

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB      DEC. 16, 99  
U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The All American Gourmet Company

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Serial No. 75/226,831

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**Bert A. Collison** of Nims, Howes, Collison, Hansen & Lackert  
for The All American Gourmet Company.

**Mitchell Front**, Trademark Examining Attorney, Law Office  
**111** (Craig Taylor, Managing Attorney).

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Before Cissel, Chapman and Rogers, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

The All American Gourmet Company has filed an  
application to register the mark shown below

for "entrees, dinners, and side dishes principally  
consisting of meat, poultry, fish, shellfish, seafood,  
cheese or vegetables" in International Class 29; and

"entrees, dinners, and side dishes principally consisting of rice or pasta" in International Class 30.<sup>1</sup>

Registration has been finally refused under Section 6 of the Trademark Act on the basis of applicant's failure to comply with a requirement to disclaim the word "GOURMET." Such word, according to the Examining Attorney, is merely descriptive of applicant's goods within the meaning of Section 2(e)(1) of the Trademark Act, and therefore must be disclaimed.

Applicant has appealed.<sup>2</sup> Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm.

It is the Examining Attorney's position that the term "gourmet" is a laudatory term which conveys a sense of quality about the food products, e.g., high quality or skillfully prepared; and that when the mark is viewed in its entirety, the term "gourmet" is an unregistrable component of an otherwise registrable mark. As evidence in

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<sup>1</sup> Application Serial No. 75/226,831, filed January 16, 1997, wherein applicant alleges a bona fide intent to use the mark in commerce.

<sup>2</sup> Applicant's application includes two classes of goods, but applicant paid an appeal filing fee for only one class of goods. Applicant is advised that one additional appeal fee has been charged to applicant's deposit account to cover the appeal fee for the second class of goods. See Trademark Rules 2.6(a)(18), 2.85(e) and 2.141.

support of this position, the Examining Attorney submitted the following dictionary definitions:

(1) "gourmet" from The Random House Unabridged Dictionary (2nd ed. 1993)<sup>3</sup> defined as "n. 1. a connoisseur of fine food and drink; epicure. -adj. 2. of or characteristic of a gourmet, esp. in involving or purporting to involve high-quality or exotic ingredients and skilled preparation: gourmet meals; gourmet cooking. 3. elaborately equipped for the preparation of fancy, specialized or exotic meals: a gourmet kitchen."; and

(2) "gourmet" and "gourmet foods" from Webster's New World Dictionary of Culinary Arts defined, respectively, as "A connoisseur of fine food and drink," and "A term used imprecisely to denote foods of the highest quality, perfectly prepared and beautifully presented."

The Examining Attorney also submitted 25 third-party Principal Register registrations<sup>4</sup> showing disclaimers of the term "gourmet" apart from the marks used in connection with food products; and excerpts retrieved from the Nexis database showing "gourmet foods" used in the food industry to describe high-quality food products.

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<sup>3</sup> This definition was submitted with the Examining Attorney's brief, along with a request that the Board take judicial notice thereof. The Examining Attorney's request for judicial notice of the dictionary definition is granted. See TBMP §712.

<sup>4</sup> The Examining Attorney stated that he found 214 active registrations in Classes 29 and 30 with disclaimers of the term "gourmet."

Applicant argues that when the mark is considered in its entirety, the term "gourmet" is suggestive. Applicant explains in its brief as follows:

"a consumer encountering the applicant's mark will not have a direct or immediate association of the mark with gourmet food, but rather is more likely to associate the word 'GOURMET' with the design of a chef which in this instance is the applicant, the manufacturer of the food products sold under the trademark." (p. 5); and

"At most, it is suggestive that applicant is the 'chef' for food products appealing to the entire family." (pp. 6-7).

That is, applicant essentially contends that in this case the term "gourmet" is a noun referring to an individual, and not an adjective used to describe the quality of the goods. Applicant also contends that it owns three registrations for the mark THE BUDGET GOURMET and one for the mark THE BUDGET GOURMET LITE, all for food products, and all without a disclaimer of the term "gourmet"; and that a registration to applicant in the current case will not prevent others from using the term "gourmet." Finally, applicant contends that its goods are not exotic, elegant goods, but rather are pre-cooked, family style frozen dinners, entrees and side dishes which are sold in supermarkets and grocery stores, thus rendering applicant's

use of the term "gourmet" incongruous; and that any doubt on the issue of descriptiveness should be resolved in applicant's favor.

It is well settled that a term or phrase is considered merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately conveys information concerning an ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute of them. Moreover, whether a term or phrase is merely descriptive is determined in relation to the goods or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). Terms which are laudatory are also regarded as being merely descriptive because these laudatory terms are seen as a form of describing the quality of the goods. See 2 J. Thomas

McCarthy, Trademarks and Unfair Competition, §11:17 (4th ed. 1998), and cases cited therein.

The Examining Attorney has established that the term "gourmet" is a laudatory term which relates to food products, often involving or purporting to involve high-quality ingredients or skilled preparation of foods. This term is unregistrable by itself for these goods.

Applicant's argument that the term may be construed to refer to a person, specifically here a "chef," which in turn, relates to applicant as the manufacturer of the goods, is unpersuasive. First, there is no evidence of record that the purchasing public would consider the term "gourmet" within applicant's mark in the two-step process explained by applicant. Second, even if viewed by the purchasing public in the manner suggested by applicant (i.e., as a noun referring to a "chef"), we find the term "gourmet" remains merely descriptive in relation to applicant's goods because it refers to skillful preparation by a master chef. The third-party registrations submitted by the Examining Attorney include uses of "gourmet" as both an adjective and as a noun, but all include disclaimers of the word. See *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987). The design feature of applicant's mark, namely, the depiction of a chef's hat

and scarf, does not negate the descriptive significance of the word "gourmet" as applied to entrees, dinners and side dishes principally consisting of meat, poultry, fish, shellfish, seafood, cheese, vegetables, rice or pasta. See *In re Lean Line, Inc.*, 229 USPQ 781 (TTAB 1986) (requirement for a disclaimer of the merely descriptive term "lean" for a variety of low calorie foods affirmed); *In re IBP, Inc.*, 228 USPQ 304 (TTAB 1985) (requirement for a disclaimer of the merely descriptive terms "select trim" for pork affirmed); and *In re Truckwriters Inc.*, 219 USPQ 1227 (TTAB 1983), *aff'd unpubl'd Appeal No. 84-689* (Fed. Cir., November 1, 1984) (requirement for a disclaimer of the merely descriptive term "writers" for insurance agency services affirmed).

Applicant argues that the term "gourmet" is incongruous in relation to its goods, which are family-style frozen foods sold in supermarkets and grocery stores, and they are not elegant or exotic foods sold in specialty stores. Applicant's identification of goods is not so limited, rendering this argument unpersuasive. See *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

Applicant's argument that it has obtained four registrations for the marks THE BUDGET GOURMET and THE

BUDGET GOURMET LIGHT, each without any disclaimer of the term "gourmet," is also not persuasive. The Examining Attorney acknowledges that applicant obtained these registrations which do not include a disclaimer of the word "gourmet," but he contends that each case must be decided on its own facts.

It is clear that there are registered marks which include the word "gourmet" with a disclaimer; and there are applicant's four registrations which do not include such treatment of the term "gourmet." Thus, we acknowledge that the records of the Patent and Trademark Office are inconsistent with regard to the Office treatment of the word "gourmet." However, while the Office strives for consistency, we must decide each case on its own facts and record. See *In re Consolidated Foods Corp.*, 200 USPQ 477 (TTAB 1978). The mere fact that there have been inconsistencies in how Examining Attorneys treated the word "gourmet" in other applications does not raise a doubt as to the merely descriptive nature of the mark now before us. Common and laudatory terms of this character must remain available for the trade and competitive use to which they are so relentlessly put.

Decision: The requirement under Section 6 for a disclaimer of the term "gourmet" is proper. In the absence

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of a disclaimer of "gourmet" registration is refused. If a disclaimer is entered within thirty days from the mailing date hereof, this decision will be vacated and the mark will then be published for opposition. See Trademark Rule 2.142(g).

R. F. Cissel

B. A. Chapman

G. E. Rogers  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board