

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Bedrock Brands, LP*

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Serial No. 85036916

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Molly Buck Richard of Richard Law Group for Bedrock Brands LP.

Won T. Oh, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

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Before Quinn, Cataldo and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Bedrock Brands, LP seeks registration of GRISWALD, in standard characters, alleging a bona fide intent to use the mark in commerce for:

Carry-all bags; Carrying cases; Duffel bags; Luggage; Shoulder bags; Travel bags in International Class 18;

Bottle openers; Insulated containers for food or beverage for domestic use; Portable coolers; Utensils for barbecues, namely, forks, tongs, turners in International Class 21; and

Coats; Foul weather gear; Headwear; Jackets; Rain suits, Ski wear; Snow boarding suits; Sweat shirts; T-shirts in International Class 25.<sup>1</sup>

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<sup>1</sup> Application Serial No. 85036916, filed May 12, 2010.

The examining attorney refused registration on the ground that applicant's mark is "primarily merely a surname" under Section 2(e)(4) of the Act. After the refusal became final, applicant appealed and requested reconsideration. Following the denial of applicant's request for reconsideration, the appeal was resumed and both applicant and the examining attorney filed briefs. We affirm the refusal to register.

"A term is primarily merely a surname if, when applied to a particular product ... its primary significance to the purchasing public is that of a surname. The burden is on the Patent and Trademark office to establish a prima facie case that the involved term is primarily merely a surname." In re United Distillers plc, 56 USPQ2d 1220, 1221 (TTAB 2000). The issue "can be resolved only on a case by case basis." In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). In this case, we consider the following factors in determining whether GRISWALD is primarily merely a surname: "(i) whether the surname is rare; (ii) whether anyone connected with applicant has the involved term as a surname; (iii) whether the term has any other recognized meaning; and (iv) whether the term has the 'look and feel' of a surname." United Distillers, 56 USPQ2d at 1221.<sup>2</sup>

Here, there is no doubt or dispute with respect to the first factor -- GRISWALD is a rare surname. In fact, the examining attorney's evidence includes a printout from Public Record's nationwide telephone directory, which identifies

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<sup>2</sup> Because applicant's mark is in standard characters, we need not consider a fifth factor, whether any stylization is "distinctive enough ... [to] cause the mark not to be perceived as primarily merely a surname." In re Benthin Management GmbH, 37 USPQ2d 1332, 1334 (TTAB 1995).

only 70 people in the United States having the surname “Griswald.” While applicant stresses that “[t]his is significantly less than in other cases where the surname has been found to be rare,” at the same time, and as the examining attorney points out, “the fact that a term is not a common surname does not mean that a surname would not be considered to be primarily merely a surname.” In re Giger, 78 USPQ2d 1405, 1408 (TTAB 2006); In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564, 1566 (TTAB 1988), aff’d, 883 F.2d 1026 (Fed. Cir. 1989) (“even rare surnames may be unregistrable and ... there is no minimum number of directory listings required to establish a prima facie case for refusal of registration under” Section 2(e)(4)); In re E. Martinoni Co., 189 USPQ 589, 590 (TTAB 1975) (“The fact that ‘MARTINONI’ may be a rare surname does not entitle it to treatment different from what would be accorded to a common surname when no other meaning for the word is shown.”). In other words, while GRISWALD is a rare surname, and this factor weighs in applicant’s favor, we must nonetheless examine the remaining factors to determine whether GRISWALD is “primarily merely a surname.”

There is also no dispute with respect to the second factor. As applicant states in its Appeal Brief, “there are no persons connected with Applicant that have GRISWALD as a surname.” However, “that a proposed mark is not the 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). Therefore, this factor is neutral.

Applicant and the examining attorney disagree regarding the third factor, specifically whether GRISWALD has a recognized meaning other than as a surname. Applicant claims that GRISWALD “actually sounds more like a person’s first name,” relying on the following evidence:

- a printout from the “meaning-of-names.com” website which indicates that “In German, the name Griswald means – from the gray forest. The name Griswald originated as a German name. The name Griswald is most often used as a boy name or male name;”
- a printout from the “ourbabynamer.com” website which also indicates that Griswald “is of German origin and the meaning of Griswald is ‘from the gray forest,’ but which at the same time indicates that “In 2010, [Griswald] was not one of the top 1000 most popular U.S. boys names;” and
- a printout from the “parentsconnect.com” website which indicates that Griswald is of Germanic origin and means “grey ruler.”

Applicant’s Request for Reconsideration Ex. B.

The examining attorney relies on “negative dictionary evidence,” which, he claims, “shows that the only significance of ‘GRISWALD’ is as a surname.” Specifically, the examining attorney relies on printouts from the “rhymezone.com,” “yourdictionary.com,” “wordnik.com” and “oxforddictionaries.com” websites, none of which include a non-surname definition for Griswald. April 30, 2011 Office Action pp. 4-9.<sup>3</sup> See In re Binion, 93 USPQ2d 1531, 1537 (TTAB 2009) (finding that BINION is primarily merely a surname in part based on dictionary evidence

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<sup>3</sup> The “rhymezone.com” and “wordnik.com” entries indicate that GRISWALD is used as a surname albeit, as indicated by “rhymezone.com,” a “very rare” one.

“showing the absence of an entry for ‘Binion’”). Moreover, the examining attorney relies on excerpts from 26 articles from the LexisNexis® research database, each of which refers to or is written by an individual having the surname GRISWALD, and none of which indicate that Griswald has any meaning other than as a surname. April 30, 2011 Office Action pp. 1-3.

In this case, we are persuaded by the examining attorney’s “negative” evidence that GRISWALD does not have a recognized meaning other than as a surname. Indeed, applicant’s only evidence to the contrary, that Griswald may be a German boy’s name, is unpersuasive because it is not accompanied by any evidence that anyone in the United States has the given name Griswald, much less that Griswald is “recognized” as a given name in the United States. See In re Gregory, 70 USPQ2d at 1796 (“Applicant has not put anything in the record to show how commonly ROGAN is used as a first name rather than a surname, while we have a good deal of evidence of its use as a surname.”); In re Benthin Management, 37 USPQ2d at 1333 (“The record is devoid of any evidence that Benthin has any meaning other than that of a surname. Thus, this third factor weighs in favor of a finding that BENTHIN and design would be perceived as primarily merely a surname.”).

The parties also disagree with respect to the fourth factor, whether GRISWALD has the “look and feel” of a surname. The examining attorney relies on a printout from the Public Records database showing that there are 3,425 listings for individuals having the surname Griswold, spelled slightly differently than the

involved mark.<sup>4</sup> The examining attorney also relies on evidence from Wikipedia that Clark Wilhelm “Sparky” Griswold Jr. is “the main protagonist of the *National Lampoons* (sic) *Vacation* film series,” and that the character’s wife and children, who also have the surname Griswold, are also featured in the film series. October 28, 2010 Office Action Exhibits p. 6.

Applicant claims, however, that the family in the “Vacation” movies is the Griswolds, and that there is no evidence supporting the contention that consumers would associate GRISWALD with the name Griswold or the fictional Griswold family which spells its name differently, especially given the evidence that Griswald may be a given name.

We find that GRISWALD has the “look and feel” of a surname. Indeed, there is no evidence or basis upon which to believe that GRISWALD would be perceived as “an initialism or acronym ... and [it] does not have the appearance of having been coined by combining a root element that has a readily understood meaning in its own right with either a prefix or a suffix.” In re Gregory, 70 USPQ2d at 1796.

In conclusion, while it is clear that GRISWALD is a rare surname, there is simply no persuasive evidence in the record that it would be perceived as anything other than a surname in the United States. Moreover, it has the look and sound of

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<sup>4</sup> Applicant’s objection to this evidence is overruled. “Inasmuch as applicants sought reconsideration after the examining attorney’s final refusal, the examining attorney was permitted to submit evidence in response to this request and applicants’ request that we not consider such evidence is denied.” In re Giger, 78 USPQ2d at 1407-08; TBMP § 1207.04 (3d ed. rev. 2012). Furthermore, despite applicant’s objections, we have considered the evidence indicating that there are 3,425 listings for individuals having the surname GRISWOLD, but recognize, as applicant points out, that some of these may include duplicate listings.

a surname. Accordingly, we find that the examining attorney has met his initial burden of establishing that GRISWALD would primarily be viewed as a surname, and applicant has not rebutted the examining attorney's prima facie case.

Decision: The refusal to register under Section 2(e)(4) of the Act on the ground that GRISWALD is primarily merely a surname is hereby affirmed.