

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

Mailed: December 17, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Parsons Xtreme Golf, LLC
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Serial Nos. 86666031, 86700421, 86701458, 86701787, 86702680, 86706223
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Douglas N. Masters and Melaina D. Jobs of Loeb & Loeb LLP,
for Parsons Xtreme Golf, LLC

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Lydia Belzer, Managing Attorney.

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Before Cataldo, Lykos, and Lynch,
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

In six separate applications, Parsons Xtreme Golf, LLC (“Applicant”) seeks to register on the Principal Register the mark PARSONS in standard characters for the following goods and services:

- Serial No. 86666031: “Golf equipment, namely, golf clubs, golf bags, head covers for golf clubs, golf club grips, golf club shafts, golf balls, golf gloves, golf tees, golf ball markers, divot repair tools, and golf bag covers” in International Class 28;¹

¹ Application Serial No. 86666031 was filed June 17, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

- Serial No. 86700421: “Financial sponsorship of golf tournaments and golf professionals participating in golf tournaments” in International Class 36;²
- Serial No. 86701458: “Drinking glasses; Mugs; Plastic water bottles sold empty; Sports bottles sold empty; Waste paper baskets; Water bottles sold empty” in International Class 21;³
- Serial No. 86701787: “Maintenance and/or repair of golf equipment, namely, golf clubs; Providing information related to the installation, maintenance and repair of golf equipment, namely, golf clubs” in International Class 37;⁴
- Serial No. 86702680: “Hand tools, namely wrenches” in International Class 8;⁵ and
- Serial No. 86706223: “License plate frames; Sun blinds adapted for automobiles; Sun shields and visors for motor cars” in International Class 12.⁶

The Board previously consolidated the six cases on appeal.⁷ Some of the cases had been reassigned so that the same Examining Attorney would handle all six cases, and the Board granted the Examining Attorney’s request for a remand “to provide additional evidence and ensure consistency of the consolidated record.”⁸ In each case, the Examining Attorney has finally refused registration on the ground that the

² Application Serial No. 86700421 was filed July 21, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

³ Application Serial No. 86701458 was filed July 22, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

⁴ Application Serial No. 86701787 was filed July 22, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

⁵ Application Serial No. 86702680 was filed July 23, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

⁶ Application Serial No. 86706223 was filed July 27, 2015 based on a declared intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b).

⁷ 10 TTABVUE 2. Citations are to the TTABVUE and TSDR records for the parent case, Serial No. 86666031.

⁸ 9 TTABVUE 3 (Examining Attorney’s Motion for Remand); 10 TTABVUE 2 (Board order).

proposed mark is primarily merely a surname under Section 2(e)(4), 15 U.S.C. § 1052(e)(4).

Under that section of the Trademark Act, “No trademark by which the goods of the applicant may be distinguished from the goods [or services] of others shall be refused registration on the principal register on account of its nature unless it ... (e) Consists of a mark which... (4) is primarily merely a surname ...” *Id.* A term is primarily merely a surname if, as 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.*, 864 F.3d 1374, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017); *In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1548 (TTAB 2017) (citing *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985)).

Whether the primary significance of a term is merely that of a surname is a question of fact that must be resolved on a case-by-case basis, considering the record as a whole. *In re Olin Corp.*, 124 USPQ2d 1327, 1330 (TTAB 2017); *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1480 (TTAB 2017). Probative considerations include: the extent to which the term is exposed to the public as a surname; whether the term is the surname of anyone connected with the applicant; whether there is contextual use related to surname significance; whether the term has any recognized meaning other than as a surname; and whether the term has the structure and pronunciation of a surname. *Olin Corp.*, 124 USPQ2d at 1330; *Beds & Bars*, 122 USPQ2d at 1548. “These considerations are not exclusive, and any of these circumstances singly or in

combination and any other relevant facts may shape the analysis in a particular case.” *Olin Corp.*, 124 USPQ2d at 1330.

A. PARSONS Is Not a Rare Surname

We first consider the frequency of, and public exposure to, the term PARSONS as a surname. *See Darty*, 225 USPQ at 653. Even a rare surname may be held primarily merely a surname if its primary significance to purchasers is that of a surname. “The relevant question is not simply how frequently a surname appears, however, but whether the purchasing public for Applicant’s services [and goods] is more likely to perceive Applicant’s proposed mark as a surname rather than as anything else.” *Beds & Bars, Ltd.*, 122 USPQ2d at 1551.

Relevant evidence introduced by the Examining Attorney includes the following:

- A LexisNexis public records search for the surname PARSONS that returned 106,689 results. The first 500 results were made of record and include addresses that span the U.S.⁹
- Results of a search of 411.com finding 91,946 exact matches for PARSONS.¹⁰
- Whitepages.com reports that 76,915 people in the U.S. have the last name PARSONS.¹¹
- Articles from major U.S. newspapers and media outlets referring to people with the surname PARSONS, including USA Today, The New York Times, The Dallas Morning News, The Chicago Tribune,¹² The Los Angeles Times, The Detroit Free Press, The Oregonian, The Boston Globe, The Buffalo News, The Cincinnati Enquirer, The Indianapolis Star, The Sun-Sentinel, The Hartford Courant, Newsday, The Plain

⁹ May 5, 2017 Office Action at 6-26.

¹⁰ *Id.* at 44.

¹¹ *Id.* at 66.

¹² *Id.* at 29, 32, 35-36.

Dealer, and The Baltimore Sun.¹³ The individuals mentioned in the articles include professional athletes (such as NHL player Tyler Parsons) and entertainment personalities (such as TV actor Jim Parsons who stars as Sheldon on “The Big Bang Theory,” Gram Parsons of the Byrds and Flying Burrito Brothers, Broadway director Estelle Parsons, TV actress Karyn Parsons of “The Fresh Prince of Bel Air”) as well as more ordinary people.

- Wikipedia lists nearly 80 “[n]otable people with the surname of Parsons,” including Applicant’s founder who is identified as an entrepreneur. Other notables include Estelle Parsons, identified as an Academy Award-winning actress, and musician and musical producer Alan Parsons (of the band The Alan Parsons Project).¹⁴

Applicant contends that the LexisNexis results “are incomplete and inaccurate as duplicates exist,” having pointed out a handful of duplications and noting that without the entire search results, it is not possible to assess the breadth of duplication. While we “agree that the probative value of the Lexis listings is limited for the reasons stated by Applicant,” *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1280 (TTAB 2016), we nonetheless accord the evidence some probative value because a degree of duplication is to be expected in this type of data compilation, and does not merit discounting the compilation altogether. As the Examining Attorney suggests, we bear in mind the practicalities of the somewhat limited resources available to USPTO examining attorneys in assessing the record. *See, e.g., In re Pacer Tech.*, 338 F.3d 1348, 67 USPQ2d 1629, 1632 (Fed. Cir. 2003). Applicant further questions whether the LexisNexis, Whitepages.com, and 411.com evidence is overlapping and may contain duplications.¹⁵ Again, while we take account of the probability of some

¹³ May 31, 2016 Office Action at 7-24.

¹⁴ *Id.* at 35-38 (Wikipedia.org).

¹⁵ 19 TTABVUE 11 (Applicant’s Brief).

overlap, the evidence still provides a rough sense of the frequency of the name, and can be compared to evidentiary showings from the same or similar sources in other surname cases by the Board, as discussed below.

Applicant introduced the U.S. Census Bureau “U.S. and World Population Clock” showing the U.S. Population¹⁶ and compares the total number of people in the U.S. to the number of people bearing the PARSONS surname to argue that the percentage is extremely small.¹⁷ However, such a comparison with even the most common surname would represent only a small fraction of the U.S. population, so we do not find this argument convincing.

Recent Board precedent shows a determination that a surname was not rare even with an evidentiary showing much less substantial than the Examining Attorney’s in this case. In *Olin Corp.*, where the public records search returned only 7,552 hits and the 411.com matches were only 100, the Board relied on that and other evidence comparable to the record in this case to conclude that “OLIN is not rarely encountered as a surname, and therefore it is likely to be perceived by the public as having surname significance.” *Olin Corp.*, 124 USPQ2d at 1311. The numbers from the public records database and 411.com are far greater in this case.

In addition, Applicant offers no specific criticism of the newspaper and media articles. They “are the type of evidence that can be probative and aid analysis because they show public exposure to [PARSONS] used as a surname.” *Eximius Coffee, LLC*,

¹⁶ May 6, 2016 Response to Office Action at 14 (census.gov).

¹⁷ 19 TTABVUE 11 (Applicant’s Brief).

120 USPQ2d at 1281; *see also In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004) (ROGAN primarily merely a surname based in part on broad exposure of public to politician, athletes, actor and author with this surname). The widespread appearance of the surname in mainstream media, as well as indications that well-known celebrities bear the surname, contribute to public perception of PARSONS as a surname.

Based on this evidence, we find that PARSONS is not rarely encountered as a surname, and therefore it is likely to be perceived by the public as having surname significance.

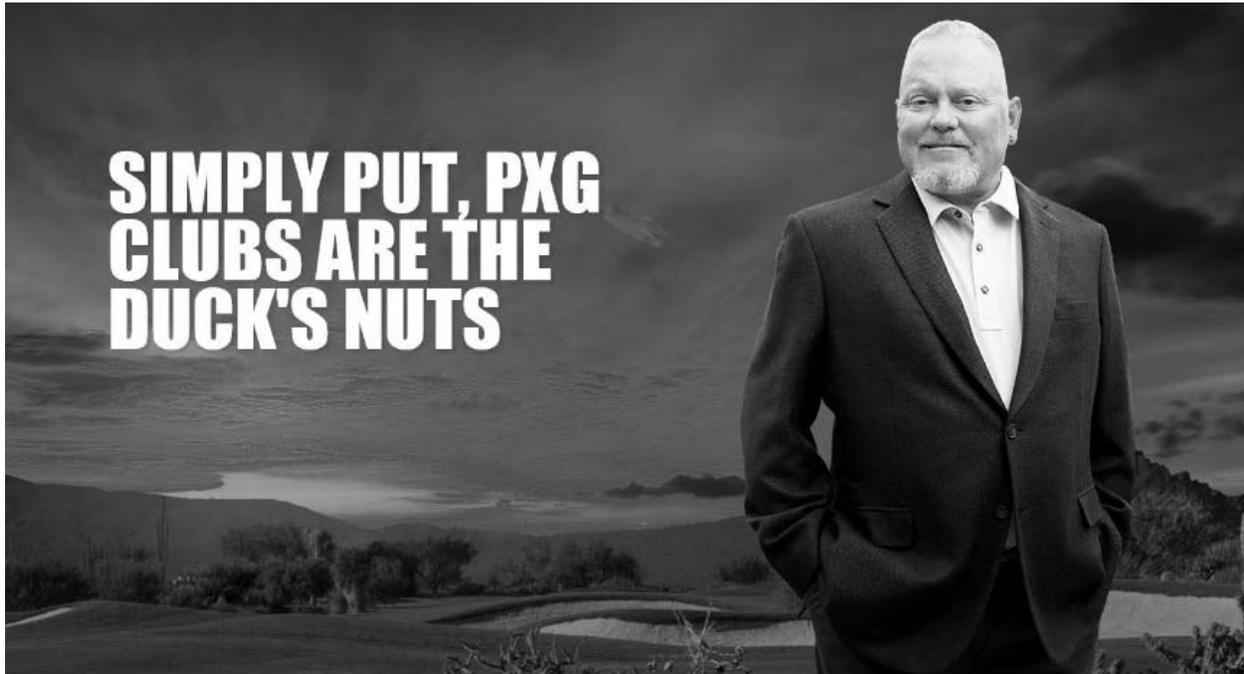
B. PARSONS Is the Surname of Applicant's Founder and Applicant's Website Shows Contextual Use as a Surname

Applicant's founder, Bob Parsons, bears the surname, and Applicant publicizes the connection. The Examining Attorney submitted Applicant's website showing a prominent photo of Mr. Parsons with text underneath stating, "Parsons Xtreme Golf (PXG) was founded in September of 2014 by well-known businessman, philanthropist and golf nut Bob Parsons."¹⁸ Applicant's webpages provide extensive biographical information on "Our Founder," and repeatedly refer to Mr. Parsons by name, such as "Bob Parsons, best known as the founder of GoDaddy," "Bob Parsons is a U.S. Marine Corps Vietnam veteran," and "PPXG was born out of Parsons' desire to make the world's best golf equipment."¹⁹

¹⁸ November 6, 2015 Office Action at 26 (pxg.com).

¹⁹ *Id.*

Excerpts from Applicant's webpages appear below:²⁰



PXG IS GOLF CLUB INNOVATION UNBOXED

Parsons Xtreme Golf (PXG) was founded in September of 2014 by well-known businessman, philanthropist and golf nut **Bob Parsons**. PXG was born out of Parsons' desire to make the world's best golf equipment.

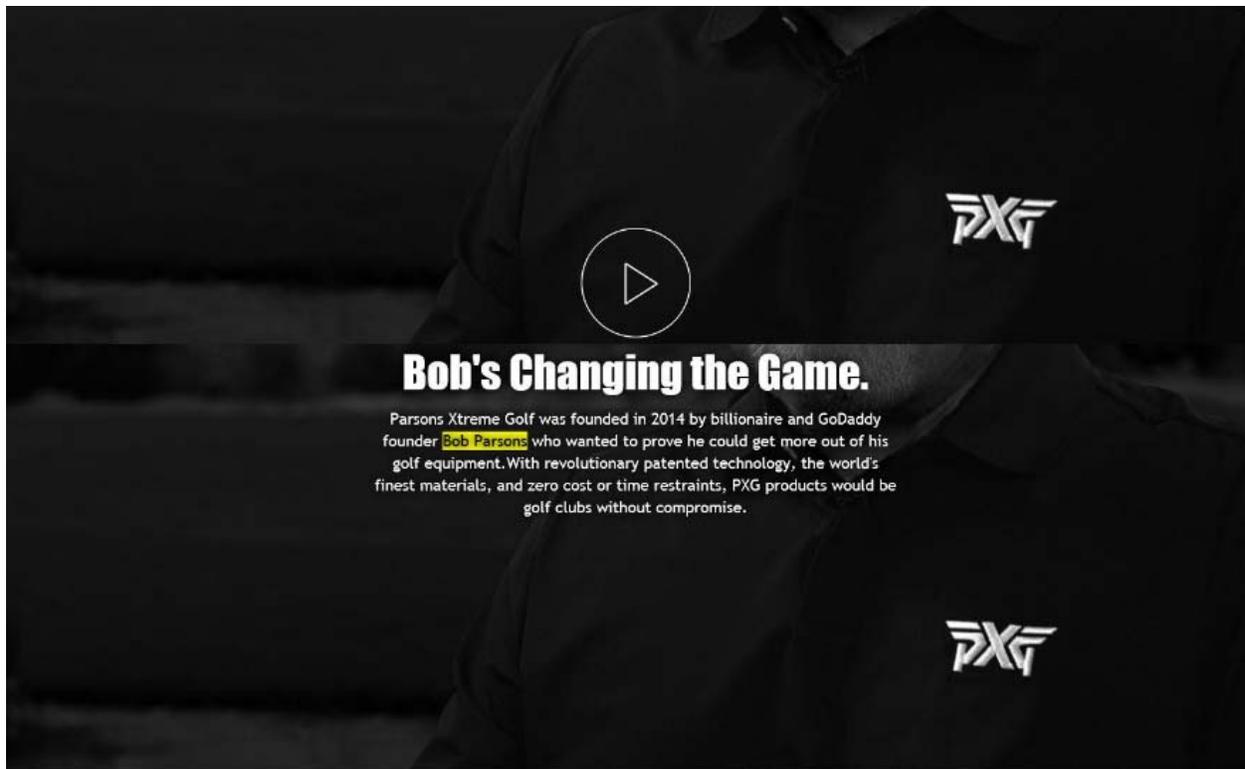
A shared passion for the greatest game ever played and equitable obsession with club technology led Parsons to partner with two highly-respected golf club designers to develop the finest equipment on the planet.

Parsons demanded of his designers what most golfers dream about: a sexy set of irons that look like blades, launch higher, go further, feel softer and have a sweet spot the size of Texas. "PXG clubs have to feel like butter and the difference has to be noticeable."

With no cost or time constraints, the duo began the long process of researching various alloys, exploring new technologies, and identifying the unique properties that would make PXG clubs unlike anything else.

Fifty-three patents later, Parsons Xtreme Golf introduced a full line of golf clubs that are forcing golfers to change the way they think about their clubs.

²⁰ *Id.*



OUR FOUNDER

Bob Parsons, best known as the founder of GoDaddy, is widely recognized for his entrepreneurial and philanthropic efforts. Currently, Bob is a member of the GoDaddy Board of Directors and is the CEO and founder of YAM Worldwide, which is home to his entrepreneurial ventures in the fields of motorcycles, golf, real estate, marketing, innovation and philanthropy.

Bob Parsons is a U.S. Marine Corps Vietnam veteran and a recipient of the Purple Heart Medal, Combat Action Ribbon and Vietnamese Cross of Gallantry. He attended college at the University of Baltimore on the G.I. Bill and graduated magna cum laude. His alma mater presented him with an honorary doctorate in 2008 and named him Distinguished Entrepreneur in 2010.

Bob's first endeavor was Parsons Technology, a software company he started in his basement in 1984 after teaching himself how to write computer programs. When Parsons Technology was sold to Intuit, Inc. in 1994 for \$64 million, the company had nearly 1,000 employees, \$100 million in annual revenue and three million customers.

Three years later, in 1997, **Bob Parsons** started GoDaddy. Today, GoDaddy is the world's largest domain name registrar. In 2011, he sold a majority stake in GoDaddy in a deal that valued the company at \$2.3 billion.

In 2012, Bob and his wife Renee founded The Bob & Renee Parsons Foundation, which has awarded more than \$90 million in critical funds to charitable organizations.

A self proclaimed golf nut, Parsons founded Parsons Xtreme Golf to design and develop the finest golf clubs ever played.

Follow Bob

Promotional materials touting a founder whose surname is the mark support public perception of the mark primarily as a surname. *Olin Corp.*, 124 USPQ2d at 1332 (citing *In re Adlon Brand GmbH & Co. KG*, 120 USPQ2d 1717, 1722 (TTAB

2016) (finding evidence clearly indicated “that the hotel was named ADLON because that was the surname of its founder, and was subsequently held out as a family operation. It is interlaced with references to persons bearing the surname ADLON who were involved in founding, managing, or promoting the hotel.”)); *see also In re Integrated Embedded*, 120 USPQ2d 1504, 1506-07 (TTAB 2016) (applicant’s website showing, discussing the credentials of, and enabling visitors to contact, applicant’s “Namesake” and Chief Technical Officer Thomas Barr serve to reinforce the primary significance of BARR as a surname in the proposed mark BARR GROUP). The evidence emphasizes to the public Mr. Parsons’ connection to Applicant, and weighs in favor of public perception of Applicant’s mark as a surname.

C. PARSONS Has a Recognized Meaning Other Than as a Surname but the Meaning Is Not Applicable in the Context of Applicant’s Goods and Services

Applicant posits that because “parsons” can be defined as members of the clergy, the non-surname significance undercuts a claim that the proposed mark is **primarily merely** a surname. While dictionary definitions of “Parsons” define it as a “biographical name” for Talcott Parsons and William Parsons,²¹ “parson” in the singular can be defined as “a member of the clergy, especially a Protestant minister; pastor; rector.”²² Although the Examining Attorney contends that “parson” may be a somewhat antiquated term, Applicant argues that the reference to “Parson Brown”

²¹ May 31, 2016 Office Action at 26 (merriam-webster.com); *see also id.* at 29 (dictionary.com).

²² May 31, 2016 Office Action at 29 (dictionary.com).

in the lyrics of the popular Christmas song “Winter Wonderland”²³ makes the non-surname significance of “parson” more familiar to consumers.²⁴ The Examining Attorney counters that the surname meaning is by far more familiar to consumers, pointing to the previously discussed evidence of surname use of PARSONS in the media.

We have considered, but do not find persuasive, the arguments from both the Examining Attorney and Applicant arising from the percentages of Americans who are Christians, who attend church regularly, or who celebrate Christmas, as we lack evidence to correlate this with familiarity with the term PARSONS.²⁵

The evidence establishes that there is a non-surname meaning of PARSONS, but mere existence of other non-surname meanings of a mark does not preclude a finding that it is primarily merely a surname. Rather, we consider to what degree, if any, the public would associate the particular meaning with the goods or services in the application. *See Mitchell Miller, PC v. Miller*, 105 USPQ2d 1615, 1621 (TTAB 2013) (“the record is devoid of evidence that the non-surname meanings of MILLER, i.e., a mill operator or a moth, are the primary significance thereof or somehow eclipse its surname significance” in connection with legal services). Applicant’s golf-related goods and services and other promotional items do not relate in any way to the clergy,

²³ Applicant introduced a Wikipedia article on “Christmas Music” stating that the American Society of Composers, Authors and Publishers in 2006 ranked “Winter Wonderland” the third most-performed holiday song written by one of its members. November 30, 2016 Request for Reconsideration at 29-30.

²⁴ November 30, 2016 Request for Reconsideration at 22-23 (Wikipedia.org article on “Winter Wonderland”); *id.* at 46 (lyrics).

²⁵ November 30, 2016 Request for Reconsideration at 17-20 (pewresearch.org).

and Applicant offers no reason why a consumer would associate that meaning of PARSONS with its mark, rather than the surname meaning. Particularly given Applicant's own extensive promotion of PARSONS as the surname of its founder, we find that the consumers would apply the surname meaning to Applicant's mark.

D. Whether PARSONS Has the Structure and Pronunciation of a Surname

Next, we determine whether PARSONS has the structure and pronunciation of a surname. "Under this factor, a party may submit evidence that, due to a term's structure and pronunciation, the public would or would not perceive it to have surname significance." *Azeka Bldg. Corp.*, 122 USPQ2d at 1481. Typically, such evidentiary showing would involve proof of other common surnames that are configured similarly and sound similar to the mark. *See Eximius Coffee*, 120 USPQ2d at 1280 (would need proof that other terms with the suffix "OA" are common surnames to show a structure and pronunciation similar to ALDECOA); *Adlon Brand*, 120 USPQ2d at 1724 ("With the possible exception of Ablon and Allon, which differ from ADLON by one letter, the surnames cited are not highly similar in structure to ADLON"). The Examining Attorney, however, has offered an unconventional argument here, that PARSONS has "the structure and pronunciation of an English occupational surname."²⁶ In support of this assertion, she submitted online entries for PARSONS from Ancestry.com,²⁷ Behindthename.com,²⁸

²⁶ 21 TTABVUE 6 (Examining Attorney's Brief).

²⁷ May 31, 2016 Office Action at 40-41.

²⁸ *Id.* at 39.

Wikipedia.org,²⁹ and Wiktionary.org, all of which identify PARSONS as a surname that derived from historical use as a surname for relatives or servants of a clergyman – a “parson.” According to an online article on “The Origins of Some English Last Names,” [m]any surnames are taken from jobs,” such as “Smith, Potter, Cooper, Mason, Tailor or Taylor, Spinner, Weaver.... The surname Parsons was given to a parson’s servant.”³⁰ The other examples of English occupational surnames are not structurally or phonetically similar to PARSONS. While the Examining Attorney’s evidence may generally show additional consumer exposure to PARSONS as a surname due to its identification as such in these various online resources, it is not because of any similar pronunciation with or structural similarity to other common surnames.

E. Other Registrations

Applicant argues that third-party registrations for various goods and services “support the conclusion that the term ‘parsons’ functions as a trademark and is not primarily merely a surname.”³¹ In support thereof, Applicant submitted TESS printouts of two registrations for PARSON’S, three for PARSONS, and two for PARSONS’.³² The records of those third-party registrations are not of record in our case, so we are not privy to the evidence in those cases. Particularly at least the

²⁹ *Id.* at 35.

³⁰ May 5, 2017 Office Action at 56-57 (localhistories.org).

³¹ 19 TTABVUE 12 (Applicant’s Brief).

³² November 1, 2017 Response to Office Action at 12-24.

factors of contextual use and whether someone connected with the applicant bears the surname depend on the applicant and its use. In addition, each application must stand on its own record and be assessed on a case-by-case basis. *See In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [applicant’s] application, the PTO’s allowance of such prior registrations does not bind the board or this court.”).

F. Conclusion

We find that the record, taken as a whole, establishes that the primary significance of PARSONS to the purchasing public is merely that of a surname within the meaning of Section 2(e)(4).

Decision: The refusals to register Applicant’s mark under Section 2(e)(4) of the Act are affirmed.