

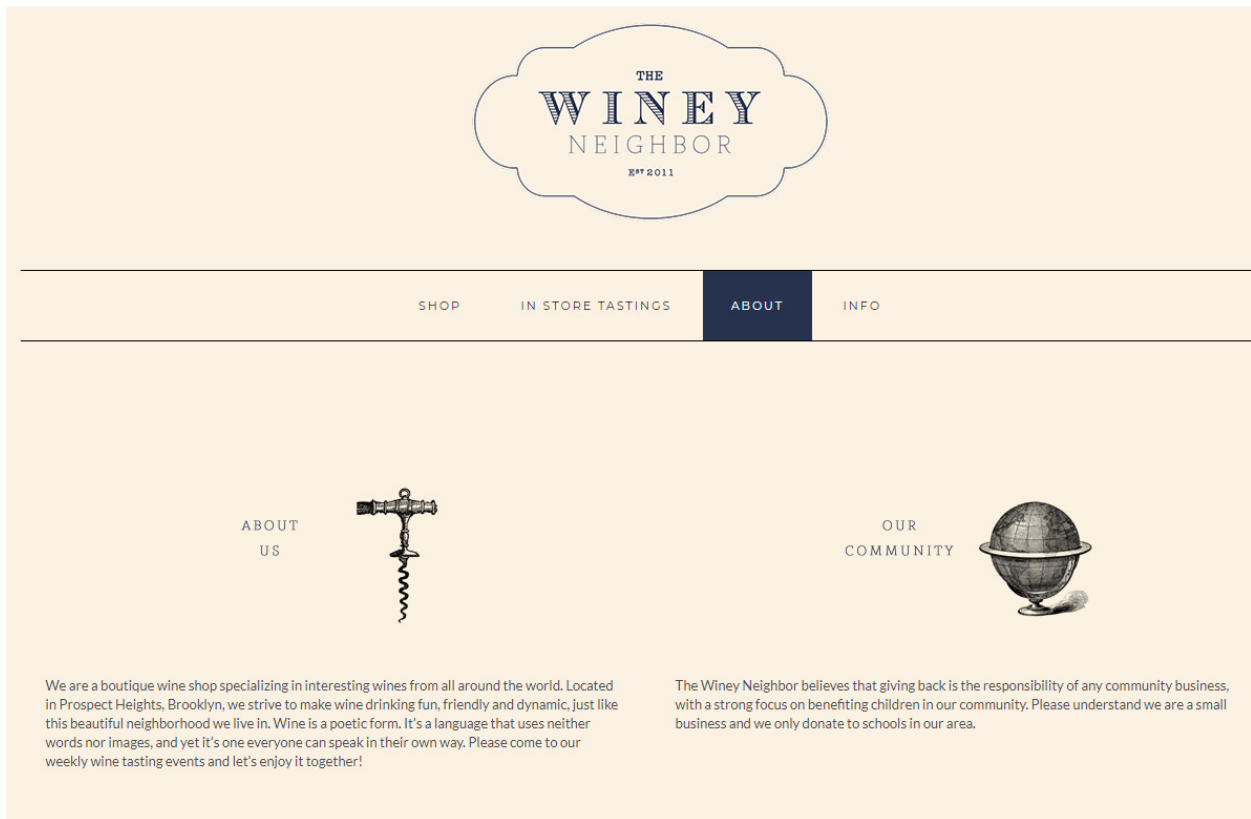
**87/932,111 for WINEY**

**Section 2(d) Refusal**

The Office Action has alleged that Registration no. 4,862,042 for WINEY would be likely to cause confusion with Applicant’s mark. Applicant has carefully reviewed the cited application and its use in commerce, and submits that there is no chance of any confusion.

As discussed in further detail below in this response, Applicant intends to use the WINEY mark on coffee cups, particularly unadorned (Spartan) ceramic coffee cups, as a word mark for sale principally into specialty coffee stores for the benefit of extremely dedicated and sophisticated high-end coffee equipment enthusiasts. The most mainstream location for sale of such goods might be Starbucks, or that kind of venue. The target consumer would be coffee aficionados.

On the other hand, the mark associated with registration no. 4,862,042 is associated with a local wine store called The Winey Neighbor in Brooklyn, NY and seems to have a single location. Applicant has inspected their website (<https://wineyneighbor.com>), and has not been able to find any references to coffee or coffee products:



[\(https://wineyneighbor.com/about/\)](https://wineyneighbor.com/about/)

An example of Applicant's goods is presented below in the form of a ceramic coffee cup bearing the COCOA trademark:



Applicant fully expects its anticipated cup bearing the WINEY mark to be similar in overall appearance, but likely of a noticeably different shape. These products would be sold in specialty coffee shops to coffee enthusiasts.

Consumers that would frequent The Winey Neighbor would be very sophisticated connoisseurs of wine, and be very knowledgeable about the source (i.e., the particular store). These same individuals, whether they were coffee equipment fans or not, would never mistake Applicant's coffee cup as having originated at The Winey Neighbor.

Accordingly, for at least these reasons, Applicant submits that there is no likelihood of confusion between Applicant's mark and the cited application.

### **Section 2(e)(1) Refusal**

Applicant has deleted herein the portion of its description of goods that relates specifically to tasting cups, although notes that the remainder of the description of goods would nonetheless be sufficiently broad to encompass such goods. Specifically, Applicant modifies its description of goods to recited only coffee cups and coffee mugs. It is Applicant's understanding that this amendment will successfully address the Section 2(e)(1) Refusal. Applicant therefore respectfully requests withdrawal of the Section 2(e)(1) Refusal.

### **Response to Request for Information**

A physical specimen of a cup that Applicant intends to sell bearing the WINEY mark is not yet available. However, Applicant submits similar documentation for goods of the same type in the form of the attached professional photograph of a cup intended to be sold by Applicant bearing the mark COCOA on its bottom (also depicted above). Applicant expects that the cup it eventually sells bearing the WINEY mark will be depicted in essentially the same manner, as a word mark with some accompanying similar logos, and on the bottom of the cup. As with the example image, other than the writing on the bottom

of the cup, the cup would not include other writing or ornamentation. The cup itself may have a different ornamental shape as compared to the depicted cup, but it is unknown whether any such change in shape would lead to a change in function. As to channels of trade, the cup is principally intended for sale in coffee shops and are directed to consumers that have a sophisticated knowledge of coffees and coffee related equipment.

Espro, Inc., the Applicant, plans to use the WINEY mark as a source indicator for a coffee cup similar to the illustrated coffee cup. WINEY is known as a flavor note, as set forth in the SCAA flavor wheel appended to the Office Action that can be detected in certain coffees, depending on how the coffee is roasted and brewed. However, the actual cup sold by Applicant that is pictured, or any other cup that Applicant would plan to sell bearing the WINEY mark, to Applicant's knowledge, would not physically function to enhance WINEY flavor notes in coffees.

**Ornamental Refusal Possible - Advisory**

Applicant plans to use the applied for mark in a manner similar to the attached photograph. It is believed that because of this, the WINEY trademark acts as a source indicator, and not "merely a decorative or ornamental feature of the goods."