

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

Mailed: March 31, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Cameron Sexton for State Representative

Serial No. 90211624

William A. Wooten of Wooten Law Office,
for Cameron Sexton for State Representative.

K. Margaret Le, Trademark Examining Attorney, Law Office 118,
Michael Baird, Managing Attorney.

Before Shaw, Greenbaum and Larkin,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Cameron Sexton for State Representative (“Applicant”), a Tennessee Political Campaign Committee, seeks registration on the Principal Register of the proposed mark PEOPLE BEFORE POLITICS (in standard characters) for

Printed advertising posters; Cardboard signboards; Paper banners; Placards of paper or cardboard, in International Class 16;

Shirts; T-shirts; Pullovers; Fleece pullovers; Graphic T-shirts; Long sleeve pullovers; Short-sleeved or long-sleeved t-shirts, in International Class 25;

Development and production of the advertising content of banners and signs for advertising, promotional, or marketing purposes; Providing information regarding political issues, knowing how to vote and knowing how to register to vote; Providing information, news and commentary in the field of politics; Providing political information, news, and commentary in the field of election campaigns, in International Class 35;

Political fundraising services, in International Class 36;
and

On-line journals, namely, blogs featuring politics and political campaigning; Educational and entertainment services, namely, providing motivational speaking services in the field of politics and political campaigns; Educational services, namely, providing educational speakers in the field of politics and political campaigns, in International Class 41.¹

The Trademark Examining Attorney refused registration of Applicant's proposed mark in each International Class under Sections 1, 2, 3 and 45 of the Trademark Act, 15 U.S.C. §§ 1051-53 and 1127, on the ground that the phrase PEOPLE BEFORE POLITICS does not function as a mark because it is "merely informational and constitutes a common slogan that is widely used in the marketplace." Ex. Atty. Br., 8 TTABVUE 1-2.

The Examining Attorney also refused registration of Applicant's proposed mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), for the services

¹ Application Serial No. 90211624 was filed on September 25, 2020 based upon Applicant's claim, in each International Class, of first use anywhere since at least as early as June 1, 2010, and first use in commerce since at least as early as July 2, 2010 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). Applicant amended its filing basis, and the application is now based upon Applicant's allegation, in each International Class, of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). November 8, 2021 Petition to Revive Abandoned Application, TSDR 1.

identified in Classes 35 and 36 only, on the ground that Applicant's proposed mark, when used in connection with the identified services, so resembles the registered mark PEOPLE BEFORE PARTY, which is the subject of two registrations, each in a single International Class and owned by one registrant, for

Political action committee services, namely, promoting the interests of voters in the field of politics; Promoting public awareness of increased competition and new ideas in the field of politics, legislation, and policy by means of public advocacy and grassroots organizing; Providing information regarding political issues, candidates and elections, in International Class 35; and

Political fundraising services and charitable fundraising services by means of organizing, arranging, and conducting fundraising programs, in International Class 36,

as to be likely to cause confusion, mistake or deception.²

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the failure to function refusal and therefore do not reach the likelihood of confusion refusal.

I. Evidentiary Issue

Applicant attached to its brief two third-party registrations that were not previously made of record, and to which the Examining Attorney objects. App. Br., 6 TTABVUE 18-19; Ex. Atty. Br., 8 TTABVUE 7. Only evidence filed during examination is timely, Trademark Rule 2.142(d); 37 CFR § 2.142(d), and it should not

² Reg. Nos. 5579484 and 5579485 issued on October 9, 2018 for the Class 35 and Class 36 services, respectively.

be submitted (or resubmitted) on appeal. *See, e.g., In re Dist. of Columbia*, 101 USPQ2d 1588, 1591-92 (TTAB 2012) (Board did not consider third-party registrations submitted for the first time with an appeal brief); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 1203.02(e) and 1207.01 (2022). We therefore sustain the objection, and do not further consider the registrations.

II. Failure to Function as a Mark

A. Statement of the Law

A proposed mark is ineligible for registration when it fails to meet the statutory definition of a trademark or service mark. Sections 1, 2, 3 and 45 of the Trademark Act provide the statutory basis for refusal to register subject matter that fails to function as a mark. Specifically:

Sections 1 and 2 provide for the application and registration on the Principal Register of “trademark[s] by which the goods of the applicant may be distinguished from the goods of others”;

Section 3 provides that service marks are registrable “in the same manner and with the same effect as trademarks”; and

Section 45 defines a “trademark” in pertinent part, as “any word, name, symbol, or device, or any combination thereof used by a person, or which a person has a bona fide intention to use in commerce ... to identify and distinguish his or her goods [or services], including a unique product [or service], from those manufactured or sold [or provided] by others, and to indicate the source of the goods [or services], even if that source is unknown.”

Accordingly, the USPTO “is statutorily constrained to register matter on the Principal Register if and only if it functions as a mark.” *In re Lizzo LLC*, 2023

USPQ2d 139, at *3 (TTAB 2023) (citing *In re Brunetti*, 2022 USPQ2d 764, at *9 (TTAB 2022)); *see also In re Vox Populi Registry, Ltd.*, 25 F.4th 1348, 2022 USPQ2d 115, at *2 (Fed. Cir. 2022) (“Under the Lanham Act, ‘no service mark by which the services of the applicant may be distinguished from the services of others shall be refused registration on the principal register on account of its nature’ subject to certain exceptions. 15 U.S.C. §§ 1052-53. One of these exceptions is that a service or trademark must function to ‘identify and distinguish the services of one person ... from the services of others and to indicate the source of the services.’ 15 U.S.C. § 1127.”) (cleaned up); *In re Standard Oil Co.*, 275 F.2d 945, 125 USPQ 227, 228 (CCPA 1960 (“The Trademark Act is not an act to register words but to register trademarks. Before there can be registrability, there must be a trademark”)); *see also In re The Ride, LLC*, 2020 USPQ2d 39644, at *5-6 (TTAB 2020). “Matter that does not operate to indicate the source or origin of the identified goods or services and distinguish them from those of others does not meet the statutory definition of a trademark and may not be registered” *In re Greenwood*, 2020 USPQ2d 11439, at *2 (TTAB 2020) (quoting *In re AC Webconnecting Holding B.V.*, 2020 USPQ2d 11048, at *2-3 (TTAB 2020)).

“Not every designation adopted with the intention that it perform a trademark function necessarily accomplishes that purpose.” *Brunetti*, 2022 USPQ2d 764, at *10; *In re Tex. With Love, LLC*, 2020 USPQ2d 11290, *2-3 (TTAB 2020) (quoting *In re Pro-Line Corp.*, 28USPQ2d 1141, 1142 (TTAB 1993) (“Mere intent that a phrase function as a trademark is not enough in and of itself to make it a trademark.”)). Certain

designations “are inherently incapable of functioning as trademarks to identify and distinguish the source of the products in connection with which they are used.” *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (affirming refusal to register ONCE A MARINE, ALWAYS A MARINE for clothing because it would be perceived as an informational slogan “to express support, admiration or affiliation with the Marines.”); *In re Volvo Cars of N. Am. Inc.*, 46 UPSQ2d 1455, 1460 (TTAB 1998) (“[P]rimary significance of the phrase DRIVE SAFELY, as used by applicant, and as likely to be perceived by purchasers and prospective purchasers, is merely that of an everyday, commonplace safety admonition”).

Matter fails to function as a trademark if it is a common term or phrase that consumers of the goods or services identified in the application are accustomed to seeing used by various sources to convey ordinary, familiar, or generally understood concepts or sentiments. Such widely used messages will be understood as merely conveying the ordinary concept or sentiment normally associated with them, rather than serving any source-indicating function. *See, e.g., D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1716 (TTAB 2016) (in addition to granting petition to cancel the applicant’s registration for the mark I ♥ DC for clothing, the Board also sustained opposition to applicant’s pending application for the same mark because it “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 with respect to the city of Washington, D.C.” and thus would not be perceived as a source-indicator);

see also TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1202.04(b) (2022) (widely used messages).

“The critical inquiry in determining whether a proposed mark functions as a trademark is how the relevant public perceives it.” *Univ. of Ky. v. 40-0, LLC*, 2021 USPQ2d 253, at *13 (TTAB 2021) (citing *Greenwood*, 2020 USPQ2d 11439, at *2). When, as here, “there are no limitations on the channels of trade or classes of consumers of the [goods and services] identified in the application, the relevant consuming public comprises all potential purchasers of [such goods and services].” *Id.*, at *24 (citing *In re Mayweather Promotions, LLC*, 2020 USPQ2d 11298, at *3 (TTAB 2020)). “To make this determination, we look to [any] ... evidence of record showing how the designation is actually used in the marketplace.” *Tex. with Love*, 2020 USPQ2d 11290, at *2 (quoting *Eagle Crest*, 96 USPQ2d at 1229, and noting that “widespread use of a term or phrase may be enough to render it incapable of functioning as a trademark, regardless of the type of message.”).

“Consumers ordinarily take widely-used, commonplace messages at their ordinary meaning, and not as source indicators, absent evidence to the contrary.” *Greenwood*, 2020 USPQ2d 11439, at *6 (citing *Mayweather Promotions*, 2020 USPQ2d 11298, at *1). “The more commonly a phrase is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark.” *Id.* (citing *Eagle Crest*, 96 USPQ2d at 1229). “Where the evidence suggests that the ordinary consumer would take the words at their ordinary meaning rather than read into them some special meaning distinguishing the goods and

services from similar goods and services of others, then the words fail to function as a mark.” *In re Ocean Tech., Inc.*, 2019 USPQ2d 450686, at *3 (TTAB 2019) (internal punctuation omitted). *Cf. Lizzo*, 2023 USPQ2d 139, at *39 (evidence showed consumers perceive 100% THAT BITCH as a mark signifying source in acclaimed singer Lizzo and her music).

B. Evidence and Arguments

The Examining Attorney contends the evidence shows that the proposed mark PEOPLE BEFORE POLITICS comprises an informational, social, political or similar kind of message, which merely conveys support of, admiration for, or affiliation with, the ideals of the message: that people are more important than political considerations. Ex. Atty. Br., 8 TTABVUE 12-13. For the failure-to-function analysis, we consider all the evidence of record, including Applicant’s specimens.³ *In re Team Jesus LLC*, 2020 USPQ2d 11489, at *3 (TTAB 2020). Applicant’s specimens show the proposed mark PEOPLE BEFORE POLITICS directly below the name of the candidate running for office, namely, Cameron Sexton. The specimens include a screenshot of Cameron Sexton’s Facebook page showing the proposed mark on a campaign banner, a photo of a portion of a fleece pullover showing the proposed mark

³ As explained above, Applicant filed the application under Section 1(a) of the Trademark Act, but amended the filing basis to Section 1(b). *See* n.1 *supra*. Nonetheless, we consider the specimen submitted by Applicant showing how Applicant actually uses the designation PEOPLE BEFORE POLITICS in the marketplace. *See Eagle Crest*, 96 USPQ2d at 1229 (considering specimens and evidence in the record showing how the designation is actually used in the marketplace); *Cf. In re Promo Ink*, 78 USPQ2d 1301, 1303 (TTAB 2006) (examining attorney may introduce evidence that applicant’s own literature supports refusal even though application is based on Section 1(b)).

directly below Cameron Sexton's name, and a screenshot of Applicant's fundraising webpage showing what appears to be a mock-up or artist's rendition of the aforementioned campaign banner. Application, TSDR 3, 6, 14-15.

As displayed on Applicant's specimens, the wording PEOPLE BEFORE POLITICS comprises a political message or slogan. The question is whether the wording also functions as a trademark, or whether consumers would perceive the wording as a commonly used informational or political message or slogan. *See In re Hulting*, 107 USPQ2d 1175, 1177-79 (TTAB 2013) (finding NO MORE RINOS!, a slogan meaning "No More Republicans In Name Only," not registrable for various paper items, shirts and novelty buttons, because the wording would be perceived as a commonly used political message).

The evidence submitted by the Examining Attorney includes screenshots of the following, all of which feature the phrase PEOPLE BEFORE POLITICS:

- A red t-shirt "by Caityjean" posted on ShirtWoot! prominently displaying "People Before Politics." February 23, 2021 Office Action, TSDR 9.
- A Congressional session in Wisconsin from spectrumnews1.com, with the caption "Governor Tony Evers of Madison Wisconsin calls for Putting People Before Politics During Inaugural Address." *Id.*, at TSDR 11.
- The BlackWestchester.com website, YouTube channel and Facebook page featuring a radio show named "People Before Politics." *Id.*, at TSDR 12 and 15; June 28, 2022 Request for Reconsideration Denied, TSDR 6-7.

- The Equity Forward website PutPeopleBeforePolitics.org demanding that HHS Secretary Azar “put people before politics and defend lifesaving research” related to funding for Alzheimer’s research. February 23, 2021 Office Action, TSDR 14.
- The webpage for mainepeoplebeforepolitics.com shows use of the term PEOPLE BEFORE POLITICS as part of a URL and as part of the name of the group. *Id.*, at TSDR 16.
- Various goods displaying the phrase “put people before politics” including a t-shirt posted on pinterest.com; a pinback button posted on RedBubble.com along with thumbnails of a sticker, cotton tote bag, t-shirt and tapestry; and a sticker posted on the website of author Jacqui Lambie. Request for Reconsideration Denied, TSDR 2-4.
- A signboard with the phrase “People Before Politics” displayed at The West Virginia Council of Churches, posted on Flickr.com. *Id.*, at TSDR 5.
- The name of a Spotify podcast. *Id.*, at TSDR 8.
- A story posted on the WECT News 6 website titled “People Before Politics: Transgender volunteer helps North Carolina flood victims.” *Id.*, at TSDR 9.
- Use as a political slogan on Rep. Andy Kim’s webpage, the Facebook page “PeopleBeforePoliticsSA” for three candidates who were running on a ticket in South Amboy, New Jersey, and on the runwithramirez.com website for Lucas Ramirez, FNP, Utah House of Representatives, District 58. *Id.*, at TSDR 10, 12 and 13.

The Examining Attorney also submitted a number of excerpts from the Lexis/Nexis database showing use of the phrase “people before politics” in various contexts, all of which convey the ordinary meaning of the phrase, including several uses in the context of political campaigns. February 23, 2021 Office Action, TSDR 17 (at 1-36). Examples, with emphasis added, include:

- February 4, 2021 editorial in “Richmond Times Dispatch (Virginia)” titled “**People before politics**; Editorial: Census data delay serves as a reminder – **put people before politics.**” *Id.* at TSDR 17 (at 7 of 36).
- November 15, 2019 post by Samuel McKnight in “The Roanoke Times (Virginia)” titled “**People before politics**; McKnight: **People before politics.**” *Id.*, at TSDR 17 (at 10 of 36) (duplicate at 9 of 36, dated December 6, 2019).
- February 3, 2021 post by “Anonymous” in “Chicago Weekend” titled “Expressing Thanks to Illinois Legislators for **Putting People Before Politics.**” *Id.*, at TSDR 17 (at 11 of 36).
- November 16, 2015 opinion piece by Albert Mishaan in “The Columbia Spectator: Columbia University” titled “**Let’s put people before politics.**” *Id.*, at TSDR 17 (at 12 of 36).
- January 5, 2021 article by Peter Goonan in “The Republican (Springfield, Massachusetts)” titled “Council president urges ‘**people before politics**’: ‘Newly elected City Council President Marcus Williams said Monday he will focus on the challenges of the coronavirus pandemic in 2021, and will ‘**put people before politics.**’ ... “Those elected in Springfield were done so to **put people before politics,**’ Williams said.” *Id.*, at TSDR 17 (at 13 of 36) (related article dated January 7, 2021, no author attributed, in the same paper, titled “‘**People before politics**’ for the good of Springfield.” *Id.*, at TSDR 17 (at 14 of 36)).
- January 27, 2019 post by Tommy Christopher on Mediaite website titled “Kevin McCarthy Sputters on Claim Trump **Put People Before Politics** After Chuck Todd’s Three Word Response.” *Id.*, at TSDR 17 (at 17 of 36).
- June 20, 2018 press release in “Congressional Documents and Publications” and also posted on Newstex Blog titled “Leader McCarthy: **Put People Before Politics**” reporting remarks from then House Majority Leader

Kevin McCarthy at a leadership press conference, with the following quote “Tomorrow night the question will be, **do people want to play politics or do they want to put people before politics?**” *Id.*, at TSDR 17 (at 19-20 of 36).

- March 19, 2020 article by Amy Neff Roth in “Times Telegram (Herkimer, Little Falls, NY)” titled “Former U.S. Rep Richard Hanna dies: **Remembered for putting people before politics.**” *Id.*, at TSDR 17 (at 21 of 36).
- October 24, 2019 post by Irina Khanin in “The Winchester Star (Virginia)” titled “**People before politics; That’s Khanin’s basic platform**” urging constituents to vote for her. *Id.*, at TSDR 17 (at 22 of 36).
- Three press releases dated July 1, 2016-July 6, 2016 about an Illinois politician, posted on “AP Planner,” titled “**GOP Rep. Bob Dold continues ‘People Before Politics’ bus tour.**” *Id.*, at TSDR 17 (at 27-29 of 36).
- February 9, 2016 press release by Pennsylvania House of Representatives, Democratic Caucus, posted on “States News Services” titled “Krueger-Braneky: **It’s Time to Put People Before Politics,**” *id.*, at TSDR 17 (at 30 of 36); **and** a related video of the same date titled “Youngblood: **Put People Before Politics**” posted on Newstex Blogs, with the following summary: “**PA state Rep Rosita Youngblood says it’s time for lawmakers to put people before politics and take Pennsylvania down a path where schools are funded, those in need get help and our homeowners don’t face higher property taxes every year.**” *Id.*, at TSDR 17 (at 35 of 36).
- October 13, 2017 letter from “Lindsey Terry, Southington” posted in “Record-Journal (Meridian, Connecticut), urging constituents to vote for Jack Perry, “**a leader who puts ‘people before politics.’**” *Id.*, at TSDR 17 (at 32 of 36).

The evidence amply supports a finding that the phrase PEOPLE BEFORE POLITICS is a commonplace informational slogan, often associated with politicians or political campaigns, which consumers are accustomed to seeing on goods and services like those identified in the application, including on signs and clothing, and in association with political information, political fundraising and blogs featuring

politics and political campaigning. The use of the phrase on Applicant's specimens is similar to the various third-party uses discussed above. And the use of the phrase "people before politics" in a variety of contexts, including non-political contexts, provides additional support for our finding that the phrase is commonly used and understood as an exhortation to put people over politics. The more commonly a term or phrase is used in everyday speech by various sources, the less likely consumers will be to perceive the matter as a trademark for any goods or services. *E.g.*, *Greenwood*, 2020 USPQ2d 11439, at 2-3 (citing *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1402 (TTAB 2018)); *In re DePorter*, 129 USPQ2d 1298, 1303 (TTAB 2019) (quoting *Hulting*, 107 USPQ2d at 1177); *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, 1153 (TTAB 2019).

Applicant does not argue that the evidence is insufficient to support the refusal, but rather that the proposed mark meets the standard of a source indicator and therefore functions as a mark:

Here, Applicant uses the mark in a manner calculated to project to consumers a single source or origin for the goods/services featured in Applicant's advertising, campaign materials, clothing articles, website, and other informational materials. Applicant is the only source of this phrase to Applicant's knowledge, and there are no other political candidates or campaigns that have used Applicant's Mark. Further, consumers and potential consumers who view all of Applicant's advertising materials, marketing materials and goods/services clearly associate Applicant's mark with Applicant as the sole source, origin, and indicator for Applicant's Mark. Applicant has used this mark in commerce for years, and as such, Applicant has become synonymous with the mark in question.

App. Br., 6 TTABVUE 14.

The record shows that Applicant's claims that it is "the only source of this phrase" and that "there are no other political candidates or campaigns that have used Applicant's Mark" are incorrect, and Applicant's arguments are inapposite in any event. Applicant has not amended its application to seek registration under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f), but such an amendment could not overcome the refusal because matter than does not indicate the source or origin of the identified goods and services and distinguish them from those of others does not meet the statutory definition of a trademark, and thus cannot be registered. *Ocean Tech.*, 2019 USPQ2d 450686, at *8. "This is so regardless of the register on which registration is sought (i.e., Principal or Supplemental), or a claim of acquired distinctiveness." *Id.*, and cases cited therein.

C. Conclusion

In sum, we find that PEOPLE BEFORE POLITICS is merely informational and constitutes a common social or political slogan that is widely used in the marketplace, including on or in association with goods and services like those identified in the application. The proposed mark therefore fails to function as a trademark or service mark for Applicant's goods and services. Accordingly, we do not reach the likelihood of confusion refusal. *See, e.g., In re Suuberg*, 2021 USPQ2d 1209, at *9-10 (TTAB 2021) (affirming nonuse refusal, and because application was void, declining to reach failure to function refusal).

Decision: The refusal to register Applicant's proposed mark PEOPLE BEFORE POLITICS under Sections 1, 2, 3 and 45 of the Trademark Act is affirmed as to all Classes of goods and services.