

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

11/18/2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Gibson Piano Ventures, Inc.

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Serial No. 76402813

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Lucian Wayne Beavers of Waddey & Patterson for Gibson Piano Ventures, Inc.

John S. Yard, Trademark Examining Attorney, Law Office 115 (Tomas Vlcek, Managing Attorney).

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Before Hanak, Walters and Chapman, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Gibson Piano Ventures, Inc. (applicant) seeks to register in typed drawing form LINDEMAN & SONS for pianos. The intent-to-use application was filed on May 1, 2002.

Citing Trademark Act Section 2(e)(4), the Examining Attorney refused registration on the basis that applicant's mark is primarily merely a surname. When the refusal to register was made final, applicant appealed to this Board.

Applicant and the Examining Attorney filed briefs.

Applicant did not request an oral hearing.

To begin with, we note that there is no dispute that LINDEMAN is a surname, and applicant does not contend to the contrary. In this regard, reference is made to page 4 of applicant's brief where applicant states that "the combined mark LINDEMAN & SONS is not 'primarily merely' a surname. Instead, it is a combination of a surname and an additional term." (original emphasis).

However, it is the contention of applicant that LINDEMAN & SONS is not primarily merely a surname for two reasons. First, applicant contends that LINDEMAN per se is a rare surname. Second, applicant contends that in any event, when combined with the additional wording & SONS, the combined mark (LINDEMAN & SONS) is not primarily merely a surname.

Before considering whether LINDEMAN is a rare surname, we note at the outset that "the degree of a surname's rareness" is but one factor in determining whether LINDEMAN per se is primarily merely a surname. In re Benthin Management, 37 USPQ2d 1332, 1333 (TTAB 1995). See also In re Sava Research Corp., 32 USPQ2d 1380, 1381 (TTAB 1994). In Benthin, the evidence demonstrated that there were just over 100 residential telephone directory listings for

individuals whose surname was BENTHIN. In contrast, the Examining Attorney has demonstrated by making of record the pertinent pages from the PowerFinder (2001) nationwide telephone directory that there are over 2,000 residential telephone listings for individuals whose surname is LINDEMAN. Hence, we find that LINDEMAN is not a rare surname in the United States.

However, as previously noted, the degree of a surname's rareness is not the only factor in determining whether a surname is primarily merely a surname. Another factor is whether the surname has any "recognized meaning other than that of a surname." Benthin, 37 USPQ2d at 1333. See also In re BDH Two Inc., 26 USPQ2d 1556, 1558 (TTAB 1993). In this case, the Examining Attorney stated during the examination process that he consulted numerous dictionaries and can find no listing for "lindeman." Moreover, applicant has not contended that the surname LINDEMAN has any meaning other than as a surname. Thus, this factor favors a finding that LINDEMAN would be perceived as primarily merely a surname.

Finally, a key factor in determining whether LINDEMAN would be perceived as primarily merely a surname is whether LINDEMAN has "the structure and pronunciation" of a surname, or stated somewhat differently, the "look and

sound" of a surname. Benthin, 37 USPQ2d at 1333. See also In re Industrie Pirelli, 9 USPQ2d 1564, 1566 (TTAB 1988).

While we recognize that this is a rather subjective determination, it is our belief that LINDEMAN clearly has the look and sound of a surname.

In sum, taking into account all of the pertinent factors, we find that the LINDEMAN portion of applicant's mark is most decidedly primarily merely a surname. Thus, the only issue left is whether the addition of & SONS to LINDEMAN results in a combination which is not primarily merely a surname.

The leading case concerning whether the addition to a surname of words (or abbreviations) indicating the business structure of applicant results in a composite mark which is not primarily merely a surname is In re I. Lewis Cigar Mfg. Co., 205 F.2d 204, 98 USPQ 265 (CCPA 1953). There a predecessor Court to our primary reviewing Court held that the "mark" S. SEIDENBERG & CO'S for cigars was primarily merely a surname despite the fact that the "mark" in its entirety concluded with the wording & CO'S. The wording & CO'S like the wording & SONS merely indicates the legal nature of the business, and does not convert either SEIDENBERG or LINDEMAN into something other than primarily merely surname. Indeed, the present "mark" LINDEMAN &

SONS, if anything, is more likely to retain its status as primarily merely a surname. In the Lewis Cigar case the mark in question featured additional verbiage, namely, the letter "S" preceding the "mark" S. SEIDENBERG & CO'S. Here, there is no initial or other wording proceeding LINDEMAN & SONS.

More recently, our primary reviewing Court held that DARTY was primarily merely a surname. In so doing, the Court noted that DARTY "is used in the company name in a manner which reveals its surname significance, at least to those with a modicum of familiarity with the French language (Darty et Fils translates as Darty and Son)." In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985).

In short, we find that the addition of & SONS to the surname LINDEMAN does not result in a "mark" (LINDEMAN & SONS) which is other than primarily merely a surname.

Finally, applicant argues at pages 4 and 5 of its brief that it is a "common practice within the piano industry" of adding the words & SONS to a surname such that consumers do not view the resulting combination as primarily merely a surname. Applicant cites five registrations for pianos which conclude with the words & SONS.

As the Examining Attorney correctly notes, applicant's argument is misplaced. One of the registered marks consists of a given name and a surname followed by the words & SONS. Another registration was obtained pursuant to the provisions of Section 2(f) where the applicant demonstrated that the mark in its entirety had acquired a secondary meaning such that it was no longer primarily merely a surname. A third registration has been abandoned. Finally, the Examining Attorney noted that he was not privy as to the examination process that resulted in the registration of the other two marks containing a surname followed by the words & SONS.

The Examining Attorney's position is well taken. We would only add that this Board is certainly not bound by the actions of Examining Attorneys in allowing marks to be registered. West Florida Seafood v. Jet Restaurants, 31 F.3d 1122, 31 USPQ2d 1660, 1664 (Fed. Cir. 1994).

Decision: The refusal to register is affirmed.