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**THIS DISPOSITION  
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Paper No. 19  
EJS

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re **Hickory Hill Lakes, Inc.**

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Serial No. 75/027,373

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**Gilbert N. Henderson and Leslie K. Batté of Biebel & French**  
for Hickory Hill Lakes, Inc.

**Steven Foster**, Trademark Examining Attorney, Law Office 107  
(Thomas Lamone, Managing Attorney)

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Before Simms, Seeherman and Rogers, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Hickory Hill Lakes, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register HICKORY HILL LAKES U.S.A., depicted in typed drawing form, as a mark for "entertainment services, namely conducting band competitions."<sup>1</sup> "U.S.A." has been disclaimed. The

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<sup>1</sup> Application Serial No. 75/027,373, filed December 4, 1995.

refusal is based on the Examining Attorney's requirement for acceptable specimens.

The application was filed based on an intention to use the mark; it was published in the Official Gazette and a Notice of Allowance issued. Applicant subsequently filed a Statement of Use, and the Examining Attorney refused to accept the specimens because the services advertised in the specimens had not yet occurred. Applicant thereupon submitted substitute specimens which the Examining Attorney also found unacceptable because they did not show use of the mark shown in the drawing. It is from the requirement for acceptable specimens that this appeal has been taken.

Briefs have been filed by applicant and the Examining Attorney; an oral hearing was not requested.

It should be noted that, although during examination the Examining Attorney objected to both the original and the substitute specimens and argued the unacceptability of both sets of specimens in his brief, applicant's brief has discussed only the acceptability of its substitute specimens. Accordingly, we will focus our comments on these specimens alone.

It is the Examining Attorney's position that the mark shown in the substitute specimens does not support the mark shown in the drawing because, in the specimens, the term

USA is on a different line from the words HICKORY HILL LAKES. The Examining Attorney asserts that the way in which the words are depicted in the specimens creates a different commercial impression from the mark shown in the drawing. The Examining Attorney also points out that the drawing shows U.S.A. with periods and the specimens show USA without periods, although he concedes that this portion of the drawing could be amended.

First, we find that the fact that U.S.A. is depicted with periods in the drawing and without them in the specimens is an immaterial difference. See **In re Finlay Fine Jewelry Corp.**, 41 USPQ2d 1152 (TTAB 1996) (NEW YORK JEWELRY OUTLET not a material alteration of NY JEWELRY OUTLET). Trademark Rule 2.51(b)(2) provides that, once a statement of use has been filed, the drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services. The term "USA", as used in applicant's specimens, is a substantially exact representation of "U.S.A." as depicted in the drawing.

The more important question is whether applicant's specimens show use of the mark HICKORY HILL LAKES U.S.A. depicted in the typed drawing. To determine this, we must turn to the specimens themselves. We reproduce below, in

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reduced size, the relevant portion of the specimen brochure.

Although the phrase HICKORY HILL LAKES USA does not appear together on one line anywhere in the brochure, we do not find this to be a fatal flaw. As applicant points out,

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the phrase obviously continues on more than one line because it cannot fit on a single line. Thus, in the Friday schedule it is shown as

Hickory Hill Lakes  
USA Talent Round Up

while in the Sunday schedule it is shown as

Hickory Hill Lakes  
USA Talent Round  
Up Winner

and in the text, under the heading

Hickory Hill Lakes  
USA Talent Round Up

it is referred to as

Country Concert '96 will host Hickory Hill Lakes USA Talent Round Up. The round up will consist of country music talent winners from...

Because of the different ways the phrase is broken in the brochure, consumers are not likely to regard HICKORY HILL LAKES, as used in the phrase HICKORY HILL LAKES USA TALENT ROUND UP, as the trademark, and to view USA as merely modifying the phrase TALENT ROUND UP.<sup>2</sup> Rather, they will recognize that the phrase is broken as it is to accommodate such items as the star designs, or the "New for '96" flash design. No one would suggest that because "Up

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<sup>2</sup> In saying this, we are aware that HICKORY HILL LAKES is depicted in other parts of the brochure as a separate trademark.

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Winner" appears on a separate line from "USA Talent Round," consumers will view "Up Winner" as distinct from the preceding words; for similar reasons, we think that USA, as used in the specimens, does not project a separate commercial impression from HICKORY HILL LAKES.

Moreover, it must be remembered that the phrase "talent round up" which follows HICKORY HILL LAKES USA has a descriptive significance for the services. Immediately following the reference to the "Hickory Hill Lakes USA Talent Round Up," the text uses the term "round up" in a generic manner, and mentions that it will consist of "country music talent contest winners." Accordingly, consumers will be well aware of the descriptive nature of the phrase. Further, "USA" is not generally used as an adjective, the way "U.S." is used, but as a place name, often following an address. Thus, because of the way "USA" is used in the specimens, consumers will not view "USA" as modifying the phrase "Talent Round Up," but as part of the preceding words HICKORY HILL LAKES.

We find, therefore, that the specimens are adequate to show use of the mark sought to be registered.

Decision: The refusal of registration is reversed.