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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re HJL Group, LLC.

Serial No. 85028579

Scott W Kelley of Kelly Lowry & Kelley, LLP, for HJL Group, LLC.

Nicholas K.D. Altree, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Zervas, Kuhlke, and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

HJL Group, LLC, applicant herein, seeks registration on the Principal Register of the mark "NEIGHBORHOODJOINTS," in standard character format, for "offering business management assistance in the establishment and/or operation of restaurants; providing a web site featuring product ratings of the consumer goods and services of others in the field of food and restaurant services; providing a website

where users can post ratings, reviews and recommendations on restaurants, food and wine for commercial purposes; restaurant management for others," in International Class 35.¹ The trademark examining attorney refused registration on the ground that applicant's mark is merely descriptive of the identified services under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1). Both applicant and the examining attorney filed briefs. After careful consideration of all of the arguments and evidence of record, we affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of 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). 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

¹ Serial No. 85028579, filed on May 3, 2010, under Trademark Act Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), alleging a bona fide intent to use in commerce.

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). Moreover, it is settled that "[t]he 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); *See also In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

We consider a composite mark in its entirety. A composite of descriptive terms is registrable only if as a unitary mark it has a separate, non-descriptive meaning. *In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (holding SUGAR & SPICE not merely descriptive of bakery products). Accordingly, we look to the plain meaning of the words.

Applicant does not contest that its proposed mark consists of the words "neighborhood" and "joints." We take

judicial notice of the dictionary definitions of these words, which we set forth in relevant part below:²

Neighborhood: the place or region near.
Merriam-Webster Online Dictionary (2012)

Joint: place; establishment.
Merriam-Webster Online Dictionary (2012)
Synonyms: parlor; salon.

In this regard, we view the dictionary definitions to show the relevant public's understanding of the term "NEIGHBORHOOD JOINTS," as applied to applicant's identified services, namely, as referring informally to a local place or hangout. The examining attorney submitted evidence to show third parties using the term "neighborhood joint" or "neighborhood joints" to refer to local restaurants. We note that some of the entries are news articles referring specifically to applicant, the HJL Group, LLC, and its local restaurant properties. We also note from the record that applicant has itself used the term "neighborhood joints" to refer to its local restaurants. Applicant does not dispute this, but rather states that "restaurant services" are not what it seeks to register with the current application. (Reply Brief at 1-2).

² The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd* 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

New Orleans - Top 25 Neighborhood Joints: Tom's 25 Best Neighborhood Restaurants: I guess the best way to illustrate what I mean by a great New Orleans neighborhood restaurant is to make a list of the best of them. www.flyertalk.com; Attached to August 13, 2010 Office Action p12.

Categories: Neighborhood Joints: Bond Trisransri Is at It Again With 2B Asian Bistro; The Sicilian in Miami Lakes Will be Sold Soon; At Tinta y Café, Cuban Café Meet Coffeehouse; Liberty Caffè: Casual Eats at the Coral Gables Country Club; Blogs.miaminewtimes.com/shortorder/neighborhood_Joints; Attached to August 13, 2010 Office Action p22-31.

Nob Hill restaurants + neighborhood joints: My sister and I are coming to SF and staying on Bush Street at the top of Nob Hill. We love to eat, are adventurous - and pretty cheap. Any ideas for good restaurants? We'd like to know about some near our hotel, and would also like to know about restaurants in neighborhoods we could travel to via trolley or bus. Thanks! chowhound.chow.com; Attached to August 13, 2010 Office Action p2.

Newest Santa Barbara Restaurant Arch Rock Fish Set to Rock the Neighborhood Beginning August Fresh Seafood Joint from Restaurant and Hospitality Veterans Sources Locally: Arch Rock Fish, Santa Barbara's newest restaurant and the first neighborhood joint from HJL Restaurant Advisors Group, is set to debut this month. www.classic.cnn.com; Attached to August 13, 2010 Office Action p7.

"We're thrilled to open our flagship neighborhood joint with Arch Rock Fish, bringing to life a restaurant concept and business strategy that we've carefully planned out with the intention of providing the best dining experience suited to the beautiful setting of Santa Barbara," said Jeremiah Higgins, Arch Rock Fish operations advisor and co-owner and HJL Group partner. www.thefreelibrary.com; Attached to February 2, 2011 Office Action p6.

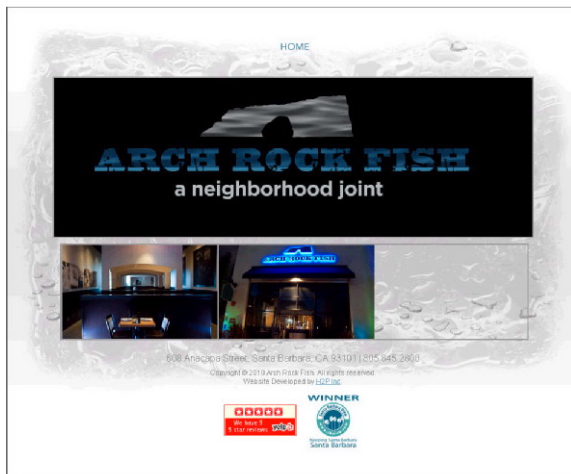
Restaurant and Hospitality Veterans Announce New Venture with HJL Restaurant Advisors Group: Restaurant projects assisted by the HJL group include Marquee, Brush and Savoy in Santa Barbara, Calif, and Santa Monica Seafood Co. HJL Group is also operating a series of its own neighborhood joints throughout Southern California. www.prnnewswire.com; Attached to February 2, 2011 Office Action p10.

Arch Rock Fish writes: Arch Rock Fish is a Santa Barbara restaurant and local neighborhood joint that serves a variety of fresh, high-quality seafood dishes in a relaxed but casually elegant full service environment. www.opentable.com; Attached to February 2, 2011 Office Action p12.

Go(Arch Rock) Fish: While the restaurant's owners, the HJL Group (which also has a hand in some other establishments, such as Blush, Marquee, and On the Side in Isla Vista), admit they have visions of a host of "neighborhood joints" down the pike, Arch Rock Fish is the first and for now, foremost focus; www.independent.com; Attached to February 2, 2011 Office Action p14.

Arch Rock Fish - A neighborhood joint; archrockfish.com; Attached to February 2, 2011 Office Action p4.

<http://archrockfish.com/home> 02/02/2011 10:26:46 AM



The primary purposes for refusing registration of a merely descriptive mark are "(1) to prevent the owner of a mark from inhibiting competition in the sale of particular goods; and (2) to maintain freedom of the public to use the language involved, thus avoiding the possibility of harassing infringement suits by the registrant against others who use the mark when advertising or describing their own products." *In re Abcor*, 200 USPQ at 217.

Applicant's reliance on *In re TBG Inc*, 229 USPQ 759 (TTAB 1986) is misplaced. The holding of the Board in that case, finding the mark SHOWROOM ONLINE to be not merely descriptive of "leasing computer databases and video disks in the field of interior furnishings and related products of others" is limited to the record in that case. Among other things, the Board rested its findings on the fact that the Office had not identified "a single third party use" of the term. *Id.* at 760. As noted from the evidence above, that is not the case here. Even applicant has used the term descriptively in regard to its own restaurant services.

While we understand that applicant is not applying for "restaurant services" here, it is clear that the term "neighborhood joints" describes a feature or function of the services recited in the application, namely that

consumers would use these services to find out "ratings" about "neighborhood joints" or business owners would use them for "restaurant management" of their own "neighborhood joints." In short, it would be an impediment for competitors offering restaurant ratings or management services or for the public using such services to try to describe them if applicant were allowed to register "NEIGHBORHOODJOINTS."

In sum, although any doubt on a 2(e)(1) refusal must be resolved in favor of the applicant, the meaning here is clear. See *In re Tower Tech Inc.*, 64 USPQ2d at 1316-17; see also *In re Conductive Services, Inc.*, 220 USPQ 84, 86 (TTAB 1983). Therefore we find that the mark is merely descriptive of the identified services. Accordingly, we affirm the refusal to register.

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