

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

In re Pamela Geller & Robert Spencer,

PAMELA GELLER & ROBERT SPENCER,

Appellants,

v.

DIRECTOR, UNITED STATES PATENT &
TRADEMARK OFFICE, in his official capacity
("Director"),

Appellee.

NOTICE OF APPEAL

Serial No. 77940879

Notice is hereby given that Applicants Pamela Geller and Robert Spencer hereby appeal to the United States Court of Appeals for the Federal Circuit from the Opinion rendered in their *ex parte* appeal to the Trademark Trial & Appeal Board ("TTAB"), which upheld the denial of the trademark application by the United States Patent & Trademark Office. Applicants-Appellants seek a review of the TTAB's Opinion (No. 77940879 issued February 7, 2013) in its entirety, which held that Applicants' mark was properly refused pursuant to § 2(a) of the Trademark Act, 15 U.S.C. § 1052(a). (*See* a true and correct copy of the TTAB Opinion attached hereto as Exhibit 1). The TTAB Opinion was received by Applicants-Appellants by email service on February 7, 2013.

Dated: April 8, 2013

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ David Yerushalmi

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2013, I served the original of this Notice of Appeal (with Exhibit 1) to the Director of the United States Patent & Trademark Office by USPS Express Mail pursuant to 37 CFR §§ 104.2 & 2.1989, 2011, addressed to Office of the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450.

I hereby also certify that on April 8, 2013, I served a copy of this Notice of Appeal (with Exhibit 1) to the TTAB by electronic filing through the ESTTA.

I hereby also certify that on April 8, 2013, I caused to be filed with the Clerk of the United States Court of Appeals for the Federal Circuit three copies of this Notice of Appeal (with Exhibit 1), together with all filing fees, by hand-delivery.

AMERICAN FREEDOM LAW CENTER

/s/ David Yerushalmi
David Yerushalmi, Esq.

EXHIBIT 1

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: June 19, 2012

Mailed: February 7, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pamela Geller and Robert B. Spencer

Serial No. 77940879

David Yerushalmi, Esq. for Pamela Geller and Robert B. Spencer.

Maria-Victoria Suarez, Trademark Examining Attorney, Law Office 102 (Karen M. Strzyz, Managing Attorney).

Before Cataldo, Taylor and Kuczma, Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Pamela Geller and Robert B. Spencer, (“applicants”), filed an application under § 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), seeking registration of the mark:

**Stop the Islamisation of
America**

in standard character form for “providing information regarding understanding and preventing terrorism,” in International Class 45.¹

¹ Application Serial No. 77940879, filed on February 21, 2010.

Registration of the mark was refused under § 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that the applied-for mark consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or national symbols. Applicants timely filed a notice of appeal. Applicants and the examining attorney submitted briefs, and appeared at the oral hearing.²

A. Disparagement

Section 2(a) of the Trademark Act prohibits registration of a mark that “consists of or comprises . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.” As noted in *University of Notre Dame du Lac v. J.C. Food Imports Co.*, 703 F.2d 1372, 1376, 217 USPQ 505, 509 (Fed. Cir. 1983), § 2(a) embodies concepts of the right to privacy and publicity, that is, the right to protect and to control the use of one’s identity. In effect, this provision of § 2(a) protects against appropriation of one’s identity by another and subjecting it to contempt or ridicule. See *Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635, 1639 (TTAB 1988).

In *In re Lebanese Arak Corp.*, the Board restated the test for disparagement where the party alleging disparagement is a member of a non-commercial group, such as a religious or racial group, as follows:

- 1) what is the likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements

² The application was examined by Examining Attorney Maria-Victoria Suarez. Senior Attorney Brian Brown represented the USPTO at the oral hearing.

in the mark, the nature of the goods or services, and the manner in which the mark is used in the marketplace in connection with the goods or services; and

2) if that meaning is found to refer to identifiable persons, institutions, beliefs or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.

In re Lebanese Arak Corp., 94 USPQ2d 1215, 1217 (TTAB 2010) (citing *In re Heeb Media LLC*, 89 USPQ2d 1071, 1074 (TTAB 2008); *In re Squaw Valley Development Co.*, 80 USPQ2d 1264, 1267 (TTAB 2006); *Harjo v. Pro-Football, Inc.*, (“*Harjo I*”) 50 USPQ2d 1705, 1740-41 (TTAB 1999), *rev’d* on other grounds, (“*Harjo II*”) 284 F.Supp.2d 96, 68 USPQ2d 1225 (D.D.C. 2003), *remanded*, 415 F.3d 44, 75 USPQ2d 1525 (D.C. Cir. 2005), *on remand*, 567 F.Supp.2d 46, 87 USPQ2d 1891 (D.D.C. 2008), *aff’d* 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009)).

1. Meaning of the Mark

Applicants and the examining attorney agree, as do we, that the test set forth in *Lebanese Arak* is the applicable test, so we turn to the first prong of the test to determine the meaning of the applied-for mark as used in connection with the services identified in the application.

The examining attorney introduced several dictionary definitions for the term “Islamize”³ which were consistent in indicating the term “Islamization” (alternatively spelled “Islamisation” according to applicants) would be generally understood to mean “converting or conforming to Islam”:⁴

³ The definitions indicate that “Islamization” is the noun form of the transitive verb “Islamize.”

⁴ See attachments to April 28, 2010 and January 19, 2011 Office Actions.

Dictionary.com Unabridged based on the Random House Dictionary:

1. To conform to Islam. 2. To bring into a state of harmony or conformity with the principles and teachings of Islam; give an Islamic character or identity to.
<http://dictionary.reference.com>

Merriam-Webster:

to make Islamic; especially: to convert to Islam
<http://merriam-webster.com/dictionary/islamization>

EncartaWorldEnglish Dictionary:

1. Convert to Islam: to convert people or countries to Islam. 2. Make subject to Islamic law: to cause people, institutions, or countries to follow Islamic law.
<http://encarta.msn.com/encnet/features/dictionary>

Webster's New World College Dictionary:

to convert or conform to, or bring within, Islam
<http://yourdictionary.com/Islamize>

American Heritage Dictionary of the English Language Fourth Ed.:

1. To convert to Islam. 2. To cause to conform to Islamic law or precepts.
<http://yourdictionary.com/Islamize>

The examining attorney also submitted the following definition for the word

“stop”:⁵

1. to cease from, leave off or discontinue: *to stop running*
2. to cause to cease; put an end to: *to stop noise in the street*
<http://dictionary.reference.com>

and a definition for the word “terrorism”:

Dictionary.com Unabridged based on the Random House Dictionary:

1. the use of violence and threats to intimidate or coerce,

⁵ See attachments to April 28, 2010 Office Action.

esp. for political purposes
<http://dictionary.reference.com/browse/islamize>

Applying these definitions in the context of applicants' STOP THE ISLAMISATION OF AMERICA mark, the mark in its entirety would be understood to mean that action must be taken to cease, or put an end to, converting or making people in America conform to Islam. Considering the mark in connection with the nature of applicants' services namely, "providing information regarding understanding and preventing terrorism," conveys the further message that the conversion or conformance to Islam must be stopped in order to prevent the intimidating threats and violence associated with terrorism.

In addition to analyzing the definitions relative to applicants' services, it is appropriate for us to consider the manner in which applicants' mark is or will be used in the marketplace in connection with the services. *Heeb Media*, 89 USPQ2d at 1075 citing *Harjo I*, 50 USPQ2d at 1739, 1742. To do this, we have reviewed the portions of applicants' website and blog (located at sioaonline.com) that are in the record. The subject matter of the articles published on applicants' website and comments posted on applicants' blog are consistent with the theme that the spread of Islam in America, i.e., converting new members to the Islam religion, must be stopped. For example, an article on applicants' website entitled: *SIOA Mosque Manifesto: All Mosques are Not Created Equal, A Handy Guide to Fighting the Muslim Brotherhood* reports on communities in the United States that have taken action against the building of mosques and provides a step-by-step guide for people who find themselves "faced with a huge monster mosque proposal in their small

towns.” The article begins: “As we have been reminded time after time after grisly Islamic terror plots have been exposed, there is always a mosque, and the imprimatur of a cleric, behind every operation.” The articles entitled *Geller, Spencer in Big Government: The 9/11 Mosque’s Peace Charade* and *SIOA Condemns Obama’s Blessing of Ground Zero Mega-Mosque; Bolton, Wilders to Speak At 9/11 Rally* raise strong objections to the proposed building of a mosque and Islamic Center near the site of the former World Trade Center in New York City that was destroyed as a result of a terrorist attack in September 2001. The article entitled *Detroit Transit Sued for Nixing SIOA ‘Leaving Islam?’ Bus ads* reports on a lawsuit filed by applicant Geller against the Detroit-area bus authority for refusing to run ads that offer assistance to those considering leaving Islam.⁶ There is no doubt that the underlying theme in the articles which are featured immediately underneath the website’s STOP THE ISLAMIZATION OF AMERICA⁷ banner is that the spread of Islam in America is undesirable and must be stopped.

Comments submitted to applicants’ blog by readers of applicants’ website also reflect the website’s message of stopping the spread of Islam in the United States:⁸

- [The trademark] implies that Islam is associated with violence and threats.” IMPLIES??? Hell no! IT IS

⁶ See copies of webpages from www.sioaonline.com attached to January 19, 2011 Office Action.

⁷ Although the word “Islamisation” as identified on the trademark drawing and in the application is spelled “Islamisation” (with the letter “s”), the banner at the top of applicants’ website spells the word with the letter “z.” According to applicants, the word “Islamisation” is an alternative spelling for “Islamization,” Applicants’ Appeal Brief p. 5.

⁸ See unnumbered attachments at pp. 54, 57-58 and 83 of January 19, 2011 Office Action. The spelling and punctuation in the readers’ comments are presented as contained in the postings.

ASSOCIATED WITH VIOLENCE AND THREATS— examples of that TRUTH ABOUND-ISLAM is a terror group defined by their own Korana [a]nd imams what PC and Muzzies have infiltrated the patent office? [Comment by Whata buncha bull on April 29, 2010 at 10:36 AM in response to article entitled “Sharia Trademark Enforcement.”]

- Very few Americans are willing to educate themselves on what Islam teaches – it is not love and peace. They only know the propaganda the media and Islamic organization indoctrinate them with each day. This is why we are doomed to experience what every country that has allowed it to exists, has experienced – evil in its purest form.

If people only knew the truth, Islam would not be allowed to exist in the USA or any other country. Franklin Graham was right in saying, “Islam is evil.” [Comment by Rick Holloway on May 12, 2010 at 10:59 AM in response to article entitled “Sharia Trademark Enforcement.”]

- This closeted Muslim President MUST be impeached, removed, and defeated before he continues to take the USA down the worst path it has ever encountered. Stop Islam Now, look at its history, lets not let The USA face the same Islamic issues our brothers in Europe are facing. [Comment by Erik on August 22, 2010 at 1:38 PM in response to article entitled: “SIOA Condemns Obama’s Blessing of Ground Zero Mega-Mosque.”]

Other comments reflect the public’s association of “Islamization” with “Islam.”⁹

- . . . here’s only one thing you can do and that’s say no to Islam and the islamization of America. [Comment by ‘nuff already on June 6, 2010 at 8:14 am]

- . . . Islamisation of America spells far more danger than what once Nazism did. Islam is like a giant python that can coil around you slowly and steadily before you even know that you have been annihilated. [Comment by Vedam on August 17, 2010 at 12:33 AM]

⁹ See unnumbered attachments at pp. 59 and 81 of January 19, 2011 Office Action.

One reader specifically commented that applicants' mark implies that applicants wish to stop Islam:¹⁰

- I agree that radical islam is the number one threat to this country's, and most country's, security. That said, the name you chose does imply that you wish to stop islam in this country. . . . [Comment by Alexandra on May 17, 2010 at 3:48 PM]

It is noted that the foregoing is not a complete list of the comments; the evidence in the record contains several additional inflammatory and/or negative readers' comments relating to the Islamic faith and its followers that were posted to applicants' blog, and we have no indication whether all comments to the blog have been submitted as evidence. While the probative value of the blog comments submitted by readers of applicants' website is less than that of the articles themselves due to the anonymity of the authors, they provide additional insight into the public's perception of and reaction to applicants' STOP THE ISLAMISATION OF AMERICA mark and services as used in the marketplace.

The evidence comprising dictionary definitions and the manner in which the mark is used and reacted to in the marketplace, taken together with the nature of applicants' services, provide probative evidence supporting the meaning of the mark proposed by the examining attorney, i.e., to stop the conversion or conformance to Islam in America in order to avoid terrorism.

Applicants advocate that Muslims do not use the term "Islamisation" "in the broad generic way consonant with 'Islamic'." Rather, applicants argue there is a

¹⁰ See unnumbered attachment at p. 59 of January 19, 2011 Office Action.

second definition of “Islamize” which conveys another meaning. That is, as set forth in the foregoing definitions, “Islamize” also means “[t]o cause to conform to Islamic law or precepts” (as defined at *Dictionary.com*) and “[m]ake subject to Islamic law: to cause people, institutions, or countries to follow Islamic law” (as defined at *Encarta.com*). This definition, i.e., to cause to be in conformity with Islamic law, more closely corresponds to the meaning of “Islamisation” proffered by applicants, namely, a sectarianization of a political society through efforts to “make [it] subject to Islamic law.”¹¹

According to applicants, Muslims understand “Islamisation” to mean the “term of art to incorporate the political-legal movement to convert a society or politic into a political society predicated upon and governed by Islamic law (i.e., Shariah).”¹² In support of this meaning, applicants cite to uses of the term “Islamisation” by professionals, academics and religious and legal experts. We refer to the following excerpts from applicants’ evidence which provide some insight into the use of the term “Islamization” and its propagation by Islamists, i.e., those that promote Islamization as political ideology (emphasis added below):

Islamism is ultimately a long-term social engineering project. The eventual ***“Islamization”*** of the world is to be enacted via a bottom-up process. Initially, the individual is Islamized into becoming a true Muslim. The process requires the person to reject Western norms of pluralism, individual rights, and the secular rule of law. The process continues as the individual’s family is transformed, followed by society, and then the state. Finally, the entire world is expected to live and be

¹¹ See Applicants’ Appeal Brief p. 8 and Applicants’ Reply Brief p. 4.

¹² See Applicants’ Appeal Brief pp. 8-9.

governed by **Islamic** principles. So it is this ideological machinery that works to promote separation, sedition, and hatred, and that is at the core of **Islamic** violent extremism. [Testimony of Zeyno Baran, Senior Fellow and Director of Center for Eurasian Policy, Hudson Institute, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]¹³

Now what I would like to address very quickly is what I believe i[s] the way to differentiate between **Islamists** and normal ordinary Muslims . . . the four core elements that I think are common to all **Islamists** regardless of the methodology they employ—and the first one I identify is that **Islamists** believe that Islam is a political ideology rather than a religion . . . the second core element that **Islamists** will all share is the notion that the Shariah religious code, which is a personal code of conduct, must become state law. . . [Testimony of Maajid Nawaz, Director, The Quilliam Foundation, London, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]¹⁴

What needs to be countered is **Islamism**, the political ideology, not Islam, the religion . . . The political ideology, however, is diametrically opposed to liberal democracy because it dictates that Islamic law, Shariah, to be the only basis for the legal and political system that governs the world's economic, social, and judicial mechanisms and that Islam must shape all aspects of life . . . Of course, not all **Islamists** will one day become terrorists, but all **Islamist** terrorists start with non-violent **Islamism**. [Testimony of Zeyno Baran, Senior Fellow and Director, Center for Eurasian Policy, Hudson Institute, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]¹⁵

Thus, today we can say that the broad ideological current of **Islamism** manifests itself in activist agendas that span the complete spectrum from democratic politics to violent efforts aimed at imposing Shariah law worldwide.

¹³ See Exhibit 3(a) p. 15 attached to applicants' July 26, 2010 Response to Office Action.

¹⁴ See Exhibit 3(a) p. 6 attached to applicants' July 26, 2010 Response to Office Action.

¹⁵ See Exhibit 3(a) p. 14 attached to applicants' July 26, 2010 Response to Office Action.

[Testimony of Peter P. Mandaville, PhD., Associate Professor of Government and Politics, George Mason University, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]¹⁶

In understanding what the ideology of *Islamism* is, it would help to begin with the name. The suffix “ism” has been added to Islam so as to draw attention to the political nature of the subject matter. Islam is a faith; *Islamism* is an ideology that uses Islam the faith as a justification. Some of you may be reluctant in calling this ideology Islamism. There exists an understandable concern of not wanting to alienate Muslims. . . . [Written Testimony of Maajid Nawaz, Director of the Quilliam Foundation, London, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]¹⁷

The foregoing evidence originated from written testimony and transcripts of record before the U.S. Senate Committee investigating “The Roots of Violent Islamist Extremism and Efforts to Counter It.” Applicants submitted additional evidence including course materials authored by applicants’ counsel and others for continuing legal education, a doctoral dissertation entitled “Islamization in Pakistan: A Political and Constitutional Study from 1947-1988” submitted to the University of Karachi (Karachi, Pakistan) in October 2004, and a list of law review articles with limited excerpts from a selection of the articles. Given the nature and intended audiences of this evidence it is less widely available and therefore, is not necessarily reflective of the general public’s understanding of the meaning of

¹⁶ See Exhibit 3(a) p. 10 attached to applicants’ July 26, 2010 Response to Office Action.

¹⁷ See Exhibit 3(a) p. 52 attached to applicants’ July 26, 2010 Response to Office Action.

applicants' mark. Indeed, applicants concede their evidence supports how Muslims themselves actually use the term "Islamization."¹⁸

We agree with the examining attorney that the several online dictionary definitions are more reflective of the public's current understanding of the term "Islamisation" than applicants' evidence, particularly because the public's access and exposure to applicants' evidence is not readily apparent. Based on the evidence, we conclude that one meaning of the mark is that the spread of Islam in America is undesirable and should be stopped in order to avoid or reduce terrorism. Although applicants' evidence is less probative of the meaning of the mark to the general public or to the American Muslim population at large, it evidences a second meaning of the mark at least to academic, professional, legal and religious experts based on the more narrow definition of the term "Islamisation" espoused by applicants.

As acknowledged by applicants, both *Harjo I* and *Harjo II* make clear that a term that has multiple meanings must be understood—for purposes of the "meaning" analysis—in the context of how it is used in the public domain relevant to the mark. If more than one meaning is established, both meanings advance to the second phase of the analysis, i.e., does the group at issue consider the term as used in the context of the services disparaging?¹⁹ With this in mind, we consider whether applicants' mark is disparaging.

¹⁸ See Applicants' Appeal Brief pp. 8-9.

¹⁹ See Applicants' Reply Brief p. 3.

2. Whether Mark Disparages Substantial Composite of Referenced Group

Addressing the second prong of the test, the definitions of Islamization submitted by the examining attorney clearly identify the referenced group as those who have converted or conformed to Islam, i.e., followers of the Islamic religion, who are also known as Muslims. Applicants also acknowledge that the referenced group is American Muslims.²⁰ Accordingly, we find both meanings of the mark refer to Muslims in the United States.

Trademarks may disparage if they “dishonor by comparison with what is inferior, slight, deprecate, degrade, or affect or injure by unjust comparison.” *Harjo II*, 68 USPQ2d at 1247; *Harjo I*, 50 USPQ2d at 1738. The question now, is whether either meaning of the mark is disparaging to a substantial composite of the referenced group, i.e., Muslims in America.

Applicants argue that if the word “Islamisation” refers to only those groups and movements which seek to compel a political order to adopt Islamic law as the law of the land, law abiding and patriotic Muslims, who are not members of such groups, would not be disparaged by the mark.²¹ The difficulty with applicants’ argument is twofold: it assumes a substantial composite of Muslims understands the meaning of “Islamisation” asserted by applicants and that they would not be offended by the mark STOP THE ISLAMISATION OF AMERICA.

²⁰ See Applicants’ Appeal Brief pp. 14-15; Reply Brief p. 7.

²¹ See Applicants’ Appeal Brief p. 12.

There is no evidence showing a substantial composite of the Muslim population in the United States understands the word “Islamisation” to have the meaning asserted by applicants. Applicants concede “[T]he only Muslims who actually use the term ‘Islamisation’ in any public or published fashion are those adherents to Islamisation known in the literature as Islamists, Muslim professionals dealing with counterterrorism, and Muslim academics who study the phenomenon of Islamisation within varied disciplines such as law, political science, and the study of terrorism.”²² The evidence submitted by applicants to support their specific definition of the term includes a doctoral dissertation submitted to a university in Pakistan, written and oral testimony presented to the U.S. Senate Committee on Homeland Security and Governmental Affairs during a hearing on the “Roots of Violent Islamist Extremism and Efforts to Counter It,” course materials for a legal seminar entitled “Shariah-Compliant Finance: Benign or Benevolent,” U.S. Department of Justice Sentencing Press Release, a “theoretical” paper by a Shariah scholar entitled “The Process of Islamization” published in 1976 and later published online, and printouts from various websites for Muslim-based organizations that do not show use of the term Islamization.²³ While such evidence

²² See applicants’ July 26, 2010 Response to Office Action p. 5.

²³ See applicants’ Exhibits 1-12 submitted with applicants’ July 26, 2010 Response to Office Action. Included as Exhibit 10 is a list of 246 articles that were represented to be the results of a search of the Lexis-Nexis database. Inasmuch as the list of articles contained snippets from the articles showing use of the term “Islamization” in some identifiable U.S. publications, the list evidences use of the term in U.S. publications. However, the vast majority of articles were published in law reviews and appear to relate to the history and extent of Islamization activities in countries outside of the United States, with several articles addressing the same countries or geographic regions. Of the twenty-four excerpts from these articles provided in applicants’ Exhibit 11, twenty-one of the excerpts appear to

provides some insight into the use of the term “Islamization,” and the process of “Islamization,” they do not establish whether or how the term is perceived by the general Muslim population in the United States.

Even if a substantial composite of the U.S. Muslim population understands “Islamisation” to have the more specific meaning asserted by applicants, the mark is disparaging because the term “Islamisation” has another more general meaning relating to conversion to Islam. Moreover, a substantial composite of Muslims regardless of their personal understanding of the term “Islamization” would be disparaged by the mark if the general non-Muslim population understands the term “Islamization” to relate to converting or confirming to Islam, endowing the mark with the more likely meaning of stopping the spread of Islam in America.

The confusing overlap in terminology is likely to exacerbate the public’s understanding of applicants’ mark and its disparaging connotation. Muslim followers of “Islam,” “Islamism” and its “Islamist” proponents, and “Islamization,” are all centered on the Islamic religion. The foregoing terms share the root word “Islam” and are encompassed by the term “Islamic.” “[F]or most Americans, dealing with Islamism is extremely difficult because it is associated with Islam . . . What needs to be countered is Islamism the political ideology, not Islam, the religion.”²⁴ That this confusion exists is supported by the statement of one of the experts

discuss Islamization outside of the United States; it is not possible to tell whether the remaining articles specifically address Islamization in the United States.

²⁴ See Testimony of Zeyno Baran, Senior Fellow and Director, Center for Eurasian Policy, Hudson Institute, to Committee on Homeland Security and Governmental Affairs United States Senate on July 10, 2008 attached as Exhibit 3(a) p.14 to applicants’ July 26, 2010 Response to Office Action.

testifying before the Senate Committee on Homeland Security and Governmental Affairs that “I firmly believe that by claiming the word Islamism, and helping shape how it is used, one can direct the debate in the right way with the intention of distinguishing the ideology from the faith.”²⁵

The admonition in the mark to STOP sets a negative tone and signals that Islamization is undesirable and is something that must be brought to an end in America. In light of the meaning of “Islamization” as referring to conversion to Islam, i.e., spreading of Islam, use of the mark in connection with preventing terrorism creates a direct association of Islam and its followers with terrorism.

There is sufficient evidence that the majority of Muslims are not terrorists and are offended by being associated as such. The following articles provide some pertinent examples:

Offended Muslims Speak Up

At a time of growing tensions involving Muslims in the United States, a record number of Muslim workers are complaining of employment discrimination, from co-workers calling them “terrorist” or “Osama” to employers barring them from wearing head scarves or taking prayer breaks. . . . [T]he rising number of complaints by Muslims, which exceeds even the amount filed in the year after the 9/11 terrorist attacks, comes as tensions rise between Muslim Americans and those of other faiths. 9/24/2010 *The New York Times, Late Edition-Final*.²⁶

²⁵ See Appendix to July 10, 2008 Hearing before US Senate Committee on Homeland Security and Governmental Affairs written testimony of Maajid Nawaz, Director of the Quilliam Foundation, London, attached as Exhibit 3(a) p.52 to applicants’ July 26, 2010 Response to Office Action.

²⁶ See unnumbered attachment at p.12 of January 19, 2011 Office Action.

Show of support for Muslims; Religious leaders call for tolerance amid tensions

Ammal Khateeb, a Tinley Park resident at Friday's prayer service, said she has grown tired of what she sees as anti-Muslim sentiment that automatically associates Islam with terrorism. "That is why I don't wear the (hijab) scarf. It's never been good after 9/11. I'm scared," she said. "I don't want my kids to go through this racism." 9/12/2010 *Chicago Tribune Sunday Early Edition*.²⁷

Arab culture and Muslim stereotypes

The press . . . regularly uses the terms "Islamic" or "Muslim" as adjectives for terrorists. . . . [I]t is time . . . that the Western press, politicians, and public stop thinking of Islamic as another word for terrorism. 6/21-6/27/2008 *The Arab American News*.²⁸

Muslims say terrorists have hijacked their faith

. . . People make assumptions that all Muslims are terrorists, (county spokeswoman Afsheen Shamsi said). . . We believe [Islamic terrorist] is not the right terminology to use, because it links something very positive, like Islam, with the word "terrorist." 6/2/2008 *Courier News* (Bridgewater, New Jersey).²⁹

Muslim victims of 9/11 deserve a mosque

By conflating the 9/11 terrorists and Islam, the opponents of the mosque are telling Muslim Americans: Do not bother; through your shared religion, you and the terrorists are the same. 9/10/2010 *The Star-Ledger* (Newark, New Jersey) State/ROP Edition³⁰

. . . one must remain cognisant [sic] of the fact that the majority of Muslims are not Islamists . . .

[Written Testimony of Maajid Nawaz, Director of the Quilliam Foundation, London, to U.S. Senate Committee

²⁷ See unnumbered attachments at pp. 17-18 of January 19, 2011 Office Action.

²⁸ See unnumbered attachments at pp. 13-15 of April 28, 2010 Office Action.

²⁹ See unnumbered attachments at pp. 19-20 of April 28, 2010 Office Action.

³⁰ See unnumbered attachment at p. 23 of January 19, 2011 Office Action.

on Homeland Security and Governmental Affairs United States Senate on July 10, 2008]³¹

The only true allies in countering an ideology that is fundamentally opposed to America and its ideas are those Muslims who share American ideas, or at the very least do not work to undermine them. This group includes the pious and practicing, the liberal, the secular, and the cultural ones; **the quiet but still the overwhelming majority of American Muslims**. . . . [S]o in closing, I would like to underline that to effectively counter the further spread of violent manifestations of Islamism, the United States needs to seriously engage in countering the Islamist ideology. . . . [Testimony of Zeyno Baran Senior Fellow and Director of Center for Eurasian Policy, Hudson Institute, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]³²

In view of the foregoing, applicants' mark used in connection with their services would be disparaging to a substantial composite of Muslims in America. Notably, the use of a similar name in England, "Stop the Islamisation of Europe," has been objected to as being disparaging and threatening to non-Islamist Muslims. In that instance, in response to a demonstration outside of a mosque under the banner "Stop the Islamisation of Europe," British Muslims for Secular Democracy (BMSD), a group which "do[es] not wish to Islamicise Britain or Europe," published a letter dated November 20, 2009, directed to the group utilizing the name "Stop the Islamisation of Europe" in England.³³ The letter by BMSD states that Muslims "end up feeling threatened" by such a demonstration and also explains that the Stop the Islamisation of Europe campaign "is fueling the notion that somehow

³¹ See Exhibit 3(a) p. 52 attached to applicants' July 26, 2010 Response to Office Action.

³² See Exhibit 3(a) p. 18 attached to applicants' July 26, 2010 Response to Office Action.

³³ See unnumbered attachments at pp. 120-121 of January 19, 2011 Office Action.

organizations such as [Stop the Islamisation of Europe] are against Muslims and the religion Islam in itself.” While the foregoing took place in Britain and therefore would not usually be considered probative evidence of the reactions by Muslim Americans to applicants’ mark, it nonetheless is illuminative of the impact that the use of applicants’ strikingly similar STOP THE ISLAMISATION OF AMERICA mark would have in the United States, which like Britain, is an English-speaking Western-based democratic society.³⁴

The mark is also disparaging in the context of applicants’ definition of “Islamisation.” According to the definition urged by applicants and supported by their evidence, “Islamization” refers to a political movement to replace man-made laws with the religious laws of Islam.³⁵ Notably, the process of “Islamization” is not defined nor described by applicants’ evidence to mandate the use of violence or terrorism (emphasis added below):

³⁴ As shown by the evidence, applicants’ website contains links to Stop the Islamization of Europe and Stop the Islamization of England, as well as similarly named groups in numerous other countries. Although the copy of the letter from BMSD submitted by the examining attorney as an attachment to the January 19, 2011 Office Action does not contain the URL information or the date it was printed, the Office Action issued January 19, 2011 indicates that the letter may be found at <http://www.bmsd.org.uk/pdfs/islamification.pdf>. Inasmuch as applicants have not objected to the admissibility of this letter and have in fact used it to support their position (see Applicants’ Appeal Brief pp. 12-15), we have considered the letter for whatever probative value it may have. See *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1835 (Fed. Cir. 2007) (depending on the record, information originating on foreign websites or in foreign news publications that are accessible to the U.S. public may be relevant to discern U.S. consumer impression of a proposed mark) and *In re Remacle*, 66 USPQ2d 1222 (TTAB 2002) (Board found professionals in certain fields such as medicine, engineering, computers and telecommunications would be likely to monitor developments in their fields without regard to national boundaries, and that the internet facilitates such distribution of knowledge, so evidence from an English language web site in Great Britain held admissible).

³⁵ See Applicants’ Reply Brief p. 7.

Islamists believe that Islam is a political ideology rather than a religion.... Now, these shared elements, though common between all Islamists, ***this doesn't imply that Islamists are all of one shade. Islamists do differ in their tactics and methodologies.*** I have identified three types of Islamists. They are first either political Islamists, who are those who use entry-level politics and tactics by working within the system through the ballot box to try and bring about this ideology. ***These are, by and large, people who are non-violent, yet they have an ideological agenda.*** . . . The second type of Islamist, again, from these four shared elements, are the revolutionary Islamists . . . and their methodology is to infiltrate the militaries, to overthrow the regimes of the Middle East thorough military coups, and those in this category do not believe in using the ballot box or working through the system. And the final category of Islamists are the militant Islamists, or the jihadists, who believe in an armed struggle against the status quo. [Testimony of Maajid Nawaz, Director, The Quilliam Foundation, London, to U.S. Senate Committee on Homeland Security and Governmental Affairs United States Senate on July 10, 2008]³⁶

Not all Islamists employ terrorism as a tactic . . . [Written Testimony of Maajid Nawaz, Director of the Quilliam Foundation, London, to U.S. Senate Committee on Homeland Security and Governmental Affairs United States Senate on July 10, 2008]³⁷

Thus, today we can say that ***the broad ideological current of Islamism manifests itself in activist agendas that span the complete spectrum from democratic politics to violent efforts aimed at imposing Shariah law worldwide.*** . . . [W]e were asked to address the question of how a more in-depth understanding of the ideology of violent Islamism can improve America's national security. We need to recognize that ***violent Islamism is part of a wider ecology of Muslim and Islamist thought and***

³⁶ See Exhibit 3(a) pp. 6-8 attached to applicants' July 26, 2010 Response to Office Action.

³⁷ See Exhibit 3(a) pp. 52, 54 attached to applicants' July 26, 2010 Response to Office Action.

practice. [Testimony of Peter P. Mandaville, Ph.D., Associate Professor of Government and Politics, George Mason University to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]³⁸

The starting point has to be distinguishing between Muslims and Islamists, and between Islam (the religion) and Islamism (the political ideology). Islam, the religion, deals with piety, ethics, and beliefs, and can be compatible with secular liberal democracy and basic civil liberties. Islamists, however, believe Islam is the *only* (emphasis original) basis for the legal and political system that governs the world's economic, social, and judicial mechanisms. Islamic law, or *sharia*, must shape all aspects of human society, from politics and education to history, science, the arts, and more. It is diametrically opposed to liberal democracy. . . . ***This is not to say that all Islamists will one day become terrorists; the vast majority will never engage in violence and in fact are likely to abhor terrorist acts.*** [Comments of Zeyno Baran Senior Fellow and Director of Center for Eurasian Policy, Hudson Institute, to U.S. Senate Committee on Homeland Security and Governmental Affairs on July 10, 2008]³⁹

A further flaw in applicants' argument that their mark is not disparaging is that it fails to take into account the nature of the services identified in their application. Applicants' use of the STOP THE ISLAMISATION OF AMERICA mark in connection with services to provide information regarding understanding and preventing terrorism creates an association with terrorism that would be disparaging to a substantial composite of Muslims whether or not they embrace

³⁸ See Exhibit 3(a) pp. 10, 12 attached to applicants' July 26, 2010 Response to Office Action.

³⁹ See Exhibit 2 pp. 1-2 and Exhibit 3 p. 68 to applicants' July 26, 2010 Response to Office Action.

Islamization. It is certainly clear that an association with terrorism is disparaging to Muslims who are not adherents of violent or terrorist activities.

The anti-Muslim social climate in the U.S. reflected in the articles excerpted below amplifies the disparaging impact of applicants' mark:

Americans remain conflicted about the Muslim faith . . .

[an] ABC/Washington Post poll found 49 percent with an unfavorable view of Islam . . .⁴⁰

A Time magazine poll . . . found that 43 percent of Americans hold unfavorable views of Muslims . . . Although the overall level of anti-Muslim sentiment hasn't shifted much . . . the change in tone has been striking . . . The reasons are myriad: rising fears of homegrown terrorism after the Fort Hood shootings and the attempted Times Square bombing. . . . Residents worry that 'the Muslims coming in here will keep growing in numbers and override our system of law and impose sharia law . . .⁴¹

Still other Muslims, citing what they say is increasing anti-Muslim sentiment in America, have come to view such efforts as useless.⁴²

. . . what many observers see as a growing anti-Islam fervor . . .⁴³

. . . a recent uptick in anti-Muslim acts nationally . . .⁴⁴

⁴⁰ See article entitled: "Anti-Muslim tensions roil the melting pot" published in *The Dallas Morning News* on September 11, 2010, attached to January 19, 2011 Office Action.

⁴¹ See article entitled: "Nowhere near Ground Zero, but no more welcome" published in *The Washington Post Suburban Edition* on August 23, 2010, attached to January 19, 2011 Office Action.

⁴² See article entitled: "Muslims work to retake 'jihad' from extremists" published in the *Times-Picayune* (New Orleans) on May 24, 2008, attached to April 28, 2010 Office Action.

⁴³ See article entitled: "Mosque furor, Quran burning: Anti-Islamic fervor mobilizes US Muslims" published in *The Christian Science Monitor* on September 10, 2010 attached to January 19, 2011 Office Action.

The Bay Area, known for its multicultural diversity and acceptance, is not immune to the anti-Muslim sentiment that has infected the country. . . . Life is mostly normal for Burrell, who feels both devoutly Muslim and quintessentially Californian. But anti-Muslim sentiment, whether it's in the news or on the sidewalk, can take a toll on her and her Muslim friends, she said.⁴⁵

In view of the foregoing, we find that under either meaning of applicants' mark, when the mark is used in connection with the services identified in the application, namely providing information for understanding and preventing terrorism, the mark is disparaging to Muslims in the United States and is therefore not registrable.

3. First Amendment

Applicants' argument that the USPTO's refusal to register their mark violates their free speech rights under the First Amendment to the U.S. Constitution is unavailing. Regardless of whether applicants' mark is protected free speech, our decision does not impact their rights under the First Amendment. The refusal to register applicants' mark does not impede their right to use the mark. As such, it imposes no restraint or limit on their ability to communicate ideas or express points of view, and does not suppress any tangible form of expression. *See In re Boulevard Entertainment Inc.*, 334 F.3d 1336, 1343, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003); *In re Mavety Media Group Ltd.*, 33 F. 3d 1367, 1374, 31 USPQ2d

⁴⁴ See article entitled: "Center an anti-Islamic target" published in the *Los Angeles Times Home Edition* on January 3, 2010, attached to January 19, 2011 Office Action.

⁴⁵ See article entitled: "For an American Muslim, stares, misunderstandings come with the territory" published in the *San Jose Mercury News* on September 14, 2010, attached to January 19, 2011 Office Action.

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1923, 1928-29 (Fed. Cir. 1994); and *In re McGinley*, 660 F.2d 481, 484, 211 USPQ 668, 672 (CCPA 1981). Therefore, applicants' rights are not abridged by the refusal to register their mark.

Decision: The refusal to register applicants' mark under Section 2(a) of the Trademark Act is affirmed.