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"STOP THE ISLAMISATION OF AMERICA" Is Disparaging: In re Pamela Geller and Robert B. Spencer

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The U.S. Court of Appeals for the Federal Circuit upheld the Trademark Trial and Appeal Board's (TTAB) refusal to register the mark "STOP THE ISLAMISATION OF AMERICA" in connection with the services "providing information regarding understanding and preventing terrorism," holding that the mark was disparaging to a group of persons. *In re Pamela Geller and Robert B. Spencer*, Case No. 13-1412 (Fed. Cir., May 13, 2014) (Wallach, J.)

Geller and Spencer applied to register the mark "STOP THE ISLAMISATION OF AMERICA" for "providing information regarding understanding and preventing terrorism." The U.S. Patent and Trademark Office examining attorney refused registration of the application under § 2(a) of the Trademark Act, which prevents registration of a mark that "may disparage . . . persons, living or dead, institutions, [or] beliefs . . . or bring them into contempt, or disrepute," reasoning that the mark is disparaging to Muslims and the Islamic religion. The applicants appealed the refusal to the TTAB. The TTAB, after considering the likely definition of the mark, and whether the mark would disparage a "substantial composite of the referenced group," determined that "Islamisation" has both a religious meaning ("the conversion or conformance to Islam") and a political meaning ("a sectarianization of a political society through efforts to make [it] subject to Islamic law"). The TTAB found the proposed mark to be disparaging to American Muslims under either meaning. The TTAB noted that using the mark in connection with the applied-for services directly associates Islam and its followers with terrorism. Finding that "the majority of Muslims are not terrorists and are offended by being associated as such," the TTAB upheld the refusal to register. Applicants appealed.

The Federal Circuit affirmed the TTAB, rejecting appellants' argument that the TTAB relied on improper evidence in determining the meaning of "Islamisation" and ignored "overwhelming evidence in the record" indicating that the term is *solely* used in a political context. Rather, the Federal Circuit found appropriate the TTAB's reliance on dictionary definitions, essays and comments posted to appellants' blog (which both the TTAB and Federal Circuit acknowledged had lower probative value due to the anonymity of the authors) in determining that the term "Islamisation" had both religious and political significance. Appellants conceded that the proposed mark is disparaging in reference to the religious definition of "Islamisation." As to the political significance, the Federal Circuit explained that "substantial evidence" supports the TTAB's finding that the mark is also disparaging with regard to the political meaning. The Federal Circuit rejected appellants' argument that political Islamisation does not include nonviolent activity, finding nothing in the record

to suggest that political Islamisation requires violence or terrorism. Thus, concluding that mark associates even “peaceful political Islamisation” with terrorism, the Federal Circuit concluded the mark is disparaging to American Muslims and affirmed the TTAB’s refusal to register.

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