

This Opinion Is Not a
Precedent of the TTAB

Mailed: November 20, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gerald Green

Application Serial No. 87682609

Christopher A. Proskey and David Breiner of Brown Winnick Law Firm
for Gerald Green.

Bridgett G. Smith, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Bergsman, Wolfson and Kuczma, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Gerald Green (Applicant) seeks registration on the Principal Register of the mark 2GS (in standard character form) for “apparel, namely, shirts; clothing, namely, pants, jackets, sweaters, footwear; hats; accessories, namely, belts, neck wear, wrist wear, ankle wear, facewear,” in Class 25.¹

¹ Application Serial No. 87682609 was filed November 13, 2017, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce.

The Trademark Examining Attorney refused to register Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered mark 2GS MADEMOISELLE (in standard character form) for, inter alia, "clothing, namely, pants, coats, dresses; footwear, headgear, namely, hats; leather or imitation leather clothing, namely, pants, coats, dresses; sports shoes; boots and high shoes for riding; leggings; gaiters; shirts; polo shirts; tee-shirts; vests; jackets; waterproof jackets; belts; gloves; caps; scarves; sashes for wear; ties; socks," in Class 25, as to be likely to cause confusion.²

In addition, the Examining Attorney refused to register Applicant's mark on the ground that Applicant failed to comply with the requirement to clarify the description of goods.

I. Preliminary Issue

Applicant, in its brief, submitted evidence for the first time.³ The Examining Attorney objected to the evidence attached to Applicant's brief on the ground that Applicant did not timely file the evidence.⁴

Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d), provides that the record in an application should be complete prior to the filing of an appeal. Because Applicant did

² Registration No. 5276062 registered on August 29, 2017.

³ Applicant's Brief, pp. 7-10 (4 TTABVUE 8-11). References to the briefs on appeal refer to the Board's TTABVUE docket system. Coming before the designation TTABVUE is the docket entry number; and coming after this designation are the page references, if applicable. Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents.

⁴ Examining Attorney's Brief (6 TTABVUE 4).

not timely file the evidence attached to Applicant's brief, we sustain the Examining Attorney's objection. We will not consider the evidence attached to Applicant's brief.

II. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("DuPont") cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); see also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant or for which there is evidence of record. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) ("While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant."). "[E]ach case must be decided on its own facts and the differences are often subtle ones." *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."); see also *In re*

i.am.symbolic, LLC, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus … on dispositive factors, such as similarity of the marks and relatedness of the goods’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. The similarity or dissimilarity and nature of the goods.

The goods are in part identical because Applicant’s description of goods and Registrant’s description of goods both include shirts, pants, jackets, footwear, and hats. Applicant’s description of goods for pants is broad enough to encompass Registrant’s leather or imitation leather pants. Where, as here, goods are broadly identified in an application or registration, “we must presume that the [goods] encompass all [products] of the type identified.” *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015); see also *In re Hughes Furniture Indus., Inc.*, 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”); *Venture Out Props. LLC v. Wynn Resorts Holdings, LLC*, 81 USPQ2d 1887, 1893 (TTAB 2007).

Under this *DuPont* factor, the Examining Attorney need not prove, and we need not find, similarity as to each product listed in the description of goods. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015),

aff'd 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126 n.5 (TTAB 2015) (“it is sufficient for finding a likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application.”).

B. Established, likely-to-continue channels of trade and classes of consumers.

Because the goods described in the application and the cited registration are in part identical and in part legally identical, we presume that the channels of trade and classes of purchasers are the same for these goods. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1745 (TTAB 2018), *aff'd mem.* (No. 18-2236) (Fed. Cir. September 13, 2019) (“Because the services described in the application and the cited registration are identical, we presume that the channels of trade and classes of purchasers are the same.”); *United Glob. Media Grp., Inc. v. Tseng*, 112 USPQ2d 1039, 1049 (TTAB 2014); *Am. Lebanese Syrian Associated Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011).

C. The conditions under which and buyers to whom sales are made, that is, “impulse” vs. careful, sophisticated purchasing.

Applicant argues:

While apparel consumers, generally, aren't considered sophisticated consumers, Registrant's mark offers sophisticated apparel and gear associated with horse-back riding. The sophistication and degree of care exercised by purchasers of Registrant's mark's goods therefore would exercise a great deal of care with the more expensive apparel purchase because the apparel affects performance of the user in horse-back riding. This sophistication of goods associated with Registrant's mark's goods further obviates any concern about source confusion.⁵

There are several problems with Applicant's argument. First, we must consider the goods as they are described in the application and registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Octocom Sys, Inc. v. Houston Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed."). We also do not read limitations into the identification of goods. *In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"); *In re Thor Tech*, 90 USPQ2d 1634, 1638 (TTAB 2009) ("We

⁵ Applicant's Brief, p. 15 (4 TTABVUE 16).

have no authority to read any restrictions or limitations into the registrant's description of goods.”).

Second, when composing and reading descriptions of goods, semicolons are used to separate distinct categories of goods within a single class. *See TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1402.01(a) (2018); In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1166 (TTAB 2013) (finding that, because a semicolon separated the two relevant clauses in registrant's identification, its “restaurant and bar services” is a discrete category of services that stands alone and independently as a basis for likelihood-of-confusion analysis, and is not connected to nor dependent on the services set out on the other side of the semicolon). Therefore, only “boots and high shoes for riding” in Registrant's description of goods is limited to horseback riding. There are no restrictions or limitations to the remainder of the apparel listed in the description of goods.

Third, because there are no restrictions or limitations in Registrant's description of goods other than boots and high shoes for riding, we may not restrict the description of goods to horseback riding apparel even if Applicant submitted evidence showing that all of Registrant's apparel is related to horseback riding. We may not limit, by resort to extrinsic evidence, the scope of goods as identified in the cited registration or in the subject application. *E.g., In re Dixie Restaurants Inc.*, 105 USPQ2d, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997); *In re Fisher Scientific Co.*, 440 F.2d 43, 169 USPQ 436, 437 (CCPA 1971); *In re La Peregrina Ltd.*, 86 SPQ2d 1645, 1646 (TTAB 2008); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986).

Finally, even if we could consider extrinsic evidence, Applicant did not submit any evidence supporting its contention that Registrant's apparel is limited to horseback riding. As the Federal Circuit recently reiterated, "Attorney argument is no substitute for evidence." *Zheng Cai, d/b/a Tai Chi Green Tea Inc. v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)).

This *DuPont* factor is neutral.

D. The similarity or dissimilarity of the marks.

We now turn to the *DuPont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *DuPont*, 177 USPQ at 567. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014); *accord Krim-Ko Corp. v. Coca-Cola Bottling Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.") (citation omitted).

In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

"The proper test is not a side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression'

such that persons who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs.*, 101 USPQ2d at 1721); *see also Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Because the products at issue are apparel, the average customer is an ordinary consumer.

The marks are similar because they share the term 2GS. There is no evidence in the record that 2GS has any meaning when used in connection with clothing or footwear. Therefore, 2GS is a fanciful or arbitrary term and it is inherently strong. *See Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 71 USPQ2d 1173, 1180-81 (Fed. Cir. 2004) (defining a fanciful mark as “a non-dictionary word concocted by the trademark holder for its product” and observing that such marks are typically strong). A strong mark is entitled to broad scope of protection. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 73

USPPQ2d 1689, 1694 (Fed. Cir. 2005) (strong marks “enjoy wide latitude of legal protection” and are “more attractive as targets for would-be copyists”); *In re Stirbl*, 62 USPQ2d 1446, 1448 (TTAB 2002); *Vadic Corp. v. E-Sys., Inc.*, 192 USPQ 281, 286 (TTAB 1976) (a strong mark is accorded a wider ambit of protection).

The identity of the shared term 2GS is particularly significant because as the first term in Registrant’s mark – 2GS MADEMOISELLE – it is likely to be noticed and remembered by consumers. See *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1049 (Fed. Cir. 2018) (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”); *Palm Bay Imps.*, 73 USPQ2d at 1692 (finding similarity between VEUVE ROYALE and two VEUVE CLICQUOT marks in part because VEUVE “remains a ‘prominent feature’ as the first word in the mark and the first word to appear on the label”); *Century 21 Real Estate Corp. v. Century Life of Am.*, 23 USPQ2d at 1700 (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because “consumers must first notice the identical lead word”).

In addition, Registrant’s mark 2GS MADEMOISELLE incorporates Applicant’s entire mark. The fact that Applicant’s mark is subsumed by Registrant’s mark increases the similarity between the two. See, e.g., *In re Mighty Leaf Tea*, 601 USPQ2d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant’s mark ML is similar to opposer’s mark ML MARK LEES both for personal care and skin products); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY as a mark for women’s dresses is likely to be confused with LILLI ANN

for women's apparel including dresses); *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1660 (TTAB 2014) (applicant's mark PRECISION is similar to opposer's mark PRECISION DISTRIBUTION CONTROL); *In re U.S. Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE for women's clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing).

In *U.S. Shoe*, the Board observed that "Applicant's mark would appear to prospective purchasers to be a shortened form of registrant's mark." 229 USPQ at 709. Likewise, in this case, consumers familiar with Registrant's 2GS MADEMOISELLE apparel encountering Applicant's mark 2GS for identical products may mistakenly believe that the clothing products emanate from the same source because of the shared term 2GS. In addition, consumers could mistakenly believe that Registrant's 2GS MADEMOISELLE apparel is the women's line of the 2GS brand.⁶

We find that the marks are similar in their entireties in terms of appearance, sound, connotation and commercial impression.

⁶ Mademoiselle is "the French-language equivalent of "miss." Wikipedia attached to the October 4, 2018 Office Action (TSDR 6). See also Merriam-Webster.com accessed November 19, 2019 (mademoiselle is defined as "an unmarried French girl or woman – used as a title equivalent to Miss for an unmarried woman not of English-speaking nationality."). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), aff'd, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

E. Conclusion

Because the marks are similar, the goods are in part identical and we presume that such goods are offered in the same channels of trade to the same classes of consumers, we find that Applicant's mark 2GS for "apparel, namely, shirts; clothing, namely, pants, jackets, sweaters, footwear; hats; accessories, namely, belts, neck wear, wrist wear, ankle wear, facewear" is likely to cause confusion with 2GS MADEMOISELLE for "clothing, namely, pants, coats, dresses; footwear, headgear, namely, hats; leather or imitation leather clothing, namely, pants, coats, dresses; sports shoes; boots and high shoes for riding; leggings; gaiters; shirts; polo shirts; tee-shirts; vests; jackets; waterproof jackets; belts; gloves; caps; scarves; sashes for wear; ties; socks."

III. Description of Goods

The application, as originally filed, identified the goods set forth below:

Apparel; shirts; hats; accessories; dietary supplements; nutritional supplements; herbal supplements; dietary supplements for human consumption; nutritional supplements for human consumption; herbal supplements for human consumption; nutraceuticals for use as a dietary supplement; drink mixes for nutritional supplement purposes; medicated topical creams, gels, salves, sprays, balms and ointments; edible oil for use as a nutritional supplement; nutritionally fortified beverages; electronic cigarette liquid; electronic cigarette cartridges; flavorings for electronic cigarettes; providing a website featuring educational information regarding sports, health, wellness and nutrition; providing an online website featuring videos; providing information in the fields of sports, health, wellness and nutrition; snacks; snack foods; gum; candies, in Class 25.

In March 2, 2018 Office Action, the Examining Attorney explained that although Applicant classified all the products and services in International Class 25, many of the products and services were improperly classified. In addition, the Examining Attorney explained that many of the items in the description of goods and services were indefinite and needed clarification.

In response, Applicant amended the description of goods to read as follows:

Apparel, namely, shirts; clothing, namely, pants, jackets, sweaters, footwear; hats; accessories, namely, belts, neck wear, wrist wear, ankle wear, facewear, in Class 25.⁷

In the October 4, 2018 Office Action, the Examining Attorney explained that “wrist wear, ankle wear, facewear” in the description of goods is indefinite and must be clarified because the nature of the goods is unclear.”

Applicant must amend this wording to specify the common commercial or generic name of the goods. *See TMEP §1402.01*. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

See proposed changes in **BOLD** below.

Applicant may substitute the following wording, if accurate:

International Class 25: Apparel, namely, shirts; clothing, namely, pants, jackets, sweaters, footwear; hats; accessories, namely, belts, neckwear, **wrist wear in the nature of {specify, e.g. wrist bands as clothing}**, ankle wear **in the nature of {specify, e.g. ankle socks}**, facewear **in the nature of {specify, e.g. knit face masks}**

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the

⁷ August 31, 2018 Response to Office Action.

goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

Applicant ignored the requirement to amend the description of goods and filed his appeal. Even after the Examining Attorney pointed out that Applicant did not respond to the requirement to amend the description of goods and devoted part of her brief to the description of goods, Applicant did not address the description of goods issue in his Reply Brief.⁸

The identification of goods must be specific, definite, clear, accurate, and concise. *See In re Societe Generale des Eaux Minerales de Vittel S.A.*, 1 USPQ2d 1296, 1298 (TTAB 1986), *rev'd on other grounds*, 824 F.2d 957, 3 USPQ2d 1450 (Fed. Cir. 1987); *Procter & Gamble Co. v. Economics Lab., Inc.*, 175 USPQ 505, 509 (TTAB 1972), *modified without opinion*, 498 F.2d 1406, 181 USPQ 722 (CCPA 1974). The primary purposes for requiring a clear identification of the goods in a trademark application are (i) to allow for informed judgments concerning likelihood of confusion under 15 U.S.C. § 1052(d) and (ii) to allow for the proper classification of the goods. TMEP § 1402.01. The examining attorney has discretion in determining the degree of particularity that is needed to clearly identify the goods and to classify them under the international system of classification that has been adopted by the Trademark Office. *In re Omega SA*, 494 F.3d 1362, 83 USPQ2d 1541, 1544 (Fed. Cir. 2007) (citing *In re Water Gremlin Co.*, 635 F.2d 841, 208 USPQ 89, 91 (CCPA 1980) (“It is within

⁸ Examining Attorney’s Brief (6 TTABVUE 3 and 9-11).

the discretion of the PTO to require that one's goods be identified with particularity."); *In re Faucher Indus., Inc.*, 107 USPQ2d 1355, 1358 (TTAB 2013).

As detailed in the TMEP, an identification of goods "should set forth common names, using terminology that is generally understood Terminology that includes items in more than one class is considered indefinite." TMEP § 1402.01. Further, the USPTO has the discretion to require the degree of particularity deemed necessary to clearly identify the goods covered by the mark. *Omega, supra*; *In re Thor Tech, Inc.*, 85 USPQ2d 1474, 1477-78 (TTAB 2007). The USPTO exercises this discretion within the following parameters. An identification of goods or services will be considered acceptable if it: (1) describes the goods and/or services so that an English speaker could understand what the goods are, even if the grammar or phrasing is not optimal; (2) meets the standards (not necessarily the language) set forth in the ACCEPTABLE IDENTIFICATION OF GOODS AND SERVICES MANUAL; (3) is not a class heading; and (4) is in the correct class. TMEP § 1402.01(a); *Thor Tech*, 85 USPQ2d at 1478.

The Examining Attorney contends that the description of goods is indefinite because "wrist wear, ankle wear, and facewear" do not specify those goods with particularity and may encompass products in multiple classes.⁹ For example, wrist wear could include bracelets in Class 14, ankle wear could include ankle bracelets in Class 14 or ankle garters in Class 26, and facewear could include sunglasses, in Class 9, and earrings or nose rings in Class 14.¹⁰

⁹ Examining Attorney's Brief (6 (TTABVUE 10).

¹⁰ *Id.*

We find that the description of goods is indefinite and, therefore, the requirement that the description of goods be amended is affirmed.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is affirmed.

The refusal to register Applicant's mark because Applicant failed to comply with the requirement to amend the description of goods is affirmed.