

Attorney Docket No. 1494-099T

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

In re Application of:

Applicant : Sidney Frank Importing Co., Inc.
 Mark : SPICED PELICAN
 Serial No. : 78/471758
 Filed : August 23, 2004
 Examining Attorney : Nelson B. Snyder III, Esq.
 Law Office No. : 103
 Attorney Docket : 1494-099T

NOTICE OF APPEAL

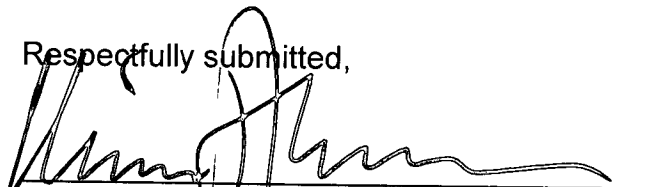
Commissioner for Trademarks
 P.O. Box 1451
 Alexandria, VA 22313-1451

To the Trademark Trial and Appeal Board:

Applicant hereby appeals to the Trademark Trial and Appeal Board from the decision of the Examiner dated October 6, 2005, finally refusing registration of the above-identified trademark.

The appeal fee required in Rule 2.6(a)(18) is enclosed.

Respectfully submitted,



Michael A. Cornman
 Attorney for Applicant
 Schweitzer Cornman Gross & Bondell LLP
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 New York, NY 10017
 Email: mac@scgb-law.com
 Tel.: (646) 424-0770; Fax: (646) 424-0880

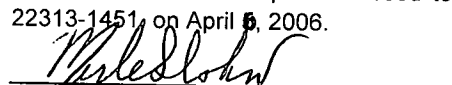
Dated: April 5, 2006

04/19/2006 KGIBBONS 00000062 78471758

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100.00 DP

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, on April 5, 2006.


 Merle L. Cohn


04-11-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #72

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. : 78/471758
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Examining Attorney : Nelson B. Snyder III, Esq.
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REQUEST FOR RECONSIDERATION
UNDER 37 C.F.R. §2.64

SIR:

In response to the FINAL office action dated October 6, 2005, applicant respectfully requests reconsideration of the Section 2(d) refusal.

Applicant seeks to register the trademark "SPICED PELICAN" for alcoholic beverages, namely rum, in International Class 033. The Examining Attorney has maintained and made final his refusal to register the above-identified mark on the ground of confusing similarity to the mark "PELICAN PALE ALE" for beer and ale, in International Class 32 (Registration No. 2716036).

Reconsideration is requested because consumer confusion is absolutely unlikely due to the differences between the goods in question and the actual trademarks themselves.

(a) Differences in the goods and channels of trade

The differences in the respective goods of applicant's mark and registrant's mark preclude a likelihood of confusion between these marks. Applicant seeks to register its

mark in connection with alcoholic beverages, namely, rum in International Class 33.

Conversely, the registrant's mark is used in connection with beer and ale in International Class 032.

The rejection was predicated on the proposition that the applicant's and registrant's goods were sufficiently related because rum is frequently offered under the same mark as beer and ale. In support, citation was made to a series of registrations containing rum and beer in the designation of goods. Furthermore, the heightened popularity of cross-branded "malternative" beverages was suggested as a possibility for consumer confusion between hard liquor and beverages such as beer, normally available in grocery stores.

It is respectfully submitted that the foregoing grounds of rejection cannot be sustained. In fact, the evidence of third party registrations is insufficient to establish that applicant's and registrant's respective goods are related. In the contrary, such evidence supports applicant's assertion that rum and beer are not commonly offered by a single source and that confusion is not likely.

There is no per se rule that all beverages are related. See Interstate Brands Corp. v. Celestial Seasonings, Inc., 576 F.2d 926, 198 USPQ 151, 152 (CCPA 1973). Similarly there is no per se rule that holds that all alcoholic beverages are related. See, e.g., G.H. Mumm & Cie v. Desnoes & Geddes Ltd., 917 F.2d 1292, 16 USPQ2d 1635 (Fed Cir. 1990).

Applicant's "hard liquor" products are regulated by federal, state and local

governments, and are sold in liquor stores or warehouse liquor outlets. In contrast, beer goods are sold in conventional retail outlets, such as grocery stores, convenience stores, etc. Beer is not customarily allowed to be sold in liquor stores due to the relevant laws. The disparate nature of the goods can be further evidenced in the different trade associations for the products such as the Distilled Spirits Council of the U.S., Inc., a trade association specific to producers and marketers of "hard liquor", and the two separate international and US PTO classifications for the products, *i.e.*, Class 032 & 033. Attached as Exhibit A is information concerning the Distilled Spirits Council of the U.S., Inc.

Furthermore, applicant's proposed goods are contemplated to be specifically a premium line of rum. These "premium" goods will be an upscale item. As such, applicant's goods will be sold at a substantially higher price than beer (hardly an upscale product) to consumers who are in the market specifically for an upscale item for consumption. These differences also weigh against a holding of a likelihood of confusion. See, e.g., G.H. Mumm & Cie v. Desnoes & Geddes Ltd., 917 F.2d 1292, 1295, 16 USPQ2d 1635 (Fed Cir. 1990)(The court found that the plaintiff's champagne, in contrast to defendant's beer, was a premium good and its consumers can be "presumed to be in the market for an upscale item for consumption and to have a reasonably focused need." These differences supported a holding of no likelihood of confusion.) Applicant is prepared to amend its designation of goods to "premium rum", if required, to

place the application in condition for publication.

The majority of the third party registrations that were attached to the office action as evidence that rum and beer are offered under the same mark were filed under a §44 basis and do not assert a claim based on use in actual commerce under §1(a). More specifically, a review of the cited third party registrations reveals that only four of the over twenty cited registrations assert a §1(a) basis. Third party registrations under the provisions of Section 44 of the Act "are not necessarily evidence of a serious intent to use the marks shown therein in the United States on all of the listed goods and services, and they have very little, if any, persuasive value" concerning whether the goods are of a type which may emanate from a single source. See In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 at 1470 (TTAB 1988).

Additionally, of the four cited third party registrations that are based on use, Reg. Nos. 2595289, 2776133, 2944764, and 3000630, three of them are "house marks" which cover a wide variety of goods. For instance, some of the goods listed in Reg. No. 2776133 aside from rum and beer include meat, fish, poultry, meat extracts, dried and cooked fruits, jellies, eggs, milk, oils, pickles, coffee, flour, rice, tapioca, breakfast cereals, and agricultural and forestry products.

The inclusion of both rum and beer in the designation of goods for a house mark or registrations for a wide variety of goods should be given little weight. See In re Donnay International, Societe Anonyme, 31 USPQ2d 1953 (TTAB 1994)(The Board in

finding that there was no likelihood of confusion between applicant's and registrant's sporting goods - tennis, table tennis, squash, and badminton bags and rackets as compared to soccer balls - held that two cited registrations for house marks were not significant as evidence that these goods commonly arise from a single source since house marks can be used to identify a broad range of products.)

It is respectfully submitted that the registrations cited in the final rejection support applicant's position that there is no likelihood of confusion due to the disparate nature of the goods because only one of the over twenty cited registrations claimed actual usage of both rum and beer. A search of the US PTO's online database for active registrations based on §1(a) for use in connection with both beer and rum established that Reg. No. 2595289 was the only active registration based on use for use in connection with both goods on the PTO's online database.

The absence of virtually any registrations for both rum and beer is persuasive evidence that these goods do not ordinarily emanate from a single source. This case is similar to In re Coors Brewing Company, where the court found that the very small number of dual use registrations demonstrated that it is quite uncommon for restaurants and beer to share the same trademark. The court ruled that there was no likelihood based on the evidence showing that few companies offered both of the goods and services at issue. Here, considering that there is only one dual use registration based on use, it is respectfully submitted that the goods are not sufficiently related for there to

be a likelihood of confusion and the Section 2(d) refusal should be withdrawn.

The PTO has numerous times approved closely similar marks for alcoholic beverages despite registrations for different alcoholic beverages. For instance, the U.S. PTO approved for registration the mark WHITE HAWK ORIGINAL IPA & Design for beer in Class 32 (Reg. No. 2956999) despite the registration for the mark WHITE HAWK VINEYARD for use in connection with wine in Class 33. In approving this mark for registration, the PTO withdrew its initial refusal under §2(d) based on the WHITE HAWK VINEYARD registration (Reg. No. 2,562,159). Additionally, the U.S. PTO approved for registration the mark THE LIBERTY BOURBON (Reg. No. 2997121) despite the registration for the mark LIBERTY ALE for ale in Class 32.

In regard to the evidence of the popularity of "malternatives" as evidence that applicant and registrant's goods are sufficiently related, the applicant asserts that providers of "malternative" beverages are few and far between and "malternatives" make up a minute segment of the alcohol industry. Attached are two articles explaining that "malternatives" constitute approximately 4% of all beer sales and that the popularity of "malternatives" is declining. See Exhibit B. Furthermore, these articles support the position that there are relatively few "malternative" producers. Applicant believes that given the compelling evidence that few, if any, liquor companies sell both rum and beer, and vice versa. The existence of "malternative" producers has little relevance towards the relatedness of applicant's and registrant's respective goods and should be given

little weight.

Here, the record clearly shows that rum and beer do not emanate from a single source and consumer confusion is not likely. Accordingly, the refusal under §2(d) should be withdrawn.

2) Differences in the Marks

The Examining attorney found that the inclusion of the term SPICED and absence of the term PALE ALE in applicant's mark as compared to the registrant's mark, was not enough to alter the similarity in the marks' commercial impressions based on the shared term PELICAN. It is submitted that the differences in the marks themselves avoid a likelihood of confusion because they convey distinct commercial impressions.

As evidence of the dissimilar nature of the applicant's and registrant's marks, applicant submits information concerning several registrations for use in connection with alcoholic beverages approved for registration by the PTO which are similar to a registered mark for alcoholic beverages. These registrations include:

<u>Registration Nos.</u>	<u>Marks</u>	<u>Goods</u>
1) 2216672	GREEN ISLAND	Class 33: wines
2) 1601259	ISLAND LAGER	Class 32: lager beer

1) 0962202	WHITE WOLF	Class 33: vodka
2) 2812544	RED WOLF	Class 33: alcohol malt beverage
1) 2997121	THE LIBERTY BOURBON	Class 33: distilled spirits
2) 1328838	LIBERTY ALE	Class 32: ale
1) 2993050	WHITE CRYSTAL	Class 33: vodka
2) 2301166	CRISTALL (Stylized)	Class 33: vodka
1) 3020373	CALIFORNIA EAGLE	Class 33: wine
2) 2629232	WHITE EAGLE	Class 32: vodka
1) 2956999	WHITE HAWK ORIGINAL IPA & Design	Class 32: beer
2) 2562159	WHITE HAWK VINEYARD	Class 33: wine

Applicant is attaching printouts of registrations taken from the electronic search records of the PTO.

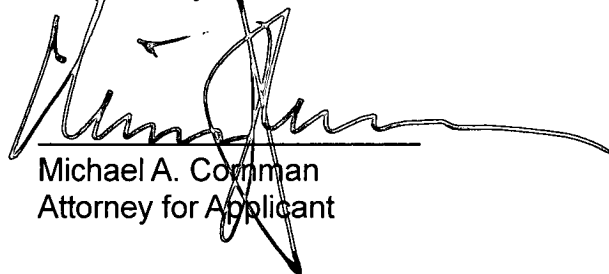
It is respectfully submitted that these registrations are evidence that these marks could peacefully coexist without any likelihood of confusion. It follows that Applicant's mark can similarly be used without causing a likelihood of confusion with the cited registrant's mark. Consequently, the refusal under §2(d) should be withdrawn and Applicant's mark should be found registrable.

CONCLUSION

In light of the foregoing Amendment and Remarks, it is respectfully submitted that the subject application is now in condition for publication. An early notice to that effect is respectfully requested.

Dated April 5, 2006
Schweitzer Cornman
Gross & Bondell LLP
292 Madison Avenue, 19th Floor
New York, NY 10017
Tel: 646-424-0770
Fax: 646-424-0880
email: mac@scgb-law.com

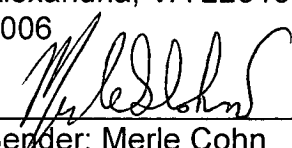
Respectfully submitted,



Michael A. Cornman
Attorney for Applicant

Certificate Under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in a postage prepaid envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on April 5, 2006



Sender: Merle Cohn

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 3,020,373

Registered Nov. 29, 2005

**TRADEMARK
PRINCIPAL REGISTER**

California Eagle

VINA ROBLES, INC. (CALIFORNIA CORPORATION)
P.O. BOX 699
PASO ROBLES, CA 93447

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 8-3-2003; IN COMMERCE 8-3-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

SER. NO. 78-478,110, FILED 9-2-2004.

JACQUELINE A. LAVINE, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 2,216,672

United States Patent and Trademark Office

Registered Jan. 5, 1999

**TRADEMARK
PRINCIPAL REGISTER**

GREEN ISLAND

**GREEN ISLAND VINEYARDS L.L.C. (CALI-
FORNIA LIMITED LIABILITY COMPANY)
809 COOMBS STREET
NAPA, CA 94559**

**FIRST USE 11-0-1997; IN COMMERCE
12-15-1997.**

SN 75-200,893, FILED 11-20-1996.

**FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND
49).**

**SAMUEL E. SHARPER JR., EXAMINING AT-
TORNEY**

Int. Cl.: 32

Prior U.S. Cl.: 48

United States Patent and Trademark Office **Reg. No. 1,601,259**
Registered June 12, 1990

**TRADEMARK
PRINCIPAL REGISTER**

ISLAND LAGER

REFRESHA-WAII, INC. (HAWAII CORPORATION), DBA PACIFIC PARADISE IMPORTS
PIONEER PLAZA, SUITE 1777
900 MORT STREET MALL
HONOLULU, HI 96813

FIRST USE 4-14-1989; IN COMMERCE
4-14-1989.

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

FOR: LAGER BEER, IN CLASS 32 (U.S. CL.
48).

SER. NO. 73-811,784, FILED 7-10-1989.

CAROLYN GRAY, EXAMINING ATTORNEY

United States Patent Office

962,202

Registered June 26, 1973

PRINCIPAL REGISTER Trademark

Ser. No. 419,990, filed Mar. 30, 1972

WHITE WOLF

Max Sobel Wholesale Liquors (California corporation),
doing business as White Wolf Company
8th and Townsend Sts.
San Francisco, Calif. 94103

For: VODKA, in CLASS 49 (INT. CL. 33).
First use Mar. 1, 1972; in commerce Mar. 1, 1972.

L. STRICKMAN, Examiner

Int. Cl.: 33

Prior U.S. Cl.: 49

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 962,202
Registered June 26, 1973
Renewal Term Begins June 26, 1993

**TRADEMARK
PRINCIPAL REGISTER**

WHITE WOLF

FRANK-LIN DISTILLERS PRODUCTS,
LTD. (CALIFORNIA CORPORATION),
DBA WHITE WOLF PRODUCTS CO.,
675 N. KING ROAD
SAN JOSE, CA 95133, ASSIGNEE OF
MAX SOBEL WHOLESALE LIQUORS
(CALIFORNIA CORPORATION), DBA
WHITE WOLF COMPANY, SAN
FRANCISCO, CA

FOR: VODKA, IN CLASS 49 (INT. CL.
33).

FIRST USE 3-1-1972; IN COMMERCE
3-1-1972.

SER. NO. 72-419,990, FILED 3-30-1972.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Dec. 7, 1993.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,812,544

Registered Feb. 10, 2004

**TRADEMARK
PRINCIPAL REGISTER**

RED WOLF

ANHEUSER-BUSCH, INCORPORATED (MIS-
SOURI CORPORATION)
ONE BUSCH PLACE
ST. LOUIS, MO 63118

OWNER OF U.S. REG. NOS. 1,975,844, 1,979,468,
AND 2,013,060.

FOR: ALCOHOL MALT BEVERAGE, IN CLASS 33
(U.S. CLS. 47 AND 49).

SER. NO. 76-487,161, FILED 2-3-2003.

FIRST USE 10-3-1994; IN COMMERCE 10-3-1994.

GEORGIA CARTY, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 2,997,121

United States Patent and Trademark Office

Registered Sep. 20, 2005

TRADEMARK
PRINCIPAL REGISTER

the liberty
bourbon

FONBELLE AMERICAS (FLORIDA CORPORATION)

2355 SALZEDO STREET, SUITE 202

CORAL GABLES, FL 33134

FOR: DISTILLED SPIRITS, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 5-1-2003; IN COMMERCE 5-1-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

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

SER. NO. 78-348,960, FILED 1-7-2004.

YSA DEJESUS, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cl.: 48

United States Patent and Trademark Office

Reg. No. 1,328,838

Registered Apr. 2, 1985

**TRADEMARK
PRINCIPAL REGISTER**

LIBERTY ALE

**ANCHOR BREWING COMPANY (CALIFORNIA
CORPORATION)
1705 MARIPOSA ST.
SAN FRANCISCO, CA 94107**

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

**FOR: ALE, IN CLASS 32 (U.S. CL. 48).
FIRST USE 7-22-1983; IN COMMERCE
8-8-1983.**

SER. NO. 448,127, FILED 10-14-1983.

JULIE B. SEYLER, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,993,050

Registered Sep. 6, 2005

**TRADEMARK
PRINCIPAL REGISTER**

WHITE CRYSTAL

**BEVERAGE BRANDS, INC. (PENNSYLVANIA
CORPORATION)
510 ROSLYN PLACE
PITTSBURGH, PA 15232**

FIRST USE 6-3-2005; IN COMMERCE 6-3-2005.

SN 78-176,152, FILED 10-18-2002.

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

ALLISON SCHRODY, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,301,166

Registered Dec. 21, 1999

TRADEMARK
PRINCIPAL REGISTER



CRISTALL U.S.A., INC. (FLORIDA CORPORATION)
902 CLINT MOORE ROAD
SUITE 142
BOCA RATON, FL 33487, ASSIGNEE OF
MOSCOW DISTILLERY CRISTALL (RUSSIAN
FEDERATIO OPEN JOINT STOCK
COMPANY) MOSCOW, 109033, RUSSIAN FE-
DERATIO

FOR: ALCOHOLIC BEVERAGES, NAMELY,
VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).
FIRST USE 5-0-1990; IN COMMERCE
5-0-1990.

THE TRANSLITERATION OF THE RUSSIAN
WORD "STOLICHNAYA" IS "CAPITAL" IN
ENGLISH.

SER. NO. 74-637,923, FILED 2-22-1995.

CAROLYN GRAY, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,629,232

Registered Oct. 1, 2002

**TRADEMARK
PRINCIPAL REGISTER**

WHITE EAGLE

UNITED STATES DISTILLED PRODUCTS COM-
PANY (MINNESOTA CORPORATION)
1607 SOUTH 12TH STREET
PRINCETON, MN 55371

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

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

SN 76-205,425, FILED 2-5-2001.

FIRST USE 6-0-1995; IN COMMERCE 6-0-1995.

INGA ERVIN, EXAMINING ATTORNEY

Int. Cl.: 32

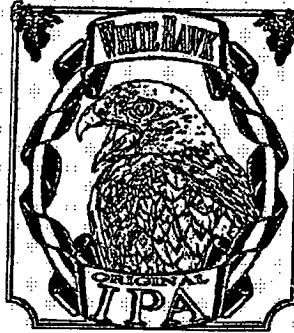
Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 2,956,999

Registered May 31, 2005

**TRADEMARK
PRINCIPAL REGISTER**



MENDOCINO BREWING COMPANY, INC. (CALIFORNIA CORPORATION)

1601 AIRPORT ROAD

UKIAH, CA 95482

FOR: BEER, ALE AND LAGER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-24-2002; IN COMMERCE 6-24-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE ORIGINAL IPA, APART FROM THE MARK AS SHOWN.

THE STIPPLING IS FOR SHADING PURPOSES ONLY.

THE MARK CONSISTS OF THE PROFILE OF A THE FACE OF A HAWK IN THE MIDDLE OF AN OVAL WHICH IS ENCIRCLED WITH RIBBONS. A CLUSTER OF GRAPES IS ON THE TOP RIGHT AND TOP LEFT OF THE MARK AND THE ENTIRE MARK IS SURROUNDED BY A RECTANGLE.

SER. NO. 78-304,844, FILED 9-24-2003.

PATRICIA EVANKO, EXAMINING ATTORNEY

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,562,159

Registered Apr. 16, 2002

**TRADEMARK
PRINCIPAL REGISTER**

WHITE HAWK VINEYARD

**WHITE HAWK VINEYARD L.L.C (CALIFORNIA
LIMITED LIABILITY COMPANY)
P.O. BOX 128
LOS ALAMOS, CA 93440**

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

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

SN 75-625,199, FILED 1-22-1999.

FIRST USE 8-0-2000; IN COMMERCE 5-30-2001.

LINDA ORNDORFF, EXAMINING ATTORNEY

**DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES**

[SEARCH](#)

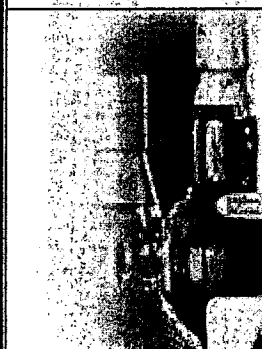
[SITE MAP](#)

[CONTACT US](#)

The national trade association representing producers and marketers of America's favorite brands of distilled spirits.

ABOUT US

- [Commitment to Responsibility](#)
- [Code of Responsible Practices](#)
- [Government Affairs and Industry Issues](#)
- [Alcohol and Health](#)
- [Cocktail Corner](#)
- [Media Room](#)
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DISTILLED SPIRITS. Responsible Industry. Responsible Consumers.

- [President's Message](#)
- [General Background Information](#)
- [Member Companies](#)
- [President's Bio](#)
- [FAQ](#)

OVERVIEW

The Distilled Spirits Council of the United States, Inc. (DISCUS) is a national trade association representing producers and marketers of distilled spirits sold in the United States. Our members' quality products include the full spectrum of distilled spirits such as Bourbon, Scotch and other whiskeys, vodka, gin, tequila, rum, brandy, cordials and liqueurs. The distillers take special pride in their products as well as in their efforts to encourage responsible beverage alcohol consumption by adults who choose to drink.

The Spirit Of America

Just like jazz and baseball, the "cocktail" has its roots in Americana. Dating back to the early colonists in the mid 17th century, the manufacture of distilled spirits has played an important role in our country's heritage, economy and cultural and social traditions.

A Tradition of Excellence

From the farmer who cultivates the grain to the precision of the master distiller, special care is taken at every step to preserve the distinct characteristics and quality of distilled spirits. The distillers also take every step to encourage adults who choose to drink to enjoy beverage alcohol products responsibly. This commitment to quality and social responsibility always has been, and will continue to be, the cornerstone of the distilled spirits industry.

A Major Contributor to the Nation's Economy

The fiscal impact of the distilled spirits industry reaches far beyond the distillery.

- The distilled spirits industry generates \$95 billion in U.S. economic activity annually.
- Over 1.3 million people are employed in the United States through the manufacture, distribution and sale of distilled spirits.
- Jobs within the distilled spirits industry account for more than \$28 billion in U.S. wages.

A Commitment To Responsibility

Working together, the beverage alcohol industry, federal and state governments, local communities, private organizations and individuals are making progress in encouraging responsible consumption of beverage alcohol and combatting all forms of beverage alcohol abuse. According to government statistics, underage drinking is near its lowest point since 1974 when the data were first collected. In addition, the number of teenage drivers involved in fatal drunk driving accidents as well as drunk driving fatalities for all ages continue their long-term decline.

While the distilled spirits industry, through its education and social responsibility programs, has been part of this progress, more remains to be done. The distillers are proud of their longstanding history of social responsibility and will continue to be energetic leaders in the fight against alcohol abuse.

Through the efforts of The Century Council, a not-for-profit organization funded solely by America's leading distillers, the distilled spirits industry develops innovative programs used by communities nationwide to combat drunk driving and illegal, underage drinking. Believing that the best long-term solution to alcohol abuse is education, The Century Council designs programs that are specifically tailored for students in middle school through college, and for

their parents. These programs are available at no cost to communities, individuals and organizations nationwide.

- [Social Responsibility and Public Education Fact Sheet](#)
- [Moderation Messages](#)
- [Drinking and Driving](#)
- [DISCUS Code of Good Practice](#)
- [The Century Council](#)

Alcohol In The Adult American Diet

Beverage alcohol, which includes distilled spirits, beer and wine, is consumed responsibly by more than 100 million American adults. For these adults, beverage alcohol is an enjoyable lifestyle and diet choice.

Alcohol And The Heart

There is a growing body of scientific evidence reporting that moderate beverage alcohol consumption may reduce the risk of cardiovascular disease, the leading cause of death in the United States. Although there is a widespread misperception that this potential benefit is only associated with wine consumption, the scientific literature generally reports that this potential benefit is associated with the ethanol (alcohol) in all beverage alcohol products. Thus, this potential benefit is equally available from moderate consumption of any form of beverage alcohol --distilled spirits, beer or wine.

Although the vast majority of American adults consume beverage alcohol responsibly, it is commonly known that alcohol abuse can cause serious problems, and there is a body of literature regarding the reported risks of beverage alcohol consumption generally. America's distillers do not recommend that consumers drink beverage alcohol for health reasons and are fully committed to combatting all forms of alcohol abuse.

Alcohol Is Alcohol Is Alcohol

According to the *Dietary Guidelines for Americans*, the federal government's official nutrition policy of the United States, a drink is defined as 1.5 ounces of 80-proof distilled spirits, 12 ounces of beer or 5 ounces of wine. Understanding that these standard servings of distilled spirits, beer and wine contain the same amount of alcohol is a critical aspect of responsible drinking. This fact, known as "beverage alcohol equivalence," is taught by the federal government and numerous public health organizations and is included in the majority of state driver's manuals.

The Nation's Most Heavily Taxed Consumer Product

- More than half of the price that consumers spend on a typical bottle of distilled spirits is taxes.
- Federal, state and local governments receive more than \$18 billion per year in tax revenue from the beverage alcohol industry. Tax revenues from the distilled spirits industry alone account for more than \$7.5 billion.
- Federal, state and local governments combined realize 14 times more in spirits tax revenues than the distillers make in profits.

The Unfair Tax Structure Against Distilled Spirits

- While the nation's distillers believe that any additional excise taxes on any form of beverage alcohol - beer, wine or distilled spirits - would be unjust, the current federal beverage alcohol tax structure is particularly biased against distilled spirits.
- Despite the fact that standard servings of beer, wine and distilled spirits contain the same amount of alcohol, the federal tax rate on distilled spirits is almost three times the rate on wine and over two times the rate on beer.

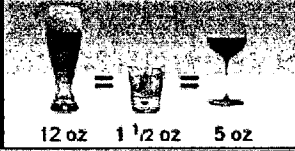
The Code of Good Practice: An Enduring Example of Social Responsibility

In advertising, as in every other aspect of our business operations, the distillers are committed to social responsibility. Since 1934, the distillers have abided by a voluntary Code

of Good Practice. The Code includes more than 30 provisions regarding the responsible placement and content of distilled spirits advertising and marketing. Through these voluntary provisions, the distilled spirits industry holds itself to a higher standard than mandated by any law or regulation.

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POSSIBLE RECLASSIFICATION OF MALTERNATIVES COULD HURT MARKETING

The Treasury Department could take some of the fizz out of the "malternatives" segment by seeking to reclassify the beverages as spirits rather than beer, a move that could have ramifications for how companies market the products.

Last week, the department's Alcohol and Tobacco Tax and Trade Bureau (TTB) announced that: "The rapid growth of this product sector has brought it to the attention of both federal and state regulators" and that despite possessing similar alcohol volume to beer, many of the malternative products derived nearly all of their alcohol from flavorings containing distilled spirits. The TTB says it is seeking public comment on proposed regulations for malt beverages.

A change in its classification could result in higher taxes for manufactures, as well as limit the marketing options for malternatives since liquor brands are prohibited from advertising on TV. And since the segment had already been waning in popularity at the end of 2002, a reclassification could push some marketers and to look at abandoning products.

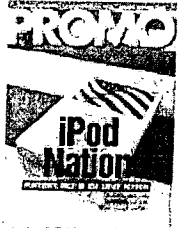
"This is a fading category," said Tom Pirko, president of Santa Clara, CA-based consultancy Bevmark. "Marketers like SAB Miller thought it was going to generate seven to 10 percent of sales and it just hasn't happened. Consumers haven't shown any real inclination for it, and while the big guys like Smirnoff and Bacardi have enough market share to continue, any additional rulings are going to have other manufacturers wondering if [malternatives are] worth it."

At its height, the malternatives segment generated \$600 million in sales, with marketers devoting more than \$70 million to advertising, according to New York City-based Competitive Media Reporting.

With beer sales flat, the major brewers turned to malternatives, often partnering with liquor manufacturers. Miller Brewing and Allied Domecq struck up a \$50 million development and marketing pact last spring and Anheuser-Busch teamed with Bacardi USA to produce Bacardi Silver. Guinness UDV continues to lead the segment with Smirnoff Ice.

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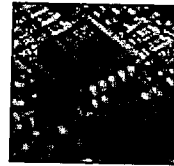


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Are new malternative brews a good fit for drug stores? - Consumables - Brief Article - Statistical Data Included

Dan Ackerman

If you've been keeping up on news coming out of the alcoholic beverage category over the past year or so, the rise of alternative malt beverages is worth watching. Dubbed "malternatives," by PR types, these alcoholic concoctions are a far cry from the Colt 45 style drinks typically associated with the "malt" name.

While the business has been favorable in drug, it is one of the more promotional areas of the (store-for those stores in the business. The new malt beverages, while still a small piece of that business, tend to have higher margins that can offset the impact of price-cutting tactics in the overall beer category. In drug stores, the category -malt beverages are tracked on with alcoholic cider drinks in the beer category-was up 12.5 percent in chain drug stores last year, according to data from Information Resources Inc., reaching more than \$785 million in the 5 weeks ended Dec. 30.

Overall, malternatives already have captured 4 percent of the beer category-not a major player yet, but enough to catch the eyes of savvy retailers everywhere, including drug chains. Diageo North America (Guinness parent) chief executive officer Paul Clinton recent told The New York Times that, "Our belief is that the category can be 9 percent of the total beer market. This is not a flash in the pan."

The drug store beer cooler is a rarity in places such as New York City, but in other regions, beer and wine can be big sellers. Rite Aid stores sell beer in markets where it is allowed, and Longs has a vibrant business in beer and particularly wine in its California stores.

But with limited cooler space, should drug stores devote square footage to new malternative products? This would take display space away from traditional beer and could threaten to cannibalize sales. Although, given the higher margins in this segment-in the high 20s to 30s, Anheuser-Busch executives have told Drug Store News-this is a trade-off most retailers would be willing to make.

For their part, some drug chains seem to be taking a wait and see attitude. One major chain declined to talk about the role of malternatives in their merchandising mix, saying only that "Malt beverages are a very small segment of the category."

IRI, in a recent study on malternatives, said, "for supermarkets and drug stores, volun sales of new malternative beverages, such as Smirnoff Ice and Mike's Hard Lemonade grew 81 percent during the 24 weeks ended Jan. 13 versus the same period last year." This is compared with a paltry 1 percent for the entire alcoholic beverage category.

Every major brewer has taken a shot at the malternative market. Industry leader Anheuser Busch is using the Bacardi brand name to push Bacardi Silver, citrus-flavored malt beverage. No. 2 brewer Miller is teaming with Skyy Spirits on SKYY Blue, and Diageo is using its Smirnoff, brand name for Smirnoff Ice.

Other than SKYY Blue, most of the products do not actually contain the distilled spirits they're named after.

Smirnoff Ice was the first of the current alternative malt beverages to make a big splash, racking up \$615 million in sales last year. But are these products a guaranteed hit for drug retailers? Despite their buzz-heavy status, the prognosis is mixed.

Malternatives are drawing the ire of industry watchdogs for their youth appeal. And one look at the advertising for these products makes it evident that the mom-heavy demographic of chain drug stores is not the target market.

The other fear is that malternatives are just a fad, doomed to burn brightly, but not long. The parallels to the wine cooler craze of the '80s are hard to miss. In fact, one needs only look back on what was perhaps the first mainstream malternative, Zima, to see how a beverage fad can bite the hand that feeds it.