

THIS DECISION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

INTERNATIONAL ASSOCIATION OF SUFISM

v.

NADER ANGHA

Cancellation No. 92024565

Michael B. Newman, Esq. for International Association of Sufism.

Joseph D. Lewis of Barnes & Thornburg for Nader Angha.

Before Quinn, Kuhlke and Walsh, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

On November 24, 1995, International Association of Sufism (petitioner) filed a petition to cancel Registration No. 1652335 owned by Nader Angha (respondent). The registration is for the mark MAKTAB TARIGHAT OVEYSSI SHAHMAGHSOUDI (SCHOOL OF SUFISM), in standard character form, for "educational and religious publications; namely, pamphlets, booklets books, manuals and newsletters." The registration includes the following translation: "The English translation of the words 'MAKTAB TARIGHAT' in the

mark is 'SCHOOL OF ISLAMIC SUFISM.'" The registration also includes the following disclaimer: "No claim is made to the exclusive right to use 'MAKTAB TARIGHAT' and 'SCHOOL' and 'SUFISM' apart from the mark as shown." The registration also includes a claim of acquired distinctiveness, in part, as to the wording "School of Islamic Sufism."<sup>1</sup>

The registration issued on July 30, 1991, was renewed and is active and currently in the first 10-year renewal term.

The Record

Petitioner indicates that the record in the proceeding consists of: the registration file; petitioner's notice of reliance covering certain portions of the discovery deposition of respondent and certain exhibits from the deposition, and excerpts from 14 publications; respondent's testimony on his own behalf; and testimony of five individuals submitted on behalf of respondent. Respondent has not characterized the content of the record, and neither party has objected to any submission of evidence by the other party. In the absence of any objections by either

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<sup>1</sup> In papers filed March 10, 1989, respondent amended its underlying application to insert a claim of acquired distinctiveness. respondent filed a response and a substitute application at that time. In the response registrant indicated that it was claiming acquired distinctiveness as to "School of Islamic Sufism"; in the substitute application registrant claimed acquired distinctiveness as to "Islamic Sufism" only. The registration issued with a claim of acquired distinctiveness as to "School of Islamic Sufism." For purposes of this case, we will recognize the claim in the registration, as issued.

party, we will accept all items identified by petitioner as part of the record and will accord each submission appropriate weight, if any, in accordance with Trademark Rule 2.122, 37 C.F.R. § 2.122.

Standing

In the petition, petitioner describes itself as, "a worldwide membership association of Sufi schools, orders and students that practice and study Sufism" and adds, "Many of its members in particular practice and study Islamic Sufism." Petitioner also states in the petition that the registration, ". . . has placed a cloud on the right of Petitioner's member schools and orders to freely (sic) to identify themselves, where applicable, as "Oveyssi" or "Shahmaghsoudi . . ." In its answer respondent asserted an affirmative defense that petitioner lacked standing, but respondent has not argued the standing issue in its brief. Therefore, we conclude that respondent has abandoned its standing defense, and we further conclude that petitioner has presented allegations and evidence minimally sufficient to establish petitioner's real interest in the case and standing.<sup>2</sup> American Speech-Language-Hearing Assoc. v.

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<sup>2</sup> With its notice of reliance petitioner has included properly authenticated letters produced during the discovery deposition of respondent wherein respondent's attorneys demand that petitioner refrain from use of certain elements of respondent's registered mark.

National Hearing Aid Society, 224 USPQ 798, 801-02 (TTAB 1984).

The Grounds

Petitioner asserts fraud as the ground for cancellation. At the outset, we must clarify our characterization of the ground for cancellation. In its brief, under the heading "STATEMENT OF ISSUES," respondent states, "The issue presented to the Board is whether Respondent fraudulently obtained from the United States Patent & Trademark Office (the 'Office') registration of the trademark MAKTAB TARIGHAT OVEYSSI SHAHMAGHSOUDI (SCHOOL OF SUFISM)(the 'Mark') in reliance upon multiple false and deceptive statements by Respondent?" The "Conclusion" to Petitioner's brief states, in its entirety, "Petitioner urges the Board to cancel the registration for the Mark, because Respondent fraudulently obtained from the Office registration of the Mark in reliance upon multiple false and deceptive statements by Respondent." These statements, and the remainder of the brief, which address only the fraud issue, are sufficient for us to conclude that fraud is the only ground petitioner has maintained in this proceeding.

References to Other Potential Grounds

For completeness, we will address references in the petition and petitioner's brief which potentially identify additional grounds.

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In its petition (¶3), petitioner states, "respondent's mark is deceptive in that it suggests that its school or order of Sufism is the only school of Islamic Sufism." The petition (¶4) states further, "Registrant's mark is deceptive in that it suggests that its school or order of Sufism is the only 'Oveyssi' school of Sufism and falsely suggests a connection with Oveys-e Gharan (c. 7<sup>th</sup> Century)." The petition (¶5) also states, "Registrant's mark is deceptive in that it suggests that its school or order of Sufism is the only "ShahMaghsoudi" school of Sufism."

However, petitioner does not argue nor attempt to prove that MAKTAB TARIGHAT OVEYSSI SHAHMAGHSOUDI (SCHOOL OF SUFISM) is "deceptive" or "falsely suggests a connection" within the meaning of Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a). In fact, there is no reference to this statutory section in either the petition or the brief, nor is there a citation to even a single case in petitioner's brief. Thus, we must look to petitioner's arguments and evidence for clarification of the specific legal grounds for cancellation.

To establish that a mark is "deceptive" a petitioner must show that the mark misdescribes the goods, that the relevant public are likely to believe the misrepresentation and that the misrepresentation will materially affect the decision to purchase the goods. In re Budge Manufacturing

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Co., 8 USPQ2d 1790, 1790 (TTAB 1987). Petitioner has not asserted that the mark, or any component of the mark, is deceptive as applied to the goods identified in the registration, "educational and religious publications; namely, pamphlets, booklets, books, manuals and newsletters." Furthermore, petitioner has not presented any evidence that the relevant public would believe any alleged misrepresentation, nor any evidence that any such misrepresentations would materially affect the decision to purchase the identified goods.

To the extent petitioner even discusses deceptiveness, petitioner's apparent point is that the registration would allegedly deceive people into believing that respondent has an exclusive right to use individual elements of the mark, elements it identifies in its petition. In doing so petitioner perhaps suggests, however indirectly, that the mark or portions of the mark are generic or merely descriptive. However, neither the petition nor petitioner's brief delineate such a claim. Furthermore, petitioner's discussion focuses on individual elements of the mark and not the mark as a whole in discussing these points.

Likewise, petitioner has failed to assert or demonstrate a "false connection" under Section 2(a). In Buffett v. Chi-Chi's, Inc., 226 USPQ 428 (TTAB 1985), the Board set forth the requirements for maintaining such a

claim citing University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc., 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), aff'g 213 USPQ 594 (TTAB 1982). The Board stated:

The Board now requires that a plaintiff asserting a claim that a mark falsely suggests a connection with persons living or dead, or institutions, demonstrate (i) that the defendant's mark is the same or a close approximation of plaintiff's previously used name or identity; (ii) that the mark would be recognized as such; (iii) that the plaintiff is not connected with the activities performed by the defendant under the mark; and (iv) that the plaintiff's name or identity is of sufficient fame or reputation that when the defendant's mark is used on the goods or services, a connection with the plaintiff would be presumed.

Id. at 429.

Here, petitioner refers to an alleged false connection with "Oveys-e Gharan (c. 7<sup>th</sup> Century)."<sup>3</sup> Petitioner has not made the threshold showing that this name is its "previously used name or identity." Nor has the petitioner met any of the other requirements to show a false connection.

In sum, petitioner's evidence and arguments, as discussed below, focus on allegedly false statements respondent made to the examining attorney in obtaining the registration. Accordingly, the only ground which petitioner has argued or attempted to prove in this case is fraud and that is the only ground we have considered here. To the

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<sup>3</sup> Petitioner indicates that there are a variety of spellings for this name including Oveyssi, Oveys, Uwaisi, Uwaysi and al-Waisi, though neither party has presented explicit, external authority for this proposition.

extent petitioner may have referred to other potential grounds in its petition, we conclude that petitioner has either failed to assert and prove the grounds adequately or abandoned those grounds.

Fraud

A registrant commits fraud by knowingly making a false statement as to a material fact in conjunction with a trademark application or registration. Mister Leonard Inc. v. Jacques Leonard Couture Inc., 23 USPQ2d 1064, 1065 (TTAB 1992). Thus the statement in question: (1) must be false; (2) must be made with knowledge that it is false; and (3) it must be material. Id. A party asserting fraud also faces a steep evidentiary burden: "It thus appears that the very nature of the charge of fraud requires that it be proven 'to the hilt' with clear and convincing evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party." Smith International Inc. v. Olin Corp., 209 USPQ 1033, 1044 (TTAB 1981).

In asserting fraud, petitioner first states, "In a telephone communication on November 16, 1990 between Respondent's attorney and the Office Examiner concerning the mark's (sic) application for registration, Petitioner's (sic) attorney 'explained that there are numerous "Sufism" sects & that this applicant is the head of *the only sect*

*that practices Islamic Sufism.'* (Emphasis added)."

Petitioner then adds, "To the contrary, there are at least hundreds of sects of Sufism worldwide that practice Islamic Sufism and are considered to be schools of Islamic Sufism. Respondent's sect is far from the only sect that practices Islamic Sufism."

Petitioner does not refer to any evidence to support its claim that respondent's explanation is false. Petitioner did not take any testimony. Consequently, there is no testimony or other admissible evidence even as to the petitioner's own activities which purport to prove the statement false. Furthermore, even if we had evidence that this explanation was not true, we have no basis to conclude that registrant himself believed the explanation to be false. That is, we have no basis to conclude that respondent was not sincere in his belief that his sect is the only sect which practices Islamic Sufism. Respondent's own testimony provides evidence of his sincere belief in the truth of the explanation he offered. Also, petitioner's assertion relates to the "worldwide" situation without indicating what the status is in the United States.

More importantly, any statement relating to the practice of a particular belief system, by its very nature, is one which is highly subjective. There is no objective evidence of record which clearly contradicts respondent's

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explanation. Lastly we have no basis to conclude that this statement was material. "Islamic Sufism" is but one element of the mark. It is covered by the claim of acquired distinctiveness for "School of Islamic Sufism." There is no indication that this statement was material in the examining attorney's decision to approve the application.

Accordingly, we conclude that petitioner has failed to establish fraud based on this statement.

Next petitioner asserts that respondent's statement that "'Oveyssi' 'refers to Oveys of Gharan, a founder of this spiritual school of thought.'" is fraudulent. Petitioner states further, "But scholars and commentators on Sufism have uniformly maintained that Oveys never founded a school or order of Sufism and no one at the time of Oveys named a school or order after Oveys. A school identified as "Oweyssi," "Uwaissi," or "Uwaysi" means that the school is a particular style or form of Sufi school or spiritual path based on the receipt of spiritual guidance or instruction from an invisible or physically absent Teacher."

Petitioner refers to 11 exhibits attached to its notice of reliance by letter designation in support of this proposition without saying precisely where in those 11 documents the support resides. We have reviewed those documents and can find no basis in the documents to conclude that respondent has committed fraud. In his testimony

respondent asserts an apparent sincere belief that his sect traces its lineage to Oveys of Gharan. The testimony of respondent's five other witnesses generally confirms this position.

Again, petitioner appears to be splitting hairs in areas, spirituality and religion, where reasonable minds can and do differ. Indeed, this is the rule not the exception. We previously indicated that petitioner has failed in any attempt to assert a "false connection" with Oweyssi. We must also conclude that petitioner has likewise failed to show any fraud based on respondent's explanation of the significance of Oweyssi as used in the mark. There is no statement with regard to Oweyssi which is objectively false; there is no evidence of an intent to deceive; and there is no evidence that respondent's statement here was material.

Next petitioner asserts that, "respondent falsely and deceptively states that 'ShahMaghsoudi' refers to the current master of this school of thought." Petitioner indicates that the named individual had died in 1980, before the application was filed.<sup>4</sup> However, in the telephone record, dated November 16, 1990, to which petitioner

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<sup>4</sup> Petitioner also appears to argue here that there are several schools of Sufism throughout the world that follow the Shahmaghsoudi school of thought. As noted above, these arguments suggest a challenge to respondent's exclusive right to use SHAHMAGHSOUDI, a claim petitioner has neither explicitly asserted nor attempted to prove.

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referred previously, the following explanation from respondent is recounted, "'Shahmaghsoudi' did not literally refer to a living individual. Putting an 'i' on the end of the name means 'in the way of.' By analogy, it would be like referring to 'Moses' as 'Moses-like' or in the way of Moses." In his testimony in the case respondent, Nader Angha, states that Shahmaghsoud is his father and predecessor as leader of the sect identified by the MAKTAB TARIGHAT OVEYSSI SHAHMAGHSOUDI (SCHOOL OF SUFISM) mark. Petitioner does not dispute this fact. Respondent's five witnesses also provide general confirmation of respondent's position here.

Accordingly, we conclude that respondent has not committed fraud with regard to any representations as to the significance of SHAHMAGHSOUDI. There is no basis in the record for us to conclude that respondent's representations were false, nor intentionally false, nor material to the approval of the application.

Lastly, petitioner asserts that respondent committed fraud by stating that "'tarighat' directly translates into 'Sufism.'" Petitioner explains, "'Tarighat' is an Arabic word that literally means 'path' or 'way.'" (See Notice of Reliance, Exhibits B, D and M) In a religious or spiritual context, 'tarighat' identifies a particular style or method

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of a spiritual school or order. 'Tarighat' does not mean or directly translate into 'Sufism.'

As noted above, the registration includes the following translation: "The English translation of the words 'MAKTAB TARIGHAT' in the mark is 'SCHOOL OF ISLAMIC SUFISM.'" We note further that "MAKTAB TARIGHAT" is disclaimed in the registration. On the basis of the disclaimer alone we conclude that any representations regarding its meaning could not have been material to the approval of the application.

Furthermore, the exhibits petitioner references in support of its position are, at best, ambiguous on the issue of the accuracy of the translation. In fact, the referenced sources may be construed as supporting respondent's translation. For example, Exhibit D, West African Sufi, states the following in the explanation of the meaning of "tariqa" (apparently the equivalent of TARIGHAT): "The Arabic word for Sufi order is *tariqa*, meaning 'path' or 'way.'" In Exhibit M, The Concise Encyclopedia of Islam, the discussion of "Tariqah" (apparently another spelling) ties the term to Sufism. Lastly, Exhibit B, The Gnosis Archive, Gnostic Studies on the Web, likewise links TARIQAH and Sufism. It begins as follows: "I. TARIQAH. . . . in Islam 'the spiritual path,' also Tasawwuf "Sufism" or

'esotericism' . . . "<sup>5</sup> On the basis of this evidence, we cannot conclude that the translation respondent provided is false, nor that respondent provided a false translation knowingly. We have already noted that the translation of this disclaimed term was not material to the approval of the application. Accordingly, we conclude that respondent did not commit fraud in providing the translation of TARIGHAT.

To sum up, in cases where the Board has found fraud there is generally objective evidence that the statement in question is false. Often the registrant admits that the statement is false, or the record otherwise objectively establishes that the relevant statement is false. See, e.g., Torres v. Cantine Torresella S.r.L., 808 F.2d 46, 1 USPQ2d 1483, 1484-85 (Fed. Cir. 1986); Medinol Ltd. v. Neuro Vasx Inc., 67 USPQ2d 1205, 1209 (TTAB 2003); First International Services Corp. v. Chuckles Inc., 5 USPQ2d 1628, 1636 (TTAB 1988). Here we do not have anything remotely approaching that kind of objective clarity. Rather, on this record the allegedly false statements are

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<sup>5</sup> This document appears to be a copy of a printout from an Internet web page not related to any printed publication. There is no testimony to establish its authenticity or reliability. Consequently, we conclude that this exhibit is not a self-authenticating printed publication, nor has registrant provided any independent basis on which to determine its reliability. Accordingly, we have not accorded it any weight in our decision. See Raccioppi v. Apogee, Inc., 47 USPQ2d 1368, 1370-71 (TTAB 1998). If we had considered it, it would not be helpful to petitioner.

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uniformly credible and made in good faith. They relate to highly subjective subject matter which lends itself to varied interpretations. The allegedly false statements are also not material to the approval of the entire mark for publication and registration. Therefore, we conclude that petitioner has failed in all instances to show fraud under the rigorous standards which apply. See Smith International Inc. v. Olin Corp., 209 USPQ at 1044.

**Decision:** The petition to cancel is dismissed.