THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.

Paper No. 14
TEH

9/25/00

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Gamma-Metrics

Serial No. 75/489,741

Edward W. Callan for Gamma-Metrics.

Lisa Weiss Rosaya, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Cissel, Bottorff and Holtzman, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Gamma-Metrics to register RAMOS for goods that were subsequently amended to the following:[1]

> Computer software for use in a raw materials processing system for proportioning raw materials to produce an optimal raw mix chemistry. In Class 9.
>
> User manuals and printed documentation pertaining to a raw materials processing system that uses computer software to proportion raw materials to produce an optimal raw mix chemistry. In Class 16.

[1] Application Serial No. 75/489,741, filed May 22, 1998, asserting a bona fide intention to use the mark in commerce.

The Examining Attorney has refused registration under Section 2(e)(4) of the Trademark Act on the ground that RAMOS is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Whether a mark is primarily merely a surname depends upon whether its primary significance to the purchasing public is that of a surname. In re Hutchinson Technology, Inc., 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988). The Office has the burden of establishing prima facie that a term is primarily merely a surname. In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985).

In this regard, the Examining Attorney has attached evidence from Phonedisc U.S.A. (1998 edition) showing that out of a total of 115 million residential listings, 27,787 individuals have the surname "Ramos." The Examining Attorney has also submitted an excerpt from *American Surnames* (1st ed. 1969). According to this publication, the name "Ramos" is ranked 318 out of the 2,000 most common surnames in the United States,[2] ahead of, for example, the surnames Stevenson, Brady and McGee. In addition, the Examining Attorney has submitted the relevant page from *Webster's II New*

[2] In order to fully understand this ranking in context, we have taken judicial notice of the fact that there are a total of 2,000 surnames identified in this publication. See, for example, Sprague Electric Co., Inc. v. Electrical Utilities Co., 209 USPQ 88 (TTAB 1980).

*Riverside University Dictionary* (1994) containing no entry for "Ramos," thereby demonstrating that "Ramos" has no non-surname, dictionary meaning. The Examining Attorney's evidence shows that RAMOS is a relatively common surname, that the public exposure to RAMOS is only as a surname, and that RAMOS would therefore be regarded as a surname by the average purchaser of applicant's products.

Thus, the Examining Attorney has established, prima facie, that RAMOS is primarily merely a surname. Having done so, the burden shifts to the applicant to rebut the showing made by the Examining Attorney. See In re Harris-Intertype Corp., 518 F.2d 629, 186 USPQ 238, 239-40 (CCPA 1975).

Applicant argues that the primary significance of RAMOS is "an indication of an association with [applicant's] goods" rather than a surname. (Applicant's brief, p.3). In support of this claim, applicant refers to its user manual wherein applicant, by its own description of its software product, states that "RAMOS stands for **RA**w [sic] **M**ix **O**ptimization **S**ystem." (Emphasis in original). Applicant points out that RAMOS has also been used by other industry members to refer to applicant's software products. As an example of such use, applicant submitted a copy of a technical paper which was presented at an industry conference by another member company and which contains a reference to applicant's RAMOS software.

The question to be considered is whether RAMOS has any "*recognized* meaning *other than that of a surname*." See In re BDH Two, 26 USPQ2d 1556, 1558 (TTAB 1993) (emphasis added). Applicant, or even other industry groups, may use RAMOS to refer to applicant's products. However, that use does not, in itself, detract from the significance of RAMOS as a surname or show that those entities, or that relevant purchasers in general, recognize RAMOS as anything other than a surname. Applicant has still not shown that RAMOS has a *primary* meaning other than that of a surname.[3]

In an apparent attempt to overcome applicant's claim that RAMOS is a recognized acronym for applicant's goods, the Examining Attorney submitted an entry from an acronym dictionary (*Acronym, Initialism and Abbreviations Dictionary*, 23rd ed. 1997) showing that RAMOS is instead an acronym for either "Reading and Mathematics Observation System" or "Remote Automatic Meterological Observing Station." The mere fact that RAMOS appears in an acronym dictionary does not automatically exclude the possibility that it is still primarily merely a surname.

---

[3] Evidence of industry recognition of RAMOS as a mark and an association of RAMOS with applicant's products would be relevant to show that RAMOS has acquired a meaning other than that of a surname over time, and thus that the mark has acquired distinctiveness under Section 2(f) of the Trademark Act. See, for example, In re McDonald's Corporation, 230 USPQ 304 (TTAB 1986). However, that is not the nature of applicant's claim in this case.

See, for example, In re Nelson Souto Major Piquet, 5 USPQ2d 1367, 1368 (TTAB 1987). There are vast numbers of words or terms appearing in dictionaries which are unknown to the purchasing public. There is no indication that the acronyms appearing in this dictionary have any relevant meaning in connection with applicant's products or that the average purchaser of applicant's products would recognize any such other meaning. Thus, this evidence does not overcome the primary significance of RAMOS as a surname. Accordingly, applicant has failed to rebut the prima facie case presented by the Examining Attorney.

**Decision:** The refusal to register is affirmed.

R. F. Cissel

C. M. Bottorff

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board