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July 26, 2010

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FILED via TEAS (courtesy copy via email)

Re: Trademark Application No. 77/940879; Response to Office Action Trademark Application Refusal

Dear Ms. Suarez:

I am legal counsel to the applicant, Pamela Geller, regarding the trademark application referenced above. Please consider this letter and its exhibits as evidentiary support of my client's Response to Office Action Trademark Application Refusal filed via TEAS. Specifically, my client objects to USPTO's Office Action refusal to register ("Office Action") the trademark "Stop the Islamisation of America" ("SIOA") on the grounds that it violates 15 U.S.C. § 1052(a), and specifically that the trademark "includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or national symbols."<sup>1</sup> Even more particularly, my client objects and responds to the Office Action refusal to register the trademark on the grounds that the trademark "consists of

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<sup>1</sup> Unless otherwise noted, all quotations are quotes from the Office Action available online at

[http://tportal.uspto.gov/external/PA\\_TOWUserInterface/OpenServletWindow?serialNumber=77940879&scanDate=2010042840466&DocDesc=Offc+Action+Outgoing&docType=OOA&currentPage=1&rowNum=1&rowCount=1&formattedDate=28-Apr-2010&comingFromDDA=Y](http://tportal.uspto.gov/external/PA_TOWUserInterface/OpenServletWindow?serialNumber=77940879&scanDate=2010042840466&DocDesc=Offc+Action+Outgoing&docType=OOA&currentPage=1&rowNum=1&rowCount=1&formattedDate=28-Apr-2010&comingFromDDA=Y).

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matter which may disparage or bring into contempt or disrepute Muslims and the Islamic religion.”

## **I. INTRODUCTION.**

The Office Action refusal to register my client’s trademark predicates its ruling on two grounds: (1) that the meaning of the word ‘Islamisation’ combined with the word ‘Stop’ refers to Muslims in a disparaging manner because by definition it implies that conversion or conformity to Islam is something that needs to be stopped or caused to cease; and (2) that my client’s trademark, which identifies informational services (i.e., “providing information regarding understanding and preventing terrorism”), “implies that Islam is associated with violence and threats.”

My client objects to these two grounds for the following reasons: (1) the Office Action improperly and too generally defines ‘Islamisation’ as referring to Muslims and Islam; (2) the Office Action fails to identify what specific group of Muslims would be disparaged by the trademark; (3) there is no showing that terrorism is not in fact associated with ‘Islamisation’; and (4) refusal to grant the trademark is a violation of my client’s right to Free Speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution.

## **II. THE OFFICE ACTION IMPROPERLY AND TOO GENERALLY DEFINES ‘ISLAMISATION’ AS REFERRING TO MUSLIMS AND ISLAM.**

The Office Action premises its refusal to register based upon the following faulty polysyllogism:

Premise 1: ‘Islamisation’ refers to converting to Islam or becoming more Islamic.

Premise 2: ‘Islam’ and ‘Islamic’ refer to Muslims.

Premise 3: ‘Stop’ disparages that which it seeks to render inactive.

Proposition: ‘Stop the Islamisation of America’ (“SIOA”) disparages Muslims.

The Office Action then applies the proposition of its syllogism to draw the conclusion that because (a) SIOA provides services relating to information of and about terrorism, then (b) SIOA links Muslims *qua* Muslims to terrorism.

First, the Office Action’s proposition that SIOA disparages Muslims, and its further conclusion that SIOA links Muslims *qua* Muslims to terrorism, both flow from the first premise which is patently false. ‘Islamisation’ does not refer to an individual or even a society simply converting to the faith of Islam or even becoming more Islamic. The Office Action, in defining ‘Islamisation’ as merely the conversion to Islam or becoming

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more Islamic, has improperly relied upon an online dictionary called Dictionary.com (*see* Office Action Attachments 1-3). The problem with using this online dictionary definition is twofold: (1) the Dictionary.com definition does not properly characterize how Muslims themselves use the word ‘Islamisation,’ nor does it describe how professional and academics in the relevant disciplines use the word; and (2) The Office Action ignores the dominant and prevailing meaning of the term, which is actually provided by Dictionary.com as a second meaning. This alternative definition is closer to how Muslims use the word and how relevant professionals and academics apply the word in the literature of their respective disciplines. Thus, Dictionary.com recognizes that the word can mean “To cause to conform to *Islamic law*<sup>2</sup> or precepts.” (emphasis added.) (*See* Office Action Attachment 2.) But even this definition is woefully inadequate because ‘Islamisation’ does not just mean “to cause to conform to [Shariah],” but includes the entire politicalization of Shariah so that it controls all aspects of political, social, economic, and religious life.

Formally, the proper and widely understood definition of ‘Islamisation’ (alternatively spelled ‘Islamization’) is the political movement prevalent in a society or societal unit which seeks to embrace a political doctrine that calls for the application of Shariah (i.e., Islamic law) as the supreme law of the society. While Islamisation and the call to create a Shariah-adherent political order does include the call to convert non-Muslims, that is not what marks Islamisation as a political and social order, and it is not how Muslims themselves understand the word, nor is it how professionals and academics in the relevant disciplines use the word.

Rather, Islamisation is specifically the politicization of a Muslim’s religious faith in that Shariah, in its classic and extant form, demands that a society’s laws must all be predicated upon and subservient to Shariah and its legal jurisprudence called *fiqh*. Islamisation even in its “moderate” form demands that no secular law may contradict any Shariah dictate. The prototypical examples of this form of Islamisation are the constitutional or legal provisions in Muslim-dominated countries that include a “Shariah-supremacy” clause providing that no secular law passed by the political branches may contradict Shariah.

In short, the Islamisation of a society is the conversion to a theocratic political order organized and enforced by the dictates of Shariah. Per Shariah, there is no possibility of a “separation of mosque and state.” Shariah applies to all political, social, religious, and military institutions within a society that has undergone Islamisation.

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<sup>2</sup> Islamic law is Shariah. Shariah, formally, is both Islamic law and Islamic jurisprudence. For a thorough discussion of Shariah, *see* David Yerushalmi, “Shari’ah’s ‘Black Box’: Civil Liability and Criminal Exposure Surrounding Shari’ah-Compliant Finance,” 2008 UTAH L. REV. 1019, 1024-1032, attached hereto at Exhibit 4(a).

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Source authorities:

[1] *See generally* source authorities listed under §§ II.A and II.B.(1)-(2).

[2] One of the notable modern examples of Islamisation occurred in Pakistan after that country gained its independence from Britain. Pakistan is one of the better examples of the process of Islamisation as a purposeful political movement to institute Shariah as the law of the land and to convert the secular state to a state ordered and maintained by Shariah. In contrast, while it is true that Iran also experienced a thorough-going Islamisation after the Iranian revolution of 1979 that saw the secular Shah deposed, this process was far more abrupt and radical than is typically envisioned by the advocates of Islamisation. The Pakistani example is illustrated in a thorough doctoral dissertation submitted by Tanveer Khalid, at the University of Karachi, Karachi, Pakistan (Oct. 2004), attached hereto as Exhibits 1(a)-(o). The great proponent of Pakistan's Islamisation during its peak period (1977-1988) was General Zia Ul-Haque. As the Pakistani researcher noted at p. 228 of his dissertation: "The ultimate goal [of Zia's Islamisation plan] was to make SHARIAH the basis of all law in Pakistan." (Ex. 1(k).)

**A. Origin of the Use of the Word 'Islamisation.'**

The word 'Islamisation' is closely linked to the terms 'Islamist' and 'Islamism.' These terms were developed and popularized by leaders of the Muslim Brotherhood, which originated in Egypt in the 1930s and which has spread throughout the Muslim world, including to and among Muslims living in Europe and the United States. The Muslim Brotherhood's founding purpose was an opposition to the Westernization of the Arab nation-states mostly created after the fall of the Ottoman Empire after World War I. The founders of the Muslim Brotherhood specifically lamented the destruction of the Islamic empire that had lasted in some form or another for 1200 years where Islam was not just a religious faith but a political and social order implemented through political, social, military, and religious institutions. The principle purpose of the Muslim Brotherhood was to create political and social movements among Muslims in Muslim and non-Muslim societies in an effort to recreate the Islamic Empire known as the Caliphate through a staged process called Islamisation.

Source authorities:

[1] Written Testimony of Zeyno Baran, Senior Fellow and Director of Eurasian Policy, Hudson Institute, before the Senate Committee on Homeland Security and Governmental Affairs, during the hearing on the "Roots of Violent Islamist Extremism and Efforts to Counter It" (hereinafter "Hearing"), attached hereto as Exhibit 2.

[2] "Report on the Roots of Violent Islamist Extremism and Efforts to Counter It: The Muslim Brotherhood," by Steven Emerson, Executive Director, Investigative

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Project on Terrorism, submitted for the Record of the Hearing by Senator Coburn and made a part of the Record as an Appendix at 102-118. The entire Transcript of the Record of the Hearing (“Record”) is attached hereto as Exhibit 3.

[3] Zeyno Baran, “The Muslim Brotherhood’s U.S. Network,” submitted for the Record of the Hearing by Zeyno Baran and made a part of the Record as an Appendix at 119-136 at Exhibit 3.

[4] Post-Hearing Questions for the Record submitted by Senator Coburn to Zeyno Baran, made a part of the Record as an Appendix at 140-143 at Exhibits 3(a)-(b).

[5] Continuing Legal Education seminar entitled, “Shariah-Compliant Finance: Benign or Benevolent,” and downloadable course materials available online at <http://www.davidyerushalmi.com/Law-Offices-of-David-Yerushalmi-present-Shariah-compliant-finance--disclosure--seminar-for-online-viewing-b9-p1.html> and attached hereto at Exhibits 4(a)-(f).

## **B. The Use of the Term ‘Islamisation.’**

### **1. Among Muslims.**

The 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. Specifically relevant to how contemporary U.S. Muslims understand the term ‘Islamisation’ (as opposed to early-20th century Muslim Brotherhood founders from the Middle East) is a theoretical document entitled, “The Process of Islamization,” by Dr. Jaafar Sheikh Idris, a well-respected Shariah scholar. His paper on the process of Islamisation was originally published in 1976 by the Islamic Society of North America (“ISNA”) and later published online at <http://www.jaafaridris.com/English/Books/procisla.htm>. The paper was so well-received that it was then published in 1977 by the Muslim Students Association of the U.S. and Canada (“MSA”) and was reprinted on at least four occasions through 1983. The MSA subsequently published the paper online at <http://www.islaam.com/Article.aspx?id=365>. While both ISNA and MSA have documented ties to the Muslim Brotherhood, both organizations profess allegiance to the U.S. Constitution and representative government.

Dr. Idris’s paper begins the discussion of the “Process of Islamization” with the unequivocal statement that Islamisation is not fundamentally about proselytizing or converting non-Muslims to a common spiritual religious faith, but rather a political movement to establish a political order where all aspects of government, society, economics, and culture are founded upon and guided by Islamic teachings. The only

Islamic teachings that reach all of these myriad political and social institutions is Shariah—Islamic law. Thus, he begins:

The aim of the Islamic movement is to bring about somewhere in the world a new society wholeheartedly committed to the teachings of Islam in their totality and striving to abide by those teachings in its government, political, economic and social organizations, its relation with other states, its educational system and moral values and all other aspects of its way of life.

Our organized and gradual effort which shall culminate in the realization of that society is the process of Islamization.

The importance of creating an Islamic state bound by Islamic law is central to Islamisation. Dr. Idris writes:

#### **Fundamental Importance of the Islamic State.**

Turning to the Prophets sira [biography], it is necessary to justify the statement that I have just made about his objective of an Islamic state. The Prophet's aim as a messenger of God was to convey His message to His servants. This is true, but it is also true that the attempt to create such an Islamic state is an important part of that message. It has been said that had it been one of his aims to create such a state the Prophet would not have turned down the Meccan offer of kingship. The prophet did reject that offer, but he did so because its acceptance would not have made him the head of a Muslim state. He would have become king of a people who did not even believe in his Message, and who in fact offered him status as a bribe to abstain from propagating it. A man, who accepted such an offer would not be a genuine Prophet but a man possessed by lust for power, who would be using the claim to prophethood only as a means to gratify that desire.

The fact that the Prophet was desirous of creating a Muslim state comes out clearly in the fact that besides his attempt to convert individuals to the new faith he was doing his best to win over the power of an organized and independent community to be the stronghold of this faith.

Two points become clear from this particular publication—specifically, from the publication in context of its publication by ISNA and MSA—and from any open source search for other Muslim references to Islamisation. First, the term 'Islamisation' does not mean simply a religious or even a cultural turn toward Islamic piety or culture. Rather, it has a specific and discreet meaning which describes a process advocated by the

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Muslim Brotherhood whereby societies which include Muslims are converted to political orders adherent to, and organized by, the Islamic teachings of Shariah. In other words, otherwise non-Shariah-compliant states are converted into Shariah-compliant Islamic states.

Second, law abiding and civilly responsible Muslim Americans do not advocate the Islamisation of the U.S. because they understand that would mean that the U.S. Constitution is no longer the supreme law of the land and the First Amendment's protection of religious freedom and prohibition against the establishment of a government religion would no longer be valid. This is precisely why ISNA and MSA—even though they dutifully published this document—go to great lengths on their English-based websites to present their respective organizations as “mainstream” and civilly responsible and do not publicly embrace Islamisation. In short, law abiding, patriotic, civilly responsible Muslim Americans do not embrace the Islamisation of America and would not be disparaged by a campaign to stop it. Thus, the SIOA trademark is not referencing Islam simply or Muslims *qua* Muslims. If there is a group referenced by the trademark and proffered services, it would be the Muslim Brotherhood advocates who seek the destruction of the United States as a constitutional Republic based upon a representative government where no specific religion has government sanction over any other.

Source authorities:

[1] Jaafar Sheikh Idris, “The Process of Islamization,” (1976), attached hereto as Exhibit 5.

[2] Continuing Legal Education seminar entitled, “Shariah-Compliant Finance: Benign or Benevolent,” and downloadable course materials available online at <http://www.davidyerushalmi.com/Law-Offices-of-David-Yerushalmi-present-Shariah-compliant-finance--disclosure--seminar-for-online-viewing-b9-p1.html> and are attached at Exhibit 4(a)-(f).

[3] On ISNA's ties to the Muslim Brotherhood, see the Investigative Project on Terrorism's Dossier on ISNA, attached hereto as Exhibit 6.

[4] On MSA's ties to the Muslim Brotherhood, see the Discover The Networks.Org Dossier on MSA, attached hereto as Exhibit 7.

[5] Because ISNA and MSA attempt to hold their respective organizations out as mainstream Muslim organizations, they distance themselves from the Muslim Brotherhood and appear on their respective English-based web sites to reject the Islamisation doctrine expressed by Dr. Idris and espoused generally by the Muslim Brotherhood. *See, e.g.*, ISNA's web-based “ISNA Statement of Position: Who We Are and What We Believe,” available online at <http://www.isna.net/articles/press->

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[releases/isna-statement-of-position-who-we-are-and-what-we-believe.aspx](#) and attached hereto as Exhibit 8. (MSA founded ISNA and remains affiliated. *See* MSA's web-based "FAQs," available online at <http://www.msanational.org/about/faqs> and attached hereto as Exhibit 9. This distancing by these two Muslim Brotherhood-linked organizations is evidence that to the extent they wish to present themselves as "mainstream" and loyal to this country and the Constitution, they must appear not to be advocating for Islamisation. In other words, if ISNA and MSA are to be acceptable to those law abiding and loyal Muslims they seek to influence, they cannot appear to be on the side of those who would eliminate the Constitution and its guarantees of religious freedom. This once again makes the point that Islamisation is not an affront or disparaging of Islam simply or of Muslim Americans *qua* Muslims. The SIOA trademark and associated services are in fact aligned and in concert with those Muslim and non-Muslim Americans who are law abiding, loyal citizens who cherish our freedoms under the Constitution.

## **2. The Use of 'Islamisation' in the Professional and Academic Literature.**

Even a cursory review of the professional and academic literature demonstrates the point that American Muslims would not be disparaged by the advocacy against 'Islamisation' because 'Islamisation' is understood by all the professionals and academics who use it as a term referring to the destructive efforts by those Shariah-advocates typically referred to as Islamists working through politics and terrorism to impose a Shariah-based political order either on a specific targeted society or on the world as a whole. In subsection 1. immediately above, we showed that lay Muslims themselves understand 'Islamisation' as a political movement to create an Islamic state, contrary to the laws of the United States. From the lay Muslim's perspective, assuming a law abiding, loyal fellow citizen, the call to "Stop the Islamisation of America" would be laudatory, not disparaging. This section is designed to set forth overwhelmingly the evidence that the consensus among academics and professionals is likewise that Islamisation is not limited to spiritual conversions or mere Islamic piety or even acculturation as suggested by the Office Action, but rather it is understood universally as a political movement, oftentimes violent, to impose Shariah. A review of the literature also demonstrates that the Islamisation of a country is viewed unanimously by the professionals and academics who write on the subject as a destructive social, political, and legal phenomenon. As such, the call to "Stop" such a process would not and should not disparage any law abiding, civic minded, loyal citizen of the United States.

Attached as Exhibit 10 is a print-out of a Lexis search of all 246 law review articles published at any time which include the word 'Islamisation' or its alternative spelling 'Islamization.' A review of these articles—or even a review of any random selection of these articles—illustrates that 'Islamisation' refers to a destructive and violent political process driven by Shariah's dictates to establish a political order governed by Shariah. To make this point demonstratively, attached as Exhibit 11 are the actual excerpts

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referencing ‘Islamisation’ or ‘Islamization’ as they appear in context in every tenth article cited in the Lexis search at Exhibit 10. The context is irrefutable. Professionals and academics use the term ‘Islamisation’ to refer to a destructive and violent movement to impose Shariah as the law of the land often at the expense of women and religious minorities.

### **III. THE OFFICE ACTION INCORRECTLY DEFINES ‘ISLAMISATION’ AND AS A RESULT FAILS TO IDENTIFY WHAT SPECIFIC GROUP OF MUSLIMS WOULD BE DISPARAGED BY THE TRADEMARK.**

The Office Action fails to properly apply the test for refusing to register the applicant’s trademark on the grounds that it is disparaging to Muslims and violates § 2(a) of the Lanham Act (15 U.S.C. § 1052(a)). Specifically, the analysis utilized in the Office Action fails to adhere to the requirements set out in detail in *Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96 (D.D.C. 2003) (“*Harjo II*”). The test accepted by the court in *Harjo II* as the governing analysis was the test set out by the Trial Trademark and Appeal Board (“TTAB”) in the earlier *Harjo* ruling (*Harjo v. Pro-Football, Inc.*, 1999 TTAB LEXIS 181, 50 U.S.P.Q.2d 1705, 1749 (T.T.A.B. 1999) (“*Harjo I*”). That test is and remains as follows:

Our analysis is essentially a two-step process in which we ask, first: What is the meaning of the matter in question, as it appears in the marks and as those marks are used in connection with the services identified in the registrations? Second, we ask: Is this meaning one that may disparage Native Americans? As previously stated, both questions are to be answered as of the dates of registration of the marks herein.

*Harjo II*, 284 F. Supp. 2d at 125 (quoting *Harjo I* at 50 U.S.P.Q. 2d at 1741)

At a threshold level, the Office Action has failed to properly ascertain “the meaning of the matter in question” because it applies that part of an online definition of ‘Islamisation’ that has no meaning or relevance to Muslims who use the word or know of its meaning. Moreover, the definition used by the Office Action is not the relevant definition for the word used by academics and professionals in the context of their professional publications. By limiting the word artificially and incorrectly to “convert[ing] to Islam or [of] bring[ing] into a state of harmony or conformity with the principles and teachings of Islam; giv[ing] an Islamic character or identity to,” the Office Action broadens the meaning and context of the word beyond recognition. As the evidence above demonstrates, ‘Islamisation’ refers to a far more discreet political process than merely conversions and bringing the matter into harmony with nondescript Islamic principles and teachings.

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Rather, ‘Islamisation’ refers to a historically documented political process whereby entire societies are brought within the guidance and control of Shariah. It is the theocratization of a political order guided in all matters by the Islamic law and jurisprudence of Shariah.

Having incorrectly defined ‘Islamisation’ to effectively mean ‘Islamic,’ the Office Action concludes, understandably (yet incorrectly) so, that “Stop the Islamisation of America” suggests that Islam and Muslims simply must be stopped. But this is a false conclusion of the meaning of “Stop the Islamisation of America,” and it is false because the syllogism begins with a false premise upon which the conclusion rests. As noted above, precisely because the first premise incorrectly defines ‘Islamisation’ to mean anything of and pertaining to Islam and Muslims, it fails to capture the specific meaning and intent of the trademark and casts a net far too broad.

The trademark “Stop the Islamisation of America” refers to the fact that the United States is a constitutional Republic founded in large measure on the freedom to worship as one chooses and on the prohibition of establishing a state-sanctioned religion to the detriment of others. Shariah and the political process of ‘Islamisation’ violate both of these constitutional tenets, which are fundamental to our constitutional Republic.

Having determined the proper, more relevant definition of ‘Islamisation,’ we come to the second prong of the disparagement test: are law abiding, loyal Muslim Americans—who presumably do not wish to see the Constitution replaced by Shariah any more than any other loyal American citizens—likely to be disparaged by a trademark and services seeking to stop the “Islamisation of America”? The question of course answers itself—no.

And, this refinement of the meaning of ‘Islamisation,’ which in turn leads to the proper meaning of the word relative to Muslim Americans as Muslims simply and as loyal Americans more specifically, points to the other defect in the Office Action’s analysis. Under the standards enunciated by *Harjo I* and *II*, the analysis provided by the Office Action, which references only disparate news articles and opeds ambiguously as attachments, fails to properly identify which group of Muslim Americans would take umbrage from and be disparaged by the trademark and associated services, which merely seek to preserve all Americans’ religious liberty. Thus, in *Harjo II*, the court set out these criteria for clearly identifying the “disparaged” group:

“[I]t is only logical that in deciding whether the matter may be disparaging we look, not to American society as a whole, . . . but to the views of the referenced group.” [*Harjo I*] at 1739. The views of the referenced group, the Board concluded, are “reasonably determined by the views of a substantial composite thereof.” *Id.* (citing *In re Hines*, 31 U.S.P.Q.2d 1685, 1688 (T.T.A.B. 1994), *vacated on other grounds* 32 U.S.P.Q.2d 1376 (T.T.A.B. 1994)). To determine the referenced group, the TTAB

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adopted the test from *In re Hines*, which looks to “the perceptions of ‘those referred to, identified or implicated in some recognizable manner by the involved mark.’” [*Harjo I*], 50 U.S.P.Q.2d at 1740 (quoting *Hines*, 31 U.S.P.Q.2d at 1688) (“In determining whether or not a mark is disparaging, the perceptions of the general public are irrelevant. Rather, because the portion of section 2(a) proscribing disparaging marks targets certain persons, institutions or beliefs, only the perceptions of those referred to, identified or implicated in some recognizable manner by the involved mark are relevant to this determination.”).

*Harjo II* at 124. Because the Office Action improperly generalized and broadened the meaning of ‘Islamisation’ beyond its actual meaning of a political process bent on destroying American constitutional government through the implantation of Shariah, the Office Action necessarily failed to come to terms with the relevant “referenced group.”

Finally, and to avoid any doubt, assuming Shariah-adherents of the Islamic faith who seek to implement the Islamist goal of Islamisation make up the relevant “referenced group,” it should be obvious from the evidence provided above that the “Stop the Islamisation of America” trademark and associated services do not “disparage” this group. As the court held in *Harjo II*, a trademark disparages if it “may ‘dishonor by comparison with what is inferior, slight, deprecate, degrade, or affect or injure by unjust comparison.’” *Harjo II* at 124 (quoting *Harjo I* at 1737). As must be obvious, a trademark such as “Stop the Islamisation of America” and associated services do not dishonor, slight, deprecate, or degrade those Islamists who seek to implement Islamisation because the Islamist members of the referenced group already know that the Constitution itself and the laws of the United States work to “Stop the Islamisation of America.” If my client’s trademark disparages this group, it must be that the Constitution and the very foundation of this country do as well. And, it can also be asserted with confidence that my client’s trademark does not and cannot “affect or injure by unjust comparison” a group of Islamists who seek to undermine and supplant the Constitution.

What is relevant here is a Muslim Brotherhood document authored by and belonging to the referenced group of Shariah-adherent Islamists who make up the referenced group, which was uncovered and admitted into evidence by the U.S. Attorney prosecuting members of the U.S. Muslim Brotherhood for conspiracy to fundraise in the United States for jihad abroad. The trial resulted in convictions for all five Muslim Brotherhood defendants and sentences ranging from 15 years to 65 years. *See, generally, United States v. Holy Land Foundation for Relief and Development (“HLF”) et al.*, 3:04-cr-00240-P (N.D. Texas)<sup>3</sup>; see also the Department of Justice sentencing press release available online at <http://dallas.fbi.gov/dojpressrel/pressrel09/dl052709.htm> and attached hereto as

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<sup>3</sup> Court documents for the trial available at:

<http://www.txnd.uscourts.gov/judges/hlf2.html>.

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Exhibit 12. During the lengthy pre-indictment investigation, the Federal Bureau of Investigation uncovered a secret memorandum that sought to establish the Muslim Brotherhood goals in the United States. The memorandum lays out means and methods for implementing the organization's Islamisation goals. Noteworthy, is this portion:

The process of settlement is a 'Civilization-Jihadist Process' with all the word means. The Ikhwan [Muslim Brotherhood] must understand that their work in America is a kind of grand Jihad in eliminating and destroying the Western civilization from within and 'sabotaging' its miserable house by their hands and the hands of the believers so that it is eliminated and Allah's religion is made victorious over all other religions.<sup>4</sup>

In other words, the Shariah-advocates of Islamisation know in advance of the SIOA trademark that they must seek to "sabotage" Western civilization through stealth because the constitutions and laws seeking to protect Western liberties opposes Islamisation. Given these expressed goals and methods, it is not reasonable to assume that the trademark "Stop the Islamisation of America" would likely "affect or injure" this group by "unjust comparison."

#### **IV. THE OFFICE ACTION FAILS TO ESTABLISH THAT TERRORISM IS NOT IN FACT ASSOCIATED WITH 'ISLAMISATION.'**

Given the evidence and analysis above, it is clear that the Office Action incorrectly concludes that my client's trademark is meant to suggest (even remotely) that Islam simply or Muslims *qua* Muslims are responsible for, involved with, or even supportive of, Islamic terrorism. What should now be clear is that the referenced group with the expressed or implied connection to terrorism are those Islamists, such as the Muslim Brotherhood groups, who seek to implement Islamisation in this country and abroad. Indeed, the federal trial of the Holy Land Foundation defendants established "beyond a reasonable doubt" that the Muslim Brotherhood has set up operations in the United States both to fundraise for violent jihad abroad and to "sabotage" the Homeland by undermining the Constitution and its liberties. The trademark "Stop the Islamisation of America" affects and impugns only this group, but does no more than assert the supremacy of the Constitution and draw proven links between the Shariah-adherent Islamists and Islamic terrorism. The Office Action, having incorrectly defined 'Islamisation,' does not provide any evidence that the properly referenced group—consisting of Shariah-adherents promoting Islamisation—is not in fact linked to terrorism.

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<sup>4</sup> The full document is available online at Available on line at [http://www.nefafoundation.org/miscellaneous/HLF/Akram\\_GeneralStrategicGoal.pdf](http://www.nefafoundation.org/miscellaneous/HLF/Akram_GeneralStrategicGoal.pdf) and attached hereto as Exhibit 4(e).

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**V. THE OFFICE ACTION'S REFUSAL TO GRANT THE TRADEMARK VIOLATES THE APPLICANT'S FREE SPEECH RIGHTS UNDER THE FIRST AMENDMENT TO THE CONSTITUTION.**

The Office Action refusal to grant the trademark violates my client's free speech rights under the First Amendment to the Constitution. Specifically, Congress has, through the Lanham Act, established a public forum for those who seek to register a trademark. *See, e.g., Redmond v. Jockey Club*, 244 Fed. Appx. 663, 668 (6th Cir. Ky. 2007) (explaining that a horse registry was a limited public forum); *see generally Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985) ("The [Supreme] Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for [expressive] purposes."). There is no doubt that my client's trademark is protected speech under the First Amendment, either as commercial speech or as political speech. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (recognizing "that expression on public issues 'has always rested on the *highest rung* of the hierarchy of First Amendment values'" and that "[Speech] concerning public affairs is more than self-expression; *it is the essence of self-government*"") (citations omitted). By restricting my client's speech based upon some perceived, yet undocumented harm to some ambiguous group's reputation based upon the content and viewpoint of the speech, the USPTO is engaging in an unlawful and unconstitutional infringement of my client's free speech rights. Indeed, the viewpoint-based restrictions applied here are unconstitutional even in a nonpublic forum. *See Perry Educ. Ass'n v. Perry Local Educators*, 460 U.S. 37, 46 (1983) (holding that in a nonpublic forum, the government "may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view"); *see also, Nieto v. Flatau*, No. 7:08-cv-185H(2), 2010 U.S. Dist. Lexis 55938 (E.D.N.C. Mar. 31, 2010) (holding that a speech restriction on a military base, a nonpublic forum, was viewpoint based as applied to speech that was perceived to be anti-Islam in violation of the First Amendment). As such, the Office Action's refusal to register the trademark is unconstitutional under any forum analysis.

Letter to Maria-Victoria Suarez, Trademark Attorney

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## **VI. CONCLUSION.**

For the foregoing reasons, we ask that you reverse the Office Action's refusal to register the trademark and to take any and all steps to register the trademark immediately.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "David Yerushalmi". The signature is written in a cursive style with a long horizontal stroke extending to the right.

David Yerushalmi, Esq.