

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: April 8, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Maple Leaf Cheesemakers, Inc.

Serial No. 88663903

Brett M. Tolpin of Tolpin & Partners PC,
for Maple Leaf Cheesemakers, Inc.

David Brookshire, Trademark Examining Attorney, Law Office 114,
Nicole Nguyen, Managing Attorney.

Before Wellington, Pologeorgis, and English,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Maple Leaf Cheesemakers, Inc. (“Applicant”) seeks registration on the Principal Register of the standard character mark MAPLE LEAF CHEESE CO-OP (with a disclaimer of CHEESE CO-OP) for “cheese” in Class 29.¹

Registration has been refused under Sections 1, 2 and 45 of the Trademark Act (“the Act”), 15 U.S.C. §§ 1051-1052, 1127, on the ground that Applicant’s proposed

¹ Application Serial No. 88663903 was filed on October 22, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s declaration of a bona fide intent to use the mark in commerce. On January 25, 2024, Applicant filed a Statement of Use (SOU) alleging January 25, 2024 as its date of first use and first use in commerce of the mark.

mark, as shown in the specimen, is being used only as a trade name and does not function as a trademark to indicate the source of Applicant's goods and to identify and distinguish them from others.

After the refusal was made final, Applicant simultaneously appealed and filed a Request for Reconsideration. After the Request for Reconsideration was denied by the Examining Attorney, the appeal resumed. The appeal has been fully briefed. We affirm the refusal.

I. Applicable Law

Section 1 of the Act “provides for registration of a mark based on use of the mark in commerce.” *In re Siny Corp.*, 920 F.3d 1331, 1335 (Fed. Cir. 2019). Pursuant to Section 1 of the Act and Trademark Rule 2.56, 37 C.F.R. § 2.56, the USPTO “requires an applicant to submit a specimen of use ‘showing the mark as used on or in connection with the goods.’” *Id.* (quoting *In re Sones*, 590 F.3d 1282, 1284 (Fed. Cir. 2009)). That is, the specimen of use must display the applied-for mark and show an association between the mark and the goods.

Of importance to this appeal, we note that a “trade name” is defined in Section 45 of the Act as “any name used by a person to identify his or her business or vocation.”¹⁵ U.S.C. § 1127. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) § 1202.01 (Nov. 2025) and cases cited therein; *see also Martahus v. Video Duplication Servs., Inc.*, 3 F.3d 417 (Fed. Cir. 1993). If a proposed mark functions solely as a trade name, registration must be refused. *Martahus*, 3 F.3d at 421; *see also, e.g., In re Supply Guys, Inc.*, No. 77027094, 2008 TTAB LEXIS 12; *In re Diamond Hill Farms*,

No. 74248825, 1994 TTAB LEXIS 16; *In re Letica Corp.*, No. 341524, 1985 TTAB LEXIS 96, at *2-3 (“[T]here was a clear intention by the Congress to draw a line between indicia which perform only trade name functions and indicia which perform or also perform the function of trademarks or service marks.”) (citations omitted). This is not to say that a designation may not function as both—a trade name and a trademark. As the Court of Appeals for the Federal Circuit has explained, “[a] trade name which also has significance as either a trademark or service mark may be registered[.]” *Martahus*, 3 F.3d at 421.

“The distinction between trade name use and either trademark or service mark use is often a difficult one to make and often is nebulous in character.” *In re Unclaimed Salvage & Freight Co.*, 1976 TTAB LEXIS 73, at *7. That is, “[t]he question of whether a name used as a trade name also functions as a trademark is one of fact, and is determined from the manner in which the name is used and the probable impact on purchasers and prospective purchasers.” *Diamond Hill Farms*, 1994 TTAB LEXIS 16, at *2. Factors to consider include whether Applicant has used its full corporate name or entity designation, capitalized its name, utilized its name in the same lettering style as other matter, used its name in a significantly bolder or larger style of type, or displayed its name in a contrasting color. *In re Univar Corp.*, No. 73786565, 1991 TTAB LEXIS 31, at *5.

II. Analysis and Conclusion

Here, the only evidence of use for Applicant's proposed mark is the specimen submitted with Applicant's SOU, as shown below:²



The specimen is described by Applicant as a "label and packaging on cheese."³ The proposed mark, MAPLE LEAF CHEESE CO-OP, appears on the bottom line of the label and is immediately preceded by "Distributed By:" and followed by its city/state/zip code and website address. The font size, style and color for the "Distributed By:" wording is the same as the proposed mark. The city/state/zip

² Specimen submitted with SOU on January 25, 2024 (red arrow added by the Board for emphasis).

³ SOU on January 25, 2024, at TSDR p. 1.

code/URL information on the same line also appears in the same font and color, albeit in slightly smaller size.

Based on the manner in which the proposed mark is being used, we agree with the Examining Attorney and find that consumers will perceive MAPLE LEAF CHEESE CO-OP merely as a trade name, and not as a product source-identifier. Specifically, “the applied-for mark only has the impression of identifying a business or a vocation, and therefore is an unregistrable trade name.”⁴ In contrast, consumers encountering this packaging will view the composite mark, MAPLE LEAF CHEESE with a maple leaf and banner design, that appears stylized, in color, and much more prominently at the top as the source-identifier for the cheese. While goods may be sold under more than one mark, in this case, the manner in which Applicant’s proposed mark is being used will not encourage consumers to view it as an additional trademark for the cheese.

Applicant argues that it “does not own a business or entity name or is part of a business or entity name called MAPLE LEAF CHEESE CO-OP” and accuses the Examining Attorney of “brush[ing] this important fact aside.”⁵ However, again, whether the proposed mark is being used solely as a trade name or functions as a trademark is a question of fact and should be determined based on “the manner in which the name is used and the probable impact on” on the consuming public. *Diamond Hill Farms*, 1994 TTAB LEXIS 16, at *2. Here, Applicant’s reliance on the

⁴ 8 TTABVUE 4 (Examining Attorney’s Brief).

⁵ 6 TTABVUE 4 (Appeal Brief).

“important fact” that its proposed mark is not actually a trade name is irrelevant because consumers may be unaware of this and it runs contrary to the impression being conveyed. Simply put, consumers encountering “Distributed By: Maple Leaf Cheese Co-op” followed by contact information, will perceive the proposed mark as purely informational, merely identifying a name and location for the distributor of the cheese.

In sum, the specimen submitted by Applicant does not show MAPLE LEAF CHEESE CO-OP being used in the manner of a trademark. The wording, as displayed in the specimen, identifies a distributor or business entity, whether actual or not, and does not distinguish Applicant’s goods from those of others. Accordingly, the proposed mark cannot proceed to registration under Sections 1, 2, and 45 of the Act. 15 U.S.C. §§ 1051-1052, 1127.

Decision

The refusal to register Applicant’s proposed mark is affirmed.