

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed: 30 MAR 2004
Paper No. 9
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Merillat Industries, Inc.

Serial No. 76357515

Edgar A. Zarins, Esq. for Merillat Industries, Inc.

Wendy B Goodman, Trademark Examining Attorney, Law Office
103 (Michael Hamilton, Managing Attorney).

Before Hanak, Hohein and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On January 11, 2002, Merillat Industries, Inc.
(applicant) applied to register the mark LANDIS, in typed
form, for goods ultimately identified as "cabinetry,
namely, kitchen and bathroom cabinets and cabinet doors" in
International Class 20.¹

The examining attorney refused to register applicant's
mark on the ground that the mark is primarily merely a

¹ Serial No. 76357515. The application is based on applicant's
allegation of a bona fide intention to use the mark in commerce.

Ser No. 76357515

surname under Section 2(e)(4) of the Trademark Act. 15
U.S.C. § 1052(e)(4).

After the examining attorney made the refusal final, applicant filed a notice of appeal.

In order to determine whether a term is primarily merely a surname, we must determine the impact the term has or would have on the purchasing public. “[I]t is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance. If it is, *and it is only that*, then it is primarily merely a surname.” In re Harris-Intertype Corp., 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975), quoting, Ex parte Rivera Watch Corp., 106 USPQ 145 (Comm’r Pat. 1955) (emphasis in original).

“Among the factors to be considered in determining whether a term is primarily merely a surname are the following: (i) whether the surname is rare; (ii) whether anyone connected with applicant has the involved term as a surname; (iii) whether the term has any other recognized meaning; and (iv) whether the term has the “look and feel”

of a surname." In re United Distillers plc, 56 USPQ2d 1220, 1221 (TTAB 2000).²

On the first factor, the examining attorney introduced the following evidence. First, the examining attorney has made of record a printout from the "PowerFinder" database that shows that there are 8,283 residential telephone number listings for the name Landis. Attached to the printout were 100 listings with the last name Landis and the first name beginning with "A" along with the respective phone numbers. Next, the examining attorney included a sample of more than 30 printouts from the NEXIS database that shows use of Landis as a surname.³ These stories refer to a quarterback named Brad Landis (Story 1), an obituary for Tom Landis (Story 3), a webcaster named David Landis (Story 4), a high school golf coach named Warren Landis (Story 6), a state lawmaker identified only as Landis (Story 7), a college assistant coach named Ben Landis (Story 8), and an opera company member identified as Jim Landis (Story 12). The examining attorney argues that this

² If the mark is depicted in stylized form, another factor we consider is the distinctiveness of the stylization. If the stylization is "distinctive enough, this would cause the mark not to be perceived as primarily merely a surname." See In re Benthin Management GmbH, 37 USPQ2d 1332, 1334 (TTAB 1995). Inasmuch as the mark in this case is depicted in typed form in an intent-to-use application, this factor is not applicable.

³ The NEXIS printout indicated that there were more than 39,000 articles involving the term Landis.

evidence supports the conclusion that LANDIS is not a rare surname. We agree. It is clear that many people in the United States have the surname Landis, and that it is not a rare surname.

The second factor we consider is whether anyone associated with applicant has the involved term as a surname. No inquiry was made on this point and no evidence was submitted, therefore, this factor does not favor either applicant's or the examining attorney's position.

The third factor we discuss is whether there is any other recognized meaning of the term. The examining attorney has submitted a page from a dictionary to demonstrate that the term Landis has no dictionary meaning. Applicant has not pointed to any other meaning the term Landis may have other than to argue that it will serve to identify applicant's goods. Therefore, this factor supports the examining attorney's position that the term Landis is primarily merely a surname. We add that even if there were evidence that a term has some geographic significance, which there is not in this case, that would not necessarily demonstrate that the term was not primarily merely a surname. See Harris-Intertype, 186 USPQ at 239 (evidence that "Harris" was the name of cities in Arizona, Kansas, Minnesota, Missouri, and Oklahoma and counties in

Georgia and Texas did not prevent term from being primarily merely a surname).

The final factor to consider is whether the term has the "look and feel" of a surname. Applicant's arguments are concentrated on this point. "While applicant does not contend that the mark cannot operate as a surname, the primary significance to consumers is as an identifier of the goods. The mark does not immediately involve the connotation of a surname to the consuming public. While almost any term can be found as a surname in an electronic phone list, the mark LANDIS does not have the look and feel of a surname. Consumers would consider the mark nothing more than a fanciful identifier for applicant's cabinets." Applicant's Brief at 2.

The examining attorney disagrees and argues that the telephone listings and the NEXIS printouts support her conclusion that the term has the "look and feel" of a surname. While there is obviously some subjectivity as to whether a term has the "look and feel" of a surname, we conclude that this factor favors the term Landis being viewed as a surname. The term does not look like an arbitrary term and it is not a rare surname. When prospective purchasers encounter the term, it would likely be viewed as a surname.

Ser No. 76357515

When we consider that thousands of people in the United States have the surname Landis, that there are no other recognized meaning for the term, and that the term looks like a surname, we conclude that the examining attorney has meet her burden of establishing a prima facie case that the term LANDIS is primarily merely a surname, which applicant has not rebutted.

Decision: The refusal to register applicant's mark on the ground that it is primarily merely a surname is affirmed.