

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

December 3, 2019

Drew Ciurpita
Trademark Examining Attorney
Law Office 114
United States Patent and Trademark Office

RE: Serial No: 88338117
Mark: **EMBER**
Applicant: Jacobsen Lewis Entertainment, LLC
Office Action Of: June 3, 2019

APPLICANT'S RESPONSE TO OFFICE ACTION

The following is the response of Applicant, Jacobsen Lewis Entertainment, LLC, to the Office Action Examining Attorney Drew Ciurpita sent via email on June 3, 2019.

Applicant hereby responds to the Office Action dated June 3, 2019 as follows.

Section 2d Refusal – Likelihood of Confusion—Partial Refusal

The Examining Attorney limited the Section 2d likelihood of confusion refusal to the following services: “Entertainment services, namely bar and live music services.” The registrations cited in support of this partial refusal were for the mark “THE EMBERS” for “entertainment services, namely, live performances by a musical group” and for the mark “BRASAS” for “wine.”

Applicant has amended the services in the subject application to “Nightclubs; entertainment services, namely nightclub services,” thus omitting the “bar and live music “services that were subject to the Examining Attorney’s partial refusal.

Accordingly, the Examining Attorney’s partial refusal is obviated and the Applicant’s mark should be allowed to proceed to publication.

Prior Filed Applications

The three prior filed applications mentioned in the pending Office Action are the following:

EMBER – for “alcoholic beverages except beers” in international class 33;

EMBER BREWING – for “drinking glasses” in international class 21; “shirts” in international class 25; and “beer” in international class 32

EMBER BREWING – abandoned as of 08.22.19

In view of the Examining Attorney citing the “BRASAS” registration for wine as a basis for partial refusal of the pending application ONLY for the bar services claimed therein, it is reasonable to assume that in light of Applicant amending the subject application to omit “bar services,” the pending applications cited in the pending Office Action are no longer relevant to the registrability of Applicant’s mark. Accordingly, Applicant believes its application should be allowed to proceed to publication notwithstanding these two pending prior filed applications because there is no likelihood of confusion between Applicant’s mark (as amended) and the marks in the referenced prior filed applications.

Conclusion

Because Applicant amended its description of services to omit the services that were the subject of the Examining Attorney’s partial refusal and that were relevant to the prior filed applications cited in the pending Office Action, Applicant believes it has overcome the basis for the Examining Attorney’s partial refusal. Therefore, Applicant respectfully requests the Examining Attorney reconsider the refusal and allow Applicant’s mark to proceed to publication. The Applicant has responded to all issues raised in the Office Action. If any further information or response is required, please contact Applicant's attorney. The attorney may be reached by telephone at (636) 686-8331.