

THIS OPINION IS A
PRECEDENT OF THE TTAB

Mailed: October 29, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Mayweather Promotions, LLC
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Serial No. 86753084
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Lauri S. Thompson and Shauna L. Norton of Greenberg Traurig LLP,
for Mayweather Promotions, LLC.

Yocheved Bechhofer,¹ Trademark Examining Attorney, Law Office 114,
Laurie Kaufman, Managing Attorney.

—————
Before Kuhlke, Wolfson and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Applicant, Mayweather Promotions, LLC, seeks registration of the proposed mark
PAST PRESENT FUTURE (in standard characters), as amended,² on the Principal

¹ In this proceeding, Ms. Bechhofer represented the Office with respect to the application at briefing. Mr. In Pyo Lee is the Examining Attorney that was responsible for the application during prosecution.

² The original drawing showed the wording with periods, i.e., PAST. PRESENT. FUTURE. September 10, 2015 Application, TSDR 1. Following an initial refusal of the proposed mark as failing to function (for being merely ornamental), Applicant amended the drawing to delete the periods. June 24, Response to Office Action, TSDR 1. The Examining Attorney accepted the amended drawing as a non-material alteration and withdrew the ornamentation refusal. July 18, 2016 Suspension Notice, TSDR 1.

Register for “T-shirts” in International Class 25.³ The Trademark Examining Attorney refused registration under Sections 1, 2, and 45 of the Trademark Act, 15 U.S.C. §§ 1051-52 and 1127, on the ground that the proposed mark fails to function as a trademark because it is a slogan or term that would not be perceived as identifying and distinguishing the Applicant’s goods and indicating their source. Instead, it would be perceived as a commonplace term, message, or expression widely used by a variety of sources.⁴

When the refusal was made final, Applicant appealed to this Board. The appeal is fully briefed. We affirm the refusal.

I. Applicable Law

“The Trademark Act is not an act to register words but to register trademarks. Before there can be registrability, there must be a trademark ... and, unless words have been so used, they cannot qualify for registration.” *In re Standard Oil Co.*, 275 F.2d 945, 125 USPQ 227, 229 (CCPA 1960). Thus, we start our analysis with Section 45 of the Act, which defines a “trademark” as “any word, name, symbol, or device, or any combination thereof used by a person ... to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the

Trademark Status & Document Retrieval (“TSDR”) citations herein refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

³ Application Serial No. 86753084 was filed on September 10, 2015 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on Applicant’s claim of first use of the mark anywhere and in commerce as of 2008.

⁴ The refusal also refers to Section 3 of the Trademark Act, 15 U.S.C. § 1053, but that section applies only to marks for services, not goods. 8 TTABVue 4, 11. Only Sections 1, 2, and 45 are relevant to the refusal.

goods, even if that source is unknown.” 15 U.S.C. § 1127. *See also In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 216 (CCPA 1976) (“[T]he classic function of a trademark is to point out distinctively the origin of the goods to which it is attached”). Widely used commonplace messages are those that merely convey ordinary, familiar concepts or sentiments and will be understood as conveying the ordinary concept or sentiment normally associated with them, rather than serving any source-indicating function. *See, e.g., D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1716 (TTAB 2016) (sustaining opposition to registration of I ♥ DC for clothing because it “has been widely used, over a long period of time and by a large number of merchandisers as an expression of enthusiasm, affection or affiliation with respect to the city of Washington, D.C.” and thus would not be perceived as a source-indicator); *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d 1455, 1460-61 (TTAB 1998) (affirming refusal to register DRIVE SAFELY for automobiles because it would be perceived as an everyday, commonplace safety admonition); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1202.04(b) (October 2018).

Whether the phrase PAST PRESENT FUTURE is more than a commonplace message and functions as a mark depends on whether the relevant public, i.e. purchasers or potential purchasers of Applicant’s goods, would perceive the term as identifying and distinguishing those goods and indicating their source, even if that source is unknown. Trademark Act § 45, 15 USC § 1127; *In re Volvo Cars of N. Am., Inc.*, 46 USPQ2d at 1459 (“A critical element in determining whether a term or phrase is a trademark is the impression the term or phrase makes on the relevant public.”);

see also 1 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 7:23 (5th ed. 2019) (“The more commonly used the phrase, the less likely that the public will use it to identify only one seller and the less likely that it can achieve trademark status.”).

II. The Examining Attorney’s Arguments and Evidence

The Examining Attorney argues that PAST PRESENT FUTURE is “a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment” and fails to function as a trademark because it does not distinguish Applicant’s goods from those of others or identify the source of those goods.⁵ She contends that “PAST PRESENT FUTURE is a widely used commonplace message or expression that “is commonly used to refer to describe or recount the general history/background, the current state and the direction/projection of a person, animal, idea, or concept in a lineal fashion based on a timeline.”⁶ Accordingly, that wording “will not be perceived as identifying the source of the goods.”⁷

In support, the Examining Attorney provided evidence from a variety of third-party websites including the following examples:⁸

⁵ 8 TTABVUE 5.

⁶ *Id.* at 6.

⁷ *Id.* at 11.

⁸ April 19, 2018 Office Action, TSDR 6-18 (highlighting added by the Examining Attorney).

Bone graft substitutes: past, present, future.

Parikh SN¹.

⊕ Author information

Abstract

Bone grafts are necessary to provide support, fill voids, and enhance biologic repair of skeletal defects. They are used by orthopaedic surgeons, neurosurgeons, craniofacial surgeons, and periodontists. Bone harvested from donor sites is the gold standard for this procedure. It is well documented that there are limitations and complications from the use of autograft, including the limited quantity and associated chronic donor site pain. Despite the increase in the number of procedures that require bone grafts, there has not been a single ideal bone graft substitute. Scientists, surgeons, and medical companies, thus, have a tremendous responsibility to develop biologic alternatives that will enhance the functional capabilities of the bone graft substitute, and potentially reduce or eliminate the need for autograft. This article is an attempt to review the past and existing bone graft substitutes, and future directions of research. The historical data was extracted after thorough review of the literature. The data for the current concepts and future directions was compiled from the Internet, and from direct correspondence with medical companies. Since many products are undergoing clinical trials, and are yet not commercially available, their data cannot be found in literature. The main purpose of this article is to give the reader an idea about the existing market products and products likely to be available in near future.

(ncbi.nlm.nih.gov)

Past. Present. Future.

The 25th Anniversary of Cause
Marketing.

(conecomm.com)

Climate Relicts: Past, Present, Future

Annual Review of Ecology, Evolution, and Systematics

Vol. 42:313-333 (Volume publication date December 2011)

First published online as a Review in Advance on August 23, 2011

<https://doi.org/10.1146/annurev-ecolsys-102710-145015>

(annualreviews.org)

*Past Present Future: Western Pennsylvania's
People and Places at Silver Eye Center*

A rich and sprawling show looks backward, around
and forward

(pghcitypager.com)



Commentary

Medical informatics: Past, present, future ☆☆☆

Reinhold Haux ¹

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<https://doi.org/10.1016/j.ijmedinf.2010.06.003>

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Abstract

Objective

To reflect about medical informatics as a discipline. To suggest significant future research directions with the purpose of stimulating further discussion.

Methods

Exploring and discussing important developments in medical informatics from the past and in the present by way of examples. Reflecting on the role of IMIA, the International Medical Informatics Association, in influencing the discipline.

Results

Medical informatics as a discipline is still young. Today, as a cross-sectional discipline, it forms one of the bases for medicine and health care. As a consequence considerable

(sciencedirect.com)

— PERSPECTIVE BY BAHRAM AKRADI —

Past, Present, Future

BY BAHRAM AKRADI | JANUARY-FEBRUARY 2018



A look at how the ways we're living have changed in recent decades — and why it's important to adapt and grow.

(experiencelife.com)



PAST PRESENT FUTURE, PROFILES - MARCH 14, 2018

Past, Present, Future: Gancia De Muze

Past, Present, Future: Gancia De Muze

Although one of four other very talented mares in Bruynseels' current string—a string that he has credited as the best he's had in his career—the 12-year-old Belgian Warmblood mare (Malito de Reve x Nimmerdor) stands out, especially after the events in the Netherlands last week.

PAST

- Gancia was previously developed through the CSIYH1*, and CSI2* levels by fellow Belgian rider Wilm Vermeir and briefly, Maarten Driessen.
- Since taking over the ride in June of 2015, Bruynseels' first win with Gancia was a CSI4* 1.45m two-phase at Liège in Belgium in November of 2015.
- They would score their first Grand Prix win at CSI3* Bonheiden in June 2016. Just four months later in October, they beat out Scott Brash and Hello Guv'Nor for top honors in the **€80,000 Grand Prix of Helsinki CSI5***.

PRESENT

- Gancia's 2017 five-star schedule previewed her successes last weekend: In January 2017, she won the **Longines Grand Prix of Basel**. In September, it was the **€300,000 Rolex Grand Prix at Brussels Stephex Masters**, and in December, the **Grand Prix Sport Vlaanderen at Jumping Mechelen CSI5*-W**. #nottooshabby
- "She is such a lovely horse. She is so easy to manage, she knows her job and she proved [on Sunday] again that she is one of the top horses on the circuit," Gancia's groom Frank Delval let told The Dutch Masters after her Rolex Grand Slam Grand Prix victory.

FUTURE

- Gancia's immediate next appearance in the show ring will be Saut Hermès at the Grand Palais in Paris this coming weekend, starting Friday the 16th.
- "We can see the standing time piece from here! Next stop-Germany! "Aachen is certainly the next stop," Bruynseels shared. "The Rolex Grand Slam of Show Jumping is the biggest prize in our sport and I hope I can

(noellefloyd.com)

Past, Present, Future

From Wikipedia, the free encyclopedia

Past, Present, Future or **Past, Present and Future** may refer to:

Books [edit]

- *Islam: Past, Present and Future*, a book by Hans Küng
- *Past, Present and Future*, a book series by Nat Schachner

Music [edit]

Albums [edit]

- *Past, Present, Future* (Morgana Lefay album), 1995
- *Past, Present, Future* (Tiki Taane album), 2007
- *Past:Present:Future* (Chipz EPs), 2006, two-part extended play series
- *Past, Present and Future* (Al Stewart album), 1973
- *Past, Present & Future* (Rob Zombie album), 2003
- *Past, Present, & Future*, an album by Aron Burton
- *Trilogy: Past Present Future*, by Frank Sinatra, 1980
- *Trinity (Past, Present and Future)*, by Slum Village, 2002
- *HiStory: Past, Present and Future, Book I*, by Michael Jackson, 1995
- *Pa La Calle: Pasado, Presente y Futuro*, a 2010 mixtape by Zion & Lennox
- *The Past, The Present, The Future* (Mark 'Oh album), 2009
- *The Past, The Present, The Future* (Jodeci album), 2015

Songs [edit]

- "Past, Present, and Future", a song by Abby Travis
- "Past, Present and Future", a song by Agnetha Fältskog from *My Colouring Book*
- "Past, Present and Future", a song by Allen Kwela
- "Past, Present, & Future", a song by Aron Burton
- "Past, Present and Future", a song by Grant Green from *The Final Comedown*
- "Past Present and Future", a song by Marianne Faithfull from *Horses and High Heels*
- "Past Present and Future", a song by Ronnie Self
- "Past, Present and Future", a song by The Shangri-Las
- "Past Present and Future", a song by Sibongile Khumalo
- "My Past, My Present and My Future", a song by Russ Columbo
- "Sound Image of the Past, Present and Future", a song by Muhal Richard Abrams from *Family Talk*
- "Visions of the Past, Present and Future", a song by White Hills
- "You're My Past, Present, and Future", a song by Joe Venuti

(Wikipedia.com)

Additionally, the Examining Attorney provided a number of webpages showing PAST PRESENT FUTURE or variants thereof being used on t-shirts by unrelated third parties, including the following excerpts therefrom:⁹



(ebay.com)

⁹ November 6, 2018 Final Office Action, TSDR 7-20.



(poshmark.com)



(redmolotov.com)



(365ist.com)



(amazon.com)

The Examining Attorney argues that “[t]his widespread use of the phrase PAST PRESENT FUTURE shows that consumers viewing the mark will perceive [it] as conveying that message rather than as indicating the source of the goods. ... [T]his evidence is more than sufficient to show the phrase is widely used by a variety of sources to convey the same message of a lineal timeline conveying a general history, current state, and direction of a person, animal, idea, or concept, and that the phrase is commonly used in the clothing industry.”¹⁰

¹⁰ 8 TTABVue 7.

III. Applicant's Arguments

Applicant makes a number of arguments in support of registrability, which we address in turn.

A. Argument: PAST PRESENT FUTURE is Highly Distinctive and Well-Known in the Trade and to the Relevant Public

According to Applicant, "PAST PRESENT FUTURE is known in the boxing industry to indicate the career of the champion boxer Floyd Mayweather, Jr. and the sports and entertainment related goods and services provided by his company Mayweather Promotions, LLC."¹¹ Applicant contends that "consumers recognize the PAST PRESENT FUTURE Mark as affiliated with Floyd Mayweather, and members of the purchasing public have come to recognize [it] as a trademark identifying Appellant and its services and goods" because:

- "the relevant public comprises sports fans";
- "these fans have seen the slogan PAST PRESENT FUTURE for more than 10 years in association with Floyd Mayweather and [Applicant]";
- "Appellant has dedicated significant resources to promoting goods and services featuring the mark PAST PRESENT FUTURE ... on Appellant's website and social media sites"; and
- "Appellant's consistent and extensive promotion of services and products in connection with Appellant's PAST PRESENT FUTURE Mark [has caused the mark to] become highly distinctive and well-known in the trade and to the relevant public."¹²

Applicant's contention that "the relevant public comprises sports fans" is

¹¹ 5 TTABVue 4.

¹² *Id.* at 4-5.

misplaced. Because there are no limitations on the channels of trade or classes of consumers of the t-shirts identified in the application, the relevant consuming public comprises all potential purchasers of t-shirts, who may or may not be sports aficionados. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); *Bell's Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1345 (TTAB 2017). Even if Applicant had provided evidence that a small subgroup of t-shirt consumers who are fans of Mr. Mayweather associate the phrase with him, Applicant fails to grapple with the evidence of third-party use of the phrase on t-shirts that does not appear to be linked with Mr. Mayweather, which suggests that the broader class of t-shirt consumers would perceive only the common meaning of the phrase.

Applicant's additional arguments lack evidentiary support. There is simply no evidence in the record regarding Floyd Mayweather, Jr., his career, or even his purported legal connection to Applicant. Nor is there evidence of what "fans" have seen "for more than 10 years in association with Mayweather" or Applicant; evidence that Applicant has dedicated significant resources to promoting goods and services featuring PAST PRESENT FUTURE on websites or social media sites; or that due to such activities, the mark "has become highly distinctive and well-known in the trade and to the relevant public." Counsel's argument is "no substitute for evidence." *In re OEP Enters.*, 2019 USPQ2d 309323 at *46 (TTAB 2019) (quoting *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 1550 (2019) (internal quotation omitted)).

B. Argument: PAST PRESENT FUTURE is Not Merely Informational and Is Not A Common Phrase in the Clothing Industry

Applicant argues that PAST PRESENT FUTURE “does not have the characteristics of words commonly refused under a ‘merely informational matter’ refusal because it is not well recognized, ubiquitous, or merely informational.”¹³

Specifically, Applicant contends,

the evidence submitted by the Examiner does not demonstrate that the phrase PAST PRESENT FUTURE conveys any information to the public about the goods. Indeed, the evidence submitted by the Examiner in support of the refusal consists of website screenshots showing third party use of the phrase in an ornamental fashion on shirts. This evidence is insufficient to establish that Appellant’s Mark is merely informational as to the goods, or that PAST PRESENT FUTURE is a common phrase in the clothing industry. Just because there is some evidence on the internet showing use of a mark in a decorative fashion does not automatically lead to the conclusion that the relevant consuming public, i.e., sports and boxing fans, will not associate Appellant’s goods sold under the mark with Appellant.¹⁴

Applicant’s argument that the evidence does not show PAST PRESENT FUTURE merely conveys information **about the goods** is inapposite, since the Examining Attorney does not make that argument as a basis for the refusal. Instead, the Examining Attorney argues that widespread use of the term PAST PRESENT FUTURE in the marketplace “shows that consumers viewing the mark will perceive the applied-for mark as conveying that message rather than as indicating the source of the goods.”¹⁵ A term may still fail to function as a mark even if it does not convey

¹³ 5 TTABVUE 6.

¹⁴ 5 TTABVUE 8.

¹⁵ 8 TTABVUE 7.

information about the goods.

Additionally, and contrary to Applicant's contentions, the weight of the evidence does demonstrate ubiquitous third-party use of the phrase PAST PRESENT FUTURE to refer to the past, present and future of people, things, ideas and concepts. Further, as demonstrated by the record, in the clothing industry, this common message is used on t-shirts as a feature such that "the display itself is an important component of the product and customers purchase the product" not associating it with a particular source but because of the message. *D.C. One Wholesaler*, 102 USPQ2d at 1716; *see also Eagle Crest*, 96 USPQ2d at 1230 ("Because consumers would be accustomed to seeing this phrase displayed on clothing items from many different sources, they could not view the slogan as a trademark indicating source of the clothing only in applicant."). Indeed, Applicant's own use of the term on t-shirts, as seen on the specimen of record, shows the same manner of use as the third-party evidence of record:¹⁶



¹⁶ September 10, 2015 Application, TSDR 7.

This kind of evidence is probative in determining whether a term or phrase would be perceived in the marketplace as a trademark or as a widely used message. *D.C. One Wholesaler*, 120 USPQ2d at 1716; *Eagle Crest*, 96 USPQ2d at 1232 (“The primary function of this familiar Marine slogan as shown by the evidence of use by the public, by other retailers and also by applicant, is nonetheless to convey information, that is, to express support, admiration or affiliation with the Marines”). In this case, the Examining Attorney’s evidence establishes not only that PAST PRESENT FUTURE is a widely used message that conveys a concept, but also that consumers are accustomed to seeing that message displayed in a non-source identifying manner on t-shirts. Taken together, these two forms of evidence strongly support a finding that PAST PRESENT FUTURE is not perceived as a mark when used in connection with t-shirts.

C. Argument: Registrability of PAST PRESENT FUTURE is Confirmed By Third-Party Registrations and Applicant’s Ownership of a Prior Registration for a Similar Mark for Services

Applicant provided a list of twelve third-party registrations for different marks comprising what Applicant refers to as “sports-related slogans” that the USPTO has “routinely registered,” and also points to Registration No. 5682897 owned by Applicant for PAST, PRESENT & FUTURE OF SPORTS & ENTERTAINMENT for “online retail store services featuring sports apparel, clothing and hats.”¹⁷ According

¹⁷ 5 TTABVUE 8-9 (listing I WILL WHAT I WANT; THE ATHLETES OF THE NEXT GENERATION; ARE YOU FROM HERE?; WE MADE IT BETTER; DON’T BE LAST; BRAVE THE RUN; I THINK YOU HEAR US COMING; SHE’S A FIGHTER; JOIN THE TEAM; BELIEVE IN NOW; WORK OUT LIKE A PRO; PREPARE FOR COMBAT; and BE A BETTER ATHLETE).

to Applicant, the latter “confirms that these terms do function as a source indicator for Applicant’s clothing.”¹⁸

The Examining Attorney correctly notes that these third-party registrations are irrelevant: “Each of the marks in the third-party registrations are comprised of wording that is entirely different from the wording in the applied-for mark,” she asserts, and regardless, the “prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the [Board].”¹⁹ *See also In re Weiss Watch Co.*, 123 USPQ2d 1200, 1207 (TTAB 2017); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to Nett Designs’ application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”).

Applicant’s argument that the third-party registrations for different wording are relevant to our analysis by virtue of the fact that they are “sports-related slogans” is

The Examining Attorney also asserts that no consideration should be given to these registrations because Applicant merely provided a list of the registrations instead of providing copies of the registration certificates. 8 TTABVUE 9. However, as Applicant notes, the previous Examining Attorney did not object to the mere listing provided with Applicant’s response to the second office action. 9 TTABVUE 3-4. In fact, he considered and discussed them in his final office action. November 6, 2018 Final Office Action, TSDR 3-4. Because he did not object during prosecution, which would have allowed Applicant to cure the deficiency, we consider the objection waived on appeal. *See In re City of Houston*, 101 USPQ2d 1534, 1536 (TTAB 2012), *aff’d*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013) (where the examining attorney failed to advise the applicant during prosecution of the insufficiency of a list of registrations, the Board deemed the examining attorney to have waived any objection to the list and considered it for whatever probative value it had).

¹⁸ 5 TTABVUE 8.

¹⁹ 8 TTABVUE 9.

misguided; the question is not whether slogans can be used as source identifiers in the field of sports, the question is whether this particular phrase Applicant seeks to register would be perceived by potential consumers as identifying source. In any event, we are not privy to the records of those prior registrations and therefore must assess the registrability of Applicant's proposed mark on its own merits and not simply based on the existence of other registrations for different marks. *Nett Designs*, 57 USPQ2d at 1566 ("The Board must decide each case on its own merits.").

Applicant's reliance on ownership of a prior registration for "PAST, PRESENT & FUTURE OF SPORTS & ENTERTAINMENT" for online retail store services as confirmation that the proposed mark PAST PRESENT FUTURE serves as a source indicator for t-shirts is equally unconvincing. The mark in that registration includes additional wording and covers services not at issue here. "It has been said many times that each case must be decided on its own facts." *Eagle Crest*, 96 USPQ2d at 1129 (citing *Nett Designs*, 57 USPQ2d at 1566).

D. Argument: PAST PRESENT FUTURE is Registrable as an Identifier of Secondary Source

"Alternatively," Applicant argues, "PAST PRESENT FUTURE is registrable because it informs the purchasing public of the goods [sic] connection with Appellant and Floyd Mayweather, creating 'secondary source' identification. Under the secondary source doctrine," Applicant urges, "trademarks are permitted to identify and distinguish a source of goods in the sense of indicating sponsorship or

authorization by a recognized entity.”²⁰ Specifically:

In Appellant’s case, it is suggestive of longevity- Floyd Mayweather’s sports career has spanned over 22 years, and he still may fight again in 2019. He became his own promoter and started Mayweather Promotions, LLC in 2007. Currently Mayweather Promotions has 20 fighters, netted in excess of \$350 million worldwide, and generated over \$1 Billion in Pay-per-View revenues. Sales under PAST PRESENT FUTURE have made the phrase highly recognizable when associated with goods and services offered by Appellant. For these reasons, Appellant’s Mark PAST PRESENT FUTURE is distinctive and serves as an indicator of source for Appellant’s goods and services, Appellant requests that its application be approved for publication.²¹

This is not a situation where evidence of secondary source is relevant. Applicants may present secondary source evidence to show that a proposed mark used on goods in a decorative or ornamental manner also has a source-indicating function by showing that the applicant has used the proposed mark in a non-ornamental manner with goods or services in the past other than those being refused as ornamental. *See In re T.S. Designs, Inc.*, 95 USPQ2d 1669, 1672 (TTAB 2010) (rejecting applicant’s attempts to rely on the theory of secondary source because there was “no factual parallel ... to reported decisions where ornamental material on the clothing tells the purchasing public the source of the goods”); *In re Watkins Glen Int’l, Inc.*, 227 USPQ 727, 729 (TTAB 1985) (finding a stylized checkered flag design registrable for patches and clothing items, where applicant had previously registered WATKINS GLEN and checkered flag design for services); *In re Paramount Pictures Corp.*, 213 USPQ 1111, 1112 (TTAB 1982); TMEP § 1202.03(c). However, as the Examining Attorney notes,

²⁰ 5 TTABVUE 9.

²¹ *Id.* at 10.

the proposed mark was not finally refused on grounds that it is merely ornamental, so this theory of registrability is inapplicable.

IV. Conclusion

The record before us indicates that PAST PRESENT FUTURE has been widely used in various commercial settings to convey a familiar concept, namely one that is used to describe or recount the PAST (history/background), PRESENT (current state) and anticipated FUTURE (direction) of a person, animal, idea, or concept in a lineal fashion based on a timeline. Additionally, the marketplace evidence shows that consumers have been exposed to PAST PRESENT FUTURE used on t-shirts to convey a common message, which reinforces our finding that consumers are unlikely to associate that term with a particular source for t-shirts. *See Eagle Crest*, 96 USPQ2d at 1230 (“Because consumers would be accustomed to seeing this phrase [ONCE A MARINE, ALWAYS A MARINE] displayed on clothing items from many different sources, they could not view the slogan as a trademark indicating source of the clothing only in applicant.”) It is clear that t-shirts provided in connection with this term will be purchased by consumers for the message it conveys.

We thus find that the phrase PAST PRESENT FUTURE in connection with t-shirts would be perceived by purchasers and prospective purchasers as a widely used commonplace expression of a familiar concept and not as a source indicator for t-shirts.

Decision: The refusal to register is affirmed.