

**THIS DISPOSITION IS NOT
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OF THE TTAB**

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Paper No. 8

GDH/gdh

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Crouch-Pion**

Serial No. 76**256749**

Mathew A. Newboles of Stetina Brunda Garred & Brucker for **Leslie Crouch-Pion**.

Andrew J. Benzmilller, Trademark Examining Attorney, Law Office 116 (Meryl Hershkowitz, Managing Attorney).

Before **Simms, Hohein** and **Walters**, Administrative Trademark Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

Leslie Crouch-Pion has filed an application to register the term "BUNCO" for "slot machines."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the

¹ Ser. No. 76256749, filed on May 1, 2001, which is based on an allegation of a bona fide intention to use term in commerce.

ground that, when used in connection with applicant's goods, the term "BUNCO" is merely descriptive of them.

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

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See *In re Bright-*

Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, while acknowledging in its brief that the evidence made of record by the Examining Attorney from searches of the "NEXIS" database demonstrates that the term "BUNCO" "is used to denote a hand-playing dice game," argues among other things that (emphasis in original):

Based on this usage of the term, one cannot reasonably derive a clear understanding, or even a general one, that such term signifies Appellant's particular goods, namely, slot machines. Appellant's mark and the goods associated therewith clearly extend far beyond mere hand dice games, particularly insofar as the mark is utilized in connection with sophisticated, expensive, stand-alone mechanical machines which do not involve the use of dice in any manner or fashion. Thus, the cited excerpts that fail to capture the true essence of Applicant's goods cannot be used as evidentiary support for the Examining Attorney's mere descriptiveness rejection.

Moreover, while noting in particular that the Examining Attorney "has presented one excerpt which associates the term 'bunco' with 'slot machines,'" applicant points out that "such excerpt was from an article written about Applicant's own company that was referenced therein not only with slot machines, but with various types of other products sold by the Applicant as well

(e.g., stationary [sic], newsletters, T-shirts, jewelry, etc.)" (underlining in original). In view thereof, applicant asserts that "such excerpt fails to demonstrate the alleged descriptive use, but rather amply illustrates Appellant's arbitrary use of the term 'bunco' in association with a wide range of different products." Applicant urges, in light of the record herein, that the term "BUNCO" is at a minimum no more than suggestive of her goods.

We agree with the Examining Attorney, however, that the evidence made of record from his searches of the "NEXIS" database, together with the dictionary definitions, which we judicially notice, of the words "slot machine" and "bunco,"² are sufficient to demonstrate prima facie that the term "BUNCO" is merely descriptive of applicant's goods and that applicant has offered nothing which serves to rebut such showing. In particular, while the Examining Attorney points out in his brief that The American Heritage Dictionary of the English Language

² The Examining Attorney, in his brief, requests with respect to the former that "the Board ... take judicial notice of this definition" and states as to the latter that "the record includes a dictionary definition of 'bunco'" (although no such definition appears in either the initial or final Office actions). Inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions, consideration has been given to the above. See, e.g., Hancock v. American Steel & Wire Co. of New Jersey, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); 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); and Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852, 860 n. 7 (TTAB 1981).

(3rd ed. 1992) defines "slot machine" as "a vending or gambling machine operated by the insertion of coins into a slot," we note that, for instance, Webster's Third New International Dictionary (3rd ed. 1993) lists "bunco" in relevant part as "**2** : any of various games (as card games) in which the person who proposes the game expects to win by virtue of an opponent's ignorance, lack of skill, or naiveté." The "NEXIS" excerpts, the Examining Attorney accurately observes, in this regard specifically "show that 'bunco' (occasionally spelled 'bunko') is the name of a type of gambling game" which is generally played with dice.

In particular, the "NEXIS" excerpts indicate in pertinent part that (emphasis added):

"Surprisingly, for such a good-natured and sociable activity, **bunco** has a shady past. It was a **gambling game** in the West during the Gold Rush, and the word 'bunco'--also spelled 'banco' and 'bunko'--came to mean a swindling game, as in the expression 'bunco squad.'" -- Record (Bergen County, NJ), April 28, 2002;

"An then there's bunco stationery, a bunco newsletter and bunco jewelry, and a **bunco slot machine is in the works**, according to Crouch, founder of the World Bunco Association and the force behind the plethora of related products.

'Some of (the phenomenon) has to do with getting back to basics--just good, old, clean fun,' said Crouch, who runs the WBA out of her home." -- San Diego Union-Tribune, January 29, 2002 (article headlined: "**BUNCO SQUADS; Old dice game catching on with a new crowd**");

"In Sienna Plantation, for example, for more than a year now, a group of about 12 to 20 moms get together the first Saturday of every month to play the **dice game Bunco**." -- Houston Chronicle, August 9, 2001;

"Within the community, there are sewing groups, reading and discussion groups and **bunco (a dice game)** groups, plus community swimming and tennis teams." -- Atlanta Journal & Constitution, July 15, 2001;

"In the upper middle-class Aristida home of Darlene and Ken Mauro, eight couples are whooping it up over **bunco, a dice game** that's getting credit for bringing neighbors together, building friendships and turning responsible adults into giddy merrymakers." -- Tampa Tribune, May 17, 2001;

"At the turn of the century, the game was known as a pleasant **parlor game**. During Prohibition, **Bunco** gambling parlors sprang up--the most notorious were located in Chicago. The police who raided the gambling parlors were known as Bunco Squads, so the word took on a meaning applied to scams and con games." -- Topeka Capital Journal, April 5, 2001;

"A venerable **parlor game** with a colorful past, **bunco** has been soaring in popularity in suburbs where new mothers and newcomers are looking to make some friends.

....
Bunco is a progressive dice game of chance. The rules vary slightly from group to group, but the essence is the same.

....
'It's a mindless game, in the sense that you don't have to think or have any skill at all,' said Leslie Crouch, founder of the World Bunco Association and licenser of the only trademarked **bunco game** on the market, 'It's Bunco Time.'" -- Chicago Tribute, February 21, 2001; and

"It grew in respectability after the Civil War, and almost every city had some sort of **bunco** parlor. It moved into the home early last century, becoming a popular **parlor game**. During Prohibition, however, **bunco** gambling parlors again flourished, the most notorious ones being in and around Chicago. The term 'bunco squads' referred to detectives who raided those establishments." -- San Francisco Chronicle, December 22, 2000.

Furthermore, citing her registration for the mark "IT'S BUNCO TIME!!!" and design (as mentioned in one of the "NEXIS" excerpts set forth above),³ we observe that applicant in any event has conceded in her response to the initial Office action that "the term 'BUNCO' is and has always been generic for a particular type of dice game" as shown by the "NEXIS" excerpts.

The Examining Attorney, additionally noting that in her response to the initial Office action, applicant described her goods as "mechanical slot machines used for gambling," points out in his brief (footnote omitted) that, as illustrated by an online press release which he also made of record:

Other games that may have originated as parlor games played with cards or dice, or as board games, are now also commonly played on slot machines. For example, the printout (attached to the final refusal) of an online press release discussing various types of gambling machines to be exhibited at the annual Gaming Expo in Las Vegas refers to other gambling games derived from card and

³ Reg. No. 2,226,530, which issued on February 23, 1999 with respect to "equipment sold as a unit for playing a dice game" and which includes a disclaimer of the term "BUNCO."

board games that are now played on slot and video gambling machines; the website also refers to a slot machine or video gambling machine (apparently from one of applicant's competitors) called BUNCO NIGHTS, "adapted from the popular parlor game."

Such press release, which is headlined "IGT to unveil new video slot games ... at Gaming Expo" and is dated "August 22nd, 2001," reads in relevant portion as follows (bold in original):

With the countdown under way to early October's Global Gaming Expo--an inaugural trade show event for the gaming industry--gaming manufacturers are putting final touches on the new and improved products they will exhibit at the Las Vegas show.

At the headquarters of IGT, the world's largest maker of slot and video gaming machines, the pace is feverish. IGT always unveils an extensive lineup of new games at the fall gaming expo, and this year will be no exception. The company's ... booth will be loaded with new gaming machines, many of them based on well-known entertainment themes and personalities.

IGT's game designers ... are acknowledged masters of adapting pop culture to a gaming machine format. The record in recent years has been to apply successful brands from the movies and television to slot entertainment.

....

IGT will also be introducing a variety of new premium licensed games based on popular themes in both iGame Plus™ and S2000™ platforms. In iGame Plus comes **Bunco Nightsä**, adapted from the popular parlor game; a video version of the strategy board game, **Othello©**; and **SPAM®**, a video slot that

takes its name and inspiration from the all-purpose canned meat product.

In the S2000™ spinning reel format, show attendees will see--and be able to play --UNOä, based on one of the world's most popular card games; SPAM®; Diablo Diamondsä, and Triple Texas Teaä.

In view of the above, including in particular the "NEXIS" excerpt from the San Diego Union-Tribune which is headlined "BUNCO SQUADS; Old dice game catching on with a new crowd" and which refers to applicant's having a "bunco slot machine ... in the works," the Examining Attorney maintains in his brief that "no leap in imagination would be required for consumers seeing the term BUNCO on slot machines to immediately understand that the slot machines will be used to play the game of bunco." Such term, the Examining Attorney insists, "thus merely describes a significant characteristic, feature, function, purpose or use of applicant's slot machines" and "applicant has offered no evidence of any other uses of the term and has given no hints as to what else the term might suggest" instead.

Based on the dictionary definitions and the evidence made of record by the Examining Attorney, we concur, as noted previously that the term "BUNCO" is merely descriptive of applicant's slot machines. Given the indicated capability of slot machines to replicate virtually any dice, card, board or

other parlor game, both sophisticated purchasers and ordinary players of applicant's slot machines would immediately understand that the term "BUNCO" merely describes a significant feature or characteristic of the goods, as well as their purpose, function or use. Specifically, such term conveys forthwith, without speculation or conjecture, that applicant's goods are used to play the game of bunco. Nothing about the term "BUNCO," in the context of applicant's goods, is incongruous, ambiguous or suggestive, nor is there anything about such term which requires the exercise of imagination, cogitation or mental processing or which necessitates the gathering of further information in order for the merely descriptive significance thereof to be immediately apparent. Plainly, in light of the resurgent interest in the game of bunco, the term "BUNCO" immediately conveys that a principal feature or characteristic of applicant's slot machines, as well as their purpose or function or use, is to enable players of such goods to play bunco. The term "BUNCO" is accordingly merely descriptive of applicant's goods within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.