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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92082310
Party	Plaintiff Matos Insurance Agency, Inc. and Armando J. Matos
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Submission	Trial testimony/evidence/brief Brief on merits for plaintiff
Certificate of service	Method of service: **Email** I hereby certify that a true and complete copy of Brief on merits for plaintiff has been served on 02/27/2026 by delivering a copy to Roger M. Masson, counsel for Respondent; Michele A. Fenlon, assistant to Mr. Masson by email at rmasson@hinshawlaw.com; mfenlon@hinshawlaw.com Roger Masson Senior Counsel Hinshaw & Culbertson LLP 151 North Franklin Street, Suite 2500, Chicago, IL 60606 .
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Attachments	Petitioners Final Brief on the Merits - Cancellation No 92082310.pdf (Brief | 285 KB | 36 pages) Description: Brief on merits for plaintiff

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Registration No.: 6209276
Mark: MATTOS INSURANCE
Registered: December 1, 2020
Class: 036
Cancellation: 92082310

MATOS INSURANCE AGENCY, INC.,
ARMANDO JOSE MATOS)
)
Petitioner,)
)
v.)
)
MATTOS INSURANCE, INC.)
)
Respondent.)

PETITIONERS' FINAL BRIEF ON THE MERITS

Petitioners, Matos Insurance Agency, Inc., and Armando Jose Matos, respectfully submit their Final Brief on the Merits in support of the complete cancellation of Respondent, Mattos Insurance Inc.'s, mark, "MATTOS INSURANCE" (U.S. Reg. No. 6209276), registered on December 1, 2020, under class 036 for "Insurance agency and brokerage" (hereinafter referred to as "Respondent's Mark"), and respectfully request Respondent's Mark be cancelled in its entirety.

Dated: February 27, 2026.

Respectfully submitted,

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INTRODUCTION

Respondent's Mark was not, and is not, entitled to registration and should be cancelled in its entirety. Respondent's Mark lacked secondary meaning in the application prosecution phase and at the time of registration and lacks secondary meaning in the trial phase of this proceeding. Because Respondent's Mark was registered pursuant to Section 2(f), Respondent's Mark is not inherently distinctive so as to be registered on the Principal Register absent a showing of acquired distinctiveness (hereinafter interchangeably referred to as "secondary meaning"). *See* TMEP § 1212.02(b). Considering Respondent's Mark was previously determined to be primarily merely a surname combined with a descriptive or generic term ("insurance"), it is undisputed that Respondent's Mark is at least highly descriptive (if not generic), warranting an exponentially larger amount of evidence of secondary meaning to be placed on the Principle Register. *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005) ("Applicant's burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning."). Given that Respondent's Mark is primarily, and thus highly descriptive, as noted by the Examining Attorney, actual evidence that "MATTOS INSURANCE" is perceived as a mark for the relevant goods and services is required to establish secondary meaning.

Respondent's Mark failed to show any additional evidence of secondary meaning at the application phase (apart from an insufficient Declaration) and, following the close of evidence in this proceeding, clearly lacks secondary meaning. Respondent's claim of secondary meaning as to Respondent's Mark is otherwise invalid.

The Lanham Act authorizes "any person who believes that he is or will be damaged . . . by the registration of a mark" to file a petition to cancel the mark's registration. 15 U.S.C. § 1064. If a petition is filed "[w]ithin five years from the date of the registration," *Id*. § 1064(1), then "any ground that would have prevented registration in the first place qualifies as a valid ground for cancellation," *Pinkette Clothing, Inc., v. Cosmetic Warriors Ltd*., 894 F.3d 1015, 1021 (9th Cir. 2018), including that the mark, "when used on or in connection with the goods of the applicant is merely descriptive . . . [or] is primarily merely a surname" 15 U.S.C § 1052(e). A mark may be cancelled at any time if it is, or becomes, generic. 15 U.S.C. § 1064(3).

A registered trademark, like Respondent's Mark, is presumed valid. 15 U.S.C. § 1115(a). However, this presumption may be rebutted with sufficient evidence. Petitioners respectfully submit that the record evidence herein supports the rebuttal and overcoming of the presumption of validity accorded to Respondent's Mark by virtue of its registration on the Principal Register. Not only was the five-year use Declaration Respondent submitted in support of its original trademark application substantively inaccurate, and should have barred registration, even if the Declaration is deemed valid, the USPTO should have still required more evidence in registering the mark, because Respondent's Mark is highly descriptive as it is primarily merely a surname coupled with a descriptive or generic term. Notwithstanding, the record evidence supports the notion that Respondent's mark does not have the requisite secondary meaning to maintain registration. Petitioners have submitted the *unrebutted* consumer survey and findings of survey expert, Brian Sowers, and Respondent otherwise has no direct evidence of secondary meaning for which it can rely, including consumer surveys or actual consumer testimony. Even then, the circumstantial evidence Petitioners anticipate Respondent will rely on is insufficient to overcome the deficiencies

in Respondent's original application and the direct evidence of lack of secondary meaning for which Petitioners have submitted.

On this record, it cannot be said that the relevant public associates the designation MATTOS INSURANCE with Respondent alone or recognizes the designation as a mark identifying only Respondent's identified services.

PETITIONERS' DESCRIPTION OF THE RECORD[1]

Petitioners note that when referring to page numbers, Petitioners are referring to the page of the PDF in which the evidence is contained (e.g. 17 TTABVUE 24 = docket entry 17, page 24 of PDF).

Petitioners' description of the record consists of the evidence submitted in support of Petitioners' Third Notice of Reliance (32 TTABVUE)[2]. The evidence in support of Petitioners' Third Notice of Reliance may be found at (27 TTABVUE). Other evidence in the record for which Petitioners intend to rely on includes (14 TTABVUE), (17 TTABVUE), (31 TTABVUE), (41 TTABVUE), (58 TTABVUE), (65 TTABVUE), (66 TTABVUE), (67 TTABVUE).

1. Nonfinal Office Action dated April 30, 2020, regarding U.S. Trademark Application Serial No. 88794831(27 TTABVUE 6-14)
2. Response to Nonfinal Office Action dates August 7, 2020, regarding U.S. Trademark Application Serial No. 88794831 (27 TTABVUE 16-20)
3. Respondent's Trademark Registration for MATTOS INSURANCE, U.S. Reg. 6209276 (27 TTABVUE 21-22)
4. Petitioner's Petition to Cancel (Cancellation: 92082310) (27 TTABVUE 23-24)
5. Respondent's Answer to Petition (Cancellation No. 92082310) (27 TTABVUE 25)
6. Extensive Third-Party Usage of "MATTOS" (internet evidence) (41 TTABVUE)
7. Petitioners' Notice of Expert Witness Disclosure of Brian Sowers; Testimonial Declaration, Expert Report and Survey of Brian M. Sowers dated April 12, 2024; and Oral Cross Examination of Brian Sowers (14 TTABVUE), (17 TTABVUE), (31 TTABVUE)
8. Discovery deposition transcript of Corporate Representative for Mattos Insurance, Inc., Tiago Macedo Mangueira (27 TTABVUE 301-399)
9. Copy of Verified Complaint in Mattos Insurance, Inc. v. Jose Matos Armando and Matos Insurance Agency, Inc., Case No.: 0:22-cv-62075, U.S. District Court Southern District of Florida (27 TTABVUE 400-423)

[1] Petitioners note some of the evidence listed herein may only be used in Petitioners' Rebuttal/Reply brief, to the extent applicable.

[2] (32 TTABVUE) and (27 TTABVUE) are subject to the stipulations in filings (35 TTABVUE), (36 TTABVUE), (40 TTABVUE) and (41 TTABVUE).

10. Copy of Answer and Affirmative Defenses in Mattos Insurance, Inc. v. Jose Matos Armando and Matos Insurance Agency, Inc., Case No.: 0:22-cv-62075, U.S. District Court Southern District of Florida (27 TTABVUE 424-436)
11. Florida corporation filing for Mattos Insurance, Inc. (27 TTABVUE 437-444)
12. Testimonial (trial) Declaration of Tiago Mangueira (53 TTABVUE)
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14. Testimonial (trial) deposition transcript of Sam Freitas (58 TTABVUE 68-94)
15. Testimonial (trial) deposition transcript of Solange Buldrini (58 TTABVUE 95-129)
16. Testimonial (trial) deposition transcript of A. Kamila Silva (65 TTABVUE 4-84)
17. Testimonial (trial) deposition transcript of Tiago Mangueira (65 TTABVUE 85-142)
18. Petitioners' Rebuttal Disclosure of Armando Matos (66 TTABVUE)
19. Testimonial (trial) Declaration of Armando Matos (67 TTABVUE).

STATEMENT OF THE ISSUES

The issues in this proceeding are:

1. Whether Petitioners have rebutted the presumption of validity associated with Respondent's Mark.

2. Whether Respondent's Mark was erroneously registered based on an invalid claim of acquired distinctiveness.

3. Whether Respondent's Mark, in light of being primarily merely a surname coupled with a descriptive and/or generic term, and in light of having no competing direct evidence of secondary meaning and insufficient circumstantial evidence of secondary meaning, should be cancelled and is otherwise unregistrable on the Principal Register.

4. In the alternative to issue #3, whether Respondent's mark is generic, should be cancelled and is otherwise unregistrable whatsoever.

RECITATION OF THE FACTS

By way of historical background, on July 7, 2009, Marcelo Mattos and Deborah Mattos formed "Mattos Insurance, Inc.", a Florida profit corporation. 27 TTABVUE 437, 440. Respondent does business as "Mattos Insurance". On March 22, 2018, Petitioner, Armando Matos, formed "Matos Insurance Agency, Inc.", a Florida profit corporation. 27 TTABVUE 403 ¶ 12. Petitioners do business as "Matos Insurance Agency". On February 12, 2020, Respondent, filed a §1(a) trademark application for Respondent's Mark, "MATTOS INSURANCE", covering "insurance agency and brokerage" pursuant to class 036, Serial No. 88794831. On April 30, 2020, the USPTO issued a Non-Final Office Action (the "OA"), refusing registration of the mark MATTOS INSURANCE pursuant to Section 2(e)(4) of the Trademark Act, on the grounds the mark is "primarily merely a surname." The OA, citing applicable legal precedent, further asserted that "although the mark contains the additional term INSURANCE, combining a surname with a term that is merely descriptive…or generic of an applicant's good and/or services typically does not 'detract from the primary surname significance' of the mark." The OA further noted that since the applicant provides insurance agency/brokage services, "the term INSURANCE is considered generic in relation to the services and does not detract from the primary surname significance of the mark." Accordingly, the USPTO initially refused registration of Respondent's Mark.

The Examining Attorney offered Respondent three ways to overcome the OA refusal including by submitting a verified statement of five-years of substantially exclusive and continuous use in commerce for at least the five years immediately before the date of the statement. On August 7, 2020, Respondent submitted the requested Declaration and on July 7, 2009, Respondent's Mark was registered on the Principal Register. However, the Examining Attorney should have required additional evidence apart from the Declaration because of the highly

descriptive nature of the mark (to the extent the mark is deemed generic, no evidence would have been able to overcome the refusal since generic marks cannot be registered).

After extensive discovery conducted in this matter, it is clear Petitioners have shown Respondent's Mark lacks the requisite secondary meaning to be on the Principle Register because it is merely (highly) descriptive or is generic and is not otherwise registrable whatsoever. Respondent has not, and cannot, overcome Petitioners' *direct* evidence of no secondary meaning set forth in the record. Most significantly, Petitioners retained expert Brian Sowers to conduct a secondary meaning consumer survey. Respondent has no survey expert and Mr. Sowers's survey is therefore unrebutted (at least by an opposing survey expert, or any expert for that matter). Respondent had the opportunity to cross-examine Mr. Sowers via oral deposition (31 TTABVUE). Mr. Sowers has determined, through his consumer survey, that the findings of his survey result in a net secondary meaning level for Respondent's Mark, "Mattos Insurance" of 10.4%. Similarly, Mr. Sowers determined the net level of secondary meaning among a sub-quota of consumers in Florida regarding Respondent's Mark, "Mattos Insurance", to be 13.0%. Each of these figures are substantially below the threshold courts have typically found to show secondary meaning based on a consumer survey. Respondent has submitted zero direct evidence of secondary meaning in this action and at this juncture is unable to submit any form of direct evidence of secondary meaning. Further, none of the circumstantial evidence of secondary meaning Respondent may attempt to submit can overcome the inherently strong (and direct) evidence (or lack thereof) of secondary meaning associated with Petitioners' consumer survey pool and Respondent's Mark.

Accordingly, Petitioners respectfully submit the Examining Attorney erroneously allowed registration of the mark as Respondent failed to make a threshold showing of secondary meaning at the application stage.

Curiously, the Examining Attorney also did not require Respondent to submit any type of consent forms being that Respondent was applying to register a surname or require Respondent to indicate if the surname refers to a living person.

Notwithstanding, the evidence in the record shows Respondent's Mark lacks necessary secondary meaning to be on the Principal Register. *See Royal Palm Props., LLC v. Pink Palm Props., LLC*, 950 F.3d 776, 783 (11th Cir. 2020) (noting the district court found the USPTO wrongly allowed registration of a particular mark because the mark was not distinctive as required by the Lanham Act). Or, Respondent's Mark is on its face generic, or so highly descriptive as to be generic and cannot be registered at all.

As noted in its Petition, Petitioners have been damaged by Respondent's attempt to enforce its invalid mark, namely through the federal trademark infringement litigation Respondent filed in the United States District Court for the Southern District of Florida, which is premised on Respondent's Mark being valid and on the Principal Register. Petitioners assert they will be damaged by continued registration of Respondent's Mark. *See Mattos Insurance, Inc. v. Jose Matos Armando and Matos Insurance Agency, Inc.*, Case No.: 0:22-cv-62075-AHS (27 TTABVUE 400). In its Answer and Affirmative Defenses to that lawsuit, Petitioners challenged the validity of Respondent's Mark (27 TTABVUE 435).

Respondent asserted no affirmative defenses in responding to Petitioners' Petition (6 TTABVUE 4).

ARGUMENT

A. Petitioners have sufficiently rebutted the presumption of validity.

Where a mark has been registered with the USPTO, there is a "rebuttable presumption that the mark[ ] [is] protectable or distinctive." *Welding Servs., Inc. v. Forman*, 509 F.3d 1351, 1357 n.3 (11th Cir. 2007). Accordingly, in order to successfully challenge a registered mark on distinctiveness grounds, the challenger must overcome the presumption of validity by showing by a preponderance of the evidence that the mark is not distinctive. *See Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc*., 892 F.2d 1021, 1023 (Fed. Cir. 1989) (discussing the standard in the context of cancellation for abandonment); *Borinquen Biscuit Corp. v. M.V. Trading Corp*., 443 F.3d 112, 117–18 (1st Cir. 2006) (stating that a putative infringer challenging a registered mark on distinctiveness grounds must prove descriptiveness by a preponderance of the evidence). If proof of secondary meaning was attempted to be provided (such as in the instant matter), the presumption is that the mark has acquired distinctiveness by obtaining secondary meaning. *Id*. ("[T]he relevant presumption to which [a trademark holder] is entitled, as the owner of marks registered under Section 2(f), is not the presumption that the marks are inherently distinctive, but rather that the marks had acquired distinctiveness."). *Aromatique, Inc. v. Gold Seal, Inc*., 28 F.3d 863, 870 (8th Cir. 1994).

B. Five-year use claims of secondary meaning are generally insufficient where the mark is highly descriptive, such as a Respondent's Mark, "MATTOS INSURANCE", which is primarily merely a surname coupled with a descriptive or generic term for the relevant services; marks which are primarily merely a surname are deemed to be merely descriptive

Here, as noted, Respondent's Mark was registered under Section 2(f), which states that "nothing . . . shall prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods [or services] in commerce." 15 U.S.C. § 1052(f). The court in

Cold War Museum Inc. v. Cold War Air Museum Inc., 92 USPQ2d 1626, 1629 (Fed. Cir. 2009) said in further detail:

> In a Section 2(f) case, the party seeking cancellation bears the initial burden to establish a prima facie case of no acquired distinctiveness [i.e. secondary meaning]. To satisfy this initial burden, the party seeking cancellation must present sufficient evidence or argument on which the board could reasonably conclude that the party has overcome the record evidence of acquired distinctiveness—which includes everything submitted by the applicant during prosecution. The burden of producing additional evidence or argument in defense of registration only shifts to the registrant if and when the party seeking cancellation establishes a prima facie showing of invalidity. The Board must then decide whether the party seeking cancellation has satisfied its ultimate burden of persuasion, based on all the evidence made of record during prosecution and any additional evidence introduced in the cancellation proceeding.

Id. (citations and quotation marks omitted). It should be noted that here, during the application phase of Respondent's Mark, which ultimately matured into registration, Respondent **did not** submit any actual evidence of secondary meaning. *See In re Kalmbach Publ'g Co*., 14 USPQ2d 1490, 1494 (TTAB 1989) (finding that absent specific evidence of the extent of the mark's exposure to the purchasing public and of the purchasers' perception of the asserted mark, long use of a purported mark does not demonstrate requisite acquired distinctiveness). *See also Target Brands, Inc. v. Hughes*, 85 USPQ2d 1676, 1681 (TTAB 2007) ("Applicant's continuous use since 1992 is a fairly lengthy period, but not necessarily conclusive or persuasive on the Section 2(f) showing."). Here, Respondent claims exclusive and continuous in the five years preceding the Declaration (which Petitioners contest) and at least since 2009, which would have been about 11 years before the filing of its trademark application.

It has been consistently held that "[f]or terms encumbered with a greater degree of descriptiveness, statements of length of use alone generally will be insufficient to establish acquired distinctiveness." *See In re La. Fish Fry Prods., Ltd*., 797 F.3d 1332, 116 USPQ2d 1262

(Fed. Cir. 2015) (holding that the Board was within its discretion not to accept applicant's allegation of five years' use given the highly descriptive nature of the mark); *Apollo Med. Extrusion Techs., Inc. v. Med. Extrusion Techs., Inc*., 123 USPQ2d 1844, 1856 (TTAB 2017) (finding, despite applicant's claim of use since 1991, that much more evidence, especially in the quantity of direct evidence from the relevant purchasing public, would be necessary to show that the designation MEDICAL EXTRUSION TECHNOLOGIES has become distinctive for Applicant's medical extrusion goods); *Alcatraz,* 107 USPQ2d at 1766 (TTAB 2013) ("Given the highly descriptive nature of registrant's mark [ANNAPOLIS TOURS], continuous use alone since 1992 would not be sufficient to establish acquired distinctiveness."); *In re Noon Hour Food Prods., Inc*., 88 USPQ2d 1172 (TTAB 2008) (finding, despite applicant's claim of use in commerce for almost one hundred years, as well as an "inadvertently cancelled" seventy-year old registration for the mark BOND-OST for cheese, current evidence clearly showed the mark was generic for the goods, and assuming arguendo that BOND-OST is not generic, that applicant had failed to establish acquired distinctiveness of the highly descriptive mark); *In re Crystal Geyser Water Co*., 85 USPQ2d 1374 (TTAB 2007) (holding applicant's evidence of acquired distinctiveness, including a claim of use since 1990, sales of more than 7,650,000,000 units of its goods, and extensive display of its mark CRYSTAL GEYSER ALPINE SPRING WATER on advertising and delivery trucks and promotional paraphernalia, insufficient to establish that the highly descriptive phrase ALPINE SPRING WATER had acquired distinctiveness for applicant's bottled spring water); *In re Kalmbach Publ'g Co.*, 14 USPQ2d 1490 (TTAB 1989) (holding applicant's sole evidence of acquired distinctiveness, a claim of use since 1975, insufficient to establish that the highly descriptive, if not generic, designation RADIO CONTROL BUYERS GUIDE had become distinctive of applicant's magazines); *In re Gray Inc*., 3 USPQ2d 1558, 1559 (TTAB 1987) ("[T]o

support registration of PROTECTIVE EQUIPMENT [for burglar and fire alarms and burglar and fire alarm surveillance services] on the Principal Register a showing considerably stronger than a prima facie statement of five years' substantially exclusive use is required.". Courts have summarily rejected claims of secondary meaning predicated solely upon the continued use of the mark for many years. *Vision Center v. Opticks, Inc. et al.,* 596 F.2d 111 (5th Cir. 1979) (quoting R. Callman, The Law of Unfair Competition, Trademarks and Monopolies, supra § 77.3 (3d ed. 1969).

A trademark/service mark which is composed of someone's name, including surname, is viewed the same as merely descriptive marks. *See Peaceable Planet, Inc. v. Ty, Inc.,* 362 F.3d 986, 989–90 (7th Cir.2004) (identifying the particular reasons for considering names merely descriptive marks: (1) "a reluctance to forbid a person to use his own name in his own business"; (2) a recognition that "some names are so common ... that consumers will not assume that two products having the same name therefore have the same source"; and (3) the concern that "preventing a person from using his name to denote his business may deprive consumers of useful information").

Courts have long held that marks consisting of a surname paired with a generic or highly descriptive term for the relevant goods or services are not inherently distinctive but instead describe the provider and the service offered. See *Hutchinson Technology Incorporated*, 852 F.2d 552 (Fed. Cir. 1988). In *Hutchinson*, the Court refused registration of the mark "Hutchinson Technology" finding the term "Hutchinson" was a surname and the term "technology" was merely descriptive of the goods involved and added nothing to the registrability of the mark. *Id.* The Court cited pages from the 1984 Northern Virginia and 1985 Maryland Suburban telephone directories which listed over 200 individuals with the surname "Hutchinson." *Id*. The Court further held the

presence of the word "technology" in the mark did not alter the primary significance of the mark as a surname. *Id*.

Similarly to the applicant's mark in *Hutchinson*, Respondent's mark in this case is merely a surname "Mattos" (the surname of its originators) combined with a term describing the goods or services being provided ("Insurance"). The term "Insurance" immediately conveys to consumers the nature and source of the services without necessitating any imagination from consumers while the term "Mattos" does nothing more than information consumers that Respondent provides insurance services under the name "Mattos." Similarly to the Court's findings in *Hutchinson*, in this particular case, "Mattos" is a surname, and specifically that of the founders of Respondent, and "Insurance" although disclaimed, is generic of the services involved and adds nothing to the registrability of the mark or the primary significance of the mark.

i. *Alcatraz Media, Inc. v. Chesapeake Marine Tours Inc*., 107 USPQ 2d 1750 (TTAB 2013) states that sole reliance on five-year use Declaration in prosecution phase of application is not enough where mark is highly descriptive.

The *Alcatraz* case is instructive and squarely on point with the facts herein. Like in *Alcatraz*, *here* the USPTO found acquired distinctiveness of Respondent's Mark "solely on the basis of respondent's Section 2(f) declaration of five years of 'substantially exclusive and continuous use' immediately preceding the date of execution of the declaration." 107 USPQ 2d 1750, 1766 (TTAB 2013). In *Alcatraz*, the respondent asserted that because the examining attorney did not require actual evidence of acquired distinctiveness, the petitioner must, under *Cold War*, demonstrate respondent's use of its mark was not substantially exclusive and continuous during the relevant time period in order to satisfy its initial burden of prima facie invalidity." In rejecting this argument, the Board said simply because the respondent's mark was registered under 2(f) based solely on a declaration of use "does not preclude petitioner from introducing evidence that

the mark is so highly descriptive as to require actual evidence of acquired distinctiveness in order to satisfy its initial burden of proof [because] to hold otherwise would unduly restrict a plaintiff's ability to challenge the validity of a mark registered under Section 2(f) in a cancellation proceeding based on a declaration of use and fail to account for changes in the marketplace." 107 USPQ 2d at 1791. The Board in *Alcatraz* compared such a position as to being akin to substituting the examining attorney's determination based on a limited record adduced during an *ex parte* examination, in lieu of a more expansive record that may be shown in an *inter partes* proceeding such as here.

In *Alcatraz*, the Board said a petitioner may carry its initial burden of showing prima facie invalidity by introducing evidence at trial that the mark is so highly descriptive that a mere declaration of five years continuous and substantially exclusive use is insufficient to establish secondary meaning, so that actual evidence of secondary meaning in the form of sales and advertising information is necessary, noting that in accordance with *Cold War Museum*, upon petitioner meeting this initial burden, the burden of proof then shifts to respondent to defend its registration.

Ultimately, the *Alcatraz* Board found that because respondent's mark was highly descriptive and because respondent had only submitted a five-year use declaration at the time of registration, the petitioner met its burden of making a prima facie showing of lack of secondary meaning. The Board should find the same here. In accordance with *Cold War Museum*, the burden should shift to Respondent to now provide secondary meaning based on any additional evidence or argument produced in this proceeding, *see Alcatraz*, supra. Because Petitioners are unsure at this particular stage which of the purported circumstantial evidence of secondary meaning Respondent intends to rely upon in its response brief, Petitioners reserve the right to challenge the

sufficiency of Respondent's circumstantial evidence in more detail in its rebuttal/reply brief, including any argument of likelihood of confusion (which Petitioners refute) to the extent Respondent raises such a claim in its response brief.

C. **Respondent's Mark is highly descriptive when considering the origin of the name and the services to which the mark is applied.**

Here, it is undisputed that Respondent, Mattos Insurance, Inc., was formed in 2009 by Marcelo and Deborah Mattos (27 TTABVUE 437, 440); (65 TTABVUE 11 at 8:12-14; 96 at 12:4-9). Respondent never obtained written consent from either Marcelo or Deborah Mattos prior to filing for Respondent's Mark and consequently did not submit any proof of consent as part of its application (65 TTABVUE 97 at 3-6), even though the name of the company, and the mark itself was adopted in light of the last name of the founders. As testified to by Andrea Kamila Soares De Silva, an employee of Respondent and whose family purchased Respondent:

> 12 Q. Was Mattos Insurance the company named after Marcello
> 13 and Deborah?
> 14 A. Yes.

(65 TTABVUE 11 at 8:12-14).

There is no evidence "Mattos" was utilized in Respondent's Mark for any reason other than it is the last name of the founders of the company or that it has a unique meaning other than functioning as the surname of the founders. Respondent learned of Petitioners in 2018 and/or 2019 (65 TTABVUE 29 at 26:4-5; 69 at ¶ 8; 92 at 8:23-25, 9:1). Therefore, in addition to the five-year use claim being insufficient because Respondent has failed to show secondary meaning of Respondent's Mark, Respondent's statement in its 2(f) Declaration, dated June 11, 2020 (27 TTABVUE 20), that it had been substantially, exclusively and continuously using Respondent's Mark "at least five years immediately before the date of [the] Declaration" (27 TTABVUE, p. 20 ¶ 4) could not possibly be true, as Respondent's Vice President, Tiago Mangueira who was

personally involved in the preparation of the application for Respondent's Mark, and signed the Declaration (27 TTABVUE 91 at 7:18-24), admitted they have known about Petitioners, and Petitioners' use of "Matos Insurance" or "Matos Insurance Agency" since at least 2018 or 2019 (1 or 2 years prior to the date of the Declaration). Mr. Mangueira testified that Respondent "[p]rovides insurance services as an insurance agent and broker, insurance broker. That's the main service we provide." (65 TTABVUE 93) at 9:14-17. These are also the services covered by Respondent's Mark registration (insurance agency and brokerage) (27 TTABVUE 21).[3] To note, Mr. Mangueira has worked for Respondent since 2015 and currently is "the Vice President of [Respondent] and [at all relevant times has been] responsible for the management of the whole company." (65 TTABVUE 99 at 15:19-21). It should be noted that Mr. Mangueira served as Respondent's corporate representative for purposes of deposition in the discovery phase of this proceeding (27 TTABVUE 301).

D. <u>Secondary meaning and the significance of consumer surveys</u>

[T]he considerations to be assessed in determining whether a mark has acquired secondary meaning can be described by the following six factors: (1) association of the trade[mark] with a particular source by actual purchasers (**typically measured by customer surveys**); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark. *Converse, Inc. v. Int'l Trade Comm'n*, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018) (emphasis added); *see Wembley, Inc. v. Diplomat Tie Co*., 137 U.S.P.Q. 107 (D. Md. 1963)

[3] Petitioners note that, where, as here, a part of the trademark is "disclaimed" with the United States Patent and Trademark Office, the disclaimed part is usually not regarded as the "dominant" part of the mark. § 19:72. Effect of disclaimer in determining if confusion is likely, 2 McCarthy on Trademarks and Unfair Competition § 19:72 (5th ed.); *Country Floors, Inc. v. Partnership Composed of Gepner and Ford*, 930 F.2d 1056, 1065, 18 U.S.P.Q.2d 1577, 19 Fed. R. Serv. 3d 1319 (3d Cir. 1991) (The disclaimed segment is "not usually regarded as the dominant part of a mark.").

("Proof of secondary meaning requires more than proof of the existence of one person or even a relatively small number of people who associate the term with a single source."). *See Norm Thompson Outfitters, Inc. v. General Motors Corp.*, 171 U.S.P.Q. 328 (9th Cir. 1971) (If there is only a "sparseness of people" who associate the mark with plaintiff, secondary meaning is not proven); *see also* § 15:45. Association with a single source by how many people?, 2 McCarthy on Trademarks and Unfair Competition § 15:45 (5th ed.).

The preferred form of proof when attempting to establish that a registered mark is not entitled to protection on descriptive grounds includes direct evidence (such as consumer surveys). *See Keebler Co. v. Rovira Biscuit Co*., 624 F.2d 366, 375 (1st Cir. 1980). Many courts have found that the lack of survey evidence is a "decisive factor" to a party's claim that its mark has acquired secondary meaning. "[C]onsumer surveys have been consistently cited as the most persuasive evidence of secondary meaning. And, in a borderline case where it is not at all obvious that [a] designation has been used as a mark, survey evidence may be necessary to prove trademark perception." *LVL XIII Brands, Inc. v. Louis Vuitton Malletier S.A*., 209 F. Supp. 3d 612, 656 (S.D.N.Y. 2016) (2d Cir. 2017) (summary order); s*ee also Chum Ltd. v. Lisowski,* 198 F. Supp. 2d 530, 534–35 (S.D.N.Y. 2002) (where the plaintiff "chose not to offer into evidence[] any consumer surveys . . . demonstrating the requisite link in the minds of consumers," despite three other factors weighing in plaintiffs' favor, the court was **most persuaded by the evidence it has not seen: direct survey evidence**," and therefore found that the plaintiff failed to meet "its burden of demonstrating by a preponderance of the evidence" that the marks acquired a secondary meaning) (emphasis added); *Information Clearing House, Inc. v. Find Magazine,* 492 F. Supp. 147, 160 (S.D.N.Y.1980) (observing, in the likelihood of confusion context, that "[i]t is also significant that plaintiff, although possessed of the financial means, did not undertake a survey of public consumer

reaction"); A ratio in the 30% range is considered more marginal, and may be insufficient to raise a triable issue of fact on summary judgment whereas if the percentage is below 30%, a defendant is in a tenable position to argue that no triable issue of fact exists. S*praying Systems Co. v. Delavan, Inc.*, 975 F. 2d at 390, 393 (7th Cir. 1992).

Here, Respondent has not conducted or provided any survey evidence to support the finding of secondary meaning. In such circumstances, consumer perception is the central inquiry and survey evidence is the most direct and persuasive way of establishing secondary meaning. *Vision Center*, 596 F.2d at 119; *Aloe Creme Laboratories*, 423 F.2d at 849; 1 J. McCarthy, supra, Sec. 15.12(D). McCarthy on Trademarks and Unfair Competition, § 32:190 (5th ed.).

i. Even if the Board does not deem the Declaration during Respondent's prosecution phase, on its own, as insufficient to show secondary meaning, the consumer survey conducted by Petitioners' expert, Brian Sowers provides direct evidence Respondent's Mark does *not* have the requisite secondary meaning for Respondent to maintain its mark on the Principal Register; Respondent has no rebuttal survey and any circumstantial evidence it may rely upon is inadequate.

When determining level of secondary meaning, "[g]enerally, figures over 50% are regarded as clearly sufficient. However, figures of 46%, 48%, and 37 percent have also been found sufficient." McCarthy on Trademarks and Unfair Competition, § 32:190 (5th ed.).

In this case, Petitioner retained survey expert Brian Sowers who designed and conducted a consumer survey and submitted a corresponding Declaration (17 TTABVUE). Mr. Sowers is a Principal at Applied Marketing Science, Inc., a market research and consulting Firm. (17 TTABVUE 5 ¶ 2). Incorporated into Mr. Sowers's report is his CV, as well as a discussion of his educational and progressional background. Respondent did not challenge the disclosure of Mr. Sowers or the sufficiency of his report and did not file a motion to strike prior to pre-trial disclosures were due. Notwithstanding, Mr. Sowers is clearly qualified, based on his materials,

which includes that he has conducted thousands of market research surveys across a broad range of modalities and populations (17 TTABVUE 9 ¶ 2) to render his opinion. The purpose of Mr. Sowers's survey was to determine whether Respondent's Mark, MATTOS INSURANCE, "has acquired secondary meaning for insurance agency and brokerage services." (17 TTABVUE 9 ¶ 4). Mr. Sowers ultimately concluded as follows:

> [I]t is my professional opinion that, after controlling for guessing and other forms of survey noise, the net secondary meaning level for MATTOS INSURANCE of **10.4%**. Similarly, the net level of secondary meaning among a sub-quota of consumers in Florida (the state in which I understand Respondent's principal place of business is located) is **13.0%.**

(17 TTABVUE 5-6 ¶ 4). It is Mr. Sowers's understanding that 10.4% and 13% are below the levels typically held by courts to be probative of secondary meaning (17 TTABVUE 11 ¶ 11) (citing to McCarthy on Trademarks and Unfair Competition, § 32:190 (5th ed.). To briefly summarize Mr. Sowers's methodology, even though it was not timely challenged by Respondent, Mr. Sowers designed his survey based on accepted principles of survey research as set forth in the Federal Judicial Center's "Reference Manual on Scientific Evidence." (17 TTABVUE 12 ¶ 12). Mr. Sowers conducted a double-blind survey where no information about the actual purpose of the survey or the survey sponsor was disclosed. In addition, the survey included screening answers that were unrelated to the survey's purpose to disguise the "correct" answer for sample selection (17 TTABVUE 12, ¶ 13). The survey universe consisted of "potential customers of insurance policies in the areas served by Respondent." (17 TTABVUE 12, ¶ 16). Survey invitations were sent via e-mail to Prodege panel members (a respected provider of survey respondents) and participants were given 75 "Swagbucks" for completion of the survey, a form of Prodege currency. (17 TTABVUE 12, ¶ 21). Click-balancing was used to ensure individuals participating in the survey approximated the U.S. Census in terms of age and gender for the particular states.

Survey takers were qualified if they resided in "Connecticut, Florida, North Carolina, New Jersey, Pennsylvania, South Carolina, or Texas (states where Respondent claims to conduct business, (65 TTABVUE 113 at 29:20-21.) and had personally purchased or renewed an insurance policy in the past 12 months or indicated that they are likely to do so in the next 12 months." (17 TTABVUE 12, ¶ 17).

Survey respondents also had to have at least some involvement in selecting the company from whom they purchased or renewed (or from whom they will purchase or renew) the insurance policy. *Id.* In Mr. Sowers's survey, the test stimulus was "MATTOS INSURANCE". The stimulus to be shown to the Control Group was INSURANCE AGENCY, which is a strong control because such phrasing cannot be attributed to any one particular company. (17 TTABVUE 16, ¶ 24). A total of 8,196 potential participants responded to the e-mail invitation to participate in the survey, with a total of 421 respondents qualifying for the survey based on their responses. (17 TTABVUE 24, ¶ 46).

Ultimately, the final dataset included 416 respondents, which accounted for 5 respondents that provided random keystrokes or nonsensical answers. (17 TTABVUE 25, ¶ 47). "The 'net' difference between the test and the control is the true measure of the level to which respondents associate MATTOS INSURANCE with the insurance agency and brokerage services of one company [which was arrived at by taking 21.8% received by Test Group respondents and the 11.4% received by Control Group respondents, for a total net of 10.4%]." (17 TTABVUE 25, ¶ 48). Mr. Sowers tried to be more conservative and also conduct a Florida subgroup analysis, although not necessary for the purposes of his opinion, because he understood Florida to be Respondent's principal place of business, and to determine whether and to what extent their beliefs regarding MATTOS INSURANCE differ from relevant consumers more broadly. The net

secondary meaning level for relevant consumers in Florida was found to be 13.0%, which is still substantially lower than the values generally accepted as being probative of secondary meaning. See *Roselux Chemical Co. v. Parsons Ammonia Co.*, 132 U.S.P.Q. 627 (1962) (Where a survey showed that only about 10% of actual users associated the name with a single source, this was insufficient.); *Brooks Shoe Mfg. Co., Inc. v. Suave Shoe Corp.*, 215 U.S.P.Q. 358 (S.D. Fla. 1981), judgment aff'd, 221 U.S.P.Q. 536 (11th Cir. 1983) (2.7% association is insufficient as "de minimis" evidence of secondary meaning); *Straumann Co. v. Lifecore Biomedical Inc.*, 278 F. Supp. 2d 130, 137 (D. Mass. 2003) (Identification percentages as low as 0 to 2.7% are not sufficient to go to a jury on the issue of secondary meaning.); *Citizens Banking Corp. v. Citizens Financial Group, Inc.*, 2008 WL 1995104 (E.D. Mich. 2008), aff'd, 320 Fed. Appx. 341 (6th Cir. 2009) (8% identification with plaintiff "is insufficient to demonstrate secondary meaning."). § 15:45. Association with a single source by how many people?, 2 McCarthy on Trademarks and Unfair Competition § 15:45 (5th ed.).

Although all evidence must be reviewed on a case-by-case basis, generally, survey results showing less than 10% consumer recognition are insufficient to establish secondary meaning,and results over 50% are sufficient to establish secondary meaning. See *Roselux*, supra. (finding 10% insufficient to establish secondary meaning); *In re Owens-Corning Fiberglas Corp*., 774 F.2d at 1127–28, 227 USPQ at 424–25 (finding 50% probative in establishing secondary meaning given the totality of the evidence); Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§15.45, 32.190 (4th ed. 2013). *See Thomas & Betts Corp. v. Panduit Corp*., 138 F.3d 277, 295 (7th Cir. 1998) ("We noted that figures in the 30% range were marginal and did not establish secondary meaning as a matter of law."); *Walker & Zanger, Inc. v. Paragon Indus., Inc*., 465 F. Supp. 2d 956, 966–67 (N.D. Cal. 2006) (holding a positive response of 25% was insufficient to

show secondary meaning); *Zippo Mfg. Co. v. Rogers Imps., Inc*., 216 F. Supp. 670, 689–90 (S.D.N.Y. 1963) (holding that a positive response of 25% was insufficient to show secondary meaning); *American Flange & Mfg. Co. v. Rieke Corp*., 2006 WL 1706438, at *23–24 (TTAB 2006) (holding a positive response of 19% was insufficient to show secondary meaning).

E. Respondent's lack of survey or other quantitative evidence substantially weakens, if not is a fatal flaw to Respondent's ability to claim secondary meaning regarding Respondent's Mark.

Survey evidence is generally thought to be the most direct and persuasive way of establishing secondary meaning. *See Zatarains, Inc. v. Oak Grove Smokehouse, Inc*., 698 F.2d 786, 795 (5th Cir. 1983).

In *Am. Television and Communications Corp. v. Am. Communications and Television, Inc.*, 810 F.2d 1546 (11th Cir. 1987), the appellate court, in finding that the trial court's holding that plaintiff failed to prove secondary meaning was *not* clearly erroneous, noted that plaintiff's sole reliance on circumstantial evidence of secondary meaning was insufficient, especially considering the absence of any direct evidence, i.e. survey or other qualitative evidence, neither of which were proffered by the plaintiff. "[P]laintiff presented no more than speculation about what its name might mean to investors and presented no evidence of the meaning of its name to any suppliers. Nor does plaintiff's evidence of its advertising, press releases, coverage in the media, Time, Inc.'s annual reports, and two misdirected missives convince us that the court's ruling does not reflect the truth and the right of the case." In *Am. Heritage Life, Ins. Co. v. Heritage Life Ins. Co.*, 494 F.2d 3 (5th Cir. 1974), the court found plaintiff's annual reports, prospectuses, other corporate material, and press coverage not sufficient to prove secondary meaning, and use of terms in corporate name by others in insurance industry militates against finding of secondary meaning. Similarly, in *Vision Center*, the court found testimony of seven of plaintiff's customers and

evidence that plaintiff occasionally received mail addressed to other establishments with "vision" in their names held insufficient to prove secondary meaning, especially considering lack of survey.

Sheer numbers alone are not necessarily enough to prove secondary meaning. *In re Boston Beer Co. L.P.*, 53 USPQ2d 1056 (Fed. Cir. 1999) (claim based on annual sales under the mark of approximately $85 million, and annual advertising expenditures in excess of $10 million, not sufficient to establish acquired distinctiveness in view of highly descriptive nature of mark). The record is devoid of any evidence, and Respondent cannot show, how any of the financial expenditures it likely intends to rely, translate into recognition of "MATTOS INSURANCE" as a mark. See *In Re Tennis Industry Assn.*, 102 USPQ2d 1671 (TTAB 2012).

Petitioners anticipate Respondent will rely therefore on circumstantial or indirect evidence of secondary meaning, none of which should be sufficient to overcome the findings of Petitioners' survey. As for volume of sales, although one cannot define the precise range necessary to establish secondary meaning, in most cases a significant amount of sales is needed for a court to make such a finding. *See, e.g. The Black & Decker Corp. v. Dunsford et al.*, 944 F. Supp. 220, 227 (S.D.N.Y. 1996) (listing cases). And even sales of up to $30 million in one year have been found insufficient to establish secondary meaning when there is an insufficient connection between those sales and the mark. S*praying Systems Co.*, 975 F. 2d at 390, 393 (7th Cir. 1992) (sales of over $20 and $30 million per year not persuasive when they do not reflect recognition of the mark). As with advertising, the courts do not look robotically at the level of sales to determine whether secondary meaning has been achieved. Instead, the mark holder must demonstrate how the sales volume shows that consumers identify the product or features thereof with the mark. *Spraying Systems*, 975 F. 2d at 393 (emphasis added); *Keystone Camera Products Corp. v. Ansco Photo-Optical*

Products Corp., 667 F. Supp. 1221, 1231 (N.D. Ill. 1987) (evidence of ten million dollars in sales not persuasive without context).

i. All of the circumstantial evidence Respondent likely intends to set forth is limited in temporal scope and even then, the circumstantial evidence has not been associated with how consumers identify the services provided under the mark.

As noted in *Converse*, supra the considerations to be assessed in determining whether a mark has acquired secondary meaning from a circumstantial (or indirect) standpoint can be described by the following factors: (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark (omitting factor (1) which discusses direct evidence). Because Respondent has no direct evidence of secondary meaning, it may only rely on factors 2 through 6 to show secondary meaning, which are all forms of circumstantial evidence.

Petitioners have already addressed herein why factor 2 should be disregarded as Respondent's claim of use on its own is inadequate to show secondary meaning. Therefore, Petitioners anticipate Respondent will set forth evidence of advertising expenditures, amount of sales and number of customers, intentional copying and unsolicited media coverage, to the extent applicable. However, none of this evidence is sufficient, is incomplete or otherwise cannot overcome the numerous issues with Respondent's Mark as discussed above.

As to number of clients, Mr. Mangueira declared in his trial Declaration (53 TTABVUE) that in 2018, Respondent had about 3,000 clients, and at the end of 2020, about 5,000 clients. (53 TTABVUE 6 ¶ 11). In 2025, Respondent had about 7,000 clients (65 TTABVUE 111 at 27:15-17). Gross sales were listed at $767,342.00 in 2017, steadily increasing through 2022 to about $1,789,022.00. No data was provided for subsequent years. *Id*. It should be noted not one customer

was identified by name in the Declaration as having "heard of" about Respondent and no consumer testimony was otherwise submitted in the entirety of this proceeding by Respondent.

Mr. Mangueira testified that, as to the size of Respondent's client book, there is nobody in the company that can testify as to the size of Respondent's client book between 2009 to 2014:

> ·9· · · Q.· -- estimate.· But you wouldn't know the client
> 10· ·book size from 2009 to 2014 because that predates you
> 11· ·being at the company, correct?
> 12· · · A.· Correct.
> 13· · · Q.· Is there anyone else in the company that would
> 14· ·know that information 2009 to '14?
> 15· · · A.· No, because it's the same thing.· We don't have
> 16· ·the records anymore to access and calculate that

(65 TTABVUE 108 at 24:9-16). The only data Respondent can rely on would be data between 2015 through the present (or 2015 through 2020 if looking at the date in which Respondent filed its trademark application). Respondent estimated that the "value" of its client book in 2015 was around $1.1 million.

As to advertising expenditures, Mr. Mangueira similarly testified that there is nobody in the company that can testify to how much Respondent spent in advertising between 2009 and 2014 because such information is no longer accessible:

> 17· · · Q.· Understood.· Let's talk a little bit about
> 18· ·advertisement expenditures and how much you guys spent
> 19· ·on advertising every year.· Again, like before, you
> 20· ·don't know what the advertisement expenditures for
> 21· ·Mattos Insurance was for 2009 to '14, correct?
> 22· · · A.· Uh-huh.
> 23· · · Q.· Yes?
> 24· · · A.· That's correct, sorry.

(65 TTABVUE 108 at 24:17-24). Mr. Mangueira, the current Vice President of Respondent could neither say with certainty how much Respondent spent on advertising for the years 2015-2024, but referred back to his Declaration, which had little no evidence of amounts spent on advertising. As

of October 7, 2025, Mr. Mangueira estimated that in 2025, Respondent spent only $20,000 in advertising (65 TTABVUE 109 at 25:11-16). Respondent cites one exhibit in Mr. Mangueira's Declaration which shows a total of $13,200 was spent on an advertisement agreement with a media company. (53 TTABVUE 62). As noted above, such dollar amounts and client size, without more, is not adequate to show secondary meaning for a highly descriptive mark such as Respondents. The courts do not look robotically at the level of sales to determine whether secondary meaning has been achieved. Instead, the mark holder must demonstrate how the sales volume shows that consumers identify the product or features thereof with the mark. *See Spraying Systems*, supra (the courts do not look robotically at the level of sales to determine whether secondary meaning has been achieved. Instead, the mark holder must demonstrate how the sales volume shows that consumers identify the product or features thereof with the mark); *Keystone Camera Products Corp.*, supra (evidence of ten million dollars in sales not persuasive without context). Significantly, Mr. Mangueira said he did not have marketing metrics (which shows how successful social media campaigns are) for between 2009 and 2022 (65 TTABVUE 110 at 26:3-25, 111 at 27:1-2). Mr. Mangueira said "for sure I cannot access anything [from 2009 to 2015]."

Petitioners anticipate Respondent will argue intentional copying because Petitioners do business as Matos Insurance Agency. First, Petitioners have not, and do not intend to, apply for a federal trademark. Moreover, as declared by Armando Matos in his trial Declaration, Mr. Matos "chose to adopt the name 'Matos Insurance Agency, Inc.' for [his] company because 'Matos' is his surname" (67 TTABVUE 5 ¶ 12) and utilizes the colors red and blue in his logo and promotional materials because they represent the United States flag (67 TTABVUE 5 ¶ 11). Petitioners also often advertise using the slogan "Auto-Home-Commercial & More" (67 TTABVUE 5 ¶ 13) and promotes its services primarily in the Spanish language as most of

Petitioners clients are of Venezuelan origin and speak Spanish (67 TTABVUE 5 ¶ 10). As testified to by Ms. A. Kamila Silva, about 70% of its advertising is in the Portuguese language (65 TTABVUE 17 at 14:1-2). Petitioners do not provide services in Portuguese because nobody that works for Petitioners speak Portuguese (67 TTABVUE 7 ¶ 25). Petitioners also utilize the colors of blue and yellow in its branding (65 TTABVUE 99 at 15:2-6), when prior to this, the logo looked similar to the Brazilian flag (which has yellow, green, blue and white colors) (65 TTABVUE at 15:7-10). Clearly, Petitioners have not sought to "intentionally copy" Respondent. *See AcademyONE, Inc. v. CollegeSOURCE, Inc*., 2009 WL 5184491, *16 (E.D. Penn. 2009) (granting summary judgment for defendant on trademark infringement claim and stating "there is ample and more persuasive authority supporting the…position…that intentional copying alone is not sufficient to prove a secondary meaning….". Petitioners have also submitted evidence of third-party usage of providers of insurance services utilizing the surname "Mattos," "Matos" or some other variant, e.g. "De Mattos Insurance" which has been around since 1972, in the connection with the promotion of insurance services, *See generally* (41 TTABVUE) and specifically (41 TTABVUE 17). Finally, Respondent has set forth no evidence of unsolicited media coverage – any advertising set forth by Respondent as evidence appears to have been paid for or initiated by Respondent.

Consequently, any circumstantial evidence Respondent intends to set forth is extremely weak and cannot overcome Petitioners' direct evidence or other deficiencies with Respondent's Mark discussed herein.

F. In the alternative, Respondent's Mark is generic and must be cancelled.

A generic term is the common descriptive name of a class of goods or services, and it can never be registered as a trademark because such a term is "merely descriptive" within the meaning

of § 2(e)(1) [of the Lanham Act] and is incapable of acquiring de jure distinctiveness under § 2(f). A generic mark, being the "ultimate in descriptiveness," cannot acquire distinctiveness. *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc*., 782 F.2d 987, 989 (Fed.Cir.1986). A generic term, by definition, identifies a type of product, not the source of the product. *In re Gould Paper Corp.*, 834 F.2d 1017, 1018 (Fed. Cir. 1987). A generic term cannot function as an indicator of the source of a product, and thus as a trademark, because the relevant public understands the term primarily as the common name for the product. *In re Dial-A-Mattress*, 240 F.3d 1341, 1344 (Fed. Cir. 2001).

This Federal Circuit created the test for genericness which has two parts: first, the court determines the genus of goods or services at issue, and second, the court determines whether the term sought to be registered is understood by the relevant public "primarily to refer to that genus of goods or services." *H. Marvin Ginn Corp.*, 782 F.2d at 990. "Generic terms cannot be rescued by proof of distinctiveness or secondary meaning no matter how voluminous the proffered evidence may be." *In Re Northland Aluminum Products, Inc*., 777 F.2d 1556, 1558 (Fed. Cir. 1985). This is the established rule for generic terms as by definition are incapable of indicating a unique source. *See In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569 (Fed.Cir.1987) ("Generic terms, by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status." (citing *Dan Robbins & Assocs., Inc. v. Questor Corp.*,599 F.2d 1009, 1014 (C.C.P.A.1979))).

Applying the two-part test formulated in *H. Marvin Ginn*, Respondent's mark MATTOS INSURANCE is generic as it is used in connection with insurance services and the relevant public understands the mark to refer to the type of services it describes. Insurance, in Respondent's Mark, is used to describe insurance itself. Because it is undisputed that the name, MATTOS INSURANCE, consists of insurance services provided by the founders of the company, Deborah

and Marcello Mattos, Respondent's Mark literally describes itself and is arguably generic when considering all other factors.

CONCLUSION

The Board should cancel Respondent's Mark, U.S. Reg. No. 6209276, "MATTOS INSURANCE" on the grounds that the presumption of validity of Respondent's Mark has been rebutted; Respondent failed to show sufficient secondary meaning of Respondent's Mark in the application phase, and cannot show, following the close of evidence in this proceeding, that Respondent's Mark has acquired secondary meaning for the services covered Respondent's Mark – "insurance agency and brokerage" under class 036. Accordingly, because Respondent's Mark is primarily merely a surname (and consequently highly descriptive) and does not have the requisite secondary meaning for a 2(f) claim, Respondent's Mark should be cancelled in its entirety and removed from the Principal Register. To the extent the Board determines Respondent's Mark is generic, Petitioners respectfully request the Board cancel Respondent's Mark in its entirety, remove it from the Principal Register and declare Respondent's Mark cannot be accorded any trademark protection.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February 2026, a true and correct copy of the foregoing was filed via the Trademark Trial and Appeal Board (TTAB) Center, with a courtesy copy sent via e-mail to counsel of record for Respondent.

Dated: February 27, 2026.

Respectfully submitted,

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