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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jeld-Wen, Inc.

Serial No. 78772837

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Nelson Mullins Riley & Scarborough for Jeld-Wen, Inc.

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

Opinion by Quinn, Administrative Trademark Judge:

Jeld-Wen, Inc. filed an application to register the  
mark LANGFORD for "decorative glass panels sold as an  
integral component of metal doors."<sup>1</sup>

The trademark examining attorney refused registration  
under Section 2(e)(4) of the Trademark Act, 15 U.S.C.  
§1052(e)(4), on the ground that the matter sought to be

<sup>1</sup> Application Serial No. 78772837, filed December 14, 2005,  
alleging a bona fide intention to use the mark in commerce.

registered is primarily merely a surname.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.<sup>2</sup>

Section 2(e)(4) of the Trademark Act precludes registration of a mark that is "primarily merely a surname" on the Principal Register without a showing of acquired distinctiveness under Section 2(f), 15 U.S.C. §1052(f). We must decide on the specific facts of each case whether the public would perceive the mark at issue as "primarily merely a surname." *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). The examining attorney bears the initial burden to make a prima facie showing of surname significance. *Id.* If the examining attorney makes that showing, then we must weigh all of the evidence to determine ultimately whether the mark is primarily merely a surname. *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994).

In the case of *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995), the Board identified five factors, four of which are relevant here, to consider in determining whether a mark is primarily merely a surname: (1) the degree of the surname's "rareness"; (2) whether anyone

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<sup>2</sup> Applicant's request for an oral hearing subsequently was withdrawn.

associated with applicant has the mark as a surname; (3) whether the mark has any recognized meaning other than as a surname; and (4) whether the mark has the "look and feel" of a surname. *Id.* at 1332-33. Because applicant's mark is in standard characters, we need not consider the fifth factor, that is, whether, because of the display of the mark, it will not be perceived as a surname.

With respect to the rareness of "Langford" as a surname, the examining attorney submitted the results of a search of the Phonedisc database. The search revealed 8,995 hits for the surname "Langford." The examining attorney also provided the results of a search for "Langford" at rhymezone.com stating, "name: A surname (common: 1 in 12500 families; popularity rank in the U.S.: #1659)." Also of record is a search of the NEXIS database showing 2,697 hits for "Langford" as a surname in a recent six-month period.

Applicant responds by arguing, "[t]his data is simply not relevant since it is not in a format which can be used to determine if the purchasing [public] would primarily view the mark as a surname." (Brief, p. 6). Applicant goes on to indicate that two major metropolitan areas, namely New York City and Los Angeles, have only nine and ten listings, respectively, of individuals with the surname

"Langford." Applicant contends that "[a] more useful and relevant technique is to look at the data in the context of a city, as opposed to the whole country at once," and that "[b]y looking at the data on a micro level instead of a macro level, the impression of the purchasing public is more easily determined." (Brief, p. 8).

We find that the examining attorney's evidence establishes that "Langford" is a surname, and one that is not rare. Although applicant cites to the case of *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975) in support of its novel arguments, we do not share applicant's view. The examining attorney followed long settled practice and procedure in determining the number of individuals with the surname "Langford" throughout the United States, including major cities. The fact that few surnames were listed in two metropolitan areas does not diminish the probative value of the examining attorney's evidence.

With regard to the second factor, applicant states that "no person connected with Applicant bears 'Langford' as a surname." While we have considered this fact, it is not determinative of whether "Langford" is a surname within the meaning of Section 2(e)(4).

As to the third factor, the examining attorney contends that "Langford" has no meaning other than as a surname. In support of this position, the examining attorney relies upon dictionary excerpts showing no entry for "Langford." To the contrary, applicant argues that "Langford" "has roots dating back to the early English vernacular. Looking at its components, LANG means 'long' in Old English and FORD refers to a pass or a river crossing. The combination of the two terms would have been used to describe a long river crossing." (Brief, p. 2). Applicant points out, "as evidence of this heritage," that "Langford" is the name of multiple foreign cities across the world (primarily in England and none in the United States), thereby taking "Langford" out of the category of "primarily merely a surname." Applicant also contends that due to its English etymology, the use of LANGFORD in connection with the goods may be suggestive of an English style or feel of the goods.

Even assuming *arguendo* the accuracy of applicant's factual statements, it is likely that most individuals in the United States are not aware of early English vernacular or the existence of obscure geographical locations named "Langford" overseas. See *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1943 (TTAB 1993). We do not view

"Langford" as being in the category of geographical significance discussed in *In re Colt Industries Operating Corp.*, 195 USPQ 75 (TTAB 1977) [geographical significance of Fairbanks as a well-known city in Alaska overcame a finding of primary surname significance]. There is no indication in the record that the locations highlighted by applicant are well known or even slightly known to potential customers in this country. Accordingly, we find that in the United States, the term "Langford" has no meaning to individuals other than as a surname.

Insofar as the fourth factor is concerned, we consider whether "Langford" has the "look and feel" of a surname. The examining attorney contends that the mark "has the structure and sound of a surname," but has submitted no evidence in support of this proposition. To the contrary, applicant argues that the mark "has the meaning, as well as the appearance, of the compound word which combines the word 'lang' with the word 'ford;' words with reference to a long river crossing."

This fourth factor is highly subjective. Given the absence of any evidence in support of the examining attorney's claim, we decline to speculate on the point. We reiterate, however, that individuals in this country likely will not be familiar with any Old English meaning or that

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the mark is the name of certain cities in foreign countries.

We have considered all of applicant's arguments against the refusal, including those not specifically mentioned in this opinion. Notwithstanding applicant's arguments, we conclude, based on the evidence of record, that LANGFORD is primarily merely a surname within the meaning of Section 2(e)(4).

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