

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	79141996
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>In the Final Official Action, the Examiner has continued the refusal of registration of the present application on the Principal Register because of the alleged "immoral" and "scandalous" nature of Applicant's mark.</p> <p>The Applicant notes for the record 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". Instead, the term "f**k" is a made up word that is incapable of offending or shocking the public decency, because each consumer who encounters the term will likely interpret the coined word differently. Thus, Applicant respectfully disagrees and believes that the Examiner has failed to make a <i>prima facie</i> showing of the immoral and scandalous nature of Applicant's mark. Applicant also notes for the record that an Appeal of Refusal to Register has been filed contemporaneously with this Request for Reconsideration.</p> <p>I. THE MARK IS NOT IMMORAL OR SCANDALOUS.</p> <p>A. The Examining Attorney has Failed to Present Sufficient Evidence that Applicant's Mark is Immoral or Scandalous</p> <p>The U.S. Patent and Trademark Office has the burden of proving that a trademark falls within the prohibition of Section 2(a) for being immoral or scandalous. <i>In re Mavety Media Group Ltd.</i>, 33 F.3d 1367, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994). <i>See also In re Standard Elektrik Lorenz A.G.</i>, 371 F.2d 870, 152 USPQ 563, 566 (CCPA 1967). The determination that a mark comprises scandalous matter is a conclusion of law based upon underlying factual inquiries. <i>Cf. Frederick Gash, Inc. v. Mayo Clinic</i>, 461 F.2d 1395, 1397, 174 USPQ 151, 152 (CCPA 1972) ("The inquiry under [15 U.S.C. § 1052(a)] is similar to that under...15 U.S.C. § 1052(d), which is likelihood of confusion of the marks as applied to the respective goods and/or services."); <i>Weiss Assocs., Inc. v. HRL Assocs. Inc.</i>, 902 F.2d 1546, 1547-48, 14 USPQ.2d 1840, 1841 (Fed. Cir. 1990). To support a Section 2(a) refusal, there must be evidence that a substantial portion of the general public would consider the mark to be scandalous in the context of contemporary attitudes and the relevant marketplace. <i>Mavety Media</i>, 33 F.3d at 1371-72, 31 USPQ2d at 1925-26; TMEP § 1203.01. To warrant refusal, the PTO must demonstrate that the mark is "shocking to the sense of truth, decency or propriety; disgraceful; offensive; disreputable; ... giving offense to the</p>	

conscience or moral feelings; ... [or] calling out [for] condemnation." *Mavety Media*, 33 F.3d at 1371, quoting *In re Riverbank Canning Co.*, 95 F.2d 327 (CCPA 1938).

The Examining Attorney has failed to meet this burden. In support of the refusal, the Examiner first submitted dictionary.com references explaining that the term "fuck" is vulgar. However, vulgarity is not the legal standard. The primary definition of the term "vulgar" is defined as "not having good manners, good taste, or politeness." See [Exhibit C, Merriam-Webster dictionary definition of the term "vulgar"]. Therefore, it would appear that the term "fuck" may be considered an impolite word. The Examiner contends that "evidence that a mark is vulgar is sufficient to establish that the mark is scandalous within the meaning of Trademark Act Section 2(a)." However, it is difficult to reconcile such a statement with the fact that the term "vulgar" may also mean "relating to the common people or the speech of common people." See *id.* The speech of common people should not be considered shocking to the general public. Therefore, it may be that the term "fuck" is actually the speech of common people, which is explicitly permissible within the framework of the law. The legal standard for a scandalous mark requires much more than mere impoliteness and would certainly not encompass the speech of common people. As elucidated by *Riverbank*, which is the leading pre-Lanham Act case on the subject, the legal standard is scandalous, which means "calling out for condemnation." See *In re Riverbank Canning*, 95 F.2d at 327 (CCPA 1938) (demonstrating that the standard require more than simply referring to something in bad taste, i.e., 'vulgar'). Moreover, the courts recognize "the inherent fallibility in defining the substantial composite of the general public based solely on dictionary references." *In re Runsdorf*, 171 USPQ 443 (1971); *In re Maverty*, 33 F.3d at 1373. Furthermore, Applicant notes that Applicant's mark does not contain the word "fuck" in the mark. Applicant's mark consists of the term "f**k", which is dramatically different in appearance, sound, connotation, and commercial impression than the term "fuck". Simply put the term "f**k" is not shocking and does not call out for condemnation.

The Examiner then submitted several other pieces of evidence. Many of these pieces of evidence appear to show the term "f**k" used in a trademark sense. For example, a book titled "F**K IT", followed by a clothing line titled "F**K IT", followed by a book series titled "F**K IT". These uses of the term "f**k" are not evidence that the term "f**k" is shocking and calls out for condemnation. None of these pieces of evidence give any indication as to the potential meaning of the term "f**k", if that term has any concrete meaning at all. As a result, it appears that the Examiner has merely entered into evidence potentially infringing trademarks rather than evidence as to the allegedly scandalous meaning of the term "f**k".

The next piece of the Examiner's evidence includes a single instance in which the word "fuck" might be censored as "f**k" in order to potentially form a comprehensible phrase. It is not clear from the evidence what the term "f**k" would mean within the news article titled "F**K Earth! Elon Musk wants to send million people to Mars to ensure humanity's survival" and The Examiner seems to have presupposed that the term "f**k" is being used as a substitute for "fuck," even though the evidence does not directly indicate that the word "f**k" is intended to be a censored version of the term "fuck."

The Examiner then submitted a piece of evidence titled "Whence the !@#\$? How a dirty word gets that way." This piece of evidence actually undermines the Examiner's position that Applicant's "F**K PROJECT" mark, which does not even contain the allegedly scandalous term "fuck", would be perceived by the public as scandalous. The article submitted by the Examiner explains that as of 2007, the FCC would no longer levy indecency fines on broadcasters who accidentally allowed the term "fuck" on the airwaves. The FCC reasoned that the word "fuck" is commonly used to express frustration rather than sexual obscenity. A term commonly used to express frustration would certainly not rise to the level of scandalous. The law requires that a scandalous mark be shocking and offensive to the public. As the evidence explains, the FCC would no longer fine accidental uses of the term "fuck,"

precisely because the term was no longer shocking and offensive to the public.

The final piece of evidence submitted by the Examiner appears to be yet another instance in which the term "f**k" used in a trademark sense. This piece of evidence is comprised of an advertisement for a documentary film titled "F**K". Once again, it appears that the Examiner has merely entered into evidence a potentially infringing trademark rather than evidence as to the allegedly scandalous meaning of the term "f**k".

The reality is that the term "f**k" could refer to an infinite number of socially acceptable words such as "fork" or "flack". It is also possible that the letters "f" and "k" are initials of different words and the asterisk symbols serve a merely decorative use, rather than serving as placeholders for letters that would result in a scandalous term. In sum, the term "f**k" is not present in the dictionary, and there is no commonly accepted definition of the term "f**k". Instead, the term "f**k" is a made up word that is incapable of offending or shocking the public decency, because each consumer who encounters the term will likely interpret the coined word differently. Even if a consumer interpreted the term "f**k" to be a substitute for the term "fuck," that does not mean that the fanciful term "f**k" itself is immoral or scandalous.

Consumers will not interpret the mark "F**K PROJECT" as offending or shocking the public decency, as elucidated by the fact that the same mark has been registered in numerous other countries where English is the official language or widely spoken, such as the European Community, without any refusal. Similarly International Registration No. 1190861 for the mark "F**K PROJECT" was approved in Japan, Monaco, and Ukraine. Moreover, as espoused by the Examiner's evidence in the form of an article titled "Whence the !@#? How a dirty word gets that way" it has been established that the FCC would no longer fine broadcasters accidentally using the term "fuck," because the term is commonly used to express frustration rather than sexual obscenity. The fact that the term "fuck" has become an integral part of common parlance, and the term is often used in a manner to express frustration, clearly demonstrates that the term is not "scandalous" or "shocking to the public decency."

B. Substitutes for Vulgar Terms are not themselves Vulgar

Even if the Examining Attorney found additional evidence that the fanciful term "f**k" is a commonly understood substitute for the word "fuck," such evidence would be insufficient to find that the term "f**k" itself is immoral or scandalous. Conversely, such evidence would only serve to strengthen the position that society had then adopted the fanciful term "f**k" as a non-offensive and socially acceptable alternative to the otherwise offensive term "fuck."

The present case is factually similar to the analogous case, *In re Big Effin Garage, LLC*, Serial Nos. 77595225 and 77595240 (November 23, 2010) [not precedential]. See [Exhibit A (attached to initial response), TTAB decision *In re Big Effin Garage, LLC*]. In that case, the examining attorney rejected marks containing "effin" and "f/n" as being immoral or scandalous as they are a common substitute for the word "fucking." The TTAB reversed the refusal, holding that the words "effin" and "f/n" are not scandalous precisely because the word is a substitute for a scandalous term. In that case, the Board reasoned that:

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.

Id. at 7. The Examining Attorney contends that the cited case is distinguishable, because those terms at issue were nonliteral, slang forms of the word. However, the present case features circumstances even more favorable to Applicant, precisely because Applicant's mark is not a slang form of a supposedly vulgar word.

Applicant's mark is actually a fanciful term that stands on its own without any reference at all to a potentially vulgar word. Applicant's mark contains the fanciful term "f**k," which is not in and of itself scandalous or immoral. While the Examining Attorney has found a few instances where asterisks were used in a fashion similar to Applicant's mark as a potential substitute for a scandalous or immoral word, the symbols themselves are not scandalous or immoral. Furthermore, the presence of asterisks next to letters does not necessitate that the resulting term would be scandalous or immoral. Finally, the Examiner's evidence in the form of an article titled "Whence the !@#? How a dirty word gets that way" establishes that the FCC views the term "fuck" as a commonly used term to express frustration, as opposed to a sexual obscenity. The fact that the term "fuck" has become an integral part of common parlance, and the term is often used in a manner to express frustration, clearly demonstrates that the term is not "scandalous" or "shocking to the public decency."

The Federal Circuit has held 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). Here there is clearly doubt as to whether the term "f**k" would be considered scandalous or immoral, and such doubt should therefore be resolved in favor of Applicant.

The Applicant recognizes that prior determinations in other applications are not binding on the PTO. Nonetheless, given the strong public policy in favor of consistency of decisions, Applicant respectfully notes that a similar mark, U.S. Trademark Registration No. 4,142,745 for the mark "\$#! MY DAD SAYS" has been allowed by the USPTO. *See* [Exhibit B (attached to initial response), Trademark Registration No. 4,142,745 for the mark "\$#! MY DAD SAYS"]. Similar to the current case, the presence of symbols creates a term that could be interpreted as immoral or scandalous, or could be interpreted as standing for an infinite number of other commonly accepted words.

Assuming *arguendo* that the term "f**k" was a reference to the term "fuck," the mark "F**K PROJECT" would still not be offending or shocking the public decency, because the trademark would not make sense. Applicant is unsure what the perceived meaning of "fuck project" might be, because the phrase does not make sense. Expressions such as "fuck it" or "fuck you" that are directed as an offense toward someone or something would likely be considered offending or shocking the public decency. Even the phrase "fuck project," which is not Applicant's mark, sounds mildly pejorative as opposed to offensive or shocking to the public decency. It seems most likely that the phrase "fuck project," which is not Applicant's mark, would express some sense of frustration. As illuminated by the article titled "Whence the !@#? How a dirty word gets that way" that the Examiner submitted, the FCC views the term "fuck" as a commonly used term to express frustration, which clearly demonstrates that the term is not "scandalous" or "shocking to the public decency." It is unlikely that the mark "F**K PROJECT" would cause outrage, because outrage is a strong feeling that motivates the sufferer to take strong and swift action. As explained above, 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 to take strong and swift action in those locations. Applicant's mark is not illegal, blasphemous, racist, or discriminatory. The right to freedom of speech and freedom of expression should allow for expressions

such as "F**K PROJECT", even if it possible that a small subset of society could interpret the mark as being slightly rude.

II. CONCLUSION

The mark "f**k" is fanciful and should not be considered immoral and scandalous. For this reason, Applicant respectfully believes that the present mark should not be refused under Section 2(a). As such, Applicant respectfully requests that the Examiner reconsider the final rejection of this application, and that the present mark be passed to publication at an early date.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_10819393249-20150122113650602972 . 1722-336_Second_OA_Response_Exhibit_C.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\791\419\79141996\xml14\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\419\79141996\xml14\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\791\419\79141996\xml14\RFR0004.JPG
DESCRIPTION OF EVIDENCE FILE	Exhibit C, Merriam-Webster dictionary definition of the term "vulgar"

SIGNATURE SECTION

DECLARATION SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
DECLARATION SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
DECLARATION SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert

SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
DECLARATION SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
DECLARATION SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
RESPONSE SIGNATURE	/1722-336/
SIGNATORY'S NAME	John S. Egbert
SIGNATORY'S POSITION	Attorney of record, Texas bar member
SIGNATORY'S PHONE NUMBER	713-224-8080
DATE SIGNED	01/22/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jan 22 11:40:27 EST 2015
TEAS STAMP	USPTO/RFR-108.193.93.249-20150122114027434328-79141996-530beb470bb7fd7fe7e2

abb9ee473a2fad22cd64ccd6e
72ca5833d19caba2dfdba-N/A
-N/A-20150122113650602972

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **79141996** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

In the Final Official Action, the Examiner has continued the refusal of registration of the present application on the Principal Register because of the alleged "immoral" and "scandalous" nature of Applicant's mark.

The Applicant notes for the record 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". Instead, the term "f**k" is a made up word that is incapable of offending or shocking the public decency, because each consumer who encounters the term will likely interpret the coined word differently. Thus, Applicant respectfully disagrees and believes that the Examiner has failed to make a *prima facie* showing of the immoral and scandalous nature of Applicant's mark. Applicant also notes for the record that an Appeal of Refusal to Register has been filed contemporaneously with this Request for Reconsideration.

I. THE MARK IS NOT IMMORAL OR SCANDALOUS.

A. The Examining Attorney has Failed to Present Sufficient Evidence that Applicant's Mark is Immoral or Scandalous

The U.S. Patent and Trademark Office has the burden of proving that a trademark falls within the prohibition of Section 2(a) for being immoral or scandalous. *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 31 UPSQ2d 1923, 1925 (Fed. Cir. 1994). *See also In re Standard Elektrik Lorenz A.G.*, 371 F.2d 870, 152 UPSQ 563, 566 (CCPA 1967). The determination that a mark comprises scandalous matter is a conclusion of law based upon underlying factual inquiries. *Cf. Frederick Gash, Inc. v. Mayo Clinic*, 461 F.2d 1395, 1397, 174 USPQ 151, 152 (CCPA 1972) ("The inquiry under [15 U.S.C. § 1052(a)] is similar to that under...15 U.S.C. § 1052(d), which is likelihood of confusion of the marks as applied to the respective goods and/or services."); *Weiss Assocs., Inc. v. HRL Assocs. Inc.*, 902 F.2d 1546, 1547-48, 14 USPQ.2d 1840, 1841 (Fed. Cir. 1990). To support a Section 2(a) refusal, there must be evidence that a substantial portion of the general public would consider the mark to be scandalous in the context of contemporary attitudes and the relevant marketplace. *Mavety Media*, 33 F.3d at 1371-72, 31 USPQ2d at 1925-26; TMEP § 1203.01. To warrant refusal, the PTO must demonstrate that the mark is "shocking to

the sense of truth, decency or propriety; disgraceful; offensive; disreputable; ... giving offense to the conscience or moral feelings; ... [or] calling out [for] condemnation." *Mavety Media*, 33 F.3d at 1371, quoting *In re Riverbank Canning Co.*, 95 F.2d 327 (CCPA 1938).

The Examining Attorney has failed to meet this burden. In support of the refusal, the Examiner first submitted dictionary.com references explaining that the term "fuck" is vulgar. However, vulgarity is not the legal standard. The primary definition of the term "vulgar" is defined as "not having good manners, good taste, or politeness." See [Exhibit C, Merriam-Webster dictionary definition of the term "vulgar"]. Therefore, it would appear that the term "fuck" may be considered an impolite word. The Examiner contends that "evidence that a mark is vulgar is sufficient to establish that the mark is scandalous within the meaning of Trademark Act Section 2(a)." However, it is difficult to reconcile such a statement with the fact that the term "vulgar" may also mean "relating to the common people or the speech of common people." See *id.* The speech of common people should not be considered shocking to the general public. Therefore, it may be that the term "fuck" is actually the speech of common people, which is explicitly permissible within the framework of the law. The legal standard for a scandalous mark requires much more than mere impoliteness and would certainly not encompass the speech of common people. As elucidated by *Riverbank*, which is the leading pre-Lanham Act case on the subject, the legal standard is scandalous, which means "calling out for condemnation." See *In re Riverbank Canning*, 95 F.2d at 327 (CCPA 1938) (demonstrating that the standard require more than simply referring to something in bad taste, i.e., 'vulgar'). Moreover, the courts recognize "the inherent fallibility in defining the substantial composite of the general public based solely on dictionary references." *In re Runsdorf*, 171 USPQ 443 (1971); *In re Maverty*, 33 F.3d at 1373. Furthermore, Applicant notes that Applicant's mark does not contain the word "fuck" in the mark. Applicant's mark consists of the term "f**k", which is dramatically different in appearance, sound, connotation, and commercial impression than the term "fuck". Simply put the term "f**k" is not shocking and does not call out for condemnation.

The Examiner then submitted several other pieces of evidence. Many of these pieces of evidence appear to show the term "f**k" used in a trademark sense. For example, a book titled "F**K IT", followed by a clothing line titled "F**K IT", followed by a book series titled "F**K IT". These uses of the term "f**k" are not evidence that the term "f**k" is shocking and calls out for condemnation. None of these pieces of evidence give any indication as to the potential meaning of the term "f**k", if that term has any concrete meaning at all. As a result, it appears that the Examiner has merely entered into evidence potentially infringing trademarks rather than evidence as to the allegedly scandalous meaning of the term "f**k".

The next piece of the Examiner's evidence includes a single instance in which the word "fuck" might be censored as "f**k" in order to potentially form a comprehensible phrase. It is not clear from the evidence what the term "f**k" would mean within the news article titled "F**K Earth! Elon Musk wants to send million people to Mars to ensure humanity's survival" and The Examiner seems to have presupposed that the term "f**k" is being used as a substitute for "fuck," even though the evidence does not directly indicate that the word "f**k" is intended to be a censored version of the term "fuck."

The Examiner then submitted a piece of evidence titled "Whence the !@#\$? How a dirty word gets that way." This piece of evidence actually undermines the Examiner's position that Applicant's "F**K PROJECT" mark, which does not even contain the allegedly scandalous term "fuck", would be perceived by the public as scandalous. The article submitted by the Examiner explains that as of 2007, the FCC would no longer levy indecency fines on broadcasters who accidentally allowed the term "fuck" on the airwaves. The FCC reasoned that the word "fuck" is commonly used to express frustration rather than sexual obscenity. A term commonly used to express frustration would certainly not rise to the level of scandalous. The law requires that a scandalous mark be shocking and offensive to the public. As the

evidence explains, the FCC would no longer fine accidental uses of the term "fuck," precisely because the term was no longer shocking and offensive to the public.

The final piece of evidence submitted by the Examiner appears to be yet another instance in which the term "f**k" used in a trademark sense. This piece of evidence is comprised of an advertisement for a documentary film titled "F**K". Once again, it appears that the Examiner has merely entered into evidence a potentially infringing trademark rather than evidence as to the allegedly scandalous meaning of the term "f**k".

The reality is that the term "f**k" could refer to an infinite number of socially acceptable words such as "fork" or "flack". It is also possible that the letters "f" and "k" are initials of different words and the asterisk symbols serve a merely decorative use, rather than serving as placeholders for letters that would result in a scandalous term. In sum, the term "f**k" is not present in the dictionary, and there is no commonly accepted definition of the term "f**k". Instead, the term "f**k" is a made up word that is incapable of offending or shocking the public decency, because each consumer who encounters the term will likely interpret the coined word differently. Even if a consumer interpreted the term "f**k" to be a substitute for the term "fuck," that does not mean that the fanciful term "f**k" itself is immoral or scandalous.

Consumers will not interpret the mark "F**K PROJECT" as offending or shocking the public decency, as elucidated by the fact that the same mark has been registered in numerous other countries where English is the official language or widely spoken, such as the European Community, without any refusal. Similarly International Registration No. 1190861 for the mark "F**K PROJECT" was approved in Japan, Monaco, and Ukraine. Moreover, as espoused by the Examiner's evidence in the form of an article titled "Whence the !@#\$? How a dirty word gets that way" it has been established that the FCC would no longer fine broadcasters accidentally using the term "fuck," because the term is commonly used to express frustration rather than sexual obscenity. The fact that the term "fuck" has become an integral part of common parlance, and the term is often used in a manner to express frustration, clearly demonstrates that the term is not "scandalous" or "shocking to the public decency."

B. Substitutes for Vulgar Terms are not themselves Vulgar

Even if the Examining Attorney found additional evidence that the fanciful term "f**k" is a commonly understood substitute for the word "fuck," such evidence would be insufficient to find that the term "f**k" itself is immoral or scandalous. Conversely, such evidence would only serve to strengthen the position that society had then adopted the fanciful term "f**k" as a non-offensive and socially acceptable alternative to the otherwise offensive term "fuck."

The present case is factually similar to the analogous case, *In re Big Effin Garage, LLC*, Serial Nos. 77595225 and 77595240 (November 23, 2010) [not precedential]. See [Exhibit A (attached to initial response), TTAB decision *In re Big Effin Garage, LLC*]. In that case, the examining attorney rejected marks containing "effin" and "f/n" as being immoral or scandalous as they are a common substitute for the word "fucking." The TTAB reversed the refusal, holding that the words "effin" and "f/n" are not scandalous precisely because the word is a substitute for a scandalous term. In that case, the Board reasoned that:

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 "fn" ring hollow.

Id. at 7. The Examining Attorney contends that the cited case is distinguishable, because those terms at issue were nonliteral, slang forms of the word. However, the present case features circumstances even more favorable to Applicant, precisely because Applicant's mark is not a slang form of a supposedly vulgar word.

Applicant's mark is actually a fanciful term that stands on its own without any reference at all to a potentially vulgar word. Applicant's mark contains the fanciful term "f**k," which is not in and of itself scandalous or immoral. While the Examining Attorney has found a few instances where asterisks were used in a fashion similar to Applicant's mark as a potential substitute for a scandalous or immoral word, the symbols themselves are not scandalous or immoral. Furthermore, the presence of asterisks next to letters does not necessitate that the resulting term would be scandalous or immoral. Finally, the Examiner's evidence in the form of an article titled "Whence the !@# \$? How a dirty word gets that way" establishes that the FCC views the term "fuck" as a commonly used term to express frustration, as opposed to a sexual obscenity. The fact that the term "fuck" has become an integral part of common parlance, and the term is often used in a manner to express frustration, clearly demonstrates that the term is not "scandalous" or "shocking to the public decency."

The Federal Circuit has held 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). Here there is clearly doubt as to whether the term "f**k" would be considered scandalous or immoral, and such doubt should therefore be resolved in favor of Applicant.

The Applicant recognizes that prior determinations in other applications are not binding on the PTO. Nonetheless, given the strong public policy in favor of consistency of decisions, Applicant respectfully notes that a similar mark, U.S. Trademark Registration No. 4,142,745 for the mark "\$#! MY DAD SAYS" has been allowed by the USPTO. *See* [Exhibit B (attached to initial response), Trademark Registration No. 4,142,745 for the mark "\$#! MY DAD SAYS"]. Similar to the current case, the presence of symbols creates a term that could be interpreted as immoral or scandalous, or could be interpreted as standing for an infinite number of other commonly accepted words.

Assuming *arguendo* that the term "f**k" was a reference to the term "fuck," the mark "F**K PROJECT" would still not be offending or shocking the public decency, because the trademark would not make sense. Applicant is unsure what the perceived meaning of "fuck project" might be, because the phrase does not make sense. Expressions such as "fuck it" or "fuck you" that are directed as an offense toward someone or something would likely be considered offending or shocking the public decency. Even the phrase "fuck project," which is not Applicant's mark, sounds mildly pejorative as opposed to offensive or shocking to the public decency. It seems most likely that the phrase "fuck project," which is not Applicant's mark, would express some sense of frustration. As illuminated by the article titled "Whence the !@# \$? How a dirty word gets that way" that the Examiner submitted, the FCC views the term "fuck" as a commonly used term to express frustration, which clearly demonstrates that the term is not "scandalous" or "shocking to the public decency." It is unlikely that the mark "F**K PROJECT" would cause outrage, because outrage is a strong feeling that motivates the sufferer to take strong and swift action. As explained above, 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 to take strong and swift action in those locations. Applicant's mark is not illegal, blasphemous, racist, or discriminatory. The right to freedom of

speech and freedom of expression should allow for expressions such as "F**K PROJECT", even if it possible that a small subset of society could interpret the mark as being slightly rude.

II. CONCLUSION

The mark "f**k" is fanciful and should not be considered immoral and scandalous. For this reason, Applicant respectfully believes that the present mark should not be refused under Section 2(a). As such, Applicant respectfully requests that the Examiner reconsider the final rejection of this application, and that the present mark be passed to publication at an early date.

EVIDENCE

Evidence in the nature of Exhibit C, Merriam-Webster dictionary definition of the term "vulgar" has been attached.

Original PDF file:

[evi_10819393249-20150122113650602972_ . 1722-336_Second_OA_Response_Exhibit_C.pdf](#)

Converted PDF file(s) (3 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or amendment to allege use (AAU) unsigned, all statements in the application or AAU and this submission based on the signatory's own knowledge are true, and all statements in the application or AAU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AAU: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(a) or AAU under 15 U.S.C. Section 1051(c), the signatory additionally believes that: the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce and has been using the mark in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the signatory additionally believes that: the applicant is entitled to use the mark in commerce; the applicant

has a bona fide intention and has had a bona fide intention as of the application filing date to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member
Signatory's Phone Number: 713-224-8080

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member
Signatory's Phone Number: 713-224-8080

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member
Signatory's Phone Number: 713-224-8080

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member
Signatory's Phone Number: 713-224-8080

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member
Signatory's Phone Number: 713-224-8080

Request for Reconsideration Signature

Signature: /1722-336/ Date: 01/22/2015
Signatory's Name: John S. Egbert
Signatory's Position: Attorney of record, Texas bar member

Signatory's Phone Number: 713-224-8080

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal

territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 79141996

Internet Transmission Date: Thu Jan 22 11:40:27 EST 2015

TEAS Stamp: USPTO/RFR-108.193.93.249-201501221140274

34328-79141996-530beb470bb7fd7fe7e2abb9e

e473a2fad22cd64ccd6e72ca5833d19caba2dfdb

a-N/A-N/A-20150122113650602972

Exhibit "C"



m-w.com

?! Quiz
Test Your Vocabulary
Take Our 10-Question Quiz

UNITED

Earn 30,000 Bonus Miles

- Free Checked Bag
- Priority Boarding
- No Foreign Transaction Fees

EXPLORE NOW

Intro Offer - First Year Free

vulgar

New! Spanish Central

Subscri

vulgar

Save Popularity

9 ENTRIES FOUND:

- vulgar
- vulgar era
- vulgar establishment

Save this word to your Favorites.
If you're logged into Facebook, you're ready to go.



Sponsored Links

New Tech Stock - VMRI
VMRI Goes Airborne in Emerging Tech Sector. Invest Today!
vaimle.com

Advertise Here

vul-gar *adjective* \ˈval-gər\

: not having or showing good manners, good taste, or politeness

: relating to the common people or the speech of common people

Beat your friends at SCRABBLE® with our official Word Finder Tool »

Full Definition of VULGAR

Like

- a** : generally used, applied, or accepted

b : understood in or having the ordinary sense <they reject the *vulgar* conception of miracle — W. R. Inge>
- 1** : VERNACULAR <the *vulgar* name of a plant>
- a** : of or relating to the common people : PLEBEIAN

b : generally current : PUBLIC <the *vulgar* opinion of that time>

c : of the usual, typical, or ordinary kind
- a** : lacking in cultivation, perception, or taste : COARSE

b : morally crude, undeveloped, or unregenerate : GROSS

c : ostentatious or excessive in expenditure or display : PRETENTIOUS
- a** : offensive in language : EARTHY

b : lewdly or profanely indecent

— *vul-gar-ly* *adverb*

Examples of VULGAR

- He was a *vulgar* man.
- She had a coarse, *vulgar* laugh.
- I will not tolerate such *vulgar* language in my home.

Origin of VULGAR

Middle English, from Latin *vulgaris* of the mob, vulgar, from *volgus*, *vulgus* mob, common people
First Known Use: 14th century

Related to VULGAR

Synonyms

Tumi Alpha Bravo Knox Backpack, Hickory, ... \$295.00	Tumi Alpha Bravo Kingville Deluxe, ... \$445.00 - \$599.95
---	--

MORE QUIZZES



Name That Thing
Take our visual vocabulary quiz
Test Your Knowledge »



True or False?
A quick quiz about stuff worth knowing
Take It Now »



Spell It
The commonly misspelled words quiz
Hear It, Spell It »



Failed Attempts to Reform English Spelling
8 Spelling Suggestions That Didn't Slick



Should You "Flush Out" or "Flesh Out" Your Plan?
Top 10 Commonly Confused Words, Vol. 2

baseborn, common, humble, inferior, low, lowborn,
lower-class, low-life, lowly, lumpen, mean, plebeian,
prole, proletarian, unwashed, ignoble

Antonyms

aristocratic, blue-blooded, genteel, gentle, grand,
great, high, highborn, highbred, lofty, noble, patrician,
upper-class, upper-crust, wellborn

[+] more

See Synonym Discussion at common, coarse

Rhymes with VULGAR

bulgur

Learn More About VULGAR

Thesaurus: All synonyms and antonyms for "vulgar"

Spanish Central: Spanish translation of "vulgar"

SCRABBLE®: Playable words you can make from "vulgar"

Browse

Next Word in the Dictionary: vulgare

Previous Word in the Dictionary: vulcanology

All Words Near: vulgar

Ask The Editor Videos

« Seen & Heard »

What made you want to look up *vulgar*? Please tell us where you read or heard it (including the quote, if possible).