

ESTTA Tracking number: **ESTTA351980**

Filing date: **06/09/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184456
Party	Plaintiff L'Oreal USA, Inc.
Correspondence Address	Robert L. Sherman Paul, Hastings, Janofsky & Walker LLP 75 East 55th Street New York, NY 10022 UNITED STATES rls@paulhastings.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Natalie G. Furman
Filer's e-mail	rls@paulhastings.com
Signature	/ngf/
Date	06/09/2010
Attachments	Opposer's Notice of Reliance (Part 1).pdf (10 pages)(766431 bytes) Exhibit A.pdf (2 pages)(75663 bytes) Exhibit B.pdf (2 pages)(68963 bytes) Exhibit C-01 [Search results for Applicant's Federal Appln] 300 dpi.pdf (3 pages)(866031 bytes) Exhibit C-02 [HEINEKEN App, OA, Tarr] - 300 dpi.pdf (42 pages)(949393 bytes) Exhibit C-03 [SOUTHERN COMFORT App, OA, Tarr] 300 dpi.pdf (46 pages)(1194683 bytes) Exhibit C-04 [ABSOLUT App, OA, Tarr] 300 dpi.pdf (94 pages)(2634875 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/596,736
Published in the Official Gazette on May 6, 2008
Mark: L'OREAL PARIS

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

OPPOSER'S NOTICE OF RELIANCE

(Part 1)

Pursuant to Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 704.02 and 37 CFR §§ 2.120 and 2.122, L'Oréal S.A. and L'Oréal USA Creative, Inc. (collectively, "L'Oréal" or "Opposer") hereby offers into evidence and intends to rely on the following:

1. Pursuant to 37 C.F.R. § 2.123(b), the parties have stipulated that testimony may be received in the form of declarations. The parties' stipulation is attached hereto as **Opposer's Exhibit A**.

2. Pursuant to 37 C.F.R. § 2.123(b), the parties have stipulated that all documents printed from the USPTO Web site relating to federal trademark applications owned by Robert Victor Marcon ("Applicant") may be made of record and relied on as evidence by submitting such

records through a notice of reliance. The parties' stipulation is attached hereto as **Opposer's Exhibit B.**

3. Documents regarding Applicant's federal applications, printed from the USPTO Web site on June 6, 2010, which are attached hereto as Opposer's Exhibit C.

- a. **Opposer's Exhibit C-1:** Search results from the USPTO TESS system for federal applications filed by Applicant.
- b. **Opposer's Exhibit C-2:** A copy of Applicant's Application Serial No. 78/288,366 for HEINEKEN for "water, still water, mineral water spring water, aerated water carbonated water sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups" in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for "meat juices" in International Class 29.
- c. **Opposer's Exhibit C-3:** A copy of Applicant's Application Serial No. 78/288,368 for SOUTHERN COMFORT for "beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups" in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office

action that issued with respect to that application; and a printout of the TARR status for such application.

d. **Opposer's Exhibit C-4:** A copy of Applicant's Application Serial No.

78/288,367 for ABSOLUT for "beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups" in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application.

e. **Opposer's Exhibit C-5:** A copy of Applicant's Application Serial No.

78/288,365 for FINLANDIA for "water, still water, mineral water spring water, aerated water carbonated water sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups" in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application.

f. **Opposer's Exhibit C-6:** A copy of Applicant's Application Serial No.

78/288,364 for COORS for "water, still water, mineral water spring water, aerated water carbonated water sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or

cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups” in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “meat juices, and meat juice concentrates” in International Class 29.

g. **Opposer’s Exhibit C-7:** A copy of Applicant’s Application Serial No.

78/288,361 for BUDWEISER for “water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups” in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application.

h. **Opposer’s Exhibit C-8:** A copy of Applicant’s Application Serial No.

78/288,359 for JACK DANIEL’S for “beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups” in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “meat juices, and broth comprising meat

juices; preparations for making bouillon, and bouillon cubes” in International Class 29 and for “beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups” in International Class 32.

- i. **Opposer’s Exhibit C-9:** A copy of Applicant’s Application Serial No. 78/288,358 for DOM PERIGNON for “beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups” in International Class 32, as originally filed on August 17, 2003 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “meat juices, and broth comprising meat juices” in International Class 29.
- j. **Opposer’s Exhibit C-10:** A copy of Applicant’s Application Serial No. 78/230,510 for ABSOLUT WATER for “aerated water, mineral water, spring water, bottled water, aerated water, mineral water, spring water, bottled water, aerated water, mineral water, spring water, bottled water” (sic) in International Class 32, as originally filed on March 26, 2003 under § 1(b), § 44(d), and § 44(e); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application.

- k. **Opposer's Exhibit C-11:** A copy of Applicant's Application Serial No. 76/596,736 for L'OREAL PARIS for "(a) perfumes and fragrances; (b) vitamin, mineral, and herbal supplements, and combinations thereof; (c) aloe vera drinks; (d) shaving balms, lotions, creams, and soaps; and (e) topical skin balms, namely; sunscreens, tanning balms, lotions, creams, combinations thereof; (f) candles, both plain and scented; and (g) shaving implements" in International Class 5, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for "aloe vera drinks" in International Class 32.
- l. **Opposer's Exhibit C-12:** A copy of Applicant's Application Serial No. 76/596,737 for BAYER for "(a) Vitamin, mineral, and herbal supplements, and combinations thereof; (b) Dental products, namely; toothbrushes, toothpaste, dental floss, floss wands, mouthwash, dental whitening strips and pastes, dental desensitizing strips and pastes, and aerosol breath fresheners; (c) Bandages; (d) Cosmetics; (e) Topical skin balms namely; sunscreens, tanning balms, lotions, creams, and combinations thereof; and (f) Lozenges and throat sprays" in International Class 3, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for "non-medicated breath fresheners delivered via aerosol spray; non-medicated mouthwash and gargle" in International Class 3.
- m. **Opposer's Exhibit C-13:** A copy of Applicant's Application Serial No. 76/596,738 for NESTLÉ for "(a) Vitamin, mineral, and herbal supplements, and combinations thereof; (b) Over the counter medications, namely; analgesics,

sleep aids and preparations for making the same, cold and flu medications; (c) Beer; (d) Ale; (e) Non-alcoholic malt beverages; (f) Non-alcoholic coolers and spritzers; (g) Alcoholic coolers and spritzers, namely, malt based, wine based and distilled spirit based; (h) Distilled spirits; (i) Liqueurs; (j) Cordials; (k) Edible nuts and legumes, edible oils; and (l) Cheese” in International Class 32, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “over the counter medications, namely, Analgesics; Sleep aids; Cold and flu medications” in International Class 3.

- n. **Opposer’s Exhibit C-14:** A copy of Applicant’s Application Serial No. 76/596,735 for NESCAFÉ for “Distilled spirits; Liqueurs; Cordials; and Alcoholic coolers, namely; distilled spirit based and malt based” in International Class 33, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application.
- o. **Opposer’s Exhibit C-15:** A copy of Applicant’s Application Serial No. 76/596,734 for JACK DANIEL’S for “(a) Salsa; (b) Barbecue sauce; (c) Cigars; (d) Cigarettes; (e) Chewing tobacco; and (f) Steak sauce” in International Class 34, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “cigars, cigarettes, and chewing tobacco” in International Class 34.
- p. **Opposer’s Exhibit C-16:** A copy of Applicant’s Application Serial No. 76/596,733 for CHANEL for “(a) candles, both plain and scented; (b) shaving

implements; (c) topical skin balms, namely: sunscreens, tanning balms, lotions, creams, and combinations thereof; (d) vitamins, mineral, and herbal supplements, and combinations thereof; (e) hair coloring; (f) pre-moistened towelettes; (g) breath fresheners; and (h) scented stationary and greeting cards” in International Class 4, as originally filed on June 9, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “scented stationary and greeting cards” in International Class 16.

- q. **Opposer’s Exhibit C-17:** A copy of Applicant’s Application Serial No. 76/577,011 for EVIAN for “distilled spirits, namely vodka, gin, and tequila, ice cream, sherbert, frozen confections” in International Class 33, as originally filed on February 18, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “ice cream; sherbert; and frozen confections” in International Class 33.
- r. **Opposer’s Exhibit C-18:** A copy of Applicant’s Application Serial No. 76/577,010 for TIM HORTONS for “alcoholic beverages, ice cream, sherbert, sorbet, frozen yogurt, frozen confections, and edible nuts” in International Class 33, as originally filed on February 18, 2004 under § 1(b) and § 44(d); the initial Office action that issued with respect to that application; and a printout of the TARR status for such application, as amended, for “alcoholic beverages, namely, vodka, rum whiskey, bourbon, brandy, cognac, gin, and tequila, bitters, wine, sparkling wine, sherry; port, vermouth, liqueurs, cordials, schnapps, coolers, sprinters, and hard cider” in International Class 33.

4. Applicant's responses and amended responses to Opposer's discovery requests, which are attached hereto as Opposer's Exhibit D.

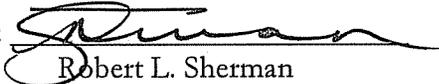
- a. **Opposer's Exhibit D-1:** Opposer's first set of discovery requests, including Opposer's First Set of Requests for Admissions, Opposer's First Set of Interrogatories, and Opposer's First Set of Document Requests, all dated September 29, 2008.
- b. **Opposer's Exhibit D-2:** Applicant's "Response to Opposers' Request," dated October 30, 2008.
- c. **Opposer's Exhibit D-3:** Applicant's "Response to Opposers' Request (Supplementary)," dated February 7, 2009.
- d. **Opposer's Exhibit D-4:** Applicant's "Response to Opposers' Request (Supplementary)," dated March 9, 2009.

ORAL ARGUMENT REQUESTED

Dated: June 9, 2010

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY
& WALKER LLP

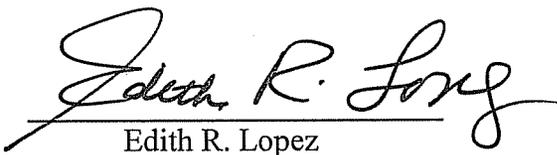
By: 

Robert L. Sherman
Natalie G. Furman
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212-318-6000
Attorneys for Opposer

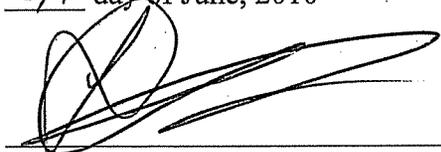
CERTIFICATE OF SERVICE

I hereby certify that the foregoing OPPOSER'S NOTICE OF RELIANCE was served this 9th day of June, 2010, by delivering a true and correct copy of same by first class mail to:

Robert V. Marcon
3481 Sinnicks Avenue
Niagara Falls, ON L2J 2G
Canada


Edith R. Lopez

Sworn to before me this 9th
9th day of June, 2010



Notary Public

FRANK NUNZIO D'AGOSTINO
Notary Public, State of New York
No. 01DA4996102
Qualified in New York County
Commission Expires May 11, 2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT A TO OPPOSER'S NOTICE OF RELIANCE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

STIPULATION TO SUBMIT TESTIMONY BY AFFIDAVIT OR DECLARATION

Pursuant to Trademark Rule 2.123(b), 37 C.F.R. § 2.123(b), and Trademark Trial and Appeal Board Manual of Procedure § 703.01(b), L'Oréal S.A. and L'Oréal USA, Inc. (collectively, "L'Oréal" or "Opposer") and Robert Victor Marcon ("Applicant") hereby stipulate and agree that the testimony of any witness or witnesses of any party may be submitted in the form of an affidavit or declaration by such witness or witnesses during the appropriate testimony period. Nothing herein shall prevent a party from taking testimony by oral deposition of any witness for rebuttal, or from objecting to testimony on the grounds of competency, relevance, admissibility, materiality and/or any other grounds that would be available to it if testimony by oral deposition took place.

Dated: June 26, 2009

ROBERT VICTOR MARCON

By: Robert Victor Marcon
Robert Victor Marcon

3471 Sinnicks Avenue
Niagara Falls, Ontario
L2J 2G6 CANADA
905-354-2543

Applicant

PAUL HASTINGS, JANOFSKY & WALKER LLP

By: Robert L. Sherman
Robert L. Sherman
Natalie G. Furman

75 E. 55th Street
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212-318-6000

Attorneys for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Published in the Official Gazette on May 6, 2008
Mark: L'OREAL PARIS

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Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT B TO OPPOSER'S NOTICE OF RELIANCE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/596,736
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Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

**STIPULATION REGARDING AUTHENTICITY AND
ADMISSIBILITY OF PAGES PRINTED FROM USPTO WEB SITE**

Pursuant to Trademark Trial and Appeal Board Manual of Procedure §§ 702, 704, and 705,
Opposer and Applicant hereby stipulate that all documents printed from the USPTO Web site
relating to trademark applications owned by Applicant are authentic, valid, and admissible, may
made of record through a notice of reliance, and may be relied on as evidence.

Dated: March 6, 2009

ROBERT VICTOR MARCON

By: Robert Victor Marcon
Robert Victor Marcon

3471 Sinnicks Avenue
Niagara Falls, Ontario
L2J 2G6 CANADA
905-354-2543

Applicant

PAUL, HASTINGS, JANOFFSKY & WALKER LLP

By: Robert L. Sherman
Robert L. Sherman
Natalie G. Furman

75 E. 55th Street
New York, New York 10022
212-318-6000

Attorneys for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT C-1 TO OPPOSER'S NOTICE OF RELIANCE



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Jun 8 04:00:29 EDT 2010

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OR to record:

19 Records(s) found (This page: 1 ~ 19)

Refine Search (Robert Marcon)[OW]

Current Search: S1: [\(Robert Marcon\)\[OW\]](#) docs: 19 occ: 38

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	78288366		HEINEKEN	TARR	LIVE
2	78288368		SOUTHERN COMFORT	TARR	DEAD
3	78288367		ABSOLUT	TARR	DEAD
4	78288365		FINLANDIA	TARR	DEAD
5	78288364		COORS	TARR	DEAD
6	78288361		BUDWEISER	TARR	DEAD
7	78288359		JACK DANIEL'S	TARR	DEAD
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9	78230510		ABSOLUT WATER	TARR	DEAD
10	76596736		L'OREAL PARIS	TARR	LIVE
11	76596737		BAYER	TARR	LIVE
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13	76596735		NESCAFÉ	TARR	DEAD
14	76596734		JACK DANIEL'S	TARR	DEAD
15	76596733		CHANEL	TARR	DEAD
16	76577011		EVIAN	TARR	DEAD
17	76577010		TIM HORTONS	TARR	DEAD
18	76364139		ROCKLIN	TARR	DEAD
19	76251596		NUTRADENT	TARR	DEAD

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT C-2 TO OPPOSER'S NOTICE OF RELIANCE

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288366
Filing Date: 08/17/2003

The table below presents the data as entered.

Input Field	Entered
MARK	HEINEKEN
OWNER	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO
ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
PHONE	905 354 2543
FAX	905 354 7693
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	CANADA
CORRESPONDENCE	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO

ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	WATER, STILL WATER, MINERAL WATER SPRING WATER,AERATED WATER CARBONATED WATER SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	WATER, STILL WATER, MINERAL WATER SPRING WATER,AERATED WATER CARBONATED WATER SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 44(d)
FOREIGN APPLICATION NUMBER	1168025
FOREIGN APPLICATION COUNTRY NAME	Canada
FOREIGN FILING DATE	02/18/2003
SIGNATURE INFORMATION	
SIGNATURE	/ROBERT V MARCON/

SIGNATURE DATE	08/17/2003
SIGNATORY NAME	ROBERT V MARCON
SIGNATORY POSITION	APPLICANT
PAYMENT	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
RAM SALE NUMBER	472
RAM ACCOUNTING DATE	08/18/2003
FILING INFORMATION	
SUBMIT DATE	Sun Aug 17 12:58:59 EDT 2003
TEAS STAMP	USPTO/BAS-2162096817 2-200308171258599830 19-78288366-200a5efe 589a270de7e7e78b996b 44f672e-CC-472-20030 817125548053175

PTO Form 1478 (Rev 4/2000)
OMB Control #0651-0009 (Exp. 08/31/2004)

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288366

Filing Date: 08/17/2003

To the Commissioner for Trademarks:

MARK: HEINEKEN

The applicant, ROBERT, VICTORMARCON, a citizen of CANADA, residing at 3471 SINNICKS

AVENUE, NIAGARA FALLS, ONTARIO Canada L2J2G6, requests registration of the trademark/service mark shown on the drawing page in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 032: WATER, STILL WATER, MINERAL WATER SPRING WATER, AERATED WATER CARBONATED WATER SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

Priority based on foreign filing: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services and asserts a claim of priority based upon a foreign application. 15 U.S.C. Section 1126(d), as amended.

Based on Canada application number 1168025, filed 02/18/2003:

International Class 032: WATER, STILL WATER, MINERAL WATER SPRING WATER, AERATED WATER CARBONATED WATER SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ROBERT V MARCON/ Date: 08/17/2003

Signatory's Name: ROBERT V MARCON

Signatory's Position: APPLICANT

Mailing Address:

MARCON, ROBERT, VICTOR

3471 SINNICKS AVENUE

NIAGARA FALLS, ONTARIO L2J2G6

RAM Sale Number: 472

RAM Accounting Date: 08/18/2003

Serial Number: 78288366

Internet Transmission Date: Sun Aug 17 12:58:59 EDT 2003

TEAS Stamp: USPTO/BAS-21620968172-20030817125859983019-78288366-
200a5efe589a270de7e7e78b996b44f672e-CC-472-20030817125548053175

FILING DATE:

2003/08/17

SERIAL NUMBER:

78/288366



TRADEMARK APPLICATION

FEE RECORD SHEET

RAM SALE NUMBER: 472

RAM ACCOUNTING DATE: 20030818

Description	Fee Code	Fee Amount	Number Of Classes	Total Fees Paid
New App	7001	335	1	335

To: MARCON, ROBERT, VICTOR (HASTINGS1066@SYMPATICO.CA)
Subject: TRADEMARK APPLICATION NO. 78288366 - HEINEKEN - N/A
Sent: 1/23/04 12:06:13 PM
Sent As: ECom112
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
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[Attachment - 20](#)
[Attachment - 21](#)
[Attachment - 22](#)
[Attachment - 23](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/288366

APPLICANT: MARCON, ROBERT, VICTOR

CORRESPONDENT ADDRESS:
MARCON, ROBERT, VICTOR
3471 SINNICKS AVENUE
NIAGARA FALLS; ONC - ONTARIO
L2J2G6

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom112@uspto.gov

CAX - CANADA

MARK: HEINEKEN

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
HASTINGS1066@SYMPATICO.CA

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/288366

The assigned examining attorney has reviewed the referenced application and determined the following.

Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration Nos. 0767954, 0823033, 0823034, 0823035, 0956608, 1504209, 2019060, 2285509, 2781138. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

When determining whether there is a likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

Applicant proposes the mark HEINEKEN for use in connection with "beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups.

Registrant in 0767954 provides "beer" in connection with the mark HEINEKEN and design.

Registrant in 0823033 provides "beer" in connection with the mark HEINEKEN SPECIAL DARK BEER

BREWED IN HOLLAND HORS CONCOURS MEMBRE DU JURY PARIS 1900 TRADE MARK GRAND PRIX PARIS 1889 DIPLOME D'HONNEUR AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875.

Registrant in 0823034 provides "beer" in connection with the mark HEINEKEN LAGER BEER BREWED IN HOLLAND HORS CONCOURS MEMBRE DU JURY PARIS 1900 TRADE MARK GRAND PRIX PARIS 1889 DIPLOME D'HONNEUR AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875.

Registrant in 0823035 provides "beer" in connection with the mark HEINEKEN HORS CONCOURS MEMBRE DU JURY PARIS 1900 GRAND PRIX 1889 DIPLOME D'HONNEUR AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875.

Registrant in 0956608 provides "beer and malt beverages" in connection with the mark HEINEKEN.

Registrant in 1504209 provides "beer" in connection with the mark HEINEKEN and configuration of a bottle.

Registrant in 2019060 provides "beer" in connection with the mark HEINEKEN and design.

Registrant in 2285509 provides "beer" in connection with the mark HEINEKEN EN VIVO.

Registrant in 2781138 provides "beer" in connection with the mark HEINEKEN and design.

The same registrant owns 0767954, 0823033, 0823034, 0823035, 0956608, 1504209, 2019060, 2285509, 2781138.

When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956); TMEP §1207.01(b).

With respect to the marks in Registration Nos. 0767954 and 0956608, the examining attorney finds that the applicant's mark HEINEKEN is identical to the registrant's mark HEINEKEN. In the second step of the analysis, the examining attorney finds that the registrant's goods and the applicant's goods are commercially related. Both the applicant and the registrant provide beverages. Nevertheless, if the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Amcors, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a).

With respect to the marks in Registration Nos. 0823033, 0823034, 0823035, 1504209, 2019060, 2285509, 2781138, the examining attorney finds that the applicant's mark shares the identical leading term HEINEKEN with each of the cited registrations.

While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entireties, one feature of a mark may be more significant in creating a commercial impression. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976); *In re El Torito Restaurants Inc.*, 9

USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Disclaimed matter is typically less significant or less dominant. Thus not only is ABSOLUT more significant than the disclaimed portions of the respective registrations but also, consumers will call for the goods by their name rather than by the design portions. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *In re Drug Research Reports, Inc.*, 200 USPQ 554 (TTAB 1978).

Finally, the mere addition of a term to a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) ("BENGAL" and "BENGAL LANCER"); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) ("THE LILLY" and "LILLI ANN"); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988) ("MACHO" and "MACHO COMBOS"); *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" and "CREST CAREER IMAGES"); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) ("CONFIRM" and "CONFIRMCELLS"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) ("ACCUTUNE" and "RICHARD PETTY'S ACCU TUNE"); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) ("HEAD START" and "HEAD START COSVETIC"). Thus the addition of other terms or a design to the dominant term HEINEKEN in the registrant's marks does not obviate the likelihood of confusion.

For these reasons, the marks are overall confusingly similar and impart a similar commercial impression.

In the second step of the analysis, the examining attorney finds that the applicant's goods are similar to the Registrants' goods because both provide alcoholic beverages. If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698 (Fed. Cir. 1992); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b).

For these reasons, it is likely that the purchasing public would confuse the goods as originating from the same source. Therefore, the examining attorney refuses registration of the applicant's mark under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

The applicant should also note the following additional ground for refusal.

False Association

Registration is refused because the proposed mark consists of or comprises matter which may falsely suggest a connection with HEINEKEN for beer. HEINEKEN is so famous that consumers would presume a connection with applicant. Trademark Act Section 2(a), 15 U.S.C. §1052(a); TMEP §§1203.03, 1203.03(e) and 1203.03(f); *See generally University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *University of Alabama v. BAMA-Werke Curt Baumann*, 231 USPQ 408 (TTAB 1986); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Section 2(a):

- the mark sought to be registered is the same as or a close approximation of the name or

identity of a person or institution;

- the mark would be recognized as such;
- the person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- the fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods or services.

In re Cotter & Co., 228 USPQ 202, 204 (TTAB 1985); *See Buffett v. Chi?Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985).

If applicant's goods or services are of a type that the named person or institution sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *In re National Intelligence Academy*, 190 USPQ 570 (TTAB 1976).

The fact that purchasers would realize, at some point after purchase, that no connection exists between the listed goods or services and the person or institution falsely connected, is not relevant. The focus is on "the initial reaction or impact of the mark when viewed in conjunction with the applicable goods or services." *In re Bicentennial Society*, 197 USPQ 905, 906 (TTAB 1978).

For these reasons the examining attorney refuses registration of the mark under Section 2(a) of the Trademark Act for false association with a famous mark.

Applicant May Respond

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Identification of Goods

The wording in the identification of goods needs clarification because it is too broad and could include goods classified in other international classes. Applicant may substitute the following wording, if accurate: TMEP §§1402.01 and 1402.03.

Nutritional drink mixes for use as a meal replacement. *International Class 5.*

Ice, crushed ice. *International Class 30.*

Beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water; juices, fruit flavored drinks, soft drinks; preparations for making fruit drinks; syrups for use in making soft drinks. *International Class 32.*

Classification

Applicant must correct the classification of the goods in the application and amend the application to classify them in International Classes 5, 30 and 32. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.02(a) and 1401.03(b).

Combined Application

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

(1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

Current fees are sufficient for one class only.

Dual Filing Bases §§1(b) and 44(d)

If applicant wishes to proceed relying on the applicant's intent to use the mark in commerce under Trademark Act Section 1(b) as the sole basis for registration, with the claim of priority under Section 44(d), then applicant should so advise the trademark examining attorney. TMEP §§806.02(f) and 806.04(b). If applicant chooses to do so, this Office will approve the mark for publication without waiting for applicant to submit a copy of the foreign registration, once all other outstanding issues are resolved. Moreover, while the application may be approved for publication, the mark will not register until after an acceptable allegation of use has been filed.

If applicant does not indicate otherwise, this Office will presume that applicant wishes to rely on the foreign registration as an additional basis for registration and will require applicant to submit the copy of the foreign registration and, if appropriate, an English translation signed by the translator. TMEP §§1004.01 and 1004.01(b).

Designation of Domestic Representative

Applicant may designate a domestic representative upon whom notices or process may be served. Trademark Act Section 1(e), 15 U.S.C. §1051(e); 37 C.F.R. §2.24; TMEP §§604, 811 and 1013. If applicant does not designate a domestic representative, notices or process in proceedings affecting the mark may be served on the Director of the USPTO. Trademark Act Section 1(e), 15 U.S.C. §1051(e).

DESIGNATION OF DOMESTIC REPRESENTATIVE

Identify the mark

Serial No.

Name of applicant

Date of signature

(Name of domestic representative)

whose postal address is

is hereby designated applicant's representative upon whom notice or process in proceedings affecting the mark may be served.

(Signature of applicant)

If the applicant has any questions or needs assistance in responding to this Office action, please call or e-mail the assigned examining attorney.

/D. Beryl Gardner/
D. Beryl Gardner
Examining Attorney - Law Office 112
www.uspto.gov/teas/index.html (file responses)
beryl.gardner@uspto.gov (submit questions only)
703-308-9112 x180

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit

<http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

DESIGN MARK

Serial Number

72128558

Status

REGISTERED

Word Mark

HEINEKEN

Registration Number

0767954

Date Registered

1964/04/07

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Heineken Brouwerijen B.V. limited company NETHERLANDS Amsterdam
NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: Beer. First Use:
1959/06/08. First Use In Commerce: 1959/06/08.

Foreign Country Name

NETHERLANDS

Foreign Registration Number

90,182

Foreign Registration Date

1947/10/21

Foreign Country Name

NETHERLANDS

Foreign Registration Number

48,726

Foreign Registration Date

1924/07/01

Print: Jan 23, 2004

72128558

Prior Registration(s)

0547390

Filing Date

1961/09/25

Examining Attorney

UNKNOWN

Heineken

DESIGN MARK

Serial Number

72228151

Status

REGISTERED AND RENEWED

Word Mark

HEINEKEN SPECIAL DARK BEER BREWED IN HOLLAND HORS CONCOURS MEMBRE DU JURY PARIS 1900 TRADE MARK GRAND PRIX PARIS 1889 DIPLOME D'HONNEUR AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875

Registration Number

0823033

Date Registered

1967/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

HEINEKEN BROUWERIJEN B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2E WETERINGPLANTSOEN 21 AMSTERDAM NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: BEER. First Use: 1964/05/02. DECEMBER 1937 IN A DIFFERENT FORM.. First Use In Commerce: 1964/05/02.

Prior Registration(s)

0547390;0767954

Disclaimer Statement

NO CLAIM IS MADE TO THE FOLLOWING WORDING APART FROM THE MARK AS A WHOLE: "SPECIAL DARK BEER; HORS CONCOURS MEMBRE DU JURY PARIS 1900; TRADE MARK; GRAND PRIX PARIS 1888; DIPLOME D'HONNEUR AMSTERDAM 1883; MEDAILLE D'OR PARIS 1875; AND BREWED IN HOLLAND."

Lining/Stippling Statement

THE DRAWING IS LINED FOR THE COLOR BROWN.

Filing Date

1965/09/20

Print: Jan 23, 2004

72228151

Examining Attorney

UNKNOWN



DESIGN MARK

Serial Number

72228152

Status

REGISTERED AND RENEWED

Word Mark

HEINEKEN LAGER BEER BREWED IN HOLLAND HORS CONCOURS MEMBRE DU JURY
PARIS 1900 TRADE MARK GRAND PRIX PARIS 1889 DIPLOME D'HONNEUR
AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875

Registration Number

0823034

Date Registered

1967/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

HEINEKEN BROUWERIJEN B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2E
WETERINGPLANTSOEN 21 AMSTERDAM NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: BEER. First Use:
1961/04/01. First Use In Commerce: 1961/04/01.

Prior Registration(s)

0547390;0767954

Disclaimer Statement

NO CLAIM IS MADE TO THE FOLLOWING WORDING APART FROM THE MARK AS A
WHOLE: "LAGER BEER; HORS CONCOURS MEMBRE DU JURY PARIS 1900; TRADE
MARK; GRAND PRIX PARIS 1888; DIPLOME D'HONNEUR AMSTERDAM 1883;
MEDAILLE D'OR PARIS 1875; AND BREWED IN HOLLAND."

Lining/Stippling Statement

THE DRAWING IS LINED FOR THE COLORS GREEN AND RED.

Filing Date

1965/09/20

Print: Jan 23, 2004

72228152

Examining Attorney
UNKNOWN



Print: Jan 23, 2004

72228153

DESIGN MARK

Serial Number

72228153

Status

REGISTERED AND RENEWED

Word Mark

HEINEKEN HORS CONCOURS MEMBRE DU JURY PARIS 1900 GRAND PRIX 1889
DIPLOME D'HONNEUR AMSTERDAM 1883 MEDAILLE D'OR PARIS 1875

Registration Number

0823035

Date Registered

1967/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

HEINEKEN BROUWERIJEN B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2E
WETERINGPLANTSOEN 21 AMSTERDAM NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: BEER. First Use:
1937/12/00. First Use In Commerce: 1937/12/00.

Prior Registration(s)

0547390;0767954

Disclaimer Statement

NO CLAIM IS MADE TO THE FOLLOWING WORDING APART FROM THE MARK AS A
WHOLE: "HORS CONCOURS MEMBRE DU JURY PARIS 1900; GRAND PRIX PARIS
1888; DIPLOME D'HONNEUR AMSTERDAM 1883; MEDAILLE D'OR PARIS 1875."

Filing Date

1965/09/20

Examining Attorney

UNKNOWN



Print: Jan 23, 2004

72407230

TYPED DRAWING

Serial Number

72407230

Status

REGISTERED AND RENEWED

Word Mark

HEINEKEN

Registration Number

0956608

Date Registered

1973/04/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

HEINEKEN BROUWERIJEN B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2E
WETERINGPLANTSOEN 21 1017 ZD AMSTERDAM NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: BEER AND MALT
BEVERAGES. First Use: 1864/00/00. First Use In Commerce: 1900/00/00.

Foreign Country Name

BENELUX

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Registration Number

016099

Foreign Registration Date

1971/03/19

Prior Registration(s)

0823033;0847979;AND OTHERS

Filing Date

1971/11/09

Print: Jan 23, 2004

72407230

Examining Attorney

UNKNOWN

Attorney of Record

H. JOHN CAMPAIGN

Print: Jan 23, 2004

73631961

DESIGN MARK

Serial Number

73631961

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

HEINEKEN

Registration Number

1504209

Date Registered

1988/09/13

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

HEINEKEN BROUWERIJEN B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2E
WETERINGPLANTSOEN 21 AMSTERDAM NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 048. G & S: BEER. First Use:
1981/07/00. First Use In Commerce: 1981/07/00.

Prior Registration(s)

0547390;0767954;0823033;0823034;0823035;0847979;0956608;1342529

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE THE REPRESENTATION OF
THE BOTTLE AND THE BOTTLE CAP APART FROM THE MARK AS SHOWN.

Lining/Stippling Statement

THE BOTTLE AND BOTTLE CAP ARE LINED FOR THE COLOR GREEN, BUT NO CLAIM
IS MADE TO COLOR.

Filing Date

1986/11/24

Examining Attorney

UNKNOWN

Print: Jan 23, 2004

73631961

Attorney of Record
H. JOHN CAMPAIGN



DESIGN MARK

Serial Number

75004235

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

HEINEKEN

Registration Number

2019060

Date Registered

1996/11/26

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Heineken Brouwerijen B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2e
Weteringplantsoen 21 1017 ZD Amsterdam NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: beer.
First Use: 1995/01/01. First Use In Commerce: 1995/07/01.

Lining/Stippling Statement

The drawing is lined for the colors green and red.

Filing Date

1995/10/11

Examining Attorney

SHARPER, SAMUEL E.

Attorney of Record

H. JOHN CAMPAIGN



Print: Jan 23, 2004

75576173

DESIGN MARK

Serial Number

75576173

Status

REGISTERED

Word Mark

HEINEKEN EN VIVO

Registration Number

2285509

Date Registered

1999/10/12

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Heineken Brouwerijen B.V. A PRIVATE LIMITED LIABILITY COMPANY
NETHERLANDS Tweede Weteringplantsoen 21 1017 ZD Amsterdam NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Beer.
First Use: 1998/04/11. First Use In Commerce: 1998/04/11.

Prior Registration(s)

0547390;2019060;AND OTHERS

Translation Statement

The English translation of "EN VIVO" in the mark is "live".

Filing Date

1998/10/23

Examining Attorney

SPILS, CAROL

Attorney of Record

Karen G. McCloat

HEINEKEN EN VIVO

Print: Jan 23, 2004

76245043

DESIGN MARK

Serial Number

76245043

Status

REGISTERED

Word Mark

HEINEKEN

Registration Number

2781138

Date Registered

2003/11/11

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Heineken Brouwerijen B.V. PRIVATE LIMITED COMPANY NETHERLANDS 2e
Weteringplantsoen 21 1017 ZD Amsterdam NETHERLANDS

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Beer.

Foreign Country Name

BENELUX

Foreign Registration Number

668.845

Foreign Registration Date

2000/08/01

Foreign Expiration Date

2010/08/01

Lining/Stippling Statement

The colors green and red are features of the mark. The background of the mark should be considered lined for the color green and the star design should be considered lined for the color red.

Filing Date

Print: Jan 23, 2004

76245043

2001/04/23

Examining Attorney
FICKES, JERI J.

Attorney of Record
H. John Campaign

 **Heineken**

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-06-08 19:03:55 ET

Serial Number: 78288366 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): HEINEKEN

Standard Character claim: No

Current Status: An office action suspending further action on the application has been mailed.

Date of Status: 2010-01-12

Filing Date: 2003-08-17

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

Attorney Assigned:
GARDNER DAWNA BERYL

Current Location: M3X -TMO Law Office 112 - Examining Attorney Assigned

Date In Location: 2010-01-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. MARCON, ROBERT, VICTOR

Address:

MARCON, ROBERT, VICTOR
3471 SINNICKS AVENUE
NIAGARA FALLS, ONTARIO L2J2G6
Canada

Legal Entity Type: Individual

Country of Citizenship: Canada

Phone Number: 905 354 2543

Fax Number: 905 354 7693

GOODS AND/OR SERVICES

International Class: 029

Class Status: Active

meat juices

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Foreign Application Number: 1168025

Country: Canada

Foreign Filing Date: 2003-02-18

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-01-12 - Letter of suspension mailed

2010-01-11 - Suspension Letter Written

2009-12-07 - Amendment From Applicant Entered

2009-12-07 - Communication received from applicant

2009-12-03 - PAPER RECEIVED

2009-06-04 - Letter of suspension mailed

2009-06-03 - Suspension Letter Written

2009-06-02 - Amendment From Applicant Entered

2009-06-02 - Communication received from applicant

2009-06-01 - PAPER RECEIVED

2008-12-18 - Letter of suspension mailed

2008-12-17 - Suspension Letter Written

2008-11-25 - Amendment From Applicant Entered

2008-11-25 - Communication received from applicant

2008-11-25 - Assigned To LIE

2008-11-14 - PAPER RECEIVED

2008-05-30 - Letter of suspension mailed

2008-05-29 - Suspension Letter Written

2008-04-29 - Ex parte appeal terminated

2008-04-28 - Ex parte appeal - Refusal reversed

2007-12-26 - Examiner's statement mailed

2007-12-21 - Examiners Statement - Completed

2007-10-31 - Jurisdiction Restored To Examining Attorney

2007-09-11 - EXPARTE APPEAL RECEIVED AT TTAB

2007-02-23 - Final refusal mailed

2007-02-22 - Final Refusal Written

2007-01-26 - Ex parte appeal terminated

2007-01-26 - Jurisdiction Restored To Examining Attorney

2006-12-22 - Jurisdiction Restored To Examining Attorney

2006-11-22 - Ex parte appeal - Instituted

2006-10-23 - EXPARTE APPEAL RECEIVED AT TTAB

2006-04-19 - Non-final action mailed

2006-04-18 - Non-Final Action Written

2006-03-22 - Amendment From Applicant Entered

2006-03-01 - Communication received from applicant

2006-03-01 - PAPER RECEIVED

2005-08-31 - Non-final action mailed

2005-08-30 - Non-Final Action Written

2005-07-28 - Amendment From Applicant Entered

2005-07-14 - Communication received from applicant

2005-07-14 - PAPER RECEIVED

2005-01-24 - Final refusal mailed

2004-09-07 - Final Refusal Written

2004-08-10 - Amendment From Applicant Entered

2004-07-16 - Communication received from applicant

2004-07-16 - PAPER RECEIVED

2004-01-23 - Non-final action e-mailed

2004-01-11 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Robert V. Marcon

Correspondent

ROBERT V MARCON
3471 SINNICKS AVE
NIAGARA FALLS, ONTARIO
L2J 2G6
CANADA
Phone Number: 905 354 2543
Fax Number: 905 354 7693

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/596,736
Published in the Official Gazette on May 6, 2008
Mark: L'OREAL PARIS

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT C-3 TO OPPOSER'S NOTICE OF RELIANCE

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288368
Filing Date: 08/17/2003

The table below presents the data as entered.

Input Field	Entered
MARK	SOUTHERN COMFORT
OWNER	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO
ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
PHONE	905 354 2543
FAX	905 354 7693
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	CANADA
CORRESPONDENCE	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO

ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	BEER,WATER, STILL WATER, MINERAL WATER, SPRING WATER,AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS,NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	BEER,WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS,NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 44(d)
FOREIGN APPLICATION NUMBER	1168272
FOREIGN APPLICATION COUNTRY NAME	Canada
FOREIGN FILING DATE	02/24/2003
SIGNATURE INFORMATION	
SIGNATURE	/ROBERT V MARCON/

SIGNATURE DATE	08/17/2003
SIGNATORY NAME	ROBERT V MARCON
SIGNATORY POSITION	APPLICANT
PAYMENT	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
RAM SALE NUMBER	474
RAM ACCOUNTING DATE	08/18/2003
FILING INFORMATION	
SUBMIT DATE	Sun Aug 17 13:11:58 EDT 2003
TEAS STAMP	USPTO/BAS-2162096817 2-200308171311585850 21-78288368-200c3397 6db4e2b2be06f71e691f 2c8d2-CC-474-2003081 7130923391187

PTO Form 1478 (Rev 4/2000)
OMB Control #0651-0009 (Exp. 08/31/2004)

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288368

Filing Date: 08/17/2003

To the Commissioner for Trademarks:

MARK: SOUTHERN COMFORT

The applicant, ROBERT, VICTORMARCON, a citizen of CANADA, residing at 3471 SINNICKS

AVENUE, NIAGARA FALLS, ONTARIO Canada L2J2G6, requests registration of the trademark/service mark shown on the drawing page in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 032: BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

Priority based on foreign filing: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services and asserts a claim of priority based upon a foreign application. 15 U.S.C. Section 1126(d), as amended.

Based on Canada application number 1168272, filed 02/24/2003:

International Class 032: BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ROBERT V MARCON/ Date: 08/17/2003

Signatory's Name: ROBERT V MARCON

Signatory's Position: APPLICANT

Mailing Address:

MARCON, ROBERT, VICTOR

3471 SINNICKS AVENUE

NIAGARA FALLS, ONTARIO L2J2G6

RAM Sale Number: 474

RAM Accounting Date: 08/18/2003

Serial Number: 78288368

Internet Transmission Date: Sun Aug 17 13:11:58 EDT 2003

TEAS Stamp: USPTO/BAS-21620968172-20030817131158585021-78288368-
200c33976db4e2b2be06f71e691f2c8d2-CC-474-20030817130923391187

FILING DATE:

2003/08/17

SERIAL NUMBER:

78/288368



TRADEMARK APPLICATION

FEE RECORD SHEET

RAM SALE NUMBER: 474

RAM ACCOUNTING DATE: 20030818

Description	Fee Code	Fee Amount	Number Of Classes	Total Fees Paid
New App	7001	335	1	335

To: MARCON, ROBERT, VICTOR (HASTINGS1066@SYMPATICO.CA)
Subject: TRADEMARK APPLICATION NO. 78288368 - SOUTHERN COMFORT
- N/A
Sent: 1/23/04 5:46:58 PM
Sent As: ECom112
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
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[Attachment - 28](#)
[Attachment - 29](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/288368

APPLICANT: MARCON, ROBERT, VICTOR

CORRESPONDENT ADDRESS:
MARCON, ROBERT, VICTOR
3471 SINNICKS AVENUE
NIAGARA FALLS; ONC - ONTARIO
L2J2G6
CAX - CANADA

RETURN ADDRESS:
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom112@uspto.gov

MARK: SOUTHERN COMFORT

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
HASTINGS1066@SYMPATICO.CA

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/288368

The assigned examining attorney has reviewed the referenced application and determined the following.

Prior Pending Applications

Information regarding pending Application Serial Nos. 76-237949 and 76-530332 are enclosed. The filing dates of the referenced applications precede applicant's filing dates. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced mark. If the referenced applications register, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §1208.01.

Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration Nos. 0317529, 0423955, 0513317, 1522030, 1897081, 2172514, 2589521, 2650502, 2650503, 2797121 and 2780811. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

When determining whether there is a likelihood of confusion, all circumstances surrounding the sale of the

goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

Applicant proposes the mark SOUTHERN COMFORT for use in connection with “beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups.

Registrant in 0317529 provides “cordial” in connection with the mark SOUTHERN COMFORT.

Registrant in 0423955 provides “liqueur” in connection with the mark SOUTHERN COMFORT THE GRAND OLD DRINK OF THE SOUTH ORIGINATED ON THE BANKS OF THE MISSISSIPPI IN NEW ORLEANS, LOUISIANA, U.S.A. BY SOUTHERN COMFORT COMPANY.

Registrant in 0513317 provides “liqueur” in connection with the mark SOUTHERN COMFORT and design.

Registrant in 1522030 provides “liqueur” in connection with the mark SOUTHERN COMFORT.

Registrant in 1897081 provides “cordials and liqueurs” in connection with the mark SOUTHERN COMFORT RESERVE.

Registrant in 2172514 provides “pre-mixed alcoholic cocktails” in connection with the mark SHOOTERS ON TAP SOUTHERN COMFORT and design.

Registrant in 2589521 provides “restaurant and bar services” in connection with the mark SOUTHERN COMFORT.

Registrant in 2650502 provides “alcoholic beverages; namely, distilled spirits” in connection with the mark SOUTHERN COMFORT ESTABLISHED 1874 and design.

Registrant in 2650503 provides “alcoholic beverages; namely distilled spirits” in connection with the mark SOUTHERN COMFORT.

Registrant in 2797121 provides “alcoholic beverages; namely, distilled spirits” in connection with the mark SOUTHERN COMFORT ESTABLISHED 1874 M. W. HERON MW HERON PERFECTED THIS GREAT AMERICAN ORIGINAL IN NEW ORLEANS, LOUISIANA, U.S.A.

Registrant in 2780811 provides “alcoholic beverages; namely, distilled spirits” in connection with the mark SOUTHERN COMFORT, BETWEEN FRIENDS.

The same registrant owns 0317529, 0423955, 0513317, 1522030, 1897081, 2172514, 2589521, 2650502,

2650503, 2797121 and 2780811.

When applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956); TMEP §1207.01(b).

With respect to the marks in Registration Nos. 2589521, 1522030, 0317529 and 2650503, the examining attorney finds that the applicant's mark is identical to the registrant's mark. In the second step of the analysis, the examining attorney finds that the registrant's goods and the applicant's goods are commercially related. Both the applicant and the registrant provide alcoholic beverages. Nevertheless, if the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Amcor, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a).

With respect to the marks in Registration Nos. 0423955, 0513317, 1897081, 2172514, 2650502, 2797121 and 2780811, the examining attorney finds that the applicant's mark shares the identical leading terms SOUTHERN COMFORT with each of the cited registrations.

While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entirety, one feature of a mark may be more significant in creating a commercial impression. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Disclaimed matter is typically less significant or less dominant. Thus not only is SOUTHERN COMFORT more significant than the disclaimed portions of the respective registrations but also, consumers will call for the goods by their name rather than by the design portions. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *In re Drug Research Reports, Inc.*, 200 USPQ 554 (TTAB 1978).

Finally, the mere addition of a term to a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) ("BENGAL" and "BENGAL LANCER"); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) ("THE LILLY" and "LILLI ANN"); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988) ("MACHO" and "MACHO COMBOS"); *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" and "CREST CAREER IMAGES"); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) ("CONFIRM" and "CONFIRMCELLS"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) ("ACCUTUNE" and "RICHARD PETTY'S ACCU TUNE"); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) ("HEAD START" and "HEAD START COSVETIC"). Thus the addition of other terms to the dominant terms SOUTHERN COMFORT in the registrant's marks does not obviate the likelihood of confusion.

For these reasons, the marks are overall confusingly similar and impart a similar commercial impression.

In the second step of the analysis, the examining attorney finds that the applicant's goods are similar to the Registrants' goods because both provide alcoholic beverages. If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698 (Fed. Cir. 1992); *In re J.M. Originals Inc.*, 6

USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b).

For these reasons, it is likely that the purchasing public would confuse the goods as originating from the same source. Therefore, the examining attorney refuses registration of the applicant's mark under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

The applicant should also note the following additional ground for refusal.

False Association

Registration is refused because the proposed mark consists of or comprises matter which may falsely suggest a connection with SOUTHERN COMFORT for liqueur or "alcoholic beverages". SOUTHERN COMFORT is so famous that consumers would presume a connection with applicant. Trademark Act Section 2(a), 15 U.S.C. §1052(a); TMEP §§1203.03, 1203.03(e) and 1203.03(f); *See generally University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *University of Alabama v. BAMA-Werke Curt Baumann*, 231 USPQ 408 (TTAB 1986); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi?Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Section 2(a):

- the mark sought to be registered is the same as or a close approximation of the name or identity of a person or institution;
- the mark would be recognized as such;
- the person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and
- the fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods or services.

In re Cotter & Co., 228 USPQ 202, 204 (TTAB 1985); *See Buffett v. Chi?Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985).

If applicant's goods or services are of a type that the named person or institution sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *In re National Intelligence Academy*, 190 USPQ 570 (TTAB 1976).

The fact that purchasers would realize, at some point after purchase, that no connection exists between the listed goods or services and the person or institution falsely connected, is not relevant. The focus is on "the initial reaction or impact of the mark when viewed in conjunction with the applicable goods or services." *In re Bicentennial Society*, 197 USPQ 905, 906 (TTAB 1978).

For these reasons the examining attorney refuses registration of the mark under Section 2(a) of the Trademark Act for false association with a famous mark.

Applicant May Respond

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Identification of Goods

The wording in the identification of goods needs clarification because it is too broad and could include goods classified in other international classes. Applicant may substitute the following wording, if accurate: TMEP §§1402.01 and 1402.03.

Nutritional drink mixes for use as a meal replacement. *International Class 5.*

Ice, crushed ice. *International Class 30.*

Beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water; juices, fruit flavored drinks, soft drinks; preparations for making fruit drinks; syrups for use in making soft drinks. *International Class 32.*

Classification

Applicant must correct the classification of the goods in the application and amend the application to classify them in International Classes 5, 30 and 32. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.02(a) and 1401.03(b).

Combined Application

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

- (1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and
- (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

Current fees are sufficient for one class only.

Dual Filing Bases §§1(b) and 44(d)

If applicant wishes to proceed relying on the applicant's intent to use the mark in commerce under Trademark Act Section 1(b) as the sole basis for registration, with the claim of priority under Section

44(d), then applicant should so advise the trademark examining attorney. TMEP §§806.02(f) and 806.04(b). If applicant chooses to do so, this Office will approve the mark for publication without waiting for applicant to submit a copy of the foreign registration, once all other outstanding issues are resolved. Moreover, while the application may be approved for publication, the mark will not register until after an acceptable allegation of use has been filed.

If applicant does not indicate otherwise, this Office will presume that applicant wishes to rely on the foreign registration as an additional basis for registration and will require applicant to submit the copy of the foreign registration and, if appropriate, an English translation signed by the translator. TMEP §§1004.01 and 1004.01(b).

Designation of Domestic Representative

Applicant may designate a domestic representative upon whom notices or process may be served. Trademark Act Section 1(e), 15 U.S.C. §1051(e); 37 C.F.R. §2.24; TMEP §§604, 811 and 1013. If applicant does not designate a domestic representative, notices or process in proceedings affecting the mark may be served on the Director of the USPTO. Trademark Act Section 1(e), 15 U.S.C. §1051(e).

DESIGNATION OF DOMESTIC REPRESENTATIVE

Identify the mark

Serial No.

Name of applicant

Date of signature

(Name of domestic representative)

whose postal address is

is hereby designated applicant's representative upon whom notice or process in proceedings affecting the mark may be served.

(Signature of applicant)

If the applicant has any questions or needs assistance in responding to this Office action, please call or e-mail the assigned examining attorney.

/D. Beryl Gardner/
D. Beryl Gardner
Examining Attorney - Law Office 112
www.uspto.gov/teas/index.html (file responses)
beryl.gardner@uspto.gov (submit questions only)
703-308-9112 x180 (submit questions only)
703-308-9112 x180

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

DESIGN MARK

Serial Number

71352748

Status

REGISTERED AND RENEWED

Word Mark

SOUTHERN COMFORT

Registration Number

0317529

Date Registered

1934/09/25

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

BROWN-FORMAN CORPORATION CORPORATION DELAWARE 850 DIXIE HIGHWAY
LOUISVILLE KENTUCKY 40210

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: CORDIAL. First
Use: 1934/01/19. First Use In Commerce: 1934/01/19.

Filing Date

1934/06/15

Examining Attorney

UNKNOWN

SOUTHERN COMFORT

Print: Jan 23, 2004

71491891

DESIGN MARK

Serial Number

71491891

Status

REGISTERED AND RENEWED

Word Mark

SOUTHERN COMFORT THE GRAND OLD DRINK OF THE SOUTH ORIGINATED ON THE BANKS OF THE MISSISSIPPI IN NEW ORLEANS, LOUISIANA, U.S.A. BY SOUTHERN COMFORT COMPANY

Registration Number

0423955

Date Registered

1946/09/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

SOUTHERN COMFORT PROPERTIES, INC. CORPORATION CALIFORNIA 4040 CIVIC CENTER DRIVE, SUITE 528 SAN RAFAEL CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: LIQUEUR. First Use: 1934/01/19. First Use In Commerce: 1934/01/19.

Prior Registration(s)

0317529

Disclaimer Statement

FOR PURPOSES OF REGISTRATION, NO CLAIM IS MADE TO THE READING MATTER OR TO THE REPRESENTATION OF A LABEL APPEARING IN THE DRAWING EXCEPT THE WORDS "SOUTHERN COMFORT".

Filing Date

1945/11/19

Examining Attorney

UNKNOWN

Attorney of Record

Print: Jan 23, 2004

71491891

MICHELLE A COOKE

SOUTHERN COMFORT

The Second Old Drink of the South



*Originated on the Banks of the Mississippi
in the City of New Orleans, Louisiana, U. S. A.*

SOUTHERN COMFORT COMPANY

Print: Jan 23, 2004

71539573

DESIGN MARK

Serial Number

71539573

Status

REGISTERED AND RENEWED

Word Mark

SOUTHERN COMFORT

Registration Number

0513317

Date Registered

1949/08/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

BROWN-FORMAN CORPORATION CORPORATION DELAWARE 850 DIXIE HIGHWAY
LOUISVILLE KENTUCKY

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: LIQUEUR. First
Use: 1934/06/04. First Use In Commerce: 1934/06/04.

Prior Registration(s)

0317529;0423955

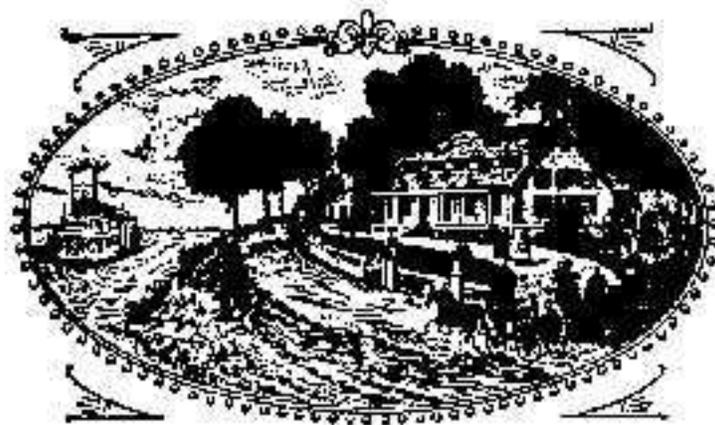
Filing Date

1947/10/30

Examining Attorney

UNKNOWN

SOUTHERN COMFORT



Print: Jan 23, 2004

73668904

DESIGN MARK

Serial Number

73668904

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

SOUTHERN COMFORT

Registration Number

1522030

Date Registered

1989/01/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

SOUTHERN COMFORT PROPERTIES, INC. CORPORATION CALIFORNIA 4040 CIVIC CENTER DRIVE, SUITE 528 SAN RAFAEL CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: LIQUEUR. First Use: 1934/01/19. First Use In Commerce: 1934/01/19.

Prior Registration(s)

0317529;0423955;0513317;0513410;1048272;1056700;1256136;AND OTHERS

Filing Date

1987/06/26

Examining Attorney

WILLIAMS, R. ELLSWORTH

Attorney of Record

MICHELLE A COOKE

SOUTHERN COMFORT

Print: Jan 23, 2004

74411718

DESIGN MARK

Serial Number

74411718

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

SOUTHERN COMFORT RESERVE

Registration Number

1897081

Date Registered

1995/05/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

SOUTHERN COMFORT PROPERTIES, INC. CORPORATION CALIFORNIA 4040 CIVIC CENTER DRIVE SUITE 528 SAN RAFAEL CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: cordials and liqueurs. First Use: 1994/04/11. First Use In Commerce: 1994/04/11.

Prior Registration(s)

0317529;0423955;0513317;1048272;1522030;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RESERVE" APART FROM THE MARK AS SHOWN.

Filing Date

1993/07/09

Examining Attorney

EVANKO, PATRICIA

Attorney of Record

DAVID S GOODER ESQ

SOUTHERN COMFORT RESERVE

DESIGN MARK

Serial Number

75239451

Status

REGISTERED

Word Mark

SHOOTERS ON TAP SOUTHERN COMFORT

Registration Number

2172514

Date Registered

1998/07/14

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

SOUTHERN COMFORT PROPERTIES, INC. CORPORATION CALIFORNIA 4040 CIVIC CENTER DRIVE SUITE 528 SAN RAFAEL CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: pre-mixed alcoholic cocktails. First Use: 1997/01/24. First Use In Commerce: 1997/01/24.

Prior Registration(s)

0317529;0423955;1522030

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SHOOTERS ON TAP" APART FROM THE MARK AS SHOWN.

Lining/Stippling Statement

The lining and stippling in the drawing are features of the mark, and are not intended to indicate color.

Description of Mark

The mark consists of the words "SOUTHERN COMFORT" and "SHOOTERS ON TAP", and an oval in which appear, in part, a house with trees, a horsedrawn carriage on a road, and a steamboat on a river.

Print: Jan 23, 2004

75239451

Filing Date

1997/02/10

Examining Attorney

UNKNOWN

SOUTHERN COMFORT

SHOOTERS ON TAP

Print: Jan 23, 2004

76075907

DESIGN MARK

Serial Number

76075907

Status

REGISTERED

Word Mark

SOUTHERN COMFORT

Registration Number

2589521

Date Registered

2002/07/02

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive, Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Restaurant and Bar Services. First Use: 1988/12/31. First Use In Commerce: 1988/12/31.

Prior Registration(s)

1522030;AND OTHERS

Filing Date

2000/06/22

Examining Attorney

YONTEF, DAVID

Attorney of Record

David S. Gooder

SOUTHERN COMFORT

DESIGN MARK

Serial Number

76237949

Status

THIRD EXTENSION - GRANTED

Word Mark

SOUTHERN COMFORT

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.
G & S: Glass and plastic drinking containers, namely flasks, ceramic mugs, ceramic pitchers, ceramic jugs; sponges for household purposes; wood coasters; cork coaster; swizzle sticks; bowls; decorative boxes made of non-precious metal; food and beverage containers; glassware for beverages; and metal serving trays and serving trays of non-precious metals.

Prior Registration(s)

0317529;0423955;0513317;1522030;AND OTHERS

Filing Date

2001/04/09

Examining Attorney

YONTEF, DAVID

Attorney of Record

David S. Gooder

**SOUTHERN
COMFORT**

DESIGN MARK

Serial Number

76239965

Status

REGISTERED

Word Mark

SOUTHERN COMFORT ESTABLISHED 1874

Registration Number

2650502

Date Registered

2002/11/12

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages; namely, distilled spirits. First Use: 2001/06/30. First Use In Commerce: 2001/06/30.

Prior Registration(s)

0317529;0423955;0513317;1522030;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTABLISHED 1874" APART FROM THE MARK AS SHOWN.

Lining/Stippling Statement

The lining and stippling shown in the drawing are features of the mark and not intended to indicate color.

Filing Date

2001/04/09

Examining Attorney

YONTEF, DAVID

Print: Jan 23, 2004

76239965

Attorney of Record

David S. Gooder, Esq.



Print: Jan 23, 2004

76239966

DESIGN MARK

Serial Number

76239966

Status

REGISTERED

Word Mark

SOUTHERN COMFORT

Registration Number

2650503

Date Registered

2002/11/12

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages; namely distilled spirits. First Use: 2001/06/30. First Use In Commerce: 2001/06/30.

Prior Registration(s)

0317529;0423955;0513317;1522030;AND OTHERS

Filing Date

2001/04/09

Examining Attorney

YONTEF, DAVID

Attorney of Record

David S. Gooder

**SOUTHERN
COMFORT**

DESIGN MARK

Serial Number

76470264

Status

REGISTERED

Word Mark

SOUTHERN COMFORT ESTABLISHED 1874 M. W. HERON MW HERON PERFECTED THIS GREAT AMERICAN ORIGINAL IN NEW ORLEANS, LOUISIANA, U.S.A.

Registration Number

2797121

Date Registered

2003/12/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive, Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages; namely, distilled spirits. First Use: 2001/06/30. First Use In Commerce: 2001/06/30.

Prior Registration(s)

0317529;0423955;0513317;1522030;2562561;2617158;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ESTABLISHED 1874" APART FROM THE MARK AS SHOWN.

Lining/Stippling Statement

The lining and stippling is a feature of the mark and does not indicate color.

Name/Portrait Statement

The name "M. W." Heron does not identify a living individual.

Description of Mark

The mark consists of the wording "ESTABLISHED 1874, SOUTHERN COMFORT, MW HERON, M.W. HERON PERFECTED THIS GREAT AMERICAN ORIGINAL IN NEW ORLEANS, LOUISIANA, U.S.A." and a configuration of raised vertical ribs around the shoulder of the bottle. The shape of the bottle is not claimed as a part of the mark and appears in dotted lines.

Section 2f Statement

as to "the vertical ribs around the shoulder of the bottle"

Filing Date

2002/11/29

Examining Attorney

STRZYZ, KAREN M.

Attorney of Record

David S. Gooder, Esq.



DESIGN MARK

Serial Number

76530332

Status

NEW APPLICATION - RECORD INITIALIZED NOT ASSIGNED TO EXAMINER

Word Mark

SOUTHERN COMFORT M.W. HERON

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive, Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages; namely, distilled spirits. First Use: 2001/06/30. First Use In Commerce: 2001/06/30.

Prior Registration(s)

2562561;AND OTHERS

Description of Mark

The mark consists of a threedimensional configuration of a bottle with fluting around the shoulder. An embossed signature design comprised of the words M.W. HERON appears diagonally on the front lower side of the bottle . The mark contains a concave depression on the left side of the bottle with the word SOUTHERN embossed in vertically letters. The mark also has a concave depression and the word COMFORT embossed in vertical letters on the right side of the bottle. The dotted or broken lines in the drawing are intended to show the position of the labels that are placed on the bottle.

Filing Date

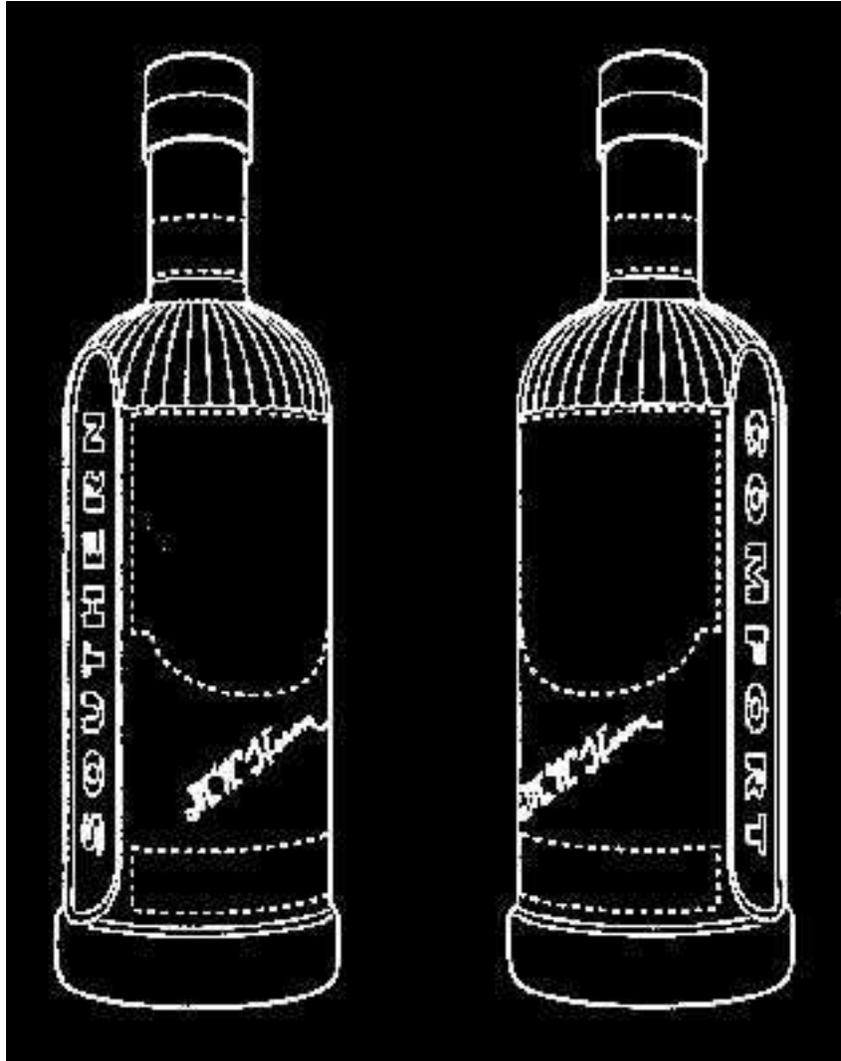
2003/07/18

Examining Attorney

UNKNOWN

Attorney of Record

David S. Gooder



Print: Jan 23, 2004

78148745

TYPED DRAWING

Serial Number

78148745

Status

REGISTERED

Word Mark

SOUTHERN COMFORT, BETWEEN FRIENDS

Registration Number

2780811

Date Registered

2003/11/04

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Southern Comfort Properties, Inc. CORPORATION CALIFORNIA 4040 Civic Center Drive, Suite 528 San Rafael CALIFORNIA 94903

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages; namely, distilled spirits. First Use: 2003/02/28. First Use In Commerce: 2003/02/28.

Prior Registration(s)

0423955;1897081;2167605;AND OTHERS

Filing Date

2002/07/30

Examining Attorney

BERK, STEVEN

Attorney of Record

David S. Gooder, Esq.

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-06-08 19:09:44 ET

Serial Number: 78288268 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): (NOT AVAILABLE)

Standard Character claim: No

Current Status: Serial number was assigned in error. Please do not use this number to identify any application. You will receive a "Notice of Incomplete Trademark Application" explaining why the serial number was held "misassigned."

Date of Status: 2003-09-24

Filing Date: (DATE NOT AVAILABLE)

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 000 -Unknown

Date In Location: (DATE NOT AVAILABLE)

LAST APPLICANT(S)/OWNER(S) OF RECORD

(NOT AVAILABLE)

GOODS AND/OR SERVICES

(NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

(NOT AVAILABLE)

ATTORNEY/CORRESPONDENT INFORMATION

(NOT AVAILABLE)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/596,736
Published in the Official Gazette on May 6, 2008
Mark: L'OREAL PARIS

L'ORÉAL S.A. and L'ORÉAL USA, INC.,

Opposer,

v.

ROBERT VICTOR MARCON,

Applicant.

Opposition No. 91184456

ORAL ARGUMENT REQUESTED

EXHIBIT C-4 TO OPPOSER'S NOTICE OF RELIANCE

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288367
Filing Date: 08/17/2003

The table below presents the data as entered.

Input Field	Entered
MARK	ABSOLUT
OWNER	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO
ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
PHONE	905 354 2543
FAX	905 354 7693
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	CANADA
CORRESPONDENCE	
NAME	MARCON, ROBERT, VICTOR
STREET	3471 SINNICKS AVENUE
CITY	NIAGARA FALLS
STATE	ONTARIO

ZIP/POSTAL CODE	L2J2G6
COUNTRY	Canada
EMAIL	HASTINGS1066@SYMPATICO.CA
AUTHORIZED EMAIL COMMUNICATION	Yes
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	BEER,WATER, STILL WATER, MINERAL WATER, SPRING WATER,AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS,NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES	
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	BEER,WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS(EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS,NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS
FILING BASIS	Section 44(d)
FOREIGN APPLICATION NUMBER	1168026
FOREIGN APPLICATION COUNTRY NAME	Canada
FOREIGN FILING DATE	02/18/2003
SIGNATURE INFORMATION	
SIGNATURE	/ROBERT V MARCON/

SIGNATURE DATE	08/17/2003
SIGNATORY NAME	ROBERT V MARCON
SIGNATORY POSITION	APPLICANT
PAYMENT	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
RAM SALE NUMBER	473
RAM ACCOUNTING DATE	08/18/2003
FILING INFORMATION	
SUBMIT DATE	Sun Aug 17 13:07:19 EDT 2003
TEAS STAMP	USPTO/BAS-2162096817 2-200308171307198530 20-78288367-200323d7 29d1a0775257e2bad71d bfd09b-CC-473-200308 17130429717183

PTO Form 1478 (Rev 4/2000)
OMB Control #0651-0009 (Exp. 08/31/2004)

Trademark/Service Mark Application, Principal Register, with Declaration

Serial Number: 78288367

Filing Date: 08/17/2003

To the Commissioner for Trademarks:

MARK: ABSOLUT

The applicant, ROBERT, VICTORMARCON, a citizen of CANADA, residing at 3471 SINNICKS

AVENUE, NIAGARA FALLS, ONTARIO Canada L2J2G6, requests registration of the trademark/service mark shown on the drawing page in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 032: BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

Priority based on foreign filing: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services and asserts a claim of priority based upon a foreign application. 15 U.S.C. Section 1126(d), as amended.

Based on Canada application number 1168026, filed 02/18/2003:

International Class 032: BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ROBERT V MARCON/ Date: 08/17/2003

Signatory's Name: ROBERT V MARCON

Signatory's Position: APPLICANT

Mailing Address:

MARCON, ROBERT, VICTOR

3471 SINNICKS AVENUE

NIAGARA FALLS, ONTARIO L2J2G6

RAM Sale Number: 473

RAM Accounting Date: 08/18/2003

Serial Number: 78288367

Internet Transmission Date: Sun Aug 17 13:07:19 EDT 2003

TEAS Stamp: USPTO/BAS-21620968172-20030817130719853020-78288367-
200323d729d1a0775257e2bad71dbfd09b-CC-473-20030817130429717183

FILING DATE:

2003/08/17

SERIAL NUMBER:

78/288367



TRADEMARK APPLICATION

FEE RECORD SHEET

RAM SALE NUMBER: 473

RAM ACCOUNTING DATE: 20030818

Description	Fee Code	Fee Amount	Number Of Classes	Total Fees Paid
New App	7001	335	1	335

To: MARCON, ROBERT, VICTOR (HASTINGS1066@SYMPATICO.CA)

Subject: TRADEMARK APPLICATION NO. 78288367 - ABSOLUT - N/A

Sent: 1/23/04 11:34:34 AM

Sent As: ECom112

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)
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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/288367

APPLICANT: MARCON, ROBERT, VICTOR

CORRESPONDENT ADDRESS:

MARCON, ROBERT, VICTOR
3471 SINNICKS AVENUE
NIAGARA FALLS; ONC - ONTARIO
L2J2G6
CAX - CANADA

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514
ecom112@uspto.gov

MARK: ABSOLUT

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

HASTINGS1066@SYMPATICO.CA

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/288367

The assigned examining attorney has reviewed the referenced application and determined the following.

Prior Pending Application

Information regarding pending Application Serial Nos. 76443040, 76561774, 76-527141, 76-492793, 76-444497, 76-444157 and 76-257570 are enclosed. The filing dates of the referenced applications precede applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If the referenced applications register, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §1208.01.

Likelihood of Confusion

Registration of the proposed mark is refused because of a likelihood of confusion with the mark in U.S. Registration Nos. 1244734, 1302003, 1570118, 1590115, 1642971, 1868516, 1893279, 2023285,

2002725, 2399045, 2472717, 2673509, 2651084, 2529817, 2540331, 2688447, 2785564, 2785565. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

When determining whether there is a likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

Applicant proposes the mark ABSOLUT for use in connection with “beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water, ice, crushed ice, juices, flavored drinks (except beverages based on coffee, tea, or cocoa and milk beverages), nutrient drinks, non-alcoholic beverages, preparations for making beverages, syrups.

Registrant in 2785565 provides “alcoholic beverages, namely, vodka” in connection with the mark ABOLUT CITRON.

Registrant in 2785564 provides “alcoholic beverages, namely, vodka” in connection with the mark ABOLUT PEPPAR.

Registrant in 2688447 provides “alcoholic beverages, namely, vodka” in connection with the mark ABOLUT KURANT.

Registrant in 2540331 provides “vodka” in connection with the mark ABSOLUT.

Registrant in 2529817 provides “vodka” in connection with the mark ABSOLUT.

Registrant in 2651084 provides “alcoholic beverages, namely, vodka” in connection with the mark ABSOLUT and configuration of a bottle.

Registrant in 2673509 provides “alcoholic beverages, namely, vodka” in connection with the mark ABSOLUT MANDRIN COUNTRY OF SWEDEN.

Registrant in 2472717 provides “alcoholic beverages, namely, vodka” in connection with the mark ABSOLUT MANDRIN COUNTRY OF SWEDEN.

Registrant in 2399045 provides “alcoholic beverages, namely, vodka” in connection with the mark ABSOLUT MANDRIN.

Registrant in 2002725 provides “vodka” in connection with the mark ABSOLUT VODKA COUNTRY OF SWEDEN THIS SUPERB VODKA WAS DISTILLED FROM GRAIN GROWN IN THE RICH FIELDS OF SOUTHERN SWEDEN. IT HAS BEEN PRODUCED AT THE FAMOUS OLD DISTILLERIES NEAR AHUS IN ACCORDANCE WITH MORE THAN 400 YEARS OF SWEDISH TRADITION. VODKA HAS BEEN SOLD UNDER THE NAME ABSOLUT SINCE 1879.

Registrant in 2023285 provides “vodka” in connection with the mark ABSOLUT COUNTRY OF SWEDEN PEPPAR.

Registrant in 1893279 provides “vodka” in connection with the mark ABOLUT VODKA COUNTRY OF SWEDEN.

Registrant in 1868516 provides “vodka” in connection with the mark ABSOLUT KURANT COUNTRY OF SWEDEN and design.

Registrant in 1642971 provides “vodka” in connection with the mark COUNTRY OF SWEDEN ABSOLUT and configuration of a bottle.

Registrant in 1590115 provides “vodka” in connection with the mark ABSOLUT CITRON COUNTRY OF SWEDEN.

Registrant in 1570118 provides “vodka” in connection with the mark ABSOLUT COUNTRY OF SWEDEN PEPPAR.

Registrant in 1302003 provides “vodka” in connection with the mark ABSOLUT.

Registrant in 1244734 provides “vodka” in connection with the mark COUNTRY OF SWEDEN ABSOLUT and design.

The same registrant owns 1244734, 1302003, 1570118, 1590115, 1642971, 1868516, 1893279, 2023285, 2002725, 2399045, 2472717, 2673509, 2651084, 2529817, 2540331, 2688447, 2785564, 2785565.

When applicant’s mark is compared to a registered mark, “the points of similarity are of greater importance than the points of difference.” *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956); TMEP §1207.01(b).

With respect to the mark in Registration No. 1302003, the examining attorney finds that the applicant’s mark is identical to the registrant’s mark. In the second step of the analysis, the examining attorney finds that the registrant’s goods and the applicant’s goods are commercially related. Both the applicant and the registrant provide alcoholic beverages. Nevertheless, if the marks of the respective parties are identical, the relationship between the goods or services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *Amcors, Inc. v. Amcor Industries, Inc.*, 210 USPQ 70 (TTAB 1981); TMEP §1207.01(a).

With respect to the marks in Registration Nos. 1244734, 1570118, 1590115, 1642971, 1868516, 1893279, 2023285, 2002725, 2399045, 2472717, 2673509, 2651084, 2529817, 2540331, 2688447, 2785564, 2785565, the examining attorney finds that the applicant’s mark shares the identical leading term ABSOLUT with each of the cited registrations.

While the examining attorney cannot ignore a disclaimed portion of a mark and must view marks in their entireties, one feature of a mark may be more significant in creating a commercial impression. *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (CCPA 1976); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986). Disclaimed

matter is typically less significant or less dominant. Thus not only is ABSOLUT more significant than the disclaimed portions of the respective registrations but also, consumers will call for the goods by their name rather than by the design portions. *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987); *In re Drug Research Reports, Inc.*, 200 USPQ 554 (TTAB 1978).

Finally, the mere addition of a term to a registered mark is not sufficient to overcome a likelihood of confusion under Section 2(d). *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) ("BENGAL" and "BENGAL LANCER"); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) ("THE LILLY" and "LILLI ANN"); *In re El Torito Restaurants Inc.*, 9 USPQ2d 2002 (TTAB 1988) ("MACHO" and "MACHO COMBOS"); *In re United States Shoe Corp.*, 229 USPQ 707 (TTAB 1985) ("CAREER IMAGE" and "CREST CAREER IMAGES"); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) ("CONFIRM" and "CONFIRMCELLS"); *In re Riddle*, 225 USPQ 630 (TTAB 1985) ("ACCUTUNE" and "RICHARD PETTY'S ACCU TUNE"); *In re Cosvetic Laboratories, Inc.*, 202 USPQ 842 (TTAB 1979) ("HEAD START" and "HEAD START COSVETIC"). Thus the addition of other terms or a design to the dominant term ABSOLUT in the registrant's marks does not obviate the likelihood of confusion.

For these reasons, the marks are overall confusingly similar and impart a similar commercial impression.

In the second step of the analysis, the examining attorney finds that the applicant's goods are similar to the Registrants' goods because both provide alcoholic beverages. If the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698 (Fed. Cir. 1992); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b).

For these reasons, it is likely that the purchasing public would confuse the goods as originating from the same source. Therefore, the examining attorney refuses registration of the applicant's mark under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

The applicant should also note the following additional ground for refusal.

-
False Association

Registration is refused because the proposed mark consists of or comprises matter which may falsely suggest a connection with ABSOLUT for vodka. ABSOLUT is so famous that consumers would presume a connection with applicant. Trademark Act Section 2(a), 15 U.S.C. §1052(a); TMEP §§1203.03, 1203.03(e) and 1203.03(f); *See generally University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); *University of Alabama v. BAMA-Werke Curt Baumann*, 231 USPQ 408 (TTAB 1986); *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *Buffett v. Chi-Chi's, Inc.*, 226 USPQ 428 (TTAB 1985).

The following is required for a showing of false connection under Section 2(a):

. the mark sought to be registered is the same as or a close approximation of

the name or identity of a person or institution;

· · · · · the mark would be recognized as such;

· · · · · the person or institution identified in the mark is not connected with the goods sold or services performed by applicant under the mark; and

· · · · · the fame or reputation of the named person or institution is of such a nature that a connection with such person or institution would be presumed when applicant's mark is used on its goods or services.

In re Cotter & Co., 228 USPQ 202, 204 (TTAB 1985); *See Buffett v. Chi?Chi's, Inc.*, 226 USPQ 428, 429 (TTAB 1985).

If applicant's goods or services are of a type that the named person or institution sells or uses, and the named party is sufficiently famous, then it may be inferred that purchasers of the goods or services would be misled into making a false connection of sponsorship, approval, support or the like with the named party. *In re Cotter & Co.*, 228 USPQ 202 (TTAB 1985); *In re National Intelligence Academy*, 190 USPQ 570 (TTAB 1976).

The fact that purchasers would realize, at some point after purchase, that no connection exists between the listed goods or services and the person or institution falsely connected, is not relevant. The focus is on "the initial reaction or impact of the mark when viewed in conjunction with the applicable goods or services." *In re Bicentennial Society*, 197 USPQ 905, 906 (TTAB 1978).

For these reasons the examining attorney refuses registration of the mark under Section 2(a) of the Trademark Act for false association with a famous mark.

Applicant May Respond

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

Identification of Goods

The wording in the identification of goods needs clarification because it is too broad and could include goods classified in other international classes. Applicant may substitute the following wording, if accurate: TMEP §§1402.01 and 1402.03.

Nutritional drink mixes for use as a meal replacement. *International Class 5.*

Ice, crushed ice. *International Class 30.*

Beer, water, still water, mineral water, spring water, aerated water, carbonated water, sparkling water, ice water, iceberg water; juices, fruit flavored drinks, soft drinks; preparations for making fruit drinks; syrups for use in making soft drinks. *International Class 32.*

Classification

Applicant must correct the classification of the goods in the application and amend the application to classify them in International Classes 5, 30 and 32. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.02(a) and 1401.03(b).

Combined Application

If applicant prosecutes this application as a combined, or multiple-class application, then applicant must comply with each of the following for those goods and/or services based on an intent to use the mark in commerce under Trademark Act Section 1(b):

(1) (1) (1) (1) (1) Applicant must list the goods and/or services by international class with the classes listed in ascending numerical order. TMEP § 1403.01; and

(2) (2) (2) (2) (2) Applicant must submit a filing fee for each international class of goods and/or services not covered by the fee already paid. 37 C.F.R. §2.86(a)(2); TMEP §§810.01 and 1403.01.

Current fees are sufficient for one class only.

Dual Filing Bases §§1(b) and 44(d)

If applicant wishes to proceed relying on the applicant's intent to use the mark in commerce under Trademark Act Section 1(b) as the sole basis for registration, with the claim of priority under Section 44(d), then applicant should so advise the trademark examining attorney. TMEP §§806.02(f) and 806.04(b). If applicant chooses to do so, this Office will approve the mark for publication without waiting for applicant to submit a copy of the foreign registration, once all other outstanding issues are resolved. Moreover, while the application may be approved for publication, the mark will not register until after an acceptable allegation of use has been filed.

If applicant does not indicate otherwise, this Office will presume that applicant wishes to rely on the foreign registration as an additional basis for registration and will require applicant to submit the copy of the foreign registration and, if appropriate, an English translation signed by the translator. TMEP §§1004.01 and 1004.01(b).

Designation of Domestic Representative

Applicant may designate a domestic representative upon whom notices or process may be served. Trademark Act Section 1(e), 15 U.S.C. §1051(e); 37 C.F.R. §2.24; TMEP §§604, 811 and 1013. If applicant does not designate a domestic representative, notices or process in proceedings affecting the mark may be served on the Director of the USPTO. Trademark Act Section 1(e), 15 U.S.C. §1051(e).

DESIGNATION OF DOMESTIC REPRESENTATIVE

Identify the mark

Serial No.

Name of applicant

Date of signature

(Name of domestic representative)

whose postal address is

is hereby designated applicant's representative upon whom notice or process in proceedings affecting the mark may be served.

(Signature of applicant)

If the applicant has any questions or needs assistance in responding to this Office action, please call or e-mail the assigned examining attorney.

/D. Beryl Gardner/
D. Beryl Gardner
Examining Attorney - Law Office 112
www.uspto.gov/teas/index.html (file responses)
beryl.gardner@uspto.gov (submit questions only)
703-308-9112 x180

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

DESIGN MARK

Serial Number

73246618

Status

REGISTERED AND RENEWED

Word Mark

COUNTRY OF SWEDEN .ABSOLUT.

Registration Number

1244734

Date Registered

1983/07/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN FORMANSVAGEN 19
STOCKHOLM SWEDEN S-100 72

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: Vodka. First Use:
1979/05/14. First Use In Commerce: 1979/05/14.

Prior Registration(s)

1129746;1149463

Disclaimer Statement

No claim is made to the exclusive right to use the phrase "Country Of Sweden", apart from the mark as shown.

Lining/Stippling Statement

The lining appearing on the drawing is a feature of the mark and does not indicate color.

Name/Portrait Statement

THE PORTRAIT SHOWN ON THE DRAWING IS THAT OF "SMITH, L(ARS)
(O)HLSSON", WHO WAS BORN IN THE YEAR 1836 AND DIED IN THE YEAR 1913.

Section 2f Statement

AS TO "ABSOLUT".

Print: Jan 23, 2004

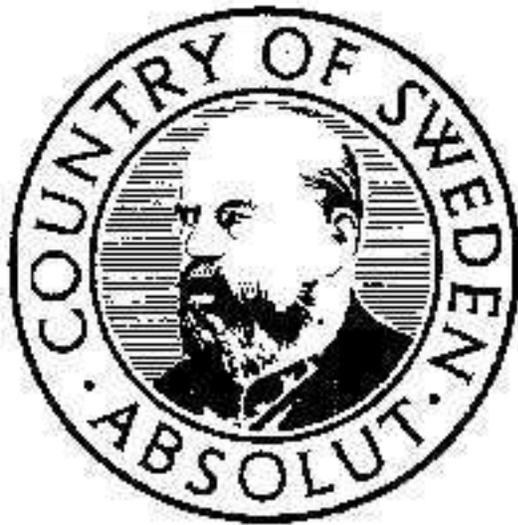
73246618

Filing Date

1980/01/17

Examining Attorney

UNKNOWN



TYPED DRAWING

Serial Number

73408325

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

ABSOLUT

Registration Number

1302003

Date Registered

1984/10/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN FORMANSVAGEN 19 S-100 72
STOCKHOLM SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: Vodka. First Use:
1883/12/31. First Use In Commerce: 1978/05/03.

Prior Registration(s)

1168828;1244734;AND OTHERS

Section 2f Statement

2(F) ENTIRE MARK

Translation Statement

The English equivalent of the Swedish word "absolut" is "absolute".

Filing Date

1983/01/06

Examining Attorney

UNKNOWN

Print: Jan 23, 2004

73613079

TYPED DRAWING

Serial Number

73613079

Status

REGISTERED AND RENEWED

Word Mark

ABSOLUT COUNTRY OF SWEDEN PEPPAR

Registration Number

1570118

Date Registered

1989/12/05

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN FORMANSVAGEN 19 SE11797
STOCKHOLM SWEDEN

Name Change

BY CHANGE OF NAME FROM

Original Owner

AB VIN -& SPRITCENTRALEN CORPORATION STOCKHOLM SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: VODKA.

Foreign Country Name

SWEDEN

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

19863227

Foreign Filing Date

1986/04/23

Print: Jan 23, 2004

73613079

Foreign Registration Number

213001

Foreign Registration Date

1989/02/17

Foreign Expiration Date

1999/02/17

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEPPAR" AND "COUNTRY OF SWEDEN" APART FROM THE MARK AS SHOWN.

Section 2f Statement

AS TO THE WORD "ABSOLUT"

Translation Statement

THE ENGLISH TRANSLATION OF THE WORD "PEPPAR" IN THE MARK IS "PEPPER".

Filing Date

1986/08/04

Examining Attorney

UNKNOWN

Attorney of Record

SUSAN UPTON DOUGLASS

Print: Jan 23, 2004

73791014

DESIGN MARK

Serial Number

73791014

Status

REGISTERED AND RENEWED

Word Mark

ABSOLUT COUNTRY OF SWEDEN CITRON

Registration Number

1590115

Date Registered

1990/04/03

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 STOCKHOLM
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: VODKA. First Use:
1988/07/05. First Use In Commerce: 1988/07/05.

Prior Registration(s)

1244734;1302003

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SWEDEN" AND "CITRON"
APART FROM THE MARK AS SHOWN.

Section 2f Statement

AS TO "ABSOLUT"

Translation Statement

THE ENGLISH TRANSLATION OF THE WORD "ABSOLUT" IN THE MARK IS
"ABSOLUTE".

Filing Date

1989/04/03

Print: Jan 23, 2004

73791014

Examining Attorney

UNKNOWN

Attorney of Record

SUSAN UPTON DOUGLASS

ABSOLUT
Country of Sweden
CITRON

DESIGN MARK

Serial Number

73830835

Status

REGISTERED AND RENEWED

Word Mark

COUNTRY OF SWEDEN ABSOLUT

Registration Number

1642971

Date Registered

1991/04/30

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 STOCKHOLM
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: VODKA. First Use:
1979/02/14. First Use In Commerce: 1979/02/14.

Prior Registration(s)

1149463;1244734;1570118

Lining/Stippling Statement

THE LINING SHOWN IN THE MARK IS FOR SHADING PURPOSES ONLY AND DOES NOT
INDICATE COLOR.

Name/Portrait Statement

THE PORTRAIT IN THE MARK IS THAT OF SMITH LARS OHLSSON, NOW DECEASED.

Description of Mark

THE MARK IS COMPRISED OF THE CONFIGURATION OF THE CONTAINER FOR THE
GOODS, AND THE SEAL AFFIXED TO THE CONTAINER

Section 2f Statement

AS TO THE CONFIGURATION OF THE CONTAINER OF THE GOODS AND THE WORDS
"COUNTRY OF SWEDEN" AND "ABSOLUT"

Translation Statement

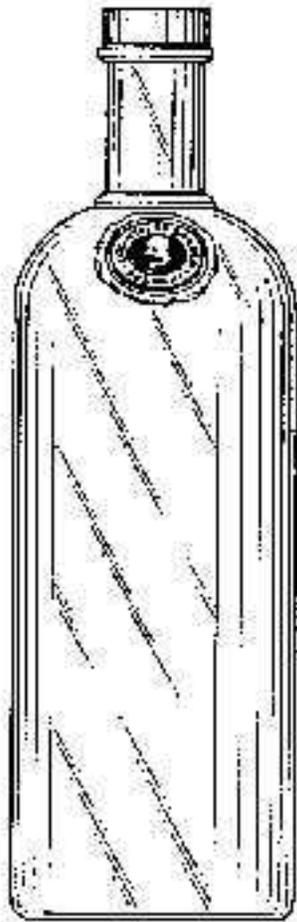
THE ENGLISH TRANSLATION OF THE WORD "ABSOLUT" IN THE MARK IS
"ABSOLUTE".

Filing Date

1989/10/12

Examining Attorney

LAWRENCE, ANDREW



DESIGN MARK

Serial Number

74220781

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

ABSOLUT COUNTRY OF SWEDEN KURANT

Registration Number

1868516

Date Registered

1994/12/20

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

V & S Vin & Sprit Aktiebolag COMPANY SWEDEN Formansvagen 19 S-100 72
Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: vodka. First Use:
1992/09/27. First Use In Commerce: 1992/09/27.

Foreign Country Name

SWEDEN

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

B-91-09554

Foreign Filing Date

1991/11/07

Prior Registration(s)

1244734;1302003;1570118;1590115;1634299;AND OTHERS

Section 2f Statement

as to "ABSOLUT COUNTRY OF SWEDEN KURANT"

Translation Statement

The word "KURANT" may be translated into English as "fit; saleable; marketable".

Filing Date

1991/11/08

Examining Attorney

UNKNOWN

Attorney of Record

JOANNE LUDOVICI-LINT

ABSOLUT
Country of Sweden
KURANT



DESIGN MARK

Serial Number

74494847

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

ABSOLUT COUNTRY OF SWEDEN VODKA

Registration Number

1893279

Date Registered

1995/05/09

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Formansvagen 19 S-100 72
Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 049. G & S: vodka. First Use:
1978/05/03. First Use In Commerce: 1978/05/03.

Prior Registration(s)

1129746;1176702;1302003;1634299;1660515;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VODKA" APART FROM THE
MARK AS SHOWN.

Section 2f Statement

as to "COUNTRY OF SWEDEN"

Translation Statement

The English translation of "ABSOLUT" is "absolute".

Filing Date

1994/02/28

Examining Attorney

Print: Jan 23, 2004

74494847

JENKINS, CHARLES L.

Attorney of Record

JOANNE LUDOVICI-LINT

ABSOLUT
Country of Sweden
VODKA

DESIGN MARK

Serial Number

74708572

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

ABSOLUT COUNTRY OF SWEDEN PEPPAR

Registration Number

2023285

Date Registered

1996/12/17

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Formansvagen 19 S-100 74
Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: vodka. First
Use: 1986/00/00. First Use In Commerce: 1986/00/00.

Prior Registration(s)

1176702;1302003;1570118;1634299;1660515;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEPPAR" APART FROM THE
MARK AS SHOWN.

Section 2f Statement

as to "COUNTRY OF SWEDEN"

Translation Statement

The English translation of "ABSOLUT" is "absolute" and "PEPPAR" is
"pepper".

Filing Date

1995/07/20

Print: Jan 23, 2004

74708572

Examining Attorney
LOUGHRAN, BARBARA A.

ABSOLUT
Country of Sweden
PEPPAR

DESIGN MARK

Serial Number

74708573

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

ABSOLUT VODKA COUNTRY OF SWEDEN THIS SUPERB VODKA WAS DISTILLED FROM GRAIN GROWN IN THE RICH FIELDS OF SOUTHERN SWEDEN. IT HAS BEEN PRODUCED AT THE FAMOUS OLD DISTILLERIES NEAR AHUS IN ACCORDANCE WITH MORE THAN 400 YEARS OF SWEDISH TRADITION. VODKA HAS BEEN SOLD UNDER THE NAME ABSOLUT SINCE 1879.

Registration Number

2002725

Date Registered

1996/09/24

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Formansvagen 19 S-100 74 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: vodka. First Use: 1978/05/03. First Use In Commerce: 1978/05/03.

Prior Registration(s)

1129746;1176702;1302003;1634299;1660515;1893279;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VODKA" APART FROM THE MARK AS SHOWN.

Section 2f Statement

as to all the wording in the mark excluding the terms "ABSOLUT" and "VODKA"

Translation Statement

The English translation of "ABSOLUT" IS "ABSOLUTE".

Print: Jan 23, 2004

74708573

Filing Date

1995/07/20

Examining Attorney

LOUGHRAN, BARBARA A.

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT
Country of Sweden
VODKA

*This superb vodka
was distilled from grain grown
in the rich fields of southern Sweden.
It has been produced at the famous
old distilleries near Åhus
in accordance with more than
400 years of Swedish tradition.
Vodka has been sold under the name
Absolut since 1879.*

DESIGN MARK

Serial Number

75555188

Status

REGISTERED

Word Mark

ABSOLUT MANDRIN

Registration Number

2399045

Date Registered

2000/10/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Ingenjorsvagen 2 S-117
97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely vodka. First Use: 1999/07/01. First Use In
Commerce: 1999/07/01.

Prior Registration(s)

1302003;1590115;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MANDARIN" APART FROM
THE MARK AS SHOWN.

Filing Date

1998/09/17

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

JOANNE LUDOVICI-LINT

ABSOLUT MANDRIN

DESIGN MARK

Serial Number

75616227

Status

REGISTERED

Word Mark

ABSOLUT MANDRIN COUNTRY OF SWEDEN

Registration Number

2472717

Date Registered

2001/07/31

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Ingenjorsvagen 2 S-117
97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely vodka. First Use: 1999/07/01. First Use In
Commerce: 1999/07/01.

Prior Registration(s)

1302003;1590115;1634299;1788035;1893279;2002725;2023285;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MANDARIN" APART FROM
THE MARK AS SHOWN.

Section 2f Statement

as to COUNTRY OF SWEDEN

Translation Statement

The English translation of the word "ABSOLUT" in the mark is
"ABSOLUTE".

Filing Date

1999/01/06

Print: Jan 23, 2004

75616227

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT
Country of Sweden
MANDRIN

DESIGN MARK

Serial Number

75616228

Status

REGISTERED

Word Mark

ABSOLUT MANDRIN COUNTRY OF SWEDEN

Registration Number

2673509

Date Registered

2003/01/14

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Ingenjorsvagen 2 S-117
97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely vodka. First Use: 1999/07/01. First Use In
Commerce: 1999/07/01.

Prior Registration(s)

1302003;1590115;1634299;1788035;1893279;2002725;2023285;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MADE FROM A UNIQUE
BLEND OF NATURAL MANDARIN AND ORANGE FLAVORS AND VODKA" AND "THE
DISTILLING AND FLAVORING OR VODKA IS AN AGE-OLD SWEDISH TRADITION"
APART FROM THE MARK AS SHOWN.

Section 2f Statement

as to "COUNTRY OF SWEDEN"

Translation Statement

The English translation of the word "ABSOLUT" in the mark is
"ABSOLUTE".

Print: Jan 23, 2004

75616228

Filing Date

1999/01/06

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT *Country of Sweden* **MANDRIN**

*Absolut Mandrin is made from
a unique blend of natural mandarin
and orange flavors and vodka
distilled from grain grown in
the rich fields of southern Sweden.
The distilling and flavoring of vodka
is an age-old Swedish tradition.
Vodka has been sold under the name
Absolut since 1879.*

DESIGN MARK

Serial Number

76050012

Status

REGISTERED

Word Mark

ABSOLUT

Registration Number

2651084

Date Registered

2002/11/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN Ingenjorsvagen 2 S-117
97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages; namely, vodka. First Use: 1999/07/01. First Use In
Commerce: 1999/07/01.

Prior Registration(s)

1893279;2002725;2023285;AND OTHERS

Lining/Stippling Statement

The mark is lined for the color orange, which is claimed as a feature
of the mark.

Description of Mark

The mark consists of the mark "ABSOLUT" and a three-dimensional
configuration of a "punt" protrusion that is hemispheric in shape,
emanating from the bottom of a bottle and invading the lower portion
of the bottle itself, and which "punt" is visible within and under the
bottle. The broken lining in the drawing represents the distinctive
shape of the bottle and is intended to show the general position of
the mark and is not a part of the mark as shown.

Print: Jan 23, 2004

76050012

Section 2f Statement

as to the representation of the punt design

Filing Date

2000/05/17

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

Joanne Ludovici-Lint



Print: Jan 23, 2004

76254061

DESIGN MARK

Serial Number

76254061

Status

REGISTERED

Word Mark

ABSOLUT

Registration Number

2529817

Date Registered

2002/01/15

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Vodka. First
Use: 1979/04/17. First Use In Commerce: 1979/06/17.

Prior Registration(s)

1893279;2002725;2023285;2399045;AND OTHERS

Description of Mark

The mark consists of the stylized term ABSOLUT shown in the color red.
The color red encompasses the entire mark and is not limited to any
particular portion of the mark. Applicant claims the color red as a
feature of the mark.

Filing Date

2001/05/09

Examining Attorney

FINE, STEVE

Attorney of Record

JOANNE LUDOVICI-LINT

ABSOLUT

Print: Jan 23, 2004

76254294

DESIGN MARK

Serial Number

76254294

Status

REGISTERED

Word Mark

ABSOLUT

Registration Number

2540331

Date Registered

2002/02/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Vodka. First
Use: 1979/04/17. First Use In Commerce: 1979/06/17.

Prior Registration(s)

1893279;2002725;2023285;2399045;AND OTHERS

Description of Mark

The mark consists of the stylized term "ABSOLUT" shown in the color
blue. The color blue encompasses the entire mark and is not limited
to any particular portion of the mark. The color blue is claimed as a
feature of the mark.

Filing Date

2001/05/09

Examining Attorney

BUCHANAN WILL, NORA

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT

DESIGN MARK

Serial Number

76257570

Status

SECOND EXTENSION - GRANTED

Word Mark

ABSOLUT SPIRITS

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Absolut Spirits Company Incorporated, The CORPORATION DELAWARE C/O
Dewey Ballantine LLP 1301 Avenue of the Americas New York NEW YORK
10019

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S:
distributorship services in the field of alcoholic beverages, wines
and spirits.

Prior Registration(s)

1778035;1804839;1825372;1868516;1893279;2002725;2023285;2247960;2399045-
;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SPIRITS" APART FROM
THE MARK AS SHOWN.

Filing Date

2001/05/14

Examining Attorney

BRUNO, JAMES

Attorney of Record

JOANNE LUDOVICI-LINT, ESQ.

ABSOLUT SPIRITS

Print: Jan 23, 2004

76395489

DESIGN MARK

Serial Number

76395489

Status

REGISTERED

Word Mark

ABSOLUT PEPPAR

Registration Number

2785564

Date Registered

2003/11/25

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages, namely, vodka. First Use: 1986/00/00. First Use In Commerce: 1986/00/00.

Prior Registration(s)

1302003;2023285;2399045;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PEPPAR" APART FROM THE MARK AS SHOWN.

Translation Statement

The English translation of "ABSOLUT" is "Absolute". The English translation of "PEPPAR" is "Pepper".

Filing Date

2002/04/15

Examining Attorney

JOHNSON, DARLENE

Print: Jan 23, 2004

76395489

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT PEPPAR

DESIGN MARK

Serial Number

76395490

Status

REGISTERED

Word Mark

ABSOLUT KURANT

Registration Number

2688447

Date Registered

2003/02/18

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages, namely, vodka. First Use: 1992/09/27. First Use In Commerce: 1992/09/27.

Prior Registration(s)

1302003;1864882;1868516;2399045;AND OTHERS

Section 2f Statement

as to "KURANT"

Translation Statement

The English translation of "ABSOLUT" is "ABSOLUTE". The English translation of "KURANT" is "fit"; "saleable"; "marketable".

Filing Date

2002/04/15

Examining Attorney

JOHNSON, DARLENE

Print: Jan 23, 2004

76395490

Attorney of Record

Joanne Ludovici-Lint, Esq.

ABSOLUT KURANT

DESIGN MARK

Serial Number

76395491

Status

REGISTERED

Word Mark

ABSOLUT CITRON

Registration Number

2785565

Date Registered

2003/11/25

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages, namely, vodka. First Use: 1988/07/05. First Use In Commerce: 1988/07/05.

Prior Registration(s)

1302003;1590115;2399045;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CITRON" APART FROM THE MARK AS SHOWN.

Translation Statement

The English translation of "ABSOLUT" is "Absolute". The English translation of "CITRON" is "Lemon".

Filing Date

2002/04/15

Examining Attorney

JOHNSON, DARLENE

Print: Jan 23, 2004

76395491

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT CITRON

DESIGN MARK

Serial Number

76443040

Status

PUBLISHED FOR OPPOSITION

Word Mark

ABSOLUT VANILIA

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely, distilled spirits.

Prior Registration(s)

1302003;1590115;2399045;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VANILLA" APART FROM
THE MARK AS SHOWN.

Translation Statement

The English translation of the term "ABSOLUT" is "ABSOLUTE".

Filing Date

2002/08/22

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

Joanne Ludovici-Lint, Esq.

ABSOLUT VANILIA

DESIGN MARK

Serial Number

76444157

Status

NOTICE OF ALLOWANCE - ISSUED

Word Mark

ABSOLUT RASBERRI

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely, distilled spirits.

Prior Registration(s)

1302003;1590115;2399045;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RASPBERRY" APART FROM
THE MARK AS SHOWN.

Filing Date

2002/08/23

Examining Attorney

ELTON, DAVID

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT RASBERRI

DESIGN MARK

Serial Number

76444497

Status

NOTICE OF ALLOWANCE - ISSUED

Word Mark

ABSOLUT RASPBERRI

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages namely distilled spirits.

Prior Registration(s)

1302003;1590115;2399045;AND OTHERS

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RASPBERRY" APART FROM
THE MARK AS SHOWN.

Translation Statement

The English translation of "ABSOLUT" is "ABSOLUTE".

Filing Date

2002/08/26

Examining Attorney

JOHNSON, DARLENE

Attorney of Record

Joanne Ludovici-Lint, Esq.

ABSOLUT RASPBERRI

Print: Jan 23, 2004

76492793

DESIGN MARK

Serial Number

76492793

Status

NON-FINAL ACTION - MAILED

Word Mark

ABSOLUT COUNTRY OF SWEDEN VANILIA

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S Vin & Sprit Aktiebolag CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, distilled spirits, vodka, and related products and
services.

Foreign Country Name

SWEDEN

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

2002/05438

Foreign Filing Date

2002/08/27

Prior Registration(s)

1244734;1570118;AND OTHERS

Filing Date

2003/02/25

Examining Attorney

LINCOSKI, JOHN

Attorney of Record

Print: Jan 23, 2004

76492793

Joanne Ludovici-Lint

ABSOLUT
Country of Sweden
VANILIA

DESIGN MARK

Serial Number

76527141

Status

SUSPENSION LETTER - MAILED

Word Mark

ABSOLUT BAR

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Bar and
cocktail lounge services. First Use: 2000/09/00. First Use In
Commerce: 2000/09/00.

Prior Registration(s)

1302003;1590115;2399045

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAR" APART FROM THE
MARK AS SHOWN.

Translation Statement

The English language translation of the term "ABSOLUT" is "absolute."

Filing Date

2003/06/30

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT BAR

DESIGN MARK

Serial Number

76550275

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

ABSOLUT CUT

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages and related goods.

Foreign Country Name

SWEDEN

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

2003/04486

Foreign Filing Date

2003/08/07

Prior Registration(s)

1302003;2529817;2540331;AND OTHERS

Filing Date

2003/10/09

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT CUT

DESIGN MARK

Serial Number

76550276

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

ABSOLUT CUT

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.

G & S: Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding materials; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks; writing instruments; napkins; recipe brochures; posters; and related goods.

Goods/Services

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.

G & S: Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semiworked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; barware; glassware; serving ware; beverage trays; shakers; beverage stirrers; beverage coolers; and related goods.

Goods/Services

Class Status -- ACTIVE. IC 024. US 042 050. G & S: Textile goods; bed and table covers; towels; and related goods.

Goods/Services

Print: Jan 23, 2004

76550276

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing; footwear; headgear; bags; and related goods.

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Beers; maltbased beverages; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; and related goods.

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Services for providing food and drink; temporary accommodations; and related services.

Foreign Country Name

SWEDEN

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

2003/04488

Foreign Filing Date

2003/08/08

Prior Registration(s)

1660515;1811766;1893279;2591827;AND OTHERS

Filing Date

2003/10/09

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT CUT

DESIGN MARK

Serial Number

76559475

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

ABSOLUT

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Charitable fundraising services; promoting the goods and services of others by preparing and placing advertisements on websites on global computer networks and distributing printed material; promoting the goods and services of others by arranging for sponsors to affiliate their goods and services with art exhibitions, musical concerts, and multimedia Internet programming; business consultation in the field of beverage sales and marketing; offering technical assistance in the operation of beverage distribution and retail sales businesses; developing promotional campaigns and contests for businesses; product marketing, namely, sales volume and inventory tracking for others in the field of beverage sales; and services related thereto.

Foreign Country Name

SWEDEN

Foreign Registration Number

241301

Foreign Registration Date

1992/10/09

Prior Registration(s)

1302003;1590115;1804839;2247960;AND OTHERS

Filing Date

Print: Jan 23, 2004

76559475

2003/11/12

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT

DESIGN MARK

Serial Number

76559870

Status

NEW APPLICATION - ASSIGNED TO EXAMINER

Word Mark

ABSOLUT

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Soft
drinks, water, beer, flavored malt beverages, non-alcoholic beverage
mixes, and related goods.

Foreign Country Name

SWEDEN

Foreign Registration Number

248376

Foreign Registration Date

1993/04/16

Prior Registration(s)

1302003;2529817;2540331;AND OTHERS

Filing Date

2003/11/14

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT

DESIGN MARK

Serial Number

76561774

Status

NON-FINAL ACTION - MAILED

Word Mark

ABSOLUT BAR

Type of Mark

TRADEMARK; SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Owner

V&S VIN & SPRIT AKTIEBOLAG CORPORATION SWEDEN SE-117 97 Stockholm
SWEDEN

Goods/Services

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,
footwear, headgear.

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Beers;
mineral and aerated waters and other non-alcoholic drinks; fruit
drinks and fruit juices; syrups and other preparations for making
beverages.

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages (except beers).

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Education;
providing of training; entertainment; sporting and cultural
activities.

Goods/Services

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Services for
providing food and drink; temporary accommodation.

Foreign Country Name

SWEDEN

Foreign Priority

Print: Jan 23, 2004

76561774

FOREIGN PRIORITY CLAIMED

Foreign Application Number

2003/03329

Foreign Filing Date

2003/05/26

Prior Registration(s)

1660515;1811766;1893279;AND OTHERS

Filing Date

2003/11/25

Examining Attorney

ALFIERI, AMY

Attorney of Record

Joanne Ludovici-Lint

ABSOLUT BAR

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Serial Number: 78288367 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark (words only): ABSOLUT

Standard Character claim: No

Current Status: Abandoned: Applicant's express request.

Date of Status: 2005-02-21

Filing Date: 2003-08-17

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 112

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: M3X -TMO Law Office 112 - Examining Attorney Assigned

Date In Location: 2005-02-21

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [MARCON, ROBERT, VICTOR](#)

Address:

[MARCON, ROBERT, VICTOR](#)
[3471 SINNICKS AVENUE](#)
[NIAGARA FALLS L2J2G6](#)
[Canada](#)

Legal Entity Type: Individual

Country of Citizenship: Canada

Phone Number: 905 354 2543

Fax Number: 905 354 7693

GOODS AND/OR SERVICES

International Class: 032

Class Status: Active

BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS; BEER, WATER, STILL WATER, MINERAL WATER, SPRING WATER, AERATED WATER, CARBONATED WATER, SPARKLING WATER, ICE WATER, ICEBERG WATER, ICE, CRUSHED ICE, JUICES, FLAVORED DRINKS (EXCEPT BEVERAGES BASED ON COFFEE, TEA, OR COCOA AND MILK BEVERAGES), NUTRIENT DRINKS, NON-ALCOHOLIC BEVERAGES, PREPARATIONS FOR MAKING BEVERAGES, SYRUPS

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Foreign Application Number: 1168026

Country: Canada

Foreign Filing Date: 2003-02-18

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2005-02-22 - Abandonment Notice Mailed - Express Abandonment

2005-02-21 - Abandonment - Express mailed

2005-02-15 - Report Completed Suspension Check Case Still Suspended

2004-12-21 - Letter Of Abandonment Processed

2004-12-21 - PAPER RECEIVED

2004-09-22 - Letter of suspension mailed

2004-09-21 - Suspension Letter Written

2004-08-13 - Amendment From Applicant Entered

2004-07-16 - Communication received from applicant

2004-07-16 - PAPER RECEIVED

2004-01-23 - Non-final action e-mailed

2004-01-11 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Mr. ROBERT V. MARCON,

Correspondent

MR. ROBERT V. MARCON,
3471 SINNICKS AVENUE
NIAGARA FALLS; ONTARIO
L2J2G6
CANADA

Phone Number: 905 354 2543

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