

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: April 19, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Divine Light Healing Ministries, Inc.

v.

Spiritual Arts Institute
—

Cancellation No. 92074236
—

Mark C. Johnson of Johnson Dalal,
for Divine Light Healing Ministries, Inc.

John Alunit of ALUMIT IP,
for Spiritual Arts Institute.

—
Before Kuczma, Dunn and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Spiritual Arts Institute (“Respondent”) owns a registration on the Principal Register for the standard character mark DIRECT DIVINE LIGHT HEALING (“direct” and “healing” disclaimed) for “Education services, namely, providing workshops, classes, and training in the fields of metaphysics, spiritual healing, the aura and spiritual growth; Educational services, namely, providing training of doctors, holistic practitioners, massage therapists, and nurses for certification in the

field of spiritual healing,” in International Class 41.¹

Divine Light Healing Ministries, Inc. (“Petitioner”) seeks cancellation of Respondent’s Registration on grounds that DIRECT DIVINE LIGHT HEALING is generic, merely descriptive, and fails to function as a mark for the identified services.²

Respondent, in its answer to the petition, admits the following four allegations, and denies the remaining salient allegations:

- “[Petitioner] filed application no. 88/378,607” and “[o]n June 26, 2019, a Non-Final Office Action was issued in connection with the ‘607 Application wherein registration was refused, in part, due to a Section 2(d) likelihood of confusion with [Respondent’s] Mark,” which was subsequently made final;³

¹ Registration No. 4829973 (“Respondent’s Registration”), issued October 13, 2015. USPTO records indicate that Respondent filed a Section 8 declaration of use on December 14, 2021, after this proceeding was commenced, that is pending review.

² 1 TTABVUE (Petition for Cancellation). As a further alleged “ground,” Petitioner “also seeks relief in the nature of entry of a disclaimer of the terms ‘DIVINE LIGHT’ in [Respondent’s] Mark because” they are “merely descriptive of the light or spiritual energy that is believed to be given by, or emanate from, God.” *Id.* at 8 (¶ 34). This is an impossibility because the words “DIRECT” and “HEALING” are already separately disclaimed, and requiring a further disclaimer of “DIVINE LIGHT” would amount to a disclaimer of all wording. *Dena Corp. v. Belvedere Int’l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991) (“A mark which must be entirely disclaimed has no ‘unregistrable component,’ but is instead entirely nonregistrable.”); *In re MCI Commc’ns Corp.*, 21 USPQ2d 1534, 1537 (Comm’r Pats. 1991) (“the applicant may not disclaim the entire mark”); TMEP 1213.06. We therefore consider Petitioner’s contentions under this purported ground merely as amplifications of its allegations of its genericness and descriptiveness claims.

Citations in this opinion to the briefs and other docket entries on appeal refer to TTABVUE, the Board’s online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page number(s) of the docket entry where the cited materials appear. Citations to the prosecution history record in these proceedings refer to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system and, specifically, to the downloaded .pdf versions of the documents in the USPTO TSDR Case Viewer.

³ See Petitioner’s allegations in ¶¶ 2 and 5-6 of the Petition at 1 TTABVUE 4, and Respondent’s admission thereto in its Answer at 6 TTABVUE 2.

- “[Respondent] has not shown or otherwise alleged that [its] Mark has acquired distinctiveness under Section 2(f) of the Trademark Act”;⁴
- “A true and correct screenshot of [Respondent’s] Website, accessed on May 13, 2020 at 11:00 AM, is attached” to the Petition, which “contains the quoted language” “empowers you to help others to heal and accelerate your spiritual growth by deepening your own direct connection to the Divine,” and “trains students in the sacred art of administering of Divine Light to others, and how to build up their own healing power to be able to facilitate the exhilarated healing currents”;⁵ and
- “A true and correct copy of the course syllabus from Defendant’s Website, accessed on May 13, 2020, at 11:15 AM, is attached” to the Petition.⁶

The case is briefed. For the reasons set forth below, we grant the petition.

I. The Record

The record consists of the pleadings, the file of Respondent’s Registration by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), and the following

⁴ See Petitioner’s allegation in ¶ 11 of the Petition at 1 TTABVUE 5, and Respondent’s admission thereto in its Answer at 6 TTABVUE 3.

⁵ See Petitioner’s allegations in ¶ 29 of the Petition at 1 TTABVUE 7, and Respondent’s admission thereto in its Answer at 6 TTABVUE 4.

⁶ See Petitioner’s allegation in ¶ 45 of the Petition at 1 TTABVUE 10, and Respondent’s admission thereto in its Answer at 6 TTABVUE 5.

The screenshot of Respondent’s website (*see* note 5) and the course syllabus from Respondent’s website referenced in Respondent’s above-noted admissions were not made of record by virtue of their attachment to the petition because, with the exception of a current status and title copy of a plaintiff’s pleaded registration prepared by the USPTO, or a printout or copy of the current status and title of such pleaded registrations from the electronic database records of the USPTO, “an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached, and must be identified and introduced in evidence as an exhibit during the period for the taking of testimony.” Trademark Rule 2.122 (c) and (d), 37 CFR § 2.122(c) and (d). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 704.05 (June 2021). Nevertheless, the documents attached to the pleading were also produced by Respondent in response to document requests and, as discussed in note 10 *infra*, they have been deemed of record due to Respondent’s treatment of them as such.

submissions by the parties:

- Petitioner's Notice of Reliance on printouts from third-party Internet websites;⁷ and Respondent's responses to Petitioner's interrogatories,⁸ request for admissions,⁹ and request for production of documents.¹⁰

- Respondent's Notice of Reliance on USPTO file histories for Petitioner's pending application Serial Nos. 88378607 and 86368630;¹¹ a Wikipedia article;¹² dictionary definitions;¹³ and pages from Petitioner's website.¹⁴

⁷ 8-9 TTABVUE 3-44 (confidential/redacted versions); 12 TTABVUE 7-48 (redacted).

⁸ 8-9 TTABVUE 46-73 (confidential/redacted versions); 12 TTABVUE 50-77 (redacted).

⁹ 8 TTABVUE 75-99 (confidential/redacted versions); 12 TTABVUE 79-102 (redacted).

¹⁰ 8-9 TTABVUE 100-715 (confidential/redacted versions); 12 TTABVUE 104-719 (redacted).

Respondent's responses to Petitioner's request for admissions introduced by Petitioner include both admissions and denials. Generally, denials of request for admissions cannot be submitted under notice of reliance. Trademark Rule 2.120(k)(3)(i), 37 C.F.R. § 2.120(k)(3)(i); *see also, e.g., Ayoub, Inc. v. ACS Ayoub Carpet Serv.*, 118 USPQ2d 1392, 1395 n.9 (TTAB 2016); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 704.10 (June 2021).

Respondent's responses to Petitioner's request for production of documents include documents produced in response to those requests. Generally, documents produced in response to discovery requests are not admissible by notice of reliance alone. Trademark Rule 2.120(j)(3)(iii), 37 C.F.R. § 2.120(j)(3)(iii). *See also, e.g., City Nat'l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1674 n.10 (TTAB 2013) (responses to document production requests are admissible solely for purposes of showing that a party has stated that there are no responsive documents).

Notwithstanding the foregoing rules, Respondent in its brief treats the entire notice of reliance as being of record. *See, e.g.*, 17 TTABVUE 5, 10-11, 14-15. We therefore consider the documents produced by Petitioner in response to the requests and submitted with Respondent's notice of reliance to be stipulated into the record.

¹¹ 10-11 TTABVUE 6-150. Respondent's notice of reliance is duplicated at 10 and 11 TTABVUE. We will refer to the docket entry at 10 TTABVUE for Respondent's evidence.

¹² *Id.* at 152-154.

¹³ *Id.* at 156-173.

¹⁴ *Id.* at 175-186.

II. Preliminary Issues

Both the confidential and redacted versions of Petitioner's notice of reliance were filed under seal during Petitioner's testimony period. Petitioner subsequently filed a second unredacted public version after its testimony period (and during Respondent's testimony period) that shows the same date of service as the versions filed during Petitioner's testimony period. Respondent not only does not object to the untimely filing, but lists it as part of the record and refers to the materials attached to it as evidence in its brief. Therefore, to the extent there is a procedural defect arising from Petitioner's failure to file a public version of its notice of reliance during its own testimony period, Respondent waived any objections to that evidence and we consider it. *See Optimal Chemical Inc. v. Srills LLC*, 2019 USPQ2d 338409, at *3 n.28 (TTAB 2019) (submission of exhibits to the notice of reliance one month after the rebuttal period was untimely; however, since respondent did not object to their timeliness, the procedural objection was waived); *Plus Prods. v. Natural Organics, Inc.*, 204 USPQ 773, 775 n.5 (TTAB 1979) (untimely notice of reliance filed prior to testimony period considered where no objection was raised and error was not prejudicial).

Petitioner's manner of filing, however, has caused some confusion because Respondent cites to all three versions, only one of which is public. Additionally, Petitioner does not cite to TTABVUE for any of the evidence attached to its notice of reliance and instead uses its own system of referring to pages of its designated letter exhibits (A-D) that can be found in any of the three filed versions, notwithstanding the different page arrangements in the confidential and public versions. This required the Board to hunt for documents Petitioner cited in support of its arguments,

which was inconvenient to Board to say the least, and confusing to the reader.

In this situation, the Board could have simply referred to any one version of the evidence, noted that the other versions appeared duplicative, and allowed Petitioner to suffer the consequences of any confusion. Instead, the Board exercised its discretion and considered all three versions of the same evidence to ascertain Petitioner's references in its brief. Nevertheless, we reiterate to Petitioner's counsel the guidance in TBMP § 801.01 that, "[t]o allow readers [of briefs] to easily locate materials in the record, the parties should cite to the evidence in the trial record by referencing the TTABVUE entry and page number," and in *Turdin*, 109 USPQ2d at 1476 n.6:¹⁵

Because the Board primarily uses TTABVUE in reviewing evidence, the Board prefers that citations to material or testimony in the record that has not been designated confidential include the TTABVUE docket entry number and the TTABVUE page number. For material or testimony that has been designated confidential and which does not appear on TTABVUE, the TTABVUE docket entry number where such material or testimony is located should be included in any citation.

III. Entitlement to a Statutory Cause of Action¹⁶

A petitioner's entitlement to invoke a statutory cause of action for cancellation of a registration is a necessary element in every cancellation proceeding even if, as here,

¹⁵ A trial brief's "description of the record should comprise a list of the evidence properly introduced by the parties." TBMP § 801.03. Petitioner's brief however, only lists Petitioner's evidence. 16 TTABVUE 4-5, while Respondent's brief properly lists both parties' evidence.

¹⁶ Board decisions previously analyzed the requirements of Sections 13 and 14 of the Trademark Act under the rubric of "standing." Although "[w]e now refer to what previously had been called standing as 'entitlement to a statutory cause of action,' ... our prior decisions and those of the Federal Circuit interpreting 'standing' under §§ 13 and 14 remain applicable." *Chutter, Inc. v. Great Mgmt. Grp., LLC*, 2021 USPQ2d 1001, at *10 n.39 (TTAB

the respondent does not contest the petitioner's entitlement. *Chutter*, 2021 USPQ2d 1001, at *10 (citing *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at *6-7 (Fed. Cir. 2020), *cert. denied*, ___ U.S. ___, 141 S. Ct. 2671, 210 L. Ed. 2d 833 (2021); *Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at *3 (Fed. Cir. 2020), *cert. denied*, ___ U.S. ___, 211 L. Ed. 2d 16 (2021) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014)). Petitioner may seek to cancel Respondent's Registration if its claim falls within the zone of interests protected by the statute, 15 U.S.C. § 1064, and Petitioner has a reasonable belief in damage that is proximately caused by the continued registration of Respondent's mark. *Chutter*, 2021 USPQ2d 1001, at *10 (citing *Spanishtown Enters.*, 2020 USPQ2d 11388, at *1).

Petitioner alleged in its Petition for Cancellation that its application, Serial No. 88378607, to register the mark DIVINE LIGHT HEALING MINISTRIES for "Religious services, namely, conducting minister-conducted non-denominational religious sermons, religious counseling and providing religious guidance session in the field of religious healing, religious counseling, ministerial-lead counseling, and prayer; religious retreats in the field of religious healing; psychic readings and interpretations, and prayer meetings," in International Class 45, was refused based likelihood of confusion with the mark DIRECT DIVINE LIGHT HEALING in Respondent's Registration.¹⁷ Respondent not only admitted this allegation, as

2021) (citing *Spanishtown Enters., Inc. v. Transcend Res., Inc.*, 2020 USPQ2d 11388, at *2 (TTAB 2020)).

¹⁷ 1 TTABVUE 3-4 (¶¶ 1-6).

mentioned previously, but also made of record a copy the file history of Petitioner's refused application showing that to be the case.¹⁸

This is sufficient to establish Petitioner's entitlement to a statutory cause of action under the statute. *See e.g., ShutEmDown Sports Inc. v. Lacy*, 102 USPQ2d 1036, 1041 (TTAB 2012) (pending application refused registration based on a likelihood of confusion with mark in respondent's registration shows petitioner has real interest in proceeding, and has standing); *Life Zone Inc. v. Middleman Grp. Inc.*, 87 USPQ2d 1953, 1959 (TTAB 2008) (opposer's evidence of the suspension of its pending trademark application based on the applicant's application established its standing).

We therefore proceed to consider the merits of Petitioner's claims.

IV. Genericness

We begin with Petitioner's claim that the phrase DIRECT DIVINE LIGHT HEALING is generic for the services recited in Respondent's Registration. Generic terms do not qualify for registration because "by definition [they] are incapable of indicating a unique source." *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1267 (Fed. Cir. 2015) (citing *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987)). They are "the antithesis of trademarks, and can never attain trademark status." *Merrill Lynch*, 4 USPQ2d at 1142.

The ultimate test for determining whether DIRECT DIVINE LIGHT HEALING is generic is its primary significance to the relevant public. *See* Section 14(3) of the

¹⁸ 10 TTABVYE 6-77 (Respondent's Notice of Reliance).

Trademark Act, 15 U.S.C. § 1064(3). *See also In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB, Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991). This involves a two-step inquiry: First, what is the genus (category or class) of the services at issue? Second, is the term DIRECT DIVINE LIGHT HEALING understood by the relevant public primarily to refer to that genus of services? *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Virtual Indep. Paralegals, LLC*, 2019 USPQ2d 111512, *2 (TTAB 2019).

“[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (holding CHURRASCOS, a word that is generic for a type of grilled meat, to be generic for restaurant services because it refers to a key sub-aspect of those services). *See also In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) (BUNDT generic for ring cake mixes, i.e., the subcategory “bundt cakes.”). Thus, any term that the relevant public uses or understands to refer to the genus of goods, or a key aspect of a sub-group of the genus, is generic. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018); *see also In re Consumer Protection Firm PLLC*, 2021 USPQ2d 238, at *5 (TTAB 2021) (“[I]f the proposed mark defines ‘an integral, if not the paramount, aspect of ... [the] services[,] as [the applicant] defines ... [them,]’ the term or phrase sought for registration may be found generic for those services.”)

(quoting *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007)).

A. The Genus

Because the recitation of services in a registration for a service mark defines the scope of rights accorded its owner, typically, “a proper genericness inquiry focuses on the description of services set forth in the certificate of registration.” *Magic Wand*, 19 USPQ2d at 1552. In this case, we find that the relevant genus of services is commensurate with the identification of services in the Registration: “Education services, namely, providing workshops, classes, and training in the fields of metaphysics, spiritual healing, the aura and spiritual growth; Educational services, namely, providing training of doctors, holistic practitioners, massage therapists, and nurses for certification in the field of spiritual healing.” If the purported mark is generic for any one of the services in the identification, the registration is appropriately [cancelled] for the entire class of services. *In re Katch, LLC*, 2019 USPQ2d 233842, *10 (TTAB 2019). *Accord Cordua*, 118 USPQ2d at 1636 (“the genus of the services at issue is adequately defined by a portion of the recitation of services in the application, specifically ‘restaurant services,’”).

Citing *Cordua*, Petitioner notes that recitation of services ends with the wording “for certification in the spiritual healing” and concludes that “[t]he genus of services, therefore, is properly characterized as a spiritual healing certification.”¹⁹ We disagree; under *Cordua*, a shortened form of the recitation of services does not reflect

¹⁹ 16 TTABVUE 10-11 (Petitioner’s Brief).

the genus unless it adequately reflects a portion of the services. Although the wording “for certification in the spiritual healing” identifies a purpose of the education for spiritual healing purposes, the essential service – and thus the genus – remains education in spiritual healing.

B. The Relevant Public and Types of Probative Evidence

The relevant public is the purchasing public for the identified services. *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013); *see also USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 207 L. Ed. 2d 738, 2020 USPQ2d 10729, at *5 (2020) (“whether ‘Booking.com’ is generic turns on whether that term, taken as a whole, signifies to consumers the class of online hotel-reservation services”).

Petitioner argues that “the purchasing or consuming public for the identified education services is comprised of spiritual healers because it is these individuals, not ordinary Americans, that are likely to seek and obtain Registrant’s education services to attain certification status as Direct Divine Light Healers.”²⁰ Again, certification may be a purpose of the education services, but the relevant public is tied to the genus, which reflects the services as described in the registration. Based on the complete recitation of services, we find that the purchasing public consists of not only doctors, holistic practitioners, massage therapists, and nurses seeking training in order to be certified in the field of spiritual healing, but also consumers (ordinary and professional) who seek training in the fields of metaphysics, spiritual healing, the aura and spiritual growth. *See Magic Wand*, 19 USPQ2d at 1553-54.

²⁰ *Id.* at 11.

C. Evidence of the Relevant Public’s Understanding of DIRECT DIVINE LIGHT HEALING

Evidence of this relevant public’s understanding of DIRECT DIVINE LIGHT HEALING may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications, *see Cordua Rests.*, 118 USPQ2d at 1634 and *Merrill Lynch*, 4 USPQ2d at 1143, as well as Registrant’s own specimens of use and promotional materials, *see In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987); *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1958 (TTAB 2018).

We must consider how the relevant public perceives the term DIRECT DIVINE LIGHT HEALING in its entirety. Thus, “even in circumstances where the Board finds it useful to consider the public’s understanding of the individual words in a compound term as a first step in its analysis, the Board must then consider available record evidence of the public’s understanding of whether joining those individual words into one lends additional meaning to the mark as a whole.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1832-33 (Fed. Cir. 2015).

1. Meaning of the Component Terms

The parties’ submitted, and mentioned or discussed, the following dictionary and Internet evidence to show the meaning of the component terms in DIRECT DIVINE LIGHT HEALING (underlining added):

- Definition of light from Dictionary.com defining that term as “something that makes things visible or affords illumination,” and as “God regarded as a source of illuminating grace and strength.”²¹
- Definition of divine from Dictionary.com defining that term as “of or relating to a god, especially the Supreme Being,” and as “addressed, appropriated, or devoted to God or a god; religious; sacred; *divine worship*.”²²
- Wikipedia-excerpted definition from definitions.net explains that “[i]n theology, divine Light (also called divine radiance or divine refulgence) is an aspect of divine presence, specifically an unknown and mysterious ability of angels or human beings to express themselves communicatively through spiritual means, rather than through physical capacities.”²³
- Transcribed sermon from the website Grace to You (gty.org), titled “Jesus: The Divine Light,” refers to “the Light” as “the spiritual light of Christ,” and explains that when it “hits the living soul, ... everything is illuminated in the spiritual realm.”²⁴
- World Divine Light (worlddivinelight.org) has a page titled “The Art of Divine Light,” which is explained as “the art of spiritual purification by Divine Light from God” and states that “[b]y receiving the divine light, your soul mind, and body can be purified, and changes in the invisible worlds – the spiritual worlds – around you will appear in various ways.”²⁵

²¹ 12 TTABVUE 674, 682 (Petitioner’s Notice of Reliance). The second definition was not mentioned by either party, but is noted by the Board.

²² *Id.* at 685. The second definition was not mentioned by either party, but is noted by the Board.

²³ *Id.* at 14 (dictionary.net), 152 (wikipedia.com). Petitioner sources this as a dictionary.com definition, but the notice of reliance reference is actually from dictionary.net. We take into account the fact that dictionary.net, like Wiktionary and Wikipedia, is an open content source and is therefore not as reliable as traditional dictionaries (definitions.net/adddefinition.php). *See In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032 (TTAB 2007) (“Our consideration of Wikipedia evidence is with the recognition of the limitations inherent with Wikipedia (e.g., that anyone can edit it and submit intentionally false or erroneous information.”).

²⁴ 12 TTABVUE 23-29, 23 (Petitioner’s Notice of Reliance).

²⁵ *Id.* at 7-8.

- Article from Live Heal Love (liveheallove.com) titled “what is divine light? Your key to personal & spiritual growth” states that “Divine Light is defined as the spiritual energy that propels the Life Force of God to all creation. A shorter definition is that Divine Light is the conduit of consciousness.”²⁶

The parties did not provide definitions for “direct” or “healing,” so we take judicial notice of their definitions to aid our analysis:²⁷

“Direct”

- “(of light or heat) proceeding from a source without being reflected or blocked” and “aim (something) in a particular direction or at a particular person” (OXFORD ENGLISH US DICTIONARY).²⁸
- “proceeding by the shortest way,” “stemming immediately from a source” and “characterized by close logical, causal, or consequential relationship” (MERRIAM-WEBSTER DICTIONARY).²⁹
- “moving towards a place or object, without changing direction and without stopping, for example in a journey” and “to emphasize the closeness of a connection between two things” (COLLINS DICTIONARY).³⁰

“Healing”

- “to make free from injury or disease: to make sound or whole”; “to make well again: to restore to health”; “to cause (an undesirable condition) to be overcome: MEND”; and “to restore to original purity or integrity.”³¹

²⁶ *Id.* at 34.

²⁷ The Board may take judicial notice of dictionary definitions from online sources when the definitions themselves are derived from dictionaries that exist in printed form or have regular fixed editions. *See In re OEP Enters., Inc.*, 2019 USPQ2d 309323, at *7 n.29; *In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 n.23 (TTAB 2013).

²⁸ <http://lexico.com/en/definition/direct> (accessed April 8, 2022).

²⁹ <http://www.merriam-webster.com/dictionary/direct> (accessed April 8, 2022).

³⁰ <http://www.collinsdictionary.com/dictionary/english/direct> (accessed April 8, 2022).

³¹ <https://www.merriam-webster.com/dictionary/healing> (accessed April 11, 2022).

2. Additional Internet Evidence

Petitioner also provided Internet website evidence referring to “Divine Light Healing” and “Direct Divine Light Healing” to show “that the compound term DIRECT DIVINE LIGHT HEALING is routinely used by the relevant public to identify said healing technique or modality,”³² including the following examples:

- Divine Light Healing Clinic’s (divinelighththealingclinic.com) home page offers “Vortex Healing” and “Divine Energy Healing” treatments and birthday blessings, “Where with noninvasive healing methods we treat any discomfort of Mind, Body and Spirit.”³³
- Omega (eomega.com) promotes an October 1-3, 2021 Divine Light Healing workshop on its website. “During this healing weekend with Rob Wergin, you experience multiple hands-on healing experiences and Divine Light transmissions that create opportunities to clear old patterns, experiences, and beliefs. ... You return home with a renewed connection to Divine energy and a healthier, more vibrant body, mind and spirit.”³⁴
- Cynthia, of Equilibrium by Cynthia (equilibriumbycynthia.com), explains on her “About” page that she is a “light worker, teacher, joy ombassador (sic)” and that “[i]n 2015,” she “found Divine Light Meditation at [Respondent’s company], and found it to be deeply transformative.” “Cynthia began her study of metaphysics at [Respondent’s company] and ... is [now] a certified metaphysician and spiritual healer—earning her credentials most recently in Direct Divine Light Healing™ under the tutelage of her beloved teachers, Barbara Martin and Dimitri Moraitis [owners of Respondent].”³⁵
- Emily Kayaloglou, on a page from her website, thehappyconnection.com titled “What is Direct Divine Light Healing,” credits Barbara Y. Martin and Dimitri Moraitis [of Respondent] as the developers of Direct Divine Light Healing, which she states is “based on healing traditions dating back 4,000 years.” According to her

³² 16 TTABVUE 11-12 (Petitioner’s Brief).

³³ 12 TTABVUE 16 (Petitioner’s Notice of Reliance).

³⁴ *Id.* at 17.

³⁵ *Id.* at 19-20.

explanation, “[t]he healer directs Divine Light into your aura to restore health and balance.”³⁶

- Eventbrite (eventbrite.com) lists two past events including “Divine Light Healing Experience” by Cynthia Avery and “Divine Light Healing & Guidance with Renee” by Inspired Events and Advenurca, but provides no other details.³⁷

- TimeOut (timeout.com), under “Things to Do” in San Diego, promotes a weekly “Divine Light Healing and Meditation” where one can “[e]njoy deep, guided meditations focused on ‘Bringing in the Light’ into our energy centers. ... This ancient, very powerful yet simple technique helps heal our wounds, address our core issues, and improve our life circumstances.”³⁸

- Kym, of Shanti living Wellness (shantiliving-wellness.com) promotes “Healing with Spiritual Energy and Divine Light with Direct Divine Light Healing™ technique,” which she learned from her teachers “Barbara Martin and Dimitri Moraitis,” the founders of Respondent. She “offers healing sessions as a guide and conduit of spiritual energy and Divine Light.” “Each healing session facilitates Spiritual Energy, guiding individuals to connect to their true nature and to Divine Source. This spiritual healing modality works with the aura and empowers individuals to heal and accelerate their spiritual growth.”³⁹

Petitioner further contends that the above-noted evidence showing the primary significance of DIRECT DIVINE LIGHT HEALING is “buttressed by the fact that Registrant, itself, uses the Mark not as a source indicator but as the generic name for the spiritual healing certification that Registrant offers,”⁴⁰ and offers two examples:

- Respondent, on Patch (patch.com), promoted an event called “Spiritual Arts Institute Presents Divine Light Group Healing,” explaining that “Our powerful group healing uses one of the most dynamic and effective energy healing modalities – Direct Divine Light Healing™. This full-

³⁶ *Id.* at 44.

³⁷ *Id.* at 21-22.

³⁸ *Id.* at 45.

³⁹ *Id.* at 47.

⁴⁰ 16 TTABVUE 14 (Petitioner’s Brief).

spectrum aura therapy infuses the body with Divine Light consciousness to connect you to the Source of health and well-being.”⁴¹

- Respondent, on its website (spiritualarts.org) explains its Direct Divine Light Healing Program as follows:⁴²

For those who are committed to deepening their spiritual growth and to help others heal, The Direct Divine Light Healing Program is a two-year certification training in Direct Divine Light Healing™, a full-spectrum aura therapy and one of the most dynamic and effective spiritual healing modalities. This program empowers you to help others to heal and accelerate your own direct connection to the Divine.

...

Ideal for doctors, holistic practitioners, massage therapists, and nurses who wish to enhance their healing skills or anyone who wishes to delve deeply into their spiritual nature. A certificate is awarded upon completion.”

...

Topics Covered [include]: • The principles of spiritual healing [and] • The various types of healing applications, including mental, emotional, physical, astral, absentee, and soul healing.

3. Respondent’s Course Materials

Petitioner also cites to Respondent’s course materials to establish the meaning of direct healing.⁴³ For example, Chapter 1 of Respondent’s publication, “The Techniques of Spiritual Healing – Part 1,” explains that:

Direct healing is where the healing is done through the hands and the palm chakras in the hands. This is the simplest and safest way to be the channel of healing and can be used in all facets of consciousness: spiritual, physical, mental and emotional. During a direct healing, the spiritual healers from the other side overshadow the healer and use him or her as a base of power. When the physical healer is in a good spiritual place, this technique is a tremendous boon to the healing process.

⁴¹ 12 TTABVUE 9 (Petitioner’s Notice of Reliance).

⁴² *Id.* at 13.

⁴³ 16 TTABVUE 16-21 (Petitioner’s Brief).

The general technique employed in direct healing is to hold the hand about 4 inches above the affected area and ask that the light be down-rayed to that area through the palm chakras of your hands. The palm of each hand has its own little chakra. The palm chakras are very potent and powerful. They are red in color and about the size of a quarter and located in the middle of the palm. Their purpose is to be conductors of energy for healing. The energy flows very quickly when working with these points. In addition to the palm chakras, we have energy radiations that move out from the fingertips. Their color is also red and they act as antennas to radiate energy as well. Our hands have been designed to truly be “healing hands.”

Your hands will be your primary tools of healing. What generally happens is the healers work through your Higher nature to down-ray the healing light to your palm chakra, which focuses the energy, and then direct your hand to the area that needs the healing. Occasionally, the spiritual healer will overshadow the physical hands directly. There are many variations to this process.⁴⁴

Chapter 1 of Respondent’s publication is titled “Direct Healing with Divine Light” and further explains the concept of “DIRECT HEALING – This technique of directing light to the chakras through the palms of your hands is the fundamental tool in your

⁴⁴ 9 TTABVUE 608 (Petitioner’s Notice of Reliance – Confidential Version) (emphasis added). Although this portion of Respondent’s course publication was redacted from the public version of Petitioner’s Notice of Reliance at 9 TTABUVE, Petitioner quoted it in its trial brief and Respondent posed no objection in its trial brief. Furthermore, a review of Respondent’s publication reveals that designating the entirety of its content as confidential evidence, as was done here, is excessive. Board proceedings are designed to be public, and the improper designation of material as confidential thwarts the Board’s ability to discuss the evidence of record as needed to explain the bases for decisions. *See Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1402 (TTAB 2010). In this case, we will treat as confidential evidence that is clearly confidential or commercially sensitive, but we will not otherwise be bound by a confidentiality designation. Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g) (“The Board may treat as not confidential that material which cannot reasonably be considered confidential, notwithstanding a designation as such by a party.”); *see also Noble House Home Furnishings, LLC v. Floorco Enters., LLC*, 118 USPQ2d 1413, 1416 n.21 (TTAB 2016) (“[W]e will treat only ... evidence that is truly confidential or commercially sensitive as such.”).

healing work.”⁴⁵ As Petitioner notes, “[t]he chapter then goes on to provide [a] step-by-step guide on how to conduct direct healing” which includes the following explanations excerpted from the materials:

Let us look at how to conduct direct healing. ... The steps to administer direct healing are as follows:

Step1 - Send light to recipient before they come.

Before your client arrives, ask the light to touch into their Higher Self to prepare them for the healing. Also ask the light to fill your home or the place you are conducting the healing with Divine Light and especially ask the light to touch into the place you will be doing the actual healing. ...

Step 4 - Greet them with love and compassion.

[] Your job in conducting the direct healing is to be the channel. You (sic) main job initially, is to get the person to relax and let go of the problem so they can more effectively receive the light. This is the time to connect with God.

...

Step 6 - Administer light.

Now you are ready to do the direct healing. Before beginning, decide what energies you will bring in. ...

Begin with the first ray and verbally ask for the light to down-ray to them touching into their centers then their astral, physical, mental etheric bodies. This helps to generate power and to help the person receiving the healing become more receptive to the light and helps you to connect with the light stronger.

In the case of direct healing, the light will be flowing from you to them rather than from their own Higher Self. As you invoke light rays, the healers down-ray the light from your Higher Self to your mental etheric silvery point.

⁴⁵ *Id.* at 614-15.

Once you have called on the light, then begin by holding your hand six inches above their head at their mental etheric silvery point. The light will flow from your silvery point to your right hand to their silvery point. It will then encircle their mental etheric body in seven flows. Hold for about fifteen seconds. Then hold your hand four inches above each center for about fifteen seconds or so. The light will move directly from your hand to their center and activate them in the light.

Repeat the process with each ray you bring down.

When you are finished, step back out of their auric field and ask for protection to surround them. Thank the Holy Ones for the blessing they have received. If they wish, they can lie a few minutes to let the energy equalize, and then you are done.⁴⁶

D. Analysis

The TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) explains that:

When a term consists of a compound word or a telescoped word, the examining attorney may establish that the term is generic by producing evidence that each of the constituent words is itself generic, and that the separate words retain their generic significance when joined to form the compound or telescoped word that has “a meaning identical to the meaning common usage would ascribe to those words as a compound.”

TMEP § 1209.01(c)(i) (quoting *Gould Paper*, 5 USPQ2d at 1111–12). Referencing this TMEP section, Petitioner argues the evidence suggests that “the term ‘direct healing’ denotes healing performed through the healer’s hands. Notably, however, this

⁴⁶ *Id.* at 616-17. Petitioner also quotes, and embeds within the text of its brief a portion of one of Respondent’s promotional pamphlets. Although the excerpted portion in Petitioner’s brief is legible, the pamphlet contained in the record is illegible and we therefore do not consider this evidence. *See, e.g., RxD Media, LLC v. IP Application Dev. LLC*, 125 USPQ2d 1801, 1806 n.16 (TTAB 2018) (“Illegible evidence is given no consideration.”), *aff’d*, 377 F. Supp. 3d 588 (E.D. Va. 2019), *aff’d*, 986 F.3d 361, 2021 USPQ2d 81 (4th Cir. 2021); *Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1758 (TTAB 2013), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014) (“Petitioner has a duty to ensure that the evidence it submits is legible.”).

definition is not lost or transformed in the context of the entire compound mark DIRECT DIVINE LIGHT HEALING.”⁴⁷ Petitioner concludes that the term is generic because:

The phrase “divine light”, meaning light emanating from God and manifesting as a form of spiritual energy, and the phrase “direct healing”, meaning healing performed through the healer’s hands, each retain their generic significances when joined to form the compound Mark. In other words, DIRECT DIVINE LIGHT HEALING is a type of spiritual healing technique where light emanating from God is directed into one’s body through the healer’s hands. Registrant’s educational services teach, train, and certify consumers in performing DIRECT DIVINE LIGHT HEALING. The relevant purchasing public, comprised of spiritual healers seeking certification, understand that the Mark primarily refers to education services in the foregoing type of healing technique or modality.⁴⁸

Having carefully considered the record as a whole, we find that the term DIRECT DIVINE LIGHT HEALING is understood by the relevant public primarily to refer to the genus of the services in Respondent’s Registration, whether the education in spiritual healing is offered to the general public or those in healthcare for the purpose of certification. “Divine” means “of or relating to a god, especially the Supreme Being,” and “light” refers to something that is “God regarded as a source of illuminating grace and strength.”⁴⁹ The Internet evidence of record shows that third-parties use those words together, as “divine light,” to refer to (i) “an aspect of divine presence, specifically an unknown and mysterious ability of angels or human beings to express

⁴⁷ 16 TTABVUE 22 (Petitioner’s Brief) (internal citations omitted).

⁴⁸ *Id.*

⁴⁹ 12 TTABVUE 682, 685 (Petitioner’s Notice of Reliance).

themselves communicatively through spiritual means”;⁵⁰ (ii) “the spiritual light of Christ” where “everything is illuminated in the spiritual realm” when it “hits the living soul”;⁵¹ and as (iii) “the spiritual energy that propels the Life Force of God to all creation” or “the conduit of consciousness.”⁵²

Respondent counters that “while some may propose a definition for Divine Light, no one consistently provides the same meaning.” Although the definitions use different wording, we find that Petitioner has aptly characterized the meaning of the term “Divine Light” shown by the evidence as generally “meaning light emanating from God and manifesting as a form of spiritual energy.”⁵³ Indeed, Respondent, in promoting one of its seminars, explained that its “Divine Light Healing Modality™

⁵⁰ *Id.* at 14, 152. According to Respondent, the Wikipedia article from which this first noted definition derives also states that “Bible commenters such as John W. Ritenbaugh see the presence of light as a *metaphor* of true, good and evil, knowledge and ignorance.” *Id.* at 12. “Thus,” Respondent asserts, “‘Divine Light’ is also suggestive of truth, good and evil, knowledge and ignorance.” *Id.* at 12. We do not find that one Bible commentator’s purported belief about the significance of a “presence of light” establishes another meaning that is suggestive of Respondent’s services. Regardless, the question before us is the understanding of “the relevant public,” which in this case consists of consumers seeking training in the fields of metaphysics, spiritual healing, the aura and spiritual growth. Those persons would be exposed to the purported mark in the context of those services and, accordingly, that is the context in which we must consider the primary meaning of the term at issue. As noted by the Court of Appeals for the Second Circuit in *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 189 USPQ 759 (2nd Cir. 1975), in the spectrum of distinctiveness (generic/descriptive/suggestive/arbitrary/fanciful), “a term that is in one category for a particular [service] may be in quite a different one for another, ... [and] a term may have one meaning to one group of users and a different one to others...,” *id.* at 764, and “a word may have more than one generic use,” *Id.* at 766. *See also In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1588 (TTAB 2014) (meteorological meanings of “cloud” irrelevant as to whether CLOUDTV is generic for computer goods and services); *In re Rosemount Inc.*, 86 USPQ2d 1436, 1439 (TTAB 2008) (“It is well established that we must look to the meaning of the term within the context of the identified [services].”).

⁵¹ *Id.* at 23.

⁵² *Id.* at 34.

⁵³ 16 TTABVUE 22 (Petitioner’s Brief).

... infuses the body with Divine Light consciousness to connect you to the Source of health and well-being.”⁵⁴

As mentioned above, a key aspect, central focus or feature, or main characteristic of a service may be generic for that service. *Cordia Rests.*, 118 USPQ2d at 1637-38 (CHURRASCOS held generic for restaurant services where term referred to a key aspect of a class of restaurants called “churrasco restaurants” that served churrasco steak). Consistent with this understanding, the recitation of services in Respondent’s Registration, the Internet evidence of record, and Respondent’s own course materials, healing – which means “to make free from injury or disease,” “to make sound or whole,” “to make well again,” “to restore to health,” “to cause (an undesirable condition) to be overcome: MEND,” and “to restore to original purity or integrity” – is clearly a key aspect of Respondent’s “workshops, classes, and training in the fields of metaphysics, **spiritual healing**, the aura and spiritual growth” (emphasis added) and thus generic of them.

We further find that when the terms “divine light” and “healing” are combined as “divine light healing,” they retain their generic significance as applied to the services. For example, the Divine Light Healing Clinic offers “Divine Energy Healing” “[w]here with noninvasive healing methods we treat any discomfort of Mind, Body and Spirit.”⁵⁵ Omega similarly promotes a “Divine Light Healing Workshop” where one can “experience multiple hands-on healing experiences and Divine Light

⁵⁴ 12 TTABVUE 9 (Petitioner’s Notice of Reliance) (emphasis added).

⁵⁵ *Id.* at 16.

transmissions that create opportunities to clear old patterns, experiences, and beliefs,” purportedly allowing one to “return home with a renewed connection to Divine energy and a healthier, more vibrant body, mind and spirit.”⁵⁶ Likewise, Emily Kayaloglou, a graduate of Respondent’s program, explains on her website that in Divine Light Healing, “[t]he healer directs Divine Light into your aura to restore health and balance.”⁵⁷

The last example also shows that the word “direct” – which means “proceeding from a source without being reflected or blocked,” to “aim (something) in a particular direction or at a particular person,” and “stemming immediately from a source” and “characterized by close logical, causal, or consequential relationship”⁵⁸ – identifies a key aspect of Respondent’s method of divine light healing. In other words, the word “direct” in the phrase “DIRECT DIVINE LIGHT HEALING” implies that the healing is provided directly by or through the healer via the healer’s connection with the Divine, via the healer’s hands, or the person’s own direct connection with the Divine. Just as the terms “divine light” and “healing” retain their generic significance when combined as “divine light healing,” the terms “direct” and “divine light healing” also retain their generic significance when combined.

Excerpts from Respondent’s course materials, which bear repeating here, are most persuasive on this point. For example, Respondent clearly explains therein that:

⁵⁶ *Id.* at 17.

⁵⁷ *Id.* at 44.

⁵⁸ *See* notes 29-30, *supra*.

Direct healing is where the healing is done through the hands and the palm chakras in the hands. This is the simplest and safest way to be the channel of healing and can be used in all facets of consciousness: spiritual, physical, mental and emotional. ...

The general technique employed in direct healing is to hold the hand about 4 inches above the affected area and ask that the light be down-rayed to that area through the palm chakras of your hands. The palm of each hand has its own little chakra. The palm chakras are very potent and powerful. They are red in color and about the size of a quarter and located in the middle of the palm. Their purpose is to be conductors of energy for healing. The energy flows very quickly when working with these points. In addition to the palm chakras, we have energy radiations that move out from the fingertips. Their color is also red and they act as antennas to radiate energy as well. Our hands have been designed to truly be “healing hands.”

Your hands will be your primary tools of healing. What generally happens is the healers work through your Higher nature to down-ray the healing light to your palm chakra, which focuses the energy, and then direct your hand to the area that needs the healing. Occasionally, the spiritual healer will overshadow the physical hands directly. There are many variations to this process.⁵⁹

Petitioner also explains in those course materials that:

In the case of direct healing, the light will be flowing from you to them rather than from their own Higher Self. As you invoke light rays, the healers down-ray the light from your Higher Self to your mental etheric silvery point.

Once you have called on the light, then begin by holding your hand six inches above their head at their mental etheric silvery point. **The light will flow from your silvery point to your right hand to their silvery point.** It will then encircle their mental etheric body in seven flows. Hold for about fifteen seconds. Then hold your hand four inches above each center for about fifteen seconds or so. **The light will move directly from your hand to their centers and activate them in the light.**⁶⁰

⁵⁹ 9 TTABVUE 608 (Petitioner’s Notice of Reliance – Confidential). *See* note 42, *supra*.

⁶⁰ *Id.* at 616-17.

Based on the foregoing evidence, we find that the words direct, divine, light, and healing, are each generic for Respondent's services of "providing workshops, classes, and training in the fields of metaphysics, spiritual healing, the aura and spiritual growth," and they retain their generic significance when joined together to form the compound term DIRECT DIVINE LIGHT HEALING that has "a meaning identical to the meaning common usage would ascribe to those words as a compound." *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019, 2025 (TTAB 2010) (quoting *Gould Paper*, 5 USPQ2d at 1111-12). *See also In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009) ("[I]f the compound word would plainly have no different meaning from its constituent words, and dictionaries, or other evidentiary sources, establish the meaning of those words to be generic, then the compound word too has been proved generic. No additional proof of the genericness of the compound word is required."). Accordingly, consumers will perceive the term in its ordinary dictionary sense as educational training in the direct application of Divine Light for healing.

Respondent takes issue with some of the website evidence offered by Petitioner, including the evidence from equilibriumcynthia.com, thehappyconnection.com, and shantiliving-wellness.com, because those websites either belong to current or former students of Respondent, or its founders, whom they credit for development of the DIRECT DIVINE LIGHT HEALING technique they use, and they apply the ™ symbol to the term.⁶¹ Respondent further asserts that the references from its own

⁶¹ 17 TTABVUE 9-10 (Respondent's Brief).

website and on patch.com “show that [Respondent] uses the words ‘Direct Divine Light Healing’ with a ‘TM’ symbol and with the words ‘Divine Light capitalized in order to indicate the source of [Respondent’s] services.”⁶² Respondent concludes, “[t]hus, this evidence shows that ‘Direct Divine Light Healing’ is a trademark associated with Defendant for educational services, and that Defendant’s students use the term ‘Divine Light’ to indicate completion of Defendant’s coursework” or “to refer to [Respondent’s] teachings.”⁶³

However, the mere fact that the owners of those websites may be students of Respondent or its founders does not make their generic use of the term any less generic. Nor does their use or Respondent’s use of the TM symbol, as such symbol cannot by itself convert a term that does not function as a trademark into one that does. *See In re Crystal Geysler Water Co.*, 85 USPQ2d 1374, 1379 n.4 (TTAB 2007) (“We further note that use of the TM designation does not in itself elevate descriptive matter to a trademark”); *In re Union Carbide Corp.*, 171 USPQ 510 (TTAB 1971) (“The fact that applicant has used the term ‘MINIGENERATOR’ in a trademark manner and employed the designation ‘TM’ in association therewith does not, per se, establish that it does perform or is capable of performing the function of a trademark.”).

Neither does the use of initial caps by Respondent or others to describe “Divine Light” compel a different result. *See In re Empire Tech. Dev. LLC*, 123 USPQ 2d 1544,

⁶² *Id.* at 10.

⁶³ *Id.*

1559 (TTAB 2017), citing *Capital Project Mgmt. Inc. v. IMDISI Inc.*, 70 USPQ2d 1172, 1179 (TTAB 2003) (finding “time impact analysis” to be generic even though “the term often appears in print in initial capital letters, that is, ‘Time Impact Analysis.’”). It is common knowledge that references to, and things emanating from, God, such as ‘Divine Light’ – the purported source of Respondent’s healing method – are often displayed in initial caps. Indeed, Respondent also uses initial caps to refer to “God,” “the Divine,” “the Holy Ones,” “Spiritual Etherea,” “Eternal Life,” “Earth,” “Spiritual Tone,” “The Word of God,” and “The Tree of Knowledge of Good and Evil,” none of which Respondent appears to claim as trademarks.⁶⁴

Respondent argues that “[a]t most, [Petitioner’s] evidence tends to show that third-party users have only recently begun to adopt Plaintiff’s terminology, ‘Divine Light Healing’ or ‘Divine Light’ as part of their own trademark for educational services, creating a risk of weakness in these terms, but not genericness.”⁶⁵ As examples, Respondent refers to (i) the October 3, 2021 workshop titled “Divine Light Healing” on the eomega.com website as being “very recent, and not likely to instill the minds of prospective consumers that ‘Divine Light’ is a generic term, and (ii) the Wikipedia article cited by Respondent (to show where the definition of “Divine Light” came from) as being “last edited on February 24, 2021, which is insufficient time for prospective consumers to understand ‘Divine Light’ as a generic term.”

In essence, Respondent is arguing that the terms DIVINE LIGHT and DIVINE

⁶⁴ *E.g.*, 9 TTABVUE 451, 460, 468, 472, 482-83, 487, (Petitioner’s Notice of Reliance – Confidential). *See* note 42, *supra*, regarding the citation to documents under seal.

⁶⁵ 17 TTABVUE 12 (Respondent’s Brief).

LIGHT HEALING are not generic because Respondent was the first entity to use those terms and they were not generic when Respondent adopted them. However, the record does not establish when Respondent or the other entities using those terms first started using them, and “statements in a brief cannot take the place of evidence.” *In re Simulations Publ’ns, Inc.*, 521 F.2d 797, 187 USPQ 147, 148 (CCPA 1975). Regardless, even if it were true that Respondent was the first party to use these terms, we are not limited to determining the status of a term as of the date it was first adopted. “To determine if a mark is generic, we examine the evidence up through the time of trial.” *Alcatraz Media*, 107 USPQ2d at 1758. Furthermore, the fact that a party may be the first or only user of a generic designation does not justify registration if the only significance conveyed by the term is that of a category of services. *Empire Tech*, 123 USPQ2d at 1549 (citing *In re Greenliant Systems Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010). *See also Merrill Lynch*, 4 USPQ2d at 1142 (“To allow trademark protection for generic terms, i.e., names which describe the genus of [services] being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his [services] as what they are.”).

As Judge Rich explained in *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 219, (CCPA 1978) (Rich, J., concurring), a term that immediately and unequivocally describes the purpose and function of Respondent’s services is a name for those services, for “[t]hat is what names do. They tell you what the thing is.” Respondent uses the terms DIRECT DIVINE LIGHT and DIRECT DIVINE LIGHT

HEALING as the names of things, not as source-identifiers. *BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 35 USPQ2d 1554, 1557 (Fed. Cir. 1995) (quoting *Marvin Ginn*, 228 USPQ at 530) (“The generic name of a thing is in fact the ultimate in descriptiveness.”). For example, Respondent explains that “[c]rystal healing is now one of the four healing modalities that are part of **your** Direct Divine Light Healing **work**,” and that “[y]ou can direct Divine Light to the meridians to increase the flow of ch’i in the etheric template.”⁶⁶ A party’s own generic use of a term is strong evidence of genericness. See *Turtle Wax Inc. v. Blue Coral Inc.*, 2 USPQ2d 1534, 1536 (TTAB 1987).

We find that the evidence of record in its entirety proves that consumers perceive the term DIRECT DIVINE LIGHT HEALING as a generic term for the education services recited in Respondent’s Registration (“namely, providing workshops, classes, and training in the fields of metaphysics, spiritual healing, the aura and spiritual growth” and “providing training of doctors, holistic practitioners, massage therapists, and nurses for certification in the field of spiritual healing”).

V. Mere Descriptiveness

Implicit in our holding that DIRECT DIVINE LIGHT HEALING is generic, based on the evidence of record, is our finding that it is also not only merely descriptive of Registrant’s identified services, but highly descriptive of them under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). “The generic name of a thing is in fact the ultimate in descriptiveness.” *BellSouth Corp. v. DataNational Corp.*, 60 F.3d

⁶⁶ 9 TTABVUE 451, 645 (Petitioner’s Notice of Reliance – Confidential).

1565, 35 USPQ2d 1554, 1557 (Fed. Cir. 1995) (quoting *Marvin Ginn*, 228 USPQ at 530); *Weiss Noodle Co. v. Golden Cracknel and Specialty Co.*, 290 F.2d 845, 129 USPQ 411, 413 (CCPA 1961) (“The name of a thing is the ultimate in descriptiveness.”). We find that the same evidence found sufficient to prove that DIRECT DIVINE LIGHT HEALING is generic for the genus of services in Registrant’s Registration is sufficient to show that it is merely descriptive.

VI. Failure to Function

Petitioner’s final claim that DIRECT DIVINE LIGHT HEALING fails to function as a source identifier and should be cancelled because it “is more properly characterized as a certification mark other than a trademark”⁶⁷ is unavailing.

Certification marks indicate that goods or services provided by persons other than the mark owner adhere to specified standards set by the mark owner, whereas trademarks indicate the source of the goods or services. *See* Section 45 of the Trademark Act, 15 U.S.C. 1127 (defining “certification mark”); *see also* TMEP § 1306.01(b) (“[T]he purpose of a certification mark is to inform purchasers that the goods or services of a person possess certain characteristics or meet certain qualifications or standards established by another person). A trademark may not also be a certification mark. *Midwest Plastic Fabricators, Inc. v. Underwriters Labs., Inc.*, 906 F.2d 1568, 15 USPQ2d 1359, 1361 (Fed. Cir. 1990) (“if a certification mark’s owner also allowed the mark to be used as a trademark, there would be a basis for cancellation of the registration”).

⁶⁷ 16 TTABVUE 32 (Respondent’s Brief).

The fact that Respondent's Registration identifies the purpose of one of its services as being "for certification" does not mean it is a certification mark, and thus unregistrable as a trademark. Nor does the evidence support Petitioner's contention that it is a certification mark. We therefore do not find that DIRECT DIVINE LIGHT HEALING fails to function for that reason.

VII. Conclusion

In sum, the evidence of record establishes that DIRECT DIVINE LIGHT HEALING is generic for, and merely descriptive of, "Education services, namely, providing workshops, classes, and training in the fields of metaphysics, spiritual healing, the aura and spiritual growth" in Respondent's Registration. However, we do not find that it fails to function because it "is more properly characterized as a certification mark."

Decision: The cancellation is granted and Registration No. 4829973 will be cancelled in due course.