

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

July 29, 2019  
John S. Yard  
Examining Attorney  
Law Office 115  
RE: Serial No. 88255887  
Mark: "FRESHIE"  
Applicant: Timm Martin  
Office Action Of: 26 March 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

The following is the response of Applicant, Timm Martin, by Counsel to the Office Action of Mr. John S. Yard, dated March 26, 2019. In the above stated Office Action, the examining attorney notified the applicant that the applicant's mark could be refused for registration under Trademark Act Section 2(d) because of a likelihood of confusion between the applicant's mark, "FRESHIE" and a prior pending application for the mark "PHRESHIE," U.S. Application Serial No. 87-434649 (hereafter referred to as the "Conflicting Mark").

1. Clarification of the Marks and Ownership

Timm Martin is the applicant named on the application to which this Response corresponds for registration of the mark "Freshie" (Serial Number of 88255887) in connection with goods in class 032 ("Current Application"). Mr. Martin and Freshie, LLC (owned by Mr. Martin) is also the original applicant and current owner the registered trademark "Freshie" (Registration Number: 5763975) used in connection with the goods and services class 033 (herein referred to as the "Original Mark"). On November 25, 2016, Mr. Martin filed a Section 1B, intent-to-use application for the Original Mark and was granted registration on the Principal Register on May 28, 2019. Attached hereto as "Exhibit A" is a copy of the records with the U.S. Trademark Office pertaining to the Original Mark.

2. The Conflicting Mark's application for registration should be refused, resolving any likelihood of confusion between it and "Freshie."

On June 23, 2017, a Suspension Letter was sent to the applicant of the Conflicting Mark, Southern Tier Brewing Company via it's counsel of record, notifying the applicant that its application for registration was suspended due to a likelihood of confusion, pending the registration of a prior filed application (a copy of the Suspension Letter is attached hereto as "Exhibit B"). **The pending application which caused the Conflicting Mark to be suspended was Mr. Martin's original application for registration of the Original Mark, which was subsequently granted registration on the Principal Register on May 28, 2019.** The Conflicting Mark's application should therefore be refused registration because it is confusingly similar to Mr. Martin's previously registered Original Mark. Such refusal will alleviate any conflict between it and the Current "Freshie" Application.

“EXHIBIT A”

Record 1 out of 1

TSDR

ASSIGN Status

TTAB Status

( Use the "Back" button of the Internet Browser to return to TESS)

# FRESHIE

**Word Mark** FRESHIE  
**Goods and Services** IC 033. US 047 049. G & S: Prepared distilled blue agave liquor cocktails; distilled blue agave liquor cocktail mixes. FIRST USE: 20161125. FIRST USE IN COMMERCE: 20190329  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 87248104  
**Filing Date** November 25, 2016  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** May 16, 2017  
**Registration Number** 5763975  
**Registration Date** May 28, 2019  
**Owner** (REGISTRANT) Timm Martin INDIVIDUAL UNITED STATES 636 Anthony Trail Northbrook ILLINOIS 60062  
(LAST LISTED OWNER) FRESHIE, LLC LIMITED LIABILITY COMPANY ILLINOIS 636 ANTHONY TRAIL NORTHBROOK ILLINOIS 60062  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** /Hillel Frankel/  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

## “EXHIBIT B”

<b>To:</b>	Southern Tier Brewing Company, LLC ( <a href="mailto:lbarnes@robinsonbradshaw.com">lbarnes@robinsonbradshaw.com</a> )
<b>Subject:</b>	U.S. TRADEMARK APPLICATION NO. 87434649 - PHRESHIE - 24215.00051
<b>Sent:</b>	6/23/2017 12:17:14 PM
<b>Sent As:</b>	ECOM109@USPTO.GOV
<b>Attachments:</b>	<a href="#">Attachment - 1</a> <a href="#">Attachment - 2</a>

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87434649

MARK: PHRESHIE

**\*87434649\***

**CORRESPONDENT ADDRESS:**

LANI BARNES BAXTER  
ROBINSON, BRADSHAW & HINSON, P.A.  
101 NORTH TRYON STREET, SUITE 1900  
CHARLOTTE, NC 28246

**GENERAL TRADEMARK INFORMATION:**  
<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

**APPLICANT:** Southern Tier Brewing Company, LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO :**  
24215.00051

**CORRESPONDENT E-MAIL ADDRESS:**  
[lbarnes@robinsonbradshaw.com](mailto:lbarnes@robinsonbradshaw.com)

### SUSPENSION NOTICE: NO RESPONSE NEEDED

**ISSUE/MAILING DATE: 6/23/2017**

The trademark examining attorney is suspending action on the application for the reason stated below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

**PRIOR-FILED PENDING APPLICATION(S) FOUND:** The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant's mark.

The effective filing date of the pending application identified below precedes the filing date of applicant's application. If the mark in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, action on this application is suspended until the earlier-filed referenced application(s) is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application is attached.

- Application Serial No. 87434649

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online at <http://teasroa.uspto.gov/rsi/rsi>.

/Kathleen Lorenzo/  
Trademark Examining Attorney  
Law Office 109  
(571) 272-5883  
kathleen.lorenzo@uspto.gov

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

**Print: Jun 21, 2017**

**87248104**

**Issue: Jul 11, 2017**

**DESIGN MARK**

**Serial Number**  
87248104

**Status**  
PUBLISHED FOR OPPOSITION

**Word Mark**  
FRESHIE

**Standard Character Mark**  
Yes

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Timm Martin INDIVIDUAL UNITED STATES 636 Anthony Trail Northbrook  
ILLINOIS 60062

**Goods/Services**  
Class Status -- ACTIVE. IC 033. US 047 049. G & S: Prepared  
tequila cocktails; tequila cocktail mixes.

**Filing Date**  
2016/11/25

**Examining Attorney**  
KEATING, MICHAEL

**Attorney of Record**  
Hillel Frankel

# FRESHIE

**To:** Southern Tier Brewing Company, LLC ([lbarnes@robinsonbradshaw.com](mailto:lbarnes@robinsonbradshaw.com))  
**Subject:** U.S. TRADEMARK APPLICATION NO. 87434649 - PHRESHIE - 24215.00051  
**Sent:** 6/23/2017 12:17:16 PM  
**Sent As:** ECOM109@USPTO.GOV  
**Attachments:**

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR  
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED  
ON **6/23/2017** FOR U.S. APPLICATION SERIAL NO. 87434649

Please follow the instructions below:

**(1) TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

**(2) QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail [TSDR@uspto.gov](mailto:TSDR@uspto.gov).

**WARNING**

**PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION:** Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All **official** USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see [http://www.uspto.gov/trademarks/solicitation\\_warnings.jsp](http://www.uspto.gov/trademarks/solicitation_warnings.jsp).