

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Vivid Holdings, LLC)	
)	
Serial No.:	88/336,734)	
)	
Filed:	March 12, 2019)	
)	
Mark:	ACCEPT ALL INVITATIONS)	RESPONSE TO FIRST OFFICE ACTION
)	
TNW Ref. No.:	3247-011.TM)	
)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

In response to the Office Action mailed May 23, 2019, please reconsider U.S. Trademark Application Serial No. 88/336,734 for the mark ACCEPT ALL INVITATIONS for use with “wines, sparkling wines and champagne” in view of the comments below.

MARK FUNCTIONS AS A TRADEMARK

In the Office Action, the application was refused registration based on the claim that ACCEPT ALL INVITATIONS did not function as a trademark in the specimen to indicate the source of Applicant’s goods and identify and distinguish them from others. Respectfully, Applicant disagrees.

The specimen shows the use of the mark ACCEPT ALL INVITATIONS in not one, but two places. The back bottle label clearly shows ACCEPT ALL INVITATIONS in blue, italicized font. The back of the neck foil is also embossed with ACCEPT ALL INVITATIONS.

However, the USPTO did not accept these uses, claiming that ACCEPT ALL INVITATIONS did not create a separate commercial impression and that the mark LE GRAND

COURTÂGE, also featured on the label, would be considered the source indicator. But the size or prominence of a mark is not the question, rather the question is whether the mark, when noticed, will indicate origin of the goods. *In re Royal Viking Line A/S*, 216 USPQ 795, 797 (TTAB 1982). Therefore, the size differences between ACCEPT ALL INVITATIONS and LE GRAND COURTÂGE should not carry weight in this evaluation.

ACCEPT ALL INVITATIONS does create a separate commercial impression, as can be seen in the attached marketing materials. Exhibit A. Although the specimen is the most important evidence of whether a mark is used as a trademark, promotional and marketing materials (when made of record) can also be considered in the evaluation. TMEP 1202; *See In re Safariland Hunting Corp.*, 24 USPQ2d 1380, 1381 (TTAB 1992). This evidence shows use of the mark in conjunction with promotional materials, on napkins, and on the Le Grand Courtâge website. These uses are evidence that the mark has been, or at least has become, associated with the goods “wines, sparkling wines and champagne.”

Respectfully, Applicant therefore requests that the failure to function objection be withdrawn.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the mark ACCEPT ALL INVITATIONS is registrable on the Principal Register. If any impediment to passing this mark onto publication remains after consideration of these remarks, the Examining Attorney is invited to contact the undersigned.

DATED this 21st day of November, 2019.

Respectfully Submitted,

/s/petermdejonge/

Peter M. de Jonge

Attorney for Applicant

THORPE NORTH & WESTERN, LLP