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EPICUREAN LOUNGE Found To Be Distinctive (Even For English Speaking Hedonists)

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A lifestyle and hospitality company well known for its luxurious beach clubs and hotels, has recently succeeded in registering EPICUREAN LOUNGE word mark in the European Union. While the OHIM examiner initially refused the application on the grounds of descriptiveness, an appeal reversed the examiner's decision.

In September 2014, Nikki Beach filed a community trademark application for EPICUREAN LOUNGE registration with respect to various services in classes 35, 41 and 43. The OHIM examiner initially refused the application for services in classes 41 and 43 based on the grounds of descriptiveness and non-distinctiveness. The examiner informed the applicant that the mark was not eligible for registration pursuant to Article 7(1)(b) and (c) CTMR and Article 7(2) CTMR, i.e. the mark has a clear descriptive meaning in relation to the services applied for.

The OHIM examiner stated that since the word "epicurean" meant "devoted to sensual pleasures, esp. food and drink; hedonistic" and "lounge" represented "a living room in a private house; a more expensive bar in a pub or hotel", the relevant public, English-speaking consumers in the EU, would understand the words "epicurean lounge" as a meaningful expression: "room in a house or in a more expensive bar in a pub or hotel where people may enjoy things such as good food and drink".

In December 2014, the applicant filed its observations against the examiner's objection. Having considered the applicant's observations, the examiner partially dismissed her refusal but maintained it for some of the services in classes 41 and 43 - various educational, entertaining and training services in class 41 and services in the field of providing food and drinks and accommodation in Class 43.

In February 2015, the applicant filed an appeal requesting that the application be registered for all services applied for. The applicant argued *inter alia* that the average consumer did not know the meaning of the word "epicurean" as it could not be expected that he/she was familiar with the ancient Greek philosopher Epicurus and the philosophy of Epicureanism merely because "epicurean" was an English word.

In October 2015, OHIM's Fifth Board of Appeal annulled the contested decision and allowed the CTM application to proceed to publication. The Board stated that the word

'epicurean' might not be understood or known by the general public of the contested services and that the fact that the term appears in the dictionary (Collins online dictionary, quoted by the examiner) is not sufficient to show that the word is commonly used or understood by the average English-speaking consumer. The Board went on to state that the general public might not be familiar with all entries in a general dictionary and even if the public were familiar with Epicurus, a number of mental steps would still be necessary to establish a link between the meaning of the word 'epicurean' and the contested services. The Board concluded that the trademark has the minimum degree of distinctiveness necessary to pass the threshold of Article 7(1)(b) CTMR.

The trademark was registered in the EU on February 8, 2016. Atypically, the case was handled by the Brussels office of the East European firm PETOSEVIC.

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