

# Saying It YOUR Way, On THEIR Website: Not a Registrable Service

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When you create a social media profile on a platform such as Twitter, and engage with other Twitter users, are you creating your own online community? This question was at the heart of the TTAB's recent precedential decision in [\*In re Florists' Transworld Delivery, Inc.\*](#)

Florists' Transworld Delivery (FTD), a major flower delivery company, applied to register the mark **SAY IT YOUR WAY** for services that included "Creating an on-line community for registered users to participate in discussions, get feedback from their peers, form communities, and engage in social networking featuring information on flowers, floral products and gifts" in Class 42. The Examining Attorney finally rejected the Class 42 specimen, which was comprised of multiple screenshots of FTD's Twitter page, and was described by applicant as "reflecting conversations on the Twitter page involving FTD and FTD fans and customers."

Appealing the Examining Attorney's rejection of the Class 42 specimen, FTD argued that Twitter created a forum within which users "may create their own virtual communities," and that FTD's Twitter page serves to "foster a dialogue" within their community. The Board disagreed and, upholding the Examining Attorney's rejection, held that Twitter provides the social networking service of creating an online community, and FTD is using the applied-for mark to advertise its presence within the community created by Twitter. The Board did not go so far as to say that an Applicant's presence on Twitter would *never* be considered a separately registrable service, but instead that "an applicant generally will not be able to rely on use of its social media account to support an application for registration" of the applied-for social networking services.

For applicants, the takeaway is that in an application to register a mark for social media-related services, the wording of the identification of services is key. In particular, applicants should consider wording the identification of services to distinguish between its own services and the services provided by the social media platform.

Another strategy is to create a social media forum directly on the applicant's own website, avoiding the use of another social media platform as a middleman. Either way, going forward, applicants should be very cautious when submitting a specimen for social media services that consists of

screenshots of a Twitter page...unless, of course, the applicant is Twitter.

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