

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Maslyukov

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Serial No. 77107926

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Pavel Maslyukov, pro se.

Esther A. Belenker, Trademark Examining Attorney, Law  
Office 111 (Craig D. Taylor, Managing Attorney).

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Before, Hairston, Walsh and Ritchie de Larena,  
Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Pavel Maslyukov has filed an application to register  
the mark HAIG (in standard character form) for goods  
ultimately identified as "whisky."<sup>1</sup> Registration has been  
finally refused pursuant to Section 2(e)(4) of the

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<sup>1</sup> Application Serial No. 77107926, filed on February 15, 2007,  
which alleges a date of first use anywhere and in commerce as  
early as July 1, 2001. The application contains a statement that  
"[t]he name shown in the mark does not identify a particular  
living individual."

Trademark Act, 15 U.S.C. 1052(e)(4), on the ground that the mark is primarily merely a surname.

Applicant has appealed; applicant and the trademark examining attorney have filed briefs.

Whether a term is primarily merely a surname depends on the primary significance of the term to the purchasing public. In re Harris-Intertype Corp., 518 F.2d 629, 186 USPQ 238 (CCPA 1975); and In re Champion International Corp., 229 USPQ 550 (TTAB 1985). The examining attorney bears the burden of establishing a prima facie case in support of the conclusion that the primary significance of the term to the purchasing public would be that of a surname. In re BDH Two Inc., 26 USPQ2d 1556 (TTAB 1993) and cases cited therein. If a prima facie case is presented, then the burden of rebutting that showing shifts to the applicant. In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985); and In re Harris-Intertype Corp., supra.

"The question of whether a word sought to be registered is primarily merely a surname within the meaning of the statute can only be resolved on a case by case basis," taking into account various factual considerations. Darty, 225 USPQ at 653. There are five accepted factors to

be considered in the analysis:

- (1) Is the word a common or rarely used surname?
- (2) Does anyone connected with the applicant have that surname?
- (3) Does the word have meaning other than as a surname?
- (4) Does the word look and sound like a surname?
- (5) Is the word presented in use in a stylized form distinctive enough to create a separate non-surname significance?

In re Benthin Management GmbH, 37 USPQ2d 1332, 1333-34 (TTAB 1995) [BENTHIN held not primarily merely a surname because it was a rare surname, did not look and sound like a surname, and was set forth in a highly stylized oval design].

Because applicant seeks to register HAIG in standard character form, the fifth factor is not a factor in this case and we consider the record in light of the first four factors.

As to the first factor, i.e., the rarity of HAIG as a surname, we find the record sufficient to establish that the surname is not a rare one. In this regard, the examining attorney submitted several different types of evidence. She submitted the results of a search of the "P-

FIND" database which indicated that there were 732 entries for the surname "Haig" and one-hundred of the entries were made of record. Also, the examining attorney made of record LEXIS/NEXIS printouts that show individuals throughout the United States who have the surname "Haig." The individuals include several athletes; an Air Force colonel; an actor; a pharmacist; a zookeeper; a CEO of a corporation; an orchestra conductor; a school superintendent; and Alexander Haig, retired General in the U.S Army, former White House Chief of Staff under President Nixon, and former U.S. Secretary of State under President Reagan.

With respect to Alexander Haig, we believe it is reasonable to conclude that large numbers of individuals in the United States would be exposed to the name of a General and top official in two presidential administrations in news reports on military and government activities. This leads us to conclude that the name HAIG may be rare when viewed in terms of frequency of use as a surname in the general population, but not at all rare when viewed as a name repeated in the media in terms of public perception. See *In re Gregory*, 70 USPQ2d 1792, 1795. [The existence of two elected officials with the surname ROGAN led the Board to conclude that "the name may be rare when viewed in terms

of frequency of use as a surname in the general population, but not at all rare when viewed as a name repeated in the media and in terms of public perception."]. Accordingly, we conclude that HAIG is not a rare surname. Moreover, we note that a mark may be found to be primarily merely a surname even though it is not a common surname. See *In re Giger*, 78 USPQ2d 1405 (TTAB 2006). See also *In re E. Martoni Co.*, 78 USPQ2d 589 (TTAB 1975); and *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564 (TTAB 1988). Also, there is no minimum number of listings needed to prove that mark is primarily merely a surname.

As to the second factor, i.e., whether any individual connected with applicant has the surname in question, there is nothing in the record either way on this factor and we can assume that no individual connected with applicant is named HAIG. As explained in *Gregory*, supra, however, this does not aid applicant and only means that the factor is neutral. *Gregory*, 70 USPQ2d at 1795.

The third factor we consider is whether the term HAIG has non-surname significance. In connection with this factor, applicant first argues that HAIG identifies Scotch whisky produced by the Haig family in Scotland. In this regard, applicant referenced a website and submitted a photograph downloaded from this website which shows a

building described as "Former headquarters of John Haig & Sons whisky." This argument, however, is not well taken inasmuch as applicant seeks registration on the Principal Register without resort to Section 2(f). See *In re Cazes*, 21 USPQ2d 1796 (TTAB 1991) [Applicant argued that LIPP or BRASSERIE LIPP no longer primarily merely a surname because the significance of the term is now that of a mark for her restaurant; argument rejected because applicant did not seek registration under Section 2(f)].<sup>2</sup>

Applicant next argues, in connection with this factor, that the term HAIG has historical significance, i.e., it identifies the British General Douglas Haig. The record shows that British General Douglas Haig commanded British troops on the Western Front for most of World War One.

Decisions concerning historical names generally draw a line between names which are so widely recognized that they are almost exclusively associated with a specific historical figure and are thus not considered primarily a surname, e.g., *Lucien Piccard Watch Corp. v. Crescent Corp.*, 314 F. Supp. 329, 165 USPQ 459 (S.D.N.Y. 1970) [DA

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<sup>2</sup> We note that the examining attorney, in her first Office action, advised applicant concerning registration of a surname under Trademark Act Section 2(f). Applicant, in response thereto, stated that "[t]he grounds cannot be provided to let this trademark be registered under Trademark Section 2(f)." (June 7, 2007 response, p. 1).

VINCI not primarily merely a surname because it primarily connotes Leonardo Da Vinci], and names which are only semi-historical in character and thus can be perceived as primarily merely a surname, e.g. Frances Rothschild, Inc. v. U.S. Cosmetic Fragrance Marketing Corp., 223 USPQ 817 (N.D. Tex. 1983) [ROTHSCHILD held primarily merely a surname despite being the surname of a historical banking family]; and In re Champion International Corp., supra [MCKINLEY held primarily merely a surname despite being the surname of a deceased president].

In this case, we find that British General Douglas Haig is at best a semi-historical figure and, therefore, the significance of such name is not so great as to eclipse the surname significance of the term.

We turn, then, to the fourth and final factor to be discussed, i.e., whether HAIG has the look and sound of a surname. When a term does not have the look and sound of a surname, it clearly favors the applicant. On the other hand, when it does look and sound like a surname, such a finding merely tends to reinforce a conclusion that the term's primary significance is as a surname. HAIG does not have the look or sound of an initialism or acronym; nor does it appear to be a coined term. Rather, the term HAIG "appears to be a cohesive term with no meaning other than

as a surname." In re Gregory, supra at 1796. Further, the existence of individuals with the name HAIG tends to reinforce the conclusion that HAIG has the look and feel of a surname.

An additional argument made by applicant requires comment. Applicant maintains that it is entitled to registration of the mark HAIG because the USPTO previously issued Registration No. 359367 for the mark HAIG & HAIG. According to applicant, the registration is now "abandoned." Apart from the fact that applicant failed to make a copy of this registration of record, even assuming that the USPTO issued such registration, it does not entitle applicant to registration of the mark HAIG in this case. The Board's task in this appeal is to determine, based on the record before us, whether applicant's mark HAIG is primarily merely a surname. Each case must be decided on its own merits. Moreover, the determination of registrability of a particular mark by an examining attorney cannot control our decision in the case now before us. See In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ["Even if some prior registrations had some characteristics similar to (applicant's application), the PTO's allowance of such

prior registrations does not bind the Board or this court."]

In sum, when we consider the evidence as a whole, we find that the USPTO has made out a prima facie case that HAIG is primarily merely a surname and that applicant has not rebutted this prima facie case.

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