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Mailed: October 31, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Ruxton Pharmaceuticals, Inc.

Serial No. 78496761

Nicole K. McLaughlin of Duane Morris LLP for Ruxton
Pharmaceuticals, Inc.

Marcie R. Frum Milone, Trademark Examining Attorney, Law Office
116 (Michael W. Baird, Managing Attorney).

Before Hohein, Kuhlke and Walsh, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

An application has been filed by Ruxton Pharmaceuticals,
Inc. to register the mark RUXTON PHARMACEUTICALS (in standard
character form) for goods ultimately identified as
"Pharmaceutical products and preparations for the treatment and
prevention of central nervous system diseases, namely,
neurodegenerative, cognitive, psychiatric and pain disorders;
cardiovascular anti-inflammatory and anti-infective

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pharmaceuticals and preparations" in International Class 5.¹ In response to the examining attorney's request, applicant disclaimed the word PHARMACEUTICALS.

The examining attorney has refused registration under Section 2(e)(4) of the Trademark Act (15 U.S.C. §1052(e)(4)) on the ground that RUXTON is primarily merely a surname.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

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. See *In re United Distillers plc*, 56 USPQ2d 1220 (TTAB 2000). The inclusion in the mark of a generic term "does not preclude its surname significance, if, when considered as a whole the primary significance of the mark to the purchasing public is that of a surname." *In re Hamilton Pharmaceuticals Ltd.*, 27 USPQ2d 1939, 1940 (TTAB 1993). The burden is on the examining attorney to establish a prima facie case that a term is primarily merely a surname. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). Among the factors to be considered in determining whether a term is primarily merely a surname are (1) the degree of a surname's rareness; (2) whether

¹ Application Serial No. 78496761, filed October 8, 2004, claiming a bona fide intention to use the mark in commerce under Trademark Act Section 1(b) (15 U.S.C. §1051(b)).

anyone connected with applicant has that surname; (3) whether the term has any recognized meaning other than that of a surname; and (4) whether the term has the "look and sound" of a surname. See *In re Benthin Management GmbH*, 37 USPQ2d 1332, 1333 (TTAB 1995). See also *In re Gregory*, 70 USPQ2d 1792 (TTAB 2004).

In support of her contention that RUXTON is a surname, the examining attorney provided a listing of 115 entries for individuals with the surname RUXTON retrieved from the Lexis/Nexis USFIND database.² The examining attorney also submitted pages from various websites that show RUXTON used as a surname. See, e.g., surnames.heritagecreations.com; ruxtonbrothers.com; amazon.com; antiques-colorado.com; genforum.genealogy.com; ancestry.com; andoverstownman.com; houseofnames.com; nytimes.com; and chenowithsite.com. In addition, she submitted two third-party registrations which issued under Section 2(f) based on a showing of acquired distinctiveness. She also submitted Lexis/Nexis printouts of excerpted articles from various publications that show several individuals throughout the United States who have the surname RUXTON.

² In reviewing this evidence, we have disregarded any duplicate references to the same individuals in the USFIND database.

In support of her position that RUXTON has no other meaning, she submitted the "results of a search in the Columbia Gazetteer, which showed that a geographic search for RUXTON did not produce any results." In addition, she submitted "a full search at Bartleby.com show[ing] a hit for RUXTON used solely as a surname," and noted that RUXTON "would have appeared with a definition in this search, if, indeed, it were a defined term." Br. unnumbered p. 5.

Finally, in support of her argument that RUXTON has the look and feel of a surname, the examining attorney submitted search results from the Lexis/Nexis PFIND database for the surnames BRAXTON, BUXTON, RUX, and ROXTON.

As to the meaning of the word PHARMACEUTICALS the examining attorney submitted the following dictionary definitions:

PHARMACEUTICAL adj. Connected with the production of medicines n. a medicine. Dictionary.cambridge.org (Cambridge University Press 2004); and

PHARMACEUTICAL adj. of or relating to pharmacy or pharmacists. n. a pharmaceutical product or preparation. The American Heritage Dictionary of the English Language (4th ed. 2000).

Applicant submitted excerpts from the Dictionary of American Family Names (2003); American Surnames (1969); and A Dictionary of Names, Nicknames and Surnames (1904 repub. 1966), noting that none of these sources lists RUXTON as a surname. However, the Dictionary of American Family Names does list RUXTON as a

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surname. Applicant also notes a third-party registration for RUXTON that was not registered pursuant to Section 2(f); however, applicant did not submit a copy of this registration. In addition, applicant submitted printouts from www.whitepages.com which show that RUXTON is not listed as a surname in the town or zip code where applicant's corporation is located. Applicant also submitted a printout of the search results showing no records for the name RUXTON retrieved from the website mongabay.com which purports to contain the most common surnames in the United States and a printout from www.namestatistics.com which includes a statement that RUXTON is a "very rare last name."

In support of its contention that RUXTON has other meanings, applicant submitted excerpts from search results retrieved from the Google search engine which show RUXTON used as a surname, as a geographic location and as part of a company or school name, e.g., RUXTON MEDIA GROUP; a printout from mapquest.com showing RUXTON as the name of a town and creek in Colorado and a city in Maryland; and an article retrieved from a Canadian online auto magazine that mentions the RUXTON car named after a William Ruxton and produced for approximately one year. Finally, applicant also states that no one in the corporation "possesses the name 'Ruxton.'"

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