

**To:** JOEL R. FELDMAN([atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com))  
**Subject:** U.S. Trademark Application Serial No. 90695813 - BERCKMANS - 209914010100  
**Sent:** July 28, 2023 02:14:01 PM EDT  
**Sent As:** [tmng.notices@uspto.gov](mailto:tmng.notices@uspto.gov)

#### Attachments

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[screenshot-augusta-com-masters-story-news-family-history-brings-berckmans-descendant-masters-16802920943231](#)  
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**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 90695813

**Mark:** BERCKMANS

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**Applicant:** Berckmans Spirits, LLC

**Reference/Docket No.** 209914010100

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## REQUEST FOR RECONSIDERATION AFTER FINAL ACTION DENIED

**Issue date:** July 28, 2023

**Applicant's request for reconsideration is denied.** See 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1)

raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

### **Application History:**

In an Office action dated January 25, 2022, the examining attorney refused registration of the applied-for-mark based Section 2(d)-Likelihood of Confusion Refusal and 2(e)4- Primarily Merely a Surname Refusal.

In a Final Office Action sent on September 6, 2022, the examining attorney refused registration of the applied-for-mark based on the following Section 2(d)-Likelihood of Confusion Refusal and 2(e)4- Primarily Merely a Surname Refusal.

The following refusal has been withdrawn: Section 2(d) - Likelihood of Confusion Refusal with U.S. Registration No. 4529896

Accordingly, the following refusal made final in the Office action dated September 6, 2022 are **maintained and continued:**

- 2(e)4- Primarily Merely a Surname Refusal

See TMEP §§715.03(a)(ii)(B), 715.04(a).

The examining attorney responds to applicant's arguments below:

### **2(e)4-Primarily Merely a Surname Arguments**

Applicant argues that any doubt must be resolved in the applicant's favor, and if there is a doubt as to whether a term is primarily merely a surname, the Board will resolve the doubt in favor of the applicant. However, in the present case, the evidence of record leaves no doubt that the mark is a surname. The examining attorney has previously attached evidence from *OneLook*, which is a database featuring dictionary searches of over 1000 dictionary indexes. The search from *OneLook* demonstrates that only one hit comes up for the applied-for-mark, and when that link is clicked on, no dictionary evidence is found. This evidence supports the fact that there is no other meanings or definitions of "BERCKMANS" other than a surname.

However, if there were other meanings of the mark, the existence of other non-surname meanings of a mark does not preclude the mark from being held primarily merely a surname. *Miller v. Miller*, 105 USPQ2d 1615, 1620-21 (TTAB 2013); see *In re Harris-Intertype Corp.*, 518 F.2d 629, 631, 186 USPQ2d 238, 239 (C.C.P.A. 1975); *In re Hamilton Pharms. Ltd.*, 27 USPQ2d 1939, 1942 (TTAB 1993). The issue is not whether a mark that has surname significance might also have a non-surname significance, but whether, in the context of an applicant's goods or services, the non-surname significance is the mark's primary significance to the purchasing public. *Miller v. Miller*, 105 USPQ2d at 1621; see *In re Harris-Intertype Corp.*, 518 F.2d at 631, 186 USPQ2d at 239; *In re Hamilton Pharms. Ltd.*, 27 USPQ2d at 1942.

Applicant argues that the surname is rare. As mentioned in previous office actions, the issue of determining whether a surname is common or rare is not determined solely by comparing the number

of listings of the surname to the total number of listings in a computerized database, because even the most common surname would represent only a small fraction of the database. *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004). Rather, if a surname appears routinely in news reports or articles and receives media publicity so as to be broadly exposed to the general public, then such surname is not rare and its primary significance to purchasers would be that of a surname, such as in this case. *See In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1551 (TTAB 2017); *In re Gregory*, 70 USPQ2d at 1795; TMEP §1211.01(a)(v).

The previous attached evidence from various news articles, and the newly attached evidence from *Bevnet*, *Augusta.com*, *Draft Kings*, *The San Diego Union Tribune*, *Kingdom*, and *WJBF*, and *Berckmans* demonstrate that “BERCKMANS” often appears in the media and thus, such surname is not rare and its primary significance to purchasers would be that of a surname. These articles all reference PJ Berckmans, his legacy and impact on the community, not only in Augusta, GA, but in the nation as well. Furthermore, PJ Berckmans is publicly associated with the business in which the mark is being used, as the evidence from *Bevnet* shows. A determination that a person is publicly connected with the business in which the mark is being used may be based on evidence that the named individual is well known in the relevant field of goods or services, is associated in some manner with the applicant (e.g., the named individual is a corporate officer or partner of the applicant), and/or is actually connected to the goods or services at issue (e.g., the named individual invented the identified goods in the application), and, as a result, the relevant public will recognize or perceive the name as identifying that particular individual. *See Krause v. Krause Publ’ns Inc.*, 76 USPQ2d 1904, 1909-10 (TTAB 2005); *In re Sauer*, 27 USPQ2d 1073, 1075 (TTAB 1993); TMEP §1206.02.

There is no rule as to the kind or amount of evidence necessary to show that relevant consumers will perceive the applied-for mark as primarily merely a surname. *In re Six Continents Ltd.*, 2022 USPQ2d 135, at \*4 (TTAB 2022); *In re tapio GmbH*, 2020 USPQ2d 11387, at \*8 (TTAB 2020); TMEP §1211.01. Each case is decided on its own facts, based on the evidence of record. TMEP §1211.01; *see In re tapio GmbH*, 2020 USPQ2d 11387, at \*8 (citing *In re Etablissements Darty et Fils*, 759 F.2d 15, 17, 225 USPQ 652, 653 (Fed. Cir. 1985)). The following are examples of evidence that is generally considered to be relevant to such a determination: telephone directory listings, excerpted listings and articles from computerized research databases, applicant’s website, evidence in the application record showing the term used as a surname, the manner of use on specimens, dictionary definitions of the term and evidence from dictionaries showing no definition of the term. *See* TMEP §1211.02(b)(i)-(b)(iii), (b)(v)-(b)(vi).

Applicant states that any doubt should be resolved in applicant's favor. However, in the present case, the evidence of record leaves no doubt that the mark is primarily merely a surname.

For the foregoing reasons, the request for reconsideration is DENIED.

**If applicant has already filed an appeal** with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

**If applicant has not filed an appeal** and time remains in the response period for the final Office action, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) [file a notice of appeal](#) to the Board. TMEP §715.03(a)(ii)(B).

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# Berckmans

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## Definitions

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## Etymologies

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## Examples

"We've received orders to cut back on unnecessary expenses, and that only happens when things are bad," said Catherine **Berckmans**, a lobbyist for GM in Brussels.

*Companies in Europe Are Pulling Back*

Vanfleteren photographs real life outcasts and misfits of the kind featured in the novels of **Berckmans**.

*01 « September « 2008 « Jahsonic*

Magnolia Lane, which leads to the clubhouse, and went on down the corner to **Berckmans**

*Journeyman starts with early lead*

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