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Sent: 11/14/2011 12:35:42 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 77940879 - STOP THE ISLAMISATION OF AMERICA - N/A - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

APPLICATION SERIAL NO. 77940879

MARK: STOP THE ISLAMISATION OF AMERICA



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EXAMINING ATTORNEY'S APPEAL BRIEF

Pamela Geller and Robert B. Spencer (applicants), individual citizens of the United States, have appealed the trademark examining attorney's refusal to register the mark STOP THE ISLAMISATION OF AMERICA for use in connection with "providing information regarding understanding and preventing terrorism." Registration was refused on the Principal Register pursuant to Trademark Act Section 2(a), 15 U.S.C. §1052(a), because the applied-for mark consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs, or national symbols.

ARGUMENT

Registration is refused because the applied-for mark consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or

national symbols. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see In re Squaw Valley Dev. Co.*, 80 USPQ2d 1264, 1267-79 (TTAB 2006); *Harjo v. Pro-Football, Inc.*, 50 USPQ2d 1705, 1740-48 (TTAB 1999), *rev'd*, 284 F. Supp. 2d 96, 125, 68 USPQ2d 1225, 1248 (D.D.C. 2003) (finding “no error in the TTAB’s articulation of [the Section 2(a)] test for disparagement”), *remanded on other grounds*, 415 F.3d 44, 75 USPQ2d 1525 (D.C. Cir. 2005), *and aff'd*, 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009), *cert. denied*, 130 S. Ct. 631 (2009); TMEP §§1203.03, 1203.03(c).

The following two factors must be considered when determining whether matter may be disparaging under Trademark Act Section 2(a):

- (1) What is the likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements in the mark, the nature of the goods and/or services, and the manner in which the mark is used in the marketplace in connection with the goods and/or services; and
- (2) If that meaning is found to refer to identifiable persons, institutions, beliefs or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.

In re Lebanese Arak Corp., 94 USPQ2d 1215, 1217 (TTAB 2010); *In re Squaw Valley Dev.*, 80 USPQ2d at 1267 (citing *Harjo*, 50 USPQ2d at 1740-41); TMEP §1203.03(c).

1. TAKING INTO ACCOUNT ALL RELEVANT FACTORS INCLUDING THE MANNER IN WHICH THE MARK IS USED IN THE MARKETPLACE, THE LIKELY MEANING OF THE APPLICANTS' MARK IS DISPARAGING IN ITS ENTIRETY.

For cases involving matter which would offend the sensibilities of a religious group, the proper focus is on the group of persons that adhere to those beliefs or tenets. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); TMEP §1203.03(c). Thus, because of the reference to Islam in the mark, the proper focus in this case is on those of the Islamic faith.

Turning to the meaning of the mark, by definition, “Islamisation” refers to the conversion or conformity to Islam, or alternatively, to all things associated with Islam. Numerous well-established American dictionaries define the term generally as converting to Islam. For example, the following definitions were attached to the January 19, 2011 final Office action:

- From Merriam-Webster, “to make Islamic; especially: to convert to Islam.” Merriam-Webster Online, search of “Islamization,” <http://www.merriam-webster.com/dictionary/islamization> (Sept. 1, 2010).

- From Encarta World English Dictionary, “to convert people [...] to Islam.” Encarta World English Dictionary, search of “Islamize,” <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861622547> (Sept. 1, 2010).
- From Webster's New World College Dictionary, “to convert or conform to, or bring within, Islam.” Webster’s New World College Dictionary, search of “Islamize,” <http://www.yourdictionary.com/Islamize> (Sept. 1, 2010).
- From American Heritage Dictionary of the English Language, “to convert to Islam.” American Heritage Dictionary of the English Language, search of “Islamize,” <http://www.yourdictionary.com/Islamize> (Sept. 1, 2010).

These definitions clearly demonstrate that the term “Islamisation,” is widely understood in a more general sense to refer to converting or conforming to Islam. Thus, the proposed mark STOP THE ISLAMISATION OF AMERICA, in its entirety, conveys to others that converting or conforming to Islam in America – a nation that honors as well as recognizes religious freedom – must be stopped.

The applicants’ argument that “Islamisation” refers to a political movement appears inconsistent with the aforementioned mainstream dictionary definitions. In their July 26, 2010 response, the applicants state:

The proper and widely understood definition of “Islamisation” (alternatively spelled “Islamization”) is the political movement prevalent in a society or societal unit which seeks to embrace a political doctrine that calls for the application of Shariah (i.e., Islamic law) as the supreme law of the society.

In support, however, the applicants turned to less widely available evidence, such as a doctoral dissertation, written testimony and transcript of record before a Senate committee, course material for continuing legal education written by the applicants’ attorney and a list of law review articles. Certainly, this type of evidence appears less reflective of the mainstream understanding of the term than what appears in multiple dictionaries. Thus, the applicants’ self-described “professional and academic” definition should be disregarded in favor of the more mainstream definition.

Moreover, considering the reference in the context of the mark as a whole, STOP THE ISLAMISATION *OF AMERICA* (emphasis added) makes the applicants’ proposed definition seem even less applicable. Within the United States of America, with its firmly embedded principles of religious freedom, “the application of Shariah (i.e., Islamic law) as the supreme law of the society” hardly seems underway or imminent. By contrast, the conversion of individuals in America to Islam would be a more familiar and believable occurrence. Thus, those encountering the proposed mark STOP THE ISLAMISATION OF AMERICA would likely understand “Islamisation” as referring to the conversions in America with which they are familiar, rather than “the application of Shariah” in America. The determination of what is the likely meaning of the matter in

question must take into account the relationship of the matter to the other elements in the mark, which here supports the examining attorney's definition of "Islamisation." See *Lebanese Arak Corp.*, 94 USPQ2d at 1217.

As indicated by the court in *Harjo*, it is also appropriate to consider "the manner in which the mark is used in the marketplace in connection with the goods and/or services." 50 USPQ2d at 1739. The writings and actions of third-parties are relevant because they "indicate the public's perceptions of the meanings attributable to, and associations made in connection with," the applicants' service mark. *Harjo*, 50 USPQ2d at n.111. The comments made by readers of the applicants' website suggest that third-parties view the reference in the applicants' mark to stopping "Islamisation" in the more general sense as a reference to the spread of Islam, rather than in the more narrow sense proposed by the applicants. The comments refer to Islam in general, rather than any political movement or practice of Shariah. The examining attorney refers to the excerpted web pages from the applicants' website "Stop the Islamization of America," attached to the final Office action dated January 19, 2011 at pages 9-54. For example, note the following comments prominently posted on their website:

- [The mark] implies that Islam is associated with violence and threats.
IMPLIES??? hell no! IT IS ASSOCIATED WITH VIOLENCE AND THREATS
– examples of that TRUTH ABOUND- ISLAM is a terror group as defined by
their own Korana nd imams [sic] what PC and Muzzies have infiltrated the patent

office? [Comment of Whata bunchca bull on April 29, 2010 at 10:36 AM in response to “Sharia Trademark Enforcement ”]. *See* page 22.

- Very few Americans are willing to educate themselves on what Islam teaches – it is not love and peace. They only know the propaganda the media and Islamic organizations indoctrinate them with each day. This is why we are doomed to experience what every country that has allowed it to exist, has experienced – evil in its purest form.

If people only knew the truth, Islam would not be allowed to exist in the USA or any other country. Franklin Graham was right in saying, “Islam is evil.”

[Comment of Rick Halloway on May 12, 2010 at 10:59AM in response to “Sharia Trademark Enforcement ”]. *See* pages 25-26.

- Islam and Nazism are same. Nazi [sic] want to dominate world. Islam also want [sic] to dominate world. [Comment andrew wang on August 3, 2010 at 7:52 PM in response to “Geller, Spencer in Big Government: The 9/11 Mosque’s Peace Charade”]. *See* page 36.
- The muslim belief or plan is to take over the world. They’re doing the same thing in Europe. If your [sic] not muslim your [sic] a animal to them. They have no respect for anybody else. Christians should have the same rights. I agree fully with your statement.

Muslims is just like Hitler was!!!! They're doing the same thing. [Comment of Londa Picard on June 29, 2010 at 3:53 PM in response to "Detroit Transit Sued for Nixing SIOA 'Leaving Islam?' Bus ads"]. *See* page 43.

- ...Islam is an acute mental disease standing as it does on the tripod of Treachery, Butchery and Debauchery.... [Comment of Vedam on August 17, 2010 at 12:16 AM in response to "SIOA Condemns Obama's Blessing of Ground Zero Mega-Mosque; Bolton, Wilders to Speak At 9/11 Rally"]. *See* page 49.
- ... Take Islam for example. The entire religion, and culture that surrounds it is oppressive and bigoted – to women, to anyone of another religious belief, to anyone who doesn't follow its tenets.... [Comment of Jason N on August 19, 2010 at 8:09 AM in response to "SIOA Condemns Obama's Blessing of Ground Zero Mega-Mosque; Bolton, Wilders to Speak At 9/11 Rally"]. *See* page 50.

The above list of comments is not exhaustive, and the record contains several additional inflammatory and/or negative comments in response to content about Islam on the same website.

In this context, these comments reinforce the dictionary definitions of "Islamisation" and the overall disparaging impact this mark carries. It is artful for the applicants to argue that the term "Islamisation" merely refers to a discrete political

movement when a substantial portion of their own “consumers” condemn all things associated with Islam on their own website entitled “Stop the Islamization of America.”

The applicants contend that these comments are “the rants of a few select individuals” and that “there is no evidence in the record that these arbitrarily selected comments are in fact the actual marketplace or the intended audience of the Applicant’s [sic] goods and services.” *Applicants’ brief* at 10. These comments shape context as well as fuel perception, and in light of their nature, tend to overshadow the few, if any, positive comments about Islam that might appear on the website. Besides, these comments reflect, at least in part, the actual marketplace and the audience of the applicants’ services. The applicants’ service is providing information on how to understand and prevent terrorism via the “marketplace” of a website, which is easily accessible by all.

What’s more, the applicants’ website provides a link to the organization Stop the Islamisation of Europe (SIOE) whose slogan reads “Racism is the lowest form of human stupidity, but Islamophobia is the height of common sense.” The examining attorney refers to screen shots of SIOE’s website attached to the final Office action dated January 19, 2011 at pages 55-87. This organization, which the applicants’ website chooses to feature prominently, does not merely reject Islamisation as defined by the applicants, but rejects all Islam. It is disingenuous for the applicants to argue that they have no control over the links that are featured on their website. In addition to the content on the website, every comment and every link is a part of the marketplace for the applicants’ web-based

information services – a marketplace where the phrase “Stop the Islamisation of America” clearly conveys the notion that Islamisation involves the spread of Islam generally, and in fact, the association with anything Islamic.

Taking into account not only the dictionary definitions and the manner in which the mark is used in the marketplace (i.e., the applicants’ own website), as well as the comments associated therewith, Muslims are likely to perceive “STOP THE ISLAMISATION OF AMERICA” as an indictment against all things affiliated or associated with Islam with the desired end goal being the “end” of Islam and the conversion of people to Islam in America.

2. A SUBSTANTIAL COMPOSITE OF MUSLIMS WOULD PERCEIVE THE MARK AS DISPARAGING.

To “disparage” means “to speak slighting[ly] of: run down: depreciate.” *In re Squaw Valley Dev. Co.*, 80 USPQ2d 1264, 1276 (TTAB 2006) (internal punctuation omitted) (quoting *Webster’s Third New International Dictionary* (unabridged ed. 1993)). The determination of whether a mark is disparaging depends upon the perspective of the object of disparagement. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); *see also* TMEP §1203.03(c). A mark may be disparaging in two ways:

- (1) Matter that is not, in and of itself, disgusting or otherwise unpleasant, may be applied or combined in such a way that it is offensive to the disparaged party.

See, e.g., In re Anti-Communist World Freedom Cong., Inc., 161 USPQ 304, 305 (TTAB 1969) (holding design of an "X" superimposed over a hammer and sickle to disparage, and to bring into contempt and disrepute, a national symbol of the U.S.S.R.); or

(2) Matter may be inherently offensive, and, when directed at a specific individual or entity, may become even more offensive. *See, e.g., Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635, 1640 (TTAB 1988) (noting “the offensiveness of [applicant’s mark, depicting a defecating dog,] becomes even more objectionable because it makes a statement about opposer itself”).

The question is whether a “substantial composite” of Muslims in the United States would perceive the matter to be disparaging. *See In re Lebanese Arak*, 94 USPQ2d at 1218, citing *In re Heeb Media LLC*, 89 USPQ2d 1071, 1074 (TTAB 2008).

In this case, the record shows that a substantial composite of Muslims would find the applied-for mark disparaging. The phrase “Stop the Islamisation of America” indicates that conversion or conformity to Islam is a negative force that needs to be stopped or caused to cease. The use of “Stop the ...” in connection with a reference to any religion would be perceived by a substantial composite of adherents to the religion as offensive and disparaging.

As support, the excerpted copies of ten (10) articles drawn from the Lexis-Nexis® news database attached to the final Office action dated January 19, 2011, demonstrates that Muslim Americans are offended and feel disparaged by anti-Muslim statements and expressions that hold Islam in contempt. For example, please note the following excerpts:

- Mohammad Kaleemuddin, a Pakistani immigrant who drove trucks for the American war effort in Iraq for three years, said that while he was working for a construction company in Houston, his supervisor and several co-workers called him “Osama,” “al Qaeda,” “Taliban,” and “terrorist.”

“It was very rough,” said Mr. Kaleemuddin, who was fired after protesting to management about the ethnic slurs. “It brought a bit of terror in my chest. I’d wonder, ‘Why are they doing this? I’ve always been nice to them.’” Steven Greenhouse, *Offended Muslims Speak Up*, N.Y. Times, Sept. 21, 2010, at B1.

- Life is mostly normal for Burrell, who feels both devoutly Muslim and quintessentially Californian. But anti-Muslim sentiment, whether it's in the news or on the sidewalk, can take a toll on her and her Muslim friends, she said. Matt O’Brian, *For an American Muslim, stares, misunderstandings come with the territory*, San Jose Mercury News, Sept. 14, 2010.

- Ammal Khateeb, a Tinley Park resident at Friday's prayer service, said she has grown tired of what she sees as anti-Muslim sentiment that automatically associates Islam with terrorism.

"That is why I don't wear the (hijab) scarf. It's never been good after 9/11. I'm scared," she said. "I don't want my kids to go through this racism." Andy Grimm, *Show of support for Muslims; Religious leaders call for tolerance amid tensions*, Chi. Trib., Sept. 12, 2010, at C10.

- "My brother came home one night really upset," said Asma Mian, a 20-year-old junior from Potomac, Md. He'd encountered a man on the Metro who was railing against the proposed community center and mosque in Lower Manhattan.

It rattled her to see her 17-year-old brother so emotional. "He barely gets involved in politics. He's not extremely religious or anything," she said, adding that people his age can be quick to take offense. They "feel like it's more a personal attack. It's more mortifying than it would be if you were older." Tara Bahrapour, *Experts fear hostility may radicalize Muslims*, The Star-Ledger (Newark, NJ), Aug. 28, 2010, at 14.

- "Politics can get dirty. But usually they just say something about you," Saleh said. "But when you come and tell people not to vote for any Muslims, you're talking about an entire group. I was born in this country. I want to be part of this American democratic system. This is very upsetting." Hector Becerra, *Campaigning in Bell and Cudahy gets ugly; City Council hopefuls have homes*

and cars vandalized and are smeared as terrorists. 'It's nasty stuff.', L.A. Times, March 5, 2009, at A14.

In addition, the examining attorney refers to nine (9) articles drawing from the Lexis-Nexis® news database attached to the Office action dated April 28, 2010, showing how many Muslims view terrorists as illegitimate adherents of Islam. For example, the Board is asked to note the following excerpts:

- Not only does such misuse disparage the faith and undercut moderate followers, they say, it also unwittingly gives legitimacy to Muslim extremists.

“The real key is not to afford (terrorists) the name of Islam and not legitimize them that way,” said Ahmed Rehab, a spokesman for the Council on American-Islamic Relations, stressing that terrorists represented only a tiny fraction of the Muslim world.

“By calling terrorists Islamic, we're saying that this tiny contingency is the one whose interpretation of Islam is Islam, and everyone else doesn't matter.” Omar Sacirbey, *Muslims work to retake 'jihad' from extremists; Word doesn't denote violence, they say*, Times-Picayune (New Orleans), May 28, 2004, at 8.

- There are over 1 billion Muslims throughout the world who are not terrorists, stretching from Singapore to Nigeria and from the United States to the Central Asian republics. Radical terrorist groups may be of Christian, Jewish, Muslim or Hindu persuasion. Their religion is irrelevant: first and foremost they are

terrorists who often cloak their actions in a cause, sometimes adding the veil of nationalism or religion to justify their crimes. Most terrorists are self-serving thugs, more concerned about gaining power and influence than helping the people or the cause they supposedly represent. James Emery, *Arab culture and Muslim stereotypes*, The Arab American News, June 21-27, 2008, at 19.

- Terrorist groups such as Wahabi and Al Queda are not led by the followers of Islam, Kabbani argued. Jack Chinn, *From the Pulpit: 'Not all Muslims are radical terrorist'*, Oroville Mercury Reg. (California), Nov. 20, 2009.

Therefore, taking into account the nature of the applicants' services ("providing information regarding understanding and preventing terrorism"), the suggestion that Islam is synonymous with terrorism would be disparaging to a substantial composite of Muslims.

The term "Islamisation" and the phrase "Stop the Islamisation of America" may not, in and of itself, be disgusting or otherwise grossly unpleasant, but in the context of the services related to providing information in the field of terrorism and in the environment of a marketplace where the applicants' own users or followers describe Islam as a "terror group" (*see* page 22), "evil in its purest form" (*see* page 26), a "roach motel" (*see* page 45) and "an acute mental disease" (*see* page 49), at least a substantial composite of Muslims would likely find the proposed mark disparaging. This viewpoint is articulated in a letter from British Muslims for Secular Democracy to Stephen Gash of

Stop the Islamisation of Europe attached to the January 19, 2011 final Office action at pages 88-89. In pertinent part, the letter reads as follows:

We are a group of Muslim democrats who are committed to the values that define the British state, including legal and constitutional equality for all, equal rights for women and minorities, and religious freedom, including the right to be free of faith.

...just like the majority of law-abiding British Muslims and non-Muslims, we too are extremely concerned about the rise of extremism and political Islam in Britain, which has been used to justify or demand non-democratic practices. On this issue, I am sure your organization and ours share a common concern and would like to see a halt to the spread of these.

By demonstrating outside a mosque under the banner, “Stop the Islamisation of Europe,” ordinary peace-loving British Muslims end up feeling threatened and have begun to believe that their fundamental right to practice their religion is being curtailed.

Your campaign is also fuelling the notion that somehow organisations such as SIOE are against all Muslims and the religion Islam itself.

Emphasis added.

Although this letter expresses the perception of a British Muslim, given the association of Stop the Islamisation of Europe with the applicants and the similarity between the matter referenced in the letter and the applied-for mark, it serves as a valuable inference of how Muslim Americans would view the phrase “Stop the Islamisation of America.” The use of the “Stop the Islamisation” phrase in the context of anti-Muslim expressions is perceived in general to refer to the proposition that converting or conforming to Islam must be stopped and that adherence to any of the tenets or practices generally associated with Islam are patently wrong. This perception, in turn, affects the manner in which Muslims will understand the phrase. Ultimately, as communicated in the letter, Muslims “end up feeling threatened and have begun to believe that their fundamental right to practice their religion is being curtailed.”

3. THE SECTION 2(a) REFUSAL TO REGISTER DOES NOT VIOLATE THE FIRST AMENDMENT OR DUE PROCESS RIGHTS OF THE APPLICANTS.

The applicants also assert that the refusal to register “violates [the applicants’] free speech rights under the First Amendment to the Constitution” (*Applicants’ brief* at 15), but binding precedent forecloses this argument. Previous decisions of the United States Court of Appeals for the Federal Circuit “have rejected First Amendment challenges to refusals to register marks under Section 1052(a), holding that the refusal to register a mark does not proscribe any conduct or suppress any form of expression because it does not affect the applicant’s right to use the mark in questions.” *In re*

Boulevard Entertainment, 334 F.3d 1336, 1343 (Fed. Cir. 2003) (rejecting First Amendment challenge and citing *In re Mavety Media Group, Ltd.*, 33 F.3d 1367, 1371 (Fed. Cir. 1994) and *In re McGinley*, 660 F.2d 481, 484 (CCPA 1981).

The authority of the USPTO is limited to determining the right to register rather than the right to use, and therefore, the Federal Circuit has unequivocally rejected the argument that refusals such as this one are unconstitutional. *Id.* And while registration has been refused and the examining attorney respectfully requests that the Board do the same, the registrability determination does not control the applicants' use of the phrase on its website and in any other medium of expression or any ideas maintained or associated therewith.

In sum, the proposed mark consists of or includes matter which disparage or brings into contempt or disrepute Muslims. To the extent that a substantial composite of Muslims would also be disparaged, and the free speech rights of the applicants are neither at issue nor have been violated, registration is properly refused on the Principal Register under Section 2(a).

CONCLUSION

Based on the record evidence and case law, the applied-for mark, when used on or in connection with the identified services, consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs, or national

symbols. The examining attorney, therefore, respectfully requests that the Board affirm the refusal to register the mark under Trademark Act Section 2(a), 15 U.S.C. §1052(a).

Respectfully submitted,

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