

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86491658
LAW OFFICE ASSIGNED	LAW OFFICE 118
MARK SECTION	
MARK FILE NAME	http://tsdr.uspto.gov/img/86491658/large
LITERAL ELEMENT	HERITAGE BREWING CO.
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
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SIGNATURE SECTION	
RESPONSE SIGNATURE	/tdunlap/
SIGNATORY'S NAME	TOM DUNLAP
SIGNATORY'S POSITION	ATTORNEY OF RECORD
SIGNATORY'S PHONE NUMBER	703.777.7319
DATE SIGNED	04/23/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Apr 23 09:10:16 EDT 2015
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XX-20 150423091016196236-864916 58-530ab23e6eeb6a6c0cca09 89ff56e5095d455dd794c382e 2a73dc5168597675bcd6-N/A- N/A-20150423085315498555

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86491658** HERITAGE BREWING CO. (Stylized and/or with Design, see <http://tsdr.uspto.gov/img/86491658/large>) has been amended as follows:

EVIDENCE

Original PDF file:

[evi_701095314-20150423085315498555 . HERITAGE BREWING CO OA 2d_response.pdf](#)

Converted PDF file(s) (7 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

SIGNATURE(S)

Response Signature

Signature: /tdunlap/ Date: 04/23/2015

Signatory's Name: TOM DUNLAP

Signatory's Position: ATTORNEY OF RECORD

Signatory's Phone Number: 703.777.7319

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: 86491658

Internet Transmission Date: Thu Apr 23 09:10:16 EDT 2015

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20150423091016196

236-86491658-530ab23e6eeb6a6c0cca0989ff5

6e5095d455dd794c382e2a73dc5168597675bcd6

-N/A-N/A-20150423085315498555

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heritage brewing Co.
Serial No.: 86491658
Filed: February 06, 2015
Trademark Atty: Leigh Caroline Case
TradeMark: HERITAGE BREWING CO. (design)

RESPONSE TO FEBRUARY 06, 2015 OFFICE ACTION

This Response is filed in reply to the Office Action e-mailed on February 06, 2015. The Applicant respectfully submits the following response. Applicant submits that the above-identified trademark application for HERITAGE BREWING CO. (design) is in condition for allowance to publication.

POTENTIAL SECTION 2(d) REFUSAL – 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 Leigh Caroline Case raises a Section 2(d) refusal in a subsequent Office Action.

APPLICANT'S MARK



**HERITAGE
BREWING CO.**

Serial No. 86491658

Date of First Use: 12/01/2011

Class 032: Beer

CITED REGISTERED MARK

PATRONIZE YOUR HERITAGE

Registration. No. 4168654

Date of First Use: 09/01/2010

Class 032: Beer

AN EXAMINATION OF THE MARKS AS TO APPEARANCE, SOUND AND MEANING DETERMINE THEY ARE NOT SIMILAR

Under *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973), the first factor requires examination of "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." "When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). Moreover, the focus is on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. See, e.g., *In re M. Serman & Company, Inc.*, 223 USPQ 52 (TTAB 1984). In the present case, the cited registration prominently features the terms PATRONIZE YOUR, which are stated first within the mark. Given that PATRONIZE YOUR is stated first, it is distinguishable from HERITAGE BREWING CO. in appearance, sound, and connotation. Additionally, the recollections of a general purchaser of the cited registrants goods will focus on PATRONIZE YOUR in reference to the mark rather than its additional terms.

APPLICANT'S MARK HAS ADDITIONAL ELEMENTS GIVING IT A DISTINCT COMMERCIAL IMPRESSION

The USPTO suggests that it will refuse registration of Applicant's mark, HERITAGE BREWING CO. (design) in class 032, because of a likelihood of confusion with registered mark "Patronize Your Heritage," U.S. Registration No. 4168654, hereinafter "Registrant." "[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 weigh against the existence of a likelihood of confusion.

WHEN VIEWED IN ITS ENTIRETY APPLICANTS MARK HAS A DISTINCT COMMERCIAL IMPRESSION

The Examining Attorney has highlighted the similarity of the marks as one basis for the refusal, focusing on the premise that the "word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar..." However, when viewed side by side, the marks do not appear similar. The Applicant's mark includes additional elements not shared by the cited registration, namely, a distinct design element which includes a snake coiled around a rifle; in addition to the descriptive term "BREWING CO." which, although disclaimed, must be considered when viewing the Applicant's mark as a whole.

Courts have held that the addition of different terms to common elements appreciably reduces the likelihood of confusion between two marks, even in cases where the goods are highly similar. See *UStTrust v. U.S. States Trust Co.*, 210 F. Supp 2d9 27-28 (D. Mass. 2002), (holding that UNITED STATES TRUST COMPANY not confusingly similar to UNITED STATES TRUST COMPANY OF BOSTON, both for financial services).

Additionally, in *In re Electrolyte Labs*, 929 F.2d 645, U.S.P.Q. 2d 1239 (Fed. Cir. 1990), the Federal Circuit reversed the Trademark Trial and Appeal Board, and held that the marks "K+ and Design" and "K+ EFF" for "competitive dietary supplements" were not likely to be confused even if consumers

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