

## RESPONSE

Applicant respectfully requests that the Examining Attorney withdraw the refusal to register the subject mark because the applied-for-mark PEUGEOT is not primarily merely a surname and, even if it were, the term has secondary meaning verified by dictionary entries associating the term with Applicant, long-standing use of the mark for over 200 years, and ownership of incontestable registrations for the PEUGEOT mark.

### **I. The PEUGEOT Mark is Not Primarily Merely a Surname.**

The Office Action refused registration under Section 2(e)(4) on the basis that the term PEUGEOT is primarily merely a surname. “A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname.” *In Re Fair Isaac Germany GmbH, No. 87424333*, 2019 WL 6005583, at \*2 (May 28, 2019).

In determining whether the primary significance of a mark is perceived as a surname, the Trademark Trial and Appeal Board (the “Board”) has identified a non-exclusive list of five factors: (1) the degree of the surname’s “rareness”; (2) whether anyone connected with the applicant has the mark as a surname; (3) whether the mark has any recognized meaning other than as a surname; (4) whether the mark has the “look and sound” of a surname; and (5) whether the mark is sufficiently stylized that it would not be perceived as a surname. *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1333-34 (TTAB 1995).

The Trademark Office carries “the burden of establishing a prima facie case that [PEUGEOT] is ‘primarily merely a surname.’” *In Re Sava Research Corp.*, 32 U.S.P.Q.2d 1380 (T.T.A.B. 1994) (citing *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985)); *In Re Fair Isaac Germany GmbH, No. 87424333*, 2019 WL 6005583, at \*5 (May 28, 2019) (“Whether the primary significance of an applied-for mark is merely that of a surname is a question of fact, and the burden of marshalling those facts to make a prima facie case rests with the Examining Attorney.”); *see also, In re Hutchinson Tech. Inc.*, 852 F.2d 552, 554 (Fed. Cir. 1988). “If there is any doubt,” the issue must be resolved in favor of the Applicant. *In Re Fair Isaac Germany GmbH, No. 87424333*, 2019 WL 6005583, at \*2 (May 28, 2019) (citing *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995)).

Under the *Benthin* factors, Applicant respectfully submits that the Mark would not be perceived primarily merely as a surname because use of the term as a surname is extremely rare. The public is more likely to perceive of the term as a coined term.

Moreover, even if the term were considered primarily merely a surname, dictionary evidence, long-standing use, and ownership of incontestable registrations for the PEUGEOT mark verify secondary meaning. As a result, Applicant respectfully submits that the refusal to register under Section 2(e)(4) should be withdrawn.

**A. The Term PEUGEOT is Rarely Encountered as a Surname and, Therefore, Would Not Be Perceived of as Primarily Merely a Surname.**

The Office Action indicates that PEUGEOT “could be considered rare” based on the LexisNexis public records database, identifying 87 listings for the term PEUGEOT. At the outset, Applicant notes that entries on the list are actually duplicative. For example, the telephone number 913-831-3549 for the address 3214 Barber, Kansas City, KS 66106-2858 appears 5 times in the search results. The telephone number 419-636-4820 for the address 1101 Colonial, Bryan OH 43506-9744 also appears 5 times. The telephone number 913-390-5110 for the address 1401 E Butterfield, Olathe, KS 66062 appears 4 times with 2 additional entries identifying different phone numbers for that same address. In some instances, the search results list identical entries back to back, such as entries 18 and 19 or 65 and 66. Duplicative listings must be taken into account. *In Re Benthin Mgmt. Gmbh*, 37 U.S.P.Q.2d 1332, 1332 (T.T.A.B. 1995). Considering the duplicate entries, the referenced evidence actually verifies that the term would not be perceived as a surname.

The LexisNexis search results confirm that use of the term as a surname is extremely rare in the United States. Even assuming the evidence demonstrated 87 unique examples, given that the United States has a population of over 327 Million, 87 listings would establish that only .00000027% of the population of the United States has the surname PEUGEOT. Exhibit A (<https://www.census.gov/quickfacts/fact/table/US/PST045218>, last visited, December 18, 2019). As noted above, due to duplicate entries, the evidence relied upon indicates that the term is even more rare.

The Board has held that examining attorneys have erred in concluding that the primary significance of subject marks were perceived as surnames in numerous cases where there was far more evidence, and less rarity. In *United Distillers PLC*, recognizing the “massive scope” of the Phonedisc database, the Board held that the term HACKLER is a rare surname despite “1,295 listings” and numerous representative excerpts from Nexis articles showing “Hackler” as a person’s surname. 56 USPQ2d at 1221. In *Eximius Coffee*, the Board noted that the LexisNexis public records database showed approximately 950 listings for the surname ALDECOA in the U.S., which was evidence that ALDECOA is a surname “rarely encountered.” 120 USPQ2d at 1280-81. Just recently, in *Fair Isaac Germany*, the Board found 523 listings rare. *In Re Fair Isaac Germany Gmbh*, No. 87424333, 2019 WL 6005583, at \*5 (May 28, 2019). *See also, In Re Sava Research Corp.*, 32 U.S.P.Q.2d 1380 (T.T.A.B. 1994) (finding that over 100 different entries indicated that the term SAVA was rarely used as a surname considering the entries represented “only one ten-thousandth of one percent of the surnames in this data base.”). If 1,295 listings from the Phonedisc database and 950 listings from the Lexis public records database are considered evidence of the rarity of a surname, PEUGEOT must be considered extremely rare based on less than 87 unique listings from the LexisNexis database.

Additionally, PEUGEOT does not appear in resources that catalog surnames in the United States. For example, PEUGEOT does not appear in the online Dictionary of American Family Names (Oxford Univ. Press 2006). See Exhibit B (Search Results for “peu”). The Board, considering such evidence, has explained that surname dictionaries contain not only “major surnames,” but also “many rarer ones” (Introduction to A Dictionary of Surnames), and

cover “many diverse languages and dialects” (Preface to New Dictionary of American Names).” *In Re Benthin Mgmt. Gmbh*, 37 U.S.P.Q.2d 1332 (T.T.A.B. 1995). The absence of the term PEUGEOT in the Dictionary of American Family Names further verifies that the term would not be viewed primarily merely as a surname. Likewise, the term PEUGEOT does not appear in U.S. Census Bureau records tracking surnames that appear at least 100 times nationally. See <https://www2.census.gov/topics/genealogy/2010surnames/names.zip>, last accessed on December 18, 2019.<sup>1</sup>

Viewed in the proper context of the size of the U.S. population, with only a tiny fraction of the population using the term as a surname, the public would not be exposed to use of the term as a surname and would not perceive of the primary significance of the term PEUGEOT as a surname. The fact that PEUGEOT is rarely used as a surname and does not have broad public exposure as a surname weighs in favor of a finding that PEUGEOT is distinctive and registrable.

### **B. The Term PEUGEOT in Connection with Applicant.**

Applicant was founded over 200 years ago by Jean-Pierre Peugeot and Jean-Frédéric Peugeot. The business has grown substantially over two centuries with the corporate structure evolving over time. The Applicant is an investment firm and holding company with an interest in PSA Group, which is a French multinational manufacturer of automobiles and motorcycles sold under the PEUGEOT mark, along with other merchandising associated with the brand. The PSA group has a Supervisory Board that includes representatives of investors, employees, and the French State along with two descendants of the original founders. Applicant respectfully submits that in the context of a company of this size consumers at the point-of-purchase are not aware of the ownership interests and executive leadership within the corporation to associate the term PEUGEOT with particular directors or employees. This is particularly true in light of the fact that the term is so rarely used as a surname in the United States.

Even where a term is in fact the surname of someone connected with an applicant, that factor is not dispositive. Consumers may not perceive of a term as a surname even if the term may rarely be encountered as a surname. *In Re Okamoto Corp.*, No. 85739429, 2015 WL 910208, at \*5 (Feb. 6, 2015) (holding that the Examining Attorney failed to establish that the primary significance of OKAMOTO to the relevant purchasing public was that of a surname where OKAMOTO was the surname of the President of the company, but the surname was rare). “Given the rareness of the surname” as well as its look and sound, Applicant submits that PEUGEOT “would not be perceived as primarily merely a surname” weighing all of the factors despite being the surname of the founding members of the company over 200 years ago. *Fisher Radio Corp. v. Bird Electronic Corp.*, 162 U.S.P.Q. 265 (T.T.A.B. May 26, 1969); *In Re Benthin Mgmt. Gmbh*, 37 U.S.P.Q.2d 1332 at \*3 (T.T.A.B. 1995).

### **C. Recognized Meaning of PEUGEOT Other than as a Surname.**

Certain dictionaries include the term PEUGEOT defined as a term used to refer to goods

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<sup>1</sup> Applicant notes that the U.S. Census file identifying surnames occurring 100 times or more in the United States is several thousand pages and, therefore, was not attached as an exhibit. The file available through the link provided is searchable and a search for the term PEUGEOT yield no results.

manufactured by Applicant. See Exhibit C. These dictionary references provide a meaning other than as a surname by defining the term as a reference to Applicants goods. More importantly, this dictionary evidence verifies secondary meaning through public association of the term with Applicant. While the term does not appear in the dictionary referenced by the Examiner, where the term appears in a dictionary, the term is defined as Applicant's goods based on Applicant's trademark use.

As discussed above, PEUGEOT also does not appear in resources cataloging surnames in the United States, such as the Dictionary of American Family Names (Oxford Univ. Press 2006) or the 2010 Census. Because the general public is not exposed to the term as a surname, the public is more likely to view the term as a coined term associated with Applicant.

#### **D. The Structure and Pronunciation of the Term PEUGEOT.**

The structure and pronunciation of a surname is a "decidedly subjective" inquiry. *Eximius Coffee*, 120 USPQ2d at 1280 (quoting *Benthin*, 37 USPQ2d at 1333). As the Board explained in *Olin*, 124 USPQ at 1332, "applicants and examining attorneys may submit evidence that, due to a term's structure or pronunciation, the public would or would not perceive it to have surname significance." As noted above, the Examiner carries the burden to present evidence sufficient to establish a *prima facie* case that the term is primarily merely a surname.

Here, the Office Action indicates that the structure and pronunciation of the term PEUGEOT "does not lend the term to being confused with other terms with other meanings" without any supporting evidence or any explanation. The Office Action does not provide a rational basis for the conclusion that the structure and pronunciation of the term PEUGEOT creates the look and feel of a surname.

The term PEUGEOT does not adopt a prefix or suffix commonly associated with a surname. The Office has not provided any evidence to suggest that PEUGEOT looks or sounds like any other surname. The term may bear resemblance to "puget," like the Puget Sound, or "pugot" a type of fish. As noted above, use of the term PEUGEOT as a surname is extremely rare. The Dictionary of American Family Names does not include any surnames that adopt a similar structure or pronunciation. See Exhibit B. In light of this evidence that other surnames do not adopt a similar structure or pronunciation, this factor weights against a finding that PEUGEOT is primarily as a surname. At a minimum, this factor would be considered neutral in the absence of any evidence to suggest that the structure or pronunciation creates the look and feel of a surname.

#### **E. Because the Applied-for-Mark is a Standard Character Mark, Stylization is Neutral.**

Because the applied-for-mark is a standard character mark, the fifth factor considering stylization is not relevant and does not need to be considered. *In Re Fair Isaac Germany GmbH*, No. 87424333, 2019 WL 6005583, at \*2 (May 28, 2019). While the Office Action notes that Applicant did not incorporate additional stylization, Applicant notes that the factor does not weight against Applicant. Instead, the factor should not be considered.

Considering the other four factors, Applicant submits that PEUGEOT is not primarily merely a surname. Use of the term PEUGEOT as a surname is extremely rare. “Although *Benthin* sets forth a multi-factor test, the rarity of the surname is of particular importance.” *In Re Okamoto Corp.*, No. 85739429, 2015 WL 910208, at \*5 (Feb. 6, 2015).

In *Okamoto*, the Board reversed refusal to register OKAMOTO. *Id.* The term OKAMOTO was the surname of the President of the company and appeared as a surname in the Dictionary of American Family Names. *Id.* at \*3. The Examiner also submitted evidence of 2543 Lexis search results, articles evidencing use of the term as a surname, including references to actress Tao Okamoto, but the Board still considered the surname rare. *Id.* at \*3-4. The Examining Attorney submitted dictionary evidence to indicate that there was no recognized meaning of the term and the Board could not determine whether OKAMOTO had “a clear ‘look and feel’ as either that of a surname, or an arbitrary term.” *Id.* The Board concluded that “the Examining Attorney ha[d] not established that the primary significance of OKAMOTO to the relevant purchasing public is that of a surname.” *Id.* at \*5. In reaching this conclusion, the Board stressed the importance of the rarity of the surname. *Id.*

Here, the evidence indicates that the term PEUGEOT is more rare than the term OKAMOTO. The term does not appear in the Dictionary of American Family Names and the LexisNexis search revealed only a small number of search results. Dictionaries providing a non-surname meaning for the term define PEUGEOT as a term used for Applicant’s goods, not only providing a non-surname meaning, but also evidence of secondary meaning. The term PEUGEOT does not incorporate a structure or pronunciation similar to other surnames and no evidence has been provided in the record to suggest that the term has the look and feel of a surname. These factors weight against a finding that the term is primarily merely a surname even considering the surname of the founders of the company. *Id.* (holding that the Examining Attorney failed to establish that the primary significance of OKAMOTO to the relevant purchasing public was that of a surname where OKAMOTO was the surname of the President of the company, but the surname was rare).

Considering all of the factors taken as a whole, Applicant submits that the consuming public would not view PEUGEOT as a surname and requests that the refusal to register be withdrawn.

**F. Even if PEUGEOT were considered primarily merely a surname, PEUGEOT has established secondary meaning.**

As verified by the evidence relied upon in the Office Action, Applicant has used the PEUGEOT trademark for over 200 years. Applicant has provided dictionary entries defining the term as a term used to refer to Applicant’s goods. Exhibit C. Additionally, Applicant has claimed ownership of incontestable U.S. Registrations for the PEUGEOT mark, including U.S. Reg. Nos. 3,924,904 and 3,924,905, as well as PEUGEOT & Design, U.S. Reg. No. 5,705,905. The PEUGEOT mark has become distinctive by virtue of longstanding use as evidenced by ownership of the same mark on the Principal Register. Even if the term were considered primarily merely a surname, the record reflects that Applicant has established secondary meaning and the refusal to register should be withdrawn on that basis.

## II. Examiner's Inquiry

As discussed above, Applicant was founded over 200 years ago by Jean-Pierre Peugeot and Jean-Frédéric Peugeot. Within this long history, as the company has grown, the corporate structure has evolved. Applicant is an investment firm and holding company that with an ownership interest in FFP, which owns 9.3% of PSA Group, which is a French multinational manufacturer of automobiles and motorcycles sold under the PEUGEOT mark, along with other merchandising associated with the brand. The operating entity PSA Group has a Managing Board, a Global Executive Committee, and a Supervisory Board. See <https://www.groupe-psa.com/en/automotive-group/governance>, last accessed on December 18, 2019. The fifteen member Supervisory Board includes two members that are descendants of the original founders, Marie-Helene Peugeot-Roncoroni (identified in the Office Action) and Robert Peugeot, who serves as a member of the Supervisory Board. See <https://www.groupe-psa.com/en/automotive-group/governance/#supervisory-board>, last accessed on December 18, 2019. PSA Group has announced a merger with FCA (Fiat Chrysler Automobiles). See <https://www.groupe-psa.com/en/hp/psa-fca-merger-project>, last accessed on December 18, 2019. The proposed merger would restructure the board. *Id.*

As discussed above, although descendants of the original founders remain involved, in the context of a large company with a corporate structure involving many executives and interested parties, the public is not likely to associate the PEUGEOT mark with an individual board member or otherwise perceive of the mark as primarily merely a surname.

Even if the Office were to consider this association to be evidence that the PEUGEOT mark is primarily merely a surname, the evidence should be viewed in context. In *Okamoto*, even where a mark was the surname of the President of the company, with even more evidence of use of the term as a surname, the Board weighed all of the evidence to assess the perception of the relevant purchasing public and concluded that the public would not make that association. *In Re Okamoto Corp.*, No. 85739429, 2015 WL 910208, at \*5 (Feb. 6, 2015) (holding that the Examining Attorney failed to establish that the primary significance of OKAMOTO to the relevant purchasing public was that of a surname where OKAMOTO was the surname of the President of the company, but the surname was rare). Likewise, here, the surname of the founders of the company is not sufficient evidence that the relevant purchasing public would view the term as primary merely a surname.

Considering all of the factors as a whole, Applicant submits that the consuming public would not view PEUGEOT as a surname and requests that the refusal to register be withdrawn.

## **CONCLUSION**

Having responded to the Examining Attorney's Office Action, Applicant respectfully submits that the Application is now in proper condition for publication, notification of which Applicant requests at the Examining Attorney's convenience. If it would advance the prosecution of this Application, Applicant invites the Examining Attorney to telephone the undersigned at 314-335-6854.