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

Paper No. 9
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Keo Limited

Serial No. 75/612,931

John M. Keene of Graham, Campaign for applicant.

Carol A. Spils, Trademark Examining Attorney, Law Office 101
(Jerry Price, Managing Attorney).

Before Quinn, Walters and Bucher, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Keo Limited has filed a trademark application to
register the mark KEO for "brandy, namely, Cyprus brandy."¹
The Trademark Examining Attorney has issued a final refusal
to register on the ground that the mark, KEO, is primarily

¹ Serial No. 75/612,931, in International Class 33, filed December 29, 1998, based on use of the mark in commerce, alleging first use and use in commerce as of 1962. The Examining Attorney had issued a final requirement to amend the identification of goods. In its brief applicant offered to adopt an identification of goods apparently suggested by the Examining Attorney, namely, "brandy from Cyprus." The Examining Attorney did not comment on applicant's offer in her brief - she merely withdrew the final requirement for an amendment to the identification of goods. Therefore, we consider the identification stated in the body of our opinion to be the identification of goods of record. We add that we see no substantive difference between this identification of goods and "brandy from Cyprus."

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merely a surname, under Section 2(e)(4) of the Trademark Act, 15 U.S.C. 1052(e)(4).

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

It is well established 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. *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993) and cases cited therein. As stated by our principal reviewing court, the question of whether a mark is primarily merely a surname can only be made on a case-by-case basis. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985).

It is the Examining Attorney's position that the primary significance of applicant's mark is that of a surname. The Examining Attorney has made of record surname listings from *Phonedisc Powerfinder USA One 1998* (4th edition), a nationwide computerized database of names and phone numbers, showing 357 individuals, out of 115 million listings, with this surname.

Based on this record, we can conclude only that "Keo" falls within the category of being a relatively rare

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surname. See *In re Garan Inc.*, 3 USPQ2d 1537, 1540 (TTAB 1987); and *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994). We hasten to add, however, that there is no minimum or "magic" number of directory listings required to establish a prima facie case for refusal of registration under Section 2(e)(4). *In re Cazes*, 21 USPQ2d 1796 (TTAB 1991).

We find nothing of record in this case to raise the level of frequency of usage to that of a common surname or even close thereto. However, even rare surnames are not registrable if the primary significance of the term to the public is that of a surname. See *In re Rebo High Definition Studio Inc.*, 15 USPQ2d 1314 (TTAB 1990); *In re Industrie Pirelli*, 9 USPQ2d 1564, 1566 (TTAB 1988).

Thus, we turn to the other factors relevant to determining the significance of the term to the public. We note, first, that applicant states that there is no individual connected to applicant with the surname of "Keo." *In re Monotype Corp.*, 14 USPQ2d 1070, 1071 (TTAB 1989). See also *Sava, supra*. Additionally, we find that the "structure and pronunciation," or the "look and sound" of KEO is not that of a surname.² *In re Industrie Pirelli, supra*; and

² Applicant argues incorrectly that its use of KEO as a trademark on its labels over many years obviates any finding that KEO would be perceived as a surname. Applicant's argument speaks to the question of acquired distinctiveness which is not before us.

Sava, supra. This conclusion is supported by applicant's statement that KEO is an acronym for its company name in Greek, which is Kipriaki Eteria Oionon. As stated in *Industrie Pirelli*, "certain rare surnames look like surnames, and certain rare surnames do not and that 'Pirelli' falls into the former category, while 'Kodak' falls into the later." 9 USPQ2d at 1566. All of these factors taken together support the conclusion that the Examining Attorney has not established that the primary significance of KEO to the public is as a surname.

The single factor in this case that favors a finding that the primary significance of KEO to the public is as a surname is the fact that the record is devoid of evidence that the term "Keo" has any recognized meanings other than that of a surname. *In re BDH Two Inc.*, 26 USPQ2d 1556, 1558 (TTAB 1993). *See also Sava, supra.* However, this factor is significantly outweighed by those factors addressed *infra*.

Decision: The refusal under Section 2(e)(4) of the Act is reversed.