

This Opinion is Not a  
Precedent of the TTAB

Hearing: January 19, 2023

Mailed: August 11, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re SP Plus Corporation*

Serial No. 87906630

Angelo J. Bufalino of Vedder Price PC,  
for SP Plus Corporation.

David Tooley, Trademark Examining Attorney, Law Office 125,  
Heather Biddulph, Managing Attorney.

Before Kuhlke, Pologeorgis, and Dunn,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

SP Plus Corporation (“Applicant”) seeks registration on the Principal Register and, in the alternative, on the Supplemental Register of the mark PARKING.COM (in standard characters) for “website providing information regarding parking availability” in International Class 39.<sup>1</sup>

<sup>1</sup> Application Serial No. 87906630 filed May 3, 2018 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce. On January 29, 2019, the application basis was amended to (i) claim Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), as the basis for the application with Applicant’s claim of first use anywhere and use in commerce since at least as early as July 31, 2018, and

The Trademark Examining Attorney refused registration of Applicant's proposed mark PARKING.COM on the Supplemental Register on the ground that it is generic as applied to, and incapable of distinguishing, the services under Trademark Sections 23 and 45, 15 U.S.C. §§ 1091(c), and 1127, and, in the alternative, merely descriptive without sufficient evidence of acquired distinctiveness to support registration on the Principal Register under Trademark Act Sections 2(e)(1), (f), and 45; 15 U.S.C. §§ 1052(e)(1), (f), and 1127.

After the Trademark Examining Attorney made the refusal final, Applicant appealed. We affirm the refusal to register.

## **I. Genericness**

'In order to qualify for registration on the Supplemental Register, a proposed mark 'must be capable of distinguishing the applicant's goods or services.'" *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017) (quoting 15 U.S.C. § 1091(c)). Generic terms do not qualify for registration because "by definition [they] are incapable of indicating a unique source." *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d. 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (citation omitted). *Accord USPTO v. Booking.com B.V.*, 140 S Ct. 2298, 2020 USPQ2d 10729 at \*4 (2020) (*Booking.com*) ("generic terms are ordinarily ineligible for protection as trademarks").

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(ii) seek registration on the Supplemental Register. On January 18, 2022, Applicant amended its application to seek registration on the Principal Register under Trademark Section 2(f), 15 U.S.C. §§ 1052(f).

The Trademark Status and Document Retrieval (TSDR) citations refer to the downloadable .pdf version of the documents available from the electronic file database for the involved application. The TTABVue citations refer to the Board's electronic docket, with the first number referring to the docket entry and the second, if applicable, the page within the entry.

Whether a particular term is generic is a question of fact. *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009). Resolution of that question depends on the primary significance of the term to the relevant public. *Booking.com* at \*5 (“the relevant meaning of a term is its meaning to consumers”).

A generic term identifies a type of service, not the source of the service. *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005). *Accord Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 126 USPQ 397, 398 (CCPA 1960) (“The generic name by which a product is known is not a mark which can be registered on the Supplemental Register under section 23 because such a name is incapable of distinguishing applicant's goods from goods of the same name manufactured or sold by others.”). “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.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (citation omitted).

The genericness inquiry is a two-part test: “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?” *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (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); *In re Uman Diagnostics AB*, 2023 USPQ2d 191, at \*4 (TTAB 2023).

### A. Genus

“[A] proper genericness inquiry focuses on the description of services set forth in the [application or] certificate of registration.” *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991). Generally, the application’s (or registration’s) description of the goods and services adequately defines the genus. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 111 USPQ2d 1495, 1496 (Fed. Cir. 2014) (“The Board found that the relevant goods were adequately defined by Nordic’s description: ‘nutritional supplements containing DHA.’”); *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) (“In this case, the parties agree that the genus of services is ‘online retail store services in the field of mattresses, beds, and bedding.’”). *See also Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 23 USPQ2d 1081, (1992) (“[G]eneric marks ... refer to the genus of which the particular product is a species.”) (citation omitted).

In this case, the recitation lists the services as “website providing information regarding parking availability,” and we find this to be an adequate definition of the genus at issue.<sup>2</sup>

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<sup>2</sup> Applicant describes the genus as “websites for parking availability services” (17 TTABVue 7) and we find the omission of the reference to “information” to be unintentional rather than an argument for a different genus.

**B. Perception of the proposed mark PARKING.COM by relevant consumers**

We turn to the issue of whether the relevant public understands the proposed mark PARKING.COM primarily to refer to the genus of services comprising a “website providing information regarding parking availability.”

**1. Relevant Consumers**

To determine what the record reveals about the relevant public’s understanding of a proposed mark requires us first to define the relevant public. *In re Eddie Z’s Blinds and Drapery, Inc.*, 74 USPQ2d 1037, 1040 (TTAB 2005). The relevant consumer for a genericness determination refers to the purchasing or consuming public for the identified goods or services. *Magic Wand Inc.*, 19 USPQ2d at 1553; *In re James Haden, MD, PA*, 2019 USPQ2d 467424, at \*2 (TTAB 2019).

In response to a request for information identifying the typical consumer of its services, Applicant describes “an individual with a need to acquire information regarding parking availability.”<sup>3</sup> This is an overly broad description of the relevant consumer and omits the necessary information that the relevant consumer of Applicant’s services is seeking the information online, that is, through a website. An individual in a car who needs to park, or who wishes to assist someone in a car who needs to park, is “an individual with a need to acquire information regarding parking availability.” This individual’s access to parking availability information is not restricted to online sources but includes, as a just a few examples, using their eyes to

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<sup>3</sup> April 9, 2020 Response TSDR 39.

seek available parking spaces, calling driving destinations to inquire as to parking availability, and seeking print directories or physical signage directing drivers to available parking. While there may be overlap, the individuals seeking parking availability information from other than online sources are not necessarily the relevant consumers for Applicant's website services offering parking availability information.

Because Applicant's services are a website providing information regarding parking availability and its genus is the same, we find that the relevant consumers consist of consumers who seek parking availability information online.

## **2. Perception of the proposed mark PARKING.COM**

Whether a term is generic "turns on whether that term, taken as a whole, signifies to consumers the class of [] services." *Booking.com* at \*5. *Accord In re Steelbuilding.com*, 75 USPQ2d at 1421 ("An inquiry into the public's understanding of a mark requires consideration of the mark as a whole."). Evidence of the relevant consumer's understanding of the proposed mark may be obtained from any competent source. *In re Cordua Rests., Inc.*, 118 USPQ2d at 1634.

### **a. Evidence that component elements of PARKING.COM are perceived as generic**

Because PARKING.COM comprises two separate words, we assess it as a compound, or combined, term. *Booking.com* at \*5; *In re 1800Mattress.com IP, LLC*, 92 USPQ2d at 1684; *In re Hotels.com, LP*, 91 USPQ2d at 1535. More specifically, the term PARKING.COM does not appear in the dictionary. *See In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719 (TTAB 2016) (defining "negative evidence" as

evidence that a term is not found in reference works).<sup>4</sup> Nor is PARKING.COM a coined term which is inherently distinctive as a mark. *Compare In re Chippendales USA, Inc.*, 96 USPQ2d at 1684 n.2 (“These marks [‘Rolls-Royce’ or ‘Kodak’] contain ‘coined, arbitrary or fanciful words or phrases that have been added to rather than withdrawn from the human vocabulary by their owners, and have, from the very beginning, been associated in the public mind with a particular product . . . and have created in the public consciousness an impression or symbol of the excellence of the particular product in question.’”).<sup>5</sup> Instead, PARKING.COM combines the recognizable dictionary terms PARKING and .COM.

So long as it also includes assessment of the relevant public’s perception of the compound or combination as a whole, the assessment of the relevant public’s perception of a compound or combined term properly includes assessing the perception of the component parts of the term. *In re 1800Mattress.com IP, LLC*, 92

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<sup>4</sup> The American Heritage Dictionary of the English Language, Fifth Edition copyright ©2022, <https://www.ahdictionary.com/word/search.html?q=parking.com>. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests.*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

<sup>5</sup> Applicant’s alternate contentions that PARKING.COM is not generic and may reside on the Supplemental Register or has acquired distinctiveness to Register on the Principle Register both serve as an admission that its mark is not inherently distinctive. *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (1972) (“We also agree with the observation of the board that, when appellant sought registration of SUPER BLEND on the Supplemental Register, it admitted that the term was merely descriptive of its goods....”); *In re Rosemount Inc.*, 86 USPQ2d 1436, 1439 (TTAB 2008) (“[B]ecause applicant seeks registration on the Supplemental Register, applicant has conceded that the marks are merely descriptive.”); *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1932 (TTAB 2012) (“[W]hen an applicant responds to a refusal based on mere descriptiveness of a mark, or portion of a mark, by claiming acquired distinctiveness, such amendment to seek registration under Section 2(f) of the Trademark Act is considered an admission that the proposed mark is not inherently distinctive.”).

USPQ2d at 1684 (“[T]he Board properly concluded that the relevant public understands the mark MATTRESS.COM to be no more than the sum of its constituent parts, *viz.*, an online provider of mattresses.”); *In re Hotels.com, LP*, 91 USPQ2d at 1535 (“We discern no error in the Board’s consideration of the word ‘hotels’ for genericness separate from the ‘.com’ suffix.”); *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, 1794 (TTAB 2002) (“BONDS.COM is properly considered a compound word in this analysis. The terms ‘bond’ and ‘.com’ are joined as a compound word and appear without any space or separation between them.”). *See also Booking.com* at \*85 (“for a compound term [such as Booking.com], the distinctiveness inquiry trains on the term’s meaning as a whole, not its parts in isolation.”).

The term PARKING is defined as follows:<sup>6</sup>

**PARKING**

*noun*

1. The act or practice of temporarily leaving a vehicle or maneuvering a vehicle into a certain location
2. Space in which to park vehicles or a vehicle

The term PARKING appears in the recitation of services. *In re Johanna Farms, Inc.*, 222 USPQ 607, 609 (TTAB 1984) (“The term ‘yogurt’ is concededly the name of the goods. That fact is uncontrovertible where, as here, the same term has been used in the identification of goods for which registration is sought.”). In its brief, Applicant concedes that PARKING is generic as applied to its services, stating “[i]n particular, the above marks for Jewish.com and Hotels.com as well as PARKING.COM all

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<sup>6</sup> September 4, 2018 Office Action TSDR 5, citing the American Heritage Dictionary of the English Language.



include a single and generic term before .COM.”<sup>7</sup> As discussed more fully below, while we cannot accept Applicant’s unsupported conclusion that registered third-party marks are generic, we accept Applicant’s acknowledgement that PARKING is generic as applied to its services (PARKING is a “single and generic term before .COM”).




Notwithstanding Applicant’s admission, we consider all evidence of relevant consumer perception of the term PARKING as used with websites providing parking availability information. The fact that PARKING is a generic term for Applicant’s services is corroborated by record evidence comprising examples of websites or webpages that are devoted to providing information about available spaces in which to park vehicles (sometimes also to reserve a parking space), and that use of the term “parking” as the generic name for the information. Because this evidence is obtained from online sources of parking availability information, it is direct evidence of how the relevant consumers of online parking availability information encounter the term PARKING in conjunction with those services. A sampling of that evidence is as follows:

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<sup>7</sup> 17 TTABVUE 23.


## "The best parking app available!"

- Check daily and monthly rates for lots, plus rates for street parking (where available).
- Set our parking timer to help you avoid overstaying, overpaying or getting a ticket.
- See real-time info on available parking spots and street parking (select markets only).

		
<b>Find</b>	<b>Pay</b>	<b>Park</b>
Find the cheapest, closest parking to your destination.	Get a guaranteed parking spot in advance with your credit card.	Head to your destination and you'll find a spot waiting for you.

8

Metropolitan Washington Airports Authority | Dulles International Airport | Dulles Toll Road | Business | About the Authority

 **REAGAN NATIONAL**

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### Parking Information

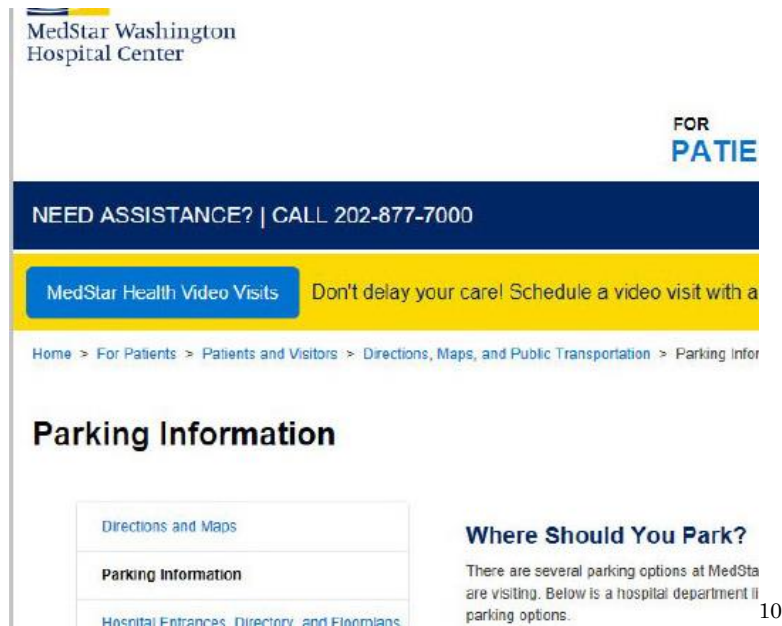
TERMINAL A GARAGE	TERMINAL B/C GARAGES
<b>OPEN</b>	<b>OPEN</b>
<b>551</b> of 1080 Available	<b>1940</b> of 5202 Available
\$6/Hour or max \$25/Day <b>A</b>	\$6/Hour or max \$25/Day <b>B C</b>

**Reserve Your Parking Now**

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<sup>8</sup> March 11, 2019 Office Action TSDR 5-6.

<sup>9</sup> March 11, 2019 Office Action TSDR 8.



In addition, the record includes online news articles about parking availability applications (“Google Maps now shows parking availability in ‘25 metro areas,” Digital Trends 1/26/17 and “Where to park in downtown Knoxville: new app shows parking availability,” 10News, WBIR 11/9/18) and third-party websites promoting how to develop parking availability websites and applications:<sup>11</sup>

Our smart parking availability and guidance solutions make it easy and cost-effective to solve your most complex parking management challenges. Smart Parking Made Easy. ParkingCloud is the only cloud-based IofT platform built specifically for the parking, transportation and traffic industries that integrates all your devices, data and output in one place, so you always have access to all your important data and information. With ParkingCloud, your technology choices are limitless, regardless of your current environment---as complex or as simple as you need your system to be. Leverage your existing technology and seamlessly add new technology and devices as your requirements change, without being locked into one vendor's platform.  
...

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<sup>10</sup> June 11, 2020 Office Action TSDR 11.

<sup>11</sup> March 11, 2019 Office Action TSDR 29-30 and 38-40 (parking availability applications) and 20-21 and 45 (parking availability websites).

Always know your inventory and availability in real time, using cost-effective sensors, real-time data collection and customized vehicle guidance systems. Combine with our parking guidance, access systems, safety solutions, and reporting and analytics for seamless, end-to-end parking availability management.

All Traffic Solutions, [www.alltrafficsolutions.com/solutions/parkingcloud/](http://www.alltrafficsolutions.com/solutions/parkingcloud/)

### How to Build a Real Time Parking Availability System?

Bumper-to-bumper traffic and surface car parks packed to the gunwales are the problems well known in every metropolis. Underground parking and parking blocks are the solution to ills but one has to know there is a vacant parking spot before making a dive into a parking structure.

Smart city concept claims momentum with its “different types of electronic data collection sensors to supply information which is used to manage assets and resources efficiently.” Prediction of parking space availability in real time is a perfect example of smart and efficient resources management.

...

People know they can use an app to get to the place they need. Really it's enough to say “OK Google” and name the point of destination to get the route including the information about road surface and traffic jams. But when you get there, will there be a place to park? IBM's global parking survey estimated that over 30 percent of traffic in a city is caused by drivers searching for a parking spot.

A dynamic information-based parking can be a key to this problem. A smart parking system providing parking operators with parking availability information across all parking lots and garages allows accurate estimation of the number of spaces available at any given time. The parking inventory data from back-end parking data systems can be provided to car drivers via an integrated app.

Archer, [www.archer-soft.com/en/blog/how-build-real-time-parking-availability-system](http://www.archer-soft.com/en/blog/how-build-real-time-parking-availability-system)

Finally, the record includes excerpts from other parking availability information websites which show that the relevant consumers encounter “parking” following the domain name as the last part of the URL, reinforcing that “parking” names the genus of the parking availability information on the webpage located at the domain.<sup>12</sup> In the

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<sup>12</sup> We take judicial notice that “URL” is defined as a noun and acronym for Uniform Resource Locator, “an internet address (for example, <http://www.hmhco.com/about-hmh>), usually consisting of the access protocol (http), the domain name (hnhco.com), and optionally the path to a file or resource residing on the server where the domain name resides (about-hmh)”

examples below, the URL for the parking availability information website has been enlarged for visibility and the arrows show “parking” or “parking information” in both the URL and on the webpage:



<https://www.wmata.com/service/parking/> 06/11/2020 02:33:43 PM



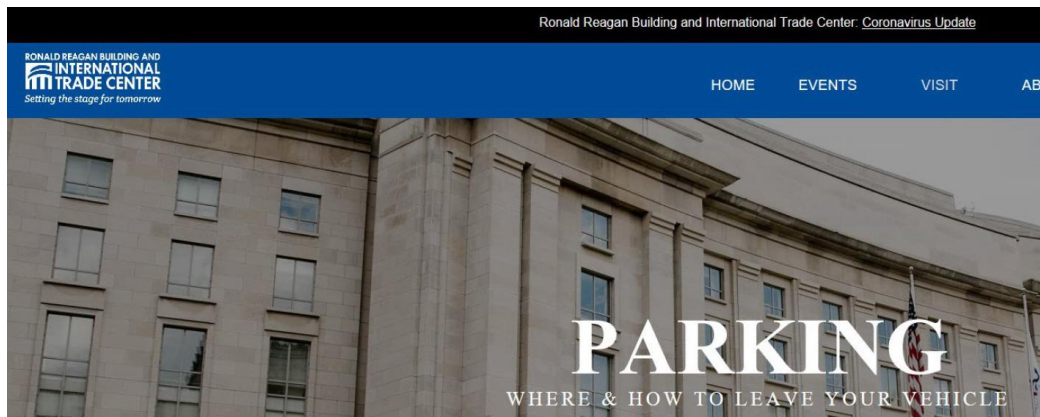
The screenshot shows the WMATA website's navigation bar with links for Service, Schedules & Maps, Rider Guide, Fares, and Initiatives. Below the navigation bar is a breadcrumb trail: Home | Service | Parking | Parking. The main content area is titled 'PARKING' and includes links for 'Parking Details by Station' and 'Reserved Parking'. A large box on the right contains the text 'Free Saturday parking returns to Metro lots' and 'Metro operates parking facilities at 44 Metrorail stations. Of these:'. A blue arrow points to the 'PARKING' link in the sidebar.

and “domain name” is defined as a noun, and “a series of alphanumeric strings separated by periods, such as [www.hmhbooks.com](http://www.hmhbooks.com), that is an address of a computer network connection and that identifies the owner of the address.” The American Heritage Dictionary of the English Language, Fifth Edition copyright ©2022, at <https://www.ahdictionary.com/word/search.html?q=domain+name>. and <https://ahdictionary.com/word/search.html?q=URL>.

<sup>13</sup> June 11, 2020 Office Action TSDR 44.



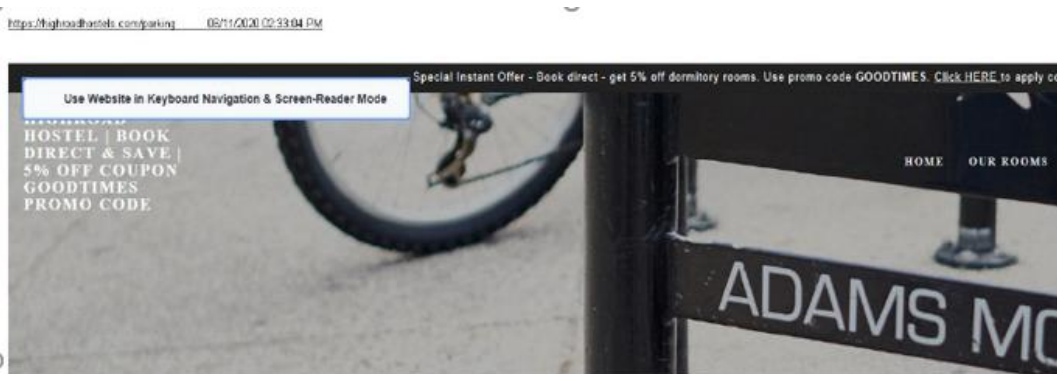
<https://www.rrbtc.com/parking/> 06/11/2020 02:32:07 PM



14



<https://highroadhostels.com/parking> 06/11/2020 02:33:04 PM



#### Location

CONTACT US

PARKING  
INFORMATION

DIRECTIONS FROM:  
UNION STATION

#### PARKING AROUND HIGHROAD HOSTEL

THERE ARE 3-4 BASIC OPTIONS:

1. Street parking
2. Parking garage directly across the street

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<sup>14</sup> June 11, 2020 Office Action TSDR 18.

<sup>15</sup> June 11, 2020 Office Action TSDR 32-39. We note that these two third-party users expose the relevant consumer to “.com/parking” in the Internet address.



<https://transportation.stanford.edu/parking> 06/11/2020 02:33:26 PM

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Stanford University

# Stanford | Transportation

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Parking

- Purchase a Parking Permit
- Learn About Tickets, Enforcement, and Lost/Stolen Permits
- Find Parking, EV

Stanford Transportation COVID-19 Updates (as of June 10)

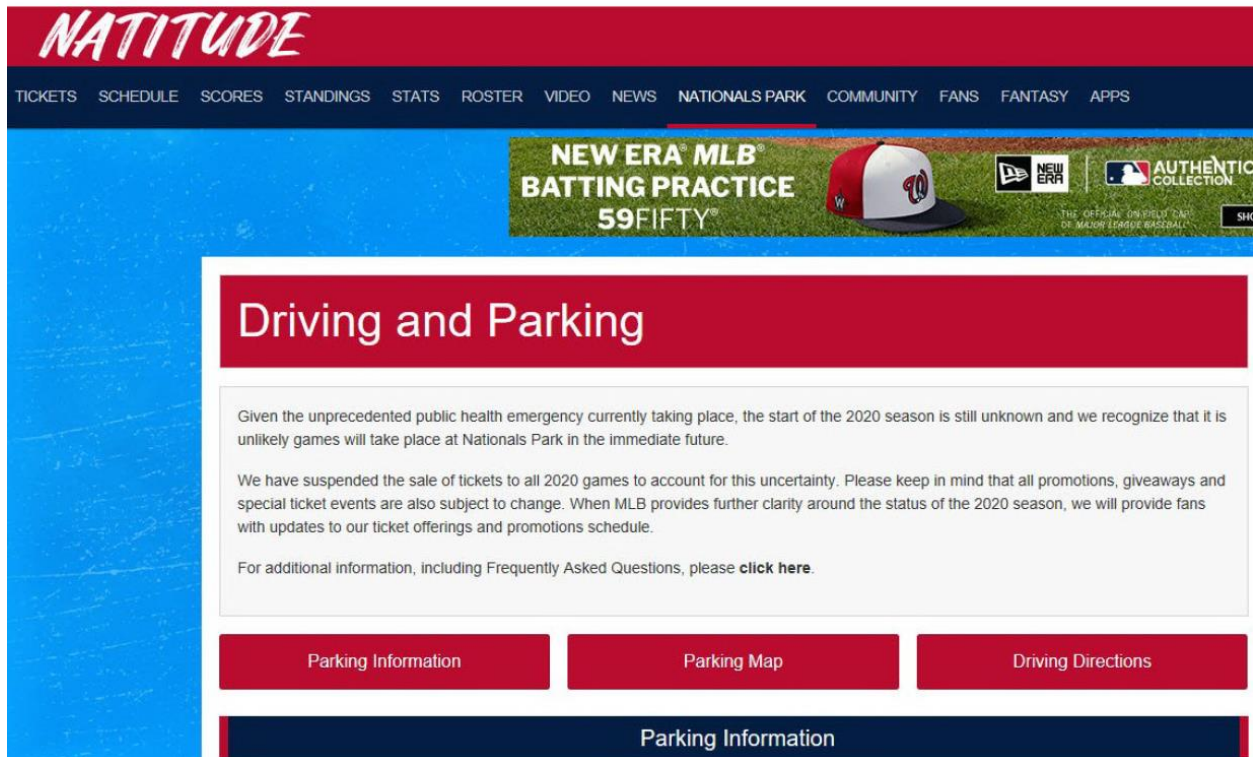


<sup>16</sup> June 11, 2020 Office Action TSDR 32-39.





<https://www.mlb.com/nationals/ballpark/transportation/driving-parking#parking-information>  
06/11/2020 02:32:30 PM



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As demonstrated by the evidence, there is no need to spell out to online consumers of parking availability information that a “parking” website does not actually offer parking. The industry-specific evidence makes clear that the term “parking” on a parking availability information website is a recognized shorthand for parking availability information. The shorthand “parking” appears not just on the webpage but in the URL. In short, to the relevant consumers of Applicant’s parking availability

<sup>17</sup> June 11, 2020 Office Action TSDR 22.



information from a website, “parking” names the genus of online information regarding parking availability.

Turning to the term .COM, it is defined as follows:<sup>18</sup>

.COM

*abbr.*

Commercial organization (in Internet addresses)

The record also includes a Wikipedia article describing .COM as a “top level domain name (TLD) in the Domain Name System of the Internet,” “introduced March 15, 1985,” and “widely regarded as the standard for TLDs,” that also states:

The domain was originally administered by the United States Department of Defense, but is today operated by Verisign, and remains under ultimate jurisdiction of U.S. law. Registrations in the .com domain are processed via registrars accredited by ICANN.

...

Although .com domains were originally intended to designate commercial entities (others such as government agencies or educational institutions have different top-level domains assigned to them), there has been no restriction on who can register .com domains since the mid-1990s. With the commercialization and popularization of the internet, the .com domain was opened to the public and quickly became the most common top-level domain for websites, email, and networking. Many companies that flourished in the period from 1997 to 2001 (the time known as the “dot-com bubble”) incorporated the .com suffix into company names: these became known as dot-coms or dot-com companies. The introduction of .biz in 2001, which is restricted to businesses, has had no impact on the popularity of .com.<sup>19</sup>

Based on this unchallenged evidence, .COM identifies a top level domain used in designating an Internet web address, and also a short hand reference to a company

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<sup>18</sup> The Examining Attorney requests that the Board take judicial notice of the definition of .COM. <sup>19</sup> TTABVue 5, 15. Inasmuch as Applicant’s reply brief does not object to the definition but also refers to it (20 TTABVue 5), we grant the request.

<sup>19</sup> September 4, 2018 Office Action TSDR 7-8. The record includes an excerpt from the website for the .com registrar Verisign that corroborates the Wikipedia article. *Id.* at TSDR 11-13.

doing business online, i.e., from a website. The record is bereft of evidence of another meaning of the term .COM or evidence that the relevant consumers of parking availability information from a website would perceive .COM as having any other meaning. *See In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1537 (Fed. Cir. 2009) (“the TTAB could reasonably have given controlling weight” to, among other evidence “the common meaning and dictionary definition of ‘hotels’ and the standard usage of ‘.com’ to show a commercial internet domain.”).

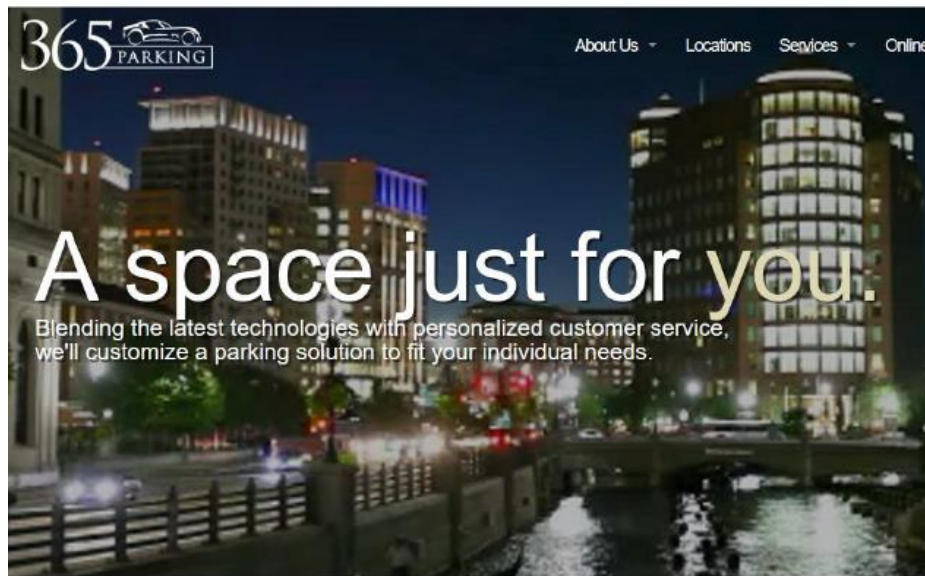
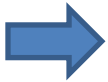
Applicant argues that “[t]he addition of .COM to the term PARKING expands the meaning of the mark to include services beyond providing parking spaces.”<sup>20</sup> We find this argument to be unsupported by Applicant and unconvincing in view of the evidence of record. Applicant does not provide parking spaces but information about parking availability from a website. Applicant does not state what additional services are described by adding the term .COM to the generic term for parking availability information services. As we show below, the record demonstrates that the relevant consumers encounter businesses that offer parking availability information from a website using “parking” on the website to name the genus of information, and then using “parking.com” in their domain name. In the examples below, the URL has been enlarged for visibility and the arrows show “parking.com” in the URL and “parking” on the webpage:

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<sup>20</sup> 17 TTABVue 17.



<https://www.365-parking.com/> 02/11/2021 04:23:18 PM

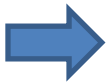


## We've Got A Spot For You

Whether you're downtown for the day, headed to an event, need monthly parking, or looking for valet services, 365 Parking offers solutions that fit your needs. We've mastered the art of blending the most advanced technologies with highly personalized face to face customer service, providing you with a parking experience that you just can't find anywhere else.



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<https://www.bestparking.com/> 02/11/2021 04:36:28 PM



## Download the FREE BestParking App

Tap into awesome parking anywhere on iOS & Android.

Text yourself a link to download.

 (xxx) xxx-xxxx

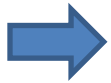
Standard message rates may apply



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<sup>21</sup> February 11, 2021 Office Action TS DR 5.

<sup>22</sup> February 11, 2021 Office Action TS DR 47.



[https://www.preferredparking.com/2019\\_index.html](https://www.preferredparking.com/2019_index.html)

02/11/2021 04:39:17 PM



**PREFERRED PARKING**

Locations ▾ Event Parking Services ▾ About Us Contact Us ▾ **Violations** **Cus**

For the health and safety of our employees and customers, all of our offices are closed to walk-in customers. We are happy to assist you via phone or email and will update you if the situation changes.

# Park, Pay & Continue on Your Way.

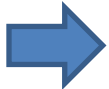
We provide convenient options for daily, monthly and event parking.

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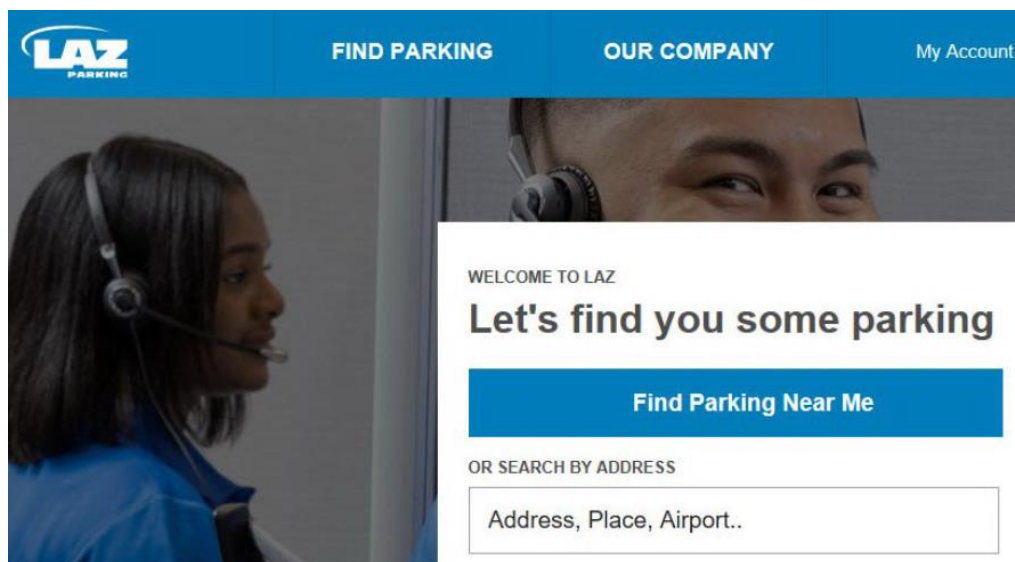
<sup>23</sup> February 11, 2021 Office Action TSDR 59.



<https://www.americanparking.com/> 02/11/2021 04:23:59 PM



<https://lazparking.com/> 02/11/2021 04:36:51 PM



<sup>24</sup> February 11, 2021 Office Action TSDR 11.

<sup>25</sup> February 11, 2021 Office Action TSDR 49.



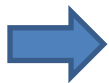
<https://hartfordparking.com/> 02/11/2021 04:37:18 PM



26



<https://www.annapolisparking.com/> 05/12/2022 09:36:05 AM

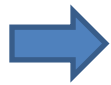


27

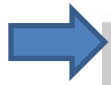
<sup>26</sup> February 11, 2021 Office Action TSDR 52.

<sup>27</sup> May 12, 2022 Office Action TSDR 13.

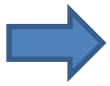




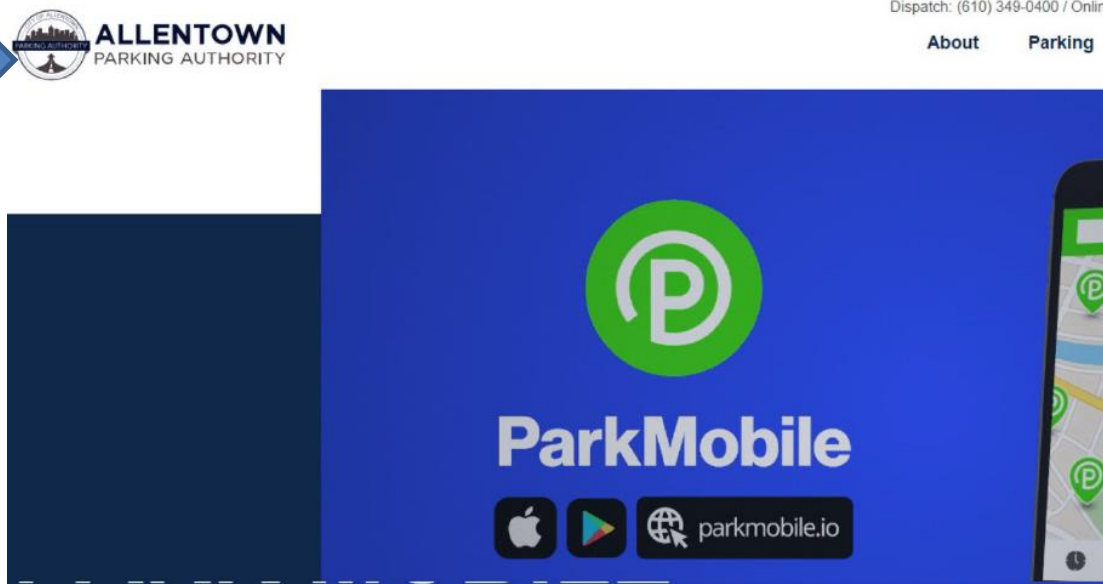
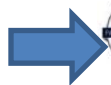
<https://www.citycenterparking.com/> 02/11/2021 04:37:37 PM



28



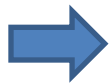
<https://www.allentownparking.com/> 05/12/2022 09:35:25 AM



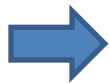
29

<sup>28</sup> February 11, 2021 Office Action TSDR 54.

<sup>29</sup> May 12, 2022 Office Action TSDR 7.



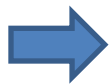
<https://citiparking.com/> 05/12/2022 09:37:00 AM



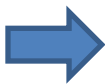
[HOME](#) [LOCATIONS](#) [MONTHLY](#) [ABOUT](#) [PARKING TIPS](#) [CO](#)



30



<https://www.fortworthparking.com/> 05/12/2022 09:37:29 AM



## BROWSE BY NEIGHBORHOOD



### DOWNTOWN

Easy access to 335 blocks of first-class entertainment, shopping, dining and hotel rooms. Downtown Fort Worth is known as the place for good times and [Find Downtown Parking →](#)



### STOCKYARDS

The Stockyards' many rodeos, shops, restaurants, museums, saloons, attractions, historical landmarks and special events keep the spirit of Texas' [Find Stockyards Parking →](#)



### CULTURAL DISTRICT

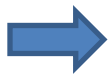
See priceless masterpieces and enjoy an enormous range of experiences (from art to animals, from fashion to family fun) in the world-renowned [Cultural District Parking →](#)

31

<sup>30</sup> May 12, 2022 Office Action TSDR 19.

<sup>31</sup> May 12, 2022 Office Action TSDR 23-24.





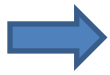
<https://www.offcampusparking.com/> 05/12/2022 09:38:01 AM



[RESERVE PARKING](#) [ABOUT US](#) [PMC PARTNERSHIP](#) [CONTACT US](#)



32



<https://www.premiumparking.com/> 05/12/2022 09:38:28 AM



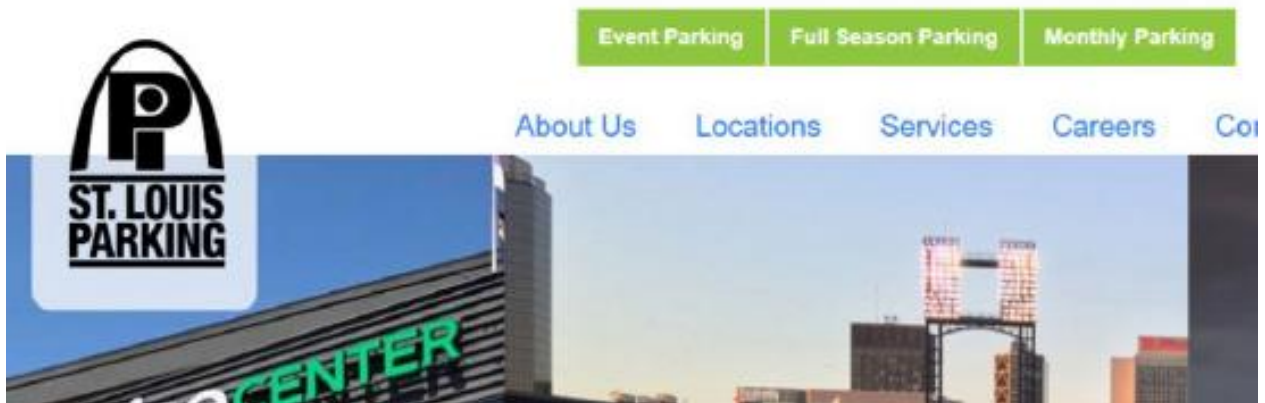
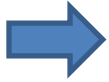
33

<sup>32</sup> May 12, 2022 Office Action TSDR 25.

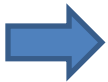
<sup>33</sup> May 12, 2022 Office Action TSDR 27.



<https://www.stlouisparking.com/> 05/12/2022 09:39:05 AM



34



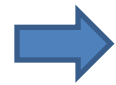
<https://usairportparking.com/> 05/12/2022 09:39:30 AM



35

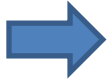
<sup>34</sup> May 12, 2022 Office Action TSDR 32.

<sup>35</sup> May 12, 2022 Office Action TSDR 36.



<https://www.vegas-airport-parking.com/>

05/12/2022 09:39:56 AM



ENTRY DATE: 05-12-2022 ENTRY TIME: 00

EXIT DATE: 05-12-2022 EXIT TIME: 00

Get Quote

FROM \$5.99

AIRPORT PARKING

36

These sixteen parking availability information websites use “parking” as the genus of information on the webpage, and “parking.com” in the URL to indicate the genus of website as one with parking availability information. This evidence corroborates the other evidence of record indicating that the term “.com” in a compound names a website to the public at large, and also applies specifically to the relevant consumer of parking availability information from a website.

Finally, as to whether .COM names a genus if website in PARKING.COM, we address Applicant’s argument that “the Trademark Office has allowed similar .COM marks to register.”<sup>37</sup>

The Trademark Office’s long practice of registering similar marks is evidence that PARKING.COM is not generic for the goods and services. In particular,

<sup>36</sup> May 12, 2022 Office Action TSDR 39.

<sup>37</sup> 17 TTABVUE 22. Applicant also contends that “.EDU” and “.ORG” marks, none featuring the term PARKING, have been allowed to register. *Id.* citing April 6, 2020 Response TSDR 203-214. Since there is no dispute that domain names used as marks are registrable, we fail to see (and Applicant does not provide) any reason why registered domain names which include neither PARKING nor COM have any relevance here.

the above marks for Jewish.com and Hotels.com as well as PARKING.COM all include a single and generic term before .COM. The goods and services are all similar as well as all three marks provide online information to consumers. As such, Applicant submits that Applicant's Mark is entitled to registration and the Official Action's rejection should be withdrawn.

In support, Applicant submitted more than 100 third-party registration certificates for .COM marks.<sup>38</sup> Third-party registrations that include the term .COM but not the

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<sup>38</sup> The third-party registrations are for the following marks:

REGISTER.COM, STAPLES.COM, WEATHER.COM, BESTBUY.COM, TUTOR.COM, ANSWERS.COM, DICTIONARY.COM, DEALER.COM, ENTERTAINMENT.COM, PARTYDIGEST.COM, DIAPERS.COM, UNIVERSITYJOBS.COM, SKI.COM, MONEYLAUNDERING.COM, BUYLIGHTFIXTURES.COM, CHEAPROOMS.COM, WWW.HEDGEFUNDRESEARCH.COM, REPLACEYOURCELL.COM (September 11, 2019 Response TSDR 64-104); and

JEWISH.COM; PARENTS.COM, HOMES.COM, TENNIS.COM, DENTIST.COM, SOFTWARE.COM, LEGAL.COM, SIGNWAREHOUSE.COM, INC.COM, SHAVERS.COM, BATTERIES.COM, 1-800-DOCTORS.COM, FRUITS.COM, GENEALOGY.COM, BUSES.COM, DATING.COM, WEDDING.COM, TRAVEL.COM, COOKING.COM, CRUISE.COM, TRIP.COM, WEATHER.COM, RUNNINGSTORE.COM, KARAOKE.COM, 1-800-BASKETS.COM, 1800FLOWERS.COM, INSURANCECOMPANY.COM, RENT.COM, BACKGROUNDCHECKS.COM, VACATION.COM, TICKETS.COM, 1-800-CANDIES.COM, BATTERYDEPOT.COM, 1800LAWYERS.COM, HOTELS.COM, THESHOEMART.COM, SEX.COM, LAWMART.COM, RESTAURANT.COM, FLIGHTS.COM, BEAUTY.COM, CATHOLICSUPPLY.COM, DEBT.COM, LAW.COM, KITCHENS.COM, DENTISTRY.COM, WINDSHIELDS.COM, GOLF.COM, BLINDSONLINE.COM, ONLINEMETALS.COM, ART.COM, WEB.COM, ONLINELABELS.COM, 1-800-VEHICLES.COM, CARE.COM, TUTOR.COM, 1800CONTACTS.COM, TUTOR.COM, INTERNSHIPS.COM, 1-800 LENS.COM, 1-800-DENTIST.COM, WIRELESSSTORE.COM, TURKISHTOWELS.COM, WEATHER.COM, SCAFFOLDMART.COM, STAMPS.COM, 1-800LIGHTING.COM, 1-800-DOGBONE.COM, CARPARTSWAREHOUSE.COM, GOVERNING.COM, BEDANDBREAKFAST.COM, WORKOUT.COM, SUNSCREENWAREHOUSE.COM, FOODSERVICEWAREHOUSE.COM, LIFEINSURE.COM, RENTALS.COM, LEISURE.COM, RENTALS.COM, PLASTIC-MART.COM, BABYSHOWER.COM, BEAUTYHUT.COM, CARING.COM, OFFICEMART.COM, RENTALHOUSES.COM, CABLESONLINE.COM, WRESTLINGFIGURES.COM, INSUREONLINE.COM, THELUBRICANTSTORE.COM, WAITTIME.COM, CARE.COM, CONCERT.COM, WWW.LAWFIRMONLINE.COM, NOZZLEANDHOSE.COM, 1800CEILING.COM, ROOMMATES.COM, YOGAOUTLET.COM, SALARY.COM, 800WINE.COM, HEALTHLABS.COM, READERS.COM, RENTALS.COM, HEALTHWAREHOUSE.COM (April 9, 2020 Response TSDR 42-202.).

term PARKING are not, in fact, evidence that PARKING.COM is not generic, or even evidence that .COM is not generic. Applicant's argument rests entirely on its wholly unsupported legal conclusion that the registered .COM marks comprise a generic term plus .COM. However, there is nothing in the registrations themselves which demonstrate consumer perception and support Applicant's conclusion that it was the term .COM that made the third-party .COM marks registrable.

That is, even if the goods or services in the third-party registrations include the same term used in the registered .COM mark, evidence that, as we point out above, is probative of genericness, we would not assume that the mark is generic. *See In re Johanna Farms, Inc., supra*. Applicant's argument ignores the vital fact that the registrability determination in a generic case depends entirely on the evidence of consumer perception of the mark as a whole available to the USPTO at the time the registrability determination is made, a matter which cannot be determined from the face of the registration.<sup>39</sup> *See In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d

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<sup>39</sup> With respect to USPTO's alleged "long practice of registering similar marks," as indicated in the earlier cited Wikipedia article and domain registry website, while domain registries first became available in 1985, domain names became part of the general public's lexicon with the dot-com bubble of 1997-2001. The dot-com bubble dates in fact parallel the Board's first precedent addressing domain names as marks (*In re Eilberg*, 49 USPQ2d 1955, 1956 (TTAB 1998), which issued in 1998), and the Board's first precedent addressing whether a domain name [BONDS.COM] was generic (*In re CyberFinancial.Net Inc., supra*) which issued in 2002). We find it no great leap to conclude that the "long practice of registering similar marks" in part reflects the dearth of generally available information on domain names before the dot.com bubble. *See In re Loew's Theatres, Inc.*, 769 F.2d 764, 768, 226 USPQ 865, 868 (Fed. Cir. 1985) ("... practicalities of the limited resources available to the PTO are routinely taken into account in reviewing its administrative action.").

One of the examples cited in Applicant's argument, the mark HOTELS.COM issued November 15, 2005, and the mark JEWISH.COM issued July 15, 1997. See April 9, 2020 Response TSDR 41 and 79.

1681, 1686 (Fed. Cir. 2010) (“[T]he right to register must be determined on the basis of the factual situation as of the time when registration is being sought.”); *DeWalt, Inc. v. Magna Power Tool Corp.*, 289 F.2d 656, 129 USPQ 275, 279 (CCPA 1961) (“Trademark rights are not static. A word or group of words not descriptive today may, through usage, be descriptive tomorrow.”). To the extent that Applicant suggests that third-party .COM marks facing genericness refusals (WEBTHEME.COM and CLOWNS.COM)<sup>40</sup> were allowed to register following issuance of the *Booking.com* decision, presumably because the Supreme Court held domain names may no longer be held to be generic, or .COM may no longer be held to be generic, we disagree.

As pointed out above, the Supreme Court in *Booking.com* emphasized that it was not creating a bright-line rule barring generic refusals of domain names. We regard the issuance of the registrations following *Booking.com* to reflect that the assessment of the evidence in each application of consumer perception of the .COM mark as a whole was insufficient to support the refusal, an assessment not applicable to this record.

Because we have no record evidence to support a finding that the third-party registrations for .COM marks comprise a generic term plus .COM, and were so perceived by the relevant consumers at the time the registrations issued, we reject Applicant’s argument that the third-party registrations for .COM marks outweigh the evidence of dictionary definitions, Wikipedia, the domain registrar Verisign, and

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<sup>40</sup> December 11, 2020 Response TSDR 90 and 92.

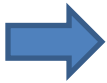
relevant industry use showing that .COM is generic as applied to Applicant's website services.

In sum, we find the record includes ample evidence that the relevant consumer perceives the components "parking" and ".com" as generic as applied to a website providing parking availability information.

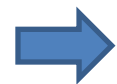
**b. Evidence that PARKING.COM as a whole is perceived as generic**

Turning to the proposed mark as a whole, we address how the relevant consumers of parking availability information online will perceive the compound PARKING.COM. *Booking.com* at \*7 ("A compound of generic elements is generic if the combination yields no additional meaning to consumers capable of distinguishing the goods or services."). As important context for assessing the relevant consumer perception of the combination of the generic terms "parking" and ".com," we review the record evidence showing that a website offering parking availability information also is known by the generic term "parking website." In the examples below, the arrows show "parking website" used to name a genus of website providing parking availability information:





<https://www.vevs.com/car-parking-websites/> 06/11/2020 02:41:59 PM

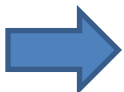


41

From the website [www.way.com](http://www.way.com): <sup>42</sup>

**Where can I find parking in San Francisco?**

Hourly and Monthly San Francisco parking can be found through a variety of ways! There are a number of parking garages and lots (both covered and uncovered) that offer short term and long term SF parking options. Parking spaces at these garages and lots can be booked by driving up, contacting the parking operator, or by using a parking website or app, such as Way.com.

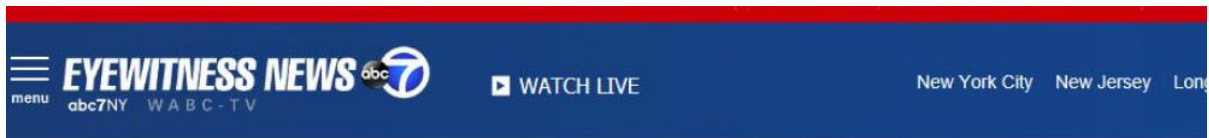


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<sup>41</sup> June 11, 2020 Office Action TSDR 49.

<sup>42</sup> June 11, 2020 Office Action TSDR 59.





7 ON YOUR SIDE INVESTIGATION

## 7 On Your Side Investigates complaints about parking websites

By Danielle Leigh

Thursday, October 17, 2019

43

### Reliable and accurate off-street parking information

We work directly with parking and lot operators, conduct regular site visits, and gather and verify feedback from users to update our off-street parking information daily. Additionally, we use automated toolsets to detect changes to parking websites.

44



45

<sup>43</sup> June 11, 2020 Office Action TSDR 62.

<sup>44</sup> June 11, 2020 Office Action TSDR 79.

<sup>45</sup> June 11, 2020 Office Action TSDR 74.

## The Bouncer

Sell your spaces online, everywhere customers look for parking.


LAZ Parking's Bouncer is a secure service that connects LAZ locations to online sellers and grants online customers access to LAZ locations.



Your Pin on Every Map - Bouncer lets us sell your parking everywhere; through parking websites, ticket sellers, navigation apps and the connected car. Let in who you want, keep out

46

### ADDITIONAL PARKING OPTIONS



Additional parking is available throughout downtown Dallas. The following websites can help you find and reserve parking as well as estimate parking cost over your entire stay. Furry Fiesta does not guarantee the accuracy of these third party parking websites nor do we recommend one service over another.

- Best Parking
- Parkopedia
- Inrix ParkMe
- Spot Hero
- Parking Panda

47

To recap the background information on websites providing parking availability information, the record makes clear that the relevant consumer of a website providing parking availability information understands that parking availability information will be found at a website; understands that the website is located at the domain

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<sup>46</sup> June 11, 2020 Office Action TSDR 75.

<sup>47</sup> June 11, 2020 Office Action TSDR 88.

name identified in the URL; and understands the URL will include a top level domain, highly likely to be the ubiquitous “.com.”<sup>48</sup>

In view of these facts, the relevant consumer of a website providing parking availability information will perceive PARKING.COM as a domain name. *See Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d 1175, 1180 (TTAB 2017) (“Considering Opposer’s use of the domain names <armbrusterstageway.com> and <armbrusterstagewaylimousines.com>, these names *per se* merely indicate Internet addresses where Opposer’s websites offering vehicles under the EXECUTIVE COACH mark could be found. Here, the domain names do not separately identify Opposer’s goods or retail sales services.”); *United Glob. Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1047 (TTAB 2014) (“However, the only reference to BeauTV is the copyright notice and the URL, neither of which shows trademark use of BeauTV. If a mark is depicted as part of a URL, to constitute trademark use, it must be more than merely an informational indication of the domain name address used to access a website.”).<sup>49</sup>

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<sup>48</sup> Of the many URLs for parking availability information websites already featured in this opinion, only one (an .edu website) did not use “.com.”

<sup>49</sup> *See also In re Roberts*, 87 USPQ2d 1474, 1479 (TTAB 2008) (“applicant’s designation irestmycase, as it appears in the website address on applicant’s specimens of record, fails to function as a mark under Trademark Act Sections 1, 2 and 45 as used in connection with her recited legal services”); *In re Supply Guys, Inc.*, 86 USPQ2d 1488, 1495 (TTAB 2008) (“Obviously, a website can be used for multiple purposes and the simple fact that a term is used as part of the internet address does not mean that it is a trademark for the goods sold on the website.”); *In re Eilberg*, 49 USPQ2d at 1956 (“the asserted mark WWW.EILBERG.COM merely indicates the location on the Internet where applicant’s Web site appears. It does not separately identify applicant’s legal services as such”).

This does not end our inquiry because domain name use does not preclude a finding that relevant consumers also perceive the domain name as a service mark. *In re Roberts*, 87 USPQ2d at 1479-1480 (“We note that the purpose of www.iorestmycase.com as an Internet website address does not per se preclude it or a portion thereof from serving as a source identifier for applicant’s services. However, in order for iorestmycase to function as a mark, applicant must first take the necessary actions to use it as such or to use the web address in such a manner that the iorestmycase portion would be perceived as a mark.”) (internal citation omitted); *In re Eilberg*, 49 USPQ2d at 1957 (“In other words, the asserted mark WWW.EILBERG.COM merely indicates the location on the Internet where applicant’s Web site appears. It does not separately identify applicant’s legal services as such. This is not to say that, if used appropriately, the asserted mark or portions thereof may not be trademarks or services mark.”) (internal citation omitted).

Nor does the evidence of domain name use preclude the term being found to be a generic designation. *Booking.com* at \*7 (“While we reject the rule proffered by the PTO that “generic.com” terms are generic names, we do not embrace a rule automatically classifying such terms as nongeneric.”).<sup>50</sup> Whether a domain name is a

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<sup>50</sup> Applicant argues “PARKING.COM is not generic” because “the Supreme Court found in *Booking.com*, only one entity can occupy a particular domain name,” and so “a consumer who is familiar with that aspect of the domain name system can infer that BOOKING.COM refers to some specific entity.” 17 TTABVue 12. Because the Supreme Court states that there is no rule that a domain name may not be found to be generic, we do not regard the Supreme Court’s recognition that a domain name identifies a unique Internet address as finding that a domain name always functions as a mark. The Supreme Court’s position is consistent with the cited cases requiring the relevant consumer to perceive the domain name as a source indicator to be found registrable as a mark. In other words, the fact that some consumers may recognize that PARKING.COM in a URL can identify only one entity at any

source indicator or a generic term depends on the relevant consumer's perception of the term.<sup>51</sup>

Here, the perception of the relevant consumer that PARKING.COM is a domain name is accurate. Applicant does not dispute that PARKING.COM is its domain name, which is confirmed by Applicant's webpage with the URL including PARKING.COM as shown below:

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one time has little probative value in the face of the record evidence that the relevant consumers encounter multiple third parties that use PARKING.COM as a generic designation for a website providing parking availability information.

<sup>51</sup> Applicant is mistaken in citing a trademark treatise for the proposition "domain name's use can confer trademark use/trademark rights." 20 TTABVUE 7. The treatise in question explains, consistent with our own position above, that "[a] domain name does not become a trademark or service mark unless it is also used to identify and distinguish the source of goods or services." J. Thomas McCarthy, 5 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION 25A:18 (5<sup>th</sup> ed) ("Is a domain name a trademark?" The correct answer is: "A domain name can become a trademark only if it is used as a trademark."). *See also Id.* at 25A:17 ("Registration of a word or words as a domain name does not control over the law of trademarks: to the contrary, trademark law trumps the grant of a domain name registration by a registrar.").



52

We turn to the evidence showing the additional ways in which the relevant consumer encounters the term PARKING.COM. As already discussed, there are 16 competing third-party parking availability information websites where the relevant consumer encounters parking availability information on webpages with “parking.com” in the URL. Applicant’s argument that “Applicant is using the mark PARKING.COM, not merely ‘parking’ with .com on the end” does nothing to decrease the probative value of this evidence.<sup>52</sup> We disagree that the presence of a prefatory term with “parking.com” in the third-party URLs prevents perception of

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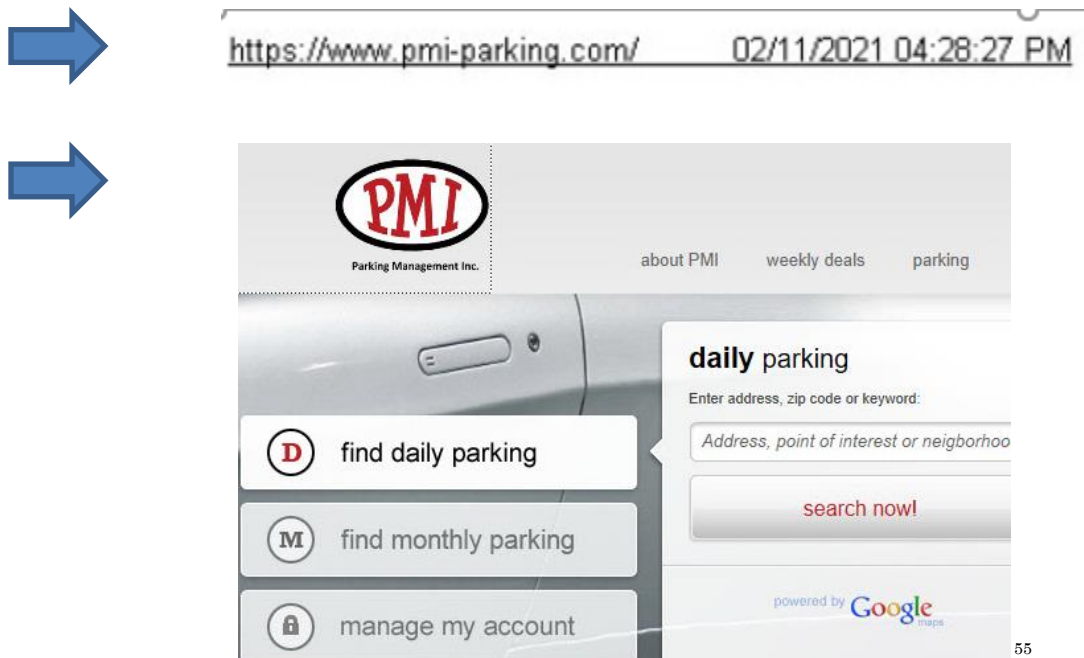
<sup>52</sup> January 18, 2022 Response TSDR 25 (URL blurred in original). In fact Applicant’s brief asserts multiple times that the USPTO examination policies on domain names are applicable. 17 TTABVUE 9, 11, 23.

Because it is evidence of relevant consumer perception, the Examining Attorney is advised that any refusal of a proposed mark comprising a domain name that is in use should include evidence that the applicant uses the proposed mark as its domain name.

<sup>53</sup> 17 TTABVUE 12.

“parking.com” by the relevant consumer. As pointed out above, the term “parking” is used as the generic term for the information on the website and this affects the relevant consumer perception of “parking.com” in the domain name when used for a webpage providing parking availability information.

The record also includes three third-party websites that offer parking availability information using a term on the website to identify the source of the online parking availability information, and then using the same term plus “parking.com” as their domain name.<sup>54</sup> In the examples below, the URL has been enlarged for visibility and the arrows show a term plus “parking.com” in the URL and the same term on the webpage:



<sup>54</sup> Unlike Applicant, we do not characterize a term identifying the source of the information as a mark because the term may not be inherently distinctive. For example, while it may be clear that PMI is inherently distinctive as a mark for parking availability information services through a website, this is not necessarily the case with the term “airport security.”

<sup>55</sup> February 11, 2021 Office Action TSDR 39.





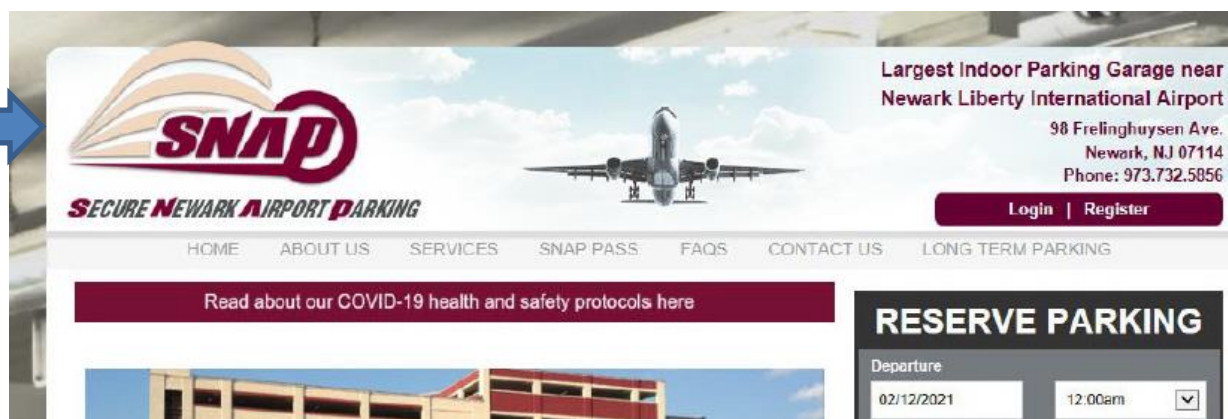
<http://airport-security-parking.com/> 05/12/2022 09:34:53 AM



56



<https://www.snap-parking.com/> 02/11/2021 04:28:49 PM



57

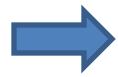
<sup>56</sup> May 12, 2022 Office Action TSDR 4.

<sup>57</sup> February 11, 2021 Office Action TSDR 40.



The addition of “parking.com” to other terms (PMI, AIRPORT SECURITY, SNAP) to form a domain name in the URL on a webpage for the same parking availability information services offered by Applicant demonstrates that the relevant consumers encounter “parking.com” used as a generic designation for a parking availability information website.

Finally, the record includes 11 third-party websites offering parking availability information that use “parking.com” on their webpage, as well as in their domain name. In each excerpted webpage below, the URL has been enlarged for visibility, and arrows indicate the different uses of “parking.com.”

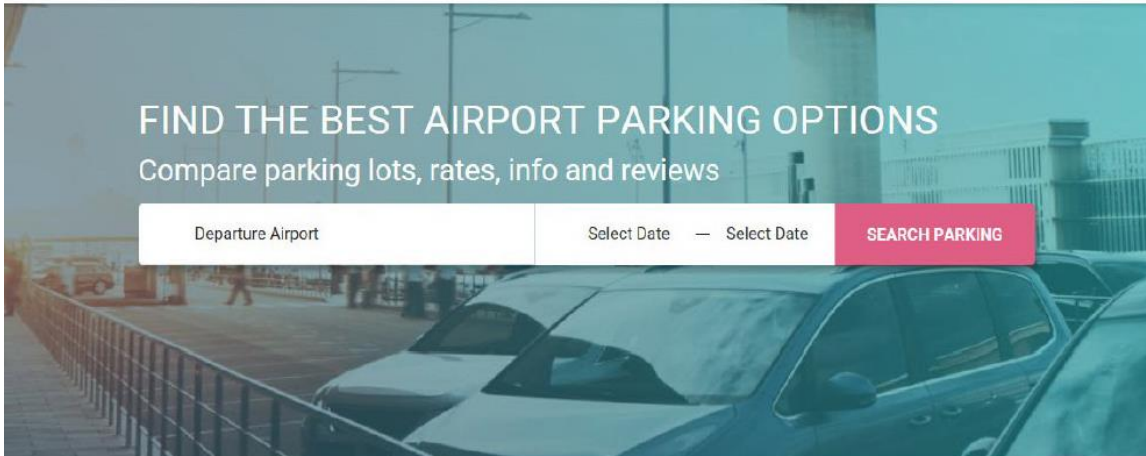


<https://airportparking.com/> 02/11/2021 04:23:39 PM



Excellent 301 reviews on Trustpilot

AIRPORTS



### Why AirportParking.com?



#### Save Big on Airport Parking

Search and compare the best rates on airport parking. Never overpay for your parking again.



#### Dedicated Support

Our customer service representatives can assist you with your reservation requirements.



#### Free Cancellations

No annoying cancellation fees. If your plans change, no problem, cancel free of charge.

58

<sup>58</sup> February 11, 2021 Office Action TSDR 8.



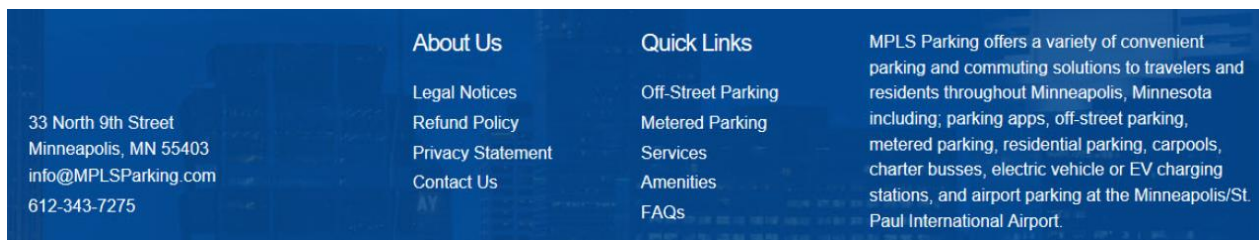
<https://www.baltimoreparking.com/> 02/11/2021 04:24:39 PM



59



<https://mplsparking.com/> 02/11/2021 04:38:57 PM




60

<sup>59</sup> February 11, 2021 Office Action TSDR 14.

<sup>60</sup> February 11, 2021 Office Action TSDR 58.

<http://www.dailytruckparking.com/> 02/11/2021 04:25:14 PM



**DAILY TRUCK PARKING IN ATLANTA**

HOME ABOUT OUR LOCATION LOT FEATURES

**\$15 PER DAY**

**PARK ANY VEHICLE**

**PAY ON YOUR PHONE**

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Parking Terms Apply. Convenience fees and data fees may apply.

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**TEXT PARKNOW TO 25023**

Or, point your camera at this QR Code

Or, visit [t2p.mobi/PARKNOW](http://t2p.mobi/PARKNOW)

**DAILY TRUCK PARKING & TRAILER STORAGE IN ATLANTA**

*LOCATED AT: 2952 Moreland Ave., Atlanta, GA 30315*

**Located Just Off of I-285 & I-675!**

61

<sup>61</sup> February 11, 2021 Office Action TSDR 18.



<https://eauclaireparking.com/> 02/11/2021 04:25:45 PM



**EAUCLAIREPARKING.COM**

**Gibson Lot is under New Management. Contact Commonweal Development for information. 715-832-8707**

[Home](#) [Location Map](#) [Parking Map](#) [Price & Policies](#) [Payments & Forms](#) [Contact Us](#)

**Gibson Parking Lot**

62



<http://www.studentparking.com/> 02/11/2021 04:29:15 PM



## Welcome to Student Parking.com

### ASU Students' Premiere Choice in parking accomidations

Student Parking.com is a parking solutions service offered to [Appalachian State University](#) students in the [downtown Boone, North Carolina](#) area. Our well lit, paved and kept lots are located around the University. Our web site is a place where you can get information about our services, see the lots, check the local weather and learn about the area.

63

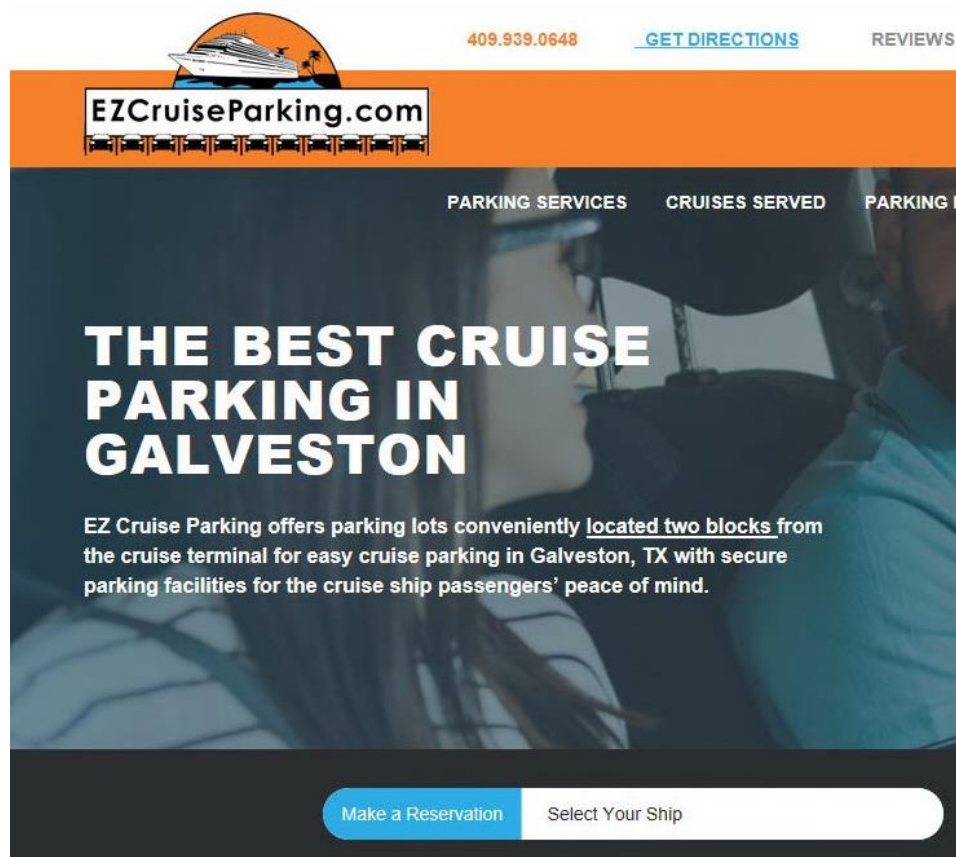
<sup>62</sup> February 11, 2021 Office Action TSDR 23.

<sup>63</sup> February 11, 2021 Office Action TSDR 64.





<https://www.ezcruiseparking.com/> 02/11/2021 04:26:16 PM



64

<sup>64</sup> February 11, 2021 Office Action TSDR 25.



<https://www.memorialairportparking.com/>

02/11/2021 04:27:01 PM



Welcome Loyalty Customers!  
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6010 West Chelsea St., Tampa, FL 33634

Re-Opening July 1st from Covid-19 We will open with new procedures to adhere to all CDC guidelines including the following:

- Self Park – Recommended option for a contact free parking experience
- Valet Parking – All touch point surfaces are sanitized prior to you picking up your vehicle
- Masks – All employee will wear masks and adhere to CDC guidelines of social distancing and sanitizing touchpoints
- Shuttle Vans – Complete and thorough sanitizing of all touch points after every trip. Additional shuttles will run to limit passengers in vehicle

[Home](#) / [Directions](#) / [Reservations](#) / [Customers](#) / [Contact](#) / [FAQ](#) / [Blog](#) / [Reviews](#)

65



<https://parkwayparking.com/>

02/11/2021 04:27:36 PM

#### Accreditation



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66

<sup>65</sup> February 11, 2021 Office Action TSDR 30.

<sup>66</sup> February 11, 2021 Office Action TSDR 36.





<http://www.phl-parking.com/> 02/11/2021 04:28:04 PM



67

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<sup>67</sup> February 11, 2021 Office Action TSDR 37.



<https://www.thriftyairportparking.com/> 02/11/2021 04:29:37 PM



Home Locations Deals Services Corporate Rewards FAQ's Contact Us

### Automotive Services

Let us service your car while you are away...oil change, tune-ups, complete auto detailing and more!

### Welcome to Thrifty Airport Parking

THRIFTY offers more than a CHEAP airport parking spot.

Thrifty Airport Parking has provided safe, secure airport parking across the country for over 40 years. We believe that service is more than just a free airport parking shuttle. Our service at our parking spot locations across the USA will impress you! Park with Thrifty for your best airport parking deal.

### Parking Services & Deals

Thrifty Parking Saves You Money! Before you park, join our Preferred Rewards program & save 10% – plus you'll earn points, which can be redeemed for Free parking with Thrifty.

68

These competing parking availability information websites demonstrate generic use of “parking.com” to indicate the genus of the parking availability information website. Applicant’s brief erroneously contends in multiple places that the refusal is based on the definition of “parking,” third-party use of “parking.com,” and the lack of

<sup>68</sup> February 11, 2021 Office Action TSDR 44.

a survey.<sup>69</sup> As set forth above, the record also includes detailed information about the term “.com” from Wikipedia<sup>70</sup> and the Verisign website through which website owners can register their .com domain name, and third-party parking availability information websites with domain names comprising marks plus .com.<sup>71</sup> Based on this evidence, to the relevant consumers of Applicant’s parking availability information from a website, “.com” names a genus of websites, including websites providing information regarding parking availability.

In response to the evidence that the relevant consumers may encounter dozens of third-party websites providing parking availability information and using the term “parking.com” in their URLs alone or in conjunction with use on the website, Applicant contends:<sup>72</sup>

Therefore, instead of being evidence that the phrase PARKING.COM is generic, these websites are instead evidence that other entities use trademarks that include PARKING.COM. These websites are using the phrase “parking.com” as part of their trademarks and thus these citations are not

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<sup>69</sup> 17 TTABVUE 3, 8, 1. Applicant’s point, that a survey is not required to prove that a mark is not generic, is not in dispute. However, a consumer survey was relied upon in the *Booking.com* case, and Applicant urged the Examining Attorney (and now urges the Board) to follow *Booking.com* in reversing the genericness refusal here. It is not stating an impermissible evidentiary requirement to point out the evidentiary difference in the two cases - the *Booking.com* case involved additional evidence of consumer perception not present here.

<sup>70</sup> Because the Wikipedia evidence regarding the term “.com” accompanied the first September 4, 2018 Office Action was never challenged by the Applicant, and corroborates the definition we noted, we give it probative weight. *See In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1633 n.6 (TTAB 2018) (“The Board has considered evidence taken from Wikipedia, bearing in mind the limitations inherent in this reference work, so long as the non-offering party had an opportunity to rebut that evidence.”).

<sup>71</sup> Applicant also omits other evidence that parking is generic, namely the website examples of parking availability information online and websites where “parking” appears in the domain name to name the genus of information on the page.

<sup>72</sup> 17 TTABVUE 15.

examples that the phrase PARKING.COM is generic. The remaining citations in the Fifth Office Action all include “parking.com” in the domain name, but these are not generic uses of PARKING.COM. For each of these websites, the term PARKING is used as part of a composite trademark ...

Applicant provides no evidence to support its conclusion that consumers will perceive third-party uses of “parking.com” on parking availability information websites as functioning as trademarks. Indeed, Applicant provides no evidence that any third-party using “parking.com” regards it as inherently distinctive or having acquired distinctiveness. Applicant’s argument fails to recognize that marks may include generic terms. That is, so long as some part of the mark is distinctive as a source indicator, the mark may be registered, usually with a disclaimer as to the generic term. *See Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) quoting 15 U.S.C. 1056(a) (“The PTO may condition registration of a larger mark on the applicant’s disclaimer of an ‘unregistrable component of a mark otherwise registrable’”). Assuming, *arguendo*, the third-party uses of “parking.com” are perceived as part of a trademark or service mark, that does not preclude the relevant consumers from perceiving “parking.com” as a generic component of the trademark or service mark.

Applicant argues against probative weight being given to evidence of “parking.com” in domain names, contending “the cited domains do nothing to establish that the commonly used phrase is understood as a genus of goods or services.”<sup>73</sup> Not only are parking availability information services provided by a

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<sup>73</sup> 20 TTABVUE 4. While we agree with Applicant’s point (*Id.*), citing *Booking.com*, that “Use of a phrase is only generic where it is used to refer to the genus of goods and services at issue,” the Supreme Court did not find that third-party domain name uses were not probative of

website offered online exclusively, but as some of the excerpted websites show,<sup>74</sup> the relevant consumer actually uses the service with the third-party parking.com domain name in constant view. More specifically, after entering the third-party parking .com domain name in a browser to reach the parking.com website, the relevant consumer encounters a search bar in close proximity to the URL with the third party parking.com domain name which allows entry of an address to search for available parking information.

In sum, the use of the parking.com domain names are integral to use of the parking websites and demonstrate that “parking.com” names the genus of parking availability information website to the relevant consumer of the services. *See In re 1800Mattress.com IP, LLC*, 92 USPQ2d at 1684 (“The Board then considered the mark as a whole and determined that the combination added no new meaning, relying on the prevalence of the term ‘mattress.com’ in the website addresses of several online mattress retailers that provide the same services as Dial-A-Mattress. Such reliance is permissible to illuminate what services the relevant public would understand a website operating under the term ‘mattress.com’ to provide.”).<sup>75</sup>

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consumer perception; the Supreme Court made no factual findings regarding consumer perception. Rather, the Supreme Court stated that the USPTO did not contest the lower court determinations that consumers “do not perceive the term ‘Booking.com’ to signify online hotel-reservation services as a class.” *Booking.com* at \*2. The Supreme Court took the fact of consumer non-perception as established, and went on to reject what it characterized as the USPTO’s “unyielding legal rule that entirely disregards consumer perception.” *Booking.com* at \*7.

<sup>74</sup> LAZ Parking, CityCenter Parking, and Premium Parking, *supra*.

<sup>75</sup> *See also In re Hotels.com LP*, 91 USPQ2d at 1536 (“It is clear from the website and promotional materials of applicant as well as the websites of third-parties that consumers who are interested in finding information about hotels or making reservations at hotels, would immediately understand that HOTELS.COM identifies a website that provides such

Finally, we disagree with Applicant’s argument that the refusal must fail absent “evidence of the public referring to multiple websites as ‘parking.coms.’”<sup>76</sup> Being the first to use a term does not preclude the term being found to be generic. *See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 72 USPQ2d 1833, 1838 (2004) (the law does not permit “anyone to obtain a complete monopoly on use of a descriptive [or generic] term simply by grabbing it first.”); *In re Pennington Seed, Inc.*, 466 F.3d 1053, 80 USPQ2d 1758, 1761-62 (Fed. Cir. 2006) (“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.”). *See also In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957 (TTAB 2018) (“The fact that there is no evidence of third-party use of the precise term ‘mechanically floor-malted’ is not, by itself, necessarily fatal to a finding of genericness.”).

Moreover, there can be more than one generic term for a service, and it is not required that the relevant consumer uses the term generically if the evidence establishes that the relevant consumer understands the term to be generic. *See In re*

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services.”); *In re Reed Elsevier Props. Inc.*, 82 USPQ2d at 1380 (“in 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 ... and they provide substantial evidence to support the board’s finding.”).

<sup>76</sup> 20 TTABVUE 3-4.

*1800Mattress.com*, 92 USPQ2d at 1685 (“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.”); *Clairol, Inc. v. Roux Distrib. Co.*, 126 USPQ at 398 (“The same merchandise may, and often does, have more than one generic name.”); *In re ActiveVideo Network, Inc.*, 111 USPQ2d 1581, 1591 (TTAB 2014) (“[A]s a marketplace reality, the apt term ‘Cloud TV’ is much shorter and more nimble than the cumbersome phrases that Applicant offers as generic alternatives.”).

In view of the generic meanings of “parking” and “.com” as applied to websites providing parking availability information; the absence of any different meaning when the generic terms are combined and applied to websites providing parking availability information; the generic use of “parking website” for the same services; the dozens of third-party websites providing parking availability information under domains using “parking.com;” the third party websites providing parking availability information with uses of “parking.com” on the website in addition to the URL; and the fact that the online parking availability information services may be rendered on the parking.com website, we have no hesitation in finding that the relevant consumer of websites providing parking availability information perceives “parking.com” as naming a genus of a website providing parking availability information.

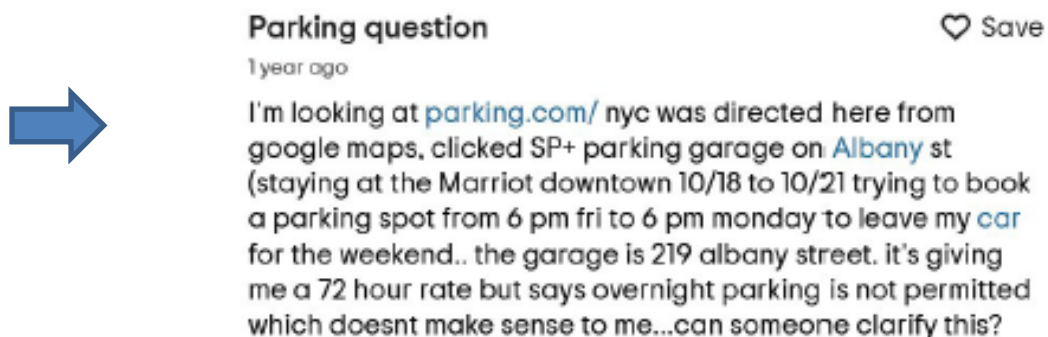


**c. Applicant's rebuttal evidence on relevant consumer perception of PARKING.COM**

We address Applicant's argument that, even if the evidence of record presents a prima facie case that the relevant public perceives the term PARKING.COM as generic when applied to Applicant's website providing parking availability information services, Applicant has rebutted the evidence:<sup>77</sup>

Applicant has submitted forum posts and over 6,000 customer reviews as evidence that consumers use Applicant's Mark to specifically identify Applicant as the source of Applicant's parking availability information services. These 6,000 customer reviews show that Applicant's advertising and marketing has been effective in educating the public to associate the PARKING.COM mark with a single source.

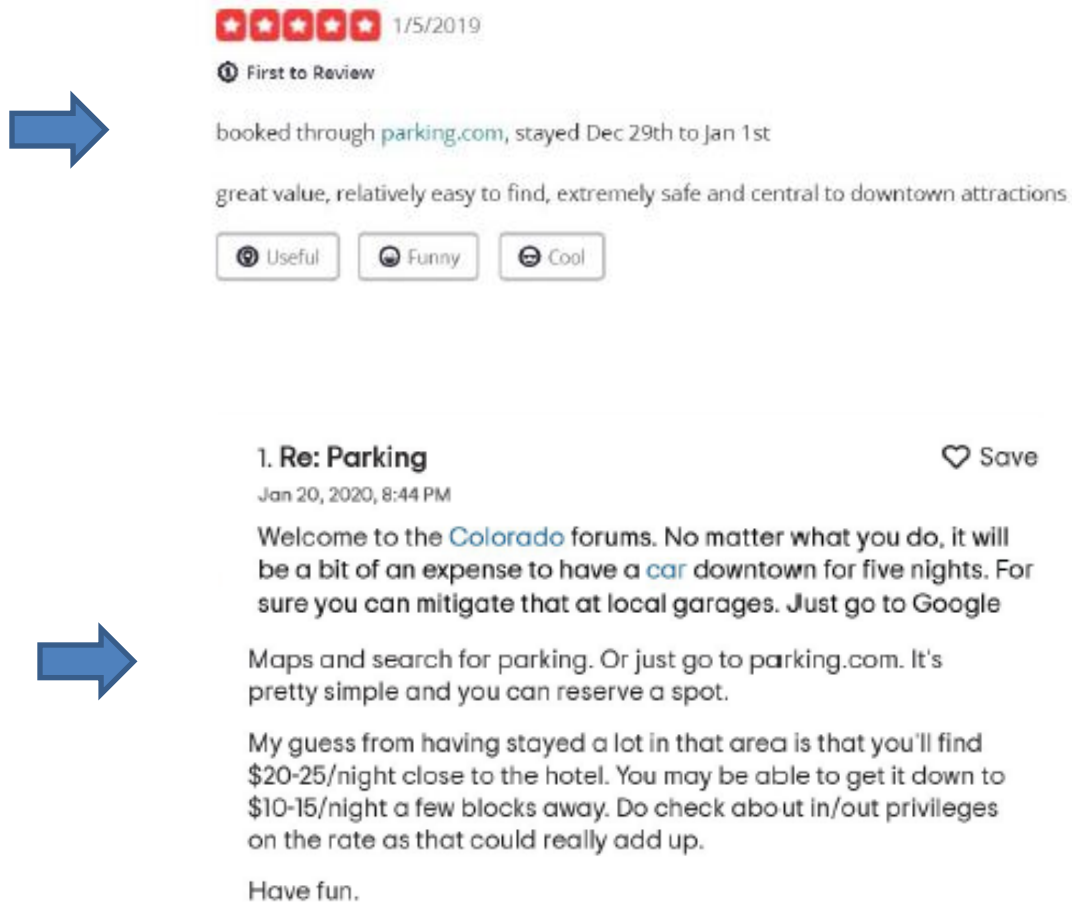
The three "forum posts" appeared on the Yelp and TripAdvisor platforms and do not refer to "parking.com" as a source indicator but as a parking availability information website or a domain name:<sup>78</sup>



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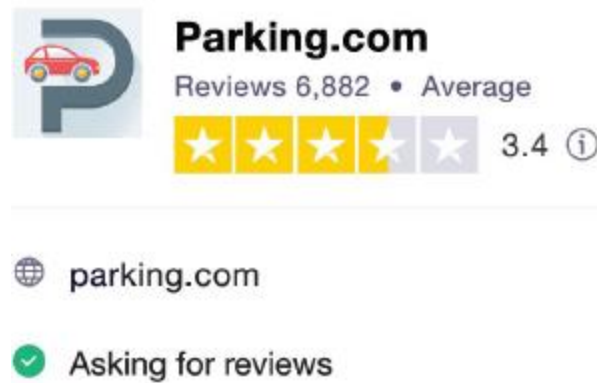
<sup>77</sup> 17 TTABVUE 20.

<sup>78</sup> December 11, 2020 Response TSDR 88.



Moreover, Applicant has not submitted over 6,000 customer reviews. Instead, Applicant submitted a webpage with 20 reviews under this header:<sup>79</sup>

<sup>79</sup> December 11, 2020 Response TSDR 60-72.



Internet materials do not establish the truth of any matter stated on the materials. *Spiritline Cruises LLC v. Tour Mgmt. Servs. Inc.*, 2020 USPQ2d 48324, at \*2 (TTAB 2020) (“we consider Internet printouts and other materials properly introduced under a notice of reliance without supporting testimony only for what they show on their face rather than for the truth of the matters asserted therein.”). For example, absent testimony from someone knowledgeable about how the online reviews are collected, anything published in the webpage “review” field may be counted as a review, regardless of its content.<sup>80</sup> Unless we see 6,882 reviews, or testimony from someone credible who saw 6,882 reviews, we give no credence to Applicant’s contention that the webpage demonstrates that its services garnered 6,882 reviews. *Cf. In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (“Search engine results — which provide little context to discern how a term is actually used on the webpage that can be accessed through the search result link —

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<sup>80</sup> For example, a single review could be posted multiple times, questions about Applicant’s services could be inadvertently listed as a review, reviews could be misdirected from websites with similar domains (“barking.com” or “parting.com”).

may be insufficient to determine the nature of the use of a term or the relevance of the search results to registration considerations.”).

The number of actual reviews in the record is small, and the number of relevant reviews is smaller. Three reviews are only partially reproduced in the record, and if “parking.com” was present in the original review, it was omitted from the version submitted:

“to get my money back and never got a response”<sup>81</sup>

“If I could give 0 stars I would. I paid \$10 to day a day of parking and when I brought the....” <sup>82</sup>

I bought this and thought I had a deal for \$20 parking. My car is a gmc canyon which is a small pick up truck. when it was time to pickup the truck and I showed my coupon at...

show me where it says about that but the cashier just insisted that’s there policy. This wasn’t disclosed to me and if I only knew about this I would never wasted my time getting a discounted parking here cause it will just turn out the same rate I will pay.<sup>83</sup>

Another two reviews are fully legible but make no reference to “parking.com,” stating only “Terrible” and “My catalytic converter was cut out of...”<sup>84</sup>

Only five reviews use “parking.com” in a way that indicates that the consumer recognizes the term not as a parking availability information website or a parking app that links to the website, but as a source indicator for a particular parking availability information website:

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<sup>81</sup> December 11, 2020 Response TS DR 61.

<sup>82</sup> December 11, 2020 Response TS DR 63.

<sup>83</sup> December 11, 2020 Response TS DR 64-65.

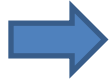
<sup>84</sup> December 11, 2020 Response TS DR 61, 66.



Updated Oct 19, 2020

✓ Verified

#### **The lot was closed when we arrived**



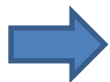
The lot was closed when we arrived, so we were forced to find a different parking option. Although this was disappointing and inconvenient, I'm giving Parking.com 4 stars and here's why: I never reached out to them to let them know about the lot closure (I felt like the price tag on the pain of a phone call was higher than the lost \$). I was asked to give a review and wrote about the closure and lost money. They reached out to ME and refunded my money without any prompting!! I am so impressed and will absolutely use them again when I am traveling to a new city and need parking!

85



Nov 24, 2020

✓ Verified



#### **The garage company didn't accept voucher**

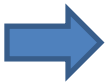
Turned out the garage company didn't accept Parking.com vouchers. We had to haggle with attendant for quite a while and almost ended up paying full price on top of what we paid through the app. Won't be using the app again.

86



Oct 23, 2020

✓ Verified



#### **Too many hoops to jump thru just to park.**

My first experience with Parking.com occurred in Nashville, TN where valet parking is on hold due to Covid. The Marriott MOXY boutique hotel used Parking.com for their guests. The garage was 3 blocks away for a 15 minutes walk. But to get your car from the hotel to the garage was a detour fiasco due to construction. The total time from checkin to parking my car and getting BACK to the hotel was 90 minutes. And the same thing for checking out. I was VERY hesitant to set up a Parking.com account with all my credit card info for a 1 night of parking for \$10 but it was \$40 without the hotel / parking.com partnership fee. UGH. I will stay at another hotel with parking rather than go through all that again. My time is worth something. And a total of 3 hours just to park is unacceptable.

87

<sup>85</sup> December 11, 2020 Response TSDR 72.

<sup>86</sup> December 11, 2020 Response TSDR 65.

<sup>87</sup> December 11, 2020 Response TSDR 69.


 Updated Oct 27, 2020

✓ Verified

**Be cautious when using the Larimer Square in Denver, CO parking garage.**

Larimer Square Denver, CO parking garage has not updated their equipment to be compatible with the Parking.com online reservation Use with caution. After my complaint to Parking.com, they said they would refund my \$20 reservation money, but I still had to pay \$30 to use the garage on that night. Had I know I would have had to pay \$30 for a parking spot, I would NOT have used Parking.com. Parking.com was prompt with responding to my email about the situation. If they refunded the \$30 I had to pay along with the \$20, I would give them a higher rating.

88

 Nov 13, 2020

✓ Verified

**Parking.com seemed like a great website...**

Parking.com seemed like a great website to use to find parking for downtown San Francisco. They had the layout of all of the garages, their pricings that varied and even directions on how to get there. It seemed perfect so I purchased a full day for downtown parking at a lot with good recommendations. When I got there, turns out it was closed for the entire day. No one was there & I paid the full price. I went online to figure out if I could request a refund but there wasn't an option on the receipt or even the fine print under their terms. Because I was pressed for time that morning I had to park somewhere quickly, and luckily found a lot nearby to purchase a pass from. In the end I had to pay twice the amount of a full days parking in downtown San Francisco with the bonus of experiencing the tremendous anxiety of not knowing where I could leave my vehicle.

89

These five reviews not only capitalize “Parking.com,” indicating that they refer to a specific source, but include context such as outreach by company employees, business relationships with the source, or use Parking.com as an adjective to distinguish from other parking websites. *See Zimmerman v. Nat’l Ass’n of Realtors*, 70 USPQ2d 1425, 1434 (TTAB 2004) (“While one should not place determinative weight upon whether or not the journalists and editors involved in these randomly-selected newspaper articles use an upper-case or lower-case letter ‘R,’ we find it instructive that in a majority of these instances, the word ‘Realtor’ is capitalized and

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<sup>88</sup> December 11, 2020 Response TSDR 68.

<sup>89</sup> December 11, 2020 Response TSDR 67.

used in a manner consistent with respondent's position that this term functions as an identifier for its members not as a generic designation for all real estate agents.”); *Plyboo Am. Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1638 (TTAB 1999) (Board found in descriptiveness opposition that evidence showed that applicant's “term ‘plyboo’ is clearly used as a trademark for applicant's goods--in that the first letter of such term (like a proper noun or proper adjective) is capitalized, or the term is otherwise set off by quotation marks, *and* the term is followed (or preceded) by generic terminology for the goods ... .”) (*emphasis* in original).

Ten reviews use the term generically, as if “parking.com” was equivalent to a parking availability information website or app, or as a reference to the domain name, with no indicia that Applicant is the source of the service:



Oct 24, 2020

✓ Verified

**I had trouble with the web version of...**

I had trouble with the web version of parking.com, to the extent that apparently I did NOT pay for the parking space in spite of my best efforts, although I thought I had. On return to my car I had a citation. Later that evening I used the online tool to file a dispute, and had trouble with that too. (Apparently the dispute DID get sent, although the interface led me to believe it had not been sent.). The next day I download the IOS APP and tried to create an account so I would be better prepared next time. That attempt was unsuccessful too. Having worked in IT for 35+ years I'm fairly adept at handling technology, but I have met my match with the “parking.com” tools. :-)

90

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<sup>90</sup> December 11, 2020 Response TSDR 69.

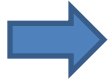




4 days ago

✓ Verified

**I had an awful experience with...**



I had an awful experience with parking.com I will never ever use them again. The garage I used in NYC was very rude. They gave me a hard time and when I called customer device that person was rude as well refused to refund/ credit my purchase and said I was out of luck. The Stewart hotel on 31 st. Terrible service!!

91



6 days ago

✓ Verified

**This parking process was outstanding**



This parking process was outstanding! Super quick and easy to reserve and pay for an extended weekend. The location was convenient, the security was great and the price was unbeatable. We will be using parking.com in the future.

92



Oct 19, 2020

✓ Verified

**I use parking.com several times a week**



I use parking.com several times a week. Have tried several times to make an account so I don't have to put in all my info every time. Every time I try to log in it just keeps bringing me back to the login page. It's such a pain to have to put in my credit card info each time, and sometimes there is an error with processing the credit card info and I have to wait a few hours and try again while I'm at work. The previous app that was used by the lot I park at was MUCH better. Took way less time than parking.com

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<sup>91</sup> December 11, 2020 Response TSDR 61.

<sup>92</sup> December 11, 2020 Response TSDR 62.

<sup>93</sup> December 11, 2020 Response TSDR 70.

### **My experience was "GAABAGE"**

My experience was "GAABAGE". I went to vote (on my lunch time with limited time) the other day and pulled into the public parking lot and parked directly in front of the sign with the parking.com info on it. The sign told me to go to parking.com to pay for parking. I did that. The landing page had no mention (or, at least, easily recognizable) way to enter the "zone" that I was in. ok, so I tried the "find parking near me" option. It came back with like a 5 mile by 5 mile map with markers on it. My position wasn't easily indicated at all. I dumped that option. There was an option to download the app. I downloaded the app, thinking that maybe the experience would be more straightforward there. It "seemed" to be. I managed to find where I could enter my zone number and go from there. I moved along, and got to a point where it kept asking me to log in or sign up. it wouldn't let me move forward, so I ended up setting up using my google account. the google account never worked. I tried the facebook option. neither option worked, but "somehow" I managed to get to the payment process screen. the app wouldn't take my saved bank card saved into my phone (android), so I attempted to use the "scan the barcode" option. still didn't work. so, I went back to using the webpage, parking.com. I eventually was able to pay for my parking, 20-30 minutes after fumbling with both the web page and the app.

94

✓ Verified

### **My experience was good**

My experience was good. I saved about \$35 dollars by booking thru parking.com Thank you!

95



Oct 13, 2020

✓ Verified

### **Money wasted on poor online service**

The confirmation I received had no barcode, and ended up paying for parking from the garage kiosk ON TOP of paying parking.com... it feels like a scam, do not recommend.

96

<sup>94</sup> December 11, 2020 Response TSDR 71.

<sup>95</sup> December 11, 2020 Response TSDR 71.

<sup>96</sup> December 11, 2020 Response TSDR 71.



Nov 30, 2020

✓ Verified

### **Valet guy was extremely rude**

→ Valet guy was extremely rude. We pulled into the garage and we were treated as if we had no business pulling into the garage. I provided him with QRS code and well as email from parking.com. He insisted that we provide more information. We exited our truck. While walking out of the garage he said “aye let me tell you something. If you’re late or even a minute pass 10:00pm don’t bother coming back to the garage without \$10 cash.

97



Nov 27, 2020

✓ Verified

### **Unreliable Reservations**

→ I reserved a parking slot via parking.com at Maryland Avenue SW, Washington, DC. But when I arrived the parking garage was closed. Tried to contact customer service several time to get in but my calls were ghosted.

98



Nov 23, 2020

✓ Verified

### **I parked at the SP+ facility at 20 W/ 13th Street**

→ I parked at the SP+ facility at 20 W. 13th street from Friday, 11/20 to Sunday, 11/22. I pre-purchased parking at this facility on parking.com on 11/19. Upon arrival on 11/20, the attendant told me they didn't accept my parking pass and put up a big fuss, telling me I should have purchased parking though SP+ instead. (Why would SP+ parking facilities be listed on parking.com if they didn't accept purchases made on parking.com??? Makes no sense.) After making me wait and acting frustrated, the attendant told me I would have to work this out when I picked up my car on Sunday. (Work out what??) On Sunday, when picking up my car, the new attendant also acted frustrated, had to make some calls, made me wait to get car. Overall poor experience. SP+ and Parking.com should work out whatever their problems are with one another and make sure to communicate down to the attendants so they are more accepting and courteous to paying customers.

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<sup>97</sup> December 11, 2020 Response TS DR 63.

<sup>98</sup> December 11, 2020 Response TS DR 64.

<sup>99</sup> December 11, 2020 Response TS DR 66.

The consumer's use of "parking.com" in lower case letters in these reviews is a classic example of the use of an alleged mark as a generic term. *See Luxco, Inc. v. Consejo Regulador del Tequila, A.C.*, 121 USPQ2d 1477, 1492 (TTAB 2017), and cases cited therein. However, we do not rely solely on the lack of capitalization, but also the context in which the term appears: the consumer reviews do not refer to "parking.com" as a mark but merely a domain name or a website providing online parking availability information. *Cf. In re MCDM Prod, LLC*, 2022 USPQ2d 227, at \*9 (TTAB 2022) ("Finally, the record includes four online reviews of Applicant's role playing game manual (excerpted below), all of which identify the work being reviewed as a book with the title STRONGHOLDS & FOLLOWERS").

In short, while we find the Examining Attorney's argument that "applicant provided virtually no direct evidence that consumers see its mark as source indicating"<sup>100</sup> to be somewhat of an exaggeration, we ultimately agree that the scant evidence of consumer perception that "parking.com" is Applicant's mark provided by the online forums and reviews is greatly outweighed by the widespread third-party generic use to designate parking availability information websites.

Applicant also argues that the evidence that PARKING.COM is generic has been rebutted by the declaration of its Chief Legal Officer and Corporate Secretary Ritu Vig and accompanying exhibits showing Applicant's use of PARKING.COM, contending "the Board should consider the same evidence which is often used to show

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<sup>100</sup> 19 TTABVUE 12.

acquired distinctiveness in its consideration of the genericness question.”<sup>101</sup> *See Converse, Inc. v. ITC*, 909 F.3d 1110, 128 U.S.P.Q.2d 1538 (Fed. Cir. 2018) (“Today we clarify that the considerations to be assessed in determining whether a mark has acquired secondary meaning can be described by the following six factors: (1) association of the [mark] with a particular source by actual purchasers (typically measured by customer 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.”).<sup>102</sup>

Applicant did not submit any evidence with respect to the fifth and sixth factors but we address the evidence relevant to the other four.

With respect to the first factor, the association of the mark with a particular source by actual purchasers, in addition to the online forum posts and reviews already discussed, Applicant contends it “has partnered with several third party entities to provide its goods and services to consumers. These third parties recognize the term

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<sup>101</sup> 17 TTABVUE 18, citing Vig declaration at January 18, 2022 Response TSDR 22-30, and attached exhibits.

<sup>102</sup> The Board has used this test in conjunction with similar refusals that a mark is generic and, in the alternative, lacks acquired distinctiveness. *See In re Uman Diagnostics AB*, 2023 USPQ2d 191 (TTAB 2023); *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514 (TTAB 2019); *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d 111512 (TTAB 2019). While we decline to improve upon our primary reviewing court’s test with consideration of what Applicant terms “the McCarthy criteria,” we find there is no evidence specified under that criteria which is not encompassed by the *Converse* test. 17 TTABVUE 18. In short, no evidence alleged to demonstrate acquired distinctiveness has been excluded from our consideration.

PARKING.COM as a brand name.”<sup>103</sup> However, the support for this statement lacks persuasive detail. Secretary Vig merely avers “[Applicant] provides professional parking management, ground transportation, remote baggage check-in and handling, facility maintenance, security, event logistics, and other technology-driven mobility solutions to aviation, commercial hospitality, health care and government clients across North America including in Canada and the United States” and the United States clients include “the Center for Jewish History, The Palace Theatre, GEM Realty Tenant Program, The Shops at Hudson Lights, Pittsburgh Penguins Visitor Event Parking, Madison Square Garden, Soldier Field, McCormick Place, House of Blues Houston, Pepsi Center and others.”<sup>104</sup> The declaration offers no facts in support of the conclusion in the brief that these ten clients recognize PARKING.COM as more than a generic reference to a parking availability information website, or Applicant’s domain name.

With respect to the second factor, the length, degree, and exclusivity of use, the record is slight as to the length and exclusivity of Applicant’s use. The Vig declaration refers to use since 2018, averring no use earlier than Applicant’s date of first use of July 31, 2018.<sup>105</sup> The Vig declaration, executed January 18, 2022, does not allege that Applicant’s use is or has been exclusive, merely referring to PARKING.COM as “a unique identifier of the SP Plus Services.”<sup>106</sup> Nor do we find that Applicant’s use has

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<sup>103</sup> 17 TTABVUE 20.

<sup>104</sup> January 18, 2022 Response 22-23.

<sup>105</sup> January 11, 2020 Response TSDR 24.

<sup>106</sup> January 11, 2020 Response TSDR 24.

been substantially exclusive. As set forth earlier in this opinion, the record evidence shows that the relevant consumers may encounter dozens of third-party websites providing parking availability information and using the term “parking.com” in their URLs alone or in conjunction with use on the website.

As to the degree of Applicant’s use, while the Vig declaration describes Applicant as “the leading provider of professional parking management services throughout North America,”<sup>107</sup> it does not explain whether that is the same as being the leading provider of parking availability information through a website, the services at issue here. Nor does Applicant explain whether professional management of parking matters to the relevant consumer seeking parking availability information online. The record shows that parking availability information through a website currently is available from a wide variety of sources, including municipal parking authorities, educational institutions, airports, hospitals, subway systems, sport venues, and large office buildings. The record also indicates that the number of sources for this service is growing, with multiple articles and advertisements on how to create or add online parking availability information to other services.

The record shows the degree of Applicant’s asserted trademark use is diluted by domain name or generic use. The Vig declaration avers that Applicant’s parking locations have distributed over 100 million printed tickets that bear PARKING.COM.

<sup>108</sup> An example of such a ticket is reproduced below:

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<sup>107</sup> January 11, 2020 Response TSDR 24.

<sup>108</sup> January 11, 2020 Response TSDR 24.





While the original picture is blurred, it appears that Applicant's name SP+ PARKING appears on one side and the exhortation "Find parking at Parking.com" appears on the other. This display of Applicant's name as a source indicator and Parking.com as the domain name or the generic name for a website for parking availability information is repeated in much of Applicant's signage. The Vig declaration avers that at least 2,000 of Applicant's parking locations display signage and posters that bear PARKING.COM, but the photographs show SP+ as the source of the services and PARKING.COM as the generic name for a parking website or the domain name where the services can be rendered:



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<sup>109</sup> January 11, 2020 Response TSDR 36.

<sup>110</sup> January 11, 2020 Response TSDR 37.



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The Vig declaration also avers that Applicant's website and mobile application bear PARKING.COM, as in the mobile application shown below.



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<sup>111</sup> January 11, 2020 Response TSDR 64.

<sup>112</sup> January 11, 2020 Response TSDR 26.

The Vig declaration also avers that Applicant has 800,000 subscribers who receive communications that bear PARKING.COM:



113

While the original is blurred and enlarging for insertion here made it more so, it is apparent that “SP+ PARKING” appears as the header of the communication and the communication is “signed” SP+. The term PARKING.COM is used generically, or as a domain name, and not a trademark: “However, you can easily manage your account online, through SP+’s Monthly Parker Management Portal at parking.com.”

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<sup>113</sup> January 11, 2020 Response TSDR 66.

The Vig declaration avers that Applicant prepares advertisements for its clients which display PARKING.COM:<sup>114</sup>



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The presence of PARKING.COM in the upper left-hand corner, proximate to where the domain name usually appears in the browser which linked to the webpage, does not create the perception of a mark (which appears to be Gem Realty in this advertisement) but the generic name or domain name for the parking website which provides Gem Realty customers with parking availability information. Assuming, arguendo, the presence of PARKING.COM with the red car design in the large letter

<sup>114</sup> January 11, 2020 Response TSDR 27.

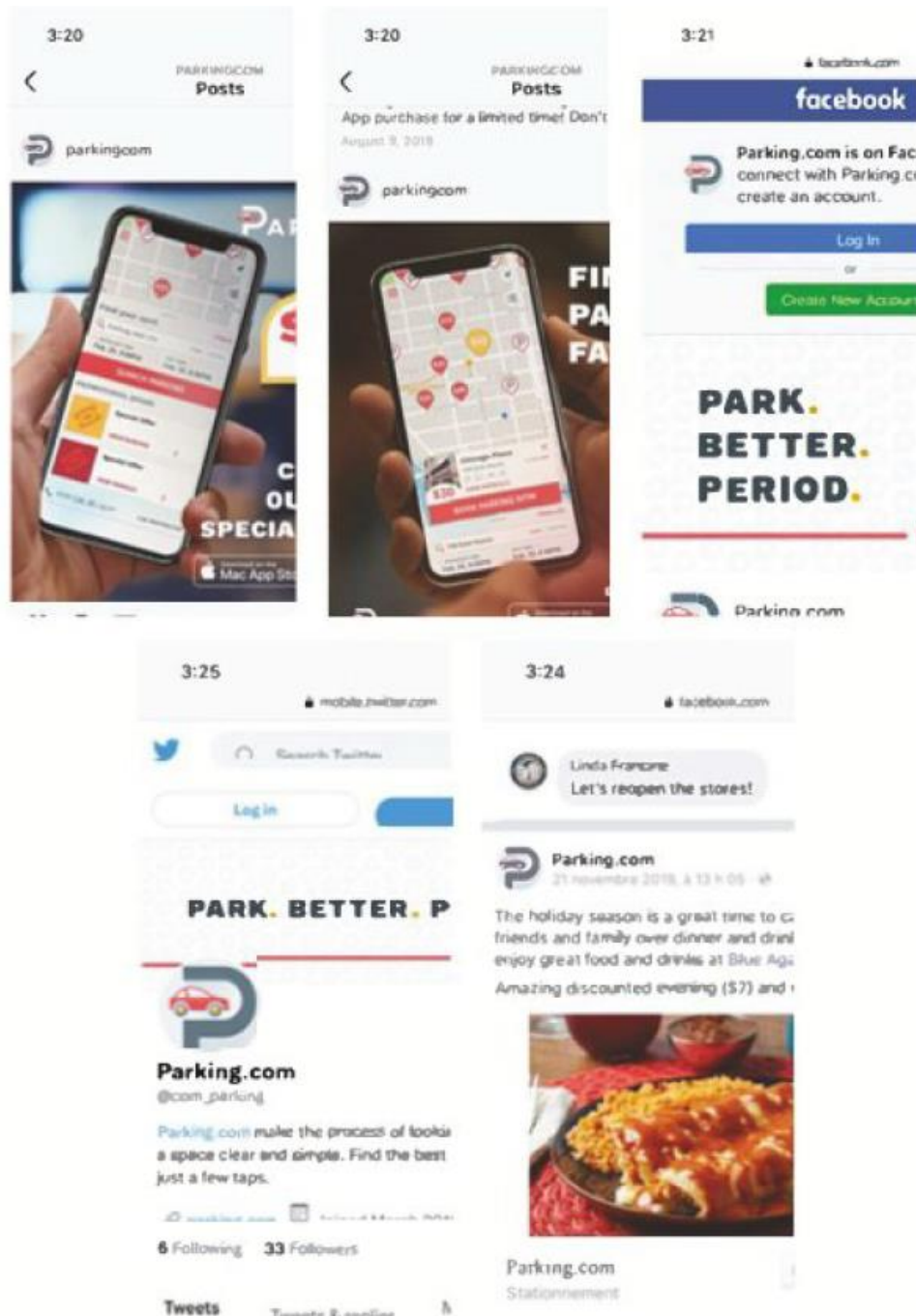
<sup>115</sup> January 11, 2020 Response TSDR 78

P in the upper left-hand corner is service mark use, we cannot know if it is the literal term “parking.com,” or the design element, color, and stylization, which the relevant consumer would perceive as a mark.

Finally, the Vig declaration avers that Applicant uses PARKING.COM consistently on Instagram, Twitter, and Facebook, and attached a single page with excerpts from the different social media which provides little context for how consumers perceive PARKING.COM:<sup>116</sup>

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<sup>116</sup> January 11, 2020 Response TSDR 28, 81.



The scant number of uses which could be considered service mark use are outweighed by Applicant's own use of PARKING.COM to designate the generic name for a parking website or the Internet address for its parking website.



We turn to the third and fourth factors, and Applicant's evidence on the amount and manner of its PARKING.COM advertising and the amount of sales and number of customers. The third factor overlaps with the second because the degree of Applicant's PARKING.COM use also reflects its manner of advertising its PARKING.COM service. The Vig declaration avers that from 2018 to 2021 Applicant spent at least \$500,000 per year on digital marketing and advertising, with ads placed with Google, Waze, Facebook, local listings, and email.<sup>117</sup> As discussed, Applicant also promotes its PARKING.COM service with its physical tickets and signage, its website and mobile application, its communications to subscribers and customers, its promotions created for clients, and its social media.

The Vig declaration avers that in the period of 2018 to 2021, Applicant's website had more than 6 million page views from U.S. sources alone, and each page includes PARKING.COM. In 2021, over one million transactions took place on Applicant's PARKING.COM mobile application. Based on its digital advertising, marketing and website, Applicant estimates that PARKING.COM has more than two million impressions per year.<sup>118</sup>

With respect to Applicant's customers and sales, as noted previously, the Vig declaration listed ten clients for which Applicant provides parking availability information services which the client in turn offers to its clients. The Vig declaration also avers that "revenues generated by the provision of the SP Plus services in the

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<sup>117</sup> January 11, 2020 Response TSDR 28.

<sup>118</sup> January 11, 2020 Response TSDR 29.

United States has been hundreds of millions of dollars each year. The vast majority of that revenue is attributable to customers who either visited SP Plus' website, through SP Plus' mobile application featuring the PARKING.COM mark, and/or through locations bearing the PARKING.COM mark.”<sup>119</sup>

Upon consideration of this evidence, we do not dispute that, based on Applicant's promotional efforts and resulting success in attracting users to its website providing parking availability information, many relevant consumers have encountered the term “PARKING.COM.” However we are hard-pressed to find that the relevant consumers perceive “parking.com” as service mark use. Instead, we find Applicant's own uses of PARKING.COM, especially the frequent association of the mark with “find parking at” leads the relevant consumer to perceive PARKING.COM as naming a genus of website devoted to parking availability information or the domain name for a website devoted to parking availability information.

Moreover, the record indicates that the relevant consumers encountering Applicant's promotional efforts may also be encountering similar efforts by some of the many other providers of online parking availability information. The rapid growth of the market for online parking availability information provides important context for consumer perception of PARKING.COM. As discussed, the consumer of websites providing parking availability information services may encounter “parking.com” when planning a trip to a school, or a baseball game or an office building, and the

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<sup>119</sup> January 11, 2020 Response TSDR 29.

source may be the school or the sports venue, or a third-party provider such as Applicant.

In view of the evidence of record, we find that the Examining Attorney has carried his burden of demonstrating that the relevant consumer understands “parking.com” to refer to the identified “website providing information regarding parking availability,” and Applicant has failed to rebut the evidence. *See In re Uman Diagnostics AB*, 2023 USPQ2d 191, at \*28 (“Where the record shows a ‘mixture’ of uses, our task remains the same: to determine whether a preponderance of the evidence shows that the proposed mark’s ‘primary significance’ to the relevant consuming public is to refer to the product or to indicate source.”); *In re Am. Online, Inc.*, 77 USPQ2d 1618, 1623 (TTAB 2006) (“[T]he mere fact that a record includes evidence of both proper trademark use and generic use does not necessarily create a mixed record that would overcome an examining attorney’s evidence of genericness.”).

The refusal of registration on the ground that the proposed mark PARKING.COM is generic as applied to Applicant’s services is affirmed.

## **II. Descriptiveness and Acquired Distinctiveness**

### **A. Descriptiveness**

For the sake of completeness, we address whether, assuming *arguendo* that PARKING.COM is not generic, Applicant has demonstrated that PARKING.COM, as a merely descriptive mark, has acquired distinctiveness and so could be registered on the Principal Register with a claim of acquired distinctiveness. *See Booking.com* at \*3 (“[T]o be placed on the principal register, descriptive terms must achieve

significance ‘in the minds of the public’ as identifying the applicant’s goods or services—a quality called ‘acquired distinctiveness’ or ‘secondary meaning.’). As noted above, seeking registration with a claim of acquired distinctiveness is an admission that the mark is not inherently distinctive. *See In re RiseSmart Inc., supra*. *See also Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009) (“Where an applicant seeks registration on the basis of Section 2(f), the mark's descriptiveness is a nonissue; an applicant's reliance on Section 2(f) during prosecution presumes that the mark is descriptive.”).

The concession does not end the matter because “[w]here a mark sits on a sliding scale of descriptiveness impacts the burden a proposed registrant must bear with respect to its claim of acquired distinctiveness.” *Royal Crown Co. v. Coca-Cola Co.*, 127 USPQ2d at 1045. “In assessing acquired distinctiveness, accordingly, the Board must first determine whether the proposed mark is highly descriptive rather than merely descriptive.” *Id.* Based on the evidence discussed above in connection with the genericness refusal, we find that each of the terms comprising Applicant’s proposed mark, PARKING and .COM individually and when combined as PARKING.COM is at the very least highly descriptive of Applicant’s website providing information regarding parking availability. *In re GJ & AM, LLC*, 2021 USPQ2d 617, at \*35 (TTAB 2021) (“The evidence discussed above in connection with the genericness refusal is equally probative on the question of the level of descriptiveness of Applicant’s asserted mark, because the two inquiries are so closely related.”) (citing *Marvin Ginn*,

228 USPQ at 530 (“The generic name of a thing is in fact the ultimate in descriptiveness.”)).

### **B. Acquired Distinctiveness**

In general, to establish that a term has acquired distinctiveness, an applicant must show that in the minds of the public, the primary significance of the term is to identify the source of the service rather than the service itself. *In re La. Fish Fry Prods.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015). Applicant bears the ultimate burden of providing acquired distinctiveness of its proposed mark by a preponderance of evidence. *Yamaha Int’l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1005-06 (Fed. Cir. 1988)). Because we have found that the term PARKING.COM is highly descriptive of Applicant’s services, Applicant faces an “elevated burden to establish acquired distinctiveness.” *In re La. Fish Fry Prods.*, 116 USPQ2d at 1265. As previously discussed, whether a mark has acquired distinctiveness looks to six factors: (1) association of the mark with a particular source by actual purchasers (typically measured by customer 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.”). *See Converse, Inc. v. ITC, supra*.

We need not rehash the evidence already discussed. However, we point out that Applicant has submitted no surveys, and no evidence of intentional copying or unsolicited media coverage. When proposed marks are highly descriptive, evidence of use for five years, or even longer, is generally insufficient to show acquired

distinctiveness. *In re La. Fish Fry Prods.*, 116 USPQ2d at 1265. Here, Applicant's use beginning July 31, 2018 extended to five years only after briefing in this case concluded. Applicant's use has not been long and, as also well established in this record, it has not been exclusive.

Applicant has been successful in promoting its services and attracting consumers, but we do not see evidence that this success is tied to consumer recognition of its mark. Indeed, the success could be wholly tied to the popularity of the parking availability information service. While the online reviews and Applicant's uses include sparse use as a service mark, the record overwhelmingly shows a proliferation of parking websites, and use of parking.com to identify the genus of the websites or their Internet address. *See In re JC Hosp. LLC*, 802 Fed. Appx. 579, 2020 USPQ2d 10067 (Fed. Cir. 2020) (Board correctly determined that a higher burden of proof was required to show acquired distinctiveness for Applicant's highly descriptive mark THE JOINT for "entertainment services, namely live musical performances, shows, and concerts; and nightclub services" and "restaurant, bar and catering services"; evidence of over \$12 million in marketing expenditures, total gross revenue over \$104 million, social media presence (e.g., Yelp and TripAdvisor forums, and YouTube) was insufficient); *In re Crystal Geyser Water Co.*, 85 USPQ2d 1374 (TTAB 2007) (holding applicant's evidence of acquired distinctiveness, including a claim of use since 1990, sales of more than 7,650,000,000 units of its goods, and extensive display of its mark CRYSTAL GEYSER ALPINE SPRING WATER on advertising and delivery trucks and promotional paraphernalia, insufficient to establish that the highly descriptive

phrase ALPINE SPRING WATER had acquired distinctiveness for applicant's bottled spring water).

Accordingly, we find that Applicant has failed to demonstrate that its applied-for mark has acquired distinctiveness under Section 2(f) of the Act.

### **III. Decision**

The refusal to register Applicant's proposed mark PARKING.COM on the Supplemental Register on the ground of genericness is affirmed, as is the alternative refusal to register on the Principal Register on the ground of mere descriptiveness and an insufficient showing of acquired distinctiveness.