

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86062955
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86062955/large
LITERAL ELEMENT	ROCKÄS RUM INFUSED BEVERAGE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_701095314-105751257_._ROCKAS.pdf
CONVERTED PDF FILE(S) (7 pages)	\\TICRS\EXPORT16\IMAGEOUT16\860\629\86062955\xml4\ROA0002.JPG
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DESCRIPTION OF EVIDENCE FILE	arguments to overcome the Section 2(d) refusal.
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use RUM INFUSED BEVERAGE apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/avann/
SIGNATORY'S NAME	Antonio G. Vann
SIGNATORY'S POSITION	Attorney of Record, VA Bar Member
SIGNATORY'S PHONE NUMBER	2027168266
DATE SIGNED	04/02/2014
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	

TEAS STAMP

USPTO/ROA-XX.XXX.XX.XX-20
140402110010272289-860629
55-500e5d814ad2d3e4df75ac
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f5ae24438cff6af19-N/A-N/A
-20140402105751257158

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86062955** ROCKÄS RUM INFUSED BEVERAGE(Standard Characters, see <http://tsdr.uspto.gov/img/86062955/large>) has been amended as follows:

EVIDENCE

Evidence in the nature of arguments to overcome the Section 2(d) refusal. has been attached.

Original PDF file:

[evi_701095314-105751257 . ROCKAS.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use RUM INFUSED BEVERAGE apart from the mark as shown.

SIGNATURE(S)

Response Signature

Signature: /avann/ Date: 04/02/2014

Signatory's Name: Antonio G. Vann

Signatory's Position: Attorney of Record, VA Bar Member

Signatory's Phone Number: 2027168266

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86062955

Internet Transmission Date: Wed Apr 02 11:00:10 EDT 2014

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20140402110010272

289-86062955-500e5d814ad2d3e4df75accb4da

9f9a385ec5c076ad9d04f5ae24438cff6af19-N/

A-N/A-20140402105751257158

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	CH Holdings, LLC
Serial No.:	86062955
Filed:	September 12, 2013
Trademark Atty:	Natalie L. Kenealy
Word Mark:	ROCKÄS RUM INFUSED BEVERAGE

RESPONSE TO OFFICE ACTION DATED DECEMBER 26, 2013

This Response is filed in reply to the Office Action e-mailed on December 26, 2013. The Applicant respectfully submits the following response. Applicant submits that the above-identified trademark application for ROCKÄS RUM INFUSED BEVERAGE is in condition for allowance to publication.

Potential Section 2(d) – Likelihood of Confusion

Applicant submits a preliminary response to the potential section 2(d) refusal; however, Applicant reserves all rights to provide a detailed and more descriptive response if Examining Attorney Natalie L. Kenealy raises a Section 2(d) refusal in a subsequent Office Action.

Applicant's Word Mark

Cited Registered Marks

ROCKÄS RUM INFUSED BEVERAGE

and ROCKER

Reg. No. 4109917

Reg. No. 4345330

Preliminary Response with Reservation of Rights

The USPTO suggests that it will refuse registration of Applicant's mark, ROCKÄS RUM INFUSED BEVERAGE, because of a likelihood of confusion with registered marks R ROKKA

LIQUEUR and ROCKER. “[T]he question of confusion is related not to the nature of the mark but to its effect ‘when applied to the goods of the applicant.’” *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1360, 177 USPQ 563, 566 (C.C.P.A. 1973). The United States Court of Customs and Patent Appeals listed thirteen factors to weigh in the likelihood of confusion analysis and stated that all of the factors must be considered “when of record.” *Id.* at 1361. The Examining Attorney has indicated that similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services weigh against the Applicant’s mark. However, Applicant respectfully asserts that when all factors are weighed, the majority weighs against the existence of a likelihood of confusion.

(1) Similarity of Conflicting Designations

The first factor is the similarity of the conflicting designations, including in their appearance, sound, meaning or connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). A similar phrase found in two marks is not dispositive of a confusing similarity between the marks when the marks give off different commercial expressions. *See Kellogg Co. v. Pack’em Enterprises, Inc.*, 951 F.2d 330 (Fed. Cir. 1991). When Applicant’s mark (ROCKÄS RUM INFUSED BEVERAGE), and the Registrants’ marks are compared the appearance is not similar. Applicant’s shared terms are different in appearance. The common elements in question are the variations of ROCKÄS, RÖKAS, and ROCKER. While these terms have similarities, on their face each is different. The Applicant’s mark utilizes a diaeresis over the letter “a.” One cited registration utilizes a macron over the letter “o.” The other cited registration utilizes the suffix “er.” Further differences are apparent in the additional word elements in the Applicant’s mark that are not shared by the cited registrations, namely, “rum infused beverage.” Phonetically the marks differ in sound as the diaeresis in the Applicant’s mark creates a distinct and different pronunciation than the cited registrations. The term “ROCKÄS” is a word originally created by the Applicant, with the purpose of sounding Jamaican in nature. Furthermore, the Applicant’s mark consists of eight syllables and the cited

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