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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Hoist Group Inc.

Serial No. 98444366

Avraham S.Z. Cohn of Cohn Legal, PLLC, for The Hoist Group Inc.

Komal Vo, Trademark Examining Attorney, Law Office 128, Colleen Cassidy, Managing Attorney.

Before Lykos, Thurmon and Bradley, Administrative Trademark Judges.

Opinion by Thurmon, Administrative Trademark Judge:

The Hoist Group Inc. ("Applicant") seeks registration on the Principal Register of the mark BOWENS, in standard characters, for a variety of electronic guitar and audio equipment in International Class 9 and guitars and guitar accessories in International Class 15.[1] The Examining Attorney refused registration under Trademark Act Section 2(e)(4), 15 U.S.C. § 1052(e)(4), finding the mark to be

[1] Application Serial No. 98444366, filed March 11, 2024, based on a bona fide intent to use the mark in commerce, pursuant to Section 1(b) the Trademark Act, 15 U.S.C. § 1051(b).

primarily merely a surname. The appeal has been briefed and is ready for decision. We affirm the refusal.

I. Section 2(e)(4) – Primarily Merely a Surname – Law and Analysis

Section 2(e)(4) of the Trademark Act precludes registration of a proposed 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).[2] "A mark is primarily merely a surname if the surname is the primary significance of the mark as a whole to the purchasing public." *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 1377 (Fed. Cir. 2017) (citation and internal quotation marks omitted); *see also In re Six Continents Ltd.*, Nos. 88430142 and 88430162, 2022 TTAB LEXIS 35, at *4-5, *In re Beds & Bars Ltd.*, No. 85597669, 2017 TTAB LEXIS 141, at *5; *In re Eximius Coffee, LLC*, No. 86262060, 2016 TTAB LEXIS 472, at *3-4. Whether the primary significance of a mark is primarily 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.*, No. 86651083, 2017 TTAB LEXIS 337, at *9; *Azeka Bldg. Corp. v. Azeka*, No. 91218679, 2017 TTAB LEXIS 123, at *12.

[2] As the Application was filed under Section 1(b), Applicant could not make a claim of acquired distinctiveness. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1347 (Fed. Cir. 2001) ("Because by definition registration based on acquired distinctiveness requires prior use of the mark, an applicant who has applied to register a mark based on its intent to use the mark ordinarily will not claim acquired distinctiveness unless it seeks to show that it has used the mark since the date of its application and the mark has acquired secondary meaning."). If Applicant is using the mark and believes the mark has become distinctive, the affirmance of the refusal in this appeal will not preclude Applicant from filing a new application claiming acquired distinctiveness under Section 2(f) of the Act.

To determine whether the applied-for mark BOWENS is primarily merely a surname, we consider the following four factors:

- Whether the surname is rare;
- Whether anyone connected with the applicant has that surname;
- Whether the term has any recognized meaning other than as a surname e.g., an "ordinary language" meaning; and,
- Whether the term has the structure and pronunciation of a surname.[3]

Colors in Optics, Ltd., No. 87558653, 2020 TTAB LEXIS 4, at *5 (citing *In re Benthin Mgmt. GmbH*, No. 74340080, 1995 TTAB LEXIS 10, at *1-3, for the *Benthin* inquiries/factors); *see also In re Etablissements Darty et Fils*, 759 F.2d 15, 16-18 (Fed. Cir. 1985); *Eximius Coffee*, 2016 TTAB LEXIS 472, at *7 n.4 (noting there is no need to discuss other inquiries for which the record lacks relevant evidence); *In re Adlon Brand GmbH & Co.*, No. 85831682, 2016 TTAB LEXIS 526, at *14 (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)"). These inquiries or factors are not exclusive, and any of these circumstances – singly or in combination – and any other relevant circumstances may be considered when making this determination. *Colors in Optics, Ltd.*, 2020 TTAB LEXIS 4, at *5 (citing *Azeka Bldg. Corp.*, 2017 TTAB LEXIS 123, at *13).

[3] When the mark is presented in a stylized format, we also consider whether such stylization eliminates the primary surname significance. As the Application seeks registration of the mark in standard characters, this consideration is not relevant to the current appeal. *Colors in Optics*, 2020 TTAB LEXIS 4, at *5 n.13.

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, 631 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm'r Pat. 1955)). Our analysis will focus on the question of whether BOWENS will be understood by consumers as primarily merely a surname.

A. Is BOWENS a Rare Surname?

The Examining Attorney presented evidence showing that BOWENS is not a rare surname in the United States, with the Lexis/Nexis® surname database, a regularly updated nationwide directory of mobile and other phone numbers, showing over twenty-three thousand individuals with the Bowens surname.[4] *See, In re Integrated Embedded,* No. 86140341, 2016 TTAB LEXIS 470, at *6-8 (finding evidence from the LexisNexis® surname database showing the proposed mark appeared as a surname 13,622 times probative to show surname significance). The search results showed persons with the surname "BOWENS" across the United States, including in Illinois, North Carolina, Virginia, Michigan, California, Georgia, New York, Indiana, South Carolina, Florida, Kentucky, Ohio, New Jersey, Alabama, Texas, Pennsylvania, Missouri, Oklahoma, Colorado, Maryland, Tennessee, Connecticut, and New Mexico.[5]

[4] Office Action dated September 24, 2024, at 3, 8.

[5] *Id.* at 8-33. The Trademark Examining Attorney also provided evidence from ancestry.com showing over seventy-two thousand persons with the Bowen surname.

Applicant argues BOWENS is not a common surname, as it accounts for a tiny fraction of the individuals in the United States.[6] Both the Trademark Examining Attorney and the Applicant are correct here, as BOWENS is not a rare or common surname. It rests somewhere between these two points on the range of surnames in the United States. The standard, however, asks whether the BOWENS surname is rare. We find it is not rare, though it is not particularly common either. The first factor supports the refusal, but is not conclusive of the primary significance of the applied-for mark.

B. Is BOWENS the Surname of Someone Connected with Applicant?

There is no evidence that the BOWENS surname is connected to anyone associated with Applicant.[7] This factor, therefore, is neutral.

C. Does BOWENS Have Any Other Established Meaning?

Applicant argues that there are other uses of BOWENS that show the term has other meanings.[8] These examples include Bowens Island, a reference to a geographic area near San Antonio, Texas.[9] The material Applicant relies on explains that this area was named for John Bowen, who "had come to Texas from Philadelphia via South America."[10] In other words, Bowens Island is a use of Bowens as a surname,

[6] 6 TTABVUE 12.

[7] Applicant submitted a declaration of Samuel Strulovics, the owner of Applicant, who declared that no one affiliated with Applicant has the surname Bowens. Request for Reconsideration dated April 18, 2025, at 10.

[8] 6 TTABVUE 15.

[9] Request for Reconsideration dated April 18, 2025, at 120-21.

[10] *Id.* at 120.

and therefore provides support for the Section 2(e)(4) refusal, rather than undermining it. The same is true of other examples Applicant provided, which include a disease named for a person who identified it, which again is a surname use of Bowens.[11] None of the evidence Applicant submitted shows an established non-surname meaning of Bowens.

The Trademark Examining Attorney also submitted evidence showing that BOWENS does not have a dictionary definition.[12] We have held that such evidence supports a Section 2(e)(4) refusal. *See, e.g., Six Continents Ltd.*, 2022 TTAB LEXIS 35, at *14 ("The evidence that 'Atwell' has no other recognized meaning supports finding that 'Atwell' is primarily merely a surname."); *Olin Corp.*, 2017 TTAB LEXIS 337, at *16-17 (finding, in the absence of any countervailing evidence, that negative dictionary evidence established that OLIN has no recognized meaning other than as a surname); *Adlon Brand GmbH*, 2016 TTAB LEXIS 526, at *5-6 (finding negative dictionary evidence supported that ADLON had no meaning other than as a surname); *Eximius Coffee*, 2016 TTAB LEXIS 472, at *11-12 ("The evidence that ALDECOA has no other recognized meaning further supports the Examining Attorney's case that its primary significance is as a surname.").

The Trademark Examining Attorney also submitted evidence from ancestry.com about the family history of the Bowens surname.[13] This evidence shows the Bowens

[11] *Id.* at 123-24 (Bowen's disease).

[12] Final Office Action dated January 21, 2025, at 4, 10-11.

[13] *Id.* at 12-14.

surname originated in Dutch, as the name Bouwens, and later became Bowens in Welsh-Irish and English. This evidence shows that Bowens is a surname with a documented history.

This factor supports the refusal.

D. Does BOWENS Have the Structure and Pronunciation of a Surname?

This factor presents something of a conundrum, because we have no clear guidance on what structure or pronunciation is typical of a surname. Indeed, surnames can be found with many different structures and pronunciations, making it difficult to apply this factor in a consistent and meaningful way. The Trademark Examining Attorney found three other surnames—BOWEN, BOUWENS and BAUWENS—and argued that BOWENS is similar in structure and pronunciation to these other surnames.[14] But as Applicant notes, we have no evidence of what it is about these names that would lead consumers to understand them as surnames.[15] It is circular reasoning to say one surname must be a surname because it looks or sounds like other surnames, when there is little evidence that consumers are aware that any of the proffered names are actually surnames. The Trademark Examining Attorney's evidence for this factor equivocal. This evidence doesn't tell us much about whether consumers will understand BOWENS as primarily merely a surname.

[14] *Id.* at 3; 8 TTABVUE 12-13.

[15] 6 TTABVUE 16.

Applicant does no better, however, when it submits trademark registrations for Bowen-variant marks that were registered without a showing of acquired distinctiveness.[16] As the Trademark Examining Attorney correctly notes, we must decide this appeal on its own record. Moreover, Applicant also submits evidence of Bowen-variant marks that were registered with a showing of acquired distinctiveness.[17] The third-party registration evidence, and the other evidence of Bowen-variant marks or names, do not help us determine whether BOWENS has the structure and pronunciation of a surname.

Because we find the evidence of record equivocal as to the import of the structure and pronunciation of BOWENS, we find this factor neutral.

Conclusion: BOWENS Is Primarily Merely a Surname

Having considered all the evidence of record and the relevant factors for evaluating that evidence, we find that the applied-for mark is primarily merely a surname. The evidence supports the conclusion that consumers are likely to view BOWENS as a surname. There is no evidence of any other established meaning of BOWENS, and some evidence that this term has surname significance in some other established contexts. The Trademark Examining Attorney's refusal is supported by the record and the Applicant did not rebut that evidence. We are compelled, under these circumstances, to affirm the refusal.

Decision: The Section 2(e)(4) refusal is affirmed.

[16] *Id.* at 16-17; Request for Reconsideration dated April 18, 2025, at 13-34.

[17] 8 TTABVUE 14.