

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: December 2, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Katakis*  
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Serial No. 85901018  
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Henry J. Cittone of Cittone & Chitna LLP,  
for Helen Katakis.

Kara E. Jackson, Trademark Examining Attorney, Law Office 120,  
Michael W. Baird, Managing Attorney.

—————  
Before Quinn, Bergsman and Masiello,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Helen Katakis (“Applicant”) seeks registration on the Principal Register of the  
mark MEAT CANDY (in standard characters) for

Food kiosk services; mobile food kiosk services; mobile  
street vendor services featuring food and drink; street  
vendor services featuring food and drink, in International  
Class 35.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85901018 was filed on April 11, 2013, based upon Applicant’s  
allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the  
Trademark Act.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark MEAT CANDY is merely descriptive because it describes a feature of Applicant's food vending services<sup>2</sup> (*i.e.*, Applicant intends to sell sweetly flavored meat products).<sup>3</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

A term is merely descriptive of services within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). *See also, In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). The Board has previously found that a mark for restaurant services which comprises a generic name of a food may be merely descriptive of restaurant services where customers may purchase those products. *See In re France Croissant, Ltd.*, 1 USPQ2d 1238 (TTAB 1986) (LE CROISSANT SHOP is merely descriptive of restaurant services where customers may purchase croissants); *In re Le Sorbet, Inc.*, 228 USPQ 27 (TTAB 1985) (LE SORBET is merely descriptive of restaurant and carry-out services); *Steak N Shake, Inc. v. Steak and Ale*, 171 USPQ 175 (TTAB 1971) (STEAK, common portion of STEAK N SHAKE and STEAK N' Ale, held descriptive of restaurant services).

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<sup>2</sup> 12 TTABVUE 4.

<sup>3</sup> 12 TTABVUE 6.

*Compare In re Registry Hotel Corp.*, 216 USPQ 1104 (TTAB 1983) (LA CHAMPAGNE held registrable for restaurant services because the mark served a function different from merely informing consumers that champagne was served in applicant's restaurant: that is, the mark was suggestive of French cuisine in general rather than of a particular wine served by applicant).

Applicant argues that her mark is suggestive, rather than descriptive, because it is a “tongue in cheek reference to the desirability of certain meat products.”<sup>4</sup> According to Applicant, “[c]andy, in common modern American English parlance, is a snarky reference to anything desirable.”<sup>5</sup> In this regard, we note that “candy” is defined, *inter alia*, as “something that is pleasant or appealing in a light or frivolous way <visual candy>.”<sup>6</sup> Thus, noting the evidence submitted by the Examining Attorney showing “Meat Candy” used by third parties to describe their products in a laudatory manner, Applicant argues that such use is “merely an expression of desirability of a product – *i.e.*, so good it's like candy.”<sup>7</sup> See the excerpts listed below from the websites submitted by the Examining Attorney in her October 3, 2014 and May 1, 2015 Office Actions:

1. “100 Best Barbecue Restaurants In America” (barbecuerankings.com)

The smoked bacon at Jimmy's is unbelievable. This is everything a carnivore could ask for: thick cut, smokey [sic], blackened cubes of meat candy.

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<sup>4</sup> 10 TTABVUE 3 and 4.

<sup>5</sup> 10 TTABVUVUE 4.

<sup>6</sup> Merriam-Webster online dictionary (merriam-webster.com) attached to the March 5, 2014 Office Action.

<sup>7</sup> 10 TTABVUE 5.

2. Triple J's Smokehouse ([thrillist.com](http://thrillist.com))

Coma-inducing, mind-numbingly delicious smoldering slabs of meat candy so crack-like you'd follow that weird guy into his van for a little taste of some more.

3. The Warner Cable News ([statenisland.ny1.com](http://statenisland.ny1.com))

Chow: John Brown's Barbecue Turns To Pure "Meat Candy"

\* \* \*

... The flavor packed ends of the brisket are pure meat candy.

4. Smash Burger ([smashburger.com](http://smashburger.com))

Smashburger, Smashingly Good Meat Candy

\* \* \*

The combination of the smash burger, the restaurants signature seasoning blend, and high temperatures result in a caramelized crust to create what is called meat candy.

5. Texas BBQ Ranger ([texasranger.blogspot.com](http://texasranger.blogspot.com))

Meat Candy Time

Wife is out of town and the weather is perfect. Time to fire up the pit. I'm ready for some meat candy ribs (See previous post Meat Candy).

6. Mad Meat Genius ([madmeatgenius.com](http://madmeatgenius.com))

The pork was flavorful. The outer crust of the meat was caramelized with rich meat candy flavor.

7. eatocracy ([eatocracy.cnn.com](http://eatocracy.cnn.com))

1. Chicken hearts

You'll find the chicken hearts at almost every butcher's counter (if not they can order them for you). They're

super-cheap, and when grilled, they taste like meat candy.

8. Seriously Asian: Chinese Sausage ([seriouslyseats.com](http://seriouslyseats.com))

What unifies all kinds of Chinese sausage is an extremely sweet flavor and an emulsified texture that makes even the fresher links taste like meat candy.

9. Best Beef Jerky ([bestbeefjerky.org](http://bestbeefjerky.org))

Jedidiah's Beef Jerky – Private Reserve – Teriyaki

\* \* \*

Overall, this is a sweet & salty variety of jerky. You could rightfully call it a teriyaki variety, but only if you call it an extremely sweet teriyaki. This stuff is basically “meat candy”, and is supported by the very high 13g of carbs per loz serving on the nutrition label.

10. Pearson Ranch Elk & Bison Jerky ([pearsonranchjerky.com](http://pearsonranchjerky.com))

We are happy to announce Rucker's Candy is now a distributor of Pearson Ranch Elk & Bison Jerky meats. Our jerky and snack sticks taste like meat candy so it's a perfect fit!

11. Afar website ([afar.com](http://afar.com))

Pork Candy at the Ravenous Pig

“It's meat candy,” said the waiter as he gleefully described the Pork Belly starter.

12. OinkinMoo BBQ ([omgbbq.com](http://omgbbq.com))

Menu

\* \* \*

MEAT – all meat slow-smoked to perfection on this truck

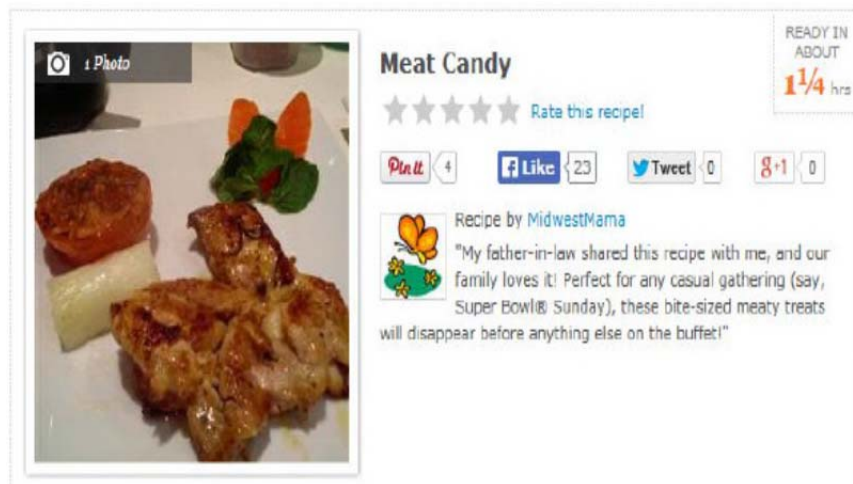
\* \* \*

Burnt Ends – Meat candy. Cubed pieces of brisket, sprinkled with additional rub and resmoked for several more hours, then coated with BBQ sauce. Good as it gets.

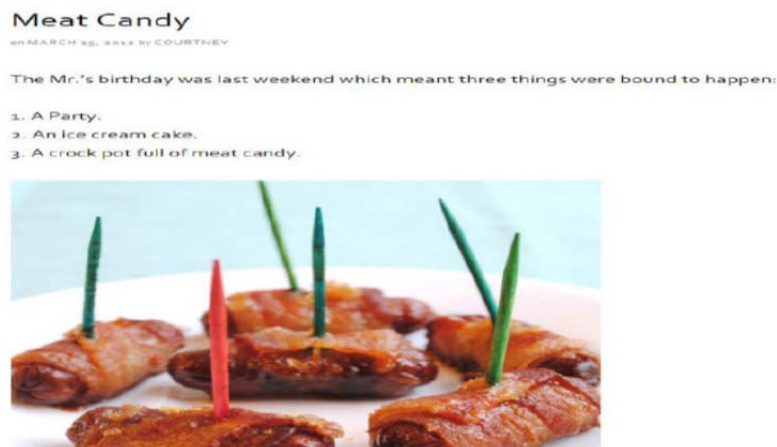
Corroborating the laudatory nature of the term “Meat Candy,” are the numerous examples of third parties, shown below, who have used that term to identify particular foods:

1. Bacon wrapped sausage

a. Allrecipes.com<sup>8</sup>



b. Neighbor Food website (neighborfoodblog.com)<sup>9</sup>



<sup>8</sup> March 5, 2014 Office Action.

<sup>9</sup> March 5, 2014 Office Action.

- c. My Day To Shine! website ([mydaytoshine.blogspot.com](http://mydaytoshine.blogspot.com))<sup>10</sup>

### Meat Candy

Even from the name it sounds completely disgusting but I promise this was one of the most glorious things I ever tasted! Meat Candy!

This little bit of heaven on a toothpick came from my best friend's aunt. ... It also won best recipe at the West Virginia State Fair.

- d. The Bump website ([forums.thebump.com](http://forums.thebump.com))<sup>11</sup>

aw: shabby chic style shower update with meat candy recipe!!

... We had a champagne punch ... meat candy (lil smokies wrapped in bacon and soaked in brown sugar ...).

- e. Preservation Network ([preservationist.tumblr.com](http://preservationist.tumblr.com))<sup>12</sup>

Recipe: Paleo Meat Candy (So Good!!)



### Paleo Meat Candy

- Ingredients
  - Pitted Dates
  - Mild Italian Sausage

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<sup>10</sup> March 5, 2014 Office Action.

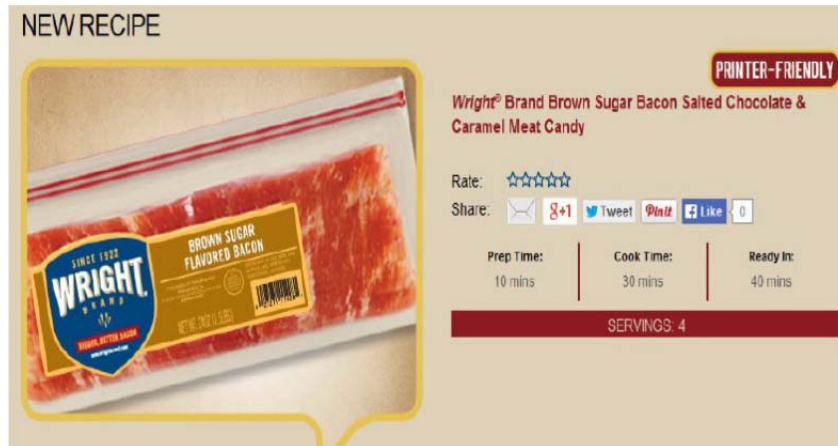
<sup>11</sup> March 5, 2014 Office Action.

<sup>12</sup> May 1, 2015 Office Action (7 TTABVUE 13).

- Bacon

2. Desserts or other sweet offerings

a. Wright Brand website (wrightbrand.com)<sup>13</sup>



b. Saveur.com<sup>14</sup>

Meat Candy

There is a new trend afoot, and we're both intrigued and mystified by it. We call it sweetmeats, but others might call it gross: we're talking about meat desserts. This particular phenomenon has manifested itself in countless ways, including bacon peanut brittle (our favorite is the Redhead's, which we could eat by the fistful), chef Becky Selengut's bacon and Rice Krispies treats, Humphrey Slocombe's foie gras and prosciutto ice creams, Vosge's bacon chocolate bars, and Roni-Sue's bacon-flavored "Pig Out" gift packages.

c. Revolutionarrie.tumblr.com<sup>15</sup>

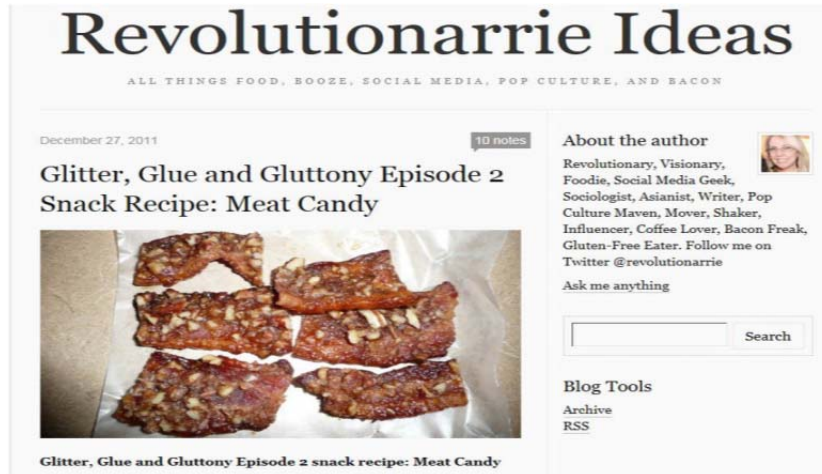
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<sup>13</sup> March 5, 2014 Office Action.

<sup>14</sup> *Id.*

<sup>15</sup> October 3, 2014 Office Action.





- d. Blake's on Sixth (blakesonsixth.com)<sup>16</sup>

Snacks

Meat Candy - \$7

*bacon wrapped dates, gorgonzola, honey*

- e. Back Bay Social Club (boston.menupages.com)<sup>17</sup>

Starters

\* \* \*

Meat Candy kielbasa, brown sugar & pineapple

3. Beef jerky

- a. Country Cat Dinner House & Bar (thecountrycat.com)<sup>18</sup>

Homemade Delights

Each year, they make five tons of house-cured bacon and over 1,000 pounds of beef jerky (better known there as "meat candy") used in many ways including to garnish Bloody Mary's.

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<sup>16</sup> May 1, 2015 Office Action (6 TTABVUE 13).

<sup>17</sup> May 1, 2015 Office Action (7 TTABVUE 8).

<sup>18</sup> October 3, 2014 Office Action.

4. Brisket ends

Oregon Live ([oregonlive.com](http://oregonlive.com))<sup>19</sup>

Reverend's BBQ: a work-in-progress in SE Portland

\* \* \*

Brisket, a cut from the hard-worked pectoral muscles in a cow's chest, is notoriously fickle, best treated by a slow-and-low smoke bath. ... Barbecue aficionados sometimes refer to the burnt ends, the fatty, charred end bits traditionally made from the brisket's point, as "meat candy" - - if you have had great brisket, you'll understand.

5. Hamburgers

Levi's Gastrolounge & Lowbar ([levisgastrolounge.com](http://levisgastrolounge.com))<sup>20</sup>

BURGERS

\* \* \*

MEAT CANDY & CHEESE

Bacon, Tillamook & the beef

6. Pork shanks

a. Stash Pizza ([statshpizza.com](http://statshpizza.com))<sup>21</sup>

Meat Candy

*Grilled pork shanks, dry spice rub, carolina style sauce, pineapple slaw*

b. Cavegirl In The Kitchen ([cavegirlinthekitchen.blogspot.com](http://cavegirlinthekitchen.blogspot.com))<sup>22</sup>

Easy Carnitas (AKA Meat Candy)

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<sup>19</sup> October 3, 2014 Office Action.

<sup>20</sup> May 1, 2015 Office Action (6 TTABVUE 8).

<sup>21</sup> May 1, 2015 Office Action (7 TTABVUE 3).

<sup>22</sup> May 1, 2015 Office Action (8 TTABVUE 7).

7. Chicken

SparkRecipes website (recipes.sparkpeople.com)<sup>23</sup>

Meat Candy

Introduction

A delicious chicken recipe we found online somewhere and modified.

8. Ribs

Eye of the White Face website (eyeofthewhiteface.org)<sup>24</sup>

Fall Means the Making of Meat Candy

Meat Candy

... I came across a new recipe that included ginger-mango-and hickory barbecue sauce.

\* \* \*

So whether the mission is to feed yourself, the ultimate tailgate party, your buddies at deer camp, a family of four, or a hot Thursday night date you cannot go wrong with this recipe. ... I can't let all my secrets go, but rest assured if you do your beef ribs right, nobody will care what the sides are as long as the meat candy's there.

In assessing the probative value of the evidence of record, Applicant argues that MEAT CANDY used to identify Applicant's food services is suggestive because a consumer must take too many mental steps to associate the mark with the nature of the services.

To get to kiosk food services, one must first mentally translate meat candy to barbecue, then associate that translation with kiosk food services. *There are simply too*

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<sup>23</sup> May 1, 2015 Office Action (7 TTABVUE 15).

<sup>24</sup> May 1, 2015 Office Action (8 TTABVUE 3). At 8 TTABVUE 9, the Examining Attorney submitted a recipe for "Candy Meat" for short ribs or cut up chuck steak.

*many mental steps between the mark and the services themselves.* The term meat candy does not immediately and directly convey food kiosk services and the consuming public would not know that the services were food kiosk services merely from the mark itself.<sup>25</sup>

Applicant concludes by stating that “[m]eat candy is used in conjunction with events and foods as a suggestion of their desirability.”<sup>26</sup>

We agree that the term MEAT CANDY characterizes the desirability of the food served by Applicant. However, it is this very connotation which makes the term MEAT CANDY laudatory when considered in relation to Applicant’s services (*i.e.*, Applicant’s service features food that is so good, it is meat candy) and, as such, is merely descriptive under Section 2(e)(1) of the Trademark Act. “Terms which are laudatory are also regarded as being merely descriptive because these laudatory terms are seen as a form of describing the quality of the goods.” *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 (TTAB 1998) (QUESO QUESADILLA SUPREME held laudatory). Likewise, the courts of appeal and this Board have held that other marks which arguably denote “high quality,” “excellence” and “superior quality” are laudatory and thus merely descriptive. These include the term ULTIMATE in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001) (THE ULTIMATE BIKE RACK is “a laudatory descriptive phrase that touts the superiority of Nett Designs’ bike racks”), and the term BEST in *In Re Boston Beer Co. LP*, 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA for “beer and ale” found to be laudatory and incapable of distinguishing

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<sup>25</sup> 10 TTABVUE 5.

<sup>26</sup> *Id.*

source). *See also In re Duvernoy & Sons, Inc.*, 212 F.2d 202, 101 USPQ 288 (CCPA 1954) (CONSISTENTLY SUPERIOR held laudatory); *Supreme Wine Co. v. American Distilling Co.*, 310 F.2d 888, 135 USPQ 481 (2d Cir. 1962) (SUPREME held laudatory); *In re San Miguel Corp.*, 229 USPQ 617 (TTAB 1986) (SELECT and its equivalent SELECTA held laudatory); *In re Inter-State Oil Co.*, 219 USPQ 1229 (TTAB 1983) (PREFERRED held laudatory); *In re Wileswood, Inc.*, 201 USPQ 400 (TTAB 1978) (AMERICA'S BEST POPCORN held laudatory).

In addition, the numerous third-party uses for specific food products (*e.g.*, bacon wrapped sausage, desserts, brisket ends, *etc.*) show that the term “meat candy” has been adopted and used to describe food products. While the usage is not consistent, it does evidence that the term “meat candy” is used to identify meat snacks in general. In this regard, the context in which the term “meat candy” is used in several of the third party websites provides insight into its meaning. For example,

1. Saveur.com referred to “meat candy” as “a new trend afoot,” suggesting a growing recognition;

2. Country Cat Dinner House & Bar website stated that beef jerky was “better known there as ‘meat candy,’” a sign of local recognition; and

3. Eye of the White Face website featured an article entitled “Fall Means the Making of Meat Candy,” suggesting a new tradition and, thus, established recognition of the meaning of “meat candy.”

We find that prospective consumers of Applicant’s food services will readily understand that Applicant’s applied-for mark describes a delicious meat specialty

that is a feature of Applicant's food services. The term MEAT CANDY immediately and intuitively conveys information about the food served by Applicant. Accordingly, we find that the term MEAT CANDY is merely descriptive of Applicant's services.

**Decision:** The refusal to register Applicant's mark MEAT CANDY is affirmed.