

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

Mailed: April 19, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Majestic Gifts Inc.
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Serial No. 88682492
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Michael Steinmetz of Garson, Segal, Steinmetz, Fladgate LLP,
for Majestic Gifts Inc.

Robert Clark, Trademark Examining Attorney, Law Office 101,
Zachary R. Sparer, Managing Attorney.

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Before Taylor, Greenbaum and Coggins,
Administrative Trademark Judges.

Opinion by Greenbaum, Administrative Trademark Judge:

Majestic Gifts Inc. (“Applicant”) seeks registration on the Principal Register of the
mark BARSKI (in standard characters) for

Beverage glassware; Bowls; Cake domes; Cake stands;
Candlesticks; Decanters; Decorative centerpieces of
crystal, glass; Drinking glasses; Glass beverageware; Ice
buckets; Jars for jams and jellies of crystal; Napkin rings;
Pitchers; Plates; Serving dishes; Serving ladles; Serving
trays; Vases; Glass jars, in International Class 21.¹

¹ Application Serial No. 88682492 was filed on November 6, 2019, based upon Applicant’s claim of first use of the mark anywhere and in commerce since at least as early as June 2017 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

The Trademark Examining Attorney has 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).

When the refusal was made final, Applicant appealed and requested reconsideration.² After the Examining Attorney denied the request for reconsideration, the appeal was resumed. Both Applicant and the Examining Attorney filed briefs. We reverse the refusal to register.

I. Applicable Law

Section 2(e)(4) of the Trademark Act provides that absent a showing of acquired distinctiveness under Section 2(f) of the Trademark Act, 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 to the purchasing public is that of a surname. *See 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).

Whether the primary significance of a proposed mark is merely that of a surname is a question of fact. *See In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653-54 (Fed. Cir. 1985). There is no rule as to the kind or amount of evidence necessary to show that a term mark would be perceived as primarily merely a

² Citations to the prosecution record are to the Trademark Status & Document Retrieval (“TSDR”) system by page number in the non-downloadable versions of the documents. All other citations are to TTABVUE, the Board’s online docketing system.

surname. This question must be resolved on the specific facts presented in each case. *Id.* at 654; *see also, e.g., Beds & Bars*, 122 USPQ2d at 1548; *In re Pohang Iron & Steel Co.*, 230 USPQ 79, 79 (TTAB 1986). We review the entire record to determine the primary significance of a term. *In re Olin Corp.*, 124 USPQ 1327, 1330 (TTAB 2017). If there is any doubt, we “are inclined to resolve such doubts in favor of applicant.” *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995).

Various circumstances may be probative in determining whether the purchasing public would perceive a proposed mark as primarily merely a surname, including the following that have been raised in this case: the frequency and extent of public exposure to the term as a surname; whether the term is the surname of anyone connected with Applicant; whether the term has any recognized meaning other than as a surname; and whether the term has the structure and pronunciation of a surname. *Darty*, 225 USPQ at 653-54; *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1278 n.4 (TTAB 2016) (reviewing factors from *Darty* and *Benthin* and noting there is no need to discuss other circumstances for which the record lacks relevant evidence).

These factors are not exclusive, nor are they presented in order of importance; any of the factors—singly or in combination—and any other relevant circumstances, may shape the analysis in a particular case. *Olin*, 124 USPQ2d at 1330; *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1480 (TTAB 2017); *In re Integrated Embedded*, 120 USPQ2d 1504, 1506 n.4 (TTAB 2016). In making our determination, we weigh the factors together and accord the appropriate weight to each one based on the evidence of record.

The Examining Attorney argues that although no one associated with Applicant has the surname BARSKI, the proposed mark BARSKI would be understood as a surname because there are a number of individuals in the United States with that surname, BARSKI has no other meaning, and BARSKI has the structure and pronunciation of a surname, particularly one of Polish origin. In support of the refusal, the Examining Attorney submitted the following evidence:

- Search results from the Lexis.com Surname Database showing the first 100 of 415 entries for “Barski.” February 15, 2020 Office Action, TSDR 1 (bottom of page).
- An entry from the website baseball-reference.com for “Chris Barski,” a baseball player in the minor leagues from approximately 1999-2001. April 21, 2020 Final Office Action, TSDR 2-5.
- A LinkedIn profile for “Brandon Barski,” founder of “BarskiHardscraping.com,” a landscaping business in Northeast Ohio. *Id.*, TSDR 7-12.
- A webpage for “Brenda Barski,” an accountant for the University of Kansas Office of Research. *Id.*, TSDR 13-17.
- A webpage for “Kristine Barski,” a Realtor at Re/Max Crossroads Properties in Ohio. *Id.*, TSDR 18-19.
- An entry from the Florida Bar for “Katherine Barski,” an attorney at a law firm in Florida (*id.*, TSDR 20-21), and a legal blogpost from the same

attorney titled “Katherine Barski Talks Trusts in The Villages.” November 19, 2020 Request for Reconsideration Denied, TSDR 17-20.

- Search results from the online AMERICAN HERITAGE DICTIONARY showing no recognized meaning for “Barski” as a word in the English language. February 15, 2020 Office Action, TSDR 2-3.
- An entry from the “Wikipedia” website for “Polish name” that lists the suffix “-ski/ska,” noting the origin of the suffix as an indicator of nobility, and stating that “[t]he most widespread Polish names are Nowak, Kowalski, Wisniewski and Wojcik.” November 19, 2020 Request for Reconsideration Denied, TSDR 2-12.
- Two additional entries from the “Wikipedia” website for: (1) Kevin Smith a/k/a “Lovebug Starski,” a hip-hop artist in the 1980s (February 15, 2020 Office Action, TSDR 4-5), and (2) “Jack Barsky” (not “Jack Barski”) (born Albrecht Dittrich), a KGB spy from 1978-88 who published his autobiography, “Deep Undercover,” in 2017. November 19, 2020 Request for Reconsideration Denied, TSDR 3-16.

Applicant contends that BARSKI is not primarily merely a surname, and instead would be perceived as a fanciful term. Applicant points to entries from the Urban Dictionary for the term “BARSKY” (not “BARSKI”) as “an inappropriate workplace email,” and “BARSKIES” (not “BARSKI”) as “Xanax.” April 27, 2020 Response to Office Action, TSDR 7-9. Applicant also argues that the number of surname occurrences found by the Examining Attorney, including several multiple listings

that appear to identify the same individuals, indicates that the surname is “extremely rare.” 8 TTABVUE 8. In addition, Applicant contends that BARSKI is a coined term that is a combination of Applicant’s founders’ surnames (“BaumgARten and ZablotSKY [pronounced ‘ski’]).” 8 TTABVUE 9.

The record demonstrates that “Barski” is an actual surname, albeit an uncommon one; no one associated with Applicant bears the surname “Barski”; surnames of Polish origin often end with the letters “SKI”; and “Barski” has no other “ordinary language meaning.” See *Darty*, 225 USPQ at 653; *In re Adlon Brand GmbH & Co.*, 120 USPQ2d 1717, 1719, 1721 (TTAB 2016) (lack of dictionary entry for a proposed mark created a “strong inference” that the mark had no other non-surname meaning). The possible alternative definitions of the term “Barski” to which Applicant points are obscure, at best, and Applicant’s argument concerning the origin of “Barski” as a combination of Applicant’s founders’ surnames, neither of which includes the three-letter strings “bar” or “ski,” is unconvincing.

Nonetheless, the relevant question is whether, when applied to Applicant’s goods, the purchasing public for those goods is more likely to perceive the mark BARSKI, which is in standard characters, as a surname rather than as anything else. *Beds & Bars*, 122 USPQ2d at 1551 (“[t]he relevant question is not simply how frequently a surname appears ... but whether the purchasing public for Applicant’s services is more likely to perceive Applicant’s proposed mark as a surname rather than as anything else.”); *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)) (emphasis in original) (“[I]t 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. If it is, **and it is only that**, then it is primarily merely a surname.”). The evidence in this case does not show sufficient public exposure to the uncommon surname BARSKI from which we can conclude that consumers likely would perceive BARSKI as a surname. *Cf. In re Tapio GmbH*, 2020 USPQ2d 1137, at *10-11 (TTAB 2020) (highlighting evidence of “meaningful and fairly widespread public exposure” to uncommon surname TAPIO “throughout the United States” and concluding that “this evidence supports a finding that TAPIO is likely to be perceived by the public as a surname.”). Moreover, when viewed in association with the identified goods, which include barware such as beverage glassware, decanters, drinking glasses, glass beverage ware, and ice buckets, we believe consumers likely would perceive BARSKI as a coined term, particularly as a clever bar-related play on the noun “brewski” (a U.S. slang term for “beer”),³ and that this meaning would be the primary perception of BARSKI to the public. *Cf., e.g., Fisher Radio Corp. v. Bird Elec. Corp.*, 162 USPQ 265, 266-67 (TTAB 1967) (BIRD not primarily merely a surname due to ordinary language meaning of “bird”).

³ We take judicial notice of the definition of this term from MERRIAM-WEBSTER.COM DICTIONARY, merriam-webster.com/dictionary/brewski, last visited April 16, 2021. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

II. Conclusion

We find that the record, as a whole, does not establish that the primary significance of BARSKI to the purchasing public is merely that of a surname within the meaning of Section 2(e)(4) of the Trademark Act, when applied to the identified goods, and instead would be viewed as a coined term that is a play on the slang term “brewski.”

Decision: The refusal to register Applicant’s mark BARSKI under Section 2(e)(4) is reversed.