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THE TTAB

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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 Leslie A. Snyder

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Serial No. 76526403

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Norman E. Lehrer for Leslie A. Snyder.

Ronald L. Fairbanks, Trademark Examining Attorney, Law  
Office 112 (Janice O'Lear, Managing Attorney).

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Before Seeherman, Bucher and Rogers, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Leslie A. Snyder, an individual, has applied to  
register the mark WHEELCHAIRGEAR and design, as shown  
below, for "all purpose carrying bags, pouches, totes and  
packs for use with wheelchairs, walkers, crutches and other  
ambulatory aids."<sup>1</sup>

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<sup>1</sup> Application Serial No. 76526403, filed June 26, 2003, and  
asserting a bona fide intention to use the mark in commerce.



The Trademark Examining Attorney has required that applicant disclaim exclusive rights to WHEELCHAIRGEAR apart from the mark as shown. When applicant refused to submit the required disclaimer, the Examining Attorney issued a final Office Action refusing registration. It is from that action that applicant has filed the instant appeal.

Applicant and the Examining Attorney have filed appeal briefs. Applicant did not request an oral hearing.

Section 6(a) of the Trademark Act, 15 U.S.C. §1056(a), provides, in part, that The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 2(e)(1) of the Act, 15 U.S.C. §1052(e)(1), prohibits the registration of a mark that, when used on or in connection with the goods of the applicant, is merely descriptive of them.

In support of his position that WHEELCHAIR GEAR is merely descriptive of applicant's identified goods, the

Examining Attorney has submitted the following definitions<sup>2</sup> of the words "wheelchair" and "gear":

Wheelchair or Wheel Chair: A chair mounted on large wheels for the use of a sick or disabled person.

Gear: 1. Equipment, such as tools or clothing, used for a particular activity; paraphernalia: *fishing gear*. See synonyms at equipment  
2. Clothing and accessories: *the latest gear for teenagers*.

He has also submitted several pages of the "search results" from a Google search of "gear 'wheelchair accessories'-motor." They include the following:

AJ's Essential Chair Gear  
Essential wheelchair accessories...With this product you can see the world without having to drag around a lot of heavy bathroom gear  
[www.disabilitytravel.com/travel/essentials/chair\\_essentials2.htm](http://www.disabilitytravel.com/travel/essentials/chair_essentials2.htm)

Assistivetech.net|Search for AT|By Function/Activity Results  
...Push Ease Wheelchair Hand Gear-Wheelchair gloves...  
[www.assistivetech.net/search/FA\\_search4.dfm?](http://www.assistivetech.net/search/FA_search4.dfm?)

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<sup>2</sup> The American Heritage Dictionary of the English Language, 3d ed. © 1992). With its appeal brief the Examining Attorney recited additional definitions from on-line dictionaries. These definitions were not properly submitted as evidence during the examination of the application. Because they are from on-line dictionaries, and because there is no indication that they are available in book form, we decline to take judicial notice of them. See *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789, n.3 (TTAB 2002) *In re Total Quality Group Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999).

WheelchairNet: Daily living equipment for people who use...  
...Disability Gear-Accessories for wheelchairs, scooters, walkers and more.  
[www.wheelchairnet.org/WCN\\_ProdServ/Products/adidev.html](http://www.wheelchairnet.org/WCN_ProdServ/Products/adidev.html)

DA/Quest 5-4/Wheelchair Accessories  
...alarm cushion, and gloves and other hand gear. Maddak Inc. produces a line of independent living aids called Ableware. Among wheelchair accessories offered...  
[www.mdausa.org/publications/Quest/q54chairstuff.html](http://www.mdausa.org/publications/Quest/q54chairstuff.html)

Accessories  
...Grover Gear-Makes wheelchair accessories such as hunting covers and cushion covers.  
[www.iseekhealth.com/accessories05889.php](http://www.iseekhealth.com/accessories05889.php)

Ableware Wheelchair Accessories  
...Return Policy. Wheelchair Accessories. Lap Top Wheelchair Desk. Roomy storage beneath the lid for  
...Grover Gear. 218 2<sup>nd</sup> Avenue North, PO Box 84, Bowlus MN  
[www.grovergear.com/id64.htm](http://www.grovergear.com/id64.htm)

A mark is merely descriptive, and therefore prohibited from registration by Section 2(e)(1), if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which

registration is sought, the context in which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark in the marketplace. In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986).

It is obvious that the word WHEELCHAIR describes a significant feature of applicant's goods. Applicant's own identification describes its various bags and packs as being for use with wheelchairs.<sup>3</sup> These carrying bags, pouches, totes and packs are accessories that are used on the wheelchairs, and would be used by people in wheelchairs. These goods also fall within the dictionary definition of gear: "1. Equipment, such as tools or clothing, used for a particular activity; paraphernalia: *fishing gear*. See synonyms at equipment." They can be considered as paraphernalia, or as equipment used by individuals who conduct their activities from a wheelchair.

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<sup>3</sup> We note that applicant's identification states that its goods are for use not only with wheelchairs, but "walkers, crutches and other ambulatory aids." We have analyzed the issue with respect to wheelchairs because "registration will be denied if a mark is merely descriptive of any of the goods or services for which registration is sought." (emphasis in original) In re Quik-Print Copy Shop, Inc., 616 F.2d 513, 205 USPQ 505, 507 (CCPA 1980).

Moreover, the Google search results support the dictionary meaning of "gear," when used with respect to wheelchair accessories/accoutrements/items, as indicating paraphernalia or equipment, on pages that would be of interest to the class of purchasers for applicant's goods. We note that the "search results" pages of a Google search generally have limited probative value because the phrases from the actual websites which are listed in the search results are so truncated. For this reason, Examining Attorneys are strongly encouraged to submit the pages from the actual website, rather than relying only on the Google report. However, the listings that have been provided in this instance are sufficient for us to conclude that "gear" is used for its broader dictionary meanings of paraphernalia and equipment for this class of purchasers/users, and is not limited to meaning only "clothing," as applicant suggests. For example, the excerpt reporting the WheelchairNet website uses the term "Disability Gear" for "Accessories for wheelchairs." The title of the excerpt reporting the disabilitytravel.com website is "AJ's Essential Chair Gear."

It is clear that consumers of goods such as those of applicant, whether they be people who use wheelchairs or purchasers of goods for those in wheelchairs, would

understand the word GEAR in its usual dictionary sense and so would perceive the term to mean, inter alia, equipment for use on or in connection with wheelchairs. When the term WHEELCHAIRGEAR is used in a trademark for all purpose carrying bags, pouches, totes and packs for use with wheelchairs, it directly conveys to consumers for such goods that they are accessories that are used on wheelchairs. As such, the term is merely descriptive of the identified goods.

Applicant has argued that "one seeing or hearing the term WHEELCHAIRGEAR would not immediately know that Appellant's goods were all purpose carrying bags, pouches, totes and packs for use with wheelchairs, walkers, crutches and other ambulatory aids." Brief, pp. 2-3. This argument, however, ignores the principle stated above, that the determination of whether a term is merely descriptive is not made in the abstract, but in relation to the goods for which registration is sought. For the same reason, we find unpersuasive applicant's argument that WHEELCHAIRGEAR could refer to mechanical parts.

Applicant also states that "there is no such thing as wheelchairgear." Brief, p. 4. Such a position would be applicable if the Examining Attorney had required a disclaimer on the basis that the term is generic. However,

the Examining Attorney has asserted only that the term is merely descriptive and to be found merely descriptive a term need not be the name of the product; it need only directly convey information concerning a quality, characteristic, function, ingredient, attribute or feature of a product (or service). See *In re Venture Lending Associates*, 226 USPQ 285, 286 (TTAB 1985).

Applicant also argues that "the descriptive significance of the individual terms is lost in the mark as a whole."<sup>4</sup> Brief, p. 5. Applicant claims that the expression WHEELCHAIRGEAR "has an alliterative lilted cadence and rhyme (chair and gear) which encourages persons encountering it to perceive it as a whole." *Id.* We do not agree. There is nothing alliterative or rhyming about the syllables "chair" and "gear." Cf. *In re Kraft, Inc.* 218 USPQ 571 (TTAB 1983) (LIGHT N' LIVELY). Consumers for these bags that are used with wheelchairs will immediately recognize that the term consists of the word WHEELCHAIR and GEAR, and will, as stated above, immediately understand that applicant's goods are accessories for wheelchairs.

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<sup>4</sup> Because this appears to be an alternative argument, we have not taken this statement to be a concession by applicant that the individual terms are merely descriptive.

Applicant has asserted that competitors do not need to use the term WHEELCHAIR GEAR to describe similar products because other words could be utilized. Citing *In re Reynolds Metals Co.*, 178 USPQ 296 (CCPA 1973), applicant states that the mark BROWN-IN-BAG was found suggestive for plastic bags because competitors could use other terms to describe their goods. This is a misreading of Reynolds. The Court first found the mark to be suggestive, and the discussion of whether competitors would be deprived of a necessary term was made in response to a concern of the Commissioner. Case law is well-established that a mark should be found merely descriptive if it immediately conveys knowledge of the qualities, characteristics, etc. of the goods. There may be some situations in which a term that does not directly convey such information may be found merely descriptive if it would deprive competitors of a necessary word to describe their products, but the reverse is not true. If a term immediately conveys such information, as we have found it does here, it is merely descriptive, regardless of whether other words could also be used.

This brings us to applicant's argument that, to his knowledge, no other entity is using the term WHEELCHAIRGEAR or any similar term in connection with similar goods. The

fact that no other entity has been uncovered that uses WHEELCHAIRGEAR as a trademark may simply reflect that it is a descriptive term, and that other companies prefer to adopt a stronger and/or registrable trademark. There is evidence from the Google search results submitted by the Examining Attorney that "gear" is used by third parties, in that a company calls itself "Grover Gear" and "Disability Gear" is used as the title of a category of products. In any event, as the Examining Attorney has pointed out, the fact that an applicant may be the first or only user of a term does not justify registration if the term is merely descriptive. See *In re Alpha Analytics Investment Group LLC*, 62 USPQ2d 1852 (TTAB 2002).

Decision: Because we have found that WHEELCHAIRGEAR is merely descriptive of applicant's identified goods, the Examining Attorney's requirement for a disclaimer of this term was correct, and the refusal of registration of the mark in the absence of a disclaimer of this term is affirmed. However, if applicant submits the required disclaimer within thirty days from the mailing date of this decision, the decision will be set aside and the application will proceed to publication.