

This Opinion is not a
Precedent of the TTAB

Mailed: September 30, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Giorgio S.R.L.
—

Serial No. 79141996
—

John S. Egbert of the Egbert Law Offices, PLLC,
for Giorgio S.R.L.

Christine Martin, Trademark Examining Attorney, Law Office 104,
Chris Doninger, Managing Attorney.

—
Before Seeherman, Shaw and Adlin,
Administrative Trademark Judges.

Opinion by Shaw, Administrative Trademark Judge:

Giorgio S.R.L. (“Applicant”) seeks registration on the Principal Register of the
mark



FK**
PROJECT

for “Leather and imitations of leather; leather and imitation leather goods, namely
bags, suitcases, backpacks, traveling bags, purses, key-cases of leather and skins,
wallets, briefcases for documents; umbrellas,” in International Class 18, and

“Clothing, namely, T-shirts, shirts, jumpers, trousers, skirts, jeans, jackets, underclothes, bathing suits, hats and caps, footwear,” in International Class 25.¹

Applicant submitted a description of its mark which states “The mark consists of the letters ‘F’ and ‘K’ separated by two asteriks[sic]; below said asteriks[sic], there is the wording ‘PROJECT’ in smaller sized letters.” Color is not claimed as a feature of the mark.

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 2(a), on the ground that the applied-for mark consists of immoral or scandalous matter.

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. We affirm the refusal to register.

I. Preliminary Matter

Before proceeding to the merits of the refusal, we address a preliminary matter. Applicant, in its reply brief, requested that this appeal be suspended pending the decision of the Court of Appeals for the Federal Circuit in the case of *In re Tam*, Appeal No. 2014-1203. In *Tam*, the Federal Circuit has requested additional briefing from the parties on the question of whether “the bar on registration of disparaging marks in 15 U.S.C. 1052(a) violates the First Amendment?”²

¹ Application Serial No. 79141996 based on International Reg. No. 1190861, issued October 18, 2013. The USPTO was notified of the request for extension on January 30, 2014.

² *In re Tam*, No. 14-1203 (Fed. Cir. April 27, 2015).

Section 2(a) of the Lanham Act provides that the Office may refuse to register a trademark that “[c]onsists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.” 15 U.S.C. § 1052(a). The question asked by the Court in the *Tam* case deals with the disparagement clause of Section 2(a), not the question presented here, whether Applicant’s mark is immoral or scandalous. Because the issue before the Federal Circuit in *Tam* differs from the issue in this case, the request for suspension is denied.

II. Section 2(a) refusal

Section 2 of the Trademark Act provides in pertinent part that:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral . . . or scandalous matter. . . .

15 U.S.C. § 1052(a). The Patent and Trademark Office may prove that a mark is scandalous and refuse registration by establishing that the mark is “vulgar.” *In re Fox*, 702 F.3d 633, 105 USPQ2d 1247, 1248 (Fed. Cir. 2012) (citing *In re Boulevard Entm’t, Inc.*, 334 F.3d 1336, 67 USPQ2d 1475 (Fed. Cir. 2003)); *In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2060 (TTAB 2013). This demonstration must be made in the context of contemporary attitudes, in the context of the marketplace as applied to the goods described in the application, and from the standpoint of not

necessarily a majority, but a substantial composite of the general public. *In re Fox*, 105 USPQ2d at 1248.

We are mindful that the entire mark is the mark shown above, and our findings apply to the entire mark, however, in the prosecution and briefing of this case, it is the term “F**K” which is the focus of the refusal and the arguments. The term “F**K” is the most distinctive and significant element in the mark. Accordingly, much of our discussion necessarily focuses on the term “F**K” alone.

The Examining Attorney contends that because “F**K” in applicant’s mark is a variant of the word “fuck,” the mark is scandalous under Section 2(a). The Examining Attorney submitted the following three dictionary definitions of the word “fuck,” including accompanying usage notes or commentary:

Dictionary.com – fuck [fuhk] *Vulgar*.³

verb (used with object)

1. to have sexual intercourse with.
2. *Slang*. to treat unfairly or harshly.

verb (used without object)

3. to have sexual intercourse.
4. *Slang*. to meddle (usually followed by *around* or *with*).

interjection

5. *Slang*. (used to express anger, disgust, peremptory rejection, etc., often followed by a pronoun, as *you* or *it*.)

noun

6. an act of sexual intercourse.
7. a partner in sexual intercourse.
8. *Slang*. a person, especially one who is annoying or contemptible.
9. **the fuck**, *Slang*. (used as an intensifier, especially with WH-questions, to express annoyance, impatience, etc.)

Usage note

For many people, the word FUCK is extremely vulgar, considered improper and taboo in all of its senses. Yet various forms of the word, primarily in its

³ Office Action, February 5, 2014.

nonliteral, slang senses, have increasingly crept into casual use, not only as spontaneous expletives of shock, horror, or anger, but also as verbal tics and common intensifiers, mere indices of annoyance or impatience or even pleasant surprise: *Where are my fucking keys? What the fuck is taking so long? This is fucking awesome!* Nevertheless, the term is best avoided altogether in “polite company.” The mass broadcast media have actually been forced by the threat of punitive fines to block audiences from hearing it, either by banning its use entirely or by bleeping all or part of the sound—if only by blocking out nothing more than the vowel sound in the middle. . . . Well into the 20th century, it was generally regarded as “unprintable,” and forms like *f**** or *f--k* or some spelling distortion like *frack* or *frig* or *fork* or *fug* were typically substituted for it in writing. . . .

Merriam-Webster.com – fuck *verb* \ˈfək\⁴

Definition of FUCK

intransitive verb

- 1 *usually obscene* : copulate
- 2 *usually vulgar* : mess 3 —used with *with*

transitive verb

- 1 *usually obscene* : to engage in coitus with —sometimes used interjectionally with an object (as a personal or reflexive pronoun) to express anger, contempt, or disgust
- 2 *usually vulgar* : to deal with unfairly or harshly : cheat, screw

noun

- 1 *usually obscene* : an act of copulation
- 2 *usually obscene* : a sexual partner
- 3 **a** *usually vulgar* : damn 2
b *usually vulgar* —used especially with *the* as a meaningless intensive <what the *fuck* do they want from me>
- 4 *usually vulgar* : fucker

CollinsDictionary.com - fuck (fʌk) (*taboo*) (*slang*)⁵

Definitions

(*vulgar*)

Intransitive verb

1. to engage in sexual intercourse
2. (*slang*) to meddle (with)

Transitive verb

3. to engage in sexual intercourse with
4. (*slang*) to treat (someone) with great, usually malicious, unfairness; esp., to cheat (*sometimes with over*)

⁴ Office Action, October 4, 2012.

⁵ Office Action, February 5, 2015.

noun

5. an act or instance of sexual intercourse
6. (*slang*) a person with whom one engages in sexual intercourse, often, specif., one of specified competence
7. (*slang*) an undesirable or contemptible person

exclamation

8. (*slang*) used to express anger, disappointment, frustration, etc

Although hundreds of years old, *fuck* has only rarely been recorded in print until recent years; even in print its use is still confined largely to reported speech, and the term is generally regarded as offensive to prevailing notions of propriety

The Examining Attorney also made of record an article from slate.com titled “Whence the !@#?” discussing the etymology of “fuck” and stating that “for the most part. . . . Fuck has always been an offensive word. . . .”⁶

This evidence establishes that the term “fuck” is a vulgar word referring to sexual intercourse. These definitions indicate that “fuck” is vulgar and obscene without reservation or limitation as to any particular group or subset of the public. Moreover, “fuck” remains vulgar and obscene despite increasingly liberal and permissive contemporary attitudes. The usage notes and commentary reinforce both the historical scope and duration of the public’s lasting perception of the term as vulgar and obscene despite changing mores.

Dictionary definitions alone may be sufficient to establish that a proposed mark comprises scandalous matter, where multiple dictionaries indicate that a word is vulgar, and the applicant’s use of the word is limited to the vulgar meaning of the word. *In re Boulevard Entm’t*, 67 USPQ2d at 1478 (holding 1-800-JACK-OFF and JACK OFF scandalous, where all dictionary definitions of “jack-off” were considered

⁶ Office Action, October 4, 2014.

vulgar); *In re Star Belly Stitcher*, 107 USPQ2d at 2059 (stating that dictionary evidence showed that the terms “shit” and “aw shit” are vulgar terms); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1381-1382 (TTAB 2006) (finding multiple dictionary definitions indicating BULLSHIT is “obscene,” “vulgar,” “usually vulgar,” “vulgar slang,” or “rude slang” constitute a prima facie showing that the term is offensive to the conscience of a substantial composite of the general public).

The Examining Attorney made of record Internet evidence to show that the term F**K is commonly used in place of the word “fuck,” and therefore the former may be considered equivalent to the latter, particularly in meaning and commercial impression. The following examples are representative:

- **rt.com** – An article on entrepreneur Elon Musk titled “F**K Earth! Elon Musk wants to send [a] million people to Mars to ensure humanity’s survival.” The article includes a quote by Musk stating, “Fuck Earth! Who cares about Earth?”⁷
- **topdocumentaryfilms.com** – A review of a documentary titled “F**K – A Documentary.” The documentary “takes a look on all sides of the infamous F-word. It’s taboo, obscene and controversial, yet somehow seems to permeate every single aspect of our culture – from Hollywood, to the schoolyard to the Senate floor in Washington D.C.”⁸ A review of the same film on Amazon.com states that “fuck” is “the mother of all curse words.”⁹
- **So badsgood.com** – An article about a charity seeking to raise money and awareness of the need to help the poor by wearing signs that say “FUCK THE POOR.” In describing the charity campaign, the article uses the term “F**K instead of the term “fuck.”¹⁰
- **Metrolyrics.com** – Lyrics to a pop song titled “F**k You” by musician Lily Allen. The lyrics include the refrain “Fuck you, fuck you very, very much.”¹¹

⁷ Office Action, October 4, 2014.

⁸ *Id.*

⁹ Office Action, February 5, 2015.

¹⁰ *Id.*

¹¹ *Id.*

- **Huffingtonpost.com** – An article about the Daily Show with comedian Jon Stewart titled “Jon Stewart Has A Question For Rand Paul: ‘What The F**k Are You Talking About?’” The article quotes Jon Stewart as asking the rhetorical question of Rand Paul, “What the fuck are you talking about?”¹²
- An entry from **Wikipedia.org** titled “Wordfilter” describing ways in which online software censors can filter offensive words, and ways that these censors can be circumvented. The entry states that “posters often replace certain letters [in the word ‘fuck’] with an asterisk, creating ‘f*ck’, ‘f**k’, ‘f***’ and so on.”¹³


The fact that “F**K” is used in place of “fuck” does not reduce the vulgarity of “F**K” inasmuch as they have the same use and meaning. “F**K” is used by writers, mostly in article headings, in order to shield readers from seeing the word “fuck” precisely because “fuck” is considered to be too vulgar and offensive for the general public. That is, the asterisks in “F**K” serve as a typographical “fig leaf” to protect readers from the visual vulgarity of the word “fuck” but the terms are nevertheless equivalents. The fig leaf does not alter the vulgar meaning so much as highlight it. In addition, to the extent a consumer would call for Applicant’s goods by name, the proposed mark likely would be articulated by many as “fuck project,” as opposed to, for example, “f k project.” This is so because the proposed mark would be perceived when presented visually as the equivalent of “fuck project” and therefore, the most logical way to verbalize the mark would be in accordance with its perception.

There is nothing about the nature of the goods, leather goods, umbrellas, and clothing, identified in this application that gives “F**K” a different meaning from

¹² *Id.*

¹³ Office Action, February 5, 2014. *See In re Cook Medical Techs. LLC*, 105 USPQ2d 1377, 1382 n.2 (TTAB 2012) (evidence obtained from *Wikipedia* considered because the non-offering party had an opportunity to rebut the evidence).

the meaning noted above. Applicant does not argue to the contrary. Thus,

Applicant's mark, , viewed in its entirety, suggests nothing more than a project or enterprise devoted to sexual intercourse or to one of the other vulgar meanings of "fuck."

None of Applicant's arguments supports a different finding. Applicant first argues that "it is impossible for the fanciful term 'f**k' to be considered immoral and scandalous, because there is no such word. The term 'f**k' is not present in the dictionary, and there is no commonly accepted definition of the term 'f**k.'"¹⁴ The fact that "F**K" is not found in a dictionary is not controlling on the question of registrability if the Examining Attorney can show that the term has a well understood and recognized meaning. *See In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977). More importantly, the evidence of record shows that "F**K" is commonly accepted as the equivalent of "fuck" and that it is used because "fuck" is too vulgar for use in general written media.

Applicant claims that its mark "is a humorous attempt to suggest . . . a 'false positive' result"¹⁵ as defined by Internet software censors, but there is no evidence suggesting that consumers are familiar with the intricacies of Internet censors or that they would see "F**K" as anything but an alternative spelling of "fuck." Similarly, Applicant argues that "the term 'F**K' could refer to an infinite number

¹⁴ Applicant's Br., p. 2.

¹⁵ Applicant's Br., p. 4.

of socially acceptable words such as ‘fork’ or ‘flack.’”¹⁶ This argument strains credulity. Writers use asterisks in the term “F**K” precisely because the asterisks mask the vulgar appearance of the word “fuck” in its entirety, while at the same time leaving no doubt in the reader’s mind of the meaning. Non-vulgar words like “fork” or “flack” would have no reason to be displayed using asterisks because the words are not offensive. Applicant has not included any evidence that non-vulgar words are ever displayed with asterisks or other typographical characters.

Applicant points to the Board’s decision in *In re Big Effin Garage, LLC*¹⁷ as support for the premise that substitutes for scandalous words are registrable because they are not scandalous themselves. We find this case to be distinguishable. In *In re Big Effin Garage*, the Board found that the terms “effin” and “f’n” were not scandalous because the evidence of record was sparse, dictionary definitions did not plainly show the meanings to be offensive, and the evidence showed the terms to be less-offensive substitutes for the word “fucking.” As the Board stated:

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.¹⁸

¹⁶ *Id.*

¹⁷ Serial Nos. 77595225 and 77595240 (November 23, 2010) [not precedential]

¹⁸ *Id.* at 7.

Unlike the marks in *Big Effin Garage*, the term “F**K” in Applicant’s mark would be perceived exactly the same as the vulgar word “fuck,” and if spoken in a way that would recognize its significance, it would offend. Also unlike the marks in *Big Effin Garage*, “F**K” does not have an alternative meaning that is not plainly offensive. Moreover, the evidence in this case is overwhelming as to the recognized meaning of “F**K.”

Applicant also points to Registration No. 4142745 for the mark “\$#! MY DAD SAYS” for “entertainment services” as justification for the registration of marks with special characters masking otherwise scandalous terms. It is well established that even if marks in prior registrations have some characteristics similar to Applicant’s mark, the USPTO’s allowance of such prior registrations does not bind the Board. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). “The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the agency must forgo applying that standard in all other cases.” *In re Boulevard Entm’t*, 67 USPQ2d at 1480.

Finally, Applicant argues that its mark should be registered because “the mark ‘F**K PROJECT’ has been approved in other countries and there is no evidence that anyone has expressed any strong feelings that would motivate the sufferer [sic] to take strong and swift action in those locations.”¹⁹ Registration of a mark in a foreign jurisdiction does not compel registration in the United States as applicants

¹⁹ Applicant’s Br., p. 11.

here are subject to the bars to registration mandated by U.S. law. *In re Rath*, 402 F.3d 1207, 74 USPQ2d 1174, 1179 (Fed. Cir. 2005).



Decision: The refusal to register Applicant’s mark, **F**K PROJECT**, under Section 2(a) of the Trademark Act is affirmed.

Adlin, Administrative Trademark Judge, concurring:

I concur with the decision to affirm the refusal to register, but write separately because my reasoning is different, and because if we were writing on a clean slate, I would join the dissent.

I would affirm because we are not writing on a clean slate – in cases involving euphemisms or alternate spellings of “bad words,” we have generally found that the euphemisms or alternate spellings, if perceived as such, are themselves scandalous. While each case must be decided on its own merits, and we do not base our decisions on the results of other applications, in this case it is also interesting to note the record evidence that the Office has consistently refused registration of marks analogous to **F**K PROJECT**:

List At: OR to record: **3 Records(s) found (This page: 1 ~ 3)**

Refine Search

Current Search: S8: "f**k[bi] docs: 3 occ: 3

Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85569419	DON'T F**K WITH THE DEAD	TSDR	DEAD
2	79141996	F**K PROJECT	TSDR	LIVE
3	77757960	WOMEN WHO SAY F**K IT	TSDR	DEAD

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [PREV LIST](#) [NEXT LIST](#) [IMAGE LIST](#) [Top](#) [HELP](#)

Start List At: OR Jump to record: **14 Records(s) found (This page: 1 ~ 14)**

Refine Search "F*ck"[bj]

Current Search: S9: "F*ck"[bj] docs: 14 occ: 18

Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1		FIVE STAR CASH KINGS F*CK	TSDR	DEAD
2		F*CK YOU, I'M FROM KANSAS	TSDR	DEAD
3		F*CK OUDDA HERE	TSDR	DEAD
4		F*CK LIKE A PORN STAR	TSDR	DEAD
5		F*CK IT... WHY NOT!	TSDR	DEAD
6		F*CK OUDDA HERE	TSDR	DEAD
7		F*CK YOU CLOTHING	TSDR	DEAD
8		F*CK	TSDR	DEAD
9		F*CK	TSDR	DEAD
10		F*CK THE TERRORISTS	TSDR	DEAD
11		DON'T F*CK WITH MY IMAGE	TSDR	DEAD
12		F*CK CENSORSHIP	TSDR	DEAD

Denial of Request for Reconsideration of February 5, 2015 (printouts from TESS database). Unless and until a court or a larger panel of the Board adopts a new course in situations such as this, it is not appropriate to disturb the settled expectations resulting from the Office’s prior and relatively consistent treatment of this type of mark.

However, if presented the opportunity to serve on a larger panel in a case such as this, with similar evidence of record, I would view the issue as the dissent does. Specifically, while I agree with the majority that the Office has established that “fuck” is vulgar, and that F**K would be perceived as an alternative version of “fuck,” I do not agree that F**K is itself vulgar. To the contrary, the evidence makes clear that “f**k,” “f--k,” “F-word” and other euphemisms are used precisely because they are *not* vulgar, and because they are acceptable ways of communicating the vulgar word “fuck.” Indeed, “euphemism” is defined as “the substitution of an agreeable or inoffensive expression for one that may offend or suggest something unpleasant.”²⁰

²⁰ <http://www.merriam-webster.com/dictionary/euphemism>.

Furthermore, our primary reviewing court has made clear that dictionary definitions constitute important evidence when the question is whether a term is scandalous, because they “represent an effort to distill the collective understanding of the community with respect to language and thus clearly constitute more than a reflection of the individual views of either the examining attorney or the dictionary editors.” *In re Boulevard Entm’t, Inc.*, 334 F.3d 1336, 67 USPQ2d 1475, 1478 (Fed. Cir. 2003). In this case, as the dissent points out, the dictionary.com definition of “fuck” which the Examining Attorney made of record includes a “usage note” which states that because “fuck” was “unprintable,” alternative “forms like f*** or f-k or some spelling distortion like *frack* or *frig* or *fork* or *fug* were typically substituted for it in writing.” Just as we may use dictionary definitions and usage notes to find a term scandalous, I believe that we should be able to use them to find that a term is *not* scandalous. In this case, the usage note which seems to suggest that f-k is not scandalous is corroborated by the record evidence that public, for-profit websites, and book, movie and clothing sellers use alternate spellings of “fuck” in an apparent effort to *not* offend, or at least to reduce the level of offense arising out of calling to mind the word “fuck.” *See also, In re Star Belly Stitcher, Inc.*, 107 USPQ2d 2059, 2062 (TTAB 2013) (“The article ... indicates that many newspapers declined to print the word in full ... The article also states that some major newspapers, including USA Today, printed the expletive as ‘S___’ instead of the actual word ...”) and *In re Luxuria s.r.o.*, 100 USPQ2d 1146, 1151 (TTAB 2011) (“For example, the article quoted above, entitled ‘Why Is The Middle Finger Offensive?’ blurs out the gesture

in the photograph because it is obviously considered to be offensive to the readers of the article, who clearly are not the object of the gesture.”).

In short, if it were not for our prior decisions and Office practices involving similar marks, I would find that the record fails to establish that F**K is vulgar from the standpoint of a substantial composite of the general public.²¹

Seeherman, Administrative Trademark Judge, dissenting.

I respectfully dissent from the majority’s affirmance of the refusal.

I agree with the conclusion that the evidence shows the word “FUCK” has an obscene/vulgar meaning; if the mark were FUCK PROJECT I would be in favor of affirming the refusal on the ground that the mark is scandalous. However, the mark is not “FUCK PROJECT,” it is F**K PROJECT.

I also agree that consumers would understand from the mark that “F**K” is meant as a substitute for “FUCK.” However, that alone is not enough for me to consider the mark scandalous. I do not agree that if a term would be readily understood as the offensive term, the substitute term is also offensive. There are many words or euphemisms that are used as substitutes for vulgar or obscene words or words that are not considered acceptable in polite society, but the

²¹ “[W]e must be mindful of ever-changing social attitudes and sensitivities. Today’s scandal can be tomorrow’s vogue. Proof abounds in nearly every quarter, with the news and entertainment media today vividly portraying degrees of violence and sexual activity that, while popular today, would have left the average audience of a generation ago aghast.” *In re Mavety Media*, 33 F.3d 1367, 31 USPQ2d 1923, 1926 (Fed. Cir. 1994); *see also, In re Tinseltown, Inc.*, 212 USPQ 863, 866 (TTAB 1981) (“No person blessed with the gift of hearing can fail to be cognizant of this much freer use of obscenities in contemporary America.”).

euphemisms are used precisely because they are acceptable and non-vulgar substitutes. At least at one time “jeez” was a euphemism for “Jesus,” “heck” was used instead of “hell” and “gosh” was used for “God.”²² Today, the “N-word” is used as an acceptable substitute for a particularly offensive word:

n-word or n word, N-word: 1. A euphemism for the word nigger: *His use of the highly offensive n-word during a televised broadcast caused outrage.*²³

Similarly, although “fuck” is considered an offensive term, there are many substitutes for “fuck” that dictionary definitions show are acceptable. “F-word” is defined as “a euphemism for the word *fuck*.”²⁴ “F-bomb” is “used metaphorically as a euphemism.”²⁵ And the “Usage note” for “fuck” in the Dictionary.com definition quoted in the majority opinion states:

Well into the 20th century, it was generally regarded as “unprintable,” and forms like *f**** or *f--k* or some spelling distortion like *frack* or *frig* or *fork* or *fug* were typically substituted for it in writing. . . .

In my view, F**K is also a non-offensive way of depicting the word FUCK. Indeed, “f-k” is treated by the dictionary as a non-vulgar version of “fuck.” I find it difficult to believe that “f-k” with lines as “placeholders” for the missing letters is considered an acceptable substitute for the word “fuck,” but that when asterisks are used in the same way the word retains its vulgar meaning.

²² Origin of “jeez”: 1920-25, Americanism; euphemistic shortening of *Jesus*; Origin of “heck”: 1850-55, euphemistic alteration of hell; Origin of “gosh”: 1750-60; euphemistic alteration of God. Dictionary.com Unabridged, based on the Random House Dictionary (2015).

²³ Dictionary.com Unabridged, based on the Random House Dictionary (2015).

²⁴ *Id.*

²⁵ Merriam-webster.com, “f-bomb: the word *fuck*—used metaphorically as a euphemism <accidentally dropped an *f-bomb* on television—Timothy Kurkjian>.”

The Internet evidence submitted by the Examining Attorney reinforces that “F**K” is an acceptable, non-vulgar substitute for the word “fuck.” For example, the Barnes & Noble website offers a book which is listed as having the title “Go the F**k to Sleep.”²⁶ The cover of the book actually shows the title with a picture of the moon in the space between the letters “F” and “k.” In other words, it appears that Barnes & Noble (or the publisher) treated “F**k” as a substitute for the offensive word “fuck.” Similarly, the amazon.com website offers a documentary which it lists as “F**k”; the title on the image also shown on that webpage is “The F-Bomb.”²⁷ As noted above, the dictionary definition lists “F-Bomb” as a euphemism for “fuck”; I suggest that “F**k” is being used on this website also as an acceptable euphemism. An article on the TMZ website has the headline, “Justin Bieber Flips Out at Photog ‘I’LL BEAT THE F**K OUT OF YOU.”²⁸ Throughout the article “f**k” appears in quoted statements in which it is obvious that the actual word that was said was “fuck.” Again, this suggests that the website considered “f**k” to be an acceptable substitute for the offensive word, and not vulgar in its own right. The article about Jon Stewart in the Huffington Post, which was excerpted in the majority opinion, uses “F**k” in the title, “Jon Stewart Has a Question For Rand Raul: ‘What the F**k Are You Talking About?’”²⁹ The article goes on to quote Stewart’s statement, “What the fuck are you talking about?”, suggesting that the publication makes a

²⁶ February 5, 2014 Office action at 14.

²⁷ February 5, 2015 Office action at 2.

²⁸ February 5, 2015 Office action, at 15-16.

²⁹ February 5, 2015 Office action, at 32-33.

distinction between its own use of “fuck” and the reporting of a direct quote; in the former situation the use of “F**k” suggests to me that it regards “F**k” as an inoffensive way to communicate “fuck.” In other words, “f**k” is an acceptable substitute for the offensive term “fuck.” I interpret the RT article about Elon Musk, also excerpted in the majority opinion, in the same way.³⁰ The publication uses “F**k” in the title, but in the article uses “Fuck” when quoting Musk.

Another webpage excerpt, from Top Documentary Films, has a page about “F**K--A Documentary” which describes the film as “a look on all sides of the infamous F-word.”³¹ The actual word “fuck” is not used in any of the text; rather, it substitutes “f**k,” e.g., “Scholars and linguists examine the long history of f**k”; “Comedians, actors, and writers who have charted and popularized the upward course of f**k are heard from...”; “We hear from advocates who oppose f**k and its infringement into our everyday lives.” Again, the conclusion I draw from this is that “f**k” is considered to be an acceptable substitute for the unacceptable word “fuck”.

As the majority opinion states, “F**K is used by writers ...in order to shield readers from seeing the word ‘fuck’ precisely because ‘fuck’ is considered to be too vulgar and offensive for the general public.” That is my point. F**K is a non-vulgar substitute for the vulgar and offensive word “fuck,” an iteration that is considered to be acceptable to be seen by the general public. I agree with that portion of the statement in the majority opinion that “the asterisks in ‘F**K’ serve as a typographical ‘fig leaf’ to protect readers from the visual vulgarity of the word

³⁰ October 4, 2014 Office action, at 12-16.

³¹ October 4, 2014 Office action at 23.

‘fuck.’” That is what a fig leaf does, it conceals “what may be considered indecorous or indecent,”³² so that what is seen is not indecent; the result in this case is that F**K is a sanitized version of the vulgar word “fuck,” but because it is sanitized by the fig leaf asterisks, it should not be treated as being the same as the vulgar word that the fig leaf asterisks are obscuring.

Accordingly, I disagree with the statement in the majority opinion that “The fact that ‘F**K’ is used in place of ‘fuck’ does not reduce the vulgarity of ‘F**K’ inasmuch as they have the same use and meaning.” As I have pointed out, there are many words that are considered to be acceptable when they are used as substitutes for vulgar words; that is the point of a euphemism.

I also do not feel the same concern the majority does about how the mark will be pronounced, i.e., “to the extent a consumer would call for Applicant’s goods by name, the proposed mark likely would be articulated by many as ‘fuck project,’” and if spoken in that manner it would offend. I will not argue that some people, recognizing “F**K” as a substitute for “fuck,” will not pronounce it that way, although it seems to me that those who pronounce the mark as “fuck project” would not consider this wording to be offensive, or believe that their audience would.³³ As for those who would be offended by the pronunciation of the mark as “fuck project,” there is little chance that they would be subjected to hearing the mark pronounced this way in broadcast television and radio advertising because the word “fuck” is not

³² Dictionary.com Unabridged, based on the Random House Dictionary (2015).

³³ Certainly the way “F**K” is depicted in the mark would not *require*, under normal rules of English pronunciation, that it be pronounced as “fuck” since there are no vowels whatsoever.

permitted to be said in such media. As for print advertising and other print references, the mark would not be pronounced at all, and only the visual

 would be seen.

At the very least, the record shows that there is some question about whether “f**k” would be perceived as an offensive or vulgar word, or as a euphemism for the offensive word “fuck.” This is enough to show that there is doubt as to whether the applied-for mark, F**K PROJECT in stylized form, is scandalous and, accordingly, such doubt should be resolved in favor of publishing the mark for opposition. *See In re Mavety Media Group Ltd.*, 33 F.3d 1367, 31 USPQ2d 1923, 1928 (Fed. Cir. 1994), in which the Federal Circuit commended the Board’s practice to resolve the issue whether a mark comprises scandalous matter under Section 2(a) in favor of the applicant, citing *In re In Over Our Heads Inc.*, 16 USPQ2d 1653, 1654-55 (TTAB 1990).

Finally, I would like to address the point made in the concurring opinion that we should refuse registration of this mark because Trademark Examining Attorneys have presumably refused registration of other “fuck” marks in which an asterisk has replaced one or more letters. There is no question that a uniform standard for assessing registrability of marks is desirable. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). And it is also desirable that if the Examining Operation has adopted a particular policy, trademark owners should be able to rely on it. However, that does not mean that this Board must cede its authority to the Examining Operation, and follow its determination as to what

constitutes a scandalous mark. As far as I am aware, this is the first time that the question of whether a mark containing the term “F**K” is scandalous has come before the Board. In the absence of a finding by the Board on this issue, it was appropriate and necessary for the Trademark Operation to set a policy as to whether such marks are scandalous. But it becomes a Catch-22 when, the first time the Board has occasion to rule on this question, the Board is asked to find the mark scandalous *because* the Examining Operation has done so in the past.

I also point out that a finding that Applicant’s mark is not scandalous would not hurt trademark owners, but would actually liberalize the practice of registering marks. The concurring opinion invokes the “settled expectations” resulting from the Office’s prior treatment of “F*ck” marks. “Settled expectations” normally come into play when a trademark owner adopts a mark, expecting it to be registered because other similar marks have been registered. To deny registration in such a situation would cause harm to the trademark owner, who has acted based on those settled expectations. But liberalizing the policy regarding Section 1(a) scandalous refusals would not cause such harm, as it would only allow more trademark owners to register their marks, and would not impinge on other trademark owners’ rights. The Board and the PTO have a history of liberalizing practice, even when there are settled policies and even rules, and there has been no concern about “settled expectations.” For example, in *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031 (TTAB 2010), the Board expanded the documents that could be submitted under a

notice of reliance to include Internet materials, even though Trademark Rule 2.122(e) did not provide for this, and even though prior cases had not allowed it.

For the foregoing reasons, I would reverse the refusal and allow the application to proceed to publication of the mark.