This Opinion is Not a
Precedent of the TTAB

Mailed: March 20, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Global Creativity Holdings

Serial No. 97112986

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Mariana Paula Noli of Noli IP Solutions PC
for Global Creativity Holdings.

Cayla Keenan, Trademark Examining Attorney, Law Office 122,
Kristin Dahling, Managing Attorney.

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Before Wellington, Lebow, and Bradley,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Global Creativity Holdings ("Applicant") seeks registration on the Principal Register of the standard character mark FAN for "Cryptocurrency exchange services featuring blockchain technology," in International Class 36.[1]

The Trademark Examining Attorney issued a final refusal of registration under Sections 1 and 45 of the Trademark Act ("the Act"), 15 U.S.C. §§ 1051 and 1127, on

[1] Application Serial No. 97112986 was filed on November 8, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant's claim of first use anywhere and in commerce on November 8, 2021.

the basis that the specimens of record are unacceptable because they fail to show the applied-for mark in use in commerce in connection with the identified services.

Applicant appealed and requested reconsideration. When the request for reconsideration was denied, the appeal resumed. The appeal is fully briefed. We affirm the refusal to register.

I. Evidentiary Issue

The Examining Attorney objects to Applicant's submission of evidence with its trial brief.[2] Specifically, the Examining refers to certain screenshots and website links embedded within Applicant's brief.[3]

The Examining Attorney's objection is sustained as to all of the objected-to materials, except, as explained more below, the objection to the "screenshot of MERRIAM-WEBSTER DICTIONARY (TTABVUE pg. 11)." Only evidence filed during examination is timely, Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), and it should not be submitted on appeal. *See, e.g., In re Dist. of Columbia*, 101 USPQ2d 1588, 1591-92 (TTAB 2012) (third-party registrations submitted for first time with appeal brief are not considered), *aff'd sub nom., In re City of Houston*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013); *see also* TBMP §§ 1203.02(e), 1207.01 & 1208.03. Moreover, providing only hyperlinks does not properly make the corresponding Internet

[2] 10 TTABVUE 2-3.

[3] The Examining Attorney (at 10 TTABVUE 2-3) objected to the following:

> 1. Footnote No. 2 (TTABVUE pg. 9) 2. Footnote No. 3 (TTABVUE pg. 11) 3. Screenshot of Merriam-Webster Dictionary (TTABVUE pg. 11) 4. Screenshots of CoinMarketCap (TTABBUE pg. 12-13) 5. The Business Blockchain by William Mougayar (TTABVUE pg. 13) 6. Footnote No. 4 (TTABVUE pg. 14) 7. Footnote No. 5 (TTABVUE pg. 14).

materials of record. *See In re ADCO Indus. – Techs., L.P.*, 2020 USPQ2d 53786 at *2 (TTAB 2020) (web addresses or hyperlinks are insufficient to make the underlying webpages of record); *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1195 n.21 (TTAB 2018) (Board does not consider websites for which only links are provided).

In its reply brief, Applicant argues that the objected-to materials "should be considered CLARIFICATION EVIDENCE which aims to explain or interpret existing evidence that might be unclear or ambiguous."[4] Applicant does not cite to any authority in support of this purported exception to Trademark Rule 2.142(d) that requires evidence be filed before appeal. Accordingly, we reject the argument.

As to the Merriam-Webster dictionary screenshot, because the Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions, *see In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016), we do so here and accept the definition of the word "swap."

In sum, other than the dictionary definition, we give no further consider to the objected-to evidence, including hyperlinks and screenshots.[5]

II. The Refusal and Applicant's Specimens

As noted above, Sections 1 and 45 of the Trademark Act provide the basis for the refusal to register Applicant's mark because the specimens submitted do not show

[4] 11 TTABVUE 4-5.

[5] We note that Applicant also embeds screenshots and website links within its reply brief. Again, to the extent these materials were not submitted prior to appeal, they not given consideration for the reasons and authority provided *supra*.

Applicant's mark in "use in commerce" in connection with Applicant's identified services. Specifically, Section 1(d)(1) of the Act requires applicants to file a "specimen[] or facsimile[] of the mark as used in commerce[.]" 15 U.S.C. § 1051(d)(1). Trademark Rule 2.56(b)(2) provides further guidance regarding the acceptability of service marks, stating that it "must show the mark as used in the sale of the services, including use in the performance or rendering of the services, or in the advertising of the services." 37 C.F.R. § 2.56(b)(2).

Section 45 of the Act defines a "service mark" as meaning "any word, name, symbol, or device, or any combination thereof ... used by a person ... to identify and distinguish the services of one person ... from the services of others and to indicate the source of the services ...." 15 U.S.C. § 1127. It further provides that "a mark shall be deemed to be in use in commerce ... on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce ... and the person rendering the services is engaged in commerce in connection with the services." *Id.*

The Court of Customs and Patent Appeals has held that an acceptable service mark specimen generally must show a "direct association" between the mark and the services for which registration is sought. *In re Universal Oil Prods. Co.*, 476 F.2d 653, 177 USPQ 456, 457 (CCPA 1973). While the exact nature of the services does not need to be specified in the specimen, there must be something which creates in the mind of the purchaser an association between the mark and the services that have been recited in the application. *In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (quoting

In re Johnson Controls Inc., 33 USPQ2d 1318, 1320 (TTAB 1994)). *See also In re Osmotica Holdings, Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010). A specimen that shows "only the mark with no reference to, or association with, the services does not show service mark usage." *In re Pitney Bowes, Inc.*, 125 USPQ2d 1417, 1419 (TTAB 2018). "To determine whether a mark is used in connection with the services described in the [statement of use], a key consideration is the perception of the user." *In re JobDiva, Inc.*, 843 F.3d 936, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016).

The TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) sets forth facts and evidence that may be considered during examination, including:

- declarations from persons with firsthand knowledge of the facts, with a sufficiently detailed explanation of how the mark is used in advertising or rendering the services or how the services are advertised or rendered;
- clarification of the specimen of record, such as an explanation of the nature, content, or context of use of the specimen (this explanation need not be verified with a declaration);
- evidence, such as declarations or industry-related periodicals, regarding industry practice with respect to how marks and services are promoted in advertising or how the services are rendered;
- additional background materials, such as printouts showing information on subsequent webpages from the applicant's website or subsequent screenshots of an electronic device on which the services may be accessed, rendered, and experienced (this matter generally need not be verified with a declaration); and
- responses to any Trademark Rule 2.61(b) request for information.

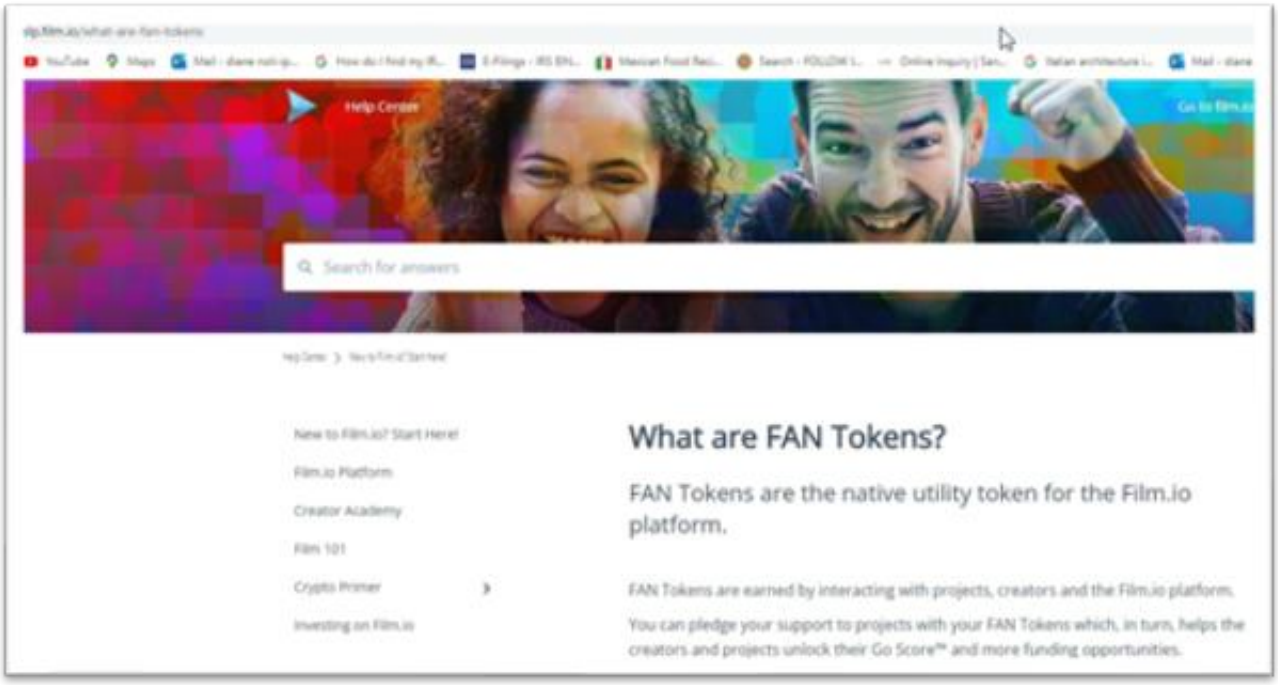
TMEP § 1301.04(g)(1) (2024). *See also In re DSM Pharms., Inc.*, 87 USPQ2d 1623, 1626 (TTAB 2008) ("In determining whether a specimen is acceptable evidence of service mark use, we may consider applicant's explanations as to how the specimen

is used, along with any other available evidence in the record that shows how the mark is actually used.").

With the above in mind, we turn our attention now to the original and substitute specimens Applicant submitted during prosecution. We have reviewed each of four substitute specimens, and to be clear, we have considered the specimens individually and jointly in their entirety for purposes of acceptability in terms of showing use in commerce of the FAN mark in connection with the "cryptocurrency exchange services featuring blockchain technology" identified in the application.

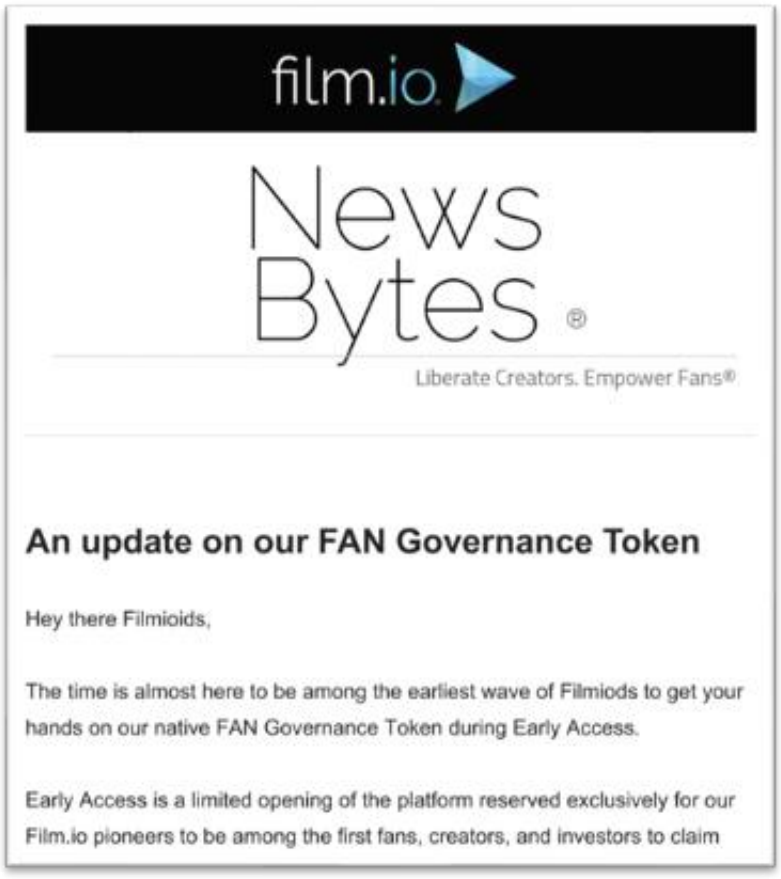
We also note that each specimen submitted comprises several pages; for sake of brevity, the following are only some excerpts or samples taken from the specimens:

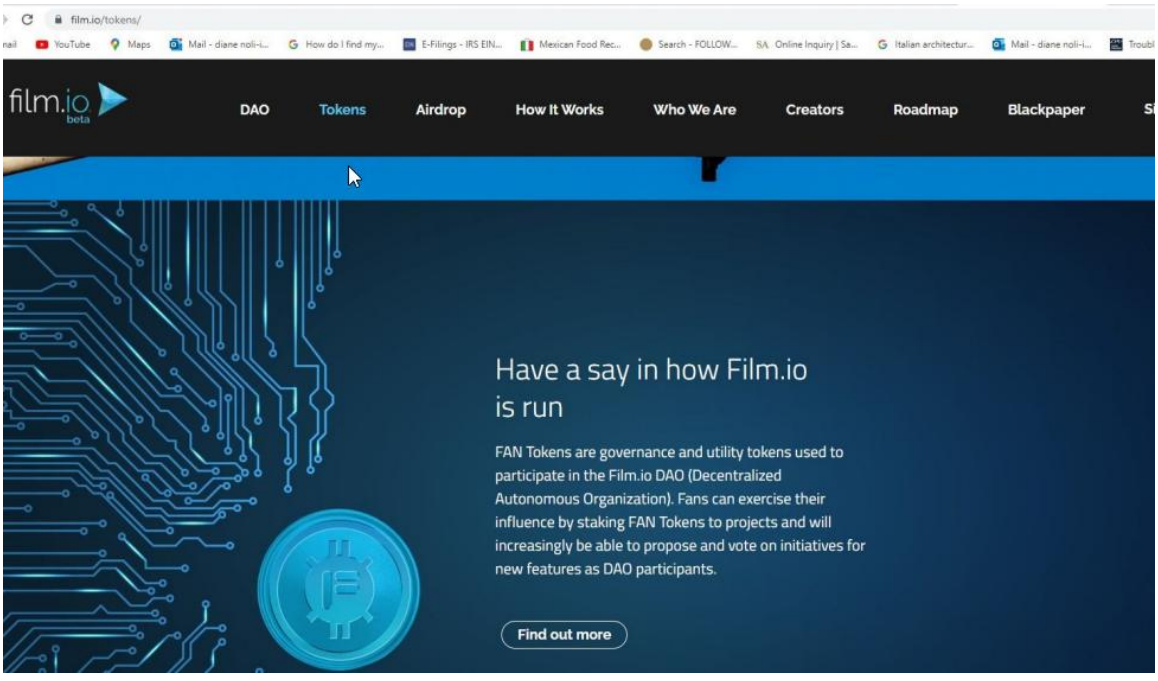
Original Specimen[6]



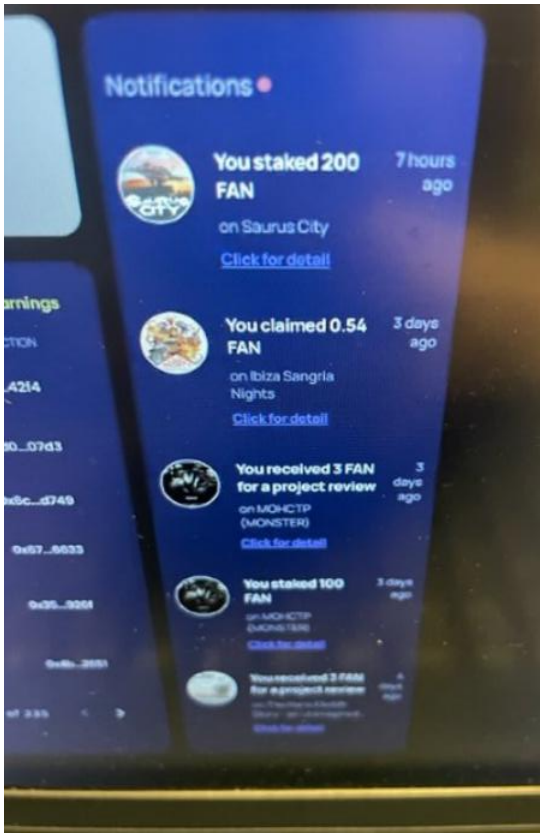
[6] Filed with application. The specimen is described by Applicant as "Photos displaying the use of the mark in connection with the services."

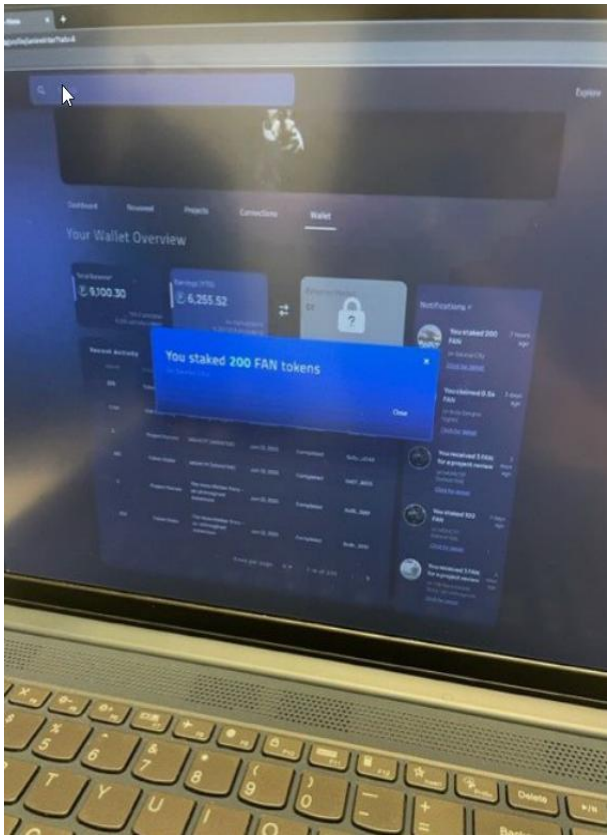
First Substitute Specimen[7]





Second Substitute Specimen[8]

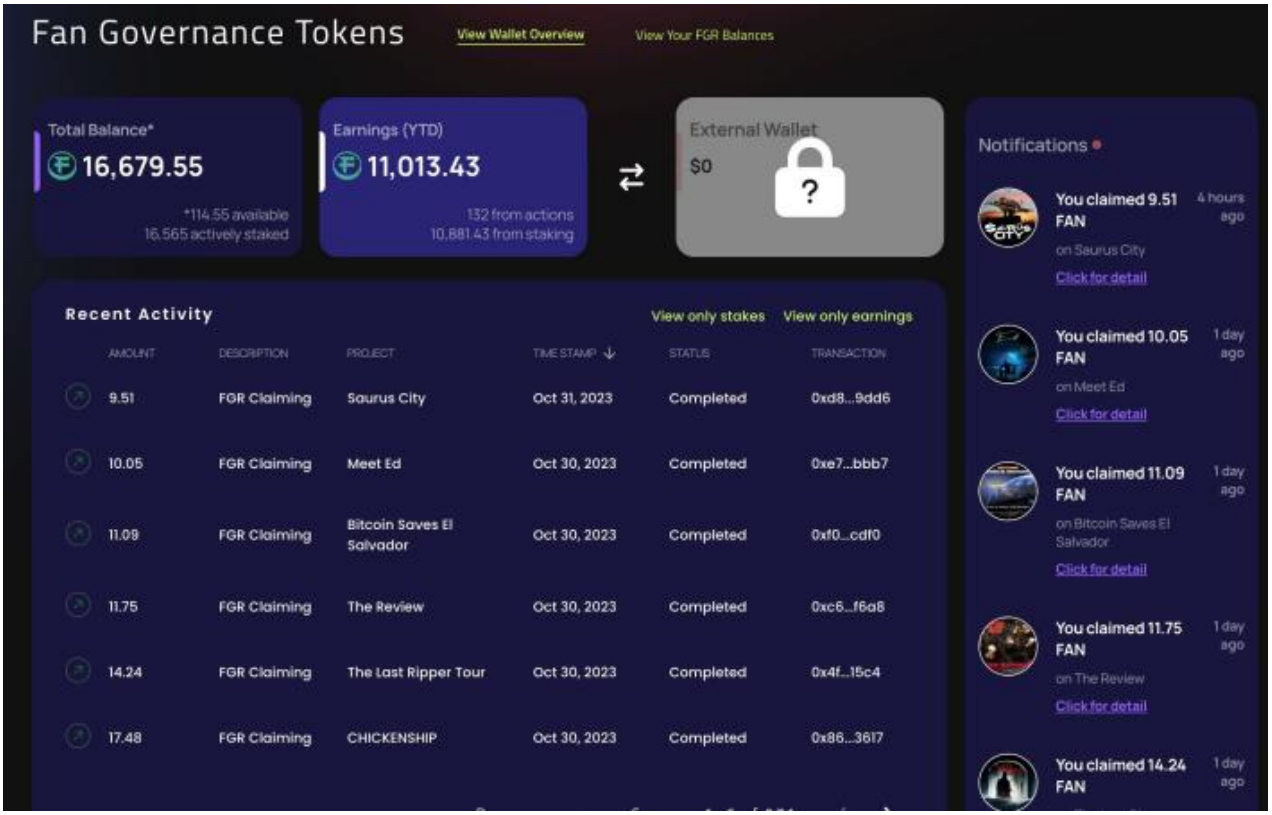


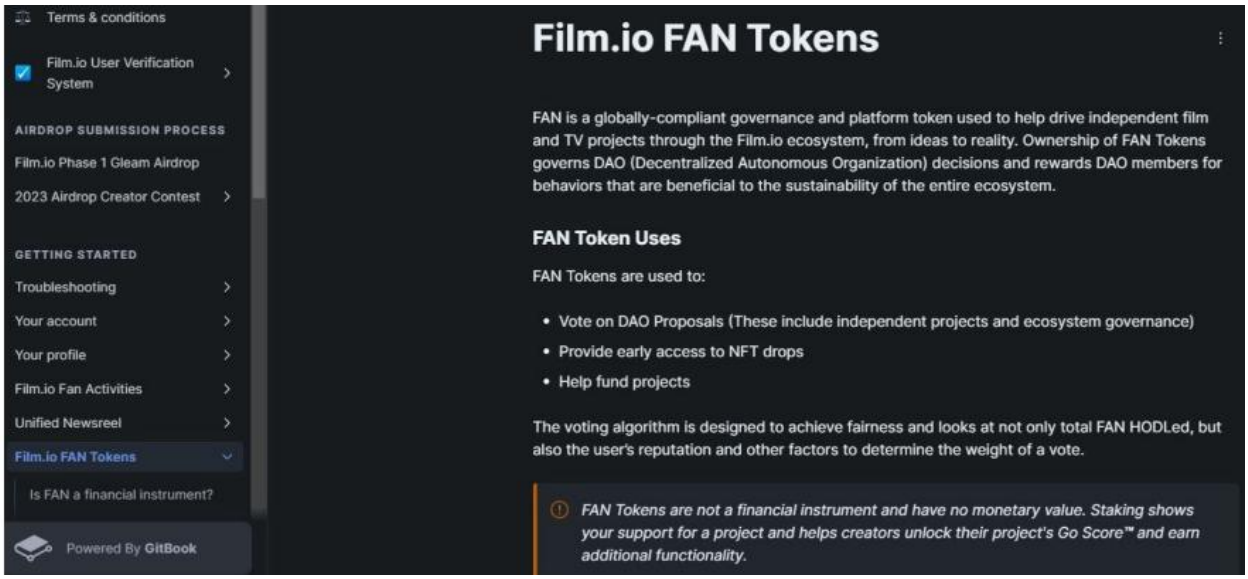


[7] Attached to Applicant's response filed February 27, 2023. The specimen is described by Applicant as "Email newsletter samples, Screen shots from website displaying the mark in connection with the services."

[8] Attached to Applicant's response filed June 26, 2023. The specimen is described by Applicant as "Photos displaying the mark as used in connection with the services."

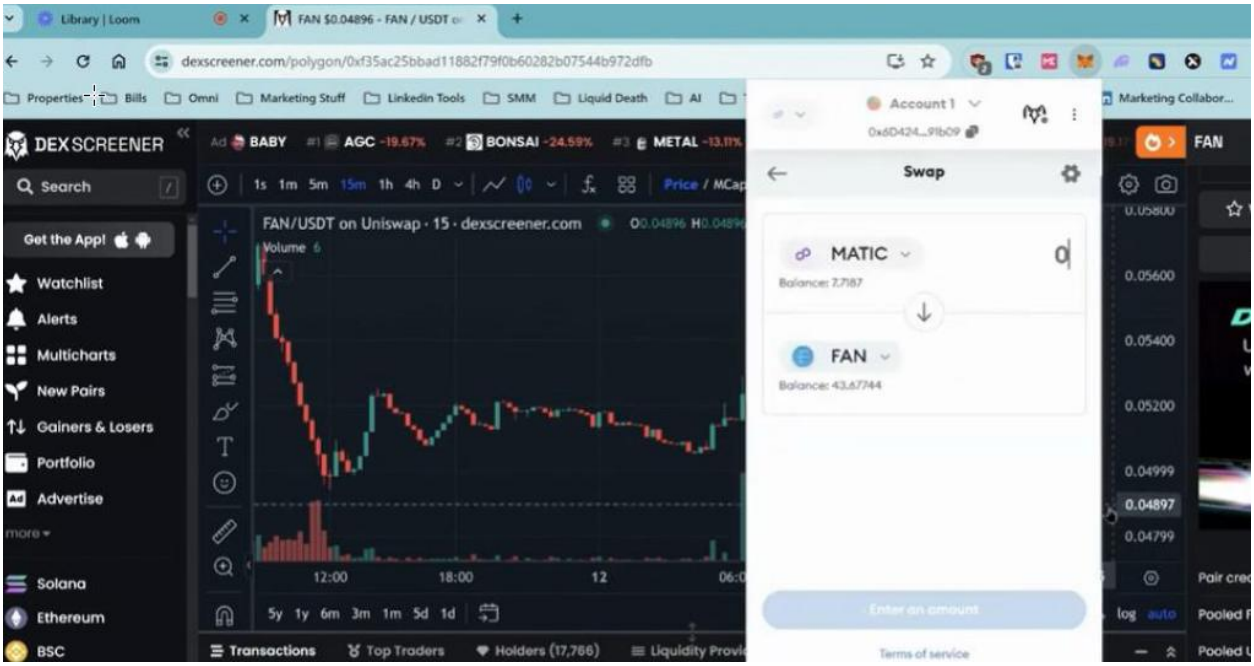
Third Substitute Specimen":[9]





[9] Attached to Applicant's response filed October 31, 2023. The specimen is described by Applicant as "Screenhost (sic) of the Wallet displaying the specimen FAN in connection with the services."

Fourth Substitute Specimen[10]



III. Argument and Analysis

Applicant describes its business as "an innovative entertainment company whose mission is to provide financial support and resources to small filmmakers and music creators who aspire to bring their work to the Hollywood stage."[11] Applicant does this through a website platform, https://app.film.io/, or "Film.io", whereby "fans can influence the types of films that get made and participate actively in the creation process, also participating in the financial success of the projects they support."[12] The

[10] Attached to Applicant's request for reconsideration filed July 16, 2024, the specimen is described by Applicant as "Photos from website displaying the mark in connection with the services."

[11] 8 TTABVUE 8.

[12] 8 TTABVUE 8.

platform, according to Applicant, "allows users who invest in projects to acquire FAN tokens, which grant them a stake in the studio."[13]

Applicant acknowledges "that the mark FAN refers to a cryptocurrency minted by [Applicant] that enables users to cast their votes supporting specific projects in the platform," but maintains that it also uses the mark in connection with "cryptocurrency exchange services featuring blockchain technology," that it provides.[14] Applicant contends that "the mark FAN also clearly identifies a cryptocurrency exchange service offered by Applicant to the users and potential users of the Film.io platform as encountered by them and as shown in the specimens of record."[15] Applicant refers in particular to its fourth substitute specimen (a relevant screenshot is reproduced above), arguing that this shows that "when a user of the Film.io platform clicks on FAN an electronic wallet/exchange service opens allowing for the exchange of a cryptocurrency for the FAN cryptocurrency."[16] Applicant concludes that this specimen "indicating FAN tokens/cryptocurrency can be swapped for MATIC cryptocurrency clearly creates a direct association between the FAN mark and the cryptocurrency exchange services showing use in commerce of the mark."[17]

[13] 8 TTABVUE 8.

[14] 8 TTABVUE 8.

[15] 8 TTABVUE 8.

[16] 8 TTABVUE 11. In explaining the screenshot, Applicant states that "MATIC [is a] cryptocurrency that powers the Polygon Network, a scaling solution for the Ethereum blockchain … [and that] MATIC is a utility token of the Polygon Network." *Id.*

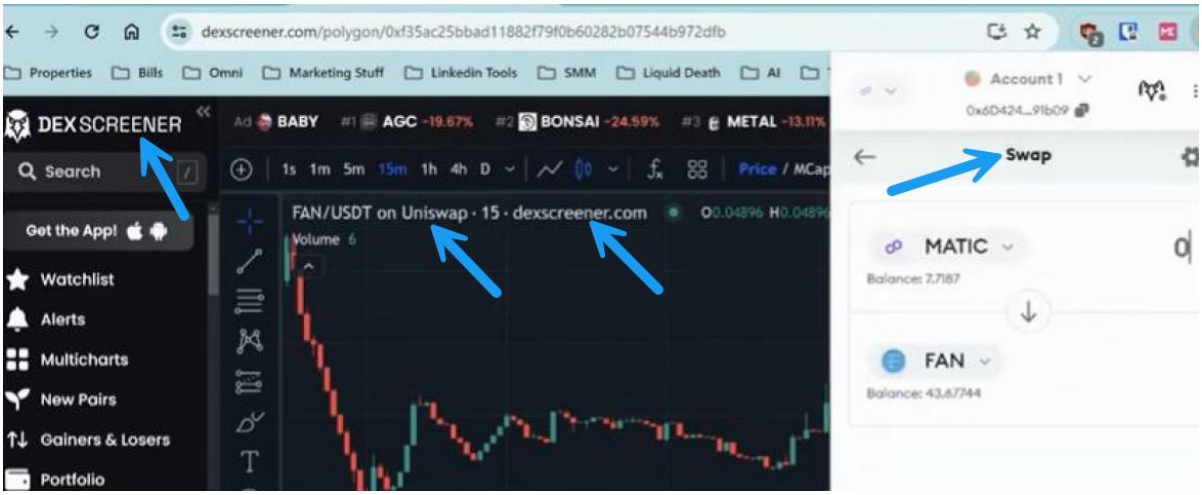
[17] 8 TTABVUE 13.

The Examining Attorney does not dispute that Applicant's FAN mark may be referring to a type of cryptocurrency, or utility token, as Applicant claims. However, the Examining Attorney argues that the specimens do not show that Applicant is using the FAN mark in connection with providing a cryptocurrency exchange service. And, with respect to the fourth substitute specimen that Applicant specifically relies upon, the Examining Attorney retorts:[18]

> [I]t clearly shows the exchange of cryptocurrencies, from MATIC to FAN. MATIC is Polygon's own cryptocurrency, used in the polygon network as well as FAN. However, although Applicant states this specimen shows the mark used in connection with the identified services 'Cryptocurrency exchange services,' neither the specimen itself nor the explanation Applicant has submitted indicate how the mark FAN is used in connection with [those] services. Even if this specimen somehow 'shows the exchange of cryptocurrencies,' it does not show the mark FAN used as a source identifier for the provision of the cryptocurrency exchange services. At best, FAN appears on this specimen as a cryptocurrency that may itself be exchanged. Accordingly, this argument is not persuasive.

We agree the Examining Attorney's analysis of this specimen. That is, although the specimen clearly indicates that a user has the ability to exchange or "swap" FAN cryptocurrency with MATIC cryptocurrency, there is no indication that Applicant is providing this service, let alone that FAN is being used to identify the source of that service. Rather, the exchange services offered on this website (www.dexscreener.com) appear to be provided under the mark DEXSCREENER, as shown in the closer-up excerpt (with arrows provided for indication) reproduced below:

[18] 10 TTABVUE 4.



A consumer or user on this site will perceive FAN as referring to what is being traded or swapped. The same consumer is also likely to understand that it is DEXSCREENER, or dexscreener.com, that is the source or provider of the exchange services allowing the cryptocurrencies to be swapped or exchanged.

For the aforementioned reasons, we do not find that the fourth substitute specimen that Applicant emphasizes in its brief shows use of the mark FAN in association with the cryptocurrency exchange services such that a consumer would perceive that mark as the source for those services. *DSM Pharms.*, 87 USPQ2d at 1625-26 (LIQUIDADVANTAGE referred only to software and did not identify and distinguish custom manufacturing services). Again, we have thoroughly reviewed all of the specimens submitted and find that they, too, show use of FAN in connection with reference to a cryptocurrency, but fail to properly show use that mark for the cryptocurrency exchange services. *See, e.g., In re HSB Solomon Assocs. LLC*, 102 USPQ2d 1269, 1274 (TTAB 2012) (CEI identified process by which applicant derived a measurement rather than technical consulting service); *Osmotica*, 95 USPQ2d at 1669 (OSMODEX referred only to drug delivery technology, not consulting services).

In conclusion, we have reviewed all of Applicant's specimens, including the original and substitutes, and find that none show a direct association with the identified services in the application. Accordingly, the specimen refusal is proper.

Decision: The refusal to register Applicant's mark FAN, under Trademark Act Sections 1 and 45, on the basis that the specimens of use are unacceptable is affirmed.