

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

Mailed: September 27, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re RokFit, Inc.*  
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Serial No. 90507392  
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Francis John Ciaramella, of Francis John Ciaramella, PLLC for RokFit, Inc.

George Murray, Trademark Examining Attorney, Law Office 121,  
Richard White, Managing Attorney.

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Before Larkin, Coggins and Thurmon, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

RokFit, Inc., (“Applicant”) seeks registration on the Supplemental Register of the proposed mark ATHLETIC STREETWEAR (in standard characters) for “Leggings; Shoes; Shorts; Socks; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shoes; Beanies; Board shorts; Graphic T-shirts; Hoodies; Short-sleeved or long-sleeved t-shirts; Sports bras; Tank tops; Athletic shorts; Gym shorts” in International Class 25.<sup>1</sup> The Examining Attorney finally

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<sup>1</sup> Application Serial No. 90507392 was filed on February 3, 2021, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based upon Applicant’s claim of first use anywhere at least as early as July 12, 2017 and use in commerce since at least as early as February 3, 2021.

refused registration under Trademark Act Sections 23(c) and 45, 15 U.S.C. §§ 1091(c) and 1127, finding the proposed mark is generic for the identified goods and not eligible for registration on the Supplemental Register.

Applicant initially sought registration on the Principal Register, but amended its application to seek registration on the Supplemental Register after the Examining Attorney found the alleged mark was merely descriptive of the identified goods.<sup>2</sup> The Examining Attorney then issued a second non-final Office Action refusing registration on the Supplemental Register “because the applied-for mark is generic and thus incapable of distinguishing applicant’s goods.”<sup>3</sup> Applicant presented arguments and evidence against the refusal, but the Examining Attorney maintained and made final the genericness refusal.<sup>4</sup> Applicant appealed and requested reconsideration, which was denied. The appeal is now ready for decision. We affirm the refusal to register.

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Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at \*2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s appeal brief appears at 6 TTABVUE and the Examining Attorney’s brief appears at 8 TTABVUE. Citations to the application record are to the downloadable .pdf version of the United States Patent and Trademark Office’s Trademark Status & Document Retrieval (“TSDR”) system.

<sup>2</sup> Office Action dated September 1, 2021; Response to Office Action dated November 12, 2021.

<sup>3</sup> Office Action dated November 21, 2021.

<sup>4</sup> Response to Office Action dated May 24, 2022; Final Office Action dated June 10, 2022.

## I. The Record

The Examining Attorney submitted evidence with each of the three Office Actions. The first Office Action maintained that the mark was merely descriptive, and included evidence of a Wikipedia listing for “Streetwear.”<sup>5</sup> The first Office Action also included screenshots of an Internet article about Streetwear fashion, a part of which is reproduced below.



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Applicant responded to the first Office Action with evidence of three trademark registrations and a screenshot of Merriam-Webster’s online dictionary showing no results for the term “streetwear.”<sup>7</sup>

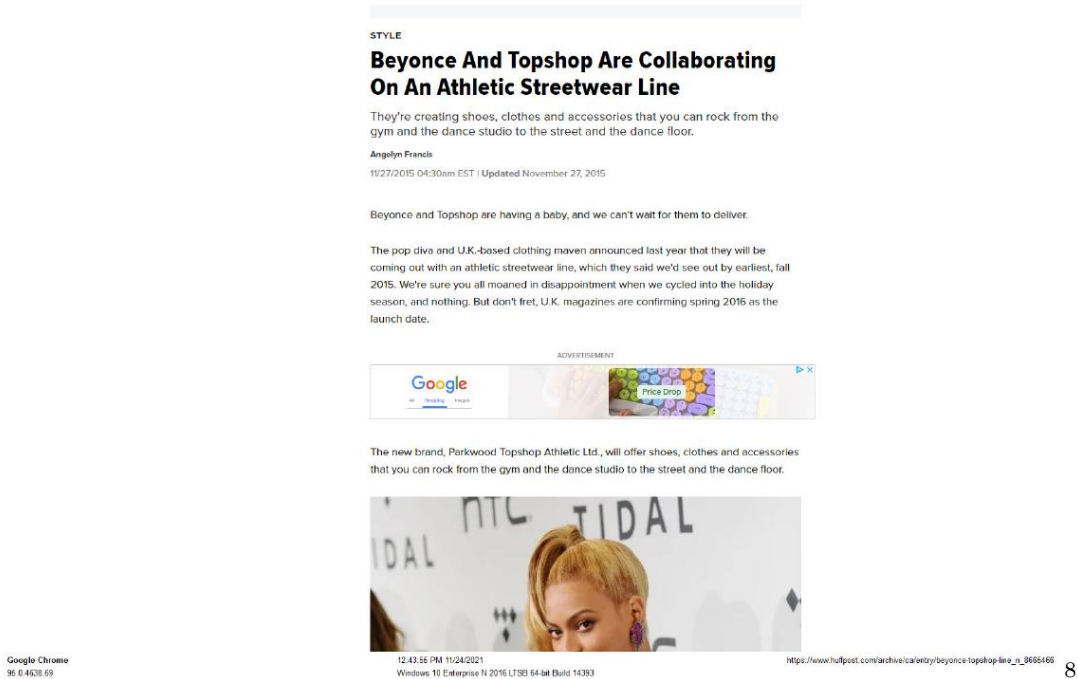
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<sup>5</sup> Office Action dated September 1, 2021 at 9-11.

<sup>6</sup> *Id.* at 16.

<sup>7</sup> Response to Office Action dated November 12, 2021 at 12 (Merriam-Webster screenshot), 14-16 (registrations).

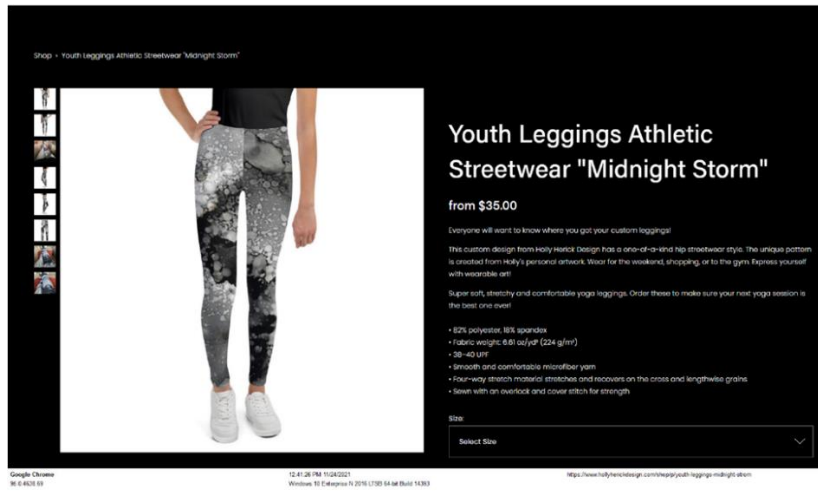
The second Office Action asserted the genericness refusal for the first time and was supported by evidence, including this screenshot from Huffington Post’s Internet site.



The Examining Attorney also submitted a screenshot of a clothing item that includes “Athletic Streetwear” in the description of the article of clothing, as shown below.

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<sup>8</sup> Office Action dated November 21, 2021 at 6.

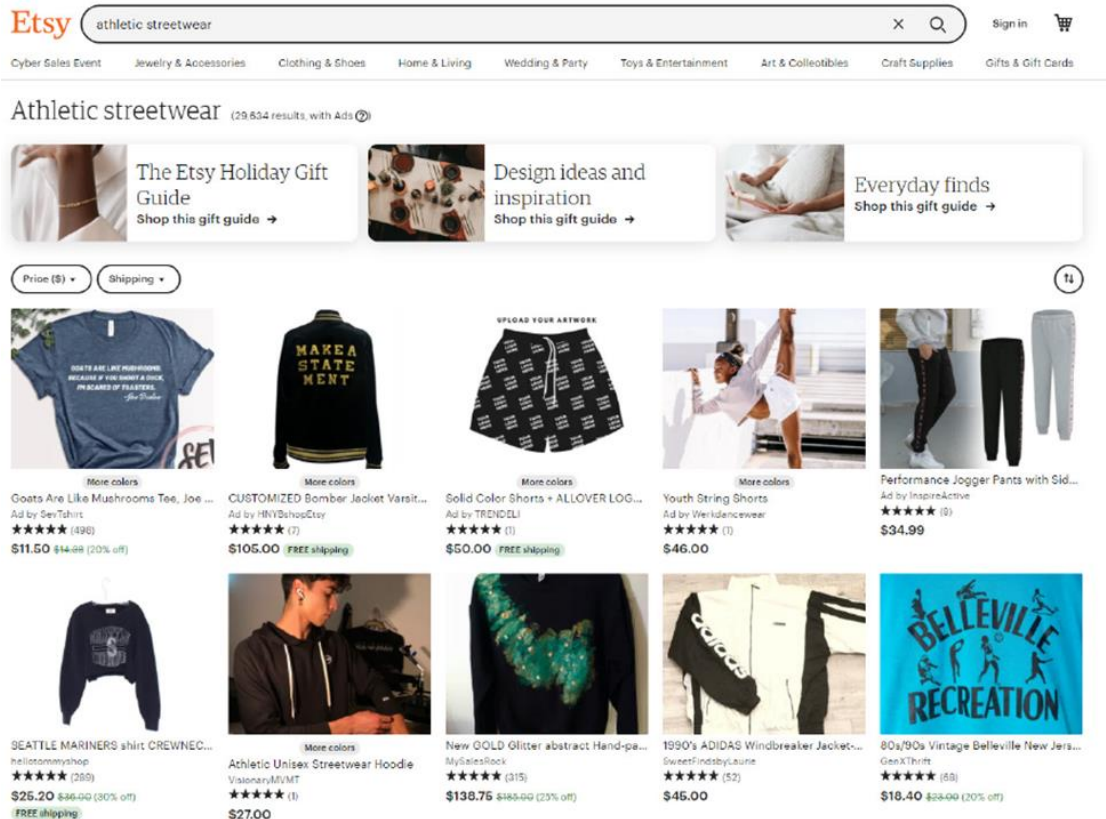


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The second Office Action also included screenshots of an Etsy.com page with search results for “athletic streetwear,” a portion of which is provided below.

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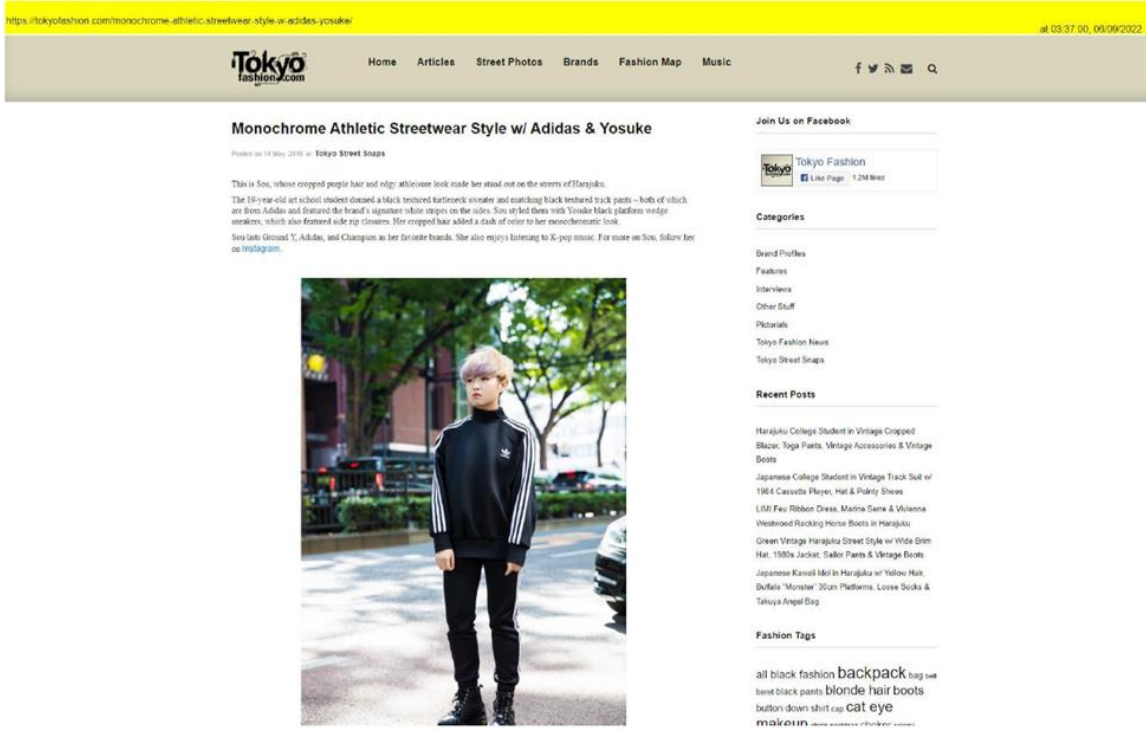
<sup>9</sup> *Id.* at 7. There was a second clothing listing with the second Office Action. It shows a long-sleeved pullover shirt listed as a “Nike Mock Neck Long Sleeve Shirt Athletic Streetwear Swoosh.” *Id.* at 11.



Applicant responded with arguments against the genericness refusal, but provided no additional evidence.<sup>11</sup> In the Final Office Action, the Examining Attorney maintained the genericness refusal and provided additional evidence. This included screenshots of an Internet article on Tokyofashion.com, a portion of which is reproduced below.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> Response to Office Action dated May 24, 2022.



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The Final Office Action also provided screenshots of three clothing items, each listed on a different Internet site, where each includes “athletic streetwear” in the description of the item.<sup>13</sup> Screenshots were provided of Internet sites for two businesses that use “athletic streetwear” in describing their business.<sup>14</sup> Finally, there is a screenshot from the LinkedIn site showing what appears to be a clothing label with the phrase “luxury athletic streetwear.”<sup>15</sup>

<sup>12</sup> Final Office Action dated June 10, 2022 at 6.

<sup>13</sup> *Id.* at 11, 21, and 32.

<sup>14</sup> *Id.* at 35 (motionathletic.com site with statement “Baltimore’s #1 Athletic Streetwear Brand”); 38-39 (globalfloorseats.com with statement “Welcome to Global Floor Seats, The #1 supplier of athletic streetwear.”).

<sup>15</sup> *Id.* at 14.

## II. Applicable Law

A generic term is “the name of a class of products or services.” *USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 2020 USPQ2d 10729, at \*2 (2020). *See also Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045-46 (Fed. Cir. 2018); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2011) (“Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services.”) (citations omitted).

Consumer understanding is the measure of whether a term or phrase is generic, as Judge Learned Hand explained just over 100 years ago:

What do the buyers understand by the word for whose use the parties are contending? If they understand by it only the kind of goods sold, then, I take it, it makes no difference whatever what efforts the plaintiff has made to get them to understand more.

*Bayer Co. v. United Drug Co.*, 272 F. 505, 509 (S.D.N.Y. 1921) (finding aspirin a generic term because consumers “did not understand by the word anything more than a kind of drug”). “The test is thus one of meaning to the usual buyer or other relevant members of the public.” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). *See also* Trademark Act § 14(3), 15 U.S.C. § 1064(3); *In re Am. Fertility Soc’y.*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB, Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991).



To determine “whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?” *Marvin Ginn*, 228 USPQ at 530. “[I]n registration proceedings the PTO always bears the burden of proving genericness.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (citing *In re Hotels.com, L.P.*, 573 F.3d 1300, 1301 (Fed. Cir. 2009)). “[D]oubt on the issue of genericness is resolved in favor of the applicant.” *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005).

The genus typically is determined by the goods or services identified in the application. *Cordua Rests.*, 118 USPQ2d at 1636. We will find a term 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.” *Id.* at 1637.

Evidence of the public’s understanding of a term may be obtained from “any competent source, such as consumer surveys, dictionaries, newspapers and other publications.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (quoting *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985)). “In assessing the primary significance of Applicant’s proposed mark to the relevant public, we also may consider Applicant’s use thereof.” *In re Consumer Prot. Firm PLLC*, 2021 USPQ2d 238, at \*8

(TTAB 2021) (citing *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

### III. Analysis

Our analysis proceeds in three steps. First, we define the “relevant public,” that is the actual or prospective purchasers of the goods identified in the Application. Second, we define the genus. Third, we consider whether the evidence shows that the relevant public understands ATHLETIC STREETWEAR to identify the genus or some part of it.

#### A. The Relevant Public

The Application identifies clothing items in International Class 25, with no field-of-use or other limitations. The goods, therefore, are presumed to be sold to ordinary consumers of clothing. *See, e.g., In re Embiid*, 2021 USPQ2d 577, at \*31 (TTAB 2021) (finding shoes “are ‘general consumer goods’ that are ‘marketed to the general population . . . and that are purchased or used in some form by virtually everyone”) (quoting *DeVivo v. Ortiz*, 2020 USPQ2d 10153, at \*14 (TTAB 2020)). There is nothing in the record to narrow the relevant purchasers for these goods. The relevant public includes ordinary consumers of the type of clothing identified in the Application.

#### B. The Genus

The Examining Attorney argues “the genus of the goods and/or services may be defined by an Applicant’s identification of goods and/or services.”<sup>16</sup> Applicant argues that the Examining Attorney did not support “the position, **by clear and**

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<sup>16</sup> 8 TTABVUE 4.

**convincing evidence**, that the Applicant’s identification of goods and services defines the genus at issue.”<sup>17</sup> Applicant’s argument makes no sense, because immediately after criticizing the Examining Attorney for basing the genus on the goods identified in the Application, the Applicant argues, “In a proceeding such as this, the genus of the goods or services at issue **are the goods or services set forth in the identification portion of the Application itself.**”<sup>18</sup> That is exactly what the Examining Attorney did and it is fully supported by the law.

The relevant genus is clothing and includes the following goods (taken from the identification of goods in the Application itself):

Leggings; Shoes; Shorts; Socks; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic shoes; Beanies; Board shorts; Graphic T-shirts; Hoodies; Short-sleeved or long-sleeved t-shirts; Sports bras; Tank tops; Athletic shorts; Gym shorts.

### **C. The Alleged Mark ATHLETIC STREETWEAR Is Generic**

#### **1. The Term “Streetwear” Is Generic**

Applicant submitted the absence of results from a dictionary search for “streetwear” as evidence this term is not generic.<sup>19</sup> The Examining Attorney, on the other hand, submitted screenshots of a Wikipedia entry for “streetwear” and screenshots of an Internet sewing site article on “Streetwear fashion.”<sup>20</sup> Other

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<sup>17</sup> 6 TTABVUE 4 (emphasis in bold here in italics in the original).

<sup>18</sup> *Id.* (emphasis in original).

<sup>19</sup> Response to Office Action dated November 12, 2021 at 12.

<sup>20</sup> Office Action dated September 21, 2021 at 9-11 (Wikipedia), 16 (sewguide.com article).

evidence discussed below shows additional uses of “streetwear” as part of a generic term for a type of clothing.

We find “streetwear” is a generic term for a category of clothing. The Wikipedia entry provides information about streetwear and provides an image of “A man wearing streetwear in London.”<sup>21</sup> The image shows a person wearing a hat, jacket, t-shirt, pants and athletic shoes. Each of these clothing items is identified in the Application, showing that streetwear is a generic term for some of the same clothing items Applicant sells. *Cordua Rests.*, 118 USPQ2d at 1637 (“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”).

## **2. The Term “Athletic” Is Often Used to Create Generic Terms**

The Examining Attorney submitted evidence that “athletic wear” is defined as “attire worn for sport or for casual wear.”<sup>22</sup> A similar definition was provided from a second dictionary, confirming the generic nature of the term.<sup>23</sup> The definition itself also shows that “wear” is a generic term for clothing, and the fact that “athletic wear” is also generic shows the term “athletic” is understood by consumers as identifying a subset of the broader clothing category. Consumers know that “wear” can be any type

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<sup>21</sup> *Id.* at 9.

<sup>22</sup> Office Action dated September 1, 2021 at 4 (from thefreedictionary.com).

<sup>23</sup> *Id.* at 7 (from definitions.net).

of clothing, and that “athletic wear” is a narrower category populated with “athletic” clothing items.

We need look no further than the Application to find additional evidence of the highly-descriptive nature of the word “athletic” when used with clothing items. *Cf. In re NextGen Mgmt., LLC*, 2023 USPQ2d 14 at \*9 (TTAB 2023) (“Use of a term in an application’s recitation of services strongly suggests that the term is merely descriptive.”). For example, the Application includes the following “pairs” of goods, with one more general than the other.

Shoes	Athletic shoes
Shorts	Athletic shorts

The Application also includes “Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms.” There are, in total, four uses of the word “athletic” within the identification of goods in the Application itself, including two instances where there are “athletic” versions of other goods (e.g., shoes and athletic shoes). Finally, we note that Applicant identified “Shorts,” “Board shorts,” “Athletic shorts,” and “Gym shorts.”

We assume Applicant understands the nature of the goods it has identified in the Application. It follows, therefore, that Applicant understands “Athletic shorts” to be different from “Board shorts” or “Gym shorts.” It also follows that each of these categories of shorts are identified by generic terms. “Athletic shorts,” as used in the Application, is a generic term. It identifies a category of shorts, as shown by Applicant’s inclusion of both “Shorts” and “Athletic shorts.” The identification of

“Shoes” and “Athletic shoes” is similar evidence that “Athletic shoes” is a generic term that identifies a category of shoes. The same is true of Athletic apparel and Athletic uniforms.

Applicant’s use of “athletic apparel” is particularly telling. When this term appears in the identification, it is followed by a list of the types of clothing Applicant includes within the category, “namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms.” “Athletic apparel” is used as a generic term and the Applicant has defined the genus of that term. These uses by Applicant show that the word “athletic” can be combined with a generic term for a type of clothing to produce a new, more specific generic term. The Application itself provides two examples: (1) the category of shoes is narrowed to the category of athletic shoes; and (2) the category of shorts is narrowed to the category of athletic shorts.

We find that the word “athletic” is so highly descriptive and widely used, that when combined with a broader generic term for clothing such as “streetwear,” the resulting combination is very likely to be understood by consumers as identifying a category of goods. The Application contains evidence of four instances of this combination and resulting new generic terms, as we explained above.

Other evidence in the record strongly supports this conclusion. Applicant submitted evidence of three registrations that include the term “streetwear.”<sup>24</sup> One of the registrations, for the mark GYM STREETWEAR, includes an identical phrase in its identification: “Athletic apparel, namely, shirts, pants, jackets, footwear, hats

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<sup>24</sup> Response to Office Action dated, November 12, 2021 at 14-16.

and caps, athletic uniforms.”<sup>25</sup> This is further evidence that relevant consumers will understand “athletic apparel” and “athletic uniforms” as identifying categories of clothing, with the former category broader than the latter.

When we take this evidence with the use of “athletic apparel” in the Application and one of the registrations Applicant submitted, it is clear that the word “athletic” may be combined with many generic terms for clothing to produce a new, more narrow generic term. Just as “shoes” becomes the narrower “athletic shoes,” “wear” and “apparel” become the narrower generic terms “athletic wear” and “athletic apparel.”

### **3. The Alleged Mark ATHLETIC STREETWEAR is Generic**

We have focused thus far on the meaning of the individual words “streetwear” and “athletic,” because “[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. *See also In re Petroglyph Games, Inc.*, 91 USPQ2d 1332, 1337 (TTAB 2009) (“[I]t is entirely acceptable to consider the component parts of a composite mark when divining the likely perception of the composite.”) We found “streetwear” generic, based on the evidence in the record. We need not find the word “athletic” alone to be generic for clothing, because the uses in the record show that this word is so highly descriptive within the clothing field that it can be combined with many other generic terms to create a new generic term that will be well-understood by consumers.

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<sup>25</sup> *Id.* at 15 (Registration No. 5753698, Supplemental Register).

For example, the Examining Attorney submitted a screenshot of the Etsy website, showing search results for “athletic streetwear.”<sup>26</sup> This single piece of evidence shows shorts, a t-shirt, a hoodie, pants, and jackets, all of which are also found in the identification of goods in the Application. This is strong evidence that the relevant public—the goods are identical in the Etsy results and the Application, so the consumers must be the same—understands “athletic streetwear” as identifying a genus of goods that includes many of the specific items identified in the Application.

The record also contains evidence of five different listings for clothing items that include “athletic streetwear” in the descriptions. One listing identifies “Youth Leggings Athletic Streetwear ‘Midnight Storm.’”<sup>27</sup> Another listing shows a Nike top and includes “Athletic Streetwear” in the item description.<sup>28</sup> The other three listings in the record show similar generic uses of “athletic streetwear.”<sup>29</sup> There is no other evidence to controvert the premise established by these five listings that consumers understand “athletic streetwear” as a category of clothing.

There is also evidence showing that persons writing about clothing use “athletic streetwear” generically to identify a category of clothing. For example, the record includes screenshots of an article about “An Athletic Streetwear Line” to be introduced by Beyonce and Topshop.<sup>30</sup> Another article reports on a young woman in

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<sup>26</sup> Office Action dated November 21, 2021 at 10.

<sup>27</sup> Office Action dated November 21, 2021 at 7.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> Final Office Action dated June 10, 2022 at 11, 21 and 32.

<sup>30</sup> Office Action dated November 21, 2021 at 6.



Japan wearing “Monochrome Athletic Streetwear Style ...”<sup>31</sup> These are also snapshots of uses of “athletic streetwear”, and these uses are consistent with the other evidence. In the latter example, the young woman is wearing an Adidas jacket and pants. The Application includes “jackets” and “pants,” showing that “athletic streetwear” is used in this evidence to identify the same types of clothing identified in the Application.

The record also contains evidence of competitive need to use “athletic streetwear” as a generic term. Two businesses are shown using this term to identify the nature of their businesses. *Booking.com B.V.*, 2020 USPQ2d 10729, at \*7 n.6 (evidence of genericness “can include ... usage by ... competitors”). Screenshots from the Motion Athletics website show the business’s claim to be “Baltimore’s #1 Athletic Streetwear Brand.”<sup>32</sup> This site lists “shirts” and “hats” for sale, two items also found in the Application. A second business, Global Floor Seats, identifies itself as “The #1 supplier of athletic streetwear.”<sup>33</sup> This site shows t-shirts for sale, again, an item identified in the Application.

The evidence of record fully supports the genericness refusal because it shows that the relevant public understands ATHLETIC STREETWEAR to identify a genus of clothing goods. It shows different types of generic uses of “athletic streetwear,” but

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<sup>31</sup> Final Office Action dated June 10, 2022 at 6. Even if this website originates in Japan, it appears that it is available to, if not directed to, consumers in the United States, as it is written entirely in English.

<sup>32</sup> *Id.* at 35.

<sup>33</sup> *Id.* at 38-39.

all of these uses include goods identified in the Application. The term “athletic streetwear” is generic for at least some of the goods identified in the Application.

**Decision:** The refusal to register the alleged mark ATHLETIC STREETWEAR on the Supplemental Register is affirmed.