

In the Supreme Court of the United States

VETEMENTS GROUP AG, PETITIONER

v.

JOHN A. SQUIRES, UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR,
UNITED STATES PATENT AND TRADEMARK OFFICE

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Patent and Trademark Office correctly refused registration of a clothing company's proposed trademarks that comprise the term "Vetements," the common French word for "clothing."

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is reported at 137 F.4th 1317. The opinion of the Trademark Trial and Appeal Board (Pet. App. 30a-79a) is available at 2023 WL 3271156.

JURISDICTION

The judgment of the court of appeals was entered on May 21, 2025. The petition for a writ of certiorari was filed on August 19, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

* Under Secretary Squires is substituted for former Acting Under Secretary Coke Morgan Stewart pursuant to Rule 35.3 of the Rules of this Court.

STATEMENT

This case involves petitioner’s applications to register trademarks comprising the term “Vetements” for clothing products and clothing-related retail-store services. The United States Patent and Trademark Office (USPTO) refused registration of the proposed marks as generic for and merely descriptive of the goods and services identified in the applications. Pet. App. 30a-79a. The court of appeals affirmed. *Id.* at 1a-29a.

1. a. A trademark is a “word, name, symbol, or device” used by a person “to identify and distinguish his or her goods” in commerce and “to indicate the source of the goods.” 15 U.S.C. 1127. Federal law does not create trademark rights. *Matal v. Tam*, 582 U.S. 218, 224 (2017). Rather, trademarks have been protected by the common law and in equity since the Founding, and the common law and statutes of many States continue to provide such protection today. *Ibid.* But federal law has long provided additional advantages for trademark holders. Since 1946, those advantages have been provided through the Lanham Act, 15 U.S.C. 1051 *et seq.* As relevant here, the Lanham Act defines the term “trademark” and authorizes federal registration of trademarks if certain requirements are met. 15 U.S.C. 1051(a)(1), 1052, 1127.

To assist in determining whether particular words or phrases can serve as trademarks, this Court has identified five categories of terms, listed in order of increasing distinctiveness and protectability: “(1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992) (citing *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976) (Friendly, J.)). “A generic term is one that refers to the genus of which

the particular product is a species.” *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). A generic term is “the common name of a product or service itself,” and it “‘identifies the general nature of an article.’” *Sara Lee Corp. v. Kayser-Roth Corp.*, 81 F.3d 455, 464 & n.10 (4th Cir.) (citation omitted), cert. denied, 519 U.S. 976 (1996). Generic terms are categorically ineligible for registration under the Lanham Act. See *USPTO v. Booking.com B.V.*, 591 U.S. 549, 554 (2020); see also 15 U.S.C. 1064(3), 1065(4).

In contrast with a generic term, a descriptive term “describes the qualities or characteristics of a good or service.” *Park 'N Fly*, 469 U.S. at 194; see 3 Malla Pollack & Ryan Vacca, *Callmann on Unfair Competition, Trademarks and Monopolies* § 18:14 (4th ed. 2025) (“A generic term *categorizes*; it conveys information with respect to the nature or class of an article. A descriptive term, on the other hand, *characterizes*; it identifies the characteristics and qualities of the article, such as its color, odor, functions, dimensions or ingredients.”). Examples of descriptive terms include “After Tan post-tanning lotion, 5 Minute glue, King Size men’s clothing, and the Yellow Pages telephone directory.” *Sara Lee*, 81 F.3d at 464. Unlike generic terms, a descriptive term may be protected, but only if “it has acquired secondary meaning, *i.e.*, it ‘has become distinctive of the applicant’s goods in commerce.’” *Park 'N Fly*, 469 U.S. at 194 (citation omitted); see 15 U.S.C. 1052(f).

Suggestive, arbitrary, and fanciful marks “are deemed inherently distinctive and are entitled to protection.” *Two Pesos*, 505 U.S. at 768. “Suggestive marks connote, without describing, some quality, ingredient, or characteristic of the product.” *Sara Lee*, 81 F.3d at 464 (providing examples of Coppertone sunscreen and Orange

Crush soda). “Arbitrary marks are comprised of words in common usage, but, because they do not suggest or describe any quality, ingredient, or characteristic of the goods they serve, are said to have been arbitrarily assigned.” *Ibid.* (e.g., Camel cigarettes and Apple computers). “Fanciful marks are, in essence, made-up words.” *Ibid.* (e.g., Clorox bleach and Kodak film).

b. Applicants sometimes seek to register foreign-language words as trademarks. Under the longstanding “doctrine of foreign equivalents,” a term may be translated into English for purposes of assessing its distinctiveness and protectability, at least if the term comes from a common modern language and “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 Fondee en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005) (brackets and citation omitted); see Restatement (Third) of Unfair Competition § 14 (1995); *Trademark Manual of Examining Procedure* § 1209.03(g) (May 2025). For instance, the phrase “‘Leche de Magnesia’” could not be trademarked because it “is the ready equivalent * * * to many people” of the generic term “‘Milk of Magnesia.’” *McKesson & Robbins, Inc. v. Charles H. Phillips Chem. Co.*, 53 F.2d 1011, 1011 (2d Cir. 1931), cert. denied, 285 U.S. 552 (1932). A trademark applicant is required to provide an English translation of a proposed foreign-language mark to allow for proper examination, including to assist the examiner in determining whether the mark is generic or descriptive. See 37 C.F.R. 2.32(a)(9).

The doctrine of foreign equivalents rests on at least two main rationales. See J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:41, at

171 (5th ed. 2025) (McCarthy). First, it reflects the multilingual character of the United States and the attendant harms to domestic commerce that could result from allowing trademark registration of generic or merely descriptive foreign terms. See *ibid.*; *Otokoyama Co. v. Wine of Japan Import, Inc.*, 175 F.3d 266, 270-271 (2d Cir. 1999). Second, the doctrine serves interests in international comity and reciprocity. In order to protect American businesses that export goods or operate abroad, “[t]he United States has traditionally objected to the registration as trademarks in foreign nations of generic names in the English language.” McCarthy § 12:41, at 171.

2. a. Petitioner, a fashion company, applied to the USPTO to register two marks comprising the term “Vetements” (rendered in all capital letters), one in standard character format and one in stylized form. Pet. App. 30a; Pet. 4. Both applications pertain to petitioner’s clothing products (*e.g.*, “[s]hirts, skirts, sweaters, coats, jackets, suits”) and clothing-related retail-store services. Pet. App. 31a. As the applications note, the English translation of the French word “‘vetements’ in the mark is ‘clothing.’” *Ibid.*

A USPTO examining attorney refused to register the proposed marks, Pet. App. 91a-103a, and the USPTO Trademark Trial and Appeal Board (TTAB) affirmed the refusal, *id.* at 30a-79a. Applying the doctrine of foreign equivalents, the TTAB determined that the marks are unregistrable because the term “Vetements” is generic for the goods and services identified in the applications. *Id.* at 34a-49a, 63a. In the alternative, the TTAB concluded that the applied-for marks are merely descriptive of those goods and services, and that peti-

tioner had not demonstrated that they have acquired distinctiveness. *Id.* at 49a-63a.

b. The court of appeals affirmed. Pet. App. 1a-29a.

The court of appeals first determined that, in assessing the marks' eligibility for registration under the Lanham Act, it was appropriate to apply the doctrine of foreign equivalents and translate "Vetements" into English. Pet. App. 13a-27a; see *id.* at 13a (recognizing that the doctrine "is not an absolute rule and should be viewed merely as a guideline") (quoting *Palm Bay*, 396 F.3d at 1377). The court found "substantial evidence" supporting the TTAB's "finding that the ordinary American purchaser would stop and translate the marks." *Id.* at 14a. It observed that French is a common language widely used in the United States and that "the word in question is a simple and common word—the word for clothing." *Id.* at 17a; see *id.* at 16a (noting that "as of 2010, French * * * was the fourth most common language spoken in the United States"). The likelihood of translation was reinforced, the court concluded, by the usage of the proposed marks in the context of petitioner's clothing business, given that "Vetements" "is the French word for clothing." *Id.* at 22a. The court further rejected petitioner's contention that under *Menendez v. Holt*, 128 U.S. 514 (1888), all foreign-language marks are inherently fanciful, as well as its claim that the proposed marks had acquired distinctiveness. Pet. App. 22a-25a.

Having invoked the doctrine of foreign equivalents, the court of appeals held that the proposed marks are unregistrable. Pet. App. 27a-29a. The court concluded that the marks are generic because the term "Vetements," translated into English as "clothing," merely "refer[s] to the genus of goods or services in question."

Id. at 28a (citation omitted); see *ibid.* (noting that petitioner “only superficially disputes * * * that its marks are generic or descriptive if translated into ‘clothing’”). The court likewise found “no error” in the TTAB’s determination that the proposed marks were also “descriptive words without acquired distinctiveness.” *Id.* at 29a (citation omitted).

ARGUMENT

Petitioner contends (Pet. 15-25) that the Federal Circuit erred in applying the doctrine of foreign equivalents to its proposed “Vetements” marks. This is a textbook case for application of that doctrine, however, and the court of appeals’ decision does not conflict with any decision of this Court or another court of appeals. This Court recently denied a petition for a writ of certiorari that presented related issues, see *Australian Leather Pty. Ltd. v. Deckers Outdoor Corp.*, 142 S. Ct. 587 (2021) (No. 21-513), and it should take the same course here.

1. The court of appeals correctly applied the doctrine of foreign equivalents in holding that petitioner’s proposed marks are generic and ineligible for registration. Pet. App. 13a-29a.

a. Generic and merely descriptive terms are ineligible for registration as trademarks under the Lanham Act. *USPTO v. Booking.com B.V.*, 591 U.S. 549, 553-554 (2020). And nothing in the Lanham Act or in governing precedent restricts that limitation to English-language words. See, *e.g.*, 15 U.S.C. 1052(e) and (f). Rather, the determination whether a word is distinctive for purposes of trademark registrability is guided by consumer perception. See *Booking.com*, 591 U.S. at 556; Pet. 3. The Federal Circuit and other courts accordingly have applied the doctrine of foreign equivalents,

under which proposed foreign-language trademarks are translated into English for purposes of determining their eligibility for registration, at least when an ordinary American consumer would likely translate the mark upon encountering it in commerce. Pet. App. 5a-14a; see, e.g., *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005); *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1531-1532 (4th Cir. 1984).

While the doctrine of foreign equivalents “is not an absolute rule and should be viewed merely as a guideline,” *Palm Bay*, 396 F.3d at 1377, the Federal Circuit appropriately applied it here. Consistent with the TTAB’s findings, the court of appeals emphasized that French is one of the most commonly spoken and taught languages in the United States, and that “vetements” is a basic French word. See Pet. App. 16a-17a, 43a-47a. A large proportion of consumers would be particularly likely to translate the marks in the context of petitioner’s clothing business, since “clothing” is the direct translation of “vetements” and French terms are widely used in the fashion industry. *Id.* at 20a-22a (citation omitted); see *Chaussures Bally Societe Anonyme de Fabrication v. Dial Shoe Co.*, 345 F.2d 216, 217 (C.C.P.A. 1965).

Petitioner’s proposed marks thus raise the core concerns that underlie the doctrine of foreign equivalents. Many American consumers would encounter petitioner’s proposed “Vetements” marks in commerce and see them as simply the generic term “clothing.” Indeed, it appears that petitioner intended for its marks to invite that consumer perception. See Pet. App. 41a (“In [petitioner’s] own words: ‘We didn’t want to use a personal name, but a generic one that expressed our ap-

proach.’”) (citation omitted). Thus, registering “Vetements” for clothing and clothing stores would be inconsistent with the fundamental purpose of a trademark, which is “to indicate the source of the goods” and avoid consumer confusion. 15 U.S.C. 1127; see 15 U.S.C. 1114(1).

In addition, registering the word “Vetements” in the United States would be the equivalent of a foreign country registering “Clothes” or “Clothing” as a trademark, to the obvious detriment of American firms that market clothing abroad. See McCarthy § 12:41, at 171. Treating “Vetements” as an unregistrable generic mark thus “protects the interest of the consuming public in understanding the nature of goods offered for sale, as well as a fair marketplace among competitors by insuring that every provider may refer to his goods as what they are.” *Otokoyama Co. v. Wine of Japan Import, Inc.*, 175 F.3d 266, 270 (2d Cir. 1999). The court of appeals therefore correctly affirmed the denial of petitioner’s trademark applications.

b. Petitioner’s contrary arguments lack merit. Petitioner’s principal contention (Pet. i, 12, 20) is that the doctrine of foreign equivalents is spurious, and that proposed foreign-language marks should always be assessed “at face value” without translation into English. But petitioner identifies no judicial decision, including petitioner’s own principal modern authority (Pet. 3, 26, 30), *Pizzeria Uno Corp. v. Temple*, *supra*, that has rejected the doctrine of foreign equivalents. See 747 F.2d at 1531-1533; see also pp. 13-14, *infra*. The doctrine serves important interests and was well established long before the Lanham Act was enacted in 1946. See *In re Northern Paper Mills*, 64 F.2d 998, 998-999 (C.C.P.A. 1933) (collecting cases); see also, *e.g.*, *Dadirrian v. Ya-*

cubian, 98 F. 872 (1st Cir. 1900); *Selchow v. Chaffee & Selchow Mfg. Co.*, 132 F. 996 (C.C.S.D.N.Y. 1904). And courts “normally assume that Congress is ‘aware of relevant judicial precedent’ when it enacts a new statute.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 233 (2020) (citation omitted); see *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 136 (2014).

Although petitioner contends (Pet. 16-18) that this Court rejected the doctrine of foreign equivalents in the pre-Lanham Act case *Menendez v. Holt*, 128 U.S. 514 (1888), the court of appeals correctly disagreed, Pet. App. 22a-24a. The *Menendez* Court upheld a flour company’s mark “La Favorita” and noted that the mark did not, “in itself, indicate quality, for it was merely a fancy name, and in a foreign language.” 128 U.S. at 520. Petitioner reads that statement (Pet. 17) to mean that all foreign terms are inherently “fanciful” and protectable. But in the remainder of the sentence that petitioner quotes, the *Menendez* Court explained that the term “La Favorita” “evidenced, that the skill, knowledge and judgment of [the trademark holder] 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.” 128 U.S. at 520. Rather than treating foreign words as categorically fanciful and protectable, the *Menendez* Court thus implicitly translated the mark in question and found it sufficiently distinctive.

Under this Court’s modern trademark-eligibility framework, the mark upheld in *Menendez* may be best understood as a self-laudatory descriptive mark that had acquired distinctiveness. See *Booking.com*, 591 U.S. at 553; *Hoover Co. v. Royal Appliance Mfg. Co.*, 238 F.3d 1357, 1360 (Fed. Cir. 2001) (explaining that

“[m]arks that are merely laudatory and descriptive of the alleged merit of a product are * * * regarded as being descriptive’” but may “acquire distinctiveness or secondary meaning”) (citation omitted). In holding that the “La Favorita” mark “deserve[d] protection,” the Court emphasized that “the flour so marked [had] acquired an extensive sale, because the public had discovered that it might be relied on as of a uniformly meritorious quality.” *Menendez*, 128 U.S. at 520. That observation would not have been relevant if all foreign-language marks were inherently fanciful, as petitioner suggests. And because “La Favorita” was not a foreign-language equivalent of the word “flour,” the *Menendez* Court had no occasion to address the proper treatment of a foreign-language *generic* term, like the one at issue here.

Petitioner also contends that the court of appeals applied the wrong standard for identifying a foreign equivalent, and deviated from “the Lanham Act’s focus on consumer perception,” *Booking.com*, 591 U.S. at 556, by applying the doctrine here “even though only a minute fraction of the consuming public would * * * translate the term [‘Vetements’],” Pet. 3; see Pet. i, 20. But the court rejected the factual premise on which petitioner’s argument rests. The court found that “substantial evidence” supported the TTAB’s “finding that the ordinary American purchaser,” not a minute fraction of U.S. consumers, would understand “Vetements” as referring to clothing. Pet. App. 14a; see *id.* at 15a-22a; see also *id.* at 49a (TTAB “find[s] 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”); contra

Pet. 11-12 (asserting that the court ignored consumer perception).

Although petitioner emphasizes (Pet. 23) that “less than 1% of the American public speak French,” that is the fraction of Americans who speak French *at home*, Pet. 23 n.10—far fewer, as the TTAB noted, than the number of Americans who “speak or comprehend” the language, Pet. App. 46a, and presumably even fewer than would understand a relatively basic French word like “vetements.” In any event, a dispute over the extent of public understanding of a particular foreign term is not a matter warranting this Court’s review, particularly where the court of appeals applied the correct standard of review (“supported by substantial evidence,” *id.* at 14a) and upheld the relevant factual finding. See Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings.”); *United States v. Johnston*, 268 U.S. 220, 227 (1925) (“We do not grant a certiorari to review evidence and discuss specific facts.”); cf. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949).

2. Contrary to petitioner’s suggestion (Pet. 26-32), this case does not implicate a circuit conflict warranting this Court’s review. Petitioner accepts (Pet. 26-28) that the court of appeals’ decision is consistent with decisions of the Second and Fifth Circuits. See *Otokoyama*, 175 F.3d 266 (2d Cir.); *Orto Conservia Cameranesa Di Giacchetti Marino & Co. v. Bioconserve S.r.l.*, 205 F.3d 1324 (Tbl.), 2000 WL 232108 (2d Cir. Feb. 8, 2000); *McKesson & Robbins, Inc. v. Charles H. Phillips Chem. Co.*, 53 F.2d 1011 (2d Cir. 1931), cert. denied, 285 U.S. 552 (1932); *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439 (5th Cir. 2000). Petitioner is wrong,

however, in contending that those circuits categorically apply the doctrine of foreign equivalents without regard to consumer perception. See, *e.g.*, *Bernat*, 210 F.3d at 445 (noting that the relevant product, sold using a Spanish-language mark, was “available in the U.S. only in ethnic ‘mom-and-pop’ stores that serve Spanish-speaking consumers”); *Orto Conservia*, 2000 WL 232108, at *2 (affirming a finding that “consumers would recognize the [trademark] as describing a type of olive from Italy and not as an olive produced by the defendants”); *McKesson*, 53 F.2d at 1011 (distinguishing the Spanish word “[l]eche” from “words taken from the language of Hottentots or Patagonians which might be so unfamiliar as to be in effect fanciful or arbitrary terms”).

Although petitioner perceives “a potential that the outcome would be the opposite” in the Fourth Circuit (Pet. 31), the decision below does not conflict with the Fourth Circuit’s decision in *Pizzeria Uno*, *supra*. The question in that case was whether the word “Uno” in the mark “Pizzeria Uno” was “descriptive or suggestive.” *Pizzeria Uno*, 747 F.2d at 1527. The Fourth Circuit accepted the doctrine of foreign equivalents, citing several of the same precedents that the Federal Circuit invoked below. *Id.* at 1531-1533 (citing, *e.g.*, *Northern Paper Mills*, 64 F.2d 998; *Weiss Noodle Co. v. Golden Cracknel & Specialty Co.*, 290 F.2d 845, 846 (C.C.P.A. 1961); *Bart Schwartz Int’l Textiles, Ltd. v. FTC*, 289 F.2d 665, 667 (C.C.P.A. 1961)); see Pet. App. 5a-8a. The court applied the doctrine to “Uno,” translating the word to the English “one” and correctly concluding that the term was suggestive, rather than descriptive of the trademark holder’s pizza restaurants. *Pizzeria Uno*, 747 F.2d at 1533.

Unlike “Uno,” the term “Vetements” when translated into English yields a plainly generic term. See Pet. App. 28a. If the Fourth Circuit had disapproved the doctrine of foreign equivalents or deemed foreign terms inherently fanciful, as petitioner urges, the court’s translation of “Uno” and its analysis of the word’s English equivalent would have been superfluous. And contrary to petitioner’s view, the Fourth Circuit evidently viewed the doctrine as consistent with *Menendez*, which it cited in support of its holding. See *Pizzeria Uno*, 747 F.2d at 1534.

Petitioner also suggests (Pet. 9, 24-25, 29) that the decision below is inconsistent with the Federal Circuit’s prior decision in *Palm Bay*, *supra*. There, the court of appeals declined to apply the doctrine of foreign equivalents to the mark “Veuve Royale” (“Royal Widow” in French) in holding that the mark was not likely to be confused with the English-language mark “The Widow.” 396 F.3d at 1377; see *ibid.* (affirming the refusal to register “Veuve Royale” on other grounds) (capitalization altered). As the court below explained, *Palm Bay* is readily distinguishable from this case, both because “veuve” is a more obscure word than “vetements” and because it has no close association with the relevant product (there, sparkling wine). See Pet. App. 17a, 21a. And even if the Federal Circuit’s precedent on the doctrine of foreign equivalents were internally inconsistent, that would not be a ground for granting a writ of certiorari. See *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam) (“It is primarily the task of a Court of Appeals to reconcile its internal difficulties.”).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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