

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 88/411,512 *Via TEAS*
Filing Date: May 1, 2019
Mark: CRUZ
Applicant: Cruz Blanca Brewery LLC
Law Office: 115
Ex. Atty.: Sahar Nasserghodsi
Atty Dkt. No.: 062782.04021

RESPONSE TO OFFICE ACTION

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

Sir:

This responds to the Office Action dated July 2, 2019, in connection with the above-referenced application.

REMARKS

Class 32 - Refusal Under Section 2(d)

The Examiner has refused registration of Applicant's trademark CRUZ under Section 2(d), 15 U.S.C. § 1052(d), on the grounds of a likelihood of confusion with prior Registration Nos. 4,980,205 (CRUZ) for "Madeira wines and wines of Portuguese origin, namely, Port wine", 4,111,837 (LACRUZ) for "Wines", and 5,035,650 (CRUZE) for a variety of non-alcoholic, fruit juice-based beverages i.e. "Apple juice beverages; coconut-based beverages ..." These grounds for refusal only apply to registration of Applicant's trademark in class 32 for the goods "beer".

A. Registration Nos. 4,980,205 And 4,111,837

Applicant's and Registrants' marks are used in connection with distinctly different, specialized goods that are sought out by sophisticated consumers, such that there is no likelihood of confusion. Applicant's mark CRUZ refers to the Spanish word for "cross" and is a shortened version of Applicant's registered trademark CRUZ BLANCA ("white cross"). Applicant is the owner of prior Registration Nos. 5,245,832 and 5,008,5004 for CRUZ BLANCA in connection with the identical goods and services as the present application -- i.e. "beer", "beer making and brewing services", and "brewpub services".

Applicant's Cruz Blanca brewpub is one of a group of restaurants under nationally recognized, award-winning chef Rick Bayless, who is a well-known authority on traditional Mexican cuisine. (Exhibit A.) The trademark CRUZ is particularly associated with Applicant's Mexican-style craft beer and Oaxacan-style street food. (Exhibit B.) Consumers specifically seek Applicant's Mexican-style craft beers based on their association with Rick Bayless and his knowledge of and expertise in Mexican cuisine. The present application has been amended to clarify that the goods in class 32 are "Mexican-style craft beer".

If consumers are sufficiently sophisticated to distinguish between the Examiner's two cited prior registrations for CRUZ and LACRUZ for the similar goods "Port wine" and "wine", then consumers must also have the ability to distinguish between these prior registrations and Applicant's mark for Mexican-style craft beer. Craft beer and wine are not impulse purchases. Consumers for craft beer and consumers for wine are both sophisticated and careful purchasers who are able to distinguish between Applicant's and Registrants' respective marks for beer and wine. This is particularly true of prior Registration No. 4,980,205 for CRUZ in connection with "Madeira wines and wines of Portuguese origin, namely, Port wine". Port wines are unique,

fortified sweet wines that are specifically produced in the Douro region of Portugal from distilled grape spirits. Thus, purchasers of Port wines are highly sophisticated consumers who are unlikely to be confused between Applicant's and Registrant's respective marks.

There is no per se rule that wine and beer are per se related goods, and each case must be decided on its own record. TMEP 1207.01(a)(iv). The Board has previously found that "even though beer and wine are sometimes sold by the same party under the same mark, the two beverages are not sufficiently related that the contemporaneous use of similar marks on the two products is likely to cause confusion as to source". *In re Coors Brewing Company*, 68 U.S.P.Q.2d 1059, 1063 (Fed. Cir. 2003) (summarizing Board's findings regarding "registered 'Blue Moon' marks for wine and Coors' 'Blue Moon and design' mark for beer"). Furthermore, the Examiner's evidence of only four examples¹ of breweries that offer both beer and wine under the same brand is de minimis and insufficient to establish an overlap between sources of beer and wine. See, e.g., *In re Harborside Beverage Group LLC*, Serial No. 78626361, Appeal Decision 3/27/07 at 7 (TTAB) (<http://ttabvue.uspto.gov/ttabvue/v?pno=78626361&pty=EXA&eno=8>) (four third-party registrations insufficient to establish likelihood of confusion between beer and fruit drinks).

B. Registration No. 5,035,650

Applicant's mark CRUZ and Registrant's mark CRUZE differ in appearance and meaning, and are used in connection with distinctly different goods, such that there is no likelihood of confusion. The addition of the "E" not only changes the appearance, but also the meaning of CRUZE. As discussed above, Applicant's mark CRUZ refers to the Spanish word "cross" and is a shortened version of Applicant's prior registrations for CRUZ BLANCA ("white cross"). In

¹ The Examiner's evidence of "McMenamin's" does not show beer and wine from a single source, but appears to be a restaurant providing beer and wine from different sources.

contrast, the mark CRUZE refers to the word “cruise” and is intended to evoke a tropical ocean voyage. This understanding is evidenced by the specimens of use submitted in support of Registration No. 5,035,650 for CRUZE. The related beverages are promoted as “HYDRATION FOR THE HIGH SEAS”, “a non-alcoholic beverage engineered to ENHANCE the cruising experience for those who love to cruise”, and “THE OFFICIAL RESTORATOR OF THE CRUISING COMMUNITY”. (Exhibit C.)

In addition, the Board has previously determined that beer and non-alcoholic fruit drinks are not related goods.

The four remaining use-based third-party registrations are not sufficient to convince us that, when applicant’s mark is used on lager and registrant’s mark is used on fruit drinks, there is a likelihood of confusion. Lager and fruit drinks are not typically complementary goods, and they are different in nature. Moreover, there is no per se rule that alcoholic and non-alcoholic beverages are related products. In re Modern Development Co., 225 USPQ 695 (TTAB 1985). Thus, we are unable to conclude on this record that lager and fruit drinks are related goods.

In re Harborside, Serial No. 78626361, Appeal Decision 3/27/07 at 7 (reversing Examiner’s refusal under Section 2(d)). The Examiner’s evidence consists of only four examples of breweries that offer both beer and soft drinks under the same brand. As discussed above, such evidence is insufficient to establish an overlap between sources of beer and fruit drinks. *Id.*

Prior-Filed Applications

The Examiner has indicated that the present application may be suspended pending the disposition of prior filed trademark Application Nos. 88/214,827 (LACRUZ & Design) in connection with the goods “Rum”, and 88/310,778 (CASA CRUZ) in connection with “Restaurant services”.

Applicant respectfully requests that the Examiner’s objections over prior Application No. 88,214,827 for LA CRUZ in connection with “Rum” be withdrawn for the same reasons as

discussed above, regarding the refusal over the prior registrations for LACRUZ and CRUZ for wine. Consumers for craft beer are sophisticated and careful purchasers who are able to distinguish between the respective marks for beer and rum.

Applicant further requests that the Examiner's objections over prior Application No. 88/310,778 for the mark CASA CRUZ in connection with "Restaurant services" be withdrawn. The identification of goods in the present application has been amended to delete "brewpub services" in Class 43. Accordingly, there is no overlap between the respective services and no likelihood of confusion. *In re Coors Brewing Company*, 68 U.S.P.Q.2d 1059, 1063 (Fed. Cir. 2003)

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the refusal to register be reconsidered and that the application be approved for publication.

Respectfully submitted,

Dated: January 2, 2020

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