

This Opinion Is Not a
Precedent of the TTAB

Mailed: February 27, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Data Network Marketing, Inc.

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Serial No. 97817090

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Michael F. Hoffman of Hoffman Warnick, LLC, for Data Network Marketing, Inc.

Deborah Meiners, Trademark Examining Attorney, Law Office 110, Loksye Lee
Riso, Managing Attorney.

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Before Goodman, Thurmon and Lavache, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

Data Network Marketing, Inc. (“Applicant”) seeks registration on the Supplemental Register of the mark TARGETED DELIVERY, in standard characters, for “Providing temporary use of on-line non-downloadable software tools for implementing a production and delivery timeline for direct mail campaigns with enhanced scheduling and pricing options to ensure delivery to household mailboxes nationwide within a three-day time window,” in International Class 42.¹ The

¹ Application Serial No. 97817090 was filed on March 1, 2023 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming first use anywhere and in commerce at least as early as February 28, 2023.

Trademark Examining Attorney issued a final refusal of registration under Sections 23(c) and 45 of the Trademark Act, 15 U.S.C. § 1091(c), 1127, finding the applied-for mark is generic for the identified services.²

The appeal is fully briefed and ready for final decision. We affirm the refusal to register.

I. Genericness – Applicable Law

“Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold.” *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1344 (Fed. Cir. 2001) (citations omitted). Generic terms “are by definition incapable of indicating a particular source of the goods or services, and cannot be registered as trademarks” on either the

Citations to the prosecution file are to entries in the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in .pdf format. Citations to the appeal record are to TTABVue, the Board’s online docketing system.

² The original Application sought registration on the Principal Register. The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). Office Action dated December 13, 2023. Applicant responded with arguments against the refusal. Response to Office Action dated March 5, 2024. The Trademark Examining Attorney issued a second non-final Office Action maintaining the Section 2(e)(1) refusal, and in response, the Applicant amended the Application to seek registration on the Supplemental Register. Office Action dated April 27, 2024; Response to Office Action and Amendment dated July 9, 2024. The Trademark Examining Attorney then issued the refusal at issue in this appeal, that the mark is generic for the identified services. Office Action dated September 17, 2024. Applicant argued against the refusal and amended the identified services. Response to Office Action dated December 10, 2024. A final Office Action was issued maintaining the genericness refusal. Final Office Action dated April 14, 2025. Applicant requested reconsideration, which was denied, and pursued this appeal. The sole issue before the Board is the genericness refusal.

Principal Register or Supplemental Register. *Id.*; see also *USPTO v. Booking.com B.V.*, 591 U.S. 549, 551 (2020) (“Booking.com”).³

Whether a particular term or phrase is generic is a question of fact. *In re Cordua Rests., Inc.*, 823 F.3d 594, 599 (Fed. Cir. 2016). Resolution of that question depends on the primary significance of the term to the relevant public. *Booking.com*, 591 U.S. at 556. More specifically, the genericness inquiry follows a two-part test: “First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 990 (Fed. Cir. 1986); see also *Princeton Vanguard, LLC v. Frito-Lay North Am., Inc.*, 786 F.3d 960, 966 (Fed. Cir. 2015) (“[T]here is only one legal standard for genericness: the two-part test set forth in *Marvin Ginn*[.]”).

A term is generic if the term refers to a subcategory of the claimed genus of services or a key aspect of them; there is no requirement that the term refer to the entire genus. *Cordua Rests.*, 823 F.3d at 605 (“[T]he term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants.”); *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1361, 1364 (Fed. Cir. 2009) (affirming that

³ Applicant’s amendment to seek registration on the Supplemental Register constitutes an admission that the terms are not inherently distinctive. See *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 1299 (1972). Applicant’s statement, submitted with the amendment, that it “is not conceding any legal findings,” does not alter the legal consequences of its decision to seek registration on the Supplemental Register. Response to Office Action dated July 9, 2024, at 1.

“mattress” is generic for online retail store services featuring mattresses and related goods); *In re Twenty-Two Desserts, LLC*, No. 86586833, 2019 TTAB LEXIS 269, at *4 (“Any term that the relevant public uses or understands to refer to the genus of goods, or a key aspect or subcategory of the genus, is generic.”).

A. Defining the Genus and the Relevant Consumers.

In most cases, the application’s description of services adequately defines the genus. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1343 (Fed. Cir. 2014) (the relevant goods were adequately defined by “nutritional supplements containing DHA”). The Application identifies the services, which define the scope of rights potentially obtained through registration. For that reason, we use the identification as the genus of the services. *Cordua Rests.*, 823 F.3d at 602 (quoting *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640 (Fed. Cir. 1991)). The genus of the services, therefore, is: “Providing temporary use of on-line non-downloadable software tools for implementing a production and delivery timeline for direct mail campaigns with enhanced scheduling and pricing options to ensure delivery to household mailboxes nationwide within a three-day time window.”

The relevant consumers of this genus of services are individuals and businesses that use direct mail campaigns for marketing or informational purposes. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1367 (Fed. Cir. 2018) (noting the need to identify the relevant consumer group in a genericness analysis); *Magic Wand, Inc.*, 940 F.2d at 641 (finding the relevant consumer group consists of the purchasers or consumers

of the identified services). Applicant does not dispute either the genus of the services or the relevant consumer group. 6 TTABVue 9-10.

B. Do the Relevant Consumers Primarily Understand TARGETED DELIVERY to Primarily Refer to the Genus or a Class or Category of the Genus?

Whether a term is generic “turns on whether that term, taken as a whole, signifies to consumers the class of ... services.” *Booking.com*, 591 U.S. at 557. See also *In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005) (“An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole.”).

[W]hen a firm wishes to string together two or more generic terms to create a compound term ... courts must determine whether the combination of generic terms conveys some distinctive, source-identifying meaning that each term, individually, lacks. ... If the meaning of the whole is no greater than the sum of its parts, then the compound is itself generic.

Booking.com, 591 U.S. at 567 (citations omitted). Evidence of the relevant consumer’s understanding of the proposed marks may be obtained from any competent source. *Cordova Rests.*, 823 F.3d at 599.

We begin with dictionary definitions. When a mark is composed of words defined in a dictionary, such definitions are strong evidence of what the words mean to typical consumers. *Stratus Networks, Inc. v. UBTA-UBET Commc’ns Inc.*, 955 F.3d 994, 996 (Fed. Cir. 2020) (“The Board relied on dictionary definitions of the terms ‘stratus’ and ‘strata’ to evaluate similarities in the connotation of each mark.”). “A target is a result that you are trying to achieve.” Office Action dated December 13, 2023, at 8 (from

Collins online dictionary). Targeted is the past tense or past participle of target. *Id.* “Delivery” means, among other things, “a distributing, as of goods or mail.” *Id.* at 10.

Applicant does not dispute these definitions, but argues that the Trademark Examining Attorney used an “overly broad definition to the term TARGETED DELIVERY,” by using a date-range as the target. 6 TTABVUE 10. According to Applicant, “the term TARGETED DELIVERY is almost exclusively used in conjunction with *targeting specified individuals or audiences to receive direct mail.*” *Id.* (emphasis in original). Both the record and common sense refute this argument.

We begin with common sense. Consider a direct mail campaign aimed at voters in an election. Surely, the date-range of the deliveries of such mail are important, perhaps just as important as “targeting specified individuals or audiences.” If the election is on date X, it would be of little value to deliver mail promoting a particular candidate or issue days or weeks after the election. Or consider a direct mail advertising campaign for a President’s Day sale. Surely it is important that such mail be delivered prior to the President’s Day holiday, that is before the sale ends. It simply makes no sense to structure these common types of direct mail campaigns without targeting a date-range for delivery of the mail. Applicant’s arguments to the contrary are not credible.

The record confirms what common sense tells us. We begin with excerpts from Applicant’s website, the same source Applicant used for its specimen. “Targeted Delivery is our proprietary program that ensures you land in mailboxes— nationwide—within a three-day window.” Office Action dated December 13, 2023, at

11; Specimen dated July 9, 2024. This statement makes clear that the target of Applicant’s direct mail program is a date range. There is nothing distinctive about calling your service what it is, and that is exactly what Applicant has done here. Indeed, even if Applicant were the first business to use the “targeted delivery” phrase for? such services, that would not mean the phrase is distinctive. *See, e.g., In re Fat Boys Water Sports LLC*, No. 86490930, 2016 TTAB LEXIS 150, *10 (noting that even the first user of a merely descriptive term or phrase does not avoid a Section 2(e)(1) refusal).

But Applicant is not the only direct mail business using date ranges as part of the targeting of the direct mail.

- MSP, another direct mail business, states on its website that its service “also provides targeted delivery windows, which can improve your campaign’s time to market and response rates.” Office Action dated December 13, 2023, at 15.
- Anchor, a software business that provides direct mail software, refers to “targeted delivery,” and notes the importance of timing for election-related direct mail campaigns. Office Action dated April 27, 2024, at 13-14.
- Prolist, a direct mail business, provides a list of the capabilities of its services. The first bullet entry on this list is “View results by Targeted Delivery Date Range. *Id.* at 15.
- The Clark Group, a logistics business, refers to the “targeted delivery date” for shipping goods. *Id.* at 16.
- Lob, another direct mail business, describes its services as “meticulously targeted and timed to make an impact when it matters most. Our approach transforms conventional direct mail into a targeted marketing too, fine-tuned to enhance your promotional strategy.” *Id.* at 44. This business also refers to “strategic timing” as one feature of its services. *Id.* at 46.
- Zahub, a marketing business focused on pizza shops, states “Pizza shops can gain an edge by partnering with a direct mail vendor who’s perfected targeted delivery dates.” *Id.* at 108.

- Capital Imaging, discussing use of door-hanger marketing, refers to “Targeted Delivery: Distribute in areas where your target audience is most likely to be, and consider timing for maximum impact (e.g., during peak hours or before a special event).” *Id.* at 112.

These examples confirm the importance of timing in direct mail, and related, marketing activities. Applicant’s argument that “targeted delivery” is used “almost exclusively” to refer to customer targeting is misplaced. The evidence shows that multiple targets may be used in direct mail marketing, and that timing is a key target for many such campaigns. To claim exclusive rights to use the phrase “Targeted Delivery” is clearly inconsistent with the reality of this business segment.

The evidence of record shows that one meaning of “targeted delivery” is “*targeting individuals or audiences to receive direct mail,*” as Applicant argues. 6 TTABVue 10. The Trademark Examining Attorney submitted numerous examples of such uses. *See, e.g.,* Office Action dated December 13, 2023, at 17, 18; Office Action dated April 27, 2024, at 9, 10; Final Office Action dated April 14, 2025, at 39. This fact, however, does not undermine the refusal because terms often have multiple meanings. The evidence of record shows that one established meaning of “Targeted Delivery” in the direct mail business segment is for mailings targeted to a delivery date or range of dates, which is exactly how Applicant uses the phrase. It is irrelevant that one use might be more common. This evidence simply shows that relevant consumers are likely to understand that there is more than one kind of direct mail targeting. The reference to the “primary” meaning of the phrase in the genericness standard does not mean that only one meaning of a word or phrase is generic. Consumers who know

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that Applicant provides targeted delivery based on a date range (i.e., the relevant genus for our analysis), will understand the applied-for mark to refer to that genus.

Decision: The genericness refusal is affirmed.