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

Paper No. 17  
CEW

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re White Toque, Inc.

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Serial No. 75/471,926

Myron Amer, Esq. for White Toque, Inc.

Jason Turner, Trademark Examining Attorney, Law Office 108  
(David Shallant, Managing Attorney).

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Before Hanak, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

This case concerns an application on the Supplemental Register by In re White Toque, Inc. for the mark GOURMET USA for "exporting third party food products, namely, purees."<sup>1</sup> The application includes a disclaimer of GOURMET apart from the mark as a whole.

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<sup>1</sup> Application Serial No. 75/471,926, was originally filed on April 22, 1998 on the Principal Register based on an allegation of a bona fide intention to use the mark in commerce. Following an earlier attempt, on December 18, 1999, applicant filed an amendment to allege use, which was acceptable except for the issue herein concerning the specimens,

The Examining Attorney has issued a final requirement for the submission of substitute specimens showing use of the mark in connection with the services identified in the application. The Examining Attorney contends that the specimens of record show use of the mark in connection with goods, *i.e.*, puree, not with the identified services.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

When this application was originally filed, as an intent-to-use application on the Principal Register, applicant recited its services as "exporting third party food products, namely, vegetables, cookies, purees, seafood and meat." On June 7, 1999, applicant filed, *inter alia*, an amendment to allege use; and sought to delete its recitation of services and to substitute "puree" as the identification of goods. The Examining Attorney refused to accept the amended identification because it was not within the scope of the originally identified services. Thereafter, applicant amended its recitation of services as indicated herein.

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and applicant successfully amended the application to seek registration on the Supplemental Register.

Serial No. 75/471,926

The specimen in this application is reproduced below:

Applicant contends that the specimen "is an insert that accompanies in foreign commerce a U.S.A. manufactured product, namely, a puree, sent to a French user of the product, namely, MOLSHEIM FR 67." Applicant states that the statement in the French language at the bottom of the specimen indicates that applicant, doing business as Gourmet USA, is the exporter of the product from the United States; and that this constitutes an advertisement for applicant's services.

The Examining Attorney contends that this specimen is merely an informational label for the container or packaging for the goods identified on the purported label. He points to the fact that the specimen is on a type of

paper with a peel-off backing as support for the conclusion that the specimen is merely a label. The Examining Attorney also notes applicant's apparently conflicting statements during the prosecution of the application.<sup>2</sup> Finally, the Examining Attorney argues that the portion of the specimen referred to by applicant merely conveys information; and that, even if the specimen is perceived as an advertisement, the specimen, taken as a whole, conveys the impression that the product, a puree, comes from applicant, not that applicant is providing export services for third parties.

In its reply brief, applicant argues that, regardless of whether applicant manufactures the products or purchases them, it has exported them from the United States to "the French user" with the specimen as an insert in the shipment.

We conclude that it is immaterial whether the specimen is a "label" because it has a peel-off backing, or whether it is an insert in the packaging for the goods. We find that the specimens of record do not support use of the mark

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<sup>2</sup> In the original application, applicant states that the mark will be used on labels affixed to the goods; in applicant's December 18, 1999 response, applicant states that "[t]he mark is used in advertising on packaging of an exported puree as shown in the annexed specimen" (which is the specimen shown herein). Subsequently, applicant contends that the specimen is an insert sent with the goods.

in connection with "exporting third party food products, namely, purees." The use of GOURMET USA in a stylized form at the top of the specimen is likely to be perceived as a trademark for the goods, a puree. The use of GOURMET USA at the bottom of the specimen is likely to be perceived merely as a trade name within an informational statement, not as a service mark for the identified services.

Either applicant is rendering the identified services and has submitted unacceptable specimens in support thereof, or applicant is offering goods for sale, which is not encompassed by the identification of services herein.

*Decision:* The refusal is affirmed on the ground that the Examining Attorney properly required substitute specimens because the specimens of record do not show use of the mark in connection with the identified services.