

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: June 5, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Student Ally, Inc.
—

Serial No. 90046632
—

Peter W. Peterson of DeLio Peterson & Curcio LLC,
for Student Ally, Inc.

Michael Eisnach, Trademark Examining Attorney, Law Office 104,
Zachary Cromer, Managing Attorney.

—
Before Kuhlke, Dunn, and Elgin,
Administrative Trademark Judges.

Opinion by Elgin, Administrative Trademark Judge:¹

Student Ally, Inc. (“Applicant”) seeks registration on the Supplemental Register of the mark STUDENT ALLY (in standard characters) for services ultimately identified as “Providing training for University administration on compliance with

¹ As part of an internal Board pilot citation program on possibly broadening acceptable forms of legal citation in Board cases, this opinion varies from the citation form recommended in the TRADEMARK BOARD MANUAL OF PROCEDURE (TBMP) § 101.03 (2023). 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 only 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 employs citation to the LEXIS database. Until further notice, practitioners should continue to adhere to the practice set forth in TBMP § 101.03.

governmental regulations, claims investigations, evidence collection and location-based student safety emergency alert systems,” in International Class 41. The appeal is fully briefed.²

We affirm the refusal to register on the ground that it is generic for the identified services under Trademark Act Sections 23(c) and 45, 15 U.S.C. §§ 1091(c) and 1127, and do not reach the refusal for failure to function as a mark under Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§ 1051-53 and 1127.

I. Prosecution History and Evidence

We first summarize the prosecution history of the application because it provides useful background for our analysis of the grounds for refusal.

Application Serial No. 90046632 originally was filed on July 10, 2020 based upon Applicant’s bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), in connection with “providing training for university administration on compliance with governmental regulations, claims investigations, evidence collection and student safety, and downloadable software therefor,” in International Class 41.³

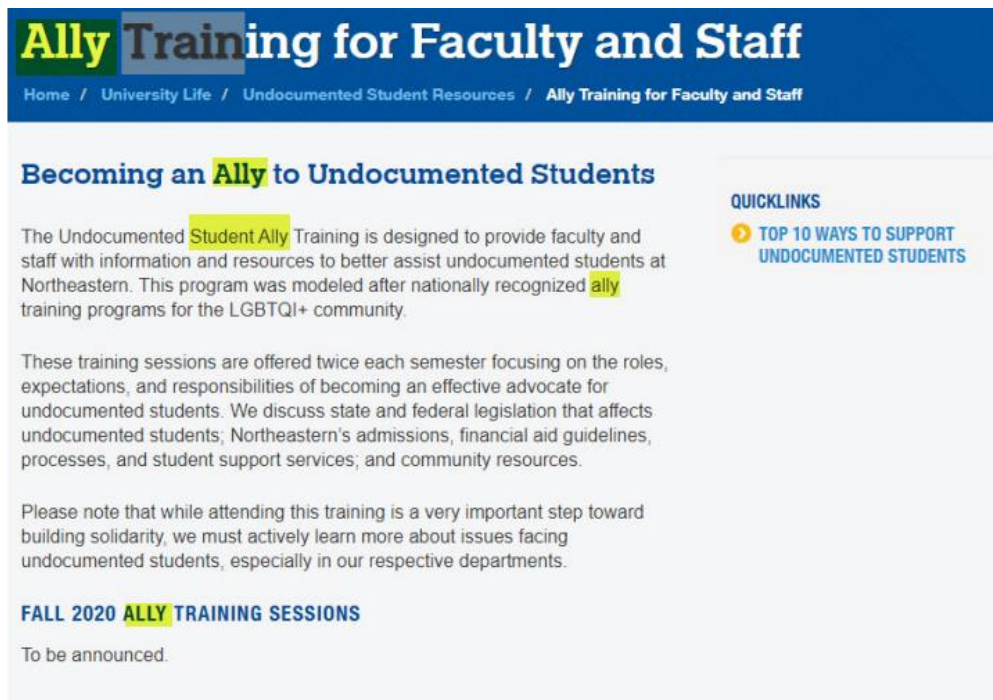
On October 28, 2020, the Examining Attorney issued a nonfinal office action refusing registration of Applicant’s proposed mark on the grounds that: (1) it is merely descriptive of a feature of Applicant’s services under Trademark Act Section 2(e)(1), 15 U.S.C. § 1052(e)(1); (2) the identification of goods and services was indefinite and

² Applicant’s Brief and Reply Briefs are at 6 TTABVUE and 9 TTABVUE. The Examining Attorney’s Brief is at 8 TTABVUE.

³ July 10, 2020 Application.

overly broad; and (3) the identification included services in Class 41 and goods in Class 9, but Applicant had paid insufficient fees for two classes (the “multiple class requirement”).⁴ The Examining Attorney suggested amendments to the identification, including an option to delete “and downloadable software therefor.”⁵ The Section 2(e)(1) refusal was supported by website evidence showing use of “ally” and “student ally” in connection with training services by five universities (highlighting added for emphasis):

Northeastern Illinois University:⁶



⁴ Oct. 28, 2020 Nonfinal Office Action at TSDR 1. Citations to the prosecution record refer to the .pdf version of the TSDR system. *See In re Integra Biosciences Corp.*, Ser. No. 87484450, 2022 TTAB LEXIS 17, at *6 (TTAB 2022). Citations to the briefs in the appeal record refer to the Board’s TTABVUE docket system. *See New Era Cap Co. v. Pro Era, LLC*, Opp. No. 91216455, 2020 TTAB LEXIS 199, at *4 n.1 (TTAB 2020).

⁵ Oct. 28, 2020 Nonfinal Office Action at TSDR 2.

⁶ *Id.* at TSDR 4.

Central Michigan University:⁷

What is an Online Student Ally?

The Online **Student Allies** are CMU students, just like yourself, who have been trained and have been successful in completing online courses. We are an extra tool for students to utilize when they are struggling in their online courses. We are a separate entity from your course instructor, therefore questions that involve course content, grades and tutoring questions should be directed toward your professor. Typically, we assist students with such items as:

- time management skills
- study tactics
- finding additional resources for courses
- creating a course calendar to help you prepare for upcoming assignment due dates and manage priorities
- any other concerns or needs you may have

Visit [Online Ally Resources](#) for helpful eLearning tips, best practices and resources. We would be more than happy to help you with any concerns or questions you may have throughout your online course. Please do not hesitate to send us an email or give us a call! The Online Ally services can be reached via email at onlineally@cmich.edu.

Northern Illinois University:⁸

Undocumented Student Ally Program

We offer information and training to those who wish to become **allies to undocumented students**. By supporting undocumented students, you can help create a welcoming campus and encourage cultural and intellectual diversity at NIU.

Our Undocumented **Student Ally Training** is one way to learn about issues faced by undocumented students in different areas of campus. We also encourage you to:

- Learn about relevant state and federal legislation.
- Become familiar with campus resources.
- Use the term "undocumented" instead of "illegal," and encourage others to do the same.
- Follow [Dream Action NIU](#) on social media.

Undocumented Student Ally Training

Each semester, we offer **ally training** to NIU faculty, staff and students. Participants learn how to be effective advocates for undocumented students. You'll learn about:

- State and federal legislation that affects undocumented students.
- Educational, economic and psychological challenges faced by undocumented students.
- Campus and community resources that support undocumented students and improve their educational experience.

Sessions are offered each semester.

[Register for Undocumented Student Ally Training](#)

The Role of an Ally

As an **ally to undocumented students**, you'll:

- Learn about the legal rights of undocumented students and support their right to enroll in schools and universities.
- Listen to undocumented students with an open mind and keep your communications with them confidential.
- Avoid revealing a student's undocumented status without their permission and help them reveal it at their own pace.

Learn more about [supporting undocumented students \(PDF\)](#).

⁷ *Id.* at TSDR 5.

⁸ *Id.* at TSDR 6.

Golden West College:⁹

ALLY TRAINING SERIES



Vet Net Ally Training

The VET NET Ally Program is an education and awareness program that develops a network of faculty, staff, and administrators committed to creating a welcoming and supportive campus environment for military service members and veterans at GWC.

The VET NET Ally Program supports the academic freedom and professional, personal, and social success of service

and

STUDENT ALLY CENTER

IN THIS SECTION

- [Student Equity](#)

- [Equity Bulletins](#) ▼

- [Undocumented Student Week of Action](#) ▼

- [Current Student Projects](#)

- [Ally Training Series](#)

- [Student Ally Center](#)

- [Student Equity Plan](#)

- [Apply for Equity Funds](#)

The Student Equity and Achievement Program opened the Student Ally Center in Fall 2019 to serve all student populations through a case management approach and by connect students with on- and off-campus resources to address non-academic challenges.

Services in the Student Ally Center include: study space, student computers, financial aid office hours, student club meeting space, workshop rooms, faculty office hours space, counseling space, and on and off campus resources.

At Golden West College we understand and acknowledge that students face many challenges outside the classroom. The Student Ally Center supports students with non-academic challenges through resource connections. Our team helps students navigate these challenges to increase their persistence and completions of academic goals. If you or a student you know requires support, please use this form to submit a request to have a Student Ally Center representative contact you.

Examples of Current Cases:

- Food insecurity
- Home insecurity
- Undocumented Status
- Discrimination (Age, Race, Gender, Ability, Preferred Name, Pronouns, etc.)

[Student Ally Center Intake Form](#)

⁹ *Id.* at TSDR 7-8.

Loyola University Chicago:¹⁰

Share the DREAM Undocumented Student Ally Training

Reserve your seat today!

Sign up for a Fall 2019 Ally training session



TRAINING

Spring 2020 training sessions will be announced in January

2-hour workshops will be offered to students in Spring 2020!

CIVIC ENGAGEMENT

Next Steps for all students

Consider becoming an Undocumented Student Ally

Reach out to your U.S. Senators and Representatives and urge them to act to preserve DACA's protections. Find out how to contact your elected officials through this [government resources page](#).

and

¹⁰ *Id.* at TSDR 9-11.

AWARENESS | ADVOCACY | ALLIANCE

The Share the DREAM Undocumented **Student Ally** Trainings began in 2012 with the introduction of the Deferred Action for Childhood Arrivals (DACA) referendum presented by President Barack Obama. The trainings were successfully offered through a collaboration by the Department of Student Diversity and Multicultural Affairs (SDMA) and the Center for Urban Research and Learning (CURL). These trainings are modeled after UndocuPeers: Liberating Campus Climate training developed by **United We Dream's (UWD)**, the largest immigrant youth-led organization in the nation. To date, over 350 faculty, staff, and students have completed the Share the Dream trainings as part of a University-wide effort to support undocumented students.

The Share the DREAM Undocumented **Student Ally** Trainings provide the Loyola community with skills to understand the value and importance of exploring the experiences and perspectives of undocumented students; they aim to generate knowledge for self-learning; and they increase on-campus support for and the inclusion of undocumented students. Upon completing the training, trainees receive a placard that recognizes them as **allies and as points of support for undocumented students on campus**. The goal is that participants display these placards in their work area to invite questions and/or dialogue about the issues that impact this community.

Trainings are held several times a year and are open to faculty, staff, and students. It is important that trainees commit to the entire two hours in order to receive all of the information they need in order to support this community.

On April 12, 2021, Applicant filed an amendment to allege use in commerce under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), claiming first use and first use of the mark in commerce as early as April 5, 2021.¹¹ The filing was supported by a specimen of use comprising printouts of Applicant's mobile application and its website at studentally.com, including the website screenshot shown below:¹²

¹¹ April 12, 2021 Amendment to Allege Use.

¹² *Id.* at TSDR 20. The specimen also shows Applicant's mobile application, which was at issue until Applicant deleted reference to it in its identification on November 10, 2021. *See infra* text accompanying note 27.



On the same date, Applicant filed a response to the first office action in which it presented arguments traversing the mere descriptiveness refusal, but failed to address the identification issue and multiple class requirement.¹³

On May 14, 2021, the Examining Attorney issued a second nonfinal office action maintaining the mere descriptiveness refusal and noting that Applicant failed to address the identification issue and multiple class requirement. He supplemented the evidence of record with a dictionary definition of “ally” as “someone who supports people who are in a minority group or who are discriminated against, even though they do not belong to that group themselves.”¹⁴ The Examining Attorney noted that Applicant’s “app is for students to help other students; in other words, to be an ally.”¹⁵

¹³ April 12, 2021 Response to Office Action.

¹⁴ May 14, 2021 Nonfinal Office Action at TSDR 2, 5-14.

¹⁵ *Id.* at TSDR 2. This argument appears to be relevant to Applicant’s mobile application for students, which was deleted in the identification, not its training services for University administrators. *See infra* note 27.

The Examining Attorney also refused registration under Trademark Act Sections 1, 2, 3, and 45 on the ground that “student ally” fails to function as a trademark in that it “merely convey[s] an informational message”¹⁶ He attached website printouts from five universities and three media sites using the term “student ally” to show “that this wording is commonly used to refer to students who are helping other students.”¹⁷ These printouts include the following (highlighting added by the Board for emphasis):

The University of Louisville:¹⁸



¹⁶ *Id.* at TSDR 3.

¹⁷ *Id.*

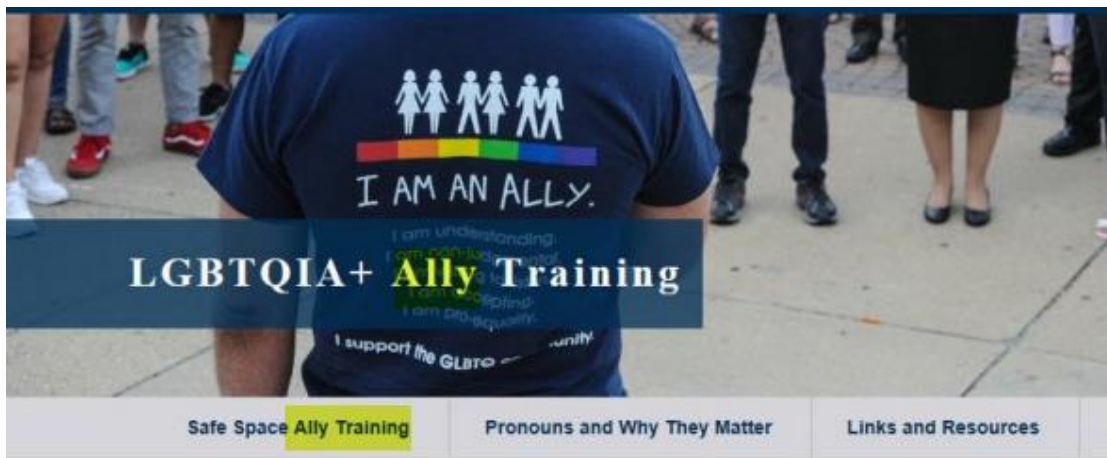
¹⁸ *Id.* at TSDR 19-21.

Rowan University:¹⁹

Tantamount to that has been the work of the Rowan **Student Ally** Network, a group of more than 80 University employees—from secretaries to professional staff members to vice presidents to deans—who have checked on students to ensure they have the services and supports they need to thrive.

When Rowan went to online learning in March, the network connected with students requiring assistance and supports. Since then, the **Student Ally** Network has referred students to various University offices, including helping them to secure **CARES Act funding**. According to McElwee, more than \$3 million was provided to students.

Old Dominion University:²⁰



[Safe Space Ally Training](#)

Interested in learning more about LGBTQIA+ identities and being recognized as a university-sponsored **ally** to the LGBTQIA+ community? Look no further! Safe Space offers two day training sessions to give you education and experience with the LGBTQIA+ community to provide you with the skills and resources to be an effective **ally**. These are two day training sessions, and attendance at BOTH sessions is required to complete the course and receive your **ally** certificate.

and

¹⁹ *Id.* at TSDR 22-24.

²⁰ *Id.* at TSDR 25-27.

The goals of our training sessions include:

- Provide an overview of what it means to be an "ally" for any ODU faculty, staff or student.
- Educate the community on issues/trends/concerns with LGBTQ students, faculty and staff.
- Provide additional resources (websites, theories, contacts, etc.) that might be of use to an ally.

See Who Our Campus Allies Are!

Interested in seeing how many of our campus faculty, staff, and graduates students are Safe Space Campus Allies? Click this link to view our spreadsheet with the Name, Title, and Contact info of our trained allies. We do not list undergraduate students for privacy concerns as well as knowing that this population is ever-changing.



Have you taken the training and don't see your name listed? Contact safespace@odu.edu and we can get you added!

California State University – Long Beach:²¹

**THE SENATE OF THE ASSOCIATED STUDENTS
CALIFORNIA STATE UNIVERSITY, LONG BEACH**

Bill Number:	Senate Resolution #2017-25
Title:	Creation of Muslim Student Ally Training
Sponsored by:	Senators-at-Large Yasmeeen Azam and Yasmin Elasmr, and Senator for the College of the Arts Sofia Musman
Date Submitted:	March 17, 2017
Date Approved:	April 12, 2017

WHEREAS the institutionalization of Islamophobia, in association with Orientalized and dehumanized perceptions of Muslim persons, as well as the exploitation of Muslim-majority countries around the world, are all deliberate processes that require deliberate institutional resistance through education and allyship; now therefore, be it

²¹ *Id.* at TSDR 43.

University of Southern California:²²

Student Ally Accessibility Tools

ITS has launched a new Blackboard feature called **Ally** that allows you to download your course files in different formats, like a MP3 or mobile-friendly version.

For assistance with Ally, please email the ITS Ally Support Team at ally_usc@usc.edu.

Choose Your Alternate Format +

Learning Benefits for Alternative Formats +

[Learning-Benefits-of-Alt-Formats-Guide](#) [Download](#)

Other non-university website evidence made of record includes (bolded for emphasis):

- A page on the website *Standing With You* entitled “Become a **Student Ally**” to assist high school and college-aged women with unplanned pregnancies, including training to become a “Standing With You **Student Ally**.”²³
- A podcast on the website for the *Future Makers Coalition* entitled “Higher Education: Being a Student ally,” featuring a “student success advisor” at Florida Southwestern State College who describes “how she helps students achieve their goals and is dedicated to being a **student ally**.”²⁴
- An article on the website *Medium.com* (dated Mar. 9, 2015) entitled “Teachers: Who’s on Your Team? Teacher as **student ally**, student as teacher ally.”²⁵

In addition, the Examining Attorney attached additional materials from Applicant regarding its goods and services, include one explaining the mobile application: “The Student Ally Application empowers students to take a more active role in their

²² *Id.* at TSDR 42.

²³ *Id.* at TSDR 28-29 (bolded for emphasis).

²⁴ *Id.* at TSDR 30-33 (bolded for emphasis).

²⁵ *Id.* at TSDR 34-41 (bolded for emphasis).

personal safety and community wellbeing. The Student Ally System is built around engaging and empowering student communities, and our application is the primary conduit for that empowerment.”²⁶

The Applicant’s November 10, 2021 response to the office action accepted the Examining Attorney’s proposed identification of services in Class 41, including deletion of the phrase “and downloadable software therefor.”²⁷ Applicant presented arguments against the descriptiveness and failure to function refusals, and requested “the opportunity to amend its application to seek registration on the Supplemental Register.”²⁸ Applicant also submitted printouts from its website to show use of STUDENT ALLY as a trademark. These printouts show, in part (highlighted for emphasis):



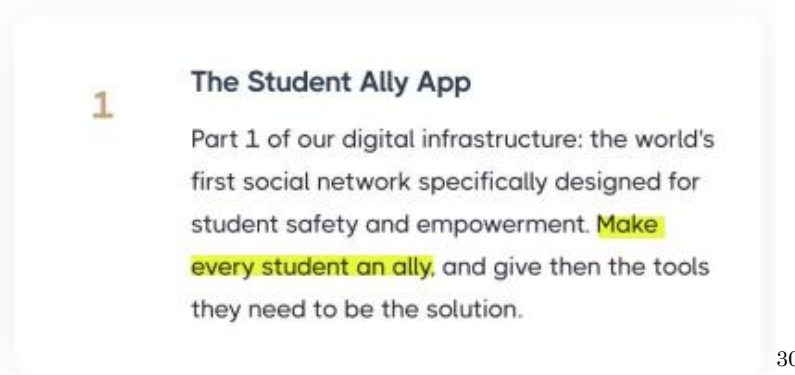
29

²⁶ *Id.* at TSDR 16-18.

²⁷ Nov. 10, 2021 Response to Office Action at TSDR 3, 4.

²⁸ *Id.* at TSDR 5.

²⁹ *Id.* at TSDR 11.



Student Ally is the world's first social network dedicated to ending sexual assault. In Student Ally, there are no victims, no bystanders, no students or administrators. We are all just Allies in the fight to end sex-based discrimination.³¹

The Examining Attorney issued a final office action on December 9, 2021 maintaining refusal of the mark on the descriptiveness and failure to function grounds.³² The Examining Attorney again supplemented the evidence of record to add a definition of “student” as “someone who goes to school.”³³ He submitted additional evidence from Applicant's website, arguing it shows use of the term “ally” (though sometimes capitalized) descriptively, including such phrases as:³⁴

- “Make your school an Ally today”
- “Make every student an ally, and then give them the tools they need to be the solution.”

³⁰ *Id.* at TSDR 12.

³¹ *Id.* at TSDR 15-16.

³² Dec. 9, 2021 Final Office Action at TSDR 4. The Examining Attorney also notified Applicant that amending the application to the Supplemental Register, or asserting a claim of acquired distinctiveness under Trademark Section 2(f), 15 U.S.C. § 1052(f), would not obviate the refusals. *Id.*

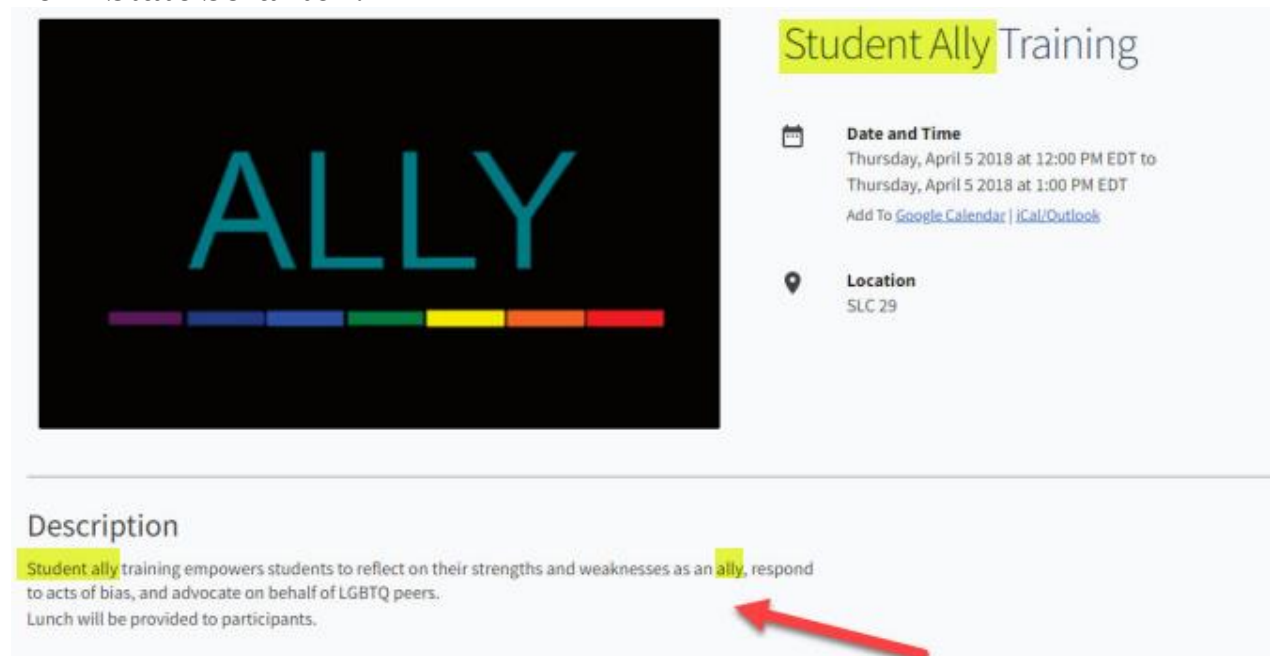
³³ *Id.* at TSDR 24-25.

³⁴ *Id.* at TSDR 7, 9, 13, 14, 15.

- “We are just Allies in the fight to end sex-based discrimination.”
- “What would you do with twice the bandwidth and a team of professionals at your disposal? Become an Ally and find out.”
- Become an Ally and make your school a national leader in student safety, sexual assault prevention, and Title IX compliance.”
- “Watch an Ally empowers users to share their location with other Allys.”

The Examining Attorney included additional evidence of third party use of the term “ally” and “student ally” from universities and media sources (highlighting added for emphasis):

Penn State Scranton:³⁵



³⁵ *Id.* at TSDR 16. The arrow in this screenshot was added by the Examining Attorney.

Washington State University – Pullman:³⁶



and

Student Ally Training is a broad presentation on how to support lesbian, gay, bisexual, and trans* individuals!

After participating in this training, attendees will be able to:

- Differentiate between sexual orientation, sex, gender expression, and gender identity.
- Describe issues LGBT individuals experience in higher education and in society.
- Recognize heterosexual and cisgender privilege in higher education and in society.
- Define terms that are most salient in the LGBT community.
- Discuss how to be a better **ally** to the LGBT community.

³⁶ *Id.* at TSDR 17-18.

Crafton Hills College:³⁷



To host a training, follow these simple steps:

- ⇒ Gather a group of at least five interested students
- ⇒ Contact Breanna Andrews to set up a training day and time. Trainings are usually 1.5-2 hours
- ⇒ Administer a follow up survey
- ⇒ Compile a list of Peer Allies

It's that easy!

Crafton Hills College established its employee Safe Space program in 2014 and its student program in 2015. Those who complete the training are called "allies" and these allies create safe spaces by being open in their support. Safe Space helps to establish a campus as an inclusive and educational environment where all members can engage, learn, and advance.

and

Why be a student ally?

Because we all deserve to learn in a safe, supportive and welcoming environment.

A news article about a program at Lone Star College explains plans to pilot a “student ally” program to make LGBTQ students feel safer. The article explains that the program will be modeled after an existing certification program for employees, which “comes with a door sticker and a lapel pin to heighten visibility on campus [and] says to our LGBTQ students on campus ‘I see you, I support you.’”³⁸

³⁷ *Id.* at TSDR 19-20.

³⁸ *Id.* at TSDR 21-26.

Applicant requested reconsideration of the final refusal and (despite the Examining Attorney's warning) amended its application to seek registration on the Supplemental Register.³⁹ Applicant also filed a notice of appeal.⁴⁰ The Examining Attorney withdrew the refusal on the basis of mere descriptiveness, and maintained the refusal on the ground that the phrase "student ally" fails to function as a mark; he also issued a new refusal on the ground that "student ally" is generic under Trademark Act Sections 23(c) and 45 based upon the evidence previously discussed.⁴¹

After the Applicant responded with arguments,⁴² the Examining Attorney made the refusals final, again supplementing the record with examples of use of "student ally" and "ally." This evidence included additional university website evidence (highlighting added by the Board or the Examining Attorney for emphasis):

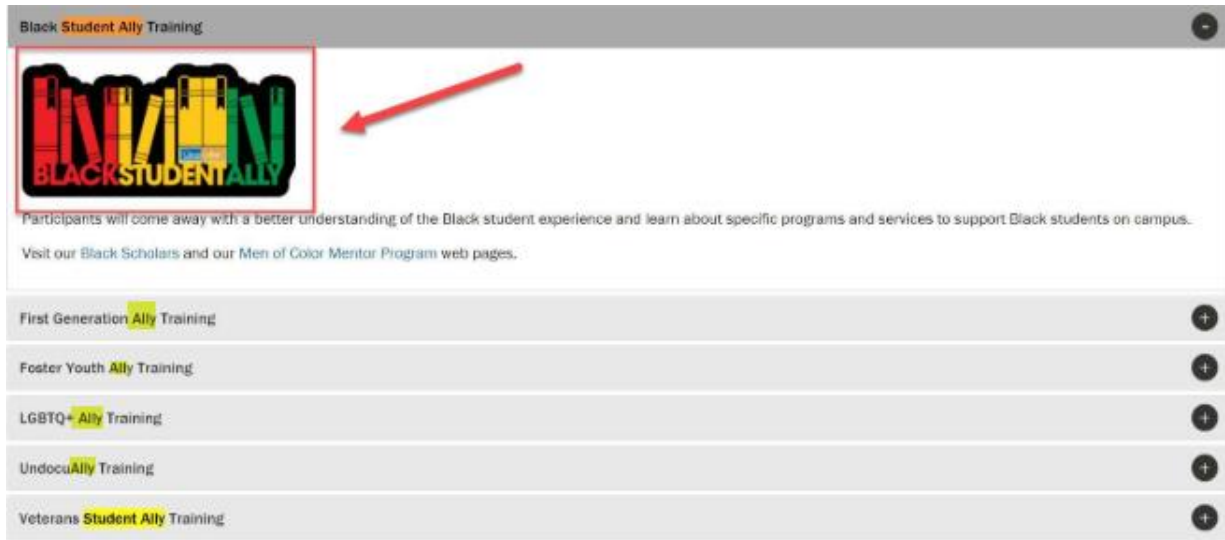
³⁹ May 17, 2022 Request for Reconsideration at TSDR 2.

⁴⁰ *See* 1 TTABVUE.

⁴¹ July 6, 2022 Nonfinal Office Action at TSDR 1-2.

⁴² Dec. 20, 2022 Response to Office Action.

Citrus College:⁴³



College of the Redwoods:⁴⁴



⁴³ April 25, 2023 Continuing Final Office Action at TSDR 14-17. The arrow in this screenshot was added by the Examining Attorney.

⁴⁴ *Id.* at TSDR 18-24.

California State University Channel Islands:⁴⁵

Undocumented Student Ally Program



About the Program

Faculty and Staff on campus can choose to take part in our ally program to serve as allies to undocumented students on campus. The program offers three levels of training so that individuals can choose how involved they want to be and how much in depth knowledge they want. Each level requires a two hour training workshop and will be available throughout the academic year. Each level grows and relies on information from the

IDENTITY, DIVERSITY, EQUITY & ACCESS

Associate Vice President's Office

DACA FAQs

About Us

Contact Us

and

Bronze/Fundamental Level Learning Outcomes:

1. Know the national and state policies that impact our student body: AB 540, Deferred Action for Childhood Arrivals (DACA), Immigration Executive Orders.
2. Know the two primary resources on campus for immigrant students.
3. Identify the four critical issues that the issue of immigration has on a student's everyday life and academic potential.

Miami University (Ohio):⁴⁶

Ally Directory

Connect with faculty and staff who support first-generation students and their families, including those who were the first in their own families to earn a four-year degree.

Connect via email by clicking the appropriate name.

23

⁴⁵ *Id.* at TSDR 28-30.

⁴⁶ *Id.* at TSDR 31-53.

University of Toledo:⁴⁷

SPRING 2021 (UN)DOCUMENTED STUDENT ALLY TRAINING REGISTRATION

(Un)documented Student Ally Training Registration

The (Un)documented Student Ally Training for faculty and staff will help them understand the unique challenges that this student population faces. It focuses on the significance of policies; ways to be an effective ally; as well as campus and community resources that are available. Join us for this interactive session in which we will highlight ways in which this population of students experience their higher education journey differently than others.

Golden West College:⁴⁸

HOME > STUDENT EQUITY

ALLY TRAINING SERIES

Vet Net Ally

The VET NET Ally Seminar is an education and awareness program that develops a network of faculty, staff, and administrators committed to creating a welcoming and supportive campus environment for military service members and veterans at GWC.

Ability Ally

The Ability Ally Training Program creates a network of faculty, staff, and students who take a visible role in promoting disability awareness by actively supporting people with disabilities and maintaining appropriate resources for working and interacting successfully with people with disabilities.

UndocuAlly

The UndocuAlly Training is an education and awareness program that develops a network of faculty, staff, and administrators committed to creating a supportive campus environment for undocumented students.

Equity Ally

The Equity Ally Training provides participants with a practical framework for understanding and deconstructing systemic racial inequities. This training equips participants with the skills needed to engage in positive dialogue to continue with the discussion of this important topic in a productive manner.

and

⁴⁷ *Id.* at TSDR 61-62.

⁴⁸ *Id.* at TSDR 65-69. This is additional material, *see supra* pictures accompanying note 9.

The Student Equity and Achievement Program opened the **Student Ally** Center in the Fall of 2019 to serve all student populations through a case management approach by connecting students with on-campus and community resources to address non-academic challenges.

Services in the **Student Ally** Center include: study space, student computers, Financial Aid office hours, student club meeting spaces, workshop rooms, faculty office hours space, counseling space, and on-campus and community resources.

University of Illinois - Urbana Champaign:⁴⁹

In the Zone **Allies** and Advocates Trainings

In the Zone, a collaboration funded by a Student Affairs Initiatives Grant to bring together the **allies** and advocates trainings which provided identity specific training for faculty, staff, and students. Offerings included:

- > **Disability Ally Program**
- > **ICARE Bystander Intervention Training**
- > **LGBTQ+ Ally Network**
- > **Racial Justice Allies and Advocates Training.**
- ▼ **Undocumented Student Ally Training**

Undocumented Student Ally Training provides staff, administration, and faculty information that will allow them to better serve undocumented students at the University of Illinois. This training is led by staff and students who are part of the Illinois Coalition Assisting Undocumented Students' Education (I-CAUSE). Sponsored by the Office of the Vice Chancellor for Diversity, Equity & Inclusion and La Casa Cultural Latina.
- > **Veteran Ally Workshops**

In addition, the Examining Attorney submitted (bold added for emphasis):

- A news article (dated Oct. 26, 2022) about “Global Zone International **Student Ally** Training” for faculty and staff at Southern Illinois University Edwardsville “to better understand the unique experiences and challenges that international students face and discuss how to most effectively serve the needs of the valued student population,” including “immigration restrictions.”⁵⁰
- An article (dated Nov. 11, 2019) reporting about Columbia University’s plans to implement a “**Student Ally Program**” for

⁴⁹ *Id.* at TSDR 79-82.

⁵⁰ Apr. 25, 2023 Continuing Final Office Action at TSDR 58-60.

faculty, consisting of “a series of workshops on how to support, communicate and work with marginalized student communities” including students who are racially diverse and first generation college students.⁵¹

- A news article in the Harvard Crimson (dated Oct. 4, 2013) regarding a departing Title IX investigator at Harvard University calling her a “**student ally** and support system”;⁵²
- An award for “Outstanding **Student Ally**” from Hamline University;⁵³
- A job posting by Leadership Public Schools for a “Student Ally”;⁵⁴ and
- An article by the National Education Association (dated Feb. 1, 2017) stating, “Here are some ways schools can support transgender students . . . Be a **student ally**.”⁵⁵

The Examining Attorney also supplied additional evidence of Applicant’s use of the term “ally” in its social media (Facebook) posts:⁵⁶

- “Take A Stand. Be An Ally.”
- “An effective orientation is the BEST WAY to prevent sexual assault, and every engaged student is another ALLY in the fight to end sexual violence. Let’s make every student an ALLY. Let’s make every student community an ALLIANCE.”

Following issuance of the Continuing Final Office Action, the appeal was resumed.

⁵¹ *Id.* at TSDR 70-73.

⁵² *Id.* at TSDR 75-78.

⁵³ *Id.* at TSDR 83-84.

⁵⁴ *Id.* at TSDR 85-91.

⁵⁵ *Id.* at TSDR 93-103.

⁵⁶ *Id.* at TSDR 63-64.

II. Whether the Proposed Mark is Generic

Generic terms are “by definition incapable of indicating source,” and so “are the antithesis of trademarks, and can never attain trademark status.” *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 1569 (Fed. Cir. 1987). “To allow trademark protection for generic terms, i.e., names which describe the genus of goods being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are.” *Id.* (citation omitted).

Whether a proposed mark is generic rests on its primary significance to the relevant public. *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 641 (Fed. Cir. 1991). Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?” *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 991 (Fed. Cir. 1986); *In re Virtual Indep. Paralegals, LLC*, 2019 TTAB LEXIS 74, at *4-5 (TTAB 2019).

A term also can be considered generic if the public understands it to refer to a part of the genus, “even if the public does not understand the term to refer to the broad genus as a whole.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 605 (Fed. Cir. 2016).

A. The Genus and the Relevant Public

Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration, as a rule “a

proper genericness inquiry focuses on the description of services set forth in the [application].” *Id.* at 602 (quoting *Magic Wand*, 940 F.2d at 640). The relevant public for a genericness determination is the purchasing or consuming public for the identified goods or services. *Magic Wand*, 940 F.2d at 640.

In this case, the Applicant and the Examining Attorney agree that the genus is adequately defined by the services identified in the Application: “providing training for university administration on compliance with governmental regulations, claims investigations, evidence collection and location-based student safety emergency alert systems,”⁵⁷ and that the relevant public is university administrators.⁵⁸ *See generally In re Katch, LLC*, 2019 TTAB LEXIS 154, at *9 (TTAB 2019) (the relevant public is the purchasing public for the identified services). With this in mind, we turn to whether the designation STUDENT ALLY is understood by the relevant purchasing public as primarily referring to Applicant’s training services.

B. The Relevant Public’s Understanding of the Mark

“Evidence of the public’s understanding of [a] term may be obtained from any competent source, such as consumer surveys, dictionaries, newspapers and other publications.” *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1559 (Fed. Cir. 1985). “An inquiry into the public’s understanding of a mark requires consideration of the mark as a whole. Even if each of the constituent words in a combination mark is generic, the combination is not generic unless the entire formulation does not add any

⁵⁷ Applicant’s Brief, 6 TTABVUE 13-14; Examining Attorney’s Brief, 8 TTABVUE 4-5.

⁵⁸ Applicant’s Brief, 6 TTABVUE 13; Examining Attorney’s Brief, 8 TTABVUE 5.

meaning to the otherwise generic mark.” *In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir. 2005), cited in *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 967 (Fed. Cir. 2015); *see also In re Mecca Grade Growers, LLC*, 2018 TTAB LEXIS 64, at *24 (TTAB 2018) (“Regardless of whether the mark is a compound term or a phrase, the applicable test is the same and the Board must consider the record evidence of the public’s understanding of the mark as a whole.”) (quoting *Princeton Vanguard*, 786 F.3d at 968).

There is no definition of “student ally” of record. Thus, we start our analysis with the definitions of the meanings of the individual words in the mark. The Examining Attorney made of record a definition of “student” as “someone who goes to school,”⁵⁹ and various definitions of “ally,” including:

- a person or group that supports another, esp[ecially] in the face of opposition
- a country, person, or group joined with another or others for a common purpose
- an associate; helper; auxiliary
- someone who supports people who are in a minority group or who are discriminated against, even though they do not belong to that group themselves.⁶⁰

The Examining Attorney argues that “[t]ogether, these words [STUDENT ALLY] convey that applicant’s services involve someone who goes to school and supports people in other groups even though they do not belong to that group.”⁶¹ Applicant does not challenge the accuracy of the definitions of “student” or “ally” supplied by the

⁵⁹ Dec. 9, 2021 Final Office Action at TSDR 24-25.

⁶⁰ May 14, 2021 Office Action at TSDR 5-14 (definitions of “ally”).

⁶¹ Examining Attorney’s Brief, 8 TTABVUE 5.

Examining Attorney. Nor does Applicant provide evidence or arguments regarding any additional meanings purportedly created by the combination of generic terms.⁶²

Taking these definitions together, the plain meaning of the phrase STUDENT ALLY is a person or group (such as a university, university administrators, faculty, or other students) who provides assistance or support to students facing discrimination or other struggle. *In re Gould Paper Corp.*, 834 F.2d 1017, 1018 (Fed. Cir. 1987) (affirming determination that SCREENWIPE is generic based on “evidence including dictionary definitions that the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound”).

We next turn to what perhaps is the best evidence of the relevant public’s perception of the phrase, Applicant’s own use. *Id.* at 1018-19 (“Gould’s own submissions provided the most damaging evidence that its alleged mark is generic and would be perceived by the purchasing public as merely a common name for its goods rather than a mark identifying the good’s source.”). We have reviewed all of Applicant’s materials of record, including its website, mobile application description, and social media posts.

Applicant’s materials show that Applicant uses the terms “student” and “ally” or “allies” generically in keeping with their ordinary meaning: e.g., “we are all just Allies

⁶² During prosecution, Applicant only proffered excerpts from its own website, *see* Nov. 10, 2021 Response to Office Action at TSDR 8-24, and a copy of its patent, *see* Dec. 20, 2022 Response to Office Action at TSDR 28-44. The patent does not concern the training services identified in the pending application.

in the fight to end sex-based discrimination”; “Make your school an Ally”; “The Student Ally System is built around engaging and empowering student communities”; and – most tellingly – “make every student an ally.”⁶³

Applicant argues that these materials only show use of the phrase STUDENT ALLY in a “trademark sense.”⁶⁴ In this case, although Applicant undoubtedly uses STUDENT ALLY as a trademark, such use does not render the phrase non-generic. *See Goodyear Tire & Rubber Co. v. Continental Gen. Tire Inc.*, 2003 TTAB LEXIS 277, at *31 (TTAB 2003) (“[T]he mere fact that applicant often capitalizes the term cannot salvage a term that the record shows otherwise to be a descriptive term.”). Applicant’s intent to exclusively appropriate the phrase as its trademark is not at issue. The issue is whether STUDENT ALLY is recognized as a trademark for the identified training services by the relevant public. *See In re 1800Mattress.com IP LLC*, 586 F.3d 1359, 1362 (Fed. Cir. 2009) (the issue is whether the relevant public understands the term to be generic). Moreover, no amount of evidence can transform a generic phrase into a registrable trademark. *See In re Half Price Books, Records, Mags., Inc.*, 1984 TTAB LEXIS 1, at *3 (TTAB 1984); *Miller Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75, 81 (7th Cir. 1977). Applicant’s generic uses strongly imbue its trademark uses with an overall generic meaning, and are strong evidence that the relevant public of university administrators views STUDENT ALLY, as a whole, to refer to a key aspect or function of Applicant’s services.

⁶³ See pictures and text accompanying notes 29, 30, 31, 34, and 56.

⁶⁴ Applicant’s Brief, 6 TTABVUE 17.

Finally, we turn to the Examining Attorney's evidence of third party use, including universities using "student ally," "ally" or "allies" in connection with support services (many including training) for various student groups, such as undocumented and other international students;⁶⁵ LGBTQIA+ and other students facing sexual discrimination;⁶⁶ veterans;⁶⁷ racially and religiously diverse students;⁶⁸ differently-abled students;⁶⁹ economically-disadvantaged students;⁷⁰ foster youth;⁷¹ first generation college students;⁷² and even students needing general assistance.⁷³ The record also includes examples of uses of the term "student ally" in various media

⁶⁵ See *supra* text and pictures accompanying notes 6 (Northeastern Illinois University), 8 (Northern Illinois University); 10 (Loyola University Chicago), 50 (Southern Illinois University Edwardsville), 43 (Citrus College), 44 (College of the Redwoods), 45 (California State University Channel Islands), 47 (The University of Toledo), 48 (Golden West College), and 49 (University of Illinois - Urbana Champaign).

⁶⁶ See *supra* text and pictures accompanying notes 9 and 48 (Golden West College), 18 (University of Louisville), 20 (Old Dominion University), 35 (Penn State Scranton), 36 (Washington State University - Pullman), 38 (Lone Star College University Park), 43 (Citrus College), and 49 (University of Illinois - Urbana Champaign).

⁶⁷ See *supra* text and pictures accompanying notes 9 and 48 (Golden West College), 43 (Citrus College), and 49 (University of Illinois - Urbana Champaign).

⁶⁸ See *supra* text and pictures accompanying notes 9 and 48 (Golden West College), 21 (California State University-Long Beach), 51 (Columbia University), 43 (Citrus College), and 49 (University of Illinois - Urbana Champaign).

⁶⁹ See *supra* text and pictures accompanying notes 9 and 48 (Golden West College) and 49 (University of Illinois - Urbana Champaign).

⁷⁰ See *supra* text and pictures accompanying notes 9 and 48 (Golden West College), 19 (Rowan University).

⁷¹ See *supra* text and pictures accompanying note 43 (Citrus College).

⁷² See *supra* text and pictures accompanying notes 51 (Columbia University), 43 (Citrus College), and 46 (Miami University (Ohio)).

⁷³ See *supra* text and pictures accompanying notes 19 (Rowan University), 37 (Crafton Hills College), 51 (Columbia University), and 48 (Golden West College).

referring to individuals providing support for students.⁷⁴ This evidence strongly supports a finding that university administrators would perceive STUDENT ALLY as referring to a key aspect of Applicant’s training services: to foster support for students, particularly those who are targets of discrimination or are otherwise marginalized.⁷⁵

Nonetheless, Applicant attempts to distinguish these third party uses:

The term “Student Ally” and “student ally” as cited are used for very different student programs by universities and colleges, and have no common meaning. None of these programs deal with the services at issue in the instant application for “STUDENT ALLY,” namely, “providing training for university administration on compliance with governmental regulations, claims investigations, evidence collection and location-based student safety emergency alert systems.”⁷⁶

Applicant also points out that “there is no competition between the various cited ‘Student Ally’ programs and Applicant’s services of providing training for university administration in the specified areas.”⁷⁷ Thus, Applicant maintains, even if STUDENT ALLY is generic for these other services, that same term “may be able to function as a trademark for a related but different product or service.”⁷⁸

⁷⁴ See *supra* text accompanying notes 23 (“become a student ally” for students with unplanned pregnancies), 24 (dedicated to being a “student ally”), 25 (“teacher as student ally”), 52 (Title IX investigator is a “student ally”), 53 (“Outstanding Student Ally” award), 54 (job posting for a “Student Ally”), and 55 (“Be a student ally” for transgender students).

⁷⁵ We note that one example, by the University of Southern California, depicts ALLY as a trademark for an accessibility feature of the Blackboard software program. See *supra* note 22.

⁷⁶ Applicant’s Brief, 6 TTABVue 13.

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* (citing cases); see also *id.* at 16-17.

At the outset, we disagree that Applicant is offering a service that is different from the third party examples of record. Admittedly, Applicant’s training services are targeted to universities seeking to comply with Title IX of the Education Amendments of 1972 (“Title IX”) and preventing sexual assault by promoting student safety on campus.⁷⁹ But Applicant’s identification of services is broadly for training on “governmental regulations, claims investigations, evidence collection and location-based student safety emergency alert systems” and is not limited to Title IX. The evidence indicates that at least six of these universities offered training on governmental legislation and regulations as part of their services.⁸⁰ The evidence also shows that Title IX investigators may be known as “student allies.”⁸¹ And almost all of the third party university evidence, broadly speaking, concerns student safety and well-being.

Thus, *In re Seats, Inc.*, 757 F.2d 274 (Fed. Cir. 1985) and *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4 (2d Cir. 1976), relied upon by Applicant, are

⁷⁹ Title IX protects individuals from discrimination based on sex in education programs or activities that receive federal financial assistance. “Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment, which encompasses sexual assault and other forms of sexual violence; treatment of pregnant and parenting students; treatment of LGBTQI+ students; discipline; single-sex education; and employment.” TITLE IX AND SEX DISCRIMINATION (https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html, accessed June 3, 2024). See *In re Nieves & Nieves LLC*, 2015 TTAB LEXIS 12, at *8 (TTAB 2015) (taking judicial notice of U.S. government online publications).

⁸⁰ See *supra* text accompanying notes 6 (Northeastern Illinois University), 8 (Northern Illinois University), 50 (Southern Illinois University Edwardsville), 44 (College of the Redwoods), 45 (California State University Channel Islands), and 47 (The University of Toledo).

⁸¹ See *supra* text accompanying note 52.

distinguishable.⁸² The evidence in those cases did not show generic use of the subject mark for the exact goods or services identified in the application or registration, as it does here.⁸³ And even if we were to accept the suggestion that the third-party services are different from Applicant's services, the "fact that there is no evidence of third-party use of the precise term" STUDENT ALLY for Applicant's precise training services "is not, by itself, necessarily fatal to a finding of genericness." *Mecca Grade Growers*, 2018 TTAB LEXIS 64, at *24; *see also In re Empire Tech. Dev. LLC*, 2017 TTAB LEXIS 232, at *60 (TTAB 2017) (it is a "well-settled principle that being the first and only user of a generic term even if the public associates it with the first user does not make an otherwise generic term non-generic."); *cf. KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 122 (2004) (discussing "the undesirability of allowing anyone to obtain a complete monopoly on use of a descriptive term simply by grabbing it first.").

Applicant argues that the remaining few third party uses of "student ally" of record differ from Applicant's services and are insufficient to "show widespread common usage."⁸⁴ We disagree that the totality of the evidence of use of the phrase "student ally" is limited to these few examples. Even so, there is no specific rule as to the exact amount or type of evidence necessary to prove generic use. *Cf. Hunter Publ'g Co. v.*

⁸² *See* Applicant's Brief, 6 TTABVUE 14-15; Applicant's Reply Brief, 9 TTABVUE 5-6.

⁸³ We note that we are not bound by the decisions of federal district courts such as *Polo Fashions, Inc. v. Extra Special Prods., Inc.*, 451 F. Supp. 555 (S.D.N.Y. 1978), also relied upon by Applicant, although such cases may be instructive. *See* cases cited in TBMP § 101.03. In that case, the court was concerned with adjudging the strength of the plaintiff's POLO marks in an infringement case, not the registration of a proposed mark as we face here.

⁸⁴ Applicant's Brief, 6 TTABVUE 16.

Caulfield Publ'g Ltd., 1986 TTAB LEXIS 28, at *11 (TTAB 1986) (“[e]valuation of the evidence requires a subjective judgment as to its sufficiency based on the nature of the mark and the conditions surrounding its use.”).

This also is not a case like *Magic Wand*, 940 F.2d at 638, relied upon by Applicant, which found that evidence of generic use of TOUCHLESS for automobile washing services by “a very small part of the relevant purchasing public,” operators and manufacturers of car wash equipment” was “not enough to show generic use or understanding by the relevant public.”⁸⁵ *Id.* at 641. Here, the evidence shows generic use of the term for training services by, and directed to, the relevant public: university administrators. The fact that many of the third party uses employ initial capitalization of the terms (i.e., Student Ally) as “proper,” not “common” nouns in sentences or “common expressions”⁸⁶ is not determinative; indeed, a review of the evidence of record shows that – like Applicant – third parties also use the terms “ally” for students or the entire phrase “student ally” in text alongside their capitalized uses. None of these uses show a symbol such as “TM” or “SM” to designate an alleged mark, indicating that none of these third parties view the phrase as source identifying. *Cf. In re Wakefern Food Corp.*, 1984 TTAB LEXIS 119, at *6-7 (TTAB 1984) (finding common prominent use by third parties of WHY PAY MORE without a trademark symbol proof that the phrase is not a sole indicator of origin).

⁸⁵ *Id.* at 16; *see also* Applicant’s Reply Brief, 9 TTABVUE 5-6.

⁸⁶ *See* Applicant’s Brief, 6 TTABVUE at TSDR 11-12 (detailing use), 15-16, 17.

We are not persuaded by Applicant's reliance on *In re Minnetonka Inc.*, 1987 TTAB LEXIS 72, at *9-10 (TTAB 1987) (SOFT SOAP not generic for liquid hand soap in a pump-type dispenser) for the proposition that "there is no evidence of a need for others to use the term 'STUDENT ALLY' in offering competing services."⁸⁷ The evidence in this case, unlike that in *Minnetonka*, demonstrates a need for competitors to use the term "student ally" in promoting training services to university administrators for student support. "To allow trademark protection for generic terms, i.e., names which describe the genus of goods [or services] being sold, even when these have become identified with a first user, would grant the owner of the mark a monopoly, since a competitor could not describe his goods [or services] as what they are." *In re Pennington Seed, Inc.*, 466 F.3d 1053, 1058 (Fed. Cir. 2006) (quoting *Merrill Lynch*, 1828 F.2d at 1569).

C. Conclusion

We find that the dictionary definitions in the context of the applied-for services combined with the examples of Applicant's use, and supported by the many examples of third party use, demonstrate that STUDENT ALLY would be understood by the relevant consumers to refer a key aspect of Applicant's services: that is, training to foster support for students, particularly those who are targets of discrimination or are otherwise marginalized. As the Board stated in *Gould*: "Nothing is left for speculation or conjecture in the alleged trademark," as the phrase "immediately and unequivocally

⁸⁷ *Id.* at 15; *see also* Applicant's Reply Brief, 9 TTABVUE 5.

describes the purpose, function and nature” of Applicant’s services.” 834 F.2d at 1019. Thus, we find that Applicant’s proposed mark is generic for the identified services.

Decision

The refusal to register Applicant’s proposed mark STUDENT ALLY on the Supplemental Register on the ground that it is generic for the identified services under Trademark Act Sections 23 and 45 is **affirmed**.

In view of the foregoing, we need not address the additional basis for refusal on the ground that the proposed mark fails to function as a mark under Trademark Act Sections 1, 2, and 45. *E.g.*, *In re Suuberg*, 2021 TTAB LEXIS 459, at *11 (TTAB 2021) (“Because we affirm the [genericness] refusal[s]..., we need not analyze the failure to function refusal[s] under Sections 1, 2, 3, and 45 of the Trademark Act.”) (citing *In re DTI P’ship*, 2003 TTAB LEXIS 171, at *10 (TTAB 2003)).