

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

Mailed: April 10, 2012

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Helmet Integrated Systems Ltd.

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Serial No. 77697443

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Mark B. Harrison of Venable LLP for Helmet Integrated Systems Ltd.

Priscilla Milton, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Bergsman, Lykos, and Shaw,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Helmet Integrated Systems Ltd ("applicant") has filed an application, under the provisions of Section 44(e) of the Trademark Act, 15 U.S.C. § 1126(e), to register the mark CROMWELL on the Principal Register in standard character form for the goods listed below:

Headgear for protection against accident or injury, and parts and fittings therefor, namely, respiratory mask filters, faceshields, facepiece respirators, hoods, visors, peaks, chinstraps, neck curtains, protective

eye glasses and safety goggles, and sweatbands; radio receivers and transmitters, head-up display units, oxygen masks not for medical use and electrical and pipeline connectors therefor, in International Classes 9.

The examining attorney finally refused registration on the ground that the mark is primarily merely a surname under Section 2(e)(4) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(4). Section 2(e)(4) of Trademark Act precludes registration of a mark which is "primarily merely a surname" on the Principal Register without a showing of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f).

In response, applicant argues that CROMWELL is not primarily merely a surname because its primary significance is Oliver Cromwell, a British general, Puritan statesman, and Lord Protector of England from 1653-1658.<sup>1</sup>

In the face of Applicant's evidence showing that Oliver Cromwell is a towering historical figure who remains well known to this day, the Examining Attorney's evidence does not begin to refute Applicant's evidence the primary significance of Applicant's CROMWELL mark is as a reference to Oliver Cromwell. When one encounters Applicant's mark CROMWELL, there is one, and only one, individual who comes to mind.<sup>2</sup> (Emphasis in the original).

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<sup>1</sup> Webster's Encyclopedic Unabridged Dictionary of the English Language, p. 345 attached as Exhibit A to applicant's December 16, 2009 response.

<sup>2</sup> Applicant's Brief, p. 9.

Applicant also argues that "Cromwell is a given name.

In its March 19, 2011 response, applicant requests that in the event the Board affirms the surname refusal, the application is amended to the Supplemental Register.

We must decide on the facts of each case whether the mark at issue is "primarily merely a surname" under the Act. *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 from the examining attorney and the applicant, to determine ultimately whether the mark is primarily merely a surname. *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994). If there is any doubt, we must resolve the doubt in favor of applicant. *In re Benthin Management GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995).

In analyzing the surname refusal, we must determine the impact CROMWELL has on the purchasing public because "it is the impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a [sic] surname significance. If it is, *and it is only that*, then it is primarily merely a surname." *In re Giger*, 78 USPQ2d 1405,

1407 (TTAB 2006), *quoting*, *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975), *quoting*, *Ex parte Rivera Watch Corp.*, 106 USPQ 145 (Comm'r 1955) (emphasis in the original).

Our case law sets out the factors to determine if the term is primarily merely a surname:

1. Whether the surname is rare;
2. Whether anyone connected with the applicant has the term as a surname;
3. Whether the term has any other recognized meaning; and,
4. Whether the term has the "look and sound" of a surname.

*In re Benthin Management GmbH*, 37 USPQ2d at 1332-33.<sup>3</sup>

*NameStatistics.com* ranks "Cromwell" as the 2772<sup>nd</sup> most common surname with 0.004% of the population or approximately 10,000 people having that surname.<sup>4</sup> The *MyLife.com* white pages website listed 13,927 people with the surname "Cromwell."<sup>5</sup> Although a surname is not among the most common, that does not automatically qualify it as a rare surname. We find that "Cromwell" is not a rare surname. See *In re Champion International Corporation*, 229

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<sup>3</sup> The fifth *Benthin* factor, whether the manner in which the mark is displayed might negate any surname significance, is not relevant to our analysis inasmuch as applicant seeks registration of CROMWELL in standard character form.

<sup>4</sup> May 2, 2011 Office action.

<sup>5</sup> May 2, 2011 Office action.

USPQ 550, (TTAB 1985) (McKinley found to be primarily merely a surname in part because it was listed as the 1197<sup>th</sup> most common surname with an estimated 23,170 people with that surname).

There is no evidence in the record regarding whether anyone associated with applicant has a the surname "Cromwell." However, the fact that "a proposed mark is not applicant's surname, or the surname of an officer or employee, does not tend to establish one way or the other whether the proposed mark would be perceived as a surname." *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004).

The third factor is whether there is another recognized meaning for "Cromwell." Words having significance other than as a surname are not "primarily merely a surname." *Fisher Radio Corp. v. Bird Electronic Corp.*, 162 USPQ 265 (TTAB 1969) (BIRD is not primarily merely a surname); *Ex parte Omaha Cold Storage Co.*, 111 USPQ 189 (Comm'r Pat. 1956) (DOUGLAS is not primarily merely a surname); *In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989) (CALLISTO has no surname meaning from Greek mythology); *In re BDH, Inc.*, 26 USPQ2d 1556 (TTAB 1993) (GRAINGERS for crackers and chips is not a surname because it would be perceived as suggestive of the grain-

based nature of the product); see also TMEP §1211.01(a) (8<sup>th</sup> ed. 2011).

As indicated above, applicant contends that "Cromwell" is a given name and that the primary significance of "Cromwell" is a reference to Oliver Cromwell, a British historical figure. In its July 12, 2010 response, applicant submitted a printout from the *PeopleLookUp.com* website that applicant proffers identifies 1,500 persons with the given name "Cromwell," with at least one person in every state. On the other hand, the examining attorney submitted printouts from the *NameStatistics.com* website stating that "Cromwell" is a very rare given name for both males and females.<sup>6</sup> This is corroborated by the information in the *ThinkBabyNames.com* website that states "Cromwell is an uncommon first name for men but a very common last name for both men and women."<sup>7</sup> Accordingly, we find that the infrequent use of "Cromwell" as a given name does not affect the significance of "Cromwell" as primarily being a surname.

The primary thrust of applicant's contention that "Cromwell" is not primarily merely a surname is applicant's argument that "Cromwell" is primarily a reference to Oliver

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<sup>6</sup> May 2, 2011 Office action.

<sup>7</sup> August 16, 2010 Office action.

Cromwell. In support of that contention, applicant submitted an article from the *BBC.co.uk* website, dated October 20, 2002, reporting that a survey of 30,000 Britons selected Oliver Cromwell as one of the ten greatest Britons.<sup>8</sup> This article is not persuasive because it is a survey of citizens of Britain, not the United States. Also, there is no indication of how many U.S. citizens read the *BBC.co.uk* website.

Applicant also relies on the following evidence:

1. Webster's Encyclopedic Unabridged Dictionary of the English Language has a listing for Oliver Cromwell under "Cromwell." "Cromwell" is defined as Oliver Cromwell and the definition also references his son Richard Cromwell, a British soldier, politician and Lord Protector of England.<sup>9</sup> In addition, the dictionary defined the word "Cromwellian" as "pertaining to, or characteristic of the politics, practices, etc. of Oliver Cromwell ... noting or pertaining to the style of English furnishings of the middle 17<sup>th</sup> century, characterized by austerity and utilitarianism, by the use of oak and leather, and by simple, decorative moldings."

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<sup>8</sup> Applicant's March 9, 2011 response.

<sup>9</sup> Applicant's December 16, 2009 response, Exhibit A.

2. An entry for Oliver Cromwell in the Encyclopedia Britannia (*Britannia.com*).<sup>10</sup>

3. An entry of Oliver Cromwell in *Wikipedia*.<sup>11</sup>

4. An excerpt from the *Oliver Cromwell* website (*olivercromwell.org*), dedicated to "promoting our understanding of the 17<sup>th</sup> century."<sup>12</sup>

5. An excerpt from the Internet Movie Database (*imdb.com*) for the movie *Cromwell* (1970).<sup>13</sup>

Applicant's burden of proving that "Cromwell" is perceived primarily as a reference to Oliver Cromwell is to show that the primary significance of CROMWELL to the American purchasing public is the historical figure. The name "Cromwell" has to be so widely recognized as to be "almost exclusively associated in terms of commercial impression with the historical figure[s]." *In re Pyro-Spectaculars Inc.*, 63 USPQ2d 2022, 2024 (TTAB 2002), quoting *In re Pickett Hotel Company*, 229 USPQ 760, 761 (TTAB 1986). In *Pyro-Spectaculars*, the Board noted that it is the "present day recognition and continuing fame of John Philip Sousa, however, which is much more meaningful for purposes of determining the primary significance of the

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<sup>10</sup> Applicant's December 16, 2009 response, Exhibit B.

<sup>11</sup> Applicant's December 16, 2009 response, Exhibit B.

<sup>12</sup> Applicant's December 16, 2009 response, Exhibit C.

<sup>13</sup> Applicant's December 16, 2009 response, Exhibit D.



term SOUSA today," rather than to try and place the name on a historical/semihistorical continuum based on past history. 63 USPQ2d at 2024 (current news articles note that the legacy of John Phillip Sousa and his music remains strong in the minds of the American public). See also *Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F.Supp. 329, 165 USPQ 459, 461 (S.D.N.Y. 1970) (Da Vinci "comes very near having as its *exclusive* connotation the world-reowned [sic] 15<sup>th</sup> century artist, sculptor, architect, musician, engineer and philosopher") (emphasis in the original); *In re Champion International Corporation*, 229 USPQ 550 (TTAB 1985) (the evidence does not show that McKinley presidency was of particular historical significance and, therefore, the primary significance of McKinley is as a surname, not of the historical figure).

In view of the foregoing, we find that surname "Cromwell" is more akin to McKinley than Da Vinci. It is unlikely that American consumers would regard CROMWELL in connection with protective headgear, etc. as an arbitrary use of the name Oliver Cromwell, rather than merely a surname of any individual identified by that name. Accordingly, the evidence of "Cromwell" as a surname is greater than the evidence that "Cromwell" has any other significance.

The fourth and final factor is whether the proposed mark has the "look and sound" of a surname. This is a subjective factor concerning whether CROMWELL has the "structure and pronunciation" or "the look and sound" of a surname. *In re Benthin Management GmbH*, 37 USPQ2d at 1333; *In re Sava Research Corp.*, 32 USPQ2d at 1381; *In re Industrie Pirelli*, 9 USPQ2d 1564, 1566 (TTAB 1988). As stated in *Industrie Pirelli*, "certain rare surnames look like surnames, and certain rare surnames do not and that 'Pirelli' falls into the former category, while 'Kodak' falls into the latter." *Id.* On this fourth and final *Benthin* factor, we find that CROMWELL has the "look and sound" of a surname.

Upon balancing the factors, we find that CROMWELL is primarily merely a surname.

**Decision:** The refusal to register CROMWELL on the Principal Register under Section 2(e)(4) on the ground that CROMWELL is primarily merely a surname is affirmed.

The application is remanded to examining attorney to consider registration on the Supplemental Register.