

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: March 31, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board  
—

*In re Rayhawk Corporation*  
—

Serial No. 88507462  
—

Farah P. Bhatti of Buchalter, a Professional Corporation,  
for Rayhawk Corporation.

Janice L. McMorro, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

—  
Before Kuczma, Coggins, and Johnson,  
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Rayhawk Corporation (“Applicant”) seeks registration on the Principal Register of the proposed mark LESS FRICTION (in standard characters) for “medical services,” in International Class 44.<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is

—  
<sup>1</sup> Application Serial No. 88507462 was filed on July 10, 2019, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as October 1, 2017.

merely descriptive of Applicant's services. 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

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them,” unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f)<sup>2</sup>. A mark is “merely descriptive” within the meaning of Section 2(e)(1) “if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.” *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017) (citing *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). “A mark need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods [or services].” *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

---

<sup>2</sup> Applicant does not claim that if the proposed mark is found to be merely descriptive, it is registrable because it has acquired distinctiveness.

Whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use,’” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *Bayer*, 82 USPQ2d at 1831), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “whether someone who knows what the goods and services are will understand the mark to convey information about them.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted)). A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods are to reach a conclusion about their nature from the mark. *See, e.g., Fat Boys*, 118 USPQ2d at 1515.

Applicant’s proposed mark consists of the words LESS FRICTION. We “must consider the commercial impression of a mark as a whole.” *Real Foods*, 128 USPQ2d at 1374 (quoting *DuoProSS*, 103 USPQ2d at 1757 (citation omitted)). “In considering [a] mark as a whole, [we] ‘may not dissect the mark into isolated elements,’ without ‘consider[ing] . . . the entire mark,’” *id.* (quoting *DuoProSS*, 103 USPQ2d at 1757), but we “may weigh the individual components of the mark to determine the overall

impression or the descriptiveness of the mark and its various components.” *Id.* (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004)). “Indeed, we are ‘required to examine the meaning of each component individually, and then determine whether the mark as a whole is merely descriptive.’” *In re Fallon*, 2020 USPQ2d 11249, \*7 (TTAB 2020) (quoting *DuoProSS*, 103 USPQ2d at 1758).

If the words in the proposed mark are individually descriptive of the identified services, we must then determine whether their combination “conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *Fat Boys*, 118 USPQ2d at 1515-16 (quoting *Oppedahl & Larson*, 71 USPQ2d at 1372). If each word instead “retains its merely descriptive significance in relation to the [services], the combination results in a composite that is itself merely descriptive.” *Id.* at 1516 (citing *In re Tower Tech., Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002)); *see also In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1953-55 (TTAB 2018).

“Evidence of the public’s understanding of [a] term . . . may be obtained from any competent source,” *Real Foods*, 128 USPQ2d at 1374 (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046 (Fed. Cir. 2018)), and “may include [w]ebsites, publications and use ‘in labels, packages, or in advertising material directed to the goods [or services],” *N.C. Lottery*, 123 USPQ2d at 1710 (quoting *Abcor Dev.*, 200 USPQ at 218).

Applicant explains that its actual medical services involve “medical-grade non-surgical body contouring services[, t]he intended result of [which] is fat cell reduction

and a more sculpted physique. . . . not to provide ‘less friction,’ but to eliminate fat cells from the targeted treatment area. The primary goal of [which] is a slimmer physique, not a reduction in friction.”<sup>3</sup> Applicant may well provide only subcutaneous fat-reduction procedures, but the identification of services in the application is not so limited; it is broadly worded. Our analysis must be based on the services as identified – whatever they may include. *Chamber of Commerce*, 102 USPQ2d at 1219. We are required to construe the application as broadly as it is written. If the proposed mark is merely descriptive for any of the possible services falling within that identification, we must hold it to be merely descriptive. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

We are therefore not persuaded by Applicant’s argument that because the Examining Attorney submitted only two third-party websites showing use of “less friction” in context with inner thigh fat-reduction services, the lack of any more direct Internet evidence demonstrates that the use of the wording “less friction” “is not common but is extremely rare as the term does not describe [Applicant’s specific body contouring] services, or a feature or purpose of the same.”<sup>4</sup> Instead, we may (and must) consider all of the evidence adduced that is probative of an average purchaser’s understanding of the meaning of “less friction” with any and all “medical services,” including not only Applicant’s body contouring services, but also, inter alia, plastic,

---

<sup>3</sup> Appeal Brief, p. 7 (7 TTABVUE 8). Citations to the briefs in the appeal record refer to the TTABVUE docket system. Citations to the prosecution file refer to the .pdf version of the TSDR system record. *In re Consumer Protection Firm PLLC*, 2021 USPQ2d 238, \*3 n.3 (TTAB 2021).

<sup>4</sup> 7 TTABVUE 9.

breast, hip, thumb, and knee surgeries. *See Chamber of Commerce*, 102 USPQ2d at 1219 (citing *Stereotaxis*, 77 USPQ2d at 1089).

Similarly, we are not concerned with “[a]ny number of [other] terms [that] can be used to identify the source of Applicant’s services,” or whether a descriptiveness refusal would have issued had Applicant applied for “hygiene improvement” or “better fit” as its mark.<sup>5</sup> LESS FRICTION is the mark for which registration is sought, and it is that term for which we must determine the commercial impression and relevant public’s understanding in relation to medical services. Under Section 2(e)(1) we look to whether **the proposed mark** is merely descriptive of an ingredient, quality, characteristic, feature, function, purpose or use of the services, *see Chamber of Commerce*, 102 USPQ2d at 1219, not whether other terms are merely descriptive.

In support of its argument that the term LESS is not merely descriptive, Applicant points to ten third-party registrations on the Principal Register for marks which incorporate the word LESS for medically related services.<sup>6</sup> We note that none of those marks contains the term LESS FRICTION, only three of the marks contain the word LESS as a separate term in a unitary phrase,<sup>7</sup> and the remaining seven marks incorporate “less” in what are entirely different words.<sup>8</sup> The proposed mark is LESS

---

<sup>5</sup> 7 TTABVUE 9, 10.

<sup>6</sup> 7 TTABVUE 10-11; April 1, 2020 Response to Office Action TSDR 9-10 (chart), 12-31 (registrations).

<sup>7</sup> Those marks are: LESS WAIT MORE CARE (Registration No. 5865649), LESS INVASIVE. BETTER RESULTS (Registration No. 4830221), and MORE HEALING LESS PAIN (Registration No. 4019419).

<sup>8</sup> Those marks are: FLULESS (Registration No. 5850761), JUST AGELESS (Registration No. 5714667), AGELESS. EFFORTLESS (Registration No. 5162958), RELENTLESS

FRICITION, not simply LESS or a variation thereof, and the third-party registrations are not probative of whether the proposed mark LESS FRICITION is descriptive. The fact that third-party registrations exist on the Principal Register and contain one of the individual terms in Applicant's proposed mark – or a variation thereof – is not persuasive. The third-party marks differ from the proposed mark as they do not contain all the terms; they contain either completely different terms and/or additional terms. *See In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (observing that a term “may tilt toward suggestiveness or descriptiveness depending on context and any other factor affecting public perception.”). Moreover, the existence of these third-party registrations does not compel us to approve registration of the proposed mark, inasmuch as it is settled that each case must be decided on its own facts. *Id.* (“Even if some prior registrations had some characteristics similar to [Applicant's] application, the PTO's allowance of such prior registrations does not bind the Board or this court.”).

The Examining Attorney argues that Applicant's proposed mark LESS FRICITION uses the constituent words “less” and “friction” in their common meanings.<sup>9</sup> To support this argument, the Examining Attorney submitted dictionary definitions showing that “less” means “not so much,” and “friction” means “the action of chafing or rubbing (the body or limbs).”<sup>10</sup> Applicant has stated that “[t]he intended

---

(Registration No. 5350087), BREATHLESS (Registration No. 5435811), AGELESS MD (Registration No. 4909283), and PAINLESS LIVING (Registration No. 3947926).

<sup>9</sup> Examiner's Statement (unnumbered) p.3 (9 TTABVUE 4).

<sup>10</sup> April 20, 2020 Final Office Action TSDR 46 (“less,” from oed.com) and 64 (“friction,” from oed.com).

result of [its] services is fat cell reduction . . . [and] the purpose . . . is . . . to eliminate fat cells . . . .”<sup>11</sup> One result of Applicant’s services is less fat cells. Applicant’s specimen, reproduced below, highlights the inner thigh area where the thighs may chafe or rub together.<sup>12</sup>

The screenshot shows the Dr. Freeze website for the 'Less Friction inner thigh package'. It includes a diagram of a person's inner thighs with two treatment areas marked '2x'. A pricing table is provided:

Treatment Cycles	4
Std. Price/Cycle	\$900
Std. Package Price	\$3,600
Discounted Price	\$2,600
Est. Fat Reduction	~40%

Additional text on the page includes: 'Our Less Friction package is your ticket to slimmer inner thighs. This package includes 4 cycles of treatment (2 rounds\* on each inner thigh). Patients typically notice undeniable results approximately 8 to 12 weeks after the 2nd round of treatments.' and a note: '\* 2nd round of CoolSculpting is usually performed at least 6 to 8 weeks after the initial treatments. NOTE: Estimated fat reduction is the approximate percent of subcutaneous fat cells typically eliminated from the targeted skin after 2 rounds of CoolSculpting. ~ denotes that the estimated fat reduction is an approximation.'

Based on the definitions of record, we find that the component words of the proposed mark are individually descriptive of the services.

Because the components LESS and FRICTION are individually descriptive of the broadly identified “medical services,” we now determine whether their combination

<sup>11</sup> 7 TTABVUE 8.

<sup>12</sup> July 10, 2019 Specimen TSDR 1. Chafing is a negative quality. “Chafe” means: To cause irritation by rubbing or friction; to become worn or sore from rubbing or friction. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (ahdictionary.com) accessed March 30, 2021. The Board may sua sponte take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including definitions in online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).



conveys any distinctive impression contrary to the descriptiveness of the individual words. *See Fat Boys*, 118 USPQ2d at 1515-16. The Examining Attorney argues that “[t]he purpose of [A]pplicant’s services is to provide not so much chafing, and this purpose is immediately described by the proposed mark.”<sup>13</sup> To demonstrate the purchasing public’s understanding of the term LESS FRICTION in association with the broadly identified medical services, the Examining Attorney points to website evidence attached to Office Actions that issued during prosecution of the application, including, for example (all bold emphasis added):

- (personalenhancementcenter.com)<sup>14</sup>  
Thigh lift surgery is a popular body contouring procedure designed to eliminate excess skin and fat in the inner and/or outer thighs . . . . What Are the Benefits of a Thigh Lift? ... **Less friction** between the thighs [and r]educed irritation and/or rashes often caused by skin folds.
- (boyntonplasticsurgery.com)<sup>15</sup>  
Thigh Lift  
After weight loss, many people may experience a build-up of excess skin in the thighs. Thigh lift surgery removes the excess and pulls the remaining skin taut, re-sculpting the thighs for a more fit look with **less friction** between the thighs as you walk.
- (plasticsurgerynola.com)<sup>16</sup>  
BREAST REDUCTION BENEFITS  
...  
HYGIENE IMPROVEMENT  
When there is a reduction of breast tissue, patients find there is **less friction** and sweating at the breast crease. This hygiene improvement will bring more comfort to this areas and improve your quality of life. With fewer rashes and less risk of yeast infections in this area, a breast reduction becomes more viable when added to the other benefits it offers.

---

<sup>13</sup> 9 TTABVUE 4.

<sup>14</sup> October 1, 2019 Office Action TSDR 5; April 20, 2020 Final Office Action TSDR 8.

<sup>15</sup> October 1, 2019 Office Action TSDR 10; April 20, 2020 Final Office Action TSDR 15.

<sup>16</sup> April 20, 2020 Final Office Action TSDR 22.

- (bonesmart.org)<sup>17</sup>  
Mobile-Bearing Total Hip Implants  
...  
Although most hip implants are a fixed-bearing design, some are of a mobile-bearing . . . design . . . . [which] allows for multi-directional movement and an increased range of motion. The buffer also results in **less friction** and lower wear.
- (prasadkilaru.com)<sup>18</sup>  
TREATMENT FOR DE QUERVAIN'S TENDINOSIS  
If symptoms do not improve with nonsurgical treatment, surgery may be recommended. The goal of surgery is to open the thumb compartment to make space for tendons. **Less friction** of the tendons as you move your thumb and wrist can reduce irritation.

There are additional websites of record, all containing the term “less friction” in describing benefits of various medical procedures.<sup>19</sup> The Examining Attorney argues that Applicant’s actual services “referred to on the specimen are the same, or extremely similar in purpose to, the various plastic surgery procedures noted above referring to ‘less friction’ as a purpose of . . . both thigh and breast medical body enhancement. In addition, the evidence shows ‘less friction’ as a purpose of various hip replacement and tendon-related surgeries encompassed within” Applicant’s broadly worded identification of “medical services.”<sup>20</sup> All of these websites are probative of the meaning the term LESS FRICTION has to consumers and how they would perceive it when used in context with “medical services” generally, and with

---

<sup>17</sup> *Id.* at 25-26.

<sup>18</sup> *Id.* at 31.

<sup>19</sup> *See, e.g.*, the Examining Attorney’s excerpts from this evidence at 9 TTABVUE 4-5.

<sup>20</sup> 9 TTABVUE 6.

Applicant's actual services. *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1156 (TTAB 2019).

From the website evidence, we find that the commercial impression of the proposed mark LESS FRICTION is merely descriptive when used in connection with medical services because it describes a resulting feature, characteristic, and benefit of medical procedures, and specifically a result of Applicant's thigh contouring services. *See Real Foods*, 128 USPQ2d at 1374; *DuoProSS*, 103 USPQ2d at 1758. Contrary to Applicant's argument,<sup>21</sup> no imagination is required of a consumer who knows what the services are; consumers "will understand the mark to convey information about them." *Real Foods*, 128 USPQ2d at 1374 (quoting *DuoProSS*, 103 USPQ2d at 1757).

Applicant argues that "[t]here are no 'less friction' medical services or the like."<sup>22</sup> Even if Applicant were the first and only user of the proposed mark LESS FRICTION for medical services, the application must be refused if the term is merely descriptive. *See Fat Boys*, 118 USPQ2d at 1514; *In re Nat'l Shooting Sports Found., Inc.*, 219 USPQ 1018, 1020 (TTAB 1983); *see also KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 72 USPQ2d 1833, 1838 (2004) (trademark law does not countenance someone obtaining "a complete monopoly on use of a descriptive term simply by grabbing it first") (citation omitted).

---

<sup>21</sup> 7 TTABVUE 14.

<sup>22</sup> 7 TTABVUE 13.

We reject Applicant's argument that the mark is a double entendre.<sup>23</sup> For trademark purposes, a "double entendre" is an expression that has a double connotation or significance as applied to the goods or services. *See* TMEP § 1213.05(c). While terms comprising a double entendre will not be found merely descriptive, the multiple interpretations that make an expression a "double entendre" must be associations that the public would make fairly readily, and must be readily apparent from the mark itself. *See In re Calphalon Corp.*, 122 USPQ2d 1153, 1163-64 (TTAB 2017); *In re Wells Fargo & Co.*, 231 USPQ 95, 99 (TTAB 1986) (holding EXPRESSERVICE merely descriptive for banking services despite applicant's argument the term also connotes the Pony Express, the Board finding that, in the relevant context, the public would not make that association). *See also In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156, 1158 (TTAB 2003) (holding ETHNIC ACCENTS merely descriptive of "entertainment in the nature of television programs in the field of home décor" because the meaning in the context of the services is home furnishings or decorations that reflect or evoke particular ethnic traditions or themes, a significant feature of applicant's programs; viewers of applicant's programs deemed unlikely to discern a double entendre referring to a person who speaks with a foreign accent). "[T]hat applicant can take the dictionary definitions of the individual words in the term and come up with a meaning that makes no sense in connection with the services recited in the application does not mandate a different conclusion on the issue of mere descriptiveness." *Id.* at 1159.

---

<sup>23</sup> 7 TTABVUE 14-15

The primary purposes for refusing registration of a merely descriptive mark are “(1) to prevent the owner of a mark from inhibiting competition in the sale of particular [services]; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own [services].” *Abcor Dev.*, 200 USPQ at 217. It would be difficult for competitors to describe one feature and characteristic of medical procedures which result in beneficial less friction to various parts of the body if Applicant were allowed to register LESS FRICTION. Based on the evidence of record Applicant’s proposed mark LESS FRICTION is merely descriptive of the broadly identified medical services.

## II. Decision

The refusal to register Applicant’s mark LESS FRICTION because it is merely descriptive under Section 2(e)(1) is affirmed.