This Opinion Is Not
a Precedent of
the TTAB

Mailed: April 8, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Trinity Christian Center of Santa Ana, Inc.

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Serial No. 87785608

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Jennifer L. Whitelaw of Whitelaw Legal Group,
for Trinity Christian Center of Santa Ana, Inc.

William Verhosek, Trademark Examining Attorney,
Law Office 114 (Nicole Nguyen, Managing Attorney).

Before Zervas, Dunn and Lavache, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Trinity Christian Center of Santa Ana, Inc. ("Applicant") seeks registration on the Principal Register of the standard character mark BETTER TOGETHER for the following International Class 38 services (hereinafter, "Applicant's Services"):

> television broadcasting of religious, faith-based and motivational programming; cable television broadcasting of religious, faith-based and motivational programming; television broadcasting services of religious, faith-based and motivational programming; digital television broadcasting of religious, faith-based and motivational programming; audio broadcasting of religious, faith-based and motivational programming; broadcasting religious, faith-based and motivational programs via

> a global computer network; video broadcasting of religious, faith-based and motivational programming; streaming of religious, faith-based and motivational video material on the internet; radio broadcasting of religious, faith-based and motivational information and other religious, faith-based and motivational programs; radio program broadcasting of religious, faith-based and motivational programming; and streaming of religious, faith-based and motivational audio material on the internet; providing information in the field of inspirational audio and video broadcasting.[1]

On September 27, 2022, Applicant filed a Statement of Use, claiming first use and first use in commerce of its mark in connection with the identified services on April 22, 2019. Applicant submitted five specimens of use with its Statement of Use, none of which the Examining Attorney accepted as supporting evidence of use for the International Class 38 services. *See* Trademark Act §§ 1 and 45, 15 U.S.C. §§ 1051 and 1127, and 37 C.F.R. §§ 2.34(a)(1)(iv) and 2.56(a). The Examining Attorney issued an Office Action on April 17, 2023, finally refusing registration of Applicant's mark.

Applicant then filed a notice of appeal and a Request for Reconsideration. The Board suspended the appeal and remanded the application to the Examining Attorney for consideration of Applicant's Request. The Examining Attorney was not

[1] Application Serial No. 87785608 was filed on February 6, 2018, originally claiming a bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The original application included additional goods and services in International Classes 9, 16, 35 and 41. Applicant filed a request to divide on July 13, 2023, leaving only the International Class 38 services in the present application.

Page references to the application record refer 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 downloadable .pdf version of the documents in the USPTO TSDR Case Viewer. *See In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). Citations to briefs refer to TTABVUE, the Board's online docketing system.

persuaded by Applicant's arguments and continued the refusal. After the Board resumed the appeal, Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

I. Evidentiary Objection

Applicant asks us to take judicial notice of the specimens in Registration No. 6991874 that are not in the evidentiary record.[2] The Board's well-established practice is not to take judicial notice of registrations that reside in the USPTO, and we do not take judicial notice of specimens from other registration files that have not been made of record in the case before us. *See*, *e.g.*, *In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1644 n.11 (TTAB 2011) (stating that "the Board's well-established practice is not to take judicial notice of registrations that reside in the USPTO"); *Beech Aircraft Corp. v. Lightning Aircraft Co.*, 1 USPQ2d 1290, 1293 (TTAB 1986) ("[W]e do not take judicial notice of application and registration files that reside in the Patent and Trademark Office on the basis of their mere identification in briefs ….").

Applicant's additional arguments regarding specimens in other registrations are without evidentiary support and therefore not further considered.[3] "Attorney argument is no substitute for evidence." *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005); *see also Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018).

[2] Applicant's brief, 14 TTABVUE 10.

[3] *Id.*, 14 TTABVUE 9-10.

II. Authority

Section 1 of the Trademark Act establishes that the owner of a trademark used in commerce may apply to register the trademark on the Principal Register by filing a written application and specimens of the mark as it is used in commerce. According to Section 45 of the Trademark Act, 15 U.S.C. § 1127, a service mark is used in commerce "when it is used or displayed in the sale or advertising of services and the services are rendered in commerce." *See also* Trademark Rule 2.56(b)(2), 37 C.F.R. § 2.56(b)(2). "To determine whether a mark is used in connection with the services described in the [application], a key consideration is the perception of the user." *In re JobDiva, Inc.*, 843 F.3d 936, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016) (citation omitted). The question is whether the evidence of Applicant's use of its mark creates an association between the mark and Applicant's services. *Id.*

"Specimens showing the mark used in rendering the identified services need not explicitly refer to those services in order 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 Way Media*, 118 USPQ2d 1697, 1698 (TTAB 2016) (quoting *In re Johnson Controls, Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)); accord *JobDiva*, 121 USPQ2d at 1126 ("the question is whether the evidence of JobDiva's use of its marks sufficiently creates in the minds of purchasers an association between the marks and JobDiva's personnel placement and recruitment services") (cleaned up).

For specimens showing the mark in advertising the services, "[i]n order to create the required 'direct association,' the specimen must not only contain a reference to

the service, but also the mark must be used on the specimen to identify the service and its source." *Way Media*, 118 USPQ2d at 1698 (quoting *In re Osmotica Holdings Corp.,* 95 USPQ2d 1666, 1668 (TTAB 2010)).

Showing only the mark with no reference to, or association with, the services does not show service mark usage. *In re Adair*, 45 USPQ2d 1211, 1214-15 (TTAB 1997); *In re Duratech Indus. Inc.*, 13 USPQ2d 2052, 2054 (TTAB 1989). Thus, an acceptable specimen must show "some direct association between the offer of services and the mark sought to be registered therefor." *In re Universal Oil Prods. Co.*, 476 F.2d 653, 177 USPQ 456, 457 (CCPA 1973).

As noted in the first page of this opinion, the application claims various "telecommunication services" in International Class 38. Section 1401.02 of the TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) (Nov. 2024) states as follows with regard to such services:

> Class 38 includes mainly services that allow at least one party to communicate with another, as well as services for the broadcasting and transmission of data.
>
> This Class includes, in particular:
> transmission of digital files and electronic mail;
> providing user access to global computer networks;
> radio and television broadcasting;
> video-on-demand transmission;
> providing internet chatrooms and online forums;
> telephone and voice mail services;
> teleconferencing and videoconferencing services.
>
> This Class does not include, in particular:
> radio advertising (Cl. 35);
> telemarketing services (Cl. 35);
> **content or subject matter that may be contained in the communication activity, for example, downloadable image**

> **files (Cl. 9), providing business information via a website (Cl. 35), providing films and television programmes, not downloadable, via video-on-demand services (Cl. 41)**;
> services conducted using telecommunication connections, for example, online retail services for downloadable digital music (Cl. 35), online banking (Cl. 36);
> production of radio and television programmes (Cl. 41);
> telecommunications technology consultancy (Cl. 42);
> online social networking services (Cl. 45). (emphasis added).

III. Discussion

As mentioned, Applicant submitted five specimens to establish use of its mark for Applicant's Services. Applicant provided the webpage URL for each specimen in its Statement of Use, and described its specimens as:

> mark on advertisement for television broadcasting of religious, faith-based and motivational programming; mark on advertisement for broadcasting religious, faith-based and motivational programs via a global computer network; mark on streaming[4] of religious, faith-based and motivational video material on the internet.

Much of these states the obvious – Applicant mark is used in Internet advertising – but lacks an explanation of how a "direct association" is made between the mark and Applicant's Services. Applicant's description of its specimens in its Statement of Use therefore provides limited assistance in determining whether the proffered

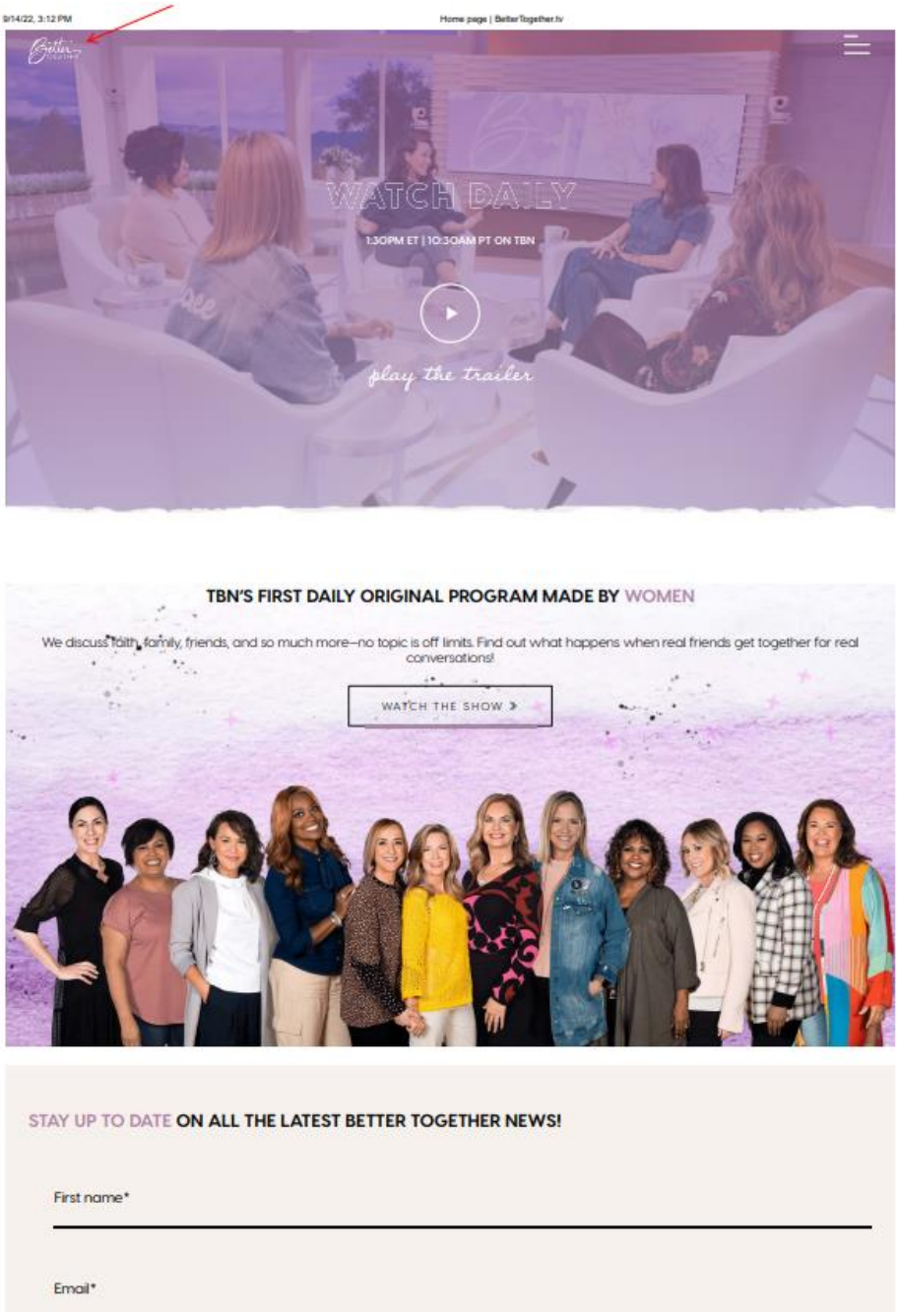
[4] Statement of Use, TSDR 1.

Streaming is defined in the Collins Dictionary (American English) as "a method of sequentially transmitting an audio or video presentation, as over the Internet: the data is playable as it is being received, rather than only after it is completely downloaded." (Accessed on April 2, 2025 at https://www.collinsdictionary.com/us/dictionary/english/streaming.) We take judicial notice of this definition. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

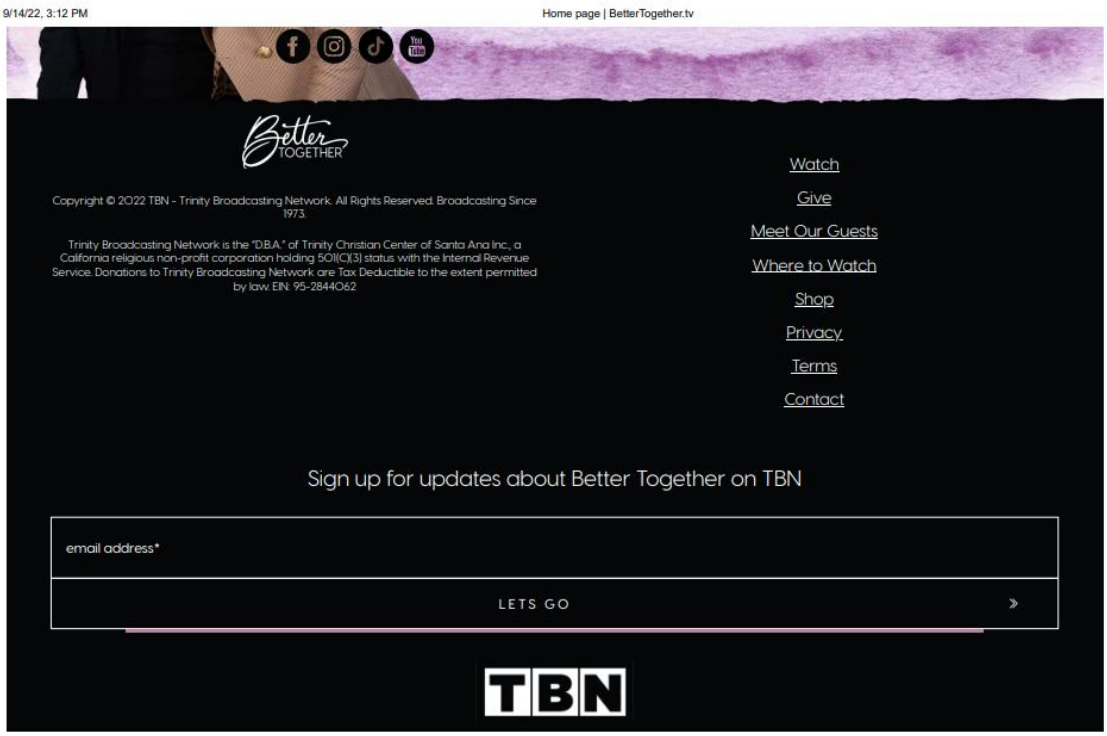
specimens support Applicant's claim that it has used its mark in connection with Applicant's Services.

We now address in turn each specimen Applicant submitted with its Statement of Use, in the order discussed in Applicant's brief.

First Specimen[5]



[5] Statement of Use, TSDR 1-3.



Applicant mentions the domain BetterTogether.tv at the top of the webpage.[6] If Applicant is relying on the domain name to make the required direct association with Applicant's Services, we do not agree. BetterTogether.tv is not the applied-for mark,[7] and the domain name serves here as an Internet address, not a trademark.

Applicant also states:

> The "watch" link is clearly shown in close proximity to the exact applied for mark, supporting that at least the applied for Class 38 services of "streaming of religious, faith-based and motivational video material on the internet" and "providing information in the field of inspirational audio and video broadcasting" are used in commerce in connection with the applied-for services.[8]

[6] Applicant's brief, 14 TTABVUE 15.

[7] *Id.*, 14 TTABVUE 15.

[8] *Id.*, 14 TTABVUE 7.

The words BETTER TOGETHER appear in cursive at the top left of the specimen. Underneath, is the explanatory phrase in bold and in capital lettering for emphasis, "TBN's FIRST DAILY ORIGINAL PROGRAM MADE BY WOMEN." (emphasis added). BETTER TOGETHER is unambiguously identified as a "program."

The "watch" link appears on a list that includes "Meet Our Guests" and "Where to Watch." These links pertain to the programs that are referenced in the specimen, not any of Applicant's Services. The instruction, "Sign up for updates about Better Together on TBN" is provided, and TBN's logo prominently appears at the bottom of the webpage.[9] Further, "trailer," in "Play the trailer," is in singular form, refering to a single program episode, and not a streaming or broadcasting service. The link "Where to watch," mentioned above, informs potential viewers where they can find the BETTER TOGETHER program, not a streaming service or any other of Applicant's Services. "[T]he show" in the link "watch the show," refers to a single episode of BETTER TOGETHER and not a streaming or broadcast service.

In its March 31, 2023 Response, Applicant states,

> TBN is a trademark owned by the Applicant, and the use of their TBN trademark in connection with the BETTER TOGETHER trademark is permitted. The fact the television show is broadcast on the Applicant's network is in itself evidence of the streaming of "television broadcasting services" on the Internet.[10]

[9] Applicant states that it "is, and has been for decades, known to many as the largest inspiration broadcaster in the world, and America's most watched faith and family channel." Applicant's brief at p. 8, 14 TTABVUE 9.

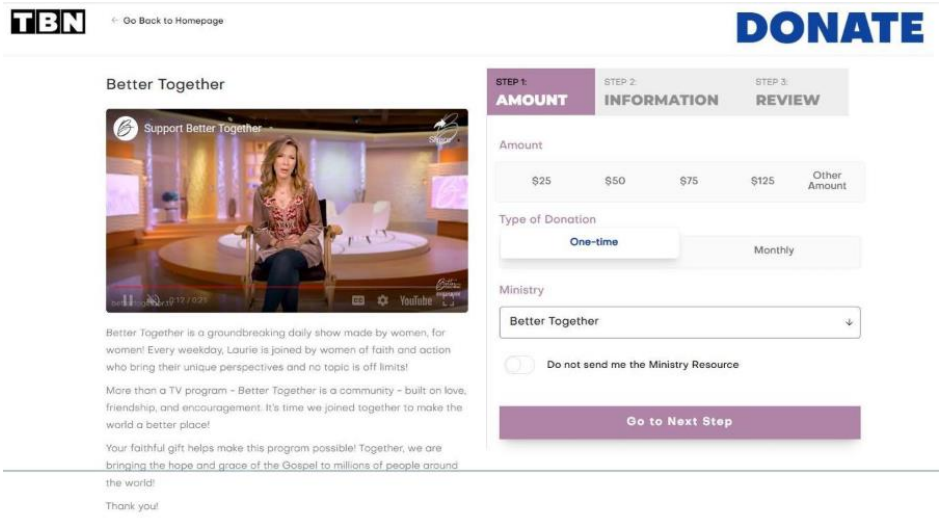
[10] March 31, 2023 Response, TSDR 3.

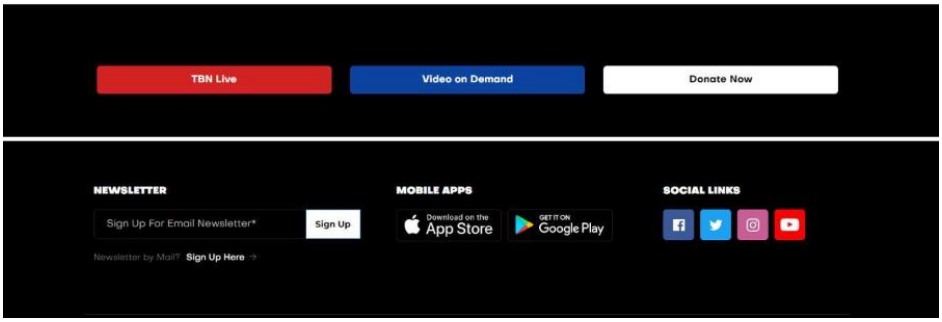
Applicant misunderstands what "streaming of religious, faith-based and motivational video material on the internet; radio broadcasting of religious, faith-based and motivational information and other religious, faith-based and motivational programs" entails. It is the provision of a streaming or a broadcasting service, not the presentation of a program on a streaming or broadcasting service, even if the source of the program and the source of the streaming or broadcasting service is the same. Using Applicant's logic, the comedy show "I Love Lucy" found on a streaming service such as Netflix would be the trademark of a streaming service.

In sum, "Watch" in the specimen, and other wording in the specimen, do not create the required direct association between the mark and Applicant's International Class 38 services. The wording in the specimen informs the consumer of a program named BETTER TOGETHER, and programs, as content, are excluded from International Class 38's telecommunications services. *See* the TMEP guide note, *supra*, exluding "content or subject matter that may be contained in the communication activity" from International Class 38.

In view of the foregoing, we find that this the First Specimen fails to make the required direct association between the mark and Applicant's Services.

Second Specimen[11]





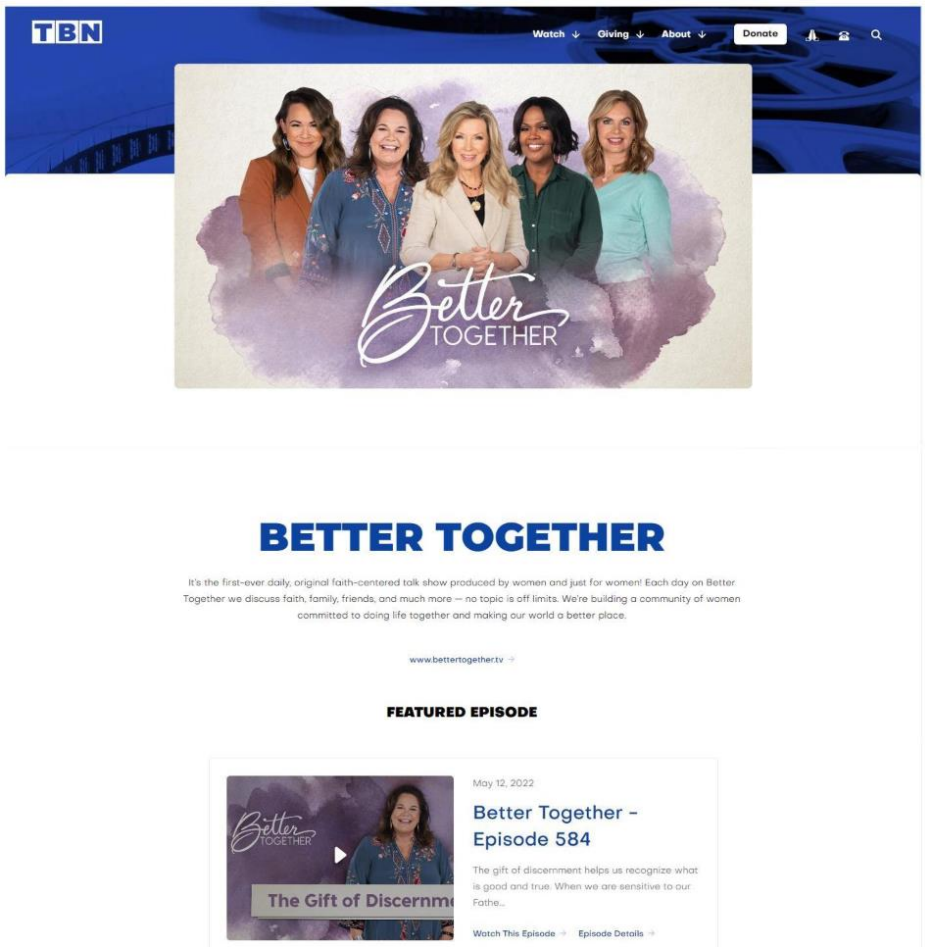
Applicant states that the mark is displayed on the streamed video itself and on the information section below the video. Applicant points to the text, "More than a TV program – *Better Together* is a community," and, at the bottom of the webpage, "TBN Live" and "Video on Demand."

The text, however, states, that "*Better Together* is a groundbreaking daily show." It also states, "Your faithful gift makes this program possible." These are unambiguous references to "content or subject matter that may be contained in the

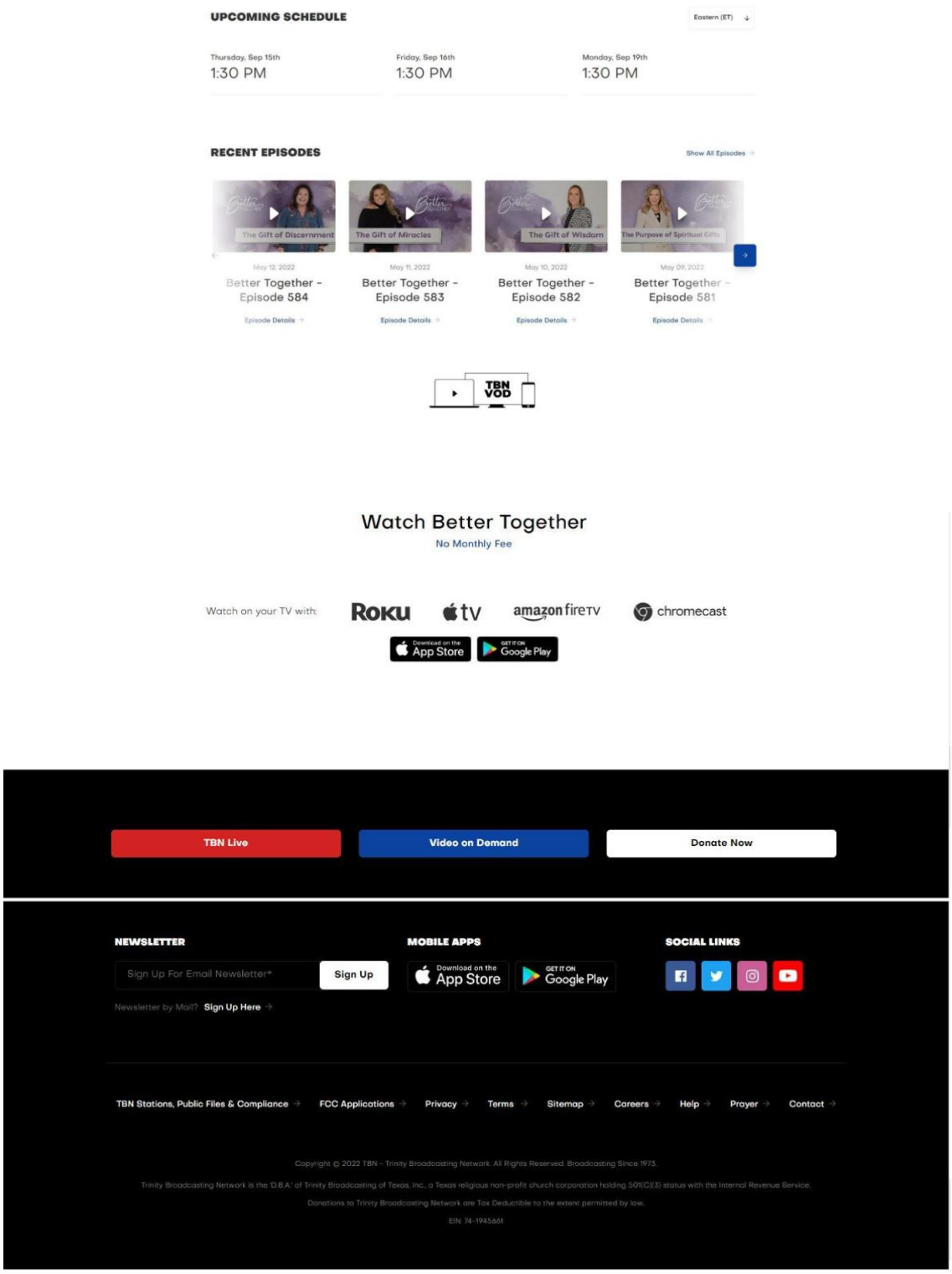
[11] Statement of Use, TSDR 1-3.

communication activity," of the kind identified in "films and television programmes, not downloadable, via video-on-demand services (Cl. 41)." In light of this clarification, the link "Videos on Demand" is not referring to BETTER TOGETHER streaming, but to BETTER TOGETHER programs. "TBN Live," through its reference to TBN, offers nothing with regard to BETTER TOGETHER as a streaming or broadcasting service.

Third Specimen[12]



[12] *Id.*, TSDR 4.



Applicant states that its mark is used in this specimen as indicating "video on demand" and a broadcasting schedule, "without which there would be no

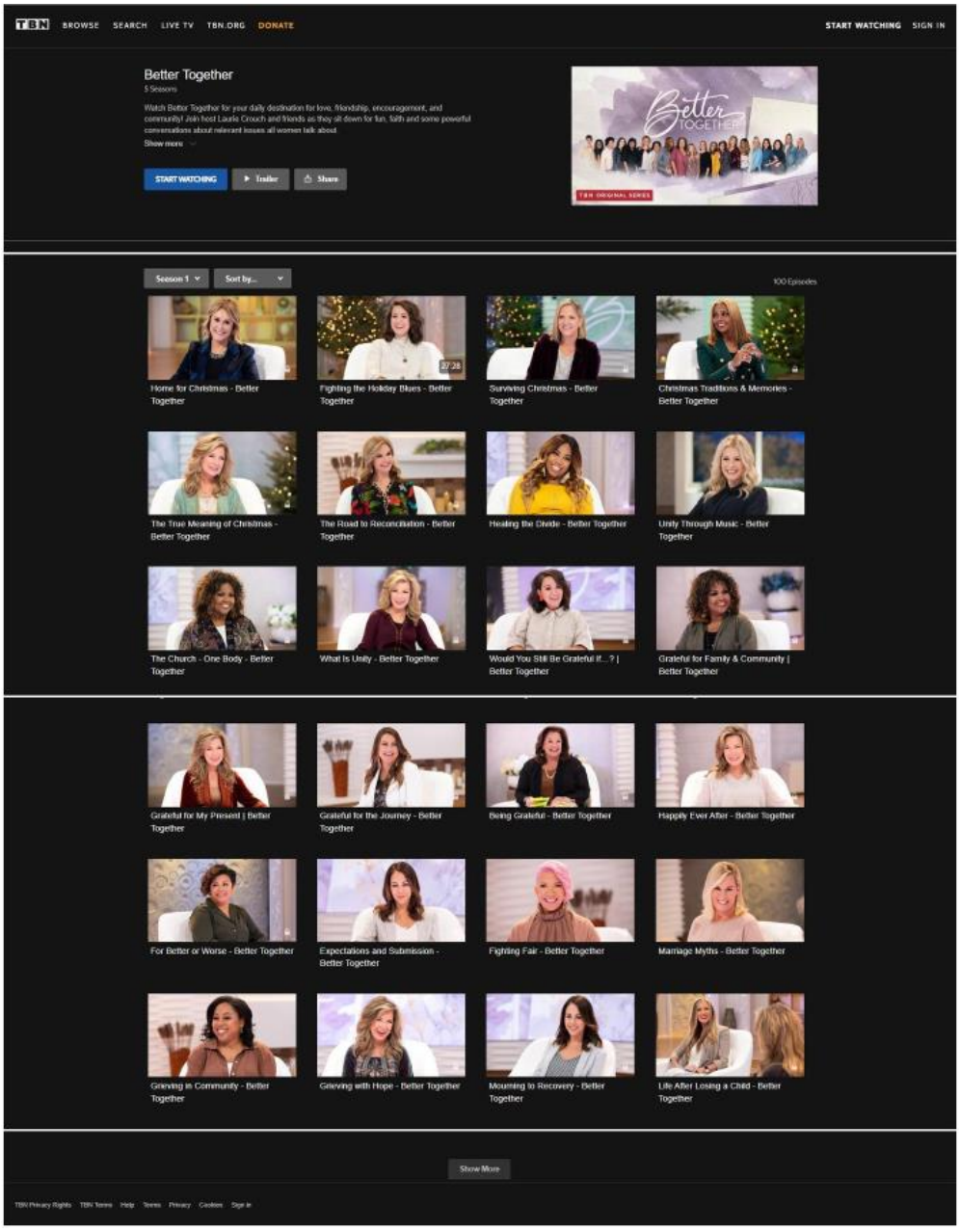
services."[13] The specimen adds, however, that BETTER TOGETHER is "the first-ever daily, original faith-center talk show," and identifies a "Featured Episode"[14] and "Recent Episodes," each with the BETTER TOGETHER mark.[15] Also, "VOD," ostensibly meaning "video on demand," appears next to "TBN," a term different than the applied-for mark, associating VOD with TBN, and not Applicant's mark. "Upcoming schedule" refers to the schedule of the programs, not any of Applicant's Services. In sum, "TBN Live" and "Video on Demand" do not help Applicant for the reasons stated, as well as those mention in the discussion of the Second Specimen.

[13] Applicant's brief, TTABVUE 17-18.

[14] Statement of Use, TSDR 3.

[15] *Id.*, TSDR 3.

Fourth Specimen

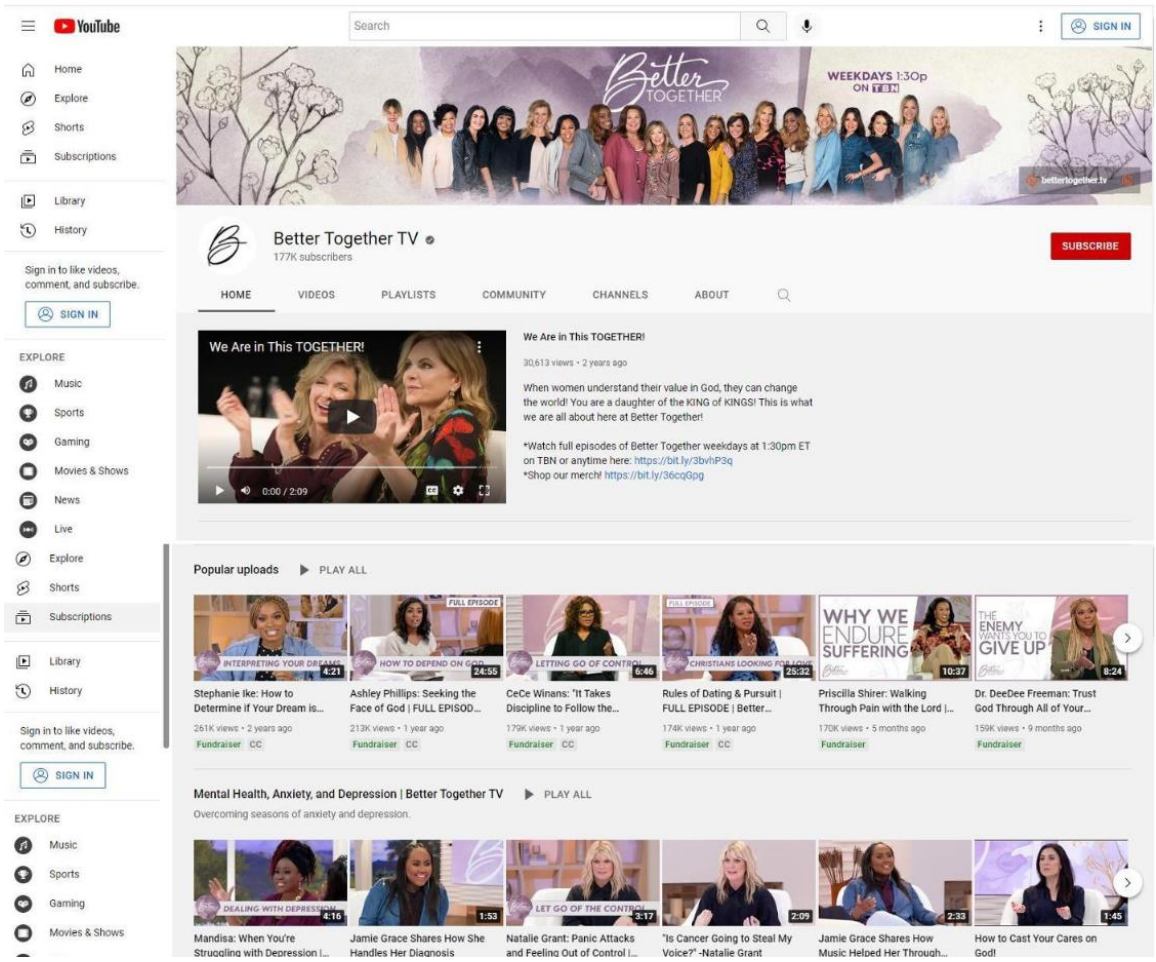


Applicant focuses on the blue "Start Watching" button of this webpage, arguing it gives the viewer the option to "Start Watching," with the mark appearing in connection with the broadcasting, streaming and information services.[16] The page,

[16] Applicant's brief, TTABVUE 18-19; Statement of Use, TSDR 16.

however, also refers to a "Trailer," "5 Seasons" and "Season 1" and screen clips with titles such as "Home for Christmas" and "Fighting the Holiday Blues." These are all references to television programs, *i.e.*, content. "Start Watching" merely instructs where to watch a program named BETTER TOGETHER.

Fifth Specimen[17]



[17] *Id.* TSDR 28. Applicant submitted two additional YouTube webpages, not duplicated in this opinion, that are similar to the one depicted as the fifth specimen. Applicant did not duplicate those two webpages in its brief.

Applicant states that its fifth specimen is a page from its BETTER TOGETHER YouTube channel.[18] According to its "Further Explanation," the specimen shows a screen capture, webpage, advertising circular, offering to all viewers advertising, web content, broadcasting, promotional material and branding for (i) streaming, (ii) providing information, and (iii) television broadcasting in the field of religious, faith-based and motivational programming. "The specimen bearing the mark is and continues the actual streaming of said material. Right before the eyes of the beholder of the specimen material, the broadcasting and the streaming is shown to be occurring, all bearing the mark."[19]

Applicant argues:

> The applied for mark as shown on the Applicant's specimens is … further utilized during the rendering of the applied for broadcasting and streaming services, and where users of Applicant's services would indeed recognize the applied for mark as it appears throughout the entirety of the provision of the recited services to Applicant's consuming public.[20]

The caption at the top of the webpage states, "Watch full episodes of Better Together weekdays at 1:30pm ET on TBN …." The YouTube pages display short BETTER TOGETHER "video thumbnails" of episodes which a consumer could click on, each under ten minutes in length and each having a different title. As such, they

[18] Applicant's brief, 14 TTABVUE 20. Applicant quotes from TMEP § 1304.04(h)(iii) which identifies YouTube is a streaming service. Applicant's brief, 14 TTABVUE 9.

[19] Req. for Recon., TSDR 4-5.

[20] Applicant's brief, 14 TTABVUE 23-24. Here, Applicant does not mention the "providing information" services.

do not demonstrate any of Applicant's Services but rather display "content … that may be contained in the communication activity, for example, … television programmes, not downloadable, via video-on-demand services." "Better Together TV" appears at the top of the YouTube webpage and under many of the "video thumbnails." As presented, "Better Together TV" simply identifies as the name of a YouTube channel, with YouTube providing the "downloadable, via video-on-demand services."

We find that the Fifth Specimens does not demonstrate use of the mark in a manner that creates in the minds of potential consumers a direct association between the mark and any of Applicant's Services.

IV. Other arguments

1. Applicant cites to TMEP § 1301.04(h)(iii)[21] and advocates for a broader interpretation of broadcasting services that would allow acceptance of its

[21] TMEP § 1301.04(h)(iii) states:

> Furthermore, some traditional services, and the associated terminology, may require fresh understanding and broader interpretation in the modern commercial environment. More and more traditional services are now offered online and, increasingly, multiple services are seamlessly integrated, creating difficulty in distinguishing the source of the services. For instance, television programs that were once provided only by broadcast television and cable outlets are now also accessible via streaming services like Netflix®, Hulu®, or YouTube®. Thus, typical service identification terms like "broadcasting," "distribution," and "transmission" have taken on new meaning in the modern marketplace. Thinking of traditional and other services more broadly and being cognizant of the current marketplace realities will also help the examining attorney determine whether

specimens.[22] Section 1301.04(h)(iii) discusses in relevant part expanding traditional broadcast television and cable outlets to streaming services and makes no reference to application of the requirement for a "direct association between the offer of services and the mark sought to be registered therefor" for specimens of use mandated by *In re Universal Oil Prods.*, 177 USPQ at 457. Further, "the TMEP does not have the force and effect of law …." *W. Florida Seafood Inc. v. Jet Rests. Inc.*, 31 F.3d 1122, 31 USPQ2d 1660, 1664 n.8 (Fed. Cir. 1994)

2. Applicant also states,

> [A] brand may be used for a Class 41 entertainment service and, at the same time, the same brand may be used by its owner for the streaming of faith based video material on the internet. Both services may occur simultaneously and may be branded by the presence and use of the same mark.[23]

The problem is not that there are additional marks on Applicant's specimen or that in principle, one mark can be used to identify more than one service, the problem is that Applicant's specimens do not make a direct association with any of Applicant's Services and that BETTER TOGETHER in the specimens identifies a service other than any of Applicant's Services.

3. Applicant notes that the Examining Attorney has not provided evidence to show that "customers will not recognize the mark or associate the services being offered."[24]

> the specimen properly shows use of the mark in direct association with the identified services.

[22] Applicant's brief, 14 TTABVUE 9.

[23] *Id.*, 14 TTABVUE 13.

[24] *Id.*, 14 TTABVUE 21.

Applicant cites no authority for its argument and we find it unpersuasive here where none of Applicant's specimens offered to support its International Class 38 services demonstrate a direct association between the mark and Applicant's Services.

V. Conclusion

Applicant has not persuaded us that the applied-for mark depicted in the specimens submitted for any of Applicant's Services in International Class 38 demonstrates the required direct association between Applicant's mark and Applicant's Services.[25]

Decision: The refusal to register Applicant's mark is affirmed.

[25] Applicant states, "if there were any doubt, the benefit of the doubt should go to the Applicant." Reply brief, 17 TTABVUE 9. We have no doubts as to our conclusion.