

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wenger S.A.

Serial No. 85157939

David I. Greenbaum of Rimon, P.C.,
for Wenger S.A.

Matthew Galan, Staff Attorney, Law Office 100,
Robert Lavache, Supervisor, Legal Policy Office.¹

Before Wellington, Dunn and Lebow,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Applicant, Wenger S.A., applied to register the standard character mark SWISS MILITARY on the Principal Register for “watches of Swiss origin,” in International Class 14.² The application is based on a claim that the mark has acquired

¹ Laura Gorman Kovalsky was the Trademark Examining Attorney originally assigned to this case and she filed the USPTO’s brief on appeal. 27 TTABVUE. Following Applicant’s subsequent request for remand, the Office assigned responsibility of the application to Staff Attorney Matthew Galan. 46 TTABVUE. We refer to Ms. Kovalsky when discussing the Office’s arguments in its appeal brief.

² Application Serial No. 85157939, filed October 21, 2010, based on Applicant’s allegation of first use of the mark in commerce in 1989, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

distinctiveness under Section 2(f) of the Trademark Act (“the Act”), 15 U.S.C. § 1052(f).

Applicant’s mark has ultimately been refused registration under Sections 1, 2, and 45 of the Act, 15 U.S.C. §§ 1051-1052, and 1127, on the ground that it is generic and therefore incapable of indicating source.

For the following reasons, we reverse the refusal.

I. Background and Application Prosecution

Applicant is a watch manufacturer from Switzerland. Victorinox AG owns Applicant, along with Applicant’s sister companies Victorinox Swiss Army, Inc. (“VSAI”) and Victorinox Swiss Army Watch, S.A.³ VSAI is Applicant’s exclusive distributor in North America for SWISS ARMY and SWISS MILITARY-branded products, including watches, made by Applicant and its sister companies.⁴

Applicant first used SWISS MILITARY on watches in the U.S. in 1989.⁵ Applicant owns a registration for the mark WENGER SWISS MILITARY, in standard characters with a disclaimer of SWISS MILITARY, for “watches of Swiss origin” on the Principal Register,⁶ as well as several registrations for SWISS ARMY-formative marks for different goods, such as knives, watches, luggage, apparel, etc., including

³ 11 TTABVUE 12 (Gold Dec. ¶ 2).

⁴ *Id.*

⁵ 7 TTABVUE 141 (Eskridge Dec. ¶ 12).

⁶ Registration No. 473046, issued May 19, 2015; 7 TTABVUE 142 (Eskridge Dec. ¶ 13).

the standard character mark SWISS ARMY for watches on the Principal Register, without a disclaimer or claim of acquired distinctiveness under Section 2(f).⁷

Applicant filed the involved application on October 21, 2010. Since that time, numerous Office Actions have issued raising various statutory refusals. We provide some general history for the application before addressing the merits of the genericness refusal.

The application, as filed, was first refused on the grounds that SWISS MILITARY is merely descriptive and primarily geographically descriptive of watches, under Sections 2(e)(1) and 2(e)(2) of the Act, 15 U.S.C. §§ 1052(e)(1) and 1052(e)(2).⁸ The Examining Attorney also advised Applicant that the mark “appears to be generic” and thus incapable of functioning as a source-identifier.⁹ In addition, the Examining

⁷ Registration No. 1734665, issued November 24, 1992. *Id.* Copies of Applicant’s registrations are attached at Eskridge Exh. 1. Applicant makes several references in its appeal brief to the SWISS MILITARY mark being “part of a family of marks.” See, e.g., 25 TTABVUE 12. The existence of a family of marks sharing a common element may assist an Applicant in establishing the distinctiveness of a new mark that also shares that common element. *See In re LC Trademarks, Inc.*, 121 USPQ2d 1197 (TTAB 2016). However, although there are several registrations for a SWISS ARMY mark, this is but one other mark, not a family. *See Consolidated Foods Corp. v. Sherwood Medical Instruments Inc.*, 177 USPQ 279, 282 (TTAB 1973) (Ownership of a large number of registrations insufficient, per se, to establish recognition of a family of marks.); and *Daltronics, Inc. v. H. L. Dalis, Inc.*, 158 USPQ 475, 480 (TTAB 1968) (Family of marks argument not available to party that, as of relevant date, was using only one mark.). In any event, upon review of Applicant’s evidence, including the declaration of Marc Eskridge with related exhibits, Applicant has not established that consumers have come to associate SWISS ARMY-branded goods, including knives, with SWISS MILITARY-branded watches. In particular, although Eskridge Exh. 4 includes copies of advertisements for such branded goods alongside each other, they are relatively few, the extent of their circulation is unclear, and it is not always clear that they originate from the same source. *Cf. J & J Snack Foods Corp. v. McDonald’s Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891-92 (Fed. Cir. 1991) (discussion of evidence required for an assessment that a common feature provides consumers with a recognition that the marks are of common origin).

⁸ March 22, 2011 Office Action.

⁹ *Id.*

Attorney identified and attached copies of three prior-filed applications for marks that, if registered, may serve as bases for refusal on the ground of likelihood of confusion, under Section 2(d) of the Act, 15 U.S.C. § 1052(d).¹⁰

Applicant responded to the initial Office Action by arguing the mark is registrable and, particularly, that the mark is not generic for watches.¹¹ The application was suspended pending the outcome of the three prior-filed applications.¹²

After four years of suspension, during which time the three prior-filed applications went abandoned, the Examining Attorney resumed examination by issuing an Office Action making final the merely descriptive and primarily geographically descriptive refusals.¹³ In response, Applicant amended the application to seek registration based on a claim that the mark has acquired distinctiveness, under Section 2(f) of the Act.¹⁴

The Examining Attorney acknowledged Applicant's acquired distinctiveness claim and refused registration on the genericness ground; this refusal was subsequently made final.¹⁵ The Examining Attorney also rejected Applicant's acquired distinctiveness claim and maintained the finality of the merely descriptive and primarily geographically descriptive refusals.¹⁶

¹⁰ *Id.* The Examining Attorney also raised a few other administrative requirements that were later satisfied.

¹¹ September 22, 2011, Response.

¹² October 18, 2011, Office Action (Suspension Letter).

¹³ April 4, 2016 Office Action.

¹⁴ October 4, 2016, Response.

¹⁵ See October 26, 2016 and May 18, 2017 Office Actions.

¹⁶ *Id.*

Applicant appealed and filed two requests for reconsideration that were denied by the Examining Attorney.¹⁷ Applicant's appeal was fully briefed on the issues of genericness and, alternatively, acquired distinctiveness and mere descriptiveness.¹⁸ In her brief, the Examining Attorney withdrew the primarily geographically descriptive refusal.¹⁹

Approximately three months after Applicant filed its appeal reply brief, the application file was remanded to the Examining Attorney, at her request, so that an additional refusal to registration could be made under Section 2(d) of the Act based on a likelihood of confusion with the registered certification mark, SWISS, for goods that include watches.²⁰ On remand, the Examining Attorney issued Office Actions that: made final the likelihood of confusion refusal based on the SWISS certification mark, "reinstated" the finality of the primarily geographically descriptive refusal, maintained the finality of the genericness refusal and rejection of the acquired distinctiveness claim, and withdrew the merely descriptive refusal.²¹

¹⁷ See 1 TTABVUE (Applicant's notice of appeal); 7 and 11 TTABVUE (Applicant's requests for reconsideration); and 4-6, 9 and 13-22 TTABVUE (Examining Attorney's denials of the requests for reconsideration).

¹⁸ 25 TTABVUE (Applicant's brief), 27 TTABVUE (Examining Attorney's brief), and 31 TTABVUE (Applicant's reply brief).

¹⁹ 27 TTABVUE 19.

²⁰ 38 TTABVUE (Examining Attorney's request for remand); 40 TTABVUE (Board Order remanding jurisdiction of application back to the Examining Attorney). The SWISS certification mark (Reg. No. 3047277) is for "horological and chronometric instruments, namely, watches, clocks and their component parts and fittings thereof," issued on January 24, 2006, and has been renewed. A copy of the registration was attached to the February 1, 2019 Office Action, TSDR p. 1-2.

²¹ February 1, 2019 and September 11, 2019 Office Actions.

Applicant then filed a request for remand of the application to the Examining Attorney for consideration of a letter from the Federation of the Swiss Watch Industry (the “Federation”), owner of the cited SWISS certification mark.²² In the letter, the Federation states that “Applicant, through its mother company . . . and sister company . . . is itself a member of . . . ‘the Federation,’” and that the Federation “consents to the use and registration by [Applicant] of the mark SWISS MILITARY in connection with watches of Swiss origin.”²³ In response to this request for reconsideration, the Staff Attorney currently assigned responsibility for the application expressly withdrew the likelihood of confusion and primarily geographically descriptive bases for refusal, while asserting only the genericness refusal as a basis for refusal being “maintained and continued.”²⁴ Proceedings were resumed.

In sum, and as noted at the outset of this decision, the sole issue before us now on appeal is whether Applicant’s mark is generic.

II. Genericness - Applicable Law

Section 2 of the Act provides for registration on the Principal Register of marks “by which the goods of the applicant may be distinguished from the goods of others.” 15 U.S.C. § 1052. “Generic terms do not so qualify.” *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017). “A generic name--the name of a class of products or services--is ineligible for federal trademark registration.” *U.S. Patent &*

²² 44 TTABVUE. A copy of the letter is attached to Applicant’s request.

²³ *Id.* at 7.

²⁴ 46 TTABVUE.

Trademark Office v. Booking.com B.V., 140 S. Ct. 2298, 2020 USPQ2d 10729, *1 (2020). See also *Royal Crown Cola v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). The reason being that generic terms “are by definition incapable of indicating a particular source of the goods or services.” *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001).

When the USPTO refuses to register a proposed mark on the ground that it is a generic term, the examining attorney bears the burden of proving genericness. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016). The Federal Circuit has set forth a two-step inquiry to determine whether a mark is generic: First, what is the genus (category or class) of goods or services at issue? Second, does the relevant public understand the term at issue primarily to refer to that genus of goods? *H. Marvin Ginn*, 228 USPQ 530. “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term to be protected to refer to the genus of goods or services in question.” *Royal Crown*, 127 USPQ2d 1046 (quoting *Marvin Ginn*, 228 USPQ at 530).

A. The Genus of Applicant’s Goods

Our first task is to determine the proper genus of the goods at issue. In defining the genus, we commonly look to the identification of goods in the application. *In re Reed Elsevier Prop. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991)

(a proper genericness inquiry focuses on the identification set forth in the application or certificate of registration); *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018) (proper genus is generally “set forth by the recitation of services in [the] subject application.”). The Examining Attorney and Applicant agree that the identification of goods in the application appropriately sets forth the genus of goods at issue—“watches of Swiss origin.”²⁵ We concur.

B. Relevant Public Understanding of SWISS MILITARY

Turning to the second part of the genericness test, we consider whether the relevant public understands SWISS MILITARY to primarily refer to watches of Swiss origin. *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016). “The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard, LLC*, 124 USPQ2d 1184, 1187 (TTAB 2017) (citing *Magic Wand*, 19 USPQ2d at 1553). *See also Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013). In this case, there are no restrictions or limitations to the channels of trade and we therefore construe the relevant purchasing public to be purchasers, including prospective purchasers, of watches of Swiss origin.

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in

²⁵ 25 TTABVUE 14 (Applicant, in its brief, states “[t]he class, or genus, of goods at issue is ‘watches of Swiss origin’”); 27 TTABVUE 5 (the Examining Attorney states “the application identifies the goods as ‘watches of Swiss origin,’ which adequately defines the genus at issue”).

dictionaries, trade journals, newspapers and other publications.” *Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *see also Cordua Rests.*, 118 USPQ2d at 1634. In some cases, dictionary definitions and an applicant’s own description of its goods may suffice to show genericness. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987); *see also In re Am. Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999).

We have reviewed and considered all evidence submitted.²⁶ In view of the refusals made and withdrawn during the long prosecution of this application, we do not recount all submissions or necessarily discuss each piece of evidence. Rather, the following is a discussion of some of the evidence we find pertinent to the genericness refusal, along with arguments presented by the Examining Attorney and Applicant.

1. The Examining Attorney’s Arguments and Evidentiary Support

The Examining Attorney contends that the evidence “clearly indicates that both the terms SWISS and MILITARY, as well as the composite term SWISS MILITARY, are generic for watches.”²⁷ In particular, she asserts “Applicant’s own use of the term ‘Swiss’ in its identification and the existence of [the Federation] clearly evidences the

²⁶ Specifically, we note the Examining Attorney attached evidence to: March 22, 2011 Office Action, TSDR pp. 2-53; April 4, 2016 Office Action, TSDR pp. 2-38; October 26, 2016 Office Action, TSDR pp. 2-59; May 18, 2017 Office Action, TSDR pp. 2-94; January 6, 2018 Office Action, TSDR pp. 2-38; April 30, 2018 Office Action, TSDR pp. 2-119; and February 1, 2019 Office Action, TSDR pp. 2-86.

Applicant submitted evidence with its responses (including requests for reconsideration or remand) filed on: September 22, 2011, TSDR pp. 5-12; April 26, 2017, TSDR pp. 9-31; November 20, 2017 (at 7 TTABVUE 49-456); April 2, 2018 (at 11 TTABVUE 9-34); and October 16, 2019 (44 TTABVUE 7).

²⁷ 27 TTABVUE 5.

common use and understanding in the watch industry of the generic term ‘Swiss’ as related to watches.”²⁸ Referring to the Federation’s SWISS certification mark, she argues that “[t]he term ‘Swiss’ is not capable of serving as a single source indicator; it is only capable of serving as a certification of the Swiss origin of watches.”²⁹ The Examining Attorney also argues that “military” is generic for watches, relying on evidence that “includes numerous retail store offerings of watches referred to both as a category (‘military watches’) and with the term ‘military watch’ following a brand name.”³⁰ With respect to the composite mark, SWISS MILITARY, she concludes that the evidence “shows professional watch dealers, large retailers and consumers use and understand the common, generic term ‘Swiss military.’”³¹

a. Evidence of Public Understanding of the Individual Terms: SWISS and MILITARY

SWISS is defined as an adjective as “of, relating to, or characteristic of Switzerland or the Swiss.”³² This term is used in the identification of goods, which is the agreed-upon genus of goods, namely, “watches of Swiss origin.” Use in the

²⁸ 27 TTABVUE 6.

²⁹ February 1, 2019 Office Action, TSDR p. 6.

³⁰ *Id.*

³¹ *Id.* at 8.

³² We take judicial notice of this definition from the online Merriam-Webster dictionary website. <https://www.merriam-webster.com/dictionary/Swiss> (accessed 16 Mar. 2021). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

The Examining Attorney also submitted the following definition: “[adjective] 1. Someone who is Swiss is from Switzerland. 2. Relating to Switzerland or its culture,” from online MacMillan Dictionary (www.macmillandictionary.com), October 26, 2016 Office Action, TSDR p. 41.

identification of goods is probative on the issue of genericness. *See In re Johanna Farms, Inc.*, 222 USPQ 607, 609 (TTAB 1984) (“The term ‘yogurt’ is concededly the name of the goods. That fact is uncontrovertible where, as here, the same term has been used in the identification of goods for which registration is sought.”). While it is perhaps common knowledge, there is also evidence showing that, in the context of watches, Switzerland is renowned for watchmaking. The Examining Attorney submitted printouts from the Wikitravel website wherein Switzerland is described as “famous for a few key goods,” listing “watches” first.³³ Indeed, the article describes, “Switzerland [as] the watch-making capital of the world, and ‘Swiss Made’ on a watch face has long been a mark of quality.”³⁴

To further show the significance of the term SWISS in connection with watches, the Examining Attorney submitted printouts from the website of the Federation, owner of the SWISS certification mark for watches that gave consent to Applicant’s use of SWISS in its mark for watches of Swiss origin.³⁵ She argues that the

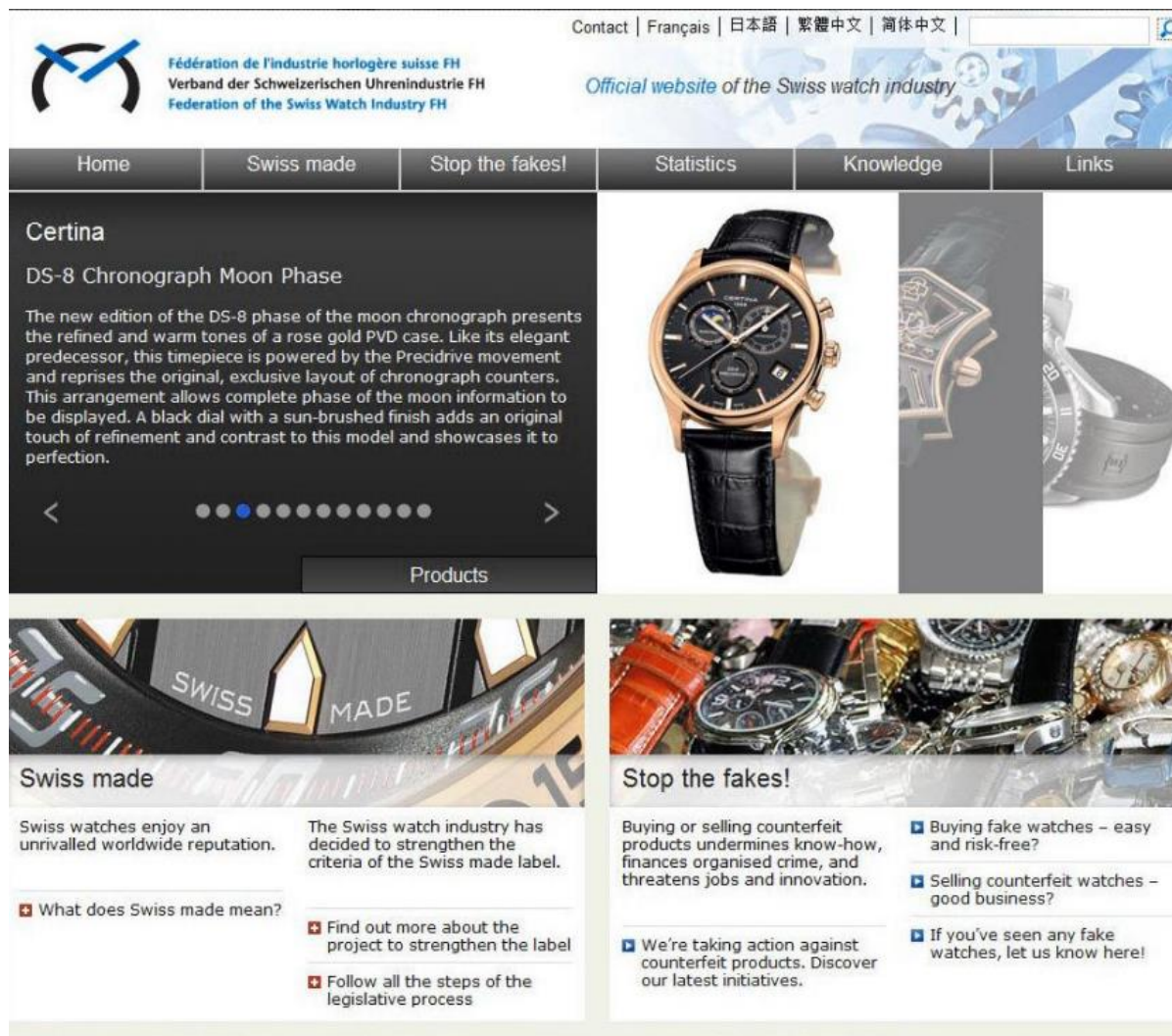
³³ February 1, 2019 Office Action, TSDR p. 72.

³⁴ *Id.*

³⁵ See note 14. The Federation also owns the certification mark SWISS MADE for watches (Registration No. 3038819, issued January 10, 2010). A copy of the registration was submitted by the Examining Attorney with the February 1, 2019 Office Action, TSDR p. 83.

We further note that the Federation successfully defended the SWISS and SWISS MADE registrations against a genericness claim in a cancellation proceeding. *See Swiss Watch Int’l Inc. v. Federation of the Swiss Watch Ind.*, 101 USPQ2d 1731 (TTAB 2012). In that decision, the Board ultimately held “the evidence shows that the geographic connection between watches and Switzerland is very strong, and that when the terms SWISS and SWISS MADE are used in connection with watches, consumers will understand that they signify the geographic origin of the goods, and will not regard the marks as generic terms.” *Id.* at 1744. We hasten to add that neither Applicant nor its applied-for mark were party to or the subject of that proceeding, and the decision was based on a different record; thus, that decision is not binding in this appeal.

information on the website shows “the descriptive quality implication of calling a watch, ‘Swiss.’”³⁶ Specifically, the Examining Attorney relies on the website to “indicat[e] that there is, in fact, a Swiss watch industry” and that the Federation is engaged in “stopping the production and sale of counterfeit Swiss watches.”³⁷ The following is an excerpt from the website:³⁸



³⁶ 27 TTABVUE 6.

³⁷ *Id.*

³⁸ April 4, 2016 Office Action, TSDR p. 1.

The Federation's consent letter further states that the SWISS "certification mark is used exclusively by Swiss watchmakers, provided their watches meet [the Federation's] certification standards."³⁹

The Examining Attorney also relies on printouts from the Best Reviews Guide website providing the following lists: "10 Best Swiss Watch Brands," "10 Best Swiss Made Watches," and "10 Best Swiss Watches."⁴⁰ The Examining Attorney argues that these lists constitute "further evidence of the generic nature of the term 'Swiss' in relation to watches."⁴¹ Applicant does not offer evidence on how the relevant public perceives the term SWISS for watches, merely stating "[t]he term 'Swiss' taken alone might describe a quality of certain watches as being of Swiss origin."⁴²

Based on this record, we find the term "SWISS" is clearly a geographically descriptive term, meaning that Swiss watches are perceived by the relevant public as watches from Switzerland, and not a type of watch that would originate elsewhere. The evidence further shows that, because Switzerland is renowned for watchmaking, the term SWISS is likely to carry significant weight and play an important role in the minds of the relevant consumer, including prospective purchasers, of watches of Swiss origin. We acknowledge that some of the evidence shows use of the term SWISS in connection with watches, or watch accessories, without any additional reference to

³⁹ 44 TTABVUE 7.

⁴⁰ April 30, 2018 Office Action, TSDR pp. 13-21.

⁴¹ *Id.*, p. 1.

⁴² 25 TTABVUE 17.

the goods coming from Switzerland.⁴³ That evidence is treated as neutral in our analysis because it does not clearly establish that the term has a non-geographic meaning; it merely shows use of the term without its explicit geographic connection.

To be clear, although a geographic term may be generic for goods, the record does not establish that this is the case with SWISS for watches of Swiss origin. *See, e.g., Int'l Dairy Foods Ass'n v. Interprofession du Gruyère and Syndicat Interprofessionnel du Gruyère*, 2020 USPQ2d 10892, at *9 (TTAB 2020). In *Interprofession du Gruyère*, the Board found the applicant's proposed certification mark, GRUYERE, is generic for cheese because the record showed that consumers understand the term "as a designation that primarily refers to a category within the genus of cheese that can come from anywhere," and not just from the Gruyère region of Switzerland and France. The Board in that case relied on dictionary definitions of "gruyere cheese," frequent third-party use of "gruyere" in lowercase letters to refer to a type of cheese, as well as evidence showing that "gruyere" cheese originates from other geographic regions, like Wisconsin.

Indeed, one can easily think of several other geographic terms that, when used on or in the context of certain goods, lose their geographical connotation, e.g., "french" or "russian" for salad dressings, "swiss" for "swiss cheese," etc. In other words, french dressing is a type of salad dressing and does not necessarily describe a salad dressing

⁴³ For example, the Walmart website advertises a Technosport-branded watch described as "Men's World Timer GMT Swiss Chronograph Military Green Watch" and having an "International Warrant," but gives no indication of the watch's country of origin. January 6, 2018 Office Action, TSDR pp. 7-9. Amazon also lists a watch (or watch strap) for sale that is advertised as "LsvtrUS Men's Sport Style Swiss Military Army Pilot Fabric Strap Watch," again with no country of origin information. *Id.* at p. 13.

from France. In contrast, the record in this case does not show that SWISS clearly refers to a type of watch or that it has a non-geographical meaning. Rather, consumers of watches of Swiss origin will primarily understand the term as describing the country of origin of the watches. Again, although the term SWISS may play an important role in a consumer's purchasing decision and may connote a watch of higher quality because of the country's reputation for watchmaking, the evidence in this case does not establish that it describes a type or genus of watch.

With respect to the term MILITARY and in support of her argument that it is "also clearly identified as a generic term for a type of watch,"⁴⁴ the Examining Attorney submitted a significant amount of Internet evidence, including advertisements for watches where the term "military watch" is preceded by a brand name, retail websites categorizing or listing different "military watches" for sale, online discussion forums for "military watches," and articles reviewing "military watches" and their attributes. Some examples from the record are:

- Printouts from the Watchismo retail website listing a variety of different branded watches for sale under the banner "military watches," with some watches including the term "military" after the brand name. For example:⁴⁵




⁴⁴ 27 TTABVUE 6.

⁴⁵ April 4, 2016 Office Action, TSDR pp. 17, 19, and 29 (printout excerpts from www.watchismo.com website).



G-Shock Classic Military X-
Large Black
\$129.99

- Printouts from an online discussion forum called “The Military Watch Resource (MWR)” describing itself as a “site for enthusiasts of military timepieces” and stating that “[a]ll discussions related to military timepieces, and watches in general are welcome.”⁴⁶
- A Google shopping search for “military watches” lists the following watches for sale from various online sites:⁴⁷

 Locman Men's Military Watches: Blue Titanium Rubber Quartz Watch ... \$358	 "Military Watches - Official United States of America Navy Watch" \$101.97 Underbid	 Military Watches US Navy Logo Watch \$42.30 Army Navy Shop	 Suunto Core All Black Computer Man Military Watches \$315.00 used eBay	 US Military Watches - Official US Coast Guard Watch \$103.00 JewelBasket.com
 "US Military Watches - Official US Coast Guard Watch" \$101.97 Underbid	 Traser Authentic US Military Spec Watch P6500 Type 6 \$225.00 Newegg.com	 Swiss Military Men's Navalus II White Dial Watch \$249.99	 Smith & Wesson Sww-357bss H3 Tritium Military Watches \$247.50 eBay	 Locman Men's Military Watches Mare 130RI-RI-RUDEP \$545.00 UpscaleTime.com

⁴⁶ *Id.*, p. 6.

⁴⁷ March 22, 2011 Office Action, TSDR p. 12.

- Printouts from watch manufacturer, MTM, describing itself on its website as “the internationally recognized leading manufacturer of tactical military watches” and one watch model as “the most durable and innovative military watch[].”⁴⁸
- An article from the “Worn and Wound” website—“Time Spec: A Primer on Military Watches” describing a “military watch” as “[s]trictly utilitarian . . . made popular by their simple yet functional design, sturdy construction” and there being “a world of military watch collecting.”⁴⁹

In view of this evidence, we reject Applicant’s assertion that “The Examiner has provided no evidence to suggest that consumers refer to a type of watch as ‘military.’”⁵⁰ On this record, we find the term “MILITARY” is generic for, and commonly understood by the relevant public to refer to, a type or category of watch.

b. Evidence of Public Understanding of the Composite: SWISS MILITARY

In addition to her contention that each word in Applicant’s mark is generic, the Examining Attorney argues that the composite, SWISS MILITARY, is understood as a “common, generic term used in the watch industry.”⁵¹ She states “the record actually consists of a multitude of evidence of usage of the wording ‘Swiss military’

⁴⁸ *Id.*, p. 15.

⁴⁹ October 26, 2016 Office Action, TSDR pp. 45-59.

⁵⁰ 25 TTABVUE 17. Applicant submitted the declaration of James Lamdin, a collector of watches, freelance journalist, and watch retailer, who averred that “there is no specific, unique type of watch that is referred to as a ‘military watch,’ nor is ‘military watch’ a designation for a particular style of watch, as in the case of ‘diving watch’ or ‘chronograph’ . . .” 11 TTABVUE 10. Although we consider Lamdin’s testimony somewhat probative overall, we regard Lamdin’s conclusory statement about “military watches” with some skepticism in view of the amount and type of evidence showing the term “military” to indeed refer to a category or type of watch.

⁵¹ 27 TTABVUE 8.

when referring to watches of various manufacturers,”⁵² and points to Internet evidence showing “Swiss military,” or the component words in proximity to one another on or in connection with watches. The following are some examples of watches advertised on retail websites:

- A Marathon-branded watch advertised on Amazon, described as a “Swiss Made Military Field Army Watch . . .” and “Swiss made authentic military watch”:⁵³



- A Dueber-branded pocket watch on Amazon, described as a “Dueber Swiss, Military Style Pocket Watch, Black Dial, Luminous Hands, Satin Steel”⁵⁴
- A watch advertised on a Delta Kappa Epsilon fraternity gear website, described as “DKE Commander Watch. DKE Swiss military style with calendar, stainless steel case....”⁵⁵
- An advertisement on Amazon for 3 watches described as “LsvtrUS Men’s Sport Style Swiss Military Army Pilot Fabric Strap Watch[es].”⁵⁶

⁵² *Id.*

⁵³ May 18, 2017 Office Action, TSDR p. 6.

⁵⁴ *Id.*, p. 31.

⁵⁵ *Id.*, p. 85.


⁵⁶ January 6, 2018 Office Action, TSDR p. 13.

- An advertisement on Amazon for watches described as “Vavna Luxury Brand NAVIFORCE Fashionable Japan Movement Swiss Military Men’s Sports Watches 30M Waterproof Nylon Strap Watch-Red.”⁵⁷
- A bulk (“100 pieces ... Min. Order”) watch purchase offering for watches from China advertised as “weijieer men swiss military style watch” on the Alibaba.com website.⁵⁸

There is also evidence of use by other entities of SWISS MILITARY as a particular brand, collection name or model. Specifically, the evidence shows that in addition to Applicant, a handful of different watch companies, such as Hanowa, Chrono, and CX Swiss Military (Montres Charmex), use SWISS MILITARY in a manner consistent with use as a mark, sub-brand, or identifying a line for their watches. For example:

⁵⁷ January 6, 2018 Office Action, TSDR p. 19.

⁵⁸ May 18, 2017 Office Action, TSDR p. 86. We note that “Alibaba.com” touts itself as a “Global trade” website and the price for the watches is in “US \$.” We thus conclude that the target audience includes U.S. consumers. *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007) (“Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark.”)




\$105.01 from 2 stores
Swiss Military Hanowa 06-5231.04.007
Mens Quartz Watch
★★★★★ (1)



\$109.00 from Princeton Watches
Wenger Swiss Military Men's Field Classic
Watch - Stainless Steel ...

59



\$164.99 from 5+ stores
Swiss Military By Charmex Infantry Men's
46Mm Watch In Stainless Steel ...
More style options

60



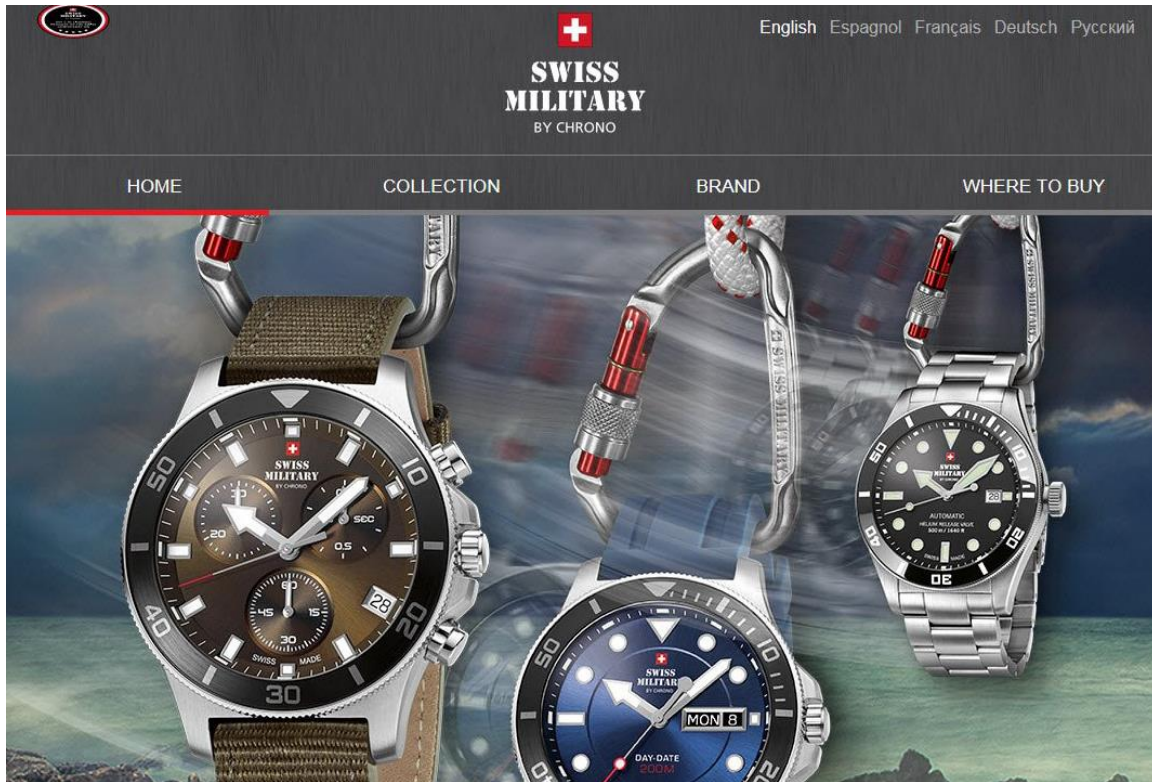
\$4,436.29 from Bonanza - Luna Time
CX Swiss Military Watch 1947 - Men's
Watch

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⁵⁹ April 30, 2018 Office Action, TSDR p. 110.

⁶⁰ *Id.*, p. 111.

⁶¹ *Id.*, p. 112.



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As shown in the aforementioned examples, Applicant, and the three other watchmaking entities, use the term “Swiss Military” prominently (top center) on the actual watch faces.⁶³

Additional evidence shows “Swiss Military,” by itself, without any accompanying house mark, as brand—for example, the Ashford retail website lists the following watches:

⁶² *Id.*, p. 82.

⁶³ With respect to the “CX Swiss Military Watch 1947,” it is not possible to read any of the written terms on the watch due to the quality of the printout. However, “Swiss Military” does appear on the watch that appears alongside it (described as “Swiss Military by Charmex Infantry Men’s”), and these two watches are from the same entity -- Charmex.



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In addition to being listed as one of the retail site’s “brands,” the collection of SWISS MILITARY-branded watches offered on the Ashford retail website are accompanied by an explanation that “Swiss Military Watches **is a brand**” for “Swiss made timepieces, thoroughly rugged . . . created to meet the most rigorous military requirement as well as appeal to the leisure and pleasure seeking consumer. . . . The tradition of precision Swiss timekeeping and impeccable craftsmanship is well very represented **in this brand.**”⁶⁵ (Emphasis added). These watches also have “Swiss Military” prominently placed top center on the watch face.

On another retail website, JOMASHOP.COM, there are eleven different “Collection[s]” of “Swiss Military [Sealander, Freedom, Dreamland . . .] Watches” listed for sale.⁶⁶ Both “Swiss Military” and “Wenger Swiss Military” (Applicant) are listed as watch brands on this website.⁶⁷

⁶⁴ October 26, 2016 Office Action, TSDR p. 31.

⁶⁵ *Id.*, p. 35.

⁶⁶ March 22, 2011 Office Action, TSDR pp. 34-36.

⁶⁷ *Id.*

The Examining Attorney also relies on printouts from the Overstock website containing question and answer information in the form of “FAQs About Swiss Military Watches.”⁶⁸ We regard this evidence, however, as inconsistent and confusing in its treatment of the term SWISS MILITARY. On the one hand, as the Examining Attorney points out, the term “Swiss military” appears a couple times with a lowercase letter “m” and is used to describe watches that are “generally marketed to outdoor enthusiasts” and “also fashionable, making them the perfect wristwatch for daily wear.”⁶⁹

On the other hand, the Overstock guide primarily displays and uses the term “Swiss Military” in a manner consistent with that of a brand name. Specifically, the guide explains that “watches from Swiss Military are meant to be highly functional. ... Sport watches from Swiss Military are perfect for women and men with active ... Swiss Military produces watches in a variety of price categories.”⁷⁰ Indeed, aside from the two instances already mentioned, the letter “M” in “Swiss Military” is capitalized throughout the guide, thus reflecting an intent of the author to convey its perception as a brand name, which may thus indicate how readers’ will perceive the term. *See In re Country Music Ass’n Inc.*, 100 USPQ2d 1824, 1831 (TTAB 2011) (“[I]n the

⁶⁸ April 30, 2018 Office Action, TSDR pp. 2-6.

⁶⁹ *Id.*

⁷⁰ *Id.*, pp. 3-4. We further note the guide states that “Swiss Military watches are produced by three different sub-brands: Wenger, Hanowa and CX Swiss Military Watch.” *Id.* This statement is nonsensical. A “sub-brand” refers to an extension or added brand to an already existing brand as used by the same entity. Given they are three separate entities and Applicant has opposed applications involving Hanowa and Charmex (“CX Swiss Military Watch”), the “sub-brand” is simply not plausible and incorrect.

English language, initial capitalization of a term or phrase is generally used to designate a brand name, as opposed to a generic term.”) *See also Plyboo Am, Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1638 (TTAB 1999) (Board found in descriptiveness opposition that evidence showed that applicant’s “term ‘plyboo’ is clearly used as a trademark for applicant’s goods--in that the first letter of such term (like a proper noun or proper adjective) is capitalized ... **and** the term is followed (or preceded) by generic terminology for the goods”) (emphasis in original). Furthermore, the plain language “watches from Swiss Military” and “Swiss Military produces watches” reinforces an understanding that “Swiss Military” is identifying a source or brand of watches, rather than a type of watch.

The Examining Attorney further points to a printout from the Cabela’s retail store website informing consumers that they can “[c]hoose men’s watches, wrist watches and Swiss military watches that [have different features] . . . from leading brands including Luminox wrist watches, Timex watches, Wenger Swiss military watches and much more from Cabela’s.”⁷¹ The Examining Attorney argues that “by its lack of capitalization of ‘military’ when referring to [A]pplicant’s watches--Wenger® is the brand, and ‘Swiss military watches’ is generic for the goods.”⁷² However, we note that “Swiss military” does not appear in the “By Type” menu of watches on the Cabela’s

⁷¹ March 22, 2011 Office Action, TSDR pp. 14-20.

⁷² 27 TTABVUE 10.

website⁷³ and appears only once more as “Swiss Military” (with a capitalized “M”) in a listing for one of Applicant’s watches.⁷⁴

2. Applicant’s Arguments and Evidence

Applicant argues that “[e]ven if the word ‘military’ or the ‘military watch’ has significance in the watch industry . . . SWISS MILITARY is—as a unitary phrase—a proper adjective as a whole, which is used as a brand of watch.”⁷⁵ As to the evidence submitted by the Examining Attorney, Applicant contends that it “shows use of ‘Swiss’ and ‘military’ in close proximity, but simply not as SWISS MILITARY [or in] other cases, SWISS MILITARY is being used by third party infringers.”⁷⁶ Applicant acknowledges other watchmakers have used “Swiss Military” as a mark, or part of a mark, and specifically identifies the companies Chrono, Montres Charmex, and Hanowa as purported “infringers.”⁷⁷ Applicant, however, argues that consumers have had “very little exposure to the watches offered by infringers.”⁷⁸ Applicant also points to what it calls “successful” enforcement actions, referencing opposition proceedings it instituted against the prior-filed applications for the marks CX SWISS MILITARY WATCH and SWISS MILITARY HANOWA.⁷⁹

⁷³ March 22, 2011 Office Action, TSDR p. 15.

⁷⁴ *Id.* at p. 18.

⁷⁵ 31 TTABVUE 6.

⁷⁶ *Id.* at 7.

⁷⁷ 26 TTABVUE 11-12.

⁷⁸ *Id.* at 12.

⁷⁹ *Id.* at 11; the Examining Attorney acknowledged these proceedings stating that she made “a quick review of Opposition Nos. 91198547 and 91177749, filed by applicant” (27 TTABVUE 15). However, as the Examining Attorney points out, these proceedings were terminated

In addition, Applicant relies on the following evidence.

a. Survey

Applicant commissioned a “Teflon” style survey with a stated purpose of determining whether SWISS MILITARY for watches of Swiss origin is understood by relevant consumers to be a generic term or a brand name.⁸⁰ Applicant argues that this survey shows that “the primary significance of the mark SWISS MILITARY is that of a specific brand name of a watch, and not as a common or class name for watches of Swiss origin.” The survey consisted of 200 respondents and was conducted over a two week period in November 2017 using a “Teflon” format whereby the respondents were first provided with instructions and examples of “brand” and “common” names and then tested to ensure that they understood the difference and can properly identify what they believed to be brand and common names.⁸¹ The respondents were screened to only include only those who either “purchased a watch in the past two years and had either purchased a watch of Swiss origin in the past two years or considered purchasing a watch of Swiss origin” or “were likely to purchase a watch in the coming 12 months and would consider a watch of Swiss

without any adjudication on the merits or determination of rights in a SWISS MILITARY mark.

⁸⁰ 7 TTABVUE 76-104. This includes the declaration and “Expert Report of Hal Poret,” signed under penalty of perjury by Hal Poret, President of Hal Poret, LLC, a survey research and survey consulting firm. Copies of the survey questions and results are also attached.

The “Teflon” survey is so named after a style of consumer survey introduced in *E.I. DuPont de Nemours & Co. v. Yoshida Int’l., Inc.*, 393 F. Supp. 502, 185 USPQ 597 (E.D.N.Y.1975), involving a determination of whether the term “Teflon” was a valid trademark and not a generic name for a non-stick coating.

⁸¹ *Id.* at 77, 80.

origin.”⁸² The demographics of the respondents were spread across different age groups above the age of 21, geographic region, and sex.⁸³

After a short tutorial on the differences between “brand” and “common” names, the qualified respondents were given a test to see if they could correctly answer whether certain terms were a brand or a common name. If they answered correctly and remained qualified,⁸⁴ the respondents were asked about 7 different terms (all displayed in uppercase bold lettering and in randomized order): SWISS MILITARY, CHRONOGRAPH, ZENITH, TAG HEUER, STAINLESS STEEL, MONT BLANC, and DIVE WATCH. The respondents were asked:

“Do you think this is a ...

1. Brand name
2. Common name
3. Don’t know”

[“Brand name” and “Common name” response choices were rotated evenly].

With regard to SWISS MILITARY, the respondents’ answers were as follows:

57% Brand name

35% Common name

8% Don’t know.⁸⁵

⁸² *Id.*

⁸³ *Id.* at 80-81; 55/45 % of those identifying as male/female; 33/44/23 % in age groups (21-34)/(35-54)/(55 or older); and

⁸⁴ Before the survey was administered, other control measures were taken. For example, the survey was terminated if the respondent stated they were under the age of 21, or worked in advertising or market research, or did not understand the directions, etc.

⁸⁵ The results for the other terms, given in percentages and order of “brand/common name/don’t know” were: MONT BLANC—94/1/5; TAG HEUER—91/3/6; Zenith—91/5/4; CHRONOGRAPH—17/76/7; DIVE WATCH—20/71/9; and STAINLESS STEEL—4/96/0.

The survey report provides that “the clear majority of relevant prospective purchasers of swiss watches (57%) understood SWISS MILITARY to be a brand name and only a minority (35%) answered that SWISS MILITARY is a common (generic) term.”⁸⁶ Mr. Poret concludes in the report that “[b]ased on the survey results it is my opinion that the primary significance of the term SWISS MILITARY in the context of watches of Swiss origin is as a brand name and not a generic term.”⁸⁷

We find no fatal or inherent flaws with the methodology in which the survey was conducted⁸⁸ or any other reason to disregard the survey evidence. While the level of awareness of SWISS MILITARY as a brand name falls below that attributed to the other brands of watches in the survey (see Note 85), a clear majority of survey respondents identified SWISS MILITARY as a brand, not a common name, and this favors a finding that term is not generic. Moreover, although the survey is not overwhelming in the number of persons interviewed, 200 respondents who passed the hurdles to qualify as members of the relevant purchasing public is not an insignificant number.

As already noted, a consumer survey is one possible type of evidence that can be considered in determining the public’s understanding of the term. *Merrill Lynch*, 4 USPQ2d at 1143. Indeed, we keep in mind the Federal Circuit’s admonition to the

⁸⁶ 7 TTABVUE 81.

⁸⁷ *Id.*

⁸⁸ We do note, however, that one question in the survey asks, “Do you or does anyone in your household work for a company or store that makes or distributes watches?” 7 TTABVUE 104. It is not clear if the survey was terminated if the answer was “yes,” and the results of the this question were not provided. Without more information, we consider this a potential flaw in the survey, but not fatal.

Board that it cannot “disregard the results of survey evidence without explanation” and “must give appropriate consideration to the proffered survey evidence.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1834 (Fed. Cir. 2015). We are also mindful of the Supreme Court’s guidance, in determining whether BOOKING.COM was generic, that the question of genericness “depends on whether consumers in fact perceive that term as the name of a class or, instead, as a term capable of distinguishing among members of the class” and that in general, “[s]urveys can be helpful evidence of consumer perception but require care in their design and interpretation.” *USPTO v. Booking.com B.V.*, ___ U.S. ___, 140 S. Ct. 2298, 2020 USPQ2d 10729, *7 and *16 n. 6 (2020).⁸⁹

We are also aware of the limitations of Teflon surveys in the context of genericness determinations, particularly in situations where a party asserting ownership of a mark previously did not control the term at issue as a coined or arbitrary term. *See, e.g., Frito-Lay*, 124 USPQ2d at 1202-03 (discussion of the relevance and probative value of surveys).⁹⁰ On remand from the Federal Circuit, the Board in *Frito-Lay* not

⁸⁹ We further note that Professor McCarthy opines on the subject by stating that it would be “clearly erroneous” to maintain a “strict view” that surveys are irrelevant unless the contested designation was once a coined or arbitrary trademark. 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:17.25 (5th Ed.). In Professor McCarthy’s view, the “message of the Supreme Court [in *Booking.com*] was that genericness depends upon public perception” and a survey “can be valuable evidence to prove or disprove whether a term is perceived by the relevant public as a generic name.” *Id.*

⁹⁰ The Board’s *Frito-Lay* decision reached in 2017 was the culmination of an earlier Board decision that was appealed to the Federal Circuit and remanded back to the Board. *See Princeton Vanguard*, 114 USPQ2d 1827. The *Frito-Lay* proceeding is currently before the U.S. District Court for the Western District of North Carolina, pursuant to a 15 U.S.C. § 1071(b) request for review of the Board’s 2017 decision. *See Snyder’s-Lance, Inc.; Princeton Vanguard, LLC v. Frito-Lay North America, Inc.*, 991 F.3d 512 (4th Cir. 2021) (reversing and remanding decision back to district court).

only found that the defendant's proposed mark PRETZEL CRISPS was not inherently distinctive, but also relied on evidence showing "at least three citations to the term 'pretzel crisps' in a descriptive manner by third-parties" before the defendant attested to first use of mark. *Id.* Based on those circumstances and relying on the *Weiss Noodle Co. v. Golden Cracknel and Specialty Co.*, 290 F.2d 845, 129 USPQ 411 (CCPA 1961) decision, the Board in *Frito-Lay* found that the survey results concerning PRETZEL CRISPS were "not relevant, and instead merely reflect[ed] ... 'de facto secondary meaning,'" a term used to describe the situation of a party "by advertising, [seeks] to convert common descriptive names, which belong to the public, to their own exclusive use." *Frito-Lay*, 124 USPQ2d 1203 (internal description of 'de facto secondary meaning' from *Weiss Noodle*, 129 USPQ at 414).

While the circumstances in this appeal are in some respects similar to those in *Frito-Lay*—*e.g.* involving double-word marks, with the first word in each mark that is used in the identification of goods—they are dissimilar in other respects. For instance, the type and amount of evidence adduced by the parties in the *Frito-Lay* opposition differs significantly from the record in this *ex parte* appeal. Specifically, the Board found "many instances in the record where the term 'pretzel crisps' is set forth in lower case, with no apparent reference to the term as a brand, or to Defendant, indicating an understanding by the relevant public that the term 'pretzel crisps' refers to a product rather than to a single producer thereof." *Frito-Lay*, 124 USPQ2d 1190. The Board pointed to more than 20 different instances, many from known publications, where the term "pretzel crisps" was used in this manner. *Id.* In

contrast, the record before us now consists of very few instances where “Swiss military” (letter “m” in lower case) is used in the same manner.

In addition, the record in *Frito-Lay* included three expert surveys, two from defendant and one from plaintiff, and the Board noted that “[u]nsurprisingly, the surveys reached differing results on the question of whether the term PRETZEL CRISPS is generic in relation to ‘pretzel crackers,’ and each party has criticized the survey conducted by its adversary.” *Id.* at 1195. In this proceeding, we have a single survey before us that, as discussed, supports a finding that the mark is not generic.⁹¹

By seeking registration based on a Section 2(f) claim of acquired distinctiveness, Applicant acknowledges that SWISS MILITARY is not an inherently distinctive term. *See Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009). However, unlike *Frito-Lay* where there was significant evidence of third-party use of the term PRETZEL CRISPS prior to the applicant’s adoption, here there is no evidence of third-party use of the term SWISS MILITARY in connection with watches, either descriptively or in a trademark manner, prior to Applicant’s attested first use of the term in commerce in 1989.⁹²

⁹¹ We keep in mind the practicalities of an ex parte appeal and that resources available to USPTO examining attorneys are limited. *See, e.g., In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). For example, examining attorneys do not commission their own surveys to rebut the results of surveys conducted at the behest of applicants.

⁹² In addition to Applicant’s attestation of first use of SWISS MILITARY on watches since 1989, the record shows Applicant’s actual use at least as early as 1996. *See, e.g., Eskridge Exh. 2-4* (comprising advertisements, including nationally distributed magazines, for Applicant’s watches under the brand “Swiss Military”). 7 TTABVUE 326-360.

For the foregoing reasons, we find the facts in this case distinguishable from those in *Frito-Lay* and thus consider the survey to have some probative value. In other words, on the record before us, we cannot conclusively label the survey result for the term SWISS MILITARY as merely a reflection of Applicant’s acquisition of rights in a common term that was already in use, i.e., obtaining “de facto secondary meaning.”

We caution that our comparison of the record in this proceeding with that in *Frito-Lay* is purely for sake of instruction and should not be construed as setting forth any requirement for a certain type of evidence to support a finding of genericness. Indeed, we point out that we would reach the same conclusion in this appeal with or without Applicant’s survey evidence. That is, we do not find the standard of proof in this ex parte appeal has been met—by establishing “clear evidence” of generic use that SWISS MILITARY will be perceived by the relevant consumers primarily as a common name for watches of Swiss origin. See *In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009); *Merrill Lynch*, 4 USPQ2d at 1143.

b. Declarations

Applicant submitted six declarations to rebut the Examining Attorney’s evidence, including two declarations from individuals not affiliated with Applicant or its related companies. One such declaration is from Gary Girdvainis, Publisher and Editorial Director of iW Magazine and other watch-related publications, who avers that he has 27 years of experience working and covering the watch industry and that he is “particularly familiar with Swiss-made watches sold” in the U.S.⁹³ According to

⁹³ 7 TTABVUE 423-456 (Girdvainis Dec. with exhibits).

Girdvainis, watches sold under the marks SWISS MILITARY BY CHRONO, CX SWISS MILITARY WATCH and SWISS MILITARY HANOWA “are not sold in the United States in any substantial number;” that he does not know of any U.S. distributors or agents that offer those watches; and that although “there may be some sales online, based on my knowledge and experience in the marketplace in the United States, these sales are insignificant and insubstantial.”⁹⁴

Another such declaration is that of James Lamdin, a collector of watches for over 15 years, freelance journalist who has contributed to various watch journals, and Founder of Analog/Shift LLC (a “leading retailer of timepieces with a global online presence and boutique in New York”).⁹⁵ Lamdin states that he is “intimately familiar with the terminology customarily used in the watch industry by consumers to describe watches, watch components, and types of watches,” and based on his expertise, “there is no specific, unique type of watch that is referred to as ‘Swiss military,’ nor is ‘Swiss military’ a designation for a particular watch style, as in the case of ‘diving watch’ or ‘chronograph.’”⁹⁶

The remaining declarations submitted by Applicant are from four employees of Applicant’s sister company and its exclusive U.S. distributor, VSAI.⁹⁷ The testimony from these declarants includes statements that VSAI is responsible for customer

⁹⁴ *Id.* at 424.

⁹⁵ 11 TTABVUE 9-10.

⁹⁶ *Id.* at 10.

⁹⁷ 11 TTABVUE 12-34 (declarations of VSAI employees: Marc Gold, Christopher Davanzo, Jackeline Rodriguez, and Joy Tecci).

service for Applicant's Swiss Military-branded watches and that, while the "overwhelming majority of returns are genuine" products of Applicant's, it is not "uncommon" to receive non-genuine products.⁹⁸ Since 2015, VSAI has records show that it has received 31 non-genuine watches "bearing the brand[] 'Swiss Military,'"⁹⁹ and the declarants state that, based on their experience and communications with the customers, that it is their "understanding that these customers sent [VSAI] these watches because when they see the term[] 'Swiss Military' ..., they think" it is one of Applicant's watches.¹⁰⁰

III. Conclusion

The Examining Attorney is correct in arguing that a compound word mark may be held generic if the constituent words are proven to be generic, and that the separate words retain their generic significance when joined. *In re Gould*, 5 USPQ2d 1111–12 (SCREENWIPE held generic as applied to cloths or wipes for cleaning computer and television screens because mark has "a meaning identical to the meaning common usage would ascribe to those words as a compound"). As discussed, the evidence shows that MILITARY is a common name for a type of watch. However, on this record, we find that SWISS is perceived as geographically descriptive for watches of Swiss origin; it has not been shown to be generic. Thus, unlike SCREENWIPE, we do not find Applicant's mark is the combination of two generic

⁹⁸ *Id.* at 13.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 14, 25, 29, and 33.

terms and *Gould* is not applicable here.

As to mark in its entirety, and upon review of all of the evidence, we do not find the record supports a conclusion that the relevant public primarily understands SWISS MILITARY to refer to watches of Swiss origin or any subgenus thereof. Indeed, much of the evidence shows SWISS MILITARY used as a source identifier and that the relevant consuming public perceives it as such.

Although we need not rely on Applicant's survey evidence, we find it helps corroborate a finding that consumers' primary perception of SWISS MILITARY is not that of a common name for watches of Swiss origin. That is, a majority (57%) of respondents believe that SWISS MILITARY is a brand for watches of Swiss origin. We do not discount the fact that 35% of respondents stated that they believed it is a common name for watches of Swiss origin—this is not an insignificant number. Nevertheless, the survey provides some direct evidence that helps indicate that the primary significance of SWISS MILITARY in the minds of the relevant purchasing community is that of source identifier, and not as a common name.

We also find the Girdvainis and Lamdin declarations, signed under 18 U.S.C. § 1001,¹⁰¹ to be relevant and probative overall. Mr. Lamdin's statements that he is "intimately familiar with the terminology used in the watch industry and by

¹⁰¹ Specifically, both declarations contain the following language:

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

consumers,” and that “there is no specific, unique type of watch that is referred to as ‘Swiss military,’” are probative in this regard.

With respect to the evidence showing different watchmakers, and not just Applicant, using SWISS MILITARY as a mark or incorporated into a mark, this does not necessarily show that Applicant’s mark is generic. As noted, Applicant characterizes the other users as “infringers” and submitted some evidence that it has attempted to police or prevent others from using or registering SWISS MILITARY in marks on watches. We have also considered Girdvainis’ statement in his declaration that sales of these watches are “insignificant and insubstantial.” We have also carefully reviewed all evidence showing use of “Swiss military” not as a brand. However, that evidence is limited and, as discussed, often inconsistent as to what “Swiss military” or “Swiss Military” is identifying. The Board resolves any reasonable doubt in this regard in favor of the applicant “on the theory that any person who believes that he would be damaged by the registration will have an opportunity ... to oppose the registration of the mark and to present evidence, usually not present in the ex parte application, to that effect.” *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972). See also *In re Trek 2000 Int’l Ltd.*, 97 USPQ2d 1106 (TTAB 2010); *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005).

In sum, we cannot conclude that Applicant’s mark SWISS MILITARY is generic and thus unregistrable.

Decision: The refusal to register Applicant’s SWISS MILITARY mark on the Principal Register on the ground that it is generic is reversed.