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**THIS DISPOSITION
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Paper No. 9
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Daniel Brotman

Serial No. 75/574,820

Serial No. 75/576,365

Keith S. Orenstein of Orenstein & Orenstein, L.L.C. for Daniel Brotman.

Teresa A. Lee, Trademark Examining Attorney, Law Office 111
(Craig Taylor, Managing Attorney).

Before Simms, Bucher and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Daniel Brotman has filed two applications to register the mark URBAN RHYTHM, one for "music entertainment in the nature of live musical performance"¹ and the other for "sound recordings, namely compact discs and audio cassettes, featuring musical

¹ Serial No. 75/574,820, filed October 21, 1998, alleging dates of first use and first use in commerce in March 1993.

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performance."²

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of applicant's goods and services.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs.³ An oral hearing was not requested. Because the issues in these two applications are substantially the same, the appeals have been consolidated and are being treated in a single decision.

The Examining Attorney argues that URBAN RHYTHM is descriptive of a particular genre or style of music, such as jazz, blues, rock or rap, as well as "a particular sound or rhythm" incorporated in such music, i.e., that urban rhythm beats are characteristic of such music. In support of her position, the Examining Attorney has made of record numerous excerpts from the NEXIS database and printouts from several Internet websites containing references to "urban rhythm" or "urban rhythms."

Applicant argues, based on dictionary definitions for the individual words "urban" and "rhythm," that the two words when combined "do not have any discernible meaning" and that unlike

² Serial No. 75/576,365, filed October 23, 1998, alleging a bona fide intention to use the mark in commerce.

³ Applicant filed a reply brief only in connection with application Serial No. 75/574,820.

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the style of music known as, for example, "rhythm and blues" the evidence does not reflect any particular species, style, type or sound of music called "urban rhythm." According to applicant, the evidence does not show that "urban rhythm" is commonly used as a description of music but only that the terms "urban" and "rhythm" appear often in the press. Applicant points out that none of the articles which do refer to "urban rhythm" explain what is actually meant by "urban rhythm" or convey a clear sense of what it is. Applicant maintains that, in fact, "urban rhythm" has no particular or fixed meaning but rather means basically whatever the speaker wants it to mean. While acknowledging that "[I]t may be that such a meaning will emerge in the future" applicant believes that "this has not yet happened."

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which the term is used, and the possible significance that the term is likely to have to the average purchaser as he encounters the goods or services in the

marketplace. See *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986).

We agree with the Examining Attorney that the term URBAN RHYTHM when used in connection with musical performances and sound recordings directly conveys information about the type of the music performed and recorded by applicant, clearly a significant aspect of both the goods and the services.⁴

It is clear that "urban rhythm" is a coined phrase and that it has only recently become part of the music vernacular. Thus, it is not surprising that the conventional dictionary meanings of the individual words "urban" and "rhythm" would not support the descriptive meaning of the phrase as a whole. However, the NEXIS and Internet references made of record by the Examining Attorney clearly demonstrate that a type of music is referred to as "urban rhythm." Examples of the articles taken from the NEXIS database are reproduced below (emphasis added):

In fact, his cutting edge sound and style, birthed in straight-ahead jazz, soaked in **urban rhythm**, bop, hip-hop and saturated with street-beat poetry, is like no other coming together of those potent, often denigrated genres. *New York Amsterdam News*. (September 30, 1995).

The Yellowjackets (contemporary jazz), Rick Braun (smooth-jazz trumpeter), Eric Marienthal (alto sax in the Cannonball Adderly tradition), The Phil Woods Quintet (saxophone-based)

⁴ Whether the term may have some meaning in other "non-musical" contexts does not change its descriptive connotation in relation to the identified goods and services.

and Liquid Soul (**urban rhythm**, funk, acid jazz). *The Florida Times-Union (Jacksonville, FL)*. (September 2, 1999); and in a related story:

The boundary-busting group fearlessly mixes **urban rhythm**, funk, acid jazz with impeccable musicianship to create a contagious sound that's bringing jazz back to the dance floor. *The Florida Times-Union (Jacksonville, FL)*. (November 7, 1999).

Garth Trinidad, host of the weeknight KCRW, 89.9-FM show Chocolate City--officially billed as a "smooth, creamy mix of **urban rhythm** and soul"--hosts a new Friday night Club downstairs in the cabaret at Luna Park, with a rotating host of DJs.... *New Times Los Angeles*. (July 15, 1999).

WMNF is known for its eclectic programming, all the way from bluegrass to punk rock. At first K was slated to do a rhythm-and-blues, reggae show. "Then the station manager asked what my favorite form of music was. Of course I said hip hop" - the latest style in **urban rhythm** music. *St. Petersburg Times*. (February 21, 1988).

MacIsaac drives fussy purists crazy with his irreverent musical hybridization - the 21-year-old Cape Breton fiddler's music is based in traditional reels and jigs, but it's expanded to include rock and **urban rhythm** elements. *The Denver Post*. (June 21, 1997).

Heading off midcareer fatigue at the pass, Mellencamp shook things up for his 14th and latest album, "Mr. Happy Go Lucky" (Mercury Records). He invited New York dance club disc jockey and remix wizard Junior Vasquez to help produce a batch of new songs replete with processed **urban rhythm** tracks and thick, repetitive beats. *The Atlanta Journal and Constitution*. (September 22, 1996);

The following excerpts from third-party Internet websites further illustrate the descriptive meaning of "urban rhythm" in the music field (emphasis added):

Toronto feels the Rhythm! From Wednesday, August 26 - Saturday, August 29, 1998, the JVC **Urban Rhythm** Festival (formerly the JVC Acid Jazz Groove Festival) continues the exploration of jazz vibes in the **urban rhythm**, including street soul, jazz funk, spoken word, hip hop, dub, drum n'

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bass, Latin, house, world and everything in between. *Urban Rhythm Musical Festival* web page.

And Now For Something Completely Different...1998 in Review...Morricone's literate New-Romantic chorales couple with **urban rhythm** tracks proved that there is fertile ground here for any composer willing to acknowledge that rap styles and electronic grooves are good for more than the pseudo-terrorization of WASP audiences. *Film Score Monthly* (The Online Magazine of Motion Picture and Television Music Appreciation) web page.

The evidence shows that "urban rhythm" is used to identify a particular form or style of music in much the same way as "rock," "hip hop," and "rhythm and blues" are used in those articles to refer to other more or less familiar types of contemporary music. It is not especially important that the term is not defined in those references or that the particular characteristics of the music are not explained or revealed. Applicant would not dispute that, for example, "hip hop" and "alternative rock" are recognized types of music (brief p.5). Yet those terms, while mentioned in some of the identified stories, are not specifically defined either. The point is that the issue is not whether the general public has a precise, well-defined understanding of the elements of "urban rhythm" music, or knowledge of, for example, its structure, type of rhythm or chord progressions. In fact, the general public's understanding of the term is not even particularly relevant. The important consideration is whether the term has a descriptive meaning to the segment of the public

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who will be purchasing applicant's goods and services. See *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1559, 227 USPQ 961, 963 (Fed. Cir. 1985).

It seems clear that the cited NEXIS and Internet articles are directed to a specialized audience, that is, those individuals who are already familiar with or knowledgeable about zydeco, hip hop, urban rhythm or the other music forms identified in those articles, and who would therefore not require any formal definition of those terms.⁵ The relevant purchasers of applicant's recordings and patrons of applicant's concerts will similarly recognize the meaning of URBAN RHYTHM in relation to those goods and services and understand (or assume) that applicant is providing performances and sound recordings of "urban rhythm" music.⁶

In view of the foregoing, we find that URBAN RHYTHM when used in connection with applicant's recordings and performances,

⁵ It is for this reason that the relevant public will understand that the stories referring to an "urban rhythm track" or "urban rhythm section" of a band merely identifies the type of music performed on those tracks or by that section of the band.

⁶ We note applicant's claim that none of the evidence describes the particular music produced by applicant. However, the descriptiveness of a mark is determined on the basis of the identification of goods and services rather on the type of music or sound actually performed or recorded. In the absence of any such restriction, it is presumed that applicant is performing and recording the type of music named in the mark. See, e.g., *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660 (TTAB 1988).

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would be readily understood by relevant purchasers to describe a significant characteristic of those goods and services.

Decision: The refusal to register in each application is affirmed.