

THIS OPINION
IS NOT A PRECEDENT OF
THE TTAB

Mailed: 10/13/10

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Joel Wiens

Serial No. 78526520

Richard O. Bartz of Bartz & Bartz for Joel Wiens.

Sharon A. Meier, Trademark Examining Attorney, Law Office
112 (Angela Wilson, Managing Attorney).

Before Quinn, Walters and Ritchie, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Joel Wiens filed an application to register on the
Supplemental Register the designation JOC for "protective
athletic garments, namely, men's hockey shorts with cup
pouches and sock clips, men's hockey pants with cup
pouches, goalie hockey compression shorts with cup pouches,
cups and socks holders, women's hockey shorts with pelvic
protectors and sock holders, with cup pouches and straps,
men's briefs with cup pouches, men's compression shorts
with protective cups, men's compression shorts with

adjustable protection cups, men's shorts with contour cup pouches, and men's pants with built-in cup pouches".¹

The trademark examining attorney refused registration on the Supplemental Register because applicant's designation is the phonetic equivalent of the word "jock," and this term is generic for the goods identified in the application. As such, the designation is incapable of registration.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

The examining attorney maintains that JOC is the phonetic equivalent and a slight misspelling of the term "jock," that is, the generic term for the class of applicant's goods. According to the examining attorney, the relevant purchasing public, that includes both male and female athletes, understands that the term "jock" primarily refers to a type of protective athletic garments commonly called "jock shorts" or "jock pants." In support of the refusal the examining attorney introduced dictionary definitions of the term "jock," a third-party patent registration, and numerous third-party web pages retrieved

¹ Application Serial No. 78526520, filed December 3, 2004, alleging first use anywhere and first use in commerce on October 31, 1993.

from the Internet showing generic uses of "jock" in connection with clothing of the type identified in the present application.

Applicant contends that his use of the designation JOC is "as a colloquialism for athlete," and further "does not dispute that the mark JOC is an obvious misspelling of, and phonetically equivalent to, the colloquial term 'Jock.'" (Brief, p. 2). Although conceding that JOC is merely descriptive, applicant argues that the designation is not generic and, thus, is registrable on the Supplemental Register, with the potential to acquire distinctiveness through continued use in commerce. More specifically, applicant asserts that there are "two different definitions for the term 'Jock' in the same context...both to identify a person who is an athlete and a designation for an athletic support undergarment characterized by an elasticized belt and a pouch for supporting and protecting the genitals." (Brief, p. 4). But applicant contends that the "athlete" definition of the colloquialism "jock" is the primary meaning, especially because applicant's goods are not limited to just jock straps, but rather include female undergarments. In this connection, applicant states that women consumers do not necessarily understand the term "jock" to refer primarily to a jockstrap, and that they

primarily associate the term "jock" with an athlete. Applicant points out that his usage of JOC is meant to convey the "athlete" meaning of the term, especially in view of his use of "athletic-looking models" in advertisements. Applicant has submitted photographs and labels showing how his mark is actually used, dictionary listings for "jock," excerpts from his product catalog, excerpts from the Amazon.com website showing athletic garments for sale, and copies of five registered patents, covering athletic garments, owned by applicant.

To be registrable on the Supplemental Register, the matter sought to be registered must be "capable of distinguishing applicant's goods or services" pursuant to Section 23 of the Trademark Act, 15 U.S.C. §1091. Generic terms are, by definition, incapable of indicating a particular source of the goods or services. "The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question." *In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009), citing *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). Determining whether a term is generic involves a

two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services? *Id.* "Evidence of the public's understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications." *In re Merrill Lynch, Fenner and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). To be generic, members of the relevant public must primarily use or understand applicant's term as referring to the genus of his goods. *Ginn*, 228 USPQ at 530.

Registrability must be determined in this appeal on the basis of the goods as set forth in the application. *In re Vehicle Information Network Inc.*, 32 USPQ2d 1542, 1544 (TTAB 1994). Registration will be denied if a mark is generic of any of the goods for which registration is sought. *See In re Quik-Print Copy Shop, Inc.*, 205 USPQ 505, 507 (CCPA 1980).

Our first task under *Marvin Ginn* is to determine, based on the record before us, the genus of applicant's goods. Applicant and the examining attorney are in essential agreement on this first factor. We find that the

genus of goods at issue is men's and women's protective athletic garments.

We next determine whether the designation applicant seeks to register, JOC, is understood by the relevant public primarily to refer to that genus of goods. The relevant public comprises men and women athletes or, more generally, men and women who participate in athletic and/or sporting contests.

The examining attorney introduced a dictionary definition of the term "jock," the phonetic equivalent of "joc":

1. An athletic supporter
 2. *Sports*. An athlete, especially in college.
 3. *Slang*. One characterized by excessive concern for machismo.
- Etymology: Short for jockstrap.

The American Heritage Dictionary of the English Language

(3d ed. 1992). Entries of "jock" in various other dictionaries made of record reflect the same range of relevant definitions. "An athletic supporter, often referred to as a jockstrap or a jock, is an undergarment used by athletes to support their genitals."

(www.ehow.com).

As just indicated, it is not disputed that "joc" is the phonetic equivalent and/or a misspelling of the term

"jock." "A slight misspelling of a word will not turn a descriptive or generic word into a non-descriptive mark." TMEP §1209.03(j) (7th ed., Oct. 2010). See *In re Carlson*, 91 USPQ2d 1198 (TTAB 2009) (URBANHOUSING would be perceived by consumers as the equivalent of the descriptive term URBAN HOUSING, rather than as including the separate word ZING); *In re Ginc UK Ltd.*, 90 USPQ2d 1472 (TTAB 2007) (generic meaning of "togs" not overcome by misspelling of the term as TOGGS); and *In re Hubbard Milling Co.*, 6 USPQ2d 1239 (TTAB 1987) (MINERAL-LYX held generic for mineral licks for feeding livestock). Thus, we turn to consider the uses of "jock" in connection with protective athletic garments.

The examining attorney introduced excerpts of the websites of third-party online retailers showing sales of athletic supporters referred to as "jocks." In point of fact, the terms "athletic supporter" and "jock" essentially are interchangeable. See, e.g., "Under Armour TurfGear Performance Jock with Cup Support"; "Reebok Sr. Goalie Jock"; "Bike's new Performance line of jocks and support gear"; and "A durable, comfortable jock that provides maximum protection for all sports." The record also includes applicant's Design Patent No. 571533 for "Combined Adjustable Jock Cup Pouch and Pants," and No. 579628 for

"Adjustable Jock Cup Pouch," both items that appear to be encompassed by the identification of goods in the present application. In this connection, we note that every item, as identified in the identification of goods, including women's hockey shorts, includes a protective "cup" or "cup pouch."

We appreciate the fact that applicant's goods do not appear to encompass athletic supporters *per se*, but rather goods, such as shorts and pants, that incorporate the qualities and functions of an athletic supporter. Thus, more significant is the evidence of record showing uses of "jock" in connection with other types of athletic garments. The following excerpt includes an explanation of "jock shorts":

Jock Shorts

If you're looking for jock shorts that protect your goods and support your muscles, then you're going to love our collection at International Jock. We've got fantastic styles with built-in jocks from superior brands such as Safe-T-Gard, Stromgren and Bike, to name a few.

Why Choose Jock Shorts over Jock Straps?

If you've never worn jock shorts and don't know what they offer that jockstraps don't, here's a heads up: they use supportive materials to prevent muscle fatigue in your legs, pelvis and lower back. Also known as "compression shorts," these garments

generally use Lycra or spandex blends to support your muscles. In long-lasting activities like baseball and cross-country running, jock shorts can truly increase your competitive edge. (www.internationaljock.com)

Also of record is a third-party patent, namely Patent No. 7216371 for "Jock support short":

An alternative to the jock strap is an athletic support short, which secures a protective cup over the groin region of a user without the use of jock-type straps, and may be comfortably worn as outerwear or under other clothing or equipment...it would be beneficial to provide a jock support device possessing the comfort provided by a short with the level of protection afforded by conventional jock straps.

The record includes numerous website excerpts showing the sale of "jock shorts" and "jock pants" as alternatives to the traditional jock strap. The following examples are representative of the evidence: "Shock Doctor Loose Adult Hockey Jock Shorts"; "Bauer Jock Plus Junior Jock Shorts"; and "Johnnygard Compression Jock Shorts"

(www.prohockeyequipment); "Easton Synergy Compression Jock" (www.ushockey.com); "Shock Doctor 272 Senior Comp Hockey Jock Pants" (www.prohockeyequipment.com); "Itech JT201 Jr. Compression Jock Pant"; and "Reebok Compression Jock Pants" (www.hockeymonkey.com); and "see below for an excellent selection of various brands of senior, junior and youth

hockey shorts and hockey jock shorts."

(www.skatingfitness.com). Also of record is the following excerpt:

The company [Bike] is launching a line with new fabrics and designs that they say will hit stores next year. They're also set to debut the "Boxer Jock" and the "Brief Jock" products with the support of a jock without the outdated appearance."
www.valleyadvocate.com

There also is evidence showing the following uses of "jock short" or "jock" specifically in connection with women's athletic garments: "Itech Women's Jock Short" (www.hockeyworld.com); and "Shock Doctor 274 Female Basix Compression Hockey Jock." (www.hockeyonestore.net).

Based on the evidence of record, we find that "joc," the phonetic equivalent and a misspelling of the term "jock," is generic for shorts and pants that feature protective cups and/or cup pouches. *See In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998) (ATTIC is generic for sprinklers installed primarily in attics); and *In re Reckitt & Colman, North America Inc.*, 18 USPQ2d 1389 (TTAB 1991) (PERMA PRESS is generic for soil and stain removers for use on permanent press products). Because the designation JOC is used in connection with "jock"-type athletic garments, this meaning will be the primary

meaning, and one that clearly dominates over the meaning of "jock" as "an athlete." The commonly understood and well recognized meaning of the word "jock" in connection with athletic wear, coupled with the numerous examples showing use of "jock" in connection with athletic garments such as shorts and pants, convince us that relevant consumers will perceive the applied-for mark JOC as the name of a product that functions like a "jock." While we recognize that applicant's garments may not be "jocks" in the classic sense, the goods incorporate a "jock" as that term is understood in the athletic garment field. Given the widespread generic use of "jock" in connection with athletic shorts and pants, the designation "joc," the phonetic equivalent and misspelled version of "jock," is incapable of distinguishing applicant's goods from the same or similar goods of others.

Decision: The refusal to register on the Supplemental Register is affirmed.