

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
July 30, 2010
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re USCANTEEN INC.

Serial No. 76695792

Lawrence F. Spirn of Spirn & Spirn for USCANTEEN INC.

John E. Michos, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Bucher, Kuhlke and Walsh, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

USCANTEEN INC. seeks
registration on the Principal
Register of the alleged
special form mark shown at the
right, for "non-leaching metal
water bottles sold empty" in
International Class 21.¹

This case is now before
the Board on appeal from the

US
canteen



¹ Application Serial No. 76695792 was filed on February 13, 2009 based upon applicant's claims of first use anywhere and first use in commerce at least as early as November 17, 2008. Applicant makes no claim to the right to use "uscanteen" apart from the mark as shown.

final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has taken the position that applicant's mark, when used in connection with the identified goods, so resembles the mark **USCANTEEN** (*in standard character format*) registered for "plastic and metal water bottles sold empty"² also in International Class 21, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have briefed the issues involved in this case. We affirm the refusal to register inasmuch as (i) the goods are legally identical and (ii) the marks are identical as to sound and substantially the same as to connotation and commercial impression. It is troubling that applicant and registrant share the same address [58 School Street, Glen Cove, New York 11542], and at the time of the appeal, both applicant and registrant were represented by the same counsel - although this puzzling set of facts was neither noted by the Trademark Examining Attorney nor apparently recognized by applicant's counsel at the time, Mr. Myron Amer.

Decision: The refusal to register is hereby affirmed.

² Registration No. 3604558 issued on the Supplemental Register to Phonecharge International Inc. on April 7, 2009.