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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Applicant | Geller, Pamela |
| Applied for Mark | STOP THE ISLAMISATION OF AMERICA |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Mark: Stop the Islamisation of America

Applicant: Pamela Geller

Examining Attorney: Maria-Victoria Suarez
Law Office 108

SERIAL NO: 77940879

EX PARTE APPEAL

APPLICANT'S REPLY BRIEF

COMES NOW the Applicant, Pamela Geller (“Applicant”), by her undersigned counsel, and hereby respectfully submits her Reply in the matter of the appeal of the Examining Attorney’s refusal to register the mark STOP THE ISLAMISATION OF AMERICA in standard characters.

I. OVERVIEW OF THE EXAMINING ATTORNEY’S BRIEF

The Examining Attorney and Applicant agree on the statement of the relevant analysis for determining whether a Mark is disparaging under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a). Specifically, that analysis involves two steps: (1) the Office must determine what the mark means; and (2) the Office must determine if that particular understanding of the Mark is disparaging to the group at issue. *In re Lebanese Arak Corp.*, 94 U.S.P.Q.2d 1215, 1217 (TTAB 2010); *see also Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705 at 1740-41 (“*Harjo I*”), *rev’d on other grounds*, 284 F. Supp. 2d 96, 68 USPQ2d 1225 (D.D.C. 2003), *remanded*, 415 F.3d 44, 367 U.S. App. D.C. 276, 75 U.S.P.Q.2d 1525 (D.C. Cir. 2005), *on remand*, 567 F. Supp. 2d 46, 87 U.S.P.Q.2d 1891 (D.D.C. 2008), *aff’d* 565 F.3d 880, 385 U.S. App. D.C. 417, 90 U.S.P.Q.2d 1593 (DC Cir. 2009) (T.T.A.B. 1999) (“Our analysis is essentially a two-step process in which we ask, first: What is the meaning of the matter in question, as it appears in the marks and as those marks are used in connection with the services identified in the registrations? Second, we ask: Is this meaning one that may disparage Native Americans?”).¹

¹ In Applicant’s Opening Brief, Applicant concedes that the *statement* of the analysis on “meaning” in the first step was improperly limited to merely the “group at issue,” referring specifically to Muslims as opposed to the public at large. However, the discussion of the “meaning” prong of the analysis in Applicant’s Opening Brief properly discussed “meaning” in its larger context to the relevant public audiences. (Applicant’s Br. at 8-9). In *Harjo I*, it is clear that the meaning of the Mark for the purpose of the first-step in the analysis includes the broader meanings to the public at large in the context of the use of the Mark. Thus, the TTAB in *Harjo I* and the District Court on appeal of the TTAB’s ruling in *Harjo I* applied the meaning of “Redskins” not just to Native Americans but to the public at large. *Harjo I*, 50 U.S.P.Q.2d at

The Examining Attorney, however, takes the artificial position that a broad dictionary definition of the meaning of the term “Islamisation” (used within the Mark) as referring to all things Islamic (and notably conversion to Islam) is the relevant meaning for purposes of the first step in the analysis. However, the Examining Attorney does so by (1) relying on only one of two possible dictionary definitions; (2) failing to provide any evidence whatsoever of the actual understanding of the use of the term “Islamisation” in any context by in turn failing to provide any actual use whatsoever (except one use that actually supports Applicant’s position); (3) ignoring the way the term “Islamisation” is actually used by academics, professionals, and Muslims themselves; and (4) relying on cherry-picked comments left on Applicant’s blog as somehow indicative of how Applicant uses the Mark in connection with Applicant’s services.

Once Examining Attorney created an artificially overbroad meaning of the term “Islamisation”—converting the meaning to all things Islamic—the second step in the analysis becomes a *fait accompli* when focusing on the word “Stop.” But, it is precisely the Examining Attorney’s flawed analysis by which she creates an overly broad meaning unrelated to the actual Mark that causes her to reach the conclusion that the Mark is disparaging of Muslims generally.

1740-41; *see also Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 126-27 (D.D.C. 2003) (“*Harjo II*”). Yet, the TTAB specifically excluded any possible meaning to the public relating to the term “redskin” as a kind of peanut because “there is no evidence in the record that any of these possible meanings of the word „redskin(s)” would pertain to the word as it is used in respondent’s marks in connection with the identified services.” *Harjo I* at n.108. Similarly, how Muslims understand the meaning of the term “Islamisation” impacts directly on whether they will consider the “meaning” disparaging, thus illustrating that “meaning” in the first step of the analysis cannot be entirely separated from the “group at issue” when approaching the second step in the analysis (*i.e.*, whether Muslims would be disparaged by the meaning of the Mark, Stop the Islamisation of America). Thus, in *Harjo II*, the court recognized that the term “Redskins” could mean the professional football team, or it could mean Native Americans in a demeaning context. But the court overruled the TTAB’s conclusion that Native Americans would necessarily consider the term demeaning because, in part, there was not sufficient evidence that Native Americans themselves accepted the term as referencing Native Americans in a demeaning context as opposed to the former non-disparaging meaning. *Harjo II*, 284 F. Supp. 2d at 127-33.

II. THE EXAMINING ATTORNEY ARTIFICIALLY AND IMPROPERLY DEFINES “ISLAMISATION” TO MEAN “ISLAMIC” DESPITE EVIDENCE THAT ITS RELEVANT AND ACTUAL MEANING TO THE PUBLIC IS A POLITICAL MOVEMENT PREVALENT IN A SOCIETY OR SOCIETAL UNIT WHICH SEEKS TO EMBRACE A POLITICAL DOCTRINE THAT CALLS FOR THE APPLICATION OF SHARIA (I.E., ISLAMIC LAW) AS THE SUPREME LAW OF THE SOCIETY.

The opinions in both *Harjo I* and *Harjo II* make clear that a term that has multiple meanings must be understood—for purposes of the “meaning” analysis—in context of how it is used in the public domain relevant to the Mark. “Redskin” could mean all things relating to the professional football team or it could refer to Native Americans in a demeaning fashion. But, both meanings remained for purposes of the second phase of the analysis—do Native Americans consider the term as used in the context of the pro football team disparaging?

Examining Attorney chooses simply to ignore the overwhelming evidence in the record that the term “Islamisation” has only been used to refer to a political process replacing civilian laws with Islamic religious law (*i.e.*, sharia) to impose Islamic political rule on society. Moreover, Examining Attorney also ignores the fact that the only evidence in the record—indeed Examining Attorney’s own evidence—demonstrates that even Muslims consider the term “Islamisation” to mean an undesirable political process imposing Islamic law on previously non-sectarian political orders.

A. Examining Attorney Ignores Her Own Selected Dictionary Definitions.

As demonstrated in Applicant’s Opening Brief, Examining Attorney chooses to ignore the definition of “Islamisation” which conveys the meaning proffered by Applicant. Thus, Dictionary.com, proffered in the Final Office Action (“FOA”) as Att. No. 1, specifically includes the definition “[t]o cause to conform to **Islamic law** or precepts.” (emphasis added). Encarta.com, proffered by Examining Attorney as Att. No. 4, defines the term as “make subject

to Islamic law” and then explains this definition as to “cause people, institutions, or countries to follow Islamic law.”

B. Examining Attorney Fails to Present Any Evidence of How the Term “Islamisation” is Actually Used and Understood.

Having ignored the second and more specific dictionary definition, Examining Attorney pretends as though the analysis of “meaning” is more or less finished. But, given the two dictionary definitions, one of which conforms with Applicant’s stated use of the Mark, Examining Attorney’s failure to offer even a single instance of how the term “Islamisation” is actually used is fatal to her case. *Harjo II* makes this point in its reversal of the TTAB’s determination of “disparagement.” *Harjo II*, 284 F. Supp. 2d at 127-33. If there are two or more meanings of a term used in a Mark, the meaning of the term and its perceived disparagement to the specific group at issue becomes the critical question. Yet, Examining Attorney offers no actual use of the term “Islamisation” that would suggest that the meaning is anything but the meaning proffered by Applicant—*i.e.*, a sectarianization of a political society through efforts to “make [it] subject to Islamic law.”

C. The Only Actual Evidence Proffered by Examining Attorney about the Use of the Term “Islamisation” Demonstrates that Muslims Themselves Understand “Islamisation” as the Undesirable Conversion of Representative Government to a Sectarian Islamic Political Order.

The only evidence Examining Attorney proffers that remotely references the actual use of the term “Islamisation” is a public letter written by British Muslims to a group in England called Stop the Islamisation of Europe (“SIOE”). In that letter, as discussed in detail in Applicant’s Opening Brief, the British Muslims expressly reject and oppose the process of Islamisation, seeking to join with SIOE’s objectives and objecting only to SIOE’s demonstrating outside a mosque the British Muslims consider not to be a part of this destructive Islamisation movement.

(Applicant's Br. at 12-15).

In an apparent effort to obfuscate this patent understanding of "Islamisation" as proffered by Applicant and adopted by the British Muslims—an understanding that Examining Attorney strangely relies upon—Examining Attorney proffers articles where Muslims object to the notion that all or most Muslims are terrorists or that Islam as a religion adheres to terrorism. Thus, Examining Attorney's Brief quotes from select articles attached to her FOA that were gleaned from LexisNexis and which bemoan the characterization of Islam and Muslims with terrorism. (FOA at 11-33 [of the unnumbered digital pdf file]). The problem with Examining Attorney's reliance on these articles is that none of them—literally none of them—has anything to do with the term "Islamisation" or the terms incorporated within the Mark. Rather, these are Muslims protesting the characterization that because one is a Muslim, he or she is a terrorist. But that is not implicated in the specific meaning of "Islamisation" or the Mark "Stop the Islamisation of America," given the specific meaning set forth by Applicant, the alternative meaning of "Islamisation" in the dictionary definitions, which accords with Applicant's meaning, and the position of the British Muslims cited by Examining Attorney.

D. Examining Attorney Ignores the Way the Term "Islamisation" Is Actually Used by Academics, Professionals, and Muslims Themselves.

Beyond the fact that Examining Attorney ignores the dictionary definitions that support Applicant's use of the term "Islamisation," and beyond Examining Attorney's failure to present to the TTAB a single example of the use of the term "Islamisation" that supports her choice of definition, Examining Attorney has ignored the only actual uses of the term "Islamisation." All of the evidence on the actual use of the term was provided by Applicant, and this evidence makes clear that the professionals, academics, and Muslims who use the term use it in a way that mirrors Applicant's definition of a political process that would turn our form of government on

its head and reduce the U.S. Constitution to dead letter law and replace it with a “divine” Islamic law. Indeed, the record before the TTAB, as set forth in Attachment No. 10 to Applicant’s Response to Examining Attorney’s non-final Office action, establishes that the process of “Islamisation” discriminates grotesquely against women and non-Muslims. And, unlike Examining Attorney’s failure to present any evidence of how “Islamisation” is actually used in context, Applicant’s evidence is a representative sampling of every single LexisNexis search of the use of the term “Islamisation.”

D. Examining Attorney Futilely Cherry-Picks Third-Party Comments to Applicant’s Blog in a Final Effort to Artificially and Improperly Restrict the Meaning of “Islamisation” to the Broad Definition of “Islamisation” Proffered by Examining Attorney but Not Found in Actual Use.

Examining Attorney cites to footnote 111 in *Harjo I* to establish the principle that citing to “fans” of Applicant as they are posted on a public blog is proper. The problem with this position is twofold. First, as argued in Applicant’s Opening Brief, there is nothing to suggest that open public comments on a blog, cherry-picked by Examining Attorney, is representative of how the general public perceives the meaning of “Islamisation.” Indeed, nothing in these specific comments cited by Examining Attorney addresses the specific meaning of “Islamisation.” Second, even assuming some small subset of the “blog commenting” public opposes Islam or even considers “Islamisation” to be the general meaning proffered by Examining Attorney (*i.e.*, all things Islamic), this does not eliminate the very real and actually used meaning of the term as argued by Applicant. As in *Harjo I*, and as emphasized in *Harjo II*’s overruling of *Harjo I*, the fact that “fans” of an applicant embrace a disparaging definition of a trademark, this “meaning” remains only one of several meanings to be tested against how the group at issue (in this case, Muslims) understands the term “Islamisation” and whether they consider the Mark, “Stop the Islamisation of America,” disparaging.

II. EXAMINING ATTORNEY HAS FAILED TO MEET HER BURDEN THAT THE MARK IS DISPARAGING TO LAW ABIDING MUSLIMS.

Given the available meanings of the term “Islamisation,” notably the meaning and actual use of the term by academics, professionals, and Muslims themselves as a political movement to replace man-made laws by the religious law of Islam, Examining Attorney has presented literally zero evidence in the record that Muslim Americans, or indeed any Muslims, would object to the Mark. Examining Attorney has provided no evidence of any Muslim anywhere in the world who would view the Mark as disparaging, other than perhaps those lawless persons who advocate replacing the law of the People (*i.e.*, the Constitution) with the law of Allah. The LexisNexis articles cited by Examining Attorney in her Brief and as attached to her FOA are noteworthy for the fact that they are statements by Muslims objecting to Islam / Muslims being equated with terrorism. But Examining Attorney has provided no evidence whatsoever that that is the meaning of the Mark “Stop the Islamisation of America.” More importantly, the one document provided by Examining Attorney actually referencing “Stop the Islamisation of Europe” demonstrates that law abiding British Muslims support the effort to prevent the “Islamisation” of British political society.

In *Harjo II*, the court rejected *Harjo I*’s approach to the analysis of disparagement precisely for failing to identify an evidentiary basis for the proposition that Native Americans as a group felt disparaged by the term “Redskins.” Because the TTAB had not found any substantial evidence of this disparagement by the group at issue, beyond unrepresentative samples, the court in *Harjo II* overruled the TTAB’s ruling on disparagement. In the case presently before the TTAB, Examining Attorney has not reached even the deficient threshold of

Harjo I. That is, Examining Attorney has not found a single law abiding Muslim who opposes or would feel disparaged by the Mark and Applicant's use of the Mark. What is especially telling is that Examining Attorney not only has failed to find any Muslims who have articulated disparagement arising from the term "Islamisation," or, for that matter, from the Mark itself, Examining Attorney has failed to respond to the fact that the British Muslims she referenced in her evidence actually embrace the goals of Stop the Islamisation of Europe.

III. CONCLUSION

Examining Attorney has failed to satisfy the requisite burden necessary to deny Applicant's Mark because her efforts have failed to understand the meaning and import of the Mark by the public generally as inferred from the multiple dictionary meanings, the academic and professional public who actually use the term "Islamisation" in their published works, and actual Muslims who have written and published on the subject of "Islamisation." Moreover, Examining Attorney has not provided any actual evidence regarding how Applicant uses the Mark in the marketplace in connection with Applicant's goods and/or services. The Mark's use of the term "Islamisation," quite simply, is not understood by Muslims or by the professional and academic classes who use the term as relating to Islam *qua* Islam. Rather, the term is quite narrowly focused on a political-legal movement that works to destroy civil liberties and to supplant the rule of man-made law with a theologically-centered law understood to be divine. Finally, Examining Attorney has provided no evidence whatsoever to support the claim that law abiding Muslims would be disparaged by this common and dominant usage of the term "Islamisation" and of the Mark more specifically.

For the foregoing reasons, Applicant respectfully requests that the TTAB reverse the FOA and order the registration of the Mark.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2011, a copy of the foregoing was filed electronically.

LAW OFFICES OF DAVID YERUSHALMI, P.C.

/s/ David Yerushalmi
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