

This Opinion is Not a
Precedent of the TTAB

Mailed: January 25, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lukumades AGD Limited

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Serial No. 88844592

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Candice M. Reder of Baker & Hostetler LLP for Lukumades AGD Limited.

Ronald G. McMorrow, Trademark Examining Attorney, Law Office 118,
Michael W. Baird, Managing Attorney.

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Before Cataldo, Pologeorgis, and Larkin,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Lukumades AGD Limited (“Applicant”) seeks registration on the Principal Register of the proposed mark shown below



LUKUMADES

for goods identified as “Yogurt drinks; beverages made from or containing milk; butter; milk; prepared fruits; fruit jellies; jams; milk products excluding ice cream, ice milk and frozen yogurt; dairy puddings, namely, white pudding” in International Class 29, and as “Doughnuts; doughnut mixes, namely, instant doughnut mixes; flour

for doughnuts; pastry; crepes; confectionery flavored ices; chocolates; chocolate syrup; topping syrup; pancake syrup; honey; candy; coffee; tea; cocoa; cocoa products, namely, cocoa powder, cocoa spreads, cocoa drops, cocoa biscuits; cocoa mixes; fruit sauces; dough mix; dairy ice cream, ice milk and frozen yogurt” in International Class 30, and for services identified as “Services for the preparation of food and drink; services for providing food and drink” in International Class 43.¹

The Trademark Examining Attorney has refused of Applicant’s proposed mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the mark is merely descriptive of the goods and services identified in the application.

When the Examining Attorney made the refusal final, Applicant appealed and requested reconsideration, which was denied. Applicant and the Examining Attorney have filed briefs.² We affirm the refusal to register as to Classes 30 and 43 in their entirety, and reverse the refusal to register as to Class 29 in its entirety.

¹ Application Serial No. 88844592 was filed on March 23, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intention to use the proposed mark in commerce in connection with the goods and services identified in the application. Applicant describes its proposed mark as follows: “The mark consists of the word ‘LUKUMADES’ stylized.” March 23, 2020 Application at TSDR 1.

² Citations in this opinion to the briefs refer to TTABVUE, the Board’s online docketing system. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Specifically, the number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear. Applicant’s brief appears at 6 TTABVUE and the Examining Attorney’s brief appears at 8 TTABVUE.

I. Record on Appeal³

The record on appeal includes a Wikipedia entry for the word “Lokma;”⁴ pages from various websites discussing and displaying Greek pastries called “loukoumades,” “loukoumádes,” or “lukumades;”⁵ the declaration of Bill Carousos, Applicant’s founder and business development advisor (“Carousos Decl.”), discussing Applicant’s business and covering portions of the “Brand Guidelines” for Applicant’s proposed mark;⁶ an article about Applicant and its business;⁷ and pages from the website at lukumades.co.⁸

³ Citations in this opinion to the application record, including the request for reconsideration and its denial, are to pages in the Trademark Status & Document Retrieval (“TSDR”) database of the United States Patent and Trademark Office (“USPTO”).

⁴ June 18, 2020 Office Action at TSDR 2-4.

⁵ *Id.* at TSDR 5-19; December 30, 2020 Final Office Action at TSDR 9-16.

⁶ December 18, 2020 Response to Office Action at TSDR 10-14. We will cite the Carousos Declaration by paragraph number (e.g., “Carousos Decl. ¶ 1”).

⁷ December 30, 2020 Final Office Action at TSDR 2-4.

⁸ *Id.* at TSDR 5-8. During prosecution, the Examining Attorney described this website as “applicant’s website,” *id.* at TSDR 1, and on appeal, he describes it as part of Applicant’s “marketing materials.” 8 TTABVUE 6. Neither is correct. The website is actually that of an Australian company that “began [its] doughnut journey in 2016 out of a food truck that roamed the streets of Australia’s AU ‘foodie’ capital – Melbourne,” and that describes itself as “Australia’s first store dedicated to Greek doughnuts . . .” December 30, 2020 Final Office Action at TSDR 6. Applicant has operated in Athens, Greece since 2013, Carousos Decl. ¶ 2, and an article about Applicant’s Athens location states that Applicant’s website has the URL “lukumades.com.” December 30, 2020 Final Office Action at TSDR 4. There is no evidence from the lukumades.com website in the record. With respect to the Australian website itself, “[i]nformation originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark.” *In re Well Living Lab Inc.*, 122 USPQ2d 1777, 1781 n.10 (TTAB 2017) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007)). “We evaluate the probative value of foreign information sources on a case-by-case basis.” *Id.* (quoting *Bayer*, 82 USPQ2d at 1835). “Various factors may inform the probative value of a foreign website in any given case, such as whether the website is in English (or has an optional English language version), and whether the nature of the goods or services makes it more or less likely that U.S. consumers will encounter foreign websites in the field in

II. Mere Descriptiveness Refusal

A. Applicable Law

Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), prohibits 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,” unless the mark has acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).⁹

“A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services.” *In re Fallon*, 2020 USPQ2d 11249, at *7 (TTAB 2020) (quoting *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018) (citing *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re TriVita, Inc.*, 783 F.3d 872, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978)). “A mark need not immediately convey an idea of each and every specific feature of the goods [or services] in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods [or services].” *In re Fat Boys Water Sports LLC*, 118

question.” *Id.* Although the lukumades.co website is in English because its owner is located in Australia, it appears to be “clearly directed to local consumers or readers,” *In re TracFone Wireless, Inc.*, 2019 USPQ2d 222983, at *3 n.7 (TTAB 2019), because it offers franchising opportunities, December 30, 2020 Final Office Action at TSDR 6, and online ordering and delivery, *id.* at TSDR 6-7, and “there is no basis in the record to conclude that U.S. consumers of [foods and food services] are likely to have been exposed to [it].” *TracFone Wireless*, 2019 USPQ2d 222983, at *3 n.7. We have given this website no consideration in our decision.

⁹ Applicant does not claim that its proposed mark has acquired distinctiveness.

USPQ2d 1511, 1513 (TTAB 2016) (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

“Whether a mark is merely descriptive is ‘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,’” *Fallon*, 2020 USPQ2d 11249, at *7 (quoting *Chamber of Commerce*, 102 USPQ2d at 1219) (internal quotation omitted)), and “not in the abstract or on the basis of guesswork.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1513) (citing *Abcor Dev.*, 200 USPQ at 218)). “We ask ‘whether someone who knows what the goods and services are will understand the mark to convey information about them.’” *Id.* (quoting *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted))). A mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods or services are to reach a conclusion about their nature from the mark. *Id.* (citing *Fat Boys*, 118 USPQ2d at 1515).

“[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.’” *Chamber of Commerce*, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087,

1089 (Fed. Cir. 2005)). With respect to each class in Applicant’s application, “if the mark is descriptive of some identified items – or even just one – the whole class of goods [or services] still may be refused by the” Examining Attorney. *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) (citing *Chamber of Commerce*, 102 USPQ2d at 1220). “If the Board affirms a refusal of an entire class based on the descriptiveness of the mark for one or more goods [or services] in the class, then the entire class will fall.” *Id.*

“Whether a mark is merely descriptive or not is determined from the viewpoint of the relevant purchasing public.” *In re Omniome, Inc.*, 2020 USPQ2d 3222, at *5 (TTAB 2019) (quoting *Stereotaxis*, 77 USPQ2d at 1090 (internal quotation omitted)). The foods and food services identified in the application are common, everyday goods and services that are purchased by ordinary consumers.

“Evidence of the public’s understanding of [a] term . . . may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers[,] and other publications.” *Fallon*, 2020 USPQ2d 11249, at *7 (quoting *Real Foods*, 128 USPQ2d at 1374). “These sources may include [w]ebsites, publications and use in labels, packages, or in advertising materials directed to the goods [or services].” *Id.*, at *7-8 (quoting *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1710 (Fed. Cir. 2017) (internal quotation omitted)). “Evidence that a term is merely descriptive similarly may come from an applicant’s own usage other than that found on its labels, packaging or advertising materials.” *Omniome*, 2020 USPQ2d 3222, at *4.

Applicant seeks registration of its proposed mark in stylized letters. “A composite mark may be registrable even when its word portion, taken alone, is not.” *In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1072 (TTAB 2018).

As the Board has previously held, “[a] display of descriptive or otherwise unregistrable matter is not registrable on the Principal Register unless the design features of the asserted mark create an impression on the purchasers separate and apart from the impression made by the words themselves, or if it can be shown by evidence that the particular display which the applicant has adopted has acquired distinctiveness.”

Id. (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1639 (Fed. Cir. 2016) (quoting *In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1486 (TTAB 2012))).

“It is the Examining Attorney’s burden to show, prima facie, that a mark is merely descriptive of an applicant’s goods or services.” *Fallon*, 2020 USPQ2d 11249, at *8 (quoting *Fat Boys*, 118 USPQ2d at 1513). “If such a showing is made, the burden of rebuttal shifts to the applicant.” *Id.* (quoting *Fat Boys*, 118 USPQ2d at 1513).

B. Summary of Arguments

1. Applicant

Applicant makes two essential sets of arguments against the refusal to register. The first set involves the stylization of its proposed mark. Applicant argues that “the stylization of the mark gives an impression separate from the impression made by the word itself,” which makes Applicant’s mark “inherently distinctive and worthy of trademark protection on its own.” 6 TTABVUE 3-4. Applicant contends that “even without the stylization, the spelling of LUKUMAΔΕΣ is more than just a misspelling [of LUKUMADES]” because the “Δ’ (Delta) and ‘Σ’ (Sigma) were selected because of

their symbolism in the Greek language, which reflects on values of Applicant's brand and business." *Id.* at 4.

Applicant further argues that the word in its proposed mark is difficult to discern. Applicant concedes that the first six letters L-U-K-U-M-A are easily read and understood, *id.* at 3, but claims that the letters that follow are not. Applicant posits an internal conversation in "the mind of the ordinary consumer upon initial viewing" of the mark, *id.*, in which the viewer muses about what those letters are and mean. *Id.* Applicant concludes that "[i]t would be difficult for an ordinary consumer to confidently say, spell, or understand the mark upon an initial viewing," and that "[a] viewer needs access to additional information before he or she is certain that the literal element is LUKUMADES." *Id.*

Applicant also argues that its proposed mark is a unitary mark. Applicant claims that "even without the stylization, the spelling of LUKUMAΔΕΣ is more than just an intentional misspelling," *id.* at 4, and that the Greek letter Δ (delta) in its proposed mark is "suggestive of creativity" and "how Applicant's spin on traditional Greek donuts is new and different," while the Greek letter Σ (sigma) "is the universal mathematical symbol for a sum" and "connotes Applicant's focus on more than just selling fried dough, but the sum of everything important to its business: climate and sustainability, promoting Greek culture and awareness, and creating community and positive relations." *Id.* Applicant concludes that to "consumers, the term and letters comprising Applicant's mark are integrated and merged together such that they cannot be regarded as separable," and that "[c]onsumers are not likely to consider the

mark simply to be LUKUMADES, and even less likely to consider the mark simply to be the Greek letters “Δ” and “Σ” or to the stylization alone.” *Id.*

Applicant’s second set of arguments involves its claim that its proposed mark does not immediately describe characteristics of all of the goods identified in the application. Applicant acknowledges that the Examining Attorney’s “evidence shows that the Greek donuts commonly known as loukoumades are fried dough balls soaked in honey syrup and topped with cinnamon or walnuts,” but claims that “[b]ased on this common understanding of loukoumades, consumers would not expect to find Greek donuts featuring an assortment of non-honeyed spreads and fillings, such as fruit jellies, fruit, sauces, jams, yogurts, puddings or other milk products,” or “savory Greek donuts filled with cheese. At the very least, the term loukoumades would certainly not immediately bring to mind ice cream, coffee, tea, juices, yogurt drinks, milkshakes, or other beverages.” *Id.* at 6. According to Applicant, there is an inferential leap between the word ‘loukoumades’ and the goods and services claimed in” the application. *Id.*

Applicant further argues that

the fact that [the proposed mark] may convey some information regarding the nature of Applicant’s goods or services does not necessarily render the mark merely descriptive. Applicant is not just selling the traditional notion of loukoumades. There is a conceptual leap to start with the word “loukoumades,” used to describe a specific type of Greek donut, and end up thinking about ice creams, coffees, blended drinks, or Applicant’s unique stuffed, filled, and topped fried dough balls.

Id. at 7.

2. The Examining Attorney

The Examining Attorney argues that the “evidence of record clearly shows that LOUKOUMADES are Greek donuts,” that the “applied-for mark is an alternate transliteration of [a] common Greek word typically transliterated as – and therefore, the phonetic equivalent of – LOUKOUMADES,” and that “[a] novel spelling or an intentional misspelling that is the phonetic equivalent of a merely descriptive word or term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive word or term.” 8 TTABVUE 4. According to the Examining Attorney, “[w]hen the applied-for mark is considered in relation to the goods and services, it very clearly and unmistakably indicates that the applicant’s goods will include loukoumades and fillings, toppings and mixes for preparing loukoumades and that the applicant’s services will feature loukoumades.” *Id.*

The Examining Attorney rejects Applicant’s argument that the proposed mark is suggestive because

[t]he applicant’s identification of goods includes doughnuts, doughnut mixes, flour for doughnuts and numerous items that are typically used as fillings or toppings for doughnuts such as prepared fruits, fruit jellies, chocolate syrup; topping syrup, honey, etc. and the applicant’s services include preparation of food and drink and providing food and drink. It is entirely unreasonable to think that consumers familiar with these goods and services would not perceive the term LUKUMAΔDEΣ [sic] as an intentional alternate spelling of LOUKOUMADES or that these consumers would not understand the information conveyed by the mark. If anything, the use of two Greek letters reinforces the meaning of the term and makes that meaning easily understood. This is especially true since the applicant’s marketing materials emphasize the fact that loukoumades are the principal attraction of the applicant’s services.

Id. at 5-6.¹⁰

With respect to Applicant's arguments regarding the stylization of its proposed mark, the Examining Attorney argues that "[s]tylized descriptive or generic wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself." *Id.* at 7. He further argues that the "replacement of two letters in the second half of a nine letter word with Greek letters is not sufficient stylization to create an inherently distinctive impression on purchasers separate and apart from the impression made by the word itself" because the "question is not whether someone presented only with the mark could guess what the goods and/or services are," but rather "whether someone who knows what the goods and[or] services are will understand the mark to convey information about them." *Id.* (quotation omitted). He claims that "consumers who know that loukoumades are Greek donuts and that the applicant's goods are loukoumades and that the applicant's services feature loukoumades would easily perceive the novel spelling as identifying the nature of the goods and a feature of the services," particularly because the "chiseled-stone font and the two Greek letters merely reinforce the Greek nature of the goods and services in question." *Id.*

The Examining Attorney rejects a disclaimer proposed by Applicant because it "was, in effect, a proposal to disclaim the entirety of the mark. That is, once the wording itself is disclaimed, no inherently distinctive elements remained. Disclaimer

¹⁰ As noted above, what the Examining Attorney refers to as "applicant's marketing materials," which he describes in his brief as the "pages from lukumades.co," 8 TTABVUE 6, are actually pages from the website of another company.

of the entirety of the mark is logically impossible, and does not raise any new issue.”
Id. at 8.

C. Analysis

Applicant properly concedes that the Examining Attorney’s “evidence shows that the Greek donuts commonly known as loukoumades are fried dough balls soaked in honey syrup and topped with cinnamon or walnuts.” 6 TTABVUE 6. A Wikipedia entry describes loukoumádes as “pastries made of leavened and deep fried dough, soaked in syrup and honey, sometimes coated with cinnamon or other ingredients,” and states that in Greece, loukoumádes “are commonly spiced with cinnamon in a honey syrup and can be sprinkled lightly with powdered sugar.”¹¹ The website at MyGreekDish.com displays a “Loukoumades Recipe (Greek Donuts with Honey and Walnuts).”¹² The website at allrecipes.com provides a recipe for “Loukoumades,” which it describes as “Fried Greek honey puffs.”¹³

The website at athensinsiders.com urges visitors to the site to “get on the first plane to Athens” to try “loukoumades,” which it describes as “traditional Greek sweet little honey puffs, the Greek version of donuts some could say,” and provides the “traditional recipe” for those unfortunate persons who are stuck in the United States.¹⁴ The website at chefjar.com describes and displays “LOUKOUMADES” (accompanied by the spelling of the word in Greek as ΛΟΥΚΟΥΜΑΔΕΣ) as follows:

¹¹ June 18, 2020 Office Action at TSDR 2-3.

¹² *Id.* at TSDR 5-6.

¹³ *Id.* at TSDR 7-8.

¹⁴ *Id.* at TSDR 9-10.



and provides a recipe for them.¹⁵ The website at realgreekrecipes.com displays and offers a recipe for “Loukoumades – Greek Honey Balls (Easy Homemade Donuts).”¹⁶

Applicant’s proposed mark is a stylized display of the word “Lukumádes,” not a stylized display of the word “Loukoumádes,” but “[i]n general, a mere misspelling of a word is not sufficient to change a merely descriptive term into an inherently distinctive trademark,” *In re Carlson*, 91 USPQ2d 1198, 1200 (TTAB 2009), so we must determine whether “Lukumádes” will be perceived as the equivalent of “Loukoumádes.” *Id.* at 1201 (finding that URBANHOUSING is the equivalent of URBANHOUSING). Applicant concedes that the word LUKUMÁDES in its proposed mark is an “intentional misspelling” of “loukoumades,” 6 TTABVUE 4, and the record confirms that the word “lukumádes” (or “lukumades”) is recognized as a phonetically

¹⁵ *Id.* at TSDR 14-17.

¹⁶ *Id.* at TSDR 18-19.

equivalent misspelling of “loukoumádes” (or “loukoumades”). The website at lilcookie.com shows and provides a recipe for “Lukumades - Greek Doughnuts,”¹⁷ and the website at hotmixhome.com similarly displays and offers a recipe for “Lukumades (Greek Honey Balls).”¹⁸ “Perhaps most importantly, [A]pplicant [itself] uses [‘LUKUMÁDES’] as an alternate version of [‘LOUKOUMÁDES’] in general statements separate and apart from [its] proposed trademark.” *Carlson*, 91 USPQ2d at 1201. Applicant’s use of its proposed mark in its “Brand Guidelines” confirms that its proposed mark is a misspelling of the word “loukoumádes” for what Applicant calls “Greek dough balls”:



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¹⁷ December 30, 2020 Final Office Action at TSDR 9-13.

¹⁸ *Id.* at TSDR 14-16. The hotmixhome.com website is owned by an Italian company, but it offers an “optional English language version,” *Well Living Lab*, 122 USPQ2d at 1781 n.10, and we have given it weight in determining the meaning of the word “lukumades” in the United States because United States consumers searching online for recipes for “Greek donuts” may access the website. *See In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1634 n.8 (TTAB 2018).

¹⁹ December 18, 2020 Response to Office Action at TSDR 12 (Carousos Decl. ¶ 5).

The record thus establishes, as Applicant acknowledges, that “loukoumádes” and its phonetic-equivalent misspelling “lukumádes” identify a particular type of pastry consisting of “Greek dough balls” and sometimes referred to as “Greek donuts.” To the extent that the word “lukumádes” per se does not identify a genus of the goods identified as “doughnuts” and “pastry” in Class 30 in the application, it at least immediately describes a feature of those goods, namely, that they are what Mr. Carousos calls “Greek dough ball pastries,” Carousos Decl. ¶ 2, and what Applicant’s Brand Guidelines shorten to “Greek dough balls.” Cf. *Carlson*, 91 USPQ2d at 1203 (concluding that the “applicant’s applied-for mark, URBANHOUSING in standard character form, will be immediately and directly perceived by consumers as the equivalent of the admittedly descriptive term URBAN HOUSING” and “does not convey a double entendre that would prevent it from being merely descriptive of applicant’s services.”),²⁰

²⁰ As noted above, the Examining Attorney argues that this evidence shows that the word “lukumádes” is also merely descriptive of the Class 29 goods identified as “prepared fruits” and “fruit jellies” because those goods are among the goods that “are typically used as fillings or toppings for doughnuts” 8 TTABVue 5. We disagree. The record shows that “lukumádes” identifies a particular type of pastry or doughnut, not a particular type of filling for a pastry or doughnut. In rejecting Applicant’s argument that its proposed mark does not merely describe certain other Class 29 goods, the Examining Attorney cites *Chamber of Commerce* for the propositions that “a mark does not need to be merely descriptive of all the goods or services specified in an application,” and that a “descriptiveness refusal is proper if the mark is descriptive of any of the [goods or] services for which registration is sought.” *Id.* at 6 (quoting *Chamber of Commerce*, 102 USPQ2d at 1219 (internal quotation omitted)). As discussed above, however, the cited principle applies only to multiple goods or services **within** a particular class in a multi-class application such as Applicant’s, not across the application as a whole. A multi-class application “can be viewed as a series of applications for registration of a mark in connection with goods or services in each class, combined into one application,” and “[a]s a general matter, the filer of such an application is in the same position it would be [in] had it filed several single-class applications instead.” *G&W Labs., Inc. v. G W Pharma Ltd.*, 89 USPQ2d 1571, 1574 (TTAB 2009) (citations omitted). To sustain the descriptiveness refusal as to the entire application, the Examining Attorney must show that

The record also establishes, as Applicant acknowledges, that “lukumádes” are the “specialty of the house” menu item that will be served by Applicant in the United States in the course of providing the “services for the preparation of food and drink” and “services for providing food and drink” identified in Class 43 in the application. Applicant “offers Greek dough ball pastries and other food, drink, and treats in its restaurant and store” in Athens, Carousos Decl. ¶ 2, and “intends to operate its business in the United States beginning in 2021,” Carousos Decl. ¶ 3, and, as shown above, its Brand Guidelines expressly associate its proposed mark with “Greek Dough Balls.” Carousos Decl. ¶ 5.

An article on the website at greece-is.com entitled *Lukumades: Taking “Greek Donuts” to Another Level* discusses Applicant’s business at its location in Athens, Greece.²¹ The article states beneath the headline that “[t]his establishment in the center of Athens is the ultimate place to try Greece’s all-time classic desert.”²² The body of the article begins as follows: “On the corner of Aioulou and Aghias Irinis Street, you will find LUKUMADES, a shop that reinvented the beloved Greek dessert from

Applicant’s proposed mark is merely descriptive of at least one good or service in each of the three classes in the application. The Examining Attorney has not shown that the word “Lukumádes” (whether stylized or not) describes any of the Class 29 goods in the application (“Yogurt drinks; beverages made from or containing milk; butter; milk; prepared fruits; fruit jellies; jams; milk products excluding ice cream, ice milk and frozen yogurt; dairy puddings, namely, white pudding”).

²¹ December 30, 2020 Final Office Action at TSDR 2-4. This website appears to be that of a foreign publication, but it is in English and we have considered it because it reflects the common knowledge that Athens, Greece is a popular destination for United States tourists, and because the website and article are directed to, and may be accessed by, United States tourists to Athens who are searching for what the exterior signage of Applicant’s restaurant in Athens shown below describes in English as “Authentic Greek Delights.” *Id.* at TSDR 3.

²² *Id.* at TSDR 2.

which it takes its name (loukoumades which are fried balls of dough, aka ‘Greek donuts’), becoming an instant favorite among locals and visitors alike.”²³ The article displays some of Applicant’s “tweaked modern versions” of lukumádes:



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and Applicant’s exterior signage:



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²³ *Id.* at TSDR 3. The article states that “the ultimate ‘must-order’ are the signature filled loukoumades.” *Id.*

²⁴ *Id.*

²⁵ *Id.*

The word “Lukumádes” per se is thus also merely descriptive of the “services for the preparation of food and drink” and “services for providing food and drink” identified in Class 43 in the application. See *In re France Croissant, Ltd.*, 1 USPQ2d 1238, 1239 (TTAB 1986) (LE CROISSANT SHOP found to be merely descriptive of an eating establishment where croissants were the principal attraction, even though other items were available); *In re Le Sorbet, Inc.*, 228 USPQ 27, 28 (TTAB 1985) (LE SORBET found to be merely descriptive of restaurant and carry-out services where sorbet was the principal attraction); *In re Gen. Franchising Corp.*, 169 USPQ 55, 56 (TTAB 1971) (“[T]here can be no doubt that the identification of a restaurant by the name of the food which is the specialty of the house is merely descriptive of the restaurant, be it in English or in a foreign language.”). Cf. *Cordia Rests.*, 118 USPQ2d at 1638 (finding that “churrascos,” a Spanish and Portuguese word referring to “barbecue,” was generic for bar and restaurant services when presented in a stylized presentation because “[i]f the relevant public would understand a term denoting a specialty dish to refer to a key aspect of restaurant services, then the term is generic for restaurant services.”).

But while Applicant acknowledges that its proposed mark “consists of the word ‘LUKUMADES’ stylized,”²⁶ it is not simply the word “Lukumades” (or “Lukumádes”) in block letters, and we must consider whether the stylization of the word makes Applicant’s proposed mark suggestive rather than merely descriptive with respect to

²⁶ March 23, 2020 Application at TSDR 1.

the Class 30 goods and the Class 43 services in the application. We again reproduce Applicant's proposed mark for ease of reference in following our analysis:



Whether or not the word LUKUMÁDES in Applicant's proposed mark "is displayed in an inherently distinctive fashion is necessarily a subjective matter which must be determined based on a viewer's subjective impression." *Sadoru*, 105 USPQ2d at 1486. As the Board has put it, "'distinctive display' is in the eyes of the beholder." *In re Jackson Hole Ski Corp.*, 190 USPQ2d 175, 176 (TTAB 1976).²⁷

Applicant's proposed mark consists of seven stylized letters from the Roman alphabet and two stylized letters from the Greek alphabet. Applicant admits that the first six Roman letters in the proposed mark, "L-U-K-U-M-Á," are clearly discernable as such, 6 TTABVUE 3, but claims that the two Greek letters that surround the Roman letter "E" at the end of the mark make the mark, as a whole, a mystery. *Id.* at 3-4. We disagree.

Applicant's arguments necessarily assume unfamiliarity with the Greek letters Δ (delta) and Σ (sigma) on the part of United States consumers of the goods and services identified in the application. There is no support in the record for this assumption.

²⁷ In *Sadoru*, the Board displayed and discussed a number of marks that the Board had considered in previous cases "to get some sense of the stylizations that were found to create separate and inherently distinctive impressions, and those that were not." *Sadoru*, 105 USPQ2d at 1486-88. Given the fact-intensive and particularized nature of the "distinctive display" inquiry, we will focus on the mark at issue here rather than on other marks for different goods and services, particularly because neither Applicant nor the Examining Attorney refers to the marks displayed and discussed in *Sadoru*.

We take judicial notice that the United States Department of State has estimated that as of August 12, 2021, “three million American residents of the United States claim Greek descent,” and that “[t]his large, well-organized community cultivates close political and cultural ties with Greece.”²⁸ This “large, well-organized community” of Greek-Americans with close “cultural ties with Greece” surely would be a prime target of Applicant’s business in the United States, whose “signature” product is what the article about Applicant’s Athens store calls “Greece’s all-time classic desert,”²⁹ and “the beloved Greek dessert from which [Applicant] takes its name.”³⁰ Even assuming varying degrees of knowledge of the Greek language among Greek-Americans in the United States, it is likely that the vast majority of Greek-American consumers who view Applicant’s proposed mark containing two Greek letters will understand the mark to be the word “Lukumádes.”³¹

²⁸ state.gov/u-s-relations-with-greece/ (last accessed on January 25, 2022). “The Board may take judicial notice of official United States government publications.” *M/S R.M. Dhariwal (HUF) 100% EOU v. Zarda King Ltd.*, 2019 USPQ2d 149090, at *1, n.7 (TTAB 2019) (citing *In re Nieves & Nieves LLC*, 113 USPQ2d 1639, 1642 (TTAB 2015)).

²⁹ December 30, 2020 Final Office Action at TSDR 2.

³⁰ *Id.* at TSDR 3.

³¹ As noted above, Applicant argues that “Δ’ (Delta) and Σ’ (Sigma) were selected because of their symbolism in the Greek language, which reflects on values of Applicant’s brand and business.” 6 TTABVUE 4. Applicant’s Brand Guidelines explain that the “Greek letter Δ’ (Delta) is an essential element of the brand, suggestive of spirituality, harmony and creativity, while the “Σ’ (Sigma) is the universal mathematical symbol for sum, which adds our 5 C’s approach (Collaborators, Customers, Company, Community and Climate), an integral part of our brands’ DNA.” December 18, 2020 Response to Office Action at TSDR 14. There is nothing in the record showing that even consumers who understand Greek will view the Greek letters in Applicant’s proposed mark as symbolizing “spirituality, harmony and creativity” or Applicant’s “5C’s approach.” It is far more likely that they will simply view the letters as contributing to the formation of the hybrid word “LUKUMÁDES.”

We can also safely assume that a significant number of American consumers who are not of Greek descent have at least a passing familiarity with the Greek letters Δ (Delta) and Σ (Sigma) even if they do not speak or read the Greek language. The Greek letter Delta has received recent notoriety in the United States as the name of a particular variant of the novel coronavirus that has sickened and killed thousands of Americans during the Covid-19 pandemic.³² Applicant describes the Greek letter “ Σ ” (Sigma) [a]s the universal mathematical symbol for sum,” Carousos Decl. ¶ 6, suggesting that the Greek letter Σ is familiar to the many millions of Americans who have studied mathematics. It is also common knowledge that numerous Americans have been involved in “Greek life” in college through membership in fraternities and sororities that are identified by Greek letters, and that Greek letters are similarly used in the names of academic honor societies such as Phi Beta Kappa. Such uses of Greek letters in American life increase the likelihood that a significant number of American consumers of non-Greek descent will at least be able to recognize the Greek letters Δ and Σ in Applicant’s proposed mark and use them, together with the Roman letters that proceed them, to read the mark as “LUKUMÁDES.”

Moreover, in assessing how Applicant’s proposed mark will be understood, we must assume that consumers know that Applicant’s goods include “pastry” and “doughnuts,” *Fallon*, 2020 USPQ2d 11249, at *7, and, to the extent possible, we “must consider [the] mark in its commercial context to determine the public’s perception,” *N.C. Lottery*, 123 USPQ2d at 1367 (internal quotation omitted), and we may look to

³² A more recent variant is similarly identified by a Greek letter, Omicron.

Applicant's "own usage other than that found on its labels, packaging or advertising materials." *Omniome*, 2020 USPQ2d 3222, at *4.

Applicant's use of its proposed mark together with the words "Greek Dough Balls" in its Brand Guidelines, and its use of its proposed mark together with the English words "Authentic Greek Delights" in its exterior signage at its Athens location, suggest that Applicant's proposed mark will not be exposed to United States consumers in a vacuum, but will instead be viewed by them in a commercial context that will include verbal or at least visual references to Applicant's signature product, loukoumades. In that context, we agree with the Examining Attorney that consumers will likely understand the Greek letters in Applicant's proposed mark as simply "reinforc[ing] the Greek nature of the goods and services in question," 8 TTABVue 7, and we have no doubt that Greek-Americans and non-Greek-Americans alike will understand Applicant's proposed mark to immediately describe the nature of the "pastry" and "doughnuts" identified in Class 30 in the application, namely, that they are "Greek dough balls," and to identify the "specialty of the house" that will be served in the course of rendering the services "for the preparation of food and drink" and "for providing food and drink" identified in Class 43 in the application.

D. Conclusion

We find that the Examining Attorney established a prima facie that Applicant's proposed mark is merely descriptive of a feature of the "pastry" and "doughnuts" identified in Class 30 in the application and is merely descriptive of a feature of the "services for the preparation of food and drink" and the "services for providing food

and drink” identified in Class 43 in the application, and that Applicant failed to rebut the Examining Attorney’s prima facie case. Applicant’s proposed mark is thus ineligible for registration on the Principal Register for the goods identified in Class 30 and for the services identified in Class 43 in the absence of a showing of acquired distinctiveness.

As noted above, we find that the Examining Attorney failed to establish a prima facie case that Applicant’s proposed mark is merely descriptive of any of the goods identified in Class 29 in the application.

Decision: The refusal to register is affirmed as to Classes 30 and 43 in their entireties. The refusal to register is reversed as to Class 29 in its entirety.