

This Opinion is Not a
Precedent of the TTAB

Mailed: August 13, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joan H Walker Photography LLC

Serial No. 97743111

Glenn K. Robbins II of Spencer Fane LLP,
for Joan H Walker Photography LLC.

Patty Evanko, Trademark Examining Attorney, Law Office 119,
Brett Golden, Managing Attorney.

Before Heasley, Stanley, and O'Connor,
Administrative Trademark Judges.

Opinion by Stanley, Administrative Trademark Judge:

Joan H Walker Photography LLC (“Applicant”) seeks registration on the Principal Register of the standard-character mark THE TRAVELING PAWTOGRAPHERS for “pet portrait photography services,” in International Class 41.¹

¹ Application Serial No. 97743111 was filed on January 5, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration of Applicant's mark as merely descriptive of the identified services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. The case is now fully briefed. We affirm the refusal to register Applicant's mark.²

I. Mere Descriptiveness Refusal – Applicable Law

Section 2(e)(1) of the Trademark Act excludes from registration any “mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive ... of them.” 15 U.S.C. § 1052(e)(1). A mark is “merely descriptive” within the meaning of Section 2(e)(1) if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017). “A mark need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods [or services].” *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *4 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 1218 (Fed. Cir. 1987)).

² Citations to the prosecution file are to the USPTO's TRADEMARK STATUS & DOCUMENT RETRIEVAL (“TSDR”) system in .pdf format. Citations to the appeal record are to TTABVUE, the Board's online docketing system.

Whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use,’” *Chamber of Commerce of the U.S.*, 675 F.3d at 1300 (quoting *In re Bayer AG*, 488 F.3d 960, 963-64 (Fed. Cir. 2007)), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 2016 TTAB LEXIS 150, at *4 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978)). We ask “whether someone who knows what the goods and services are will understand the mark to convey information about them.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012) (internal quotation omitted)). A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods or services are to reach a conclusion about their nature from the mark. *See, e.g., Fat Boys*, 2016 TTAB LEXIS 150, at *11.

We must “consider the **commercial impression** of a mark as a whole.” *Real Foods*, 906 F.3d at 974 (emphasis in bold here, in italics in original). “Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase.” *In re Zuma Array Ltd.*, Ser. No. 79288888, 2022 TTAB LEXIS 281, at *8 (TTAB 2022) (quoting *In re Omniome, Inc.*, Ser. No. 87661190, 2019 TTAB LEXIS 414, at *12 (TTAB 2019)). “[I]f each component retains its merely descriptive significance in relation to the goods or services, the

combination results in a composite that is itself merely descriptive.” *Omniome*, 2019 TTAB LEXIS 414, at *12. Only where the combination of merely descriptive terms creates a unitary mark, or a mark with a unique, incongruous, or otherwise nondescriptive meaning in relation to the goods or services is the mark registrable as suggestive. *See In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1174 (Fed. Cir. 2004) (citing *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985)).

“The major reasons for not protecting [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods [or services]; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products [or services].” *Abcor Dev. Corp.*, 588 F.2d at 813 (citation omitted).

Refusals for mere descriptiveness, like other refusals, are based on evidence bearing on public perception of the mark. *See, e.g., Real Foods*, 906 F.3d at 974 (descriptiveness inquiry “consider[s] the commercial impression of a mark as a whole, viewed through the eyes of a consumer”) (cleaned up, citation omitted); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341 (Fed. Cir. 2001) (“The perception of the relevant purchasing public sets the standard for determining descriptiveness.”). Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source, *Nett Designs*, 236 F.3d at 1341, such as dictionaries, newspapers, or surveys. *Bayer*, 488 F.3d at 964. It also may be obtained from websites and publications. *See N.C. Lottery*, 866 F.3d at 1368. In this particular case, the

involved application was filed under Section 1(b) of the Trademark Act, meaning that Applicant has yet to claim use in the United States. Nonetheless, the Examining Attorney may introduce or rely upon excerpts from Applicant's own materials, website, or news articles as evidence of public perception of the mark. *In re Promo Ink*, Ser. No. 76541018, 2006 TTAB LEXIS 138, at *4-5 (TTAB 2006) (examining attorney may introduce evidence that applicant's own literature supports descriptiveness of term despite the fact that application is based on intent-to-use under Trademark Act Section 1(b)).

"It is the Examining Attorney's burden to show, prima facie, that a mark is merely descriptive of an applicant's goods or services." *Fat Boys*, 2016 TTAB LEXIS 150, at *5 (citing *Gyulay*, 820 F.2d at 1217). If the Examining Attorney establishes a prima facie case, the burden shifts to the applicant to rebut that case. *Id.*

II. Is Applicant's Mark Merely Descriptive of the Identified Services?

The Examining Attorney argues that "the term TRAVELING means 'going to different places instead of staying in one place,'" "PAWTOGRAPHER(S) is used in the pet photography business to identify photographers that provide photography services specifically related to pets," and "the combined wording THE TRAVELING PAWTOGRAPHERS has a readily understood meaning in relation to pet photography services because it immediately tells purchasers that the services are provided by pet photographers that provide photography services at different locations."³

³ Examining Attorney's Br., 10 TTABVUE 3.

To support her argument, the Examining Attorney points to Applicant's own statements during prosecution of the involved application, as well as Internet evidence submitted by both Applicant and the Examining Attorney. In the first Non-Final Office Action, the Examining Attorney issued a refusal under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the mark subject to Registration No. 5509907, namely the standard-character mark PAWTOGRAPHY for "photography; photography services; pet photography," in International Class 41.⁴ In obviating the Section 2(d) refusal, Applicant argued that "[t]he cited mark [PAWTOGRAPHY] **describes** the field generally of pet photography services,"⁵ and as "**evidence of the extensive usage in connection with pet photography services,**"⁶ Applicant submitted Internet screenshots of third parties "incorporating the wording 'pawtography' or 'pawtographer'[,]" including the following (all bold emphasis added):

- (mjpawtography.com): Screenshot of the website for MJ **Pawtography**, advertising itself as "The Finest Dog Photographer in the Quad Cities."⁷
- (bougiepetpawtography.com): Screenshot of the website for Bougie Pet **Pawtography**, advertising its pet photography services ("While we **love pet photography (or, rather, pawtography)**, we want to create full

⁴ September 29, 2023 Non-Final Office Action, TSDR at 2-3, 5. We take judicial notice that Registration No. 5509907 has since been canceled because the registrant did not file an acceptable declaration under Trademark Act Section 8, 15 U.S.C. § 1058. *Harry Winston, Inc. v. Bruce Winston Gem Corp.*, Opp. No. 91153147, 2014 TTAB LEXIS 284, at *11 n.19 (TTAB 2014) (taking judicial notice of status of registration properly introduced into the record).

⁵ March 26, 2024 Response to Office Action, TSDR at 2 (emphasis added).

⁶ *Id.* at 3 (emphasis added).

⁷ *Id.* at 10-13.

experiences, whether through private sessions, mini session events and pup pawties, or through our exclusive Pet Anderson Days”).⁸

- (teddybeargoldendoodles.com/pawtography): Screenshot of the “**Pawtography**” page for the website of Smeraglia’s TeddyBear Goldendoodles, advertising its pet photography services (“Here at Smeraglia, **we offer custom professional pet portraits. We call it Pawtography!**”).⁹
- (pawtographyphotos.com): Screenshot of the website for **Pawtography** Los Angeles Pet Photo Studio, advertising its pet photography services.¹⁰
- (jubileepawtography.com/About): Screenshot of the website for Jubilee **Pawtography**, advertising its pet photography services.¹¹
- (colorbreakfast.com/pawtography): Screenshot of the “**Pawtography**” page for Color for Breakfast, advertising its pet photography services.¹²
- (nycpetpawtographer.com): Screenshot of the website for NYC Pet **Pawtographer** Carmen Gonzalez, advertising her pet photography services.¹³
- (trickdogu.com/pawtography): Screenshot of the “**Pawtography**” page for the website of Trick Dog U, advertising its pet photography services (“**Our pet pawtography services are available by appointment only**”).¹⁴
- (sjpawtography.com): Screenshot of the website for SJ **Pawtography** Pet Photography, advertising its pet photography services.¹⁵
- (minormomentsphotography.com/pawtography): Screenshot of the “**Pawtography**” page for the website of Minor Moments Photography, advertising its pet photography services.¹⁶

⁸ *Id.* at 14-17.

⁹ *Id.* at 18-19.

¹⁰ *Id.* at 20-22.

¹¹ *Id.* at 26.

¹² *Id.* at 27-29.

¹³ *Id.* at 30-32.

¹⁴ *Id.* at 33-36.

¹⁵ *Id.* at 37-41.

¹⁶ *Id.* at 42-46.

- (yelp.com/biz/avery-rose-pawtography-noblesville): Yelp listing for “Avery Rose **Pawtography**,” a “Pet Photography” business.¹⁷
- (puppawtography.com): Screenshot of the website for Pup **Pawtography**, advertising its pet photography services.¹⁸
- (pawtographyandprints.com): Screenshot of the website for **Pawtography** and Prints, advertising its photography services.¹⁹
- (photography.placefull.com/pet-pawtography-montgomery-al?alsolookedat): Business listing for “Pet **Pawtography**” in Montgomery, Alabama.²⁰
- (lonestardogranch.com/product-category/pawtographs): Screenshot of the website for Lone Star Dog Ranch, advertising its “**Pawtograph** Cards.”²¹
- (debbiepaynephoto.com/pawtography): Screenshot of the “**Pawtography**” page for the website of Debbie Payne Photography, a professional photographer.²²
- (fureverpawtography.com): Screenshot of the website for Furever **Pawtography**, advertising its pet photography services.²³
- (bark.com/en/gb/company/viccis-pawtography/EMyKI): Business listing for Vicci’s **Pawtography**, a photography business in the United Kingdom.²⁴

¹⁷ *Id.* at 47-49. Under the same URL, Applicant submitted screenshots for “Pawtography by Ashley,” a pet photography business. *Id.* at 50-51. This appears to be a different business than “Avery Rose Pawtography,” but Applicant identified the same URL for both businesses. The Examining Attorney separately submitted screenshots for the “Pawtography by Ashley” website, which has a different URL than provided by Applicant. We identify that website in the list of the Examining Attorney’s evidence.

¹⁸ *Id.* at 52-54.

¹⁹ *Id.* at 55.

²⁰ *Id.* at 56.

²¹ *Id.* at 57.

²² *Id.* at 59-60.

²³ *Id.* at 61-63.

²⁴ *Id.* at 64. We note that, to the extent that websites such as this one appear to be from English language foreign sources, they nonetheless may be relevant to determine if a mark is merely descriptive. *Bayer*, 488 F.3d at 969 (“Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark.”) (citations omitted).

- (pawsitivehospetality.com/pawtography/home): Screenshot of the “**Pawtography**” page for the website of Pawsitive Hospetality, advertising its pet photography services.²⁵

When the Examining Attorney withdrew the Section 2(d) refusal, she issued a mere descriptiveness refusal.²⁶ In issuing and later maintaining this refusal, the Examining Attorney relied on Applicant’s own evidence (discussed above), as well as several additional third-party uses of the terms “pawtographer” and “pawtography,” including the following (all bold emphasis added):²⁷

- (facebook.com/ThePawtographer): The Facebook page for The **Pawtographer**, “The Pet Portrait Experts” in Orange County, California.²⁸
- (animalaffair.com/2022/08/18/pawfect-photo-scenes-pawtographer): An article from Animal Fair about pet photographer Robert Semrow, professionally known as the “**Pawtographer**.”²⁹
- (spokesman.com/stories/2024/mar/19/pawsome-pet-photography-dog-perspective): An article from The Spokesman-Review titled “Jimmy Clubhouse Paws, Sniffs, & Clicks: A Doggo’s Guide to Picture-Pawfect Moments,” with the dog saying, “**let’s get started on your journey to becoming duh ultimutt pet pawtographer!**”³⁰

²⁵ *Id.* at 65-66.

²⁶ April 16, 2024 Non-Final Office Action, TSDR at 2.

²⁷ We note that, in connection with the mere descriptiveness refusal, the Examining Attorney submitted some of the same Internet evidence that Applicant previously submitted to obviate the Section 2(d) refusal (e.g., Smeraglia’s TeddyBear Goldendoodles, Pawtography Los Angeles Pet Photo Studio, NYC Pet Pawtographer, Debbie Payne Photography, and Furever Pawtography). We have not repeated that evidence in this list. The Examining Attorney also submitted additional examples of advertising by one of the third parties identified in Applicant’s evidence. *See, e.g.*, April 16, 2024 Non-Final Office Action, TSDR at 7-14, 27-30 (magazine and Facebook advertisements for “New York City based dog pawtographer” Carmen Gonzalez). Although supporting public exposure to that party’s usage, we do not include these separately in the list of third-party uses.

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 17-26.

³⁰ *Id.* at 31-35.

- (yelp.com/biz/pet-pawtography-montgomery): Yelp listing for “Pet **Pawtography**,” a “Session Photography” business in Montgomery, Alabama.³¹
- (sherwoodpawtography.simplybook.me/V2): Screenshot of the website for Sherwood **Pawtography**, a photography business.³²
- (purrfectpawtraits.co.uk/about-us): Screenshot of the website for Purrfect Pawtraits, a United Kingdom-based pet photography business; the dog “Frankie” introduces himself as “the Chief **Pawtography** Pawssistant” and “John” is identified as the “Main **Pawtographer**” (“My Dad is a full time professional pawtographer with over 15 years experience in studio work, but he’s still learning”).³³
- (gary-evans.ca/dog-photography): Screenshot of the “**Pawtography**” page for the website of Gary Evans, a professional photographer.³⁴
- (amazon.com/Life-Pawfect-Pawtographer/dp/0986019801): Amazon listing for the book *Life is Pawfect* by The **Pawtographer**, a “whimsical collection of some of the **Pawtographer’s** most loved themed dog portraits”).³⁵
- (Instagram.com/mrpawtographer): Instagram page for “Mr **Pawtographer**,” a “Specialist Animal Photographer.”³⁶
- (careerservices.pace.edu/jobs/social-paws-dog-event-and-portrait-pawtographer): Event listing for “Dog Event and Portrait **Pawtographer**” in New York City on March 26, 2025.³⁷
- (pawtographybyashley.com): Screenshot of the website for **Pawtography** by Ashley, advertising its pet photography services.³⁸

³¹ October 30, 2024 Final Office Action, TSDR at 8-12.

³² *Id.* at 13-14.

³³ *Id.* at 15-20.

³⁴ *Id.* at 21-25.

³⁵ February 3, 2025 Denial of Request for Reconsideration, TSDR at 3-7.

³⁶ *Id.* at 8-10.

³⁷ *Id.* at 26-27.

³⁸ *Id.* at 37-38.

- (mrpawtographer.com/our-work): Screenshot of the website for Mr **Pawtographer**, advertising its pet photography services.³⁹
- (friendlypawtography.com): Screenshot of the website for Friendly **Pawtography**, advertising its pet photography services.⁴⁰

Part of the Examining Attorney's Internet evidence also includes an interview with Joan Walker, the Manager of Applicant.⁴¹ At the website firstcoast.life/joan-h-walker-pawtography, Ms. Walker was asked to "Tell us a little bit about your background," and she responded, in part: "**I am the chief pawtographer**, photoshop wiz and production master[.]"⁴²

We find that this evidence supports the Examining Attorney's conclusion that "the term 'pawtographer' [is] commonly used by other pet photographers and has a readily understood descriptive meaning referring thereto."⁴³

In addition to third-party use evidence of the terms "pawtographer" and "pawtography," the Examining Attorney also submitted Internet evidence concerning the use of the term "traveling" in connection with pet photography services, including the following:

- (barkography.com/blog/tag/traveling+dog+photographer#): Blog post describing a photographer based in Charlotte, North Carolina who travels around the United States and Canada photographing dogs.⁴⁴

³⁹ *Id.* at 39.

⁴⁰ *Id.* at 42-44.

⁴¹ October 30, 2024 Final Office Action, TSDR at 5-7; *see also* January 5, 2023 Application, TSDR at 2 (identifying Joan Walker as "Manager").

⁴² October 30, 2024 Final Office Action, TSDR at 5 (emphasis added).

⁴³ Examining Attorney's Br., 10 TTABVUE 4.

⁴⁴ October 30, 2024 Final Office Action, TSDR at 26-27.

- (thetravelingdogphotographer.com/about): Screenshot of the website for The Traveling Dog Photographer, advertising traveling pet photography services.⁴⁵
- (blackstonephotography.net/Travel): Screenshot of the website for Blackstone Photography, advertising the ability to book its services around the world.⁴⁶
- (wpbf.com/artcle/traveling-photographer-takes-pictures-of-shelter-animals-to-get-them-adopted/22667446): An article from ABC25 WPBF News about Adam Goldberg, a photographer who “travels the country taking photos of shelter animals to help them find forever homes[.]”⁴⁷
- (caseyandhercamera.com/Indianapolis-family-photographer-a-girl-and-her-dog): Screenshot of the website for Casey and Her Camera, describing how she became a “traveling photographer.”⁴⁸

Although not specifically cited by the Examining Attorney, we note that the websites for MJ Pawtography, Trick Dog U, and Friendly Pawtography specifically promote the option for the pet photographer to travel to a location outside the photographer’s studio.⁴⁹

We find that this evidence supports the Examining Attorney’s conclusion that the term “traveling” immediately conveys to consumers a feature, function, or characteristic of pet photography services, namely a photographer that will travel to locations outside the photographer’s studio.⁵⁰

⁴⁵ *Id.* at 28-29.

⁴⁶ *Id.* at 30-32.

⁴⁷ *Id.* at 33-36.

⁴⁸ *Id.* at 37-49.

⁴⁹ March 26, 2024 Response to Office Action, TSDR at 13 (MJ Pawtography) and 33 (Trick Dog U); February 3, 2025 Denial of Request for Reconsideration, TSDR at 44 (Friendly Pawtography).

⁵⁰ Examining Attorney’s Br., 10 TTABVUE 5.

Applicant contends that the Examining Attorney's evidence is insufficient to prove that Applicant's mark is merely descriptive. Applicant argues that Applicant's mark is suggestive, not descriptive, of the identified services because: (1) "[t]he term 'pawtographer' is not a recognized word in the English language[,] [as] [i]t blends the two words 'paw' and 'photographer' in a whimsical manner to create somewhat of a portmanteau";⁵¹ (2) "[t]he term 'traveling' modifies 'pawtographer' in a way that implies motion, mobility, or on-location services [but] does not describe an aspect of pet portrait photography services";⁵² (3) "[a] consumer encountering the phrase THE TRAVELING PAWTOGRAPHERS for the first time must interpret the meaning of 'pawtographer' by deconstructing the word elements 'paw' and 'tographer' and understanding that together they mean pet portrait photography services, and, further, to understand how the word 'traveling' refers to the services," all of which requires "imagination and interpretation";⁵³ (4) "[t]he whimsical use of 'paw' and 'tography' to create a shortened word for the concept of pet photography is essentially a linguistic revision intended for the customer to enjoy and appreciate the cleverness of the wordplay";⁵⁴ and (5) the Examining Attorney's third-party use evidence demonstrates use of the term "pawtographer" in trade names and as trademarks; "[i]f anything, these third-party uses demonstrate that PAWTOGRAPHER is perceived

⁵¹ Applicant's Br., 8 TTABVUE 4-5; *see also id.* at 6-7.

⁵² *Id.* at 5; *see also id.* at 7.

⁵³ *Id.* at 5; *see also id.* at 7.

⁵⁴ *Id.* at 5; *see also* Applicant's Reply Br., 11 TTABVUE 2-3.

in the marketplace as a creative, suggestive play on words rather than as a straightforward description of services.”⁵⁵

Applicant’s arguments are not persuasive. First, the fact that the terms “pawtographer” and “pawtography” are not found in the dictionary is not controlling on the question of registrability. *Continental Airlines, Inc. v. United Air Lines, Inc.*, Opp. No. 91098459, 1999 TTAB LEXIS 717, at *28 (TTAB 1999) (“Although there is no dictionary listing for the term ‘e-ticket’ per se, this fact is not dispositive of the issue.”); *In re Dairimetics, Ltd.*, 1971 TTAB LEXIS 44, at *3-4 (TTAB 1971) (“While it is true that ‘ROSE MILK’, per se, has not been found in any dictionary, this factor alone is not controlling on the question of registrability.”). The lack of a dictionary entry may indicate that dictionary editors do not find the terms “pawtographer” or “pawtography” noteworthy enough to warrant an entry, but “[n]o dictionary is complete or completely up to date, or tracks the language of the marketplace perfectly. A number of [descriptive] terms are not found in dictionaries.” *Continental Airlines*, 1999 TTAB LEXIS 717, at *28.

Second, that the term “pawtographer” is creative or whimsical or a portmanteau does not mean “pawtographer” is not also descriptive. Applicant points to the prevalence of the use of “many whimsical non-sensical words ... (i.e., ‘Pawfect’, ‘duh ultimutt’, ‘Purrfect Pawtraits’, and ‘Furever’)” used in connection with “pawtographer” or “pawtography” by third parties and contends that these whimsical words “clearly demonstrate a playful use of wording that cannot seriously be taken

⁵⁵ Applicant’s Br., 8 TTABVUE 8-9; *see also* Applicant’s Reply Br., 11 TTABVUE 2-4.

as understood to be recognized descriptive wording” and that “[w]hen customers see such language, they can rationally understand that the word ‘Pawtography/Pawtographers’ also is simply a play on words and would not reasonably be understood to be descriptive of pet photography services.”⁵⁶ We agree that consumers will immediately understand that “the word ‘Pawtography/Pawtographers’ ... is simply a play on words,” but we disagree that such words “would not reasonably be understood to be descriptive of pet photography services.”

The terms “pawtographer” and “pawtography” may have begun as a suggestive play on words, but these terms have been adopted by a number of third parties in the field, thereby eroding their distinctiveness into mere descriptiveness. *In re Chippendales USA, Inc.*, 622 F.3d 1346, 1354 (Fed. Cir. 2010) (“A term or device that was once inherently distinctive may lose its distinguishing characteristics over time.”) (citation omitted); *In re Thunderbird Prods. Corp.*, 406 F.2d 1389, 1391 (CCPA 1969) (quoting *DeWalt, Inc. v. Magna Power Tool Corp.*, 289 F.2d 656, 660 (1961)) (“Trademark rights are not static. A word or group of words not descriptive today may, through usage, be descriptive tomorrow.”). *See also Remington Prods., Inc. v. North Am. Philips Corp.*, 892 F.2d 1576, 1579-82 (Fed. Cir. 1990) (describing erosion from distinctive to descriptive). As noted above, descriptiveness is determined in relation to the identified services and the significance the mark would have to the average purchaser who knows what the services are. The evidence discussed above

⁵⁶ Applicant’s Reply Br., 11 TTABVUE 3.

demonstrates that a consumer who knows that the services are “pet portrait photography services” will immediately understand that the word “pawtographer” refers to a pet photographer.

Third, that other descriptive terms exist for a pet photographer does not mean “pawtographer” is not also descriptive. *See In re Sheet Pile, LLC*, Ser. No. 90900931, 2023 TTAB LEXIS 485, *13-14 (TTAB 2023) (“The fact that there may be terms in addition to OZ that describe steel sheet pile does not mean that OZ is not merely descriptive of those goods There may be more than one term that merely describes certain goods, and the Trademark Act prohibits registration on the Principal Register of each and all of them.”) (citation omitted).

Fourth, that third parties use the terms “pawtographer” or “pawtography” in their respective trade names or in connection with possible trademarks does not mean that the term cannot be descriptive. The record is replete with descriptive uses of the term “pawtographer,” including by Applicant itself. In obviating the Section 2(d) refusal, Applicant argued that the term “pawtography” **“describes** the field generally of pet photography services[.]”⁵⁷ and in an interview with an online publication, Joan Walker, the Manager of Applicant, described herself as Applicant’s **“chief pawtographer.”**⁵⁸ *See In re Berkeley Lights, Inc.*, Ser. No. 88895703, 2022 TTAB LEXIS 382, at *21 (TTAB 2022) (citing *Gyulay*, 820 F.2d at 1217) (“[T]he Board may rely on evidence in the record of how an applicant uses the proposed mark in

⁵⁷ March 26, 2024 Response to Office Action, TSDR at 2 (emphasis added).

⁵⁸ October 30, 2024 Final Office Action, TSDR at 5-7.

determining whether consumers would perceive it as merely descriptive, and there is no unfairness to the applicant when we do so.”). Additionally, at least the websites teddybeargoldendoodles.com, colorbreakfast.com, minormomentsphotography.com, debbiepaynephotography.com, trickdogu.com, and pawsitivehospitality.com each have a “pawtography” page on their website advertising pet photography services where the word “pawtography” is unrelated to the business’ trade name. Certain of these websites, and others, use the terms “pawtographer” and “pawtography” descriptively in advertising their pet photography services:

- (bougiepetpawtography.com): “While we **love pet photography (or, rather, pawtography)**, we want to create full experiences ...”.⁵⁹
- (teddybeargoldendoodles.com/pawtography): “Here at Smeraglia, **we offer custom professional pet portraits. We call it Pawtography!**”.⁶⁰
- (trickdogu.com/pawtography): “**Our pet pawtography services are available by appointment only**”.⁶¹
- (facebook.com/nycpetpawtographer): “Intro” stating: “**A New York City based dog pawtographer.**”⁶²
- (purrfectpawtraits.co.uk/about-us): “**My Dad is a full time professional pawtographer** with over 15 years experience in studio work, but he’s still learning”.⁶³

But even setting aside the descriptive uses of the terms “pawtographer” and “pawtography” in the record and instead focusing on the uses of the term in third-party trade names, “[n]ot every symbol adopted for the purpose of identifying and

⁵⁹ March 26, 2024 Response to Office Action, TSDR at 14-17 (emphasis added).

⁶⁰ *Id.* at 18-19 (emphasis added).

⁶¹ *Id.* at 33-36 (emphasis added).

⁶² April 16, 2024 Non-Final Office Action, TSDR at 27-30 (emphasis added).

⁶³ *Id.* at 15-20 (emphasis added).

distinguishing a source accomplishes that goal.” *Hangzhou Mengku Tech. Co. v. Shanghai Zhenglang Tech. Co.*, Opp. No. 91272143, 2024 TTAB LEXIS 575, at *35 (TTAB 2024). And the fact that the terms “pawtographer” and “pawtography” are used in the names of so many pet photography businesses suggests that there is competitive need for use by others in this industry. *See Abcor Dev. Corp.*, 588 F.2d at 813. *See also In re Styleclick.com Inc.*, Ser. No. 75459912, 2001 TTAB LEXIS 127, at *15 (TTAB 2001) (quoting *In re Colonial Stores, Inc.*, 394 F.2d 549, 551 (CCPA 1968)) (“The intent of [Trademark Act] Section 2(e)(1) is to protect the competitive needs of others, that is, ‘descriptive words must be left free for public use.’”).

Last, we disagree with Applicant that the term “TRAVELING” is not descriptive because a consumer would not understand “what services” are being provided.⁶⁴ As just noted, descriptiveness is determined in relation to the identified services and the significance the mark would have to the average purchaser who knows what the services are. Additionally, as also previously noted, “[a] mark need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods [or services].” *Fat Boys*, 2016 TTAB LEXIS 150, at *4. The descriptiveness of THE TRAVELING PAWTOGRAPHERS is viewed in relation to pet portrait photography services. The term “traveling” is used in the photography business to identify photographers who will travel to different locations to take photographs (i.e., outside of the photographer’s studio). When combined with

⁶⁴ Applicant’s Br., 8 TTABVUE 5.

the term PAWTOGRAPHERS, the word TRAVELING describes a feature or characteristic of the services because it immediately informs purchasers that the PAWTOGRAPHERS will travel to different locations to photograph the customer's pets.

Based on the evidence of record, we agree with the Examining Attorney that PAWTOGRAPHER refers to a pet photographer, and that relevant purchasers would perceive the term accordingly. At its inception, the term may have been unique, but the evidence of record shows that the term is now used in a descriptive manner in the pet photography business to identify a person who takes pet photographs. We further agree that the term TRAVELING retains its understood descriptive meaning ("going to different places instead of staying in one place"), and that when the words are combined to form THE TRAVELING PAWTOGRAPHERS, the words retain their descriptive significance, namely a particular type of photographer providing pet photography services who will travel to locations other than the photographer's studio. *See In re Omaha Nat'l Corp.*, 819 F.2d 1117, 1118-19 (Fed. Cir. 1987) (FirstTier is merely descriptive of banking services in view of evidence that banks can be ranked in tiers "and that large high-quality banks whose client base includes large corporate accounts are referred to as 'first tier banks.'"); *In re Petroglyph Games, Inc.*, Ser. No. 78806413, 2009 TTAB LEXIS 465, at *35-36 (TTAB 2009) (BATTLECAM for computer game software is merely descriptive because "the relevant class of purchasers will immediately understand BATTLECAM to describe a feature of computer game software"); *see also See Investacorp, Inc. v. Arabian Inv. Banking*

Corp., 931 F.2d 1519, 1524 (11th Cir. 1991) (the composite term INVESTACORP “literally convey[s] to the observer that [plaintiff] is in the business of investing in corporations”).

As to Applicant’s contention that any doubt as to the question of descriptiveness should be resolved in Applicant’s favor,⁶⁵ we merely state that after a careful review of the facts as set forth in the record, we do not entertain any doubts pertaining to the issue of descriptiveness of the mark involved in this appeal, and are firmly of the opinion that Applicant’s mark THE TRAVELING PAWTOGRAPHERS proposed for use in connection with “pet portrait photography services” is merely descriptive.

III. Decision

The refusal to register Applicant’s mark is affirmed.

⁶⁵ Applicant’s Br., 8 TTABVUE 6.