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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re US Ghost Adventures Llc*

Serial Nos. 98186224

Timothy J. Bechen, of Woods Rogers PLC,  
for US Ghost Adventures Llc.

Doritt Carroll, Trademark Examining Attorney, Law Office 116,  
Elizabeth Jackson, Managing Attorney.

Before Dunn, Casagrande, and Lavache, Administrative Trademark Judges.

Opinion by Casagrande, Administrative Trademark Judge:

US Ghost Adventures Llc (“Applicant”) seeks registration on the Principal  
Register of MURDER HOUSE for services identified as follows:

- Entertainment services, namely, in the nature of a tourist attraction, provided by museums; Museum services; Museum services, namely, exhibiting to the public a historical site, in International Class 41; and
- Hotel accommodation services; Restaurant services; Restaurant and café services; Hotel restaurant services, in International Class 43.<sup>1</sup>

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<sup>1</sup> Application Ser. No. 98186224 was filed on September 19, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s statement that it has a bona fide intent to use the mark in commerce.

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), determining that the mark is merely descriptive of the identified services. After the Examining Attorney made the refusals final,<sup>2</sup> Applicant appealed.<sup>3</sup> Applicant and the Examining Attorney filed briefs,<sup>4</sup> and Applicant filed a reply brief.<sup>5</sup> The appeal is now ready for decision. For the reasons explained below, we affirm the refusal.

## **I. Analysis**

Section 2(e)(1) prohibits registration of 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 term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (citations omitted); *In re Abcor Dev. Corp.*, 588 F.2d 811, 813 (CCPA 1978) (“conveys information regarding a function, or purpose, or use of the goods”).<sup>6</sup> “[A]

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<sup>2</sup> See August 1, 2024, Final Office Action.

<sup>3</sup> See 1 TTABVUE. References to the briefs and appeal record cite to the Board’s TTABVUE electronic docket system. The number preceding “TTABVUE” represents the docket number assigned to the cited filing in TTABVUE and any number immediately following “TTABVUE” identifies the specifically-cited page(s), if any.

<sup>4</sup> See 4 TTABVUE (Applicant); 6 TTABVUE (Examining Attorney).

<sup>5</sup> See 7 TTABVUE.

<sup>6</sup> A designation found to be merely descriptive may be registered under Section 2(f) once it has acquired distinctiveness, i.e., through use, the consuming public has come to primarily perceive it to indicate source. *See, e.g., Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018). Applicant has not claimed that its mark has acquired distinctiveness under Section 2(f), which is not surprising given that this is an application under Section 1(b) and Applicant has not filed an amendment to allege use. *See, e.g., In re Olin Corp.*, No. 86651083, 2017 WL 4217176, at \*7 (TTAB 2017) (“A claim of distinctiveness under Section 2(f) normally

descriptiveness refusal is proper with respect to all of the identified goods in an International Class if the mark is descriptive of any of the goods or services in that class.” *In re Swatch Grp. Mgmt. Servs. AG*, No. 85485359, 2014 WL 1679139, at \*1 (TTAB 2014) (citations omitted), *aff’d mem.*, 599 F. App’x 959 (Fed. Cir. 2014). “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*, 588 F.2d at 813 (citation omitted).

“A mark need not recite each feature of the relevant goods or services in detail to be descriptive, it need only describe a single feature or attribute.” *Chamber of Com.*, 675 F.3d at 1300 (cleaned up; citation omitted). “[T]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1378 (Fed. Cir. 2017) (cleaned up; citations omitted).

Refusals for mere descriptiveness are based on evidence bearing on public perception of the proposed mark. *See, e.g., In re Slokevage*, 441 F.3d 957, 960 (Fed. Cir. 2006); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341 (Fed. Cir. 2001). “Evidence of

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is not raised in a Section 1(b) application before the applicant files an amendment to allege use or a statement of use because a claim of acquired distinctiveness, by definition, requires prior use.”).

the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (cleaned up; citation omitted); *see also In re N.C. Lottery*, 866 F.3d 1363, 1367-68 (Fed. Cir. 2017) (public’s understanding of a mark can be evidenced by sources that “may include Websites, publications, and use in labels, packages, or in advertising material directed to the goods”) (cleaned up; citations omitted).

Here, Applicant’s identified services fall within two classes. They include “Museum services, namely, exhibiting to the public a historical site” in Class 41 and “Hotel accommodation services” in Class 43. The Examining Attorney placed in the record dictionary definitions of “murder” and “house.” The noun “murder” is defined as “the intentional and unlawful killing of a person.”<sup>7</sup> The noun “house” is defined as “a building that serves as living quarters for one or a few families.”<sup>8</sup>

In support of the finding that the two words, considered together in the mark, are merely descriptive of Applicant’s identified services, the Examining Attorney also placed excerpts from Applicant’s website in the record. In one excerpt, Applicant states: “US Ghost Adventures is the leader in spooky and haunted experiences, providing ghost tours, haunted pub crawls, and other experiences in over 100 cities;

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<sup>7</sup> See May 13, 2024, Nonfinal Office Action, at TSDR 12 (www.merriam-webster.com online dictionary). Citations in this opinion to the application record refer to the version of the record downloaded in .pdf format from the Trademark Status and Document Retrieval (TSDR) database of the United States Patent and Trademark Office (USPTO).

<sup>8</sup> See *id.* at TSDR 16.

overnight stays and tours of America’s most historic and haunted houses like the Villisca Axe Murder House and Lizzie Borden Houses ....”<sup>9</sup> Another excerpt from Applicant’s website, concerning the Villisca Axe Murder House, states that “groups of six or fewer can book an overnight stay in the home” through Applicant.<sup>10</sup> Yet another excerpt from Applicant’s website urges consumers to “[e]xperience a night in America’s most haunted houses. From the infamous Lizzie Borden House to the Welty House, join us for experiences you’ll take with you to the grave ... and brag about to everyone until then.”<sup>11</sup> These excerpts make clear that Applicant’s museum and hotel services include tours and stays at houses where murders occurred. *See, e.g., N.C. Lottery*, 866 F.3d at 1368-69 (where Applicant’s website made clear that new versions of Applicant’s lottery scratch-off game were offered on the first Tuesday of every month, FIRST TUESDAY deemed merely descriptive for lottery services). Thus, the two words MURDER HOUSE together, in the context of Applicant’s services, merely describe locations among those where Applicant renders its services.

Applicant argues that its services are “not restricted to locations requiring actual murder,” i.e., that the identification of services is broader than murder sites.<sup>12</sup> It is irrelevant that the term may not describe all subsets of goods or services falling

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<sup>9</sup> *See id.* at 35.

<sup>10</sup> *See* Aug. 1, 2024, Final Office Action, at TSDR 17

<sup>11</sup> *See id.* at 27. Applicant argues weakly (and without evidence) that Lizzie Borden “was not found guilty of murdering her parents. Therefore, while there were 2 deaths at the property, there was not a murder at the property.” 7 TTABVUE 3. This (unsupported) argument rings hollow in light of Applicant’s earlier acknowledgement that murders took place at that house. *See* July 15, 2024, Response to Nonfinal, at TSDR 5.

<sup>12</sup> *See* 4 TTABVUE 4.

within a broad or unrestricted identification of goods or services if the evidence shows it is merely descriptive of some subset within the identification. For example, SCANNER was held to be merely descriptive of goods broadly identified as “antennas” because the broad term in the application necessarily encompassed narrower term, “scanning antennas.” *In re Allen Elec. and Equip. Co.*, 458 F.2d 1404, 1405 (CCPA 1972). Likewise, in *In re Cryomedical Sciences Inc.*, No. 74238772, 1994 WL 587038 (TTAB 1994), the Board held that SMARTPROBE was merely descriptive where the goods were broadly described to include all types of disposable cryosurgical probes, including those containing electronic devices or microprocessors); *see generally In re AC Webconnecting Holding B.V.*, No. 85635277, 2020 WL 5544272, at \*13 (TTAB 2020) (services that are “identified without limitation ... must be presumed to include” all specific subsets of those services within the broad identification); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, No. 94002242, 2015 WL 4464550, at \*17 (TTAB 2015) (“Where an applicant identifies its services broadly, we must presume that the services encompass all services of the type identified.”) (citation omitted).

Applicant’s brief lists several third-party registrations in the form “\_\_\_\_\_ HOUSE” in Class 43 and argues that marks in that form can be registered.<sup>13</sup> The Examining Attorney notes that one of the listed registrations is cancelled and several of them treat HOUSE as descriptive.<sup>14</sup> These arguments are of no value to us because

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<sup>13</sup> See 4 TTABVUE 6.

<sup>14</sup> See 6 TTABVUE 4.

none of the registrations are in the record. *See, e.g., Whitserve, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 23 (Fed. Cir. 2012) (“arguments of counsel cannot take the place of evidence lacking in the record”) (cleaned up; citation omitted); *In re Jackson Int’l Trading Co.*, No. 77600412, 2012 WL 3157151, at \*3 (TTAB 2012) (same); *see also In re Seminole Tribe of Fla.*, No. 87890892, 2023 WL 3751113, at \*3 (TTAB 2023) (referring to the Board’s “well-established practice is not to take judicial notice of third-party registrations” even when requested) (citations omitted). Even if these registrations were of record, it would not help Applicant. The USPTO is required to examine each application for compliance with the statutory requirements, even if it previously allowed (rightly or wrongly) marks with similar characteristics to be registered. *E.g., In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001).

Applicant next argues that MURDER HOUSE could indicate something other than a house where a murder took place, such as a restaurant with food so good diners want to “murder” their meals or a house where crows gather.<sup>15</sup> These supposed alternative meanings of murder do not detract from the evidence here, largely derived from Applicant’s own website, that indicates that consumers will perceive MURDER HOUSE as merely describing tours and stays at houses where murders took place. *See, e.g., In re Mueller Sports Med., Inc.*, No. 87209946, 2018 WL 2277503, at \*6 (TTAB 2018) (“It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive.”) (cleaned up;

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<sup>15</sup> *See* 4 TTABVUE 6, 7.

citations omitted); *see also In re Coles*, 839 F. App'x 455, 457 (Fed. Cir. 2020) (fact that “brew” in BREW SCIENCE could refer to the brewing of tea “does not detract from the conclusion that brew is a commonly accepted term for beer and that, in the context of entertainment services related to beer, a consumer would reasonably understand the term to refer to beer.”) (citations omitted).

In sum, the evidence here convinces us that consumers will perceive MURDER HOUSE, considered as a whole, as merely descriptive of Applicant’s “Museum services, namely, exhibiting to the public a historical site” in Class 41 and “Hotel accommodation services” in Class 43.

**Decision:** The refusal to register is affirmed.