

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
July 9, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Betty Bangs, LLC*

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Serial No. 85386222

James R. Menker of Holley & Menker, P.A. for applicant Betty Bangs, LLC.

Christopher Law, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

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Before Bucher, Holtzman, and Hightower, Administrative Trademark Judges.

Opinion by Hightower, Administrative Trademark Judge:

On August 1, 2011, applicant, ultimately identified as Betty Bangs, LLC, applied to register the mark I BANGED BETTY, in standard character form, for “bathing suits for men; men’s and women’s jackets, coats, trousers, vests; men’s underwear” in International Class 25.<sup>1</sup> Registration has been refused on the ground that the mark consists of or comprises immoral or scandalous matter pursuant to Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).

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<sup>1</sup> Application Serial Number 8538622, based on a bona fide intention to use the mark in commerce pursuant to Lanham Act Section 1(b), 15 U.S.C. § 1051(b).

Applicant timely appealed. Both applicant and the examining attorney filed appeal briefs.

Analysis

Section 2 of the Trademark Act provides in pertinent part that:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

- (a) Consists of or comprises immoral, deceptive, or scandalous matter; . . .

The Patent and Trademark Office may prove that a mark is scandalous and refuse registration by establishing that the mark is “vulgar.” *In re Fox*, 702 F.3d 633, 105 USPQ2d 1247, 1248 (Fed. Cir. 2012) (citing *In re Boulevard Entm’t, Inc.*, 334 F.3d 1336, 67 USPQ2d 1475 (Fed. Cir. 2003) (“*Boulevard*”). This demonstration must be made in the context of contemporary attitudes, in the context of the marketplace as applied to the goods described in the application, and from the standpoint of not necessarily a majority, but a substantial composite of the general public. *In re Fox*, 105 USPQ2d at 1248 (quoting *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 31 USPQ2d 1923 (Fed. Cir. 1994)) (quotation marks omitted).

Where the meaning of a mark is ambiguous, mere dictionary evidence of a possible vulgar meaning may be insufficient to establish the vulgarity of the mark. *In re Fox*, 105 USPQ2d at 1248. But where it is clear from dictionary evidence that the mark as used by the applicant in connection with the goods described in the application invokes a vulgar meaning to a substantial composite of the general public, the mark is unregistrable. *Id.*

In this case, record evidence establishes that “banged” is a vulgar synonym for sexual intercourse. This evidence includes the following dictionary definitions of the transitive verb “bang”:

- *vulgar slang* (of a man) have sexual intercourse with (a woman)<sup>2</sup>
- *Slang (vulgar)*, to have sexual intercourse with<sup>3</sup>
- *Slang: Vulgar* . to have sexual intercourse with.<sup>4</sup>
- To have sexual intercourse with; to fuck; – usually used with the male as a subject. Considered vulgar or obscene [vulgar slang]<sup>5</sup>
- *Vulgar Slang* To have sexual intercourse with.<sup>6</sup>
- *taboo slang* to have sexual intercourse with<sup>7</sup>
- 1. banged To have meaningless sex, or a word that you and your buds use in substitution of the word sex, make love, etc. *Yo man I banged that biatch so many times...* 2. banged to have had sexual intercourse, usually with a female *I banged her last night*. 3. banged 1. To have some hard core, rough sex . . . 1. “*Hey, I banged Latonia against the bathroom door this morning.*” . . . 4. banged a common word meaning to have sex-past tense “*I got banged last night*” . . .<sup>8</sup>
- coarse slang to have sexual intercourse with someone<sup>9</sup>

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<sup>2</sup> October 31, 2012 Reconsideration letter at 4, THE NEW OXFORD AMERICAN DICTIONARY 126 (2d ed. 2005).

<sup>3</sup> *Id.* at 8, RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 163 (2d ed. 2001).

<sup>4</sup> November 30, 2011 Office action at 3, Dictionary.com.

<sup>5</sup> *Id.* at 7, FreeDictionary.org, “The Collaborative International Dictionary of English v.0.48”; *see also* Request for Reconsideration at 85.

<sup>6</sup> *Id.* at 8, TheFreeDictionary.com (from THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000; updated 2009)).

<sup>7</sup> April 18, 2012 final Office action at 58, CollinsDictionary.com.

<sup>8</sup> *Id.* at 54-55, UbanDictionary.com (definitions submitted 2003-07).

<sup>9</sup> October 2, 2012 Request for Reconsideration at 88, Chambers 21st Century Dictionary, chambers.co.uk. Because our analysis concerns the contemporary U.S. meaning of the term “banged,” we give less weight to this evidence and to an article from the British publication “The Guardian” submitted by applicant, *id.* at 35-37.

- coarse, slang To have sexual intercourse with someone.<sup>10</sup>
- To copulate (with), to have sexual intercourse (with). *slang*<sup>11</sup>

It is plain from these definitions, obtained from both traditional printed and open-source online dictionaries, that the term “banged” is regarded as a vulgar slang term for sexual intercourse by a substantial composite of the general public. As used by applicant, the mark I BANGED BETTY would thus be understood as a vulgarity meaning “I had sexual intercourse with Betty.” Although applicant’s goods are not identified as erotic, there is no evidence that the phrase I BANGED BETTY would invoke a different, non-vulgar meaning when used in connection with applicant’s goods or in the marketplace for clothing, particularly men’s underwear and bathing suits for men.

The dictionary definitions alone are sufficient to make a prima facie showing that applicant’s mark comprises vulgar matter and is therefore unregistrable as scandalous under Trademark Act Section 2(a). *See In re Fox*, 105 USPQ2d at 1248. However, the record also contains extensive additional evidence demonstrating that applicant’s mark will invoke the same vulgar meaning to a substantial composite of the general public. This evidence includes Internet screenshots and printouts of:

- An online “adult humor” interactive game titled “I Banged Betty!” in which it appears that the viewer has the opportunity to “Bang Betty!” by controlling the movement of a cartoon image of a woman, “Brickhouse Betty,” having sexual intercourse with a man;<sup>12</sup> and

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<sup>10</sup> *Id.* at 94, WritersEvents.com.

<sup>11</sup> *Id.* at 93, THE OXFORD ENGLISH DICTIONARY 927 (2d ed. 1989; reprinted 2000).

<sup>12</sup> April 18, 2012 final Office action at 50-53.

- Numerous articles, most from what appear to be celebrity and gossip websites, such as:
  - “Johnny Depp Banged An Olsen Twin, Is Gonna Die”<sup>13</sup>
  - “Gerard Butler Banged a Brunette in a Porta-Potty at Coachella”<sup>14</sup>
  - “Lito Sheppard Banged Jabar Gaffney’s Wife On Their Anniversary”<sup>15</sup>
  - “Kim Kardashian Banged Lil’ Bow Wow”<sup>16</sup>
  - “Kim Kardashian is definitely banging Kanye West now”<sup>17</sup>
  - an article titled “Life After Kristen Stewart: What’s The Future Of Robert Pattinson’s Love Life?” stating in the text: “There’s just something about a poor, crestfallen dude that just got his heart smashed open that makes women everywhere want to coddle him back to health so he can ultimately spurn his nurses and go out and bang hot chicks to his heart’s delight again.”<sup>18</sup>
  - an article titled “Kanye West Records Sex Tape With Kim Kardashian Look-Alike, Cries About It” stating in the text: “Sadly for Mr. West, the whole world’s gonna totally wanna see him bang an 18-year-old Kim K. look-alike.”<sup>19</sup>
  - “Kanye West – Watched Kim Kardashian Sex Tape While Banging Other Chicks”<sup>20</sup>
  - “Heidi Klum – Yes, I’m Banging the Bodyguard”<sup>21</sup>

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<sup>13</sup> *Id.* at 61, TheSuperficial.com.

<sup>14</sup> *Id.* at 64, TheBlemish.com.

<sup>15</sup> *Id.* at 66, Philly.Barstoolsports.com.

<sup>16</sup> October 2, 2012 Request for Reconsideration at 2, TheSuperficial.com.

<sup>17</sup> *Id.* at 4, DailyCaller.com.

<sup>18</sup> *Id.* at 13-14, CelebrityDirtyLaundry.com.

<sup>19</sup> *Id.* at 19, blogs.MiamiNewTimes.com.

<sup>20</sup> *Id.* at 23, TMZ.com.

<sup>21</sup> *Id.* at 54, TMZ.com.

- “Heidi Klum IS banging her bodyguard”<sup>22</sup>
- an article titled “Maria Shriver – Friends Call ‘Bulls\*\*t’ on Arnold Schwarzenegger” stating in the text: “Arnold Schwarzenegger was lying through his gap teeth when he claimed Maria Shriver KNEW he was banging other women during their marriage . . . .”<sup>23</sup>
- “Monica Lewinsky Is Getting \$12 Million To Write Tell-All About Banging Bill Clinton!”<sup>24</sup>
- “Banging Sarah Palin’s Daughters”<sup>25</sup>

Applicant makes several arguments that its mark does not run afoul of Section 2(a). First, applicant argues that the term “banged” has a wide range of meanings, all but one of which are not vulgar.<sup>26</sup> However, it is well-established that

there is no requirement in the statute that a mark’s vulgar meaning must be the only relevant meaning—or even the most relevant meaning. Rather, as long as a “substantial composite of the general public” perceives the mark, in context, to have *a* vulgar meaning, the mark as a whole “consists of *or comprises*... scandalous matter.”

*In re Fox*, 105 USPQ2d at 1250 (quoting 15 U.S.C. § 1052(a) (emphasis added) and *Boulevard*, 67 USPQ2d at 1477); *see also Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581, 1588 (TTAB 2008) (finding SEX ROD vulgar despite non-vulgar definitions of “rod”). In this vein, applicant argues that text on its website regarding a female friend who “got banged in Vegas” constitutes a self-reference (i.e., to applicant Betty Bangs) as well as “a way to describe the rapid

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<sup>22</sup> *Id.* at 56, Women24.com.

<sup>23</sup> *Id.* at 60-61, TMZ.com.

<sup>24</sup> *Id.* at 69, PerezHilton.com.

<sup>25</sup> *Id.* at 79, CapitolHillBlue.com.

<sup>26</sup> *See* Appeal Brief at 6.

manufacture of Applicant's swimwear."<sup>27</sup> We find this reference to be ambiguous at best and, in context, more readily understood as a vulgar reference to sexual intercourse.

In a somewhat contradictory argument, applicant also contends that the term "banged" is so commonly used as a synonym (and even as a more polite euphemism) for sexual intercourse that it is no longer regarded as vulgar, but recognized as socially acceptable – albeit crude – slang.<sup>28</sup> In addition to the Internet evidence summarized above, applicant made of record an excerpt from the John Updike novel "Couples" in which the noun "bang" appears as a reference to sexual intercourse.<sup>29</sup> Applicant also argues that the verb has been used on network television shows four times, although there is no supporting evidence of record to assist us in evaluating the latter uses, such as information regarding networks and airtimes.

We are not persuaded by these arguments. We also note that, contrary to applicant's argument, access to materials containing a term need not "be restricted or censored"<sup>30</sup> in order for it to be vulgar. While we recognize that social attitudes and sensitivities are ever-changing, the definitions and other materials of record are sufficiently contemporaneous with the examination of the subject application to reflect contemporary viewpoints. *See In re Luxuria, s.r.o.*, 100 USPQ2d 1146, 1150 (TTAB 2011). We find that the term "banged" in the context of applicant's mark

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<sup>27</sup> *See id.* at 8.

<sup>28</sup> *See id.* at 9.

<sup>29</sup> October 2, 2012 Request for Reconsideration at 80-81. Use in two other novels is also referenced in one of the dictionary definitions submitted by applicant.

<sup>30</sup> Appeal Brief at 10.

retains its dictionary definition as a vulgarity and is used to invoke the same meaning, which is vulgar to a substantial composite of the general public, on the Internet sites and in the novel excerpt of record.

Nor are we persuaded by applicant's evidence that female entertainers have been described on the Internet as having "banging bikini bod[ies]."<sup>31</sup> Applicant's mark incorporates the verb "banged" rather than the adjective "banging," and many of the goods identified in the application are directed to men. Use of the root word "bang" in different formatives and in contexts that may not be vulgar does not change the meaning of the mark at hand, I BANGED BETTY.

Similarly unpersuasive are applicant's prior registration of the mark BETTY BANGS for bathing suits and lingerie<sup>32</sup> and third-party registrations made of record by applicant.<sup>33</sup> None of these registrations comprises even the term "BANGED," much less a vulgar declarative sentence in a form similar to applicant's mark. In any event, we must decide each case on its own merits and are not bound by the allowance of prior registrations, even if they have some characteristics similar to the application. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001).

*Decision:* Because applicant's mark comprises immoral or scandalous matter, the refusal of registration is affirmed.

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<sup>31</sup> October 2, 2012 Request for Reconsideration at 9, 10 & 34.

<sup>32</sup> Registration No. 3543088.

<sup>33</sup> These registrations are for BANGTIME (No. 3378327), JOE BANG (No. 3498303), STAND AND BANG (No. 3911595), STR8BANGIN (No. 3817566), LETS BANG (No. 4122248), and BANG-ON (No. 3186662). A seventh third-party registration submitted by applicant, for A BIGGER BANG (No. 3175535), was cancelled June 28, 2013.