

THIS OPINION IS NOT A  
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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 O'Neill Beverage Co., Ltd.

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Serial No. 85152684

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Barry Strike and Katherine Robb of Strike & Techel for  
O'Neill Beverage Co., Ltd.

Linda M. Estrada, Trademark Examining Attorney, Law Office  
104 (Chris Doninger, Managing Attorney).

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Before Seeherman, Grendel and Hightower, Administrative  
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

**INTRODUCTION.**

O'Neill Beverage Co., Ltd. (applicant) seeks  
registration on the Principal Register of the mark **MARTIN &**

**WEYRICH ROSSO ALLEGRO** (in standard character form) for goods identified in the application as "wine."<sup>1</sup>

The Trademark Examining Attorney has issued a final refusal to register applicant's mark under Trademark Act Section 2(c), 15 U.S.C. §1052(c). Specifically, the Trademark Examining Attorney contends that the mark comprises the names of two particular living individuals, i.e., Mary Martin Weyrich and David Weyrich, whose written consent to applicant's registration of the mark is not of record, as is required by the statute. She has made final her requirement that applicant submit:

A written consent, personally signed by the individual(s) whose name, signature or portrait appears in the mark, authorizing applicant to register the identifying matter as a trademark and/or service mark with the USPTO, e.g., 'I, DAVID WEYRICH or I, MARY (MARTIN) WEYRICH, consent to the use and registration by O'Neill Beverage Co., Ltd. of my name as a trademark with the USPTO.

Applicant has appealed the final refusal, arguing that an express written instrument or statement of consent to

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<sup>1</sup> Serial No. 85152684, filed on October 14, 2010. The application is based on applicant's allegation of a bona fide intention to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b). The application includes a translation statement asserting that "The English translation of ROSSO ALLEGRO in the mark is RED CHEERFUL." The application also includes a disclaimer of the word ROSSO apart from the mark as a whole. The application also includes a claim of ownership of prior Reg. No. 2964738, which is of the mark MOSCATO ALLEGRO for "wine."

register from the individuals named in the mark is not or should not be required because those individuals should be deemed to have given their implied consent to registration of applicant's mark comprising their names.

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

**TRADEMARK ACT SECTION 2(c).**

In pertinent part, Trademark Act Section 2(c) provides: "No trademark ... shall be refused registration on the principal register on account of its nature unless it ... Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent..."<sup>2</sup>

Thus, if the mark the applicant seeks to register includes or comprises the name of a particular living individual, then under Section 2(c) that individual's

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<sup>2</sup> In its entirety, Trademark Act Section 2(c) reads as follows:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it ... (c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

written consent to registration of that mark must be submitted by the applicant, failing which registration of the mark must be refused.

**Applicant's Mark Identifies Particular Living Individuals.**

"A name is considered to 'identify' a particular living individual for purposes of Section 2(c) if the 'individual bearing the name in question will be associated with the mark as used on the goods, either because the person is so well known that the public would reasonably assume the connection, or because the individual is publicly connected with the business in which the mark is used.'" *Krause v. Krause Publications Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005), quoting *Martin v. Carter Hawley Hale Stores, Inc.*, 206 USPQ 931, 933 (TTAB 1979). Also, Section 2(c) "operates to bar the registration of marks containing not only full names, but also surnames, shortened names, nicknames, etc., so long as the name in question does, in fact, 'identify' a particular living individual." *In re Sauer*, 27 USPQ2d 1073, 1074 (TTAB 1993).

The evidence of record establishes and, in its appeal brief applicant apparently does not dispute, that for purposes of Section 2(c) in this case, the designation

MARTIN & WEYRICH in the mark applicant seeks to register identifies particular living individuals, i.e., Mary Martin Weyrich and David Weyrich. The Trademark Examining Attorney has submitted Internet evidence showing that these individuals were the previous owners of and were publicly associated with the Martin & Weyrich Winery, a winery in Paso Robles, California. For example:

Becoming the new sole owners of Martin Brothers in 1998, along with their eight children, David and Mary (Martin) Weyrich are working hard on strengthening an already impressive reputation. ... Martin & Weyrich Winery was the first modern grower and producer of Nebbiolo in the U.S.<sup>3</sup>

Growth for the Martin & Weyrich Winery was slow and steady, and in 1998, David and his wife Mary Martin Weyrich bought out all the other family members. By then, the winery had grown to 180 acres through the purchase of the Weyrich Family Home Ranch two years earlier. ... Total production for Martin & Weyrich Winery exceeds 80,000 cases, making it one of the larger wineries along the Central Coast.<sup>4</sup>

Martin & Weyrich were among the first families to recognize the incredible potential of the future Paso Robles Viticultural Appellation. ... In a few short years, Martin Weyrich became known as one of the country's premier producers of Italian

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<sup>3</sup> A page from the website [www.pasowine.com](http://www.pasowine.com), downloaded December 16, 2010 and attached to the Trademark Examining Attorney's December 17, 2010 Office Action.

<sup>4</sup> A page from the website [www.goldmedalwineclub.com](http://www.goldmedalwineclub.com), downloaded on July 12, 2011 and attached to the Trademark Examining Attorney's July 15, 2011 Office Action.

varietals. ... In 1998 David and Mary (Martin) Weyrich purchased the winery from their siblings.<sup>5</sup>

Based on this evidence and on applicant's apparent concession of the point, we find that the mark MARTIN & WEYRICH ROSSO ALLEGRO comprises the names of and identifies two particular living individuals, i.e., Mary Martin Weyrich and David Weyrich.

**Written Consent to Register is Required.**

Because the mark applicant seeks to register comprises the names of particular living individuals, Section 2(c) requires those individuals' written consent to registration of the mark as a pre-condition to such registration.

The record in this case includes no written document(s) or instrument(s) signed by Mary Martin Weyrich and David Weyrich which would constitute their express written consent to applicant's registration of its mark comprising their names. Because no such written consent to register is of record, Section 2(c) bars registration of applicant's mark. We therefore find the Trademark Examining Attorney's refusal of registration under Section 2(c) to be proper.

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<sup>5</sup> May 13, 2009 online article from Entrepreneur, at [www.entrepreneur.com](http://www.entrepreneur.com), attached to the Trademark Examining

However, applicant contends that an express written statement of consent should not be required in order to register its mark in this case because, based on the facts recounted later in this opinion, Mary Martin Weyrich and David Weyrich should be deemed to have impliedly consented to applicant's registration of its mark comprising their names, and that such implied consent is sufficient for purposes of Section 2(c).

In response, the Trademark Examining Attorney contends that, at most, applicant with its evidence has shown that Mary Martin Weyrich and David Weyrich have impliedly consented to applicant's use of its mark comprising their names, but not also to the registration of that mark, as required by Section 2(c).

It is long-settled that, to overcome the Section 2(c) statutory bar to registration, the written consent of the particular individual named in the mark must be that individual's consent to registration of the mark, not merely consent to the use of the mark.

The early inter partes cancellation case of *Mary Garden v. Parfumerie Rigaud, Inc.*, 34 USPQ 30 (Comm'r Pats. 1937), which was decided under Section 5 of the 1905 Trademark Act (the precursor to Section 2(c) of the 1946

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Attorney's July 15, 2011 Office Action.

Lanham Act),<sup>6</sup> involved a mark comprising the name MARY GARDEN and Ms. Garden's portrait. The Commissioner of Patents held that even though Mary Garden had given her express written consent to the respondent corporation's use of the mark bearing her name and portrait, that did not satisfy the statute's requirement for her written consent to the corporation's registration of that mark. The Commissioner stated: "The statute leaves nothing to inference or implication. The requirement is unmistakably clear that before the portrait of a living individual may be registered as a trade mark his written consent to such registration must be supplied." *Mary Garden, supra*, 37 USPQ at 31.

In the Section 2(c) inter partes cancellation case of *Reed v. Bakers Engineering & Equipment Co.*, 100 USPQ 196 (Comm'r Pats. 1954), involving the respondent corporation's mark REED REEL OVEN, the Commissioner of Patents held that even if the individual named in the respondent corporation's mark, Mr. Reed, were to be deemed to have given his implied consent to the corporation's use of the mark comprising his name by virtue of his long-time association with the corporation, that did not satisfy the

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<sup>6</sup> Section 5 of the 1905 Trademark Act provided as follows, in pertinent part: "No portrait of a living individual may be



statute's requirement for his written consent to the corporation's registration of that mark. Rejecting the contention that the right to use necessarily also constitutes the right to register, the Commissioner stated:

This, however, is a non sequitur; while the right to register derives from the right to use, the right to register is based upon the specific requirements of the statute relating to registration and if the requirements are not met there is no right to register. The statute requires the written consent of a particular individual in certain cases and if this written consent does not exist in those cases in which it is required there can not be any registration. The only material question involved is whether this is a case where the written consent of a particular individual is required. Consent to register must be distinguished from consent to use. There may very well be consent to use without any consent to register. And neither is consent to register sufficient under the statute unless it is a written consent as specified in the statute.

*Reed, supra*, 100 USPQ at 199.

In the inter partes cancellation case of *Laub v. Industrial Development Laboratories, Inc.*, 101 USPQ 595 (TTAB 1959), involving the respondent corporation's mark LAUB, the Board held that Mr. Laub's previous grant to the respondent corporation of an express license to use the mark comprising his name was insufficient to satisfy the statute's express requirement for his written consent to

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registered as a trade mark except by the consent of such individual, evidenced by an instrument in writing."

the corporation's registration of that mark. "In the absence of such written consent, registration must be refused." *Laub, supra*, 101 USPQ at 595.

In the ex parte case of *In re New John Nissen Mannequins*, 227 USPQ 569 (TTAB 1985), involving the applicant corporation's mark JOHN NISSEN MANNEQUINS, the Board affirmed the refusal under Section 2(c), holding that even if the individual named in the applicant's mark, John Nissen, were to be deemed to have impliedly consented to the applicant's use of the mark comprising his name by virtue of his previous signature on the deed of incorporation of the applicant's predecessor corporation and his previous written consent to the use of his name in several foreign trademark registrations, that did not satisfy the statute's requirement for his written consent to the applicant corporation's registration of that mark. The Board stated: "The statutory language is clear in its prohibition of registration where the mark comprises the name of a living individual except by his written consent." *In re New John Nissen Mannequins, supra*, 227 USPQ at 571.

The ex parte case of *In re D.B. Kaplan Delicatessen*, 225 USPQ 342 (TTAB 1985), upon which applicant in the present case specifically relies (see discussion *infra*), appears to be the only reported Section 2(c) case in which

it was found that the lack of a specific express written consent to registration did not preclude registration of a mark naming a particular living individual, because the named individual was found to have impliedly consented to registration of the applicant's mark comprising his name.

In *Kaplan*, the applicant corporation, D.B. Kaplan Delicatessen, sought to register the mark D.B. KAPLAN DELICATESSEN for restaurant services. Registration was refused under Section 2(c) on the ground that the mark comprised the name of a living individual, i.e., D.B. Kaplan, whose written consent to registration was not of record.

The evidence of record in *Kaplan* established that Donald Kaplan was one of the original shareholders, officers and directors of the applicant corporation. Mr. Kaplan and the other original shareholder, Lawrence Levy, had entered into a written agreement whereby Mr. Kaplan agreed to sell, and Mr. Levy agreed to purchase, Mr. Kaplan's entire interest in the corporation. According to the Board's opinion, this "buy-out" agreement provided in pertinent part that the trade name and service mark "D.B. Kaplan Delicatessen" and any name or mark confusingly similar thereto was to be the property of the applicant

corporation D.B. Kaplan Delicatessen, Inc., and that Donald Kaplan could not use it in any subsequent business.

The Trademark Examining Attorney contended that, under the terms of the buy-out agreement, Mr. Kaplan had merely consented to the applicant corporation's use of his name in its mark, but not to the applicant's registration of that mark, as required by Section 2(c).

However, the Board found:

In the present case, Donald Kaplan has indicated in writing that the trade name and service mark "D.B. Kaplan Delicatessen" and any name or mark confusingly similar thereto is the property of D.B. Kaplan Delicatessen, Inc., the applicant herein, and that Donald Kaplan cannot use it in any subsequent business. We disagree with the Examining Attorney that the foregoing agreement is simply a consent to use and does not constitute a consent to register. Kaplan clearly has relinquished to applicant corporation all rights in the mark "D.B. Kaplan Delicatessen" which comprises his name and has agreed that he cannot use it in any subsequent business. We think that these provisions are beyond a mere "consent to use" situation and that a reasonable reading of this provision clearly implies that consent to applicant's registration of the mark was contemplated.

*Kaplan, supra*, 225 USPQ at 344. The Board concluded:

The fact that Kaplan has agreed in the document [that] applicant owns the name and mark "D.B. Kaplan Delicatessen" and that Kaplan cannot use it in any subsequent business is, in our view, all that is necessary to satisfy the requirement that a particular living individual consent to the use and

registration by another of a mark comprised of that individual's name."

*Id.*

The Board reached the opposite conclusion in the inter partes cancellation case of *Krause v. Krause Publications Inc., supra*, which appears to be the most recent reported case (decided in 2005) involving the issue of Section 2(c) "implied consent."

In *Krause*, the respondent corporation, Krause Publications Inc., had registered the mark KRAUSE PUBLICATIONS. Petitioner Chester L. Krause, the individual named in the mark, was the original founder of respondent corporation but was no longer associated with the corporation. Mr. Krause petitioned to cancel the respondent's registration of the mark KRAUSE PUBLICATIONS on the ground that he did not consent and had not consented in writing to registration of the mark bearing his name, as required by Section 2(c).

In its defense, the respondent corporation maintained in pertinent part that Mr. Krause's written consent was unnecessary because, by virtue of various previous written agreements and dealings with the corporation, he had impliedly consented to respondent's registration of the mark bearing his name. Specifically, respondent contended

that Mr. Krause had impliedly consented to the corporation's registration of the mark by virtue of the facts that: (a) he had incorporated his company, which had been a sole proprietorship doing business as "Krause Publications," into the respondent corporation, which then continued doing business as "Krause Publications"; (b) he later sold all of his shares of stock in the corporation to the corporation's employee stock ownership plan; and (c) at various times as the corporation's president and chairman of the board, he had pledged the corporation's assets, including its trademarks comprising his name, as security for obtaining loans to finance the corporation's operations and expansion.

In granting the petition for cancellation, the Board found that these facts did not support a finding that Mr. Krause had consented to the respondent corporation's registration of the KRAUSE PUBLICATIONS mark, for purposes of Section 2(c). Specifically distinguishing *Kaplan*, the Board found that in none of the prior transactions involving Mr. Krause had he ever expressly stated in writing that the mark KRAUSE PUBLICATIONS was the property of respondent corporation, nor had he ever agreed to refrain from use of his name in any subsequent business. Based on these findings, the Board held that Section 2(c)'s

explicit requirement for written consent to registration of the mark had not been met.

With this prior caselaw in mind, we turn now to the evidence applicant has submitted in support of its claim that Mary Martin Weyrich and David Weyrich, the individuals named in its mark MARTIN & WEYRICH ROSSO ALLEGRO, should be deemed to have consented to applicant's registration of that mark.

**The Receivership Order and the Asset Purchase Agreement.**

The record establishes (or reasonably suggests) the following facts which occurred prior to the filing of applicant's present application on October 14, 2010. We derive these facts from the documents submitted by applicant with its June 12, 2011 response to the Trademark Examining Attorney's December 17, 2010 Office action. These documents include a February 11, 2010 "Order Appointing Limited Purpose Receiver and Issuing Preliminary Injunction" issued by the Superior Court of the State of California for the County of San Luis Obispo Paso Robles Branch (Case No. 098250) (the "Receivership Order"), and an April 29, 2010 "Asset Purchase Agreement" between the court-appointed Receiver, as Seller, and O'Neill Beverage

Company, Ltd. (applicant herein), as Buyer (the "Asset Purchase Agreement").

The Martin Weyrich Winery LLC, and its principals Mary Martin Weyrich and David Weyrich, had obtained a loan from Heritage Oaks Bank, a California bank, secured by certain collateral (see below). The borrowers defaulted on the loan. The bank then brought a lawsuit based on its rights under the secured loan agreement. The Receivership Order indicates that the defendants named in the lawsuit included Martin Weyrich Winery, LLC, a California limited liability company, and David Weyrich and Mary Martin Weyrich, individually and as husband and wife.

The Receivership Order indicates that earlier in the judicial proceedings, the bank and "the Winery" had entered into a "Stipulation and Order Appointing Limited Purpose Receiver and Issuing Preliminary Injunction" (the "Stipulation"). (Receivership Order, "Findings" ¶1.) The Stipulation itself is not of record. The Receivership Order does not expressly indicate whether the named defendants David Weyrich and Mary Martin Weyrich, as individuals, were themselves (in addition to Martin Weyrich Winery LLC) parties to, or signatories to, the Stipulation.

The February 11, 2010 Receivership Order stated that the case had, at that time, come up to the court on the



bank's "ex parte application to request that the terms of the Stipulation be ordered by the Court...." (Receivership Order, "Findings" ¶2.) The Receivership Order stated that "[t]he Stipulation provided among other things, that it may be entered by the Court upon plaintiff's ex parte application, without showing of cause or other justification and without objection by defendants." (Receivership Order, "Findings" ¶1.)

The Receivership Order (at page 1) stated that "No one appeared on behalf of Defendant Martin Weyrich Winery, LLC (the 'Winery')" at the hearing on the bank's ex parte application. (Id.) Nor is there reference in the Order to any appearance by the named individual defendants David Weyrich and Mary Martin Weyrich.

The Receivership Order (at pp. 2-4) included a Preliminary Injunction, which ordered:

1. Defendants and each of them, and their agents, partners, servants, employees, and all persons acting under, in concert with, or on behalf of any of them, are hereby enjoined and restrained from and in any manner, directly or indirectly, demanding, collecting, discounting, receiving or in any way diverting any rents, issues, profits, or income from the sale of Plaintiff's Collateral defined as:

All Accounts Receivables, Chattel Paper, General Intangibles, wine inventories, all juice inventory now owned or hereafter acquired including, but not limited to, the following: All cased and bottled goods, all bulk wine. All general intangibles now

owned or hereafter acquired including but not limited to the following: All rights to the use of the name, "Martin Weyrich Winery LLC and/or York Mountain Winery" this includes all wine inventory with the "York Mountain" label and all trademarks, whether registered or unregistered, patented, or not yet patented, all common law copyright and all trade names whether now in use or to be used; all accounts, contract rights, and rights to payment of every kind now existing or hereafter arising, together with all possessions and returns thereunder.

The Receivership Order's Preliminary Injunction also affirmatively ordered the defendants to surrender possession of the collateral, and certain documents and records associated therewith, to the Receiver. Preliminary Injunction, ¶2.

The Receivership Order also provided (at pp. 4 et seq.), in pertinent part:

5. Thomas Cook of Cook, Ekmanian & Associates (the "Receiver") shall be appointed as Receiver to take possession, custody and control of the Collateral...

...

14. ... the Receiver shall operate, manage and sell the Collateral ...

Subsequently, on April 29, 2010, the above-referenced Asset Purchase Agreement was executed. The parties to the agreement were "Tom Cook, State Court Receiver (Seller), and O'Neill Beverages Co. LLC (Buyer)." The lawsuit defendants Martin Weyrich Winery LLC and the individuals

Mary Martin Weyrich and David Weyrich were not named as parties to the Asset Purchase Agreement nor were they signatories thereto.

In pertinent part, the Asset Purchase Agreement provided:

**Recital A:** Seller is authorized by Order of the San Luis Obispo County Superior Court in the case entitled Heritage Oaks Bank v. Martin Weyrich Winery, LLC (Case No. CV 098250) now pending, to sell the brand names Martin & Weyrich Moscato Allegro, the Martin Weyrich Winery, and the associated intellectual property and intangibles and approximately 58,152 gallons of Moscato wine and to account for same to the Superior Court.

**Recital B:** Seller desires to sell and Buyer desires to purchase the Brands and the associated intellectual property and intangibles on the terms and conditions set forth in this Agreement.

**1. PURCHASE AND SALE OF ASSETS.**

Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, Seller agrees to sell, transfer and assign to Buyer, and Buyer agrees to purchase and acquire from Seller on the Closing Date (as defined in Section 10.1), (a) all of Seller's right, title and interest in and to the brand names Martin & Weyrich, Moscato Allegro, the Martin Weyrich Winery, and the York Mountain Winery, including all registered or unregistered trademarks, trademark applications, trademark rights, trade names and all derivations thereof, fictitious business names, service marks, logos, copyrights, uncopyrighted works (the "Brands"), (b) any related intangible property, not including cash or accounts receivable, associated with the Brands that were acquired by Seller in consideration of any indebtedness or the foreclosure of any collateral acquired held by the

Seller or a related party in the Martin Weyrich Winery LLC (the "Winery"), and 58,152 gallons of the Winery's Moscato wine (the "Wine Inventory") (collectively, the "Assets"). The Assets shall be conveyed free and clear of all liens, pledges, mortgages, security interests, restrictions, charges, encumbrances, equities, liabilities and claims [of] any nature ("Liens").

...

**4. REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller hereby represents and warrants to Buyer as follows:

...

**4.4 Title to Assets.** (i) Seller has good and marketable title to, or has the right to use and transfer to Buyer, each of the Assets ... The delivery to Buyer of the instruments of transfer of ownership contemplated by this Agreement will vest good, marketable and exclusive title to the Assets in Buyer free and clear of all Liens.

...

For the reasons discussed below, we find that neither the Receivership Order nor the Asset Purchase Agreement, whether considered separately or in conjunction with each other, satisfies Section 2(c)'s clear requirement for Mary Martin Weyrich's and David Weyrich's express written consent to applicant's registration of the mark comprising their names, i.e., MARTIN & WEYRICH ROSSO ALLEGRO. Also, to the extent that *Kaplan* suggests that the required consent to register might be implied or imputed to the named individuals in certain circumstances, we find that it

is distinguishable on its facts from the present case. We likewise find that there is no other valid basis in the record for finding implied consent to register in this case.

**The Receivership Order Does Not Constitute the Named Individuals' Express Written Consent to Register.**

The Receivership Order in the underlying lawsuit indicates that it was based on the terms of an earlier Stipulation which had been entered into by the plaintiff Heritage Oaks Bank and the defendant "Martin Weyrich Winery LLC." The Stipulation therefore apparently was the basis of the terms of the Receivership Order, including its recitation of collateral to be transferred from the individual defendants to the Receiver. We note that at several points in its brief, applicant specifically asserts and relies on this Stipulation as a basis for its contention that the individuals named in its mark have consented to registration of that mark.

The Stipulation itself is not of record. It does not appear from the face of the Receivership Order, nor from anything else in the record, that the individual defendants David Weyrich and Mary Martin Weyrich themselves personally signed the Stipulation. The Receivership Order on its face

identifies only Martin Weyrich LLC as a party to the Stipulation.

Given the absence of the Stipulation itself from the record, and the apparent absence (implicit in the Receivership Order) of the named individuals' signatures on the Stipulation underlying the Receivership Order, we find that the Stipulation itself cannot be a basis for finding that the individuals consented in writing to applicant's registration of its mark, for purposes of Section 2(c).

Nonetheless, the Receivership Order based on the Stipulation refers to the lawsuit "defendants" several times. In view thereof, we will find for purposes of this case that the individuals, as named defendants in the bank's lawsuit (in addition to the named defendant Martin Weyrich Winery LLC), were subject to the entry and terms of the Receivership Order.

However, we find that even if the individuals may be deemed to have been subject to the entry and terms of the Receivership Order, there is nothing in the Receivership Order itself which would constitute the individuals' express written consent to registration of applicant's mark comprising their names, for purposes of Section 2(c).

First, the only direct substantive references in the Receivership Order to the duties and obligations of the

lawsuit defendants (including the individual defendants) appear in the "Preliminary Injunction" portion of the Receivership Order. The Preliminary Injunction negatively enjoined and restrained the defendants from taking certain specified actions with respect to the collateral recited in the Order. (Preliminary Injunction ¶1.) We find that those negatively enjoined and restrained actions did not include and cannot in any way constitute or be construed as the individual defendants' affirmative consent to anything, including their consent to registration of applicant's mark.

The Preliminary Injunction also imposed on the defendants certain affirmative obligations with respect to the surrender of the collateral and certain associated records and documents. (Preliminary Injunction, ¶2.) However, the specification of the affirmative obligations on the defendants imposed by the Preliminary Injunction did not include, whether expressly or impliedly, any obligation with respect to registration of any trademark(s), including any obligation on the part of the individual defendants to provide written consent to registration of such mark(s).

Next, we agree with the Trademark Examining Attorney that the recitation of collateral itself, which identified the intellectual property assets being transferred to the

Receiver, specifically identified and was limited to the right "to the use of" the name "Martin Weyrich Winery LLC" and additional unidentified trademarks and trade names. The Receivership Order's recitation of collateral included, in pertinent part:

All general intangibles now owned or hereafter acquired including but not limited to the following: All rights to the use of the name, "Martin Weyrich Winery LLC and/or York Mountain Winery" this includes all wine inventory with the "York Mountain" label and all trademarks, whether registered or unregistered, patented, or not yet patented, all common law copyright and all trade names whether now in use or to be used.

(Receivership Order, ¶1; emphasis added.)

We find that, contrary to applicant's argument, the recitation of collateral did not include the right to register the name "Martin Weyrich Winery LLC" or any portion or derivation thereof, but specifically conveyed to the Receiver merely the right to use that name. The recitation of collateral did not address or provide for the future registration of or right to register such designation(s). We find that it thus does not constitute the named individuals' express consent to registration of any trademark(s) for purposes of Section 2(c), including the MARTIN & WEYRICH ROSSO ALLEGRO mark applicant seeks to register here.



We note that the Receivership Order's recitation of collateral to be transferred to the receiver included the wording "all trademarks, whether registered or unregistered." However, reading the recitation of collateral as a whole, we find that the introductory words "all rights to the use of" apply to all of the following wording, including to the words "all trademarks, whether registered or unregistered." That is, we find that the assets and rights transferred to the receiver by the Receivership Order included only the rights to the use of the unnamed registered and unregistered trademarks, and not the right to register any such marks. Again, we find that this does not suffice as the named individuals' express consent to registration of such marks.

We also find, contrary to applicant's unstated but implicit contention, that the mere presence in the recitation of collateral of a reference to "unregistered" trademarks does not in itself constitute or imply any right to register any such unregistered marks, and does not constitute the the named individuals' express consent to any such registration.

In short, we find that the Receivership Order (which, for purposes of this decision, we find David Weyrich and Mary Martin Weyrich to be bound by as defendants in the

bank's lawsuit despite the fact that they may not have signed the underlying Stipulation) does not in itself suffice as a basis for finding that applicant has the right to register the mark it seeks to register, i.e., MARTIN & WEYRICH ROSSO ALLEGRO, as opposed to the mere right to use the mark. It certainly does not suffice as a basis for finding that the individuals named in applicant's mark have expressly consented in writing to applicant's registration of that mark, as required by Section 2(c).

**The Asset Purchase Agreement Does Not Constitute the Named Individuals' Express Written Consent to Register.**

Next, we find that the Asset Purchase Agreement between the Receiver and applicant, which was authorized by the Receivership Order, does not suffice as the named individuals' express written consent to registration of applicant's mark comprising their names, for purposes of Section 2(c).

It is clear from the face of the Asset Purchase Agreement that it was not personally signed by David Weyrich and Mary Martin Weyrich, but rather by the Receiver as "Seller." We find that it therefore cannot be deemed to be the individuals' express written consent to anything, including in particular their written consent to

registration of applicant's mark comprising their names, MARTIN & WEYRICH ROSSO ALLEGRO, for purposes of Section 2(c).

We also find that the Receiver's signature on the Asset Purchase Agreement does not suffice for this purpose. Section 2(c) clearly requires that the written consent to register must be that of the individual named in the mark. The named individual's right under Section 2(c) to consent to registration of a mark comprising his/her name is a right that is personal to the individual. *Cf. Ross v. Analytical Technology Inc.*, 51 USPQ2d 1269, 1276 (TTAB 1999) (finding that, in the context of an opposition proceeding involving a Section 2(c) claim by the individual named in the applicant's mark (as plaintiff/opposer), the equitable defenses of laches, acquiescence and estoppel are available to the defendant/applicant, because the named individual's Section 2(c) claim is personal in nature).

In view thereof, we find as a general matter that, for purposes of Section 2(c), any asserted conveyance or transfer to another of the named individual's right to consent to register, if that right may be conveyed at all, must be clearly and explicitly expressed in writing by the named individual. In the absence of such clear and explicit conveyance of such right to consent to

registration, we will not impute such Section 2(c) consent to the named individual, especially in an ex parte case.

No such clear and explicit written conveyance by the named individuals David Weyrich and Mary Martin Weyrich of their Section 2(c) right to consent to registration of applicant's mark comprising their names is present in this case. As noted above, the Receivership Order is silent on this issue. We find that the Receiver therefore was not entitled in the Asset Purchase Agreement (or otherwise) to assert any such consent to register on the individuals' behalf or in their stead, and we will not impute such consent to the individuals.

Moreover, even if we were to find that the Receiver was entitled to act in the individuals' legal stead in executing the Asset Purchase Agreement pursuant to the Receivership Order, it would not suffice in this case. As noted above, the Receivership Order did not transfer to the Receiver the right to register any trademark(s), nor did it address the issue of the named individuals' consent to register any trademark(s). This includes the mark MARTIN & WEYRICH ROSSO ALLEGRO. The Receiver could not convey to applicant in the Asset Purchase Agreement what he had not received under the Receivership Order to begin with.

In short, we find that the Asset Purchase Agreement between the Receiver and applicant, whether considered alone or in conjunction with the Receivership Order, does not constitute or suffice as the named individuals' express written consent to registration of applicant's mark, for purposes of Section 2(c). The named individuals did not themselves sign the Asset Purchase Agreement, nor was the Receiver entitled and clearly authorized by the individuals to do so in their legal stead. In any event, the assets conveyed to the Receiver under the Receivership Order did not include the named individuals' right to consent to applicant's registration of the mark comprising their names, and the Receiver therefore was not entitled to grant such consent to register to applicant under the Asset Purchase Agreement.

**Ownership of a Mark Is Not Necessarily An Entitlement to Register That Mark.**

Applicant argues that under the terms of the Receivership Order and the Asset Purchase Agreement, applicant acquired from the Receiver outright and exclusive title to, and full ownership of, all of the winery's intellectual property assets including its trademarks and trademark rights, which would include the mark MARTIN &

WEYRICH ROSSO ALLEGRO. Applicant contends: "Ownership is more than a right to use for certain specific matters or for a limited period of time; it constitutes free and full rights to use the item in all legal manners." (Applicant's Brief at 4-5.) Applicant argues that its outright ownership of the winery's trademarks, including the trademark MARTIN & WEYRICH ROSSO ALLEGRO, necessarily encompasses all rights appurtenant to such ownership, and that those rights necessarily include the right to register the trademarks, and not merely the right to use them.

We are not persuaded by these arguments.

First, we find that the Receivership Order in fact did not specifically transfer ownership of the mark MARTIN & WEYRICH ROSSO ALLEGRO to the Receiver (nor even mention that mark).

However, even if we were to assume that applicant in fact acquired from the Receiver under the Asset Purchase Agreement outright ownership of the trademark MARTIN & WEYRICH ROSSO ALLEGRO it now seeks to register, we find that applicant's ownership of that trademark does not in itself entitle applicant to register that trademark without the written consent of the individuals named in the mark, as required by Section 2(c).

Trademark Act Section 1(a)(1), 15 U.S.C. §1051(a)(1), provides in pertinent part that "[t]he owner of a trademark used in commerce may request registration of its trademark...".<sup>7</sup> However, that right to request registration is explicitly subject to the restrictions of Trademark Act Section 2, 15 U.S.C. §1052, which provides that "No trademark ... shall be refused registration on the Principal Register on account of its nature *unless...*" (emphasis added) it falls within the proscriptions specified in Section 2. These include, for example, Section 2(d)'s bar to registration of a mark which is confusingly similar to a previously-registered mark, and Section 2(e)(1)'s bar to registration of a merely descriptive mark. In such circumstances, an applicant's mere ownership of such a mark does not entitle it to register that mark.

Section 2(c) is one of these explicit bars to registration. It expressly provides that a mark which comprises the name of a particular living individual may not be registered without that individual's express written

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<sup>7</sup> In the equivalent context of applicant's intent-to-use application in this case, Trademark Act Section 1(b)(1), 15 U.S.C. §1051(b)(1), provides that "A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark...".

consent to such registration. The fact that an applicant may be the owner of the subject mark comprising the name of a particular living individual does not relieve the applicant of the statutory obligation to supply the named individual's written consent to registration. As the Commissioner held in *Reed v. Bakers Engineering & Equipment Co., supra*,

... the right to register is based upon the specific requirements of the statute relating to registration and if the requirements are not met there is no right to register. The statute requires the written consent of a particular individual in certain cases and if this written consent does not exist in those cases in which it is required there can not be any registration.

100 USPQ at 199.

In short, even if we assume that applicant in fact is the owner of the particular mark MARTIN & WEYRICH ROSSO ALLEGRO by virtue of the Receivership Order and/or the Asset Purchase Agreement, such ownership does not in itself entitle applicant to register that mark without the written consent to such registration of the individuals named in the mark. That written consent is expressly and explicitly required by Section 2(c). Because no such written consent



is of record, Section 2(c) bars registration of applicant's mark.<sup>8</sup>

**Kaplan is Distinguishable.**

Applicant argues that the case of *In re D.B. Kaplan Delicatessen, supra*, is highly analogous to this case. Applicant argues that the Board in *Kaplan* found that, despite the absence of an express written statement of consent by Mr. Kaplan to the applicant's registration of the mark bearing his name, D.B. KAPLAN DELICATESSEN, the written buy-out agreement between Mr. Kaplan and the corporation was more than merely Mr. Kaplan's consent to the corporation's use of his name in its mark. The Board held that the buyout agreement constituted Mr. Kaplan's implied consent to the corporation's registration of its mark, and that this implied consent to register was sufficient for purposes of Section 2(c).

Likewise in the present case, applicant argues, the Stipulation, the Receivership Order and the Asset Purchase

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<sup>8</sup> We note that, if prior to the bank's lawsuit the Martin Weyrich Winery LLC itself had been the owner of the mark MARTIN & WEYRICH ROSSO ALLEGRO comprising the individuals' names, and had itself sought to register the mark, it, like applicant, would have been required under Section 2(c) to provide the written consent of the named individuals to registration of the mark. *Cf.* Trademark Manual of Examining Procedure § 1206.04(b) (April 2013) (consent to register may be presumed only if the application is personally signed by the individual whose name appears in the mark).

Agreement suffice to establish David Weyrich's and Mary Martin Weyrich's implied consent to applicant's registration of its mark comprising their names. Applicant argues that, under *Kaplan*, this implied consent to register suffices for purposes of Section 2(c), even in the absence of the named individuals' express written consent to such registration.

However, to the extent that *Kaplan* suggests that implied consent might be sufficient to satisfy Section 2(c)'s explicit requirement for the named individual(s)' written consent to register the applicant's mark, we find that *Kaplan* is distinguishable on its facts from the present case in several crucial respects.

First, in *Kaplan*, Mr. Kaplan himself had personally signed the buyout agreement between himself and the applicant corporation upon which the applicant was basing its claim of implied consent to register its mark. In the present case, by contrast, David Weyrich and Mary Martin Weyrich did not themselves personally sign the Asset Purchase Agreement upon which applicant bases its claim of implied consent. As discussed above, we find that the Receiver's signature on the Agreement is not sufficient, because he had not been expressly authorized by the individuals to assert their personal right to consent to

registration in their legal stead. Also, insofar as applicant is basing its claim of implied consent on the original Stipulation underlying the terms of the Receivership Order, including its recitation of collateral, it does not appear on this record, as discussed above, that David Weyrich and Mary Martin Weyrich had personally signed that Stipulation either.

Second, *Kaplan* is distinguishable from the present case because, in *Kaplan*, Mr. Kaplan had expressly acknowledged in the written buyout agreement that the particular mark the applicant sought to register, D.B. KAPLAN DELICATESSEN which had been in long use as the name of the business, and any mark(s) confusingly similar thereto, were the property of the applicant corporation. In the present case, by contrast, nothing in the record establishes that David Weyrich and Mary Martin Weyrich have ever expressly acknowledged, whether in the Stipulation, the Receivership Order, the Asset Purchase Agreement or otherwise, that the particular mark applicant seeks to register, MARTIN & WEYRICH ROSSO ALLEGRO, and any mark(s) confusingly similar thereto, are the property of applicant. As discussed above, ownership of that mark was never conveyed or otherwise transferred to applicant in any of those documents, nor was it even mentioned.

We also find this to be so with respect to the "brand name" MARTIN & WEYRICH which was specifically identified in Section 1 of the Asset Purchase Agreement as one of the assets being conveyed by the Receiver to applicant. Even if we assume that ownership of this designation *per se* was in fact conveyed to applicant in the Asset Purchase Agreement, and that the named individuals impliedly consented to such conveyance and thereby impliedly acknowledged applicant's ownership of that designation, that does not suffice under Section 2(c) or *Kaplan* as the individuals' consent to register the mark MARTIN & WEYRICH ROSSO ALLEGRO.

In this regard, the individuals' implied acknowledgement of applicant's ownership of the designation MARTIN & WEYRICH itself, if any, would not also and necessarily constitute their acknowledgement of applicant's ownership of and right to register in the future any and all marks which might include that designation or otherwise comprise their names. To conclude otherwise would effectively be entitling applicant, notwithstanding Section 2(c), to register any mark comprising the designation MARTIN & WEYRICH or otherwise comprising the individuals'

names, no matter how objectionable a particular mark might be to them.<sup>9</sup>

Third, we find that *Kaplan* is distinguishable from the present case because, in *Kaplan*, Mr. Kaplan had expressly agreed in the buyout agreement that he would not use the mark D.B. KAPLAN DELICATESSEN, nor any confusingly similar mark(s), in any future business. In the present case, David Weyrich and Mary Martin Weyrich have never expressly agreed, whether in the Asset Purchase Agreement or otherwise, that they were relinquishing their right to use marks comprising their names in any future business endeavors.

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<sup>9</sup> This implicates the named individuals' rights of privacy and publicity which underlie Section 2(c), i.e., their right to control the commercial exploitation of their names and identities. See generally *The University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 703 F.2d 1372, 217 USPQ 505, 509 n.8 (Fed. Cir. 1983). Trademark Act Section 2(c) "is intended to protect the intellectual property right of privacy and publicity that a living person has in his/her identity." *In re Hoefflin*, 97 USPQ2d 1174, 1176 (TTAB 2010). The Board has stated that, "If Section 2(c) is viewed as an embodiment of at least the concept of the right of publicity, it must be construed as a protection of the right of a person to control the commercial use of his or her identity." *Ross v. Analytical Technology Inc.*, *supra*, 51 USPQ2d at 1276 n.13 (TTAB 1999). In *Kaplan* itself, the Board stated that "[t]he logical rationale for the proscription of registration in Section 2(c) of the Act is to protect living individuals ... from the commercial exploitation of their names ... except where those living individuals ... agree to such exploitation as evidenced by the written consent of the individual ... to the use and registration of the name by the applicant seeking to register a mark which consists of or comprises said name." *In re D.B. Kaplan Delicatessen*, *supra*, 225 USPQ at 344.

As noted above, Kaplan appears to be the only reported Section 2(c) case finding that the consent to register required by the statute can be implied consent. Given the clear language of Section 2(c) requiring written consent to register, we find that *Kaplan* should be read narrowly and limited to its specific facts.

In *Kaplan*, the Board found that, in the buyout agreement between Mr. Kaplan and the applicant corporation, which was personally signed by Mr. Kaplan, "... Kaplan clearly has relinquished to applicant corporation all rights in the mark "D.B. Kaplan Delicatessen" which comprises his name and has agreed that he cannot use it in any subsequent business." *Kaplan, supra*, 225 USPQ at 344 (emphasis added). In this case, by contrast, we find that the individuals named in applicant's mark have not clearly relinquished their rights in mark(s) comprising their names, including the mark MARTIN & WEYRICH ROSSO ALLEGRO which applicant seeks to register. The Board also found in *Kaplan* that the written buyout agreement between Kaplan and the applicant corporation "... clearly implies that consent to applicant's registration of the mark was contemplated ...". *Id.* (Emphasis added). We find on the record in this case that any implication that David Weyrich and Mary Martin may have consented to applicant's registration of

its mark comprising their names, or that consent to register was clearly contemplated in the Asset Purchase Agreement or otherwise, is far from clear.

**Section 2(c) Is Applicable In This Ex Parte Case.**

Finally, applicant argues in effect that the Section 2(c) refusal should be reversed and that its application should be passed to publication for opposition, thereby giving the named individuals an opportunity to, and imposing on them the obligation of, opposing registration of the mark if they object to such registration. Applicant argues:

Furthermore, the Individuals are not contesting registration of the Mark. In both *Krause* and *Kaplan*, registration of the mark in question was opposed by the individual whose name was a part of the mark. The opposition itself may give rise to a question of whether implied consent exists or does not. In the present case, however, the only opposition to registration of the mark is from the examining attorney, not the Individuals whose names are in question.

(Applicant's Brief at 7.) This argument is unavailing.

Section 2(c) is an absolute statutory bar to registration where the mark comprises the name of a particular living individual without that individual's written consent. This includes ex parte examination

practice involving a Trademark Examining Attorney's refusal to register a mark which violates Section 2(c).<sup>10</sup> The Section 2(c) bar to registration certainly is applicable in inter partes cases brought by the individual named in the mark at issue, such as the *Mary Garden*, *Reed*, *Laub*, and *Krause* cases discussed earlier in this opinion. However, nothing in the clear language of Section 2(c), nor its relevant caselaw, nor elsewhere in the Trademark Act, limits the operation of Section 2(c) to inter partes cases.<sup>11</sup>

#### CONCLUSION AND DECISION.

Trademark Act Section 2(c) is clear in precluding registration of a mark that comprises the name of a particular living individual without that individual's written consent to such registration. "The statute leaves

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<sup>10</sup> As discussed above, in the context of an inter partes case the right of the named individual (as plaintiff) to consent to registration of a mark comprising his/her name is a right that is personal to him/her. However, that does not relieve the Office of its duty to refuse registration ex parte under Section 2(c) if a proper requirement for written consent to register has not been satisfied by the applicant.

<sup>11</sup> Applicant is incorrect in asserting that *Kaplan* was an inter partes case in which registration of the applicant's mark was contested by the named individual himself. *Kaplan* was an ex parte case involving the Trademark Examining Attorney's refusal to register the applicant's mark. Likewise, *In re New John Nissen Mannequins*, *supra*, was an ex parte case.



nothing to inference or implication. The requirement is unmistakably clear that before the portrait [or name] of a living individual may be registered as a trade mark his written consent to such registration must be supplied."

*Mary Garden, supra*, 37 USPQ at 31. "The statute requires the written consent of a particular individual in certain cases and if this written consent does not exist in those cases in which it is required there can not be any registration." *Reed, supra*, 100 USPQ at 199.

In this case, the evidence establishes that, for purposes of Section 2(c), applicant's mark MARTIN & WEYRICH ROSSO ALLEGRO comprises the names of two particular living individuals, Mary Martin Weyrich and David Weyrich. The evidence also establishes that these individuals have not expressly consented in writing to applicant's registration of the mark as required by Section 2(c). To the extent that, under *Kaplan*, the consent to register required by Section 2(c) might be implied consent, we find *Kaplan* to be distinguishable on its facts and that no such implied consent to register is present in this case.

For these reasons, we conclude that the Section 2(c) refusal to register applicant's mark is proper.

**Decision: The refusal to register is affirmed.**

Seeherman, Administrative Trademark Judge, dissenting:

I respectfully dissent from the majority's view that applicant has failed to satisfy the requirements of Section 2(c) of the Act regarding the written consent of the individuals named in the applied-for mark. Although, unlike in most situations involving a mark containing a personal name, there is no specific document labeled "Consent" in which the named individual specifically consents to the registration and use of his or her name, the documents of record are sufficient, in my view, to satisfy the requirements of the statute for such written consent.

The majority has done a very thorough job in examining each of the documents that are of record, or that have been discussed, and has reached the conclusion that none of them constitutes the written consent of David Weyrich and Mary Martin Weyrich, the individuals named in the mark. However, in my view, when the documents are considered in their entirety, and in connection with the activities regarding the security interest and subsequent court proceeding and sale, they are sufficient to demonstrate consent for purposes of meeting the statutory requirement. See *West Florida Seafood Inc. v. Jet Restaurants Inc.*, 31 F.3d 1122, 31 USPQ2d 1660 (Fed. Cir. 1994).

As noted, the Martin Weyrich Winery LLC and its principals Mary Martin Weyrich and David Weyrich had obtained a loan from Heritage Oaks Bank, secured by certain collateral. The borrowers defaulted on the loan. The bank then brought a lawsuit based on its rights under the secured loan agreement, naming, inter alia, Mr. and Ms. Weyrich, as defendants. As a result of the lawsuit, the Court issued a Receivership Order which, as noted in the majority opinion at p. 22, applied to David Weyrich and Mary Martin Weyrich. The Order indicated that the collateral that the bank had obtained from the defendants, including the Weyriches, would be sold.<sup>12</sup> The collateral was defined as, inter alia, "all general intangibles now owned or hereafter acquired," including "all trademarks, whether registered or unregistered." ¶ 1. The Order appointed Thomas Cook as the Receiver of the collateral discussed in the Order, and authorized him to sell the collateral. Mr. Cook subsequently entered into an Asset Purchase Agreement with applicant, by which he transferred, inter alia, certain brand names, and specifically including the designation MARTIN & WEYRICH. The agreement recites Mr. Cook's authorization to sell the trademark by the order

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<sup>12</sup> The Order enjoined the defendants from receiving "any rents, issues, profits, or income from the sale of Plaintiff's

of the San Luis Obispo Superior Court (the Receivership Order).

There is no question that the rights in the trademark MARTIN & WEYRICH were transferred by the Asset Purchase Agreement pursuant to the Court Receivership Order. Although the documents do not specifically include Mr. and Ms. Weyrich's consents to the registration of their names as part of trademarks, in my view the Receivership Order and the Asset Purchase Agreement should be read as evidencing such consent. To do otherwise would essentially eviscerate the purpose of the Order and Asset Purchase Agreement, and have a deleterious impact on policy involving use of trademarks as collateral.

The Order and Asset Purchase Agreement refer to trademarks, and a transfer of trademark rights, not merely to a transfer of personal names. This is not a situation in which an individual is being asked to agree to the use or registration of his or her name as a trademark, and a written instrument is required so the Office can be sure as to what the individual intended. Rather, Mr. and Ms. Weyrich had been using their names as trademarks prior to any of the incidents reflected in this record, and had pledged their trademarks as security in order to obtain a

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Collateral." ¶ 1.

loan. By the majority's reading the Receivership Order and Asset Purchase Agreement as narrowly as it has, the effect is that the trademark collateral pledged by Mr. and Ms. Weyrich as borrowers, and the security interest obtained by the bank, is essentially worthless, as the applicant, who bought the trademark as a result of the Court Order, cannot register the trademark. I do not believe that the Court contemplated such a result, and therefore I would interpret the Receivership Order and the subsequent sale of the trademark pursuant to the Asset Purchase Agreement as evidencing Mr. and Ms. Weyrich's written consent to the registration of their names in the applied-for trademark.

Further, although the facts in this case are not directly on point with the facts in Kaplan, Mr. and Ms. Weyrich, by virtue of the Receivership Order, are enjoined from gaining any benefits from the trademarks that include their names. As a result, I disagree with the majority's view that these individuals have not relinquished their rights in marks comprising their names. What would be the purpose of pledging their marks as collateral, and having the mark at issue herein sold to applicant as a result of a Receivership Order, if Mr. and Ms. Weyrich could then use their names in the same or other marks.

Finally, I would argue that, to the extent that there is any doubt on the issue of whether Mr. and Ms. Weyrich have consented to the registration of their names in applicant's mark, such doubt should be resolved in favor of publication of the mark. That is the general policy that the Board has favored in connection with other grounds for refusal of registration. See, for example, *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995) (surname); *In re Hines*, 32 USPQ2d 1376 (TTAB 1994) (disparaging); *In re Over Our Heads Inc.*, 16 USPQ2d 1653 (TTAB 1990) (scandalous); and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972) (descriptive). In fact, the only Section 2 ground that I am aware of in which this principle is not applied is that of likelihood of confusion, because of the rights afforded the owner of the cited registration by virtue of that registration. *In re Apparel, Inc.*, 366 F.2d 1022, 151 USPQ 353, 354 (CCPA 1966).