

This Opinion is Not a
Precedent of the TTAB

Mailed: November 6, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Skechers U.S.A., Inc. II
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Serial No. 97173591
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Marshall A. Lerner of Kleinberg & Lerner, LLP.

Wendy B. Goodman, Trademark Examining Attorney, Law Office 109,
Michael H. Kazazian, Managing Attorney.

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Before Heasley, Coggins and Cohen,
Administrative Trademark Judges.

Opinion by Cohen, Administrative Trademark Judge:

Skechers U.S.A., Inc. II (“Applicant”) seeks registration on the Principal Register of the proposed standard-character mark HANDS FREE STEP-INS for “footwear” in International Class 25.¹

¹ Application Serial No. 97173591 was filed on December 15, 2021, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the proposed mark in commerce.

The Examining Attorney refused registration of Applicant's proposed mark on the ground that it is merely descriptive of the goods identified in the application within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1).

When the descriptiveness refusal was made final, Applicant appealed and requested reconsideration. The request for reconsideration was denied and the appeal resumed. The case is fully briefed.² We affirm the refusal to register.

I. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them,” unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).³ A term is merely descriptive of goods or services if it conveys an immediate idea of an

² All TTABVUE and TRADEMARK STATUS AND DOCUMENT RETRIEVAL (“TSDR”) citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents. 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*, Opp. No. 91216455, 2020 WL 2853282, at *1 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 its reply brief appears at 9 TTABVUE. The Examining Attorney's brief appears at 8 TTABVUE.

As part of an internal Board pilot citation program on broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 101.03 (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals only by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites to the Westlaw (WL) database. Practitioners should also adhere to the practice set forth in TBMP § 101.03.

³ Applicant does not claim that its proposed mark has acquired distinctiveness.

ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *See, e.g., Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 972 (Fed. Cir. 2018) (quoting *N.C. Lottery*, 866 F.3d 1363, 1367 (Fed. Cir. 2017)).

Whether a term is merely descriptive is not determined in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the term is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner in which the term is used or intended to be used. *In re Bayer A.G.*, 488 F.3d 960, 963-64 (Fed. Cir. 2007). The question is whether someone who knows what the goods or services are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012).

“We must, however, consider the mark as a whole and ask whether the combination of the component words of Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Fat Boys Water Sports LLC*, Ser. No. 86490930, 2016 WL 3915986, at *6 (TTAB 2016)) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1175 (Fed. Cir. 2004)). “In considering a mark as a whole, the Board may weigh the individual components of the mark to determine the overall impression or the descriptiveness of the mark and its various components.” *Oppedahl*, 373 F.3d at 1174. Indeed, we are “required to examine the meaning of each component individually, and then

determine whether the mark as a whole is merely descriptive.” *DuoProSS*, 695 F.3d at 1255.

Where a mark consists of multiple words, the mere combination of descriptive words does not necessarily create a non-descriptive word or phrase. *In re Omniome, Inc.*, Ser. No. 87661190, 2019 WL 7596207, at *5 (TTAB 2019). “If the words in the proposed mark are individually descriptive of the identified goods, we must determine whether their combination ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.’” *In re Zuma Array Ltd.*, Ser. No., 79288888, 2022 WL 3282655, at *4 (TTAB 2022) (quoting *Fat Boys*, 2016 WL 3915986, at *6). However, if each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *Id.* (quoting *Fat Boys*, 2016 WL 3915986, at *6).

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 or services are to reach a conclusion about their nature from the mark. *See, e.g., StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 1332 (Fed. Cir. 2014); *Fat Boys*, 2016 WL 3915986, at *5.

II. Evidence of Descriptiveness and Analysis

Evidence of the public’s understanding of a term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications. *Zuma Array*, 2022 WL 3282655, at *5. These sources may include websites, publications and use in

labels, packages, or in advertising materials directed to the goods. *Id.* Proof of mere descriptiveness may originate from an applicant’s own descriptive use of its proposed mark, or portions thereof in its materials, and an applicant’s own website and marketing materials may be the most damaging evidence in indicating how the relevant purchasing public perceives a term. *Zuma Array*, 2022 WL 3282655, at *8; *In re Mecca Grade Growers, LLC*, Ser. No. 86358219, 2018 WL 1314995, at *11 (TTAB 2018).

In support of the descriptiveness refusal, the Examining Attorney argues, relying on various dictionary definitions, that HANDS FREE means “designed to be used without being held in the hands”⁴ and “describes a feature of Applicant’s footwear ... because of the specific design of the shoe, the consumer will be able to put the Applicant’s footwear on HANDS FREE”;⁵ and that STEP-IN refers to “an article of clothing put on by being stepped into: such as: a shoe”⁶ and thus, “STEP-IN describes a shoe design, that is a feature of the shoe, that allows the user to step in the shoe without using their hands.”⁷ The Examining Attorney continues, asserting that shoes featured on Applicant’s website use the terms in the proposed mark descriptively with the website reading: “Step into effortless style and comfort with Skechers Hands Free

⁴ 8 TTABVUE 3-4, citing MERRIAM-WEBSTER.COM, November 9, 2022 Office Action at TSDR 58.

⁵ *Id.* at 4.

⁶ *Id.*, citing MERRIAM-WEBSTER.COM, November 5, 2023 Final Office Action at TSDR 91.

⁷ *Id.*

Slip-ins™. **Hands free** shoes designed with our exclusive Heel Pillow™ that allow you to **step in** without bending over.”⁸

Additionally, the Examining Attorney introduced over 10 third-party websites which “clearly demonstrate[], the terms HANDS FREE and STEP-IN are common terminology among third-party shoe manufacturers,”⁹ including (emphasis added):

- ZEBASHOES.COM displaying a photo of shoes and reading “The Best **Hands-Free** Sneakers” and displaying shoes for sale with the heading “MEN’S **HANDS-FREE** SHOES.” The website explains consumers can “Put Your Shoes On Without Bending Down,” and the website includes a photo of Zeba’s brick-and-mortar store with a large sign above the door: ZEBA HANDS FREE SHOES;¹⁰
- BUYPHOENIXSUPPLY.COM offering for sale “Canvas **Step-In** Shoes (4 Colors)”;¹¹
- ULTRADT.COM offering for sale “**Step-In** Spiked Shoes.” The website explains: “No more frustration with straps, buckles, and adjustments. Just step right into Step-in Spiked Shoes and get to work”;¹²
- ANCHORTEX.COM offering for sale “3333 EVA **Step-In** Shower Shoes” described as “easy slip-on, slip-off” footwear;¹³
- HAMMACHER.COM offering for sale “The **Hands Free Step In** Comfort Shoes” described as “shoes with a rebounding heel that enables them to be slipped on and off without using hands or a shoehorn”;¹⁴
- KIZIK.COM offering shoes for sale described as “Unapologetically **hands-free**” and “Kizik is the original **hands-free** shoe” and “**Hands-free** for

⁸ *Id.*

⁹ *Id.* at 4-6.

¹⁰ November 9, 2022 Office Action at TSDR 6-11.

¹¹ *Id.* at 21.

¹² *Id.* at 31-32.

¹³ *Id.* at 34-35.

¹⁴ *Id.* at 37.

all”;¹⁵ and an article from UTAHBUSINESS.COM which reads “Kizik Kids are the first **hands-free** shoes that require no bending, no lace tying, no heel crushing, and no time ... with Kizik Kids, putting on a shoe is as simple as **stepping in**”;¹⁶

- QUIKIKS.COM offering shoes described as “The easiest to use **hands-free** shoes,” “Quikiks™ are **EASIEST** to use **HANDS-FREE** shoes! Now you can effortlessly **step into** your shoes and have them securely fasten without the need to bend over or use your hands!”;¹⁷
- NIKE.COM offering the Go FlyEase shoe described as “Nike’s first ever **hands-free** shoe makes it easy to get in and out, so you’re always one step away from the rest of the world”;¹⁸
- WALMART.COM offering “Women’s Shoes – Pop-Art Cut-Out **Step-Ins**”;¹⁹ and
- UNICOR.GOV offering “Slide-in/**Step-in** Canvas Deck Shoes” for sale.²⁰

Arguing that its proposed mark is suggestive, and not descriptive, Applicant contends that “the terms ‘HANDS FREE’ and ‘STEP-INS’ expressly describe the actions of a person donning footwear and do not describe the footwear itself. Instead, Applicant argues, ‘HANDS FREE’ and ‘STEP-INS’ are the desired results of the user experience when donning footwear”;²¹ and the terms describe the user, not the goods.²² Notwithstanding, Applicant seems to alternatively concede that HANDS FREE may be descriptive, asserting that it is willing to disclaim the term if it would

¹⁵ *Id.* at 45-54.

¹⁶ November 5, 2023 Final Office Action at TSDR 87.

¹⁷ *Id.* at 30-31.

¹⁸ *Id.* at 36.

¹⁹ *Id.* at 44.

²⁰ *Id.* at 66.

²¹ 6 TTABVUE 6.

²² *Id.* at 8.

result in registration of the mark.²³ See *In re Pollio Dairy Prods. Corp.*, Ser. No. 596577, 1988 WL 252425, at *1 n.4 (TTAB 1988) (“By its disclaimer of the word LITE, applicant has conceded that the term is merely descriptive as used in connection with applicant’s goods.”)

Applicant’s arguments are unavailing. As noted, a term need not describe all of the properties or functions of the goods to be considered merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. *Zuma Array*, 2022 WL 3282655, at *3. HANDS FREE STEP-INS describes a significant feature of the footwear sold by Applicant, namely, that they can be put on without using hands because a consumer can simply step in the shoe.

Applicant’s website, shown below, further shows how it uses HANDS FREE STEP-INS in a descriptive manner:



Hands Free Slip-ins

Step into effortless style and comfort with Skechers Hands Free Slip-ins™. Hands free shoes designed with our exclusive Heel Pillow™ that allow you to step in without bending over. Learn more about Slip-ins Technology.

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²³ *Id.* Applicant also argues that its disclaimers of HANDS FREE in its prior applications for footwear “should not control [A]pplicant’s position on that issue in future applications,” 9 TTABVUE 9, but then asserts that it “is willing to disclaim ‘HANDS FREE’ apart from the mark as shown if making such a disclaimer will lead to approval of [A]pplicant’s mark for publication.” *Id.*

²⁴ March 11, 2024 Request for Reconsideration Denied at TSDR 27.

The website displays Applicant's shoes, labeled as "Skechers Hands Free Slip-ins," as "[h]ands free shoes designed with our exclusive Heel Pillow™ that will allow you to step in without bending over. Learn more about Slip-ins Technology";²⁵ and further highlights the shoe's features, stating "Introducing new Skechers Hands Free Slip-Ins™. Putting on your shoes has never been easier. No bending over. No pulling them on. No hassles."²⁶ No imagination would be necessary for purchasers to perceive the descriptive significance of HANDS FREE STEP-INS as it relates to the important features of Applicant's footwear. As indicated in Applicant's and the third-parties' websites, it appears that there are benefits to footwear that can be donned by stepping into them without using one's hands. The evidence demonstrates this is a desirable feature of footwear. *See In re King Koil Licensing Co.*, Ser. No. 76565486, 2006 WL 639160, at *5 (TTAB 2006) (finding THE BREATHABLE MATTRESS merely descriptive of beds and mattresses, "because it is likely to be perceived by consumers as indicating that these products are breathable and therefore desirable"). In other words, Applicant and others in the footwear industry use HANDS FREE STEP-INS in a descriptive sense. *Id.*

The combination of the terms HANDS FREE STEP-INS does not result in a unitary mark with a separate, nondescriptive meaning. *See, e.g., In re Colonial Stores, Inc.*, 394 F.2d 549, 552 (CCPA 1968) (SUGAR & SPICE for "bakery products"); *King Koil.*, 2006 WL 639160, at *4-5 (THE BREATHABLE MATTRESS merely

²⁵ *Id.* at 27.

²⁶ *Id.*

descriptive of inter alia mattresses where evidence showed “breathable” retained its ordinary dictionary meaning when combined with “mattress” and the resulting combination was used in the relevant industry in a descriptive sense). Rather, HANDS FREE would retain its ordinary dictionary meaning, i.e., “designed to be used without being held in the hands”²⁷ and STEP-INS would retain its ordinary dictionary meaning, i.e., “an article of clothing put on by being stepped into: such as ... : a shoe.”²⁸ In sum, each component in HANDS FREE STEP-INS retains its descriptive significance in relation to the goods, such that the combination, taken as a whole, is merely descriptive.

Applicant’s argument that HANDS FREE STEP-INS “refer directly only to the consumer”²⁹ and thus, “the mark is descriptive of the consumer but only suggestive of the footwear”³⁰ is also unavailing. It does not escape our notice that Applicant’s website describes its shoes as “Hands free shoes designed with our exclusive Heel Pillow™ that allow you to step in without bending over.”³¹ Here, it is evident that the shoes are described as “hands free” and are specifically designed to allow a consumer to “step in” them. This is clearly a description of shoes, not the consumer. We are not persuaded by Applicant’s argument that its proposed mark describes the consumer only. Whether or not HANDS FREE STEP-INS is descriptive of Applicant’s

²⁷ MERRIAM-WEBSTER.COM, November 9, 2022 Office Action at TSDR 58.

²⁸ MERRIAM-WEBSTER.COM, November 5, 2023 Final Office Action at TSDR 91.

²⁹ 9 TTABVUE 8.

³⁰ *Id.*

³¹ *Id.*

consumers, the evidence of record shows that it is merely descriptive of Applicant's footwear.

In its reply, Applicant argues that the Examining Attorney's attempts³² to address Applicant's reliance on *Fleetwood Co. v. The Mitchum Co.*, 323 F.2d 1015 (CCPA 1963), *In re Noble Co.*, Ser. No. 73402284, 1985 WL 72017 (TTAB 1985), and *In re Univ. Water Sys., Inc.*, Ser. No. 73015921, 1980 WL 39035 (TTAB 1980) fails to rebut those cases. We disagree. While we do not disagree that, as Applicant asserts, those cases stand for the proposition that a mark can be suggestive of a desired result and therefore, not descriptive of the relevant goods,³³ the cases relied upon by Applicant are distinguishable.

Each determination by the Board as to whether a proposed mark is merely descriptive, versus being only suggestive, is done on a case-by-case basis and must be supported by the evidentiary record in each case. Moreover, we reiterate that our determination must be made in relation to the particular goods for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Remacle*, Ser. No. 75932290, 2002 WL 31563187, at *2 (TTAB 2002). Thus, other decisions for different marks and different goods have little bearing here.

Indeed, the marks at issue in the cited cases involve words that appear more fanciful than the terms before us now. For example, *Fleetwood* involved a misspelling

³² 8 TTABVUE 6-7.

³³ 9 TTABVUE 6.

of “fade” and the court found that FAYD was not descriptive of skin creams but instead “suggests a desired result” from using the creams. *Id.* at 1016. In *Noble*, the Board found that “having read the informative literature,” NOBURST was suggestive of the desired result of using the antifreeze product. *Id.* at *2. In *Universal Water*, the Board found that PURITY, based on its dictionary definition, was a “rather abstract concept” that did not describe the goods or purpose of the goods but was instead, suggestive of the desired result of using the water filtering units. *Id.* at *3. In the present case, as evidenced by dictionary definitions and third-party uses, the words HANDS FREE STEP-INS are directly descriptive of a characteristic and feature of the footwear, not merely the result or consequence of wearing the footwear. The individual and combined terms are straight-forward and readily understood, not abstract.

Having considered the evidence of record, we are of the opinion that the proposed mark HANDS FREE STEP-INS immediately informs the consumer of a characteristic, feature or function of Applicant’s footwear. When observed in connection with Applicant’s footwear, HANDS FREE STEP-INS describes “[h]ands free shoes designed ... [to] allow you to step in without bending over.”³⁴ In short, the proposed mark requires no interpretation or imagination to understand that it describes a feature of the footwear. *See In re Planalytics, Inc.*, Ser. No. 76322156, 2004 WL 715031, at * (TTAB 2004) (“Courts have long held that to be ‘merely descriptive,’ a term need only describe a single significant quality or property of the

³⁴ March 11, 2024 Request for Reconsideration Denied at TSDR 27.

goods”); *In re Gyulay*, 820 F.2d 1216, 1216-17 (Fed. Cir. 1987) (affirming Board’s decision finding APPLE PIE descriptive based on key characteristic of applicant’s potpourri).

III. Conclusion

Viewed in its entirety, in the context of the identified goods and the record before us, we find that HANDS FREE STEP-INS is merely descriptive of Applicant’s goods.

Decision: The refusal to register HANDS FREE STEP-INS under Section 2(e)(1) is affirmed. 15 U.S.C. § 1052(e)(1).