



# Bulletin

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**UNITED STATES: TTAB Finds SUGAR NO. 11, SUGAR NO. 14 and COTTON NO. 2 Not Descriptive**  
*Contributor: Robert P. Felber, Jr., Waller Lansden Dortch & Davis, LLP, Nashville, Tennessee; Verifier: Matthew A. Griffin, Kraft Foods, Inc., Northfield, Illinois; both are members of the INTA Bulletin Law & Practice–Americas Subcommittee*

In its first precedential decision of 2008, the Trademark Trial and Appeal Board (TTAB) reversed the U.S. Patent and Trademark Office's refusal to register the marks SUGAR NO. 14, SUGAR NO. 11 and COTTON NO. 2 for "financial services, namely, futures exchange and related commodity trading services" (Class 36). The Examining Attorney refused registration on grounds that the marks (1) merely described the services (the applications included disclaimers of the terms SUGAR and COTTON) and (2) did not function as service marks. *In re ICE Futures U.S., Inc.*, Serial Nos. 78199832, 781999843 and 78199848 (T.T.A.B. Jan. 16, 2008).

The Examining Attorney claimed that the words SUGAR and COTTON identified the commodity being traded through the applicant's services and that the terms NO. 14, NO. 11 and NO. 2 merely identified the contract numbers for the commodities traded. The applicant argued that the marks instead identified the applicant as the source of futures exchange services. The TTAB concluded that the marks, when viewed in the full context of their use, were not merely descriptive because the applicant did not sell sugar or cotton but provided a commodities exchange through which investors could buy or sell commodities contracts. Moreover, the numbers in the marks arbitrarily designated specific commodities contracts used exclusively by the applicant. The TTAB found the applicant's long and apparently exclusive use of these marks persuasive evidence of the absence of a need for competitors to use these terms.

The applicant submitted as specimens screen shots of its futures contracts that displayed the marks. The Examining Attorney argued that these specimens showed that the applicant used the applied-for marks only as terms to identify contracts used in the performance of a service rather than as service marks. Reversing this refusal, the TTAB recognized that use of a service mark in the "rendition" of the services should be viewed as an element of the "sale" of the services and that the services need not be referenced explicitly in the specimen. The TTAB concluded that the specimens of use submitted were sufficient to show use of the marks in connection with the identified services.

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