



judging a book by little more than its cover: ttab finds that single book may meet trademark-use test

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A recent precedential opinion from the U.S. Patent & Trademark Office Trademark Trial and Appeal Board (TTAB), *Shannon DeVivo v. Celeste Ortiz*, Opposition No. 91242863 (TTAB Mar. 11, 2020), challenges the well-established concept that a single title of a book cannot be a trademark, leaving a wide opening for those who seek to register terms previously considered non-registerable.

In the *DeVivo* proceeding, Celeste Ortiz sought to register the term ENGIRLNEER for cups and mugs, lanyards, and shirts and sweatshirts. Shannon DeVivo, the owner of two pending trademark applications for the term for children's books, notebooks, and a website offering information to young women and girls seeking careers in stem cell research opposed the application, citing likely confusion. On an accelerated case procedure, the TTAB sustained the opposition, partly relying on the fact that DeVivo had used ENGIRLNEER on the cover of a single book, which the TTAB surprisingly found to be a trademark use.

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