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U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lamb-Weston, Inc.

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Serial No. 75/204,740

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Peter J. Georges of Breneman & Georges for Lamb-Weston,  
Inc.

Montia O. Givens, Trademark Examining Attorney, Law Office  
101 (Jerry Price, Managing Attorney)

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Before Seeherman, Hohein and Bottorff, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Lamb-Weston, Inc. has applied to register the mark  
STEALTH NATURAL CUT FRIES as a trademark for frozen  
potatoes.<sup>1</sup> When the Examining Attorney made final a  
requirement that applicant disclaim exclusive rights to the

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<sup>1</sup> Application Serial No. 75/204,740, filed November 18, 1996,  
asserting first use and first use in commerce on October 8, 1996.

phrase NATURAL CUT FRIES, applicant filed the instant appeal.

Applicant and the Examining Attorney have filed briefs,<sup>2</sup> and were present at an oral hearing held before the Board.

It should be noted that in response to the first Office action, in which the Examining Attorney required a disclaimer of NATURAL CUT FRIES, applicant acknowledged that the mark conveyed a feature of the goods, namely: "natural (potatoes, made into) cut fries (natural fries are fries with the skin still on and fries are produced by cutting the potatoes)." Response filed Nov. 21, 1997. However, applicant agreed to disclaim only the terms NATURAL and CUT FRIES separately, rather than the entire phrase NATURAL CUT FRIES, as required by the Examining Attorney.

The Examining Attorney thereupon made final the requirement for a disclaimer of NATURAL CUT FRIES. In a request for reconsideration, applicant withdrew its

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<sup>2</sup> With its brief applicant submitted a cancelled registration, owned by a third party, for NATURAL-CUT WEDGE FRIES for frozen potatoes for frying. The Examining Attorney has objected to this evidence as untimely and therefore it has not been considered. See Trademark Rule 2.142(d). We would add that, even if the registration had been properly made of record, it would not change our decision herein.

previously offered disclaimer, and disclaimed only the word FRIES.

Section 6(a) of the Trademark Act, 15 U.S.C. 1056(a), provides that the Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 2(e)(1) of the Act, 15 U.S.C. 1052(e)(1), prohibits the registration of a mark which, when used on or in connection with the goods of the applicant, is merely descriptive of them. The issue before us, thus, is whether the phrase NATURAL CUT FRIES is merely descriptive of frozen potatoes, and must be disclaimed.

In support of her position that the phrase is merely descriptive, the Examining Attorney has made of record a number of excerpts, taken from the NEXIS data base, in which the phrase "natural cut fries" is used, including the following (emphasis added):<sup>3</sup>

It [the "Famous Chicken" listing on the menu] promised four big pieces of Honey's secret recipe fried chicken, with garden salad and hot **natural cut fries** or potato, \$6.59.  
"The Herald-Sun," May 2, 1997

The big concession stand to the east of the complex will again serve the

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<sup>3</sup> As applicant points out, the Examining Attorney has also submitted a number of articles with references to "natural cut" which bear no relationship to applicant's goods, e.g. "a natural-cut tree trunk," "natural-cut frozen fish." Such references obviously are irrelevant to the point at issue.

**natural-cut fries** that proved to be a hit last year.

"The Cincinnati Enquirer," May 31, 1996

When even a small local chain like King Kullen, Westbury, N.Y., offers seasoned and **natural cut fries** as well as curly fries to his Long Island customers...

What retailers have to do to keep up their volume is cover all the bases, by adding such innovative items as curly, seasoned and **natural cut fries**.

Western Family has all those lines already, so now it's bringing out shredded hash browns...

"Quick Frozen Foods International," April 1994

Served with **natural cut fries**, most sandwiches are between \$5 and \$6.

"Chicago Tribune," Oct. 20, 1991

McDonald's and other hamburger outlets favor thin-cut shoestring fries that take less time to cook and consume less oil; chains like KFC with more take-out customers prefer crinkle-cut and straight-cut because they stay warm longer. Some family restaurants are now going in for **natural cut fries** with skin on, often as a side dish for steaks.

"Quick Frozen Foods International," July 1998

Other popular items include pretzels for \$1.50, churros for \$1.50 and **natural cut French fries** sell for \$1.75.

"Amusement Business," July 8, 1991

The Examining Attorney has also made of record a registration owned by applicant for LAMBS NATURAL TRIM

FRIES for frozen potatoes, in which the phrase NATURAL TRIM FRIES has been disclaimed.<sup>4</sup>

Applicant has explained that its goods, identified as frozen potatoes, are fries, which applicant concedes is a generic term for french fries. These fries are prepared without peeling the potato, that is, the potato is not peeled before it is cut into pieces, which pieces are then fried to form fries. Applicant has also stated that the word "natural" refers to a "natural, skin-on appearance." Brief, p. 2.

Although applicant decries the limited number of NEXIS articles, we find them sufficient to prove that "natural cut fries" is a term used to describe or name a style of french fries in the same manner that "crinkle-cut fries" and "shoestring fries" are descriptive terms. The use of the term in the articles, particularly in those periodicals with a general circulation, reflects a perception that the public is familiar with the term and will readily understand it. In light of this, we are not persuaded by applicant's semantic argument that it is potatoes that are cut to form fries, but that fries are not cut. Applicant appears to be saying that its mark should be viewed as STEALTH NATURAL (pause) CUT FRIES, and that when so viewed

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<sup>4</sup> Reg. No. 1,215,047.

the term "cut fries" will not make any sense. However, given the usage of NATURAL CUT FRIES to refer to a style of french fries, we do not believe that consumers will read applicant's mark in the manner it has suggested. Rather, they will immediately understand NATURAL CUT FRIES, in the mark STEALTH NATURAL CUT FRIES for frozen potatoes, to indicate that the frozen potatoes, when cooked, are natural cut fries.

Similarly, applicant's evidence that several of its competitors use terms other than "natural cut", i.e., "skin-on" and "with peel," does not show that "natural cut fries" is not a descriptive term for applicant's product. Although there may be more than one term to describe applicant's product, the evidence of record shows that NATURAL CUT FRIES is a term used to describe french fries, and therefore it is, at the very least, descriptive of applicant's goods, which are frozen potatoes prepared in this style.

We also note applicant's statement that the references in the NEXIS articles "may well represent a reference to applicant's mark." Brief, p. 3. Applicant's mark is STEALTH NATURAL CUT FRIES, not NATURAL CUT FRIES per se. None of the references are for applicant's mark; on the contrary, if the references were in fact to applicant's

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product, the use of the term in lower case, and without the term STEALTH, show that NATURAL CUT FRIES is regarded as a descriptive term for the goods.

Decision: The requirement for a disclaimer of the phrase NATURAL CUT FRIES is affirmed. Applicant is allowed until 30 days from the mailing date of this decision to submit the required disclaimer, in which case this decision will be set aside. See Trademark Rule 2.142(g).

E. J. Seeherman

G. D. Hohein

C. M. Bottorff  
Administrative Trademark Judges  
Trademark Trial and Appeal Board