

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB JUNE 21, 00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Chef America, Inc.

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Serial No. 75/355,914

R. Charles Henn Jr. of Kilpatrick Stockton LLP  
for Chef America, Inc.

Linda M. King, Trademark Examining Attorney, Law Office 101  
(Jerry Price, Managing Attorney).

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Before Simms, Wendel and Bucher, Administrative Trademark  
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Chef America, Inc. has filed an application to  
register the mark TOASTER CROISSANTS for "filled pastries."<sup>1</sup>

Registration has been finally refused on the ground  
that the mark is merely descriptive under Section 2(e)(1)  
of the Trademark Act. Applicant and the Examining Attorney  
have filed briefs, but no oral hearing was requested.

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<sup>1</sup> Serial No. 75/355,914, filed September 10, 1997, based on an  
allegation of a bona fide intent to use the mark in commerce.

The Examining Attorney maintains that the proposed mark TOASTER CROISSANTS merely describes the nature of applicant's goods. She argues that TOASTER is descriptive of goods which may be toasted in a toaster and CROISSANT(S) of a type of pastry. Thus, she views the mark as a whole as describing applicant's pastries as "croissants that you can heat up in a toaster." She relies upon numerous Nexis excerpts showing generic use of the term "toaster pastries" as support for her argument that the average consumer, being familiar with "toaster pastries" would immediately view applicant's mark as identifying a "croissant style, albeit processed, toaster pastry." In addition, she has made of record Nexis excerpts showing references to croissants as "pastries" and to the use of toasters to heat croissants.

Applicant contends that TOASTER CROISSANTS is, at most, suggestive when used with applicant's filled, flat pastries. Applicant argues that, by definition, a "croissant" may be made of leavened dough, as well as puff pastry. Thus, since "pastry" is defined as being made of unleavened dough, not all croissants are "pastry." In addition, according to applicant, the term CROISSANT is not descriptive because a croissant is defined as being "crescent-shaped," whereas applicant's pastries are flat.

Applicant further asserts that the Examining Attorney has improperly dissected its mark; that when the mark is considered as a whole, the combination of TOASTER and CROISSANT challenges traditional notions of preparing a croissant, since croissants are normally baked in an oven, not toasted. Finally, applicant argues that the combination of an English and a French word in applicant's mark would cause consumers to pause before comprehending the precise nature of the goods.

A word or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic, quality, or feature of the goods with which it is being, or is intended to be, used. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A suggestive mark, on the other hand, requires imagination, thought or perception to reach a conclusion as to the nature of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

We find the evidence of record more than adequate to establish that TOASTER CROISSANTS would immediately convey to the average consumer that the filled pastries with which the proposed mark is intended to be used are pastries similar to croissants in composition which may be heated in

the toaster. No imagination or thought is required to reach this conclusion.

The Examining Attorney has demonstrated that "toaster pastries" are a recognized type of pastry, with the term "toaster" being used to refer to the capability of heating the pastry in a toaster. Applicant has in fact offered to disclaim the term "toaster" and thus has acknowledged the descriptiveness of this term.<sup>2</sup>

Thus, the only real question is whether CROISSANTS is merely descriptive when used with applicant's "filled pastries." We find applicant's arguments that "croissants" do not always fall within the technical definition of "pastry" a bit strained. Not only has the Examining Attorney made of record numerous Nexis excerpts in which "croissants" are specifically described as "pastries," but references are also found in applicant's own evidence to croissants as "pastry"<sup>3</sup> or "breakfast pastries."<sup>4</sup> Thus we are convinced that the average consumer would view the term CROISSANTS as descriptive of a type of pastry in general, and not make any distinction based on whether particular croissants were made of puff pastry or leavened dough.

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<sup>2</sup> As pointed out by the Examining Attorney, applicant has disclaimed the term TOASTER in its Registration No. 2,200,253 for TOASTER BREAKS for "frozen pastries filled with meat, vegetables, fruit and/or cheese."

<sup>3</sup> Lang, *Larousse Gastronomique* (1988).

We would agree with applicant that croissants by definition are normally "crescent-shaped." Applicant states that its pastries are flat. Applicant's pastries as identified in its application, however, are simply "filled pastries" and are unrestricted as to shape. Croissants may be filled, as shown by the recipe for jam croissants in the evidence made of record by applicant. Furthermore, the description of a croissant as "crescent-shaped" does not, in itself, exclude the possibility of its being flat and crescent-shaped, rather than puffed and crescent-shaped. Even if used in connection with a flat pastry of non-crescent shape, however, we believe that the average consumer, upon seeing the term CROISSANT, would interpret the term as an indication that the pastry was at least of a croissant-type composition or texture.

We fail to see any inconsistency or incongruity in the combination of TOASTER, which is clearly being used as an adjective, and not a noun, and CROISSANTS. Although croissants may be prepared in an oven, they may be reheated in a toaster. The Examining Attorney has provided evidence of reheating croissants both in a toaster oven or in a toaster particularly made for croissants. Moreover, we do not consider TOASTER CROISSANTS to fall within the category

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<sup>4</sup> Herbst, *The Food Lover's Companion* (2<sup>nd</sup> Ed.)

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of the combination of an English word and a French word. Although of French origin, the term "croissant" is an accepted term of widespread usage in the English language and lies within the vocabulary of the average consumer.

Accordingly, we find applicant's proposed mark TOASTER CROISSANTS merely descriptive of the "filled pastries" with which it is intended to be used.

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

R. L. Simms

H. R. Wendel

D. E. Bucher

Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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