

ESTTA Tracking number: **ESTTA868962**

Filing date: **01/04/2018**

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

Proceeding	87046141
Applicant	Brickhouse Tavern, LLC
Applied for Mark	BREWUS' BRICKHOUSE
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Submission	Reply Brief
Attachments	2018-01-04 Applicant Reply Brief BRIC-011.pdf(328096 bytes)
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Date	01/04/2018

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

Matter: In re Brickhouse Tavern, LLC
Applicant: Brickhouse Tavern, LLC
Mark: BREWTUS' BRICKHOUSE
Serial Number: 87/046,141
Date Filed: May 22, 2016
Examining Attorney: Sally Shih
Law Office: 106
Attorney Docket No.: BRIC-011

APPLICANT'S REPLY BRIEF

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

A. Introduction.

Pursuant to TBMP 1203.02(c) and in response to the Examining Attorney's Appeal Brief dated December 18, 2017, the Applicant hereby submits the following Reply Brief for the Board's consideration. As previously argued by the Applicant, the Examining Attorney has abrogated her duty to properly analyze the respective marks in their entirety. This trend has now continued with Examining Attorney's Reply Brief.

Had the Examining Attorney properly analyzed the marks in their entirety, it would have been found that the differences between the respective marks, particularly with respect to the dominant portion "BREWTUS" in the Applicant's Mark, preclude a finding of likelihood of confusion. Put simply, the inclusion of the term "BREWTUS" in Applicant's Mark serves to alter the appearance, sound, and connotation of the Applicant's Mark in a manner which has an effect on its commercial impression when compared with any of the Registrant's Marks.

B. The Examining Attorney Has Again Failed to Analyze the Marks.

To date, the Examining Attorney has had three opportunities to compare and properly analyze the Applicant's Mark "BREWTUS' BRICKHOUSE" with the Registrants Marks' "BRICKHOUSE TAVERN + TAP, BRICKHOUSE BREWERY, and BRICKHOUSE SUBS". Three times the Examining Attorney has failed to properly compare the Applicant's Mark with the Registrants' Marks in their entirety.

The first opportunity came with the first refusal dated September 8, 2016, in which the Examining Attorney only used the term "BREWTUS" a single time in the body of the refusal – in stating what the Applicant's Mark was. *September 8, 2017 Office Action*. The second opportunity came with the second refusal dated March 28, 2017, in which the Examining

Attorney only added a single additional reference to the term “BREWTUS” – in restating the Applicant’s arguments. *March 28, 2017 Office Action.*

The Examining Attorney has now had a third opportunity to properly analyze the respective marks. However, even in the Examining Attorney’s Appeal Brief dated December 18, 2017, the Examining Attorney has still not properly analyzed the marks. The entirety of the Examiner’s “analysis,” other than quoting copious amounts of case law, is the following conclusory statements:

The only differences in the marks is the term BREWTUS’ in the proposed mark and the disclaimed matter in the registered marks . . . The term BREWTUS does not distinguish the proposed mark from the cited marks because all the cited marks contain additional wording such as SUBS, TAVERN + TAP and BREWERY in addition to the wording BRICK HOUSE or BRICKHOUSE.

December 18, 2017 Examining Attorney’s Appeal Brief, pgs. 3-4.

The Examining Attorney’s arguments have no basis in law. The Examining Attorney seems to suggest that the use of disclaimed terms in each of the Registrant’s Marks somehow reinforces that a likelihood of confusion would exist between the marks. This defies common sense – if anything, the additional terms in the Registrant’s Marks would further distinguish them from Applicant’s Marks.

The Examining Attorney has ignored that the additional term “BREWTUS” in the Applicant’s Mark serves to distinguish its commercial impression from that of any of the Registrant’s Marks – each of which do not include the term “BREWTUS” or any similar term. The fact that the Registrant’s Marks include additional, disclaimed terms, does not serve to increase confusion by bringing the respective commercial impressions closer as suggested by the Examiner.

The Examining Attorney's faulty analysis resulted in the conclusion that, because the Applicant's and Registrant's Marks all contain additional wording, the term "BREWTUS" is not distinguishable. This argument unequivocally fails. Moreover, the Examining Attorney's two-sentence "analysis" is prefaced with the statement that the "*only differences in the marks is the term BREWTUS*". *December 18, 2017 Examining Attorney's Appeal Brief, pg. 3*. The Examining Attorney acknowledges the fact that the additional term "BREWTUS" is not found in any of the Registered Marks. However, the Examining Attorney has not provided anything other than conclusory statements to support the contention that the commercial impression of the Applicant's Mark is not altered by the missing term when compared to the Registrant's Marks.

In the examination before registration, the Applicant had a right that its Mark be considered as a whole, and that the term "BREWTUS" not be ignored. Even now, the Examiner has yet to properly analyze the Applicant's Mark in its entirety.

C. Dissimilarity of the Marks.

The Applicant has previously pointed out that the appearance, sound, and connotation of the respective marks results in sufficiently dissimilar commercial impressions so as to preclude a likelihood of confusion between the marks. Each of the Registrant's Marks is missing the dominant portion of both the sound and appearance of the Applicant's Mark – the term "BREWTUS".

As to appearance, it is immediately apparent that there is a distinct difference between the appearance of the Applicant's Mark and that of each of the Registrant's Marks. The Applicant's Mark includes a term which is completely absent from the Registrant's Marks. The Registrant's Marks each include one or more terms which are completely absent from the Applicant's Mark.

For at least these reasons, the appearance of the marks strongly disfavors a likelihood of confusion.

As to sound, the additional term in the Applicant's Mark again serves to distinguish its sound from each of the Registrant's Marks. Further, each of the Registrant's Marks themselves contain additional term(s) which are not present in the Applicant's Mark. These additional terms in each of the respective marks alters their sounds when compared to each other resulting in different cadences and syllable-counts. Additionally, the use of an apostrophe on the term "BREWTUS'" in Applicant's Mark reinforces that the term is emphasized when spoken aloud – "this is *Carl's* sandwich" as opposed to "this is Carl's *sandwich*".

As to connotation, Applicant has previously shown that the term "BREWTUS'" alters the meaning of Applicant's Mark when compared with the Registrant's Marks. The term "BRICKHOUSE" is common across a range of industries and is, at a minimum, suggestive of an establishment providing services. The Applicant's use of the additional term "BREWTUS'" alters the connotation by establishing a possessive ownership of the "BRICKHOUSE".

D. Conclusion.

The Examining Attorney has failed to properly analyze the marks in their entirety by ignoring the dominant portion of the Applicant's Mark in her "analysis." Had the Examining Attorney properly compared the marks, it would have been found that there is no likelihood of confusion between the respective marks. For the foregoing reasons, the Applicant respectfully requests that the TTAB reverse the Final Office Action and order the registration of the Mark.

Respectfully submitted,



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