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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Cathy Lynn Carlson

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Serial No. 78682282

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Matthew F. Jodziewicz for Cathy Lynn Carlson.

Patrick Shanahan, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

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Before Quinn, Cataldo, and Bergsman, Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

This appeal from the final refusal of the Trademark Examining Attorney involves Section 2(a) of the Trademark Act of 1946, 15 U.S.C. §1052(a), which precludes registration of marks that consist of or comprise "immoral, deceptive, or scandalous matter." Cathy Lynn Carlson seeks to register the designation **You Cum Like A Girl**, in standard character form, for "clothing, namely, t-shirts,

tank tops, lingerie, jackets, hats, pants, scarves, shoes and socks."[1]

The Examining Attorney contends that the designation **You Cum Like A Girl** is scandalous because the word "cum" is a vulgar term.[2] The word "cum" is defined as a vulgar, slang term meaning "semen ejaculated during orgasm" in The American Heritage Dictionary of the English Language (4th ed. 2000).[3] In further support of the refusal, the examining attorney attached copies of excerpts from pornographic websites in which the word "cum" refers to semen.

> This attached evidence illustrates the predominant connotation of the term CUM. The term is directly associated with degrading sexual acts involving girls being ejaculated on, and girls who are themselves ejaculating. As illustrated, the term CUM is clearly shocking to the sense of decency and is offensive in the context of the clothing marketplace as applied to the goods described in the application.[4]

Applicant argues that the designation **You Cum Like A Girl** is not scandalous because it is "used as an empowering

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[1] Application Serial No. 78682282, filed July 31, 2005, based on applicant's *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).
[2] Examining Attorney's Brief, unnumbered page 4.
[3] Office Action, p. 2 (February 24, 2006). Applicant does not agree that the word "cum" is vulgar, but does admit that "cum" is "merely a slang term for orgasm." Applicant's Brief, p. 2. See also applicant's Brief, p. 4.
[4] Office Action, p. 2 (July 12, 2006).

mark for an historically oppressed segement of the population, i.e., women."[5] Applicant explains that words, such as "cum," are neither scandalous, nor immoral, *per se.* It is the use of the term in its specific context that imparts the value judgment of scandalous or immoral.

> The proffered internet sites relied upon in the refusal to register the mark show not an inherent "scandalous and immoral" per se nature to the use of the word CUM, but instead how prevalent the oppression and degradation is against which the mark is used and how powerful it becomes when used by the oppressed group.[6]

Accordingly, applicant concludes that the use of the word "cum" by women in a positive context has a different meaning than the use of the term by pornographers. The fact that "cum" references semen, and therefore is "scandalous" and nonregistrable, "suggests that a female orgasm has a second class status, being derogatory in some manner, e.g., 'you throw like a girl.' This is exactly the derogatory view that Applicant's mark attacks."[7] The essence of applicant's argument is that by using the words of the oppressor (*i.e.*, men), the oppressed (*i.e.*, women) are able to empower themselves.

[5] Applicant's Brief, p. 1. See also Applicant's Brief, p. 2.
[6] Applicant's Brief, p. 4.
[7] Applicant's Brief, pp. 1-5, 8.

Applicant also argues that the Trademark Office has registered four (4) other registrations containing the word "cum", twelve (12) registrations including the word "orgasm," and numerous other marks containing arguably equally offensive terms that have been identified in dictionaries as "vulgar" (applicant did not make copies of those registrations of record even though the examining attorney expressly pointed out that to make the registrations of record, the applicant is required to file copies of the registrations).[8] Accordingly, applicant concludes that identifying a word as "vulgar" is not a valid reason to refuse registration.[9]

Finally, applicant argues that because the government may not legislate morals, but rather must act as a representative of the people, decisions regarding whether a

[8] Office Action, p. 3 (July 12, 2006). The Trademark Trial and Appeal Board does not take judicial notice of registrations, and the mere list of registrations in a response to an Office Action or brief does not make the registrations part of the record. To make registrations of record, applicant must produce and introduce as evidence copies of the registrations. *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983); *In re Duofold, Inc.*, 184 USPQ 638, 640 (TTAB 1974). Accordingly, we cannot give applicant's argument regarding the third-party registrations any consideration. However, even if we considered the registrations as having been properly made of record, for the reasons set forth later in the decision, they would not change the ultimate finding.

Applicant also referenced nine (9) applications in its brief. However, the only inference that can be drawn from an application is that it was filed.

[9] Applicant's Brief, pp. 5-7.

mark is scandalous or immoral must reflect current societal standards and mores.[10] To accurately reflect such standards and mores, the application should be approved for publication to permit the public to lodge an opposition to the registration of the mark if it is truly scandalous or immoral. Failure to allow the public to express its views through the opposition process is the imposition of arbitrary and inconsistent standards by the U.S. Patent and Trademark Office.[11] The registration of arguably equally scandalous or immoral marks through the subjective application of the Trademark Act by examining attorneys is a violation of the Fifth Amendment of the Constitution and injects instability into the commercial world.[12]

To prove that that the designation **You Cum Like A Girl** is scandalous or immoral, the U.S. Patent and Trademark Office must demonstrate that, in essence, the mark is vulgar. *In re Boulevard Entertainment Inc.,* 334 F.3d 1336, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003) (showing that the mark is vulgar is sufficient to establish that it is scandalous or immoral); *In re McGinley,* 660 F.2d 481, 211 USPQ 668, 673 (CCPA 1981), *quoting In re Runsdorf,* 171 USPQ

[10] Applicant's Brief, pp. 8-10.
[11] Applicant's Brief, p. 10.
[12] Applicant's Brief, p. 12.

443, 443-444 (TTAB 1971) (vulgar terms are encompassed by the term scandalous).

In finding the designation **You Cum Like A Girl** to be vulgar, the examining attorney consulted a dictionary, The American Heritage Dictionary of the English Language, which indicated that the word "cum" was vulgar when used in connection with semen. Also, the examining attorney introduced internet websites demonstrating that the word "cum" is used in connection with pornography. There is no evidence of the word "cum" being used otherwise than in connection with pornography.

In appropriate cases, the U.S. Patent and Trademark Office can sustain its burden of showing that the mark comprises or consists of scandalous matter by reference to dictionary definitions alone. *In re Boulevard Entertainment Inc.*, 67 USPQ2d at 1478. Here, both a dictionary definition and actual use of the term "cum" demonstrate that it is a vulgar word meaning "semen". Moreover, applicant tacitly admits that "cum" is vulgar by arguing that it is a derogatory term that she seeks to turn around and use to express an allegedly empowering attitude for women.[13] Accordingly, we find that the examining

[13] Applicant's Brief, p. 2.

attorney has met his burden of demonstrating that the designation **You Cum Like A Girl** comprises scandalous matter from the standpoint of a substantial (although not necessarily a majority) composite of the general public.

Applicant failed to offer any evidence to support her argument that she uses the designation **You Cum Like A Girl** as a symbol of female empowerment. Since applicant failed to introduce any evidence of use, we have only the readily vulgar and "derogatory" meaning of the mark on which to base our decision.

Applicant's arguments that the U.S. Patent and Trademark Office has registered other equally scandalous marks and that it violates her rights under the Fifth Amendment of the Constitution when it refuses to publish her mark for opposition are unavailing. First, the Board must decide each application on its own merits, and decisions regarding other registrations do not bind either examining attorneys or this Board. *In re Boulevard Entertainment Inc.,* 67 USPQ2d at 1480; *In re Nett Designs,* 236 F.3d 1339, 57 UPSQ2d 1564, 1566 (Fed. Cir. 2001). Even if the U.S. Patent and Trademark Office had previously allowed other "cum," "orgasm," and other arguably scandalous marks to be registered, that would not give applicant an equal protection right to have its mark

registered unless the agency acted pursuant to some impermissible standard. *In re Boulevard Entertainment Inc., supra; In re Int'l Flavors & Fragrances,* 183 F.3d 1361, 51 USPQ2d 1513, 1518 (Fed. Cir. 1999). The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standard does not mean that the U.S. Patent and Trademark office must forgo applying that standard in all other cases. *In re Boulevard Entertainment Inc., supra.*

In view of the foregoing, we find that applicant's mark consists of or comprises immoral or scandalous matter, and therefore falls within the prohibition of Section 2(a) of the Trademark Act of 1946.

Decision: The refusal to register is affirmed.