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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	87197883
Applicant	First Quality Hygienic, Inc.
Applied for Mark	PURSE SIZED
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Date	07/10/2018

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In Re Application of: First Quality Hygienic, Inc. :
Serial No.: 87/197,883 :
Filed: October 10, 2016 :
Trademark: PURSE SIZED :
Law Office: 102 :
Attorney: Christopher Buongiorno :
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REPLY BRIEF

FILED ELECTRONICALLY

Applicant First Quality Hygienic, Inc. (“Applicant”) submits this Reply Brief on Appeal, pursuant to 37 C.F.R. § 2.142, from the Final Office Action dated July 20, 2017 finally refusing registration of the instant mark PURSE SIZED for tampons (“Applicant’s Mark”) pursuant to Trademark Act § 2(e)(1) on the grounds that it is merely descriptive.

It is respectfully submitted that the arguments made by the Examining Attorney in his Appeal Brief do not alter the conclusion that Applicant’s Mark does not provide, with any degree of specificity, any information as to the nature of the goods provided under Applicant’s Mark, and therefore, Applicant’s Mark is not merely descriptive.

I. LEGAL ANALYSIS

A. The Examining Attorney Admits That No One Else Is Using PURSE SIZED Descriptively for Tampons

The Examining Attorney admits that there is no evidence of others using Applicant’s Mark in connection with tampons, which is strong evidence that the Applicant’s Mark is not merely descriptive. *See In re Wells Fargo & Co.*, 231 U.S.P.Q. 116 (T.T.A.B. 1986) (holding that “the absence from this record of evidence of any descriptive use of the term EXPRESS

SAVINGS by others in the field of banking reinforces our view that the Examining Attorney’s mere descriptiveness holding is in error”).

The cases cited by the Examining Attorney did not alter this analysis. For example, in *In re Fat Boys Water Sports LLC*, 118 U.S.P.Q.2d 1511 (T.T.A.B. 2016), although there was no evidence of third parties using applicant’s mark, HOUSEBOAT BLOB, for applicant’s goods, inflatable float mattresses which may be launched into the air and onto a body of water, there was plenty of evidence of third-parties using the BLOB portion of the mark for these goods. Here, there is no evidence of third party use of either PURSE or SIZED for tampons. In *In re Phoseon Tech., Inc.*, 103 U.S.P.Q.2d 1822 (T.T.A.B. 2012), there were several references to the term in news articles as well as in patent applications, and a third-party website, which is not the case here.

The single reference cited by the Examining Attorney, by “Rotergirl” at wisegeek.com, alleging that “purse sized tampons are very common these days” does not establish this as a fact, and is not evidence that the term is perceived as descriptive by the public. Such single reference is not persuasive of anything. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 U.S.P.Q.2d 1464, 1469 (T.T.A.B. 1993) (the fact that there were a “very limited number” of articles which used the subject phrase in a descriptive sense “is not sufficient to persuade us that the trade or the general public perceives [the subject phrase] as a descriptive . . .”); *In re Lockheed Martin Corporation*, Serial No. 85073741 (T.T.A.B. Nov. 15, 2012) (three articles insufficient to establish term at issue is descriptive).

The Examining Attorney’s other references to “purse sized” are not in connection with tampons, and therefore, not relevant. *See J. Wiss & Sons Co. v. W. E. Bassett Co.*, 462 F.2d 567 (C.C.P.A. 1972) (TRIM may be descriptive as to nail clippers, but not as to nail files); *Inmuno Vital, Inc. v. Golden Sun, Inc.*, 49 F. Supp.2d 1344 (S.D. Fla. 1997) (summary judgment denied

because jury could find VIDA VITAL descriptive as to nutritional supplements but not as to herbal teas).

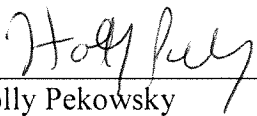
II. CONCLUSION

For all of the reasons stated above, as well as in Applicant's moving Brief, it is respectfully submitted that the refusal to register Applicant's Mark based on descriptiveness should be reversed, and Applicant's Mark should be passed to publication in due course.

Respectfully submitted,

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July 10, 2018

By:  _____
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