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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ava Watkins

Serial No. 76138675

Charles E. Baxley of Hart Baxley Daniels & Holton for applicant.

Linda B. Mickleburgh, Trademark Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Quinn, Bottorff and Drost, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Ava Watkins to register the mark TWATTY GIRL for "cartoon strips, cartoon prints and newspaper cartoons."¹

The trademark examining attorney refused registration under Section 2(a) of the Trademark Act on the ground that the mark sought to be registered consists of or comprises immoral or scandalous matter.

¹ Application Serial No. 76138675, filed October 2, 2000, based on an allegation of a bona fide intention to use the mark in commerce.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

The examining attorney maintains that she has established, notwithstanding the loosening of contemporary standards and attitudes on acceptable language to be used in public, a prima facie case that TWATTY GIRL is offensive to the conscience of a substantial composite of the general public. The examining attorney contends that the public would view "twatty" as an adjectival form of the term "twat," and that "twat" is a vulgar term for a woman's vagina or genital area; according to the examining attorney, the "GIRL" portion of the mark simply adds to the immoral or scandalous connotation of the mark. In support of the refusal, the examining attorney introduced copies of dictionary definitions of the term "twat," a printout of a GOOGLE search report, pages from websites on the Internet, and excerpts of articles retrieved from the NEXIS database.

Applicant urges that the refusal be reversed, arguing that the dictionary evidence of record is not uniform; that there is no evidence that applicant's use of the term "twatty" is consistent with a vulgar meaning; and that applicant has introduced evidence showing that the term "twatty," that is, the specific term in applicant's mark,

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means something significantly different than "twat." In this connection, applicant points to an online dictionary listing showing that the term "twatty" means "daft," and is not vulgar. Applicant sums up by contending that when one considers the alternative, non-vulgar dictionary definition of "twatty" and the evidence of non-vulgar uses of "twatty," the Office cannot fairly rely on dictionary definitions of a different word, "twat," in refusing registration. Applicant also points out that two of her previously-filed applications for the marks TWATTY (Ser. No. 75704979) and TWATTYTRAX (Ser. No. 76072967), although both now abandoned, were passed to publication without a Section 2(a) rejection by the examining attorneys handling those applications. Applicant correctly recognizes that the present examining attorney is not bound by the Office's actions relative to applicant's prior applications. Applicant contends, however, that this prior history lends credence to her argument that the present mark is not proscribed by Section 2(a) of the Act and, at the very least, that these prior positions contribute to the doubt about the refusal. In support of her arguments, applicant introduced dictionary listings for the terms "twat" and "twatty," a printout of an Internet search of "twatty" done

through the GOOGLE website, and various printouts of excerpts of websites retrieved from the Internet.

Applicant's attorney describes Ms. Watkins and her comic strip as follows (Brief, p. 6):

Ms. Watkins is a woman and a successful banking consultant, well known and respected in the financial community. She is also an independent and self-assured person. Her mark TWATTY GIRL is sassy but not salacious, without a trace of scandal or immorality, and not in any way disparaging toward women. TWATTY GIRL is an animated cartoon character, appearing in popular, well-respected animation channels of distribution, who is SANS SOUCI and perhaps a bit DAFT, but also a STRONG and EMPOWERED woman. Indeed, TWATTY GIRL expresses an attitude of female INDEPENDENCE, self-respect and one-upmanship over male domination.

The mark TWATTY GIRL is derived from the Applicant's name, Ava Watkins. Ms. Watkins has created a fictional character, "Eva Twatkins," which is obviously a play on words for Ava Watkins, and "Twatty Girl" is Eva Twatkin's fictional alter ego.

Eva Twatkins is a fictional columnist who writes a newspaper column that provides dating advice. Eva studied karate as a teenager to bolster her self-esteem after she was harassed by men. She combines a fresh, Ally McBeal-like quality with the female lead characters of *Sex and the City*. In other words, the "TWATTY GIRL" character is a bit of a "party girl."

Applicant also authored a series of "Twattisms" or "things Twatty told you but you didn't want to hear." The series of "Twattisms" are "Twatty Girl's" reflections on dating, men, and women's sexuality.

Registration of a mark that consists of or comprises immoral or scandalous matter is prohibited under Section 2(a) of the Trademark Act. Our primary reviewing court, the U.S. Court of Appeals for the Federal Circuit, has stated the following:

To justify refusing to register a trademark under the first clause of section 1052(a), the PTO must show that the mark consists of or comprises "immoral, deceptive, or scandalous matter." *In re Mavety Media Group, Ltd.*, 33 F.3d 1367, 1371 (Fed. Cir. 1994). A showing that a mark is vulgar is sufficient to establish that it "consists of or comprises immoral...or scandalous matter" within the meaning of section 1052(a). See *id.* at 1373-74 (analyzing a mark in terms of "vulgarity"); *In re McGinley*, 660 F.2d 481, 485 (CCPA 1981) (quoting with approval *In re Runsdorf*, 171 USPQ 443, 443-44 (TTAB 1971), which refused registration of a mark on grounds of vulgarity). In meeting its burden, the PTO must consider the mark in the context of the marketplace as applied to the goods described in the application for registration. *McGinley*, 660 F.2d at 485. In addition, whether the mark consists of or comprises scandalous matter must be determined from the standpoint of a substantial composite of the general public (although not necessarily a

majority), and in the context of contemporary attitudes, *id.*, keeping in mind changes in social mores and sensitivities, *Mavety*, 33 F.3d at 1371.

In re Boulevard Entertainment, Inc., 334 F.3d 1336, 67 USPQ2d 1475, 1477 (Fed. Cir. 2003).

The record includes the following dictionary definitions of the term "twat":

1. *Vulgar Slang* The vulva. 2. *Offensive & Vulgar Slang* A woman or girl. (*The American Heritage Dictionary of the English Language* (4th ed. 2000)).

1. The vulva. 2. Used as a disparaging term for a woman. (*The American Heritage Dictionary of the English Language* (3d ed. 1992)).

Usually vulgar: vulva. (*Merriam-Webster Online Dictionary*)

1. a taboo term for a woman's vagina or genital area; 2. *U.K.* a taboo term for somebody regarded as unintelligent, worthless, or detestable (*taboo insult*) (*MSN Encarta Dictionary*)

The examining attorney also submitted an additional dictionary listing for the suffix "-y": "characterized by; consisting of; like; to some degree; somewhat; tending toward; inclined toward; condition; state; quality." *The American Heritage Dictionary of the English Language* (3d ed. 1992).

The record includes another dictionary listing of the term "twat" in the "English slang" portion of *The Alternative English Dictionary*. This dictionary listing, introduced by the examining attorney, reads as follows:

Vagina, less offensive term than cunt; or twat adj., n. This is a synonym for...err...female genitalia. Not to be used in overly-polite company. It is also slang for hitting something and (as a noun again) an insult, generally directed at blokes. A suitably confusing example would read "some twat in the pub accused me of having been near his bird's twat, so I twatted him."

Another dictionary, also with British origins, *A Dictionary of Slang (slang and colloquialisms of the "UK")*, lists the following definition of "twat": "Noun. 1. The female genitals. 2. A contemptible person, an idiot. Verb. To hit, to thump."

Applicant submitted what is the only dictionary listing of the specific term in her mark, namely the term "twatty." As defined in UrbanDictionary.com (www.urbandictionary.com), the term "twatty" is defined as "someone or something which is daft, a light hearted twist to the insult 'twat' but more acceptable for use in public." An example of use is given as follows: "For

flips sake Sandra, stop prancing around the place like a twatty and lay the table."²

The NEXIS evidence includes the following:

The episode names are rather telling:
"Cum & Quiche," "Scary Straight
People," "Potty Mouth Training," and
"Menage a Twat."
(*Miami New Times*, April 26, 2001)

....there's a huge stock of videos
(some rentals) containing all the usual
suspects, including the Fetish Fanatics
series (e.g. Girls Who Cram Toys in
Their Twats) and "My Dad's Home
Movies."
(*New Times Los Angeles*, March 8, 2001)

Pussycat, powderbox, pum pum, twat,
tottita, coochie snorcher--the female
genitalia has many pet names.
(*University Wire*, April 10, 2001)

Vagina Monologues, Eve Ensler's theater
piece about women and their mimis,
totos, split knishes, Gladys
Siegelmans, pussycats, poonanis and
twats.
(*The Nation*, March 5, 2001)

The examining attorney's GOOGLE search of "twatty and sex" yielded a listing of what appear to be adult content websites. The listings include references such as "Hotty Twatty Phone Sex." Applicant's GOOGLE search of "twatty"

² A note on the page indicates "Urban Dictionary is not appropriate for all audiences." Although the examining attorney may be correct in stating that this electronic dictionary may not be "mainstream," we find that it is entitled to probative value in our determination.

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alone yielded a variety of websites, all but one ("Hotty Twatty Phone Sex") appearing to have nothing to do with any adult content. These websites use "twatty" in the manner suggested by the British English non-vulgar meanings.

Applicant also has submitted several examples showing use of the term "twat" in a non-vulgar manner. One article is taken from urbanreflex.com (www.urbanreflex.com) and is about the Segway brand human transporter. The article appears under the headline "Scientists Invent New Way Of Looking Like A Complete Twat." The article goes on to state: "Scientists in the United States have unveiled an entirely new way for people to look like complete twats. The Segway human transporter is a hugely expensive alternative to walking quickly or cycling. Its makers claim that anyone using it will immediately look like a twat with minimal effort....The device's 3000 dollar price tag is an integral part of its twattiness....The US Postal Service has already placed an order for several thousand Segways which, analysts say, will immediately enhance the device's 'twat' factor."

Also in the record are pages from the website www.gofishtx.com. The website shows prominent use of "TWAT" as an acronym for "Texas Women Anglers Tournament" which, according to the website, is a competition strictly

for women anglers in Texas. Applicant also submitted three websites using "TWAT" as an acronym for "The War Against Terror;" the websites are parodies of American politics and policies. Yet another website shows "TWAT" as an acronym for "The War Against Tobacco."

In our consideration of the mark and the record evidence, the first point to make is that the term in the involved mark is "twatty," not "twat." Simply put, the terms "twatty" and "twat" look different, but, moreover, the term "twatty," as shown by applicant's evidence, has a meaning quite distinct from any immoral, scandalous or vulgar connotation. We appreciate the examining attorney's argument "that in cases where words have a strong connotation, such as TWAT, as nouns, the mere addition of the letters required to make the noun into an adjective does not alter the original meaning nor does it change or rehabilitate the social acceptability of the term(s)." (Brief, p. 4). Although this argument may have general applicability, the viability of the argument is greatly diminished when the new adjectival term has a non-vulgar meaning as in the present case.³

³ Without ruling on the registrability of the term "cunty," a term that the examining attorney analogizes to the term "twatty," suffice it to say that we agree with applicant's assessment that this analogy is not persuasive.

In considering the record, we note that some of applicant's evidence appears to have its origins in the United Kingdom, and that the term "twatty" also has a non-vulgar meaning among the British. In determining whether a mark is immoral or scandalous, the analysis is made from the standpoint of a substantial composite of the general public in the United States. While the general public in the United States comprises, no doubt, a significant number of either U.S. citizens with British backgrounds or British nationals, the analysis must focus on the meaning in this country. Nonetheless, unlike the case with many foreign languages, there is a sizeable segment of the American public familiar with British English. Further, given that the Internet websites originating in the United Kingdom are easily accessible in this country, we find that applicant's evidence of the non-vulgar meaning and use of "twatty" in British English merits some probative weight. See *In re Cell Therapeutics Inc.*, 67 USPQ2d 1795, 1798 (TTAB 2003); and *In re Ramacle*, 66 USPQ2d 1222, 1224 n. 5 (TTAB 2002).

To the extent that there is doubt as to the immoral or scandalous nature of applicant's mark, that doubt must be resolved in favor of publication of the mark. See *In re Mavety Media Group*, supra at 1926; and *In re Hines*, 32 USPQ2d 1376 (TTAB 1994).

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Decision: The refusal to register is reversed.