

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85893351
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 106
<b>MARK SECTION (no change)</b>	
<b>ARGUMENT(S)</b>	
TWIN PEAKS BREWING (word mark) S/N 85/893351 Examiner: Lourdes Ayala Examining Attorney Law Office 106 (571) 272-9316	
<u>RESPONSE TO FINAL OFFICE ACTION OF FEBRUARY 10, 2014 AND REQUEST FOR RECONSIDERATION</u>	
<u>REMARKS</u>	
<p>The above-identified application has been carefully reviewed in view of the Final Official Action mailed February 10, 2014. Reconsideration and withdrawal of the rejection entered by the Examining Attorney is respectfully requested in light of the amendments to the application and the arguments and authorities presented below.</p>	
<p>I. <u>THE REFUSAL TO REGISTER UNDER SECTION 2(D) IS IMPROPER.</u></p>	
<p>The Examining Attorney has maintained the rejection Applicant's mark under Section 2(d) of the Trademark Act, citing U.S. Registration No. 4,351,687 for TWIN PEAKZ in International Class 033 for "Alcoholic beverages, namely vodka distilled spirits, namely, vodka." Applicant submits that concurrent use and registration of Applicant's mark will not likely cause confusion, mistake or deception, and requests that the Examining Attorney's rejection be withdrawn.</p>	
<p>Applicant believes that confusion as to source between Applicant's mark and the cited registration is not likely based upon the difference in the appearance, pronunciation, and commercial impression of the marks and the substantial difference in the goods offered under the marks.</p>	
<p>Applicant reincorporates its arguments from the prior response as if fully set forth herein.</p>	
<p>A) <u>The Commercial Impressions of the Marks Are Dissimilar</u></p>	
<p>The Examining Attorney continues to disregard "BREWING" portion of Applicant's mark in her similarity analysis. She dismisses this term by arguing, "The wording 'BREWING' does not add any trademark value to the mark and does not distinguish it from any other brewing company."</p>	

This argument actually serves to reinforce an argument raised by Applicant in its prior response – namely, that spirits are not “brewed” at all. As such, consumers would readily recognize that TWIN PEAKS BREWING refers strictly to a brewing company and not to a distillery.

Applicant concedes that some companies produce both brewed beverages – e.g., beer and ale – and distilled spirits – e.g., vodka and tequila. However, the examples cited by the Examining Attorney all use “Brewing & Distilling” or “Brewery & Distillery” to indicate that they produce both beer and distilled spirits. None of the examples given by the Examining Attorney, nor any of the examples located by Applicant’s own research, show that a distiller uses “BREWING” without also using “DISTILLER(Y).”

As such, Applicant argues that the term “BREWING” in the subject mark clearly indicates that Applicant does not sell distilled spirits and readily distinguishes Applicant’s mark from the cited registration.

B) Applicant's Mark Also Serves as a Secondary Source Identifier When Applied to the Claimed Goods

In the Final Office Action, the Examining Attorney points to precedent holding that, “The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks.” Applicant respectfully submits that this principle reinforces its argument that Applicant’s prior registrations are relevant.

Accepting as fact that the average purchaser remembers trademarks only in a general sense, the average purchaser is likely to remember Applicant’s incontestable registration for TWIN PEAKS and its nationwide chain of popular sports bars. Applicant’s Twin Peaks restaurants are well-known for their casual atmosphere and heavily promote their ice cold beers. When encountering the TWIN PEAKS BREWING mark, the average purchaser will make the connection between a longstanding, well-known sports bar and the “brewed” beverages served by the attractive Twin Peaks Girls.

Applicant also disagrees with the Examining Attorney’s conclusion that *In re Strategic Partners* precludes a finding that the registered TWIN PEAKS mark cannot be used to overcome the present 2(d) rejection.

The Examining Attorney has stated that “The wording ‘BREWING’ does not add any trademark value to the mark.” It is difficult to see, then, how the Examining Attorney could then argue that the present situation is dissimilar from *In re Strategic Partners*, where there was “no meaningful difference” between the marks.

Moreover, the Examining Attorney finds that “applicant’s prior registrations are for services and the applications are for goods.” However, this Examining Attorney was assigned to Applicant’s co-pending Application No. 85/893369 for the identical mark in connection with Class 43 services. In that case, this Examining Attorney held that “the same entity commonly provides the relevant goods and/or services...Therefore, applicant’s and registrant’s goods and/or services are considered related for likelihood of confusion purposes.” For the Examining Attorney to now hold that the goods claimed in the subject application and the services claimed in Applicant’s prior registration are not sufficiently related is inconsistent.

Moreover, the Examining Attorney summarizes the facts of *In re Strategic Partners* as having “goods identical in part.” Applicant respectfully submits that finding that the Applicant’s goods and services are unrelated simply because Applicant filed separate applications in Class 32 and Class 43, rather than filing a single multi-class application, leads to an absurd result not contemplated by the TTAB.

Applicant therefore argues once again that there is no likelihood that consumers will be confused that Applicant's beer and ale emanates from the same source as the cited registrant's distilled spirits.

**II. IN THE ALTERNATIVE, APPLICANT HAS OBTAINED THE CONSENT OF THE CITED REGISTRANT TO REGISTRATION OF THE SUBJECT APPLICATION**

Although Applicant believes its mark is entitled to registration on the basis of the present record, Applicant advances the alternative argument that it has obtained the cited registrant's consent to the registration of TWIN PEAKS BREWING in International Class 32.

If the Examining Attorney is not persuaded by Applicant's arguments in favor of registration, Applicant submits herewith a Letter of Consent to Registration signed by both Applicant and the cited registrant, Terressentia Corporation.

Accordingly, if the Examining Attorney refuses registration based upon Applicant's written arguments above, Applicant submits that the attached Letter of Consent to Registration renders the refusal moot.

**III. NOTICE OF INTENT TO APPEAL**

By way of notice only, Applicant hereby informs the Examining Attorney of its intent to appeal any continued rejection of the present application. A Notice of Appeal is submitted concurrently with this response.

**IV. CONCLUSION**

As discussed above, Applicant's TWIN PEAKS BREWING mark is not confusingly similar to the cited mark when considered in their entireties. Applicant has also demonstrated that consumers will associate Applicant's beer and ale with Applicant's senior registrations for TWIN PEAKS marks as an indicator of a secondary source, rather than with the cited registrant's vodka. Accordingly, the Examiner's rejection under § 2(d) is improper.

Applicant has entered the requested disclaimer of "BREWING" and has set forth arguments in support of registration. Applicant respectfully requests reconsideration and withdrawal of the rejection under § 2(d) and that the subject application be approved for publication without further delay. Applicant's attorney requests that the Examining Attorney contact the attorney of record if further clarification is needed or if a telephone conference would be useful in resolving the issues pending in this matter.

**EVIDENCE SECTION**

EVIDENCE FILE NAME(S)	
<b>ORIGINAL PDF FILE</b>	<a href="#">evi_1219128154-192129917_140804_Letter_of_Consent_-_TWIN_PEAKS_BREWING_Marks.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT16\IMAGEOUT16\858\933\85893351\xml7\RFR0002.JPG</a>
<b>DESCRIPTION OF EVIDENCE FILE</b>	Letter of Consent to Registration (as an alternative to Applicant's arguments)

**SIGNATURE SECTION**

<b>RESPONSE SIGNATURE</b>	/Elisabeth A. Evert/
<b>SIGNATORY'S NAME</b>	Elisabeth A. Evert
<b>SIGNATORY'S</b>	Attorney of record, Texas bar member

<b>POSITION</b>	
<b>SIGNATORY'S PHONE NUMBER</b>	214-953-1181
<b>DATE SIGNED</b>	08/11/2014
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Aug 11 19:24:00 EDT 2014
<b>TEAS STAMP</b>	USPTO/RFR-12.191.28.154-2 0140811192400579955-85893 351-50004492cd25d4d610d17 41a3ab7c7265818aaf115597d a969fcf66413cff769-N/A-N/ A-20140811192129917004

PTO Form 1930 (Rev 9/2007)  
OMB No. 0651-0050 (Exp. 05/31/2014)

## **Request for Reconsideration after Final Action To the Commissioner for Trademarks:**

Application serial no. **85893351** has been amended as follows:

### **ARGUMENT(S)**

**In response to the substantive refusal(s), please note the following:**

TWIN PEAKS BREWING (word mark) S/N 85/893351  
Examiner: Lourdes Ayala  
Examining Attorney  
Law Office 106  
(571) 272-9316

### RESPONSE TO FINAL OFFICE ACTION OF FEBRUARY 10, 2014 AND REQUEST FOR RECONSIDERATION

### REMARKS

The above-identified application has been carefully reviewed in view of the Final Official Action mailed February 10, 2014. Reconsideration and withdrawal of the rejection entered by the Examining Attorney is respectfully requested in light of the amendments to the application and the arguments and authorities presented below.

I. THE REFUSAL TO REGISTER UNDER SECTION 2(D) IS IMPROPER.

The Examining Attorney has maintained the rejection Applicant's mark under Section 2(d) of the Trademark Act, citing U.S. Registration No. 4,351,687 for TWIN PEAKZ in International Class 033 for "Alcoholic beverages, namely vodka distilled spirits, namely, vodka." Applicant submits that concurrent use and registration of Applicant's mark will not likely cause confusion, mistake or deception, and requests that the Examining Attorney's rejection be withdrawn.

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A) The Commercial Impressions of the Marks Are Dissimilar

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As discussed above, Applicant’s TWIN PEAKS BREWING mark is not confusingly similar to the cited mark when considered in their entireties. Applicant has also demonstrated that consumers will associate Applicant’s beer and ale with Applicant’s senior registrations for TWIN PEAKS marks as an indicator of a secondary source, rather than with the cited registrant’s vodka. Accordingly, the Examiner’s rejection under § 2(d) is improper.

Applicant has entered the requested disclaimer of “BREWING” and has set forth arguments in support of registration. Applicant respectfully requests reconsideration and withdrawal of the rejection under § 2(d) and that the subject application be approved for publication without further delay. Applicant’s attorney requests that the Examining Attorney contact the attorney of record if further clarification is needed or if a telephone conference would be useful in resolving the issues pending in this matter.

## **EVIDENCE**

Evidence in the nature of Letter of Consent to Registration (as an alternative to Applicant's arguments) has been attached.

**Original PDF file:**

[evi\\_1219128154-192129917\\_.140804\\_Letter\\_of\\_Consent\\_-\\_TWIN\\_PEAKS\\_BREWING\\_Marks.pdf](#)

**Converted PDF file(s)** (1 page)

[Evidence-1](#)

**SIGNATURE(S)**

**Request for Reconsideration Signature**

Signature: /Elisabeth A. Evert/ Date: 08/11/2014

Signatory's Name: Elisabeth A. Evert

Signatory's Position: Attorney of record, Texas bar member

Signatory's Phone Number: 214-953-1181

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.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85893351

Internet Transmission Date: Mon Aug 11 19:24:00 EDT 2014

TEAS Stamp: USPTO/RFR-12.191.28.154-2014081119240057

9955-85893351-50004492cd25d4d610d1741a3a

b7c7265818aaf115597da969fcf66413cff769-N

/A-N/A-20140811192129917004

**LETTER OF CONSENT TO REGISTRATION**

This Letter of Consent to Registration (the "Consent") is given by Terressentia Corporation, whose address is 3525 Iron Horse Road, Suite 104, Ladson, South Carolina 29456 (hereinafter "Terressentia"); to Twin Restaurant IP LLC, whose address is 4803 Broadway, Addison, Texas 75001 (hereinafter "TRIP").

WHEREAS, Terressentia is the owner of U.S. Trademark Registration No. 4,351,687 for TWIN PEAKZ claiming "Alcoholic beverages, namely, vodka distilled spirits, namely, vodka" in International Class 033 (the "Terressentia Mark"), and represents that it has used said mark in interstate commerce since at least as early as November 13, 2012;

WHEREAS, TRIP is the owner of intent-to-use U.S. Trademark Application No. 85/893351 for TWIN PEAKS BREWING and intent-to-use U.S. Trademark Application No. 85/893325 for TWIN PEAKS BREWING COMPANY claiming "Alcoholic beverages, namely beer and ale" in International Class 032 (the "TRIP Marks"), and represents that it has used the TWIN PEAKS core mark in interstate commerce since at least as early as April 2005; and

WHEREAS, the parties have thought through their commercial interests with care and are familiar with the relevant marketplace.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and premises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The parties acknowledge and agree that, due to differences between (a) the Terressentia Mark and the TRIP Marks, (b) the goods used in connection therewith, and (c) the trade channels in which the respective goods and services will travel, the concurrent use and registration of the Terressentia Mark and the TRIP Marks does not create a likelihood of confusion.
2. Terressentia consents to TRIP's use and registration of U.S. Trademark Application Nos. 85/893351 and 85/893325, as used in connection with "Alcoholic beverages, namely beer and ale" in International Class 032, or such amended recitation of services as may be required by the U.S. Patent and Trademark Office.
3. Terressentia consents to TRIP's use, registration and licensing of the mark TWIN PEAKS BREWING and/or TWIN PEAKS BREWING COMPANY throughout the United States in connection with the production, bottling, distribution, and sale of beer and ale.
4. TRIP consents to Terressentia's use, registration and licensing of the TWIN PEAKZ mark in connection with spirits other than beer, ale or wine in International Class 033, including but not limited to future U.S. federal trademark applications for the same. If and to the extent TRIP's consent should be required for Terressentia's registration of the TWIN PEAKZ mark as contemplated by this Agreement, Terressentia shall provide and TRIP shall execute a mutually-agreeable Letter of Consent for that purpose.
5. Neither party will contest the use or registration of the other party's mark in the manner contemplated by this Agreement, and the parties will work together in good faith to eliminate or minimize instances of actual consumer confusion between the respective marks.

**IN WITNESS WHEREOF**, Terressentia hereby grants to TRIP its consent to the use and registration of TWIN PEAKS BREWING and/or TWIN PEAKS BREWING COMPANY, including but not limited to U.S. Trademark Application No. 85/893351 for TWIN PEAKS BREWING and U.S. Trademark Application No. 85/893325 for TWIN PEAKS BREWING COMPANY.

TERRESSENTIA CORPORATION

By: \_\_\_\_\_

Name: Earl Hewette

Title: Chief Executive Officer

Date: 6-27-2014

TWIN RESTAURANT IP LLC

By: \_\_\_\_\_

Name: Randy De Witt

Title: COO

Date: 8/4/14