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A Lawsuit by the Clothing Label Vetements May Result in a Supreme Court Decision on the Trademark "Doctrine of Foreign Equivalents"

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A basic rule of trademark law is that trademark protection cannot be obtained for a term that is "generic," meaning that it simply designates the type of goods at issue. For example, the term "apple" is generic when used to sell apples, so an apple producer could not obtain a trademark for APPLE. By contrast, a computer manufacturer can obtain trademark rights in the term APPLE—because the term does not describe the manufacturer's products.

What about if the term is generic in a foreign language? For example, could a Japanese apple producer seek to trademark the term RINGO in the US? Under the "doctrine of foreign equivalents," that would also be impermissible. The doctrine directs courts to translate foreign words into English when assessing whether they are generic—and also whether they are similar in meaning or connotation to an English-language mark when assessing likelihood of confusion. Thus, in one case involving a Japanese company, federal courts in New York rejected a Japanese sake producer's claim of US trademark rights in the term OTOKOYAMA, concluding that the term in Japanese designates a *type* of sake produced by multiple breweries. *See Otokoyama Co. v. Wine of Japan Import, Inc.*, 7 F. App'x 112 (2d Cir. 2001).

Not all courts apply this doctrine as a matter of course, however. The Federal Circuit, which reviews decisions of the US Patent and Trademark Office ("PTO"), does not apply the doctrine "[w]hen it is unlikely that an American buyer will translate the foreign mark." *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 1377 (Fed. Cir. 2005).

The Supreme Court may soon have the opportunity to clarify the applicability of the doctrine. This year, the Federal Circuit affirmed the PTO's refusal to register the mark VETEMENTS for the prominent clothing label of that name, reasoning that "vêtements" is the generic French word for "clothing." *See In re Vetements Grp. AG*, 137 F.4th 1317 (Fed. Cir. 2025). Vetements has petitioned the Supreme Court for certiorari, arguing that the doctrine of foreign equivalents, even as applied by the Federal Circuit, does not sufficiently take into account the real-life perception of consumers in

the U.S. If the Supreme Court accepts the case, the resulting opinion should be of interest for foreign brand owners seeking or enforcing US trademark protection for terms in their own language.

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