

**THIS DISPOSITION  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Tropical Cheese Industries, Inc.

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Serial No. 75/407,503

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Ezra Sutton of Ezra Sutton, P.A. for Tropical Cheese Industries, Inc.

Angela Bishop Wilson, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

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Before Walters, Holtzman and McLeod, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Tropical Cheese Industries, Inc. has filed an application to register FINEST LATIN AMERICAN REFRIGERATED FOODS for the following goods:<sup>1</sup>

Cheese, sour cream, heavy cream, yogurt, butter, margarine, processed luncheon meats, soup, and prepared foods, namely chicken and rice, shredded beef, pork and rice, fried bananas, salted cod and rice, shrimp and rice; drinkable yogurt, milk-based fruit drink. In Class 29.

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<sup>1</sup> Application Serial No. 75/407,503, filed December 18, 1997, alleging a bona fide intention to use the mark in commerce.

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Salsas, cooking sauces, desserts, namely flan, cheesecakes, and bread pudding; tortillas, arepas, empanadas, tamales, burritos, enchiladas, rice and beans, and rice-based food beverages. In Class 30.

Beverages, namely fruit juices and fruit nectars. In Class 32.

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 its identified goods.

Applicant has appealed. Both applicant and the Trademark Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

It is the Examining Attorney's position that the proposed mark merely describes several features of applicant's food products. The Examining Attorney contends that FINEST is a nondistinctive laudatory word which touts the quality of the foods, that LATIN AMERICAN identifies the type of foods the applicant provides, and that REFRIGERATED indicates that the foods "are designed to be chilled." In support of her refusal, the Examining Attorney has submitted a dictionary definition of "finest" meaning "of superior quality"; "Latin American" referring to "Western Hemisphere nations south of the United States that have Spanish, Portuguese, or French as their official languages"; and "refrigerated" meaning "to preserve (food) by

chilling."<sup>2</sup> The Examining Attorney concludes that the proposed mark consists of words which when taken as a whole, are merely descriptive of applicant's goods.

Applicant maintains that even if the components of the mark are "individually descriptive" of the identified goods, the mark as a whole "is still registrable." Applicant argues that its mark is "unique and distinctive" because the mark consists of a combination of words that "have never before been used together" in connection with food products.

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

As confirmed by the dictionary definitions submitted by the Examining Attorney, the plain meaning of the words comprising FINEST LATIN AMERICAN REFRIGERATED FOODS, when considered in relation to applicant's food products, are merely descriptive of those products. Applicant does not argue otherwise. It is clear

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<sup>2</sup> Webster's II New Riverside University Dictionary (1984).

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that the word FINEST conveys information to the potential purchaser about the alleged quality of applicant's foods, that the designation LATIN AMERICAN describes the type or style of cuisine provided under the mark, and that REFRIGERATED refers to the fact that the food items are chilled or that they may be found by purchasers in the "refrigerated" section of the grocery or food store.

We disagree that the combination of these individual words results in a term which is unique or any less descriptive than the words taken alone. See *In re Disc Jockeys Inc.*, 23 USPQ2d 1715 (TTAB 1992). Viewed either as individual words or a combined phrase, FINEST LATIN AMERICAN REFRIGERATED FOODS immediately conveys the same information to the relevant public about applicant's food products, and no imagination, thought or perception is required to make that determination.

Moreover, the fact that applicant will be or intends to be the first and/or only user of the wording FINEST LATIN AMERICAN REFRIGERATED FOODS for food products is not dispositive where, as here, the phrase unquestionably conveys a merely descriptive meaning as applied to those products and the descriptive meaning would be obvious to the purchasing public. In addition, the absence of any third-party use of this phrase does not mean that competitors of applicant would not need to use such a phrase in

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advertising and promoting similar types of food products of their own. See *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992).

Accordingly, we find that applicant's asserted mark is merely descriptive of applicant's goods.

**Decision:** The refusal to register under Section 2(e)(1) is affirmed.

C. E. Walters

T. E. Holtzman

L. K. McLeod  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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