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Subject:	U.S. TRADEMARK APPLICATION NO. 85554342 - BIG COCK BRAND - 40979
Sent:	9/13/2012 2:25:14 PM
Sent As:	ECOM103@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7 Attachment - 8

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

APPLICATION SERIAL NO. 85554342

MARK: BIG COCK BRAND

85554342

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

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40979
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OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 9/13/2012

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communication filed on August 17, 2012.

The Examining Attorney acknowledges and accepts the disclaimer of the word "brand." The Applicant's arguments attempting to overcome the refusal to register under Trademark Act Section 2(a), 15 U.S.C. Section 1052(a), have been carefully considered, but found unpersuasive.

The evidence attached to the initial Office Action is incorporated herein by reference.

The refusal under Trademark Act Section 2(a) is now made FINAL for the reasons set forth below. *See* 15 U.S.C. §1052(a); 37 C.F.R. §2.64(a). In addition, the following requirement(s) is now made FINAL: The request for samples of advertisements or promotional materials and/or a photograph of the identified goods or, if such materials are not available, samples of advertisements or promotional materials and a photograph of *similar* goods. 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e);. *See* 37 C.F.R. §2.64(a).

Trademark Act Section 2(a) – Immoral or Scandalous Final

Registration is refused because the applied-for mark consists of or includes immoral or scandalous matter. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §1203.01.

The words "immoral" and "scandalous" may have somewhat different connotations; however, immoral matter has been included in the same category as scandalous matter. TMEP §1203.01; *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.").

To be considered "scandalous," the evidence must show that a 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 Mavety Media Grp. Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994); *In re Wilcher Corp.*, 40 USPQ2d 1929, 1930 (TTAB 1996); *see* TMEP §1203.01.

A mark is immoral or scandalous when the evidence shows 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 The Boulevard Entm't, Inc.* , 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003); *In re Luxuria s.r.o.*, 100 USPQ2d 1146, 1148 (TTAB 2011); TMEP §1203.01.

Evidence that a mark is vulgar is sufficient to establish that the mark is scandalous or immoral within the meaning of Trademark Act Section 2(a). *In re The Boulevard Entm't, Inc.* , 334 F.3d 1336, 1340, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003); *In re Luxuria, s.r.o.*, 100 USPQ2d 1146, 1148 (TTAB 2011); *see* TMEP §1203.01.

Dictionary definitions alone may be sufficient to show that a term is vulgar if multiple dictionaries, including at least one standard dictionary, uniformly indicate that the term's meaning is vulgar, and the applicant's use of the term is clearly limited to that vulgar meaning. *See In re The Boulevard Entm't, Inc.* , 334 F.3d at 1341, 67 USPQ2d at 1478 (holding 1-800-JACK-OFF and JACK-OFF scandalous where all dictionary definitions of "jack-off" were considered vulgar); *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1588 (TTAB 2008) (holding SEX ROD in stylized form scandalous where multiple dictionary definitions of "rod" characterized that term vulgar, such that when preceded by the word "sex" denoted only one meaning); TMEP §1203.01.

The more egregious the allegedly scandalous nature of a mark, the less evidence is required to support a conclusion that a substantial composite of the general public would find the mark scandalous. *See In re Wilcher Corp.*, 40 USPQ2d 1929, 1934 (TTAB 1996) (finding that "the inclusion in a mark of a readily recognizable representation of genitalia certainly pushes the mark a substantial distance along the continuum from marks that are relatively innocuous to those that are most egregious"); TMEP §1203.01.

The fact that profane words may be uttered more freely in contemporary American society than in the past does not render such words any less profane. *In re Tinseltown, Inc.*, 212 USPQ 863, 866 (TTAB 1981) (finding the wording BULLSHIT scandalous for handbags and other personal accessories); *cf. In re Red Bull GmbH*, 78 USPQ2d 1375, 1380-82 (TTAB 2006).

A mark that is deemed scandalous under Trademark Act Section 2(a) is not registrable on either the Principal or Supplemental Register. TMEP §1203.01; *see* 15 U.S.C. §1052(a).

Applicant seeks registration of the mark BIG COCK BRAND for goods identified as fragrances, perfumes, aftershaves and colognes. As demonstrated by the definitions attached to the June 14, 2012 initial Office Action from *Houghton Mifflin*, available at EDUCATION.YAHOO.COM, from the *Collins English Dictionary*, available at COLLINSDICTIONARY.COM, from *Merriam-Webster*, available at MERRIAM-WEBSTER.COM, and from the *Cambridge Dictionaries Online*, available at DICTIONARY.CAMBRIDGE.ORG, "cock" is a slang, vulgar, offensive and "taboo" term for a male penis. (See also attached definition from *The Cassell Dictionary of Slang (Cassell 1998);* from *The American Heritage Dictionary*, available at ANSWERS.COM, and from the attached definition from *McGraw-Hill's Dictionary of American Slang and Colloquial Expressions* (McGraw Hill 2006). In addition, as demonstrated by the attached print outs from URBANDICTIONARY.COM, "big cock" is an expression that refers to the size of a man's penis. (See also attached print outs from a LEXISNEXIS Search of (BIG COCK) AND (VULGAR OR OFFENSE) on the US Newspapers File). (See also attached print outs from COEDMAGAZINE.COM and BIGCOCKCREW.COM). Therefore, as established by the plethora of dictionary evidence indicating that the term "cock" is vulgar, offensive, taboo, BIG COCK BRAND would be considered to be immoral or scandalous under Trademark Act Section 2(a).

The Applicant has argued that the use of "cock' in the mark refers to a male bird and that the inclusion of the design of a bird reinforces this connotation. In cases involving claims that offensive or scandalous matter was intended as a parody, the Trademark Trial and Appeal Board has found that, the issue of whether applicant intended the mark to be humorous, or even whether some people would actually find it to be humorous, is immaterial." *In re Luxuria, s.r.o.*, 100 USPQ2d 1146, 1149 (TTAB 2011) (quoting *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1588 (TTAB 2008)). Where the evidence shows that "the term would be perceived and understood as vulgar by a substantial portion of the purchasing public," it is immoral or scandalous. *In re Luxuria, s.r.o.*, 100 USPQ2d at 1149 (quoting *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d at 1588).

A similar rationale applies here. The Applicant's intent is irrelevant. The evidence of record overwhelming establishes not only that "cock" is an offensive, vulgar and taboo term, but also that "big cock" is an expression with an offensive, vulgar and taboo connotation. In fact, a GOOGLE.COM search of "bib cock" as a unitary expression retrieved Internet hits that relate to the offensive or vulgar definition of the term. None of the initial hits retrieved identified articles or hits for "big birds." Moreover, as demonstrated by the attached print outs from *Heraldry of the World*, available at NGW.NL, and from GRAPHICRIVER.NET, the design element in the mark would more likely be recognized as a heraldic symbol or a symbol of a type of bird, rather than a depiction of a particular bird with a particular sex.

Inasmuch as BIG COCK BRAND would be considered to be comprised of a vulgar, taboo or offensive expression combined with the descriptive word "brand," the mark is considered to be scandalous or immoral within the meaning of the Trademark Act.

Therefore, registration is refused and made FINAL because the applied-for mark consists of or includes immoral or scandalous matter. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see* TMEP §1203.01.

The following requirement is hereby made FINAL.

Request for Information

An applicant can be required to provide more information if it is necessary for proper examination of the application. 37 C.F.R. §2.61(b); TMEP §§814, 1402.01(e); *see In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP* , 67 USPQ2d 1699, 1701-02 (TTAB 2003).

Therefore, applicant must submit samples of advertisements or promotional materials and/or a photograph of the identified goods. If such materials are not available, applicant must submit samples of advertisements or promotional materials and a photograph of *similar* goods. In addition, applicant must describe in detail the nature, purpose and channels of trade of the goods.

Proper Guidelines for Response to FINAL Refusal

If applicant does not respond within six months of the date of issuance of this final Office action, the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond to this final Office action by:

(1) Submitting a response that fully satisfies all outstanding requirements, if feasible; and/or

(2) Filing an appeal to the Trademark Trial and Appeal Board, with an appeal fee of $100 per class.

37 C.F.R. §§2.6(a)(18), 2.64(a); TBMP ch. 1200; TMEP §714.04.

In certain rare circumstances, a petition to the Director may be filed pursuant to 37 C.F.R. §2.63(b)(2) to review a final Office action that is limited to procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is $100. 37 C.F.R. §2.6(a)(15).

Assistance

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Susan A. Richards/

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TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at http://tarr.uspto.gov/. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/teas/eTEASpageE.htm.

Time of Request: Thursday, September 13, 2012 09:47:39 EST
Client ID/Project Name:
Number of Lines: 73
Job Number: 1826:369829017

Research Information

Service: Terms and Connectors Search
Print Request: Selected Document(s): 1,2
Source: US Newspapers
Search Terms: (big cock) AND (vulgar or offensive)

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