

This Opinion is Not a
Precedent of the TTAB

Mailed: September 23, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Elliott Goldberg

Serial No. 88212315
—

Roger Bernstein of Roger J. Bernstein Law Firm
for Elliott Goldberg.

Julie M. Guttadauro, Trademark Examining Attorney, Law Office 106,
Mary I. Sparrow, Managing Attorney.

—
Before Pologeorgis, Dunn and English,
Administrative Trademark Judges.

Opinion by English, Administrative Trademark Judge:

Elliott Goldberg (“Applicant”) seeks registration on the Supplemental Register of the designation MULTI-GRIP (in standard characters) for “manually-operated resistance and stretch bands for physical therapy purposes” in International Class 10 and “exercise equipment, namely, manually operated resistance and stretch band” in International Class 28.¹

¹ Application Serial No. 88212315; filed November 30, 2018 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on an allegation of first use and first use in commerce on September 1, 2018 as to both classes of goods.

On March 21, 2019, Applicant filed a voluntary amendment amending the application to seek registration on the Supplemental Register, which was approved by the Examining Attorney.

The Examining Attorney has refused registration on the Supplemental Register of the designation MULTI-GRIP under Sections 23(c) and 45 of the Trademark Act, 15 U.S.C. §§ 1091(c) and 1127, on the ground that the designation is the generic term for Applicant's identified goods and, therefore, is incapable of serving as a source identifier. When the refusal was made final, Applicant appealed and requested reconsideration. The request for reconsideration was denied and the appeal proceeded. The appeal is fully briefed.

The issue before us is whether MULTI-GRIP is generic or merely descriptive. We find that the designation is generic for Applicant's goods and, therefore, we affirm the refusal to register on the Supplemental Register.

**I. Procedural History and Evidence Attached to July 10, 2019
Final Office Action**

As an initial matter, we address the procedural history of the involved application to make clear the evidence that is of record in this appeal.

Applicant initially sought registration of MULTI-GRIP on the Principal Register.² The Examining Attorney issued an Office action refusing registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 2(e)(1), on the ground of mere descriptiveness.³ In response, Applicant amended its application to seek registration on the Supplemental Register.⁴ Subsequently, on July 10, 2019, the Examining Attorney issued a final Office action refusing registration on the ground of

² November 30, 2018 Application.

³ March 18, 2019 Office Action.

⁴ March 21, 2019 Voluntary Amendment.

descriptiveness.⁵ Applicant appealed and requested reconsideration arguing (correctly) that a descriptive mark is entitled to registration on the Supplemental Register.⁶ The appeal was suspended⁷ and the Examining Attorney issued an Office action “supplemental to and supersed[ing]” the July 10, 2019 final Office action that: (1) refused registration on the Supplemental Register on the ground that MULTI-GRIP is generic for Applicant’s goods; and (2) maintained the “issue[s] raised in the previous July 10, 2019 Office action,” namely, “the Trademark Act Section 2(e)(1) refusal.” January 23, 2020 Office Action.

The statement that the January 23, 2020 Office action “is supplemental to and supersedes” the July 10, 2019 is ambiguous. If the January 23, 2020 Office action is a “supplement,” it adds to the July 19, 2020 final Office action but if it “supersedes” the July 10, 2019 final Office action, it replaces this document, which is set aside. Because the January 23, 2020 specifies that the 2(e)(1) refusal in the July 10, 2019 is “maintained” and because Applicant has treated some of the evidence attached to the July 10, 2019 Office action as “record evidence,”⁸ we treat the January 23, 2020 as supplementing the July 10, 2019 final Office action. Accordingly, the evidence attached to the July 10, 2019 Office action forms part of the record in this appeal.

⁵ July 10, 2019 Final Office Action.

⁶ January 9, 2020 Request for Reconsideration.

⁷ The appeal resumed on January 29, 2021 solely on the issue of whether MULTI-GRIP is a generic term for the applied-for goods. 6 TTABVUE.

References to the prosecution history are to the USPTO Trademark Status and Document Retrieval system (TSDR) by page number in the downloadable .pdf format. All other citations are to TTABVUE, the Board’s online docket system.

⁸ Appeal Brief, 7 TTABVUE 10.

II. Arguments and Evidence

A. Examining Attorney's Arguments and Evidence

The Examining Attorney argues that MULTI-GRIP is generic because it “identifies a subcategory or sub-genus of the applicant’s ‘resistance bands’ and ‘stretch bands,’ and is a key feature of the applicant’s goods.”⁹ In support of this position, the Examining Attorney submitted dictionary evidence, promotional materials for Applicant’s goods, and Internet screenshots of third-party product listings.¹⁰

1. Dictionary Definitions:

- “Multi” is defined as “many: multiple: much”;¹¹ and
- “Grip” is defined as: “a part or device for gripping” or “a part by which something is grasped *especially* : HANDLE”¹²

⁹ Examining Attorney’s Brief, 9 TTABVUE 8.

¹⁰ The Examining Attorney submitted numerous duplicate copies of evidence that complicated our review of the record. *In re Virtual Independent Paralegals, LLC*, 2019 USPQ2d 111512, at *1 (TTAB 2019). As we have explained, “[a]ttaching previously submitted evidence a second or third time is neither a courtesy nor a convenience to the Board.... If evidence that purportedly is the same is presented more than once, the Board must compare all versions of the evidence to confirm that it is, in fact, identical. This is not an appropriate use of the Board’s limited resources.” *Id.*

¹¹ January 23, 2020 Office action, TSDR 6-8 (MERRIAM-WEBSTER Online Dictionary).

¹² *Id.* at TSDR 9-10.

2. Applicant's Use of MULTI-GRIP

- Specimen (with highlighting added):¹³



Multi-Grip™ Exerciser



The CanDo® Multi-Grip™ Exerciser allows for unlimited exercise options to perform high impact upper and lower body exercises.

- Easy grip loops allow for unlimited exercise options
- Each exerciser contains both large and small loops. Use small loops as anchor or for finger exercises
- Loop around hands and feet to perform high impact upper and lower body exercises
- Cloth exerciser contains no latex, no scent, and no powder coating
- Can be washed and dried

Easily change resistance by moving 1 loop up or down the exerciser, or using a different resistance

- Progressively exercise with 8 different color-coded resistance levels available in the Preferred Colors® sequence
- Available in 9-loop (6 ft. exercisers) and 135-loop 15 exercisers (30 yd. rolls)





active closed grip



passive open grip



no grip required



add resistance to specific activity

9 loop (6 foot) exerciser



30 yard roll, 15 exercisers



		9 loops, 6 foot exerciser	9 loops, 6 foot exerciser (24 ea)	135 loops, 15 exercisers 30 yard roll
tan	xx-light	10-6600	10-6600-24	10-6610
yellow	x-light	10-6601	10-6601-24	10-6611
red	light	10-6602	10-6602-24	10-6612
green	medium	10-6603	10-6603-24	10-6613
blue	heavy	10-6604	10-6604-24	10-6614
black	x-heavy	10-6605	10-6605-24	10-6615
silver	xx-heavy	10-6606	10-6606-24	10-6616
gold	xxx-heavy	10-6607	10-6607-24	10-6617




FABRICATION ENTERPRISES INC
 PO Box 1500, White Plains, NY 10602 (USA)
 tel: 800-431-2830 / +1-914-345-9300
 fax: 800-634-5370 / +1-914-345-9800
 FabEnt.com info@fab-ent.com


¹³ November 30, 2018 Specimen of Use.

- Applicant’s product listing on the FEI Fabrication Enterprises Inc. website (with highlighting added):¹⁴

Call us 1-800-431-2830 • +1-914-345-9300 • CONTACT US SIGN IN • REQUEST ACCOUNT



Exercise and PT /
OT Products Since
1974



Request/View
Your Free Catalog

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CATEGORIES

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- DME ▶
- Evaluation ▶
- Exercise ▼**
 - AFH
 - Aerobic Steppers
 - Balance Boards/Pads
 - Exercise Putty
 - Fitness Equipment
 - Foam Rollers
 - Hand Extension
 - Hand Flexion
 - Inflatable Balls & Rolls
 - Inflatable Core Training Mats
 - Patient Compliance Program
 - Pedal Exercisers
 - Range-of-Motion
 - Rehab Kits
 - Resistance Bands**
 - Resistance Tubing
 - Rolls & Wedges
 - Stretching
 - TOGU®
 - Weights
 - Wrists & Shoulder
- Hot & Cold Therapy ▶

[Home](#) > [Exercise](#) > [Resistance Bands](#) > CanDo® Multi-Grip™ Exerciser









CanDo® Multi-Grip™ Exerciser



Product Group Summary

The CanDo® Multi-Grip™ Exerciser is designed to provide unlimited exercise options to users who want to do various high impact performance exercises. Each exerciser contains both large and small loops that are easy to grip. Use the small loops as an anchor or for finger exercises. Use the larger loops around the hands and feet to perform high impact upper and lower body exercises. [...Show more](#)

Views Of The Products Below


Item #	CanDo® Multi-Grip™ Exerciser	List Price
▶ 10-6600	6 Foot Exerciser, XX-Light, Tan	\$5.50
▶ 10-6601	6 Foot Exerciser, X-Light, Yellow	\$7.00

¹⁴ July 10, 2019 first Final Office Action, TSDR 6.

- Image of Applicant's product and product descriptions on Amazon.com (with arrow added):¹⁵



- ONE RESISTANCE BAND ENDLESS USES: Can-do **Multi-Grip** Resistance Bands with built in Hands, Foot and Finger Grips enable an unlimited array of exercise options....
- MULTIPLE RESISTANCE LEVELS: Each **Multi Grip** [sic] Resistance Band allows for various degrees of difficulty by simply moving your Hand, Foot or Finger position up or down on the multiple loops....

3. Third-Party Use

- “Stretch Exercise Band with **Multiple Grip** Loops,” from Mars Wellness described as: “Featur[ing] multiple loops – 1” Wide strap with tough elastic loops stitched in that provide anchoring position for feet and/or hands. Benefits include greater flexibility and range of motion, muscle recovery”;¹⁶

¹⁵ January 23, 2020 Office Action, TSDR 15 (amazon.com).

¹⁶ *Id.* at TSDR 29 (amazon.com); *see also id.* at 34-35 from Mars Med Supply, (marsmedsupply.com) (“Features multiple loops – progress to different loop levels to

- “Gaiam Restore **Multi-Grip** Stretch Strap” (image below with highlighting and arrow added):¹⁷



- “Peace Yoga Durable 7 ft. Cotton Yoga Stretching Exercise Strap Band with **Multiple Gri[ps]**”;¹⁸
- “Osave Yoga **Multi-Grip** Stretch Strap Exercise & Physical Therapy Belt for Rehab, Stretching Out, Pilates, Dance, Gymnastics WHAT YOU GET: 1” **Multi grip** stretch strap”;¹⁹
- “SunJolly Yoga Stretch Strap with Loops Physical Therapy **Multi-Grip** Pilates Stretching Belt-Workout Instruction Included Ten integrated loops are large enough to accommodate most athletic shoes for ultimate convenience. Loops also provide comfortable handholds the entire length of the strap for stretching to your personal max”;²⁰

gradually deepen your stretches, add a variety to your yoga practice or workout, and regularly challenge yourself in a safe and effective manner.”).

¹⁷ January 23, 2020 Office Action, TSDR 17-20 (amazon.com).

¹⁸ March 18, 2019 Office Action, TSDR 7 (amazon.com).

¹⁹ *Id.* at TSDR 8; *see also* July 10, 2019 first Final Office Action, TSDR 12 “Fitness **Multi-Grip** Exercise Stretching Strap Belt GYM Pilates Handle Loop Band” (ebay.com) and “**Multi-Grip** Stretch Strap Stretching Band Fr [sic] Yoga Ballet Pilates Therapy” (ebay).

²⁰ July 10, 2019 first Final Office action, TSDR 9-11 (amazon.com).

- “ECHAIN Yoga Stretch Strap 12 Loops Physical Therapy **Multi-Grip** Pilates Stretching [Band]”;²¹
- “Waces Yoga Strap Stretch Restore **Multi-Grip** Fitness Pilates Stretching Belt Multicolor With 10 fixed loops this band allows deep, gradual stretching with greater safety and effectiveness than with unaided stretching.... Use the multiple Loops on the strap to support you through anything from basic poses to inversions. At 1 inche [sic] wide, the strap is easy to grab without having to worry about circulation restriction. This **Multigrip** Strap is made of durable cotton blend that will never give out on you.”²²
- AGPTEK “**Multi-Grip** Stretch Strap, Yoga Stretching & Flexibility Stretch Belt for Exercise Gym Fitness” with the following customer review: “This is made really well! All the stitching looks secure, and the straps have no give when you pull on them. The loops allow for a multitude of different grips.”²³
- “Juale Yoga Stretch Strap” including the following “Item Description ... – 10 Loops Stretching Strap, **Multi-Grip** Stretch Band Fitness Pilates stretching belt BUILD STRENGTH AND RANGE OF MOTION: Make every workout a strength building exercise with durable stretch bands. Improve your flexibility and body muscle with this multi loops stretching strap.”²⁴
- TAVIEW “Yoga Strap for Stretching – Stretch Band with 10 Loops – **Multi-Grip** Pilates Hamstring Stretcher Belt – Physical Therapy Equipment for Best Flexibility” with the following description: “The flexibility strap with 10 INDEPENDENT LOOPS helps you stretch further and hold the pose longer. The only flexibility equipment you’ll ever need!”;²⁵

²¹ July 10, 2019 first Final Office Action, TSDR 10 (amazon.com).

²² January 23, 2020 Office Action, TSDR 23-25 (amazon.com).

²³ *Id.* at TSDR 26-27 (walmart.com).

²⁴ *Id.* at TSDR 31-33 (walmart.com).

²⁵ August 31, 2020 second Final Office Action, TSDR 14.

- “Spencer Yoga Stretch Strap **Multi-Grip** 12-Loop Fitness Yoga Stretch Band for Pilates Practice, Dance and Physical Therapy Rehab” including the following “Feature”: “Multiple loops to adjust, good for ankles, calves, knees, thighs or wrists training.”²⁶
- “FoMI **Multi-Grip** Resistance Band”;²⁷
- “Stretching Strap Exercise Band with **Multi Grip** 12 Loop for Yoga or Rehabilitation”;²⁸
- “Yoga Strap **Multi-Grip** Stretch Band Stretching [sic] Strap **Multi-Grip**”;²⁹
- “Durable Cotton Yoga **Multi-Grip** Stretching Exercise Strap Band with Multiple Loop[s]”;³⁰
- “Adjustable 6 Sections Stretch Band **Multi-Grip** Balance Stretching Strap”;³¹
- “Black&Grey Yoga Stretch Strap **Multi-Grip** Resistance Band Gym Exercise”;³²
- “2m/6.5ft **Multi-Grip** Flexibility Stretch Strap Yoga Stretching Belt Exercise Band”;³³ and
- “Stretching Strap Balance Stretching Stretch Band Yoga Strap **Multi-Grip**.”³⁴

²⁶ *Id.* at TSDR 19-22 (walmart.com).

²⁷ July 10, 2019 first Final Office Action, TSDR 12 (ebay.com).

²⁸ *Id.* at TSDR 12-13, 15 (ebay.com).

²⁹ *Id.* at TSDR 13 (ebay.com).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at TSDR 14 (ebay.com).

³³ *Id.* at TSDR 14-15 (ebay.com).

³⁴ *Id.* at TSDR 15 (ebay.com).

B. Applicant's Arguments and Evidence

In support of its appeal, Applicant argues that: (1) “[t]he Examining Attorney ... erred by failing to use the identification of goods in the registration application to determine the genus or class of goods, that is, resistance and stretch bands for physical therapy and exercise. Instead, without a reasoned basis she improperly narrowed the genus so that it was limited to resistance and stretch bands that feature multigrips”³⁵; (2) Applicant’s description of goods does not specify that its stretch and resistance bands have “multiple loops or grips”;³⁶ (3) “the record contains no evidence at all, let alone the requisite clear and convincing evidence, that ‘Multi-Grip’ is a noun whose primary meaning to the consuming public is resistance and stretch bands”;³⁷ (4) the designation MULTI-GRIP is not used in connection with all of the stretch bands shown in the Examining Attorney’s evidence; rather the evidence shows that the “common – hence generic – name is ‘stretch band’, or ‘stretch strap’, or slight variations thereon such as ‘Stretching Strap Band’”;³⁸ (5) “‘Multi-Grip’ may be part of the lengthy verbiage being used to describe [stretch and resistance bands], but it is not being used to identify the class of goods”;³⁹ (6) “the Examining Attorney focused

³⁵ Appeal Brief, 7 TTABVUE 4-5; 18-19; *see also* Reply Brief, 12 TTABVUE 6.

³⁶ Appeal Brief, 7 TTABVUE 6; Reply Brief, 12 TTABVUE 4.

³⁷ Appeal Brief, 7 TTABVUE 18; *see also* Reply Brief, 12 TTABVUE 4 (Applicant asserts that if a customer were to say to a sales representative at an athletic store “I’d like to buy a Multi-Grip’ the sales representative would respond ‘What is that?’ because “the term ‘Multi-Grip’ is not generally understood to refer to resistance and stretch bands used for exercise and physical therapy”).

³⁸ Appeal Brief, 7 TTABVUE 10-11.

³⁹ Appeal Brief, 7 TTABVUE 20; *see also id.* at 4, 11; Reply Brief, 12 TTABVUE 11.

on the separate terms ‘multi’ and ‘grip’ without recognizing that the compound term is a descriptor for a feature of Applicant’s goods”; and (7) the designation MULTI-GRIP cannot be generic because it “is not used primarily for resistance or stretch bands” but rather it describes a feature of a number of different products.⁴⁰

In support of the last argument listed above, Applicant submitted printouts from third-party websites showing use of the designation MULTI-GRIP in connection with a grapple for construction jobs, a technology in tires, a computer gaming mouse, rock climbing holds, an adhesive, an exercise dip bar attachment, and a pull up bar,⁴¹ and third-party use of the individual terms “multi” and “grip” for unrelated goods. Applicant also submitted copies of two third-party registrations for the mark MULTI-GRIP (one for “tire chains” and the other for “general purpose adhesive for use in hardware and marine applications”) and marks incorporating “multi” or “grip” for unrelated goods.⁴²

Along the lines of this argument, Applicant asserts that the Examining Attorney has improperly equated descriptive and generic terms “repeatedly infer[ring] that because ‘Multi-Grip’ merely describes a feature of Applicant’s goods, it is therefore generic[.]” Appeal Brief, 7 TTABVUE 21; *see also id.* at 4; Reply Brief, 12 TTABVUE 9. The Examining Attorney, at times, did confuse the language pertaining to merely descriptive marks versus generic terms. *See, e.g.* Examining Attorney’s Brief, 9 TTABVUE 14-15 (discussing “[t]he question of whether a mark is merely descriptive”). The Board, however, “need not find that the examining attorney’s rationale was correct in order to affirm the refusal to register[.]” *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010). Moreover, the Examining Attorney made clear during prosecution that the basis for refusing registration is that the term MULTI-GRIP is generic for Applicant’s goods, and this is the issue that Applicant has briefed. Appeal Brief, 7 TTABVUE 4 (“The only stated basis for the refusal is the Examining Attorney’s view that ‘Multi-Grip’ is generic.”).

⁴⁰ Appeal Brief, 7 TTABVUE 5, 8-9, 18; Reply Brief, 12 TTABVUE 10.

⁴¹ July 20, 2020 Office Action Response, TSDR 14-37.

⁴² November 23, 2020 Request for Reconsideration, TSDR 6-28.

III. Applicable Law

A mark proposed for registration on the Supplemental Register must be capable of distinguishing the applicant's goods or services. 15 U.S.C. § 1091; *U.S. Patent & Trademark Office v. Booking.com B.V.*, 591 U.S. ___, 2020 USPQ2d 10729, at *5 (2020) (“Eligibility for registration ... turns on the [term’s] capacity to ‘distinguish[h]’ goods ‘in commerce.’”) (quoting 15 U.S.C. § 1052). Terms that merely describe the qualities or characteristics of a good are eligible for protection on the Supplemental Register. 15 U.S.C. § 1091(a); *see also Booking.com*, 2020 USPQ2d 10729, at *3; *Real Foods Pty Ltd. v Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 n.3 (Fed. Cir. 2018) (a mark that “is ‘merely descriptive’ of the goods or services, may be registered on the supplemental register”). Generic terms, however, are not registrable because “by definition [they] are incapable of indicating a unique source[.]” *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1267 (Fed. Cir. 2015) (citing *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987)); *see also Booking.com*, 2020 USPQ2d 10729, at *3 (“The name of the good itself ... is incapable of ‘distinguish[ing] [one producer’s goods] from the goods of others’ and is therefore ineligible for registration.”); *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 224 USPQ 327, 329 (1985) (“Generic terms are not registrable[.]”).

A generic term is “the name of a class of products or services.” *Booking.com*, 2020 USPQ2d 10729, at *2; *see also Park ‘N Fly*, 224 USPQ at 329 (“A generic term is one that refers to the genus of which the particular product is a species.”); *Princeton*

Vanguard, LLC v. Frito-Lay N. Am., Inc., 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (“A generic term ‘is the common descriptive name of a class of goods or services.’”) (quoting *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)). “The generic name of a thing is in fact the ultimate in descriptiveness.” *Marvin Ginn*, 228 USPQ at 530; *see also Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018).

There is a two-part test for determining whether a designation is generic: (1) what is the genus (class or category) of goods or services at issue?; and (2) does the relevant public understand the designation primarily to refer to that genus of goods or services? *Princeton Vanguard*, 114 USPQ2d at 1830-31 (citing *Marvin Ginn*, 228 USPQ at 530); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1462 (TTAB 2014). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *In re Cordua Rests.*, 823 F.3d 594, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016) (quoting *Marvin Ginn*, 228 USPQ2d at 530); *see also In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 92 USPQ2d 1682 1685 (Fed. Cir. 1986) (“The test is not only whether the relevant public itself would use the term to describe the genus, but also whether the relevant public would understand the term to be generic.”). “[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Cordua Rests.*, 118 USPQ2d at 1638 (holding CHURRASCOS, a word that is generic for a type of grilled

meat, to be generic for restaurant services because it refers to a key sub-aspect of those services); *see also In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) (BUNDT generic for ring cake mixes, i.e., the subcategory “bundt cakes.”). That is, any term that the relevant public uses or understands to refer to the genus of goods, or a key aspect of a sub-group of the genus, is generic. *Royal Crown*, 127 USPQ2d at 1046-47; *see also In re Consumer Protection Firm PLLC*, 2021 USPQ2d 123, at *5 (TTAB 2021) (“[I]f the proposed mark defines ‘an integral, if not the paramount, aspect of ... [the] [goods or] services[,] as [the Applicant] defines ... [them,]’ the term or phrase sought for registration may be found generic for those services.”) (quoting *In re Reed Elsevier Prods. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007)).

The Office must demonstrate that a term is generic by “clear and convincing evidence.” *Cordua Rests.*, 118 USPQ2d at 1635. Evidence of consumer understanding of a term may be obtained from any competent source, such as consumer surveys, dictionaries, usage by consumers and competitors, the applicant’s usage, trade journals, newspapers and other publications. *Booking.com*, 2020 UPSQ2d 10729, at *7, n.6; *Royal Crown*, 127 USPQ2d at 1046 (quoting *Merrill Lynch*, 4 USPQ2d at 1143); *see also Cordua Rests.*, 118 USPQ2d at 1634; *Princeton Vanguard*, 114 USPQ2d at 1830; *Reed Elsevier* 82 USPQ2d at 1380 (holding lawyers.com generic for information exchange about legal service based, in part on applicant’s “website mak[ing] clear that an integral, if not the paramount, aspect of ‘information exchange about legal services ... concerns identifying and helping people to select lawyers”);

BellSouth Corp. v. DataNational Corp., 60 F.3d 1565, 35 USPQ2d 1554, 1558 (Fed. Cir. 1995) (“[C]ompetitor use is evidence of genericness”); *Consumer Protection Firm PLLC*, 2021 USPQ2d 238, at *8 (“In assessing the primary significance of Applicant’s Proposed Marks to the relevant public, we may also consider Applicant’s use thereof.”); *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013) (citing generic use of proposed mark “footlong” by applicant and its competitors to identify a type of sandwich).

Where, as here, the designation at issue is “a compound term, the distinctiveness inquiry trains on the term’s meaning as a whole, not its parts in isolation.” *Booking.com*, 2020 USPQ2d 10729, at *5; *see also, e.g. Consumer Protection Firm*, 2021 USPQ2d 238, at *16-17. “A compound of generic elements is generic if the combination yields no additional meaning to consumers capable of distinguishing the goods or services.” *Booking.com*, 2020 USPQ2d 10729, at *7.

IV. Analysis

A. Genus of Goods

To determine the genus of goods, we focus on the identifications of goods in the involved application, namely, manually-operated resistance and stretch bands for physical therapy and exercise. *Cordua Rests.*, 118 USPQ2d at 1636; *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) (a proper genericness inquiry focuses on the identification set forth in the application or certificate of registration); *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018).

We agree with Applicant that the identifications of goods in the application sufficiently identify the genus at issue here: manually-operated resistance and stretch bands for physical therapy and exercise.⁴³ We disagree, however, with the assertion that the Examining Attorney “improperly narrowed the genus so that it was limited to resistance and stretch bands that feature multigrips.”⁴⁴

As noted, “[a] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Royal Crown*, 127 USPQ2d at 1046 (quoting *Cordua Rests.*, 118 USPQ2d at 1638); *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019, 2024-25 (TTAB 2010) (holding ELECTRIC CANDLE COMPANY generic for electric candles, a subcategory of applicant’s broadly worded identification of goods as “lighting fixtures”); *In re Central Sprinkler Co.*, 49 USPQ2d 1194, 1197 (TTAB 1998) (“The broad general category of goods involved here is sprinklers for fire protection. However, a product may be in more than one category, and here applicant’s goods also fall within the narrower category of sprinklers for fire protection of attics.”). Accordingly, it was appropriate for the Examining Attorney to consider whether MULTI-GRIP identifies a sub-group or part of the broad genus of goods here.

⁴³ The Examining Attorney and Applicant do not separately address each class of goods but rather refer to them collectively. Accordingly, we do the same, although we reach a conclusion as to each class of goods as identified.

⁴⁴ Appeal Brief, 7 TTABVUE 4-5; 18-19; *see also* Reply Brief, 12 TTABVUE 6.

B. Relevant Purchasers

“The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard LLC*, 124 USPQ2d 1184, 1187 (TTAB 2017) (citing *Magic Wand*, 19 USPQ2d at 1552); *Sheetz of Del.*, 108 USPQ2d at 1351. The relevant consuming public for Applicant’s goods consists of the public at large, namely, ordinary consumers who purchase resistance and stretch bands for exercise or physical therapy. In addition, for Applicant’s Class 10 goods, the relevant consuming public includes healthcare professionals and businesses providing physical therapy or exercise services.

C. Purchaser Perception of the term MULTI-GRIP

In determining consumer perception, we start with the dictionary definitions of “multi” meaning “multiple” and “grip” meaning “a part by which something is grasped *especially* : HANDLE.” As combined in the designation MULTI-GRIP, the terms retain their dictionary meanings referring to stretch and resistance bands with multiple grips or handles. No additional meaning is created by their combination. *See, Central Sprinkler*, 49 USPQ2d at 1198. (“[T]he separate words ‘attic’ and ‘sprinkler’ joined to form a compound ‘attic sprinkler’ have a meaning identical to the meaning common usage would ascribe to those words as a compound.”).

The record includes extensive third-party evidence showing that: (1) a number of third parties market a sub-group of resistance and stretch bands with multiple grips that allow users to adjust their hand and foot placement providing greater versatility

of use and varying degrees of difficulty; and (2) “multi-grip” is widely used in the field to refer primarily to resistance and stretch bands having multiple grips. The evidence is clear and convincing that MULTI-GRIP does not merely describe a feature of Applicant’s stretch and resistance bands, but rather identifies a “key aspect” of a category of stretch and resistance bands within the relevant genus. Applicant’s competitors should be able to continue to use “multi-grip” to identify this key aspect of their goods.

Consistent with the third-party use, Applicant does not display “multi-grip” in a manner likely to be perceived as a trademark. As shown in the below example, “multi-grip” is in the same font style, size and color as surrounding generic and informational text (e.g. “exerciser”, “finger” and anchor”). In contrast, the designation CANDO on Applicant’s product is displayed in significantly larger font on a separate line from generic and informational text.⁴⁵ *Central Sprinkler*, 49 USPQ2d at 1197 (considering Applicant’s specimen of use; “we cannot overlook how the relevant public will encounter the matter sought to be registered”).

⁴⁵ January 23, 2020 Office Action, TSDR 15 (amazon.com).



Applicant’s argument that MULTI-GRIP cannot be generic for its goods because the application does not specify that Applicant’s stretch and resistance bands have “multiple grips” is without merit. The genus at issue here, manually-operated resistance and stretch bands is broad enough to include, and the evidence shows does in fact include, resistance and stretch bands with “multiple grips.” *Cordua Rests.*, 118 USPQ2d at 1638 (explaining that “the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular subgroup or type of restaurant rather than to all restaurants”); *Wm. B. Coleman*, 93 USPQ2d at 2024-25 (ELECTRIC CANDLE COMPANY generic for “lighting fixtures” because such goods encompassed electric candles); *Central Sprinkler Co.*, 49 USPQ2d at 1197 (ATTIC generic for “automatic sprinklers for fire protection” because term identified a category of such goods, namely, sprinklers for fire protection used in the attic).

Similarly unpersuasive is Applicant's argument that MULTI-GRIP is not generic because not all resistance and stretch bands are "multi-grip" bands. A term "need not be equated by the general public with the entire broad genus ... in order for the term to be generic." *Royal Crown*, 127 USPQ2d at 1046-47 (explaining that "if the public understands ZERO when used in combination with a designated beverage name to refer to a sub-group or type of beverage that carries specific characteristics, that would be enough to render the term generic" for the claimed genus of beverages); *see also Cordua Rests.*, 118 USPQ2d at 1638 ("There is no logical reason to treat differently a term that is generic of a category or class of products where some but not all of the goods identified in an application fall within that category."); *Northland Aluminum*, 227 USPQ at 964 (BUNDT generic for ring cake mixes, i.e., the subcategory "bundt cakes."); *Consumer Protection Firm PLLC*, 2021 USPQ2d 238, at *23 (THE CONSUMER PROTECTION FIRM generic for "legal services" referring to "a 'class' or 'category' of 'legal services,' namely, legal services concerning the laws related to consumer production").

We acknowledge that "multi-grip" modifies the term "band" and so functions as an adjective, but this also does not foreclose a determination that MULTI-GRIP is generic. Both nouns **and** adjectives can be generic. *Serial Podcast*, 126 USPQ2d at 1067-68; *Sheetz of Del.*, 108 USPQ2d at 1366 ("We readily acknowledge that 'Footlong' is not the name of a food product; rather it is an adjective referring to the length of the sandwich. This adjectival use, however, does not remove 'Footlong' from being generic when used in connection with sandwiches."); *Central Sprinkler*, 49 USPQ2d

1194, 1199 (TTAB 1998) (“[A]pplicant’s mark does not present the classic case of a generic noun, but rather a generic adjective.”); TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1209.01(c)(ii) (July 2021) (“The expression ‘generic name for the goods or services’ is not limited to noun forms but also includes ‘generic adjectives,’ that is, adjectives that refer to a genus, species, category, or class of goods or services.”). Moreover, the fact that Applicant has not chosen to include the term “band(s)” in the matter sought to be registered does not justify the registration of MULTI-GRIP alone where, as here, the evidence establishes that it identifies a key aspect of a sub-group of resistance and stretch bands. *Central Sprinkler*, 49 USPQ2d at 1198.

As an adjective, multi-grip may be used and, as Applicant’s evidence shows, is in fact used to modify other types of goods, including goods unrelated to resistance and stretch bands. But this also does not preclude a finding that MULTI-GRIP is generic for manually operated resistance and stretch bands for physical therapy and exercise. The issue before us is whether MULTI-GRIP is generic for the genus of goods **defined in Applicant’s application**. The evidence establishes by clear and convincing evidence that MULTI-GRIP bands are encompassed within Applicant’s broadly identified genus of goods.

Further, we are unpersuaded by Applicant’s argument that MULTI-GRIP is not generic because not all third-parties use MULTI-GRIP to identify their resistance and stretch bands. Many of the product listings Applicant points to as not using “multi-grip” are truncated so we cannot conclude that “multi-grip” is not being used

to identify the type of resistance or stretch band. Moreover, because “multi-grip” identifies a subcategory of resistance and stretch bands it is not an accurate generic term for all resistance and stretch bands. A product may have more than one generic name. *See, e.g., 1800Mattress.com*, 92 USPQ2d at 1685; *Consumer Protection Firm*, 2021 USPQ2d 238, at *6; *Central Sprinkler*, 49 USPQ2d at 1197.

As for the third-party registrations Applicant submitted, only two registrations are for the mark MULTI-GRIP, both covering goods different from resistance and stretch bands for exercise and physical therapy. We are not privy to the record in those cases and, in any event, each case must be decided on its own merits. *Consumer Protection Firm*, 2021 USPQ2d 238, at *22; *Central Sprinkler*, 49 USPQ2d at 1197. The evidence here is sufficient to support a determination that MULTI-GRIP is generic for the genus of goods in the involved application.

V. Conclusion

The record as a whole establishes by clear and convincing evidence that MULTI-GRIP refers to a “class or category” of “stretch and resistance bands” for physical therapy and exercise, namely, stretch and resistance bands with multi-grips, and would be understood by the relevant public primarily to refer to that sub-group of stretch and resistance bands. Accordingly, we find that “multi-grip” is generic for both classes of goods in the involved application and is incapable of distinguishing Applicant’s goods.

Decision: The refusal to register Applicant's applied-for mark on the Supplemental Register under Sections 23(c) and 45 of the Trademark Act is affirmed with respect to both International Classes 10 and 28.