

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
November 4, 2010
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Greenfield Records, LLC

Serial No. 77514177

Ronald Tartaglia of Greenfield Records, LLC for Greenfield Records, LLC.

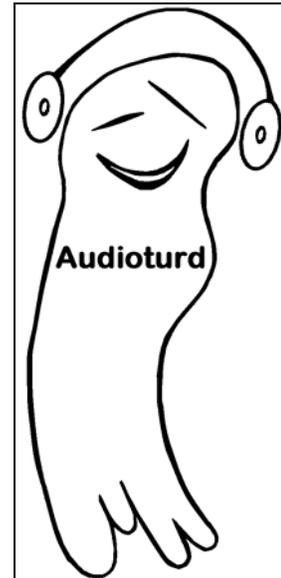
Jessica A. Powers, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

Before Walters, Bucher and Ritchie, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Greenfield Records, LLC seeks registration on the Principal Register of the hand-drawn trademark shown at right, to be used in connection with the following goods:

"digital materials, namely, ringtones, downloadable audio and video files, CDs, DVDs featuring a musical performer; digital media, namely, downloadable audio and video files, CDs, DVDs featuring a musical performer; musical instrument adaptors; musical sound recordings; musical video recordings; pre-recorded CDs featuring a musical performer; pre-recorded CDs, video tapes, laser disks and DVDs featuring a musical performer; Sound recordings



featuring a musical performer; video recordings featuring a musical performer" in International Class 9.¹

The Trademark Examining Attorney refused registration on the ground that the mark consists of or comprises immoral or scandalous matter under Section 2(a) of the Trademark Act. 15 U.S.C. § 1052(a).

After the Trademark Examining Attorney made the refusal final, applicant appealed to this Board.

We affirm the refusal to register.

The Trademark Examining Attorney argues that the applied-for mark that includes the word "turd" in the proposed mark is scandalous, whether one looks at the primary or the secondary meaning of the word, and that the graphic drawing contained within the composite mark reinforces the offensive and vulgar connotation of excrement.

By contrast, applicant argues that the literal portion of the mark is "Audioturd," not the word "turd." Also,

¹ Application Serial No. 77514177 was filed on July 3, 2008, based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. In its original application papers, applicant described the mark as follows: "The mark consists of the literal element "Audioturd" and a design which is an object (turd) representing a person." The data base currently shows that applicant has placed the following statements in the record: The mark consists of the literal element "Audioturd" and a design. Color is not claimed as a feature of the mark. The English translation of the word "turd" in the mark is "a contemptible person."

applicant contends that given contemporary attitudes as reflected in popular cultural references, the word "turd" is used regularly by the public at large and can no longer be considered scandalous. Finally, applicant argues that inasmuch as the word "turd" is usually used as a slang reference to a "contemptible person," applicant's applied-for mark, "Audioturd," will immediately be seen as connoting a contemptible sounding piece of music.

The Trademark Examining Attorney submitted for the record the following entries from online dictionaries:

turd tûrd

NOUN: Vulgar 1. a piece of excrement. 2. *Slang* A contemptible person.

ETYMOLOGY: Middle English, from Old English tord. See der-in Appendix I.²

turd

noun vulgar slang 1. a lump of excrement. 2. an obnoxious or contemptible person.³

² *The American Heritage Dictionary of the English Language*, Fourth Ed., 2000, attached to the Office action of October 16, 2008.

³ *Compact Oxford English Dictionary*, 2004, attached to the Office action of June 16, 2009.

turd

turd [[turd](#)] (*plural* turds)

noun

Definition:

1. a highly offensive term for a piece of excrement or dung (*taboo*)
2. a highly offensive term for somebody who is seen as contemptible (*taboo insult*)

[Old English *tord*< Indo-European] ⁴

turd

noun \tərd\
Middle English *tord, turd*, from Old English *tord*; akin to Middle Dutch *tort* dung and probably to Old English *teran* to tear — more at [tear](#)

Date: before 12th century

1. *sometimes vulgar* : a piece of fecal matter

2. *usually vulgar* : a contemptible person ⁵

turd noun [C] OFFENSIVE

1. a piece of solid excrement; *dog turds on the pavement*
2. a rude word for someone who you think is unpleasant *I'm not doing business with that little turd.* ⁶

The Trademark Examining Attorney argues that evidence that a term is "vulgar" is sufficient to establish that it is scandalous or immoral. *In re Boulevard Entm't, Inc.*, 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003) [applied-for marks 1-800-JACK-OFF and JACK-OFF for

⁴ *Encarta World English Dictionary*, North American Ed., 2004, attached to the Office action of June 16, 2009.

⁵ *Merriam-Webster's Online Dictionary*, Eleventh Ed., 2008, attached to the Office action of June 16, 2009.

⁶ *Cambridge International Dictionary of English*, 2002, attached to the Office action of June 16, 2009.

"entertainment in the nature of adult-oriented conversations by telephone" found to be scandalous matter]. She argues that the dictionary evidence cited above may be sufficient to show that the term "turd" is vulgar. See *In re Tinseltown, Inc.*, 212 USPQ 863 (TTAB 1981) [the wording BULLSHIT is scandalous where multiple dictionary definitions demonstrate that the primary definition is vulgar]. Finally, she suggests that "scandalous" as used in the statute encompasses matter that is "lacking in taste, indelicate, morally crude." *In re Runsdorf*, 171 USPQ 443, 444 (TTAB 1971) [BUBBY TRAP as applied to brassieres would be offensive to a segment of the public's sense of propriety].

The Trademark Examining Attorney argues that the primary definition of the word "turd" in each of multiple dictionaries is "excrement," and that in each instance, this entry is accompanied by the term "vulgar," "vulgar slang," "a highly offensive term," "taboo" or "sometimes vulgar." From this evidence, the Trademark Examining Attorney argues that the term "Audioturd" is not acceptable to members of the general public.

In applicant's attempt to counter this conclusion, throughout the prosecution of this application, applicant's counsel repeatedly enumerated within counsel's argument specific examples of the ways in which the word "turd" is

allegedly used every day in contemporary society, whether in the scatological sense, or when describing something or someone contemptible. According to applicant, while these uses may possibly insult and offend the sense of propriety of some, whatever offense is taken cannot be described as immoral or scandalous.

With the dictionary definitions reproduced above, the Trademark Examining Attorney has made a *prima facie* case of scandalousness. Because the applicant has failed to rebut this showing with sufficient evidence of record, we affirm the refusal to register.

Decision: The refusal to register under Section 2(a) of the Lanham Act is hereby affirmed.