

This Opinion is not a  
Precedent of the TTAB

Mailed: June 25, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Monica Walls*

Serial No. 98049431

Katherine M. Bond of Cislo & Thomas LLP,  
for Monica Walls.

Michael FitzSimons, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

Before Goodman, Allard and Myles,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Monica Walls (“Applicant”) seeks registration on the Principal Register of the mark KECA’S USNA (in standard characters) for “Cosmetics” in International Class 3.<sup>1</sup> The application includes a statement in the translation field (“The English translation of USNA in the mark is ‘LIPS’”).

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<sup>1</sup> Application Serial No. 98049431 was filed on June 19, 2023, based upon Applicant’s assertion of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). Applicant filed an amendment to allege use on April 2, 2024 alleging use at least as early as November 2023 for both the first use and first use in commerce dates.

The Trademark Examining Attorney applied the doctrine of foreign equivalents and required a disclaimer of the word USNA on the ground that this term is merely descriptive of Applicant's goods under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1), because Applicant's identified cosmetic goods encompass cosmetics applied to the lip.

When the disclaimer requirement 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.

#### I. Disclaimer

Under Section 6(a) of the Trademark Act, “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component which is merely descriptive under Section 2(e)(1). “The [USPTO] can condition the registration of a larger mark on an applicant’s disclaimer of an ‘unregistrable component of a mark otherwise registrable.’” *In re La. Fish Fry Prods., Ltd.*, 797 F.3d 1332, 1335 (Fed. Cir. 2015). Failure to comply with a disclaimer requirement is a basis for refusing registration. *See In re Stereotaxis, Inc.*, 429 F.3d 1039, 1041 (Fed. Cir. 2005).

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Page references to the application record are to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system. Applicant's brief is at 6 TTABVUE and the reply brief is at 9 TTABVUE. The Examining Attorney's brief is at 8 TTABVUE.

In the absence of acquired distinctiveness, Section 2(e)(1) of the Trademark Act precludes registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). “A term is merely descriptive if it immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 963 (Fed. Cir. 2007)); *see also In re Gyulay*, 820 F.2d 1216, 1217 (Fed. Cir. 1987). Descriptiveness is not considered in the abstract but is analyzed in relation to an applicant’s identified goods or services, the context in which the term is being used, and the possible significance that the term would have to the average purchaser encountering the goods or services in the marketplace. *In re Bayer*, 488 F.3d at 963-64. The question is whether someone who knows what the goods or services are will understand the term to convey information about them. *DuoProSS Meditech Corp. v. Inviro Med. Devices Ltd.*, 695 F.3d 1247, 1254 (Fed. Cir. 2012). A mark is merely descriptive if it merely describes any of the listed goods. *In re Quik-Print Copy Shops, Inc.*, 616 F.2d 523, 525 (CCPA 1980) (“Registration will be denied if a mark is merely descriptive of any of the goods or services for which registration is sought.”). The mere descriptiveness of a word in a mark is assessed in the same manner as the mere descriptiveness of an entire mark. *In re Korn Ferry*, 2024 TTAB LEXIS 224, at \*5 (TTAB 2024).

A. Doctrine of Foreign Equivalents

In considering the disclaimer requirement of the foreign term USNA due to mere descriptiveness, we must first decide whether the doctrine of foreign equivalents applies. Here there is no dispute that “lip” is a direct translation of USNA; Applicant offered “lips” as the English translation of USNA in its application.

It is a “well-recognized tenet that ‘words from modern languages are generally translated into English.’” *In re Vetements Grp. AG*, 137 F.4th 1317, 1331 (Fed. Cir. 2025) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1377 (Fed. Cir. 2005)). The doctrine of foreign equivalents provides that foreign words from common, modern languages familiar to an appreciable segment of American consumers be translated into English to determine, among other issues, mere descriptiveness. *Palm Bay Imps.* 396 F.3d at 1377.

“Foreign language words, not adopted into the English language, which are descriptive of a product, are so considered in registration proceedings despite the fact that the words may be meaningless to the public generally.” *Nestle’s Milk Prods., Inc. v. Baker Importing Co.*, 182 F.2d 193, 196 (CCPA 1950). See e.g., *In re Tokutake Indus. Co.*, 2008 TTAB LEXIS 26, at \*14 (TTAB 2008) (doctrine of foreign equivalents applied to find AYUMI and its Japanese-character equivalent merely descriptive for footwear where the evidence indicated that the primary meaning of applicant’s mark is “walking”); *In re Geo. A. Hormel & Co.*, 1985 TTAB LEXIS 45, at \*2-3 (TTAB 1985) (doctrine of foreign equivalents applied to find SAPORITO, an Italian word meaning “tasty,” merely descriptive for dry sausage because it describes a desirable

characteristic of applicant's goods). *See also In re Vetements Grp. AG*, 137 F.4<sup>th</sup> at 1327 (citation omitted) ("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.'").

"The doctrine should be applied only when it is likely that the ordinary American purchaser would 'stop and translate [the word] into its English equivalent.'" *Palm Bay Imps.*, 396 F.3d at 1377 (quoting *In re Pan Tex Hotel Corp.*, 1976 TTAB LEXIS 22, at \*5 (TTAB 1976)). For purposes of the doctrine, the "ordinary American purchaser" includes "all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English."<sup>2</sup> *In re Spirits Int'l, N.V.*, 563 F.3d 1347, 1352 (Fed. Cir. 2009).

"The doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline." *Palm Bay Imps.*, 396 F.3d at 1377. "[W]ords from dead or obscure languages are not to be literally translated into English for descriptive purposes." *In re Spirits Int'l, N.V.*, 563 F.3d at 1351 (quoting 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 11:34 (4th ed. 2009)). "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." *Palm Bay Imps.*, 396 F.3d at 1377.

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<sup>2</sup> "[T]he doctrine of foreign equivalents [does not] require us to determine what percentage of foreign language speakers know the meaning of any given word in their native language." *In re Vetements Grp. AG*, 137 F.4<sup>th</sup> at 1328, n.9.

Our primary reviewing court recently identified three nonexclusive “guiding 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.” *In re Vetements Grp AG*, 137 F.4<sup>th</sup> at 1331 (citations omitted).

Those three principles are:

- 1) 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. *Id.* at \*1331.
- 2) “[T]he capability of the U.S. population to translate the word” is considered. *Id.* (citations omitted);
- 3) Consideration is given to “whether in context, the mark would ordinarily be translated by a purchaser (from the U.S. population as a whole) with **ordinary sensibilities**.” (emphasis in italics in original). *Id.*

B. Examining Attorney’s and Applicant’s Evidence

The Examining Attorney relies upon foreign dictionary translations (from English to Croatian, Serbian, Bosnian, Montenegrin and Macedonian),<sup>3</sup> United States Census Bureau tables that show the number of Croatian and Serbo-Croatian language

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<sup>3</sup> The entries show translations in the Latin and Cyrillic alphabets.

We take judicial notice of the chart of the Croatian alphabet in Latin and Cyrillic equivalents in *Serbian Grammar* by Dragutin Subotić and Nevill Forbes (Oxford at the Clarendon Press 1918), and the table of the Croatian and Serbian alphabets (Latin and Cyrillic) in the *Encyclopedia Britannica*. See Wayles Browne *Bosnian-Croatian-Montenegrin-Serbian language*, *Encyclopaedia Britannica*. ([www.britannica.com](http://www.britannica.com) accessed June 16, 2025).

The Board may take judicial notice of entries in dictionaries and standard reference works, including encyclopedias in print and online format. *In re Weiss Watch Co.*, 2017 TTAB LEXIS 183, at \*13 (TTAB 2017) (judicial notice of German-English dictionary, dictionary of Family Names); see, e.g., *In re Mr. Recipe, LLC*, 2016 TTAB LEXIS 80, at \*8 n.3 (TTAB 2016) (judicial notice taken of encyclopedia entry); *In re Broyhill Furniture Indus., Inc.*, 2001 TTAB LEXIS 612, at \*3 nn. 4 & 5 (TTAB 2001) (judicial notice of *The Encyclopedia of Furniture* (3rd ed. 1965)).

speakers in the home, webpages relating to the Serbo-Croatian language family from universities located in the United States, a Wikipedia article on the Serbian-Croatian language, copies of smart phone and tablet language learning apps in Apple and Google stores in the United States, Mango Languages website, Easy Croatian website, foreign website for Croatian language learning,<sup>4</sup> and a webpage for Latitude Prime, a Serbo-Croatian language translation service located in the United States that provides information about the Serbo-Croatian language.<sup>5</sup>

Applicant relies on Google Translate translations (from English to Bosnian, Serbian, and Macedonian),<sup>6</sup> various articles from websites about the most common or most spoken languages in the home in the United States (World Economic Forum, Babbel, Statista), a Wikipedia article about the many languages spoken in the United States, Babbel webpages showing spoken language offerings, and references to the United States Census Bureau evidence provided by the Examining Attorney.<sup>7</sup>

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<sup>4</sup> The webpage can be read in French, German and Spanish languages. June 25, 2024 Office Action at TSDR 11, 13. It appears that the other language learning webpage submitted by the Examining Attorney is from a Croatian website, but an English language version of the webpage is offered. *Id.* at 12.

<sup>5</sup> May 2, 2024 Office Action at TSDR 2-4; June 25, 2024 Office Action at TSDR 2-25; December 4, 2024 Denial of Reconsideration at TSDR 2.

<sup>6</sup> Applicant embedded these translations in its response. According to Applicant, Montenegrin or Herzegovinian translations are not available on Google translate. August 21, 2024 at TSDR 8, 9.

<sup>7</sup> May 10, 2024 Response to Office Action at TSDR 7-49; August 21, 2024 Request for Reconsideration at TSDR 8, 9, 11-43. Applicant's March 11, 2024 Response to Office Action at TSDR 2 provided a hyperlink to a website but no printouts. The hyperlink materials are not of record because providing only a website address or hyperlink to internet materials is insufficient to make such materials of record. *In re Change Wind Corp.*, 2017 TTAB LEXIS 233, at \*24 n.8 (TTAB 2017).

C. Applicant and the Examining Attorney Arguments

Applicant argues that “[t]he Office has not provided any evidence to prove that ... Croatian [is] a common modern language such that Applicant is required to disclaim USNA.” 6 TTABVUE 4. Applicant argues that the doctrine of foreign equivalents does not apply because the Croatian language is not on a list of common spoken languages in the United States, does not satisfy the threshold of “a common modern language,” and is an obscure language. 6 TTABVUE 4, 5, 8.

Applicant’s position is that the United States 2009-2013 census data provided by the Examining Attorney showing 53,000 Croatian speakers in the home indicates an “obscure language.” 6 TTABVUE 8, 10; 9 TTABVUE 3. Applicant relies on a non-precedential case that found less than 40,000 speakers of Lithuanian was insufficient to establish the language as common, also pointing out in that case, other Baltic languages were not combined.<sup>8</sup> 9 TTABUVE 4. Applicant criticizes the Examining Attorney’s evidence relating to what it deems to be a “handful of universities in the U.S.” that offer Croatian, Bosnian and Serbian studies, arguing that this evidence is not supportive to show that Croatian is a common language. 9 TTABVUE 6.

Applicant contends that the Examining Attorney’s evidence that the word for “lip” is the same in the Serbian-Croatian language family (i.e., Serbian, Bosnian, Montenegrin and Macedonian languages) is erroneous and “based on false contentions” as the languages should not be grouped together. 6 TTABVUE 9, 10. It

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<sup>8</sup> *In re MJ Cobalt, LLC*, 2024 TTAB LEXIS 187 at \*18 (TTAB 2024) (fewer than 40,000 home speakers of Lithuanian based on census bureau evidence provided by Applicant; webpage of private advertising and marketing agency provided by the Examining Attorney).



is Applicant's position that the record does not support a finding that a person who speaks other Balkan languages understands Croatian. 9 TTABVUE 4.

Applicant also submits that even if the Board were to consider that other Balkan languages use the same word for "lip," there is still an insufficient number of Serbo-Croatian speakers in the home (243,282 speakers, based on the 2019 census table) to establish that the Serbo-Croatian language is common in the United States. 6 TTABVUE 8, 11-12; 9 TTABVUE 3, 4. Applicant also disagrees with relying on a worldwide population of Serbo-Croatians speakers from the Balkan countries of Croatia, Serbia, Montenegro, and Bosnia-Herzegovina as support to find that Croatian is a common language. 9 TTABVUE 5. Applicant distinguishes the non-precedential cases the Examining Attorney relies on to support his position, arguing that the evidence in those cases reflects much larger numbers of worldwide and U.S. speakers of those particular languages.<sup>9</sup> 9 TTABVUE 5.

Responding to Applicant's criticism of the census data, the Examining Attorney submits that "there is no per se threshold number of speakers of a foreign language identified in the U.S. Census that delineates a common, modern language." 8 TTABVUE 5-6. The Examining Attorney asserts that the 2019 census data for Serbo-

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<sup>9</sup> *In re S Squared Ventures, LLC*, 2017 TTAB LEXIS 314 at \*14 and n.12 (TTAB 2017) (between 80 to 150 million Swahili speakers around the world as a primary or secondary language; 88,685 people speak Swahili at home in the U.S. according to 2019 American Community Survey (ACS) census table; other evidence relating to clubs, religion and broadcasting in Swahili in the United States); *In re Buna Cafe Rico S.A.P.I. de C.V.*, 2025 TTAB LEXIS 3, at \*9, 15 (TTAB 2025) (57.5 million speakers in Ethiopia, low to mid hundreds of thousands of speakers in the home in the U.S. census table, Ethiopia is a prominent trading partner of coffee, and many coffee-based businesses in the U.S. use the term sought to be registered).

Croatian speakers reflects an appreciable number of consumers understand USNA translates as “lip.” 8 TTABVUE 9. The Examining Attorney argues that the evidence of record establishes that “‘USNA’ means ‘lip,’ not only in Croatian, but also in Serbian and in other mutually intelligible Serbo-Croatian languages [Bosnian, Montenegrin, and Macedonian] spoken chiefly in [the] Balkan Peninsula,” which are “sometimes referred to as a single pluricentric language.” 8 TTABVUE 6, 7. To support his position of the applicability of the doctrine of foreign equivalents and consideration of evidence relating not just to the Croatian language but also to the Serbo-Croatian (BCMS) language family, the Examining Attorney points to the evidence of record that the languages are mutually intelligible, “there is a sizeable global population of Serbo-Croatian speakers, a significant diaspora of people from Balkan Peninsula countries in the United States, evidence that Serbo-Croatian languages are taught by well-known U.S. universities, and U.S. Census evidence that there are an appreciable number of speakers of these languages in the United States.” 8 TTABVUE 7.

#### D. Analysis

The word USNA is a Croatian word meaning “lip.” There is no dispute between Applicant and the Examining Attorney regarding the meaning of the Croatian word USNA when translated to English. The dictionary evidence shows that the English translation to Croatian is an unambiguously exact and direct translation. Applicant does not contend to the contrary and, in fact, offered the same translation in its application.

What Applicant and the Examining Attorney do dispute is whether Croatian is a common, modern language and whether other West Balkan languages in the standardized Serbian-Croatian language family (i.e., Bosnian, Croatian, Montenegrin, and Serbian (BCMS)), which have been described as being mutually intelligible and pluricentric, translate “USNA” as “lip,” broadening the number of people in the United States that understand USNA as “lip” in English.<sup>10</sup> The Examining Attorney and Applicant also provided a translation for Macedonian which has not been shown in the record to be part of the Serbo-Croatian language family (BCMS).<sup>11</sup> The translations in the record for the English word “lip” in Serbian and Macedonian show a Cyrillic alphabet: лип and yчнa.<sup>12</sup> Montenegrin and Bosnian translations in the record for the English word “lip” show a Latin alphabet: USNA, although another translation for “lip” from English to Bosnian provided by the Examining Attorney is shown in the Latin alphabet as USNE.<sup>13</sup>

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<sup>10</sup> See e.g., June 25, 2024 Office Action at TSDR 24-25 (Wikipedia) and university website pages at TSDR 4, 16-23.

<sup>11</sup> We take judicial notice that North Macedonia is “a landlocked country of the south-central Balkans” and “[t]he Macedonian language is very closely related to Bulgarian and Serbo-Croatian and is written in the Cyrillic script.” North Macedonia, Encyclopaedia Britannica (2025). ([www.britannica.com](http://www.britannica.com) accessed June 16, 2025).

<sup>12</sup> We take judicial notice that “[i]t is in its written form that Serbian differs from Bosnian and Croatian. Reflecting Serbian religious heritage, it uses a modified version of the Cyrillic alphabet ....” Serbia, Encyclopaedia Britannica (2025) ([www.britannica.com](http://www.britannica.com) accessed June 16, 2025). The Serbian language can employ both Latin and Cyrillic alphabets, but “Cyrillic writing is being encouraged at the expense of Latin.” Browne, *supra*, Encyclopaedia Britannica.

We take judicial notice that the English word “lip” is translated in Serbian (Latin) as usna and Serbian (Cyrillic) as yчнa. COLLINS DICTIONARY (<https://www.collinsdictionary.com/us/translator>, accessed June 16, 2025).

<sup>13</sup> The translations provided by the Examining Attorney and Applicant are as follows:

1. Is Croatian a common, modern language?

To establish that a particular language is a common, modern language, the TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1207.01(b)(vi)(B) (May 2025) indicates the types of evidence the Examining Attorney should provide. That evidence can include census data, evidence that the foreign language is spoken by a sizeable world population, or that the country is a prominent U.S. trading partner. *Id.*

The Examining Attorney relies on two separate Census data tables:<sup>14</sup> 1) a 2009-2013 United States Census Bureau table showing 53,000 Croatian speakers in the home; 144,675 Serbo-Croatian speakers in the home; 267,979 speakers of the Serbo-Croatian language family in the home; and 2) a United States Census Bureau

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English to Serbian translation of lip shown as yчнa;  
English to Serbian translation of lip shown as лип;  
English to Macedonian translation of lip shown as yчнa;  
English to Bosnian translation of lip shown as USNA;  
English to Bosnian translation of lip shown as USNE;  
English to Montenegrin translation of lip shown as USNA.

May 2, 2024 Office Action at TSDR 2 (Croatian), 5 (Serbian), 6 (Bosnian), 7 (Montenegrin), and 8 (Macedonian); December 4, 2024 Denial of Reconsideration at TSDR 2 (Bosnian); August 21, 2024 Request for Reconsideration at 8 (Bosnian, Serbian), 9 (Macedonian).

<sup>14</sup> The Census Bureau website states that the data tables for languages spoken at home submitted by the Examining Attorney are derived from the American Community Survey (ACS) and explains that “the data are a sample of the total population, there may be languages spoken that are not reported, either because the ACS did not sample the households where those languages are spoken, or because the person filling out the survey did not report the language or reported another language instead.” <https://www.census.gov/data/tables/time-series/demo/language-use/2017-2021-lang-tables.html> (accessed June 16, 2025). Every year, over 3.5 million housing unit addresses are contacted to participate in the ACS. *Id.* (Using American Community Survey Estimates and Margins of Error).

We may take judicial notice of publicly available facts on a governmental website. *In re Int’l Fruit Genetics, LLC*, 2022 TTAB LEXIS 403, at \*3 (TTAB 2022).

publication for the years 1980-2019 (1980, 1990, 2000, 2010, and 2019) showing 243,232 speakers of Serbo-Croatian in the home.<sup>15</sup> The webpage for University of California Los Angeles (UCLA) submitted by the Examining Attorney indicates that there are between 100,000 to 200,000 Croatian speakers located in the United States and Canada.<sup>16</sup> According to the University of Kansas webpage, there are large communities of people from the Western Balkans in the United States in Chicago, Pittsburgh, Detroit, St. Louis and Kansas City.<sup>17</sup> In the United States, some of the largest populations of these groups can be found in California, New York, Illinois, Missouri, and Pennsylvania.<sup>18</sup>

The Examining Attorney also relies on evidence of eight state and major universities in the United States that offer Slavic studies and foreign language courses in Croatian, Bosnian and Serbian (UCLA, Arizona State, Columbia University, Ohio State University, Harvard University, University of Wisconsin-Madison, University of Kansas, and University of North Carolina Chapel-Hill),<sup>19</sup> a Wikipedia article about the Serbo-Croatian languages,<sup>20</sup> the United States Apple Store and the Google Play Store webpages offering multiple apps for learning

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<sup>15</sup> May 2, 2024 Office Action at TSDR 4; June 25, 2024 Office Action at TSDR 9.

<sup>16</sup> June 25, 2024 Office Action at TSDR 4, 21. The webpage from Latitude Prime translation service indicates 415,000 Croatian-Americans, 200,000 Bosnian Americans, 190,000 Serbian Americans, and 40,000 Montenegrin-Americans. *Id.* at TSDR 3.

<sup>17</sup> June 25, 2024 Office Action at TSDR 17.

<sup>18</sup> June 25, 2024 Office Action at TSDR 3, Latitude Prime translation service website.

<sup>19</sup> June 25, 2024 Office Action at TSDR 4, 21, 16-23.

<sup>20</sup> June 25, 2024 Office Action at TSDR 24-25.

Croatian (from a search for “croatian”),<sup>21</sup> the Mango Language website offering Croatian language learning, websites offering Croatian language instruction or courses, and a webpage from a Minnesota company that offers Serbo-Croatian translation services and provides information about the world and U.S. population that speaks Serbo-Croatian and the Serbo-Croatian language.<sup>22</sup>

The webpages from some of the universities provide information about the number of worldwide speakers of the standardized “Serbo-Croatian” language family (BCMS), that ranges between 16 million to 20 million people.<sup>23</sup> According to one of the webpages, Croatia has a population of about 5 million and there are about 6 million Croatian speakers worldwide.<sup>24</sup> We also take judicial notice of information in The World Factbook ([www.cia.gov/the-world-factbook](http://www.cia.gov/the-world-factbook), accessed June 16, 2025), an official

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<sup>21</sup> June 25, 2024 Office Action at TSDR 14, 15. Ten apps are listed in the Apple Store from the search “croatian”; 30 apps are listed in the Google Store from the search “croatian.”

<sup>22</sup> The webpage from the Latitude Prime translation service also explains that the Serbo-Croatian language has four variants, it is a pluricentric language, although it employs both the Latin and Cyrillic alphabets, and the differences are more political/ethnic than linguistic, with most linguists agreeing that it is a single language. June 25, 2024 Office Action at TSDR 3.

<sup>23</sup> June 25, 2024 Office Action at TSDR 17, 22, 23. The webpage from the Latitude Prime translation service included Kosovo as a republic that speaks Serbo-Croatian, identifying the population of speakers of Serbo-Croatian as 21 million. June 25, 2024 Office Action at TSDR 3. According to Encyclopaedia Britannica, the “official languages” of Kosovo are Albanian and Serbian. Kosovo is the smallest country in the Balkans, landlocked and bordered by Serbia, Montenegro, Albania and North Macedonia. Kosovo, Encyclopaedia Britannica (2025) ([britannica.com](http://britannica.com), accessed June 16, 2025).

We take judicial notice that politically, the languages from these countries are considered separate languages and are identified by different names in the independent republics as Bosnian, Croatian, Montenegrin and Serbian. The label Serbo-Croatian, “dropped out of official use” in these countries, but outside the West Balkan region they may be referred to as Serbo-Croatian languages. Browne, *supra*, Encyclopaedia Britannica.

<sup>24</sup> June 25, 2024 Office Action at TSDR 4, 21.

United States government publication of the Central Intelligence Agency (CIA), which provides information on countries around the world.<sup>25</sup> In 2024, Croatia had an estimated population of 4,150,116; the combined total population for the countries of Bosnia-Herzegovina, Croatia, Montenegro and Serbia (based on the separate entries and population numbers for each country in The World Factbook)<sup>26</sup> is over 15 million.

According to the various university webpage information, Wikipedia, and the Latitude Prime translation service, the Serbo-Croatian languages (BCMS) are mutually intelligible between the standard varieties; they have also been described as pluricentric and one that forms a dialect continuum.<sup>27</sup> By studying one of the BCMS languages, the language learner can speak three or four. Although some of the BCMS languages have different alphabets, the BCMS linguistic varieties are nearly identical to each other in vocabulary and grammar. We take judicial notice of the entries for the Serbo-Croatian language and Serbia in the Encyclopaedia Britannica and the preface page from Serbian Grammar, which further confirms the BCMS languages' mutual intelligibility:

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<sup>25</sup> The Board may take judicial notice of official United States government publications. *See M/S R.M. Dhariwal (HUF) 100% EOU v. Zarda King Ltd. and Global Tech. & Trade Marks Ltd.*, 2019 TTAB LEXIS 95, at \*4 n.7 (TTAB 2019) (“The Board may take judicial notice of official United States government publications.”) (citing *In re Nieves & Nieves LLC*, 2015 TTAB LEXIS 12, at \*8 (TTAB 2015)).

<sup>26</sup> The separate population numbers from The World Factbook are as follows:

599,849	Montenegro
6,652,212	Serbia
4,150,116	Croatia
3,798,671	Bosnia Herzegovina.

<sup>27</sup> *See e.g.*, June 25, 2024 Office Action at TSDR 24-25, Wikipedia.

The Encyclopaedia Britannica entry<sup>28</sup> about the Serbo-Croatian language explains:

In the 21st century, then, two well-delineated standard languages exist (Croatian and Serbian) and two more are taking shape (Bosnian and Montenegrin). Educated speakers from any of the countries can converse with full understanding, hindered only by a few everyday words and technical terms (much like British boot and treacle versus American trunk [of a car] and molasses). Accordingly, some argue, they are speaking one language. When writing, however, one cannot follow Serbian and Croatian, or Montenegrin and Bosnian, language standards simultaneously, so in practice no joint standard exists.<sup>29</sup>

The Encyclopaedia Britannica entry for Serbia indicates that Serbians:<sup>30</sup>

speak essentially the same language as Croats, Bosniaks, and Montenegrins, although some pronunciation and vocabulary are distinctive. This language, linguistically termed Serbo-Croatian, is now identified as Serbian, Croatian, Bosnian, or Montenegrin, depending on the ethnicity of the speaker. It is in its written form that Serbian differs from Bosnian and Croatian. Reflecting Serbian religious heritage, it uses a modified version of the Cyrillic alphabet ...”

Serbian Grammar states:<sup>31</sup>

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<sup>28</sup> Browne, *supra*, Encyclopaedia Britannica.

<sup>29</sup> The Browne article also explains that the term Serbo-Croatian, is still used in language studies and by authors outside the Balkan region who also refer to the language as BCS or BCMS. In Serbian, writing in the Cyrillic alphabet is encouraged instead of writing in the Latin alphabet; in Montenegro the vocabulary is that of Serbia and writing in the Cyrillic alphabet is favored over the Latin alphabet. In Croatia, the Latin alphabet is used in writing; and in Bosnia and Herzegovina, with a mixed population (Croats, Serbs and Bosniaks), Serbs use the Cyrillic alphabet for writing while Croats and Bosniaks use the Latin alphabet. Browne, *supra*, Encyclopaedia Britannica.

We note that the Examining Attorney’s translation for Montenegro was a Latin translation. We take judicial notice that Montenegrin is closer in pronunciation to Croatian. Montenegro, Encyclopaedia Britannica (2025) ([www.britannica.com](http://www.britannica.com), accessed June 16, 2025).

<sup>30</sup> Serbia, *supra*, Encyclopaedia Britannica.

<sup>31</sup> Serbian Grammar, *supra*, p.7.



The title of this book has been chosen for the sake of simplicity. The full name of the language is Serbo-Croatian. It must be emphasized that Croatian, except for slight differences in vocabulary, is absolutely the same language in Serbian, only written with the Latin alphabet with diacritic signs. Knowledge of both the Cyrillic and Latin (Croatian) alphabets is indispensable to any student of Serbo-Croatian ...

Applicant and the Examining Attorney both point to non-precedential cases to support their positions. We observe that the Board's determinations in these non-precedential cases are consistent with our precedential decisions in that none apply a per se rule with regard to the question of whether a certain number of speakers of a foreign language is considered appreciable. The determination of whether a language was a common, modern language was based on the on the evidence in the record—census and other data—or facts that were judicially noticed. “The Board must decide each case on its own merits.” *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001).

We now consider whether Croatian is a common, modern language or is obscure or unusual.

To the extent modern means something different from common, we find that Croatian is clearly a “modern” language for purposes of the doctrine of foreign equivalents, because unlike a “dead” language such as Latin, Croatian is spoken in Croatia and elsewhere. *See e.g., In re Tokutake Indus. Co.*, 2008 TTAB LEXIS 26, at \*8 (“In this case, the foreign language is Japanese, which the evidence shows is a modern language spoken by more than 100 million people worldwide and by hundreds of thousands of people in the United States.”). Nonetheless, the doctrine of foreign

equivalents will not be invoked where the non-English language at issue is obscure or unusual, that is, not spoken by an appreciable number of individuals in the United States.

As to whether the language is common, it is enough to demonstrate that an “appreciable” number of Americans are capable of translating the term USNA from Croatian into English. *In re Vetements Grp. AG*, 137 F.4th at 1326, 1331 (“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”; 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). “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.’” *Id.* at 1331.

Given that Bosnian, Croatian, Montenegrin and Serbian are mutually intelligible among each other and are considered “nearly identical” in vocabulary and grammar, we consider the census and other website information relating to the “Serbo-Croatian” language family probative. *See In re Vetements Grp. AG*, 137 F.4th at 1327 (substantial evidence that an appreciable number of Americans are capable of translating the word VETEMENTS included evidence of French (including all French dialects) spoken by 2.1 million Americans in the home).

Applicant relies on the many articles it submitted which are based on the Census Bureau's American Community Survey, (ACS) data tables,<sup>32</sup> that list the most spoken languages, other than English, in the home in the United States. The most spoken languages in the home are Spanish, Chinese, Tagalog, Vietnamese, Arabic, French, Korean, Portuguese, Russian, Haitian and German. Applicant relies on these lists showing, for example, the top five or ten spoken languages, which do not list Croatian, to support its argument that Croatian is not a common language. Applicant's position as to the Examining Attorney's census evidence is that the number of Croatian speakers (53,000) in the home from the 2009-2013 census table is low, and the higher figure (243,232) for Serbo-Croatian languages spoken in the home from the 2019 census data, to the extent it should be considered, also is insufficient.

Applicant appears to equate "common" with "most spoken," arguing that there must be a "minimum number" of speakers to establish that a language is "common." 6 TTABVue 7. However, neither the Federal Circuit, not the Board's precedents regarding the doctrine of foreign equivalents, set a minimum threshold number of speakers of a foreign language that is required for the language to be considered a "common" one in the United States.<sup>33</sup>

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<sup>32</sup> See note 14.

<sup>33</sup> The *Vetements* court rejected a statistical test of likelihood of translation as to the overall United States population, based on a percentage, under the doctrine of foreign equivalents. *In re Vetements Grp. AG*, 137 F.4th at 1327 ("The doctrine of foreign equivalents would be a nullity under Appellant's 50% [of the U.S. population threshold headcount] rule."). The Board has previously rejected arguments related to determining the commonness of a language based on balancing the percentage of speakers of a language from census data against the total U.S. population, recognizing that it would eliminate the doctrine of foreign equivalents for virtually all foreign languages spoken or understood in the United States. *In re Thomas*,

Applicant's reliance on sources documenting the most spoken languages at home based on the Census Bureau ACS tables should not be confused with the percentages of Americans who speak or comprehend a particular language.<sup>34</sup> The ACS census tables reflect the language that is spoken as the primary language in peoples' homes; this is not the same as percentages of Americans who know a particular language. This figure undercounts persons that do not speak the language at home, but are familiar with or even fluent in it, such as those who have learned the language through academic study, in business, in the course of foreign travel, or living abroad. The census evidence of record is a data sample of the United States population and is an estimation.

Thus, the number of home speakers of Croatian or Serbo-Croatian in the ACS census tables is an imperfect measure of the number of persons in the United States who understand Croatian (or BCMS) well enough to be able to translate the word "lip." We have previously found a modern language to be "common" based on data showing the number of speakers at home in the hundreds of thousands. *See In re S. Malhotra & Co. AG*, 2018 TTAB LEXIS 344, at \*6-7 (TTAB 2018) (finding Greek to be a common language in the United States based on 2015 Census data that 304,932 people in the United States spoke Greek at home); *In re Tokutake Indus. Co.*, 2008

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2006 TTAB LEXIS 135 at \*8-10 (TTAB 2006) ("applicant's interpretation would write the doctrine out of existence").

<sup>34</sup> Even one of the articles provided by Applicant indicates states that "[i]n this article we refer to foreign-language 'speakers' as those who report speaking a language other than English (LOTE) at home, not necessarily all those who can speak that language." August 21, 2024 Request for Reconsideration at TSDR 27.

TTAB LEXIS 26, at \*8 (finding Japanese to be a modern language spoken by “hundreds of thousands of people in the United States” based on Census data available in 2008).

The evidence in the record shows that BCMS languages are taught at eight major universities in the United States – with six of them being state universities and two major private universities. There is also evidence of a translation service for the Croatian language, which reflects United States businesses do business with businesses in Croatia. The many smart phone or tablet apps available in the Google Play and Apple Stores in the United States for learning Croatian reflect that the language is relatively common, or at least popular enough to warrant the app’s resources in developing content for Croatians since language learning apps often prioritize languages with a larger user base and a stronger demand for learning materials. The Serbo-Croatian language (BCMS) is spoken by a sizeable world population.

Thus, the evidence in the record shows, among other things, there are sizeable global populations of Serbo-Croatian (BCMS) speakers, a significant number of people from Balkan Peninsula countries living in major cities in the United States, evidence that Serbo-Croatian (BCMS) languages are taught by well-known and major U.S. universities, and U.S. census evidence that speakers of the Serbo-Croatian language in the home is over 240,000. Given this evidence, we do not view Croatian as obscure.

Based on the evidence of the record as a whole, we find that Croatian is a common, modern language.

2. Would USNA be Ordinarily Translated

We next consider whether the relevant consumer would stop and translate USNA.

As articulated in *Vetements*, 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*.” (emphasis in original). *In re Vetements Grp. AG*, 137 F.4th at 1331. This third principle “assumes linguistic ability but asks whether a purchaser with ordinary sensibilities would translate the word given the context in which the mark is used.” *Id.* See e.g., *In re Geo. A. Hormel & Co.*, 1985 TTAB LEXIS 45, at \*5 (the term SAPORITO would be translated into English as tasty when used in connection with sausage).

In this case, a purchaser with ordinary sensibilities would translate the word USNA because it is relevant in the context of Applicant’s cosmetic goods, which are shown to be lipsticks and lip gloss on the Applicant’s specimen/webpage.<sup>35</sup> “Lip” is a common and simple word for a part of one’s mouth and would not require an advanced vocabulary. See *In re Vetements Grp. AG*, 137 F.4th at 1327 (“Additionally, the word in question is a simple and common word—the word for clothing.”).

Moreover, where a term has a clear, descriptive meaning in the context of Applicant’s goods, consumers familiar with the Croatian word USNA likely will focus

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<sup>35</sup> April 2, 2024 Specimen; May 2, 2024 Office Action at TSDR 3 (pages from Applicant’s website).

on that meaning when encountering the mark on the goods. The evidence clearly shows that the one and only meaning of USNA is “lip,” and without question, that is how it would be recognized and understood by the Croatian-speaking (or BCMS speaking) public. *See In re La Peregrina Ltd.*, 2008 TTAB LEXIS 38, at \*11 (TTAB 2008) (doctrine applied because “la peregrina” and “the pilgrim” are “equivalent in meaning”). Consumers have no reason to associate USNA with any other possible meaning other than “lip” when used in connection with Applicant’s cosmetic goods for the lips.

### 3. Whether Applicant Met its Burden to Oppose Translation

The burden is on the party opposing translation to show that it is unlikely the ordinary American purchaser would stop and translate the foreign term into its English equivalent. *In re Vetements Grp. AG*, 137 F.4th at 1331 (“Appellant has not met its burden to show that the marks are unlikely to be translated, and thus, the doctrine of foreign equivalents applies.”).

“Once an applicant provides a translation of a foreign term that is a generic or descriptive term for the goods in English, it has a more difficult burden to then show that the term is not merely descriptive or generic.” *In re Tokutake Indus. Co.*, 2008 TTAB LEXIS 26, at \*10-11. *See also In re Cordua Rests., Inc.*, 823 F.3d 594, 603 (Fed. Cir. 2016) (“Because ‘churrasco’ is a common word in Spanish and Portuguese and because the ’191 Application itself concedes that ‘churrascos’ means ‘barbecue,’ the PTO would have been justified in translating ‘churrascos’ into ‘barbecue’ and subsequently determining whether the term ‘barbecue’ is generic when applied to restaurant services.”).

It is appropriate to apply the doctrine of foreign equivalents in this case. We have found that Croatian is a common, modern language. There is no evidence of record suggesting that the translation of USNA to “lip” is inaccurate, or that USNA would not be easily recognized and translated by Croatian speakers (or BCMS speakers) in the U.S. marketplace in connection with the goods. *See In re Sadoru Group, Ltd.*, 2012 TTAB LEXIS 325, at \*3 (TTAB 2012) (“The doctrine is applicable in this case because the record shows that the relevant English translation is literal and direct, the word comes from a common, modern language, and there is no contradictory evidence of another relevant meaning.”). Nor is there evidence that USNA is an obscure, or rare, or uncommon word that would not be translated, or that USNA would not be translated because of marketplace circumstances, the commercial setting in which the mark is used, or the inherent nature of USNA makes translation unnecessary. *See In re La Peregrina Ltd.*, 2008 TTAB LEXIS 38, at \*11 (doctrine of foreign equivalents applied because “la peregrina” and “the pilgrim” are “equivalent in meaning,” “the translated meaning of LA PEREGRINA is not obscure,” and “no compelling evidence in the record to establish that the mark would not be translated because of marketplace circumstances or the commercial setting in which the mark is used”); *In re Thomas*, 2006 TTAB LEXIS 135, at \*14 (doctrine of foreign equivalents applied because MARCHE NOIR and “black market” are exact translations, and this is not a circumstance where MARCHE NOIR would not be translated due to inherent nature of the mark, marketplace circumstances, or commercial setting).



We find that Applicant has not met her burden to show that the doctrine of foreign equivalents does not apply. Because Applicant has not met the burden to show that Croatian is an obscure language or that an American consumer would not stop and translate USNA into its English equivalent, “lip,” in the context of Applicant’s goods, we now consider the question of descriptiveness.

E. Descriptiveness

As indicated, a term is considered to be merely descriptive of a product if it immediately conveys to a purchaser information as to the ingredients, quality, characteristics, functions, purposes or other features of the product in connection with which the mark is used. *In re Bright-Crest, Ltd.*, 1979 TTAB LEXIS 80, at \*7-8 (TTAB 1979).

We find that the term USNA in Applicant’s mark is merely descriptive within the meaning of Section 2(e)(1) of the Act. The word USNA translates to “lip,” and as the specimen and Applicant’s website pages show, excerpted below, Applicant’s cosmetic product is lipstick or lip gloss.<sup>36</sup>

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<sup>36</sup> April 2, 2024 specimen; May 2, 2024 Office Action at TSDR 3.



ABOUT MATTE LIPSTICKS WITH LIP LINER GLOSS LIPSTICKS CLEAR LIP GLOSS CONTACT NEWS

## MATTE LIPSTICKS WITH LIP LINER

Filter: Availability ▾ Price ▾

Sort by: Best selling ▾ 5



Lijepo Plum Matte Finish - The Long-lasting Liquid Lipstick And Lip Liner  
\$42.00 USD



Plaza Nude Matte Finish - The Long-lasting Liquid Lipstick And Lip Liner  
\$42.00 USD



Kroviste Red Matte Finish - The Long-lasting Lipstick And Lip Liner  
\$42.00 USD

The term “lip” is merely descriptive of lipstick and lip gloss which are encompassed by the identified “cosmetics” in Applicant’s application. “Lip” is a simple and common word that will be recognized by most people who are familiar with the Croatian (or BCMS) language. Consumers will immediately perceive that USNA

describes the use, purpose, or feature of Applicant's lipstick or lip gloss, namely products which are applied to the lips to enhance their appearance. *Cf. In re Vetements Grp. AG*, 137 F.4th at 1332 (VETEMENTS, translated as clothing, is generic for clothing and online retail stores featuring clothing).

Since "normally no distinction can be made between English terms and their foreign equivalents with respect to registrability," *In re Optica Int'l*, 1977 TTAB LEXIS 119, at \*3 (TTAB 1977), we conclude that USNA is merely descriptive of Applicant's cosmetics which include lipstick and lip gloss.

## II. Conclusion

We affirm the refusal to register Applicant's KECA'S USNA mark based on the requirement for a disclaimer of the wording USNA.

However, if Applicant submits a disclaimer of USNA to the Board within thirty days of the mailing date of this decision, the requirement for the disclaimer will have been met and the application will proceed. Trademark Rule 2.142(g), 37 C.F.R. § 2.142(g); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 1218 (2024).<sup>37</sup>

**Decision:** The Section 6(a) refusal to register Applicant's mark KECA'S USNA is affirmed.

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<sup>37</sup> The disclaimer should read as follows: "No claim is made to the exclusive right to use "USNA" apart from the mark as shown."