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March 1, 2005
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re *Allstar Marketing Group, Inc.*

Serial No. 76457320

Adam M. Cohen and Brendan P. McFeely of Kane Kessler P.C. for
Allstar Marketing Group, Inc.

Samuel E. Sharper, Jr., Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before *Hohein, Hairston and Chapman*, Administrative Trademark
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Allstar Marketing Group, Inc., a New York limited
liability company, has filed an application to register the mark
"BELLORA" for "watches and parts therefor; watch straps; [and]
watch fobs."¹

Registration has been finally refused under Section
2(e)(4) of the Trademark Act, 15 U.S.C. §1052(e)(4), on the
ground that the mark which applicant seeks to register is
primarily merely a surname. Registration has also been finally
refused pursuant to Trademark Rule 2.61(b) on the basis that

¹ Ser. No. 76457320, filed on October 7, 2002, which is based on an
allegation of a bona fide intention to use the mark in commerce.

applicant has failed to comply with the requirement for information as to whether the mark has any meaning in any foreign language.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal based on the ground that the mark is primarily merely a surname, but reverse the refusal premised on a failure to comply with the requirement for information concerning whether the mark has any foreign language meaning.

We consider first the requirement for information. Because, as pointed out later in this opinion, whether a mark has any meaning other than as a surname is a factor in determining whether it is primarily merely a surname, the Examining Attorney in his initial Office Action imposed the following requirements for information pursuant to Trademark Rule 2.61(b):

The applicant must indicate whether "BELLORA" has any significance in the relevant trade, any geographical significance, or any meaning in a foreign language. If the term has an English translation, applicant must submit it for the record. 37 C.F.R. §2.61(b).

Applicant, in its response, replied as follows:

The Examining Attorney has asked the Applicant to indicate whether the Mark has any significance in the relevant trade, any geographical significance, or any meaning in a foreign language. Applicant states the following: to Applicant's knowledge, the Mark has no significance in the relevant trade, nor does it have any geographical significance. The mark is a conflation of the Italian words "bella" and "ora", which have the respective English meanings of "beautiful" and "hour".

Applicant, in its brief, contends that the Examining Attorney is in error "in maintaining the request for indication of significance and foreign meaning because Applicant responded to this request in its Response to Office Action." Specifically, applicant insists that its response "is sufficient and that the continued request for indication of significance and foreign meaning should be reversed." The Examining Attorney, on the other hand, takes the position in his brief that applicant has failed to comply with the requirement for information, arguing that:

It is proper for an examining attorney to request additional information from an applicant in order to examine the application properly. *In re Air Products and Chemicals, Inc.*, 192 USPQ 157 (TTAB 1976); 37 C.F.R. §2.61(b). Applicant was required ... to indicate whether "BELLORA" has any meaning in a foreign language. The applicant did not provide or state for the record whether the mark had any meaning in a foreign language in its response The applicant [instead] provided a conflation of two Italian words and their English translations, without any support of authority of such conflation. The examining attorney maintains that the two separate Italian words (bella and ora) do not appear in the mark at bar. The examiner asserts that the applicant did not comply with the request for any meaning of the mark in a foreign language. If the applicant does not comply with the examining attorney's request for information, the requirement should be repeated and, if appropriate, made final. See *In re SPX Corp.*, 63 USPQ 1592 (TTAB 2002) (registration properly refused where applicant ignores request for information).

We agree with applicant, however, that its response to the initial Office Action constituted sufficient compliance with the Examining Attorney's requirement for information as to

whether the mark "BELLORA" has "any meaning in a foreign language." While, admittedly, applicant did not parrot back the exact language of the Examining Attorney's inquiry for such information, as it did in its negative responses to the requirements of whether such mark has "any significance in the relevant trade" or "any geographical significance," by stating, for instance, that the mark has "no meaning in a foreign language," applicant plainly did not ignore the requirement. Rather, applicant responded to the inquiry by answering, in effect, that the only foreign significance or meaning for its mark lies in the suggestion created by the derivation thereof, which as it stated "is a conflation of the Italian words 'bella' and 'ora', which have the respective English meanings of 'beautiful' and 'hour'." Clearly, such response is sufficient to indicate that the mark "BELLORA" itself has no meaning in any foreign language, particularly when it is kept in mind that it would be to applicant's advantage to state, if it were the case, that its mark had a specific foreign language meaning. Thus, there is no failure by applicant to comply with the requirement for information as to any foreign language meaning for the mark.

Turning now to the refusal on the ground that the mark "BELLORA" is primarily merely a surname, we observe as an appropriate starting point for analysis that, as stated by the Board in *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1940 (TTAB 1993):

At the outset, it is well settled that whether a mark is primarily merely a surname depends upon whether its primary significance to the purchasing public is that of a

surname. The burden is upon the Examining Attorney, in the first instance, to present evidence sufficient to make out a prima facie showing in support of the contention that a particular mark is primarily merely a surname. Provided that the Examining Attorney establishes a prima facie case, the burden shifts to the applicant to rebut the showing made by the Examining Attorney. See *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239-40 (CCPA 1975) and *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421, 422 (CCPA 1975). Whether a term sought to be registered is primarily merely a surname within the meaning of ... the Trademark Act must necessarily be resolved on a case by case basis and, as is the situation with any question of fact, no precedential value can be given to the amount of evidence apparently accepted in a prior proceeding. See *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985).

Moreover, as set forth by the Board in *In re United Distillers plc*, 56 USPQ2d 1220, 1221 (TTAB 2000):

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" of a surname. See *In re Benthin Management GmbH*, 37 USPQ2d 1332[, 1333] (TTAB 1995).²

In the present case, we agree with the Examining Attorney that the record contains sufficient evidence to make a prima facie case that the primary significance of the mark "BELLORA" to the purchasing public for applicant's goods is that of a surname and that such showing has not been rebutted by

² A fifth factor, which concerns whether a mark is in a stylized form distinctive enough to create a separate non-surname impression, is not present herein inasmuch as applicant seeks to register its mark in typed form. See *In re Benthin Management GmbH*, supra at 1333-34.

applicant. Specifically, the Examining Attorney furnished and relies upon the following evidence in support of the refusal to register: (i) a copy of the results of a search of the "PowerFinder" (a/k/a "PhoneDisc") 2001 "Government Edition" database, which indicates that a total of 44 separate residential listings in the United States were found for individuals with the surname "BELLORA"; (ii) a copy of the results of a search of various databases contained within the "Ancestry.com" website, which with respect to "Directories & Membership Lists" for the United States shows that, among other things, 40 "matches" for the last name "Bellora" were located in a "2000 Phone and Address Directory" and 238 "matches" for such name were found in a "Search for a living Bellora in the MyFamily People Finder";³ (iii) a copy of the results of searches of the "WordReference.com" website, which reveals that there was "no translation for 'Bellora' in our English Dictionary," "no Italian translation for 'Bellora' in our English to Italian Dictionary," "no French translation for 'Bellora' in our English to French Dictionary" and "no Spanish translation for 'Bellora' in our English to Spanish Dictionary"; (iv) a copy of the results of a search of the "OneLook.com" website, which states that "no dictionaries indexed in the selected category contain the word *Bellora*"; (v) a copy of the results of a search of the "AllWords.com" website, which recites that "Your Query of: bellora Found No Matching entries" in Italian, Spanish, French,

³ The specifics as to the results, however, are not provided.

German or Dutch; and (vi) copies of two relatively recent third-party registrations, one of which is for the mark "GIUSEPPE BELLORA SINCE 1883" and design and recites, *inter alia*, that "The name 'GIUSEPPE BELLORA' identifies a living individual whose consent is of record"⁴ and the other is for the mark "CAROL BELLORA MEMORIAL" and was issued to a Robert A. Bellora.⁵

Applicant, with respect to its position, submitted as evidence (i) copies of maps retrieved by using the "Maps" feature of the "Yahoo!.com" website for the areas ranging from Monongahela, PA to Monessen, PA, Pittsburgh, PA to Export, PA, and Adams, MA to Pittsfield, MA⁶ and (ii) a printout of national population estimates from the "U.S. Census Bureau" website.⁷

Applicant contends in its brief that "[t]he Examining Attorney erred in finding that the Mark is primarily merely a

⁴ Reg. No. 2,311,639, issued on January 25, 2000 with a disclaimer of "SINCE 1883," covering such goods in various classes as "candles; air fresheners; fabric for use in manufacturing clothing, upholstery and household items; bed linen, towels, tablecloths not of paper, textile place mats, pot holders, curtains, bathrobes and carpets."

⁵ Reg. No. 2,213,032, issued on December 22, 1998 with a disclaimer of "MEMORIAL," for "arranging and conducting athletic competitions and events."

⁶ As to such evidence, applicant states in its response that:

We suspect, although [we] cannot prove, that the geographic clustering of names [in the PowerFinder list] in the most populated states, Massachusetts and Pennsylvania ..., strongly indicates that the people sharing the same unusual surname in relative proximity to each other are in fact family members. If this is true, the number of unrelated groups of people having the name "Bellora" is even smaller, producing a statistically insignificant result.

⁷ Using such data, applicant asserts in its response that, "even assuming the 44 listings discovered by the Examining Attorney [in the PowerFinder database] are all for different, unrelated people, this means that there is approximately one listing for every 6,496,591 Americans (assuming 285,850,000 people in the United States.)"

surname because (1) the Mark is only very rarely used as a surname (in fact, the Examiner's evidence taken in [the] most favorable light indicates that in the entire United States only 44 people have the last name 'Bellora'), (2) there is no one connected to Applicant having the surname 'Bellora', (3) the Mark has meaning other than [as] a surname, and (4) the Mark does not have the 'look and feel' of a surname." In particular, as to the first of its contentions, applicant argues that the Examining Attorney "cited only 44 instances of surname use in the entire United States"; that "[s]uch a small number of uses as a surname will not support a 2(e)(4) rejection"; that, "[o]f these, 12 appear to be duplicate entries for six people, and 12 appear to cover six different households," such that actually "the evidence shows only 32 households having the name 'Bellora'"; that "[i]t also appears likely from the geographical clustering of names in the evidence that many of the individuals cited are in fact related"; that, statistically, "this is a tremendously small number of listings for the entire United States and is insufficient to support a 2(e)(4) denial"; and that, in any event, "the Examining Attorney's submission into the record of 44 telephone records nationwide fails to meet the burden of showing [that] the Mark functions primarily merely as a surname."

While we concur with applicant, as also acknowledged by the Examining Attorney in his brief, that the record shows that "BELLORA" is indeed a rare surname, the Examining Attorney is nonetheless correct in pointing out that even a rare surname is

unregistrable (absent a showing of acquired distinctiveness) "if its primary significance to purchasers is that of a surname."

See, e.g., In re Etablissements Darty et Fils, supra; In re Rebo High Definition Studio Inc., 15 USPQ2d 1314, 1315 (TTAB 1990); and TMEP Section 1211.01(a)(v) (3d ed. rev. 1, 2002).

Furthermore, as the Examining Attorney properly notes, "[t]here is no minimum number of telephone directory listings needed to prove that a mark is primarily merely a surname." See, e.g., In re Petrin Corp., 231 USPQ 902, 903 (TTAB 1986); and TMEP Section 1211.02(b)(i) (3d ed. rev. 1, 2002). Thus, even allowing for applicant's highly speculative assertions as to the relevant number of listings shown by the results of the search of the PowerFinder database, we agree with the Examining Attorney that the results of such search, when coupled with the excerpts from the search of the "Ancestry.com" website and the surname information disclosed by the third-party registrations, are sufficient to establish the surname significance of the mark "BELLORA" to the relevant purchasing public. Stated otherwise, "BELLORA" is simply not so unusual a surname that it would not be recognized as such.

As to its second contention, applicant correctly observes that "[t]he fact that a term is the surname of an individual associated with the applicant has been held by this Board to be strong evidence of the surname significance of the term," citing, *inter alia*, In re Rebo High Definition Studio Inc., supra; In re Industrie Pirelli Societa per Azioni, 9 USPQ2d 1564, 1566 (TTAB 1988); and In re Taverniti, SARL, 225 USPQ 1263,

1264 (TTAB 1985), *recon. denied*, 228 USPQ 975 (TTAB 1985). In view thereof, applicant asserts, although notably without citation to any authority, that:

Conversely, where no individual associated with the applicant has a surname incorporating the subject mark, this factor must weigh heavily in favor of Applicant. In this case, the Examining Attorney ... failed to adduce any evidence showing that anyone connected with Applicant has the name "Bellora". In fact, Applicant stated that ... no one connected with the Applicant has the surname Bellora.

The fact, however, that "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." In *re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004). The absence of anyone associated with applicant who has the surname "BELLORA" is therefore a factor which, as the Examining Attorney indicates in his brief, is properly viewed as being neutral.

Thirdly, applicant contends that its mark has meaning other than as a surname because, as mentioned previously, "the Mark is the conflation of two Italian words, 'bella' (meaning 'beautiful') and 'ora' (meaning 'hour')," which "create a term suggestive of the chronometric goods in connection with which Applicant intends to use the Mark." While the Examining Attorney, in his brief, counters that such contention "is not support[ed] by any linguistics evidence or morphology," we simply have doubt that, as argued by applicant, "the purchasing public is likely to recognize the commonly known meaning of the Latin roots of the terms 'bella' and 'ora' and ... understand the Mark

to function as a term suggestive of chronometric goods."

Instead, customers for applicant's goods are likely to regard the term "BELLORA" as having only a surname significance, given both the evidence made of record by the Examining Attorney and applicant's implicit admission (as noted earlier) that such term has no other meaning or significance in any language.

Accordingly, the absence of any other recognized meaning for such term is a factor which favors a finding that the mark "BELLORA" is primarily merely a surname.

Finally, applicant contends that its mark lacks the "look and feel" of a surname, arguing that "[a]lthough there are some names which by their very nature can only be recognized as a surname, 'Bellora' is not such a name." However, noting in his brief that, for instance, "Bellissima, Bellotti, Bellucci, Belloni, Bellone and Belloso are Italian surnames," the Examining Attorney, citing *In re Industrie Pirelli Societa per Azioni*, supra, persuasively observes that "[i]t is a well-known fact that Italian surnames often end with a vowel." While, of course, not all terms ending in a vowel necessarily have the "look and feel" of a surname, applicant acknowledges the Italian derivation of its mark and it is our admittedly subjective determination that "BELLORA" is not only structured like the examples of Italian surnames recited by the Examining Attorney, but it has the sound thereof as well. Accordingly, we find that applicant's mark has the "look and feel" of a surname of Italian heritage.

Upon balance, therefore, three of the four factors bearing upon the issue favor a determination that the primary

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significance of the mark "BELLORA" to the purchasing public for applicant's watches, watch parts, watch straps and watch fobs is that of a surname and the other factor is neutral. We find, in view thereof, that the Examining Attorney has presented evidence sufficient to establish prima facie that applicant's mark is primarily merely a surname within the meaning of Section 2(e)(4) of the statute and that applicant has failed to rebut such showing.

Decision: The refusal based on Trademark Rule 2.61(b) is reversed, but the refusal under Section 2(e)(4) is affirmed.