

U.S. TRADEMARK APPLICATION SERIAL NO. 88/536,099
MARK: SWIZZLE DINNER & DRINKS
RESPONSE TO OFFICE ACTION DATED SEPTEMBER 16, 2019

SIR:

This is in response to an Office Action from the United States Patent and Trademark Office dated September 16, 2019. In the Office Action with regard to the above-referenced trademark application (“Application”), the following issues were raised:

Summary of Issues

- Section 2(d) Likelihood of Confusion Refusal
- Prior Pending Application
- Disclaimer Required

Response

1) Section 2(d) Likelihood of Confusion Refusal

The Examining Attorney refused registration of the Application because of a likelihood of confusion with U.S. Registration No. 4,978,831 for the mark, “SWIZZLE” in association with class 033 goods of “wines and sangria”.

Applicant thanks the Examining Attorney for a teleconference on 02/19/20 where various options were discussed to put the Application in condition for approval for publication. Based on an agreement from that teleconference, Applicant is deleting from its class 043 services “restaurant and bar services”. Accordingly, Applicant’s remaining services in class 043 are “hotel services”. By this modification of services covered by the mark, Applicant has deleted those services that the Examining Attorney asserted are confusingly similar to those of the Registration and thus has overcome the likelihood of confusion refusal as it relates to U.S. Registration No. 4,978,831. Accordingly, Applicant requests that this ground of rejection be withdrawn.

2) Prior Pending Application

The Examining Attorney also cited prior filed pending U.S. Application Serial No. 88482217 and asserted that if this application registers, Applicant's mark may be refused registration based on a likelihood of confusion.

The services associated with U.S. Application Serial No. 88482217 include "Bar and cocktail lounge services; Restaurant and bar services". As discussed above and as agreed to by the Examining Attorney, Applicant is amending its services so that the only services claimed are "hotel services". Applicant has thus deleted the "restaurant and bar services" that were asserted to be potentially confusingly similar to the services listed in the Application. As discussed with the Examining Attorney, Applicant asserts that the deletion of these services overcomes this potential likelihood of confusion.

3) Disclaimer

The Examining Attorney asserts that a disclaimer of the words, "DINNER & DRINKS" is required as it is descriptive of Applicant's "restaurant and bar services [that] provide dinner and drinks".

As Applicant deleted its class 043 services that include "restaurant and bar services", which are the basis of this disclaimer requirement, Applicant asserts that a disclaimer is no longer required. Applicant asserts that this remaining "hotel services" are not merely descriptive of a feature of the services.

Accordingly, Applicant respectfully asserts that it has overcome this refusal and requests that this ground of rejection be withdrawn.

Conclusion

Applicant believes that it has responded to each ground for rejection of registration of the Application and requests that all grounds for rejection be withdrawn and that registration of the Application be approved. If there are any questions concerning this response, please contact Applicant's counsel.

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Respectfully submitted,
/Scott R. Cox/

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