

JAN 11 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO. 78/020086		APPLICANT TequilaDrinker.com, LLC	
MARK TEQUILADRINKER			
ADDRESS Janice W. Housey Roberts, Mlotkowski & Hobbes, PC 3911 Old Lee Highway Suite 43B Fairfax, VA 22030		ACTION NO. 03	PAPER NO.
		MAILING DATE 01/10/02	
		REF. NO.	
FORM PTO-1525 (5-90)		U.S. DEPT. OF COMM. & TM OFFICE	
		ADDRESS: Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513 www.uspto.gov	
		If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
		Please provide in all correspondence:	
		1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.	

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 78/020086

This letter responds to the applicant's request for reconsideration filed on November 29, 2001.

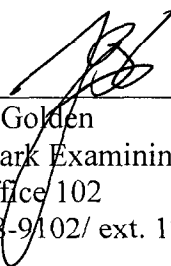
A final refusal was issued on May 29, 2001 on the ground that the proposed mark merely describes an aspect of the applicant's services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. Section 1052(e)(1). The examining attorney has carefully considered the applicant's request for reconsideration. See TMEP Section 1110.

The request to reconsider is *refused* as no new matter has been presented. A request for reconsideration will be granted only if the applicant asserts new facts or issues which are significant regarding the point at issue. A final action will not be altered or withdrawn merely because the applicant presents a re-argument of the same ideas. See TMEP sections 1105.04(f) and 1110. In its request for reconsideration, the applicant presents the same argument as in its prior response, namely, that the proposed is merely suggestive of the recited services.

For the reasons noted in the Final Office Action, the examining attorney maintains his position that the proposed mark merely describes the class of purchasers of the identified on-line magazine services. See, e.g., *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) ("SYSTEM USER" found merely descriptive of trade journal directed toward users of large data processing systems); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984)

("MOUNTAIN CAMPER" held merely descriptive of retail mail order catalog in the field of outdoor equipment and apparel). The applicant ignores this line of cases in its response and grounds its argument on registrations that are clearly not analogous in this regard, for example, "TEQUILA MOCKINGBIRD," U.S. Registration No. 2323922, which is unquestionably a play off of the title of the Harper Lee novel.

Because no new evidence or issues have been raised, the **FINAL** refusal to register under Trademark Act Section 2(e)(1) of the Trademark Act, 15 U.S.C. Section 1052(e)(1), is **MAINTAINED**. The request for reconsideration with respect to the refusal under Section 2(e)(1) is **DENIED**, and the application will be returned to the Trademark Trial and Appeals Board for resumption of the appeal.

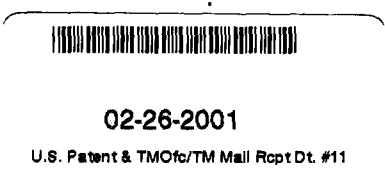


J. Brett Golden
Trademark Examining Attorney
Law Office 102
703-308-9102/ ext. 178

TTAB

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

Applicant: Intercell Biomedizinische
Forschungs-und Entwicklungs GmbH :
Serial No: 75/677,384 :
Filed: April 8, 1999 :
Mark: INTERCELL :
Our Ref: INTL 99/12195 :



#10

NOTICE OF APPEAL

Box TTAB
FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Applicant, by its undersigned attorney, hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examiner of Trademarks refusing registration. Applicant is simultaneously filing a request for reconsideration of that decision. Therefore, Applicant requests that this appeal be stayed while the trademark attorney (Farah P. Bhatti, Law Office 115) considers that request.

A check for the \$100 Official fee for a single-class application is attached. If this amount is incorrect, please charge any deficiency or overage to applicant's attorney's Deposit Account No. 23-0825-0576900.

Dated: New York, New York
February 26, 2001

03/02/2001 JHARLEY 00000094 75677384

01 FC:378 100.00 DP

"Express Mail" mailing label No. EL562827943US Date of Deposit February 26, 2001
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.
Lawrence E. Apolzon (Printed name of person mailing paper or fee) [Signature] (Signature)

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: _____

Lawrence E. Apolzon
Attorneys for Applicant
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

LEA/kml