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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Packaged Ice, Inc.

Serial No. 74/695,059

Kenneth H. Johnson for Packaged Ice, Inc.

David C. Reihner, Trademark Examining Attorney, Law Office 107 (Thomas Lamone, Managing Attorney)

Before Seeherman, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Packaged Ice, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register PACKAGED ICE as a trademark for "plastic bags for packaging."[1] Registration was refused pursuant to Section 2 and 45 of the Trademark Act, 15 U.S.C. 1052 and 1127, on the ground that the mark sought to be registered is not used to

identify the source of the goods specified in the application, namely, plastic bags for packaging. [2]

The case has been fully briefed. Applicant did not request an oral hearing.

This case is a companion case to **In re Packaged Ice, Inc.**, __USPQ2d__, Serial No. 74/703,747 (TTAB Feb. 8, 1999), decided by the Board earlier this year. The evidence and arguments in both cases are the same; the only difference is that Serial No. 74/703,747 involved a design mark which contained the words PACKAGED ICE, INC., while the present application is for the words PACKAGED ICE shown in a typed drawing.

We will not repeat the evidence and arguments set forth in the earlier opinion, which also involved an application by the present applicant.

We find that in the instant case, as we did in the companion case for PACKAGED ICE, INC. and design, the words PACKAGED ICE do not function as a trademark to identify the source of applicant's plastic bags. That is, based on the facts and the specimens of record, and for the reasons

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[1] Application Serial No. 74/695,059, filed June 29, 1995, asserting first use as of October 7, 1993 and first use in commerce as of April 27, 1994.

[2] The application was remanded to the Examining Attorney on February 10, 1999 to consider whether the mark shown in the drawing--PACKAGED ICE per se--was a mutilation of the mark. The

given in the companion case, we find that the customers/licensees of applicant's ice-making equipment will not regard PACKAGED ICE, as it is used on the specimens of record, as a trademark which is used to indicate the source of the bags.

The fact that the mark in this case is PACKAGED ICE depicted in a typed drawing, while the mark in Serial No. 74/703,747 was the words PACKAGED ICE INC. shown with a design element, does not compel a different result. If anything, in this case the purchasers of the bags are even more likely to regard PACKAGED ICE as a trademark for the ice, and not the plastic bags, because the words are not, as in the companion case, also applicant's trade name.

Decision: The refusal of registration is affirmed.

E. J. Seeherman

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board

Hanak, Administrative Trademark Judge, dissenting:

I respectfully dissent.

Examining Attorney determined that a refusal on this basis was not warranted, and therefore this issue is not before us.

E. W. Hanak
Administrative Trademark Judge
Trademark Trial and Appeal Board