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**THIS DISPOSITION
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Paper No. 10
RLS/CV

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ridmark Corporation

Serial No. 75/591,493

Kathryn Grant Belleau of St. Onge Steward Johnston & Reens
LLC for Ridmark Corporation.

Kimberly B. Perry, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Simms, Cissel and Rogers, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Ridmark Corporation (applicant), a Delaware
corporation, has appealed from the final refusal of the
Trademark Examining Attorney to register the mark RIDDELL
for interactive video game programs.¹ The Examining
Attorney has refused registration under Section 2(e)(4) of

¹ Application Serial No. 75/591,493, filed November 17, 1998,
based upon applicant's allegation of a bona fide intention to use
the mark in commerce, under Section 1(b) of the Act, 15 USC
§1051(b). Applicant subsequently claimed ownership of four
registrations covering this mark.

the Act, 15 USC §1052(e)(4), on the basis that applicant's mark is primarily merely a surname.

Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

We affirm.

It is the Examining Attorney's position that the primary significance of applicant's mark is that of a surname. The Examining Attorney has made of record over eight pages of surname listings from Phonedisc Powerfinder USA One 1998 (4th edition), a nationwide computerized database of names and phone numbers, showing 556 individuals with this surname.

It is applicant's position, however, that its ownership of the registrations covering the mark RIDDELL and LIL' RIDDELL for goods in the same class² is sufficient evidence to show that the previously created distinctiveness of this surname would be transferred to the mark if it were used in connection with the goods in this application. In support of applicant's claim of use of the mark for "related goods" for more than 30 years and claim

² The registrations of RIDDELL cover the following Class 28 goods: protective helmets, headband suspensions, face guards, neck protectors, chin straps, shoulder pads, chest pads, thigh pads, protective padding, sideline marking equipment for football games, bowling shoes, football shoes, baseball and track shoes. The LIL' RIDDELL registration covers miniature football helmets.

that such use "inures to the benefit" of the current application, applicant has submitted a declaration of its chief executive officer stating that the "continuous and exclusive" use of the mark RIDDELL for toys and athletic equipment for over thirty years demonstrates that the mark has become distinctive of those goods and, due to the relatedness of those goods to the goods in this application (video game programs), that distinctiveness applies to these goods. Applicant also states that the video games have a sports theme and that they are "video rendition[s] evidencing use of goods covered by previous registrations." Brief, p. 3. Because applicant's previous use has been for sporting goods in the same class, applicant urges that the refusal be reversed.

In response to applicant's claim of acquired distinctiveness, it is the Examining Attorney's position that applicant's registrations do not cover the same or related goods. See Trademark Rule 2.41(b) and TMEP §1212.04(c).³ The Examining Attorney, noting that

³ Trademark Rule 2.41(b) provides:

b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness...

TMEP §1212.04(c) provides, in part:

applicant's prior registrations cover such goods as helmets, face guards, neck protectors, shoulders pads, sideline marking equipment, and athletic shoes, argues that none of applicant's registrations covers the same or sufficiently similar goods.⁴ The Examining Attorney contends that applicant's protective headgear and other equipment are different in nature and function from video game programs, which are for entertainment. Also, the Examining Attorney argues that there is no evidence that all of these goods would be sold in the same channels of trade to the same class of purchasers. With respect to classification, the Examining Attorney maintains that classification is not dispositive because classification is an administrative matter within an agency's discretion, and that the fact that these goods are in the same class does not mean that they are sufficiently related products.

Whether a mark is primarily merely a surname depends upon the term's primary significance to the purchasing public. In re Harris-Intertype Corp. 518 F.2d 69, 186 USPQ

The examining attorney should determine whether the goods or services named in the application are sufficiently similar to the goods or services named in the prior registration or registrations.

⁴ Electronic versions of these registrations were submitted for the first time with applicant's appeal brief. However, because the Examining Attorney has treated these registrations as of record, we have too. See Trademark Rule 2.142(d).

238, 239-40 (CCPA 1975). The burden is upon the Examining Attorney to present evidence sufficient to make out a *prima facie* showing that a particular mark is primarily merely a surname. In re Hamilton Pharmaceuticals Ltd., 27 USPQ2d 1939, 1940 (TTAB 1993).

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that a *prima facie* case of the primary significance of the name RIDDELL has been established. Indeed, applicant does not argue to the contrary. Rather, it is applicant's position, as noted above, that the distinctiveness its mark has acquired for other goods will, when used for the goods in this application, be transferred to these goods. While we agree with applicant that some of these registrations cover the substantially identical mark (shown in stylized form), we also agree with the Examining Attorney that applicant's video game programs cannot be considered sufficiently similar to such goods as football helmets, face guards, shoulder pads, etc. so as to permit registration of this same mark on the basis of applicant's claim of ownership of the prior registrations. Although in the same class, these goods are simply unrelated in purpose and function to applicant's video games. See Bausch & Lomb Inc. v. Leupold & Stevens Inc., 6 USPQ2d 1475 (TTAB

Ser. No. 75/591,493

1988)(applicant's reliance on the distinctiveness of its mark for rifle scopes and handgun scopes not sufficient to establish distinctiveness for binoculars and spotting scopes). Cf. In re Best Products Co., Inc., 231 USPQ 998 (TTAB 1986)(mail order and catalogue showroom services and retail jewelry store services held sufficiently related).

Decision: The refusal of registration is affirmed.