

This Opinion is Not a  
Precedent of the TTAB

Mailed: March 18, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board

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*In re NGD Homesharing, LLC*

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Serial Nos. 88452729 and 88454104

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Sherry Flax of Saul Ewing Arnstein & Lehr LLP  
for NGD Homesharing, LLC.

Jacob Vigil, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

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Before Wolfson, Adlin and Lynch, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant NGD Homesharing, LLC seeks Principal Register registrations for two proposed marks: HOSTIING GROUP, in standard characters (GROUP disclaimed), for:

downloadable mobile applications for travel recommendations and reservation and booking services for temporary lodging and short-term rentals, in International Class 9;

real estate management of short-term rental properties; real estate management services; real estate services, namely, condominium management services; real estate services, namely, leasing and management for others of residential condominiums located within hotel developments; real estate service, namely, rental property management; real estate services, namely, property

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management services for condominium associations, homeowner associations and apartment buildings, in International Class 36; and

making reservations and bookings for restaurants and meals; making reservations and bookings for temporary lodging, in International Class 43;<sup>1</sup>

and HOSTIING, in standard characters, for:

real estate management of short-term rental properties; real estate management services; real estate service, namely, rental property management; real estate services, namely, condominium management services; real estate services, namely, leasing and management for others of residential condominiums located within hotel developments; real estate services, namely, property management services for condominium associations, homeowner associations and apartment buildings, in International Class 36; and

making reservations and bookings for restaurants and meals; making reservations and bookings for temporary lodging, in International Class 43.<sup>2</sup>

The Examining Attorney refused both applications on the ground that the proposed marks are merely descriptive of the identified goods and services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). After the refusals became final, Applicant appealed and filed requests for reconsideration which were denied. Applicant and the Examining Attorney filed briefs.

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<sup>1</sup> Application Serial No. 88452729 (the “729 Application”), filed May 30, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

<sup>2</sup> Application Serial No. 88454104 (the “104 Application”), filed May 31, 2019 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

## I. Appeals Consolidated

These appeals involve common questions of law and fact and the records are quite similar. Accordingly, we consolidate and decide both appeals in this single decision. *See In re Binion*, 93 USPQ2d 1531, 1533 (TTAB 2009); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2020).<sup>3</sup>

## II. Evidence and Arguments

The Examining Attorney relies on Applicant's own uses of "hosting" (i.e., correctly spelled with a single "i" rather than the two "i"s in the proposed mark) in connection with its identified real estate rental/management services, and its temporary lodging reservations-related goods and services. Specifically, the "Homesharing" page on Applicant's website ("niido.com/homesharing") explains that, in partnership with Airbnb, Applicant "supplies the technology and services that enhance the **hosting** experience, such as keyless entry locks, linen services ...." August 28, 2019 Office Action TSDR 6 (emphasis added). The site goes on to state that "[e]veryone has a different style of **hosting**" and to promise that "[i]f this is your first time **hosting** or traveling with Airbnb, our Master**Host** will help you get set up and answer any questions that you may have throughout the process." *Id.* at 6-7 (emphasis added). In other words, Applicant uses the term "hosting" to describe sharing a home with, or renting a home to, those desiring lodging.

Others use the term similarly. For example, "plushyhost.com" appears to be in the same general field as Applicant, and is perhaps one of Applicant's direct competitors.

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<sup>3</sup> Citations are to the record in the '729 Application.

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The site's headline is "We Make Airbnb **Hosting** Easy." It states "Our team of professional **hosts** provide a comprehensive solution to all of your short-term rental property management and **hosting** needs." *Id.* at 18-21 (emphasis added). Plushyhost.com does not limit its services to Airbnb users, however. It provides the same services to users of Booking.com and VRBO, which, like Airbnb, also allow homeowners to "host" travelers or other guests via a rental or sharing arrangement. Similarly, Xpert Home Services provides "Vacation **Hosting**" services, "to manage your vacation rental home," including "Full Airbnb **hosting** services" and "Full VRBO **hosting** services," which include "Check In/Out," "Local Contact," "Linens," "House Keeping," "24/7 Emergency" and "Turnover Inspection." *Id.* at 28-29.

The media uses "hosting" and "host" similarly. A Forbes article entitled "Putting Your House on Airbnb? What to Know Before **Hosting** As a Homeowner" repeatedly refers to those who rent their homes to Airbnb users as "**hosts**." *Id.* at 8-10 (emphasis added). The "balance.com" article "How to Get Affordable Airbnb or Home-Sharing Host Insurance" uses the terms "hosting" and "host" in the exact same way, making clear that "hosting" is used in Applicant's field to refer to renting temporary lodging to others. *Id.* at 11-17. A Washington Post article entitled "What You Need to Know Before **Hosting** Short-Term Renters in Your Home" states "After your guests leave and before **hosting** new guests, most **hosts** will hire a cleaning service, laundry service or a team to manage their home before guests arrive." *Id.* at 22-27 (emphasis added). An Entrepreneur article entitled "10 **Hosting** Options Beyond Airbnb"

identifies 10 of Airbnb’s competitors which allow “hosts” to offer and book rental or sharing accommodations. *Id.* at 30-32 (emphasis added).

Based on this and similar evidence, the Examining Attorney argues that HOSTIING is nothing more than a minor misspelling, and will be understood as the equivalent of “hosting,” which in turn has “particular significance in the homesharing industry.” 8 TTABVUE 6-7. Specifically, “a property owner participating in homesharing is called a host and is engaged in hosting.” *Id.* at 7.

For its part, Applicant relies on Google search results which indicate that “hosting” has several meanings unrelated to lodging rentals or homesharing. For example, depending on the context, the term may mean storing or providing access to information on the Internet, or moderating or being the master of ceremonies for a radio or television program. February 26, 2020 Office Action response TSDR 12-13.<sup>4</sup> In fact, the “techtarget.com” website defines “hosting” as “the business of housing, serving, and maintaining files for one or more Web sites.” *Id.* at 15. Applicant also relies on third-party Principal Register registrations for marks which include forms

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<sup>4</sup> Generally, a list of excerpts from Internet search results has little probative value. Here, however, while Applicant relies on mere search result excerpts rather than entire articles or websites, it is clear from the excerpts provided and the context how the terms in question are used or defined. Thus, this evidence is probative, even without the rest of the information revealed through the search. *Cf. In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1833-34 (Fed. Cir. 2007) (finding Google search result summaries of “lesser” and “little” probative value where there was “very little context of the use of ASPIRINA on the webpages linked to the search report”).

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of the term “host,” in which the term is not disclaimed or registered under Section 2(f) of the Act. *Id.* at 16-30.<sup>5</sup>

Applicant argues based on this evidence that “hosting” has “several meanings and is most frequently associated with website services which are entirely irrelevant to Applicant’s services.” 6 TTABVUE 5. In fact, according to Applicant, the term “is so broad that no specific and precise meaning can be attached to it in connection with Applicant’s services.” *Id.* at 8. Furthermore, “Applicant has purposefully implemented the double ‘ii,’ lending to different pronunciations that relevant consumers could apply and evoking a distinctive commercial impression.” *Id.* at 5-6. Applicant contends, based on the third-party registration evidence, that “the USPTO does not consider the term ‘host’ as merely descriptive ... of the relevant goods or services.” *Id.* at 9. Finally, the term “hosting” is “different than ‘host’ as it evokes a transitive, more active service.” *Id.*

### III. Analysis

Here, the record leaves no doubt that HOSTIING and HOSTIING GROUP are both merely descriptive of Applicant’s goods and services because these terms “immediately conve[y] knowledge of a quality, feature, function, or characteristic” of those goods and services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 82 USPQ2d at 1831; *In*

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<sup>5</sup> We decline Applicant’s request to take judicial notice of three of Applicant’s pending applications, 6 TTABVUE 10, for two reasons. First, it is now too late to introduce evidence. Trademark Rule 2.142(d). Second, the Board does not take judicial notice of trademark applications or registrations. TBMP § 704.03(b)(1)(A).

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*re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Specifically, third parties that provide goods or services such as Applicant's, and the media, use the terms "host" and "hosting" in connection with offering, reserving and managing temporary lodging, including rental and other homesharing arrangements. Applicant uses the term the exact same way, for its identified rental property management and reservations/booking services, as well as its identified reservation and booking mobile app for short term rentals. Adding the disclaimed and thus admittedly descriptive term GROUP to the mark in the '729 Application does not make that mark inherently distinctive, as GROUP merely describes "a number of individuals assembled together or having some unifying relationship." August 28, 2019 Office Action TSDR 34 (Merriam-Webster.com). In other words, HOSTING GROUP conveys an entity involved in hosting.

Applicant's focus on its use of a double "i" ("ii") is misplaced, because this minor misspelling does not change the term's meaning (or much of anything else in the term). In fact, "HOSTIING" with two "i"s differs from "HOSTING" with one by only one letter in the middle of the term. It thus looks almost the same as, and would be pronounced similarly or identically to, "hosting," a term commonly used and with a well-recognized meaning in connection with Applicant's identified goods and services. *See e.g., Standard Paint Co. v. Trinidad Asphalt Co.*, 220 U.S. 446, 455 (1911) ("The word ["rubberoid"], therefore, is descriptive, not indicative of the origin or the ownership of the goods; and, being of that quality, we cannot admit that it loses such quality and becomes arbitrary by being misspelled [as RUBEROID]. Bad orthography

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has not yet become so rare or so easily detected as to make a word the arbitrary sign of something else than its conventional meaning ...."); *Nupla Corp. v. IXL Mfg. Co.*, 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed. Cir. 1997) ("Nupla's mark [CUSH-N-GRIP], which is merely a misspelling of CUSHION-GRIP, is also generic as a matter of law"); *In re Quik-Print*, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (finding QUIK-PRINT merely descriptive of printing and copying services, stating "[t]here is no legally significant difference here between 'quik' and 'quick.'"); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) ("applicant's applied-for mark, URBANHOUSING in standard character form, will be immediately and directly perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING, rather than as including the separate word ZING"); *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1475 (TTAB 2007) ("The generic meaning of 'togs' is not overcome by the misspelling of the term as TOGGS in applicant's mark. A slight misspelling is not sufficient to change a descriptive or generic word into a suggestive word.").

While Applicant is correct that "host"/"hosting" has other meanings in other contexts, including storing or providing access to Internet information, this does not impact the term's descriptiveness for Applicant's identified goods and services.<sup>6</sup> Indeed, Applicant itself recognizes that descriptiveness is considered "in relation to

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<sup>6</sup> We need only find that one meaning of "host"/"hosting" is merely descriptive of Applicant's identified goods and services. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984) ("It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive."). *See also, In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1034 (TTAB 2007); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).



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the [goods and] services for which registration is sought, the context in which it is used, the possible significance of the term[s] in relation to the [goods and] services, and the likely reaction thereto by the average purchaser.” 7 TTABVUE 6. *See also DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (“The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.”) (quoting *In re Tower Tech Inc.*, 64 USPQ 2d 1314, 1316-17 (TTAB 2002)). Someone who knows that Applicant provides real estate/management services and temporary lodging reservations-related goods and services will immediately understand HOSTIING as conveying that Applicant’s goods and services are intended to help those “hosting” renters and others seeking temporary lodging.

Applicant’s own use of “hosting” makes this meaning clear. For example, in discussing its Siight operating platform, Applicant’s website states: “Residents get a robust resident portal that allows them to sync their **hosting** calendar ....” February 26, 2020 Office Action response TSDR 33 (emphasis added). On the “Homesharing” section of its website, Applicant states:

“Niido supplies the technology and services that enhance the **hosting** experience, such as keyless entry locks, linen services, a bike-sharing program, and a supporting team of staff who are always ready to assist Niido residents and Niido guests.” August 28, 2019 Office Action TSDR 6 (emphasis added).

“If this is your first time **hosting** or traveling with Airbnb, our Master**Host** will help you get set up and answer any questions that you may have throughout the process.” *Id.* (emphasis added).

“Everyone has a different style of **hosting**, but you can find great tips and tricks to make your place the perfect spot for travelers.” *Id.* at 7 (emphasis added).

“Airbnb Plus is a new selection of only the highest quality homes with **hosts** known for great reviews and attention to detail.” *Id.*

Thus, Applicant’s own use of the term “host”/“hosting,” with its traditional spelling, reveals the descriptiveness of the virtually identical proposed mark HOSTIING. *See In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709-10 (Fed. Cir. 2017); *In re Hunter Fan Co.*, 78 USPQ2d 1474, 1476 (TTAB 2006) (“applicant’s own use of the term ERGONOMIC ... highlights the descriptive nature of this term ....”).

We agree with Applicant that several of the third-party registrations upon which it relies may show that the Office has not always treated the term HOST as descriptive in connection with services arguably related to those Applicant offers. February 26, 2020 Office Action response TSDR 19-22 (Registration Nos. 5156092, 5302722, 5303388 and 5339397).<sup>7</sup> However, we are not privy to relevant evidence concerning those marks or the records in those cases, Applicant has not demonstrated how those registered terms are used or perceived, and neither the existence of these third-party registrations nor any of the evidence in their prosecution records (even if it were of record) compels a specific result in later, allegedly analogous cases. *See*,

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<sup>7</sup> We have not considered third-party registrations for Internet “hosting,” entertainment or other apparently unrelated goods or services.

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*e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1377 (Fed. Cir. 2018) (“these prior registrations do not compel registration of [Applicant’s] proposed mar[k]”) (citing *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016) (“The [US]PTO is required to examine all trademark applications for compliance with each and every eligibility requirement, . . . even if the [US]PTO earlier mistakenly registered a similar or identical mark suffering the same defect.”)); *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218, 1221 (Fed. Cir. 2009) (“Even if all of the third-party registrations should have been refused registration under section 1052(a), such errors do not bind the USPTO to improperly register Applicant’s marks.”); *In re Cooper*, 254 F.2d 611, 117 USPQ 396, 401 (CCPA 1958) (“the decision of this case in accordance with sound law is not governed by possibly erroneous past decisions by the Patent Office”). As we recently stated in an analogous situation, to the extent that our decision here is inconsistent with the third-party registrations, “it is the decision required under the statute on the record before us.” *In re Ala. Tourism Dept.*, 2020 USPQ2d 10485, \*11 (TTAB 2020).<sup>8</sup>

Finally, with respect to the application to register HOSTIING GROUP, not only are “hostiing” and the disclaimed term “group” each merely descriptive of Applicant’s goods and services, but when those terms are combined, the resulting combination HOSTIING GROUP does not evoke a non-descriptive commercial impression. To the

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<sup>8</sup> While Applicant is of course correct that “host” and “hosting” are not the same term, the record reveals that both are used in connection with goods and services encompassed by Applicant’s identifications of goods and services, and that both are merely descriptive of Applicant’s identified goods and services.

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contrary, in Applicant's proposed mark, each component retains its merely descriptive significance in relation to the goods and services, and Applicant does not suggest any alternative commercial impression resulting from the combination of these immediately descriptive terms. The composite term HOSTIING GROUP is therefore merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents, and for tracking the status of the records by means of the Internet); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332 (TTAB 2009) (BATTLECAM merely descriptive for computer game software); *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING merely descriptive of real estate brokerage, real estate consultation and real estate listing services); *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs).

#### **IV. Conclusion**

The record leaves no doubt that HOSTIING GROUP is merely descriptive of Applicant's goods and services, which all pertain to the rental or sharing of lodging, i.e. "hosting."

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**Decision:** The refusal to register Applicant's proposed mark on the Principal Register because it is merely descriptive under Section 2(e)(1) of the Trademark Act is affirmed in each application.