

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	76634174
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	<p>American Wholesale Wine, Touch Mark (Velvety Bottle), Sn 76-634,174 / / Applicant responds to the office action of January 13, 2006. / Applicant respectfully suggests that its mark, a touch mark consisting of a velvety bottle, is highly distinctive, and thus under Wal-Mart Stores, Inc. v Samara Brothers, Inc. 529 US 205, 54 USPQ2d 1065 (2000), eligible for registration on the principal register. / Most significantly, applicant's mark is a TOUCH MARK. As examination of the specimen submitted shows, applicant's goods, wine, are packaged within a functional glass bottle. That glass bottle is tightly encased within a velvety fabric, which is entirely non-functional regarding the containing of wine, or most other liquids of similar density and surface tension. The velvety feel of applicant's goods is not that of a rectangular bag, nor of a loose fitting bag separate from its within bottle. Applicant's velvety bottle FEELS materially different than would any of the cited bags. / The examiner has cited that other companies use velvet bags or sacks for packing wine or liquor. However, the FEEL of a LIMP bag is quite different from the FEEL of a TURGID velvety surface attached to a wine bottle. / The parallels with visual marks would be to claim that an amorphous (derivative meaning without shape) amoeba design would be the same as a stylized and defined letter I, or the letter O, the same as a geometric triangle, circle, square, hexagon. / Comparing the FEEL from outside the bag of a Crown Royal whiskey bottle within its initially packaged bag is quite different from the FEEL of applicant's tightly encased velvety bottle. The Crown Royal bag freely slips around the whiskey bottle. Since the Crown Royal bag is NOT ATTACHED to the whiskey bottle, the bag may be rotated freely around the vertical axis and will have many degrees of rotation and slippage available in the other dimensions also. With dexterity, one could rotate the bag freely in all three dimensions. / Since this is a TOUCH mark, it is the sensation of the touch that is to be distinctive, not a visual inspection nor a mental semantic inquiry into the meaning and manufacture of the covering. / In contract to Crown Royal whisky bottle and separate bag, applicant's velvety texture is affixed in several locations to its wine container; the velvet feel does not freely rotate separately from the bottle in any dimension. / The examiner also cites Cator Enterprises, a vendor of velvet bags. However, these bags also are loose, separate from wine bottles, or from any other containee. By its website, <http://www.sexybloomers.com>, Cator appears to primarily market undergarments. / Inspection today of the Sexybloomers.com website shows that Cator offers "burgundy wine bottle velvet wraps," but does not sell wine. Moreover, Cator's wine bags are rectangular. While a wine bottle could be placed by a customer into the Cator bag, the bag would not be affixed to the bottle. Since the bags are sold as enhancing a</p>

gift bottle of wine, it would be contrary to the marketing purpose of Cator for a purchaser to separately purchase glue, consult his or her geometry and Calculus books, cut the rectangular Cator bag to fix a dual-diameter (neck narrower than body) wine bottle, and affix the mutilated Cator bag to a wine bottle, whether gift or for one's own consumption.

/

Applicant searched the PTO database and found no touch mark, much less a touch (sensory) mark for wine.

/

Unlike clothing with a knitted design, applicant's velvety material has no utilitarian function, can be conceptually and physically separated from the utilitarian container. (In a manner similar to cutting out Nike swish design from shoes, it can physically be done, but it renders the remainder object disfigured and less attractive.) Applicant suggests that its mark is not a close case at all: the velvety touched material does not package the wine any more than a paper wine label does. The integrity of the wine liquid is the same with or without the velvety surface, without or without the paper label. Paper wine labels long have served as visually distinctive trademarks. Applicant's innovative velvety surface covering tightly affixed to a wine bottle serves as a touch distinctive trademark.

/

There is no function for applicant's velvety feel of its wine bottles other than to distinguish them from all other wine bottles, which lack a similar feel, and to indicate the source of the wine, from applicant.

/

With this clarification, applicant suggests the the application is in condition for publication, and the same is respectfully requested.

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KKL Docket 105,008,940 (17Apr06)

SIGNATURE SECTION

RESPONSE SIGNATURE	/daniel kegan/
SIGNATORY NAME	Daniel Kegan
SIGNATORY POSITION	Applicant's Attorney
SIGNATURE DATE	04/17/2006

FILING INFORMATION SECTION

SUBMIT DATE	Mon Apr 17 17:39:25 EDT 2006
TEAS STAMP	USPTO/ROA-66.134.226.121- 20060417173925626740-7663 4174-320aca61bd4fdceaac35 2cb2111f0f131-N/A-N/A-200 60417173533023105

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **76634174** has been amended as follows:

Argument(s)

In response to the substantive refusal(s), please note the following:

American Wholesale Wine, Touch Mark (Velvety Bottle), Sn 76-634,174

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/

Applicant respectfully suggests that its mark, a touch mark consisting of a velvety bottle, is highly distinctive, and thus under *Wal-Mart Stores, Inc. v Samara Brothers, Inc.* 529 US 205, 54 USPQ2d 1065 (2000), eligible for registration on the principal register.

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KKL Docket 105,008,940 (17Apr06)

Response Signature

Signature: /daniel kegan/ Date: 04/17/2006

Signatory's Name: Daniel Kegan

Signatory's Position: Applicant's Attorney

Serial Number: 76634174

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