

Hearing:
December 15, 1998

Paper No. 14
EWH/cj

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 26, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re P. Cerlis Corp.

Serial No. 75/141,622

G. Franklin Rothwell of Rothwell, Figg, Ernst & Kurz for P.
Cerlis Corp.

John E. Michos, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Cissel, Hanak and Walters, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

P. Cerlis Corp. (applicant) seeks to register F. ROQUE
in typed drawing form for cigars. The intent-to-use
application was filed on July 25, 1996.

The Examining Attorney has refused registration on the
basis that F. ROQUE is primarily merely a surname within
the meaning of Section 2(e)(4) of the Lanham Trademark Act.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs and were present at a hearing held on December 15, 1998.

In In re Benthin Management, 37 USPQ2d 1332 (TTAB 1995) this Board identified four factors which need to be considered in determining whether a particular mark would be viewed as primarily merely a surname. See also 2J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 13:30 at pages 13-53 to 13-56 (4th ed. 1999).

The first factor to be considered is "the degree of a surname's rareness." In re Garan, 3 USPQ2d 1537, 1540 (TTAB 1997). Relying upon a national telephone directory, the Examining Attorney demonstrated that there are over 1,400 individuals with the surname ROQUE. Given the fact that this national telephone directory has 83 million listings, the surname ROQUE is by no means a common surname. However, by the same token, it is not nearly as rare as was the surname BENTHIN in the case of Benthin Management. In the latter case, there were only approximately 100 individuals (out of 76 million listings) with the surname Benthin. Thus, we find that this first factor - the rareness of the surname - is a neutral factor favoring neither applicant nor the Examining Attorney.

The second factor in determining whether F. ROQUE would be perceived as primarily merely a surname is whether there is "anyone connected with applicant" having said surname. In re Monotype Corp., 14 USPQ2d 1070, 1071 (TTAB 1989). In a paper dated June 18, 1997 applicant stated that "the name, F. Roque, is the name of the mother of the owner of applicant and her written consent for use and registration of her name as a trademark is attached." Thus, this second factor weighs in favor of a finding that the mark F. ROQUE would be perceived as primarily merely a surname.

The third factor to be considered is whether F. ROQUE (or ROQUE) has any "recognized meaning other than that of a surname." In re BDH Two, 26 USPQ2d 1556, 1558 (TTAB 1993) (emphasis added). Applicant argues that in the English language, the word "roque" refers to a type of croquet played on a hard-surfaced court with a raised border. Applicant goes on to note that the same word in Spanish means a rook in the game of chess, and in French means castling in the game of chess. (Applicant's brief p.3). We find that in the English language, the word "roque" is a very obscure term, and it simply lacks any other recognized meaning other than to a minimal number of American consumers. Obviously, there are tens of thousands of words

in English dictionaries which are totally unknown to the vast majority of Americans. We believe that the word "roque" is one such word. Moreover, we note that applicant has made of record no evidence - such as an affidavit from a language expert - demonstrating that the term "roque" is known to other than a very minimal number of American consumers (i.e. croquet aficionados). Thus, this third factor favors a finding that F. ROQUE would be perceived as primarily merely a surname.

This brings us to the fourth factor, namely, whether F. ROQUE has the "structure and pronunciation" of a surname, or stated somewhat differently, the "look and sound" of a surname. Benthin Management, 37 USPQ2d at 1333. Because of the presence of the initial F., we find that in its entirety, F. ROQUE has the look and sound of a surname. As Professor McCarthy has stated, "the use of an initial with a word may serve to emphasize the surname significance of the word." 2 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 13:30 at page 13-55 (4th ed. 1999). Moreover, the predecessor to our primary viewing Court explicitly stated that the addition of a single initial before a surname is simply insufficient to remove the surname from the category of being primarily merely a surname. In re I. Lewis Cigar, 205 F.2d 204, 98

USPQ 265, 267 (CCPA 1953). As for applicant's contention that the initial F. may indicate Fiji, France or fine, we simply do not accept this argument. See applicant's brief page 5. Again, applicant has made of record no evidence demonstrating that the initial F. is recognized by any more than a very minimal number of American consumers as indicating any of the foregoing terms.

Given the fact that there is an individual connected with applicant with the name F. Roque; the fact that F. ROQUE (or ROQUE), to the vast majority of Americans, has no recognized meaning other than that of a surname; and the fact that, especially with the initial F., the mark has the look and sound of a surname, we find that F. ROQUE would be perceived as primarily merely a surname.

Decision: The refusal to register is affirmed.

R. F. Cissel

E. W. Hanak

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board