

## RESPONSE

Applicant is pleased to note that the Examining Trademark Attorney has located no registered or pending mark that would bar registration of Applicant's AKIN mark.

The Trademark Office has initially refused registration of the subject trademark AKIN on the Principal Register on the ground that the mark is primarily merely a surname under Section 2(e)(4) of the Trademark Act. Applicant respectfully submits that the term AKIN as used in the subject mark is not primarily merely a surname for the reasons set forth below.

### **I. Legal Standard**

Marks which are "primarily merely a surname" may not be registered on the Principal Register unless they have acquired distinctiveness. *See* 15 U.S.C. § 1052(e) and (f); *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). "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." *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1480 (TTAB 2017).

In refusing registration of the mark AKIN under Section 2(e)(4), the Trademark Examining Attorney has the burden to show that the primary significance of AKIN to the purchasing public is primarily merely as a surname. *See Darty*, 225 USPQ at 653; and *In re Eximus Coffee, LLC*, 120 USPQ2d 1276, 1278 (TTAB 2016).

Applicant respectfully traverses the Examining Trademark Attorney's refusal to register, and requests reconsideration thereof.

## II. Discussion

The Trademark Trial and Appeal Board has identified five inquiries that may lead to evidence regarding the public's perception of a mark's primary significance: (1) whether the surname is rare; (2) whether the term is the surname of anyone connected with the applicant; (3) whether the term has any recognized meaning other than as a surname; (4) whether it has the "structure and pronunciation" of a surname; and (5) whether the stylization of lettering is distinctive enough to create a separate commercial impression. For the reasons presented below, Applicant submits that the United States Patent and Trademark Office has failed to meet its burden to establish a *prima facie* case that the mark AKIN as applied to legal services is primarily merely a surname.

In this case, the Trademark Examining Attorney contends that there exist 21,704 listings for AKIN in a Lexis/Nexis surname database.<sup>1</sup> The current population of the U.S. is over 333 million as of July 1, 2022. See **Tab A** ([www.census.gov/quickfacts/fact/table/US/PST045221](http://www.census.gov/quickfacts/fact/table/US/PST045221), obtained on February 17, 2023). Even if the Lexis/Nexis data were reliable, it is a *de minimis* showing out of 333 million people and falls short of establishing that the relevant public would, therefore, perceive AKIN primarily as merely a surname. See *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F. 2d 831 (CCPA 1975) (burden cannot be shifted to the applicant upon merely showing that a surname listing exists); and *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975).

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<sup>1</sup> Only 121 of such references are of record. Of those 121 records, some are duplicate entries. See entries 39 and 40. It is not possible to determine how many other duplicate records may be among the results, particularly since some of the records list only a city and state, and not a specific street address. Accordingly, such evidence has limited probative value.

As shown by the Trademark Examining Attorney's own evidence, AKIN is a rare surname. Statistically, the evidence of record shows such a low percentage that for all practical purposes, there cannot be any other reasonable conclusion except that the general public will not view AKIN as a primarily merely a surname. See *In re Joint-Stock Co. "Baik,"* 84 USPQ2d 1921, 1924 (TTAB 2007) (finding the extreme rarity of BAIK weighed against surname refusal); *In re Benthin Mgmt. GmbH,* 37 USPQ2d 1332, 1333 (TTAB 1995) (finding the fact that BENTHIN was a rare surname to be a factor weighing against a finding that the term would be perceived as primarily merely a surname); and *In re Garan Inc.,* 3 USPQ2d 1537 (TTAB 1987) (holding GARAN not primarily merely a surname). Therefore, the mere fact that "AKIN" may be the surname of a small population sample in the U.S. does not weigh in favor of finding AKIN primarily merely a surname, particularly when other factors for which there is evidence (as discussed below) also favor Applicant.

In addition to being a rare surname, AKIN is not the surname of any attorney who is currently working for Applicant.<sup>2</sup> This factor also favors the finding that the mark is not primarily merely a surname, or is at least neutral.

The term "AKIN" also has alternative meanings that are relevant given its relative rarity as a surname. For example, AKIN means "related by blood", or "essentially similar, related or compatible." See attached at **Tab B** (web site printouts obtained on February 16, 2023). Given these recognized alternative meanings, the subject mark AKIN is not primarily merely a surname. See *In re United Distillers plc,* 56 USPQ2d 1220 (TTAB 2000) (holding the relatively rare surname HACKLER not primarily merely a surname, in light of dictionary meaning); *Fisher Radio Corp. v. Bird Elec. Corp.,* 162 USPQ 265 (TTAB 1969)

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<sup>2</sup> Henry Akin passed away more than 23 years ago. See attachment to Office action.

(holding BIRD not primarily merely a surname despite surname significance); and *In re Hunt Elecs. Co.*, 155 USPQ 606 (TTAB 1967) (holding HUNT not primarily merely a surname despite surname significance).

Further, there is nothing in the record that supports the conclusion that the mark AKIN has the “structure and pronunciation” of a surname. Indeed, AKIN does not have the “look and feel” of a surname, particularly given its recognized multiple dictionary meanings. *See In re United Distillers plc*, 56 USPQ2d 1220, 1222 (TTAB 2000) (finding HACKLER does not have the look and feel of a surname).

Given that the subject application was filed in standard characters, there is no stylization that is relevant to the present analysis. *See In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007) (noting that where the mark is in standard characters, it is unnecessary to consider the fifth factor).

In summary, the evidence of record does not establish a *prima facie* case under Section 2(e)(4). AKIN is a rare surname in the United States, said term has alternative meanings, and AKIN does not have the look and structure of a surname. Therefore, AKIN is not primarily merely a surname under Section 2(e)(4) and is eligible for registration on the Principal Register without a showing of secondary meaning. *See In re Sava Research Corp.*, 32 USPQ2d 1380, 1381 (TTAB 1994) (finding SAVA not primarily merely a surname, where there was evidence that the term had other meaning, no evidence that the term was the surname of anyone connected with applicant, and the term’s use as a surname was very rare).

If there were any doubt as to whether AKIN is primarily merely a surname, such doubt must be resolved in favor of Applicant. *See In re Yeeley*, 85 USPQ2d 1150, 1151 (TTAB 2007);

*In re Benthin Mgmt, GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995). In view of the submission herein, Applicant respectfully requests that the refusal to register be withdrawn.

### **III. Formalities**

Applicant requests that the statement of use of the mark in a different form be deleted from the application.

Finally, Applicant's state of formation – Texas – was inadvertently omitted from the application. The application has been amended accordingly.

Based on the submission herein, Applicant respectfully requests that this application be passed to publication. Prompt notification of same is respectfully requested.