

This Opinion is Not a
Precedent of the TTAB

Mailed April 14, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

In re American Outdoor Brands Corporation

Serial Nos.:

87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169, 87305170


Hara K. Jacobs of Ballard Spahr, LLP
for American Outdoor Brands Corporation.

Bianca Allen, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

Before Bergsman, Adlin and Hudis, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant American Outdoor Brands Corporation filed 30 applications to register AMERICAN OUTDOOR BRANDS CORPORATION, one seeking registration of the proposed mark in standard characters, and the other 29 seeking registration of the

mark in this design form: . This decision addresses the 12 previously-consolidated applications identified above (the “Group II Cases”), consisting of standard character application Serial No. 87228558 (the “558

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Application”¹), and 11 applications to register the design form of the mark. Two of the 12 applications, including the parent ’558 Application, identify financial information and shareholder and investor relations services, while the remaining 10 identify outdoor-related products and services, most of which are specifically related to firearms. We address the remaining 18 cases, which have also already been consolidated (the “Group I Cases”), in a separate decision.²

Because the examining attorneys found in all of the Group II Cases that the literal portion of Applicant’s mark, AMERICAN OUTDOOR BRANDS CORPORATION, is primarily geographically descriptive of the involved goods and services under Section 2(e)(2) of the Trademark Act, 15 U.S.C. § 1052(e)(2), registration of the standard character ’558 Application was refused; the examining attorneys also refused registration of the remaining applications absent a disclaimer of the literal portion of Applicant’s mark in its entirety.³ In addition, the examining attorneys found that Applicant failed to establish its alternative claim that AMERICAN OUTDOOR BRANDS CORPORATION has acquired distinctiveness. After the refusals became

¹ We use the same abbreviated format to identify the other applications.

² The 18 Group I Cases are application Serial Nos. 87305138, 87305140, 87305141, 87305142, 87305143, 87305144, 87305145, 87305146, 87305147, 87305151, 87305154, 87305155, 87305156, 87305157, 87305158, 87305159, 87305162 and 87305163.

³ The 30 Group I and Group II Cases originally were split among several examining attorneys, each of whom handled and developed evidence in multiple cases. Eventually, all 30 cases were assigned to Examining Attorney Bianca Allen.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

final, Applicant appealed and filed requests for reconsideration that were denied. In most of the Group II Cases, Applicant also requested and was granted a remand to introduce additional evidence that it alleged “is directly relevant to the acquired distinctiveness of Applicant’s mark,” and successfully moved to consolidate the two groups of cases as indicated. 4, 7 and 9, 10 TTABVUE;⁴ 8 TTABVUE in the ’167 Application. Applicant and the Examining Attorney filed briefs.

I. The Applications

Applicant filed the ’558 and ’588 Applications on November 7, 2016, seeking registration of its marks for financial information and shareholder and investor relations services under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on use of the marks since January 2017; Applicant filed the remaining Group II applications on January 18, 2017, based on an alleged bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). In each Group II application, Applicant disclaimed “BRANDS CORPORATION” apart from the mark as shown, and made an alternative claim that “AMERICAN OUTDOOR BRANDS CORPORATION” has acquired distinctiveness pursuant to Trademark Act Section 2(f), 15 U.S.C. § 1052(f). Each application to register the

⁴ Unless otherwise indicated, citations are to the record in the ’558 Application. In citations to TTABVUE, the Board’s online docketing system, the number preceding “TTABVUE” corresponds to the docket entry number(s), and any number(s) following “TTABVUE” refer to the page number(s) of the docket entry where the cited materials appear. Citations to the TSDR database are to the downloadable .pdf version of the documents.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

design form of the mark includes this description of the mark: “The mark consists of the wording ‘AMERICAN OUTDOOR BRANDS CORPORATION’ adjacent to a silhouette of a mountain range with two mountain peaks resting above a silhouette of a curved line representing a stream.” The identified goods and services in each application are set forth in their entirety in the Appendix to this decision.

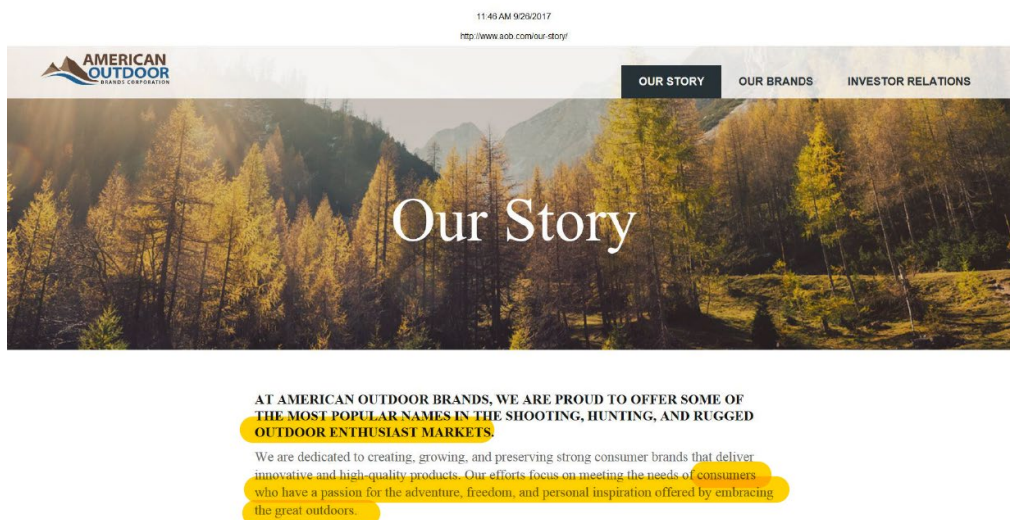
II. Applicant

Applicant, known until November 2016 as Smith & Wesson Holding Corporation, is the parent of Smith & Wesson Corp. August 16, 2017 Office Action Response TSDR 5-6. SMITH & WESSON “has been a brand name synonymous with firearms” since 1852. *Id.* at 5.

Over the years, “[t]hrough a series of acquisitions, Smith & Wesson has diversified and expanded its well-known brand outside of the firearms industry.” *Id.* In fact, at the time of its name change, Smith & Wesson Holding Corporation held “more than eighteen highly respected and well-known consumer brands in such diverse areas as personal safety and survival tools such as survival kits, camp kitchen products, and fire starters; hunting products, such as bipods and tripods, hunting knives, hand saws, axes, and hatchets; and recreational sports apparel and related accessories.” *Id.* at 6. Applicant claims “[w]ith every strategic acquisition, Smith & Wesson draws closer to its strategic goal of being the leading provider of products for the shooting, hunting, and recreational sports industries.” *Id.* at 5-6.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Applicant's new name and logo, shown in the involved applications, "were chosen as a representation of the brand and growing array of brands in the shooting, hunting, and recreational sporting markets ... to create an impression of adventure and freedom and capture the rugged spirit possessed by the active lifestyle of the consumer for the AMERICAN OUTDOOR BRANDS CORPORATION™ products." *Id.* at 6. As Applicant's webpage states, it offers "some of the most popular names in the shooting, hunting and rugged outdoor enthusiast markets," to "consumers who have a passion for the adventure, freedom, and personal inspiration offered by embracing the great outdoors":



September 27, 2017 Office Action TSDR 78. An article in the Springfield, Massachusetts Republican about Applicant's name change states "Venerable Smith & Wesson completed its transition Tuesday to a new corporate name – American Outdoor Brands Corporation – which is more fitting with its diversification strategy." March 27, 2018 Office Action response TSDR 52. A Wall Street Journal article quotes

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Applicant's spokeswoman as saying "We believe the new name better reflects our many brands and products and our growth strategy." *Id.* at 48.

III. Geographic Descriptiveness and the Disclaimer Requirement

The Examining Attorney argues that the standard character mark in the '558 Application is unregistrable and that Applicant must disclaim the literal portion of its mark in each of the remaining Group II applications because AMERICAN OUTDOOR BRANDS CORPORATION is a combination of a geographically descriptive word (AMERICAN) and a term which merely describes the provider of Applicant's goods and services, or those goods and services themselves (OUTDOOR BRANDS CORPORATION). 13 TTABVUE 9-19 (Examining Attorney's Appeal Brief at 8-18).

Applicant argues, however, that the literal portion of its mark is not descriptive, geographically or otherwise: "AMERICAN OUTDOOR BRANDS CORPORATION is amorphous, conveying nothing specific, but conjuring up a sense of freedom – a calling to unexplored places." 11 TTABVUE 12 (Applicant's Appeal Brief at 11). More specifically, Applicant claims that AMERICAN is "an inherently nuanced term," which "engenders the impression of the red, white, and blue; of hope and freedom; of a dream. 'AMERICAN' is a way of life, a culture." *Id.* at 15. In fact, according to Applicant, the "geographic meaning of 'AMERICAN OUTDOOR' is different for every consumer. It could be the Colorado Rockies, the California Redwoods, the

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Shenandoah Valley, or Central Park in New York City. It means nowhere in particular.” *Id.* at 16.

With respect to the 11 Group II applications for the design form of Applicant’s mark, under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component which is merely descriptive under Section 2(e)(1) of the Act or primarily geographically descriptive under Section 2(e)(2) of the Act. Failure to comply with a disclaimer requirement is a basis for refusing registration. *See In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400 (Fed. Cir. 2006); *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

A. The Test for Assessing Geographic Descriptiveness

In order to establish that the literal portion of Applicant’s mark is primarily geographically descriptive, the Examining Attorney must establish that: (1) the primary significance of the term is the name of a place known generally to the public; (2) the public would make a goods/place association, i.e. believe that the goods for which the applicant seeks registration originate in that place; and (3) the source of the goods is the geographic region named in the mark. *In re Newbridge Cutlery Co.*, 776 F.3d 854, 113 USPQ2d 1445, 1448-49 (Fed. Cir. 2015) (quoting *In re Societe Generale Des Eaux Minerales De Vittel S.A.*, 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Cir. 1987) and *In re Jacques Bernier, Inc.*, 894 F.2d 389, 13 USPQ 1725 (Fed. Cir. 1990)); TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1210.01(a) (2018).

Generally, adding a descriptive or generic term (as the Examining Attorney alleges OUTDOOR BRANDS CORPORATION to be) to a geographic one (as AMERICAN is alleged to be) does not alter the geographic term's geographic significance. *See e.g. In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1920 (TTAB 2008) (NORMANDIE CAMEMBERT primarily geographically descriptive of Camembert cheese, because “[i]t is settled that the primarily geographic significance of a term (like NORMANDIE) is not overcome by the addition of a generic term (like CAMEMBERT)”); *In re JT Tobacconists*, 59 USPQ2d 1080, 1083 (TTAB 2001) (“The additional presence in applicant's mark of the generic terminology ‘CIGAR COMPANY’ for an entity in the business of selling cigars and related cigar products such as cigar cases and humidors does not detract from or otherwise alter the fact that the primary significance of the mark as a whole is geographical.”); *In re California Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1705 (TTAB 1988) (same).

B. Is AMERICAN OUTDOOR BRANDS CORPORATION Primarily Geographically Descriptive?

The Examining Attorney has established that the literal portion of Applicant's mark is geographically descriptive, as AMERICAN is a geographically descriptive term which is combined with terms that are at best merely descriptive of Applicant's goods and services.

1. The Primary Significance of AMERICAN is a Place Known Generally to the Public

The Examining Attorney has established that “AMERICAN” means “of or relating to the United States of America or its people or language or culture.” September 27, 2017 Office Action TSDR 7-17 (printouts from “ahdictionary.com,” “merriam-webster.com” and “vocabulary.com”). These dictionary definitions belie Applicant’s argument, which is unsupported by any evidence, that “AMERICAN” is amorphous, or that it means freedom or conveys any other non-geographic concept or feeling. *See In re Wada*, 194 F.3d 1297, 52 USPQ2d 1539, 1541 (Fed. Cir. 1999) (affirming refusal to register NEW YORK WAYS GALLERY and rejecting mere argument, unsupported by any evidence, that there is a “New York style” of the goods at issue, or that NEW YORK evokes “an aura of status or prestige”). And as the Examining Attorney points out, the adjectival form of a geographic location, such as AMERICAN, is treated the same as the name of the geographic location itself. *See e.g. In re Premiere Distillery, LLC*, 103 USPQ2d 1483, 1484 (TTAB 2012) (finding that the primary significance of REAL RUSSIAN for vodka is geographic, stating “[i]t is well-established that adjectival forms of geographic terms are also considered primarily geographically descriptive”); *In re Joint-Stock Co. “Baik,”* 80 USPQ2d 1305, 1310 (TTAB 2006) (BAIKALSKAYA, which means “from Baikal,” is primarily geographically descriptive of vodka).

Further, not only has Applicant failed to introduce any evidence that AMERICAN has a non-geographic meaning in the context of its goods or services, but Applicant’s

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

own use of the term reveals that AMERICAN is used in its geographic sense. For example, a Napa Valley Register article on Applicant's name change quotes Applicant's CEO James Debney as saying "We believe the name 'American Outdoor Brands Corporation' will better reflect our family of brands, our broad range of product offerings and our plan to continue building upon our portfolio **of strong American brands.**" March 27, 2018 Request for Reconsideration TSDR 41; *see also* September 27, 2017 Office Action TSDR 78 (essentially the same quote on Applicant's webpage). Despite being confronted with this evidence throughout prosecution of its involved applications, Applicant has never even contended, much less presented evidence, that its stated desire to build a portfolio of "strong American brands" means strong "freedom" brands, or that its use of the term "AMERICAN" in this way has any meaning other than its geographic meaning.

In any event, even if Applicant had established that AMERICAN may have other meanings in different contexts, which it did not, that would not alter the term's primarily geographic meaning when used in Applicant's proposed mark for Applicant's identified goods and services. *In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1858 (TTAB 2014) (finding HOLLYWOOD LAWYERS ONLINE primarily geographically descriptive of attorney referrals, pointing out that "without additional elements in the mark to detract from the geographic significance, there is no allusion to the alternative meaning referencing the 'glamour' of the film

industry”);⁵ *In re Opyland USA Inc.*, 1 USPQ2d 1409, 1412-13 (TTAB 1986) (NASHVILLE NETWORK primarily geographically descriptive of television program production and distribution, because the programming has “a substantial enough relation to Nashville, Tennessee,” even though the term “has other imagery than the city of Nashville,” stating “[b]ecause a term may have other meanings does not necessarily alter the primacy of its geographical significance”); *In re Cookie Kitchen, Inc.*, 228 USPQ 873, 874 (TTAB 1986) (MANHATTAN & Design primarily geographically deceptively misdescriptive of cookies, even though term has other meanings, such as a Manhattan cocktail); *In re Jack’s Hi-Grade Foods, Inc.*, 226 USPQ 1028, 1029 (TTAB 1985) (NEAPOLITAN primarily geographically deceptively misdescriptive of sausage even though term has other meanings, such as a type of multi-flavored ice cream). Here, based on multiple, consistent dictionary definitions of the term AMERICAN, and Applicant’s own use of the term in connection with its goods and services, we find that AMERICAN is primarily geographically descriptive.

When we consider Applicant’s mark as a whole, we find that the primary geographic significance of AMERICAN does not change. As indicated, Applicant has disclaimed BRANDS CORPORATION in each application. This is essentially an admission that BRANDS CORPORATION is merely descriptive. *In re Carlson*, 91

⁵ The design element of Applicant’s mark does not support a finding that AMERICAN has a non-geographic meaning or commercial impression. While the mountain peaks and stream depicted in the design element could be located anywhere, given the established meaning of “AMERICAN,” consumers would likely perceive the pictured peaks and stream as American.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

USPQ2d 1198, 1200 (TTAB 2009); *Bass Pro Trademarks LLC v. Sportsman's Warehouse, Inc.*, 89 USPQ2d 1844, 1851 (TTAB 2008). *See also Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1762 (TTAB 2013), *aff'd mem.*, 565 Fed. Appx. 900 (Fed. Cir. 2014). In any event, Applicant concedes the point in its Appeal Brief, stating that it seeks registration “with a disclaimer of ‘BRANDS CORPORATION,’ terms that, unlike the mark as a whole, directly convey information or describe a purpose of [Applicant’s] products or services.” 11 TTABVue 12.

Applicant argues that it need not disclaim AMERICAN OUTDOOR (and that its standard character mark is registrable with the disclaimer of only BRANDS CORPORATION) because AMERICAN OUTDOOR is “unitary,” and suggestive rather than merely descriptive.⁶ *Id.* at 12-13. We disagree.

In fact, AMERICAN OUTDOOR is not unitary in Applicant’s proposed mark. The elements of a unitary mark are “inseparable,” in that “the mark has a distinct meaning of its own independent of the meaning of its constituent elements.” *Dena*

⁶ A mark is deemed to be merely descriptive, within the meaning of Trademark Act Section 2(e)(1), if it immediately conveys knowledge of a quality, feature, function, characteristic or purpose of the goods for which it is used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (quoting *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009)); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re Gyulay*, 3 USPQ2d at 1010.

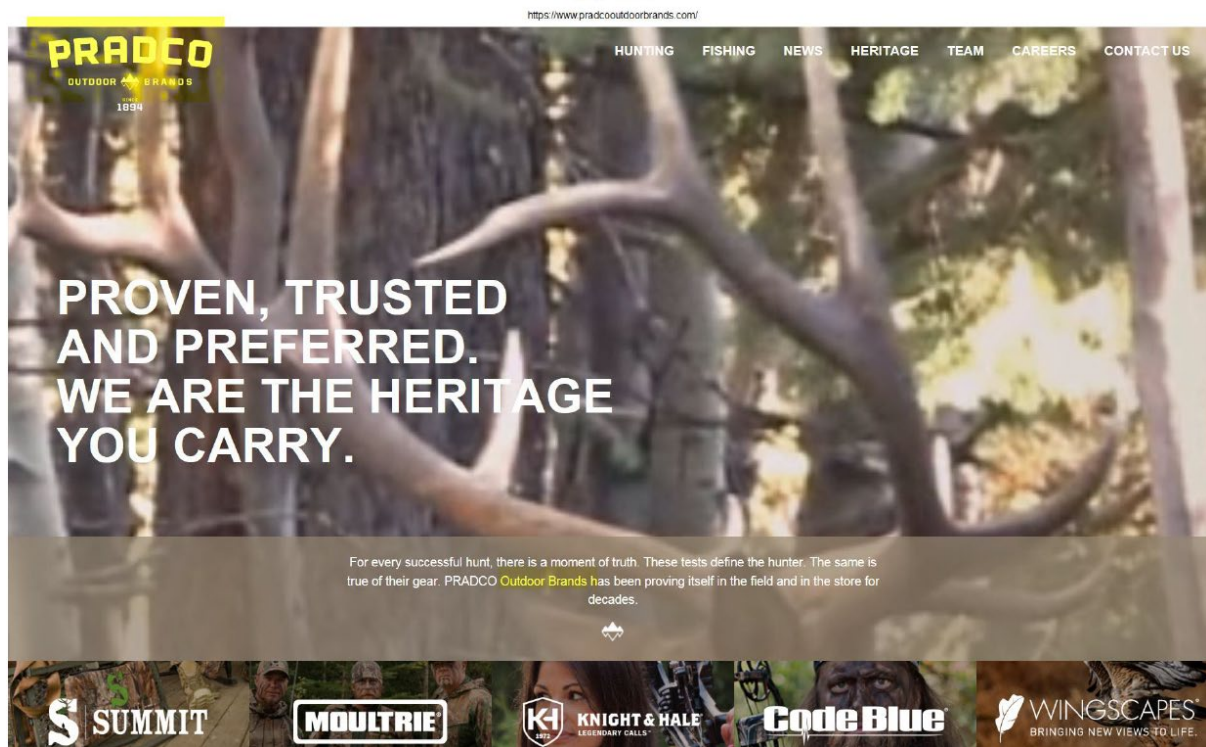
Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Corp. v. Belvedere Int'l, Inc., 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991).

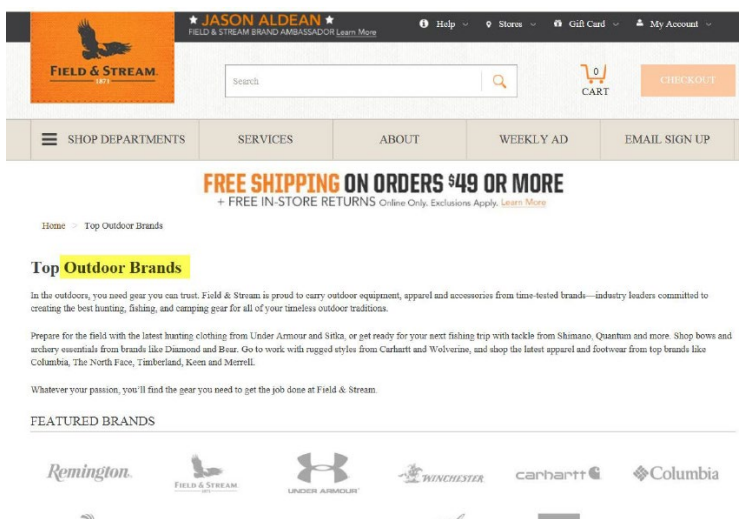
That is not the case here.

To the contrary, the Examining Attorney has established that if any element of AMERICAN OUTDOOR BRANDS CORPORATION is unitary, it is the term “outdoor brands,” which is commonly used by third parties and the media to identify entities such as Applicant which offer products intended to be used or services related to the outdoors. For example, an Outside magazine article entitled “These Are the Coolest Small Brands We Saw at Outdoor Retailer” states: “We give the big **outdoor brands** a lot of love at Outdoor Retailer – and for good reason. Companies like Patagonia and The North Face make great products.” September 27, 2017 Office Action TSDR 43-49 (printout from “outsideonline.com”) (emphasis added). A Hiking for Her website article entitled “The Best **Outdoor Brands** for Hikers” identifies the characteristics of “the best **outdoor brands**.” It includes lists of: “**outdoor brands** focused on wide selection” (including REI and Sierra Trading Post); and “**outdoor brands** focused on social responsibility” (including Patagonia and REI). *Id.* at 60-62 (printout from “hiking-for-her.com”) (emphasis added). One of Applicant’s apparent competitors which also sells hunting and fishing gear operates under the trade name PRADCO OUTDOOR BRANDS:

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

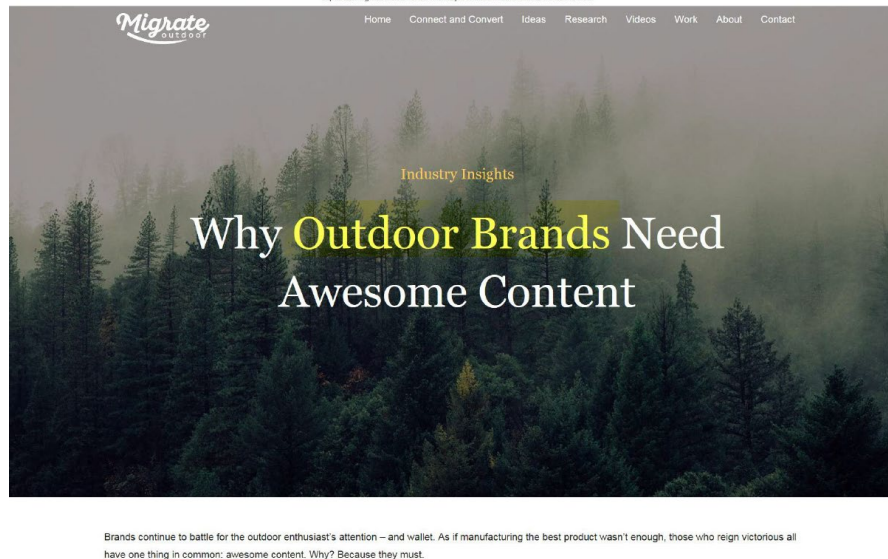


Id. at 52 (printout from “pradcooutdoorbrands.com”). A section of Field & Stream’s website is devoted to the “Top Outdoor Brands”:



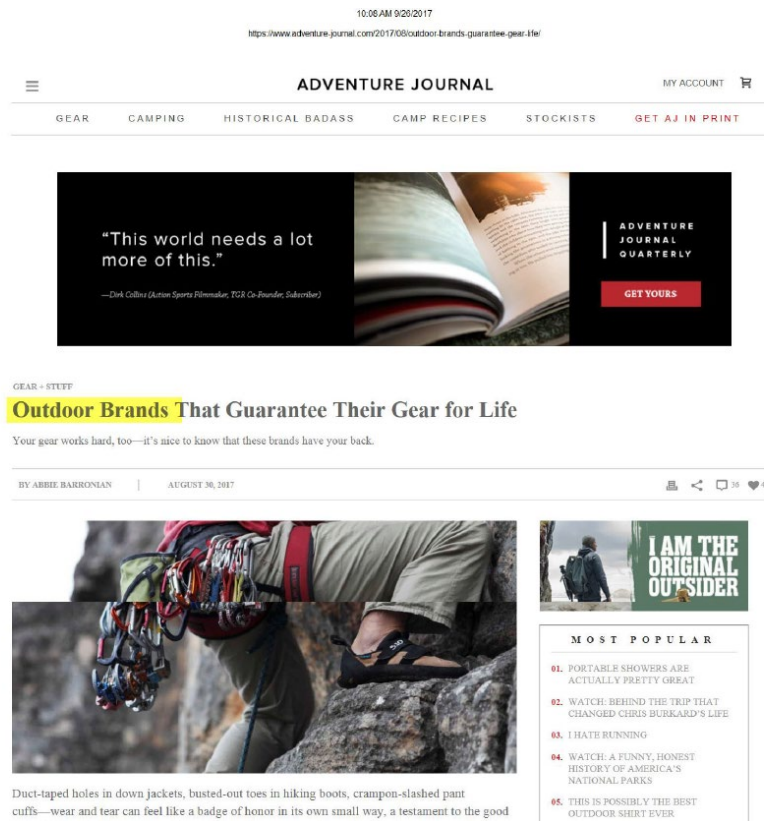
Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Id. at 50 (printout from “fieldandstreamshop.com”). The Industry Insights section of Migrate Outdoor includes an article entitled “Why **Outdoor Brands** Need Awesome Content”:



Id. at 64-66 (printout from “migrateoutdoor.com”) (emphasis added). An Adventure Journal article entitled “**Outdoor Brands** That Guarantee Their Gear for Life” separates outdoor product companies – including Jansport, Eddie Bauer, Gore-Tex, The North Face and REI – into two groups, those which provide lifetime warranties for their products, and those which provide limited lifetime warranties:

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



Id. at 54-59 (printout from “adventure-journal.com”). Finally, news articles use the term “outdoor brand(s)” to refer to entities offering outdoor goods, such as hunting, fishing, camping, climbing and related products:

A Business Briefing in the Canton, Ohio Repository states that “L.L. Bean is positioning itself as an **outdoor brand** focused less on individual pursuits and more on family and friends enjoying the outdoors, whether it’s a remote lake or local park.”

The Salt Lake City Deseret Morning News article “Ogden Signs Agreement with European Firms” quotes Ogden’s Mayor as saying “Hosting the EU4Sports Alliance will connect Ogden with outdoor industry partners and discover synergies for business growth ... We want to open doors to global **outdoor brands** and support their efforts

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

as they look to Ogden's mountain to metro community as their partner for U.S. market expansion."

A Minneapolis St. Paul Business Journal article quotes Winnebago's CEO as saying "The Winnebago brand and the company is almost iconic. It's a great part of the history of American business and **outdoor brands**, but yet it had been struggling to some degree over the last 10 years."

A Denver Post article indicates that Backbone Media "represents dozens of **outdoor brands** that are forging the new progressive outdoor economy ethos."

A Manchester, New Hampshire Union Leader article states "Colleen Vien is the sustainability director at Timberland, a global **outdoor brand** based in New Hampshire."

A Memphis Commercial Appeal article states "Mossy Oak is one of today's iconic **outdoor brands**. With beginnings as a maker of camouflage clothing for hunting, Mossy Oak has grown into a family of brands."

A Lewiston Idaho Morning Tribune article about Vista Outdoors states "Outside of its guns and ammunition line, it holds a number of **outdoor brands** such as Jimmy Styks paddleboards, CamelBak and Camp Chef."

A St. Louis Post-Dispatch article about a clothing designer states that he designs a "rugged collection of flannel with a modern fit and details that set it apart from other **outdoor brands**."

A Quad City Times article on activewear states "most **outdoor brands** have moved away from the 'pink it and shrink it' philosophy that frustrated female outdoor enthusiasts for so long."

Id. at 68-75, 77 (emphasis added). Thus, to the extent that any part of the literal portion of Applicant's mark is unitary, it is OUTDOOR BRANDS rather than

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

AMERICAN OUTDOOR. It is of course significant that this evidence of use of OUTDOOR BRANDS also establishes that there are many American “outdoor brand(s)” companies, several of which are “corporations.”

In any event, even if OUTDOOR BRANDS was not a unitary term, that would not matter here. Disclaimers of AMERICAN and OUTDOOR still would be required. As we found above, AMERICAN is primarily geographically descriptive. Moreover, OUTDOOR directly conveys information about and describes a purpose of Applicant’s identified goods and services, which are primarily outdoor-focused, as revealed by the third party and media uses of the term “outdoor brands” highlighted above. This is also revealed by Applicant’s arguments made in other applications to register the same term, in which Applicant claimed “[w]here ‘AMERICAN’ appears in combination with ‘OUTDOOR’ and the mountain design, the overall commercial impression of the mark impressed upon the relevant consumers is a strong and powerful brand of companies committed to providing products for open-air adventures.” April 23, 2018 Office Action in ’588 Application TSDR 23-27.

The term OUTDOOR also directly conveys information about Applicant itself, as Applicant is comprised of a number of outdoor brands. Applicant’s conclusory contention to the contrary notwithstanding, using AMERICAN and OUTDOOR together does not alter the meaning of either of the term’s constituent elements. Indeed, Applicant is an American company offering outdoor products and services. Even if AMERICAN is interpreted as modifying OUTDOOR, such that it conveys that

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Applicant's brands are intended for use in outdoor environments in the United States, the term would still not amount to anything more than its constituent elements.⁷

Turning back to the literal portion of the proposed mark as a whole, as explained above, adding a descriptive or generic term (as the evidence shows OUTDOOR BRANDS CORPORATION to be) to a geographic one (AMERICAN) does not alter the geographic term's geographic significance. *In re Cheezwhse.com*, 85 USPQ2d at 1917; *In re JT Tobacconists*, 59 USPQ2d at 1080; *In re California Pizza Kitchen*, 10 USPQ2d at 1704. In other words, Applicant's use of OUTDOOR BRANDS CORPORATION for a United States corporation comprised of many outdoor brands does not detract from or otherwise alter the fact that the primary significance of the literal portion of Applicant's mark as a whole is geographic. Applicant is an American outdoor brands corporation.

The literal element of Applicant's mark also is geographically descriptive when considered in the context of the specific goods and services identified in the involved applications. In fact, terms such as AMERICAN OUTDOOR BRANDS

⁷ Applicant's argument that "AMERICAN OUTDOOR is capable of many different meanings," 16 TTABVUE 21, is unsupported by any evidence, and unpersuasive in any event. "It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive." *In re Chopper Industries*, 222 USPQ 258, 259 (TTAB 1984); *see also*, *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1034 (TTAB 2007); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

CORPORATION that describe the provider of a good or service are themselves often unprotectable, unless they have acquired distinctiveness. For example, in *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1301, 102 USPQ2d 1217 (Fed. Cir. 2012), the Federal Circuit affirmed the Board’s finding that NATIONAL CHAMBER is merely descriptive of “promoting the interests of businesspersons or industry on a national level, or connecting local chambers of commerce through a nationwide network,” because CHAMBER can refer to a chamber of commerce and chambers of commerce typically offer those services. In fact, some of the applicant’s services were a “core function” of chambers of commerce. *Id.* at 1221.

Similarly, in this case, various American outdoor brands typically provide the types of goods and services for which Applicant seeks to register its mark, most of which relate to hunting, fishing, shooting, climbing, camping and other outdoor sports and endeavors.⁸ *See also In re Major League Umpires*, 60 USPQ2d 1059 (TTAB 2001) (MAJOR LEAGUE UMPIRE merely descriptive of clothing, face masks and chest protectors provided by a company owned and operated by Major League Baseball umpires because it describes the provider and designer of the goods); *In re E.I. Kane, Inc.*, 221 USPQ 1203 (TTAB 1984) (OFFICE MOVERS, INC. generic for moving services for offices); *In re Career Employment Services, Inc.*, 219 USPQ 951, 952

⁸ This is true whether the outdoor brands operate independently or under a parent corporation or holding company which owns many different outdoor brands, such as Applicant.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

(TTAB 1983) (THE PROFESSIONAL HEALTHCARE PEOPLE generic for providing temporary employment services for medical personnel because the term refers to the applicant and its employees who place temporary workers); *In re Old Boone Distillery Co.*, 172 USPQ 697, 698 (TTAB 1972) (DISTILLER'S LIGHT merely descriptive of scotch whisky because it "conveys the information that applicant's product is a distiller's light blended scotch whisky"). Similarly, here, AMERICAN OUTDOOR BRANDS CORPORATION merely describes a conglomeration of outdoor brands based in the United States that provide outdoor products and services.

a. The Services Identified in the '558 and '588 Applications

The '558 and '588 Applications seek registration for "providing financial information; shareholder and investor relations and shareholder services, namely, providing corporate financial analysis, providing investors with financial information," rather than for services which are specifically outdoor-focused. Nevertheless, AMERICAN OUTDOOR BRANDS CORPORATION describes the provider of Applicant's financial information and shareholder and investor relations services, i.e. a United States outdoor brand company, just as it describes the provider of Applicant's other goods and services.

In fact, in an analogous case involving the mark FirstTier & Design for banking services, the United States Court of Appeals for the Federal Circuit affirmed the requirement that Applicant disclaim the exclusive right to use the term "FirstTier." *In re Omaha Nat'l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). There, the

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Federal Circuit relied on evidence “that in the banking industry, banks can be ranked in ‘tiers’” to find the mark merely descriptive. *Id.* at 1861. It then rejected the applicant’s argument that findings of descriptiveness should be limited to “terms which identify a characteristic or quality of an article or service”:

We cannot agree. The factual situations in which mere descriptiveness must be resolved are too varied to lend themselves to resolution under any rigid formula ... In any event, appellant admits that it could not preclude the descriptive use of “first tier” being made in connection with banking services or interfere with the equal rights of others to denominate themselves “first tier” banks. It asserts it seeks only protection for “FirsTier” in the distinctive design set forth in its application. A disclaimer of exclusive rights in the phrase “first tier” apart from the mark as shown in the drawing will secure to appellant exactly the extent of rights it desires.

Id. (citations omitted). Thus, in this case, we are not constrained by any “rigid formula.” Terms which describe the type of entity which offers services may be descriptive of the services themselves. *In re The Phone Co., Inc.*, 218 USPQ 1027, 1028 (TTAB 1983) (“The Trademark Examining Attorney essentially wishes us to decide that a mark which names the type of commercial establishment from which particular goods come is merely descriptive of those goods. We believe the Examining Attorney is correct and affirm his refusal.”). Here, as in *In re The Phone Co.*, the literal portion of Applicant’s mark names the type of commercial establishment from which particular financial information and shareholder and investor services come: a United States corporation consisting of outdoor brands.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

The record in this case reveals that United States companies that offer outdoor products are known as “outdoor brands,” just as some banks were shown to be known as “first tier” in *In re Omaha Nat’l*. Also, here, as in *In re Omaha Nat’l*, Applicant should not acquire rights which could enable it to preclude competitor “outdoor brands” from using that term, or AMERICAN, or CORPORATION, separately or together, for outdoor products or services, or other goods and services which would be provided by an “American outdoor brands corporation.” *See also In re Abcor Development*, 200 USPQ at 217 (“The major reasons for not protecting [merely descriptive] marks are ... to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.”). Financial information and shareholder and investor relations services could be provided by any of Applicant’s competitor “American outdoor brands corporations,” whether they are publicly traded or otherwise have shareholders or investors.

Here, the literal element of Applicant’s mark does not only describe the provider of Applicant’s financial and shareholder services. Under the facts of this case Applicant’s mark also describes those services themselves. Indeed, the question we face is “not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.”

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ 2d 1314, 1316-17 (TTAB 2002)). Someone who knows that Applicant offers financial information and shareholder and investor relations services will understand “American outdoor brands corporation” to convey information about not only the provider of those services, i.e. a United States conglomerate of companies which offer outdoor products and services, but those services themselves, specifically that they relate to “American outdoor brands.”

In fact, Applicant’s use of the plural “brands” rather than the singular “brand” increases the descriptiveness of the proposed mark. That is, a conglomeration of multiple brands would likely be perceived as a holding company, or otherwise more encompassing than a single brand, and thus more likely to provide financial information and investor services than a single stand alone brand. In fact, a holding company (or “brands corporation”) is exactly the type of entity that would be more likely to provide shareholder and investor relations services than a stand-alone entity focused on core products which might be expected to assign shareholder and investor relations to a third party.⁹

⁹ During prosecution, the Examining Attorney at one point refused registration of Applicant’s mark on the ground that the identified financial information and shareholder and investor relations services are not registrable because they are “merely incidental or necessary to an applicant’s larger business.” April 23, 2018 Office Action TSDR 2. The Examining Attorney withdrew this refusal without substantive explanation. November 20, 2018 Office Action TSDR 2.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

As Applicant argued in claiming that its financial information and shareholder and investor relations services are registrable:

Applicant manufactures firearms and recreational sporting goods products. Applicant also owns eighteen different recreational sporting brands and renders services in connection with its management and administration of those brands. The fact that an activity is ancillary to the sale of goods does not in itself mean that it is not a separately registrable service ... the services at issue here are not provided only to Applicant's shareholders; they are provided to the broader segments of the public that might be interested in investing in Applicant, or that might more broadly be interested in learning about companies in markets in which Applicant conducts business

October 23, 2018 Office Action Response TSDR 12-13. In other words, Applicant renders its financial information and shareholder and investor relations services to segments of the public interested in investing in an American outdoor brands corporation. Thus, AMERICAN OUTDOOR BRANDS CORPORATION is primarily geographically descriptive.

Finally, the question here is whether the term is primarily geographically descriptive. As shown above, it is, because the primary significance of AMERICAN is a place generally known to the American public, which is where Applicant provides its financial information and shareholder and investor relations services. The term AMERICAN is just as geographically descriptive for those services as for Applicant's core outdoor products and services.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

b. The Remaining Goods and Services

The literal element of Applicant's mark describes not only the provider of Applicant's remaining goods and services, but those goods and services themselves, because they are outdoor-focused. Specifically, the identifications of goods and services in the remaining 10 involved applications all fall into one or more of three general categories:

<u>FIREARMS</u>	<u>CAMPING AND ACCESSORIES</u>	<u>OUTDOOR SECURITY</u>
Serial Nos.: 87305135, 85305137, 87305164, 87305165, 87305166, 87305167, 87305169 (Class 35)	Serial Nos.: 87305149, 87305160, 87305165	Serial Nos.: 87305165, 87305169 (Class 45), 87305170

The Examining Attorney has established that goods and services falling within these general categories are known as "OUTDOOR" products and services, and that various "outdoor brands" offer goods and services in these general categories. In addition, the Examining Attorney has established that OUTDOOR and OUTDOOR BRANDS are terms used in connection with specific goods and services identified in the involved applications. Indeed, the transcript of a Motley Fool video about Applicant states

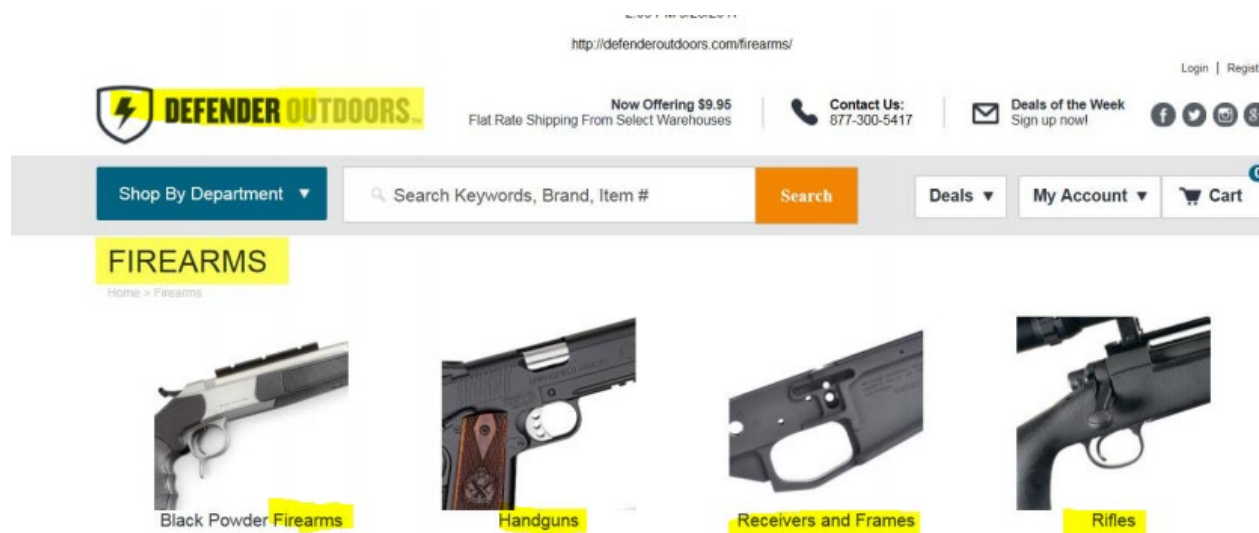
on the **outdoor products and accessories side**, that includes three different divisions. You have their core accessories, this includes stuff like what you need to **clean your gun, to repair it, gunsmithing**, things like that, if

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

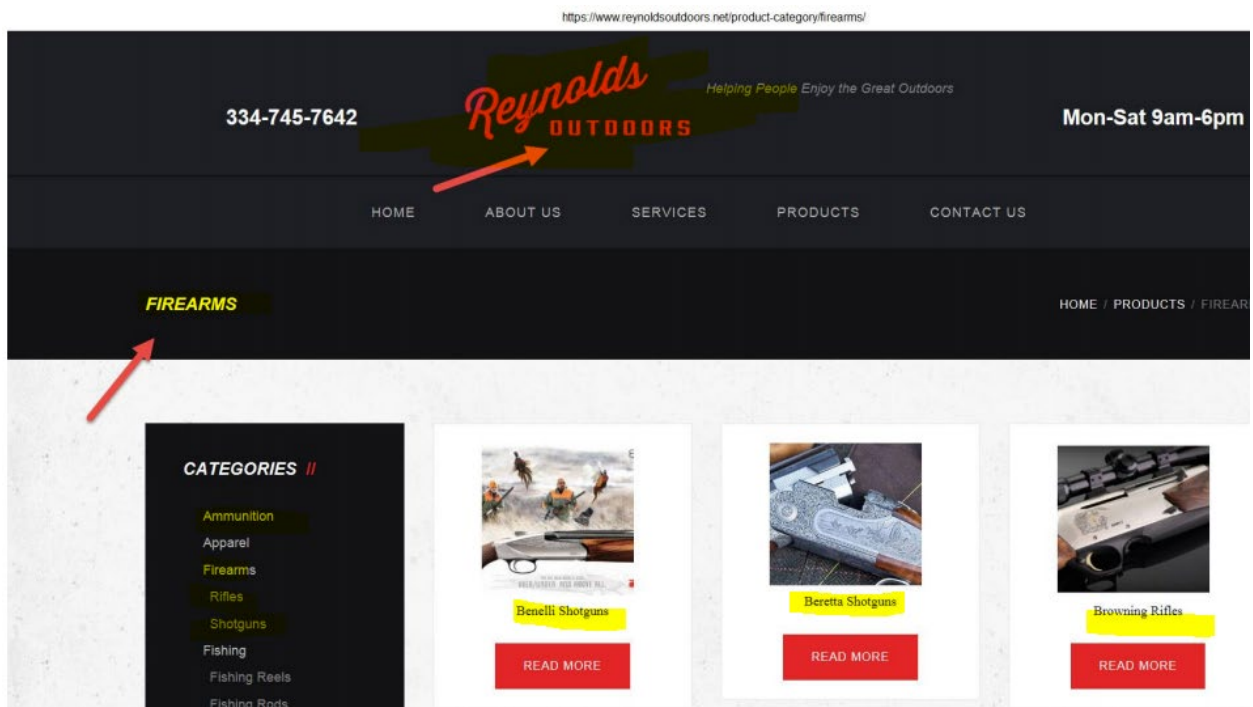
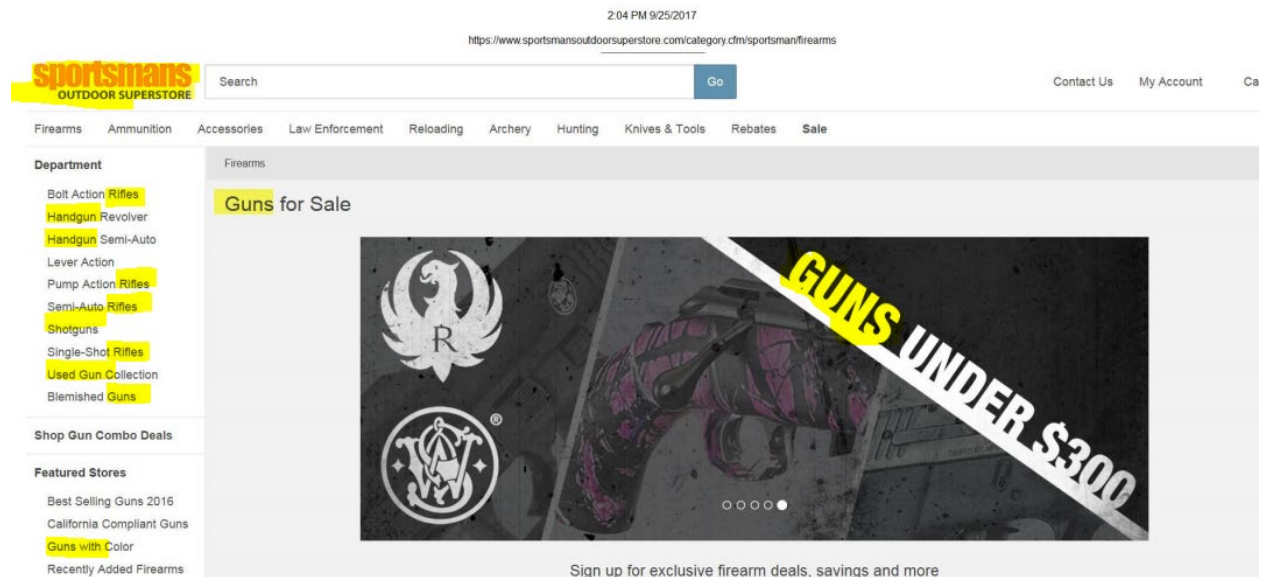
you're not familiar with the space ... Then, outdoor recreation, which is the newest division ... is really targeting things like **camping, hiking, fishing, paddling sports**, things along those lines ... some of the brands that operate within this umbrella, like Crimson Trace and Battenfeld Technologies, Taylor, a bunch of **different cutlery brands** and things along those lines....

November 7, 2017 Office Action in '164 Application TSDR 88-92 (emphasis added).


In addition, the Sportsmans Outdoor Superstore, Reynolds Outdoors and Defender Outdoors websites reveal that firearms and firearm accessories (identified in the '135 and '137 Applications) are considered “outdoor” products; and the Mountainside Outdoor, 3CR Outdoor Supply and Outdoor Sportsman websites reveal that gunsmithing (identified in the '164 and '166 Applications), is an “outdoor” service:



Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



We'll take this to this!

Home Outdoor Center Outdoor Supplies Sugar Ridge Farms Community About Us

SITE MAP

- Home
- Outdoor Center
 - Archery Services
 - Archery Shooting Lanes
 - Gunsmithing Services
 - Hunter Education
 - Mounting & Tanning
 - NRA Basic Pistol Course
 - Wild Game Processing
- Outdoor Supplies
 - Archery Supplies
 - Gun Supplies
 - Maple Sugaring Supplies
 - Reloading Supplies
 - Trapping Supplies
- Sugar Ridge Farms
- Community
 - Announcements
 - Brag Board
 - Festivals
- About Us
 - Contact Us

Gunsmithing Services

Here at Mountainside we offer a full range of gunsmith services

Below are some basic services with prices.

DRILLING & TAPPING.....\$12.00-\$15.00 PER HOLE (depending on number of holes)

PROTECTIVE BLUING.....\$150.00 & UP (the gun pictured above is our own work)

GUN CLEANING.....\$25 & UP

BORE SIGHTING.....\$15.00

SIGHTING IN.....\$25.00 + AMMO (we can use yours or you can buy ours)

MOUNTING SCOPE.....\$20.00 + PARTS (we can use yours or you can buy ours)

INSTALLING SLING.....\$20.00 + PARTS (we can use yours or you can buy ours)

TRANSFERS

PRIVATE LOCAL TRANSFER (gun must be present)

\$15 per long gun (\$10 background check, \$5 federal paperwork fee)

<http://www.mountainsideoutdoor.com/outdoorcenter/gunsmith-services/>



HOME SHOP ONLINE HERE GUNSMITH QUOTE FORM

3CR Outdoor Supply

SERVICES LIST

- RESTORATION
- HYDROGRAPHICS
- PARKERIZING

SPORTING GOOD SALES

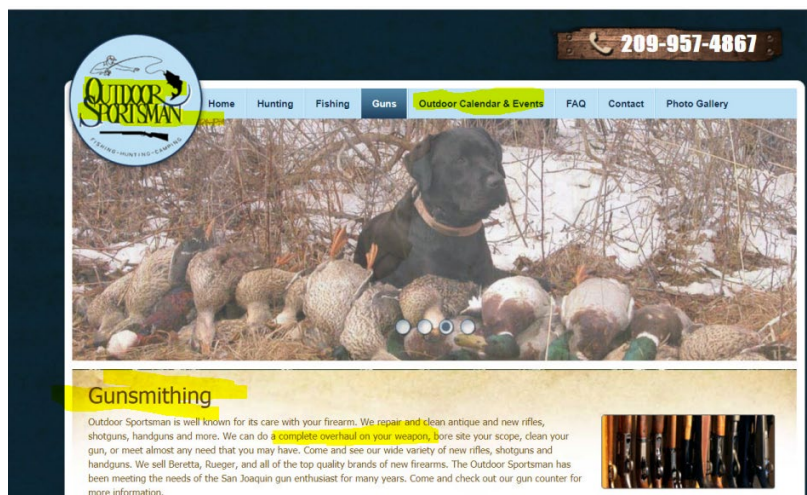
Our online shop offers a huge selection of firearms that can be shipped right to your FFL along with hundreds of other useful

ONLINE GUN SHOP

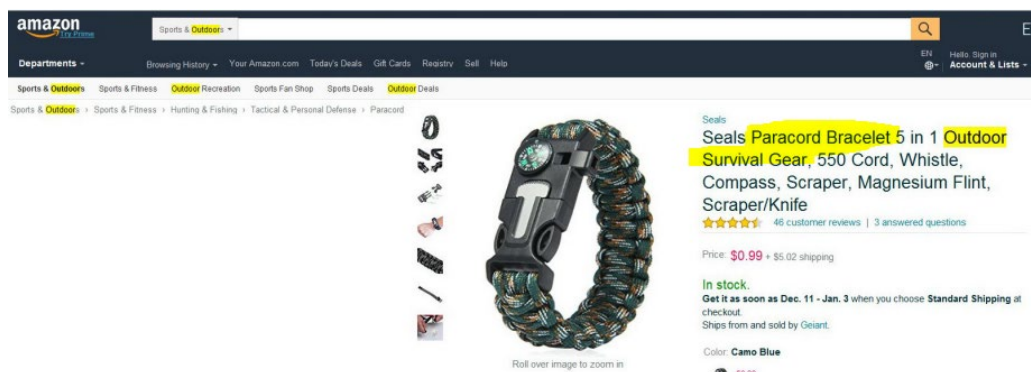
Custom Gunsmithing

Our in-house team of gun finish experts can complete parkerization and sprayed media application for most common guns and equipment. Have a special project? Request a

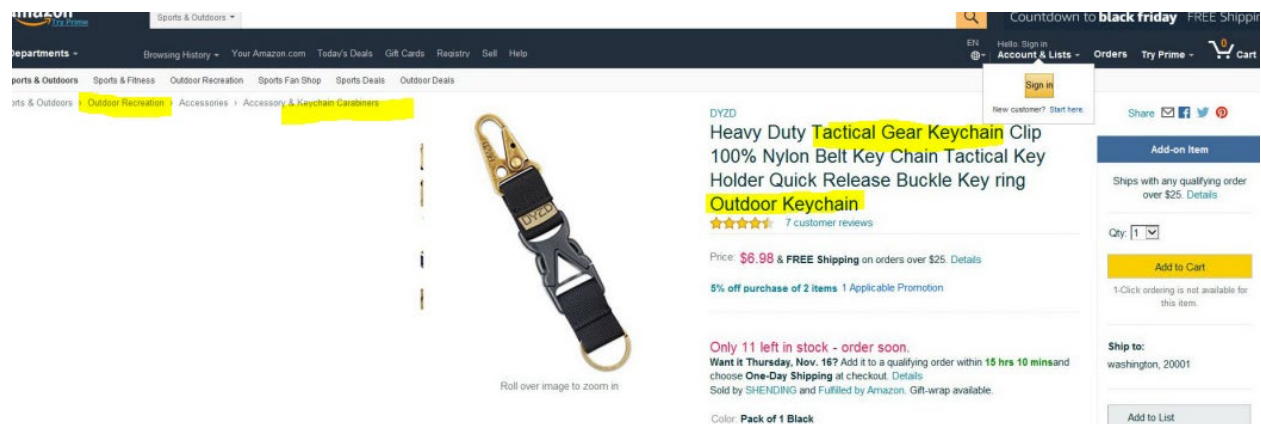
Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



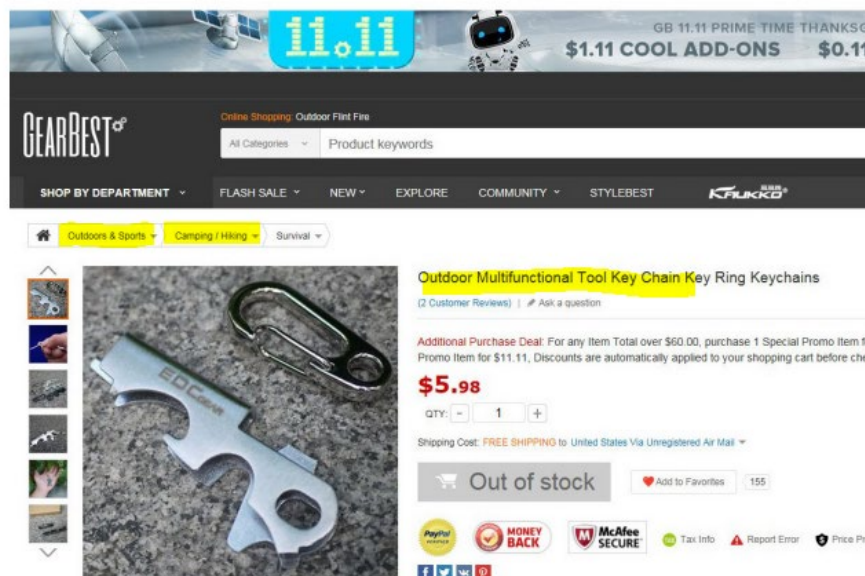
September 27, 2017 Office Action in '135 Application TSDR 8-16; November 7, 2017
Office Action in '164 Application TSDR 93-95. Paracord bracelets and metal key
chains (such as those identified in the '149 Application) are also considered “outdoor”
products. For example:



Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

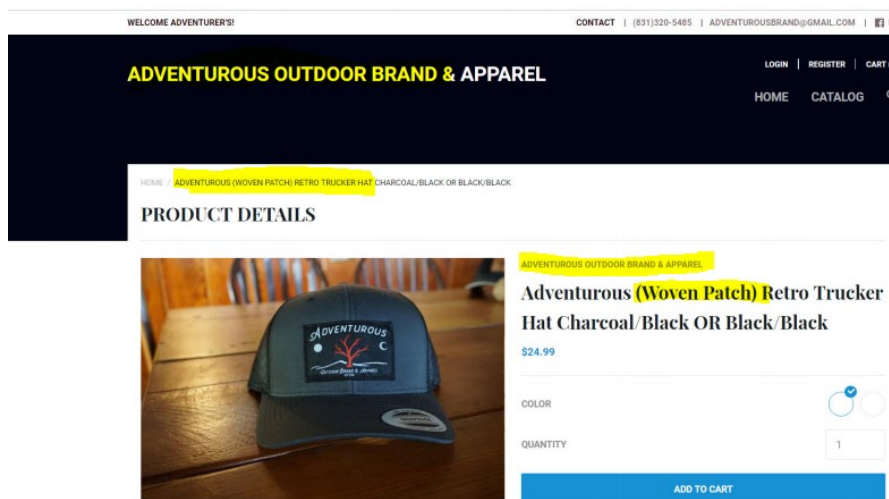
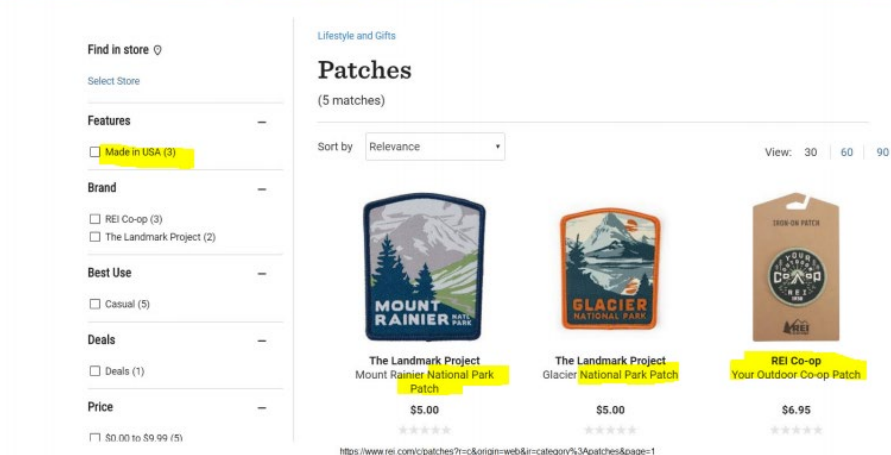
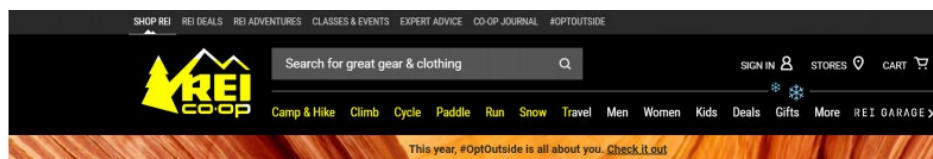


https://www.gearbest.com/survival-emergency-gear/pp_16833.html 11/14/2017 11:02:47 PM



November 14, 2017 Office Action TSDR 64-119. Cloth patches (such as those identified in the '160 Application) are “outdoor” products:


Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



November 7, 2017 Office Action in '160 Application TSDR 87-97. Security products and services, including security cameras and alarm monitoring (such as the services identified in the '164, '169 and '170 Applications), are often provided "outdoors":

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

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outdoor

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SECURITY

RELIABLE SECURITY SYSTEM INSTALLERS

Some of your most important assets reside within your home or business, and it's vital that you protect them with a security system you can rely on. The expert security system installers at Town & Country Group have decades of experience designing, installing, wiring, and cabling top-quality security systems to protect your commercial facilities.

We don't do one-size-fits-all security systems. Our talented team takes the time to talk with you about your specific security needs or concerns, and we then custom design a complete system from start to finish. This makes your security system install faster and more cost efficient, and avoids having to work with multiple vendors. You can rest assured that whether you need CCTV security cameras, card access door control, fire detection systems, Code Blue emergency call stations, or others, these systems will keep your home or business safe and protected.

SECURITY SYSTEM INSTALLATIONS

Town & Country Group is a certified Honeywell dealer, and we are proud to install their state-of-the-art systems. We custom design our security systems to best your home or business to the best of our abilities.

CARD ACCESS DOOR CONTROLS

Having a key-card door access system has proven to be a very successful and convenient component of complete security systems. Our experts are happy to help you figure out how to utilize your card access capabilities best.

SURVEILLANCE MONITORING

We can install both **outdoor** and indoor security cameras and surveillance monitoring systems. As a result you'll be able to monitor your system 24/7 or partner with our trusted partners at CSA Monitoring.

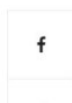


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HOME SECURITY & AUTOMATION

Outdoor Security Camera Buyer's Guide

UPDATED: JULY 24, 2017 · 17 MINUTE READ



Outdoor security cameras are the first line of defense when it comes to protecting what's most important—your home, property and family. Outdoor surveillance provides the assurance that anything and anybody approaching your property and home will be captured on video.



Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



Home Security Cameras

Remember when pagers were just for doctors and cell phones were the size of a brick? Back then, home surveillance systems were about the size of a mail box. Well, times have changed.

Today, smart phones have replaced pagers, cell phones can fit in your pocket and just about everyone has one. The same holds true for outdoor home security cameras. Advancements in technology have helped to reduce the size and cost, making outdoor surveillance cameras affordable.



Managed Services for Outdoor Security

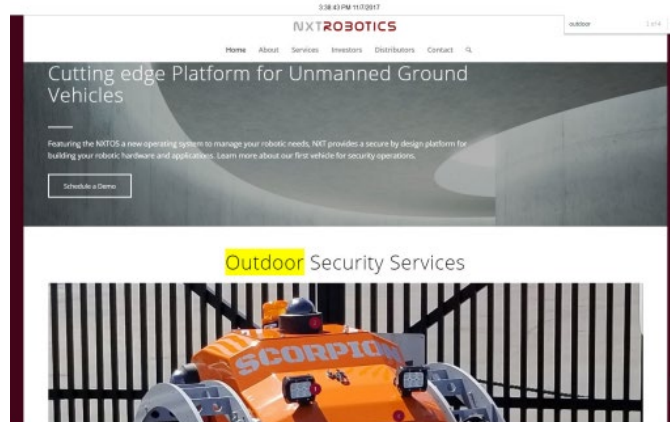
Posted on June 6, 2013 by Eric Heller in Blog - No Comments



The excitement around using managed services to secure outdoor assets continues to grow. The key to the success of managed services for physical security is accurate alarms that can be quickly verified. First responders need to trust the legitimacy of an alert and be able to determine the urgency and scope of the situation in real time to take appropriate actions.

Until recently, managed services have primarily been used for indoor systems, where the stable environment has allowed automated systems to function well. Outdoor security applications, on the other hand, are subject to many more variables that until now have made them more problematic for third-party management. For this reason, the success of security as a service for outdoor spaces is dependent on using very smart solutions that can overcome the difficulties of the outdoors and produce accurate alerts.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



November 7, 2017 Office Action in '164 Application TSDR 99-122; November 7, 2017 Office Action in '169 Application TSDR 126-141. Broadcasting and streaming of video (such as identified in the '165 and '167 Applications), is broad enough to encompass video about the outdoors, such as “outdoor documentaries,” and outdoor-focused television channels such as Outdoor TV and Outdoor Channel:

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

https://gearjunkie.com/10-best-outdoor-documentaries-on-netflix - Google Search

VENTRIX.

February 10, 2017, 1:07 pm By: Staff Post

10 Best Outdoor Documentaries Streaming On Netflix

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NEWS

We'd all rather go out and live the outdoors than watch someone else do it, but there's nothing wrong with getting a little inspiration every now and then.

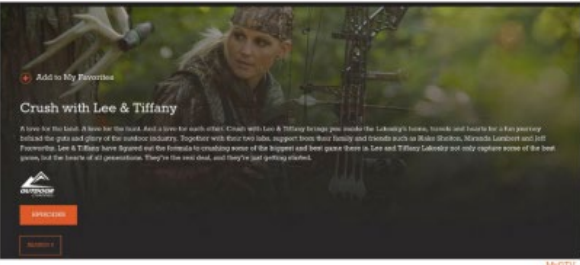


http://gearjunkie.com/10-best-outdoor-documentaries-on

wide open spaces

How My Outdoor TV is Changing the Landscape of Outdoor Entertainment

What is My Outdoor TV?



In short, it's a new outdoor streaming service that has various shows and episodes from the two biggest outdoor entertainment channels, Sportsman and Outdoor Channel. The streaming service includes most shows from the channels. However, most shows only have a season or two that can be up to years old.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

DEADLINE | HOLLYWOOD TV Comcast Adds Outdoor Channel To Its Streaming And VOD Line-Up

Comcast Adds Outdoor Channel To Its Streaming And VOD Line-Up

by The Deadline Team
April 22, 2013 5:22am

Whether you just like to trade Or you're a trader

TEMECULA, Calif., April 22, 2013 — Outdoor Channel, America's Leader In Outdoor TV, today announced a multi-year distribution agreement with XFINITY TV from Comcast, making the network's array of outdoor lifestyle entertainment accessible for multi-platform viewing by XFINITY TV customers across the U.S.

Effective immediately, the agreement will broaden the Outdoor Channel viewing experience by offering its popular roster of programming on XFINITY On Demand, online at xfinity.com/t and through the XFINITY TV Player app. The network's shows capture the excitement of the great outdoors through the eyes of esteemed hunting, fishing and shooting talent, alongside world-renowned actors, musicians and athletes. Among

- TV
- COMCAST
- OUTDOOR CHANNEL

November 7, 2017 Office Action in '165 Application TSDR 107-115. Finally, association services (such as those identified in the '169 Application), are provided to those involved in the outdoor and gun industries:

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Forgot Password

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WELCOME

Welcome and thanks for stopping by the Professional Outdoor Media Association (POMA) website. Whether you're a hunting and fishing industry communicator, industry professional or an avid outdoor sports enthusiast, POMA is working hard for you.

POMA is dedicated to seeing the traditional outdoor sports story is told honestly and fairly so hunting, fishing, the shooting sports and trapping will endure.

HAPPENING NOW

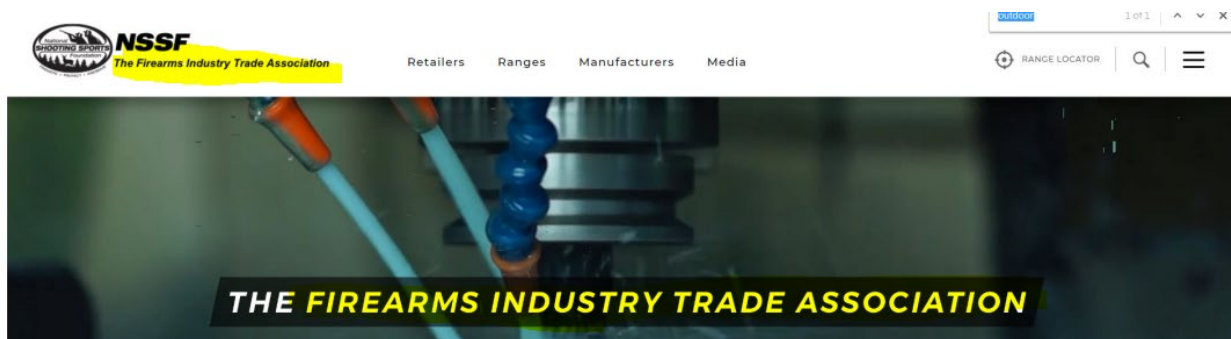
SHOP AT AMAZONSMILE AND AMAZON WILL MAKE A DONATION TO

amazon smile

GET STARTED

POMA FOUNDATION INC.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170



November 7, 2017 Office Action in '169 Application TSDR 140-147.

In short, because Applicant is an outdoor brands company from the United States offering outdoor products and services through and under its various outdoor brands, AMERICAN OUTDOOR BRANDS CORPORATION is primarily geographically descriptive and must be disclaimed. We have often found analogous terms to be non-distinctive. *See e.g. In re Wm. B. Coleman Co., Inc.*, 93 USPQ2d 2019 (TTAB 2010) (ELECTRIC CANDLE COMPANY generic for light bulbs and lighting products where the applicant and third parties used the term ELECTRIC CANDLE generically for those products, stating that “even if the proposed mark as a whole is not the literal name of the goods,” or the name the public would use to describe them, it is “nonetheless incapable” of distinguishing source, because “the relevant public would nonetheless understand the term to refer to a company which offers electric candles”); *In re Cell Therapeutics, Inc.*, 67 USPQ2d 1795 (TTAB 2003) (CELL THERAPEUTICS, INC. generic for pharmaceutical preparations and laboratory research related to biochemical signaling pathways because medical doctors and researchers, the relevant purchasers of the goods and services, would readily understand the term to

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

refer to “various goods and services that treat cells ...”); *In re The Paint Products Co.*, 8 USPQ2d 1863, 1866 (TTAB 1988) (PAINT PRODUCTS CO. highly descriptive of paints and coatings because purchasers “would view those words not as a trademark but in their ordinary dictionary sense: a company that sells paint products,” and “the phrase should remain available for applicant’s competitors”).

Here, consumers will view the literal element of Applicant’s mark not as source identifying, but instead in its ordinary dictionary sense: a United States corporation consisting of outdoor brands. More specifically, consumers who know which specific goods or services are identified in the involved applications will understand that Applicant’s various outdoor hunting, camping, shooting, broadcasting, association and security products and services are provided by such a corporation. *DuoProSS*, 103 USPQ2d at 1757 (“The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.”) (quoting *In re Tower Tech Inc.*, 64 USPQ 2d 1314, 1316-17 (TTAB 2002)). The Examining Attorney has established this element of the test.

2. The Public Would Make a Goods (and Services)/Place Association

We find that the public would believe that Applicant’s goods and services originate in America, because: as revealed by the involved applications, Applicant was organized in Nevada and is based in Massachusetts; Applicant’s website promotes its

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

“portfolio of strong American brands;” and Applicant files reports with the United States Securities and Exchange Commission (“SEC”), one of which states that it manufactures its “firearm products at our facilities in Springfield, Massachusetts and Houlton, Maine.” September 27, 2017 Office Action TSDR 78; March 27, 2018 Office Action response TSDR 38-40. *In re JT Tobacconists*, 59 USPQ2d at 1084 (finding a goods/place association between Applicant’s goods and Minnesota based on the applicant’s admission that its goods were packaged and shipped from there); *In re Handler Fenton Westerns, Inc.*, 214 USPQ 848, 850 (TTAB 1982). Obviously, the SEC report also indicates that Applicant provides its financial information and shareholder and investor relations services in the United States. This element of the test is therefore also satisfied.

3. The Source of the Goods and Services is the Geographic Region Named in the Mark

As indicated, the involved applications and the evidence of record reveals that Applicant is based in the United States and manufactures goods and provides services here. September 27, 2017 Office Action TSDR 78; March 27, 2018 Office Action response TSDR 38-40. The Examining Attorney has therefore established each element of the test.

4. Applicant Has Not Rebutted the Examining Attorney’s Prima Facie Case

Applicant’s argument that AMERICAN OUTDOOR BRANDS CORPORATION is “amorphous, conveying nothing specific” and means something “different for every

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

consumer” is not well taken. As we have found, the evidence – including the evidence establishing that OUTDOOR BRANDS is descriptive of, and commonly used to refer to, companies which offer products and services of the type identified in the involved applications – is to the contrary as a matter of fact.

Moreover, the argument is misplaced as a matter of law. Applicant’s argument calls to mind a similar contention made in *In re Patent & Trademark Svcs., Inc.*, 49 USPQ2d 1537 (TTAB 1998), in which the applicant sought to register PATENT & TRADEMARK SERVICES, INC. for “legal representation in the area of Intellectual Property administered by representing others before the Patent and Trademark Office and the Copyright Office.” There we found essentially the same argument unpersuasive because the proposed mark “describes significant aspects of applicant’s services, and the fact that the phrase does not specify exactly which patent and trademark services applicant offers does not mean that applicant is entitled to exclusively appropriate the phrase.” *Id.* at 1539.

Here, we find Applicant’s similar argument unpersuasive for essentially the same reason – Applicant’s mark need not “specify exactly which” outdoor goods or services Applicant offers to be found merely descriptive, because all of Applicant’s specifically-identified goods and services are outdoor-focused and come from America. Similarly, Applicant’s mark need not describe any particular place in America to be primarily merely geographically descriptive. *See In re American Furniture Warehouse Co.*, 126 USPQ2d 1400, 1404 (TTAB 2018) (“we find that the primary significance of

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

AMERICAN is geographic, the adjective form of AMERICA, a place generally known to the American public”). Applicant’s mark is broad enough to describe, geographically and otherwise, all of Applicant’s identified goods and services.

Applicant argues that unlike other geographic terms, the word AMERICAN is entitled to “special treatment,” citing TMEP § 1210.02(b)(iv) (Oct. 2018). 16 TTABVUE 13-15. While that TMEP section makes clear that if AMERICAN “is used in a nebulous or suggestive manner, then it is inappropriate to treat” the term as primarily geographically descriptive, at the same time it restates the law that if AMERICAN “is used in a way that primarily denotes the United States origin of the goods or services, then the term is primarily geographically descriptive.”

Here, while Applicant argues that it uses AMERICAN in a “nebulous” manner, there is no evidence that as used in Applicant’s mark AMERICAN is amorphous, that it conjures up a sense of freedom or that it “engenders the impression of the red, white, and blue; of hope ... of a dream.” As the Federal Circuit has held, “[a]ttorney argument is no substitute for evidence.” *Zheng Cai, d/b/a Tai Chi Green Tea Inc. v. Diamond Hong, Inc.*, 901 F.3d 1367 , 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)); *In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006 (TTAB 2014) (finding that there was no proof to support the statements in the record by counsel). *See also In re California Pizza Kitchen*, 10 USPQ2d at 1705 (“However, applicant has not submitted any evidence whatsoever in support of the contention that the public would associate

‘CALIFORNIA’ with western-style or wood-fire cooking. In the absence of any evidence of a non-geographical meaning of ‘CALIFORNIA’, we conclude that the primary (and on this record the only) significance of ‘CALIFORNIA’ is its geographical significance.”) and *In re JT Tobacconists*, 59 USPQ2d at 1084 (“There is simply no support for applicant’s assertion that the primary significance of its mark [MINNESOTA CIGAR COMPANY] ‘is to suggest a level of excellence in procuring top quality cigars and cigar related products.’”).¹⁰ In fact, here, the evidence of record reveals that Applicant uses AMERICAN to denote the United States origin of its outdoor brands.

The cases upon which Applicant relies, discussed in Applicant’s Appeal Brief at 11 TTABVUE 15, are therefore inapposite. Indeed, as the Examining Attorney points out, in *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916), the term AMERICAN in the mark THE AMERICAN GIRL referred not to the geographic origin of the shoes for which the mark was used, but instead to the GIRL referenced in the mark, and was therefore found to not be a geographically descriptive term. In *In re Jim Crocket Promotions, Inc.*, 5 USPQ2d 1455 (TTAB 1987), the term AMERICAN in THE GREAT AMERICAN BASH is used in a laudatory manner, as

¹⁰ Of course, even if Applicant established that AMERICAN means freedom, or the red, white and blue or the like, as in *In re Opryland USA*, “these meanings are all so closely connected to” America “that they do not ... obviate that term’s primary geographic sense.” *In re Opryland USA*, 1 USPQ2d at 1413.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

part of the commonly-used term “Great American,” and therefore the public would not “consider that it is intended to, or that it does, primarily describe the geographical origin of applicant’s services.”¹¹ *See also* September 27, 2017 Office Action TSDR 28-42 (evidence of widespread third party use of the term GREAT AMERICAN, for example in “great American novel” and “great American smokeout”). Here, by contrast, there is no evidence that the term AMERICAN in Applicant’s mark is part of a unitary term or that it refers to anything other than the geographic location where Applicant’s goods and services originate.

5. Conclusion Regarding Geographic Descriptiveness

Other American outdoor brands or outdoor brand companies that compete with Applicant have a “legitimate interest ... in truthfully being able to use [the geographic term “American outdoor brands corporation”] to inform the public of the origin of their similar products” and services. *In re Cambridge Digital Sys.*, 1 USPQ2d 1659, 1662 (TTAB 1986). *See also In re MCO Properties, Inc.*, 38 USPQ2d 1154, 1156 (TTAB 1995) (“The purpose of the proscription in Section 2(e)(2) of the Act against registration of primarily geographically descriptive terms is to leave place names free for all businesses operating in particular areas to inform customers where the goods

¹¹ *In re Olejar*, 2016 BL 289681 (TTAB 2016) is non-precedential. In any event, in that case the Board found the term AMERICAN in AMERICAN BARRISTER to be part of a unitary, incongruous phrase that did not describe the geographic origin of the services. Barristers are lawyers in England or Wales who perform their services only there, so “consumers will likely perceive ‘American’ to refer primarily to a personal characteristic rather than to the geographic location per se.”

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

or services originate.”). The refusal to register and requirements for disclaimers of AMERICAN OUTDOOR BRANDS CORPORATION in Applicant’s Group II applications are affirmed.

IV. Acquired Distinctiveness

Applicant argues in the alternative that the literal element of its mark is entitled to registration under Section 2(f) of the Trademark Act because it “has become distinctive.” In other words, Applicant argues, “in the minds of the public, the primary significance of [the term] is to identify the source” of Applicant’s goods and services. 15 U.S.C. § 1052(f); *Royal Crown Co. v. The Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (citation omitted). Applicant bears the burden of establishing acquired distinctiveness. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015).

“Where a mark sits on a sliding scale of descriptiveness impacts the burden a proposed registrant must bear with respect to its claim of acquired distinctiveness.” *Royal Crown*, 127 USPQ2d at 1045. Indeed, “the applicant’s burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning.” *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1424 (citing *In re Bongrain Intern. (Am.) Corp.*, 894 F.2d 1316, 13 USPQ2d 1727 (Fed. Cir. 1990)). Therefore, we “must first determine whether the proposed mark is highly descriptive rather than merely descriptive.” *Royal Crown*, 127 USPQ2d at 1045.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Here, based on the evidence of record, and as discussed above, AMERICAN OUTDOOR BRANDS CORPORATION is highly geographically descriptive, as it identifies the geographic origin of the goods and services offered by Applicant's outdoor brands. Indeed, Applicant is a United States company comprised of outdoor brands. Because the literal element of Applicant's mark is so highly geographically descriptive, Applicant's burden to show acquired distinctiveness is "concomitantly high." *In re Steelbuilding*, 75 USPQ2d at 1424.

In assessing whether Applicant has met its heavy burden of establishing acquired distinctiveness, we consider any evidence bearing on: "(1) association of the trade[mark] with a particular source by actual purchasers (typically measured by customer surveys); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark." *In re Snowizard, Inc.*, 129 USPQ2d 1001, 1005 (TTAB 2018) (quoting *Converse, Inc. v. Int'l Trade Comm'n*, 907 F.3d 1361, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018)). Trademark Rule 2.41(a), 37 C.F.R. § 2.41(a).

Applicant's evidence of acquired distinctiveness is substantively sparse. It consists of the Declaration of Elizabeth A. Sharp, its Vice President of Investor Relations, who testifies that Applicant's involved mark "has acquired distinctiveness for financial information services and for shareholder and investor relations services." May 20,

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

2019 Request for Reconsideration TSDR 62-63 (Sharp Dec. ¶ 3). More specifically,

Applicant relies on:

Ms. Sharp's testimony that Applicant's mark is "well known among the consuming and investing public" for financial information and shareholder and investor relations services, and that Applicant has used its mark since January 1, 2017 "to identify and promote the company, its corporate identity, its financial information, and its shareholder and investor relations services." *Id.* (Sharp Dec. ¶¶ 3-4, 7).

Applicant has invested "more than \$450,000 to advertise, promote, and develop" Applicant's brand and mark and associate it with Applicant, "and its corporate identity, its financial information, and its shareholder and investor relations services." *Id.* (Sharp Dec. ¶ 5).

"Between January 1, 2018 and December 31, 2018, [Applicant's] revenue exceeded \$600 million." *Id.* (Sharp Dec. ¶ 6).

Several news articles, including in the Chicago Tribune, Forbes, NPR's website, San Diego Union-Tribune, USA Today and Wall Street Journal reporting on Applicant's name change to AMERICAN OUTDOOR BRANDS CORPORATION. March 27, 2018 Office Action response TSDR 32-53.

Additional news articles about: the performance of Applicant's publicly traded stock (GV Times); Applicant's diversification strategy (Seeking Alpha); and Applicant's acquisition of laser sight and laser training company LaserLyte (MassLive and Zacks). May 20, 2019 Request for Reconsideration TSDR 12-25.

Evidence that there have been a large number of unique visitors to Applicant's website between January 2018 and April 2019. *Id.* at 27-56.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

The evidence is not sufficient to meet Applicant's heavy burden.

Turning first to the financial information and shareholder and investor relations services identified in the '558 and '588 Applications, as the Examining Attorney points out, the articles about Applicant's name change are news articles from 2017. They reported on Applicant's name change very shortly after it occurred. Therefore, they obviously do not indicate that the AMERICAN OUTDOOR BRANDS CORPORATION name, just recently adopted, had acquired distinctiveness when the articles were written. Additionally, because the articles are static, they are not evidence of the term's acquisition of distinctiveness since that time.

The more recent 2019 articles about Applicant's stock performance, diversification and a specific acquisition reveal that Applicant has been active since 2017, including in investing and expanding, but they do not show that the term in question has become distinctive for Applicant's financial information and shareholder and investor relations services. In fact, none of the articles provide any indication that Applicant itself even provides financial information as a service, or that it provides shareholder or investor relations as a service, much less that consumers recognize AMERICAN OUTDOOR BRANDS CORPORATION as identifying these types of services. Ms. Sharp's testimony sheds no light on which specific financial information or shareholder and investor relations services Applicant provides, to whom they are provided, or, more to the point, whether or the extent to which consumers recognize the literal component of Applicant's mark as identifying the source of those services.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Similarly, while Applicant's sales and advertising figures are significant, they are not tied in any way to the identified financial information and shareholder and investor relations services. To the contrary, there is no indication in the record that any of the claimed revenue came from financial information or shareholder and investor relations services, or that Applicant has ever advertised those services. Rather, the record merely indicates that Applicant sells outdoor products and services, offered by its various outdoor brands. Applicant's failure to specify the portions of its revenue derived from, or advertising related to, financial information and shareholder and investor relations services specifically renders Applicant's revenue and advertising evidence impotent to establish acquired distinctiveness for these services.¹²


The evidence that Applicant's website draws many visitors is unhelpful for the same reason – there is no indication whether Applicant's website even offers or promotes its financial information and shareholder and investor relations services, much less evidence that consumers associate the literal element of Applicant's mark with these services.¹³ In fact, there is no indication which specific pages were visited,

¹² Applicant's limited evidence and cursory explanation of its advertising expenses fails to comply with Trademark Rule 2.41(a)(3) (evidence of acquired distinctiveness should show duration, extent, and nature of the trademark use), including because Applicant did not identify the "types of media" in which Applicant advertised, or attach "typical advertisements."

¹³ The record establishes that Applicant is a holding company, which owns a number of brands, and that many of Applicant's goods and services are sold under those various brands,

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

whether financial information or shareholder and investor relations services (or for that matter any outdoor-focused products or services) were displayed on those pages or even whether or how the pages displayed AMERICAN OUTDOOR BRANDS CORPORATION, much less whether visitors associate the literal portion of Applicant's mark with the source of Applicant's identified outdoor goods and services.¹⁴

which are completely different than AMERICAN OUTDOOR BRANDS CORPORATION or . For example, the Chicago Tribune article about Applicant's name change states that the "change only affects the holding company, not the brand name of its guns," which will remain SMITH & WESSON. March 27, 2018 Office Action response TSDR 38; *see also id.* at 47-48 (Wall Street Journal article stating "Next month, the nation's largest gun maker will ask shareholders to approve changing the name of its holding company to American Outdoor Brands Corp., though it will continue to use Smith & Wesson for its best-selling handguns.") and 57 (Head Down News article stating "The S&W name will remain on all of their guns, so it's not like they're changing that."). Applicant introduced a Seeking Alpha article focusing on Applicant, "the owner of the iconic brand Smith & Wesson **and newer noted brands such as Crimson Trace, Thompson Center, and Bubba Blade.**" May 20, 2019 Request for Reconsideration TSDR 17 (emphasis added). Applicant also introduced a MassLive article about Applicant's acquisition of LaserLyte, which quotes the president of the "**Electro-Optics Division of American Outdoor Brands and Crimson Trace Corp.**" as saying "We are excited to **add the LaserLyte brand and product lines to our existing lineup of Crimson Trace laser sights, tactical lights, and optics.**" *Id.* at 21-22 (emphasis added). Finally, in its Appeal Brief, Applicant states that it "sought a new name and identity that invoked both the spirit of its historical roots and its adventure-seeking consumers, and that was **autonomous from each individual brand.**" 11 TTABVUE 12 (emphasis added).

¹⁴ Applicant claims in its Appeal Brief, without supporting evidence, that an individual registered the domain names "americanoutdoorbrands.org" and "americanoutdoorbrands.net" one day after Applicant announced its adoption of the name AMERICAN OUTDOOR BRANDS CORPORATION. The individual allegedly attempted to sell the names to Applicant, following which Applicant filed a complaint under the Uniform Domain Name Dispute Resolution Policy. "Shortly after the complaint was filed, the infringer transferred the domain names to" Applicant. 11 TTABVUE 20-21. Even if Applicant supported this allegation with evidence, it would not weigh in favor of finding acquired distinctiveness. As Applicant indicates, the individual registered the names one day after

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Turning next to the remaining Group II applications for Applicant's outdoor-focused products and services, each of these applications is based on an intent to use the mark in commerce rather than actual use. Typically, as Applicant itself points out, "an intent-to-use applicant cannot rely on acquired distinctiveness as a basis for registration because acquired distinctiveness presumes that the public has had an opportunity to encounter the mark on products or services sold in interstate commerce." 11 TTABVue 17 (Applicant's Appeal Brief at 16); *see also In re Olin Corp.*, 124 USPQ2d 1327, 1333 (TTAB 2017) ("A claim of distinctiveness under Section 2(f) normally is not raised in a Section 1(b) application before the applicant files an amendment to allege use or a statement of use because a claim of acquired distinctiveness, by definition, requires prior use.").

Applicant relies, however, on what it calls an "exception" which allows an intent to use applicant to establish a prima facie case of acquired distinctiveness "where it can show that [the] same mark acquired distinctiveness for sufficiently similar or related goods, and that this acquired distinctiveness will transfer to the goods

Applicant announced it was adopting the literal portion of its involved mark. Obviously, the name AMERICAN OUTDOOR BRANDS CORPORATION did not acquire distinctiveness in a single day, and of course there is no evidence so indicating. Rather, the most generous view of the alleged infringer's registration of the domain names is that the infringer anticipated that the names could become valuable, or that they were already valuable based on anticipated public recognition in the future. But that does not establish acquired distinctiveness at the time the names were registered, or even at any point in the future, much less for the specific goods and services identified in the involved applications. Even if it did, the view of a single individual about the value of the name would not be persuasive.

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

specified in the application when the mark is used in connection with them.” *In re Olin*, 124 USPQ2d at 1333 (citing, among others, *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)).

This is a difficult showing to make. In fact, “by the very nature of the inquiry, Section 1(b) applicants face a **heavy burden** in establishing that their mark will acquire distinctiveness when use commences. Accordingly, the required showing for acquired distinctiveness to ‘transfer’ to new products is a **rigorous** one.” *Id.* at 1335 (emphasis added). Thus, assuming arguendo that Applicant had established acquired distinctiveness for its financial information and shareholder and investor relations services, which it did not, it would also have to make a “rigorous” showing that the financial information and shareholder and investor relations services are “sufficiently similar or related” to the goods and services in the remaining intent to use applications. *In re Olin*, 124 USPQ2d at 1334; *In re Rogers*, 53 USPQ2d 1741, 1744 (TTAB 1999) (“applicant must establish, **through submission of relevant evidence rather than mere conjecture**, a sufficient relationship between the goods or services in connection with which the mark has acquired distinctiveness and the goods or services recited in the intent-to-use application to warrant the conclusion that the previously created distinctiveness will transfer to the goods or services in the application upon use”) (emphasis added).

Here, there is no evidence whatsoever that financial information or shareholder and investor relations services are related in any way to the outdoor-focused products

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

and services identified in the involved applications. We perceive no relationship between Applicant's various outdoor hunting, camping, shooting, broadcasting, association and security products and services on the one hand and financial information or shareholder and investor relations on the other. *See generally Bausch & Lomb Inc. v. Leupold & Stevens Inc.*, 6 USPQ2d 1475, 1478 (TTAB 1988) ("Applicant's almost total reliance on the distinctiveness which its gold ring device has achieved vis-à-vis rifle scopes and handgun scopes is simply not sufficient by itself to establish that the same gold ring device has become distinctive vis-à-vis binoculars and spotting scopes."). Therefore, Applicant has not established that any acquired distinctiveness of the literal portion of its involved mark for any goods or services will transfer to Applicant's new outdoor-focused goods and services which are the subject of its intent to use applications.

In short, Applicant has not met its heavy burden of establishing acquired distinctiveness.

V. Conclusion

The term AMERICAN OUTDOOR BRANDS CORPORATION is primarily geographically descriptive of Applicant as the provider of Applicant's goods and services, and the goods and services themselves. Applicant has not established its alternative claim that the term has acquired distinctiveness. Accordingly, registration of the standard character mark AMERICAN OUTDOOR BRANDS CORPORATION in the '558 Application is refused, and registration of the remaining

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

Group II applications also is refused, unless Applicant provides a disclaimer of the literal portion of its mark in those applications.

Decision: The refusal to register application Serial No. 8722558 is affirmed. The refusals to register application Serial Nos. 87228588, 87305135, 87305137, 87305149, 87305160, 87305164, 87305165, 87305166, 87305167, 87305169 and 87305170 absent a disclaimer of the literal portion Applicant's mark are also affirmed. However, if Applicant submits a disclaimer of "AMERICAN OUTDOOR BRANDS CORPORATION" to the Board within thirty days, the requirements for disclaimers will have been met and those 11 applications will proceed. Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1218 (2019). The disclaimers should read as follows: "No claim is made to the exclusive right to use AMERICAN OUTDOOR BRANDS CORPORATION apart from the mark as shown."

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

APPENDIX

<u>Serial No.</u>	<u>Goods</u>	<u>Serial No.</u>	<u>Goods</u>
87228558	Providing financial information; shareholder and investor relations and shareholder services, namely, providing corporate financial analysis, providing investors with financial information in International Class 36	87228588	Providing financial information; shareholder and investor relations and shareholder services, namely, providing corporate financial analysis, providing investors with financial information in International Class 36
87305135	Protective coatings in the nature of finishes for firearms and firearm accessories; firearm gunstock refinishing kits comprising coatings in the nature of stains and finishes, sealer coatings, finish remover, sand paper, filler, and polishing preparations in International Class 2	87305137	Cleaning and polishing preparations for firearms and firearm accessories; firearm gunstock sanding kits comprising sandpaper, abrasive cloths in the nature of sanding cloths, and sanding blocks in International Class 3
87305149	Bracelets made of paracord and/or nylon material; nylon bracelets; metal key chains; metal key rings in International Class 14	87305160	Decorative cloth patches in International Class 26
87305164	Custom gunsmith services, namely, the custom modification and repair of firearms and muzzleloaders; Installation of security systems and physical access control devices in International Class 37	87305165	Broadcasting of live video programming over the internet; streaming of live video material on the internet in International Class 38
87305166	Custom gunsmith services, namely, custom manufacture of guns for others; custom	87305167	Entertainment in the nature of an ongoing news show featuring news and

Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

	gunsmith services, namely, the custom manufacture of firearms and muzzleloaders; custom injection molding of plastic services for all major industries, including medical, general industrial, aerospace, communications and automotive; custom injection molding of plastic services for firearm frames and receivers in International Class 40		information about firearms and shooting sports broadcast over television and internet; entertainment in the nature of an ongoing news show featuring news and information about firearms and shooting sports conferences and exhibitions broadcast over television and internet; entertainment in the nature of an ongoing news show featuring interviews with professional shooters, other members of the shooting sports community, members of the firearms industry, and members of the media broadcast over television and internet; education services, namely, instruction in use of firearms, non-lethal weapons, breath-testing equipment, night surveillance equipment, and gun safety and defensive firearms training for security guard personnel, and firearms instructors; Educational services, namely, providing courses of instruction in recreational shooting, tactical and defensive firearms training for civilians and security professionals in International Class 41
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Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160
87305164, 87305165, 87305166, 87305167, 87305169 and 87305170

87305169	<p>Developing and implementing customized physical security plans for improving security and preventing criminal activity for businesses and governmental agencies in International Class 45</p> <p>and</p> <p>Association services, namely, promoting the interests of weaponry manufacturers and retailers through the dissemination of information concerning weaponry to the trade and to the public in International Class 35</p>	87305170	<p>Security services, namely, alarm monitoring in International Class 45</p>
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