

Hearing:
June 11, 2008

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
September 30, 2008
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Amlin plc

Serial No. 79011475

Jordan A. LaVine of Flaster Greenberg P.C. for Amlin plc.

Tina Brown, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Bucher, Rogers and Wellington, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Amlin plc seeks registration on the Principal Register
of the mark **AMLIN** (*in standard character format*) for services
recited in the application, as amended, as follows:

"insurance services and financial services relating to the insurance industry, namely, insurance underwriting in the fields of life, health, accident, fire, aviation and satellite, motor, marine, real estate, personal property, fine art, financial trading, professional indemnity, US and international catastrophe; reinsurance underwriting; insurance and reinsurance brokerage; insurance claims administration; electronic processing of insurance claims and payment data; appraisals for insurance claims; insurance claims processing; insurance consultation; financial analysis and consultation relating to insurance

premiums and claims; financial evaluation for insurance purposes; financial management for insurance purposes; financial planning for insurance purposes; financial portfolio management for insurance purposes" in International Class 36.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation under Section 2(e)(4) of the Trademark Act, 15 U.S.C. Section 1052(e)(4), because the proposed mark is primarily merely a surname.

Applicant and the Trademark Examining Attorney submitted main briefs, and both appeared at a hearing before this panel of the Board on June 11, 2008. We reverse the refusal to register.

The test for determining whether a mark is primarily merely a surname is the primary significance of the mark to the purchasing public. *See In re Hutchinson Technology Inc.*, 852 F.2d 552, 554, 7 UPQ2d 1490, 1492 (Fed. Cir. 1988), *citing In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975) and *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238 (CCPA 1975).

The initial burden is on the Trademark Examining Attorney to

¹ On April 25, 2005, applicant made a Request for Extension of Protection, seeking registration on the Principal Register under Section 66(a) of the Trademark Act. On July 7, 2005, the application was forwarded to the United States Patent and Trademark Office, and assigned application Serial No. 79011475.

establish a *prima facie* case that a mark is primarily merely a surname. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 16, 225 USPQ 652, 653 (Fed. Cir. 1985). After the Trademark Examining Attorney establishes a *prima facie* case, the burden shifts to the applicant to rebut this finding.

The Board, in the past, has considered several different factors in making a surname determination under Section 2(e)(4): (i) the rarity of the surname; (ii) whether anyone connected with applicant has the surname; (iii) whether the term has any recognized meaning other than that of a surname; and (iv) the structure and pronunciation or "look and feel" of the surname. *In re Joint-Stock Co. "Baik,"* 84 USPQ2d 1921, 1922 (TTAB 2007); and *In re Benthin Management GmbH*, 37 USPQ2d 1332, 1333 (TTAB 1995).

Rareness

The following number of "Amlin" listings were located in these various electronic databases by applicant and by the Trademark Examining Attorney:

Source:	No. of Listings
http://www.411.com/	111
http://www.directory-assistance.net/	127
http://people.yahoo.com/	154
LexisNexis® "P-FIND" database	165
http://www.whitepages.com/	174
http://zabasearch.com/	192

Applicant argues that "Amlin" is an *extremely* rare surname while the Trademark Examining Attorney contends that it is a *relatively* rare surname. Eliminating the unavoidable duplication in the databases and choosing a midrange of one-hundred-fifty separate listings in the entire United States, we are looking at a surname for only one in every two million individuals in the U.S. population. Hence, we agree with applicant that "Amlin" is such an *extremely* rare surname that few prospective consumers are likely to perceive it as a surname, and substantially no one will be adversely affected by the registration of this term for the recited services.

Similarly, the articles placed into the record by the Trademark Examining Attorney fall far short of supporting her contention that the surname "Amlin" commonly appears in newspapers and other media, or of supporting a finding that individuals having this surname have enjoyed broad exposure to the general public such that "Amlin" is well recognized as a surname. *Contra In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004).

Accordingly, this factor favors the position of applicant.

Surname of anyone connected with applicant?

As to the second *Benthin* factor, there is no evidence in this record that someone with the surname "Amlin" is associated with applicant, making this factor, from applicant's perspective, neutral at worst. On the other hand, applicant points to the merger of its predecessor in interest with another firm in 1998, where initials (A•ML•IN) were joined together in a logical way to coin a trade name for the newly-formed company.² Hence, we accept applicant's representation that **AMLIN** is a coined term, finding this to be a most credible explanation for the origins of its company name.

Other Meanings

The third factor we consider is whether the term has a recognized meaning other than that of a surname. The Trademark Examining Attorney has submitted dictionary

² "As a legal entity, Applicant was formed as Angerstein Underwriting Trust plc in 1993. It changed its name to Amlin plc in 1998 upon its merger with the Murray Lawrence Group in 1998. Applicant's "Amlin" trademark and name were coined by combining: (1) the first letter of its former "Angerstein Underwriting Trust plc" name, i.e., "A," (2) the initial letters of the merging company "Murray Lawrence," i.e., "M" and "L," (3) and the letters "in," which was intended to suggest the primary focus of Applicant's business, namely, insurance and reinsurance services."

Bale Declaration attached to Request for Reconsideration, July 17, 2007.

evidence to show that the word "Amlin" is not listed in any dictionary, thus indicating that it does not have any non-surname meaning. Applicant has not argued that the term "Amlin" has another non-surname meaning, but as noted above, explains the recent origins of the term in the United Kingdom in connection with insurance and reinsurance underwriting. While a significant non-surname meaning usually helps the position of an applicant, we find that the converse (i.e., a determination that the involved term does not have any non-surname meaning) does not help significantly the position of the Trademark Examining Attorney.

Look and Feel

The final factor for our consideration is the somewhat subjective factor of whether or not the word "Amlin" has the look and feel of a surname. In support of her position, the Trademark Examining Attorney points to examples of similar sounding surnames, most of which were even rarer than Amlin. See *In re Joint-Stock Co. "Baik,"* 84 USPQ2d at 1924. Moreover, absent corroborating factors, we find that the Trademark Examining Attorney cannot base a *prima facie* case under Section 2(e)(4) of the Act on the mere fact that the rare surname at issue has some similarity in structure and

pronunciation to another, more common surname, like
"Hamlin." *Id.*

In conclusion, based upon the record in this case, we find that the Trademark Examining Attorney has failed to meet the burden of establishing a *prima facie* case that "Amlin" is primarily merely a surname.

Furthermore, applicant is correct in contending that, in the event there is any doubt about whether the Trademark Examining Attorney has set forth a *prima facie* case in support of refusal, we must resolve such doubt in favor of applicant, and publish the mark for opposition in the *Trademark Official Gazette*. See *In re Benthin Management GmbH*, 37 USPQ2d at 1334.

Decision: The refusal to register the term **AMLIN** on the ground that it is primarily merely a surname under Section 2(e)(4) of the Lanham Act is hereby reversed.