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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Masco Builder Cabinet Group

Serial No. 77309908

Edgar A. Zarins of Masco Corporation of for Masco Builder
Cabinet Group.

Dominic J. Ferraiuolo, Trademark Examining Attorney, Law
Office 102 (Karen M. Strzyz, Managing Attorney).

Before Bucher, Grendel and Kuhlke, Administrative Trademark
Judges.

Opinion by Grendel, Administrative Trademark Judge:

Masco Builder Cabinet Group (applicant) seeks
registration on the Principal Register of the mark
MERIWETHER (in standard character form) for goods
identified in the application as "cabinetry."¹

¹ Serial No. 77309908, filed on October 22, 2007. The
application is based on applicant's asserted bona fide intention
to use the mark in commerce. Trademark Act Section 1(b), 15
U.S.C. §1051(b).

The Trademark Examining Attorney has issued a final refusal to register applicant's mark on the ground that the mark is primarily merely a surname, and thus unregistrable pursuant to Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4).

Applicant has appealed the final refusal. Applicant and the Trademark Examining Attorney filed briefs on appeal.

After careful consideration of the evidence of record and the arguments of counsel, we affirm the refusal to register.

Section 2(e)(4) of the Trademark Act precludes registration of a mark on the Principal Register which is "primarily merely a surname." The Office bears the initial burden to make a prima facie showing that the mark is primarily merely a surname. *In re Etablissements Darty et Fils*, 222 USPQ 260 (TTAB 1984), *aff'd*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). If that prima facie showing is made, then we must go on to determine whether the other evidence in the record overcomes the prima facie showing, i.e., whether the evidence as a whole supports a finding that the mark is primarily merely a surname. *Id.*; *In re Yeley*, 85 USPQ2d 1150 (TTAGB 2007). If there is any doubt, we resolve the doubt in favor of applicant. *In re Yeley*,

supra; *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

In this case, we find that the evidence establishes, *prima facie*, that MERIWETHER is primarily merely a surname. We further find that the evidence, as a whole, establishes that MERIWETHER is primarily merely a surname.

In the case of *In re Benthin Management GmbH, supra*, the Board identified five factors to be considered in determining whether a mark is primarily merely a surname: (1) the degree of the surname's rareness; (2) whether anyone connected with applicant has the mark as a surname; (3) whether the mark has any recognized meaning other than as a surname; (4) whether the mark has the look and sound of a surname; and (5) whether the stylization of the mark, as depicted in the application, overcomes the mark's surname significance in the mark's commercial impression.

We turn first to the evidence which establishes, *prima facie*, that MERIWETHER is primarily merely a surname.

Under the first *Benthin* factor (relative rareness of the surname), the Trademark Examining Attorney has made of record printouts from the online telephone directory Whitepages.com, showing that there are "over 300" listings for persons with the surname MERIWETHER in the United States. Although it appears from this evidence that

MERIWETHER is not a common surname, we find that it is not an especially rare surname, either, for purposes of the first *Benthin* factor. Applicant does not contend otherwise. This factor tends to weigh in favor of a finding that MERIWETHER is primarily merely a surname.

Under the fourth *Benthin* factor, we find that MERIWETHER looks and sounds like a surname. On its face, it does not look like a coined term or an acronym, nor like anything else but a surname. This factor weighs in favor of a finding that MERIWETHER is primarily merely a surname.

Relatedly, under the fifth *Benthin* factor, the mark is depicted in the application in standard character form, without any stylization or design element that might add to or otherwise alter the mark's commercial impression as that of a surname. The fifth factor is effectively neutral.

Based on these findings, we find, *prima facie*, that MERIWETHER is primarily merely a surname. MERIWETHER, depicted in standard character form, looks like a surname, and it in fact is a surname.

We turn next to the other *Benthin* factors, to determine whether the evidence as a whole supports or rebuts our *prima facie* finding that MERIWETHER is primarily merely a surname.

Under the second *Benthin* factor, there is no evidence that anyone connected with applicant has the surname MERIWETHER. Although this factor therefore does not weigh in support of a finding that the mark is primarily merely a surname, neither does it weigh against such a finding. This factor is neutral. See *In re Thermo LabSystems Inc.*, 85 USPQ2d 1285 (TTAB 2007); *In re Gregory*, 70 USPQ2d 1792 (TTAB 2004).

The remaining *Benthin* factor is the third factor, under which we consider whether the mark has any recognized meaning or significance other than its surname significance.

Applicant has presented evidence (discussed below) which shows that MERIWETHER has a non-surname significance as the first name of Meriwether Lewis of the Lewis and Clark Expedition, and a non-surname significance as the name of the Meriwether National Golf Club, located outside of Portland, Oregon.² Citing this evidence, applicant argues that "[a]ll of these alternative meanings for the term MERIWETHER support the contention that the mark is not merely a surname. While the Examining Attorney has

² Applicant also contends that there is a band named Meriwether which has a national recording contract and tours frequently across the nation. However, applicant has submitted no evidence to support this contention.

provided examples of Meriwether as a surname, the foregoing establishes that the mark is not merely a surname, that is, other common usages exist." (Applicant's brief at unnumbered page 1; emphasis in original.)

Before we reach the evidence itself, we must note that applicant misapprehends the standard for determining whether a mark is primarily merely a surname. To make that determination, we must determine what the primary significance of the mark would be to the purchasing public. "This court has recognized that section 2(e)(3) [now Section 2(e)(4)] is difficult to apply in determining whether a mark is primarily merely a surname. However, we are of the opinion that a correct resolution of the issue can be made only after the primary significance of the mark to the purchasing public is determined..." *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421, 422 (CCPA 1975). Contrary to applicant's argument, the mere existence of other non-surname meanings of the mark does not preclude a finding that the mark is primarily merely a surname. "To be considered primarily merely a surname, a term does not have to be devoid of any non-surname significance." *In re Isabella Fiore LLC*, 75 USPQ2d 1564, 1567 (TTAB 2005). The question is not whether a mark having a surname significance might also have a non-surname

significance, but rather whether that non-surname significance is the mark's primary significance to the purchasing public, thus eclipsing and relegating the mark's surname significance to secondary rather than primary status. "Thus the determining factor is the primary (not secondary) significance to the public..." *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975).

With this standard in mind, we now turn to applicant's contention that there are two other recognized meanings of MERIWETHER (Meriwether Lewis, and Meriwether National Golf Club) which overcome the Office's showing that MERIWETHER is primarily merely a surname.

Applicant has submitted a printout, from the online encyclopedia Wikipedia, of an entry for "Meriwether Lewis," which identifies him and discusses his role as one of the leaders of the 1804-1806 Lewis and Clark Expedition, which explored the territory of the Louisiana Purchase. We find, however, that even if consumers might be familiar with the Lewis and Clark Expedition, there is no evidence that they are familiar with the fact that Lewis' first name was Meriwether, much less any evidence that they would recognize or refer to Meriwether Lewis simply by his first name. In any event, we find that Meriwether Lewis is not

an historical figure of such extraordinary renown that consumers, upon seeing MERIWETHER, would understand it primarily as identifying the historical figure himself, rather than primarily as a surname. In this respect, this case is distinguishable from other surname cases involving the names of renowned historical figures, like *Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F.Supp. 329, 165 USPQ 459 (S.D.N.Y. 1970) (DA VINCI not primarily a surname because it primarily connotes Leonardo Da Vinci), and *Michael S. Sachs Inc. v. Cordon Art B.V.*, 56 USPQ2d 1132 (TTAB 2000) (primary significance of M.C. ESCHER is that of famous deceased Dutch artist, not as a surname).

For these reasons, we find that the primary surname significance of MERIWETHER is not eclipsed or overcome by its non-surname significance as the first name of Meriwether Lewis, assuming that this non-surname significance would even be recognized by consumers.

Applicant does not appear to be arguing that MERIWETHER is not primarily a surname because it is a common given name, but we find that the evidence would not support such a contention anyway. There is no evidence that anyone has the given name MERIWETHER aside from Meriwether Lewis. And even as to Meriwether Lewis, the Wikipedia article submitted by applicant reveals that

Meriwether Lewis' mother was named Lucy Meriwether, and that his given name therefore in fact was derived from a surname. *Cf. In re Harris-Intertype Corp., supra* (dictionary evidence that HARRIS is used as a given name is mitigated by the fact that the given name is derived from a surname). If MERIWETHER has any recognized significance as a given name, such significance is not its primary significance.

Applicant also has submitted a printout of the home page of the website of Meriwether National Golf Club, which is located outside of Portland, Oregon. We will assume, favorably to applicant, that the golf club is not named after someone with the surname Meriwether. However, there is no evidence that shows that this golf club is well-known by consumers, even among golf fans. We find that this non-surname significance of MERIWETHER, assuming that it is recognized by consumers at all, is much too obscure to support a finding that it, rather than the surname significance of MERIWETHER, is the primary significance of MERIWETHER.

For these reasons, we find on this record that there are no recognized non-surname meanings of MERIWETHER which eclipse its primary surname significance. The third

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Benthin factor weighs in favor of a finding that MERIWETHER is primarily merely a surname.

Having considered all of the evidence of record, and for the reasons discussed above, we conclude that MERIWETHER is primarily merely a surname, and that registration of the mark on the Principal Register therefore is barred by Section 2(e)(4) of the Trademark Act.

Decision: The refusal to register is affirmed.