

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 8, 00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re The Gantt Group, Inc.

Serial No. 75/291,852

Susan M. Kornfield of Bodman, Longley & Dahling LLP for The
Gantt Group, Inc.

Matthew J. Pappas, Trademark Examining Attorney, Law Office
104 (Sidney I. Moskowitz, Managing Attorney).

Before Hohein, Chapman and Holtzman, Administrative
Trademark Judges.

Opinion by **Chapman**, Administrative Trademark Judge:

On May 14, 1997 The Gantt Group, Inc. filed an
application to register the mark THE GANTT GROUP on the
Principal Register for "business consulting services in the
field of project management." Applicant disclaimed the
term "GROUP." Applicant asserts a date of first use of
January 2, 1995.

Registration has been finally refused under Section 2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), on the basis that the mark THE GANTT GROUP is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

Applicant acknowledges that the term "GANTT" is a surname (brief, p. 5, and reply brief, p. 4), but argues that it is not primarily merely a surname, especially in terms of what the word means to the relevant purchasers of applicant's services. In support of its position, applicant contends that in offering its business consulting services in the field of project management it makes extensive use of a visual tool known as a "Gantt chart"; that the term GANTT connotes more than a surname, since "it refers to an idea for presenting information crucial to project management—the Gantt chart" (brief, p. 5); and that because the term "GANTT" has acquired a meaning other than as a surname, applicant's mark is not primarily merely a surname. In addition, applicant states that no person associated with applicant has the surname GANTT.

Applicant has submitted a page from a website wherein "Gantt chart" is defined as "a horizontal bar chart that

graphically displays the time relationships between the different tasks in a project"; a definition from The American Heritage Dictionary (2nd ed.) listing the term "Gantt chart" as "n. A chart designed for comparing rates, as of planned production actual production. [After Henry Laurence Gantt (1861-1919)]";¹ and copies of three third-party registrations, taken from the PTO trademark text and image database for the following marks registered on the Principal Register: QUICKGANTT, MICRO GANTT², and GANTT-PACK, all of which are for computer programs.³

In support of his position, the Examining Attorney has made of record a portion of the printout from the Phonedisc records showing 3,179 surname listings of "Gantt"; a copy of The American Heritage Dictionary (3rd ed. 1992) definition of the term "Gantt chart" as "noun-A chart that

¹ Although applicant did not submit this dictionary definition until it filed its brief on appeal (see Trademark Rule 2.142(d)), the Board may take judicial notice of dictionary definitions. See TBMP §712.01.

² In such registration, the term "GANTT" is disclaimed.

³ Applicant listed two of the three third-party registrations in its July 17, 1998 response to the first Office action. A party may not make third-party registrations of record simply by setting forth a listing thereof. See *In re Duofold, Inc.*, 184 USPQ 638 (TTAB 1974); and TBMP §703.02(b). Applicant's inclusion of copies of third-party registrations with its brief on appeal was untimely. However, although the Examining Attorney could have objected to applicant's third-party registrations as proffered, he did not do so. In fact, the Examining Attorney treated the third-party registrations as if they were of record. Therefore, the third-party registrations referred to by applicant have been considered by the Board.

depicts progress in relation to time, often used in planning and tracking a project. [After Henry Laurence Gantt (1861-1919), American engineer]" (emphasis in original); a copy of a page from Webster's New Geographical Dictionary showing no entry for, and thus no other meaning of, the term "Gantt"; and copies of eight third-party registrations of marks which are surnames (e.g., HAMILTON, CHAN, CAHILL) with at least the additional word "GROUP," each on the Supplemental Register and including a disclaimer of the term "GROUP."

The Examining Attorney argues that the term GANTT, by itself, has no significance other than as a surname; and that while applicant's mark must be considered in its entirety, GANTT is the dominant term in the mark, with both the article "THE" and the disclaimed word "GROUP" (indicating an entity designation) having no trademark significance; and that the word GANTT thus remains primarily merely a surname in the context of applicant's mark.

A term is primarily merely a surname if, when used in connection with a particular service (or applied to a particular product), its primary significance to the purchasing public is that of a surname. The burden is on the Patent and Trademark Office to establish a prima facie

case that the involved term is primarily merely a surname. See *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238 (CCPA 1975); *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975); and *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993). Further, the question of whether the term sought to be registered is primarily merely a surname can be resolved only on a case by case basis. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). See generally, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §§13:29 and 13:30 (4th ed. 1999).

As noted earlier, applicant does not dispute that the term GANTT is a surname. The question before the Board, however, is whether the mark THE GANTT GROUP is primarily merely a surname. We find that the mark, when considered in its entirety, and in light of the significance of the term GANTT in relation to charts which are used, as in applicant's services, to track projects, is not primarily merely a surname.

Even though the "Gantt chart" was named after an individual with the surname "Gantt," the name itself has another important significance or meaning, especially in the field of project management. Specifically, the term "GANTT" relates to organizing information and tracking

projects through a specific type of chart. Thus, it cannot be said that the primary significance to the relevant purchasing public, i.e., purchasers and prospective purchasers of applicant's business consulting services in the field of project management, would be solely that of a surname. That is, in this case, purchasers upon seeing the mark will recognize its independent meaning signifying or relating to the "Gantt charts" for tracking projects. See *In re Sava Research Corp.*, 32 USPQ2d 1380 (TTAB 1994); and *In re Colt Industries Operating Corp.*, 195 USPQ 75 (TTAB 1977).⁴

Moreover, our analysis must relate to the mark considered in its entirety. See *In re Hutchinson Technology Inc.*, 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988). Here the mark is THE GANTT GROUP. While the word "THE" is simply a common article and the word "GROUP" is a generalized entity-type of designation (disclaimed by applicant), nonetheless, we are of the opinion that the relevant purchasing public, when confronted with the mark

⁴ Applicant's argument regarding the level of historical significance of Henry Gantt as the developer of the "Gantt chart" is not persuasive in this case. See *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, footnote 12 (TTAB 1993); and *In re Champion International Corporation*, 229 USPQ 550 (TTAB 1985).

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as a whole, would not perceive it as primarily merely a surname.

As to the third-party registrations made of record by both the Examining Attorney and applicant, we find that they have no probative value inasmuch as we do not have the file history records of those registrations before us and thus have no reliable way of knowing why the particular registrations were allowed. See *In re Harris-Intertype*, supra at 240.

Finally, to the extent there is any doubt on the question of whether the mark would be perceived as primarily merely a surname, we resolve such doubt in favor of the applicant and passage of the application to publication. See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

Decision: The refusal to register under Section 2(e)(4) is reversed.

G. D. Hohein

B. A. Chapman

T. E. Holtzman
Administrative Trademark Judges,
Trademark Trial and Appeal Board