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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Jasco Solutions L.L.C.

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Serial No. 86308947

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Christopher J. Day, Esq. for Jasco Solutions L.L.C.

Mark Shiner, Trademark Examining Attorney, Law Office 105 (Susan Hayash,
Managing Attorney).

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Before Mermelstein, Shaw, and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Jasco Solutions L.L.C. (“Applicant”) seeks registration on the Supplemental Register of the mark SKINNIBELT in standard characters for “belts,” in International Class 25.¹ The Examining Attorney has refused registration under Section 23 of the Trademark Act, 15 U.S.C. § 1091, on the ground that Applicant’s mark is generic as applied to the goods. When the Examining Attorney made the

¹ Application Serial No. 86308947 was filed on June 13, 2014 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), stating July 21, 2012 as the date of first use and August 20, 2012 as the date of first use in commerce. Applicant originally sought registration on the Principal Register but on November 5, 2014 amended the application to seek registration on the Supplemental Register.

refusal final, Applicant appealed to this Board. Applicant and the Examining Attorney have filed briefs.

A mark is generic if it refers to the class or category of goods or services on or in connection with which it is used. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), *citing H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986) (“*Marvin Ginn*”). The test for determining whether a mark is generic is its primary significance to the relevant public. *In re American Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *Marvin Ginn, supra*. Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *Marvin Ginn*, 228 USPQ at 530. The Examining Attorney has the burden of establishing by clear evidence that a mark is generic. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); *In re American Fertility Soc’y, supra*; and *Magic Wand Inc., supra*. “Doubt on the issue of genericness is resolved in favor of the applicant.” *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005).

As the Examining Attorney argues, the genus of goods at issue is “belts.”² The Examining Attorney contends that “skinny belt” is the generic name of a category of belts. He argues that SKINNIBELT “is merely a novel, or intentional misspelling of

² Examining Attorney’s brief, 6 TTABVUE 5.

the two words ‘skinny belt,’” and that “the phonetic equivalent of a generic term is also generic if purchasers would perceive the different spelling as the equivalent of the generic term,”³ citing *Nupla Corp. v. IXL Mfg.Co.*, 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed. Cir. 1997). We turn then to consider whether “skinny belt” would be understood by the relevant public primarily to refer to a genus of belts. As belts are a commonplace article of clothing that may be worn by any person, the relevant public consists of members of the general public.

The Examining Attorney has made of record much evidence from retail websites offering women’s apparel, including many items identified as “skinny belts.” However, a mere list of such items, without more context, does not allow us to distinguish between descriptive use of the phrase “skinny belt” and generic use. In many cases, the available context does not suggest that the term is understood as a generic name. For example, on the Lord & Taylor’s website,⁴ the goods offered as “skinny belts” are found by means of a pull-down menu that appears as follows:

Accessories

Belts

Skinny

Medium

Wide

We would not expect the expressions “medium belts” and “wide belts” to be generic names, but rather designators of width. This pull-down menu therefore suggests

³ *Id.*, 6 TTABVUE 7.

⁴ Office Action of June 10, 2015 at 40.

that “Skinny,” as used here, is merely a width designation. Other retail websites show items called “skinny belt” alongside items described by variations on this wording, including:

Skinny Leather Belt
Skinny Faux Leather Belt
skinny thin Patent Leather Belt
Skinny Roller Buckle Brown Belt
Skinny Reversible Center Bar Belt
Skinny Double Wrap Belt
Skinny Fashion Belt.⁵

The Nordstrom retail website offers “skinny belts” alongside “skinny bow belt,” “Skinny Calf Hair Belt,” “Skinny Reversible Belt,” “Skinny Braided Leather Belt,” and “Skinny Obi Sash Belt.”⁶ The Macy’s retail website offers “skinny belts” alongside “Skinny Bow Belt,” “Skinny Lizard Print Stretch Belt,” “Skinny Lizard Belt,” “Skinny Studded Leather Belt,” and “Skinny Snake Belts.”⁷ The interposition of other descriptive words between “skinny” and “belt” suggests that “skinny” is merely an adjective in a string of other descriptors, rather than an integral part of the generic term “skinny belt.”

The Examining Attorney has made of record several examples of usage that do appear to show “skinny belt” used in a generic sense. We note the following:

⁵ Listing at <amazon.com>, Office Action of November 25, 2014 at 22-24.

⁶ *Id.* at 6-8.

⁷ Office Action of September 23, 2014 at 15-18.

Invisibelt, an amazingly flat buckless “Skinny Belt” is the new trend for eliminating unwanted belt buckle bulk and buldge [*sic*] in your wardrobe. ... Invisibelt is a skinny belt that works as a slim, undetectable accessory that keeps your pants in place without buldging [*sic*] or adding to your waistline.⁸

Ahhh the skinny belt....! The skinny belt is a miracle salve! It complements our curves when we are lacking femininity and shrinks our sillhouetes [*sic*] on a “wide day.” Skinny belts add style, color, and texture to our looks.⁹

What Are Skinny Belts?

Skinny belts are narrow women’s belts, usually no more than 1 to 1.5 inches (2.54 to 3.81 cm) in width. While skinny belts have come in and out of fashion several times over the decades, the term “skinny belt” itself is a relatively new one. Originating in the early part of the 21st century, the use of the word “skinny” in fashion magazines to describe narrow belts most likely derived from the simultaneous popularity of “skinny jeans,” or jeans with very narrow legs.¹⁰

Long skinny belts are nothing new to the fashion world but their popularity has soared the past several seasons. ...The red skinny belt by far stands out as the most popular colorful belt. ...¹¹

On the other hand, the above sources also suggest that “skinny” in this case might be just an adjective. The article at <examiner.com>, last quoted above, also refers to “a bright red skinny bow belt” and “skinny rectangular belts.”¹² The readers’ comments to the article “What Are Skinny Belts?” refer to “a skinny black patent

⁸ Office Action of November 25, 2014 at. at 4-5.

⁹ “Fabuless Fashion: The Power of the Skinny Belt!,” Office Action of June 10, 2015 at 6-20.

¹⁰ *Id.* at 24-25.

¹¹ <examiner.com>, *id.* at 33.

¹² *Id.*

belt,” “skinny red belt,” “skinny leather belts,” and “skinny waist belts,”¹³ suggesting that they view “skinny” as merely an adjective to describe the width of a belt. The author of “Fabuless Fashion” once uses “thin belt” interchangeably and contrasts the “skinny belt” with “thick belts” and “wide” belts,”¹⁴ terms that we have no reason to view as generic terms.

It is worth noting that nearly all of the products that are referred to as “skinny belts” in the record are belts that are narrow in width; but Applicant’s goods, as shown in its specimen of record, as well as the product offered under the Invisibelt mark,¹⁵ discussed above, are belts that are relatively wide in width but very thin in terms of the fabric of which they are made (*i.e.*, they are designed to lie very flat upon the waist, so as not to bulge outward). This suggests some disagreement in the marketplace as to what a “skinny” belt actually is.

For the reasons discussed above, we find that the Examining Attorney’s evidence is equivocal and does not clearly show that the relevant public understands the term “skinny belt” to be a reference to a genus of belts, rather than merely a combination of the generic word “belt” to which the descriptor “skinny” has been applied. We therefore find that the Examining Attorney has not met the burden of showing, by clear evidence, that Applicant’s mark is generic.

Decision: The refusal to register Applicant’s mark on the Supplemental Register is reversed.

¹³ *Id.* at 27-29.

¹⁴ *Id.* at 9-10.

¹⁵ Office Action of November 25, 2014 at 4-5.