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Files: record1-1.jpg, record1-2.jpg, record1-3.jpg, record1-4.jpg, record2-1.jpg, record2-2.jpg, record2-3.jpg, record3-1.jpg, record3-2.jpg, record3-3.jpg, record4-1.jpg, record4-2.jpg, record4-3.jpg, record4-4.jpg, 86129039.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86129039

MARK: ESTABLISHED 1980 RECORDS



CORRESPONDENT ADDRESS:

JULIAN PETTY

NIXON PEABODY LLP

PO BOX 26769

SAN FRANCISCO, CA 94126-6769

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Established 1980 Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

058945.00010

CORRESPONDENT E-MAIL ADDRESS:

SFTrademarks@nixonpeabody.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 10/12/2015

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following refusals made final in the Office action dated March 27, 2015 are maintained and continue to be final: Section 2(e)(1) Misdescriptive Refusal. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

Applicant's arguments that the applied-for mark, ESTABLISHED 1980 RECORDS, is suggestive rather than misdescriptive are unpersuasive.

The application indicates various forms of musical recordings, and as the attached definitions from several dictionaries show, "records" indicate applicant's goods (e.g., "something on which sound or images have been recorded for subsequent reproduction"). Therefore, the wording RECORDS in the applied-for mark is generic for the goods and does not impact the commercial impression of the mark because the wording is generic and not capable of indicating source. *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987); see TMEP §1209.01(c). Applicant has voluntarily disclaimed the wording RECORDS.

The fundamental question here, therefore, is whether the wording ESTABLISHED 1980 misdescribes applicant's goods and whether consumers would believe the misdescription. As already established, this wording merely describes the year in which an organization or entity is founded. The wording is merely informational and constitutes a common term that would ordinarily be used in business and does not function as a trademark or service mark to indicate the source of applicant's goods and to identify and distinguish them from others. See 15 U.S.C. §§1051-1053, 1056(a), 1127; *In re AOP LLC*, 107 USPQ2d 1644, 1654-55 (TTAB 2013); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1864 (TTAB 2006); TMEP §§807.14(a), 1213.03(a), (b). The record also contains information sufficient to establish that the goods themselves were not created in the year 1980, nor produced by an entity that was established in that year. Therefore, it is clear from the record that the wording ESTABLISHED 1980 is misdescriptive.

While applicant has shown a clear desire to use the mark in a way that is not descriptive, applicant's intent is not controlling. The determination of whether a mark is merely descriptive is made in relation to an applicant's goods as indicated in the application, not in the abstract. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); TMEP §1209.01(b). Therefore, the extrinsic evidence provided by applicant – specifically, that the mark is used in connection with a song titled "1980" – is not persuasive. The applied-for mark is analyzed in connection with the goods indicated in the application, namely, "Downloadable musical sound

recordings; Musical recordings; Musical sound recordings; Musical video recordings.” Applicant has not provided any marketplace evidence establishing that consumers of sound recordings would interpret ESTABLISHED 1980 RECORDS in a manner outside the established meaning of the words when viewed together.

Applicant also refers to the specimens of various trademark registrations and explains that establishment dates are often coupled with source-identifying wording. This does not impact the analysis of the wording ESTABLISHED 1980 RECORDS. As noted above, the analysis is done in relation to applicant’s goods as indicated in the application. *Id.* Furthermore, although applicant may not intend to use ESTABLISHED 1980 descriptively, the wording misdescribes applicant’s goods and businesses and competitors should be free to use descriptive language when describing their own goods and services to the public in advertising and marketing materials. *See In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001). Two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. In other words, there are compelling public policy reasons for not granting legal rights to a certain establishment year (ESTABLISHED 1980). Establishments, and in particular musical sound recording establishments, should be free to indicate consumers the year of founding.

With respect to the question of whether consumers are likely to believe the misrepresentation, applicant argues that the “unusual syntax of the mark, which does not refer to any company name, would prevent consumers from believing that Applicant’s mark refers to a company founding date of 1980.” This argument, that a lack of significant source-identifying wording makes an informational or descriptive mark suggestive, is not persuasive. In fact, this is precisely the issue. Applicant’s mark is composed entirely of descriptive wording; and in this case, misdescriptive wording. There is no other wording to distinguish the mark. As the previously attached evidence indicates, there are a great many trademark registrations featuring only establishment dates without additional wording. In each of these cases, the wording is treated descriptive or misdescriptively for the compelling public policy reasons indicated above. Consumers understand that establishment years are often indicated in association with particular goods and services. There is no compelling evidence in the records that consumers of the musical recordings are likely to interpret the words ESTABLISHED 1980 RECORDS as anything other than the common interpretation of the wording.

Applicant argues that any doubt regarding the mark’s descriptiveness should be resolved on applicant’s behalf. *E.g.*, *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 1571 4 USPQ2d 1141, 1144 (Fed. Cir. 1987); *In re Grand Forest Holdings, Inc.*, 78 USPQ2d 1152, 1156 (TTAB 2006). However, in the present case, the evidence of record leaves no doubt that the mark is merely descriptive.

Advisory: Supplemental Register Currently Unavailable

A mark that has been refused registration under Trademark Act Section 2(e)(1) on the ground of deceptive misdescriptiveness may be registrable on the Principal Register under Section 2(f), upon a showing of acquired distinctiveness, or on the Supplemental Register. 15 U.S.C. §§1052(f), 1091; TMEP §1209.04. Although an amendment to the Supplemental Register would normally be an appropriate response to this refusal, such a response is not appropriate in the present case. The instant application was filed under Trademark Act Section 1(b) and is not eligible for registration on the Supplemental Register until an acceptable amendment to allege use meeting the requirements of 37 C.F.R. §2.76(b), (c) has been timely filed. 37 C.F.R. §2.47(d); TMEP §§816.02, 1102.03.

If applicant files an acceptable allegation of use and also amends to the Supplemental Register, the effective filing date of the application will be the date on which applicant met the minimum filing requirements of 37 C.F.R. §2.76(e) for the amendment to allege use. 37 C.F.R. §2.75(b); TMEP §§816.02, 1102.03. In addition, the undersigned trademark examining attorney will conduct a new search of the Office records for conflicting marks based on the later application filing date. TMEP §§206.01, 1102.03.

To amend the application filing basis from an intent-to-use application under Trademark Act Section 1(b) to a use in commerce basis under Section 1(a), applicant must file, prior to approval of the mark for publication, an amendment to allege use that satisfies the requirements of 37 C.F.R. §2.76. *See* 15 U.S.C. §1051(c); 37 C.F.R. §2.35(b)(8); TMEP §§806.01(b), 1103.

The following must be submitted in an amendment to allege use in order to amend an application to use in commerce under Section 1(a):

- (1) The following statement: **“Applicant is believed to be the owner of the mark and that the mark is in use in commerce.”**

- (2) The date of first use of the mark anywhere on or in connection with the goods and/or services.

- (3) The date of first use of the mark in commerce as a trademark or service mark.
- (4) A specimen showing actual use of the mark in commerce for each class of goods and/or services for which use is being asserted. If a single specimen supports multiple classes, applicant should indicate which classes the specimen supports rather than providing multiple copies of the same specimen.
- (5) A filing fee of \$100 per class for each international class of goods and/or services for which use is being asserted (current fee information should be confirmed at http://www.uspto.gov/trademarks/tm_fee_info.jsp).
- (6) Verification of the above (1) through (3) requirements in an affidavit or signed declaration under 37 C.F.R. §2.20.

See 37 C.F.R. §§2.6(a)(2), 2.56, 2.76(b), 2.193(e)(1); TMEP §§1104.08, 1104.10(b)(v).

Amendments to allege use can be filed online at <http://www.uspto.gov/trademarks/teas/index.jsp>. Filing an amendment to allege use does not extend the deadline for filing a response to an outstanding Office action. TMEP §1104.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

Zachary R. Sparer

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record

verb [T] UK **ˈrɪk.ɔːd** US **ˈrɪk.ɔːrd**

record verb [T] (STORE ELECTRONICALLY)
to store sounds or moving pictures using electronic equipment so that they can be heard or seen later:

Cliff Richard has recorded more number one hit songs than any other British pop star.

We recorded their wedding on video.

I tried to call her, but all I got was a recorded message saying that she was away for the weekend.

Was the concert live or was it recorded (= made before being broadcast)?

More examples

Exclusive Offer
Double all your cash back at the end of your first year. No annual fee.

record verb [T] (STORE INFORMATION)
to keep information for the future, by writing it down or storing it on a computer:

She records everything that happens to her in her diary.

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"record" in British English

verb noun adjective

More meanings of "record"

All Idioms

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off the record idiom
track record
setput the record straight idiom
go on record idiom
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been recorded.
[+ that] In his journal, Captain Scott recorded that he and his companions were weakened by lack of food.
The coroner recorded (= decided) a verdict of accidental death.
1 If a device records a measurement, it shows that measurement:
The thermometer recorded a temperature of 30 degrees Celsius.

More examples

record

noun UK (k) /rek.ɔ:d/ US (k) /-ɔ:d/

record noun (INFORMATION)
1 [C or U] a piece of information or a description of an event that is written on paper or stored on a computer:
The weather centre keeps a record of the weather.
This summer has been the hottest on record (= the hottest summer known about).

2 [C] information about someone or something that is stored by the police or by a doctor:
A person's medical records are confidential.
He is well known to the police and has a long criminal record (= a list kept by the police of his previous crimes).

3 [C] the facts that are known about a person or a company and the actions they have done in the past:
I won't fly with an airline that has a bad safety record (= whose aircraft have often had accidents).

for the record
4 something that you say before you tell someone something important that you want them to remember:
And, just for the record, we were never any more than good friends.

More examples

record noun (MUSIC)
1 [C] a flat plastic disc on which music is recorded:
Would you like to listen to some records?
2 [C] a song or music that has been recorded and is available for the public to buy:

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SMART Thesaurus: the police generally
"record": synonyms and related words:

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booze bus CID constabulary fuzz
patrol wagon plain clothes
police police department police force
police state precinct
the fraud squad
the long arm of the law idiom
the Met the Metropolitan Police
the RCMP warrant

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Word of the Day
aptitude
a natural ability or skill
Word of the Day



The Beatles' first hit record was "Love Me Do".

More examples

record noun (BEST)

[C] the best or fastest ever done:

He ran the 100 metres in 9.79 seconds and **broke/mashed** the world record.

She **set/reestablished** a new European record in the high jump.

More examples

Idioms

go on record

off the record

More...

record

adjective UK **ˈrɛk.əd** US **ˈrɛk.əd**

at a higher level than ever achieved before:

The long hot summer has led to a record harvest this year.

Inflation has reached record levels.

We finished the work in record time (= faster than had ever been done before).

(Definition of record from the Cambridge Advanced Learner's Dictionary & Thesaurus © Cambridge University Press)

Translations of "record"

in Spanish ▾

grabar, registrar, consignar...

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Record

From Wikipedia, the free encyclopedia
(Redirected from Records)

A **recording**, **record**, **records** or **the record** may mean:

An item or collection of **data**:

- Archaeological record, the body of archaeological evidence
- Document for administrative use
 - Anything which is recorded in writing or otherwise for future reference
 - Business record of economic transactions
 - A transcript is a verbatim record of some proceedings, in particular a *court transcript* is a record of a law court case or similar procedure
 - Criminal record, a list of a person's criminal convictions
 - Docket (court), the summary of proceedings in a court (US)
 - Medical record of a person's medical history and treatments
 - Minutes, a summary of the proceedings at a meeting
 - Public records, information that has been filed or recorded by public agencies
 - Recording (real estate), the act of documenting real estate transactions
 - Service record, usually associated with military service
- Gramophone record (also called "phonograph record"), mechanical analog audio storage medium
- Record (computer science), a data structure
 - Boot record, record used to start an operating system
 - Record (database), a set of fields in a database related to one entity
 - Storage record, a basic input/output structure
- Sound recording and reproduction

Look up **record** in Wiktionary, the free dictionary.

Languages

- Cestina
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- Italiano
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- Русский
- Simple English

↗ Edit links

- **Win–loss record (pitching)**, the number of wins and losses a baseball pitcher has accumulated
- **World record**, an unsurpassed accomplishment or statistic

Entertainment

- *Records* (album), a 1982 album by rock band Foreigner
- *The Record* (album), a 1982 punk rock album by the band Fear
- *The Record* (film), a South Korean film directed by Ki-Hun Kim
- The Records, an English power pop band

Sports

- FC Rekord Aleksandrov, a former Russian association football club
- Rekord Irkutsk, a Russian bendy club
- Rekord Stadium, a sports arena in Irkutsk, Russia

Software

- Record (software), a music recording program

Periodicals

In the United States:

- *The Philadelphia Record*, a newspaper in Philadelphia published 1877–1947
- *The Record (Bergen County)*, a newspaper in Bergen County, New Jersey
- *The Record* (Stockton), a newspaper in Stockton, California
- *The Record* (Troy), a newspaper in Troy, New York
- *The Yale Record*, the country's oldest college humor magazine, operated out of New Haven, Connecticut

In Canada:

- *The Record* (magazine), a former trade magazine of the Canadian music industry
- *The Record* (Sherbrooke), a newspaper in Quebec
- *The Record* (Waterloo Region), a newspaper in Waterloo Region, Ontario

Elsewhere

- *Récord*, a Mexican sports newspaper

- *Record* (magazine), the official church paper of the South Pacific Division of Seventh-day Adventists
- *Record* (newspaper), a Portuguese sports newspaper
- *The Record Music Magazine*, an Indian publication featuring music personalities

Broadcasting

- Record News, the Rede Record's news channel 1
- Rede Record, a Brazilian TV network

Science:

- RECORD statement (The REporting of Studies Conducted Using Observational Routinely-Collected Health Data)

People:

- Max Records, American child actor
- Record (surname)

See also

- Reckord

Brand names:

- Record (agricultural vehicles), a Greek vehicle manufacturer



*This disambiguation page lists articles associated with the title **Record***

If an internal link led you here, you may wish to change the link to point directly to the intended article.

Categories: Disambiguation pages

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THE USAGE PANEL

re·cord¹ (ri-kôrd)

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v. re·cord·ed, re·cord·ing, re·cords

v.tr.

1. To set down for preservation in writing or other permanent form: She recorded her thoughts in a diary.
2. To register or indicate: The clerk recorded the votes.

3.

- a. To render (sound or images) into permanent form for reproduction in a magnetic or electronic medium.
- b. To record the words, sound, appearance, or performance of (someone or something): recorded the oldest townspeople on tape; recorded the violin concerto.

v.intr.

To record something.

n. rec·ord (rêk'ôrd)

1.

- a. An account, as of information or facts, set down especially in writing as a means of preserving knowledge.
- b. Something on which such an account is based.
- c. Something that records: a fossil record.

2. Information or data on a particular subject collected and preserved: the coldest day on record.

3. The known history of performance, activities, or achievement: your academic record; hampered by a police record.

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INDEUROPEAN & SEMITIC ROOTS APPENDICES

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THE PANELISTS



Go to our Crossword Puzzle Solver and type in the letters that you know, and the Solver will produce a list of possible solutions.

- 4. An unsurpassed measurement: a world record in weightlifting; a record for cold weather.
- 5. Computers A collection of related, often adjacent items of data, treated as a unit.
- 6. Law A transcript or a collection of statements and related information reporting the proceedings of a legislative body, a court, or an executive.
- 7.
 - a. A disk designed to be played on a phonograph.
 - b. A musical recording that is issued on a medium of some kind.

Idioms:

go on record

To embrace a certain position publicly: go on record in favor of the mayor's reelection.

off the record

Not for publication: The senator told the reporters that his remarks were strictly off the record.

on record

Known to have been stated or to have taken a certain position: The senator's opposition to the new legislation is on record.

[Middle English recorder, from Old French recorder, from Latin recordāri, to remember : re-, re- + cor, cord-, heart; see **kerd-** in the Appendix of Indo-European roots.]

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dictionary include etymologies that trace their roots back to reconstructed proto-languages. You can obtain more information about these forms in our online appendices.

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Dictionary

record

verb | re·cord | \rɪ-ˈkɔrd/

: to write (something) down so that it can be used or seen again in the future : to produce a record of (something)
 : to show a measurement of (something) : to indicate (something)
 : to store (something, such as sounds, music, images, etc.) on tape or on a disk so that it can be heard or seen later : to produce a recording of (something)

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Full Definition of RECORD
 transitive verb

1 a (1) : to set down in writing : furnish written evidence of (2) : to deposit an authentic official copy of <record a deed>
 b : to state for or as if for the record <voted in favor but recorded certain reservations>
 c (1) : to register permanently by mechanical means <earthquake shocks recorded by a seismograph> (2) : INDICATE, READ <the thermometer recorded 90°>

Word of the Day OCTOBER 09, 2015
incidence

an occurrence or rate of occurrence

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2 : to give evidence of

3 : to cause (as sound, visual images, or data) to be registered on something (as a disc or magnetic tape) in reproducible form

intransitive verb

to record something
— re-cord-able ◀ | \ˈrɔːd-ə-bəl | adjective

See record defined for English-language learners
See record defined for kids

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Examples of RECORD

Be sure to record all your business expenditures.

There are similar events all throughout recorded history.

The thermometer recorded 40 degrees below zero.

A seismograph is a device that measures and records the intensity of earthquakes.

Please record the television program for me.

He recorded the birthday party with his new video camera.

He just recorded his latest album.

The show is recorded in front of a live audience.

The band spent all night recording.

Ask The Editor Videos

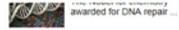


- Word Games**
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- True or False?** 
- Spell It** 

Trend Watch



Replication
The Nobel for chemistry



Origin of RECORD

Middle English, literally, to recall, from Anglo-French recorder, from re- + cord, or heart — more at HEART
First Known Use: 14th century

Related to RECORD

Synonyms
jot (down), log, mark, note, put down, register, report, set down, take down, write down
[\[+\] more](#)

Rhymes with RECORD

aboard, accord, afford, award, backboard, backword, bargeboard, baseboard, billboard, backboard, boxboard, breadboard, broadsword, buckboard
[\[+\] more](#)

record

noun | re-cord | ˈrɛ-kərd also -ˈkɔrd

Definition of RECORD

- 1** : the state or fact of being recorded
- 2** : something that records: as
 - a** : something that recalls or relates past events
 - b** : an official document that records the acts of a public body or officer
 - c** : an authentic official copy of a document deposited with a legally designated officer
 - d** : the official copy of the papers used in a law case
- 3** **a** (1) : a body of known or recorded facts about something or someone especially with reference to a particular sphere of activity that often forms a discernible pattern — a good academic record — a liberal voting record — (2) : a collection of related items of information (as in a database) treated as a unit
 - b** (1) : an attested top performance (2) : an unsurpassed statistic

4 : something on which sound or visual images have been recorded, specifically : a disc with a spiral groove carrying recorded sound for phonograph reproduction

— for the record
: for public knowledge : on the record

— off the record
: not for publication <spoke off the record> <remarks that were off the record>

— of record
1 : being documented or attested <a partner of record in several firms>
2 : being authoritative or sanctioned <a newspaper of record>

— on record
1 : in the position of having publicly declared oneself <went on record as opposed to higher taxes>
2 : being known, published, or documented <the judge's opinion is on record>

— on the record
: for publication

First Known Use of RECORD

14th century

record 

adjective | same as ¹

: best or most remarkable among other similar things

Full Definition of RECORD

: of, relating to, or being one that is extraordinary among or surpasses others of its kind

See record defined for English-language learners

First Known Use of RECORD

1664

record 

noun | re-cord | 'rɪ-ˈkɔrd

Definition of RECORD