

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: February 17, 2009  
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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 Rotolo

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Serial No. 77008616

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Catherine Ferguson of Malin Haley & DiMaggio, P.A. for John Rotolo.

Giancarlo Castro, Trademark Examining Attorney, Law Office 110 (Chris A. F. Pedersen, Managing Attorney).

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Before Hairston, Walsh and Ritchie, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

John Rotolo seeks to register the mark STRIP HOP (in standard character form) for "adult entertainment services, namely, live performances by exotic dancers, night clubs and cabarets featuring alcoholic drinks and food" in International Class 41.<sup>1</sup>

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<sup>1</sup> Serial No. 77008616, filed September 27, 2006, based on applicant's allegation of a bona fide intention to use the mark in commerce.

The trademark examining attorney has refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified services.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs.

The examining attorney maintains that the term "strip hop" is commonly used to refer to a genre or type of music and dance style; and that applicant's identified adult entertainment services encompass "strip hop" music and dance. Thus, it is the examining attorney's position that STRIP HOP is merely descriptive of applicant's identified services. In support of his position, the examining attorney has submitted excerpts of articles from the Nexis database and third-party websites containing references to the term "strip hop."<sup>2</sup>

Applicant, on the other hand, contends that its mark is "a play on words in the classic sense of a coined or

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<sup>2</sup> Applicant has objected to two of the excerpts on the ground that they are from foreign (Canadian) publications. We have not given any consideration to these two excerpts since we cannot determine to what extent customers in the United States have been exposed to them.

suggestive trademark" (Brief, p. 3); that imagination, thought or perception is required to reach a conclusion as to the nature of applicant's services; that the examining attorney has not met his burden of showing that the term "strip hop" is commonly used to refer to a style of dance; and that competitors would not need to use STRIP HOP to describe their adult entertainment services.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services

for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). It is settled that "the question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." In re Tower Tech Inc., 64 USPQ2d 1314, 1316-17 (TTAB 2002).

The examining attorney has submitted the following excerpts of articles from the Nexis database and third-party websites which show that the term "strip hop" is used descriptively to refer to a type of music and style of dance:

HEADING: No more Mr. Ice Guy; At a time when rap is all booty and bling - call it strip hop - Ice Cube is mad as hell and isn't going to take it any more.

BODY: But the current chart-topping rapper TI - who grew up in Atlanta, center of the strip-hop universe - says he just has to look at his own life to keep from falling into that trap.

(Newsweek, June 19, 2006);

HEADLINE: Strip-hop or strip-not?

BODY: Then, e-mail [ritaredeye@tribune.com](mailto:ritaredeye@tribune.com) to let us know if you think its "strip-hop" or "strip-not". Please include your full name and neighborhood. Twista featuring Pit Bull. (Chicago Tribune, RedEye Edition, December 25, 2005);

HEADLINE: Rise of strip-hop; Strip club-related rap becoming popular tracks

BODY: The popularity of strip club-related rap, dubbed "strip-hop" by RedEye, doesn't surprise Vibe magazine's music editor Erik Parker, who lists "Laffy Taffy" as just ...

...

But McDowell and Green reject the categorization of "Laffy Taffy," and other similar songs, as strip hop.

...

Chicago MC's are getting wind of the trend and reaching out for Collipark's strip-hop tracks. (Chicago Tribune, RedEye Edition, December 26, 2005);

HEADLINE: 'Booty shake' beginnings

... first time that MC's combined X-rated lyrics with infectious bass-heavy beats to get the club bumping. The beginnings of strip-hop can be traced back nearly two decades to 2 LiveCrew. (Chicago Tribune, RedEye Edition, December 26, 2005);

HEADLINE: Xzibit, W.C., Nivea and Blue Cantrell also on the bill

BODY: Mystic completes the bill in support of her solo debut, "Cuts for Luck and Scars for Freedom." No mere strip-hop diva la Lil' Kim, this singer-songwriter spins tough, lyric-driven tales of modern-day womanhood. (Arizona Daily Star, March 14, 2003);

Jaci-O

Miami's queen of strip-hop is heating things up with her new single "Sugarwalls" and a BET Female Hip Hop nomination.

Jaci-O's debut album "Poe Little Rich Girl" in stores now!

([www.screensavers.com](http://www.screensavers.com)); and

Strip Hop - Vol. 1 (2002)

A review of Strip Hop - Vol. 1

Synopsis: Like hip hop? Like to watch some hot booty shaking? Then STRIP HOP VOLUME I is just what you've been looking for. Some of the west coast's hottest rappers do their thing, while some of the hottest women shed their clothing for your pleasure.

MPAA Rating: Unrated

Runtime: 70 minutes

Genre: Adult Audience, Non-Explicit, Erotic, Adult, Strippers

([www.rottentomatoes.com](http://www.rottentomatoes.com))

Phillip Steir uses a simple off-kilter guitar flourish to transform "The Ballad of Resurrection Joe" into an eerie, unsettling bit of strip-hop, while Chris Vrenna's rave-y "Return of the Phantom Stranger" makes one wonder what Zombie's originals might have become in the hands of say Underworld.

([www.yaleherald.com](http://www.yaleherald.com))

HEADLINE: Strip Hop - Sexual Moves in Music Videos Have Spawned Very Grown-Up Styles Even Kids Have Mastered

([Atlanta Journal-Constitution](http://atlanta-journal-constitution.com), June 9, 2005);

Strip-Hop: Music videos make stripper moves all the craze

As popular dance evolved faster than the number of beats in a Lil Jon song, it's sometimes hard to keep track of what exactly those young bodies are doing in front of the MTV cameras.

(<http://blaqboard.com>)

Join us on Thursday evenings for non-stop sexy dance classes!

...

Try our 2 new classes. Sweat appeal & Strip Hop! Don't forget to bring your sneakers.

(<http://studiorio.netfirms.com>)

Dancers have the best bods!  
Get yours with our Booty-licious Dance/Fitness Series  
(18+)  
Strip Hop  
Wednesdays @ 8 PM  
Sept 12 - Oct 17  
([www.defsol.ca/bootylicious.html](http://www.defsol.ca/bootylicious.html))

Strip-Hop Dancing  
A group for people to showcase and watch other peoples  
strip-hop dancing moves!  
([youtube.com/group/strip-hop](http://youtube.com/group/strip-hop))

Based on the above evidence, we find that in the context of applicant's adult entertainment services, STRIP HOP is merely descriptive in that such services will feature "strip hop" music and dancing. The evidence submitted by the examining attorney establishes that the term "strip hop" is used to refer to a type of music and style of dance. Moreover, it is not uncommon for a term to describe a type of music and the associated style of dance, e.g. "disco" and "salsa." We have no doubt that prospective customers for applicant's services would understand STRIP HOP to describe the music and dance to be featured at applicant's night clubs and cabarets.

In reaching our conclusion, we recognize that only one of the Nexis and Internet excerpts appears to use the term "strip hop" in connection with adult entertainment services (HEADLINE: Rise of strip-hop; Strip club-related rap becoming popular tracks). However, this does not change

our view of the probative value of this evidence. The descriptive significance of the term "strip hop" as used in these excerpts is equally applicable to adult entertainment services. This is especially the case since several of the excerpts reference the risqué nature of "strip hop," e.g., "X-rated lyrics," "sexual moves," "stripper moves," "hot booty shaking," and "Booty-licious dance." Furthermore, because the refusal is based on the ground of descriptiveness, we do not require the same type of record as would be required if the refusal of registration were based on a conclusion that STRIP HOP was generic.

Finally, as to applicant's contention that competitors do not need to use the term STRIP HOP to describe their adult entertainment services, that an applicant may be the first and sole user of a merely descriptive term does not justify registration if the only significance conveyed by the term is merely descriptive. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

In view of the foregoing, we find that STRIP HOP is merely descriptive of applicant's identified services.

**Decision:** The refusal to register under Section 2(e)(1) is affirmed.