

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 3, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board

—————  
*In re Snap Inc.*

—————  
Serial Nos. 87177292 and 87211997

—————  
John M. Kim of IPLA LLP  
for Snap Inc.

April Roach, Trademark Examining Attorney, Law Office 115,  
Daniel Brody, Managing Attorney.

—————  
Before Mermelstein, Adlin and Johnson, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Snap Inc. seeks Principal Register registrations for the proposed mark

SPECTACLES, in standard characters and stylized form (*Spectacles*), for:

Computer hardware; computer peripherals; wearable computer hardware; wearable computer peripherals; computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data; downloadable computer software, namely, software for setting up, configuring, and controlling wearable computer hardware and peripherals; downloadable computer software and software applications for use in uploading, downloading, capturing, editing, storing, distributing and sharing photographic and video content and other digital data via global and local computer networks and via mobile devices; downloadable multimedia files containing digital audio and video files featuring user generated images, videos, multimedia files,

and other digital data, all in the fields of entertainment, photography and online social networking; computer software for accessing and transmitting data and content among consumer electronics devices and displays in International Class 9.<sup>1</sup>

Applicant claims in each application that the proposed mark has acquired distinctiveness under Section 2(f) of the Trademark Act.

The Examining Attorney refused registration in both applications under Sections 1, 2 and 45 of the Act, on the ground that the proposed mark is generic for the identified goods; and, alternatively, Section 2(e)(1) of the Act on the ground that the proposed mark is merely descriptive of the identified goods and has not acquired distinctiveness under Section 2(f). After the refusals became final, Applicant appealed and filed requests for reconsideration which were denied. The appeals are fully briefed.

## **I. Appeals Consolidated**

These appeals involve common questions of law and fact and the records are quite similar. Accordingly, we consolidate and decide both appeals in this single decision.

*See In re Binion*, 93 USPQ2d 1531, 1533 (TTAB 2009); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1214 (2020).<sup>2</sup>

---

<sup>1</sup> Application Serial Nos. 87177292 (the “292 Application”) and 87211997 (the “997 Application”), filed September 20 and October 21, 2016, respectively, under Trademark Act Sections 1(b), based on an intent to use each mark in commerce, and 44(d), with priority claims based on foreign applications. Applicant later amended both of its involved applications to allege first use dates of November 10, 2016.

<sup>2</sup> Citations are to the record in the ’292 Application, unless otherwise indicated, and refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system’s online database, by page number, in the downloadable .pdf format. In citations to the Board’s online docketing system, TTABVUE, the number preceding “TTABVUE” corresponds to the docket entry

## II. Evidence and Arguments

The Examining Attorney relies on several dictionary definitions of “spectacle,” which all indicate that SPECTACLES, the involved mark, means “glasses,” or “something resembling eyeglasses in shape or suggesting them in function.” December 11, 2020 Office Action TSDR 9-12; December 27, 2016 Office Action TSDR 13. “Eyeglasses” or “glasses” are devices “used to correct defects of vision or to protect the eyes that consists typically of a pair of glass or plastic lenses and the frame by which they are held in place.” October 24, 2019 Request for Reconsideration TSDR 47. In its singular form the word “spectacle” means “something that can be seen or viewed, especially something of a remarkable or impressive nature,” or “something to view as unusual, notable, or entertaining; *especially* an eye-catching or dramatic public display.” December 11, 2020 Office Action TSDR 9-12; December 27, 2016 Office Action TSDR 13.<sup>3</sup>

The Examining Attorney also relies on evidence concerning Applicant’s identified goods. For example, a “pcmag.com” review of Applicant’s SPECTACLES product explains that Applicant is a social media company that now also refers to itself as a “camera company,” and, “for its first foray into hardware,” Applicant developed its

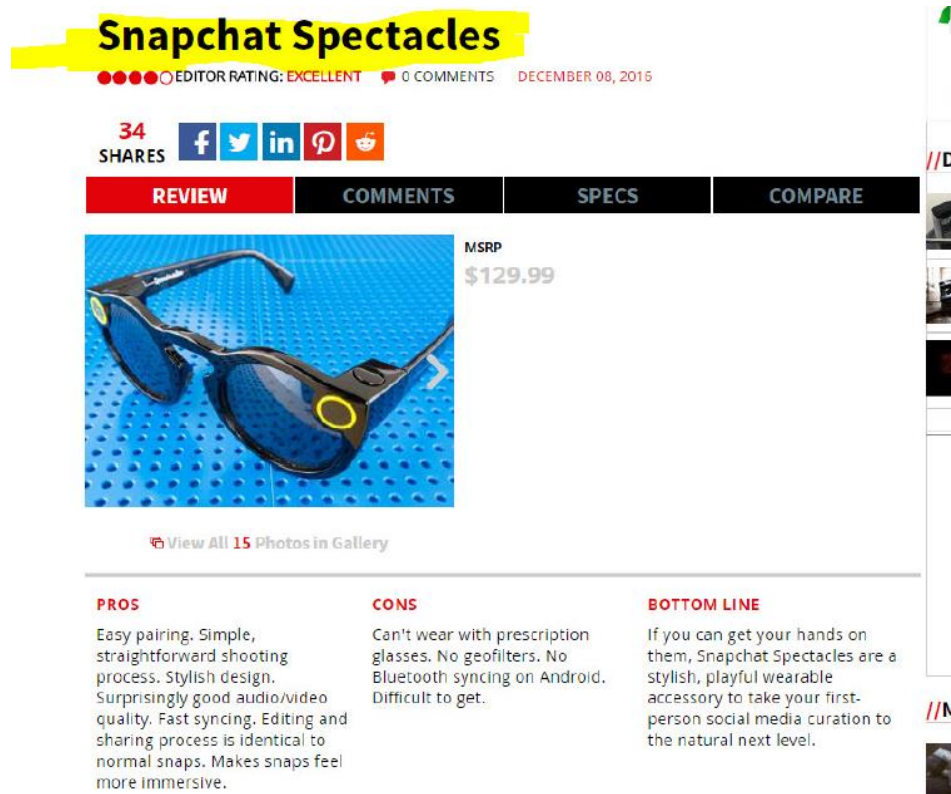
---

number(s), and any number(s) following “TTABVUE” refer to the page number(s) of the docket entry where the cited materials appear.

<sup>3</sup> We have also considered the Urban Dictionary definition of “spectacle”/“spectacles” upon which Applicant relies, October 24, 2019 Office Action response TSDR 41-43, despite the Urban Dictionary’s “potential reliability problem.” *In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2061 n.3 (TTAB 2013). Here, we find that the Urban Dictionary definition does not contradict definitions from the more traditional dictionaries the Examining Attorney and Applicant made of record.

Serial Nos. 87177292 and 87211997

“Snapchat Spectacles.” December 27, 2016 Office Action TSDR 18-25. The review describes Applicant’s SPECTACLES as “shades” and “connected glasses that do one thing – take snaps ...,” using “outward facing cameras, one in the corner of each lens.” *Id.* The review includes a picture of Applicant’s SPECTACLES, showing that the product takes the form of glasses, specifically sunglasses:



*Id.* at 18.

A BUSINESS INSIDER article about Applicant’s SPECTACLES also refers to them as “sunglasses,” as well as “smart glasses.” *Id.* at 25. Applicant itself refers to its SPECTACLES as “sunglasses with an integrated video camera that makes it easy to create Memories.” *Id.* at 30.

Third parties also offer “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data” in

Serial Nos. 87177292 and 87211997

the form of glasses, and refer to these products as “spectacles.” For example, eFashion offers a “DVR camcorder camera” in the form of glasses which it refers to as “Spectacles,” and which is functionally and aesthetically similar to Applicant’s SPECTACLES:



*Id.* at 31. Another third party, Noldus, also offers a “**spectacles camera**” taking the form of glasses “with a built-in camera.” *Id.* at 37-38 (emphasis added).<sup>4</sup>

The media, including several technology publications, also use the term “spectacles” to refer to products encompassed by the involved application’s identification of “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data.” For example:

A TechRadar article about Apple’s augmented reality (“AR”) “smart glasses” refers to them as “the Apple AR **spectacles**.”<sup>5</sup> April 24, 2019 Office Action TSDR 26 (emphasis added).

<sup>4</sup> While Noldus’s international headquarters is in The Netherlands, it also has a North American Headquarters in the United States, and we therefore find this evidence relevant. December 27, 2016 Office Action TSDR 38. However, we have not considered evidence that appears to relate to solely foreign uses of the term SPECTACLES.

<sup>5</sup> The article makes clear that Apple’s AR smart glasses are different than Applicant’s SPECTACLES, because Applicant’s product is “incredibly basic,” while Apple’s glasses provide “context sensitive digital information overlaid onto your real world surroundings – look at a subway station and get train times automatically displayed, for instance, or walk down the aisles of a food store and have the specs recommend a recipe.” For our purposes,

A “cnet.com” article about new Huawei products refers to the company’s glasses that “let you listen to music in stereo and take calls” as “smart **spectacles.**” *Id.* at 40 (emphasis added).<sup>6</sup>

A BUSINESS INSIDER article reports that “Amazon is the latest firm to try to build its own smart **spectacles,**” and that the glasses “apparently look like normal **spectacles.**” *Id.* at 43 (emphasis added).

An article in THE BRIDGE about new smart glasses reports that “North is counting on a few things to make smart **spectacles** actually stick. Focals are custom-built glasses with a transparent, holographic display that only the wearer can see. From this display you can scroll through texts, travel directions and weather notifications. The glasses even allow you to hail an Uber and speak with Alexa.” *Id.* at 52 (emphasis added).<sup>7</sup>

An NBC News article about smart glasses includes this lede: “The jury is still out on whether smart glasses are a fashion do or don’t, but tech companies are already running wild with ideas for how smart **spectacles** can be used in the future.” *Id.* at 57 (emphasis added).

An MIT TECHNOLOGY REVIEW article entitled “Coming Soon: Smart Glasses That Look Like Regular **Spectacles**” includes the subtitle “Sunglasses made with nanoscale optical technology hint at a near future of inconspicuous head-mounted displays.” November 12, 2019 Office Action TSDR 6.

---

however, the differences between Applicant’s SPECTACLES and Apple’s (or other) AR smart glasses are not particularly relevant because both types of products clearly fall within Applicant’s identification of “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data.” April 24, 2019 Office Action TSDR 27, 32.

<sup>6</sup> Huawei’s “smart spectacles” are functionally different than Applicant’s SPECTACLES, but nonetheless also fall within Applicant’s identified “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data.”

<sup>7</sup> This product also falls within Applicant’s identification of goods.

A VR SCOUT article about Intel’s prototype AR glasses called VAUNT reports that the product “comes equipped with customized lenses and two different hardware suites built into each stem of the **spectacles.**” *Id.* at 8 (emphasis added). The product’s “sole purpose is to sync with your smartphone to pull and project notifications via laser directly into the retina of your right eye,” *id.* at 9, a purpose which falls within Applicant’s identification of goods.

A VRFOCUS article about another AR glasses prototype is entitled “Microsoft Reveals AR Glasses That Look Like Regular **Spectacles.**” *Id.* at 11 (emphasis added).

A USA TODAY article about Google’s new AR effort states “On Monday, Google announced a new version of the AR **spectacle** called ‘Google Glass Enterprise Edition 2.’” *Id.* at 13 (emphasis added).

The Examining Attorney argues based on this evidence that “[t]he genus of the goods is hardware and peripherals that are wearable as glasses.” She also points out that “[t]he hardware and peripherals [identified] in the application include items that are glasses.” 9 TTABVUE 4-5. Furthermore, according to the Examining Attorney, “Applicant’s photographs and promotional materials and third party references to the goods show” that the relevant public would understand SPECTACLES as a “designation” for hardware wearable as glasses. *Id.* at 4, 6-8.

In the alternative, the Examining Attorney argues that the proposed mark is highly descriptive because Applicant’s goods are “a pair of glasses comprised of frames and lenses that are worn over the user’s eyes,” i.e. “spectacles,” and are commonly referred to as such descriptively. *Id.* at 9-10, 12. Moreover, the proposed highly descriptive mark has not acquired distinctiveness despite Applicant’s advertising and media coverage of Applicant’s SPECTACLES camera glasses,

Serial Nos. 87177292 and 87211997

because SPECTACLES is so commonly used to describe the nature of the product or competing products, rather than any particular source of the product(s).

For its part, Applicant relies on evidence that its SPECTACLES product does not correct vision, but is instead “a sophisticated digital camera with a battery and related software and hardware that allow users to upload pictures and short videos to the Snapchat photo/video-sharing and social networking application.” March 8, 2017 Office Action response TSDR 10, 24-25. At the same time, however, Applicant introduced a “cnet.com” article referring to Applicant’s product as “specs,” and quoting Applicant’s website as stating that the product is “integrated ... seamlessly into a fun pair of sunglasses.” *Id.* at 25. Similarly, Applicant relies on its own website, which states that “Spectacles are sunglasses with an integrated video camera that makes it easy to create Memories,” and articles,<sup>8</sup> which also refer to the product as “glasses,” “sunglasses” or “sunglasses-plus-camera.” *Id.* at 27, 30, 38, 39.

Applicant introduced a TIME article which refers to SPECTACLES as “Snapchat’s new camera glasses,” as well as Google search results and other evidence showing that a number of products similar to Applicant’s SPECTACLES are referred to as “camera glasses.” *Id.* at 47-49, 53-72. Applicant also introduced an article published by The College of Optometrists which indicates that “[o]nly in the eighteenth century did spectacles as we would understand them start to appear,” and argues based on this evidence that “spectacles” is not the common term for corrective eyewear today.” October 24, 2019 Office Action response TSDR 27-28, 37-39.

---

<sup>8</sup> The BBC article was written by the BBC’s North America technology reporter.



In support of its Section 2(f) claim, Applicant relies on evidence that “there are numerous instances of third parties intentionally copying Applicant’s SPECTACLES mark to offer competing electronic products.” *Id.* at 34, 124-133. It also relies on a declaration from Matthew Stratton, its Associate General Counsel, IP, who testifies that Snapchat is generally popular, and that Applicant owns design patents for the SPECTACLES product. *Id.* at 134-38. Mr. Stratton’s declaration also includes evidence that Applicant’s SPECTACLES product has received substantial media attention. *Id.* at 134-430. *See also* May 12, 2020 Office Action response TSDR 1-518 and November 28, 2020 Office Action response TSDR 1-822.

Based on this evidence, Applicant argues first that the proposed mark is not generic, claiming that “the record is devoid of any ‘persuasive and clear’ evidence demonstrating that the camera industry, or the majority of the relevant public has ever used the word SPECTACLES as a common, generic term for Snap’s camera product described in the subject Application.” 7 TTABVUE 5. Applicant specifically asserts that it does not use SPECTACLES to refer to “eyewear or other optical instrument with a lens and frame used as a viewing aid,” and that “limited descriptive uses of ‘spectacles’ to describe an ancillary aspect of Snap’s SPECTACLES camera product or other purportedly similar product is not the test for genericness – it is the test for descriptiveness.” *Id.* at 7-8.

Applicant next argues that the proposed mark is not descriptive either. Rather, it “creates a double entendre because [Applicant’s product] is, on the one hand, a high-definition digital camera housed in a plastic sunglass frame and, on the other hand,

Serial Nos. 87177292 and 87211997

it is designed to capture and share ‘unusual, notable, or entertaining’ scenes, i.e. ‘spectacles’ ...” *Id.* at 10. In fact, the “plastic sunglass frame component of Snap’s SPECTACLES camera product is an insignificant component” and “not a primary or significant motivator of a consumer’s decision to purchase.” *Id.* at 11. Moreover, with respect to the proposed mark’s other alleged meaning, SPECTACLES merely connotes “the desired result of creating memories ... by creating and recording the multiple daily ‘spectacles’ of life,” and is therefore suggestive rather than merely descriptive. *Id.* at 14.

Applicant also argues that the proposed mark is “incongruous,” because “spectacles” is “an old-fashioned term popular in the 18<sup>th</sup> century,” while Applicant’s SPECTACLES product is “a high-tech camera.” *Id.* at 15. Applicant claims that there is no “competitive need” to use the term “spectacles,” pointing out that similar products are often referred to as “camera glasses” or “smart glasses.” *Id.* at 17.

Finally, Applicant argues that even if the proposed mark is merely descriptive, it has acquired distinctiveness, based on nearly five years of “substantially exclusive and continuous use,” widespread use of the Snapchat app, media attention focused on and awards for the SPECTACLES product or its marketing, and Applicant’s significant online presence.

### **III. Is the Proposed Mark Generic?**

“Generic terms are common names that the relevant purchasing public understands primarily as describing the genus of goods or services being sold. They are by definition incapable of indicating a particular source of the goods or services.”

*In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed.

Serial Nos. 87177292 and 87211997

Cir. 2011) (citations omitted). *See also USPTO v Booking.com B.V.*, 591 U.S. \_\_\_, 140 S. Ct. 2298, 2020 USPQ2d 10729 \*2-4 (2020); *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045-46 (Fed. Cir. 2018).

The ultimate test for determining whether a term is generic is its primary significance to the relevant public. *See* Section 14(3) of the Act. *See also In re Am. 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). The examining attorney bears the burden of making a “strong” showing, with “clear evidence,” that Applicant’s mark is generic. *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). *See In re K-T Zoe Furniture, Inc.*, 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). “[D]oubt on the issue of genericness is resolved in favor of the applicant.” *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005).

We must make a two-step inquiry to determine whether SPECTACLES is generic: First, what is the genus (category or class) of goods at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods? *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

Here, the relevant public is vast, and practically coextensive with the consuming public at large, due to the ubiquity of computer hardware, software and peripherals in today’s society. More specifically, a wide variety of hardware, software and peripheral products are commonly used by general consumers for the everyday tasks

Serial Nos. 87177292 and 87211997

specified in Applicant's identification of goods, including "remotely accessing, capturing, transmitting and displaying pictures, video, audio and data." These products include, for example, smart phones, portable and desktop computers, cameras and other consumer electronic products used often and for a variety of tasks by a large percentage of United States consumers.

#### **A. The Genus**

Applicant initially argued that the genus of goods is "cameras and related software/hardware components that are commonly and generically referred to as 'smart glasses' or 'camera glasses,' but never 'spectacles.'" 7 TTABVUE 7. The Examining Attorney contends that the genus of goods is "hardware and peripherals that are wearable as glasses." 9 TTABVUE 4.

To the extent there is a meaningful difference between these proffered genera, we agree with the Examining Attorney, as Applicant eventually did in its Reply Brief, 10 TTABVUE 2, because "a proper genericness inquiry focuses on the description of [goods] set forth in the [involved application]." *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1636 (Fed. Cir. 2016) (quoting *Magic Wand*, 19 USPQ2d at 1552). Here, Applicant's identification of goods is not limited to the smart glasses/camera glasses specified in Applicant's proposed genus. Rather, the identification of goods is drafted more broadly, and includes: (1) "computer hardware," without limitation, as well as "wearable computer hardware" specifically; (2) "computer peripherals," without limitation, as well as "wearable computer peripherals" specifically; and (3) downloadable software for both "setting up, configuring, and controlling wearable computer hardware and peripherals;" and "use in uploading, downloading, capturing,

Serial Nos. 87177292 and 87211997

editing, storing, distributing and sharing photographic and video content and other digital data ....” In any event, because Applicant’s identification of goods clearly encompasses cameras and related hardware and software “referred to as ‘smart glasses’ or ‘camera glasses,’” for our purposes the result here would be the same if we adopted Applicant’s initially proposed genus instead of the Examining Attorney’s. *See e.g., Royal Crown*, 127 USPQ2d at 1041 (term is generic if it refers to a “key aspect” or part of a genus); *In re Cordua Rests.*, 118 USPQ2d at 1638. *See also In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1438 (TTAB 2005) (“the class or category of services described in the application still clearly includes that of providing information regarding sports and betting”).

#### **B. The Relevant Public’s Understanding of the Proposed Mark**

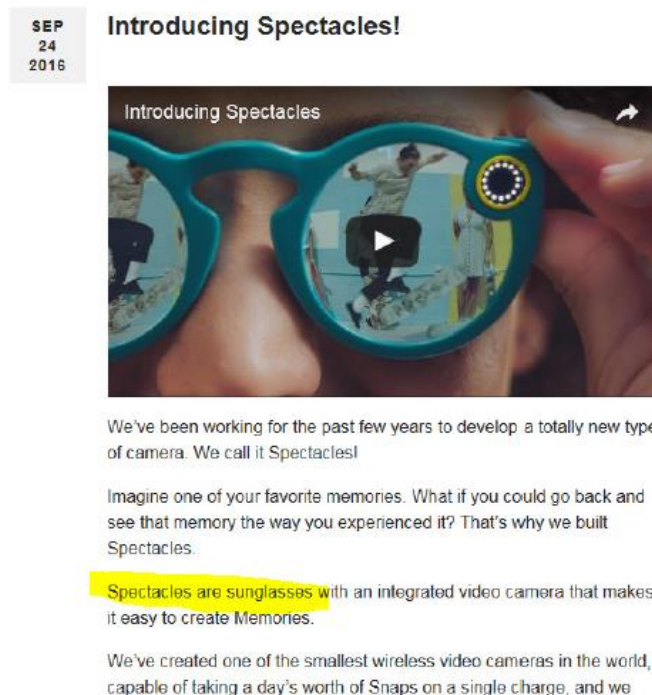
Evidence of the relevant public’s (i.e. general consumers’) understanding of SPECTACLES may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985). “[E]vidence of competitors’ use of particular words as the name of their goods or services is, of course, persuasive evidence that those words would be perceived by purchasers as a generic designation for the goods and services.” *Cont’l Airlines, Inc. v. United Air Lines, Inc.*, 53 USPQ2d 1385, 1395 (TTAB 1999). Similarly, “examples of ... commentators using the term to refer to a category of [goods] is persuasive evidence that the term would be perceived by the relevant public ... as a generic designation of those [goods].” *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1069 (TTAB 2018). *See also Northland*, 227 USPQ at 963 (relying on publications’ uses of

Serial Nos. 87177292 and 87211997

the term to find BUNDT generic for a type of ring cake mix); *In re Noon Hour Food Prods. Inc.*, 88 USPQ2d 1172 (TTAB 2008) (relying on publications' uses of the term to find BOND-OST generic for a type of cheese).

### 1. Dictionary Definitions

The dictionary evidence in this case is significant, consistent and persuasive – SPECTACLES means “glasses,” “eyeglasses,” or “something resembling eyeglasses in shape or suggesting them in form.” December 11, 2020 Office Action TSDR 9-12; December 27, 2016 Office Action TSDR 13-15; March 8, 2017 Office Action response TSDR 20-21; October 24, 2019 Office Action response TSDR 41-49; May 12, 2020 Office Action response TSDR 41-56. Applicant admits that this is exactly what its involved goods are, referring to them as “smart glasses” or “camera glasses” in its Appeal Brief, 7 TTABVUE 7-8, and “sunglasses” on its website, as shown below:



December 27, 2016 Office Action TSDR 30 (emphasis added).

While Applicant attempts to minimize the significance of its goods being glasses or sunglasses, pointing out in its Appeal Brief, 7 TTABVUE 17, and the web post reproduced above that its “Spectacles are sunglasses with an integrated video camera ...,” several of Applicant’s competitors, the media and Applicant itself still refer to the product (and similar third-party products falling within Applicant’s identification of goods) as “glasses” or “sunglasses” (or “spectacles”). And that is still what the goods are, because first, as the dictionary evidence makes clear, they “resembl[e] eyeglasses in shape or sugges[t] them in function,” December 11, 2020 Office Action TSDR 9. Second, Applicant characterizes SPECTACLES as “sunglasses,” photographs reveal them to be sunglasses and reviews and news articles refer to them that way; thus, SPECTACLES falls squarely within the dictionary definitions of “glasses” and “eyeglasses,” because sunglasses such as Applicant’s SPECTACLES product are in the form of eyeglasses and “protect the eyes.” October 24, 2019 Request for Reconsideration TSDR 47.

Applicant’s arguments to the contrary call to mind *In re Recorded Books Inc.*, 42 USPQ2d 1276 (TTAB 1997), in which we found RECORDED BOOKS generic for “pre-recorded audio tape cassettes featuring literary works.” In *Recorded Books*, the applicant argued that the proposed mark “does not convey the exact nature of the goods,” and that the goods are not books, but tapes. In nevertheless finding the mark generic, we pointed out that Applicant’s arguments missed the point, which “is whether members of the relevant public primarily use or understand the term sought to be registered to refer to the genus.” *Id.* at 1280. Relying on dictionary definitions

Serial Nos. 87177292 and 87211997

of the proposed mark's constituent terms, we found that the proposed mark "has a plain and readily understood meaning when used in connection with ... prerecorded audio tape cassettes featuring books." *Id.* In other words, the question is whether the term is generic in the context of the goods. Here, when used for computer hardware and peripherals for transmitting pictures, video, audio and data, SPECTACLES "has a plain and readily understood meaning."

Indeed, as the dictionary and other evidence of record makes clear, the proposed mark SPECTACLES means "glasses" or "eyeglasses,"<sup>9</sup> and the media sometimes refers to the goods as "spectacles." April 24, 2019 Office Action TSDR 40, 43, 52, 57. As we pointed out in *In re Recorded Books*, "a product may have more than one generic name." 42 USPQ2d at 1281.

The evidence of record does not support Applicant's argument that SPECTACLES is "an old-fashioned term popular in the 18<sup>th</sup> century." To the contrary, the media and Applicant's competitors currently use the term to refer to sophisticated high-tech products at the cutting edge of social media, information technology and consumer electronics. December 27, 2016 Office Action TSDR 31, 37-38; April 24, 2019 Office Action TSDR 26, 40, 43, 52, 57; November 12, 2019 Office Action TSDR 6, 8, 11, 13.

Even if "spectacles" was an "old-fashioned" term, that would not change anything. The question "is not whether a term is more frequently chosen colloquially than any of its synonyms, but whether it still retains its generic meaning. Appellants have

---

<sup>9</sup> Applicant concedes that the genus of goods includes "smart glasses" or "camera glasses." 7 TTABVUE 7.



Serial Nos. 87177292 and 87211997

made no showing that the term in this case [MART for retail discount stores] has any meaning in the minds of the consuming public other than store or market.” *S.S. Kresge Co. v. Utd. Factory Outlet, Inc.*, 598 F.2d 694, 202 USPQ 545, 546-47 (1st Cir. 1979). *See also In re Int’l Ass’n. for Enterostomal Therapy, Inc.*, 218 USPQ 343, 344 (TTAB 1983) (“The test is not whether a term is more frequently used than its synonyms, but rather whether it does in fact have a generic meaning.”). Indeed, Applicant’s argument that “spectacles” is too “old-fashioned” to be generic is essentially the same argument the Federal Circuit rejected in finding BUNDT generic for ring cake mix in *In re Northland*, 227 USPQ at 962.

Here, Applicant has not shown that SPECTACLES has any meaning other than glasses or something to be viewed, and the record shows that the term is currently used to refer to goods falling within Applicant’s identification of “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data; downloadable computer software, namely, software for setting up, configuring, and controlling wearable computer hardware and peripherals.” Specifically, the term “spectacles” is commonly used to refer to smart glasses or camera glasses, which are referred to as “smart spectacles,” with the result being that consumers understand “spectacles” and “smart spectacles” to refer to the consumer electronics category which Applicant refers to as smart glasses or camera glasses and others refer to as “smart spectacles.”

To the extent Applicant maintains that it is the first or only user of SPECTACLES for “computer hardware and peripherals for remotely accessing, capturing,

Serial Nos. 87177292 and 87211997

transmitting and displaying pictures, video, audio and data,” the record belies the claim. In any event, that would not matter even if it were true. Indeed, the Supreme Court has recognized “the undesirability of allowing anyone to obtain a complete monopoly on use of a descriptive term simply by grabbing it first.” *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 72 USPQ2d 1833, 1838 (2004). More to the point with respect to registration, “the fact that an applicant may be the first or only user of a generic designation ... does not justify registration if the only significance conveyed by the term is that of the category of goods.” *Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1083 (TTAB 2010).

## **2. News, Technical and Other Publications**

The news, technical and other publications of record reveal that the term “spectacles” is used, and understood by the relevant public, to describe the genus, which includes not only smart glasses and camera glasses, but also other “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data.” For example, the TechRadar article about Apple’s AR smart glasses refers to them descriptively as “the Apple AR spectacles,” revealing real world, current use of “spectacles” meaning “glasses,” and that “spectacles” is used and understood by the relevant public to refer to the consumer electronics category known as “smart glasses,” “camera glasses” and “smart spectacles,” which includes AR glasses/spectacles.<sup>10</sup> *In re Serial Podcast*, 126 USPQ2d

---

<sup>10</sup> While AR glasses, including Apple’s, perform functions that Applicant’s SPECTACLES do not, they are still “smart glasses,” are referred to as such and at the very least fall well within Applicant’s identification of “computer hardware and peripherals for remotely accessing,

Serial Nos. 87177292 and 87211997

at 1069 (publications' use of term to refer to a category of goods is evidence of genericness). *See also*, *Northland*, 227 USPQ at 963 and *In re Noon Hour*, 88 USPQ at 1179-80 (same). Similarly, the USA TODAY article about new AR glasses states that "Google announced a new version of the AR spectacles called 'Google Glass Enterprise Edition 2,'" thus revealing the media's use and the relevant public's understanding of "AR spectacles" as a generic term/genus, not the trademark for a specific product such as "Google Glass Enterprise Edition 2." And the THE BRIDGE article about North's product refers to it as "smart spectacles."

Perhaps even more relevant are the "cnet.com" and BUSINESS INSIDER articles, because they are about non-AR smart glasses such as Applicant's. Both of them refer to competing, non-AR products from Huawei and Amazon as "smart spectacles," and the NBC News article refers to "smart glasses" generally as "smart spectacles," highlighting the interchangeability of "smart glasses" and "smart spectacles," and how the relevant public perceives and understands the term "spectacles." April 24, 2019 Office Action TSDR 40, 43, 52, 57. More specifically, these uses also reveal the public's understanding of the term "spectacles" in the context of "computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data." *Northland*, 227 USPQ at 963; *In re Serial Podcast*, 126 USPQ2d at 1069 (TTAB 2018); *In re Noon Hour*, 88 USPQ at 1172.

---

capturing, transmitting and displaying pictures, video, audio and data; downloadable computer software, namely, software for setting up, configuring, and controlling wearable computer hardware and peripherals."

While it is not clear that the MIT TECHNOLOGY REVIEW, VR SCOUT and VRFOCUS articles refer to products currently on sale, they all nevertheless refer to prototype or planned products falling within Applicant's identification of goods as "spectacles." These articles show both that "spectacles" is used to refer to the genus of goods, and that the public understands "spectacles" as referring to the genus of goods. *Northland*, 227 USPQ at 963; *In re Serial Podcast*, 126 USPQ2d at 1069; *In re Noon Hour*, 88 USPQ at 1172.

### **C. Decision on Genericness**

The evidence from dictionaries and publications is mutually reinforcing. It clearly establishes that the term "spectacles" is currently used and understood by the relevant public as a reference to hardware and peripherals wearable as glasses generally, i.e. "smart spectacles" or "AR spectacles." It is not a trademark that specifically identifies Applicant or any other particular source of smart glasses.<sup>11</sup>

### **IV. Is the Proposed Mark Merely Descriptive?**

Our finding that "spectacles" is generic subsumes a finding that the term is merely descriptive, because "[t]he generic name of a thing is in fact the ultimate in descriptiveness." *H. Marvin Ginn*, 228 USPQ at 530. Obviously, SPECTACLES "immediately conveys knowledge of a quality, feature, function, or characteristic" of Applicant's goods, specifically that they are glasses. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer*

---

<sup>11</sup> In the event our decision on genericness is overturned on appeal, we go on to consider whether the proposed mark is merely descriptive and whether it has acquired distinctiveness.

Serial Nos. 87177292 and 87211997

*AG*, 82 USPQ2d at 1831); *In re Abcor Dev.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). Indeed, as the dictionary evidence shows, “spectacles” means “glasses” or “eyeglasses,” which is what Applicant’s goods are, with Applicant and others describing them as “sunglasses” or “glasses” (or “spectacles”).<sup>12</sup>

Thus, Applicant’s argument that “[t]he plastic sunglass frame component of Snap’s SPECTACLES camera product is an insignificant component” is baseless. Not only are the goods in the form of glasses, but their glasses form is exactly what distinguishes them from traditional cameras – smart glasses provide a particular view and perspective, and eliminate the need for the user to separately carry, uncase and set up a traditional camera. The functional benefits of Applicant’s product taking the form of eyeglasses are summed up in Applicant’s slogan: “Your world, the way you see it.” October 24, 2019 Request for Reconsideration TSDR 74; *see also id.* at 109 (“Spectacles. Real moments. Real life. **From your perspective.**”) (emphasis added). The product’s eyeglasses form is a feature, function and characteristic of the camera, not only functionally but aesthetically.

Moreover, the Court of Customs and Patent Appeals has held that a mark which is merely descriptive of the packaging of goods may be found merely descriptive for the goods themselves. *J. Kohnstam, Ltd. v. Louis Marx & Co., Inc.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960). There, the Court found MATCHBOX SERIES merely descriptive of “toy model vehicles and toy model machines” sold in matchboxes.

---

<sup>12</sup> The record, which shows current generic and descriptive uses of “spectacles” in connection with camera glasses, belies Applicant’s argument that SPECTACLES is “incongruous.”

We think the word is just as descriptive of a box which is made to look as much like a matchbox as is feasible so that the toys packaged in it can appropriately be designated as a “Matchbox Series” of toys ... Appellant has also *argued* that “MATCHBOX SERIES” is not descriptive of *toys*. We give no weight to this argument for, while it may be literally true, it does not hold with respect to a series of toys sold in simulated matchboxes. The merchandise in the form in which appellant puts it on the market is aptly described as a series of matchbox toys.

*Id.* at 364. This case is analogous.

Applicant cannot seriously dispute that “spectacles” is merely descriptive when it proposes that the genus is “cameras and related software/hardware components that are commonly and generically referred to as ‘smart glasses’ or ‘camera glasses,’” 7 TTABVUE 7, when the record establishes that “smart glasses” and “camera glasses” are also referred to as “smart spectacles.” Based on the evidence of record, we thus find that SPECTACLES is merely descriptive of smart glasses, and other types of “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data” which take the form of glasses.<sup>13</sup>

---

<sup>13</sup> Applicant’s argument that SPECTACLES is a double entendre is not well-taken. In the context of Applicant’s goods (“computer hardware and peripherals”), the only “readily apparent” meaning of SPECTACLES is camera glasses/smart glasses, an increasingly common type of hardware/peripheral typically referred to descriptively or generically as “glasses” or “spectacles.” Applicant’s proffered second meaning (multiple things “that can be seen or viewed”), is nebulous at best in the context of hardware and peripherals. *See e.g., In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1105 (TTAB 2018) (“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 Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017). In any event, Applicant’s proffered second meaning is itself merely descriptive of the product’s function, photographing or taking video of “spectacles.”

## V. Has the Proposed Mark Acquired Distinctiveness?

Applicant argues – assuming its proposed mark is not generic – that the proposed mark is entitled to registration under Section 2(f) of the Act because it has acquired distinctiveness. In other words, Applicant argues, “in the minds of the public, the primary significance of [the term “spectacles”] is to identify the source” of Applicant’s goods. 15 U.S.C. § 1052(f); *Royal Crown*, 127 USPQ2d at 1045 (citation omitted). Applicant bears the burden of establishing acquired distinctiveness. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015).

“Where a mark sits on a sliding scale of descriptiveness impacts the burden a proposed registrant must bear with respect to its claim of acquired distinctiveness.” *Royal Crown*, 127 USPQ2d at 1045. Indeed, “the applicant’s burden of showing acquired distinctiveness increases with the level of descriptiveness; a more descriptive term requires more evidence of secondary meaning.” *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1424 (citing *In re Bongrain Intern. (Am.) Corp.*, 894 F.2d 1316, 13 USPQ2d 1727 (Fed. Cir. 1990)). Therefore, we “must first determine whether the proposed mark is highly descriptive rather than merely descriptive.” *Royal Crown*, 127 USPQ2d at 1045.

Here, based on the evidence of record, and as discussed above, if SPECTACLES is not generic it is highly descriptive, as dictionary and publication evidence reveals that it is currently and commonly used to refer to and describe glasses or eyeglasses, and Applicant itself refers to and describes its goods as “sunglasses” and “smart glasses.” Products which compete directly with Applicant’s goods are also currently and commonly referred to and described as “spectacles.” Because Applicant’s

Serial Nos. 87177292 and 87211997

proposed mark is highly descriptive, Applicant's burden to show acquired distinctiveness is "concomitantly high." *In re Steelbuilding*, 75 USPQ2d at 1424.

In assessing whether Applicant has met its heavy burden of establishing acquired distinctiveness, we consider any evidence bearing on: "(1) association of the trade[mark] with a particular source by actual purchasers (typically measured by customer surveys); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark." *In re Snowizard, Inc.*, 129 USPQ2d 1001, 1005 (TTAB 2018) (quoting *Converse, Inc. v. Int'l Trade Comm'n*, 907 F.3d 1361, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018)). Here, Applicant's evidence falls well short of establishing that "spectacles," which means "glasses" and is commonly used by third parties, has acquired distinctiveness.

Applicant's acquired distinctiveness evidence was introduced through Mr. Stratton's declaration, the most recent iteration of which was submitted with Applicant's November 18, 2020 Office Action response. Much of Mr. Stratton's testimony and the accompanying evidence concerns Applicant generally. While Applicant is quite well known and successful, its SNAPCHAT app is used by a quarter of a billion people every day, and SNAPCHAT users have shared "untold trillions of photo and video messages," November 18, 2000 Office Action response TSDR 818-19 (Stratton Dec. ¶ 3), this impressive evidence is unrelated to the proposed mark SPECTACLES or whether the proposed SPECTACLES mark has acquired distinctiveness.



The evidence related to the proposed SPECTACLES mark is much less impressive. The mark has been used for slightly less than five years. *Id.* at 820 (Stratton Dec. ¶ 6) (testifying that proposed mark’s first use date was November 10, 2016). The product “first became available via ‘Snapchat’ vending machines that emerged in different cities.” *Id.* However, Applicant introduced media reports indicating that the vending machines were few and far between, with only a few cities hosting them. *See, e.g.*, October 24, 2019 Request for Reconsideration TSDR 161 (November 14, 2016 article stating “Snap currently offers their Spectacles exclusively via the Spectacles Box – a friendly, futuristic vending machine that pops up in a random location that is disclosed on their site the day after a timer counts down: <http://www.spectacles.com/map>.”); *id.* at 185 (February 3, 2017 article stating “They’re still not available to buy normally – but that could soon change.”).

Furthermore, it appears that the SPECTACLES product may have enjoyed only limited success, at least in its early years. Applicant introduced an “emarketer.com” article on how many consumers were searching for the product online in late 2016 which states that it was “not an insignificant number but it’s barely a bug on the windshield compared to Snapchat’s US user base, which eMarketer estimates at 58.6 million.” *Id.* at 642. Applicant also introduced a Wikipedia article which indicates that “[i]n late 2017, Snapchat wrote off \$40m worth of unsold Spectacles inventory and unused parts. As of May 2018, the company sold 220,000 pairs, which was less than initially expected.” *Id.* at 460. Applicant relies on a May 10, 2017 “techcrunch.com” article concerning Applicant’s financial performance which states

Serial Nos. 87177292 and 87211997

“clearly Spectacles haven’t done much to boost Snapchat’s user growth by making it seem cooler, considering how few users it has added since Instagram launched its Stories clone ... [Applicant] may need something with more widespread appeal than a computer you wear on your face.” *Id.* at 549.

In any event, Applicant’s SPECTACLES product and its “Snapbot” vending machines won awards at the 2017 Cannes Lions International Festival of Creativity, and Applicant’s SPECTACLES product and a promotional video won 2017 Crunchies Awards. *Id.* (Stratton Dec. ¶ 8). While we can safely assume that some Americans are aware of these awards, there is no indication in the record how many. Moreover, the supporting evidence appears to consist of niche publications with no circulation figures provided, and a press release without any indication whether it was sent or to whom it may have been sent, much less whether its content was ever published. *Id.* at 210-28 (Stratton Dec. Ex. K).

Somewhat more impressive are the large number of media reports on Applicant’s SPECTACLES product. *Id.* at 250-817. While the quantity of this evidence is impressive, the quality is questionable. It consists mostly of what appear to be niche publications, such as Mobile App Daily, “adweek.com” and “techcrunch.com”; blogs, such as a post from “Joe Schindel Web Developer | Marketer | Yoga Teacher | Traveler”; foreign publications, such as “hindustantimes.com,” THE INDIAN EXPRESS and “thetimes.co.uk,” which have no probative value; and press releases. Many and perhaps most of these media reports are reviews or “first impressions” of the SPECTACLES product, but they contain no clear information regarding how

many United States consumers may have been exposed to the product and the SPECTACLES proposed mark, or how the SPECTACLES product fares in comparison to its competitors.

Mr. Stratton does attempt to quantify consumer exposure to the SPECTACLES mark by citing a third party:

As measured by Cision, a communication firm, Snap's SPECTACLES v.1 product garnered over 13,000 US-based media articles, news stories, and other third-party publications between September 24, 2016 and April 18, 2017. The collective circulation, website visitors, and broadcast audience for media outlets covering SPECTACLES v.1 in the US resulted in over one billion estimated impressions. The publicity value of such media coverage was over \$35 million based on the estimated price that professional media buyers would pay for that amount of exposure for that particular outlet and factors, including the average cost per impression, length of articles/segment, and engagement level.

Snap's latest SPECTACLES v.3 product garnered over 650 US-based media articles, news stories, and other third-party publications in a span of just two days (August 13-14, 2019). The collective circulation, website visitors, and broadcast audience for media outlets covering SPECTACLES v.3 in the US was over 1.7 billion people, as measured by Cision, and resulted in an estimated 34 million impressions.

*Id.* at 821 (Stratton Dec. ¶¶ 10-11). Thus, Applicant has provided some quantification of the level of consumer exposure to the proposed mark SPECTACLES.

Nonetheless, Applicant's quantification of consumer exposure is missing context and supporting documentation which reduces its probative value significantly. Perhaps most glaringly, if Cision provided a report of its findings or any documentation to support them, Applicant failed to provide it. This leaves us unable

Serial Nos. 87177292 and 87211997

to assess, *inter alia*: the types of “media articles, news stories, and other third-party publications” referenced; the nature of stories; how extensively the materials cover or mention the proposed mark, if at all; the context in which the proposed mark is mentioned, if at all; the publications’ readers; and how the number of “estimated impressions” and “publicity value” of those impressions was calculated. In fact, it is not even clear whether these publications specifically mentioned the proposed mark SPECTACLES, or whether they merely displayed or mentioned the product by itself, apart from the proposed mark.

It does not escape notice that in many of the publications Applicant did provide, the proposed mark was mentioned in passing, deep in a multi-page article which focused on other products, companies or topics. For example, Applicant relies on a number of publications which reviewed, compared or ranked multiple competing products from a variety of sources, with Applicant’s SPECTACLES product being only one of them, and sometimes the product is covered in passing or deep in an article. Furthermore, as indicated, many of the publications Applicant provided appear to have niche audiences, some are nothing more than blog postings by individuals, and some seem to be obscure.

At the same time, however, we recognize that the numbers Cision provided are large, if unexplained, and that Applicant’s SPECTACLES product has appeared in a few well-known publications including USA TODAY and VANITY FAIR. Applicant’s SPECTACLES Twitter account has 40,000 followers, its SPECTACLES YouTube Channel has over 8,500 subscribers; and its SPECTACLES Instagram account has

Serial Nos. 87177292 and 87211997

over 9,000 followers. *Id.* (Stratton Dec. ¶ 12). Thus, we can assume that some American consumers have been exposed to Applicant’s goods and mark,<sup>14</sup> even if we have no information about the overall extent of consumer exposure, or how consumer exposure to the SPECTACLES mark and product compares to consumer exposure to competitive marks or products.

In short, the evidence provided, and the assumptions we can draw from it are not sufficient to establish acquired distinctiveness for such a highly descriptive mark. First, even if Applicant had established that its mark has been in use for five years (it falls just short), that would not be sufficient here because the proposed mark is so highly descriptive. *See In re Ennco Display Sys., Inc.*, 56 USPQ2d 1279, 1286 (TTAB 2000) (while Board may consider evidence of continuous use for more than five years, “the language of the statute is permissive, and the weight to be accorded this kind of evidence depends on the facts and circumstances of the particular case”).

In any event, Applicant’s use is not “substantially exclusive,” because third parties, including at least a few of Applicant’s competitors, use SPECTACLES in connection with their products. *See Levi Strauss & Co. v. Genesco, Inc.*, 742 F.2d 1401, 222 USPQ 939, 940-41 (Fed. Cir. 1984) (“When the record shows that purchasers are confronted with more than one (let alone numerous) independent users of a term or

---

<sup>14</sup> Based on our experience in evaluating evidence supporting Section 2(f) claims, Applicant SPECTACLES social media accounts have an underwhelming number of followers, and the number of followers is surprisingly small given Cision’s estimates regarding the allegedly high level of consumer exposure to the proposed mark SPECTACLES.

device, an application for registration under Section 2(f) cannot be successful, for distinctiveness on which purchasers may rely is lacking under such circumstances.”).

Second, Applicant has not provided any survey evidence, nor has it provided sales and advertising figures, often the most important evidence of acquired distinctiveness.<sup>15</sup> While a survey is not required to demonstrate acquired distinctiveness, a well-conducted survey may be highly persuasive on the issue.

Third, while Applicant’s SPECTACLES product has enjoyed unsolicited media coverage, most of the coverage in the record is in niche, specialized publications. The vast majority of it does not show a meaningful level of consumer recognition of the proposed highly descriptive mark. Even if Applicant had provided documents or details supporting and explaining the Cision findings and more information about consumer exposure to the proposed mark generally, that would not necessarily mean that the exposed consumers perceive SPECTACLES as a source identifier rather than a generic or descriptive term, especially when it is used for products commonly known and described as “spectacles” (or “glasses”). In fact, it seems likely that many consumers would perceive the product’s source identifier as SNAP or SNAPCHAT, with “spectacles” only describing or referring to the product’s category, form or appearance.

---

<sup>15</sup> When a mark is highly descriptive even many millions of dollars in advertising expenditures and sales may be insufficient to establish acquired distinctiveness. *See, e.g., In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (\$85 million in annual sales revenue and \$2 million in annual advertising expenditures insufficient); *Goodyear Tire & Rubber Co. v. Interco Tire Corp.*, 49 USPQ2d 1705 (TTAB 1998) (\$56,000,000 in sales revenue and 740,000 tires sold insufficient).

In short, the record does not support Applicant's Section 2(f) claim.<sup>16</sup>

## **VI. The Stylized Presentation of the Mark in the '997 Application Does Not Create a Commercial Impression Separate from the Term SPECTACLES**

Applicant sometimes displays its proposed mark in a stylized form which amounts to nothing more than cursive writing (*Spectacles*). If anything, the cursive display of Applicant's mark is more pedestrian and less distinctive than the stylized form of the generic term CHURRASCOS (*Churrascos*) found by the Federal Circuit to be insufficient to "save it from ineligibility as generic." *In re Cordua Rests.*, 118 USPQ2d at 1639-40. *See also In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1490 (TTAB 2012) (finding "the stylization of the lettering in which SADORU appears [**SADORU**] does not create a separate and inherently distinctive commercial impression apart from the word itself. Thus, we find that the mark as a whole is merely descriptive."). Applicant does not allege that the stylized version of its mark has acquired distinctiveness. Thus, we find that the stylized version of Applicant's mark is no less generic (or in the alternative, merely descriptive) than the mark in standard characters, and the stylization cannot "save it."

---

<sup>16</sup> We disagree with Applicant's claim that "there are numerous instances of third parties intentionally copying Snap's SPECTACLES mark to offer competing electronics products." 7 TTABVUE 22. In fact, the instances cited show use of SNAPCHAT (which could be argued to be "fair use" of the SNAPCHAT mark for purposes of comparison). The examples appear to use SPECTACLES descriptively or generically (and often immediately preceding "glasses"), or to refer to Applicant's product for purposes of comparison. Referring to Applicant's product in offering a competing product is not by itself evidence that SPECTACLES is distinctive. It is at most evidence of how Applicant refers to its own product.

## VII. Conclusion

The record leaves no doubt that SPECTACLES, which means “glasses,” is generic for “computer hardware and peripherals for remotely accessing, capturing, transmitting and displaying pictures, video, audio and data,” including smart glasses/camera glasses. Even if the proposed mark is not generic, it is highly descriptive and Applicant has not met its burden of establishing that it has acquired distinctiveness. Finally, the record establishes that Applicant’s competitors have a need to, and do, use SPECTACLES in connection with their own smart glasses. *In re Abcor Development*, 200 USPQ at 217 (“The major reasons for not protecting [merely descriptive] marks are ... 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.”).

**Decision:** The refusals to register Applicant’s proposed mark on the ground that it is generic for the identified goods, and, alternatively, that it is highly descriptive and has not acquired distinctiveness, are affirmed.