

This Opinion is not a
Precedent of the TTAB

Mailed: August 11, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re GoldenDoodle LLC
—

Serial No. 86717500
—

Marsha G. Ajhar of Smith Gambrell & Russell LLP,
for GoldenDoodle LLC.

Tracy Whittaker-Brown, Trademark Examining Attorney, Law Office 111,
Robert L. Lorenzo, Managing Attorney.

—
Before Zervas, Mermelstein and Hightower,
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

GoldenDoodle LLC (“Applicant”) seeks registration on the Principal Register of the proposed standard character mark GOLDEN DOODLE for “On-line retail gift shops; On-line retail store services featuring apparel and accessories; Retail store services featuring apparel, accessories and gifts” in International Class 35.¹

¹ Application Serial No. 86717500 was filed on August 6, 2015, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon an allegation of a *bona fide* intention to use the mark in commerce.

The Examining Attorney determined that GOLDEN DOODLE is merely descriptive of a characteristic of Applicant's identified services, and refused registration of Applicant's mark pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

After the Examining Attorney made the refusal final, Applicant appealed to this Board and requested reconsideration. On remand from the Board, the Examining Attorney denied the request for reconsideration. The appeal resumed and both Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

Mere Descriptiveness

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the [services] of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e)(1). A term is "merely descriptive" within the meaning of Section 2(e)(1) if it "immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978); *see also In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

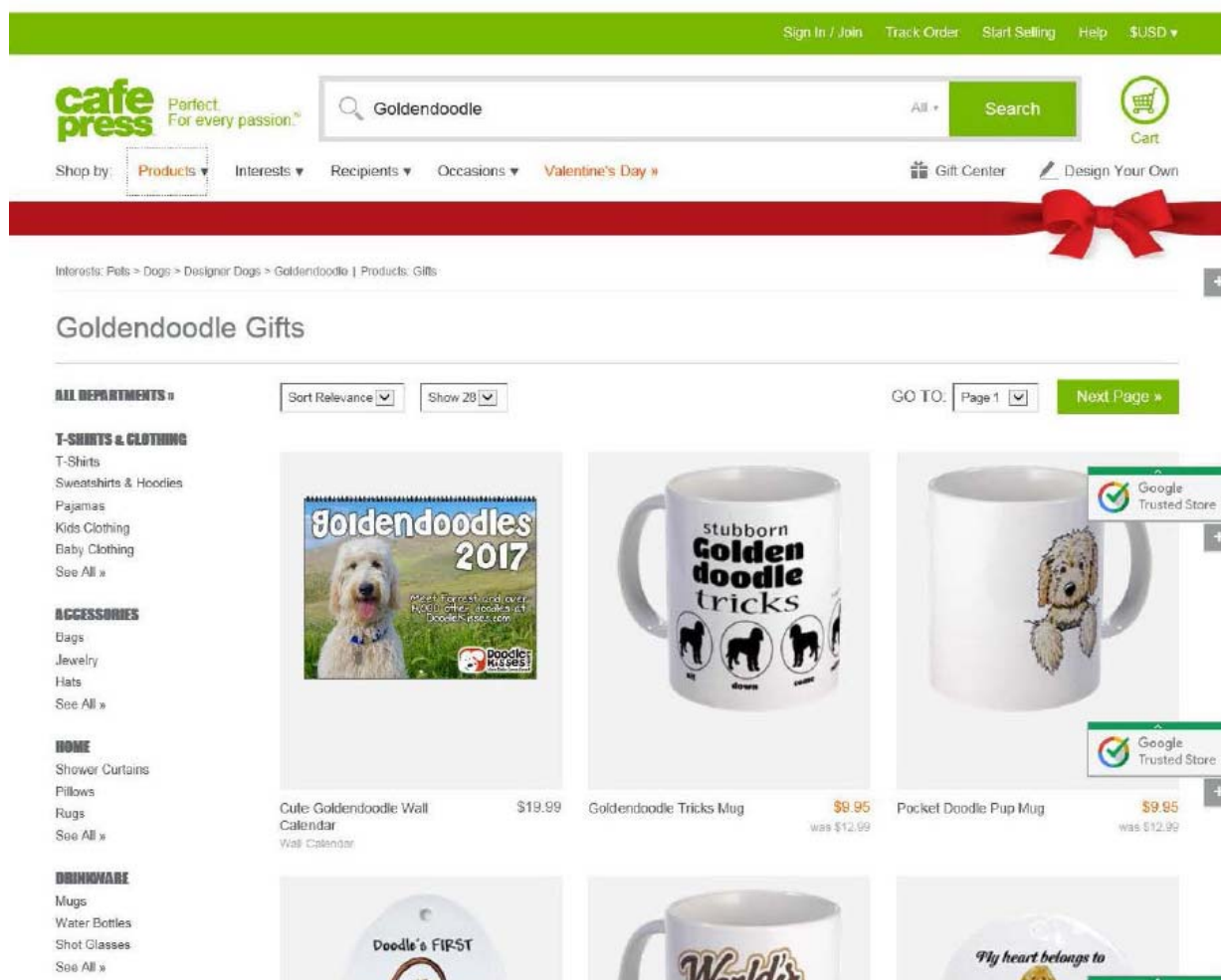
Whether a mark is merely descriptive is determined in relation to the services for which registration is sought, not in the abstract or on the basis of guesswork. Descriptiveness must be evaluated “in relation to the particular [services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the [services] because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. In other words, we evaluate whether someone who knows what the services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

The Examining Attorney maintains that “The mark GOLDEN DOODLE describes a characteristic of the services, in that it refers to the subject matter thereof. GOLDEN DOODLE refers to a hybrid breed of dog resulting from a golden retriever and poodle mix.”² “Applicant acknowledges that one of the many breeds of dogs represented in the offered designs is the ‘goldendoodle,’ a canine cross-breed obtained by breeding a golden retriever with a poodle”³ In support of her refusal, the Examining Attorney relies on, *inter alia*, (a) webpages from Applicant’s website which feature goods with a dog theme, (b) screenshots from www.dogtime.com, www.teddybeargoldendoodles.com and www.doodledogs.us discussing the

² Examining Attorney’s brief at page 5, 12 TTABVUE 6.

³ Applicant’s brief at 3-4, 10 TTABVUE 4-5.

goldendoodle hybrid dog breed, which is a mix of golden retriever and poodle⁴; and (c) screenshots from www.baxterboo.com, www.cafepress.com, www.michaels.com, www.zazzle.com, www.teespring.com and www.etsy.com, featuring gifts and other goods for humans with a goldendoodle theme such as mugs, t-shirts, sweatshirts, or goods specifically intended for goldendoodles such as jackets and raincoats. *See, e.g.*, screenshot from www.cafepress.com:



⁴ November 19, 2015 Office Action, TSDR 2-34.

The Examining Attorney's evidence and Applicant's acknowledgement establishes that a "goldendoodle" is a dog breed. In addition, the evidence establishes that goods offered in on-line retail stores featuring apparel, accessories and gifts may feature goods with images, slogans or information regarding the goldendoodle breed. *See, e.g.,* www.cafepress.com screenshot.⁵ As such, the proposed mark merely describes a feature of Applicant's services in that it identifies a feature of the retail goods being sold.

Applicant argues that "GOLDEN DOODLE does not convey an immediate idea of the qualities or characteristics of Applicant's Services *with any degree of particularity*" (emphasis in original); and "[t]here are a number of breed images to choose from in the wide array of retail goods offered on-line by Applicant; the goldendoodle image is but one of many. Applicant lists a total of 175 breeds and crossbreeds on its website and of those presently offered, goldendoodles are only one breed among the total of 56 ... represented or roughly only 2% of the breeds shown on the retail site." We consider, however, whether the proposed mark is merely descriptive in connection with the services for which registration is sought, not as Applicant actually uses its proposed mark. *See In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219. Thus, Applicant's suggestion that its proposed mark would be used in connection with a number of dog breeds, and that "the appearance of artistically rendered illustrations of goldendoodle dogs on a few items of apparel and accessories among many is too attenuated for the term to be considered

⁵ November 19, 2015 Office Action, TSDR 2-34.

descriptive” is not well taken.⁶ Applicant has crafted its recitation of services in a manner to allow for retail services offering apparel, accessories and gifts that feature wording or images pertaining to goldendoodles, even to the exclusion of other dog breeds.

Applicant points out too that it is facing the “anomalous situation” where the USPTO published for opposition Applicant’s divisional application for goods and service divided from the present application, but refuses registration of the services in the present application. (Applicant’s December 19, 2016 request to divide sought division of goods and services in five International Classes from the present application.) It is well established, however, that we are not bound by decisions of examining attorneys. *In re Davey Prods. Pty*, 92 USPQ2d 1198, 1206 (TTAB 2009); *In re Wilson*, 57 USPQ2d 1863, 1871 (TTAB 2001); *In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994); *In re Nat’l Novice Hockey League, Inc.*, 222 USPQ 638, 641 (TTAB 1984).

We therefore affirm the Examining Attorney’s refusal to register Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act.

Decision: The refusal to register Applicant’s mark is affirmed.

⁶ Applicant’s brief at 5-6, 10 TTABVUE 6-7.