

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 20, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re 228 West Broadway, Inc.

Serial No. 75/150,659

Charles E. Baxley of Hart Baxley Daniels & Holton for 228
West Broadway, Inc.

Jeri J. Fickes, Trademark Examining Attorney, Law Office
108 (Dave Shallant, Managing Attorney)

Before Simms, Cissel and Hairston, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

228 West Broadway, Inc. (applicant), a New York
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark BUBBLE
LOUNGE for bar services.¹ The Examining Attorney has
refused registration under Section 2(d) of the Act, 15 USC

¹ Application Serial No. 75/150,659, filed August 15, 1996, on
the basis of applicant's assertion of a bona fide intention to
use the mark in commerce. Shortly after applicant filed its
application, applicant submitted an amendment to allege use
reciting use in commerce since March 28, 1996. Pursuant to

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§1052(d), on the basis of Registration No. 1,341,733,
issued June 11, 1985, for the mark shown below

for restaurant services. In the registration, registrant has disclaimed the exclusive right to use the word "ROOM" apart from the mark as shown.

Applicant and the Examining Attorney have submitted briefs, but no request for oral argument was submitted.

We affirm.

Relying upon dictionary definitions, the Examining Attorney argues that the respective marks have similar connotations, and thus that they create similar commercial impressions. The Examining Attorney relies upon one

request, applicant submitted a disclaimer of the word "LOUNGE" in its mark.

definition of "lounge" as "a room in an establishment, as in a hotel or restaurant, where cocktails are served." The Examining Attorney contends that both marks contain a descriptive designation of a place of hospitality, or suggest places where food or beverages are served, and that both are dominated by the word "BUBBLE." The Examining Attorney also argues that the average purchaser may retain a general rather than a specific impression of trademarks and, thus, may confuse the respective marks, which will not necessarily be compared on a side-by-side basis. As to the services, the Examining Attorney maintains that they are closely related, in that bar services are often offered as part of or adjacent to restaurant services. The Examining Attorney has submitted computer-generated printouts of articles discussing various establishments that have both a restaurant and a bar.²

Applicant, on the other hand, argues that, except for the word "BUBBLE," the respective marks sound and look different and mean different things. In this regard, applicant argues that the words "LOUNGE" and "ROOM" are the significant and dominant words that distinguish the marks.

² In the Examining Attorney's final refusal, the Examining Attorney notes that she has submitted copies of various third-party applications and registrations showing that both types of services have been listed on the same registrations. However, the record contains no such copies.

Applicant contends that its mark has a "bouncy rhythm" while the registered mark is "discordant" and "sonically dissident." Further, applicant argues that the word "ROOM" connotes a confining space whereas the term "LOUNGE" suggests a place to relax. According to applicant, the word "BUBBLE" is highly suggestive of champagne and is therefore "weak." Applicant also contends that its mark is shorter and more easily remembered than the registered mark. Finally, counsel states that there have been no instances of actual confusion.

Upon careful consideration of this record and the arguments of the attorneys, we hold that confusion is likely if applicant's mark BUBBLE LOUNGE for bar services is used contemporaneously with the registered mark BUBBLE ROOM and design for restaurant services. Both marks in their entireties create similar commercial impressions and the respective services are closely related. To the extent that each mark has some connotation or meaning, whether it be of the "effervescent" atmosphere or the beverages served (as posited by the Examining Attorney), we believe that both marks have the same suggestive connotation. A customer familiar with registrant's BUBBLE ROOM and design mark for restaurant services who then encounters applicant's BUBBLE LOUNGE bar services is likely to believe

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that these services emanate from or are sponsored by the same source.

With respect to the lack of instances of actual confusion, we have no information of record that the respective marks have been used in the same area such that there has been an adequate opportunity for confusion to have taken place.

Decision: The refusal of registration is affirmed.

R. L. Simms

R. F. Cissel

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board