

<p>This Opinion is Not a Precedent of the TTAB</p>
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Mailed: August 12, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Franklin Sports, Inc.

Serial No. 98326109

Michelle Brownlee, General Counsel,
for Franklin Sports, Inc.

Samantha Agreda, Trademark Examining Attorney, Law Office 123,
Susan Hayash, Managing Attorney.

Before Greenbaum, Dunn, and Casagrande,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Franklin Sports, Inc. (Applicant) seeks registration on the Principal Register of
the proposed mark BOSTON STRONG (standard characters) for:

Entertainment services in the nature of professional athletes competing in volleyball; Entertainment services, namely, organizing and conducting an array of athletic events rendered live and recorded for the purpose of distribution through broadcast media; Entertainment services, namely, the provision of continuing live and pre-recorded sports programs featuring volleyball delivered by television, radio and the internet; Ticket reservation and booking for sporting events; Educational and entertainment services,

namely, a continuing program about volleyball accessible by radio, television, satellite, audio, video and computer networks, in International Class 41:¹

The Examining Attorney refused registration on the ground that the proposed mark fails to function as a source indicator under Sections 1, 2, 3, and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53, 1127, because it is a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment.

When the refusal was made final, Applicant requested reconsideration and appealed. After the Examining Attorney denied the request for reconsideration, the appeal resumed. The appeal is fully briefed.²

For the reasons explained below, we affirm the refusal.

I. Failure to Function

“Consistent with trademark law’s basic purpose, the lead criterion for registration is that the mark in fact serves as a ‘trademark’ to identify and distinguish goods [or services].” *Jack Daniel’s Props., Inc. v. VIP Prods. LLC*, 599 U.S. 140, 146 (2023) (internal citation omitted). Under the Trademark Act, “every trademark’s ‘primary’

¹ Application Serial No. 98326109 filed December 21, 2023, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce.

References to the application are to the downloadable .pdf version of documents available from the USPTO’s TSDR (Trademark Status and Document Retrieval) database. The TTABVUE citations refer to the Board’s electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

² Attached to Applicant’s brief (6 TTABVUE 12-46) are what appear to be copies of Applicant’s evidence submitted during examination. We give it no consideration. If already part of the record, it is redundant, and if not already part of the record, it is untimely. *See* Trademark Rule 2.121(a), 37 CFR 2.121(a); *In re Inn at St. John’s, LLC*, 2018 TTAB LEXIS 170, *4-5, *aff’d*, 777 F. App’x 516 (Fed. Cir. 2019).

function' [is] to identify the origin or ownership of the article to which it is affixed.” *Id.* at 145-46 (citing 15 U.S.C. § 1127); *see also In re Bose Corp.*, 546 F.2d 893, 897 (CCPA 1976) (“[T]he classic function of a trademark is to point out distinctively the origin of the goods to which it is attached.”). “We must assess whether Applicant's proposed mark ... functions as a mark based on whether the relevant public, i.e. purchasers or potential purchasers of the identified ... educational and entertainment services ... would perceive [the mark] as identifying the source or origin of such [services].” *In re Team Jesus LLC*, 2020 TTAB LEXIS 503, *5-6. In this case, because there are no limitations to the channels of trade or classes of consumers, the relevant consuming public comprises all potential purchasers of the identified services. *Id.* at *6.

“Matter that is widely used to convey ordinary or familiar concepts or sentiments, or social, political, religious, or similar informational messages that are in common use, would not be perceived as indicating source and is not registrable as a mark.” *Id.* at *7, *16 (“The evidence as a whole shows that TEAM JESUS is a commonplace message of Christian affiliation.”); *In re Texas With Love, LLC*, 2020 TTAB LEXIS 466, *6-7 (“It is clear from how the term is used by multiple third parties that TEXAS LOVE merely conveys a well-recognized concept or sentiment, specifically love for or from Texas; the term does not identify the source of Applicant's goods.”); *In re Wal-Mart Stores, Inc.*, 2019 TTAB LEXIS 1, *39 (“In sum, the evidence submitted by the Examining Attorney showing widespread use of the phrase ‘investing in American jobs’ in an informational sense to encourage ventures such as manufacturing of goods

in the U.S. and employment in the U.S. further supports our finding that the consuming public will not perceive INVESTING IN AMERICAN JOBS used by Applicant for the applied-for services as an indicator of a single source of the services.”). For the failure-to-function analysis, we consider all the evidence of record. *Team Jesus*, at *7-8. “It is well settled that articles obtained from the Internet, websites, and blog posts are admissible as evidence of information available to the consuming public and of the way in which a term is being used or would be understood by the relevant public.” *Wal-Mart Stores*, 2019 TTAB LEXIS 1, at *27.

A. Evidence of how the public perceives the term BOSTON STRONG

The record includes a CBS News story reporting that on April 15, 2013 at the finish line of the Boston Marathon, explosives killed three and injured 264 people and resulted in a four-day manhunt for the bombers.³ A May 12, 2013 Boston Globe article titled “Boston Strong, the phrase that rallied a city” describes the speed with which the term BOSTON STRONG spread as a response to the bombing:⁴

“BOSTON STRONG.” The two-word motto has been everywhere in Boston since the Marathon bombing a month ago, a handy shorthand for defiance, solidarity, and caring. In its ubiquity, “Boston Strong” presents a united front in the face of threat.

As a verbal meme, “Boston Strong” spread so quickly that it felt like a blooming organic force. Almost instantly, it adorned countless T-shirts, hats, and ribbons. MBTA buses began flashing it on their LED signs, and a state legislator proposed putting it on a special license plate to raise funds for victims. When a benefit concert headlined by Aerosmith was announced for later this month, “Boston Strong” was the obvious name.

³ June 11, 2024 Office Action TSDR 8. The record includes articles from the History Channel article and CNN “Fast Facts” with similar accounts. *Id.* at 81-113.

⁴ *Id.* at 43, 77.

An April 14, 2014 article on the NPR website similarly describes the ubiquity of the term BOSTON STRONG:⁵

The words are everywhere: Boston Strong is plastered on cars, cut into the grass at Fenway, tattooed on arms, bedazzled on sweatshirts and printed on T-shirts (and everything else).

“We have ‘Boston strong’ bracelets, we have car magnets, little money pouches, we have mints,” says Catherine Thomas, manager of a souvenir shop in Quincy Market. Boston Strong continues to sell strong, she says.

An April 19, 2014 Christian Science Monitor article reports that within hours of the bombing, the term BOSTON STRONG appeared all over the city, the Boston Red Sox baseball team put the words on a jersey displayed in the dugout for the baseball season, and the slogan on T-shirts became a fundraising vehicle for the bombing victims which produced \$500,000 in sales within a week, and became the subject of

⁵ *Id.* at 71.

multiple knockoffs.⁶ In 2015, the University of Chicago Press released the book “Boston Strong A City’s Triumph Over Tragedy.”⁷

News articles in the record show that subsequent urban events with fatalities resulted in similar rallying cries. A fundraiser for the victims and articles describing the one year anniversary used “Orlando Strong” as a slogan following the June 12, 2016 Pulse nightclub shooting; an article titled “Charleston Strong: A rallying cry in a time of mourning” describes a unity march following the June 17, 2015 mass shooting in a Charleston church; an article titled “Houston Strong Together: An open letter to the Houston Astros from your fans” describes the team wearing the slogan and a HOUSTON STRONG t-shirt raised funds for the victims of Hurricane Harvey.⁸ The adoption of the city name plus strong as a rallying cry following a city event

⁶ June 11, 2024 Office Action TSDR 11-12. The article also states:

The US Patent and Trademark Office rejected nine separate applications from businesses attempting to trademark [sic] the phrase: because consumers are accustomed to seeing this slogan or motto commonly used in everyday speech by many different sources... the mark fails to function as a trademark.

Id. at 12. Three other articles similarly report on the USPTO refusal to register BOSTON STRONG as a mark, including an article on Boston.com titled “Feds Deny Attempts to Trademark ‘Boston Strong.’” *Id.* at 60-63. An article from an attorney blog titled “Do Not File A Trademark Application For a ‘Trending Rallying Cry’ cites BOSTON STRONG as an example of a recent rallying cry which was the subject of “a misguided attempt to exclaim exclusive rights to the phrase.” *Id.* at 28-29. An ESPN article quotes a Boston trademark attorney as saying, “in its BOSTON STRONG ruling, the patent and trademark office is being consistent with the way it has decided on similar phrases in the past ... BOSTON STRONG is a message, it’s an attitude, and it doesn’t speak to who made the items, so no one really owns it.” *Id.* at 26-27.

⁷ *Id.* at 134.

⁸ June 11, 2024 Office Action TSDR 17, 22, 44-45, 48-54, 55-56, 114-723.

resulting in multiple deaths corroborates that BOSTON STRONG remains a common message of support for the city of Boston.⁹

The record shows that uses of BOSTON STRONG remain in the public eye, with each article below available online in 2024:

- University of Pittsburgh Press online post advertising a commemorative book of the poem BOSTON STRONG by Richard Blanco issued in 2013 with sales proceeds benefitting the One Fund Boston used to assist the families of the bombing victims.¹⁰
- May 12, 2014 online article “Strength through connection and focus on meaning: Boston Strong” discussing how ‘All of us who call Boston home’ should understand “how we have come together as a community to navigate the horror to find strength and room for the possibility of embracing another day.”¹¹
- Red Cross online post advertising April 8-12, 2019 Red Cross and Boston 25 News Boston Strong blood drive.¹²
- April 6, 2021 The Athletic online article “The Red Sox, in yellow and blue? New uniforms highlight ‘Boston Strong’ connection” discusses Nike designers collaborating with the Red Sox marketing group for a pilot City Connect program, and opting to make use of the yellow-and-blue color

⁹ Applicant counters this evidence with third-party registrations for JERSEY STRONG for fitness instruction services and clothing (Reg. No. 3709168), KENTUCKY STRONG for fitness instruction and health spa services (Reg. No. 5262023), SOUTHERN NEVADA STRONG for community outreach services (Reg. No. 5262023) and ERIE STRONG for services organizing community festivals (Reg. No. 6687348). August 27, 2024 Response TSDR 20-31. Because these marks are not rallying cries following urban events with fatalities, we disagree that they undermine the evidence that instances of copying reinforce that BOSTON STRONG is perceived as a common message of support for the city of Boston following the Marathon bombing.

In addition, the fact that the USPTO registered other marks with characteristics said to be similar to the mark at issue is not pertinent or binding, because each mark must be assessing for compliance with the governing statutory provisions. See, e.g., *In re Cordua Rests., Inc.*, 823 F.3d 594, 600 (Fed. Cir. 2016); *In re Boulevard Ent., Inc.*, 334 F.3d 1336, 1343 (Fed. Cir. 2003).

¹⁰ October 23, 2024 Office Action TSDR 8-9.

¹¹ *Id.* at 21-22.

¹² June 11, 2024 Office Action TSDR 140-41.

scheme that became a city-wide symbol of resilience and unity, along with the phrase ‘Boston Strong,’ after the 2013 Boston Marathon bombings.¹³

- May 30, 2022 advertisement for podcast “Boston Strong With Adrienne Haslet,” The CLS Experience with Craiq Siegel, interviewing athlete who lost her leg at the Boston marathon bombing.¹⁴
- April 12, 2023 online Boston Globe letter to the editor “We will always be Boston Strong” praising an article about bomb injured runner competing again in Boston Marathon.¹⁵
- April 12, 2023 WHDH.com article “Still Boston Strong: Local surgeon running marathon again 10 years after jumping into action to help bombing victims¹⁶
- April 17, 2023 MLB.COM article “Remembering “Boston Strong” 2013 champs” including the Boston Red Sox baseball team’s dugout display of a BOSTON STRONG jersey.¹⁷
- May 5, 2023 The Harbus [Harvard business school student publication] online article titled “Boston Strong” interviewing two student runners who ran the Marathon on the 10 year anniversary of the bombing.¹⁸
- August 27, 2023 Massachusetts State Police online article about the tenth anniversary of its Boston Strong basketball tournament honoring the victims and survivors of the 2013 Marathon bombing.¹⁹
- MassElite website post about February 10 and 11, 2024 BOSTON STRONG lacrosse 7x7 tournament.²⁰
- August 13, 2024 Massachusetts Probation Services online article about the 11th Annual Boston Strong Invitational, a two-day sporting event bring together probation employees, first responders, law enforcement youth, and local communities for a basketball tournament, Special Olympic events,

¹³ October 23, 2024 Office Action TSDR 65-68.

¹⁴ *Id.* at 30.

¹⁵ *Id.* at 58-59.

¹⁶ *Id.* at 53.

¹⁷ *Id.* at 10-14.

¹⁸ *Id.* at 24-25.

¹⁹ June 11, 2024 Office Action TSDR 144-45.

²⁰ *Id.* at 142.

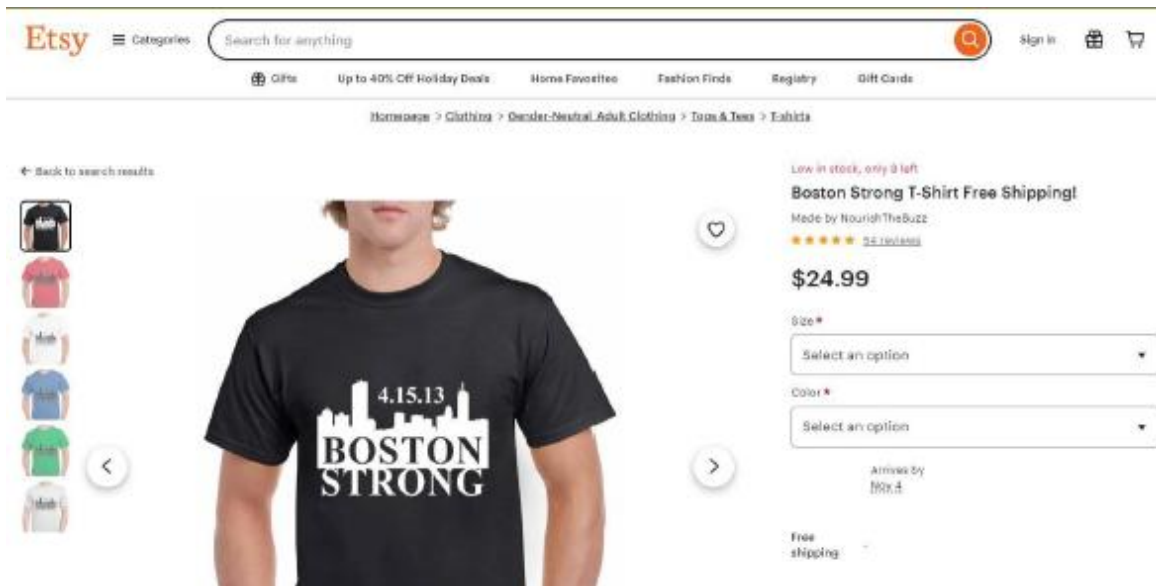
and child-friendly games and activities to commemorate the lives lost during the Boston marathon bombing.²¹

This evidence demonstrates that the term BOSTON STRONG remains a common message of support for the city of Boston. In addition, the evidence shows the association of BOSTON STRONG with sporting events, which initiated with the bombing occurring at and during a famous Boston sporting event, and continues with annual remembrance by the Red Sox baseball team, Marathon competitors, basketball and lacrosse tournaments, and special Olympic events.

The record also includes webpages showing BOSTON STRONG products, such as jewelry, stickers, keychains, masks, mugs, and clothing items including hats, t-shirts, jackets, and hoodies, are currently available online from multiple sources.²² As shown in the examples below, the use of the term BOSTON STRONG does not act as a source indicator. Instead, the uses “reflect use of the phrase in a manner that will only be perceived by consumers as conveying ‘support for, or affiliation or affinity with the [city of Boston],’ a well-recognized sentiment.” *Texas With Love*, 2020 TTAB LEXIS 466, at *14.

²¹ October 23, 2024 Office Action TSDR 17-19.

²² June 11, 2024 Office Action TSDR at 124-133, 137; October 23, 2024 Office Action TSDR 31, 37, 43-50.



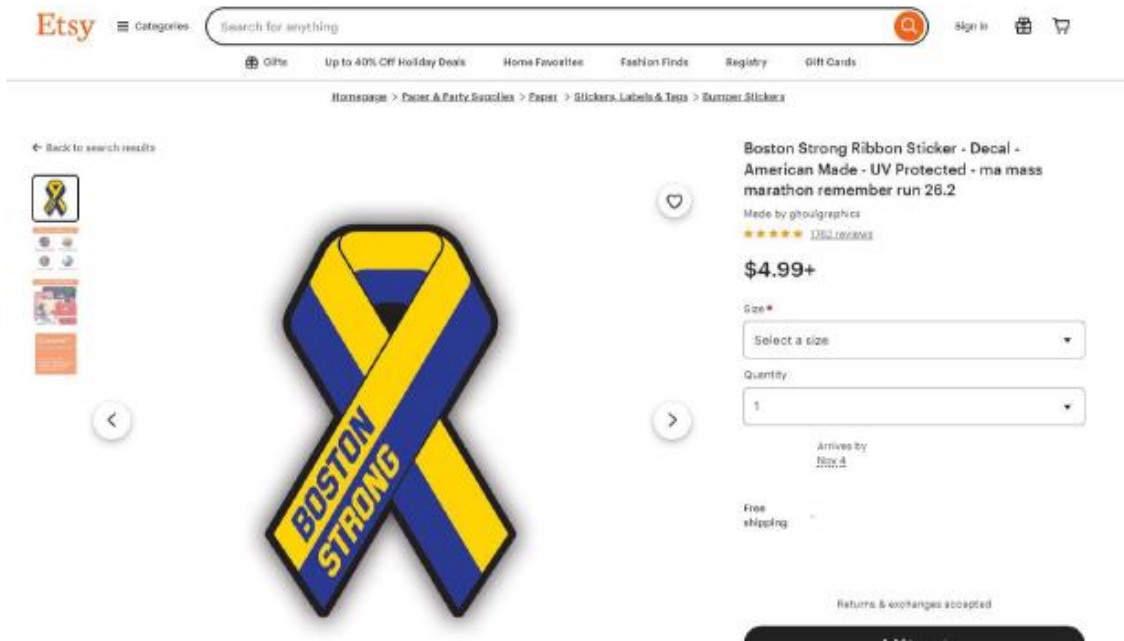
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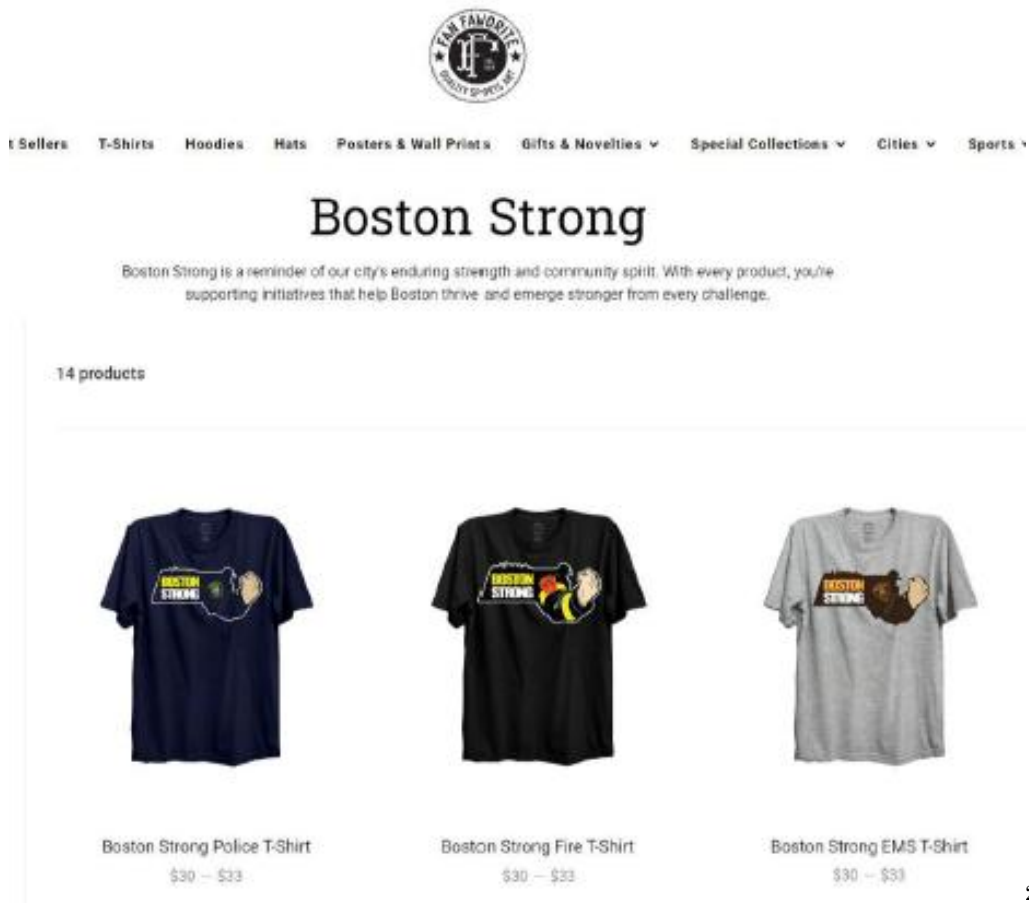
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²³ October 23, 2024 Office Action TSDR 31.

²⁴ June 11, 2024 Office Action TSDR 137.



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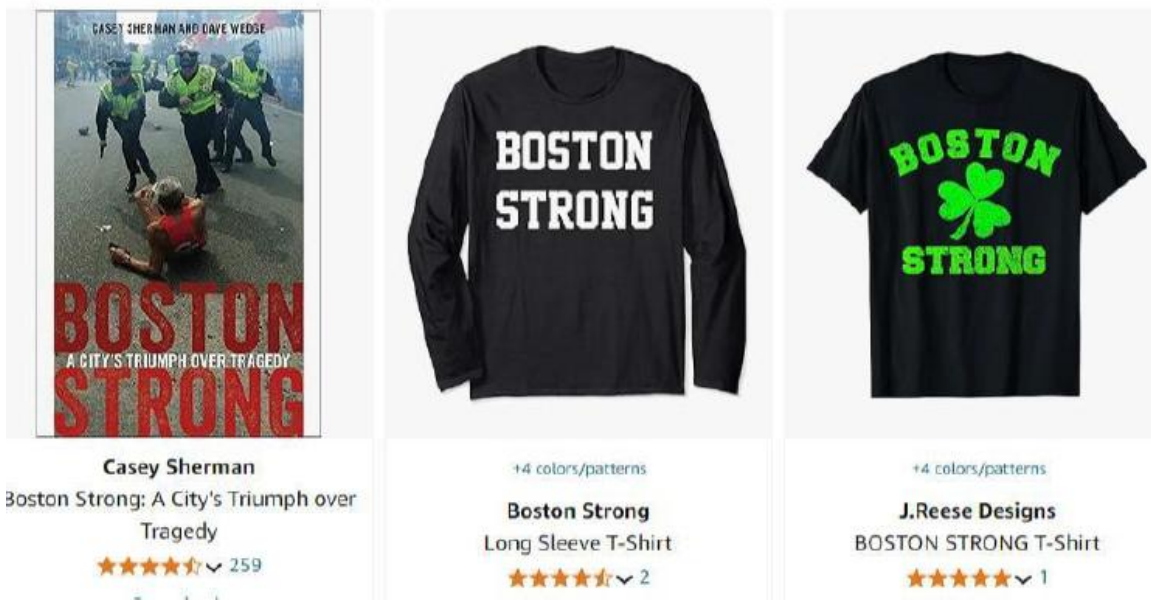


Boston Strong Police Mug
\$15

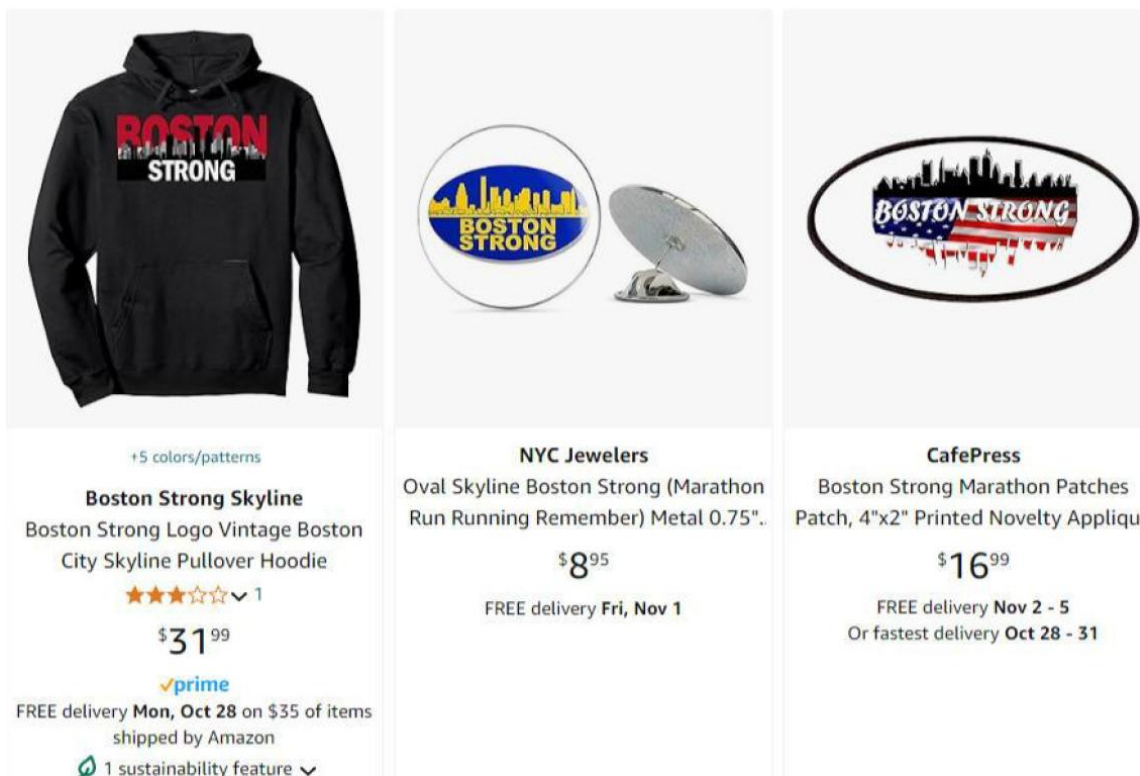
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²⁶ June 11, 2024 Office Action TSDR 124.

²⁷ *Id.* at 126.



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²⁸ October 23, 2024 Office Action TSDR 44.

²⁹ *Id.* at 49.



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The record here supports a finding that BOSTON STRONG conveys a common message of support for the city of Boston³¹ and that it is incapable of functioning as a mark.

B. Applicant's arguments

Applicant contends that the failure to function refusal is prematurely issued against its intent-to-use application.³² We are not persuaded. Applicant cites the general USPTO guidance:

The issue of whether a designation functions as a mark usually is tied to the use of the mark, as evidenced by the specimen. Therefore, unless the drawing and description of the mark are dispositive of the failure to function without the need to consider a specimen, generally, no refusal on this basis will be issued in an intent-to-use application under §1(b) until the applicant has submitted a specimen(s) with an allegation of use (i.e., either an amendment

³⁰ June 11, 2024 Office Action TSDR 128.

³¹ While maintaining that the term can function as a source indicator for its services, Applicant "does not disagree with the Examining Attorney's conclusion that BOSTON STRONG is a widely used phrase." 6 TTABVUE 7.

³² 6 TTABVUE 10-11.

to allege use under 15 U.S.C. §1051(c) or a statement of use under 15 U.S.C. §1051(d)).

TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §1202 (May 2025). However, Applicant's argument ignores the more specific guidance pertaining to proposed marks found to be merely informational, a category which includes not just proposed marks conveying general information about the goods or services, but a religious text, or, as here, a common phrase or message. For such proposed marks, the TMEP directs:

Although the failure-to-function refusal is typically a specimen-based refusal, a refusal must be issued, regardless of the filing basis, if the evidence supports a determination that a proposed mark is merely informational and thus would not be perceived as an indicator of source.

TMEP 1202.04. *See Vox Populi*, 2020 TTAB LEXIS 465, *23 (affirming failure-to-function refusal against application class with an intent-to-use filing basis on the basis of third-party use evidence), *aff'd*, 25 F.4th 1348 (Fed. Cir. 2022).

Moreover, while an applicant's submission of an acceptable specimen with the proposed mark is taken into consideration, it is not determinative when weighed against evidence that consumers perceive the proposed mark as a common phrase or message. *See In re GO & Assocs., LLC*, 90 F.4th 1354, 1357 (Fed. Cir. 2024) ("Considering the diversity and breadth of third-party uses, the Board found that GO's own specimens and uses were insufficient to render the mark [EVERYBODY VS RACISM] source-identifying."); *D.C. One Wholesaler, Inc. v. Chien*, 2016 TTAB LEXIS 536, *22 ("The fact that Respondent has sometimes displayed I [heart] DC on

hangtags and labels, in a non-ornamental manner that is conventional for the display of trademarks, does not require a different result.”).

Applicant also argues that common messages may serve a dual function as a source indicator, and submits a third-party registration of the mark CHICAGO FIRE for soccer team services (Reg. No. 2239667).³³ We do not disagree with the general proposition, but Applicant’s example is not persuasive that there should be a different result here. Applicant contends that “Chicago fire” denotes a historical event but cites no evidence showing “Chicago Fire” is a common message. Moreover, we base our decision on the proposed mark and evidence here, not loose analogies to other registrations. *See, e.g., Cordua Rests.*, 823 F.3d at 600; *Boulevard Ent.*, 334 F.3d at 1343.

Finally, Applicant points to its application Serial No. 98325728 for the mark STRONG for similar services to those at issue here, and third-party registrations for the mark BOSTON CELTICS for luggage, keychains, basketballs, pens, basketball printed matter, sweatshirts, and basketball services (Reg. No. 1003131) and the mark BOSTON BRUINS for professional hockey services (Reg. No. 1953886).³⁴ Applicant argues that media coverage of Applicant’s volleyball team would transform BOSTON

³³ 6 TTABVUE 9-10; August 27, 2024 Response TSDR 13-19. Applicant also submitted a third-party registration for NEVER GIVE UP for clothing (Reg. No. 4777712) but does not explain how it is a common message. January 13, 2025 Response TSDR 22-24.

³⁴ August 27, 2024 Response TSDR 11-12; January 13, 2025 Response TSDR 12-17.

STRONG into a registrable team name “just as they would refer to the BOSTON CELTICS or the BOSTON BRUINS.”³⁵

The application for the mark STRONG mark is irrelevant to our inquiry as to the registrability of BOSTON STRONG. It is merely an application; it has no probative value except to show that the application was filed. *Weider Publ’ns, LLC v. D&D Beauty Care Co.*, 2014 TTAB LEXIS 2, *43. Moreover, the third-party registrations for different marks are not relevant to whether the term BOSTON STRONG would be perceived as a mark. Applicant’s contention that media coverage would transform the common message into a source indicator is entirely speculative, and ignores that we must determine the current public perception of the term BOSTON STRONG.

The record shows that BOSTON STRONG has already been associated with a sports uniform – namely a baseball jersey – and there is no dispute that the public perceived the use as the common phrase conveying support for the city of Boston rather than as a source designation for the team. The record also shows that BOSTON STRONG has been used in advertising multiple other sporting events in addition to the Boston Marathon – basketball and lacrosse and Special Olympics events, and these uses have continued the message conveyed by BOSTON STRONG of support for the city of Boston. We disagree that Applicant has demonstrated that use of BOSTON STRONG as the name of a volleyball team would be recognized as a source indicator.

³⁵ 6 TTABVUE 8-9.

Serial No. 98326109

II. Decision:

The refusal to register Applicant's proposed mark BOSTON STRONG is affirmed.