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Subject: U.S. TRADEMARK APPLICATION NO. 86263642 - MERSIN - N/A - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 86263642

MARK: MERSIN



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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

TTAB INFORMATION:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: Yahya Kemal Gungor

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the examining attorney's final refusal to register the mark **MERSIN** and *design* for "cheese, namely, mild cream cheese, kasari cheese, hellim cheese, and feta cheese; garnish, namely, frozen peas, diced carrots, and diced potatoes" in International Class 29 and "dough; Pastry, namely, kunefe, an oven shredded pastry filled with soft cheese and in thick syrup" in International Class 30 on the ground that applicant must disclaim the term **MERSIN** under Trademark Act Section 6(a), 15

U.S.C. §1056(a) because the term **MERSIN** is primarily geographically descriptive of the origin of applicant's goods under Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2).

FACTS

Applicant filed an application on April 25, 2014 seeking registration of the mark **MERSIN** and *design* for "cheese, namely, mild cream cheese, kasari cheese, hellim cheese, and feta cheese" in International Class 29 and "dough; oven shredded pastry with soft cheese filling in thick syrup; garnish; peas" in International Class 30.

On August 15, 2014, the examining attorney issued a requirement for applicant to amend the description of the mark, amend the identification of goods, and provide information regarding the origin of the goods. The examining attorney also issued an advisory that a disclaimer may be required.

On February 05, 2015, the applicant submitted a response to the Office action that amended the description of the mark, amended the identification of goods, and provided information regarding the origin of the goods. Applicant also submitted arguments against the potential disclaimer requirement and submitted a claim of acquired distinctiveness under Trademark Act Section 2(f).

On February 15, 2015, the examining attorney issued a new non-Final Office action that required applicant to disclaim the word **MERSIN** under Trademark Act Section 6(a) because the word **MERSIN** is primarily geographically descriptive of the origin of applicant's goods under Trademark Act Section 2(e)(2). The examining attorney also refused applicant's claim of acquired distinctiveness under Trademark Act Section 2(f) because the application was filed as an intent-to-use application under Trademark Act Section 1(b).

On March 31, 2015, the applicant submitted a response to the Office action arguing against the disclaimer requirement.

On April 10, 2015, the examining attorney issued a final refusal because applicant did not provide the required disclaimer of the word **MERSIN**.

On September 17, 2015, the applicant submitted a request for reconsideration concerning the requirement to disclaim the word **MERSIN**.

On October 08, 2015, the examining attorney denied applicant's request for reconsideration concerning the requirement to disclaim the word **MERSIN**.

On October 10, 2015, the applicant filed a notice of appeal and submitted a second request for reconsideration concerning the requirement to disclaim the word **MERSIN**.

On October 29, 2015, the examining attorney denied applicant's second request for reconsideration concerning the requirement to disclaim the word **MERSIN**.

On December 28, 2015, the applicant filed is appeal brief.

On January 23, 2016, applicant's appeal brief was forwarded to the examining attorney.

On March 08, 2016, the examining attorney requested that the Trademark Trial and Appeal Board remand the case to the trademark examining attorney to address applicant's claim of acquired distinctiveness.

On March 08, 2016, the Trademark Trial and Appeal Board granted the examining attorney's request for remand and restored jurisdiction to the examining attorney.

On March 09, 2016, the examining attorney issued a subsequent final refusal because applicant did not provide the required disclaimer of the word **MERSIN** and applicant's claim of acquired distinctiveness under Trademark Act Section 2(f) did not satisfy the requirements to establish that the mark in the Section 1(b) intent-to-use application had acquired distinctiveness.

On April 01, 2016, the applicant filed a request for reconsideration withdrawing the claim of acquired distinctiveness under Trademark Act Section 2(f) and requesting that the appeal on the issue of the requirement to disclaim the word **MERSIN** be resumed.

On April 29, 2016, the examining attorney accepted applicant's withdrawal of the claim of acquired distinctiveness under Trademark Act Section 2(f) and that issue was determined to be

obviated. The examining attorney denied applicant's request for reconsideration concerning the requirement to disclaim the word **MERSIN**.

On April 29, 2016, the Trademark Trial and Appeal Board resumed proceedings and provided applicant sixty days to file a supplemental brief.

On June 30, 2016, applicant having not filed a supplemental brief during the sixty day period, applicant's appeal brief was forwarded to the examining attorney.

ISSUES

The sole issue presented on appeal is whether the term **MERSIN** in the applied-for mark is primarily geographically descriptive of the origin of applicant's goods under Trademark Act Section 2(e)(2) and therefore subject to being disclaimed under Trademark Act Section 6(a).

PRELIMINARY MATTER

As an initial matter, the examining attorney notes that applicant has made a list of the evidence previously made of record by the examining attorney and that applicant has made arguments regarding the admissibility of such evidence. Applicant's arguments, however, appear to be addressing the probative value of the evidence, rather than the admissibility; therefore, the merits of applicant's arguments regarding the probative value of the evidence are addressed in the body of the argument section below. If applicant's arguments are deemed as addressing the admissibility of the evidence, the examining attorney requests that the Trademark Trial and Appeal Board deem the evidence provided by the examining attorney as admissible because it was properly made of record prior to applicant filing of an appeal. See 37 CFR § 2.142(d); TBMP §§1207, 2018.

ARGUMENT

THE TERM MERSIN IN THE APPLIED-FOR MARK MUST BE DISCLAIMED BECAUSE IT IS PRIMARILY GEOGRAPHICALLY DESCRIPTIVE OF THE ORIGIN OF APPLICANT'S GOODS

Trademark Act Section 6(a), 15 U.S.C. §1056(a), permits the Office to require a disclaimer of an unregistrable component of a mark that is otherwise registrable. Trademark Act Section 2(e), 15 U.S.C. §1052(e), bars the registration of a mark which is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Therefore, the examining attorney may require the disclaimer of a portion of a mark which, when used in connection with the goods, is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive. If an applicant does not comply with a disclaimer requirement, the examining attorney may refuse registration of the entire mark. TMEP §§1210, 1213.01(b).

A three-part test is applied to determine whether a mark or term is primarily geographically descriptive. First, the primary significance of the mark or term must be a generally known geographic place or location. Second, the goods for which applicant seeks registration must originate in the geographic place identified in the mark or term. Third, purchasers must be likely to make a goods-place association; that is, purchasers must be likely to believe that the goods originate in the geographic place identified in the mark. TMEP §1210.01(a); *see In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987); *In re Hollywood Lawyers Online*, 110 USPQ2d 1852, 1853 (TTAB 2014).

In this case, the applicant is seeking to register the mark **MERSIN** *and design* for “cheese, namely, mild cream cheese, kasari cheese, hellim cheese, and feta cheese; garnish, namely, frozen peas, diced carrots, and diced potatoes” in International Class 29 and “dough; Pastry, namely, kunefe, an oven shredded pastry filled with soft cheese and in thick syrup” in International Class 30. The term **MERSIN** must be disclaimed because it is primarily geographically descriptive of the origin of the goods.

A. MERSIN IS A GENERALLY KNOWN GEOGRAPHIC PLACE OR LOCATION

The primary significance of **MERSIN** is a generally known geographic location because it has a large population and would be immediately recognizable to the Turkish population of this country as

identifying a geographic location. Courts have identified several factors as being probative on whether a geographic location is generally known. Two of those factors are: (1) the size of the population of that geographic location, and (2) whether members of the consuming public have ties to that geographic location such that members of the relevant population would recognize that location. *See In re the Newbridge Cutlery Co.*, No. 2013-1535 (Fed. Cir. Jan. 15, 2015) (citing example from *In re Loew's Theatres, Inc.*, 769 F.2d 764 (Fed. Cir. 1985) "that Durango, Mexico would be recognized by 'the Mexican population of this county' is evidence that a location is generally known").

In this case, **MERSIN** identifies the provincial capital of the eponymous **MERSIN** province of Turkey, both of which have very large populations.¹ The province of **MERSIN** has a population of approximately 1.65 million people, and its capital city, **MERSIN**, has a population of approximately 940,000 people, which makes it the tenth largest city in Turkey.² **MERSIN** is also considered to be a major economic and cultural hub in Turkey, as it contains Turkey's largest seaport, recently hosted the 2013 Mediterranean Games, and has a rapidly growing tourism industry.³ **MERSIN** is also a twin "sister city" with West Palm Beach, Florida.⁴ Thus, the Turkish population of this country would immediately recognize **MERSIN** as identifying a geographic location because **MERSIN** is both a province and capital city in Turkey, it is the tenth largest city in Turkey, it is a major economic and cultural hub in Turkey that boasts the country's largest seaport, and it is a twin "sister city" with a U.S. city.

¹ *See* Columbia Gazetteer of the World entry at pg. 2 in the Office action dated 02/15/2015; *see also* Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015.

² *See* Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015; *see also* Wikipedia entry at pg. 16 in the Final action dated 04/10/2015.

³ *See* Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015; *see also* Daily News, *Mersin Eyes New Tourism Hope After the Mediterranean Games*, at pg. 34 in the Final action dated 04/10/2015 (noting goal of increasing tourism after hosting Mediterranean Games); Ansa med, *Tourism: Rich Arabs' New Route to be Turkey's Mersin*, at pg. 35 in the Final action dated 04/10/2015 (noting the number of foreign tourist in Mersin is rapidly rising); Turkey Travel & Tourism at pgs. 40-53 in the Final action dated 04/10/2015 (noting that Turkey is the sixth most visited country in the world, calling for investment in Mersin and other regions to support increased tourism, and identifying Mersin as area of focus for ecological tourism, golf tourism, and diving tourism).

⁴ *See* Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015.

That the primary significance of **MERSIN** is a known geographic location is further supported by the fact that **MERSIN** has no other meaning outside of its geographic significance. *Cf. In re the Newbridge Cutlery Co.*, No. 2013-1535 (Fed. Cir. Jan. 15, 2015) (finding that NEWBRIDGE has other meanings as probative evidence that the term is not generally known as the name of a geographic place). In this case, the only definition of the term **MERSIN** that appears in the dictionary is one that defines it as a city in Turkey.⁵ Similarly, a search of the Columbia Gazetteer only returns results for one city in the world being named **MERSIN**.⁶ Thus, because **MERSIN** has no other possible meaning, the primary significance of **MERSIN** is a generally known geographic location.

That the primary significance of **MERSIN** is known geographic location is also supported by the fact that **MERSIN** is commonly found on maps of Turkey. *Cf. In re the Newbridge Cutlery Co.*, No. 2013-1535 (Fed. Cir. Jan. 15, 2015) (finding that NEWBRIDGE is not generally known because it does not appear on certain maps and atlases). In this case, a Google image search for the wording “TURKEY MAP” shows the city of **MERSIN** appearing on at least the first twelve results.⁷ The city of **MERSIN** also appears on maps of Turkey found in travel guides⁸ and in encyclopedias.⁹

⁵ The examining attorney requests that the Board take judicial notice of the attached dictionary definitions of the words “MERSIN” from the online version of The American Heritage Dictionary® of the English Language, Fifth Edition which is readily available on the Internet and is free to access and which is also available in printed form as demonstrated by the attached screenshot showing a print version of the dictionary for sale, per TMEP §710.01(c). *See* American Heritage Dictionary, *Mersin*, <https://www.ahdictionary.com/word/search.html?q=Mersin>. The Trademark Trial and Appeal Board may take judicial notice of dictionary definitions that (1) are available in a printed format, (2) are the electronic equivalent of a print reference work, or (3) have regular fixed editions. TBMP §1208.04; *see In re Dietrich*, 91 USPQ2d 1622, 1631 n.15 (TTAB 2009) (taking judicial notice of definition from *Merriam-Webster Online Dictionary* at www.merriam-webster.com); *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009) (taking judicial notice of definition from Dictionary.com because it was from *The Random House Unabridged Dictionary*); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006) (taking judicial notice of definition from *Encarta Dictionary* because it was readily available in specifically denoted editions via the Internet and CD-ROM); TMEP §710.01(c); *see also* Fed. R. Evid. 201; 37 C.F.R. §2.122(a).

⁶ *See* Columbia Gazetteer of the World search at pg. 15 in the Final action dated 04/10/2015.

⁷ *See* Images of maps from Google search of “Turkey Map” at pgs. 17-29 in the Final action dated 04/10/2015.

⁸ *See* DK Eyewitness Travel Guide: Turkey at pgs. 30-32 in the Final action dated 04/10/2015.

⁹ *See* Encyclopedia Britannica at pg. 21 in the Denial of Request for Reconsideration dated 10/08/2015.

In further support of the conclusion that **MERSIN** is a generally known geographic location, the examining attorney has made evidence of record from a variety of sources, such as blogs and internet forums,¹⁰ news articles,¹¹ and travel guides,¹² all of which make reference to **MERSIN** as a geographic location. For example, the popular travel site TripAdvisor has a page featuring activities, restaurants, and lodging in **MERSIN**, and as of April 2015, users have left a total of 2,375 reviews of attractions in the city.¹³ Similarly, the popular travel site Expedia offers **MERSIN** vacation packages, and notes that “this part of Eastern Mediterranean Coast is such a favorite with locals and visitors alike.”¹⁴

In addition to being referenced as a tourist destination, **MERSIN** routinely appears in U.S. media publications. For example, articles in the well-known U.S. magazines *The Economist* and *The Atlantic* both reference events occurring in the city of **MERSIN**.¹⁵ Similarly, excerpted articles from the LexisNexis® computerized database show that **MERSIN** commonly appears in major U.S. news

¹⁰ See Trade Show News Network, *Mersin 6th International Food, Food Technologies, and Packaging Fair*, at pgs. 36-37 in the Final action dated 04/10/2015 (discussing prominence of Mersin as leader in international food sector with developing tourism importance); Turkey Central at pgs. 41-45 in the Denial of Request for Reconsideration dated 10/08/2015; Rick Steve’s Europe at pgs. 70-73 in the Denial of Request for Reconsideration dated 10/29/2015; If the Bag Fits at pgs. 74-86 in the Denial of Request for Reconsideration dated 10/29/2015 (travel blog with articles referencing Mersin); HelloSociety Blog at pgs. 87-89 in the Denial of Request for Reconsideration dated 10/29/2015 (blog referencing Mersin).

¹¹ See Excerpted articles from the LexisNexis® computerized database at pgs. 2-70 in the Denial of Request for Reconsideration dated 10/29/2015; Hurriyet Daily News, *Mersin eyes new tourism hope after the Mediterranean Games*, at pg. 34 in the Final action dated 04/10/2015 (news article discussing revival of tourism in Mersin); ANSAMED, *Tourism: Rich Arabs’ New Route To Be Turkey’s Mersin*, at pg. 35 in the Final action dated 04/10/2015 (news article discussing increase in tourism for Mersin); Today’s Zaman, *1,600 American Evacuees Arrive in Mersin Aboard US Warship*, at pgs. 45 in the Denial of Request for Reconsideration dated 10/08/2015.

¹² See DK Eyewitness Travel Guide: Turkey at pgs. 30-33 in the Final action dated 04/10/2015; Wikitravel at pgs. 54-55 in the Final action dated 04/10/2015; World 66, *Mersin Travel Guide*, at pgs. 68-69 in the Final action dated 04/10/2015; Turkey Travel Bazaar at pgs. 70-55 in the Final action dated 04/10/2015; Dimple Travel at pg. 90 in the Denial of Request for Reconsideration dated 10/29/2015 (travel guide discussing Mersin); Afar, *Things to Do in Mersin*, at pgs. 92-93 in the Denial of Request for Reconsideration dated 10/29/2015 (travel guide discussing Mersin); Travvyde at pgs. 94-100 in the Denial of Request for Reconsideration dated 10/29/2015 (travel guide discussing Mersin and referencing the types of foods identified in the application).

¹³ See Trip Advisory at pgs. 38-39 in the Final action dated 04/10/2015.

¹⁴ See Expedia Mersin Vacation Packages at pg. 91 in the Denial of Request of Reconsideration dated 10/29/2015.

¹⁵ See *The Atlantic*, *In Turkey, Not Even Posters of Women Are Safe From Violence*, at pgs. 46-48 in the Denial of Request of Reconsideration dated 10/08/2015; *The Economist*, *A Turn For The Worse*, at pgs. 49-50 in the Denial of Request of Reconsideration dated 10/08/2015.

publications,¹⁶ such as the Chicago Tribune,¹⁷ Miami Herald,¹⁸ New York Times,¹⁹ and Washington Post.²⁰

When this evidence is considered in its entirety, it demonstrates that **MERSIN** is a *generally known* geographic location because the purchasing public has routinely encountered the term **MERSIN** being used solely to identify a geographic location in blogs, major U.S. news publications, and travel guides.

1. MERSIN is neither remote nor obscure

In contrast to determining whether a geographic location is generally known based on factors such as population size and whether the relevant population has ties to that location, courts have found that if a geographic location is “minor, obscure [or] remote” then it is not generally known. *See In re the Newbridge Cutlery Co.*, No. 2013-1535 (Fed. Cir. Jan. 15, 2015) (citing *In re Nantucket, Inc.*, 677 F.2d 95, 99 (C.C.P.A. 1982)). Remoteness or obscurity of a geographic location is determined not in the abstract, but from the point of view of the consumers of the particular goods. TMEP §1210.04(c); *see In re Joint-Stock Co. “Baik,”* 80 USPQ2d 1305, 1309-10 (TTAB 2006) (holding that the relevant consumer, purchasers of vodka, including Russian vodka, would likely know the geographic significance of the mark because they are most likely either from Russia, have Russian relatives, or became familiar with Russia when learning the language); *In re MCO Props. Inc.*, 38 USPQ2d 1154, 1155-56 (TTAB 1995) (holding FOUNTAIN HILLS primarily geographically descriptive of real estate development services rendered in Fountain Hills, Arizona, population 10,030, because the record showed Fountain Hills to be the name of the town where applicant was located and rendered its services, and relevant consumers in the real

¹⁶ See Excerpted articles from the LexisNexis® computerized database at pgs. 2-70 in the Denial of Request of Reconsideration dated 10/29/2015.

¹⁷ See Chicago Tribune, *Café Orchid plants Turkish cuisine in town; Chicago eatery opens shop in Village Green* at pgs. 3-4 in the Denial of Request of Reconsideration dated 10/29/2015.

¹⁸ See Miami Herald, *Mediterranean simplicity on South Beach*, at pgs. 7-8 in the Denial of Request of Reconsideration dated 10/29/2015.

¹⁹ See New York Times, *Migrant Deaths Reveal Tactics of Smugglers*, at pgs. 17-18 in the Denial of Request of Reconsideration dated 10/29/2015; New York Times, *Traveling in Europe’s River of Migrants*, at pgs. 19-20 in the Denial of Request of Reconsideration dated 10/29/2015.

²⁰ See Washington Post, *With a war raging next door, Turkish commerce improvises*, at pgs. 28-29 in the Denial of Request of Reconsideration dated 10/29/2015.

estate market who came into contact with applicant's promotional brochure specimen would associate the place with the services); *cf. In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959-60, 3 USPQ2d 1450, 1452-53 (Fed. Cir. 1987) (holding VITTEL and design not primarily geographically descriptive of cosmetic products because evidence that the town had a resort with mineral springs where the water was bottled and distributed was insufficient to show that the bulk of cosmetic purchasers would, upon seeing the word Vittel on a bottle of skin lotion or the like, conclude it was a place name and that the lotion came from there).

The relevant consumers of applicant's goods are purchasers of specialty Turkish foods. Specifically, the application identifies the goods as being "cheese, namely, mild cream cheese, kasari cheese, hellim cheese, and feta cheese; garnish, namely, frozen peas, diced carrots, and diced potatoes" in International Class 29 and "dough; Pastry, namely, kunefe, an oven shredded pastry filled with soft cheese and in thick syrup." Here, the evidence of record demonstrates that "hellim cheese", "kasari cheese", and "kunefe" are all Turkish foods and are featured in Turkish restaurants, and that "hellim cheese" and "kunefe" are foods that are particularly famous or well-known for being produced in **MERSIN**.²¹

As in *In re Joint-Stock Co. "Baik,"*, where the relevant consumer of Russian vodka was found likely to be familiar with the geographic locations of Russia, the relevant consumer of specialty Turkish foods in this case would likely know the geographic significance of the mark because they are most likely either from Turkey, have Turkish relatives, or became familiar with Turkey while learning about the

²¹ See Wikipedia entry at pgs. 10-13 in the Final action dated 04/10/2015 (noting kunefe is famous local cuisine in Mersin); Wikitravel at pgs. 54-56 in the Final action dated 04/10/2015 (noting kunefe is famous local cuisine in Mersin); Janey In Mersin at pg. 56 in the Final action dated 04/10/2015 (blogging about traveling in Mersin and noting kunefe is famous local cuisine); About.com at pgs. 65-66 in the Final action dated 04/10/2015 (providing history of kunefe and noting Mersin has its own distinct variety); Muraybey at pg. 67 in the Final action dated 04/10/2015 (noting that hellim cheese is especially produced in Mersin); Travel Bazaar at pg. 70 in the Final action dated 04/10/2015 (noting kunefe is famous local cuisine in Mersin); Excerpted articles from the LexisNexis® computerized database at pgs. 3, 7-13 in the Denial of Request of Reconsideration dated 10/29/2015 (news articles referencing Mersin in connection with restaurants); Travyde at pgs. 94-100 in the Denial of Request of Reconsideration dated 10/29/2015 (recommending travelers to try kunefe when they visit Mersin).

language, culture, or history and origins of the specialty foods. To the relevant consumer of specialty Turkish foods, **MERSIN** would be neither remote nor obscure because it is both a province and capital city in Turkey, the tenth largest city in Turkey, a major economic and cultural hub in Turkey that boasts the country's largest seaport, and well known for producing the type of food identified in the application.

2. Consideration of applicant's arguments regarding the geographic significance of MERSIN

Applicant argues that **MERSIN** is remote and obscure because it does not appear on certain maps of Turkey. In support of its argument that **MERSIN** does not appear on certain maps, applicant has made four maps of record.²² As an initial matter, the examining attorney notes that one of the maps provided by applicant does indeed contain **MERSIN** by way of its former name, İçel.²³ With respect to the remaining maps, applicant has provided no context or information on the source of these maps or the condition in which the maps were found. Thus, these maps may very well be specialized maps for displaying specialized information, such as "cities with highest tax rates." Without information on the source of the maps or the conditions under which those maps were found, these maps cannot support the conclusion that **MERSIN** is remote and obscure.

By contrast, the examining attorney has provided screenshots of a Google image search of the very basic wording "TURKEY MAP" along with the first twelve results of that image search, a map of Turkey found in a travel guide, and a map of Turkey found in the encyclopedia.²⁴ All of these maps contain **MERSIN**. The fact that **MERSIN** appears on at least the first twelve results of the most basic search for a map of Turkey indicates that it is neither remote nor obscure.

²² See Maps at pgs. 2-3 in Incoming Correspondence dated 03/31/2015.

²³ See Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015 (explaining that İçel was renamed to Mersin in 2002).

²⁴ See *supra* notes 7-9.

Applicant also argues that **MERSIN** is remote and obscure because it is not included on some travel websites. In support of its argument, applicant has attached screenshots from three websites listing “Top [X number] Tourist Attractions in Turkey.”²⁵ Applicant also supports its conclusion by arguing that some of evidence provided by the examining attorney is used exclusively by Europeans and Middle Eastern people looking to travel to Turkey and that “the most popular travel site GLOBUS offers several guided tours of Turkey. There [sic] most popular trip the [sic] called ‘The Best of Turkey’ and this trip does not even include the Mersin *Province* let alone the city” (emphasis in original). The fact that **MERSIN** may be included in an arbitrary list of the top ten or twelve tourist attractions in Turkey does not demonstrate that it is remote or obscure because the presence of record-setting geographical features is not a requirement in establishing that the primary significance of a term is its geographic significance. Tourist may visit an area for any number of reasons, and the evidence of record demonstrates **MERSIN** frequently appears in travel guides and on tourism websites, that **MERSIN** is the tenth largest city in Turkey, and that **MERSIN** is home to Turkey’s largest seaport. With respect to applicant’s claim regarding European usage of the examining attorney’s evidence, applicant has provided no evidence to support its claim. Similarly, applicant has not provided any evidence of the website GLOBUS, its popularity, or its guided tours.

Applicant also argues that **MERSIN** is remote and obscure because it makes up a small percentage, 1.16%, of the total population of Turkey. This argument is both misleading and irrelevant because a city’s population in proportion to the country as a whole neither has any bearing on whether the primary significance of a term is a known geographic location nor does it demonstrate the “relative importance” of a city. The court in *In re the Newbridge Cutlery Co.* considered the population size to be a probative factor on whether a geographic location was generally known; it did not look at the

²⁵ See *Touropia* at pgs. 75-95 in Incoming Correspondence dated 09/17/2015; *Planet Aware* at pgs. 96-119 in Incoming Correspondence dated 09/17/2015; *Historvius* at pgs. 119-129 in Incoming Correspondence dated 09/17/2015.

population size relative to the country as a whole. To illustrate the misleading nature of these statistics, the examining attorney has made of record population statistics for other well-known cities.²⁶ For example, Los Angeles is the second largest city in the United States with a population of roughly 3.884 million. Relative to the entire United States, however, Los Angeles accounts for only 1.22% of the United States population. Similarly, Delhi is the *fourth largest city in the world*, having approximately 22.242 million people; yet relative to all of India, Delhi only accounts for 1.78% of the total population. The population size of these cities in proportion to their respective countries has no impact on whether the primary significance of a term is a generally known geographic location.

Applicant also argues that **MERSIN** is not a generally known geographic location on the basis that the examining attorney has provided no evidence showing that **MERSIN** is a location that is generally known to the purchasing public. Elsewhere, applicant contends that the examining attorney has provided no evidence demonstrating that the American purchasing public would be familiar with the evidence provided by the examining attorney showing that **MERSIN** is a generally known geographic location.

With respect to applicant's argument that no evidence regarding the geographic significance of **MERSIN** has been provided, the examining attorney notes that he has made a significant amount and wide variety of evidence of record demonstrating that **MERSIN** is a generally known geographic location. The evidence of record shows **MERSIN** appearing in encyclopedias, the Columbia Gazetteer, Lexis Nexis®, dictionaries, maps, blogs, news articles, and travel guides. When this evidence is viewed in its entirety, it shows that **MERSIN** is a *generally known* location because **MERSIN** has a substantial population, frequently appears in a wide variety of publications made available to purchasers in the United States, and would be neither remote nor obscure to the purchasers of Turkish foods that are famous for being produced in **MERSIN**.

²⁶ See Population Statistic at pgs. 93-97 in the Final action dated 04/10/2015.

With respect to applicant's argument that there is no evidence of the amount of people that have seen the evidence provided by the examining attorney, the examining attorney concedes that there is no direct evidence of the amount of people that have seen the websites, read the news articles and blogs, or purchased the travel guides cited by the examining attorney. Information of this nature, such as webpage viewership statistics or book sales figures, are ordinarily proprietary information made available only to the owner or publisher of that source and inaccessible to the public. Providing evidence of the extent to which people would be familiar with any particular piece of evidence would represent an impossibly high evidentiary burden for the examining attorney. The Court of Appeals for the Federal Circuit and Trademark Trial and Appeal Board have long recognized that the USPTO has limited resources for obtaining evidence when examining applications for registration; the practicalities of these limited resources are routinely taken into account when reviewing a trademark examining attorney's action. *See In re Pacer Tech.*, 338 F.3d 1348, 1352, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003); (citing *In re Loew's Theatres, Inc.*, 769 F.2d 764, 768, 226 USPQ 865, 868 (Fed. Cir. 1985)); *In re Florists' Transworld Delivery, Inc.*, 106 USPQ2d 1784, 1786 (TTAB 2013); TBMP §1208.

While no evidence of the amount of people that have seen any particular piece of evidence has been provided, the volume of evidence provided by the examining attorney should resolve any doubt that **MERSIN** is a *generally known* geographic location. Moreover, the type of evidence provided by the examining attorney has been routinely accepted in the past as competent evidence.

For example, *The Columbia Gazetteer of the World* (Saul B. Cohen ed., Columbia Univ. Press 2008), is considered an authoritative and respected reference work that has been updated and published under various names since the mid-nineteenth century. *See* John Sigwald, *Where in the World is . . . ?*: *New Columbia Gazetteer Names Places*, *The Plainview Herald* (May 21, 1999), <http://unger.myplainview.com/reviews/Columbia%20Gazetteer%20of%20the%20World.htm>; Richard A. Spohn, *The Columbia Gazetteer of the World; Review*, 38 *American Library Association Reference & User*

Services Quarterly 3, at 316 (Mar. 22, 1999). Similar to entry of a word in an English dictionary, which signifies a word's usage in common lexicon, entry of a place name in the *Columbia Gazetteer* means that the place meets certain criteria such as population thresholds, area size, political administrative frameworks, and economic, political, and/or cultural significance. See *Preface to The Columbia Gazetteer of the World* (Saul B. Cohen ed., Columbia Univ. Press 2008), available in part at http://www.columbiagazetteer.org/static/about_gazetteer. Thus, an entry in the *Columbia Gazetteer* is inferential evidence that the place name is known to American consumers. See *Corporacion Habanos, S.A. v. Guantanamera Cigars Co.*, 102 USPQ2d 1085, 1098 (TTAB 2012) (citing *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1570, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987) (“It is well settled that evidence of what the relevant public understands a term to mean may be shown not only by direct evidence, such as consumer testimony and surveys, but it may also be inferred from indirect or circumstantial evidence, such as gazetteer entries and third-party websites . . .”).

Similarly, material obtained from computerized text-search databases, such as LexisNexis®, is generally accepted as competent evidence. See *In re Lamb-Weston Inc.*, 54 USPQ2d 1190, 1192 (TTAB 2000) (accepting LexisNexis® evidence to show descriptiveness); *In re Wada*, 48 USPQ2d 1689, 1690 (TTAB 1998) (accepting LexisNexis® evidence to show geographic location is well-known for particular goods); TBMP §1208.01; TMEP §710.01(a)-(b).

With regard to the internet evidence, material obtained from the Internet is also generally accepted as competent evidence. See *In re Jonathan Drew Inc.*, 97 USPQ2d 1640, 1641-42 (TTAB 2011) (accepting Internet evidence to show geographic location was well-known for particular goods); *In re Leonhardt*, 109 USPQ2d 2091, 2098 (TTAB 2008) (accepting Internet evidence to show descriptiveness); *In re Joint-Stock Co. “Baik”*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); TBMP §1208.03; TMEP §710.01(b). The Internet has become integral to daily life in the United States, with Census Bureau data showing approximately three-quarters of American

households used the Internet in 2013 to engage in personal communications, to obtain news, information, and entertainment, and to do banking and shopping. See *In re Nieves & Nieves LLC*, 113 USPQ2d at 1642 (taking judicial notice of the following two official government publications: (1) Thom File & Camille Ryan, U.S. Census Bureau, Am. Cmty. Survey Reports ACS-28, *Computer & Internet Use in the United States: 2013* (2014), available at <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>, and (2) The Nat'l Telecomms. & Info. Admin. & Econ. & Statistics Admin., *Exploring the Digital Nation: America's Emerging Online Experience* (2013), available at http://www.ntia.doc.gov/files/ntia/publications/exploring_the_digital_nation_-_americas_emerging_online_experience.pdf). Thus, the widespread use of the Internet in the United States suggests that Internet evidence may be probative of public perception in trademark examination.

In sum, the evidence of record should resolve all doubt as to whether **MERSIN** is a generally known geographic location. The examining attorney has provided a substantial amount of evidence from a wide variety of acceptable and competent sources showing that **MERSIN** routinely appears in encyclopedias, the Columbia Gazetteer, Lexis Nexis®, dictionaries, maps, blogs, news articles, and travel guides. This evidence shows that **MERSIN** is a *generally known* location because **MERSIN** has a substantial population making it the tenth largest city in Turkey, appears on many maps of Turkey, has no other meaning outside of identifying a geographic location, frequently appears in a wide variety of publications made available to purchasers in the United States, and would be neither remote nor obscure to the purchasers of Turkish foods that are well-known as being produced in **MERSIN**.

B. THE GOODS FOR WHICH APPLICANT SEEKS REGISTRATION ORIGINATE IN MERSIN

The second factor of the Section 2(e)(2) test for whether a term or mark is primarily geographically descriptive is whether the goods for which applicant seeks registration originate in the geographic place identified in the mark. Goods are considered to originate from a geographic location

when the record shows that the goods are sold there, manufactured or produced there, packaged and shipped from there, and/or contain a main ingredient or component derived from there. *See In re Jacques Bernier Inc.*, 894 F.2d 389, 391-92, 13 USPQ2d 1725, 1727 (Fed. Cir. 1990), *opposition sustained sub nom. Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 38 USPQ2d 1691 (TTAB 1996) (holding applicant's perfume did not originate from RODEO DRIVE because, although goods did not have to be manufactured or produced at the geographic site and could "be sold there" to originate from the geographic location, there was insufficient evidence to show that perfume was sold on RODEO DRIVE); *In re Joint-Stock Co. "Baik,"* 80 USPQ2d 1305, 1310 (TTAB 2006) (holding applicant's vodka originated from BAIKALSKAYA, a Russian word meaning "from Baikal," because it was made from the water of Lake Baikal and applicant produced various vodkas from a location near Lake Baikal); *In re JT Tobacconists*, 59 USPQ2d 1080, 1083 (TTAB 2001) (holding applicant's cigars, cigar cases, and humidors originated from MINNESOTA because they were packaged and shipped from MINNESOTA, and applicant's business was located in MINNESOTA); *In re Nantucket Allserve Inc.*, 28 USPQ2d 1144, 1145-46 (TTAB 1993) (holding applicant's beverages originated from NANTUCKET because labels for applicant's goods suggested a connection with NANTUCKET, additional evidence suggested that some ingredients came from NANTUCKET and that applicant's goods were sold at applicant's store located in NANTUCKET, and applicant's corporate headquarters and research and development center were located in NANTUCKET); TMEP §1210.03.

In this case, the goods originate in the geographic location named in the mark. Specifically, applicant indicated in response to a Request for Information regarding the origin of the goods "the goods will be manufactured, packaged, shipped from and sold in **MERSIN**."²⁷ Accordingly, the goods originate in the geographic location named in the mark because the goods will be manufactured, packaged, shipped and sold in **MERSIN**.

²⁷ See Information Re: Origin of Goods Required at pg. 2 of the Incoming Correspondence dated 02/05/2015.

1. Consideration of applicant's arguments regarding the origin of the goods

Applicant contends that not *all* of its products are made in **MERSIN**, and that some products are “only packaged in **MERSIN**, Turkey” or “transported to **MERSIN**, Turkey to be packaged and distributed.” There is no requirement that *all* of the goods must be made in a particular geographic location. Rather, and as noted above, goods are considered to originate from a geographic location when the record shows that the goods are sold there, manufactured or produced there, packaged and shipped from there, and/or contain a main ingredient or component derived from there. See *In re Jacques Bernier Inc.*, 894 F.2d 389, 391-92, 13 USPQ2d 1725, 1727 (Fed. Cir. 1990), *opposition sustained sub nom. Fred Hayman Beverly Hills, Inc. v. Jacques Bernier Inc.*, 38 USPQ2d 1691 (TTAB 1996). Accordingly, applicant's argument against the origin of the goods, as well as applicant's response to the request for information, is an express admission that the goods originate in the place named in the mark.

C. PURCHASERS WOULD BE LIKELY TO MAKE A GOODS-PLACE ASSOCIATION BETWEEN MERSIN AND THE GOODS IDENTIFIED IN THE APPLICATION

When there is no genuine issue that the geographical significance of a term is its primary significance, and the geographical place is neither obscure nor remote, a public association of the goods with the place is presumed if an applicant's goods originate in the place named in the mark. TMEP §1210.04; see, e.g., *In re Cal. Pizza Kitchen Inc.*, 10 USPQ2d 1704, 1706 (TTAB 1988) (holding CALIFORNIA PIZZA KITCHEN primarily geographically descriptive of restaurant services rendered in California); *In re Handler Fenton Ws., Inc.*, 214 USPQ 848, 849-50 (TTAB 1982) (holding DENVER WESTERNS primarily geographically descriptive of western-style shirts originating in Denver). In this case, a goods-place association may be presumed because the geographical significance of **MERSIN** is its primary significance, **MERSIN** is neither obscure nor remote, and applicant's goods originate in **MERSIN**.

Even in the absence of a presumption of a goods-place association, a goods-place association would still exist because **MERSIN** is well-known for producing at least some of the goods identified in

the application. A trademark examining attorney's burden is to establish only that there is a "reasonable predicate" for concluding that the public is likely to believe a goods-place association; that is, the mark identifies a place from which applicant's goods could conceivably originate. *In re Miracle Tuesday, LLC*, 695 F.3d 1339, 1344, 104 USPQ2d 1330, 1333 (Fed. Cir. 2012) (quoting *In re Pacer Tech.*, 338 F.3d 1348, 1351, 67 USPQ2d 1629, 1631 (Fed. Cir. 2003)); see TMEP §1210.04(a). A goods-place association "often requires little more than a showing that the consumer identifies the place as a known source of the product." *In re Miracle Tuesday, LLC*, 695 F.3d at 1344, 104 USPQ2d at 1333 (quoting *In re Les Halles De Paris J.V.*, 334 F.3d 1371, 1373-74, 67 USPQ2d 1539, 1541 (Fed. Cir. 2003)).

Inferential evidence, such as geographical dictionaries, the LexisNexis® database, or Internet search results, is normally acceptable to establish a goods-place association. TMEP §1210.04; see e.g., *In re Wada*, 194 F.3d 1297, 1300, 52 USPQ2d 1539, 1540-41 (Fed. Cir. 1999) (holding a goods-place association between New York and bags and related products where manufacturer listings and Nexis® excerpts showed that handbags and luggage were designed and manufactured in New York); *In re Loew's Theatres, Inc.*, 769 F.2d 764, 765-66, 768, 226 USPQ 865, 866, 868 (Fed. Cir. 1985) (holding a goods-place association between Durango and chewing tobacco where a gazetteer and dictionary showed that tobacco was a crop produced and marketed in Durango, Mexico).

In the present case, the attached evidence from Wikipedia, blogs, news articles, and travel guides demonstrates a goods-place association because **MERSIN** is well-known for producing the "kunefe" and "hellim cheese" identified in the application. For example, Wikipedia and the travel guide Wikitravel both identify kunefe as being a famous local food item from **MERSIN**.²⁸ Similarly, About.com features an article on kunefe that notes **MERSIN** is an important southeastern Turkish city that has its own distinct kunefe variations.²⁹ With respect to the "hellim cheese", the hellim cheese manufacture

²⁸ See Wikipedia entry at pgs. 8-13 in the Final action dated 04/10/2015; Wikitravel at pgs. 54-55 in the Final action dated 04/10/2015.

²⁹ See About Food at pg. 66 in the Final action dated 04/10/2015.

Muratbey notes on its website that hellim cheese is “especially produced in Mersin”.³⁰ Thus, a goods-place association between **MERSIN** and the goods identified in the application exists because the primary significance of **MERSIN** is a generally known geographic location, **MERSIN** is neither obscure nor remote, the goods originate in **MERSIN**, and **MERSIN** is well-known for producing the goods identified in the application.

D. CONSIDERATION OF APPLICANT’S OTHER ARGUMENTS

1. The applied-for mark has been registered in other countries

Applicant points to the presence of its foreign registrations of the term **MERSIN** as support for registration of the applied-for mark. Applicant is seeking registration of the applied-for mark in the United States under a Section 1(b) intent-to-use filing basis. The registrability of the applied-for mark in foreign countries, which have different laws and legal requirements for registering trademarks, has no bearing on the registrability of the applied-for mark in the United States.

2. Names of other cities in Turkey have been registered without a disclaimer

Applicant also argues that the existence of third-party registrations containing geographic terms supports the registrability of the applied-for mark. The third-party registrations submitted by applicant have little to no bearing on the registrability of the mark at issue. The registrations upon which applicant relies are either for different geographic terms than the term at issue or for different goods than those identified in the application; therefore, these registrations are not probative on the question of whether the term **MERSIN** is primarily geographically descriptive of the identified goods.

Moreover, all of the registrations cited by the applicant have been cancelled, have expired, or are registered on the Principal Register under a Section 2(f) claim of acquired distinctiveness, which indicates that the terms in these marks were deemed to be primarily geographically descriptive. See *Inst. Nat’l des Appellations D’Origine v. Vintners Int’l Co.*, 958 F.2d 1574, 1581-82, 22 USPQ2d 1190, 1196

³⁰ See Muratbey at pg. 67 in the Final action dated 04/10/2015.

(Fed. Cir. 1992); *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re Finisar Corp.*, 78 USPQ2d 1618, 1621 (TTAB 2006). Thus, even if these registrations did contain the term at issue, **MERSIN**, they would either not be probative on the question of whether the term **MERSIN** is primarily geographically descriptive of the identified goods or would actually support the conclusion that **MERSIN** is primarily geographically descriptive of the identified goods.

Finally, it is well settled that each case must be decided on its own facts and the Trademark Trial and Appeal Board is not bound by prior decisions involving different records. *See In re Nett Designs, Inc.*, 236 F. 3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *In re Datapipe, Inc.*, 111 USPQ2d 1330, 1336 (TTAB 2014); TMEP §1209.03(a). The question of whether a mark is merely descriptive or primarily geographically descriptive is determined based on the evidence of record at the time each registration is sought. *In re theDot Commc'ns Network LLC*, 101 USPQ2d 1062, 1064 (TTAB 2011); TMEP §1209.03(a); *see In re Nett Designs, Inc.*, 236 F.3d at 1342, 57 USPQ2d at 1566.

CONCLUSION

The primary significance of the term **MERSIN** is a generally known geographic location because it has a substantial population, the relevant purchaser of applicant's goods would recognize it as identifying a geographic location, and it has no other meaning outside of identifying a geographic location. The goods for which applicant seeks originate in **MERSIN**. Purchasers would be likely to make a goods-place association because there is no genuine issue that the primary significance of **MERSIN** is its geographic significance, applicant's goods originate in **MERSIN**, and the goods for which applicant seeks registration are a famous locale food item that known for being produced in **MERSIN**. For the foregoing reasons, the requirement to disclaim the term **MERSIN** made pursuant to Section 2(e)(2) and Section 6(a) of the Trademark Act, 15 U.S.C. §§1052(2)(e)(2), 1056(a), should be affirmed.

Respectfully submitted,

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