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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 Fazzari Restaurant Group LLC

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Serial No. 77109197

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Andrew S. McConnell of Boyle Fredrickson, S.C. for Fazzari Restaurant Group LLC.

Ann Sappenfield, Trademark Examining Attorney, Law Office 117 (Brett Golden, Acting Managing Attorney).

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Before Walters, Walsh and Bergsman,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Fazzari Restaurant Group LLC ("applicant") filed an intent-to-use application on the Principal Register for the mark MARGARITA COMPANY, in standard character form, for "restaurant and bar services," in Class 43.

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive. According to the Examining Attorney, the mark MARGARITA COMPANY "taken as a

whole, merely refers to a restaurant business where margarita cocktails are served."[1]

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the products and services it identifies. *In re Gyulay,* 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). Whether a particular term is merely descriptive is determined in relation to the goods and services for which registration is sought and the context in which the term is used, not in the abstract or on the basis of guesswork. *In re Abcor Development Corp.,* 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle,* 66 USPQ2d 1222, 1224 (TTAB 2002). In other words, the question is not whether someone presented only with the mark could guess the products listed in the description of goods. Rather, the question is whether someone who knows what the products are will understand the mark to convey information about them. *In re Tower Tech, Inc.,* 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.,* 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Association of Greenville,* 18 USPQ2d 1313, 1317 (TTAB 1990); *In re American Greetings Corp.,* 226 USPQ 365, 366 (TTAB 1985).

[1] The Examining Attorney's Brief, unnumbered p. 3.

When two or more merely descriptive terms are combined, the determination of whether the composite mark also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooking towers); *In re Sun Microsystems Inc.*, 59 USPQ 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use in developing and deploying application programs); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of new information services in the food processing industry). In this regard, we must consider the issue of descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. *See Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054, 1057 (TTAB 1989).

Finally, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what

product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978); *see also, In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980). Incongruity is a strong indication that a mark is suggestive rather than merely descriptive. *In re Tennis in the Round, Inc.*, 199 USPQ at 498 (the association of applicant's mark TENNIS IN THE ROUND with the phrase "theater-in-the-round" creates an incongruity because applicant's services do not involve a tennis court in the middle of an auditorium).

The following facts have been established and are uncontested:

1. A "Margarita" is "[a] cocktail made with tequila, an orange-flavored liqueur, and lemon or lime juice, often served with salt encrusted on the rim of the glass." [2] It is also a girl's name.[3]

2. A "Company" is, *inter alia*, "[a] business enterprise; a firm"[4] and when used as part of a registered

[2] The American Heritage Dictionary of the English Language (3rd ed. 1992).
[3] The American Heritage Dictionary of the English Language (4th ed. 2000).
[4] The American Heritage Dictionary of the English Language (3rd ed. 1992).

mark, the exclusive use of the word "Company" has been disclaimed.

3. Margaritas are served in restaurants and bars.

4. Many restaurants incorporate the term "Margarita" in their names (*e.g.*, Tio Juan's Margaritas Mexican Restaurant and Watering Hole, Margarita's Mexican Restaurant, and Margarita's).

The Examining Attorney contends that the combination of descriptive words "Margarita" and "Company" does not form a composite mark with a non-descriptive meaning. Applicant argues, to the contrary, that "when the mark is taken as a whole, and 'Margarita' and 'Company' are considered together, they suggest an industrial activity, creating the commercial impression of a business that is engaged in a manufacturing enterprise – e.g., a company manufacturing Spanish or Mexican products (Margarita being the Spanish name of a girl) – not a restaurant or bar offering commensurate services."[5]

The combination of the words "Margarita" and "Company" to form MAGARITA COMPANY is incongruous because a restaurant or bar that serves Margaritas does not immediately call to mind a Margarita company, whatever that may be. For

[5] Applicant's Brief, pp. 3-4.

example, a restaurant is synonymous with a café, counter, sandwich shop, chophouse, pizzeria, bistro, etc.[6] and a bar is synonymous with a lounge, ale house, bistro, cocktail lounge, etc.[7] MARGARITA COMPANY is not the usual or normal manner in which consumers refer to a restaurant or bar specializing in Margaritas; although it is highly suggestive, it possesses enough incongruity to raise doubt as to its mere descriptiveness because its meaning would not be grasped without some measure of imagination and "mental pause." Accordingly, we find that the term MARGARITA COMPANY, as used in connection with restaurant and/or bar services, does not readily and immediately evoke an impression and understanding of restaurant or bar services.

We recognize that the suggestive/descriptive dichotomy can require the drawing of fine lines and often involves a good measure of subjective judgment. Indeed, this case presents such a challenge. At the very least, however, we have doubts about the "merely descriptive" character of the mark before us and, unlike the situation in determining likelihood of confusion under Section 2(d) of the Trademark Act, it is clear that such doubts are to be resolved in

[6] Roget's Thesaurus (2010).
[7] *Id.*

favor of applicants. *In re Pennwalt Corp.*, 173 USPQ 317, 319 (TTAB 1972); *In re Ray J. McDermott and Co., Inc.*, 170 USPQ 524, 525 (TTAB 1971).

Decision: The refusal to register is reversed.