

THIS OPINION IS NOT A PRECEDENT OF THE TTAB
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Mailed: February 16, 2022

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**

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*In re Stevland Morris d/b/a Stevie Wonder*

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Serial No. 88388322

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Robert A. Becker of Fross Zelnick Lehrman & Zissu PC,  
for Stevland Morris d/b/a Stevie Wonder.

Megan M. Hartnett, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

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Before Bergsman, Lynch, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Stevland Morris d/b/a Stevie Wonder (“Applicant”) seeks registration on the Principal Register of the composite mark THE STEVIE WONDER SONG PARTY LIFE and design, as displayed below, for, inter alia, “Entertainment services, namely, live musical performances and live music concerts” in International Class 41.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88388322 was filed on April 16, 2019, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming May 2018 as both the date of first use and the date of first use in commerce for the identified Class 41 services.



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The Trademark Examining Attorney refused registration of Applicant's mark under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), based on Applicant's failure to comply with the requirement to disclaim the wording SONG PARTY solely in the context of the identified Class 41 services because it is merely descriptive of such services within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), and is thus an unregistrable component of the mark.<sup>3</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for

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<sup>2</sup> The description of the mark reads as follows: "The mark consists of the words 'THE STEVIE WONDER SONG PARTY' in stylized letters surrounded by a rectangular design above three distinct balloon designs, one featuring the word 'LIFE' surrounded by a circle, another in the shape of a heart, and the last in the shape of a musical note."

<sup>3</sup> Applicant's involved application also identifies goods in International Classes 15, 21, and 25. These classes of goods, however, are not subject to the disclaimer requirement of the wording "SONG PARTY."

reconsideration, the appeal was resumed. The appeal is fully briefed. For the reasons explained below, we reverse the refusal to register.<sup>4</sup>

### **I. Disclaimer Requirement - Applicable Law**

An examining attorney may require an applicant to disclaim an unregistrable component of a mark otherwise registrable. Trademark Act Section 6(a), 15 U.S.C. § 1056(a). A “disclaimer” is a statement that an applicant does not claim exclusive rights to an unregistrable component of a mark:

[A] disclaimer of a component of a composite mark amounts merely to a statement that, in so far as that particular registration is concerned, no rights are being asserted in the disclaimed component standing alone, but rights are asserted in the composite; and the particular registration represents only such rights as flow from the use of the composite mark.

*Sprague Elec. Co. v. Erie Resistor Corp.*, 101 USPQ 486, 486-87 (Comm’r Pats. 1954). Absent a showing of acquired distinctiveness, merely descriptive terms are unregistrable on the Principal Register under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), and therefore are subject to disclaimer if the mark is otherwise registrable. Failure to comply with a disclaimer requirement is grounds for refusal of registration. *In re Omaha Nat’l Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46 (CCPA 1975); *In re National Presto Indus. Inc.*, 197 USPQ 188 (TTAB 1977); and *In re Pendleton Tool Indus. Inc.*, 157 USPQ 114 (TTAB 1968).

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<sup>4</sup> All TTABVUE and Trademark Status & Document Retrieval (“TSDR”) citations reference the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .pdf version of the documents.

“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 Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *see also In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015). The determination of whether a portion of a mark is merely descriptive must be made in relation to the goods or services for which registration is sought, not in the abstract. *Chamber of Commerce*, 102 USPQ2d at 1219; *Bayer*, 82 USPQ2d at 1831. This requires consideration of the context in which the term is used or intended to be used in connection with those goods and services, and the possible significance that the term would have to the average purchaser of the goods and services in the marketplace. *Chamber of Commerce*, 102 USPQ2d at 1219; *Bayer*, 82 USPQ2d at 1831; *Omaha Nat’l Corp.*, 2 USPQ2d 1859. In other words, the question is not whether someone presented only with the mark could guess the goods or services identified in an application. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them. *DuoProSS Meditech Corp. v. Invira Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). In addition, it is not necessary, in order to find a mark or term merely descriptive, that the mark or term describe each feature of the goods or services, only that it describe a single, significant ingredient, quality, characteristic, function, feature, purpose or use of the goods or services. *Chamber of*

*Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Sterotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Evidence that a term is merely descriptive to the relevant purchasing public “may be obtained from any competent source, such as dictionaries, newspapers, or surveys.” *Bayer*, 82 USPQ2d at 1831 (quoting *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986)).

## **II. Evidence and Arguments**

The Examining Attorney asserts that the wording SONG PARTY, as used in Applicant’s mark and in the context of the identified Class 41 services, immediately informs consumers of a significant feature or purpose of such services, namely, live musical performances and concerts which are social gatherings for entertainment or pleasure and which feature songs or musical compositions.<sup>5</sup>

As evidentiary support, the Examining Attorney submitted dictionary definitions of the terms SONG and PARTY,<sup>6</sup> which are defined as follows:

- SONG: “a brief composition written or adapted for singing”;
- PARTY: “a social gathering especially for pleasure or entertainment.”

The Examining Attorney also submitted approximately 34 screenshots from various websites purportedly demonstrating that the wording SONG PARTY is

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<sup>5</sup> Examining Attorney’s Brief p. 6, 6 TTABVUE 7.

<sup>6</sup> July 1, 2019 Office Action, TSDR pp. 17-18.

commonly used to describe live musical performances or musical concerts.<sup>7</sup> The most relevant examples are set forth below:<sup>8</sup>

- [www.ankgallery.com](http://www.ankgallery.com)

Including the perfect positive equipment can make or break all your set of events. Sure, there are a lot of clothes that are not doing well. . . A Black-Tights Obsessive but are these people not doing well, less the appropriate add-on? Due to this request that still exists, we have created a list of the most effective event equipment in the world. And, we have now determined that the Fruit Crossbody Carrier will be the most appropriate option because of its cost and flexibility. Over the years, acceptance of raves has improved considerably. These are not entirely underground. Alternatively, they can often be accompanied by song parties, as well as other situations that are conducive to EDM. In other words, positive wear has changed from hot trousers and fluffies to luminescent shade. Nowadays, this involves the variety of treehugger clothing at really sexy basses. So, this should come because leg avenue fishnet stockings garter belt no positive shock equipment has progressed in the same potential. This list includes timeless classics, around what is fashionable for the period of the event. With this in mind, the following information continues to be divided into the following types: And we realize how important affordability is. That's why each part is set over 40 Festival & the minimalist accessory in the 1st video slot and the most expensive in the last video slot. Remember, this article is about women's gear. BUT, I'm not saying that guys and imbits can not rock the songs presented either. However, if you would like information on men's clothing, read the following information to view men's event apparel and Nike's sweatpants.

- [www.lamasterchorale.org](http://www.lamasterchorale.org)

Japanese folk music, resting on traditions of courtship, winter and spring festivals, agricultural rites, cloth bleaching, rice pounding, grain grinding and sake brewing, dates back to the 8th century, although some 4500 such songs reach into the 4th century. These have survived, and selections are performed every year at the Imperial New Year song party.

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<sup>7</sup> October 7, 2020 Final Office Action, TSDR pp. 26-70; May 3, 2021 Denial of Request for Reconsideration, TSDR pp. 4-22.

<sup>8</sup> A careful review of this evidence reveals, however, that the wording “song party,” as a whole, is not used in most of this evidence. Instead, there are references to the terms “song,” “party,” “party concert,” and “live music party” standing alone. Thus, because these websites that do not employ the phrase “song party” as a unitary phrase (akin to “birthday party,” “bachelor party,” “dinner party,” etc.) in relation to live musical performances or live music concerts, we find that these particular websites have limited probative value in our analysis.

- [www.newsday.com](http://www.newsday.com)

PRINT SHARE

The New York Festival of Song doesn't stay still for long.

It has roamed among halls, traded in singers for younger models and plowed

through hundreds of composers. Next year it turns 20, making it the oldest

permanent floating song party in New York. Its onstage constant is the pianist,

programmer, coach and emcee Steven Blier. The festival is, above all, an

expression of his personality.

- [www.songsourcesfestival.org](http://www.songsourcesfestival.org)

Tuesday, August 8, 2017

8:00 PM – 10:00 PM

MacPhail Center for Music (map)

Google Calendar · ICS

It's Canada's Birthday! And to celebrate our 'Neighbors to the North,' we're throwing a song party! Canada's finest recitalists **Mireille Asselin**, **Tyler Duncan**, and **Erika Switzer** along with **Clara Osowski** present a program of music we bet you've never heard!

- Children's Museum Houston Twitter Account



- [www.event.wtmd.org](http://www.event.wtmd.org)

WTMD › EVENT DETAILS



### Howard County Historical Society Concert: "The Classic Hitmen"


Join the Howard County Historical Society as we take a historical look at classic hit songs from the great music decades of the 60s, 70s and 80s. The Classic Hitmen transports its audience back to the feel good times of the last century when music took us away to fun places in our minds. Performing hits by such groups as The Doors, Deep Purple, Talking Heads, Tom Petty, Tommy James, Joe Jackson, Toto, David Bowie and more, the Classic Hitmen will help you relive them all at this classic song party!

□ Saturday, September 23, 2017 at 7:00pm to 9:00pm

□ **Howard County Historical Society Museum**


- [www.barnstormmusic2019.com](http://www.barnstormmusic2019.com)

KARAOKE  
w/ LIVE BAND  
Karaoke  
live company song parties  
Bucket list your singing with this  
Band Fantasy  
come true  
and team build  
your company's  
next song.





Additionally, the Examining Attorney submitted copies of the following live, third-party registrations for marks that include the term PARTY for musical performances where the term “party” has been disclaimed, registered under Section 2(f) of the Trademark Act, or on the Supplemental Register to demonstrate that the term is merely descriptive of such services:<sup>9</sup>

- Registration No. 4742969 for the mark THE BEST PARTY ANYWHERE with design elements registered on the Principal Register based on Section 2(f);
- Registration No. 4803035 for the mark BIG PARTY ORCHESTRA in standard characters with “PARTY ORCHESTRA” disclaimed registered on the Principal Register;
- Registration No. 5180465 for the mark TAMBOR PARTY in standard characters with “PARTY” disclaimed registered on the Principal Register;
- Registration No. 5959870 for the mark TRAPICAL HOUSE PARTY in standard characters with “HOUSE PARTY” disclaimed registered on the Principal Register;
- Registration No. 6134078 for the mark  with “JAZZ” and “NEWPORT BEACH JAZZ PARTY” disclaimed registered on the Principal Register; and

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<sup>9</sup> October 7, 2020 Final Office Action, TSDR pp. 7-25. The Examining Attorney also submitted a copy of Registration No. 4642559 issued on the Principal Register for the mark OTTER CREST JAZZ PARTY in standard characters with “JAZZ PARTY” disclaimed. This registration, however, has since been cancelled. It is well-established that an expired or cancelled registration is only evidence that the registration issued and it does not carry any of the legal presumptions under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b). *In re Info. Builders, Inc.*, 2020 USPQ2d 10444, at \*6 n.19 (TTAB 2020). Thus, we have given no consideration to this now-cancelled registration in our analysis.

- Registration No. 6076962 for the mark THE PARTY MIX TOUR in standard characters registered on the Supplemental Register.

Based on all the foregoing evidence, the Examining Attorney concludes that the wording “SONG PARTY,” when viewed in its entirety, is merely descriptive of Applicant’s Class 41 services.

In challenging the refusal, Applicant argues that because the phrase SONG PARTY, as commonly understood by consumers, is not descriptive of the Class 41 services and, instead, is incongruous when applied to those services, the disclaimer requirement should be withdrawn.<sup>10</sup> In support of its position, Applicant submitted its own dictionary definitions of the term “party,”<sup>11</sup> which is defined as follows:

- The Cambridge Dictionary defines a “party” as “a social event at which a group of people meet to talk, eat, drink, dance, etc., often in order to celebrate a special occasion.”
- The Macmillan Dictionary defines a “party” as “a social event at which people meet to celebrate something or to have fun by eating and drinking, dancing, playing games, etc.”
- The Longman dictionary defines a “party” as “a social event when a lot of people meet together to enjoy themselves by eating, drinking, dancing etc.”
- The Merriam-Webster Dictionary defines “party” as: “a social gathering //a dinner party //a birthday party also: the entertainment provided for it.”

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<sup>10</sup> Applicant’s Appeal Brief, p. 1; 6 TTABVue 1.

<sup>11</sup> September 16, 2020 Response to Office Action, Exhs. 1-3, TSDR pp. 16-34.

Applicant argues that what is clear from all these definitions is that a “party,” as commonly understood, is a social gathering or event. Applicant further contends that, as shown by the examples and definitions, what makes a gathering “social” is that its purpose is for the people at the gathering to speak with each other—to socialize.<sup>12</sup>

By contrast, Applicant maintains that the purpose of a live music concert is not for the attendees to socialize; rather, it is to listen to and enjoy a live musical artist’s performance of music.<sup>13</sup> While Applicant acknowledges that there may be some incidental socializing by people sitting next to each other, but like a movie exhibition where people may socialize, that is not the point of the gathering.<sup>14</sup> Indeed, Applicant asserts that many people attend music concerts by themselves, with no intention of socializing with others.<sup>15</sup> Applicant further contends that such a thing would be unthinkable at—and antithetical to the point of—a party.<sup>16</sup> Moreover, Applicant maintains that talking at a musical performance or concert is often considered rude and therefore can lead to demands to be quiet so that those present can hear the performer’s music clearly.<sup>17</sup> Thus, Applicant submits that because the purpose of attending a music concert is not to socialize, the commonly understood meaning of “party” does not include live musical performances or a music concert. For this reason,

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<sup>12</sup> Applicant’s Appeal Brief, p. 3; 6 TTABVUE 4.

<sup>13</sup> *Id.*

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

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

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

<sup>17</sup> *Id.*

Applicant maintains that the term “PARTY” is not descriptive when applied to its identified Class 41 services.

Additionally, Applicant submitted countervailing third-party registrations for marks that include the term PARTY for live musical performances but which do not disclaim the term PARTY.<sup>18</sup> As example: ALL NIGHT PARTY, DEATH OF THE PARTY, GLOBAL PARTY PEOPLE, IT’S ALL ABOUT THE PARTY, IT’S MY PARTY, LIBERATE YOUR PARTY, MORE BEER PARTY, PARTY AT THE MOONTOWER, PARTY MACHINE, PARTY MARCH, PARTY ON THE MOON, PARTY PRINCESS PRODUCTIONS, PARTY PUPILS.

Applicant does not dispute that the term SONG, when considered apart from its involved mark, is nondistinctive as applied to its Class 41 services.<sup>19</sup> Nevertheless, Applicant maintains that its involved SONG PARTY designation is an indivisible, unitary composite phrase resulting from the inherent incongruity of its constituent terms.<sup>20</sup> More specifically, Applicant contends that the phrase SONG PARTY, as applied to the covered Class 41 services, is incongruous, since the songs that are performed at a music concert are not being performed at a party.<sup>21</sup> Because there is

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<sup>18</sup> September 16, 2020 Response to Office Action, Exhs. 4 and 5; TSDR pp. 35-91. Applicant also submitted another set of third-party registrations for musical performances where the term PARTY is disclaimed but where the identification of services explicitly includes “parties.” *Id.* at Exhs. 7-8; TSDR pp. 92-111. Applicant argues that the disclaimer of the term “PARTY” in these registrations is a result of the inclusion of the provision of “parties” in the identification of services, and not live musical performances.

<sup>19</sup> Applicant’s Appeal Brief, p. 1, 6 TTABVUE 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at p. 4; 6 TTABVUE 5.

no party at live musical performances or concerts, Applicant asserts that is what makes SONG PARTY incongruous.<sup>22</sup> Therefore, Applicant concludes that the wording SONG PARTY need not be disclaimed for the covered Class 41 services.

Applicant also argues that the Examining Attorney has impermissibly expanded the dictionary meaning of PARTY, as used in the wording SONG PARTY, so as to make it appear that it covers a musical concert or performance, even though socializing, which Applicant claims is the essential characteristic of a party, is inconsistent with the purpose of listening to a musical concert or performance.<sup>23</sup> Thus, here, too, “it would be rare (indeed, close to non-existent) in contemporary usage” to say that one is going to a “song party” when one is going to a musical concert or performance “and evoke an understanding of this as a natural language usage.”<sup>24</sup> Applicant concludes that the Examining Attorney’s position that the wording SONG PARTY is merely descriptive of its Class 41 services does not “relate to general and readily recognizable word formulations and meanings.”<sup>25</sup>

Finally, Applicant requests, in the alternative, that if the Board does not reverse the Examining Attorney’s requirement to disclaim the wording SONG PARTY in the context of Applicant’s Class 41 services, Applicant asks that the Board find that the evidence of record establishes that if Applicant (i) disclaims the term SONG, and/or (ii) amends the services to “Entertainment services, namely, live music concerts in

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at p. 6; 6 TTABVUE 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

front of a seated audience,” the requirement to disclaim SONG PARTY should be reversed.<sup>26</sup>

### III. Analysis

Based on the totality of the evidence of record, we agree with Applicant and find that relevant consumers would not perceive SONG PARTY to be descriptive of live musical performances or music concerts. The dictionary definitions of the individual words SONG and PARTY do not support the proposition that consumers would understand their combination to refer to or describe live musical performances. Instead, we find that the wording SONG PARTY, when viewed as a whole, is suggestive, albeit it highly suggestive of live musical performances or concerts, but not merely descriptive of such services.

We further find that the screenshots from various websites submitted by the Examining Attorney do not alter our conclusion. Specifically, the use of the phrase “SONG PARTY” in the website [www.ankgallery.com](http://www.ankgallery.com) is used in connection with raves, which is defined as “a large overnight dance party featuring techno music and usually involving the taking of mind altering drugs.”<sup>27</sup> Here, Applicant’s services do not include “dance parties,” and therefore this evidence is not probative in our analysis.

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<sup>26</sup> Applicant’s Appeal Brief, pp. 21-22, 6 TTABVUE 22-23; April 7, 2021 Request for Reconsideration, TSDR p. 5.

<sup>27</sup> [www.merriam-webster.com](http://www.merriam-webster.com) (accessed February 1, 2022). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

With regard to use of the wording “song party” in the website [www.lamaterchorale.org](http://www.lamaterchorale.org), we find that the such use is presumably a translated reference to an event in Japan known as the Imperial New Year song party, which likely would not be familiar to U.S consumers. The use of the wording “song party” in the website [www.newsday.com](http://www.newsday.com) is not a reference to a musical concert as is commonly understood but instead refers to a floating festival that features the personality of an individual who is not just a pianist, but also a programmer, coach and emcee. As such, we do not find this evidence particularly probative to our analysis. Likewise, the use of the term “song party” in the website [www.songsourcesfestival.org](http://www.songsourcesfestival.org) concerns a festival that has a Canadian cultural aspect. As such, it is not a reference to a typical musical concert and therefore this evidence also has limited probative value.<sup>28</sup> Moreover, the use of the phrase “SONG PARTY” in the website [www.barnstormmusic2019.com](http://www.barnstormmusic2019.com) involves karaoke services, a service that is not being provided by Applicant under its proposed mark. As such, this evidence is similarly not probative in our analysis.

Finally, the screenshot from the Twitter account of the Children’s Museum Houston concerns an educational service to children to learn how to create computer coding through the use of music or songs. Applicant is not providing an educational service and, therefore, this particular evidence is also not probative.

The only website evidence submitted by the Examining Attorney that arguably supports the Examining Attorney’s position that the wording “song party,” in its

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<sup>28</sup> We further note that the events described in the websites [www.lamaterchorale.org](http://www.lamaterchorale.org), [www.newsday.com](http://www.newsday.com), and [www.songsourcesfestival.org](http://www.songsourcesfestival.org) are festivals. There is nothing in the record to indicate that Applicant is providing festival services under its proposed mark.

entirety, is merely descriptive of live musical performances is from the website [www.event.wtmd.org](http://www.event.wtmd.org), which is an advertisement for a musical concert featuring the musical group, The Classic Hitman. However, this single piece of evidence is not sufficient to demonstrate that the relevant consuming public would view the wording “song party” as merely descriptive of live musical performances or musical concerts. Overall, this record leaves the impression that consumers would not be familiar with “song party” in connection with the relevant services.

As for the Examining Attorney’s third-party registration evidence, we find that Applicant’s countervailing third-party registrations diminish the probative value of the Examining Attorney’s evidence in demonstrating that the Office typically requires a disclaimer of the term “party” for live musical performances.

In sum, upon consideration of the record before us, we find that the designation SONG PARTY is highly suggestive, rather than merely descriptive, of Applicant’s live musical performances and live music concert services. Although the word “song” does describe a feature of live musical performances or concerts, the connection between “song” and “party” is not so obvious that a consumer seeing SONG PARTY in relation to Applicant’s Class 41 services would immediately know that the term describes a quality, feature, function, or characteristic of such services. We acknowledge that there is some socializing that may take place at a live music concert or performance—just as socializing takes place at restaurants, in classrooms, and at sporting events. But on this record, we cannot find that a concert or a live musical performance is a kind of “party.” Based on the commonly understood meaning of the term “party,” in



the context of SONG PARTY, we find that the term does not describe a concert or a live musical performance, and instead requires some imagination or thought on the part of the consumer to connect the term “party” in the mark with Applicant’s Class 41 services. As a result, we conclude that the wording SONG PARTY is incongruous and, therefore, suggestive in relation to live musical performances and musical concerts. *See, e.g., In re Sharky's Dry Goods*, 23 USPQ2d 1061, 1062-63 (TTAB 1992) (PARIS BEACH CLUB incongruous because there is no beach in Paris); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983) (SNO-RAKE held not merely descriptive of a snow-removal hand tool); *In re Tennis in the Round Inc.*, 199 USPQ 496, 498 (TTAB 1978) (TENNIS IN THE ROUND created an incongruity because applicant's tennis facilities are not analogous to those used in a “theater-in-the-round”).

As often has been stated, there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. *See, e.g., In re Atavio*, 25 USPQ2d 1361, 1362 (TTAB 1992); *In re TMS Corp. of the Ams.*, 200 USPQ 57, 58 (TTAB 1978). The distinction, furthermore, is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. *See In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985). Here, we find that the Examining Attorney did not meet her burden of showing that the wording “SONG PARTY,” in its entirety, is merely descriptive of Applicant’s identified Class 41 services.

Moreover, to the extent there is any doubt as to the mere descriptiveness of the wording SONG PARTY as a whole in connection with the identified Class 41 services, we resolve such doubt in Applicant's favor. *See In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1512 (TTAB 2016) ("The Board resolves doubts as to the mere descriptiveness of a mark in favor of the applicant."); *see also In re The Stroh Brewery Co.*, 34 USPQ2d 1796, 1797 (TTAB 1994) ("When doubts exist as to whether a term is descriptive as applied to the goods or services for which registration is sought, it is the practice of this Board to resolve doubts in favor of the applicant and pass the mark to publication with the knowledge that a competitor of applicant can come forth and initiate an opposition proceeding in which a more complete record can be established.").

**Decision:** The refusal to register Applicant's mark based on the requirement, made under Trademark Act § 6(a), for a disclaimer of the wording SONG PARTY used in connection with the identified Class 41 services is reversed.<sup>29</sup>

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<sup>29</sup> In light of our decision, Applicant's alternative request to disclaim the word SONG and/or amend its Class 41 recitation of services is deemed moot and is given no further consideration.