

**THIS DISPOSITION
IS NOT A PRECEDENT
OF THE TTAB**

Mailed: May 4, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Beyond Boundaries Travel, Inc.

v.

FanTrip LLC

Opposition No. 91189499

to Application Serial No. 77376164

John L. Welch of Lando & Anastasi LLP for Beyond Boundaries Travel, Inc.

Jeffrey M. Drake and John S. Mortimer of Wood Phillips Katz Clark & Mortimer for FanTrip LLC.

Before Quinn, Kuhlke and Taylor, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

FanTrip LLC ("applicant") seeks registration on the Principal Register of the mark FANTRIP (in standard character format) for "[t]ravel agency services, namely, making reservations and bookings for transportation and temporary lodging for fan-themed destinations" in International Class 39. The application was filed on January 20, 2008 based on an allegation of a bona fide intent to use the mark in commerce.

Opposer, Beyond Boundaries Travel, Inc. has opposed registration of the mark on the alternative grounds of priority and likelihood of confusion under Section 2(d) of the Trademark Act, and mere descriptiveness under Section 2(e)(1) of the Act. Opposer specifically alleges with regard to its Section 2(d) claim that it has used the trade name Fan Trips and the service mark FAN TRIPS continuously in connection with travel agency services, including making reservations and bookings for transportation and temporary lodging for fan-themed destinations, since at least 2003, and long prior to applicant's filing date; that on December 19, 2008, the USPTO issued an Office action in its pending application Serial No. 77574519, for the mark FAN TRIPS (standard characters) for "travel services, including organizing all components for travel as an event, as multi-day, and single day tours for fans of movies, books, theater, music and similar themes," stating that registration may be refused under Section 2(d) because the filing date of applicant's involved application Serial No. 77376164 precedes opposer's filing date; that applicant's mark is essentially identical to opposer's mark and applicant's services are identical or closely related to those recited in opposer's pending application; and, thus, applicant's FANTRIP mark is likely to cause confusion with opposer's trade name and trademark FAN TRIPS.

With regard to opposer's alternative claim under Section 2(e)(1), opposer alleges that applicant's mark is merely descriptive of the recited services.

Applicant, in his answer, has denied the salient allegations in the notice of opposition.

PRELIMINARY MATTERS

Evidentiary Matters

On April 5, 2011, the Board deferred consideration of opposer's motion to strike Exhibits 6, 8 and 9 from applicant's first notice of reliance. We now consider that motion which opposer renewed in its brief. Opposer objects to these items, comprising applicant's own answers to opposer's first request for admissions, opposer's request for production of document and things and opposer's first set of interrogatories, arguing that applicant should not be permitted to take this short-cut to submit its evidence. Opposer also stated that it submitted into evidence only Responses 7, 11-14, and 24 of applicant's responses to Opposer's first and second requests for admissions, and that applicant has failed to explain why it should be permitted to rely on the additional responses.

Applicant responded to the motion, arguing that it explained why the documents at issue are relevant to the issue of non-descriptiveness of Applicant's mark FANTRIP.

Trademark Rule 2.120(j)(5) provides that an answer to an interrogatory or a response to a request for admission may be submitted and made part of the record by only the inquiring party, except in limited circumstances. The rule further provides that the notice of reliance must be supported by a written statement explaining why the responding party needs to rely on each of the additional interrogatory answers or admissions, not whether the responses are relevant. Inasmuch as applicant failed to explain why it needed to rely on these additional responses, and noting especially that opposer did not make any of applicant's interrogatory or document request responses of record, we decline to consider the additional responses. See TBMP §704.10 (3d ed. 2011). Accordingly, opposer's motion is granted and Exhibits 6, 8 and 9 are hereby stricken from applicant's notice of reliance. We add that, even if considered, this evidence would not mandate a different result in this proceeding.

Opposer, in its brief, also objects to Exhibit 10 of applicant's notice of reliance, comprising opposer's responses to applicant's document requests, arguing that "[t]here is no provision in the rules for submission of such responses by way of notice of reliance." This objection is not well taken, although not for the reasons asserted by applicant - i.e., relevance and provided for by Trademark

Rule 2.120(j)(8). While documents produced in response to document requests cannot be made of record by notice of reliance, see Trademark Rule 2.120(j)(3)(ii), applicant did not submit any documents with the notice of reliance, only opposer's responses consisting of objections or representations that there were no documents, the documents had been produced or the documents would be produced. As such, the responses are properly of record and opposer's objection is overruled. Cf. L.C. Licensing Inc. v. Berman, 86 USPQ2d 1883, n.5 (TTAB 2008).

Applicant, in turn, objects to opposer's reliance on opposer's responses to applicant's interrogatory requests that were made of record by applicant, arguing that opposer failed to verify any of the responses. When an interrogatory answer, or an admission, has been made of record by one party in accordance with Trademark Rule 2.120(j), it may be referred to by any party for any purpose permitted by the Federal Rules of Evidence. See *Henry Siegel Co. v. M & R International Mfg. Co.*, 4 USPQ2d 1154, 1155 n.5 (TTAB 1987); *Beecham Inc. v. Helene Curtis Industries, Inc.*, 189 USPQ 647, 647 (TTAB 1976) (where party relies on all of adversary's answers to interrogatories, the adversary need not file its own notice of reliance thereon). As such, opposer may rely on these responses for whatever probative value they may have. However, the responses are

not signed (under oath) by opposer and, accordingly, they have no probative value for either party.

We next address additional evidentiary matters that were not addressed by either party and comment that a party seeking to make evidence of record by notice of reliance must follow the rules and case law. If material cannot be made of record by notice of reliance it will not be considered even if the adverse party does not specifically object to it, as long as the adverse party does not specifically treat it as of record such that we can say it has been stipulated to in the record. With this in mind, we now consider opposer's rebuttal notice of reliance. By the rebuttal notice, opposer seeks to make of record: (i) a copy of its motion, filed October 1, 2009, for summary judgment and the declaration supporting the motion (Exhibit 10); (ii) the declaration of its counsel, John Welch, in support of opposer's opposition to applicant's motion for Rule 56(f) discovery, filed October 28, 2011 (Exhibit 11); and (iii) documents produced by opposer in response to applicant's first set of document requests (Exhibit 12). In each instance, opposer claims that the information is necessary for completeness and to give full context to applicant's submissions. With respect to two declarations, they are not admissible by notice of reliance in the absence of a written agreement between the parties. See Trademark

R. 2.123(b). Notably, the parties were advised, in the Board's April 13, 2010 order denying opposer's motion for summary judgment, that to be considered at final hearing, any evidence supporting the motion must be properly introduced into evidence during the appropriate trial period. With respect to the produced documents, they are not admissible solely by notice of reliance, except to the extent that they are admissible by notice of reliance under the provisions of Trademark Rule 2.122(e), see Trademark Rule 2.120(j)(i), or otherwise admissible under *Safer, Inc. v. OMS Investments, Inc.* 94 USPQ2d 1031 (TTAB 2010). See TBMP § 704.08(b).

With further regard to opposer's rebuttal notice, instead of submitting the documents referenced in Exhibits 10 and 11, opposer "refer[red] the Board to the electronic file." Neither the Trademark Rules nor Board practice provides for the submission of evidence by such reference.

For the reasons stated, opposer's rebuttal notice of reliance has been given no consideration, except to the extent that some of the documents attached as Exhibit 12, i.e., portions of the opposition file and the files of applicant's involved application Serial No. 77376164 and opposer's application Serial No. 77574519, and properly

identified Internet materials, are otherwise admissible via a notice of reliance.¹

THE RECORD

By operation of Trademark Rule 2.122 the record includes the pleadings and the file of application Serial No. 77376164. In view of the foregoing, the record also includes opposer's Notices of Reliance 1-6 on Exhibits 1-9; applicant's notice of reliance on Exhibits 1-5, 7, 10 and 11; and Opposer's Rebuttal Notice of Reliance on portions of Exhibit 12.

Both opposer and the applicant filed briefs and opposer filed a reply brief.²

STANDING

To establish standing in an opposition proceeding, opposer must show both "a real interest" in the proceeding as well as a "reasonable" basis for its belief of damage. See *Richie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). Through a notice of reliance, opposer introduced evidence of its pending application Serial No. 77574519, filed September 19, 2008, to register the mark FAN

¹ We point out that much of the admissible material is already of record, either by operation of rule or via another notice of reliance. The duplication was unnecessary.

² Opposer, in its reply brief, observed that applicant filed its brief two days late, but indicated that "it does not move to strike the brief." Inasmuch as opposer did not contest the late filing, and because a final brief serves as a roadmap for the Board to a party's arguments and evidence, we have considered applicant's brief.

TRIPS, which potentially has been refused registration under Section 2(d) of the Trademark Act on the basis of a likelihood of confusion with the mark in applicant's previously-filed involved application. This is sufficient to show that opposer has a real interest in this proceeding and, therefore, has standing. *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953, 1959 (TTAB 2008) ("The filing of opposer's application and the Office's action taken in regard to that application provides opposer with a basis for pleading its standing..."). Opposer also claimed standing by virtue of its being a competitor in the same field as applicant, as evidenced by opposer's response to applicant's interrogatory request No. 1. However, as discussed above, opposer's unsigned responses have no probative value and, therefore, cannot serve to establish opposer's standing. Nonetheless, since opposer has established its standing as to the asserted ground of likelihood of confusion, opposer is entitled to assert its mere descriptiveness claim. See e.g., *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987).

We must address one final matter before considering the merits of this case. Applicant argues that "opposer has set forth a **new** ground for opposition, namely that Applicant's mark is 'merely descriptive' irrespective of a finding by the TTAB that Opposer's purported mark is 'merely

descriptive.'" Applicant's br. p. 8, emphasis supplied. We find this argument unavailing given that applicant has been on notice of opposer's claim of mere descriptiveness since day one of this proceeding; opposer's notice of opposition included both a claim of priority and likelihood of confusion and an alternative claim of mere descriptiveness. The fact that opposer has primarily pursued its "alternative" claim of mere descriptiveness is of no moment. As opposer points out, Rule 8(d)(3) of the Federal Rules of Civil Procedure allows "[a] party to state as many separate claims or defenses as it has, regardless of consistency." Moreover, there is no requirement that an opposer pursue all of the stated claims or that they be pursued in any particular order.

MERE DESCRIPTIVENESS

We first consider opposer's claim that the term FANTRIP is merely descriptive of applicant's identified services. A term is deemed to be merely descriptive of services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each

and every specific feature of the applicant's services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a particular term is merely descriptive is determined not in the abstract, but in relation to the services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those services, 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. *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002) ("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 and services are will understand the mark to convey information about them.").

"On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); see also *In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983). Even where individual terms are

descriptive, combining them may evoke a new and unique commercial impression. If, however, each component retains its merely descriptive significance in relation to the goods, without the combination of terms creating a unique or incongruous meaning, then the resulting combination is also merely descriptive. *Tower Tech*, 64 USPQ2d at 1317-1318.

While applicant contends that its applied-for mark is, at best, suggestive of its services, it is opposer's position that "[o]n its face, the applied-for mark FanTrip merely describes the focus of applicant's services - arranging trips for fans - and is therefore unregistrable absent a showing of acquired distinctiveness." Br. p. 3. Opposer further contends that because applicant has never used the mark for the recited services, applicant cannot prove (nor has it claimed) acquired distinctiveness.³

Opposer submitted the following evidence to demonstrate that FANTRIP is merely descriptive in connection with applicant's identified services.

i. Dictionary definitions⁴, in relevant part,

FAN: "an enthusiast"⁵

³ Because the involved application is based on applicant's intent to use the mark in commerce, applicant did not, and could not, assert acquired distinctiveness of the applied-for mark, FanTrip. Accordingly, that issue is not before us.

⁴ Opposer proffered six definitions for the word "fan" and five for the word "trip." We have listed two definitions for each word and note that those not repeated here are the same as or similar to the ones listed above.

"a person who has a strong interest in or enthusiasm for a particular sport, art form, or famous person"⁶

TRIP: "a going from one place to another; a journey"⁷

"an act of going to a place and returning; a journey or excursion, especially for pleasure"⁸

ii. Numerous excerpts from a variety of widely distributed printed publications in which the term "fan trip(s)" is used to describe fan-themed trips, a sampling of which is set forth below (emphasis supplied in part, added in part):

300 Oilers faithful plan Buffalo trip

"Hotel accommodations and airline space are in short supply over the New Year's weekend, said travel agents who regularly book Oilers **fan trips**." (Houston Chronicle, December 30, 1988)⁹

CUBS FAN TOUR

"Departure date is March 16 for a 10- or 14-night Cubs' Spring Training **Fan Trip** [sic] to Scottsdale, Ariz., being organized by Chicagoan Phoebe Medow in conjunction [sic] with N.E.W.S. Travel. It will be Medow's 22nd annual springtraining [sic] **fan trip**. (Chicago Tribune, February 10, 1991)¹⁰

BEARS FAN TRIPS

⁵ The American Heritage Dictionary of the English Language (4th ed. 2000), retrieved December 12, 2009. (Opposer's NOR 1- Exh. 1-A).

⁶ Oxford Dictionaries Online, retrieved November 29, 2010. (Opposer's NOR 1- Exh. 1-B).

⁷ The American Heritage Dictionary of the English Language (4th ed. 2000), retrieved December 12, 2009. (Opposer's NOR 1- Exh. 2-A).

⁸ Oxford Dictionaries Online, retrieved November 29, 2010. (Opposer's NOR 1- Exh. 2-B).

⁹ Opposer's NOR 3- Exh. 6-B.

¹⁰ Opposer's NOR 3- Exh. 6-F.

"A **fan trip** to Berlin to watch the Chicago Bears take on the San Francisco 49ers Aug. 3 is available from AAA-Chicago Motor Club Travel Agency. The Aug. 1-8 Berlin tour features round trip air fare, lodging (five nights in Berlin, one in Copenhagen), transfers, sightseeing and, of course, a ticket to the game [sic].

The company also has **fan trips** to regular season games."

(*Chicago Tribune*, July 14, 1991)¹¹

Strike could be a long foul for some/Walkout by baseball players would hurt many workers and businesses worse than losing the Reds

"Drake Miller, president of Ace Travel House, says the travel agency may have to cancel **fan trips** it has planned to Astros games in Atlanta, Montreal and Denver."

(*Houston Chronicle*, August 7, 1994)¹²

HOW I ALMOST GOT A DATE WITH A CHARGERS CHEERLEADER

"... They don't perform at away games, but a half dozen of them are coming to Pittsburgh this weekend with two local tour operators who are running **fan trips**."

(*Pittsburgh Post-Gazette* (PA), January 13, 1995)¹³

STUDENTS GET LESSONS IN TRAVELING ABROAD

"* If you have always wanted to attend the Super Bowl or the Indy 500, meet Sports Tours, Inc., of Massachusetts. It puts together **fan trips** for just about any major sporting event."

(*Fresno Bee*, February 16, 1997)¹⁴

Rivermen get breathing room

"In addition, the Rivermen front office has put together a **fan trip** for those wishing to follow the team to Johnstown."

(*PANTAGRAPH BLOOMINGTON*, IL, April 11, 2000)¹⁵

¹¹ Opposer's NOR 3- Exh. 6-I.

¹² Opposer's NOR 3- Exh. 6-N.

¹³ Opposer's NOR 3- Exh. 6-O.

¹⁴ Opposer's NOR 3- Exh. 6-T.

¹⁵ Opposer's NOR 3- Exh. 6-V.

Carolina's run in playoffs good for Everblades

"If the Hurricanes can have a squad that includes former Everblades players, Carolina officials could build a fan base in Southwest Florida.

Possibilities could include **fan trips** here for training camp or for a trip for local fans to Raleigh, N.C., during the season."

(*The News-Press* (Fort Meyers, FL), May 25, 2002)¹⁶

BIG BLUE FAMILY PACKING BAGS FOR BLUE HAWAII

"The trip is 'completely sold out - and has been for three months,' said Peggy Meece, an owner of Commonwealth Travel, which runs **fan trips** in support of the university's athletic programs."

(*Lexington Herald-Leader* (KY), November 17, 2002)¹⁷

Salina, Kan., Travel Agent Gets Busy after Kansas State's Win Alters Bowl Bid

"As a travel consultant at World Travel, 1827 S. Ninth, she's organized **fan trips** to several recent Kansas State bowl appearances, and the Wildcats were on their way to the Fiesta Bowl following their 35-7 walloping of then No. 1-ranked Oklahoma Sooners on Saturday."

(*Salina Journal* (KS) (KRT), December 9, 2003)¹⁸

French revolutions; Cycling trips let fans be more than

"I'd pedaled up this beast of a mountain the day before on a Trek Travel biking vacation. Our group of 14 cycling enthusiasts was on the ultimate **fan trip**, following the Tour as it swung through the slopes of the Pyrenees all the way to the cobblestones of Paris."

(*Chicago Sun Times, Inc.*, August 4, 2010)¹⁹

iii. Numerous excerpts from a variety of Internet sites demonstrating that the term "fan trip" is used in connection with travel to fan-themed destinations, including music,

¹⁶ Opposer's NOR 3- Exh. 6-BB.

¹⁷ Opposer's NOR 3- Exh. 6-DD.

¹⁸ Opposer's NOR 3- Exh. 6-EE.

¹⁹ Opposer's NOR 3- Exh. 6-XX.

sports and other events, a sampling of which is set forth below (emphasis supplied in part, added in part):

Set Sail with the Carolina Panthers in 2010!

AAA presents the Fifth Annual Panthers' **Fan Trip**.
(http://www.aaagameday.com/Panthers/2009_panthers-fan-trip.htm, retrieved August 31, 2010)²⁰

**Rock' N' Roll
Will Never Die**

BUDDY'S 73rd Birthday
FAN TRIP 2009
(<http://buddyhollylives.info/526962/192610.html>,
retrieved August 31, 2010)²¹

**Canucks Fan Trip to New York! Watch our Canucks in New
York & Washington**

"I'm currently organizing a Canucks **Fan Trip** to New York. I was initially going to just organize it for me and a group of friends & co-workers, but I thought why not see if any other Canucks fans would be interested in coming..."
(<http://forum.canucks.com/topic/282107-canucks-fan-trip-to-new-york/>, retrieved August 31, 2010)²²

**Provident Travel
See the world through our web
Cincinnati Red Rooters' Tours**

"Waite Hoyt, Hall of Fame pitcher and Reds Radio Broadcaster, urged his friend Barney Rapp to promote a **fan trip** to Milwaukee to help root the Reds on to victory."
(<http://www.providentvacations.com/baseballtours.html?verifyZip=45202...>, retrieved August 31, 2010)²³

**Keith Henderson
"Illusions of The King" Live!**

Keith Henderson **Fan Trip** 2007

²⁰ Opposer's NOR 4- Exh. 7-A.

²¹ Opposer's NOR 4- Exh. 7-E.

²² Opposer's NOR 4- Exh. 7-F.

²³ Opposer's NOR 4- Exh. 7-H.

Nancy Cabe Tours
Atlantic City, NJ
(<http://www.keithillusions.com/showdetails.asp?show=141>, retrieved August 31, 2010)²⁴

Savory Adventures

Dolce Debbie Fan Trip Piemonte, Italy
"Join Dolce Debbie and Barry Frangipane on this **fan trip** to Piemonte! October 5, 2010"
(<http://www.savoryadventures.com/piemonte/docedebbie/fantrippiemonte.html>, retrieved August 31, 2010)²⁵

XL

Soccer Tours

Real Madrid **Fan Trip** 2009-2010 Coming soon
(http://www.xltravel.com/sfw/rm/index_E.html, retrieved August 31, 2010)²⁶

Aquatic Gardeners Association

Re: AGA 2010 Convention-November 11-14 Ft. Lauderdale

"2) ... Is there a car pool list for the **FAN trip** where we can pitch-in for gas and stuff?"
([...aquatic-gardeners.org/viewtopic.pho?...](http://aquatic-gardeners.org/viewtopic.pho?...), retrieved, November 12, 2010)²⁷

Jaye Albright's Breakfast Blog

Thursday, December 09, 2010
Fan Trip To Opry: Meet Keith Urban
(...blogspot.com/.../fan-trip-to-opry-meet..., retrieved December 10, 2010)²⁸

Cubs Destinations is your passport for fun

"How fun it is to travel with the Cubs? In November, several Cubs players including Aramis Ramirez, Carlos Marmol, Sean Marshall and Hall of Famer Billy Williams, took part in a weeklong **fan trip** in the Dominican

²⁴ Opposer's NOR 4- Exh. 7-N.
²⁵ Opposer's NOR 4- Exh. 7-X.
²⁶ Opposer's NOR 4- Exh. 7-CC.
²⁷ Opposer's NOR 4- Exh. 7-TT.
²⁸ Opposer's NOR 4- Exh. 7-YY.

Republic. That trip was organized by Apple Vacations...."
(Chicago.cub.mlb.com/news/article.jsp..., retrieved December 24, 2010)²⁹

iv. Copies of use-based, third-party registrations showing that the word "trip" has been disclaimed in connection with travel-related services.³⁰

Registration No. 3158419 for the mark TRIP COACH (TRIP disclaimed) for "travel information services; providing links to web sites of others featuring travel";

Registration No. 2980063 for the mark SPEEDWAY SPEEDY TRIP (TRIP disclaimed) for "providing online automotive travel information, namely, maps, travel routes, travel distances, travel time, locations of vehicle service stations and their amenities, and fuel costs";

Registration No. 3102038 for the mark TRIP CONNECT and design (TRIP disclaimed) for "travel information services";

Registration No. 3798812 for the mark TRIP FIT (TRIP disclaimed) for "travel agency services, namely, making reservations and bookings for transportation"

Registration No. 3549127 for the mark TRIP STUFF.com and design (TRIP disclaimed) for "making referrals in the field of travel";

Registration No. 3397522 for the mark TRIP DOGS TRAVEL (TRIP disclaimed) for "travel agency services,

²⁹ Opposer's NOR 4- Exh. 7-AAA.

³⁰ Opposer also submitted copies of several third-party applications and expired registrations for marks including the term "fan" and additional copies of third-party expired, or non-use-based, registrations for marks including the term "trip." These additional applications and registrations have no probative value. See Action Temporary Services Inc. v. Labor Force Inc., 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989) ("[A] cancelled registration does not provide constructive notice of anything"); Interpayment Services Ltd. v. Docters & Thiede, 66 USPQ2d 1463 (TTAB 2003) (applications show only that they have been filed).

namely, making reservations and bookings for transportation";

Registration No. 3084146 for the mark TRIP COACH (TRIP disclaimed) for "printed publications, namely magazine columns about travel";

Registration No. 3064797 for the mark TRIP MATE YOUR PARTNER IN TRAVEL (TRIP disclaimed) for "Insurance administration for travelers, namely insurance for ... pre-departure trip cancellation; post departure trip interruptions, travel delay; loss or damage to baggage and personal effects, baggage delay; and accidental death and dismemberment while on trip"; and

Registration No. 3025356 for the mark TRIP LOGICS (TRIP disclaimed) for "travel agency services, namely, making reservations and bookings for transportation, namely, airline tickets, cars, cruises and tours."

With particular regard to the third-party registrations, while they are not evidence that the registered marks are actually in use, they may be given some weight to show the meaning of a mark, or a term in the mark, in the same way that dictionaries are used. In re Box Solutions Corp., 79 USPQ2d 1953, 1955 (TTAB 2006) ("[T]hird-party registrations can be used in the manner of a dictionary definition to illustrate how a term is perceived in the trade or industry"). See also In re J.M. Originals Inc., 6 USPQ2d 1393, 1394 (TTAB 1987) ("[T]hird [-] party registrations are of use only if they tend to demonstrate that a mark or a portion thereof is suggestive or descriptive of certain goods and hence is entitled to a narrow scope of protection. Used in this limited manner,

'third-party registrations are similar to dictionary definitions showing how language is generally used.'")
(Internal citations omitted) "Such third [-] party registrations show the descriptive significance as applied to certain goods or services." Institut National Des Appellations I'Origine v. Vinters International Co., 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992) (third-party registrations found to be persuasive evidence").

We note, first, that applicant's applied-for mark is a compound mark which, in this case, consists of two words combined to create a single term. A compound mark is merely descriptive if (1) the individual words are descriptive and retain their descriptive meaning within the compound mark, and (2) the compound mark has no unique or incongruous meaning as applied to the services. See Cox Enterprises, 82 USPQ2d 1040, 1043 (TTAB 2007). Here, applicant has combined the descriptive term "fan," previously defined as "a person with a strong interest in or enthusiasm for a particular sport ...," and the descriptive word "trip," previously defined as "a journey or excursion, especially for pleasure." The compound term FANTRIP has no different meaning apart from its constituent words. Noticeably, applicant, on its promotional website, displays its mark in a manner that highlights the combination of two separate and distinct terms "fan" and "trip," by capitalizing the first

letter of each word, i.e., FanTrip. See, Opposer's Second Request for Admissions No. 34 and Exhibit 1 to the Admissions Request, and Applicant Response to Opposer's Second Request for Admissions No. 34.³¹

Moreover, the Internet evidence also establishes that the term "fantrip" ("fan trip") is used in the travel industry to describe fan-themed trips or travel destinations.

Based on the evidence of record, we find that the term "fantrip," when viewed as a whole, would be understood in the context of applicant's identified services to merely describe, without conjecture or speculation, or the gathering of additional information, a significant feature or purpose of applicant's identified travel agency services, namely that applicant's making reservations and bookings for transportation and lodging are for trips for fan-themed trips.

We find unpersuasive applicant's contention that there is no evidence to support this finding because "the hundreds of pages of Internet printouts" using the terms "fan" and "trip" do not show use of the unitary term "fantrip." While applicant is correct in its observation that none of the evidence submitted by opposer shows use of "fantrip" as a single term, it is not necessary that the

³¹ Opposer's NOR 2- Exhs. 3 and 4.

evidence show use by others in the exact manner in which it is displayed as a mark. See *In re SPX Corp.*, 63 USPQ2d 1592 (TTAB 2002). The evidence herein clearly shows use of the very combination of terms applicant is seeking to register. Moreover, this type of minor variation, i.e., the telescoping or merger of terms, in the display of a descriptive designation has frequently been held to be legally insignificant. See, e.g., *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (FIRSTIER, the equivalent of "first tier," merely descriptive of banking services); *Cox Enterprises*, 82 USPQ2d at 1043 (THEATL, the equivalent of THE ATL, a common nickname for the city of Atlanta, merely descriptive of publications featuring information about Atlanta); and *In re BankAmerica Corp.*, 229 USPQ 852 (TTAB 1986) (PERSONALINE [understood as "personal line"], merely descriptive of consumer loan services in which a personal line of credit is provided). It is apparent, here, that the term FANTRIP would be recognized as the combination of the words "fan" and "trip" and the merger of the terms, if noticed at all, does not transform the merely descriptive term "fan trip" into one that is registrable.

We further find unpersuasive applicant's argument that opposer improperly dissected applicant's mark in the descriptiveness analysis. As explained, applicant's

applied-for mark, as a whole, merely describes the purpose of applicant's services.

Applicant also argues that its applied-for mark FANTRIP is, at most, "suggestive" because applicant's services are for the making of reservations and bookings relating to fan-themed destinations and "not" the actual trips. We find this argument is unavailing. As previously explained, a term is merely descriptive if it immediately describes a significant function, feature or purpose of the identified services. Here, the term FANTRIP immediately conveys information about the purpose of applicant's reservation and booking services. Indeed, applicant, in explaining the nature of its proposed business, admitted that the recited services "are intended to include reservations and bookings for trips to fan-themed destinations." (Applicant's Resp. to Opposer's Req. for Admissions No. 7) (emphasis added).³²

We also find unavailing applicant's argument that opposer's "belief" or "admission" that its "essentially identical" mark (FAN TRIPS) is inherently distinctive demonstrates that Applicant's mark is not merely descriptive.³³ While we do not consider statements made in

³² Opposer's NOR 2- Exh. 3.

³³ In this regard, applicant vigorously argues that applicant failed to prove that its mark had acquired secondary meaning at the time opposer filed its trademark application for the term FAN TRIPS. Whether opposer has acquired secondary meaning in the term FAN TRIPS is irrelevant to our decision on whether or not that term is merely descriptive of applicant's identified

another proceeding or in other contexts as admissions, we may consider them in evaluating the evidence. "That a party earlier indicated a contrary opinion respecting the conclusion in a similar proceeding involving similar marks and goods [or services] is a fact, and that fact may be received in evidence as merely illuminative of shade and tone in the total picture confronting the decision maker. To that limited extent, a party's earlier contrary opinion may be considered relevant and competent. Under no circumstances, may a party's opinion, earlier or current, relieve the decision maker of the burden of reaching his own ultimate conclusion on the entire record." *Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576 F.2d 926, 198 USPQ 151, 154 (CCPA 1978).

In this case, opposer not only clearly indicated that the pleadings in the notice of opposition and the arguments in its brief were in the alternative but, as discussed, the record plainly demonstrates that the term "fantrip" is merely descriptive of a significant feature or purpose of applicant's travel agency services, namely, that applicant's making reservations and bookings for transportation and lodging are for trips for fan-themed destinations.

services. Accordingly, that argument has been given no consideration in our finding on opposer's mere descriptiveness claim. We add, however, that the argument is relevant to opposer's claim of priority and likelihood of confusion.

LIKELIHOOD OF CONFUSION

Having found that applicant's mark is merely descriptive, we do not reach the issue of whether applicant's applied-for mark FANTRIP is likely to be confused with opposer's pleaded mark FAN TRIPS.

Decision: Opposer's opposition to the registration of the mark in application Serial No. 77376164 on the ground of mere descriptiveness is sustained.