

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
In the matter of trademark application “ASGARD” No 88240685

RESPONSE TO THE OFFICE ACTION

We have received provisional refusal office action from the USPTO. We find that USPTO has been refused registration of our trademark because of Likelihood of Confusion, Trademark Act Section 2(d) Refusal.

We submit request for registration of the trademark “ASGARD” App. №88240685 in relation to the abbreviated list of goods to the spirits with the following arguments in support of registration.

The goods and/or services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

Brewpub services provides services, whereas spirits is a good. Services are inextricably linked with the performer, while the goods are sold mainly without reference to the specialist who manufactures the goods. This is the reason why the marketing of goods and services differ from each other: in marketing services, companies advertise their best specialists, and in product marketing advertise a product.

Beer and spirits belong to different goods and services, and that is why they are separated into different international classes.

Beer and spirits are sold mainly in different stores. Craft beer is sold in breweries and bars. Spirits are sold in supermarkets and liquor stores. Vodka "Asgard" is intended for sale in supermarkets. Accordingly, vodka "Asgard" and beer "Asgard" will be sold through different sales channels.

Examining attorney cites in office action as an example breweries that produce spirits in addition to beer following companies: Round Barn, Depot and Warfield. But these companies are large holdings that have expanded the range of products for spirits, restaurants and events.

Round Barn belongs to Moersch Hospitality Group, which is a huge holding that operates for over 30 years.

MOERSCH HOSPITALITY GROUP

We are a family bounded by a passion for life's finest pleasures – great food and fine wine. Farmers by trade, we know what it means to cultivate sustainable ingredients and relationships. For more than 30 years, we have been creating the best wine, craft beer and spirits in Southwest Michigan. Paired with epicurean flavors inspired by farm-to-table freshness, we're behind four concepts you may already know and love: Free Run Cellars, Tabor Hill Winery and Restaurant, Round Barn Winery and Public House.

Screenshot from <https://roundbarn.com/about-us/>

The Depot is a holding with activities including brewing, restaurant, distilling, foods and architecture renovation and events.

GALLERY



Brewing



Depot



Distilling



Foods



Construction

Screenshot from <http://thedepotreno.com/our-story/>

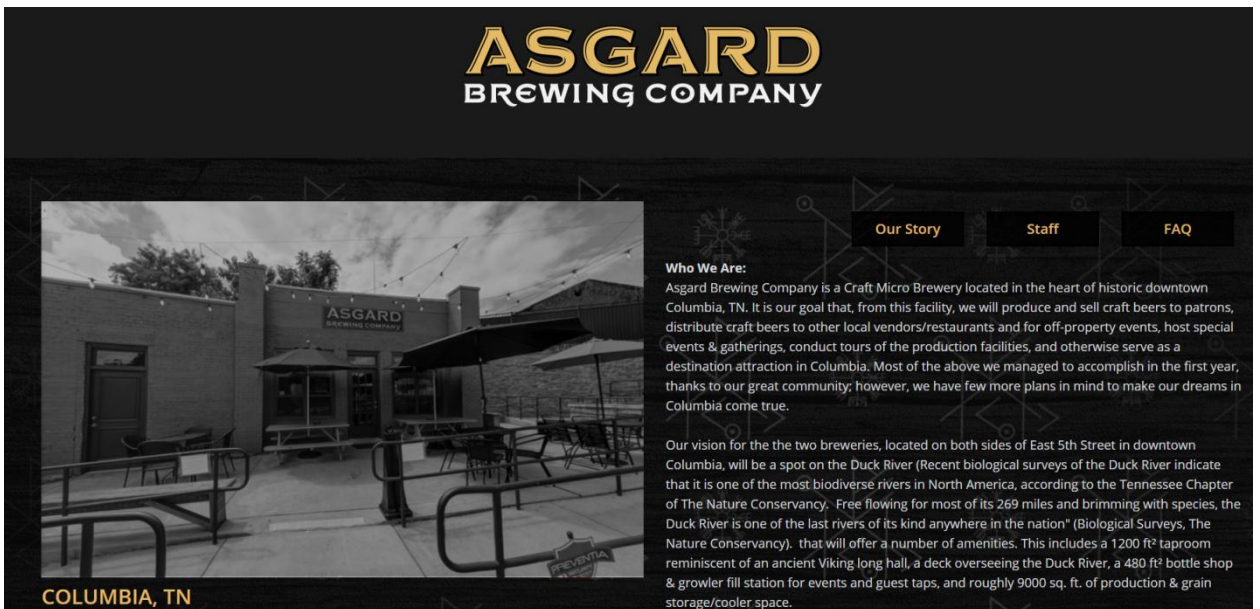
Warfield is a large company that has a brewery and a distillery. This fact is directly indicated on their logo.



Screenshot from <https://warfelddistillery.com/our-process/>

In all the above cases, the examining attorney points to large companies. At the same time, companies directly indicate on their websites that they are not only beer brewers, but also distillers, a restaurant, events etc.

In our case, the examining attorney refers to the trademark "Asgard" No. 5142966. This trademark belongs to Asgard Brewing Company, Inc.. This is a small brewery that produces solely beer:



Screenshot from <https://www.asgardbrewery.com/our-brewery.html>

The company's website repeatedly points out that Asgard Brewing Company specializes exclusively in the production of beer:



OUR BREWS

Asgard Brewing Company is a destination brewery that focuses on eco tourism and quality craft beer that uses a myriad of natural and locally sourced ingredients.

VOYAGER
American Pale Wheat Ale

Voyager is crafted with drinkability in mind. Brewed with Pale, Wheat, and Caramel malts, we add a large amount of Citra hops late in the brewing process to create its unique and delicate flavor. A neutral American yeast strain is used to allow the sweetness of the malt to shine through and complement the hops.

5.2% ABV

Screenshot from <https://www.asgardbrewery.com/our-brewery.html>

In this regard, we believe that in our case there is no danger of likelihood of confusion, because Asgard Brewing Company provide exclusively brewpub services, while we produce strong spirits as vodka.

However, we understand the apprehension of the USPTO that consumers might be confused. In this regard, we undertake an obligation not to produce beer and similar drinks and exclude them from the list of goods and services, all beer drinks and all low-alcohol drinks similar to beer.

In this regard, we ask for the registration of the Asgard trademark in relation to the abbreviated list of goods:

Alcoholic aperitif bitters; Alcoholic beverages except beers; Alcoholic beverages, namely, digestifs; Alcoholic beverages, namely, flavor-infused whiskey; Alcoholic bitters; Alcoholic carbonated beverages, except beer; Alcoholic cocktail mixes; Alcoholic cocktails containing milk; Alcoholic cocktails in the form of chilled gelatins; Alcoholic cocktails in the form of frozen pops; Alcoholic cocktails in the form of non-chilled gelatins; Alcoholic coffee-based beverage; Alcoholic cordials; Alcoholic egg nog; Alcoholic energy drinks; Alcoholic essences;

Alcoholic extracts; Alcoholic fruit beverages; Alcoholic fruit cocktail drinks; Alcoholic fruit extracts; Alcoholic ice; Alcoholic malt coolers; Alcoholic mixed beverages except beers; Alcoholic punch; Alcoholic punches; Alcoholic tea-based beverage; Aperitifs with a distilled alcoholic liquor base; Fruit extracts, alcoholic; Prepared alcoholic cocktail; Rice alcohol; Rum; Vodka.

03/05/2019

/s/ Nikita Kostromin

Nikita Kostromin, Director

POWER OF WARRIOR FOODS