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Subject: U.S. TRADEMARK APPLICATION NO. 85767380 - PORNO JESUS - N/A - EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 85767380 MARK: PORNO JESUS	
CORRESPONDENT ADDRESS: PAULO A DE ALMEIDA PATEL & ALMEIDA PC 16830 VENTURA BLVD SUITE 360 ENCINO, CA 91436	GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/trademarks/index.jsp TTAB INFORMATION: http://www.uspto.gov/trademarks/process/appeal/index.jsp
APPLICANT: Beck, Mathew	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A CORRESPONDENT E-MAIL ADDRESS: Paulo@PatelAlmeida.com	

EXAMINING ATTORNEY'S APPEAL BRIEF

I. STATEMENT OF THE ISSUE

Applicant Mathew Beck ("applicant") seeks to register the standard character mark PORNO JESUS for "DVDs featuring music videos, adult themed content, glamour photography, and adult entertainment;

video recordings featuring music videos, adult themed content, glamour photography, and adult entertainment.” The examining attorney has refused registration of applicant’s mark under Trademark Act Section 2(a), 15 U.S.C. §1052(a), because the mark consists of scandalous matter and may disparage or bring into contempt persons, institutions or beliefs. The issue on appeal is whether the mark consists of scandalous matter and/or is disparaging, and thus unregistrable under Trademark Act Section 2(a).

II. STATEMENT OF THE CASE

On October 30, 2012, applicant applied to register the standard character mark PORNO JESUS on the Principal Register for goods identified as “DVDs featuring music videos, adult themed content, glamour photography, and adult entertainment; video recordings featuring music videos, adult themed content, glamour photography, and adult entertainment.” On March 7, 2013, the examining attorney refused registration of applicant’s mark under Trademark Act Section 2(a), 15 U.S.C. §1052(a), because the mark consists of scandalous matter and may disparage or bring into contempt persons, institutions or beliefs, and also required applicant to disclaim the word PORNO. On September 14, 2013, applicant filed a response in which applicant disclaimed PORNO and set forth reasons as to why the refusal should be withdrawn. On October 12, 2013 the examining attorney made final the refusal to register. On April 7, 2014, applicant requested reconsideration and also filed an appeal with the Trademark Trial and Appeal Board (“TTAB”). On April 21, 2014, the examining attorney denied the request for reconsideration. On June 22, 2014, applicant filed its appeal brief with the TTAB, and on June 23, 2014, the appeal brief was forwarded to the examining attorney for his brief.

III. ARGUMENT

A. The Mark is Scandalous

A mark is scandalous when the evidence demonstrates that a substantial composite of the general public (although not necessarily a majority) would consider the mark to be scandalous in the context of contemporary attitudes and the relevant marketplace. *See In re Fox*, 702 F.3d at 635, 105 USPQ2d at 1248 (Fed. Cir. 2012) (quoting *In re Mavety Media Grp. Ltd.*, 33 F.3d at 1371, 31 USPQ2d at 1925-26 (Fed. Cir. 1994)); *In re The Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003); Trademark Act Section 2(a), 15 U.S.C. §1052(a).

The words “immoral” and “scandalous” may have somewhat different connotations; however, immoral matter has been included in the same category as scandalous matter. *See In re McGinley*, 660 F.2d 481, 484 n.6, 211 USPQ 668, 673 n.6 (C.C.P.A. 1981) (Because of the court’s holding that appellant’s mark was scandalous, “it [was] unnecessary to consider whether appellant’s mark [was] ‘immoral.’ [The court] note[d] the dearth of reported trademark decisions in which the term ‘immoral’ [had] been directly applied.”).

For a mark to be “scandalous,” the evidence must show that the mark would be considered shocking to the sense of decency or propriety, giving offense to the conscience or moral feelings, or calling out for condemnation. *In re Fox*, 702 F.3d 633, 635, 105 USPQ2d 1247, 1248 (quoting *In re Mavety Media Grp. Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925).

In this case, applicant seeks registration of PORNO JESUS for “DVDs featuring music videos, adult themed content, glamour photography, and adult entertainment; video recordings featuring music

videos, adult themed content, glamour photography, and adult entertainment.” The definition of PORNO is “pornographic,” the meaning of which is: “Showing or talking about sexual activities in a very obvious way that is intended to make people sexually excited.” The definition of JESUS is: “The Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation.” Please see the evidence from the *Macmillan* and *Merriam-Webster* dictionaries attached to the March 7, 2013 Office action.

Christianity is a “major religion, stemming from the life, teachings, and death of Jesus of Nazareth (the Christ, or the Anointed One of God) in the 1st century A.D. It has become the largest of the world’s religions. Geographically the most widely diffused of all faiths, it has a constituency of more than 2 billion believers.” Please see the evidence from the *Encyclopedia Britannica* attached to the March 7, 2013 Office action.

The four largest religious groups in America are all Christian (the Catholic Church, the Southern Baptist Convention, the United Methodist Church and the Church of Jesus Christ of Latter-day Saints) and comprise 108 million people. Please see the evidence attached to the October 12, 2013 Office action. This does not include other Christian groups such as the Episcopalians, Presbyterians, Lutherans, Jehovah’s Witnesses, Christian Scientists or the many various Pentecostal churches. In all, “only about one-sixth of [American] religious adherents are not Christian.” Please see the evidence from the *Encyclopedia Britannica* attached to the March 7, 2013 Office action. Christians, therefore, constitute a substantial composite of the general public.

In addition, Jesus is considered a figure of respect by non-Christians. Please see the evidence from the *Wikipedia* encyclopedia made of record in applicant's April 7, 2014 response which states that "in Islam, Jesus is known as *Isa* and is one of God's highest-ranked and most beloved prophets, specifically sent to guide the children of Israel." In addition, "the Bahá'í Faith consider Jesus to be a manifestation of God."

This respect for Jesus extends beyond Christians and Muslims to the general public as a whole. The *Macmillan* dictionary defines the use of the term "Jesus Christ" as an interjection as follows: "Used for expressing surprise or anger. This use of the name Jesus Christ is offensive to many Christians." Similarly, the online *Collins English Dictionary* defines the use of the word "Jesus" to express intense surprise, dismay, etc. as "taboo slang." Please see the definitions attached to the March 7, 2013 Office action. This dictionary evidence demonstrates the high level of sensitivity that exists in American society as a whole regarding the use of the name of Jesus.

Although there are many different Christian sects, all of them are strongly opposed to pornography on religious grounds. The four largest religious groups in the United States today, that is, the Catholic Church, the Southern Baptist Convention, the United Methodist Church and the Church of Jesus Christ of Latter-day Saints, to which a total of 108 million Americans belong, unanimously hold that pornography is directly contrary to the teachings of Jesus. Please see the evidence attached to the October 12, 2013 Office action.

Christians believe that this prohibition against pornography comes from the teachings of Jesus himself, most notably in the New Testament of the Bible, Matthew 5:28, which quotes Jesus as saying, "But I say

to you that every one who looks at a woman lustfully has already committed adultery with her in his heart.” Please see the evidence attached to the March 7, 2013 Office action.

The evidence, therefore, demonstrates that a substantial composite of the general public is Christian, that Christian churches are unanimous in their condemnation of pornography, that this condemnation stems from a Christian understanding of the teachings of Jesus himself, and that respect for the name of Jesus extends beyond Christianity to the general American population as a whole. The mark PORNO JESUS would, therefore, be considered shocking to the sense of decency or propriety of a substantial composite of the general public because it links Jesus, believed by Christians to be the founder of Christianity and the Son of God, with an industry that is well known to Christians and non-Christians alike to be directly contrary to the original teachings of Jesus and the contemporary teachings of Christianity.

In its appeal brief, applicant states that “the Examining Attorney’s argument that PORNO JESUS is ‘scandalous’ largely rests on quotations from religious scripture,” and in a footnote states that there is “something unseemly about the government’s excessive quotation of Bible scripture against the Applicant, who does not agree with the government’s literal interpretation of the Bible.” Applicant’s brief at 4 and 5. Applicant adds that “the statements allegedly made by Jesus Christ over two-thousand years ago are also inadmissible hearsay of the most unreliable kind, and may not be considered for the truth of the matter asserted, namely, that all persons who look at a woman lustfully have somehow committed adultery. F.R.E. 801.” Applicant’s brief, at 5.

As an initial matter, there is no provision in the Trademark Rules of Practice concerning the applicability of the Federal Rules of Evidence to ex parte appeals before the TTAB. TBMP §101.02. In an ex parte proceeding the TTAB tolerates some relaxation of the technical requirements for evidence and focuses instead on the spirit and essence of the rules of evidence. The reason for this more relaxed approach in ex parte cases is that in an ex parte proceeding there is no cross-examination of witnesses or any compelling need for the strict safeguards required in an inter partes proceeding. TBMP §1208. *See, e.g., In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859, 1860 (Fed. Cir. 1987).

Even if the Board were to strictly enforce the Federal Rules of Evidence, however, the hearsay rule would not be applicable in this case because, as the examining attorney made clear in his October 12, 2013 Office action, the examining attorney is not quoting scripture in order to prove the truth of the matter asserted. The examining attorney is quoting scripture to demonstrate that contemporary Christians believe that the prohibition against pornography stems directly from the teachings of Jesus himself. The fact that Jesus himself is believed by a substantial composite of the general public to have spoken out against “lust” and, therefore, pornography, would make the mark PORNO JESUS—which links the name of Jesus to the pornography industry—shocking to the sense of decency or propriety.

Applicant argues that the examining attorney “focuses on one quotation taken out of context” and, using a “tortured definition of ‘adultery’ then “equivocates ‘adultery’ with pornography” in order to conclude that “contemporary Christians condemn pornography because it involves ‘look[ing] at a woman lustfully.” Applicant’s brief, at 4.

The examining attorney made of record contemporary teachings of the four largest religious groups in the United States, that is, religious groups with a total membership of 108 million Americans, all of which conclude that pornography is contrary to the teachings of Jesus. Specifically, the examining attorney attached to the October 12, 2013 Office action evidence that demonstrates the following:

- The Catholic Church has 78.2 million self-identified members, making it the largest single religious group in the United States, comprising 25 percent of the total population. The *Catechism of the Catholic Church*, in Section 2354, strongly condemns the viewing of pornography as a “grave offense.”
- The Southern Baptist Convention, with about 16 million members, is the second-largest religious group in the United States. The examining attorney attached evidence showing the strong condemnation of pornography by the Southern Baptist Convention, including a major anti-pornography initiative launched in 2013.
- The United Methodist Church, with 7.8 million members, is the third-largest religious group in the United States. *The Book of Resolutions of The United Methodist Church 2008*, Section 2082, states that “Research shows [pornography] is not an ‘innocent activity.’ It is harmful and is generally addictive. Persons who are addicted to pornography are physiologically altered, as is their perspective, relationships with parishioners and family, and their perceptions of girls and women.” It goes on to say that “The United Methodist Church declares that the use of pornography in church programs, on church premises or with church property by persons in ministerial roles (lay and clergy) is a form of sexual misconduct, a chargeable offense for laity and clergy in The United Methodist Church.”
- The Church of Jesus Christ of Latter-day Saints, with about six million members, is the fourth-largest religious group in the United States. The Church of Jesus Christ of Latter-day Saints teaches that “Pornography is any material depicting or describing the human body or sexual

conduct in a way that arouses sexual feelings . . . Using pornographic material in any way is a violation of a commandment of God: ‘Thou shalt not . . . commit adultery . . . nor do anything like unto it’ (D&C 59:6). It can lead to other serious sins. Members of the Church should avoid pornography in any form and should oppose its production, distribution, and use.”

The examining attorney, further, made of record evidence demonstrating that these contemporary teachings of the top four religious groups in the United States are based on a shared belief that Jesus taught against lust, and that this prohibition against lust includes a prohibition against pornography. Again, this evidence is not presented for the truth of the matter asserted, but to demonstrate that contemporary American Christian attitudes regarding pornography come from a shared understanding regarding what Jesus himself taught. It is these Christian churches, and not the examining attorney, who have traced the prohibition against pornography back to Jesus’ statement in Matthew 5:28 that “every one who looks at a woman lustfully has already committed adultery with her in his heart.” The fact that applicant disagrees with this contemporary Christian interpretation of the Bible verse is irrelevant to the issue of whether the mark is scandalous under Trademark Act Section 2(a).

Applicant argues that the evidence made of record by the examining attorney, summarized above, amounts to “obscure texts” that discuss “alleged prohibitions on the viewing of pornography,” and that these teachings do not “represent the views of contemporary Christians.” Applicant’s brief, at 6.

This argument misrepresents the nature of the evidence made of record by the examining attorney. The evidence regarding the teachings of the four largest religious groups in the United States reflects

contemporary, official views regarding pornography, not ancient or obscure teachings. The Southern Baptist Convention's initiative against pornography was launched in 2013. The *Book of Resolutions of The United Methodist Church* is from 2008 and remains the current teaching. The *Catechism of the Catholic Church* reflects current teaching, as does the teaching cited from the Church of Jesus Christ of Latter-day Saints. None of the evidence made of record by the examining attorney is "obscure" and none of the prohibitions against pornography contained therein can be characterized as "alleged"; the prohibitions are all very clearly stated.

Applicant argues that contemporary Christians "have a much more liberalized view of sexuality" and provides as evidence of this claim a *USA Today* article regarding homosexuality, a blog entry regarding Christians who view pornography and an online article regarding adultery. Applicant's brief, at 6.

Applicant argues that this evidence demonstrates that "the sentiments of Christians as expressed in the article[s] shows that Christians do not regard less-than strict compliance with the teachings of Jesus Christ as 'shocking' to the conscience. Rather, once-'grave offenses' such as homosexuality, adultery, and watching pornography are commonplace even among Christians and would not 'shock' the conscience." Applicant's brief, at 6-7.

This argument confuses the issue that is before the TTAB. The issue is not whether pornography in general is scandalous, or whether a trademark that identifies pornographic goods or services is scandalous or whether a trademark that contains the word PORNO is scandalous. The issue is whether a trademark that links the name of Jesus to pornography is scandalous. None of applicant's arguments regarding an alleged "liberalized view of sexuality" among Christians address the issue of linking the name of Jesus to the pornography industry.

Applicant next argues that “there is even an entire genre of ‘Christian porn’ produced by and directed toward Christians” and concludes that “these Christians, who are accustomed to the presence of pornography in modern society, are not likely to be ‘shocked’ by pornography or Applicant’s Mark.” Applicant’s brief, at pp. 7-8.

One website hardly supports a finding that “there is an entire genre of ‘Christian porn’.” But, again, the issue is not whether Christians or Americans in general are “likely to be ‘shocked’ by pornography.” The issue is whether the use of the name of Jesus in connection with pornography would be scandalous to a substantial composite of the general public. Applicant’s argument, again, fails to address this issue.

Applicant next argues that “the USPTO may not refuse registration under Section 2(a) because the goods are considered offensive . . . The Examining Attorney may only refuse registration if the **mark** is offensive to a substantial composite of the general public in the context of the current attitudes of today” (emphasis in the original; citations omitted). Applicant’s brief, at 8.

In making this argument applicant is confusing two separate issues. While it is true that a refusal under Section 2(a) cannot be based on a finding that the goods themselves would be considered offensive, it is also true that a determination of whether a mark is scandalous or disparaging “should not be considered in the abstract but in connection with the goods.” *In re Lebanese Arak Corp.*, 94 USPQ2d 1215 (TTAB 2010); see also *In re Heeb Media, LLC*, 89 USPQ2d 1071 (TTAB 2008).

In this case, the mark PORNO JESUS would be considered both scandalous in general and disparaging to Christians in particular regardless of the goods or services that the mark identifies, because the mark itself links Jesus to pornography. The fact that the goods comprise DVDs and video recordings in the field of adult entertainment only reinforces this scandalous and disparaging meaning of the mark PORNO JESUS.

Applicant argues that “there is no evidentiary support for the position that a substantial portion of the public would be ‘shocked’ by the ‘linking’ of Jesus and pornography as opposed to merely disapproving of pornography in general.” Applicant adds that “neither of the terms PORNO nor JESUS are ‘vulgar’ or ‘shocking to the sense of propriety, offensive to the conscience or moral feelings or calling out for condemnation” and that “the mark does not somehow become ‘scandalous’ through the juxtaposition of two non-scandalous terms” (emphasis in the original; citations omitted). Applicant’s brief, at 9.

This interpretation of Section 2(a) is unsupported by any statutory or case law. In fact a mark can be rendered scandalous under Section 2(a) through the juxtaposition of two non-scandalous terms. This is clear from two of the marks cited by applicant itself, JACK OFF, which combines two inoffensive words to form a scandalous word, and SEX ROD, which also combines two inoffensive words to form a scandalous word. See *In re Boulevard Entm’t, Inc.*, 334 F.3d 1336, 67 USPQ2d 1475 (Fed. Cir. 2003); *Boston Red Sox Baseball Club Ltd. P’ship v. Sherman*, 88 USPQ2d 1581 (TTAB 2008).

Similarly, applicant argues that “nor has the Examining Attorney cited any authority for the position that the composite PORNO JESUS somehow takes on a scandalous meaning where neither the terms PORNO nor JESUS are vulgar alone.” Applicant’s brief, at 10.

Again, applicant’s argument appears to be premised on two incorrect interpretations of Section 2(a): First, that Section 2(a) refusals are made in the abstract rather than in the context of the goods or services and, second, that the mark itself has to be vulgar in the abstract. A mark can be found to be scandalous under Section 2(a) solely based on the context of its use with particular goods or services:

Of course, the word ‘Madonna’ is not *per se* scandalous. We do not understand that appellant contends that a mark must be scandalous *per se* to come within the prohibition of the statute . . . It is therefore obvious that, in determining whether a mark ‘consists of or comprises * * * scandalous matter,’ consideration ordinarily must be given to the goods upon which the mark is used.

In re Riverbank Canning Company, 95 F.2d 327, 25 C.C.P.A. 1028, 1938 Dec. Comm'r Pat. 442, 37 USPQ 268 (CCPA 1938) (MADONNA for wine held “scandalous”).

The record clearly demonstrates that the mark PORNO JESUS would be shocking to the sense of decency or propriety of a substantial composite of the general public because of the respect in which the name of Jesus is held and because a substantial composite of the general public understands the teachings of Jesus to be directly contrary to pornography. *See In re Sociedade Agricola E. Comerical Dos Vinhos Messias, S.A.R.L.*, 159 USPQ 275 (TTAB 1968) (MESSIAS held unregistrable for wine and brandy).

Finally, applicant argues that “the USPTO allows registration of marks containing ‘JESUS’ combined with additional terms which may be offensive to Christians,” citing the marks HOOKERS FOR JESUS and REDNECK JESUS. Applicant’s brief, at 11.

The HOOKERS FOR JESUS mark identifies “charitable services, namely, organizing women’s groups to undertake projects which benefit the homeless, abused, at risk women and women in transition and in pain, while encouraging empowerment among women of all ages and ethnicities.” The services are not prostitution services and the mark, used as it is in connection with charitable services, links the name of Jesus to the assistance of “homeless, abused, at risk women and women in transition and in pain.” If anything, the mark calls to mind Jesus’ association with prostitutes, adulterers, tax collectors and others who were thought to be sinners in the context of helping them to reform their lives. This commercial impression is the opposite of that created by applicant’s mark, which associates Jesus with pornography.

The mark REDNECK JESUS, for television and websites featuring religious information, appears to be identifying the service of informing self-described “rednecks” about Jesus. There is nothing in this mark or the services it identifies that is contrary to the teachings of Christianity.

With respect to the issue of whether PORNO JESUS for “DVDs featuring music videos, adult themed content, glamour photography, and adult entertainment; video recordings featuring music videos, adult themed content, glamour photography, and adult entertainment” would be considered scandalous under Trademark Act Section 2(a), the examining attorney has demonstrated that a substantial composite of the general public is Christian, that the general public as a whole believes that the name of

Jesus can be used in way that is offensive or taboo, that a substantial composite of the general public understands that pornography is directly contrary to the teachings of Jesus and the contemporary teachings of Christianity and, therefore, that the linking of the name of Jesus to pornography in the mark PORNO JESUS in connection with adult-themed DVDs and video recordings would be shocking to the sense of decency or propriety to a substantial composite of the general public.

Applicant's sole argument is that pornography is widespread in America today, even among Christians, and so cannot be found to be shocking to the sense of decency or propriety to a substantial composite of the general public. However, even if that point were to be conceded, the pervasiveness of pornography is not the issue. The question is not whether a substantial composite of the general public are scandalized by pornography or by trademarks that use the term PORNO. The question is whether a substantial composite of the general public would be scandalized by the use of the name of JESUS with the word PORNO. The evidence overwhelmingly demonstrates that they would be.

B. The Mark is Disparaging

The following two-part test is applied to determine whether a proposed mark may be disparaging:

- (1) The likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements in the mark, the nature of the goods or services, and the manner in which the mark is used in the marketplace in connection with the goods or services; and

- (2) If that meaning is found to refer to identifiable persons, institutions, beliefs, or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.

In re Tam, 108 USPQ2d 1305, 1309 (TTAB 2013); *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); TMEP §1203.03(b)(i); see *Bd. of Trs. of the Univ. of Ala. v. Pitts, Jr.*, 107 USPQ2d 2001, 2028 n.98 (TTAB 2013); Trademark Act Section 2(a), 15 U.S.C. §1052(a).

With respect to the first prong of the test, the definition of PORNO is “pornographic,” the meaning of which is: “Showing or talking about sexual activities in a very obvious way that is intended to make people sexually excited.” The definition of JESUS is: “The Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation.” Please see the evidence from the online *Macmillan* and *Merriam-Webster* dictionaries attached to the March 7, 2013 Office action.

The record shows that the sole meaning of the mark PORNO JESUS is the linking of the name of the religious teacher Jesus with pornography. Applicant has not argued that PORNO has some meaning other than “pornographic.” Applicant has also not argued that JESUS refers to anything or anyone other than “the Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation.” In fact, applicant acknowledges that “the word ‘Jesus’ in Applicant’s Mark refers to Jesus Christ.” Applicant’s brief, at 14. Finally, applicant has not argued that the combined term PORNO JESUS has some meaning or connotation other than the association of the

religious teacher Jesus with pornography. There is no dispute, therefore, that the likely meaning of PORNO JESUS under the first prong of the test is the association of the religious teacher Jesus with pornography.

Regarding the second prong of the test, as stated above, applicant has acknowledged that the term JESUS in applicant's mark refers to the religious leader Jesus. The evidence made of record by both the examining attorney and applicant demonstrates that Jesus is the central figure to Christianity:

- The *Merriam-Webster* dictionary defines "Jesus" as "the Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation." Please see the evidence attached to the March 7, 2013 Office action.
- The *Collins English Dictionary* defines "Jesus" as "founder of Christianity, born in Bethlehem and brought up in Nazareth as a Jew. He is believed by Christians to be the Son of God and to have been miraculously conceived by the Virgin Mary, wife of Joseph." Please see evidence attached to applicant's April 7, 2014 request for reconsideration.
- The *American Heritage New Dictionary of Cultural Literacy* defines "Jesus" as "a prophet of the first century of our era; to Christians, Jesus Christ, the son of God, a person who was both God and man, the Messiah sent by God to save the human race from the sin it inherited through the Fall of Man." Please see evidence attached to applicant's April 7, 2014 request for reconsideration.
- The *Encyclopedia Britannica* identifies "Christianity" as "major religion, stemming from the life, teachings and death of Jesus of Nazareth (the Christ, or the Anointed One of God) in the 1st century AD." Please see evidence attached to the March 7, 2013 Office action.

Pornography is directly contrary to the teachings of Christianity. The *Catechism of the Catholic Church*, Section 2354, strongly condemns the viewing of pornography as a “grave offense.” The Southern Baptist Convention strongly condemns pornography and launched a major anti-pornography initiative launched in 2013. The *Book of Resolutions of The United Methodist Church 2008*, Section 2082, states that “Research shows [pornography] is not an ‘innocent activity.’ It is harmful and is generally addictive. Persons who are addicted to pornography are physiologically altered, as is their perspective, relationships with parishioners and family, and their perceptions of girls and women.” It goes on to say that “The United Methodist Church declares that the use of pornography in church programs, on church premises or with church property by persons in ministerial roles (lay and clergy) is a form of sexual misconduct, a chargeable offense for laity and clergy in The United Methodist Church.” The Church of Jesus Christ of Latter-day Saints teaches that “Using pornographic material in any way is a violation of a commandment of God: ‘Thou shalt not . . . commit adultery . . . nor do anything like unto it’.” Please see the evidence attached to the October 12, 2013 Office action. These teachings reflect the beliefs of a substantial composite of Christians, being the teachings of the top four religious groups in America with a combined membership of 108 million Americans. Moreover, there is no evidence in the record to suggest that any other Christian denomination—Episcopalian, Presbyterian, Lutheran, etc.—has teachings on pornography that are any different than the teachings of the Catholic Church, the Southern Baptist Convention, the United Methodist Church and the Church of Jesus Christ of Latter-day Saints summarized above.

This Christian prohibition against pornography is believed by Christians to originate in the teachings of Jesus himself who, according to the New Testament’s Book of Matthew, 5:28, said, “But I say to you that every one who looks at a woman lustfully has already committed adultery with her in his heart.” The

examining attorney attached evidence to the March 7, 2013 Office action showing that Christians view Jesus' teachings against "lust" to include pornography.

The evidence, therefore, clearly demonstrates that the mark PORNO JESUS is likely to be understood as linking pornography with the person of Jesus, a point conceded by applicant. The evidence further demonstrates that this meaning of the mark would be disparaging to a substantial composite of Christians because pornography is directly contrary not only to contemporary Christian teachings but also to the original teachings of Jesus. That being the case, the mark PORNO JESUS is disparaging to Christians under Trademark Act Section 2(a).

Applicant argues that "there is no 'religious order' called JESUS . . . Moreover, the followers of Christian teachings are not called 'JESUS' . . . The refusal must be reversed for at least the reason that the word 'Jesus' in Applicant's Mark refers to Jesus Christ, not Christians as a group or their beliefs or tenets."

Applicant's brief, at 14.

In making this argument, applicant misstates the requirements of the two-pronged test for disparagement under Section 2(a). It is not necessary that the mark include the term "Christianity" in order to be found disparaging to Christians under Section 2(a). It is enough if the term is so uniquely and unmistakably associated with Christians as to constitute their identity such that when applicant's mark is used in connection with the goods, a connection would be assumed. *Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635, 1639-40 (TTAB 1988). For instance, the mark KHORAN was found to be disparaging to American Muslims based on a finding that "KHORAN is the phonetic equivalent of 'Koran';

that the Koran is the sacred text of Islam; that the Koran forbids consumption of alcoholic beverages, including wine; and therefore that the use of KHORAN for wine is disparaging to the beliefs of Muslims.”

In re Lebanese Arak Corp., 94 USPQ2d 1215 (TTAB 2010).

Applicant argues that *In re Lebanese Arak* does not apply because “while the Koran is well known to strictly prohibit alcohol, the prohibition of pornography is not uniquely Christian, and there is nothing in the record to suggest that Applicant’s Mark is particularly disparaging to Christians as opposed to other groups which may also find pornography distasteful or offensive.” Applicant’s brief, at 15.

Applicant’s argument in this respect is confused. The second prong of the Section 2(a) test for disparagement is whether the *mark* is found to refer to identifiable persons, institutions, beliefs, or national symbols, not whether the *goods and services* are found to refer to identifiable persons, institutions, beliefs, or national symbols. Whether or not other groups besides Islam prohibit alcohol, or other groups besides Christianity prohibit pornography, is irrelevant to the question of whether a mark is disparaging under Section 2(a).

Applicant argues that “‘Jesus’ has been appropriated by a variety of different religious groups, including Islam, Judaism, Bahá’í, Scientology, and Raëlism . . . The mere fact that Jesus plays an important role in other religions shows that ‘Jesus’ is not ‘uniquely’ and ‘unmistakably’ associated with Christians as to ‘constitute their identity’.” Applicant’s brief, at 14.

The evidence made of record by applicant to support this assertion in fact contradicts it. The *Wikipedia* article referenced by applicant as Exhibit H states that “unlike Christian writings, the Qur’an does not describe Jesus as the son of God” and that “most Muslims believe that he was neither killed nor crucified.” The same article states that “Judaism rejects the idea of Jesus being God, or a person of a Trinity, or a mediator to God. Judaism also holds that Jesus is not the Messiah.” In none of the religions surveyed by the article is Jesus understood to be the Son of God who rose from the dead to save mankind from sin. And yet these Christian aspects of Jesus which are rejected by non-Christians are integral to the dictionary definition of “Jesus.” The *Merriam-Webster* dictionary defines “Jesus” as “the Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation.” The *Collins English Dictionary* defines “Jesus” as “founder of Christianity, born in Bethlehem and brought up in Nazareth as a Jew. He is believed by Christians to be the Son of God and to have been miraculously conceived by the Virgin Mary, wife of Joseph.” The *American Heritage New Dictionary of Cultural Literacy* defines “Jesus” as “a prophet of the first century of our era; to Christians, Jesus Christ, the son of God, a person who was both God and man, the Messiah sent by God to save the human race from the sin it inherited through the Fall of Man.” None of these definitions are possible outside of Christianity. It is solely Christians who view Jesus as “the Jewish religious teacher whose life, death, and resurrection as reported by the Evangelists are the basis of the Christian message of salvation,” “the Son of God,” and “a person who was both God and man, the Messiah sent by God to save the human race from the sin it inherited through the Fall of Man.” JESUS, therefore, is uniquely and unmistakably associated with Christians.

Applicant argues that “even assuming, arguendo, that ‘JESUS’ is the name of a ‘religious order’ or a ‘religious belief or tenet’, the Examining Attorney has not shown that a substantial composite of

contemporary Christians would be disparaged by Applicant's Mark. As discussed above, contemporary Christians have a much more liberalized approach to sexuality and even participate in once-'grave offenses' such as homosexuality, adultery, and viewing pornography." Applicant's brief, at 15.

Again, applicant here is confusing two separate issues. The question is not whether contemporary Christians feel disparaged by the existence of pornography or by the word PORNO. The question is whether the linking of the name of Jesus to pornography through the mark PORNO JESUS would be disparaging to a substantial composite of Christians. The evidence is overwhelming that the association between Jesus and pornography created by applicant's mark, especially in association with applicant's adult-themed DVDs and videos, would be disparaging to a substantial composite of Christians.

IV. CONCLUSION

Based on the evidence that a substantial composite of the general public would consider the mark to be scandalous and a substantial composite of Christians would find the mark to be disparaging, the refusal to register PORNO JESUS pursuant to Trademark Act Section 2(a), 15 U.S.C. §1052(a), should be affirmed.

Respectfully submitted,

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