

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: February 17, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lostmy.name Ltd

—
Serial No. 98342035

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Pamela N. Hirschman and Julie S. Shursky of Davis Graham & Stubbs LLP,
for Lostmy.name Ltd.

Thomas Key, Trademark Examining Attorney,¹ Law Office 130,
John Lincoski, Managing Attorney.

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Before Dunn, Allard, and Bradley,
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

¹ A different Trademark Examining Attorney, Lindsey Schoen, examined the involved application, issued the final refusal, and denied the request for reconsideration. The application was assigned after appeal to Examining Attorney Key, who filed the brief of the United States Patent and Trademark Office (“USPTO”). 10 TTABVUE 2, 8. In this opinion, we will refer to both Examining Attorney Key and his predecessor as the “Examining Attorney.”

Lostmy.name Ltd (“Applicant”) seeks registration on the Principal Register of the mark I LOVE YOU THIS MUCH (in standard characters) for “Publication of books; publication of personalized story books; book publishing,” in International Class 41.²

The Examining Attorney refused registration under Sections 1 and 45 of the Trademark Act, 15 U.S.C. §§ 1051, 1127, asserting that Applicant’s specimen does not show the mark as actually used in commerce in connection with any of the identified services.³

After the refusal was made final, Applicant appealed and requested reconsideration.⁴ The Board suspended the appeal and the application was remanded to the Examining Attorney.⁵ After the Examining Attorney denied the request for reconsideration, the appeal resumed.⁶ Applicant and the Examining Attorney filed briefs.⁷ We affirm the refusal.

² Application Serial No. 98342035 was filed on January 4, 2024, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming a date of first use and use in commerce of January 9, 2020.

³ December 14, 2024 Final Office Action at 2.

Page references to the application file cite to the online database of the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system. All citations to documents contained in the TSDR database are to the downloaded .pdf versions of the documents.

⁴ 1 TTABVUE; February 19, 2025 Request for Reconsideration.

References to the briefs on appeal refer to TTABVUE, the Board’s online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry.

⁵ 2 TTABVUE.

⁶ 4, 5 TTABVUE.

⁷ Applicant’s brief appears at 8 TTABVUE and the Examining Attorney’s brief appears at 10 TTABVUE.

I. The Examining Attorney's Request for Judicial Notice





The Examining Attorney has requested that we take judicial notice of the exhibits attached to his brief: (1) dictionary definitions for the terms “publish” from (a) the MERRIAM-WEBSTER DICTIONARY, and (b) the AMERICAN HERITAGE DICTIONARY; and (2) an article from the ENCYCLOPEDIA BRITANNICA on the history of publishing.⁸ Because both dictionary definitions and information from encyclopedias are subject matters of which the Board regularly takes judicial notice, we grant this request. *Univ. of Notre Dame du Lac v. J. C. Gourmet Food Imps. Co., Inc.*, No. 91061847, 1982 TTAB LEXIS 146, at *7 (TTAB 1982) (Board may take judicial notice of dictionary definitions), *aff'd*, 703 F.2d 1372 (Fed. Cir. 1983); *Productos Lacteos Tocumbo S.A. de C.V. v. Paeteria La Michoacana Inc.*, No. 92047438, 2011 TTAB LEXIS 164, at *43, 1934 n.61 (TTAB 2011) (Board may take judicial notice of information from encyclopedias).

II. Applicant's Specimen


Applicant's sole specimen, which consists of 12 pages, contains two main parts. One part is a printout from its Wonderbly website (www.wonderbly.com) (excerpt below):

⁸ 10 TTABVUE 2-3, 9-48.


Ends soon. 20% off 1 book, 25% off 2 books and 30% off 3+ books with code **NEWYOU**

WONDERBLY Search our store    

[Our Books](#) [Who's it for](#) [Occasion](#) [Books for kids](#) [New! Books for adults](#) [Valentine's Day](#) [About Us](#)




I Love You This Much

Trustpilot  384 reviews


Create a book for up to four children, to show how enormously you love them in every moment of every day. A beautiful personalized picturebook to read together as a family.


- 📅 Recommended for ages 0-4
- 📄 Preview all 34 pages before buying
- 📦 Printed and shipped in 48 hours


\$39.99 USD


English (US) 


Personalize my book

 **PayPal** Buy now, pay later. [Learn more](#)

How is the book personalized? 

What's the story? 

Size & quality 

Trustpilot  384 reviews

"Best gift EVER! My grandsons read this every night before bed." – Judy

[Read reviews](#)

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and the other consists of printouts from Amazon.com (excerpt below):

⁹ January 4, 2024 Specimen at 1.

The screenshot shows an Amazon product page for a personalized storybook. The main title is "Wonderbly Personalized Storybook - I Love You This Much (Hardcover)". The price is listed as \$46.99. There are four book covers shown, each with a child's name: Ava, Olivia, Noah, and Lucas. The page includes a "Customize Now" button and a "See Me!" logo. The page number "10" is visible in the bottom right corner.

As mentioned, the Examining Attorney refused to accept the specimen, asserting that it does not show the involved mark as actually used in commerce in connection with any of the identified services.¹¹ Applicant and the Examining Attorney agree that the sole issue on appeal is whether the specimen shows use of the I LOVE YOU THIS MUCH mark with the identified services, namely, “Publication of books; publication of personalized story books; book publishing.”¹²

¹⁰ January 4, 2024 Specimen at 5.

¹¹ December 14, 2024 Final Action at 2.

¹² 8 TTABVUE 5; 10 TTABVUE 2, 3. The specimen refusal was explained in different ways during examination but we focus on the arguments set forth in the briefs which, as set forth above, agree as to the single issue on appeal.

III. Analysis

The Trademark Act “provides for registration of a mark based on use of the mark in commerce.” *In re Siny Corp.*, 920 F.3d 1331, 1335 (Fed. Cir. 2019). Under Section 45 of the Trademark Act, 15 U.S.C. § 1127, a mark is used in commerce on services “when it is used or displayed in the sale or advertising of services and the services are rendered in commerce”

An application filed under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), as the involved application here, must include a specimen showing the mark “as actually used in commerce on or in connection with the ... services identified.” Trademark Rule 2.56(a), 37 C.F.R. § 2.56(a). The specimen must show a “direct association between the mark and the services.” Trademark Rule 2.56(b)(2).

Essentially, the mark must be shown “in a manner that would be perceived by potential purchasers as identifying the applicant’s services and indicating their source.” *In re DSM Pharms., Inc.*, No. 78373640, 2008 TTAB LEXIS 29, at *2 (TTAB 2008); *see also In re JobDiva, Inc.*, 843 F.3d 936, 941 (Fed. Cir. 2016) (“To determine whether a mark is used in connection with the services described in the registration, a key consideration is the perception of the user.”). Specimens need not explicitly refer to the services to establish the requisite direct association between the mark and the services, but “there must be something which creates in the mind of the purchaser an association between the mark and the service activity.” *In re Weiss*, No. 88621608, 2024 TTAB LEXIS 277, at *12-13 (TTAB 2024) (quoting *In re Cardio Grp., LLC*, No. 786840860, 2019 TTAB LEXIS 153, at *3 (TTAB 2019)).

After consideration of the specimen, together with the evidence and arguments of record, we find that Applicant's specimen does not show use of the involved mark with the identified services. The description accompanying the display of Applicant's I LOVE YOU THIS MUCH mark from its Wonderbly website states the following:

Create a book for up to four children, to show how enormously you love them in every moment of every day. A beautiful personalized picturebook to read together as a family.¹³

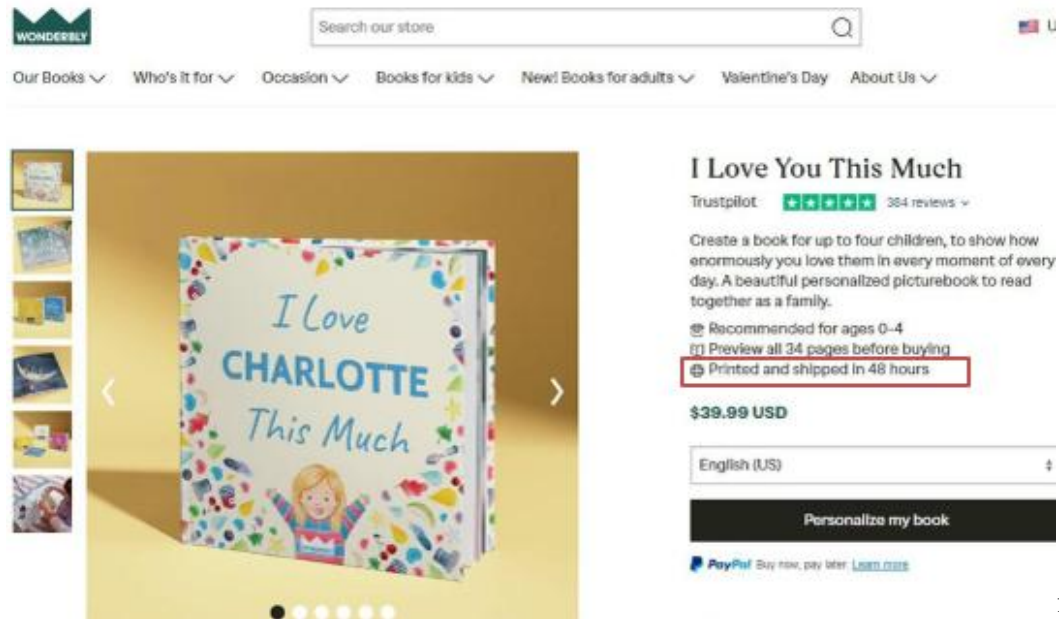
As an initial matter, there is nothing in this description that suggests that Applicant is offering "publication of books; publication of personalized story books; book publishing" under the involved mark; the description accompanying the display of the mark on Amazon.com is similar in that there is nothing on its face that suggests Applicant is offering the identified services under the mark.

We agree with the Examining Attorney that this description suggests Applicant's services are more akin to "customized printings of a pre-published template book to the order and specification of an individual customer."¹⁴ Indeed, the text of the specimen (shown in the red box for easy reference) clearly indicates that the customized book is "[p]rinted and shipped in 48 hours."¹⁵

¹³ January 4, 2024 Specimen at 1.

¹⁴ 10 TTABVUE 3-4.

¹⁵ January 4, 2024 Specimen at 1.



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This is also consistent with Applicant's specimen from Amazon.com, where the text in the red box reads that "Our books are printed on thick, luxurious paper that's partly recycled ... and built to last."¹⁷

¹⁶ January 4, 2024 Specimen at 1 (emphasis added).

¹⁷ January 4, 2024 Specimen at 6.

Wonderly Personalized Storybook - I Love You This Much (Hardcover)

Visit the Wonderly Store
4.8 ★★★★★ - 271 ratings | 10 answered questions

\$46.99

Style: Hardcover

Softcover	Hardcover
\$46.99	\$34.99

About this item

- **MAKE A CHILD THE HERO OF THEIR OWN BOOK** - Add your child's name and choose their character. Then watch as we magically weave their name throughout the story, on the front cover, and in beautiful watercolor illustrations.
- **BEAUTIFUL STORY** - Follow a day in the life of a child, as you go on adventures and tell them just how much you love them. More than breakfast? Oh yes. More than the ocean? Of course. Than all the worlds in the universe? Easily!
- **PERFECT GIFT** - Wonderfully written and illustrated. A gift for every occasion, perfect for birthdays, christenings, Christmas and everything in between.
- **HIGH QUALITY** - The square format (9 x 9 inches) and thick, high-quality paper makes this perfect for reading together with little ones.
- **GUARANTEE** - Our books are printed on thick, luxurious paper that's partly recycled (FSC-certified) and built to last. Made in USA

Roll over image to zoom in

FREE delivery January 18 - 25
Details

Delivering to Denver 80202 - Update location

In stock
Usually ships within 4 to 5 days.

This product needs to be customized before adding to cart.

Customize Now

By clicking "Customize", you agree to these Terms and Conditions.

Ships from: Wonderly
Sold by: Wonderly
Returns: This item is non-returnable
Payment: Secure transaction

Add to List

Shop Deeply Personalized Valentine's Day Books

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Nothing in the specimen suggests that the customized story books purchased by the consumer are “published,” as defined within the dictionary definitions of record. Although several definitions are of record, we begin with the one Applicant itself relied on in its brief: “publishing” is “the business or profession of the commercial production and issuance of literature, information, musical scores or sometimes records or art.”¹⁹ In considering this definition, we take judicial notice of the definition of “issuance,” which is defined as “the act of issuing, especially officially,”²⁰ where

¹⁸ January 4, 2024 Specimen at 6 (emphasis added).

¹⁹ 4 TTABVUE 9 (MERRIAM-WEBSTER DICTIONARY definition); 8 TTABVUE 7 (Applicant’s brief).

²⁰ THE MERRIAM-WEBSTER DICTIONARY, accessed on February 12, 2026. <https://www.merriam-webster.com/dictionary/issuance>. *Univ. of Notre Dame*, 1982 TTAB LEXIS 146, at *7.

“issuing,” in this context, is defined as: (b) “to send out for sale or circulation.”²¹ As the specimen makes clear, Applicant does not publish, or issue books for sale or circulation, because the specific book ordered is not available to anyone but the consumer who ordered it. The production of the book is not professional, but personal: the book is not produced to be sold to others but because it was sold to one consumer who designed its content within a template.

Applicant argues that its services meet this definition of “publishing:”

As shown by the submitted specimens of record, Applicant provides a service that allows consumers to customize a consumer chosen book template by editing the book text and format. *See* the third specimen of use submitted with the January 4, 2024 application (showing that consumers can “edit book”, “edit format” of the book or “add other extras” to the book). Once the consumer has submitted their order for the customized book, Applicant processes the consumer’s order by producing or printing the consumer edited book and issuing or shipping a unique piece of literature to the consumer. *See* the first specimen of use submitted with the January 4, 2024 application (showing that the books are “printed and shipped in 48 hours” to the consumer). Therefore, the specimens show that Applicant publishes customized books because Applicant produces and issues a story edited by a consumer by processing the consumer’s edits and printing and shipping the book to the consumer. Therefore, Applicant’s activities in providing this service to its consumers meet the definition of publishing added to the record by the Examining Attorney.

With Applicant’s personalized publishing services, **the consumer becomes the author of the book** by creating a custom story with unique facts and personal details. After the consumer submits its order for publication of a

²¹ THE MERRIAM-WEBSTER DICTIONARY, accessed on February 12, 2026. <https://www.merriam-webster.com/dictionary/issuing>. *Univ. of Notre Dame*, 1982 TTAB LEXIS 146, at *7.

personalize book, Applicant then produces and issues or publishes the personalized book for the author of the customization.²²

We disagree. An important point in Applicant's argument is that "the consumer becomes the author of the book."²³ Starting with this premise, Applicant's argument requires us to believe that the act of Applicant/publisher sending the customized book **back** to the author/consumer constitutes the act of publishing. However, this is inconsistent with the definitions of "issuing," i.e., to send **out** for circulation, meaning to **others, not back to the author**. This argument is also inconsistent with other definitions of the term "publish," meaning, for example, "to disseminate to the **public**,"²⁴ i.e., not back to the author. Evidence of record also shows that modern publishing practice involves marketing a book to the public.²⁵ Simply put, ordering a customized storybook for oneself, which Applicant merely prints and ships to the consumer (as denoted in its ordering details and discussed above), does not constitute "publishing" or "publication" services.

It is true that Applicant's specimen refers to publishing services, but these services are clearly associated with the WONDERBLY and Design mark, not the involved mark:

²² 8 TTABVUE 7-8 (emphasis added).

²³ 8 TTABVUE 8.

²⁴ 10 TTABVUE 11, 16 (MERRIAM-WEBSTER DICTIONARY); 10 TTABVUE 20 (THE AMERICAN HERITAGE DICTIONARY, definition 1(a)).

²⁵ *See generally* 10 TTABVUE 29-31 (article from ENCYCLOPEDIA BRITANNICA).



Discover a world where storytellers, illustrators and tech whizzes work together to create meaningfully personalized books.

Four friends put their heads together to make the world's most astonishing personalized book – and *The Little Boy or Girl Who Lost Their Name* was born. It was the start of something magical.

A lot happened over the next few years. We created over 70 new stories in 12 different languages, and published them in 40 countries worldwide. We won Children's Publisher of the Year 2021. And now we're on a mission to bring the amazing power of personalized stories to readers of all ages.

Our books have celebrated hundreds of birthdays, welcomed thousands of new babies and showed millions of mums just how appreciated they are. We believe everyone deserves to feel incredibly special – and that's the real magic of personalization.

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Because the portion of Applicant's specimen in the red box is difficult to read, we set it out here:

A lot happened over the next few years. We created over 70 new stories in 12 different languages, and published them in 40 countries worldwide. We won Children's Publisher of the Year in 2021. And now we're on a mission to bring the amazing power of personalized stories to readers of all ages.²⁷

Applicant's statement that it has "created over 70 new stories ... and published them in 40 countries," which is positioned under the WONDERBLY and Design mark, shows an association of the WONDERBLY and Design mark with such "publishing services."

While we agree with Applicant's general statement of law that two marks, such as a house mark and a service mark, can be used on the same page of a website and

²⁶ January 4, 2024 Specimen at 6 (emphasis added).

²⁷ January 4, 2024 Specimen at 6.

identify the same services,²⁸ such is not the case here. When the entire web page is considered (see below), there is no association of the involved mark with publication services. The involved mark appears in the upper right hand corner in its own segment, in relatively small font, visually separated from the description of publishing services by various images and text (compare red arrow and red box):



The screenshot displays the Wonderbly website's product page for personalized children's books. At the top, four book covers are shown with names: LUCAS, NOAH, AVA, and OLIVIA. A red arrow points to the text 'I Love You This Much' on the right. Below are three images: a baby holding a book, a book cover with a moon and the name 'Harper', and a child reading a book. Text blocks describe the personalization, the story, and the book as a gift. The Wonderbly logo is centered below. A footer section contains a testimonial and a red-bordered box with a testimonial. The page number '29' is at the bottom right.

How it's personalized
Pick your child's name and choose their character. Then watch as we magically weave their name throughout the story, on the front cover, and in beautiful watercolor illustrations.

The Story
Follow a day in the life of a child, as you go on adventures and tell them just how much you love them. More than breakfast? Oh yes. More than the ocean? Of course. Than all the worlds in the universe? Easy!

Perfect gift for 0 to 3
From birthdays, to Valentine's Day, to 'just because' days! I Love You This Much is the perfect personalized children's gift for pretty much any occasion, and is designed to be read together every day.

WONDERBLY

Discover a world where storytellers, illustrators and tech whizzes work together to create meaningfully personalized books.

Your friends put their heads together to make the world's most astonishing personalized book - and The Little Boy or Girl Who Lost Their Name was born. It was the start of something magical.

I got happened over the next few years. We created over 70 new stories in 52 different languages, and published them in 40 countries worldwide. We were Children's Publisher of the Year 2021. And now we're on a mission to bring the amazing power of personalized stories to readers of all ages.

Our books have celebrated hundreds of birthdays, welcomed thousands of new babies and showed millions of mums just how appreciated they are. We believe everyone deserves to feel incredibly special - and that's the real magic of personalization.

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When viewing this web page, potential purchasers would not perceive the involved mark as identifying Applicant's publishing services and indicating their source due

²⁸ 8 TTABVUE 14.

²⁹ January 4, 2024 Specimen at 6 (emphasis added).

to the intervening text and images. Rather, due to the prominence of the WONDERBLY and Design mark, and its proximity to the description of publication services, the WONDERBLY and Design mark would be perceived as associated with such services. *In re DSM Pharms.*, 2008 TTAB LEXIS 29, at *2; *see also In re JobDiva*, 843 F.3d at 941.

For the reasons discussed above, we find that the specimen fails to show a direct association between the I LOVE YOU THIS MUCH mark and the identified services, namely, “publication of books; publication of personalized story books; book publishing,” as required by Trademark Rule 2.56(b)(2).

Decision

The refusal to register Applicant’s mark as shown in the involved application (Serial No. 98342035) is affirmed.