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**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

7/19/00

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Pocono Foods, Inc.

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Serial No. 74/412,534

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Charles N. Quinn of Dann Dorfman Herrell and Skillman for  
Pocono Foods, Inc.

Geoffrey A. Fosdick, Trademark Examining Attorney, Law Office  
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(Craig D. Taylor, Managing Attorney).

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Before Hohein, Wendel and Holtzman, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Pocono Foods, Inc. has filed an application to  
register the mark "SPORTS" for "processed poultry".<sup>1</sup>

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<sup>1</sup> Ser. No. 74/412,534, filed on July 15, 1993, based upon an allegation of a bona fide intention to use the mark in commerce. Following publication of the mark and issuance of a notice of allowance, applicant submitted a statement of use on November 7, 1996 which alleges dates of first use of August 1993.

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Registration has been finally refused on the ground that, inasmuch as the specimens of use submitted by applicant show use of the mark "CHIC-N-SPORTS-CN" instead of the mark "SPORTS" which appears on the drawing, applicant must submit properly verified substitute specimens showing use of the mark "SPORTS," as required by Section 1(a)(1) of the Trademark Act, 15 U.S.C. §1051(a)(1), and Trademark Rule 2.72(a). A representative specimen, which applicant indicates in the statement of use constitutes packaging for its goods, is reproduced in relevant part below:

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

As a preliminary matter, there would appear to be no disagreement by either applicant or the Examining Attorney with the long-standing principle that an applicant may apply to register any element of a composite mark displayed on the specimens of use if that element presents a separate and distinct commercial impression as a mark; that is, the element in and of itself functions as a mark since, as shown by the manner of its use on the specimens, it creates a separate impression which is indicative of the source of the applicant's goods or services and distinguishes such from those of others. See, e.g., *Institut National des Appellations D'Origine v. Vintners International Co. Inc.*, 958 F.2d 1574, 22 USPQ2d 1190, 1197 (Fed. Cir. 1992), *citing* *In re Servel, Inc.*, 181 F.2d 192, 85 USPQ 257, 259-60 (CCPA 1950); *In re Raychem Corp.*, 12 USPQ2d 1399, 1400 (TTAB 1989); *Tekelec-Airtronic*, 188 USPQ 694, 695 (TTAB 1975); and *In re Berg Electronics, Inc.*, 163 USPQ 487, 487-88 (TTAB 1969).

Turning, therefore, to the merits of this appeal, applicant argues that the facts herein "are highly analogous" to those in *In re Raychem Corp*, supra, in which the Board held that the manner of use shown in the specimen label illustrated below

was acceptable to permit registration of the mark "TINEL-LOCK" for "metal rings for attaching a cable shield to an adapter." The Board, in so holding, noted that the Examining Attorney therein had conceded that the designation "TR06AI" shown on the specimen label was a part number and that the generic term for the goods involved was "RING". The Board, in light thereof, reasoned that:

A part or stock number does not usually function as a source identifier. Even when a part number is joined by a hyphen to other matter which does serve a trademark function, the trademark is registrable without showing the part number as well in the drawing. ....

In the case at hand the alpha-numeric designation appearing on the specimen in front of "TINEL-LOCK" is not essential to the commercial impression of "TINEL-LOCK" as a trademark for applicant's metal rings. In a similar sense, the generic term "RING," although connected to the model number and source-identifying term, "TINEL-LOCK," by a hyphen, nonetheless plays no integral role in forming the portion of applicant's mark which distinguishes applicant's goods from those of others. Applicant therefore need not include either the part number or the generic term in the drawing, because neither is essential to the commercial impression created by the mark as shown in the specimens. Prospective purchasers of these highly technical goods would readily recognize both the part number and the name of the goods as such, and would therefore look only to the trademark "TINEL-LOCK" for source identification. The fact that hyphens connect both the part number and

the generic term to the mark does not, under the circumstances presented by this case, create a unitary expression such that "TINEL-LOCK" has no significance by itself as a trademark. Such independent significance is in fact supported by applicant's use of the mark without the part number or generic designation in its advertising materials. ....

In re Raychem Corp, supra.

Applicant, notably without any evidentiary support, asserts that the term "CN" in the designation "CHIC-N-SPORTS-CN" is a "grade designation" and that, as in Raychem, such term "in hyphenated conjunction with the mark for which registration is sought is not essential to the commercial impression of applicant's mark 'Sports' as [a] trademark for applicant's breaded chicken pattie products." The claimed grade designation, applicant contends, "plays no integral part in forming the portion of applicant's mark which distinguishes applicant's goods from those of others." Similarly, applicant maintains that, with respect to the term "CHIC-N," it "has used a generic term for applicant's product as the precedent portion of applicant's mark and has coupled that term to applicant's mark with a hyphen, in the same manner as was done in Raychem," and that consequently such term "need not be included as part of the words [sic] applicant seeks to register unless it forms a part of a unitary mark." Here, applicant insists that, as in Raychem, the hyphen connecting

the generic term "CHIC-N" to the word "SPORTS" is sufficient "to separate the generic term from the mark for which registration is sought. Accordingly, applicant ... submits that Raychem is controlling precedent and that applicant's specimens adequately show the mark for which registration is sought as displayed on the drawing accompanying the application."

We concur with the Examining Attorney, however, that this case is distinguishable from Raychem. As the Examining Attorney correctly observes, "[t]here is no evidence of record which explains the significance of 'CN,' nor has the applicant submitted evidence showing use of the mark with other similar notations" so as to validate its assertion that the term "CN" is a grade designation devoid of source significance. Moreover, although we disagree with the Examining Attorney's contention that "[t]he generic term for the applicant's product is 'CHICKEN,' not 'CHIC-N,'" inasmuch as the latter is clearly the phonetic equivalent of the former, we nevertheless find that the misspelling of the word "CHICKEN" is integral to the overall commercial impression engendered by the designation "CHIC-N-SPORTS-CN." Prospective customers for applicant's processed poultry, including its chicken patties, would undoubtedly regard the misspelled term "CHIC-N" as forming part of the unitary phrase "CHIC-N-SPORTS-CN,"

notwithstanding the separation of such term from the word "SPORTS" by a hyphen, since the additional hyphen in the term "CHIC-N" serves to impart trademark significance to the designation "CHIC-N-SPORTS-CN" as a whole. Stated otherwise, even if it is assumed, *arguendo*, that the suffix "-CN" would be viewed or understood as a grade designation for applicant's goods, the purchasing public is so accustomed to misspellings of generic and/or descriptive terms in trademarks that, when confronted with a designation such as "CHIC-N-SPORTS-CN," it would regard the entirety of the phrase "CHIC-N-SPORTS"--and not the word "SPORTS" separately--as indicative of the source of applicant's processed poultry. In consequence thereof, properly verified substitute specimens, in which the word "SPORTS" projects a separate and distinctive commercial impression, are necessary in order for applicant to register such term alone as a mark for its goods.

**Decision:** The refusal to register is affirmed.

G. D. Hohein

H. R. Wendel

T. E. Holtzman  
Administrative Trademark

Judges,

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Board

Trademark Trial and Appeal