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Mailed: October 31, 2006

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Ruxton Pharmaceuticals, Inc.

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Serial No. 78496761

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Nicole K. McLaughlin of Duane Morris LLP for Ruxton  
Pharmaceuticals, Inc.

Marcie R. Frum Milone, Trademark Examining Attorney, Law Office  
116 (Michael W. Baird, Managing Attorney).

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Before Hohein, Kuhlke and Walsh, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

An application has been filed by Ruxton Pharmaceuticals,  
Inc. to register the mark RUXTON PHARMACEUTICALS (in standard  
character form) for goods ultimately identified as  
"Pharmaceutical products and preparations for the treatment and  
prevention of central nervous system diseases, namely,  
neurodegenerative, cognitive, psychiatric and pain disorders;  
cardiovascular anti-inflammatory and anti-infective

pharmaceuticals and preparations" in International Class 5.<sup>1</sup> In response to the examining attorney's request, applicant disclaimed the word PHARMACEUTICALS.

The examining attorney has refused registration under Section 2(e)(4) of the Trademark Act (15 U.S.C. §1052(e)(4)) on the ground that RUXTON is primarily merely a surname.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

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). The inclusion in the mark of a generic term "does not preclude its surname significance, if, when considered as a whole the primary significance of the mark to the purchasing public is that of a surname." *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1940 (TTAB 1993). The burden is on the examining attorney to establish a prima facie case that a term is primarily merely a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). 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

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<sup>1</sup> Application Serial No. 78496761, filed October 8, 2004, claiming a bona fide intention to use the mark in commerce under Trademark Act Section 1(b) (15 U.S.C. §1051(b)).

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 Benthin Management GmbH*, 37 USPQ2d 1332, 1333 (TTAB 1995). See also *In re Gregory*, 70 USPQ2d 1792 (TTAB 2004).

In support of her contention that RUXTON is a surname, the examining attorney provided a listing of 115 entries for individuals with the surname RUXTON retrieved from the Lexis/Nexis USFIND database.<sup>2</sup> The examining attorney also submitted pages from various websites that show RUXTON used as a surname. See, e.g., [surnames.heritagecreations.com](http://surnames.heritagecreations.com); [ruxtonbrothers.com](http://ruxtonbrothers.com); [amazon.com](http://amazon.com); [antiques-colorado.com](http://antiques-colorado.com); [genforum.genealogy.com](http://genforum.genealogy.com); [ancestry.com](http://ancestry.com); [andoverstownman.com](http://andoverstownman.com); [houseofnames.com](http://houseofnames.com); [nytimes.com](http://nytimes.com); and [chenowithsite.com](http://chenowithsite.com). In addition, she submitted two third-party registrations which issued under Section 2(f) based on a showing of acquired distinctiveness. She also submitted Lexis/Nexis printouts of excerpted articles from various publications that show several individuals throughout the United States who have the surname RUXTON.

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<sup>2</sup> In reviewing this evidence, we have disregarded any duplicate references to the same individuals in the USFIND database.

In support of her position that RUXTON has no other meaning, she submitted the "results of a search in the Columbia Gazetteer, which showed that a geographic search for RUXTON did not produce any results." In addition, she submitted "a full search at Bartleby.com show[ing] a hit for RUXTON used solely as a surname," and noted that RUXTON "would have appeared with a definition in this search, if, indeed, it were a defined term." Br. unnumbered p. 5.

Finally, in support of her argument that RUXTON has the look and feel of a surname, the examining attorney submitted search results from the Lexis/Nexis PFIND database for the surnames BRAXTON, BUXTON, RUX, and ROXTON.

As to the meaning of the word PHARMACEUTICALS the examining attorney submitted the following dictionary definitions:

PHARMACEUTICAL adj. Connected with the production of medicines n. a medicine. Dictionary.cambridge.org (Cambridge University Press 2004); and

PHARMACEUTICAL adj. of or relating to pharmacy or pharmacists. n. a pharmaceutical product or preparation. The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000).

Applicant submitted excerpts from the Dictionary of American Family Names (2003); American Surnames (1969); and A Dictionary of Names, Nicknames and Surnames (1904 repub. 1966), noting that none of these sources lists RUXTON as a surname. However, the Dictionary of American Family Names does list RUXTON as a

surname. Applicant also notes a third-party registration for RUXTON that was not registered pursuant to Section 2(f); however, applicant did not submit a copy of this registration. In addition, applicant submitted printouts from [www.whitepages.com](http://www.whitepages.com) which show that RUXTON is not listed as a surname in the town or zip code where applicant's corporation is located. Applicant also submitted a printout of the search results showing no records for the name RUXTON retrieved from the website [mongabay.com](http://mongabay.com) which purports to contain the most common surnames in the United States and a printout from [www.namestatistics.com](http://www.namestatistics.com) which includes a statement that RUXTON is a "very rare last name."

In support of its contention that RUXTON has other meanings, applicant submitted excerpts from search results retrieved from the Google search engine which show RUXTON used as a surname, as a geographic location and as part of a company or school name, e.g., RUXTON MEDIA GROUP; a printout from [mapquest.com](http://mapquest.com) showing RUXTON as the name of a town and creek in Colorado and a city in Maryland; and an article retrieved from a Canadian online auto magazine that mentions the RUXTON car named after a William Ruxton and produced for approximately one year. Finally, applicant also states that no one in the corporation "possesses the name 'Ruxton.'"

We first determine whether RUXTON is a rare surname. The evidence of 115 entries (a few of which appear to be duplicates) is not substantial evidence that the term RUXTON is a common surname. With regard to the articles, they are not sufficient to compensate for the small number of entries in the USFIND database. Compare Gregory, 70 USPQ2d at 1795 ("[E]xistence of these [public officials] with the surname ROGAN leads us 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."). Therefore, we conclude that the surname RUXTON is not a common surname in the United States, and thus it would be somewhat rare. See United Distillers, 56 USPQ2d at 1221 ("Hackler" held to be a rare surname despite 1295 listings in phone directories).<sup>3</sup>

However, the fact that a term is not a common surname does not mean that a surname would not be considered to be primarily merely a surname. See In re Adrian Giger and Thomas Giger, 78 USPQ2d 1405, 1408 (TTAB 2006). See also In re E. Martinoni Co., 189 USPQ 589, 590 (TTAB 1975); and In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564, 1566 (TTAB 1988). Here, the

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<sup>3</sup> While applicant argues that the number of RUXTON hits against the total U.S. population is very small, we note that given "the large number of different surnames in the United States, even the most common surnames would represent but small fractions of the total population." See Gregory, 70 USPQ2d at 1785.

USFIND listings and articles retrieved from Lexis/Nexis show use of RUXTON as a surname in New York, New York; Bonita Springs, Florida; Philadelphia, Pennsylvania; West Menlo Park, California; Kansas City, Missouri; Iron Mountain, Wyoming; Lakewood, Colorado; Eugene, Oregon; Iowa City, Iowa; Munci, Indiana; Bristol, Wisconsin; Middletown, Connecticut; Chicago, Illinois; Baltimore, Maryland; Menands, New York; Cincinnati, Ohio; Plymouth, Massachusetts; and Syracuse, New York among other places. In view of this evidence, we find that the surname significance of RUXTON would be recognized by prospective purchasers.<sup>4</sup> See *Establissemments Darty et Fils*, supra.

The second factor we consider is whether anyone associated with applicant has the surname RUXTON. In this case, applicant has indicated that no one associated with it has the surname RUXTON and there is nothing in the record to contradict this statement.

The third factor we consider is whether there is evidence of another recognized meaning of the term RUXTON. In this case, the examining attorney submitted evidence that the term RUXTON has no other meaning in English. Specifically, the examining attorney searched the Bartleby database and only retrieved a surname

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<sup>4</sup> We note that the two third-party registrations submitted by the examining attorney are not sufficient to establish a particular practice by the Trademark Office. Moreover, as is often stated, each case must stand on its own merits. In *re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

reference for RUXTON. Applicant's evidence does not support a finding that RUXTON has another primary meaning in English. The search results retrieved from the Google search engine do not serve substantially to support applicant's argument. Out of approximately 26 excerpts, 11 excerpts show Ruxton appearing as a surname and 3 excerpts show RUXTON appearing as a company name, where the company is named after an individual with the last name RUXTON. As to the remaining excerpts, 2 appear to be geographical references to the town of Ruxton, Maryland and in some of the other excerpts RUXTON appears as part of the name of a company or school which may or may not be based on the surname of an individual. We further note that search results frequently do not provide sufficient information to determine the significance of a term. In re Fitch IBCA, Inc., 64 USPQ2d 1058, 1060 (TTAB 2002). As to the geographical references, this case is not in the category of In re Colt Industries Operating Corp., 195 USPQ 75 (TTAB 1977) where the geographical significance of FAIRBANKS as a well-known city in Alaska obviated a finding of primary surname significance. There is nothing in the record to suggest that Ruxton, Maryland or Ruxton Creek in Colorado are well-known or even slightly known to potential consumers of applicant's goods. See Hamilton Pharmaceuticals, supra. The article about a car called RUXTON is not sufficient to show another meaning for RUXTON in the consumer's minds. According to

the article, this car was named after an individual and produced between 1930 and 1931. We are also not persuaded by applicant's argument that RUXTON PHARMACEUTICALS "is registrable because its rare occurrence as a surname is in balance with its use as something other than a surname." Reply Br. p. 4. Unlike In re Hunt Electronics Co., 155 USPQ 606 (TTAB 1967) (HUNT not primarily a surname) and In re Fisher Radio Corp. v. Bird Electronic Corp., 162 USPQ 265 (TTAB 1969) (BIRD not primarily merely a surname) there is no definitive other meaning of RUXTON. Hamilton Pharmaceuticals, 27 USPQ2d at 1942 ("unless there is a readily recognized meaning for a term apart from its surname significance, the fact that other meanings for the term exist does not necessarily indicate that the term would have a primary meaning to the purchasing public other than that of its ordinary surname significance").

Finally, we consider whether RUXTON has the look and sound of a surname. As stated in Ex parte Rivera Watch Corp., 106 USPQ 145, 149 (Comm'r Pats. 1955):

There are some names which by their very nature have only a surname significance even though they are rare surnames. "Seidenberg," if rare, would be in this class. And there are others which have no meaning--well known or otherwise--and are in fact surnames which do not, when applied to goods as trademarks, create the impression of being surnames.

Applicant argues that RUXTON does not have the "look and feel" of a surname. Applicant specifically argues:

In the case of rare surnames, there is no evidence that relevant purchasers would be "preconditioned" to perceive RUXTON as a surname...Applicant-appellant submits that there are a myriad of famous trademarks, such as KODAK®, that may also be surnames. Although "Kodak" may be a surname, it is also heralded as being a "strong" trademark because it is inherently distinctive or "fanciful." There are many other famous trademarks that become surnames by simply changing one letter. For example, by taking the well-known INTEL® trademark and adding one letter, one may come up with the surnames "Fintel" or "Gintel." By changing a single letter of the INTEL® mark, you get surnames such as "Antel," "Istel," or "Insel"...Moreover, the determination of whether a mark has the "look and feel" of a surname is based on a culmination of the other factors: In this case, the Board should consider whether "Ruxton" has any other known significance, and whether Ruxton is the surname of an individual affiliated with the Applicant-appellant.

Br. pp. 12-13.

The examining attorney argues that:

There is no evidence of record to suggest that the proposed mark will be perceived as anything other than a surname. It does not appear to have a defined, recognized meaning or coined meaning. (citation omitted) RUXTON appears to be a cohesive term that has nothing more than surname significance. The fact that a term looks and sounds like a surname may contribute to a finding that the primary significance of the term is that of a surname...In the denial of the request for reconsideration, the Examining Attorney attached additional evidence that other, similar sounding surnames, such as BRAXTON, BUXTON, RUX, and ROXTON have a primary significance as a surname. The examiner also attached evidence of a Ruxton tartan that was submitted by a RUXTON from California. This evidence only bolsters the examiner's argument that the primary significance of RUXTON is as a surname and that RUXTON has the "look and feel" of a surname.

Br. unnumbered pp.9-10.

We conclude that RUXTON has the look and sound of a surname.<sup>5</sup> First, there are numerous individuals with the surname RUXTON throughout the United States. Second, it has no other known significance sufficient to obviate its primary significance as a surname. "It would not be perceived as an initialism or acronym, and does not have the appearance of having been coined by combining a root element that has a readily understood meaning in its own right with either a prefix or a suffix." Gregory, 70 USPQ2d at 1796. The facts of this case are distinguished from *In re Sava Research Corp.*, 32 USPQ2d 1380 (TTAB 1994) where the Board found the word SAVA "to have the look and sound of an acronym, and that applicant's explanation as to the meaning of SAVA [was] quite plausible." In this case, applicant has not argued nor is it plausible that RUXTON would be perceived as an acronym or abbreviation.

In conclusion, while RUXTON is not a common surname and no one associated with applicant has the surname RUXTON, it has the look and sound of a surname and the record points to no other definitive recognized meaning for this term. Thus, when we view

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<sup>5</sup> We note the examining attorney's argument regarding the occurrence of other similar sounding surnames. While this evidence may be helpful in providing some context for consumer perception of certain combinations of letters, sounds, suffixes and prefixes in surnames, see *Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988), our determination does not rely on this evidence. We also note that applicant's argument regarding the significance of other marks or manipulation of those marks to create surnames is not supported by evidence and the possible perception of other trademarks is not relevant here.

the term RUXTON under the factors set out in Benthin, we conclude that the examining attorney has met her initial burden of showing that the term RUXTON would primarily be viewed as a surname and applicant has not rebutted this prima facie case.

Considering the mark as a whole, the addition of the generic term PHARMACEUTICALS does not overcome the surname significance of the proposed mark RUXTON PHARMACEUTICALS. Hamilton Pharmaceuticals, supra. "It is certainly not a nebulous term that detracts from the surname significance of the mark." Giger, 78 USPQ2d at 1409. Therefore, when we consider the primary significance of the entire mark, RUXTON PHARMACEUTICALS, when it is used on applicant's pharmaceutical products and preparations, we conclude that prospective purchasers would understand that the term is primarily merely a surname.

Decision: The refusal to register under Section 2(e)(4) of the Trademark Act on the ground that it is primarily merely a surname is affirmed.