Chapman CBC, LLC (“Applicant”) seeks registration on the Principal Register of the proposed mark CHAPMAN CRAFTED BEER COMPANY (in standard characters) for “Beer” in International Class 32.1

The Trademark Examining Attorney refused registration under Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4), on the ground that Applicant’s proposed

1 Application Serial No. 86124155 was filed on November 20, 2013, based upon applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The wording CRAFTED BEER COMPANY has been disclaimed.
mark is primarily merely a surname. When the refusal was made final, Applicant appealed to this Board and simultaneously filed a request for reconsideration. The Examining Attorney denied the request for reconsideration and this appeal resumed.

We affirm the refusal to register.

I. Section 2(e)(4) Surname Refusal

Section 2(e)(4) of the Trademark Act precludes registration on the Principal Register of a mark that is primarily merely a surname without a showing of acquired distinctiveness under Section 2(f) of the Act, 15 U.S.C. § 1052(f). “The test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public.” In re Hutchinson Tech. Inc., 852 F.2d 552, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988) (footnote omitted). This expression of the test restates the rule set forth in In re Kahan & Weisz Jewelry Mfg. Corp., 508 F.2d 831, 184 USPQ 421, 422 (CCPA 1975) (“[A] correct resolution of the issue can be made only after the primary significance of the mark to the purchasing public is determined ...”); and In re Etablissements Darty et Fils, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). Our focus, then, is on whether the purchasing public for an applicant’s goods or services is more likely to perceive the applicant’s proposed mark as only a surname than as something else. See Miller v. Miller, 105 USPQ2d 1615, 1620 (TTAB 2013); In re Yeley, 85 USPQ2d 1150, 1151 (TTAB 2007); In re United Distillers plc, 56 USPQ2d 1220, 1221 (TTAB 2000).

Whether the primary significance of an applied-for mark is merely that of a surname is a question of fact and “can only be resolved on a case by case basis.” In re
Établissements Darty et Fils, 225 USPQ at 653-54. In In re Benthin Mgmt. GmbH, 37
USPQ2d 1332, 1333-34 (TTAB 1995), the Board identified several examples of
inquiries or “factors” that may lead to evidence regarding whether the primary
significance of a term to the purchasing public is merely as a surname.2

Before we examine the evidence of record, some observations are in order. First,
the Benthin factors are not exclusive nor presented in any order of importance, and
we therefore recognize that in any particular case, one or another factor may be more
important, or even outcome determinative, and other relevant circumstances may
shape the analysis. Second, the rareness factor must focus not only on the frequency
with which a surname appears in, for example, census records, but also on the extent
to which members of the consuming public can be presumed to have been exposed to
the surname. See In re Gregory, 70 USPQ2d 1792, 1795 (TTAB 2004) (“A surname
rarely appearing in birth records may nonetheless appear more routinely in news
reports, articles and the like, so as to be broadly exposed to the general public.”). Third, whether “anyone connected with applicant” has the surname must be analyzed
in the context of whether the connection would be known to the consuming public, for
an unknown (or unproven) connection can scarcely affect consumer perception.
Finally, the question whether a surname has other meanings will require

2 In Benthin, the Board stated that factors to be considered in determining whether a term is
primarily merely a surname include (1) the degree of a surname’s rareness; (2) whether
anyone connected with applicant has that surname; (3) whether the term has any recognized
meaning other than that of a surname; (4) whether the term has the “structure and
pronunciation” of a surname; and (5) whether the stylization of lettering is distinctive enough
to create a separate commercial impression. Where, as here, the mark is in standard
characters, it is unnecessary to consider the fifth factor. In re Yeley, 85 USPQ2d at 1151.
consideration of whether the other meanings would be commonly known or are obscure. See In re Établissements Darty et Fils, 225 USPQ at 653 (for a surname with an “ordinary language meaning” that “is likely to be the primary meaning to the public,” but “where no common word meaning can be shown, a more difficult question must be answered”).

As to the first factor, involving the number of persons with, and the prevalence with which “Chapman” is used as a surname, the Examining Attorney submitted information taken from the year 2000 United States Census, ranking “Chapman” as number 218 of the “most common surnames,” with 124,614 occurrences of the surname.3 The Examining Attorney also submitted the results of a search of the surname “Chapman” from whitepages.com showing 177,641 people in the United States with the surname, ranked as number 214 in prevalence, and indicating that there are individuals with the surname “Chapman” in every state.4 In addition, the record shows that notable individuals with the surname “Chapman” include Frank Michler Chapman (an American ornithologist), George Chapman, (English dramatist and translator) and Johnny Appleseed Chapman, (American pioneer).5 Thus, the surname “Chapman” “is not so unusual that such significance would not be recognized by a substantial number of persons.” See In re Établissements Darty et Fils, 225 USPQ at 653.

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Applicant has made no argument regarding the first factor.

As to the second factor, Applicant asserts that there are no persons connected or involved with Applicant with the surname “Chapman,” and that therefore this factor weighs in favor of registration. However, as the Examining Attorney points out, the fact that “Chapman” is not Applicant’s surname, or the surname of one of its officers or employees, does not establish one way or another whether the proposed mark would be perceived as a surname. *In re Gregory*, 70 USPQ2d at 1795.

As to the third factor, Applicant argues that “Chapman” has a “vast variety of alternative meanings,” including the alternate meaning of merchant, the name of a university, the geographical name for cities in the United States, Canada, Australia and South Africa, a boating reference work, a species of bird, a musical instrument, a mathematical formula, an automobile suspension device, a Scottish literary journal, and a Swedish youth hostel. Applicant submits that it is presenting the term “Chapman” in a manner “that enhances the non-surname significance,” namely as merchant or peddler. Applicant also contends that “Chapman” will not be perceived by the public as primarily merely a surname due to the existence of these assertedly common non-surname usages.

While dictionary definitions are generally relevant, here the definition of “chapman” as “merchant, trader” is specifically described by the dictionary as “archaic.” Therefore, it is not persuasive in establishing that a substantial portion of

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6 9 TTABVUE 8.
the general public is aware of this non-surname meaning, especially where the surname meaning has been established to be current and fairly common.\(^8\) See e.g., \textit{In re Hershey}, 6 USPQ2d 1470, 1471 (TTAB 1988) (because reference in slang dictionary indicated that use of term was becoming archaic, definition did not carry great weight in determining whether general public recognized the term as a slang word). As to Applicant’s reference to Chapman University, the record reflects that the founder was Charles Chapman, and it is likely the public would view “Chapman” in this context as a surname.\(^9\) As to the other alternative meanings suggested by Applicant, such as geographical place names and things, it is significant that for most of these alternate meanings, the term “Chapman” is coupled with the place or thing so named.\(^10\) While the existence of places and things with the name “Chapman” in the United States\(^11\) can be considered, their existence may actually support the conclusion that “Chapman” would be viewed as a surname by individuals familiar with these places or things. See \textit{In re Harris-Intertype}, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (cities, counties, streets, lakes and other things may derive their names from an individual’s name); \textit{In re Isabella Fiore LLC}, 75 USPQ2d 1564, 1567 (TTAB 2005) (“It

\(^8\) In Middle English, Chapman was an occupational name for a merchant or trader. June 5, 2014 Office Action, TSDR, p.12; Request for Reconsideration, 4 TTABVUE 12.

\(^9\) Request for Reconsideration, 4 TTABVUE 37.

\(^10\) In the case of cities in the United States, Chapman is used alone. Request for Reconsideration, 4 TTABVUE 39-40.

\(^11\) The apparent existence of places and things named “Chapman” that are not in the United States is not evidence that consumers in the United States will perceive “Chapman” as having a non-surname meaning. \textit{In re Sava Research Corp.}, 32 USPQ2d 1380, 1381 (TTAB 1994).
would hardly be surprising that a surname also identified streets, villas, or towns and such minor geographic occurrences do not demonstrate that the term is not primarily a surname.”). Moreover, despite Applicant’s assertion to the contrary, there is nothing in the record to show significant public recognition of these geographical place names such that these alternate meanings would overshadow the surname significance of the term “Chapman.” *In re Gregory*, 70 USPQ2d at 1796.

As to Applicant's evidence that “Chapman” has significance as a boating reference, a species of bird, a musical instrument, a mathematical formula, and an automobile suspension device, there is nothing in the record to indicate that these meanings are readily recognized by the average consumer, and it is not sufficient for Applicant to simply uncover other meanings of the term when the surname significance predominates. *In re Nelson Souto Major Piquet*, 5 USPQ2d 1367, 1367-68 (TTAB 1987). We do not believe that these other meanings of the term “Chapman” are sufficient to call into question its significance as “primarily merely a surname.” See *e.g.*, *In re Harris-Intertype*, 186 USPQ at 239; *In re The British Oxygen Company Limited*, 161 USPQ 242 (TTAB 1969) (significance of “Boyle” in Boyle’s Law and Boyle temperature is clearly that of a surname); *In re United States Catheter & Instrument Corporation*, 158 USPQ 52 (TTAB 1968) (surnames of doctors may become accepted type designations for medical or surgical appliances). That is, none of this evidence shows that “Chapman” has another common meaning such that it is likely to be the primary meaning to the public. *See e.g.*, *Fisher Radio Corp. v. Bird Elec. Corp.*, 162
USPQ 265, 266-67 (TTAB 1969) (BIRD not primarily merely a surname due to ordinary language meaning of “bird”).

In short, while Applicant argues that purchasers would not perceive “Chapman” as a surname because of the alternative meanings for “Chapman,” the surname significance of “Chapman” is far more common and predominates. In re Hamilton Pharmaceuticals Ltd., 27 USPQ2d 1939, 1943 (TTAB 1993) (fact that Hamilton has some minor significance as geographical term does not dissipate its primary significance as a surname).

As to the fourth factor12, there is no evidence in the record to give the structure and pronunciation of “Chapman” any weight in the determination.13

Upon consideration of the record as a whole, and taking into consideration all relevant factors, we find that the primary significance of “Chapman” to the purchasing public is that of a surname.

As for whether CHAPMAN CRAFTED BEER COMPANY is primarily merely a surname, the terms “Crafted Beer Company” do not diminish the applied-for mark’s primary significance as a surname. See Hutchinson Tech., 7 USPQ2d at 1492 (when assessing whether the public will view a mark primarily as a surname, the “mark sought to be registered must be considered in its entirety”). In this case, Applicant disclaimed “Crafted Beer Company.” “Craft beer” or “Crafted beer” is a generic term

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12 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.

13 Applicant has made arguments related to this factor in the context of the “vast variety of alternative meanings.” 9 TTABVUE 9.
for Applicant’s beer.14 “Combining the surname with the generic name for the [goods or] services does not overcome a mark’s surname significance.” *Miller v. Miller*, 105 USPQ2d at 1622. The disclaimed term “Company” also does not change the surname significance of “Chapman” as “Company” is an entity designation and incapable of rendering source. *In re I. Lewis Cigar Manufacturing Co.*, 205 F.2d 204, 98 USPQ 265, 267 (CCPA 1953).” In addition, the presence of the term “Company” reinforces the surname significance of “Chapman.” See *In re Giger*, 78 USPQ2d 1405, 1409 (TTAB 2006) (discussing cases regarding titles such as MD. and other indicia which reinforce surname meaning). Considering the mark as a whole, in the context of Applicant’s goods, we find that Applicant’s proposed mark CHAPMAN CRAFTED BEER COMPANY does not engender a consumer perception beyond that of a surname.

II. Conclusion

Given our findings that “Chapman” would be perceived primarily as a surname and that its combination with the terms “Crafted Beer” and “Company” does not detract from or change the surname significance conveyed by the mark as a whole, we find that consumers would perceive CHAPMAN CRAFTED BEER COMPANY as primarily merely a surname.

**Decision:** The refusal to register is affirmed.

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14 Craft beer is defined as a “specialty beer produced in limited quantities.” March 13, 2014 Office Action. TSDR, p.2.