

**This Opinion is Not a
Precedent of the TTAB**

Mailed: August 25, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Ethos USA, Inc.
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Serial No. 85675559
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Sandra M. Koenig and Scott A. McCollister of Fay Sharpe LLP
for Ethos USA, Inc.

Colleen Dombrow, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

—
Before Taylor, Ritchie and Wolfson,
Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

Ethos USA, Inc. (“Applicant”) seeks registration on the Principal Register of the
mark PROGEAR (in standard characters) for

Covers for golf clubs; Gloves for golf; Golf bag covers; Golf
bags; Golf clubs in International Class 28.¹

The Trademark Examining Attorney has refused registration of Applicant’s
mark pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), because the

¹ Application Serial No. 85675559 was filed on July 12, 2012, based upon Applicant’s
allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the
Trademark Act.

proposed mark merely describes a feature or characteristic of Applicant's goods, namely that Applicant's golf gear is of a professional grade or quality, or is designed for use by professional athletes.

When the refusal was made final, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration on November 13, 2013, and the appeal was resumed on November 20, 2013. We affirm the refusal to register.

Applicant, in urging reversal of the refusal, maintains that its mark is suggestive and warrants registration. Applicant particularly contends that "the overall mark PROGEAR must be analyzed as a whole" and, when so viewed, "PROGEAR has no specific meaning." Reply br. pp. 2-3.

The Examining Attorney conversely maintains that Applicant's mark immediately describes a feature or characteristic of Applicant's goods, that PRO and GEAR are individually descriptive of Applicant's goods and when they are combined the resulting term PROGEAR is also descriptive. The Examining Attorney has supported her refusal with the following:

1. Various definitions of the terms "pro" and "gear." The following are representative.

Pro

Pro is ... the shortened form of the word "professional," often referring to professional sports.
(<http://www.vocabulary.com/dictionary/pro>, retrieved November 5, 2012)

noun or adjective : professional

(www.merriam-webster.com/dictionary/pro, retrieved April 24, 2013)

Gear

noun “Equipment, such as tools or clothing, used for a primary activity: *fishing gear*.”
(<http://education.yahoo.com/reference/dictionary/entry/gear>, retrieved April 24, 2013)

5. “equipment and supplies for a particular operation, sport, etc ⇒ fishing gear”
(<http://www.collinsdictionary.com/dictionary/english/gear>, retrieved November 5, 2012)

2. Internet evidence showing use of the term “pro,” or its longer form “professional,” to characterize the quality of various types of golf equipment and accessories, including clubs and gloves, as follows:

- The evidence found at www.mitchellgolf.com states, “Mitchell® Golf Equipment Company is the #1 source in the world for professional grade golf club performance and repair equipment and supplies.”
- The evidence found at www.golfusamanhattan.com states, “Tour Edge Golf Clubs” and “Utilizing state-of-the-art technology and minimal marketing, Tour Edge products are professional grade yet affordable!”
- The evidence found at www.callawaygolfpreowned.com states, “A professional-grade forged iron that delivers excellent workability and control, with legendary Callaway Golf playability.”
- A web page at www.ebay.com states: “Two professional golf one size fits all golf gloves”
(<http://webcache.googleusercontent.com/search?..>) Search terms: “professional golf gloves,” retrieved April 24, 2013.
- An excerpt from a web page at www.golfworks.com states, “Maxfli Pro Golf Gloves”.

(<http://webcache.googleusercontent.com/search?...>) Search terms: “professional pro golf gloves,” retrieved April 24, 2013.

- An excerpt from a web page at www.imaginegoldclub.com states: “Adams Pro Leather Golf Gloves” and “Adams Pro Leather Gloves – Professional Performance Without The Cost!” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional pro golf gloves,” retrieved April 24, 2013.

- An excerpt from a web page at www.mapleleafpromotions.com states, “Budget Prices in USA and Canada for professional quality golf gloves with custom imprint.” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional quality golf gloves,” retrieved April 24, 2013.

- An excerpt from the website at www.uniquesportsaccessories.com states: “Datrek Professional Bags, a leader in golf bags & Accessories for both men and women, offers a top quality selection of bags, including carry/cart bags, sidekick stand bags, headcovers and deluxe cart bags.” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional golf bags,” retrieved April 24, 2013.

- The website at www.espow.com states, in part: “PGM Women’s Professional Durable Nylon Golf Carry Bags” and “Espow.com provides a selection of golf bags for golf game. If you are looking for a durable and professional golf bag that protect[s] your golf clubs, espow.com has it.” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional golf bags,” retrieved April 24, 2013.

- An excerpt from a web page at golftips.golfsmith.com states: “Adams Golf has been producing professional-grade clubs since 1987.” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional grade golf clubs,” retrieved April 24, 2013.

- An excerpt from a web page at www.golfcrafters.com states: “We only sell the highest quality professional grade models from Ashton Golf, Wish on Golf, Prophet, Snake Eyes, Maltby, and Limited Edition.” (<http://webcache.googleusercontent.com/search?...>) Search terms: “professional grade golf clubs,” retrieved April 24, 2013.
- The evidence from www.igolfalot.com states, “The clubs are professional grade forged irons that deliver excellent workability and control.”

3. Internet evidence showing the term “gear” used to identify golf equipment and accessories.

- A web page from www.amazon.com states: “Golf Gear” and listing “NCAA Ohio State Buckeyes Gridiron II Stand Bag”. (<http://www.amazon.com/NCAA-Buckeyes-Gridiron-Stand/dp.B008J3SPAW/...>, retrieved November 11, 2013).
- The evidence from www.golfsmith.com states, “Team & Collegiate Golf Gear” and “Support your alma mater or favorite pro team with Golfsmith’s selection of team and collegiate gear. Just about every college and professional sports team can be found among the head covers, golf bags, towels, caps and more that we offer.”
- The evidence from www.overstock.com states, “Golf Gear,” and below the heading the products include golf bags, golf gloves, and golf club covers.
- The evidence from www.golfink.com states, “Golf Gear & Reviews,” and has links to golf clubs, golf bags, and golf gloves.

4. Third-party registrations for PRO-formative marks and marks including the term GEAR for golfing equipment, that include disclaimers of PRO and GEAR, respectively.²

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

A combination of merely descriptive terms may be registrable if the composite creates a mark with a separate, nondescriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968). “Whether a term which is created by combining two or more unregistrable words may achieve registration depends on whether, in combination, a new and different commercial impression is achieved

² The Examining Attorney also made of record a notice of allowance for the mark VISTA PRO. We have not considered this submission because it only evidences that an application has been filed.

and/or the term so created imparts a bizarre or incongruous meaning as used in connection with the goods or services.” *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1662 (TTAB 1988). If each component retains its descriptive significance in relation to the services, the combination results in a composite that is itself descriptive. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004).

We find the Examining Attorney’s evidence highly persuasive. The dictionary definitions as well as the Internet evidence of and/or about the term/abbreviation “pro,” show that “pro” directly describes an attribute of Applicant’s golf equipment and accessories, namely that they are of a professional grade or quality, a favorable characteristic recognized by consumers as indicated by the use of the term in the Internet advertising copy. We simply are unconvinced by Applicant’s unsupported assertion that the term “professional” has an inherent ambiguity.

Similarly, the dictionary definitions of “gear” and the Internet evidence demonstrate that the term describes collectively the identified golfing equipment. Applicant argues that, with the exception of advertising where the phrase “golf gear” may be used, none of the evidentiary materials supplied by the Examining Attorney properly equates the word GEAR to golf. Reply br. pp 1-2. We find this argument unavailing. Contrary to Applicant’s position, although the definitions of record do not specifically mention “golf,” the definitions “equipment and supplies for a particular ...sport” and “equipment such as tools ..., used for a particular activity,” respectively, are applicable to equipment and tools used in connection

with the sport of golf, e.g., equipment such as that recited in Applicant identification, namely, covers for golf clubs; gloves for golf; golf bag covers and golf clubs. The fact that the examples in the definitions only mention fishing is insignificant. Indeed, as Applicant acknowledges, and as noted *supra*, several websites advertise items identical to those identified in Applicant's application under the moniker "GEAR." The use of the term "golf" with the word "gear" in these examples only reinforces the consumer's awareness that golf equipment and accessories are often referred to as "gear."

In view of the evidence submitted by the Examining Attorney, we find that the individual terms PRO and GEAR have descriptive significance as used in connection with the identified goods. PRO, a term synonymous with, and an abbreviation for, the word professional, refers to the quality of Applicant's identified golf equipment and accessories, and the term GEAR refers collectively to the golf equipment and accessories recited in the identification of goods. No hesitation or thought is needed in appreciating the meaning of these two terms.

Next, we must determine whether the combination of these two descriptive terms is still descriptive, or whether it creates a term that evokes a new and unique commercial impression. As previously stated, if, when the mark is considered as a whole, the merely descriptive components retain their merely descriptive significance in relation to the goods, then the resulting combination is also merely descriptive. *See, e.g., In re Oppedahl & Larson*, 71 USPQ2d at 1372; *In re Tower*

Tech, Inc., 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers).

Here, we find that the record establishes that the designation PROGEAR, as a whole, is descriptive of the identified goods. When PROGEAR is viewed in connection with the goods listed in the application, there is nothing in the designation which is incongruous, nor is there anything which would require the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to prospective purchasers of the goods. See, e.g., *In re Abcor Development Corp., Inc.*, 588 F.2d 811, 200 USPQ 215 (CCPA) (Rich, J., concurring) [GASBADGE described as a shortening of the name “gas monitoring badge”]; *Cummins Engine Co., Inc. v. Continental Motors Corp.*, 359 F.2d 892, 149 USPQ 559 (CCPA 1966) [TURBODIESEL held generically descriptive of engines having exhaust driven turbine super-chargers]. That is, the combination of the terms “pro” and “gear” fails to create a new and distinct commercial impression.

Applicant’s arguments to the contrary simply are unavailing. First, the Examining Attorney has not improperly dissected the mark. “In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *In re Oppedahl & Larson LLP*, 71 USPQ2d at 1372. Viewing the mark as a whole, we find that the combination of the individual terms PRO and GEAR results in a term which is not unique or incongruous, but rather provides

more complete information about a characteristic of Applicant's golf equipment than each word alone.

Applicant states that it "uses PROGEAR as a brand identifier. ... [T]here are no goods descriptively called PROGEAR, but there are numerous trademarks for PROGEAR." Br. p. 4. In support of this position, Applicant has made of record several registrations for PROGEAR marks for "professionally oriented equipment" in an effort to show that "PROGEAR is a commonly used and validly registered trademark term that is no more suggestive of applicant's goods than it is of the third party goods and services listed in those registrations." Br. p. 2. We acknowledge that Applicant's goods are not identified as "progear." Nor, for that matter, does the record show any third-party golf equipment and/or accessories so designated. However, the refusal is not that Applicant's mark is a generic term. As stated, in order to be found descriptive, the mark need only convey an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods, not the common name. *See In re Gyulay*, 3 USPQ2d at 1009.

As regards the four third-party PROGEAR registrations,³ in determining the issue of descriptiveness, prior registrations are of little value because each case

³ Applicant made the following registrations of record:

Registration No. 2790303 for the mark **PROGEAR** for various hand tools;

Registration No. 3216900 for the mark PROGEAR.COM for "Promotional and marketing services, namely, design and preparation of custom advertising campaigns and promotional products and materials for others";

must be determined on its own facts. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court”). We are constrained to decide this appeal on the record before us, and the record in this appeal clearly demonstrates that the wording PROGEAR is descriptive of a characteristic of Applicant’s golfing equipment and accessories. Notably, Registration No. 3216900 has been cancelled, and the remaining three registrations are for goods other than golfing equipment and accessories.

To the extent Applicant points to alternate definitions of the terms “pro” and “gear,” as noted previously, descriptiveness is determined in relation to the goods sought to be registered. *See In re Bright-Crest, supra*. Here, the record clearly demonstrates the descriptive significance of the terms, individually, as well as when combined as PROGEAR, in relation to Applicant’s identified goods. Moreover, Applicant’s unsupported contention that different consumers interacting with Applicant’s products bearing the PROGEAR mark would not immediately arrive at the same conclusion regarding the goods is unsupported and unpersuasive.

Registration No. 3941378 for the mark PROGEAR for
“Optical products for use in sports, namely, spectacles,
sunglasses and lenses”; and

Registration No. 3821168 for the mark PROGEAR for
“Masks for use by medical personnel.

Finally, we note Applicant's reliance on the principle that when there is doubt on the issue of whether a mark is merely descriptive, that doubt should be resolved in favor of the applicant. In the present case, we have no doubt that Applicant's mark is merely descriptive.

After careful consideration of all of the evidence and arguments presented, including evidence and arguments not specifically discussed herein, we conclude that when applied to Applicant's goods, the designation PROGEAR, as a whole, immediately describes a characteristic of the identified goods, namely that Applicant's gear is of professional quality.

Decision: The refusal to register under Section 2(e)(1) of the Trademark Act is affirmed.