

This Opinion is not a  
Precedent of the TTAB

Mailed: June 30, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Seal Team PT Incorporated*  
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Serial No. 86420547  
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David E. Weslow of Wiley Rein LLP,  
For Seal Team PT Incorporated

Mark Sparacino, Trademark Examining Attorney, Law Office 103,  
Michael Hamilton, Managing Attorney.

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Before Gorowitz, Hightower and Goodman,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

Seal Team PT Incorporated (“Applicant”) seeks registration on the Principal



**SEAL TEAM**  
Physical Training, Inc.

Register of the stylized mark , with “Physical

Training, Inc.” disclaimed, for “consulting services in the fields of fitness and exercise; physical fitness instruction” in International Class 41.<sup>1</sup>

The Trademark Examining Attorney has refused registration of Applicant’s mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that the applied-for mark falsely suggests a connection with elite units of the United States Department of the Navy (“Navy”) known as SEAL Teams or SEALs. The Trademark Examining Attorney also has refused registration of Applicant’s mark under Trademark Act Section 2(d), 15 U.S.C. §1052(d), on the ground that Applicant’s mark, when used in connection with the identified services, is likely to cause confusion with the collective membership mark SEAL (standard characters) for “indicating membership in a [sic] organization of applicant that develops and executes military missions involving special operations strategy, doctrine, and tactics” in International Class 200.<sup>2</sup>

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed.

We affirm the refusal to register on the ground of a false suggestion of a connection.

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<sup>1</sup> Application Serial No. 86420547 was filed on October 10, 2014, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as September 15, 1998.

<sup>2</sup> Registration No. 3285473 issued August 28, 2007. Section 8 and 15 accepted and acknowledged.

## I. Section 2(a), False Suggestion of a Connection

### A. Applicable Law

Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), prohibits the registration of a mark that consists of or comprises matter that may falsely suggest a connection with persons, institutions, beliefs, or national symbols. Under Section 2(a), “institutions” include government agencies. See *In re Peter S. Herrick P.A.*, 91 USPQ2d 1505, 1506 (TTAB 2009), and cases cited therein.

To establish that a proposed mark falsely suggests a connection with a person or an institution, it is the examining attorney’s burden to make a prima facie case that:

- (1) the mark is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) the mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) the person or institution named by the mark is not connected with the activities performed by the applicant under the mark; and
- (4) the fame or reputation of the person or institution is such that, when the mark is used with the applicant’s goods or services, a connection with the person or institution would be presumed.

See *In re Jackson Int’l Trading Co.*, 103 USPQ2d 1417, 1419 (TTAB 2012); *Buffett v. Chi-Chi’s, Inc.*, 226 USPQ 428, 429 (TTAB 1985); see also *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 703 F.2d 1372, 1375-77, 217 USPQ 505, 509 (Fed. Cir. 1983) (providing foundational principles for the four-part test used by the Board to determine the existence of a false connection).

B. Analysis



The issue presented is whether Applicant's mark  for "consulting services in the fields of fitness and exercise; physical fitness instruction" falsely suggests a connection with elite units of the Navy.

1. Whether SEAL TEAM PHYSICAL TRAINING INC. (stylized) is the same as or a close approximation of elite units of the Navy.

The Examining Attorney argues that "SEAL Team" is the name of elite units of the Navy and has no other recognized meaning. The record shows that "SEAL Team" is a reference to members of special weapons operation and tactical units or teams in the Navy known as SEAL (Sea-Air-Land) Teams (also known as SEAL or Navy SEAL).<sup>3</sup>

Applicant argues that the term "Inc." in its mark signifies that it is not a governmental entity and the term "Team" in its mark is a reference to the team-oriented nature of its physical fitness training program.<sup>4</sup> Based thereon, Applicant contends that its mark does not point to the Navy. To the contrary, the addition of matter to the name of an institution does not avoid the commercial impression that

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<sup>3</sup> November 5, 2014 Office Action, TSDR pp. 39-66; May 6, 2015 Office Action, TSDR pp. 39-40; Request for Reconsideration, 4 TTABVUE 86-100.

<sup>4</sup> Although Applicant made these arguments under the second prong of the test, this argument is more properly directed to the first prong. *See, e.g., In re White*, 80 USPQ2d 1654, 1658 (TTAB 2006) (discussing under the first prong of the false suggestion of a connection test Applicant's arguments that MOHAWK is not the same as or a close approximation of the designation for the St. Regis Band of Mohawk Indians of New York because the terms "St. Regis" and "New York" are not included in applicant's mark).

the mark is a close approximation of the institution. *In re North American Free Trade Association*, 43 USPQ2d 1282, 1285 (TTAB 1997) (NAFTA and design mark is same as or a close approximation of NAFTA treaty despite addition of design); *cf. In re White*, 80 USPQ2d 1654, 1658 (TTAB 2006) (MOHAWK falsely suggests a connection with St. Regis Band of Mohawk Indians of New York). Thus, we find that SEAL TEAM PHYSICAL TRAINING INC. (stylized) is the same as or a close approximation of elite units of the Navy.

2. Whether SEAL TEAM PHYSICAL TRAINING INC. (stylized) points uniquely and unmistakably to elite units in the Navy.

Applicant argues that SEAL TEAM does not point uniquely to the Navy. As support for its position, Applicant references two registrations on the Principal



Register for , arguing that this “confirms that SEAL TEAM does not point uniquely and unmistakably to the Navy.”<sup>5</sup>

The two registrations owned by the same third party, which incorporate the term “Seal Team,” are insufficient to defeat the contrary evidence that there is a unique and unmistakable association of “SEAL Team” with elite units of the Navy. *In re Opus One Inc.*, 60 USPQ2d 1812, 1814 (TTAB 2001). Applicant also provided website evidence of use of “PADI Seal Team.”<sup>6</sup> Applicant has not submitted any other third-

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<sup>5</sup> 16 TTABVUE 25; Request for Reconsideration, 4 TTABVUE 395-412, Registration Nos. 2695113 and 2668729; “TEAM” disclaimed.

<sup>6</sup> April 30, 2015 Response to Office Action. TSDR, p. 61.

party uses of SEAL TEAM as a mark or evidence of other meanings for SEAL TEAM. The one third-party use (PADI Seal Team) does not detract from the association of “SEAL Team” with the Navy.

The Examining Attorney submitted examples of media coverage referring to SEAL Teams, which directly relate to Navy SEALs.<sup>7</sup> Also in the record are third parties selling apparel, patches, and decals with SEAL Team insignia, or SEAL Team Halloween costumes, all of which directly refer to the Navy SEALs.<sup>8</sup> The evidence in the record supports the Examining Attorney’s position that the public associates “SEAL Team” with elite units in the Navy and that the uses of “SEAL Team” directly point to the Navy SEALs.<sup>9</sup>

3. Whether the Navy or its SEAL Teams are connected with Applicant.

Applicant does not dispute that it is not connected with the Navy or its SEAL units.<sup>10</sup> We find that the third prong of the test is satisfied.

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<sup>7</sup> November 5, 2014 Office Action, TSDR p. 8-9, 14-15, 39-51, 55-66; May 6, 2015 Office Action, TSDR pp. 19-29, 39-40, 46-54; Denial of Reconsideration, 6 TTABVUE 5-10; 7 TTABVUE 2-8; 12 TTABVUE 12-13; 13 TTABVUE 2-3.

<sup>8</sup> November 5, 2014 Office Action, TSDR pp. 25-26; May 6, 2015 Office Action, TSDR pp. 31-38; Denial of Reconsideration, 10 TTABVUE 5-8, 12-13; 13 TTABVUE 7.

<sup>9</sup> November 5, 2014 Office Action; May 6, 2015 Office Action; Denial of Reconsideration, 5 TTABVUE.

<sup>10</sup> While Applicant’s principal and some of its instructors are former SEALs, Applicant does not claim a connection with the Navy SEAL units. 16 TTABVUE 26 (“...Applicant makes clear that the owner of the company is a former—not current—Navy Seal.”).

4. Whether the fame or reputation of Navy SEAL Teams or SEALs is such that, when Applicant's mark is used with its services, a connection with those units would be presumed.

Our inquiry under this prong of the test is whether the elite units of the Navy are of such renown that when the mark SEAL TEAM PHYSICAL TRAINING INC. is used in connection with Applicant's identified services, consumers will understand "SEAL Team" as referring to these elite units, the Navy SEAL Teams or SEALs, and that a connection with these elite units of the Navy will be presumed. *In re Nieves & Nieves LLC*, 113 USPQ2d 1629, 1637 (TTAB 2015).

The contemporary fame or reputation of "SEAL Team" is reflected in the record which clearly establishes that there has been widespread publicity, movies and books regarding the Navy SEALs, and SEAL Teams, particularly SEAL Team 6 in connection with the raid that killed Osama bin Laden as well as military actions taken by SEAL Teams in Afghanistan, Libya and Somalia.<sup>11</sup> We can conclude that Navy SEALs and SEAL Teams are well known to the general public and that the general public would recognize "SEAL Team" as unambiguously referring to elite special operations units of the Navy, the SEAL Teams or SEALs.

We now look to whether a connection with the Navy SEALs would be presumed when Applicant's mark SEAL TEAM PHYSICAL TRAINING INC. is used with its identified "consulting services in the fields of fitness and exercise; physical fitness instruction services." Applicant argues that due to the nature of its services, which

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<sup>11</sup> November 5, 2014 Office Action; May 6, 2015 Office Action; Denial of Reconsideration, 5 TTABVUE.

are commercial fitness services for civilians, no connection with the Navy would be presumed. Applicant points to its customer declarations as evidence that consumers do not presume such a connection, given that the Navy's services relate to executing military missions while Applicant's services are physical fitness services for the general public. Applicant submits that while its customers "know of the Navy," "no rational person would sign up for physical fitness training with the Applicant under the assumption that he or she is joining the U.S. Navy SEALs or that he or she would actually be trained by active duty SEALs" who are employed by the Navy.<sup>12</sup>

However, that is not the focus of our inquiry with regard to this prong of the test. Our inquiry here is whether consumers of Applicant's identified services would presume a connection with the Navy's elite units, the SEAL Teams or SEALs when Applicant's mark SEAL TEAM PHYSICAL TRAINING INC. is used in connection with such services. *In re Pederson*, 109 USPQ2d 1185, 1202 (TTAB 2013).

The evidence indicates that SEAL Teams are known for executing special operations military missions, are part of the United States Naval Special Warfare Command, and are organized into Teams 1-5 and 7-10, and the Naval Special Warfare Development Group, unofficially known as SEAL Team 6.<sup>13</sup> The evidence also indicates that Navy SEALs are known for having to undertake rigorous mental and physical training, including BUD/S (Basic Underwater Demolition/Seal) physical

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<sup>12</sup> 16 TTABVUE 20.

<sup>13</sup> November 5, 2014 Office Action, TSDR, pp. 39-63; May 6, 2015 Office Action, TSDR pp. 39-40; Request for Reconsideration, 4 TTABVUE 86-100.

and mental stamina training, to become SEALs.<sup>14</sup> The official website of the Navy SEALs has web pages related to SEAL physical training including strength, swimming, running, and injury prevention, SEAL workouts in PDF form, and downloadable SEAL training videos.<sup>15</sup> As part of its recruiting and outreach efforts, the Navy offers the Navy SEAL Fitness Challenge, an athletic and fitness event for the general public, and has a separate website and Facebook page for this event.<sup>16</sup> The Navy offers Navy SEAL training engagements geared to athletic clubs, high schools and universities which include fitness presentations and training from Navy SEALs, and the Navy also offers public awareness events that are used to recruit potential Navy SEALs.<sup>17</sup> The evidence in the record also indicates that Applicant and other companies offering physical training using Navy SEAL training methods, including BUD/S training, have successfully trained individuals seeking to qualify as Navy SEALs.<sup>18</sup> Moreover, Applicant's website states that its founder is a former Navy SEAL, that Applicant offers Navy SEAL type workouts by trainers who may be former Navy SEALs, and that its members include current and former members of the military.<sup>19</sup>

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<sup>14</sup> November 5, 2014 Office Action; TSDR, pp. 41-43, 57-59, 60-63; Request for Reconsideration, 4 TTABVUE 24-27, 86-100.

<sup>15</sup> Request for Reconsideration, 4 TTABVUE 86-100; Reconsideration Denied, 5 TTABVUE 11-15.

<sup>16</sup> Request for Reconsideration, 4 TTABVUE 86-100; Reconsideration Denied, 5 TTABVUE 16-17.

<sup>17</sup> *Id.*

<sup>18</sup> Request for Reconsideration, 4 TTABVUE 24-27, 65-66, 306-326, 351; April 30, 2015 Response to Office Action, TSDR p. 68-70.

<sup>19</sup> 4 TTABVUE 305-327.

Given the Navy SEAL outreach and recruitment efforts as well the Navy SEAL website providing the general public with Navy SEAL workouts and the Navy SEAL Challenge website and Facebook page, the public would assume that the Navy has an interest in sponsoring, approving, or supporting activity related to physical training services such as Applicant's to foster interest in Navy SEALs and from which it might occasionally draw a Navy SEAL candidate. We therefore find that the public would presume that there is a connection between Applicant and the elite units of the Navy, the SEAL Teams or SEALs, that is, the Navy approves or endorses Applicant's services by Applicant's use of SEAL TEAM PHYSICAL TRAINING INC.

Accordingly, we conclude that use of SEAL TEAM PHYSICAL TRAINING INC. (stylized) in connection with "consulting services in the fields of fitness and exercise; physical fitness instruction services" falsely suggests a connection with elite units in the Navy and that registration must be refused.

## II. Conclusion

In summary, we find a false suggestion of a connection with Applicant's mark and the elite units of the United States Department of the Navy, the SEAL Teams or SEALs.



**Decision:** The Section 2(a) refusal to register Applicant's mark is affirmed. Because we have sustained the refusal under Section 2(a) of the Trademark Act, we need not reach the Section 2(d) refusal. *See New York Yankees*

*P'ship v. IET Prods. & Servs., Inc.*, 114 USPQ2d 1497, 1512 (TTAB 2015); *Multisorb Techs., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170 (TTAB 2013).