

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: August 25, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Collis ECommerce Ltd.*

Serial Nos. 97722010 and 97722016

Joel B. Rothman of SRIPLAW, P.A.  
for Collis ECommerce Ltd.

Kierra MacDougall, Trademark Examining Attorney, Law Office 126,  
Jeffrey Look, Senior Attorney.

Before Goodman, Allard, and Lavache,  
Administrative Trademark Judges.

Opinion by Allard, Administrative Trademark Judge:

Collis ECommerce Ltd. (“Applicant”) seeks registration on the Principal Register  
of the marks BATTLE ROYALE GOLF (standard characters, GOLF disclaimed) and



(GOLF disclaimed), both for goods ultimately identified as “Equipment  
sold as a unit for playing golf games; Outdoor activity game equipment sold as a unit

comprising of carrying case, sticky golf balls and playing surface mat for playing games,” in International Class 28.<sup>1</sup>

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

After the Examining Attorney made the refusals final, Applicant appealed and requested reconsideration. After each request was denied, the appeals resumed. Applicant filed a motion to consolidate the appeals, which was granted.<sup>2</sup> The appeals are fully briefed.<sup>3</sup>

We affirm both refusals to register.

## **I. Background**

As mentioned, Applicant seeks to register its proposed marks for “Outdoor activity game equipment sold as a unit comprising of carrying case, sticky golf balls and

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<sup>1</sup> Both applications (Serial Nos. 97722016 and 97722010, respectively) were filed on December 18, 2022, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere on July 18, 2022 and use in commerce on July 20, 2022.

The composite word and design mark is described as “consist[ing] of the word(s) ‘BATTLE ROYALE’ above the word ‘GOLF’.” Color is not claimed as a feature of the mark.

The record of each application is essentially the same. Unless otherwise indicated, references are to the record in Ser. No. 97722010. The records on appeal are also essentially the same. References to the appeal record are also that of Ser. No. 97722010, unless otherwise indicated.

<sup>2</sup> 8, 9 TTABVUE.

References to the briefs on appeal refer to TTABVUE, the Board’s online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s) following “TTABVUE” refer to the page number(s) of that particular docket entry.

<sup>3</sup> In each appeal record, Applicant’s brief appears at 14 TTABVUE, the Examining Attorney’s brief appears at 16 TTABVUE, and Applicant’s reply brief appears at 19 TTABVUE.

playing surface mat for playing games.” To provide context for the discussion that follows, we offer the following image of Applicant’s game, as shown in its specimen of record:



In its brief, Applicant describes its game as “a backyard golf chipping game with a playing surface made of fabric featuring illustrations of a fairway, green, bunkers, water hazards, and other features of a golf hole.”<sup>5</sup> To play, “[p]layers putt or chip the balls onto the playing surface using normal golf clubs but with special balls included with the game.”<sup>6</sup> The balls, Applicant explains, adhere to the fabric playing surface using hook and loop connectors.<sup>7</sup> Because different features of the playing surface have different point values, the location of the ball on the mat determines the player’s score.<sup>8</sup>

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<sup>4</sup> December 18, 2022 Specimen at TSDR 1; *see also* 14 TTABVUE 7.

<sup>5</sup> 14 TTABVUE 6.

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

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 6-7.

## II. Mere Descriptiveness – Applicable Law

“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 Aktiengesellschaft*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *In re Gyulay*, 820 F.2d 1216, 1217 (Fed. Cir. 1987).<sup>9</sup> “A mark ‘need not recite each feature of the relevant goods or services in detail to be descriptive,’ it need only describe a single feature or attribute.” *Chamber of Com.*, 675 F.3d at 1300 (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346 (Fed. Cir. 2001)). *See also In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173 (Fed. Cir. 2004) (“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” (quoting *Dial-A-Mattress*, 240 F.3d at 1346)).

Whether a particular term is merely descriptive is determined in relation to the goods or services 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 Abcor Dev. Corp.*, 588 F.2d 811, 814 (CCPA 1978); *In re Omniome, Inc.*, Ser. No. 87661190, 2019 TTAB LEXIS 414, at \*11 (TTAB 2019). In other words, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them. *In re TriVita, Inc.*, 783 F.3d 872, 874 (Fed. Cir. 2015);

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<sup>9</sup> A term that is merely descriptive of the identified goods may not be registered on the Principal Register without a showing of acquired distinctiveness. Sections 2(e)(1), 2(f) of the Trademark Act, 15 U.S.C. §§ 1052(e)(1), 1052(f). Because Applicant does not claim that either of its proposed marks (or any of the individual terms) has acquired distinctiveness, we do not consider this issue.

*DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012). Conversely, a mark is suggestive if it requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services. *Omniome*, 2019 TTAB LEXIS 414, at \*10-11 (citing *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1378 (Fed. Cir. 2017) (contrasting merely descriptive marks with suggestive marks)).


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 Phoseon Tech., Inc.*, Ser. No. 77963815, 2012 TTAB LEXIS 306, at \*4 (TTAB 2012). A mark comprising a combination of merely descriptive components is registrable if “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 TTAB LEXIS 150, at \*14-15 (TTAB 2016) (quoting *Oppedahl & Larson*, 373 F.3d at 1175).

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. *See, e.g., Oppedahl & Larson*, 373 F.3d at 1174-75 (PATENTS.COM merely descriptive of computer software for managing a database of records that could include patents and for tracking the status of the records by means of the Internet); *see also Phoseon Tech.*, 2012 TTAB LEXIS 306, at \*3 (“When two or more merely descriptive terms are combined, ... [i]f 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.”). “A mark comprising a combination of merely descriptive components is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as applied to the goods or services.” *Omniome*, 2019 TTAB LEXIS 414, at \*12.

Thus, our determination as to whether the proposed marks BATTLE ROYALE



GOLF and  are each merely descriptive is based on an analysis of the components individually and as a whole. *DuoProSS Meditech*, 695 F.3d at 1252 (“When determining whether a mark is merely descriptive, the Board must consider the commercial impression of a mark as a whole.”). “The Board, to be sure, may ascertain the meaning and weight of each of the components that makes up the mark[.]” so long as it ultimately considers the mark as a whole. *Id.* at 1253.

Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries,” *Bayer*, 488 F.3d at 964, as well as “advertising material directed to the goods[.]” *Abcor Dev.*, 588 F.2d at 814. It also may be obtained from websites and publications. *In re N.C. Lottery*, 866 F.3d 1363, 1368 (Fed. Cir. 2017); *In re Nett Designs, Inc.*, 236 F.3d 1339, 1341-42 (Fed. Cir. 2001). Evidence that a term is merely descriptive similarly may come from an applicant’s own usage. *See, e.g., Chamber of Com.*, 675 F.3d at 1301 (content of applicant’s website, along with articles discussing the activities of chambers of

commerce, constituted substantial evidence supporting the Board's mere descriptiveness finding). Additionally, evidence that a term is descriptive may be found in its third-party usage in connection with products or services similar or related to those at issue. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1378 (Fed. Cir. 2012).

### III. Analysis

In assessing the possible descriptiveness of each of the proposed marks as a whole, we begin with an examination of the meaning of the component terms before considering whether each of the marks as a whole is merely descriptive. *DuoProSS*, 695 F.3d at 1254-55. The proposed marks are each made up of two recognizable components: BATTLE ROYALE and GOLF.

The dictionary evidence of record shows that "battle royale" is defined as "a fight participated in by more than two combatants especially: one in which the last fighter in the ring or the last fighter standing is declared the winner."<sup>10</sup> The second component, "golf," is defined as "a game in which a player using special clubs attempts to sink a ball with as few strokes as possible into each of the 9 or 18 successive holes on a course."<sup>11</sup>

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<sup>10</sup> September 28, 2023 Office Action at TSDR 7-8 (MERRIAM-WEBSTER DICTIONARY).

Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system.

<sup>11</sup> September 28, 2023 Office Action at TSDR 13 (MERRIAM-WEBSTER DICTIONARY).

Applicant's own specimen seeks to appeal to each player's competitive spirit: "Transform your next gathering into a **battle** for short-game bragging rights."<sup>12</sup> Its five modes of play are characterized as "high drama games" ensured to cause "mayhem."<sup>13</sup> One such mode is the "Classic **Battle Royale**."<sup>14</sup> This mode of play encourages players to "Rack up high scores and avoid hazards to be the last man standing."<sup>15</sup> Applicant's website printout, also of record, uses similar language: Sixteen "**battle balls**" are provided to "[t]ransform your backyard into a thrilling golf **battlefield**."<sup>16</sup> It adds, "The brutal scoring system and cutthroat eliminations keep you on your toes."<sup>17</sup> "Last man standing wins!"<sup>18</sup>

As for the term "golf," Applicant acknowledges in its brief that it offers a "backyard **golf** chipping game"<sup>19</sup> and Applicant's own identification of goods specifies that the equipment is "for playing **golf** games." It is well-established that, by including the term "golf" in its identification, Applicant underscores the term's descriptiveness. *See In re Taylor & Francis (Publ'rs), Inc.*, Ser. No. 75229157, 2000 TTAB LEXIS 380, at \*5 (TTAB 2000) (use of the word "psychology" in the identification of goods demonstrates that the word is merely descriptive). In light of this, Applicant, not

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<sup>12</sup> December 18, 2022 Specimen at TSDR 2 (emphasis added).

<sup>13</sup> December 18, 2022 Specimen at TSDR 2.

<sup>14</sup> December 18, 2022 Specimen at TSDR 2 (emphasis added).

<sup>15</sup> December 18, 2022 Specimen at TSDR 2.

<sup>16</sup> January 31, 2024 (Final) Office Action at TSDR 15 (emphasis added).

<sup>17</sup> January 31, 2024 (Final) Office Action at TSDR 15.

<sup>18</sup> January 31, 2024 (Final) Office Action at TSDR 17.

<sup>19</sup> 14 TTABVUE 6 (emphasis added).



surprisingly, disclaimed the term “golf” in each application, which is a concession that the term is descriptive. *See, e.g., In re Zuma Array Ltd.*, Ser. No. 79288888, 2022 TTAB LEXIS 281, at \*15 (TTAB 2022) (disclaimer of the term “smart” is a concession that the term is merely descriptive of the identified goods).

The Examining Attorney made of record evidence of third-party uses of the phrase “battle royale” to describe games, many involving combat/shooter-style competitions, whereby players or teams of players are eliminated from play, where the “last-man standing” is deemed the winner:

- Juego Studios has a blog post titled, “What is a **Battle Royale** Game?”<sup>20</sup>  
The answer? “**Battle Royale** games are among the most popular game genres at the moment.... [T]hese are a genre of games where numerous players are pitted against each other in combat. Each player has to eliminate other players. The one that is still surviving till the end is declared the victor.... In the case of the multi-player mode, the team [with] the last individual or people standing would be declared the winner.”<sup>21</sup>
- Google Play’s “game genre report,” a self-described “white paper,” describes “**Battle Royale**” as “a subgenre of the shooter genre[,] ... combin[ing] shooting game combat mechanics with last-person-standing survival gameplay ....”<sup>22</sup> “A **battle royale** game is a competitive multiplayer game

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<sup>20</sup> January 31, 2024 (Final) Office Action at TSDR 2 (emphasis added).

<sup>21</sup> January 31, 2024 (Final) Office Action at TSDR 2 (emphasis added).

<sup>22</sup> January 31, 2024 (Final) Office Action at TSDR 3-4 (emphasis added).

type where players work against game and map elements, including other players, to be the last one standing.”<sup>23</sup>

- The Acer website post titled, “A brief history of the “**battle royale** genre,” states that “the **battle royale** genre is one of the most popular genres in the multiplayer video games industry, with games that involve a large number of gamers, typically around 100, controlling characters who parachute onto a virtual map, where they will battle until there is only one person left standing.”<sup>24</sup>
- ProWrestling Fandom states that “[i]n professional wrestling, a **battle royal** (sometimes **battle royale**; plural **battles royal**) is a multi-competitor match in which wrestlers are eliminated from the match ....”<sup>25</sup>
- PC Magazine published a list of the “best **battle Royale** games,” explaining that “a **battle royale** game is a [genre] that combines the aforementioned last-man-standing shooter gameplay with weapon gathering and a shrinking playfield that drives player characters ever closer together.”<sup>26</sup>
- Make Use Of, in describing the genre, writes “Many **battle royale** games treat the genre very similarly: spawn players onto an aesthetically pleasing

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<sup>23</sup> January 31, 2024 (Final) Office Action at TSDR 5 (emphasis added).

<sup>24</sup> September 28, 2023 Office Action at TSDR 4 (emphasis added).

<sup>25</sup> September 28, 2023 Office Action at TSDR 5 (emphasis in original).

<sup>26</sup> September 28, 2023 Office Action at TSDR 7 (emphasis added).

map, provide buildings and other features for cover, and hide items, loot, weapons .... The main goal is to be the last player or team standing ....<sup>27</sup>

- Esports Illustrated acknowledges that “**battle royale** genre taken over the gaming world. Starting as shooters, **battle royale** games have continued to change and transform, becoming more imaginative.”<sup>28</sup>

Against this backdrop of evidence of third-party use of the term “Battle royale” in shooter and/or combat settings in video gameplay or in video gaming, the Examining Attorney also made of record evidence of third-party use in non-shooter and non-combat game settings, including with backyard golf chipping games, like Applicant’s:

- Full Swing Sports offers via Amazon.com its own “**Battle Royale Golf** Game.”<sup>29</sup> “Better than a Golf Net and Other Golf Games, Enjoy this **Battle Royale Golf** Game with your crew in the backyard, on the beach, or in your living room.”<sup>30</sup>
- Linmanshuo offers via Amazon.com a “**Golf Battle Royale** Game.”<sup>31</sup> “This **golf battle royale** game is an amazing play mat designed to promote parent-child bonding ... [and] enhance ... skill learning.”<sup>32</sup>
- 52HZ offers via Amazon.com a “**Battle Royale Golf** Game Set.”<sup>33</sup>

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<sup>27</sup> September 28, 2023 Office Action at TSDR 8 (emphasis added).

<sup>28</sup> January 31, 2024 (Final) Office Action at TSDR 39-41 (emphasis added).

<sup>29</sup> January 31, 2024 (Final) Office Action at TSDR 7 (emphasis added).

<sup>30</sup> January 31, 2024 (Final) Office Action at TSDR 7 (emphasis added).

<sup>31</sup> January 31, 2024 (Final) Office Action at TSDR 8 (emphasis added).

<sup>32</sup> January 31, 2024 (Final) Office Action at TSDR 8 (emphasis added).

<sup>33</sup> January 31, 2024 (Final) Office Action at TSDR 9 (emphasis added).

The record also includes third-party social media posts of images of people playing backyard games (both golf and darts) and an online golf game, all using the term “battle royale:”

- An Instagram post states: “[W]e played a mini **golf BATTLE ROYALE** [...] Last man standing wins!!”<sup>34</sup> Here, the players are playing an indoor putting golf game.
- An Instagram post states: “I challenged @twintourgolf crew to a Chip N Stick **Battle Royale**!!”<sup>35</sup> The players are playing a chipping golf game with a mat and sticky balls similar to Applicant’s.
- A YouTube screen shot shows several young adults playing a pop dart game under a covered porch; the game involves throwing darts with suction-cup-ends onto a board with an image of golf course, where the course has locations marked predetermined values.<sup>36</sup> The caption reads: “Pop Darts **Battle Royale** Challenge!!”<sup>37</sup>
- Coolmath Games provides a computer platform for users to play a “Mini **Golf Battle Royale**” which is an online multiplayer golf game where players must survive three rounds to be the “last golfer standing.”<sup>38</sup>

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<sup>34</sup> January 31, 2024 (Final) Office Action at TSDR 10 (emphasis added).

<sup>35</sup> January 31, 2024 (Final) Office Action at TSDR 11 (emphasis added)

<sup>36</sup> January 31, 2024 (Final) Office Action at TSDR 12 (emphasis added).

<sup>37</sup> January 31, 2024 (Final) Office Action at TSDR 12 (emphasis added).

<sup>38</sup> September 28, 2023 Office Action at TSDR 6 (emphasis added).

The third-party use evidence discussed above establishes that the “battle royale” portion of the mark is commonly used to describe “last man standing” gameplay formats. While the battle royale genre may have been popularized with video games involving shooter/combat settings and a shrinking map, the term’s usage has expanded and the record shows that the term is also used with non-violent, non-shooter and non-combat games, including backyard games such as golf mat games similar to that offered by Applicant. Specifically, the record shows that third-party backyard golf mat game providers (Full Swing Sports, Linmanshuo, and 52HZ) use the phrase “battle royale golf,” which is identical to Applicant’s mark and also “golf battle royale,” which is a slight variation of it. Moreover, consumers themselves also use the phrase “battle royale” in connection with backyard and indoor golf, as evidenced by the Instagram posts and YouTube screen shot.<sup>39</sup>

Importantly, Applicant’s own specimen refers to a “Battle Royale” mode of play, the object of which is to “[r]ack up high scores and avoid hazards to be the last man standing.”<sup>40</sup> Applicant’s webpage printouts similarly use the terms “battlefield” and “battle balls,” and declare the winner to be the “last man standing!”<sup>41</sup> Applicant’s own marketing material is probative on the issue of descriptiveness and here, as is commonly the case, it is the most probative evidence in indicating how the relevant

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<sup>39</sup> January 31, 2024 (Final) Office Action at TSDR 10-12.

<sup>40</sup> December 18, 2022 Specimen at TSDR 1-2.

<sup>41</sup> January 31, 2024 (Final) Office Action at TSDR 15-17.

public perceives a term. *See e.g., In re Mecca Grade Growers, LLC*, Ser. No. 86358219, 2018 TTAB LEXIS 64, at \*25-26 (TTAB 2018).

Based on this evidence, we find that the individual components of the proposed mark, BATTLE ROYALE and GOLF, are merely descriptive of Applicant's goods. In the context of "equipment sold as a unit for playing golf games," as identified by Applicant in both of its applications, BATTLE ROYALE and GOLF immediately convey to consumers that Applicant's game is a multiplayer golf game where players or teams compete to be the last person or team, or in this case, golfer, standing. In this regard, the terms describe a characteristic, function or purpose of Applicant's identified golf game equipment, rendering the terms merely descriptive.

We also find that each of the proposed marks as a whole is merely descriptive of a characteristic, function or purpose of Applicant's identified golf game equipment. As discussed above, third-parties use "battle royale" in the same way as Applicant does—to denote a multiplayer game where the winner is the "last man standing." The evidence of record makes it clear that the components BATTLE ROYALE and GOLF in Applicant's marks retain their merely descriptive significance in relation to the identified goods. The composite term BATTLE ROYALE GOLF is therefore nothing more than the sum of its parts when used for the identified golf game equipment. Applicant does not suggest any alternative commercial impression resulting from the combination of these immediately descriptive terms. The composite term BATTLE ROYALE GOLF is therefore merely descriptive as a whole.<sup>42</sup> *See, e.g., Oppedahl &*

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<sup>42</sup> Applicant argues that the stylization of the composite word and design mark renders it suggestive. 14 TTABVue 24. To the extent that Applicant contends that stylization of the

*Larson*, 373 F.3d at 1177; *In re Petroglyph Games, Inc.*, Ser. No. 78806413, 2009 TTAB LEXIS 465, at \*12-13 (TTAB 2009) (BATTLECAM merely descriptive for computer game software).

Applicant concedes that “battle royale” is a popular film genre,<sup>43</sup> but argues that the Examining Attorney “never produced any evidence that golf games are ‘multi-player action skill games,’” or that the golf players compete to be the last player or team standing.<sup>44</sup> Applicant contends that the Examining Attorney relied on evidence of “battle royale” used in one domain—video games—and applied it to another domain—terrestrial backyard golf games—while ignoring the change in context.”<sup>45</sup> The refusal, therefore, at least according to Applicant, based on battle royale’s “usual association with digital, multiplayer video games was out of context making that term’s use inapplicable to applicant’s mark and thereby making the descriptiveness conclusion simply wrong.”<sup>46</sup>

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literal elements in the composite word and design mark creates a commercial impression separate and apart from the impression made by the literal elements themselves, we also disagree. Here, the stylization is minimal and does not create a separate and inherently distinctive commercial impression apart from the literal elements themselves. Thus, the composite word and design mark as a whole is merely descriptive. *See e.g., In re Sadoru Grp., Ltd.*, Ser. No. 77941164, 2012 TTAB LEXIS 325, at \*16 (TTAB 2012).

<sup>43</sup> 14 TTABVUE 22.

<sup>44</sup> 14 TTABVUE 22.

<sup>45</sup> 14 TTABVUE 22.

<sup>46</sup> 14 TTABVUE 22; *see also* 19 TTABVUE 6.

Applicant’s arguments about handicaps and other tournament play formats (19 TTABVUE 6) and its chart itemizing the differences between golf and other multiplayer games (19 TTABVUE 7-8) have not been considered because there is no indication that the information in the chart is in the record, nor are we aware of evidence in the record to establish the same. *See e.g., Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1371 (Fed. Cir. 2018) (“Attorney argument

While we acknowledge that there is no evidence of “battle royale” used with traditional golf games, i.e., those played on a full-sized golf course having 9, 18 or more holes, this is not dispositive. Applicant’s identification, which includes “Equipment sold as a unit for playing golf games” is broad enough to include all types of golf games, including both traditional games played on a course and backyard versions, played with a mat. Moreover, Applicant’s arguments ignore the record evidence showing three third-parties offer backyard golf-mat games similar to that offered by Applicant (Full Swing Sports;<sup>47</sup> Linmanshuo;<sup>48</sup> and 52HZ<sup>49</sup>) and three consumers playing similar indoor or backyard golf-style games, each characterizing their play as a “battle royale” and declaring that the winner is the last man standing.<sup>50</sup> We also consider pertinent the evidence that Coolmath Games offers an online “Mini Golf Battle Royale,” where multiple players must “survive” three rounds to be the “last golfer standing.”<sup>51</sup> Applicant’s arguments also ignore its specimen and website, where it offers a “battle royale” mode of play and declares that the “last man standing wins!”

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is no substitute for evidence.” quoting *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)).

<sup>47</sup> January 31, 2024 (Final) Office Action at TSDR 7 (emphasis added).

<sup>48</sup> January 31, 2024 (Final) Office Action at TSDR 8 (emphasis added).

<sup>49</sup> January 31, 2024 (Final) Office Action at TSDR 9 (emphasis added).

<sup>50</sup> January 31, 2024 (Final) Office Action at TSDR 10-12 (emphasis added).

<sup>51</sup> September 28, 2023 Office Action at TSDR 6 (emphasis added).



Applicant argues that the Examining Attorney's reliance on its specimen is misplaced because it contains "puffery"<sup>52</sup> and "hyperbole and metaphor" and, as a result, too much weight was placed on it.<sup>53</sup> We disagree. As discussed earlier, Applicant's own specimen uses the phrase "battle royale" in a descriptive manner. Applicant's own usage of the term in a descriptive manner is most relevant, and, as a result, the Examining Attorney did not place undue weight on it during examination. *See e.g., Mecca Grade Growers*, 2018 TTAB LEXIS 64, at \*25-26 (quoting *Gould Paper*, 834 F.2d at 1019).

Applicant argues that its marks should be registered because other marks containing the term "battle royale" or something similar have been allowed to register. As an initial matter, we agree with the Examining Attorney that the disclaimer of "BATTLE ROYALE" in the mark PAC-MAN BATTLE ROYALE CHOMPIONSHIP for, inter alia, "arcade game machines" (Reg. No. 7086973) is a concession that the term is descriptive of the identified goods and, as a result, does not support Applicant's argument.<sup>54</sup> *See e.g., In re Pollio Dairy Prods. Corp.*, Ser. No. 5965778, 1988 TTAB LEXIS 45, at \*3 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.") (citing *Quaker Oil Corp. v. Quaker State Oil Ref. Corp.*, 1969 TTAB LEXIS 48, at \*7 (TTAB 1969), *aff'd*, 453 F.2d 1296 (CCPA 1972)).

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<sup>52</sup> 19 TTABVUE 10.

<sup>53</sup> 14 TTABVUE 26.

<sup>54</sup> 16 TTABVUE 8-9.

It is true, as Applicant contends, that the record shows the following three marks are registered without a disclaimer of the term BATTLE ROYALE: (1) PAC-MAN BATTLE ROYALE for, among other things, “coin-operated video games” (Reg. No. 4110005); and (2) BATTLERITE ROYALE and Design and BATTLERITE ROYALE both for, inter alia, “action skill games” (Reg. Nos. 6166183, 6044530).<sup>55</sup> However, these third-party registrations are of little probative value. For example, the marks of the latter two registrations do not show the phrase “battle royale,” but rather the term “battlerite” followed by the term “royale,” rendering the marks very different. Moreover, the fact that third-party registrations exist for marks, all registered on records different than the one before us, is not conclusive on the issue of descriptiveness. *See Nett Designs*, 236 F.3d at 1342 (“Even if some prior registrations had some characteristics similar to ... [Applicant’s mark], the [US]PTO’s allowance of such prior registrations does not bind the Board or ... [the Federal Circuit].”). Marks that are merely descriptive do not become registrable simply because other seemingly similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 1977 TTAB LEXIS 97, at \*4-5 (TTAB 1977).

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<sup>55</sup> 14 TTABVue 10-12; December 28, 2023 Response to Office Action at TSDR 7-8, 14-26.

**Decision:**

The refusal to register Applicant's proposed marks BATTLE ROYALE GOLF and



(Ser. Nos. 97722016 and 97722010, respectively) on the ground of mere descriptiveness pursuant to Section 2(e)(1) of the Trademark Act is affirmed.