applicant's field.

In view of the highly descriptive nature of BOOKING.COM and its actual use in the marketplace by third parties, a very strong demonstration of acquired distinctiveness would be required to render the term registrable. We find Applicant's demonstration of its business success to be insufficient for this purpose, especially because it does not focus on demonstrating actual market recognition of BOOKING.COM as a source indicator. The press notices are only five in number, and while one of them refers to Applicant as a "[h]otel booking giant," the same article also states, "even though *many Americans are unfamiliar with the brand*, Booking.com is the largest hotel-booking site in the world …"[60] The record contains no statements by customers indicating the degree of their recognition of the term as Applicant's source-indicator; and the record has very few examples of Applicant's advertising materials to show how Applicant has sought to replace, in the minds of consumers, the general descriptiveness of the term with an impression of single-source identification. The press release relating to the J.D. Power survey, which neither sets forth the questions asked nor the answers received from the survey

[60] Applicant's response of April 29, 2014 at 93-94 (emphasis added).

respondents, does not present the unmediated views of consumers, but merely an undetailed digest of their responses, indicating general satisfaction with Applicant's services. Considering that the structure of the term BOOKING.COM indicates that it refers to an internet address, the survey does not show that customers recognize BOOKING.COM as a single-source indicator, but only that they were satisfied with the services provided at a particular internet address. Overall, we find Applicant's evidence to be too sparse and equivocal to indicate that a term as highly descriptive as BOOKING.COM has acquired distinctiveness under Section 2(f). We therefore affirm the Examining Attorney's determination that BOOKING.COM is merely descriptive and that Applicant has failed to demonstrate that the term has acquired distinctiveness within the meaning of Section 2(f); and we affirm the Examining Attorney's refusal to register Applicant's mark unless Applicant disclaims the exclusive right to use BOOKING.COM apart from the mark as shown.

Decision: The refusal to register Applicant's mark in the absence of a disclaimer of BOOKING.COM is AFFIRMED on the ground that BOOKING.COM is generic as applied to Applicant's services; and on the ground that BOOKING.COM is merely descriptive of Applicant's services and has not been shown to have acquired distinctiveness. Applicant is allowed until thirty (30) days from the date of this decision to submit to the Board a disclaimer (in proper form) of the designation BOOKING.COM, in which case this decision will be set aside. *See* Trademark Rule 2.142(g).