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Mailed: August 25, 2006

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Sikorsky Aircraft Corporation

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Serial No. 78221800

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Barry L. Kelmachter of Bachman & LaPointe, P.C. for Sikorsky Aircraft Corporation.

Chrisie Brightmire King, Trademark Examining Attorney, Law Office 109 (Dan Vavonese, Managing Attorney).

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Before Quinn, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by Sikorsky Aircraft Corporation to register the mark SIKORSKY (in standard character form) for the following goods, as amended:<sup>1</sup>

Sports knives; and multi-function hand tools comprised of screwdrivers, knives, and can openers, in International Class 8.

Interactive video game programs; pre-recorded video tapes and cassettes about helicopters; computer mouse pads; calculators; magnets; laptop computer carrying

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<sup>1</sup> Application Serial No. 78221800, filed June 27, 2005, based on an allegation of a bona fide intention to use the mark in commerce.

cases; and video game cartridges and discs, in International Class 9.

Pins being jewelry, tie tacks, pendants, bracelets, earrings, costume earrings, flag pins being jewelry, watches, clocks; alarm clocks; mantel clocks; collectable coins, commemorative coins, non-monetary coins, in International Class 14.

Lunch bags; books relating to helicopters; history books; children's books; sticker books; color books; posters; prints; framed posters; framed photographs; photographs; notepads; calendars; pens; pencils; desk sets; desktop business card holders; stationery-type portfolios; decals; postcards; bumper stickers; and impression stamps, in International Class 16.

Umbrellas; tote bags; duffel bags; all purpose sports bags; attaché cases; leather briefcases; back packs; and luggage, in International Class 18.

Portable beverage coolers; mugs; cups; drinking glasses; travel mugs; and plastic water bottles sold empty, in International Class 21.

Apparel, namely T-shirts for men, women, and children, sweatshirts, baseball shirts, collared sports shirts, turtleneck jerseys, oxford shirts, denim shirts, wind shirts, wind-resistant jackets, jackets, sweaters, fleece shirts, fleece vests, pullovers, vests, denim jackets, parkas, leather jackets, flight jackets, aviator jackets, bibs overalls; headgear, namely baseball caps, and children's hats, in International Class 25.

Ornamental novelty buttons; cloth patches for clothing, in International Class 26.

Toy model vehicles and related accessories sold as a unit; radio controlled toy helicopters, toy helicopter building sets, toy helicopters and related accessories sold as a unit, flying boat float toys, dolls, plush toy bears, plush toy helicopters, kites, hand held units for playing video games, board games, jigsaw and manipulative puzzles; golf balls; golf club covers; golf bags; and Christmas tree ornaments, in International Class 28.

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Applicant has claimed ownership of Registration No. 2142914 of the mark SIKORSKY for "aircraft, namely, airplanes and helicopters" based on a claim of acquired distinctiveness under Section 2(f) of the Trademark Act;<sup>2</sup> and Registration No. 2873223 of the mark SIKORSKY SUPPORT SERVICES, INC. and design (SUPPORT SERVICES, INC. disclaimed) for various services relating to aircraft and helicopters.<sup>3</sup>

The trademark examining attorney refused registration under Section 2(e)(4) of the Trademark Act on the ground that SIKORSKY is primarily merely a surname. When the refusal was made final, applicant appealed. Both applicant and the examining attorney have filed briefs. An oral hearing was not requested.

The examining attorney argues that SIKORSKY is primarily merely a surname, albeit a rare one. The examining attorney contends that SIKORSKY is the surname of Igor Sikorsky, applicant's founder; that the term has no meaning in ordinary language; and that by its nature, the term has only surname significance. To support her position, the examining attorney points to applicant's prior registration of SIKORSKY which issued under Section 2(f) of the Trademark Act and an entry from

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<sup>2</sup> Issued March 10, 1998; Section 8 affidavit accepted; Section 15 affidavit acknowledged.

<sup>3</sup> Issued August 17, 2004.

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*Wikipedia*, an online encyclopedia (*en.wikipedia.org*), for "Sikorsky Aircraft Corporation" which states:<sup>4</sup>

Sikorsky Aircraft Corporation  
(Redirected from Sikorsky)

Sikorsky is an American helicopter manufacturer founded in 1923 by Russian born American Igor Sikorsky, the inventor of the first successful helicopter design, upon which the majority of subsequent helicopters were based (though he did not invent the helicopter itself). The company is now a subsidiary of United Technologies Corporation, but remains one of the leading helicopter manufacturers, producing such well-known models as the UH-60 Black Hawk...

Applicant argues that the examining attorney has failed to establish a prima facie case that SIKORSKY is primarily merely a surname, contending that the examining attorney has provided no evidence that there are a large number of individuals in the United States which have the surname or that consumers would view the mark as primarily merely a surname. According to applicant, "the conclusion to be drawn from the absence of such readily available information is that the surname Sikorsky is indeed a rare one." Applicant states on page 4, footnote 1, of its brief, "If one conducts a People Search on Yahoo.com, one finds that in the entire U.S. there are only 113 telephone listings for people having the last name Sikorsky." Applicant did not attach a printout of the listings.

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<sup>4</sup> The accuracy of the information contained in this reference has not been disputed.

Applicant also argues that the facts in this case are "virtually identical" to those in *In re Pyro-Spectaculars Inc.*, 63 USPQ2d 2022 (TTAB 2002) (finding that SOUSA, when used in connection with fireworks, would be viewed as the name of the famous historical figure John Philip Sousa). Applicant contends that the consuming public will associate the mark SIKORSKY with either "a particular deceased individual, Igor Sikorsky" who was "famous for creating helicopters," or with "Appellant, the well known national company who manufactures helicopters." Brief, pp. 5, 6. Applicant introduced pages from three third-party websites: *www.aero-web.org*, entitled "Aviation Enthusiast Corner," showing various models of "Sikorsky" helicopters and the museums where they can be found; *www.aircraft-charter-world.com* describing an available Sikorsky charter aircraft; and *www.rotorhead.org* regarding specifications for the UH-60 Black Hawk helicopter. Applicant also submitted an entry from an online encyclopedia, *www.nationmaster.com*, which contains information similar to that found in the *Wikipedia* reference, as well as information about the various models of "Sikorsky" aircraft.<sup>5</sup>

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<sup>5</sup> The above evidence was timely submitted prior to appeal. The evidence attached to applicant's reply brief is untimely and has not been considered. See Trademark Rule 2.142(d).

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Applicant contends that "Sikorsky" also refers to "Sikorsky Bridge" located in Connecticut and has introduced a page from *www.bergerlehman.com* discussing plans for expansion of the bridge. As to its prior registration under Section 2(f), applicant argues that the registration "evidences the long and exclusive use of the mark" and "does not demonstrate that the consuming public today views the subject mark as being primarily a surname." (Emphasis in original.)

A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname. See *In re United Distillers plc*, 56 USPQ2d 1220 (TTAB 2000). Among the factors to be considered in determining whether a term is primarily merely a surname are (1) the degree of a surname's rareness; (2) whether anyone connected with applicant has that surname; (3) whether the term has any recognized meaning other than that of a surname; and (4) whether the term has the "look and sound" of a surname. See *In re United Distillers plc*, *supra*.

We emphasize that the burden is on the examining attorney, in the first instance, to present evidence sufficient to establish a prima facie case that a term is primarily merely a surname. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). Only when the examining attorney has

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established a prima facie case does the burden shift 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 (CCPA 1975).

As to the first factor, we point out that the degree of rarity of a surname has a direct bearing on whether the term will be perceived by the public as primarily merely a surname. In *re Industrie Pirelli*, 9 USPQ2d 1564, 1566 (TTAB 1988); and In *re Garan Inc.*, 3 USPQ2d 1537, 1540 (TTAB 1987). A surname may be so rare or obscure that it may not fall within the proscription of Section 2(e)(4) of the Act. See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995); and *In re Sava Research Corp.*, 32 USPQ2d 1380 (TTAB 1994).

The examining attorney has produced evidence of only one individual in the entire United States with the surname "Sikorsky." The individual is Igor Sikorsky, now deceased, who was the founder of Sikorsky Aircraft Corporation in 1923. Apart from any question of whether "Sikorsky Aircraft Corporation" is well known, there is no evidence showing that the individual, Igor Sikorsky, is well known or that his name has had wide exposure to the purchasing public.<sup>6</sup> Applicant's statement in its

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<sup>6</sup> We note that the examining attorney in her search for "Sikorsky" on the *Wikipedia* website was redirected to the entry for "Sikorsky Aircraft Corporation." There is apparently no separate entry in the encyclopedia for the individual, Igor Sikorsky.

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brief regarding the telephone listings for "Sikorsky" in *Yahoo.com* is unsupported by any documentation or information about the listings. It is impossible to draw any meaningful conclusion from the statement alone about the extent of public exposure to the term or that its surname meaning would be recognized by a significant segment of the purchasing public. See *In re Garan Inc.*, 3 USPQ2d 1537, 1540 (TTAB 1987) (noting that "[v]irtually no exposure of 'Garan' as a surname has been demonstrated"). See also, e.g., *In re Etablissements Darty et Fils*, supra at 653 (observing that in *In re Kahan & Weisz Jewelry Manufacturing Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975), "the PTO sought to buttress its position by resort to the applicant's submissions," the Court stated, "[n]ot only was the refusal to register without the examiner having made a prima facie case improper, but also, as one might expect, the applicant's evidence was insufficient to establish a case for the PTO.")

As to the second factor, if "Sikorsky" is the name of someone associated with applicant, it could well indicate the public recognition of the term as a surname. Igor Sikorsky is the name of the individual who founded the company in 1923. However, that individual is deceased and we question whether this reflects current use as a surname by anyone in the United States or current perception of the term as a surname.

Turning to the third factor, whether the term has another recognized meaning, we point out that the examining attorney is required to show, as part of her prima facie case, not only that "Sikorsky" is a surname but that it is primarily merely a surname. The examining attorney has introduced no evidence, such as the absence of the term from the dictionary, that the term has no meaning other than a surname.<sup>7</sup>

As to the fourth factor, the examining attorney concludes that "Sikorsky" has the structure and pronunciation of a surname on the basis that Sikorsky has no other meaning, which as noted above, the examining attorney has not proven. There is otherwise no evidence or at least an explanation to support the examining attorney's conclusory contention that "Sikorsky" has the "look and sound" of a surname. Compare, e.g., *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564 (TTAB 1988) ("'Pirellli' looks like an Italian surname, being similar in structure to Italian surnames which do appear in excerpts from the *American Surnames* reference book (viz., Antonelli, Mancinelli and Pacelli, etc.)") In addition, for the reasons noted earlier, we cannot give much weight in this case to the fact that Igor Sikorsky is the name of applicant's founder.

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<sup>7</sup> We are not persuaded by applicant's evidence and argument that the term does have another recognized meaning. On the other hand, it is not an applicant's burden to make this showing unless and until the examining attorney first establishes a prima facie case that the term is primarily merely a surname.

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As a final matter, the examining attorney has provided no authority for her apparent contention that applicant's Section 2(f) claim in its prior registration for SIKORSKY amounts to a concession as to the present application, for different goods, that the term is primarily merely a surname. Even in cases where an applicant concedes the lack of inherent distinctiveness in the application itself, TMEP §1212.02(b) instructs that the examining attorney "should not rely on this concession alone, but should rely on other appropriate evidence."

We find, under the factors set out in *United Distillers* and based on the record before us, that the examining attorney has not met her initial burden of showing that SIKORSKY would be viewed as primarily merely a surname.

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