

From: Severson, Karen

Sent: 7/25/2013 7:00:03 AM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 79098943 - CHATEAU PAVIE MACQUIN SAINT EMILION -  
N/A - Request for Reconsideration Denied - Return to TTAB - Message 1 of 4

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Attachment Information:

Count: 3

Files: Perse-01.jpg, Perse-02.jpg, 79098943.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 79098943

**MARK:** CHATEAU PAVIE MACQUIN SAINT EMILION



**CORRESPONDENT ADDRESS:**

BURTON S EHRlich

LADAS & PARRY

224 SOUTH MICHIGAN AVENUE SUITE 1600

CHICAGO, IL 60604

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

**APPLICANT:** SCEA CHATEAU PAVIE MACQUIN SCEA

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

CHIUSTM@LADAS.NET

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 7/25/2013

## **INTERNATIONAL REGISTRATION NO. 1081449**

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.64(b); TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a). The requirement(s) and/or refusal(s) made final in the Office action dated December 20, 2012 (refusal under Trademark Act Section 2(d) and requirement for a new drawing) are maintained and continue to be final. See TMEP §§715.03(a)(2)(B), (a)(2)(E), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

In further support of the likelihood of confusion refusal under Trademark Act 2(d), the examining attorney attaches hereto industry articles discussing the wines of registrant. First, please see the attached Internet web pages from <http://fxcuisine.com/Default.asp?language=2&Display=181&resolution=high> which state, in part:

While top Bordeaux wine critic Robert Parker awarded Pavie its highest rating, other critics are scandalized that such a concentrated, powerful, almost port-like wine could be made in St-Emilion. Gérard Perse [jayrar payrs], the powerful owner of Château Pavie, doesn't mind as his wine now retails for nearly \$500 a bottle. Who is this man? How could he turn Château Pavie into such a spectacular success?

The article further notes the particular procedures used in making registrant's wine, stating:

Let's follow Mr Perse across his vineyards where he will explain us all about the soil, the type of grapes, the almost bonzai-like cultivation and unique wine making procedures.

The examining attorney notes the use of CHATEAU PAVIE to discuss registrant's wine and vineyards. The examining attorney also points to the evidence of record (submitted with applicant's response received November 19, 2012) in the form of an article from [www.thewinedoctor.com](http://www.thewinedoctor.com), which discusses the history of both applicant and registrant's vineyards. It is important to note that the article indicates that the parties' vineyards "were once part of the holdings of Ferdinand Bouffard." It is also important to note

that prior to applicant's ownership of what is now called Chateau Pavie-Macquin, applicant's vineyard was known as Chapus-Pavie vineyard, which appears to distinguish the subject vineyard from the vineyards of registrant, namely, Chateau Pavie and Chateau Pavie-Decesse. As noted in the Winedoctor article, following the purchase of Chapus-Pavie by Albert Macquin, the vineyard was renamed Chateau Pavie-Macquin.

Please see also the attached article from [http://en.wikipedia.org/wiki/Ch%C3%A2teau\\_Pavie](http://en.wikipedia.org/wiki/Ch%C3%A2teau_Pavie) which discusses the history of registrant's vineyards and states, in part:

Like other vineyards in Saint-Émilion such as Château Ausone, the Pavie vineyard dates back to Roman times. It takes its name from the orchards of peaches ("pavies") that used to stand there. The modern estate was assembled by Ferdinand Bouffard in the late 19th century by buying plots from several families. The plots were still managed separately, and the 9 hectares bought from the Pigasse family retained a separate identity as Château Pavie-Decesse.

However Bouffard struggled with phylloxera, and at the end of World War I he sold it to Albert Porte, who sold it to Alexandre Valette in 1943. His grandson Jean-Paul Valette sold it to Gérard Perse in 1998 for \$31 million.

This article once again shows the importance in the identification of wines by vineyard and the investments made by vineyard owners in producing the wines bearing their marks.

Please also see the attached article from <http://www.vignoblesperse.com/> which specifically notes the quality consumers expect to receive from registrant's CHATEAU PAVIE wines, stating, in part:

In the same way as his arrival at Monbousquet in 1993, Gérard Perse's purchase of Pavie, in 1998, did wonders for the estate. Its quality is now unanimously acknowledged by wine specialists around the world.

And from the same web site, the following information regarding registrant's vineyard practices which states, in part:

A major replanting programme was set into motion. This was done scientifically, matching grape varieties and soil types. Cabernet has been planted in the most prestigious parts of the terroir. The grape varieties are as follows: 60% Merlot, 30% Cabernet Franc, and 10% Cabernet Sauvignon. In addition, the vines are now trained higher to increase the leaf canopy.

It is important to note that when comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entirety that confusion as to the source of the goods and/or services offered under applicant's and registrant's marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP §1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

And, moreover, that the overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. See 37 C.F.R. §2.64(b); TMEP §715.03, (a)(2)(B), (a)(2)(E), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a)(2)(B), (c). However, if applicant has already filed a timely notice of appeal with the Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. See TMEP §715.04(a).

/Karen P. Severson/

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Gerard Perse, one of the most important men in the Bordeaux wine industry, took me on a three-hour tour of Château Pavie in **St Emilion**. See for yourself how this man turned a failing château into one of the most prized wines in the region. Complete with many pictures and my **360° panorama** of the huge limestone cellar and exclusive heart-to-heart **interview with Perse**.

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While top Bordeaux wine critic **Robert Parker** awarded Pave its highest rating, other critics are scandalized that such a concentrated, powerful, almost port-like wine could be made in St-Emilion. Gérard Perse [jayrar pays], the powerful owner of Château Pave, doesn't mind as his wine now retails for nearly \$500 a bottle. Who is this man? How could he turn Château Pave into such a spectacular success?



Let's follow Mr Perse across his vineyards where he will

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