

THIS DISPOSITION IS
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OF THE TTAB

Mailed: December 15, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vegard Ulvang

Serial No. 78160641

Laurel V. Dineff of Dineff Trademark Law Limited for Vegard Ulvang.

Jennifer M.B. Krisp, Trademark Examining Attorney, Law Office 112 (Janice O'Lear, Managing Attorney).

Before Quinn, Chapman and Holtzman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On September 4, 2002, Vegard Ulvang (an individual citizen and resident of Norway) filed an application to register the mark ULVANG on the Principal Register for "socks" in International Class 25. The application is based on applicant's Norwegian Registration No. 174432 pursuant to Section 44(e) of the Trademark Act, 15 U.S.C. §1126(e).

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 term ULVANG is primarily merely a surname.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs. No oral hearing was requested by applicant.

Applicant acknowledges that "ULVANG is the surname of applicant" (brief, p. 5); that "ULVANG has no dictionary meaning" (brief, p. 6.); and that ULVANG has "no geographical significance or meaning in a foreign language." (Applicant's response filed August 11, 2003, p. 1.)

Applicant contends that ULVANG is a particularly rare surname in the United States as the Examining Attorney produced only 15 listings out of millions to be found on the PowerFinder (formerly PhoneDisc) database; that applicant's proposed mark will not evoke surname significance to purchasers due to its rarity; that even though the term is applicant's surname, "due to the connection between Applicant's mark ULVANG and the specific goods at issue, namely, 'socks,' the term ULVANG does not create the impression of being a surname" (brief, p. 6);¹

¹ Applicant has not sought registration pursuant to Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f).

that, while subjective in nature, the term "does not have the clear look and sound of a surname" (brief, p. 7); and that consumers will not regard the term ULVANG as primarily merely a surname.

The Examining Attorney contends that the primary significance of the term ULVANG to the purchasing public is that of a surname as evidenced by (i) the 15 residential listings of persons with that surname found in the PowerFinder database, and (ii) several excerpted stories retrieved from the Nexis database, all but two indicating uses of a first name with the surname ULVANG.² She further contends that even rare surnames may be unregistrable under the Trademark Act if, as here, the primary significance to purchasers is that of a surname; and that the involved mark "looks and sounds" like a surname.

It is well established that the USPTO has the burden of establishing a prima facie case that a mark 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

² The Examining Attorney also submitted the first few pages of the search results from a Google search of "ulvang." This material is not probative as the listings are too truncated for understandable context, and/or they are in a foreign language. This evidence was not considered in reaching our decision.

public. See *In re BDH Two Inc.*, 26 USPQ2d 1556 (TTAB 1993), and cases cited therein. The Board looks to several factors to be considered in our analysis of whether a term is primarily merely a surname under Section 2(e)(4) of the Trademark Act. See *In re Gregory*, 70 USPQ2d 1792 (TTAB 2004); and *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995).

We are of the opinion that the Examining Attorney has met the burden of proof here, and that applicant's arguments have failed to rebut the Office's prima facie case.

Although the 15 PowerFinder residential listings of ULVANG are a small fractional percentage of the entire PowerFinder database, virtually any surname (even extremely common surnames) would presumably also constitute only a small fractional percentage of this entire database. All but two of the excerpted stories retrieved from the Nexis database submitted by the Examining Attorney refer to individual people whose surname is "Ulvang." Also, the PowerFinder evidence includes references to individuals named ULVANG from many geographic areas of the United States (California, Colorado, Kansas, Michigan, Oregon and Washington). The Nexis evidence indicates coverage of stories involving persons whose surname is ULVANG (John

Ulvang, Emily Ulvang) in many geographical areas of the United States ("Kansas City Star," "Los Angeles Times," "Rocky Mountain News (Denver, CO)," "Salt Lake Tribune," "San Antonio Express-News," "San Diego Union-Tribune" and "Times-Picayune (New Orleans, LA)). It is noteworthy that several of the excerpted stories include information about Vegard Ulvang, an Olympic gold medal winner in cross-country skiing. Even if ULVANG is a rare surname, this does not mean that its surname significance would not be recognized by a substantial number of members of the general public.

As noted above, applicant concedes that ULVANG is applicant's surname and that the term has no dictionary, geographical or foreign language meaning.

Finally, we consider the decidedly subjective factor of whether ULVANG has the "look and sound" of a surname. We conclude that it does. See *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564 (TTAB 1988), *aff'd unpub'd*, 883 F.2d 1026 (Fed. Cir. 1989).

Based on the evidence, we find that the primary significance of this term to the purchasing public is that of a surname.

Decision: The refusal to register under Section 2(e)(4) of the Trademark Act is affirmed.