

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: March 29, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re The PSYCH Group, LLC
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Serial No. 88017204
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Rosezena J. Pierce, Oscar R. Trejo, and Jasmine C. Boyd, of R.J. Pierce Law Group,
P.C., for The PSYCH Group, LLC.

Rebecca Choi, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

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Before Greenbaum, Lynch, and Coggins,
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

The PSYCH Group, LLC (“Applicant”) seeks registration on the Principal Register
of the proposed mark THE PSYCH GROUP (in standard characters) for

Psychological assessment services; Psychological assessment services in the field of clinical, educational, neuropsychological, and forensic; Psychological consultation; Psychological counseling; Psychological counseling in the field of trauma, parenting, anxiety, depression, work and career issues, stress management, multicultural issues, conflict resolution, and intimacy concerns; Psychological services, namely, providing diagnostic services to children with special needs and their families; Psychological services, namely, providing

therapeutic services to children with special needs and their families; Psychological testing services; Consulting services in the field of forensic psychology; Providing information in the field of psychological counseling and treatment, in International Class 44.¹

After a long, looping, and piecemeal prosecution history,² we now take up the Examining Attorney's final refusals to register the proposed mark under Sections 1, 2, 3, 23(c), and 45 of the Trademark Act, 15 U.S.C. §§ 1051-1053, 1091(c) & 1127, on the grounds that THE PSYCH GROUP is generic for the identified services, and not eligible for registration on the Principal or Supplemental Register; in the alternative,

¹ Application Serial No. 88017204 was filed on June 27, 2018, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant's claim of first use anywhere and use in commerce since at least as early as July 14, 2014.

² After the application was abandoned for Applicant's failure to timely respond to the original Examining Attorney's final Office action, Applicant concurrently filed a petition to revive, a request for reconsideration, and an appeal to the Board. The petition was granted, the application was revived, and the appeal was instituted but suspended pending remand to the Examining Attorney for consideration of Applicant's request for reconsideration. When the request for reconsideration was denied, the appeal was resumed and Applicant filed an appeal brief. The appeal was forwarded to the Examining Attorney, but, instead of filing a brief, the new Examining Attorney to whom the application had been reassigned requested remand, which was granted. After subsequent non-final and final Office actions addressing the issue of acquired distinctiveness, the appeal was resumed. Applicant then variously filed three requests for remand, each granted by the Board and necessitating suspension of the appeal and review by the Examining Attorney. None of the requests persuaded the Examining Attorney to withdraw any refusal. Once the appeal was finally resumed after conclusion of the fifth suspension, Applicant filed a supplemental appeal brief and the Examining Attorney filed an appeal brief.

Applicant's piecemeal requests for remand with a trickle of minimally probative "additional" evidence are discouraged. This type of piecemeal prosecution is inefficient. *Cf.* TRADEMARK MANUAL OF EXAMINING PROCEDURE ("TMEP") § 704.01 (July 2022) ("Every effort should be made to avoid piecemeal prosecution, because it prolongs the time needed to dispose of an application."). Twice the Examining Attorney found "that the new evidence is not quantitatively or qualitatively different from the evidence previously submitted by applicant," *see* October 26, 2021 and March 15, 2022 Requests for Reconsideration Denied at 2, and after the third request the Examining Attorney noted that the "evidence provided by applicant . . . was previously available." May 25, 2022 Request for Reconsideration Denied at 2.

that the proposed mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1); and, as a second alternative, that the proposed mark is merely descriptive under Section 2(e)(1) and has not acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). As explained below, we affirm the refusals to register.

I. Evidentiary Issue

Applicant attached to its supplemental brief copies of various evidentiary submissions, most of which it made of record during prosecution.³ The Board discourages this practice. *In re Lorillard Licensing Co.*, 99 USPQ2d 1312, 1315 (TTAB 2011); *In re SL&E Training Stable Inc.*, 88 USPQ2d 1216, 1220 n.9 (TTAB 2008) (attaching as exhibits to brief material already of record requires Board to determine whether attachments had been properly made of record and adds to the bulk of the file); *In re Thor Tech Inc.*, 85 USPQ2d 1474, 1475 n.3 (TTAB 2007) (attaching evidence from record to briefs is duplicative and is unnecessary). We consider the two attachments not made of record during prosecution⁴ for whatever probative value

³ See 27 TTABVUE 7-38 (supplemental brief), 13 TTABVUE 5-6 (1st request for remand), 23 TTABVUE 5-13 (3rd request for remand), and July 15, 2021 Response to Office Action at 5-13 and 17-19.

Citations to the briefs in the appeal record refer to the TTABVUE docket system. Citations to the prosecution record refer to the .pdf version of the TSDR system. See *In re Integra Biosciences Corp.*, 2022 USPQ2d 93, *7 (TTAB 2022).

⁴ See 27 TTABVUE 21-24 (dictionary definition of “psych” from dictionary.com) and 34-35 (thepsychgroup Instagram page).

they may have due to the nature of the evidence⁵ and because the Examining Attorney did not object thereto.

II. Applicable Law for Genericness

A mark proposed for registration on the Principal or Supplemental Register must be capable of distinguishing the applicant's goods or services. Trademark Act Sections 1, 2, 3, 23(c), and 45. 15 U.S.C. §§ 1051-1053, 1091(c), and 1127. "Generic terms do not so qualify." *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017).

"A generic name—the name of a class of products or services—is ineligible for federal trademark registration." *USPTO v. Booking.com B.V.*, 591 U.S. ___, 140 S. Ct. 2298, 2020 USPQ2d 10729, at *2 (2020). "A generic mark, being the 'ultimate in descriptiveness,' cannot acquire distinctiveness, and is not entitled to registration on either the Principal or Supplemental Register under any circumstances." *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)).

A term is generic if it refers to the class or category of goods or services on which it is used. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807

⁵ The dictionary definition is matter of which we may take judicial notice, *see e.g., In re Uman Diagnostics AB*, 2023 USPQ2d 191, *6 n.6 (TTAB 2023), even though there is another definition of "psych" already of record (from merriam-webster.com), *see* October 19, 2018 Office Action at 4, and September 14, 2020 Reconsideration Letter at 4. Applicant's Instagram page appears to be a copy, printed July 15, 2021, similar to the Instagram page submitted with the July 15, 2021 Response to Office Action at 14-16, the only difference being the visible images of posts to the account.

(Fed. Cir. 2001) (citing *Marvin Ginn*, 228 USPQ at 528). In other words, “[a] generic term, by definition, identifies a type of [service], not a particular source.” *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1011 (Fed. Cir. 1987). If a term is generic for one or more of the goods or services listed in an application, it is treated as being generic for an entire class for which registration is sought. See *In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff’d*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

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. “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) (quoting *Marvin Ginn*, 228 USPQ at 530).

The test for determining whether a proposed mark is generic is its primary significance to the relevant public. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1553-54 (Fed. Cir. 1991); *Marvin Ginn*, 228 USPQ at 530. “Making this determination ‘involves a two-step inquiry: First, what is the genus of [services] ... at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of . . . services?’” *In re Uman Diagnostics*, 2023 USPQ2d 191, at *4 (quoting *Marvin Ginn*, 228 USPQ at 530).

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046 (Fed. Cir. 2018) (quoting *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987)); *see also In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016); *Princeton Vanguard*, 114 USPQ2d at 1830; *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (finding third-party websites competent sources for determining what the relevant public understands mark to mean). An applicant’s own website and marketing material are also probative and can be “the most damaging evidence” in showing how the relevant public perceives a term. *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957-58 (TTAB 2018) (citing *Princeton Vanguard*, 114 USPQ2d at 1831; *In re Gould Paper Corp.*, 5 USPQ2d at 1112). Competitor use also is probative on the issue of genericness. *Booking.com B.V.*, 2020 USPQ2d 10729, at *7 n.6 (evidence of genericness “can include ... usage by ... competitors”).

A. The Genus of Applicant’s Services

The genus of the services may be defined by an applicant’s identification of services. *See In re Cordua Rests.*, 118 USPQ2d at 1636 (citing *Magic Wand*, 19 USPQ2d at 1552. The Examining Attorney looks to Applicant’s identification of services and argues that because “[a]ll the listed activities are specified as being psychological in nature[,] ‘psychological services’ adequately defines the genus at

issue.”⁶ Applicant does not directly address the question of the genus of its services, but discusses its counseling, assessment, consulting, information, and diagnostic services as “all in the field of psychology.”⁷

Each service listed in Applicant’s identification is characterized as “psychological” or involving “psychology.” Although the recitation includes greater specificity, the services are all psychological services, and we find that this constitutes the appropriate genus.

B. Whether the Relevant Public Understands THE PSYCH GROUP
Primarily to Refer to the Genus of Applicant’s Services

We first define the relevant public, then look to the relevant public’s understanding of the proposed mark.

1. Defining the Relevant Public

In the context of our genericness inquiry, the relevant public is the “actual or potential purchasers of the [services].” *Loglan Inst. Inc. v. Logical Language Grp., Inc.*, 962 F.2d 1038, 22 USPQ2d 1531, 1533 (Fed. Cir. 1992) (quoting *Magic Wand*, 19 USPQ2d at 1553). Here, because there are no restrictions on or limitations to the channels of trade or classes of consumers of most of the psychological services in the application on appeal,⁸ the relevant public comprises ordinary consumers who

⁶ 29 TTABVUE 6.

⁷ 6 TTABVUE 7-8.

⁸ Only two of the services are limited to “children with special needs and their families.” With the exception of “consulting services in the field of forensic psychology” which might have specialized trade channels or consumers (there is no evidence in the record on the matter), the remaining services are broadly written and include general psychological services (i.e., assessment and counseling) without limitation.

purchase, would purchase, or use Applicant's psychological services. Applicant does not argue to the contrary.

2. The Understanding of the Relevant Public when Exposed to THE PSYCH GROUP with reference to Applicant's Services

Bearing in mind that we assess the mark in its entirety, on this record we also find it "useful to consider the public's understanding of the individual words." *Princeton Vanguard*, 114 USPQ2d at 1832-33. We start with the relevant dictionary definitions of record:

- PSYCH is an abbreviation and informal noun meaning "psychology"⁹ which is "the science of mind and behavior;"¹⁰ and
- GROUP is defined as "set of people who meet or do something together because they share the same purpose . . ." ¹¹ and "a number of individuals assembled together or having some unifying relationship."¹²

While "dictionary definitions of the individual words . . . in the proposed mark are probative of the public's understanding of their combination," *In re Empire Tech. Dev. LLC*, 123 USPQ2d 1544, 1550 (TTAB 2017), we also consider other evidence of record to determine the relevant public's understanding of the proposed mark. Consistent

⁹ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com), October 19, 2018 Office Action at 4; September 14, 2020 Reconsideration Letter at 4. Dictionary.com, 27 TTABVUE 22. The Examining Attorney also submitted numerous websites of third-party providers of psychological services demonstrating use of PSYCH consistent with the dictionary definition. See December 12, 2019 Office Action at 21 (health.arizona.edu), 26 (gdpsychservices.com), 30 (homespsychservices.com), 35 (lasvegaspsychservices.com), 40 (mpsde.com), and 45 (pediatricpsychservices.com).

¹⁰ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com), September 14, 2020 Reconsideration Letter at 5.

¹¹ MACMILLAN DICTIONARY (macmillandictionary.com), December 12, 2019 Office Action at 5.

¹² MERRIAM-WEBSTER DICTIONARY (merriam-webster.com), October 19, 2018 Office Action at 5.

with the definitions, the record includes webpages from many third-party psychological services providers around the United States who use the term PSYCH GROUP to refer to themselves as a provider of psychological services. For example:

- “Lorio Psych Group” offers individual, family, group, and couples therapy, among other psychological services;¹³
- “Enso Psych Group” offers psychotherapy from licensed mental health professionals;¹⁴
- “Patterson Psych Group, PLLC” offers various therapies to adults, adolescents, children, couples, and families;¹⁵
- “Plymouth Psych Group” teaches social skills for teens for successful social interaction;¹⁶
- “Noll Psych Group” offers state-of-the-art, treatment-relevant psychological and neuropsychological assessments;¹⁷
- “Orlando Psych Group” offers counseling and psychiatry services;¹⁸
- “Acute & Diversified Psych Group” offers psychology and psychiatry services;¹⁹
- “Keil Psych Group” offers individual and group therapy;²⁰
- “Geri Psych Group” specializes in psychiatry;²¹ and

¹³ Loriopsychgroup.com, October 19, 2018 Office Action at 6, and December 12, 2019 Office Action at 6-7.

¹⁴ Ensopsych.com, October 19, 2018 Office Action at 7, December 12, 2019 Office Action at 8.

¹⁵ Pattersonpsych.com, October 19, 2018 Office Action at 9, and December 12, 2019 Office Action at 11.

¹⁶ Plymouthpsychgroup.com, May 14, 2019 Office Action at 8.

¹⁷ Nollpsychgroup.com, May 14, 2019 Office Action at 9.

¹⁸ Healthgrades.com, December 12, 2019 Office Action at 9.

¹⁹ Vitals.com, December 12, 2019 Office Action at 10.

²⁰ Drmitchkeil.com, December 12, 2019 Office Action at 12.

²¹ Npidb.org, December 12, 2019 Office Action at 13-14.

- “Flatiron Psych Group” is a group private practice of licensed psychologists that focuses on cognitive-behavioral therapy.²²

The only substantive argument Applicant makes against the genericness refusals in its brief is that “[c]onsumers would associate [THE PSYCH GROUP] with a group of individuals. In fact, the evidence submitted by the examining attorney, shows the terms ‘THE PSYCH GROUP’ or ‘PSYCH GROUP’ are . . . used in trademarks to identify [the] source of the services rather than referring primarily to the specific services themselves.”²³ We agree that the evidence shows examples of PSYCH GROUP paired with another leading term (e.g., Flatiron Psych Group), and we find that this common usage is due to meaning of the term – specifically, the public perceives PSYCH GROUP as referring to psychological services. Use by competitors in the field – and here, what appears to be routine use by many providers of psychological services – is strong evidence of genericness. *See, e.g., Royal Crown v. Coca-Cola*, 127 USPQ2d at 1048 (“zero” used by competitors generally for soft drinks, sport drinks, and energy drinks with zero or near zero calories); *BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 35 USPQ2d 1554, 1558 (Fed. Cir. 1995) (“Walking Fingers” logo, used by many competing telephone companies and directory publishers, found informational for Yellow Pages); *In re Thunderbird Prods.*, 406 F.2d 1389, 160 USPQ 730, 732 (CCPA 1969) (“cathedral hull” used generally and by at least one competitor to describe specific type of boat hull). *Cf. In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 4 USPQ2d at 1144 (genericness refusal of CASH

²² Flatironpsych.com, December 12, 2019 Office Action at 15.

²³ 6 TTABVUE 7-8.

MANAGEMENT ACCOUNT reversed where evidence “showed recognition in a substantial number of publications” that appellant was the source of the CASH MANAGEMENT ACCOUNT).

The record also contains newspaper articles demonstrating generic use of PSYCH GROUP as a reference to providers of psychological services:

- An article headlined “Randolph psych group owner from Canton on chamber board” explains that Dr. Ebi Okara, founder of Metis Psychological Associates, was named to the South Shore Chamber of Commerce board of directors;²⁴ and
- An article headlined “Psych group takes on interrogations” explains that the nation’s largest group of psychologists is considering the role of psychologists in military interrogations.²⁵

As the Examining Attorney accurately describes it, “the record shows that the [term] ‘PSYCH GROUP’ is commonly used in the industry to refer to a group of psychologists assembled together to provide psychological services and care.”²⁶ We find that the record demonstrates that the relevant public perceives PSYCH GROUP as generic for psychological services. *Cf., In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) (affirming disclaimer requirement of PSYCHOLOGY PRESS).

In addition, we take judicial notice that THE is a definite article “used as a function word to indicate that a following noun or noun equivalent is definite or has

²⁴ HOLBROOK SUN (Massachusetts), April 29, 2016, Business section; May 14, 2019 Office Action at 10.

²⁵ MONTEREY COUNTY HERALD (California), August 19, 2007, State section; May 14, 2019 Office Action at 11.

²⁶ 29 TTABVUE 8.

been previously specified by context or by circumstance,”²⁷ and is “[u]sed before a singular noun indicating that the noun is generic.”²⁸

The Examining Attorney argues that while Applicant’s proposed mark includes the definite article THE, merely adding that article to a generic term, here PSYCH GROUP, generally does not add any source-indicating significance or otherwise affect the public perception of the term’s genericness.²⁹ Applicant makes no related argument in its brief. On this record, we agree with the Examining Attorney. *See, e.g., In re Consumer Prot. Firm PLLC*, 2021 USPQ2d 238, at *18 (TTAB 2021) (holding THE CONSUMER PROTECTION FIRM generic for legal services; adding the definite article “the” did not affect the term’s genericness). The addition of the article THE to the routinely used term PSYCH GROUP does not transform the individual words of the proposed mark into something more when put together as THE PSYCH GROUP in the context of psychological services. Here, the evidence of record reflects widespread, third-party generic use of the designation PSYCH GROUP, and nothing about the combination of words makes THE PSYCH GROUP as a whole any greater than the sum of its parts. *See In re The Place, Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (definite article THE adds “no source-indicating significance to the mark as a whole”).

²⁷ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com), accessed March 27, 2023. *See In re Uman Diagnostics AB*, 2023 USPQ2d 191, at *6 n.6 (Board may take judicial notice).

²⁸ AMERICAN HERITAGE DICTIONARY (ahdictionary.com), accessed March 27, 2023.

²⁹ 29 TTABVUE 9.

Applicant argues that its proposed mark should be allowed to register because the Office “has allowed trademarks similar to Applicant’s to be registered” which “indicat[es] it is often the policy of the Office to allow [such] marks to register.”³⁰ In support of this argument, Applicant points to several third-party registrations that issued either on the Supplemental Register or on the Principal Register following a showing of acquired distinctiveness under Section 2(f) of the Trademark Act.³¹

Some of the third-party registered marks are materially different from Applicant’s because they contain terms that do not appear to be generic, for example UNITED (in the mark UNITED UROLOGY GROUP) and NATIONAL (in NATIONAL COUNSELING GROUP). The most relevant registrations cited by Applicant can be categorized into two groups: those with psychological or psychological-related services, and those with marks similar in structure to the proposed mark at issue in this appeal (i.e., THE + [term] + GROUP).

In the former group, the third-party registrations are:

- FORENSIC PSYCHOLOGY GROUP
Registration No. 4119770, issued on the Supplemental Register, with GROUP disclaimed, for psychological and psychiatric assessments in legal matters;³² and
- BEHAVIOR DEVELOPMENT GROUP
Registration No. 5215532, issued on the Supplemental Register, for behavioral health services.³³

In the latter group, the third-party registrations are:

³⁰ 6 TTABVUE 8.

³¹ 6 TTABVUE 8-11.

³² July 7, 2020 Petition to Revive at 14.

³³ July 7, 2020 Petition to Revive at 16.

- **THE EAR GROUP**
Registration No. 5063362, issued on the Principal Register under Section 2(f), with GROUP disclaimed, for hearing aid services.³⁴
- **THE FOOD GROUP**
Registration No. 4792201, issued on the Supplemental Register, for charitable services and nutritional consultation;³⁵
- **THE OD/MD CONSULTING GROUP**
Registration No. 4787572, issued on the Supplemental Register, with CONSULTING GROUP disclaimed, for medical care consulting;³⁶ and
- **THE CONCUSSION GROUP**
Registration No. 5747785, issued on the Supplemental Register, with GROUP disclaimed, for medical imaging and health care consulting in the field of medical imaging and brain scans.³⁷

We find these registrations do not compel a finding that Applicant's mark is not generic for psychological services. The marks in these registrations likely are highly descriptive; but, Registrant has not demonstrated that the relevant purchasing public would perceive each term before GROUP as the name of the genus of services in the respective identifications. Moreover, in all but two of these examples GROUP is disclaimed, demonstrating that it is most often considered a generic term.

At any rate, the Examining Attorney countered Respondent's third-party registrations with other third-party registrations issued on the Supplemental Register, or the Principal Register under Section 2(f), with a disclaimer of GROUP

³⁴ July 7, 2020 Petition to Revive at 18.

³⁵ July 7, 2020 Petition to Revive at 20.

³⁶ July 7, 2020 Petition to Revive at 22.

³⁷ July 7, 2020 Petition to Revive at 36.

and the term preceding GROUP.³⁸ The disclaimers in these registrations are consistent with disclaimer practice for generic terms. *See* TMEP § 1213.03(b).

We are not persuaded by Applicant's third-party registration evidence and argument, and do not agree that the registrations necessarily reflect that the USPTO has a policy of registering marks analogous to Applicant's mark. The records of the third-party registrations are not before us. It is well-established that the Board must decide each application on its own merits. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). We are not bound by the allowance of prior registrations, even if they have some characteristics that may appear relevant to this case. *See, e.g., In re Cordua Rests.*, 118 USPQ2d at 1635 ("The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement, including non-genericness, even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect."); *Hilson Rsch. Inc. v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1439 (TTAB 1993). *See also In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, at *11 (TTAB 2020) (consistency in examination is desirable but the Board "must yield to proper determinations under the Trademark Act and rules") (internal quotations omitted). The third-party registration evidence submitted by Applicant and the Examining Attorney, when

³⁸ *See* 29 TTABVUE 7-8 (listing the relevant information of the registrations); May 14, 2019 Office Action at 20-48 (electronic printouts of the registrations). These include, for example, Reg. No. 4103358 for AMERICAN PEDIATRIC DENTAL GROUP issued on the Supplemental Register with PEDIATRIC DENTAL GROUP disclaimed; and Reg. No. 5268055 for MEHTA DENTAL GROUP issued on the Supplemental Register with DENTAL GROUP disclaimed.

taken as a whole, does not convince us that THE PSYCH GROUP is at least merely descriptive and capable of distinguishing Applicant's psychological services.

C. Conclusion on Genericness

From the evidence made of record, including the dictionary definitions of the constituent words, numerous third-party websites, as well as news articles, we find that PSYCH GROUP immediately and directly informs the public that the services being offered are psychological services. The combination of THE with PSYCH GROUP does not yield any additional meaning to consumers that would make it capable of distinguishing Applicant's services from like services of others. We therefore find that THE PSYCH GROUP is generic for Applicant's identified services and consequently ineligible for registration on the Principal or Supplemental Registers. Accordingly, we affirm the refusals to register the proposed mark under Sections 1, 2, 3, 23(c), and 45 of the Trademark Act, 15 U.S.C. §§ 1051-1053, 1091(c) & 1127, on the grounds that THE PSYCH GROUP is generic for the identified services and not eligible for registration on the Principal or Supplemental Register.

III. Merely Descriptive and Lack of Acquired Distinctiveness

For completeness, we also address the Examining Attorney's two alternative refusals to register the mark on grounds that it is merely descriptive of the identified goods under Section 2(e)(1) and, further, that it has not acquired distinctiveness under Section 2(f). *See, e.g., In re Uman Diagnostics AB*, 2023 USPQ2d 191, at *37.

A. Mere Descriptiveness

A mark is “merely descriptive” within the meaning of Section 2(e)(1) of the Trademark Act if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017).

Applicant presents no arguments in its brief or supplemental brief that the proposed mark THE PSYCH GROUP is registrable as inherently distinctive on the Principal Register. Instead, Applicant restricts its arguments to traversing the refusal that the proposed mark is generic and the second alternative refusal that the proposed mark has not acquired distinctiveness under Section 2(f). Indeed, Applicant appears to concede that the mark is merely descriptive. For example, Applicant’s briefs explain:

- “Here, Applicant’s mark is Highly descriptive and registrable under 2f [sic].”³⁹
- “Applicant’s mark ‘The PSYCH Group’ is at the very least descriptive, able to acquire distinctiveness, and worthy for registration on the principal registry [sic] under 2(f).”⁴⁰
- “Applicant’s descriptive mark has acquired secondary meaning.”⁴¹

Inasmuch as Applicant failed to address the Examining Attorney’s first alternative refusal of registration under Trademark Act Section 2(e)(1) on the ground

³⁹ 6 TTABVUE 8.

⁴⁰ 6 TTABVUE 12.

⁴¹ 27 TTABVUE 3.

that the proposed mark is merely descriptive of the services, Applicant has waived any arguments on this ground, and consequently its appeal of the refusal of registration on the Principal Register under Section 2(e)(1). *See In re Katch, LLC*, 2019 USPQ2d 233842, at *1-2 (TTAB 2019) (applicant who briefed only the refusal under Section 23(c) waived its appeal of the refusal to registration under Trademark Sections 1, 2, 3 and 45); *In re Harley*, 119 USPQ2d 1755, 1758 (TTAB 2016) (Applicants' failure to address any of the grounds for refusal is a basis for affirming the examining attorney's refusal on all grounds); *In re Gibson Guitar Corp.*, 61 USPQ2d 1948, 1950 n.2 (TTAB 2001) (applicant did not, in its appeal brief, pursue claim of inherent distinctiveness, and therefore the claim was not considered by Board). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 1203.02(g) (2018) ("If an applicant, in its appeal brief, does not assert an argument made during prosecution, it may be deemed waived by the Board.").

Even if Applicant had not waived its arguments on this ground, we would find, based on the record as a whole, and for the same reasons set out above in the discussion and analysis of the generic refusals, that Applicant's proposed mark is merely descriptive of the services.

B. Degree of Descriptiveness

We must determine the degree of descriptiveness of THE PSYCH GROUP for purposes of determining whether it has acquired distinctiveness. "[A]pplicant's burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary

meaning.” *Steelbuilding.com*, 75 USPQ2d at 1424; *see also Royal Crown*, 127 USPQ2d at 1045 (Board should first determine level of descriptiveness of proposed mark before assessing acquired distinctiveness).

Implicit in our holding above that the evidence before us establishes that THE PSYCH GROUP is generic for psychological services is a finding that proposed mark is highly descriptive of the services under Section 2(e)(1). “The generic name of a thing is in fact the ultimate in descriptiveness.” *Bellsouth v. DataNational*, 35 USPQ2d at 1557 (quoting *Marvin Ginn*, 228 USPQ at 530); *Weiss Noodle Co. v. Golden Cracknel & Specialty Co.*, 290 F.2d 845, 129 USPQ 411, 413 (CCPA 1961) (“The name of a thing is the ultimate in descriptiveness.”).

C. Evidence of Acquired Distinctiveness

We assess Applicant’s claim of acquired distinctiveness based on the entire record, keeping in mind that “[t]he applicant . . . bears the burden of proving acquired distinctiveness.” *In re La. Fish Fry Prods.*, 116 USPQ2d at 1264 (citation omitted). Because we have found the proposed mark highly descriptive, Applicant’s burden of establishing acquired distinctiveness under Section 2(f) is “commensurately high.” *In re Virtual Indep. Paralegals, LLC*, 2019 USPQ2d 111512, *11 (TTAB 2019) (citing cases). *See also In re Bongrain Int’l (Am.) Corp.*, 894 F.2d 1316, 13 USPQ2d 1727 (Fed. Cir. 1990).

Inasmuch as Applicant’s Section 2(f) claim rests on prior use and “[o]ther evidence,” *see* Trademark Rule 2.41(a)(2)-(3), 37 C.F.R. § 2.41(a)(2)-(3), we look to the following six factors which inform whether a mark has acquired secondary meaning:

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

Converse, Inc. v. Int'l Trade Comm'n, 907 F.3d 1361, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018), cited in *Uman Diagnostics AB*, 2023 USPQ2d 191, at *39-40. All six factors are to be weighed together in determining the existence of secondary meaning. *Id.* See also *In re SnoWizard, Inc.*, 129 USPQ2d 1001, 1008 (TTAB 2018) (determining acquired distinctiveness by “weighing all of the factors for which there is evidence”).

In its original brief, Applicant’s specific argument as to acquired distinctiveness relates to factor 2 only,⁴² and in the supplemental brief, Applicant’s specific argument relates to factors 2 and 3.⁴³ Otherwise, Applicant argues only generally that its mark is “capable of acquired distinctiveness” and “able to acquire distinctiveness.”⁴⁴ Accordingly, we address these two factors only.⁴⁵

⁴² 6 TTABVUE 8 (“Applicant has been using its mark in commerce since as early as July 14, 2014 as identifying source.”).

⁴³ 27 TTABVUE 6 (“Applicant has provided a variety of evidence to established [sic] the secondary meaning of its mark, including a declaration from one of Applicant’s service providers and search engine and social media, [sic] results showing that Applicant is synonymous with the mark.”).

⁴⁴ 6 TTABVUE 7, 12.

⁴⁵ Because Applicant bears the burden of proving acquired distinctiveness, it is up to Applicant to make its best arguments and point to specific evidence in the record. It is not our function to examine Applicant’s evidence in greater detail than as submitted by Applicant or to craft Applicant’s argument. Applicant’s arguments in its briefs are at best an invitation to the Board to scour the record to extract the relevance of Applicant’s evidence submitted throughout the long and winding prosecution history. We decline the invitation. *Cf. Halliburton Energy Servs., Inc. v. M-ILLC*, 514 F.3d 1244, 85 USPQ2d 1654, 1659 n.22 (Fed. Cir. 2008) (“A skeletal ‘argument’, really nothing more than an assertion, does not preserve a claim.”); *Clintec Nutrition Co. v. Baxa Corp.*, 44 USPQ2d 1719, 1723 n.16 (N.D. Ill. 1997)

1. Length, degree, and exclusivity of use

On July 7, 2020, Applicant submitted a verified statement claiming substantially exclusive and continuous use of the proposed mark in commerce for at least the five years before the date of the statement – that is, at least as early as July 7, 2015.⁴⁶ Similarly, Applicant submitted the declaration of Dr. Rashika J. Rentie, Applicant’s CEO, which states that “[s]ince July 10, 2014, [Applicant] has continuously advertised and marketed its psychological services under the mark THE PSYCH GROUP.”⁴⁷

While evidence of substantially exclusive use for a period of five years immediately preceding such a statement may be considered prima facie evidence of acquired distinctiveness under Section 2(f), the “language of the statute is permissive, and the weight to be accorded this kind of evidence depends on the facts and circumstances of the particular case.” *In re Ennco Display Sys., Inc.*, 56 USPQ2d 1279, 1286 (TTAB 2008) (citing *Yamaha Int’l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001, 1004 (Fed. Cir. 1988)). We have discretion to find that evidence of a period of use is insufficient to show acquired distinctiveness, and we do so here because of the highly descriptive nature of Applicant’s proposed mark. *Uman Diagnostics AB*, 2023 USPQ2d 191, at *41. *See also GJ & AM*, 2021 USPQ2d 617, at *41-42 (TTAB 2021)

(where a party points the court to multi-page exhibits without citing a specific portion or page, the court will not pour over the documents to extract the relevant information, citing *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (judges do not hunt for truffles buried in briefs or the record)).

⁴⁶ July 7, 2020 Petition to Revive at 3.

⁴⁷ 13 TTABVUE 6 (Rentie Decl.).

(citing *Apollo Med. Extrusion Techs., Inc. v. Med. Extrusion Tech., Inc.*, 123 USPQ2d 1844, 18555 (TTAB 2017) (25+ years not sufficient to prove acquired distinctiveness); *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1766 (TTAB 2013) (19 years use insufficient to prove acquired distinctiveness); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 920 (TTAB 1984) (16 years “is a substantial period but not necessarily conclusive or persuasive” on acquired distinctiveness). Nonetheless, we must “consider the length of Applicant’s use in connection with the other evidence of how consumers perceive Applicant’s [proposed] mark.” *GJ & AM*, 2021 USPQ2d 617 at *42.

In addition, as discussed above, we find that multiple third parties are using the term PSYCH GROUP as the name of an entity providing psychological services. *See In re Guaranteed Rate, Inc.* 2020 USPQ2d 10869, at *7 (TTAB 2020) (third party use of term “weighs heavily against Applicant’s claim of acquired distinctiveness”). We also note that Dr. Rentie’s declaration, as opposed to the statement tracking the statutory language of Section 2(f), does not claim that the proposed mark’s use has been substantially exclusive.⁴⁸

2. Amount and manner of advertising

With respect to Applicant’s advertising and marketing efforts, Dr. Rentie’s declaration does not mention the amount or manner of Applicant’s advertising. However, Applicant made of record screenshots of its Facebook account (with 149 followers), Twitter account (with 62 followers), and Instagram account (with 532

⁴⁸ 13 TTABVUE 6 (Rentie Decl.); July 7, 2020 Petition to Revive at 3 (statement).

followers),⁴⁹ but provided no evidence of other analytics or metrics, or the specific time periods that Applicant used these social media accounts.⁵⁰ Because “Applicant has not provided any testimony or evidence estimating the size of the relevant consumer base, there is no context by which we can assess the extent or effectiveness of Applicant’s social media reach.” *GJ & AM*, 2021 USPQ2d 617, at *44 (citations omitted). Notwithstanding the lack of context for the social media numbers, they appear quite low given the extreme popularity of general social media use in the United States, in a nation with a population of over 330 million persons.

There are various other advertising materials of record, such as a business card,⁵¹ a trifold brochure,⁵² a LinkedIn page,⁵³ and Applicant’s website,⁵⁴ but there is no context provided for any of these.

The Google search results⁵⁵ are of little probative value because a partial list of search results does not show the context in which THE PSYCH GROUP is used on the listed web sites. *See In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (Google search results that provided very little context of the use of

⁴⁹ July 15, 2021 Petition to Revive at 5, 8, 14.

⁵⁰ While the Twitter page indicates “Joined February 2017,” *see* July 15, 2021 Response to Office Action at 8, such assertion appearing on the printout cannot be used to demonstrate truth of this matter without corroborating testimony. *WeaponX Performance Prods. v. Weapon X Motorsports, Inc.*, 126 USPQ2d 1034, 1041 (TTAB 2018); *Swiss Watch Intl. Inc. v. Federation of the Swiss Watch Indus.*, 101 USPQ2d 1731, 1735 (TTAB 2012).

⁵¹ 19 TTABVUE 5.

⁵² 19 TTABVUE 13.

⁵³ 19 TTABVUE 12.

⁵⁴ April 19, 2019 Response to Office Action at 37-43.

⁵⁵ 23 TTABVUE 5-12.

ASPIRINA deemed to be “of little value in assessing the consumer public perception of the ASPIRINA mark”); *In re Tea and Sympathy, Inc.*, 88 USPQ2d 1062, 1064 n.3 (TTAB 2008) (truncated Google search results entitled to little probative weight without additional evidence of how the searched term is used). To the extent the results demonstrate that Applicant appears in the first few pages of results, such fact would be more probative if Applicant had offered testimony or evidence of the amount of money and effort it spends to ensure that it appears. *See, e.g., In re Country Music Ass’n, Inc.*, 100 USPQ2d 1824, 1834 (TTAB 2011) (finding expenditure of resources to ensure the applicant it is the first hit of an internet search probative of acquired distinctiveness).

D. Conclusion as to Acquired Distinctiveness

Considering all of the *Converse* factors and evidence Applicant presented in its briefs, we find that Applicant has failed to meet its burden of showing that the highly descriptive term THE PSYCH GROUP has acquired distinctiveness. *See GJ & AM*, 2021 USPQ2d 617, at *46-47. The record shows that there are numerous providers of psychological services who use PSYCH GROUP, and Applicant provided no context for Applicant’s social media use. Applicant also provided no information on the amount of its advertising, the amount of sales or number of customers, or other critical evidence that would be probative of acquired distinctiveness, such as customer surveys or affidavits from purchasers of Applicant’s services.

Based on the record as a whole, we find that Applicant falls far short of carrying its heavy burden of showing that its highly descriptive proposed mark THE PSYCH

GROUP has acquired distinctiveness, and we affirm the refusal to register THE PSYCH GROUP on the Principal Register on the ground that it is merely descriptive of the services identified in the application and has not acquired distinctiveness. *See, e.g., In re Automated Mktg. Sys., Inc.*, 873 F.2d 1451, 11 USPQ2d 1319, 1320 (Fed. Cir. 1989) (after finding SALES FOLLOW-UP for soliciting repeat and referral business for automobile dealership services generic, “the highly descriptive nature of ‘SALES FOLLOW-UP’ outweighed [applicant’s] evidence of acquired distinctiveness.”); *In re Noon Hour Food Prods., Inc.*, 88 USPQ2d 1172 (TTAB 2008) (finding, despite applicant’s claim of use in commerce for almost one hundred years, as well as an “inadvertently cancelled” seventy-year-old registration for the mark BOND-OST for cheese, current evidence clearly showed the mark was generic for the goods, and assuming arguendo that BOND-OST is not generic, that applicant had failed to establish acquired distinctiveness of the highly descriptive mark).

IV. Decision

The refusals to register Applicant’s proposed mark THE PSYCH GROUP on the grounds that it is generic for the identified services and not eligible for registration on the Principal or Supplemental Register are affirmed. In addition, the refusals to register on the alternative grounds that Applicant’s proposed mark is merely descriptive of the identified services and has not acquired distinctiveness are also affirmed.