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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Friggin Barnyard

Serial No. 75/033,653

Stephen H. Block of Kahn & Block LLP for Friggin Barnyard.

Andrew Lawrence, Trademark Examining Attorney, Law Office 108 (David E. Shallant, Managing Attorney).

Before Quinn, Hohein and Wendel, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

An application has been filed by Friggin Barnyard to register the mark "FRIGGIN" and design, as reproduced below,

for "decorative refrigerator magnets".[1]

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[1] Ser. No. 75/033,653, filed on December 18, 1995, which alleges a bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(a) of the Trademark Act, 15 U.S.C. §1052(a), on the ground that applicant's mark constitutes immoral or scandalous matter.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We reverse the refusal to register.

Applicant, noting among other things that the excerpt which it has made of record from The Compact Edition of the Oxford English Dictionary (1987) at 1162 lists the entry "fridge, frig" as meaning "[c]olloq. abbrev. of REFRIGERATOR," argues that the Examining Attorney, in light of such definition, has failed to meet his "burden to prove that an applicant's mark consists of or comprises immoral or scandalous matter". In particular, applicant maintains that inasmuch as there is an "alternative, non-vulgar meaning of applicant's mark -- an extension of the word 'frig' meaning refrigerator -- [which] 'makes sense' because the goods for which the mark is sought are, in fact, refrigerator magnets," the mark is not scandalous or immoral and hence is registrable. Applicant also insists that, "[a]lthough some archaic definitions of frig are vulgar, the primary meaning of the term among the general public is refrigerator -- particularly as understood in the context of refrigerator related goods," and that, given such ambiguity in its mark, the Board should interpret any reasonable ambiguity "in favor of the unoffensive [sic] meaning."

The Examining Attorney, relying upon various dictionary definitions and two articles obtained from his search of the "NEXIS" database, contends on the other hand that because applicant's mark "is an abbreviated spelling of the term 'frigging' and is slang for 'fucking' or 'masturbating,'" the mark is accordingly immoral or scandalous.[2] Specifically, in support of his position, the Examining Attorney points out that:

> (1) Sexual Slang (1993) mentions "**frig** *v*" as signifying "**1.** masturbate .... **2.** fuck. This is a 19th-century euphemism";
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> (2) Webster's Ninth New Collegiate Dictionary (1990) defines "**frig** \'frig\ *vi* **frigged**; **frig•ging**" as meaning "**COPULATE**- usu. considered vulgar; sometimes used in present participle as meaningless intensive";
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> (3) The Random House Unabridged Dictionary (2d ed. 1993) lists "**frig**[1] (frig), *v.t.*, *v.i.*, **frigged, frig•ging**" as connoting "*[s]lang (vulgar). -v.t.* **1.** to copulate with. **2.** to take advantage of; victimize. **3.** to masturbate. *-v.i.* **4.** to copulate. **5.** to masturbate ...." and refers to "**frig**[2] (frij), *n.*" as signifying "*Informal.* refrigerator"; and
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> (4) The Oxford English Dictionary (2d ed. 1989) sets forth "**frig** (frig), *v.* **Also frigg**" as meaning, inter alia, "**3.** Freq. used with euphemistic force. **a.** *trans.* and *intr.* = FUCK ... **b.** To masturbate ... **c.** *fig.* Also used as a coarse expletive. Cf. FUCK" and additionally lists "**frig**" by reference to "see FRIDGE."

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[2] While the Examining Attorney "urges the Board to rule that the applicant's mark is immoral" as well as scandalous, it is clear from his brief that in resting his argument on principles which he "submits are moral in nature, [and which] proscribe the use of ... vulgar sexual terminology," the Examining Attorney is actually grounding his arguments solely on the basis that applicant's mark is scandalous. In view, thereof, we need only decide whether applicant's mark is scandalous as such term has been judicially interpreted.

The Examining Attorney also notes that a search of the "NEXIS" database retrieved the following excerpts (**emphasis added**):[3]

> "Order of Cooties members say Mrs. Boozer has disrupted several meetings of both the order and the VFW Women's Auxiliary with drunkenness and **foul** language. Several members said she used the expression '**friggin'** bitches' at the January meeting." -- Wilmington Star-News, March 9, 1996; and
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> "A kindergartner stuck his or her tongue out at a driver. A-third grader called a driver a '**friggin'** witch.' Another student used a much more **foul** term." -- Allentown Morning Call, (July 11, 1994).

In view of the above, the Examining Attorney maintains that, while tribunals in other circumstances "have found that non-vulgar meanings either might outweigh the vulgar meanings or that their varied meanings pointed towards resolving any doubts in an applicant's favor," the present appeal involves a situation in which the vulgar significance of applicant's mark is "the only meaningful one". Although conceding that the record shows that "'frig' alone, but not 'frigging,' is an informal word for

[3] Although asserting that such evidence "demonstrates that the word 'FRIGGIN' is vulgar and is not a reference to a household appliance," the Examining Attorney explains in his brief that "there is limited evidence from the Nexis database ... since this database is comprised in large part of news articles for wide circulation and ... vulgar terms are not likely to make it past the editors of the journals and then into the database." It would seem, however, that a more credible reason as to why only a few references to the term "friggin" or "frigging" were located is the fact that the Examining Attorney used the exceedingly restrictive search request "(FRIGGIN OR FRIGGING) W/15 (OFFENSIVE! OR SCANDAL! OR FOUL OR SWEAR)". Moreover, even though such search found 12 stories, the Examining Attorney elected to submit only the above two for the record. We recognize, of course, that while the Examining Attorney was trying to establish the offensiveness of the term "FRIGGIN" in applicant's mark, a broader search (e.g., "FRIGGIN OR FRIGGING") would undoubtedly have been more meaningful in this case since it would have revealed the frequency and context in which such term is currently used in the mass media.

'refrigerator,'" the Examining Attorney argues that the record "confirm[s] that 'frigging' is nothing more than a form of the word 'frig' and that the latter is itself a vulgar term." Since the literal element of applicant's mark, "FRIGGIN," is merely a shortened form of the term "frigging,"[4] the Examining Attorney insists that the mark is scandalous, asserting that:

> It almost goes without saying that despite changes in the morals of Americans, there are still terms that are deemed indecent, disgraceful, offensive or disreputable. Not every term or saying that, in bygone days, would be used only in limited circles and then uttered quietly or with great hesitation, is freely accepted by every person. While some people may use the word "frigging," or other highly offensive terms, intending to provide humor, such usage does not negate the fact that a substantial composite of the general public would find the mark to be scandalous. As the Board has stated in a similar situation, "the fact that profane words may be uttered more freely does not render them any the less profane." *In re Tinseltown, Inc.*, 212 USPQ 863, 868 (TTAB 1981) (considering the registration of the term "bullshit"). ....

Furthermore, as to the contention that, when used in connection with decorative refrigerator magnets, the term "FRIGGIN" in applicant's mark "will be seen as a reference to 'refrigerator,' a reference which the applicant identifies as 'refrigeratoresque'" and, hence, a double entendre, the Examining Attorney states that "he has examined several dictionaries and

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[4] In addition to noting that the oval design in applicant's mark "has no effect on the meaning of the ... mark and [that] the applicant has never argued that it did," the Examining Attorney points out "that [t]he spelling '-in' at the end of a word is a common and well understood misspelling of '-ing' representing the situation where the "g" sound at the end is de-emphasized in actual pronunciation." Applicant, we observe, does not contend to the contrary.

can find no evidence that there is any such word as 'refrigeratoring.'" Thus, according to the Examining Attorney (footnote omitted):

> This leads to the conclusion that if "figging" means anything at all, its meaning is associated with and derived from the *other* meaning of "frig." That meaning, with which the applicant has not disagreed, is "fucking" or "masturbating"." There is no indication that these meanings are obscure or archaic. ....
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> ....
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> [T]he evidence ... demonstrates that the applicant's mark is only a vulgar term. It is just as vulgar when used on a refrigerator magnet as it is anywhere else because it has only a vulgar meaning. .... The applicant's suggestion that the mark is a reference to ... "refrigerator" is made less persuasive by the pronunciation of "frigging" and "frig". The use attributed to [the meaning of] a refrigerator ends in a soft "g" sound like the letter "j." The vulgar meaning of "frig," and the meaning of "FRIGGIN," have a hard "g" sound as in the word "frog." As a result, anyone seeing the applicant's mark, on a magnet or otherwise, would be directed to the vulgar meaning by its very pronunciation. ....

We agree with the Examining Attorney's reasoning that, even when viewed in the context of applicant's goods, the assertion that the term "'FRIGGIN' means or is a reference to 'refrigerator' is strained and fails to take full consideration of the evidence". Nevertheless, we are constrained to agree with applicant that the Examining Attorney has failed to satisfy his burden of proof. As the Board pointed out in In re Wilcher Corp., 40 USPQ2d 1929, 1930 (TTAB 1996) (footnotes omitted):

> In the recent case of *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 31 USPQ2d 1923 (Fed. Cir. 1994), our primary reviewing court, the Court of Appeals for the Federal Circuit, recounted certain principles governing a refusal to register, under Section 2(a) of the Act, on the ground that the applicant's mark consists of or comprises immoral or scandalous matter. Specifically, the Court noted that (1) the Patent and Trademark Office ("PTO") has the burden of proving that a mark consists of or comprises immoral or scandalous matter; (2) that in order to meet this burden of proof, the PTO must demonstrate that the mark is "shocking to the sense of truth, decency, or propriety; disgraceful; offensive; disreputable; ... giving offense to the conscience or moral feelings; ... [or] calling out for condemnation" (quoting from *In re Riverbank Canning Co.*, 95 F.2d 327, 328, 37 USPQ 268, 269 (CCPA 1938)); (3) that the question of whether a mark is immoral or scandalous must be determined by considering the mark in the context of the marketplace as applied to the goods specified in the applicant's application; and (4) that whether a mark, including innuendo, comprises scandalous matter is to be ascertained from "the standpoint of not necessarily a majority, but a substantial composite of the general public," (quoting from *In re McGinley*, 660 F.2d 481, 485, 211 USPQ 668, 673 (CCPA 1981)) and "in the context of contemporary attitudes" (quoting from *In re Old Glory Condom Corp.*, 26 USPQ2d 1216, 1219 (TTAB 1993)).

The Board in *Wilcher*, supra, further noted that, as stated by the Federal Circuit in *Mavety*:

> In addition, we must be mindful of ever-changing social attitudes and sensitivities. Today's scandal can be tomorrow's vogue. Proof abounds in nearly every quarter, with the news and entertainment media today vividly portraying degrees of violence and sexual activity that, while popular today, would have left the average audience of a generation ago aghast. ....

31 USPQ2d at 1926.

While, in the present case, some of the definitions indicate that the terms "frig" and, in particular, "frigging" are regarded as vulgar slang (or are usually considered so), another definition of record states that such terms are "19th-century euphemisms". As to the current meaning of such terms to a substantial composite of the general public, which would constitute the principal purchasers of applicant's goods, we take judicial notice that:[5]

> (1) The Oxford Dictionary & Thesaurus (1996) sets forth "**frig**[1] /frig/ *v. & n. coarse slang* • *v.* (**frigged, frigging**)" as meaning, among other things, "**1 a** *tr. & intr.* Have sexual intercourse (with). **b** masturbate. **2.** *tr.* (usu. as an exclamation) = FUCK" and also lists "**frig**[2] /frij/ *n. colloq.*" as signifying "REFRIGERATOR. [abbr.]";
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> (2) NTC's Dictionary of American Slang & Colloquial Expressions (2d ed. 1995) defines "**frigging**" as specifically meaning "**1.** *mod.* Damnable. (A euphemism for *fucking.)* □ *Who made this frigging mess?* □ *I smashed up my frigging car!* **2.** *mod.* Damnably. □ *What a frigging stupid thing to do!* □ *That is a dumb frigging thing to do!*";
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> (3) The Random House Historical Dictionary of American Slang (1994) lists "**frig** *n.*" as connoting, inter alia, "**2.** an act of copulation.--usu. considered vulgar. .... **3.** a damn; FUCK, *n.*, **3.a.**--usu. considered vulgar. .... **4.** (a euphem. for) *the fuck* ...."; "**frig** *v.*" as referring to, among other things, "**2.a.** to copulate; (*trans.*) to copulate with.--usu. considered

[5] It is settled that the Board may properly take judicial notice of dictionary definitions and information in technical reference works. See, e.g., In re Hartop & Brandes, 311 F.2d 249, 135 USPQ 419, 423 (CCPA 1962); Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); and University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc., 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

vulgar. .... **b.** (used as an expletive); SCREW; to damn; (*hence*) to disregard utterly.--usu. considered vulgar. [Now regarded as a partial euphem. for FUCK, *v.*, **3.a.**] .... **c.** to cheat.--usu. considered vulgar. [Regarded as a partial euphem. for FUCK, *v.*, **2.a.**] .... **3.** to trifle or fool around.--in U.S. now constr. with *with* or *around*.--usu. considered vulgar. [Now usu. considered a euphem. for FUCK, *v.*, **5**]"; and "**frigging** *adj. & adv.*" as signifying "contemptible or despicable; damned; (often used with reduced force as a mere intensifier).--usu. considered vulgar. Also as infix. [Perh. orig. abstracted and generalized from opprobrious literal collocations such as *frigging youngster, frigging madman*, etc.; now usu. regarded as a euphem. for FUCKING, q.v.]";

(4) The Oxford Dictionary of Modern Slang (1992) mentions "**frig**" as meaning, inter alia, "mainly euphemistic. verb **1** trans. and intr. **a** = FUCK .... noun **3** = FUCK" and additionally lists "**frigging**" as connoting "adjective and adverb mainly euphemistic = FUCKING ....";

(5) Forbidden American English (1990) defines "**frig** [frig]" as signifying "**1.** To copulate [with] someone. (... see note 31. More at *frigging*.)" and specifically defines "**frigging** ['figin]" as meaning "damn; damnable. (A euphemism for *fucking.* See note 31.*)* □ *Get your frigging feet off my chair!* □ *I'm tired of this frigging job! I quit!*" (with usage "note 31" indicating that such terms are listed as "expressions in this dictionary that are forbidden because of *what they refer to*, not necessarily because the particular words used in the expression are taboo. That is, all the expressions ... refer to forbidden *topics or subjects*"); and

(6) Thesaurus of American Slang (1989) sets forth "frig" as one of many terms and phrases meaning "fuck".

Inasmuch as some--although by no means all--of the above definitions indicate that the word "frig," and especially

the term "frigging," are often considered or understood in contemporary society as euphemisms for certain words which, while in common use, are clearly still regarded as vulgar or offensive even under today's more permissive standards, we have doubt as to whether a substantial composite of the purchasing public for applicant's decorative refrigerator magnets would regard the mark "FRIGGIN"--which plainly is short for the term "frigging"--as scandalous. As was similarly the case in *Mavety*, there are definitions of such term in which it is invariably considered to be vulgar as well as definitions in which it is usually regarded to be inoffensive.[6] Clearly, in light thereof, it is at least reasonably debatable--and certainly not definitive--as to whether applicant's mark would be acceptable, or at least inoffensive, to most people, or whether to at least a substantial composite thereof it would be shockingly indecent or disgraceful. Moreover, what other limited evidence which we have in this record, namely, two "NEXIS" excerpts of stories from family newspapers (and not from so-called "adult" or sexually oriented publications), suggests by the very fact that such articles

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[6] The Federal Circuit pointed out in *Mavety* that a lack of uniformity in dictionary definitions "tellingly highlights the inherent fallibility in defining the substantial composite of the general public based solely on dictionary references" and that:

> While a standard dictionary may indicate how the substantial composite of the general public defines a particular word, the accompanying editorial label of vulgar usage is an arguably less accurate reflection of whether the substantial composite considers the word scandalous. Such labels are subject not only to differences in opinion among the respective publication staffs of particular dictionaries, but also to the potential anachronism of those opinions.

31 USPQ2d at 1927.

appeared therein that use of the term "friggin" is in general not likely to be presently viewed as vulgar, highly indecent or otherwise offensive.

Recognizing, therefore, the difficulties in accurately discerning contemporary attitudes, our principal reviewing court in *Mavety* commended "the practice adopted by the Board in another case to resolve the issue whether a mark comprises scandalous matter under § 1052(a) 'in favor of [the] applicant and pass the mark for publication with the knowledge that if a group does find the mark to be scandalous ..., an opposition proceeding can be brought and a more complete record can be established," citing In re In Over Our Heads Inc., 16 USPQ2d 1653, 1654-55 (TTAB 1990). 31 USPQ2d at 1928. And, although dicta, the Federal Circuit, citing *Mavety*, recently affirmed such an approach, stating that:

> By so doing, the PTO avoids the risk of pre-judging public attitudes toward a proposed registration based on ad hoc responses by government officials, while at the same time affording the affected public an opportunity to effectively participate in the question of whether the registration is proper. See id. at 1374, 31 USPQ2d at 1928. Thus, the policy behind the procedure for determining whether a mark is scandalous encourages, if not requires, participation by members of the general public who seek to participate through opposition proceedings.

Ritchie v. Simpson, No. 97-1371, slip op. at 3, 1999 U.S. App. LEXIS 4153 *4, ___ F.3d ___, ___ (Fed. Cir. March 15, 1999).

Accordingly, since the dictionary definitions are not uniform and the "NEXIS" evidence creates further doubt as to whether a substantial composite of the purchasing public for decorative refrigerator magnets would regard the term "friggin"

as disgraceful, shockingly indecent or otherwise offensive, we find that the Examining Attorney has failed to meet the burden of showing that applicant's "FRIGGIN" mark is scandalous.

Decision: The refusal under Section 2(a) is reversed.

T. J. Quinn

G. D. Hohein

H. R. Wendel
Administrative Trademark Judges,
Trademark Trial and Appeal Board