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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/370042

MARK: MANWEAR



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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

TTAB INFORMATION:

<http://www.uspto.gov/web/offices/dcom/ttab/index.html>

APPLICANT: Webid Consulting Ltd.

CORRESPONDENT'S REFERENCE/DOCKET NO:

12136-19

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EXAMINING ATTORNEY'S APPEAL BRIEF

INTRODUCTION

Webid Consluting, Ltd. (hereinafter referred to as "applicant") has appealed the trademark examining attorney's refusal to register the standard character mark MANWEAR for men's clothing, men's leather clothing and men's fashion accessories. Registration was refused on the Principal Register under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), on the ground that the proposed mark merely describes the nature of the goods. The examining attorney respectfully requests that this refusal be affirmed.

FACTS

On January 11, 2008, applicant filed an intent-to-use application to register the standard character mark MANWEAR for the following goods: Men's clothing, namely, coats, jackets, vests, sweaters, t-shirts, shirts, jerseys, shorts, parkas, pullovers, wind-jackets, pants, raincoats; sportswear, namely, sweatsuits, leisure suits, jeans, sport jackets, overalls; underwear, namely, short and long sleeve tee-shirts, long johns, briefs, boxers;

Men's leather clothing, namely, coats, jackets, vests, shorts, parkas, pants, raincoats; Men's fashion accessories, namely, ties, socks, caps, gloves, belts, wristband, watch wristband, hats, shoes and scarves; Men's accessories namely, portfolios, tote bags, compartment bags; Men's small leather goods namely, wallets, key chains, travel kits and bags, luggage, travel organizers, business card cases, memo holders, money clips, sunglass cases.

In the first Office action dated April 16, 2008, the examining attorney refused registration in part under Trademark Act Section 2(e)(1) as to the following goods: Men's clothing, namely, coats, jackets, vests, sweaters, t-shirts, shirts, jerseys, shorts, parkas, pullovers, wind-jackets, pants, raincoats; sportswear, namely, sweatsuits, leisure suits, jeans, sport jackets, overalls; underwear, namely, short and long sleeve tee-shirts, long johns, briefs, boxers; Men's leather clothing, namely, coats, jackets, vests, shorts, parkas, pants, raincoats; Men's fashion accessories, namely, ties, socks, caps, gloves, belts, wristband, watch wristband, hats, shoes and scarves. In the first Office action, in support of the refusal, the examining attorney provided for the record a *Merriam-Webster OnLine Dictionary* definition of the word wear and five web pages showing use of the term MANWEAR referring to clothing. In addition, the examining attorney set forth the requirement for an amended identification and classification of goods.

On October 16, 2008, applicant responded to the first Office action. Applicant argued against the refusal to register the mark under Section 2(e)(1) of the Trademark Act and amended the identification and classification of goods to the following:

Men's clothing, namely, coats, jackets, vests, sweaters, t-shirts, shirts, jerseys, shorts, parkas, pullovers, wind-jackets, pants, raincoats; sportswear, namely, sweatsuits, leisure suits, jeans, sport jackets, overalls; underwear, namely, short and long sleeve tee-shirts, long

johns, briefs, boxers; Men's leather clothing, namely, coats, jackets, vests, shorts, parkas, pants, raincoats; Men's fashion accessories, namely, ties, socks, caps, gloves, belts, wristband, watch wristband, hats, shoes and scarves, International Class 25; and

Men's accessories, namely, money clips, folders used as travel organizers and memo holders, International Class 16; and

Men's accessories namely, briefcase-type portfolios, tote bags, compartment bags, namely all purpose carrying bags with multiple compartments; Men's small leather goods namely, wallets, key chains, travel kits in the nature of shaving bags, travel bags, luggage, business card cases, International Class 18.

While the amendment to the identification was acceptable, applicant failed to provide the appropriate fees for the addition of two classes to the application.

In the second Office action, sent on November 6, 2008, the examining attorney made final the refusal to register the mark under Section 2(e)(1) of the Trademark Act partial with respect to the goods in International Class 25 and the fee requirement related to the addition of two classes. In support of the refusal, the examining attorney provided for the record *Merriam-Webster OnLine Dictionary* definitions of the words man and wear, listings from the *Manual of Acceptable Identifications of Goods and Services* containing the term wear, nine additional new web pages showing the use of the term MANWEAR referring to clothing and excerpted articles showing use of the wording menswear as a genre of men's clothing.

On May 6, 2009, applicant filed a notice of appeal with the Trademark Trial and Appeal Board. Applicant also motioned to suspend the appeal pending the request for reconsideration of the final refusal. The motion was granted. Moreover, applicant filed a request to divide the application which was processed creating parent Application Serial No. 77977259 for International Classes 16 and 18 and the child Application Serial No.

77370042 for International Class 25. Applicant paid the fees for the additional two classes. However, this appeal involves Application Serial No. 77370042 only.

On June 2, 2009, the examining attorney denied applicant's request for reconsideration and adhered to the final action with respect to the refusal to register the mark under Section 2(e)(1) of the Trademark Act with for the goods in International Class 25. In that Office action, the examining attorney added *Dictionary.com* dictionary definitions of the words man and wear to the record. On September 14, 2009, applicant filed an appeal brief.

Overall, the examining attorney has considered applicant's arguments and has found them unpersuasive.

ISSUE

Whether applicant's mark MANWEAR is descriptive under Section 2(e)(1) of the Trademark Act as applied to applicant's goods.

ARGUMENTS

APPLICANT'S STANDARD CHARACTER MARK MANWEAR IS DESCRIPTIVE IN RELATION TO APPLICANT'S IDENTIFIED GOODS.

A. Relevant Law Generally

The examining attorney has refused registration because applicant's mark merely describes a feature, characteristic or purpose of applicant's goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

The determination of whether a mark is merely descriptive is considered in relation to the identified goods, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be

understood to refer to the “documents” managed by applicant’s software, not “doctor” as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of “computer programs recorded on disk” where relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

A “compound mark,” which consists of two or more words combined to create a single word, is merely descriptive if (1) the individual words are descriptive and retain their descriptive meaning within the compound mark, and (2) the compound mark has no unique or incongruous meaning as applied to the goods. *See In re Cox Enters.*, 82 USPQ2d 1040, 1043 (TTAB 2007) (holding THEATL the equivalent of THE ATL, a common nickname for the city of Atlanta, merely descriptive of publications featuring news and information about Atlanta); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002) (holding SMARTTOWER merely descriptive of highly automated cooling towers); *In re Entenmann’s, Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990) (holding OATNUT merely descriptive of bread containing oats and hazelnuts), *aff’d per curiam*, 928 F.2d 411 (Fed. Cir. 1991); TMEP §1209.03(d).

Applicant’s mark is MANWEAR in standard character form for the following goods: Men’s clothing, namely, coats, jackets, vests, sweaters, t-shirts, shirts, jerseys, shorts, parkas, pullovers, wind-jackets, pants, raincoats; sportswear, namely, sweatsuits, leisure suits, jeans, sport jackets, overalls; underwear, namely, short and long sleeve tee-shirts, long johns, briefs, boxers; Men’s leather clothing, namely, coats, jackets, vests,

shorts, parkas, pants, raincoats; Men's fashion accessories, namely, ties, socks, caps, gloves, belts, wristband, hats, shoes and scarves. In the present case, when viewed in relation to applicant's goods, the matter sought to be registered describes a feature, characteristic or purpose of applicant's goods, namely, wear or clothing for a male.

B. Applicant's Mark Manwear is Descriptive in Relation to the Goods

In relation to the goods, applicant's mark MANWEAR describes the exact nature of the goods, namely, wear or clothing for a man. According to the *Merriam-Webster OnLine Dictionary* and *Dictionary.com*, both of which are of record, the term wear is defined as clothing. In relation to the goods, the term wear indicates a feature, characteristic of purpose of applicant's goods as clothing. According to the *Merriam-Webster OnLine Dictionary* and *Dictioanry.com*, the term man is defined as an adult male human or person and the plural of man is men. Therefore, in relation to the goods, the term man indicates a feature, characteristic or purpose of applicant's clothing for an adult male.

A "compound mark," which consists of two or more words combined to create a single word, is merely descriptive if (1) the individual words are descriptive and retain their descriptive meaning within the compound mark, and (2) the compound mark has no unique or incongruous meaning as applied to the goods. *See In re Cox Enters.*, 82 USPQ2d 1040, 1043 (TTAB 2007) (holding THEATL the equivalent of THE ATL, a common nickname for the city of Atlanta, merely descriptive of publications featuring news and information about Atlanta); *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002) (holding SMARTTOWER merely descriptive of highly automated cooling towers); *In re Entenmann's, Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990) (holding

OATNUT merely descriptive of bread containing oats and hazelnuts), *aff'd per curiam*, 928 F.2d 411 (Fed. Cir. 1991); TMEP §1209.03(d).

Although the *Merriam-Webster OnLine Dictionary* and *Dictionry.com* provide various definitions of the words man and wear, descriptiveness is considered in relation to the relevant goods. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979); TMEP §1209.03(e). Moreover, the fact that applicant's compound word mark is not found in the dictionary is not controlling on the question of registrability as the plain meaning of applicant's compound mark indicates a characteristic, feature or purpose of applicant's goods as clothing for a male. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977); TMEP §1209.03(b).

Thus, as the plain meaning of applicant's compound mark reveals, applicant's mark is a compound word mark in which the individual words are descriptive and retain their descriptive meaning within the compound mark. In fact, the wording in the mark in relation to the goods identifies the characteristic, feature or purpose of the goods, namely, clothing for a male. Thus, in the present case, the mark merely describes a characteristic, feature or purpose of applicant's goods. In addition, the compound mark has no unique or incongruous meaning as applied to the goods which is supported by the record.

As additional evidence that consumers would perceive the nature of applicant's mark as describing a type of clothing, the examining attorney provided excerpted articles

from the examining attorney's search in a computerized database for the term menswear. The articles in connection with the dictionary definition of record for the term man evidence that while menswear is the name for clothing for men which consumers are accustomed, applicant's mark MANWEAR would not rise to the level of a suggestive mark merely because the term man is the singular of men. The fact that applicant has used the singular form to indicate the male person in the mark would not leave consumers unclear as to the nature of the goods because the goods are for the male person. Therefore, the fact that applicant has used the singular form man in the mark does not obviate the descriptive nature of the mark in relation to the goods or make applicant's mark incongruous.

Moreover, the examining attorney has made of record the listings from the *Manual of Acceptable Identifications of Goods and Services* containing the term wear. While manwear is not an entry in the manual, the manual does show use of the term wear in connection with other terms which further indicate the specific nature of the clothing, namely, beachwear, footwear, headwear, infantwear, loungewear, neckwear, nightwear, rainwear, skiwear, sleepwear, swimwear and underwear. The examining attorney expressly notes that these entries are of record and can be found in the attachments of the Office Action dated November 6, 2008. In light of the various wears for clothing, consumers would easily understand by the plain meaning of MANWEAR in relation to men's clothing that the wording in the mark indicates a characteristic, feature or purpose of the goods as clothing for a man. Thus, the significance of the mark to the purchasers of applicant's goods would be clear given the plain meaning of the words in the mark

and the custom in the clothing industry of using the term wear in connection with another descriptive term to indicate the genre of clothing.

As additional evidence of the possible significance the mark would have to consumers, and as further evidence of the descriptive nature of the mark, the examining attorney attached a total of 14 different web pages showing use of the mark in connection with clothing. In particular, although not numerous, the web pages are probative that consumers encountering the term MANWEAR would understand that it refers to clothing for a male. In particular, the examining attorney notes the following web pages made of record:

1. http://209.85.165.104/search?q+cache:LFmfTxlckLAJ:cindy_garment.ecvv.com/+%22manwear%22&hl=en&ct=clnk&cd=5&gl=us the web page of Shanghai E-Buz International Trading Co. Ltd. a textile garment exporter based in Shanghai. The “Products/Services” they offer include “Manwear, Ladies fashion, Baby clothing, Accessory, [and] Gifts” with a worldwide main market.

2. http://209.85.165.104/search?q=cache:cNsc2dcv3w0J:ttnet.net.show_html.jsp/profile/S/infohtm/Y/oday//cono/1011659/carton//typw1/A=%22manwear%22&hl=en&ct=clnk&cd=9&gl=us the web page of Hope Textile Co., Ltd. of mainland China with main products for export, manufacture and wholesale including pants, jackets, slee[p]ingcloth, bodywear, manwear, womenwear, jeans, finished goods of leisure suits, sports wear, kids wear, pet wear and related products.

3. <http://209.85.165.104/search?q=cache:4QE96yuGGX8J:www.pszpresenza.com/ingabolutus.htm+%22manwear%22&hl=en&ct=clnk&cd=15&gl=us> the web page of PRESENZA a company which endeavors include manufacturing, wholesale and retail sales of manwear in Laleli [TURKEY] and Osmanbey [TURKEY] and in 2007 Europe with the brands Presenza for manwear.

4. http://209.85.165.104/search?q=cache:jyth5SDkEJ:womenbusiness.tiawantrade.com.t/w/Company_List.aspx%3FPrefix%3DF%26ct100%24ContentPlaceHolder1%24Repeate

[r1%3D4,1,0+%22manwear%22&hl=en&ct=clnk&cd=21&gl=us](http://64.233.169.104/search?q=cache:1r1%3D4,1,0+%22manwear%22&hl=en&ct=clnk&cd=21&gl=us) a web page of the Taiwan Women's Business Network indicating the company Friends-Text International Co., Ltd. has products including woven, sportswear, manwear womenwear, etc.

5. http://64.233.169.104/search?q=cache:j-A8zZCuznwJ:www.madeinvicenza.ta/a_86_EN_403_1.html+%22manwear%22&hl=en&ct=clnk&ce=28&gl=us the web page of Made in Vicenza of Italy which is in the production of tailored fine quality manwear: suits, jackets, coats, night suits and trousers.

6. <http://64.233.169.104/search?q=cache:hBe5XdvoeLUJ:www.seride.com/english/azienda.htm+%22manwear%22&hl=en&ct=clnk&cd=9&gl=us> the web page of seride producers since 1975 an Italian producer of linen prints for womenwear, manwear and childwear, underwear and furnishings.

7. <http://64.233.169.104/search?q=cache:8DYkKcM7AVkJ:www.go4worldbusiness.com/search/memberdetails.asp%3Fobjid%3D615048+%22manwear%22&hl=en&ct=clnk&cd=15&gl=us> the web page of go4WorldBusiness.com for the company Oceanus Industrial Limited of China which deals in the export of kidswear, manwear, ladywear, jeans, denim jackets, etc.

8. <http://64.233.169.104/search?q=cache:K0OvjDN1CewJ:www.importers.com/clothing-fashion/sleepwear-pajamas/Exporter/Alex-Hollywood-tailoring/ID.298454.TP.444606/oem-different-brands.html+%22manwear%22&hl=en&ct=clnk&cd=24&gl=us> the web page for importers.com featuring the company Oem Different Brands that deals with "women clothing, textile, underware, night gowns, pyjamas etc. also manwear possible depending on size of the orders".

9. http://64.233.169.104/search?q=cache:pHcCsr_F8zIJ:www.made-in-china.com/products-search/hot-china-products/Interlining.html+%22manwear%22&hl=en&ct=clnk&cd=54&gl=us a web page for Made-in-China.com featuring the company Shanghai Tianqiang Textile Co., Ltd. which specializes in producing all kinds of woven and knitted interlining which is used in manwear.

10. <http://64.233.169.104/search?q=cache:SbrIJof2U4IJ:www.merterfashion.com/index.html+%22manwear%22&hl=en&ct=clnk&cd=55&gl=us> the web page for MERTER READY-to-WEAR & TEXTILE EXPORTERS the right place for ready-to-wear knitwear, fabric and textile business featuring jeans, babywear, kidswear, womanwear, manwear, underwear, and socks.

11. <http://74.125.45.104/search?q=cache:IKPdWiK9auoJ:www.jlcateringsupplies.com/revamp/a3shop/man1a.htm+%22manwear%22&hl=en&ct=clnk&cd=51&gl=us> from the A3 SHOP web page for a shop online catalogue of manwear, namely, men's coat and men's food industry coat.

12. <http://74.125.45.104/search?q=cache:43iRNVUU-XcJ:www.momcentral.com/blogs/where-have-all-the-mommies-gone-long-time-passing.html+%22manwear%22&hl=en&ct=clnk&cd=58&gl=us> from the Mom Central web page article *Where Have All the Mommies Gone?...Long Time Passing* which describes “Joe Simpson, a former preacher, who now walks the red carpets behind his daughter, wearing slick, metrosexual manwear....”

13. http://74.125.45.104/search?q=cache:tpOdl0d_VcJ:www.trustexporter.com/tecom-7-20/Clothing-Accessories+%22manwear%22&hl=en&ct=clnk&cd=86&gl=us from the web page TrustExporter.com listing Oceanus Industrial Limited whose key products include kidswear, manwear, etc.

14. <http://74.125.45.104/search?q=cache:AaB3nvEVXH4J:gabsmash.blogspot.com/2005/10/tim-faith.html+%22manwear%22+faith+tim&hl=en&ct=clnk&cd=1&gl=us> from the Gabmash web page regarding Tim McGraw and wife Faith Hill in which the following entry was made: “His jeans look like metrosexual manwear not country singer gear.”

Although many of the web pages are from sources outside of the United States, access to the web pages are accessible by American consumers and appear in English. Moreover, the foreign companies represented by these web pages export, retail, wholesale or manufacture manwear arguably to the United States as their contact information is often provided and clothing is manufactured and imported to the United States from all over the world. While not dispositive on the issue of descriptiveness, the web pages are probative that consumers encountering the term would understand the term to refer to clothing for a male which is the essential point of this evidence. Therefore, the examining attorney has provided the web pages to support the fact that consumers would understand the plain meaning of the wording in the mark as indicating a characteristic, feature or purpose of applicant’s goods, namely, clothing for a male.

C. Applicant’s Arguments that the Mark is not Descriptive are Unpersuasive

Applicant argues that the applicant's mark MANWEAR is not merely descriptive for applicant's goods. The examining attorney notes that applicant does not dispute the meaning of the terms man and wear, but argues that the definitions do not lead to the conclusion that the combination of the two words results in a descriptive term. In particular, applicant contends that applicant has created an obvious incongruity in the mind of the prospective purchaser because applicant's mark is MANWEAR not the recognized term menswear. Thus, applicant contends that the result is exactly the type of "mental pause" the Trademark Trial and Appeal Board recognized as creating distinctiveness in the case of the mark SNO-RAKE for a snow removal tool in *In re Shutts*, 217 USPQ 363 (TTAB 1983).

The examining attorney finds applicant's arguments and analogy to *In Re Shutts* to be unpersuasive. In particular, the evidence of record supports the fact that there is no incongruity in the term MANWEAR. Although consumers are accustomed to seeing the term menswear, the fact that wear means clothing and man would indicate for whom the clothing is intended does not create an incongruity. Although not used often in American vernacular, there is nothing inappropriate or inconsistent about the combination of the terms. Furthermore, the incongruity in *In re Shutts* dealt with the fact that no one in contemporary usage would request to rake snow or refer to any tool for snow as a rake. Thus, while snow may not be raked, a man does don wear. Thus, applicant's mark lacks the incongruity or the "mental pause" characteristics articulated in *In re Shutts*.

Applicant argues that applicant's misuse of the term man in MANWEAR, as opposed to menswear, does not lead to the conclusion that the combination of the two

words man and wear result in a descriptive term. Applicant argues that the term man as used in the mark would not be viewed as the equivalent of mens when paired with the term wear because the term man has thirty definitions as set forth in the *Dictioanry.com* definition. Applicant's argument misses the crucial point that the determination of whether a mark is merely descriptive is considered in relation to the identified goods. The fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979); TMEP §1209.03(e). In the present case, despite the thirty definitions for man, applicant's goods are men's clothes and the term man describes by whom the clothes are to be worn. Moreover, the fact that the definitions of mens refers to clothing, as pointed out by applicant, does not obviate the descriptive nature of the term man in the mark in relation to the goods nor does it make applicant's mark the type of incongruous mark which was recognized in *In re Shutts*.

Applicant argues that the term MANWEAR is not a recognized name for men's clothing. However, this argument neglects the plain meaning of the wording as describing the exact nature of the goods. In addition, the fact that a descriptive word or term is not found in the dictionary is not controlling on the question of registrability. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977); TMEP §1209.03(b). Moreover, consumers have been conditioned and the *Manual of Acceptable Identifications of Goods and Services* usage of common commercial names for goods sets forth the understanding of the term wear to refer to various genres of clothing. Thus, based on the common

meaning of the terms in applicant's mark and consumers exposure to the term wear as indicating various genres of clothing, it would be logical for consumers to conclude that if surfers wear surfwear, infants wear infantwear, than a man wears manwear. Thus, with no "mental pause", applicant's arguments of incongruity are not persuasive.

Applicant argues that applicant's mark MANWEAR does not immediately tell the potential purchaser only what applicant's goods are or the function, characteristic or uses. This is particularly true, according to applicant, because of the extraordinary range of different meanings of the wording in applicant's mark. Moreover, applicant contends that the evidence or record does not support that consumers would perceive applicant's mark is the equivalent of menswear or any other genre of wear listed in the *Manual of Acceptable Identifications of Goods and Services*. The examining attorney finds these arguments unpersuasive because the arguments detract from the determination that whether a mark is merely descriptive is considered in relation to the identified goods not in the abstract. In relation to the goods men's clothing, applicant's mark MANWEAR describes the exact nature of the goods as clothing for a man. The excerpts from the *Manual of Acceptable Identifications of Goods and Services* service are provided to support the conclusion that consumers would readily understand the plain meaning of the wording in the mark based on other types of common commercial names for wear.

Because of the descriptive nature of the wording in the mark in relation to the goods, the examining attorney is not persuaded that the wording in the mark is analogous to the term "TECHNOLOGY" which was held to have a broad and general meaning in connection with the mark "HUTCHINSON TECHNOLOGY" for electrical components

in *In re Hutchinson, Technology*, 852 F.2d 552, 7 USPQ2d 1490, (Fed. Cir. 1988), and in connection with the mark “TOWER TECH” for heat transfer equipment in *In re Tower Tech.*, 64 USPQ2d 1314 (TTAB 2203). The same is true for the term “COMMERCE” which was held not to have an immediate association with banking services in connection with the mark “COMMERCE BANK” in *In re Commerce Bancorp, Inc.*, 2006 TTAB LEXIS 248 (TTAB 2006), as well as, “ADVANCED” and “SOLUTIONS” which were held to be general and vague terms in connection with the mark “ADVANCED FUEL CELL SOLUTIONS” for power generation equipment in *In re IdaTech, LLC*, 2004 TTAB LEXIS 259 (TTAB 2004), and “SOLUTIONS” held to be a general broad term in connection with the mark “ACQUISITION SOLUTIONS TRAINING INSTITUTE” for training services in *In re Acquisition Solutions*, 2005 TTAB LEXIS 25 (TTAB 2005). In light of the evidence in this case of the descriptive nature of the mark, the examining attorney stands by the axiom that each case is decided on its own facts, and each mark stands on its own merits. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Int’l Taste, Inc.*, 53 USPQ2d 1604, 1606 (TTAB 2000); *In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994).

Applicant argues that MANWEAR is not in common usage as a description for the goods and that the evidence of record wholly fails to show common usage of the term MANWEAR. In particular, applicant notes the excerpted articles provided in the final Office action dated November 6, 2008 which do not reference applicant’s mark. While these articles do not show that applicant’s mark MANWEAR is a common term, these articles were provided to show that consumers are familiar with the term menswear.

Thus, upon seeing applicant's mark MANWEAR, consumers would understand the nature of applicant's mark to refer to clothing for a man.

In addition, applicant argues that the web pages provided which show use of applicant's mark MANWEAR have absolutely no probative value with respect to the question of descriptiveness in the United States because of the fact that many of them are foreign in origin. With respect to the web pages from the United States, applicant contends that they do not show trademark usage and merely are textual references to clothing. Therefore, applicant concludes, the web pages have no probative value. The examining attorney finds applicant's arguments regarding the web page evidence unpersuasive. While not dispositive on the issue of descriptiveness, the web pages are probative that consumers encountering the applicant's mark MANWEAR would understand the term to refer to clothing for a male which is the essential point of this evidence despite the origin or number of the web pages.

Applicant argues that the examining attorney has not met the burden of proving descriptiveness. However, the plain meaning of the terms in the mark as supported by the dictionary definitions of record and the international and United States usage of the term manwear in the web pages of record are all evidence which support the conclusion that in connection with applicant's goods, the applicant's mark MANWEAR describes the nature of applicant's goods, namely, clothing for a male. In addition, the excerpted articles of record regarding the term menswear and the identifications from the *Manual of Acceptable Identifications of Goods and Services* are provided to support the conclusion that consumers would understand the plain meaning of applicant's mark MANWEAR to

refer to clothing for a male because applicant's mark is the singular form of menswear and because wear is often used to indicate a genre of clothing. Therefore, contrary to applicant's arguments, the evidence of record does not fall short of proving descriptiveness. Moreover, in light of the evidence, there is not doubt to be resolved in favor of applicant on the issue of descriptiveness.

CONCLUSION

When applicant's mark MANWEAR is viewed in relation to the identified goods, applicant's mark describes a feature, characteristic or purpose of the goods, namely, wear or clothing for a male. The plain meaning of the wording in the mark and the evidence of record support this conclusion. Therefore, the refusal to register applicant's mark under Section 2(e)(1) of the Trademark Act should be affirmed.

Respectfully submitted,

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