

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

es

In re Mixed Message
Media, Inc.

Serial Nos. 77860990
and 77980028

Filed: October 29, 2009

Marc J. Randazza
Randazza Legal Group
P.O. Box 5516
Gloucester, MA 01930

By the Trademark Trial and Appeal Board:

Applicant has appealed the refusals in the subject applications, and the appeals are now fully briefed. Because the appeals involve common questions of law and fact, and similar records, we hereby consolidate the appeals.

Upon review of the applications, it appears that there is an additional ground for refusal that may be applicable, namely, whether the mark is scandalous within the meaning of Section 2(a) of the Trademark Act. A refusal based on the ground that the mark is scandalous is different from a refusal based on the ground that the mark is disparaging, which currently is the only basis on which registration has been refused.

Accordingly, pursuant to Trademark Rule 2.142(f)(1), the applications are remanded to the examining attorney to issue, within 30 days, Office actions in which the examining attorney either refuses registration on the additional ground that the mark is scandalous, or a statement that further examination did not result in an additional ground for refusal of registration. See Trademark Rule 2.142(f)(2). In the latter case, the Board will then issue a decision on the only issue in the consolidated appeal, namely, the Section 2(a) ground of disparagement.

If further examination does result in the examining attorney refusing registration on the ground that the mark is scandalous, the examining attorney is reminded that such a refusal must be made in a non-final Office action which allows applicant six months to file a response. If final refusals of registration ultimately issue with respect to the additional ground, the examining attorney should omit the "six-months-response" clause from such final Office actions, and return the applications to the Board. The examining attorney should omit any statement about applicant's recourse being the filing of an appeal, since appeals have already been filed and instituted. Upon return of the applications to the Board, the Board will resume proceedings in the consolidated appeal, and allow applicant

Ser Nos. 77860990 and 77980028

time in which to file a supplemental consolidated brief
directed to the new ground for refusal.