

This Opinion is Not a
Precedent of the TTAB

Mailed: July 8, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Salvation Army

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Serial No. 86150336

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Claudia Rast of Butzel Long,
for The Salvation Army.

John S. Yard, Trademark Examining Attorney, Law Office 115,
John Lincoski, Managing Attorney.

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Before Seeherman, Kuhlke and Shaw,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

The Salvation Army (“Applicant”), an Illinois corporation, seeks registration on the Principal Register of the mark shown below for “charitable fundraising services by means of collecting clothing for donation of redemption proceeds to charitable organizations; charitable fundraising services used to purchase clothing for needy persons,” in International Class 36.¹

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¹ Application Serial No. 86150336 was filed on December 21, 2013, under Section 1(a) of the Trademark Act, based upon Applicant’s allegation of first use and first use in commerce on



The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified services, so resembles the marks in the thirteen registrations, summarized below, owned by three different entities incorporated in different states, two of which have the name The Salvation

December 1, 2013. The application includes a disclaimer of the wording "COATS FOR KIDS," and the following description of the mark:

The mark consists of an orange and white coat with a blue scarf and 4 additional coats in blue, green, red and purple, each with white trim, with the literal element "COATS" in purple, the literal elements "FOR" and "& MORE" in green and the literal element "KIDS" in blue with a red shield with the literal elements "THE SALVATION ARMY" inscribed in white.

In addition, the application includes the following color claim:

The color(s) orange, blue, white, green, red and purple is/are claimed as a feature of the mark.

Finally, the application, as filed, includes a claim of ownership of prior Reg. Nos. 807044, 1061876, 1061877, 1657612, 3360432, "and others."

Army and one of which has the name The Salvation Army National Corporation, as to be likely to cause confusion, mistake or deception. In maintaining the refusal, the Examining Attorney stated “[w]hile each of the owners of the cited marks appeared to be related to the applicant in some manner, each owner was seen to be a separate and distinct organization known as and/or affiliated with the Salvation Army. The applicant is The Salvation Army, an Illinois corporation. The registrants include The Salvation Army National Corporation (a corporation of New Jersey) and various Salvation Army entities incorporated in New York and California.” January 21, 2016 Final Office action.

The following registrations are owned by the New York corporation, The Salvation Army:

Reg. No. 1061876 for the mark THE SALVATION ARMY BLOOD AND FIRE S and design, shown below, for “religious and charitable services-namely, the conduct of religious meetings, the operation of hospitals, clinics, maternity homes, settlements and day nurseries, children’s homes, rehabilitation centers for alcoholics, clubs for service men, missing persons bureaus, camps for children and adults, and care for disaster victims, unmarried mothers, prisoners and parolees and their families, the aged, the homeless and the destitute,” in International Class 42, claiming prior Reg. Nos. 807044 and 807391, issued on March 22, 1977, renewed



Reg. No. 1061877 for the mark THE SALVATION ARMY BLOOD AND FIRE S and design, shown below, for

“religious and charitable services-namely, the conduct of religious meetings, the operation of hospitals, clinics, maternity homes, settlements and day nurseries, children’s homes, rehabilitation centers for alcoholics, clubs for service men, missing persons bureaus, camps for children and adults, and care for disaster victims, unmarried mothers, prisoners and parolees and their families, the aged, the homeless and the destitute,” in International Class 42, claiming prior Reg. Nos. 807077 and 807391, issued on March 22, 1977, renewed



Reg. No. 2517143 for the mark THE SALVATION ARMY TREASURES FOR CHILDREN and design, shown below, for “philanthropic services, namely, donations of toys for children,” in International Class 42, issued on December 11, 2001, renewed

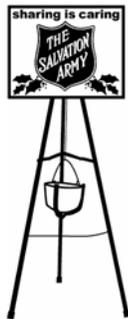


Reg. No. 2781882 for the mark THE LEARNING ZONE THE SALVATION ARMY and design, shown below, for “religious, educational, and charitable services, namely, providing religious instruction; providing training in the field of social services through nutrition, cooking, budgeting, parenting, health and creative home decorating classes; and providing academic mentoring to school age children through after-school programs,” in International Class 41, issued on November 11, 2003, renewed

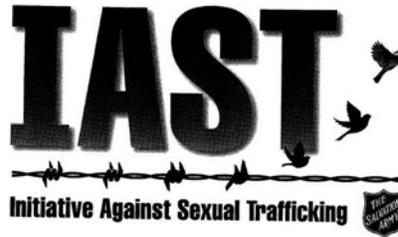


Reg. No. 2973401 for the mark THE SALVATION ARMY COMMUNITY CARE MINISTRIES for “religious and charitable services, namely ministering to the spiritual and social needs of people who are vulnerable to loneliness and isolation because of age, disability, ill health or other circumstances,” in International Class 45, claiming prior Reg. Nos. 807044, 807391, 2517143, issued on July 19, 2005, renewed

Reg. No. 3044551 for the mark SHARING IS CARING THE SALVATION ARMY and design, shown below, for “charitable services, namely charitable fund raising for a religious and charitable entity,” in International Class 36, issued January 17, 2006, renewed



Reg. No. 4141158 for the mark IAST INITIATIVE AGAINST SEXUAL TRAFFICKING THE SALVATION ARMY and design, shown below, for “religious charitable services, namely, providing information to the public regarding sexual trafficking prevention, survivor protection and exploiter prosecution,” in International Class 45, claiming prior Reg. Nos. 807044, 2973401, 3044551, issued May 15, 2012



The following registrations are owned by the California corporation, The Salvation Army:

Reg. No. 2674617 for the mark THE SALVATION ARMY GIVING TREE for “Religious and charitable services, namely, providing tags to be hung on trees that suggest possible donations to be made by people selecting the tags in order to provide gifts for needy individuals,” in International Class 45, issued January 14, 2003, renewed

Reg. No. 3015499 for the mark THE SALVATION ARMY ANGEL GIVING TREE for “religious and charitable services, namely, providing tags to be displayed on trees and renderings of trees that suggest possible donations to be made by people selecting the tags in order to provide gifts for needy individuals,” in International Class 45, claiming prior Reg. No. 2674617, issued November 15, 2005, renewed

Reg. No. 3183140 for the mark THE SALVATION ARMY RAY AND JOAN KROC CORPS COMMUNITY CENTER for “religious and charitable services, namely providing a facility for recreation and cultural arts activities; job training programs in the fields of computer skills, culinary arts, and employee behavioral skills; summer and recreational camps for adults and children; religious instruction program services; and providing toys and books to needy persons,” in International Class 41, “religious and charitable services, namely operating nurseries, daycare centers, after-school daycare centers; daycare for the elderly and community centers for religious and social gatherings and meetings for seniors; and providing food to needy people,” in International Class 43, “religious and charitable services, namely conducting religious worship services; providing spiritual counseling; providing clothing

to needy people; and ministerial counseling services in the field of spiritual and social rehabilitation,” in International Class 42, claiming prior Reg. Nos. 2674617 and 3015499, issued December 12, 2006, renewed

Reg. No. 3189062 for the mark THE SALVATION ARMY RAY AND JOAN KROC CORPS COMMUNITY CENTER and design, shown below, for “religious and charitable services, namely providing a facility for recreation and cultural arts activities; job training programs in the fields of computer skills, culinary arts, and employee behavioral skills; summer and recreational camps for adults and children; religious instruction program services; and providing toys and books to needy persons,” in International Class 41, “religious and charitable services, namely operating nurseries, daycare centers, after-school daycare centers; daycare for the elderly and community centers for religious and social gatherings and meetings for seniors; and providing food to needy people,” in International Class 43, “religious and charitable services, namely conducting religious worship services; providing spiritual counseling; providing clothing to needy people; and ministerial counseling services in the field of spiritual and social rehabilitation,” in International Class 45, issued on December 26, 2006, renewed



The following registrations are owned by the New Jersey corporation, The Salvation Army National Corporation:

Reg. No. 4163803 for the mark THE SALVATION ARMY for “religious and charitable services provided by Applicant and Applicant's licensees, namely, job training programs in the fields of computer skills, culinary arts, and employee behavioral skills; summer and recreational camps for adults and children; religious instruction program services; and providing toys and books to needy persons,” in International Class 41, “religious and charitable services provided by Applicant and Applicant’s licensees, namely, operating nurseries, daycare centers, after-school daycare

centers; daycare for the elderly and community centers for religious and social gatherings and meetings for seniors; providing temporary housing to needy people; providing food to needy people and members of the military; operating retirement homes; providing disaster relief services in the nature of emergency shelter and temporary housing,” in International Class 43, “religious and charitable services provided by Applicant and Applicant's licensees, namely, missing persons investigation; conducting religious worship services; providing spiritual counseling; providing clothing to needy people; ministerial counseling services in the field of spiritual and social rehabilitation; and operating residential spiritual rehabilitation homes,” in International Class 45, issued June 26, 2012

Reg. No. 4168081 for the mark ROCK THE RED KETTLE THE SALVATION ARMY DOING THE MOST GOOD and design, shown below, for “charitable fundraising services by means of musical concerts held to promote fundraising campaign of religious and charitable organization,” in International Class 36, issued July 3, 2012



In addition, the Examining Attorney initially cited the following registrations, also listing the registrant as The Salvation Army, but identified as an Illinois corporation, as a bar to Applicant's mark:

Reg. No. 1657612 for the mark THE SALVATION ARMY CIRCLE OF CARING and design, shown below, for “charitable fundraising services,” in International Class 36, issued on September 17, 1991, renewed



Reg. No. 2726323 for the mark THE SALVATION ARMY LIGHT BRIGADE and design, shown below, for “religious and charitable services namely supplying food to needy families, giving parties for needy children, providing meals and residential care for homeless men gifts for elderly shut-ins, gifts for patients in hospitals, rest homes and infirmaries gifts for imprisoned persons, dolls and toys for underprivileged children and gift packages to members of the armed forces,” in International Class 42, issued on June 17, 2003, renewed



In the Final Office action, however, the Examining Attorney withdrew these latter two citations “because applicant ... clarified its status as a corporation formed under the laws of Illinois, [and] applicant is clearly the owner of [these registrations].”²

When the likelihood of confusion refusal based on the other cited registrations was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed and briefs were filed. As explained below, we reverse the refusal to register because we find that the Registrants in the three cited registrations and Applicant are entities governed

² January 21, 2015 Office action, p. 1.

by a central authority, which exercises unity of control over the entities' trademarks and that this central control obviates any likelihood of confusion in the public mind as to the source of the entities' services.

Evidentiary Issue

With its brief Applicant submitted, for the first time, an exhibit titled "The Salvation Army Graphic Standards and Guidelines Manual." App. Br., 6 TTABVue 13-53. The Examining Attorney has objected to this evidence as untimely. The Examining Attorney's objection is well taken. Trademark Rule 2.142(d) provides that the record in the appeal should be complete prior to the filing of an appeal. We give no consideration to the untimely evidence.

Unity of Control

Because the ultimate question raised in this appeal is whether there exists a likelihood of confusion *as to source*, we address the Examining Attorney's refusal by analyzing whether there exists such unity of control over the marks in the involved application and the cited registrations that the public will view the identified services as emanating from a single source. Applicant argues that in the unique factual circumstances presented here it and the cited Registrants satisfy the "unity of control" test and their marks should be allowed to co-exist on the Register. In support of its position that there is unity of control between Applicant and the three separate Registrants Applicant submitted:

- (1) a printout from the website salvationarmy.usa.org titled "The Salvation Army – National Advisory Board,"

which has a listing and photo of the individual board members;³

(2) a printout from the website salvationarmysouth.org titled “Our Structure – The Salvation Army USA Official Southern Territory Website,” which outlines the structure of The Salvation Army southern territory;⁴

(3) a printout from the website salvationarmyusa.org titled “The Salvation Army – Who We Are,” which provides information about the different positions in the organization and their roles (Commissioners, Salvation Army Officers, Salvation Army Soldiers, National Advisory Board, Volunteers);⁵

(4) a printout from the website salvationarmy.org.au titled “Organisational structure of The Salvation Army,” which shows the organizational structure of The Salvation Army internationally and in Australia;⁶ and

(5) a printout from the website salvationarmy.org titled “The Salvation Army International,” which describes the history and mission of The Salvation Army worldwide.⁷

Applicant explains that it is one of The Salvation Army regional organizations and “while decentralized into separate regional organizations, [The Salvation Army] is under unitary control of the Salvation Army USA through the National Commander USA and the Commissioners Conference USA.” App. Br., 6 TTABVUE 3 (citing the Salvation Army USA website). Relying on *In re Wella A.G.*, 5 USPQ2d 1359 (TTAB 1987) (“*Wella II*”), *rev’d on other grounds*, 858 F.2d 725, 8 USPQ2d 1365 (Fed. Cir. 1988), Applicant argues that “all regional entities are organized and follow directives

³ April 21, 2015 Response, pp. 2-5.

⁴ April 21, 2015 Response, pp. 6-8.

⁵ April 21, 2015 Response, pp. 9-11.

⁶ April 21, 2015 Response, pp. 12-19.

⁷ April 21, 2015 Response, pp. 20-21.

from a single source and adhere to the general policies established by the International Headquarters [and] the national policy is established by the commissioners' Conference." App. Br., 6 TTABVUE 5 (citing The Salvation Army USA's and The Salvation Army International's – "About Us" websites). Applicant also points to its "quasi-military command structure' that enhances the organizational nature, supporting the fact that the Army is indeed, a single source despite the legal entity arrangements." *Id.* (quoting the website The Salvation Army International – About Us).⁸

Finally, in support of its position, Applicant points to the 15 registrations (the originally cited registrations which include two of Applicant's prior registrations) that incorporate THE SALVATION ARMY mark, requesting that because the USPTO has "recognized and allowed registration from multiple regional entities" that this application be "so recognized presently." App. Br., 6 TTABVUE 4.⁹

The Examining Attorney argues that the arrangement Applicant describes fails to meet the requirements of *Wella II*. Ex. Att. Br., 8 TTABVUE 10. The Examining Attorney views Applicant and the cited Registrants as "sister entities" that "are not even owned by a common parent." *Id.* Arguing that the "regional entities appear to

⁸ Applicant further explains that the National Command, in the United States, "exercises control with respect to branding decisions." *Id.* However, this specific statement about "branding decisions" is unsupported inasmuch as it relies on the untimely-submitted evidence.

⁹ Applicant further argues that it is the owner of the cited registrations because of unity of control. Allowance of a registration in the name of another entity under the concept of unity of control does not mean the new registrant owns the other registrants' registrations or the reverse. Rather, it simply recognizes that despite ownership of registrations residing in different but related entities, there will be no confusion as to source.

operate largely autonomously while adhering to the directives and general policies of a broader or national entity,” the Examining Attorney concludes that they are “even less of a single source than sister corporations owned by a common parent.” *Id.*

The Examining Attorney contends that the evidence of record does not establish unity of control. Specifically, he argues:

This general overview of the Salvation Army hierarchical structure is not seen to support a unity of control which creates a single source for trademark purposes. It does not provide detailed evidence how one party controls the trademark activities of the others to establish a unity of control such that the parties would constitute a single source, as discussed in *Wella*, supra. ... The evidence considered as a whole presents a diffuse organization which lacks a demonstrated organizational unity of control over the use of trademarks such that applicant and the various registrants constitute a single source.

Ex. Att. Br., 8 TTABVUE 11, 12.

Finally, with regard to the argument that the USPTO has already registered the marks under different owners, the Examining Attorney points out for the first time in his brief that:

[T]he two most recent cited registrations, Reg. Nos. 4163803 and 4168081, each contain a Consent Agreement signed by the various Salvation Army affiliated organizations, including the applicant herein, each being owners of various Salvation Army marks largely or wholly cited herein. Said agreements, which appear to have been peremptorily filed to avoid refusals under Section 2(d) of the Trademark Act, have not been noted or otherwise made of record in the current application record, nor do they reference the within application ... Thus, contrary to the applicant’s assertion, the present refusal is in fact consistent with the recent activity of the USPTO to establish a sound basis for allowing these Salvation Army marks owned by different parties, along with any similarly owned Salvation Army marks filed in the future, to coexist

on the register. Therefore, absent the execution and submission of such a consent agreement in this case, the Section 2(d) refusal has not been obviated and must be maintained.

Ex. Att. Br., 8 TTABVUE 12-13.¹⁰

In *Wella*, the applicant Wella A.G. had sought to register the mark WELLASTRATE for hair care products. The examining attorney refused registration under Section 2(d) in view of the marks WELLA, WELLASOL, WELLA STREAK and WELLATONE for various hair care products, all registered in the name of Wella Corporation (Wella U.S.), a subsidiary of Wella A.G. When an appeal was taken, the Board affirmed the refusal to register. The Board held that Section 2(d) of the Trademark Act bars registration of a mark that so resembles a mark registered or used “by another” as to be likely to cause confusion and that, because Wella U.S. was a separate legal entity from Wella A.G., Wella U.S. was “another” within the meaning of Section 2(d) and Wella A.G. was not entitled to registration of the mark WELLASTRATE. Wella A.G. appealed the Board’s decision to the U.S. Court of Appeals for the Federal Circuit, our primary reviewing court. The Federal Circuit vacated the Board’s decision and remanded the application to the Board for further action in accordance with its opinion. In remanding the case for further action, the Federal Circuit stated:

The question is whether, despite the similarity of the marks and the goods on which they are used, the public is likely to be confused about the source of the hair straightening products carrying the trademark

¹⁰ The file records in Reg. Nos. 4163803 and 4168081 referred to by the Examining Attorney are not of record. *In re Sela Prods. LLC*, 107 USPQ2d 1580, 1583 (TTAB 2013) (cited registration file not automatically of record).

“WELLASTRATE.” In other words, is the public likely to believe that the source of the product is Wella U.S. rather than the German company or the Wella organization. ... If the Wella family of marks connotes to consumers only a single source for all Wella products, namely the Wella organization, it is difficult to see how Wella A.G.’s use of the mark “WELLASTRATE” would cause confusion as to source because of Wella U.S.’s use of other Wella marks.

In re Wella A.G., 787 F.2d 1549, 229 USPQ 274, 276 (Fed. Cir. 1986).

In addition, the Federal Circuit criticized the Board’s decision for affirming the refusal to register under Section 2(d) without determining “whether under the circumstances there was in fact any likelihood of confusion, or to explain what that confusion would be.” *Id.* at 277. On remand, the Board reversed the Section 2(d) refusal, stating at 5 USPQ2d at 1361 that:

[A] determination must be made as to whether there exists a likelihood of confusion as to *source*, that is, whether purchasers would believe that particular goods or services emanate from a single source, when in fact those goods or services emanate from more than a single source. Clearly, the Court views the concept of “source” as encompassing more than “legal entity.” Thus, in this case, we are required to determine whether Wella A.G. and Wella U.S. are the same source or different sources. If we find that the two entities are the same source, there could, of course, be no confusion as to source, and the refusal under Section 2(d) may not stand. The question of whether Wella U.S. and Wella A.G. are the same source is a question of fact.

The existence of a related company relationship between Wella U.S. and Wella A.G. is not, in itself, a basis for finding that any “WELLA” product emanating from either of the two companies emanates from the same source. Besides the existence of a legal relationship, there must also be a unity of control over the use of the trademarks. “Control” and “source” are inextricably linked. If, notwithstanding the legal relationship between entities, each entity exclusively controls the nature and quality of the goods to which it applies one or more of the various

“WELLA” trademarks, the two entities are in fact separate sources. Wella A.G. has made of record a declaration of the executive vice president of Wella U.S., which declaration states that Wella A.G. owns substantially all the outstanding stock of Wella U.S. and “thus controls the activities and operations of Wella U.S., including the selection, adoption and use of the trademarks.” While the declaration contains no details of how this control is exercised, the declaration is sufficient, absent contradictory evidence in the record, to establish that control over the use of all the “WELLA” trademarks in the United States resides in a single source.

Thus, in “Wella this ‘unity of control’ was sufficiently evidenced by a declaration establishing that the applicant, Wella AG, owned substantially all the outstanding stock of the registrant, Wella (USA). However, what establishes ‘unity of control’ depends on the circumstances in every case.” *In re Wacker Neuson SE*, 97 USPQ2d 1408, 1413 (TTAB 2010). In certain circumstances, “where there is a relationship, but perhaps not the level of ‘unity of control’ envisioned by the Wella doctrine, a consent from the related company may suffice.” *In re Wacker Neuson SE*, 97 USPQ2d at 1413.

The Trademark Manual of Examining Procedure (“TMEP”) provides further guidance on how an applicant may show that there is unity of control:

If neither the applicant nor the registrant owns all or substantially all of the other entity, and USPTO records do not show their joint ownership of the application or cited registration (*see* TMEP § 1201.07(b)(ii)), the applicant bears a more substantial burden to establish that unity of control is present. For instance, if both the applicant and the registrant are wholly owned by a third common parent, the applicant would have to provide detailed evidence to establish how one sister corporation controlled the trademark activities of the other to establish unity of control to support the contention that the sister corporations constitute a single source. *See In re Pharmacia Inc.*, 2 USPQ2d 1883 (TTAB 1987); *Greyhound Corp. v. Armour Life Ins. Co.*, 214 USPQ 473 (TTAB 1982).

Likewise, where an applicant and registrant have certain stockholders, directors, or officers in common, the applicant must demonstrate with detailed evidence or explanation how those relationships establish unity of control. *See Pneutek, Inc. v. Scherr*, 211 USPQ 824 (TTAB 1981). The applicant's evidence or explanation should generally be supported by an affidavit or a declaration under 37 C.F.R. §2.20.

TMEP § 1201.07(b)(iii) (April 2016).

During prosecution, the Examining Attorney did not take issue with the form or veracity of the evidence; rather, he found that the structure of the organization, as revealed by the evidence, does not “support unity of control which creates a single source for Trademark purposes.” September 2, 2015 Denial of Request for Reconsideration. In making this observation, the Examining Attorney cites to TMEP § 1201.03(c).¹¹ However, this section of the TMEP concerns whether entity A may rely on the use of a mark by entity B as use to support entity A's application, *i.e.*, that B's use inures to A's benefit. By contrast, the concept of “unity of control” focuses on whether there will be likely confusion as to source. While TMEP § 1201.07(b)(iii) discusses a somewhat similar concept with sister corporations and it is important to have detailed information about the structure of an organization and how the mark points to one source, the concept of “unity of control” is not limited to certain

¹¹ Section 1201.03 is titled “Use by Related Companies.” Section 1201.03(d) provides: The fact that two sister corporations are controlled by a single parent corporation does not mean that they are related companies. Where two corporations are wholly owned subsidiaries of a common parent, use by one sister corporation is not considered to inure to the benefit of the other, unless the applicant sister corporation exercises appropriate control over the nature and quality of the goods or services on or in connection with which the mark is used. *Great Seats, Ltd. v. Great Seats, Inc.*, 84 USPQ2d 1235, 1242 (TTAB 2007); *In re Pharmacia Inc.*, 2 USPQ2d 1883, 1884 (TTAB 1987); *Greyhound Corp. v. Armour Life Ins. Co.*, 214 USPQ 473, 475 (TTAB 1982).

organizational structures; thus, merely because an arrangement does not fall within a set type of organization does not preclude a finding that there is unity of control.

Applicant has stated, through the representations of its attorney that The Salvation Army is a worldwide organization headquartered in London and the United States affiliate is divided into four regions all under the control of the National Command in a quasi-military structure. Applicant provided evidence from the website of its International Headquarters that supports these representations. For example,

The Salvation Army in the United States is divided into four territories. The national commander and the national chief secretary serve in coordinating capacities. Each territorial commander operates under the general policies laid down by International Headquarters in London, England.

National policy is established by the commissioner's Conference, over which the national commander presides. While the local leadership adjust to meet conditions in each community, all officers are subject to the same broad, overall policies;¹² and

The Salvation Army is an integral part of the Christian Church, although distinctive in government and practice. ... The rapid deployment of the first Salvationists was aided by the adoption of a quasi-military command structure in 1879 when the title, "The Salvation Army", was brought into use. A similarly practical organisation today enables resources to be equally flexible.¹³

¹² www.salvationarmysouth.org, April 21, 2015 Response, pp. 6-7.

¹³ www.salvationarmy.org, *id.* at 20. While this website is from the International Headquarters, which is reflected in the British spelling of "organization," it is directed and available to anyone interested in learning more about The Salvation Army, including people residing in the United States (as shown by the hyperlink on the salvationarmyusa.org website *Id.* at 11). Moreover, as noted above, Applicant is providing information about an international organization.

It is preferable that salient factual information be submitted in the form of an affidavit or declaration signed by an officer of the applicant, rather than by attorney representations. *See, e.g., In re Highlights for Children, Inc.*, 118 USPQ2d 1268, 1276 (TTAB 2016); *In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006 (TTAB 2014); *In re EBSCO Indus., Inc.*, 41 USPQ2d 1917, 1923 n.5 (TTAB 1997). However, because Applicant has provided information regarding the Salvation Army organization, evidence in the record supports these statements, there is nothing in the record that contradicts Applicant's attorney's statements and the information provided is credible, we accept them as factual support for the common organizational structure and control of The Salvation Army.¹⁴ *In re First Draft Inc.*, 76 USPQ2d 1183, 1185 n.3 (TTAB 2005) (Board considered representations by applicant's counsel because examining attorney did not object to them and they were not contradicted by anything in the record). *See also In re Sela Prods. LLC*, 107 USPQ2d at 1584 (evidentiary requirements in *ex parte* prosecution are not as stringent as those in *inter partes* proceedings, which generally follow the Federal Rules of Evidence).

¹⁴ We further note counsel's duty of "candor toward the tribunal" as set out in Rule § 11.303, which provides in pertinent part: (a) A practitioner shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the practitioner ... (3) Offer evidence that the practitioner knows to be false. ... (d) In an *ex parte* proceeding, a practitioner shall inform the tribunal of all material facts known to the practitioner that will enable the tribunal to make an informed decision, whether or not the facts are adverse." 37 CFR § 11.303.

Moreover, Applicant already owns three registrations for charitable services with the wording “The Salvation Army” (the earliest dating from 1991);¹⁵ these have coexisted for over five years with the other registrations, *dating from 1977*, that are owned by the other Salvation Army entities incorporated in New York, California, and New Jersey. Thus, the record reveals a long practice of the Registrants and Applicant registering their various The Salvation Army marks and which, taken together with the other evidence, further supports a finding that The Salvation Army constitutes a single source. *In re Wella*, 229 USPQ at 276. *Cf. In re Strategic Partners Inc.*, 102 USPQ2d 1397 (TTAB 2012) (coexistence of applicant’s existing registration with cited registration for over five years and, thus, not subject to attack by owner of cited registration on a claim of likelihood of confusion, considered under thirteenth *du Pont* factor to outweigh the other factors in finding no likelihood of confusion).

It is important to have guidelines as to how entities may demonstrate unity of control, *Wella II*, 5 USPQ2d at 1361, TMEP § 1201.07(b)(iii), but each case should be evaluated on its own particular set of facts. This case presents a unique situation in which we find there would not be a likelihood of confusion as to source. As the Federal Circuit stated, the question is “whether under the circumstances there was in fact any likelihood of confusion” and “to explain what that confusion would be.” *In re Wella*, 229 USPQ at 277. Based on this record and the unique organizational

¹⁵ Reg. Nos. 1657612, 2726323 and 3360432. Reg. No. 3360432 is for the identical mark for “charitable services, namely, solicitation and collection of donated coats for use by needy children.”

structure of the Salvation Army, it is not possible to explain what that confusion would be.

Decision: The refusal to register Applicant's mark is reversed.