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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Georgia Intellectual Property Alliance, Inc.

Serial No. 88013883

Sean Bedford of Alston & Bird LLP,
for Georgia Intellectual Property Alliance, Inc.

Sahar Nasserghodsi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.

Before Taylor, Kuczma and Hudis,
Administrative Trademark Judges.

Opinion by Hudis, Administrative Trademark Judge:

Georgia Intellectual Property Alliance, Inc. ("Applicant") seeks registration on the Principal Register of the mark GIPA (in standard characters) for:

> Business services, namely, assisting the owners of intellectual property and intangible assets in finding investors; Organizing business networking events in the field of intellectual property; Promoting public interest and awareness of intellectual property in International Class 035;
>
> Educational services, namely, conducting classes, seminars, conferences, and workshops in the field of intellectual property and distribution of educational materials in connection therewith; Educational services, namely, providing educational speakers in the field of intellectual property in International Class 041; and

> Advisory services relating to intellectual property rights; Providing information about intellectual and industrial property rights; Providing information in the field of intellectual property; Providing information in the field of business law, litigation and intellectual property; Providing on-line information in the field of intellectual property; Providing on-line information in the field of intellectual property legal services in International Class 045.[1]

The Trademark Examining Attorney refused registration under Trademark Act Section 2(a), 15 U.S.C. § 1052(a), on the ground that Applicant's mark, as applied to the services identified in the application, falsely suggests a connection with the Global Intellectual Property Academy (the "Academy"), also known as "GIPA", of the United States Patent and Trademark Office ("USPTO").

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. Applicant and the Examining Attorney filed briefs. We reverse the refusal to register.

I. False Suggestion of a Connection: Applicable Law

Trademark Act Section 2(a), in relevant part, provides that "[n]o trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it — (a) … falsely suggest a connection with persons … [or] institutions …. 15 U.S.C. § 1052(a). Trademark Act Section 3, 15 U.S.C. § 1053, in pertinent part, states that "[s]ubject to the provisions relating to the registration of trademarks, so far as they

[1] Application Serial No. 88013883 filed on June 25, 2018, under Trademark Act Section 1(b), 15 U.S.C. § 1051(b), based upon Applicant's allegation of a bona fide intention to use the mark in commerce.

are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks ...."

To establish that a proposed mark falsely suggests a connection with a person or an institution, it is the Examining Attorney's burden to show:

> (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.

In re Pedersen, 109 USPQ2d 1185, 1188-89 (TTAB 2013); *see also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 703 F.2d 1372, 217 USPQ 505, 507-09 (Fed. Cir. 1983) (providing foundational principles for the current four-part test used by the Board to determine the existence of a false connection).

II. Discussion

Applicant and the Examining Attorney agree that *Pedersen* states the applicable test for determining whether an applied-for mark should be refused registration on false suggestion of connection grounds under Trademark Act Section 2(a).[2] Applicant

[2] Applicant's Brief, 8 TTABVUE 8; Examiner's Brief, 10 TTABVUE 4. Page references herein to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval ("TSDR") system. All citations to documents contained in the TSDR database are to the downloadable .pdf versions of the documents in the USPTO TSDR Case Viewer. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 n.4 (TTAB 2018). References to the briefs on appeal refer to the Board's TTABVUE docket system. Before the TTABVUE designation is the docket entry number; and after this designation are the electronic page references, if applicable.

and the Examining Attorney disagree how factors (1), (2) and (4) should be applied under the circumstances of this appeal and the evidence of record.

A. Whether GIPA is the same as, or a Close Approximation of, the name or identity previously used by the Academy as a Person or Institution

While the Trademark Act provides a definition of a "Person" to include government agencies and their instrumentalities,[3] the term "Institution" is not defined in the Act. The Examining Attorney does not argue that the Academy is a "Person" within the meaning of Trademark Act Section 2(a) or the Act generally. Rather, the Examining Attorney contends that prior decisions interpreting Trademark Act Section 2(a) construe "Institution" in a sufficiently broad manner so as to include entities like the Academy.[4]

Applicant, while not disputing that the USPTO qualifies as an "Institution" under Trademark Act Section 2(a), argues that the Examining Attorney conflates the USPTO and the Academy, the USPTO has never been named or identified as "GIPA," the Academy does not qualify as a "Person" under the statute, the Examining Attorney has not presented evidence sufficient to conclude that the Academy meets the liberal definition of "Institution," and that "GIPA" is no more than an acronym

[3] "The term 'person' … includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity." Trademark Act Section 45, 15 U.S.C. § 1127.

[4] Examiner's Brief, 10 TTABVUE 5-7.

for a training program offered by the U.S. Patent and Trademark Office which already has its own identity or persona – the "USPTO."[5]

Before reviewing applicable case law, we believe it helpful to consider dictionary definitions of the terms "Instrumentality" (within the statutory definition of "Person") and "Institution," neither of which have been made of record. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE defines "Instrumentality" as "[a] subsidiary branch, as of a government, by means of which functions or policies are carried out"; and defines "Institution" as "[a]n established organization or foundation, especially one dedicated to education, public service, or culture."[6]

Prior decisions interpreting Trademark Act Section 2(a) have broadly construed the terms "Person" and "Institution" to include governmental and quasi-governmental entities. *See e.g. In re Peter S. Herrick, P.A.*, 91 USPQ2d 1505, 1507-08 (TTAB 2009) (U.S. CUSTOMS SERVICE, even though that agency is no longer in existence, falsely suggests a connection with the United States Customs and Border Protection as a "person" or "institution" within the meaning of Trademark Act Section 2(a)); *In re N. Am. Free Trade Ass'n*, 43 USPQ2d 1282, 1285-86 (TTAB 1997) (finding that "NAFTA is an institution, in the same way that the United Nations is an

[5] Applicant's Brief, 8 TTABVUE 10.

[6] Https://www.ahdictionary.com/word/search.html?q=instrumentality.
https://www.ahdictionary.com/word/search.html?q=institution.
The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd,* 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

institution," and noting that the "legislative history ... indicates that the reference to an 'institution' in Section 2(a) was designed to have an expansive scope."); *In re Cotter & Co.*, 228 USPQ 202, 204-05 (TTAB 1985) (WEST POINT falsely suggests a connection with an institution, the United States Military Academy, a military post in southeastern New York); *In re Nat'l Intelligence Academy*, 190 USPQ 570, 572 (TTAB 1976) (NATIONAL INTELLIGENCE ACADEMY falsely suggests a connection with the United States government); *Nat'l Aeronautics & Space Admin. v. Record Chem. Co.*, 185 USPQ 563, 565 (TTAB 1975) (finding NASA to be a juristic person within the broad language of the trademark statute, having capacity and standing to oppose the APOLLO 8 registrations sought by applicant); *Fed. Bureau of Investigation v. Societe: "M. Bril & Co."*, 172 USPQ 310, 313 (TTAB 1971) (finding the F.B.I. to be a juristic person that has the capacity to oppose registration of a mark under Section 2(a)).

The Examining Attorney made of record Internet website evidence indicating that the Academy, under the acronym GIPA, comprises a series of annual training programs on intellectual property topics managed by the Office of the Administrator of Policy and International Affairs ("OPIA") within the USPTO, as "a guiding force in both national and international IP policy issues."[7] This suggests that the Academy is merely the title of a program run by OPIA, a subset entity of the USPTO. However, as noted more comprehensively in the FEDERAL REGISTER:

[7] Https://www.uspto.gov/learning-and-resources/global-intellectual-property-academy, Office Action of October 23, 2018 at TSDR 6-8.

> GIPA was established in 2006 to offer training programs on enforcement of intellectual property rights, patents, trademarks, and copyrights. The training programs offered by GIPA are designed to meet the specific needs of foreign government officials … concerning various intellectual property topics, such as global intellectual property rights protection and enforcement and strategies to handle the protection and enforcement issues in their respective countries.[8]

Although it is a close call, based on the Examining Attorney's evidence, and the broad meanings of "Person," "Instrumentality" and "Institution" as defined by dictionary definitions, the Trademark Act, and as construed by relevant case law, we find that the Academy is a "Person" "or "Institution" within the ambit of Trademark Act Section 2(a).

However, our finding that the Academy is a "Person" or "Institution" for purposes of Section 2(a) does not end our inquiry of the first *Pedersen* factor. Where an organizational entity (not an individual) is concerned, "there clearly must be some public use or promotion of the asserted identity in a manner that provides a means of identifying the" entity. *Bd. of Tr. of the Univ. of Alabama v. Pitts*, 107 USPQ2d 2001, 2026 (TTAB 2013), *request to reopen, vacate and dismiss without prejudice denied*, 115 USPQ2d 1099 (TTAB 2015) (HOUNDSTOOTH and HOUNDSTOOTH MAFIA found not to be the names or identities of the University); *but see Bd. of Tr. of the Univ. of Alabama v. BAMA-Werke Curt Baumann*, 231 USPQ 408, 411 (TTAB 1986) (BAMA uniquely identified the University of Alabama, largely because of national reputation of the University's football team).

[8] Federal Register notice of March 18, 2014, Office Action of October 23, 2018 at TSDR 18.

Here, the Examining Attorney made the following evidence of record to demonstrate that GIPA is the name or identity of the Academy:

- A 2011 Washington, D.C. symposium of the Global Network on Intellectual Property ("IP") Academies ("GNIPA"), held in collaboration with the Academy, highlighted on the website of the World Intellectual Property Organization ("WIPO").
- A mention of the Academy's intellectual property training programs on the StopFakes.gov website.
- A 2016 post describing the Academy's intellectual property training programs on the Export.gov website.[9]
- A notice on the website of the International Trademark Association ("INTA") that a trademark roundtable discussion would be held at the Academy within the USPTO's Virginia headquarters.
- A 2015 notice on the website of the National Association of Music Merchants ("NAMM") that and intellectual property protection program would be held at the Academy within the USPTO's Virginia headquarters.
- Promotion of a series of videos about the Academy and its mission on the Creative Liquid website.
- A 2007 announcement that the Commercial Law Development Program ("CLDP") of the Office of General Counsel of the United States Department of Commerce that it sponsored Bosnia-Herzegovina IP officials to attend an enforcement program at the Academy.[10]
- A 2018 description of the Academy's programs, provided by OPIA attorneys, in the INTA Bulletin (newsletter).
- A 2012 seminar on Specialized Intellectual Property Rights Courts advertised on the International Intellectual Property Institute ("IIPI") website.
- A 2012 USPTO IP Empowerment Summit promoted on the website of the Institute for Intellectual Property & Social Justice ("IIPSJ").
- A 2016 Patent Searching Fundamentals course being offered at the Academy as noted on the website of the Patent Information Users Group ("PIUG").

[9] WIPO, StopFakes.gov and Export.gov web pages provided with the Office Action of October 23, 2018 at TSDR 9-16.

[10] INTA, NAMM, Creative Liquid and CLDP web pages provided with the Office Action of May 10, 2019 at TSDR 6, 7, 13 and 14.

- A report of the Academy's 2018 annual conference sponsored by America's Small Business Development Centers ("SBDC") posted on the website of its Florida chapter.
- A workshop on "Teaching Songwriting to the World Dignitaries" held at the Academy within the USPTO's Virginia headquarters, as posted on the Songlife website.[11]

We find that these references sufficiently substantiate that GIPA is a name referring to the USPTO's Academy for purposes of the false suggestion of a connection prong of Trademark Act Section 2(a).

B. Whether GIPA would be recognized as such, in that it Points Uniquely and Unmistakably to the Academy

"[U]nder concepts of the protection of one's 'identity,' … [a] critical requirement is that the name (or an equivalent thereof) claimed to be appropriated by another must be unmistakably associated with a particular personality or 'persona.'" *Univ. of Notre Dame*, 217 USPQ at 509. "[I]t is not sufficient to show merely prior identification with the name adopted by another." *Id.* "The protection afforded a name or its equivalent under [Trademark Act] Section 2(a) is acquired only when the name claimed to be appropriated points 'uniquely and unmistakably' to the [entity's] … 'persona,' that is the personal or trade identity of the [entity] …." *Bos. Ath. Ass'n v. Velocity, LLC*, 117 USPQ2d 1492, 1497 (TTAB 2015) (citing *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985)). *See also Hornby v. TJX Cos. Inc.*, 87 USPQ2d 1411, 1424 (TTAB 2008) ("[T]he name claimed to be appropriated by the defendant must point uniquely to the plaintiff."). Grounds for reversing a false suggestion of connection refusal to

[11] INTA Bulletin, as well as IIPI, IIPSJ, PIUG, SBDC-Florida, and Songlife web postings provided with the Denial of Reconsideration of December 4, 2019 at TSDR 8 and 14-36.

register a mark under Trademark Act Section 2(a) include "evidence and arguments [which] do not persuade us that [the designation] …, as a close approximation to [the entity's] … name [or identity], points uniquely and unmistakably to [the entity] …." *Pierce-Arrow Soc'y v. Spintek Filtration, Inc.*, 2019 USPQ2d 471774, *5 (TTAB 2019).

Applicant made of record numerous examples demonstrating that "GIPA" is used to refer to many entities other than the Academy. The following illustrations are representative:

- Global Investment Prospects Assessment;
- German International Parent Association;
- Gulf International Private Academy;
- General Infinite Periodic Array;
- Government Information Public Access;
- Green Island Power Authority;
- Gamma Industry Processing Alliance;
- Georgia Intellectual Property Alliance (Applicant); and
- Georgia Indoor Percussion Association.[12]

The Examining Attorney dismisses this evidence "because the acronym examples applicant discusses are associated with entities that are not in the IP field."[13] The Examining Attorney's argument misses the point of these examples. Applicant made the third-party "GIPA" illustrations not to weaken the scope of protection of the Academy's acronym as a mark. That would be a consideration for a likelihood of confusion refusal to register under Trademark Act Section 2(d), 15 U.S.C. § 1052(d),

[12] April 17, 2019 Office Action Response at TSDR 24-26; November 12, 2019 Request for Reconsideration at TSDR 19-21, 23-25 and 27-28.

[13] Examiner's Brief, 10 TTABVUE 8.

which is not applicable here. *Univ. of Notre Dame*, 217 USPQ at 508-09 ("Clearly the same standard cannot be adopted for § 2(a) as for § 2(d)." … "§ 2(a) was intended to preclude registration of a mark which conflicted with another's rights, even though not founded on the familiar test of likelihood of confusion."). Rather, the illustrations of third-party organizations referred to as "GIPA" were made of record by Applicant to show the Academy clearly is not the only organization that uses this acronym. Numerous other organizations do as well. Thus, GIPA does not point uniquely and unmistakably to the Academy.

C. Whether the Academy is or is not Connected with the Activities Performed by Applicant under the GIPA Mark

During prosecution[14] and on appeal,[15] Applicant readily conceded that the Academy is not connected with the activities performed by Applicant under the GIPA mark.

D. Whether the Fame or Reputation of the Academy is such that, when GIPA is used with the Applicant's Services, a connection with the Academy would be Presumed

Regarding the reputation of GIPA in connection with the activities sponsored or performed by the Academy, the Examining Attorney contends:

> USPTO's Global Intellectual Property Academy (GIPA) has established a reputation of being related in the IP field and that consumers would assume a connection between the applied-for services and GIPA. Specifically, if applicant's services are of the type that the named institution offers, and the named institution is sufficiently famous, then it may be inferred that purchasers of the services would be misled into

[14] April 17, 2019 Office Action Response at TSDR 16-17.

[15] Applicant's Brief, 8 TTABVUE 7.

> making a false connection of sponsorship, approval, support or the like with the named party.[16]

In support of this argument, the Examining Attorney made of record the following evidence:

- In Fiscal Year 2016, the Academy (as GIPA) provided training to almost 5,000 foreign officials from 114 countries on a variety of intellectual property topics. In addition, the Academy provided training to over 1,500 people associated with U.S. small and medium sized enterprises (SMEs) and 585 members of academic groups.[17]
- In Fiscal Year 2019, the Academy (as GIPA) conducted a total of 140 training activities, serving over 9,800 individuals. Approximately 45 percent of all individuals served were domestic IP rights owners and users and approximately 55 percent were patent, trademark, and copyright officials; prosecutors; police; customs officials; and IP policymakers from 120 countries.[18]

The Examining Attorney also relies upon the co-sponsored symposia, training and enforcement programs, roundtable discussions, seminars, summits, courses, conferences and workshops held in connection with various foreign and domestic intellectual property related groups, as discussed above.

Applicant responds that "[t]he statistics cited by the Examining Attorney, however, clearly show that the majority of the training provided by the USPTO's Global Intellectual Property Academy is to foreign officials."[19] In fact, the Academy's web pages (in 2016 and 2019) state: "The participants in each of the GIPA classes must be officials of intellectual property offices of their respective governments, or of

[16] Examiner's Brief, 10 TTABVUE 9.

[17] October 23, 2018 Office Action at TSDR 6-8.

[18] December 4, 2019 Denial of Request for Reconsideration at TSDR 9-13.

[19] Applicant's Brief, 8 TTABVUE 18.

the agencies of their governments that are responsible for enforcement, patent, trademark, or copyright policies."[20] A good portion of the evidence additionally made of record by the Examining Attorney supports Applicant's contention.[21]

We agree with Applicant that "most of the Academy participants cited [by the Examining Attorney] to show fame are irrelevant to the Section 2(a) analysis."[22] *See In re Pedersen*, 109 USPQ2d at 1197 ("[W]e fail to see how a foreign registration bears on the question whether consumers in the U.S. would view the mark as falsely suggesting a connection[.]"); *In re Urbano*, 51 USPQ2d 1776, 1778–79 (TTAB 1999) (Australian periodicals submitted as evidence were "of minimal evidentiary value herein, as we have no indication of the extent to which the general public in the United States may have been exposed to these articles").

According to evidence made of record by Applicant, in 2014, IP-intensive industries directly accounted for 27.9 million jobs in the United States, and for the period 1996 to 2014, a dataset of federal income tax returns demonstrated there were a total of 1.2 million inventors (patent applicants or recipients) and 1.7 million patents granted to United States residents.[23] Thus, whether or not we consider the

[20] Office Action of October 23, 2018 at TSDR 6-7; Denial of Request for Reconsideration of December 4, 2019 at TSDR 9.

[21] Office Action of October 23, 2018 at TSDR 9-12 (WIPO), 15-16 (Export.gov), 17-20 (Federal Register), 21-22 (USPTO website); Office Action of May 10, 2019 at TSDR 8 (Innovation Partnership), 9 (Wilkerson biography), 11 (InfoJustice.org), 14 (CLDP); and Denial of Request for Reconsideration of December 4, 2019 at TSDR 8 (INTA Bulletin), 14-17 (IIPI) and 27-36 (Songlife).

[22] Applicant's Brief, 8 TTABVUE 18.

[23] Request for Reconsideration of November 12, 2019 at TSDR 30-88 (esp. p. 32) and 90-155 (esp. pp. 91, 97).

Academy's exposure (as "GIPA") to foreign and domestic individuals, businesses, governments and institutions, the universe of persons served by the Academy is infinitesimal by contrast to the number of domestic intellectual property interests for the periods cited in Applicant's evidence. By any comparative measure, particularly considering the number of other organizations also using the designation "GIPA," this does not show that GIPA, as associated with the Academy, has a sufficient reputation such that when this designation is used with the Applicant's services, a connection with the Academy would be presumed.

III. Conclusion: False Suggestion of a Connection

Applicant's mark, GIPA, is the same as the name used by the Academy as a Person or Institution within the meaning of Trademark Act Section 2(a). The Academy is not connected with the activities performed by Applicant under the GIPA mark. However, GIPA does not point uniquely and unmistakably to the Academy. Also the Academy, as GIPA, does not have a sufficient reputation such that, when the mark is used with Applicant's services, a connection with the Academy would be presumed. Therefore, the evidence of record does not establish a false suggestion of a connection between Applicant's applied-for mark GIPA and the Global Intellectual Property Academy.

Decision:

The refusal to register Applicant's mark GIPA pursuant to Trademark Act Section 2(a) is reversed.