

This Opinion is Not a
Precedent of the TTAB

Mailed: November 16, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re John Patrick Allen
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Serial No. 86800623
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Randall B. Jakubowski of Onyx Law Group APC,
for John Patrick Allen.

Annie M. Noble, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

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Before Kuhlke, Bergsman and Larkin,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

John Patrick Allen (“Applicant”) seeks registration on the Principal Register of the mark UNI/FORM (in standard characters) for “clothing, namely, belts, blouses, bottoms, boxer shorts, dresses, hats, hoodies, jackets, jeans, pants, long sleeve shirts, short sleeve shirts, shoes, shorts, socks, sweaters, sweat shirts, sweat pants, swimwear, t-shirts, tank tops, tops, underwear, vests; athletic wear, namely,

moisture wicking sports pants, moisture wicking sports shirts, moisture wicking sports shorts, in Class 25.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark is merely descriptive. According to the Trademark Examining Attorney, Applicant's mark describes Applicant's clothing as a uniform or "part of a person's everyday wardrobe."²

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

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 goods 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

¹ Application Serial No. 86800623 was filed on October 27, 2015, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1052(a), based upon Applicant's claim of first use anywhere and use in commerce since at least as early as November 1, 2014.

² Trademark Examining Attorney's Brief (10 TTABVUE 7).

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 Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980).

Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought, not in the abstract or on the basis of guesswork, and we must consider “the context in which [the mark] is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). In other words, we evaluate whether someone who knows what the goods 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)).

We begin by looking at the definition of the word “Uniform.” “Uniform” is defined, *inter alia*, as “the distinctive clothing worn by members of the same organization or body or by children attending certain schools”³ or “an identifying outfit or style of dress worn by the members of a given procession, organization, or rank.”⁴ It is broadly

³ **Oxford Dictionary** (oxforddictionaries.com/us) attached the February 22, 2016 Office Action (TSDR 5).

Citations to the TSDR database are in the .pdf format.

⁴ *Dictionary.com* based on the **Random House Dictionary** (2017). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

applied to include personal styles of dress so that most clothing in Applicant's description of goods could be part of a uniform. *See for example,*

- *The Wall Street Journal* (wsj.com) (May 25, 2016)⁵

“The Case for Uniform Dressing”

Some women simplify their lives by wearing the same look every day; ordering 15 blouses at once

Many of us have a morning dress routine. It involves moments of doubt at a mirror, a last-minute shirt switcheroo, and a questionable choice of footwear in the race out the door.

Imagine eliminating the hassle: Calmly slip on a simple outfit in the morning. Tomorrow, repeat. The concept isn't far-fetched. The solution lies in defining a personal uniform that can be easily maintained and frequently updated.

* * *



Matilda Kahl in her work uniform. PHOTO:
@LILLTRILL/INSTAGRAM

⁵ September 22, 2016 Office Action (TSR 6-11).

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Uniforms don't need to be as strict as Ms. Kahl's. They can incorporate the same silhouette in different fabrics or different pieces in the same fabric, such as a group of matching skirts and pants.

- *New York Magazine* (nymag.com) (January 9, 2015)⁶

12 Tips to Find Your Own Chic, Easy Uniform

This week on the Cut we're exploring how to get your act together when it comes to personal style – from organizing your closet, to finding your signature scent, to figuring out your work uniform.

It's one thing to *want* a uniform to make your life easier – it's another to actually find one that works for you. In the spirit of pairing down our closets and finding our signature looks, the Cut asked stylists, designers, and creative types for tips on how to find the perfect uniform. "I don't always wear skirts," J. Crew's Jenna Lyons told us. "So I've fallen into my own uniforms, which is always a blazer."

- *Harper's Bazaar* (harpersbazaar.com) (April 3, 2015)⁷

Why I Wear The Exact Same Thing To Work Every Day

I have no clue how the idea of a work uniform came to me, but soon, the solution to my woes came in the form of 15 silk white shirts and few black trousers. ...

To state the obvious, a work uniform is not an original idea. There's a group of people that have embraced this way of dressing for years – they call it a *suit*.

- *Who What Wear* (whowhatwear.com) (June 22, 2016)⁸

7 Style Uniforms Fashionable Women Swear By

⁶ September 22, 2016 Office Action (TSDR 15-18).

⁷ September 22, 2016 Office Action (TSDR 19-21).

⁸ September 22, 2016 Office Action (TSDR 25).

Surely you have noticed those women who pride themselves on a certain combination of clothing they consider their “go-to” outfit. In other words, a style uniform.

While Applicant concedes that “it is beyond dispute that uniforms are a type/subset of clothing,”⁹ Applicant’s mark is UNI/FORM, not UNIFORM. With respect to the insertion of a backward slash in the middle of Applicant’s mark, “the addition of punctuation marks to a descriptive term would not ordinarily change the term into a non-descriptive one.” *In re Vanilla Gorilla L.P.*, 80 USPQ2d 1637, 1639 (TTAB 2006) (3-O’S on thirty-inch car rims is merely descriptive) (citing *Weiss Noodle Co. v. Golden Cracknel and Specialty Co.*, 290 F.2d 845, 129 USPQ 411, 414 (CCPA 1961) (Term “HA-LUSH-KA” held to be the generic equivalent of the Hungarian word “haluska”); *American Druggist Syndicate v. United States Indus. Alcohol Co.*, 2 F.2d 942 (D.C. Cir. 1924) (“‘Al-Kol’ is merely a phonetic or misspelling of the word ‘alcohol,’ and is descriptive of the goods”); *In re S.D. Fabrics, Inc.*, 223 USPQ 54, 55 (TTAB 1984) (“designers/fabric” is merely descriptive for retail stores services in the field of fabrics); *In re Wyandotte Chem. Corp.*, 156 USPQ 100, 100 (TTAB 1967) (“It is equally true that a descriptive term is not made arbitrary by hyphenating or misspelling it” and, therefore, TES-TED is merely descriptive for detergents that have been subjected to tests)); *see also In re Noon Hour Food Prods. Inc.*, 88 USPQ2d 1172 (TTAB 2008) (BOND-OST is a generic term for bondost cheese). In other words, “slight variations in spelling of marks from their traditional spelling does not change

⁹ Applicant’s Brief, p. 7 (8 TTABVUE 8).

the meaning of the term if the underlying term is itself descriptive.” *In re Vanilla Gorilla L.P.*, 80 USPQ2d at 1639.

Applicant argues that UNI/FORM is suggestive when it used in connection with Applicant’s “non-standardized, individual and voluntarily purchased medium to high price-point clothing.”¹⁰ Whether a mark is merely descriptive is determined by the description of goods and Applicant’s description of goods is simply a list of clothing without any characterization of the clothing as “non-standardized, individual and voluntarily purchased medium to high price-point clothing.” *See In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270 (TTAB 2016) (“the determination of mere descriptiveness must be made not in the abstract, but in relation to the goods or services for which registration is sought.”); *In re Vehicle Info. Network Inc.*, 32 USPQ2d 1542, 1544 (TTAB 1994) (in descriptiveness cases, “the question of registrability must be determined, in proceedings before the Board, on the basis of the goods or services as set forth in the application, rather than in reference to the precise nature of the goods or services on or in connection with which the mark is actually used or intended to be used.”). Accordingly, we must consider Applicant’s clothing products as encompassing clothing products that may be used for any purpose, including uniforms.

Applicant contends that UNI/FORM conveys a double entendre by referring to “**UNI**que **FORM**ula” when applied to Applicant’s clothing.¹¹ “The multiple

¹⁰ Applicant’s Brief p. 7 (8 TTABVUE 8).

¹¹ Applicant’s Brief, p. 7 (8 TTABVUE 8).

interpretations that mark an expression a ‘double entendre’ must be associations that the public would make fairly readily, and *must be readily apparent from the mark itself.*” *In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017) (quoting Trademark Manual of Examining Procedure Section 1213.05(c) (Jan. 2017)). The claimed double entendre is not readily apparent from the mark itself. Moreover, Applicant’s contention is not corroborated by Applicant’s label, shown below, submitted as a specimen.¹²



See also the screen shot of Applicant’s website submitted with its original application.



¹² August 18, 2016 Response to Office Action (TSDR 9).

There is simply nothing in the display of the mark on Applicant's label or website that conveys a meaning or commercial impression of anything other than the word "uniform."

Finally, Applicant asserts that UNI/FORM as applied to Applicant's clothing is incongruous.¹³ The word "incongruous" is defined as "out of keeping or place," "not harmonious in character," and "inconsistent."¹⁴ The Board found that SNO-RAKE for "a snow removal hand tool" "does indeed sit strange in terms of application to snow ... that hardly fits any of the common conceptions of 'rake' or 'raking,'" and, therefore, held that mark suggestive because the term SNO-RAKE was incongruous. *In re Shutts*, 217 USPQ at 364-65. *See also Tennis in the Round*, 199 USPQ at 498 (TENNIS IN THE ROUND for providing tennis facilities in the form of courts and tennis ball machines and tennis instructions found incongruous because applicant's facilities do not involve a tennis court in the middle of an auditorium or arena with an audience seated on all sides of the court and the term "In The Round" has no purpose in the performance of the services). We find nothing in Applicant's mark UNI/FORM as applied to clothing to be incongruous and Applicant does not explain the incongruity.

In view of the foregoing, we find Applicant's mark UNI/FORM when applied to clothing to be merely descriptive.

Decision: The refusal to register Applicant's mark UNI/FORM is affirmed.

¹³ Applicant's Brief, pp. 8-9 (8TTABVUE 9-10).

¹⁴ *Dictionary.com* based on the **Random House Dictionary** (2017).