

1/11/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Hearing:

September 14, 2000

Paper No. 15

PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Everts Ballon GmbH & Co. KG

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Serial No. 75/332,745

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Felix J. D'Ambrosio of Jones, Tullar & Cooper, P.C. for  
Everts Ballon GmbH & Co. KG.

Paul F. Gast, Trademark Examining Attorney, Law Office 106  
(Mary I. Sparrow, Managing Attorney).

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Before Simms, Hairston and Bottorff, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

This is an appeal from the Trademark Examining  
Attorney's final refusal to register the mark EVERTS and  
design, as shown below

for "toys, namely, balloons made of plastic or other materials."<sup>1</sup>

Registration has been refused on the ground that EVERTS is primarily merely a surname, under Section 2(e)(4) of the Trademark Act, 15 U.S.C. 1052(e)(4).

In support of the refusal, the Examining Attorney has introduced the first 100 (of 966) listings for the surname Everts from the Phonedisc USA database which contains over 115 million names, addresses and phone numbers. In addition, the Examining Attorney submitted excerpts from the Acronyms, Initialisms & Abbreviations Dictionary (1996); Webster's New Geographical Dictionary (1988); and several foreign language dictionaries showing the absence of any listing of "everts" therein. Also, the Examining Attorney submitted a number of excerpts from the NEXIS database which mention the tennis player Chris Evert. Finally, while the Examining Attorney also submitted an excerpt from the Random House Unabridged Dictionary 2d. ed. (1983) wherein the word "evert" is defined as "to turn outward or inside out," he maintains that "evert" is not a word with a readily recognized meaning, such that EVERTS

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<sup>1</sup> Serial No. 75/332,745 filed July 29, 1997, based upon applicant's bona fide intention to use the mark in commerce and German Registration No. 972607 under Section 44(e) of the Trademark Act.

would not be perceived as a surname.

Applicant, in urging reversal of the refusal to register, argues that Everts is a rare surname, and as evidenced by the dictionary excerpt, the word "evert" has another meaning. Also, applicant maintains that the mark it seeks to register will not be perceived as a surname because:

It is fanciful and possesses a design which produces an effect quite different from any effect that would be achieved from the word "EVERTS" alone. The fanciful design disconnects the mark from the possibility of it being primarily only a surname. The extension of the E to produce a partial oval effect moves the mark away from the company name Everts.

At the outset, we note that the Office has the burden of establishing a *prima facie* case that a term is primarily merely a surname, and that the test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public. See *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993) and cases cited therein.

After careful consideration of the arguments and record in this case, we are not persuaded that the public would regard applicant's mark EVERTS and design as being primarily merely a surname. We should point out, however, that with respect to applicant's argument that EVERTS is a

rare surname, it is well settled that the rareness or uncommonplace nature of a surname does not necessarily remove it from the category of "primarily merely a surname" precluded by Section 2(e)(4) of the Trademark Act. Second, we have given little weight to the fact that the word "evert" means to turn outward or inside out. We do not believe that this meaning would be known to the majority of the purchasers of applicant's balloons.

However, as pointed out by applicant, the mark it seeks to register in this case is not simply EVERTS in typed or block letters. Rather, applicant's mark depicts EVERTS in a highly stylized format. The first letter "E" is very fanciful and looks similar to an oval or ellipse. The remaining letters are encompassed within the letter "E" and are displayed in stylized lettering. Because of the highly stylized display of applicant's mark, we question whether the mark will even be perceived by the public as the surname EVERTS. The mark could just as easily be perceived as consisting of a fanciful oval or ellipse design encompassing the term "verts," or perhaps a fanciful depiction of the mark "C verts." In view thereof, we are not convinced that the primary significance of applicant's mark to the relevant purchasing public would be that of a surname.

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To the extent that 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. See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

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