

IN RE GELLER, Appeal No. 2013-1412 (Fed. Cir. May 13, 2014). Before Newman, O'Malley and Wallach. Appealed from Trademark Trial and Appeal Board.

Background:

In 2010, Pamela Geller and Robert B. Spencer applied to register the trademark "STOP THE ISLAMISATION OF AMERICA" in connection with the recited services of "understanding and preventing terrorism." The Examining Attorney refused the application on January 19, 2011, on the ground that the mark may be disparaging to American Muslims pursuant to § 2(a) of the Trademark Act. Geller and Spencer appealed to the Trademark Trial and Appeal Board ("Board"), which affirmed the § 2(a) refusal. Geller and Spencer appealed to the Federal Circuit.

Issue/Holding:

Did the Board err in refusing the registration on the ground that the mark may be disparaging to American Muslims? No, affirmed.

Discussion:

Section 2(a) of the Trademark Act provides that the Board may refuse an application when the trademark "consists of or comprises . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." The Federal Circuit noted that the parties agreed that the proper analysis for a § 2(a) refusal based on disparagement was set forth in the Board's *In re Lebanese Arak Corp.* opinion, which outlines a two-prong "disparagement" test. The first prong of the disparagement test determines "the likely meaning of the matter in question." The second prong asks whether the likely meaning identified in prong one "is found to refer to identifiable persons, institutions, beliefs or national symbols," and if so, whether that meaning "may be disparaging to a substantial composite of the referenced group."

With regard to the first prong, the Federal Circuit disagreed with Appellants' arguments that "Islamisation" only has a "political" meaning, and does not have a "religious" meaning. Instead, the Federal Circuit found that the Board was correct in determining that the term has *two* meanings: 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 court found that in determining whether the "religious" meaning is also a likely meaning, the Board correctly relied on dictionary evidence (i.e., the definition of "Islamize"), as well as certain essays posted on the Appellants' website that oppose the building of mosques.

Under the second prong of the disparagement test, the Federal Circuit also found that *both* meanings are disparaging to American Muslims. With respect to the religious meaning, the court agreed with the Board's conclusion that the mark's admonition to "STOP" Islamisation in America both sets a negative tone and signals that Islamisation is undesirable and is something that must be brought to an end in America. With regard to the political meaning, the Federal Circuit agreed with the Board that associating "preventing terrorism" with political beliefs of Islam is also disparaging. Specifically, the court pointed out that the political meaning merely refers to a political movement to replace man-made laws with religious laws, and does not mandate the use of violence or terrorism.