

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
March 21, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Worship Artistry, LLC*

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Serial No. 85392899

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Angela Holt of Bradley Arant Boult Cummings, LLP for Worship Artistry, LLC.

Michael Webster, Trademark Examining Attorney, Law Office 102 (Mitchell Front,  
Managing Attorney).

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Before Zervas, Greenbaum and Masiello, Administrative Trademark Judges.

Opinion by Masiello, Administrative Trademark Judge:

Worship Artistry, LLC has applied to register on the Principal Register the  
mark WORSHIP ARTISTRY in standard character form for the following services:

Educational and entertainment services in the field of  
music instruction offered through online, non-  
downloadable videos and instructor assistance; providing  
a website featuring non-downloadable instructional videos  
in the field of music instruction, in International Class 41.

The trademark examining attorney 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  
merely describes the services. When the refusal was made final, applicant filed a

request for reconsideration, which was denied. This appeal ensued. Applicant and the examining attorney have filed briefs, and applicant has filed a reply brief.

The question before the Board is whether the mark WORSHIP ARTISTRY, viewed in its entirety, merely describes the services identified in the application. "A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used." *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 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 re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); *In re Remacle*, 66 USPQ2d 1222, 1224 (TTAB 2002). The mark need not describe all of the recited goods and services in an application in order to be deemed merely descriptive. Rather, a descriptiveness refusal is proper if the mark is descriptive of any of the goods or services for which registration is sought. *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005); *In re Chamber of Commerce of the United States of America*, 102 USPQ2d 1217 (Fed. Cir. 2012). A mark that, when applied to the goods or services at issue, requires imagination, thought, or perception to reach a conclusion as to the nature of those goods or services is not merely descriptive, but suggestive, and is registrable. *In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985); *Nautilus Grp., Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340, 71 USPQ2d 1173, 1180 (Fed. Cir. 2004). The determination that a mark is merely descriptive is a finding of

fact and must be based upon substantial evidence. *In re Bayer Aktiengesellschaft*, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007).

The word WORSHIP, as a noun, is defined as follows:

**2** : the reverence or veneration tendered a divine being or supernatural power; *also* : an act, process or instance of expressing such veneration by performing or taking part in religious exercises or ritual.

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) p. 2637.<sup>1</sup>

As a verb, WORSHIP is defined as follows:

**1** : to honor or reverence as a divine being or supernatural power : VENERATE.

*Id.*<sup>2</sup>

ARTISTRY is defined as:

**1** : artistic quality of effect or workmanship.... **2** : artistic ability.

*Id.* at 125.<sup>3</sup>

ARTISTIC is defined as:

**1** : relating to, suitable for, or characteristic of art or artists.... **2** : characterized by taste, discrimination, and judgment or by art and skill.

*Id.* at 124.

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<sup>1</sup> The first definition given in the dictionary is noted as "archaic." The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

<sup>2</sup> We have noted as well the definition of WORSHIP, from <merriam-webster.com>, made of record by applicant with its response of December 8, 2011.

<sup>3</sup> The definition of ARTISTRY that was made of record by the examining attorney with his Office action of December 5, 2011, from <merriam-webster.com>, is, in substance, identical.

The examining attorney has made of record internet evidence showing that “worship music” describes a genre of Christian music. The Wikipedia entry for “Contemporary worship music” states:

Contemporary worship music (CWM) is a loosely defined genre of Christian music used in contemporary worship. It has developed over the past sixty years and is stylistically similar to pop music. The songs are frequently referred to as “praise songs” or “worship songs” and are typically led by a “worship band” or “praise team”, with either a guitarist or pianist leading. It is becoming a common genre of music sung in Western churches, predominantly in particular in *[sic]* Pentecostal churches, both denominational and nondenominational. Also many non Charismatic *[sic]* Protestant Churches use this type of music.<sup>4</sup>

The examining attorney takes the position that “the term ‘WORSHIP’...specifically identifies the subject of Applicant’s educational services, namely,... worship music”;<sup>5</sup> and “The term ‘artistry’ is frequently used to describe a laudatory quality or characteristic of the art of music.”<sup>6</sup> He concludes that “WORSHIP ARTISTRY identifies a quality or characteristic of Applicant’s instruction services in worship music artistry.”<sup>7</sup>

The examining attorney’s interpretation of the meaning of the mark depends upon viewing the word WORSHIP as equal to the words WORSHIP MUSIC; but these two terms are manifestly not equal. If we accept the examining attorney’s

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<sup>4</sup> Submitted with Office action of December 5, 2011. *See also* other examples of descriptive use of “worship music” submitted with final Office action of December 29, 2011.

<sup>5</sup> Examining attorney’s brief at unnumbered p. 3.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 8.

characterization of applicant's services, then those services are instruction in the field of "Christian music used in contemporary worship." When the mark is considered in this context, the meaning of WORSHIP that *immediately* arises is its dictionary definition, *i.e.*, "the reverence or veneration tendered" to the Christian deity through Christian "religious exercises or ritual." Again, accepting the examining attorney's characterization of the services, the "Christian music" that is the subject matter of applicant's instruction is called, according to the evidence of record, "worship music," not "worship." To suggest that applicant's mark has the same meaning as WORSHIP MUSIC ARTISTRY requires that a word that is not present in the mark be interpolated into it. It is true that, in the context of music instruction, the word WORSHIP might suggest WORSHIP MUSIC, but the logical leap from WORSHIP to WORSHIP MUSIC is the very type of "imagination, thought, or perception" that, if required to reach a conclusion as to the nature of the services, would render the mark suggestive, and not merely descriptive. *In re George Weston Ltd.*, 228 USPQ at 58.

The examining attorney argues that the word ARTISTRY "describes a laudatory quality or characteristic" of the art of music. He has submitted evidence to demonstrate that expressions that contain the word ARTISTRY and are similar in structure to applicant's mark are used by third parties in a descriptive manner, including "violin artistry" and "musical artistry";<sup>8</sup> "pop artistry," "rock artistry,"

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<sup>8</sup> Office action of December 5, 2011.

“R&B artistry,” and “hip-hop artistry.”<sup>9</sup> The examining attorney argues that “the term ‘worship’ in Applicant’s mark identifies a field or genre of music,” and that these examples show descriptive use of terms that describe a quality of talent in the performance of various genres of music.<sup>10</sup> We find this analogy to be an imperfect one. In the examining attorney’s examples, the “genre” word, in itself, describes a type of music or another type of art: “rock” means “rock and roll music”; “R&B” means “rhythm & blues music”; “pop” means “pop music” or another form of pop art expression; “hip hop” means “hip hop music” or other hip hop artistic expression; “violin” clearly refers to the playing of music on a violin. WORSHIP, unlike rock, R&B, pop and hip hop, is not one of the performing arts. Rather, the primary meaning of WORSHIP is “to honor or reverence as a divine being or supernatural power.” One must look outside the mark to find a connection between WORSHIP and a type of music. The examining attorney’s examples of descriptive usage of “piano artistry” and “guitar artistry” are similarly distinguishable.

In order to demonstrate that the word ARTISTRY is merely descriptive, the examining attorney has submitted numerous references from the internet in which ARTISTRY is used in connection with musical performances by particular performers and, sometimes, in connection with musical instruction. To counter this, applicant argues that this evidence shows not that ARTISTRY is a skill that can be taught through music instruction, but is rather “the artistic expressiveness and

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<sup>9</sup> Denial of request for reconsideration, mailed May 21, 2012.

<sup>10</sup> Applicant’s brief at 4.

quality” of an individual musician.<sup>11</sup> Applicant has also submitted numerous examples of U.S. trademark registrations for marks that include, without disclaimer, the designation ARTISTRY, arguing that those registrations demonstrate that the Trademark Office has considered the word non-descriptive.

To the extent that the examining attorney’s evidence refers to ARTISTRY as an attribute of a talented person or of that person’s inherent artistic ability, it does not support a finding that applicant’s mark is descriptive: if ARTISTRY is not something that can be taught by a music teacher, then it does not describe the subject matter of the music instruction services. Examples in which ARTISTRY is literally offered as a subject of instruction are more relevant, but they are few and, we find, ambiguous. The advertisement for a “Masterclass in Violin Artistry”<sup>12</sup> seems to offer to teach the student “artistry,” but it poses and answers the question, “Musical Artistry! What is it?” with a lengthy explanation indicating that it has more than a dozen meanings, including “Creating beauty,” “Finding the inner meaning of the music,” and “Using a palette of tone colors, like a painter.” The reference to “Jazz Artistry” in connection with music instruction at The New School for Jazz and Contemporary Music discusses “artistry” as a personal attribute: “the integration of the music and educational communities has helped develop a new breed of musician, one whose musical artistry is paired with a solid liberal arts academic foundation.”<sup>13</sup> Long Hill Music Center offers not to teach artistry, but to

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<sup>11</sup> Applicant’s brief at 5.

<sup>12</sup> Submitted with the Office action of December 5, 2011.

<sup>13</sup> Submitted with Reconsideration Letter of May 21, 2012.

“enrich[ ] the community, and the discovery/training of musical artistry!”<sup>14</sup> The reference to the book entitled “Music, Artistry, and Education,” describes artistry not as the result of teaching, but of growth and journey: “this collection of Zen-like stories... will guide you along an artistic journey of musical growth and enlightenment.”<sup>15</sup> The references to Charlotte Academy of Music’s course “Piano Artistry” and the instructional book “Acoustic Artistry” suggest intended use of these terms more as trademarks than as literal descriptions.<sup>16</sup>

We find that WORSHIP, as used in applicant’s mark, does not “immediately” convey the significance of “worship music.” Moreover, the evidence indicates that the meaning of ARTISTRY is at best ambiguous, containing the suggestion of an attribute of artistic excellence possessed by an individual artist or performer, and not merely describing the subject matter of an educational course of instruction.<sup>17</sup> We find that applicant’s mark as a whole does not have the meaning attributed to it by the examining attorney, *i.e.*, skill in the performance of a type of music. Rather, WORSHIP ARTISTRY literally means artistic skill in worshipping, a concept that will seem, to some, incongruous. Applicant’s identified services are not instruction in worshipping, but instruction in music. We find that applicant’s mark, as a whole, is not merely descriptive within the meaning of Section 2(e)(1).

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> We note that, in view of our interpretation of the meaning of WORSHIP, a finding that ARTISTRY is not merely descriptive is not essential to our ultimate decision.



Serial No. 85392899

**Decision:** The refusal to register is reversed and this application will be forwarded to publication.