

This Opinion is Not a
Precedent of the TTAB

Mailed: September 19, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Thomas D. Foster, APC

Serial No. 87981611

Thomas D. Foster of TDFoster – Intellectual Property Law,
for Thomas D. Foster, APC.

Tracy Cross, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Wellington, Heasley and Allard,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Thomas D. Foster, APC (“Applicant”), a corporation, seeks registration on the Principal Register of the standard character mark US SPACE FORCE for the following goods and services:¹

“Metal license plates; metal novelty license plates; souvenir license plates of metal” in International Class 6;

“License plate frames; license plate holders” in International Class 12;

¹ Application Serial No. 87981611, filed March 19, 2018 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s allegation of an intent to use the mark in commerce. The identifications of goods for Classes 16, 18, 21, 24 and 28, are extensive and we therefore summarize these goods.

“Collectible coins; commemorative coins; lapel pins; ornamental lapel pins; jewelry pins for use on hats; jewelry; watches; clocks; decorative key fobs of common metal; leather key chains” in International Class 14;

Various types of books, posters, art prints, magazines, and other stationery items in International Class 16;

Various types of bags, umbrellas, and luggage in International Class 18;

“Accent pillows; bed pillows; floor pillows; novelty pillows; pillows; picture and photograph frames; picture frames; wind chimes” in International Class 20;

Various goods, including beverage and food containers and related accessory goods, in International Class 21;

Various articles, including cloth flags, linen, towels, and blankets, in International Class 24;

Various types of toys, including “toy spacecraft; toy rockets; toy space vehicles; toy figures; toy vehicles; toy weapons; scale model spacecraft; scale model rockets; scale model space vehicles,” in International Class 28;

and

“Lighters for smokers; cigar lighters” in International Class 34.

The Examining Attorney has refused registration of the mark for all classes of goods under Section 2(a) of the Trademark Act (“the Act”), 15 U.S.C. § 1052(a), based on false suggestion of a connection with the United States Space Force.

When the refusal was made final, Applicant appealed.² The appeal has been briefed.³

We affirm the refusal to register.

I. Section 2(a) False Suggestion of a Connection

Section 2(a) of the Act prohibits registration on either the Principal or the Supplemental Register of a designation that consists of or comprises matter that may falsely suggest a connection with “persons, living or dead, institutions, beliefs, or national symbols” 15 U.S.C. § 1052(a). “[T]he rights protected under the § 2(a) false suggestion provision are not designed primarily to protect the public, but to protect persons and institutions from exploitation of their persona.” *Bridgestone/Firestone Rsch. Inc. v. Auto. Club de l’Ouest de la France*, 245 F.3d 1359, 58 USPQ2d 1460, 1463 (Fed. Cir. 2001) (citing *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imps. Co.*, 703 F.2d 1372, 217 USPQ 505, 508-09 (Fed. Cir. 1983)). A person, institution, belief or national symbol does not need to be explicitly protected by statute in order to be protected under Section 2(a). *See, e.g., In re Shinnecock Smoke Shop*, 571 F.3d 1171, 91 USPQ2d 1218 (Fed. Cir. 2009).

² Prior to the appeal, Applicant filed a request for reconsideration (on January 24, 2020), and this was denied by the Examining Attorney on March 2, 2020.

The application was then remanded to the Examining Attorney at Applicant’s request (4-5 TTABVUE) based on “new and compelling evidence.” The application was also remanded to the Examining Attorney at the Examining Attorney’s request (6-7 TTABVUE) for remand “to address an issue not involved in the appeal that may render the subject mark unregistrable.” After the issuance of another final Office Action (on July 6, 2021), Applicant filed a second request for reconsideration (on September 11, 2021), and this was denied by the Examining Attorney (on January 28, 2022). The appeal was then resumed (11 TTABVUE).

³ 12 TTABVUE (Applicant’s appeal brief) and 14 TTABVUE (Examining Attorney’s appeal brief).

Also, relevant to this proceeding, the U.S. government, as well as government agencies and instrumentalities, are considered juristic persons or institutions within the meaning of the statute. 15 U.S.C. § 1052(a); Section 45 of the Act, 15 U.S.C. § 1127. *See In re Peter S. Herrick P.A.*, 91 USPQ2d 1505, 1506 (TTAB 2009) (“institutions, as used in Section 2(a), include government agencies.”); *U.S. Navy v. United States Mfg. Co.*, 2 USPQ2d 1254, 1257-58 (TTAB 1987) (“the Navy is a juristic person within the meaning of Section 45 of the Act and the Marine Corps might be *argued* to be an institution”); *In re Cotter & Co.*, 228 USPQ 202, 204-05 (TTAB 1985) (finding the United States Military Academy is an institution and West Point “has come to be solely associated with and points uniquely to the United States Military Academy”); *NASA v. Record Chem. Co. Inc.*, 185 USPQ 563, 565-66 (TTAB 1975) (finding the National Aeronautics and Space Administration (NASA) is a juristic person and institution). Thus, common names, acronyms and initialisms for the U.S. government or its agencies or instrumentalities can be relevant to false suggestion of connection claims.

To establish that a proposed mark falsely suggests a connection with a person or an institution, it must be shown that:

- (1) The mark is the same as, or a close approximation of, the name or identity previously used by another person or institution;
- (2) The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
- (3) The person or institution named by the mark is not connected with the activities performed by the applicant under the mark; and

(4) The fame or reputation of the person or institution is such that, when the mark is used with the applicant's goods or services, a connection with the person or institution would be presumed.

Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 217 USPQ 508-09 (“the *Univ. of Notre-Dame du Lac* test”). See also *In re Pedersen*, 109 USPQ2d 1185, 1188-89 (TTAB 2013) (citing *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.* in an ex parte appeal context for “providing foundational principles for the current four-part test used by the Board to determine the existence of a false connection”). See also *Piano Factory Grp., v. Schiedmayer Celesta GmbH*, 11 F.4th 1363, 2021 USPQ2d 913, at *11 (Fed. Cir. 2021); *U.S. Olympic Comm. v. Tempting Brands Netherlands B.V.*, 2021 USPQ2d 164, at *17-18 (TTAB 2021); *In re Jackson Int’l Trading Co.*, 103 USPQ2d 1417, 1419 (TTAB 2012); *Buffett v. Chi-Chi’s, Inc.*, 226 USPQ 428, 429 (TTAB 1985).

A. US SPACE FORCE is the same as, or a close approximation of, U.S. Space Force

The Examining Attorney asserts that “[t]he evidence of record makes clear that the U.S. Space Force is an agency of the U.S. Government” and “[i]n fact, the U.S. Space Force is the sixth branch of the U.S. military, nested within the Department of the Air Force.”⁴ In support, she submitted numerous materials, including printouts from the official U.S. military website for the “United States Space Force”

⁴ 14 TTABVUE 9.

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