

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: May 15, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board

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In re Migeca S.p.A.
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Serial No. 87105947
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Larry H. Tronco of Holland & Hart LLP,
for Migeca S.p.A.

Brittany Lee-Richardson, Trademark Examining Attorney, Law Office 116,
Christine Cooper, Managing Attorney.

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Before Zervas, Gorowitz and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Migeca S.p.A. (“Applicant”) seeks registration on the Principal Register of the stylized mark CA’ PUCCINO COFFEE HOUSE AND KITCHEN (“COFFEE HOUSE AND KITCHEN” disclaimed), as displayed below,



ca' puccino
coffee house and kitchen

for various clothing items in International Class 25, as well as the following goods

and services in International Classes 30 and 43:¹

Coffee; tea; cocoa; artificial coffee; rice; snack foods, namely, chocolate-based snack foods, wheat-based snack foods, grain-based snack foods and cereal based snack foods in this class; muesli bars, cereal based energy bars and breakfast bars in the nature of cereal bars, chocolate-based meal replacement bars, high-protein cereal bars; tapioca and sago; flour; bread, pastry and confectionery, namely, chips for baking; edible sherbet and sorbet ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces as condiments; spices; pasta; biscuits; buns; sushi; tarts; prepared foods, namely, meat pies, pizzas, pasta; prepared meals, namely, noodle-based prepared meals, meals consisting primarily of pasta or rice; fruit sauces excluding cranberry sauce and applesauce; convenience food and savoury snacks, namely, corn-based snack foods, ready-to-eat cereal, flour-based snacks in the nature of flour-based chips and sesame-based snacks in the nature of sesame sticks; crackers, dumplings, pancakes, pasta, rice dishes in the nature of frozen, prepared and packaged meals consisting primarily of rice; cereal dishes in the nature of breakfast cereals; pies and pastry dishes, sandwiches and pizzas, spring roll and Korean-style dried seaweed rolls containing cooked rice, steamed buns stuffed with minced meat; salts, seasonings, food flavourings, other than essential oils; condiments, namely, pepper sauce, prepared horseradish, tomato paste; baked goods namely, crumbles, cookies, cakes, pies; chocolate and bakery desserts; sugars, natural sweeteners; and sweet fillings, namely, fruit-based filling for cakes and pies, buttercream fillings for cakes, chocolate-based fillings for cakes and pies; bee products in the nature of honey; ice, ice creams, frozen yogurts and sorbets; processed grains; starches, namely, starch for food, start syrup, corn starch and goods made thereof, namely, starch noodles, starch vermicelli; baking preparations, namely, baking powders, baking spices; and yeasts, in International Class 30; and

Services for providing food and drink; restaurant services; food and drink take-away services in the nature of restaurant carryout services; provision of food and drink via a mobile truck; preparation of meals for consumption off the premises in the nature of food preparation services; café services; coffee supply services for offices; office coffee supply services; contract food services; bar services; providing temporary

¹ Application Serial No. 87105947, filed on July 15, 2016, pursuant to Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), based on European Union Registration No. 015657547, which issued on December 8, 2016. The colors brown and black are claimed as a feature of the mark.

accommodation; booking of temporary accommodation; cocktail lounge services; hotel information in the nature of providing information and advice on hotels and restaurants to tourists and business travelers; providing hotel accommodation; resort hotels services; motel services; agency services for booking hotel accommodation; holiday lodgings in the nature of providing temporary lodging at holiday camps; arranging and provision of temporary housing holiday accommodations; arranging and providing meals for travelers in the nature of making reservations and bookings for others for meals at hotels and restaurants; food preparation services; arranging and providing hotel reservation services in the nature of making reservations and bookings for others for accommodations at hotels; reservation services for booking meals in the nature of making reservations and bookings for restaurants and meals; catering services for the provision of food and drink; and advice, consultancy and information for the aforesaid, in International Class 43.

The Trademark Examining Attorney has partially refused registration of Applicant's mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark, as a whole, is merely descriptive of the goods and services solely identified in International Classes 30 and 43. (The International Class 25 goods are not the subject of the Trademark Examining's refusal).

When the refusal was made final, Applicant appealed and requested reconsideration. The Board suspended the appeal and returned the application to the Trademark Examining Attorney. After the Trademark Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register.²

² All TTABVUE citations refer to the docket and all Trademark Status and Document Retrieval ("TSDR") citations refer to the electronic file database for Application Serial No. 87105947. All citations to the TSDR database are to the downloadable PDF version of the documents.

I. Preliminary Matter – Evidentiary Objection

Before proceeding to the merits of the refusal, we address the Trademark Examining Attorney’s objection to Applicant’s reference to and attachment of two third-party registrations to its appeal brief, i.e., Registration Nos. 3256571 and 4535275, that concern marks which include the term CA’ and have translations that show CA’ translates to “House of...” These registrations were not made of record during examination. Accordingly, the Trademark Examining Attorney’s objection is sustained and no consideration will be given to these two registrations.³ Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d); *In re Posthuma*, 45 USPQ2d 2011, 2012 n.2 (TTAB 1998) (third-party registration attached to appeal brief not considered).

II. Mere Descriptiveness

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods [or services] of the applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is “merely descriptive” within the meaning of Section 2(e)(1) if it “immediately

³ We note that Applicant also attached excerpts from three websites to its appeal brief, namely, (1) the search results from a Google translation search of the term “casa,” (2) a definition of the term “CA” retrieved from the website www.visit-venice-italy.com, and (3) and historical information regarding the surname Puccino from a website purportedly called House of Names. See Applicant’s Appeal Brief, pp. 5-7, 4 TTABVUE 6-8. These website excerpts, however, were also submitted during the prosecution of Applicant’s application. See February 22, 2017 Response to Office Action, TSDR pp. 18-20. That being said, neither submission included the URLs or the dates upon which the excerpts were printed from the internet. As a general matter, internet evidence is acceptable in an ex parte case when the full web address (URL) for the page and the date on which the page was accessed and downloaded are provided. TBMP § 1208.03 (June 2017). Although the URL and the date printed information were not provided by Applicant and since the Trademark Examining Attorney neither requested the information nor raised any objection in connection thereto, the failure to provide the information is excused. Accordingly, we will consider these website excerpts submitted during the prosecution of Applicant’s application.

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, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978); *see also In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

A term need only describe a single feature or attribute of the goods or services to be descriptive. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001). Moreover, a mark need not be merely descriptive of all recited goods or services in an application. A descriptiveness refusal is proper, “if the mark is descriptive of any of the goods [or services] for which registration is sought.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)).

Descriptiveness of a term must be evaluated “in relation to the particular goods [or services] for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). “The question is not whether someone presented with only the

mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)).

Moreover, in general, a mere misspelling of a word and inconsequential punctuation differences are not sufficient to render otherwise descriptive marks registrable. *See e.g., In re Wyandotte Chemicals Corp.*, 156 USPQ 100, 100 (TTAB 1967) (“[A] descriptive term is not made arbitrary by hyphenating or misspelling it.”); *see also In re Quik-Print Copy Shops*, 616 F.2d 523, 205 USPQ 505, 507 n.9 (CCPA 1980) (QUIK-PRINT held descriptive; “There is no legally significant difference here between ‘quik’ and ‘quick’”); *In re ING Direct Bancorp*, 100 USPQ2d 1681, 1690 (TTAB 2011) (PERSON2PERSON PAYMENT held generic); *In re Carlson*, 91 USPQ2d 1198, 1203 (TTAB 2009) (“URBANHOUSING in standard character form, will be immediately and directly perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING, rather than as including the separate word ZING.”); *In re Organik Tech. Inc.*, 41 USPQ2d 1690, 1694 (TTAB 1997) (“ORGANIK, which is the phonetic equivalent of the term ‘organic,’ is deceptive”); and *Hi-Shear Corp. v. Nat’l Auto. Parts Ass’n*, 152 USPQ 341, 343 (TTAB 1966) (HI-TORQUE “is the phonetic equivalent of the words ‘HIGH TORQUE’”).

The policy underlying the general rule that misspelled words may be merely descriptive is set forth in the Restatement of Unfair Competition as follows:

The misspelling or corruption of an otherwise descriptive word will not ordinarily alter the descriptive character of the designation. In many instances the contrivance will not overcome the ordinary meaning of the term, and prospective purchasers will thus continue to understand the designation in a purely descriptive sense. ... Recognition of exclusive rights in variants and corruptions of descriptive words also imposes a risk of liability on subsequent users of the original words. [Cross-reference omitted.] Thus, unless the alteration is sufficient to avoid encumbering use of the original word, the variation remains descriptive.

Restatement (Third) of Unfair Competition (June 2017 update), § 14, Comment a.

As noted in the Restatement, the spelling of a descriptive term may be so extensively altered that the resulting mark would not be perceived as the equivalent of the original descriptive word, but merely suggestive of it. However, even extensively altered descriptive terms may be merely descriptive. *See Andrew J. McPartland, Inc. v. Montgomery Ward & Co.*, 164 F.2d 603, 76 USPQ 97, 99 (CCPA 1947), cert. denied, 333 U.S. 875, 77 USPQ 676 (1948) (KWIXTART is the phonetic spelling of “quick start” which “was intended to describe merely that appellant's battery would start a motor or engine quickly.”).

In support of the refusal, the Trademark Examining Attorney maintains that the CA' PUCCINO portion of Applicant's proposed mark is a misspelling and the phonetic equivalent of the word “cappuccino,” a term that is defined as “an espresso coffee mixed or topped with steam milk or cream.”⁴ As such, the Trademark Examining Attorney argues that the designation CA' PUCCINO is merely descriptive of

⁴ November 2, 2016 Office Action, TSDR p. 12 (The American Heritage Dictionary of the English Language – www.ahdictionary.com).

Applicant's identified Class 30 goods and Class 43 services because consumers will immediately recognize that the designation conveys that Applicant's goods and services feature the coffee-type beverage known as cappuccino.⁵

The Trademark Examining Attorney further contends that since "cappuccino" is originally an Italian word that is commonly misspelled, U.S. consumers are even more likely to understand the designation CA' PUCCINO as merely indicating the beverage cappuccino. In support of her contention, the Trademark Examining Attorney submitted the following evidence:

- An article from *Huffington Post* discussing how the term CAPPUCCINO is one of the 17 most commonly misspelled food words and how the term is often spelled as CAPPUCINO and CAPPUCINNO;⁶
- An article from *Life Hack* discussing how the term CAPPUCCINO is one of the 16 most commonly misspelled food words, and demonstrating that it is often misspelled as CAPUCCINO;⁷
- An article from *Anish Athalye* discussing how the term CAPPUCCINO is commonly misspelled as CAPUCCINO and CAPPUCINO;⁸
- A discussion board thread from *Ilxor* including the misspelling of the term CAPPUCCINO misspelled;⁹ and

⁵ Because Applicant has disclaimed the wording "COFFEE HOUSE AND KITCHEN" and, therefore, has conceded its descriptive nature when used in connection with the goods and services at issue, the Trademark Examining Attorney's arguments in support of her partial refusal primarily focus on the descriptiveness of the term CA' PUCCINO.

⁶ March 24, 2017 Office Action, TSDR p. 27.

⁷ *Id.*, TSDR pp. 43-44.

⁸ *Id.*, TSDR pp. 52-53.

⁹ *Id.*, TSDR p. 56.

- A news blog post at www.romespottetravel.com/blog-news/its-majest-the-capuccino.php in which the term “cappuccino” is misspelled in its title as “capuccino,” i.e., “Its majesty: the capuccino.”¹⁰

To bolster this argument, the Trademark Examining Attorney also submitted evidence from a blogger in Europe who, in reviewing Applicant’s restaurant, stated “I hope someone with more passion for coffee can tell me if their cappuccinos are worthy of the name,” referring to the name of Applicant’s restaurant.¹¹ The Trademark Examining Attorney contends that this evidence demonstrates that someone from Europe, who has visited and dined at Applicant’s establishment, views CA’ PUCCINO as referring to the cappuccino beverage.¹²

In traversing the refusal, Applicant offers a number of arguments for why the term CA’ PUCCINO is not merely descriptive of its identified Class 30 goods and Class 43 services. First, Applicant argues that CA’ PUCCINO is not a novel misspelling of the term “cappuccino” because the term is a completely different phrase with its own distinct meaning. Specifically, Applicant contends that the abbreviation CA’ is a readily recognized abbreviation for the term “casa,” and that this abbreviation is common slang used by Italians. Applicant further maintains that “casa” is a common word meaning “house” in Italian, and that such meaning is well-

¹⁰ *Id.*, TSDR pp. 28-29.

¹¹ *Id.*, TSDR pp. 18-26.

¹² Trademark Examining Attorney’s Brief, p. 13, 10 TTABVUE 13. We find this argument to be speculative in nature. Moreover, a foreign person’s perception of a mark used in a foreign country is not probative of the perceptions of consumers in the United States of that same mark used in U.S. commerce in determining whether or not the mark is descriptive of the goods and services upon which it used. Accordingly, we have given no consideration to this argument or the evidence submitted in support thereof in our determination of this appeal.

understood by American consumers. Additionally, Applicant contends that the two words CA' (with the apostrophe) and PUCCINO (with a single "p") will not be viewed interchangeably with "cappuccino" (a single term with a double "p") and, therefore, the primary significance of CA' PUCCINO will not be considered a descriptive reference to Applicant's goods and services; rather, Applicant maintains that when viewed in its entirety, the term CA' PUCCINO would be understood by American consumers to mean "House of Puccino."¹³

Second, Applicant argues that, under the doctrine of foreign equivalents, Italian-speaking Americans will immediately recognize that the two word CA' PUCCINO designation is not the same as the single term "cappuccino," in either spelling or commercial impression. Instead, Applicant contends that relevant consumers would stop and translate the designation to mean "House of Puccino."¹⁴

Third, Applicant contends that, even assuming that the term CA' PUCCINO will be viewed by U.S. consumers as a novel spelling of the word "cappuccino," the designation is still entitled to registration because it constitutes a double entendre given that its English translation is "House of Puccino."¹⁵

Finally, Applicant argues there is no evidence of record indicating that the phrase CA' PUCCINO is known to or viewed by American consumers as a novel misspelling of "cappuccino." Applicant further contends that the term CA' PUCCINO does not

¹³ Applicant's Appeal Brief, p. 2, 4 TTABVUE 3.

¹⁴ *Id.* at p. 3, 4 TTABVUE 4.

¹⁵ *Id.* at pp. 3-4, 4 TTABVUE 4-5.

appear in any dictionary and that the record does not demonstrate that the term is commonly used by others to describe coffee drinks.¹⁶

In support of its arguments, Applicant submitted the following relevant evidence:

- A Google translation of the term “casa” meaning “home”;¹⁷
- A dictionary definition obtained from the website www.visit.venice.italy.com defining the term CA’ as “the abbreviation of Casa, the home.”;¹⁸ and
- An excerpt from an unidentified website regarding the history of the surname Puccino.¹⁹

We are not persuaded by Applicant’s arguments and evidence and agree with the Trademark Examining Attorney that the evidence of record establishes that the term CA’ PUCCINO is merely descriptive of the identified Class 30 goods and Class 43 services. As noted above, in our analysis of the proposed term CA’ PUCCINO we must consider “the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods [or services] because of the manner of its use or intended use.” *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219.

We find that the designation CA’ PUCCINO will be viewed by relevant consumers as the misspelling of the term “cappuccino,” particularly in light of the record evidence that demonstrates that the word “cappuccino” is commonly misspelled.

¹⁶ *Id.* at p. 4, 4 TTABVUE 5.

¹⁷ July 15, 2016 Response to Office Action, TSDR p. 18.

¹⁸ *Id.*, TSDR p. 19.

¹⁹ *Id.*, TSDR p.

Moreover, the designation CA' PUCCINO is the phonetic equivalent of the word "cappuccino," which the record shows means "espresso coffee mixed or topped with steam milk or cream." U.S. consumers therefore are likely to perceive the designation CA' PUCCINO as being the equivalent of "cappuccino" since it is used in connection with cappuccino/coffee-type beverages and coffee establishments. In the context of coffee beverages and food and drink services, consumers are likely to view the term as describing coffee beverages, specifically cappuccino.²⁰

Applicant's argument that the term CA' PUCCINO cannot be interchanged with the term "cappuccino" because of the visual differences between the terms is not persuasive. The only differences between the words is a space between the terms CA' and PUCCINO, an apostrophe and one less "P." These minor variances do not create a significant difference in the appearance of the words. Consumers in the United States will still likely view the designation as CA' PUCCINO as "cappuccino" and not focus on or recall the minor differences. In addition, as noted above, the words are phonetic equivalents. The evidence of record demonstrates that "cappuccino" is pronounced like "\,ka-pə-'chē-(,)nō, kā-pü-\," with a pause after the "ka" sound, just like the designation CA' PUCCINO.²¹ Because of the visual and aural similarities between the designation CA' PUCCINO and the term "cappuccino," consumers are likely to perceive the designation CA' PUCCINO as referring to the coffee beverage.

With respect to Applicant's double entendre argument, we note that a "double

²⁰ We note that Applicant does not dispute that the term "cappuccino" is descriptive of the relevant goods and services. *See* Applicant's Appeal Brief, p. 4, 4 TTABVUE 5.

²¹ March 24, 2017 Office Action, TSDR, p. 9.

entendre” is an expression that has a double connotation or significance as applied to the goods and services. Trademark Manual of Examining Procedure (“TMEP”) § 1213.05(c). We further note that a mark that comprises a “double entendre” will not be refused registration as merely descriptive if one of its meanings is not merely descriptive in relation to the goods and services. *Id.* However, the multiple meanings that make an expression a “double entendre” must be well-recognized by the public and readily apparent from the mark itself. *See In re Calphalon Corp.*, 122 USPQ2d 1153, 1163-64 (TTAB 2017) (quoting TMEP §1213.05(c)) (finding SHARPIN not a double entendre in relation to cutlery knife blocks with built-in sharpeners and affirming descriptiveness refusal); *In re The Place, Inc.*, 76 USPQ2d 1467, 1470-71 (TTAB 2005) (finding THE GREATEST BAR not a double entendre in relation to restaurant and bar services and affirming descriptiveness refusal). Here, Applicant merely claims that the designation CA’ PUCCINO means “House of Puccino” but fails to demonstrate how such designation has any meaning in connection with Applicant’s coffee product and coffee house retail establishment so that it would constitute a double entendre. Accordingly, Applicant’s double entendre argument is unavailing.

We next turn to Applicant’s doctrine of foreign equivalent argument. As noted above, Applicant argues that the designation CA’ PUCCINO consists of two words in Italian and that American consumers will stop and translate the designation to mean “House of Puccino.” In light of this translation, Applicant maintains that the designation CA’ PUCCINO is not merely descriptive of its Class 30 goods or Class 43 services.

It is well settled that the foreign equivalent of a merely descriptive U.S. English term is also merely descriptive. “[A] word taken from a well-known foreign modern language, which is, itself, descriptive of a product, will be so considered when it is attempted to be registered as a trademark in the United States for the same product.” *In re N. Paper Mills*, 64 F.2d 998, 17 USPQ 492, 493 (CCPA 1933). Under the doctrine of foreign equivalents, marks with foreign terms from common, modern languages are translated into English to determine descriptiveness. *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) (citing *In re Sarkli, Ltd.*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459, 1460 (TTAB 1987)).

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.” *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976). The “ordinary American purchaser” is not limited to those purchasers who speak only English. “[R]ather, the term includes all American purchasers, including those proficient in a non-English language who would ordinarily be expected to translate words into English.” *In re Spirits Int’l, N.V.*, 563 F.3d 1347, 90 USPQ2d 1489, 1492 (Fed. Cir. 2009).²² Further, the Board has previously held that Italian is a common modern language, finding that “it does not require authority to conclude that Italian is a common, major

²² Our consideration of the doctrine of foreign equivalents, therefore, is based on the implicit presumption that the primary language of an ordinary American purchaser is English. See *In re Spirits Int’l, N.V.*, 90 USPQ2d at 1491 (“In *Palm Bay*, we noted that the doctrine of foreign equivalents applies only in those situations where the ordinary American consumer would stop and translate the mark into English. ...”).

language in the world and is spoken by many people in the United States.” *In re Ithaca Indus.*, 230 USPQ 702, 704-705 (TTAB 1986).

Keeping the foregoing in mind, we find that the doctrine of foreign equivalents is inapplicable in this situation. Although Italian in origin, the term “cappuccino” is now recognized immediately by U.S. consumers as an English word.²³

Even if certain bilingual consumers do not recognize that CA’ PUCCINO is a misspelling of an English word, and were to stop and attempt to translate the term, Applicant’s contention that the designation CA’ PUCCINO directly and literally translates to “House of Puccino” does not correspond with Applicant’s evidence. Applicant explains and submits translation evidence to support the contention that CA’, an alleged Italian slang term, is the abbreviation for the term “casa,” which in turn translates to the English word “house.” Therefore, the prefix CA’ does not directly translate to “house.” This is problematic because the doctrine of foreign equivalents is properly applied to cases where the evidence shows that the relevant English translation is literal and direct, and no contradictory evidence of shades of meaning or other relevant meanings exists. *See In re Sarkli*, 220 USPQ at 112-13 (holding REPECHAGE for various skin-care products, and SECOND CHANCE for face creams and other toiletries, not likely to cause confusion, where the evidence failed to show that the terms were direct foreign equivalents); TMEP § 1207.01(b)(vi)(B) (Oct. 2017). Here, the translation provided by Applicant, i.e.,

²³ November 2, 2016 Office Action, TSDR p. 12 (The American Heritage Dictionary of the English Language – www.ahdictionary.com).

“House of Puccino,” is not a direct and literal translation of CA’ PUCCINO. Applicant is effectively requiring U.S. consumers to study the designation CA’ PUCCINO to determine that the mark is not “cappuccino,” and instead pause and translate the term, including translating the Italian slang term CA’ to the word “casa,” and then translating “casa” to the English term “house.” It is unlikely that consumers of Applicant’s goods and services will engage in these mental gymnastics. Also, Applicant contends that the term “casa” is “well-understood by Americans;” however, Applicant fails to submit any evidence to support such contention. Therefore, it cannot be said that such term is well-understood by U.S. consumers, nor can it be said that U.S. consumers will know that CA’ is the slang term for “casa.” Accordingly, we find that the doctrine of foreign equivalents is not applicable under these circumstances.

Finally, Applicant’s argument that due to the lack of any evidence of record (1) demonstrating that third parties use the term CA’ PUCCINO in a descriptive manner in relation to coffee drinks or (2) showing that the term appears in any dictionary, the designation CA’ PUCCINO is therefore not descriptive of the relevant goods and services is unpersuasive. First, the fact that there is no dictionary evidence of the designation CA’ PUCCINO further supports rather than detracts from our finding that CA’ PUCCINO is a misspelling of the word “cappuccino.” Second, the lack of third-party use evidence of the term CA’ PUCCINO used descriptively in relation to coffee products is irrelevant to our analysis. The issue is not whether third parties use the designation descriptively but whether consumers would view the designation

CA' PUCCINO as a misspelling of the descriptive term "cappuccino." Moreover, Applicant's contention that that there is no evidence of record to substantiate that American consumers would view the designation CA' PUCCINO as a misspelling of the word "cappuccino" is unfounded. The Trademark Examining Attorney submitted several articles demonstrating that the term "cappuccino" is a commonly misspelled word and, therefore, U.S. consumers are likely to understand the designation CA' PUCCINO to be a mere misspelling of the word "cappuccino."²⁴

III. Conclusion

Based on the record, we find that the term CA' PUCCINO in Applicant's proposed mark is a misspelling and the phonetic equivalent of the word "cappuccino." Moreover, there is nothing in the phrase CA' PUCCINO that sufficiently differentiates it from the word "cappuccino" so as to change the descriptive nature of the term. Simply put, the designation CA 'PUCCINO appears and sounds very similar to the word "cappuccino." As such, when the designation is used in connection with the remaining descriptive wording in the mark, COFFEE HOUSE AND KITCHEN, the combination thereof is likely to create an impression in the minds of purchasers of coffee beverages, specifically cappuccinos, that the wording CA' PUCCINO describes a feature of the goods and services, namely, a coffee-type beverage, or a dining establishment that serves coffee-type beverages. Moreover, we find that consumers would not stop and translate the designation to mean "House of Puccino," as argued by Applicant, for the reasons discussed above. Accordingly, we

²⁴ See March 24, 2017 Office Action, TSDR, pp. 27, 43-44, 52-53 and 56.

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conclude that Applicant's proposed mark, as a whole, is merely descriptive of Applicant's Class 30 goods and Class 43 services under Section 2(e)(1) of the Trademark Act.

Decision: The refusal to register Applicant's mark for its Class 30 goods and Class 43 services is affirmed. Application Serial No. 87105947 will proceed to registration solely in connection with the goods identified in Class 25.