

This Opinion is Not a
Precedent of the TTAB

Mailed: October 18, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re John Brent Moetteli
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Serial No. 86491129
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John Moetteli, DaVinci Partners LLC, pro se.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114,
Laurie Kaufman, Managing Attorney.

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Before Mermelstein, Wolfson, and Greenbaum,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

John Brent Moetteli (“Applicant”) seeks registration on the Principal Register of the mark CASTLELOVERS (in standard characters) for “Matchmaking services; services, namely, providing an on-line computer database featuring single people interested in meeting other single people” in International Class 45.

The application was initially filed on the Principal Register, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging Applicant’s bona fide intent to use

the mark in commerce in several classes.¹ Following publication, Applicant requested division of the application. Applicant's request was granted and the application was divided into two child applications and the parent (original) application. Following division of the application, statements of use were filed for all classes. The child applications registered in 2017 in Classes 16, 35, 36, 39, 41 and 43.²

The Examining Attorney refused registration of the parent application (the application involved herein) under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that CASTLELOVERS is merely descriptive of Applicant's services of matching together people who love castles. "The applicant's matchmaking services and database of single people interested in meeting other single people match people who love castles."³ After the Examining Attorney issued a final descriptiveness refusal, Applicant filed a Request for Reconsideration, which was denied. Both Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

¹ Serial No. 86491129, filed December 29, 2014 for goods identified in International Classes 16, 35, 39, and 41. Following payment of additional class fees, the application was published in Classes 16, 35, 36, 39, 41, 43, and 45. Following division of the application, statements of use were filed for all classes.

² Serial No. 86981991 registered on October 17, 2017 (under Reg. No. 5312436) in Classes 16, 29 and 41. Serial No. 86981990 registered on April 25, 2017 (under Reg. No. 5192779) in Classes 35, 36 and 43.

³ 9 TTABVUE 7. Citations to the briefs refer to TTABVUE, the Board's online docketing system. See *Turidin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding "TTABVUE" corresponds to the docket entry number, and any number(s) following "TTABVUE" refer to the page number(s) of the docket entry where the cited materials appear. Citations to the examination record refer to the entries in the USPTO Trademark Status and Document Retrieval system (TSDR), by document, date and page number.

I. Evidentiary Matters

In response to an Office Action and again in his opening Brief, Applicant provided a hyperlink to a third-party Facebook page, denoting it as “Applicant’s evidence.” Applicant also argues that a definition of “matchmaking” provided in his brief comes from “Google’s ‘dictionary’ function.”⁴ Neither are properly of record.

The Board has long held that the inclusion of hyperlinks is not sufficient to introduce the underlying information into the record. Because the nature of an online media site such as Facebook is dynamic, not static, and Applicant did not attach any pages from the Facebook link, the authenticity of the site as it existed during prosecution cannot be guaranteed. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1195 n.21 (TTAB 2018) (“[W]e do not consider websites for which only links are provided); *In re Olin Corp.*, 124 USPQ2d 1327, 1332 n.15 (TTAB 2017) (“Because the information displayed at a link’s Internet address can be changed or deleted, merely providing a link to a website is insufficient to make information from that site of record.”). Accordingly, we give no consideration to the Facebook hyperlink included in Applicant’s brief.⁵

As for the definition of “matchmaking” that Applicant argues appears in a Google dictionary, while the Board may take judicial notice of definitions from online

⁴ 7 TTABVUE 6.

⁵ Applicant first mentioned the link in his February 26, 2018 response. He did not provide a copy of any pages from the link at that time. He did not attach any pages to his brief either, but to have done so at the briefing stage would have been untimely in any event. The record in an application must be complete prior to appeal. Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d).

dictionaries that exist in printed format, *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018), Applicant has not shown that the Google dictionary “function” to which he refers is available in printed format. We consider Applicant’s argument as a request that the Board take judicial notice of his provided definition of the term matchmaking. Although we decline to take judicial notice of this definition without proof that it is available in printed format, we take notice of a similar definition in Collins English dictionary: “the act or occupation of arranging marriages for others; the act or practice of bringing together unmarried people with the hope that they will marry or become romantically involved.”⁶

II. Analysis

A mark is “merely descriptive” within the meaning of Trademark Act 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 N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017) (citing *In re Bayer A.G.*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, 5 (TTAB 2019). “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.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citation and internal quotation omitted).

⁶ At <https://www.collinsdictionary.com/us/dictionary/english/matchmaking>; accessed October 6, 2019.

The Examining Attorney argues that the term “castle lover” is merely descriptive of Applicant’s services because it describes a matchmaking service that brings together persons who love castles.⁷ The Applicant agrees with the Examining Attorney’s definition of “lover” as being “one who is fond of or devoted to something: a lover of fine food,”⁸ but argues that the meaning of “castle lover” is ambiguous. Applicant posits that while the wording may mean “a lover of a type of medieval fortress or palace known as a ‘castle,’” it could also mean someone “who loves the television series ‘Castle;’”⁹ “a lover who is in a castle;” or a lover of “a person named ‘Castle.’”¹⁰

As Applicant acknowledges, we consider the meaning of a mark in relation to the goods or services with which it is used. That is, whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods for which registration is sought, the context in which the mark is used, and the possible significance that the term would have to the average consumer of the goods because of the manner of its use or intended use,’” *In re Chamber of Commerce*, 102 USPQ2d at 1219, (quoting *Bayer*, 82 USPQ2d at 1831), and “not in the abstract or on the basis of guesswork.” *In re Fat Boys Water Sports, LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “not whether

⁷ 9 TTABVUE 5.

⁸ 7 TTABVUE 9.

⁹ Applicant did not submit any evidence to support his assertion that there is a television series entitled “Castle.”

¹⁰ 7 TTABVUE 8.

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.’” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (citation and internal quotation omitted).

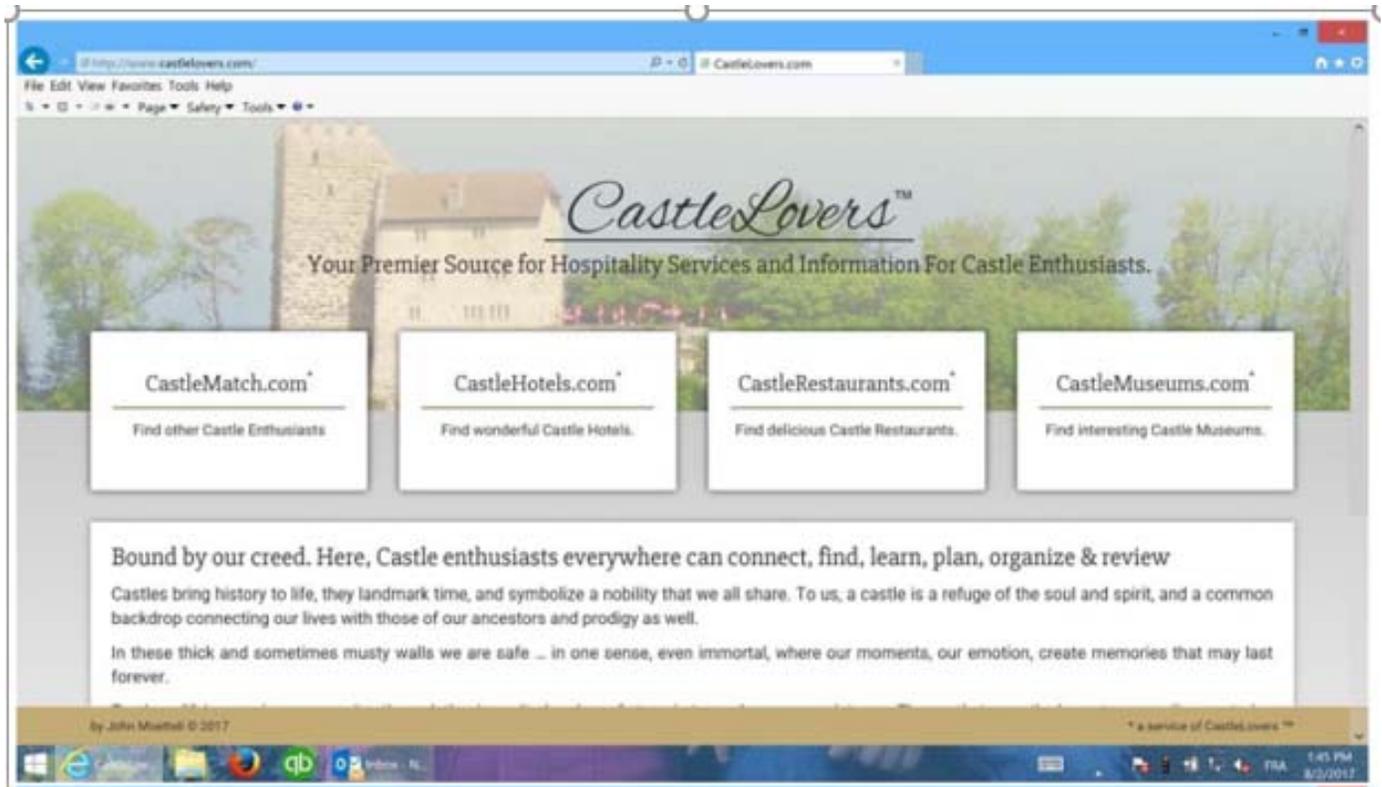
Applicant argues that the Examining Attorney has misunderstood the nature of his services. He argues that his services are “dating services,” and that all he does is “encourage[] castle enthusiasts to be curious enough to look for other people with the same interest, find other people and make friends with others sharing the same interest in castles.”¹¹ Applicant argues that his services relate only to castles, not to matchmaking. This argument is disingenuous. As Applicant concedes, his services are designed to enable people to “look for other people” who love castles. In this way, Applicant “bring[s] persons together for a relationship between themselves.”¹² Although there are other ways to describe a person’s interest in castles without using the word “love,” the word aptly describes one’s ardent enthusiasm for something, and “lover” is a synonym for “enthusiast.”¹³ Applicant agrees that the “dictionary extracts in the instant case also support the allegation that a ‘castle lover’ is ‘one who is a

¹¹ 7 TTABVUE 9.

¹² 7 TTABVUE 9.

¹³ See Thesaurus.com, listing “lover” as a synonym for “enthusiast.” At <http://www.thesaurus.com>, attached to March 2, 2018 Office Action at TSDR 36. Applicant agrees that “the “dictionary extracts in the instant case also support the allegation that a ‘castle lover’ is ‘one who is a castle enthusiast.’” 7 TTABVUE 8.

castle enthusiast.”¹⁴ The specimen submitted by Applicant in support of the statement of use underscores this connection:¹⁵



Applicant’s specimen is directed to and intended for “castle enthusiasts.”

The Examining Attorney has shown that the Office regularly considers “lover” as a descriptive word in connection with an object (that which is loved). In support, she submitted twelve Principal Register, use-based third-party, registrations that include disclaimers of the word “lovers” in combination with a word describing the object that is “loved.” Illustrative examples are:

¹⁴ 7 TTABVue 8.

¹⁵ Applicant’s specimen consisted of two webpages shown adjacent to each other. We reproduce here only the relevant page, that which displays the mark “CastleLovers.”



Registration No. 5035105 for the mark  for “dating services, namely, providing an on-line computer database featuring single people interested in meeting other single people,” (“WHERE DOG LOVERS MEET” disclaimed);¹⁶

Registration No. 4459367 for the mark **BIRD LOVERS ONLY** for “DVDs featuring domesticated, exotic birds” (“BIRD LOVERS” disclaimed);¹⁷



Registration No. 4829691 for the mark  for “fan clubs” (“BURGER LOVERS” disclaimed);¹⁸ and



Registration No. 4446903 for the mark  for “on-line retail store services featuring pet food, pet supplies and pet accessories” (“WHERE PET LOVERS SHOP” disclaimed).¹⁹

Third-party registrations are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed. *E.g.*, *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (quoting *Inst. Nat’l des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 1581-82, 22 USPQ2d 1190,

¹⁶ March 2, 2018 Office Action at TSDR 30-32.

¹⁷ *Id.* at TSDR 12-13.

¹⁸ *Id.* at TSDR 20-22.

¹⁹ *Id.* at TSDR 17-19.

1196 (Fed. Cir. 1992)); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006). The third-party registrations support a finding that “castle lovers” is merely descriptive for matchmaking services for castle enthusiasts.

The website pages submitted by the Examining Attorney that use “castle lovers” to describe people who love or are enthusiastic about castles further prove that the public has an immediate understanding of the meaning of the term in association with matchmaking services.²⁰ As with terms that describe the intended audience of a literary publication, the term CASTLELOVERS immediately describes the class of consumers Applicant is attempting to interest in purchasing his services. The designation is descriptive of the users of the services. *Cf. H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 532 (Fed. Cir. 1986) (finding FIRE CHIEF descriptive for a magazine about the fire-fighting industry because it designates a definable target audience).

The fact that Applicant’s mark is one word without a space does not change the impression of the mark. We agree with the Examining Attorney that “CASTLELOVERS retains its descriptive meaning even without the space and consumers would perceive the mark as merely a combination of the two words CASTLE and LOVERS.”²¹ Applicant’s manner of use of his mark on the specimen reinforces this conclusion. *See In re Omaha Nat’l Corp.*, 819 F.2d 1117, 1118, 2

²⁰ *See, e.g., Id.* at TSDR 48-53: Tripadvisor.com advertises tours of Dunhill Castle in Ireland “For lovers of castle ruins” at <https://www.tripadvisor.com> and the website www.ilovecastles.com advertises itself as the “home of the castle lovers guides.”

²¹ 9 TTABVUE 9.

USPQ2d 1859, 1860 (Fed. Cir. 1987) (holding FIRSTIER merely descriptive of banking services); *Minn. Mining & Mfg. Co. v. Addressograph-Multigraph Corp.*, 155 USPQ 470, 472 (TTAB 1967) (“It is almost too well established to cite cases for the proposition that an otherwise merely descriptive term is not made any less so by merely omitting spaces between the words....”).

Here, the record leaves no doubt that CASTLELOVERS is merely descriptive of the identified services. The proposed mark merely describes the group of people to whom Applicant’s matchmaking services are directed, and that the purpose of the services is to help consumers find a suitable match among people who are enthusiastic about castles. As noted above, it is immaterial that Applicant’s mark is a single compound term rather than two terms separated by a space. Moreover, Applicant’s argument that the mark is a double entendre is without factual or legal support.

III. Conclusion

Upon seeing CASTLELOVERS in connection with Applicant’s matchmaking and dating services, consumers will immediately understand that Applicant provides a means for consumers who are ardent admirers of castles to meet each other and establish relationships. The mark therefore is merely descriptive of “matchmaking services; services, namely, providing an on-line computer database featuring single people interested in meeting other single people.”

Decision: Refusal under Section 2(e)(1) is affirmed.