

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
November 29, 2012

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Lorch Schweißtechnik GmbH

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Serial No. 85037839

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Mark Harrison and Michael E. Hall of Venable LLP for Lorch Schweißtechnik GmbH

Hélène Liwinski, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Holtzman, Mermelstein, and Gorowitz Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Lorch Schweißtechnik GmbH (applicant) filed an application to register the mark LORCH on the Principal Register in standard character form for

Welding wire; metal welding rods in Class 6;

Electric welding machines; electric arc welding machines; electric plasma cutting machines in Class 7; and

Electric arc welders; welding torches; accessories for electric welding and electric cutting apparatus, namely, electric cables, welding electrodes, electrode holders for electric arc welders, grounding clamps for electric arc welders, electrical connectors and adaptors for electric arc welders; accident protection equipment for welders, namely, welding gloves and protective eyewear, namely, welding shields, welding masks; controls for electric

welding and electric cutting apparatus, namely, welding transformers and electric power supplies for electric arc welders in Class 9.¹

The examining attorney refused registration on the ground that the mark is primarily merely a surname under Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4). The refusal was made final in the Office action dated March 21, 2011. Applicant has appealed the refusal.²

Section 2(e)(4) of Trademark Act precludes registration of a mark which is “primarily merely a surname” on the Principal Register without a showing of acquired distinctiveness under § 2(f) of the Act, 15 U.S.C. § 1052(f). The Board has identified five factors to consider in determining whether a mark is primarily merely a surname: (1) the degree of the surname’s “rareness”; (2) whether anyone connected with applicant has the mark as a surname; (3) whether the mark has any recognized meaning other than as a surname; (4) whether the mark has the “look and feel” of a surname; and (5) whether the mark is presented in a stylized form distinctive enough to create a separate non-surname impression. *In re Benthin*

¹ Serial No. 85037839 filed on May 13, 2010, pursuant to Section 44(e) of the Trademark Act, based on European Community Registration No. 002358851, issued on August 7, 2003.

² Applicant filed a Request for Reconsideration on September 13, 2011, to amend the application to the Supplemental Register if the Board affirms the Section 2(e)(4) refusal. The examining attorney denied the Request but did not address the issue of whether the application was eligible for registration on the Supplemental Register in view of the expiration of applicant’s European Community registration. On February 17, 2012, the examining attorney requested remand to address that issue. The examining attorney submitted additional evidence on the merits of the surname refusal with both the denial of the Request for Reconsideration and during remand. Applicant has objected to the submission of this evidence. The evidence submitted with both the Denial of the Request for Reconsideration and the Motion for Remand is identical. Because the evidence was properly made of record in the Denial of the Request for Reconsideration, applicant’s objections are overruled.

Management GmbH, 37 USPQ2d 1332-33 (TTAB 1995). Since the mark LORCH is in standard character form, the fifth *Benthin* factor is irrelevant here.

(1) The degree of the surname's “rareness”

We turn to the first *Benthin* factor, which is the degree of the surname's “rareness.” The examining attorney made of record a portion of a “Public Records: Surname” search from the Lexis-Nexis database, which found 470 listings for the name “Lorch.”³ As applicant noted in its brief, “this listing contains some duplicates.” Appeal Brief at p. 6.

The examining attorney also made of record documents referring or relating to approximately 35 – 40 people whose surname is Lorch⁴ and she introduced

³ On page 4 of the Denial of Request for Reconsideration, the examining attorney also refers to “a separate online dictionary” which “defines LORCH as a surname, with a frequency rating of 20,124.” The relevance of this statement is not known. Accordingly, we give no weight to this evidence.

⁴ In the Office action dated August 26, 2010, the examining attorney made of record several documents referring to individuals with the surname “Lorch”, i.e., the website of Donatella Lorch, biographical information about reporter Matt Lorch from the website of the Boston affiliate of NBC, and a Wikipedia article about Lee Lorch, a mathematics professor and civil rights activist.

In the second Office action dated March 21, 2011, she made of record, the following information referring to individuals with the surname “Lorch”: an advertisement for attorney Linda Lorch from New Albany, Indiana, several articles about George Lorch, who was likely to become the chairman of Pfizer, several articles about criminal charges pending against Ernest (Ernie) Lorch, and a and a listing from The Internet Movie Database for 25 people in the entertainment industry with the surname Lorch.

In the Denial of the Request for Reconsideration dated October 21, 2011, biographical information about Jay Lorch and Rajul Pandya-Lorch, the flickr page of Mark Lorch, 10 listings from Facebook (one of which was for Donatella Lorch) and articles about Lee Lorch and his wife Grace; and about Ernest Lorch were made of record.

The documentation introduced about Lee and Grace Lorch does reflect that the couple was known as civil rights activists. However, the evidence does not prove that Lee and Grace Lorch were generally well-known.

information about the “Lorch Coat of Arms/Lorch Surname History from the website my-coat-of-arms.com, and a definition of “LORCH” (one who came from Lorsch, in Hussia) from meaningofnames.com.⁵ We do not find this evidence sufficient to support the examining attorney’s contention that the “evidence of record demonstrates prominent persons in media and history that impress upon the public the significance of the surname Lorch.” Examining Attorney’s Brief at p. 6.

Therefore, for the purpose of this decision, we base our determination of the degree of the surname’s rareness on the 470 listings for the name Lorch from the Lexis-Nexis database. In *In re Giger*, 78 USPQ2d 1405 (TTAB 2006), the Board determined that “Giger,” is not a common surname since there were only 545 listings for the name. *Id* at 1407 and 1408. *In re Joint-Stock Co. “Baik”*, 84 USPQ2d 1921 (TTAB 2007), the Board determined that Baik appears to be an extremely rare surname with only 456 listings of individuals with the surname. *Id* at 1922.

As a result, on this record, we conclude that LORCH is an extremely rare surname.

⁵ The examining attorney also refers to the website Mundia, which she asserts shows “recent activity for those with the surname Lorch appearing in the United States.” The exhibit includes a chart with four red figures. Three of the figures are placed in Europe. The fourth appears to be placed in Mexico or the southern United States. There is no specific mention of the United States, nor is it indicated where the referenced people reside. As such, we did not find this exhibit to be probative of any use of Lorch as a surname in the United States.

(2) Whether the mark is a surname of anyone connected with applicant.

The second factor that we look at is whether anyone connected with the applicant has the mark as a surname. There is no evidence in the record addressing this issue, so we treat it as neutral.

(3) Whether the mark has any recognized meaning other than as a surname.

The examining attorney introduced a number of dictionary sites to establish that “lorch” does not have any recognized meaning.⁶ No contradictory evidence was produced by the applicant. Accordingly, we find that mark does not have any recognized meaning.

(4) Whether the mark has the “look and feel” of a surname.

The determination of whether a mark has the “look and feel” of a surname is a subjective one. The question we must answer is whether LORCH looks or sounds like a surname and would be perceived as such by the consuming public. See *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564,1566 (TTAB 1988) (“certain rare surnames look like surnames, and certain rare surnames do not ...‘Pirelli’ falls into the former category, while ‘Kodak’ falls into the latter.”). The examining attorney offered no evidence or argument on this point. In our view, Lorch, unlike Pirelli, does not sound like a surname; nor has the examining attorney shown that

⁶ The evidence submitted to prove that “lorch” does not have any recognized meaning is not contradicted by the evidence introduced by the examining attorney from the “meaning-of-names.com” website that Lorch means “one who came from Lorsch, in Hessa.” See March 21, 2011, Office action at page 11. There is no evidence that this definition the “meaning-of-names.com” website is generally known to the American public or that the definition of Lorch therefrom would be generally recognized in the United States.

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it has the structure or format of a surname. Accordingly, we conclude that LORCH does not have the “look and feel” of a surname.

After weighing all of the elements in the *Benthin* test, and keeping in mind that any doubt as to whether the mark is primarily merely a surname must be resolved in applicant's favor, see *In re Joint-Stock Co. “Baik”*, 84 USPQ2d at 1922); *Benthin Management*, 37 USPQ2d at 1334, we find that LORCH is not primarily merely a surname.⁷

Decision: The refusal to register LORCH under Section 2(e)(4) of the Trademark Act is reversed.

⁷ Our decision in this case renders applicant’s request in the alternative to amend to the Supplemental Register moot.