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

Proceeding	85627933
Applicant	BBIP, LLC
Applied for Mark	PAWG
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:)	BRIEF FOR APPELLANT
)	
BBIP, LLC)	Law Office No.: 110
)	571-272-9243
Serial No.: 85/627,933)	
)	Trademark Examining Attorney:
Filed: May 17, 2012)	Caroline E. Wood
)	
Classes: 41)	Date: October 12, 2015
)	
Trademark: PAWG)	
)	
_____)	

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I. Introduction

Appellant, BBIP, LLC (hereinafter “Appellant”), hereby appeals from the Examining Attorney’s refusal to register the mark PAWG on the grounds that, in the Examining Attorney’s opinion, the mark is immoral or scandalous. Appellant disagrees with the Examining Attorney’s opinion, and her factual and legal conclusions, and respectfully requests that this Board reverse the Examining Attorney’s decision.

II. Statement of Facts

On May 17, 2012, Appellant filed an application to register PAWG. Appellant’s associated services are “Entertainment services, namely, providing a web site featuring photographic, audio, video and prose presentations featuring adult-oriented subject matter” (Class 41).

On June 26, 2014, the Examining Attorney issued an Office Action refusing registration based on Section 2(a) of the Lanham Act because the applied-for mark allegedly consists of or includes immoral or scandalous matter. Appellant filed a response explaining why PAWG was not barred from registration, but on February 11, 2015, the Examining Attorney made her refusal final.

III. Argument

The Examining Attorney has refused registration of Appellant’s mark PAWG on a single ground – that it allegedly consists of or comprises immoral or scandalous matter under Section 2(a). The burden of proving that a mark is scandalous rests with the United States Trademark Office. *In re Mavety Media Group, Ltd.*, 33 F.3d 1367, 1371 (Fed. Cir.

1994). The undersigned respectfully disagrees that the Examining Attorney has met this burden.

a. The Appellant's Mark and Its Meaning

The Examining Attorney has entered evidence into the record to establish that the term "PAWG" is an acronym that stands for "Phat Ass White Girl." The Appellant does not dispute the validity of this acronym. The Examining Attorney contends that the phrase "Phat Ass White Girl" is immoral or scandalous within the meaning of such terms in Section 2(a) of the Lanham Act. The Appellant expressly disputes this legal conclusion.

b. Establishing 2(a) with Dictionary Definitions

In order to sustain a refusal to register based on Section 2(a) of the Lanham Act, the Examining Attorney must provide evidence showing that the applied-for 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," in the context of the marketplace as applied to goods and/or services described in the application. *Mavety Media Group Ltd.*, 33 F.3d at 1371 (internal punctuation omitted) (quoting *In re Riverbank Canning Co.*, 95 F.2d 327, 328 (C.C.P.A. 1938)); *In re Wilcher Corp.*, 40 USPQ2d 1929, 1930 (TTAB 1996); see also TMEP §1203.01. This conviction that the mark be condemned as disgraceful and offensive must be held by a substantial composite of the general public to justify refusing registration. See *In re Fox*, 702 F.3d 633, 635 (Fed. Cir. 2012) (quoting *Mavety Media Group Ltd.*, 33 F.3d at 1371)); *In re The Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340 (Fed. Cir. 2003); TMEP §1203.01.

According to the currently prevailing precedent, one way that the Examining Attorney may establish how a substantial composite of the general public feels about a particular mark is to provide multiple dictionary definitions for the term, including from at least one standard dictionary, that uniformly indicate the term's meaning is vulgar. See *The Boulevard Entm't, Inc.*, 334 F.3d at 1341 (holding 1-800-JACK-OFF and JACK-OFF scandalous where all dictionary definitions of "jack-off" indicated that the term was considered vulgar); *In re Michalko*, 110 USPQ2d 1949, 1953 (TTAB 2014) (holding ASSHOLE REPELLENT scandalous where multiple dictionary definitions of "asshole" indicated that the term was considered vulgar); TMEP §1203.01.

c. The Examining Attorney has not met her burden of proof.

The Examining Attorney has provided the following evidence to establish how the general public feels about the term "PAWG":

1. 7 user written definitions appearing on the website UrbanDictionary.com
2. 3 user submitted acronyms for PAWG appearing on the website AcronymFinder.com
3. 1 user written definition appearing on the website OnlineSlangDictionary.com
4. 1 page of Google results for the search string "pawg define"
5. 2 pages of Google results for the search string "PAWG"

There are several weaknesses in the Examining Attorney's proffered evidence that support a reversal of her refusal under Section 2(a). In particular, none of the above listed pieces of evidence is a standard dictionary definition. Further, none of items 1 through 3 above are reliable evidentiary sources. These websites are built entirely on user-submitted material with little or no fact checking or accountability for incorrect

information. Literally anyone with a connection to the Internet can create and edit definitions and acronyms that appear on these websites to say anything they want. These websites are unfiltered and unverified sources of user-generated definitions and acronyms that can be manipulated for any purpose whatsoever. Such “evidence” cannot be relied on for veracity. *See Safer Incorporated v. OMS Investments Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010) (stating that entries on a user-generated content site are only admissible to show what is written there, not for proving any substance thereof); *see also In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1475-76 (TTAB 1999) (internet sources of questionable origin should be given little weight).

Even if all of the Examining Attorney’s evidence was reliable (which it is not), none of the proffered evidence indicates that any member of the general public is shocked or offended by the term “PAWG.” In fact, the webpage submitted from OnlineSlangDictionary.com (evidence item 3 from the listing above) has a place where members of the public can vote on whether they find the particular slang term to be “vulgar,” and not a single person has used this feature to indicate that he or she feels that the term is vulgar.

Rather than successfully establishing that a substantial composite of the general public finds the term “PAWG” to be immoral or scandalous, the Examining Attorney presents a number of conclusory statements asserting facts that are not actually demonstrated by the proffered evidence. For example, the Examining attorney posits that because the term “PAWG” is used in connection with pornography, “[c]learly, the public would consider the mark scandalous in connection with the applicant’s services.”

(February 11, 2015 Office Action.) Despite her assertion that this conclusion is “clear,” the Examining Attorney has not presented any evidence that the public considers pornography scandalous, or that any term used in connection with pornography is considered scandalous by the public. Except perhaps for herself, the Examining Attorney has failed to present evidence that anyone at all is offended or shocked by the term “PAWG.” Such a refusal is improper. *See Mavety Media Group Ltd.*, 33 F.3d at 1371 (“[E]ven if the members of this panel personally find the mark BLACK TAIL disgustingly scandalous, the legal conclusion that a trademark comprises scandalous matter must derive from the perspective of the substantial composite.”).

d. The Appellant’s mark is neither immoral nor scandalous.

The Examining Attorney’s own evidence shows that the mark is neither immoral nor scandalous. Several of the Google search results show that some women self identify as a “PAWG.” See, e.g., Search Result “PAWG WIFE” (pawgwife69.tumblr.com) with excerpt text “PICS OF MYSELF, POSTED BY HUSBAND OR I, AND ANYTHING ELSE THAT WE FIND SEXY! Happy couple posting pics for our/your pleasure and ...”; and Search Result “pawg bubble” (pawgbubble.tumblr.com) with excerpt text “I’m Coo Coo and I’m a PAWG who loves other PAWG (Phat Ass White Girl)! I hope you enjoy!” These women are not offended or shocked by the term “PAWG” and have gone on the public record calling themselves “PAWG.”

In cases, such as this one, where the Examining Attorney has not provided convincing evidence that a mark is immoral or scandalous, the Board is to resolve any doubt 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. *Mavety Media Group Ltd.*, 33 F.3d at 1374 (quoting *In re In Over Our Heads Inc.*, 16 USPQ2d 1653, 1654-55 (TTAB 1990)).

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IV. Conclusion

For all of the reasons set forth above, and in the record below, Appellant respectfully requests that the Board reverse the Examining Attorney's refusal to register PAWG.

Respectfully submitted,

/s/ Jason A. Fischer

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being submitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on October 12, 2015.

/s/ Jason A. Fischer