



First to File, Still Refused: When Fame Arrives *After* Your Trademark Application

In re Wemby Corporation, Serial No. 97752244 (T.T.A.B. June 24, 2026) (precedential)

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Trademark law typically rewards whoever gets there first: pick a name, file, take your place in line. But some grounds for refusal have nothing to do with priority, as a precedential decision issued last month by the Trademark Trial and Appeal Board (the “Board”), the USPTO tribunal hearing trademark appeals, makes clear.

On January 12, 2023, Wemby Corporation applied to register WEMBY for athletic apparel and footwear on an intent-to-use basis, meaning it hadn’t sold anything yet, but had a stated intention to sell. That filing date ordinarily serves as a constructive first-use date, putting the applicant ahead of later adopters. And the company was early: in January 2023, Victor Wembanyama was a nineteen-year-old playing basketball in France, five months from being drafted first overall by the San Antonio Spurs, and nine months from his NBA debut.

Being early did not help. A third party filed a Letter of Protest, a procedure that lets a third-party hand the USPTO evidence against a pending application. The examining attorney reviewed the letter and refused registration of the WEMBY mark under Sections 2(a) and 2(c) of the Lanham Act, partially based on the evidence in the letter. Three and a half years later, the Board affirmed the rejection on both grounds.

Section 2(a) bars a mark that falsely suggests a connection with a person: does it approximate a name someone else already used, point unmistakably to that person, and trade on fame great enough that a connection would be presumed? **Section 2(c)** is blunter, absolutely prohibiting a name identifying a particular living individual without written consent, which Wemby Corporation never had. Both protect the person rather than the earlier user, and neither is limited to legal names: a nickname counts.

Wemby Corporation’s only argument was one of timing: whatever WEMBY means now, it meant little in January 2023. It failed twice over. Under the Federal Circuit’s 2025 *In re Foster* decision, a Section 2(a) refusal is assessed as of the time of examination, not the filing date, so everything the world did during those three and a half years was admissible; Section 2(c) has no timing component at all. The nickname was also already in circulation before the application was filed, although maybe not widely used.

The applicant fought that evidence and won a round. Because the examining attorney omitted URLs and access dates from his web printouts, the Board excluded every exhibit attached to two Office Actions. The victory was worthless. The examiner had already obtained a remand to resubmit, and the 2022 articles in *Sports Illustrated*, *The Athletic*, and *The Ringer* referring to Victor Wembanyama as “Wemby” had arrived through the Letter of Protest instead.

The Board declined to decide whether the false association was deliberate, but it did note that Wembanyama’s status as a 2023 NBA first-round draft pick, the exact match between Applicant’s mark and nickname, and the applied-for goods being athletic apparel would all be probative of Applicant’s intent.

A name that belongs to no one the day it’s filed can belong to someone by the time it’s examined — and a stranger can put the proof in the file without ever appearing in the case. Wemby Corporation may still seek Federal Circuit review.