

# APPENDIX

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**ENTERED: April 8, 2019**

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**IN RE: BRANDED LLC,**  
*Appellant*

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2018-1828

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Appeal from the United States Patent and Trademark Office, Trademark Trial and Appeal Board in No.86529647.

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**JUDGMENT**

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JEFFREY FURR, Furr Law Firm, Utica, OH, argued for appellant.

THOMAS L. CASAGRANDE, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, argued for appellee Andrei Iancu. Also represented by THOMAS W. KRAUSE, CHRISTINA J. HIEBER, JOSEPH MATAL, FARHEENA YASMEEN RASHEED.

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THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (LOURIE, DYK, AND O'MALLEY, *Circuit Judges*).

**AFFIRMED. See Fed. Cir. R. 36.**

ENTERED BY ORDER OF THE COURT

April 8, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

**ENTERED: February 13, 2018**

This Opinion is Not a  
Precedent of the TTAB

Hearing: January 18, 2018

Mailed: February 13, 2018

UNITED STATES PATENT AND  
TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Branded LLC*

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Serial No. 86529647

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Jeffrey M. Furr, of Furr Law Firm, for Branded LLC.

John C. Boone, Trademark Examining Attorney, Law  
Office 104,<sup>1</sup>

Dayna Browne, Managing Attorney.

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Before Shaw, Adlin, and Larkin, Administrative  
Trademark Judges.

Opinion by Larkin, Administrative Trademark  
Judge:

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<sup>1</sup> Trademark Examining Attorney Timothy J. Finnegan examined the subject application and filed the Patent and Trademark Office's brief, but left federal service prior to the oral hearing. Trademark Examining Attorney Cory Boone appeared at the oral hearing on behalf of the Patent and Trademark Office.

Branded LLC (“Applicant”) seeks registration on the Supplemental Register of the claimed mark TWEEDS in standard characters for “shirts; sweaters,” in International Class 25.<sup>2</sup> The Trademark Examining Attorney has refused registration of Applicant’s proposed mark under Section 23(c) of the Trademark Act, 15 U.S.C. § 1091(c), on the ground that it is a generic name for the identified goods, is incapable of distinguishing them, and is therefore ineligible for registration on the Supplemental Register. When the refusal was made final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney have filed briefs, and counsel for Applicant and the Examining Attorney appeared at an oral hearing before the panel on January 18, 2018. We affirm the refusal to register.

## **I. Record on Appeal**

The record on appeal consists of:

1. Dictionary definitions of the words “tweed” and “tweeds;”<sup>3</sup>

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<sup>2</sup> Application Serial No. 86529647 was filed on February 10, 2015 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), on the basis of Applicant’s claim of first use of the mark on June 25, 1987 and first use of the mark in commerce on July 1, 1987. Applicant originally sought registration on the Principal Register, but amended its application during prosecution to seek registration on the Supplemental Register.

<sup>3</sup> May 20, 2015 Office Action at 2-8; July 30, 2015 Office Action at 2-4; April 26, 2016 Office Action at 93-102; November 21, 2016 Office Action at 6-17. The Examining Attorney made the same definitions, as well as some other evidence, of record in more than one office action. This is unnecessary and confusing, and should be avoided.

2. Internet webpages regarding various types of tweed fabric;<sup>4</sup>
3. Webpages showing use of the words “tweed” and “tweeds” in connection with woolen clothing, including coats, jackets, pants, kilts, skirts, hats, and ties;<sup>5</sup>
4. The results of a Google search for “tweed shirts;”<sup>6</sup>
5. Webpages displaying shirts referred to as “tweed” shirts and “tweed” shirt jackets;<sup>7</sup>
6. The results of a Google search for “tweed sweaters;”<sup>8</sup> and
7. Webpages displaying sweaters referred to as “tweed” sweaters and “tweed” sweater jackets, or sweaters made of tweed fabric.<sup>9</sup>

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<sup>4</sup> November 21, 2016 Office Action at 2-5

<sup>5</sup> July 30, 2015 Office Action at 6-47.

<sup>6</sup> April 26, 2016 Office Action at 2-4.

<sup>7</sup> April 26, 2016 Office Action at 13-45; November 21, 2016 Office Action at 40-50; June 9, 2017 Denial of Request for Reconsideration at 12-32, 37-42.

<sup>8</sup> April 26, 2016 Office Action at 46-48; November 21, 2016 Office Action at 24-25.

<sup>9</sup> April 26, 2016 Office Action at 58-92; November 21, 2016 Office Action at 18-23, 26-39; June 9, 2017 Denial of Request for Reconsideration at 2-11, 33-36, 43-55.

## II. Genericness Refusal

Before discussing whether the claimed mark is generic, we must address Applicant's suggestion that its ownership of a prior registration of TWEEDS for shirts and sweaters is relevant. Applicant argues:

This mark was previously registered, and owned by applicant, in association with the exact same goods in US Registration Number 1697698. The mark was not previously determined to be generic. The law and rules in this area of what is a generic trademark and what is not have not changed since the mark previously registered. The marketplace in this area has not changed since the mark previously registered. In refusing registration of this application based on genericness, the Examining Attorney is running counter to the previous correct findings of the USPTO. The Examining Attorney has not shown or proved any changes to the marketplace or commerce which would convert "TWEEDS" from a mark that was placed and registered on the principal register to a mark that is generic.

8 TTABVue 5.<sup>10</sup>

Applicant's position is meritless. "The PTO is required to examine all trademark applications for compliance with each and every eligibility

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<sup>10</sup> The referenced registration is not in the record, and we do not know why it is no longer subsisting, or when it was cancelled or expired.



requirement, including non-genericness, even if the PTO earlier mistakenly registered a similar or identical mark suffering the same defect.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (existence of subsisting incontestable standard character registration of CHURRASCOS for restaurant services on the Principal Register did not preclude finding that stylized CHURRASCOS mark was generic for the same restaurant services). “Thus, whether or not the term [‘tweeds’] was generic when it was registered, [the Board] must evaluate the evidence in the present record to determine whether there is sufficient evidence to establish that it is ineligible.” *Id.*

Turning to the substantive question on this appeal, “[i]n order to qualify for registration on the Supplemental Register, a proposed mark ‘must be capable of distinguishing the applicant’s goods or services.’” *In re Empire Tech. Dev. LLC*, 123 USPQ2d 1544, 1547 (TTAB 2017) (quoting *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017) (quoting 15 U.S.C. § 1091(c))). “Generic terms do not so qualify.” *Id.* (quoting *Emergency Alert Sols.*, 122 USPQ2d at 1089).

“A generic term ‘is the common descriptive name of a class of goods or services.’” *Id.* (quoting *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (internal quotation omitted)). “The test for determining whether a proposed mark is generic is its primary significance to the relevant public.” *Id.* “Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term

sought to be registered understood by the relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). The Examining Attorney must establish that TWEEDS is generic by clear evidence of generic use. *Empire Tech.*, 123 USPQ2d at 1547 (citing *In re Hotels.com, L.P.*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009)).

### A. The Genus of Goods

“The genus of goods is often defined by the identification in the subject application. . . .” *Id.* (citing *In re Meridian Rack & Pinion*, 114 USPQ2d 1462, 1463 (TTAB 2015)). Applicant argues that the “genus here is shirts and sweaters,” 8 TTABVUE 4, while the Examining Attorney argues that “the application identifies the goods as ‘shirts, sweaters’, namely, clothing, which adequately defines the genus at issue.” 11 TTABVUE 4-5<sup>11</sup>. We find that the identification adequately identifies two genres of goods: “shirts” and “sweaters.” Applicant’s claimed mark may be refused registration for both goods in Class 25 if it is the generic name for either one. *In re*

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<sup>11</sup> It is unclear whether the Examining Attorney contends that “clothing,” which subsumes “shirts” and “sweaters,” is the genus, rather than the individual items of clothing identified in the application. As discussed below, the Examining Attorney discusses Internet evidence that he claims shows “the widespread generic quality of the words ‘tweed’ and ‘tweeds’ when used by retail clothing stores to describe **clothing, namely, shirts and sweaters**, of tweed cloth,” 11 TTABVUE 5 (emphasis added), but the identification does not read “clothing, namely, shirts and sweaters,” and he must show that Applicant’s claimed mark is generic for the identified goods.

*Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012).

## **B. The Relevant Purchasing Public's Understanding of TWEEDS for Shirts and Sweaters**

We turn now to the second *Marvin Ginn* inquiry, whether TWEEDS is understood by the relevant purchasing public to refer to shirts or sweaters.

### **1. Defining the Relevant Purchasing Public**

We agree with the Examining Attorney that “the relevant public is the purchasing or consuming public for the identified goods,” which here is “ordinary consumers who purchase Applicant’s goods, because there are no restrictions or limitations to the channels of trade or classes of customers in Applicant’s identification.” 11 TTABVUE 5.

### **2. The Evidence Regarding the Public's Understanding of TWEEDS**

“Evidence of the public’s understanding of a proposed mark may be obtained ‘from any competent source, such as consumer surveys, dictionaries, newspapers and other publications.’” *Empire Tech.*, 123 USPQ2d at 1548-49 (quoting *Princeton Vanguard*, 114 USPQ2d at 1830 (internal quotation omitted)). Testimony regarding the public’s understanding may also be considered. *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

**a. Dictionary Definitions of “Tweed”  
and “Tweeds”**

The Examining Attorney made of record dictionary definitions of “tweed” as “a rough-surfaced woolen cloth, typically of mixed flecked colors, originally produced in Scotland,” OXFORD DICTIONARIES (oxforddictionaries.com/us),<sup>12</sup> and “a rough woolen cloth that is woven with different colored threads.” MERRIAM-WEBSTER ONLINE DICTIONARY (merriam-webster.com).<sup>13</sup> The Examining Attorney also made of record dictionary definitions of “tweeds” as “clothes made of tweed,” OXFORD DICTIONARIES,<sup>14</sup> and “tweed clothing (such as a suit).” MERRIAM-WEBSTER ONLINE DICTIONARY.<sup>15</sup> Taken together, these definitions indicate that “tweeds” refers to a category of clothing made of rough, multicolored woolen cloth.

It is not sufficient, however, for the Examining Attorney to show that “tweeds” refers to tweed clothing other than shirts and sweaters, such as jackets, pants, or skirts. That is to say, the Examining Attorney’s evidence establishing the existence of a broad category of men’s and women’s tweed clothing,<sup>16</sup> tweed field coats, jackets, and

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<sup>12</sup> May 20, 2015 Office Action at 2.

<sup>13</sup> Id. at 5.

<sup>14</sup> Id. at 2.

<sup>15</sup> Id. at 5.

<sup>16</sup> July 30, 2015 Office Action at 5-7, 44-47.

headwear,<sup>17</sup> tweed ties,<sup>18</sup> and tweed trousers,<sup>19</sup> does not carry his burden of showing that “tweeds” refers to a category of shirts or sweaters. *See Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1366 (TTAB 2013). We turn to the record to determine whether the category of clothing referred to as “tweeds” includes shirts and sweaters, or whether there are other categories of shirts and sweaters referred to as “tweeds.”

**b. Internet Evidence of Use of “Tweed” and “Tweeds” in Connection with Shirts and Sweaters**

The Examining Attorney made of record multiple webpages displaying and offering for sale shirts referred to as “tweed” shirts,<sup>20</sup> and sweaters referred to as “tweed” sweaters. We reproduce examples of those webpages below.

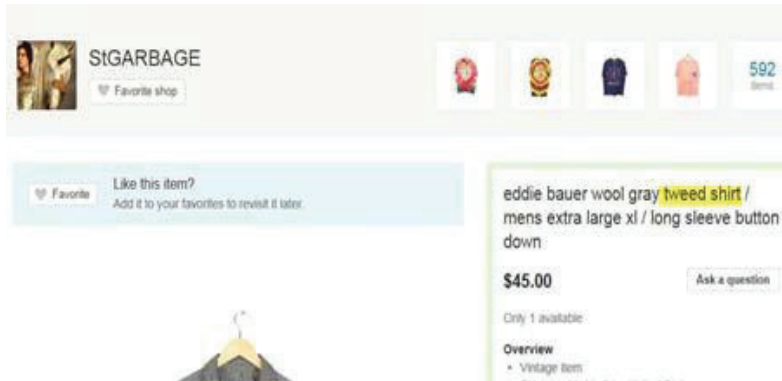
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<sup>17</sup> Id. at 28-31.

<sup>18</sup> Id. at 32.

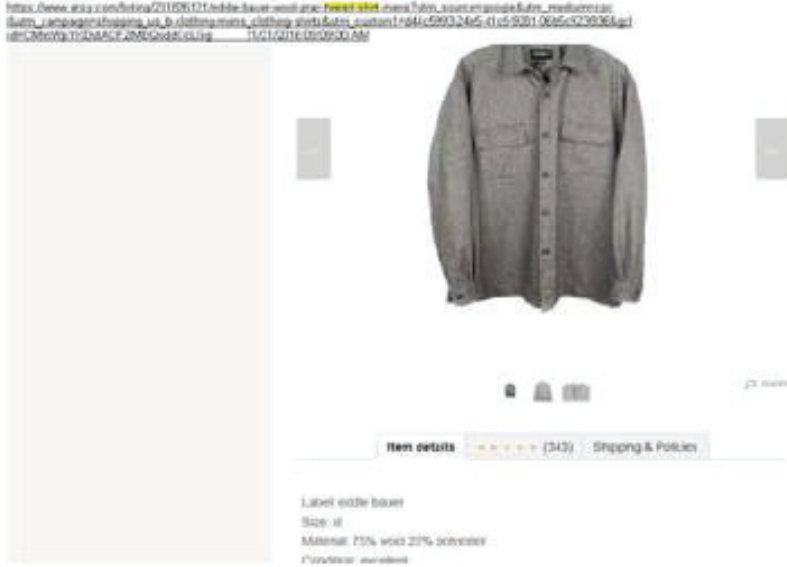
<sup>19</sup> Id. at 41-42.

<sup>20</sup> Two websites displaying tweed shirts appear to be the Australian versions of the sites (countryroad.com.au/shop, April 26, 2016 Office Action at 30-33 and trenery.com.au/shop, April 26, 2016 Office Action at 34-38), while pages from two websites displaying tweed shirts appear to be United Kingdom pages (ebay.co.uk, April 26, 2016 Office Action at 41-45, and theprojektstore.co.uk, April 26, 2016 Office Action at 50). We have given no weight to these webpages in the absence of evidence regarding their exposure to Americans.

Tweed Shirts<sup>21</sup>


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<sup>21</sup> As discussed below, most of the shirts referred to as “tweed” shirts, and a few of the sweaters referred to as “tweed” sweaters, are described as being made of materials other than wool. Uses of “tweed” to refer to categories of non-woolen shirts and sweaters that have the look, appearance, or style of tweed fabric (i.e., that appear to be rough fabric with different colored threads) are no less significant in determining whether TWEEDS is generic than are uses of “tweed” to refer to categories of shirts and sweaters actually made of tweed fabric, because both uses of TWEEDS define a genus of the goods. Indeed, Applicant does not distinguish between the evidence regarding shirts and sweaters made of tweed fabric, and the evidence regarding shirts and sweaters that have the look, appearance, or style of tweed fabric, in acknowledging that the “examples given by the examining attorney use the word ‘tweed’ to indicate the type of sweater or shirt being offered.” 8 TTABVue 4



November 21, 2016 Office Action at 40-41 (highlighting added).



select size

BUY HERE

ADD TO BAG

ADD TO WISH LIST

ZOOM VIDEO

DESCRIPTION SIZE & SPEC DELIVERY & RETURNS

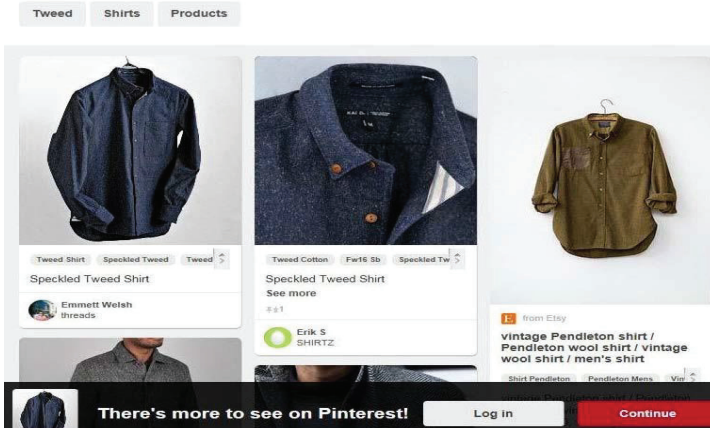
Supertory men's Ultimate lined shirt. A versatile and trick button down lined shirt that can be worn as a casual alternative to a jacket. The shirt features two chest pockets with button fastening and buttoned cuffs. The lined shirt is finished with a subtle Supertory logo tab on one chest pocket.

Model wear: Marlon  
Model height: 6'2" (188cm)

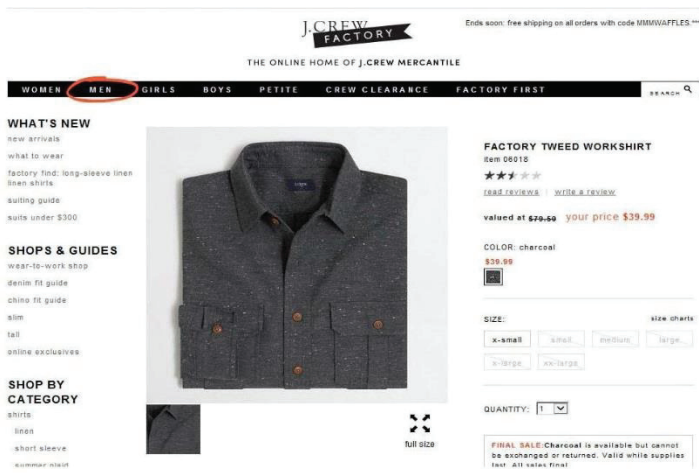
June 9, 2017 Denial of Request for Reconsideration at 29-32.



Explore Tweed Shirt, Speckled Tweed and more!

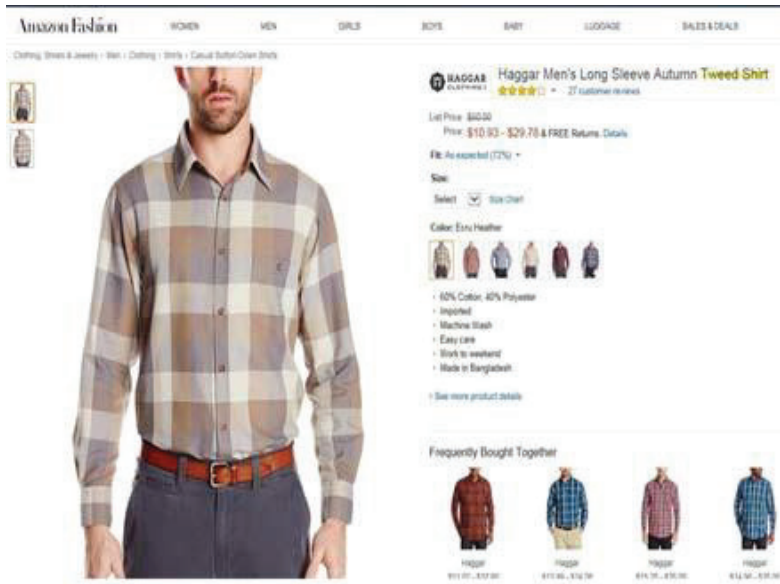


November 21, 2016 Office Action at 46.



April 26, 2016 Office Action at 13-14.<sup>22</sup>

<sup>22</sup> The webpages displaying this shirt state that it is made of cotton. April 26, 2016 Office Action at 14.



April 26, 2016 Office Action at 17-18 (highlighting added).<sup>23</sup>



<sup>23</sup> The webpages displaying this shirt state that it is made of cotton and polyester. April 26, 2016 Office Action at 17.

LAST CHANCE! SALE UP TO 50% OFF LAST MARKED PRICE  
FOR SELECT STYLES, DISCOUNT TAKEN AT CHECKOUT

## DESCRIPTION

This henley shirt is made with a twill-like texture and a built-in hood, so you can look your best in comfort from the classroom to the playground.



- Hooded henley shirt.
- Grey tweed-like material.
- Built-in hood with 2 button placket.
- Two buttoned chest pockets with Empyre emblem at left.
- Kangaroo pouch pocket.
- Faux leather Empyre patch at bottom front.
- Youth sizing.
- 60% cotton, 40% polyester.
- Imported.


April 26, 2016 Office Action at 26-27.24.<sup>24</sup>

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<sup>24</sup> The webpages displaying this shirt state that it is made of cotton and polyester, which are described as “[g]rey tweed-like material.” April 26, 2016 Office Action at 27.

BACK | CLOTHING | SHIRTS & TOPS | TRUE GRIT

True Grit Sueded Tweed Long Sleeve Two-Pocket Shirt



**TRUE GRIT**

64% OFF!






MSRP \$160.00  
**\$56.99**

Color:  
Green

Men's Size:  
Select a Size

ADD TO SHOPPING BAG

ADD TO FAVORITES

SHARE:     

Customers Who Viewed This Item

June 9, 2017 Denial of Request for Reconsideration at 12-14<sup>25</sup>



**BRISTOL TWEED LONG SLEEVE**

Standard Fit

Regular Price: \$58.00  
Special Price \$31.59

FEATURES / Fabric:  
#72207

Availability: In stock

**Men's solid flannel shirt**

Color:  


Size:  
S-X  
M-X  
L-X  
XL-X  
XXL-X

Regular Price: \$58.00  
Special Price \$31.59

June 9, 2017 Denial of Request for Reconsideration at 24-25.<sup>26</sup>


<sup>25</sup> The webpages displaying this shirt state that the “[t]weed shirt boasts a supersoft suede-inspired finish,” but that it is made of polyester. June 9, 2017 Denial of Request for Reconsideration at 13-14.

<sup>26</sup> The webpages displaying this shirt state that the “Bristol Tweed Long Sleeve is a soft, trusty cotton flannel in a subtle and classic TWEEDY weave.” June 9, 2017 Denial of Request for Reconsideration at 25.

## Tweed Sweaters

WOMENS MENS CLANS KIDS SCARVES KNITTING HOUSE & HOME END OF SEASON SALE BLOG

Home > Mens > Donegal Tweed Half Zip Sweater



### DONEGAL TWEED HALF ZIP SWEATER

\$99.95

\* COLOR:

\* SIZE:

Small  Medium  Large  X Large

XX Large


**ADD TO CART**



Donegal Tweed Half Zip Sweater - ~~\$139.95~~

A Donegal tweed Half Zip Sweater can be worn as a top

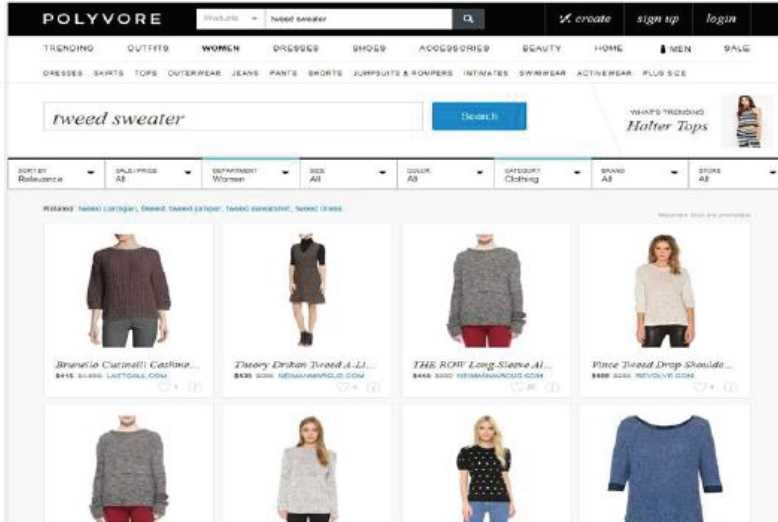
or middle layer. This tough and rugged masculine sweater offers unequalled protection against whatever nature has to throw at you. Donegal yarn contains solid flecks of contrasting colours which is unique and makes them stand out from all other garments.

- Made in Ireland of 100% Donegal Tweed New Wool
- Features a stylish half zip design
- Donegal Wool is still made using the traditional homespun style
- Only 100% natural fibre is used in its manufacture.
- With our signed & stamped Certificate of Authenticity attached you know you are getting authentic Irish knitwear.




Shopit    

April 26, 2016 Office Action at 58-60.



April 26, 2016 Office Action at 61-66.



April 26, 2016 Office Action at 73-74.

main street ballyboeey  
co donegal ireland  
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Murphy of Ireland, The Donegal Tweed Heritage Retailer



Ladies Irish Grandfather Shirts,  
Nightshirts and Sweaters  
luxury and style

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Asian Sweaters Tweed & Aran Caps Tweed Jackets Overcoats & Vests Nightshirts

April 26, 2016 Office Action at 75-78.

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Men's Irish Donegal Tweed Sweater

Item # 1173494

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Quantity

Size Chart

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April 26, 2016 Office Action at 82-83.

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2-DAY \$25 - OVERNIGHT \$50

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- OUTERWEAR
- SPORT COATS
- SUITS
- O'CONNELL'S TROUSERS
- WINTER WEAR
- SWEATERS
  - Shetland Sweaters - Plain
  - Donegal Tweed Sweaters
  - Geelong Sweaters
  - Scottish Lambswool Sweaters
  - Scottish Cashmere Sweaters
  - Shetland Sweaters - Cable
  - Irish Fisherman Knit Aran Sweaters
  - Sweater Vests & Sleeveless Cardigans
  - Scottish Cotton Cashmere Sweaters
  - Scottish Fair Isle Sweaters
  - Merino 1/4 Zips
  - Nordic & Icelandic Yoke Sweaters
  - Cotton Sweaters
  - Pima Cotton Half Zips

DONEGAL TWEED SWEATERS

Sort by: Most Popular



O'Connell's Merino Wool Donegal Crewneck Sweater - Seaweed  
\$185.00



O'Connell's Merino Wool Donegal Crewneck Sweater - Blue-Grey  
\$185.00



O'Connell's Merino Wool Donegal Crewneck Sweater - Cambridge Grey  
\$185.00



O'Connell's Merino Wool Donegal Crewneck Sweater - Navy  
\$185.00



O'Connell's Chunky Merino Wool Donegal Tweed Sweater - Glacier  
\$225.00



O'Connell's Chunky Merino Wool Donegal Tweed Sweater - Claret  
\$225.00



O'Connell's Chunky Merino Wool Donegal Tweed Sweater - Glade  
\$225.00



O'Connell's Chunky Merino Wool Donegal Tweed Sweater - Mink  
\$225.00



O'Connell's Chunky Merino Wool Donegal Tweed Sweater - Deep Blue  
\$225.00



November 21, 2016 Office Action at 33-34.



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SEARCH HISTORY OF RAINIE  
SHOPPING BAG



SEE WHAT'S NEW

MISSES

PETITE

WOMEN'S

TALL

SHOES & ACCESSORIES

SALE

HOME > MISSES > TWEED MOCK-NECK SWEATER



★★★★★ read all 112 reviews or write a review

CLUS ALB TWEED MOCK-NECK SWEATER

MISSES

COLOR:

~~\$89~~ \$29.99



XS

PERFECT \$2-\$4 S

QTY



ADD TO BAG

DETAILS STYLE NO. Z3R1HW

Our relaxed pullover sweater is knit with color-flecked yarns for the look of tweed. Ribbed funnel neck, hemline and cuffs. Knit-in front pockets. Long raglan sleeves. Side vents. Slightly longer in back.

- Low hip length: M 27 1/2", P 26", W 26"
- Long sleeves
- 55% cotton, 25% wool and 20% polyester yarn
- Hand wash or dry clean, reshape and dry flat
- Imported

SIZE GUIDE

- MISSES
- PETITE
- WOMEN'S
- TALL

view points of measure

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June 9, 2017 Denial of Request for Reconsideration at 2-3.27<sup>27</sup>



[Earn InCircle Triple Points + Double Points on beauty. Details](#)

### Theory

#### Vendla Tweed Fringe-Hem Sweater

Original: \$365.00 NOW: \$127.00

Free Shipping + Free Returns

Online Inquiries: NMF17\_TD78G | Store Inquiries: #1927359

- Theory "Vendla" sweater in tweed with fringe hem.
- Crew neckline.
- Bracelet sleeves.
- Slim silhouette.
- Pullover style.
- Cotton/rayon/polyester.
- Imported of Italian material

[Modern Size Guide](#)

#### Select Color



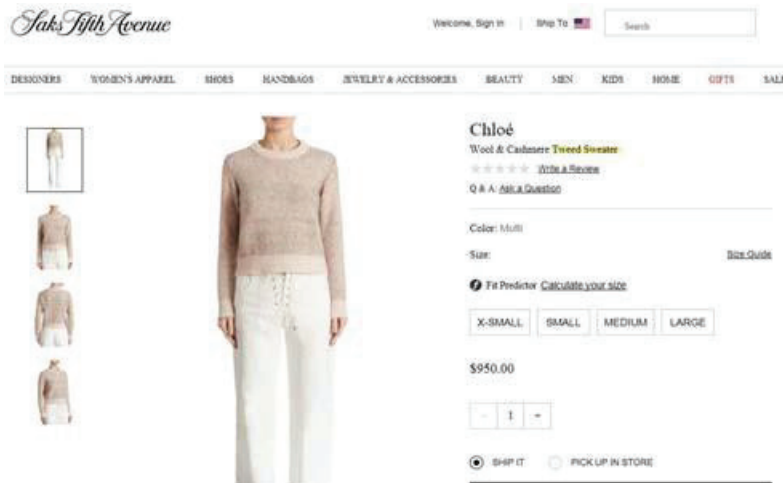
ADD TO SHOPPING BAG

FIND IN STORE

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<sup>27</sup> 27 The webpages displaying this sweater state that it is made of 55% cotton, 25% wool, and 20% polyester yarn and “is knit with color-flecked yarns for the look of tweed.” June 9, 2017 Denial of Request for Reconsideration at 3.

June 9, 2017 Denial of Request for Reconsideration at 34.<sup>28</sup>



June 9, 2017 Denial of Request for Reconsideration at 50-51 (highlighting added).<sup>29</sup>

Applicant does not challenge the quantity or quality of the Examining Attorney’s evidence, or offer any countervailing evidence. To the contrary, Applicant readily agrees that “it is possible to find shirts and sweaters that are made of tweed,”<sup>30</sup> and that the **“examples given by the examining**

<sup>28</sup> The webpages displaying this sweater state that it is made of cotton, rayon, and polyester, but is “in tweed with fringe hem.” June 9, 2017 Denial of Request for Reconsideration at 34.

<sup>29</sup> The webpages displaying this sweater describe it as a “Tweed sweater in tinted wool and cashmere.” June 9, 2017 Denial of Request for Reconsideration at 51.

<sup>30</sup> Applicant’s counsel acknowledged at the oral hearing that a number of Applicant’s shirts and sweaters were made of tweed fabric.

**attorney use the word ‘tweed’ to indicate the type of sweater or shirt being offered.”** 8 TTABVUE 4 (emphasis added). Applicant nevertheless claims that “tweeds” is not the generic name even for “shirts and sweaters that are made of tweed” because “[t]weed is a fabric, not a shirt or sweater,” and “tweeds” is thus “merely descriptive of a type of sweater or shirt.” 8 TTABVUE 4.<sup>31</sup> These arguments misapprehend the law of genericness.

The use of “tweed” to “indicate the type of sweater or shirt being offered,” 8 TTABVUE 4, is use of the word in its adjectival form, rather than in its noun form to identify a fabric, but generic adjectives are just as unprotectable as generic nouns. In *Sheetz of Del., supra*, the Board found that the adjective “footlong” was generic for “sandwiches, excluding hot dogs” because the record showed that “Footlong, as used by applicant, identifies a type or category of sandwich and that the relevant public understands the term ‘Footlong’ to refer to that class of products that includes 12-inch sandwiches.” 108 USPQ2d at 1366. The Board “readily acknowledge[d] that

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<sup>31</sup> Applicant also argues, without any evidentiary support, that the “goods have been offered in commerce with this mark since 1987” and that the “mark has become distinctive with these goods and is recognized by consumers as an indicator of source for the goods,” 8 TTABVUE 5, but a “generic mark, being the ‘ultimate in descriptiveness,’ cannot acquire distinctiveness.” In re La. Fish Fry Prods., Ltd. 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (quoting Marvin Ginn, 228 USPQ at 530). Because we find that TWEEDS is a generic name for Applicant’s goods, no amount of evidence of acquired distinctiveness could establish that it is registrable. See, e.g., Northland Aluminum, 227 USPQ at 964.

‘Footlong’ is not the name of a food product; rather it is an adjective referring to the length of the sandwich. This adjectival use, however, does not remove ‘Footlong’ from being generic when used in connection with sandwiches” because “the term does not merely describe a sandwich, but in fact identifies a category of sandwiches included within the relevant genus.” *Id.* The Board noted that “[a]lthough it has sometimes been said that ‘generic names are nouns and descriptive uses are adjectives,’ such a rule is not consistent with the Board’s precedent or that of many courts; genericness cannot be determined simply by applying prescriptivist rules based on parts of speech.” *Id.* (citing MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:10 (4th ed. rev. March 2013)); *see also In re Cent. Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998).

Applicant’s acknowledgment that the “examples given by the examining attorney use the word ‘tweed’ to indicate the type of sweater or shirt being offered,” 8 TTABVUE 4, is a concession that the proposed mark TWEEDS “does not merely describe a [sweater or shirt], but in fact identifies a category of [sweater or shirt] included within the relevant genus.” *Sheetz of Del.*, 108 USPQ2d at 1366; *see also Cordua Rests.*, 118 USPQ2d at 1637 (“a term can be generic for a genus of goods or services if the relevant public . . . understands the term to refer to a key aspect of that genus . . .”). The pluralization of the word “tweed” as TWEEDS in the claimed mark does not alter its meaning as referring to categories of shirts and sweaters. *Id.*

On the basis of the record as a whole, we find that the Examining Attorney has established, by clear

evidence of generic use, that Applicant's claimed mark TWEEDS is understood by the relevant purchasing public to refer to categories of shirts and sweaters that are made of tweed fabric, or that have the appearance, look, or style of tweed fabric. The proposed mark is thus incapable of distinguishing Applicant's goods, making it ineligible for registration on the Supplemental Register.

**Decision:** The refusal to register Applicant's mark on the Supplemental Register is affirmed.

**ENTERED: June 18, 2019**

Trademark Status & Document Retrieval

**BULK DATA:** The TSDR Application Programming Interface (API) will be unavailable starting May 7 at 12 a.m. ET for at least two weeks. Bulk data customers who rely on the TSDR API can use **alternative methods** to receive bulk data from TSDR. If you are a bulk data customer who has questions or needs additional information, please **email us**.

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**Generated on:** This page was generated by TSDR  
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**Mark:** TWEEDS No Image exists for this case.

**US Serial Number:** 73685672

**Application Filing Date:** Sep. 22, 1987

**US Registration Number:** 1697698

**Registration Date:** Jun. 30, 1992

**Register:** Principal

**Mark Type:** Trademark, Service Mark

**TM5 Common Status**

**Descriptor:**



DEAD/REGISTRATION/Cancelled/Invalidated

The trademark application was registered, but subsequently invalidated and removed from the registry.

**Status:** Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all on the Trademark Document Retrieval link at the top of this page.

**Status Date:** Dec. 16, 2014

**Publication Date:** Apr. 07, 1992

**Date Cancelled:** Dec. 16, 2014

**Mark Information**



**Mark Literal Elements:** TWEEDS

**Standard Character Claim:** No

**Mark Drawing Type:**

1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

**Acquired Distinctiveness** In whole

**Claim:**

**Goods and Services**

**Note:**

- The following symbols indicate that the registrant/owner has amended the goods/services:
- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** MAIL ORDER SALES OF [ MEN'S AND ]  
WOMEN'S SPORTSWEAR

**International Class(es):** 042 - Primary Class

**U.S. Class(es):** 100, 101

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 1(a)

**First Use:** Jun. 25, 1987

**Use in Commerce:** Jul. 01, 1987

**For:** SHIRTS AND SWEATERS

**International Class(es):** 025 - Primary Class

**U.S. Class(es):** 039

**Class Status:** SECTION 8 - CANCELLED

**Basis:** 1(a)

**First Use:** Jun. 25, 1987

**Use in Commerce:** Jul. 01, 1987

**Basis Information (Case Level)**

**Current Owner(s) Information**

**Attorney/Correspondence Information**

**Prosecution History**

<b>Date</b>	<b>Description</b>	<b>Proceeding Number</b>
Jan. 24, 2018	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Dec. 16, 2014	CANCELLED SEC. 8 (10-YR)	67657
Oct. 15, 2007	CASE FILE IN TICRS	
May 10, 2006	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Sep. 27, 2002	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	

Sep. 27, 2002	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED
Jul. 05, 2002	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED
Jul. 05, 2002	PAPER RECEIVED
Jun. 07, 2002	TEAS CHANGE OF CORRESPONDENCE RECEIVED
Apr. 02, 1998	POST REGISTRATION ACTION CORRECTION
Sep. 22, 1997	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.
Sep. 08, 1997	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED
Jun. 30, 1992	REGISTERED-PRINCIPAL REGISTER
Apr. 07, 1992	PUBLISHED FOR OPPOSITION
Mar. 06, 1992	NOTICE OF PUBLICATION
Apr. 22, 1991	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER
Sept. 10, 1990	CONTINUATION OF FINAL REFUSAL MAILED
Jul. 30, 1990	CORRESPONDENCE RECEIVED IN LAW OFFICE
Jan. 22, 1990	CORRESPONDENCE RECEIVED IN LAW OFFICE
Aug. 07, 1990	EXAMINER'S AMENDED MAILED
May 15, 1990	CORRESPONDENCE RECEIVED IN LAW OFFICE

Apr. 20, 1990	ASSIGNED TO EXAMINER	59810
Mar. 07, 1990	ASSIGNED TO EXAMINER	59500
Jan. 16, 1990	CONTINUATION OF FINAL REFUSAL MAILED	
Dec. 20, 1989	JURISDICTION RESTORED TO EXAMINING ATTORNEY	
Oct. 03, 1989	CONTINUATION OF FINAL REFUSAL MAILED	
Jul. 12, 1989	JURISDICTION RESTORED TO EXAMINING ATTORNEY	
Apr. 10, 1989	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 10, 1988	ASSIGNED TO EXAMINER	67123
Oct. 24, 1989	FINAL REFUSAL MAILED	
Aug. 11, 1988	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Feb. 12, 1988	NON-FINAL ACTION MAILED	
Dec. 28, 1987	NON-FINAL ACTION MAILED	
Dec. 16, 1987	ASSIGNED TO EXAMINER	64632

### **TM Staff and Location Information**

### **Assignment Abstract Of Title Information**

### **Proceedings**

### **Summary**

**Party Type**

**Proceedings**

**Number of Proceedings:** 2

**Type of Proceeding:** Exparte Appeal

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**Proceeding Number:** 73685672

**Filing Date:**

**Status:** Terminated

**Status Date:** Aug 03, 1993

**Interlocutory Attorney:**

**Plaintiff(s)**

**Name:** TWEEDS, INC.

**Correspondent Address:**

RANDY LIPSITZ  
BROWN RAYSMAN MILLSTEIN  
FELDER & STEINER  
120 W 45TH ST  
NEW YORK NY UNITED STATES, 10036

**Associated marks**

**Mark**

TWEEDS

**Application Status**

Cancelled - Section

**Serial Number**

**73685672****Registration Number****1697698****Prosecution History**

<b>Entry Number</b>	<b>History Text</b>	<b>Date</b>	<b>Due Date</b>
1	APPEAL TO BOARD	Apr 10, 1989	
2	AMENDMENT	Apr 10, 1989	
3	REMANDED TO EXAMINER	Jul 12, 1989	
4	APPEAL BRIEF DUE 12-11-89	Oct 11, 1989	
5	APPEAL SUSP; REMAND TO EXMR.	Dec 15, 1989	
6	APPEAL RESUMED; BRIEF DUE 03-26-90	Jan 26, 1990	
7	STIPULATED CONSENT FOR REMANDING	Dec 08, 1989	
8	APPEAL SUSP; REMANDED TO EXMR.	Mar 02, 1990	
9	APPEAL RESUMED; BRIEF DUE 11-19-90	Sep 20, 1990	

10	REQ. TO EXT. OF TIME	Oct 18, 1990
11	REQ. TO DISMISS APPEAL	Feb 13, 1991
12	APPEAL DISMISSED	Mar 03, 1991

**Type of Proceeding:  
Opposition**