

**THIS OPINION IS NOT A
PRECEDENT OF THE T.T.A.B.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Mannington Mills, Inc.

Serial No. 78783771

Sherry H. Flax of Saul Ewing LLP for Mannington Mills, Inc.

Monique C. Miller, Trademark Examining Attorney, Law Office
109 (Dan Vavonese, Managing Attorney).

Before Walters, Grendel and Bergsman, Administrative
Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Mannington Mills, Inc. filed an intent-to-use application for the mark HARRINGTON OAK, in standard character format, for goods ultimately identified as "oak floor boards; oak wooden flooring," in Class 19 (Serial No. 78783771). Applicant disclaimed the exclusive right to use the word "oak."

The Trademark Examining Attorney refused to register applicant's mark under Section 2(e)(4) of the Trademark Act of 1946, 15 U.S.C. §1052(e)(4), on the ground that the mark HARRINGTON OAK is primarily merely a surname. Section

2(e)(4) of the Trademark Act provides that registration should be refused if the proposed mark is "primarily merely a surname." "Merely" is synonymous with "only," and "primarily" refers to "first in order" or "fundamentally." Thus, we must determine whether HARRINGTON OAK is fundamentally only a surname. *In re I. Lewis Cigar Mfg. Co.*, 205 F.2d 204, 98 USPQ 265, 267 (CCPA 1953). In so analyzing the mark at issue, we must keep in mind that the inclusion of a descriptive word, such as "oak," does not preclude surname significance if, when considered as a whole, the primary significance of the mark to the purchasing public is that of a surname.¹ *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1940 (TTAB 1983). See also *In re Woolley's Petite Suites*, 18 USPQ2d 1810, 1812 (TTAB 1991) (the addition of the descriptive term "Petite Suites" to the surname WOOLLEY does not create a mark that is anything other than primarily merely a surname); *In re Pickett Hotel Company*, 229 USPQ 760, 762-763 (TTAB 1986) (the addition of the descriptive term

¹ The word "oak" is descriptive of oak floor boards, and oak wooden flooring because it describes the type of wood from which the flooring is made. Moreover, applicant disclaimed the exclusive right to use the word "oak" in response to the requirement for a disclaimer on the ground that the word "oak" is merely descriptive.

"suite hotel" to the surname PICKETT does not alter the surname significance of the mark).

The determination of whether the primary significance of the designation at issue is that of a surname is based on the facts made of record. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). The Examining Attorney has 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 *Benthin*, 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 connected with the applicant has the involved term 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 sound" of a surname.

Id at 1333. Because HARRINGTON OAK is in standard character form, we need not consider the fifth *Benthin* factor here, that is, whether the manner in which the mark is displayed might negate any surname significance.

The Record

The Examining Attorney submitted the following evidence that the primary significance of "Harrington" is a surname:

1. An excerpt from the U.S. Census Bureau website indicating that the surname "Harrington" ranks 478 in terms of frequency, and that the surname "Harrington" is possessed by 0.024% of the sample population;²
2. An excerpt from the WhitePages.com website indicating that there are over 300 listings for "Harrington" in the United States;³
3. An excerpt from the PGA Tour website providing a September 9, 2004 news story regarding how Joey Harrington, formerly a quarterback for the Detroit Lions, will be rooting for his cousin,

² www.census.gov attached to the July 10, 2006 Office Action.

³ July 10, 2006 Office Action.

Padraig Harrington, at the Ryder Cup golf competition;⁴

4. An excerpt from the LexisNexis People Finder Database indicating that there are 30,887 telephone listings in the United States for the surname Harrington;⁵
5. Excerpts from news articles from newspapers referencing Padraig Harrington, a professional golfer, Joey Harrington, a quarterback for the Detroit Lions football team, and Pat Harrington, an actor;⁶ and,
6. Seven third-party Harrington registrations registered under the provisions of Section 2(f) or on the Supplemental Register.⁷

In order to show that the primary significance of "Harrington" is not a surname, applicant submitted the following evidence:

1. Three third-party registrations:⁸

⁴ www.pgatour.com attached to the July 10, 2006 Office Action.

⁵ August 14, 2007 Office Action.

⁶ August 14, 2007 Office Action.

⁷ August 14, 2007 Office Action.

⁸ Applicant's January 8, 2007 Response. Applicant referenced Registration No. 3303962 for the mark HARRINGTON INTERNATIONAL STUDIES in its Reply Brief. We cannot give this registration any consideration because it was not properly made of record. First, all evidence must be introduced prior to the appeal. Trademark Rule 2.142(d). Second, to make a third-party registration of record, a copy of the registration, either a copy of the paper

- A. Registration No. 3135299 for the mark
HARRINGTON INDUSTRIAL PLASTICS LLC and a
globe design. The registrant disclaimed the
exclusive right to use "Industrial Plastics
LLC";
 - B. Registration No. 2388368 for the mark
HARRINGTON GAY MEN'S FICTION QUARTERLY. The
registrant disclaimed the exclusive right to
use "Gay Men's Fiction Quarterly"; and,
 - C. Registration No. 2618043 for the mark HWM
HARRINGTON WEALTH MANAGEMENT COMPANY. The
registrant disclaimed the exclusive right to
use "Wealth Management Company";
- 2. The home page from the Harrington Raceway
trotters track in Harrington, Delaware;⁹
 - 3. A sample of Harrington font;¹⁰

registration issued by the U.S. Patent and Trademark Office or a copy taken from the electronic records of the U.S. Patent and Trademark Office, should be submitted. *In re Volvo Cars of North America, Inc.*, 46 USPQ2d 1455, 1456 n.2 (TTAB 1998); *In re Duofold Inc.*, 184 USPQ 638. 640 (TTAB 1974). The mere identification of a registration is not sufficient. *In re Dos Padres Inc.*, 49 USPQ2d 1860, 1861 n.1 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1560 n.6 (TTAB 1996).

⁹ Applicant's July 12, 2007 Response (no URL provided).

¹⁰ Applicant's July 12, 2007 Response.

4. An excerpt from an unidentified website advertising a house for sale located on Harrington Street in Teaticket, Massachusetts;¹¹
5. An excerpt from the Rooms To Go website advertising Harrington furniture;¹²
6. A Wikipedia entry for "Harrington jacket" stating that "[a] Harrington jacket is a type of short, lightweight jacket, made of cotton, polyester, wool or suede - usually with a tartan or check-patterned lining. . . . The style of jacket earned the nickname *Harrington* because it was worn by the character Rodney Harrington (played by Ryan O'Neal) in the 1960's television program *Peyton Place*";¹³
7. A street map from Google Maps displaying Harrington Avenue in the Bronx, New York;¹⁴ and,
8. An excerpt from the search results for "Harrington" from an online database (<http://dictionary.reference.com>) identifying Harrington Park, New Jersey, Harrington,

¹¹ Applicant's July 12, 2007 Response.

¹² Applicant's July 12, 2007 Response (no URL provided).

¹³ Applicant's July 12, 2007 Response.

¹⁴ Applicant's July 12, 2007 Response.

Delaware, Harrington, Maine, and Harrington,
Washington.¹⁵

Analysis

1. Rareness

The United States Census Bureau estimates that HARRINGTON is the 478th most common surname in the United States. In practical terms, that ranking is corroborated by the 30,887 residential telephone listings for persons with the Harrington surname found in the LexisNexis People Finder Database. In addition, celebrities such as Joey Harrington, Detroit Lion quarterback, Padraig Harrington, PGA golfer, and Pat Harrington, actor, are subjects of news stories appearing in newspapers throughout the country. In view of the foregoing, we conclude that a substantial portion of the population would be exposed to the surname Harrington and, therefore, it is not a rare surname.

2. Connection with applicant

There is no evidence in the record regarding this factor.

3. Recognized meaning other than a surname

This factor requires us to consider whether the name Harrington has any significance other than as a surname. Applicant has submitted evidence to show that Harrington is

¹⁵ Applicant's July 12, 2007 Response.

a print font, a street in the Bronx, a street in Teaticket, Massachusetts, and the following towns:

1. Harrington Park, New Jersey - population 4,623
2. Harrington, Delaware - population 2,311
3. Harrington, Maine - population not listed
4. Harrington, Washington - population 449.¹⁶

On the other hand, the Examining Attorney has referenced the fact that "Harrington" does not have a dictionary definition.¹⁷

Based on the record, we find that the primary significance of HARRINGTON is a surname. Despite applicant's argument that the evidence points to several

¹⁶ The evidence that Harrington is a style of jacket actually favors finding that Harrington is a surname because the evidence points out that the name was derived from the television character, Rodney Harrington, who popularized the jacket. Also, the evidence regarding the furniture is of limited probative value because there is insufficient information regarding Harrington furniture (e.g., the derivation of the name, whether it is a brand name or a style of furniture, etc.).

¹⁷ We can consider the dictionary definitions attached to the Examining Attorney's brief because the Board may take judicial notice of dictionary evidence. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). In this regard, we also note that there is no definition of Harrington in The Random House Dictionary of the English Language (Unabridged) (2nd ed. 1987). However, "harrington" may be defined as "a copper token worth a farthing in 17th century England." The word was derived from John Harington, the first Baron of Harington of Exton, and a nobleman who manufactured tokens under a patent granted by James I. Webster's Third New International Dictionary of the English Language (Unabridged), p. 1036 (1993). In view of the fact that a harrington refers to a 17th century English coin, we find that the word does not have a dictionary definition pertinent to contemporary life in the United States.

meanings of the term "Harrington," the geographic uses are obscure or represent the normal naming of a place or item (*i.e.*, the font) after an individual. *In re Harris-Intertype Corporation*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975). *See also In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1943 (TTAB 1993) ("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"); *In re Picone*, 221 USPQ 93 (TTAB 1984). There is no persuasive evidence in the record that indicates any significant consumer recognition and association between HARRINGTON and any geographical association, font, or any other item other than a surname.

4. Structure and pronunciation

Insofar as this factor is concerned, we consider whether HARRINGTON has the structure and pronunciation of a surname, or the "look and sound" of a surname. *In re Benthin Management GmbH*, 37 USPQ2d at 1333; *In re Industrie Pirelli*, 9 USPQ2d 1564, 1566 (TTAB 1988). This fourth factor is highly subjective and takes into account the likely perception of consumers. As stated in *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." *In re Industrie Pirelli*, 9 USPQ2d at 1566. We find that HARRINGTON has the clear look and sound of a surname.

When the word "oak" is added to the surname "Harrington" to form the mark HARRINGTON OAK, the primary significance of the mark, as whole, remains a surname. The descriptive word "oak" adds nothing in the way of trademark significance to the surname HARRINGTON and, in fact, emphasizes that HARRINGTON is a surname by engendering the commercial impression of oak flooring offered by or designed by an individual named HARRINGTON.¹⁸

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

Decision: The refusal to register is affirmed.

¹⁸ There is no evidence in the record to support applicant's argument that "[t]he term HARRINGTON, as used in this mark, gives the commercial impression of a stately or antique style, not that of a surname."