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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mefona LLC

Serial No. 97065669

Mefona LLC, pro se.

Heather Schubert, Senior Trademark Examining Attorney,[1] Law Office 116,
Elizabeth Jackson, Managing Attorney.

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

Opinion by Larkin, Administrative Trademark Judge:

Most of the ex parte appeal cases that reach the Board for final decision arrive after a relatively straightforward examination of the involved application and are disposed of on appeal in a relatively straightforward manner. This is not one of them.

[1] The application was initially examined by Trademark Examining Attorney Doritt Carroll, who issued the final refusal to register from which this appeal was taken and who denied Applicant's request for reconsideration of that final refusal. The application was then re-assigned to Senior Trademark Examining Attorney Schubert, who issued a subsequent final refusal and filed the appeal brief defending the refusal. We will refer to them both as the "Examining Attorney."

Mefona LLC ("Applicant"), appearing pro se, seeks registration on the Supplemental Register of the proposed standard-character mark ENAIRA for "Financial services, namely, providing a virtual currency for use by members of an on-line community via a global computer network" in International Class 36.[2] The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that Applicant's mark falsely suggests a connection with the Central Bank of Nigeria.

When the Examining Attorney made the refusal final, Applicant first requested reconsideration, which was ultimately denied, and then appealed. The appeal was ultimately fully briefed,[3] and was designated as ready for decision a year-and-a-half after it was filed, and more than three years after the involved application was filed.

This is an unusually long time. We feel compelled to note that Applicant is responsible for the long and tortured prosecution of this application and the similarly long and tortured procedural history of this appeal. As catalogued below, Applicant (1) has made numerous unfounded and offensive accusations of unethical and even illegal conduct by the Examining Attorney, officials of the United States Patent and Trademark Office ("USPTO"), and the Board itself, in violation of the decorum

[2] Application Serial No. 97065669 was filed on October 8, 2021 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] Citations in this opinion to the briefs and other materials in the voluminous case file refer to TTABVUE, the Board's online docketing system. 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. Applicant's appeal brief appears at 37 TTABVUE and its reply brief appears at 40 TTABVUE. The Examining Attorney's brief appears at 39 TTABVUE.

requirements set forth in 37 C.F.R. § 2.192; *see also* Section 709.07 of the Trademark Manual of Examining Procedure ("TMEP") (Nov. 2024) and Section 115.01 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") (June 2024);[4] (2) has unnecessarily inflated the record, and complicated and prolonged the ultimate disposition of this case; and (3) has caused the Board and other offices in the USPTO to waste their limited resources on multiple matters not germane to the merits of this case.

Applicant's misconduct has been egregious. Nevertheless, we are duty-bound to decide, based solely on the record and the applicable law, whether the evidence shows that Section 2(a) of the Trademark Act bars registration of Applicant's mark. For the reasons discussed below, we find that there is at least significant doubt that it does, and we are thus constrained to reverse the refusal to register.[5]

[4] Applicant repeated a number of these accusations in its appeal brief, 37 TTABVUE 7-11, 16-17, and in its reply brief. 40 TTABVUE 10-11.

[5] As part of an internal Board pilot program on possibly broadening acceptable forms of legal citation in Board cases, the citation form in this opinion is in a form provided in Section 101.03 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 adhere to the practice set forth in TBMP § 101.03.

I. Prosecution and Procedural History, and Record on Appeal[6]

Applicant originally sought registration of its proposed standard-character mark ENAIRA on the Principal Register, and displayed the mark as follows:

eNaira[7]

The Examining Attorney refused registration on the ground that the mark was merely descriptive of the identified services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because the "Naira" is Nigeria's currency and "eNaira" is the name given to Nigerian currency in electronic form, making "eNaira" descriptive of "the exact type of currency the applicant provides."[8] The Examining Attorney made of record a Wikipedia entry captioned "Nigerian naira,"[9] and Internet evidence regarding the meaning of "eNaira" as a digital form of the Nigerian currency.[10] The Examining Attorney noted that amendment to seek registration on the Supplemental Register was not then an option because the application was filed under Section 1(b) and Applicant had not submitted evidence of use in commerce of its proposed mark.[11]

[6] Citations in this opinion to the file history of the application are to the downloadable .pdf versions of the documents in the USPTO's Trademark Status & Document Retrieval ("TSDR") database.

[7] October 8, 2021 Application at TSDR 5.

[8] March 15, 2022 Office Action at TSDR 2.

[9] *Id.* at TSDR 4.

[10] *Id.* at TSDR 5-9.

[11] *Id.* at TSDR 2.

Applicant responded to the Office Action by stating that it wished to amend its application to seek registration on the Supplemental Register,[12] and by simultaneously filing an Amendment to Allege Use. Applicant's Amendment to Allege Use was supported by a specimen consisting of several pages from the website at account.enaira-online.com.[13] Applicant's Amendment to Allege Use was ultimately accepted by the USPTO.[14]

The USPTO then received a letter of protest regarding the application. The Office of the Deputy Commissioner for Trademark Examination issued a Letter of Protest Memorandum advising the Examining Attorney of the letter of protest and instructing the Examining Attorney as follows:

> Upon consideration of evidence included with a letter of protest filed before publication of the above-referenced mark, it has been determined that some of the evidence is relevant to the following ground(s) for refusal and or requirement(s): Possible false association of the mark under Trademark Act Section 2(a) with the Central Bank of Nigeria. Some of the evidence submitted by the protestor has been included in the record for your consideration. Please review it and determine whether to issue a refusal or make a requirement.[15]

The Examining Attorney subsequently issued a non-final Office Action refusing registration under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that Applicant's proposed mark falsely suggests a connection with the Central

[12] July 26, 2022 Response to Office Action at TSDR 1.

[13] July 26, 2022 Amendment to Allege Use at TSDR 7-16.

[14] July 30, 2022 Notice of Acceptance of Amendment to Allege Use at TSDR 1.

[15] August 11, 2022 Letter of Protest Memorandum at TSDR 1 (citing Trademark Rule 2.149(d)(1), 37 C.F.R. § 2.149(d)(1), and TMEP § 1715.02).

Bank of Nigeria,[16] and requesting that Applicant submit additional information about its relationship with the Central Bank of Nigeria.[17] The Examining Attorney made of record a page from the website of the Central Bank of Nigeria at cbn.gov.ng discussing the eNaira as "a central bank digital currency (CBDC) backed by law, the full sovereignty of Nigeria, issued by the Central Bank of Nigeria as a legal tender."[18]

Applicant filed a response to the Office Action that included 47 pages of argument and more 230 pages of exhibits,[19] including what it claimed to be a copy of the letter of protest from the Central Bank of Nigeria.[20] Applicant also made of record other exhibits, including pages from its website at enaira-online.com and the website of the Central Bank of Nigeria;[21] various articles, in the English language,[22] discussing or mentioning the Central Bank of Nigeria;[23] correspondence regarding the eNaira;[24]

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[16] September 8, 2022 Office Action at TSDR 1-2.

[17] *Id.* at TSDR 2 (citing Trademark Rule 2.61(b), 37 C.F.R. § 2.61(b)).

[18] *Id.* at TSDR 4-5.

[19] November 29, 2022 Response to Office Action at TSDR 1-301.

[20] *Id.* at TSDR 63-67. Letters of protest are ordinarily not in the public files of applications. Trademark Rule 2.149(h), 37 C.F.R. § 2.149(h). *See also* TMEP § 1715 ("To preserve the integrity and objectivity of the ex parte examination process, the letter of protest is not entered into the application file.").

[21] *Id.* at TSDR 71-72.

[22] The Board may take judicial notice of information from encyclopedias. *In re Mr. Recipe, LLC*, Ser. No. 86040643, 2016 WL 1380730, at *3 n.3 (TTAB 2016) (citing *B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 728 (Fed. Cir. 1988)). We take judicial notice that English is the official language of Nigeria. BRITANNICA (britannica.com, last accessed on May 6, 2025).

[23] November 29, 2022 Response to Office Action at TSDR 79-94, 96, 97-102, 103-04, 166, 167, 168-70, 172, 173-82, 184-85, 186, 188-92, 196-97, 198-99, 204, 208-14, 216, 218-20, 221-28, 229-32, 265-72, 277-79, 290-93, 301.

[24] *Id.* at TSDR 108-111.

correspondence and other documents pertaining to litigation in the Federal High Court of Nigeria captioned Enaira Payment Solutions Ltd. vs. The Central Bank of Nigeria, and the plaintiff's ownership of a Nigerian registration of ENaira;[25] and a September 14, 2022 letter from United States counsel for the Central Bank of Nigeria to Applicant asserting that Applicant's use of ENAIRA is likely to cause consumers to believe that Applicant's services are provided or authorized by the Central Bank of Nigeria and that Applicant is an authorized issuer of eNaira, and demanding that Applicant cease further use of "eNaira," withdraw the application at issue on this appeal, and take various other steps.[26]

On December 17, 2022, before the Examining Attorney responded to Applicant's response to the Office Action, Applicant filed another lengthy response, which Applicant characterized as "the updated version of Applicant's November 29, 2022 response to this Office Action . . . ."[27] This response contained 51 pages of argument,[28] and nearly 250 pages of exhibits.[29] It appears to contain the same exhibits contained

[25] *Id.* at TSDR 113-22.

[26] *Id.* at TSDR 274-75.

[27] December 17, 2022 Response to Office Action at TSDR 16. Applicant justified this filing as follows: "REASONS FOR SUBMITTING THIS NEWER VERSION With potential threats from the Secret Police growing daily, Applicant decided to quickly submit on November 29, 2022 the not fully edited Response. This Applicant did simply not [sic] to lose the entire work to such possible attacks. This newer version submitted today, December 17, 2022 is the fully edited and updated version to the Nonfinal Office Action. Examining Attorney could only imagine the hostile work situation and endless daily threats Applicant has been contiuously [sic] subjected to." *Id.* at TSDR 4.

[28] *Id.* at TSDR 16-67.

[29] *Id.* at TSDR 68-214.

in Applicant's original response, as well as what appear to be some additional articles discussing or mentioning the Central Bank of Nigeria.[30]

On January 17, 2023, the Examining Attorney issued an Office Action making final the Section 2(a) refusal to register.[31] The Examining Attorney made of record the Wikipedia entry captioned "Nigerian naira;"[32] third-party webpages regarding the use of the word "Naira" to identify the currency of Nigeria issued by the Central Bank of Nigeria and the use of the word "eNaira" to identify a virtual currency issued by the Central Bank of Nigeria;[33] entries from the website at brittannica.com captioned "naira" and "coinage;"[34] pages from the website of the Central Bank of Nigeria regarding eNaira;[35] a "Factsheet" on the website of the International Monetary Fund ("IMF") captioned "Monetary Policy and Central Banking;"[36] and pages from the website of Investopedia captioned "What Central Banks Do."[37]

After receiving a three-month extension of time to respond to the final Office Action, Applicant filed a request for reconsideration and subsequently appealed. In its Request for Reconsideration, Applicant made of record additional exhibits, including additional submissions from the litigation in Nigeria between Enaira

[30] *Id.* at TSDR 164, 170-72, 244-46.

[31] January 17, 2023 Final Office Action at TSDR 1-4.

[32] *Id.* at TSDR 5-9.

[33] *Id.* at TSDR 10-25, 31-49.

[34] *Id.* at TSDR 26-28.

[35] *Id.* at TSDR 29-30.

[36] *Id.* at TSDR 50-53.

[37] *Id.* at TSDR 54-61.

Payment Solutions Ltd. and the Central Bank of Nigeria;[38] pages from Investopedia regarding the Nigerian naira;[39] papers from litigation in the Federal High Court of Nigeria between Applicant's principal Basil Odilim Enwegbara and various defendants, including the Central Bank of Nigeria;[40] additional articles discussing or mentioning the Central Bank of Nigeria;[41] and an "Affidavit of Fact" in response to the final Office Action, signed by Mr. Enwegbara.[42]

The Examining Attorney denied Applicant's Request for Reconsideration,[43] and the appeal resumed. 5 TTABVUE 1. Applicant then filed a lengthy request for remand of the application to the Examining Attorney, 6 TTABVUE 1-166, making of record a new 49-paragraph declaration of Mr. Enwegbara accompanied by numerous exhibits, *id.* at 17-166, including a decision and judgment of the Supreme Court of Nigeria, *id.* at 21-102; correspondence between Applicant's Nigerian counsel and the Central Bank of Nigeria regarding Applicant's claimed rights in the mark e-Naira in Nigeria, *id.* at 103-07; another copy of the Central Bank of Nigeria's letter of protest to the USPTO, *id.* at 108-11; additional articles discussing or mentioning the Central Bank of Nigeria, *id.* at 113-119, 120-32, 139-41, 142-53; a link to a YouTube video in which

[38] July 15, 2023 Request for Reconsideration at TSDR 25-28.

[39] *Id.* at TSDR 48-55.

[40] *Id.* at TSDR 74-110.

[41] *Id.* at TSDR 111-15, 116-21, 122-24, 125-30.

[42] *Id.* at TSDR 137-38. Applicant also made of record a letter from Applicant to the USPTO Director in which Applicant accused the USPTO of copyright infringement, *id.* at TSDR 41-43, and a letter from Applicant to the Federal Bureau of Investigation in which Applicant accused the Central Bank of Nigeria of various forms of illegal conduct. *Id.* at TSDR 131-36.

[43] July 26, 2023 Denial of Request for Reconsideration at TSDR 1-4.

Mr. Enwegbara apparently discusses the suspension of the governor of the Central Bank of Nigeria, *id.* at 142-43; pages from the Investopedia website regarding the Nigerian Naira, *id.* at 154-60; and another copy of the September 14, 2022 letter from United States counsel for the Central Bank of Nigeria to Applicant, this time accompanied by an enclosure to that letter consisting of pages from Applicant's website at enaira-online.com. *Id.* at 162-66.

The Board granted Applicant's request for remand, 8 TTABVUE 1-2, and remanded the application to the Examining Attorney for consideration of the additional evidence. The Examining Attorney then issued a Subsequent Final Office Action in which she stated that Applicant's evidence and arguments "regarding foreign asset legality, infringement, and unfair competition are not relevant to this ex parte proceeding," 9 TTABVUE 2, and that Applicant's arguments regarding a WIPO registration of the applied-for mark were similarly irrelevant because the USPTO "is under no legal requirement to grant automatic registration merely because applicant has a registration in another country." *Id.*

The Board resumed the appeal, 10 TTABVUE 1, and Applicant requested and received a 90-day extension of time to file its appeal brief. 11 TTABVUE; 12 TTABVUE. Prior to the extended due date for its appeal brief, Applicant filed the first of what would be numerous motions to suspend the appeal, or for the Board's "recusal," in which Applicant asserted various forms of misconduct by the USPTO, including making false accusations about Applicant, evidence tampering, and violations of the Administrative Procedure Act ("APA") and the Due Process Clause

of the Fifth Amendment to the United States Constitution. This filing also contained self-styled "Reform Recommendations" to address the alleged wrongdoing. 13 TTABVUE 2-25. Applicant included copies of letters from Applicant to the House Judiciary Committee, the Inspector General of the Department of Commerce, and the Federal Trade Commission. Shortly thereafter, Applicant filed another motion to suspend based on the pending litigation in Nigeria between Enaira Payments Solutions Limited and the Central Bank of Nigeria. 14 TTABVUE 2-21. The Board denied both motions. 15 TTABVUE 1-3.

Applicant then requested and received a further 60-day extension of time to file its appeal brief, 16 TTABVUE; 20 TTABVUE, and before the new requested extended due date, filed another motion to suspend. 19 TTABVUE. This motion was based on litigation filed by Applicant in Nigeria on July 17, 2024 against multiple defendants, including the Central Bank of Nigeria. Applicant argued that "[t]he outcome of the Nigerian lawsuit will have a direct and significant impact on the TTAB appeal proceedings involving [Applicant]." *Id.* at 2. The Board granted Applicant's motion for an extension of time to file its appeal brief, and advised Applicant that it would consider Applicant's motion to suspend in due course. 20 TTABVUE 2.

Applicant then filed a document captioned "Request for Expedited Decision on Suspension of Appeal Proceedings," 21 TTABVUE, in which Applicant asked for an expedited decision on its most recent motion to suspend. *Id.* at 2. The Board responded by "allow[ing] [Applicant] 45 days from the mailing date of this order to file with the Board any and all further submissions in connection with the Nigerian

Civil Suit and/or any status updates." 22 TTABVUE 1. The next day, Applicant filed another motion to suspend based on Applicant's litigation in Nigeria. 23 TTABVUE 2-70.[44]

The Board then denied Applicant's motion to suspend for lack of good cause, determining that "the foreign litigation will have no bearing on the Section 2(a) refusal before the U.S. Patent and Trademark Office" and that "the application was filed based on a bona fide intent to use the mark in U.S. commerce and is not contingent upon issuance of any foreign registration." 25 TTABVUE 2. The same day, Applicant filed a document captioned "Ex Parte Motion to Suspend Proceedings Due to USPTO Tampering With Evidence," 26 TTABVUE, in which Applicant alleged that the USPTO "altered information on its data page, which was formally notified to the Office as critical evidence in litigation in Nigeria." *Id.* at 2.

The next day, Applicant filed a response to the Board's order denying Applicant's motion to suspend, 27 TTABVUE, in which Applicant argued that the Board's order "constitutes a significant interference with ongoing lawsuits," including Applicant's and Mr. Enwegbara's suits in Nigeria against the Central Bank of Nigeria. *Id.* at 2. Four days later, Applicant filed a document captioned "Motion To Compel Recusal of The Trademark Trial And Appeal Board and Referral To The Department of Justice For Investigation With Urgent Request For Action Before October 2, 2024 Deadline Pursuant to 37 CFR § 2.127(d) and 28 U.S.C. § 455," 28 TTABVUE, in which Applicant moved for the recusal of the Board "due to demonstrated bias, prejudgment,

[44] Applicant filed this motion twice. 23 TTABVUE; 24 TTABVUE.

and procedural misconduct that have deprived the Applicant of its right to a fair and impartial hearing," *id.* at 2, and sought a "referral of this matter to the U.S. Department of Justice (DOJ) for investigation into potential obstruction of justice, evidence tampering, and procedural misconduct by the USPTO . . . ." *Id.*

The Board subsequently addressed Applicant's multiple filings in an order dated September 30, 2024. 29 TTABVUE. The Board rejected Applicant's claims of evidence tampering and its request for reconsideration of the Board's earlier ruling that the litigation in Nigeria would have no bearing on the issue on appeal. *Id.* at 2-5. The Board also discussed Applicant's "inappropriate correspondence" and "inappropriate communications," and noted that Applicant's "extensive and exhaustive submissions were devoid of legal arguments addressing the substantive refusal to register" and "instead took the form of 'personal attacks and questions regarding the legitimacy of a foreign government.'" *Id.* at 5 (citing 13 TTABVUE 15). The Board concluded by noting that Applicant's appeal brief was due on October 11, 2024 and stating that "**[n]o other filings seeking suspension or extension will be considered**." *Id.* at 6 (emphasis added).

Undeterred by the Board's September 30, 2024 order, Applicant subsequently proceeded to submit no fewer than six additional filings:

(1) an October 1, 2024 document captioned "Second Motion for Recusal Due to Bias and Unfounded Accusations in Appeal Case pursuant to 37 C.F.R. § 2.127(d)," 31 TTABVUE, in which Applicant accused the Board and the USPTO of inappropriate

accusations of Applicant's delay, conflicts of interest, lack of due process, and racial bias and stereotyping, *id.* at 2-8;

(2) an October 2, 2024 document captioned "Order of the Court," in which Applicant purported to serve on the Board a copy of what Applicant described as the "Order of the Federal High Court of Nigeria, Abuja (Suit No. FHC/ABJ/CS/994/2024, directing the Trademark Trial and Appeal Board (TTAB) to stay the ongoing proceedings regarding the 'eNaira' trademark," 32 TTABVUE 2-7;

(3) an October 3, 2024 document captioned "Second Motion to Suspend Proceedings and Referral to the Department of Justice (DOJ)," 33 TTABVUE 2-6;

(4) an October 5, 2024 document captioned "Motion for Status Update and Request for Suspension," 34 TTABVUE, in which Applicant requested "an update on the Board's actions in response to this suspension directive," a reference to the Nigerian court order, *id.* at 3, and asked whether the Board would "formally suspend proceedings in this matter pursuant to the Federal High Court's order and the applicable rules under 37 C.F.R. § 2.177(a)," *id.*;

(5) an October 8, 2024 document captioned "Motion for Reconsideration," 35 TTABVUE, in which Applicant "request[ed] that the Board reconsider its current posture and grant a suspension of proceedings based on a court order issued by a Nigerian court mandating that the parties maintain the status quo," *id.* at 2; and

(6) an October 9, 2024 document captioned "Final Request for Stay Consideration-Appeal No. 97065669," 36 TTABVUE, in which Applicant argued that the principle

of comity and the Due Process Clause required the Board to obey the order of the Nigerian court. *Id.* at 2-4.[45]

On October 11, 2024, Applicant filed its appeal brief "Under Protest," purportedly "pursuant to a court order from Nigeria prohibiting the Appellant from filing this brief, particularly in light of the Board's decision not to honor the court order by suspending the proceedings, as outlined in 37 C.F.R. § 2.117(a), 15 U.S.C. § 1119, and TMEP § 510.02(a)." 37 TTABVUE 6.[46] We will exercise our statutory responsibility under 15 U.S.C. § 1070 and decide this appeal, which is fully briefed.

II. Analysis of False Suggestion of a Connection Refusal

"Section 2(a) of the Trademark Act prohibits registration on either the Principal or Supplemental Register of 'matter which may . . . falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols.'" *In re Leathernecks Motorcycle Club Int'l, Inc.*, Ser. No. 90498154, 2024 WL 2863442, at *1 (TTAB 2024)

[45] Because these filings were submitted in violation of the Board's September 29, 2024 order, 29 TTABVUE 5, we have not considered them except to the extent that we note that we are not subject to the authority of the Nigerian courts, and the October 2, 2024 order of the Federal High Court of Nigeria in the Abuja Judicial Division, which purports to order a stay of this appeal, 32 TTABVUE 6-7, does not bind the Board.

"The Board may suspend a proceeding pending final determination of a foreign action between the parties," where "the final determination in the [foreign] proceeding may have a bearing on the issues before the Board," *Birlinn Ltd. v. Stewart*, Opp. No. 91214145, 2014 WL 4675000, at *5 (TTAB 2014), but as discussed above, the Board previously "carefully reviewed all submissions concerning the Nigerian Civil Suit and determined that the foreign litigation will have no bearing on the issue on appeal." 29 TTABVUE 5. We must note in that regard that in one of its numerous motions to suspend, Applicant argued that the "Board's refusal to suspend proceedings contradicts its decision in Bourjois, Inc. v. Nevada Labs, Inc., 85 USPQ2d 320 (TTAB 2007), where it suspended proceedings due to related foreign litigation that had a direct impact on the TTAB case" and that the "inconsistency in handling Mefona LLC's case indicates bias." 28 TTABVUE 3. We could not locate the cited decision.

[46] Applicant also filed its reply brief "Under Protest." 40 TTABVUE 2.

(quoting 15 U.S.C. § 1052(a)). As noted above, the Examining Attorney contends that the relevant "institution" in this case is the Central Bank of Nigeria, a foreign governmental entity.

To establish a false suggestion of a connection between Applicant and the Central Bank of Nigeria, the Examining Attorney must prove that:

(1) The term ENAIRA in Applicant's mark is the same as, or a close approximation of, the Central Bank of Nigeria's name or identity, as previously used or identified with the Central Bank of Nigeria;

(2) The term ENAIRA in Applicant's mark would be recognized as such because it points uniquely and unmistakably to the Central Bank of Nigeria;

(3) The Central Bank of Nigeria is not connected to or otherwise affiliated with Applicant; and

(4) The Central Bank of Nigeria is of sufficient fame or reputation that, when the term ENAIRA is used in connection with the "Financial services, namely, providing a virtual currency for use by members of an on-line community via a global computer network" identified in the application, a connection with the Central Bank of Nigeria would be presumed.

See In re Foster, __ F.4th __, 2025 WL 1317602, at *3 (Fed. Cir. May 7, 2025) (noting that the "four-part test provides a helpful framework to assess whether there is a false suggestion of a connection"); *Piano Factory Grp., Inc. v. Schiedmayer Celesta GmbH*, 11 F.4th 1363, 1377 (Fed. Cir. 2021) (setting forth elements of a Section 2(a) claim for false suggestion of a connection); *Leathernecks Motorcycle Club*, 2024 WL 2863442, at *2 (same).

The Examining Attorney's failure to establish any one of these elements requires reversal of the refusal to register. *See Mystery Ranch, Ltd. v. Terminal Moraine Inc.*, Opp. No. 91250565, 2022 WL 17369425, at *14 (TTAB 2022). We must resolve any significant doubt as to whether the Examining Attorney has shown a false suggestion

of a connection in favor of Applicant. *In re MC MC S.r.l.*, Ser. No. 79022561, 2008 WL 4384474, at *4 (TTAB 2008); *In re White*, Ser. No. 78175476, 2004 WL 2202268, at *10 (TTAB 2004).

We will focus on the fourth element because we determine below that it is dispositive.[47] Under the argument heading "The Central Bank Of Nigeria Is So Well-Known That When Applicant Uses ENAIRA On Its Applied-For Financial Services, Consumers Will Presume A Connection With The Central Bank Of Nigeria," 39 TTABVUE 5, the Examining Attorney argues that this "prong of the test is satisfied because the Central Bank of Nigeria is well-known." *Id.* The Examining Attorney claims that "a central bank is the key financial repository authority for a country," *id.*, citing the Investopedia article and the IMF factsheet discussed above. *Id.*

The Examining Attorney also argues that

> [w]ithin the totality of the application record, there are thirteen separate pieces of evidence to support the assertion that ENAIRA is a mark used by the Central Bank of Nigeria, that it would be recognized as such in that it points uniquely and unmistakably to that institution, that the institution is not connected with the applicant, and that the reputation of the institution is of such a nature that a connection would be presumed.

Id. at 5-6. The Examining Attorney does not identify the 13 specific pieces of evidence that she claims prove that "the reputation of the [Central Bank of Nigeria] is of such

[47] Because we dispose of the appeal based on the fourth element of the Section 2(a) test, we need not and do not address whether the Examining Attorney established the other elements of the test.

a nature that a connection with such person or institution would be presumed." *Id.* at 6.

Applicant responds in its reply brief that the Examining Attorney "has not established that CBN is famous or reputable, nor has she shown that eNaira is well-known in the U.S. market and any other place to presume a connection." 40 TTABVUE 6.

At the outset of our analysis, we reiterate that the Central Bank of Nigeria is a foreign "institution" for purposes of Section 2(a). The Board has considered the issue of a false suggestion of a connection with a foreign natural person or institution in several precedential cases. *See*, *e.g.*, *Association Pour La Defense et La Promotion De L'ouevre De Marc Chagall Dite Comite Marc Chagall v. Bondarchuk*, Canc. No. 92042323, 2007 WL 749714 (TTAB 2007) (finding that the mark MARC CHAGALL for vodka falsely suggested a connection with the Russian painter Marc Chagall); *Hornby v. TJX Cos.*, Canc. No. 92044369, 2008 WL 1808555 (TTAB 2008) (finding that the mark TWIGGY for clothing falsely suggested a connection with the British model and celebrity Lesley Hornby a/k/a "Twiggy"); *In re Nieves & Nieves LLC*, Ser. No. 85179263, 2015 WL 496132 (TTAB 2015) (finding that the mark ROYAL KATE for various goods falsely suggested a connection with Kate Middleton, the Dutchess of Cambridge); *U.S. Olympic Comm. v. Tempting Brands Neth. B.V.*, Opp. No. 91233138, 2021 WL 465324 (TTAB 2021) (finding that the stylized word mark Pierre de Coubertin did not falsely suggest a connection with Pierre de Coubertin, the French founder of the modern Olympic Games); *see also* ***In re Int'l Watchman, Inc.***,

Ser. No. 87302907, 2021 WL 5755146 (TTAB 2021) (finding that the mark NATO for canopies and tents falsely suggested a connection with the North Atlantic Treaty Organization).

In cases in which the Board has found a false suggestion of a connection with a foreign person or institution, the records have included evidence of significant exposure of the person or entity to United States consumers. *See, e.g.*, *Association Pour La Defense et La Promotion De L'ouevre De Marc Chagall*, 2007 WL 749714, at *8 (finding "substantial evidence of the fame or reputation of Marc Chagall in the United States" based on the display of his works in numerous museums and public places in the United States); *Hornby*, 2008 WL 1808555, at *15 (finding that petitioner's professional name "Twiggy" had sufficient fame and reputation in the United States in 1999 and 2000 based on "various entertainment activities, and the promotional efforts surrounding them, [which] have successfully kept her name before the U.S. public, and have built on the extraordinary initial reputation and celebrity that was created in the period from 1967-1970"); *Nieves & Nieves*, 2015 WL 496132, at *11 (finding that "Kate Middleton is a member of the British Royal Family who is referred to as 'Her Royal Highness'" and that "the evidence shows that she is the subject of great public interest in the United States and throughout the world"); *see also Int'l Watchman*, 2021 WL 5755146, at *12, 13 (noting "NATO's fame and prominent role as an intergovernmental military alliance," and the facts that "NATO has become part of our ordinary lexicon," and there has been "widespread reporting of NATO activities in the media"). We therefore will examine the entire record to

determine whether the Central Bank of Nigeria is of sufficient fame or reputation among United States consumers that when ENAIRA is used in connection with the services of "providing a virtual currency for use by members of an on-line community via a global computer network," a connection with the Central Bank of Nigeria would be presumed.

The Examining Attorney did not make of record any evidence regarding the extent, if any, of the exposure of any of the materials in the record to United States consumers. Many of the webpages and articles in the record come from what appear to be foreign websites based either on their domain names or their contents. In *In re Well Living Lab Inc.*, Ser. No. 86440401, 2017 WL 2876809 (TTAB 2017), the Board discussed the probative value of foreign websites as follows:

> [I]t is settled that "[i]nformation originating on foreign websites or in foreign news publications that are accessible to the United States public may be relevant to discern United States consumer impression of a proposed mark." . . . We evaluate the probative value of foreign information sources on a case-by-case basis. . . . Various factors may inform the probative value of a foreign website in any given case, such as whether the website is in English (or has an optional English language version), and whether the nature of the goods or services makes it more or less likely that U.S. consumers will encounter foreign websites in the field in question.

Id. at *4 n.10 (citing *In re Bayer A.G.*, 488 F.3d 960, 969 (Fed. Cir. 2007)).[48] The Board in *Well Living Lab* considered various foreign websites for the purposes of assessing whether the use of a particular term on the sites made it "merely descriptive" of the

[48] The fact that the foreign websites here are in English is less significant because, as noted above, English is the official language of Nigeria.

involved goods within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), but the principles regarding the circumstances under which foreign websites may be viewed by United States consumers also apply to the question of whether the mentions of the Central Bank of Nigeria on these sites may have caused that foreign institution to have become well-known to United States consumers.

With respect to the evidence referenced by the Examining Attorney, the Investopedia.com article and the IMF factsheet specifically cited by the Examining Attorney to show that "a central bank is the key financial regulatory authority for a country," 39 TTABVUE 5, do not mention the Central Bank of Nigeria,[49] but simply discuss the function and role of central banks. A *Bloomberg* article made of record by the Examining Attorney is too blurry to determine whether it mentions the Central Bank of Nigeria.[50] *See, e.g.*, *In re Virtual Indep. Paralegals, LLC*, Ser. No. 86947786, 2019 WL 1453034, at *8 n.23 (TTAB 2019) ("If evidence is not legible, we cannot consider it.") (citations omitted).

The Central Bank of Nigeria is mentioned in a Wikipedia entry captioned "Nigerian naira;"[51] an article from *Punch*, which appears to be a Nigerian publication with a website at punchng.com;[52] a page from the *Britannica* encyclopedia;[53] pages

[49] January 17, 2023 Final Office Action at TSDR 50-60.

[50] *Id.* at TSDR 31-32.

[51] March 15, 2022 Office Action at TSDR 4; January 17, 2023 Final Office Action at TSDR 5-9.

[52] January 17, 2023 Final Office Action at TSDR 10-25.

[53] March 15, 2022 Office Action at TSDR 74; January 17, 2023 Final Office Action at TSDR 26.

from the website of the Central Bank of Nigeria at cbn.gov.ng;[54] pages from the website at cointelegraph.com;[55] pages from the website at Nairametrics.com;[56] and pages from the website at decrypt.co.[57]

Applicant also made of record numerous articles and webpages in which the Central Bank of Nigeria is discussed or at least mentioned. The vast majority of the websites from which these materials are taken also appear to be foreign ones: saharareporters.com;[58] thenigeriabusiness.com;[59] pmnewsnigeria.com;[60] thenationonlineng.com;[61] businessnews.com.ng;[62] newsrescue.com;[63] economicconfidential.com;[64] thenigerianvoice.com;[65] medium.com;[66]

[54] September 8, 2022 Office Action at TSDR 4-5; January 17, 2023 Final Office Action at TSDR 29-30.

[55] January 17, 2023 Final Office Action at TSDR 33-39. This article begins as follows: "With less than 0.5% adoption, the central bank of Nigeria is struggling to push its eNaira CBDC to its citizens." *Id.* at TSDR 33.

[56] *Id.* at TSDR 40-44.

[57] *Id.* at TSDR 45-49.

[58] November 29, 2022 Response to Office Action at TSDR 79-94, 221-28, 277-79; July 15, 2023 Request for Reconsideration at TSDR 116-21.

[59] November 29, 2022 Response to Office Action at TSDR 96.

[60] *Id.* at TSDR 97-102, 229-32.

[61] *Id.* at TSDR 103-04.

[62] *Id.* at TSDR 166, 168-70.

[63] *Id.* at TSDR 188-92.

[64] *Id.* at TSDR 173-82.

[65] *Id.* at TSDR 196-97; July 15, 2023 Request for Reconsideration at TSDR 122-24.

[66] *Id.* at TSDR 208-14.

premiumtimesng.com;[67] dailypost.ng;[68] legit.ng;[69] goldmyne.tv;[70] plustvafrica.com;[71] insidebsuiness.ng;[72] pressreader.com;[73] sundiatapost.com;[74] punchng.com;[75] guardian.ng, 6 TTABVUE 120-32; vanguardngr.com, *id.* at 139-41; and tgnews.com. *Id.* at 142-53.

The record is devoid of evidence that is probative of whether or to what extent "U.S. consumers will encounter [these] foreign websites" pertaining to the banking system and other financial matters in Nigeria. *Well Living Lab*, 2017 WL 2876809, at *4 n.10. Beyond what is shown regarding Mr. Enwegbara's own activities, there is no evidence of the size or activities of the Nigerian diaspora in the United States. There is no evidence of the extent or nature of the trade or financial relations between the United States and Nigeria, including any interactions between the Federal Reserve, the central bank of the United States, and the Central Bank of Nigeria, or between private companies and individuals in the United States and private companies or government institutions in Nigeria. There is no evidence regarding the number of visitors to the website of the Central Bank of Nigeria at cbn.gov.ng,

[67] November 29, 2022 Response to Office Action at TSDR 198-99.

[68] *Id.* at TSDR 216.

[69] *Id.* at TSDR 265-72. This November 2022 article is captioned "We Don't Know The e-Naira, We Have Never Used It, Nigerians Express Ignorance About CBN's Digital Currency," and cites a recent survey finding that the e-Naira is not known by many Nigerians.

[70] *Id.* at TSDR 290-93.

[71] *Id.* at TSDR 301.

[72] December 17, 2022 Response to Office Action at TSDR 170-72.

[73] *Id.* at TSDR 244-46.

[74] July 15, 2023 Request for Reconsideration at TSDR 125-30.

[75] *Id.* at TSDR 111-15.

including the number of United States consumers who have visited the site, and, as noted above, no evidence of the size of the United States readership or viewership of the many articles and other websites in the record.

On this record, we cannot draw the inference urged by the Examining Attorney, namely, that the Central Bank of Nigeria is so well-known to United States consumers that the use of the ENAIRA mark will cause consumers of the services identified in the application to presume a connection with the Central Bank of Nigeria. 39 TTABVUE 5. A foreign person or institution may not need the notoriety of Marc Chagall, Twiggy, Kate Middleton, or NATO to be sufficiently well-known in the United States to qualify for the protection of Section 2(a), but more than what has been shown here is required. At the very least, we have significant doubt that the Central Bank of Nigeria is sufficiently well-known in the United States, and we must resolve that doubt in favor of Applicant. *MC MC*, 2008 WL 4384474, at *4.

Decision: The refusal to register is reversed and a Supplemental Register registration of Applicant's mark ENAIRA will issue in due course.[76]

[76] Our decision, of course, does not prevent the Central Bank of Nigeria, or any other interested party, from petitioning to cancel Applicant's Supplemental Register registration based on Section 2(a), or other grounds for cancellation, and providing a better-developed record.