

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE

**Applicant:** Romo Hermanas, S.A. de C.V.  
**Serial No.:** 78/195384  
**Filed:** December 17, 2002  
**Trademark:** GOTLAND VODKA AND BOTTLE DESIGN (IN COLOR)  
**Class No.:** 33  
**Examining Attorney:** Amy E. Hella  
**Office:** 110

**Date of this Paper:** November 12, 2004

**REQUEST FOR RECONSIDERATION**

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

**Dear Sir:**

This responds to the official letter of May 12, 2004.

**I. DISCLAIMERS**

The disclaimer in the application should be amended to read as follows:

No claim is made to the exclusive right to use the wording VODKA, FROM SWEDEN IMPORTED and the representation of a bottle apart from the mark as shown.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on the date shown below.

MARIE-ANNE MASTROVITO

  
Signature

Date: November 12, 2004



11-15-2004

## II. GOTLAND SHOULD NOT BE DISCLAIMED

The Applicant requests that the Examiner reconsider her continued requirement that Applicant submit a disclaimer of the word **GOTLAND**. For the reasons stated below, and in the Applicant's previous response, the Applicant submits that consumers will not recognize **GOTLAND** as the name of a geographic location. As a result, the mark will not be perceived by any appreciable number of U.S. consumers as identifying the origin of the goods. **GOTLAND** therefore is not primarily geographically descriptive and should not be disclaimed.

The Examiner states that "[a] two-part test is applied to determine whether a term is geographically descriptive. First, the term must be the name of a place known generally to the public. Second, the public must be likely to make a goods-place association." The Applicant submits that the first part of this test has not been met. The Examiner has not shown that the average consumer purchasing vodka in the United States would recognize Gotland as the name of a geographic location.

The Examiner asserts that this case differs from the Aying case previously cited by the Applicant (*In re Brauerei Aying Frahnz Inselkammer KG*, 217 USPQ 73(TTAB 1983)). The Examiner appears to distinguish the two cases because the town of AYINGER involved in the prior instance had a population of 500 inhabitants, while the island of **GOTLAND** has a population of 58,000. The Applicant submits that the difference in population between the places named is not grounds for ignoring this precedent.

First, there is no *per se* rule that a population over certain number creates a presumption that U.S. consumers are familiar with a particular location. For example in *In re Bavaria St. Pauli Brauerie AG*, 222 USPQ 926 (TTAB 1984), the Board found that consumers were not likely to recognize JEVER as identifying a place name. At that time Jever, Germany, the place named in the mark had a population of approximately 10,000. Although JEVER had a population significantly larger than AYINGER, the Board noted that the case before it was "extremely similar" to *In re Brauerei Aying*. Thus, the Board saw no reason to distinguish the two cases based on the differences in the populations involved.

Second, the Applicant contends that 58,000 is still a relatively small population compared to geographical locations abroad that are likely to be "generally known to the public." For example, Stockholm, which is arguably the most widely known city in Sweden has a population

of 1,240,600 (see attached excerpt from The World Gazetteer), more than 21 times greater than the population of the entire island of Gotland.

In this case the only evidence submitted by the Examiner as to the significance of Gotland is an excerpt from the *Columbia Encyclopedia*. Nothing in the record suggests that this publication is either widely read or distributed. Nor is there any other evidence suggesting that the island of GOTLAND would be well known to Americans. The Examiner's contention that "Gotland is a well-known tourist locale in Sweden," is completely unfounded because none of the materials attached to the official action discuss this issue. Moreover, even if Gotland was known to Swedish tourists, this would not also mean that Americans would be familiar with this place. In fact, the scant evidence submitted by the Examiner regarding the significance of Gotland, suggests that, in the U.S., Gotland is obscure.

The Applicant submits that this case is also analogous to *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 3 USPQ2d 1450 (Fed Cir. 1987) in which the Court of Appeals found that the mark VITTEL should not be considered to be geographically descriptive. In that case the Court explained that in dealing with questions regarding the public's response to world symbols, the relevant segment of the American public is "mill-run" purchasers, not the unusually well travelled, the aficionados of European watering places, or computer operators checking out the meaning of strange words on NEXIS *Id.* at 1452. Nothing in the record in this case suggests that the mill-run consumers of vodka in the United States would have any reason to know the geographic location Gotland. For this reason, the word **GOTLAND** is not primarily geographically descriptive.

The Applicant also disputes the Examiner's contention that "[t]he applicant is advertising the vodka as a specialty product from Gotland, Sweden as part of its marketing strategy." The Applicant agrees that its packaging states that the product derives from Sweden, however, it does not promote that it is from **GOTLAND**. The statement that the product is from Sweden does not have any effect on how the word **GOTLAND** would be interpreted. Consumers will recognize the name Sweden, they are not likely to recognize **GOTLAND** as having any meaning other than as a trademark for the goods.

For the reasons above, the Applicant submits that the Examiner has not made a *prima facie* showing that the mark is primarily geographically descriptive, and requests that the Examiner withdraw the disclaimer requirement.

### III. DRAWING OF MARK

The Applicant requests that the Examiner reconsider her objection to the drawing of the mark. The Applicant submits that the drawing is sufficiently precise to meet the Trademark Office's requirements. Because of the size limitations on drawings imposed by the Trademark Office, and the curved nature of the bottle, it is not possible to represent the entire configuration of the product and all the wording on the goods any more clearly. The drawing is certainly precise enough to put third parties on notice of the mark claimed.

### III. DRAWING STATEMENT

The following statement may be added to the record:

The mark consists of a configuration of a blue bottle and in the center of the bottle appears the words GOTLAND VODKA FROM SWEDEN in white below a yellow sunburst design. The neck of the bottle includes two gold parallel lines forming a band around the neck of the bottle with the word IMPORTED between the two lines.

### IV. CONCLUSION

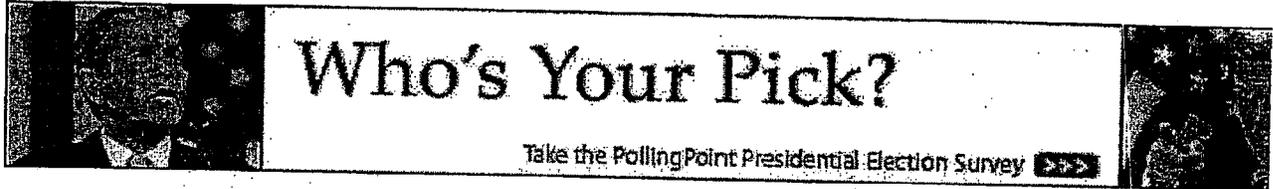
As all outstanding issues have been addressed, the Applicant requests that the Examiner allow the application for publication.

Respectfully submitted,

  
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## The World Gazetteer

\* current population figures for cities, towns and places of all countries

\* largest cities of the world

\* current national flags

### Sweden 2004

#### Cities and Places

rank	Place	Administrative Division	Pop. 2003	Pop. 2004	Aggl. 2004	Latituc
14	Borås	<u>Västra Götaland</u>	62 700	62 900		57.73°
25	Borlänge	<u>Dalarna</u>	39 000	38 900		60.49°
16	Eskilstuna	<u>Södermanland</u>	58 500	58 600		59.37°
28	Falun	<u>Dalarna</u>	35 300	35 300		60.61°
13	Gävle	<u>Gävleborg</u>	68 200	68 300		60.69°
2	Göteborg	<u>Västra Götaland</u>	507 400	510 300	761 900	57.72°
19	Halmstad	<u>Halland</u>	54 700	55 200		56.67°
8	Helsingborg	<u>Skåne</u>	89 700	90 400		56.05°
9	Jönköping	<u>Jönköping</u>	82 700	83 100		57.78°
29	Kalmar	<u>Kalmar</u>	34 300	34 400		56.67°
31	Karlskrona	<u>Blekinge</u>	32 200	32 300		56.18°
18	Karlstad	<u>Värmland</u>	57 100	57 300		59.38°
32	Kristianstad	<u>Skåne</u>	31 900	32 100		56.03°
34	Lidingö	<u>Stockholm</u>	30 700	30 900	Stockholm	59.37°
7	Linköping	<u>Östergötland</u>	95 700	96 100		58.41°

22 Luleå	<u>Norrbottn</u>	45 400	45 400		65.60°
11 Lund	<u>Skåne</u>	75 300	75 800	København-Malmö	55.71°
3 Malmö	<u>Skåne</u>	256 200	258 600	København-Malmö	55.61°
10 Norrköping	<u>Östergötland</u>	82 900	82 900		58.60°
6 Örebro	<u>Örebro</u>	97 100	97 700		59.28°
24 Östersund	<u>Jämtland</u>	43 100	43 000		63.18°
33 Skellefteå	<u>Västerbotten</u>	31 100	31 100		64.76°
30 Skövde	<u>Västra Götaland</u>	32 500	32 600		58.38°
15 Södertälje	<u>Stockholm</u>	59 900	60 200	Stockholm	59.20°
1 Stockholm	<u>Stockholm</u>	1 240 600	1 250 400	1 644 400	59.33°
21 Sundsvall	<u>Västernorrland</u>	48 400	48 300		62.40°
17 Täby	<u>Stockholm</u>	58 200	58 400	Stockholm	59.50°
23 Trollhättan	<u>Västra Götaland</u>	44 300	44 400		58.29°
27 Tumba	<u>Stockholm</u>	35 200	35 600	Stockholm	59.20°
35 Uddevalla	<u>Västra Götaland</u>	30 100	30 200		58.35°
12 Umeå	<u>Västerbotten</u>	72 700	73 200		63.83°
26 Upplands-Väsby	<u>Stockholm</u>	36 400	36 600	Stockholm	59.53°
4 Uppsala	<u>Uppsala</u>	126 600	127 400		59.86°
5 Västerås	<u>Västmanland</u>	105 100	105 700		59.62°
20 Växjö	<u>Kronoberg</u>	52 800	53 100		56.88°

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