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**THIS DISPOSITION
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Paper No. 12
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Accu-fit Clubfitting Incorporated

Serial No. 75/848,515

Larry L. Coats of Coats & Bennett, LLP for Accu-fit Clubfitting Incorporated.

LaVerne T. Thompson, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Acting Managing Attorney).

Before Cissel, Seeherman and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

An application has been filed by Accu-fit Clubfitting Incorporated to register on the Principal Register the mark SWING COEFFICIENT for "services in the area of fitting golf clubs for individuals" in International Class 41.¹

The Examining Attorney has finally refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the basis that the mark SWING

¹ Application Serial No. 75/848,515, filed November 15, 1999. The claimed dates of first use and first use in commerce is November 1998.

COEFFICIENT, when used in connection with the services of the applicant, is merely descriptive of them.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney contends that the word "swing" is descriptive of applicant's services because "applicant measures the golfer's swing of his/her club to determine the best club size for the individuals swing" (brief, p. 4); that the word "coefficient" is descriptive of applicant's services because "applicant merely determines the physical measurement of the golfer's swing and assigns it a coefficient" (brief, p. 6); that applicant's mark SWING COEFFICIENT "merely describes the manner in which the clubs are fitted" (Final Office action, p. 2); and that the combination of the two words does not create a separate, nondescriptive meaning.

Applicant argues that the nature of golf club fitting services varies from one professional fitter to another; that applicant coined the mark SWING COEFFICIENT to identify and distinguish its golf club fitting services from others; that SWING COEFFICIENT is not used by others in the business and it is not a term of art in golf; that it is an arbitrary mark, or at worst, it is a suggestive

mark which requires thought and multi-stage reasoning to make the connection between the mark and the services; that SWING COEFFICIENT does not immediately and forthwith describe any specific quality, feature, or characteristic of its services; that the Examining Attorney improperly dissected the mark in analyzing descriptiveness; and that any doubt on the question of whether a mark is merely descriptive should be resolved in applicant's favor.

In support of her refusal, the Examining Attorney submitted (i) dictionary definitions of the terms "swing" and "coefficient";² and (ii) printouts of several excerpted stories retrieved from the Nexis database. Also of record are (i) applicant's specimens of record (newspaper advertisements); and (ii) a copy of applicant's training manual and guide explaining applicant's club fitting service which was submitted by applicant in response to the Examining Attorney's request for information.

The test for determining whether a mark is merely descriptive is whether the mark immediately conveys information concerning a quality, characteristic, function,

² In her brief on appeal, the Examining Attorney requested that the Board take judicial notice of additional dictionary definitions included with her brief. The request is granted because the Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594, aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), and TBMP §712.01.

ingredient, attribute or feature of the product or service in connection with which it is used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

Whereas a mark is suggestive if imagination, thought or perception is required to reach a conclusion on the nature of the goods or services. See *In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ2d 505 (CCPA 1980).

It has long been acknowledged that there is often a very narrow line between terms which are merely descriptive and those which are suggestive, and the borderline between the two is hardly a clear one. See *In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992).

In the present case, we conclude that the evidence does not support the Examining Attorney's position. The mark SWING COEFFICIENT does not readily and immediately convey information as to the nature of applicant's services.

The Examining Attorney's submission of dictionary definitions includes the following: The American Heritage Dictionary (Third edition 1992) definitions of "swing" as "2. to hit at something with a sweeping motion of the arm," and "coefficient" as "2. a numerical measure of a physical or chemical property that is constant for a system under

specified conditions such as the coefficient of friction." When the words SWING COEFFICIENT are used together, it is not clear from the dictionary definitions how the term is merely descriptive of applicant's services.

Further, the Nexis stories of record do not evidence use of the words "SWING COEFFICIENT" descriptively in relation to the services which are the subject of this application. The Examining Attorney searched the Nexis database for articles in which the word "swing" appeared within 5 words of the word "coefficient," submitting 9 excerpted stories of the 15 total. None of the 9 stories includes the words together, and most do not relate to golf or sports at all, relating instead to business, stocks, politics, and human motor control. The only pertinent story relating to golf is shown below (emphasis in original provided in record):

HEADLINE: For [sic-From?] Swords to Clubs; In Its Shift From Military to Commercial Products, Wyman-Gordon Co. Has Entered the Golf Market
...made larger, which keeps a drive playable, but will weigh the same as a smaller clubhead of steel, said Wyman-Gordon's Mortimer. "A player can miss the ball a little bit and still have a good shot."
Titanium also has a better "elastic **coefficient**," or ability to transfer energy from **swing** speed to force on the ball, translating, presumably, into greater distance, he said.

Golf World's Pike points out that most titanium drivers have longer shafts, and a longer shaft creates a longer arc and more clubhead speed. "Sunday Telegram (Worcester, MA)," July 21, 1996.

The Examining Attorney also searched the Nexis database for articles in which "golf swing" appeared within 5 words of "swing," and "club fitting" appeared within 5 words of "swing." Examples of these are set forth as follows (emphasis in original printouts in record):

HEADLINE: Flip Out Over POG Tourneys
Meanwhile, the Arizona Science Center will sponsor "Batter Up" from 11 a.m. to 3 p.m. Saturday, outdoors at Second and Adams streets. A machine will **measure** the speed of fastballs and the force of **golf swings**.... "The Arizona Republic," February 24, 1995;

HEADLINE: Kreipe's New Niblicks Suit Hackers to a Tee
To construct the proper set of clubs for his clients, Kreipe uses a swing analyzer, essentially a digital computer that measures club head speed, club path, ball carry and other critical components of a **golf swing**. Based on those **measures**, Kreipe builds in the proper alterations in the club. "The Business Journal-Portland," January 20, 1986;

HEADLINE: Sports fans Zone in on ESPN Complex
...In a baseball batting cage, you can swing against the major-league baseball pitcher of your choice, say randy Johnson or Mike Messina. At Virtual PGA, you can **measure** your **golf**

swing. "The Richmond Times Dispatch,"
December 27, 1998;

HEADLINE: Valley/Ventura County
Sports; Valley of the Stars
Championship
LPGA Fan Village
Wednesday through Sunday: The Village
is a 2,400-square-foot entertainment
and information center for fans.
Among the features: Digital golf-**swing**
analysis, **club-fitting**, hitting golf
balls autographs and photos with tour
players, rules seminars and a 60-foot-
long pictorial timeline on the LPGA.
"Los Angeles Times, " February 6,
1999; and

Headline: Taking Swing at Serving Only
Women; LadysGolf.com Stocks Apparel,
Equipment
Boudreau and her husband, an adjunct
business professor at Northeastern
University, opened the 2,600 square-
foot store last December.
LadysGolf.com specializes in custom-
club fitting and swing speed analysis,
and also provides an indoor hitting
cage, putting green, and a television
and VCR to view instructional tapes.
"The Boston Globe," May 9, 1999.

The Board must assume that the Nexis evidence
submitted by the Examining Attorney is the best case
possible for the Examining Attorney's position that the
mark is merely descriptive of the identified services. See
In re Homes & Land Publishing Corp., 24 USPQ2d 1717,1718
(TTAB 1992).

The record before the Board simply does not establish
a prima facie case that "SWING COEFFICIENT" is merely

descriptive of applicant's services of fitting golf clubs for individuals. Even if a numerical measure of computation is made in relation to various aspects of golfing (e.g., swing, speed, club head), there is no evidence that consumers would readily understand a connection between SWING COEFFICIENT and the services of fitting golf clubs for individuals. See *Bose Corp. v. International Jensen Inc.*, 963 F.2d 1517, 22 USPQ2d 1704 (Fed. Cir. 1992); *In re Classic Beverage Inc.*, 6 USPQ2d 1383 (TTAB 1988); and *Manpower, Inc. v. The Driving Force, Inc.*, 212 USPQ 961 (TTAB 1981), *aff'd* 538 F.Supp. 57, 218 USPQ 613 (EDPA 1982).

Decision: The refusal to register under Section 2(e)(1) is reversed.