

This Opinion is not a
Precedent of the TTAB

Mailed: August 9, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Structural Energetic Therapy

Serial No. 87827772

Zachary D. Messa, of Johnson Pope Bokor Ruppel & Burns LLP,
for Structural Energetic Therapy.

Breanna Freeman, Trademark Examining Attorney, Law Office 114,
Laurie Kaufman, Managing Attorney.

Before Zervas, Kuhlke and Cataldo,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Structural Energetic Therapy (“Applicant”) seeks registration on the Principal Register of the proposed mark CRANIAL/STRUCTURAL (in standard characters) for (i) “educational services, namely, providing instructional courses in the field of medical massage” in International Class 41; and (ii) “medical massage therapy services” in International Class 44.¹

¹ Application Serial No. 87827772 was filed on March 9, 2018, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use and first use in commerce at least as early as December 14, 2003, for the services in both International Classes.

In the July 19, 2018 Final Office Action, the Examining Attorney refused registration of Applicant's proposed mark:

- (i) as merely descriptive of a feature, characteristic or purpose of Applicant's services under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1);
- (ii) as failing to function as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051-1053, 1127, because Applicant's proposed mark is a term that is commonly used in the medical massage industry to merely convey information about Applicant's services or services similar thereto;
- (iii) because Applicant's specimen of use failed to demonstrate appropriate use of the proposed mark in commerce for either International Class of services; and
- (iv) because Applicant's identification of services included indefinite wording.²

Applicant then timely appealed and submitted a request for reconsideration. In its request, Applicant argued against the refusals and claimed acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f), in the alternative.³ Applicant also submitted substitute specimens. The Board suspended the appeal and remanded the application to the Examining Attorney for consideration of the request for reconsideration.

² TSDR 1. Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. TTABVUE references refer to the Board's docket system.

³ January 21, 2019 Request for Reconsideration, TSDR 3.

After further prosecution, the Examining Attorney issued a second Final Office Action on June 9, 2020, refusing registration:

- (i) under Trademark Act Sections 1, 2, 3 and 45 on the basis that the proposed mark is generic;
- (ii) in the alternative, if the applied-for mark is ultimately determined not to be generic, under Section 2(e)(1), on the basis that the proposed mark is merely descriptive of Applicant's services and Applicant's showing of acquired distinctiveness under Section 2(f) is insufficient;
- (iii) under Trademark Act Sections 1, 2, 3 and 45 as failing to function as a mark because Applicant's proposed mark is commonly used by those in Applicant's particular trade or industry to merely convey information about Applicant's or similar services, namely, to refer to a particular type of massage therapy using a specific technique aimed at addressing pain, injury and/or structural imbalances in the body; and
- (iv) under Trademark Act Sections 1 and 45 because the specimen and substitute specimen do not show a direct association between the mark and the International Class 44 services, and fail to show the applied-for mark as actually used in commerce with the International Class 44 services.⁴

Subsequently, the Board resumed the appeal, and allowed Applicant and the Examining Attorney time to file briefs. The appeal is fully briefed.

⁴ June 9, 2020 Office Action, TSDR 1. The Examining Attorney accepted the substitute specimen for Applicant's International Class 41 services in the March 11, 2019 Office Action.

We affirm the genericness and mere descriptiveness refusals and the Examining Attorney's determination that Applicant's showing under Section 2(f) is insufficient to establish acquired distinctiveness. We do not reach the remaining refusals.

I. Genericness

A generic term "is the common descriptive name of a class of goods or services." *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)); *see also USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 2020 USPQ2d 10729, *1 (2020). Any term that the relevant public uses or understands to refer to the genus of goods or services, or a key aspect or central focus or subcategory of the genus, is generic. *Royal Crown Co., Inc. v. The Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046-1047 (Fed. Cir. 2018). "[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole." *In re Cordua Rests.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (holding CHURRASCOS, a word that is generic for a type of grilled meat, to be generic for restaurant services because it referred to a key aspect of those services); *see also In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1535 (Fed. Cir. 2009) ("hotels" identified the "central focus" of online lodging information and reservation services and therefore HOTELS.COM found generic). Because generic terms "are by definition incapable of indicating a particular source of the goods or services," they cannot be registered as trademarks.

Id. (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001)). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Id.* (quoting *Marvin Ginn*, 228 USPQ at 530).

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. *See also Princeton Vanguard*, 114 USPQ2d at 1829 (“there is only one legal standard for genericness: the two-part test set forth in *Marvin Ginn*”). “An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole.” *Id.* at 1831 (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005)).

A term may be generic if it refers to part of the claimed genus of services. *In re Cordua Rests.*, 118 USPQ2d at 1638, states:

[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole. Thus, the term “pizzeria” would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants. *See, e.g., Northland Aluminum*, 777 F.2d at 1561⁵ (affirming the TTAB’s determination that BUNDT is generic “for a type of ring cake”); *In re Analog Devices, Inc.*, 6 USPQ2d 1808, 1810 ... (TTAB 1988) (“There is no logical reason to treat differently a term that is generic of

⁵ *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

a category or class of products where some but not all of the goods identified in an application fall within that category.”), *aff’d*, 871 F.2d 1097 (Fed. Cir. 1989) (unpublished); *see also Otokoyama Co., Ltd. v. Wine of Japan Imp., Inc.*, 175 F.3d 266, 271 (2d Cir.1999) (“Generic words for sub-classifications or varieties of a good are [] ineligible for trademark protection.”). ... A “term need not refer to an entire broad species, like ‘cheese’ or ‘cake,’ in order to be found generic.” 1–2 Anne Gilson LaLonde, *Gilson on Trademarks* § 2.02[7][a] (2011).

In an ex parte appeal, the USPTO has the burden of establishing that a mark is generic and, thus, unregistrable. *In re Hotels.com*, 91 USPQ2d 1532 at 1533; *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987); *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987).

a. The Genus of Services

“[O]ur first task is to determine, based upon the evidence of record, the genus of Applicant’s [services]” *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1600 (TTAB 2014). 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 Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The recitations of services suitably express the genus of the services in each class.

b. The Relevant Purchasing Public's Understanding of CRANIAL/STRUCTURAL

We turn now to the second inquiry under *Marvin Ginn*, whether CRANIAL/STRUCTURAL is understood by the relevant public primarily to refer to “educational services, namely, providing instructional courses in the field of medical massage” and “medical massage therapy services.” Any competent source, including dictionary excerpts, research databases, webpages, newspapers and other publications, may serve as evidence to show the relevant public’s understanding of the wording at issue. *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007); *In re Merrill Lynch, Pierce, Fenner, & Smith*, 4 USPQ2d at 1143.

Based on the recitations of services, we find that a consumer of Applicant’s International Class 41 educational services (“providing instructional courses in the field of medical massage”) and of Applicant’s International Class 44 “medical massage therapy services” is a member of the general public.

1. Applicant's evidence includes:

- The January 20, 2019 Declaration of Don McCann, Applicant's owner, reproduced below;⁶

DECLARATION

1. My name is Don McCann, I am over the age of eighteen and the owner of Structural Energetic Therapy, Inc. I have personal knowledge of the facts and circumstances contained herein.

2. Structural Energetic Therapy, Inc. d/b/a The Institute of Structural Energetic Therapy ("SET") has been using Cranial/ Structural for instructional courses featuring medical massage and medical massage ("Mark") continuously and exclusively without interruption throughout the United States for approximately fifteen (15) years.

3. Since 2003, SET has continuously used the Mark in connection with classes, presentations and seminars in the following nineteen (19) states: Georgia, Alabama, North Carolina, Massachusetts, Rhode Island, New York, Pennsylvania, Texas, Colorado, Minnesota, Florida, New Jersey, Arizona, Indiana, Rhode Island, Pennsylvania, Kansas, Texas and Vermont.

4. Since 2003, SET has continuously used the Mark and prominently displayed the same during the Florida State Massage Therapy Association ("FSMTA") State Conventions and Chapter Meetings. SET's attendance, use and display of the Mark for instructional courses featuring medical massage at the FSMTA events is significant, because the FSMTA promotes public awareness of massage therapy through education and professionalism, has nearly 5,000 members, and has chapters in Virginia, West Virginia, New Jersey, Washington DC, Maryland, Pennsylvania, and Delaware. During each year of the FSMTA State Convention, SET demonstrated and promoted the instructional services under the Mark from anywhere between 125-295 attendees, which over the last 15 years amounts to approximately 1875 to 4425 therapists.

5. Since 2003, SET has continuously used the Mark for instructional courses featuring medical massage in the American Massage Therapy Association (AMTA) National Conventions in Pennsylvania and Washington, AMTA New England Conference in Massachusetts, AMTA Florida Chapter, AMTA Minnesota Chapter, AMTA Georgia Chapter, and AMTA Rhode Island Chapter. The AMTA is the largest non-profit, professional association serving massage therapists, massage students and massage schools in the United States whose mission is to advance the art, science and practice of massage therapy.

6. Likewise, SET has continuously used the Mark for instructional courses featuring medical massage in the World Massage Festivals (WMF) in Indiana (2015), New Jersey (2016), North Carolina (2017) and Nevada (2018). WMF's mission is to educate the general public about massage and to educate therapists about different types of massage.

7. While SET actively promotes its instructional courses featuring medial massage under the Mark through organizations such as the FSMTA, AMTA and WMF, it also offers the instruction to therapists under the Mark, which upon completion of the course, receive a certification permitting them to offer the massage to their clients. Since, 2003, the Mark has been used in connection with the instruction, education and training of over 2,109 therapists who in turn are permitted to use the Mark to offer the massage to their clients.

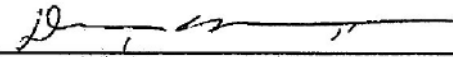
8. SET's instructional courses, including courses offered under the Mark, are also approved by the Florida Board of Massage Therapy for Continuing Education (CE Provider #50-1023) and the National Certification Board for Therapeutic Massage & Bodywork (Provider # 037660-00).

9. SET's continuous and exclusive use of the Mark for instructional course featuring medical massage and medical massage over the last fifteen years has resulted in the Mark as being a source identifier for such goods and services.

10. As I explained in my previous declaration, I authored the Massage Today, and Bon Vital articles cited by the Examining Attorney. The Naturalis Holistic Health article cited by the Examining Attorney was not authored by me, but it clearly indicates that SET is the source of the article. The CE Broker's print-out, also refers the instructional course offered by SET under the Mark that has been approved since at least as early as 2003 (see Exhibit "A"). Finally, the JPMassage.com printout shows that Jupiter Farms does not offer, any massages under the Mark (see Exhibit "B"). In light of no recognized dictionary definition of the Mark (see Exhibit "C"), and the limited evidence of use of the Mark by others who began using after SET's first use, the Mark is not descriptive of the services offered thereunder.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

DATED this 20 day of January 2019.


Don McCann

• Mr. McCann's July 2, 2018 Declaration, providing, inter alia, that Mr. McCann "founded the therapeutic technique ... named CRANIAL/STRUCTURAL as shown in the articles attached to the June 25, 2018 Office Action" (addressed below); and that he authored two of the articles submitted with the same Office Action;⁷

⁶ January 21, 2019 Request for Reconsideration, TSDR 14-15.

⁷ July 6, 2018 response, TSDR 2.

- Applicant's specimens and substitute specimens, including:⁸

REVOLUTIONIZE
Your Massage Practice!!
**CRANIAL / STRUCTURAL
SOFT TISSUE RELEASE I**

*A CRANIAL/STRUCTURAL APPROACH TO
SOFT TISSUE REHABILITATION!!*

**90% of body pain can be directly related to the
Core Distortion Pattern!!!**

- Learn to identify and release this Core Distortion
- Effectively treat headaches, back pain, sciatica, TMJ, whiplash, arthritis, carpal tunnel syndrome, herniated / bulging discs, nerve entrapments, *and so much more!!*

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813-909-9626 – Pam Putnam

January 14-15, 2006 – Daytona Beach, FL

386-763-4890 – Don Glassey

CLASS SIZE LIMITED!

Discounts for early registration

Don McCann, MA, LMT, LMHC, CSETT (mm3717)

www.StructuralEnergeticTherapy.com



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• Negative dictionary evidence for “cranial structural” and negative Internet search results for “cranial structural massage”;⁹

• Webpages from AMTA, FSMTA, Alpha School of Massage and WebMD that do not mention cranial/structural or variations thereof but mention various styles of massage;¹⁰

• A registration record for Registration No. 4906034 for the mark ROLLEASE for services identified as “teaching massage therapy techniques to massage therapists and other therapy providers”;¹¹

⁸ January 21, 2019 Specimens, TSDR 1-2.

⁹ January 21, 2019 Request for Reconsideration, TSDR 27-30.

¹⁰ *Id.*, TSDR 31-85.

¹¹ *Id.*, TSDR 90-91.

• 18 essentially identical declarations by massage and health professionals stating, inter alia, that they attended training courses offered by Applicant that were developed by Mr. McCann; that “[s]tudents who successfully complete the Cranial/Structural course are permitted to offer ... services under the name Cranial/Structural”; and that they “do not identify the term Cranial/Structural as describing a specific type of massage services, such as Swedish massage, offered by others who have not successfully completed the Cranial/Structural courses.”¹²

• Third-party registration papers for the following registered marks:¹³

Mark	Reg. No.	Goods
CRANIAL TECHNOLOGIES	Principal Reg. No. 4988789 (Section 2(f) claimed)	Medical services; medical services, namely, remodeling and shaping of deformed infant heads in International Class 44
CRANIAL TECHNOLOGIES	Principal Reg. No. 5003408 (Section 2(f) claimed)	Medical devices, namely, head shape remodeling orthosis to correct deformed infant heads in International Class 10
INSTITUTE OF STRUCTURAL MEDICINE (INSTITUTE disclaimed)	Principal Reg. No. 5600406 (Section 2(f) claimed)	Education and training, namely, providing classes, seminars, and training for medical professionals and lay people in the area of physical therapy, massage, structural integration, voice dialogue, movement education, and body-mind connection in International Class 41

¹² September 11, 2019 Response to Office Action, TSDR 8-33.

¹³ May 12, 2020 Response to Office Action, TSDR 4-132; September 11, 2019 Office Action, TSDR 25, 31-32.

Mark	Reg. No.	Goods
INTEGRATED CRANIAL HEALTH	Supp. Reg. No. 5331831	Educational services, namely, conducting classes, workshops, and seminars for surgeons, aestheticians, dentists, and practitioners of chiropractic, massage, and physical therapy in the field of integrative manual therapy to release cranial and spinal tissues, and distribution of course materials in connection therewith in International Class 41 and Integrative manual therapy services to release cranial and spinal tissues for use by surgeons, aestheticians, dentists, and practitioners of chiropractic, massage, and physical therapy in International Class 44
CRANIOSOMATICS	3153901	Seminars, courses and workshops in cranial therapy concepts and applications, and training in manual therapy techniques in International Class 41
RENEGERATIO SUI ZOEGENIC THERAPIES and Design	2444357	holistic healing, physical therapy and massage services featuring a particular type of movement technique, namely, scientific massage therapy, reflexology, reiki, acupressure, lymph massage, connective tissue massage; counseling services in the field of conflict resolution and stress management in International Class 42

2. The Examining Attorney evidence includes:

- MERRIAM WEBSTER DICTIONARY definition of “cranial” as “of or relating to the skull or cranium.”¹⁴
- MERRIAM WEBSTER DICTIONARY definition of “structural” as “of or relating to the physical makeup of a plant or animal body.”¹⁵

¹⁴ November 12, 2019 Office Action, TSDR 29-34.

¹⁵ *Id.*, TSDR 39-45.

Submitted with June 25, 2019 Office Action:

- bonvital.com - "A New Paradigm for Soft Tissue Therapy – Cranial/Structural Techniques" (TSDR 12-15):¹⁶

Cranial/Structural therapy is a new paradigm that is totally different from anything else you have been exposed to or studied.

As the name implies, Cranial/Structural addresses the structural aspects of the body in relationship to the cranium. The distortion found in the cranium relates directly to the anterior/posterior rotation of the iliums and tippage of the sacrum. Thus, as the soft tissue restrictions that hold the cranium in its distortion are released allowing the cranium to move freely into balance, the rotation of the iliums and tippage of the sacrum are also brought into balance and weight bearing support. ... In just one application of the specialized Cranial/Structural Core Distortion Releases the previously unbalanced ilium/sacrum relationship is able to provide a stable weight bearing support to the whole body. Once released in one application, that distortion doesn't return! The soft tissue restrictions of the cranium won't reform in the same way so the weight bearing collapse at the SI joint does not recur!

- massagetoday.com - "The Integration of Cranial Structural Tissue" (February 2014) (TSDR 6-8):

[I]ntegrating cranial/structural therapy with soft tissue [missing wording] produce rapid long term results in rehabilitating clients with musculoskele[missing wording] integration of advanced techniques maybe the answer for

¹⁶ Applicant claims Mr. McCann authored this article, as well as the following articles from massagetoday.com.

many of your [missing wording] returning with the same problems over and over.

- massagetoday.com - “Cranial/Structural Soft-Tissue Releases” (May 2007) (TSDR 9-11):

Cranial/structural techniques are very different from craniosacral technique[s].

- naturalisllc.com - “Cranial Structural Technique (CST)” (TSDR 16-17):

I have been a Holistic Health Care Practitioner for many years but recently I learned and gained qualification in Cranial Structural Technique. Currently in my practice I have been combining the Bowen Technique with the Cranial Structural technique (CST) and achieving staggering results.

CST was developed by Don McCann. CST should not be confused with craniosacral technique in fact they are worlds apart. With Cranial Structural Technique one addresses the core distortion pattern that exists within the structure of every body – we are born with it. It is similar to a spiral that runs through the body causing rotation of the iliums and a tipped sacrum as well as a bit of scoliosis. The spiral is not only found in the body but also in the cranium. Pain is often caused by this distortion – and when the distortion is released pain is relieved.

- comfortkeepers.com - “How Cranial Structural Therapy Can Ease Your Chronic Pain.” (November 20, 2014 by Michael Jones) (TSDR 18-20):

Cranial Structural Therapy (Structural Energy Therapy) which is looking at the whole body, the energetics and strains in the body to then assess and release to help chronic and acute pain, is what Patty specializes i[n].

- apps.cebroker.com - “Cranial/Structural Therapy for Rehabilitation from Concussions and Mild Traumatic Brain Injury” (TSDR 21-22):

This workshop will teach contraindications, evaluation, and hands on manipulation of the cranium

Submitted with November 12, 2019 Office Action

- Bowen College course entitled “Cranial/Structural Core Distortion Releases, Quick Release Technique, and Cranial/Structural Frontal/Occipital Decompression” (Instructor: Don McCann) (TSDR 6-11):

These techniques can be integrated into any soft tissue treatment and they will initiate dramatic structural changes from the beginning of the first session. You will learn: cranial anatomy, cranial rhythms, core distortion patterns, structural evaluation, body reading, cranial/structural relationships, soft tissue cranial releases, muscle testing, and kinesiology, corrections of structural distortions.

- essentialstarr.com

“Advanced Cranial Structural Treatments” (TSDR 12-17):

These advanced energetic techniques address the SBS joint, just above C1 of the spinal column. This point of the sphenoid and occiput within the depths of the cranium is a focal point of the neurosystem to shift and balance the entire musculoskeletal system. Once this joint moves into alignment, the rest of the structure can now move into alignment because of the relationship between the cranium and the structure of the whole body.

By combining deep tissue massages and cranial/structural techniques we are able to balance your structure releasing many of the tissues that have caused your pain.

- rehabtherapynow.com - Trevino Bodywork Center LLC – “Cranial/Structural Soft Tissue Releases” (TSDR 75-78):

Cranial/Structural techniques are very different from craniosacral techniques in intent and application. ... Cranial/Structural techniques release the soft tissue restrictions of the normal cranial motion resulting in structural changes in throughout the body.

Cranial work that focuses on this structural shift is called Cranial/Structural due to its direct relationship to structural balance. Prior to having these techniques to balance the SBS, and correct the weight bearing collapse found in the core distortion pattern, I was not able to achieve a long-term correction of the distortion in the pelvis. However, with the Cranial/ Structural techniques, my clients showed dramatic changes in the initial session, and I was able to correct this distortion throughout the body in only a few treatments by integrating my soft tissue protocols with the Cranial/Structural.

- kikitymassage.com (TSDR 19-20):

What is Structural Energetic Therapy®?

Structural Energetic Therapy® (SET) is a posture restructuring therapy that primarily focuses on releasing structural imbalances within the skull, the pelvis, and the related compensations throughout the body that are often responsible for postural strain and its related injuries. It incorporates postural analysis, muscle testing (kinesiology), Cranial/Structural soft tissue release, acupuncture, and deep tissue myofascial techniques that focus on the individual needs of the client.

The cascade of unwinding throughout the body's structure, initiated by SET's Cranial/Structural Core Distortion Release, is what makes this modality so extremely effective.

- surgicalalternative.com (TSDR 24):

Cranial Structural Bodywork

At Surgical Alternative we specialize in Cranial Structural Bodywork Therapy Cranial Structural Bodywork is a complete full body restructuring and balancing program for rehabilitation from acute (pain that resolves more quickly) and chronic pain (pain lasting for long periods of times, even months and in many cases years). Cranial Structural Bodywork is a combination of multiple modalities and techniques including Cranial Structural Therapy,

Structural Bodywork and Applied Kinesiology (muscle testing) techniques.

- jfmassage.com (TSDR 21):

Are you ready to feel better? Cranial/Structural therapy combined with deep tissue bodywork to help your body re-balance and be pain free.

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- touchstonewellness.com (TSDR 3):

These techniques include kinesiology and muscle testing, postural analysis, Cranial/Structural techniques, directed myofascial unwinding, emotional energy release, acupressure, scar tissue and adhesion release, deep tissue therapy and other therapeutic bodywork techniques.

- helpinghandmassage.com (TSDR 7):

SET integrates Cranial/Structural techniques, myofascial unwinding, neuromuscular applications, myofascial restructuring, emotional energy release, acupressure, kinesiology and muscle testing, passive and active resistance, postural analysis, scar tissue and adhesion release, deep tissue therapy and rehabilitative massage.

- thebiomedcenterne.com (TSDR 8):

Structural Energetic Therapy is an integration of Cranial Structural, Deep Tissue Myofascial Unwinding and Energy techniques.

- jenniferkiel.massagetherapy.com (TSDR 11):

Cranial/Structural Core Distortion

- reformavi.com (TSDR 13):

Cranial/Structural vs Craniosacral

Cranial/Structural techniques are very different from craniosacral techniques in intent and application. Craniosacral techniques are applied within the soft tissue restrictions of the normal cranial motion.

Cranial/Structural techniques release the soft tissue restrictions of the normal cranial motion resulting in structural changes throughout the body.

c. Arguments

The Examining Attorney argues that the applied-for term is generic because “[t]here is substantial and significant evidence of record to demonstrate that CRANIAL/STRUCTURAL or CRANIAL STRUCTURAL massage is a specific type of massage therapy technique involving the skull or cranium and the structural composition of the human body.”¹⁷

Applicant argues that “[m]ixed and ambiguous evidence of genericness, such as ten of the twelve Internet Articles that are either authored by Applicant’s principal or refer to Applicant or Applicant’s services, skews strongly in favor of finding that Applicant’s Mark is not generic”; “CRANIAL/STRUCTURAL is a new treatment to stabilize the pelvis relationship between the cranial bones, reciprocal tension membrane, dura and the myofascial planes of the body”; and that “Applicant’s Mark has no recognized dictionary definition ... is not recognized by Wikipedia as any form of massage or massage technique ... and is not recognized as a common form of massage by the American Massage Therapy Association ... Alpha School of Massage ... or WebMd”¹⁸

¹⁷ Examining Attorney’s brief, 10 TTABVUE 8.

¹⁸ Applicant’s brief, 8 TTABVUE 7-9.

d. Analysis

We consider whether the term “CRANIAL/STRUCTURAL,” as a whole, is generic for Applicant’s International Class 41 and 44 services. “An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole.” *Princeton Vanguard*, 114 USPQ2d at 1831 (quoting *In re Steelbuilding.com*, 75 USPQ2d at 1421). As mentioned above, any term that the relevant public uses or understands to refer to the genus of services, or a key aspect or central focus or subcategory of the genus, is generic. *Royal Crown*, 127 USPQ2d at 1046-1047.

The Examining Attorney’s evidence reflects that the two terms in Applicant’s proposed marks are defined terms, meaning “of or relating to the skull or cranium”;¹⁹ and “of or relating to the physical makeup of a plant or animal body.”²⁰ Both terms therefore have meaning in the context of the human body, and, by extension, to massage which is performed in particular areas of the human body, whether it be the offering of massage therapy services or the provision of instructional courses concerning medical massage. Applicant’s principal, Mr. McCann, makes clear what the significance of these two terms is. He states in his article “A New Paradigm for Soft Tissue Therapy – Cranial/Structural Techniques,” “[a]s the name implies, Cranial/Structural addresses the structural aspects of the body in relationship to the cranium.”²¹ See also articles from megsmenopause.com (“What is a Cranial

¹⁹ November 12, 2019 Office Action, TSDR 33-37.

²⁰ *Id.*, TSDR 43-48.

²¹ July 25, 2019 Office Action, TSDR 12-15.

Massage?”);²² realbodywork.com (“Introduction to Structural Massage”);²³ and “utahpainrelief.com (“Everything You Need to Know About Structural Massage.”).²⁴ Applicant states in its specimen of use, “**See *and* Feel Immediate Structural Changes!**” (emphasis in original.)²⁵

Third-parties - massage therapists and others - have used terms such as “Cranial/Structural” and “Cranial/Structural technique” to identify a certain type of massage in promoting their massage services to the general public. *See* Touchstone Wellness Center (“These techniques include kinesiology and muscle testing, postural analysis, Cranial/Structural techniques...”);²⁶ Jennifer Kiel Massage Therapy (“Cranial/Structural Core Distortion”);²⁷ Surgical Alternatives (“Cranial Structural Bodywork is a combination of multiple modalities and techniques including Cranial Structural Therapy, Structural Bodywork and Applied Kinesiology (muscle testing techniques”);²⁸ Essential Starr Integrated Healing Arts (“By combining deep tissue massages and cranial/structural techniques we are able to balance your structure releasing many of the tissues that have caused your pain.”);²⁹ Comfort Keepers (“How

²² November 12, 2019 Office Action, TSDR.

²³ *Id.*, TSDR 248-55.

²⁴ *Id.*, TSDR 60.

²⁵ March 9, 2018 Specimen, TSDR 5.

²⁶ November 12, 2020 Office Action, TSDR.

²⁷ June 9, 2020 Office Action, TSDR 11.

²⁸ November 12, 2020 Office Action, TSDR 24.

²⁹ *Id.*, TSDR 12-17.

Cranial Structural Therapy Can Easy Your Chronic Pain”);³⁰ and Reformavi Massage Therapy (“Cranial/Structural techniques release the soft tissue restrictions of the normal cranial motion resulting in structural changes throughout the body”).³¹

Mr. McCann states that he “founded the therapeutic technique ... named CRANIAL/STRUCTURAL as shown in the articles attached to the June 25, 2018 Office Action”; that Applicant offers “instruction to therapists under the Mark, which upon completion of the course, receive a certification permitting them to offer the massage to their clients”; and that since 2003, the proposed mark has been used in commerce in connection with the instruction, education and training of over 2,109 therapists.³² In addition, Applicant points out that “ten of the twelve Internet Articles ... are either authored by Applicant’s principal or refer to Applicant or Applicant’s services”³³ Applicant notes the webpages from MassageToday.com, BonVital.com, Naturalisllc.com, ComfortKeepers.com, CEBroker.com, JFMassage.com, bowencollege.com, wellcomeomcenter.com, kokitymassage.com, and rehabtherapy.com refer to Structural Energetic Therapy or “SET.”³⁴

Simply because there are references to Mr. McCann, Structural Energetic Therapy or SET does not render “Cranial/Structural” a non-generic term. What counts is how “Cranial/Structural” is used in the evidence. Rehabtherapynow.com –

³⁰ June 25, 2019 Office Action, TSDR 18-20.

³¹ June 9, 2019 Office Action, TSDR 13.

³² McCann Declaration ¶ 7, January 21, 2019 Request for Reconsideration, TSDR 14.

³³ Applicant’s brief, 8 TTABVUE 8.

³⁴ *Id.*, 8 TTABVUE 6.

which presents an article written by Mr. McCann – references Structural Energetic Therapy but states:

Cranial work that focuses on this structural shift is called Cranial/Structural due to its direct relationship to structural balance. Prior to having these techniques to balance the SBS [the cranium], and correct the weight bearing collapse found in the core distortion pattern, I was not able to achieve a long term correction of the distortion in the pelvis. However, with the Cranial/Structural techniques, my clients showed dramatic changes in the initial session, and I was able to correct this distortion throughout the body in only a few treatments by integrating my soft tissue protocols with the Cranial/Structural.³⁵

There is no indication in the article that Applicant is the source of the Cranial/Structural technique. In fact, the article states that “a missing link in the treatment to stabilize the pelvis was found in the relationship between the cranial bones, reciprocal tension membrane, dura, and the myofascial planes of the body,” and identifies Dr. G. Dallas Hancock, a chiropractic physician, as having discovered

a relationship between two of the cranial bones (the sphenoid and the occiput), the sphenobasilar synchondrosis (SBS) where they meet, and the torsion of the pelvis. ... He developed a technique of releasing the cranial torsion of the SBS in an attempt to release the torsion of the pelvis.³⁶

Additionally, “Cranial/Structural” is regularly used in the evidence with terms such as “technique,” indicating that it is a type of massage. The following from kokitymassage.com is exemplary:

³⁵ November 12, 2019 Office Action, TSDR 73.

³⁶ *Id.*, TSDR 72.

Structural Energetic Therapy® (SET) is a posture restructuring therapy that primarily focuses on releasing structural imbalances within the skull, the pelvis, and the related compensations throughout the body that are often responsible for postural strain and its related injuries. It incorporates postural analysis, muscle testing (kinesiology), Cranial/Structural soft tissue release, acupressure, and deep tissue myofascial techniques that focus on the individual needs of the client.³⁷

“Cranial/Structural soft tissue release” is included within a listing of generic terms - kinesiology, acupressure, and deep tissue myofascial techniques, suggesting it too is a generic term. Thus, even though the webpage contains reference(s) to Applicant, the relevant public will understand that “Cranial/Structural soft tissue release” is a type of massage.

Many uses of “Cranial/Structural” in the record are with initial capital letters, and it has been said that initial capitalization of a term or phrase is generally used to designate a brand name, as opposed to a generic term. *See In re Country Music Ass’n Inc.*, 100 USPQ2d 1824, 1831 (TTAB 2011) (“[I]n the English language, initial capitalization of a term or phrase is generally used to designate a brand name, as opposed to a generic term.”); *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464, 1469 (TTAB 1993) (“In many of these articles, ‘Action Slacks’ is mentioned in connection with trademarked products of opposer’s, and the trademarks for these products are also shown in initial capital letters, while at the same time clearly generic terms are depicted in lower case. As a result, the impression is

³⁷ *Id.*, TTABVUE 19. We note that the same website states, “[t]he cascade of unwinding throughout the body’s structure, initiated by SET’s Cranial/Structural Core Distortion Release, is what makes this modality so extremely effective.”

conveyed that ACTION SLACKS is also a trademark[.]”).” Several articles include the term “Technique” (in initial capitalization) after the term “Cranial/Structural.”

There is, however, ample third-party use of “cranial/structural” and “technique” without initial capitalization, as well as Applicant’s use of lower case letters in articles he authored in 2007 and 2014 reprinted in massagetoday.com. See for example:

- 90% of client pain - neck, low back, headaches, carpal tunnel, knee, foot or hip - can be directly related to the cranial/structural core distortion pattern (also known as the spiral distortion).
- Develop the awareness and the tools to release these cranial/structural patterns, which will release the pelvic imbalances and related structural compensations of the core distortion pattern.
- cranial/structural relationships
 - soft tissue cranial releases
 - muscle testing and kinesiology
 - correction of structural distortions.³⁸

We point out too that Applicant’s uses of the term are for the most part as an adjective³⁹:

“Cranial Structural Core Distortion”;

³⁸ See June 25, 2019 Office Action, TSDR 6-8 and 9-11. “[A]n applicant’s own website or marketing materials may be probative, or even, as in *Gould*, ‘the most damaging evidence,’ in indicating how the relevant public perceives a term.” *In re Mecca Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018)) (citing *Princeton Vanguard* and *In re Gould*, supra; see also *In re Empire Tech. Dev. LLC*, 123 USPQ2d 1544 (TTAB 2017) (Board considered applicant’s own website and promotional video in finding COFFEE FLOUR generic)).

³⁹ The Board stated in *In re Mecca Grade Growers*, 125 USPQ2d at 1959:

The fact that Applicant’s proposed mark is not a noun does not render it less generic. It is well established that generic designations need not be nouns:

“Cranial/Structural techniques”;

“CranialStructural Core Distortion Releases I & Cranial/Structural Frontal/Occipital Decompression Workshop”;

“Cranial/Structural releases”;

“cranial structural relationships”;

“Develop the awareness and the tools to release these cranial/structural patterns ...”; and

“A CRANIAL/STRUCTURAL APPROACH.”⁴⁰

“Cranial/Structural” followed by different nouns suggests that the term refers to a type massage or body therapy.

Applicant argues that the proposed mark has no recognized dictionary definition and that this weighs against a finding that the mark is generic. However, the fact

[W]e readily acknowledge the sometimes-used distinction that generic names are nouns and descriptive terms are adjectives. 2 J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 12:10 (4th ed. 1997) [“A rule of thumb sometimes forwarded as distinguishing a generic name from a descriptive term is that generic names are nouns and descriptive terms are adjectives. However, this “part of speech” test does not accurately describe the case law results.”]. Here, we recognize that applicant’s mark does not present the classic case of a generic noun, but rather a generic adjective. In this case, because the term ATTIC directly names the most important or central aspect or purpose of applicant’s goods, that is, that the sprinklers are used in attics, this term is generic and should be freely available for use by competitors.

In re Central Sprinkler Co., 49 USPQ2d 1194, 1199 (TTAB 1998); *see also Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1366 (TTAB 2013). Adjectival phrases are common forms of speech, such that consumers will recognize Applicant’s proposed mark as the generic designation for the goods and services.

⁴⁰ January 21, 2019 Request for Reconsideration, TSDR 86-89, 101-108; January 21, 2019 Specimen, TSDR 1-8.

that a word or term is not found in the dictionary is not controlling on the question of registrability. *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at *8 (TTAB 2019) (citing *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1603 (TTAB 2014); *In re Dairimetics, Ltd.*, 169 USPQ 572, 573 (TTAB 1971)).

The same reasoning applies to the listings of massage types in webpages Applicant submitted, which do not refer to a “Cranial/Structural” massage, such as the webpages from alphaschoolofmassage.com (“The Definitive Guide to Massages”).⁴¹ Applicant has only established that “Cranial/Structural” is not included in the types of massages listed therein.

In addition, the fact that an applicant may be the first or only user of a generic designation is not dispositive on the issue of genericness where the evidence shows that the word or term is generic. *See In re Empire Tech. Dev. LLC*, 123 USPQ2d 1544, 1549 (TTAB 2017) (quoting *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010)); *see also In re Mecca Grade Growers*, 125 USPQ2d at 1959 (“Applicant may be the first to use the precise phrase “mechanically floor-malted” ... [and] Applicant might even be the creator of a new mechanized process for producing floor malt. But whether this is true or not, this does not affect the generic nature of Applicant’s proposed mark.”).

Turning to the few third-party registrations submitted by Applicant, we accord them little weight. First, each registration does not contain the same two terms appearing in Applicant’s proposed mark. Second, the CRANIAL TECHNOLOGIES

⁴¹ January 21, 2019 Request for Reconsideration, TTABVUE 53 – 90.

registrations are for unrelated services. Third, the remaining registrations are too few from which to reach any conclusion. Fourth, “the Board is not bound by prior decisions of Trademark Examining Attorneys, and ... each case must be decided on its own merits and on the basis of its own record, in accordance with relevant statutory, regulatory and decisional authority.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1567 (Fed. Cir. 2001); *see also In re Thomas H. Wilson*, 57 USPQ2d 1863, 1871 (TTAB 2001).

Applicant also submitted eighteen essentially identical declarations from massage and health professionals stating that they attended training courses offered by Applicant that were developed by Mr. McCann; that “[s]tudents who successfully complete the Cranial/Structural course are permitted to offer ... services under the name Cranial/Structural”; and that they “do not identify the term Cranial/Structural as describing a specific type of massage services, such as Swedish massage, offered by others who have not successfully completed the Cranial/Structural courses.”⁴² The probity of these declarations is limited because they are form declarations. *See In re Pohl-Boskamp GmbH & Co.*, 106 USPQ2d 1042, 1051 (TTAB 2013) (“[T]hey are all essentially identical in form and were clearly not composed individually. ... [S]uch statements are less persuasive than statements expressed in the declarants’ own words.”); *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1759 (TTAB 1991) (form declarations found to “lack persuasiveness on the issue of the primary significance of the term ‘MULTI-VIS’ to the purchasing public” when there was no indication that

⁴² September 11, 2019 Response to Office Action, TSDR 8-33.

the declarants were “familiar with such technical concepts as mere descriptiveness, distinctiveness and the definition of a trademark.”). In addition, there is no indication how the declarants use the term, and their use could be in the same manner found in the Examining Attorney’s evidence, i.e., as a massage technique. There are no declarations from those who have not participated in Applicant’s courses. Further, the fact that Applicant uses the term “Cranial/Structural” as the name of a course suggests that the term identifies the subject matter taught in the course.

Applicant also argues that the record contains mixed and ambiguous evidence of genericness which precludes a finding of genericness.⁴³ When confronted with a mixed record on the issue of genericness, the Federal Circuit has instructed the Board to side with an applicant. *See In re America Online Inc.*, 77 USPQ2d 1618, 1623 (TTAB 2006) (“the evidence of generic use is offset by applicant’s evidence that shows not only a significant amount of proper trademark use but also trademark recognition” by third parties); *see also In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 4 USPQ2d at 1144 (where “recognition in a substantial number of publications that the source of the CASH MANAGEMENT ACCOUNT” was the applicant, the court found that “[t]he mixture of usages unearthed by the NEXIS computerized retrieval service does not show, by clear evidence, that the financial community views and uses the term CASH MANAGEMENT ACCOUNT as a generic, common descriptive term for the brokerage services to which Merrill Lynch first applied the term.”). This is not a “mixed record” case. Unlike in *Merrill Lynch*, there is little

⁴³ Applicant’s brief, 8 TTABVUE 8.

evidence of consumers recognizing CRANIAL/STRUCTURAL as a mark for the involved services that we can consider, and much of the evidence uses “Cranial/Structural” to identify a massage technique.

After carefully considering all of the arguments and evidence of record, we find that the relevant public understands the term “cranial/structural” as a term that primarily refers to a category within the genera “educational services, namely, providing instructional courses in the field of medical massage” and “medical massage therapy services” – namely, a massage technique – and that the proposed mark is generic. *See In re Cordua Rests.*, 118 USPQ2d at 1638; *Marvin Ginn*, 228 USPQ at 530. Because the proposed mark CRANIAL/STRUCTURAL is generic when used in connection with the services identified in the application, it is not registrable on the Principal Register.

II. Mere Descriptiveness

We next address the refusal under Section 2(e)(1), precluding registration of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive ... of them.” A term is merely descriptive within the meaning of the statute “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2017) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). Descriptiveness must be assessed “in relation to the goods [and services] for which

registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *Bayer AG*, 82 USPQ2d at 1831 (citing *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)).

We must also address the degree of descriptiveness because that bears on the quantity and quality of evidence required to prove acquired distinctiveness, which we discuss below. *See Royal Crown*, 127 USPQ2d at 1045 (instructing Board to first determine whether a proposed mark is highly descriptive rather than merely descriptive before assessing acquired distinctiveness); *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1378 (Fed. Cir. 2018) (same).

We find the proposed mark highly descriptive in view of the entire record and for the reasons set out above in the genericness discussion. The clarity, quality and quantity of the Examining Attorney’s evidence persuades us that a mental leap is not needed to determine that the proposed mark refers to a feature of Applicant’s identified services. We also find the proposed mark to be highly descriptive. Because of the proposed mark’s highly descriptive nature, Applicant has a higher burden to establish acquired distinctiveness. *In re Guaranteed Rate, Inc.*, 2020 USPQ2d 10869, *4 (TTAB 2020).

III. Acquired Distinctiveness

Applicant claims acquired distinctiveness in the alternative under Section 2(f). For the sake of completeness, we consider whether Applicant’s asserted mark has acquired distinctiveness based on the entire record, keeping in mind that “[t]he

applicant ... bears the burden of proving acquired distinctiveness.” *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (citation omitted).

Because we have found the proposed mark highly descriptive, Applicant’s burden of establishing acquired distinctiveness under Section 2(f) is “commensurately high.” *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d 111512, at *11 (TTAB 2019) (citing cases). *See also, e.g., Royal Crown*, 127 USPQ2d at 1048 (“[H]igher levels of descriptiveness require a more substantial showing of acquired distinctiveness.”); *In re Steelbuilding.com*, 75 USPQ2d at 1424 (“[A]pplicant’s burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning.”); *In re Bongrain Int’l Corp.*, 894 F.2d 1316, 13 USPQ2d 1727, 1727 n.4 (Fed. Cir. 1990) (quoting *Yamaha Int’l Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1008 (Fed. Cir. 1988) (“the greater the degree of descriptiveness the term has, the heavier the burden to prove it has attained secondary meaning”)); *In re Tires, Tires, Tires Inc.*, 94 USPQ2d 1153, 1157 (TTAB 2009) (highly descriptive terms are less likely to be perceived as trademarks, and therefore more persuasive evidence of secondary meaning will ordinarily be required to establish their distinctiveness).

The following six factors inform whether a mark has acquired secondary meaning:

- (1) association of the trade[mark] with a particular source by actual purchasers (typically measured by consumer surveys); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the

mark ... All six factors are to be weighed together in determining the existence of secondary meaning.

Converse, Inc. v. Int'l Trade Comm'n, 907 F.3d 1361, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018).

Applicant relies on Mr. McCann's Declarations which include the following in support of its Section 2(f) claim:

- approximately fifteen (15) years of continuous and exclusive use of the proposed mark in approximately nineteen (19) states;
- continuous use of the proposed mark with prominent displays in Florida association, convention and meetings of professional organizations, wherein Applicant demonstrated and promoted the instructional services under the proposed mark from anywhere between 125-295 attendees, amounting to approximately 1875 to 4425 therapists over the past 15 years;
- continuous use of the proposed mark for instructional courses featuring medical message in various associations, conferences and association chapter meetings including the American Massage Therapy Association (AMTA) which is the largest non-profit, professional association serving massage therapists, massage students and massage schools in the United States;
- provision of instruction, education and training under Applicant's proposed mark to over 2,109 therapists;
- use of the proposed mark to promote Applicant's services among nationally recognized trade organization events; and
- use of Applicant's proposed mark in connection with the promotion of Applicant's continuing education courses by CE Brokers, and the Florida Board of Massage Therapy for Continuing Education.⁴⁴

⁴⁴ January 21, 2019 Request for Reconsideration, TSDR 14-15.

We also note the eighteen declarations of the eighteen massage and health professionals, discussed above.

Given the highly descriptive nature of Applicant's proposed mark, we find the evidence insufficient to show acquired distinctiveness. Applicant offered no details about its advertising or context. It has no information about its amount of sales, any intentional copying and unsolicited media coverage. There are references to Applicant and its principal in the evidence, but these references are not helpful to Applicant because, as explained earlier in this opinion, "Cranial/Structural" is generally used to identify a massage technique and not an indicator or source, and Applicant has used the term in a manner that does not indicate source. Also, Applicant's 15 years of continuous use with its training of thousands of therapists are impressive, but we have questions about how the proposed mark was presented to such therapists. From the webpages in the record which refer to Applicant or Mr. McCann, it appears to us that their uses are in a generic manner, not as a source indicator. Further, there is no direct evidence that consumers of Applicant's services associate Applicant's proposed mark with Applicant. *See In re Melville Corp.*, 228 USPQ 970, 972 (TTAB 1986) (affirming the rejection of Section 2(f) claim, despite substantial advertising and revenue figures, given "the absence of any direct evidence that the purchasing public has come to recognize applicant's slogan as a term identifying applicant's services").

With regard to the eighteen form declarations, in addition to the reasons provided above resulting in their diminished probative value, we find that the declarations do

not reflect any geographic diversity or that they are representative of more than one segment of those consumers of the services identified in the application. Some degree of geographic and customer diversity is necessary for the declarations to have significant probative value. *See In re Florists' Transworld Delivery Inc.*, 106 USPQ2d 1784, 1793-94 (TTAB 2013) (criticizing form declarations for lack of geographic diversity); *In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1633 (Fed. Cir. 2003) (criticizing form declarations for lack of customer diversity).

Thus, even though Applicant has established 15 years of use, and such use has been substantially exclusive, we find that given the highly descriptive nature of Applicant's proposed mark, much more persuasive evidence than Applicant has submitted would be necessary to show that CRANIAL/STRUCTURAL has become distinctive as a source indicator for Applicant's services. *Cf. See In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) (claim based on annual sales under the mark of approximately eighty-five million dollars, and annual advertising expenditures in excess of ten million dollars, not sufficient to establish acquired distinctiveness in view of highly descriptive nature of the mark); *In re Guaranteed Rate*, 2020 USPQ2d at *10 ("The record in this case reflects that, notwithstanding Applicant's substantial efforts, the public, including Applicant's competitors, still primarily use and understand the term 'guaranteed rate' to describe a feature of mortgage lending services.").

IV. Remaining Refusals

In view of our disposition of the issues discussed above, we need not address the two remaining grounds for refusal of Applicant's proposed mark.

Decision: We affirm the refusal to register Applicant's proposed mark on the ground that it is a generic designation of the identified services, and in the alternative, we affirm the refusal to register on the ground that the mark is merely descriptive and without acquired distinctiveness.