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Subject: U.S. TRADEMARK APPLICATION NO. 85436615 - MOTT'S - 5338.4163 -
EXAMINER BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 85436615

MARK: MOTT'S



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GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

TTAB INFORMATION:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: MOTT'S LLP

CORRESPONDENT'S REFERENCE/DOCKET NO:

5338.4163

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EXAMINING ATTORNEY'S APPEAL BRIEF

Applicant has appealed the Trademark Examining Attorney's refusal to register the mark MOTT'S for the Class 31 goods "Packaged combinations consisting primarily of fresh fruit, namely, fresh fruit and fresh fruit packaged in combination with cheese, granola, yogurt, and/or caramels." One single issue is presented upon appeal.

ISSUE:

WHETHER THE TRADEMARK EXAMINING ATTORNEY PROPERLY REFUSED REGISTRATION OF APPLICANT'S MARK, MOTT'S, ON THE GROUNDS THAT APPLICANT'S MARK IS PRIMARILY MERELY A SURNAME.

FACTS:

1. On September 30, 2011, Applicant filed U.S. Trademark Application Serial No. 85436615 seeking registration of the mark “MOTT'S” for "Packaged combinations consisting primarily of fresh fruit and cheese or granola or yogurt or caramels,” in International Class 31.

2. On November 21, 2011, the Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(e)(4), 15 U.S.C. Section 1052(e)(4), on the grounds that Applicant's mark, “MOTT'S,” is primarily merely a surname. Additionally there was an Identification of Goods Requirement.

3. On January 25, 2012, Applicant responded to the office action contesting the Examining Attorney's statutory refusal and satisfying the Identification of Goods requirement. In the response, Applicant argued their mark is not primarily merely a surname, and the statutory refusal should be withdrawn based upon arguments and attached evidence from the Applicant's website documenting the history of their company. *(See Applicant's 01/25/2012 Response to Office Action evidence pages 2-5).*

4. On February 17, 2012, the Examining Attorney issued a final office action maintaining the Trademark Act Section 2(e)(4) primarily merely a surname refusal. The Identification of Goods Requirement was satisfied by the Applicant.

5. On August 14, 2012, the Applicant submitted a Request for Reconsideration of the Examining Attorney's final refusal and filed a notice of appeal with the Trademark Trial and Appeal Board.

6. On September 4, 2012, the Examining Attorney issued an Office Action denying Applicant's Request for Reconsideration, which also contained additional evidence in support of the Examining Attorney's position on the refusal of registration.

7. On November 5, 2012, the Applicant filed their appeal brief with the Trademark Trial and Appeal Board.

ARGUMENT:

A mark that is primarily merely a surname shall be refused registration on the Principal Register absent a showing of acquired distinctiveness. Trademark Act Section 2(e)(4), 15 U.S.C. Section 2(e)(4). The primary significance of the mark to the purchasing public determines whether a term is primarily merely a surname. In re Kahan & Weisz Jewelry Mfg. Corp., 508 F.2d 831, 832, 184 USPQ 421, 422 (C.C.P.A. 1975); In re Binion, 93 USPQ2d 1531, 1537 (TTAB 2009); see TMEP §§1211, 1211.01.

The following four factors are used to determine whether a mark is primarily merely a surname:

- (1) Whether the surname is rare;
- (2) Whether anyone connected with Applicant uses the term as a surname;
- (3) Whether the term has any recognized meaning other than as a surname;

(4) Whether the term has the structure and pronunciation of a surname; and

See *In re Binion*, 93 USPQ2d 1531, 1537 (TTAB 2009); *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995); TMEP §1211.01.

The mark at hand is “MOTT’S” which is the possessive form of the term “MOTT.”

Presentation of a surname in its plural or possessive form does not diminish its surname significance. TMEP §1211.01(b)(v); *see, e.g., In re Binion*, 93 USPQ2d 1531, 1537 (TTAB 2009) (BINION’S); *In re Woolley’s Petite Suites*, 18 USPQ2d 1810, 1812 (TTAB 1991) (WOOLLEY’S); *In re Luis Caballero, S.A.*, 223 USPQ 355, 357 (TTAB 1984) (BURDONS).

I. WHETHER THE SURNAME IS RARE

1. Whether or Not the Name “MOTT” is Primarily Merely a Surname

Applicant argues that their mark is not primarily a surname, and the refusal of registration should be withdrawn because under the first factor, its mark “MOTT’S” is a rare surname. The Examining Attorney attached evidence to the end of his first Office Action of 11/21/2011, from the LexisNexis database showing that the name “MOTT” appearing 5,819 times as a surname. Although Applicant concedes that there is no threshold number of surname listings required to support a surname refusal, Applicant believes that in this instance the name “MOTT” is so “rare,” “rarer” and “relatively rare” that the relative rareness factor should be given greater weight in determining whether its mark is primarily merely a surname. (*See Applicant’s Brief pages 6, 9 and 10*) Applicant appears

to be arguing there are different levels of rarity that will determine how much weight this particular factor should affect the surname analysis. Such a proposition is not supported by the case law, Statute or Rule. The Examining Attorney stands firmly behind the position that evidence of 5,819 individual persons from a nationwide telephone directory of names using the surname “MOTT” does not qualify the term as a “rare” surname.

Hypothetically, even if Applicant’s position maintaining the surname “MOTT” is some degree of rare, the fact a surname is rare does not *per se* preclude a finding that a term is primarily merely a surname. Even a rare surname may be held primarily merely a surname if its primary significance to purchasers is that of a surname. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985) (holding DARTY primarily merely a surname); *In re Rebo High Definition Studio Inc.*, 15 USPQ2d 1314 (TTAB 1990) (holding REBO primarily merely a surname); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB 1986) (holding POSTEN primarily merely a surname). Regardless of the rarity of the surname, the test is whether the primary significance of the term to the purchasing public is that of a surname, and, has the look and feel of a surname. As stated in previous Office Actions, Applicant cannot dispute that the only recognized meaning of the term “MOTT” is primarily merely as a surname.

There is no rule as to the kind or amount of evidence necessary to make out a prima facie showing that a term is primarily merely a surname. This question must be resolved on a case-by-case basis. TMEP §1211.02(a); see, e.g., *In re Monotype Corp. PLC*, 14 USPQ2d 1070 (TTAB 1989); *In re Pohang Iron & Steel Co.*, 230 USPQ 79 (TTAB

1986). The entire record is examined to determine the surname significance of a term. The following are examples of evidence that is generally considered to be relevant: telephone directory listings, excerpted articles from computerized research databases, evidence in the record that the term is a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term/name. TMEP §1211.02(a). The Examining Attorney attached to prior Office actions results from a nationwide telephone directory of names (*see LexisNexis Database evidence attached at the end of the 11/21/2011 Office Action, and 02/12/2012 Superpages.com evidence at pp. 4-6*), Dictionary evidence (*see 02/12/2012 Office Action evidence pp. 2-3*), excerpted Yellowpages.com sample listings from Arkansas, California, Florida and Kansas (*see 02/12/2012 evidence pp. 7-9, 10-12, 13-15, 16-18 and 19-28, respectively*) and Internet search engine located stories (*see 02/12/2012 evidence pp. 19-28*) showing that the name “MOTT” is only used primarily merely to identify individuals both past and present by and as a surname, and has no other meaning. The issue is not whether consumers seeing the mark will recognize “MOTT” to be a rare, common, or historical surname, but merely that they would recognize it as a surname. The evidence clearly indicates this because the mark has no other recognize meanings. Whether or not the surname is rare, which the Examining Attorney is not in agreement about with the Applicant, consumers would perceive the only significance of Applicant's mark “MOTT’S” is as a surname.

a. Applicant’s Census Data and Related Arguments

The Applicant has entered into the record a U.S. 2000 Census data excerpt wherein the surname Mott appears to be ranked at 1,941st nationally. The Applicant argues this information shows the rareness of “MOTT” as “uncommonly used as a surname.” The Applicant also requests this Census excerpt (*see Applicants 08/14/2012 attached evidence at pp. 2-5*) be accepted by the Board for consideration, and additionally requests the Board take judicial notice of the entire 2000 Census in its totality with all of the information contained therein. The Applicant bases their claim upon the position that attaching such lengthy evidence to the record of this application would be too great a burden to the Applicant and impractical on the whole. The Examining Attorney takes issue to the admission of this evidence for consideration by the Board, as the Applicant provides no context for the understanding of how a ranking of 1,941st nationally is to be interpreted, and how it may or may not establish rareness of the surname “MOTT”. Clearly, as the Census ranking provided only includes surnames appearing over 100 times nationally, and the fact that the surname “MOTT” appears in the supplied portion of the Census excerpt is indisputable evidence of the use of “MOTT” as a surname in the United States, whether or not it is “rare”.

The Examining Attorney takes issue with Applicant’s request the Board take judicial notice of the entire 2000 Census. The Examining Attorney performed a search of the census data at the US Census Bureau website indicated by the Applicant. (*see 08/14/2012 Request for Reconsideration evidence p. 2*) It is readily apparent that the raw data appearing within the excerpted charts provided by the Applicant must be taken within a specified context to have any value in supporting the Applicant’s position. The Applicant

fails to provide any context other than to state “MOTT” appears ranked 1,941st in a national ranking. Without the proper context, one cannot determine where a ranking of 1,941st places the surname “MOTT” in comparison to all other surnames in the United States. One is left purely to conjecture as to whether this is a ranking out-of 100,000, 1 million or 1 billion rankings. In Applicant’s 08/14/2012 evidence page 2, the “Related Files” section indicates “Technical Documentation Demographic Aspects of Surnames from Census 2000”. The Examining Attorney briefly and independently reviewed this document online, which consists of 21 pages of instructions on how the raw data provided in the charts is to be interpreted. As the Applicant has not attached the relevant information for interpreting the complicated Census excerpts data provided, and not provided additional context for the interpretation of this raw data, the Examining Attorney takes issue with Applicant’s request to the Board to take judicial notice of the entire U.S. Census of 2000, and requests the attached information provided by the Applicant be afforded no recognition or weight by the Board, other than to be used solely for the purpose of proving the name “MOTT” is clearly a surname in use in the United States by over 100 individuals. (5,819 by the Examiner’s nationwide directory search *sic.*).

Additionally, it should also be noted with regard to the greater Census data referenced by the Applicant, but not provided/attached by the Applicant: Applicant is responsible for ensuring that attachments are in fact submitted and for providing attachments in a format acceptable to the Office. See, e.g., TMEP §§301, 804.05 (regarding requirements for attachments for electronic filing). The record in an application should be complete prior

to the filing of an appeal. 37 C.F.R. §2.142(d); TBMP §§1203.02(e), 1207.01; TMEP §710.01(c). The Applicant was appraised of this rule by the Examining Attorney in his Office Action of 02/17/2012.

**b. Applicant's Arguments Regarding Other Registrations for
Names on the Principal Register**

The Applicant has further argued and presented evidence of ownership of "MOTT" registrations on the Principal Register without a claim of acquired distinctiveness pursuant to Trademark Act Section 2(f). (*see Applicant's Brief pp. 9-10*) The Applicant argues essentially, since they have a few singular term "MOTT" marks which registered in the past, the present mark application should simply be allowed without consideration of the statutory constraints of the Office and the Office examination procedure. The Examining Attorney is not persuaded by these arguments. Although indeed it appears the Applicant has on rare occasion managed to register the single term "MOTT" for similar goods as those presently at issue, the Examining Attorney was able to locate four registrations of record for the singular term "MOTT" held by the Applicant for similar goods, appearing on the principal register under a claim of 2(f). This indicates the Applicant's mark has been deemed primarily merely a surname by past examiners. (*see 09/14/2012 Office action evidence pp. 2-9*). Additionally, it should be noted that many of the Applicant's registrations relied upon by Applicant are for marks that are not primarily merely the term "MOTT," but reflect other terms and/or significant design elements. (*see Applicants 08/14/2012 Response pp. 15-20 and 23*).

The Applicant has requested the Board consider the totality of the Applicant's "portfolio of marks" in consideration as to whether the present application for "MOTT" should be permitted registration on the Principal Register. The Examining Attorney is not aware of any standard, rule or statute whereby the Board may properly consider a "portfolio of [Applicant's] marks" in determining whether a mark has the look and feel of primarily merely a surname, and therefore this request by the Applicant should be properly denied.

Similarly, the Applicant provides examples of other registrations purportedly for: "JOHNSON & JOHNSON," "MILLER," "MCDONALD," "CALVIN KLEIN," "FOX" and "SEARS." These Registrations were not attached to the Applicant's response and the registration numbers provided by Applicant for many such as "MCDONALD" were not correct. The Applicant's arguments predicated upon these registrations should not be considered by the Board as the Registrations have not been entered into the record as evidence. It should also be noted, the registrations for "JOHNSON & JOHNSON," "MILLER," "CALVIN KLEIN" and "FOX" are not primarily merely surnames. "JOHNSON & JOHNSON" is two terms, "MILLER" has other dictionary meaning(s), "CALVIN KLEIN" is a full name and "FOX" is also a type of animal.

The Applicant spends considerable argument and time discussing how the name "FORD" has been permitted registration in many instances. (*see Applicant's 08/14/2012 Response to Office Action evidence pp. 24-31 and 32-67*). The Applicant states they should be afforded the same treatment as the Ford Motor company. The Examining Attorney cannot accept these arguments, because the term "FORD" is not primarily merely a

surname. The term “ford” clearly has a dictionary meaning, and therefore other meaning other than primarily merely a surname. Therefore any and all arguments presented by the Applicant in reliance of the term “FORD” being primarily a surname should be disregarded as incorrect and off topic.

The dictionary definition of the term “FORD” is:

NOUN:

A shallow place in a body of water, such as a river, where one can cross by walking or riding on an animal or in a vehicle.

TRANSITIVE VERB:

ford-ed, ford-ing, fords

To cross (a body of water) at a ford.

(see attached dictionary definitions obtained from the Internet).

The Trademark Trial and Appeal Board may take judicial notice of definitions obtained from dictionaries that (1) are available in a printed format, (2) are the electronic equivalent of a print reference work, or (3) have regular fixed editions. TBMP §1208.04; *see* Fed. R. Evid. 201; 37 C.F.R. §2.122(a); TMEP §710.01(c); *see, e.g., In re Dietrich*, 91 USPQ2d 1622, 1631 n.15 (TTAB 2009) (taking judicial of definition from Merriam-Webster Online Dictionary at www.merriam-webster.com); *In re Petroglyph Games Inc.*, 91 USPQ2d 1332, 1334 n.1 (TTAB 2009) (taking judicial notice of definition from Dictionary.com because from The Random House Unabridged Dictionary); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006) (taking judicial notice of definition from *Encarta Dictionary* because it is readily available in specifically denoted editions via the Internet and CD-ROM).

It should also be noted prior decisions and actions of other trademark Examining Attorneys in registering different marks have little evidentiary value and are not binding

upon the Office. TMEP §1207.01(d)(vi). Each case is decided on its own facts, and each mark stands on its own merits. *See AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Int'l Taste, Inc.*, 53 USPQ2d 1604, 1606 (TTAB 2000); *In re Sunmarks, Inc.*, 32 USPQ2d 1470, 1472 (TTAB 1994).

II. WHETHER ANYONE CONNECTED WITH THE APPLICANT USES THE TERM AS A SURNAME

Applicant has clearly stated their company was founded by “Samuel R. Mott,” 169 years ago, who according to the Applicant, said founder is now a historical figure. (*see Applicant’s 01/25/2012 Response to Office Action pp. 2-4*) The Applicant further argues “If a term identifies a historical person rather than Applicant or the Applicant’s business partners, then the term may [emphasis added] not be primarily merely a surname.”(*see Applicant’s Brief Page 13, Paragraph No. 2*). The Examining Attorney is not persuaded by these arguments, as there is no *per-se* rule, Rule or Statute which indicates a name loses its status as primarily merely a surname because a person using the name becomes a historical figure. The fact that a term is the surname of an individual associated with the Applicant (e.g., an officer or founder) is evidence of the surname significance of the term. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 17, 225 USPQ 652, 653 (Fed. Cir. 1985); *In re Rebo High Definition Studio Inc.*, 15 USPQ2d 1314, 1315 (TTAB 1990); *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988), *aff’d*, 883 F.2d 1026 (Fed. Cir. 1989); *In re Taverniti, SARL*, 225 USPQ 1263, 1264 (TTAB 1985), *recon. denied*, 228 USPQ 975 (TTAB 1985). When an individual associated with the

Applicant has the mark as a surname, such a fact is evidence in favor of a surname refusal.

The fact that Samuel R. Mott started the company and may be considered a historical figure, does not obviate the fact the surname “MOTT” is still alive, well and in common use in the United States. The fact that a term is shown to have some significance as a historical figure generally will not dissipate its primary significance as a surname. See *In re Binion*, 93 USPQ2d 1531, 1537-38 (TTAB 2009); *In re Thermo LabSystems, Inc.*, 85 USPQ2d 1285, 1289 (TTAB 2007); *Lucien Piccard Watch Corp. v. Since 1868 Crescent Corp.*, 314 F. Supp. 329, 331, 165 USPQ 459, 461 (S.D.N.Y. 1970); TMEP

§1211.01(a)(iv). The Board has found that where an individual is notable in a particular field, the evidence must show that his or her achievements are “so remarkable” or “so significant” that the primary connotation of the term would be that of an historical individual. *In re Binion*, 93 USPQ2d at 1537-38; *In re Thermo LabSystems*, 85 USPQ2d at 1289. Further, if the term would be evocative of numerous individuals rather than one particular historical individual, the term does not qualify as a historical name but is merely the surname of numerous individuals with varying degrees of historical significance. *In re Thermo LabSystems*, 85 USPQ2d at 1290; TMEP §1211.01(a)(iv).

It is abundantly clear from the Applicant’s arguments that they believe their mark has acquired distinctiveness as the source of the Applicant’s goods under the name “MOTT’S,” sometime over the past 169-46 years since the company was founded by Samuel R. Mott. In arguing their mark is not primarily merely a surname, the Applicant

has admitted their mark should be registered on the Principal Register pursuant to Trademark Act Section 2(f) based upon more than 5 years' use and/or a prior Registration for the same or similar mark for same or similar goods. This option has been open and available to the Applicant since their filing of the Application.

III. WHETHER THE TERM HAS ANY RECOGNIZED MEANING OTHER THAN PRIMARILY MERELY A SURNAME

Applicant has argued the Examining Attorney's Internet stories evidence is insufficient in proving the term "MOTT" is primarily merely a surname, and essentially did not provide any evidence of widespread exposure or circulation of the name "MOTT'S" or "MOTT" to the general public. Applicant further argues that the term solely identifies a historically significant name and figure only, and is also currently a rare historical name. The standard for this third factor is not whether the name has widespread exposure or circulation, but merely whether the name has any other recognized meaning other than that of a surname. The Examining Attorney has attached a dictionary definition (*examiner's 02/17/2012 Office Action pp. 2-3*) showing that there are no other definitions of the term other than that as a surname. Additionally, the Examining Attorney references pages 7-12 of the Applicant's 09/04/2012 Request for Reconsideration which discusses the C.S. or Charles Stewart Mott Foundation, a foundation owned or started by the Applicant and presumably an individual named Charles Stewart Mott. The Applicant argues the "CHARLES STEWART MOTT FOUNDATION" mark was allowed on the Principal Register without a claim of 2(f), so the present application should be given similar treatment. The Examining Attorney is not persuaded by these arguments, as the

mark "CHARLES STEWART MOTT" would not be considered primarily merely a surname by the Section 2(e)(4) statutory elements.

This "Charles Stewart Mott" evidence does clearly evidence the surname "MOTT" applies to more than one person associated with the Applicant beyond the founder Samuel R. Mott. The Examining Attorney also enclosed multiple articles showing that "MOTT" is used as a surname by individuals in the current public. (*see 09/04/2012 Office Action pp. 10-49*) Excerpted articles from an Internet search engine are one type of credible evidence of the surname significance of a term. There is no requirement that the Examining Attorney make of record every story found in internet search engine results. However, the Examining Attorney is presumed to make the best case possible. See *In re Federated Dep't Stores Inc.*, 3 USPQ2d 1541, 1542 n.2 (TTAB 1987); see also *In re Monotype Corp. PLC*, 14 USPQ2d 1070, 1071 (TTAB 1989) ("We must conclude that, because the Examining Attorney is presumed to have made the best case possible, the 46 stories not made of record [the search yielded 48 stories] do not support the position that CALISTO is a surname and, indeed, show that CALISTO has non surname meanings.")

Lastly, the issue of determining whether a surname is common or rare is not determined solely by comparing the number of listings of the surname in a computerized database with the total number of listings in that database, because even the most common surname would represent only a small fraction of such a database. Rather, if a surname appears routinely in news reports, articles and other media as to be broadly exposed to the

general public, then such surname is not rare and would be perceived by the public as primarily merely a surname. In re Gregory, 70 USPQ2d 1792, 1795 (TTAB 2004); see TMEP §1211.01(a)(v). (See attached news articles).

The Examining Attorney will briefly address the Applicant's argument that due to the fact of the existence of Samuel R. Mott as the company's founder, the consumer of Applicant's goods will instantly connect and recognize in their mind, the history of the founding of the company upon seeing the mark "MOTT'S," as opposed to perceiving the mark as having the look and feel of a surname. As there is no survey evidence to support this position, the Examining Attorney request the Board provide these arguments little to no weight in consideration of this appeal. Additionally, it should be noted the entire name "Samuel R. Mott" or "Samuel Mott" does not appear in any registered trademark, and therefore does not appear to be used in commerce by the Applicant or on the Applicant's goods.

IV. WHETHER THE TERM HAS A STRUCTURE AND PRONUNCIATION OF A SURNAME

Applicant argues their mark lacks the look and feel of a surname and therefore will not be perceived a primarily merely a surname. The Examining Attorney respectfully disagrees because the fact that a term looks and sounds like a surname may contribute to a finding that the primary significance of the term is that of a surname. In re Giger, 78 USPQ2d 1405, 1409 (TTAB 2006); In re Gregory, 70 USPQ2d 1792, 1796 (TTAB 2004); In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564, 1566 (TTAB 1988); In re Petrin

Corp., 231 USPQ 902, 904 (TTAB 1986); see TMEP §1211.01(a)(vi). Contrary to Applicant's arguments, the evidence regarding the surname "MOTT" is relevant because it supports the position that Applicant's mark "MOTT'S" has the look and feel of a surname. In this particular instance, Applicant's mark clearly has the "look and feel" of a surname. Some names, by their very nature, have only surname significance even though they are rare surnames. See *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988), *aff'd*, 883 F.2d 1026 (Fed. Cir. 1989) (holding PIRELLI primarily merely a surname, the Board stated that "certain rare surnames look like surnames and certain rare surnames do not and ... 'PIRELLI' falls into the former category...."); *In re Petrin Corp.*, 231 USPQ 902 (TTAB 1986) (holding PETRIN primarily merely a surname). To support the Examining Attorney's position that Applicant's mark has the "look and feel" of a surname, the Examining Attorney attached significant evidence of the popularity of the surname "MOTT" which has previously been discussed and cited in this Brief.

V. EXAMINING ATTORNEY'S EVIDENCE ATTACHED TO REQUEST FOR RECONSIDERATION CHALLENGED AND DISPUTED BY APPLICANT

Applicant disputes the Examining Attorney's evidence attached to the Denial of Request for Reconsideration as being late submitted after the noting of appeal by the Applicant, should not be considered by the Board. (*see Applicant's Brief p. 12*) The Applicant filed their referenced Request for Reconsideration concurrently with their noting an appeal with the TTAB. The Applicant is in error, and the referenced evidence provided by the

Examining Attorney was proper and acceptable for consideration by the Board as the Examining Attorney had jurisdiction over the application at that time. TMEP 710.01(c).

TBMP 1203.02(e):

"If an Applicant that has filed a timely request for reconsideration of a final action, second refusal on the same ground(s), or repeated requirement, also files a timely appeal, and the Examining Attorney has not yet considered the request for reconsideration when the appeal is filed, or if the Applicant files a request for reconsideration along with the notice of appeal, the application, with the appeal and the request for reconsideration, will be forwarded to the Board. However, because papers may become separated, if an Applicant files a request for reconsideration along with a paper notice of appeal, it should indicate in the notice of appeal that a request for reconsideration is being filed contemporaneously... The Board will acknowledge receipt of the appeal and request, suspend further proceedings (including the Applicant's time for filing its appeal brief) with respect to the appeal, and remand the application to the Examining Attorney for consideration of the request. Because proceedings in the appeal are automatically suspended when a request for reconsideration is pending, the Applicant should not file its appeal brief within sixty days of the filing of the notice of appeal, as provided by 37 CFR § 2.142(b)(1), even if the Board has not issued its order suspending proceedings prior to the date the appeal brief would otherwise be due.

If, upon the Examining Attorney's consideration of the request for reconsideration, all refusals and requirements are not withdrawn, and a new final refusal or action maintaining the finality of a Chapter 1200 – 24 prior Office action is issued (either in the Examining Attorney's action on the request for reconsideration, or in a subsequent action), the six-month response clause should be omitted from the paper in which such action is taken; the application should be returned to the Board; proceedings with respect to the appeal will be resumed; and the Applicant will be allowed time in which to file its appeal brief. See TBMP § 1205.

SUMMARY

Applicant's mark "MOTT'S" has the look and feel of a surname and no other meaning than primarily merely a surname. Contrary to Applicant's arguments, the surname "MOTT" is not relatively rare and the fact that it also includes and identifies historical

figure(s) is insufficient to overcome the surname refusal. The Examining Attorney has shown that “MOTT” or in this instance the possessive form “MOTT’S” has no other meaning than that of primarily merely a surname. The Examining Attorney has also shown that Applicant's mark has the "look and feel" of a surname. The evidence of record supports the finding that the name “MOTT’S” is primarily merely a surname. Therefore, the Examining Attorney respectfully requests of the Board that the refusal to register the Applicant's mark pursuant to Trademark Act Section 2(e)(4), be affirmed.

Respectfully submitted,

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ford (fɔrd, fɔrd) *ky*

Word of the Day
perfunctory
Definition: (adjective)
unenthusiastic; routine; or

NOUN:
A shallow place in a body of water, such as a river, where one can cross by walking or riding on an animal or in a vehicle.

AdChoices



unenthusiastic, routine, or mechanical.
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CROSS BY WALKING OR DRIVING ON AN ANIMAL OR IN A VEHICLE.

TRANSITIVE VERB:
ford-ed, ford-ing, fords

To cross (a body of water) at a ford.

ETYMOLOGY:
Middle English, from Old English, see *per-*² in Indo-European roots

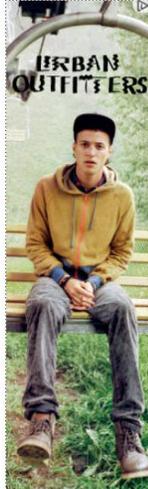
OTHER FORMS:
ford'a-ble(*Adjective*)

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ford

noun UK US /fɔːd/ ⓘ /fɔːrd/ ⓘ [C]

Definition

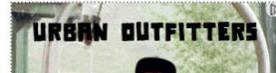
an area in a river or stream which is not deep and can be crossed on foot or in a vehicle

(Definition of ford noun from the Cambridge Advanced Learner's Dictionary & Thesaurus © Cambridge University Press)

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SMART Thesaurus

Synonyms and related words:

- barrage bayou **beck** **billabong** burn
 - cataract creek downriver downstream
 - fluvial gorge gully maelstrom rushing
 - sluice **stream** upstream watercourse
 - waterfall watershed
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- **forceful** *adjective*
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- **forcible** *adjective* (USING PHYSICAL POWER)
- **forcible** *adjective* (GIVING NO CHOICE)
- **ford** *noun*
- **ford** *verb*
- **fore** *noun*
- **fore** *adverb/adjective*
- **fore-** *prefix*
- **forearm** *noun*

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ford

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A ford is a shallow area of a river where it's easier to cross. *(noun)*

An example of a ford is where you can see the bottom of a river.

To ford is to cross a river at a shallow place. *(verb)*

An example of ford is when cattle are taken across the stream to get to the other side.

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- forcibly
- forcing
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- fordable
- fordable
- forded
- Ford, Henry (Henry Ford)
- fording
- Fordism
- fordless

Multi-Word Results ? Similar Spellings ?

Henry Ford

ford

pronunciation: **ford**

parts of speech: noun, transitive verb

part of speech: **noun**

definition: a shallow stretch in a river or other body of water that can be crossed without a boat or raft. *We made our way along the edge of the river until we could find a ford.*

related words: bay

part of speech: **transitive verb**

inflections: forded, fording, fords

definition: to cross (a river or other body of water) at a shallow place, as on foot or horseback. *The army forded the river a few miles below the falls. Most of the animals safely forded the river, but a few were swept away by the current and had to be rescued.*

related words: cross

derivations: fordable (adj.), fordless (adj.)

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