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Subject: U.S. TRADEMARK APPLICATION NO. 87197883 - PURSE SIZED - 34301/212 - Request for Reconsideration Denied - Return to TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 87197883

MARK: PURSE SIZED



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: First Quality Hygienic, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO:

34301/212

CORRESPONDENT E-MAIL ADDRESS:

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 2/13/2018

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following refusal made final in the Office action dated July 20, 2017, is maintained and continues to be final: Section 2(e)(1). See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not raised a new issue or provide any compelling evidence with regard to the refusal in the final Office action. In addition, applicant's analysis and arguments are

not persuasive nor do they shed new light on the refusal. Specifically, copies of third-party registered marks that present commercial impressions different from the descriptive commercial impression conveyed by applicant's mark do not provide grounds for withdrawing the Section 2(e)(1) refusal.

The fact that third-party registrations exist for marks allegedly similar to applicant's mark is not conclusive on the issue of descriptiveness. *See In re Scholastic Testing Serv., Inc.*, 196 USPQ 517, 519 (TTAB 1977); TMEP §1209.03(a). An applied-for mark that is merely descriptive does not become registrable simply because other seemingly similar marks appear on the register. *In re Scholastic Testing Serv., Inc.*, 196 USPQ at 519; TMEP §1209.03(a).

It is well settled that each case must be decided on its own facts and the Trademark Trial and Appeal Board is not bound by prior decisions involving different records. *See In re Nett Designs, Inc.*, 236 F. 3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); TMEP §1209.03(a). The question of whether a mark is merely descriptive is determined based on the evidence of record at the time each registration is sought. *In re theDot Commc'ns Network LLC*, 101 USPQ2d 1062, 1064 (TTAB 2011); TMEP §1209.03(a); *see In re Nett Designs, Inc.*, 236 F.3d at 1342, 57 USPQ2d at 1566.

In this case, the examining attorney has established an evidentiary record which shows the wording "purse sized" used to describe a feature of goods that fit in a purse. Applicant confirmed in a response that the tampons will be marketed or promoted as fitting in a purse. The wording PURSE SIZED in the proposed mark is clearly descriptive of the goods. Applicant argues that the examining attorney has not shown the wording used in connection with tampons. As indicated in the final Office action, the fact that applicant may be the first or only user of a merely descriptive designation does not necessarily render wording incongruous or distinctive; as in this case, the evidence shows that the wording "purse sized" is used to describe goods that fit into a purse. *See In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1826 (TTAB 2012); TMEP §1209.03(c). Accordingly, the request is denied.

The Trademark Trial and Appeal Board will be notified to resume the appeal. *See* TMEP §715.04(a).

/Christopher Buongiorno/

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