This Opinion is Not a Precedent of the TTAB

Mailed: February 10, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Matthew A. Handal

Serial No. 88931066
Serial No. 88936129
Serial No. 90340590
Serial No. 90340613
(Consolidated)

Matthew A. Handal, pro se.[1]

Kapil K. Bhanot, Trademark Examining Attorney, Law Office 108,
Kathryn E. Coward, Managing Attorney.

Before Kuhlke, Larkin, and Thurmon,
Administrative Trademark Judges.

Opinion by Larkin, Administrative Trademark Judge:

Matthew A. Handal ("Applicant") seeks registration on the Principal Register of the following four proposed standard-character marks:

- MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020 for "Athletic shirts; Baseball caps; Baseball caps and hats; Denim jackets; Denim skirts; Hats; Head scarves; Head sweatbands; Head wear; Headbands; Headscarfs;

[1] Applicant was represented by counsel at some point during the prosecution of each of the four applications at issue in these appeals, but his counsel withdrew in each case and Applicant pursued the appeals pro se.

Headscarves; Headwear; Hooded pullovers; Hooded sweat shirts; Hooded sweatshirts; Hoodies; Knitted caps; Long sleeve pullovers; Long-sleeved shirts; Muscle tops; Polo shirts; Pullovers; Scarfs; Scarves; Shirts; Shirts and short-sleeved shirts; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts; Sport shirts; Sports caps and hats; Sports jackets; Sports shirts; Sports shirts with short sleeves; Sweat shirts; Sweaters; T-shirts; Tank tops; Tee shirts; Volleyball jerseys; Yoga pants; Yoga shirts; Yoga tops" in International Class 25;[2]

- MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020 for "Facial masks" in International Class 3;[3]

- DUMP TRUMP AND LOCK HIM UP for "On-line journals, namely, blogs featuring information about political issues; on-line journals, namely, blogs featuring information about Donald Trump, namely, as it relates to politics and political campaigning; providing a website featuring non-downloadable videos and photographs in the field of politics and political campaigning" in International Class 41;[4] and

- INDICT THE TRUMP ORGANIZATION for "On-line journals, namely, blogs featuring information about political issues; on-line journals, namely, blogs featuring information about Donald Trump, namely, as it relates to politics and political campaigning; providing a website featuring non-downloadable videos and photographs in the field of politics and political campaigning" in International Class 41.[5]

The Examining Attorney refused registration of each of Applicant's proposed marks under Section 2(c) of the Trademark Act, 15 U.S.C. § 1052(c), the pertinent

[2] Application Serial No. 88931066 was filed on May 24, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

[3] Application Serial No. 88936129 was filed on May 27, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

[4] Application Serial No. 90340590 was filed on November 24, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

[5] Application Serial No. 90340613 was filed on November 24, 2020 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of a bona fide intention to use the mark in commerce.

portion of which prohibits registration of a mark that "[c]onsists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent," on the ground that the word "TRUMP" in each mark refers to Donald Trump, who was President of the United States when Applicant filed each of his four applications, and whose written consent to registration is not of record in any of them.

Applicant appealed in each case when the Examining Attorney made the Section 2(c) refusal final. The Board consolidated the appeals in Serial Nos. 88931066 and 88936129, which involve the same proposed mark MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020 for different goods, and ordered that those cases be presented on the same brief. 8 TTABVUE 1 (Ser. No. 88931066); 9 TTABVUE 1 (Ser. No. 88936129). Applicant and the Examining Attorney filed briefs in those consolidated cases as well as in the appeals in Serial Nos. 90340590 and 90340613.[6]

Applicant argues in each appeal that the refusal to register should be reversed "because the Section 2(c) (15 U.S.C. §1052(c)), is unconstitutional *in toto* and as applied." 5 TTABVUE 3 (Ser. Nos. 88931066, 88936129, 90340590, and 90340613).[7] After the briefing was complete in the four appeals, the Board, acting sua sponte, suspended the appeals in view of the filing by the United States Patent and

[6] Citations in this opinion to the briefs refer to TTABVUE, the Board's online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 WL 2853282, at *1 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

[7] As discussed below, Applicant also argues in Serial No. 90340613 that Section 2(c) does not apply to Applicant's proposed mark INDICT THE TRUMP ORGANIZATION.

Trademark Office ("USPTO") of a petition for a writ of certiorari from the United States Supreme Court to review the Federal Circuit's February 24, 2022 decision in *In re Elster*, 26 F.4th 1328 (Fed. Cir. 2022),[8] which reversed a Board decision affirming a Section 2(c) refusal to register the proposed mark TRUMP TOO SMALL for clothing on the ground that Section 2(c) was unconstitutional as applied to that mark.[9] 11 TTABVUE 1-2 (Ser. Nos. 88931066 and 88936129); 9 TTABVUE 1-2 (Ser. Nos. 90340590 and 90340613). The appeals were suspended "pending any decision by the Supreme Court that finally resolves the issues in that case." 11 TTABVUE 1-2 (Ser. Nos. 88931066 and 88936129); 9 TTABVUE 1-2 (Ser. Nos. 90340590 and 90340613).

The Supreme Court granted certiorari in *Elster* and on June 13, 2024 issued its decision in *Vidal v. Elster*, 602 U.S. 286 (2024), in which the Court reversed the Federal Circuit and held that the pertinent portion of Section 2(c), which the Court referred to as the "names clause," "supports the restriction of the use of another's

[8] The citation form in this opinion is in a form provided in Section 101.03(a) of the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") (2024). This opinion cites decisions of the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Customs and Patent Appeals by the page(s) on which they appear in the Federal Reporter (e.g., F.2d, F.3d, or F.4th). For decisions of the Board, this opinion cites the Westlaw legal database ("WL") and, in the initial full citation of a case, also identifies the number of the Board proceeding where it is available. The Board's decisions that have issued since 2008 are available in TTABVUE and many precedential Board decisions that issued from 1996 to 2008 are available online from the TTAB Reading Room by entering the same information. Practitioners should also adhere to the practice set forth in TBMP § 101.03(a).

[9] Applicant participated in the *Elster* litigation before the Federal Circuit as a pro se amicus curiae. *Elster*, 26 F.4th at 1329. He notes his amicus participation in the *Elster* case in each of his appeal briefs and states in two of them that his "amicus brief in the Federal Circuit explain[ed] his views on the analysis that should have been used in that case." 5 TTABVUE 18 n.9 (Ser. No. 90340590); 5 TTABVUE 19 n.11 (Ser. No. 90340613).

name in a trademark," *id.* at 308, and is not unconstitutional.[10] The Supreme Court's decision in *Elster* removed the basis for the suspension of the four appeals, and they were resumed on February 4, 2025, 12 TTABVUE 1 (Ser. Nos. 88931066 and 88936129); 10 TTABVUE 1 (Ser. No. 90340590 and 90340613), and are now ready for decision.

Because the appeals in Serial Nos. 90340590 and 90340613 present similar issues as the previously consolidated appeals in Serial Nos. 88931066 and 88936129, and the records in the four appeals are substantively similar, we now consolidate all four appeals sua sponte, *In re S. Malhotra & Co.*, Ser. Nos. 79194076 & 79194077, 2018 WL 4669490, at *1 (TTAB 2018), and will decide them in this single opinion. We affirm the four refusals to register.

I. Applicant's Constitutional Challenges to Section 2(c)

Applicant's sole argument in three of the four appeals (Ser. Nos. 88931066, 88936129, and 90340590), and his primary argument in the fourth appeal (Ser. No. 90340613), is that the names clause in Section 2(c) is unconstitutional because it violates the First Amendment to the United States Constitution. 5 TTABVUE 4-20 (Ser. Nos. 88931066 and 88936129); 5 TTABVUE 6-20 (Ser. No. 90340613); 5 TTABVUE 4-19 (Ser. No. 90340590). Applicant argues in each appeal that "Section 2(c) is facially unconstitutional because the government is discriminating based on

[10] Following the Supreme Court's decision in *Elster*, the Federal Circuit issued an unreported Order Sua Sponte vacating its February 24, 2022 decision and affirming the Board's decision that TRUMP TOO SMALL was unregistrable under Section 2(c). *In re Elster*, 2024 WL 3530200, at *1 (Fed. Cir. July 25, 2024). Applicant is listed in that order as an amicus curiae.

viewpoint," and is "also unconstitutional as applied to Applicant's mark." 5 TTABVUE 20 (Ser. Nos. 88931066, 88936129, 90340613, and 90340590).

As Applicant is surely aware from his participation as an amicus curiae in the *Elster* case before the Federal Circuit, the Supreme Court's *Elster* decision forecloses each of Applicant's arguments. The Court held in *Elster* (1) that the "names clause does not facially discriminate against any viewpoint," *Elster*, 602 U.S. at 293, and is instead "content based" because it prohibits the registration of a trademark that "contain[s] a person's name" where the would-be registrant "lacks that person's consent," *id.*; (2) that "[b]ecause of the uniquely content-based nature of trademark regulation and the longstanding coexistence of trademark regulation with the First Amendment, we need not evaluate a solely content-based restriction on trademark registration under heightened scrutiny," *id.* at 300; (3) that the names clause "reflects trademark law's historical rationale[s] of identifying the source of goods" and "ensuring that consumers make no mistake about who is responsible for a product," *id.* at 305; and (4) that "the names clause is of a piece with a common-law tradition regarding the trademarking of names." *Id.* at 308. The Court saw "no reason to disturb this longstanding tradition, which supports the restriction of the use of another's name in a trademark," *id.*, and concluded that "the names clause in § 1052(c) does not violate the First Amendment." *Id.* at 310.[11] Applicant's First

[11] Justice Thomas' opinion for the Court drew concurring opinions from Justices Kavanaugh, Barrett, and Sotomayor advancing different rationales for the Court's decision, but all nine Justices "agree[d] that the names clause does not violate the First Amendment." *Elster*, 602 U.S. at 309.

Amendment challenges to the names clause in Section 2(c) in each appeal are no longer viable in view of the Supreme Court's decision in *Elster*.

II. The Merits of the Section 2(c) Refusals

The Supreme Court's decision in *Elster* does not dispose of Applicant's appeals, however, because the USPTO bears the burden of proving that each of Applicant's proposed marks is unregistrable under the names clause in Section 2(c). We turn now to the merits of the four refusals.

A. Applicable Law

The names clause in Section 2(c) prohibits registration of a mark that "[c]onsists of or comprises a name, portrait, or signature identifying a particular living except by his written consent . . . ." *In re ADCO Indus. – Techs., L.P.*, Ser. Nos. 87545258 & 87545533, 2020 WL 730361, at *9 (TTAB 2020) (quoting 15 U.S.C. § 1052(c)). In *ADCO*, the Board affirmed Section 2(c) refusals to register the marks shown below for "utility knives"

on the ground that "Donald Trump is a well-known political figure and a celebrity," and the proposed marks "include Donald Trump's name and likeness" without his written consent to registration. *Id.* at *11.

"A key purpose of requiring the consent of a living individual to the registration of his or her name, signature, or portrait is to protect rights of privacy and publicity

that living persons have in the designations that identify them." *Id.* at *9 (citations omitted). As the Supreme Court explained in *Elster*, the names clause "prohibit[s] a person from obtaining a trademark of another living person's name without consent, thereby protecting the other's reputation and goodwill." *Elster*, 602 U.S. at 307.

For purposes of Section 2(c), a "name" does not have to be the full name of an individual. "Section 2(c) applies not only to full names, but also first names, surnames, shortened names, pseudonyms, stage names, titles, or nicknames" if there is "evidence that the particular name identifies a specific living individual who is publicly connected with the business in which the mark is used, or who is so well known that such a connection would be assumed." *ADCO*, 2020 WL 730361, at *10. "Whether consent to registration is required depends on whether the public would recognize and understand the mark as identifying a particular living individual." *Id.*

"[T]he Board has set forth two ways to show that a 'name' identifies a particular living individual for purposes of Section 2(c): 1) if the person is so well known that the public would reasonably assume a connection or 2) if the person is publicly connected with the business in which the mark is being used." *Mystery Ranch, Ltd. v. Terminal Moraine Inc.*, Opp. No. 91250565, 2022 WL 17369425, at *19 (TTAB 2022) (citation omitted).

"[W]ell-known individuals such as celebrities and world-famous political figures are entitled to the protection of Section 2(c) without having to evidence a connection with the involved goods or services." *ADCO*, 2020 WL 730361 at *11 (citing *In re Hoefflin*, Ser. Nos. 77632391, 77632400, & 77632406, 2010 WL 5191373, at *2 (TTAB

2010) (finding that because Barack Obama was President of the United States, he was "so well known and famous that members of the purchasing public will associate the individual names 'Barack' and 'Obama' as used in Applicant's marks [OBAMA BAHAMA PAJAMAS, OBAMA PAJAMA, and BARACK'S JOCKS DRESS TO THE LEFT for pajamas and other clothing] with the President and will reasonably assume that President Obama is being identified")). The Board found in *ADCO* that "Donald Trump is a well-known political figure and a celebrity," and affirmed the Section 2(c) refusals because each "application does not include Donald Trump's written consent to the use and registration of his name and likeness . . . ." *Id.*

B. Serial Nos. 88931066, 88936129, and 90340590

Applicant asserts in these three appeals that "[t]here is no dispute about the evidence. Donald J. Trump is extremely famous."[12] 5 TTABVUE 3-4 (Ser. Nos.

[12] Applicant similarly states in Serial No. 90340613 that if Section 2(c) applies to the proposed mark INDICT THE TRUMP ORGANIZATION, "Donald J. Trump is extremely famous." 5 TTABVUE 4 (Ser. No. 90340613). The voluminous records in the four appeals support Applicant's acknowledgments that Donald Trump is "extremely famous." For example, in Serial Nos. 88931066 and 88936129 to register MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020, Applicant made of record, among other things, articles that Applicant claimed show that "Donald Trump is a Public Figure," February 4, 2021 Response to Office Action at TSDR 56-85, articles that Applicant claimed show that "Donald Trump is the Subject of Public Discussion," *id.* at TSDR 86-160, articles that Applicant claimed show that "Possible Crimes by Trump in New York are the Subject of Public Discussion," *id.* at TSDR 164-76, articles that Applicant claimed show that "Trump Continues to be the Subject of Public Discussion," *id.* at TSDR 177-93, what Applicant called "Examples of TRUMP Applications Showing Viewpoint," *id.* at TSDR 230-43, and the file histories of various applications to register marks pertaining in some manner to Donald Trump, which contain additional materials reflecting his notoriety, including a lengthy Wikipedia entry captioned "Donald Trump." *Id.* at 296-325. The Examining Attorney also made of record a Wikipedia entry captioned "Donald Trump" that includes discussion of his term as the 45th President of the United States. February 11, 2021 Final Office Action at TSDR 30 (Ser. Nos. 88931066 and 88936129).

88931066 and 90340590); 5 TTABVUE 4 (Ser. No. 88936129). Applicant states that Donald Trump "voluntarily made himself a public figure, as a businessman, socialite, and television personality," and argues that his notoriety increased while he was the 45th President of the United States. 5 TTABVUE 4 (Ser. Nos. 88931066, 88936129, and 90340590).

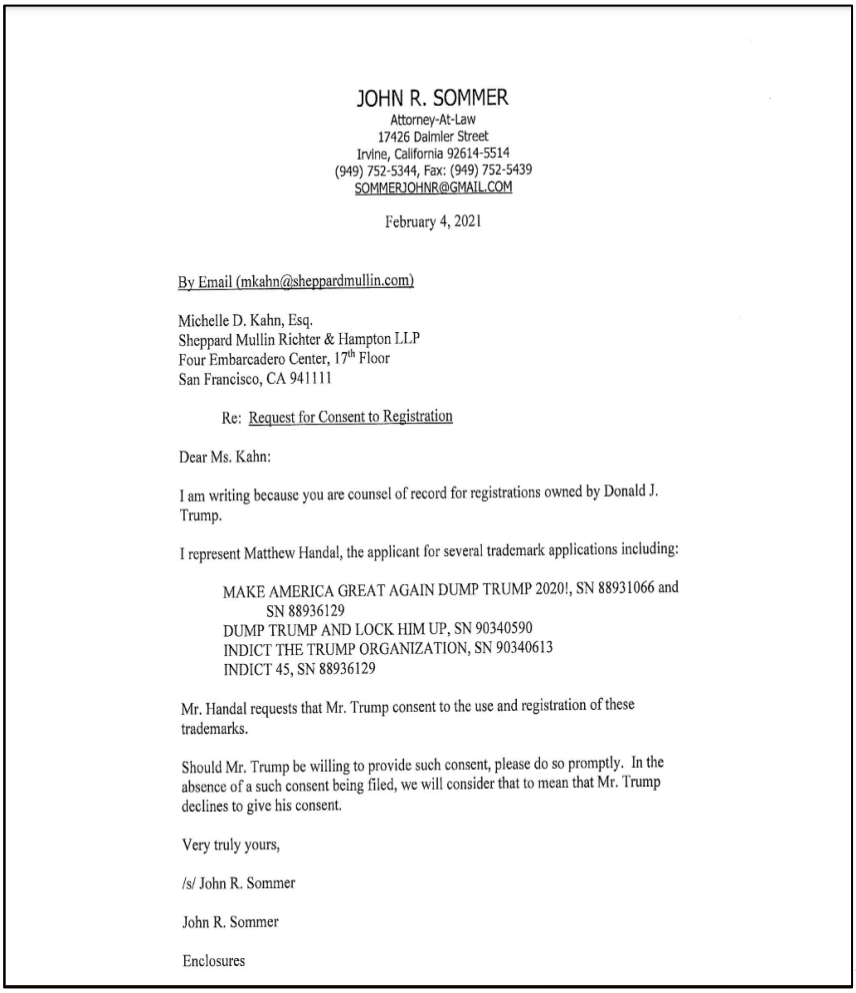
In the proposed mark MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020 for goods in Classes 3 and 5, the words MAKE AMERICA GREAT AGAIN are Donald Trump's signature political slogan, *see ADCO*, 2020 WL 730361, at *5 (finding that the words MAKE OPENING PACKAGES GREAT in one of the marks were "a play on Donald Trump's campaign slogan 'Make America Great Again'"), and the words DUMP TRUMP! 2020 reference President Trump's candidacy in the 2020 Presidential election.

In the proposed mark DUMP TRUMP AND LOCK HIM UP for "blogs featuring information about Donald Trump, namely, as it relates to politics and political campaigning; providing a website featuring non-downloadable videos and photographs in the field of politics and political campaigning," the words DUMP TRUMP again refer to President Trump's candidacy in the 2020 Presidential election and the words AND LOCK HIM UP similarly refer to President Trump.

Given Applicant's own evidence and admission of Donald Trump's fame as a political figure and a celebrity, and the nature of the use of the word TRUMP in the context of the marks in their entireties, there is no doubt that the public would view the word TRUMP in the proposed marks MAKE AMERICA GREAT AGAIN DUMP

TRUMP! 2020 and DUMP TRUMP AND LOCK HIM UP as referring to President Donald Trump, a "particular living individual" within the meaning of the names clause of Section 2(c), triggering the need to obtain his written consent to register those marks.

In February 2021, after Donald Trump's term as the 45th President, Applicant's counsel contacted trademark counsel for Donald Trump with a request for his written consent to the "use and registration of [Applicant's] trademarks":



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February 4, 2021

By Email (mkahn@sheppardmullin.com)

Michelle D. Kahn, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 941111

Re: Request for Consent to Registration

Dear Ms. Kahn:

I am writing because you are counsel of record for registrations owned by Donald J. Trump.

I represent Matthew Handal, the applicant for several trademark applications including:

MAKE AMERICA GREAT AGAIN DUMP TRUMP 2020!, SN 88931066 and SN 88936129
DUMP TRUMP AND LOCK HIM UP, SN 90340590
INDICT THE TRUMP ORGANIZATION, SN 90340613
INDICT 45, SN 88936129

Mr. Handal requests that Mr. Trump consent to the use and registration of these trademarks.

Should Mr. Trump be willing to provide such consent, please do so promptly. In the absence of a such consent being filed, we will consider that to mean that Mr. Trump declines to give his consent.

Very truly yours,

/s/ John R. Sommer

John R. Sommer

Enclosures

[13]

[13] February 4, 2021 Response to Office Action at TSDR 737 (Ser. No. 88931066).

Applicant's counsel enclosed "Consent to Registration" forms for the marks.[14] The "Consent to Registration" for Serial Nos. 88931066 and 88936129 is shown below:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK APPLICATION -- PRINCIPAL REGISTER

In re Application of Michael A. Handal)
)
Appl. Serial Nos.: 88/931066 and 88/936129)
)
Mark: **MAKE AMERICA GREAT AGAIN**)
DUMP TRUMP 2020!)
)

CONSENT TO REGISTRATION

Donald J. Trump, an individual, hereby consents to the use and registration of my name as a trademark and/or service mark with the USPTO for the above mark in these two Applications only.

Dated: February ___, 2021

Donald J. Trump

[15]

Applicant acknowledges in each appeal that "[a]lthough [Donald Trump's] consent was requested, it has not been given." 5 TTABVUE 10 (Ser. Nos. 88931066, 88936129, and 90340590); 5 TTABVUE 11 (Ser. No. 90340613).

[14] *Id.* at TSDR 738-40.

[15] *Id.* at TSDR 738.

We affirm the Section 2(c) refusals to register the proposed marks MAKE AMERICA GREAT AGAIN DUMP TRUMP! 2020 (Ser. Nos. 88931066 and 88936129) and DUMP TRUMP AND LOCK HIM UP (Ser. No. 90340590) because the public would view the word TRUMP in each of the proposed marks as identifying Donald Trump, a particular living individual whose written consent to registration is not of record.

C. Serial No. 90340613

In Serial No. 90340613, Applicant seeks registration of INDICT THE TRUMP ORGANIZATION for "On-line journals, namely, blogs featuring information about political issues; on-line journals, namely, blogs featuring information about Donald Trump, namely, as it relates to politics and political campaigning; providing a website featuring non-downloadable videos and photographs in the field of politics and political campaigning." Applicant argues in this appeal that "Section 2(c) does not apply because the TRUMP ORGANIZATION does not refer to Donald J. Trump," 5 TTABVUE 4 (Ser. No. 90340613), for two reasons, one factual and one legal.

First, Applicant argues as a factual matter that Section 2(c) "does not refer to any living individual," *id.* at 5, because the "'Trump' in TRUMP ORGANIZATION refers to deceased persons, Elizabeth Christ Trump and Fred Trump." *Id.* According to Applicant, the "organization was founded in 1923 by Donald Trump's paternal grandmother, Elizabeth Christ Trump, and his father, Fred Trump, as E. Trump & Son. Donald Trump began leading it in 1971, renamed it around 1973, and handed

off its leadership to his children in 2017." *Id.* at 4-5.[16] Applicant argues that because the Trump Organization was founded in 1923 and Donald Trump was born in 1946, "it **cannot possibly** be named after him." *Id.* at 5 (emphasis in bold here in italics in Applicant's brief).[17] Applicant concludes that "TRUMP ORGANIZATION does not refer to the name of any living individual. Specifically, it does not refer to Donald J. Trump. The Section 2(c) refusal is factually inapplicable." *Id.*

Second, Applicant argues as a legal matter that "Section 2(c) does not [apply] to corporations that have been named after individuals, or have individuals with [the] same name as owners or executives," *id.*, because "an entity is separate from its owner," *id.*, and "[t]hat is the whole purpose of setting up a corporation with that separate existence from its owners." *Id.* at 5-6.

Applicant concludes this argument as follows:

> Names of entities can be registered, even if named after living individuals, without the consent of such living individuals. Of the largest family held companies in the USA and the world that incorporate the founders name, all are registered: Ford Motor Company, Koch Industries, Inc., Carlson, Inc., Bechtel Group, Mars, Porsche, Kinder Morgan, Tata Group, McKesson and Philipps 66.

Id. at 6.

[16] Applicant quotes a Wikipedia entry captioned "The Trump Organization." May 9, 2021 Response to Office Action at TSDR 890.

[17] Applicant also argues that "[n]or is Donald Trump . . . associated with the management of the Trump Organization" because he "was required to terminate his involvement with the management of the entity when he became president," 5 TTABVUE 5, and "[p]ersons other than Donald Trump are managing the Trump Organization." *Id.*

The Examining Attorney initially objects that "Applicant has submitted a list of registrations in their appeal brief" and that the "mere submission of a list of registrations or a copy of a private company search report does not make such registrations part of the record." 7 TTABVUE 3 (citations omitted). The Examining Attorney does not identify the challenged "list of registrations," but a list of third-party registrations of what Applicant describes as "examples of marks that do not refer to Mr. Trump or are ambiguous whether they refer to Mr. Trump" appears in Applicant's brief in connection with Applicant's argument that the names clause in Section 2(c) is unconstitutional. 5 TTABVUE 15. To the extent that this is the list to which the Examining Attorney objects, the objection is moot because we have rejected Applicant's argument that Section 2(c) is unconstitutional based on the Supreme Court's *Elster* decision.

Applicant also lists what he claims to be registered marks consisting of the names of the founders of various companies without providing the specifics of any registration. 5 TTABVUE 6 (Ser. No. 90340613). The Examining Attorney appears to object to these registrations as well. 7 TTABVUE 6. In his response to the initial Office Action during prosecution, Applicant listed various registrations of family names of what he called the "Ten Largest Family Owned Companies in America with Company Name Same as Living Officer/Director/Owner" and the "Twenty-One Largest Family Owned Companies in World with Company Name Same as Living Officer/Director/Owner."[18] He made of record plain copies of the certificates of

[18] May 9, 2021 Response to Office Action at TSDR 60-61.

registration for what he called "Registrations for Corporations with Same Name as Family Members" and webpages regarding family-owned companies.[19] We will consider the third-party registrations that Applicant made of record for whatever probative value they may have on his argument that Section 2(c) does not apply to his proposed mark INDICT THE TRUMP ORGANIZATION.

On the merits, the Examining Attorney argues that "the name 'TRUMP' in the applied-for mark identifies . . . Donald Trump, because he is so well known that the purchasing public would reasonably assume a connection between Trump and the services specified in the application." 7 TTABVUE 5. The Examining Attorney cites the record evidence of Donald Trump's fame and claims that "Donald Trump is so well known that members of the purchasing public will associate the name 'TRUMP' as used in Applicant's mark with the President and will reasonably assume that President Trump is being identified," *id.*, and further argues that "the evidence of record shows the term INDICT THE TRUMP ORGANIZATION has been used by others as a reference to Donald Trump as seen by online news sites and publications." *Id.*

The Examining Attorney further argues that the "fact that a mark may also contain other matter, in addition to a name, portrait, or signature, does not alter the requirement for written consent to register from the identified individual." *Id.* According to the Examining Attorney, "the additional terms reinforce the mark is a

[19] *Id.* at TSDR 1,028-1,102.

reference to Donald Trump as the terms INDICT TRUMP and TRUMP ORGANIZATION are both frequently associated with Donald Trump." *Id.*

The Examining Attorney rejects Applicant's factual arguments that TRUMP ORGANIZATION in the proposed mark refers to deceased persons and not to Donald Trump, and that TRUMP in the proposed mark is not a reference to Donald Trump, on the grounds that the identification of services with which the mark is intended to be used expressly references Donald Trump and that the record shows that TRUMP ORGANIZATION is frequently used with reference to Donald Trump. *Id.* at 5-6.

The Examining Attorney concludes that

> [t]he evidence shows the terms INDICT TRUMP and TRUMP ORGANIZATION used to reference Donald Trump. In combination with Applicant's applied for services, the term TRUMP uniquely and unmistakably references Donald Trump as he is frequently referenced by his last name, his business dealings, and high level positions in the many business entities bearing his last name.

Id. at 6.[20]

[20] The phrase "uniquely and unmistakably" in the Examining Attorney's argument is a term of art in cases under Section 2(a) of the Trademark Act, the pertinent portion of which prohibits registration of "matter which may . . . falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols." *See ADCO*, 2020 WL 730361, at *4 (quoting 15 U.S.C. § 1052(a)). One of the elements of a Section 2(a) claim or refusal is proof that the involved mark "point[s] uniquely and unmistakably" to a particular person. *Id.* (citation omitted). There is no Section 2(a) refusal at issue in any of the four appeals, and it is unnecessary for us to find that the name TRUMP in the proposed mark INDICT THE TRUMP ORGANIZATION "uniquely and unmistakably" references Donald Trump to affirm the Section 2(c) refusal. *Mystery Ranch*, 2022 WL 1736945, at *15-16, 20 (sustaining opposition under Section 2(c) but dismissing opposition under Section 2(a) because the applicant's mark did not point uniquely and unmistakably to the opposer).

We begin our analysis with Applicant's argument that "Section 2(c) does not [apply] to corporations that have been named after individuals, or have individuals with [the] same name as owners or executives." 5 TTABVUE 5. As noted above, the names clause in Section 2(c) prohibits registration of a mark that "consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent . . . ." 15 U.S.C. § 1052(c). Applicant appears to contend that where a mark is, or includes what is or appears to be, the name of a juristic person, the mark cannot "consist[ ] of or "comprise[ ] a name . . . identifying a particular living individual" within the meaning of Section 2(c) as a matter of law.

Applicant cites no authority for his position and we have located none. The names clause in Section 2(c) has been applied for more than 70 years to marks containing a name and other matter. In *Reed v. Bakers Eng'g & Equip. Co.*, Ser. No. 528997, 1954 WL 5348 (Exam'r in Chief 1954),[21] cited by the Examining Attorney, 7 TTABVUE 5, the Examiner in Chief reversed the dismissal of a cancellation proceeding under Section 2(c) against the mark REED REEL OVEN for baker's ovens because the name "Reed" in the mark referred to the petitioner, a living individual who was well known in the oven business. The Examiner in Chief analyzed the applicability of the names clause in Section 2(c) to the REED REEL OVEN mark as follows:

> Respondent states that the trade mark is not "Paul N. Reed" and that petitioner's name is not "Reed Reel Oven" and argues in effect that the statute is applicable only when the full name of an individual is used. However, the statute refers to a trade mark which "consists of or

[21] Prior to the Board's creation in 1958 by an amendment to the Trademark Act, USPTO inter partes proceedings were handled by agency officers.

> comprises a name . . . identifying a particular living individual." It should be noted first that the word "comprises" is used as well as "consists of" and hence **the trade mark in question may include other matters than the name**.
>
> Second, the statute uses the words "a name" and not the words "the name". Hence "name" in section 2(c) is not restricted to the full name of an individual but refers to any name regardless of whether it is a full name, or a surname or given name, or even a nickname, which identifies a particular living individual, although in the case of the use of the surname only it is possible that the name may lose all significance of identifying a particular individual.

Reed, 1954 WL 5348, at *5.

Under *Reed* and its recent progeny, where a mark "comprises" (that is, includes) a name, and the name identifies a particular living individual, the names clause in Section 2(c) bars registration of the mark in the absence of written consent from the identified living individual. *See*, *e.g.*, *Hoefflin*, 2010 WL 5191373, at *2 (affirming refusal to register OBAMA BAHAMA PAJAMAS, OBAMA PAJAMA, and BARACK'S JOCKS DRESS TO THE LEFT); *ADCO*, 2020 WL 730361, at *9 (affirming refusal to register TRUMP-IT MY PACKAGE OPENER MAKE OPENING PACKAGES GREAT and design and TRUMP-IT MY PACKAGE OPENER and design); *Mystery Ranch*, 2022 WL 17369425, at *19 (sustaining opposition to registration of DANA DESIGN and the design of a hiker); *In re Elster*, Ser. No. 87749230, 2020 WL 14008587, at *4 (affirming refusal to register TRUMP TOO SMALL) (non-precedential), *aff'd*, 2024 WL 3530200, at *1 (Fed. Cir. July 25, 2024).[22] We see no

[22] A similar analysis has been applied under Section 2(e)(4) of the Trademark Act, which bars registration on the Principal Register of a mark that is "primarily merely a surname" absent a showing of acquired distinctiveness. 15 U.S.C. § 1052(e)(4). Multiple marks consisting of

reason, based on the text of the names clause in Section 2(c) or otherwise, why Applicant's proposed mark INDICT THE TRUMP ORGANIZATION, which includes a surname as part of the name of a juristic person, must be treated differently.[23]

We turn now to Applicant's factual argument that the word TRUMP in his proposed mark INDICT THE TRUMP ORGANIZATION "refers to deceased persons, Elizabeth Christ Trump and Fred Trump," 5 TTABVUE 5, not the living individual Donald Trump. Applicant's argument is belied by his own conduct and evidence.

The service identified in the application to register INDICT THE TRUMP ORGANIZATION as "on-line journals, namely, blogs featuring information about Donald Trump, namely, as it relates to politics and political campaigning" specifically refers to Donald Trump, not deceased members of the Trump family (or other living members of the Trump family), and Applicant sought the following "Consent to Registration" from Donald Trump in connection with the application:

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the trade names of juristic persons have been found to be "primarily merely a surname" within the meaning of Section 2(e)(4). *See*, *e.g.*, *In re Weiss Watch Co.*, Ser. No. 86782562, 2017 WL 2876824 (TTAB 2017) (WEISS WATCH COMPANY); *In re Integrated Embedded*, Ser. No. 86140341, 2016 WL 7368696 (TTAB 2016) (BARR GROUP); *Mitchell Miller, A P.C. v. Miller*, Opp. No. 91184841, 2013 WL 2329829 (TTAB 2013) (MILLER LAW GROUP).

[23] Applicant's reliance on the existence of third-party registrations of marks such as FORD MOTOR COMPANY and BECHTEL GROUP, 5 TTABVUE 6, is misplaced. "It is axiomatic that the 'Board must assess each mark on its own facts and record," *In re Korn Ferry*, Ser. No. 90890949, 2024 WL 3219482, at *5 (TTAB 2024) (quoting *In re Am. Furniture Warehouse Co.*, Ser. No. 86407531, 2018 WL 1942214, at *7 (TTAB 2018) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342 (Fed. Cir. 2001)), and that "'the prior decisions and actions of other trademark examining attorneys in registering other marks are not binding upon the USPTO or the Board.'" *Id.* (quoting *In re Dolce Vita Footwear, Inc.*, Ser. No. 88554717, 2021 WL 2285577, at *2 n.6 (TTAB 2021) (citation omitted)).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK APPLICATION -- PRINCIPAL REGISTER

In re Application of Michael A. Handal)
)
Appl. Serial No.: 90/340613)
)
Mark: **INDICT THE TRUMP ORGANIZATION**)
)
_____)

CONSENT TO REGISTRATION

Donald J. Trump, an individual, hereby consents to the use and registration of my name as a trademark and/or service mark with the USPTO for the above mark in this Application only.

Dated: February __, 2021

_____
Donald J. Trump

[24]

Applicant's request for written consent from Donald Trump is an admission that the word TRUMP in the proposed mark INDICT THE TRUMP ORGANIZATION is the name of the particular living individual Donald Trump.

As noted above, Applicant made of record a Wikipedia entry captioned "The Trump Organization."[25] The entry begins as follows: "The Trump Organization is a group of about 500 business entities of which **Donald Trump is the sole or principal owner**. Around 250 of these entities use the **Trump name**."[26] The entry goes on to discuss the Trump Organization, and often refers to Donald Trump as the person identified in the "Trump Organization" name. The Examining Attorney made

[24] May 9, 2021 Response to Office Action at TSDR 749 (Ser. No. 90340613).

[25] *Id.* at TSDR 889-925.

[26] *Id.* at TSDR 890 (emphasis added).

of record pages from the website at trump.com identifying Donald Trump as the "Founder, The Trump Organization."[27]

As noted above, Applicant admits that if Section 2(c) applies to the proposed mark INDICT THE TRUMP ORGANIZATION, "Donald J. Trump is extremely famous." 5 TTABVUE 4 (Ser. No. 90340613). The record as a whole leaves no doubt that the word TRUMP in the proposed mark INDICT THE TRUMP ORGANIZATION refers to the particular living individual Donald Trump. We affirm the Section 2(c) refusal to register that proposed mark because the public would view the word TRUMP in the proposed mark as identifying Donald Trump, whose written consent is not of record.

Decision: The four refusals to register are affirmed.

[27] March 22, 2021 Office Action at TSDR 17-24.