

USA: Real Foods Pty Ltd. v. Frito-Lay North America, Inc., United States Court of Appeals, Federal Circuit, No. 2017-1959, 04 October 2018

Kluwer Trademark Blog

October 16, 2018

[Cheryl Beise \(Wolters Kluwer Legal & Regulatory US\)](#)

Please refer to this post as: Cheryl Beise, 'USA: Real Foods Pty Ltd. v. Frito-Lay North America, Inc., United States Court of Appeals, Federal Circuit, No. 2017-1959, 04 October 2018', Kluwer Trademark Blog, October 16 2018, <http://trademarkblog.kluweriplaw.com/2018/10/16/usa-real-foods-pty-ltd-v-frito-lay-north-america-inc-united-states-court-appeals-federal-circuit-no-2017-1959-04-october-2018/>

In an opposition proceeding brought by Frito-Lay North America against Real Foods Pty Ltd., the Trademark Trial and Appeal Board properly determined that the marks CORN THINS and RICE THINS were highly descriptive of their respective goods—"crispbread slices predominantly of corn, namely popped corn cakes" and "crispbread slices primarily made of rice, namely rice cakes"—and that Real Foods failed to prove that the marks had acquired distinctiveness among consumers, the U.S. Court of Appeals for the Federal Circuit has decided. The Board's decision to sustain Frito Lay's opposition to registration of the marks on the ground of mere descriptiveness was affirmed. However, the Board's dismissal of Frito Lay's opposition on the ground of genericness was reversed because the Board erred by unduly narrowing the genus of goods at issue. The court remanded the case to the Board to reconsider its selected genus and to conduct a genericness analysis in light of that genus (Real Foods Pty Ltd. v. Frito-Lay North America, Inc., October 4, 2018, Wallach, E.).

A full summary of this case has been published on [Kluwer IP Law](#).