

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: COOL TROPICS
MARK: RIPS
SERIAL NO.: 76/691,918
FILED: August 8, 2008
EXAMINER: Janice Kim, Trademark Examining Attorney, Law Office 103

REPLY TO
EXAMINING ATTORNEY'S APPEAL BRIEF

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

The examining attorney misstates the issue on appeal that it is premised only (underlining added) on the common use of "RIPS."

To the contrary, applicant contends that dispositive of the issue on appeal is whether the RIPS-identified products non-alcoholic (applicant) and alcoholic (registrant) travel through the same channels of trade to the consumer.

An affirmative answer is required for said goods "to be likely to cause confusion, to cause mistake, or to deceive;" and a negative answer dictates the absence of said goods to have the market place consumer confusion, mistake or deception, and no factual support of the Section 2(d) refusal.



11-22-2010

As known from common experience:

The Registrant's goods

1. A retail seller is licensed by the State;
2. In some states, sales of alcoholic beverages are totally prohibited (a so-called "dry state");
3. A purchasing consumer must submit proof of attaining a specific age, usually 21;
4. In some states, in which alcoholic beverages are dispensed (*e.g.* bars, *per se*) entry thereinto is permitted only of individuals who have attained a specific age (usually 18 or 21); and
5. Alcoholic beverages are addictive and have resulted in health issues "liver cirrhosis" and social issues "Alcoholics Anonymous."

The aforesaid list is not exhaustive of the channels of trade of the registrant's goods that are not utilized in the marketing of applicant's goods and belie the examining attorney's contention that the goods are complementary.

Not only do the goods in issue differ as to their nature, namely alcoholic (Registrant) and fruit juice (applicant), but also they differ in their packaging. Registrant's goods are sold in a glass bottle and applicant's goods, as per the annexed specimen of record, is sold in a flexible plastic bag having the instruction thereon "FREEZE, SQUIEEZE AND LET IT RIP! (underlining added) INTO GREAT TASTE!"

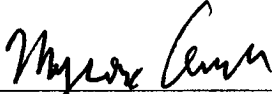
In Second College Edition, the American Heritage Dictionary, at page 1054, right column, the word "rip" is defined as "...2. To remove by cutting or tearing roughly."

Thus, applicant's mark RIPS has a connotation which is totally absent in registrant's mark, and is of a creative coined nature which supersedes the common use of the four alphabetic letters.

For the foregoing reasons, the Sect. 2(d) refusal should be overruled.

Respectfully,

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Attorney for Applicant

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Dated: November 18, 2010

RIPS

100% JUICE SLUSH

BY

Cool
TROPICS



RIP INTO GREAT TASTE!