

# Trademark case: Real Foods Pty Ltd. v. Frito-Lay North America, Inc., USA

**Kluwer Trademark Blog**

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

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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.).

Case date: 04 October 2018

Case number: No. 2017-1959

Court: United States Court of Appeals, Federal Circuit

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