

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
(Our File No. 2015-164)

**Mark:** PRL BEER )  
 )  
**Applicant:** Polish Folklore Import Co., Inc. )  
 )  
**Serial No.** 88/322,387 )  
 )  
**Registration No.** N/A )

I hereby certify that this correspondence is being filed electronically on this 13th day of November, 2019.

By: /Kevin J. Lahey/  
Kevin J. Lahey

Diane Collopy  
Examining Attorney  
Law Office 107

November 13, 2019

**Response to Non-Final Office Action**

Dear Ms. Collopy,

Applicant, Polish Folklore Import Co., Inc. (“PFI”) is in receipt of your Non-Final Office Action dated May 13, 2019, having a deadline to respond of November 13, 2019.

This office action detailed the following issues:

- (I) Section 2(d) Refusal to Register in IC 032 -Likelihood of Confusion; and
- (II) Specimen Refusal.

Issue (I) will be addressed in this written Response. Applicant agrees with the Examiner’s suggested remedy to issue (II) and will amend the drawing of the mark to match the specimen by dropping the word ‘BEER.’

**(I) Response to Section 2d Refusal to Register in IC 032 - Likelihood of Confusion with U.S. Registration No. 4914935.**

Registration for the above-identified standard character wordmark has been refused because of a likelihood of confusion with U.S. registration number 4,914,935

(hereinafter '935), which is a wordmark registered in IC 043 for a singular casino bar in Mississippi.

As the Examining Attorney has pointed out, a determination of likelihood of confusion under Section 2d is made by considering what is known as the *DuPont* factors to determine if the applied for mark so resembles the registered mark that it is likely that it would cause the target consumer to be confused, mistaken, or deceived as to the source of the goods/services of the application.

Applicant's mark and the '935 mark are not confusing to the consumer

Applicant concedes that the applied-for mark and the '935 mark share the same standard characters, PRL. However, the likelihood of confusion is determined by focusing on the question whether the purchasing public would mistakenly assume that the applicant's goods originate from the same source, or are associated with, the goods in the cited registration. *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 1314 (Fed. Cir. 2003). The captive "purchasing public" for the registered '935 mark are casino patrons at the Scarlet Pearl Casino in Mississippi. The PRL Bar itself is billed as a stylish craft cocktail bar and is located in a remote, singular corner of the casino. (See Evidence). The registrant does not sell its goods or services outside of that singular casino location. Furthermore, no packaged goods of any kind are sold at the PRL Bar.

On the contrary, the "purchasing public" for the Applicant's mark are consumers purchasing pre-packaged beer from a grocery or liquor store, primarily in the Chicago region. It's a far fetch for the "purchasing public" to assume that packaged, bottled beer purchased from a grocer's shelf in Chicago originate from a casino bar in Mississippi.

Comparison of the Services

Turning next to the comparison of the services offer by the Applicant and the owners of the registered marks.

The Scarlet Pearl Casino and Polish Folklore Import Company serve goods to a vastly different class of purchasers

While both are admittedly in the business of selling alcohol, the types of alcohol, the manner in which it is served, and – most importantly – the class of purchasers, are vastly different. Applicant is an importer of Polish alcohol based in Chicago, while the owner of the ‘935 mark operates a casino bar in Mississippi. It is highly unlikely that the class of purchaser of either of these establishments would mistake the two as being affiliated in any manner whatsoever.

In light of the above arguments, Applicant respectfully requests that this mark be allowed in IC 032.

### **Conclusion**

Based on the above response to the Non-Final Office Action dated May 13, 2019, Applicant Polish Folklore Import Co. respectfully requests that this mark be allowed in IC 032.

Thank you,

/Kevin J. Lahey/

Kevin J. Lahey  
Attorney of Record, Illinois Bar Member