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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Big Effin Garage, LLC

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Serial No. 77595225
Serial No. 77595240

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Mark E. Mueller of Driggers, Schultz & Herbst, P.C. for Big Effin Garage, LLC.

Naakwama Ankrah, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

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Before Seeherman, Cataldo and Ritchie, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

Big Effin Garage, LLC ("applicant") filed an application to register on the Principal Register the mark BIG EFFIN GARAGE in standard characters for the following services, as amended: "entertainment services, namely, providing a website where registered visitors can listen to music and find out information about musicians and musical groups, including demo materials, and reviews and recommendations generated by an online community of

musicians and music fans," in International Class 41, and "hosting an online community for musicians and music fans featuring information about music, musicians and musical groups; computer services, namely, creating an online community for registered musicians and music fans to upload, download, or mix music tracks, showcase their skills, get feedback from peers, form virtual groups, play music together, and engage in social and professional networking," in International Class 42.[1]

On the same date, applicant filed an application to register the mark BIG F'N GARAGE, also in standard character form, for the same services in the same classes, as amended.[2] The examining attorney refused registration of each application under Section 2(a) of the Trademark Act on the ground that the mark sought to be registered consists of or comprises immoral or scandalous matter. The examining attorney further refused registration for the services in Class 41 in each application because applicant's identification of services, as amended, exceeds the scope of the services as originally identified. Trademark Rule 2.71(a); 37 CFR §2.71(a).

[1] Application Serial No. 77595225 was filed on October 17, 2008, based upon applicant's assertion of a *bona fide* intent to use the mark in commerce in connection with the services.

When the refusals were made final in each case, applicant filed an appeal. Applicant and the examining attorney filed main briefs on the issues under appeal and applicant filed a reply brief. Since the cases involve common questions of law and fact, we consolidate them for purposes of this decision.

2(a) Refusal

The Section 2(a) refusal is based on the presence of the words "effin" or "f'n" in the marks at issue in this proceeding. Registration of a mark that consists of or comprises immoral or scandalous matter is prohibited under Section 2(a) of the Trademark Act. To prove that the words "effin" and "f'n" are scandalous or immoral, the examining attorney must demonstrate that the terms are vulgar. *In re Boulevard Entertainment Inc.,* 334 F.3d 1336, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003) (showing that the mark is vulgar is sufficient to establish that it is scandalous or immoral); *In re McGinley,* 660 F.2d 481, 211 USPQ 668, 673 (CCPA 1981), *quoting In re Runsdorf,* 171 USPQ 443, 443-444 (TTAB 1971) (vulgar terms are encompassed by the term scandalous). The U.S. Patent and Trademark Office has the

[2] Application Serial No. 77595240 was filed on October 17, 2008, based upon applicant's assertion of a *bona fide* intent to use the mark in commerce in connection with the services.

burden of proving that a trademark falls within the prohibition of Section 2(a). *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 31 UPSQ2d 1923, 1925 (Fed. Cir. 1994). *See also In re Standard Electrik Lorenz A.G.*, 371 F.2d 870, 152 UPSQ 563, 566 (CCPA 1967).

The evidence of record is sparse, consisting primarily of a few dictionary definitions of "effin" or "effing."

From Urban Dictionary, urbandictionary.com:

1. **effing**: Derivative of the word fucking, 'effing' means literally "f—ing." You may see it used on a message board where derogatory words (such as the f-word) are not allowed, to take the place [sic] the unallowed.
2. **effing**: A variant of "fucking" used on Canadian television, primarily 'Royal Canadian Air Farce [sic]." Pre-teens have been known to use in [sic] when quoting and the term "fucking" comes up in the quotation. "That's effin' ridiculous!"
3. **effing**: Used in place of the f-bomb. Also "effed" and "eff." "You Effing dolt!" or "That's so effed up" or "Eff that!"
4. **effing**: A Jordanism. Polite way of saying fucking in the workplace. He is so effing stupid.
5. **effing**: It is a nicer way to say f*cking.
6. **effing:** The new cuss word that begins with an e. Also

short for the f word. What the eff!" "How the effing hell did this happen."

7. **effing:** The edited version of the word "fucking." Spelled this way, it is incorrect. The letter "F" is not to be spelled out. See F'n or F'in for correct spelling. I wish I could use the English language properly, but I keep misspelling a bunch of effing words. I'm effing stupid!
1. **F'n:** Edited version of the word "fucking." *I'm F'n late from class.*
2. **F'n**: A way to say "fucking" without swearing. *That was the craziest f'n thing I've ever seen.*

From Dictionary.com:

Effing: euphemism for fucking, with *ef* as spelled form of the name of the initial letter.

From Internet Slang Dictionary & Translator:

Effing-fucking

Interestingly, both applicant and the examining attorney rely on these same dictionary definitions to plead their case. Applicant contends that the dictionary definitions show the words to be non-vulgar, polite substitutions for a forbidden word. The examining attorney, by contrast, asserts that the words are themselves vulgar in their own right. In an apparent

attempt to bolster that argument, the examining attorney submitted pages of Google searches containing the words "f'n" and "effin" alongside or near the word "fucking." However, we do not find the Google searches to be very probative in our analysis since the printouts are too truncated to provide context. *See In re Bayer Aktiengesellschaft,* 488 F.3d 960, 967, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (GOOGLE search results that provided very little context of the use of ASPIRINA deemed to be "of little value in assessing the consumer public perception of the ASPIRINA mark."); *In re Tea and Sympathy, Inc.,* 88 USPQ2d 1062, 1064 n.3 (TTAB 2008) (truncated GOOGLE search results entitled to little probative weight without additional evidence of how the searched term is used). The examining attorney also submitted a few pages of Internet blogs that use the words "effin" or "f'n" as an apparent substitute for the word "fucking" (i.e., "Watch Your 'Effin' Language, It's 'No Cussing Week'"). However this limited evidence fails to prove the vulgarity of the terms at issue in this proceeding.

In cases in which the evidence demonstrates that the term in question has only one pertinent meaning, dictionary definitions alone can be sufficient to satisfy the USPTO's burden of establishing that such term is scandalous. *In re*

Boulevard Entertainment, Inc., *supra* 67 USPQ2d at 1478. Here, however, without more, the dictionary definitions do not plainly show the meaning of the words at issue -- that is "effin" or "f'n" -- to be vulgar. Furthermore, while the evidence of record supports a finding that "effin" and "f'n" are used as substitutes for the offensive term "fucking," such evidence also indicates that these derivative terms are utilized as a substitute therefor precisely because they are less offensive, and may be used in conversation, on television, and on Internet message boards. Accordingly, the examining attorney's arguments regarding the scandalousness of the substituted "effin" or "f'n" ring hollow.

Finally, the Federal Circuit has advised the Board that to the extent there is doubt as to the immoral or scandalous nature of an applicant's mark, that doubt must be resolved in favor of publication of the mark for opposition. *In re Mavety Media Group Ltd.*, 31 UPSQ2d at 1928; and *In re Hines*, 32 USPQ2d 1376 (TTAB 1994). In the event registration is opposed, the parties will have the opportunity to develop the record with evidence of whether a substantial composite of the public would consider this mark immoral or scandalous. *Mavety*, 31 USPQ2d at 1928.

In view of the foregoing, we find that the examining attorney has not met the Office's burden of demonstrating that the words "effin" and "f'n" and the overall designations BIG EFFIN GARAGE and BIG F'N GARAGE are scandalous or immoral under Section 2(a).

ID Refusals

Applicant's original applications identified its services in Class 41 as follows: "entertainment services, namely offering an online community for musicians and music fans, allowing registered users to upload, download or mix music tracks, showcase their skills, get feedback from peers, form virtual groups, play music together, and engage in social and professional networking."

The examining attorney issued office actions in each application with a requirement for applicant to amend its identification. The examining attorney suggested the following identification, if accurate: "Hosting an online community for musicians and music fans featuring __ [indicate subject matter or purpose]; computer services, namely creating an online community for registered musicians and music fans to upload, download or mix music tracks, showcase their skills, get feedback from peers, form virtual groups, play music together, and engage in

social and professional networking," in International Class 42.

Applicant amended the identification of services in both applications, but did not accept the identification as suggested by the examining attorney, and retained the classification in Class 41. Applicant amended the identifications to "entertainment services, namely, providing a website where registered visitors can listen to music and find out information about musicians and musical groups, including demo materials, and reviews and recommendations generated by an online community of musicians and music fans," in International Class 41. The examining attorney issued final office actions refusing the Class 41 identification of services, in both applications, as being beyond the scope as originally filed.

The applicable rule reads as follows: "The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods...." Trademark Rule 2.71(a); 37 CFR §2.71(a). We take judicial notice of the relevant definitions of the terms "online community" and "website" in undertaking our analysis as to whether

applicant inappropriately broadened the original identification of services:[3]

> "Online community": (1) A generic reference to the Internet at large. (2) A specific reference to Web sites where people congregate online to discuss a subject or to introduce themselves for possible meeting in person. *www.PCmag.com.*
>
> "Online community": An online community is a virtual community that exists online whose members enable its existence through taking part in membership rituals. *En.wikipedia.org*
>
> "Online community": A means of allowing Web users to engage with one another and with an organization through use of interactive tools such as e-mail, discussion boards, and chat systems. *www.bnet.com.*
>
> "Website": A set of interconnected webpages, usually a homepage, generally located on the same server, and prepared and maintained as a collection of information by a person, group, or organization. *Houghton Mifflin eReference.*

These definitions are probative in our analysis that applicant has broadened its identification of services in violation of Trademark Rule 2.71(a). In particular, the amended identification of "providing a website" would encompass more than "offering an online community." Furthermore, under the proposed amendment, registered visitors would be able to "listen to music and find out information about musicians and music groups" which is

[3] The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd* 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

beyond the scope of the originally contemplated allowing "musicians and music fans" to "upload, download or mix music tracks, showcase their skills, . . . " Therefore the proposed amendment is broadening, and the refusal is affirmed.

Decision: The 2(a) refusals to register are reversed. The Trademark Rule 2.71(a) refusals for Class 41 are affirmed.

The applications will proceed to publication only as to the services in Class 42.