

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.:

87305138, 87305140, 87305141, 87305142, 87305143, 87305144
87305145, 87305146, 87305147, 87305151, 87305154, 87305155
87305156, 87305157, 87305158, 87305159, 87305162, 87305163


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 18 previously-consolidated applications identified above (the “Group I Cases”), all of which seek to register the design form of the mark and identify hunting, fishing,

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climbing, firearms and camping-related products and services; a separate decision addresses the remaining 12 applications, which have also already been consolidated (the “Group II Cases”).¹

Because the examining attorneys found in all of the Group I 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), they refused registration absent a disclaimer of that literal portion in its entirety.² The examining attorneys also found that Applicant failed to establish its alternative claim that AMERICAN OUTDOOR BRANDS CORPORATION has acquired distinctiveness. After the refusals became final, Applicant appealed and filed requests for reconsideration that were denied. 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. 5, 6, 14 and 15 TTABVUE.³ Applicant and the Examining Attorney filed briefs.

¹ The 12 Group II Cases are application Serial Nos. 87228558, 87228588, 87305135, 87305137, 87305149, 87305160, 87305164, 87305165, 87305166, 87305167, 87305169 and 87305170.

² 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.

³ Unless otherwise indicated, citations are to the record in parent application Serial No. 87305138 (the “138 Application”). In citations to TTABVUE, the Board’s online docketing system, the number preceding “TTABVUE” corresponds to the docket entry number(s), and

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I. The Applications

Applicant filed all 18 of the Group I applications on January 18, 2017, based on an alleged bona fide intent to use the mark in commerce for the goods and services identified in each application. In each 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 describes the mark as follows: “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 6-7. Smith & Wesson “has been a brand name synonymous with firearms” since 1852. *Id.* at 6.

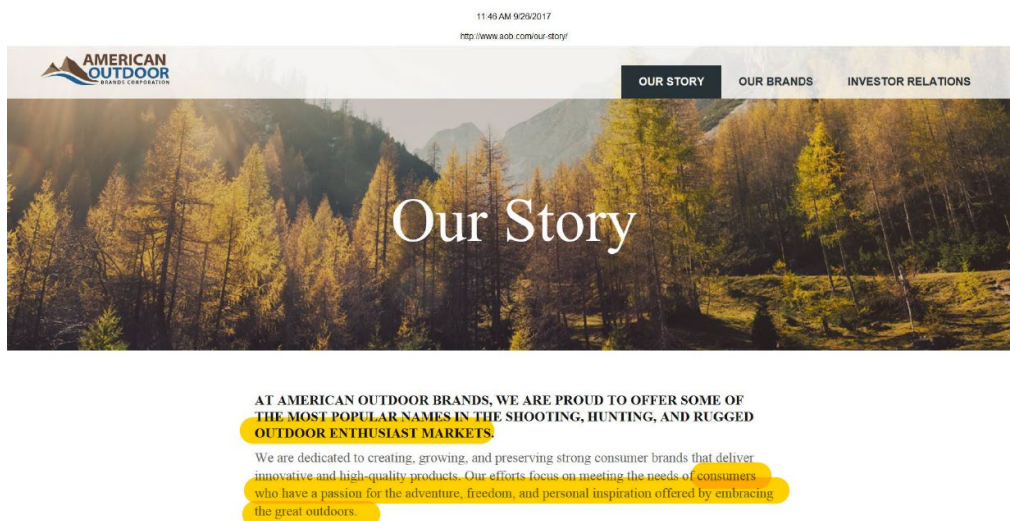
any number(s) following “TTABVUE” refer to the page number(s) of the docket entry where the cited materials appear. Citations to the TSDR database are to the downloadable .pdf version of the documents.

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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 7. Applicant claims that “[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 6-7.

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 7. 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”:

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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 Request for Reconsideration TSDR 47. A Wall Street Journal article quotes Applicant's spokeswoman as saying "We believe the new name better reflects our many brands and products and our growth strategy." *Id.* at 43.

III. Disclaimer Requirement

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.

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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).

The Examining Attorney argues that Applicant must disclaim the literal portion of its mark in each Group I application because it 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). 18 TTABVUE 12-20 (Examining Attorney's Appeal Brief at 11-19).

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." 16 TTABVUE 13 (Applicant's Appeal Brief at 9). 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 14. 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 Shenandoah Valley, or Central Park in New York City. It means nowhere in particular." *Id.* at 15.

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

The Examining Attorney argues that AMERICAN OUTDOOR BRANDS CORPORATION is primarily geographically descriptive because it consists of a geographically descriptive term combined with merely descriptive terms. In fact, generally, adding a descriptive or generic term (as the Examining Attorney alleges OUTDOOR BRANDS CORPORATION to be) to a geographic one (AMERICAN) 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 primary geographic significance of a term (like NORMANDIE) is not overcome by the addition of a generic term (like CAMEMBERT)"); *In re JT Tobacconists*, 59

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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, 10, 15 (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

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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”). 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 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 36 (emphasis added); *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

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“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 its 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”);⁴ *In re Opryland 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

⁴ 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.

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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, AMERICAN is primarily geographically descriptive.

When we consider the 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 this portion of Applicant's mark is merely descriptive. *In re Carlson*, 91 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 'OUTDOOR' and 'BRANDS CORPORATION,' terms that, unlike the mark as a whole, directly convey information or describe a purpose of [Applicant's] products or services." 16 TTABVue 13.

Despite agreeing to disclaim the term OUTDOOR, Applicant nevertheless simultaneously argues that AMERICAN OUTDOOR is "unitary," and suggestive

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rather than merely descriptive⁵ as used in the literal portion of its mark. *Id.* We disagree. This argument is inconsistent with Applicant's agreement to disclaim OUTDOOR by itself. *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399 (Fed. Cir. 2006) ("If a mark is unitary, meaning that it has no 'unregistrable components' and is an 'inseparable whole,' it is exempted from the disclaimer requirement because 'it does not fit within the language of 15 U.S.C. § 1056(a).'; *In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983) ("when the registrable and unregistrable elements of a composite mark are so integrated or merged together that they cannot be regarded as separate units, so that it is obvious that no claim other than of the composite is involved, no disclaimer should be required"); TMEP § 1213.05 ("If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required.").

More importantly, AMERICAN OUTDOOR is not unitary in Applicant's proposed mark. In fact, 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

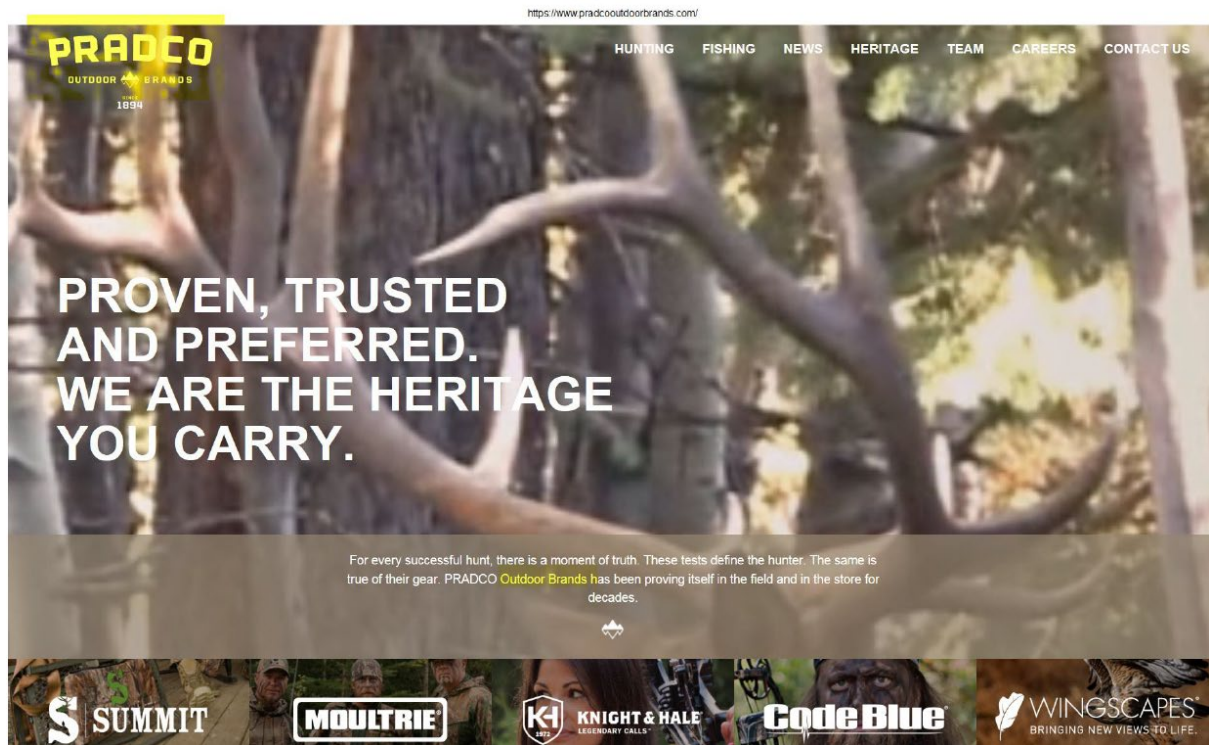
⁵ A mark is deemed to be merely descriptive, within the meaning of Section 2(e)(1), if it immediately conveys knowledge of a quality, feature, function, characteristic or purpose of the goods for which it is used. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007) (quoting *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.

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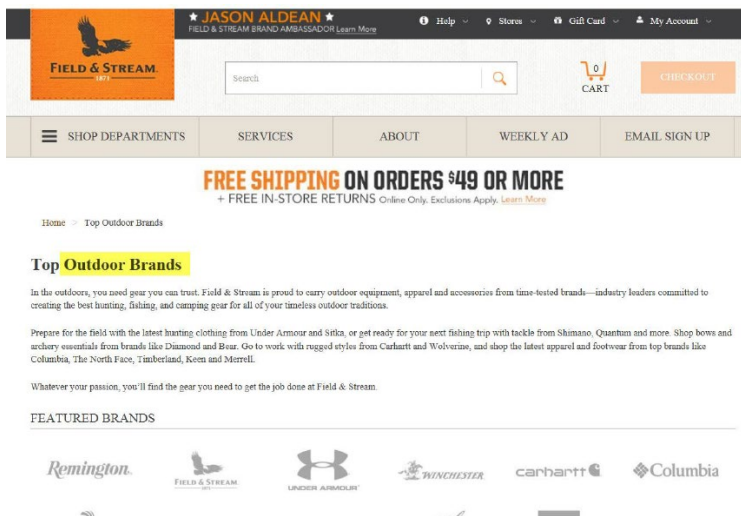
elements.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991). That is not the case here.

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 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:

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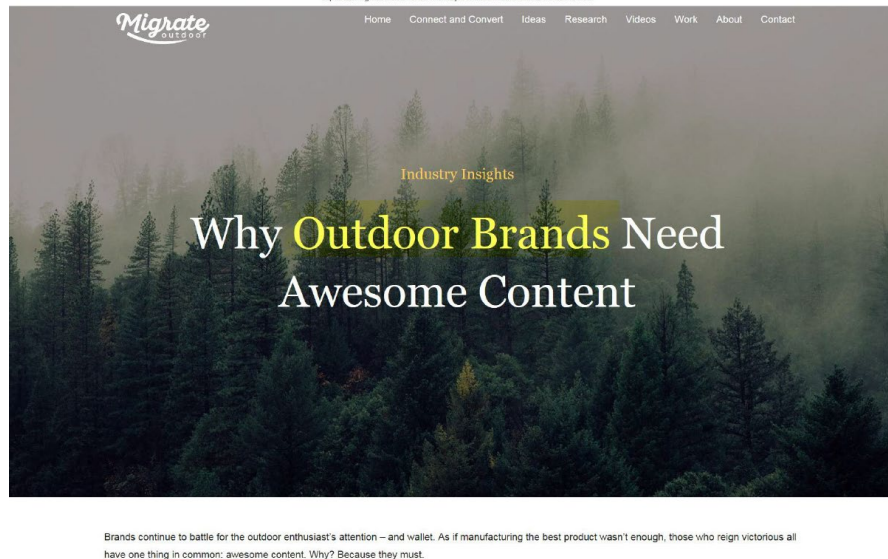


Id. at 52 (printout from “pradcooutdoorbrands.com”). A section of Field & Stream’s website is devoted to the “Top Outdoor Brands”:



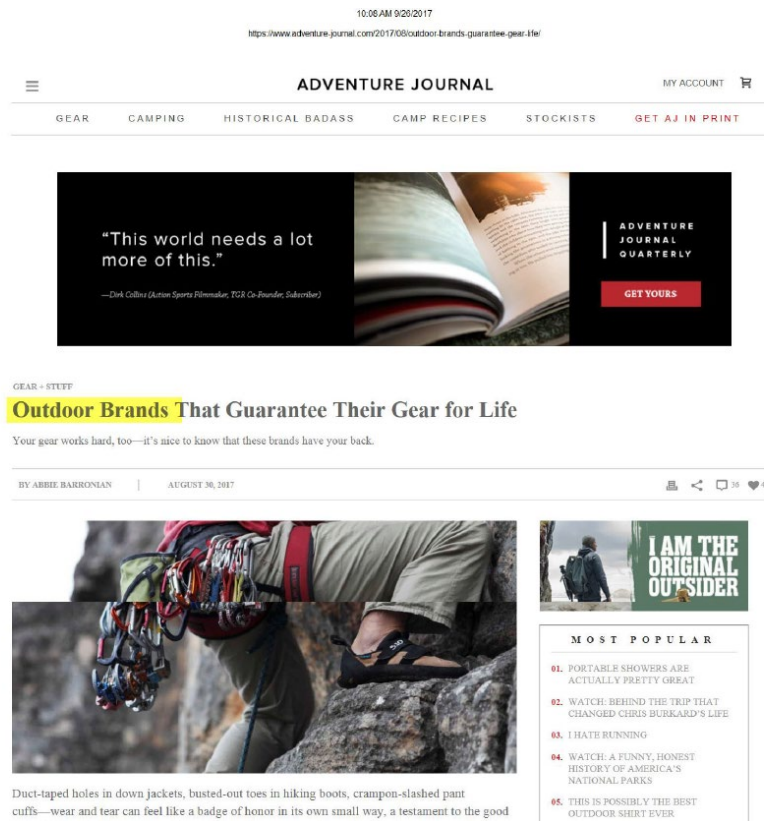
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Id. at 50 (printout from “fieldandstreamshop.com”). The Industry Insights section of Migrate Outdoor includes an article entitled “Why **Outdoor Brands** Need Awesome Content”:



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:

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Id. at 54-63 (printout from “adventure-journal.com”). Finally, news articles use the term “outdoor brand(s)” to refer to entities which offer 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

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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 68-77 (emphasis added). Thus, to the extent that any part of the literal portion of the proposed mark is unitary, it is OUTDOOR BRANDS rather than AMERICAN

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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, and disclaimers of AMERICAN and OUTDOOR would still be required. As we found above, AMERICAN is primarily geographically descriptive. As Applicant admits, OUTDOOR directly conveys information about and describes a purpose of Applicant’s identified goods and services, which are outdoor-focused. 16 TTABVUE 13. And 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. And even if AMERICAN is interpreted as modifying OUTDOOR, such that it conveys that 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.⁶

⁶ 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).

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Turning back to the literal portion of the proposed mark as a whole, as explained above it is settled that 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 is also 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 CORPORATION which 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

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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.⁷ *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 (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 which provide outdoor products and services.

⁷ This is true whether the outdoor brands operate independently or under a parent corporation which owns many different outdoor brands, such as Applicant.

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The literal element of Applicant's mark describes not only the provider of Applicant's identified goods and services, but also those goods and services themselves, because they are all outdoor-focused goods and services. Specifically, the identifications of goods and services in the 18 involved applications all fall into one or more of four general categories:

<u>CAMPING</u>	<u>CLIMBING</u>	<u>HUNTING and FISHING</u>	<u>FIREARMS and SHOOTING</u>
Serial Nos.:	Serial No.:	Serial Nos.:	Serial Nos.:
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The Examining Attorney has established that goods 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. For example, outdoor gear may include climbing gear, as

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revealed by Gear Patrol's report on "The 25 Best Outdoor Stores in America," which lists Redpoint Climber's Supply and Pagan Mountaineering, both of which offer specific goods identified in the involved applications for climbing products:

<https://gearpatrol.com/2016/06/20/best-outdoor-stores-america/> 11/14/2017 06:10:30 PM

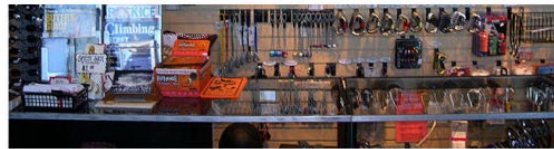


Photo: Robert Speik

Terrebonne, OR: Located roughly seven minutes by car from Smith Rock, Redpoint not only has every piece of climbing gear you could possibly need, but it also offers eight beers on tap, and coffee, to boot. It's the perfect gathering place for a post-climb beer and a rehash of the day's adventures.

8222 US-97 #101 | (541) 923-6207 | redpointclimbing.com

<https://gearpatrol.com/2016/06/20/best-outdoor-stores-america/> 11/14/2017 06:10:30 PM



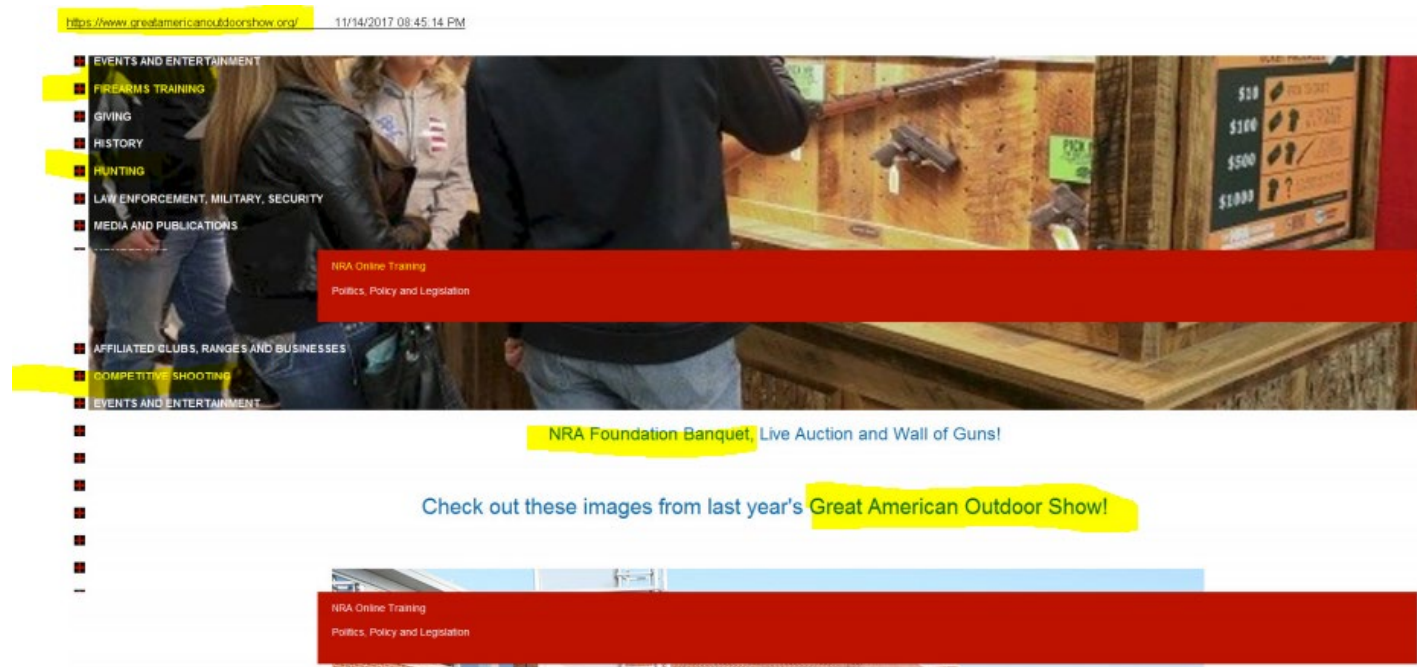
Moab, UT: Pagan Mountaineering carries gear specifically tailored to the harsh desert climate that surrounds Moab — including gear for climbing the region's salient sandstone towers. For rock climbers passing through Moab, Pagan is a must stop.

59 S Main St #2 | (435) 259-1117 | paganclimber.com

November 14, 2017 Office Action in '144 Application TSDR 21-22, 25 (printout from "gearpatrol.com"). The Great American Outdoor Show is a National Rifle Association (NRA) event which covers firearms, hunting, shooting and other outdoor goods and services. It reveals the relationship between firearms and related products and

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services, identified in some of the involved applications, and the outdoors more generally:



Id. at 33-45. Duckworth is described in an article about “outdoor brands” as offering clothing in-part identical to clothing identified the ‘159 Application (t-shirts):

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Photo: Jakob Schaller

Duckworth began when Robert "Bernie" Bernthal met fourth-generation sheep rancher John Helle while skiing at Montana's Maverick Mountain. Helle owns a 25,000-acre ranch with 12,500 head of fine Rambouillet merino sheep, and Bernthal has a background in branding and marketing. They hatched a business plan by the third lift ride and soon partnered with textile guru Graham Steward and designer Outi Pulkkinen to create a line of high-end wool apparel that includes everything from T-shirts to long underwear to puffy jackets. The company takes a lot of pride in its local product. I can attest to the superior comfort as well as durability of pieces like the men's *Maverick Crew*.

Pictured: Robert Bernthal and Outi Pulkkinen.

September 27, 2017 Office Action TSDR 44, 46 (printout from "outsideonline.com").

Similarly, Gear Patrol's report reveals that some sources of outdoor products and services offer their "own brand of apparel":

Half Moon Outfitters



Charleston, SC: In addition to brands like The North Face and Black Diamond, Half Moon also carries its own brand of apparel and gear, including stand-up paddle boards. It's located right in the heart of Charleston and is an easy stop when wandering around town.

280 King St ☎ (843) 853-0990 | halfmoonoutfitters.com

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November 14, 2017 Office Action in ‘144 Application TSDR 22.

In short, because Applicant is an outdoor brands company from the United States which offers outdoor products and services through and under its various outdoor brands, AMERICAN OUTDOOR BRANDS CORPORATION is merely 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 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”).

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Here, the literal element of Applicant's mark would be viewed 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 these hunting, fishing, camping, shooting and climbing products and services are provided by such a corporation. *DuoProSS Meditech Corp. v. Inviro Medical Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) ("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/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 "portfolio of strong American brands;" and Applicant files reports with the United States Securities and Exchange Commission, 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 88; March 27, 2018 Request for Reconsideration TSDR 23-25. *In re JT Tobacconists*, 59 USPQ2d at 1084 (finding

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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). This element of the test is therefore also satisfied.

3. The Source of the Goods 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 here. September 27, 2017 Office Action TSDR 88; March 27, 2018 Request for Reconsideration TSDR 23-25. 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 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

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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 AMERICAN is geographic, the adjective form of AMERICA, a place generally known to the American public”).

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

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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

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top quality cigars and cigar related products.”).⁸ In fact, 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 16 TTABVUE 14-15, 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 geographical term. In *In re Jim Crockett Promotions, Inc.*, 5 USPQ2d 1455 (TTAB 1987), the term AMERICAN in THE GREAT AMERICAN BASH is used in a laudatory manner, as 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.”⁹ See also September 27, 2017 Office Action TSDR 19-33 (evidence of widespread third party use of the term GREAT AMERICAN, for example in “great

⁸ Of course, even if AMERICAN was shown to mean 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.

⁹ *In re Olejar*, 2016 BL 289681 (TTAB 2016) is non-precedential. In any event, in that case the term AMERICAN in AMERICAN BARRISTER was found 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.”

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American novel” and “great American smokeout”). Here, by contrast, there is no evidence that the term AMERICAN in Applicant’s mark 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 or services originate.”). The requirement for a disclaimer of AMERICAN OUTDOOR BRANDS CORPORATION in Applicant’s Group I applications is 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

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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.

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

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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)).

Applicant’s evidence of acquired distinctiveness is 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.**” March 27, 2018 Request for Reconsideration TSDR 94 (Sharp Dec. ¶ 3) (emphasis added). This testimony is not probative, because “financial information services” and “shareholder and investor relations services” are not at issue here. In fact, all 18 of the Group I applications identify traditional outdoor products and services; none identify financial information or shareholder and investor relations services. Applicant has not introduced any evidence that AMERICAN OUTDOOR BRANDS CORPORATION has acquired distinctiveness for the outdoor goods and services specifically identified in the involved applications.

Nevertheless, Applicant relies on the following evidence in support of its claim of acquired distinctiveness:

Ms. Sharp’s testimony that Applicant’s mark is “well known among the consuming and investing public” for financial information and shareholder and investor

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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.* at 94-95 (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.* at 95 (Sharp Dec. ¶ 5).

“Between January 1, 2017 and January 31, 2018, [Applicant’s] revenue exceeded \$400 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. *Id.* at 27-55.

The evidence is not persuasive.

All of the involved applications are 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.” 16 TTABVue 16 (Applicant’s Appeal Brief at 12); *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

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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 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). More specifically, Applicant must establish that the financial information and shareholder and investor relations services for which the literal portion of Applicant’s mark has allegedly acquired distinctiveness are “sufficiently similar or related” to the goods and services in the involved 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

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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). In its attempt to meet its high burden,¹⁰ Applicant may seek to rely on: prior registrations for the same mark; five years of substantially exclusive and continuous use of its mark in commerce; or other evidence “showing duration, extent, and nature of the use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements)” Trademark Rule 2.41(a), 37 C.F.R. § 2.41(a).

Here, while Applicant owns Registration No. 5487449 for its mountain and stream design alone (, as the Examining Attorney points out, “this would not be a suitable basis for the applicant’s Section 2(f) assertion since the wording of the mark is at issue” and the cited registration does not include the same wording (or any wording at all). 18 TTABVue 20-21; *see generally In re Binion*, 93 USPQ2d 1531, 1539 (TTAB 2009) (failure to show that BINION and BINION’S are the “same mark” as previously-registered marks JACK BINION and JACK BINION’S renders those registrations incompetent to establish the transfer of acquired distinctiveness).

Further, given the highly geographically descriptive nature of the wording in question, and the “rigorous” showing Applicant must make to show that any alleged

¹⁰ Applicant’s burden is high both because it is seeking to transfer alleged acquired distinctiveness, and because the literal portion of its mark is so highly descriptive.

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acquired distinctiveness transfers to the new goods and services, five years of substantially exclusive use would not be enough to meet Applicant's high burden. *See In re Ennco Display Systems, Inc.*, 56 USPQ2d 1279, 1286 (TTAB 2000) (while the Board may consider evidence of continuous use for more than five years, "the language of the statute is permissive, and the weight to be accorded this kind of evidence depends on the facts and circumstances of the particular case"). More to the point, both the design and literal components of Applicant's mark, and the mark in its entirety, have only been in use since 2017, which is less than five years in any event. Therefore, Applicant may only rely on, and we now turn to consider, Applicant's "other evidence" of acquired distinctiveness. Trademark Rule 2.41(a)(3), 37 C.F.R. § 2.41(a)(3).

Applicant's "other evidence" of acquired distinctiveness is not persuasive. The overwhelming majority of Ms. Sharp's testimony and all of the other evidence is related to financial information and shareholder and investor relations services, which are not identified in any of the Group I applications. More importantly, there is no evidence whatsoever that financial information or shareholder and investor relations services are related in any way to the outdoor products and services identified in the involved applications. We perceive no relationship between retail services and goods related to camping, climbing, hunting, fishing and firearms 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,

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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.

Applicant’s evidence of acquired distinctiveness is not probative or persuasive for other reasons. First, while Applicant’s revenue between 2017-2018 is impressive by any measure, it is not tied in any way to the literal portion of Applicant’s mark, or to the outdoor goods and services identified in the involved applications. In fact, 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, 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 Request for Reconsideration TSDR 33; *see also id.* at 42 (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

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Smith & Wesson for its best-selling handguns.”) and 52 (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.**” 8 TTABVue 14 (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 18 (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.**” 16 TTAB 12 (emphasis added).

Second, Applicant’s advertising expenses, while not insignificant, are not explained or detailed sufficiently to be probative. It is unclear when or over what time period Applicant spent the \$450,000. There is no indication which specific goods or services were promoted via the advertising, if any. Ms. Sharp indicates only that the money was spent to associate the involved mark with Applicant, “its corporate identity, its financial information, and its and (sic) shareholder and investor relations services.” *Id.* at 95 (Sharp Dec. ¶ 5). In presenting its limited evidence regarding its

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advertising, Applicant failed to comply with Trademark Rule 2.41(a)(3), because it did not identify the “types of media” in which Applicant advertised, or attach “typical advertisements,” compounding and highlighting the problem.

Finally, Applicant makes much of an individual’s registration of the domain names “americanoutdoorbrands.org” and “americanoutdoorbrands.net” one day after Applicant announced its adoption of the name AMERICAN OUTDOOR BRANDS CORPORATION. The individual 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. 16 TTABVue 18. This does not weigh in favor of finding acquired distinctiveness. As Applicant indicates, the individual registered the names one day after 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.¹¹

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

¹¹ During prosecution, Applicant took the bold but curious position that the mere announcement of its name change resulted in the immediate acquisition of distinctiveness. March 27, 2018 Request for Reconsideration TSDR 13 (“With a single announcement, the AMERICAN OUTDOOR BRANDS CORPORATION mark saturated the collective consciousness of consumers.”).

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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.¹²

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

V. Conclusion

Because the literal portion of Applicant's mark is primarily geographically descriptive of the provider of Applicant's goods and services, and the goods and services themselves, and because Applicant has not established its alternative claim of acquired distinctiveness, registration is refused unless Applicant provides a disclaimer of the literal portion of its mark in each application.

Decision: The refusals to register absent a disclaimer of the literal portion Applicant's mark are affirmed. However, if Applicant submits a disclaimer of

¹² Applicant's evidence that there have been a large number of unique visitors to its website between January 2018 and April 2019, 8 TTABVue 24-52, is unpersuasive. There is no indication which specific pages were visited, whether any outdoor 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.

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“AMERICAN OUTDOOR BRANDS CORPORATION” to the Board within thirty days, the requirements for the disclaimer will have been met and the 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.”

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APPENDIX

<u>Serial No.</u>	<u>Goods</u>	<u>Serial No.</u>	<u>Goods</u>
87305138	solid fire starters; tinder; fuel products for stoves, namely, solid fuel tablets in International Class 4	87305140	first aid kits in International Class 5
87305141	handcuffs; carabiner clips made of metal; metal locks; metal hardware, namely, carabiner clips of metal; metal tent stakes in International Class 6	87305142	chainsaws, power-operated saws, and replacement parts therefor in International Class 7
87305143	sportsmens' folding trowels; knives, namely, tactical knives, hunting knives, fishing knives, sport knives, pocket knives, and knives for hobby use; leather sheaths for knives; hand tools for repair, maintenance, and cleaning of firearms, namely, hammers, punches, forend wrenches, torque wrenches, bore guides, brushes, and multi-function hand tools comprised of torque wrenches, bit drivers for hand tools, and holders for hand drill bits; multi-function hand tools comprised of knives and hand-operated can openers; non-electric can openers; fishing line cutters; fishing tackle pliers; fish forks; fish scalers; fish scoops; fish tape for pulling cables;	87305144	telescopic gun sights for firearms containing lasers; telescopic sights for firearms; tactical laser sights for firearms; tactical laser sights; tactical laser sights sold together as a unit with illuminators in the nature of lights for firearms; eyewear; eyeglasses, including safety glasses, shooting glasses, and sunglasses; protective eyewear; protective ear covering shields for hearing protection; optical devices for firearms, namely, gun scopes; signaling mirrors; directional compasses; flashing and steady safety lights; marine compasses; optical apparatus, namely, a non-lethal security device that uses a light source to detect, warn, repel, temporarily blind, disorient, nauseate, disable, confuse, debilitate, stun, subdue, stop, or incapacitate persons or

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	multitools, namely, multi-function hand tools comprised of pliers, screwdrivers, cutting blades, files, can openers, cap lifter, awls, and wire cutters; hatchets; hand saws; scissors; shovels; mallets being hand tools; tweezers in International Class 8		animals; portable LED safety lighting devices for personal use for safety purposes; power adapters; power supply connectors and adaptors for use with portable electronic devices; safety equipment, namely, a lifeline system for horizontal or vertical movement to which a worker is attached for protection against fall hazards, composed of carabiners and paracords; safety equipment, namely, beacon lights; signal bells; signal whistles; warning flags; weighing scales; media transfer magnets; accessories for binoculars, firearm scopes, and cameras, namely, mounts and rests; ammunition loading and reloading equipment, namely, micrometers and reloading caliper; hand-operated gunsmithing tools, namely, firearm scope levelers; electric pocket warmers in International Class 9
87305145	flashlights; lighting products, namely, portable flashlights that are rechargeable via USB; flashing strobe light apparatus; lamps for outdoor use; lanterns for lighting; LED lighting fixtures; outdoor portable lighting products, namely, headlamps; pocket search	87305146	Camping trailers in International Class 12

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	lights; portable battery-operated lights that can be placed on surfaces where other light sources are unavailable; searchlights; spot lights; non-electric pocket warmers, namely, chemically-activated heating packets for warming hands; chemically activated light sticks; folding gas stoves; portable showers in International Class 11		
87305147	Firearms and component parts thereof; BB guns; pellet guns; starter pistols; airsoft guns for training purposes; airsoft guns not for recreational use; firearm slings; firearm tactical cases; cases for firearms; range bags especially adapted to carry firearms and munitions to gun ranges; ammunition for firearms; ammunition for muzzle-loading firearms; holders, and pouches for ammunition and shooting accessories; holsters; sprays for personal defense purposes; cleaning implements for firearms, namely, brushes, rods, pull-throughs, closer cups, shell extractors, decappers, bores, chamber mops, gun vises, slotted tips, and dummy ammunition, namely, snap	87305151	flip books; printed guides for clouds and knot tying; waterproof paper; quick reference pocket guides in the fields of venomous snakes and insects, animal tracking, fire building, first aid, cooking, paracord usage, shelter building, star gazing, survival fishing, and way finding in International Class 16

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	caps and cleaning patches; protective metal coating, sold as a component part of firearms; monopods for firearms; bipods for firearms; tripods for firearms; firearm attachments, namely, mounts for use with monopods, bipods and tripods; accessories for non-telescopic firearm sights, namely, mounts and rests; ammunition loading and reloading equipment, namely, cartridge gages, tumblers, vibratory devices that clean cartridges after firing, gun powder measures and priming pins; component parts for gun reloading tumblers, namely, tumbler nuts and tumbler bowls; case cleaning media, namely, gun cleaning cloth; media separators; sifters in the nature of mesh strainers specially adapted for sorting and separating ammunition components from foreign matter; portable reloading stands for firearms; powder funnels for firearms; bullet pullers; primer tube fillers; ammunition boxes; reloading trays for firearms; firearm gunstock supplies, namely, firearm gunstock bedding kits		
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	comprising epoxy resin, hardener, dye, mixing cups, applicators, modeling clay and surgical tubing; firearm gunstock recoil pad installation kits comprising work fixtures, namely, a base for mounting securely to a table or other larger fixed surface and mounting bars; firearm gunstock inletting block for use in detecting imperfections of fit between gunstocks and firearm barrel; firearm gunstock-making hardware comprising butt plates, forend tips and grip caps; bore lapping kits comprising abrasive pastes and steel plates, for use exclusively with firearms and firearm scope ring alignment; bolt face lap tools used for squaring the bolt face of bolt-action rifles; receiver face truing tools used for squaring the face of a rifle receiver to the barrel shoulder; receiver taps used to install new firearm barrels in International Class 13		
87305154	survival kits comprising signal whistles, directional compasses, signaling mirrors, blankets for outdoor use, towels, bandanas, ponchos, bandages for dressing, gauze pads, solid fire	87305155	plastic key chains; tool and tool accessory boxes not made of metal sold empty; furniture for camping; inflatable mattresses for use when camping; inflatable chairs; non-metal tent stakes; plastic

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	<p>starters, tinder, chemically-activated light sticks, plastic tape for use in the field of outdoor camping and survival, lanyards for safety purposes for fall protection, carabiners of metal, food rationing bars in the nature of ready to eat, food derived food bars in International Class 9</p> <p>and</p> <p>all-purpose carrying bags for sporting and outdoor purposes, namely, carrying bags and gear bags; dry bags; duffle bags; day backpacks; messenger bags; backpacks; attaché cases; shoulder haul bags; equipment bags, namely, all purpose sport bags; travel bags; sling bags; clutch bags in International Class 10</p>		cases in International Class 20
87305156	camping grills; portable pots and pans for camping; bottle openers; mugs; cups; water bottles sold empty; collapsible bowls; cutting boards; cutlery; household utensils, namely, spatulas; camping grills; insulating flasks in International Class 21	87305157	bags for securing valuables; bags for securing paracords; tents for mountaineering or camping; hammocks; clothesline; rubber tie downs; elastic cords; unfitted tarps in International Class 22
87305158	sleeping bags for camping; tablecloths, not of paper;	87305159	clothing, namely, t-shirts and sweatshirts; footwear; belts;

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	towels; mosquito nets in International Class 24		caps being headwear; hats; visors; ponchos; rain suits in International Class 25
87305162	airsoft guns for recreational purposes; targets and target stands; fishing equipment, namely, fishing lures, fishing leaders, fishing hooks, fishing spinners, fishing plugs, fishing flies, fishing buoys, fishing poles, fishing gaffs, fishing sinkers, fishing creels, fishing tackle, fishing reels, fishing rods, fishing lines, fishing floats, fishing weights, fishing lure boxes, fishing tackle containers, fishing safety harness, fishing rod holders, fishing rod handles, fishing rod blanks, fishing fly boxes, fly fishing stripper baskets, hand-held fishing nets, fishing bait holder, artificial fishing bait, gut for fishing, spears for use in fishing, fish hooks, fish hook removers, fishing clamps for use in holding fish to remove fish hooks, fish bite alarm and strike indicator, sportsman's fishing bags; hunting blinds; hunting stands; decoys for hunting or fishing; electronic animal calls for recreation and hunting activities; hunting equipment, namely, scent dispenser for	87305163	on-line wholesale and retail store services featuring a complete line of key chains with a purpose; on-line retail store services featuring survival products, namely, life rafts, personal flotation devices, flashlights, strobe lights, first aid kits, whistles, blankets, signal flags, reflective tape, emergency flares and warning lights, fire starting tools, stoves, dehydrated meals ready to eat, LED lighting, navigation devices, paracords, protective gear, hand-held multi-tools, marine lights, survival kits, signal mirrors, saws, shovels, cutting-tools, knives, knife sharpeners, protective gear, tents, and camping equipment; Customer loyalty services in the nature of conducting incentive award programs to promote customer loyalty for commercial, promotional and/or advertising purposes in International Class 35

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	attracting or repelling animals in International Class 28		
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