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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lanza Vineyards, Inc.

Serial No. 78117536

H. Michael Brucker, Esq. for Lanza Vineyards, Inc.

Josette M. Beverly, Trademark Examining Attorney, Law
Office 112 (Janice O'Lear, Managing Attorney).

Before Chapman, Rogers and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On March 26, 2002, Lanza Vineyards, Inc. (applicant)
applied to register on the Principal Register the mark
LANZA VINEYARDS, in typed form, for "wine" in International
Class 33.¹ Applicant has disclaimed the term "vineyards."

The examining attorney refused to register applicant's
mark on the ground that the mark is primarily merely a

¹ Serial No. 78117536. The application is based on applicant's
allegation of a bona fide intention to use the mark in commerce.

Ser No. 78117536

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

After the examining attorney² made the refusal final, applicant filed a notice of appeal.

In order to determine whether a term is primarily merely a surname, we must determine the impact the term has or would have on the purchasing public. “[I]t is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product is a surname significance. If it is, *and it is only that*, then it is primarily merely a surname.” In re Harris-Intertype Corp., 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975), quoting, Ex parte Rivera Watch Corp., 106 USPQ 145 (Comm’r 1955) (emphasis in original).

“Among the factors to be considered in determining whether a term is primarily merely a surname are the following: (i) whether the surname is rare; (ii) whether anyone connected with applicant has the involved term as a surname; (iii) whether the term has any other recognized meaning; and (iv) whether the term has the “look and feel”

² The current examining attorney was not the original examining attorney in the case.

of a surname." In re United Distillers plc, 56 USPQ2d 1220, 1221 (TTAB 2000).³

In this case, because there is little debate about the surname significance of the term "Lanza," we will only briefly address the surname factors. The examining attorney introduced a printout from a national telephone directory that showed that there were "More than 1000 Matching Listings" for the name "Lanza." The printout included the first fifteen entries. In addition, the examining attorney made of record a NEXIS printout that indicated that 716 articles were returned when the term "lanza" was searched. The first ten stories were submitted, and they contained stories about Frank C. Lanza (CEO), Andrew Lanza (councilman), Pedro Lanza (sports figure), Mario Lanza ("famous Italian singer"), Nina Lanza (reporter), Dr. Robert Lanza, Kathy Lanza (funeral announcement next-of-kin), Rev. Steven Lanza, Steven Lanza (editor), and Jana Lanza (high school honor roll student). This evidence supports a conclusion that LANZA is not a rare surname.

³ If the mark is depicted in stylized form, we would also consider the stylization because if it is "distinctive enough, this would cause the mark not to be perceived as primarily merely a surname." See In re Benthin Management GmbH, 37 USPQ2d 1332, 1334 (TTAB 1995).

Regarding the second factor, no inquiry was made and applicant offered no information as to whether anyone associated with applicant is named "Lanza" and, therefore, this factor does not favor either applicant's or the examining attorney's position. In re Gregory, 70 USPQ2d 1792, 1795 (TTAB 2004) ("[T]hat a proposed mark is not the applicant's surname, or the surname of an officer or employee, does not tend to establish one way or the other whether the proposed mark would be perceived as a surname").

Considering the third factor, there is no evidence that there is any other recognized meaning of the term LANZA, nor does applicant argue that there is any other meaning. The fourth factor concerns whether the term has the "look and feel" of a surname. Here, the evidence indicates that the public will be exposed to the term Lanza as a surname and there is some indication that the surname significance of Lanza will be reinforced because of its association with a "famous Italian singer" named Mario Lanza. Therefore, the evidence leads us to conclude that the term LANZA has the "look and feel" of a surname. See Gregory, 70 USPQ2d at 1796 ("We conclude that ROGAN has the look and sound of a surname. It would not be perceived as an initialism or acronym, and does not have the appearance

of having been coined by combining a root element that has a readily understood meaning in its own right with either a prefix or a suffix. Rather, ROGAN appears to be a cohesive term with no meaning other than as a surname") (footnote omitted).

However, we must consider the mark as a whole and the mark for which applicant seeks registration is not LANZA alone but LANZA VINEYARDS. Applicant's main argument is that the "mark formed by the combination of LANZA and VINEYARDS is not merely a surname." Applicant's Brief at 8 (Emphasis in original). Key to applicant's argument is its contention that "the term VINEYARDS is 'capable' of functioning as a mark because it is not the generic name for the goods." Reply Brief at 2.

The examining attorney responded to applicant's arguments by introducing numerous NEXIS articles to show that winemakers "use the term 'vineyard,' in both the singular and plural as essentially generic designations for the place or establishment where wine is produced." Examining Attorney's Brief at 5. Indeed, the record contains numerous references to the use of the word "vineyards" with respect to wine and winemakers, a sample of which is set out below.

These wines include the 1999 Sacrashe Vineyard Cabernet Sauvignon poured by Hill.
Miami Herald, February 28, 2003.

The group has recruited several wineries to pour at the event, including ... Ironstone Vineyards.
Modesto Bee, February 28, 2003.

Enjoy an open bar featuring wine from Sterling Vineyards.
Orlando Sentinel, February 28, 2003.

Paul Jaboulet's "Parallele 45" Cotes du Rhone (\$9.49), so named because the vineyards lie at 45 degrees latitude (where many of the world's great wine regions are found).
Philadelphia Inquirer, February 27, 2003.

Wallenbrook, 45, who held positions with Robert Mondavi Coastal winery and De Loach Vineyards, has created the Humanitas wine brand.
San Francisco Chronicle, February 27, 2003.

There will be a wine auction on March 22 with Dick Grace, owner of Grace Family Vineyards, as master of ceremonies.
Sun-Sentinel, February 27, 2003.

Wine: Landry Vineyard's new vintage blanc Du Bois white wine.
Times-Picayune, February 27, 2003.

Wines: Pontchartrain Vineyards wines.
Times-Picayune, February 27, 2003.

But now Bieg faithfully brings the wine each week, made from his personal vineyard.
Albuquerque Journal, February 26, 2003.

Evening dedicated to the wines of Stimson Lane Vineyards.
Austin American Statesman, February 26, 2003.

An acknowledged leader in pinot noir, Martinborough Vineyards crafts an exotically flavored, lush wine.
Boston Globe, February 26, 2003.

Wines from Fetzer Vineyards will be matched to a four-course dinner.

Commercial Appeal (Memphis, TN), February 26, 2003.

Featured Wine: 1998 Rudd Jericho Vineyard.

Dayton Daily News, February 26, 2003.

Wine tasting ... Ficklin Vineyards ... Bullene Vineyards.

Fresno Bee, February 26, 2003.

Why should I pay Bryant [Family Vineyard of Napa] \$150 for their wine ... Indeed, Rick Boyer of Jekel Vineyards in Monterey County acknowledges that the escalating prices of California wine have "opened the door for a lot of foreign competition."

Los Angeles Times, February 26, 2003.

Cal State Fresno oenology students examine grapes at the school's 160-acre vineyard and commercial winery. The wines star in the weekend event.

Los Angeles Times, February 26, 2003.

The term "vineyard" is a synonym for the word "winery" and we agree with the examining attorney that "it is essentially a generic term" that simply identifies where the goods are produced. Any wine producer should be able to use this term to identify the place where its goods are produced. As such, it is incapable of distinguishing applicant's wine from the wine of others.

In addition, applicant also relies on the case of In re Hutchinson Technology Inc., 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988). Applicant argues that this case stands for the proposition that "a term, when standing alone, may be primarily merely a surname, [but it] is not merely a surname when combined with another element that is not

generic of the goods to which the mark is applied.”

Applicant’s Brief at 5. In Hutchinson Technology, 7 USPQ2d at 1493 (footnote omitted), the Court concluded as follows:

The term "technology" does not convey an immediate idea of the "ingredients, qualities, or characteristics of the goods" listed in Hutchinson's application. Therefore, the term "technology" is not "merely descriptive" of Hutchinson's goods, and we conclude that the board's finding that the term "technology," standing alone, is merely descriptive of Hutchinson's goods is clearly erroneous. The board offered no other evidence to support its findings on the effect of the inclusion of "technology" in Hutchinson's mark as a whole. Consequently, the board's findings on the effect of the inclusion of "technology" in the mark, as a whole, also are clearly erroneous.⁴

The term “vineyards” for “wine” is a much different term than the term “technology” for “flexible circuits.” The Court found that the term “technology” did not immediately convey a characteristic or feature of the goods. In the Hutchinson Technology case, the Court emphasized the lack of evidence concerning the descriptiveness of the term. In the present case, there is a substantial amount of evidence demonstrating that the term “vineyard” is commonly used in association with wine to state the obvious, that the goods originate from a vineyard. Rather than supporting applicant’s case, Hutchinson Technology supports the examining attorney’s

position because in this case there is significant evidence that "vineyard" is a common term in the relevant field that would not be capable of distinguishing the goods of applicant from those of others. Such commonly used terms are not sufficient to convert a term that is primarily merely a surname into inherently distinctive marks. See In re Pickett Hotel Company, 229 USPQ 760, 762 (TTAB 1986) ("[I]t is clear to us that the term [suite hotel] is, at least, merely descriptive, and perhaps generic of appellant's services;" PICKETT SUITE HOTEL primarily merely a surname); In re Possis Medical, Inc., 230 USPQ 72, 73 (TTAB 1986) ("Since we believe that PERFUSION CUP is an apt descriptive name for applicant's devices, the requirement for a disclaimer of these words is proper;" POSSIS PERFUSION CUP primarily merely a surname).⁵

⁴ The Court did require the applicant to submit a disclaimer of the term "technology."

⁵ Applicant also relies on TMEP 1211.01(b)(vi) as support for its argument that its proposed mark is registrable. The TMEP indicates that "[i]f the wording combined with the surname is incapable of functioning as a mark (i.e., a generic name for the goods or services), the examining attorney should refuse registration on the ground that the entire mark is primarily merely a surname under §2(e)(4)." On the other hand, the same section goes on to say that if "the wording combined with the surname is capable of functioning as a mark (i.e., matter that is arbitrary, suggestive or merely descriptive of the goods or services), the mark is not considered to be primarily merely a surname under §2(e)(4)." Here, the term "vineyards" could not be capable of distinguishing the source of one entity's wine from the wine of other parties. Accord Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co., 128 US 598, 602-03 (1888) ("[P]arties united to produce or sell wine, or to raise cotton or

The only remaining question then would be whether the combined term LANZA VINEYARDS when used on wine would be considered primarily merely a surname. We find that the evidence demonstrates that LANZA is a common surname and that the addition of the commonly used term "vineyards" would not overcome the surname significance of the term. Therefore, we conclude that applicant's term LANZA VINEYARDS is primarily merely a surname.

Decision: The refusal to register applicant's mark LANZA VINEYARDS on the ground that it is primarily merely a surname is affirmed.

grain, might style themselves Wine Company, Cotton Company, or Grain Company; but by such description they would in no respect impair the equal right of others engaged in similar business to use similar designations"); In re Boston Beer Co., L.P., 198 F.3d 1370, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999) ("[A] phrase or slogan can be so highly laudatory and descriptive as to be incapable of acquiring distinctiveness as a trademark"). Producers of wine would similarly not be prevented from using the term "vineyards" to identify their products.