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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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In re Good Health Natural Foods, Inc.  
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Serial No. 75/486,815  
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Eric D. Paulsrud of Leonard, Street and Deinard for Good Health Natural Foods, Inc.

Linda M. King, Trademark Examining Attorney, Law Office 101 (Jerry Price, Managing Attorney).  
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Before Simms, Quinn and Walters, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Good Health Natural Foods, Inc. filed an application to register on the Principal Register the mark VEGGIE RINGS for "vegetable-based snack foods," in International Class 29.<sup>1</sup>

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<sup>1</sup> Serial No. 75/486,815, filed May 19, 1998, based on use of the mark in commerce, alleging first use and use in commerce as of June 30, 1997.

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The Trademark Examining Attorney initially refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that the subject matter of the application is merely descriptive when used in connection with the identified goods. Applicant responded, on October 1, 1998, by amending its application to seek registration on the Supplemental Register.

The Examining Attorney accepted the amendment and issued a refusal to register, which was ultimately made final, under Sections 1, 2 and 45 of the Trademark Act, 15 U.S.C. 1051, 1052 and 1127, on the ground that the subject matter does not function as a trademark.

Applicant filed its notice of appeal and a request for reconsideration. On reconsideration, the Examining Attorney continued the final refusal and, shortly thereafter, sought remand of the application, which was granted. On remand, the Examining Attorney withdrew the statutory basis previously asserted for the refusal to register and reasserted the refusal, under Section 23 of the Trademark Act, 15 U.S.C. 1091, on the ground that the subject matter of the application is generic and not entitled to registration on the Supplemental Register. This refusal was ultimately made final and the

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application was returned to the Board to resume the appeal.

Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We reverse the refusal to register.

With respect to genericness, the Office has the burden of proving genericness by "clear evidence" thereof. *In re Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question. *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: First, what is the category or class of goods or services at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that category or class of goods or services? *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

The Examining Attorney contends that the class of goods is "vegetable-based snack rings" within the broader class of snack foods. She contends that "veggie" is a common descriptive term for a vegetable-based food; that "ring" is a common descriptive term for snack foods shaped in a ring; and that "even without a lot of direct evidence of the generic use of the term VEGGIE RINGS, the proposed mark amounts to a genus of snack rings, or an apt descriptive name for 'vegetable-based snack food'..."

Regarding the relevant public's understanding of the term VEGGIE RINGS, the Examining Attorney submitted the following dictionary definitions:

"veggies" - *pl.n. Informal. Vegetables.*  
[*Webster's II New Riverside University Dictionary.*]

"veggies" - A slang term for vegetables. It has been in use only in the last two decades and derives from the maternal admonishment to "eat your veggies." [*The Dictionary of American Food and Drink.*]

"ring" - 1. A circular object, form or arrangement with a vacant circular center.  
[*Webster's II New Riverside University Dictionary.*]

Additionally, the Examining Attorney submitted excerpts of articles retrieved from the LEXIS/NEXIS database reflecting numerous uses of "rings" in connection with "onion rings"; two uses in connection with "snack rings";

and one use in connection with "potato ring."<sup>2</sup> She also submitted substantial LEXIS/NEXIS excerpts and Internet web site excerpts showing use of "veggie" as a common term for "vegetable." Two Internet web site excerpts, one a school lunch menu and the other a restaurant review, use the terms, respectively, "veggie rings" and "vegetable rings."<sup>3</sup> The Examining Attorney submitted two third-party registrations, for the marks SEA ROUND CHEESE RINGS (Principal Register) and NACHO RINGS and design (Supplemental Register), both for a type of snack food, and including disclaimers, respectively, of CHEESE RINGS and NACHO RINGS.

Applicant contends that the Examining Attorney has not met her burden of establishing that VEGGIE RINGS is generic. Applicant argues that this case should be determined according to the precedent established by the Federal Circuit in *In re American Fertility Society*, 188

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<sup>2</sup> The Examining Attorney also submitted several excerpts from recipes and articles about food that use the term "vegetable ring." However, the term refers to a different type of food product from that identified herein, i.e., a casserole-type side dish shaped into a ring, rather than a snack food. Thus, we do not consider this evidence to be particularly probative of the use of the term "vegetable ring" in connection with snack foods. However, it is probative of the use of the term "ring" in connection with a food item.

<sup>3</sup> The reference in the restaurant review to "vegetable ring" does appear to be a reference to a snack food rather than to a casserole-type side dish, i.e., "[f]or openers there are crispy vegetable rings with herb aioli ..."

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F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999), [genericness determination must be based on the meaning as a whole of the phrase SOCIETY FOR REPRODUCTIVE MEDICINE, not based only on definitions and generic uses of the constituent terms of the mark]. In particular, applicant refers to the statement by the court that requires proof of an "understanding by the general public that the mark refers primarily to that genus of goods." *Id.* at 1837.

Applicant's evidence included copies of Internet searches for "veggie rings," the results of which were applicant's mark only; excerpts of articles retrieved from the Westlaw database that contain both "veggie" and "rings," with none of the references pairing the words to form the term "veggie rings"; photocopies of two Supplemental Register registrations owned by applicant for the marks VEGGIE STICKS and VEGGIE STIX, both for "vegetable-based snack foods."

We find that the Examining Attorney has provided evidence of the highly descriptive, if not generic, nature of the term "veggie" in connection with vegetable-based food products; and that the Examining Attorney has shown that the term "ring[s]" is at least merely descriptive of a ring-shaped food product, whether it is a snack food, e.g., "onion rings," or a casserole item.

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However, we agree with applicant that under the law established by our primary reviewing court in *In re American Fertility Society, supra*, the Examining Attorney has not met the burden of establishing that VEGGIE RINGS is the name of the class of vegetable-based snack foods, or that the general public ascribes that meaning to VEGGIE RINGS. See also *In re Dial-A-Mattress Operating Corp.*, 240 F.3<sup>rd</sup> 1341, 57 USPQ2d 1807 (Fed. Cir. 2001).

*Decision:* The refusal under Section 23 of the Act on the ground that the proposed mark is generic is reversed. The application will be forwarded for registration on the Supplemental Register in due course.