

This Opinion is not a  
Precedent of the TTAB

Mailed: February 9, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re CP Comercial S/A*

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Serial No. 90865025

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Steven J. Grossman and Chelsea Steadman of Rossman Tucker  
Perreault & Pflieger PLLC for CP Comercial S/A

David Brundage, Trademark Examining Attorney, Law Office 112,  
Matthew Cuccias, Managing Attorney.

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Before Kuhlke, Goodman and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Goodman, Administrative Trademark Judge:

CP Comercial S/A (“Applicant”) seeks registration on the Principal Register of the mark CANTU (in standard characters) for “Tires; vehicle wheels; air chamber tire parts for vehicles, namely, inner tubes” in International Class 12.<sup>1</sup>

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<sup>1</sup> Application Serial No. 90865025 filed on August 4, 2021, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon an allegation of a bona fide intention to use the mark in commerce.

Citations to page references to the application record refer to the online database of the USPTO’s Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board’s TTABVUE docket system.

The Trademark Examining Attorney refused registration of Applicant's mark pursuant to Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4), on the ground that the applied-for mark is primarily merely a surname.

When the refusal was made final, Applicant appealed.

We affirm the refusal to register.

#### I. Primarily Merely a Surname

Section 2(e)(4) of the Trademark Act precludes registration of a mark on the Principal Register that is "primarily merely a surname" without a showing of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. §1052(f). A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname. *Earnhardt v. Kerry Earnhardt, Inc.*, 846 F.3d 1374, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017); *see also In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1548 (TTAB 2017); *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1277 (TTAB 2016).

To determine whether the purchasing public would perceive Applicant's mark as primarily merely a surname, there are multiple sources of evidence that may be probative of the possible surname meaning of a proposed mark. These inquiries include (1) whether anyone connected with Applicant has this surname; (2) whether the term has a non-surname "ordinary language" meaning; and (3) the extent to

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Applicant's brief is at 4 TTABVUE; the Examining Attorney's brief is at 6 TTABVUE. Applicant included exhibits to the brief of evidence submitted during prosecution which was unnecessary.

which the term is used by others as a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). In addition to the list of examples of inquiries articulated in *Darty*, the Board articulated two additional examples of inquiry in *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995): (4) whether the term has the “structure and pronunciation” of a surname; and (5) whether the stylization of lettering is distinctive enough to cause the mark not to be perceived as primarily merely a surname. These inquiries are not exclusive and any of these circumstances—singly or in combination—and any other relevant circumstances, may shape the analysis in a particular case. *In re Eximius Coffee, LLC*, 120 USPQ2d at 1278; *see also In re Integrated Embedded*, 120 USPQ2d 1504, 1506 n.4 (TTAB 2016).

A. Whether the stylization of the lettering is distinctive enough to create a separate commercial impression.

Applicant’s mark is depicted in standard characters, without any stylization or design element that might add to or otherwise alter the mark’s commercial impression as that of a surname. This consideration is neutral.

B. Whether CANTU is the Surname of Anyone Connected with Applicant

The record does not reflect that anyone associated with Applicant has the surname CANTU. The absence of anyone associated with applicant who has the surname CANTU renders this consideration neutral. *See In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004) (the fact that “a proposed mark is not the applicant’s surname, or the

surname of an officer or employee, does not tend to establish one way or the other whether the proposed mark would be perceived as a surname.”).

C. Whether CANTU Has the Structure and Pronunciation of a Surname

Applicants and examining attorneys may submit evidence that, due to a term’s structure or pronunciation, the public would or would not perceive it to have surname significance. The only evidence the Examining Attorney presented as to whether CANTU has a similar structure and sound to other surnames is the Ancestry webpage (ancestry.com). December 2, 2022 Office action at TSDR 9. That webpage indicates the following surnames are “similar” to CANTU (Canto, Canby, Banta, Cann, Santa, Canal, Canas, Canter, Gant and Sante). We find that only one surname appears similar: CANTO.

Applicant provided information to argue that CANTU does not have the look and feel of a surname. Applicant submitted a webpage about Portuguese surnames that explains that many Portuguese names end in “es”; the webpage also provides examples of Portuguese surnames that end with “os” or “a.” November 7, 2022 Response to Office action at TSDR 7 (fbiic.gov). Applicant provided an excerpt from Ancestry to support its argument that common surnames end in consonants or are indicators to prior familial occupations (-son/-s/-kin/-kins/-kens/-ing/-man/-mann/-er/-ley/-ton/-ing/-ford/-ham/-burg/-thal/-macher/-mann). *Id.* at 8.

We find the evidence provided by the Examining Attorney and Applicant does not weigh in either’s favor. Coupled with the countering evidence from Applicant regarding common endings for surnames, the Examining Attorney’s evidence

showing CANTO is a similar surname is insufficient to show how the public perceives the structure and sound of CANTU. *See In re Eximius Coffee, LLC*, 120 USPQ2d at 1280 (“the Examining Attorney’s reference to two purported surnames — without proving that they are surnames, without showing how common such surnames with the suffix ‘OA’ are, and without providing some other objective evidence of how members of the public perceive the structure and sound of ALDECOA — is not sufficient to enable us to determine that ALDECOA has a structure and pronunciation similar to that of other purportedly common surnames”).

Therefore, this consideration is neutral.

#### D. Whether and to What Extent CANTU Is Encountered as a Surname

As to whether CANTU is encountered as a surname, the Examining Attorney relies principally on excerpts from the Lexis-Nexis Public Records database.<sup>2</sup> During examination, the Examining Attorney submitted the first 10 results from a search of CANTU which shows that CANTU appears 107,752 times in the search. May 5, 2022 Office action at TSDR 3.

The Examining Attorney also relies on a webpage from the Ancestry website relating to the CANTU family name which indicates there are 430,000 United States records relating to the CANTU surname (birth, marriage, and death records, census records, military records, immigration records, and member trees). December 2, 2022 Office action at TSDR 9. The Ancestry webpage states that the origin of the CANTU

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<sup>2</sup> According to the Examining Attorney, this database is “a weekly updated directory of cell phone and other phone numbers (such as voice over IP) from various data providers.” May 5, 2022 Office Action at TSDR 1.

surname is Italian and Hispanic (mainly Mexico), and describes CANTU as a “habitational name from Cantu in Lombardy.” *Id.*

As demonstrated by the database evidence and the Ancestry website evidence, CANTU is used as a surname across the United States, and the general public has been exposed to the surname. We find that members of the general public are likely to encounter CANTU as a surname, and this evidence supports the Examining Attorney’s refusal that the primary significance of CANTU is as a surname.

E. Whether CANTU Has Any Recognized Meaning Other Than as a Surname

To show that CANTU has no recognized ordinary English language meaning or significance other than as a surname, the Examining Attorney submitted a webpage from MERRIAM-WEBSTER DICTIONARY that shows no definition for CANTU. May 5, 2022 Office action at TSDR 2. This evidence supports the Examining Attorney’s refusal that the primary significance of CANTU is as a surname. *In re Weiss Watch Co., Inc.*, 123 USPQ2d 1200, 1203 (TTAB 2017) (evidence that MACMILLAN DICTIONARY does not have entries for WEISS supports surname significance).

Our inquiry is not concluded, however, because Applicant invokes the doctrine of foreign equivalents asserting that CANTU has the meaning of the English words “sing” or “song” in a foreign language that removes the surname significance of CANTU.

Whether a term is primarily merely a surname must take into consideration the meaning the term has in a foreign language. *In re Isabella Fiore, LLC*, 75 USPQ2d

1564, 1568 (TTAB 2005) “If the term has an established meaning ... we consider the meaning’s significance in the United States.” *Id.* at 1659.

The doctrine of foreign equivalents is not an absolute rule, but merely a guideline, which should be applied only when it is likely that the ordinary American purchaser would stop and translate the foreign word into its English equivalent. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1377, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005). Whether the doctrine of foreign equivalents applies is based on an analysis of the evidence of record.

Applicant submitted a Google Translate entry from Portuguese to English to show the English translation of CANTU. November 7, 2022 Response to Office action at TSDR 6. The Google Translate result shows that a translation of CANTU from Portuguese to English is “sing.”



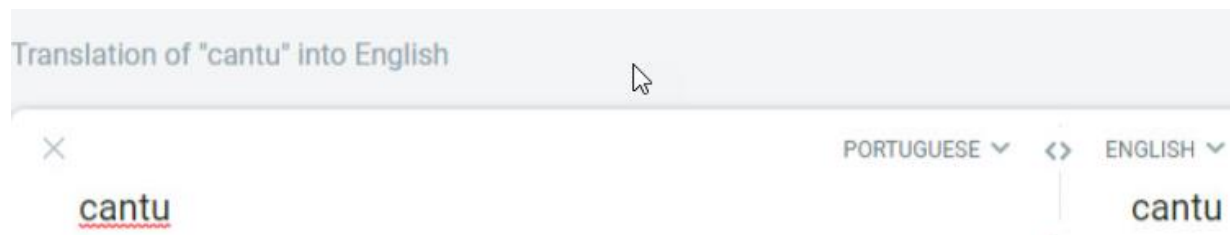
*Id.*

In response to this argument and evidence, the Examining Attorney provided additional Google Translate evidence which shows that “song” translates to

Portuguese as “CANTA.” December 2, 2022 Office action at TSDR 2. The Examining Attorney provided two English to Portuguese online translators (online-translator.com and systran.net) to show that “cantar” is the Portuguese translation for the English word “sing.” December 2, 2022 Office action at TSDR 3-4. One of the translation webpages shows various conjugations of the verb “cantar” including “cantem,” “cante” and “canta.” *Id.* at 3. There are no conjugations showing “cantu.” The Examining Attorney provided a page from an online translator showing that there is no English to Portuguese translation for “sing” as CANTU (“sing” translates as “cantar”). *See*



*Id.* at TSDR 5. The Examining Attorney also submitted evidence showing no translation of CANTU from Portuguese to English (i.e., CANTU translates as CANTU) from online translators other than Google Translate. *See e.g., COLLINS DICTIONARY:*



*Id.* at TSDR 6-8.



Applicant argues on appeal that CANTU is not primarily merely a surname because it has other recognized meanings as the foreign equivalent of the English word “sing,” namely that CANTU means “sing” in the Corsican, Sicilian and Asturian languages. 4 TTABVUE 8. The Examining Attorney argues that the mention of Corsican in the Google Translate result submitted by Applicant is a suggested search and not a translation that the English word for “sing” is CANTU in the Corsican language. 6 TTABVUE 6. The Examining Attorney also argues that there is no evidence in the record showing that CANTU has a meaning in either the Sicilian or Asturian foreign languages. *Id.*

We find there is no evidence in the record establishing that the doctrine of foreign equivalents applies in this case. There is no evidence in the record to support CANTU is the foreign equivalent of the English word “sing” in the Sicilian and Asturian languages. Attorney argument is not evidence. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (citing *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”)). The record also does not clearly support a finding that the English word “sing” is translated as CANTU in the Portuguese language. Lastly, as the Examining Attorney points out, the Google Translate result submitted by Applicant does not show that the English word “sing” is translated as CANTU in the Corsican language. As a result, we find the doctrine of foreign equivalents inapplicable.

Having found Applicant's evidence unconvincing and the Examining Attorney's negative dictionary evidence probative, we find that consumers would apply the surname meaning to CANTU.

## II. Conclusion

Taking the relevant inquiries together, we find that the record, as a whole, establishes the primary significance of CANTU to the purchasing public is that of a surname.

**Decision:** The refusal to register Applicant's mark CANTU under Section 2(e)(4) of the Trademark Act is affirmed.