

## **The Sky's the Limit? TTAB Rules that Guitar-Shaped Hotel Is a Distinctive Design**

Article By:

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For music lovers, while it may be a bit far for some to travel to Liverpool and stay in the Yellow Sub Hotel, why not have a more local adventure, in sunny Florida at The Seminole Hard Rock Hotel & Casino's *The Guitar Hotel*, which, in addition to boasting luxurious guest rooms, this year, the hotel was successful in persuading the Trademark Trial and Appeal Board ("the TTAB") that its design, the shape of a guitar, is inherently distinctive.

In August 2018, The Seminole Tribe of Florida ("The Applicant") sought registration on the Principal Register for the design:

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(SN No. 87890892) for “Casinos” and “Hotel, restaurant and bar services” in International Classes 41 and 43. The mark was described as *trade dress consisting of a three-dimensional building in the shape of a guitar.*

The Examining Attorney refused registration, finding the mark to be nondistinctive trade dress. The Applicant argued that the mark *is* inherently distinctive, those arguments were refused and the Applicant appealed. In *In re Seminole Tribe of Florida*, 2023 U.S.P.Q. 2d 631 (TTAB 2023) (precedential), the Trademark Trial and Appeal Board (“the TTAB”) allowed the application for registration, stating that “*it is appropriate for us to consider whether a consumer would immediately rely on Applicant’s Guitar Design design mark to differentiate Applicant’s services from the services of others who offer casinos or hotel restaurant and bar services, as well as to consider the entire trade dress of Applicant’s Guitar Design mark...*”. Finding that the guitar design was inherently distinctive, the TTAB held that the design was “*unique*” for a building and is a “*type that consumers would immediately rely on to differentiate applicant’s services from casinos, hotel, bar and restaurant services offered by others, and that it therefore constitutes inherently distinctive trade dress.*”

If a guitar-shaped hotel can enjoy protection as inherently distinctive, I look forward to more such *ground-breaking, landmark* and *earth-shattering* decisions...

As a postscript, following publication of its application, on November 17, 2023, Gibson Brands, Inc. opposed the Applicant's application on grounds of likelihood of confusion with its LES PAUL BODY DESIGN trade dress ("LES PAUL marks") for actual guitars, *not a building*. Stay **TUNED!**

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