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

Proceeding	91223456
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Brouwerij Nacional Balashi N.V.

Opposer,

v.

t & beer, inc.,

Applicant.

Opposition No. 91223456

Mark: BALASHI SPIRITS

Serial No.: 86/566,095

**OPPOSER’S REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

Brouwerij Nacional Balashi N.V., (“BNB” or “Opposer”), hereby respectfully replies to Applicant t & beer, inc.’s (“T & Beer”) opposition to Opposer’s motion for summary judgment and states as follows:

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I. INTRODUCTION

Applicant has ignored the requirements of Rule 56 and opposed summary judgment on barely more than a wish. Indeed, T & Beer has: (a) failed to submit evidence of its alleged bona fide intent to use the subject mark at the time it filed the '095 Application; (b) admitted the substance of BNB's facts but merely disputed their materiality; (c) admitted the likelihood of confusion between the parties' marks; (d) confused the issue of standing and priority; and (e) fundamentally mischaracterized BNB's use of its BALASHI mark in a failed attempt to push it outside the scope of foreign trade. Thus, as discussed in the Motion and below, summary judgment in BNB's favor is appropriate and should be granted by the Board.

II. APPLICANT FAILED TO DISPUTE OPPOSER'S STATEMENTS OF FACT

In attempting to create a genuine dispute, Applicant *could have*: (a) showed that Opposer's cited evidence does not establish the absence of a genuine dispute; or (b) showed that Opposer cannot produce admissible evidence to support its facts. Fed.R.Civ.P. 56(c)(1)-(2). However, Applicant failed to accomplish either. Instead, Applicant admitted nearly all of Opposer's facts, and failed to establish a genuine dispute as to the few facts it challenged.

Applicant admitted the substance of all of Opposer's stated facts,¹ except BNB's SOF ¶¶ 35, 37-38, and 43. With respect to BNB's SOF ¶¶ 35, 37-38, Applicant challenges those facts (including Exhibits T-U) by means of an *unsupported* allegation that the U.S. consumers referred to therein "*smuggled* the beer into the United States illegally." Opp., at pp. 12-13, at ¶¶ 35, 37-38. Demonstrating the frivolity of that accusation, Applicant failed to cite to any law or evidence that could establish that the importations that the consumers discussed in Exhibits T and U violated U.S. regulations and, *if they did*, how those few could negate *all* of the sales to U.S. consumers shown in Ex. W (Lacle Decl.).

With respect to BNB's SOF ¶ 43, T & Beer's denial must fail because it mischaracterizes the evidence as an "application." Opp., p. 14, ¶ 43. The evidence (Exhibit 9 to the Declaration of Paul Disch) is an approved and issued certificate (*i.e.*, a COLA), not merely an application. As shown in boxes 23 and 24 of the exhibit, it is signed by an authorized officer and was issued on August 14, 2014. Mot., Ex.P, part 9, at pp. 19-22, Ex. 9 (BNB 000427-29). Likewise, in the box marked "FOR TTB USE ONLY," it states: "THE

¹ Abbreviations used in Opposer's Motion for Summary Judgment are continued herein.

STATUS IS APPROVED” and has no expiration date. *Id.*

The only evidence Applicant objected to on the basis of admissibility is BNB’s Exhibit W (Lacle Declaration), by merely stating: “[i]t is further denied that Exhibit W establishes through admissible evidence of sales to U.S. citizens.” Opp., p. 11, ¶¶ 30-31. However, that objection is without merit because Mr. Lacle’s declaration fully complies with Rule 56(c)(4). Mr. Lacle is the person responsible for operating the duty free stores in Aruba, he made his statements upon personal knowledge, and he confirmed the truthfulness of the facts therein, including the report of duty-free sales to U.S. nationals on flights bound for the U.S.. *See* Ex. W. The objection must also fail because Applicant did not make any showing of inadmissibility, did not state why Exhibit W could not be put into admissible form; and failed to state any basis for the accusation that the exhibit does not establish sales to U.S. consumers. *See* Opp., p. 11, ¶¶ 30-31. Thus, the objection is without support, without merit, and cannot be considered.

Applicant’s other responses to BNB’s evidence also cannot be considered because Applicant confused unsupported argument for objection. In response to BNB’s SOF ¶¶ 14-38, 40-43, Applicant made the repetitive argument that those facts—while admitted—are irrelevant and immaterial. Opp., pp. 7-14, ¶¶ 14-38, 40-43. However, because Applicant failed to provide any support for those arguments, they may not be considered. *See* Fed.R.Civ.P. 56(c)(1), (3). Similarly, Applicant’s allegation that Exhibit P (Disch Declaration) is hearsay is without support. Opp., p. 13, ¶¶ 42. Mr. Disch made his declaration in his capacity as BNB’s Managing Director. Thus, Exhibit P is direct party testimony about its own conduct and records. Consequently, Applicant’s hearsay objection must be denied. *See* Fed.R.Civ.P. 56(c)(4) and Fed.R.Evid. 801.

In sum, although T & Beer made arguments against *some* of BNB’s evidence, it failed to support those arguments with counter-evidence or law and, thus, failed to create a dispute as to material facts.

III. APPLICANT FAILED TO SUBMIT MATERIAL OPPOSING EVIDENCE

In attempting to create a genuine dispute, Applicant also could have: (a) cited to particular record evidence; or (b) showed by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. Fed.R.Civ.P. 56(c)(1)(A), (d). However, with respect to the former, Applicant’s minimal effort failed and, as to the latter, Applicant made no effort at all.

In its Counter-Statement of Material Facts [Opp., § A], Applicant submitted only eight exhibits. Four of those exhibits relate to abandoned applications filed in 2003 and early 2004. *See* Opp., Ex. 1-3, 8. Those four exhibits do not establish any fact that is material to this proceeding.² *See Bonomo Culture Inst., Inc.*, 188 U.S.P.Q. 415, *2 (P.T.O. Aug. 27, 1975) (“expired registration is incompetent as evidence”). Even if they were material, Applicant failed to show how mere abandonment of previous applications could possibly negate an opposer’s standing or priority of rights. Applicant’s remaining four exhibits are merely repetitive or cumulative of facts BNB has already placed in evidence, namely BNB’s currently pending applications to register its BALASHI trademarks. *See* Mot., SOF ¶ 44.

As to Applicant’s statements of purported facts, BNB objects as follows:

1. Objection; no such statement in Opposer’s Ex. P. Applicant points to no evidence showing that BNB’s BALASHI beer is sold *only* in Aruba.

2. Objection; mere argument that is not supported by the few exhibits pointed to.

3 thru 21. Objection to statements and exhibits 1-3, 8 cited therein, as immaterial and irrelevant. BNB’s past efforts to register its mark and its business reasons for discontinuing such efforts (*which are not of record*) have no bearing upon this proceeding. Neither Opposer’s standing nor its priority of rights in the BALASHI mark are dependent upon those previous applications filed before the commencement of its duty-free program in 2004. *See* §§ IV, VI, *infra*.

27. Objection; mischaracterizes the evidence. *See* Opposer’s SOF ¶¶ 19-23, 27-31, 33-43.

28. Objection; mischaracterizes the evidence. *See* Opposer’s Ex. T at ¶ 1 and Ex. Z at ¶ 1.

More important than the aforementioned immaterial facts and argument, however, is what is glaringly absent from Applicant’s Opposition. In its Counter-Statement of Material Facts, T & Beer did *not* submit a single piece of evidence aimed at showing its bona fide intent to use the BALASHI SPIRITS mark in commerce at or before the time it filed the ‘095 Application. If it existed, such evidence would have been within its control; yet, Applicant produced none.

² Applicant itself argues that prior applications or registrations “are not ‘material facts’ relevant to the instant motion for summary judgment...” Opp., at p. 7, ¶15.

Perhaps realizing that its opposition is deficient, Applicant's final argument is that "discovery has not yet closed" and depositions not yet taken.³ Opp., p. 24. However, Applicant did **not** argue that, due to such, it could not present facts essential to its opposition, and did **not** submit an affidavit or declaration, **as required by Rule 56(d)**, to justify such an argument. Consequently, Applicant failed to justify its lack of opposing evidence,⁴ and failed to establish any basis for the Board to defer or deny BNB's motion, or to allow Applicant further time to obtain evidence. *See* Fed.R.Civ.P. 56(d).

IV. APPLICANT CONFUSES THE ISSUES OF STANDING AND PRIORITY

In its memorandum, Applicant argues that "[a]s a matter of law, Opposer lacks standing...due to its lack of priority." Opp., p. 22; and §A, at pp. 16-18, 21. However, that argument incorrectly confuses the issues of standing and priority. Standing is not dependent upon priority. *See Pan Am. Life Ins. Co.*, 226 U.S.P.Q. 914, *4-6 (TTAB, Aug. 8, 1985) (sustaining opposition on §1 grounds despite applicant's priority).⁵ Standing before this Board is conferred by Section 13 of the Lanham Act,⁶ and requires that BNB have: (1) a real interest in the proceeding; and (2) a reasonable basis for believing it would suffer damage if T & Beer's mark is registered. *Coach Svcs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1376 (Fed. Cir. 2012).

Standing is required to avoid litigation where there is no real controversy between the parties, and the opposer is a mere intermeddler. *Id.* "The issue is not whether the [opposer] owns the mark or is entitled to register it, but merely whether it is likely that he would be somehow damaged if a registration were granted to the applicant." *Wilson v. Delaunay*, 245 F.2d 877, 878-79 (CCPA 1957). Thus, the threshold for standing is low and liberally construed. *Estate of Biro*, 18 USPQ2d 1382, *4 (PTO 1991); *Jeanette K. Daniels*, 2015 WL 984129, *2 (TTAB). If the threshold is crossed, "the opposer may rely on any ground that negates applicant's right to the registration" *Id.*; *Coach Svcs.*, 668 F.3d at 1377; *Cpc Int'l.*, 218 USPQ 379, *2.

³ Given that Applicant avoided its deposition, this argument is rather ironic. *See* Mot., SOF ¶¶ 16-17.

⁴ Nor could it since it has had ample opportunity to respond to discovery and attach evidence to its Opposition to this Motion. *See* Mot., SOF ¶¶ 6-10; Fed.R.Civ.P. 56.

⁵ *See also Cpc Int'l, Inc. v. Seven-Up Co.*, 218 U.S.P.Q. 379, *2 (P.T.O. May 9, 1983) (finding standing despite argument that none existed due to lack of confusion); *Labs. Du Dr. N.G. Payot Etablissement*, 3 U.S.P.Q.2d 1600 (P.T.O. July 9, 1987).

⁶ Section 13 states in pertinent part, that "[a]ny person who believes that he would be damaged by the registration of a mark ... may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor." 15 U.S.C. § 1063(a).

Here, Opposer clearly has a real interest in this proceeding and a reasonable belief that it will suffer damage if T & Beer's mark is registered. In 2004, under its BALASHI mark, Opposer established a duty-free export program, which has been continuously enjoyed by U.S. consumers who purchase, transport and distribute Opposer's beer into the United States through U.S. Customs. SOF ¶¶ 27-31, 33-38. U.S. consumers have come to identify and distinguish Opposer's beer by means of its BALASHI mark. SOF ¶ 39. Moreover, Opposer's BALASHI beer has come to be known and referred to by U.S. media and trade publications, SOF ¶¶ 40-41, as well as by U.S. trade vendors, SOF ¶¶ 20-23. Moreover, the TTB has issued a COLA, which is necessary step in Opposer's establishment of distribution within the physical boundaries of the United States. SOF ¶ 43. Finally, BNB has pending applications to register its BALASHI mark. SOF ¶ 44. Each of those applications has been refused under Section 2(d) due to likely confusion with Applicant's applications to register the BALASHI SPIRITS and BALASHI marks. Exhibits HH-KK.

If Applicant is permitted to register the subject mark, Opposer would suffer damage, not only from being refused registration of its marks on the Principal Register, but also from the confusion among consumers and lost sales as result thereof. *See id.*; Mot., § VI and SOF ¶¶ 45-50.⁷ In sum, there is no genuine issue of material fact as to BNB's standing, and Applicant has failed to demonstrate otherwise.

V. APPLICANT LACKED A BONA FIDE INTENT TO USE MARK WHEN IT FILED APPLICATION

Applicant did not submit any evidence with its opposition regarding the issue of whether it had a bona fide intent to use the BALASHI SPIRITS mark when it filed the '095 Application. *See Opp.*, Ex.s 1-8. Instead, Applicant merely made the conclusory statement that it "has produced documents evidencing its bona fide intent" but failed to explain how they could provide an inference in its favor. *See Opp.*, pp. 22-24.

Applicant also vaguely argued that summary judgment is inappropriate where intent is an issue. *Id.* However, *Giant Food*, which Applicant cited for its contention that summary judgment is "notoriously inappropriate", ***did not involve an intent to use issue***. Instead, it dealt with a claim of fraud, which must be proven "to the hilt" under a clear and convincing evidence standard, not the preponderance of the evidence

⁷ The argument in Section I.A.1 of Applicant's opposition is a redherring because BNB is not relying solely upon its Section 44 applications for standing or priority given that BNB's mark has been in actual use in commerce since 2004. *See Mot.*, SOF ¶44, Ex. DD.

standard at issue here. *Giant Food, Inc.*, 229 U.S.P.Q. 955, *9-10 (P.T.O. May 7, 1986). Applicant's other cited case, *Commodore Electronics*, is also inapposite because, there, the applicant had previously filed a statement of use and specimen for a similar mark, which the Board viewed in its favor. *Commodore Elecs. Ltd.*, 26 U.S.P.Q.2d 1503, *5 (P.T.O. Feb. 3, 1993). Here, Applicant has no such evidence.

Applicant also vaguely argued that Opposer had not met its burden. Opp., p. 22. However, as discussed in more detail in BNB's Motion, an Opposer may meet its burden on this issue by showing that there is an absence of documentary evidence of a bona fide intent which arose contemporaneously with the filing of the subject application. Mot., pp. 20-22. Here, BNB met this burden by submitting evidence showing that: (a) Applicant repeatedly admitted that it does not have any documentary evidence from on or before the date it filed the '095 Application, [Mot., SOF ¶¶ 9.a.-c., e.-m.; see SOF ¶ 7.a., c.]; and (b) the few documents that Applicant did produce were created *post*-litigation [see Mot., SOF ¶¶ 9.d.ii., iii. ¶ 10, Ex. H].

Therefore, the burden shifted to T & Beer to come forward with evidence, contemporaneous with its filing of the '095 Application, to show a bona fide intent to use the BALASHI SPIRITS mark, which it failed to do. See Opp., § I.B; and Mot., pp.22-23. Accordingly, it is entirely appropriate for the Board to grant summary judgment to BNB on this issue. See *Honda Motor Co.*, 90 USPQ2d 1660, *2-4 (TTAB 2009).

VI. OPPOSER'S PRIORITY DOES NOT OFFEND TERRITORIALITY

In an attempt to take BNB's use outside the scope of foreign trade and, thus, the Lanham Act, the Applicant fundamentally mischaracterizes BNB's position regarding priority as an argument that "foreign consumption" or "U.S. citizens consum[ing] its product abroad" alone establishes priority of rights in the mark. Opp., p. 17. Similarly, Applicant mischaracterizes BNB's use as "exclusively foreign." *Id.*, at p.16.⁸ However, the evidence clearly shows that BNB's use is *not* exclusively foreign but, instead, participates in and has a substantial effect upon U.S. commerce. See Mot., § V, SOF ¶¶ 19-23, 27-31, 33-43.

Applicant then attempts to distinguish *Int'l Bancorp* because it believes BNB is "relying upon" it. See Opp., pp. 17-18. However, while BNB certainly cites to *Int'l Bancorp* for its careful analysis of the definition of "commerce," BNB does not need to *rely* upon *Int'l Bancorp* in its entirety because it is not the

⁸ Applicant also repeatedly misuses the word "admitted." See Opp., at pp. 5, 16, 21-22. BNB made no such admissions in its motion or elsewhere. Applicant cannot substitute semantics for evidence.

source of the law that both it and *Grand River* so aptly explain. Instead, BNB is *relying* upon the applicable statutory language in 15 U.S.C. § 1127 and the Commerce Clause of the U.S. Constitution, U.S. Const. Art. I, § 8, cl. 3.⁹ In fact, BNB agrees with Applicant that parts of *Int'l Bancorp* are not applicable here—specifically, those parts discussing what conduct meets the statutory definition of “use in commerce” with respect to *services*—because, here, BNB’s mark is used in connection with *goods* (beer) not services and the statute provides different definitions of “*use* in commerce” for each. It is for that reason, BNB confined its citations to *Int'l Bancorp* to its statements regarding “commerce” and “foreign trade.” *See* Mot., § V.

With respect to goods, the Lanham Act has only two requirements for achieving “use in commerce” of a mark: (1) it must be placed on the goods or their containers or displays, tags, or labels; and (2) the goods must be either sold or transported in commerce. 15 U.S.C. § 1127.¹⁰ Here, the evidence attached to the Motion shows that BNB met both of these requirements prior to the date Applicant filed the ‘095 Application. *See* Mot., SOF ¶¶ 20-23, 27-31, 33-41.

Even if *Int'l Bancorp* were limited to services as Applicant argues,¹¹ the principles underlying it are not.¹² *See* 15 U.S.C. § 1127; *Grand River Enter. Six Nations Ltd. v. VMR Products LLC*, 2014 WL 2434517, *8-9 (W.D. Wis.). Indeed, over 192 years ago, the Supreme Court found that the words of the Commerce Clause “comprehend *every species* of commercial intercourse between the United States and foreign nations.” *Gibbons v. Ogden*, 22 U.S. 1, 193-94 (1824). Thus, Applicant may not simply point to a distinction

⁹ As discussed in Section V of BNB’s Motion, “[t]he word ‘commerce’ means *all* commerce which may lawfully be regulated by Congress,” which includes “[c]ommerce with *foreign Nations*,” 15 U.S.C. § 1127; U.S. Const. Art. I, §8, cl. 3; *In re Trade-Mark Cases*, 100 U.S. 82, 96, 25 L.Ed. 550 (1879).

¹⁰ Unlike the definition applicable to servicemarks, there is no mention of “advertising.” *See id.*

¹¹ Trying to have its cake and eat it too, Applicant argues that *Int'l Bancorp* does not apply because it is limited to services, but also argues that BNB cannot have priority because *Int'l Bancorp* requires “dual foreign and domestic use.” *Id.*, at pp. 17-19 (referring to the requirement to advertise in the U.S.). However, even if there were “dual use” requirement such that the mark had to be placed on the goods or their containers, displays, tags or labels *within* the territorial border of the U.S., BNB meets such a requirement because its mark is placed on cans in Colorado and on cartons in Florida. *Id.*, at SOF ¶ 20-23.

¹² The Fourth Circuit recently reiterated its view that commerce includes foreign trade occurring outside the territorial boundaries of the U.S.. *Belmora LLC v. Bayer Consumer Care AG*, 2016 WL 1135518, *12 (4th Cir. Mar. 23, 2016) (“Lanham Act ‘commerce’ includes, among other things, ‘foreign trade’ and is not limited to transactions solely within the borders of the United States”). The Federal Circuit also recently acknowledged (albeit briefly) *Int'l Bancorp*’s finding. *Couture v. Playdom, Inc.*, 778 F.3d 1379, 1382 (Fed. Cir. 2015) (“apart from the activities of the New York office, evidence that United States citizens had gone to the casino in Monaco established trade with a foreign nation and thus use in commerce”).

between goods and services to escape the broad definition of commerce and BNB's priority of rights.

Perhaps realizing such, Applicant parrots the unfulfilled speculation of the *Int'l Bancorp* dissent, arguing that granting Opposer priority would "eviscerate territoriality and priority concepts" and have a "stifling effect" on commerce.¹³ Opp., pp. 20-21. To bolster this argument, Applicant misquoted the *Person's* decision to imply that the Federal Circuit established a *per se* rule against **any** foreign use forming the basis of priority of rights in a mark. Indeed, Applicant omitted the opening word "Such," which shows the court was speaking of the particular facts of that case, not making a *per se* rule. Compare Opp., p. 17 to *Person's Co., Ltd. v. Christman*, 900 F.2d 1565, *1568 (Fed.Cir. 1990) ("Such foreign use has no effect...").

Applicant further mischaracterizes *Person's* as "rejecting [the] argument that goods sold in Japan by Japanese company to U.S. consumer could establish priority rights in the United States." Opp., p. 19.¹⁴ However, the *Person's* court was **never presented** with such an argument. Indeed, the petitioning Japanese company's principal testified that it did not begin selling to American buyers in Japan until November 1982, which was *after* the respondent's documented first use in commerce. *Person's Co., Ltd. v. Christman*, 9 U.S.P.Q.2d 1477, 1988 WL 252326, *4 (TTAB 1988). Moreover, the petitioner did not have any records of those alleged sales. *Id.* Thus, neither the Board nor the appellate court had any evidence before it that, prior to respondent's first use of the mark in the U.S., petitioner had made a sale to any U.S. consumer other than the single sale to respondent.¹⁵ See *Id.*; *Person's Co.*, 900 F.2d at 1567-68. Likewise, the petitioner failed to show that its mark was known outside of Japan. *Person's Co.*, 1988 WL 252326, *3. Based on that record, the Board found petitioner's use of the mark in Japan "did not have an effect on U.S. commerce" before the respondent's first use in commerce. *Id.*, at *4.

Applicant similarly mischaracterizes the decisions of this Board by arguing that the Board has "long rejected the theory that **any** foreign trade regulated by Congress constitutes 'use in commerce' under the Lanham Act." Opp., at p. 20. That argument, however, must fail for at least two reasons. First, such a

¹³ Thirteen years have passed since *Int'l Bancorp* and there is no evidence of commerce having been stifled.

¹⁴ Applicant assertion that BNB ignored other "contrary precedent (Opp., p. 19) is without merit. The cited cases are not precedent given that they are factually inapposite and fail to discuss the Lanham Act definition of commerce and application of the Commerce Clause.

¹⁵ There is no indication that the petitioner ever argued and attempted to rely on that single sale as a basis for priority. See *Person's Co.*, 1988 WL 252326, *3; *Person's Co.*, 900 F.2d at 1567-68.

rejection would be contrary to the plain language of Section 45 of the Lanham Act. 15 U.S.C. § 1127 (“The word ‘commerce’ means *all* commerce which may lawfully be regulated by Congress”). Secondly, the only case cited by Applicant that even comes close to touching upon the “theory” at issue in this proceeding is *Sterling Drug*.¹⁶ However, in *Sterling Drug*, the alleged foreign trade consisted of only the administration of a *sample* of Applicant’s drug by “a [*i.e.*, one] German doctor” within a U.S. military hospital in West Berlin. There was *no* evidence that any American patient received the dose of the sample drug in a package displaying the mark or that he transported it home to the United States. Thus, the Board found that “the activities of *that* doctor had no substantial effect, *if any at all*, on the foreign commerce of the United States.” *Sterling Drug Inc.*, 159 U.S.P.Q. 628, *2-3 (P.T.O. Sept. 27, 1968).

Finally, even if BNB did not have priority in the form of a technical trademark use sufficient for registration, it has—at *minimum*—prior analogous use sufficient to find that Applicant cannot be permitted to register the BALASHI SPIRITS mark. See *Malcolm Nicol & Co. v. Witco Corp.*, 881 F.2d 1063, 1065 (Fed. Cir. 1989) (“it is not necessary that an opposer prove prior use of a similar term in a strict trademark sense”); *Shalom Children’s Wear Inc.*, 26 U.S.P.Q.2d 1516, 1519 (P.T.O. Mar. 11, 1993). Indeed, BNB’s Motion contains substantial evidence of the wide recognition its BALASHI mark has received among U.S. consumers and U.S. media. See Mot., at SOF ¶¶ 39-42. Consequently, whether based on technical “use in commerce” sufficient for registration, or upon analogous use, BNB has shown that it has priority of rights in the BALASHI mark, and Applicant has failed to show any genuine dispute as to such. Accordingly, summary judgment in BNB’s favor is appropriate.

VII. APPLICANT HAS ADMITTED THAT CONFUSION IS LIKELY

In Section B of its memorandum, Applicant acknowledged that BNB’s Motion seeks summary judgment on the issue of likelihood confusion; nevertheless, Applicant failed to dispute that confusion

¹⁶ The other four cases Applicant cites address different issues than what is at issue here. See Opp., p. 20 citing: *Rivard v. Linville*, 133 F.3d 1446, 1449 (Fed. Cir. 1998) (whether registration under Section 44(e) for beauty salon services could be cancelled for abandonment); *Techex, Ltd.*, 220 U.S.P.Q. 81 (P.T.O. 1983) (whether opposer’s transactions with its U.S. parent constituted foreign trade); *Mother’s Restaurants Inc.*, 218 U.S.P.Q. 1046 (P.T.O. 1983) (restaurant services); *Stagecoach Properties, Inc.*, 199 U.S.P.Q. 341 (P.T.O. 1978) (whether abandoned Mexican services not shown to have been offered under the applied for mark could form basis for priority). Notably, three of these four cases are servicemark cases, which is ironic because Applicant is also arguing that *Int’l Bancorp* cannot be relied upon because it relates to services.

between the parties' marks is likely. *See* Opp., p. 22. Similarly, T & Beer also admitted the likelihood of confusion in its Answer. Specifically, in its Notice of Opposition, BNB alleged that: "Applicant's proposed BALASHI SPIRITS mark is confusingly similar to Opposer's BALASHI marks." Not. of Opp., ¶29. In response, Applicant merely answered: "Denied that Opposer has any enforceable BALASHI mark," Answer, ¶29, which fails to respond to—and, thus, admits—the substance of the allegation: confusing similarity between the parties' marks. Fed.R.Civ.P. 8(b)(2), (4), (6).

BNB also alleged that: "Applicant's proposed goods (distilled spirits) and Opposer's goods (beer) are related given that they are all alcoholic beverages." Not. of Opp., ¶31. In response, Applicant answered: "Admitted only that distilled spirits and beer are alcoholic beverages," Answer, ¶31, which fails to respond to and, thus, admits the relatedness of the parties' respective goods. Fed.R.Civ.P. 8(b)(2), (4), (6).

BNB also alleged that: "the proposed mark set forth in the '095 Application, BALASHI SPIRITS, consists of or comprises a mark which so resembles the Opposer's BALASHI marks that potential consumers are likely to be confused, deceived and/or mistaken as to the source of the goods offered by Applicant and Opposer." Not. of Opp., ¶34. In response, Applicant answered only: "Denied that Opposer has any enforceable BALASHI mark", Answer, ¶34, which fails to respond to and, thus, admits the substance of the allegation: that consumers are likely to be confused. Fed.R.Civ.P. 8(b)(2), (4), (6).

In sum, Applicant has admitted that the parties' goods are related and that confusion is likely to occur among consumers with respect to the parties' respective marks, and has failed to challenge BNB's establishment, through its Motion, that there is no genuine dispute on the issue of likelihood of confusion. Therefore, in light of BNB's priority of rights in the BALASHI mark and the aforementioned likelihood of confusion, the Board should grant summary judgment to BNB on Section 2(d) grounds.

VIII. CONCLUSION

As shown in Opposer's Motion for Summary Judgment and the foregoing reply in support thereof, summary judgment is appropriate and would serve judicial economy in this Proceeding. Therefore, Opposer respectfully requests that the Board grant its Motion for Summary Judgment on all grounds raised therein.

Dated: May 31, 2016

Respectfully submitted,

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**CERTIFICATE OF ELECTRONIC FILING
AND CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing document entitled: **OPPOSER'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** is being submitted electronically via the Electronic Filing System for Trademark Trial and Appeals on this 31st day of May, 2016.

I hereby certify that, pursuant to the parties' agreement to serve documents in this proceeding electronically, a true and complete copy of the foregoing document entitled: **OPPOSER'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** has been served upon the Applicant on this 31st day of May, 2016, by transmitting a copy of same via electronic mail to:

Gregory J. Winsky, and Kerri E. Chewning
ARCHER & GREINER, P.C.
One Continental Square, P.O. Box 3000
Haddonfield, New Jersey 08033
E-mail: trademarks@archerlaw.com; kchewning@archerlaw.com
Telephone: 856-616-2610
Facsimile: 856-673-7140

As attorney of record for Application Serial No. 86/566,095 on behalf of:
t & beer, inc.
136 Willow Drive
Old Tappan, New Jersey 07675
E-mail: t.simone@prodigy.net

/Susan Latham/

Susan J. Latham
Attorney for Opposer

To: Brouwerij Nacional Balashi, N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86734984 - BALASHI - 1918 - Brouw
Sent: 11/3/2015 5:36:57 AM
Sent As: ECOM118@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)

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

U.S. APPLICATION SERIAL NO. 86734984

MARK: BALASHI

86734984

CORRESPONDENT ADDRESS:

SUSAN J. LATHAM
Feldman Gale P A
1 Biscayne Tower Fl 30
Miami, FL 33131-1806

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Brouwerij Nacional Balashi, N.V.

CORRESPONDENT'S REFERENCE/DOCKET NO :

1918 - Brouw

CORRESPONDENT E-MAIL ADDRESS:

trademarks@feldmangale.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/3/2015

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.

SUMMARY OF ISSUES:

- Potential Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Requirement for an Explanation on the Significance of the Mark
- Requirement for Translation

SEARCH OF OFFICE’S DATABASE OF MARKS

The trademark examining attorney has searched the USPTO’s database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant’s mark.

The effective filing date of pending **U.S. Application Serial Nos. 86406855 and 86566095** precedes applicant’s filing date. *See* attached referenced applications. If one or more of the marks in the referenced applications register, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the marks in the referenced applications. Applicant’s election not to submit arguments at this time in no way limits applicant’s right to address this issue later if a refusal under Section 2(d) issues.

Upon receipt of applicant’s response resolving the following requirement(s), action on this application will be suspended pending the disposition of U.S. Application Serial No. **86406855 and 86566095**. 37 C.F.R. §2.83(c); TMEP §§716.02(c), 1208.02(c).

EXPLANATION OF MARK’S SIGNIFICANCE REQUIRED

Applicant must explain whether “BALASHI” has any meaning or significance in the industry in which the goods are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

1. What does BALASHI mean when used in connection with applicant’s goods?
2. Do applicant’s goods originate in the geographic location known as BALASHI?

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTIP’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

ENGLISH TRANSLATION REQUIRED

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §§2.32(a)(9),

2.61(b); *see* TMEP §809. In the present case, the wording “BALASHI” requires translation.

The following translation statement is suggested:

The English translation of the word “BALASHI” in the mark is “___ {please provide accurate translation}”.

TMEP §809.03.

If the wording has no meaning, the following statement is suggested:

The wording “BALASHI” has no meaning in a foreign language.

See 37 C.F.R. §2.61(b); TMEP §809.03.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please e-mail the assigned trademark examining attorney at Tasneem.hussain@uspto.gov. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and e-mail technical questions to TEAS@uspto.gov.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone without incurring this additional fee.

/Ms. Tasneem Hussain/
Trademark Examining Attorney

Law Office 118
tasneem.hussain@uspto.gov (preferred)
571.272.8273

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86406855

Status

FIRST EXTENSION - GRANTED

Word Mark

BALASHI

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc, CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Translation Statement

The wording "BALASHI" has no meaning in a foreign language.

Filing Date

2014/09/26

Examining Attorney

BULLOFF, TOBY

Attorney of Record

Gregory J. Winsky

BALASHI

DESIGN MARK

Serial Number

86566095

Status

OPPOSITION PENDING

Word Mark

BALASHI SPIRITS

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Disclaimer Statement

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

Filing Date

2015/03/17

Examining Attorney

HUDSON, TAMARA B

Attorney of Record

Gregory J. Winsky

BALASHI SPIRITS

To: Brouwerij Nacional Balashi, N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86734984 - BALASHI - 1918 - Brouw
Sent: 11/3/2015 5:36:59 AM
Sent As: ECOM118@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **11/3/2015** FOR U.S. APPLICATION SERIAL NO. 86734984

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **11/3/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Opposer's Exhibit II

To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701463 - BALASHI PREMIUM BEER 11.27 FL OZ - 1918 - Balas
Sent: 11/3/2015 7:08:23 AM
Sent As: ECOM118@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)

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

U.S. APPLICATION SERIAL NO. 86701463

MARK: BALASHI PREMIUM BEER 11.27 FL OZ

86701463

CORRESPONDENT ADDRESS:

ASHLEY G. KESSLER
Feldman Gale Pa
1 Biscayne Tower Fl 30
Miami, FL 33131-1806

**CLICK HERE TO RESPOND TO THIS
LETTER:**

http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Brouwerij Nacional Balashi N.V.

CORRESPONDENT'S REFERENCE/DOCKET NO :

1918 - Balas

CORRESPONDENT E-MAIL ADDRESS:

trademarks@feldmangale.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/3/2015

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.

SUMMARY OF ISSUES:

- Potential Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Requirement for an Acceptable Identification of Goods/Services
- Requirement for Multiple Class Applications
- Requirement for a Disclaimer
- Requirement for a New Drawing
- Requirement for an Amended Color Claim and Description of the Mark
- Requirement for a Foreign Registration Certificate with a Translation
- Requirement for an Explanation on the Significance of the Mark
- Requirement for Translation

SEARCH OF OFFICE’S DATABASE OF MARKS

The trademark examining attorney has searched the USPTO’s database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant’s mark.

The effective filing date of pending **U.S. Application Serial Nos. 86406855 and 86566095** precedes applicant’s filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the marks in the referenced applications. Applicant’s election not to submit arguments at this time in no way limits applicant’s right to address this issue later if a refusal under Section 2(d) issues.

Upon receipt of applicant’s response resolving the following requirement(s), action on this application will be suspended pending the disposition of U.S. Application Serial No. **86406855 and 86566095**. 37 C.F.R. §2.83(c); TMEP §§716.02(c), 1208.02(c).

IDENTIFICATION AND CLASSIFICATION OF GOODS/SERVICES

The identification of goods/services must be clarified because the wording identified below is indefinite and could include goods/services in more than one International Class. *See* TMEP §1402.01.

International Class 025

The wording “*clothing*” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of “clothing” with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Clothing can be classified in international classes other than Class

025 (e.g., Classes 009, 010, and 018). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for clothing in Class 025 include the following: “shirts,” “shorts,” “pants,” “coats,” “dresses,” skirts,” and “socks.”

The wording “**headgear**” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of headgear with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Headgear may be classified in international classes other than Class 025 (e.g., Classes 009, 010, 026, and 028). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for headgear in Class 025 include the following: “hats,” “caps,” “visors,” “bonnets,” and “headbands.”

International Class 032

The wording is acceptable as written.

International Class 035

The wording is acceptable as written. Applicant is advised, however, that to be a service, an activity must be primarily for the benefit of someone other than the applicant. *See In re Reichhold Chems., Inc.*, 167 USPQ 376, 377 (TTAB 1970). Please note that advertising of one’s own goods is not a service rendered for the benefit of others. *See* TMEP §§1301.01(a)(ii), 1402.11.

An applicant may only amend an identification to clarify or limit the goods/services, but not to add to or broaden the scope of the goods/services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

Applicant may adopt the following identification, if accurate:

“Clothing **for protection against accidents**” in **International Class 009**; and/or

“**Orthodontic** headgear” in **International Class 010**; and/or

“Clothing, **namely, __ {identify specific types of clothing in this class, e.g., shirts, pants, dresses}**; footwear, headgear, **namely, __ {identify specific types of headgear in this class, e.g., hats, caps, headwear}**” in International Class 025; and/or

“Beer” in International Class 032; and/or

“Advertising” in International Class 035

Periodically the USPTO revises the *U.S. Acceptable Identification of Goods and Services Manual* (ID Manual) based on changes to the international classification system and the USPTO’s policies regarding acceptable identifications of goods and services. *See* TMEP §1402.14. Identifications are examined in accordance with the Trademark Rules of Practice and the USPTO’s policies and procedures in effect on the date an application is filed. *See* 37 C.F.R. §2.85(e)(1); TMEP §1402.14. However, an applicant may voluntarily choose to follow policies and procedures adopted after the application was filed. *See* 37 C.F.R. §2.85(e)(2); TMEP §1401.12.

Thus, descriptions of goods and/or services found in earlier-filed applications and registrations are not necessarily considered acceptable identifications when a later-filed application is examined. *See* TMEP §§702.03(a)(iv), 1402.14.

For guidance on writing identifications of goods and/or services, please use the USPTO’s online ID

Manual at <http://tess2.uspto.gov/netahtml/tidm.html>, which is continually updated in accordance with prevailing rules and policies. See TMEP §1402.04.

MULTIPLE-CLASS APPLICATION REQUIREMENTS

The application identifies goods and/or services in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on Trademark Act Section 44:

- (1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class.
- (2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the USPTO's current fee schedule at http://www.uspto.gov/trademarks/tm_fee_info.jsp). The application identifies goods and/or services that are classified in at least five classes; however, applicant submitted a fee(s) sufficient for only three classes. Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.

See 15 U.S.C. §§1051(b), 1112, 1126(e); 37 C.F.R. §§2.32(a)(6)-(7), 2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 44 multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/multiclass.jsp>.

DISCLAIMER REQUIRED FOR CLASS 032

Applicant must disclaim the following unregistrable components of the mark: (1) the wording "PREMIUM BEER" because it merely describes a characteristic, quality, and nature of applicant's goods; and (2) the wording "BREWED IN ARUBA" because it is primarily geographically descriptive of the origin of applicant's goods in Class 032. See 15 U.S.C. §§1052(e)(1)-(2), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1451-52 (Fed. Cir. 1987); TMEP §§1210.01(a), 1210.06(a), 1213.03(a).

Applicant's goods are "beer" and clearly BEER is generic wording for applicant's goods while the wording BREWED describes the quality of the goods as having been brewed. The attached evidence from Collins American Dictionary shows that ARUBA is a generally known geographic place or location, a "self-governing island in the Caribbean". See TMEP §§1210.02 *et seq.* The goods for which applicant seeks registration originate in this geographic place or location as shown by applicant's address. See TMEP §1210.03. Purchasers are likely to believe the goods originate in this geographic place or location because applicant is located there. See TMEP §§1210.04 *et seq.*

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods, including the geographic origin thereof, in the marketplace. See *Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. See *Schwarzkopf v. John H.*

Breck, Inc., 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

The wording “PREMIUM” is merely laudatory and thus must be disclaimed because it merely describes the quality of applicant’s goods. “Marks that are merely laudatory and descriptive of the alleged merit of a product [or service] are . . . regarded as being descriptive” because “[s]elf-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods [or services].”

DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd., 695 F.3d 1247, 1256, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012) (quoting *In re The Boston Beer Co.*, 198 F.3d 1370, 1373, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999); TMEP §1209.03(k).

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. See *In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “PREMIUM BEER” and “BREWED IN ARUBA” in International Class 032 apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

DRAWING OF THE MARK

Applicant must submit a new drawing showing the “**tm**” symbol deleted from the mark; this matter is not part of the mark and is not registrable. See TMEP §807.14(a).

Applicant must submit a new drawing showing **volume statements at the bottom of the mark** deleted from the mark because it is merely informational matter. This matter is not part of the mark. See TMEP §§807.02, 807.14(a).

Furthermore, the drawing is not acceptable because it will not create a high quality image when reproduced. See TMEP §807.04(a). Specifically, the drawing shows the mark in a small, corner section of the page.

A clear drawing of the mark is an application requirement. 37 C.F.R. §2.52. Therefore, applicant must submit a new drawing showing a clear depiction of the mark. All lines must be clean, sharp and solid, and not fine or crowded. 37 C.F.R. §§2.53(c), 2.54(e); TMEP §§807.05(c), 807.06(a).

To submit a new drawing via the Trademark Electronic Application System (TEAS), applicant must use the response form and follow the instructions regarding submission of a drawing. TMEP §807.05(a); see 37 C.F.R. §2.53(a). An applicant must submit a drawing via TEAS in jpg format, and the USPTO recommends a digitized image with a length and width no smaller than 250 pixels and no larger than 944 pixels. 37 C.F.R. §2.53(c); TMEP §807.05(c).

For drawings submitted on paper, the paper should be approximately 8.5 inches wide by 11 inches long, white, non-shiny, and include the caption “DRAWING PAGE” at the top. 37 C.F.R. §2.54(a)-(c); TMEP §807.06(a). The mark in the drawing must appear no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide. 37 C.F.R. §2.54(b); TMEP §807.06(a). Further, the drawing must be made with ink or by a

process that will provide a high definition when scanned. 37 C.F.R. §2.54(e); TMEP §807.06(a). A photolithographic, printer's proof copy, or other high-quality reproduction of the mark may be used. 37 C.F.R. §2.54(e); TMEP §807.06(a).

The USPTO will not accept amendments or changes to the applied-for mark shown in a new drawing if the changes would materially alter the mark. 37 C.F.R. §2.72; *see* TMEP §§807.13 *et seq.*, 807.14.

REQUIREMENT FOR AN ACCEPTABLE COLOR CLAIM AND DESCRIPTION OF THE MARK

As a preliminary matter, please note that the drawing of the mark itself features the wording "BREWED IN ARUBA" but it is not referenced in the literal element section. For an application that shows two different marks, one in the body of the written application and one on a separate drawing page, the mark on the separate drawing page controls for purposes of determining what the mark is. *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d 1063 (Dir USPTO 2001); TMEP §807.01. Similarly, for an electronic application that includes a digitized image in the "mark" field as well as a different mark in another field, the image in the "mark" field controls for purposes of determining the mark. TMEP §807.01.

Therefore, the applied-for mark is BALASHI PREMIUM BEER BREWED IN ARUBA, the mark that appears on the drawing page and in the "mark" field.

Applicant must amend the color claim and mark description to identify all the colors in the mark drawing. *See* 37 C.F.R. §2.52(b)(1); TMEP §807.07(a)-(a)(ii). The following colors have been omitted from the color claim: GRAY. In addition, the following colors have been omitted from the mark description: GRAY.

A complete color claim must reference all the colors appearing in the drawing of the mark. *See* 37 C.F.R. §2.52(b)(1); TMEP §§807.07(a) *et seq.* Similarly, a complete mark description for a mark depicted in color must identify all the literal and design elements in the mark and specify where the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §§807.07(a) *et seq.* However, if black, white, and/or gray are not being claimed as a color feature of the mark, applicant must exclude them from the color claim and include in the mark description a statement that the colors black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark. *See* TMEP §807.07(d).

The following color claim and mark description are suggested, if accurate:

Color claim: **"The colors green, red, white, black, and gray are claimed as a feature of the mark."**

Mark description: **"The mark consists of a green horizontal stripe across the top of the mark and a white background below. Just below the stripe are the words "PREMIUM BEER" in black curved up. Below the words "PREMIUM BEER" is a red banner with white trim and with gray shading at each corner with the word "BALASHI" written in white across the banner. Under the banner are the words "BREWED IN ARUBA" in black curved down."**

TRANSLATED FOREIGN REGISTRATION CERTIFICATE REQUIRED

The applicant must submit an English translation of the foreign registration. 37 C.F.R. §2.34(a)(3)(ii); TMEP §1004.01(a)-(b). The translation should be signed by the translator. TMEP §1004.01(b).

EXPLANATION OF MARK'S SIGNIFICANCE REQUIRED

Applicant must explain whether “BALASHI” has any meaning or significance in the industry in which the goods/services are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

1. What does BALASHI mean when used in connection with applicant’s goods/services?
2. Do applicant’s goods/services originate in the geographic location known as BALASHI?

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

ENGLISH TRANSLATION REQUIRED

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §§2.32(a)(9), 2.61(b); *see* TMEP §809. In the present case, the wording “BALASHI” requires translation.

The following translation statement is suggested:

The English translation of the word “BALASHI” in the mark is “___ {please provide accurate translation}”.

TMEP §809.03.

If the wording has no meaning, the following statement is suggested:

The wording “BALASHI” has no meaning in a foreign language.

See 37 C.F.R. §2.61(b); TMEP §809.03.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please e-mail the assigned trademark examining attorney at Tasneem.hussain@uspto.gov. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at

http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and e-mail technical questions to TEAS@uspto.gov.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone without incurring this additional fee.

/Ms. Tasneem Hussain/
Trademark Examining Attorney
Law Office 118
tasneem.hussain@uspto.gov (preferred)
571.272.8273

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86406855

Status

FIRST EXTENSION - GRANTED

Word Mark

BALASHI

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc, CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Translation Statement

The wording "BALASHI" has no meaning in a foreign language.

Filing Date

2014/09/26

Examining Attorney

BULLOFF, TOBY

Attorney of Record

Gregory J. Winsky

BALASHI

DESIGN MARK

Serial Number

86566095

Status

OPPOSITION PENDING

Word Mark

BALASHI SPIRITS

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Disclaimer Statement

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

Filing Date

2015/03/17

Examining Attorney

HUDSON, TAMARA B

Attorney of Record

Gregory J. Winsky

BALASHI SPIRITS

English > English for Learners > French > German > Spanish > Italian >

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Aruba (əˈruːbə)

Definitions

self-governing island in the Caribbean, off the NW coast of Venezuela, under the protection of the Netherlands: formerly (until 1986) part of the Netherlands Antilles: 75 sq mi (194 sq km); pop. 69,000

Derived FormSA *ruban* *adjective, noun*

Word Frequency

 [Shake it like Shakespeare](#)



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arugula
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2000	Low
2002	Low
2004	Low
2006	High
2008	Low

View usage over:
Last 10 years

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- The Collins English-Italian Dictionary
- Latest New Word Suggestions
- The Cobuild English for Learners Dictionary
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- The Collins Italian-English Dictionary

To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701463 - BALASHI PREMIUM BEER 11.27 FL OZ - 1918 - Balas
Sent: 11/3/2015 7:08:23 AM
Sent As: ECOM118@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **11/3/2015** FOR U.S. APPLICATION SERIAL NO. 86701463

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **11/3/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701470 - BALASHI PREMIUM BEER 20CT. BOTTLE - 1918 - Balas
Sent: 11/3/2015 8:05:19 AM
Sent As: ECOM118@USPTO.GOV
Attachments: [Attachment - 1](#)
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[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)

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

U.S. APPLICATION SERIAL NO. 86701470

MARK: BALASHI PREMIUM BEER 20CT. BOTTLE

86701470

CORRESPONDENT ADDRESS:

ASHLEY G. KESSLER
Feldman Gale P A
1 Biscayne Tower Fl 30
Miami, FL 33131-1806

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APPLICANT: Brouwerij Nacional Balashi N.V.

CORRESPONDENT'S REFERENCE/DOCKET NO :

1918 - Balas

CORRESPONDENT E-MAIL ADDRESS:

trademarks@feldmangale.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/3/2015

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.

SUMMARY OF ISSUES:

- Potential Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Requirement for an Acceptable Identification of Goods/Services
- Requirement for Multiple Class Applications
- Requirement for a Disclaimer
- Requirement for a New Drawing
- Requirement for an Amended Color Claim and Description of the Mark
- Requirement for a Foreign Registration Certificate with a Translation
- Requirement for an Explanation on the Significance of the Mark
- Requirement for Translation

SEARCH OF OFFICE’S DATABASE OF MARKS

The trademark examining attorney has searched the USPTO’s database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant’s mark.

The effective filing date of pending **U.S. Application Serial Nos. 86406855 and 86566095** precedes applicant’s filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the marks in the referenced applications. Applicant’s election not to submit arguments at this time in no way limits applicant’s right to address this issue later if a refusal under Section 2(d) issues.

Upon receipt of applicant’s response resolving the following requirement(s), action on this application will be suspended pending the disposition of U.S. Application Serial No. **86406855 and 86566095**. 37 C.F.R. §2.83(c); TMEP §§716.02(c), 1208.02(c).

IDENTIFICATION AND CLASSIFICATION OF GOODS/SERVICES

The identification of goods/services must be clarified because the wording identified below is indefinite and could include goods/services in more than one International Class. *See* TMEP §1402.01.

International Class 025

The wording “*clothing*” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of “clothing” with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Clothing can be classified in international classes other than Class

025 (e.g., Classes 009, 010, and 018). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for clothing in Class 025 include the following: “shirts,” “shorts,” “pants,” “coats,” “dresses,” skirts,” and “socks.”

The wording “**headgear**” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of headgear with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Headgear may be classified in international classes other than Class 025 (e.g., Classes 009, 010, 026, and 028). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for headgear in Class 025 include the following: “hats,” “caps,” “visors,” “bonnets,” and “headbands.”

International Class 032

The wording is acceptable as written.

International Class 035

The wording is acceptable as written. Applicant is advised, however, that to be a service, an activity must be primarily for the benefit of someone other than the applicant. *See In re Reichhold Chems., Inc.*, 167 USPQ 376, 377 (TTAB 1970). Please note that advertising of one’s own goods is not a service rendered for the benefit of others. *See* TMEP §§1301.01(a)(ii), 1402.11.

An applicant may only amend an identification to clarify or limit the goods/services, but not to add to or broaden the scope of the goods/services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

Applicant may adopt the following identification, if accurate:

“Clothing **for protection against accidents**” in **International Class 009**; and/or

“**Orthodontic** headgear” in **International Class 010**; and/or

“Clothing, **namely, __ {identify specific types of clothing in this class, e.g., shirts, pants, dresses};** footwear, headgear, **namely, __ {identify specific types of headgear in this class, e.g., hats, caps, headwear}**” in International Class 025; and/or

“Beer” in International Class 032; and/or

“Advertising” in International Class 035

Periodically the USPTO revises the *U.S. Acceptable Identification of Goods and Services Manual* (ID Manual) based on changes to the international classification system and the USPTO’s policies regarding acceptable identifications of goods and services. *See* TMEP §1402.14. Identifications are examined in accordance with the Trademark Rules of Practice and the USPTO’s policies and procedures in effect on the date an application is filed. *See* 37 C.F.R. §2.85(e)(1); TMEP §1402.14. However, an applicant may voluntarily choose to follow policies and procedures adopted after the application was filed. *See* 37 C.F.R. §2.85(e)(2); TMEP §1401.12.

Thus, descriptions of goods and/or services found in earlier-filed applications and registrations are not necessarily considered acceptable identifications when a later-filed application is examined. *See* TMEP §§702.03(a)(iv), 1402.14.

For guidance on writing identifications of goods and/or services, please use the USPTO’s online ID

Manual at <http://tess2.uspto.gov/netahtml/tidm.html>, which is continually updated in accordance with prevailing rules and policies. See TMEP §1402.04.

MULTIPLE-CLASS APPLICATION REQUIREMENTS

The application identifies goods and/or services in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on Trademark Act Section 44:

- (1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class.
- (2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the USPTO's current fee schedule at http://www.uspto.gov/trademarks/tm_fee_info.jsp). The application identifies goods and/or services that are classified in at least five classes; however, applicant submitted a fee(s) sufficient for only three classes. Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.

See 15 U.S.C. §§1051(b), 1112, 1126(e); 37 C.F.R. §§2.32(a)(6)-(7), 2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 44 multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/multiclass.jsp>.

DISCLAIMER REQUIRED – For All Classes and For Class 032 separately

Applicant must disclaim the following unregistrable components of the mark: (1) the wording “PREMIUM BEER” and “BROUWERIJ NACIONAL” and “N.V.” because it merely describes a characteristic, quality, and nature of applicant’s goods; and (2) the wording “BREWED IN ARUBA” because it is primarily geographically descriptive of the origin of applicant’s goods in Class 032. See 15 U.S.C. §§1052(e)(1)-(2), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1451-52 (Fed. Cir. 1987); TMEP §§1210.01(a), 1210.06(a), 1213.03(a).

Applicant’s goods are “beer” and clearly BEER is generic wording for applicant’s goods while the wording BREWED describes the quality of the goods as having been brewed. The attached evidence from Collins American Dictionary shows that ARUBA is a generally known geographic place or location, a “self-governing island in the Caribbean”. See TMEP §§1210.02 *et seq.* The goods for which applicant seeks registration originate in this geographic place or location as shown by applicant’s address. See TMEP §1210.03. Purchasers are likely to believe the goods originate in this geographic place or location because applicant is located there. See TMEP §§1210.04 *et seq.*

The wording "BROUWERIJ NACIONAL" and "N.V." must be disclaimed for all classes because it is merely informational matter regarding applicant’s entity type, namely, a national brewery corporation or naamloze vennootschap. Business type designations and abbreviations such as “Corporation,” “Inc.,” “Company,” “LLC,” and “Ltd.” or family business designations such as “& Son’s” or “Bros.” must

be disclaimed, because they merely indicate applicant's business type or structure and generally have no source-indicating capacity. TMEP §1213.03(d); *see, e.g., Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602-03 (1888); *In re Piano Factory Grp., Inc.*, 85 USPQ2d 1522, 1526 (TTAB 2006); *In re Patent & Trademark Servs., Inc.*, 49 USPQ2d 1537, 1539-40 (TTAB 1998).

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods, including the geographic origin thereof, in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

The wording "PREMIUM" is merely laudatory and thus must be disclaimed because it merely describes the quality of applicant's goods. "Marks that are merely laudatory and descriptive of the alleged merit of a product [or service] are . . . regarded as being descriptive" because "[s]elf-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods [or services]." *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1256, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012) (quoting *In re The Boston Beer Co.*, 198 F.3d 1370, 1373, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999)); TMEP §1209.03(k).

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Non-English wording that is merely descriptive, deceptively misdescriptive, geographically descriptive, generic, or informational in connection with the identified goods and/or services, is an unregistrable component of the mark that is subject to disclaimer. TMEP §§1213.03(a), 1213.08(d); *see Bausch & Lomb Optical Co. v. Overseas Fin. & Trading Co.*, 112 USPQ 6, 8 (Comm'r Pats. 1956). The disclaimer must refer to the actual non-English wording that appears in the mark, not the English translation of that wording. TMEP §1213.08(d).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use "PREMIUM BEER BREWED IN ARUBA" in International Class 032 and "BROUWERIJ NACIONAL" and "N.V." apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

DRAWING OF THE MARK

Applicant must submit a new drawing showing the "tm" symbol deleted from the mark; this matter is not part of the mark and is not registrable. *See* TMEP §807.14(a).

Applicant must submit a new drawing showing **volume and packaging statements at the bottom, corner, and sides of the mark** deleted from the mark because it is merely informational matter. This matter is not part of the mark. *See* TMEP §§807.02, 807.14(a).

Furthermore, the drawing is not acceptable because it will not create a high quality image when reproduced. *See* TMEP §807.04(a). Specifically, the drawing shows the mark in a blurry image and with an extraneous line across the top.

A clear drawing of the mark is an application requirement. 37 C.F.R. §2.52. Therefore, applicant must submit a new drawing showing a clear depiction of the mark. All lines must be clean, sharp and solid, and not fine or crowded. 37 C.F.R. §§2.53(c), 2.54(e); TMEP §§807.05(c), 807.06(a).

To submit a new drawing via the Trademark Electronic Application System (TEAS), applicant must use the response form and follow the instructions regarding submission of a drawing. TMEP §807.05(a); *see* 37 C.F.R. §2.53(a). An applicant must submit a drawing via TEAS in jpg format, and the USPTO recommends a digitized image with a length and width no smaller than 250 pixels and no larger than 944 pixels. 37 C.F.R. §2.53(c); TMEP §807.05(c).

For drawings submitted on paper, the paper should be approximately 8.5 inches wide by 11 inches long, white, non-shiny, and include the caption “DRAWING PAGE” at the top. 37 C.F.R. §2.54(a)-(c); TMEP §807.06(a). The mark in the drawing must appear no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide. 37 C.F.R. §2.54(b); TMEP §807.06(a). Further, the drawing must be made with ink or by a process that will provide a high definition when scanned. 37 C.F.R. §2.54(e); TMEP §807.06(a). A photolithographic, printer’s proof copy, or other high-quality reproduction of the mark may be used. 37 C.F.R. §2.54(e); TMEP §807.06(a).

The USPTO will not accept amendments or changes to the applied-for mark shown in a new drawing if the changes would materially alter the mark. 37 C.F.R. §2.72; *see* TMEP §§807.13 *et seq.*, 807.14.

REQUIREMENT FOR AN ACCEPTABLE COLOR CLAIM AND DESCRIPTION OF THE MARK

As a preliminary matter, please note that the drawing of the mark itself features the wording “Brouwerij Nacional Balashi N.V.” but the description of the mark attempts to exclude it and it is not referenced in the literal element section. For an application that shows two different marks, one in the body of the written application and one on a separate drawing page, the mark on the separate drawing page controls for purposes of determining what the mark is. *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d 1063 (Dir USPTO 2001); TMEP §807.01. Similarly, for an electronic application that includes a digitized image in the “mark” field as well as a different mark in another field, the image in the “mark” field controls for purposes of determining the mark. TMEP §807.01.

Therefore, the applied-for mark is BALASHI PREMIUM BEER BREWED IN ARUBA BROUWERIJ NACIONAL BALASHI N.V., the mark that appears on the drawing page and in the “mark” field.

Applicant must amend the color claim and mark description to identify all the colors in the mark drawing. *See* 37 C.F.R. §2.52(b)(1); TMEP §807.07(a)-(a)(ii). The following colors have been omitted from the color claim: BROWN. In addition, the following colors have been omitted from the mark description: BROWN.

A complete color claim must reference all the colors appearing in the drawing of the mark. *See* 37 C.F.R. §2.52(b)(1); TMEP §§807.07(a) *et seq.* Similarly, a complete mark description for a mark depicted in color must identify all the literal and design elements in the mark and specify where the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §§807.07(a) *et seq.* However, if black, white, and/or gray are not being claimed as a color feature of the mark, applicant must exclude them from the

color claim and include in the mark description a statement that the colors black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark. *See* TMEP §807.07(d).

The following color claim and mark description are suggested, if accurate:

Color claim: **“The colors blue, white, red, dark green, light green, yellow, and brown are claimed as a feature of the mark.”**

Mark description: **“The mark consists of a square with a rounded top outlined in yellow. Inside the square, the background is light green and dark green. Within the square is an oval outlined in yellow. The inside of the oval is dark green with the words “PREMIUM BEER BREWED IN ARUBA” written in white on the top and “BROUWERIJ NACIONAL BALASHI N.V.” written in white on the bottom. Inside the middle of the oval is a picture of a white beach with a dark green tree with a brown trunk depicted on the shore with blue waters and blue skies in the background. Below this image is the word “BALASHI” written in white upon a red banner outlined in white across the lower half of the oval. This banner is on the foreground of the image.”**

TRANSLATED FOREIGN REGISTRATION CERTIFICATE REQUIRED

The applicant must submit an English translation of the foreign registration. 37 C.F.R. §2.34(a)(3)(ii); TMEP §1004.01(a)-(b). The translation should be signed by the translator. TMEP §1004.01(b).

EXPLANATION OF MARK’S SIGNIFICANCE REQUIRED

Applicant must explain whether “BALASHI” has any meaning or significance in the industry in which the goods/services are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

1. What does BALASHI mean when used in connection with applicant’s goods/services?
2. Do applicant’s goods/services originate in the geographic location known as BALASHI?

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

ENGLISH TRANSLATION REQUIRED

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §§2.32(a)(9), 2.61(b); *see* TMEP §809. In the present case, the wording “BALASHI” requires translation.

The following translation statement is suggested:

The English translation of the word “BALASHI” in the mark is “___ {please provide accurate translation}” and “BROUWERIJ NACIONAL” is “NATIONAL BREWERY”.

TMEP §809.03.

If the wording has no meaning, the following statement is suggested:

The English translation of the wording “BROUWERIJ NACIONAL” is “NATIONAL BREWERY”. The wording “BALASHI” has no meaning in a foreign language.

See 37 C.F.R. §2.61(b); TMEP §809.03.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please e-mail the assigned trademark examining attorney at Tasneem.hussain@uspto.gov. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and e-mail technical questions to TEAS@uspto.gov.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone without incurring this additional fee.

/Ms. Tasneem Hussain/
Trademark Examining Attorney
Law Office 118
tasneem.hussain@uspto.gov (preferred)
571.272.8273

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned

trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86406855

Status

FIRST EXTENSION - GRANTED

Word Mark

BALASHI

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc, CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Translation Statement

The wording "BALASHI" has no meaning in a foreign language.

Filing Date

2014/09/26

Examining Attorney

BULLOFF, TOBY

Attorney of Record

Gregory J. Winsky

BALASHI

DESIGN MARK

Serial Number

86566095

Status

OPPOSITION PENDING

Word Mark

BALASHI SPIRITS

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Disclaimer Statement

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

Filing Date

2015/03/17

Examining Attorney

HUDSON, TAMARA B

Attorney of Record

Gregory J. Winsky

BALASHI SPIRITS

English > English for Learners > French > German > Spanish > Italian >

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Home > American English Dictionary > Aruba

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Aruba (əˈruːbə)

Definitions

self-governing island in the Caribbean, off the NW coast of Venezuela, under the protection of the Netherlands: formerly (until 1986) part of the Netherlands Antilles: 75 sq mi (194 sq km); pop. 69,000

Derived FormSA *ruban* *adjective, noun*

Word Frequency



[Shake it like Shakespeare](#)



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arugula
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2002	Low
2004	Low
2006	High
2008	Low

View usage over:
Last 10 years

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- The Collins Italian-English Dictionary

To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701470 - BALASHI PREMIUM BEER 20CT. BOTTLE - 1918 - Balas
Sent: 11/3/2015 8:05:20 AM
Sent As: ECOM118@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **11/3/2015** FOR U.S. APPLICATION SERIAL NO. 86701470

Please follow the instructions below:

(1) **TO READ THE LETTER:** Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) **TIMELY RESPONSE IS REQUIRED:** Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **11/3/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) **QUESTIONS:** For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701475 - BALASHI PREMIUM BEER ARUBA'S BEER - 1918 - Balas
Sent: 11/3/2015 6:05:44 AM
Sent As: ECOM118@USPTO.GOV
Attachments: [Attachment - 1](#)
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[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)

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

U.S. APPLICATION SERIAL NO. 86701475

MARK: BALASHI PREMIUM BEER ARUBA'S BEER

86701475

CORRESPONDENT ADDRESS:

ASHLEY G. KESSLER
Feldman Gale P A
1 Biscayne Tower Fl 30
Miami, FL 33131-1806

**CLICK HERE TO RESPOND TO THIS
LETTER:**

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APPLICANT: Brouwerij Nacional Balashi N.V.

CORRESPONDENT'S REFERENCE/DOCKET NO :

1918 - Balas

CORRESPONDENT E-MAIL ADDRESS:

trademarks@feldmangale.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 11/3/2015

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.

SUMMARY OF ISSUES:

- Potential Refusal under Trademark Act Section 2(d) – Likelihood of Confusion
- Requirement for an Acceptable Identification of Goods/Services
- Requirement for Multiple Class Applications
- Requirement for a Disclaimer
- Requirement for a New Drawing
- Requirement for an Amended Color Claim and Description of the Mark
- Requirement for a Foreign Registration Certificate with a Translation
- Requirement for an Explanation on the Significance of the Mark
- Requirement for Translation

SEARCH OF OFFICE’S DATABASE OF MARKS

The trademark examining attorney has searched the USPTO’s database of registered and pending marks and has found no similar registered marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d). However, a mark in a prior-filed pending application may present a bar to registration of applicant’s mark.

The effective filing date of pending **U.S. Application Serial Nos. 86406855 and 86566095** precedes applicant’s filing date. See attached referenced applications. If one or more of the marks in the referenced applications register, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion with the registered mark(s). *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon receipt of applicant’s response to this Office action, action on this application may be suspended pending final disposition of the earlier-filed referenced application.

In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant’s mark and the marks in the referenced applications. Applicant’s election not to submit arguments at this time in no way limits applicant’s right to address this issue later if a refusal under Section 2(d) issues.

Upon receipt of applicant’s response resolving the following requirement(s), action on this application will be suspended pending the disposition of U.S. Application Serial No. **86406855 and 86566095**. 37 C.F.R. §2.83(c); TMEP §§716.02(c), 1208.02(c).

IDENTIFICATION AND CLASSIFICATION OF GOODS/SERVICES

The identification of goods/services must be clarified because the wording identified below is indefinite and could include goods/services in more than one International Class. *See* TMEP §1402.01.

International Class 025

The wording “*clothing*” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of “clothing” with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Clothing can be classified in international classes other than Class

025 (e.g., Classes 009, 010, and 018). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for clothing in Class 025 include the following: “shirts,” “shorts,” “pants,” “coats,” “dresses,” skirts,” and “socks.”

The wording “**headgear**” in the identification of goods in Class 025 is indefinite and must be clarified because it does not specify the types of headgear with which the mark will be used. *See* TMEP §§1402.01, 1402.03, 1904.02(c), (c)(ii). Headgear may be classified in international classes other than Class 025 (e.g., Classes 009, 010, 026, and 028). *See* TMEP §1904.02(c)(ii). Examples of acceptable identifications for headgear in Class 025 include the following: “hats,” “caps,” “visors,” “bonnets,” and “headbands.”

International Class 032

The wording is acceptable as written.

International Class 035

The wording is acceptable as written. Applicant is advised, however, that to be a service, an activity must be primarily for the benefit of someone other than the applicant. *See In re Reichhold Chems., Inc.*, 167 USPQ 376, 377 (TTAB 1970). Please note that advertising of one’s own goods is not a service rendered for the benefit of others. *See* TMEP §§1301.01(a)(ii), 1402.11.

An applicant may only amend an identification to clarify or limit the goods/services, but not to add to or broaden the scope of the goods/services. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07.

Applicant may adopt the following identification, if accurate:

“Clothing **for protection against accidents**” in **International Class 009**; and/or

“**Orthodontic** headgear” in **International Class 010**; and/or

“Clothing, **namely, __ {identify specific types of clothing in this class, e.g., shirts, pants, dresses};** footwear, headgear, **namely, __ {identify specific types of headgear in this class, e.g., hats, caps, headwear}**” in International Class 025; and/or

“Beer” in International Class 032; and/or

“Advertising” in International Class 035

Periodically the USPTO revises the *U.S. Acceptable Identification of Goods and Services Manual* (ID Manual) based on changes to the international classification system and the USPTO’s policies regarding acceptable identifications of goods and services. *See* TMEP §1402.14. Identifications are examined in accordance with the Trademark Rules of Practice and the USPTO’s policies and procedures in effect on the date an application is filed. *See* 37 C.F.R. §2.85(e)(1); TMEP §1402.14. However, an applicant may voluntarily choose to follow policies and procedures adopted after the application was filed. *See* 37 C.F.R. §2.85(e)(2); TMEP §1401.12.

Thus, descriptions of goods and/or services found in earlier-filed applications and registrations are not necessarily considered acceptable identifications when a later-filed application is examined. *See* TMEP §§702.03(a)(iv), 1402.14.

For guidance on writing identifications of goods and/or services, please use the USPTO’s online ID

Manual at <http://tess2.uspto.gov/netahtml/tidm.html>, which is continually updated in accordance with prevailing rules and policies. *See* TMEP §1402.04.

MULTIPLE-CLASS APPLICATION REQUIREMENTS

The application identifies goods and/or services in more than one international class; therefore, applicant must satisfy all the requirements below for each international class based on Trademark Act Section 44:

- (1) **List the goods and/or services by their international class number** in consecutive numerical order, starting with the lowest numbered class.
- (2) **Submit a filing fee for each international class** not covered by the fee(s) already paid (view the USPTO's current fee schedule at http://www.uspto.gov/trademarks/tm_fee_info.jsp). The application identifies goods and/or services that are classified in at least five classes; however, applicant submitted a fee(s) sufficient for only three classes. Applicant must either submit the filing fees for the classes not covered by the submitted fees or restrict the application to the number of classes covered by the fees already paid.

See 15 U.S.C. §§1051(b), 1112, 1126(e); 37 C.F.R. §§2.32(a)(6)-(7), 2.34(a)(2)-(3), 2.86(a); TMEP §§1403.01, 1403.02(c).

For an overview of the requirements for a Section 44 multiple-class application and how to satisfy the requirements online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/multiclass.jsp>.

DISCLAIMER REQUIRED FOR CLASS 032

Applicant must disclaim the following unregistrable components of the mark: (1) the wording "PREMIUM BEER" because it merely describes a characteristic, quality, and nature of applicant's goods; and (2) the wording "BREWED IN ARUBA" and "ARUBA'S BEER" because it is primarily geographically descriptive of the origin of applicant's goods in Class 032. *See* 15 U.S.C. §§1052(e)(1)-(2), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Societe Generale des Eaux Minerales de Vittel S.A.*, 824 F.2d 957, 959, 3 USPQ2d 1450, 1451-52 (Fed. Cir. 1987); TMEP §§1210.01(a), 1210.06(a), 1213.03(a).

Applicant's goods are "beer" and clearly BEER is generic wording for applicant's goods while the wording BREWED describes the quality of the goods as having been brewed. The attached evidence from Collins American Dictionary shows that ARUBA is a generally known geographic place or location, a "self-governing island in the Caribbean". *See* TMEP §§1210.02 *et seq.* The goods for which applicant seeks registration originate in this geographic place or location as shown by applicant's address. *See* TMEP §1210.03. Purchasers are likely to believe the goods originate in this geographic place or location because applicant is located there. *See* TMEP §§1210.04 *et seq.*

An applicant may not claim exclusive rights to terms that others may need to use to describe their goods, including the geographic origin thereof, in the marketplace. *See Dena Corp. v. Belvedere Int'l, Inc.*, 950 F.2d 1555, 1560, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991); *In re Aug. Storck KG*, 218 USPQ 823, 825 (TTAB 1983). A disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H.*

Breck, Inc., 340 F.2d 978, 979-80, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

The wording “PREMIUM” is merely laudatory and thus must be disclaimed because it merely describes the quality of applicant’s goods. “Marks that are merely laudatory and descriptive of the alleged merit of a product [or service] are . . . regarded as being descriptive” because “[s]elf-laudatory or puffing marks are regarded as a condensed form of describing the character or quality of the goods [or services].”

DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd., 695 F.3d 1247, 1256, 103 USPQ2d 1753, 1759 (Fed. Cir. 2012) (quoting *In re The Boston Beer Co.*, 198 F.3d 1370, 1373, 53 USPQ2d 1056, 1058 (Fed. Cir. 1999); TMEP §1209.03(k).

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. See *In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “PREMIUM BEER” and “BREWED IN ARUBA” and “ARUBA'S BEER” in International Class 032 apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

DRAWING OF THE MARK

Applicant must submit a new drawing showing the “**tm**” symbol deleted from the mark; this matter is not part of the mark and is not registrable. See TMEP §807.14(a).

Furthermore, the drawing is not acceptable because it will not create a high quality image when reproduced. See TMEP §807.04(a). Specifically, the drawing shows the mark in a small, corner section of the page.

A clear drawing of the mark is an application requirement. 37 C.F.R. §2.52. Therefore, applicant must submit a new drawing showing a clear depiction of the mark. All lines must be clean, sharp and solid, and not fine or crowded. 37 C.F.R. §§2.53(c), 2.54(e); TMEP §§807.05(c), 807.06(a).

To submit a new drawing via the Trademark Electronic Application System (TEAS), applicant must use the response form and follow the instructions regarding submission of a drawing. TMEP §807.05(a); see 37 C.F.R. §2.53(a). An applicant must submit a drawing via TEAS in jpg format, and the USPTO recommends a digitized image with a length and width no smaller than 250 pixels and no larger than 944 pixels. 37 C.F.R. §2.53(c); TMEP §807.05(c).

For drawings submitted on paper, the paper should be approximately 8.5 inches wide by 11 inches long, white, non-shiny, and include the caption “DRAWING PAGE” at the top. 37 C.F.R. §2.54(a)-(c); TMEP §807.06(a). The mark in the drawing must appear no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide. 37 C.F.R. §2.54(b); TMEP §807.06(a). Further, the drawing must be made with ink or by a process that will provide a high definition when scanned. 37 C.F.R. §2.54(e); TMEP §807.06(a). A photolithographic, printer’s proof copy, or other high-quality reproduction of the mark may be used. 37 C.F.R. §2.54(e); TMEP §807.06(a).

The USPTO will not accept amendments or changes to the applied-for mark shown in a new drawing if the changes would materially alter the mark. 37 C.F.R. §2.72; *see* TMEP §§807.13 *et seq.*, 807.14.

REQUIREMENT FOR AN ACCEPTABLE COLOR CLAIM AND DESCRIPTION OF THE MARK

As a preliminary matter, please note that the drawing of the mark itself features the wording “BREWED IN ARUBA” but the description of the mark states “these are not part of the mark” and the wording is not referenced in the literal element section. For an application that shows two different marks, one in the body of the written application and one on a separate drawing page, the mark on the separate drawing page controls for purposes of determining what the mark is. *In re L.G. Lavorazioni Grafite S.r.l.*, 61 USPQ2d 1063 (Dir USPTO 2001); TMEP §807.01. Similarly, for an electronic application that includes a digitized image in the “mark” field as well as a different mark in another field, the image in the “mark” field controls for purposes of determining the mark. TMEP §807.01.

Therefore, the applied-for mark is BALASHI PREMIUM BEER BREWED IN ARUBA ARUBA'S BEER, the mark that appears on the drawing page and in the “mark” field.

Applicant must amend the color claim and mark description to identify all the colors in the mark drawing. *See* 37 C.F.R. §2.52(b)(1); TMEP §807.07(a)-(a)(ii). The following colors have been omitted from the color claim: GRAY. In addition, the following colors have been omitted from the mark description: GRAY.

A complete color claim must reference all the colors appearing in the drawing of the mark. *See* 37 C.F.R. §2.52(b)(1); TMEP §§807.07(a) *et seq.* Similarly, a complete mark description for a mark depicted in color must identify all the literal and design elements in the mark and specify where the colors appear in those elements. *See* 37 C.F.R. §§2.37, 2.52(b)(1); TMEP §§807.07(a) *et seq.* However, if black, white, and/or gray are not being claimed as a color feature of the mark, applicant must exclude them from the color claim and include in the mark description a statement that the colors black, white, and/or gray represent background, outlining, shading, and/or transparent areas and are not part of the mark. *See* TMEP §807.07(d).

The following color claim and mark description are suggested, if accurate:

Color claim: **“The colors red, white, black, and gray are claimed as a feature of the mark.”**

Mark description: **“The mark consists of a red horizontal banner with white trim and with gray shading at each corner with the word “BALASHI” written in white inside of the banner. Above the red banner are the words “PREMIUM BEER” in black curved up. Under the banner are the words “BREWED IN ARUBA” in black curved down. At the very bottom of the design are the words “ARUBA'S BEER” in black written in a different font.”**

TRANSLATED FOREIGN REGISTRATION CERTIFICATE REQUIRED

The applicant must submit an English translation of the foreign registration. 37 C.F.R. §2.34(a)(3)(ii); TMEP §1004.01(a)-(b). The translation should be signed by the translator. TMEP §1004.01(b).

EXPLANATION OF MARK'S SIGNIFICANCE REQUIRED

Applicant must explain whether “BALASHI” has any meaning or significance in the industry in which

the goods/services are manufactured/provided, or if such wording is a “term of art” within applicant’s industry. *See* 37 C.F.R. §2.61(b); TMEP §814.

Further, applicant must provide additional information about this wording to enable proper examination of the application. Specifically, applicant must respond to the following questions:

1. What does BALASHI mean when used in connection with applicant’s goods/services?
2. Do applicant’s goods/services originate in the geographic location known as BALASHI?

Failure to respond to a request for information is an additional ground for refusing registration. *See In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P’ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

ENGLISH TRANSLATION REQUIRED

Applicant must submit an English translation of all foreign wording in the mark. 37 C.F.R. §§2.32(a)(9), 2.61(b); *see* TMEP §809. In the present case, the wording “BALASHI” requires translation.

The following translation statement is suggested:

The English translation of the word “BALASHI” in the mark is “___ {please provide accurate translation}”.

TMEP §809.03.

If the wording has no meaning, the following statement is suggested:

The wording “BALASHI” has no meaning in a foreign language.

See 37 C.F.R. §2.61(b); TMEP §809.03.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please e-mail the assigned trademark examining attorney at Tasneem.hussain@uspto.gov. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. *See* TMEP §§705.02, 709.06.

To expedite prosecution of the application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at <http://www.uspto.gov/trademarks/teas/index.jsp>. If applicant has technical questions about the TEAS response to Office action form, applicant can review the electronic filing tips available online at http://www.uspto.gov/trademarks/teas/e_filing_tips.jsp and e-mail technical questions to TEAS@uspto.gov.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING

DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. See 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820.

TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone without incurring this additional fee.

/Ms. Tasneem Hussain/
Trademark Examining Attorney
Law Office 118
tasneem.hussain@uspto.gov (preferred)
571.272.8273

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

DESIGN MARK

Serial Number

86406855

Status

FIRST EXTENSION - GRANTED

Word Mark

BALASHI

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc, CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Translation Statement

The wording "BALASHI" has no meaning in a foreign language.

Filing Date

2014/09/26

Examining Attorney

BULLOFF, TOBY

Attorney of Record

Gregory J. Winsky

BALASHI

DESIGN MARK

Serial Number

86566095

Status

OPPOSITION PENDING

Word Mark

BALASHI SPIRITS

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

t & beer, inc CORPORATION NEW YORK 136 willow drive old tappan NEW JERSEY 07675

Goods/Services

Class Status -- ACTIVE. IC 033. US 047 049. G & S: Distilled Spirits.

Disclaimer Statement

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

Filing Date

2015/03/17

Examining Attorney

HUDSON, TAMARA B

Attorney of Record

Gregory J. Winsky

BALASHI SPIRITS

English > English for Learners > French > German > Spanish > Italian >

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Aruba (əˈruːbə)

Definitions

self-governing island in the Caribbean, off the NW coast of Venezuela, under the protection of the Netherlands: formerly (until 1986) part of the Netherlands Antilles: 75 sq mi (194 sq km); pop. 69,000

Derived FormSA *ruban* *adjective, noun*

Word Frequency



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- The Collins English-Italian Dictionary
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To: Brouwerij Nacional Balashi N.V. (trademarks@feldmangale.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86701475 - BALASHI PREMIUM BEER ARUBA'S BEER - 1918 - Balas
Sent: 11/3/2015 6:05:45 AM
Sent As: ECOM118@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **11/3/2015** FOR U.S. APPLICATION SERIAL NO. 86701475

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on “Documents.”

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **11/3/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit “Reply” to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.