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BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Melard Manufacturing Corp.

Serial No. 76/052,914

Edgar A. Zarins, Esq. at Masco Corporation for Melard
Manufacturing Corp.

James Arthur Bruno, Jr., Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney).

Before Hanak, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On May 22, 2000 Melard Manufacturing Corp. (a Delaware
corporation) filed an application to register the mark
BELLINI on the Principal Register for goods ultimately
identified as "bathroom accessories, namely, towel bars,
towel rings, toilet tissue holders and toothbrush-tumbler
holders" in International Class 21. The application is

based on applicant's assertion of a bona fide intention to use the mark in commerce.

Registration has been finally refused under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), on the basis that the term BELLINI is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. No oral hearing was requested by applicant.

Applicant contends that BELLINI is a rare surname; that the primary significance of the term is not that of a surname; that "consumers are more likely to associate the mark as a city in Italy rather than as a surname" (applicant's response filed May 29, 2001, p. 2); that consumers "would make absolutely no association between the mark and a surname [but rather] they would perceive this as a fanciful expansion of the word 'bell'" (brief, p.3); and that the term does not look or sound like a surname.

The Examining Attorney contends that the primary significance of the term BELLINI to the purchasing public is that of a surname as evidenced by (i) the 354 residential listings of persons with that surname found in PhoneDisc, (ii) several excerpted stories retrieved from the Nexis database (10 out of 385 stories), all indicating uses of a first name with the surname BELLINI, and (iii)

the first 10 listings (from over 250) of persons with the surname BELLINI from WhitePages.com; that BELLINI has no other meaning and applicant's arguments that the term could be perceived as a city in Italy or as an expansion of the word "bell" are unsupported by any evidence thereon; that even rare surnames may be unregistrable under the Trademark Act if, as here, the primary significance to purchasers remains that of a surname; and that the involved mark "looks and sounds" like an Italian surname.

It is well established that the USPTO has the burden of establishing a prima facie case that a mark is primarily merely a surname, and that the test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public. See *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993), and cases cited therein. We are of the opinion that the Examining Attorney has met that burden here, and that applicant's arguments have failed to rebut the Office's prima facie case.

Although the 354 PhoneDisc residential listings of BELLINI are a small fractional percentage of the entire PhoneDisc database (over 100 million names, addresses, and phone numbers), virtually any surname (even extremely common surnames) would presumably also constitute only a

small fractional percentage of this entire database. All of the excerpted stories retrieved from the Nexis database submitted by the Examining Attorney refer to individual people whose surname is "Bellini." Also, the PhoneDisc, the Nexis and the WhitePages.com evidence all include references to individuals named BELLINI from all geographic areas of the United States. Based on the evidence, we find that the primary significance of this term to the purchasing public is that of a surname. As explained above, applicant submitted no evidence that purchasers would think BELLINI refers to a city in Italy or is an expansion of the word 'bell.'¹ Moreover, even if BELLINI is a rare surname, this does not mean that its surname significance would not be recognized by a substantial number of members of the general public.

The Examining Attorney did not inquire and applicant offered no information as to whether BELLINI is the surname of anyone connected with applicant. Therefore, there is no information of record on this point.

¹ Recognizing that the Board may take judicial notice of dictionary definitions (see TBMP §712.01 and cases cited therein), we note that there is no listing for the term "bellini" in either the Merriam Webster Geographical Dictionary (International 1997) or Cassell's Italian-English English-Italian Dictionary (1997).

Finally, we consider the decidedly subjective factor of whether BELLINI has the "look and feel" of a surname. We conclude that it does. See *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564 (TTAB 1988), *aff'd unpub'd*, 883 F.2d 1026 (Fed. Cir. 1989).

Decision: The refusal to register under Section 2(e)(4) of the Trademark Act is affirmed.