

This Opinion Is Not a
Precedent of the TTAB

Mailed: March 6, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Ossur hf

—
Application Serial No. 87876605

—
Kit M. Stetina of Stetina Brunda Garred & Brucker for Ossur hf.

Deborah Lobo, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

—
Before Taylor, Bergsman and Lykos, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Ossur hf (Applicant) seeks registration on the Principal Register of CONNECT, in standard character form, as a mark for “prosthetic and orthotic devices, namely, prosthetic sockets used to fasten prosthetic limbs to the body,” in International Class 10.¹

The Examining Attorney refused to register Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the

¹ Serial No. 87876605 filed April 13, 2018 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.

term CONNECT for a prosthetic socket is merely descriptive. The Examining Attorney explains that because the purpose of a prosthetic socket is to connect a prosthetic limb to the recipient's body, CONNECT conveys the purpose and function of the product without the need for a multistep reasoning process.²

Here, applicant's prosthetic sockets are medical devices that are used to fasten or connect a prosthetic body part such as an arm or leg to a recipient's body. Consumers encountering the term CONNECT used with prosthetic sockets will not need to mentally process or gather further information in order to understand the descriptive significance of the wording, especially when applicant's own description of the goods states that they are used for fastening a prosthetic limb to the body. Rather, as the third-party examples show, consumers will immediately understand that the purpose, function, or use of applicant's prosthetic sockets is to CONNECT a prosthetic limb to the body.³

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register that, when used in connection with an applicant's goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). "A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1373 (Fed. Cir. 2018) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)). We "must consider the mark as a whole and do so **in the context of the goods or services at issue.**" *DuoProSS*

² Examining Attorney's Brief (6 TTABVUE 4).

³ *Id.* at 6 TTABVUE 8.

Meditech Corp. v. Inviro Med. Devices, Ltd., 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (emphasis added); *In re Calphalon*, 122 USPQ2d 1153, 1162 (TTAB 2017). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Indeed, “[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

“The major reasons for not protecting such [merely descriptive] marks are: (1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products.” *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1090 (Fed. Cir. 2005) (quoting *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978)).

It is the examining attorney’s burden to show that a term is merely descriptive of an applicant’s goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987). Once a prima facie case is established, the burden of rebuttal shifts to Applicant. *Id.*

We now turn to the evidence of record. The Examining Attorney submitted the evidence listed below to show that CONNECT is merely descriptive when used in connection with Applicant's goods:⁴

- "Connect" is defined, inter alia, as "to join or fasten (two things together, or one thing with or to another); link; couple."⁵

- Quora website (quora.com)

Gracy Smith, MEPH Medicine and Healthcare, John Hopkins University

Basically, prosthesis is an extension of your body and a standard prosthesis is made out of conventicle component parts which create the prosthetic foot or leg.

These parts will then be connected to a socket which fits over the residual limb.

⁴ A message about the advantages of cookies blocked the relevant portion of the ExplainThatStuff! website (explainthatstuff.com) that the Examining Attorney submitted in her February 24, 2019 Office Action (TSDR 37). Applicants and examining attorneys are responsible for ensuring the documents they introduce are complete and legible. *Cf.* Trademark Rule 2.126(a)(2), 37 C.F.R. § 2.126(a)(2) ("Exhibits pertaining to an electronic submission must be made electronically as an attachment to the submission and must be clear and legible."); *Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1758 (TTAB 2013) (citing *Hard Rock Cafe Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1404 (TTAB 1998) ("It is reasonable to assume that it is opposer's responsibility to review the documents it submits as evidence to ensure that such submissions meet certain basic requirements, such as that they are legible....")), *aff'd*, 565 F. App'x 900 (Fed. Cir. 2014) (mem.); *Weider Publ'ns, LLC v. D&D Beauty Care Co.*, 109 USPQ2d 1347, 1351 (TTAB 2014) (onus is on party making submissions to ensure that, at a minimum, "all materials are clearly readable by the adverse party and the Board"), *appeal dismissed per stipulation*, No. 14-1461 (Fed. Cir. Oct. 10, 2014).

All citations to the examination record refer to the Trademark Status and Document Retrieval system (TSDR) in the downloadable .pdf format.

⁵ COLLINS DICTIONARY (collinsdictionary.com) attached to the August 8, 2018 Office Action (TSDR 13). *See also* Dictionary.com based on the RANDOM HOUSE UNABRIDGED DICTIONARY (2019) attached to the January 30, 2019 Response to Office Action (TSDR 10) ("to join, link, or fasten together; unit or bind.").

The socket will allow the prosthetic device to connect to your residual limb.⁶

- Georgia Prosthetics website (georgiaprosthetics.com)

Customized, Comfortable Sockets

A socket is used to connect the prosthesis to the residual limb. In order for the prosthesis to fit and function properly, its socket must be perfectly designed and fitted specifically for the individual.⁷

- Semantic Scholar website (semanticscholar.org)

Surface Pressure Reconstruction for a Prosthetic Socket Design System – a Numerical Case Study

A prosthetic socket connects the residual limb of amputee with a prosthesis.⁸

- artlimb website (artlimb.com)

Prosthetic Alignment: Part2 [sic]. The Socket

* * *

The prosthetic socket connects to the rest of the artificial leg by means of a socket adapter.⁹

- Horton's Orthotics & Prosthetics website (hortonsoandp.com)

Breaking Down the Parts of a Prosthetic Leg

* * *

The Socket

⁶ February 24, 2019 Office Action (TSDR 56).

⁷ August 8, 2018 Office Action (TSDR 25). The Examining Attorney submitted a copy of this website a second time attached to the February 24, 2019 Office Action (TSDR 33).

⁸ February 24, 2019 Office Action (TSDR 9).

⁹ February 24, 2019 Office Action (TSDR 11-12).

The socket is the transitional piece of equipment connecting your prosthetic limb to your residual limb.¹⁰

- Kenney Orthopedics website (kenneyorthopedics.com)

Prosthetic Sockets

* * *

About the Socket

More than any other part of a prosthetic, the socket connects the lower leg amputee to their prosthesis and ensures the prosthesis functions properly.¹¹

- Treatstock website (treatstock.com)

Why 3D Printing is the Best Thing since the X-Ray

* * *

3. 3D printed prosthetics

* * *

Next step: 3D printed bionic arms

* * *

“So they still have an elbow joint and this is where the prosthetic socket connects their arm, but they still don’t have a hand.”¹²

- Macro Orthopedic Corp. website (macroorthopedic.com)

Pediatric Amputee Effects of Upper-Limb Deficiencies on Infants

* * *

The prosthetic socket that connects the prosthesis to the upper limb is usually constructed of a plastic-type material

¹⁰ February 24, 2019 Office Action (TSDR 41-42).

¹¹ February 24, 2019 Office Action (TSDR 44 and 46).

¹² February 24, 2019 Office Action (TSDR 19 and 25).

placed over a cotton sock and suspended onto the limb by a harness that wraps around the infant's upper body.¹³

- Hangar Clinic website (hangarclinic.com)

COMFORTFLEX® PROSTHETIC SOCKET SYSTEM

At Hangar Clinic, we believe that a comfortable socket is the key to long-term success with your prosthetic leg. The socket is so important because it acts as a translator connecting your body to the hardware.¹⁴

- Wired website (wired.com)

FORGET CHEETAH BLADES. THIS PROSTHETIC SOCKET IS A REAL BREAKTHROUGH

* * *

Less glamorous, but just as important, are prosthetic sockets – the pieces connect those sophisticated prosthetics to peoples' residual limbs.¹⁵

- Ottobock website (ottobockus.com)

Keeping your leg on (suspension)

After amputation, you want a prosthetic leg system that allows you to resume the activities that are important to you as an individual. The more active you want to be, the more attentive you should give to suspension, the method of connecting a prosthesis to your residual limb.¹⁶

To rebut the evidence submitted by the Examining Attorney, Applicant submitted excerpts from third-party websites using the term “connect” in the networking,

¹³ February 24, 2019 Office Action (TSDR 7-8).

¹⁴ August 8, 2018 Office Action (TSDR 18). The Examining Attorney submitted a copy of this website a second time attached to the February 24, 2019 Office Action (TSDR 27).

¹⁵ August 8, 2018 Office Action (TSDR 19-20).

¹⁶ February 24, 2019 Office Action (TSDR 28).

telecommunications, travel, and contracting industries.¹⁷ These websites have little, if any, probative value because, as noted above, we determine the issue of whether a mark is merely descriptive “**in the context of the goods or services at issue.**” *DuoProSS Meditech Corp.*, 103 USPQ2d at 1757; *Calphalon*, 122 USPQ2d at 1162. The third-party websites are for companies in disparate channels of trade.

The above-noted evidence establishes that the word “Connect” directly imparts the purpose and function of Applicant’s “prosthetic sockets used to fasten prosthetic limbs to the body” without the need for a multistep reasoning process or cogitation on the part of a potential consumer. *See, e.g.*, “The socket will allow the prosthetic device to connect to your residual limb,” “A socket is used to connect the prosthesis to the residual limb,” and “A prosthetic socket connects the residual limb of amputee with a prosthesis.” As such, Applicant’s contention that “the term CONNECT has no descriptive meaning of the recited goods”¹⁸ simply ignores the evidence of record.

¹⁷ January 30, 2019 Response to Office Action (TSDR 14-33). Applicant also submitted a copy of its European Trademark Office Registration No. 017959994 for the mark CONNECT for prosthetic sockets with its brief on the case. Applicant’s Brief (4 TTABVUE 17-20). The Examining Attorney objects to the European Trademark Registration on the ground that it was not timely filed pursuant to Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). We sustain the Examining Attorney’s objection and we will not consider the European Trademark Registration.

Even if Applicant timely filed the European Registration, it has no probative value. *See, e.g.*, *In re Bayer Aktiengesellschaft*, 488 F3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007) (“Evidence of registration in other countries is not legally or factually relevant to potential consumer perception of Bayer’s analgesic goods in the United States.”); *In re Hag Aktiengesellschaft*, 155 USPQ 598, 599 (TTAB 1967) (“The foreign registrations ... are not persuasive on the issue before us [whether KABA is generic] because it has not been demonstrated that the criteria for registration in these countries involve examination systems in any way analogous to that of this country; and manifestly applicant’s right of registration must be determined under the provisions of the Lanham Act as interpreted by the various judicial tribunals in this country.”).

¹⁸ Applicant’s Brief, p. 11 (6 TTABVUE 12).

In its Reply Brief, Applicant analogizes the facts before us with those of *Independent Nail and Packaging Co., Inc. v. Stronghold Screw Prods., Inc.*, 205 F.2d 921, 98 USPQ 172 (7th Cir. 1953), *cert. denied*, 346 U.S. 886 (1953). In that case, the Seventh Circuit held that STRONGHOLD for nails is suggestive for the following reason:

A person unaware of the particular product or the manufacturer, upon seeing or hearing the name “Stronghold,” would find it virtually impossible to identify the product to which it might have been applied. The label “Stronghold” on a carton, with no other words to designate the contents, would never reveal that such contents were nails of a particular type.

98 USPQ at 175.

If by this the court meant a descriptive a term must identify the product, this is not the standard set by the Court of Appeals of the Federal Circuit. As noted above, “[w]hether consumers could guess what the product is from consideration of the mark alone is not the test.” *Am. Greetings Corp.*, 226 USPQ at 366. “The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS*, 103 USPQ2d at 1757 (quoting *In re Tower Tech*, 64 USPQ2d at 1316-17). To hold otherwise renders meaningless the traditional definition of a merely descriptive term noted above: “A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought.” *Real Foods Pty Ltd.*, 128 USPQ2d at 1373 (quoting *N.C. Lottery*, 123 USPQ2d at 1709).

Serial No. 87876605

Upon consideration of the applicable law, the evidence and the arguments of Applicant and the Examining Attorney, we find that Applicant's proposed mark CONNECT is merely descriptive under Section 2(e)(1) of the Trademark Act.

Decision: The refusal of registration of Applicant's proposed mark CONNECT is affirmed.