

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 6, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Yachtly Inc.*

—  
Serial No. 90784139

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Vanessa M. D’Souza, Charles C. Garvey, Jr., Gregory C. Smith, Seth M. Nehrbass,  
Julia M. FitzPatrick, Julie R. Chauvin, and Fabian M. Nehrbass of Garvey, Smith  
& Nehrbass, Patent Attorneys, L.L.C., for Yachtly Inc.

Jaclyn Kidwell Walker, Trademark Examining Attorney, Law Office 102,  
Mitchell Front, Managing Attorney.

—  
Before Lykos, Goodman, and Stanley,  
Administrative Trademark Judges.

Opinion by Stanley, Administrative Trademark Judge:

Yachtly Inc. (“Applicant”) seeks registration on the Principal Register of the  
standard character mark YACHTLY for “yacht chartering services,” in International  
Class 39.<sup>1</sup>

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<sup>1</sup> Application Serial No. 90784139, filed on June 20, 2021.

Citations to the prosecution file are to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. Citations to the appeal record are to TTABVUE, the Board’s online docketing system. *See, e.g., Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

The Trademark Examining Attorney issued a final refusal of registration under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051 and 1127, on the basis that the specimens of record are unacceptable because they fail to show the applied-for mark in use in commerce in connection with the identified services.

Applicant appealed and requested reconsideration. When the request for reconsideration was denied, the appeal resumed. The appeal is fully briefed. We affirm the refusal to register.

I. Relevant Prosecution History


Applicant filed its application to register the YACHTLY mark based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). On March 30, 2022, the U.S. Patent and Trademark Office ("USPTO") issued a Notice of Publication of the application. With no oppositions or requests for extension of time to oppose having been filed, the USPTO issued a Notice of Allowance for the application on June 14, 2022. On January 17, 2023, after the time to file a statement of use had lapsed, the USPTO issued a Notice of Abandonment. On January 21, 2023, Applicant filed a Petition to Revive the application, along with a statement of use and specimen. The specimen (hereafter, the "Original Specimen") is described as "[a] print-out of the Yachtly, Inc. website at <https://www.goyachtly.com>."<sup>2</sup> Images of Applicant's Original Specimen are provided below:<sup>3</sup>

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<sup>2</sup> January 21, 2023 Statement of Use, TSDR 2.

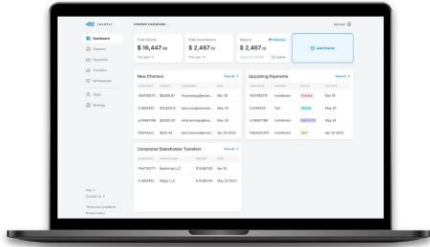
<sup>3</sup> *Id.* at 7-14.

1/21/23, 4:38 PM Yachtly | Charter Payments Made Simple



## CHARTER PAYMENTS MADE SIMPLE

Yachtly makes getting paid simple for clients,  
brokers, stakeholders, and yacht managers — all in  
one intuitive dashboard



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Confirm bookings and earn commissions faster

Save time on tedious tasks

Build client trust

## SAY GOODBYE TO PAPER CHECKS, EMAILS, AND PHONE CALLS

You take pride in providing 5-  
star experiences for our clients,  
but rely on outdated payment  
technology. You deserve  
better!



<https://go.yachtly.com> 2/8

1/21/23, 4:38 PM

Yachtly | Charter Payments Made Simple



### A PAYMENT PLATFORM MADE JUST FOR YOU

Yachtly is the only payment platform designed to meet the needs of the luxury charter yacht industry. Clients pay you instantly with the payment methods they prefer. Track every charter payment in real time. Automate transfers and payment reminders so you know where each payment is coming from, and when it will arrive.


Create your Yachtly account in minutes – no credit checks, no contracts, no hidden fees, and no website integration needed. All you need to do is provide the charter details, and Yachtly does the rest.

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<https://go.yachtly.com>

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Yachify | Charter Payments Made Simple



**SECURE YOUR FUNDS WITH PARTNERS YOU CAN TRUST**


Our team of payment processing experts, veteran software developers, and charter professionals know you require a payments platform you can trust. That's why we partnered with US based, FDIC-insured banks and Stripe, a leading payment processor, to safeguard your funds every step of the way. We ensure compliance with the charter industry's professional standards and charter yacht agreement terms.

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68

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## GET FIVE-STAR PAYMENTS IN THREE EASY STEPS

**STEP 1 – CREATE AN ACCOUNT AT GOYACHTLY.COM**

Provide a few details about your business, and get on board in minutes.

**STEP 2 – SEND SECURE PAYMENTS LINKS TO YOUR CLIENTS**

Enter client and charter details and Yachtly will email a secure "payment link" to your client. Payment links direct your clients to a customary checkout page, where they can pay immediately with a credit or debit card, or by ACH transfer.

<https://goyachtly.com> 7/8

1/21/23, 4:38 PM Yachtly | Charter Payments Made Simple

**STEP 3 – SIT BACK AND RELAX WITH THE YACHTLY DASHBOARD**

Yachtly will automatically:

- ✓ Alert you when your client makes a payment
- ✓ Calculate and pay out your commission
- ✓ Transfer charter funds to the central yacht agent
- ✓ Pay out charter fees to yacht managers on the dates in the charter agreement

<https://goyachtly.com> 8/8

On January 23, 2023, the USPTO issued a Notice of Revival of Applicant's application. On March 20, 2023, the Examining Attorney issued a Non-Final Office Action, refusing registration under Sections 1 and 45 on the ground that "the specimen does not show the applied-for mark as actually used in commerce in connection with any of the [ ] services specified in International Class[ ] 39."<sup>4</sup> The Examining Attorney explained that "[t]he mark ... is being used with payment processing services[,] not "yacht chartering services[,] and therefore "the specimen CANNOT be accepted as the mark does not show used in commerce for the applied for services."<sup>5</sup> The Examining Attorney advised Applicant that "[s]pecimens for services must show a direct association between the mark and the services ... ."<sup>6</sup>

On May 23, 2023, Applicant submitted a response to the March 20, 2023 Non-Final Office Action. Applicant did not include any arguments or provide any explanations in its response. Instead, in an attempt to obviate the refusal, it submitted substitute specimens (hereafter, the "Substitute Specimens"). The Substitute Specimens are described as "screen shots of user interface screens showing the mark and rendering the yacht chartering services; photographs of employees with the mark on their clothing while promoting the services; a photograph of business signage."<sup>7</sup> Images of Applicant's Substitute Specimens are provided below:<sup>8</sup>

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<sup>4</sup> March 20, 2023 Non-Final Office Action, TSDR 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> May 23, 2023 Response to Office Action, TSDR 2.

<sup>8</sup> *Id.* at 5-10.

**YACHTLY** CHARTERS Yachtly

Dashboard | **Charters** | Payments | Transfers | Payouts | Yachts | Team | Settings

FAQ > | User Agreement | Privacy Policy

Q Search Date range

YACHT NAME	CHARTER ID	AMOUNT	BOOKER	DATE ADDED	START DATE	STATUS
3 Sisters	va-3	\$3,456.00	Ann Renner	Mar 26, 2023	Apr 9, 2023	Waiting
3 Sisters	12	\$4,500.00	Oksana Bukach	Mar 23, 2023	Apr 17, 2023	Waiting
3 Sisters	123	\$13,456.00	Oksana Bukach	Mar 21, 2023	Apr 24, 2023	Waiting
3 Sisters	y-1	\$12,000.00	Janet Smith	Mar 14, 2023	Apr 17, 2023	Waiting
3 Sisters	er-1	\$4,500.00	Ann Renner	Mar 10, 2023	Mar 22, 2023	Waiting
3 Sisters	12	\$23,667.00	Ann Renner	Feb 28, 2023	Mar 28, 2023	Waiting
3 Sisters	not-9	\$1,234.00	Oksana Bukach	Feb 27, 2023	Mar 21, 2023	Waiting
3 Sisters	456	\$7,800.00	Oksana Bukach	Jan 31, 2023	Feb 21, 2023	Waiting
3 Sisters	12	\$1,890.00	Leanne Erandenburg	Jan 30, 2023	Feb 20, 2023	Waiting
3 Sisters	brok-2	\$52,000.00	Oksana Bukach	Jan 26, 2023	Feb 9, 2023	Waiting
3 Sisters	SP-24	\$100.00	Janet Smith	Jan 25, 2023	Feb 21, 2023	Waiting
3 Sisters	brok-8	\$351.00	Oksana Bukach	Jan 25, 2023	Feb 22, 2023	Waiting
3 Sisters	SP-26	\$100.00	SERGIO PEREZ	Dec 27, 2022	Jan 22, 2023	Waiting
3 Sisters	SP-24	\$100.00	SERGIO PEREZ	Dec 25, 2022	Jan 7, 2023	Waiting
3 Sisters	SP-11	\$1,000.00	SERGIO PEREZ	Dec 7, 2022	Dec 29, 2022	Waiting

Got any questions? We're happy to help.

**YACHTLY** YACHTS Yachtly

Dashboard | Charters | Payments | Transfers | Payouts | **Yachts** | Team | Settings

FAQ > | User Agreement | Privacy Policy

Q Search

<b>3 Sisters</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Believen</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC
<b>Big Nauti</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Champagne</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC
<b>Dolphin daze</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Esperanza II</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC
<b>Felix</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Island Time</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC
<b>Laysan</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Libra</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC
<b>Outback</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC	<b>Rompecabeza</b> <a href="#">Details &gt;</a> - And Beyond Yacht Charters LLC

Got any questions? We're happy to help.



The screenshot shows the 'MY CHARTERS' dashboard in the YACHTLY system. It features a sidebar with navigation options like Dashboard, Charters, Payments, Transfers, Commissions, Team, and Settings. The main area contains a table with the following data:

YACHT NAME	CHARTER ID	AMOUNT	CHARTEREE	DATE ADDED	START DATE	STATUS
Test yacht	charteronshaving	\$300.00	John Smith	Mar 14, 2023	May 12, 2023	Overdue
Ad Astra	noisakelholdelest	\$100.00	John Smith	Mar 14, 2023	Apr 7, 2023	Paid 100%
Test yacht	45678	\$100.00	John Smith	Mar 14, 2023	Apr 14, 2023	Noway transferred
Test yacht	578348	\$100,000.00	Jana Luce	Mar 9, 2023	Apr 20, 2023	Draft
Test yacht	07221972	\$100.00	John Smith	Feb 13, 2023	Mar 21, 2023	Paid 100%
3 Sisters	11111111	\$1,000.00	Peter Luce	Jan 9, 2023	Mar 24, 2023	Paid 100%



On October 24, 2023, the Examining Attorney issued a Final Office Action, finding that the Substitute Specimens do not show “the applied-for mark as actually used in commerce in connection with any of the [ ] services specified in International Class [ ] 39.”<sup>9</sup> The Examining Attorney again explained that “[t]he mark ... is being used with payment processing services[,]” not “yacht chartering services[,]” and therefore “the

<sup>9</sup> October 24, 2023 Final Office Action, TSDR 2.

specimen CANNOT be accepted as the mark does not show used in commerce for the applied for services.”<sup>10</sup> Relying on screenshots of Applicant’s Instagram page and website,<sup>11</sup> the Examining Attorney stated:

It is clear based on all the attached evidence that applicant ONLY provides yacht payment services and does not engage in the chartering services themselves. The specimens provided do not show any evidence to the contrary as there is not enough information to clearly show that applicant engages in any yacht chartering services.<sup>12</sup>

On January 23, 2024, Applicant filed a Request for Reconsideration along with a Notice of Appeal. Applicant did not submit any additional substitute specimens with its Request for Reconsideration but instead argued that the Original and Substitute Specimens are acceptable. On March 4, 2024, relying on additional screenshots of Applicant’s website and screenshots of Applicant’s LinkedIn page,<sup>13</sup> the Examining Attorney denied the Request for Reconsideration. After the Examining Attorney denied the Request for Reconsideration, the Board resumed the appeal.<sup>14</sup>

## II. Refusal to Register

We now turn to the substantive issue before us, that is whether any of Applicant’s specimens show Applicant’s applied-for mark in “use in commerce” in connection with Applicant’s identified services within the meaning of Sections 1 and 45 of the Trademark Act.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 5-22.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> March 4, 2024 Denial of Request for Reconsideration, TSDR 3-25.

<sup>14</sup> March 5, 2024 Order, 5 TTABVUE.

The term “service mark” means “any word, name, symbol, or device, or any combination thereof ... used by a person ... to identify and distinguish the services of one person ... from the services of others and to indicate the source of the services ...” Trademark Act Section 45, 15 U.S.C. § 1127. “[A] mark shall be deemed to be in use in commerce ... on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce ... and the person rendering the services is engaged in commerce in connection with the services.” *Id.* Section 1(d)(1) of the Trademark Act, 15 U.S.C. § 1051(d)(1), requires that an applicant file a “specimen[] or facsimile[] of the mark as used in commerce[.]” Trademark Rule 2.56(a), 37 C.F.R. § 2.56(a), amplifies that an applicant filing an intent-to-use application must file with its statement of use “one specimen per class showing the mark as used in commerce **on or in connection with the goods or services.**” (emphasis added). Trademark Rule 2.56(b)(2), 37 C.F.R. § 2.56(b)(2), provides further guidance regarding service marks, stating that an acceptable specimen “must show the mark as used in the sale of the services, including use in the performance or rendering of the services, or in the advertising of the services.”

A service mark specimen consisting of advertising or promotional materials generally must show a “direct association” between the mark and the services for which registration is sought. *In re Universal Oil Prods. Co.*, 476 F.2d 653, 177 USPQ 456, 457 (CCPA 1973). While the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the services that have been recited

in the application. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)). See also *In re Osmotica Holdings, Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010). A specimen that shows “only the mark with no reference to, or association with, the services does not show service mark usage.” *In re Pitney Bowes, Inc.*, 125 USPQ2d 1417, 1419 (TTAB 2018).

“To determine whether a mark is used in connection with the services described in the [statement of use], a key consideration is the perception of the user.” *In re JobDiva, Inc.*, 843 F.3d 936, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016). In evaluating whether a specimen is acceptable for a service mark, the examining attorney may consider any of the following properly made of record:

- declarations from persons with firsthand knowledge of the facts, with a sufficiently detailed explanation of how the mark is used in advertising or rendering the services or how the services are advertised or rendered;
- clarification of the specimen of record, such as an explanation of the nature, content, or context of use of the specimen (this explanation need not be verified with a declaration);
- evidence, such as declarations or industry-related periodicals, regarding industry practice with respect to how marks and services are promoted in advertising or how the services are rendered;
- additional background materials, such as printouts showing information on subsequent webpages from the applicant’s website or subsequent screenshots of an electronic device on which the services may be accessed, rendered, and experienced (this matter generally need not be verified with a declaration); and/or
- responses to any Trademark Rule 2.61(b) request for information.

TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1301.04(g)(1) (May 2024).

See also *In re DSM Pharm., Inc.*, 87 USPQ2d 1623, 1626 (TTAB 2008) (“In determining whether a specimen is acceptable evidence of service mark use, we may

consider applicant’s explanations as to how the specimen is used, along with any other available evidence in the record that shows how the mark is actually used.”).

We next consider whether the Original Specimen or Substitute Specimens make a direct association or reference to the identified “yacht chartering services.”<sup>15</sup>

A. Original Specimen

The Original Specimen does not indicate that Applicant provides “yacht chartering services.” One who “charters” a yacht makes the yacht available “to hire, rent, or lease for usually exclusive or temporary use.”<sup>16</sup> The Original Specimen includes the following excerpts:

- “Yachtly makes getting paid simple for clients, brokers, stakeholders, and yacht managers--all in one intuitive dashboard”;<sup>17</sup>
- Users can “say goodbye to paper checks, emails, and phone calls”;<sup>18</sup>
- “Yachtly is the only payment platform designed to meet the needs of the luxury charter yacht industry”;<sup>19</sup> and

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<sup>15</sup> Although Applicant argues that all of its “submitted webpage specimens ... create an association between the ‘Yachtly’ mark and services associated with yacht chartering,” Applicant’s Br., 6 TTABVUE 4-5, Applicant does not specifically explain in its appeal brief how the Original Specimen shows use of the applied-for the mark in connection with the identified “yacht chartering services.” Instead, Applicant focuses its discussion on the Substitute Specimens. *Id.* at 5-8.

<sup>16</sup> Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/charter> (accessed November 5, 2024). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018); *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

<sup>17</sup> January 21, 2023 Statement of Use, TSDR 7.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 9.

- “All you need to do is provide the charter details, and Yachtly does the rest.”<sup>20</sup>

In short, the Original Specimen indicates that Applicant provides a “payment platform” for consumers that themselves charter yachts.<sup>21</sup> “Payment processing services” are different than “yacht chartering services.” Accordingly, we find that the Original Specimen does not make a direct association or reference to the identified “yacht chartering services.”

## B. Substitute Specimens

As noted above, the Substitute Specimens include both “screen shots of user interface screens” and “photographs of employees with the mark on their clothing.”<sup>22</sup>

### 1. User Interface Screens

Turning first to the user interface screens, Applicant contends that the screen shots of the user interface screens are acceptable specimens because “[t]he screen shots show the mark ‘Yachtly’ in association with chartering a yacht, including booking information such as ‘Yacht Name’, ‘Amount’, ‘Broker’, ‘Charterer’, ‘Start Date’.”<sup>23</sup> More specifically, Applicant asserts that “[o]ne screen shot shows the mark ‘Yachtly’ above a ‘Charters’ tab that directs the user to a listing of the yacht chartering booking information [and] [a]nother screen shot shows the mark ‘Yachtly’ above a ‘Yachts’ tab that directs the user to a listing of the available yachts to

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 7-14.

<sup>22</sup> May 23, 2023 Response to Office Action, TSDR 2.

<sup>23</sup> Applicant’s Br., 6 TTABVUE 5.

charter.”<sup>24</sup> Applicant’s counsel provides context for the user interface screens by asserting that “charter brokers use Applicant’s services to book guests on charters, including managing payment schedules, yacht availability, etc.” and “the yacht charter payment processing services that Applicant ... provides is a part of the greater yacht chartering services that Applicant provides[.]”<sup>25</sup> In view of the screen shots and counsel’s explanation, Applicant argues that the screen shots “undoubtedly shows the mark in direct association with the services[.]”<sup>26</sup>

In response, the Examining Attorney contends that, while “the screenshots in the payment dashboard specimen show ‘YACHTLY’ alongside a list of booked charters that include additional yacht names, charter IDs, amounts in US \$, broker names, date added, and start dates in connection with the third party charters[,] ... [a] reasonable reading of the dashboard specimen suggests that applicant is not providing charter services, but rather tracking the charters of others and processing payments through their proprietary downloadable software.”<sup>27</sup> To support its position, the Examining Attorney relies on evidence from Applicant’s Instagram page<sup>28</sup> and screenshots from Applicant’s website,<sup>29</sup> all of which the Examining Attorney argues support that “applicant is informing consumers they are not

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 7-8.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> Examining Attorney’s Br., 8 TTABVUE 5.

<sup>28</sup> October 24, 2023 Final Office Action, TSDR 5-7.

<sup>29</sup> *Id.* at 11-22; March 4, 2024, Request for Reconsideration Denied, TSDR 3-21;

providing a chartering service, but rather giving consumers the option to bring their existing charter service to applicant's payment platform."<sup>30</sup>

In reply, Applicant argues that the Examining Attorney is interpreting Applicant's specimens too narrowly.<sup>31</sup> More specifically, Applicant's counsel provides further explanation concerning the yacht chartering industry, namely that yacht chartering services involve multiple providers that must be coordinated, including (1) the individual or entity who owns the yacht; (2) the "yacht brokers" who "select and book a charter, but ... do not actually provide the charter themselves"; (3) the "charter yacht escrow agents" who "hold[] the funds until the charter occurs, and also coordinate with the charter yacht owners to ensure they are insured, get work visas for crew etc."; (4) the "charter yacht management companies" who "hire the crew, keep the yachts in good working order, do accounting, etc."; and (5) the "charter yacht insurers."<sup>32</sup>

Applicant contends that "it provides comprehensive yacht chartering services under the 'Yachtly' mark through its website and user interface by connecting, coordinating and managing the abovementioned providers and requirements that are necessary to charter a yacht."<sup>33</sup> Applicant argues that "Applicant's website and the user interface screen shots ... demonstrate use of the mark in a manner that creates in the minds of potential customers a direct association between the mark and

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<sup>30</sup> Examining Attorney's Br., 8 TTABVUE 5.

<sup>31</sup> Applicant's Reply Br., 9 TTABVUE 3-5.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.*



broader yacht chartering services, i.e., providing a dashboard to facilitate chartering a yacht, providing yachts, providing yachting and sailing experience in chartering yachts, as well as a system to pay for the yacht charters - all in one place.”<sup>34</sup>

Upon careful review of each of the user interface screens and the evidence of record, we find that the user interface screens do not show service mark use for the identified “yacht chartering services.” At the outset, we note that the record here is sparse. It includes only Applicant’s specimens, supplemented by the arguments of Applicant’s counsel purporting to explain the yacht chartering industry and operation of Applicant’s business. Unlike in *Pitney Bowes*, where the applicant’s in-house counsel “clarified the specimen’s direct reference” to the services listed on the specimen, *Pitney Bowes*, 125 USPQ2d at 1420, Applicant did not do so here. In any event, we must decide the appeal on the basis of the record before us, and an explanation cannot excuse failure to use the mark in connection with the identified services, and must be consistent with what the specimen itself shows. *Id.*; *see also In re The Cardio Grp., LLC*, 2019 USPQ2d 227232, at \*3 (TTAB 2019) (“Applicant’s explanation fails to clarify that the specimens show Applicant rendering a retail store service of any type or persuade us that there is an association between THE CARDIO GROUP and design and retail store services.”).

Whether the user interface screens create an association between the applied-for mark and the identified “yacht chartering services” is a question of fact. *Cf. In re Azteca Sys., Inc.*, 102 USPQ2d 1955, 1957 (TTAB 2012) (“Whether a specimen is a

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<sup>34</sup> *Id.* at 5.

display associated with the goods is a question of fact.”). Applicant has not submitted any evidence to support its contention that consumers will perceive that Applicant itself is providing “yacht chartering services.” Because there is no evidence bearing on the reaction of the purchasing public to Applicant’s use of the applied-for mark, we must rely on our own analysis of the user interface screens to determine whether consumers would perceive the applied-for mark as a service mark identifying the identified “yacht chartering services.” *In re Signal Cos., Inc.*, 228 USPQ 956, 957 (TTAB 1986).

Reviewing the user interface screens, Applicant is correct that its applied-for mark and the words “Yacht” and “Charter” appear, including “Yacht Names,” “Charter ID,” and “Chaterer.”<sup>35</sup> However, none of the user interface screens identify Applicant as the one chartering a yacht. While Applicant’s counsel asserts that there are several providers involved in a yacht charter, and that Applicant “connect[s], coordinat[es] and manag[es]” these different providers, the evidence of record supports that Applicant does not charter yachts itself. For example:

- The Original Specimen identifies “Yachtly [as] the only payment platform designed to meet the needs of the luxury charter yacht industry.”<sup>36</sup>
- Applicant’s Instagram page identifies “Yachtly [as] the only payment system custom-built for the luxury charter yacht industry. One community. One Payment system. Powered by Yachtly.”<sup>37</sup>
- In a section of Applicant’s website with the heading “Complete Toolkit More bookings,” the website explains that “Yachtly is designed to plug right into your workflows, automatically split the payments, and give guests,

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<sup>35</sup> January 21, 2023 Petition to Revive, TSDR 9.

<sup>36</sup> January 21, 2023 Statement of Use, TSDR 5.

<sup>37</sup> October 24, 2023 Final Office Action, TSDR 5.

stakeholders, and yacht management companies full transparency into funds flow. The result? You can focus on what you do best!”<sup>38</sup>

- In a section of Applicant’s website titled, “What Yachtly Does,” the website describes “Yachtly [as] the only comprehensive payment system custom-built for the global luxury yacht charter industry.”<sup>39</sup>
- In the FAQs section of Yachtly’s website, the question “What services does Yachtly provide?” is answered as follows: “For charter brokers – Yachtly automates all payment links and reminders, as well as the flow of funds to stakeholders for multiple payments. For crewed yacht charter clients - Yachtly provides a secure payment gateway allowing multiple payers to do so online via ACH, credit card or Google Pay.”<sup>40</sup>
- In the FAQs section of Yachtly’s website, the question “Who can use Yachtly?” is answered as follows: “Yachtly is currently available to yacht charter brokers with a business based in the United States. ...”<sup>41</sup>
- In a section of Applicant’s website titled, “The Yachtly Story,” the website describes “Yachtly [as] the only payment platform that gives guests the flexibility to pay how they want, while also providing all stakeholders with a single easy-to-use interface to automate and track each payment from start to finish. ... Once the charter specifics are entered in Yachtly – your job is done!”<sup>42</sup>
- Applicant’s LinkedIn page describes “Yachtly [as] a comprehensive payment system for the luxury charter yacht industry.”<sup>43</sup>

Considering all of the user interface screens in their totality, the explanations regarding how Applicant renders its services, and the evidence of record, including the Internet evidence, the user interface screens fail to show the applied-for mark used in a way that would create, in the minds of potential users, a sufficient nexus or

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<sup>38</sup> *Id.* at 18.

<sup>39</sup> March 4, 2024 Denial of Request for Reconsideration, TSDR 3-4.

<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.* at 22.

direct association between the applied-for mark and the identified “yacht chartering services.” The inclusion of the applied-for mark and the words “Yacht” and/or “Charter” on the user interface screens does not indicate that Applicant itself provides “yacht chartering services.” Nothing in record demonstrates that consumers would perceive the applied-for mark as a source indicator for “yacht chartering services.” To the contrary, the record supports that a consumer would understand that Applicant provides a payment platform for persons that themselves charter yachts. In other words, one who provides yacht chartering services brings their booked yacht charters to Applicant, and Applicant provides a service that helps that person or entity manage **their** yacht charters, namely via Applicant’s payment platform.

2. Photographs of Employees Wearing Clothing Bearing the Applied-for Mark

Applicant represents that the photographs of its employees wearing clothing bearing the YACHTLY mark were taken at different yacht association events, including the Charter Yacht Brokers Association (CYBA), the Virgin Islands Professional Charter Yacht Association (VIPCA), and the British Virgin Islands (BVI) Charter Yacht Society, and that Applicant’s employees were advertising Applicant’s services to customers at these events.<sup>44</sup>

The Examining Attorney contends that “the employees bearing the mark on their clothing and a banner with the mark is too tenuous to meet the use requirements contemplated by Trademark Act Sections 1 and 45.”<sup>45</sup> More specifically, the

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<sup>44</sup> Applicant’s Br., 6 TTABVUE 7-8.

<sup>45</sup> Examining Attorney’s Br., 8 TTABVUE 4.

Examining Attorney argues that “[t]his use does not form any connection such that consumers encountering the mark would perceive the mark to be that of charter services as there is no other information on the employee clothing or business signage to make that causal connection.”<sup>46</sup>

In reply, Applicant argues that the Examining Attorney did not give adequate consideration to the photographs and that “[i]t is reasonable to infer that customers encountering the mark on the employees’ clothing and business signage at a table where Applicant’s employees were verbally advertising and promoting the yacht charting services would make the connection” between Applicant’s applied-for mark and Applicant’s “yacht chartering services.”<sup>47</sup>

We agree with the Examining Attorney. The applied-for mark appearing on an employee shirt or at a booth at a trade association event fails to show a direct association between the applied-for mark and the identified “yacht chartering services.” There is no information on the clothing or banners making a direct association between use of the applied-for mark and “yacht chartering services.”

### III. Conclusion

A specimen that shows the mark with no reference to, or association with, the identified services does not show service mark usage. *DSM Pharms.*, 87 USPQ2d at 1625-26 (LIQUIDADVANTAGE referred only to software and did not identify and distinguish custom manufacturing services); *see also, e.g., In re HSB Solomon*

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<sup>46</sup> *Id.* at 5.

<sup>47</sup> Applicant’s Reply Br., 9 TTABVUE 5-6.

*Assocs. LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) (CEI identified process by which applicant derived a measurement rather than technical consulting service); *Osmotica*, 95 USPQ2d at 1669 (OSMODEX referred only to drug delivery technology, not consulting services). Applicant's Original and Substitute Specimens of record fail to show the applied-for mark being used in association with "yacht chartering services;" none of Applicant's service offerings show a direct association with the identified services in the application. As such, the specimen refusal was proper.

Decision: The refusal to register is affirmed.