

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: March 18, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re DeSean Ramsey DBA BearArms Bracelets*  
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Serial No. 87708731  
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Jack A. Wheat of McBrayer PLLC,  
for DeSean Ramsey DBA BearArms Bracelets.

Jeffrey DeFord, Trademark Examining Attorney, Law Office 115,  
Daniel S. Brody, Managing Attorney.

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Before Cataldo, Shaw and Greenbaum,  
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

DeSean Ramsey DBA BearArms Bracelets (“Applicant”) seeks registration on the Principal Register of the proposed mark BULLET BRACELET (in standard characters, BRACELET disclaimed) for

Bracelets; Bracelets made of paracord; Jewelry, in  
International Class 14.<sup>1</sup>

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<sup>1</sup> Application Serial No. 87708731 was filed on December 5, 2017, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as January 29, 2015.

The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), as merely descriptive of the identified goods.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

### I. Applicable Law

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act prohibits registration of a mark on the Principal Register that, when used in connection with an applicant's goods, is merely descriptive of them. 15 U.S.C. § 1052(e)(1).<sup>2</sup> "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). *See also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). By contrast, a mark is suggestive if it "requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods." *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Suggestive marks, unlike merely descriptive terms, are registrable on the Principal Register without

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<sup>2</sup> "No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it . . . (e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive ...."

proof of acquired distinctiveness. *See Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004).

Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought and the context in which the mark is used, not in the abstract or on the basis of guesswork. *In re Bayer AG*, 82 USPQ2d at 1831; *see also In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ2d 215, 218 (CCPA 1978). In other words, we evaluate whether someone who is familiar with the goods will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods. *See In re Gyulay*, 3 USPQ2d at 1010. In addition, the descriptiveness analysis concentrates on the identification of goods set forth in the application. *See In re Cordua Rests., Inc.* 823 F.3d 594, 118 USPQ2d 1632, 1636 (Fed. Cir. 2016) (quoting *Octocom Sys., Inc. v. Hous. Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

## II. Analysis

Applicant contends that the proposed mark BULLET BRACELET (with BRACELET disclaimed) is suggestive of the identified bracelets, bracelets made of paracord and jewelry because the goods are made from spent (fired) or empty pistol shell casings and paracord, rather than actual bullets. The Examining Attorney asserts that BULLET BRACELET is descriptive of the identified goods because it

immediately describes a feature or characteristic of the goods, namely, bracelets made from part of a “bullet” or a “bullet shell casing,” as those terms commonly are used and understood by the general public, and that the wording “bullet bracelet” “identifies the common name of a type of bracelet or piece of jewelry.”<sup>3</sup>

“Bullet” is defined as “a small ball or cone-shaped missile of lead, metal alloy, etc., to be shot from a firearm.”<sup>4</sup> There is no dispute that Applicant’s goods do not include bullets, as that term is strictly defined. However, the Examining Attorney submitted ample evidence from multiple sources demonstrating that the general public commonly misuses and understands the term “bullet” to describe entire ammunition cartridges and their individual components, including cases, casings or shell casings, and the head stamp portion of a shell casing. This evidence includes webpages from multiple websites showing that individuals and recognized news media sources, such as The Wall Street Journal, NBC, US News, CBS and USA Today, use the term “bullet” to refer to complete ammunition cartridges or their individual components:

- A Wall Street Journal article titled “Loughner Bought Bullets at Walmart Saturday,” posted by Dan Gibson on January 10, 2011 on the Tucson Weekly website, states:

Arizona shooting suspect Jared Lee Loughner was turned away from a Walmart store when he tried to buy ammunition, but was sold bullets at another Walmart nearby, hours before the rampage, according to people familiar with the matter.

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<sup>3</sup> Ex. Atty. Br., 10 TTABVUE 5-6. Citations to the record reference the TTABVUE docket by the entry and .pdf page number. The TSDR citations are to the downloadable .pdf format.

<sup>4</sup> March 18, 2018 Office Action, TSDR pp. 4-6.

Reader “J.M. Alvarez” commented at 3:32 PM:

Well, thank God we have law abiding and responsible stores like Walmart. They only sold him the bullets, but he also wanted to buy a bottle of wine, which they didn’t sell to him, because he had no ID to prove that he was of drinking age.<sup>5</sup>

- A January 8, 2016 post by Dan Gibson on the local news webpage of NBC affiliate, KARK.com, titled “Wal-Mart Sued over Sale of Bullets Used in Pennsylvania Murders” states:

The lawsuit, filed in Philadelphia by families of the victims, seeks compensatory and punitive damages from Wal-Mart Stores Inc. and several employees at its Easton, Pennsylvania, store, where the bullets were purchased by Robert Jourdain on July 5 at 2:56 a.m.

...

Jourdain, then 20, walked out of the store with the bullets and handed them to Todd West, then 22, who loaded them into his .38 caliber Smith & Wesson revolver, the suit says.<sup>6</sup>

- The lead for a March 26, 2018 post on USNews.com titled “Before Walmart Shooting, Dispatcher Said Man Had ‘Bullets’” states:

Recent court filings about the fatal police shooting of a black shopper in an Ohio Walmart indicate a dispatcher told officers the man was loading a weapon with “bullets” even though a 911 caller hadn’t specified ammunition.

The post continues:

The man actually was carrying an air rifle he picked up from a shelf.

The Dayton Daily News reports the dispatcher’s deposition offers the first public record of her perspective on the

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<sup>5</sup> May 16, 2019 Denial of Request for Reconsideration, TSDR pp. 55-60.

<sup>6</sup> *Id.* at 49-54.

August 2014 shooting of 22-year-old John Crawford III at the Beavercreek Walmart.

When questioned nearly two years later, the dispatcher said a 911 caller indicated a man was loading a weapon, and she assumed that meant bullets. She said she realized her assumption but didn't immediately clarify that to police.<sup>7</sup>

- A March 23, 2018 post by Christina Hager on the CBS affiliate WBZ in Boston titled "Student Found With Bullets At Elementary School" states:

When a Hull High School student got a message from another student showing three .32 caliber bullets, the school superintendent says the system worked. The student went to an adult who called police.

Hull officers found the student who sent the photo at Lillian Jacobs Elementary School, where they searched him and found the bullets.

...

As for the bullet scare, Devine says the student who spoke up did the right thing.<sup>8</sup>

- A July 10, 2015 post by Jelisa Castrodale on the USA Today website titled "A still-employed United pilot flushed ten bullets down the toilet during a flight to Germany" states:

The first vacuum toilets were installed on commercial airplanes in 1992 and, in addition to being ridiculously loud, that pneumatic vacuum sucks everything that's dropped into the bowl into the plane's 200 gallon holding tank. Apparently that even includes bullets. A United Airlines pilot is currently under investigation for doing that very thing—for flushing ten bullets down the toilet during a late June flight from Houston to Munich.

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<sup>7</sup> *Id.* at 73-78.

<sup>8</sup> October 10, 2018 Final Office Action, TSDR pp. 34-39.

According to the Aviation Herald, which first reported the incident, the as-yet-unidentified pilot discovered the bullets in his luggage somewhere over the Atlantic Ocean. He knew that he wouldn't be permitted to take the live ammunition into Germany, so he initially dumped it into the trash. ... A flight attendant discovered the bullets and gave them back to the captain... He flushed the bullets down the toilet ...

After landing in Munich, the plane was taken to "a remote parking position" and airport fire fighters had the beyond-awful task of emptying the plane's waste tanks to find the bullets. ...

United spokesperson Karen May confirmed that the pilot did not have his gun on the flight but also said that no, he shouldn't have flushed a giant handful of bullets either. She told the Associated Press:

"He did incorrectly dispose of the ammunition, but it is likely that the pilot is not going to face any criminal charges."<sup>9</sup>

The September 6, 2012 decision by the Mississippi Supreme Court in *Williams Raymond v. Walmart Stores East* (No. 2011-CA-00375) further demonstrates interchangeable usage of the terms "bullet" and "ammunition":

1. Twenty-year old Xavier Zurndell Moore pleaded guilty to manslaughter for the shooting death of his mother's live-in boyfriend, Robert Williams. The fatal bullet had been purchased from the Walmart in Indianola, Mississippi. Robert's daughter and his estate filed a wrongful-death suit against Walmart, alleging that it unlawfully had sold ammunition to the underage Moore... [In granting summary judgment to Walmart], this Court held that, even though the store had violated federal law by selling a firearm and ammunition to a minor ...

2. ...While there, Moore remembered that he needed more bullets for a handgun that he had purchased recently. ...

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<sup>9</sup> *Id.* at 40-42.

More asked Martha if she had any bullets for a .45-caliber Smith and Wesson handgun. ...

3. ... Moments later, White approached the sales counter and asked Martha if she had any bullets for a .45-caliber handgun. ... Martha entered White's date of birth into the computer, returned his driver's license to him, and sold him the bullets. ...

4. ...He then asked her how much the bullets cost, and she told him the price. Moore said that he informed Martha that he wanted to purchase bullets ... After the purchase, White handed Moore the change and the bullets...

...

6. ...Walmart terminated her employment because she had "allowed [a] straw purchase of ammunition."

...

8. ...Plaintiffs asserted that Walmart had violated [a Section of the Mississippi Code] and Title 18, Section 922 of the United States Code by selling ammunition to a minor. ...

9. ...[Walmart] asserted that "even if the bullets in question had been sold to Xavier Moore..."

...

30. ... Regardless, Moore was twenty years old—old enough to appreciate the danger of misusing ammunition. ...

...

32. We find that Moore's criminal act was not within the realm or circle of reasonable foreseeability at the time that the ammunition was purchased. Walmart's sale of the ammunition, therefore, could not have been a proximate cause of Robert's death.<sup>10</sup>

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<sup>10</sup> May 16, 2019 Denial of Request for Reconsideration, TSDR pp. 61-72.



In addition, the Wikipedia entry for “bullet” states: “Though the word ‘bullet’ is often used incorrectly in colloquial language to refer to a cartridge round, a bullet is not a cartridge but a component of one.”<sup>11</sup>

The Examining Attorney also submitted several webpages from Applicant’s website and Applicant’s webpage from the Etsy online store in which Applicant uses the word “bullet” loosely to describe the components of its identified goods in a manner consistent with the evidence outlined above:

- “US Patented Unique Military, Law Enforcement and Second Amendment Support Bracelets made with Real, Recycled Spent Bullet Casings”;
- “I found some cord I liked, got the idea to pair it with recycled, polished bullet shell casings and the bracelets were born.”; and
- “These bracelets are handmade one at a time from nylon rope or Military spec Paracord and then paired with polished, recycled bullet shell casings.”<sup>12</sup>

The record also includes multiple screenshots from the Google search engine and Etsy of results from the search “BULLET BRACELETS.” The search results from more than 35 different retail websites and online stores show bracelets and other jewelry made of paracord (and/or other materials, such as leather, nickel and brass) and “bullets,” where the term “bullets” refers not to actual bullets as defined in the dictionary, but to rifle, pistol and shotgun cartridge casings, parts of casings, head

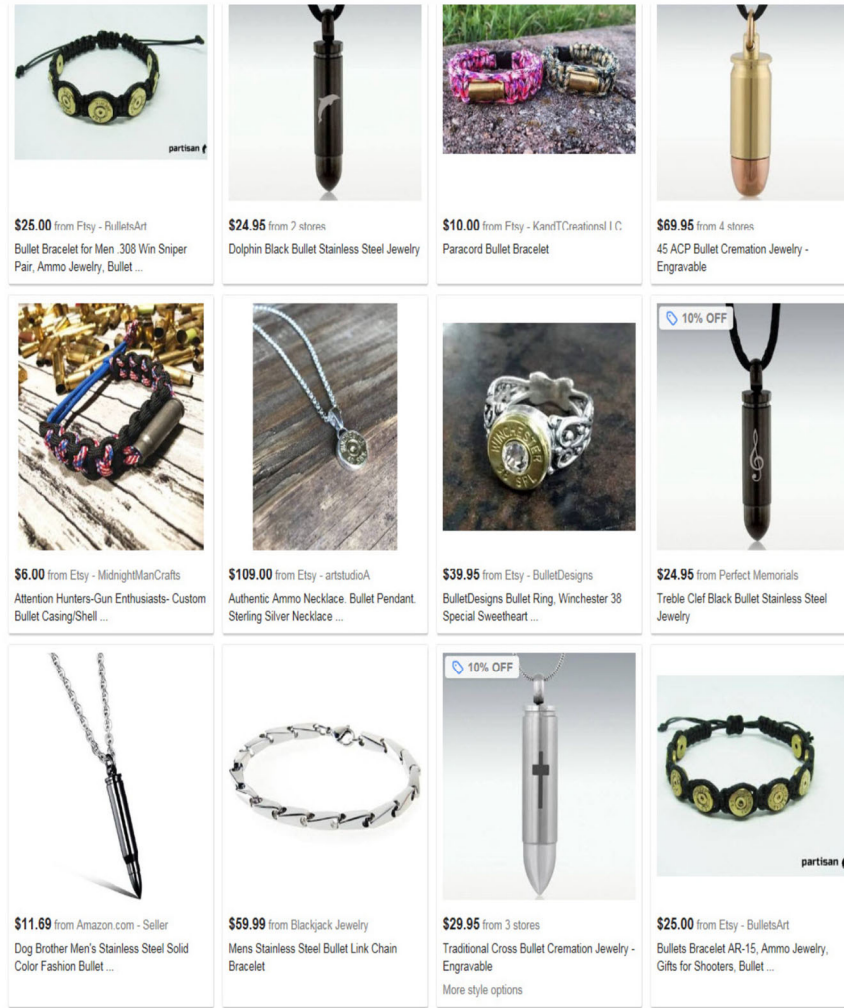
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<sup>11</sup> October 10, 2018 Final Office Action, TSDR pp. 13-21.

<sup>12</sup> May 16, 2019 Denial of Request for Reconsideration, TSDR pp. 6, 10 and 13.

stamps of casings and casings with intact projectiles.<sup>13</sup> As an illustration, we reproduce below one page of the Google search results:

<https://www.google.com/search?q=Bullet+Bracelets&source=univ&btn=shop&tbo=u&sa=X&ved=0ahUKEwjl3fGhpZwAHUjCTN8KH5YBCDBJsQsxlKw&biw=1914&bih=928#spd=11372384075050748881&spf=1557846230326> 05/14/2019 11:04:30 AM



<sup>13</sup> *Id.* at 19-48. Applicant’s objection to much of this evidence, raised for the first time in the middle of Applicant’s Reply Brief (11 TTABVUE 6-7), is untimely and will be given no further consideration as the Examining Attorney has had no opportunity to respond. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 1203.02(c) (2019) (“There is no provision in the rules for the filing by the examining attorney of a written response to the applicant’s reply brief.”). We will accord this evidence appropriate weight in our overall analysis of whether the proposed mark BULLET BRACELET is merely descriptive of the identified goods, namely, bracelets, bracelets made of paracord, and jewelry. *See* TBMP § 1208.03 and Trademark Manual of Examining Procedure (“TMEP”) (October 2018) § 710.01(b).

The same evidence also demonstrates that multiple third parties use the term “bullet bracelet” and variations (“bullet bracelets,” “bullet paracord bracelet,” “bullet ring,” and “bullet link chain bracelet”) to refer to bracelets and jewelry featuring shell casings, spent shells, casings with a projectile, or parts of casings.

In addition, the Examining Attorney submitted screenshots demonstrating third party use of “bullet bracelet” (in the singular and plural forms) to identify both a category and product name for goods that are identical or highly similar to the goods identified in the application.<sup>14</sup> In particular, the KandTCreations webpage on Etsy states: “Paracord bullet bracelets are a unique accessory for the hunter in your life.” And the Bullet Designs website describes its “Bullet Bracelets” as follows: “Our great variety of Bullet Bracelets are made from real, fired recycled bullet casings and genuine swarovski crystals! Bullets never looked so good!” It then lists the various types of “bullet casings” and bracelets offered for sale, and includes photos of the items, such as “10MM,” “12 GAUGE,” and “50 CALIBER,” and “BULLET AND CROSS CURVED CRYSTAL BRACELET,” “BULLET CHARM LEATHER WRAP BRACELET,” and “CUSTOM BULLET LEATHER BRACELET.” This marketplace evidence supports our finding that consumers (and sellers) of products that are the same as or very similar to those identified in the application commonly use the terms

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<sup>14</sup> May 16, 2019 Denial of Request for Reconsideration, TSDR pp. 36-48. The Examining Attorney submitted this evidence to substantiate his determination that the term “bullet bracelet” is highly descriptive. Ex. Atty. Br., 10 TTABVUE 6-7. As Applicant does not seek registration under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), or on the Supplemental Register, we need only determine whether BULLET BRACELET is merely descriptive of the identified goods.

“bullet” and “bullet bracelet” to identify their goods, even when the goods do not include actual “bullets,” as that term is defined in the dictionary.

Based on the foregoing, we have no doubt that consumers who see the proposed mark BULLET BRACELET used on the identified bracelets, bracelets made of paracord and jewelry, immediately would understand that the goods feature “bullets” as that term is commonly (mis)used and understood. As the Examining Attorney aptly summarizes in his brief:

This evidence reinforces that these goods are made from different parts of “bullets” and that consumers are used to seeing bracelets and jewelry comprised of shell casings, cartridge casings and/or casings with bullets described as a bullet bracelet or bullet bracelets and calling for the goods using these same terms. The impression of and expectation of the consumer is that the bracelets feature “bullets,” even though this technically is not correct. As such, consumers will immediately understand without any imagination, mental gymnastics or multi-stage reasoning process that the goods feature, include and are made in part from a “bullet.”

Here the evidence of record clearly shows that BULLET BRACELET has a plain, distinct and commonly known and descriptive meaning in relationship to bracelets, bracelets made of paracord and jewelry.<sup>15</sup>

Accordingly, the proposed mark BULLET BRACELET is merely descriptive of the identified goods and therefore ineligible for registration on the Principal Register absent a showing of acquired distinctiveness.

**Decision:** The refusal to register is affirmed.

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<sup>15</sup> Ex. Atty. Br., 10 TTABVUE 8-9.