

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed:
February 1, 2005
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Loretia R. Charlton

Serial No. 76463959

Michael I. Santucci, Esq. for Loretia R. Charlton.

Verna Beth Ririe, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Hanak, Hohein, and Drost, Administrative Trademark
Judges.

Opinion by Drost, Administrative Trademark Judge:

On August 5, 2002, Loretia R. Charlton (applicant)
applied to register on the Principal Register the mark
MARAJ, in typed form, for "entertainment and performing
arts services in the nature [of] audio-visual performances,
namely, live performances by a musical artist, dance
performances and theater productions; and song writing
services" in International Class 41.¹

¹ Serial No. 76463959. The application alleges a date of first
use and a date of first use in commerce of June 1, 1999.

The examining attorney refused to register applicant's mark on the ground that the mark is primarily merely a surname under Section 2(e)(4) of the Trademark Act. 15 U.S.C. § 1052(e)(4).

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

Section 2(e)(4) of the Trademark Act prohibits the registration on the Principal Register of a mark that "is primarily merely a surname." Our principal reviewing Court's predecessor has held that we must determine the impact the term has or would have on the purchasing public because "it 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" of a surname." In re United Distillers plc, 56 USPQ2d 1220, 1221 (TTAB 2000).²

We begin our analysis by reviewing the evidence of whether the term MARAJ is a rare surname.³ The examining attorney has submitted the results of a NEXIS database search that shows there were 308 hits for the last name "Maraj" in the database "USFIND Person Locator - Nationwide." The examining attorney attached the first one hundred results that show entries for various individuals with the last name "Maraj" located throughout the United States. In addition, the examining attorney introduced the results of a search of the NEXIS database of Florida publications that showed more than 200 stories involving individuals identified by the last name "Maraj," of which more than fifteen were submitted. Subsequently, the examining attorney conducted a broader search of U.S. newspapers with the result that more than four hundred

² 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).

³ The examining attorney does not have the burden of proving a term is a "common American surname" as applicant argues. Brief, second page. We agree with the examining attorney that a surname's rarity is a factor to consider, but the examining attorney does not need to establish that a surname is common.

stories were retrieved, of which more than 30 were submitted. Several of the results are set out below.

Championship Racing owner Dave Maraj said: "We experienced some minor problems..."
St. Petersburg Times (Florida), June 17, 2003.

In the first match played March 15, Silver Whip hosted the visitors. Batting first, the combined Ernest and Vikings [cricket] team scored 105 all-out. Amjad Khan top scored with 20, Jimmy Maraj and Antonio Balman got 11 each...
Sun-Sentinel (Ft. Lauderdale, FL), March 23, 2003.

Singles winners for Orange Park included Chris Dilley, Rajiv Maraj, Tim Walton, and Tyler Greer.
Florida Times-Union, March 12, 2003.

Real Estate Transactions
To Deodat & Nandrini Deodat Maraj by Jerry A. & Irene Bednarski
St. Petersburg Times, October 2, 2002.

"People who are buying Ybor's condos are the same exact people at Camden," said Sudesh "Max" Maraj, a general contractor and broker for Ybor Realty.
Tampa Tribune, August 1, 2002.

Shiva Maraj, the son of Tota and Krishendai Maraj and Rohan Punit, the son of Kamala and Loak Punit, each received \$500 scholarships. Both Maraj and Punit will attend the University of Florida.
Sun-Sentinel (Ft. Lauderdale, FL), July 14, 2002.

"The carnival is a good place to show up for Caribbean cooking," said Tara Maraj, the owner of Tara's Roti in Tampa.
Tampa Tribune, June 8, 2002.

The following students received first-place awards:
Piano evaluation: ... Angele Maraj, Chris Williams, Andrew Reid...
St. Petersburg Times, June 5, 2002.

He advanced to the 125-pound wrestlebacks before being stopped by Dean Maraj of Long Branch.

Asbury Park Press, December 26, 2003.

Siva Maraj, who works at Pet Barn in Worcester, says few customers ask for the more outlandish items.
Worcester Telegram & Gazette, July 22, 2003.

When we consider the evidence of the use of the name "Maraj" as a surname, we agree that it is somewhat rare. However, despite the fact that Maraj is not a common surname, the Federal Circuit has held that "the examiner made of record evidence that others in a number of cities in this country bear the surname DARTY. Thus, as a surname, DARTY is not so unusual that such significance would not be recognized by a substantial number of persons." In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985).

The next factor we consider is whether anyone associated with applicant is named "Maraj." Applicant has submitted her declaration that maintains that "MARAJ is not used as a surname to identify any particular person." Response dated July 7, 2003, Ex. C.⁴ We add that the fact 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

⁴ We note that the specimen contains a picture of a women with the word "Maraj" superimposed on the picture. While applicant may not intend to use the term as a surname to identify a particular individual, prospective customers encountering this specimen may draw a different conclusion.

would be perceived as a surname." In re Gregory, 70 USPQ2d 1792, 1795 (TTAB 2004).

The third factor we address is whether there is evidence that there is another recognized meaning of the term MARAJ. Applicant's declaration asserts that "I want the public to connect my services and my groups of performers with, and suggestive of the word "Mirage." Response dated July 7, 2003, Ex. C. Applicant has submitted a definition of the word "mirage" (Ex. A). The examining attorney pointed out that the fact that a surname may be phonetically equivalent to a common word does not overcome the surname significance of the term. In re Pickett Hotel Co., 229 USPQ 760, 761 (TTAB 1986) ("'Pickett' and 'picket' are not interchangeable in appearance or meaning"). It is even less likely that "mirage" and "maraj" would be viewed as essentially the same. Except for its phonetic similarity to the word "mirage" and applicant's suggestion that it might be recognized "as if it were her given name"⁵ (Brief, fourth

⁵ The fact that a surname is also sometimes used as first name does not prevent it from being primarily merely a surname. See Gregory, 70 USPQ2d at 1796 (While "Rogan" was applicant's first name, "applicant has not put anything in the record to show how commonly ROGAN is used as a first name rather than a surname, while we have a good deal of evidence of its use as a surname").

page), there is no other recognized meaning for the term Maraj.

The fourth factor concerns whether the term has the "look and feel" of a surname. In this case, the evidence of record shows that there are numerous references to individuals named "Maraj." The term has no other meaning and it does not appear to be simply an arbitrary term. Therefore, we agree with the examining attorney that the term 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).

Thus, when we consider all the evidence in this case, the examining attorney has met her initial burden of showing that the term MARAJ would primarily be viewed as a surname, and applicant has not rebutted the examining attorney's prima facie case. There is evidence that the term is, in fact, a surname, even if not a common one. There is no evidence that the term has any other meaning

Ser No. 76463959

besides applicant's use and, based on its "look and feel," the public would have no reason to conclude that it was not a surname.

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