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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Weitzen

Serial No. 85291176

Andrew Mark Weitzen, pro se.

David Taylor, Trademark Examining Attorney, Law Office 112
(Angela Wilson, Managing Attorney).

Before Seeherman, Ritchie, and Hightower, Administrative
Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Andrew Weitzen, applicant herein ("applicant"), seeks
registration on the Principal Register of the mark
"PARTNERSHIP DANCING,"¹ in standard character format, for
services identified as "educational and entertainment
services, namely, conducting classes, workshops and events

¹ Serial No. 85291176, filed on April 10, 2011, under Section
1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on first
use, and first use in commerce, on October 3, 2007.

in the field of dance and distribution of course materials in connection therewith, and education consulting related thereto," in International Class 41.

The trademark examining attorney refused registration on the ground that applicant's mark is merely descriptive of the recited services under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1). Both applicant and the examining attorney filed briefs, and applicant filed a reply brief. After considering all of the evidence and arguments, 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 Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *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 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). If, on the other hand, a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods or services, then the mark is suggestive. *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003).

The examining attorney argues that the term "partnership dancing" is descriptive of a feature of the services in the application, specifically, applicant's services involve and/or instruct consumers on the act of dancing with partners.

In support of this argument, the examining attorney submitted evidence showing third-party use of the term "partnership dancing" to describe services associated with the instruction or discussion of dancing with partners. Some examples include the following (emphasis added):

"ROLE PLAYING IN PARTNERSHIP DANCING"

- by Dr. SH Wong

The gentleman and the lady have distinct and different roles in all **partnership dancing**. This is especially true in Ballroom Dancing. *energiezumba.com*. Attached to July 21, 2011 Office Action, p. 7.

Wanda Deagan Studio for Dance and Movement:
Popular Dances:

What is ballroom dancing?

Ballroom dancing, now commonly referred to as **partnership dancing**, is the discipline of two people expressing a dance through lead and follow...

What dances does it include?

As one might guess, there is a great variety of music that can be used for **partnership dancing**, and many people decide what dances they wish to learn based on what kind of music they wish to dance to. www.wandadeagen.com. Attached to July 21, 2011 Office Action, p. 11.

Dance In Time Productions: Basic Salsa Steps for **Partnership Dancing**: Below is a description of some basic Salsa steps for partnership dancing in case you want to practice a few moves. Note that several of these steps are explained on my instructional video page with actual video footage of my walking through these moves with a partner. www.danceintime.com. Attached to November 7, 2011 Office Action, p. 2.

The Fun-damentals of **partnership Dancing** [sic] with Dale and Peggy Bates: Dale & Peggy Bates communicate their joy, ease and passion for **partnership dancing** in these fun and creative sessions. Seasoned dancers or those who feel they have two left feet leave with a new sense of enjoyment and confidence in dancing in relationship [sic]. SunValleyOnline.com. Attached to November 7, 2011 Office Action, p. 4.

Partnership Dancing!: Dances to be taught include the cha cha, swing, foxtrot and many more depending on time available. Gayindienow.com. Attached to November 7, 2011 Office Action, p. 5.

Kung Fu Ballroom: Teaching people to dance with their partners, not just in front of them. Kung Fu Ballroom, an approach to **partnership dancing** that emphasizes the use of technique and personal responsibility in dance... Many people want **partnership dancing** to be instantly easy, and it can be, with a certain

lack of technique. For those who just want a fun time dancing, and don't particularly care about the aesthetics or quality of the partnership, that's great and there are plenty of teachers who can supply that.

www.kungfuballroom.com. Attached to November 7, 2011 Office Action, p. 8.

Dance Etiquette: The Aloha Ballroom Dance Academy offers these guidelines and strongly encourages all students to follow them for the maximum comfort and enjoyment of all dancers.

1. Respect and Communication. Everyone has unique personal boundaries and this should be respected in **partnership dancing**. Dancers are encouraged to communicate with their partner to establish a comfortable partnership. The Academy wishes to provide a fun and comfortable environment for everyone. We know this can sometimes be tricky in Ballroom and Latin dancing as **partnership dancing** is a "contact sport," so to speak.

www.alohaballroom.com. Attached to November 7, 2011 Office Action, p. 9.

Foothill College: Course Outlines: Physical Education Division: Ballroom & Social Dance: Course objectives

- A. perform the Swing, Cha-Cha, Waltz, Fox Trot, Rhumba, and Tango
- B. analyze the historical and cultural development of **partnership dancing**.

www.foothill.edu. Attached to November 7, 2011 Office Action, p. 11.

Fred Astaire Arizona Regional Site: Welcome to Fred Astaire Arizona - Your Home For The Best Social & **Partnership Dancing** In The Valley.

www.fredastairearizona.com. Attached to November 7, 2011 Office Action, p. 13.

The DelRay Ballroom & Lounge: our studio is where students and professionals constantly rediscover the joy and art of **partnership dancing**. Whether you want the grace of Ballroom, the mystery of Latin, the energy of Swing, or the fun of Country, we're here to help.

www.TheDelray.com. Attached to November 7, 2011 Office Action, p. 15.

Dance Colorado: At Dance Colorado, we teach all styles of **partnership dancing**, including Ballroom, Latin, Country Western, Tango, Salsa, Swing, and more.

www.dancecolorado.net. Attached to November 7, 2011 Office Action, p. 16.

p17/18 NDC: every level and style of **partnership dancing** (Ballroom, Latin, Swing, etc.).

www.dancechattanooga.com. Attached to November 7, 2011 Office Action, pp. 17-18.

Applicant does not dispute that his services include those related to dancing with partners. In fact he admits, "I would agree that a mark for 'partner dancing' should be refused as merely descriptive." (appl's brief at unnumbered p.4). Applicant's specimen of use further shows use of the term "partnership dancing" to refer to his service of providing information and instruction on dancing with partners:



**Partnership
Dancing** SM

How to Dance with a Partner

PD

Contact

Dance Lessons

Guarantee

Purchase

Make Every Dance a Pleasure

Partnership Dancing TM is the first and only method of communicating in social dancing using clearly defined signals so you and your partner know exactly what to do.

Partnership Dancing TM was developed for normal people, to help you:

- Dance Safely
- Dance Comfortably
- Dance Naturally
- Dance as One with Your Partner
- Create a Respectful Environment
- Get Better Faster
- Communicate Unambiguously
- Communicate the Same Way with Every Person in Every Dance
- Express Yourself Freely
- Improvise to Music

Applicant disputes, however, that (1) the term "partnership dancing" is equivalent to the term "partner dancing" for purposes of finding his mark to be descriptive; and (2) the evidence of third-party use is sufficient to find his mark to be descriptive.

Both of applicant's arguments are related and can be assessed as follows. Applicant claims that the evidence shows that the third parties using the term "partnership dancing" either show only incidental, passing use of it, or in fact show the term being "misuse[d]" to refer to what is really "partner dancing" not "partnership dancing."

(appl's brief at unnumbered p.3). In support of his argument, applicant submitted dictionary definitions of the terms "partner" and "partnership" to show that they are different. Relevant definitions include the following:

Partner: one associated with another especially in an action; a member of a partnership especially in a business. *Merriam-Webster.com*

Partnership: The state of being a partner. Examples of partnership: two people joined in partnership. *Merriam-Webster.com*

We find applicant's arguments to be unavailing.

Although applicant may believe that the term "partnership dancing" is an incorrect usage of the English language, and that it is applicant's sole province to use the term to refer to, in his own way, a form of what he would call partner dancing, the record shows that, nonetheless, others are doing the same. Therefore, we must find that with numerous instances of third-party usage, it is apparent that consumers would perceive partnership dancing as descriptive of a feature of applicant's services.

Furthermore, given the definitions that applicant has provided, we disagree that the term "partnership dancing" has an inexorably different connotation from "partner dancing" since a "partnership" is merely a joining together of partners.

Finally, applicant submitted two unsigned and unverified statements from people describing themselves as experienced dancers, and who both stated that they had never heard the term "partnership dancing" other than in reference to applicant's own system and mark. While these two consumers may indeed have never come across the term, that does not detract from the fact that this term has been widely used to describe dancing with partners, and that those who do encounter the term with regard to applicant's services will immediately understand it to be descriptive thereof. In particular, it requires no thought or mental gymnastics to understand that "partnership dancing," when referring to applicant's services, describes a feature highlighting the involvement and instruction of partner dancing or partnership dancing. *In re MBNA America Bank N.A.*, 67 USPQ2d at 1780. As such, we have no doubt that a consumer would understand "partnership dancing," used in connection with applicant's services, as directly conveying information about them. *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 applied-for mark is merely descriptive of the identified services.

Decision: The refusal to register affirmed.