

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: December 4, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

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In re Darex, LLC

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Serial No. 97623103
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Timothy D. Nichols of Workman Nydegger,
for Darex, LLC.

April Roach, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

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Before Pologeorgis, English, and Lavache,
Administrative Trademark Judges.

Opinion by Lavache, Administrative Trademark Judge:

Darex, LLC (“Applicant”) seeks registration on the Principal Register of the standard character mark **PRECISION ADJUST** for “Knife sharpeners; replacement parts for hand operated knife sharpeners; accessories for hand operated knife sharpeners, namely, specially adapted carry cases, sharpening rods, rod holders, and hand strops,” in International Class 8.¹

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¹ Application Serial No. 97623103 was filed October 7, 2022, based upon Applicant’s allegation of use in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), claiming November 1, 2020, as both the date of first use and the date first use in commerce.

The Trademark Examining Attorney refused registration of Applicant’s proposed mark under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), on the ground that it is merely descriptive of Applicant’s identified goods. After the Examining Attorney issued a final refusal, Applicant appealed and requested reconsideration. The Examining Attorney denied the request for reconsideration, the appeal resumed, and the case was fully briefed.

For the reasons explained below, we affirm the refusal to register.

I. Analysis

Section 2(e)(1) of the Trademark Act bars registration of a mark that is merely descriptive when used on or in connection with an applicant’s identified goods. 15 U.S.C. § 1052(e)(1). A term is merely descriptive “if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Com. of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015).²

Descriptiveness must be assessed not in the abstract, but “in relation to the goods 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 because

² As part of an internal Board pilot program to broaden acceptable forms of legal citation in Board cases, citations in this opinion are in the form recommended in 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 by the pages on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For opinions of the Board, this opinion uses citations to the Lexis legal database and cites only precedential decisions. Practitioners should also adhere to the guidance at TBMP § 101.03.

of the manner of its use or intended use.” *Bayer AG*, 488 F.3d at 964 (citing *In re Abcor Dev.*, 588 F.2d 811, 813 (CCPA 1978)). Here, we must consider the perception of the average purchaser of knife sharpeners and related replacement parts and accessories.

Evidence of the relevant purchasers’ understanding of a term or phrase “may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 974 (Fed. Cir. 2018) (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018)). “These sources may include [w]ebsites, publications and use ‘in labels, packages, or in advertising materials directed to the goods.” *In re N.C. Lottery*, 866 F.3d 1363, 1368 (Fed. Cir. 2017) (quoting *Abcor*, 588 F.2d at 814). And evidence of an applicant’s own usage beyond those noted above may also be considered when determining descriptiveness. See *In re Omniome, Inc.*, Ser. No. 87661190, 2019 TTAB LEXIS 414, at *14 (TTAB 2019).

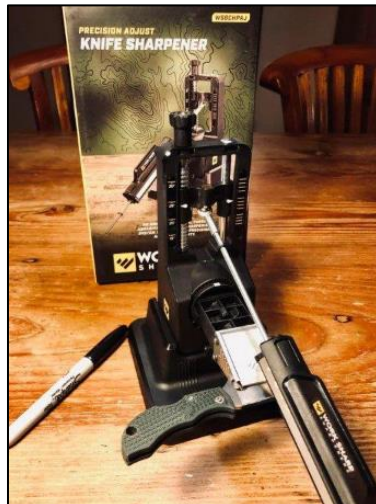
Turning to our analysis, with a proposed mark like PRECISION ADJUST, we first consider the meaning of the component terms, and then determine whether the proposed mark as a whole is merely descriptive. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1255 (Fed. Cir. 2012). If PRECISION and AJDUST are each individually merely descriptive of the goods, we assess whether their combination in “Applicant’s mark ‘conveys any distinctive source-identifying impression contrary to the descriptiveness of the individual parts.” *In re Fat Boys*

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Water Sports LLC, Ser. No. 86490930, 2016 TTAB LEXIS 150, at *14-15 (TTAB 2016) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1175 (Fed. Cir. 2003)); see also *Nat'l Shooting Sports Found., Inc.*, Ser. No. 73254912, 1983 TTAB LEXIS 69, at *5 (TTAB 1983) (“Combinations of merely descriptive components have been found registrable if the juxtaposition of the words is inventive or evokes a unique commercial impression . . . or if the term has a bizarre or incongruous meaning as applied to the goods”). If each component “retains its merely descriptive significance in relation to the goods, the combination results in a composite that is itself merely descriptive.” *Fat Boys*, 2016 TTAB LEXIS 150, at *15 (citing *In re Tower Tech., Inc.*, Ser. No. 75709532, 2002 TTAB LEXIS 300, at *10 (TTAB 2002)).

Here, Applicant’s goods are “Knife sharpeners; replacement parts for hand operated knife sharpeners; accessories for hand operated knife sharpeners, namely, specially adapted carry cases, sharpening rods, rod holders, and hand strops.”

Applicant has provided the following specimen of use:³



³ October 7, 2022 Specimen at TSDR 1. The TTABVUE and Trademark Status and Document Retrieval (“TSDR”) citations in this opinion refer to the docket and electronic file database for the involved application.

The record also includes the following photographs of Applicant's goods:⁴



According to Applicant's own advertising copy, the "Precision Adjust Knife Sharpener" (on the left, above) is "an angle **adjustable**, three abrasive grit, knife sharpening system that delivers **precision** and repeatability by controlling both the edge angle and the blade in unison. Sharpening Angle can be easily **adjusted** from 15° to 30° in 1° increments to sharpen every knife you own."⁵ And Applicant's "Professional Precision Adjust" (on the right, above) is "a complete angle **adjustable** knife sharpening system using metal construction, a digital angle indicator, and seven abrasive grits to bring rigidity, repeatability, and **precision** to your knife sharpening needs. The sharpening angle easily **adjusts** from 15° to 30° using a digital angle indicator to accurately and repeatably set your sharpening angle."⁶

⁴ July 23, 2023 Nonfinal Office Action at TSDR 11, 17.

⁵ *Id.* at 11 (emphasis added).

⁶ *Id.* at 17 (emphasis added).

The Examining Attorney has provided the following definitions of the proposed mark's component terms:

- PRECISION: “[t]he state or quality of being precise; exactness”; “[m]ade so as to vary minimally from a set standard”; “[o]f or characterized by accurate action”;⁷ and
- ADJUST: “[t]o move or change (something) so as to be in a more effective arrangement or desired condition”; “[t]o change so as to be suitable to or conform with something else.”⁸

In addition, the Examining Attorney has submitted marketplace evidence in the form of webpage excerpts showing that other retailers commonly refer to the precision and adjustability of their knife sharpeners.

For example:

- KME (kmesharp.com) offers a “Precision Knife Sharpening System,” also referred to as a “Precision Knife Sharpening Kit,” featuring an “Infinitely Adjustable Sharpening Angle” and a “Revolutionary Spherical Bearing Rod Guide” that “[m]aintains absolute zero deviation from [the] selected sharpening angle at all times.”⁹

⁷ *Id.* at 7 (quoting THE AMERICAN HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=precision> (accessed on July 23, 2023)).

⁸ *Id.* at 9 (quoting THE AMERICAN HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=adjust> (accessed on July 23, 2023)).

⁹ *Id.* at 23-27.

- Wicked Edge (wickededgeusa.com) offers the “WE120 Precision Sharpener,” featuring “Angle adjustment in 0.05-degree increments.”¹⁰
- SharpWorx (sharpworx.net) offers the SharpWorx Master sharpener, which purportedly will “[s]harpen knives with professional precision” and may be used with an “optional adjustable angle knife holder that adjusts from 0-30 degrees.”¹¹
- TSPROF (tsprof.us) offers a variety of knife sharpeners described as “precision equipment” made with “[s]tate-of-the-art manufacturing technology [that] ensures precision and angle consistency.”¹²
- ViperSharp (vipersharp.com) offers the “Vipersharp Professional Precision Sharpening System,” which features an “angle adjustment without limits” and is advertised as “tak[ing] precision sharpening to a whole new level.”¹³
- Zakarian Hospitality (shop.geoffreyzakarian.com) offers a “Precision Knife Sharpener.”¹⁴
- Lansky Sharpeners (lansky.com) offers “Precision Sharpening Kits” for knives.¹⁵

¹⁰ *Id.* at 29-30.

¹¹ October 12, 2023 Final Office Action at TSDR 7-8.

¹² *Id.* at 17.

¹³ *Id.* at 23, 25.

¹⁴ *Id.* at 27.

¹⁵ *Id.* at 28.

- Fishermen’s Source (fishermenssource.com) offers the “Berkley Precision Knife Sharpener.”¹⁶
- AccuSharp (accusharp.com) offers the “AccuSharp Precision Sharpening Kit,” which features “Angle Guide Settings for Six Precise Angles.”¹⁷
- The Mercantile Co. (themercantileco.com) offers the “Kitchen IQ Angle Adjust – Adjustable Manual Sharpener,” featuring a “[t]wo [a]djustable manual sharpening slots” and a “[k]nob [that] allows the user to adjust the angle of both the course and fine sharpening slots at the same time.”¹⁸

Based on this evidence, we find that each component term in the proposed mark merely describes a purpose, feature, or characteristic of Applicant’s knife sharpeners and related replacement parts and accessories. Specifically, PRECISION merely indicates the accuracy or exactness of Applicant’s sharpeners or their sharpening capability, and ADJUST merely indicates that the sharpeners may be changed or adapted (i.e., adjusted).

When these individually descriptive components, PRECISION and ADJUST, are combined, the result, PRECISION ADJUST, is also merely descriptive when considered in the context of the identified goods. *See DuoProSS*, 695 F.3d at 1255 (assessing the descriptiveness of the combined individual terms as a whole). Specifically, the proposed mark, as a whole, immediately and directly conveys to the

¹⁶ *Id.* at 32.

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 36-37.

relevant purchasers that Applicant's knife sharpeners (and related replacement parts and accessories) allow the user to change or adapt the sharpener to a standard level of accuracy and with minimal variation. Indeed, based on the evidence of record, a knife sharpener's precision goes hand in hand with the ability to adjust it. This conclusion is reinforced by Applicant's own advertising copy indicating that the goods consist of "an angle adjustable, three abrasive grit, knife sharpening system that delivers precision and repeatability by controlling both the edge angle and the blade in unison."¹⁹

Applicant contends that the proposed mark is not merely descriptive because the combination of PRECISION and ADJUST "form[s] an incongruous or bizarre combination that cannot be grasped without some measure of consumer imagination or 'mental pause.'"²⁰ Specifically, Applicant focuses on the grammatical structure of the proposed mark, arguing that, whether PRECISION operates as a noun or adjective, its unorthodox combination with the verb ADJUST would cause relevant purchasers to mentally pause and engage in a multi-stage reasoning process to determine how the proposed mark relates to the identified goods.²¹ And, according to Applicant, consumers who do so would arrive at an incongruous meaning, because "[i]f something has the quality of being 'precise' or 'exact,' then it does not need to be

¹⁹ July 23, 2023 Nonfinal Office Action at TSDR 11.

²⁰ Appeal Brief, 6 TTABVUE 16.

²¹ *Id.* at 16-17.

moved or changed to make it more effective . . . especially . . . in the context of knife sharpeners.”²²

We acknowledge that PRECISION ADJUST has an unconventional grammatical structure, and that, as Applicant suggests,²³ there may be more grammatically “natural” ways to combine the two terms (e.g., PRECISION ADJUSTMENT or PRECISION ADJUSTS). We do not find, however, that this combination of terms is so bizarre or evocative of a unique commercial impression that “the mark as a whole is something more than merely the sum of its descriptive parts.” *In re Fallon*, Ser. No. 86882668, 2020 TTAB LEXIS 464, at *28 (TTAB 2020). The mark immediately conveys to consumers of knife sharpeners that Applicant’s product adjusts for precision.

Nor are we persuaded by Applicant’s argument that consumers will find the proposed mark’s meaning incongruous because things that are precise, especially knife sharpeners, should not need to be adjusted if they are actually precise. In fact, the evidence of record shows the opposite: adjustability is crucial to precision when sharpening knives and thus the capability to make precise adjustments or otherwise adjust for precision is a desired attribute for knife sharpeners.

In short, there is nothing in the phrase PRECISION ADJUST that purchasers of knife sharpeners would perceive as incongruous, ambiguous, or even suggestive, nor does the phrase require further imagination, mental processing, or information

²² *Id.* at 16.

²³ *Id.*

gathering to understand its meaning. Rather, when PRECISION ADJUST is considered in the context of knife sharpeners, relevant purchasers will immediately recognize the readily apparent descriptive significance of the phrase.

Applicant nonetheless contends that “[t]he applied-for mark is the first of its kind; there are no other uses of the mark anywhere” and that because “the mark breaks the rules of grammar and logic . . . no one is likely to use the mark.”²⁴ First, the fact that Applicant may be the first and sole user of this particular combination of PRECISION and ADJUST in connection with knife sharpeners does not render the mark distinctive. *See Fallon*, 2022 TTAB LEXIS 464, at *32-33 (“The fact that Applicant may be the first or only user of a term does not render that term distinctive’ if . . . it has been shown to be merely descriptive of the goods identified in the application.” (quoting *Fat Boys*, 2016 TTAB LEXIS 150, at *10)); *In re Swatch Grp. Mgmt. Servs. AG*, Ser. No. 85485359, 2014 TTAB LEXIS 131, at *29 n.50 (TTAB 2014) (“Being ‘the first and only one to adopt and use the mark sought to be registered does not prove that the mark is not descriptive.’” (quoting *In re Bailey Meter Co.*, 102 F.2d 843, 844 (CCPA 1939))). Second, “there is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it, although such proof would be highly relevant to an analysis under Section 2(e)(1).” *Fat Boys*, 2016 TTAB LEXIS 150, at *10. And we note that, while there is no evidence of third-party use of the phrase PRECISION ADJUST, the evidence we do have

²⁴ Reply Brief, 9 TTABVUE 7.

demonstrates that third parties, in fact, use, and have a need to use, the component terms PRECISION and ADJUST to describe knife sharpeners.

Applicant has also cited cases where “somewhat incongruous” marks were found not descriptive.²⁵ However, putting aside that we are not convinced that PRECISION ADJUST is incongruous, these cases are of little aid here because they involve different marks, different goods, and different evidentiary records. As many prior Board decisions have noted, “[e]ach application for registration must be considered on its own merits.” *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 1569 (Fed. Cir. 1987); *see also In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016) (“The [USPTO] is required to examine all trademark applications for compliance with each and every eligibility requirement.”); *In re Eagle Crest, Inc.*, Ser. No. 77114518, 2010 TTAB LEXIS 346, at *5 (TTAB 2010) (“It has been said many times that each case must be decided on its own facts.”). Also, we are not bound by prior decisions of examining attorneys to register other marks. *In re Nett Designs Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [Applicant’s] application, the [USPTO’s] allowance of such prior registrations does not bind the Board or this court.”).²⁶

²⁵ Appeal Brief, 6 TTABVUE 17-18.

²⁶ During prosecution, Applicant also introduced 23 third-party registrations for marks containing either PRECISION or ADJUST. October 9, 2023 Response to Office Action at TSDR 9-20; February 23, 2024 Request for Reconsideration at TSDR 50-141. Applicant argued that these registrations indicate that “‘PRECISION’ and ‘ADJUST’ marks have been accepted by the PTO” and “show that the PTO has previously found that the word ‘PRECISION’ can function as a mark.” October 9, 2023 Response to Office Action at TSDR 23. Applicant also implied that the third-party registrations that do not contain disclaimers of PRECISION and ADJUST indicate that these terms are suggestive. *See* February 23, 2024

Lastly, Applicant asserts that the Examining Attorney, and thus the USPTO, engaged in “arbitrary and capricious agency action” by “fail[ing] to address the other definitions of ‘PRECISION’ or how those definitional possibilities create incongruities in the composite mark.”²⁷ We disagree.

“[A]n agency acts arbitrarily or capriciously only if the decision was not based on the relevant factors or it fails to ‘examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” *Japanese Found. for Cancer Rsch. v. Lee*, 773 F.3d 1300, 1304 (Fed. Circ. 2014) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In this case, the Examining Attorney’s Final Office Action referenced the relevant definitions of record for the component terms in the proposed mark,²⁸ identified other supporting evidence,²⁹ and included the following response to Applicant’s argument regarding the multiple definitions of PRECISION:

Applicant claims the applied-for mark is vague because “precision” has multiple meanings. The determination of whether a mark is merely

Request for Reconsideration at TSDR 9-10. Like the case law cited by Applicant, these third-party registrations have little persuasive value here. As the Examining Attorney noted during prosecution, the registrations are for different marks and different goods, and some include disclaimers of PRECISION. See October 12, 2023 Final Office Action at TSDR 5. And to rebut Applicant’s evidence, the Examining Attorney introduced 25 third-party registrations in which the Office treated “PRECISION” as descriptive in connection with goods in International Class 8. March 25, 2024 Denial of Request for Reconsideration at TSDR 8-57. In any event, as noted above, we are not bound by the prior decisions of examining attorneys to register other marks based on different factual and evidentiary records. See *Nett Designs*, 236 F.3d at 1342.

²⁷ Appeal Brief, 6 TTABVue 6; see also *id.* at 19-22.

²⁸ October 12, 2023 Final Office Action at TSDR 2-3.

²⁹ *Id.* at 3-4.

descriptive is made in relation to an applicant's goods and/or services, not in the abstract. . . . "That a term may have other meanings in different contexts is not controlling." . . . "It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive." . . . Applicant also claims that a consumer unfamiliar with applicant "cannot deduce from the PRECISION ADJUST mark that it is intended for manual sharpeners and accessories.[]" This is not the test. . . . The question is not whether someone presented only with the mark could guess what the goods and/or services are, but "whether someone who knows what the goods and[/or] services are will understand the mark to convey information about them."³⁰

Thus, the Examining Attorney not only addressed Applicant's argument, but adequately articulated and supported the reasons for the refusal under Section 2(e)(1) by applying the relevant case law to the facts and evidence of record. Accordingly, the Examining Attorney did not act arbitrarily or capriciously in refusing registration.

II. Conclusion

We have carefully considered all of the arguments and evidence of record and find that PRECISION ADJUST is merely descriptive of Applicant's goods.

Decision: We affirm the refusal to register Applicant's proposed **PRECISION ADJUST** mark under Trademark Act Section 2(e)(1).

³⁰ *Id.* at 4 (citations omitted).