

This Opinion is Not a
Precedent of the TTAB

Mailed: June 26, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Cutting

—
Serial No. 87109861

—
Jason S. Smith of Hellman Yates & Tisdale, PA,
for Douglas Cutting.

April A. Hesik, Trademark Examining Attorney, Law Office 124,
Lydia Belzer, Managing Attorney.

—
Before Taylor, Lykos, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Douglas Cutting (“Applicant”) seeks registration on the Principal Register of the proposed mark BUYER ENGINE in standard characters for “real estate marketing services,” in International Class 35.¹

The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the

¹ Application Serial No. 87109861 was filed on July 20, 2016 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), on the basis of Applicant’s allegation of a bona fide intention to use the mark in commerce.

ground that the proposed mark is merely descriptive of the services identified in the application. After the Examining Attorney made the refusal final, Applicant appealed. Applicant and the Examining Attorney have filed briefs. We affirm the refusal to register.

I. Record on Appeal

The record on appeal consists of the following materials, all of which were made of record by the Examining Attorney:

1. Definitions of “buyer” and “engine” from BUSINESSDICTIONARY.COM, and definitions of “engine” from the AMERICAN HERITAGE DICTIONARY and the FREE ONLINE DICTIONARY OF COMPUTING;²
2. Pages from Applicant’s published application for a method patent;³
3. Internet webpages of companies in the real estate business showing the use of search engines to collect information regarding real estate buyers;⁴ and
4. Third-party registrations from the Patent and Trademark Office’s Trademark Status & Document Retrieval (“TSDR”) database for marks covering various services in which the words “buyer” and “engine” have been disclaimed.⁵

² November 8, 2016 Office Action at 2-4; May 29, 2017 Office Action at 2-6.

³ November 8, 2016 Office Action at 5-8.

⁴ *Id.* at 9-13; May 29, 2017 Office Action at 57-91.

⁵ May 29, 2017 Office Action at 7-56.

II. Analysis of Mere Descriptiveness Refusal

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them,” unless the mark has acquired distinctiveness under § 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). A mark is “merely descriptive” within the meaning of § 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 Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). “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*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

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 the mark is used, and the possible significance the term would have to the average consumer because of the manner of its use or intended use,’” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *Bayer*, 82 USPQ2d at 1831), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218

(CCPA 1978)); *see also Bayer*, 82 USPQ2d at 1831. “In other words, we evaluate whether someone who knows what the [services] are will understand the mark to convey information about them.” *Fat Boys*, 118 USPQ2d at 1515 (citing *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012)).⁶

To determine whether Applicant’s proposed mark BUYER ENGINE is merely descriptive, we are “required to examine the meaning of each component individually, and then [to] determine whether the mark as is whole is merely descriptive.” *DuoProSS*, 103 USPQ2d at 1758. If BUYER and ENGINE are each individually descriptive of the services identified in the application, we must determine whether their combination in “Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *Fat Boys*, 118 USPQ2d at 1515-16 (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2003)). If each word instead “retains its merely descriptive significance in relation to the [services], the combination results in a composite that is itself merely descriptive.” *Id.* (citing *In re Tower Tech., Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)); *see also In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1953-55 (TTAB 2018).

Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source, such as dictionaries, newspapers, surveys,

⁶ 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*, 118 USPQ2d at 1515.

labels, packaging, or advertising materials. *Mecca Grade Growers*, 125 USPQ2d at 1953 (citing *Bayer*, 82 USPQ2d at 1831 and *Abcor Dev. Co.*, 200 USPQ at 218). “It may also be obtained from Applicant’s own specimen of use and any explanatory text included therein,” *id.* (citing *N.C. Lottery*, 123 USPQ2d at 1710), as well as from information provided by an applicant during prosecution. *In re Calphalon Corp.*, 122 USPQ2d 1153 (TTAB 2017).

A. The Examining Attorney’s Arguments and Evidence

The Examining Attorney first argues that the record shows that a feature of the services identified in the application as “real estate marketing services” is the use of “search engines pertaining to information about real estate buyers.” 6 TTABVUE 5. Because the involved application is an intent-to-use application and there is no record evidence of any use of the applied-for mark,⁷ the Examining Attorney does not rely on explanatory text in a specimen of use, as in *N.C. Lottery*, 123 USPQ2d at 1709-10 (holding that the Board properly relied on the applicant’s specimen in finding that FIRST TUESDAY was merely descriptive of “lottery cards; scratch cards for playing lottery games,” and “lottery services,” where the specimen showed that the lottery games were introduced on the first Tuesday of each month), or on advertising materials, as in *Abcor Dev.*, 200 USPQ at 218 (holding that the Board properly relied on the applicant’s advertising materials in determining that GASBADGE was merely descriptive of a “[d]evice to determine and monitor personal exposure to gaseous

⁷ In response to the Examining Attorney’s information request during prosecution, discussed below, Applicant stated that he “has not yet used any of the requested materials and documents in interstate commerce.” May 4, 2017 Response to Office Action at 6.

pollutants,” where those materials “clearly identifie[d] the gaseous pollutants collection function of [the applicant’s] device and its use in determining personal exposure to such pollutants”). Instead, the Examining Attorney relies on information provided by Applicant in response to a request for information made by the Examining Attorney pursuant to Trademark Rule 2.61(b), 37 C.F.R. § 2.61, regarding the services identified in the application, including specifically whether the services “include a search engine” and, if so, whether “the search engine pertain[s] to information about buyers.”⁸

Applicant’s response stated that his services “will include a search engine and the search engine will pertain to information about real estate buyers.”⁹ Applicant further claimed that the “services [he] intends to provide are unique” and provided the following “detailed description of such services”:

A novel method for generating real estate leads comprising:
a. registering participating buyers and buyers’ agents in an online computer system by requiring them to input information comprising: desired property specifications; b. registering participating sellers and sellers’ agents in the online computer system by requiring them to input information comprising: reciprocal specifications of interest; c. running a comparison algorithm in the online computer system every time any new information is input into the online computer system, to determine whether there is a new match between any of the desired property specifications and the reciprocal specifications of interest; d. notifying, by an electronic communication generated in the online computer system, the registered participating buyers and buyers’ agents and the registered participating sellers and sellers’ agents of any new match relating to their respective specifications; e. publishing the desired

⁸ November 8, 2016 Office Action at 1.

⁹ May 4, 2017 Response to Office Action at 6.

property specifications in the online computer system, such that they are accessible and searchable by any interested member the public; and f. connecting, by an electronic communication generated in the online computer system, any interested member of the public to the registered participating buyers and buyers' agents.¹⁰

We agree with the Examining Attorney that the record shows that a feature of Applicant's real estate marketing services is the use of a search engine pertaining to information about real estate buyers.

The Examining Attorney next argues that "the mark BUYER ENGINE is merely descriptive of this feature of applicant's real estate marketing services" 6 TTABVUE 5. She contends that "the individual words 'BUYER' and 'ENGINE' are descriptive of search engines that feature information pertaining to potential buyers of real estate." *Id.* With respect to BUYER, the Examining Attorney relies on a dictionary definition of the word as "a party which acquires, or agrees to acquire, ownership (in case of goods), or benefit or usage (in case of services), in exchange for money or other consideration under contract of sale." *Id.* at 6.¹¹ She also relies on six third-party registrations of marks for various real estate services in which "buyer" is disclaimed, *id.* at 6-7,¹² citing *In re Box Solutions Corp.*, 79 USPQ2d 1953 (TTAB 2006) and *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2014), in which the Board held that third-party registrations "show the sense in

¹⁰ May 4, 2017 Response to Office Action at 6. Applicant's description of his services reproduces his description of his claimed invention in his published application for a method patent. November 8, 2016 Office Action at 6.

¹¹ *Id.* at 2-3 (businessdictionary.com).

¹² May 29, 2017 Office Action at 8-21, 24-47, 51-56.

which [a] word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services.” (quoting *Institut National Des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992)). The dictionary definitions and third-party registrations show that the word BUYER in Applicant’s mark is descriptive of a feature of Applicant’s services, which he acknowledges “pertain to information about real estate buyers.”¹³

The Examining Attorney argues that the word ENGINE is “simply a synonym for ‘search engine.’” *Id.* at 7. She points to dictionary definitions of “engine” as “Computers: A search engine,”¹⁴ and as “Computing: Central piece of software (core) around or to which other features and functions are built or added, such as a search engine,”¹⁵ and 10 third-party registrations “for goods or services featuring search engines in which ‘ENGINE’ is disclaimed, including in marks registered on the Supplemental Register.” 6 TTABVUE 7.¹⁶

The dictionary definitions of “engine” and the third-party registrations in which the word has been disclaimed establish that “engine” is at least descriptive when it is used in marks for computer software-related goods and services such as “providing search engine software and commercial information by way of a search engine,”¹⁷ and

¹³ May 4, 2017 Response to Office Action at 6.

¹⁴ May 29, 2017 Office Action at 2 (AMERICAN HERITAGE DICTIONARY (ahdictionary.com)).

¹⁵ November 8, 2016 Office Action at 4 (BUSINESS DICTIONARY (businessdictionary.com)).

¹⁶ May 29, 2017 Office Action at 10-12, 16-21, 27-32, 35-36, 40-45, 51-56.

¹⁷ Registration No. 3311216 for the mark DISCOVERY ENGINE (May 29, 2017 Office Action at 10-12).

the “design and development of computer software.”¹⁸ Applicant’s “real estate marketing services” do not involve designing or providing software per se, but Applicant acknowledges that his services “will include a search engine and the search engine will pertain to information about real estate buyers.”¹⁹ The third-party registrations of marks containing disclaimers of “ENGINE” involve services that are similar in nature to Applicant’s services, including “providing information regarding the goods and services of others obtained from multiple sources to users based on perceived and known user interests; providing information obtained from search engines regarding the goods and services of others to users of mobile devices; searching various sources for information regarding the goods and services of others, filtering search results based on collected user preference data, and providing the filtered search results regarding the goods and services of others to users via their computers or mobile devices;”²⁰ “providing an on-line database featuring advertising and marketing information;”²¹ and “providing an on-line computer database featuring information regarding vehicle valuation data.”²² These registrations

¹⁸ Registration No. 3948812 for the mark ERASMUS ENGINE (May 29, 2017 Office Action at 16-18).

¹⁹ May 4, 2017 Response to Office Action at 6.

²⁰ Registration No. 4005440 for the mark AWARENESS ENGINE (May 29, 2017 Office Action at 30-32).

²¹ Registration No. 3943502 for the mark CONNECTION ENGINE (May 29, 2017 Office Action at 27-29).

²² Registration No. 4744611 for the mark COLLATERAL INSIGHT ENGINE (May 29, 2017 Office Action at 35-36).

therefore are probative of the descriptiveness of “ENGINE” in the context of Applicant’s services, which he acknowledges involve the use of a search engine in

registering participating buyers [and sellers] and buyers’ [and sellers’] agents in an online computer system by requiring them to input information . . . notifying, by an electronic communication generated in the online computer system, the registered participating buyers and buyers’ agents and the registered participating sellers and sellers’ agents of any new match relating to their respective specifications . . . and connecting, by an electronic communication generated in the online computer system, any interested member of the public to the registered participating buyers and buyers’ agents.²³

On the basis of the dictionary definitions of “engine,” the third-party registrations of marks for similar information-related services in which “ENGINE” has been disclaimed, and Applicant’s response to the information request during prosecution, we find that ENGINE is descriptive of the search engine feature of Applicant’s services.

The Examining Attorney next argues that “[n]ot only are [the] individual words ‘BUYER’ and ‘ENGINE’ merely descriptive of the search engine feature of the services, but the combination of the terms as ‘BUYER ENGINE’ results in a composite mark that is itself merely descriptive.” 6 TTABVUE 8. She relies on “excerpts from real estate marketing websites [that] show that search engines are commonly use [sic] to collect information for or about buyers, and that the terms ‘BUYER’ and ‘ENGINE’ are commonly used together to describe such services.” *Id.* at 9. She argues that “because consumers are accustomed to encountering the words

²³ May 4, 2017 Response to Office Action at 6.

‘BUYER’ and ‘ENGINE’ used in proximity to describe search engines pertaining to potential buyers of real estate, the mark ‘BUYER ENGINE’ is not incongruous when considered in connection [with] applicant’s search engines that provide information pertaining to buyers.” *Id.* at 10.

The Examining Attorney’s Internet evidence shows that search engines are commonly used in the marketing of real estate. Excerpts from pertinent websites are reproduced below.



Finding the right website for your real estate needs can be overwhelming. Whether you’re looking for your next home or selling a property, there are dozens of real estate websites that can get the job done. Instead of having to filter through the results, we break it down for you — we’ve compiled a list of the most popular real estate sites based on the total number of page listings on Google, with every website having more than 1 million indexed pages.

We split the list in two categories: **search engines** and **agency-specific sites**. Real estate search engines display properties put up for sale and rental by owners and brokers, often also including various tools and resources to help potential buyers make informed decisions. Agency-specific websites host a database of real estate listings and connect users with the company’s own realtors or partner agents.

beyond pricing and home amenities. The search engines we've listed here are some of the most popular on the web based on how many pages Google has indexed on each site.

Top 12 Real Estate Search Engine Sites:

1. **Realtor.com**

Realtor is the official website of the National Association of Realtors and hosts listings for homes, lands and rentals. Like Zillow and Trulia, Realtor.com gathers its information from multiple-listing services (MLSs) — databases of listings compiled by real estate professionals. Launched in 1994, the website is one of the first real estate companies to operate in a digital space.

Why you should use Realtor.com: The company website makes it straightforward to find and connect to local and trusted realtors; realtors on the site are members of the National Association of Realtors, who commit to following NAR's ethical code. Realtor.com provides detailed overviews of the local housing market, categorized by market trends, school ratings, current available homes and rentals and top-rated local agents.

2. **Trulia**



Trulia is a real estate property and rental search website that provides various information, including how to calculate mortgage rate and find local agents.

The website notably incorporates lifestyle factors as filters into the search process, including school ratings, crime data, proximity to restaurants and shops, and more.

Why you should use Trulia.com: By sorting through a combination of detailed demographic data and affordability price-points on a viewable map, potential buyers can be laser-focused when searching for the right home. Like Zillow, Trulia's app is incredibly user-friendly and allows consumers to search as easily as they would on the desktop website.

Zillow 3. **Zillow**

Zillow is one of the leading real estate marketplace search engines. With its living database of millions of homes up for sale and rental, the website offers users the relevant information and resources to get started. Zillow coined the term "Zestimate" — the company's estimation of a home value, calculated using a proprietary formula.

incorporating other research, like a comparative market analysis (CMA). Noted for its great user experience, Zillow's mobile and tablet app syncs searches and notifications across devices, making it convenient for prospective buyers to stay updated on their favorite listings.

LoopNet™ 4. LoopNet

As one of the largest commercial real estate search engines, LoopNet connects buyers to commercial properties for sale and for lease. The search function can filter by property types including office, industrial, retail, among others. According to the company's site, the website database has over 25 million property records.

Why you should use LoopNet: The site hosts more than 800,000 commercial listings and lets sellers promote their posts with several listing exposure options: Diamond, Platinum, Gold and Premium. LoopNet users can filter by property types including office, industrial and retail. To be more geographically specific, prospective buyers can draw a radius or freehand draw their desired area on the map.

RealtyTrac® 5. RealtyTrac

RealtyTrac is a real estate property search engine primarily for foreclosure listings and bank-owned homes, while also providing access to neighborhood data, real estate trend reports and house auctions.

Why you should use RealtyTrac: RealtyTrac appeals to consumers who are looking to make a purchase for an investment or bargain — with over 120 million listings, the site has detailed summary reports for each result. The website has colorful graphs and charts to break down data about lifestyle considerations, including crime, schools and unemployment rate.

Apartments.com® 6. Apartments.com

Apartments.com displays homes, apartments, condos and townhomes for rent in several major markets. The online database is dedicated to connecting rental seekers to rental property owners.

Why you should use Apartments.com: The site features the useful "Polygon" tool that lets users draw their own search parameters on the map, making it a simple process for prospective buyers to define their exact and ideal location. Additionally, the "Plan My Commute" filter allows users to find rentals close to a specific address or point of interest, adjusting by type of transportation, travel time and time of day. These helpful filters give prospective renters a glimpse of what it would be like to live in a

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²⁴ May 29, 2017 Office Action at 57-59. This website contains six additional "Real Estate Search Engine Sites." *Id.* at 60-61.

The realtor.com website discussed above is described elsewhere in the record as “the #1 Buyer Search Engine,”²⁵ while the trulia.com website discussed above is described elsewhere in the record as having “a well-designed search engine (allowing you, for example, to limit your search to foreclosures, price-reduced homes, or upcoming open houses, and to receive email updates).”²⁶

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The common use by third parties of search engines to provide information to or about buyers of real estate is probative of the likely understanding of the term BUYER ENGINE by purchasers of real estate marketing services involving a “search engine

²⁵ *Id.* at 80.

²⁶ November 8, 2016 Office Action at 13.

²⁷ *Id.* at 9.

. . . pertain[ing] to information about real estate buyers.”²⁸ *Cf. In re Mueller Sports Medicine, Inc.*, 126 USPQ2d 1584, 1589-90 (TTAB 2018).

On the basis of the record evidence of the descriptive significance of the words BUYER and ENGINE, and the common use of search engines pertaining to buyers of real estate in connection with real estate marketing services, we find that “the combination of the terms as ‘BUYER ENGINE’ results in a composite mark that is itself merely descriptive.” 6 TTABVUE 8.

B. Applicant’s Arguments

As noted above, Applicant made no evidence of record during prosecution. Instead, his appeal brief is confined to suggesting that words would need to be added to his proposed mark to “truly render it merely descriptive,” criticizing some of the Examining Attorney’s evidence and analysis, and discussing three Board cases involving marks found to have been suggestive.

Applicant initially acknowledges that the words BUYER and ENGINE in his proposed mark are not arbitrary because “[t]hey each have meanings that are suggestively related to the nature of the services.” 4 TTABVUE 2. He nonetheless argues that “their use and combination is incongruous and unique, and the suggestion they impart requires imagination, thought, mental pause, and perception.” *Id.* According to Applicant, the incongruity and suggestiveness of his proposed mark are

²⁸ May 4, 2017 Response to Office Action at 6.

exemplified by considering the descriptive words that would need to be added to the mark to truly render it merely descriptive: *REAL ESTATE BUYER SEARCH ENGINE*. The meaning of such a mark would immediately be understood by a consumer. Removing those words, however, leaves a consumer puzzled and guessing. A buyer of what? What type of engine? And, viewing the words combined, what is a buyer engine?

Id. at 2-3.

Applicant's argument that a consumer exposed to the proposed mark BUYER ENGINE would be left "puzzled and guessing" in response to the questions "A buyer of what? What type of engine? [and] [W]hat is a buyer engine?" reflects a fundamental misunderstanding of the test for mere descriptiveness. "[T]he question is not whether someone presented only with the mark could guess the goods and services listed in the identification. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them." *Mecca Grade Growers*, 125 USPQ2d at 1953 (citing *DuoProSS*, 103 USPQ2d at 1757). Applicant never addresses, much less answers, the pertinent question of whether someone who knows that Applicant's services are real estate marketing services involving, by Applicant's admission, a "search engine . . . pertain[ing] to information about real estate buyers,"²⁹ will understand the proposed mark BUYER ENGINE to describe that feature of Applicant's services. *Cf. N.C. Lottery*, 123 USPQ2d at 1710 (given the applicant's explanation that its lottery goods and services were offered on the first Tuesday of each month, "a consumer would immediately understand the

²⁹ May 4, 2017 Response to Office Action at 6.

intended meaning of FIRST TUESDAY,” making the claimed mark “less an identifier of the source of goods or services and more a description of a feature or characteristic of those goods and services”).

Applicant acknowledges the dictionary definitions of “engine” as a search engine, but argues that “the phrase ‘search engine’ is commonly used and constitutes a descriptive definition, while the word ‘engine’ by itself is not and does not.” 4 TTABVUE 3. This argument appears to be a corollary to Applicant’s misdirected argument that a consumer cannot determine the services provided under the BUYER ENGINE mark from the mark itself. We agree with Applicant that the record shows that it is more common to use “search engine,” rather than “engine” alone, to refer to goods and services involving search engines.³⁰ We are not persuaded, however, that this would cause someone who knows what Applicant’s services are to understand the word ENGINE in Applicant’s proposed mark to mean anything other than a search engine.

Applicant next argues that the “fact that the examiner’s search revealed no similar or conflicting marks . . . further demonstrates that BUYER and ENGINE are not a common or natural pairing of words to appear side by side. Again, they require additional words between them to impart any clear meaning.” 4 TTABVUE 3. This argument is equally unavailing. Even if the record establishes that “BUYER and ENGINE are not a common or natural pairing of words to appear side by side,” “there

³⁰ Applicant does not address the Examining Attorney’s evidence of third-party registrations of composite marks in which ENGINE has been disclaimed, which, as discussed above, suggest that ENGINE alone can be descriptive of goods and services involving search engines.

is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it,” *Fat Boys*, 118 USPQ2d at 1514, and the fact “that Applicant may be the first or only user of a term does not render that term distinctive, if it otherwise meets the standard [for descriptiveness] set forth in *In re Gyulay*, *In re Chamber of Commerce*, and *DuoProSS*.” *Id.* The Examining Attorney has shown that BUYER ENGINE meets that standard, and Applicant’s argument that the combination of BUYER and ENGINE in his proposed mark is unique to him does not rebut that showing.

Finally, Applicant cites three cases that he claims “are particularly analogous and illustrative here.” 4 TTABVUE 3. They are *In re Vienna Sausage Co.*, 156 USPQ 155 (TTAB 1967) (FRANKWURST found not to be merely descriptive of wieners); *In re John H. Breck, Inc.*, 150 USPQ 397 (TTAB 1966) (TINT TONE found not to be merely descriptive of hair coloring); and *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT found not to be merely descriptive of anti-perspirant deodorant for feet). It is, of course, well-settled that neither the Examining Attorney nor the Board is bound by prior registration determinations of the Patent and Trademark Office in cases involving different marks, different goods and services, and different records. *See, e.g., In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 (TTAB 2017). In any event, we agree with the Examining Attorney that the cases cited by Applicant are readily distinguishable because “in both *Vienna Sausage* and *Breck*, the Board found that the combination of the descriptive terms was incongruous given

the similarity in meaning of the words that were combined,” 6 TTABVUE 13, and that the descriptive terms were redundant, characteristics that are not present in the combination of BUYER and ENGINE here, and because in *Pennwalt*, “the Board held that the mark DRI-FOOT was suggestive of antiperspirant deodorant for feet because it was not the usual or normal manner in which the purpose of the goods would be described,” *id.* at 14, while “the mark BUYER ENGINE does not refer in an incongruous manner to the desired end-result of applicant’s services [but] rather . . . to a significant feature of the services themselves, and in a manner that is not incongruous when applied to search engines featuring potential buyers of real estate.” *Id.*

In sum, the evidence of record clearly demonstrates that BUYER ENGINE immediately describes a feature of Applicant’s real estate marketing services, namely, that they involve the use of a search engine pertaining to information about real estate buyers. Applicant’s proposed mark is thus merely descriptive of the services within the meaning of Section 2(e)(1) of the Trademark Act, and is ineligible for registration on the Principal Register in the absence of a showing of acquired distinctiveness.

Decision: The refusal to register is affirmed.