

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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September 29, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re energy.me, LLC*

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Serial Nos. 85650024 and 85650045

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Jeffrey O. Davidson and Joseph V. Norvell of Norvell IP LLC for energy.me, LLC  
Ahsen Khan, Trademark Examining Attorney, Law Office 113 (Odette Bonnet,  
Managing Attorney).

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Before Wolfson, Shaw, and Kuczma, Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

energy.me, LLC (“applicant”) seeks registration on the Principal Register of the marks **energy.me** and ENERGYDOTME (in standard characters) for “Energy management services, namely, providing a service that allows customers to purchase electricity at fixed or variable prices; retail electricity provider services that allow customers to purchase electricity,” in International Class 35.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85650024 for the mark **energy.me** was filed on June 12, 2012, based on an allegation of first use and first use in commerce of May 2011. Application

Both applications have been refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1) on the ground that the marks are merely descriptive of the services offered by Applicant. After the Examining Attorney made the refusal final in each proceeding, Applicant filed requests for reconsideration. The requests were denied and the appeals have been resumed.<sup>2</sup> Upon careful consideration of this record and the arguments presented, we agree with the Examining Attorney that the asserted marks **energy.me** and **ENERGYDOTME** are merely descriptive of Applicant's services.

#### Consolidation of Appeals

We have considered the arguments and evidence filed in each case. The refusals to register, records and briefs contain similar evidence and arguments, and the appeals involve common factual and legal issues. They are therefore consolidated.

#### Applicable Law

Trademark Act § 2(e)(1) prohibits registration of a mark which is merely descriptive of the applicant's goods or services. A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012).

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Serial No. 85650045 for the mark **ENERGYDOTME** was filed on June 12, 2012, based on an allegation of first use and first use in commerce of June 11, 2012.

<sup>2</sup> Applicant has withdrawn its conditional amendments to the Supplemental Register in each case, and requests that the marks be considered only for registration on the Principal Register.

*See also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (TTAB 2007); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract, but in relation to the goods and/or services for which registration is sought. *See In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

The Examining Attorney argues that because Applicant's marks are a combination of the descriptive term ENERGY and the non-source identifying TLD ".me" or its verbal equivalent "DOTME," Applicant's marks merely describe the field or type of services offered by Applicant. Applicant, on the other hand, argues that "energy" is not merely descriptive of its services; that ".me" (and DOTME) would be perceived by consumers as not merely a TLD but as the common English word "me" (in the case of **energy.me**) or as a distinctive letter-string (in ENERGYDOTME); and that the overall commercial impression of the marks are that of a "witty play on words or double entendre" on the double meaning of the term "me" in the marks.<sup>3</sup> For the reasons discussed below, we find that the term "energy" describes the genus of Applicant's services; the term

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<sup>3</sup> Applicant's Brief, p. 7, 13 TTABVue 12. References to the record are to entries in Serial No. 85650024 unless otherwise noted.

“.me” will be perceived as a domain name extension as well as the English word “me”; the term DOTME will be perceived as the equivalent of “.me,” and the overall effect of each mark is that of a domain name rather than a play on words.

Our analysis focuses first on the meaning of the term “energy” in the marks, which is the same in either mark.

***The term ENERGY describes the genus of services consisting of providing electricity because “electricity” is encompassed in the broader term “energy.”***

The Examining Attorney’s evidence demonstrates that “energy” is merely descriptive, if not generic,<sup>4</sup> when applied to Applicant’s services. Applicant recites its services as “energy management services” and “retail electricity provider services,” and advertises on its website that it provides “cost effective reliable electricity through a network of independent brokers and consultants.”<sup>5</sup> In the context of Applicant’s services the word “energy” is defined as “usable power (as heat or electricity); also: the resources for producing such power.”<sup>6</sup> The term “electricity” is encompassed in the broader term “energy.”

Applicant argues that the meaning of the word “energy” is too broad to have a specific meaning in connection with electricity suppliers, and that in

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<sup>4</sup> During examination, the Examining Attorney issued an advisory statement that the marks appear to be generic; however, refusal was based solely on the ground of mere descriptiveness under Section 2(e)(1).

<sup>5</sup> At [www.energy.me](http://www.energy.me); attached to Request for Reconsideration p. 255.

<sup>6</sup> At <http://www.merriam-webster.com>. The Board may take judicial notice of dictionary definitions, including definitions or entries from references that are the electronic equivalent of a print reference work. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009).

“both common parlance and industrial use, the term ‘energy’ more frequently designates the oil and gas industry, rather than the electrical industry.”<sup>7</sup> Applicant provided print-outs of online articles and websites describing the energy industry to show common use of “power” for “electric energy.” However, this usage does not preclude the term “energy” from being merely descriptive when applied to electricity provision services. In addition to Applicant, numerous third parties use the term “energy” to describe energy delivery services. For example, Green Mountain delivers “cleaner energy to consumers and businesses”;<sup>8</sup> Pepco Holding, Inc. states that it is “one of the largest energy delivery companies in the Mid-Atlantic region”<sup>9</sup>; and MidAmerican Energy Holdings Company is an “electric and natural gas” service provider.<sup>10</sup> Online directories use the phrase “energy companies” to describe companies which provide energy, including electricity. For example, the INC. 5000 lists the “Top Energy Companies on the 2012 Inc. 5000”;<sup>11</sup> Yahoo! Directory includes a category for “Energy Companies”;<sup>12</sup> and the Nasdaq stock exchange references the “Energy Companies” sector.<sup>13</sup> The term “energy” is at least highly descriptive of the provision of electricity, one source of energy.

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<sup>7</sup> Request for Reconsideration, p.12, 4 TTABVue 29.

<sup>8</sup> At <http://www.greenmountain.com>, attached to Final Office Action.

<sup>9</sup> At <http://www.pepcoholdings.com>, attached to Final Office Action.

<sup>10</sup> At <http://www.midamerican.com>, attached to Final Office Action.

<sup>11</sup> At <http://www.inc.com>, attached to Final Office Action.

<sup>12</sup> At <http://dir.yahoo.com>, attached to Final Office Action.

<sup>13</sup> At <http://www.nasdaq.com>, attached to Final Office Action.

***The term .me would be recognized as a TLD because entities use it as such within their domain name.***

The term “.me” is a country code top level domain (“ccTLD”) extension that operates as a top level domain name extension (“TLD”), following the country of Montenegro’s decision to allow businesses and individuals access to the ccTLD as part of their domain names. According to the record, “.me” is the national Internet extension for the country of Montenegro, which in 2008 set up the “.me Registry” to operate the then new “.me” domain name extension as a TLD for commercial use. From that time, “all businesses, large or small, existing or startup, [have been] eligible to apply” for an online address that will end in the extension “.me.”<sup>14</sup> Applicant argues that the “.me” TLD is extremely uncommon or “scarce” in comparison to other top-level domain extensions, but despite starting as a ccTLD, “.me” has been popularized as the domain name to use for a site that profiles oneself or one’s company. The website ENOM.com describes .me as “one of the fastest growing ccTLDs of 2008,” explaining that it is used “to personalize your web presence and make a statement by a name.”<sup>15</sup> GoDaddy.com, another provider of .me domain names, calls it “the personal domain,” and the “domain that’s all about YOU!”<sup>16</sup> This site describes why someone might want to buy a .me domain: “Tell your story on the internet with

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<sup>14</sup> From <http://venturebeat.com>, article “Latest trends: Creative branding with a .Me domain name,” attached to Request for Reconsideration.

<sup>15</sup> At <http://www.enom.com>, attached to Final Office Action. Although referring to “.me” as a ccTLD *supra*, the website places “.me” in the list of “specialty” or “hybrid” TLDs, noting that hybrid TLDs “tell people what your website is all about. Because they are new, they also let people know you are on the cutting edge. Examples are .CO, .PRO and .ME.”

<sup>16</sup> At <http://www.godaddy.com>, attached to Final Office Action.

.ME – the Top-Level Domain that’s all about you, your product, your world! Register your own name with a .ME extension and you have the ideal Web address for a personal blog, podcast or online portfolio.”<sup>17</sup>

To illustrate the manner in which the “.me” extension has been advertised to the public, below is a copy of a web page from <http://premiumdomains.me/> that list many “.me” names for sale.<sup>18</sup> In particular, several are constructed of a descriptive or generic term plus the .me extension, such as [crosswords.me](http://crosswords.me), [restaurants.me](http://restaurants.me), [medicare.me](http://medicare.me), [diabetes.me](http://diabetes.me). Others are readily perceived as plays on the word “me,” such as [inside.me](http://inside.me), [fluent.me](http://fluent.me), [insecure.me](http://insecure.me), [respect.me](http://respect.me), [you.need.me](http://you.need.me). In addition, the Examining Attorney has submitted evidence showing that “.me” is known to potential consumers as a TLD. For example, an online article from May 17, 2011 entitled *Comparing .me vs .co domain extensions (tlds), which one should you choose?* explains that both .me and .co domains are treated as generic top-level domain extensions<sup>19</sup> by search engines and users and that both “are becoming more popular. ... all smartphone apps [are] being named with .me domains.”<sup>20</sup> On Webmasters Stack Exchange, under *Which TLD would be suited to a personal site?*, a reader posts a question

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<sup>17</sup> Id.

<sup>18</sup> At <http://premiumdomains.me>, attached to denial of Request for Reconsideration.

<sup>19</sup> The use of the word “generic” here refers to a TLD that typically is recognized all over the world, such as “.com,” “.org,” or “.net.” In the website evidence of record, the “.me” extension is sometimes referred to as a generic TLD (“gTLD”), sometimes as a ccTLD, and sometimes as a hybrid TLD. One website refers to it as a ccTLD “marketed for generic (worldwide) use.” At <http://support.hostgator.com>, attached to Final Office Action. For ease of reference, we have generally referred to “.me” as a TLD throughout this decision.

<sup>20</sup> At <http://domainmichael.com>, attached to Final Office Action.

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whether he/she should use .info, .me, or .name for a website. One answer advises: “I’m not a huge fan of using ccTLDs for general use, although .tv .ws and .me have become widespread.”<sup>21</sup> A third website posts an article entitled *Latest trends: Creative branding with a .Me domain name*, and states: “Since 2008, Montenegro’s national Internet extension, .ME, has been taking the domain world by storm.”<sup>22</sup>

The print-out from PremiumDomains.me listing “.me” domain names for sale follows:

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<sup>21</sup> At <http://webmasters.stackexchange.com>, attached to Final Office Action.

<sup>22</sup> At <http://venturebeat.com>, attached to denial of Request for Reconsideration.



The world's best domain names...  
for the world's most powerful domain.

● Power of .ME ● .ME vs the World ● A Matter of TIME ● .ME Home ● .COM ● .TV ● .US ● Contact Us

Meet.ME sells for \$450,000.00 usd!!!  
Gay.XXX sells for \$500,000.00 usd!!!

**NEW!** GET YOUR NEW  
**.XXX DOMAIN!!!**

FEATURED DOMAINS	GEO DOMAINS	BUSINESS / FINANCE	HEALTH / MEDICAL	CAREER / INDUSTRY
apartment.me \$\$\$\$	Austria.me \$\$	inc.me \$\$\$\$	appetite.me \$\$\$\$	architect.me \$\$\$
autos.me \$\$\$\$	Bangladesh.me \$\$	llc.me \$\$\$\$	birthcontrol.me \$\$\$	bilingual.me \$\$
<b>career.me</b> \$\$\$\$\$	Ecuador.me \$\$	medicare.me \$\$\$\$	cancer.me \$\$\$\$\$	careers.me \$\$\$\$\$
condo.me \$\$\$	Morocco.me \$\$	mutualfunds.me \$\$\$\$\$	<b>cholesterol.me</b> \$\$\$\$\$	<b>cooking.me</b> \$\$\$\$
crosswords.me \$\$	<b>NewZealand.me</b> \$\$\$	<b>retirement.me</b> \$\$\$\$\$	diabetes.me \$\$\$\$\$	designer.me \$\$\$
guitar.me \$\$	Norway.me \$\$	revenue.me \$\$	herpes.me \$\$\$	fluent.me \$
human.me \$\$\$	<b>Orlando.me</b> \$\$\$\$	salary.me \$\$	HIV.me \$\$\$\$\$	rep.me \$\$\$
photography.me \$\$\$\$	Pakistan.me \$\$	savings.me \$\$\$\$	<b>nicotine.me</b> \$\$\$\$\$	<b>think.me</b> \$\$\$
restaurants.me \$\$\$\$\$	Poland.me \$\$	<b>socialsecurity.me</b> \$\$\$	nutrition.me \$\$\$	trainer.me \$\$
<b>taste.me</b> \$\$\$	<b>Spain.me</b> \$\$\$\$	stockmarket.me \$\$\$\$	<b>weightloss.me</b> \$\$\$\$\$	undecided.me \$
CLICK TO SEE --> <a href="#">MORE!</a>				

GOODS / SERVICES	SOCIAL / DATING	ADULT	TRAVEL / RECREATION	SPORTS / FITNESS
cereal.me \$	<b>inside.me</b> \$\$\$	amateur.me \$\$\$	beaches.me \$\$\$	<b>athlete.me</b> \$\$\$\$\$
<b>clothing.me</b> \$\$\$	compatible.me \$\$	<b>babe.me</b> \$\$\$	budgethotels.me \$\$	baseball.me \$\$\$\$\$
<b>diamond.me</b> \$\$\$\$\$	faithful.me \$	booty.me \$\$\$	<b>cancun.me</b> \$\$\$\$	basketball.me \$\$\$\$\$
fruit.me \$\$	groom.me \$\$	<b>centerfold.me</b> \$\$	<b>caribbean.me</b> \$\$\$\$	champion.me \$\$\$\$
guns.me \$\$	homecoming.me \$	eighteen.me \$\$	cheaptravel.me \$\$\$	<b>fitness.me</b> \$\$\$\$\$

general.me \$				
hotdogs.me \$	individual.me \$\$	nubile.me \$\$	cruises.me \$\$\$\$	football.me \$\$\$\$\$
limo.me \$\$\$\$	socialclub.me \$\$	nudepics.me \$	dining.me \$\$\$	hockey.me \$\$\$\$\$
<b>shuttle.me</b> \$\$\$	someone.me \$\$	pornmovies.me \$	<b>fishing.me</b> \$\$\$	soccer.me \$\$\$\$\$
uacdcara.me \$\$\$\$\$	<b>you.nccd.me</b> \$\$\$\$\$	<b>scxmovics.me</b> \$	<b>passport.me</b> \$\$\$	<b>superbowl.me</b> \$\$\$\$\$
<b>videogames.me</b> \$\$\$\$\$	overrated.me \$	x-rated.me \$	resorts.me \$\$\$\$	tennis.me \$\$\$\$
CLICK TO SEE --> <a href="#">MORE!</a>				

TECHNOLOGY / WEB	SPANISH / FOREIGN	MISC	TEAM NAMES	BARGAINS
anatomy.me \$\$	<b>asian.me</b> \$\$\$\$	bipolar.me \$\$\$	bulls.me \$\$\$	<b>bargain.me</b> \$\$\$
<b>audio.me</b> \$\$\$\$	<b>diga.me</b> \$\$\$	bobblehead.me \$	<b>celtics.me</b> \$\$\$	beginner.me \$
downloads.me \$\$\$\$	recuerda.me \$\$\$	freemovies.me \$\$	cubs.me \$\$\$	creature.me \$
duplication.me \$	trata.me \$\$	talkshow.me \$	<b>giants.me</b> \$\$\$\$	definition.me \$
gravity.me \$\$	european.me \$\$\$	<b>indulge.me</b> \$\$\$	islanders.me \$\$	hedonist.me \$
<b>memory.me</b> \$\$\$\$	latinamerica.me \$	<b>respect.me</b> \$\$\$	knicks.me \$\$\$	<b>insecure.me</b> \$
mpegs.me \$\$	<b>spanish.me</b> \$\$\$\$	trail.me \$\$	mets.me \$\$\$	libido.me \$\$
surroundsound.me \$	Sweden.me \$\$\$	holidays.me \$\$	<b>patriots.me</b> \$\$\$\$	moist.me \$
upc.me \$\$	Switzerland.me \$\$\$	first.me \$\$	phillies.me \$\$\$	resolution.me \$
username.me \$	Venezuela.me \$\$\$	mount.me \$\$	<b>steelers.me</b> \$\$\$\$	victim.me \$
CLICK TO SEE --> <a href="#">MORE!</a>				

Given the growing popularity of the .me domain name extension, and the fact that Applicant itself uses .me as part of its website address, Applicant's prospective consumers are likely to be familiar with the term ".me" as an internet extension for domain names. *See In re DNI Holdings Ltd.*, 77 U.S.P.Q.2d 1435, (TTAB 2005) ("In defining the 'relevant public' whose understanding and perception of SPORTSBETTING.COM is critical to our analysis, we must include all persons having access to the Internet who might potentially wager on sports.") (*internal citations omitted*). Applicant's customers will perceive the .me portion of Applicant's mark as a top-level domain name extension.

***Although consumers will perceive the English word "me" in the mark, the primary significance of ".me" is as a TLD because "energy.me" does not create a double entendre***

The English word "me" is a pronoun that is used in many constructions. It is defined as the "objective case" of the first person pronoun, "I."<sup>23</sup> We recognize that the public is likely to perceive ".me" as this common English word in addition to perceiving ".me" as the TLD extension in Applicant's mark. However, we do not follow Applicant's suggestion to draw a bright line between TLD's that have no independent meaning, such as ".com," ".org," or ".biz," and the TLD used by Applicant, simply because it is itself a meaningful word in the English language. For a mark that includes a domain name extension such as ".me" to be considered inherently distinctive, there must exist a grammatical connection or

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<sup>23</sup> At <http://www.merriam-webster.com>, attached to Applicant's March 28, 2013 response.

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natural continuity between the words, such that the “.me” extension is plausibly modified or acted on by the preceding word, in this case, “energy,” thereby contributing to the meaning of the domain name as a whole. Simply put, because there is no interplay between the words in the proposed mark, the primary significance of the “.me” extension will be perceived as a TLD rather than as the English word “me.”

When considering composite marks, our analysis must go beyond a determination of whether the individual components of the mark are merely descriptive; we must decide if the mark as a whole is also descriptive. If each component retains its merely descriptive significance in relation to the goods or services, the result is a composite that is itself merely descriptive. *See, e.g., In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1374 (Fed. Cir. 2004) (Court affirmed Board decision holding PATENTS.COM to be descriptive, stating “Patents’ alone describes one feature of the goods—that of tracking patent applications and issued patents. Adding ‘.com’ to the mark adds a further description of the Internet feature of the identified goods. Thus, appellant’s argument to consider the mark as a whole only strengthens the descriptiveness finding.”); *In re Omaha Nat’l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (“FirsTier” merely descriptive of banking services); *In re Putman Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE held merely descriptive of news and information service for the food processing industry). *Cf. In re Eddie Z’s Blinds and Drapery, Inc.*, 74 USPQ2d 1037 (TTAB

2005) (BLINDSANDDRAPERY.COM is generic for distributors and retailers of blinds and drapery).

Applicant argues that its mark creates a witty double entendre or play on words, by “leveraging the widely-used common usage that combines a noun of some type with the word ‘me,’ effectively transforming the noun into a verb.”<sup>24</sup> Applicant has submitted print-outs from various third-party websites illustrating this principle, wherein a noun (i.e., “burger” or “beer”) is combined with “me” to form an expression with the meaning of “give me \_\_\_,” or “I’ll take \_\_\_” (i.e., “give me a burger” or “I’ll take a beer”). Examples are shown below.



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**Beer Me!™**

The most complete source of brewery information worldwide.  
More than 16,285,160 beer lovers served!  
38,029 beers from 13,705 breweries  
8,979 tasting notes on 7,530 beers

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<sup>24</sup> Applicant’s Reply Brief p. 3, 16 TTABVue 6.

<sup>25</sup> At <http://oristeenbe3.wix.com>, attached to Applicant’s March 28, 2013 response.

<sup>26</sup> At <http://beerme.com/inc>, attached to Applicant’s March 28, 2013 response.

## Cake ME

★★★★★ 6 reviews [Rating Details](#)

Categories: Desserts, Bakeries [\[Edit\]](#)

2381 Adirondack Row

San Diego, CA 92139

Neighborhood: Paradise Hills

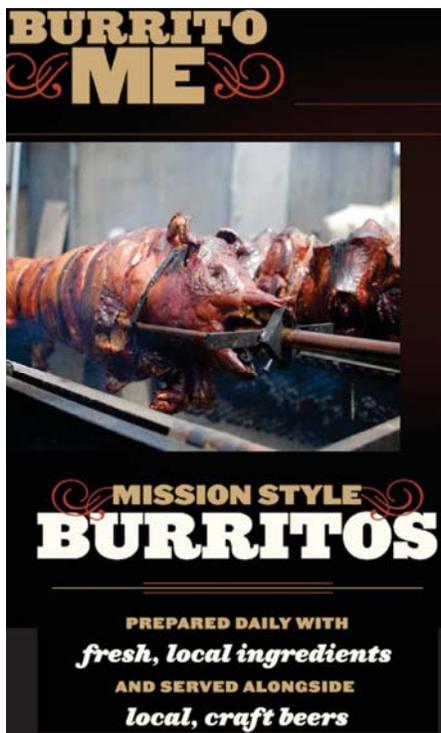
(619) 779-9702

<http://www.justcakeme.com/>

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<sup>27</sup> At <http://www.yelp.com>, attached to Applicant's March 28, 2013 response.

<sup>28</sup> At <http://pizzame.net>, attached to Applicant's March 28, 2013 response.

<sup>29</sup> At <http://www.burritome.com>, attached to Applicant's March 28, 2013 response.

Applicant argues that because its mark is constructed in the same way as are these third-party marks, that **energy.me** would be perceived as a phrase meaning “give me some energy.” The Examining Attorney disagrees, pointing out that none of the third-party marks contain a “dot,” which distinguishes these usages from that of Applicant’s.

We agree that the presence of a “dot” in front of the word “me” can result in a change to the commercial impression of a mark overall. As we have discussed above, the change from “me” to “.me” signals to consumers that the phrase is a domain name. None of the third-party names gives this impression due to the lack of a “dot” before the word “me.” Instead of being perceived as a catchy phrase, **energy.me** does not suggest “give me energy” or “I’ll take some energy.” The grammatical connection or natural continuity between the terms is lacking. *Cf. In re CyberFinancial.Net, Inc.*, 65 USPQ2d 1789, 1792 (TTAB 2002) (“Applicant seeks to register the generic term ‘bonds,’ which has no source-identifying significance in connection with applicant’s services, in combination with the top level domain indicator “.com,” which also has no source-identifying significance. And combining the two terms does not create a term capable of identifying and distinguishing applicant’s services.”); *In re Martin Container*, 65 USPQ2d 1058, 1061 (TTAB 2002) (“[N]either the generic term nor the domain indicator has the capability of functioning as an indication of source, and combining the two does not result in a compound term that has somehow acquired this capability.”).

The past practice of the USPTO in registering “.me” marks is instructive here. Applicant points out that the Office has registered numerous third-party marks with “.me” extensions, and argues that they illustrate that marks containing a “.me” component are registrable. As our primary reviewing court recognized, it is possible to create a domain name that would be registrable despite the fact that it would comprise a descriptive term and a TLD:

Under the hypothetical, a company seeks to register the mark *tennis.net* for a store that sells tennis nets. The applicant openly states that it does no business on the Internet and has no intention to ever use the Internet. This hypothetical applicant’s mark consists of a descriptive term—“tennis”—and a TLD—“.net.” The “net” portion alone has no source-identifying significance. The hypothetical mark as a whole, as is immediately apparent, produces a witty double entendre relating to tennis nets, the hypothetical applicant’s product. Arguably, the attachment of the TLD to the other descriptive portion of the mark could enhance the prospects of registrability for the mark as a whole. This hypothetical example illustrates that, although TLDs will most often not add any significant source-identifying function to a mark, a bright-line rule might foreclose registration to a mark with a TLD component that can demonstrate distinctiveness.

*In re Oppendahl & Larson LLP*, 71 USPQ2d 1370, 1373 (Fed. Cir. 2004). In *Oppendahl*, the Federal Circuit anticipated situations whereby the coupling of an otherwise unregistrable term and a TLD could create a whole greater than the sum of its parts. We do not believe Applicant’s combination of terms yields such a result. “Only in rare instances will the addition of a TLD indicator to a descriptive term operate to create a distinctive mark.” *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005) (*STEELBUILDING.COM* merely descriptive of online retail services in the field of pre-engineered metal buildings). The large majority of the third-party registered marks provided by

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Applicant have a verb as their initial component, followed by the .me extension. Each of these marks therefore forms an action statement, such as “get2know.me,” “guard me,” “join me,” “love me,” “fits.me.” Even though there is a “dot” between the words, its significance as an indicator of a TLD is dwarfed by the meaning of the mark as a whole due to the grammatical continuity in the turn of the phrase itself and the fact that the “me” component enhances the “prospects of registrability for the mark as a whole.” *Oppendahl, supra.* We further note that in several of the marks, the term in front of the “dot” would not be considered merely descriptive and thus the term would be registrable on that basis, for example, “mom.me,” “about.me,” “iband.me.” Applicant’s marks do not engender any enhanced meaning from the combination of the words “energy” and “me.”

Applicant also argues that a “dot” may appear in a mark even where there is no suggestion of a website or internet connection, showing that the mere presence of the “dot” does not transform the mark into a domain name. We agree that it is error to automatically interpret any mark that contains a period as a domain name. In this case, however, the Examining Attorney has clearly shown that “.me” is a domain name, unlike the wording following the period in the marks submitted by Applicant.<sup>30</sup>

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<sup>30</sup> These marks are: Reg. No. 3306854 for the mark i.am.me.sports; Reg. No. 3274210 for the mark E.MERGE; Reg. No. 3279959 for the mark LIPO.METRIC; Reg. No. 4402385 for the mark GI.METAL and design; Reg. No. 4247457 for the mark DR.METER; Reg. No. 5325102 for the mark Dr.mega; Reg. No. 4379938 for the mark Her.meneutics; and Reg. No. 3344490 for the mark O.ME.R.

***The substitution of the word “dot” for the period in ENERGYDOTME does not change public perception of the mark as a combination of “energy” and the TLD “.me”***

We find that the substitution of the word “DOT” for the character “.” does not alter the essential significance of Applicant’s mark ENERGYDOTME as indicating an online or internet connection. The word “dot” is the literal equivalent of the character “.” Both would be read as “dot”; despite its classification as a punctuation mark, the character “.” would not be seen as a sentence-ending period or a mere design feature. *See Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 221 (4th Cir. 2002) (“Domain names consist of sections of alpha-numeric characters separated by periods, called ‘dots.’”); *Smith v. Network Solutions, Inc.*, 135 F.Supp.2d 1159, 1160 (D. Ala. 2001) (“Each domain name consists of a combination of a Top Level Domain (‘TLD’) and Second Level Domain (‘SLD’) name, which are separated by a period known as a ‘dot.’”); *Name.Space, Inc. v. Network Solutions, Inc.*, 202 F.3d 573, 577 (2d Cir. 2000) (“A domain name, such as <www.uscourts.gov>, comprises a series of alphanumeric fields, or ‘domains,’ separated by periods or ‘dots.’”). Applicant’s argument that the mark ENERGYDOTME could be seen as a combination of the terms “energy,” “do,” and “tme” is unlikely inasmuch as “tme” is meaningless whereas “dot” and “me” are actual words in the English language. We find it more likely that the relevant public will recognize ENERGYDOTME as a “spelled-out” version of **energy.me**.

***Summary***

The marks **energy.me** and ENERGYDOTME are merely descriptive of energy services. The term “energy” is highly descriptive, if not generic, for a company that provides energy, including electricity, and the terms “.me” and DOTME will be perceived as top-level domain name extensions. While the mark **energy.me** may be perceived as the two-word combination “energy me,” there is no double entendre because “energy” and “me” do not modify each other in any recognizable way. Similarly, the mark ENERGYDOTME will likely be read as “energy dot me.” The phrase “**energy.me**” (and its equivalent ENERGYDOTME) are merely descriptive and unregistrable absent a showing of acquired distinctiveness.

***Decision:*** The refusals to register Applicant’s marks **energy.me** and ENERGYDOTME under Section 2(e)(1) are affirmed.