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

Proceeding no.	91267937
Party	Plaintiff Alpha Kappa Alpha Sorority
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of STROLL TO THE POLLS Ser. No. 90/012,428

Alpha Kappa Alpha Sorority	)	
	)	
Opposer,	)	
	)	
	)	Opposition No. 91,267,937
	)	
v.	)	
	)	
	)	
Stroll to the Polls, Inc.	)	
	)	
Applicant.	)	
_____	)	

ALPHA KAPPA ALPHA SORORITY'S TRIAL BRIEF

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    - Third-party uses of the phrase "stroll to the polls" on apparel (73 TTABVUE, AKA Tr. Exs. 11-19 (73-74 TTABVUE, AKA Tr. Exs. 11-19); and
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II. STATEMENT OF THE ISSUES[1]

Issue 1: Where "stroll to the polls" is and has been used in connection with voter mobilization initiatives by AKA, Applicant, and dozens of third parties, is "stroll to the polls" an unregistrable political slogan or message?

Issue 2: Where "stroll to the polls" is and has been displayed prominently on shirts and other apparel in a decorative manner by AKA, Applicant, and numerous third parties, is "stroll to the polls" an unregistrable ornamental phrase?

III. INTRODUCTION

Applicant seeks to register the cultural catchphrase "stroll to the polls" in connection with apparel. The record demonstrates that AKA, Applicant, and dozens of third parties use the catchphrase "stroll to the polls" as a political message in support of voting rights as well as an ornamental phrase on shirts and other apparel. The only consumer perception evidence in the record consists of two testimony declarations in which the declarants state that they believe "stroll to the polls" is a commonplace political slogan and not an indicator that goods come from

[1] AKA's operative Notice of Opposition does not include priority and likelihood of confusion under Trademark Act Section 2(d) as a ground for opposition. *See* 23 TTABVUE.

a single source. Applicant has submitted no evidence to contradict this testimony or support its position that customers perceive "stroll to the polls" as a mark when used on apparel. Accordingly, the application to register "stroll to the polls" should be denied on the grounds that it is both an unregistrable political slogan and an ornamental phrase as used by Applicant on apparel.

IV. STATEMENT OF FACTS

A. "Stroll to the Polls" Is Commonly Used as a Political Slogan.

1. AKA's Use of "Stroll to the Polls" as a Political Slogan.

"Strolling" is a longstanding tradition associated with the Divine Nine, which are the nine African-American fraternity and sorority organizations based in the United States. Barrett Trial Decl., ¶ 1 (72 TTABVUE). AKA is a member of the Divine Nine. *Id*. Strolling is a dance form that dates back to the early 1900s and proudly showcases African-American culture, harkens back to African roots, and is performed to show camaraderie, community, unity, and love. *Id*.

Since at least as early as 2016, AKA has used the catchphrase "stroll to the polls" in connection with political events, namely, voter engagement initiatives. *Id.*, ¶ 3; AKA Trial Ex. 1 (72 TTABVUE). For example, in preparation for the 2016 U.S. presidential election, AKA launched its "Be the Voice" campaign, whose goal was to increase voter participation among AKA members and other members of the African-American community. *Id*. One of the components of the "Be the Voice" campaign was "Stroll to the Polls," in which AKA's college members coordinated with other groups on campus to encourage students to vote. *Id*. AKA continued its "Be the Voice" campaign through the 2018 national mid-term elections. *Id.*, ¶ 4; AKA Trial Exs. 2-3 (72 TTABVUE).

AKA chapters have also hosted "stroll to the polls" events in an effort to increase voter turnout. For example, on October 17, 2020, an AKA chapter in Florida hosted a virtual voter engagement event called "Florida Stroll to the Polls." *Id.*, ¶ 5; AKA Trial Ex. 4 (72 TTABVUE). On October 22, 2020, the AKA chapter at Adelphi University hosted a voter engagement event called "Stroll to the Polls." *Id.*, ¶ 6; AKA Trial Ex. 5 (72 TTABVUE). On October 24, 2020, AKA held a voter engagement event called "Stroll to the Polls" at the Metropolitan Parkway Library in Atlanta, Georgia. *Id.*, ¶ 7; AKA Trial Ex. 6 (72 TTABVUE).

2. Applicant's Use of "Stroll to the Polls" as a Political Slogan.

Applicant previously applied to register "stroll to the polls" for "Promoting public awareness of civic engagement by organizing, arranging, and conducting events that encourage voter registration, mobilization, and participation" in Class 35 (Serial No. 90/248,099); "Fundraising services by means of organizing, arranging and conducting fundraising programs for the benefit of voter registration, mobilization and participation programs" in Class 36 (Serial No. 90/975,234); and "Providing temporary use of a non-downloadable web application for individuals to encourage voter registration, mobilization and participation among their peers" in Class 42 (Serial No. 90/975,235). AKA NOR (73 TTABVUE 2); AKA Tr. Exs. 8-10 (73 TTABVUE 6). Applicant filed these applications on a use basis, meaning they serve as an admission that Applicant uses "stroll to the polls" in connection with political activities such as voter registration and mobilization events. *Id*.

Additionally, these applications received final refusals from the USPTO on the ground that "stroll to the polls" fails to function as a mark pursuant to Sections 1, 2, 3, and 45 of the Trademark Act because it "is an informational and political message that merely conveys support of, admiration for, or affiliation with the ideals conveyed by the message." *Id*.

3. Third-Party Use of "Stroll to the Polls" as a Political Slogan.

AKA and Applicant are far from the only organizations who use "stroll to the polls" in connection with voter initiatives and other political activities. The record includes dozens of additional third-party uses of "stroll to the polls" as a political slogan or message, including the following:

(1) Florida State University, in collaboration with Florida A&M University, the League of Women Voters, Florida PIRG Students, Campus Election Engagement Project, and the Leon County Supervisor of Elections Office, held an event called "Stroll to the Polls" during the 2020 Presidential election. Philpot Trial Decl., ¶ 3 and Exs. 1-3 (76 TTABVUE);

(2) Delta Sigma Theta Sorority, a historically-black sorority and member of the Divine Nine, has used "stroll to the polls" in connection with voter turnout initiatives and events since at least as early as 2012. Washington Trial Decl., ¶ 3 and Exs. A-B (75 TTABVUE);

(3) The League of Women Voters' use of "Stroll to the Polls" as the name of a voter turnout project. AKA Tr. Ex. 8 at 18 (73 TTABVUE 18); AKA Tr. Ex. 22 at 101 (74 TTABVUE 101) ("Stroll to the Polls – work with teachers/principals to organize high school students to pass out voter registration and polling place information; if you ask someone to vote, they are more likely to vote.");

(4) A photo on the website Popsugar featuring two celebrities walking to the polls entitled, "Stroll to the Polls." *Id*. at 19 (73 TTABVUE 19);

(5) An article on the website AZCentral entitled, "Stroll to the Polls in Patagonia celebrates 100th anniversary of the 19th Amendment." *Id*. at 23 (73 TTABVUE 23);

(6) An article on the website The Famuan entitled, "Rattlers take part in 'stroll to the polls,'" which states that, "[t]he event was designed to encourage FAMU students to exercise their right to vote." *Id*. at 31 (73 TTABVUE 31);

(7) An event posted on the West Virginia Citizen Action Group website called, "Stroll to the Polls: Soul to the Polls – GOTV March and Voting Event." *Id*. at 36 (73 TTABVUE 36);

(8) An article on the Grand Street Democrats' website entitled, "Stroll to the Polls! Vote early with GSD on Sunday, October 25 and Thursday, October 29." *Id*. at 37 (73 TTABVUE 37);

(9) An event posted on the website https://thecompass.cnu.edu described as follows: "Stroll to the Polls is a strolling competition geared towards one of Alpha Phi Alpha's national programs 'A Voteless People is A Hopeless People.' The event exists to promote voter awareness and education while providing teams the opportunity to demonstrate their strolling abilities." *Id*. at 40 (73 TTABVUE 40);

(10) An event hosted by the Prince William County Democrats called "Stroll To The Polls Canvass Launch." *Id*. at 42 (73 TTABVUE 42);

(11) A photo on Mississippi State University's website with a caption that refers to "the National Panhellenic Council's Election Day 'Stroll to the Polls' event in November." *Id*. at 50 (73 TTABVUE 50);

(12) An event hosted by Nova Southeastern University called "Stroll to the Polls," during which a shuttle bus drove students to voting sites on election day. *Id*. at 54 (73 TTABVUE 54);

(13) An event in Denver City Park called "Stroll to the Polls." *Id*. at 57 (73 TTABVUE 57);

(14) A YouTube video entitled, "Get Ready to Vote on Election Day w/ 'HBCU Good Trouble Takeover…Walk, Run, Stroll to the Polls.'" *Id*. at 59 (73 TTABVUE 59);

(15) An event hosted by the University of Rochester during which students were encouraged to "sign up to participate in a 'Stroll to the Polls' … Participants will walk as a group from the River Campus to the early voting location []" *Id*. at 62 (73 TTABVUE 62);

(16) An event hosted by Power Coalition for Equity & Justice called "Stroll to the Polls." *Id*. at 65 (73 TTABVUE 65);

(17) An article on the NBC News website entitled, "OpEd: Black Women of Ohio, Take a 'Sister Stroll to the Polls.'" *Id*. at 68 (73 TTABVUE 68);

(18) An event hosted by a Shaw University student group called "Stroll to the Polls" intended to "encourage the community to exercise their constitutional right to vote." *Id*. at 76 (73 TTABVUE 76);

(19) An article on the Focus Daily News website entitled, "Lancaster Seniors Stroll to the Polls," which states that "Lancaster Seniors Cast First Votes in Historic Election." *Id*. at 80 (73 TTABVUE 80);

(20) An article on the University of Houston Downtown's website entitled, "UHD Community to Stroll to the Polls During Oct. 26 'Walk to Vote.'" *Id*. at 84 (73 TTABVUE 84);

(21) A YouTube video entitled, "Atlanta 'Stroll to the Polls' video, images go viral." AKA Tr. Ex. 21 (74 TTABVUE 81);

(22) An article on the WRDW/WAGT website entitled, "August mayor to host National Early Vote and Stroll to the Polls rally." *Id*. (74 TTABVUE 83);

(23) An article on http://eurweb.com entitled, "Four Historically Black Sororities Join Forces for Atlanta 'Stroll to the Polls' Video." The article explained, "Maisha Land, a member of AKA, wanted to build on that historical moment [of AKA Member Kamala Harris becoming the Vice Presidential nominee] with the organization's tradition of strolling, when members of a Divine Nine organization form a line and move forward using the same dance or motions, hence 'Stroll to the Polls.'" AKA Tr. Ex. 22 (74 TTABVUE 90);

(24) An Instagram post by a user named @lawyer_gal1908 featuring a drawing of representatives of each of the four historically Black sororities at the "Stroll to the Polls" event discussed in AKA Tr. Ex. 22 with a caption that states, "When the elderly White woman at my polling place saw my #pinkandgreen #Vote2020 sweatshirt and did a little dance and started chanting #StrollToThePolls it was the first time I thought there was hope. I said if an elderly White woman in a senior center polling location in my little suburban town knew about 'Strolling to the polls' and did a little dance for me the word was out about the power of Historically Black Sororities and Fraternities!" AKA Tr. Ex. 27 (74 TTABUVE 139); and

(25) An article in the Milwaukee Courier entitled, "Stroll to the Polls The Milwaukee Urban League Takes the Lead." AKA Tr. Exs. 25-26 (74 TTABVUE 123).

B. "Stroll to the Polls" Is Commonly Used as an Ornamental Phrase on Apparel.

1. AKA's Use of "Stroll to the Polls" as an Ornamental Phrase.

AKA's authorized distributors began selling apparel bearing the phrase "Stroll to the Polls. It's a Serious Matter." in AKA's signature pink and green color combination at least as early as March 1, 2020. A representative example of these ornamental uses is below:

Barrett Trial Decl., ¶ 8 (72 TTABVUE); AKA Trial Ex. 7 (71 TTABVUE 52).

2. Applicant's Use of "Stroll to the Polls" as an Ornamental Phrase.

Applicant uses "Stroll to the Polls" in the exact same ornamental manner as AKA and the third parties discussed below. The specimen filed with the opposed application shows the following ornamental uses:

Unisex Jersey Short Sleeve Tee

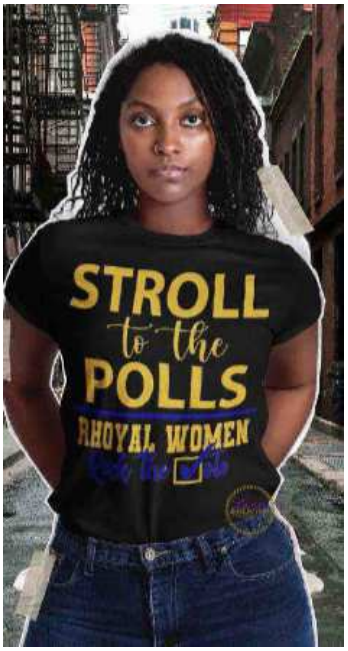
$25.00

Unisex Jersey Long Sleeve Tee

$30.00

3. Third-Party Use of "Stroll to the Polls" as an Ornamental Phrase.

In addition to the use of "Stroll to the Polls" as an ornamental phrase by AKA and Applicant, numerous third parties sell shirts and other apparel featuring the phrase. Representative examples are below:



AKA Tr. Exs. 11-19 (73 TTABVUE 297; 74 TTABVUE 2).

V. ARGUMENT

A. AKA Is Entitled to a Statutory Cause of Action.

"Any person who believes that he would be damaged by the registration of a mark upon the principal register … may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office …" 15 U.S.C. § 1063. "To establish entitlement to a statutory cause of

action [formerly known as "standing"], a plaintiff must demonstrate: (i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration or continued registration of the mark." *Andrusiek v. Cosmic Crusaders LLC*, Proceeding No. 9206483, 2022 WL 4103636, at *4 (TTAB 2022) [precedential]. "[T]he U.S. Court of Appeals for the Federal Circuit has enunciated a liberal threshold for determining standing, namely that a plaintiff must demonstrate that it possesses a real interest in a proceeding beyond that of a mere intermeddler, and a reasonable basis for his belief of damage." *U.S. Soccer Fed'n, Inc. v. Aztec Shops, Ltd.*, Proceeding No. 85458395, 2017 WL 542348, at *2 (TTAB 2017) [non-precedential].

In *D.C. One Wholesaler Inc. v. Chien*, the plaintiff "established standing by establishing that it sold sweatshirts, t-shirts, caps, and other products bearing designs similar to those covered by the defendant's application and registration." Proceeding Nos. 91199035 and 92053919, at *2 (TTAB 2016) [non-precedential]. In *U.S. Soccer Fed'n*, the opposer established standing by showing that "fans of the U.S. Men's National Team adopted the applied-for mark as the rallying cry for the team" and that "registration of the applied-for mark will deprive Opposer and others of the ability to use the mark as an informational and aspirational slogan." Proceeding No. 85458395, 2017 WL 542348, at *2. The Board further held, "[t]he fact that licensees may produce and sell goods for Opposer does not negate Opposer's real interest in this proceeding inasmuch as a licensee's use of a mark inures to the benefit of the trademark owner." *Id.*, at *3.

This case is analogous to both *D.C. One Wholesaler* and *U.S. Soccer Fed'n*. AKA demonstrated that it has sold apparel featuring the political and ornamental phrase "stroll to the polls" through authorized distributors since at least as early as 2020. *See* Section IV(B)(1), *supra*. Additionally, if the opposed application is allowed to register, AKA and numerous third

parties would be prohibited from continuing to sell apparel featuring the commonplace phrase "stroll to the polls." Accordingly, AKA has established "(i) an interest falling within the zone of interests protected by the statute and (ii) a reasonable belief in damage proximately caused by the registration or continued registration of the mark." *Andrusiek*, Proceeding No. 9206483, 2022 WL 4103636, at *4.

B. "Stroll to the Polls" Fails to Function as a Trademark Under Sections 1, 2, 3, and 45 of the Trademark Act.

"The critical inquiry in determining whether a designation functions as a mark is how the designation would be perceived by the relevant public. To make this determination we look to the specimens and other evidence of record showing how the designation is actually used in the marketplace." *In re Hulting*, 107 USPQ2d 1175, 2013 WL 5407310, at *2 (TTAB 2013) [precedential] (internal citations omitted); *see also In re Team Jesus, LLC*, 2020 USPQ2d 11489, Proceeding No. 88105154, at *8 (TTAB 2020) [precedential]; *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 2018 WL 3570240, at *2 (TTAB 2018) [precedential].

The phrase "stroll to the polls" fails to function as a trademark for two reasons: (1) it is an informational political slogan, and (2) it is merely ornamental as used by Applicant. *See* Sections 1, 2, 3, and 45 of the Trademark Act, 15 U.S.C. §§ 1051-1053, 1127.

1. "Stroll to the Polls" Is an Informational Political Slogan.

"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." *In re Team Jesus, LLC*, 2020 USPQ2d 11489, Proceeding No. 88105154, at *7 (emphasis added); *see also In re DePorter*, 129 USPQ2d 1298, Proceeding No. 87229711, at *3 (TTAB 2019) [precedential] ("[T]erms and expressions that merely convey an informational message are not registrable."); TMEP

§1202.04(b) ("Matter that merely conveys ordinary, familiar, or generally understood concepts or sentiments, as well as social, **political**, religious, or similar informational messages in common use, would not be perceived as indicating source and thus is not registrable.") (emphasis added).

a) "Stroll to the polls" is used by AKA, Applicant, and dozens of third parties as an informational political slogan encouraging citizens to vote.

"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." *In re Hulting*, 107 USPQ2d 1175, 2013 WL 5407310, at *1 (internal citation omitted); *see also* TMEP §1202.04(b) ("The more commonly a term or phrase is used in everyday speech or in an associational or affinitive manner by various sources, the less likely consumers will perceive the matter as a trademark or service mark for any goods and services.").

"[*A*]*ny* evidence demonstrating widespread use of the wording is relevant" to consumers' perception, not just uses in connection with the specific goods covered by the application at issue. *In re DePorter*, 129 USPQ2d 1298, Proceeding No. 87229711, at *10 (emphasis original). Third-party uses of the opposed phrase in things such as social media posts, websites, and news articles are also relevant. *Id*.

In the precedential decision in *In re Hulting*, the Board upheld a refusal to register "No More RINOs! [Republicans In Name Only]" for apparel on the ground that the phrase is a common political slogan. The Board explained its decision as follows:

> The record evidence shows that consumers are accustomed to seeing the phrase "No More RINOs!" displayed on bumper stickers, t-shirts, novelty pins and other items from many different sources. As a result, consumers will not perceive this wording as applied to applicant's goods as a source indicator pointing uniquely to applicant. Rather, consumers purchasing applicant's goods will

> perceive applicant's proposed mark as a political slogan commonly used by multiple individuals and entities rather than a sole source of products or services.

107 USPQ2d 1175, 2013 WL 5407310, at *3.

In another precedential decision, the Board upheld a refusal to register GOD BLESS THE USA for interior décor items because the phrase did not function as a source identifier. *In re Lee Greenwood*, 2020 USPQ2d 11439, Proceeding No. 87168719 (TTAB 2020) [precedential]. In that case, the Examining Attorney submitted evidence of numerous third parties selling household items with "God Bless the USA" on them. *Id.*, at *6-8. In refusing to register the mark, the Board stated, "Consumers ordinarily take widely-used, commonplace messages at their ordinary meaning, and not as source indicators, absent evidence to the contrary." *Id.*, at *5.

Just as in *In re Hulting* and *In re Lee Greenwood*, the record here is replete with examples of the cultural catchphrase "stroll to the polls" being used as a political slogan encouraging citizens to vote by AKA, Applicant, and dozens of third parties, ranging from historically Black sororities, to universities, to voters' rights organizations. *See* Section IV(A)(1)-(3), *supra*. As a result of the prevalence with which "stroll to the polls" is used as a pro-voting political message, consumers who see the phrase on a shirt or other article of clothing will perceive the wearer as someone expressing an affinity for voters' rights, not as a devotee of a specific clothing brand. *See* TMEP §1202.04(b) ("[G]oods that feature [political] messages are typically purchased because of the expressive sentiment conveyed by the message and not because they serve as a means for the consumer to identify and distinguish the applicant's goods or services from those of others.") (internal citations omitted).

Applicant has not introduced any evidence that could contradict this understanding. The record does not include a consumer perception survey, customer declarations, market research,

or any other evidence in support of Applicant's position that consumers understand "stroll to the polls" as a brand rather than a commonplace political slogan and catchphrase. Indeed, the only testimony regarding consumer perception favors AKA. Dr. Erin Sylvester Philpot, the Assistant Director for Leadership & Identity at Florida State University, who oversaw the college's "Stroll to the Polls" get-out-the-vote event in 2020, testified that she believes the phrase "stroll to the polls" is a commonplace political slogan and not an indicator that goods come from a single source. Philpot Trial Decl., ¶ 7 (76 TTABVUE). Dorcas Washington, the Executive Director of Delta Sigma Theta Sorority, which has used "stroll to the polls" in connection with voter turnout initiatives and events such 2012, gave the same testimony. Washington Trial Decl., ¶ 3 (75 TTABVUE).

Even if the record were to demonstrate that some consumers perceive "stroll to the polls" as a source identifier – which it does not – Applicant would not be permitted to own exclusive rights to such a commonplace political phrase. As the Board held in a precedential decision denying Wal-Mart's application to register INVESTING IN AMERICAN JOBS for retail store services, "[E]ven if there were evidence that some consumers associated the phrase with Applicant, that alone would not entitle Applicant to appropriate for itself exclusive use of an otherwise common informational phrase and thereby attempt to prevent competitors or others from using it …" *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, Proceeding No. 86261962, at *27 (TTAB 2019) [precedential].

In a recent Federal Circuit decision, the court upheld the examining attorney's refusal to register EVERYBODY V. RACISM for clothing for the same reason. *In re GO & Assocs., LLC*, 90 F.4th 1354, 1355 (Fed. Cir. 2024) ("Because granting GO the right to exclude others from using the mark to promote racial reconciliation would seriously impede the heartfelt need of

citizens of the country to express that everybody should be against racism, the examining attorney finally refused registrability of the mark.")

The same is true here. Applicant should not be entitled to "remove the term ['stroll to the polls'] from the common lexicon"; instead, AKA and others should be entitled to continue using it to demonstrate "the heartfelt need of citizens of the country to express" the importance of voters' rights. *In re Wal-Mart Stores, Inc.*, 129 USPQ2d 1148, Proceeding No. 86261962, at *26; *In re GO & Assocs., LLC*, 90 F.4th at 1355.

b) The USPTO has already determined that "stroll to the polls" is as an unregistrable political slogan in Classes 35, 36, and 42.

The Examining Attorney for Applicant's prior applications to register "stroll to the polls" in Classes 35, 36, and 42 submitted evidence proving "that the phrase 'STROLL TO THE POLLS' is a widely used message that conveys support and encouragement of voter participation and mobilization" and that "[b]ecause consumers are accustomed to seeing this message used in ordinary language by many different sources, they would not perceive it as a mark that identifies the source of applicant's services but rather only as conveying an informational message." AKA Tr. Ex. 8 at 93 (73 TTABVUE 93); *see also* AKA Tr. Ex. 9 at 110 (73 TTABVUE 110); AKA Tr. Ex. 10 at 207 (73 TTABVUE 207). Accordingly, the Examining Attorney refused registration of "stroll to the polls." The same finding should be made here, because the apparel Applicant sells emblazoned prominently with "stroll to the polls" merely allows wearers to express support for voter engagement.

2. "Stroll to the Polls" Is Merely Ornamental.

a) AKA, Applicant, and numerous third parties use "stroll to the polls" in an ornamental manner on apparel.

"[E]vidence of use of the wording as adornment, by either the applicant or third parties, may support a determination that a proposed mark does not convey the commercial impression of a trademark that identifies a single source." TMEP §1202.04(b). "When evaluating a mark that appears to be ornamental, rather than functioning as an indicator of source, the size, location, dominance and significance of the alleged mark as applied to the goods are all relevant factors in determining whether it is inherently distinctive." *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 2018 WL 3570240, at *3 (internal citations and quotation marks omitted).

AKA, Applicant, and numerous third parties use the expression "stroll to the polls" prominently on the front of shirts, hats, and other apparel in a purely ornamental manner. *See* Section IV(B), *supra*. This case is analogous to the precedential decision in *In re Hulting*, where the Board affirmed a refusal to register "No More RINOs!" on apparel because, "The slogan 'No More RINOs! is commonly used by others in the marketplace as ornamental matter on t-shirts and various other retail items in support of this movement within the Republican Party." 107 USPQ2d 1175, 2013 WL 5407310, at *3.

In another analogous precedential decision, the Board upheld a refusal to register I LOVE YOU for bracelets because the phrase was merely ornamental. *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 2018 WL 3570240, at *2. In that case, the Board explained, "The ornamental nature of the proposed mark is corroborated by the third-party use of that phrase on bracelets and other jewelry demonstrating that consumers are accustomed to seeing similar, ornamental displays of I LOVE YOU on bracelets and other jewelry from different sources. As a result, consumers will not perceive I LOVE YOU appearing on bracelets as pointing uniquely to Applicant as a single source." *Id.*, at *3.

Here, the record is filled with examples of AKA, Applicant, and numerous third parties decorating shirts and other apparel with the phrase "stroll to the polls." *See* Section IV(B)(1)-(3), *supra*. Because consumers are so accustomed to seeing "stroll to the polls" used in an ornamental manner by many different sellers, they will not perceive it as a trademark or as an indicator that the apparel featuring the phrase comes from a single source.

b) Applicant's inclusion of "stroll to the polls" on neck tags does not convert the ornamental phrase into a source identifier.

One of the specimens Applicant submitted in support of the opposed application was a picture of "stroll to the polls" used as a neck tag on a shirt:

This type of use sometimes demonstrates that a phrase operates as a source identifier. However, "[s]ubmission of an otherwise acceptable specimen bearing the proposed mark, such as a hang tag or label, will not obviate the [failure to function] refusal because the mere fact that the matter appears on a technically acceptable specimen does not mean that it would be perceived as a mark." TMEP 1202.04(d).

In a closely analogous case, the applicant submitted a picture of a neck tag as a specimen in support of its application to register TEAM JESUS for clothing:

In re Team Jesus, LLC, 2020 USPQ2d 11489, Proceeding No. 88105154, at *2. The record also included evidence of numerous churches, Christian organizations, blogs, and articles that used the phrase "Team Jesus," along with many third parties selling apparel featuring "Team Jesus" in an ornamental fashion. *Id.*, at *8-14.

In a precedential decision, the Board affirmed the refusal to register TEAM JESUS for apparel on failure to function grounds and explained, "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 a display of trademarks does not require a different result than the failure to function refusal." *Id.*, at *15. "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." *Id.* (internal citation omitted).

This case presents the exact same scenario. The record demonstrates that "stroll to the polls" is used on clothing in an ornamental fashion by numerous sellers, as well as in connection

with get-out-the-vote initiatives, voting rights organizations, news articles, and social media posts. *See* Section IV(A)-(B), *supra*. Indeed, one of Applicant's specimens demonstrates its own ornamental use of "stroll to the polls":

Unisex Jersey Short Sleeve Tee

$25.00

Unisex Jersey Long Sleeve Tee

$30.00

Applicant's use of "stroll to the polls" on a neck tag is not nearly enough to overcome the wealth of evidence that consumers are accustomed to seeing "stroll to the polls" used as an ornamental catchphrase on apparel and do not perceive this expression as a source identifier.

VI. CONCLUSION

For the reasons articulated herein, AKA respectfully asks the Board to refuse to register "stroll to the polls" because (1) it is an informational political slogan, and (2) it is merely ornamental as used by Applicant on apparel.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ALPHA KAPPA ALPHA SORORITY'S TRIAL BRIEF was served upon the counsel for Stroll to the Polls, Inc. identified below by email on February 10, 2025:

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