

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

Mailed: January 16, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Metropolis, Inc.

Serial No. 85847276

Matthew H. Swyers, The Swyers Law Firm PLLC, for Metropolis, Inc.

Kevin L. Chisolm, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

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

Opinion by Ritchie, Administrative Trademark Judge:

Metropolis, Inc. (“Applicant”) filed an application to register on the Principal Register the mark SOCIAL VENUE¹ in standard character format for relevant services of “night clubs” in International Class 41 and “restaurant services” in International Class 43.

The Examining Attorney refused registration of the mark for the services

¹ Application No. 85847276, filed February 12, 2013, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging dates of first use and first use in commerce in March 2012 for both classes. The application contains services in Class 42 which are not at issue in this appeal.

in these classes under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the applied-for mark is merely descriptive of the applied-for services. When the refusal was made final, Applicant filed a timely appeal.

The Examining Attorney and Applicant each filed briefs. Upon careful consideration of the relevant arguments and evidence, we affirm the refusal to register.

Section 2(e)(1)

A term is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used. *See In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012), *citing In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).² 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

² We note that Applicant has relied on a “three-part test” as set forth in the case *No Nonsense Fashions, Inc. v. Consolidated Food Corp.*, 226 USPQ 502 (TTAB 1985). We point out that it is not the Office’s (or a plaintiff’s) burden to prove all three elements mentioned in that case. One of those elements, that the mark conveys to consumers an immediate idea of the ingredients, qualities or characteristics of the

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).

The Examining Attorney argues that the applied-for mark SOCIAL VENUE describes a feature or purpose of Applicant’s services, namely that the term describes a “location” where “social activities take place.” (Examining Attorney’s brief 10 TTABVUE at 4).

Both parties submitted definitions of the terms “social” and “venue,” including the following:

From Applicant:³

Social: 1. Pertaining to, devoted to, or characterized by friendly companionship or relations: *a social club*.
Dictionary.com (2013)

Venue: 2. The scene or locale of any action or event.
Dictionary.com (2013)

goods, is, as noted above, the test set forth in later decisions by the Court of Appeals for the Federal Circuit, our primary reviewing court, as well as those by the Board.

³ These definitions were included with Applicant’s November 25, 2013 Response to Office Action.

From the Examining Attorney:⁴

Social: 1. Relating to activities that involve being with other people, especially activities that you do for pleasure.
www.macmillandictionary.com (2013)

Venue: the place where an activity or event happens.
www.macmillandictionary.com (2013)

The Examining Attorney also submitted evidence of third-party use of the term “social venue” in a descriptive manner in reference to services related to nightclubs or restaurants. Examples include the following:⁵

On Tap: Entertainment lineup for area bars, restaurants and **social venues**: Today: Anne&Ray’s Gathering Place; Today and Saturday: Carolina Ranch House Band, Dancing (\$7); Wednesday: Karaoke, Ladies Night Creek Ratz; Today: Freaky Fridays with D-Town DJs, \$1 cover before midnight.
scnow.com
Attached to May 30, 2013 Office Action, p.6.

Business Insider: Florida Town Bans Nightclubs and Other **Social Venues**: Weston, Fla. Residents can no longer “cut loose” at nightclubs. After nine shootings outside nightclubs in 2011, the Weston, Fla. City council permanently banned nightclubs, skating rinks, and dance halls because of “safety concerns,” according to *The Daily Mail*. Since 2002, five people have been killed in shootings outside these “**social venues**.”
Businessinsider.com.
Attached to December 21, 2013 Final Office Action, p.2-3.

Wynn Social: Wynn Social is The Home of Las Vegas Award Winning Nightclubs Featuring Celebrity and Resident DJ’s Exclusive to Wynn . . . Wynn **Social Venues** . . .
Wynnsocial.com
Attached to December 21, 2013 Final Office Action, p.35.

⁴ These definitions were included with the May 30, 2013 Office Action.

⁵ The term “social venue/venues” was bolded in some of the excerpts as submitted, presumably because this is the term that was the subject of the search. In others, it is bolded herein to highlight use of the term.

Social Venues: Arvada offers many venues and banquet facilities for weddings, family reunions, birthday parties and more – from the Arvada Center to West Woods Golf Club or maybe a pavilion in a beautiful Arvada Park. Seeing is believing.

Pinterest.com

Attached to December 21, 2013 Final Office Action, p.37.

Potential for Smoke-Free Policies in **Social Venues** to Prevent Smoking Uptake and Reduce Relapse: A Qualitative Study:
Abstract: The purpose of this article is to better understand the utility of smoking in pubs/bars and nightclubs and explore perceptions of how smoke-free policies might influence smoking behavior.

http://hpp.sagepub.com

Attached to December 21, 2013 Final Office Action, p.38.

RSVP Catering: **Social Venues:** We firmly believe the right location is a key part of making every event perfect.

Rsvpcatering.com

Attached to December 21, 2013 Final Office Action, p.40.

Applicant argues that its applied-for mark is not merely descriptive of its services because the mark does not create an “instant association” with the services. (Applicant’s brief 8 TTABVUE at 13). Applicant references the marks in seventeen third-party registrations for restaurant or nightclub services that include either the term “SOCIAL” or “VENUE” or derivatives of those words, on the Principal Register, and which do not include disclaimers or claims of acquired distinctiveness. These are THE VENUE; SOCIAL HOUSE; VILLAGE SOCIAL; VINUE [sic] FOOD AND WINE BAR and design; VENUE LIVING BY NIGHT; THE STANTON SOCIAL; SOCIAL BAKEHOUSE CAFÉ; FRESH LOCAL SOCIAL; QUALITY SOCIAL; 732 SOCIAL; FINDMYVENUE; TEXADELPHIA SOCIAL GRILL; CORNER

SOCIAL; AMERICAN SOCIAL; UPTOWN SOCIAL; VENU⁶; and VENUE LIVING BY NIGHT. Whether or not the word SOCIAL or VENUE is individually descriptive of the services is not the question before us, and therefore the existence of third-party registrations containing one or the other of these terms, without disclaimer or under Section 2(f), is not particularly relevant. Rather, we must consider whether the applied-for mark SOCIAL VENUE as a whole is merely descriptive. We also point out that each case must be decided on its own merits. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court”).

It is clear that the term “social venue” is commonly used to describe places where nightclub and restaurant services are rendered. As a result, the applied-for mark conveys information about the services. We have no doubt that a consumer would understand SOCIAL VENUE, used in connection with Applicant's nightclub and restaurant services, as directly conveying information about them, namely, that they refer to a place for social gathering. Therefore, we find that the applied-for mark is merely descriptive of the identified services, and we affirm the refusal to register.

⁶ This registration (Registration No. 4,340,329) notes that VENU is the English translation of “the past tense of to come.”

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Decision: The refusal to register is affirmed, and registration to Applicant is refused for Classes 41 and 43. After the period for appeal has passed, the application will be published for the services in Class 42, for which there is no pending refusal to register.