

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hot Stuff Foods, LLC

Serial No. 77392514

Gregory Golla of Merchant & Gould PC for Hot Stuff Foods, LLC.

Bridgett G. Smith, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

Before Seeherman, Bergsman and Kuczma, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Hot Stuff Foods, LLC (“applicant”) filed an intent-to-use application for the mark HOT STUFF PIZZA and design, shown below,



for the following goods and services, as amended:

Food products, namely, pizza; egg rolls, bread sticks and bakery goods, in Class 30;

Franchising services, offering technical assistance in the establishment and operation of restaurants, carry-out food shops, and food kiosks; food kiosk services, in Class 35; and

Restaurant services and carry-out restaurant services, in Class 43.

Applicant disclaimed the exclusive right to use the word “Pizza.”

When applicant filed its statement of use, it also filed an amended drawing.

The amended drawing is set forth below.



The Trademark Examining Attorney refused registration on the ground that the amended drawing constitutes a material alteration of the original drawing.

The original drawing shows the mark as a depiction of a slice of pizza with designs on the pizza and the words HOT STUFF PIZZA on top of the slice; the amended drawing shows the mark as a slice of pizza with no designs on it and the words HOT STUFF PIZZA on top of it.

* * *

Specifically, the proposed amendment would materially alter the mark in the initial application because the

original drawing depicts a much more stylized version of the slice of pizza.¹

Subsequently, the Trademark Examining Attorney expounded on why she thought the marks created different commercial impressions.

[T]he proposed amendment would materially alter the mark in the initial application because it depicts a vastly different looking slice of pizza. The original mark is a much more stylized version of the slice of pizza whereas the proposed amendment is a very plain and basic depiction of a pizza slice which would require republication. ... The original drawing included several lines and circular designs [sic] elements which have all now been deleted from the proposed mark. In fact, there is no shading in the original drawing. Furthermore, the proposed amendment depicts a pretty thick crusted pizza whereas the original drawing shows a thinner crusted pizza with various toppings on it.²

Finally, in her appeal brief, the Trademark Examining Attorney contends that the amended drawing “attempts to delete design elements on the slice of pizza” thereby “creating the impression of a slice of pizza with toppings versus a plain piece of pizza.” The Trademark Examining Attorney explained that “[a]n analysis of the mark as a plain slice of pizza is very different from the analysis of the mark with various elements, [sic] appearing to be toppings.”

Trademark Rule 2.72(a)(2) provides that an applicant may amend the drawing of the mark if “[t]he proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of

¹ February 23, 2011 Office action.

² September 19, 2011 Office action.

the mark filed with the original application.” As we noted in *Visa International Service Association v. Life-Code Systems, Inc.*, 220 USPQ 740, 743-44 (TTAB 1983):

The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication, it would be tantamount to a new mark appropriate for a new application.

Applicant’s amended drawing is not a material alteration to the original drawing. The amended drawing which includes a simple representation of a slice of pizza does not represent a substantial and, thus, material change to the original drawing. The two marks create the same commercial impression: the words HOT STUFF PIZZA superimposed on a pizza slice. Although the slices of pizza in the original and amended drawings have specific differences, it must be remembered that the mark is not solely the design portion. The words HOT STUFF PIZZA are clearly the dominant part of the mark, and the nature of the mark is not changed by the proposed amendment. The modified mark contains the essence of the original mark, and the new form of the mark creates the impression of being essentially the same mark as the mark in the original drawing.

We find that the amendment to the drawing is not a material alteration of the mark.

Decision: The refusal to register is reversed.