

UNITED STATES: TTAB Puts OBAMA BAHAMA PAJAMAS to Bed

In a precedential decision, the Trademark Trial and Appeal Board (TTAB) affirmed the refusal to register marks absent the written consent of the individual named in the marks. *In re Richard M. Hoefflin.*, Serial Nos. 77632391, 77632400, 77632406 (December 10, 2010).

Applicant Richard M. Hoefflin filed applications to register the marks OBAMA BAHAMA PAJAMAS, OBAMA PAJAMA and BARACK'S JOCKS DRESS TO THE LEFT for pajamas and briefs. The examining attorney at the U.S. Patent and Trademarks Office (USPTO) refused registration pursuant to Section 2(c) of the Trademark Act, which "bars the registration of a designation that identifies a particular living individual absent written consent." The applicant appealed to the TTAB.

The TTAB said that "in determining whether a particular living individual with that 'name' would be associated with the mark, we must consider (1) if the person is so well known that the public would reasonably assume the connection, or (2) if the individual is publicly connected with the business in which the mark is being used." It added, "This provision is intended to protect the intellectual property right of privacy and publicity that a living person has in his/her identity."

Notwithstanding the examining attorney's evidence that President Barack Obama was "extremely well known," Hoefflin argued that the terms "Barack" and "Obama" as used in the marks did not represent a particular person. Noting that applicant filed his applications just weeks before President Obama's swearing in, the TTAB found that purchasers would recognize the marks as referring to President Barack Hussein Obama II. The Board held that Section 2(c) bars registration of marks that contain not only full names but surnames, nicknames, etc., so long as the name in question "identifies" a particular living individual.

Hoefflin argued that the examining attorney's evidence did not support the conclusion that President Obama was connected with pajamas or briefs and that therefore his marks should not be barred under Section 2(c). The TTAB, however, agreed with the examining attorney's conclusion that Barack Obama, because he is the president of the United States, was so well known that purchasers would associate the name used in the marks with him.

Finally, the applicant provided a list of third-party registrations for marks that consist of the first name and surname of six immediate past presidents. The TTAB distinguished these registrations by stating that "George," "Bill" (or "William"), "Ronald," "Jimmy," and "Richard" are consistently among the most popular male first names in the country and that the Examining Attorney's evidence of thousands of persons in the United States who have the surnames of the six immediate past presidents. In contrast, "Barack" is an unusual first name, and "Obama" is an uncommon surname. The TTAB concluded that all three of applicant's marks created a direct association with President Barack Obama and that without his written consent the applications were barred under Section 2(c).

Contributor: Lisa A. Iverson, Neal & McDevitt, LLC, Northfield, Illinois, USA; Verifier: Robert P. Felber, Jr., Waller Lansden Dortch & Davis, LLP, Nashville, Tennessee, USA.

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