

This Opinion Is Not a
Precedent of the TTAB

Mailed: June 2, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Skiposters.com

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Serial No. 90239860

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James Juo and Scott Brenner of Thomas P. Howard, LLC,
for Skiposters.com.

Dominic R. Pino III, Trademark Examining Attorney, Law Office 127,
Mark Pilaro, Managing Attorney.

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Before Zervas, Lykos and Thurmon, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Skiposters.com (“Applicant”) seeks registration on the Principal Register of the
stylized mark **skiposters.com**¹ for “On-line retail store services featuring
photographs and artwork” in International Class 35 and “Printing; Printing services;

¹ Application Serial No. 90239860, filed on October 7, 2020 under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce. “The mark consists of the term SKIPOSTERS.COM in a sans serif font.”

Photographic printing” in International Class 40. The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that “the applied-for mark is merely descriptive of the services identified in the application.”²

Applicant filed Requests for Reconsideration before instituting this appeal and requests for remand once the appeal was in progress.³ The Examining Attorney denied the requests for reconsideration, each time maintaining the Section 2(e)(1)

² September 12, 2022 Office Action at 1. Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. The TTABVUE page numbers do not correspond to the numbered pages in the briefs. Applicant’s appeal brief appears at 14 TTABVUE and its reply brief appears at 19 TTABVUE. The Examining Attorney’s brief appears at 16 TTABVUE.

³ 1 TTABVUE. All three of Applicant’s requests for reconsideration were filed prior to the institution of this appeal. Two of the requests were denied before the appeal began, but the third was pending when the appeal began. For that reason, the matter was automatically remanded by the Board to the Examining Attorney. The third (and last) request for consideration was denied following this automatic remand.

When the appeal resumed, Applicant filed its first request for remand with the Board, arguing that it needed to submit “new” evidence (i.e., internet search results). The Board granted the request and remanded the matter back to the Examining Attorney, who maintained the Section 2(e)(1) refusal. When the appeal resumed at the Board, Applicant filed its second remand request, again arguing that it needed to submit more evidence (i.e., more internet search results). The Board granted that request, too. The Examining Attorney again maintained the refusal, but also added new evidence to the record. That evidence, discussed more below, showed what appears to be web pages relating to Applicant and its intended business. *See generally* TSDR for Serial No. 90239860 and 1, 2, 6, 8 TTABVUE.

After the Examining Attorney submitted the new internet evidence, Applicant filed a third remand request, this time stating that the evidence could not be accessed. 17 TTABVUE. We discuss this point more below, but the Board denied Applicant’s third remand request. 18 TTABVUE. We provide this additional information to help explain the somewhat complicated record in this appeal.

refusal. The case has been fully briefed. We affirm the refusal for both International Classes.

I. The Record

This application does not present unusual or complex issues. It is a simple question of whether the applied-for mark is merely descriptive. The Examining Attorney raised this issue in the first Office Action, issued March 16, 2021.⁴ Applicant responded with arguments, but submitted no evidence, except a dictionary definition of the word “imposter.”⁵ The issue was clear at that point, and yet since that stage, Applicant has made repeated filings with essentially the same argument.

Despite having multiple opportunities, Applicant submitted minimal evidence. In fact, Applicant never properly submitted the evidence it relied upon in its first two remand requests.⁶ The only evidence Applicant put in the record consists of dictionary

⁴ March 16, 2021 Office Action at 1 (“Registration is refused because the applied-for mark merely describes a feature of applicant’s services.”).

⁵ September 3, 2021 Response to Office Action.

⁶ It appears Applicant believes this evidence is of record, perhaps because the Examining Attorney commented on the evidence. But documents submitted with a remand request to the Board do not become part of record in the examination of the application. Evidence must be submitted to the Examining Attorney during the prosecution of the application, not to the Board. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (“The record should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.”).

In any event, the “evidence” submitted by Applicant with its remand requests is largely irrelevant to the issue before us. At most, this evidence shows that a Google search for “skip posters” returns results that include posters. 6 TTABVUE 8; 10 TTABVUE 5-15. We note that Applicant did not submit any Google search results for “ski posters” the words that actually make up its alleged mark. We expect such a search would also return many results showing ski posters.

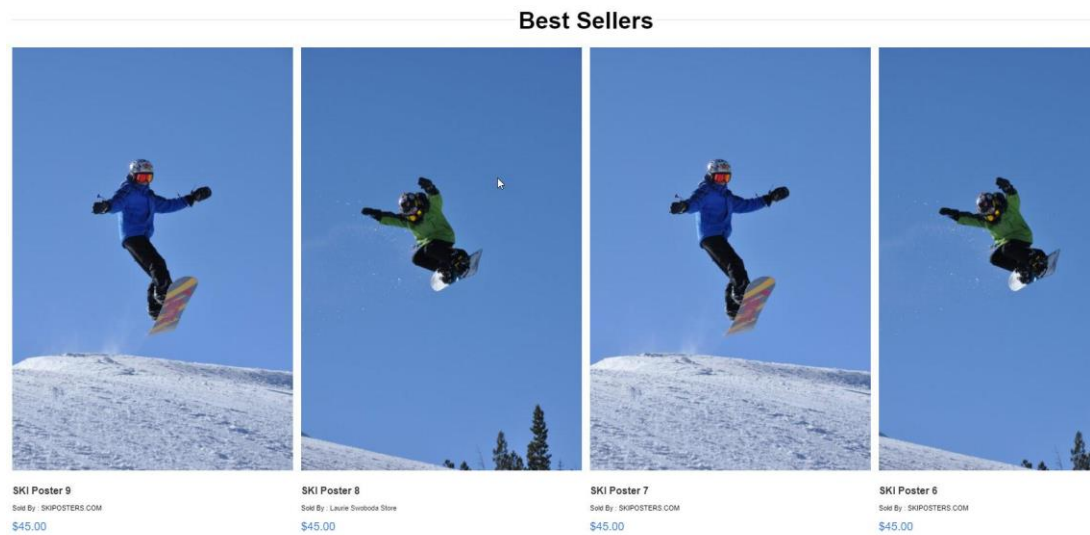
definitions, mostly of words that are not part of its proposed mark. We note the glaring lack of evidence for a reason.

The issue in this appeal is whether the mark skiposters.com is merely descriptive. The application was filed on the basis of an intent-to-use the mark and no specimens showing actual use have been submitted. Given the clear relevance of the context in which the mark will be used—a point we elaborate on below—it would have been helpful to have more information about the nature of Applicant’s intended use. The Examining Attorney noted from the start that the mark includes the words “ski” and “posters,” both common words and words that make sense when used together. Ski posters are a thing, and perhaps not an uncommon thing, particularly in the state of Colorado, where Applicant appears to be located.⁷ So, an obvious question looming over this dispute from the start is whether Applicant intends to sell ski posters. Applicant has never directly addressed that question and submitted no evidence showing how it intends to use the mark.

In an ironic turn, the Examining Attorney apparently found such evidence by accessing on September 12, 2022 an internet site that appears to show a draft version of a website with Applicant’s proposed mark.⁸ These screenshots were made of record, and we rely on them. Samples of the website evidence follow.

⁷ Applicant has effectively conceded these points by arguing throughout its Appeal Brief that the mark is a double entendre, that calls to mind two meanings: ski posters and skip posters. 14 TTABVue 2-3, 6-7. It is implicit in this argument that ski posters are a thing known to consumers, for if that were not the case, Applicant’s proposed double entendre would lack one of its meanings. It is implicit in this argument that the mark includes the word “posters,” and that consumers will understand it as such.

⁸ September 12, 2022 Office Action.



⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

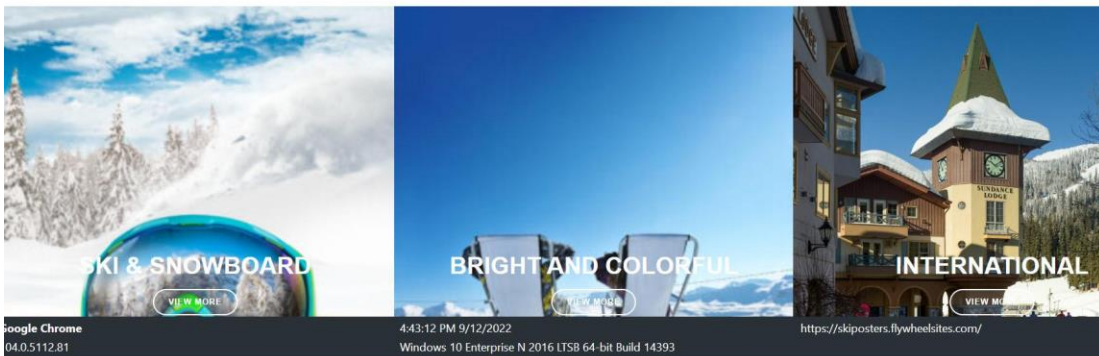


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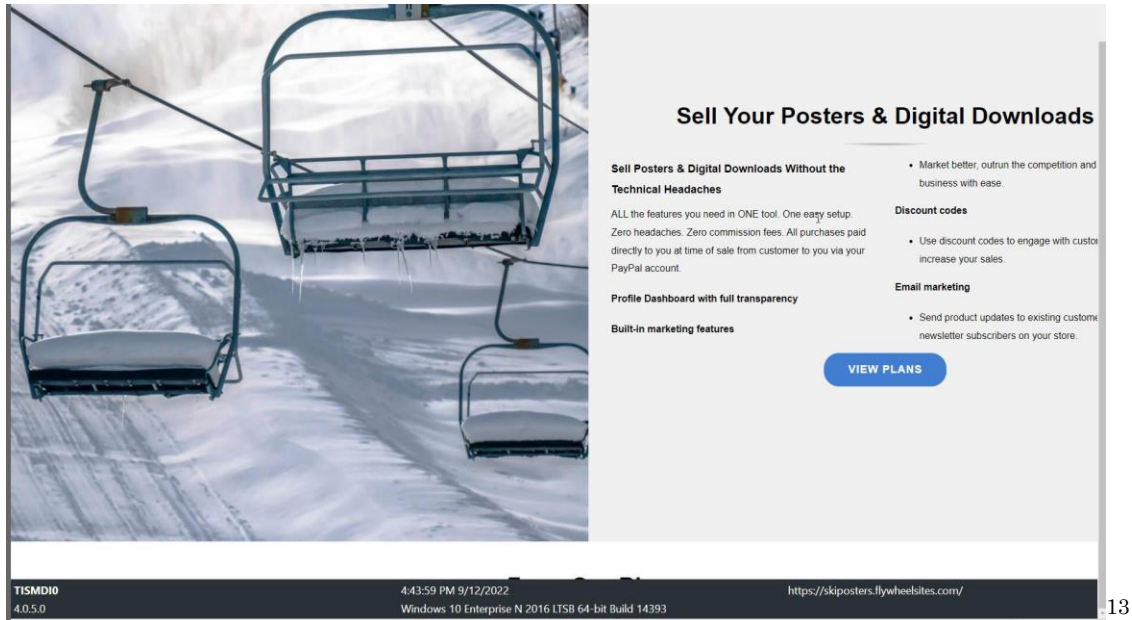
Must have images from our top categories



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¹¹ *Id.* at 4.

¹² *Id.* at 5.



These were properly made of record with the Subsequent Final Office Action on September 12, 2022. When Applicant filed its Appeal Brief on November 10, 2022, it made the following statements about the new website evidence: "...the screenshots introduced into the record by the Examining Attorney from skiposters/flywheelsites.com are not public. Nor does the stylized form of the applied-for mark appear on those webpages. Moreover, Applicant has not finalized its website in development.”¹⁴

The Examining Attorney relied on the website images in his brief, filed January 9, 2023, referring to the images as “evidence of applicant’s preliminary website.”¹⁵ On January 10, 2023, just one day later, Applicant submitted its third remand request, and this request focused on the new website evidence. Applicant submitted a

¹³ *Id.* at 7.

¹⁴ 14 TTABVUE 5 n.1.

¹⁵ 16 TTABVUE 4; *see also Id.* at 5, 7.

screenshot to show that the website accessed by the Examining Attorney in September, 2022, was not publicly accessible on January 10, 2023:

Specifically, the screenshots identify the URL, but Applicant's attorney has been unable to access that URL. Instead, the Google Chrome browser states that the website at that URL "can't be reached." Exhibit A attached hereto. In particular, the browser states, "skiposters.flywheelsites.com's server IP address could not be found." Id. Thus, this does not appear to be a website that is available to the public. It is unclear how the Examining Attorney is able to have access, but not Applicant's attorney.¹⁶

Applicant also referred to the website evidence in its Reply Brief, where Applicant argued that using such evidence "would be improper because whether a mark is a double-entendre is determined without reference to the applicant's trade dress, advertising materials or other matter separate from the mark itself."¹⁷ We address the merits (or lack thereof) of this response below, but note here that Applicant's counsel again avoided the real issue. Were these images an accurate reflection of how Applicant intends to use the mark? Instead of dealing with the obvious issue, Applicant argued this evidence was irrelevant. When the primary question is whether consumers will understand Applicant's mark as "ski posters" plus the .com suffix, it is hard to imagine more relevant evidence than website images showing Applicant selling ski posters and presenting the applied for mark in a manner (**SKI**posters.com) that makes clear it means "ski posters."

¹⁶ 17 TTABVUE 4.

¹⁷ 19 TTABVUE 7.

So, what are we to make of the website evidence? It was properly made of record by the Examining Attorney¹⁸ and it certainly appears to be attributed to Applicant. There is no evidence that some other party posted the materials shown above. In its Appeal Brief, Applicant notes the stylized version of the mark does not appear on the website pages and that its website was still in development.¹⁹ But Applicant never disavowed this evidence. Applicant never said that this evidence had nothing to do with its intended business. Indeed, Applicant's comments suggest that it pulled the website after the Examining Attorney found the site and made the screenshots that are in the record.

We find that the website evidence relates to Applicant's intended business. We accept that these materials may not have been in final form and perhaps were never intended for public posting. We note that the website materials, while publicly available on September 12, 2022, were not available on later dates. That is not the point here. The nature of Applicant's intended business is relevant to the meaning of the applied-for mark and the website evidence provides direct information about Applicant's business, even if preliminary.²⁰ The website evidence shows that Applicant intends to sell ski posters under the skiposters.com name.

¹⁸ This evidence included the indicia showing when and how it was accessed on the internet, and thus meets the requirements for such evidence. *In re I-Coat Co.*, 126 USPQ2d 1730, 1733 (TTAB 2018) (applying *Safer, Inc. v. OMS Invs., Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010) to evidence submitted by examining attorneys and applicants in ex parte cases).

¹⁹ 14 TTABVue 4.

²⁰ We are not impressed by Applicant's tactics. When evidence of the nature of Applicant's intended business was presented by the Examining Attorney, Applicant's counsel essentially asked the Board to ignore the evidence, rather than explaining the evidence or providing other

The remaining evidence of record consists of dictionary definitions of “ski,” “poster,” “skip,” “imposter” and other words. “Ski” is defined as, “Each of a pair of long narrow pieces of hard flexible material, typically pointed and turned up at the front, fastened under the feet for gliding over snow.”²¹ We note that “ski” is also defined as a verb, meaning the act of skiing, or “gliding over snow,” as the Oxford U.S. English dictionary puts it.²² A “poster” is “A large printed picture used for decoration.”²³ Applicant relies on the same meaning of the word “poster” and provided a definition of “skip” which has a number of possible meanings. These definitions are not in dispute.

II. Applicable Law

The Trademark Act prohibits registration of marks that are merely descriptive of the goods or services. 15 U.S.C. § 1052(e)(1) (barring registration of a mark which “when used on or in connection with the goods of the applicant is merely descriptive ... of them”). Under this provision, a mark is merely descriptive if it immediately conveys information about a quality, characteristic, function, feature, purpose or use of the services with which it is used. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987)); *DuoProSS Meditech Corp. v. Inviro Med. Devices*

evidence concerning its client’s business. And while this evidence surfaced late, Applicant commented on it three times. Applicant could have been more direct.

²¹ March 16, 2021 Office Action at 2 (from Oxford U.S. English dictionary).

²² *Id.* at 6 (from Oxford U.S. English dictionary).

²³ *Id.*

Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)); *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020). A term need only describe a single feature or attribute of the goods or services to be descriptive. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001). This analysis holds true for marks comprised of top-level domain names as may be the case here.²⁴

Mere descriptiveness is not evaluated in the abstract but rather “in relation to the particular [services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the [services] because of the manner of its use or intended use.” *Chamber of Commerce*, 102 USPQ2d at 1219 (citation omitted). “The question is not whether someone presented with only the mark could guess what the goods or services are.

²⁴ Applicant did not argue that the .com portion of its mark has any impact on the merely descriptiveness issue. Rather, Applicant’s arguments focused on the meaning of the “skipsters” portion of the mark, apart from the .com portion. In the first Office Action, the Examining Attorney found: “

Moreover, the wording “.COM” in the mark merely indicates that the services are offered online. See <https://encyclopedia2.thefreedictionary.com/.com>. The non-source-identifying generic top-level domain (gTLD) “.com” merely indicates an Internet address for use by commercial, for-profit organizations. See, e.g., *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 1364, 92 USPQ2d 1682, 1685 (Fed. Cir. 2009); *In re Hotels.com, L.P.*, 573 F.3d 1300, 1301, 1304, 91 USPQ2d 1532, 1533, 1535 (Fed. Cir. 2009); *In re Oppedahl & Larsen LLP*, 373 F.3d 1171, 1175-77, 71 USPQ2d 1370, 1373-74 (Fed. Cir. 2004); see also TMEP §§1209.03(m), 1215.01. Thus, this wording is also merely descriptive of applicant’s services.

Applicant never responded to this portion of the Examining Attorney’s analysis and we, therefore, find it conceded this point. We also note that the website images show the applied-for mark used as part of a domain name, but not as the top-level domain name.

Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 131617 (TTAB 2002)); *see also In re Taylor & Francis [Publishers] Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) (words PSYCHOLOGY PRESS in composite word-and-design mark were properly required to be disclaimed as merely descriptive of applicant’s goods because applicant’s identification of goods “expressly states that the series of non-fiction books upon which applicant uses its mark are ‘in the field of psychology.’”).

In some instances, a mark will have a meaning that is incongruous when considered in the context of the mark’s identification of services. *See, e.g., In re Tennis in the Round, Inc.*, 199 USPQ 496 (TTAB 1978). In *Tennis in the Round*, the Board held that the mark TENNIS IN THE ROUND was not merely descriptive of the services of providing tennis facilities in the form of courts and tennis ball machines and offering instruction in tennis. The Board found that the mark immediately evoked an association with the well-known phrase “theater in the round” (in which the audience sits on all sides of a central acting stage), but was incongruous with that association because the applicant’s “tennis facilities are not in fact at all analogous to those used in a ‘theater-in-the round;’ that is, applicant’s facilities do not involve a tennis court in the middle of an auditorium (or in the middle of an arrangement of stands) with an audience seated on all sides of the court.” 199 USPQ at 498. *See also In re Shutts*, 217 USPQ 363, 364 (TTAB 1983) (“SNO-RAKE” for a snow removal hand

tool not merely descriptive because while it evoked raking snow, “the idea of a ‘rake’ or ‘raking’ does indeed sit strange in terms of application to snow and, at best, is suggestive of a capacity for gathering up snow with an implement or using an action that hardly fits any of the common conceptions of ‘rake’ or ‘raking.’”); *Borden, Inc. v. Topps Chewing Gum, Inc.*, 173 USPQ 447, 447 (TTAB 1972) (finding the mark ICE CREAM incongruous, and thus registrable, for chewing gum).

Sometimes a mark will conjure up two different meanings, one of which is incongruous or otherwise nondescriptive of the goods or services. Such double entendre marks are registrable if the two meanings are both “associations that the public would make fairly readily, and *must be readily apparent from the mark itself.*” Trademark Manual of Examining Procedure (TMEP) § 1213.05(c) (July 2022) (emphasis in original) (citations omitted). *See, e.g., In re Tea & Sympathy Inc.*, 88 USPQ2d 1062, 1064 (TTAB 2008) (the mark THE FARMACY for retail store services featuring natural herbs and organic products and for providing integrated health services at retail locations and information about dietary supplements and nutrition was a double entendre because it was “a play on the natural or farm-fresh characteristics of applicant’s herbs and organic products used for medicinal purposes featured in applicant’s services” that conveyed “a dual meaning, that of the natural aspect of the goods sold by applicant and of a pharmacy.”); *In re Nat’l Tea Co.*, 144 USPQ 286 (TTAB 1965) (NO BONES ABOUT IT found to be a double entendre when used for boneless ham); *In re Delaware Punch Co.*, 186 USPQ 63 (TTAB 1975) (THE SOFT PUNCH found to be a double entendre when used for noncarbonated soft

drinks); *Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384-85 (CCPA 1968) (SUGAR & SPICE not merely descriptive of bakery products, notwithstanding the descriptive nature of the terms “SUGAR” and “SPICE,” because it immediately evoked the nursery rhyme “sugar and spice and everything nice”). In each of the cited cases, the nature of the mark’s use was known.

III. Analysis

What are relevant consumers likely to immediately think when they encounter skiposters.com within the context of the services Applicant intends to provide? That is the question before us. The answer, given the website evidence, is clear. Relevant consumers will understand the mark skiposters.com as “ski posters” plus the .com internet suffix. Indeed, the website materials show that Applicant itself uses that meaning.

Applicant continues to argue that consumers, or at least some of them, will understand the mark as “skip posters.” This argument is specious, for every image from the website shows skiing or ski-related images. On the first screenshot, there is a central image of a person skiing, with skiposters.com in large print overlaying the image of the skier.²⁵ In the upper left, the mark is presented as: **SKI**posters.com. The word “ski” is in all caps, black and bold. The word “posters” is in lowercase, blue and not as bold. It is beyond the pale to argue that a consumer seeing that webpage will think Applicant’s alleged mark means “skip posters.”

²⁵ *Id.* at 2.

If that were not enough, Applicant actually identifies some ski posters as Ski Poster 6 or Ski Poster 7, a generic use of the words “ski poster.”²⁶ In another place, Applicant apparently is targeting photographers when it explains how they can sell ski posters.²⁷ We must evaluate mere descriptiveness from the context of the identified services in each class and here we have evidence of an online site attributed to Applicant selling ski posters under the name skiposters.com.

For all its arguments about skip posters, Applicant provided no evidence that its intended business will have anything to do with the word “skip.” The screenshots submitted by the Examining Attorney, that we find relate to Applicant, show no persons skipping, no dogs named Skip and no other images or words that relate in any way to the word skip, skipping or to beings named Skip. The question is whether consumers who are familiar with Applicant’s services would think the mark means “skip posters.” We think not.

The website screenshots give us a clear idea of how Applicant intends to use the alleged mark. Using that evidence, it is obvious that the terms are at least merely descriptive. Indeed, evaluating the meaning of the mark within the context of its identified services is exactly what our decisions mean when they explain that distinctiveness, including the question of whether a term is merely descriptive, cannot be evaluated in a vacuum. Applicant would have us do the opposite, as its arguments are all divorced from reality. The question isn’t a hypothetical one. What

²⁶ *Id.* at 3.

²⁷ *Id.* at 7.

matters is how relevant consumers will understand those words as they are used in the mark in the context of the services identified in the application, and that requires an understanding of the services, and how they will be provided.²⁸

Applicant argues that the website materials are no longer publicly available, but never disavowed the evidence or suggested that it wasn't Applicant's own material. In fact, the only reason Applicant's counsel gives for ignoring this highly probative evidence is that the website apparently is no longer available. But the evidence is relevant for what it tells us about Applicant's intended business, not for how many people may have seen the website materials while they were publicly available. The USPTO "commonly looks to an applicant's website when it is made of record for possible evidence of descriptive use of a proposed mark." *In re Berkeley Lights, Inc.*, 2022 USPQ2d 1000, at *9 (TTAB 2022).

We do not know why the website was pulled²⁹, but given that Applicant has never suggested the website materials were inaccurate or were posted by someone else, the evidence is properly of record and probative of at least the general nature of

²⁸ We look first to the identification of services to determine the context of the use. In this case, that is enough to support the Examining Attorney's position that the mark will be understood as ski posters plus the .com suffix. But given Applicant's arguments against that conclusion, additional context is helpful to resolve the dispute. Nothing in our analysis should be read to suggest that the identification of the services is not the primary basis for determining the context in which the mark will be used. Some cases, like this one, benefit from additional information about the use or intended use of the mark.

²⁹ Someone knows. The website pages were accessed on September 12, 2022, but were not available in January, 2023, when Applicant filed its third remand request. Given that these appear to be Applicant's materials, we infer that Applicant either directed the removal of the website or is aware of why those materials were pulled. It is entirely fair to assume that Applicant had no explanation that would support its effort to obtain a trademark registration, or it would have provided that explanation to us.

Applicant's intended business. That is, even if the website materials are later changed—for example, if the generic uses of “ski posters” are removed—it is clear that Applicant intends to sell posters relating to skiing. This is the type of context needed to better evaluate the distinctiveness of a mark.

Even if we limit our analysis to the rest of the record (i.e., to the definitions alone, and not the website evidence), it is clear the mark is merely descriptive of some of the services. Applicant's arguments lack evidentiary support and defy common sense. The contention that consumers who are looking to buy “photographs and artwork,”³⁰ would understand “skiposters.com” to mean “skip posters” makes no sense. One common meaning of “skip” is to skip something, that is, to avoid doing something. Students sometimes skip school. Some persons skip the wedding and go only to the reception. Why would consumers want to “skip” the “posters” Applicant intends to sell?

There is another obvious problem with Applicant's argument. The mark is literally the words “ski” and “posters” plus the .com suffix. If the actual mark was “skipposters.com”, with two letter p's, Applicant's argument would make more sense. Why would consumers add another “p” to the middle of the mark? Applicant argues the single “p” is enough, as it would be shared by the two words. These arguments stretch credulity, particular when there is no evidence to support them. If it is common for consumers to engage in this type of construction, where is the evidence of that? Applicant provided none, and instead just kept repeating the same

³⁰ From the identification of the class 35 services.

unsupported argument over and over. Repetition, by itself, does not make an assertion true.

The primary argument Applicant makes to the Board is that the applied-for mark is a double entendre. A double entendre is “a word or expression capable of two interpretations with one usually risqué.”³¹ Even if we allow for double entendres without an explicit sexual or risqué meaning, there must be two different, and somewhat incongruous, meanings that can exist simultaneously in a person’s mind. For example, when a character with the last name “Ernest” says he finally understands the “importance of being Earnest,” the phrase sends two simultaneous messages: first, that being a member of the Ernest family is important (perhaps because of family wealth or connections); and, second, that it is important to be earnest (relying on the ordinary meaning of the word). The phrase is a double entendre because both meanings are available and both make sense. It is this same, yet different, outcome that makes the phrase a double entendre.

Applicant misses this point when it argues the mark is “a double entendre because it could be construed as either a compound word mark of “ski” and “posters”; or in the alternative as a telescoped mark of “skip” and “posters.”³² Even if true, this would not make the mark a double entendre. It would simply show that the mark, when viewed in the abstract, could mean different things to different consumers. This result is no different from the word “skip” having multiple meanings, as Applicant’s own evidence

³¹ <https://www.merriam-webster.com/dictionary/double%20entendre> (accessed May 25, 2023).

³² 14 TTABVue 2.

and arguments show. Few would suggest that the word “skip” is a double entendre because some persons understand it to mean the physical act of skipping (and there are at least three forms of skipping, as a verb) while other persons think of a pet or friend named Skip. Many words and phrases can mean different things in different contexts, but that does not mean all of those words and phrases are double entendres.

Even if we allow for the possibility that some consumers might read Applicant’s mark to mean “skip posters,” there is no reason to believe those same consumers would simultaneously realize the mark could also mean “ski posters.” These are clearly alternative meanings, not the sort of incongruous, but simultaneously held meanings that exist in a double entendre. Take, for example the SOFT PUNCH mark from *In re Delaware Punch Co.*, 186 USPQ 63 (TTAB 1975). “The slogan or mark ‘THE SOFT PUNCH’ is redundant as applied to a commercial non-alcoholic beverage and, as such, does not appear to be a phrase that would be commonly used to describe a soft drink of this type; and it possesses a degree of ingenuity in its phraseology which is evident in the double entendre that it projects.” *Id.* at 64.

There is no suggestion here, and certainly no evidence, that a consumer would understand skiposters.com to mean both ski posters and skip posters. There is nothing incongruous about skiposters.com. It is a combination of two common words plus the .com suffix. If a consumer misreads the mark, or knowingly decides to add another “p” to the middle of the phrase, that consumer has made a mistake. Applicant’s arguments amount to no more than the chance that some consumers might make mistakes in reading its alleged mark. But even if such a mistake occurs,

where is the alternative meaning? Will consumers who add a “p” and get skip posters, also realize the mark could mean ski posters? And will those consumers “get” the incongruity of it all? We think not. None of this line of analysis makes sense. If the first error occurs and a consumer thinks the mark is skip posters, then presumably that consumer is finished and isn’t likely to keep looking for other possible meanings of the mark.

Applicant’s arguments are not supported by the evidence. Even looking only to the identification of services, we cannot see any reason to believe that consumers will mistakenly read skiposters.com as skipposters.com. Such consumers will know that Applicant is engaged in an online business related to artwork and photography. Armed only with that information, why would consumers misread the mark or be inclined to imagine posters about skip (or Skip), which is what Applicant would have us believe.

Applicant’s double entendre argument is an implicit concession that the applied-for mark means ski posters, a point we noted above.³³ As Applicant argues for the plausibility of the skip posters alternate meaning, it is implicit that the ski posters meaning is also valid. Without having two appropriate meanings, there could be no double entendre, and Applicant never argues that the mark means *only* skip posters. We reject the argument that relevant consumers will understand the mark to mean both ski posters and skip posters for the reasons given above. But we also hold that Applicant’s arguments are an implicit admission as to the ski posters meaning.

³³ See n.7, above.

Mere descriptiveness results from perception, and perception is context dependent. Common sense, and our trademark decisions, make clear that we need context to understand meaning.

Descriptiveness of a mark is not considered in the abstract. Rather, it is considered in relation to the particular [services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the [services] because of the manner of its use or intended use.³⁴

Applicant ignores this guidance and tries to force us to conduct our analysis in the abstract. Applicant could have provided more context. The website materials could have been provided by Applicant, even if its website is not publicly posted. The entire record before us shows an Applicant that had many opportunities to provide helpful context about the nature of its intended use, but instead kept making arguments in a vacuum.

In conclusion, we find the phrase skiposters.com as applied to the identification is merely descriptive of a feature of at least some of Applicant's services in each of the applied-for classes. We reject Applicant's double entendre arguments as not supported by the evidence. For that reason, we affirm the refusal to register under Section 2(e)(1) of the Act.

Decision: The refusal to register is affirmed as to both International Classes 35 and 40.

³⁴ *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64 (Fed. Cir. 2007).