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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Webid Consulting Ltd.

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Serial No. 77397586

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James A. Wahl of Krass Monroe, P.A. for Webid Consulting Ltd.

Brendan D. McCauley, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

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Before Holtzman, Drost, and Ritchie, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 14, 2008, Webid Consulting Ltd. (applicant) filed an intent-to-use application (Serial No. 77397586) to register the mark MANWEAR, in standard character form, on the Principal Register for services ultimately identified as: "online retail stores featuring men's clothing and accessories and small leather goods from suppliers other than applicant" in Class 35.

The examining attorney has refused registration on the ground that the term MANWEAR is merely descriptive of applicant's services. 15 U.S.C. §§ 1052(e)(1). The examining attorney argues that the term MANWEAR "identifies the featured goods of applicant's online retail store services, namely, men's clothing or clothing for a man." Brief at 4.

After the examining attorney made the refusal final, applicant appealed to this board and filed a request for reconsideration.

The question is whether the term MANWEAR is merely descriptive for the identified services.<sup>1</sup> "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007). *See also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or

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<sup>1</sup> Inasmuch as the only refusal here is based on the mark being merely descriptive, we do not have to address the arguments concerning whether MANWEAR "indicates a genre of clothing for males or related retail services." Applicant's Brief at 12. *See also* Examining Attorney's Brief at 10.

property of the goods. *Gyulay*, 3 USPQ2d at 1009; *Meehanite Metal Corp. v. Int'l Nickel Co.*, 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). "Descriptiveness of a mark is not considered in the abstract. Rather, it is considered in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use." *Bayer*, 82 USPQ2d at 1831. See also *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). "The examining attorney has the burden to establish that a mark is merely descriptive." *Bayer*, 82 USPQ2d at 1831.

In this case, the examining attorney has submitted numerous dictionary definitions. Below are examples of relevant definitions:

Man - an adult male human, as distinguished from a boy or a woman

Men - plural of man

Wear - clothing or other articles for wearing, esp. when fashionable or appropriate for a particular function (often used in combination); *travel wear*; *sportswear*.

[www.dictionary.com](http://www.dictionary.com).

"Applicant does not dispute those meanings." Brief at 8.

We begin by taking judicial notice of the term "men's wear" as "apparel and accessories for men. Also, menswear." *The Random House Dictionary of the English Language (unabridged)* (2d ed. 1987). *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

The examining attorney has also submitted various webpages for the term "manwear." We have set out several examples below (emphasis added).

Seride s.r.l. (limited liability company) produces since 1975 linen prints for womanwear, *manwear* and childwear, underwear and furnishing  
[www.seride.com](http://www.seride.com)

Kidswear, *manwear*, ladywear, jeans, denim jacket [China]  
[www.go4worldbusiness.com](http://www.go4worldbusiness.com)

women clothing, textile, underware, night gowns, pyjamas etc. also *manwear* possible depending on size of order  
[www.importers.com](http://www.importers.com)

Our company is specialised in producing all kinds of woven and knitted interlining which is used in *manwear* woman-garment blouse and so on  
[www.made-in-china.com](http://www.made-in-china.com)

The right place for Ready-to-Wear, Knitwear, Fabric and Textile Business, Jeans, Babywear, Kidswear, Womanwear, *Manwear*, Underwear, Sock [Turkish]  
[www.merterfashion.com](http://www.merterfashion.com)

Activity of the company: Production of tailored fine quality *manwear*: suits, jackets, coats, night suits, trousers.

www.madeinvicenza.it

Manwear, Ladies fashion, Baby clothing [China]  
cindy\_garment.ecw.com

Pants, jackets, sleepingcloth, babywear, manwear,  
womenwear [China]  
ttnet.net

In addition, the examining attorney's evidence also includes two web pages that refer to "manwear" in discussions about men's clothing. See www.momcentral.com ("[Simpson] who now walks the red carpets behind his daughter, wearing slick, metrosexual manwear") and www.gabsmash.blogspot.com (McGraw's "jeans look like metrosexual manwear not country singer gear").

We can consider information on foreign websites. *Bayer*, 82 USPQ2d at 1835 ("Information originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark"). See also *In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) ("[I]t is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country, Great Britain in this case, because that research is likely to be of interest worldwide regardless of its

country of origin").<sup>2</sup> However, in this case most of the webpages appear to be foreign websites from those in the clothing industry who are poorly translating another language into English. We give these websites less weight than websites that clearly describe their products in English. However, the websites are interesting because they show that when the term "manwear" appears in the context of websites about clothing (even those with grammatical and other idiosyncrasies), there is nothing incongruous about the use of the term MANWEAR. Readers immediately would understand that the subject of the webpages includes clothing for a man or menswear. As we indicated, we must consider the mark "in the context in which it is being used." *Bayer*, 82 USPQ2d at 1831. In the context of clothing and clothing-related services, there is nothing left to the imagination that the term MANWEAR is referring to clothing for a man. Regarding the two other uses of "manwear" in conjunction with a style of clothing; again, we give this little weight except to show that when

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<sup>2</sup> As a result, applicant's reliance on *In re Men's Int'l Professional Tennis Council*, 1 USPQ2d 1917 (TTAB 1986) is misplaced. See *In re Cell Therapeutics Inc.*, 67 USPQ2d 1795, 1797 (TTAB 2003) ("Taking a broader view, we note that the *Professional Tennis Council* and [*In re*] *Appetito Provisions [Co.]*, 3 USPQ2d 1553 (TTAB 1987)] cases were decided well over fifteen years ago. This Board would be blind if it did not recognize that during the past fifteen years, there has been a dramatic change in the way Americans receive their news").

purchasers would see the term MANWEAR used in association with clothing-related services, they would understand immediately that the services are directed to clothing for men.

For a combined term to be descriptive, we must consider the mark in its entirety and not just its individual parts. *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1030 (TTAB 2007) ("Finally, in determining whether a mark is merely descriptive, we must consider the mark in its entirety"). Therefore, the question here is whether the combination of the terms "man" and "wear" is merely descriptive.

Applicant has substituted the term "man" for the term "mens" and combined it with the word "wear" and argues that "[s]ubstituting man for mens effects a fundamental change in the appearance, sound and meaning of the resulting term." Reply Brief at 2. By "substituting MAN for MEN'S and thus intentionally diverting from use of menswear, the commonly understood term for men's clothing, the Applicant has created an obvious incongruity in the mind of the prospective purchaser." Brief at 9. However, the only difference between the terms MANWEAR and MENSWEAR is that applicant uses the singular of MAN while the generic term uses the plural possessive. Inasmuch as "man" has the same

meaning as the word "mens" except that it is a singular, non-possessive form of the word, it is difficult to see how this change results in an incongruity or a double entendre. *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985) ("We see no significance in the fact that the term 'COMPUTED' is used instead of 'COMPUTER' or 'COMPUTERIZED.' The fact is that the mathematical calculations performed in order to render the images produced by applicant's machines are the results of computations made by the computer circuitry built into the goods. In the ordinary sense of the word the calculations are 'computed'... [T]he registration of 'COMPUTED SONOGRAPHY' for ultrasonic imaging instruments is barred by Section 2(e)(1) of the Act"). While purchasers may understand that applicant is not using the generic term MENSWEAR, they would understand that the term MANWEAR describes clothes for a man or men.

We add that terms that are not spelled correctly may nonetheless still be merely descriptive or even generic. *See, e.g., Nupla Corp. v. IXL Manufacturing Co.*, 114 F.3d 191, 42 USPQ2d 1711, 1716 (Fed. Cir. 1997) (CUSH-N-GRIP "which is merely a misspelling of CUSHION-GRIP, is also generic as a matter of law"); *Weiss Noodle Co. v. Golden Cracknel and Specialty Co.*, 290 F.2d 845, 129 USPQ 411 (CCPA 1961) (HA-LUSH-KA held to be the generic equivalent



of the Hungarian word "haluska"); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) ("We conclude that applicant's applied-for mark, URBANHOUSING in standard character form, will be immediately and directly perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING, rather than as including the separate word ZING. The mark, thus, does not convey a double entendre that would prevent it from being merely descriptive of applicant's services"). See also *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U.S. 446, 458 (1911) ("Bad orthography has not yet become so rare or so easily detected as to make a word the arbitrary sign of something else than its conventional meaning, as different, to bring the example to the present, as the character of an article is from its origin or ownership").

When we view the term MANWEAR in relation to applicant's services, we conclude that there is nothing incongruous about the term. Applicant's term immediately informs prospective purchasers of a feature or characteristic of the services, i.e., that its stores feature men's clothing.<sup>3</sup> See *In re Kronholm*, 230 USPQ 136,

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<sup>3</sup> *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1337 (TTAB 2009) ("More importantly, just as a term need not describe all aspects of a product for it properly to be refused as descriptive, a term need not describe every type or variation of a product listed in an identification for the term to be merely descriptive"); *In re*

137 (TTAB 1986) ("It is clear that applicant's cable television network services will have, as their subject matter and intended audience, colleges and universities in this country. The term sought to be registered [COLLEGE CABLE NETWORK] comprises a combination of descriptive words which lose no descriptive significance in the expression, one which aptly describes a significant feature or characteristic of applicant's services").

Therefore, we cannot agree with applicant that "the term MAN does not have a single recognized meaning." Brief at 12. While the terms man and wear are words with numerous meanings when they are combined and used in association with clothing-related services, their combined meaning is clear.

Similarly, that applicant can take the dictionary definitions of the individual words in the term and come up with a meaning that makes no sense in connection with the services recited in the application does not mandate a different conclusion on the issue of mere descriptiveness. As stated above, the determination of descriptiveness is made in the context of the identified services, and the meaning of "ETHNIC ACCENTS" in connection with applicant's services is clearly that of home furnishings or decorations relating to various ethnicities.

*In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156, 1159

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*Planalytics Inc.*, 70 USPQ2d 1453, 1456 (TTAB 2004) ("While applicant's mark does not describe every feature or characteristic of its services, there is no requirement that a mark must do this before it can be found to be merely descriptive of the services").

(TTAB 2003). See also *In re Polo Int'l Inc.*, 51 USPQ2d 1061, 1063 (TTAB 1999) ("If applicant produced goods related to the medical field, or specifically related to physicians, then the term 'DOC' would be readily understood by the public as referring to 'doctor.' However, here applicant's goods are computer software for document management, and 'DOC' will be readily understood as referring to documents"). Here, the term MANWEAR refers to clothing for a man or men.

Finally, applicant argues that its mark "is not commonly used or understood to relate in any way to [its] services." Reply Brief at 5. As we discussed, we have found that the meaning of the term MANWEAR in the context of clothing-related services would be clear. We add that even if applicant is the only user of the term, that fact does not mean that its mark is suggestive rather than merely descriptive. *In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001) ("The fact that AGENTBEANS does not appear in a dictionary is not determinative. Likewise, the fact that applicant may be the first and/or only entity using the phrase AGENTBEANS is not dispositive where, as here, the term unequivocally projects a merely descriptive connotation") (citation omitted); *Acuson*, 225 USPQ at 792 ("A descriptive term used first or even only by

an applicant is not registrable as long as the relevant purchasing public perceives of the term as describing the good"); and *In re Gould*, 173 USPQ 243, 245 (TTAB 1972) ("The fact that applicant may be the first and possibly the only one to utilize this notation in connection with its services cannot alone alter the basic descriptive significance of the term and bestow trademark rights therein").

Therefore, when we consider the record in this case, we find that when prospective purchasers encounter the term MANWEAR used in association with online retail stores featuring men's clothing and accessories and small leather goods from suppliers other than applicant, they will immediately understand that it describes a feature of applicant's services, i.e., that the services include providing clothes for a man. Therefore, applicant's mark is merely descriptive of its services.

Decision: The refusal to register applicant's mark MANWEAR under § 2(e)(1) of the Trademark Act is affirmed.