

To: Interbalt Products Corp. (Barbara@Berschlerlaw.com)
Subject: TRADEMARK APPLICATION NO. 77111874 - 605/B/2
Sent: 5/23/2007 11:24:36 AM
Sent As: ECOM111@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/111874

APPLICANT: Interbalt Products Corp.

77111874

CORRESPONDENT ADDRESS:

BARBARA I. BERSCHLER
LAW OFFICE OF BARBARA I. BERSCHLER
1700 ROCKVILLE PIKE STE 400
ROCKVILLE, MD 20852-1631

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK:

CORRESPONDENT'S REFERENCE/DOCKET NO: 605/B/2

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

Barbara@Berschlerlaw.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 77/111874

The assigned examining attorney has reviewed the referenced application and determined the following.

Registration Refused – Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 3155702 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

The applicant has applied to register "The mark consists of a leather-like textured covering on the surface of a bottle of wine, brandy or grappa. The dotted line in the drawing is not a feature of the mark but is intended to show the location of the mark on a typical container of the goods; the darkened lower portion of the container drawing shows the mark. The stippling in the drawing is not a feature of the mark, but a representation of how one type of leather-like textured covering may appear in visual form. The mark is a visual and sensory to the touch mark" for brandy, grappa, and wines.

The registered mark is "The mark consists of a velvet textured covering on the surface of a bottle of wine. The dotted line in the drawing is not a feature of the mark but is intended to show the location of the mark on a typical container for the goods; the dark/lower part of the container drawing shows the mark" for wines.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion.

First, the marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

Regarding the issue of likelihood of confusion, the question is not whether people will confuse the marks, but whether the marks will confuse people into believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 USPQ 558 (C.C.P.A. 1972). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 54 USPQ2d 1894, 1890 (Fed. Cir. 2000); *Visual Information Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975); TMEP §1207.01(b). Although the coverings are different materials, both are highly textured and closely cover the glass wine container. The marks are therefore highly similar in appearance. The first condition in the analysis is met. Second, the examining attorney must compare the goods or services to show whether they are related in some manner. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

The goods at issue are all wine. Purchasers could mistakenly believe that the goods come from a

common source. The second condition in the analysis is met.

The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i). Therefore, the examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 3155702 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* If the applicant has any questions or needs assistance in responding to this Office action, please contact the assigned examining attorney.

/allison holtz/
Allison Holtz
Trademark Examining Attorney
Law Office 111
allison.holtz@uspto.gov
571-272-9383

NOTICE OF NEW PROCEDURE FOR E-MAILED OFFICE ACTIONS: In late spring 2007, for any applicant who authorizes e-mail communication with the USPTO, the USPTO will no longer directly e-mail the actual Office action to the applicant. Instead, upon issuance of an Office action, the USPTO will e-mail the applicant a notice with a link/web address to access the Office action using Trademark Document Retrieval (TDR), which is located on the USPTO website at <http://portal.uspto.gov/external/portal/tow>. The Office action will not be attached to the e-mail notice. Upon receipt of the notice, the applicant can then view and print the actual Office action and any evidentiary attachments using the provided link/web address. TDR is available 24 hours a day, seven days a week, including holidays and weekends. This new process is intended to eliminate problems associated with e-mailed Office actions that contain numerous attachments.

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing.

37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: May 23, 2007

76634174

DESIGN MARK

Serial Number

76634174

Status

REGISTERED

Registration Number

3155702

Date Registered

2006/10/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(2) DESIGN ONLY

Owner

American Wholesale Wine & Spirits, Inc. CORPORATION ILLINOIS 4300
Regency Dr. Glenview ILLINOIS 60025

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Wines. First
Use: 2003/07/13. First Use In Commerce: 2003/07/13.

Lining/Stippling Statement

The stippling in the drawing is not a feature of the mark, but a
representation of how one type of velvet covering may appear in visual
form. The mark is a sensory, touch mark.

Description of Mark

The mark consists of a velvet textured covering on the surface of a
bottle of wine. The dotted line in the drawing is not a feature of
the mark but is intended to show the location of the mark on a typical
container for the goods; the dark/lower part of the container drawing
shows the mark.

Filing Date

2005/03/23

Examining Attorney

BRACEY, KAREN

Attorney of Record

Marc E. Fineman

