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

Proceeding	91208855
Party	Defendant The Wine Group LLC
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Attachments	Exhibit272.pdf(4047303 bytes) Exhibit6revised.pdf(2186338 bytes)

EXHIBIT 2

Greater Louisville Convention
and Visitors Bureau

Opposer

v.

The Wine Group LLC

Applicant

) IN THE UNITED STATES
) PATENT AND TRADEMARK OFFICE
)
)
) TRADEMARK TRIAL AND APPEAL BOARD
)
)
) APPL. NO. 85/736,374
)
) OPPOSITION NO. 91208855

**LOUISVILLE'S RESPONSES TO WINE GROUP'S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Under 37 CFR § 2.120 and Fed. R. Civ. P. 34, Greater Louisville Convention and Visitors Bureau ("Louisville", "Opposer", or "Plaintiff"), by and through its attorneys identified below, hereby responds to The Wine Group LLC's ("Wine Group", "Applicant", or "Defendant") First Set of Requests for Production of Documents, and states as follows:

Louisville, based upon its current knowledge, understanding, and belief of the facts, information and documents available to it, responds as set forth below. As this action proceeds, Louisville may discover further responsive documents. Louisville reserves the right to modify or supplement these responses accordingly.

These responses are given without prejudice to using or relying on at trial documents omitted from these responses as a result of mistake, error, oversight, or inadvertence. Louisville further reserves the right to object on appropriate grounds to the introduction at trial of any information or documents included in these responses.

Louisville's responses and objections are made without waiving or intending to waive, but on the contrary, preserving and intending to preserve, all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any

purpose of the responses, or the subject matter thereof, in this or any subsequent proceeding.

GENERAL OBJECTIONS

Louisville objects to all Requests for production of documents on the following grounds, each of which is hereby incorporated by reference into Louisville's individual responses below as if fully stated therein.

1. Louisville objects to the Requests to the extent that they seek to impose duties or obligations on Louisville beyond those imposed by the Federal Rules of Civil Procedure or the applicable Rules of Practice of the United States Trademark Office.

2. Louisville objects to each of the Requests to the extent that it seeks information which is protected by the attorney-client privilege, or which consists of attorney work product, or which is otherwise protected from disclosure. Any inadvertent production of any privileged or protected document will not constitute a waiver of any privilege or protection. Louisville will produce such privilege log as may be required by applicable law in connection with its document production.

3. Louisville objects to each of the Requests for production of documents to the extent that it seeks information which consists of proprietary business information or other confidential information. Louisville will not produce any such information except subject to the protective order entered by the TTAB.

4. Louisville objects to each of the Requests on the grounds and to the extent that it is unduly burdensome and overly broad and thus, in part, is designed to burden, harass, annoy, and oppress Louisville rather than to serve any legitimate discovery purpose. Where the request is overbroad, Louisville will initially produce a

representative sample of requested documents or will produce summary information in lieu of individual documents. After the produced documents are reviewed, Louisville will meet and confer regarding production for inspection of any additional documents specifically requested by Wine Group. Overbreadth is also evident to the extent that electronic information is called for and responsive. The electronic storage media contains extensive data irrelevant to the issues in this case. After the produced documents are reviewed, Louisville will meet and confer with Wine Group and will produce electronic information reasonably requested and specifically identified by Wine Group.

5. Louisville objects to each of the Requests on the grounds and to the extent that it seeks to require Louisville to produce documents which in large part and measure are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

6. Louisville objects each of the Requests to the extent it seeks documents or information not in the possession, custody, or control of Louisville.

7. Louisville objects to each of the Requests to the extent it seeks documents or information obtainable from some other source that is more convenient, less burdensome, or less expensive.

8. Louisville objects to each of the Requests to the extent it contains repetitive or overlapping requests.

9. Louisville objects to each of the Requests to the extent it does not set forth and describe individual items and categories with reasonable particularity or is otherwise unclear, vague, ambiguous, or unintelligible. By serving this Response, Louisville is not

admitting that there are documents or information responsive to this Request.

10. Louisville objects to each of the Requests insofar as it is intended to limit or restrict Louisville's right to rely on any documents, information, or witness for any purpose whatsoever in this proceeding before discovery is completed. Louisville's objections and responses set forth the information and facts presently known to Louisville. Further discovery may develop additional information affecting the responses to these Requests. Louisville reserves the right to amend or supplement its responses as additional information and documents are identified, facts are ascertained, analyses are made, and trial preparation, discovery, investigation, and legal research are completed. Louisville will supplement the responses only to the extent required by the Federal Rules of Civil Procedure or the applicable Rules of Practice of the United States Trademark Office. These responses are not intended to limit Louisville's use of additional information that Louisville may subsequently obtain during the course of discovery and further investigation.

11. Louisville reserves all objections to the relevancy, materiality or admissibility of any document so produced as evidence for any purpose in any further proceedings in this action, including motions for summary judgment, motions for summary adjudication of issues, and the trial of this action, or in any other action.

12. In responding to these Requests, identification of any document by Louisville shall not constitute an agreement with or a concession as to the veracity of the document, or as to any characterization of the document in these responses. Louisville expressly reserves the right to assert any and all appropriate objections with respect to any such document.

13. Louisville incorporates these General Objections into Louisville's responses to each specific request. Louisville's responses are made without waiver of, or prejudice to, these or any additional objections that the Louisville may make. All such objections are hereby reserved, as is the right to move for a protective order.

14. Louisville objects to the time, place, and manner of the document production set forth in the Requests. Louisville will initially produce a representative sample of requested documents or will produce summary information in lieu of individual documents. After the produced documents are reviewed, Louisville will meet and confer regarding production for inspection of any additional documents requested by Wine Group. Moreover, the fact that Louisville agrees to produce documents in a certain request shall not be interpreted to be an admission or inference that any such documents exist or that Louisville has any such documents in its possession, custody, or control.

15. Louisville objects to Wine Group's request for production of documents to the extent it calls for the production of documents created after the date of the filing of this action, on the grounds that such requests are overly broad, beyond the scope of the cancellation proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

16. Louisville objects to Wine Group's definition of the terms "YOU", "YOUR", and "OPPOSER" on the grounds that they are overbroad, unduly burdensome, oppressive, harassing, vague and ambiguous, and improperly seek information that is not within Louisville's possession, custody or control.

17. Louisville objects to each request to the extent that it seeks documents that contain confidential and private information of a third party, that is not relevant to the

issues in this case.

18. Louisville objects to each request as overbroad, unduly burdensome, and seeking documents that are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence to the extent the request seeks documents remote in time, concerning use outside the U.S., and not relevant to this litigation.

19. Louisville objects to the entire set of requests for production on the ground that it is overly broad and burdensome to the extent that it fails to describe or include a time period covered by the requests.

SPECIFIC RESPONSES AND FURTHER OBJECTIONS

Louisville adopts and incorporates by reference each of the foregoing General Objections as though fully set forth below as separate objections to each request. The responses to each numbered request follow:

1. All marketing plans for services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that

it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

2. All business plans for services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set

forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

3. All promotional materials used for services offered under OPPOSER'S MARKS, including by way of example but without limitation on the generality of the foregoing:

- a. Each print ad;
- b. Each television ad;
- c. Each radio ad;
- d. A sample of each marketing accessory, such as shirts, caps, aprons, etc., that bears OPPOSER'S MARKS; and
- e. All trade materials.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or

commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

4. Each consumer research study of the demographics of actual or potential users of services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set

forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

5. All DOCUMENTS constituting, comprising, discussing, or related to any consumer research conducted by YOU or on YOUR behalf and in connection with services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

6. All DOCUMENTS constituting, comprising, discussing, or related to the demographics of consumers of services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

7. All DOCUMENTS consulted in preparing the responses to APPLICANT'S FIRST SET OF INTERROGATORIES.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground

that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

9. All DOCUMENTS concerning the selection and adoption of each of OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks

confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

10. All DOCUMENTS referencing or discussing TWG'S MARK.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks

documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

11. Each DOCUMENT constituting, reflecting or discussing any actual or contemplated license to third parties to use OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

12. Each newspaper, magazine or trade press article discussing, describing or commenting on services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

13. Each witness statement provided in connection with this opposition.

Response: Louisville's General Objections set forth above are incorporated by reference

as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

14. Each DOCUMENT concerning: (a) TWG, (b) YOUR awareness of TWG (c) TWG'S MARK, and (d) YOUR claims in this proceeding.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, since it requests any document concerning Wine Group or Louisville's awareness of Wine

Group, and not just related to this proceeding. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome for the reasons discussed above. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to parts c & d of this request, if any exist.

17. All DOCUMENTS referring to or constituting actual or proposed content for each web site for services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome since it requests documents and things that are already publicly

available and thus easily obtainable by Wine Group. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request that are not already publicly available, if any exist.

18. Each DOCUMENT reflecting an inquiry from a consumer regarding whether there was a connection between bourbon bearing TWG'S MARK and services offered under OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege

and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

19. Each DOCUMENT reflecting YOUR claimed first use of each of OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks

documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

20. All DOCUMENTS constituting or concerning any Federal, state or local license for selling alcohol beverages in connection with the offering of services OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying

of non-privileged documents and things responsive to this request, if any exist.

21. All DOCUMENTS concerning or supporting the claim made in paragraph 5 of the Notice of Opposition that OPPOSER'S MARKS are "confusingly similar" to Applicant's Mark.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

22. All DOCUMENTS concerning or supporting the claim in paragraph 5 of the

Notice of Opposition that "when used on or in connection with [bourbon],"

APPLICANT'S MARK is likely "to cause confusion, to cause mistake, or to deceive" consumers.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

23. All DOCUMENTS concerning or supporting your claim in paragraph 7 of the

Notice of Opposition that Applicant's goods and Opposer's services are "closely related."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

24. All DOCUMENTS concerning or supporting your claim in paragraph 8 of the Notice of Opposition that registration of APPLICANT'S MARK will "damage" YOU.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence.

Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

25. All DOCUMENTS concerning or constituting the "exclusive license" claimed in paragraph 2 of the Notice of Opposition.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that

it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

26. All DOCUMENTS concerning the quality control exercised by the Licensor of registered mark no. 3,932,986 as pleaded in paragraph 2 of the Notice of Opposition

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request because it is ambiguous and unclear, in that it concerns "quality control... as pleaded in paragraph 2 of the Notice of Opposition", and quality control is not pleaded in the cited paragraph. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of

Louisville, Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will not produce documents as the request concerns a pleading which did not occur.

27. All DOCUMENTS concerning any action taken to enforce YOUR rights in each of OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome since it requests documents and things that are already publicly available and thus easily obtainable by Wine Group. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these

objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request that are not already publicly available, if any exist.

28. Each DOCUMENT constituting an organization chart for OPPOSER.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

29. DOCUMENTS sufficient to show each type of service offered under

OPPOSER'S MARKS.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

30. Each DOCUMENT concerning or reflecting the use of the term "bourbon" as or as part of a trademark.

Response: Louisville's General Objections set forth above are incorporated by reference

as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, since it requests any document concerning the use of "bourbon" in any trademark, and not just Louisville's marks or Wine Group's mark. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome for the reasons discussed above. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will not produce documents responsive to this request.

31. Each DOCUMENT concerning or constituting a license by YOU of Registration No. 4,178,113.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this

proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

32. All DOCUMENTS constituting, reflecting or discussing communications between YOU and the owner of registration no. 3,932,986,

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence, since it requests communications between Louisville and the Kentucky Distillers' Association on any matter, and not just concerning Reg. no. 3,932,986. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly

burdensome for the reasons discussed above. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will not produce documents responsive to this request.

33. All DOCUMENTS reflecting YOUR use of the mark set forth in registration no. 4,178,113 on or in connection with the services stated therein.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or

commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

34. All DOCUMENTS reflecting your plans to use the mark set forth in registration no. 4,178,113 as of on or before July 7, 2011.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set

forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

35. All DOCUMENTS reflecting your use of the mark set forth in registration no. 4,178,113 as of on or before October 20, 2011.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

36. All DOCUMENTS constituting, discussing or reflecting a license of the mark set

forth in registration no. 4,178,113 to the Kentucky Derby Museum.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

37. All DOCUMENTS reflecting communications with the Kentucky Derby Museum regarding the use of the mark set forth in registration no. 4,178,113.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this

proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

38. All DOCUMENTS supporting YOUR Second Affirmative Defense.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that

it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

39. All DOCUMENTS supporting YOUR claim in paragraph 2 of YOUR Second Affirmative Defense that TWG "knew that [OPPOSER] was already using its URBAN BOURBON and URBAN BOURBON TRAIL marks in commerce, since at least as early as [TWG'S] application for the (B)URBAN mark on September 24, 2012."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or

commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

40. All DOCUMENTS supporting YOUR claim in paragraph 3 of YOUR Second Affirmative Defense that TWG "knew that OPPOSER had already registered its URBAN BOURBON TRAIL mark on March 15, 2011, since at least as early as Wine Group's application for the (B)URBAN mark on September 24, 2012."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks

documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

41. All DOCUMENTS supporting YOUR claim in paragraph 4 of YOUR Second Affirmative Defense that TWG "knew that [YOU] had already registered its URBAN BOURBON mark on July 24, 2012, since at least as early as Wine Group's application for the (B)URBAN mark on September 24, 2012."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and

the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

42. All DOCUMENTS supporting YOUR claim in paragraph 5 of YOUR Second

Affirmative Defense that TWG "knew that Louisville had already applied for registration of its URBAN BOURBON EXPERIENCE mark on August 24, 2011, and that this application had been allowed, since at least as early as Wine Group's application for the (B)URBAN mark on September 24, 2012."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set

forth herein. Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

43. All DOCUMENTS reflecting the "prejudice" alleged in paragraph 7 of YOUR

Second Affirmative Defense that was allegedly caused by TWG'S delay in petitioning to cancel Registration No. 4,178,113.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

44. All DOCUMENTS supporting YOUR claim that TWG'S claim is barred by the doctrine of laches.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

44. All DOCUMENTS supporting YOUR claim of "bad faith" alleged in paragraph 1 of YOUR Third Affirmative Defense.

Response: Louisville's General Objections set forth above are incorporated by reference

as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

45. All DOCUMENTS supporting YOUR claim that TWG'S claim is barred by the doctrine of unclean hands.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive,

and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

46. All DOCUMENTS supporting YOUR claim in paragraph 3 of YOUR third affirmative defense that "Wine Group sought to benefit from Louisville's advertising and promotion of its URBAN BOURBON, URBAN BOURBON TRAIL, and URBAN BOURBON EXPERIENCE marks, in order to increase the appeal of the (B)URBAN mark for bourbon liquor."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive,

and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

47. All DOCUMENTS supporting YOUR claim in paragraph 4 of YOUR third affirmative defense that "Wine Group has no knowledge that Louisville has never used its URBAN BOURBON mark for the specified services; no knowledge that Louisville's URBAN BOURBON mark was not in use at the time it filed the specimen of use; and no knowledge that Louisville's URBAN BOURBON mark was not in use at the time of registration."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive,

and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

48. All DOCUMENTS supporting YOUR claim in paragraph 5 of YOUR third affirmative defense that "Wine Group has no knowledge that Louisville did not have a *bona fide* intention to use its URBAN BOURBON mark as of the filing date."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that

it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

49. All DOCUMENTS supporting YOUR claim in paragraph 6 of YOUR third affirmative defense that "Wine Group has no knowledge that Louisville did not exercise quality control over the services in connection with licensing its URBAN BOURBON mark."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the

grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

50. All DOCUMENTS supporting YOUR claim in paragraph 7 of YOUR third affirmative defense that "Wine Group made its counterclaim solely in an attempt to pressure [OPPOSER] into dropping its justified opposition to the (B)URBAN application."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and

the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

51. All DOCUMENTS supporting YOUR claim in paragraph 8 of YOUR third affirmative defense that "Wine Group has since explicitly engaged in such pressure" to make YOU "drop[] its justified opposition to the B(URBAN) application."

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.

52. All DOCUMENTS constituting or reflecting communications between YOU and TWG regarding this proceeding except those between counsel and the pleadings in the case.

Response: Louisville's General Objections set forth above are incorporated by reference as though fully set forth herein. Louisville objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Louisville further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Louisville also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Louisville objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Louisville. Louisville further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Louisville responds as follows: Louisville will permit inspection and copying of non-privileged documents and things responsive to this request, if any exist.


John A. Galbreath

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Reisterstown, MD 21136-5523
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EMAIL: jgalbreath@Louisville-law.com

Attorneys for Plaintiff/Opposer

Certificate of Service: I certify that on the date below, the foregoing Responses to Production Requests and referenced attachments, if any, were deposited with the U.S. Postal Service as first class mail in an envelope addressed to:

PAUL W. REIDL
LAW OFFICE OF PAUL W. REIDL
241 EAGLE TRACE DRIVE, SECOND FLOOR
HALF MOON BAY, CA 94019

14 June 2013



John A. Galbreath

EXHIBIT 6

To: Greater Louisville Convention & Visitors ETC. (jgalbreath@galbreath-law.com)

Subject: U.S. TRADEMARK APPLICATION NO. 77747378 - URBAN BOURBON TRAIL - L052909

Sent: 9/10/2009 6:48:57 PM

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UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77747378

MARK: URBAN BOURBON TRAIL

77747378

CORRESPONDENT ADDRESS:

JOHN A. GALBREATH
GALBREATH LAW OFFICES, P.C.
2516 CHESTNUT WOODS CT
REISTERSTOWN, MD 21136-5523

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Greater Louisville Convention
& Visitors ETC.

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

L052909

CORRESPONDENT E-MAIL ADDRESS:

jgalbreath@galbreath-law.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 9/10/2009

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION – CLASS 21 AND 35

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3087217 in connection with its Class 21 and 35 goods and services. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See the enclosed registration.*

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

Taking into account the relevant *du Pont* factors, a likelihood of confusion determination in this case involves a two-part analysis. The marks are compared for similarities in their appearance, sound, connotation and commercial impression. TMEP §§1207.01, 1207.01(b). The goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade

channels. See *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002); *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001); TMEP §§1207.01, 1207.01(a)(vi).

Regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. 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. See *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973); TMEP §1207.01. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); see TMEP §1207.01(b). In comparing the goods and/or services, it is necessary to show that they are related in some manner. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); TMEP §1207.01(a)(vi).

Comparison of the Marks

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); see TMEP §1207.01(b).

Applicant seeks registration of “**URBAN BOURBON TRAIL.**”

The registered mark is “**URBAN BOURBON.**”

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

The mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). See *In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) (THE LILLY and LILLI ANN); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988) (MACHO and MACHO COMBOS); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE and CREST CAREER IMAGES); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (ACCUTUNE and RICHARD PETTY'S ACCU TUNE); *In re Cosvetic Labs., Inc.*, 202 USPQ 842

(TTAB 1979) (HEAD START and HEAD START COSVETIC); TMEP §1207.01(b)(iii).

Comparison of the Goods and Services

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The applicant provides “Flasks; Shot glasses; Portable coolers; Insulated containers for beverage cans; Coaster sets not of paper and not being of textile; Tasting glasses; Decanters; Paper plates and paper cups, in Class 21; and Chamber of commerce services, namely, promoting business and tourism in the bourbon-producing region of Kentucky, in Class 35.”

The registrant provides “alcoholic beverages, namely bourbons and bourbon based beverages.”

The applicant’s goods and services in Classes 21 and 35 are related to, used in connection with and/or promote the goods of the registrant.

Further, a visit to the applicant’s website supports relatedness of the goods and services. *See attachments.*

Material obtained from applicant’s website is acceptable as competent evidence in examination and ex parte proceedings. *See In re N.V. Organon*, 79 USPQ2d 1639, 1642-43 (TTAB 2006); *In re Promo Ink*, 78 USPQ2d 1301, 1302-03 (TTAB 2006); *In re A La Vieille Russie Inc.*, 60 USPQ2d 1895, 1898 (TTAB 2001); TBMP §1208.03; TMEP §710.01(b).

The fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see In re Decombe*, 9 USPQ2d 1812 (TTAB 1988); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983). Further, when the relevant consumer includes both professionals and the general public, the standard of care for purchasing the goods is that of the least sophisticated purchaser. *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004).

The Trademark Act not only guards against the misimpression that the senior user is the source of the junior user’s goods and/or services, but it also protects against “reverse confusion,” that is the junior user is the source of the senior user’s goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Fisons Horticulture, Inc. v. Vigoro Indust., Inc.*, 30 F.3d 466, 474-75, 31 USPQ2d 1592, 1597-98 (3d Cir. 1994); *Banff, Ltd. v. Federated Dep’t Stores, Inc.*, 841 F.2d 486, 490-91, 6 USPQ2d 1187, 1190-91 (2d Cir. 1988).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993).

Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Accordingly, registration is refused pursuant to Trademark Act Section 2(d).

Applicant should also note the following additional refusal:

SECTION 2(e)(1) REFUSAL – MERELY DESCRIPTIVE – CLASS 16 AND 35

Registration is refused because the applied-for mark merely describes a feature, characteristic and/or nature of the applicant's goods and services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.*

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. TMEP §1209.01(b); *see In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005); *In re Gyulay*, 820 F.2d 1216, 1217-18, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987).

The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of "computer programs recorded on disk" where relevant trade used the denomination "concurrent" as a descriptor of a particular type of operating system). "Whether consumers could guess what the product is from consideration of the mark alone is not the test." *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant seeks registration of "**URBAN BOURBON TRAIL**" for "Posters; Cookbooks; Travel books, in Class 16; and Chamber of commerce services, namely, promoting business and tourism in the bourbon-producing region of Kentucky, in Class 35."

The word "**urban**" is relevantly defined as: relating to or belonging to a city.

The word "**bourbon**" is relevantly defined as: a type of whiskey distilled mainly in the United States from a fermented mixture of hot water and grain mash containing at least 51 percent corn. [Mid-19th century. After Bourbon County, Kentucky].

The word "**trail**" is relevantly defined as: a route planned or followed for a particular purpose.

Further, a visit to the applicant's website supports the merely descriptive finding. *See attachments.*

"A mark may be merely descriptive even if it does not describe the 'full scope and extent' of the applicant's goods or services." *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if the term describes only one significant function, attribute or property. *In re Oppedahl*, 373 F.3d at 1173, 71 USPQ2d at 1371; TMEP

§1209.01(b).

The fact that an applicant may be the first and only user of a merely descriptive designation is not dispositive on the issue of descriptiveness where, as here, the evidence shows that the word or term is merely descriptive. *See In re Sun Microsystems, Inc.*, 59 USPQ2d 1084, 1087 (TTAB 2001); *In re Acuson*, 225 USPQ 790, 792 (TTAB 1985); TMEP §1209.03(c).

The proposed mark “**URBAN BOURBON TRAIL**” is merely descriptive of a feature, characteristic and/or nature of the applicant’s goods and services. Accordingly, the mark is refused registration under section 2(e)(1).

Informalities

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:

Disclaimer Required

Applicant must disclaim the descriptive wording “bourbon” apart from the mark as shown, for International Class 21, because the applied-for goods are specifically for use with bourbon/liquor. *See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). *See previously attached definition and printouts from the applicant’s website* .

The following is the accepted standard format for a disclaimer:

No claim is made to the exclusive right to use “**BOURBON**” apart from the mark as shown in connection with the goods in International Class 21.

TMEP §1213.08(a)(i).

The Office can require an applicant to disclaim an unregistrable part of a mark consisting of particular wording, symbols, numbers, design elements or combinations thereof. 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), the Office can refuse registration of an entire mark if the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. 15 U.S.C. §1052(e). Thus, the Office may require an applicant to disclaim a portion of a mark that, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). *See* TMEP §§1213, 1213.03.

A disclaimer does not physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing. TMEP §§1213, 1213.10.

The following cases further explain the disclaimer requirement: *Dena Corp. v. Belvedere Int’l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991); *In re Brown-Forman Corp.*, 81 USPQ2d 1284 (TTAB 2006); *In re Kraft, Inc.*, 218 USPQ 571 (TTAB 1983).

Failure to comply with a disclaimer requirement can result in a refusal to register the entire mark. TMEP §1213.01(b).

Claimed Prior Registrations Not Pertinent

Applicant's claim of ownership of U.S. Registration Nos. 3474128 and 3477274 will not be printed on any registration that may issue from this application because the marks are different. Only prior registrations of the same or similar marks are considered related registrations for purposes of an ownership claim. See 37 C.F.R. §2.36; TMEP §812.

/RLF/
Ronald L. Fairbanks
Trademark Attorney
Law Office 117
(571) 272-9405

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

DESIGN MARK

Serial Number

78471873

Status

REGISTERED

Word Mark

URBAN BOURBON

Standard Character Mark

Yes

Registration Number

3087217

Date Registered

2008/05/02

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Diageo Australia Limited CORPORATION AUSTRALIA 4 Distillers Place
Huntingwood AUSTRALIA NSW 2148

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic
beverages, namely bourbons and bourbon based beverages.

Foreign Country Name

AUSTRALIA

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

990205

Foreign Filing Date

2004/02/23

Foreign Registration Number

990205

Foreign Registration Date

2004/12/20

Foreign Expiration Date

2014/02/23

Filing Date

2004/08/23

Examining Attorney

NEVILLE, BRIAN

Attorney of Record

Dana M. Gilland

URBAN BOURBON

Bourbon

COUNTRY

HOME

ABOUT US

BOURBON BUZZ

CALENDAR

PLAN A VISIT

SHOP

ALL BOURBON

CREATE SIGN UP

ADD LINK

URBAN BOURBON TRAIL

After a day in the countryside visiting the seven distilleries on the legendary Kentucky Bourbon Trail, its back to the big city for a stop on the URBAN Bourbon Trail. Louisville has been home to many distillers since Evan Williams marketed his first whiskey in the city in 1780. Until the 1920's, a portion of Main Street was known as "Whiskey Row" when as many as 50 distilleries were active.

Look who has finished the Urban Bourbon Trail

You can sample your favorite bourbons at some of the world's best bourbon bars. Morning, noon or night, bourbon can be found in its natural environment - the Louisville bars and restaurants serving up America's only native spirit in drinks and innovative dishes from mint julep pancakes to bourbon barrel smoked salmon.

The establishments on the Urban Bourbon Trail vary from historic hotel properties that once served Kentucky Whiskey to the likes of Al Capone and F. Scott Fitzgerald to cosmopolitan "scenes" where urban trend-setters are making retro drinks such as the Old-Fashioned and Manhattan in vogue again. Five are in downtown hotels, four have been internationally recognized and six are serving up bourbon-inspired dining. All offer bourbon flights, special bourbon cocktails including the official drink of the Kentucky Derby - the mint julep, and all have at least 50 different bourbon labels on the bar with trained staff that can explain the nuances and tasting notes in the varied offerings from Jai Beam Black to Woodford Reserve Sonoma-Cutrer Finish.

URBAN BOURBON TRAIL BARS

Blu

For a modern Louisville experience, step into a fresh new space of contemporary design at Blu. Sample 50 Bourbons, Bourbon-infused appetizers and Bourbon flights in the heart of the city at the Downtown Marriott.

Bourbons Bistro

Located just two miles from downtown Louisville on Historic Frankfort Avenue, Bourbons Bistro is the bourbon lover's bar with a selection of 130 Bourbons as well as monthly Bourbon dinners. Named by Whisky Magazine as the "2006 American Icon of Whiskey" for restaurants and bars.

The Brown

Enjoy an Old-Fashioned cocktail in the lavish lobby bar of the Brown Hotel that Southern Living Magazine describes as "straight from a 1930's movie set". At this treasured 1923 landmark, the famous "Hot Brown" was created to satisfy the cravings of the late-night dance crowd. Sample one for yourself.

Jockey Silks Bourbon Bar & Lounge

Cozy up to a fire and the old world décor of wood, leather and horse-racing memorabilia in one of city's oldest Bourbon bars. Located in the Galt House Hotel & Suites, Jockey Silks features 165 varieties of Bourbon - always generously poured.

Maker's Mark Bourbon House & Lounge

Located in the city's vibrant Fourth Street Live! entertainment complex, The nearly 60 ft. long wood-booped bar features an entire

Located in the city's vibrant Fourth Street Live! entertainment complex, The nearly 60-ft. long wood-topped bar features an entire wall of Backlit Maker's Mark bottles and a spectacular "wall of fire". While it bears the Maker's Mark name, Bourbons from all of Kentucky's distilleries are available.

Proof on Main

Housed in five historic buildings, Proof on Main is part of the celebrated 21c Museum Hotel. Proof's large spirits collection is highlighted by an impressive selection of 50 of Kentucky's finest Bourbons. Named one of the "Best New Restaurants of 2006" by Esquire Magazine.

The Old Seelbach Bar

Located in the hotel that served as F. Scott Fitzgerald's inspiration for *The Great Gatsby*, The Old Seelbach Bar, has been restored to its authentic, early 1900's décor. The expensive Bourbon bar has been described as "one of the finest stretches of megalony in the country" by Gary Regan, author of *The Book of Bourbon*.

URBAN BOURBON TRAIL PASSPORT - NEW PROGRAM!

Where to get the Passport

Visitors Center - 4th and Jefferson, 502.579.6109

Each of the 6 Urban Bourbon Trail restaurants/bars

How does it work?

The program is free

There is no time limit for the completion (we don't expect folks to finish in one night, or even one weekend)

The program is explained at the front of the Passport

Visit each location, make a purchase (drink/food), get the Passport stamped

The Passport cannot be reused, but you can pick-up a new passport and start another Bourbon Country adventure.

How do you receive the Passport?

If you come to the Visitors Center you'll get both a specially designed t-shirt and a premium giveaway

If you mail the Passport, we'll mail you a specially designed t-shirt



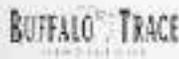
KENTUCKY BOURBON TRAIL



Come explore the Kentucky Bourbon Trail, connecting the nation's Bourbon distilleries, where you can see the art of Bourbon-making being practiced much as it was 200 years ago.

Visit the producers of "America's ONLY Native Spirit" and experience for yourself the magic and scenes of the Master Distiller's craft, travel through the rolling Kentucky hills when you visit Bourbon Country!

[View a map of the Kentucky Bourbon Trail.](#)





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SHOP

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<http://twitter.com/flv97> - Check out this cool billboard of Maker's Mark...It's Happy Hour time Tweeps!

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- uranium-lead dating
- uranography
- uranous
- Uranus
- uranyl
- urane
- urate
- urate nephropathy
- ▶ **urban**
- urban adventure
- urban artist
- urban blues
- urban cowgirl
- urban
- exploration
- urban reinvented

urban

ur-ban [ūr-bən]

adjective

Definition:

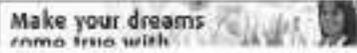
of city: relating to or belonging to a city

[Early 17th century; < Latin *urbanus*; *urbs* "city"]

Word Usage

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urban legend
urban planning



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Dictionary

urban or urbane?

Though ultimately from the same Latin form, these words differ in meaning in English. Urban refers generally to cities (as in *the stress of urban life*); urbane means "sophisticated" (as in *an urbane manner*, *He was very urbane.*).

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- bouquet garni
- bouquetier
- Bourbon
- **bourbon**
- bourgeois
- bourgeois
- Bourbon gauge
- bourgeois
- bourgeoisie
- bourgeoisify
- bourgeoisness

bourbon



bour-bon [bür-bən]

noun

Definition:

type of whiskey: a type of whiskey distilled mainly in the United States from a fermented mixture of hot water and grain **mash** containing at least 51 percent corn.

[Mid-19th century. After *Bourbon County, Kentucky*]

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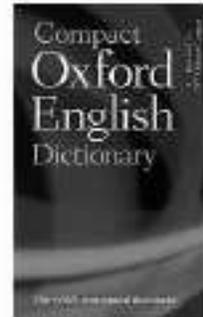


Compact Oxford English Dictionary

trail

• **noun** **1** a mark or a series of signs left behind by the passage of someone or something. **2** a track or scent used in following someone or hunting an animal. **3** a long thin part stretching behind or hanging down from something. **4** a beaten path through rough country. **5** a route planned or followed for a particular purpose: *the tourist trail*

• **verb** **1** draw or be drawn along behind. **2** follow the trail of. **3** walk or move slowly or wearily. **4** (**trail away/off**) (of the voice or a speaker) fade gradually before stopping. **5** be losing to an opponent in a contest. **6** (of a plant) grow along the ground or so as to hang down. **7** advertise with a trailer.



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— ORIGIN from Old French *traillier* 'to tow' or Low German *treien* 'haul (a boat)', from Latin *trahere* 'to pull'

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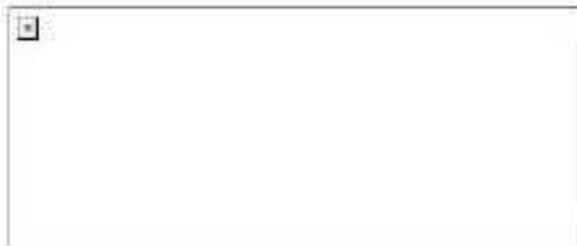


Hiking the Urban Bourbon Trail

May 6, 7:55 PM - NY Global Gourmet Examiner - William M. Dwyer

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William M. Dwyer photo

LOUISVILLE, KY – The American Whiskey Trail, which was created by the Distilled Spirits Council of the U.S. (DISCUS) several years ago, covers a meandering path connecting places in New York, Pennsylvania, Virginia, Kentucky and Tennessee.

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However, more localized trails now are popping up. The Louisville Convention and Visitors Bureau created what it calls the "Urban Bourbon Trail." And it, in turn, was created to complement the Kentucky Bourbon Trail—designated by the Kentucky Distiller's Association and Kentucky Department of Tourism.

The American Whiskey Trail covers a range of distilleries, historic hosteries, museums and other tourist sites. The Urban Bourbon Trail directs visitors to eight Louisville establishments that feature Kentucky whiskey, most of them in the city's vibrant 4th Street Level district. Five are in hotels.

The Urban Bourbon Trail has a free passport program you can pick up at the city visitors center, 4th Street and Jefferson (502/579-8109). You can tour the entire Trail over any period of time you want, get the passport stamped when you visit each location and purchase a drink or food there, then redeem the completed passport at the visitors center for a T-shirt and a chance at a premium giveaway.

The Trail spots:

• **Southack Hotel**

This is a meticulously restored example of the golden age of grand hotels. Check my story "[The grand dames of Southern hospitality](#)" for a closer look at the historic spot.

• **Jockey Silks Bourbon Bar & Lounge**

A logical name for a city that hosts the Kentucky Derby. It's an old-fashioned style place, located in the Galt House Hotel & Suites and offering 185 varieties of bourbon.

• **Proof on Main**

This establishment is, in a sense, 5-in-1. It's part of the fascinating Z1c Museum, a combination hotel, restaurant, lounge and museum housed in two historic buildings. Go [here](#) for my story and photos.

• **Maker's Mark Bourbon House & Lounge**

You actually can get a lot more than Maker's Mark bourbon in this lively spot in the heart of the Fourth Street Level entertainment neighborhood. Tends toward a younger crowd taking advantage of the foosball bar for conversation.

• **Blu**

Located in the Downtown Marriott hotel, this contemporary spot offers dozens of bourbons, bourbon flights and bourbon-infused appetizers.

— [The Examiner](#) —



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• The Brown

This landmark hotel built in the 1930s is a Louisville landmark with a glitzy lobby bar

• Park Place on Main

A private line of Woodford Reserve bourbons is among the many offerings – including very nice bourbon flights – in the lounge, along with all sorts of bourbon-infused appetizers.

• Bourbons Bistro

The only stop on the Trail that is outside downtown, but that doesn't mean it's not worth traveling two miles to see Historic Frankfort Avenue. The spot offers 130 bourbons and in 2006 was named Whisky Magazine's "American Icon of Whiskey" among bars and restaurants.

More About: Bars/Pubs - Kentucky

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The Urban Bourbon Trail: A New Twist on an Old Favorite

August 14, 2008 by Kim Linton

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Louisville Bars and Restaurants Offer Unique Bourbon Sampling Experience

According to the [Louisville Convention and Visitors Bureau](#) website, Bourbon Country, Louisville's rich bourbon heritage began back in 1780 when Evan Williams sold and transported his very first whiskey.

Louisville's Whiskey Row

Until the 1930's, Main Street in downtown Louisville housed as many as 50 distilleries, earning the area the nickname "Whiskey Row." Even though Old Forester is the only distillery that remains in the city today, the Kentucky Bourbon Trail has kept Louisville's passion for bourbon alive and well. Buffalo Trace, Four Roses, Heaven Hill, Jim Beam, Maker's Mark, Wild Turkey, and Woodford Reserve distilleries all call Kentucky home.

The Urban Bourbon Trail

In May 2006 Louisville launched the Urban Bourbon Trail (UBT) to give locals and visitors a new way to experience Kentucky bourbon. The Urban Bourbon Trail consists of seven popular downtown bars and restaurants that must meet stringent guidelines to maintain membership in the exclusive UBT club. Each establishment must offer at least 50 different bourbons, and carry a staff that has a knowledge of how the bourbon industry impacted the culture and history of the city and state.

The Urban Bourbon Trail
Neighborhood: Downtown

The UBT Passport Giveaway

Related information

- [Things to Do In and Around Louisville, Kentucky](#)
- [Churchill Downs - A Must Stop Destination on Your Trip to Louisville](#)
- [Kentucky Derby Party \(Where to Go for the Best Derby After Party\)](#)
- [Some Fun Facts About Whiskey No Less!](#)
- [Nathaniel The Screenplay](#)

anonymous user
Louisville, KY 40202
United States of America

Pick up an Urban Bourbon Trail Passport at one of the participating establishments, then have it stamped when you visit any of the seven UBT bars. After visiting all of the Urban Bourbon Trail locations you can redeem the passport for free gifts at the Louisville Convention and Visitors Bureau.

Urban Bourbon Trail Bars and Restaurants

Blu Italian Grill

<http://www.blugrill.com>

Blu is located at the [Louisville Marriott](#) downtown off I-65 at Jefferson Street and Third Street, across from the Kentucky International Convention Center. Blu features a fresh, contemporary design and offers 50 different bourbons and bourbon-infused appetizers.

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Written by Kim Linton

Kim is a freelance writer whose articles have been featured on sites like The Wall Street Journal and USA Today, and her ministry-related work is read by church leaders around the world - Full profile



Lookin'@Louisville -
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By Hivocart



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Episode 21 - Exploring
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Things to Do In and Around Louisville, Kentucky

Highlights some of the attractions and activities available to visitors in the Louisville, Kentucky area.

By K Hutchins | Published 2/20/2007

Churchill Downs - A Must Stop Destination on Your Trip to Louisville

Located in the heart of Louisville, Kentucky, Churchill Downs is arguably the most famous horse racing track in the world. Everyone knows that the Downs is the home to the Kentucky Derby, the first leg of the coveted Triple Crown.

By Eric Summers | Published 7/26/2005

Kentucky Derby Party: Where to Go for the Best Derby After-Party

DESIGN MARK

Serial Number

76311725

Status

SECTION 8-ACCEPTED

Word Mark

KENTUCKY BOURBON TRAIL

Standard Character Mark

No

Registration Number

2584119

Date Registered

2002/06/18

Type of Mark

SERVICE MARK

Register

SUPPLEMENTAL

Mark Drawing Code

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

Owner

Kentucky Distillers' Association CORPORATION KENTUCKY 110 West Main Street Springfield KENTUCKY 40069

Goods/Services

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: association services, namely, promoting the interests of the Kentucky bourbon industry. First Use: 1999/05/25. First Use In Commerce: 1999/05/25.

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: providing guided tours of bourbon distilleries. First Use: 1999/05/25. First Use In Commerce: 1999/05/25.

Disclaimer Statement

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

Description of Mark

"KENTUCKY BOURBON TRAIL" in double bordered rectangle box with " KENTUCKY" in white lettering on red background and " BOURBON TRAIL" in black lettering on white background.

Filing Date

2001/09/14

Amended Register Date

2002/01/22

Examining Attorney

GLEASON, THOMAS

Attorney of Record

Julie Ann Gregory

KENTUCKY

BOURBON TRAIL

DESIGN MARK

Serial Number
77470390

Status
REGISTERED

Word Mark
KENTUCKY BOURBON TRAIL

Standard Character Mark
Yes

Registration Number
3556684

Date Registered
2009/01/06

Type of Mark
SERVICE MARK

Register
PRINCIPAL

Mark Drawing Code
(4) STANDARD CHARACTER MARK

Owner
Kentucky Distillers' Association NON-PROFIT CORPORATION KENTUCKY 302
Shelby Street Frankfort KENTUCKY 40601

Goods/Services
Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: association
services, namely, promoting the interests of the Kentucky bourbon
industry. First Use: 1999/05/25. First Use In Commerce: 1999/05/25.

Goods/Services
Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: providing
guided tours of bourbon distilleries. First Use: 1999/05/25. First
Use In Commerce: 1999/05/25.

Prior Registration(s)
2584119

Disclaimer Statement
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "KENTUCKY BOURBON"
APART FROM THE MARK AS SHOWN.

Section 2f Statement

Print: Aug 31, 2009

77470390

2(F) ENTIRE MARK

Filing Date

2008/05/09

Examining Attorney

SHARPER, SAMUEL E.

Attorney of Record

Julie Ann Gregory

KENTUCKY BOURBON TRAIL

To: Greater Louisville Convention & Visitors ETC. (jgalbreath@galbreath-law.com)
Subject: U.S. TRADEMARK APPLICATION NO. 77747378 - URBAN BOURBON TRAIL - L052909
Sent: 9/10/2009 6:49:01 PM
Sent As: ECOM117@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR TRADEMARK APPLICATION

Your trademark application (Serial No. 77747378) has been reviewed. The examining attorney assigned by the United States Patent and Trademark Office (“USPTO”) has written a letter (an “Office action”) on 9/10/2009 to which you must respond (*unless the Office letter specifically states that no response is required*). Please follow these steps:

1. Read the Office letter by clicking on this [link](http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77747378&doc_type=OOA&) http://tmportal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77747378&doc_type=OOA& OR go to <http://tmportal.uspto.gov/external/portal/tow> and enter your serial number to access the Office letter. If you have difficulty accessing the Office letter, contact TDR@uspto.gov.

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

2. Contact the examining attorney who reviewed your application if you have any questions about the content of the Office letter (contact information appears at the end thereof).

3. Respond within 6 months, calculated from 9/10/2009 (*or sooner if specified in the Office letter*), using the Trademark Electronic Application System (TEAS) [Response to Office Action form](#). If you have difficulty using TEAS, contact TEAS@uspto.gov.

ALERT:

Failure to file any required response by the applicable deadline will result in the ABANDONMENT (loss) of your application.

Do NOT hit “Reply” to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses.

Response to Office Action

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SERIAL NUMBER	77747378
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION (no change)	
ARGUMENT(S)	
Please see the actual argument text attached within the Evidence section.	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	<u>evi 7410312090-181722426 . 77747378-URBAN BOURBON TRAIL mark-Office</u>
CONVERTED PDF FILE(S) (4 pages)	<u>\\TICRS\EXPORT1\IMAGEOUT1\779\81\77981154\LM2Copy\77747378\1\ROA6</u>
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DESCRIPTION OF EVIDENCE FILE	Argument
SIGNATURE SECTION	
RESPONSE SIGNATURE	/John A. Galbreath/
SIGNATORY'S NAME	John A. Galbreath
SIGNATORY'S POSITION	Attorney of record, MD bar member
DATE SIGNED	03/10/2010
AUTHORIZED SIGNATORY	YES

FILING INFORMATION SECTION

SUBMIT DATE	Wed Mar 10 18:20:06 EST 2010
TEAS STAMP	USPTO/ROA-74.103.120.90-2 0100310182006265193-77747 378-460aa40c9e6610524a9dd fa1771d0e1f7-N/A-N/A-2010 0310181722426530

PTO Form 1367 (Rev. 02/2008)
OMB No. 0601-0090 (Exp. 04/30/2011)

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **77747378** has been amended as follows:

ARGUMENT(S)

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

Please see the actual argument text attached within the Evidence section.

EVIDENCE

Evidence in the nature of Argument has been attached.

Original PDF file:

[evi_7410312090-181722426_77747378-URBAN_BOURBON_TRAIL_mark-Office_Action.pdf](#)

Converted PDF file(s) (4 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

SIGNATURE(S)

Response Signature

Signature: /John A. Galbreath/ Date: 03/10/2010

Signatory's Name: John A. Galbreath

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

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to

withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77747378

Internet Transmission Date: Wed Mar 10 18:20:06 EST 2010

TEAS Stamp: USPTO/ROA-74.103.120.90-2010031018200626

5193-77747378-460aa40c9e6610524a9ddfa177

1d0e1f7-N/A-N/A-20100310181722426530

In the United States Patent and Trademark Office

Serial Number: 77/747,378

Filing Date: 29 May 2009

Applicant(s): Greater Louisville Convention & Visitors Bureau

Mark: URBAN BOURBON TRAIL

Examining Attorney: Fairbanks, Ronald L. - Law Office 117

Office Action Response

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

Dear Sir:

This responds to the Office Action dated September 10, 2009, which contains a Section 2(d) refusal to register the mark for Classes 21 and 35, a Section 2(e)(1) refusal to register the mark for certain goods in Class 16 and services in Class 35, and a disclaimer requirement for Class 21. Applicant requests that its mark be granted registration, in view of the amendments and arguments discussed below.

I. DISCLAIMER

Applicant accepts the disclaimer requirement, and states that no claim is made to the exclusive right to use "BOURBON" apart from the mark as shown in connection with the goods in International Class 21.

II. SECTION 2(d) REFUSAL - LIKELIHOOD OF CONFUSION

It is important to recognize at the outset that "likelihood of confusion" is a term of art which means the probability of confusion, not merely the possibility of confusion. *See, e.g., Sears,*

Roebuck & Co. v. All States Life Ins. Co., 246 F.2d 161, 168 (5th Cir.), *cert. denied*, 355 U.S. 894 (1957); *see generally Carter Wallace Inc. v. Procter & Gamble, Co.*, 434 F.2d 794 (9th Cir. 1979). Moreover, it is also important to consider that fact that probable confusion requires a finding of probable confusion of a substantial number of reasonable buyers as to the source or connection of the sellers whose products or services are at issue. *See, e.g., Motorola, Inc. v. Griffith Electronics, Inc.*, 317 F.2d 391 (C.C.P.A. 1963). Accordingly, a finding of likelihood of confusion must not be made lightly, but instead must be supported by a rigorous consideration of all elements of the marks and their respective goods/services.

A. Applicant's Mark is Dissimilar in Appearance, Sound, Connotation, and Commercial Impression to Registered Mark 3087217

Applicant submits that its URBAN BOURBON TRAIL mark is dissimilar in appearance, sound, connotation, and commercial impression. First, it must be noted that in evaluating similarity, the two marks must be compared in their entirety. *In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985). Thus Applicant's mark cannot be compared only to the URBAN BOURBON portion of registered mark 3087217. Instead, the TRAIL portion of Applicant's mark must also be fully considered. This latter portion carries significant visual and auditory weight. Moreover, the TRAIL portion suggests a series of locations connected by a common thread or element, and thus lends a significantly different connotation and commercial impression to Applicant's mark than just URBAN BOURBON alone.

B. Applicant's Class Goods Are Dissimilar to Those of Registered Mark 3087217

Applicant submits that its Class 16 and 35 goods are different than those of registered mark 3087217. For example, the following Class 16 goods of Applicant – portable coolers, insulated containers for beverage cans, coaster sets not of paper and not being of textile, and paper cups – are not necessarily associated with the bourbon and bourbon-based beverages of registered mark 3087217. Portable coolers are used for a wide variety of foods and beverages; beverage can insulators are not used to contain bourbon as this liquor does not come in cans; coaster sets are used to protect surfaces from a wide variety of liquids, and paper cups are not typically used to serve bourbon. Certainly, paper plates are not connected with bourbon or bourbon-based beverages in any way.

Indeed, the Applicant's goods discussed above are no more connected with bourbon and bourbon-based beverages than are many other goods. If paper plates can be said to be related to bourbon, then why not forks, knives, spoons, and other tableware?

Regarding Applicant's Class 35 services, there are many different services that are within the scope of promoting business and tourism, and simply because a particular business or tourist attraction is located in the bourbon-producing region of Kentucky does not mean that the business or tourist attraction is connected with bourbon. Said another way, Applicant's services are not defined as promoting the *bourbon* business and *bourbon* tourism.

For all the above reasons, confusion is unlikely with respect to these Class 21 goods and Class 35 services.

III. SECTION 2(e)(1) REFUSAL – MERELY DESCRIPTIVE

Regarding the Class 16 goods cited – posters, cookbooks, and travel books: the mark URBAN BOURBON TRAIL, *considered in its entirety*, does not describe a significant function, attribute, or property of these goods. Said another way, it is unlikely that the public, exposed to the mark URBAN BOURBON TRAIL and the goods posters, cookbooks, and travel books, would immediately perceive that the mark describes these goods.

Similarly, the mark URBAN BOURBON TRAIL, *considered in its entirety*, does not describe a significant function, attribute, or property of the Class 35 services. Again, it is unlikely that the public, exposed to the mark URBAN BOURBON TRAIL and the business and tourism services, would immediately perceive that the mark describes these services.

In sum, a mark is not *merely* descriptive of goods or services simply because some connection – however tenuous – can be drawn in a piecemeal fashion between a single element of the mark and the goods or services. Instead, the mark must be considered in its entirety, and the connection between the mark as a whole and the goods or services must be strong and significant.

CONCLUSION

For all of the above reasons, Applicant submits that its mark, as amended, is entitled to registration, and respectfully requests such action.

Respectfully,

/John A. Galbreath/
John A. Galbreath
Galbreath Law Offices, P.C.
2516 Chestnut Woods Court
Reisterstown, MD 21136
Tel. (410) 628-7770
Email: jgalbreath@galbreath-law.com
Attorney of Record