

**This Opinion Is a
Precedent of the TTAB**

Mailed: December 10, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Team Jesus LLC
—

Serial No. 88105154
—

Jeffrey P. Thennisch of Lorenz & Kopf,
for Team Jesus LLC.

Omolayo Adebayo, Trademark Examining Attorney, Law Office 121,
Richard White, Managing Attorney.

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Before Kuhlke, Lynch and Hudis,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

I. Background

Team Jesus LLC (“Applicant”) seeks to register on the Principal Register the proposed mark TEAM JESUS in standard characters for the following goods and services:¹

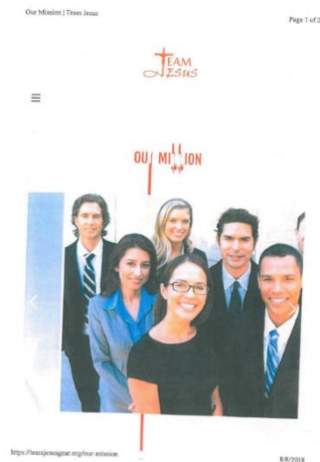
Clothing and wearing apparel in the nature of footwear, headgear, namely, hats, caps; skull caps, hooded sweatshirts, ascots, articles of outer clothing, namely,

¹ Application Serial No. 88105154 was filed September 5, 2018, based on an allegation of use of the mark in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

coats, overcoats, rain coats, ponchos; shirts, woven shirts, dress shirts, polo shirts, suits, ties, sweatshirts, hooded sweatshirts, fleece tops and bottoms, pullover fleece tops, jackets, snowsuits, pants, trousers, shorts, tank tops, rainwear, cloth bibs, skirts, blouses, dresses, suspenders, sweaters, athletic uniforms, warm-up suits, jogging suits, shoes, boots, sneakers, sandals, booties, slipper socks, swimwear, scarves, dressing gowns, boxer shorts, socks, T-shirts; sun visors being headwear, sleepwear, pajamas, slippers, underwear, wrist bands as clothing, headbands, robes; footwear and headwear for babies and toddlers; articles of clothing for babies and toddlers, namely, romper suits, shawls, bibs not of paper and booties in International Class 25; and

Educational and entertainment services for the purpose of addressing, developing, and promoting religious awakening and religious devotion, namely, organizing, arranging, and conducting cultural and art events, concerts, dramatic theater productions, and community festivals featuring a variety of activities in the nature of sporting events, art exhibitions, flea markets, ethnic dances and the like to develop and enhance the spiritual lives of individuals in International Class 41.

Applicant's specimens of use include the following, several pages of which are excerpted from a 21-page substitute specimen Applicant described as "brochures, flyers, presentations, and promotional material"²:



² January 8, 2020 Request for Reconsideration at TSDR 1. Citations to the application record are to the TSDR database.

TEAM JESUS

Team Jesus is a musical concert touring group. Team Jesus educates, inspires and evangelizes audiences with faith-based “Music with a Message”, bringing to life the parables from the Bible, into our culture today.

“Music with a Message” uses two mediums to bring the parable to life. To begin, a big screen introduces the character(s) to the audience visually (laying the parable ground work), followed by the character appearing live on stage, picking up the story where the big screen left off.

Example:

Visually on the big screen, the audience is introduced to Christian, a young man, moving from his family to go off on his own. Visually, we follow Christian and the temptations he faces (fast life, night clubs, excess alcohol, drugs, gambling, etc...). Soon, Christian is homeless. Walking the city streets, he finds himself at the steps of an old church. Christian, desperate and broken enters the church and is spiritually awoken by the beautiful light coming from the stained glass.

Stage lights come on and the audience is moved to the live stage performance.

Christian falling to his knees sings his prayer, from the church with the stained glass, to God seeking help, asking for a sign. God answers Christian’s prayer by sending some of the “All-Stars” on Team Jesus.

(Note: The centerpiece on stage is a stained glass window replica of da Vinci’s Last Supper.) From this replica, Christian, along with the audience is introduced to the Apostles, as they one by one come to life out from the stained glass and sing their “Music with a Message”. This upbeat contemporary music inspires Christian and the audience the benefits of living their lives with Virtue & Value.

The concert closes with a grass roots spiritual revival of local christian talent singing with Team Jesus, and celebrating with Christian as he (The Prodigal Son) is reunited with his father, and the audience is invited to be “Active Athletes with Team Jesus”.

Note: Coming - Team Jesus and the parable of the lost sheep.



- David saw Da Vinci Last Supper
- Tried to identify apostles
- How did artist depict each apostle?
- How did he decide where they sat?
- These men were all on a team– TEAM Jesus

What was inspiration for TEAM Jesus?

- Entertainment that may spark and reignite faith
- People want inspiration, purpose
- Be part of TEAM
- Persons will hear Gospel message and we will let Holy Spirit do heavy lifting
- Magnetic response to God
- Invitation to return to church

Evangelization

“Reconnecting with God and our Christian Faith”

Film Introduction

- Meet Christian (The Prodigal Son)
- Successful Family
 - Decides to Leave
 - Falls into the Culture Temptations of
 - Fast Life
 - Night Clubs
 - Drinking
 - Drugs
 - Gambling
 - Becomes Homeless
 - Walking City Streets, comes upon a Church – Decides to Enter...
- Testimonial



Live on Stage

- Picking up where the film left off:
- Christian is inside the Church
 - Stained Glass centerpiece of da Vinci's Last Supper
 - Has a Spiritual Awakening from the beautiful light coming from the Stained Glass
 - Falls to his knees – & Sings his Prayer
 - God answers the prayer by sending some of the All-Stars on Team Jesus
 - The Apostles as they one by one come to life out from the stained glass as they sing their “Music with a Message”
 - Educating & Inspiring the benefits of living a life with Virtue & Value
- Testimonial



Praise & Worship

- + Concert closes with a grass roots spiritual revival of local Christian talent singing with Team Jesus and celebrating with Christian as he is reunited with his father.
 - + The audience is invited to be “Active Athletes with Team Jesus”
- Testimonial



The Examining Attorney refused registration of the mark in both classes under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53 and 1127, on the ground that the proposed mark fails to function as a mark because it is “an informational social, political, religious, or similar kind of message” that “conveys being a Christian.”³ When the Examining Attorney made the refusal final, Applicant requested reconsideration and appealed. The Examining Attorney denied reconsideration and maintained the refusal. The appeal resumed, and Applicant and the Examining Attorney briefed the issues on appeal. We affirm the refusal to register.

³ July 8, 2019 Office Action at TSDR 1.

II. Failure to Function

A. Legal Background

“The Trademark Act is not an act to register words but to register trademarks (or service marks). Before there can be registrability, there must be a trademark (or a service mark) and, unless words have been so used, they cannot qualify for registration.” *In re Std. Oil Co.*, 275 F.2d 945, 125 USPQ 227, 229 (CCPA 1960). Section 45 of the Trademark Act defines “trademark” and “service mark” as “any word, name, symbol, or device, or any combination thereof ... used by a person ... to identify and distinguish” goods or services, respectively, “and to indicate the source” of the goods or services, “even if that source is unknown.” 15 U.S.C. § 1127; *see also In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 215 (CCPA 1976) (“[T]he classic function of a trademark is to point out distinctively the origin of the goods to which it is attached.”).

We must assess whether Applicant’s proposed mark, TEAM JESUS, functions as a mark based on whether the relevant public, i.e. purchasers or potential purchasers of the identified clothing goods and educational and entertainment services related to religious awakening and devotion, would perceive TEAM JESUS as identifying the source or origin of such goods and services. *See e.g. In re Texas With Love, LLC*, 2020 USPQ2d 11290, at *2 (TTAB 2020) (“Whether the term ... falls within this definition and functions as a mark depends on whether the relevant public, i.e., purchasers or potential purchasers of Applicant’s goods [or services], would perceive the term as identifying the source or origin of Applicant’s goods [or services].”); *In re TracFone*

Wireless, Inc., 2019 USPQ2d 222983, at *1-2 (TTAB 2019) (“The key question is whether the asserted mark would be perceived as a source indicator for Applicant’s [goods or] services.”); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006) (“[T]he critical inquiry is whether the asserted mark would be perceived as a source indicator.”). In this case, because there are no limitations to the channels of trade or classes of consumers, the relevant consuming public comprises all potential purchasers of the identified goods and services. See *In re Yarnell Ice Cream, LLC*, 2019 USPQ2d 265039, at *5 (TTAB 2019); cf *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983) (applying this principle in the likelihood of confusion context).

Matter that is widely used to convey ordinary or familiar concepts or sentiments, or social, political, religious, or similar informational messages that are in common use, would not be perceived as indicating source and is not registrable as a mark. See *In re Mayweather Promotions, LLC*, 2020 USPQ2d 11298, at *1 (TTAB 2020) (addressing the proposed mark PAST PRESENT FUTURE and noting that “[w]idely 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”); *Texas With Love*, 2020 USPQ2d 11290, at *2 (holding that proposed mark TEXAS LOVE “does not perform the desired trademark function and does not fall within the Act’s definition of a mark, including because it would be perceived not as a source identifier, but instead as a widely-used phrase that merely conveys a well-recognized

and commonly expressed concept or sentiment”); *see also D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1716 (TTAB 2016) (I ♥ DC was found not to function as a mark for clothing items because it would be perceived merely as an expression of enthusiasm for the city). For the failure-to-function analysis, we consider all the evidence of record, including an applicant’s specimens, as well as other evidence. *See, e.g., D.C. One Wholesaler, Inc.*, 120 USPQ2d at 1716 (considering third-party use evidence as well as the applicant’s specimens and other examples of use); *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1230 (TTAB 2010) (affirming informational refusal of ONCE A MARINE, ALWAYS A MARINE where third-party evidence showed widespread use of the phrase and use on “applicant’s specimens as well as its other materials would likely reinforce the perception” of the proposed mark as informational in the sense of expressing support, admiration or affiliation with the Marines).

B. Evidence and Analysis

The Examining Attorney argues that the proposed mark TEAM JESUS is a commonplace message or expression that is widely used by a variety of sources, including in the context of clothing and entertainment and educational services such as Applicant’s, to convey a sentiment of affiliation with Jesus Christ and the Christian religion.

The Examining Attorney submitted evidence reflecting general use of the phrase to convey a Christian affiliation in a wide variety of contexts (emphases added):

- The Fellowship of Christian Athletes website includes a devotional titled “**Team**

Jesus,” noting that “God is recruiting you for His team, but the enemy is trying his best to keep you from joining ‘**TEAM JESUS.**’ ... God, our ‘Coach,’ had plans for you before you were born (Jeremiah 1:5, 29:11). And once you give your life to Christ and join his team, you can live knowing that you will win in the end.” The devotional concludes with questions including, “Are you part of ‘**Team Jesus**?’”⁴

- A blog post titled “How to be a Starter on ‘**Team Jesus**’” by Greg Stier, identified as CEO and Founder of Dare 2 Share Ministries, begins with “Getting on ***Team Jesus*** is simple. We put our faith in him and we are on the team!”⁵
- An article on the Patheos website titled “When It Comes to Popes, I’m on **Team Jesus**” discusses unity in the Catholic Church and allegiance to Jesus rather than allegiance to either Pope Francis or Pope Benedict.⁶
- A Washington Post editorial recounts a quote from the Air Force Academy football coach, “I am a Christian first and last.... I am a member of **Team Jesus Christ.**”⁷
- A post on the Maywood Baptist Church website states, “What is **Team Jesus**? Well, it is all of you. We are all on Jesus’ team right? We want to bring more of God’s light into this world. We want to spread the gospel and bring it to those who do not know Jesus.”⁸
- The Fellowship Network website features a post by its President, Steve Holder

⁴ December 17, 2018 Office Action at TSDR 8 (fcaresources.com).

⁵ *Id.* at 9 (gregstier.dare2share.org).

⁶ January 28, 2020 Denial of Reconsideration at TSDR 7-10 (patheos.com).

⁷ December 17, 2018 Office Action at TSDR 23 (washingtonpost.com).

⁸ July 8, 2019 Office Action at TSDR 6 (maywoodbaptistchurch.org).

titled “We are all called to **Team JESUS**,” describing “unity in the Body of Christ,” in which he states “No matter our age, location, office, or appointment, we are all called to be on **Team Jesus**.”⁹

- The Athletes in Action website features a blog post titled “Why **Team Jesus**?: Defending Your Christian Faith Part II” that opens with, “In part one of *Why Team Jesus?* we were introduced to the art and science of giving reasons for our faith in Jesus.”¹⁰
- An online article titled “Christian Athletes: Let’s Talk ‘**TEAM**’ **Jesus**,” explaining that “it is true to say that all Christians form a team.”¹¹
- The **Team Jesus** USA website describes its ministry as “a non-denominational full gospel ministry that preach [sic] and teach [sic] from the King James Version of the bible.”¹²
- The **Team Jesus** Ministries website describes its organizational purpose as including providing Bible studies, and “opportunities for members/leaders to work in evangelism, student events, community service, teaching and preaching platforms.”¹³
- An online promotion for the **Team Jesus** Bible Camp includes “games, contests,

⁹ *Id.* at 9 (thefellowshipnetwork.net).

¹⁰ January 28, 2020 Denial of Reconsideration at TSDR 3 (athletesinaction.org).

¹¹ *Id.* at 16 (tcstallings.life).

¹² January 28, 2020 Denial of Reconsideration at TSDR 19 (teamjesususa.com).

¹³ July 8, 2019 Office Action at TSDR 12 (pin.gsu.edu).

and learning about Jesus.”¹⁴

- The **Team Jesus** website explains that “[t]he **Team Jesus** ministry was founded in 1996 with a vision to bring the love of God to motorsports events across the country. Our team accomplishes this by providing fan services, activities and entertainment at major racing events.”¹⁵
- The St. Stephen Lutheran Church website uses the tagline “**TEAM JESUS** Bringing People to Christ, Growing People in Christ,” and advertises “Christmas Programs.”¹⁶
- The **Team Jesus** Magazine website features a menu that includes “Entertainment,” “Christian Events,” and “Merch.”¹⁷
- The **Team Jesus** Ministries website notes that “**Team Jesus** Ministries is a nonprofit Jesus Christ honoring ministry designed to use fishing, hunting, and other recreational activities to give the opportunity for evangelism.”¹⁸
- The Palm Desert Church of Christ website promotes “VBS 2019 ‘**TEAM JESUS**’” that features “Bible, Arts & Crafts, Worship and Athletics,” along with a “**TEAM JESUS**’ Carnival.”¹⁹

¹⁴ December 17, 2018 Office Action at TSDR 2 (churchpartner.com).

¹⁵ December 17, 2018 Office Action at TSDR 18 (teamjesus.org).

¹⁶ *Id.* at 19 (teamjesusliberty.org).

¹⁷ *Id.* at 20 (teamjesusmag.com).

¹⁸ *Id.* at 21 (teamjesusministries.org).

¹⁹ January 28, 2020 Denial of Reconsideration at TSDR 11 (pdccoc.com).

- The website at watertownfirstumc.com contains a post titled “**Team Jesus @ Messy Church Sept 9th,**” noting that “Messy Church this past Sunday was focused on being part of **Team Jesus**, with lots of messy activities like Messy Eating challenges, Messy Olympic Torch Cupcakes, Messy relay games, and so much more.... We are all called to be on **Team Jesus** ... to go out and tell people about the good news that is Jesus Christ. We can all join **Team Jesus** by saying we are sorry for wrong things we have done and trust in Jesus.”²⁰

The Examining Attorney also submitted evidence of third-party use of TEAM JESUS emblazoned on clothing and to refer to clothing, such as the following examples (emphases added):

- The Faith Shirts website offers a “**Team Jesus Scoopneck**” t-shirt.²¹
- Etsy offers a variety of shirts and other goods from different makers emblazoned with “**Team Jesus,**” often referred to using the same phrase, such as “**Team Jesus Tee – Camo,**” “**Team Jesus – Jesus T-shirt,**” “**Unisex Team Jesus Tee Shirt,**” and “**Team Jesus Shirt.**”²²
- The Spreadshirt website features a page of “**Team Jesus T-Shirts**” including the “**Men’s T-Shirt Team Jesus,**” the “**Kids’ Premium T-Shirt Team Jesus,**” and the “**Women’s Premium T-Shirt team jesus,**” [sic] among others.²³
- The Bonfire website offers a “**Team Jesus**” t-shirt described as “designed for

²⁰ July 8, 2019 Office Action at TSDR 12 (watertownfirstumc.com).

²¹ January 28, 2020 Denial of Reconsideration at TSDR 6 (faithshirts.com).

²² December 17, 2018 Office Action at TSDR 4-7 (etsy.com).

²³ *Id.* at 13-17 (spreadshirt.com).

Christians who believe in God.”²⁴

- The Walmart website features a “Men’s Team Jesus Pop Culture Generic Graphic Tee” featuring that wording emblazoned across the front of the shirt.²⁵

Examples of other third-party goods offered online that are referred to as or that bear the wording “**Team Jesus**” include those in the excerpt below:²⁶

²⁴ January 28, 2020 Denial of Reconsideration at TSDR 5 (bonfire.com).

²⁵ July 8, 2019 Office Action at TSDR 11 (walmart.com).

²⁶ July 8, 2019 Office Action at TSDR 2 (google.com).

Show only

New items

Price

Up to \$10

\$10 - \$20

Over \$20

\$ _____ to \$ _____

[GO](#)

Color

Style

T-shirt

Tank Top

Sweatshirt

Type

Shirt

Sweater

Department

Men

Women

Material

Cotton

Cotton Blend

Rayon

Jersey

Polyester

Fleece

Spandex

Sleeve Style





















Short Sleeve

Long Sleeve

Sleeveless

Size

00	0	2	4
6	8	10	12
14	16	18	20
XXS	XS	S	M
L	XL	XXL	1XL
2XL	3XL	4XL	

 <p>\$12.94 from Amazon.com - Seller Fashion Team Jesus Navy Heather Graphic T-Shirt ★★★★★ (4)</p>	 <p>\$25.00 from Etsy - KingdomRealityInter Team Jesus</p>	 <p>\$1.49 from Hobby Lobby Team Jesus Polyester Bracelets</p>	 <p>\$49.95 from Humpine Humpine Team Jesus White Low Top Sneakers SK40763</p>
 <p>\$30.00 from Etsy - KingdomRealityInter KingdomRealityInter Team Jesus</p>	 <p>\$22.99 from teespring.com/stores/braulio-pride Teespring Men's Team Jesus Classic Tee Black More options</p>	 <p>16% OFF \$16.97 from CustomizedGirl CustomizedGirl.com Custom Church Camp Team Jesus - Unisex Striped ...</p>	 <p>\$2.99 from Hobby Lobby Playside Creations Team Jesus Lanyards</p>
 <p>15% OFF \$14.97 from CustomizedGirl CustomizedGirl.com Custom I Am on Team Jesus - Unisex T-Shirt ...</p>	 <p>25% OFF \$3.00 from Zazzle Zazzle Personalize Your Team Jesus Button Today, Adult Unisex ...</p>	 <p>\$18.49 from Spreadshirt.com T-Shirt Team Jesus</p>	 <p>25% OFF \$3.50 from Zazzle Zazzle Team Jesus Button, Adult Unisex, Size: 2 1/4 inch, Pale Blue ...</p>
 <p>\$19.99 from Meek Ever Printify Christian Quote I Am A Member of Team Jesus Christ - Men ... More options</p>	 <p>25% OFF \$2.85 from Zazzle Zazzle Team Jesus Button, Adult Unisex, Size: Small, 1 1/4 inch ...</p>	 <p>\$24.95 from Faith Shirts Faith Shirts Ponytail Team Jesus Hat Black</p>	 <p>\$17.20 from Redbubble Redbubble Team Jesus Unisex T-Shirt</p>
			

As noted in *D.C. One Wholesaler*, “[t]he widespread ornamental use of the phrase [I ♥ DC] by third parties ‘is part of the environment in which the [mark] is perceived by the public and . . . may influence how the [mark] is perceived.’” 120 USPQ2d at 1716 (citations omitted).

Thus, even though Applicant’s Class 25 specimen shows its proposed mark on the shirt’s outer-neck, this potentially “non-ornamental manner [of use] that is conventional for the display of trademarks . . . does not require a different result [than the failure to function refusal].” *Id.*; see also *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1152 (TTAB 2019) (“[T]he mere fact that [A]pplicant’s slogan appears on the specimens, even separate and apart from any other indicia which appear on them, does not make it a trademark.”) (quoting *In re Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987)). Because of the nature and ubiquity of the phrase TEAM JESUS, including on apparel from many sources, “it does not create the commercial impression of a source indicator, even when displayed on a hangtag or label.” *D.C. One Wholesaler, Inc.*, 120 USPQ2d at 1716.

Applicant argues that the evidentiary support for the refusal constitutes “putative common law uses of TEAM JESUS as a source identifying mark.”²⁷ We again disagree with Applicant’s characterization of the record. Most of the third-party clothing evidence shows use of TEAM JESUS in an ornamental manner, such as the t-shirts shown above with the words emblazoned in large letters across the front, presumably offered for consumers who want to convey their Christian affiliation by wearing

²⁷ 8 TTABVUE 3 (Applicant’s Brief).

apparel that prominently proclaims that message. *See Mayweather Promotions*, 2020 USPQ2d 11298, at *4 (“[I]n 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.”) (citation omitted).

The evidence as a whole shows that TEAM JESUS is a commonplace message of Christian affiliation. *See Texas With Love*, 2020 USPQ2d 11290, at *3 (“It is clear from how the term is used by multiple third parties that [the term] merely conveys a well-recognized concept or sentiment.”). The wording “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.” *D.C. One Wholesaler, Inc.*, 120 USPQ2d at 1716.

Other similar messages have been deemed unregistrable. For example, in *Eagle Crest*, 96 USPQ2d at 1229, the Board held that ONCE A MARINE, ALWAYS A MARINE for clothing did not function as a mark because the evidence showed that it is a common motto used by, and in support of, the U.S. Marines. According to the Board in that case, “[t]he 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.” *Id.* at 1232. We find the evidentiary showing in this case analogous. Also, in *In re DePorter*, 129 USPQ2d 1298, 1302 (TTAB 2019), the Board held that #MAGICNUMBER108 failed to function as a mark based on “wide use of the proposed mark in a non-trademark manner to consistently convey

information about the Chicago Cubs' World Series appearance and win after a 108-year drought. This evidence is competent to suggest that upon encountering Applicant's 'mark,' prospective purchasers familiar with such widespread non-trademark use are unlikely to consider it to indicate the source of Applicant's goods." *See also Texas With Love*, 2020 USPQ2d 11290, at *3 (finding that TEXAS LOVE did not function as a mark but instead would be perceived as a common message of "support for, or affiliation or affinity with the State of Texas,' a well-recognized sentiment").

Applicant argues that the failure-to-function refusal is "the exact opposite of practice that previously allowed the prior registration of the same mark TEAM JESUS in the now lapsed (but previously issued) U.S. Reg. Nos. 1,509,318 and 2,122,579."²⁸ Applicant also points to an application, "Serial No. 78/107,289 for TEAM ALLAH," which Applicant contends received a notice of allowance despite its "equally religious theme."²⁹ However, Applicant did not introduce any evidence in support of these assertions. As a result the record lacks proof to support them. Applicant's arguments themselves lack contextual information, such as the goods and services in these now-cancelled registrations and abandoned application. And even if Applicant had provided additional context or evidence of what was in the records of other,

²⁸ 8 TTABVUE 3 (Applicant's Brief). We note that cancelled registrations are not evidence of any existing rights in a mark, *see Action Temp. Servs. v. Labor Force*, 870 F.2d 1563, 10 USPQ2d 1307, 1309 (Fed. Cir. 1989), and show nothing but the fact that they once issued. *Sunnen Prods. Co. v. Sunex Int'l Inc.*, 1 USPQ2d 1744, 1747 (TTAB 1987).

²⁹ *Id.* at 4. We further note that an application would be evidence only of the fact that it was filed, and therefore has no probative value. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009); *In re Fiesta Palms LLC*, 85 USPQ2d 1360, 1365 n.7 (TTAB 2007).

allegedly similar, applications that were allowed, we must apply the law to the facts in every case before us, irrespective of what happened to other applications which, due to their being allowed, we do not have the opportunity to review. *See, e.g., In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1635 (Fed. Cir. 2016) (“The PTO is required to examine all trademark applications for compliance with each and every eligibility requirement....”); *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (USPTO “must assess each mark on the record of public perception submitted with the application”).

The record in this case demonstrates the “ubiquity of the phrase [TEAM JESUS] ... on apparel and other [goods] of many makers,” *D.C. One Wholesaler*, 120 USPQ2d at 1716, as well as in connection with educational and entertainment services. In addition, Applicant’s specimen for its own Class 41 services reinforces the nature of TEAM JESUS as a message of affiliation by referring to Christians generally as part of “Team Jesus.” We find that consumers will not perceive the widely-used message TEAM JESUS as distinguishing Applicant’s goods and services in commerce and indicating their source.

Decision: We affirm the refusal to register Applicant’s proposed mark under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53 and 1127, on the ground that it fails to function as a mark.