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

Proceeding	77514177
Applicant	Greenfield Records, LLC
Applied for Mark	AUDIOTURD
Correspondence Address	TARTAGLIA RONALD 28 HOLLY AVE RUNNEMEDE, NJ 08078-1507 UNITED STATES rtsound@aol.com
Submission	Appeal Brief
Attachments	Applicants Brief 77514177.pdf (1 page)(540028 bytes)
Filer's Name	Ronald Tartaglia
Filer's e-mail	rtsound@aol.com
Signature	/Ronald Tartaglia/
Date	02/11/2010

Applicant's Brief

Application Number: 77514177
Applied for Mark: AUDIOTURD

Applicant: Greenfield Records, LLC

TARTAGLIA RONALD
28 HOLLY AVE
RUNNEMEDE, NJ 08078-1507
UNITED STATES
rtsound@aol.com

ESTTA321949

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BRIEF DUE: 2/12/2010

Applicant's Brief

The applicant has appealed the trademark examining attorney's refusal to register the trademark No. 77514177 on the grounds it is a subjective, not an objective standard that is being applied.

1. "Audioturd" and its accompanying mark do not consist of immoral or scandalous matter.
The Office Action provides:

[T]he applied-for mark consists of or comprises immoral or scandalous matter. Trademark Act Section 2(a), 15 U.S.C. §1052(a); see TMEP 1203.01. According to the attached evidence from The American Heritage Dictionary, the term "turd" in the applied-for mark AUDIOTURD means "a piece of excrement" and is thus scandalous because references to feces are generally considered offensive."

Your citation to the American Heritage Dictionary is incomplete. The complete entry is:

Turd
PRONUNCIATION: túrd
NOUN: Vulgar 1. A piece of excrement. 2. Slang A contemptible person.
ETYMOLOGY: Middle English, from Old English tord. See der- in Appendix

Audioturd is not the word turd. Contrary to your parsing of the phrase at issue, "Audioturd" is intended to refer to "contemptible" or "subjectively contemptible music" or "worthless audio" and will be so understood by the public at large. This root "turd," although perhaps a vulgarity, as indicated by the dictionary entry above, is also employed in common slang and as such is commonly used by society and is not considered scandalous in the context of contemporary attitudes. See *In re Mavety Media Group Ltd.*, 33 F.3d at 1371, 31 USPQ2d at 1925; see TMEP §1203.01. Furthermore, even when understood to refer to "a piece of excrement," this word is commonly used by society and is no longer considered scandalous. Consider the following examples:

A. On Episode 19 of Season Four of the CBS series "How I Met Your Mother," which aired on CBS on Monday, March 30, 2009 at 8:30 p.m., one of the lead characters, Marshall, used the word "turd" in dialogue broadcast nationally during prime time and apparently approved by both CBS and the Federal Communications Commission. In the scene, Marshall has agreed to coach the basketball team for his wife's kindergarten class of five-year-old children and he is running a practice in the school gymnasium. His wife, Lily, arrives during practice to see how Marshall is doing and to treat the kids to orange slices. The following dialogue begins at 5:02 of the episode:

Marshall: "Hey kids, who wants to knock off early and have some of these here orange slices?"

Kids all cheer "YAY!!!!"

Marshall (YELLING): "Yeah? Well you can't! Because oranges are for winners and you little turds haven't even made a single shot yet! You're embarrassing yourselves, you're embarrassing Ms. Algren and worst of all you're embarrassing me!"

This episode aired in a time slot generally viewed by children and families, yet the word "turd" was neither censored nor stricken by either CBS or the F.C.C. In addition, the show was broadcast by tape, not performed live without delay or censor. Given the certain network awareness of F.C.C. fines and penalties it is apparent that either a series of decisions was made as to whether the word "turd" was appropriate to air nationally over broadcast television at approximately 8:35 on a Monday evening to millions of viewers, some as young as seven or eight, and approved, or else no-one gave it a second thought because it was not deemed offensive. Either way, it is evidence that "turd" is commonly used by society and is not considered scandalous in the context of contemporary attitudes.

B. President George Bush does NOT believe the word "turd" is immoral or scandalous yet the USPTO does.

How is that? That would be like documenting and calling the President immoral or scandalous. On behalf of President Bush and myself I formally oppose that. It is so well known that it is nearly common knowledge that former President of the United States George W. Bush used the phrase "Turd Blossom" as a nickname to refer to one of his then-advisors, Karl Rove. This information has been widely published on the internet and in hard copy print.

Given that "Turd Blossom" is an unambiguous scatological phrase used by Texas farmers to describe a "flower that blooms from cattle excrement" there is no question that the usage of the word "turd," even in the President's context (a clear-cut, unabashed reference to excrement), is not so immoral or scandalous as to justify banning or censoring the word from publication.

C. On October 27, 2007, Southpark, an animated series shown on basic cable aired episode 808 titled "Douche v. Turd." The show's website summarizes the plot as follows:

When PETA demonstrates against the use of a cow as South Park Elementary's mascot, the student body is forced to choose a new one. As the election approaches, Kyle tries to convince everyone that his candidate, a giant douche, is better than Cartman's nominee, a turd sandwich.

Although certainly not as mainstream as "How I Met Your Mother," this episode not only contains the word "turd" in its title but uses a "piece of excrement" as a character throughout the show.

D. Typing the word "turd" in to the search engine at www.amazon.com returns 28,001 books containing the word "turd" either in the title or the body of the work including children's books as well as other products such as infant bodysuits.

E. The word "turd" is regularly used by society and is not considered scandalous in the context of contemporary attitudes. Typing "turd" into the search engine at www.cnn.com produces many articles that have appeared on that well-respected news website wherein the word "turd" has been used by reporters and reviewers, including automotive, book, movie and television reviews, a biographical piece on director Steven Spielberg and a travel piece about Bend, Oregon.

These are just a few of the examples of the everyday usage of the word "turd" in contemporary society. It is clear that "turd," even when clearly used in the scatological sense, as by our Forty-First President, is not so offensive as to be worthy of description as "immoral" or "scandalous." Perhaps thirty or forty years ago, but not in 2009. Moreover, the word is today more often used in and understood as describing something or someone contemptible, the usage intended here. Consider, for example a definition by a competing, but equally well-respected dictionary:

TURD
Pronunciation: \ˈtʃɜrd\
Function: noun
Etymology: 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

Although this entry provides that "turd" is used "sometimes" to mean "a piece of fecal matter" it is more "usually" used to refer to a "contemptible person." That is the meaning that is recognized by modern society and it is neither immoral nor offensive.

When considered in context "Audioturd" could mean nothing other than a contemptible sounding piece of music. This application should be approved.

Etymology Dictionary meanings include:

Turd: meaning
*"dispicable person" is recorded from c.1450
*"A tord ne yeue ic for ev alle" The owl and the Nightingale c.1250
* As a type of something worthless, it is attested from c.1250

2. The applicant has never claimed color, the mark was declared Black and White and its obvious reinforced by the stick figure drawing and dont know why this would be an issue.

Respectfully submitted,

Ron Tartaglia

Greenfield Records, LLC
28 Holly Avenue
Runnemede, NJ 08078
United States
Email: rtsound@aol.com
Legal Entity Type: Limited Liability Company
State or Country Where Organized: New Jersey
Phone Number: 856-939-1782