



[Home](#) > [USA](#) > [Intellectual Property](#)

United States: Pretzel Crisps Found Generic And Unregistrable

Last Updated: August 5 2014

Article by [Jennifer Insley-Pruitt](#)

Fross Zelnick Lehrman & Zissu, P.C.



Frito-Lay North America, Inc. v. Princeton Vanguard, Inc., 109 U.S.P.Q.2d 1949 (T.T.A.B. 2014)

In a precedential decision released February 28, 2014, the Trademark Trial and Appeal Board ("TTAB" or the "Board") found that PRETZEL CRISPS was generic and could not be registered as a trademark. Princeton Vanguard, LLC, which had registered PRETZEL CRISPS for "pretzel crackers" in International Class 30 on the Supplemental Register in 2005, applied to register the mark on the Principal Register in 2009. Frito-Lay North America, Inc. ("Frito Lay") opposed the 2009 application based on genericness, and also petitioned to cancel the 2005 supplemental registration on the same ground. Following trial, the TTAB ruled in favor of Frito Lay.

Frito Lay and Princeton Vanguard compete in the field of salty pretzel snacks. Princeton Vanguard, a family-owned New Jersey company, introduced flat pretzels under the mark PRETZEL CRISPS in 2004, and the product grew to a \$100 million-a-year brand by 2011. Frito Lay, meanwhile, markets ROLD-GOLD brand pretzels.

Before the TTAB, Princeton Vanguard argued that the PRETZEL CRISPS mark should be analyzed as a unified phrase comprised of terms not previously used together under the standard set forth in *In re American Fertility Society*, 188 F.3d 1341, 1347 (Fed. Cir. 1999) ("*American Fertility*"). Under the *American Fertility* standard, the Board "cannot simply cite definitions and generic uses of the constituent terms of a mark; it must conduct an inquiry into the meaning of the disputed phrase as a whole." *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341 (Fed. Cir. 2001). Frito Lay argued that PRETZEL CRISPS is a compound term to be analyzed under the standard established in *In re Gould Paper Corp.*, 834 F.2d 1017 (Fed. Cir. 1987) ("*Gould*"). Under the *Gould* test, when a proposed mark is a combination of two or more terms in ordinary grammatical construction and communicates no more than the common meaning of the individual components of the term, genericness can be established with evidence of the meaning of the constituent terms. The Board agreed with Frito Lay, finding "no additional meaning added to 'PRETZEL CRISPS' in relation to 'pretzel crackers,' when the individual terms are combined," and therefore analyzed the mark as simply a combined term under *Gould* rather than as a unified phrase.

In support of its argument for genericness, Frito Lay introduced dictionary evidence of the use of "crisps" for "crackers," as well as evidence of industry use of the words as synonyms, including in connection with such players as Special K Cracker Crisps and Triscuit Thin Crisps. Frito Lay further showed that Princeton Vanguard itself had employed "crackers" and "crisps" interchangeably on nutritional information, indicating that even Princeton Vanguard considered the words synonymous.

Both parties also did Teflon-type consumer surveys of genericness following the model first described in *E.I. DuPont de Nemours & Co. v. Yoshida International, Inc.*, 393 F. Supp. 502 (E.D.N.Y. 1975). As part of their Teflon surveys, the parties read aloud to survey participants lists of generic and trademarked product names, and asked the respondents to indicate whether a given product name was generic or a brand. In the end, though, it appeared the Board gave little credence to either survey and ruled based on evidence submitted by Frito Lay of dictionary definitions, use by the public, and use by Princeton Vanguard itself. The Board noted that it performed its analysis under the "compound term" standard laid out in *Gould*, but that it would have reached the same conclusion under the more stringent "unified phrase" standard of *American Fertility*.

On April 22, 2014, Princeton Vanguard appealed the Board's decision to the Federal Circuit. We are monitoring the case and will report further once the appeals court ruling is issued.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Do you have a Question or Comment?
Click here to email the Author

Interested in the next Webinar on this Topic?
Click here to register your Interest

Contributor

Jennifer Insley-Pruitt

[Email Firm](#)



[More from this Firm](#)



**Fross Zelnick Lehrman &
Zissu, P.C.**

[More from this Author](#)



Authors

Jennifer Insley-Pruitt

[Contact Us](#) | [Your Privacy](#) | [Feedback](#)


© Mondaq® Ltd 1994 - 2016
All Rights Reserved