

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: August 30, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Delta Faucet Co.*<sup>1</sup>  
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Serial No. 86519156  
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Edgar A. Zarins, Esq. of Masco Corp.,  
for Delta Faucet Co.<sup>2</sup>

Douglas M. Lee, Trademark Examining Attorney, Law Office 111,  
Robert L. Lorenzo, Managing Attorney.

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Before Cataldo, Wolfson and Lynch,  
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

Delta Faucet Company (“Applicant”) seeks to register on the Principal Register the mark LUXFORD in standard characters for, “plumbing products, namely, faucets, showerheads and toilets” in International Class 11.<sup>3</sup>

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<sup>1</sup> The original owner, Masco Corp. of Indiana, assigned the entire interest in the involved application to “a sister company,” Delta Faucet Company. *See* 9 TTABVUE.

<sup>2</sup> Applicant’s attorney is in-house counsel at Masco Corporation, Applicant’s parent company. *Id.*

<sup>3</sup> Application Serial No. 86519156, filed January 30, 2015, based on Applicant’s allegation of its bona fide intent to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Examining Attorney has refused registration under 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. For the reasons set forth below, we affirm the refusal to register.

Section 2(e)(4) of the Trademark Act provides that absent a showing of acquired distinctiveness under Section 2(f), 15 U.S.C. § 1052(f), registration on the Principal Register must be refused if the proposed mark is “primarily merely a surname.” 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 as a whole to the purchasing public is that of a surname. *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 123 USPQ2d 1411 (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). Various inquiries or factors may be considered in the factual determination of whether the purchasing public would perceive a proposed mark as primarily merely a surname, including the following that have been raised in this case: whether the term has a non-surname, “ordinary language” meaning; the extent to which the term is used by others as a surname – *i.e.*, rarity; whether the term has the structure and pronunciation of a surname; and whether the public may perceive the mark, in the alternative, to be primarily a meaningless, coined term. *See In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653-54 (Fed. Cir. 1985); *Eximius Coffee*, 120 USPQ2d at 1278 n.4 (reviewing factors from *Darty* and *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995) and noting there is no need to discuss

other inquiries for which the record lacks relevant evidence); *In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719, 1721 (TTAB 2016) (noting the consideration, if there is relevant supporting evidence of record, “of an alternative perceived meaning (which may include the perception of the mark as a coined term)”). We conduct our analysis from the perspective of the purchasing public because “it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r Pat. 1955)).

In support of the refusal, the Examining Attorney introduced the following evidence:

- Search results from the Lexis.com Surname Database showing 212 entries for “Luxford.” *See* March 15, 2015 Office Action.
- Search results from *thefreedictionary.com* and the online *Oxford English Dictionary* showing no recognized meaning for “Luxford” as a word in the U.S. English language. *See* March 13, 2015 Office Action and September 15, 2015 Office Action.
- An entry for “Luxford” from HouseofNames.com showing the Luxford family crest, and providing background on the early origins and history of the Luxford family and the earliest Luxford settler in the United States. *See* September 15, 2015 Office Action.
- A Wikipedia entry for “Luxford,” stating that “Luxford is a surname....” *See* September 15, 2015 Office Action.
- An entry for “Luxford” from The Internet Surname Database providing background on “[t]his interesting surname.” *Id.*
- An entry in the IMDb database for “Robert Luxford,” identified as an actor and director with 16 acting credits. *Id.*

- A webpage for the House Clinic medical practice featuring the biography of William M. Luxford, M.D. *Id.*

This evidence demonstrates that “Luxford” is an actual surname, and that “Luxford” has no other “ordinary language meaning.” *See Darty*, 225 USPQ at 653; *Adlon*, 120 USPQ2d at 1721 (lack of dictionary entry for the applied-for mark created a “strong inference” that the mark had no other non-surname meaning).

Applicant contends that LUXFORD “does not have the immediate connotation of being a surname,” and instead “is an arbitrary term which exudes a high end, expensive product collection.” 4 TTABVUE 1 (Applicant’s Brief). Applicant also argues that the “small number of surname occurrences found by the Examining Attorney” supports its position. *Id.*

No set rule governs the kind or amount of evidence necessary to show that the applied-for mark would be perceived as primarily merely a surname. *Eximius Coffee*, 120 USPQ2d at 1278. We reject Applicant’s argument that the rarity of LUXFORD as a surname means that the public is unlikely to view it as primarily merely a surname. The evidence of individuals in a number of locations in the United States who bear the LUXFORD surname show that it “is not so unusual that such significance would not be recognized by a substantial number of persons.” *Darty*, 225 USPQ at 653. Moreover, “even a rare surname is unregistrable if its primary significance to purchasers is a surname.” *Id.* at 1281; *see also In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988), *aff’d*, 883 F.2d 1026 (Fed. Cir. 1989) (holding that despite the rarity of “Pirelli” as a surname, the relevant public still would view it primarily as a surname). The statutory provision makes no

distinction between rare and commonplace surnames. *Adlon*, 120 USPQ2d at 1721; *Eximius Coffee*, 120 USPQ2d at 1282.

Applicant raises unsupported arguments inquiring into the “look and feel” of LUXFORD and whether it would be perceived as an arbitrary, coined term. 4 TTABVUE 1 (Applicant’s Brief). As to the “look and feel” of the term, more properly addressed as the structure and pronunciation of the mark, in the absence of any objective evidence of the relevant public’s perception, this attorney argument fails to overcome the evidence of surname significance. *See Adlon*, 120 USPQ2d at 1724 (rejecting an argument based on structure and pronunciation because “[w]ith respect to this difficult type of argument, we would require more objective evidence, whether from Applicant or the Examining Attorney, of how members of the public would perceive the structure and sound ... and whether they would be likely to perceive it as similar to the structure and sound of other surnames, common words or coined terms.”). Similarly, Applicant provided no evidentiary support for its argument that LUXFORD would be viewed as “an arbitrary term,” 4 TTABVUE 1, and the argument therefore carries little weight. *See Adlon*, 120 USPQ2d at 1719 (stating that consideration will be given to whether the public may perceive the mark to be primarily a meaningless, coined term only “if there is evidence to so indicate”). “In order to show that the public would perceive a proposed mark as a coinage, in the face of evidence establishing that the mark is a surname with no other recognized meaning, some objective countervailing evidence of such a perception is required.” *Id.* at 1723.

Overall, the record contains multiple sources showing that LUXFORD is an actual surname and that no other meaning exists. Applicant's unsupported argument that consumers would view the term as an arbitrary brand name is unconvincing. Thus, on this record, the "primary significance of the mark as a whole to the purchasing public" is that of a surname. LUXFORD would be perceived by the purchasing public as primarily merely a surname within the meaning of Section 2(e)(4) of the Trademark Act.

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