

Mark: CALIMA

Serial No.: 88040737

Date: October 3, 2018

Response to Office Action Dated 8/18/2018

The Office Action contains an initial refusal based on U.S. Registration No. 1956668 for the mark KALIMNA covering wines in Class 33. Applicant respectfully submits that the respective marks differ substantially in appearance, sound, connotation, and commercial impression, such that there would be no likelihood of confusion between Applicant's mark and the cited registered mark.

At the outset, Applicant notes that the Office Action addresses only the sound and appearance of the marks, finding that "the overall sound and appearance of the marks are similar," and improperly ignores the connotations and commercial impressions of the marks.

As to connotation, Applicant submits the following evidence:

1. "Kalimna" is a region in South Australia. See maps at Exhibit 1.
2. Registrant is an Australian company with an address in South Australia. See TSDR record for the registration at Exhibit 2.
3. The specimen submitted for the registration, a wine label, prominently states "South Australia" on the label. See Exhibit 3.
4. Registrant's goods sold under the KALIMNA mark are also sold under the house mark PENFOLDS. See Exhibit 3.
5. The wine label specimen submitted for the registration further states "PENFOLDS WINES ESTABLISHED 1844 SOUTH AUSTRALIA". See Exhibit 3.
6. Penfolds "is one of Australia's oldest wineries" and "operates a number of vineyards in the South Australian wine regions." See Wikipedia entry for Penfolds at Exhibit 4.
7. Penfolds "was awarded 'New World Winery of the Year' by American wine industry publication, Wine Enthusiast Magazine." See Exhibit 4.
8. In addition to being a region in South Australia, "KALIMNA" is an Australian Aboriginal word meaning "beautiful." See definition at Exhibit 5.

The evidence of record clearly shows that the connotation of "KALIMNA" is a wine growing region in South Australia and, for those familiar with the Aboriginal language, also means

"beautiful." Applicant's mark "CALIMA" does not share either of those connotations. Indeed, "CALIMA" has a distinct connotation of its own as a British term "for a dust storm in the Canary Islands region" derived from a Spanish term meaning "haze." See definition at Exhibit 6. The connotations of the respective marks, then, are entirely distinct.

As to commercial impression, the two marks could not be more different. Registrant's mark conveys the commercial impression of goods that originate in wine regions of South Australia. Applicant's mark does not give the impression of anything remotely similar. Applicant's mark would give the commercial impression of a dry dust storm or haze, something that would make Applicant's beverages a welcome relief.

The strong difference between the respective connotations and commercial impressions are more than sufficient to establish that consumers are not likely to be confused. Consideration of the appearances and sounds of the marks supports this conclusion. Although the Office Action manages to draw a few superficial similarities between the marks, the letters C and K have entirely different appearances, which should be given greater weight because these are the first letters of marks. And the letter N inserted into the middle of a word does introduce not only a visual difference but an odd sound that requires thought to pronounce.

Indeed, the differences between the appearances and sounds of the marks are the differences between two entirely different words, one that connotes a wine region in South Australia and gives the commercial impression of goods originating from that region and one that connotes dust storms and haze and does not give the commercial impression of originating in South Australia.

Based on the evidence submitted, Applicant respectfully contends that consumers are not likely to be confused and requests that its application be allowed to proceed to publication.