

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re North Beaches Art Walk Association, Inc.

Serial No. 85139899

James R. Menker of Holley & Menker, P.A. for North Beaches Art Walk Association, Inc.

Tamara G. Frazier, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Grendel, Holtzman and Kuczma
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

North Beaches Art Walk Association, Inc. ("applicant") filed an application to register on the Principal Register the mark THE BEST LITTLE ART WALK IN TOWN, in standard character form, pursuant to § 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), for the following services in Class 41:

Art exhibitions; Organizing cultural and arts events.

The examining attorney issued a final refusal to register the mark pursuant to § 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that the

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mark is merely descriptive of the services.¹ Applicant and the examining attorney have filed briefs.

Descriptiveness

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act § 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. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217 (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. *In re H.U.D.D.L.E.*, 216 USPQ 358, 359 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

Whether a particular term is merely descriptive is determined in relation to the goods or 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*

¹ In the 2/3/2011 Final Office Action, the examining attorney reiterated that applicant could amend its application to the Supplemental Register but that if it did so, it must disclaim "art walk" because this wording appeared to be generic in light of applicant's services.

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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 American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

According to the examining attorney, applicant's mark is not entitled to registration because the mark is a laudatory phrase which merely describes applicant's services.² In support of the refusal, the examining attorney submitted definitions and internet evidence to show the meaning of the following terms:

Definitions

Best (definition):

adjective

1. Of the highest quality, excellence or standing
2. Most advantageous, suitable or

² Examining Attorney's Appeal Brief p. 3 (unnumbered).

desirable

3. Largest; most

<http://dictionary.reference.com/browse/Best?>³

Little (definition):

adjective

1. Small in size; not big; not large;

tiny

2. Short in duration; not extensive;

short; brief

3. Small in number

4. Small in amount . . .

<http://dictionary.reference.com/browse/little?>⁴

Town (definition):

Noun

1. A thickly populated area, usually smaller than a city and larger than a village, having fixed boundaries and certain local powers of government . . .

<http://dictionary.reference.com/browse/town?>⁵

Art Walk (internet evidence, emphasis added):

First Friday Art Walk

New exhibits open in more than 20 area galleries from 5 to 9 p.m. the first Friday of each month. Free trolley rides are offered up and down King Street and throughout downtown to **art walk** locations . . .⁶

http://webcache.googleusercontent.com/search?q=cache:jk56GiZffGJ:staugustine.com/entertainment/arts/2011-01-07/first-friday-art-walk+art+walk&cd=7&hl=en&ct=clnk&gl=us_01/11/2011_03:38:11_PM

Mission Arts and Performance Project

The Mission Arts and Performance Project always manages to strike a near-impossible balance between a sense of community and a high quality of art. The long-running, loosely organized bimonthly **art walk** encompasses literary

³ See attachment to 1/11/2011 Office Action.

⁴ See attachment to 1/11/2011 Office Action.

⁵ See attachment to 7/19/11 Request for Reconsideration Denied.

⁶ See attachment to 1/11/2011 Office Action.

readings, musical performances, afternoon kids' projects, and visual arts of many kinds . . .⁷

<http://webcache.googleusercontent.com/search?q=cache:dKt5TnbixucJ:www.sfweekly.com/bestof/2010/award/best-art-walk-1983108/+best+art+walk&cd=2&hl=en&ct=clnk&gl=us&source=www.google.com> 02/03/2011 06:51:40 PM

Gig Harbor Art Walk

One of the best small town **art walks** in the Pacific Northwest, stroll through the many galleries and chat with the artists as they work. Held the first Saturday of the month, enjoy an afternoon admiring the beauty of art . . .⁸

<http://webcache.googleusercontent.com/search?q=cache:D16TQm1Oht8J:www.experiencewa.com/attraction.aspx%3Fid%3D425+best+art+walk&cd=4&hl=en&ct=clnk&gl=us&source=www.google.com> 02/03/2011 06:53:42 PM

In its brief, applicant concedes that the term "art walk" is descriptive of its identified services.⁹

Relying on the foregoing and other similar evidence, the examining attorney contends that the mark THE BEST LITTLE ART WALK IN TOWN is descriptive of the quality, feature and characteristics of applicant's art exhibitions. That is, "applicant provides art exhibitions and events in the form of 'art walks' superior in character and quality to other similar events in town, which can be seen in a relatively short period of time."¹⁰

The examining attorney maintains that both the individual components and the composite culmination of applicant's mark are descriptive.¹¹ In reaching these

⁷ See attachment to 2/3/2011 Office Action.

⁸ See attachment to 2/3/2011 Office Action.

⁹ See Appeal Brief of Applicant p. 6.

¹⁰ Examining Attorney's Appeal Brief p. 4 (unnumbered). We note there is nothing in the record to support the conclusion that applicant's art walks can be seen in a relatively short period of time.

¹¹ Examining Attorney's Appeal Brief pp. 4-5 (unnumbered).

conclusions however, the examining attorney improperly dissects applicant's mark determining that each element is either descriptive or laudatory, and ignores the significance of the third-party evidence. While applicant concedes that ART WALK is descriptive of its identified services,¹² this concession does not render the mark merely descriptive. Instead, applicant contends that its mark when viewed as a whole is a unitary mark having an "oxymoronic connotation;" hence, it is not descriptive.¹³

Where the combination of descriptive terms creates a unitary mark with a unique, incongruous or otherwise nondescriptive meaning in relation to the goods, the combined mark is registrable. In other words, if the combination of words in applicant's mark results in a separate and distinct meaning or commercial impression apart from or in addition to their descriptive meaning, then applicant's mark is unitary and registrable. *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1476-77 (TTAB 2007). *See In re Colonial Stores, Inc.*, 394 F.2d 549, 157 USPQ 382, 385 (CCPA 1968) (finding mark SUGAR & SPICE not merely descriptive of bakery goods even though it is descriptive,

¹² Appeal Brief of Applicant p. 6.

¹³ Appeal Brief of Applicant p. 5.

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it also evokes an association with nursery rhyme "sugar and spice and everything nice").

Applicant argues that the terms BEST and LITTLE have divergent meanings imparting an oxymoronic connotation when these words are juxtaposed, undercutting the significance of each term separately. Specifically, any laudatory significance of BEST is diminished by the notion that the event is LITTLE.¹⁴ We agree with applicant that while the word BEST has a laudatory connotation, the "self-deprecating" word LITTLE provides a connotation that directly contrasts with BEST. Similarly, any debatable descriptive significance of the word LITTLE is offset by the notion that the event is the BEST.

A unitary mark must create a single and distinct commercial impression requiring the Board to determine "how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark." See *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) citing *In re Magic Muffler Service, Inc.*, 184 USPQ 125, 126 (TTAB 1974).

To determine how the average purchaser would encounter the mark and their reaction to the mark, we examine

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applicant's specimen of use, and the evidence submitted by applicant and the examining attorney. Applicant's specimen shows use of the mark as a slogan promoting applicant's services on its website. The mark is shown in special font and is set apart from the rest of the text. The manner in which the mark is used on the specimen confirms that the mark is presented as a unitary mark. The mark as displayed on the specimen is shown below:

*The Best Little Art Walk in Town!*TM

As explained by applicant, its mark parallels the title of the well-known Broadway musical, book and motion picture film "The Best Little Whorehouse in Texas."¹⁵ Given the extraordinarily long run, high acclaim and number of prominent award nominations and awards received by the musical and the film according to the *Wikipedia* articles submitted by applicant, the title is has been exposed to a large percentage of the purchasing public. Thus, the parallel between applicant's mark and the musical title would be obvious to the average purchaser of applicant's services.

To show that its mark conjures up an association with

¹⁴ Appeal Brief of Applicant pp. 5-6.

¹⁵ See attachments to 6/27/2011 Request for Reconsideration.

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"The Best Little Whorehouse in Texas" title, applicant submitted evidence of the following six registrations which are based on a similar theme:

Registration No.	Registered Mark
1597351	Best Little Core House in America
2061168	Best Little Doorhouse in Town
2857671	"The Best Little Roadhouse in Virginia. On The Planet
3093108	The best little neighborhood Italian restaurant
3549166	Best Little Storehouse in Texas
3632779	Best Little Hose House in Tennessee

While these third-party registrations are not evidence that the marks are actually in use, they may be considered to demonstrate the meaning of a term which comprises the mark, or a portion thereof, to show that there is a well-known and commonly understood meaning of that term and that the mark has been chosen to convey that meaning. *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991).

The vast majority of the internet evidence submitted by the examining attorney similarly shows that third parties have adopted and used names based on the "The Best Little Whorehouse in Texas" theme to identify their businesses:¹⁶

Best Little Roadhouse	Best Little Doghouse in Town
The Best Little Cat House	The Best Little Restaurant
The Best Little Cat House in PA	The Best Little Hair House

¹⁶ See attachments to 7/19/2011 Request for Reconsideration Denied.

The Best Little Road Race	The Best Little Dive Shop in Texas
The Best Little Cake Shop	The Best Little Bead Bar
The Best "Little Dog" House in Texas	The Best Little Klezmer Band in Texas
The Best Little Flower Shop	The Best Little Cabin in Texas

In addition to those businesses listed above, a couple of other businesses utilize the following "Best Little" slogans as secondary identifiers of their businesses: "The Best Little Ski Hill in Idaho" and "The Best Little Museum on Highway 50, America's Loneliest Road." Although the evidence submitted by the examining attorney also showed a handful of non-trademark uses of "Best Little," the number of service mark uses and third party registrations for "Best Little" slogans establishes that such names are used as trade names and/or service marks and that the consuming public would recognize applicant's slogan as the name of a particular art walk and not simply a laudatory slogan.

Despite the fact that marks containing the laudatory word BEST have been found to be merely descriptive, *see In re Boston Beer Co. L.P.*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA held a common, laudatory advertising phrase which is merely descriptive of applicant's beer and ale), applicant's mark, as a whole, is not merely descriptive of its services. Viewers of the mark would clearly pick up on the parody with the Broadway musical and motion picture "The Best Little Whorehouse in

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Texas." They would understand that the mark with the "oxymoronic combination" of BEST and LITTLE is not merely a laudatory mark, but refers to the art walk services provided by applicant. Applicant's mark is more akin to the "Poly Pitcher" mark in *Blisscraft of Hollywood v. United Plastics Co.*, 294 F.2d 694, 131 USPQ 55, 60 (2d. Cir. 1961), which was recognized to be more suggestive of "Molly Pitcher of Revolutionary time" than descriptive of polyethylene. Similar to the "Poly Pitcher" mark, the incongruous expression BEST LITTLE in applicant's mark is suggestive of the well-known musical and motion picture "The Best Little Whorehouse in Texas," endowing applicant's mark with the necessary characteristics for registration.

In merely descriptive cases, we are required to resolve any doubts in favor of the applicant for registration. See *In re Morton-Norwich Products, Inc.*, 209 USPQ 791, 791 (TTAB 1981) (The Board's practice is "to resolve doubts in applicant's favor and publish the mark for opposition") and *Remacle*, 66 USPQ2d at 1224.

In view of the foregoing, we find that the mark THE BEST LITTLE ART WALK IN TOWN is not merely descriptive of applicant's services. Because we find that applicant's mark is unitary and not merely descriptive, the mark must not be broken up for purposes of a disclaimer and the

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requested disclaimer of ART WALK is not appropriate. See
In re Kraft, Inc., 218 USPQ 571, 573 (TTAB 1983)

(requirement for a disclaimer of "Light" apart from the
mark "Light N' Lively" found inappropriate) and TMEP §§
1213.05(b) and (d).

Decision: The refusal to register is reversed.