

**Surname with a generic term is still merely a surname
United States - Leason Ellis LLP**

**Examination/opposition
Cancellation**

October 09 2017

- **TTAB affirmed refusal to register BRASSERIE KUNZ as it was primarily a surname**
- **Found that generic term 'brasserie' did not alter perception of mark**
- **Case serves as instructive for the proper introduction of website evidence**

In a non-precedential opinion, *In re Kunz Management LLC* (2017), the Trademark Trial and Appeal Board (TTAB) affirmed a refusal to register the mark BRASSERIE KUNZ for restaurant services on the ground that it was primarily merely a surname.

Pursuant to Section 2(e)(4) of the Lanham Act, marks that are primarily merely a surname are not registrable on the Principal Register absent a showing of acquired distinctiveness. As the application in this case was based on intent to use, the only issue was whether the mark met the test for refusal under Section 2(e)(4), which requires that consumers consider the mark's primary significance when viewed as a whole in relation to the services be that of a surname. Under applicable case law, there are certain factors to be considered as evidence of how the purchasing public perceives the mark. One such factor is whether anyone connected with the applicant has that surname. In this case, the fact that the applicant company was established by chef Gray Kunz weighed heavily in the analysis that the mark would be perceived as a surname.

The TTAB also heard evidence submitted by the examining attorney to hold that Kunz was not rare. This also weighed against registration.

The applicant's main argument was that Kunz would not be perceived as primarily merely a surname due to its other ordinary language significance. Whether the term had other recognised meanings was one of the factors considered. The applicant argued that Kunz may be translated from German to Konrad. The TTAB did not consider the evidence provided by the applicant to support this argument as it was submitted only as a link to a website. Proper procedure requires website pages be printed and attached to the evidence in order for consideration. The applicant also submitted dictionary evidence translating two phrases that included the word 'Kunz', showing the phrase '*Hinz und Kunz*' as meaning 'every Tom, Dick and Harry'. The TTAB rejected this evidence – showing a translation of an entire idiomatic phrase rather than *Kunz* alone was not probative of how purchasers would perceive the mark in question.

Finally, the TTAB addressed the issue of the public's perception of the mark as a whole (ie, with the word 'Brasserie'). The TTAB found that such a generic term did not alter the perception of the mark as a whole. Specifically, dictionary evidence showed that 'Brasserie' means an informal restaurant. Combined with evidence from the examining attorney that it is common to name restaurants after their owners or chefs, the TTAB found that the addition of the word 'Brasserie' did not alter the perception of the mark as primarily merely a surname, "but rather may in fact underscore that KUNZ is a surname".

While the TTAB said that nothing about the combination of the two words "changes the meaning of the component terms", there was no specific discussion in the decision of whether combining two words of different foreign origin – namely a French word with a German surname – added anything to the mark to qualify it for registration. Indeed, the applicant did not make that argument. Although not cited in the opinion, it is also interesting to note that the TTAB had previously found the mark BRASSERIE LIPP to be primarily merely a surname. See *In re Cazes* (21 USPQ2d 1796 (1991)). Thus, this case does not show a departure from established precedent, but is instructive for the proper introduction of website evidence and serves as a reminder that marks which combine a surname with a generic term will be considered primarily merely a surname.

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