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Subject: U.S. Trademark Application Serial No. 87708731 - BULLET BRACELET - 19654-1 - EXAMINER BRIEF

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United States Patent and Trademark Office (USPTO)

U.S. Application Serial No. 87708731

Mark: BULLET BRACELET

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Reference/Docket No. 19654-1

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EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the Examining Attorney's final refusal to register the proposed trademark BULLET BRACELET with a disclaimer of BRACELET for use with "Bracelets; Bracelets made of paracord; jewelry." The examining attorney issued a refusal based on the grounds that the wording is merely descriptive of the identified goods under 15 U.S.C. §§1052(e)(1) of the Trademark Act, Section 1056(a).

FACTS

On December 5, 2017, Applicant applied to register the mark BULLET BRACELET for “Bracelets; Bracelets made of paracord; Jewelry.” in International Class 14.

On March 18, 2018, the examining attorney issued a non-final Office Action refusing registration of the applied-for-mark based on the wording being merely descriptive as applied to the identified goods.

On September 18, 2018, Applicant filed a response to office action arguing against the refusal.

Following applicant’s unpersuasive response, on October 10, 2018, the examining attorney issued a Final Office Action refusing registration based on the descriptive nature of the wording contained in the proposed mark.

On April 3, 2019, the applicant filed notice of appeal, as well as a Request for Reconsideration after Final Office Action.

On May 16, 2019, the Request for Reconsideration after Final Office Action was denied and the examining attorney maintained and continued the final refusal based on the applied-for-mark being merely descriptive of the identified goods under 15 U.S.C. §§1052(e)(1) of the Trademark Act, Section 1056(a).

The present appeal was resumed and following the filing of applicant’s appeal brief the case was forwarded to the Examining Attorney for submission of his brief.

ARGUMENT

The wording in applicant's proposed mark is merely descriptive of the identified goods as shown by the substantial evidence of record in this case.

**APPLICANT'S PROPOSED MARK IS MERELY
DESCRIPTIVE OF THE GOODS IDENTIFIED.**

Applicant's mark is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and thus is an unregistrable component of the mark. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); TMEP §§1213, 1213.03(a).

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods and/or services in the marketplace. See *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991). Determining the descriptiveness of a mark is done in relation to an applicant's goods and/or services, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. See *In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b). Furthermore, descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 488 F.3d at 963-64, 82 USPQ2d at 1831.

Applicant's proposed mark is comprised of the words BULLET and BRACELET. As a preliminary matter the term BRACELET has been disclaimed by the applicant. The applied-for-mark is highly

descriptive because it identifies a feature and/or characteristic of applicant's bracelets, bracelets made of paracord and jewelry. As shown by the evidence made of record in this case and discussed below, the wording identifies the common name of a type of bracelet or piece of jewelry.

A BULLET, is defined as "a small ball or cone-shaped missile of lead, metal alloy, etc., to be shot from a firearm". See Office Action dated March 18, 2018 at Page 1. In support of the descriptive nature of the term, the examining attorney provided evidence that the term BULLET is commonly misused and understood by the general public to describe complete ammunition cartridges and the individual component parts including cases, casings or shell casings and the head stamp part of a shell casing. This evidence consisted of multiple website pages showing use of the term by individuals and recognized news media outlets, including CBS, USA Today, NBC, The Wall Street Journal, the AP News Service, US News and a Mississippi Supreme Court decision when referring to complete ammunition cartridges and/or the individual component parts. See Final Office Action dated October 10, 2018 at Pages 2-9; 19; 22-23; 26; 31-32 and 37-38; Denial Request for Reconsideration, dated May 16, 2019 at Pages 46-47; 52-53; 58; 70. Additionally, the Wikipedia Encyclopedia for "Bullet" states:

"Though the word "bullet" is often used incorrectly in colloquial language to refer to a cartridge round a bullet is not a cartridge but a component of one."

See Final Office Action dated October 10, 2018 at Page 10.

Additionally, the examining attorney provided several pages from the applicant's website showing its improper use of the wording "bullets" to describe the components of the goods, stating:

"Composed of polished bullet shell casings".

and

"US Patented Unique Military, Law Enforcement and Second Amendment

Support Bracelets made with Real, Recycled Spent Bullet Casings”.

and

I found some cord I liked, got the idea to pair it with recycled, polished bullet shell casings and the bracelets were born”.

See Denial Request for Reconsideration dated May 16, 2019 at Pages 3, 7 and 10.

In further support of the highly descriptive nature of the term in relationship to identical and related goods the examining attorney provided multiple screenshots taken from the Google® search engine and ETSY® under the search query “BULLET BRACELETS” showing over thirty-five different retail websites and online stores identifying bracelets and other jewelry goods comprised of paracord and other materials and “bullets” which identify rifle, pistol and shotgun cartridge casings, parts of casings, head stamps of casings and casings with the projectile intact including the identical products as the applicant and not a “bullet” as strictly defined by the dictionary. See exhibits from the Denial Request for Reconsideration dated May 16, 2019 at Pages 16-45.

This same evidence also shows that the term “bullet bracelet”, “bullet bracelets”, “bullet paracord bracelet”, “bullet ring” and “bullet link chain bracelet” being used by multiple third-parties to refer to the actual identical bracelets and jewelry products and similar products featuring shell casings, spent shells, casings with a projectile and parts of casings (head stamp only). See exhibits from the Denial Request for Reconsideration dated May 16, 2019 at Pages 16-45.

Part of the above referenced evidence consists of screen shots taken from the Google® search engine showing several pages of results from a search request for “bullet bracelets”. In substantiating the highly descriptive use of the terms shown in the search results the examining attorney also provided screen shots from several of the websites identified. These websites confirmed the highly descriptive

use of the terms “bullet bracelet” and “bullet bracelets” as both a category and product name for identical goods as those identified by the applicant. See exhibits from the Denial Request for Reconsideration dated May 16, 2019 at Pages 38-45. Two examples from those websites showing the highly descriptive use of the wording are set out below.

The KandTCreations website states:

“Paracord bullet bracelets are a unique accessory for the hunter in your life”

The Bullet Designs website shows “Bullet Bracelets” as a category and states:

“Our great variety of bullet bracelets are made from real recycled bullet casings and genuine swarovski crystals! Bullets never looks so good!”

and identifies products as:

“Men’s Black Leather Bullet Bracelet”; “Sterling Silver Cuff Bullet Bracelet”; Bullet Bracelet, Stainless Steel Infinity”; “Custom Bullet Leather Bracelet”; “Custom Bullet Tennis Bracelet”; “Silver Double Trouble Bullet Bracelet”.

See exhibits from the Denial of Request for Reconsideration dated May 16, 2019 at Pages 38-45

This evidence reinforces that these goods are made from different parts of “bullets” and that consumers are used to seeing bracelets and jewelry comprised of shell casings, cartridge casings and/or casings with bullets described as a bullet bracelet or bullet bracelets and calling for the goods using these same terms. The impression of and expectation of the consumer is that the bracelets feature “bullets”, even though this is technically not correct. As such, consumers will immediately understand

without any imagination, mental gymnastics or multi-stage reasoning process that the goods feature, include and are made in part from a “bullet”.

Here the evidence of record clearly shows that BULLET BRACELET has a plain, distinct and commonly known and descriptive meaning in relationship to bracelets, bracelets made of paracord and jewelry. Therefore, the refusal to register the proposed mark because it merely describes a feature and/or characteristic of applicant’s goods mark should be affirmed.

CONCLUSION

For the reasons set forth above, the refusal to register the proposed mark because it merely describes a feature and/or characteristic of applicant’s goods should be affirmed.

Respectfully submitted,

/Jeffrey S. DeFord/

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