

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: August 14, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Monkey IP Limited*

\_\_\_\_\_  
Serial No. 88265123

Daniel J. Gross of Myers Wolin LLC,  
for Monkey IP Limited.

Regina C. Hines, Trademark Examining Attorney, Law Office 114,  
Laura Kaufman, Managing Attorney.

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Before Taylor, Heasley and Dunn,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Monkey IP Limited (“Applicant”) seeks registration on the Principal Register of  
the mark SIKSILK (in standard characters) for

Clothing, namely, baseball jerseys, hockey jerseys, vests, sleeveless tops, hoodies, trousers, pants, shorts, sweaters, jumpers, T-shirts, oversized T-shirts, shirts, polo shirts, tracksuits, jackets, coats, skirts, dresses, blouses, crop tops, bandeau tops, swimwear, winter sports wear; footwear; headgear; Anti-sweat underwear; clothing for babies, namely, T-shirts, jumpers, jerseys, trousers, all-in-ones, dresses, skirts, jackets, coats, gloves, booties; Bandanas and neckerchiefs; Baseball jerseys; Bath robes; Bathing caps; Bathing trunks; Beach clothes, namely, swimwear, trunks, bathing suits, bikinis, shorts, T-shirts, sarongs; Beach shoes; Belts; Berets; Bikinis; lingerie, namely, bodices; Boots; Boots for sports; suspenders; Brassieres; Bralettes; Breeches for wear; Camisoles; Cardigans; Cap peaks; headwear, namely, caps, bobby hats, beanie

hats, ski hats; Clothing for gymnastics, namely, leotards; Clothing of imitations of leather, namely, trousers, jackets, gloves, skirts, vests, and waistcoats; Clothing of leather, namely, leather trousers, leather jackets, leather gloves, leather skirts, and leather vests; Coats; clothing, namely, corsets; Crop tops; Cyclists' clothing, namely, cycling shorts, trousers, socks, vests, jackets; Dresses; Dressing gowns; Dressing robes; Ear muffs; Esparto shoes and sandals; Fingerless gloves; Fishing vests; soccer boots; Fur stoles; Furs clothing; Gabardines; Gymnastic shoes; Handkerchiefs; Hats; Headbands; Headwear; Heels; Hockey jerseys; Hosiery; Hoodies; Hooded jackets; Jackets; Jeans; Jerseys; Jumper dresses; Jumpers; Jogging bottoms; Knitwear, namely, jumpers and scarves; Leg warmers; Leggings; Lingerie; Long-sleeved tops; Mittens; Money belts; Motorcyclists' clothing, namely, clothing specifically adapted for motorcyclists, such as leather trousers, leather jackets, and leather gloves; Muffs; Neck ties; Overalls; Outerwear, namely, coats and jackets; Pants; Parkas; Plimsolles; Ponchos; Polo Shirts; Pullovers; Pyjamas; Running shoes; Sandals; Saris; Sarongs; Sashes for wear; Scarfs; Shawls; Shirts; Shorts; Shoes; Singlets; Ski boots; Ski gloves; Skirts; Skull caps; Sleep masks; Sleepwear; Sleeveless tops; Slippers; undergarments, namely, slips; Socks; Soles for footwear; Sports shoes; Stockings; Suits; Suspenders; Sweat-absorbent stockings; Sweaters; Swimsuits; Swimwear; T-shirts; Ties; Tights; Tips for footwear; Togas; Top hats; Tops as clothing; Topcoats; Tracksuits; Tracksuit jackets; Tracksuit trousers; footwear, namely, sneakers; Trousers; Turbans; Undergarments; Underpants; Underwear; Uniforms; Vests; headwear, namely, visors; Waistcoats; Wellington boots; Wet suits; Windbreakers, namely, coats and jackets in International Class 25.<sup>1</sup>

The Trademark Examining Attorney has refused registration of the applied-for mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that it is deceptive when used in connection with the identified goods. After the Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

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<sup>1</sup> Application Serial No. 88265123 was filed on January 17, 2019 under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(b), based on European Union Registration No. 012144481, which was attached to the application. The application claims prior Registration No. 4934460 issued April 12, 2016 under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, for the same mark, also in standard characters, for a variety of goods and services. While the prior registration includes International Class 25 goods, the goods are more specialized than the apparel items listed in the subject application.

## I. Applicable Law on Deceptiveness

Under Section 2(a) of the Trademark Act, registration must be refused if a mark “[c]onsists of or comprises... deceptive ... matter.” 15 U.S.C. § 1052(a). A deceptive mark cannot be registered on the Principal or Supplemental Register, and neither acquired distinctiveness nor a disclaimer of the deceptive matter can make it registrable. *In re Budge Mfg. Co. Inc.*, 857 F.2d 773, 8 USPQ2d 1259, 1262 (Fed. Cir. 1988) (“it is too well established for argument that a mark which includes deceptive matter is barred from registration and cannot acquire distinctiveness.”); *R. Neumann & Co. v. Overseas Shipments, Inc.*, 326 F.2d 786, 140 USPQ 276, 278-79 (CCPA 1964) (“[N]o trademark rights can be acquired in a trademark that is deceptive .... The courts and, indeed, the Patent Office tribunals have been commendably zealous in the protection of the public interest from the practice of deceit and deception.”).

The test for determining whether a mark is deceptive sets forth three requirements:

- (1) Is the term misdescriptive of the character, quality, function, composition or use of the goods?
- (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods?
- (3) If so, is the misdescription likely to affect the purchasing decision of a significant portion of relevant consumers?

*In re Budge*, 8 USPQ2d at 1260; *In re Tapco Int’l Corp.*, 122 USPQ2d 1369, 1371 (TTAB 2017). Because the term “comprises” in the statute means “includes,” a mark need not be misdescriptive in its entirety in order to qualify as deceptive under

Trademark Act § 2(a).<sup>2</sup> ”It is well established that a mark may be found deceptive on the basis of a single deceptive term that is embedded in a larger mark....” *In re White Jasmine LLC*, 106 USPQ2d 1385, 1391 (TTAB 2013). *See R. Neumann & Co. v. Bon-Ton Auto Upholstery, Inc.*, 326 F.2d 786, 140 USPQ 276 (CCPA 1964) (mark DURA-HYDE deceptive as applied to plastic film for furniture slip covers not made of hide); *In re E5 LLC*, 103 USPQ2d 1578 (TTAB 2012) (mark consisting of the alpha symbol and the letters "CU" deceptive as applied to dietary supplements not including copper). “Misdescriptiveness of a term may be negated by its meaning in the context of the whole mark inasmuch as the combination is seen together and makes a unitary impression.” *See In re Budge*, 8 USPQ2d at 1261; *In re Simmons, Inc.*, 192 USPQ 331, 333 (TTAB 1976) (WHITE SABLE for “brushes used for artistic painting” held not deceptive because the “characteristic color of sable fur is black” and thus white sable must come from a fictitious animal that cannot deceptively represent brush hair from a real animal).

A. Silk is misdescriptive of Applicant’s apparel

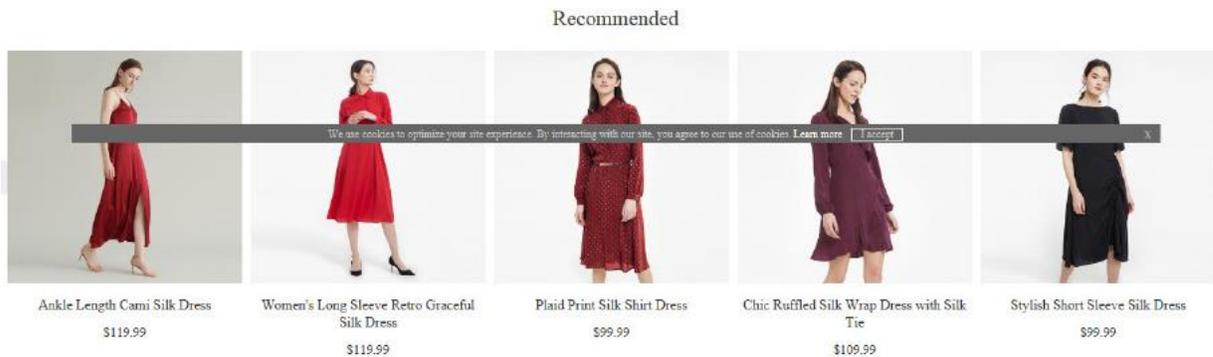
“For a term to misdescribe goods, the term must be merely descriptive of a significant aspect of the goods which the goods could plausibly possess but in fact do not.” *In re White Jasmine*, 106 USPQ2d at 1392 (*citing In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1051 (TTAB 2002)). A “significant aspect of the goods” is their material composition. *E.g.*, *In re Budge*, 8 USPQ2d 1259 (LOVEE LAMB

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<sup>2</sup> *See In re Fox*, 702 F.3d 633, 105 USPQ2d 1247, 1250 (Fed. Cir. 2012) (under Trademark Act Section 2(a), “the word ‘comprises,’ at the time of the statute’s enactment in 1905, meant ‘includes.’”).

deceptive for seat covers not made of lambskin); *Evans Prods. Co. v. Boise Cascade Corp.*, 218 USPQ 160 (TTAB 1983) (CEDAR RIDGE deceptive for embossed hardboard siding not made in whole or in part of cedar); *In re Intex Plastics Corp.*, 215 USPQ 1045 (TTAB 1982) (TEXHYDE deceptive for synthetic fabric for use in the manufacture of furniture, upholstery, luggage and the like not made of hide).

In support of her finding that the term SILK is misdescriptive of the composition of Applicant's apparel, the Examining Attorney submitted definitions from the American Heritage Dictionary of silk as a "fine, lustrous fiber," "thread or fabric made from this fiber," and "a garment made from this fiber."<sup>3</sup> The Examining Attorney also submitted webpages showing that apparel items listed in the application such as dresses, shirts, blouses, jackets, shorts, and pants, may be made of silk.<sup>4</sup>



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<sup>3</sup> October 22, 2019 Office Action, TSDR 5. The Trademark Status and Document Retrieval (TSDR) citations refer to the downloadable .pdf version of the documents available online from the electronic file for the involved application.

<sup>4</sup> April 11, 2019 Office Action, TSDR 20-25.

Recommended



Blue Stripes Jacquard Silk Cotton Shirts  
\$79.99

Blue Stripes Jacquard Silk Short-sleeve Notch Shirt  
\$79.99

Basic Boat Neck Collar Silk Blouse  
\$119.99

Round Neck Chic Silk Shirt  
\$119.99

Arc Hem Casual Silk Cotton Shirt  
\$89.99

Recommended



V Neck Front and Back Silk Camisole  
\$49.99

Stretchy Ribbed Lace Silk Camisole  
~~\$69.99~~ \$49.99

Lace Trim Silk Camisole  
\$59.99

Women's Any Day Silk Camisole  
\$49.99

Simple U-Neck Silk Camisole  
\$59.99

Recommended



Basic Long Sleeve Silk Liner Blazer

Sporty Silk Velvet Jacket

Silk Velvet Basic Baseball Jacket

Basic Long Sleeve Silk Liner Blazer

Light Georgette Silk Shrug



Black Elastic Waist Silk Pants  
\$79.99



Side Strips Silk Wide-leg Trousers  
\$99.99



Pleat Front Harem Silk Trousers  
\$79.99



You the Coolest in Silk Wide Leg Pants  
\$79.99



Very Soft Silk Shorts  
\$79.99

Even though the record evidence shows that the apparel items listed in the application may be made of silk, Applicant admitted during examination, that “[t]he

majority of the goods listed would not be made of silk....” Hence, the mark SIKSILK is misdescriptive of Applicant’s goods.<sup>5</sup>

Nevertheless, Applicant argues that prospective purchasers of its clothing do not regard the term SIKSILK as misdescriptive of the material composition of the goods, contending “In addition to the definition of silk as a specific fiber, as indicated by the Examiner, two common slang meanings for the term are to identify ‘fine clothing’ and to describe something as “very good” as an alternative to the slang term ‘sick.’”<sup>6</sup> With respect to the alternate definitions of SILK, Applicant submitted the following definitions from Cassel’s Dictionary of Slang (2005) and McGraw Hill’s Dictionary of American Slang and Colloquial Expressions (2005):<sup>7</sup>

**silk** *n.*<sup>1</sup> [early 19C+] a King’s or Queen’s Counsel. [the material of their gowns, rather than the cotton of a junior barrister’s]  
**silk** *n.*<sup>2</sup> **1** [mid-19C; 1960s+] (UK/US Black) a White person. **2** [1980s] (US) an authority figure. [the supposed wearing of silk clothes by (rich) Whites]  
  
**silk** *n.*<sup>3</sup> see SILK BROAD *n.*  
**silk** *adj.* [1920s+] (US) admirable, excellent, acceptable.  
  
**silks** *n.* [1940s+] (US Black) expensive clothing, poss. actually made of silk. [SE early 16C-19C]

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<sup>5</sup> August 8, 2019 Response, TSDR 15. The presence in the identification of goods of items which that may be made of silk does not obviate the refusal. Registration of a mark in an application containing multiple goods in a class may be refused as to the entire class if “the mark is deceptive as applied to any of the goods in the application.” *In re White Jasmine LLC*, 106 USPQ2d at 1391.

<sup>6</sup> 4 TTABVUE 11. TTABVUE provides access to the Board’s electronic docket for the appeal, and citation refers first to the docket entry and then, if applicable, to the specific page within the docket entry.

<sup>7</sup> August 8, 2019 Response, TSDR 25-26.

**silk** *n.* a Caucasian. (Black.) ♦ *He told his mama that if she doesn't treat him better, he's gonna bring some silk home for dinner and let her see what the neighbors think.*

**silked to the bone** *Go to laid to the bone.*

**silks** *n.* clothing. ♦ *I gotta get some new silks before spring.*

Applicant also submitted definitions from the Urban Dictionary, a collaborative source.<sup>8</sup> See *In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2061 n.3 (TTAB 2013) (“[W]hile a definition in Urban Dictionary may be indicative of what a term means to a composite of the general public, we are less sure that it represents the meaning to a substantial composite, given that just one person can submit a proposed definition.”).

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<sup>8</sup> *Id.*, TSDR 21-25.

TOP DEFINITION



## silks

Some fine (expensive) clothes. Term was popularized by members of [Duke Ellington's Band](#) -- [the Duke](#) being a [stickler](#) for well dressed musicians.

*Those silks [look](#) good, man. What they [set](#) you [back](#)?*

#duke ellington #clothing #suits #fashion #grooming

by [Bill Peters](#) August 10, 2006



Get a **silks** mug for your girlfriend Jovana.

2



## Silk

Produced as a [cocoon](#) covering by the [silkworm](#), and used in fine fabrics and [textiles](#).

*She wore [silk pajamas](#) and a woolen [sweater](#).*

#silk #fabric #smooth

by [golden pineapple](#) August 27, 2018



3



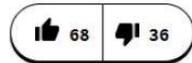
## Silk

an alternative to the [colloquial](#) use of the word 'sick', used as a positive, like an alternative for [wicked](#), great etc. to describe something as very good, or of a high standard, or to express great [admiration](#).

Did you see the [match last night](#)? It was [silk](#)!

#silk #sick #good #wicked #kickass

by [Farhan N](#) March 04, 2008



Get a **Silk** mug for your brother-in-law James.



4



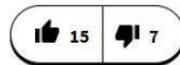
## silks

[short](#) for [silk boxers](#)

[check out](#) my [new silks](#)

#silk #boxers #guys #sexy #hott

by [skater6969](#) March 26, 2009



## silks

"[Silks](#)," or "the [silks](#)," is a slang term used to describe an item of great worth-- typically dropped from a "boss" in an RPG video game.

The term originates from "The Silks of the Victor," the unique Ancient Plate from [Blizzard's](#) masterpiece Diablo II. Legend holds that this item could only be dropped from Diablo himself, but only few mortal men have had the [mettle](#) to challenge and defeat the beast.

In some circles, this term has been expanded to describe items acquired in real life.

"[OMFGWTFBBO](#), [Diablo](#) dropped teh silks!! [ROFLCOPTER](#) I NEED THOSE!!11!one!!"

by [Seanarchy](#) August 13, 2005



We find that these definitions are not sufficient to counter the evidence of record that SILK in the mark SIKSILK when applied to clothing will be perceived as describing clothing made of silk, rather than as the slang term for fine clothing or something very good. It gives us pause that all three slang dictionaries have different definitions for the word SILK in the singular, as it appears in the mark, and SILKS in the plural. *Cf. In re Jim Crockett Promotions, Inc.*, 5 USPQ2d 1455, 1456 n.5 (TTAB 1987) (rejecting single dictionary definition of word where six other dictionaries did not define the word in the same manner). The three slang dictionaries variously define SILK as the noun for an English counsel, a Caucasian, an authority figure, or a broad, and as the adjective for good or excellent. The three slang dictionaries uniformly define SILKS as clothing, with the *Urban Dictionary* also defining SILKS as an item of great worth in a video game. We also find that the slang definitions for SILK and SILKS themselves do not indicate current wide acceptance, but in some instances indicate use limited by time or demographic. Most significantly, while the

record shows contemporary use of “silk” as a clothing fabric, there is no evidence of contemporary use of “silk” as the slang term for fine clothing or something very good.

We find that the relevant purchasers for the goods in the application are those who purchase or wear clothing, which is everyone. There is no restriction in Applicant’s identification of goods to purchasers of retro or vintage clothing, or to any particular demographic who may be aware of the slang definitions of silk. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014) (“Parties that choose to recite services in their trademark application that exceed their actual services will be held to the broader scope of the application.”). We find the dictionary definitions and website evidence available to the general public to be a more accurate gauge for determining the public perception of SIKSILK goods to be purchased by the general public. Accordingly, we find the record evidence showing that SILK is perceived as a fabric and component of clothing is entitled to more probative weight than the slang definitions of SILK. *See In re Hershey*, 6 USPQ2d 1470, 1471 (TTAB 1988) (in connection with a different Section 2(a) refusal, ten and forty year old slang definitions “while relevant, do not carry great weight in determining whether a substantial number of the general public even recognize the [slang] term...”).

Applicant also contends that prospective purchasers of its clothing do not regard the term SIKSILK as misdescriptive of the material composition of the goods because the term is a double entendre which “references the quality and trendiness of the

goods.”<sup>9</sup> More specifically, Applicant states in the record that the term SIK, “or its homonym SICK,”<sup>10</sup> is “a slang term typically defined as ‘good.’”<sup>11</sup> In addition to the reference to “sick” in the Urban Dictionary set forth above, we take judicial notice of the following definition from Merriam-Webster.com Dictionary which corroborates Applicant’s slang definition:<sup>12</sup>

sick  
adjective  
\< 'sik \  
6 slang : outstandingly or amazingly good or impressive

We agree with Applicant that the purchasing public is likely to perceive SIK in the mark as its phonetic equivalent “sick.” In fact, as shown, SIK is the phonetic spelling for “sick” provided in the dictionary definition. Further, because the slang definition acquired sufficient recognition to be included in a general dictionary, we agree that in the term SIKSILK, the purchasing public is likely to perceive SIK as conveying the “sick” laudatory slang definition of an adjective for good or impressive. Combined with SILK and applied to clothing, we find the term SIKSILK will be perceived as impressive silk clothing.

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<sup>9</sup> 4 TTABVUE 9.

<sup>10</sup> August 8, 2019 response, TSDR 16. Applicant also states “SIK is an obvious play on the word ‘sick.’”

<sup>11</sup> *Id.*, TSDR 15, 18-19.

<sup>12</sup> <https://www.merriam-webster.com/dictionary/sick>. Accessed 9 Aug. 2020. 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).

We disagree with Applicant that the addition of SIK to SILK creates a double entendre which prevents the mark from being perceived as the misdescriptive term SILK. “A double entendre is registrable only if the second, non-descriptive meaning would be readily apparent to the consumer from the mark itself.” *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1105 (TTAB 2018). Applicant contends that the fact that the terms SIK and SILK “are alliterative and rhyme is itself a reason to expect the mark to rely on slang meanings.”<sup>13</sup> The words SIK and SILK do not rhyme, and we examine carefully any claim that alliteration creates a pattern between words. *See DuoProSS Meditech Corp. v. Inviro Medical Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d1753, 1758 (Fed. Cir. 2012) (“The record, however, contains no evidence indicating that a consumer would focus on the alliteration formed by SNAP, SIMPLY, and SAFER, or that such alliteration would require a consumer to take the inferential step that the Board described.”). Applicant contends “the fact that SIK is an obvious play on the word ‘sick,’ and that the use of the term ‘sick’ in the mark is clearly not intended to be literal, leads consumers to expect that the second half of the mark, SILK, is also to be understood as slang,” and submitted a page from a book on slang which states that “alliterative compounds, such as bed-bunny (easy woman)” is a type of “slang formation.”<sup>14</sup>

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<sup>13</sup> 6 TTABVUE 16.

<sup>14</sup> 4 TTABVUE 17; August 8, 2019 Response, TSDR 28. Applicant submitted another book excerpt (TSDR 27) about slang that rhymes which we find inapplicable in view of our finding that the words SIK and SILK do not rhyme.

We accept Applicant's premises that there are slang definitions for SICK/SIK and SILK, and that alliteration may indicate slang, but do not accept Applicant's conclusion that SIKSILK as applied to clothing will be perceived as a slang double entendre connoting "good good" clothing or "good clothing" clothing. The term SIKSILK does not denote "readily apparent" second expression which may serve as a double entendre, and Applicant has supplied no evidence except the slang definitions indicating that prospective purchasers would regard SIKSILK as conveying a double meaning. This is insufficient to support finding a double entendre. *See Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d. 965, 128 USPQ2d 1370, 1376 (Fed. Cir. 2018) ("no additional suggestive meaning of the proposed marks [RICE THINS and CORN THINS] because similar products, which are not typically low in calories or known for healthfulness, contain the same descriptive term of thins. ... Therefore, it is reasonable to conclude that Real Foods' claimed additional meaning of healthfulness would not attach in the eyes of a consumer"); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 103 USPQ2d at 1755 ("insufficient evidence to demonstrate that, 'upon seeing the mark SNAP itself, [purchasers of Inviro's products would] readily understand this connotation' [applies not only to the snapping of a syringe plunger, but also to the products' ease of use: that the products are a 'snap to use.]); *In re 1800Mattress.com IP, LLC*, 586 F3d 1359, 92 USPQ2d 1682 (Fed. Cir. 2009) (rejecting double entendre argument because "the '.com' tail in MATTRESS.COM does not evoke the quality of comfort in mattresses"). *Compare A.F. Gallun & Sons Corp. v. Aristocrat Leather Prods., Inc.*,

135 USPQ 459, 460 (TTAB 1962) (“The expression ‘COPY CALF’ is obviously a play on the familiar expression ‘copy cat’; and, as applied to applicant's goods, rather than misdescribe such goods it would immediately suggest to purchasers that they are imitations or copies of wallets and billfolds made of calf skin.”).

We also reject Applicant’s argument that the eight third party registrations for SILK marks demonstrate that SILK as a component of a mark for clothing is not deceptive:<sup>15</sup>

Registration No.	Mark	Goods
1922151	SILK IMPRESSIONS	hosiery
3373429		Goods in Int. Cl. 24 clothing apparel, namely, shirts, tops, pants, underwear, sweaters, jackets, and infant and toddler one-piece clothing
3792838	HYDRASILK	wetsuits
5267513		silk cloth; silk blankets; silk fabrics; bed sheets; bed spreads; bed skirts; silk bed blankets; bath linen; bath towels; bath sheets; interior decoration fabrics; textile tablecloths
5305818	<i>Townssilk</i>	bed covers; bed linen; bed linen and table linen; bed throws; fabric of imitation

<sup>15</sup> August 8, 2019 Response, TSDR 29-60. We give no consideration to those third party registrations for SILK marks for clothing in which the mark is not deceptive because the goods are made of silk or SILK is used descriptively, as shown by the presence of a disclaimer or claim of acquired distinctiveness. *See In re RiseSmart Inc.*, 104 USPQ2d 1931, 1932 (TTAB 2012) (“amendment to seek registration under Section 2(f) of the Trademark Act is considered an admission that the proposed mark is not inherently distinctive.”); *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1442 (TTAB 2005) (“it has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term ... at the time of the disclaimer”). We also do not list pending applications. *In re Binion*, 93 USPQ2d 1531, 1535 n.3 (TTAB 2009) (“Applications are evidence of nothing more than that they were filed.”).

		animal skins; hand spun silk fabrics; handkerchiefs of textile; mattress covers; pillow shams; pillowcases; quilt covers; silk bed blankets; silk blankets; silk fabrics for printing patterns; sleeping bag liners; velvet
5559859	AMSILK	<p>Goods in Int. Cl. 1, 3, 5, 10, 19, 22, 23, 24, 26, 28</p> <p>clothing, namely, shirts, boxing shirts, pants, motorcycle pants, ski pants, trousers, ski trousers, dresses, tennis dresses, suits, sweat suits, swimsuits, bathing suits, motorcycle rain suits, flying suits, running suits, ski suits, socks, pullovers, sweatshirts, vests, motorcycle vests, underwear, motorcycle underwear, pajamas, shawls, neckties, scarves, ties, gloves, motorcycle gloves, ski gloves, running shorts; sportswear and sports clothing, namely, shorts, jogging suits, t-shirts, tennis wear, ski wear, leggings, gaiters, jackets, namely, motorcycle jackets, ski jackets, rain jackets, ponchos, tops, tricot shawls, jerseys, liveries, uniforms, ballroom dancing uniforms, baseball uniforms, martial arts uniforms, school uniforms, military uniforms, overalls, namely, nurse overalls, working overalls, overalls for motor races, motorcycle overalls, knit face masks, ski masks, belts for clothing; swim wear, footwear, in particular sports footwear, sports shoes; headwear, in particular sports headwear, sports caps and hats, beanies, headbands, in particular all of the aforesaid goods based on or containing recombinant proteins</p>
5573038	HANSILK	body limb compression sleeves for use in soccer and other sports; compression garments, namely, compression socks,

		stockings, leggings, jerseys, vests, trousers; compression bandages; compression garments; compression socks for medical or therapeutic use
5606479	MOMMESILK	Goods in Int. Cl. 24  brassieres; caps being headwear; coats; dresses; dressing gowns; neckties; pajamas; pocket squares; ready-made linings being parts of clothing; scarfs; shirts; short-sleeve shirts; skirts; sleep masks; trousers; underpants; underwear; baby layettes for clothing; clothing layettes

As shown, five of the eight registrations do not involve the general apparel items at issue here. Two of the registrations do not list clothing but bed linens, and three registrations list highly specialized clothing (wetsuits, clothing “based on or containing recombinant proteins,” and compression garments). Finally, the mere existence of these third-party registrations does not warrant a finding that the mark SIKSILK is a unitary term with a connotation that outweighs its misdescriptiveness. *See Neumann v. Overseas Shipments*, 140 USPQ 276 (“We will not assume any knowledge on the part of the purchasing public of mere registrations in the Patent Office and neither will we assume that marks are in continuing use, so as to have had any effect on the mind of the purchasing public, merely because they have been registered.” [quoting *In re Helene Curtis Industries, Inc.*, 305 F.2d 492, 134 USPQ 501, 503-4 (CCPA 1962)]; *In re Shapely, Inc.*, 231 USPQ 72, 75 (TTAB 1986) “[E]ven if the Office has perhaps improvidently, issued registrations of marks containing the term ‘silk’ for goods not made of silk in circumstances like those presented here, we

are not bound by those actions if we believe that registration in the case before us would be contrary to the statute.”). In sum, we find that the record shows that the mark SIKSILK is misdescriptive as applied to Applicant’s clothing not made of silk.

B. Prospective purchasers are likely to believe that the misdescription actually describes Applicant’s clothing

Where the record demonstrates that goods are commonly made from a certain material, purchasers are likely to believe goods identified by the term for the material are actually made from that material. *In re Budge*, 8 USPQ2d at 1261 (“The Board’s factual inference is reasonable that purchasers are likely to believe automobile seat covers denominated by the term LAMB or SHEEP are actually made from natural sheep or lamb skins.”); *In re E5*, 103 USPQ2d at 1583 (“We find that, because the evidence shows that copper is a common supplement or ingredient in dietary supplements, consumers will believe, based on the mark and the goods at issue, that applicant’s goods contain copper.”). *Compare In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1597-8 (TTAB 2018) (“Given the lack of evidence that ‘animal foodstuffs, pet foods, edible pet treats’ is likely to contain caviar, however, we find that those consumers who perceive the word ‘caviar’ in the mark CANINE CAVIAR to mean ‘fish roe’ are not likely to believe that Applicant’s goods contain caviar.”).

As set forth above, the record includes evidence that clothing may be made of silk, and Applicant does not dispute that this is the case. With respect to whether purchasers will believe the misrepresentation, Applicant repeats its argument that the mark is a double entendre, contending “[e]ven if the term SIKSILK were

considered misdescriptive despite the obvious play on words inherent in the mark, consumers would instantly recognize the double entendre and would not expect such goods to contain silk.”<sup>16</sup> Because we find no double entendre in the combination of “sik” (or ‘sick’) and “silk,” this argument is not persuasive. Rather, we find that prospective purchasers are likely to believe that the misdescription SIKSILK actually describes Applicant’s clothing. *See In re Phillips-Van Heusen*, 63 USPQ2d at 1053 (“Given the various degrees or grades which the properties of silk fabrics may have, it is indeed plausible, if not unavoidable, that customers and potential buyers of applicant's dress shirts and sports shirts made of silklike fabric would believe that such goods, when marketed under the term ‘SUPER SILK,’ are made of an excellent, first-rate, or superior grade of genuine silk when, in fact, that is not the case.”).

C. The misdescription is material to the purchasing decision

“[I]n order to establish a prima facie case of materiality there must be some indication that a substantial portion of the relevant consumers would be materially influenced in the decision to purchase the product or service by the [] meaning of the mark.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1495 (Fed. Cir. 2009). The materiality factor may be satisfied by evidence that the misdescription would make the product more appealing or desirable to prospective purchasers. *In re White Jasmine*, 106 USPQ2d at 1392.

The record includes excerpts from third party websites that advertise clothing and extol the virtues of silk:

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<sup>16</sup> 4 TTABVUE 18.

Great for day or night, our silk dresses are sure to impress.<sup>17</sup>

Hypoallergenic and breathable silk accessories give you comfy feeling.<sup>18</sup>

Modern sophistication defines this tailored front-button blouse, made from pure silk.<sup>19</sup>

Crafted in silk charmeuse, this feminine top brings a touch of fall drama with an off-center tie at the neck and covered buttons at the shoulder and cuffs.<sup>20</sup>

Versatile and timeless, Silkbody's silk dresses make excellent wardrobe staples to dress up or down.<sup>21</sup>

Feel like a movie star very night by sleeping in the luxury of silk. The unbeatable softness of our 100% silk pajamas will guarantee a good night's sleep and keep your body temperature at the optimum. For a little extra cosiness, the silk/merino blend of the long sleeve nightshirt will see you safely into the land of Nod. A silk robe is an investment in luxury.<sup>22</sup>

Silk fibres are highly absorptive and are easily dyed. We do not add any treatments to anti-static, flame retardance, wash-and-wear or antibacterial properties because silk is already naturally endowed with these properties. Silk is also biodegradable and will decompose easily in landfills.<sup>23</sup>

Applicant contends that “there is no evidence of advertisements related to silk-like qualities of the goods,” arguing that the misdescription only is material to the purchasing decision if the mark is used in conjunction with promotion of the misdescription. *See In re Shapely*, 231 USPQ at 75 (“we conclude that materiality is apparent from the representations made on appellant's hangtags”). While the Board

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<sup>17</sup> October 22, 2019, TSDR 9.

<sup>18</sup> *Id.* at TSDR 16.

<sup>19</sup> *Id.* at TSDR 20.

<sup>20</sup> *Id.* at TSDR 21.

<sup>21</sup> April 11, 2010 Office Action, TSDR 29.

<sup>22</sup> *Id.* at TSDR 30.

<sup>23</sup> *Id.* at TSDR 38.

has cited such advertisements in support of its determination that a mark is deceptive, it is not a requirement for a finding of deceptiveness. As set forth above, it is sufficient to evidence that the misdescription would make the product more appealing or desirable to prospective purchasers. *See In re Phillips-Van Heusen Corp.*, 63 USPQ2d at 1054 (“Given that silk possesses such desirable attributes, it is plain that a term which indicates that shirts or other garments are made of silk is likely to affect the decision to purchase the goods.”).<sup>24</sup> Accordingly, we find that the misdescription in the applied-for mark SIKSILK is likely to affect the purchasing decision of a significant or substantial portion of relevant consumers.

## II. Conclusion

For the reasons discussed, we find that the three requirements for determining that a mark is deceptive are met, and that the applied-for mark consists of or comprises deceptive matter within the meaning of Section 2(a) of the Trademark Act.

**Decision:** The refusal to register Applicant’s mark SIKSILK is affirmed.

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<sup>24</sup> A requirement that Applicant touts the misdescription in using its mark suggests the refusal is limited to applications filed on the basis of use in commerce, and that is not the case. *See In re Phillips-Van Heusen Corp.*, 63 USPQ2d at 1047 n.1 (TTAB 2002) (affirming deceptiveness refusal issued against application “based upon an allegation of a bona fide intention to use such term in commerce.”).