Mailed: September 19, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Thomas D. Foster, APC

Serial No. 87981611

Thomas D. Foster of TDFoster – Intellectual Property Law,
for Thomas D. Foster, APC.

Tracy Cross, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Wellington, Heasley and Allard,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Thomas D. Foster, APC ("Applicant"), a corporation, seeks registration on the Principal Register of the standard character mark US SPACE FORCE for the following goods and services:[1]

> "Metal license plates; metal novelty license plates; souvenir license plates of metal" in International Class 6;
>
> "License plate frames; license plate holders" in International Class 12;

[1] Application Serial No. 87981611, filed March 19, 2018 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant's allegation of an intent to use the mark in commerce. The identifications of goods for Classes 16, 18, 21, 24 and 28, are extensive and we therefore summarize these goods.

"Collectible coins; commemorative coins; lapel pins; ornamental lapel pins; jewelry pins for use on hats; jewelry; watches; clocks; decorative key fobs of common metal; leather key chains" in International Class 14;

Various types of books, posters, art prints, magazines, and other stationery items in International Class 16;

Various types of bags, umbrellas, and luggage in International Class 18;

"Accent pillows; bed pillows; floor pillows; novelty pillows; pillows; picture and photograph frames; picture frames; wind chimes" in International Class 20;

Various goods, including beverage and food containers and related accessory goods, in International Class 21;

Various articles, including cloth flags, linen, towels, and blankets, in International Class 24;

Various types of toys, including "toy spacecraft; toy rockets; toy space vehicles; toy figures; toy vehicles; toy weapons; scale model spacecraft; scale model rockets; scale model space vehicles," in International Class 28;

and

"Lighters for smokers; cigar lighters" in International Class 34.

The Examining Attorney has refused registration of the mark for all classes of goods under Section 2(a) of the Trademark Act ("the Act"), 15 U.S.C. § 1052(a), based on false suggestion of a connection with the United States Space Force.

When the refusal was made final, Applicant appealed.[2] The appeal has been briefed.[3]

We affirm the refusal to register.

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

Section 2(a) of the Act prohibits registration on either the Principal or the Supplemental Register of a designation that consists of or comprises matter that may falsely suggest a connection with "persons, living or dead, institutions, beliefs, or national symbols ...." 15 U.S.C. § 1052(a). "[T]he rights protected under the § 2(a) false suggestion provision are not designed primarily to protect the public, but to protect persons and institutions from exploitation of their persona." *Bridgestone/Firestone Rsch. Inc. v. Auto. Club de l'Ouest de la France*, 245 F.3d 1359, 58 USPQ2d 1460, 1463 (Fed. Cir. 2001) (citing *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505, 508-09 (Fed. Cir. 1983)). A person, institution, belief or national symbol does not need to be explicitly protected by statute in order to be protected under Section 2(a). *See, e.g.*, *In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218 (Fed. Cir. 2009).

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[2] Prior to the appeal, Applicant filed a request for reconsideration (on January 24, 2020), and this was denied by the Examining Attorney on March 2, 2020.

The application was then remanded to the Examining Attorney at Applicant's request (4-5 TTABVUE) based on "new and compelling evidence." The application was also remanded to the Examining Attorney at the Examining Attorney's request (6-7 TTABVUE) for remand "to address an issue not involved in the appeal that may render the subject mark unregistrable." After the issuance of another final Office Action (on July 6, 2021), Applicant filed a second request for reconsideration (on September 11, 2021), and this was denied by the Examining Attorney (on January 28, 2022). The appeal was then resumed (11 TTABVUE).

[3] 12 TTABVUE (Applicant's appeal brief) and 14 TTABVUE (Examining Attorney's appeal brief).

Also, relevant to this proceeding, the U.S. government, as well as government agencies and instrumentalities, are considered juristic persons or institutions within the meaning of the statute. 15 U.S.C. § 1052(a); Section 45 of the Act, 15 U.S.C. § 1127. *See In re Peter S. Herrick P.A.*, 91 USPQ2d 1505, 1506 (TTAB 2009) ("institutions, as used in Section 2(a), include government agencies."); *U.S. Navy v. United States Mfg. Co.*, 2 USPQ2d 1254, 1257-58 (TTAB 1987) ("the Navy is a juristic person within the meaning of Section 45 of the Act and the Marine Corps might be *argued* to be an institution"); *In re Cotter & Co.*, 228 USPQ 202, 204-05 (TTAB 1985) (finding the United States Military Academy is an institution and West Point "has come to be solely associated with and points uniquely to the United States Military Academy"); *NASA v. Record Chem. Co. Inc.*, 185 USPQ 563, 565-66 (TTAB 1975) (finding the National Aeronautics and Space Administration (NASA) is a juristic person and institution). Thus, common names, acronyms and initialisms for the U.S. government or its agencies or instrumentalities can be relevant to false suggestion of connection claims.

To establish that a proposed mark falsely suggests a connection with a person or an institution, it must be shown 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.

Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 217 USPQ 508-09 ("the *Univ. of Notre-Dame du Lac* test"). *See also In re Pedersen*, 109 USPQ2d 1185, 1188-89 (TTAB 2013) (citing *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.* in an ex parte appeal context for "providing foundational principles for the current four-part test used by the Board to determine the existence of a false connection"). *See also Piano Factory Grp., v. Schiedmayer Celesta GmbH*, 11 F.4th 1363, 2021 USPQ2d 913, at *11 (Fed. Cir. 2021); *U.S. Olympic Comm. v. Tempting Brands Netherlands B.V.*, 2021 USPQ2d 164, at *17-18 (TTAB 2021); *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).

A. US SPACE FORCE is the same as, or a close approximation of, U.S. Space Force

The Examining Attorney asserts that "[t]he evidence of record makes clear that the U.S. Space Force is an agency of the U.S. Government" and "[i]n fact, the U.S. Space Force is the sixth branch of the U.S. military, nested within the Department of the Air Force."[4] In support, she submitted numerous materials, including printouts from the official U.S. military website for the "United States Space Force"

[4] 14 TTABVUE 9.

(www.spaceforce.mil), describing it as a "new military branch" and "independent … within the Department of the Air Force."[5]

Applicant does not argue that its proposed mark is not the same as the U.S. Space Force branch of the U.S. Armed Forces. Indeed, they are identical.

However, Applicant takes issue with the timing of the creation of the military branch vis-à-vis the filing date of its application. Specifically, Applicant contends that:[6]

> The legislative provisions of the 2020 National Defense Authorization Act for the creation of the Space Force, were only signed into law by President Donald Trump during a signing ceremony at Joint Base Andrews on December 20, 2019. The present application was filed on March 19, 2018 - almost two years two years prior to the creation of this new military branch.

In other words, Applicant is relying on the part of "previously used" wording in the first element of the *Univ. of Notre-Dame du Lac* test requiring "by implication that the person or institution with which a connection is falsely suggested must be the prior user." *In re Nuclear Research Corp.*, 16 USPQ2d 1316, 1317 (TTAB 1990) (false suggestion of a connection U.S. Nuclear Regulatory Commission refusal was "ill founded" and reversed by Board because applicant was first user of initialism NRC). *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1203.03(b)(i) (July 2022); J. Thomas McCarthy, 3 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, § 19:76 (5TH ed. 2021) ("The phrase 'falsely suggest a connection

[5] July 6, 2021 Office Action, at TSDR p. 5.

[6] 12 TTABVUE 11.

with' in § 2(a) necessarily requires by implication that the person or institution with whom a connection is suggested must be the prior user.").

However, prior use in the context of a false suggestion of a connection is not a question of priority as contemplated in a likelihood of confusion context. Indeed, prior use "may be found when one's right to control the use of its identity is violated, even if the name claimed to be appropriated was never commercially exploited as a trademark or in a manner analogous to trademark use." *In re Pedersen*, 109 USPQ2d at 1193; *see also In re Nieves & Nieves LLC,* 113 USPQ2d 1639, 1644 (TTAB 2015) (ROYAL KATE creates a commercial impression that refers to Kate Middleton even though she has never used the identifier).

In terms of being previously-used, we note that while there were earlier proposed iterations of U.S. military institutions, including "U.S. Space Corps" in 2017 and "Air Force Space Command," it was on June 18, 2018 when the then U.S. President, Donald Trump, announced a "directive to create a sixth branch of the United States Armed Forces."[7] According to official U.S. Space Force website, the U.S. Space Force is "the newest branch of the [U.S.] Armed Forces" and "was established December 20, 2019 with the enactment of the Fiscal Year 2020 National Defense Authorization Act."[8]

The involved application is based on Applicant's allegation that it intends to use the mark in commerce (see Note 1). Applicant does not argue that it is the prior user

[7] July 9, 2018 Office Action, at TSDR pp. 12-13 (from Wikipedia online encyclopedia).

[8] July 6, 2021 Office Action, at TSDR p. 21.

of its proposed mark, but that it "intends to offer goods and services under its [proposed mark]."[9]

Thus, for purposes of the false suggestion refusal, Applicant cannot argue that it is the prior user, and whether or not the U.S. Space Force was officially created or in existence at the time of Applicant's filing date, the fact remains now that the military branch of the U.S. Armed Forces is the prior user. *Cf. In re Nuclear Research Corp.*, 16 USPQ2d 1317 (applicant was owner of use-based registration and Board found it to be "the long prior user of NRC"). Accordingly, Applicant's intended mark is the same as the name as that already being used by the U.S. Space Force, a branch of the U.S. Armed Forces.

B. US SPACE FORCE will be recognized as pointing uniquely and unmistakably to the U.S. Space Force

The record reveals that the U.S. Space Force has received considerable attention since it was first announced in 2018. It has been prominently featured in major news publications, like Newsweek, identifying it as the military branch charged with the mission of "protecting American interests in space."[10] A Time magazine article, "America Really Does Have a Space Force. We Went Inside to See What It Does," describes the U.S. Space Force's role and actions and that it has a budget of $15.4 billion for 2021.[11]

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[9] 12 TTABVUE 8.

[10] October 13, 2020 Office Action, at TSDR p. 21 (from www.newsweek.com, "How to Join U.S. Space Force, America's Newest Branch of the Military," May 15, 2020).

[11] *Id.* at p. 27 (from www.time.com, July 23, 2020).

On January 14, 2020, the then Vice President Mike Pence swore in General John W. Raymond as the "highest-ranking military leader of the newly created U.S. Space Force, adding a prominent White House ceremony that recognized the arrival of the nation's newest, separate branch of the military."[12] The U.S. Space Force's headquarters is located in the Pentagon, along with those of the Army, Navy, Marine Corps and Air Force.[13]

In its brief, Applicant sets forth various reasons it believes the proposed mark "does not point uniquely and unmistakably to the U.S. Government, former President Trump, or the U.S. Space Force."[14] We address these arguments.

1. Netflix Series "Space Force"

On May 29, 2020, a Netflix-original series called "Space Force" premiered that, according to reviews, was inspired by and intended to be a parody of the actual U.S. Space Force.[15] As pointed out by Esquire magazine — under the subtitle "Is Space Force Inspired By the Actual Space Force?" — the "show's drop onto Netflix … is eerily timed with the developments in the actual United States Space Force, a $40 million project that stands as the country's first new military branch since the

[12] July 6, 2021 Office Action, at TSDR p. 20.

[13] *Id.* at 22.

[14] 12 TTABVUE 5.

[15] See, e.g., October 13, 2020 Office Action, at TSDR p. 107 (www.cnn.com, "'Space Force' casts Steve Carell in a broad satire that never achieves liftoff," May 29, 2020, stating that the show is "clearly designed to spoof President Trump's pet military project") and p. 110 (www.theatlantic.com, "Space Force Tells a Terrible Joke About America," stating that "the show was supposedly dreamed up years ago when [then] President Trump announced the founding of the sixth, extraterrestrial branch of the armed forces…").

creation of the Air Force in 1947."[16] The show's plot revolves around a "four-star general reluctantly plucked from his position at the Air Force and placed atop this new sixth branch of the military."[17] A screenshot, displayed in The Atlantic magazine, shows actor Steve Carell playing the general:[18]

 .[19]

Applicant acknowledges that the Netflix "Space Force" series received "high ratings from audiences" and has been viewed by many, but contends that it also provides a reason Applicant's proposed mark "cannot be said to point uniquely and unmistakably" to the U.S. Space Force.[20] Specifically, Applicant argues that "[o]ne might presume that the "U.S. Government, former President Trump, or the U.S.

[16] *Id.* at p. 97.

[17] *Id.* at p. 107.

[18] *Id.* at p. 110.

[19] *Id.*

[20] 12 TTABVUE 16.

Space Force might object to the use of these terms [in the Netflix show], but that is obviously not the case."[21]

Contrary to Applicant's argument, we agree with the Examining Attorney that the existence and apparent success of the Netflix show, and particularly that the U.S. Space Force is the target of the parody, helps show the extent of fame of the military branch of the U.S. Armed Forces. As the Examining Attorney explains, "[m]ultiple seasons of a parody show … regarding the actual U.S. SPACE FORCE … can only add to the governmental entity's cultural relevance, fame and notoriety in the public eye."[22] We further agree with the Examining Attorney that "[a]rguably, a satire's potential success is directly proportional to the fame of the target of the parody."[23] It has long been stated that parodies are usually best made of an entity that is famous or, at least, well-known to the public. *See, e.g., In re Serial Podcast, LLC*, 126 USPQ2d 1061, 1076 (TTAB 2018) (a matter has to be famous or well-known to be the subject of parody). *See also, e.g. Louis Vuitton Malletier S.A. v. Haute Diggity Dog LLC*, 507 F.3d 252 , 84 USPQ2d 1969, 1975 (4th Cir. 2007) ("It is a matter of common sense that the strength of a famous mark allows consumers immediately to perceive the target of the parody, while simultaneously allowing them to recognize the changes to the mark that make the parody funny or biting."); D.S. Welkowitz "Trademark

[21] *Id.* at 17.

[22] 14 TTABVUE 17.

[23] *Id.*

Parody after Hustler Magazine v. Falwell," 11 Comm. & L. 65, 72 (Dec. 1989) ("Hence, a parody, to be effective, virtually requires that it parody a well-known trademark.").

In sum, the Netflix show is an indicator of the U.S. Space Force's renown and further reinforces a direct association of the term U.S. SPACE FORCE with the actual branch of the military.

2. 1987 Animated Television Show "Starcom: the U.S. Space Force" and Associated Collectable Toys

Applicant asserts that U.S. Space Force is "recognized as a type of collectable space related toys associated" with an animated television show called "Starcom: the U.S. Space Force" that aired in 1987.[24] Applicant contends that the "public's continuing familiarity with this show and the associated collectable toys is reflected in the fact that fans still write articles about them."[25] In support, Applicant relies on printouts from online sources, including a Wikipedia entry for the television show, the website "Robot's Pajamas," and a 2014 online review entitled "starcom: the u.s. space force – remember this?"[26] Applicant also submitted printouts showing "Starcom U.S. Space Force" toys offered for sale on Ebay.[27] In addition, Applicant submitted the declaration of Frank Winspur, a hobbyist distributor "with a focus on science fiction, fantasy, and comic related model kits, collectables and toys" and self-proclaimed "expert in the vintage and collectable toy field."[28] Mr. Winspur avers, inter

[24] *Id.* at 15.

[25] *Id.*

[26] Attached to Applicant's response filed January 24, 2020.

[27] *Id.*

[28] 4 TTABVUE 47.

alia, that "U.S. Space Force toys are available for purchase online" and that "there is a sizable number of other space toy collectors that know of and that collect these U.S. Space Force toys."[29]

According to Wikipedia, however, the television show was not very successful and "did not get much of a chance to reach the intended audience before it was cancelled after one brief season." Furthermore, the associated "toy line … was unsuccessful in the North American domestic market."[30]

On this record, it is unlikely that a significant portion of the public will make an association with the short-lived animated television show or collectable toys. Rather, we agree with the Examining Attorney that "[a]ny familiarity with a television show, that a particular segment of the population remembers, would be overshadowed by the prominence of the U.S. Government military branch."[31]

3. Applicant's "Google Survey"

Applicant also submitted a "Google survey" and argues that the "results of this survey show that the term U.S. SPACE FORCE certainly does not point uniquely and unmistakably to a branch of the U.S. military."[32] The survey consists of 3 pages, printouts from the Google website purportedly showing a "start date" of March 22, 2021, with 1,499 "responses."[33] According to the printouts, 997 survey respondents

[29] *Id.*

[30] Applicant's response filed January 24, 2020, TSDR p. 17.

[31] 14 TTABVUE 15.

[32] 12 TTABVUE 17; Google survey printouts attached to Applicant's April 5, 2021 response, at TSDR pp. 11-14.

[33] *Id.*

were presented with: "The term US SPACE FORCE points uniquely and unmistakably in my mind to:" and offered the following choices: "None of these … A branch of the U.S. military … Donald J. Trump … NASA … a Netflix television show."[34] The percentages of responses given by respondents were, respectively: 24.6% - 22.5% - 22.2% - 20.6% - 10.2%.[35] Applicant argues that "this survey evidence support the common sense argument that the mark no longer points uniquely and unmistakably to" either "the U.S. Government, Former President Trump, or the U.S. Space Force's previously used name or identity or a close approximation."[36]

It is well-established practice for the Board to take a more permissive approach to the admissibility and probative value of evidence in an ex parte proceeding versus treatment of such evidence in an inter partes proceeding. *See, e.g., In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1597 (TTAB 2018); *In re Sela Products LLC*, 107 USPQ2d 1580, 1584 (TTAB 2013) ("...the Board does not, in ex parte appeals, strictly apply the Federal Rules of Evidence, as it does in inter partes proceedings."). *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 1208 (June 2022). Nevertheless, we must consider the survey methodology and, in this instance, we have little to no information regarding how the survey was conducted, other than what is purportedly shown in the Google printouts. *In re Van Valkenburgh*, 97 USPQ2d 1757, 1767 (TTAB 2011) (finding "no basis on

[34] *Id.*

[35] *Id.*

[36] 12 TTABVUE 25.

which to conclude that the survey is based on scientifically valid principles" where the survey consisted of questionnaires distributed to an unknown number of people who filled them out and mailed them back to applicant's counsel). Indeed, the survey is not supported by an affidavit or declaration.

In any event, putting aside the flaws that diminish the survey's reliability and overall probative value, the results fail to support Applicant's argument that US Space Force does not point to the branch of the U.S. Armed Forces. As the Examining Attorney points out, three of the possible responses ("A branch of the U.S. military … [former U.S. President] Donald J. Trump … NASA") account for nearly two-thirds of the responses and these responses may be understood as generally pointing to "agencies and instrumentalities of the U.S. Governmental body, acting on its behalf and under its authority" and "all represent the U.S. Government."[37]

4. Applicant's Other Arguments

Applicant argues that the proposed mark "cannot be said to point uniquely and unmistakably" to the U.S. Space Force because the term "Space Force" is a "generic term which refers to the influential persons and enterprises which exert their power and energy towards conducting operations in space [and] does not refer just to the U.S. government and its military."[38] This argument fails because Applicant is ignoring the prefix "US" (or U.S.) and the fact that the proposed mark is US SPACE FORCE, not simply "Space Force." While the term "space force" may refer to other

[37] 14 TTABVUE 14.

[38] 12 TTABVUE 18.

entities or that other countries may have "space forces," is irrelevant; there is only one military branch designated "U.S. Space Force" and the public will readily understand the proposed mark as pointing uniquely to that military branch. As the Examining Attorney makes the comparison, this is "similar to the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marines or U.S. Coast Guard."[39] Thus, while other countries may have armies, navies, and air forces, when any of these generic terms is prefaced with U.S., it helps point uniquely and unmistakably to a specific military branch within the U.S. Armed Forces.

Applicant also argues that the "U.S. Government, Former President Trump, or the U.S. Space Force … are separate entities" and the Examining Attorney "has not identified one specific entity or person to which the mark identifies."[40] Applicant asserts that "the Examining Attorney has real difficulty identifying the one specific entity or persona to which US SPACE FORCE points," and cites to various Office Actions where the Examining Attorney mentions former President Trump, the U.S. Government, as well as the particular military branch, U.S. Space Force.[41]

The Examining Attorney counters that "[i]n this case, the agencies and instrumentalities of the U.S. Government are its President and its branches of the military,"[42] and "[h]ere, the U.S. Government, through its President, initiated and

[39] 14 TTABVUE 12.

[40] 12 TTABVUE 22.

[41] *Id.* at 22-23.

[42] 14 TTABVUE 10.

began identifying its Space Force before the instant application was filed."[43] The "prior informal references to the US Space Force gave rise to a protectable interest" and "the U.S. Government has rights to control use of this identity."[44]

We agree with the Examining Attorney to the extent that various governmental entities, including the broad term U.S. Government to President Trump to the agency U.S. Space Force, can all be characterized as government instrumentalities and used interchangeably for purposes of explaining the origin and creation of the latest military branch of the U.S. Armed Forces, namely, the U.S. Space Force. Indeed, due to the structure of the U.S. government, a very general term, and the President, who is the Commander in Chief of the U.S. Armed Forces, including the U.S. Space Force, it is certainly feasible that each of these entities may have a role or be attributed with responsibility for the military branch known as U.S. Space Force. It is evident that the then President, Donald Trump, helped create the moniker "U.S. Space Force" and the military branch can be characterized more broadly as part of the U.S. government. None of these facts negates or detracts from Applicant's proposed mark being understood as pointing to that branch of the Armed Forces.

In sum, we are not persuaded by any of Applicant's arguments, but find that the record establishes that Applicant's proposed mark, US SPACE FORCE, will be understood as pointing uniquely and unmistakably to the branch of America's military "U.S. Space Force."

[43] *Id.* at 11.

[44] *Id.*

C. Applicant has no connection with the U.S. Space Force, but a connection would be incorrectly presumed because of the fame and reputation of the U.S. Space Force

Applicant does not argue that it has any connection or affiliation with the U.S. Space Force and, indeed, the record makes clear that it does not. The evidence also establishes that the U.S. Space Force has received considerable publicity in the relative short time since it was created. As already discussed, President Trump's announcement regarding the creation of U.S. Space Force garnered widespread media attention and various major national news sites have continued to cover the military branch's growth. In addition, U.S. Space Force's popularity is reflected by, and has been accentuated by, multiple seasons of the Netflix show that parodies the military branch.

D. Conclusion

Applicant's proposed mark, US SPACE FORCE, falsely suggests a connection to the U.S. Space Force, a branch of the U.S. Armed Forces and a U.S. governmental institution. The proposed mark is identical to, and points uniquely and unmistakably to this military branch of the U.S. Armed Forces. Because of the U.S. Space Force's fame and reputation, the public would mistakenly believe that Applicant has a connection with the U.S. Space Force should US SPACE FORCE be used by Applicant on the goods identified in the application.

II. Constitutionality Argument

Applicant makes the cursory argument that "the false suggestion of a connection ground for refusal in Section 2(a) violates foundational common law principals and is

unconstitutional and, as such, is ripe for similar review and treatment by the Supreme Court."[45] In support, Applicant relies on the Supreme Court decisions holding that certain provisions of Section 2(a) are no longer valid grounds on which to refuse registration, because they violate the "Free Speech Clause" of the First Amendment to the United States Constitution. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2019 USPQ2d 232043 (2019) (immoral or scandalous marks); *Matal v. Tam*, 137 S. Ct. 1744, 122 USPQ2d 1757 (2017) (disparaging marks). Applicant goes on to argue, without citing any authority, that "any grant of a monopoly outside of [patents and copyrights] is an illegitimate legislative amendment to the U.S. Constitution."[46]

Subsequent to the *Brunetti* and *Tam* decisions, the Board addressed the constitutionality of Section 2(a)'s false suggestion of a connection ground for refusal and ultimately rejected this challenge:

> It is well-settled that "[t]he government may ban forms of communication more likely to deceive the public than inform it ...." *Cent. Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563 (1980). Unlike the disparagement clause found unconstitutional in [*Tam*], or the immoral or scandalous clause struck down in *Brunetti*, the false suggestion clause directly furthers the goal of prevention of consumer deception in source-identifiers. Congress acts well within its authority when it identifies certain types of source-identifiers as being particularly susceptible to deceptive use and enacts restrictions concerning them. *Cf. S.F. Arts &*

[45] 12 TTABVUE 25.

[46] *Id.* In this regard, we point out that Congress' authority to pass laws regarding trademarks emanates from the "Commerce Clause" of the Constitution. *Person's Co., Ltd. v. Christman*, 900 F.2d 1565, 1568 (Fed. Cir. 1990) ("power of the federal government to provide for trademark registration comes only under its commerce power"). There is no dispute this is different from the clause specifically allowing Congress to pass laws to "promote the progress of science and the useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries." U.S. Const. Art. 1, § 8, cl. 8; *Golan v. Holder*, 565 U.S. 302, 132 S. Ct. 873, 887–888 (2012) ("Perhaps counter-intuitively for the contemporary reader, Congress' copyright authority is tied to the progress of science; its patent authority, to the progress of the useful arts.").

> *Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 3 USPQ2d 1145, 1153 (1987) ("Congress reasonably could conclude that most commercial uses of the Olympic words and symbols are likely to be confusing.").

In re Adco Industries - Technologies, L.P. 2020 USPQ2d 53786, *10 (TTAB February 11, 2020). We agree with the reasoning in *In re Adco* and reject Applicant's argument in this appeal that the false suggestion of a connection refusal is unconstitutional.

Decision: The refusal to register Applicant's mark US SPACE FORCE based on a false suggestion of a connection with the U.S. Space Force, under Section 2(a) of the Trademark Act, is affirmed.