

**This Opinion is Not a
Precedent of the TTAB**

Mailed: December 8, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Global Occupational Safety and Health Academy, LLC
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Serial No. 88087696
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Daniel I. Hwang and Michael T. Murphy of Global IP Counselors LLP,
for Global Occupational Safety and Health Academy, LLC.

Brittany Johnson, Trademark Examining Attorney, Law Office 126,
Andrew Lawrence, Managing Attorney.

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Before Wolfson, Pologeorgis and Coggins,
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

Global Occupational Safety and Health Academy, LLC (“Applicant”) seeks registration on the Principal Register of the mark depicted below for “consulting in the field of workplace safety” in International Class 45.¹

¹ Application Serial No. 88087696 was filed on August 22, 2018, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of a bona fide intent to use the mark in commerce.



The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(a), 15 U.S.C. § 1052(a), on the ground that Applicant’s mark, when used in connection with Applicant’s services, falsely suggests a connection with the Occupational Safety and Health Administration (OSHA or “Administration”), a part of the U.S. Department of Labor (Dept. of Labor). The Examining Attorney also refused registration under Section 6(a) of the Trademark Act, 15 U.S.C. § 1056(a), on the ground that the wording in the mark is merely descriptive of the services and must be disclaimed. The Examining Attorney required the following disclaimer:

No claim is made to the exclusive right to use “GLOBAL OSHA” and “GLOBAL OCCUPATIONAL SAFETY AND HEALTH ACADEMY, LLC” apart from the mark as shown.

After the Examining Attorney made the refusals final, Applicant appealed to this Board, filed a request for reconsideration which was denied, and requested and was granted a remand to amend its application to the Supplemental Register. Following remand, the Examining Attorney denied Applicant’s request for Supplemental Register registration and returned the application to the Board.

A. Disclaimer Requirement

During prosecution, Applicant offered to separately disclaim the terms OCCUPATIONAL, HEALTH, SAFETY and LLC, but did not agree to the disclaimer as required by the Examining Attorney. However, in its Brief, Applicant agreed to the disclaimer as required by the Examining Attorney, clarifying in its Reply brief

“that Applicant wishes to disclaim the terms together, as required by the Office.” 17 TTABVue 3.

Accordingly, the following disclaimer is entered: “No claim is made to the exclusive right to use GLOBAL OSHA and GLOBAL OCCUPATIONAL SAFETY AND HEALTH ACADEMY, LLC apart from the mark as shown.”

The refusal under Section 6(a) is now moot.

B. Section 2(a) Refusal: “False Suggestion of a Connection”

Section 2(a) prohibits registration of “matter which may ... falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols.” 15 U.S.C. § 1052(a). False suggestion of a connection under the Trademark Act evolved from the rights of privacy and publicity, and was intended to preclude registration of a mark that conflicts with another’s rights in one’s persona or identity. *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 703 F.2d 1372, 217 USPQ 505, 509 (Fed. Cir. 1983), *aff’g* 213 USPQ 594 (TTAB 1982). To establish that a proposed mark falsely suggests a connection with a person or an institution, the following four elements must be shown:

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.

Pierce-Arrow Soc’y v. Spintek Filtration, Inc., 2019 USPQ2d 471774, *4 (TTAB 2019) (PIERCE-ARROW does not falsely suggest a connection with an organization preserving the heritage of automobiles produced by a defunct car company); *see also* *Bos. Athletic Ass’n v. Velocity, LLC*, 117 USPQ2d 1492, 1495 (TTAB 2015) (MARATHON MONDAY does not falsely suggest a connection with the Boston Athletic Association’s BOSTON MARATHON identity); *In re Nieves & Nieves LLC*, 113 USPQ2d 1629, 1639 (TTAB 2015) (PRINCESS KATE falsely suggests a connection with Catherine, Duchess of Cambridge, also known as “Kate Middleton”); *In re Cotter & Co.*, 228 USPQ 202, 204 (TTAB 1985) (WESTPOINT falsely suggests a connection with an institution, namely, the United States Military Academy).

To establish that Applicant’s mark falsely suggests a connection with the Administration, the Examining Attorney must prove that the term “OSHA” is its known name or identity; that Applicant’s mark is a close approximation of OSHA, points uniquely and unmistakably to the Administration, and is being used by Applicant in association with services that are not connected to the Administration but would be presumed to be so connected, given the fame of the designation OSHA as the Administration’s name or identity. We examine each of these factors in turn.

1. Whether the Administration is connected with Applicant’s activities performed under its mark?

The type of “connection” contemplated by Section 2(a) is “a commercial connection, such as an ownership interest or commercial endorsement or sponsorship of applicant’s services.” *In re Sloppy Joe’s Int’l Inc.*, 43 USPQ2d 1350, 1354 (TTAB 1997). On its website, Applicant disavows any such connection:

Global Occupational Safety and Health Academy, LLC is not a government agency and is not affiliated with the U.S. Department of Labor or the Occupational Safety and Health Administration.

Applicant's April 24, 2020 Request for Remand, Exhibit A, 10 TTABVUE 9. Moreover, the web pages confirm that Applicant "is not a government agency and receives no funding from the federal Occupational Safety and Health Administration." June 19, 2019 Office Action, TSDR 3. Applicant has not established a connection with the Dept. of Labor that entitles it to register the involved mark.

2. Whether the fame or reputation of OSHA is such that a connection with Administration would be presumed?

The term OSHA is defined in the Merriam-Webster online dictionary as "Occupational Safety and Health Administration." Moreover, Applicant promotes its company as "founded and managed by former senior management staff and safety experts from the U.S. Department of Labor, Occupational Safety and Health Administration's Directorate of Training and Education" and its mission as "to provide a framework for developing and delivering high quality occupational safety and health training to workers around the world" April 24, 2020 Request for Remand, 10 TTABVUE 9-11. "Evidence of such intent would be highly persuasive that the public will make the intended false association." *In re Sloppy Joe's*, 43 USPQ2d at 1354 (citing *Univ. of Notre Dame*, 217 USPQ at 509).

Although Applicant has disavowed any relationship with the Dept. of Labor, we have no doubt that prospective purchasers of Applicant's services will recognize that the term OSHA identifies the Administration. *See K2 Corp. v. Philip Morris Inc.*, 192 USPQ 174, 177 (TTAB 1976) (applicant's "disavowal does not obviate the public's


impression of the intimate relationship which applicant has fostered and established with the sport and the various manufacturers of skiing equipment, of which group opposer is a prominent member.”). When OSHA is used as part of the mark



for Applicant’s services, prospective purchasers would presume a connection between it and the Administration, notwithstanding the much smaller and subordinately placed wording “Global Occupational Safety and Health Academy, LLC” which Applicant argues “informs that Applicant is not the Government.” 14 TTABVUE 12.

3. Whether Applicant’s mark is the same as, or a close approximation of a name or identity previously used by the Administration?

There are two prongs to this inquiry. First, we determine whether OSHA is a name or identity of the Occupational Safety and Health Administration within the

Dept. of Labor. Next, we determine if  is a close approximation of OSHA.

The Examining Attorney submitted probative evidence that OSHA is a well-known acronym for the Administration, created by Congress in 1970. *See* printout from www.osha.gov, attached to December 10, 2018 Office Action at TSDR 2-3; Merriam-Webster dictionary definition, *id.* at 4-7. We find that OSHA is a name or identity of the Administration.

We next must decide whether Applicant’s mark is a close approximation to OSHA. The Board has said that “the similarity required for a ‘close approximation’ is akin to that required for a likelihood of confusion under §2(d) and is more than

merely ‘intended to refer’ or ‘intended to evoke.’” *Pierce-Arrow*, 2019 USPQ2d 471774 at *5 (citing *Bos. Athletic*, 117 USPQ2d at 1497). In other words, Applicant’s mark must do more than simply bring the Administration’s identity to mind. In this respect, we find that Applicant’s mark is a close approximation of OSHA. Because the terms “GLOBAL OSHA” and “GLOBAL OCCUPATIONAL SAFETY AND HEALTH ACADEMY, LLC” are merely descriptive of the services and have been disclaimed, and because “GLOBAL OCCUPATIONAL SAFETY AND HEALTH ACADEMY, LLC” is in a much small type size, they are less significant than the term OSHA in Applicant’s mark, which is the mark’s dominant, salient feature due to the color, relative size, anchoring position, and design in the “O” which draws the eye toward the OSHA element. As in the likelihood of confusion context, we may give more weight to the dominant feature in a mark when determining the commercial impression created by the mark. *Cf. Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (descriptive component of a mark may be given little weight in reaching a conclusion on likelihood of confusion); *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (for rational reasons, more or less weight may be given to a particular feature of a mark). Considering Applicant’s mark in its entirety, we conclude that it is a close approximation of the Administration’s name or identity.

4. Whether Applicant’s mark points uniquely and unmistakably to the Administration?

“[T]o show an invasion of one’s ‘persona,’ it is not sufficient to show merely prior identification with the name adopted by another. The mark ... must point uniquely

to the [plaintiff].” *Univ. of Notre Dame*, 217 USPQ at 509 (“Under concepts of the protection of one’s ‘identity,’ ... the initial and 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.’”). *See also Bos. Athletic*, 117 USPQ2d at 1497 (quoting *Univ. of Notre Dame*, 217 USPQ at 509); *In re Kayser-Roth Corp.*, 29 USPQ2d 1379 (TTAB 1993) (registration of mark “Olympic Champion,” for clothing, does not point uniquely and unmistakably to U.S. Olympic Committee); *Ritz Hotel Ltd. v. Ritz Closet Seat Corp.*, 17 USPQ2d 1466, 1471 (TTAB 1990) (RIT-Z, for toilet seats, did not point uniquely to Opposer); *NASA v. Bully Hill Vineyards, Inc.*, 3 USPQ2d 1671, 1676 (TTAB 1987) (the term SPACE SHUTTLE did not point uniquely and unmistakably to NASA). Here, we must consider whether the average consumer of consulting services in the field of workplace safety would recognize the term OSHA as pointing uniquely to the Administration.

Applicant argues that its mark does not point uniquely and unmistakably to the Administration, because “[m]ore than two dozen companies, many with federal registrations and applications for related training or consulting services, use OSHA in arguably more prominent ways than Applicant.” 14 TTABVUE 17. In support, Applicant submitted copies of 21 third-party registrations for marks comprising the term OSHA for similar and related services.² May 25, 2019 Response, TSDR 12-25,

² Applicant additionally submitted copies of two applications and two registrations for marks incorporating the letters “osha” in such a way as to obviate the reference to OSHA; these have been disregarded. Third-party applications are evidence only of the fact that they have been filed. *Interpayment Servs. Ltd. v. Docters & Thiede*, 66 USPQ2d 1463, 1468 n.6 (TTAB 2003).

40-54, 68-78. Applicant also submitted copies of web pages showing the registrants' use of their marks on the Internet. Applicant's Request for Remand, 10 TTABVUE.

Examples of such third-party uses and registrations include:

- Reg. No. 4805083 for the mark **OSHA TODAY** (“OSHA” disclaimed) for, inter alia, “Providing online publications in the nature of news articles in the fields of occupational health and safety, workers and employers, laws, rules and regulations, legal requirements and legal decisions, risk management, workers’ compensation, ergonomics and toxics; providing news in the nature of current event reporting” (owned by Providence Publications, LLC);
 - Applicant provided a copy of a page from <https://oshatoday.com>, showing a 2020 copyright notice in the name of Providence Publications, LLC and the tagline: “OSHAToday is your resource for OSHA news.” 10 TTABVUE 194.
 - Applicant also provided a copy of a page from <https://www.cal-osha.com>, entitled “Award Winning Cal-OSHA Reporter” that included a copyright notice in the name of Providence Publications, LLC. 10 TTABVUE 269.
- Reg. No. 4917904 for the mark **OSHA 30/30** (“OSHA” disclaimed) for “Education services, namely, providing on-line webinars in the field of occupational safety and health” (owned by Keller and Heckman LLP);
 - Applicant submitted a copy of pages from <https://www.khlaw.com>, the Keller and Heckman LLP website, advertising “OSHA 30/30 A thirty minute update on OSHA law every thirty days” offered as a webinar and a podcast. 10 TTABVUE 195-97.
- Reg. No. 2175170 for the mark **OSHA UP-TO-DATE** (“OSHA” disclaimed) for “Newsletter dealing with workplace safety issues” (owned by the National Safety Council);
 - The National Safety Council (NSC) appeared in an excerpt from Applicant’s “osha training” Google search, 10 TTABVUE 16, and Applicant submitted pages from

its website at <https://www.nsc.org> offering several courses in occupational health and safety. There is a disclaimer on the website, explaining that NSC is not an “OTI Education Center, but serves as a host training organization for National Safety Education Center.” 10 TTABVUE 120.

- Reg. No. 2370949 for the mark **OSHABUSTERS** for “Legal services” (owned by Mark A. Washak, P.C.);
- Reg. No. 5272855 for the mark **OSHA COMPLIANCE MADE EASY** (“OSHA” disclaimed) for “Conducting medical physical evaluations” (owned by Dawson Compliance);
 - Applicant submitted a copy of a web page from <https://www.dawsoncompliance.com>, where Dawson Compliance advertises that they are “The Leading Provider of Onsite OSHA Solutions – OSHA Compliance Made Easy™.” 10 TTABVUE 206.
- Reg. No. 4104204 for the mark **OSHACAMPUS** (acquired distinctiveness claimed in whole) for “Education services rendered online, namely, providing courses of study and instruction in the field of workplace safety, workplace health and workplace discrimination prevention, and distribution of training materials in connection therewith” (owned by 360training.com, Inc.);
 - Applicant submitted several pages from <https://www.360training.com>, advertising “OSHA safety training courses,” including a link to “Canada Health & Safety Training.” 10 TTABVUE 52-56. On the website, there is a question and answer section that suggests that 360training.com, Inc. is authorized by the Dept. of Labor to present its training:
 - **“What is OSHA Certification?** Officially, there’s no such thing as “OSHA certification,” and OSHA itself discourages the use of the phrase. However, it’s often used to refer to OSHA’s Outreach program, because the DOL does issue official OSHA 10-Hour or 30-Hour cards. ... These aren’t required by OSHA, but they are required by certain states and types of employers.

- **How Do You Get a DOL Card?** You can earn an official DOL card by completing an OSHA Outreach training program. OSHA doesn't provide this training itself. It lays out the rules for these programs and approves third parties who undergo a rigorous training process. ... You want to look for a provider that is "OSHA-authorized" when shopping for a DOL card. You can confirm their credentials on OSHA's website."
- 360Training.com, Inc. is noted on the website of OSHA.COM (no URL address given but phone no., email address, and chat feature given) as providing their training courses. 10 TTABVUE 48-50. On its pages, OSHA.COM identifies 360Training as an "OSHA Accepted Provider." It identifies itself as providing "OSHA-authorized online training," but also notes: "OSHA.com is a privately owned website that is not affiliated with any government agency," 10 TTABVUE 49, and "is in no way affiliated with the OSHA website available at <http://osha.gov>." *Id.* at 50.
- Reg. No. 4783614 (on the Supplemental Register) for the mark **OSHA CAMPUS ONLINE** for "Education services rendered online via the internet, namely providing courses of study and instruction in the field of safety and health" (owned by Professional Bartending Schools of America, Inc.);
- Reg. No. 4966561 (on the Supplemental Register) for the mark **OSHA EDUCATION CENTER** for "Education services provided on a global computer network, namely, providing online courses and instruction in the fields of safety, health, and workplace safety and associated workplace safety Code of Federal Regulations standards" (owned by American Safety Council, Inc.);
 - Applicant submitted a copy of pages from the American Safety Council, Inc.'s website, advertising "OSHA 30-Hour Training Online" and identifying itself as offering "#1 Trusted OSHA-Authorized Training." 10 TTABVUE 57-71. The company promises that "Students who complete OSHA Outreach training programs will be issued an official OSHA card from the U.S. Department of Labor." 10 TTABVUE 68.

- Reg. No. 5414841 for the mark **OSHAKITS.COM** for “Computerized on-line retail store services featuring food safety and blood borne pathogen spill kits; online retail store services featuring food safety and blood borne pathogen spill kits” (owned by Northfield Medical Manufacturing, LLC);



- Reg. No. 4903057 for the mark **OSHAcademy** (“OCCUPATIONAL SAFETY & HEALTH TRAINING” disclaimed) for “Educational services, namely, conducting classroom courses, seminars, workshops, and on-line training in the fields of occupational health, safety, and the environment and distribution of training materials in connection therewith” (owned by Geigle Safety Group, Inc.);

- Applicant submitted pages from OSHAcademy (no URL address given but address, phone no., and email given). 10 TTABVUE 72-78. The pages offers classes in safety training, touting “Our professional training certificates document student achievement and are recognized worldwide.” 10 TTABVUE 72. Geigle Safety Group, Inc. specifically disclaims affiliation with the Dept. of Labor:

- “OSHAcademy Occupational Safety and Health Training is a division of Geigle Safety Group, Inc., and is not connected or affiliated with the U.S. Department of Labor (DOL), or the Occupational Safety and Health Administration (OSHA).” 10 TTABVUE 78.




- Reg. No. 4844681 for the mark **LABOR FOR HIRE** (“LABOR FOR HIRE” and “OSHA TRAINED” disclaimed) for “Employment agency services, namely, filling the temporary staffing needs of business”; and



- Reg. No. 4840605 for the mark **SKILLED RESOURCES OSHA TRAINED** (“SKILLED RESOURCES OSHA TRAINED” disclaimed) for “Employment agency services, namely, filling the temporary staffing needs of business” (both owned by LFH Acquisition Corp.

- Applicant submitted a copy of a page from the website <https://www.laborforhire.com>, which displays both composite marks. 10 TTABVUE 271. In the pages that follow, LFH Acquisition Corp. commits itself to “providing the best unskilled labor in the construction industry,” because they are “all OSHA certified for the job to be performed.” *Id.* There is no indication of affiliation with the Dept. of Labor on the website.



- Reg. No. 4833412 for the mark  (“OSHA TRAINING FOR AG” disclaimed) for “Education services, namely, providing online non-downloadable tutorials and videos in the field of agricultural safety training” (owned by Good Day’s Work LLC).
 - Applicant submitted two pages from the website <https://gooddayswork.ag/>, which advertises “Get home safe. Online OSHA Safety Training for Agriculture.” 10 TTABVUE 275.

The prevalence of disclaimers of the designation OSHA in the third-party registrations supports a finding that the designation is merely the subject matter of the third-parties’ identified goods and services. Moreover, the third party use of OSHA alone, as shown in the above excerpts, is not use as a source indicator for the goods or services but again identifies the subject matter of those goods and services.

In addition to submitting third-party registrations and showing how some of the marks of the registrations are used in the marketplace, Applicant provided evidence of unregistered third-party use of “OSHA” for training or consultation services. For example:

Karen Daw provides workshops “tailored for those working in healthcare” to learn about OSHA regulations, using the trade name “The OSHA Lady.” At www.KarenDaw.com, 10 TTABVUE 207-212.

Under the mark “OSHAt rac,” Oshatrac.com offers “an online secure, web-based application which enables employers to create accident reports, print required OSHA documents, and track injury metrics in real-time.” At <http://www.oshatrac.com>, 10 TTABVUE 213.

OSHALogs advertises “Take the Guesswork out of OSHA Recordkeeping” by offering a “Secure, Web-Based Application that Enables Employers to Create Each State’s First Report of Injury, Track Injuries, Print All Required OSHA Reports, and View Injury Metrics in Real-Time.” At <https://www.oshalogs.com>, 10 TTABVUE 247-252.


ECBM Insurance Brokers and Consultants offers OSHA training through a service portal named MyWave on the website. “Included in the MyWave Portal is access to MyWave OSHA. MyWave OSHA is an online app that allows clients to record, track, and create reports from their OSHA log quickly and easily.” At <https://www.ecbm.com>, 10 TTABVUE 265.

The Examining Attorney argues that Applicant’s evidence is unpersuasive, because many of the third parties make it clear that the Dept. of Labor authorizes them to use the OSHA designation. “For example, the webpage of OSHA.COM has a notice stating that the training services are offered by ‘360training OSHA ACCEPTED PROVIDER;’ 360 TRAINING’s webpage discusses how OSHA approves third parties who undergo training, and one should look for OSHA-authorized providers; and OSHA EDUCATION CENTER webpage states that it is OSHA authorized.” 16 TTABVUE 9. The majority of the third-party websites, however, do not suggest any affiliation, and several disavow any business relationship, with the Dept. of Labor. We agree with Applicant that its mark, which includes “Global OSHA,” does not point uniquely to the Dept. of Labor such that it is unmistakably associated with the Administration.

Given the large number of third-party registrations using the term “OSHA” to descriptively identify training services in the field of occupational health and safety, relevant consumers will perceive the designation as identifying OSHA-health-and-safety-standards compliance courses offered by a number of unrelated third parties. Applicant’s use of its mark is similar to the descriptive use prevalent among these parties. Accordingly, the requirement that the name or identity serve to uniquely point to a single entity has not been satisfied.

C. Summary

In order to falsely suggest a connection with another entity by using the same or close approximation of a mark owned by the entity, the mark must be recognized as pointing uniquely and unmistakably to it. Here, because there are many companies that use the designation OSHA as a constituent part of their marks to indicate their own safety-related services, the mark does not point uniquely to the Administration. Thus, there is no false suggestion of a connection with the Administration arising from Applicant’s similar use of the term OSHA.

Decision: The refusal to register Applicant’s mark  Global Occupational Safety and Health Academy, LLC under Trademark Act Section 2(a) is reversed.