

No. 25-

IN THE
Supreme Court of the United States

VETEMENTS GROUP AG,

Petitioner,

v.

COKE MORGAN STEWART, ACTING
UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND
ACTING DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, no mark shall be refused nationwide protection as a registered trademark on account of its nature unless, *inter alia*, a mark is: (i) descriptive and lacks acquired distinctiveness; or (ii) generic, regardless of whether the mark has acquired distinctiveness. Descriptiveness and genericness of a non-English mark is currently determined based on its English translation when applying a judicially created guideline referred to as “the doctrine of foreign equivalents.” When a court or the United States Patent and Trademark Office elects to invoke this doctrine, protectability of a non-English mark is dictated by its English translation, rather than the non-English mark on its face (without English translation).

1. Whether protection of a non-English mark is controlled by consumer perception of the mark taken at face value or controlled by its English translation.
2. What is the proper test for determining genericness or descriptiveness of a non-English mark?

RELATED PROCEEDINGS

United States Patent and Trademark Office (T.T.A.B.)

In re Vetements Group AG, Nos. 88944198, 88946135
(T.T.A.B. April 21, 2023) (affirming the rejection of
applicant's trademark applications)

United States Court of Appeals (Federal Circuit)

In re: Vetements Group AG, Nos. 2023-2050, 2023-
2051 (May 21, 2025) (affirming the refusal to register
appellant's trademarks)

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PETITION FOR A WRIT OF CERTIORARI

Vetements Group AG, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a–29a) is reported at 137 F.4th 1317. The opinion of the Trademark Trial and Appeal Board (App., *infra*, 30a–79a) is not published in the United States Patents Quarterly but is available at 2023 WL 3271156.

JURISDICTION

The judgment of the court of appeals was entered on May 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1127 of Title 15 of the United States Code defines a “trademark” in relevant part as “any word, name symbol, or device, or any combination thereof” that is “used by a person . . . to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if the source is unknown.” 15 U.S.C. 1127. Section 1052(e) of the United States Code provides in relevant part that:

No trademark by which the goods of the applicant may be distinguished from the goods

of others shall be refused registration on the principal register on account of its nature unless it—. . . (e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them. . . .

Other pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 159a–182a.

STATEMENT

This case presents an important and recurring question regarding protection of trademarks under the Lanham Act: Under what circumstances, if any, should the protectability of a non-English mark consisting of a foreign term be dictated by the foreign term’s English translation. Petitioner Vetements Group AG has extensively used the foreign term VETEMENTS in its marks to identify and market its apparel products and online retail store services for apparel products. Respondent United States Patent and Trademark Office (PTO) refused registration for Petitioner’s non-English marks consisting of the foreign term VETEMENTS (in either standard letter format or stylized block letter format) by applying a judicially created guideline referred to as “the doctrine of foreign equivalents.” On appeal, the United States Trademark Trial and Appeal Board (the “TTAB”) and the Federal Circuit upheld the PTO’s refusal. In applying this doctrine, registrability of Petitioner’s VETEMENTS marks was dictated by the English translation of the foreign term VETEMENTS, rather than consumer perception of the marks themselves—that is, based on the foreign term VETEMENTS on its face without translation

into English—even though only a minute fraction of the consuming public would so translate the term.

The doctrine of foreign equivalents, as applied in the decision below, departs from this Court’s determination in *Menendez v. Holt*, 128 U.S. 514, 520 (1888) (finding that a registration of a non-English mark was valid considering, in part, because it was “a fancy name, and in a foreign language”). This doctrine also departs from a bedrock principle of the Lanham Act, which requires that consumer perception of a mark controls whether the mark is registrable. *United States Pat. & Trademark Off. v. Booking.com B. V.*, 591 U.S. 549, 560 (2020) (“[W]hether a term is generic depends on its meaning to consumers. That bedrock principle of the Lanham Act is incompatible with an unyielding legal rule that entirely disregards consumer perception.”).

Along with Petitioner’s case presenting an opportunity to reaffirm or clarify how this Court’s *Menendez* decision impacts the protectability of non-English marks, Petitioner’s case presents an opportunity to resolve a split in the circuits and the TTAB as to the treatment of foreign terms in non-English marks and the impact of consumer perception when determining protectability of non-English marks. In observance of this Court’s *Menendez* decision, the Fourth Circuit focuses on consumer perception of a non-English mark, while the Second and Fifth Circuits translate a non-English mark as a matter of course. The Federal Circuit has articulated another test but, as reflected in the decision below, translates any foreign term in a modern language even if substantially less than 1% of the United States population understands such language, absent a few limited exceptions.

The question, in essence, turns on whether the American consumer's perception of the following mark on its face should control:

VETEMENTS

A. Legal Framework

The Lanham Act provides a framework for protecting indicia by which a company or person identifies its goods and services to the American purchasing public, thereby ensuring that those consumers can confidently purchase and use goods and services knowing they are receiving what they intended. 15 U.S.C. §§ 1052, 1053. A trademark helps consumers identify goods and services that they wish to purchase, as well as those they want to avoid. *Matal v. Tam*, 582 U.S. 218, 224 (2017). Ultimately, the purpose of the Lanham Act is to safeguard the American purchasing public by preventing them from being confused as to the origin, sponsorship, or approval of goods and services. 15 U.S.C. § 1114(1).

A trademark is defined in the Lanham Act as “any word, name, symbol, or device, or any combination thereof” used by any person “to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” 15 U.S.C. § 1127. “The Lanham Act not only arms trademark owners with federal claims for relief; importantly, it establishes a

system of federal trademark registration.” *Booking.com*, 591 U.S. at 552. Federal trademark registration provides “‘valuable benefits’ including a presumption that the mark is valid” when registered on the principal register, and “more modest benefits” when registered on the supplemental register that is maintained for descriptive marks. *Id.*

A critical aspect of trademark registrability, and thus trademark protection, is determining whether the mark is one “by which the goods of the applicant may be distinguished from the goods of others.” 15 U.S.C. § 1052. “Distinctiveness is often expressed on an increasing scale: Word marks ‘may be (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.’” *Booking.com*, 591 U.S. at 553 (quoting *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992)). A mark is categorized as “merely” descriptive if it is used to describe a product, which does “not inherently identify a particular source, and hence cannot be protected.” *Two Pesos*, 505 U.S. at 769. A descriptive mark can be registered as a trademark if it achieves “significance ‘in the minds of the public’ as identifying the applicant’s goods or services—a quality called ‘acquired distinctiveness’ or ‘secondary meaning.’” *Booking.com*, 591 U.S. at 553 (citations omitted).

A mark is categorized as “generic” if it “names a ‘class’ of goods or services, rather than any particular feature or exemplification of the class.” 591 U.S. at 556. A generic term is ordinarily ineligible for trademark protection regardless of whether the mark has acquired distinctiveness. 591 U.S. at 554. Thus, a determination that a mark is generic rather than descriptive is a critical finding because a generic mark is ineligible for protection,

whereas a descriptive mark can be eligible for protection if it has acquired distinctiveness. At the other end of the distinctiveness scale is a mark that is found to be “fancy” (or fanciful). A fancy mark is considered to have the highest level of distinctiveness and protectability.

The protectability of a non-English mark was addressed by this Court in *Menendez* where this Court found that the non-English mark “La Favorita” did not itself indicate quality, but instead was a fancy name and in a foreign language, distinguishable from “a mere English word denoting quality,” and thus a valid trademark. 128 U.S. at 520. Although not expressly stated, the finding that “La Favorita” did not “in itself indicate quality, for it was merely a fancy name, and in a foreign language,” and, further, distinguishable from “a mere English word denoting quality,” is an implicit finding that protectability of a non-English mark should be judged “in itself,” as it appears and is perceived by consumers. *Id.*

This Court’s *Booking.com* decision extends on the principle implied in this Court’s *Menendez* decision that a mark should be evaluated for protectability based on the mark on its face as perceived by consumers. *Booking.com*, 591 U.S. at 560. In *Booking.com*, the PTO urged this Court to adopt “a nearly per se rule” that “every ‘generic.com’ term is generic according to the PTO, absent exceptional circumstances” and thus not registrable. 591 U.S. at 557. This Court rejected the PTO’s per se rule and found that:

an unyielding legal rule that entirely disregards consumer perception is incompatible with a bedrock principle of the Lanham Act: The generic (or nongeneric) character of a particular

term depends on its meaning to consumers, i.e., do consumers in fact perceive the term as the name of a class or, instead, as a term capable of distinguishing among members of the class.

591 U.S. at 550. As stated by this Court, “[e]ligibility for registration, all agree, turns on the mark’s capacity to ‘distinguis[h]’ goods ‘in commerce.’” 591 U.S. at 556 (citing the Lanham Act § 2, 15 U.S.C. § 1052).

The doctrine of foreign equivalents, as articulated by the Federal Circuit, is a judicially created doctrine and further a guideline, rather than a strict rule, to determine genericness and descriptiveness of non-English marks consisting of foreign terms. *E.g., Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005). When this doctrine is applied to a non-English mark consisting of a foreign term, the foreign term is translated into English, and then the English translation is evaluated to make the relevant determination, such as to determine genericness or descriptiveness of the non-English mark. As such, when the doctrine of foreign equivalents is applied, the English translation is evaluated to determine protectability of the non-English mark, rather than evaluating the non-English mark on its face.

The doctrine of foreign equivalents was first addressed by the predecessor to the Federal Circuit in *In re N. Paper Mills*, 64 F.2d 998 (C.C.P.A. 1933). That court departed from the directive of this Court’s *Menendez* decision, and did not consider consumer perception of the foreign term in the non-English mark. *N. Paper Mills*, 64 F.2d at 999. As articulated in *N. Paper Mills*, a foreign term not

adopted into the English language would be translated into English for analysis of registrability, so long as the foreign term was in a well-known modern language. *Id.* at 1110.¹ Contrary to the analysis of this Court’s *Menendez* decision, the court continued to frame the test as requiring translation of modern languages, even if the foreign term “may be meaningless to the public generally.” *Nestle’s Milk Products v. Baker Importing Co.*, 182 F.2d 193, 196 (C.C.P.A. 1950); see *Bart Schwartz International Textiles, Ltd. v. F.T.C.*, 289 F.2d 665, 668 (C.C.P.A. 1961).

Certain circuits have maintained this uniform mandate of the translation of foreign terms in non-English marks, citing the doctrine of foreign equivalents. As articulated by the Federal Circuit, the doctrine of foreign equivalents has evolved over time, but in its application, foreign terms of non-English marks that are in modern languages are translated absent a few limited exceptions. Per the current position stated by the Federal Circuit in the decision below, the doctrine applies only when it is likely that the ordinary American purchaser would “stop and translate [the word] into its English equivalent.” App. 8a, 9a (citing *Palm Bay*, 396 F.3d at 1377 (citing *Tia Maria, Inc.*, 188 U.S.P.Q. (BNA) 524 (T.T.A.B. 1975)).² In announcing its

1. The *N. Paper Mills* court cited a prior decision by the D.C. Circuit which had found the Commissioner of Patents was within his discretion to consider facts capable of proof, which encompassed the translated meaning of a French word sought to be registered. *In re Bradford Dyeing Ass’n*, 46 App. D.C. 512, 513 (D.C. Cir. 1917).

2. *Tia Maria* stated that there are prior decisions that held no distinction for trademark purposes was to be made between a foreign term and its English translation, and acknowledged that there may be exceptions for certain foreign expressions, such

adoption and application of that test in *Palm Bay*, the court below agreed with the TTAB that that an “appreciable number” of purchasers in the United States **would not** translate the French term VEUVE into English, but ultimately disagreed with the findings of the TTAB.³ However, contrary to *Palm Bay*, the decision below found an “appreciable number” of purchasers in the United States **would** translate the French term in Petitioner’s marks despite the term VEUVE and Petitioner’s marks being in the same French language. App. 20a, 21a.

Although the doctrine of foreign equivalents is stated by the Federal Circuit to be a guideline rather than an absolute rule, in practice application of the doctrine to non-English marks of modern languages has few exceptions and those are not clearly articulated. As a result, the doctrine is applied broadly to modern languages without meaningful limitation such that protectability of all non-English marks of modern languages are effectively dictated by their English translations, rather than consumer perception of the non-English marks at face value (without translation into English).

As reflected by the authorities cited in the decision below, as well as other cases, the court below and

as those that even purchasers familiar with the language would not translate, and those in a context of the marketplace that may make it unlikely purchasers would translate names or labels on products. 188 U.S.P.Q. (BNA) at 525-26.

3. The court found the TTAB’s decision had inconsistencies in its findings of whether an “appreciable number” of purchasers in the United States would or would not translate the French term VEUVE into English. *Palm Bay*, 396 F.3d at 1376-77.

its predecessor have applied the doctrine of foreign equivalents to warrant English translation of a foreign term under certain factual circumstances, such as: (i) when the foreign term was used in the English vernacular,⁴ and (ii) when the parties conceded that the translation was to be applied or the question of translation was never raised and thus undisputed⁵. Neither of those circumstances apply to Petitioner’s case. More importantly, the application of the doctrine to a broad reach of cases, particularly by the TTAB and its numerous rulings,⁶ departs dramatically

4. *E.g., Weiss Noodle Co. v. Golden Cracknel & Specialty Co.*, 290 F.2d 845, 846 (C.C.P.A. 1961) (“ha-lush-ka” in unhyphenated, phonetic equivalent form had been used by the respondent, the petitioner and others in the trade to identify a particular type of noodle).

In re Cordua Restaurants, Inc., 823 F.3d 594, 604 (Fed. Cir. 2016) (“There is substantial evidence in the record that ‘churrascos’ refers to a key aspect of a class of restaurants because those restaurants are commonly referred to as ‘churrasco restaurants.’”).

5. *In re Magnesita Refractories Co.*, 716 F. App’x 978, 982 (Fed. Cir. 2017) (“[Appellant] MRC does not challenge the applicability of the doctrine of foreign equivalents. . . .”).

In re Spirits International, N.V., 563 F.3d 1347, 1351-52 (Fed. Cir. 2009) (“the parties do not dispute this general requirement of translation under the doctrine of foreign equivalents. Nor do we. . . . [T]he applicant does not contend that the specific context of the mark is such that an ordinary American purchaser sufficiently familiar with Russian would nonetheless take the mark at face value.”).

In re Sarkli, Ltd., 721 F.2d 353, 354 (Fed. Cir. 1983) (the appellant did not contest application of the doctrine to translate the word “repêchage,” but rather argued the term as translated did not have the meaning applied by the TTAB).

6. See 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §§ 12:41, 12:45 (5th ed. 2025); Albert

from the holding of this Court’s *Menendez* decision and the principal that consumer perception of the mark is the cornerstone for analysis as recognized in this Court’s *Booking.com* decision. *Menendez*, 128 U.S. 514; *Booking.com*, 591 U.S. 549.

B. Factual and Procedural History

Petitioner is a high-profile company engaged in the fashion industry, and filed applications to register its VETEMENTS marks in both standard letter format and in a stylized block letter format for all of its goods and services. App. 54a. Petitioner has consistently been ranked in the top ten fashion brands in the world. App. 54a. From 2016 to 2021, the retail value of goods sold by Petitioner bearing its VETEMENTS marks exceeded ninety-five million dollars. App. 55a. As of 2017 Petitioner had 4.1 million followers on Instagram, with fifteen percent of those followers in the United States. App. 54a. Petitioner and its goods have been the subject of hundreds of articles directed at the fashion industry. App. 55a. Petitioner and its brand have received high profile exposure, partnering with numerous other global brands and gaining popularity among numerous national celebrities. App. 54a-55a.

In the decision below, the Federal Circuit declined to analyze Petitioner’s VETEMENTS marks as they appear and are perceived by consumers for purposes of determining registrability. App. 22a. Instead, the court

Simonyan, *International Implementation of the Doctrine of Foreign Equivalents: How to Save Foreign Generic Terms from Appropriation*, N.Y.U. J. Intell. Prop. & Ent. L., Vol. 13, Number 1 (2023); Serge Krimnus, *The Doctrine of Foreign Equivalents at Death’s Door*, N.C. J.L. & Tech., Vol. 12, Issue 1 (2010).

below chose to apply the doctrine of foreign equivalents, thereby translating the foreign term VETEMENTS into English and then evaluating the consuming public's perception of that English translation to determine registrability of Petitioner's VETEMENTS marks. App. 27a. As a consequence, the court below failed to give consideration of how the consuming public would understand Petitioner's marks at face value, departing from a "bedrock principle of the Lanham Act" that "whether a term is generic [or nongeneric] depends on its meaning to consumers." *Booking.com*, 591 U.S. at 560. The court below agreed with the TTAB's finding that "[t]he [TTAB] did not err in concluding that as translated under the doctrine of foreign equivalents, the VETEMENTS marks are unregistrable." App. 27a.

Although the lower court's decision describes that the TTAB considered the marks under the test for genericness by considering "whether the marks would be understood by the consuming public for the identified goods and services," the TTAB considered what the consuming public would understand only after translating the mark. App. 3a. Once translated into English, the TTAB concluded that the consuming public would understand the term to be generic. This circular approach, therefore, does not consider the mark as it appears and how consumers would perceive and understand the mark. The events leading up to the Federal Circuit decision below are as follows:

1. The Petitioner applied for federal registrations for the foreign term VETEMENTS in a standard letter format and a stylized block letter format **VETEMENTS** for: shirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes,

boots, waistbelts, t-shirts, pants, blouses, dresses in International Class 25; and online retail store services for shirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes, boots, waist belts, t-shirts, pants, blouses, dresses in International Class 35 (collectively referred to as “VETEMENTS marks”). App. 31a.

2. The PTO Examining Attorney in charge of both applications found that the VETEMENTS marks were subject to the doctrine of foreign equivalents after concluding that the ordinary American purchaser would likely stop and translate the marks because French is a common, modern language spoken by an appreciable number of consumers in the United States. App. 113a, 154a. After translating the marks, the Examining Attorney then considered the English translation of the foreign term VETEMENTS under the test for genericness. Based on the English translation of VETEMENTS to clothing, the Examining Attorney concluded that the VETEMENTS marks would be understood to be “the generic term used to refer to Applicant’s entire class of goods and subject matter of the services, and is so highly descriptive as to be devoid of trademark significance.” App. 115a, 155a. The Examining Attorney entered a final refusal to register each of the VETEMENTS marks. App. 90a, 130a.

3. In response to the Examining Attorney’s final refusal to register the VETEMENTS marks, the Petitioner filed a notice of appeal to the TTAB in each application for the VETEMENTS marks appealing the descriptiveness and generic refusals of the VETEMENTS marks, and arguing that the doctrine of foreign equivalents does not apply to the VETEMENTS marks and that the

VETEMENTS marks are inherently distinctive. App. 32a, 44a.

4. The TTAB consolidated the appeals and affirmed the refusals to register the VETEMENTS marks (App. 33a), concluding that it is “appropriate to apply the doctrine of foreign equivalents” (App. 46a). The TTAB reasoned that “[c]onsumers familiar with *French* are thus likely to ‘stop and translate’” the VETEMENTS marks and found the foreign term VETEMENTS “to be equivalent to the English term ‘clothing’ for purposes of determining genericness.” App. 47a (italics added). After applying the doctrine of foreign equivalents, the TTAB concluded that the VETEMENTS marks were generic for Petitioner’s goods and services identified in the applications and thus affirmed the grounds for refusal. App. 49a. Further, the TTAB held that the Petitioner did not establish that the marks had acquired distinctiveness and affirmed the refusal to register the VETEMENTS marks on the Principal Register under Section 2(f), 15 U.S.C. § 1052(f) of the Trademark Act. App. 63a.

5. In response, Petitioner appealed to the United States Court of Appeals for the Federal Circuit on the grounds that the doctrine of foreign equivalents was not properly applied and should not be applied to Petitioner’s VETEMENTS marks. App. 4a, 13a, 22a.

6. The Federal Circuit affirmed findings of the TTAB as summarized above. App. 29a.

REASONS FOR GRANTING THE PETITION

The Federal Circuit held below that registrability of Petitioner's marks consisting of a single foreign term is dictated by the English translation of the foreign term, not the non-English mark as it is written and appears to consumers. This holding conflicts with this Court's *Menendez* decision and contravenes established principles of trademark law requiring consumer perception of the mark itself to control. *Menendez*, 128 U.S. 514; *Booking.com*, 591 U.S. 549. There is a split in the circuits and the TTAB as to determining protectability of a non-English mark consisting of a foreign term, including how the foreign term is treated and the role of consumer perception in that analysis. That division of authority is destabilizing as the Lanham Act's judicial-review provisions allow dissatisfied parties to challenge a TTAB decision in either the Federal Circuit or an appropriate district court.

I. The Decision Below is Wrong.

In the decision below, the Federal Circuit found that the doctrine of foreign equivalents is applicable as an ordinary American purchaser would likely "stop and translate" Petitioner's VETEMENTS marks into English. App. 17a. As a direct result of this issue resolution, based on the English translation of the foreign term VETEMENTS, the Federal Circuit determined that Petitioner's VETEMENTS marks were generic, depriving Petitioner of the ability to register and protect its VETEMENTS marks regardless of the substantial secondary meaning achieved by Petitioner in the fashion industry. App. 29a. Registrability of each of Petitioner's VETEMENTS marks was thus dictated by its English

translation, rather than the appearance of the foreign term VETEMENTS on its face, contravening this Court’s decision in *Menendez v. Holt* that aligns with the bedrock principle of the Lanham Act requiring that consumer perception of the mark controls. *Booking.com*, 591 U.S. 549 (“[W]hether a term is generic depends on its meaning to consumers. That bedrock principle of the Lanham Act is incompatible with an unyielding legal rule that entirely disregards consumer perception.”). Thus, the decision below erred in departing from this Court’s *Menendez* and *Booking.com* decisions.

A. The Decision Below Erred in Finding This Court’s *Menendez* Precedent as “Inapposite”.

More than 130 years ago, this Court addressed the issue of registrability of a non-English mark. *Menendez v. Holt*, 128 U.S. 514 (1888). In *Menendez v. Holt*, this Court reviewed a circuit court’s decision where a trademark owner sued defendants for infringement of its non-English mark. *Holt v. Menendez*, 23 F. 869, 870 (C.C.S.D.N.Y. 1885), *aff’d*, 128 U.S. 514 (1888). The non-English mark consisted of the foreign term “La Favorita” and was registered by Holt in 1882 as a trademark for flour. *Holt v. Menendez*, 23 F. at 869-70. The circuit court found that Menendez infringed Holt’s trademark rights. *Id.* at 869-71.

On appeal to this Court, Menendez argued that Holt’s “La Favorita” mark could not be protected as a trademark. *See Menendez v. Holt*, 128 U.S. at 520. This Court rejected Menendez’s argument and found that Holt used the term “La Favorita” to certify “that the flour was the genuine article which had been determined by them to possess a certain degree of excellence.” *Id.* This Court

did not find that “La Favorita” indicated quality of the flour. *Id.* Instead, this Court explained that “[i]t did not, of course, in itself indicate quality, for it was merely **a fancy name, and in a foreign language**, but it evidenced that the skill, knowledge, and judgment of Holt & Co. had been exercised in ascertaining that the particular flour so marked was possessed of a merit rendered definite by their examination. . . .” *Id.* (emphasis added). This Court’s categorization of the “La Favorita” mark as “a **fancy name**,” and thus consisting of **fanciful** words, provides the highest level of distinctiveness and protectability as a trademark, and is an implicit finding that this Court determined protectability of the “La Favorita” mark based on the “La Favorita” mark on its face, rather than an English translation of the “La Favorita” mark. *Id.*⁷ Neither this Court nor the circuit court considered the English translation of “La Favorita” when determining that “La Favorita” deserved protection, and neither opinion recited the English translation of the term.

It is clear that this Court’s *Menendez* decision was elaborating on non-English marks being fanciful in terms of distinctiveness and protectability based on this Court distinguishing the non-English “La Favorita” mark from “a mere English word denoting quality.” *Id.* This Court explained that this “case clearly does not fall within the rule announced . . . in *Raggett v. Findlater*, L. R. 17 Eq. 29, where an injunction to restrain the use upon a trade label of the term ‘nourishing stout’ was refused on the obvious ground that ‘nourishing’ was **a mere English word denoting quality**.” *Id.* (emphasis added). That distinction addressed by this Court further supports an implicit

7. “La Favorita” translates to “the favorite” in Spanish.

finding that this Court determined protectability of the “La Favorita” mark based on the “La Favorita” mark on its face, rather than an underlying English translation of the “La Favorita” mark.

The same principle applies here. Similar to the term “La Favorita” not in itself indicating quality, each of Petitioner’s VETEMENTS marks does not “on its face” indicate a quality of its goods.

The decision below offered no sound reason for viewing this Court’s *Menendez v. Holt* decision as inapposite. App. 23a, 24a. Instead, the court below largely dismissed *Menendez*, despite the non-English mark in *Menendez* being found to not “in itself indicate quality, for it was merely a fancy name, and in a foreign language,” and, further, distinguishable from “a mere English word denoting quality.” *Menendez*, 128 U.S. at 520–21. To this day, *Menendez* is controlling.

B. The Doctrine of Foreign Equivalent as Applied by the Court Below Departs from a Bedrock Principle of the Lanham Act.

In *Booking.com*, this Court elaborated on the principles of a generic term, including that “the relevant meaning of a term is its meaning to consumers” and “[e]ligibility for registration, all agree, turns on the mark’s capacity to ‘distinguish[]’ goods ‘in commerce.’” *Booking.com*, 591 U.S. at 556. This Court applied those principles in reviewing a circuit court’s ruling that the term “Booking.com” is not generic because consumers did not perceive it as generic and, thus, eligible for federal trademark registration. *Id.* at 551. This Court described that:

whether “Booking.com” is generic turns on whether that term, taken as a whole, signifies to consumers the class of online hotel-reservation services. Thus, if “Booking.com” were generic, we might expect consumers to understand Travelocity—another such service—to be a “Booking.com.” We might similarly expect that a consumer, searching for a trusted source of online hotel-reservation services, could ask a frequent traveler to name her favorite “Booking.com” provider.

Id. at 557. This Court found that consumers do not in fact perceive the term “Booking.com” as generic, as concluded by the lower courts. *Id.* Based on this finding, this Court explained “[t]hat should resolve this case: Because “Booking.com” is not a generic name to consumers, it is not generic.” *Id.* In reaching that conclusion, this Court rejected the PTO’s sweeping rule that the combination of “.com” with a generic term like “booking” is necessarily generic. *Id.* at 551. This Court explained that such “unyielding legal rule that entirely disregards consumer perception” and is incompatible with a “bedrock principle of the Lanham Act” that “whether a term is generic depends on its meaning to consumers.” *Id.* at 560.

This Court’s *Menendez* decision, discussed above, aligns with the “bedrock principle” of the Lanham Act requiring that consumer perception of the mark controls. *Menendez*, 128 U.S. 514. This is apparent based on *Menendez*’s implicit finding that protectability of the “La Favorita” mark is based on consumer perception of the term “La Favorita” taken at face value, rather than an underlying English translation of the term “La Favorita”. *Id.* at 520-21.

In the lower decision, contrary to *Menendez* and *Booking.com*, the Federal Circuit declined to determine registrability of Petitioner's VETEMENTS marks by analyzing them at face value as perceived by consumers. App. 22a. Instead, the Federal Circuit analyzed the English translation of the term VETEMENTS, as translatable by a minute fraction of consumers, under the doctrine of foreign equivalents. App. 27a. This doctrine clashes with the bedrock principle of the Lanham Act that "whether a term is generic depends on its meaning to consumers." *Booking.com*, 591 U.S. at 560. The doctrine of foreign equivalents departs from that principle by causing protectability of a non-English mark to be dictated by a meaning of its English translation to consumers, rather than the American public's perception of the mark as used in commerce.

Nothing in the established Lanham Act supports the doctrine of foreign equivalents. By the lower court, other courts, the TTAB, and the PTO applying this doctrine such that protectability of a non-English mark is determined without due consideration of the consuming public's perception of the non-English mark taken at face value, they are depriving material and valuable protections available under the Lanham Act to the Petitioner and countless others. If the overriding motive to adopt this doctrine is to prevent competing sellers or manufacturers from being deprived from using a foreign term, that concern is not well-founded. Well-established infringement doctrines, such as likelihood of confusion and fair use, would restrict the scope of protection afforded to any non-English marks. Those doctrines would account for non-English marks that are a part of the English vernacular, such as bistro, café, bleu, noire, croissant,

bouquet, boutique, and queso, and non-English marks that visually or aurally resemble their English translations.

In any event, allowing a trademark owner to register a foreign term enables enforcement against copyists who would copy and use the foreign term as a rival or competing trademark, but does not remove the foreign term from commercial use in its descriptive sense or even in its generic sense. It only precludes use by another in a trademark sense, should use of that competing trademark create a likelihood of confusion. As explained by this Court and others regarding a descriptive term, even registration of an English word as a mark does not remove that word from use by competitors as a descriptive word. Competitors may still continue to use the word in a descriptive manner. 15 U.S.C. § 1115(b)(4); *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 121-22 (2004). The same would be even more so applicable to a foreign term. Competitors, purchasers, and the trade in general could use the foreign term in text or in other descriptive or generic manners.

The court below thus erred in applying a doctrine that is incompatible with the basic principle of the Lanham Act in which consumer perception of the mark controls. *Booking.com*, 591 U.S. at 560. Instead, protectability of a non-English mark should be dictated by the non-English mark in itself or at face value. When applying this approach to Petitioner's VETEMENTS marks based on the evidence presented, the vast majority of the consuming public would perceive the foreign term VETEMENTS as a coined word and, hence, a fanciful or fancy term that can be registered. The evidence proffered supports this finding. Absent an approach that solely considers French

speaking consumers, there is no evidence suggesting that consumers would perceive the foreign term VETEMENTS as generic or descriptive of “clothing,” the genus of goods or services in question. In particular, no evidence was presented that the foreign term VETEMENTS in Petitioner’s Marks is: (i) used by others in the field or in any field as a descriptor,⁸ (ii) a term in common use in English or part of the English vernacular such that it is recognized to mean anything, let alone clothing,⁹ or (iii) is visually or aurally similar to the English word “clothing.” There was also no evidence presented that the consuming public would be disadvantaged by allowing exclusive use of the foreign term VETEMENTS as a trademark, or that it is an essential term that needs to be accessible to other clothing sellers or manufacturers in the United States.

If the foreign term VETEMENTS were generic, we might expect consumers to understand Ann Taylor, Nordstrom, Levi’s, Lululemon, Abercrombie—other clothing brands—to be understood as VETEMENTS. *Booking.com*, 591 U.S. at 557. However, like *Booking.com*, this is not the case, and the foreign term VETEMENTS is not a generic name to consumers for clothing and should be afforded protection as a trademark. *Id.*

8. While there was evidence of a single registration that incorporated the correct spelling of the French word “vêtements” (Registration no. 2,189,172), that registration had expired and notably did not have a disclaimer for the word “vêtements.” App. 77a.

9. There was no evidence that the term VETEMENTS is defined by any American dictionaries.

C. The Court Below Misapplied its Doctrine.

The doctrine of foreign equivalents, as articulated by the decision below, “is used to ascertain if a non-English mark is impermissibly generic or descriptive by translating the mark into English and then considering its genericness or descriptiveness.” App. 5a. Although the court below stated that “[t]he doctrine should be applied only when it is likely that the *ordinary American purchaser* would ‘stop and translate [the word] into its English equivalent’” (App. 8a, 9a), the court below later stated that:

As long as an appreciable number of Americans, from the U.S. population as a whole, are capable of translating the word, the word likely will be translated. This principle does not require an absolute majority of the population being capable of translation because it takes into account that “words from modern languages are generally translated into English.”

(App. 26a). This analysis is divorced from the facts established in the case below—that less than 1% of the American public speak French, which is the only indicator of whether it is likely that an ordinary American purchaser would stop and translate the term VETEMENTS into English.¹⁰ Based on the court below equating an “ordinary

10. The PTO asserts that as of 2010 approximately 2.1 million Americans over the age of five spoke a dialect of French at home, with a slight decline in 2011. App. 16a, 43a. The Petitioner’s assertion that the 2011 Census reflected a US population of 291 million people over the age of five (App. 45a, 46a), would reflect the number of French speakers in 2010 to be less than 0.73% of the population of the United States.

American purchaser” to French speakers consisting of a fraction (less than 1%) of the American public, the court’s analysis effectively converts the “ordinary American purchaser” into “the ordinary American purchaser who is knowledgeable in the foreign language,” a test rejected by the Federal Circuit’s *In re Spirits* decision. *In re Spirits International, N.V.*, 563 F.3d 1347 (Fed. Cir. 2009). As there stated, “[t]he ‘ordinary American purchaser’ is not limited to only those consumers unfamiliar with non-English languages; rather, the term includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *Id.* at 1352.

The exceptions to the rule are unclear as reflected by the decision below. The court below attempted to distinguish its prior decision which had declined to apply the doctrine. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005). *Palm Bay* was contrasted from the present case by alleging that the English translation “widow” of the term VEUVE required a “more advanced vocabulary” in comparison to the term VETEMENTS in Petitioner’s marks, which the decision below stated “is a simple and common word” and thus “an appreciable” number of Americans are capable of translating the term VETEMENTS. App. 16a, 17a. That is not the applicable legal standard. The foreign term VETEMENTS is only a simple common word to those who speak French. To non-French speakers, the meaning of VETEMENTS is unknown and, therefore, not simple. The fact remains that French speaking persons make up only a small fraction (less than 1%) of the American public. App. 16a–18a.

The court below also attempted to distinguish this case from the *Palm Bay* decision and TTAB's *Tia Maria* decision, which also held that the doctrine did not apply, based on yet another test that considers whether an English translation of a non-English mark is closely associated with its designated goods or services, which is again not the applicable legal standard. App. 21a, 22a (citing *Palm Bay*, 396 F.3d at 1377 and *Tia Maria, Inc.*, 188 U.S.P.Q. (BNA) 524, 525-26 (T.T.A.B. 1975)). While attempting to distinguish this case, the court below referred to the actual spelling of “*vêtement*”, rather than the incorrect spelling used in Petitioner's marks. In *Palm Bay* and *Tia Maria*, the foreign terms were found to not be closely associated with their respective goods. App. 21a. The court below took the position that:

“*vêtement*” is closely associated with clothing because it is the French word for clothing. For that reason, *Palm Bay* and *Tia Maria* do not persuade us that an ordinary American purchaser would not translate the French word for “clothing” in the context of clothing.

App. 22a. To non-French speakers, the meaning of VETEMENTS is unknown and, therefore, not closely associated with its English translation. Petitioner's marks consisting of a French term having an English translation “closely associated with clothing” does not mean an “ordinary American purchaser” would translate Petitioner's non-English marks when French speaking persons make up only a small fraction (less than 1%) of the American public. App. 16a–18a.

II. The Courts of Appeals are Divided on the Question Presented, Conflicting on Consumer Perception of Foreign Terms.

A. The Fourth Circuit’s Adherence to *Menendez* in Application of the Doctrine of Foreign Equivalents Conflicts with Decisions of the Federal, Second, and Fifth Circuits.

Although various circuits and the TTAB reference the “doctrine of foreign equivalents” by the same or like names, such as “doctrine of foreign *equivalence*,” the formulation and application of this doctrine are dramatically different. In contrast to the decision below, the Fourth Circuit has embraced this Court’s precedent of *Menendez* and the importance of consumer perception controlling protectability of a foreign term as a trademark. The Second and Fifth Circuits apply the doctrine as translating a foreign term as a matter of course. The Federal Circuit has articulated a modified test that in practice, as addressed herein, translates foreign terms in modern languages with a few limited exceptions. The TTAB, which has often encountered the issue of non-English marks consisting of foreign terms, recites the same modified test as stated by the Federal Circuit, but has interpreted “the ordinary American consumer” to mean consumers who understand the non-English language, which eviscerates the test and therefore almost always translates a foreign term.

The Second Circuit views the translation of a foreign term into the English language to be generally applied, without consideration of consumer perception. In the Second Circuit’s *Orto* decision, the Second Circuit clarified

that its prior *Otokoyama* decision did not require a consumer perception analysis, but rather was to be based on a translation of the foreign term. *Orto Conserviera Cameranesse Di Giacchetti Marino & C., S.N.C. v. Biconserve S.R.I.*, 205 F.3d 1324, 2000 WL 232108 (2d Cir. 2000) (unpublished opinion); *Otokoyama Co. v. Wine of Japan Import, Inc.*, 175 F.3d 266, 268 (2d Cir. 1999). As *Orto* explained:

Nothing in *Otokoyama* or *Holland v. C. & A. Import Corp.*, 8 F. Supp. 259 (S.D.N.Y. 1934), which *Otokoyama* reaffirms, suggests that evidence under the ‘foreign equivalents doctrine,’ as it is known, must be consumer-based. Rather, the relevant inquiry is, more generally, the meaning of the term or phrase in its country of origin.

Id. In *Orto*, the Italian term “Bella di Cerignola” was, therefore, translated and found to be generic of olives from the vicinity of Cerignola, Italy and thus not registrable.

The Second Circuit had applied that mandatory rule since at least its determination in *McKessen & Roberts v. Charles H. Phillips Chemical*, which found the foreign term “Leche de Magnesia” to have an English translation of “Milk of Magnesia.” *McKessen & Roberts, Inc. v. Charles H. Phillips Chemical Co.*, 53 F.2d 1011, 1012 (2d Cir. 1931), *cert. denied*, 285 U.S. 552 (1932). The Second Circuit there applied a rote translation approach without reference to *Menendez* precedent: “It has been the general practice of the Patent Office and of the courts to deny registration to any misleading term even where it only becomes misleading through the understanding of a

foreign language. This is a sound rule which has long been followed.” *Id.* at 1011. That automatic translation approach was applied despite the dissent’s assertion that the foreign term had no meaning to the English speaking public or the relevant trade: “‘Leche de Magnesia’ is the Spanish for ‘Milk of Magnesia.’ It cannot be said to be commonly understood by an English-speaking public. . . . There is ample evidence that the term ‘Leche de Magnesia’ was meaningless even to the drug trade.” *Id.* at 1012. The automatic translation approach utilized by the Second Circuit is essentially the approach previously espoused by the predecessor to the Federal Circuit, which consistently translated foreign terms in modern languages regardless of consumer perception. *E.g.*, *Nestle’s Milk Products v. Baker Importing Co.*, 182 F.2d 193, 196 (C.C.P.A. 1950); *Bart Schwartz International Textiles, Ltd. v. F.T.C.*, 289 F.2d 665, 668 (C.C.P.A. 1961).

The Fifth Circuit follows the same approach. In its *Enrique Bernat F. v. Guadalajara* decision, the Spanish term CHUPA was determined to be a generic term for lollipop. *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 441-45 (5th Cir. 2000). In so doing, the Fifth Circuit adopted the doctrine of foreign equivalents as requiring “to translate foreign words into English to test them for genericness or descriptiveness.” *Id.* at 443. The Fifth Circuit found that “[t]he first step in the analysis is translating the word ‘chupa’”. *Id.*

Although the Federal Circuit has articulated an application of the doctrine of foreign equivalents that considers an ordinary American purchaser as a factor, in practice, this factor effectively translates any foreign term in a modern language absent a few limited exceptions.

In the Federal Circuit’s *Palm Bay* decision, the doctrine was stated to apply only when it is likely that the ordinary American purchaser would “stop and translate [the word] into its English equivalent.” *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005). There the Federal Circuit determined that the ordinary American purchaser would not translate the French term VEUVE into the English word “widow” without further explanation as to why this was so. *Id.* In the present case, the Federal Circuit in the decision below translated the French term based on the number of Americans who would speak French, which is the same factor as would have applied to the *Palm Bay* case. The court below also asserted that this Court’s *Menendez* decision was inapposite. App. 22a-24a.

The TTAB has since relied upon the test articulated in *Palm Bay* and referred to the ordinary American purchaser factor, but in some decisions, the TTAB has eviscerated that analysis by limiting its consideration to an ordinary American purchaser as one who is knowledgeable or familiar with language of the foreign term in question. *E.g., In re Thomas*, 79 U.S.P.Q.2d 1021, 2006 WL 1258862 at *3 (T.T.A.B. 2006) (“The ‘ordinary American purchaser’ in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language.”); *see In Re Rise River Asset Co., Ltd.*, No. 97229735, 2024 WL 4052749, at *9 (T.T.A.B. Aug. 14, 2024) (“Here, we find that an ordinary U.S. purchaser familiar with either Mandarin or Cantonese would view Applicant’s mark as comprising Chinese characters.”). In essence, the foreign term will automatically be translated for all modern languages

with a few limited exceptions.¹¹ This was the standard applied in the present case by the TTAB below, which found “[c]onsumers familiar with *French* are thus likely to ‘stop and translate’ VETEMENTS or **VETEMENTS** when encountering it used in connection with Applicant’s identified clothing and clothing-related retail services.” App. 47a (italics added).

In direct contrast to the TTAB and the Federal, Second, and Fifth Circuits, the Fourth Circuit has remained true to the teaching of this Court’s *Menendez* decision and the importance of consumer perception of a mark. In the Fourth Circuit’s *Pizzaria* decision, the Fourth Circuit determined the Italian term UNO as part of a non-English mark for pizza was not descriptive. *Pizzaria Uno Corp. v. Temple*, 747 F.2d 1522 (4th Cir. 1984). The Fourth Circuit noted that the Italian term UNO was not a term in common use in English for describing or identifying any product or characteristic of a product, and there was no extensive use of the term UNO as either a trademark or trade name, whether in Italy or the United States. *Id.* The Fourth Circuit relied on this Court’s precedent in reaching its determination that the Italian term UNO was not descriptive: “‘Uno’ is better analogized to a term such as . . . ‘La Favorita,’ described in *Menendez v. Holt*, 128 U.S. 514, 520, 9 S. Ct. 143, 144, 32 L. Ed. 526 (1888), as ‘merely a fanciful name and in a foreign language.’” *Id.* at 1533-34.

The Fourth Circuit is consistent with its analysis of trademarks for genericness in applying consumer

11. The TTAB has determined canned goods in supermarkets are to be treated differently than other goods. See *Tia Maria, Inc.*, 188 U.S.P.Q. (BNA) 524 (T.T.A.B. 1975).

perception as the governing standard. The Fourth Circuit’s *Booking.com* decision likewise based its analysis on the consumer perception of the overall mark and the absence of proof by the PTO that the mark was generic, which aligns with the approach confirmed by this Court. *United States Pat. & Trademark Off. v. Booking.com B. V.*, 915 F.3d 171, 184-87 (4th Cir. 2019), *aff’d*, 591 U.S. 549 (2020).

The contrast between the circuits is dramatic. Had the present case been lodged in the Fourth Circuit, which is an alternative path to an appeal to the Federal Circuit,¹² there is a potential that the outcome would be the opposite. In the present case, the automatic translation of the Petitioner’s VETEMENTS marks by the court below was predicated solely on the foreign term VETEMENTS being in the French language, which was viewed as sufficient to establish an “appreciable number” of purchasers would understand the term in that foreign language. There was no evidence of record that the foreign term VETEMENTS was used or known in the English vernacular. There was no evidence of the French language term being widely used in trademarks or trade names of third parties. There was no evidence or argument that the foreign term visually or aurally resembles its English translation.

In applying the Fourth Circuit’s following of *Menendez*, there would be no basis to follow the court

12. An applicant for a trademark registration which has been rejected by the PTO may contest the decision in a civil action in a district court, such as the United States District Court for the Eastern District of Virginia and then appeal the resulting decision to the Fourth Circuit Court of Appeals. 15 U.S.C. § 1071(b); *See Booking.com*, 591 U.S. at 554-55.

below's approach to first translate the foreign term VETEMENTS in Petitioner's marks, and then use the English translation to determine whether the doctrine of foreign equivalents is applicable. App. 21a, 22a. That the TTAB has adopted a test which essentially results in the automatic translation of a foreign term in a non-English mark applies this unjust result to all entities seeking to register a non-English mark in the United States.

III. The Question Presented Warrants Review.

A. Petitioner's Case Presents the Perfect Vehicle for Resolving the Question.

Petitioner's case presents an excellent vehicle to resolve the question presented. Petitioner's marks consist of a single foreign term VETEMENTS. There are no otherwise spurious issues. The outcome-determinative question in the decision below was whether protectability of a non-English mark should be controlled by consumer perception of the non-English mark on its face or its English translation. This case thus presents the issue for resolution in a context that would be universally applicable to the recurring nationwide issue.

B. The Question Presented is Recurring, Important, and Squarely Presented.

The question presented arises in several different contexts. The question arises in the comparison of competing marks to determine if a likelihood of confusion among consumers results from one of the marks, and also arises in determining whether a mark is generic or descriptive. The question arises in those scenarios in

the PTO during examination of a mark for registrability and during subsequent review by the TTAB and courts. The question also arises in those scenarios in the courts during enforcement proceedings involving a mark. The authorities referenced in the foregoing discussion represent only a small fraction of the cases that reflect the frequency in which the question presented occurs.

The question presented will continue to arise in a wide variety of commercial endeavors which encompass the complete scope of American enterprise. The refusal to register an extensively used and well recognized trademark of a company engaged in business in the United States will embolden copyists and counterfeiters to slavishly copy designators used by legitimate businesses and thus increase consumer confusion.¹³ By application of a standard predicated on consumer perception of a term, rather than raw numbers of people who understand a given language amounting to significantly less than 1% of the population, will protect the American public from being misled by a copyists' use of a trademark recognized by the consuming public.

Keeping in mind protection of a foreign term does not remove the word from commercial use, competitors may still continue to use the word in a descriptive manner.

13. Indeed, an unscrupulous competitor registered a copy of Petitioner's block letter logo **VETEMENTS** in France as French trademark registration No. 4562968 for a variety of goods, including footwear, hats and hosiery. Petitioner was recently successful in having ownership of that French registration judicially transferred to Petitioner by the French Court of Appeal of Paris. Cour d'appel de Paris, 5-1 Chamber, June 25, 2025, no. 23/11623.

15 U.S.C. § 1115(b)(4); *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 121-22, (2004). The question presented is important, in that the trademark laws are established to protect the American public from being confused in their purchasing activities. The decision below and the continued automatic application of the doctrine of foreign equivalents will have national impact and apply to all aspects of American business.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT, FILED MAY 21, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IN RE: VETEMENTS GROUP AG,

Appellant.

2023-2050, 2023-2051

Appeals from the United States Patent and Trademark
Office, Trademark Trial and Appeal Board in Nos.
88/944,198, 88/946,135.

May 21, 2025, Decided

Before PROST, WALLACH, and CHEN, *Circuit Judges.*

WALLACH, *Circuit Judge.*

Vêtement is the French word for clothing in English.¹ Appellant Vetements Group AG (“Appellant”) appeals the decision of the United States Patent and Trademark Office (“PTO”) Trademark Trial and Appeal Board (“Board”), which affirmed the Examining Attorney’s refusal to register the proposed marks: VETEMENTS

1. It is undisputed that the English translation of “VETEMENTS” in the mark is “CLOTHING.” Oral Arg. at 10:07-10:21, 13:34-41 (available at https://oralarguments.cafe.uscourts.gov/default.aspx?fl=23-2050_02072025.mp3).

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in standard characters and in stylized form.² The Board concluded after applying the foreign equivalents doctrine that the marks were generic and merely descriptive without acquired distinctiveness under Section 2(e)(1) of the Trademark Act. 15 U.S.C. § 1052(e)(1). The Board’s decision is supported by substantial evidence and in accordance with law, so this Court affirms.

BACKGROUND

In June 2020, Appellant filed applications for registration on the Principal Register of two marks: VETEMENTS, in standard characters, and **VETEMENTS**, in stylized form (capital block lettering in customized font), in connection with “[s]hirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes, boots, waist belts, t-shirts, pants, blouses, dresses” in International Class 25 and “[o]nline retail store services for” the same in International Class 35.³ Appx51-58; Appx478-84.

The Examining Attorney refused the applications in Final Office Actions in December 2021, on the ground that the marks as applied to clothing and online retail store

2. The Board’s Opinion affirming the rejection of Appellant’s marks is in the record at Appx1-45, and is available at *In re Vetements Group AG*, Nos. 88944198, 88946135, 2023 TTAB LEXIS 154, 2023 WL 3271156 (T.T.A.B. Apr. 21, 2023).

3. The original applications identified goods and services that are not part of this appeal and not relevant here because they were divided out into child applications.

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services for clothing were generic, or in the alternative, merely descriptive without acquired distinctiveness, and were barred from registration under 15 U.S.C. § 1052(e) (1). Appellant filed an appeal to the Board.

The Board affirmed the genericness and “alternative mere descriptiveness refusals” as well as the Examining Attorney’s finding that Appellant failed to establish acquired distinctiveness. Appx1-3. In reaching its conclusion, the Board applied the doctrine of foreign equivalents. The Board found that, as of 2010, French is the fifth-most spoken non-English language at home, and it is the second most widely taught non-English language in schools in the United States. The Board reasoned that VETEMENTS is subject to the doctrine of foreign equivalents because the ordinary American purchaser is likely to stop and translate the marks into English, particularly because they are the French word for clothing and are used in connection with pieces of clothing and clothing-related retail services.

After translating the marks, the Board then considered the marks under the test for genericness, which asks whether the marks would be understood by the consuming public for the identified goods and services primarily to refer to the genus of goods or services under consideration. *See H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90 (Fed. Cir. 1986). Using the marks’ translation, the Board found that members of the relevant public would primarily understand the marks to “refer[]to a genus of clothing items and online retail store services featuring clothing

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items,” thus making them generic. Appx17. The Board also found the proposed marks were highly descriptive. It determined that Appellant failed to establish that the proposed “VETEMENTS” marks have acquired distinctiveness among relevant U.S. consumers as a source identifier for Appellant’s goods and services. The Board accordingly affirmed the Examining Attorney’s refusal to register the marks.

Appellant filed this timely appeal. This Court has jurisdiction pursuant to 28 U.S.C. § 1295(a)(4)(B).

STANDARD OF REVIEW

This Court reviews the Board’s conclusions of law de novo and factual findings for substantial evidence. *E.g.*, *In re Cordua Rests., Inc.*, 823 F.3d 594, 599 (Fed. Cir. 2016). “The standard of genericness is a question of law that we review de novo.” *Id.* (citing *In re Save Venice N.Y., Inc.*, 259 F.3d 1346, 1351-52 (Fed. Cir. 2001)). Findings of genericness and acquired distinctiveness are “factual determinations that we review for substantial evidence.” *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1335 (Fed. Cir. 2015). “Whether the Board applied the proper test in assessing whether a mark is generic is a question of law, but ‘whether a particular mark is generic under the applicable standard is a question of fact, which we review for substantial evidence.’” *In re PT Medisafe Techs.*, 134 F.4th 1368, 1373 (Fed. Cir. 2025) (quoting *Cordua*, 823 F.3d at 599). A finding is supported by substantial evidence if a reasonable mind might accept the evidence as “adequate to support a conclusion.” *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 971 (Fed. Cir. 2018).

*Appendix A***LEGAL STANDARDS****A.**

A mark cannot be registered which “when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them.” 15 U.S.C. § 1052(e)(1). The term “descriptive” encompasses generic terms because a generic term is the “ultimate in descriptiveness.” *Bullshine Distillery LLC v. Sazerac Brands, LLC*, 130 F.4th 1025, 1029 (Fed. Cir. 2025) (quoting *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018)). “[G]eneric terms by definition are incapable of indicating source.” *In re Hotels.com, L.P.*, 573 F.3d 1300, 1302 (Fed. Cir. 2009). A generic name is “ineligible for federal trademark registration.” *U.S. Pat. & Trademark Off. v. Booking.com B.V.*, 591 U.S. 549, 551, 140 S. Ct. 2298, 207 L. Ed. 2d 738 (2020). “The statute prevents registration of a generic term because it would deceive consumers as to the origin of a good.” *Bullshine Distillery*, 130 F.4th at 1029.

B.**1.**

The doctrine of foreign equivalents is used to ascertain if a non-English word mark is impermissibly generic or descriptive by translating the mark into English and then considering its genericness or descriptiveness. *E.g., In*

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re N. Paper Mills, 64 F.2d 998, 998-99, 20 C.C.P.A. 1109 (C.C.P.A. 1933).⁴

The doctrine of foreign equivalents originated in our precedent in the 1933 case of *Northern Paper Mills*.⁵ *Northern Paper Mills* affirmed the rejection of a trademark for “Gasa” for toilet paper, explaining that “Gasa,” a Spanish word meaning gauze, “as applied to toilet paper, was descriptive of the supposed quality of the paper.” 64 F.2d at 998-99 (rejecting argument that the “English equivalent of the word sought to be registered, namely, ‘Gauze,’ is not descriptive of toilet paper”). The court reasoned “that a word taken from a well-known foreign modern language, which is, itself, descriptive of a product, will be so considered when it is attempted to be registered as a trade-mark in the United States for the same product.” *Id.* (“[A] descriptive word, used in one of the modern languages of the principal nations of the world, cannot be properly registered as a trade-mark under the present laws of the United States on that subject.”).

4. The decisions of our predecessor court, the Court of Customs and Patent Appeals, have been adopted as precedent of this Court. *S. Corp. v. United States*, 690 F.2d 1368, 1369 (Fed. Cir. 1982) (en banc).

5. Numerous cases from other circuits concerned marks of non-English language words that were descriptive of a product and pre-dated *Northern Paper Mills*. See, e.g., *In re Bradford Dyeing Ass’n*, 46 App. D.C. 512, 513, 1917 Dec. Comm’r Pat. 202 (D.C. Cir. 1917) (affirming the Commissioner of Patents’ refusal to register “E’clatant” as a trademark for cotton piece goods because the word is French and, when translated, means “brilliant, shining, glittering, etc.,” which is “descriptive of the character and quality of the goods”), cited in *N. Paper Mills*, 64 F.2d at 998 (collecting cases).

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Our cases have rejected the registrability of proposed marks in non-English languages that are merely descriptive words after translating them under the doctrine of foreign equivalents. *Bart Schwartz* affirmed the cancellation of the mark, “FIOCCO” for “textile fabrics in the piece of cotton, rayon, synthetic fibers, and mixtures thereof.” *Bart Schwartz Int’l Textiles, Ltd. v. FTC*, 289 F.2d 665, 667, 672, 48 C.C.P.A. 933, 1961 Dec. Comm’r Pat. 335 (C.C.P.A. 1961). *Bart Schwartz* explained that because “fiocco” is an Italian word referring to fabrics “made wholly or in part of spun rayon,” the word’s “prior use by others,” to descriptively identify the fiber content of textile fabrics was known but fraudulently concealed in the registrant’s sworn declaration as to its ownership of the mark. *Id.* at 667-69, 671. The court explained in dicta that because there “is no question but that the Italian word ‘fiocco’ is descriptive of ‘spun rayon,’” it is thus “subject to the general rule that a descriptive word in a foreign language cannot be registered in the United States as a trademark for the described product.” *Id.* at 668 (citing *N. Paper Mills*, 64 F.2d 998).

Weiss Noodle affirmed the rejection of a trademark for “Ha-Lush-Ka” for egg noodles and egg noodle products. *Weiss Noodle Co. v. Golden Cracknel & Specialty Co.*, 290 F.2d 845, 846, 848, 48 C.C.P.A. 1004, 1961 Dec. Comm’r Pat. 406 (C.C.P.A. 1961). “Ha-Lush-Ka” was a hyphenated, phonetically spelled version of the Hungarian word for noodles—Haluska or Galuska—which, as the Board found, was the “common descriptive name for egg noodles.” *Id.* at 846. The court reasoned that the mark was merely descriptive and not registrable because “[t]he name of a

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thing is the ultimate in descriptiveness. It is immaterial that the name is in a foreign language.” *Id.* at 847 (internal citation omitted) (citing *N. Paper Mills*, 64 F.2d 998).

2.

The doctrine of foreign equivalents has been considered by this Court in other trademark contexts. In *Palm Bay*, this Court considered the doctrine in the context of likelihood of confusion—“to determine . . . similarity of connotation in order to ascertain confusing similarity with English word marks.” *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005); *see also* 15 U.S.C. § 1052(d) (prohibiting registration when a proposed mark is “likely . . . to cause confusion, or to cause mistake” with another mark).

This Court in *Palm Bay* considered an appeal of the Board’s likelihood-of-confusion rejection of a trademark for a non-English mark, “VEUVE ROYALE.” 396 F.3d at 1371. *Palm Bay* explained that “[a]lthough words from modern languages are generally translated into English, the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline.” *Id.* at 1377. “When it is unlikely that an American buyer will translate the foreign mark and will take it as it is, then the doctrine of foreign equivalents will not be applied.” *Id.* (citing *Tia Maria, Inc.*, 188 U.S.P.Q. (BNA) 524 (T.T.A.B. 1975)).⁶ “The doctrine should be applied only when it is

6. In *Tia Maria*, “Tia Maria” was a Mexican restaurant, and the “Aunt Mary’s” mark was used for canned fruits and vegetables

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likely that the ordinary American purchaser would ‘stop and translate [the word] into its English equivalent.’” *Id.* (alteration in original) (citation omitted). *Palm Bay* declined to translate the mark to analyze its English equivalent’s potential confusing similarity to the opposer’s mark (“THE WIDOW”). *Id.* *Palm Bay* determined “it [was] improbable that the average American purchaser would stop and translate ‘VEUVE’ into ‘widow.’” *Id.* The Court reversed the Board’s finding of the likelihood of confusion as to the opposer’s “THE WIDOW” mark. *Id.*⁷

This Court in *In re Spirits* considered the doctrine of foreign equivalents in the context of geographic descriptiveness and deceptive mis-descriptiveness. *In*

sold at a supermarket. 188 U.S.P.Q. (BNA) at 525-26. The Board held it was unlikely that a person encountering “AUNT MARY’S” canned fruits and vegetables on the shelves of a supermarket would, “upon dining at the ‘TIA MARIA’ restaurant in Mexican decor and surrounded by a menu of Mexican delicacies, translate ‘TIA MARIA’ into ‘AUNT MARY’ and then mistakenly assume that the ‘TIA MARIA’ restaurant and ‘AUNT MARY’S’ canned fruits and vegetables originate from or are sponsored by the same entity.” *Id.* at 526. The Board concluded in *Tia Maria* that those shopping in a supermarket, “even those familiar with the language,” would be unlikely to translate the mark “AUNT MARY’S” on a can of vegetables to TIA MARIA and confuse the two brands. *Id.* at 525-26.

7. *Palm Bay*, despite reversing the Board on confusing similarity to the opposer’s English mark, affirmed the Board’s overall decision refusing registration of the mark VEUVE ROYALE for sparkling wine on the ground of likelihood of confusion with two of opposer Veuve Clicquot Ponsardin’s other marks: (1) VEUVE CLICQUOT PONSARDIN, and (2) VEUVE CLICQUOT. 396 F.3d at 1377.

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re Spirits Int’l, N.V., 563 F.3d 1347, 1349-50 (Fed. Cir. 2009); *see also id.* at 1353 (explaining the requirement that “the misdescription materially affect the public’s decision to purchase the goods”); 15 U.S.C. § 1052(e)(3) (prohibiting registration of a mark that “when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them”). *Spirits* was an appeal of the Board’s refusal to register a mark—MOSKOVSKAYA—for vodka. 563 F.3d at 1349-50.

Spirits noted that for the doctrine of foreign equivalents, “[t]he ‘ordinary American purchaser’ is not limited to only those consumers unfamiliar with non-English languages; rather, the term includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” 563 F.3d at 1352. At the same time, “[t]here may be many non-English marks that will not be translated in context but instead accepted at face value by the ordinary American consumer, including those familiar with the literal meaning of the mark in the non-English language.” *Id.* Thus, “there are situations in which the doctrine does not require translation even with respect to foreign language speakers.” *Id.* Nonetheless, in *Spirits*, the appellant did “not contend that the specific context of the mark is such that an ordinary American purchaser sufficiently familiar with Russian would nonetheless take the mark at face value,” *id.*, and both parties as well as the Court did “not dispute this general requirement of translation under the doctrine of foreign equivalents,” *id.* at 1351. Therefore, *Spirits* explained “[t]hat [translation] is not, however, the end of the inquiry” and proceeded

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to analyze the case as a question of “the scope of the materiality requirement” under subsection (e)(3) for geographic deceptive mis-descriptiveness. *Id.* at 1352-57, 1357 n.5.

3.

Although this Court has noted “cases applying the doctrine of foreign equivalents somewhat differently in [different] contexts,” *Spirits*, 563 F.3d at 1356 n.5 (collecting cases), that does not mean the doctrine is wholly different depending on context. At oral argument, Appellant asserted that this Court has applied the doctrine of foreign equivalents “even-handedly” across the contexts of genericness or descriptiveness and likelihood of confusion. Oral Arg. at 8:02-35. Similarly, the PTO did not identify any differences between the doctrine of foreign equivalents in the contexts of genericness or descriptiveness and likelihood of confusion. *Id.* at 20:59-21:45. Our cases have elaborated on the doctrine of foreign equivalents mostly consistently by relying on overarching principles despite different contexts. For example, *Spirits* noted the stop-and-translate analysis was a “threshold limitation on the application of the doctrine of foreign equivalents,” block-quoting a portion of *Palm Bay*, which, in turn, cited *Northern Paper Mills*. *Spirits*, 563 F.3d at 1351-52 (quoting *Palm Bay*, 396 F.3d at 1377); *see also Palm Bay*, 396 F.3d at 1377 (citing *N. Paper Mills*, 64 F.2d at 999); *see also, e.g., In re Magnesita Refractories Co.*, 716 F. App’x 978, 980 (Fed. Cir. 2017) (considering appeal relating to genericness while relying on *Palm Bay*); 2 McCarthy on Trademarks and Unfair Competition § 12:41

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& nn.8-9 (5th ed.) (explaining the doctrine of foreign equivalents in the genericness context by referencing legal standards for the ordinary American purchaser from *Palm Bay* and *Spirits*).

“Under the ‘doctrine of foreign equivalents,’ foreign words used as a mark are translated into English *and then tested* for descriptiveness, geographic descriptiveness and mis-descriptiveness, genericness, and” likelihood of confusion. 1 McCarthy on Trademarks and Unfair Competition § 11:34 (5th ed.) (emphasis added) (footnotes omitted); *see also* 2 McCarthy on Trademarks and Unfair Competition § 12:41 (5th ed.) (similar). The fact that *after* applying the doctrine of foreign equivalents, the analysis *then* differs depending on trademark context does not mean that the threshold doctrine of foreign equivalents analysis was applied differently.

At oral argument, the PTO stated that the primarily geographically deceptively misdescriptive analysis for Section 2(e)(3)—which has a proportionality requirement for materiality that a substantial portion of the intended audience be deceived—“is distinct from how the doctrine of foreign equivalents is presented.” Oral Arg. at 18:32-19:16; *see also* 15 U.S.C. § 1052(e)(3). The materiality inquiry under Section 2(e)(3) is not the same inquiry as the threshold, doctrine of foreign equivalents, ordinary American purchaser, stop-and-translate inquiry. That does not mean the threshold ordinary American purchaser inquiry varies across trademark contexts. The discussion in *Spirits* of the targeted community’s language skills and the percentage of the U.S. population that speaks Russian

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begins on or after page 1353 of 563 F.3d. None of these pages are cited by the parties in their briefing here. This portion of *Spirits* concerns the scope of the materiality requirement under subsection (e)(3)—not the threshold stop-and-translate analysis of the doctrine of foreign equivalents. 563 F.3d at 1357 n.5 (“In this case we address only subsection (e)(3) and its materiality requirement.”). Compare *id.* at 1351-52, with *id.* at 1353-57.

4.

This case, which is an appeal of a genericness or descriptiveness refusal, does not require us to delineate the precise boundaries of the doctrine of foreign equivalents in every context. The mixture of following and distinguishing precedent, based on the cases at bar, is appropriate for the doctrine of foreign equivalents, which “is not an absolute rule and should be viewed merely as a guideline.” *Palm Bay*, 396 F.3d at 1377.

We now turn to the application of the doctrine of foreign equivalents to this case.

DISCUSSION

On appeal, Appellant contends the Board’s findings rely on an alleged “misapplication of the doctrine of foreign equivalents.” Opening Br. 23. Appellant argues there is not substantial evidence to support the Board’s findings that the proposed marks are generic or highly descriptive.

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The PTO responds that the doctrine of foreign equivalents was properly applied by the Board. The PTO asserts that French is a common, modern language and one with which the ordinary American purchaser is familiar enough to recognize and translate the word for “clothing,” especially when affixed to articles of clothing. The PTO argues that after translating VETEMENTS into the English word, “clothing,” the marks are generic or alternatively merely descriptive as applied to the proposed classes involving articles of clothing and online retail store services for the same.

A.

We conclude that the Board properly considered the proposed marks under the doctrine of foreign equivalents.

1.

We begin by considering whether the ordinary American purchaser would stop and translate the mark into English because *Spirits* states that is “a threshold limitation on the application of the doctrine of foreign equivalents.” *Spirits*, 563 F.3d at 1351 (citing *Palm Bay*, 396 F.3d at 1377).

2.

The Board’s finding that the ordinary American purchaser would stop and translate the marks is consistent with our doctrine, and its underlying factual bases are supported by substantial evidence.

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“[W]ords from modern languages are generally translated into English . . .” *Palm Bay*, 396 F.3d at 1377. “[A] descriptive word, used in one of the modern languages of the principal nations of the world, cannot be properly registered as a trade-mark,” *N. Paper Mills*, 64 F.2d at 999, and “[i]t is immaterial that the name is in a foreign language,” *Weiss Noodle*, 290 F.2d at 847. We hold that unless it is unlikely that the ordinary American purchaser would stop and translate the word into its English equivalent, the doctrine of foreign equivalents applies. We view Appellant’s opposition to translation, which purports to rely extensively on *Palm Bay*, as being unsupported by our caselaw. *Palm Bay* involved two circumstances that weighed against translation. 396 F.3d at 1377. This case presents neither such circumstance, so *Palm Bay* is not analogous. Appellant does not persuade us there is any other circumstance that would weigh against translation.⁸

a.

First, when “an appreciable number of purchasers” are likely to be aware what the foreign word means in English, such circumstance weighs in favor of translation. *Palm Bay*, 396 F.3d at 1376-77 (citation omitted).

The parties dispute the relevant extent to which French is spoken and understood in the United States

8. Besides the contexts mentioned here, there is one other that is not disputed. “[W]ords from dead or obscure languages are [not] to be literally translated into English for descriptive purposes.” *Spirits*, 563 F.3d at 1351 (citation omitted). Appellant concedes it “does not argue that the French language is an obscure or dead language.” Opening Br. 20.

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and the language capability of the ordinary American purchaser—in essence, *who* is the ordinary American purchaser. Appellant asserts that “an ‘ordinary American purchaser’ logically must mean something other than only American purchasers who speak the foreign language.” Opening Br. 17. Appellant argues “only a minute fraction of Americans actually speak French.” Opening Br. 15. This minute fraction means that in the relevant pool of purchasers in the general public, Appellant argues, there is a de minimis chance that the ordinary purchaser would either recognize the French word and know its English equivalent or “stop to hunt down the translation.” Opening Br. 19-21. The PTO responds with U.S. Census Bureau data, also cited by the Board, demonstrating that as of 2010, approximately 2.1 million Americans over the age of five spoke a dialect of French at home. French is also the second most widely taught non-English language in schools in the United States. The PTO also disputes Appellant’s conception of who is the ordinary American purchaser. Rather than considering the general public in its entirety, the PTO argues that the relevant purchaser is a consumer proficient in the foreign language.

It is evident that unlike in *Palm Bay*, here an “appreciable” number of Americans are capable of translating the term VETEMENTS from French into English. Substantial evidence in the record, on which the Board based its findings, demonstrates that, as of 2010, French (including all French dialects) was the fourth most common language spoken in the United States and 2.1 million Americans over the age of five spoke French at home. French was taught to “14% of all students enrolled

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in foreign languages” in elementary grades through high school, and “12.4%” of all American university foreign-language students. Appx341. Additionally, the word in question is a simple and common word—the word for clothing. On the other hand, “widow” requires a more advanced vocabulary. This, therefore, distinguishes this case from the aspect of *Palm Bay* that was premised on “an appreciable number of purchasers [being] unlikely to be aware that VEUVE means ‘widow’” in French, and therefore “unlikely to translate the marks into English.” *Palm Bay*, 396 F.3d at 1377 (emphasis omitted) (citation omitted).

Appellant disputes the Board’s finding that the ordinary American purchaser would stop and translate the marks because Appellant argues there is no showing that a majority of Americans are capable of translating the word. Appellant’s argument is based on parsing the words “ordinary” and “likely” from our cases to reflect “a statistical reference—meaning more than 50%” likelihood as to the overall population. Opening Br. 24-25. We reject Appellant’s proposed test, which is tantamount to the threshold ordinary American purchaser under the doctrine of foreign equivalents requiring a headcount to determine the foreign language skills of the median American purchaser in every case.

Appellant cites no authority from this Court, its predecessor, or other Circuits that have required meeting a 50% population threshold understanding a word nor are we aware of any such authority. Indeed, our cases have held “words from modern languages are generally

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translated into English.” *Palm Bay*, 396 F.3d at 1377 (citing *N. Paper Mills*, 64 F.2d at 999). Our cases have translated and prohibited registration of a descriptive non-English mark regardless of “the idea which [the mark] may, or may not, convey to the general public.” *N. Paper Mills*, 64 F.2d at 998 (citation omitted); *Weiss Noodle*, 290 F.2d at 847 (denying registration of a descriptive mark in Hungarian). Adopting Appellant’s headcount rule would render the doctrine of foreign equivalents inapplicable for all words in non-English languages that are not understood by most Americans. The doctrine of foreign equivalents would be a nullity under Appellant’s 50% rule.

It is enough to demonstrate that an “appreciable” number of Americans are capable of translating the term VETEMENTS from French into English. At this time, we do not need to precisely or rigidly define the ordinary American purchaser’s language skills given the backdrop of well recognized principles in the doctrine of foreign equivalents that we have stated elsewhere in this opinion: “words from modern languages are generally translated into English,” *Palm Bay*, 396 F.3d at 1377, typically “a descriptive word, used in one of the modern languages of the principal nations of the world, cannot be properly registered as a trade-mark,” *N. Paper Mills*, 64 F.2d at 999, and usually “[i]t is immaterial that the name is in a foreign language,” *Weiss Noodle*, 290 F.2d at 847.

Appellant objects to the Examining Attorney’s conclusion in the Examining Attorney’s brief to the Board that “the ordinary purchaser is one that is proficient in French.” Appx423; Opening Br. 7, 12, 22. But the Board

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did not adopt the Examining Attorney's view. Rather, the Board found that "[c]onsumers familiar with French" would be likely to translate the marks because no evidence of record suggested "that 'vetements' is so obscure that it would not be easily recognized and translated." Appx15. The Examining Attorney's and Board's overall findings under the doctrine of foreign equivalents are in accordance with law and supported by substantial evidence. Appellant also makes an unpersuasive argument that "[i]f an ordinary American purchaser is defined as including only American purchasers that speak the subject foreign language, then it seems there would never be a chance that the members of this select subset of purchasers would not translate the word in question." Reply Br. 3. Appellant's alarm is misplaced. We do not define the ordinary American purchaser rigidly, but even if the ordinary American purchaser was defined as a proficient speaker of the foreign language, that does not necessitate translation.⁹ This Court has made clear that sometimes,

9. We note that even to native speakers, not every word is known in their native language. We believe that is another reason to avoid a rigid definition of the language skills of the ordinary American purchaser. A rigid definition could necessitate an entirely separate inquiry into whether at least 50% of the native speakers of a given foreign language understand a certain word in their native language. For comparison, consider the English word "vestment." *Vestment*, Webster's Third New International Dictionary 2547 (2002) ("a liturgical garment"). It is derived from the same Latin word (*vestimentum*) as the French word, *vêtement*. Compare *id.*, with *Vêtement*, Dictionnaire de l'Académie française, available at <https://www.dictionnaire-academie.fr/article/A9V0629> [<https://perma.cc/6Q59-526H>]. Additionally, like the English word clothing, vestment is translated into French as *vêtement*. *Clothing*, Cassell's

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a “literal translation would be irrelevant to even those ordinary American consumers who speak” the foreign language, for example, because of context. *Spirits*, 563 F.3d at 1352 (first citing *Palm Bay*, 396 F.3d at 1377; then citing *Cont’l Nut Co. v. Cordon Bleu*, 494 F.2d 1397, 1398 (C.C.P.A. 1974); and then citing *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26).

b.

Second, we consider if the context in which the words appear would cause the ordinary American purchaser to take the “VETEMENTS” marks at face value in French (i.e., not to translate). *See Palm Bay*, 396 F.3d at 1377.

Appellant argues that even if the Board correctly defined the ordinary American purchaser, she would not stop and translate the marks because of the specific context. Appellant argues that in this context, the marks “are displayed on fungible goods and in a manner that would readily be perceived as a trademark, rather than as describing the goods.” Opening Br. 25. To support this claim, Appellant asserts its marks are “used in a trademark fashion, rather than in non-trademark prosaic textual context,” “the trademark is the same as the trade name under which Appellant operates,” and

French Dictionary pt. 2, at 86 (1981); *Vestment*, Cassell’s French Dictionary pt. 2, at 605 (1981). We do not need to determine how many English speakers know the meaning of the English word “vestment,” nor does the doctrine of foreign equivalents require us to determine what percentage of foreign language speakers know the meaning of any given word in their native language.

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“there is no resemblance between the words ‘vetements’ and ‘clothing.’” Opening Br. 26. The PTO disagrees. The PTO cites several media materials, also relied on by the Board, relating to Appellant, which note the direct English translation to clothing. Response Br. 17-18. The PTO further argues that because “vetements” is a direct translation of a common English word “clothing,” that bears a direct relationship to the goods and services covered by Appellant’s proposed marks, this is a situation where it is both feasible and likely that consumers would translate VETEMENTS. Response Br. 20-21.

Courts have held that “situations arise in the marketplace which make it unfeasible or even unlikely that purchasers will translate the brand names or labels,” *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26. In *Palm Bay*, the word VEUVE constituted part of a proposed mark for sparkling wine. 396 F.3d at 1370. The Court agreed with the Board’s finding that even those familiar with French are unlikely to stop and translate the mark, VEUVE, into “widow” in English. *Id.* at 1377. *Palm Bay* and *Tia Maria* are distinguishable. *Palm Bay*, 396 F.3d at 1370, 1377; *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26. The word “widow” is not closely associated with wine, nor is “Aunt Mary” with food or restaurants. *Palm Bay*, 396 F.3d at 1370; *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26. Further, in *Tia Maria*, the consumer would be unlikely to translate the Spanish-language mark when encountering it upon dining at the applicant’s “restaurant in Mexican decor and surrounded by a menu of Mexican delicacies.” *Tia Maria*, 188 U.S.P.Q. (BNA) at 526.

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Here, by contrast, the context is one in which taking the marks at face value (without translation) is unlikely because the context is clothing and the proposed marks mean clothing. The Board considered the context in which consumers would encounter the proposed VETEMENTS marks, namely “in an ornamental manner on [Appellant’s] clothing and also in advertisements for its clothing and clothing-related services.” Appx13. The Board reasonably found that an ordinary American purchaser would likely stop and translate the marks “when encountering [them] used in connection with [Appellant]’s identified clothing and clothing-related retail services.” Appx15. We agree that “*vêtement*” is closely associated with clothing because it is the French word for clothing. For that reason, *Palm Bay* and *Tia Maria* do not persuade us that an ordinary American purchaser would not translate the French word for “clothing” in the context of clothing. *Palm Bay*, 396 F.3d at 1370, 1377; *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26.

3.

We next consider Appellant’s contention that the marks should not be translated because they are arbitrary and fanciful. *See generally Real Foods*, 906 F.3d at 973 (“Terms that are suggestive, arbitrary, or fanciful are ‘inherently distinctive’ and therefore registrable.” (citation omitted)). The PTO responds that Appellant forfeited this argument by failing to raise it with the Board. Even if not forfeited, Appellant’s citation to *Menendez v. Holt*, 128 U.S. 514, 520, 9 S. Ct. 143, 32 L. Ed. 526, 1889 Dec. Comm’r Pat. 344 (1888), for the proposition that its

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marks, as well as any foreign-word marks, are fanciful, inherently registrable, and should not be translated, falls flat. *Menendez* concerned the foreign language phrase “La Favorita,” which was “equivalent to the signature of [the trademark owner] to a certificate that the flour was the genuine article which had been determined by them to possess a certain degree of excellence.” *Menendez*, 128 U.S. at 520. Appellant takes *Menendez* out of context to suggest that foreign language marks cannot have the foreign equivalents doctrine applied to them based on one part of one sentence in *Menendez* in which the Supreme Court said the mark did not “in itself, indicate quality, for it was merely a fancy name and in a foreign language.” *Id.* Appellant’s out-of-context quote is not *Menendez* elaborating on arbitrary and fanciful non-English marks. A more complete quote is:

 [“La Favorita”] did not, of course, in itself, indicate quality, for it was merely a fancy name and in a foreign language, but it evidenced, that the skill, knowledge and judgment of [the trademark owner] had been exercised in ascertaining that the particular flour so marked was possessed of a merit rendered definite by their examination and of a uniformity rendered certain by their selection. . . . And the fact that flour so marked acquired an extensive sale, because the public had discovered that it might be relied on as of a uniformly meritorious quality, demonstrates that the brand deserves protection rather than that it should be debarred therefrom, on the ground, as argued, of being indicative of quality only.

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Menendez, 128 U.S. at 520-21. *Menendez* is inapposite to Appellant’s arbitrary-and-fanciful-trademark argument.

Further, we need not opine on whether a foreign word can, on its face in the foreign language, be deemed arbitrary or fanciful. Here, substantial evidence supports the Board’s finding that “vetement” has an easily recognizable direct translation and is not “an idiom which is not equivalent to its direct English translation.” Appx9, 15.

4.

Finally, we consider if an ordinary American purchaser would not stop and translate the marks because, under Appellant’s argument, it has “established substantial secondary meaning in the fashion industry” due to extensive sales and long use of the marks, Opening Br. 36, or as Appellant also asserts, the “appearance” and “design features” of its stylized mark are “instantly recognizable” and make “a unique commercial impression,” Opening Br. 28-30; *see In re Vox Populi Registry Ltd.*, 25 F.4th 1348, 1353 (Fed. Cir. 2022) (“Design or stylization may make an otherwise unregistrable mark registrable if the features ‘create an impression on the purchasers separate and apart from the impression made by the words themselves.’” (citation omitted)). The Board considered acquired distinctiveness and whether the stylized mark would make a separate commercial impression, and it held against Appellant based on substantial evidence. *See generally* 15 U.S.C. § 1052(f). Appellant does not challenge the underlying findings made by the Board, but instead

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asks this Court to reweigh evidence, which we decline to do because it is beyond the scope of our review on appeal.

5.

In sum, Appellant has not identified a sufficient reason that it would be unlikely that the ordinary American purchaser would stop and translate the word into its English equivalent.

Above, we distinguished *Palm Bay* based on two circumstances that weighed against translation in that case, but which are not present here. 396 F.3d at 1377; *see supra* Discussion A.2.a-b. Additionally, above, we discussed why two contentions Appellant makes against translation (arbitrary and fanciful, and secondary meaning) are unpersuasive. *See supra* Discussion A.3-4. We think it prudent to further distill the core principles relevant to analyzing the “threshold limitation on the application of the doctrine of foreign equivalents” of whether the ordinary American purchaser would stop and translate the mark into English. *Spirits*, 563 F.3d at 1351-52 (quoting *Palm Bay*, 396 F.3d at 1377). The guiding principles we identify here are nonexclusive and do not preclude the application of other principles where demanded by the particular circumstances of future cases.

First, the burden is on the party opposing translation to show that it is unlikely the ordinary American purchaser would stop and translate the word into its English equivalent. Placing the burden on a party opposing translation takes into account the well-

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recognized tenet that “words from modern languages are generally translated into English.” *Palm Bay*, 396 F.3d at 1377; *see also Spirits*, 563 F.3d at 1351 (acknowledging the undisputed “general requirement of translation under the doctrine of foreign equivalents”); *N. Paper Mills*, 64 F.2d at 999; *Weiss Noodle*, 290 F.2d at 847.

Second, we consider the capability of the U.S. population to translate the word. *See supra* Discussion A.2.a. As long as an appreciable number of Americans, from the U.S. population as a whole, are capable of translating the word, the word likely will be translated. This principle does not require an absolute majority of the population being capable of translation because it takes into account that “words from modern languages are generally translated into English.” *Palm Bay*, 396 F.3d at 1377; *see also Spirits*, 563 F.3d at 1351; *N. Paper Mills*, 64 F.2d at 999; *Weiss Noodle*, 290 F.2d at 847; *cf. Palm Bay*, 396 F.3d at 1377 (“[A]n appreciable number of purchasers are unlikely to be aware that VEUVE means ‘widow’ An appreciable number of U.S. consumers either will or will not translate VEUVE into ‘widow’” (citation omitted)).

Third, we consider whether in context, the mark would ordinarily be translated by a purchaser (from the U.S. population as a whole) with *ordinary sensibilities*. *See supra* Discussion A.2.b. Because the second principle considers language capability, this third principle does not depend on linguistic capabilities. Instead, it assumes linguistic ability but asks whether a purchaser with *ordinary sensibilities* would translate the word given the

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context in which the mark is used. This follows from cases that have articulated sometimes even a native speaker would not perform a literal translation because it would be irrelevant in the context of the specific goods, services, or market. *Spirits*, 563 F.3d at 1352; *Palm Bay*, 396 F.3d at 1377; *Tia Maria*, 188 U.S.P.Q. (BNA) at 525-26.

Here, under these principles, Appellant has not met its burden to show that the marks are unlikely to be translated, and thus, the doctrine of foreign equivalents applies. The doctrine of foreign equivalents, once applied, requires the translation of “foreign words from common languages . . . into English to determine genericness [or] descriptiveness.” *Palm Bay*, 396 F.3d at 1377; 1 McCarthy on Trademarks and Unfair Competition § 11:34 (5th ed.) (“Under the ‘doctrine of foreign equivalents,’ foreign words used as a mark are translated into English and then tested for descriptiveness . . . [and] genericness . . .” (footnotes omitted)). Therefore, we next consider whether the marks, translated from French as “clothing,” are generic or descriptive.

B.

The Board did not err in concluding that as translated under the doctrine of foreign equivalents, the VETEMENTS marks are unregistrable. The PTO argues that the Board’s findings on genericness should be affirmed because the relevant public would understand the term “VETEMENTS,” translated as “clothing” as a term that primarily refers to the genus of goods or services identified in Appellant’s applications: namely, clothing

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items and online retail store services featuring clothing. Appellant argued to the Board that, even when translated, its marks are “inherently distinctive because the term ‘clothing’ does not describe the [Appellant’s] goods and services.” Appx16 (citation omitted). Instead, Appellant argued to the Board, it had applied for “specific items” rather than the general category of clothing. Appx16 (citation omitted). The Board was unpersuaded by this argument as Appellant did “not dispute that its goods are articles or pieces of clothing, or that its online retail store services feature articles or pieces of clothing.” Appx16. Now on appeal, Appellant does not raise the argument about the specific goods and services for which it applied. More generally, Appellant only superficially disputes in this appeal that its marks are generic or descriptive if translated into “clothing” by merely alleging in a conclusory fashion a lack of substantial evidence.

A term is generic, and thus precluded from registration on the Principal Register, when the “relevant public primarily use[s] or understand[s] the term sought to be protected to refer to the genus of goods or services in question.” *H. Marvin Ginn*, 782 F.2d at 989-90. Substantial evidence supports the Board’s finding that, as translated to “clothing,” the marks are generic. Each mark is the same word as the genus of products in which the proposed marks appear: that is, Appellant’s “[s]hirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes, boots, waist belts, t-shirts, pants, blouses, dresses” in International Class 25 and “[o]nline retail store services for” the same in International Class 35. Appx51-58; Appx478-84; Appx1-3.

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Because it is generic, the word “clothing” is “incapable of indicating source.” *Hotels. com*, 573 F.3d at 1302.

Because the marks are generic, we need not reach the Board’s alternative holding that the marks are merely descriptive without acquired distinctiveness. Because a generic mark is “the ultimate in descriptiveness,” it “cannot acquire distinctiveness.” *Real Foods*, 906 F.3d at 972 & n.3 (quoting *Royal Crown*, 892 F.3d at 1366). Nonetheless, we note that we see no error in the Board’s reasoning that the proposed VETEMENTS marks fall within the statutory bar of registration under Section 2(e) and (f) for merely descriptive words without acquired distinctiveness. 15 U.S.C. § 1052(e), (f). “The name of a thing is the ultimate in descriptiveness.” *Weiss Noodle*, 290 F.2d at 847 (citation omitted).

Therefore, the Board did not err in concluding that the VETEMENTS marks are unregistrable.

CONCLUSION

We have considered the parties’ remaining arguments and find them unpersuasive or unnecessary to reach. Accordingly, the Board affirming the Examining Attorney’s refusal to register Appellant’s marks is

AFFIRMED.

**APPENDIX B — OPINION OF THE UNITED
STATES PATENT AND TRADEMARK OFFICE
IN THE TRADEMARK TRIAL AND APPEAL
BOARD, DATED APRIL 21, 2023**

UNITED STATES PATENT AND
TRADEMARK OFFICE

Trademark Trial and Appeal Board

IN RE VETEMENTS GROUP AG.

Serial Nos. 88944198 and 88946135

Mailed: April 21, 2023

This Opinion is not a Precedent of the TTAB

Before Cataldo, Bergsman and Lynch, Administrative
Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Vetements Group AG, seeks registration
on the Principal Register of the proposed marks
VETEMENTS (in standard characters)¹ and **VETEMENTS**²
(in stylized form), both identifying:

1. Application Serial No. 88944198 was filed on June 2, 2020,
amended to seek registration under Section 1(a) of the Trademark
Act, 15 U.S.C. § 1051(a), claiming first use and first use in commerce
at least as early as July 28, 2014, for the goods and services in both
International Classes.

2. Application Serial No. 88946135 was filed on June 3, 2020,
amended to seek registration under Section 1(a) of the Trademark

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Shirts, skirts, sweaters, coats, jackets, suits, caps being headwear, headwear, hats, hoods, visors being headwear, scarves, gloves, shoes, boots, waist belts, T-shirts, pants, blouses, dresses in International Class 25; and

Online retail store services for shirts; skirts; sweaters; coats; jackets; suits; caps; head wear; hats; hoods; visors; scarves; gloves; shoes; boots; waist belts; T-shirts; pants blouses; dresses in International Class 35.³

In both applications, Applicant submitted the following translation of the term comprising the mark: “The English translation of ‘vetements’ in the mark is ‘clothing.’” As discussed in greater detail below, Applicant amended both

Act, 15 U.S.C. § 1051(a), claiming first use and first use in commerce at least as early as July 28, 2014, for the goods and services in both International Classes. Applicant submitted the following description of the mark: “The mark consists of the word ‘vetements’ in capital block lettering in customized font.”

3. We observe that the semicolons in Applicant’s recitation of Class 35 services should be commas. “In general, commas should be used in the identification to separate items within a particular category of goods or services.” TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMPE) Section 1402.01(a). *See also*, e.g., *In re Midwest Gaming & Entm’t LLC*, 106 USPQ2d 1163, 1166 (TTAB 2013) (because a semicolon separated the two relevant clauses in registrant’s identification, its “restaurant and bar services” is a discrete category of services that stands alone and independently as a basis for likelihood-of-confusion analysis, and is not connected to nor dependent on the services set out on the other side of the semicolon).

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applications to submit a claim of acquired distinctiveness in the alternative under Trademark Act Section 2(f), 15 U.S.C. § 1052(f).

The Trademark Examining Attorney issued a final refusal of registration in both applications as to the Class 25 goods and Class 35 services⁴ on the following grounds:

- 1) the proposed mark is generic under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§ 1051, 1052, 1053 and 1127; and
- 2) if found to be not generic, the proposed mark highly descriptive with an insufficient showing of acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. § 1052(f).⁵

Applicant timely appealed and submitted a request for reconsideration in both cases. The appeal is fully briefed.

4. The involved applications originally identified additional goods and services that are not subject to the refusals of registration and were divided into child applications.

5. 8 TTABVUE 5 (Examining Attorney's brief). Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer.

TTABVUE references refer to the Board's docket system.

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We affirm the genericness and alternative mere descriptiveness refusals and the Examining Attorney's determination that Applicant's showing under Section 2(f) is insufficient to establish acquired distinctiveness.

I. Proceedings Consolidated

When, as here, an applicant has filed ex parte appeals to the Board in two copending applications, and the cases involve common issues of law or fact and are presented on the same record, the Board, upon request by the applicant or examining attorney or upon its own initiative, may order the consolidation of the appeals for purposes of briefing, oral hearing, or final decision. *See, e.g., In re S. Malhotra & Co.*, 128 USPQ2d 1100, 1102 (TTAB 2018) (Board sua sponte consolidated two appeals); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) (2022) § 1214 and authorities cited therein.

Accordingly, the Board consolidates these appeals. References to the record refer to Application Serial No. 88944198 unless otherwise indicated.

II. Evidentiary Matter

The Examining Attorney submitted several pages of evidence as exhibits to his appeal brief.⁶ To the extent these exhibits are duplicative of evidence previously submitted during prosecution, we need not and do not

6. 8 TTABVUE 19-54.

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give this redundant evidence any consideration. Any of the evidence submitted with the Examining Attorney's appeal brief that was not previously submitted during prosecution is untimely and will not be considered.⁷

III. Genericness

A generic term “is the common descriptive name of a class of goods or services.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)); *see also United States PTO v. Booking.com B.V.*, 140 S. Ct. 2298, 207 L. Ed. 2d 738, 2020 U.S.P.Q.2d (BNA) 10729, *1 (2020).

Any term that the relevant public uses or understands to refer to the genus of goods or services, or a key aspect or central focus or subcategory of the genus, is generic. *Royal Crown Co., Inc. v. The Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046-1047 (Fed. Cir. 2018). “[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer

7. *See* Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d) (“The record in the application should be complete prior to the filing of an appeal. Evidence should not be filed with the Board after the filing of a notice of appeal.”). The proper procedure for an applicant or examining attorney to introduce evidence after an appeal has been filed is to submit a written request with the Board to suspend the appeal and remand the application for further examination. *Id.* *See also* TBMP § 1207.02 and authorities cited therein.

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to the broad genus as a whole.” *In re Cordua Rests.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (holding CHURRASCOS, a word that is generic for a type of grilled meat, to be generic for restaurant services because it referred to a key aspect of those services); *see also In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1535 (Fed. Cir. 2009) (“hotels” identified the “central focus” of online lodging information and reservation services and therefore HOTELS.COM found generic).

Because generic terms “are by definition incapable of indicating a particular source of the goods or services,” they cannot be registered as trademarks. *Id.* (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001)). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Id.* (quoting *Marvin Ginn*, 228 USPQ at 530).

Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *Marvin Ginn*, 228 USPQ at 530. *See also Princeton Vanguard*, 114 USPQ2d at 1829 (“there is only one legal standard for genericness: the two-part test set forth in *Marvin Ginn*”). “An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole.” *Id.* at 1831 (quoting *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005)). *See also Booking.com*, 2020

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USPQ2d 10729, at *5 (“whether ‘Booking.com’ is generic turns on whether that term, taken as a whole, signifies to consumers the class of online hotel reservation services”).

A term may be generic if it refers to part of the claimed genus of services. *Cordua Rests.*, 118 USPQ2d at 1638 states:

[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole. Thus, the term “pizzeria” would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants. *See, e.g., Northland Aluminum*, 777 F.2d at 1561⁸ (affirming the TTAB’s determination that BUNDT is generic “for a type of ring cake”); *In re Analog Devices, Inc.*, 6 U.S.P.Q.2d (BNA) 1808, 1810, 1988 WL 252496, at *3 (TTAB 1988) (“There is no logical reason to treat differently a term that is generic of a category or class of products where some but not all of the goods identified in an application fall within that category.”), *aff’d*, 871 F.2d 1097 (Fed. Cir. 1989) (unpublished); *see also Otokoyama Co., Ltd. v. Wine of Japan Imp., Inc.*, 175 F.3d 266, 271 (2d Cir.1999) (“Generic words for sub-classifications

8. *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

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or varieties of a good are [] ineligible for trademark protection.”). ... A “term need not refer to an entire broad species, like ‘cheese’ or ‘cake,’ in order to be found generic.” 1-2 Anne Gilson LaLonde, *Gilson on Trademarks* § 2.02[7][a] (2011).

In an ex parte appeal, the USPTO has the burden of establishing that a mark is generic and, thus, unregistrable. *In re Hotels.com*, 573 F.3d 1300, 91 USPQ2d 1532 at 1533; *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987); *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987).

a. The Genus of the Goods and Services

“[O]ur first task is to determine, based upon the evidence of record, the genus of Applicant’s [goods and services]” *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1600 (TTAB 2014). Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, generally “a proper genericness inquiry focuses on the description of [goods and] services set forth in the [application or] certificate of registration.” *Magic Wand Inc. V. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991), citing *Octocom Sys., Inc. v. Houston Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *see also In re Reed Elsevier Props.*, 482 F.3d 1376, 82 U.S.P.Q.2d (BNA) 1378, 1380 (Fed. Cir. 2007); *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018).

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In this appeal it is undisputed that the identifications of Class 25 goods and Class 35 services define the genus of goods and services at issue.

b. The Relevant Purchasers of Applicant's Goods and Services

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to the genus of goods or services under consideration. “The relevant public for a genericness determination is the purchasing or consuming public for the identified goods [and services].” *Princeton Vanguard, LLC*, 124 USPQ2d at 1187 (citing *Magic Wand*, 19 USPQ2d at 1553); *Sheetz of Del., Inc. v. Doctor's Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013). Based on the recitations of goods and services, we find that the consuming public of Applicant's clothing goods in Class 25 and online retail store services in the field of clothing in Class 35 is the general public.

Such “ordinary American purchaser” in a case involving a foreign language mark includes purchasers knowledgeable in English as well as the pertinent foreign language(s). *See In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006) (“The ‘ordinary American purchaser’ in this context refers to the ordinary American purchaser who is knowledgeable in the foreign language”); *see also In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647-48 (TTAB 2008) (“The Board has determined that the ‘ordinary American purchaser’ in a case involving a foreign language mark refers to the ordinary American purchaser who is

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knowledgeable in English as well as the pertinent foreign language.”).

c. The Relevant Purchasing Public’s Understanding of VETEMENTS

We next turn to consider whether VETEMENTS is understood by the relevant public primarily to refer to:

Shirts, skirts, sweaters, coats, jackets, suits, caps being headwear, headwear, hats, hoods, visors being headwear, scarves, gloves, shoes, boots, waist belts, T-shirts, pants, blouses, dresses; and

Online retail store services for shirts; skirts; sweaters; coats; jackets; suits; caps; head wear; hats; hoods; visors; scarves; gloves; shoes; boots; waist belts; T-shirts; pants blouses; dresses.

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown*, 127 USPQ2d at 1046 (citing *In re Merrill Lynch*, 4 USPQ2d at 1143); *see also In re Cordua Rests.*, 118 USPQ2d at 1634; *Princeton Vanguard*, 114 USPQ2d at 1830; *In re Reed Elsevier*, 82 USPQ2d at 1380 (finding third-party websites competent sources for determining what the relevant public understands mark to mean).

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Samples from the evidence of record are attached as an appendix to this decision.

d. Meaning of “vetements”

Determining whether a term is generic is fact intensive and depends on the record. *See In re Tennis Indus. Ass’n*, 102 USPQ2d 1671, 1680 (TTAB 2012); *see also Royal Crown v. Coca-Cola Co.*, 127 USPQ2d at 1044 (“Whether an asserted mark is generic or descriptive is a question of fact” based on the entire evidentiary record). As noted above, we must give due consideration to the evidence of consumer perception of the use of the proposed marks as a whole. *Princeton Vanguard*, 114 USPQ2d at 1831 (quoting *In re Steelbuilding.com*, 75 USPQ2d at 1421 (“An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole. Even if each of the constituent words in a combination mark is generic, the combination is not generic unless the entire formulation does not add any meaning to the otherwise generic mark.”)).

Based upon the evidence appended below, there is no question on this record that VETEMENTS or **VETEMENTS** is a French language term that literally and directly translates into English as “clothing.”⁹ Applicant acknowledges this meaning in its subject applications and does not otherwise dispute this literal meaning of the term comprising its proposed marks. It further is undisputed on this record that consumers of Applicant’s goods and

9. August 13, 2020 Office Action at TSDR 5-8.

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services as well as media outlets and commentators in the clothing and fashion industries recognize this meaning of Applicant's proposed marks:

- “[T]he brand name itself is literally the French word for ‘clothing.’”¹⁰
- “Pronounced ‘vet-MAHN,’ Vetements is French for ‘clothing.’ The choice of name for the fashion collective was alleged to be one that reflects its original philosophy as having no sub or supra identity, only made for being worn.”¹¹
- “Vetements, meaning clothing in French, is a fitting name for this new Parisian brand focusing on delivering closet staples minus excess frills.”¹²
- “There is something paradoxical about a label whose generic name, intended to steer attention toward the garments it produces (*vetements* is French for clothes), instead, prompts instant curiosity about the people behind it.”¹³
- In Applicant's own words: “We didn't want to use a personal name, but a generic one that expressed our approach. We make up a mixed collective that is

10. November 13, 2020 Office Action at TSDR 8.

11. *Id.* at TSDR 10.

12. *Id.* at TSDR 15.

13. June 3, 2021 Office Action at TSDR 21.

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based in Paris, so ‘Vetements’ came naturally and it really expresses all we want to do in fashion.”¹⁴

Applicant asserts: “The term “generic” in the [above] statement was not an implied admission that the name of the company is generic in a trademark sense.”¹⁵ We do not consider Applicant’s statements to be an admission against interest. Rather, we view the statement as Applicant’s acknowledgment of the literal meaning of its proposed marks.

e. Doctrine of Foreign Equivalents

“Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine genericness, descriptiveness, as well as similarity of connotation in order to ascertain confusing similarity with English word marks.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citations omitted); *In Re Sambado & Son Inc.*, 45 USPQ2d 1312, 1315 (TTAB 1997) (FRUTTA FRESCA is equivalent to “fresh fruit” and thus generic and unregistrable for goods including “fresh fruits”).

The doctrine is not an absolute rule, and is subject to several limitations. It does not apply to words from dead or obscure languages, *In re Spirits Int’l N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1491 (Fed. Cir. 2009), and caution

14. *Id.* at 31.

15. 6 TTABVue 9 (Applicant’s brief).

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is indicated when the foreign term and the English to which it is compared are not exact synonyms, *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983). As a general principle, the doctrine of foreign equivalents is applied in situations in which an American consumer is likely to “stop and translate” foreign words into their English equivalent. (*Palm Bay*, 73 USPQ2d 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)).

As discussed above, Applicant’s marks comprise the French term for “clothing.” Evidence of record indicates that in 2010, approximately 2.1 million Americans over the age of five spoke a dialect of French at home, and that French is the second most widely taught foreign language in schools in the United States.¹⁶ The record further establishes that according to the U.S. Census Bureau, in 2011, 1.3 million Americans over the age of five speak French at home, and an additional 750,000 speak French Creole.¹⁷ Evidence also shows that the number of Americans who speak French (including Patois, Cajun and Creole) at home steadily increased 33% from 1.5 million in 1980 to over 2 million in 2010, although those numbers then slightly declined in 2011.¹⁸ At time of this record, French is the fifth most common non-English language spoken in US households, with approximately 1.3 million speakers over five years old.¹⁹

16. December 3, 2021 final Office Action at 5.

17. May 27, 2022 Request for Reconsideration at TSDR 11-12.

18. *Id.* at TSDR 15-16.

19. *Id.* at TSDR 25-26.

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Applicant argues that its proposed marks are not likely to be translated into English and “disagrees with the Examining Attorney’s position that the doctrine of foreign equivalents applies to Applicant’s Mark[s].”²⁰ Specifically, Applicant argues: “VETEMENTS displayed on an article of clothing (e.g., a t-shirt) would be perceived as a trademark (e.g., brand name or label) rather than describing the article of clothing.”²¹ As displayed in the appendix below, Applicant’s proposed mark appears on labels and packaging for its clothing, in an ornamental manner on its clothing and also in advertisements for its clothing and clothing-related services. The question is not the manner of Applicant’s use, but rather whether consumers will recognize the proposed marks as denoting the generic term “clothing.”²²

Applicant’s rather speculative assertions regarding the manner in which its proposed marks will be perceived are not persuasive. Further, Applicant’s assertions largely “are unsupported by sworn statements or other evidence, and ‘attorney argument is no substitute for evidence.’” *In re OEP Enters.*, 2019 U.S.P.Q.2d (BNA) 309323, *14 (TTAB 2019) (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (internal quotation omitted)). Nor does Applicant cite to any authority for its position that based on its manner of

20. 6 TTABVUE 4.

21. 6 TABVUE 4.

22. The Examining Attorney has not argued that Applicant failed to submit proper specimens of use for its identified goods and services.

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use and also its trade name use, consumers are more likely to perceive them as trademarks and not a generic term.²³

Applicant further relies on *In re Optica Int'l*, 196 USPQ 775 (TTAB 1977) in support of its argument that because “vetements” does not resemble its English equivalent, “clothing,” in appearance or pronunciation, it is less likely “the ordinary American consumer would stop and translate Applicant’s Mark into its English equivalent.”²⁴ Applicant’s reliance upon *Optica* is misplaced. In *Optica*, the Board found “there is no question but that ‘OPTIQUE’ is the French equivalent of the English word ‘OPTIC’.” Moreover, the resemblance between ‘OPTIQUE’ and ‘OPTIC’ is so evident in both sound and appearance that the average member of the public in this country, **whether familiar with the French language or not** will automatically equate the two.” 196 USPQ at 777 (emphasis added). The Board in *Optica* thus found even consumers unfamiliar with the French language would recognize that OPTIQUE is the equivalent of OPTIC. However, *Optica* does not stand for the proposition that a foreign term must resemble in appearance or sound its English equivalent in order for the doctrine of foreign equivalents to apply.

Applicant also argues that the French language is neither commonly nor widely spoken in the United States. Applicant points to the above evidence that out of a 2011 US population of 291 million people over the age of five,

23. 6 TTABVUE 5.

24. 6 TTABVUE 6.

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only 1.3 million speak French,²⁵ and that to “the extent French is spoken, it is significantly less than one percent of the population.”²⁶ We observe that the Census data and other evidence is restricted to individuals over the age of five who speak French at home, and does not include, for instance, students who study French or others conversant in French who do not speak the language at home. Sources documenting the primary language spoken at home should not be confused with the percentages of Americans who speak or comprehend a particular language. The evidence of record thus includes many, but likely not all French speakers living in the United States. However, even if we count only those individuals speaking French at home, the evidence of record indicates approximately 1.3 million such speakers live in the United States. While that may represent a small percentage of US citizens and residents, it nonetheless is a large number of speakers of a modern, living language that is the fifth most commonly spoken non-English language in this country.

We thus find it appropriate to apply the doctrine of foreign equivalents in this case. There is no evidence of record suggesting that the translation in the involved applications is inaccurate, that “vetements” is so obscure that it would not be easily recognized and translated by French speakers in the U.S. marketplace, or that it

25. May 27, 2022 Request for Reconsideration at TSDR 11-12. This contrasts with the 2.1 million people over the age of five who speak French at home in the 2010 census. December 3, 2021 final Office Action at 5.

26. 6 TTABVUE 6.

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is an idiom which is not equivalent to its direct English translation. As noted, Applicant is a Paris-based fashion house using the French term for “clothing” to identify itself. And there can be no doubt that French is a common, modern language. Consumers familiar with French are thus likely to “stop and translate” VETEMENTS or **VETEMENTS** when encountering it used in connection with Applicant’s identified clothing and clothing-related retail services. Nor does Applicant’s minimally stylized **VETEMENTS** mark create a commercial impression that is separate from the French language term for “clothing.” *See generally In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012) (common and prosaic lettering with minimal stylization unlikely to make impression on purchasers). We therefore find Applicant’s mark to be equivalent to the English term “clothing” for purposes of determining genericness. Applicant further argues that its marks and their English equivalent are

inherently distinctive because the term “clothing” does not describe the Applicant’s goods and services. Applicant is not applying to register the mark for clothing or for online retail store services for clothing. Further, Applicant is not applying to register a broad genus of goods or services. Rather, Applicant has applied for specific items such as, for example, shirts, online retail store services for shirts, etc. To the extent Applicant’s items are referenced in the English language relative to the word “clothing,” such items are referred to as “an article of” clothing or “a piece of” clothing. As

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such, the Applicant's Mark is neither generic nor descriptive of the goods and services for which registration is sought.²⁷

However, Applicant does not dispute that its goods are articles or pieces of clothing, or that its online retail store services feature articles or pieces of clothing. We thus are not persuaded by Applicant's somewhat semantic argument that because its recitation of goods and services does not specifically identify "clothing" but rather specific articles of clothing, its marks are inherently distinctive, particularly on the record discussed above. Further, Applicant's reliance upon this tribunal's decision in *In re Atavio*, 25 USPQ2d 1361 (TTAB 1992) (ATAVIO, translating to "the dress and ornamentation of a person," suggestive of jewelry); and a First Circuit decision for an equally unrelated mark is inapposite. As is often noted by the Board and the Courts, each case must be decided on its own merits and we are not bound by decisions in matters involving different marks and different evidentiary records. See *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); see also *In re Kent-Gamebore Corp.*, 59 USPQ2d 1373 (TTAB 2001); *In re Wilson*, 57 USPQ2d at 1871.

Turning to the few third-party registrations submitted by Applicant,²⁸ we accord them little weight. First, none of the registrations consist solely of the term "vetements" or "clothing," but rather include additional

27. 6 TTABVUE 9-10.

28. May 12, 2021 Response to Office Action at TSDR 19-29.

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wording and design elements, such as CLOTHES FOR THE SOUL, SILICLOTHES and PLANE CLOTHES. Second, the eight live registrations are too few from which to reach any conclusion on the genericness of “vetements” in connection with Applicant’s goods and services. Finally, “the Board is not bound by prior decisions of Trademark Examining Attorneys, and ... each case must be decided on its own merits and on the basis of its own record, in accordance with relevant statutory, regulatory and decisional authority.” *In re Nett Designs, Inc.*, 57 USPQ2d at 1567; *see also In re Wilson*, 57 USPQ2d 1863, 1871 (TTAB 2001).

After carefully considering all of the arguments and evidence of record, we find that the relevant public understands the term “vetements” as a term that primarily refers to a genus of clothing items and online retail store services featuring clothing items - and that the proposed marks are generic. *See In re Cordua Rests.*, 118 USPQ2d at 1638; *Marvin Ginn*, 228 USPQ at 530. Because the proposed marks VETEMENTS and **VETEMENTS** are generic when used in connection with the goods and services identified in the application, they are not registrable on the Principal Register.

IV. Mere Descriptiveness

We next address the refusal under Section 2(e)(1), precluding registration of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them.” A term is “merely descriptive if it immediately conveys information

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concerning a quality, characteristic, feature, function, purpose or use” of the goods or services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2017) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); *In re Omniome, Inc.*, 2020 U.S.P.Q.2d (BNA) 3222, *3 (TTAB 2020) (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017)); *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015).

Descriptiveness must be assessed “in relation to the goods [and services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [and services] because of the manner of its use or intended use.” *Bayer AG*, 82 USPQ2d at 1831 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 U.S.P.Q. (BNA) 215, 218 (CCPA 1978)). We must also address the degree of descriptiveness because that bears on the quantity and quality of evidence required to prove acquired distinctiveness, which we discuss below. *See Royal Crown*, 127 USPQ2d at 1045 (instructing Board to first determine whether a proposed mark is highly descriptive rather than merely descriptive before assessing acquired distinctiveness); *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1378 (Fed. Cir. 2018) (same).

We find the proposed VETEMENT and **VETEMENTS** marks highly descriptive in view of the entire record and for the reasons set out above in the genericness discussion. The clarity, quality and quantity of the Examining

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Attorney's evidence persuades us that a mental leap is not needed to determine that the proposed marks refer to Applicant's identified goods and services. Because of the proposed marks' highly descriptive nature, Applicant has a higher burden to establish acquired distinctiveness. *In re Guaranteed Rate, Inc.*, 2020 U.S.P.Q.2d (BNA) 10869, *4 (TTAB 2020).

V. Acquired Distinctiveness

Applicant claims acquired distinctiveness in the alternative under Section 2(f). For the sake of completeness, we consider whether Applicant's asserted marks have acquired distinctiveness based on the entire record, keeping in mind that "[t]he applicant ... bears the burden of proving acquired distinctiveness." *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (citation omitted).

Because we have found the proposed marks highly descriptive, Applicant's burden of establishing a prima facie case of acquired distinctiveness under Section 2(f) is commensurately high. *In re Sausser Summers, PC*, 2021 U.S.P.Q.2d (BNA) 618, *7 (TTAB 2021) (quoting *Royal Crown*, 127 USPQ2d at 1048) ("[T]he greater the degree of descriptiveness the term has, the heavier the burden to prove it has attained secondary meaning."); *GJ & AM*, 2021 U.S.P.Q.2d (BNA) 617, *37-38 ("Highly descriptive terms, for example, are less likely to be perceived as trademarks and more likely to be useful to competing sellers than are less descriptive terms. More substantial evidence of acquired distinctiveness thus will ordinarily

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be required to establish that such terms truly function as source indicators.”); *In re Virtual Indep. Paralegals, LLC*, 2019 U.S.P.Q.2d (BNA) 111512, *10 (TTAB 2019) (“[T]he greater the degree of descriptiveness, the greater the evidentiary burden on the user to establish acquired distinctiveness.”) (quoting *In re Greenliant Sys. Ltd.*, 97 USPQ2d 1078, 1085 (TTAB 2010)).

“To establish acquired distinctiveness, an applicant must demonstrate that relevant consumers perceive the subject matter sought to be registered as identifying the producer or source of the product.” *In re GJ & AM, LLC*, 2021 U.S.P.Q.2d (BNA) 617, *38 (citing *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 120 S. Ct. 1339, 146 L. Ed. 2d 182, 54 USPQ2d 1065, 1068 (2000) and *Stuart Spector Designs Ltd. v. Fender Musical Instruments Corp.*, 94 USPQ2d 1549, 1554 (TTAB 2009)); see also *In re Uman Diagnostics AB*, 2023 U.S.P.Q.2d (BNA) 191, *37 (“[T]o be placed on the principal register, descriptive terms must achieve significance ‘in the minds of the public’ as identifying the applicant’s goods or services - a quality called acquired distinctiveness’ ...” (quoting *Booking.com*, 2020 USPQ2d 10729, at *3)). “Applicant may show acquired distinctiveness by direct or circumstantial evidence.” *GJ & AM*, 2021 USPQ2d 617, at *38-39 (“Direct evidence includes actual testimony, declarations or surveys of consumers as to their state of mind. Circumstantial evidence, on the other hand, is evidence from which we may infer a consumer association, such as years of use, prior registrations, extensive amount of sales and advertising, unsolicited media coverage, and any similar evidence showing wide exposure of the mark to consumers.”).

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We consider the following factors: (1) association of the proposed mark with a particular source by actual purchasers (typically measured by customer surveys); (2) length, degree, and exclusivity of use; (3) amount and manner of advertising; (4) amount of sales and number of customers; (5) intentional copying; and (6) unsolicited media coverage of the product embodying the mark. *Converse, Inc. v. Int’l Trade Comm’n*, 909 F.3d 1110, 128 USPQ2d 1538, 1546 (Fed. Cir. 2018); *GJ & AM*, 2021 USPQ2d 617, at *39 (acknowledging the six factors the Federal Circuit has identified “to consider in assessing whether a mark has acquired distinctiveness”).

We consider all of the Section 2(f) evidence of record as a whole; no single factor is determinative. *Converse*, 128 USPQ2d at 1546 (“All six factors are to be weighed together in determining the existence of secondary meaning.”); *Sausser Summers*, 2021 U.S.P.Q.2d (BNA) 618, *7 (“All six factors are to be weighed together in determining the existence of secondary meaning.”) (quoting *In re Guaranteed Rate, Inc.*, 2020 U.S.P.Q.2d (BNA) 10869, *3 (TTAB 2020)); *GJ & AM*, 2021 USPQ2d 617, at *39 (“On this list, no single fact is determinative ‘[a]ll six factors are to be weighed together in determining the existence of secondary meaning.’”).

Applicant relies on the declaration of its founder and Chief Executive Officer, Mr. Guram Gvasalia,²⁹ which includes the following in support of its Section 2(f) claim:

29. May 12, 2021 Response to Office Action at 30-51.

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- Applicant has used the applied-for marks since 2014 on and in connection with all of its identified goods and services in commerce in or with the United States;
- Applicant and its products under the proposed marks have consistently been ranked in the top ten fashion brands in the world, including a number one ranking in 2016 by global fashion search engine Lyst and The Business of Fashion, and number fourth and third respective rankings in 2017.
- Applicant places the proposed marks on tags, labels and other trademark uses in addition to displaying them as a prominent part of the design of the garments and footwear themselves.
- Applicant and its brand under the applied-for marks currently has 4.1 million followers on Instagram, with 15% of the audience located in the United States.
- Applicant's brand under its proposed marks is very popular with celebrities including Rihanna, Kanye West, Bella Hadid, Selena Gomez, Taylor Swift, and various Kardashians and Jenners.
- Applicant and its goods sold under its proposed marks, and their impact on global

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fashion, have been the subject of hundreds of articles directed at the fashion industry and purchasing public, most of which are distributed in the United States.

- Applicant has collaborated with such brands as Reebok, Tommy Hilfiger, Levi's, Juicy Couture, Eastpak, Champion, Dr. Martens, Mont Blanc, Brioni, DHL, Mackintosh, Disney, Marvel, Pixar, McDonalds, Evian, Planet Hollywood, Carhart, Oakley and the STAR WARS franchise to market goods under its marks.
- Applicant has gained recognition in fashion magazines such as W Magazine, Vogue and Hypebeast for its dramatic and unusual marketing practices, including the use of celebrity lookalikes to model clothes under their marks, holding fashion shows in parking structures and rundown buildings, displaying its products in offbeat ways at prominent clothing stores such as Saks, Harrods, and Dover Street Market.
- Since 2016, Applicant has sold over 110 thousand units of goods to the United States under the involved marks, valued at \$ 31 million wholesale and \$ 95 million retail, not including additional sales to the United States made by online distributors associated with Applicant.

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1. Factor One: Association of the proposed mark with a particular source by actual purchasers (typically measured by customer surveys)

Applicant has not submitted any surveys by which we may assess the association of its proposed marks with a particular source by actual purchasers. Further, Applicant's evidence of recognition accompanying the Gvasalia declaration consists of articles from fashion magazines and websites, not direct evidence from the purchasers of Applicant's goods and services under its involved marks. This evidence discusses the notoriety of Applicant and its products by the fashion industry, but does not indicate that actual purchasers of Applicant's clothing associate its proposed marks with Applicant.

2. Factor Two: Length, Degree, and Exclusivity of Use

Under factor two, the Gvasalia declaration indicates use of the proposed marks since 2014 in U.S. commerce in connection with the identified goods and services.

“While ‘it is true that evidence of substantially exclusive use for a period of five years immediately preceding the filing of an application may be considered prima facie evidence of acquired distinctiveness’ under Section 2(f), *In re Ennco Display Sys., Inc.*, 56 USPQ2d 1279, 1286 (TTAB 2000), the ‘language of the statute is permissive, and the weight to be accorded this kind of evidence depends on the facts and circumstances of

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the particular case.” *In re Uman Diagnostics AB*, 2023 U.S.P.Q.2d (BNA) 191, *41 (TTAB 2023) (citing *Yamaha Int’l Corp.*, 6 USPQ2d at 1004).

Here, evidence of Applicant’s substantially exclusive use since 2014 is not particularly persuasive on the Section 2(f) showing given the high degree of descriptiveness of the proposed marks. *Uman Diagnostics*, 2023 USPQ2d 191, at *41 (“We have discretion to find that evidence of a period of use is insufficient to show acquired distinctiveness, and we do so here because of the highly descriptive nature of Applicant’s proposed mark.”); *In re MK Diamond Prods.*, 2020 U.S.P.Q.2d (BNA) 10882, *20 (TTAB 2020) (“Where, as here, the applied-for mark is highly descriptive or non-distinctive, use for a period of approximately fourteen years is insufficient to establish acquired distinctiveness.”); *Nextel Commc’ns, Inc. v. Motorola, Inc.*, 91 USPQ2d 1393, 1401 (TTAB 2009) (“Even long periods of substantially exclusive use may not be sufficient to demonstrate acquired distinctiveness” depending “on the degree of acquired distinctiveness of the mark at issue.”).

3. Factor Three: Amount and Manner of Advertising

According to the Gvasalia declaration, since 2014 Applicant has advertised its goods and services under the proposed marks at fashion events, on social media and in store signage and displays. Applicant has not disclosed its advertising expenditures or indicated any context of activities and expenditures of other clothiers.

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There also is no evidence regarding the number of advertisements Applicant has run on social media, how long Applicant has promoted its goods and services on social media, or US consumer exposure to Applicant's social media advertising, e.g., advertising impressions. See Trademark Rule 2.41(a)(3) ("advertising expenditures ... identifying types of media and attaching typical advertisements" pertinent to whether a proposed mark has acquired distinctiveness") (emphasis added); *Booking.com v. Matal*, 278 F. Supp. 3d. 891, 919 (E.D. Va. 2017) (finding "compelling" evidence that applicant's "BOOKING.COM branded television commercials ... received 1.3 billion visual impressions from U.S. consumers in 2015 and 1.1 billion impressions in 2016. Its internet advertisements during these years received 212 million and 1.34 billion visual impressions from U.S. customers, respectively. And its 2015 movie theater advertisements received approximately 40 million visual impressions from U.S. customers."); see also *In re Soccer Sport Supply Co.*, 507 F.2d 1400, 184 USPQ 345, 348 (CCPA 1975) ("The advertisements of record do not support an inference of distinctiveness inasmuch as the evidence fails to disclose information from which the number of people exposed to the design could be estimated" including the "circulation of such publications in which the advertisements appear" and "number of advertisements published"); *In re E.I. Kane, Inc.*, 221 USPQ 1203, 1206 (TTAB 1984) (substantial advertising expenditures but "no evidence that any of the advertising activity was directed to creating secondary meaning in applicant's highly descriptive trade name."); *In re Packaging Specialists, Inc.*, 221 USPQ 917, 920 (TTAB 1984) ("[L]arge [advertising] expenditures in this regard

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cannot, per se, establish that the term functions as a mark to identify and distinguish services or goods rendered by an applicant. It is necessary to examine the advertising material to determine how the term is being used therein, what is the commercial impression created by such use and what it would mean to purchasers.”) (quoting *In re Redken Labs., Inc.*, 170 USPQ 526, 529 (TTAB 1971) (internal quotation marks omitted).

Further, Applicant did not introduce any of the advertisements it has run on social media or otherwise, aside from some photographs from fashion events that lack context as to the extent to which they were viewed by consumers.

The Gvasalia declaration indicates that Applicant has 4.1 million followers on Instagram, with 15% of the audience located in the United States. However, Applicant has not indicated whether and to what extent its proposed marks are prominently featured on its Instagram page, the numbers of page views or whether and to what extent page views are from U.S. consumers. The absence of information specific to U.S. consumers aside from their general number reduces the persuasive value of this declaration evidence.

4. Factor Four: Amount of Sales and Number of Customers

According to the Gvasalia declaration, Applicant’s sales under the proposed marks since 2016 amount to 110 thousand units to the United States, valued at \$ 31 million

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wholesale and \$ 95 million retail, exclusive of sales to the U.S. by online distributors. These sales are impressive, but again, Applicant has not introduced evidence regarding its market share or how its goods and services rank in terms of sales by other fashion retailers, so we are unable “to accurately gauge” the level of Applicant’s sales success. *Target Brands v. Hughes*, 85 USPQ2d 1676, 1681 (TTAB 2007); *see also In re MK Diamond Prods.*, 2020 U.S.P.Q.2d (BNA) 10882, *23 (TTAB 2020) (probative value of raw sales figures were diminished due to lack of industry context).

5. Factor Five: Intentional Copying

There is no evidence of third parties intentionally copying Applicant’s proposed marks.

6. Factor Six: Unsolicited Media Coverage of the Services Identified by the Proposed Mark

Mr. Gvasalia declares that Applicant has received extensive media coverage in fashion magazines, blogs and websites resulting from its innovative marketing, collaborations with other designers and brands, and popularity with fashion-conscious celebrities.

However, the number of examples of media coverage introduced by Mr. Gvasalia is not a significant amount of unsolicited media coverage given that Applicant has been using the applied-for marks since 2014. The record also does not include any information regarding the

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circulation of these publications or article impressions, further reducing the weight of this evidence. And while publications like Vogue may be presumed to have large circulations, the record is unclear to what extent publications like Hypebeast and the Business of Fashion would be read inside or outside of fashion circles.

7. Other Relevant Evidence

The testimony of Mr. Gvasalia regarding his understanding of consumer perception is also potentially pertinent. Mr. Gvasalia declares:³⁰

It is my understanding and belief that due to the extensive sales by and popularity of goods of Applicant and the association with Applicant's mark VETEMENTS and the figurative or design mark **VETEMENTS**, the marks VETEMENTS and **VETEMENTS** have achieved recognition by the purchasing public in the United States and elsewhere that is beyond that of being merely a descriptive term. It is my understanding and belief that the purchasing public has come to recognize the marks VETEMENTS and **VETEMENTS** as trademarks for the goods and services of Applicant.

Mr. Gvasalia's averments are legal conclusions drawn by Applicant's witness, and have no probative value. *Cf. Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 576

30. May 12, 2021 Response to Office Action at TSDR 51.

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F.2d 926, 929, 198 USPQ 151, 154 (CCPA 1978) (likelihood of confusion is a legal conclusion, therefore, it cannot be an “admission,” only facts may be admitted; under no circumstances may a party’s opinion . . . relieve the decision maker of the burden of reaching [its] own ultimate conclusion on the entire record); *In re Hester Industries, Inc.*, 230 USPQ 797, 798 (TTAB 1986) (“we are not bound by the applicant’s conclusions on [descriptiveness] any more than we are by the Examining Attorney’s”); *Harco Labs., Inc. v. Decca Navigator Co.*, 150 USPQ 813, 814 n. 2 (TTAB 1966) (Board does not rely on admissions stating legal conclusions). *See also In re Cent. Counties Bank*, 209 USPQ 884, 888 (TTAB 1981) (“The statement[s] by applicant’s officials [of consumer recognition of applied-for term as a source indicator] are self-serving statements that are entitled, under the circumstances herein, to little, if any, probative value on the registrability question.”).

8. Conclusion: Acquired Distinctiveness

Based on a review of all of the evidence of record under the relevant factors, we find that Applicant has failed to demonstrate by a preponderance of the evidence that VETEMENTS or **VETEMENTS** has acquired distinctiveness among relevant U.S. consumers as a source identifier for Applicant’s goods and services. Because of the highly descriptive nature of the proposed marks for Applicant’s goods and services, Applicant’s substantially exclusive use of VETEMENTS and **VETEMENTS** does not carry sufficient weight in the context of Applicant’s evidentiary showing.

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Applicant's declaration and evidence are lacking important information about U.S. consumer exposure to Applicant's promotion and advertising as well as examples of how the mark is used in advertising. Applicant also did not introduce evidence that would provide industry context for its sales figures in industry context further diminishing the probative value of this evidence. *Target Brands v. Hughes*, 85 USPQ2d at 1681; *see also MK Diamond Prods.*, 2020 USPQ2d 10882, at *23.

I. Decision

On the record before us, the proposed marks VETEMENTS and **VETEMENTS** are generic for Applicant's goods and services. Accordingly, we affirm the refusal to register the mark under Sections 1, 2, 3 and 45 of the Trademark Act on the ground that VETEMENTS and **VETEMENTS** are generic for Applicant's goods and services.

We further find that VETEMENTS and **VETEMENTS** are highly descriptive of Applicant's goods and services and Applicant has not established that the designations have acquired distinctiveness as marks for Applicant's goods and services. Accordingly, we affirm the refusal to register Applicant's mark on the Principal Register under Section 2(f), 15 U.S.C. § 1052(f), of the Trademark Act.

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Evidentiary Appendix

1. Examining Attorney's evidence includes:³¹

Submitted with August 13, 2020 Office Action:³²

Screenshot from Google Translation displaying English language translation of “vetements” as “clothing.”

Screenshot from Yandex Translate displaying English language translation of “vetements” as “clothing.”

Submitted with November 13, 2020 Office Action³³

Screenshot of an article, excerpted below, from highsnobiety.com regarding Applicant and its clothing under the VETEMENTS mark:

31. Where the Examining Attorney has introduced duplicate evidence in multiple Office Actions, we cite to the first submission.

32. At TSDR 5-8.

33. At TSDR 7-17.

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Perhaps one of the most talked-about labels in fashion right now, Vetements is currently based in Zurich, Switzerland.

Founded by Georgian fashion designer Demna Gvasalia alongside his brother Guram, who presides as CEO overseeing the brand's business operations, Vetements creates a wide range of menswear and womenswear inspired by everyday fashion and regular people – the brand name itself is literally the French word for “clothing”.

Demna Gvasalia graduated from the Royal Academy of Fine Arts in Antwerp in 2006 and began working as a womenswear designer for Maison Martin Margiela in 2009. Having graduated from the same institution as Martin Margiela and the rest of the Antwerp 6, it might be unsurprising to see many of the same influences and fascinations in Gvasalia's work. In 2012, Gvasalia became head designer for Louis Vuitton's womenswear for 2 years, and then branched off to launch his own label.

WHAT IS THE MEANING OF VETEMENTS?

Pronounced “vet-MAHN,” Vetements is French for “clothing.” The choice of name for the fashion collective was alleged to be one that reflects its original philosophy as having no sub or supra identity, only made for being worn.

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Screenshot of an article, excerpted below, from thefashionspot.com, discussing Applicant and its clothing under the VETEMENTS mark:

[Vetements](#), meaning clothing in French, is a fitting name for this new Parisian brand focused on delivering closet staples minus excess frills. While the brand name may be a bit generic, the brand concept is anything but. Designed by a collective of seven designers who are, more or less, anonymous, the designers usually answer interview questions as a unit, hoping to steer attention away from themselves and exclusively onto the clothes. A cynic may call this a PR stunt and whether or not that's true, it has no doubt contributed to the new brand gaining major traction. Not since Maison Martin Margiela has a brand been thrust into the spotlight shrouded under such intense mystery. Unsurprisingly, each of the designers, all of whom were formerly trained at top design universities across Europe, spent time working at Margiela.

- › It's a sobering reality that even if you want to fight the traditional fashion landscape, as a commercial brand hoping to make profit, you can only do so much, something [Vetements has already discovered](#). "What we try to do is satisfy certain aesthetic, which is independent of trends and tendencies. We deliberately wanted to be a niche brand as globalized fashion threatens individuality of brands. However we are to function within this market so the challenge is to keep our own pace in this ever-changing and oversupplied environment."

Fun Facts

- › The brand started because each of the seven designers felt that fashion was losing a [sense of fun](#).
- › The debut collection was picked up by [nearly 30 retailers](#).
- › Designers may rotate in and out of the collective, so expect [possible shifts in aesthetic](#) in the coming seasons.

Submitted with June 3, 2021 Office Action³⁴

Google dictionary definition of "clothing" as "clothes collectively."

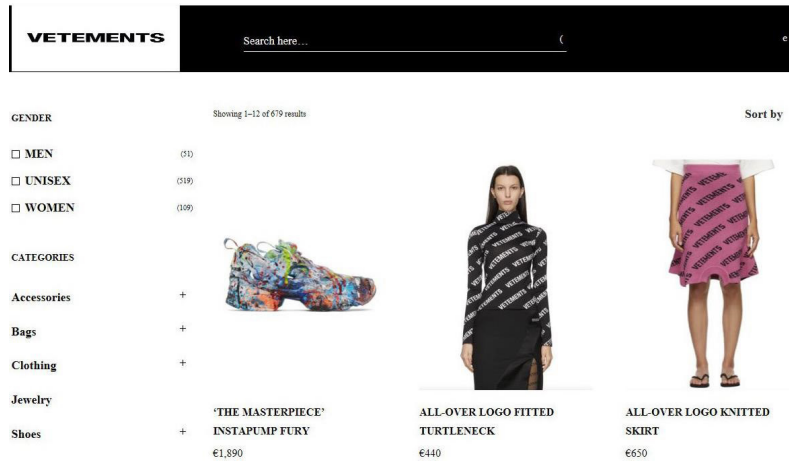
34. At TSDR 7-52.

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Google dictionary definition of “clothes” as “items to cover the body.”

Screenshots from Applicant’s website including the following:



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An article from businessoffashion.com, excerpted below:

PARIS, France — There is something paradoxical about a label whose generic name, intended to steer attention towards the garments it produces (*vetements* is French for clothes), instead, prompts instant curiosity about the people behind it. Indeed, in a city dominated by large luxury houses helmed by prominent designers, each with their personal vision, womenswear ready-to-wear label Vetements quietly stands out for its anonymous and customer-centric approach.

“We decided to think, firstly, of all of the women we wanted to dress, what their preferences are, what length for a skirt, what kind of tailoring shapes, what colours, what essential garments. We thought of our friends, of real people we know and what they would want to wear,” say the seven designers behind the label, who insist on anonymity and communicate as a collective.

Article from glamcult.com, excerpted below:

Shrouded in a veil of ambiguity, **Vetements** stepped out of and into fashion in 2014. A mere year later, the Paris-based “team of individuals” is enchanting both lovers and critics of the fashion arena. The label is like an oxymoron in itself, the garments subtle but outspoken, dreamlike but ironic, eerie but comfortable. Led by curiosity and appreciation, Glamcult got you the nuts and bolts of the stylish collective. Let us introduce you.

Tell us about the name. Why did you go for this straightforward signature?

We didn’t want to use a personal name, but a generic one that expressed our approach. We make up a mixed collective that is based in Paris, so “Vetements” came naturally and it really expresses all we want to do in fashion. The name was a unanimous thought in January 2014, just before the launch of our first collection in March. That was the moment when our thoughts started to materialize.

So when exactly was Vetements born?

In the summer of 2013, Demna Gvasalia [former senior designer at Louis Vuitton and Maison Martin Margiela] founded the brand with a couple of friends and ex-colleagues.

Could you describe your vision in a few words?

Vetements stands for the study of clothes about clothes.

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Article from neueluxury.com, excerpted below:

Gvasalia, together with his CEO brother Guram and a team of like-minded friends and creatives established Vetements in 2014, with what has proved to be the most radical of ideas—they wanted to have fun. And even more astonishingly, their design philosophy is about producing clothes that are relatable, a clever up scaling of street wear basics that have a slightly jarring, 'anti-fashion' edge. A hoodie, jeans, a blue cotton shirt, a leather trench, are all precisely explored and reassembled, with just a nuance of strangeness, such as an overlong sleeve or an exaggerated shoulder line, a process Gvasalia calls "investigative fashion". These are valuable lessons that would have no doubt been made apparent at Margiela, with new ways of seeing, and exploring the functional and the generic—the reason for calling the label 'Vetements' French for 'clothes' being self-evident. With a touch of pragmatism, Gvasalia has mentioned that he is simply making clothes that his friends would like.

Article from vogue.com, excerpted below:

The concept behind Vetements, as the name would imply, is clothing—just clothing. Each season, gaunt-faced models with buzz cuts take Vetements's runways in Paris in reworkings of wardrobe staples: floral dresses, trenchcoats, suits, and jeans. It's a no-frills approach to high fashion, borne from the mind of a collective led by designer Demna Gvasalia, with his brother, Guram, managing the business side of things. And the brand has garnered international acclaim since its 2014 debut.

"We always want to work with existing garments, the things we love—denim coats, double-breasted men's coats, classic evening dresses." [Demna Gvasalia told Vogue](#) in 2016. The label's first item was its [outsize jeans](#). With mismatched knees and jagged hems, the Frankenstein-ed denim became a street style sensation with a price tag—\$1,400—to match.

It was the hoodie with which the collective revitalized fashion, however. Its iconic iteration, a black oversize cut with "Vetements" written across the front in the style of Melilla's logo, was worn by models, editors, and [Beyoncé](#) alike. The brand has since made [sweatshirts that read "Justin Love"](#) (Richie, presumably, not that the 1997 movie [Titanic](#) [called](#) [Dick](#) [himself](#) [has](#) [been](#) [seen](#) [sporting](#) [one](#)).

In 2016, Vetements decided to turn its focus to reviving the fashion calendar, announcing it would be changing up its show schedule to present womenswear and menswear together during Paris's couture weeks in January and July. Its first outing of this kind, for Spring 2017, was a fairly compact set of out-of-the-box looks with the likes of Levi's, ID, Maitres, and [Maison Martin](#). Vetements even managed to make the much-maligned July Couture debut look out cool again. Quite an accomplishment.

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Submitted with December 3, 2021 final Office Action ³⁵

Entry from wikipedia.org regarding French language use in the United States, excerpted below:

French language in the United States

From Wikipedia, the free encyclopedia

For French people in the United States, see French Americans.

The **French language** is spoken as a minority language in the United States. Roughly 2.1 million Americans over the age of five reported speaking the language at home in a federal 2010 estimate,^{[1][2]} making French the fourth most-spoken language in the nation behind English, Spanish, and Chinese (when Louisiana French, Haitian Creole and all other French dialects and French-derived creoles are included, and when Cantonese, Mandarin and other varieties of Chinese are similarly combined).^[3]

Several varieties of French evolved in what is now the United States:

- Louisiana French, spoken in Louisiana by descendants of colonists in French Louisiana
- New England French, spoken in New England by descendants of 19th and 20th-century Canadian migrants
- Missouri French, spoken in Missouri by descendants of French settlers in the Illinois Country
- Muskrat French, spoken in Michigan by descendants of *habitants*, *voyageurs* and *coureurs des bois* in the Pays d'en Haut
- Métis French, spoken in North Dakota by Métis people

More recently, French has also been carried to various parts of the nation via immigration from Francophone regions. Today, French is the second most spoken language (after English) in the states of Maine and Vermont. In Louisiana, it is tied with Spanish for second most spoken if Louisiana French and all creoles such as Haitian are included. French is the third most spoken language (after English and Spanish) in the states of Connecticut, Rhode Island, and New Hampshire.^[24]

As a second language, French is the second most widely taught foreign language (after Spanish) in American schools, colleges and universities.^[25] While the overwhelming majority of Americans of French ancestry grew up speaking only English, some enroll their children in French heritage language classes.

French ancestry [edit]

A total of 10,804,304 people claimed French ancestry in the 2010 census^[26] although other sources have recorded as many as 13 million people claiming this ancestry. Most French-speaking Americans are of this heritage, but there are also significant populations not of French descent who speak it as well, including those from Belgium, Switzerland, Haiti and numerous Francophone African countries.

Newer Francophone immigrants [edit]

In Florida, the city of Miami is home to a large Francophone community, consisting of French expatriates, Haitians (who may also speak Haitian Creole, a separate language which is derived partially from French), and French Canadians; there is also a growing community of Francophone Africans in and around Orlando and Tampa. A small but sustaining French community that originated in San Francisco during the Gold Rush and was supplemented by French wine-making immigrants to the Bay Area is centered culturally around that city's French Quarter.

In Maine, there is a recent increase of French speakers due to immigration from Francophone countries in Africa.^{[26][1]}

Francophone tourists and retirees [edit]

Many retired individuals from Quebec have moved to Florida, or at least spend the winter there. Also, the many Canadians who travel to the Southeastern states in the winter and spring include a number of Francophones, mostly from Quebec but also from New Brunswick and Ontario. Quebecers and Acadians also tend to visit Louisiana, as Quebec and New Brunswick share a number of cultural ties with Louisiana.

Seasonal migrations [edit]

Florida, California, New York, Texas, Louisiana, Arizona, Hawaii, and a few other popular resort regions (most notably Old Orchard Beach, Maine, Kennebunk and Kennebunkport, Maine and Cape May, New Jersey) are visited in large numbers by Québécois, during winter and summer vacations.

Language study [edit]

French has traditionally been the foreign language of choice for English-speakers across the globe. However, after 1968^[13] French has ranked as the second-most-studied foreign language in the United States, behind Spanish.^[13] Some 1.2 million students from the elementary grades through high school were enrolled in French language courses in 2007–2008, or 14% of all students enrolled in foreign languages.^[14]

Many American universities offer French-language courses, and degree programs in the language are common.^[15] In the fall of 2016, 175,667 American university students were enrolled in French courses, or 12.4% of all foreign-language students and the second-highest total of any language (behind Spanish, with 712,240 students, or 50.2%).^[16]

French teaching is more important in private schools, but it is difficult to obtain accurate data because the optional status of languages. Indeed, the study of a foreign language is not required in all states for American students. Some states, however, including New York, Virginia and Georgia, require a minimum of two years of study of a foreign language.



Bilingual exit sign on Interstate 87 in Clinton County, New York, near the U.S.-Canada border with Quebec.

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2. Applicant's evidence includes:

Submitted with May 12, 2021 Response to Office Action³⁶

The May 10, 2021 Declaration of Guram Gvasalia, Applicant's founder and Chief Executive Officer, attesting, inter alia, as follows:

Applicant has been using the marks in the involved applications since 2014 on and in connection with virtually all of its goods and services both as a trademark and on the goods as part of the fashion design as displayed below:



36. At TSDR 19-116.

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Applicant and its goods and services under its involved marks have been featured in such retail stores as Saks 5th Avenue, Harrods, Bergdorf Goodman, Maxfield LA, Dover Street Market, and other installations and events in Paris, London, Zurich, Seoul, Osaka, Beijing, Hong Kong, Bangkok and Moscow. Applicant has been featured in such fashion publications as Vogue, GQ (Gentlemen's Quarterly), W Magazine, WWD (Women's Wear Daily),

Our company produces and sells designer apparel throughout the world, including substantial sales in the United States. Vetements Group was and is highly successful and has been widely recognized throughout the fashion industry as one of the hottest fashion companies of the last several years. Vetements Group and its VETEMENTS brand products have consistently been ranked in the top ten fashion brands in the world. In 2016 VETEMENTS was ranked the number 1 "hottest" fashion brand in the world by global fashion search engine Lyst and The Business of Fashion, and in 2017 was ranked fourth and third by those organizations. In the first quarter of 2017 The Business of Fashion ranked Applicant Vetements Group the number 1 "Hot Brand."

Vetements and its VETEMENTS brand currently has over 4.1 million followers on Instagram, with 15% of the audience based in the United States (the number 1 position among countries).

The VETEMENTS brand is very popular with US-based celebrities including Rihanna, Kanye West, Kim and Kylie Kardashian, Kendal Jenner, Bella Hadid, Selena

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Gomez, Travis Scott and more. As an example, attached as Exhibit 1 is a copy of an article published by PAGE SIX on September 16, 2019, discussing various celebrities who wear VETEMENTS fashion goods. Exhibit 2 is another exemplary article, this article published by Teen Vogue, discussing VETEMENTS fashion apparel being worn by Taylor Swift and Kim Kardashian.

As shown in Exhibit 12 are the logos of a number of the different companies with which Applicant Vetements Group has entered into a collaboration. These companies include Levi's, Reebok, Tommy Hilfiger, Champion, EastPak, Dr. Martens, Juicy Couture, Mont Blanc, Brioni, DHL, Mackintosh, Disney, Star Wars, Marvel, Pixar, McDonalds, Evian, Planet Hollywood, Carhart, Oakley and others.

Applicant Vetements Group has conducted numerous fashion events in the United States and elsewhere around the globe which achieve substantial recognition by the industry and the purchasing public. Those events have generated substantial recognition and fame for the VETEMENTS mark and the **VETEMENTS** logo mark and a unique and unmistakable association of those marks with Applicant and the goods and services of Applicant.

Since 2016, Applicant Vetements Group has itself sold and shipped over about one hundred ten thousand units (110,000 units) of goods to the United States under the design mark **VETEMENTS**. This represents over thirty one million dollars (\$ 31,000,000) of goods at wholesale value, and over ninety five million dollars (\$ 95,000,000)

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of goods at retail value. These numbers do not include the substantial sales and shipments to the United States made by online distributors associated with Applicant Vetements Group, which sales and shipments represent a significant additional volume of sales. Of course, the sales and shipments to the United States by Applicant's predecessor in interest would even further increase volumes to the United States that have been made under the VETEMENTS mark and the **VETEMENTS** design mark. Moreover, this is but a portion of our global sales, which are significantly greater than the sales to the United States alone.

It is my understanding and belief that due to the extensive sales by and popularity of goods of Applicant and the association with Applicant's mark VETEMENTS and the figurative or design mark **VETEMENTS** the marks VETEMENTS and **VETEMENTS** have achieved recognition by the purchasing public in the United States and elsewhere that is beyond that of being merely a descriptive term. It is my understanding and belief that the purchasing public has come to recognize the marks VETEMENTS and **VETEMENTS** as trademarks for the goods and services of Applicant.

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Excerpts from Exhibits to the Gvasalia Declaration: The Influence of Vetements on Fashion

By [Isabel Mundigo-Moore](#)



Photo: via [High Snobiety](#)

Whether you think **Vetements** is a “ridiculous marketing gag” to get you to spend [hundreds on a DHL t-shirt](#), or that they are the [genius](#) collective that the fashion industry very much needed, or [you just don't get it](#), the brand's powerful influence in fashion is undeniable. Helmed by the **Gvasalia** brothers, **Demna** and **Guram**, Vetements (which means *clothes* in French), is a fashion collective that plants itself in pragmatism, ambition, and craftsmanship, producing streetwear-inspired garments in a high-fashion manner. Though having launched just over two years ago, Vetements has both become fashion's darling and its biggest rebel child. The brand has collected celebrities like [Rihanna](#) and **Kanye West** as fans, created an even bigger draw to Paris Fashion Week than any of the Couture shows, and has consequently become the beacon to which pillar brands of the industry look to for what's next.

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Vetements FW 2016 | Photo: Indigital. tv via Vogue

Their most recent show, Spring 2017, which showed during Paris Couture Week, sparked much controversy and conversation. The brand not only showed their collection four months earlier than usual Spring collections, July instead of October, but Vetements also used a highly intense version of collaboration for their show. They did not just collaborate with one brand, but with many brands to complete the show, including **Juicy Couture**, **Canada Goose**, **Commes des Garçons**, **Levi's**, and **Manolo Blahnik**.

Despite being so young, Vetements has not only demanded systematic changes within the industry, but their “low fashion” aesthetic can be seen echoed on runways of designers old and new.


Take for example the Australian brand, **Ex Infinitas**, whose subtle luxury pieces disguised as street wear matches Vetements’s thesis. Vetements’ distinct androgynous look paired with oversized basic street wear garments is very much present in Ex Infinitas’s Spring 2017 show. Likewise, Russian designer and friend of the Vetements family, **Gosha Rubinsky** echoes the pragmatic sensibility of Vetements in his pieces. His Spring 2017 collection featured men in FFLA hoodies, denim jeans, and sneakers.

The Vetements effect even made its way to legacy fashion house **Balenciaga**, when the house appointed Demna Gvasalia as their Artistic Director. With an understanding of the cult-like ability Gvasalia has to enchant the fashion world, the brand gave him full control, meaning he applied his same principles from Vetements to Balenciaga. Honouring **Cristobal Balenciaga** while meeting the design needs of the contemporary woman came easily to Gvasalia, by using his trademark habit of taking the ordinary—puffer coats, tees, hoodies— and making it extraordinary.

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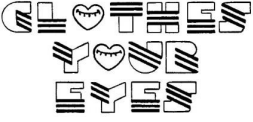
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Third-party registrations for the following registered marks:³⁷

Mark	Reg. No.	Goods
	Principal Reg. No. 2189172 (“ORIGINAL DESIGN” disclaimed; the English translation of “VETEMENTS” is “clothing.”) This registration subsequently expired.	cups in Class 21; clothing, namely, tshirts, sweatshirts, shorts boxers, and aprons in Class 25
CLOTHES FOR THE SOUL	Principal Reg. No. 3023056	Tee shirts, swimwear, shorts, knit tops, knit hats, baseball caps, sandals, shoes, jackets, and sweatshirts in Class 25
I ONLY WORK OUT TO FIT DESIGNER CLOTHES	Supplemental Reg. No. 5905587	Various items of athletic apparel in Class 25

37. All marks appear in standard characters unless otherwise displayed. Applicant also submitted these third-party registrations with its December 1, 2021 Response to Office Action at TSDR 16-26.

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Mark	Reg. No.	Goods
LOVE PEOPLE. LOVE CLOTHES	Principal Reg. No. 5249963	Belts, boots, bottoms, bras, dresses, hats, scarves, tops in Class 25
MONEY, HOES & CLOTHES	Principal Reg. No. 5325063	Various items of apparel in Class 25
SILICLOTHES	Principal Reg. No. 6003985	Blouses, socks, yoga pants in Class 25
THESE ARE MY PLAY CLOTHES	Principal Reg. No. 5469343	Various items of apparel in Class 25
	Principal Reg. No. 1539410 (The lining in the drawing is a feature of the mark and is not intended to indicate color.)	Children's clothing, namely, knit and woven tops and pants, dresses, skirts and sets of the above in Class 25.
PLANE CLOTHES	Principal Reg. No. 2091719	Various items of apparel in Class 25

*Appendix B***Submitted with May 27, 2022 Request for
Reconsideration³⁸**

A 2013 article from the United States Census discussing language use in the United States in 2011, indicating that out of a population of 291 million people over the age of five, 1.3 million speak French, while an additional 750 thousand speak French Creole. The article further states that French, including Patios, Cajun and French Creole, is the fifth most commonly spoken language other than English in the United States, behind Spanish, Chinese, Vietnamese and Tagalog.

Applicant further submitted a 2013 article from the Cultural Services of the French Embassy in the United States, corroborating the 2011 Census information regarding the number of French speakers in the United States.

38. At TSDR 9-27.

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**APPENDIX C — OFFICE ACTION OF THE
UNITED STATES PATENT AND TRADEMARK
OFFICE, DATED JUNE 7, 2022**

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's
Trademark Application**

U.S. Application Serial No. 88946135

Mark: VETEMENTS

Correspondence Address:

Terence J. Linn
GARDNER, LINN, BURKHART & ONDERSMA LLP
2900 CHARLEVOIX DRIVE SE, SUITE 300
GRAND RAPIDS MI 49546 UNITED STATES

Applicant: Vetements Group AG

Reference/Docket No. MOS01 T-147

Correspondence Email Address:

linn@gardner-linn.com

**REQUEST FOR RECONSIDERATION
AFTER FINAL ACTION
DENIED**

Issue date: June 07, 2022

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all

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the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Accordingly, the following requirement(s) and/or refusal(s) made final in the Office action dated December 3, 2021 are **maintained and continued**:

- Descriptiveness/Generic Refusal

See TMEP §§715.03(a)(ii)(B), 715.04(a).

If applicant has already filed an appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If applicant has not filed an appeal and time remains in the six-month response period, applicant has the remainder of that time to (1) file another request for reconsideration that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *See* TMEP §715.03(c).

/Theodore McBride/
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**APPENDIX D — OFFICE ACTION OF THE
UNITED STATES PATENT AND TRADEMARK
OFFICE, DATED DECEMBER 3, 2021**

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's
Trademark Application**

U.S. Application Serial No. 88946135

Mark: VETEMENTS

Correspondence Address:

Terence J. Linn
GARDNER, LINN, BURKHART & ONDERSMA LLP
2900 CHARLEVOIX DRIVE SE, SUITE 300
GRAND RAPIDS MI 49546

Applicant: Vetements Group AG

Reference/Docket No. MOS01 T-147

Correspondence Email Address:

linn@gardnerlinn.com

FINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be *abandoned*. Respond using the Trademark Electronic Application System (TEAS) and/or Electronic System for Trademark Trials and Appeals (ESTTA). A link to the appropriate TEAS response form

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and/or to ESTTA for an appeal appears at the end of this Office action.

Issue date: December 03, 2021

This letter responds to Applicant's communication filed on 11-30-2021. Applicant responded by arguing against the descriptiveness/generic refusal. The assigned examining attorney has reviewed Applicant's response and determined the following. After careful consideration of Applicant's arguments, the examining attorney remains unconvinced. Therefore, the refusal to register is herein made **FINAL**.

Generic/Descriptiveness

Applicant has responded by arguing that the mark is not generic in that the doctrine of foreign equivalents should not be applied in this instance and that the goods are not "clothing" but specific types of clothing. Applicant buttresses this argument by pointing out that the font with which the mark is displayed is unique and that there have been several instances in the registry wherein the term "CLOTHING" was allowed to register in association with clothing type items/services. Applicant also asserts that the mark has acquired distinctiveness.

The examining attorney disagrees for the following reasons.

Marks with foreign terms from a common, modern foreign language are translated into English to determine

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genericness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see *In re Cordua Rests., Inc.*, 823 F.3d 594, 602-03, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016); TMEP §1209.03(g).

Applicant's mark is in FRENCH, which is a common, modern language in the United States. *In re Optica Int'l*, 196 USPQ 775 (TTAB 1977) (French). Specifically, the attached evidence shows that French is the 4th most popular language spoken in the United States, therefore it goes without saying that a large number of U.S. consumers speak this language.

The doctrine is applied when “the ordinary American purchaser” would “stop and translate” the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016).

In this case, the ordinary American purchaser would likely stop and translate the mark because the French language is a common, modern language spoken by an appreciable number of consumers in the United States.

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A term is generic if the relevant public understands the term as referring to the category or genus of the goods and/or services in question. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342, 111 USPQ2d 1495, 1497 (Fed. Cir. 2014); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); see TMEP §1209.01(c). “[A] term [also] is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 1367-68, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018) (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (“the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants”)).

Generic terms do not meet the statutory definition of a trademark because they are incapable of indicating a particular source of goods and/or services and thus cannot be registered. *In re Cordua Rests., Inc.*, 823 F.3d at 599, 118 USPQ2d at 1634 (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) (“Generic terms, by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.”)); TMEP §1209.01(c).

The test for determining whether an applied-for mark is generic is its primary significance to the relevant

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public. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 641, 19 USPQ2d 1551, 1553-54 (Fed. Cir. 1991) (citing *In re Montrachet S.A.*, 878 F.2d 375, 376, 11 USPQ2d 1393-94 (Fed. Cir. 1989)). Making this determination involves a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

In re Cordua Rests., Inc., 823 F.3d 594, 599, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016) (citing *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 990, 228 USPQ 528, 530 (Fed. Cir. 1986)); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services may be defined by an applicant's identification of goods and/or services. *See In re Cordua Rests., Inc.*, 823 F.3d at 602, 118 USPQ2d at 1636 (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1552); *see also In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1361, 1363, 92 USPQ2d 1682, 1682, 1684 (Fed. Cir. 2009).

In this case, the application identifies the goods and/or services as various types of clothing and/or clothing related retail services, which adequately defines the genus at issue.

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Regarding the second part of the inquiry, the relevant public is the purchasing or consuming public for the identified goods and/or services. *The Loglan Inst. Inc. v. The Logical Language Grp.*, 962 F.2d 1038, 1041, 22 USPQ2d 1531, 1533 (Fed. Cir. 1992) (quoting *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1553). In this case, the relevant public comprises ordinary consumers who purchase applicant's goods, because there are no restrictions or limitations to the channels of trade or classes of consumers. The attached evidence from previous office actions that the wording "VETEMENTS" in the applied-for mark means CLOTHING and thus the relevant public would understand this designation to refer primarily to that genus of goods because Applicant's goods fall under the generic designator of CLOTHING.

The trademark examining attorney has established by clear and convincing evidence that the applied-for mark is generic; thus the USPTO's evidentiary burden has been met. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016); *see also In re Hotels. com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009) (USPTO "must demonstrate generic status by clear evidence") (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239-40 (Fed. Cir. 2002) (explaining that "clear evidence" is equivalent to "clear and convincing evidence")); TMEP §1209.01(c)(i).

As for Applicant's argument that the mark is sufficiently stylized to avoid refusal, the examining attorney also rejects this argument. The applied-for mark shows the wording in stylized lettering. Stylized descriptive or

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generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 606, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TMEP §1209.03(w). Common and ordinary lettering with minimal stylization, as in this case, is generally not sufficiently striking, unique, or distinctive as to make an impression on purchasers separate from the wording. *See In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012).

It is noted that Applicant has sought to register the mark based on acquired distinctiveness. Such an move in this instance is improper. Applicant cannot overcome the refusal by submitting a claim of acquired distinctiveness under Trademark Act Section 2(f). *See* 15 U.S.C. §1052(f). Such a claim would be insufficient because “generic terms cannot be rescued by proof of distinctiveness or secondary meaning no matter how voluminous the proffered evidence may be.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1370, 127 USPQ2d 1041, 1048 (Fed. Cir. 2018) (quoting *In re Northland Aluminum Prods.*, 777 F.2d 1556, 1558, 227 USPQ2d 961, 962 (Fed. Cir. 1985)); *see* TMEP §1212.02(i).

Applicant has also included other registrations wherein the term CLOTHING has been allowed to register without issue. The examining attorney rejects this argument for the following reasons. The overwhelming weight of evidence clearly demonstrates that the term CLOTHING is descriptive for clothing items such as

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those Applicant has listed in the identification of goods. Furthermore, the marks that Applicant has included as evidence of registerability are all unitary marks. A mark or portion of a mark is considered “unitary” when it creates a commercial impression separate and apart from any unregistrable component. The test for unitariness inquires whether the elements of a mark are so integrated or merged together that they cannot be regarded as separable. See *In re EBS Data Processing*, 212 USPQ 964, 966 (TTAB 1981); *In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983). The inquiry focuses on “how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1561, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (quoting *In re Magic Muffler Serv., Inc.*, 184 USPQ 125, 126 (TTAB 1974)). The Court of Appeals for the Federal Circuit has set forth the elements of a unitary mark:

A unitary mark has certain observable characteristics. Specifically, its elements are inseparable. In a unitary mark, these observable characteristics must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.

Dena Corp., 950 F.2d at 1561, 21 USPQ2d at 1052. If the matter that comprises the mark or relevant portion of the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required.

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Unlike the marks included in Applicant's response, there is nothing unitary about Applicant's mark. As such, the mark remains generic and the refusal to register is **FINAL**.

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. **Click to file a request for reconsideration of this final Office action** that fully resolves all outstanding requirements and refusals and/or **click to file a timely appeal to the Trademark Trial and Appeal Board (TTAB)** with the required filing fee(s).

/tmm/
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91a

**APPENDIX E — OFFICE ACTION OF THE
UNITED STATES PATENT AND TRADEMARK
OFFICE, DATED JUNE 3, 2021**

Attachment - 45

Attachment - 46

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

U.S. Application

Serial No.

88946135

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VETEMENTS

Correspondence

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Appendix E

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No. MOS01
T-147

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NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: June 03, 2021

This letter responds to Applicant's communication filed on 5-10-2021. Applicant responded by entering a translation of the wording in the mark, amending the identification of goods, making a 2(f) claim and arguing against the determination that the mark is descriptive. The assigned examining attorney has reviewed Applicant's response and determined the following. The translation of the

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mark, and the amendment to the identification of goods has been accepted into the record. However, after careful consideration of Applicant's arguments regarding the claim of acquired distinctiveness and the arguments against the descriptiveness refusal, the examining attorney remains unconvinced. Therefore, the refusal to register is maintained. In addition, the examining attorney now also refuses registration because the mark is generic.

Refusal – Applied-For Mark Is Generic

Registration was initially refused under Trademark Act Section 2(e)(1) because the applied-for mark is merely descriptive of applicant's goods/services. 15 U.S.C. §1052(e)(1). Applicant was also advised that the mark appears to be generic as well. In response, applicant amended the application to add a claim of acquired distinctiveness under Section 2(f). 15 U.S.C. §1052(f).

Registration is now refused because the applied-for mark is generic for applicant's goods/services. Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051, 1052, 1053, 1127; *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a)(ii). Thus, applicant's claim of acquired distinctiveness under Section 2(f) is insufficient to overcome the refusal because "generic terms cannot be rescued by proof of distinctiveness or secondary meaning no matter how voluminous the proffered evidence may be." *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1365, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (quoting *In re Northland Aluminum Prods.*, 777 F.2d 1556, 1558, 227 USPQ2d 961, 962 (Fed. Cir. 1985)); *see* TMEP §1212.02(i).

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A term is generic if the relevant public understands the term as referring to the category or genus of the goods and/or services in question. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342, 111 USPQ2d 1495, 1497 (Fed. Cir. 2014); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); see TMEP §1209.01(c). “[A] term [also] is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 1367-68, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018) (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (“the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants”)).

Generic terms do not meet the statutory definition of a trademark because they are incapable of indicating a particular source of goods and/or services and thus cannot be registered. *In re Cordua Rests., Inc.*, 823 F.3d at 599, 118 USPQ2d at 1634 (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) (“Generic terms, by definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.”)); TMEP §1209.01(c).

“A mark is generic if its primary significance to the relevant public is the class or category of goods or

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services on or in connection with which it is used.” TMEP §1209.01(c)(i) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1600 (TTAB 2014)). Determining whether a mark is generic requires a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

In re Cordua Rests., Inc., 823 F.3d 594, 599, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d at 990, 228 USPQ at 530); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services may be defined by an applicant’s identification of goods and/or services. *See In re Cordua Rests., Inc.*, 823 F.3d at 602, 118 USPQ2d at 1636 (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991)); *see also In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1361, 1363, 92 USPQ2d 1682, 1682, 1684 (Fed. Cir. 2009).

In this case, the application identifies the goods and/or services as various clothing items, namely, shirts, skirts, sweaters, coats, jackets, suits, caps being headwear, headwear, hats, hoods, visors being headwear, scarves,

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gloves, shoes, boots, waist belts, T-shirts, pants, blouses, dresses, as well as retail store services related to those items. Therefore, the term CLOTHING or CLOTHES adequately defines the genus at issue.

Marks with foreign terms from a common, modern foreign language are translated into English to determine genericness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see *In re Cordua Rests., Inc.*, 823 F.3d 594, 602-03, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016); TMEP §1209.03(g).

Applicant's mark is in French, which is a common, modern language in the United States. *In re Optica Int'l*, 196 USPQ 775 (TTAB 1977) (French). The doctrine is applied when "the ordinary American purchaser" would "stop and translate" the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016).

In this case, the ordinary American purchaser would likely stop and translate the mark because the French

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language is a common, modern language spoken by an appreciable number of consumers in the United States.

The term CLOTHING is a collective noun for the word CLOTHES, as in “an item of clothing.” CLOTHING is used to refer to the genus of Applicant’s goods. This is clearly demonstrated by Applicant’s website, wherein the term CLOTHING is used as a general header/category for shopping on said website, as demonstrated by the attached evidence. Specifically, when the CLOTHING link is selected on Applicant’s website, the subcategories are listed as more specific types of clothing, namely, Activewear, Beachwear, Coats, Dresses, Hoodies, Jackets, Jeans, Pants, Shirts, Shorts, Skirts, Socks, Sweaters, T-Shirts, Tops, and Underwear.

A term that is generic for a type of goods has been held generic for the service of selling primarily those goods. *See In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (holding RUSSIANART generic for art dealership services in the field of Russian art); *In re Log Cabin Homes Ltd.*, 52 USPQ2d 1206 (TTAB 1999) (holding LOG CABIN HOMES generic for architectural design of buildings and retail outlets featuring kits for constructing buildings, especially houses); *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) (holding LA LINGERIE generic for retail store services featuring clothing); *In re Wickerware, Inc.*, 227 USPQ 970 (TTAB 1985) (holding WICKERWARE generic for mail order and distributorship services featuring products made

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of wicker); *In re Half Price Books, Records, Magazines, Inc.*, 225 USPQ 219 (TTAB 1984) (holding HALF PRICE BOOKS RECORDS MAGAZINES generic for retail book and record store services); TMEP §1209.03(r).

An applicant's own website and marketing material is also probative and can be "the most damaging evidence" in showing how the relevant public perceives a term. *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957 (TTAB 2018) (citing *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d at 966, 114 USPQ2d at 1831; *In re Gould Paper Corp.*, 834 F.2d 1017, 1019, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

In addition, the examining attorney has found and attached several articles wherein the founders of Applicant's company are quoted as indicating that they purposefully selected the *generic* term for the goods/services. For example, in an interview with GLAMCULT, the founder was asked to talk about the name. The founder's response was "We didn't want to use a personal name, but a generic one that expressed our approach."

Regarding the second part of the inquiry, the relevant public is the purchasing or consuming public for the identified goods and/or services. *The Loglan Inst. Inc. v. The Logical Language Grp.*, 962 F.2d 1038, 1041, 22 USPQ2d 1531, 1533 (Fed. Cir. 1992) (quoting *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1553). In this case, the relevant public comprises ordinary consumers who purchase applicant's goods, because there are no restrictions or limitations to the channels of

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trade or classes of consumers. The evidence in previous office actions, shows that the wording “VETEMENTS” in the applied-for mark means clothing and thus the relevant public would understand this designation to refer primarily to that genus of goods/services because this is the word used to refer to these types of goods/services.

Evidence of the public’s understanding of the term “may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366, 127 USPQ2d 1041, 1046 (Fed. Cir. 2016) (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987)); TMEP §1209.01(c) (i). This includes evidence obtained from electronic sources such as the LEXIS/NEXIS® research database and Internet websites. See *In re Meridian Rack & Pinion*, 114 USPQ2d 1462, 1465-66 (TTAB 2015); *In re Active Ankle Sys., Inc.*, 83 USPQ2d 1532, 1534-37 (TTAB 2007); TBMP §1208.03; TMEP §§710.01(b), 1209.01(c)(i).

In addition, competitor use has been found probative on the issue of genericness. See *BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 1570, 35 USPQ2d 1554, 1558 (Fed. Cir. 1995) (“The cases have recognized that competitor use is evidence of genericness.”) (citing *Remington Prods., Inc. v. N. Am. Philips Corp.*, 892 F.2d 1576, 1578, 13 USPQ2d 1444, 1446 (Fed. Cir. 1990)); *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at *9 (TTAB 2019) (“We find probative the generic uses of the [applied-for mark] by competitors”) (citing *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d at 1370, 127 USPQ2d at 1048).

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Applicant has also argued that the mark is eligible for registration based on the stylization of the mark. The examining attorney disagrees. The applied-for mark shows the wording in stylized lettering. Stylized descriptive or generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 606, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TMEP §1209.03(w). Common and ordinary lettering with minimal stylization, as in this case, is generally not sufficiently striking, unique, or distinctive as to make an impression on purchasers separate from the wording. *See In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012).

The trademark examining attorney has established by clear and convincing evidence that the applied-for mark is generic; thus the USPTO's evidentiary burden has been met. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016); *see also In re Hotels. com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009) (USPTO "must demonstrate generic status by clear evidence") (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239-40 (Fed. Cir. 2002) (explaining that "clear evidence" is equivalent to "clear and convincing evidence")); TMEP §1209.01(c)(i).

Refusal In The Alternative – Applied-For Mark Is Merely Descriptive

In the alternative, if the applied-for mark is ultimately determined not to be generic by an appellate tribunal, then

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the refusal of registration based on the applied-for mark being merely descriptive of applicant's goods/services is maintained and continued for the reasons specified in the previous Office action. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

In addition, applicant's claim of acquired distinctiveness in the response is a concession that the mark sought to be registered is merely descriptive of applicant's goods/services. *In re Virtual Indep. Paralegals, LLC*, 2019 USPQ2d 111512, at *9 (TTAB 2019) (citing *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 1358, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009); *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1577, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988); *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1403 (TTAB 2018)).

Applicant's Evidence Of Acquired Distinctiveness Is Insufficient

With respect to applicant's claim of acquired distinctiveness, the following evidence was provided in support of such claim: extensive marketing, long term usage and overall brand popularity. *See* 37 C.F.R. §2.41.

If the applied-for mark is ultimately determined to be merely descriptive and not generic, the Section 2(f) evidence is insufficient to show acquired distinctiveness because the mark is so highly descriptive of the underlying goods/services that the evidence provided by Applicant fails to reach the threshold to demonstrate secondary meaning.

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The amount and character of evidence needed to establish acquired distinctiveness depends on the facts of each case and particularly on the nature of the mark sought to be registered. *Roux Labs., Inc. v. Clairol Inc.*, 427 F.2d 823, 829, 166 USPQ 34, 39 (C.C.P.A. 1970); *In re Chevron Intellectual Prop. Grp. LLC*, 96 USPQ2d 2026, 2030 (TTAB 2010); TMEP §1212.01. An applicant's evidentiary burden of showing acquired distinctiveness increases with the level of descriptiveness of the mark sought to be registered; a more descriptive term requires more evidence. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d at 1365, 127 USPQ2d at 1045 (citing *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)).

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. Click to file a response to this nonfinal Office action.

/tmm/

Theodore McBride

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*Appendix E***RESPONSE GUIDANCE**

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.
- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to *abandon***. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with *legal authority to bind a juristic applicant*. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX F — NONFINAL OFFICE
ACTION OF THE UNITED STATES PATENT
AND TRADEMARK OFFICE,
DATED NOVEMBER 13, 2020**

To: Vetements Group AG (linn@gardner-linn.com)

Subject: U.S. Trademark Application Serial No. 88946135 - VETEMENTS - MOS01 T-147

Sent: November 13, 2020 12:18:32 PM

Sent As: ecom103@uspto.gov

Attachments: *Attachment - 1*
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10
Attachment - 11
Attachment - 12
Attachment - 13
Attachment - 14

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

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Appendix F

**U.S. Application
Serial No.**

88946135

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VETEMENTS

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Vetements Group
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Reference/Docket

No. MOS01

T-147

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Appendix F

**Correspondence
Email Address:**

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linn.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: November 13, 2020

Upon further review the examining attorney has determined that a translation statement of the foreign wording must be entered into the record. The examining attorney apologizes for any inconvenience caused by the additional office action. Please note that all refusals/requirements in the previous office action are maintained.

Translation

To permit proper examination of the application, applicant must submit an English translation of the foreign wording in the mark. 37 C.F.R. §§2.32(a)(9), 2.61(b); *see* TMEP §809. The following English translation is suggested: **The English translation of “VETEMENTS” in the mark is “CLOTHING”**. TMEP §809.03. See attached translation evidence.

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Appendix F

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a response to this nonfinal Office action.*

/tmm/

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phone: 571-272-9281

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.
- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to *abandon*.** If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with

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legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.

- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX G — NONFINAL OFFICE ACTION
OF THE UNITED STATES PATENT AND
TRADEMARK OFFICE, DATED AUGUST 13, 2020**

To: Vetements Group AG (linn@gardner-linn.com)
Subject: U.S. Trademark Application Serial No. 88946135 - VETEMENTS - MOS01 T-147
Sent: August 13, 2020 07:25:40 AM
Sent As: ecom103@uspto.gov
Attachments: *Attachment - 1*
Attachment - 2
Attachment - 3
Attachment - 4

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

**U.S. Application
Serial No.
88946135**

**Mark:
VETEMENTS**

**Correspondence
Address:
TERENCE J.
LINN**

110a

Appendix G

GARDNER,
LINN,
BURKHART &
ONDERSMA
LLP

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RAPIDS, MI
49546

Applicant:
Vetements Group
AG

Reference/Docket
No. MOS01
T-147

Correspondence
Email Address:

linn@gardner-
linn.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or

Appendix G

the application will be **abandoned**. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 13, 2020

The referenced application has been reviewed by the assigned trademark examining attorney. The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

Descriptiveness Refusal

Registration is refused because the applied-for mark merely describes applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

This partial refusal applies only to the goods/services specified herein:

Applicant has applied to register the mark VETEMENTS for various goods/services, including:

Shirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes, boots, waist belts, t-shirts, pants, blouses, dresses

Online retail store services for... shirts; skirts; sweaters; coats; jackets; suits; caps; headwear; hats; hoods; visors;

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scarves; gloves; shoes; boots; waist belts; t-shirts; pants; blouses; dresses

The examining attorney has determined that VETEMENTS is the French word for clothing (see attached evidence.)

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)). In addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and/or services. "A generic mark, being the 'ultimate in descriptiveness,' cannot acquire distinctiveness" and thus is not entitled to registration on either the Principal or Supplemental Register under any circumstances. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1336, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989, 228 USPQ 528, 530 (Fed. Cir. 1986)); *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a).

The foreign equivalent of a merely descriptive English term is also merely descriptive. *In re N. Paper Mills*, 64 F.2d 998, 998, 17 USPQ 492, 493 (C.C.P.A. 1933); *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270

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(TTAB 2016) (quoting *In re Optica Int'l* , 196 USPQ 775, 777 (TTAB 1977)). Under the doctrine of foreign equivalents, marks with foreign terms from common, modern languages are translated into English to determine descriptiveness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see TMEP §1209.03(g).

Applicant's mark is in French, which is a common, modern language in the United States. *In re Optica Int'l* , 196 USPQ 775 (TTAB 1977) (French)

The doctrine is applied when “the ordinary American purchaser” would “stop and translate” the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.* , 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d at 1271.

In this case, the ordinary American purchaser would likely stop and translate the mark because the French language is a common, modern language spoken by an appreciable number of consumers in the United States.

A term that is generic for goods has been held descriptive of retail store services featuring those goods even when

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the goods are not a significant item sold in the type of store in question. *In re Pencils, Inc.*, 9 USPQ2d 1410 (TTAB 1988) (holding PENCILS merely descriptive of office supply store services); TMEP §1209.03(r). However, where the matter sought to be registered identifies the primary articles of a store or distributorship service, the term is considered generic. TMEP §1209.03(r); *see In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (holding RUSSIANART generic for dealership services in the field of fine art, antiques, furniture and jewelry); *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) (holding LA LINGERIE generic for retail stores specializing in the sale of lingerie).

The term must be analyzed in relation to the services recited, the context in which it is used, and the possible significance it would have to the recipient of the services. *In re Pencils*, 9 USPQ2d at 1411.

In addition, the applied-for mark shows the wording in stylized lettering. Stylized descriptive or generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 606, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TMEP §1209.03(w). Common and ordinary lettering with minimal stylization, as in this case, is generally not sufficiently

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striking, unique, or distinctive as to make an impression on purchasers separate from the wording. *See In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012).

In this instance, Applicant's mark is the generic term used to refer to Applicant's entire class of goods and subject matter of the services, and is so highly descriptive as to be devoid of trademark significance. Thus registration is refused.

Identification of Goods/Services

The identification of goods is indefinite and must be clarified because it does not adequately identify all of the goods. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Applicant may adopt the following wording, if accurate:

International

Class 14: Clocks; wristwatches; ORNAMENTS OF PRECIOUS METAL IN THE NATURE OF JEWELRY; jewels; rings; bracelets; earrings; jewel chains; brooches BEING JEWELRY

International

Class 18: Casual bags, NAMELY, ALL PURPOSE CARRYING BAGS; backpacks;

Appendix G

shoulder bags; key bags; waist bags; clutch bags; tote bags; cross body bags, NAMELY, SATCHELS; purses; travelling bags; suitcases; umbrellas; handbags; attaché cases; document wallets, namely, document cases of leather

International

Class 25: CLOTHING, NAMELY, shirts, skirts, sweaters, coats, jackets, suits, caps BEING HEADWARE, headwear, hats, hoods, visors, BEING HEADWEAR, scarves, gloves, shoes, boots, waist belts, T-shirts, pants, trousers, blouses, dresses

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a response to this nonfinal Office action.*

/tmm/

Theodore McBride

117a

Appendix G

Law Office 103

theodore.mcbride1@uspto.gov

phone: 571-272-9281

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.
- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to *abandon***. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with *legal authority to bind a juristic applicant*. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX H — OFFICE ACTION OF THE
UNITED STATES PATENT AND TRADEMARK
OFFICE, DATED JUNE 7, 2022**

To: TERENCE J. LINN(linn@gardner-
linn.com)

Subject: U.S. Trademark Application Serial No.
88944198 - VETEMENTS - MOS01
T-146

Sent: June 07, 2022 04:50:27 PM EDT

Sent As: tmng.notices@uspto.gov

Attachments

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's
Trademark Application**

U.S. Application Serial No. 88944198

Mark: VETEMENTS

Correspondence Address:

Terence J. Linn
GARDNER, LINN, BURKHART & ONDERSMA, LLP
2900 CHARLEVOIX DRIVE SE, SUITE 300
GRAND RAPIDS MI 49546 UNITED STATES

Applicant: Vetements Group AG

Reference/Docket No. MOS01 T-146

Appendix H

Correspondence Email Address:
linn@gardner-linn.com

**REQUEST FOR RECONSIDERATION
AFTER FINAL ACTION
DENIED**

Issue date: June 07, 2022

Applicant's request for reconsideration is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Accordingly, the following requirement(s) and/or refusal(s) made final in the Office action dated 12/03/2021 are **maintained and continued:**

- Generic/Descriptiveness

See TMEP §§715.03(a)(ii)(B), 715.04(a).

If applicant has already filed an appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If applicant has not filed an appeal and time remains in the six-month response period, applicant has the remainder of that time to (1) file another request for

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reconsideration that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B). Filing a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *See* TMEP §715.03(c).

/Theodore McBride/
Theodore McBride
Trademark Examining Attorney
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**APPENDIX I — FINAL OFFICE ACTION OF THE
UNITED STATES PATENT AND TRADEMARK
OFFICE, DATED DECEMBER 3, 2021**

To: Vetements Group AG (linn@gardner-linn.com)

Subject: U.S. Trademark Application Serial No. 88944198 - VETEMENTS - MOS01 T-146

Sent: December 03, 2021 01:17:03 PM

Sent As: ecom103@uspto.gov

Attachments: *Attachment - 1*
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

**U.S. Application
Serial No.
88944198**

**Mark:
VETEMENTS**

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Appendix I

Correspondence

Address:

Terence J. Linn

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Applicant:

Vetements Group
AG

Reference/Docket

No. MOS01

T-146

Correspondence

Email Address:

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linn.com

123a

Appendix I

FINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS) and/or Electronic System for Trademark Trials and Appeals (ESTTA). A link to the appropriate TEAS response form and/or to ESTTA for an appeal appears at the end of this Office action.

Issue date: December 03, 2021

This letter responds to Applicant's communication filed on 12-1-2021. Applicant responded by arguing against the descriptiveness/generic refusal. The assigned examining attorney has reviewed Applicant's response and determined the following. After careful consideration of Applicant's arguments, the examining attorney remains unconvinced. Therefore, the refusal to register is herein made **FINAL**.

Generic/Descriptiveness

Applicant has responded by arguing that the mark is not generic in that the doctrine of foreign equivalents should not be applied in this instance and that the goods are not "clothing" but specific types of clothing. Applicant buttresses this argument by pointing out that there have been several instances in the registry wherein the term "CLOTHING" was allowed to register in association with clothing type items/services. Applicant also asserts that the mark has acquired distinctiveness.

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The examining attorney disagrees for the following reasons.

Marks with foreign terms from a common, modern foreign language are translated into English to determine genericness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see *In re Cordua Rests., Inc.*, 823 F.3d 594, 602-03, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016); TMEP §1209.03(g).

Applicant's mark is in FRENCH, which is a common, modern language in the United States. *In re Optica Int'l*, 196 USPQ 775 (TTAB 1977) (French). Specifically, the attached evidence shows that French is the 4th most popular language spoken in the United States, therefore it goes without saying that a large number of U.S. consumers speak this language.

The doctrine is applied when “the ordinary American purchaser” would “stop and translate” the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016).

Appendix I

In this case, the ordinary American purchaser would likely stop and translate the mark because the French language is a common, modern language spoken by an appreciable number of consumers in the United States.

A term is generic if the relevant public understands the term as referring to the category or genus of the goods and/or services in question. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342, 111 USPQ2d 1495, 1497 (Fed. Cir. 2014); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); see TMEP §1209.01(c). “[A] term [also] is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 1367-68, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018) (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (“the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants”)).

Generic terms do not meet the statutory definition of a trademark because they are incapable of indicating a particular source of goods and/or services and thus cannot be registered. *In re Cordua Rests., Inc.*, 823 F.3d at 599, 118 USPQ2d at 1634 (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) (“Generic terms, by definition incapable of indicating source, are the antithesis

Appendix I

of trademarks, and can never attain trademark status.”)); TMEP §1209.01(c).

The test for determining whether an applied-for mark is generic is its primary significance to the relevant public. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 641, 19 USPQ2d 1551, 1553-54 (Fed. Cir. 1991) (*citing In re Montrachet S.A.*, 878 F.2d 375, 376, 11 USPQ2d 1393-94 (Fed. Cir. 1989)). Making this determination involves a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

In re Cordua Rests., Inc., 823 F.3d 594, 599, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 990, 228 USPQ 528, 530 (Fed. Cir. 1986)); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services may be defined by an applicant’s identification of goods and/or services. *See In re Cordua Rests., Inc.*, 823 F.3d at 602, 118 USPQ2d at 1636 (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1552); *see also In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1361, 1363, 92 USPQ2d 1682, 1682, 1684 (Fed. Cir. 2009).

In this case, the application identifies the goods and/or services as various types of clothing and/or clothing

Appendix I

related retail services, which adequately defines the genus at issue.

Regarding the second part of the inquiry, the relevant public is the purchasing or consuming public for the identified goods and/or services. The *Loglan Inst. Inc. v. The Logical Language Grp.*, 962 F.2d 1038, 1041, 22 USPQ2d 1531, 1533 (Fed. Cir. 1992) (quoting *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1553). In this case, the relevant public comprises ordinary consumers who purchase applicant's goods, because there are no restrictions or limitations to the channels of trade or classes of consumers. The attached evidence from previous office actions that the wording "VETEMENTS" in the applied-for mark means CLOTHING and thus the relevant public would understand this designation to refer primarily to that genus of goods because Applicant's goods fall under the generic designator of CLOTHING.

The trademark examining attorney has established by clear and convincing evidence that the applied-for mark is generic; thus the USPTO's evidentiary burden has been met. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016); *see also In re Hotels. com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009) (USPTO "must demonstrate generic status by clear evidence") (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239-40 (Fed. Cir. 2002) (explaining that "clear evidence" is equivalent to "clear and convincing evidence")); TMEP §1209.01(c)(i).

As for Applicant's argument that the mark is sufficiently stylized to avoid refusal, the examining attorney also

Appendix I

rejects this argument. The applied-for mark shows the wording in stylized lettering. Stylized descriptive or generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. See *In re Cordua Rests., Inc.*, 823 F.3d 594, 606, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TMEP §1209.03(w). Common and ordinary lettering with minimal stylization, as in this case, is generally not sufficiently striking, unique, or distinctive as to make an impression on purchasers separate from the wording. See *In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012).

It is noted that Applicant has sought to register the mark based on acquired distinctiveness. Such a move in this instance is improper. Applicant cannot overcome the refusal by submitting a claim of acquired distinctiveness under Trademark Act Section 2(f). See 15 U.S.C. §1052(f). Such a claim would be insufficient because “generic terms cannot be rescued by proof of distinctiveness or secondary meaning no matter how voluminous the proffered evidence may be.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1370, 127 USPQ2d 1041, 1048 (Fed. Cir. 2018) (quoting *In re Northland Aluminum Prods.*, 777 F.2d 1556, 1558, 227 USPQ2d 961, 962 (Fed. Cir. 1985)); see TMEP §1212.02(i).

Applicant has also included other registrations wherein the term CLOTHING has been allowed to register without issue. The examining attorney rejects this argument for the following reasons. The overwhelming

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weight of evidence clearly demonstrates that the term CLOTHING is descriptive for clothing items such as those Applicant has listed in the identification of goods. Furthermore, the marks that Applicant has included as evidence of registerability are all unitary marks. A mark or portion of a mark is considered “unitary” when it creates a commercial impression separate and apart from any unregistrable component. The test for unitariness inquires whether the elements of a mark are so integrated or merged together that they cannot be regarded as separable. See *In re EBS Data Processing*, 212 USPQ 964, 966 (TTAB 1981) ; *In re Kraft, Inc.*, 218 USPQ 571, 573 (TTAB 1983) . The inquiry focuses on “how the average purchaser would encounter the mark under normal marketing of such goods and also . . . what the reaction of the average purchaser would be to this display of the mark.” *Dena Corp. v. Belvedere Int’l, Inc.*, 950 F.2d 1555, 1561, 21 USPQ2d 1047, 1052 (Fed. Cir. 1991) (quoting *In re Magic Muffler Serv., Inc.*, 184 USPQ 125, 126 (TTAB 1974)). The Court of Appeals for the Federal Circuit has set forth the elements of a unitary mark:

A unitary mark has certain observable characteristics. Specifically, its elements are inseparable. In a unitary mark, these observable characteristics must combine to show that the mark has a distinct meaning of its own independent of the meaning of its constituent elements. In other words, a unitary mark must create a single and distinct commercial impression.

Dena Corp., 950 F.2d at 1561, 21 USPQ2d at 1052. If the matter that comprises the mark or relevant portion of

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the mark is unitary, no disclaimer of an element, whether descriptive, generic, or otherwise, is required.

Unlike the marks included in Applicant's response, there is nothing unitary about Applicant's mark. As such, the mark remains generic and the refusal to register is **FINAL**.

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a request for reconsideration of this final Office action* that fully resolves all outstanding requirements and refusals and/or ***click to file a timely appeal to the Trademark Trial and Appeal Board (TTAB)*** with the required filing fee(s).

/tmm/

Theodore McBride

Law Office 103

theodore.mcbride1@uspto.gov

phone: 571-272-9281

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight Eastern Time of the last day of the

Appendix I

response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.

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- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX J — NONFINAL OFFICE ACTION
OF THE UNITED STATES PATENT AND
TRADEMARK OFFICE, DATED JUNE 3, 2021**

Attachment - 45

Attachment - 46

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

U.S. Application

Serial No.

88944198

Mark:

VETEMENTS

Correspondence

Address:

Terence J. Linn

GARDNER,

LINN,

BURKHART &

ONDERSMA, LLP

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DRIVE SE,

SUITE 300

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Appendix J

GRAND
RAPIDS MI
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Applicant:
Vetements Group
AG

Reference/Docket
No. MOS01
T-146

Correspondence
Email Address:

linn@gardner-
linn.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: June 03, 2021

This letter responds to Applicant's communication filed on 5-10-2021. Applicant responded by entering a translation of the wording in the mark, amending the identification

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of goods, making a 2(f) claim and arguing against the determination that the mark is descriptive. The assigned examining attorney has reviewed Applicant's response and determined the following. The translation of the mark, and the amendment to the identification of goods has been accepted into the record. However, after careful consideration of Applicant's arguments regarding the claim of acquired distinctiveness and the arguments against the descriptiveness refusal, the examining attorney remains unconvinced. Therefore, the refusal to register is maintained. In addition, the examining attorney now also refuses registration because the mark is generic.

Refusal – Applied-For Mark Is Generic

Registration was initially refused under Trademark Act Section 2(e)(1) because the applied-for mark is merely descriptive of applicant's goods/services. 15 U.S.C. §1052(e)(1). Applicant was also advised that the mark appears to be generic as well. In response, applicant amended the application to add a claim of acquired distinctiveness under Section 2(f). 15 U.S.C. §1052(f).

Registration is now refused because the applied-for mark is generic for applicant's goods/services. Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051, 1052, 1053, 1127; *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a)(ii). Thus, applicant's claim of acquired distinctiveness under Section 2(f) is insufficient to overcome the refusal because "generic terms cannot be rescued by proof of distinctiveness or secondary meaning no matter how voluminous the

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proffered evidence may be.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1365, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (quoting *In re Northland Aluminum Prods.*, 777 F.2d 1556, 1558, 227 USPQ2d 961, 962 (Fed. Cir. 1985)); see TMEP §1212.02(i).

A term is generic if the relevant public understands the term as referring to the category or genus of the goods and/or services in question. *In re Nordic Naturals, Inc.*, 755 F.3d 1340, 1342, 111 USPQ2d 1495, 1497 (Fed. Cir. 2014); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); see TMEP §1209.01(c). “[A] term [also] is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 1367-68, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018) (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (“the term ‘pizzeria’ would be generic for restaurant services, even though the public understands the term to refer to a particular sub-group or type of restaurant rather than to all restaurants”)).

Generic terms do not meet the statutory definition of a trademark because they are incapable of indicating a particular source of goods and/or services and thus cannot be registered. *In re Cordua Rests., Inc.*, 823 F.3d at 599, 118 USPQ2d at 1634 (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987) (“Generic terms, by

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definition incapable of indicating source, are the antithesis of trademarks, and can never attain trademark status.”)); TMEP §1209.01(c).

“A mark is generic if its primary significance to the relevant public is the class or category of goods or services on or in connection with which it is used.” TMEP §1209.01(c)(i) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1600 (TTAB 2014)). Determining whether a mark is generic requires a two-step inquiry:

- (1) What is the genus of goods and/or services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of goods and/or services?

In re Cordua Rests., Inc., 823 F.3d 594, 599, 118 USPQ2d 1632, 1634 (Fed. Cir. 2016) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d at 990, 228 USPQ at 530); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of the goods and/or services may be defined by an applicant’s identification of goods and/or services. *See In re Cordua Rests., Inc.*, 823 F.3d at 602, 118 USPQ2d at 1636 (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991)); *see also In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1361, 1363, 92 USPQ2d 1682, 1682, 1684 (Fed. Cir. 2009).

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In this case, the application identifies the goods and/or services as various clothing items, namely, shirts, skirts, sweaters, coats, jackets, suits, caps being headwear, headwear, hats, hoods, visors being headwear, scarves, gloves, shoes, boots, waist belts, T-shirts, pants, blouses, dresses, as well as retail store services related to those items. Therefore, the term CLOTHING or CLOTHES adequately defines the genus at issue.

Marks with foreign terms from a common, modern foreign language are translated into English to determine genericness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see *In re Cordua Rests., Inc.*, 823 F.3d 594, 602-03, 118 USPQ2d 1632, 1637 (Fed. Cir. 2016); TMEP §1209.03(g).

Applicant's mark is in French, which is a common, modern language in the United States. *In re Optica Int'l*, 196 USPQ 775 (TTAB 1977) (French). The doctrine is applied when "the ordinary American purchaser" would "stop and translate" the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1271 (TTAB 2016).

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In this case, the ordinary American purchaser would likely stop and translate the mark because the French language is a common, modern language spoken by an appreciable number of consumers in the United States.

The term CLOTHING is a collective noun for the word CLOTHES, as in “an item of clothing.” CLOTHING is used to refer to the genus of Applicant’s goods. This is clearly demonstrated by Applicant’s website, wherein the term CLOTHING is used as a general header/category for shopping on said website, as demonstrated by the attached evidence. Specifically, when the CLOTHING link is selected on Applicant’s website, the subcategories are listed as more specific types of clothing, namely, Activewear, Beachwear, Coats, Dresses, Hoodies, Jackets, Jeans, Pants, Shirts, Shorts, Skirts, Socks, Sweaters, T-Shirts, Tops, and Underwear.

A term that is generic for a type of goods has been held generic for the service of selling primarily those goods. *See In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (holding RUSSIANART generic for art dealership services in the field of Russian art); *In re Log Cabin Homes Ltd.*, 52 USPQ2d 1206 (TTAB 1999) (holding LOG CABIN HOMES generic for architectural design of buildings and retail outlets featuring kits for constructing buildings, especially houses); *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) (holding LA LINGERIE generic for retail store services featuring clothing); *In re Wickerware, Inc.*, 227 USPQ 970 (TTAB

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1985) (holding WICKERWARE generic for mail order and distributorship services featuring products made of wicker); *In re Half Price Books, Records, Magazines, Inc.*, 225 USPQ 219 (TTAB 1984) (holding HALF PRICE BOOKS RECORDS MAGAZINES generic for retail book and record store services); TMEP §1209.03(r).

An applicant's own website and marketing material is also probative and can be "the most damaging evidence" in showing how the relevant public perceives a term. *In re Mecca Grade Growers, LLC*, 125 USPQ2d 1950, 1957 (TTAB 2018) (citing *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d at 966, 114 USPQ2d at 1831; *In re Gould Paper Corp.*, 834 F.2d 1017, 1019, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987)).

In addition, the examining attorney has found and attached several articles wherein the founders of Applicant's company are quoted as indicating that they purposefully selected the *generic* term for the goods/services. For example, in an interview with GLAMCULT, the founder was asked to talk about the name. The founder's response was "We didn't want to use a personal name, but a generic one that expressed our approach."

Regarding the second part of the inquiry, the relevant public is the purchasing or consuming public for the identified goods and/or services. *The Loglan Inst. Inc. v. The Logical Language Grp.*, 962 F.2d 1038, 1041, 22 USPQ2d 1531, 1533 (Fed. Cir. 1992) (quoting *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1553). In this case, the relevant public comprises ordinary

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consumers who purchase applicant's goods, because there are no restrictions or limitations to the channels of trade or classes of consumers. The evidence in previous office actions, shows that the wording "VETEMENTS" in the applied-for mark means clothing and thus the relevant public would understand this designation to refer primarily to that genus of goods/services because this is the word used to refer to these types of goods/services.

Evidence of the public's understanding of the term "may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications." *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366, 127 USPQ2d 1041, 1046 (Fed. Cir. 2016) (quoting *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987)); TMEP §1209.01(c) (i). This includes evidence obtained from electronic sources such as the LEXIS/NEXIS® research database and Internet websites. See *In re Meridian Rack & Pinion*, 114 USPQ2d 1462, 1465-66 (TTAB 2015); *In re Active Ankle Sys., Inc.*, 83 USPQ2d 1532, 1534-37 (TTAB 2007); TBMP §1208.03; TMEP §§710.01(b), 1209.01(c)(i).

In addition, competitor use has been found probative on the issue of genericness. See *BellSouth Corp. v. DataNational Corp.*, 60 F.3d 1565, 1570, 35 USPQ2d 1554, 1558 (Fed. Cir. 1995) ("The cases have recognized that competitor use is evidence of genericness.") (citing *Remington Prods., Inc. v. N. Am. Philips Corp.*, 892 F.2d 1576, 1578, 13 USPQ2d 1444, 1446 (Fed. Cir. 1990)); *In re Hikari Sales USA, Inc.*, 2019 USPQ2d 111514, at *9 (TTAB 2019) ("We find probative the generic uses of the [applied-for mark] by

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competitors”) (citing *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d at 1370, 127 USPQ2d at 1048).

Applicant has also argued that the mark is eligible for registration based on the stylization of the mark. The examining attorney disagrees. The applied-for mark shows the wording in stylized lettering. Stylized descriptive or generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 606, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TMEP §1209.03(w). Common and ordinary lettering with minimal stylization, as in this case, is generally not sufficiently striking, unique, or distinctive as to make an impression on purchasers separate from the wording. *See In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1487 (TTAB 2012).

The trademark examining attorney has established by clear and convincing evidence that the applied-for mark is generic; thus the USPTO’s evidentiary burden has been met. *In re Cordua Rests., Inc.*, 823 F.3d 594, 600, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016); *see also In re Hotels.com LP*, 573 F.3d 1300, 1302, 91 USPQ2d 1532, 1533-34 (Fed. Cir. 2009) (USPTO “must demonstrate generic status by clear evidence”) (citing *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1239-40 (Fed. Cir. 2002) (explaining that “clear evidence” is equivalent to “clear and convincing evidence”)); TMEP §1209.01(c)(i).

*Appendix J***Refusal In The Alternative – Applied-For Mark Is Merely Descriptive**

In the alternative, if the applied-for mark is ultimately determined not to be generic by an appellate tribunal, then the refusal of registration based on the applied-for mark being merely descriptive of applicant's goods/services is maintained and continued for the reasons specified in the previous Office action. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

In addition, applicant's claim of acquired distinctiveness in the response is a concession that the mark sought to be registered is merely descriptive of applicant's goods/services. *In re Virtual Indep. Paralegals, LLC*, 2019 USPQ2d 111512, at *9 (TTAB 2019) (citing *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 1358, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009); *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 1577, 6 USPQ2d 1001, 1005 (Fed. Cir. 1988); *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1403 (TTAB 2018)).

Applicant's Evidence Of Acquired Distinctiveness Is Insufficient

With respect to applicant's claim of acquired distinctiveness, the following evidence was provided in support of such claim: extensive marketing, long term usage and overall brand popularity. *See* 37 C.F.R. §2.41.

If the applied-for mark is ultimately determined to be merely descriptive and not generic, the Section 2(f)

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evidence is insufficient to show acquired distinctiveness because the mark is so highly descriptive of the underlying goods/services that the evidence provided by Applicant fails to reach the threshold to demonstrate secondary meaning.

The amount and character of evidence needed to establish acquired distinctiveness depends on the facts of each case and particularly on the nature of the mark sought to be registered. *Roux Labs., Inc. v. Clairol Inc.*, 427 F.2d 823, 829, 166 USPQ 34, 39 (C.C.P.A. 1970); *In re Chevron Intellectual Prop. Grp. LLC*, 96 USPQ2d 2026, 2030 (TTAB 2010); TMEP §1212.01. An applicant's evidentiary burden of showing acquired distinctiveness increases with the level of descriptiveness of the mark sought to be registered; a more descriptive term requires more evidence. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d at 1365, 127 USPQ2d at 1045 (citing *In re Steelbuilding.com*, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)).

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a response to this nonfinal Office action.*

/tmm/

Theodore McBride

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Law Office 103

theodore.mcbridel@uspto.gov

phone: 571-272-9281

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.
- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to *abandon***. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with *legal authority to bind a juristic applicant*. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX K — NONFINAL OFFICE
ACTION OF THE UNITED STATES PATENT
AND TRADEMARK OFFICE,
DATED NOVEMBER 13, 2020**

To: Vetements Group AG (linn@gardner-linn.com)

Subject: U.S. Trademark Application Serial No. 88944198 - VETEMENTS - MOS01 T-146

Sent: November 13, 2020 12:18:13 PM

Sent As: ecom103@uspto.gov

Attachments: *Attachment - 1*
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10
Attachment - 11
Attachment - 12
Attachment - 13
Attachment - 14

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United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

**U.S. Application
Serial No.**
88944198

Mark:
VETEMENTS

**Correspondence
Address:**
Terence J. Linn

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Applicant:
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Reference/Docket

No. MOS01

T-146

Correspondence

Email Address:

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linn.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: November 13, 2020

Upon further review the examining attorney has determined that a translation statement of the foreign wording must be entered into the record. The examining attorney apologizes for any inconvenience caused by the additional office action. Please note that all refusals/requirements in the previous office action are maintained.

Translation

To permit proper examination of the application, applicant must submit an English translation of the foreign wording in the mark. 37 C.F.R. §§2.32(a)(9), 2.61(b); *see* TMEP

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§809. The following English translation is suggested: **The English translation of “VETEMENTS” in the mark is “CLOTHING”.** TMEP §809.03. See attached translation evidence.

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a response to this nonfinal Office action.*

/tmm/

Theodore McBride

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RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.

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- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with *legal authority to bind a juristic applicant*. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

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**APPENDIX L — NONFINAL OFFICE ACTION
OF THE UNITED STATES PATENT AND
TRADEMARK OFFICE, DATED AUGUST 13, 2020**

To: Vetements Group AG (linn@gardner-linn.com)

Subject: U.S. Trademark Application Serial No. 88944198 - VETEMENTS - MOS01 T-146

Sent: August 13, 2020 07:23:48 AM

Sent As: ecom103@uspto.gov

Attachments: *Attachment - 1*
Attachment - 2
Attachment - 3
Attachment - 4

United States Patent and Trademark Office (USPTO)

**Office Action (Official Letter) About
Applicant's Trademark Application**

**U.S. Application
Serial No.
88944198**

**Mark:
VETEMENTS**

**Correspondence
Address:
TERENCE J.
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Applicant:
Vetements Group
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Reference/Docket
No. MOS01
T-146

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linn.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within *six months* of the issue date below or

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the application will be ***abandoned***. Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: August 13, 2020

The referenced application has been reviewed by the assigned trademark examining attorney. The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; see 15 U.S.C. §1052(d).

Descriptiveness Refusal

Registration is refused because the applied-for mark merely describes applicant's goods and/or services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

This partial refusal applies only to the goods/services specified herein:

Applicant has applied to register the mark VETEMENTS for various goods/services, including:

Shirts, skirts, sweaters, coats, jackets, suits, caps, headwear, hats, hoods, visors, scarves, gloves, shoes, boots, waist belts, t-shirts, pants, blouses, dresses

Online retail store services for . . . shirts; skirts; sweaters; coats; jackets; suits; caps; headwear; hats; hoods; visors;

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scarves; gloves; shoes; boots; waist belts; t-shirts; pants; blouses; dresses

The examining attorney has determined that VETEMENTS is the French word for clothing (see attached evidence.)

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of an applicant's goods and/or services. TMEP §1209.01(b); *see, e.g., In re TriVita, Inc.*, 783 F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005) (citing *Estate of P.D. Beckwith, Inc. v. Comm'r of Patents*, 252 U.S. 538, 543 (1920)). In addition to being merely descriptive, the applied-for mark appears to be generic in connection with the identified goods and/or services. "A generic mark, being the 'ultimate in descriptiveness,' cannot acquire distinctiveness" and thus is not entitled to registration on either the Principal or Supplemental Register under any circumstances. *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1336, 116 USPQ2d 1262, 1264 (Fed. Cir. 2015) (quoting *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 989, 228 USPQ 528, 530 (Fed. Cir. 1986)); *see* TMEP §§1209.01(c) *et seq.*, 1209.02(a).

The foreign equivalent of a merely descriptive English term is also merely descriptive. *In re N. Paper Mills*, 64 F.2d 998, 998, 17 USPQ 492, 493 (C.C.P.A. 1933); *In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1270

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(TTAB 2016) (quoting *In re Optica Int'l* , 196 USPQ 775, 777 (TTAB 1977)). Under the doctrine of foreign equivalents, marks with foreign terms from common, modern languages are translated into English to determine descriptiveness. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 354, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)); see TMEP §1209.03(g).

Applicant's mark is in French, which is a common, modern language in the United States. *In re Optica Int'l* , 196 USPQ 775 (TTAB 1977) (French)

The doctrine is applied when “the ordinary American purchaser” would “stop and translate” the foreign term into its English equivalent. *Palm Bay*, 396 F.3d at 1377, 73 USPQ2d at 1696 (quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976)); TMEP §1209.03(g). The ordinary American purchaser includes those proficient in the foreign language. *In re Spirits Int'l, N.V.* , 563 F.3d 1347, 1352, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009); see *In re Highlights for Children, Inc.*, 118 USPQ2d at 1271.

In this case, the ordinary American purchaser would likely stop and translate the mark because the French language is a common, modern language spoken by an appreciable number of consumers in the United States.

A term that is generic for goods has been held descriptive of retail store services featuring those goods even when

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the goods are not a significant item sold in the type of store in question. *In re Pencils, Inc.*, 9 USPQ2d 1410 (TTAB 1988) (holding PENCILS merely descriptive of office supply store services); TMEP §1209.03(r). However, where the matter sought to be registered identifies the primary articles of a store or distributorship service, the term is considered generic. TMEP §1209.03(r); *see In re Tires, Tires, Tires, Inc.*, 94 USPQ2d 1153, (TTAB 2009) (holding TIRES TIRES TIRES generic for retail tire store services); *In re A La Vieille Russie, Inc.*, 60 USPQ2d 1895 (TTAB 2001) (holding RUSSIANART generic for dealership services in the field of fine art, antiques, furniture and jewelry); *In re Bonni Keller Collections Ltd.*, 6 USPQ2d 1224 (TTAB 1987) (holding LA LINGERIE generic for retail stores specializing in the sale of lingerie).

The term must be analyzed in relation to the services recited, the context in which it is used, and the possible significance it would have to the recipient of the services. *In re Pencils*, 9 USPQ2d at 1411.

In this instance, Applicant's mark is the generic term used to refer to Applicant's entire class of goods and subject matter of the services, and is so highly descriptive as to be devoid of trademark significance. Thus registration is refused.

Identification of Goods/Services

The identification of goods is indefinite and must be clarified because it does not adequately identify all of

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the goods. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend the identification to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.*

Applicant may adopt the following wording, if accurate:

International

Class 14: Clocks; wristwatches; ORNAMENTS OF PRECIOUS METAL IN THE NATURE OF JEWELRY; jewels; rings; bracelets; earrings; jewel chains; brooches BEING JEWELRY

International

Class 18: Casual bags, NAMELY, ALL PURPOSE CARRYING BAGS; backpacks; shoulder bags; key bags; waist bags; clutch bags; tote bags; cross body bags, NAMELY, SATCHELS; purses; travelling bags; suitcases; umbrellas; handbags; attaché cases; document wallets, namely, document cases of leather

International

Class 25: CLOTHING, NAMELY, shirts, skirts, sweaters, coats, jackets, suits, caps BEING HEADWARE, headwear, hats, hoods, visors, BEING HEADWEAR, scarves, gloves, shoes, boots, waist belts, T-shirts, pants, trousers, blouses, dresses

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Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

If the applicant has any questions or needs assistance in responding to this Office action, please email the assigned examining attorney or call 571-272-9281.

How to respond. *Click to file a response to this nonfinal Office action.*

/tmm/

Theodore McBride

Law Office 103

theodore.mcbride1@uspto.gov

phone: 571-272-9281

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to *abandon*.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or *unforeseen circumstances* could affect an applicant's ability to timely respond.

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- ***Responses signed by an unauthorized party*** are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with *legal authority to bind a juristic applicant*. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find *contact information for the supervisor*** of the office or unit listed in the signature block.

**APPENDIX M — RELEVANT STATUTORY
PROVISIONS INVOLVED**

15 U.S. Code § 1051

(a) *Application for use of trademark*

(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify that—

(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

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(C) the mark is in use in commerce; and

(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

(i) state exceptions to the claim of exclusive use; and

(ii) shall specify, to the extent of the verifier's knowledge—

(I) any concurrent use by others;

(II) the goods on or in connection with which and the areas in which each concurrent use exists;

(III) the periods of each use; and

(IV) the goods and area for which the applicant desires registration.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the

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requirements for the application and for obtaining a filing date herein.

(b) *Application for bona fide intention to use trademark*

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify—

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant's bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

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(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 1126 of this title, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(c) *Amendment of application under subsection (b) to conform to requirements of subsection (a)*

At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this chapter, by amending his or her application to bring it into conformity with the requirements of subsection (a).

(d) *Verified statement that trademark is used in commerce*

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(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 1063(b)(2) of this title to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 1052 of this title. The notice of registration shall specify the goods or services for which the mark is registered.

(2) The Director shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an

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extension under the preceding sentence, the Director may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

(3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the

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time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

(e) *Designation of resident for service of process and notices*

If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(f) *Third-party submission of evidence*

A third party may submit for consideration for inclusion in the record of an application evidence relevant to a ground for refusal of registration. The third-party submission shall identify the ground for refusal and include a concise description of each piece of evidence submitted in support of each identified ground for refusal. Not later than 2

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months after the date on which the submission is filed, the Director shall determine whether the evidence should be included in the record of the application. The Director shall establish by regulation appropriate procedures for the consideration of evidence submitted by a third party under this subsection and may prescribe a fee to accompany the submission. If the Director determines that the third-party evidence should be included in the record of the application, only the evidence and the ground for refusal to which the evidence relates may be so included. Any determination by the Director whether or not to include evidence in the record of an application shall be final and non-reviewable, and a determination to include or to not include evidence in the record shall not prejudice any party's right to raise any issue and rely on any evidence in any other proceeding.

(July 5, 1946, ch. 540, title I, § 1, 60 Stat. 427; Pub. L. 87-772, § 1, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 103, Nov. 16, 1988, 102 Stat. 3935; Pub. L. 105-330, title I, § 103, title II, § 201(a)(1), Oct. 30, 1998, 112 Stat. 3064, 3069; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, § 13207(b)(1), (2), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 116-260, div. Q, title II, § 223(a), Dec. 27, 2020, 134 Stat. 2201.)

*Appendix M***15 U.S. Code § 1052**

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

- (a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.
- (b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.
- (c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.
- (d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office,

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or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: Provided, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

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(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.

A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a

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proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.

(July 5, 1946, ch. 540, title I, § 2, 60 Stat. 428; Pub. L. 87-772, § 2, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 104, Nov. 16, 1988, 102 Stat. 3937; Pub. L. 103-182, title III, § 333(a), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 103-465, title V, § 522, Dec. 8, 1994, 108 Stat. 4982; Pub. L. 105-330, title II, § 201(a)(2), (12), Oct. 30, 1998, 112 Stat. 3069, 3070; Pub. L. 106-43, § 2(a), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 109-312, § 3(a), Oct. 6, 2006, 120 Stat. 1732.)

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15 U.S. Code § 1053

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, § 3, 60 Stat. 429; Nov. 16, 1988, Pub. L. 100-667, §105, 102 Stat. 3938.)

*Appendix M***15 U.S. Code § 1071**

(a)(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 8 [§1058] or section 71 [§1141k] of this Act, or an applicant for renewal, who is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, shall, within twenty days after the appellant has filed notice of appeal according to paragraph (2) of this subsection, files notice with the Director that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the United States Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.

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(3) The Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the United States Patent and Trademark Office. The court may request that the Director forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Director shall submit to that court a brief explaining the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the United States Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Director, which shall be entered of record in the United States Patent and Trademark Office and shall govern the further proceedings in the case. However, no final judgment shall be entered in favor of an applicant under section 1(b) [§1051(b)] before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) [§1057(c)].

(b)(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said United States Court of Appeals for the Federal

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Circuit, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Director appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Director to take any necessary action, upon compliance with the requirements of law. However, no final judgment shall be entered in favor of an applicant under section 1(b) [§1051(b)] before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c) [§1057(c)].

(2) The Director shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Director, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not. In suits brought hereunder, the record in the United States Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to

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take further testimony. The testimony and exhibits of the record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the United States Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there are adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the Eastern District of Virginia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

(July 5, 1946, ch. 540, § 21, 60 Stat. 435; July 19, 1952, ch. 950, § 2, 66 Stat. 814; Aug. 8, 1958, Pub. L. 85-609, § 1, 72 Stat. 540; Oct. 9, 1962, Pub. L. 87-772, §12, 76 Stat. 771; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-600, §2, 88 Stat. 1955; Apr. 2, 1982, Pub. L. 97-164, §162, 96 Stat. 49; Nov. 8, 1984, Pub. L. 98-620, §414, 98 Stat. 3363; Nov. 16, 1988, Pub. L. 100-667, §120, 102 Stat. 3942; Mar. 17, 2010, Pub. L. 111-146, §3(c), 124 Stat. 67; Sept. 16, 2011, Pub. L. 112-29, §9, 125 Stat. 316.)

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15 U.S. Code § 1114(1)

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

As used in this paragraph, the term “any person” includes the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the

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authorization and consent of the United States, and any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.

* * *

(July 5, 1946, ch. 540, title VI, §32, 60 Stat. 437; Oct. 9, 1962, Pub. L. 87-772, §17, 76 Stat. 773; Nov. 16, 1988, Pub. L. 100-667, §127, 102 Stat. 3943-44; Oct. 27, 1992, Pub. L. 102-542, §3, 106 Stat. 3567; Oct. 30, 1998, Pub. L. 105-330, §201, 112 Stat. 3070; Aug. 5, 1999, Pub. L. 106-43, §4, 113 Stat. 219; Nov. 29, 1999, Pub. L. 106-113, §3004, 113 Stat. 1501A-549; Apr. 27, 2005, Pub. L. 109-9, §202, 119 Stat. 223.)

*Appendix M***15 U.S. Code § 1115**

(a) Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this Act and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in subsection (b), which might have been asserted if such mark had not been registered.

(b) To the extent that the right to use the registered mark has become incontestable under section 15 [§1065], the registration shall be conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 15 [§1065] or in the renewal application filed under the provisions of section 9 [§1059] if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered

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mark shall be subject to proof of infringement as defined in section 32 [§1114], and shall be subject to the following defenses or defects:

- (1) That the registration or the incontestable right to use the mark was obtained fraudulently; or
- (2) That the mark has been abandoned by the registrant; or
- (3) That the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used; or
- (4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin; or
- (5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to (A) the date of constructive use of the mark established pursuant to section 7(c) [§1057(c)], (B) the registration of the mark under this Act if the application for registration is filed before the effective

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date of the Trademark Law Revision Act of 1988, or (C) publication of the registered mark subsection (c) of section 12 [§1062] of this Act: *Provided, however,* That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or publication under subsection (c) of section 12 [§1062] of this Act of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States; or

(8) That the mark is functional; or

(9) That equitable principles, including laches, estoppel, and acquiescence are applicable.

(July 5, 1946, ch. 540, title VI, §33, 60 Stat. 438; Oct. 9, 1962, Pub. L. 87-772, §18, 76 Stat. 774; Nov. 16, 1988, Pub. L. 100-667, §128, 102 Stat. 3944-45; Oct. 30, 1998, Pub. L. 105-330, §201, 112 Stat. 3070; Nov. 2, 2002, Pub. L. 107-273, §13207, 116 Stat. 1906.)

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15 U.S. Code § 1127

In the construction of this Act, unless the contrary is plainly apparent from the context –

* * *

The term “trademark” includes any word, name, symbol, or device, or any combination thereof –

- (1) used by a person, or
- (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term “service mark” means any word, name, symbol, or device, or any combination thereof–

- (1) used by a person, or,
- (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish the services of one person, including a unique service, from the services of others

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and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

* * *

(July 5, 1946, ch. 540, title X, §45, 60 Stat. 443 ; Pub. L. 87-772, §21, Oct. 9, 1962, 76 Stat. 774 ; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949 ; Pub. L. 98-620, title I, §103, Nov. 8, 1984, 98 Stat. 3335 ; Pub. L. 100-667, title I, §134, Nov. 16, 1988, 102 Stat. 3946 ; Pub. L. 102-542, §3(d), Oct. 27, 1992, 106 Stat. 3568 ; Pub. L. 103-465, title V, §521, Dec. 8, 1994, 108 Stat. 4981 ; Pub. L. 104-98, §4, Jan. 16, 1996, 109 Stat. 986 ; Pub. L. 106-43, §§4(c), 6(b), Aug. 5, 1999, 113 Stat. 219 , 220; Pub. L. 106-113, div. B, §1000(a) (9) [title III, §3005, title IV, §4732(b)(1)(A)], Nov. 29, 1999, 113 Stat. 1536 , 1501A-550, 1501A-583; Pub. L. 109-312, §3(e), Oct. 6, 2006, 120 Stat. 1733.)