

TRAIGH BHAN – Response to April 17, 2019 Office Action

Applicant submits this response to the April 17, 2019 office action, in which the examiner refused registration on the ground that the mark is geographically descriptive. Applicant submits that the examiner has misapplied the criteria for determining geographic descriptiveness to the subject mark, by treating the mark as if it were ISLAY rather than TRAIGH BHAN.

First, with regard to whether TRAIGH BHAN is a generally known geographic place or location, applicant submits that the examiner's evidence demonstrates the opposite. It should initially be noted that the two web pages referred to by the examiner, https://www.islayinfo.com/beaches_on_islay.html and <https://scotlandsplaces.gov.uk/record/hes/37634/traigh-bhan-islay/rcahms?item=1056266>, are for people interested in the details of the geography of Scotland. There is no evidence that anything on those web pages is generally known to people in the US, which is what is relevant to a geographic descriptiveness determination.

But more specifically, the details of the web page at https://www.islayinfo.com/beaches_on_islay.html show why TRAIGH BHAN is not a generally known geographic place or location. First, it should be noted that, unlike the various places on the map that correspond to well-known scotches (such as Ardbeg, Bowmore, Bunnahabhain, Bruichladdich, and Caol Ila), Traigh Bhan is not shown on the map itself. Instead, the notes below the map refer to Traigh Bhan in two places, namely:

“**6. Traigh Bhan** on the west coast; This beach is only accessible by sandy dunes. Access by car and a short walk.”

“**17. Traigh Bhan** on the Oa; The Singing Sands just behind Caraigh Fhada lighthouse.”

Although points 6 and 17 appear on the map, they do not say “Traigh Bhan.” Furthermore, the fact that there are two points designated “Traigh Bhan” shows that there is no one, specific geographic place or location called “Traigh Bhan.” This is not surprising, because “Traigh Bhan” is Gaelic for “white shores,” and, indeed, points 6 and 17 are shown as being on shores.

And the other web page referred to by the examiner,

<https://scotlandsplaces.gov.uk/record/hes/37634/traigh-bhan-islay/rcahms?item=1056266>, does not show “Traigh Bhan” on the map, either, and is from a website that appears to have entries for virtually every place name in Scotland, no matter how obscure.

Thus, these two web pages show that the two places called “Traigh Bhan” are obscure and unlikely to be known to people in the US, and that, even if someone in the US were familiar with “Traigh Bhan” as referring to a geographic location, he or she would not understand it to refer to one, specific location.

Second, although the goods for which applicant seeks registration of the subject mark are produced on the island of Islay, they are not produced in either of the two places on that island

that are shown on https://www.islayinfo.com/beaches_on_islay.html as being referred to as “Traigh Bhan.” In fact, there are no scotch whiskies produced in either of those two places.

Third, purchasers would not be likely to believe that the subject goods originate from the geographic place (or places) identified in the mark, for several reasons: first, they would not be familiar with those two obscure shore areas on the Scottish Island of Islay, as discussed above. Second, the goods are not made in either of those two places. Third, the two places on Islay known as “Traigh Bhan” are not and cannot be known for producing whisky, because no whisky is produced at either of those two places.

So there is no reason why US consumers would think the scotch whisky marketed under the subject mark originates from either of the two places on Islay that are called “Traigh Bhan,” or that they would associate the mark with either of those places. It is not sufficient for consumers to be familiar with Islay, or for them to know that some scotch whisky comes from Islay.

Finally, and perhaps most importantly, since US consumers would be unlikely to know where Traigh Bhan is, or even to know that it is a place name at all, they would be unlikely to think the TRAIGH BHAN product comes from or is associated with the island of Islay at all.

For the above reasons, applicant submits that the geographic descriptiveness refusal should be withdrawn and this application should be approved for publication.