PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86332433
LAW OFFICE ASSIGNED	LAW OFFICE 103
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86332433/large
LITERAL ELEMENT	COMPASS BOTTLES
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size
ARGUMENT(S)	

BACKGROUND On April 10, 2015, the Examiner Attorney issued an Office Action refusing registration o Application No. 86/332,433 the mark COMPASS BOTTLES under Section 2(d) on the basis that the mark confusingly similar to the Registration Nos. 2240121 and 2507025. The Examining Attorney has also issue Applicant disclaim the term ?BOTTLES.? Applicant believes that the issues raised by the Examining Attor resolvable and respectfully requests that the Section 2(d) refusal be withdrawn. Section 2(d) Refusal The E Attorney has refused registration of the applied-for mark under Section 2(d) on the grounds that the mark is be confused with Reg. Nos. 2507025 and 2240121. Applicant disagrees that the two marks are confusingly and submits the following facts and argument in support of its applications for federal registration. In its pr response, Applicant argued that both the marks are goods are different. Applicant incorporates its prior resp arguments and evidence herein by references. In the April 10 Office Action, the Examining Attorney disco probative value of evidence submitted by the Applicant, including prior registrations, stating that ?prior dec and actions of other trademark examining attorneys in registering other marks have little evidentiary value not binding.? However, Applicant notes that the examining attorney submits prior registrations as evidence goods are related. Applicant recognized that ?each case is decided on its own facts, and each mark stands o merits.? See AMF Inc. v. Am. Leisure Prods., Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 19 re Binion, 93 USPQ2d 1531, 1536 (TTAB 2009). However, the Board has previously noted that ?[t]he patt registrations does, however, exemplify long- standing and extensive practice within the Patent and Tradem Office and, necessarily, equally long-standing beliefs ... of business people that the uses of those marks wo feasible and helpful in their businesses.? In re Keebler Company v. Associated Biscuits Limited, 207 USPQ

(TTAB 1980). In other words, the ?pattern of registrations? shows that the alcoholic beverages industry vie and wine and unrelated goods. Earlier this year, the Board determined that ?evidence of dozens of third-par registrations for the same or very similar marks owned by different entities for vehicles and recreational ve trailers rebuts the relevant, two third-party registrations made of record by the Trademark Examining Attor re Thor Tech, Inc. 113 USPQed 1546 (TTAB 2015). The Board further found that ?the third-party registrat record suggest that consumers are aware that they are offered by different companies under the same or sim marks.? Id. In this instance, the commercial reality is that beer and wine are not related goods. Although th Examining Attorney has submitted evidence purporting to show that wine and beer may emanate from the s source, this is the exception and not the norm. Submitted herewith is a chart showing sales of domestic bee and a chart showing sales of import beer brands in the U.S. in 2015. These charts, which show beers distrib companies that do not sell wine, demonstrate that both the industry and consumers do not expect beer and w be produced and/or sold by the same company. In fact, Applicant previously submitted a registration for CORONAS for wine, which has coexisted with the Registration for CORONA for beer, despite the fact tha is the number 1 imported beer. The fact that the examining attorney has found some evidence that beer and sometimes sold by the same source is contradicted by the record evidence, which provides: ? Over 99% of registrations for alcoholic beverages are for ?wine? or ?beer.? Less than 1% of registrations are for both. ? A has submitted 16 pairs of nearly identical registrations ? one for wine and one for beer. ? None of the top be producers also sell wine. This evidence overwhelmingly suggests that beer and wine are not related goods. Therefore, the evidence of record rebuts the evidence provided by the Examining Attorney that ?wine ?and are related. Consequently, the applied-for mark is not confusingly similar to the cited registration and the S 2(d) refusal should be withdrawn. CONCLUSION Applicant believes to have responded to all the issues ra the Examining Attorney. If any issues remain unresolved, Applicant invites the Examining Attorney to con Applicant?s attorney at the phone number listed below. Applicant respectfully requests that the Examiner w the Section 2(d) refusal and allow Application No. 86/332,433 for the mark COMPASS BOTTLES.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_50252143225-20151012182126812349_._ing_domestic_beer_brands_sales_of_the_U.S.__2015___Sta
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT16\IMAGEOUT16\863\324\86332433\xml8\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\863\324\86332433\xml8\RFR0003.JPG
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ORIGINAL PDF FILE	evi_50252143225-20151012182126812349_._ding_imported_beer_brand_sales_of_the_U.S.__2015___Sta
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	\\TICRS\EXPORT16\IMAGEOUT16\863\324\86332433\xml8\RFR0009.JPG

DESCRIPTION OF EVIDENCE FILE	chart showing sales of domestic beer brands and a chart showing sales of import beer bra the U.S. in 2015
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use BOTTLES apart from the mark as shown.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/ericewesterberg/
SIGNATORY'S NAME	Eric E. Westerberg
SIGNATORY'S POSITION	Attorney of Record, Utah Bar Member
SIGNATORY'S PHONE NUMBER	801-566-6633
DATE SIGNED	10/12/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 12 18:29:47 EDT 2015
TEAS STAMP	USPTO/RFR-50.252.143.225-20151012182947075881-86332433-540c66cf5312c466d269ebfabc98a7ecc34d2da0fb41ab5af1de1c638844c93f2f-N/A-N/A-20151012182126812349

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **86332433** COMPASS BOTTLES(Standard Characters, see http://tmng-al.uspto.gov/resting2/api/img/86332433/large) has been amended as follows:

ARGUMENT(S)

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

BACKGROUND On April 10, 2015, the Examiner Attorney issued an Office Action refusing registration of Application No. 86/332,433 the mark COMPASS BOTTLES under Section 2(d) on the basis that the mark is confusingly similar to the Registration Nos. 2240121 and 2507025. The Examining Attorney has also issued that Applicant disclaim the term ?BOTTLES.? Applicant believes that the issues raised by the Examining Attorney are resolvable and respectfully requests that the Section 2(d) refusal be withdrawn. Section 2(d) Refusal The Examining Attorney has refused registration of the applied-for mark under Section 2(d) on the grounds that the mark is likely to be confused with Reg. Nos. 2507025 and 2240121. Applicant disagrees that the two marks are confusingly similar and submits the following facts and argument in support of its applications for federal registration. In its previous response, Applicant argued that both the marks are goods are different. Applicant incorporates its prior responses, arguments and evidence herein by references. In the April 10 Office Action, the Examining Attorney discounts the probative value of evidence submitted by the Applicant, including prior registrations, stating that ?prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding.? However, Applicant notes that the examining attorney submits prior registrations as evidence that the goods are related. Applicant recognized that ?each case is decided on its own facts, and each mark stands on its own merits.? See AMF Inc. v. Am. Leisure Prods., Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); In re Binion, 93 USPQ2d 1531, 1536 (TTAB 2009). However, the Board has previously noted that ?[t]he pattern of registrations does, however, exemplify long- standing and extensive practice within the Patent and Trademark Office and, necessarily, equally long-standing beliefs ... of business people that the uses of those marks would be feasible and helpful in their businesses.? In re Keebler Company v. Associated Biscuits Limited, 207 USPQ 1034 (TTAB 1980). In other words, the ?pattern of registrations? shows that the alcoholic beverages industry views beer and wine and unrelated goods. Earlier this year, the Board determined that ?evidence of dozens of third-party registrations for the same or very similar marks owned by different entities for vehicles and recreational vehicle trailers rebuts the relevant, two third-party registrations made of record by the Trademark Examining Attorney.? In re Thor Tech, Inc. 113 USPQed 1546 (TTAB 2015). The Board further found that ?the third-party registrations of record suggest that consumers are aware that they are offered by different companies under the same or similar marks.? Id. In this instance, the commercial reality is that beer and wine are not related goods. Although the Examining Attorney has submitted evidence purporting to show that wine and beer may emanate from the same source, this is the exception and not the norm. Submitted herewith is a chart showing sales of domestic beer brands and a chart showing sales of import beer brands in the U.S. in 2015. These charts, which show beers distributed by companies that do not sell wine, demonstrate that both the industry and consumers do not expect beer and wine to be produced and/or sold by the same company. In fact, Applicant previously submitted a registration for CORONAS for wine, which has coexisted with the Registration for CORONA for beer, despite the fact that Corona is the number 1 imported beer. The fact that the examining attorney has found some evidence that beer and wine are sometimes sold by the same source is contradicted by the record evidence, which provides: ? Over 99% of registrations for alcoholic beverages are for ?wine? or ?beer.? Less than 1% of registrations are for both. ? Applicant has submitted 16 pairs of nearly identical registrations ? one for wine and one for beer. ? None of the top beer producers also sell wine. This evidence overwhelmingly suggests that beer and wine are not related goods. Therefore, the evidence of record rebuts the evidence provided by the Examining Attorney that ?wine ?and ?beer? are related. Consequently, the applied-for mark is not confusingly similar to the cited registration and the Section 2(d) refusal should be withdrawn. CONCLUSION Applicant believes to have responded to all the issues raised by the Examining Attorney. If any issues remain unresolved, Applicant invites the Examining Attorney to contact Applicant?s attorney at the phone number listed below. Applicant respectfully requests that the Examiner withdraw the Section 2(d) refusal and allow Application No. 86/332,433 for the mark COMPASS BOTTLES.

EVIDENCE
Evidence in the nature of chart showing sales of domestic beer brands and a chart showing sales of import beer brands in the U.S. in 2015 has been attached.
Original PDF file:
evi_50252143225-20151012182126812349_._ing_domestic_beer_brands_sales_of_the_U.S.__2015___Statistic.pdf
Converted PDF file(s) (4 pages)
Evidence-1
Evidence-2
Evidence-3
Evidence-4
Original PDF file:
evi_50252143225-20151012182126812349_._ding_imported_beer_brand_sales_of_the_U.S.__2015___Statistic.pdf
Converted PDF file(s) (4 pages)
Evidence-1
Evidence-2
Evidence-3
Evidence-4

ADDITIONAL STATEMENTS
Disclaimer
No claim is made to the exclusive right to use BOTTLES apart from the mark as shown.

SIGNATURE(S)
Request for Reconsideration Signature
Signature: /ericewesterberg/ Date: 10/12/2015
Signatory's Name: Eric E. Westerberg
Signatory's Position: Attorney of Record, Utah Bar Member

Signatory's Phone Number: 801-566-6633

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 86332433

Internet Transmission Date: Mon Oct 12 18:29:47 EDT 2015
TEAS Stamp: USPTO/RFR-50.252.143.225-201510121829470
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Sales of the leading domestic beer brands of the United States in 2015 (in million U.S. dollars)

This graph shows the sales of the leading domestic beer brands of the United States in 2015. Miller Lite was the third ranked domestic beer brand of the United States with about 862.6 million U.S. dollars worth of sales in 2015.

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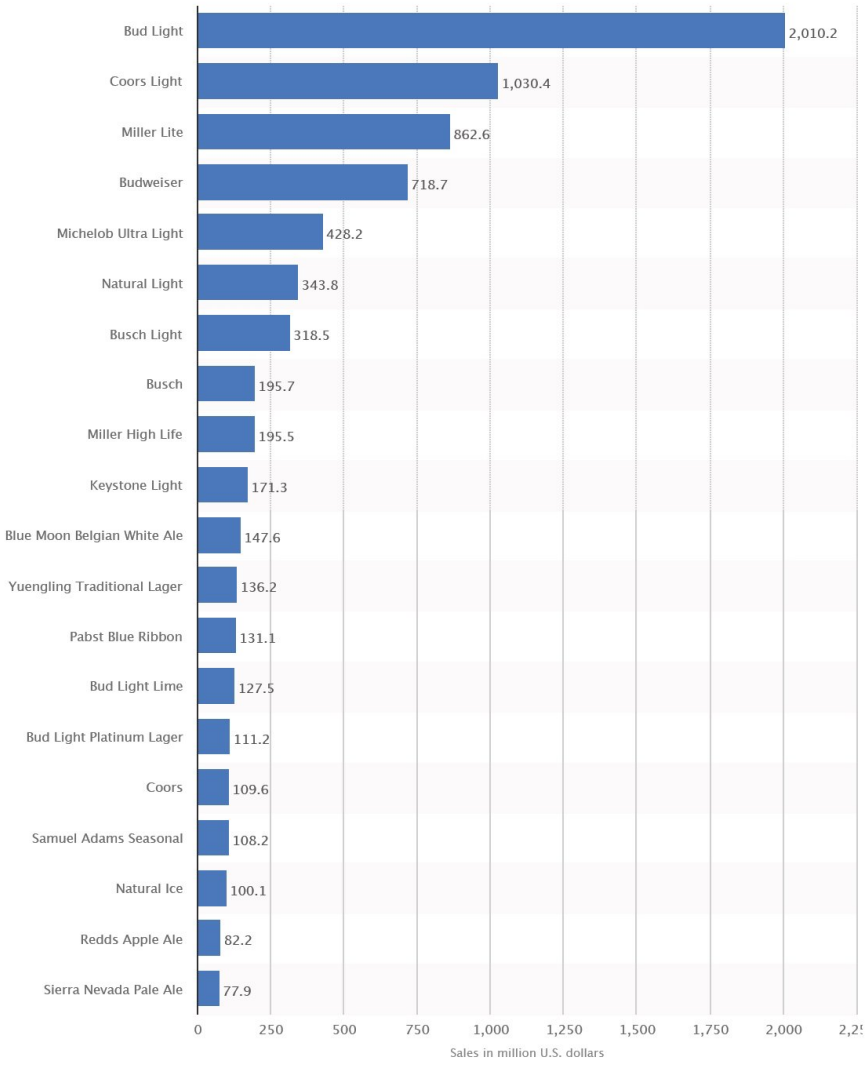

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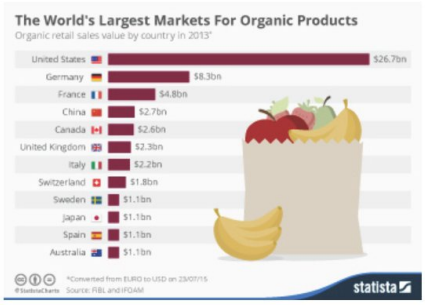

This chart shows organic retail sales value by country in 2013.

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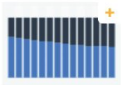
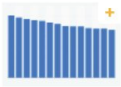
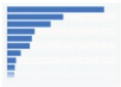


On and off-trade beer sales share in the United Kingdom (UK) 2000-2013
On-trade and off-trade share of beer sales in the United Kingdom (UK) from 2000 to 2013



Draught beer sales share in the United Kingdom (UK) 2000-2013
Draught share of total beer sales in the United Kingdom (UK) from 2000 to 2013

Share of off-trade beer sales in the United Kingdom (UK) 2012
Distribution of off-trade beer sales in the United Kingdom (UK) as of January 2012, by category



U.S. beer market: leading imported beer brands based on sales 2015
Sales of the leading imported beer brands of the United States in 2015 (in million U.S. dollars)

Beer monthly sales in the United Kingdom (UK) 2012-2014
Monthly beer sales volume in the United Kingdom (UK) from January 2012 to May 2014 (in 1,000 hectolitres)

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- **Sales share of Macy's worldwide by merchandise department 2009-2014**
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- **China: soft drink production per month August 2015**

Related market forecasts

- **Forecast: revenue soft drink manufacture Germany 2008-2020**
- **Forecast: revenue malt manufacture Germany 2008-2020**
- **Forecast: revenue housewares sales agents UK 2008-2020**

Recommended studies and dossiers

Soft drinks and non-alcoholic beverages in the UK - Statista Dossier
103 page/s

Beer in the UK - Statista Dossier
119 page/s

Beer Market of Canada - Statista Dossier
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Anheuser-Busch InBev's (AB InBev) beer brands - Statista Dossier
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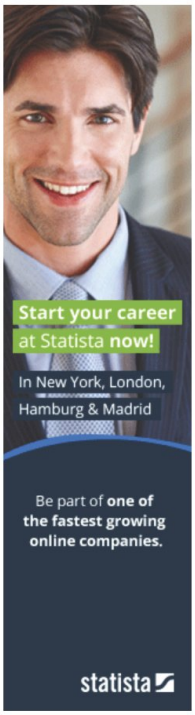
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Sales of the leading imported beer brands of the United States in 2015 (in million U.S. dollars)

This graph shows the sales of the leading imported beer brands of the United States in 2015. Modelo Especial was the third ranked imported beer brand of the United States with about 280.4 million U.S. dollars worth of sales in 2015.

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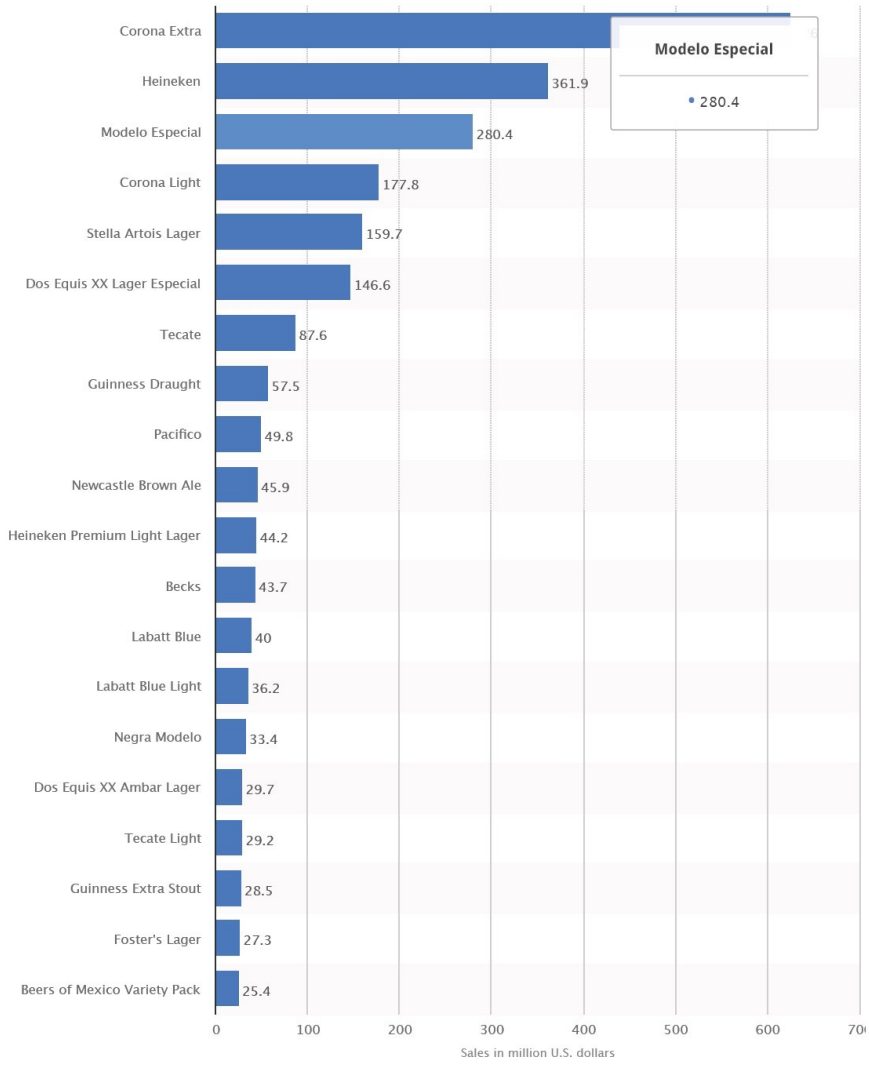

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Percentage of total mouthwash and dental rinse sales in the United States in 2014, by leading brands

Sales growth of leading lip balm brands in the U.S. 2012
Sales growth of leading brands of lip balm and cold sore medications in the United States in 2012 (change to prior sales year)

Sales share of the leading deodorant brands in the U.S. 2014
Sales share of the leading deodorant brands in the United States in 2014

Percentage of sock sales in the U.S. by leading brand 2014
Sales share of the leading sock brands in the United States in 2014

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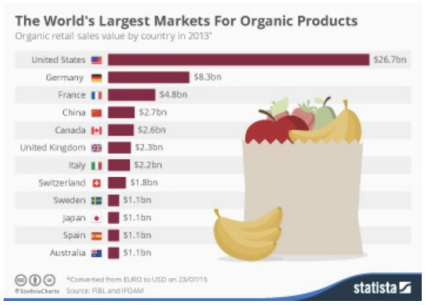
  103 page/s
- **Beer industry - Statista Dossier**
  85 page/s



This chart shows organic retail sales value by country in 2013.

Beer brands: Heineken - Statista Dossier
50 page/s

Walt Disney Company - Statista Dossier
111 page/s

Heineken's business information 2014
Report included in Corporate Account only

Beauty on YouTube
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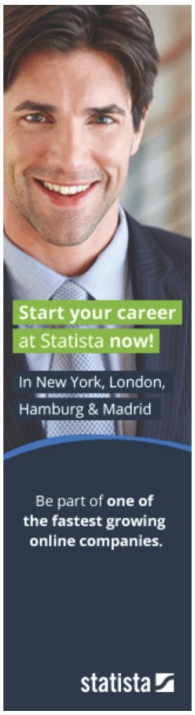
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