

## Would You Stop and Translate This?

Article By:

Danielle M. DeFilippis

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The [Trademark Trial and Appeal Board \(“Board”\)](#) invoked the doctrine of “foreign equivalents” in refusing registration for LE CHOCOLAT DES ILES (with design) based on a likelihood of confusion with the mark ISLAND CHOCOLATES. Both marks covered chocolate candy. The Board’s opinion can be found [here](#).

Foreign words or terms are not entitled to be registered if the English equivalent of those words has been registered for products that might reasonably be assumed by a consumer to come from the same source. For the doctrine to apply, the foreign word must be from a language with which an appreciable number of American consumers are familiar. It applies when the “ordinary American purchaser” would “stop and translate” the word into English. Once the doctrine is invoked, and the word is translated into English, the trademark office must consider the other relevant factors (such as channels of trade, the similarity of the goods, etc.) in assessing the likelihood of confusion.

Here, the language at issue was French. While the applicant argued that the ordinary American purchaser would be unable to translate the mark into English, the Board found this argument unpersuasive. Instead, the Board, considering evidence that there are over a million French speakers in the U.S. and that French brands are commonly sold in the U.S., found French is a common modern language. Comparing the marks, the Board found they are similar in appearance, in that they contain a similar-looking term for “chocolate,” and are essentially identical in connotation.

This decision highlights the importance of ensuring that your brand clearance process includes a review of any marks that could be deemed a translation of your proposed mark.

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