

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant	:	San Francisco Women's Motorcycle Contingent
Mark	:	DYKES ON BIKES
Serial No.	:	78,281746
Filing Date	:	July 31, 2003

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Attention: Sharon A. Meier, Examining Attorney
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DECLARATION OF RONALD R. BUTTERS UNDER 37 C.F.R. § 2.20

I, Ronald R. Butters, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declare:

1. I am a resident of Durham, North Carolina, where I am employed by Duke University as Professor of English and Cultural Anthropology and member of the faculty of the Linguistics Program. I earned my doctorate in English with a concentration in linguistics from the University of Iowa, Iowa City, in 1967, where I received advanced training in the study of both linguistics and literature; I have been employed as a professor at Duke University since that time. Twice during my tenure at Duke I have been asked to act as chair of the Department of English, a post I will take up for a third time from July 1, 2005–June 30, 2006. I have also chaired the Linguistics Program at Duke for numerous terms.

2. I serve on the Advisory Board of the *New Oxford American Dictionary*, published by the Oxford University Press, and I am an active member of the American Dialect Society, the American Name Society, the Dictionary Society of North America, the Linguistic Society of America, the International Association of Forensic Linguists, the Law and Society Association, and other professional organizations. In addition to my general contribution as Advisory Board member for the *New Oxford American Dictionary*, I also served as the dictionary's expert advisor on terms relating to homosexuality, and, in the final stages of publication in 2001, I personally read, revised as necessary, and passed final judgment on the definitions given for all such terms, including the entry for *dyke*. I know of no other major American English dictionary that has specifically employed a gay-words editorial consultant exclusively for terms relating to homosexual issues.

3. Within linguistics, my principal area of research is contemporary American English and its contexts, with special reference to words and their meanings. Appended hereto as Attachment A is a true and correct copy of my *curriculum vitae*, detailing my educational background, professional experience, teaching areas, and publications. As my curriculum vitae indicates, for more than thirty-five years I have been active in research and teaching in the field of English linguistics. I have written many scientific studies that have appeared in recognized and respected peer-reviewed linguistics journals and presses, and I have given numerous oral presentations of the results of my work, frequently by invitation, before learned societies both in the United States and abroad. I have also been the editor of peer-reviewed scientific publications of the American Dialect Society for over twenty years.

4. I have testified and/or served as an expert witness before the United States Patent and Trademark Office's Trademark Trial and Appeal Board, including in *Harjo v. Pro-Football* (50 U.S.P.Q.2d 1705, TTAB 1990), as well as before state and federal trial courts and boards in the District of Columbia, Florida, Georgia, Illinois, Kansas,

Maryland, Massachusetts, Missouri, North Carolina, Ohio, Virginia, and West Virginia. A list of all cases in which I have testified as an expert at trial or by deposition since January 1, 2000, is appended hereto as Attachment B.

5. I have been requested to provide my professional opinion in this report as an expert and scholar of linguistics, with particular reference to lexicography (the study of dictionaries and the making of dictionaries), concerning the meaning and use of the word *dyke* in current American English. Of particular interest is the meaning of *dyke* in the trademark DYKES ON BIKES as used by a nonprofit organization that organizes and conducts lesbian, gay, bisexual, transgender (LGBT) pride events, and whether the word *dyke* is a disparaging term when it is used in the trademark DYKES ON BIKES in connection with those LGBT pride-related activities. My analysis is based primarily upon my own research of standard lexicographical materials and data sources, including newspapers, magazines, web pages, and other texts, as well as standard dictionaries of the English language.

6. My conclusion is an emphatic “no.” The trademark DYKES ON BIKES is not at all disparaging; that is, it does not disparage persons living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

I. The meanings of the word *disparaging*, *derogatory*, and *offensive* compared

7. According to the *New Oxford American Dictionary*, for a word to be disparaging it must “represent [someone or something] as being of little worth.” That is to say, the very use of a disparaging word intrinsically indicates that the speaker holds the person or thing so described in contempt, as being of little worth. A word close in meaning to *disparaging* is *derogatory*, which the *New Oxford American Dictionary* defines as “showing a critical or disrespectful attitude.” Again, central to the meaning of *derogatory* is the idea that the use of the word in and of itself conveys the negative attitude of the speaker.

8. Another word that is sometimes used to describe verbal acts that may be taken as acts of disrespect is *offensive*. According to the *New Oxford American Dictionary*, for words to be offensive they must “cause someone to feel deeply hurt, upset, or angry.” Unlike *disparaging* or *derogatory*, the word *offensive* does not tell the hearer anything at all about the attitude of the speaker: words may offend that are not intended to offend. That is to say, *offensive* words are not necessarily *derogatory* or *disparaging*.

II. Dictionary Definitions of *dyke*

9. According to the *New Oxford American Dictionary* (hereafter, *NOAD*), the word *dyke*, in the meaning “lesbian,” can be “offensive.” This means *dyke* may be used in ways that will give offense to some people, but it is not intrinsically offensive. That is to say, the *NOAD* entry indicates that *dyke* as applied to lesbians is neither derogatory nor *disparaging*.¹ This was the conclusion of the editors of *NOAD*, and it was my expert opinion in 2001, when I reviewed this dictionary entry.

10. It is true that one can find other respectable dictionaries that label *dyke* in somewhat different ways from that found in *NOAD*. For example, the *Merriam-Webster Unabridged Dictionary* online says, “lesbian; *especially*: one assuming an aggressively masculine role—often used disparagingly.” The operative word here, however, is “often”: a word that is “often used disparagingly” is not intrinsically disparaging. In point of fact, virtually any word can be **used** disparagingly, and many are so used with some frequency. For example, in the current political climate the word *liberal* is frequently used in a disparaging manner to describe ideas, legislation, and even particular individuals.

¹It is important to point out that *NOAD* does in fact list numerous words as “derogatory” (i.e., disparaging): see, e.g., entries under *cunt*, *nigger*, *tree-hugger*. Other entries convey through their definitions the notion of “disparaging” and “derogatory” without actually using the terms, e.g., *cocksucker* is defined as “VULGAR SLANG a fellator; a generalized term of abuse; *twat* is “vulgar slang; a woman’s genitals; a person regarded as stupid or obnoxious.”

11. It is also the case that dictionary makers are highly sensitive to the feelings of potential purchasers of their products. As Sidney I. Landau puts it in his highly respected landmark book, *Dictionaries: The Art and Craft of Lexicography*, “If, in the past, dictionaries were too slow to label terms of insult, they now seem too quick to do so. Many hundreds of terms are now labeled as disparaging, contemptuous, or offensive in dictionaries, often on the strength of dubious evidence but also out of fear that they will be taken to be insensitive to some group. *The Encarta World Dictionary (EWED)* has carried this trend to the extreme. ... It views the language as a fortified castle of virtue, and every battlement is equipped with a cannon loaded with warnings.”² For just this reason, definitions such as *Encarta*’s should be viewed with caution. Even so, the online *Encarta* says simply, “a taboo term for a lesbian (slang taboo).” Taboo terms, however, are not necessarily derogatory or disparaging; their use is simply prohibited under certain circumstances. Thus even the *Encarta* dictionary, which has been criticized by a leading scholar in the field for going overboard in political correctness, does not label *dyke* in such a way as to indicate that it is a word that intrinsically indicates contempt.

III. In Context of Utterance, DYKES ON BIKES Cannot be Offensive

12. According to the highly respected and authoritative *Random House Dictionary of American Slang* (1994), the term *dyke* in the meaning ‘lesbian’ is “usually used disparagingly; [however,] in recent use occasionally non-disparaging in self-reference.” In my opinion, the *RHDAS* characterization is too extreme in its choice of the word *disparaging*, responding to what Landau characterized as “fear that they will be taken to be insensitive to some group.” Even so, it is important to point out that (as was the case with *Merriam-Webster Unabridged Dictionary* online discussed above, ¶10), *RHDAS* does not assert that *dyke* is disparaging, but only that it can be “used

²Second edition (Cambridge University Press), p234.

disparagingly.” Moreover, the *RHDAS* entry underscores two vital points about the social valence of the word *dyke*.

13. First, note the phrase “in recent use.” *RHDAS* was published over ten years ago, and based on data and sociolinguistic observation that is older than that. One of the fundamentals of linguistics is that language changes as time goes by. What might have been true ten or fifteen years ago with respect to the implications of the word *dyke* as applied to lesbians has continued to evolve. American English has not remained static: in twenty-first-century American usage, *dyke* is not necessarily the hard-edged word that the editors of *RHDAS* suggest that it might have been in the early 1990s. Increasingly, the use of *dyke* is “non-disparaging,” especially in “self-reference.” The word *dyke* is widely used in “self-reference” by lesbians and within the lesbian, gay, bisexual, and transgender (LGBT) community. Newspapers, magazines, web pages, community events, and popular culture include abundant citations to the use of *dyke* in positive self-reference within the LGBT community.


14. Second, the use of the word *dyke* in the trademark DYKES ON BIKES is a classic case of exactly what the editors of *RHDAS*—and linguists in general—mean by “self-reference.” It is well established that members of a persecuted minority will often (whether ironically or in defiance) self-referentially appropriate the very words that are sometimes used contemptuously towards them.³ Given that DYKES ON BIKES is used by the organization that leads the annual San Francisco Lesbian, Gay, Bisexual, Transgender Pride Parade and organizes and conducts other community events that foster pride in a wide variety of sexual orientations and identities, their use of the term *dyke* is clearly a non-disparaging self-referential designation. In direct contrast to the extent that *dyke* has in the past been used offensively against lesbians, a trademark such as DYKES ON BIKES can only be understood as exactly this sort of non-derogatory self-reference.

³See, for example, *NOAD*'s usage note for the word *queer*: “In recent years, ... many gay people have taken the word *queer* and deliberately used it in place of *gay* or *homosexual* in an attempt, by using the word positively, to deprive it of its negative power.”

15. If the trademark DYKES ON BIKES were derogatory, it could only be so if it disparaged some group of people and treated them with contempt. But since DYKES ON BIKES are using the mark in a self-referential way in the context of LGBT pride celebrations, they can scarcely be understood as disparaging and/or treating the LGBT community with contempt.⁴ There are simply no grounds for concluding that DYKES ON BIKES is disparaging.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true.

Dated: April 22, 2005

By: 
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⁴This assertion is amply demonstrated simply by examining information found at the Dykes on Bikes website, <<http://www.sfwmc.org/>>.