

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB
JULY 15, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Riggs & Forsythe Specialty Beverages Limited

Serial No. 75/135,828

Gary R. Gillen of Wildman, Harrold, Allen & Dixon for Riggs
& Forsythe Specialty Beverages Limited.

Mark T. Mullen, Trademark Examining Attorney, Law Office
101 (Chris Wells, Acting Managing Attorney).

Before Quinn, Hohein and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Riggs & Forsythe Specialty Beverages Limited has filed
an application to register the mark "RIGGS" for soft
drinks.¹

Registration has been finally refused on the ground
that the mark is primarily merely a surname under Section

¹ Serial No. 75/135,828, filed July 18, 1996, based on a bona fide intention to use the mark in commerce. The mark in the drawing as originally filed was RIGGS, but was changed by amendment to "RIGGS."

2(e)(4) of the Trademark Act. Applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

The Examining Attorney argues that he has met the burden of establishing a prima facie case that the mark "RIGGS" is primarily merely a surname by the evidence of record of 11,629 listings for the surname Riggs obtained from the PHONEDISC USA computer database. In addition, the Examining Attorney has attached to his brief dictionary pages showing that there is no listing of "riggs" as an ordinary word or as a geographic term, and accordingly, no recognized alternative meaning for RIGGS, as might remove the term from classification as primarily merely a surname.²

Applicant's major contention is that surnames do not bear quotation marks. According to applicant, the coupling of a "distinctive design element, such as quotation marks," with the name RIGGS results in a mark which cannot be considered primarily merely a surname, citing *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995). Applicant further argues that the PHONEDISC listings alone cannot be

² This evidence was not made of record by the Examining Attorney prior to the filing of the appeal and normally would not be considered by the Board. Trademark Rule 2.142(d). Since, however, the Board may take judicial notice of dictionary definitions, we have taken the pages under consideration. See

relied upon to establish that a mark is primarily merely a surname, particularly when none of the listings includes quotation marks. Applicant insists that there has been no showing that the term "RIGGS" might not have some other meaning to the public, such as a derivative of the word "rigging" or a fanciful spelling of the word "rigs." As a result, applicant contends that sufficient ambiguity exists to raise doubt as to whether the public perception of the mark would primarily be that of a surname, which doubt should be resolved in applicant's favor.

In the *Benthin* case, *supra*, the Board set forth five factors to be taken under consideration in determining whether a mark would be perceived as primarily merely a surname. The first factor is the degree of rareness of the surname. Here we find the over 11,000 listings for the name Riggs adequate to show that it does not fall within the classification of being a "rare" surname. Applicant has made no argument to the contrary with respect to the name alone.

The second factor is whether any person connected with applicant has been shown to have this surname. While applicant argues that there is no person connected with its

Marcal Paper Mills, Inc. v. American Can Co., 212 USPQ 852 (TTAB 1981).

corporation having this name, we cannot but note that the corporate name itself is the combination of two surnames, Riggs & Forsythe, a combination which we believe would be recognized as such by the public in general.

The third factor is whether there is any "recognized meaning other than that of a surname." The dictionary pages introduced by the Examining Attorney show no listings for "riggs" as a word or geographical term. Applicant's hypotheses as to other potential public perceptions of "RIGGS" do not rise to the level of evidence of other "recognized" meanings for the term. Similarly, applicant has presented no evidence as to whether "RIGGS" would have other than the "look and sound" of a surname, the fourth factor to be taken under consideration.

Instead, applicant rests its case on the fifth factor, namely, whether the stylized form in which the mark is presented is sufficiently distinct to cause the mark to not be perceived as primarily merely a surname. In *Benthin*, the Board found the highly stylized manner of lettering of the word BENTHIN created such a distinctive design element that the mark as a whole would not be viewed primarily merely as a surname. But here the only addition to the word RIGGS is quotation marks, a common form of punctuation. While these quotation marks might serve to

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set off the mark, we cannot agree with applicant that the addition of quotation marks to the surname transforms the surname into a distinctive designation having a significance other than a surname. See *In re Ervin*, 1 USPQ2d 1665 (TTAB 1986) [use of slanting script and quotation marks in mark THE "ORIGINAL" does not alter clear meaning of the dominating word matter]; *In re Burlington Industries, Inc.*, 196 USPQ 718 (TTAB 1977) [exclamation point in CHAMPAGNE! fails to impart meaning other than name of color to mark].

Accordingly, we find that use by applicant of punctuation marks in the mark "RIGGS" is insufficient to create a commercial impression separate and apart from the impression made by the word RIGGS as being primarily merely a surname. See *In re Guilford Mills, Inc.*, 33 USPQ2d 1042 (TTAB 1994) [display of otherwise unregistrable matter is not registrable on Principal Register unless design features create commercial impression separate and apart from the impression made by the words].

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Decision: The refusal to register the mark "RIGGS"
under Section 2(e)(4) is affirmed.

T. J. Quinn

G. D. Hohein

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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