

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Hearing: September 14, 2023

Mailed: September 19, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Total Vision Group LLC*  
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Application Serial No. 90687823  
Application Serial No. 90689458  
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Frank A. Mazzeo and Austin R. Bauersmith of Ryder, Mazzeo & Koienczny LLC  
for Total Vision Group LLC.

Alex Seong Keam, Trademark Examining Attorney, Law Office 114,  
Nicole Nguyen, Managing Attorney.

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Before Bergsman, Wellington, and Shaw,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Total Vision Group LLC (“Applicant”) seeks registration on the Principal Register of the mark RETYZ (in standard characters) and R RETYZ and design, reproduced below, both for “cable ties, not of metal; zip ties, not of metal,” in International Class 22.<sup>1</sup>

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<sup>1</sup> Serial No. 90687823 (standard character mark) was filed May 3, 2021, and Serial No. 90689458 (design mark) was filed May 4, 2021, both under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use anywhere and in commerce as of October 27, 2020, for both marks.



Applicant describes its composite mark as follows:

The mark consists of “R RETYZ” with the top half of each letter “R” containing the stylized design of an outline of a top handle part of a cable tie/zip tie. The first “R” is slightly larger in font size than the remaining letters in the mark and is enclosed within a rectangle.

The Examining Attorney refused to register Applicant’s mark RETYZ (in standard characters) under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that RETYZ is the phonetic equivalent of “Reties” and, therefore, it describes a characteristic or feature of Applicant’s cable ties and zip ties (i.e., cable or zip ties that may be retied).

With respect to Applicant’s mark , the Examining Attorney refused to register the mark on the ground that Applicant refused to comply with the final requirement to disclaim the exclusive right to use the term “Reties” under Section 6(a) of the Trademark Act, 15 U.S.C. §1056(a).

Because the applications involve common issues of law and fact, the Board granted Applicant’s request to consolidate the appeals.<sup>2</sup> We refer to the record in Serial No. 90687823 unless otherwise indicated.

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<sup>2</sup> 13 TTABVUE. When we cite to the briefs or motions, we refer to TTABVUE, the Board’s docketing system, by docket entry and page number (e.g., 9 TTABVUE 14).

## I. Whether RETYZ is merely descriptive

### A. Applicable law

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 [and services] of the applicant is merely descriptive . . . of them,” unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f). A mark is “merely descriptive” within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods and services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). “A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods.” *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

Whether a mark is merely descriptive is “evaluated ‘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,’” *Chamber of Commerce of the U.S.*,

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When we cite to the record, we refer to the USPTO Trademark Status and Document Retrieval (TSDR) system in the downloadable .pdf format by date, action, and page number (e.g., January 10, 2022 Office Action (TSDR 10)).

102 USPQ2d at 1219 (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “whether someone who knows what the goods . . . are will understand the mark to convey information about them.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted)).

A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods are to reach a conclusion about their nature from the mark. *See, e.g., Fat Boys*, 118 USPQ2d at 1515.

If one must exercise mature thought or follow a multi-stage reasoning process in order to determine what characteristics the term identifies, the term is suggestive rather than merely descriptive.

*In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978).

In determining how the relevant consuming public perceives Applicant’s proposed mark RETYZ and R RETYZ and design in connection with its identified goods, we may consider any competent source, including dictionary definitions and Applicant’s own advertising material and explanatory text. *See N.C. Lottery*, 123 USPQ2d at 1709-10; *Bayer*, 82 USPQ2d at 1831.

Finally, a novel or misspelling a word will not turn a descriptive word into a non-descriptive mark. *See In re Quik-Print Copy Shop, Inc.*, 616 F.2d 523, 205 USPQ 505,

507 n.9 (CCPA 1080) (QUIK-PRINT, the phonetic spelling of “quick print,” is merely descriptive of printing and photocopying services); *In re Hercules Fasteners, Inc.*, 203 F.2d 753,97 USPQ 355 (CCPA 1953) (holding “FASTIE,” phonetic spelling of “fast tie,” merely descriptive of tube sealing machines); *In re Calphalon Corp.*, 122 USPQ2d 1153, 1164 (TTAB 2017) (holding SHARPIN, the phonetic equivalent of “sharpen,” merely descriptive of knife blocks with built-in sharpeners); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (holding URBANHOUSING, in standard character form, would be perceived by consumers as the equivalent of the descriptive term URBAN HOUSING, rather than as including the separate word ZING); *In re State Chem. Mfg. Co.*, 225 USPQ 687 (TTAB 1985) (holding “FOM,” phonetic spelling of “foam,” merely descriptive of foam rug shampoo).

## **B. Evidence**

As indicated above, Applicant is seeking to register its marks for nonmetal cable ties and zip ties. Cable ties are also known as zip ties.<sup>3</sup> Cable ties “are designed to be easily clamped, adjusted, released, and reused.”<sup>4</sup>

Standard cable ties are commonly fabricated from nylon grade 6.6 and are used to harness and bundle items, usually wires. Functioning like straps, cable ties are available in miniature sizes for holding small loads, and

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<sup>3</sup> Anfel Corporation website (anfel.com) attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 45); CableOrganizer website (cableorganizer.com) attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 46) (“Most cable ties (aka ‘zip ties’).”); McDowell Decl. ¶ 2 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27) (“Applicant markets cable ties, also known as zip ties.”).

<sup>4</sup> McDowell Decl. ¶ 2 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27).

are also fabricated in long lengths and strong tensile strengths for large items or bundles.<sup>5</sup>

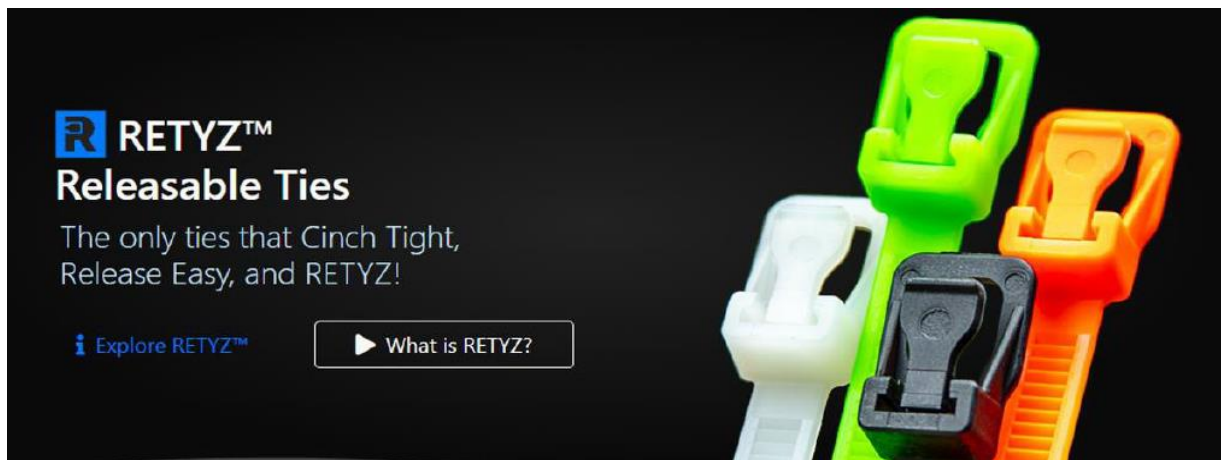
Some cable ties are reusable.<sup>6</sup>

Having to cut the ties off of your cable bundles when you need to alter them is a pain, not to mention it just feels wasteful. Enter releaseable ties: they can be easily removed and re-used, again and again!

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Releaseable zip ties tend to cost a little more than the standard type, but they save money (and are more eco-friendly) in the long run because you can reuse them over and over, as opposed to just throwing them away.<sup>7</sup>

Applicant, on its website <retyz.com>, advertises its cable and zip ties are releasable, reusable, and may be retied or, more specifically, “Retyz.”<sup>8</sup> We reproduce below excerpts from Applicant’s website:



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<sup>5</sup> “Cable Ties: Design and Use,” Thomas website (thomasnet.com) attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 42).

<sup>6</sup> CableOrganizer website (cableorganizer.com) attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 46).

<sup>7</sup> *Id.*

<sup>8</sup> July 9, 2022 Response to an Office Action (TSDR 28).

<sup>9</sup> *Id.*

## Bundle, Fasten, Secure, Organize and Release with Ease

RETYZ™ unique design creates the perfect reusable tie that releases without tools!

10

# RETYZ™ EveryTie™

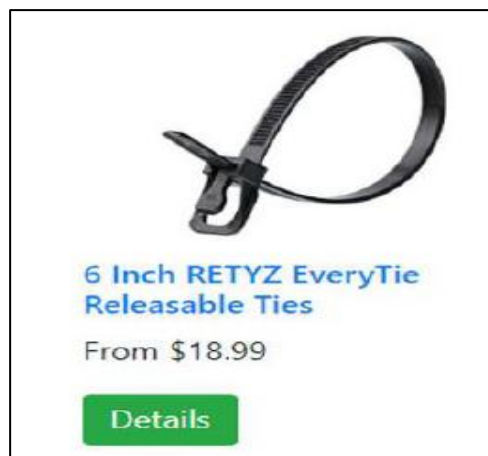
Flexible versatility perfect for everyday tasks up to 50 lbs

11

## Strong Holding Power

Designed, developed, and fabricated while focusing on reliability and durability, the RETYZ EveryTie supports at least 50lbs.

12



13

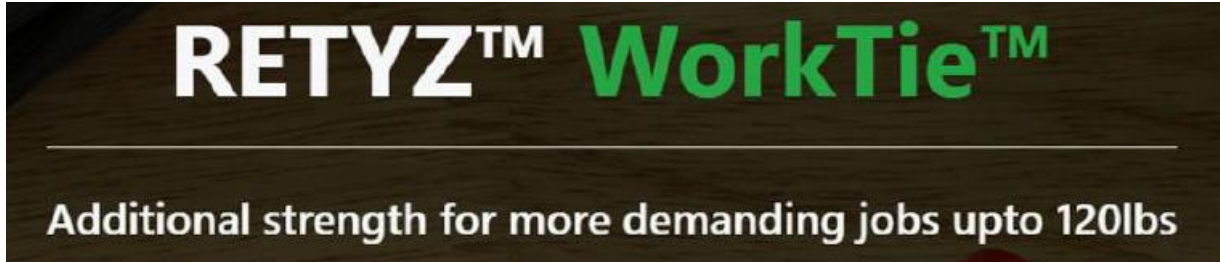
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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at TSDR 31.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at TSDR 33.



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The MERRIAM-WEBSTER DICTIONARY ([merriam-webster.com](https://www.merriam-webster.com)) defines “Retie” as “to tie (something) again.”<sup>16</sup>

The Wikipedia.org entry for “-Z” explains that “z” is a variant of “s” as in a substitute (e.g., Boyz for “boys” or Lovez for “loves”).<sup>17</sup>

With respect to the letter “Y,”

Y is considered to be a vowel if ...

The word has no other vowel: gym, my

The letter is at the end of a word or syllable: candy, deny, bicycle, acrylic

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<sup>14</sup> *Id.* at TSDR 36.

<sup>15</sup> *Id.* at TSDR 39.

<sup>16</sup> July 9, 2022 Response to an Office Action (TSDR 100). *See also* the Lexico online dictionary ([lexico.com](https://www.lexico.com)) (defining “Retie” as “tie (something) again.”). January 10, 2022 Office Action (TSDR 38). We do not consider the definition from the Collins Dictionary ([collinsdictionary.com](https://www.collinsdictionary.com)) because it refers to “British English.” *Id.* at TSDR 34.

<sup>17</sup> August 9, 2022 Final Office Action (TSDR 122).



The letter is in the middle of a syllable: system, borborygmus.<sup>18</sup>

In such cases, the letter y is pronounced as either the long vowel e or the short or long i (usually as a long I when ending a word) – and, for intents and purposes, it is a vowel.<sup>19</sup>

The Examining Attorney submitted the TYZ Now Facebook page advertising ties using TYZ as the phonetic equivalent of “Ties,”<sup>20</sup> and the Facebook page for Debra Tyz advertising men’s neckwear (i.e., ties).<sup>21</sup> In addition, the Examining Attorney submitted a copy of the NU-TYZ Pinterest page advertising handmade silk ties.<sup>22</sup>

The Examining Attorney submitted the following third-party use of “Tyz” for cable or zip ties:<sup>23</sup>

- Tyz-All Plastics, LLC website (tyzall.com) advertising a full line of cable ties;<sup>24</sup>

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<sup>18</sup> The MERRIAM-WEBSTER DICTIONARY (merriam-webster.com) (accessed August 29, 2023) defines “borborygmus” as “intestinal rumbling caused by moving gas.”

<sup>19</sup> “The Truth About ‘Y’: It’s Mostly a Vowel,” Usage Notes, Merriam-Webster Dictionary (merriam-webster.com) February 9, 2023 Request for Reconsideration (TSDR 122). *See also* “Is the letter Y a vowel or a consonant?” WoodwardEnglish.com (*Id.* at TSDR 125).

<sup>20</sup> August 9, 2022 Final Office Action (TSDR 48).

<sup>21</sup> March 3, 2023 Denial of Request for Reconsideration (TSDR 42).

<sup>22</sup> *Id.* at TSDR 47.

<sup>23</sup> We do not consider the Helukabel website (shop.helukabel.com) because the website belongs to a German company posting its prices in Euros. *Id.* at TSDR 18. There is nothing in the website that indicates the company makes sales in the U.S. market.

<sup>24</sup> August 9, 2022 Final Office Action (TSDR 12). *See also* Oesco, Inc. website (oescoinc.com) advertising Tyz-All TYZ cable ties (*Id.* at TSDR 22); “Tyz-All Plastics Introduces Tie-Strips On Rolls,” ElectricNet website (electricnet.com) (May 9, 2008) (*Id.* at TSDR 24).

The Tyz-All website refers to the relevant cable ties as “reusable” and “releasable.”

- Thomas & Betts cable ties on the Galco website (galco.com) advertising the TYZ series of cable ties;<sup>25</sup>

- ABB website (library.e.abb.com) posting a technical data sheet about the TYZ series cable ties;<sup>26</sup> and

- Cabela’s website (cabelas.com) advertising Rod Glove EZ-Rod Tyz (cable ties).<sup>27</sup>

The Examining Attorney submitted the following third-party use of “retie” in connection with cable or zip ties:

- EcoFreek website (ecofreek.com) reviewing reusable zip ties.<sup>28</sup> While reviewing WISLIGHT Adjustable Nylon Cable Ties, the reviewer writes the following:

Their adjustable zip ties are releasable and reusable; you can release and retie as and when you need.<sup>29</sup>

- Misumi website (us.misumi-ec.com) advertise that its CLICK TIE cable ties “allows you to disconnect and retie bundles.”;<sup>30</sup> and

- Matador website (matadoup.com) advertising “Re-Ties Reusable Zip Ties.”<sup>31</sup>

George McDowell, Applicant’s President, attests that “[i]t has been my experience that most attendees [at trade shows] pronounce RETYZ as ‘ret-zies’, rather than

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<sup>25</sup> *Id.* at TSDR 13.

<sup>26</sup> *Id.* at TSDR 26.

<sup>27</sup> March 3, 2023 Denial of Request for Reconsideration (TSDR 52).

<sup>28</sup> January 10, 2022 Office Action (TSDR 5-16).

<sup>29</sup> *Id.* at TSDR 6.

<sup>30</sup> *Id.* at TSDR 29.

<sup>31</sup> August 9, 2022 Office Action (TSDR 52) (“Re-Ties are reusable rubber zip ties designed to bundle loose items, attach gear to backpacks, and more.”).

‘reties’<sup>32</sup> and that even after seeing RETYZ used in connection with cable ties, they do not make the connection between RETYZ and reties.<sup>33</sup> In this regard, many online articles discussing reusable cable ties and third-party retailers and manufacturers do not refer to “retie.” For example,

- Anfel Corporation website (anfel.com)

What are cable ties?

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Most cable ties are intended to be single-use fasteners. Removal typically requires cutting the cable tie, though the ratchet can be released with the careful use of a small screwdriver or similar implement, allowing the gear rack to be pulled out. However, traditional cable ties are significantly weaker and more prone to breaking when reused. Over time, manufacturers created Reusable Cable Ties as an alternative, safely reusable cable tie option, which allow a mechanism to release the cable tie teeth, keeping the cable tie intact. These specialty cable ties are designed to be reused without weakening.<sup>34</sup>

- Cable Organizer website (cableorganizer.com) refers to releasable and reusable cable ties;<sup>35</sup>
- Nelco Cable Tie Products website (nelcoproducts.com) refers to releasable and reusable cable ties;<sup>36</sup>

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<sup>32</sup> McDowell Decl. ¶ 7 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27).

<sup>33</sup> McDowell Decl. ¶ 8 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27).

<sup>34</sup> July 9, 2022 Response to an Office Action (TSDR 45).

<sup>35</sup> *Id.* at TSDR 46-47.

<sup>36</sup> *Id.* at TSDR 48-52.

- ULINE website (uline.com) refers to releasable cable ties;<sup>37</sup>
- The CEPro website (cepro.com) reviewed Applicant’s website and referred to the cable and zip ties as releasable cable ties without any reference to reties or retying the cable ties;<sup>38</sup>
- The Oesco, Inc. website (oescoinc.com) advertises “Re-Usable Plastic Superties”;<sup>39</sup> and
- The ElectricNet website (electricnet.com) reviewing the Tyz-All Plastic products refers to them as reusable and releasable.<sup>40</sup>

### C. Arguments

The Examining Attorney contends that RETYZ is merely descriptive because it is the phonetic equivalent of “Reties,” meaning to tie again, that describes a feature of reusable cable ties (i.e., they may be retied).<sup>41</sup>

Applicant argues, to the contrary, that consumers will not perceive RETYZ as the phonetic equivalent of reties<sup>42</sup> because it is an unusual spelling that consumers are likely to mispronounce as RET EYES.<sup>43</sup> Specifically,

[T]he letter placement and removal of letters from a word affect pronunciation. RETYZ not only replaces the letter S with the letter Z, but it also replaces the I-E combination

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<sup>37</sup> *Id.* at TSDR 53.

<sup>38</sup> *Id.* at TSDR 54-57.

<sup>39</sup> August 9, 2022 Office Action (TSDR 22-23).

<sup>40</sup> *Id.* at TSDR 24-25.

<sup>41</sup> Examining Attorney’s Brief (8 TTABVUE 3-5).

<sup>42</sup> Applicant’s Brief, p. 3 (6 TTABVUE 8).

<sup>43</sup> *Id.* at pp. 4-5 (6 TTABVUE 9-10).

with the letter Y and changes the letter order to end in the letter Z. These changes visually distinguish RETYZ from “reties” and there would lead consumers to use a different pronunciation.<sup>44</sup>

Applicant also contends that RETYZ does not merely describe a feature of its cable and zip ties. Rather, RETYZ merely suggests that Applicant’s cable or zip ties may be reused.

There is no evidence that a potential consumer would be aware that certain cable ties can be reused, and the mark does not further describe this feature. It only suggests the end result, that is, that the cable ties can be reused without tools.<sup>45</sup>

Finally, Applicant argues that Applicant’s registration of RETYZ would not interfere with the need of competitors to use the word “Reties” to describe their cable or zip ties because “‘reties’ is not commonly used to describe cable ties that can be reused.”<sup>46</sup>

[T]he word “reties” is not ordinarily used when describing reusable ties. It is unusual for one to say they “tie” a cable in the way users of a necktie would “tie the tie”. Instead, users and competitors normally use terms such as “fasten”, “secure”, “bundle”, “tighten”, or “cinch” when describing such use or function. (Internal citations omitted). Minimal uses of the term “retie” in the evidence submitted with the Final Office Action does not establish that the word is commonly used. While a cable tie may “tie” something in the technical sense, it is uncommon to describe that function in such a way.<sup>47</sup>

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<sup>44</sup> *Id.* at 6 (6 TTABVUE 11).

<sup>45</sup> *Id.* at p. 7 (6 TTABVUE 12).

<sup>46</sup> *Id.* at p. 8 (6 TTABVUE 13).

<sup>47</sup> *Id.* at p. 9 (6 TTABVUE 14).

#### D. Analysis

We turn first to whether consumers will perceive RETYZ as the phonetic equivalent of “Reties.” Applicant, in its website, directs consumers to make the association between RETYZ with “Reties.” For example,

RETYZ Releasable Ties  
The only ties that Cinch Tight,  
Release Easy, and RETYZ!<sup>48</sup>

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RETYZ EveryTie<sup>49</sup>

—

RETYZ WorkTie<sup>50</sup>

—

RETYZ ProTie<sup>51</sup>

Although Applicant’s President declares that “attendees [at trade shows] pronounce RETYZ as ‘ret-zies’, rather than ‘reties’”<sup>52</sup> and that even after seeing RETYZ used in connection with cable ties, they do not make the connection between RETYZ and reties,”<sup>53</sup> “[t]here is no correct pronunciation of a trademark that is not a recognized word.” *StonCor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1651 (Fed. Cir. 2014); *see also In re Viterra Inc.*, 671 F.3d 1358,

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<sup>48</sup> July 9, 2022 Response to an Office Action (TSDR 28).

<sup>49</sup> *Id.* at TSDR 31,

<sup>50</sup> *Id.* at TSDR 36.

<sup>51</sup> *Id.* at TSDR 39.

<sup>52</sup> McDowell Decl. ¶ 7 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27).

<sup>53</sup> *Id.* at ¶ 8 attached to Applicant’s July 9, 2022 Response to an Office Action (TSDR 27).

101 USPQ2d 1905, 1912 (Fed. Cir. 2012) (stating that “there is no correct pronunciation of a trademark, and consumers may pronounce a mark differently than intended by the brand owner.”).

Because RETYZ is not a recognized word, we consider all reasonable possibilities based on normal English pronunciation. In this regard, we cannot ignore Applicant’s website evidence associating RETYZ with “Reties.” In addition, Tyz-All Plastics, LLC sells a full line of cable ties, Thomas & Betts and ABB offer a TYZ series of cable ties, and Cabela’s advertises Rob Glove EZ-Rod Tyz cable ties. Based on the foregoing, some consumers will pronounce RETYZ as “Reties.”

We now turn to whether RETYZ, as the phonetic of “Reties,” is merely descriptive of cable and zip ties. As Applicant states on its website, “RETYZ™ Releasable Ties: The only ties that Cinch Tight, Release Easy, and RETYZ!” As discussed above, the EcoFreek website, Misumi website and Matador website all advertise releasable cable ties allow the user to retie their bundle. RETYZ or “Reties” directly informs consumers about a feature of Applicant’s releasable, reusable cable and zip ties (i.e., they retie bundles).

Neither the fact that there may be other terms in use to describe Applicant’s cable and zip ties (e.g., reusable or releasable), nor the fact that the word RETYZ may not be commonly used to describe cable and zip ties are determinative of whether RETYZE is merely descriptive. *See In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1717 (TTAB 2011) (“The fact that no other competitor is using NKJV does not make it an inherently distinctive trademark when the only significance projected by the term is

merely descriptive.”) (citing *In re Hunter Fan Co.*, 78 USPQ2d 1474, 1477 (TTAB 2006) (“[A] word need not be in common use in an industry to be descriptive.”)); *In re Gagliardi Bros., Inc.*, 218 USPQ 181, 183 (TTAB 1983) (consumers will perceive BEEFLAKES as merely describing the fact that applicant’s beef is thinly sliced); *In re Marine Protein Corp.*, 183 USPQ 62 (TTAB 1974) (SALMON-ETTE merely descriptive or deceptively misdescriptive of fish even though the diminutive “ETTE” is not commonly used to describe small fish); *In re A.H. Robins Co., Inc.*, 157 USPQ 590 (TTAB 1968) (COUGH CALMERS for a combination antitussive and expectorant pharmaceutical lozenge is merely descriptive); *Nat’l Dairy Prods. Corp. v. Hughes*, 136 USPQ 318 (TTAB 1962) (HONEY WHIP merely descriptive of a whipped honey product even if the product could not in fact be considered whipped according to a technical meaning of the term); *see also Clairol, Inc. v. Roux Distrib. Co.*, 280 F.2d 863, 126 USPQ2d 397, 398 (CCPA 1960) (even novel ways of referring to the goods may nonetheless be descriptive).

While a competitive need to use a term is probative that the mark is merely descriptive, it is not a prerequisite to finding that a term is merely descriptive. *Fat Boys*, 118 USPQ2d at 1514 (“Under the current standard, there is no requirement that the Examining Attorney prove that others have used the mark at issue or that they need to use it, although such proof would be highly relevant to an analysis under Section 2(e)(1).”); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (competitor need is not the test for descriptiveness). It is well-settled that just because Applicant may be the first or only user of a term does not justify its registration when the only



significance conveyed by the term is merely descriptive. *See KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 72 USPQ2d 1833, 1838 (2004) (trademark law does not countenance someone obtaining “a complete monopoly on use of a descriptive term simply by grabbing it first.”); *Clairol*, 126 USPQ2d at 398 (even novel ways of referring to the goods may nonetheless be descriptive).

We find the term RETYZ to be merely a novel spelling of the term RETIES, which is merely descriptive of the goods.

## **II. Disclaimer requirement**

Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), provides that “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component that is generic or merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e). *See In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975) (an applicant is not entitled to register composite word mark “unless descriptive and unregistrable subject matter contained therein is disclaimed.”); *In re Candy Bouquet Int’l Inc.*, 73 USPQ2d 1883, 1889 (TTAB 2004) (“The purpose of a disclaimer is to permit the registration of a mark that is registrable as a whole but contains matter that would not be registrable standing alone . . .”).

Failure to comply with a disclaimer requirement is grounds for refusing registration. *See In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015); *In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400

(Fed. Cir. 2006); *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087 (Fed. Cir. 2005).

Because we find RETYZ is novel spelling of descriptive word, Applicant must disclaim the exclusive right to user “Reties.” *See In re Clutter Control, Inc.*, 231 USPQ 588, 590 (TTAB 1986) (“When words which are merely descriptive, and hence unregistrable, are presented in a distinctive design, the design may render the mark as a whole registrable, provided that the words are disclaimed, under Section 6 of the Trademark Act.”); *see also In re Omaha Nat’l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (affirming refusal to register FIRSTIER for banking services without a disclaimer of the exclusive right to use the term “First Tier”); *In re Grand Metropolitan Foodservice, Inc.* 30 USPQ2d 1974 (TTAB 1994) (the stylized presentation of MuffFuns may be registered with a disclaimer of “muffins” because the mark will not be perceived solely as a misspelling of “muffins”); *Ex parte Minneapolis-Honeywell Regulator Co.*, 101 USPQ 293, 294 (Comm’r Pats. 1954) (ELECTRONIK (stylized): “Since it is clear that no one person may claim exclusive rights in the word ‘electronic’ for devices of the nature involved here, a disclaimer of the phonetic equivalent used by applicant is required.”).

**Decision:** We affirm the Section 2(e)(1) refusal in application Serial No. 90687823 on the ground that the mark RETYZ for “cable ties, not of metal; zip ties, not of metal” is merely descriptive.

We affirm the refusal based on Applicant's failure to comply with the requirement to disclaim the exclusive right to use the term "RETIES" in application Serial No. 90689458 on the ground that it is merely descriptive.

However, in the event Applicant submits the required disclaimer within thirty days of the date of this decision, the requirement for the disclaimer will have been met and the application will proceed to publication for opposition.<sup>54</sup> Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g).

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<sup>54</sup> A proper disclaimer reads as follows: "No claim is made to the exclusive right to use of 'RETIES' apart from the mark as shown."