

This Opinion is Not a  
Precedent of the TTAB

Mailed: February 23, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Le Manoir Sainte-Catherine Inc.*  
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Serial No. 88265092  
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James R. Menker of Holley & Menker, PA,  
for Le Manoir Sainte-Catherine Inc.

Jeri Fickes, Trademark Examining Attorney, Law Office 107,  
Leslie Bishop, Managing Attorney.

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Before Kuhlke, Greenbaum, and Dunn,  
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Le Manoir Sainte-Catherine Inc. (Applicant) seeks registration on the Principal

Register of the mark GELCARE (in standard characters) for:

International Class 3

Nail gel; Nail polish; Gel nail polish; Preparations for removing gel nails; Nail glitter; Nail lacquer; Nail varnish; nail buffing preparations; Nail care kits comprising nail polish; Nail care preparations; Nail conditioners; Cuticle oil; Non-medicated cuticle serums for cosmetic purposes; Cuticle removing preparations; nail cream; Nail decolorants; Nail enamel removers; Nail polish remover; Preparations for removing nail gel; Nail gel polish remover; Nail varnish remover; Artificial nails; Adhesives for attaching artificial fingernails; Nail art stickers; Nail art decals; Heating mitts for gel nail removal.

International Class 35

Wholesale and retail store services featuring nail gel, nail polish, gel nail polish, gel polish, gel nail remover, nail glitter, nail lacquer, nail varnish, nail buffing compounds, nail buffers, nail care kits, nail care preparations, nail conditioners, cuticle oil, cuticle serums, cuticle remover, nail cream, nail decolorants, nail enamel removers, nail polish remover, nail gel remover, nail gel polish remover, nail varnish remover, nail lamps, nail files, cuticle cutters, nail scissors, nail scrapers, manicure tools, manicure supplies, artificial nails, adhesives for attaching artificial nails, nail art stickers, nail art decals and heating mitts for gel removal.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark GELCARE is merely descriptive of a feature or characteristic of Applicant's goods and services.

After the Trademark Examining Attorney made the refusal final, Applicant appealed to this Board. We affirm the refusal to register.

### **I. Refusal as Merely Descriptive of the Goods and Services**

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them." 15 U.S.C. § 1052(e)(1). A term is "merely descriptive" within the meaning of Section 2(e)(1) if it "immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102

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<sup>1</sup> Application Serial No. 88265092 filed January 17, 2019, under Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on Canadian Registration No. TMA1117902, issued January 18, 2022.

USPQ2d 1217, 1219 (Fed. Cir. 2012) (*quoting In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). Descriptiveness must be assessed “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.” *In re Bayer AG*, 82 USPQ2d at 1831. We find that the average purchaser of Applicant’s goods and services is the general public.

Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source. *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1564, 1566 (Fed. Cir. 2001). Dictionaries, newspapers, or surveys may provide evidence of mere descriptiveness. *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1300; *In re Bayer*, 82 USPQ2d at 1831. In addition, sources may include websites, publications, and use “in labels, packages, or in advertising material directed to the goods.” *In re N.C. Lottery*, 123 USPQ2d at 1710; *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). The Board may rely on the applicant’s descriptive use of a term in the identification of goods. *See In re NextGen Management, LLC*, 203 USPQ2d 14 at \*9 (TTAB 2023) (“Use of a term in an application’s recitation of services strongly suggests that the term is merely descriptive.”); *In re Taylor & Francis (Publ’rs) Inc.*, 55 USPQ2d 1213, 1215 (TTAB 2000) (PSYCHOLOGY PRESS & design found merely descriptive of nonfiction books in the field of psychology, in part because the applicant’s “identification of goods expressly states that the series of non-fiction books upon which applicant uses its

mark are ‘in the field of psychology.’”). *See also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1576 (Fed. Cir. 2015) (“The Board found that the relevant consumer, knowing that the goods are supplements containing nopal cactus juice, would understand the mark NOPALEA to convey information that the goods contain ingredients from the Nopalea cactus ... Substantial evidence supports the Board’s findings, and its conclusion that ‘nopalea’ is merely descriptive of TriVita’s goods.”).

## II. Analysis

In support of the refusal, the Examining Attorney contends that, as used in Applicant’s proposed mark and as viewed in the context of Applicant’s nail industry, the term GELCARE merely describes gel nail products and Applicant’s wholesale and retail store services featuring those products.<sup>2</sup>

The Examining Attorney relies in part on Applicant’s use of “gel” in its identifications of goods and services, which includes, among other things, nail gel, gel nail polish, preparations for removing gel nails, preparations for removing nail gel, nail gel polish remover, and heating mitts for gel nail removal, and retail and wholesale store services featuring, among other things, nail gel, gel nail polish, gel polish, gel nail remover, nail gel remover, nail gel polish remover, and heating mitts for gel removal.<sup>3</sup> In addition, the Examining Attorney placed in the record an online article discussing the impact of gel on the nail industry (**emphasis added**):

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<sup>2</sup> 6 TTABVUE 8.

<sup>3</sup> It is not necessary to establish the mere descriptiveness of the mark as applied to each item in the identification of goods. “If the Board affirms a refusal of an entire class based on the

Beauty Alert: No-Chip Gel Manicures Just Got Way Healthier  
Rachel Lapidos November 15, 2016

**Gel** manicures – AKA the much appreciated, longer lasting nail polish service you can get at salons – revolutionized the nail industry when they launched in 2010. ... But a major innovation in the nail industry is changing all that: new healthier **gels** are debuting at nail salons, and they’re free of the most controversial polish ingredients. ... Nail polish brands used in salon **gel** services, like Bio Seaweed **Gel** and NCLA, have recently formulated 5- and 7-free **gels**, respectively-which can last up to 21 days without chipping, says NCLA. ... “My eyes shot out of my head like a cartoon character when I heard about a safer **gel**,” say Werman, who recently introduced NCLA’s **gel** polishes into Valley’s services this summer. ... Ruth Kallens, founder of Van Court, a new, non-toxic nail salon in New York City’s Financial District, had avoided offering **gels** (because of their damage to the nail beds) as well as acrylics (which are essentially nail extensions made from a liquid powder) because of their unhealthy side. ...

The controversy over **gel** manicures

“Everyone wants their polish to last longer,” confirms Wennan, and millions of women have gotten **gels** with abandon for this reason. ... **Gels** transformed the nail industry, but they’ve come with beauty baggage. ... “Lots of nail **gels** are formulated with formaldehyde camphor, formaldehyde resin, BPA, toluene, and other hardeners we just don’t find necessary,” says Brittany Jones, national sales manager at NCLA. ... But **gels** have lagged way behind. The other issue with **gels** is the application and removal process, which can be really harsh on your nail beds. “Some **gel** products require a ‘rough-up’ of the natural nails with an electric drill or nail file so the product can adhere better,” explains Kallens. “Our **gel** goes directly on dry, clean nails,” so there’s no destroying your healthy nail in the name of beauty.

<https://www.wellandgood.com/nontoxic-gel-manicures-at-nail-salons><sup>4</sup>

The use of gel (or gels) in the nail industry is corroborated by another article discussing top salons in Washington DC, all offering some version of gel products and services:

Best Nail Salons in Washington DC: Manicure, Nail Art & Pampering  
Deirdre Paine October 23, 2021

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descriptiveness of the mark for one or more goods in the class, then the entire class will fail.”  
*In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013).

<sup>4</sup> March 21, 2022 Office Action TSDR 29-34.

#### SPA Logic

From classic Chanel or classic LouBoutin manicure/pedicure to French manicure/pedicure to shellac/**gel** manicure/pedicure, you can find anything you are looking for at Spa Logic.

#### Nailsaloon

Nail art, nail shaping, cuticle care, **gel** color polish, sugar scrub, hot cream, oil treatment, and callus removal are available, as well as special manicure and pedicure for clients 13 and under.

#### Pure in Heart Nail Boutique Shaw

The popular Shaw nail salon offers a variety of nail services including hot towel wrap, nail shaping and cuticle care, nail art, moisturizing, polishing, **gel** polish (removal), cleansing sea salt soak, exfoliating sugar scrub, collagen glove treatment, ultra-hydrating massage butter, refreshing massage, paraffin treatment, callus removal treatment, and more. If you opt for “Long-Lasting **Gel** Alternative,” you will receive a fully organic and cruelty free polishing service and it is guaranteed to last longer than regular polish.

#### Jaclore Beauty Spa

Among their “nail enhancement” services are acrylic, acrylic with **gel** color, SNS powder dipping, SNS powder dipping ombre, French color **gel**, and more. <https://thedept/best-nail-salons-in-washington-dc/><sup>5</sup>

In addition, Applicant does not contend that the term GEL has any non-descriptive meaning as applied to its gel goods and services selling gel goods, but states “the term GEL describes some of the goods in the instant application.”<sup>6</sup>

The Examining Attorney also submitted a definition showing the term CARE is defined as “maintenance” and “a person or thing that is an object of attention, anxiety, or solicitude”<sup>7</sup> and a website describing gel as an option in nail care:

#### LUXE LANE

Our holistic **nail care** treatment and client favorite, the Luxe Lane begins with our signature warm towel wrap to cleanse the skin followed by nail

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<sup>5</sup> March 21, 2022 Office Action TSDR 17-24.

<sup>6</sup> 4 TTABVUE 6.

<sup>7</sup> March 31, 2019 Office Action TSDR 6 (citing Merriam-Webster).

shaping and cuticle care. Exfoliate with a natural sugar scrub and enjoy a moisturizing wax treatment. The best part? A deep, relaxing extended massage. Choose your favorite polish to finish.

Mani \$48

Mani with **Gel** Polish \$64

<https://varnishlane.com/><sup>8</sup>

Moreover, the Examining Attorney relied on a website showing repair of gels as a type of nail care:



*Figure 1 DermElect webpage<sup>9</sup>*

The Examining Attorney also submitted webpages showing different products specifically for the care of gel nails, such as the primer, base, foundation, top coat, vitamin ampoules, overlay coats, bonding coats, cleaner, remover, booster, and repair kits shown below:<sup>10</sup>

<sup>8</sup> March 21, 2022 Office Action TSDR 27.

<sup>9</sup> March 21, 2022 Office Action TSDR 14.

<sup>10</sup> All product images from March 21, 2022 Office Action TSDR 6-8, 14.



### **GELIQUE V5 PRIMER**

With an acid-free formulation protecting nail surface protein components, it minimizes nail damage, as a booster bonder that improves holding power.

14ml/0.47Fl Oz

[INGREDIENTS](#)



### **GELIQUE ROYAL MATTE TOP GEL**

It is a perfectly matte top gel that can be expressed with deep feeling without hardening or powder aggregation of natural resin ingredient.

14ml/0.47Fl Oz

[INGREDIENTS](#)



### **GELIQUE V5 CERA GEL AMPOULE**

Highly concentrated vitamins, ceramide, and lecithin protein ingredients provide direct nourishment to nails. OIL-FREE ingredient is a nutritional gel ampoule that can be used before and after gel procedures.

20ml / 0.68 Fl Oz

[INGREDIENTS](#)





### **GELIQUE FOUNDATION GEL NO.23**

It is a natural pink syrup color foundation gel recommended for Coultton skin. Multi-base gel that can be applied naturally when extending the gel.

14ml

[INGREDIENTS](#)



### **GELIQUE V5 VITA GEL**

It is a nutrient base gel containing a large amount of vitamins C, B and E. It is a base gel that has a wide gap between the formulations and easy penetration of acetone.

14ml/0.47Fl Oz

[INGREDIENTS](#)



### **GELIQUE OVERLAY GEL**

From gentle formulation to glitter Covers parts perfectly As an overlay product Safe without heating and yellowing Convenient to use.

14ml

[INGREDIENTS](#)



### GELIQUE PREP BONDER

Booster bonder | Acid free booster bonder that minimizes natural nail damage and improves retention of gel color thru strong adhesion

14ml

INGREDIENTS



### V3 VITA BOOSTER

When you use a small amount in the cuticle line and the free edge part it minimizes the damage of the nails and enhances the persistence of Gelique V3 Vita Gel

2ml

INGREDIENTS



### GELIQUE GEL CLEANSER

Removes uncured gel on gel colored surface and enhances gloss of the gel color

100ml

INGREDIENTS



### GELIQUE GEL REMOVER

A gel remover formulated with moisturizing agents removes Gelique colors with minimum damage to nail surface.

100ml

INGREDIENTS



NATURAL NAIL REPAIR STRENGTHENING KIT  
for Gel & Acrylic Damaged Nails

The Examining Attorney also submitted two webpages showing services for care of gel nails which use the term GEL CARE:

#### Gel Manicure Aftercare

...

With little **care**, the time can be extended and manicure can last for a longer time. You need to know the right things to take of your nails and we have compiled some tips to help you get all the good things out of the gel manicure. ... Cuticle oil helps extend the life of acrylic gel nails and any polish, giving you the refined look always. ... For the new joiners of acrylic gel nails and shellac manicures, it can be difficult to let go of the habits of filing or cutting the nails. Without any manicure or **gel care**, it seems like a perfectly good option to take care of your nails but with gel manicures, it's not the case. ... TIPS FOR GEL MANICURE AFTERCARE

[www.nailclub.la/gel-manicure-aftercare/](http://www.nailclub.la/gel-manicure-aftercare/)<sup>11</sup>

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<sup>11</sup> March 21, 2022 Office Action TSDR 9-13.



*Figure 2 ad from third party website<sup>12</sup>*

Applicant contends that the term CARE “is nebulous and is arguably suggestive,” and even if descriptive, “the combination of the terms GEL and CARE is not merely descriptive.”<sup>13</sup> We disagree on both points. While the term CARE may have different connotations in different settings, the record evidence clearly demonstrates that there is a nail care field that includes gel nails, also known as gels, gel polish, and gel manicures and pedicures, and includes products and services to provide care for gel nails.

When two or more merely descriptive terms are combined, the composite mark “is registrable only if the combination of terms creates a unitary mark with a non-descriptive meaning, or if the composite has a bizarre or incongruous meaning as

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<sup>12</sup> March 21, 2022 Office Action TSDR 5.

<sup>13</sup> 4 TTABVue 6.

applied to the goods or services.” *In re Omniome, Inc.*, 2020 USPQ2d 3222, at \*4 (TTAB 2019). Applicant’s combination of GEL and CARE, without a space, does not create either an incongruous composite mark, or a unitary mark with a non-descriptive meaning. *Minn. Mining & Mfg. Co. v. Addressograph-Multigraph Corp.*, 155 USPQ 470, 472 (TTAB 1967) (“[i]t is almost too well established to cite cases for the proposition that an otherwise merely descriptive term is not made any less so by merely omitting spaces between the words”).

We have carefully considered Applicant’s arguments but find they do not detract from the evidence that the term GELCARE will be perceived by the relevant public when used in connection with Applicant’s gel products and gel retail services, as immediately informing the relevant public of a significant feature of the goods and services, namely that the goods and services offer care of gel nails, or gel care.

### **III. Decision**

The refusal to register Applicant’s mark GELCARE in both classes on the ground that it is merely descriptive under Trademark Act Section 2(e)(1) of Applicant’s goods and services is affirmed.