

ESTTA Tracking number: **ESTTA1196367**

Filing date: **03/14/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Ex parte appeal no.	90139502
Appellant	Toya Russell
Applied for mark	GIRLS OF EXCELLENCE
Correspondence address	LERAE FUNDERBURG FUNDERBURG LAW, LLC PO BOX 98248 ATLANTA, GA 30359 UNITED STATES Primary email: lerae@funderburglaw.com 678-814-6300
Submission	Appeal brief
Attachments	Brief in Support of Notice of Appeal.pdf(1270643 bytes )
Appealed class	Class 041. First Use: Jun 1, 2019 First Use In Commerce: Jul 1, 2019 All goods and services in the class are appealed, namely: charitable services, namely, providing academic mentoring services for school aged girls; community outreach services; educational services, namely personal development and life skills
Filer's name	Lerae Funderburg
Filer's email	leraefunderburglaw.com
Signature	/Lerae Funderburg/
Date	03/14/2022

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of: Toya Russell	)	Examining Attorney: Michael Engel
Serial No.: 90139502	)	
Filed: August 9, 2020	)	
Mark: Girls of Excellence	)	

---

**BRIEF FOR APPLICANT**

Pursuant to a Notice of Appeal filed with the Trademark Trial and Appeal Board on January 16, 2022, the Applicant hereby appeals from the Examining Attorney’s final refusal to register the above-identified mark, dated July 15, 2021, and respectfully requests the Trademark Trial and Appeal Board (“TTAB”) to reverse the Examining Attorney’s decision on the grounds that Applicant’s mark is not merely descriptive.

**STATEMENT OF FACTS**

Applicant seeks registration on the Principal Register of her mark, GIRLS OF EXCELLENCE (“Mark”), for charitable services, namely, providing academic mentoring services for school aged girls; educational services, namely, providing classes in the field of personal development and life skill; and, community outreach services provided to school aged girls, namely providing information and resources for school aged education and college preparation (International Class 041).

The Examining Attorney refused registration of Applicant's Mark initially in an Office Action, dated January 4, 2021, contending that the mark, when used in commerce with the associated goods, was likely to cause confusion with U.S. Registration No. 5889871 for EXCELLENCE GIRLS ("Conflicting Mark"), which is used in connection with educational services, namely, providing courses of instruction at the primary and secondary school levels in urban centers. The Examining Attorney also contended that Applicant's Mark was considered to be merely descriptive of the services it provides.

In Applicant's response to the initial refusal to register, filed on June 24, 2021, Applicant argued that there were significant differences between the Mark and the Conflicting Mark's appearance, sound, connotation, and commercial impression. Applicant also argued that there were differences in the services, marketing channels, and sophistication of consumers. As to the merely descriptive refusal, Applicant argued that the Mark did not describe any ingredients, qualities, characteristics, functions, features or uses of the services and was not considered to be descriptive.

In a Final Office Action, dated July 15, 2021, the Examining Attorney found Applicant's arguments persuasive with regard to the Conflicting Mark, but not as it relates to the merely descriptive refusal. The Examining Attorney further expounded his position in connection with the merely descriptive refusal, maintaining that the Mark immediately conveys that use of Applicant's services will result in girls of excellence.

In Applicant's Request for Reconsideration, Applicant requested that the Mark be registered on the Supplemental Register to allow more time for it to acquire distinctiveness and secondary meaning as it is a quickly growing and developing non-profit organization that is very active in the community and consistent with its mission and execution of its vision. Pending

decision of Examining Attorney's response to Applicant's Request for Reconsideration, Applicant simultaneously filed this timely appeal.

## **ARGUMENT**

If a proposed trademark or service mark is not inherently distinctive, it may be registered on the Principal Register only upon proof of acquired distinctiveness, or "secondary meaning," that is, proof that it has become distinctive as applied to the applicant's goods or services in commerce. 15 U.S.C. §1052(f). However, the Supplemental Register provides federal trademark protection for non-distinct marks, such as one that could be considered merely descriptive.

A term which is descriptive . . . may, through usage by one producer with reference to his product, acquire a special significance so that to the consuming public the word has come to mean that the product is produced by that particular manufacturer.

1 Nims, *Unfair Competition and Trademarks* at §37 (1947).

Here, Applicant started and ran a non-profit with the same mission and vision and associated services as those in connection with the Mark, for over ten (10) years and rebranded under the Girls of Excellence mark on or around June 1, 2019. Many of the same organizations, corporate sponsors, schools, networks, contributors and others who engaged with the former organization still maintain the same or similar relationships with Girls of Excellence, so it has acquired secondary meaning in the minds of many because of their prior experience and knowledge of the organization and its owners and members. The first page of a google search of "Girls of Excellence" shows only news and information about Applicant's charitable organization, which is an indication that the general consuming public has already attached secondary meaning to Girls of Excellence being representative of Applicant's non-profit organization and the services it provides. *See Exhibit A.*

## CONCLUSION

In view of the foregoing, Applicant respectfully requests the Examining Attorney to reconsider and withdraw the refusal. Applicant believed that it has responded to all outstanding requirements and that its application is in condition for publication. Applicant also requests that the Examining Attorney telephone the undersigned if the Examining Attorney has any questions or if there are any additional issues that can be addressed by an Examining Attorney's Amendment.

This 12<sup>th</sup> day of March, 2022

\_\_\_\_\_/Lerae Funderburg/\_\_\_\_\_  
LERAE FUNDERBURG, ESQ.  
Ga. Bar No. 182393  
Attorney for Respondent

FUNDERBURG LAW, LLC.  
P.O. Box 98248  
Atlanta, GA 30359  
Office: 678-814-6300  
Email: lerae@funderburglaw.com

# **EXHIBIT A**



girls of excellence

X

Tools

- All
- Images
- News
- Videos
- Shopping
- More

About 330,000,000 results (0.52 seconds)

<https://girlsofexcellenceinc.org>

### Girls of Excellence: Home

**GIRLS OF EXCELLENCE, INC.** · IS A NONPROFIT ORGANIZATION PROVIDING SUPPORTIVE SERVICES · JUST FOR GIRLS. · Our FOCUS: · Group mentoring, Life skills,...

<https://girlsofexcellenceinc.org/about-us>

### About Us - Girls of Excellence

Our goal is to inspire girls to be their best. ... GOE will provide the tools, ...

<https://www.facebook.com> > ... > Youth Organization

### Girls of Excellence, Inc. - Facebook

**Girls of Excellence, Inc.**, Atlanta, Georgia. 633 likes · 43 talking about this. To inspire girls to believe in their power to be confident, smart and...

★ ★ ★ ★ ★ Rating: 5 · 2 votes

<https://www.unitedwayatlanta.org> > event > mentor-wit...

### Mentor with Girls of Excellence - United Way of Greater Atlanta

Sign on as a mentor today! Volunteers will be matched with a group of up to 5 girls of a local Atlanta school, and will meet twice monthly.

<https://www.mightycause.com> > organization > Girls-Of...

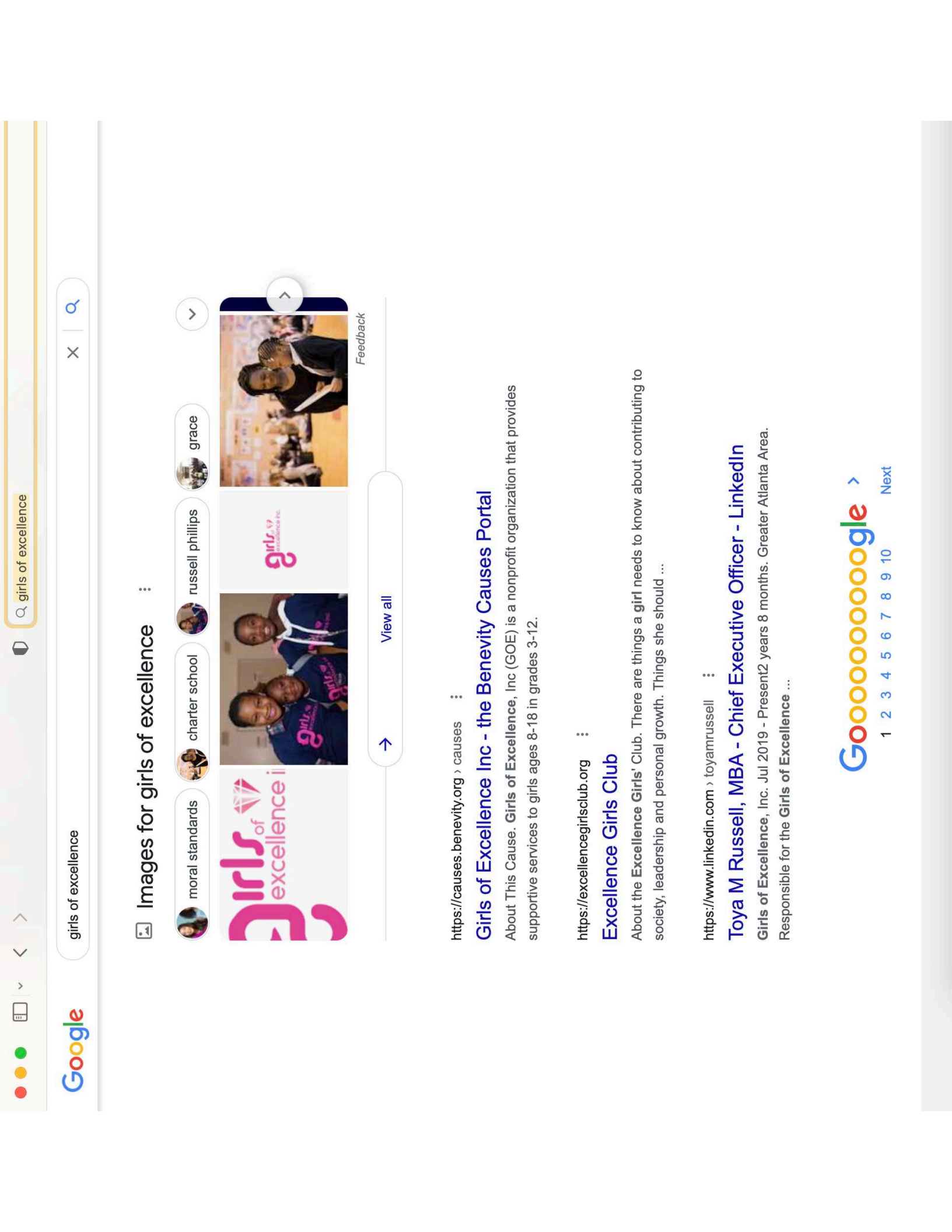
### Girls of Excellence Inc. | Mightycause

**GIRLS OF EXCELLENCE, INC.** IS A NONPROFIT ORGANIZATION PROVIDING SUPPORTIVE SERVICES JUST FOR GIRLS. Group mentoring, Life skills, Personal

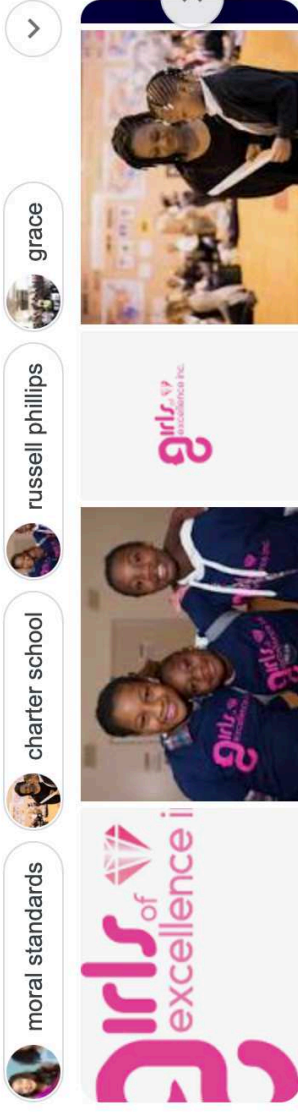
<https://www.instagram.com> > girls\_of\_excellence\_inc

### Girls of Excellence, Inc. (@girls\_of\_excellence\_inc) - Instagram

625 Followers, 898 Following, 878 Posts - See Instagram photos and videos from **Girls of Excellence, Inc.** (@girls\_of\_excellence\_inc)



## Images for girls of excellence



View all

<https://causes.benevity.org> > causes

### Girls of Excellence Inc - the Benevity Causes Portal

About This Cause. **Girls of Excellence, Inc (GOE)** is a nonprofit organization that provides supportive services to girls ages 8-18 in grades 3-12.

<https://excellencegirlsclub.org>

### Excellence Girls Club

About the **Excellence Girls' Club**. There are things a girl needs to know about contributing to society, leadership and personal growth. Things she should ...

<https://www.linkedin.com> > toyamrussell

### Toya M Russell, MBA - Chief Executive Officer - LinkedIn

**Girls of Excellence, Inc.** Jul 2019 - Present2 years 8 months. Greater Atlanta Area. Responsible for the **Girls of Excellence** ...

