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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Quadrillion Publishing Limited

Serial No. 75/217,892

Jane F. Collen of Collen Law Associates for Quadrillion Publishing Limited.

Wanda Kay Price, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

Before Seeherman, Hairston and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

An intent-to-use application has been filed by Quadrillion Publishing Limited to register the mark "BRAMLEY" for a wide variety of books, magazines and stationery items in International Class 16.¹

¹ Application Serial No. 75/217,892, filed December 2, 1996, based upon a *bona fide* intention to use the mark in commerce under Section 1(b), 15 U.S.C. §1051(b). Although the prosecution of this application also involved repeated disputes over the identification of goods, these issues were all resolved to the satisfaction of the Trademark Examining Attorney with an amendment submitted as part of applicant's appeal brief.

The Trademark Examining Attorney has refused registration under Section 2(e)(4) of the Trademark Act, 15 U.S.C.

§1052(e)(4), on the ground that applicant's mark is primarily merely a surname.

When the refusal to register was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We affirm the refusal to register.

In support of her surname refusal, the Trademark Examining Attorney has made of record the results of her search of a database containing eighty million names, finding 433 "BRAMLEY" surname listings from PHONEDISC POWERFINDER USA ONE 1997 (3rd ed.), as well as an excerpt from *Webster's Unabridged Third New International Dictionary*, 1986, showing that there is no listing of the term "Bramley" in that dictionary.

Applicant argues that the Trademark Examining Attorney has failed to establish a *prima facie* surname case. Applicant challenges the Trademark Examining Attorney's PHONEDISC evidence on the ground that the quantum of evidence submitted by the Examining Attorney is indeterminate of the primary significance of the term to purchasers. Applicant asserts that "Bramley" is also the name of a small village in England. In support of its position, applicant has submitted a map showing the village of Bramley in the county of Surrey, as well as a picture post card

seeming to represent images of several buildings in the village of Bramley. Finally, applicant has also provided a copy of the *Oxford English Dictionary* where the term "Bramley" is defined as "a large green variety of cooking apple."

The test for determining whether a mark is primarily merely a surname is the primary significance of the mark to the purchasing public. See *In re Hutchinson Technology Inc.*, 852 F.2d 552, 554, 7 UPQ2d 1490, 1492 (Fed. Cir. 1988), citing *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975) and *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238 (CCPA 1975). The initial burden is on the Trademark Examining Attorney to establish a *prima facie* case that a mark is primarily merely a surname. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 16, 225 USPQ 652, 653 (Fed. Cir. 1985). After the Trademark Examining Attorney establishes a *prima facie* case, the burden shifts to the applicant to rebut this finding.

The Board, in the past, has considered several different factors in making a surname determination under Section 2(e)(4): (i) the degree of surname rareness; (ii) whether anyone connected with applicant has the surname; (iii) whether the term has any recognized meaning other than that of a surname; and (iv) the structure and pronunciation or "look and sound" of the surname. *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

There is no doubt that the Trademark Examining Attorney has met her initial burden of establishing that "BRAMLEY" would be perceived by consumers as primarily merely a surname. In particular, the Trademark Examining Attorney has presented over four hundred "BRAMLEY" surname references from the PHONEDISC database, along with proof that the word "Bramley" does not appear in an unabridged, English-language dictionary. The Court of Appeals for the Federal Circuit has held that this type of evidence is sufficient to establish a *prima facie* surname case. See Hutchinson Technology, 852 F.2d at 554, 7 USPQ2d at 1492; Darty, 759 F.2d at 16, 225 USPQ at 653; see also 2 J. Thomas McCarthy, *MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION*, §13.30, p. 13-50 (4th ed. 1999).

The Trademark Examining Attorney's PHONEDISC evidence is collected from telephone directories and address books across the country. There is no magic number of directory listings required to establish a *prima facie* surname case. In re Cazes, 21 USPQ2d 1796, 1797 (TTAB 1991); In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564, 1566 (TTAB 1988), *aff'd unpublished decision*, No. 89-1231 (Fed. Cir. 1989). It is reasonable to conclude from these submissions that "BRAMLEY," while obviously not as common as some other surnames, has had

measurable public exposure.² Even if "BRAMLEY" is an uncommon surname, it is by no means a decidedly rare surname.³ From more than four hundred "BRAMLEY" surname references in the PHONEDISC database, we conclude that "BRAMLEY" is a surname even if there are relatively few people in the United States having this name.

Applicant dismisses the hundreds of listings from the PHONEDISC database as representing "1/10,000 of 1%," or an "imperceptible sliver of the American population." However, we find this "percentage-of-the-entire-population" argument to be a hollow reed. The rich diversity of surnames in this country is amply reflected in the PHONEDISC computer database evidence. If one were to take a statistical measurement of this database for common names like "Smith" or "Jones," each would constitute a relatively small fraction of the total database content.

As to the second Benthin factor, we recognize that no one connected to applicant's organization has been shown to have the

² To the extent applicant contends that BRAMLEY is an uncommon surname, we would point out that even uncommon surnames may not be registrable on the Principal Register. See Industrie Pirelli, 9 USPQ2d at 1566.

³ This evidence is far more significant than the number of listings presented in other cases where the surname has been categorized as "rare." See e.g. Kahan & Weisz, 508 F.2d at 832, 184 USPQ at 422 (six DUCCHARME surname telephone directory listings); In re Sava Research Corp., 32 USPQ2d 1380 (TTAB 1994)(one hundred SAVA surname telephone directory listings); Benthin Management, 37 USPQ2d at 1333 (one hundred BENTHIN surname telephone directory listings); In re Garan, Inc., 3 USPQ2d 1537 (TTAB 1987)(six GARAN telephone directory listings and one NEXIS listing). This is one of four factors. Hence, the quantum of PHONEDISC evidence which may be persuasive for finding surname significance in one case may be insufficient in another

"Bramley" surname. If a Bramley were associated in some way with applicant, it could well indicate the public's recognition of the term as a surname. However, logic tells us that the converse is not necessarily true, i.e., the mere fact that this query comes up negative herein cannot compel the conclusion that consumers will perceive the term as a non-surname.

In weighing the third Benthin factor, we have considered applicant's contention that "Bramley" has recognized meanings other than that of a surname. However, both the Benthin decision and our primary reviewing court clearly require that the other meanings be "recognized" by a significant number of people. See Harris-Intertype, supra; Benthin Management, supra. We do not believe that a significant number of people would recognize the other meanings proffered in this case because they are remote or obscure. Thus, they do not rebut the Examining Attorney's *prima facie* surname case. The mere fact that the word "Bramley" has two obscure or remote meanings is insufficient to show that it will not be perceived as "primarily merely a surname." See Harris-Intertype, supra; In re Hamilton Pharmaceuticals Ltd., 27 USPQ2d 1939, 1942 (TTAB 1993). Even applicant concedes that "Bramley" is " ... the name of a very small village outside Guildford, Surrey in England, which

because of differences in the surnames themselves and/or consideration of the other relevant surname factors. Darty, supra.

consists of a few houses, a post office and a general store." See Harris-Intertype, 518 F.2d at 631 n.4, 186 USPQ at 239 n.4 (Harris, Missouri, population 174, and Harris, Minnesota, population 559 held obscure). Applicant certainly has not demonstrated that consumers in the United States would recognize that "Bramley" is the name of a tiny, rural village in England.⁴

Similarly, as to its other alleged non-surname meaning (i.e., a variety of apple), we note that according to applicant's own dictionary entry, the designation "Bramley's seedlings" comes from "M. Bramley, English butcher in whose garden it [the apple variety] may have first grown." Moreover, an entry from the *Oxford English Dictionary* combined with the absence of entries in several unabridged English language dictionaries commonly used in the United States suggests to us that this alleged non-surname significance is remote in the United Kingdom, that this alternate meaning is directly derived from an English surname, and that this particular non-surname meaning is nonexistent in the United States.

⁴ Surnames are routinely used as key parts of the names of streets, neighborhoods, towns, mountains and so forth, indicating the surnames of the people for whom they are named. See Harris-Intertype, *supra*; In re Champion International Corp., 229 USPQ 550, 551 (TTAB 1985). Given that it is a common practice to name places after individuals, it would be surprising if the village of "Bramley" in Surrey could not also trace the historical origins of the village name to the surname of an English family that once lived there.

Finally, as to the fourth Benthin factor, contrary to applicant's contention, it is the view of the Board that "BRAMLEY" has the structure and pronunciation of a surname, not of an arbitrary designation. See Garan, 3 USPQ2d at 1538; Industrie Pirelli, 9 USPQ2d at 1566. In fact, judging this matter simply by its look and feel, "BRAMLEY" seems to fit the archetype of British surnames having an "-ley" suffix, such as Bailey, Bradley, Buckley, Brantley or Barkley, and differs only in a single vowel from American surnames, Bromley, Brumley and Brimley.

Decision: The refusal to register the mark "BRAMLEY" under Section 2(e)(4) is affirmed.

E. J. Seeherman

P. T. Hairston

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board