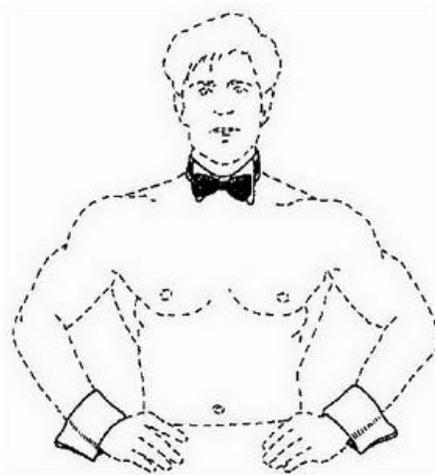


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[Collar + Cuffs = Stripper?](#)

Posted on October 7, 2010 by [Sharon Armstrong](#)

If there is any trademark case this year that has the media clamoring to create cute headlines, it may just be this one – In re Chippendales USA, Inc., decided by the Federal Circuit just six days ago. “[Federal Circuit Leaves Chippendales Nearly Naked](#),” said The American Lawyer, “[Judge ‘strips’ Chippendales of bid to beef up trademark](#),” stated the Boston Herald, and “[Chippendales Can’t Trademark ‘Cuffs And Collar’ Costume](#),” noted Reuters (as republished by the Huffington Post).



Back here on Earth, however, it is plain that Chippendales already owns a [trademark registration](#) for its “collar and cuffs” trade dress and continues to be eligible to obtain additional federal protection in its trade dress.

So what does everyone have their [collars and cuffs in a twist](#) about?

The crux is that, in obtaining its existing trade dress registration, Chippendales argued that its trade dress had acquired distinctiveness over a long period of use, such that consumers have come to recognize the trade dress with Chippendales. The Supreme Court has held that certain types of trade dress can be inherently distinctive.



In prosecuting the current applications that are the subject of the Federal Circuit opinion, Chippendales has maintained that its trade dress is actually inherently distinctive, such that it should be registered on the Trademark Office's Principal Register without any accompanying evidence of long-term use. In short, Chippendales has been arguing that its trade dress is automatically capable of identifying a source of goods and services, in this case Chippendales.

The Federal Circuit, like the Trademark Trial and Appeal Board before it, concluded that Chippendales' trade dress is not inherently distinctive, primarily because the collar-and-cuffs look is a type of "common basic shape design" that has been in use in connection with exotic dancing for quite some time. Specifically, the Court noted that the use of "collar and cuffs" outfits by [Playboy bunnies](#) constituted "substantial evidence supporting the Board's determination that Chippendales' Cuffs & Collar mark is not inherently distinctive."

Nevertheless, the Court also pointed out that Chippendales current registration has achieved incontestable status and that marks that obtain registration on the Principal Register due to acquired, rather than inherent, distinctiveness enjoy the same benefits as their inherently distinctive brethren.

Chippendales remains free and capable of obtaining the benefits of federal registration with the caveat that, at this point in time, they must claim acquired distinctiveness in their marks.

The Federal Circuit also addressed questions about the time at which to measure acquired distinctiveness and whether the existence of a registration obtained via acquired distinctiveness moots the inquiry into whether a new application for the same mark can claim inherent distinctiveness. You can read the opinion [here](#).

