

ESTTA Tracking number: **ESTTA396021**

Filing date: **03/02/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	79055664
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Submission	APPLICANT'S REQUEST TO SUSPEND AND REMAND APPEAL FOR CONSIDERATION OF ADDITIONAL EVIDENCE
Attachments	3.02.2011 Request_for_Suspension_and_Remand.pdf (10 pages)(27407 bytes) Ex1.pdf (40 pages)(211132 bytes) Ex2.pdf (40 pages)(221160 bytes) Ex3.pdf (47 pages)(2683487 bytes)
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Trademark Application of)	
)	
LUXURIA, s.r.o.)	Law Office: 112
)	
Serial No.: 79/055,664)	Trademark Examining Attorney:
)	Charisma Hampton
Filed: March 12, 2008)	
)	
Mark: Design Only)	

APPLICANT'S REQUEST TO SUSPEND
AND REMAND APPEAL
FOR CONSIDERATION OF ADDITIONAL EVIDENCE

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Applicant LUXURIA, s.r.o. (“Applicant”) respectfully requests suspension of the current appeal proceedings relative to U.S. Trademark Serial No. 79/055,664, and remand of the same to the Examining Attorney to consider additional evidence, pursuant to § 1207.02 of the Trademark Trial and Appeal Board Manual of Procedure. Applicant requests this suspension and remand on the grounds that additional evidence has just recently come to Applicant’s attention.

Attached as new evidence, not previously submitted, are the following:

- Martha Irvine’s article, *Is the Middle Finger Losing Its Shock Value?*
- Ira P. Robbins’ article, *Digitus Impudicus: The Middle Finger and the Law*
- Images showing alternative interpretations of the middle finger gesture
- The Defamer article, *Darren Aronofsky’s Middle Finger A ‘Digit Of Interest’ In FCC’s Golden Globes Indecency Inquest*

This evidence is in support of Applicant’s appeal from the Final Office Action dated May 27, 2009 in which the Trademark Examining Attorney made final the refusal to register the trademark shown in U.S. Trademark Serial No. 79/055,664 under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the grounds that Applicant’s Mark “consists of or comprises immoral or scandalous matter.” Applicant filed its Appeal Brief on November 12, 2010 and the Examining Attorney filed her Appeal Brief on January 13, 2011. Applicant filed a request to extend the deadline for filing a Reply Brief on January 26, 2011, and this request was subsequently granted on January 31, 2011. Applicant herein submits additional evidence supporting its position that the Trademark Examining Attorney’s refusal was in error, and should be reversed.

ARGUMENT

To be considered “scandalous,” the Trademark Examining Attorney must prove 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” in the context of the marketplace as applied to goods and/or services described in the application. *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 1371, 31 USPQ2d 1923, 1925 (Fed. Cir. 1994) (citation omitted). Scandalous is to be determined from “the standpoint of not necessarily a majority, but a substantial composite of the general public, . . . and in the context of contemporary attitudes” (*id.*, at 1371, 31 USPQ2d at 1925 (citation omitted)), while being “mindful of ever-changing social attitudes and sensitivities” *Id.*

I

THE TRADEMARK EXAMINING FAILED TO CONSIDER CONTEMPORARY ATTITUDES CONCERNING THE GESTURE DEPICTED IN APPLICANT’S MARK

The Trademark Examining Attorney has failed to consider contemporary attitudes concerning the gesture depicted in Applicant’s Mark, namely, “giving the finger,” as well as alternative possible meanings for the gesture, which are influenced by the shift in attitude. Based on these changes, Applicant submits that the evidence of record shows that contemporary attitudes concerning “giving the finger” have changed, such that the gesture – when appearing in a vacuum, such that it is not directed to a particular individual or group – is not immoral or scandalous within the meaning of Section 2(a) of the Trademark Act.

Indeed, there is ample evidence that both the meaning and the public perception of the middle finger gesture has changed in recent years. As explained by one author, to one

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