

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77209127
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Surname Refusal</p> <p>The Examining Attorney belatedly refused registration of the applied-for mark under Section 2(e)(4) of the Trademark Act on the grounds that the applied-for mark is primarily merely a surname. The Examining Attorney has failed to establish a <i>prima facie</i> case that the mark is primarily merely a surname. See <i>In re Etablissements Darty et Fils</i>, 225 USPQ 652, 653 (Fed. Cir. 1985). Moreover, the Examining Attorney has neglected to consider all of the evidence to determine ultimately whether the mark is primarily merely a surname. See <i>In re Sava Research Corp.</i>, 32 USPQ2d 1380, 1381 (TTAB 1994). TMEP Section 1211.01(a)(vii) states that "[i]n determining whether a term is primarily merely a surname, the examining attorney <u>must</u> consider whether the term has any meaning in a foreign language." However, in this case, the Examining Attorney has failed to consider the meaning of the applied-for mark. Lastly, although the Examining Attorney recited the relevant factors for assessing whether a mark is <u>primarily merely</u> a surname, the Examining Attorney provided absolutely no analysis of those factors. Thus, the refusal under Section 2(e)(4) is improper and Applicant requests that it be withdrawn.</p> <p>In support of this refusal, the Examining Attorney has proffered a whitepages.com listing of 40 individuals with the surname. The listing indicates that there are approximately 300 individuals with this surname. The mere listing of individuals with a particular surname does not establish a <i>prima facie</i> case that the applied-for mark is primarily merely a surname.</p> <p>Even considering the scant evidence proffered by the Examining Attorney, it is clear that the applied-for mark is an extremely rare surname. The simple phone book listings do not show the existence of any individual of particular note with the FAUCHER surname such that the public would be conditioned to recognize this rare surname as a surname. See, e.g., <i>In re Gregory</i>, 70 USPQ2d 1792, 1795 (TTAB 2004). Thus, the low number of individuals with the surname FAUCHER combined with the lack of notoriety of anyone with the surname FAUCHER establishes the rareness of the surname FAUCHER. See <i>In re Curlin Medical Inc.</i>, Serial No. 78560314 (Feb. 11, 2008) [not precedential] (the surname CURLIN was found to be rare where none of the 286 individuals with the surname were shown to have been the subject of media attention or publicity to the extent that the public perception of CURLIN would be affected).</p> <p>Most important, the applied-for mark has a non-surname meaning and significance. A refusal under Section 2(e)(4) is proper only if the mark is <u>primarily merely</u> a surname. As the TMEP clearly explains "[i]f there is a readily recognized meaning of a term, apart from its surname significance, such that the primary significance of the term is not that of a surname, registration should be granted on the Principal Register without evidence of acquired distinctiveness." TMEP Sections 1211.01(a)(i). The first case cited in this section of the TMEP discussing this principle is <i>In re Isabella Fiore, LLC</i>, 75 USPQ2d 1564 (TTAB 2005) which held that FIORE is not primarily merely a surname where it is also the Italian translation of the English word "flower" and the non-surname meaning is not obscure. In this case, the accepted translation of the French term "faucher" is "to reap, mow, scythe". Print-outs from various French translation dictionaries are submitted herewith.</p> <p>In <i>Fiore</i>, the Board noted that while it is the surname significance in the United States which is determinative of the registrability issue, "the fact that a term is a word in the Italian language does not mean that this meaning would be unknown in the United States. Indeed, the board has previously observed that 'it does not require any authority to conclude that Italian is a common, major language in the world and is spoken by many people in the United States.'" <i>Fiore</i>, 75 USPQ2d at 1568 citing (<i>In re Ithaca Indus., Inc.</i>, 230 USPQ 702, 704-05 (TTAB 1986)). Likewise, it is beyond dispute that there are many people in the United States who speak and read French. See generally <i>In re Thomas</i>, 79 USPQ2d 1021, 1024 (TTAB 2006) ("French is a common foreign language spoken by an appreciable segment of the population.").</p> <p>Lastly, the applied-for mark does not have such an obvious "look and feel" of a surname such that potential purchasers would overlook its French language meaning. The term "faucher" is spelled in the standard French dictionary form. Thus, there is no question of whether this term would be recognized in its current form as the French word meaning "to reap, mow, scythe".</p> <p>Considering all of the evidence of record it is clear that the applied-for mark is not <u>primarily merely</u> a surname. Applicant notes that it is the TTAB's practice is to resolve doubts about whether a term is a surname in favor of the applicant and for publication of the mark. See <i>In re United Distillers plc</i>, 56 USPQ2d 1220, 1222 (TTAB 2000); <i>In re S. Oliver Bernd Freier GmbH & Co.</i>, 20 USPQ2d 1878, 1879 (TTAB</p>	

1991). The fact that the Examining Attorney did not raise this refusal in the initial action alone is indicative of doubt as to its propriety.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_6580251229-110434112_ . s_English_French_Electronic_Dictionary_translation_-faucher.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT3\IMAGEOUT3\772\091\77209127\xml1\ROA0002.JPG
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DESCRIPTION OF EVIDENCE FILE	print-outs from various French-English Dictionaries
SIGNATURE SECTION	
RESPONSE SIGNATURE	/jmenker/
SIGNATORY'S NAME	James R. Menker
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	08/25/2008
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Aug 25 11:19:51 EDT 2008
TEAS STAMP	USPTO/ROA-XX.XX.XXX.XXX-2 0080825111951968499-77209 127-430867c696d8dffe932c8 25d13175a9580-N/A-N/A-200 80825110434112773

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **77209127** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Surname Refusal

The Examining Attorney belatedly refused registration of the applied-for mark under Section 2(e)(4) of the Trademark Act on the grounds that

the applied-for mark is primarily merely a surname. The Examining Attorney has failed to establish a *prima facie* case that the mark is primarily merely a surname. See *In re Etablissements Darty et Fils*, 225 USPQ 652, 653 (Fed. Cir. 1985). Moreover, the Examining Attorney has neglected to consider all of the evidence to determine ultimately whether the mark is primarily merely a surname. See *In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994). TMEP Section 1211.01(a)(vii) states that "[i]n determining whether a term is primarily merely a surname, the examining attorney must consider whether the term has any meaning in a foreign language." However, in this case, the Examining Attorney has failed to consider the meaning of the applied-for mark. Lastly, although the Examining Attorney recited the relevant factors for assessing whether a mark is primarily merely a surname, the Examining Attorney provided absolutely no analysis of those factors. Thus, the refusal under Section 2(e)(4) is improper and Applicant requests that it be withdrawn.

In support of this refusal, the Examining Attorney has proffered a whitepages.com listing of 40 individuals with the surname. The listing indicates that there are approximately 300 individuals with this surname. The mere listing of individuals with a particular surname does not establish a *prima facie* case that the applied-for mark is primarily merely a surname.

Even considering the scant evidence proffered by the Examining Attorney, it is clear that the applied-for mark is an extremely rare surname. The simple phone book listings do not show the existence of any individual of particular note with the FAUCHER surname such that the public would be conditioned to recognize this rare surname as a surname. See, e.g., *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004). Thus, the low number of individuals with the surname FAUCHER combined with the lack of notoriety of anyone with the surname FAUCHER establishes the rareness of the surname FAUCHER. See *In re Curlin Medical Inc.*, Serial No. 78560314 (Feb. 11, 2008) [not precedential] (the surname CURLIN was found to be rare where none of the 286 individuals with the surname were shown to have been the subject of media attention or publicity to the extent that the public perception of CURLIN would be affected).

Most important, the applied-for mark has a non-surname meaning and significance. A refusal under Section 2(e)(4) is proper only if the mark is primarily merely a surname. As the TMEP clearly explains "[i]f there is a readily recognized meaning of a term, apart from its surname significance, such that the primary significance of the term is not that of a surname, registration should be granted on the Principal Register without evidence of acquired distinctiveness." TMEP Sections 1211.01(a)(i). The first case cited in this section of the TMEP discussing this principle is *In re Isabella Fiore, LLC*, 75 USPQ2d 1564 (TTAB 2005) which held that FIORE is not primarily merely a surname where it is also the Italian translation of the English word "flower" and the non-surname meaning is not obscure. In this case, the accepted translation of the French term "faucher" is "to reap, mow, scythe". Print-outs from various French translation dictionaries are submitted herewith.

In *Fiore*, the Board noted that while it is the surname significance in the United States which is determinative of the registrability issue, "the fact that a term is a word in the Italian language does not mean that this meaning would be unknown in the United States. Indeed, the board has previously observed that 'it does not require any authority to conclude that Italian is a common, major language in the world and is spoken by many people in the United States.'" *Fiore*, 75 USPQ2d at 1568 citing (*In re Ithaca Indus., Inc.*, 230 USPQ 702, 704-05 (TTAB 1986)). Likewise, it is beyond dispute that there are many people in the United States who speak and read French. See generally *In re Thomas*, 79 USPQ2d 1021, 1024 (TTAB 2006) ("French is a common foreign language spoken by an appreciable segment of the population.").

Lastly, the applied-for mark does not have such an obvious "look and feel" of a surname such that potential purchasers would overlook its French language meaning. The term "faucher" is spelled in the standard French dictionary form. Thus, there is no question of whether this term would be recognized in its current form as the French word meaning "to reap, mow, scythe".

Considering all of the evidence of record it is clear that the applied-for mark is not primarily merely a surname. Applicant notes that it is the TTAB's practice is to resolve doubts about whether a term is a surname in favor of the applicant and for publication of the mark. See *In re United Distillers plc*, 56 USPQ2d 1220, 1222 (TTAB 2000); *In re S. Oliver Bernd Freier GmbH & Co.*, 20 USPQ2d 1878, 1879 (TTAB 1991). The fact that the Examining Attorney did not raise this refusal in the initial action alone is indicative of doubt as to its propriety.

EVIDENCE

Evidence in the nature of print-outs from various French-English Dictionaries has been attached.

Original PDF file:

[evi_6580251229-110434112 . s English French Electronic Dictionary translation - faucher.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

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SIGNATURE(S)

Response Signature

Signature: /jmenker/ Date: 08/25/2008

Signatory's Name: James R. Menker

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77209127

Internet Transmission Date: Mon Aug 25 11:19:51 EDT 2008

TEAS Stamp: USPTO/ROA-XX.XX.XXX.XXX-2008082511195196

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New Pocket Oxford-Hachette French Dictionary © 2005 Oxford University Press:

faucher /foʃe/ (conjugate⇒)

transitive verb

1. to mow;
to scythe;
2. [*car, bullet*] to mow [sb] down;
3. (*familiar*) to steal.

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'faucher' found in these entries:

English:
pinch

faucher:

Principal Translations/Principales traductions

faucher ⇒ v reap
faucher v behead (*chop off*)

Additional Translations:

faucher v scythe
faucher v knock down (*run over*)
faucher v knock down (*cut down*)
faucher v mow down (*cut off*)
faucher v cop
faucher (dans le sens de voler) v swipe
faucher (prendre, voler) *familiar* vtr hook (*pinch, nick colloquial, UK*)

Forums WR : discussions dont le titre comprend le mot "faucher".

Aucun titre ne contient le(s) mot(s) 'faucher'.

- Pour poser la question dans les forums
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