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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77595225
Applicant	BIG EFFIN GARAGE, LLC
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Date	07/07/2010

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Big Effin Garage, LLC

Serial No. 77595225

Filing Date October 17, 2008

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APPLICANT'S REPLY BRIEF

Big Effin Garage, LLC submits the following brief in reply to the examining attorney's appeal brief.

ARGUMENT

The examining attorney's reliance on Boston Red Sox Baseball Club Limited partnership v. Brad Francis Sherman, Opposition No. 91172268 (September 9, 2008) is misplaced. That case concerned an application for the mark SEX ROD in a parody of the Boston Red Sox team name and logo. The case is distinguishable in several respects.

First, in the context of the mark, the term "ROD" was vulgar according to dictionary definitions because it was referenced as a vulgar term for "penis". Thus there was direct standard dictionary evidence of vulgarity of the term. No such evidence was adduced for EFFIN, which

evidence shows is a euphemism for a vulgar term. There is nothing euphemistic about SEX ROD.

Second, SEX ROD was an opposition case. Unlike the instant case, the examining attorney did not refuse registration on the basis that the proposed mark was scandalous. Instead, the examining attorney allowed the opposition process to take its course. To quote briefly from Applicant's Brief, citing *Malvety*:

> We therefore commend the practice adopted by the Board in another case to resolve the issue whether a mark comprises scandalous matter under § 1052(a) "in favor of [the] applicant and pass the mark for publication with the knowledge that if a group does find the mark to be scandalous ..., an opposition proceeding can be brought and a more complete record can be established." *[citations omitted]*

In re Mavety Media Group Ltd., 33 F.3d 1367, at 1374 (Fed. Cir. 1994)

SUMMARY

The record evidence shows that EFFIN is not vulgar. Applicant's applied-for mark, BIG EFFIN GARAGE, should not be refused registration because it does not consist of or comprise immoral or scandalous matter. The examining attorney's refusal should be reversed and if there is opposition to the mark, a full record can be established.

Respectfully submitted,

By: _____

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