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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re LENG-D'OR, S.A.

Serial No. 75/232,739

Barbara H. Lowenthal of Gottlieb Rackman & Reisman, P.c. for
LENG-D'OR, S.A.

Kimberly K. Frye, Trademark Examining Attorney, Law Office 104
(Sidney Moskowitz, Managing Attorney).

Before Simms, Seeherman and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

LENG-D'OR, S.A. seeks registration on the Principal
Register for the mark as shown below:



for services recited as "commercial wholesale business management services in the field of snack food," in International Class 35.¹

Several issues relating to the form in which the mark was represented and to the details of an acceptable recitation of services dominated prosecution during the intent-to-use phase of examination. However, the sole issue before the Board in the instant appeal is whether the specimens of record demonstrate use of this mark in connection with the services set forth in the statement of use, as recited above.

While applicant's counsel, in her appeal brief, argues the appropriateness of the specimens under previous cases decided by this Board,² this argument misses the point of the refusal to register. As noted by the Trademark Examining Attorney, the real problem here is that the recitation of services in the application does not accurately reflect applicant's activities:

As is clear from the brochures, the applicant manufactures snack food. The brochures make repeated reference to the

¹ Application Serial No. 75/232,739 was filed on January 29, 1997 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. A Notice of Allowance issued on September 29, 1998, and applicant filed a Statement of Use under 37 C.F.R. §2.88 on March 24, 1999, claiming use at least as early as July 11, 1964 and use in commerce between Spain and the United States at least as early as March 17, 1995. The file now contains verified specimens described as labels for goods as well as brochures describing applicant's operations and its various snack pellets.

² For example, *In re Metriplex, Inc.*, 23 USPQ2d 1315 (TTAB 1992), and *In re Red Robin Enterprises, Inc.*, 222 USPQ 911 (TTAB 1984).

applicant's snack food products. [Trademark Examining Attorney's footnote 2 - "This conclusion is further supported by the specimen originally submitted with the statement of use; a label used on applicant's products.] The photographs in the brochures are of the applicant's manufacturing plant and the raw ingredients used in making the snack pellets. The applicant's mark appears on the first page of the brochures above the tagline SNACK FOODS and under the slogan, LENG-D'OR: A WORLD OF PELLETS. Following the text of the brochures are separate pages for the applicant's individual snack food items, containing nutritional and preparation information for each. At the bottom of each of these pages the applicant's mark appears above the slogan "A world of pellets". Thus, the brochure is clearly an advertisement for the applicant's snack food products and, at best, the manufacture thereof. Indeed, the applicant's own assertion is that the specimen shows the Applicant is "involved in providing services in connection with snack foods." Applicant's Brief at 6. This is insufficient to render the specimens acceptable to show use of the mark in conjunction with the commercial wholesale business management services listed in the statement of use.

Even accepting the applicant's position that the specimens show use of the mark in connection with snack food manufacturing, production and distribution services, the brochures fail to show use of the mark in connection with the services listed in the statement of use

(Trademark Examining Attorney's appeal brief, unnumbered p. 3).

Simply stated, throughout the prosecution of this application, the recitation of services has been limited to "business management services." This language implies that applicant is providing the service of managing the business operations of another. However, the specimens of record demonstrate clearly that applicant is in the business of developing, manufacturing and marketing bulk quantities of food pellets for further processing into snack foods. Managing one's own production plant and/or global distribution

operations is not a service separate and apart from applicant's primary services, which are nowhere recited herein.

Accordingly, while the current specimens of record would be acceptable to support specifically enumerated goods and/or services,³ such identifications and/or recitations would not be within the scope of the original recitation of services. Hence, the specimens of record fail to demonstrate use of this mark in connection with the services set forth in the statement of use.

Decision: The refusal to register is affirmed.

³ For illustrative purposes, we note that the options for applicant, in re-filing another application with the United States Patent and Trademark Office for registration of this mark, might well include, *inter alia*, recitations of services, or even an identification of goods, like the following:

- "Food products, namely processed potato, wheat, corn, rice and other cereal-based snack pellets sold in bulk form to commercial food manufacturers," in International Class 30
- "Wholesale distributorships featuring snack food pellets," in International Class 35
- "Manufacturing snack food pellets to the order and/or specification of others," in International Class 40