

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

In re the Application of	)	
	)	
CARLTON CELLARS, LLC	)	Law Office 104
Serial No. : 87/438,793	)	
Filed : May 5, 2017	)	Trademark Examining Attorney
For : SEVEN DEVILS	)	Linda M. Estrada
_____	)	

**BRIEF FOR APPLICANT**

**Introduction**

Applicant hereby appeals from the Trademark Examining Attorney’s March 1, 2018 final refusal to register applicant’s above-identified mark (“the final Office action”), and respectfully requests the Trademark Trial and Appeal Board to reverse the Examining Attorney’s decision.

**Applicant’s Trademark**

Applicant seeks registration on the Principal Register of its mark:

SEVEN DEVILS

for the following goods and services:

- **Class 8:** wine related accessories, namely, foil cutters for wine bottles;
- **Class 21:** wine openers; wine aerators; pouring spouts for wine for household use; coolers for wine; beverage glassware;
- **Class 25:** clothing, namely, t-shirts, hats and visors; and
- **Class 33:** wine.



### The Rejection

The Examining Attorney finally refused registration of applicant's mark citing a likelihood-of-confusion with U.S. Trademark Registration No. 4,845,400 for the mark SEVEN DEVILS for "stilled spirits; spirits; whiskey spirits".

### Informalities

Applicant will submit payment of the fees for the additional classes of goods pending outcome of the appeal.

### Argument

On March 1, 2018, the Examining Attorney made final her refusal to register applicant's mark based upon her contention that there is a possible likelihood-of-confusion ("LOC") with U.S. Trademark Registration No. 4,845,400 for the mark SEVEN DEVILS for "stilled spirits; spirits; whiskey spirits"

For reasons discussed below, there is no LOC because Registrant's mark should be entitled to a relatively narrow scope of protection and, in light of that narrow scope of protection, Applicant's goods are unrelated to Registrant's Goods. The table below shows that at least eight other parties own marks with SEVEN DEVILS or 7 DEVILS for goods or services related to Registrant's Goods. Information related to the marks below are attached. Accordingly, there should be a narrow scope of protection for Registrant's mark, and Applicant's mark should be registrable because there is no LOC.

### Marks with SEVEN DEVILS

Mark	Registration No.	Goods & Services	Owner/Location	Date of First Use
SEVEN DEVILS	Unregistered	Wine	Cariton Cellars 130 W. Monroe	September 24, 2010

Mark	Registration No.	Goods & Services	Owner/Location	Date of First Use
			Street Carlton, OR 97111	
7 DEVILS BREWING CO.	Unregistered	Bar and Brewing services	247 S 2nd St Coos Bay, OR 97420	At least as early as November 28, 2013
SEVEN DEVILS STEAKHOUSE AND SALOON	Unregistered	Restaurant and bar services	312 S Main St. Riggins, ID	At least as early as October 21, 2013
SEVEN DEVILS PLAY CONFERENCE	Unregistered	Plays and playwriting services, convention services	id Theater 143 E. 8th Street Brooklyn, NY 11218	At least as early as June 1, 2001
SEVEN DEVILS	Unregistered	Hats and T-shirts, letterhead, advertising, and signs for...saloons	Michael F Boldman 6247 Northview St Boise, ID 83704	May 1, 1998
SEVEN DEVILS	U.S. Reg. No. 4845400 (Nov. 3, 2015)	Distilled Spirits; Spirits; Whiskey spirits	Koenig Distillery, Inc. 20928 Grape Ln Caldwell, ID 83607	February 20, 2014
SEVEN DEVILS PUB	Unregistered	Bar, brewing, and restaurant services	Tamarack Resort Cascade, ID 83615	At least as early as February 14, 2011
SEVEN DEVILS IMPERIAL STOUT	Unregistered	Beer	Sockeye Grill & Brewery 3019 N Cole Rd Boise, ID 83704	At least as early as January 1, 2015
SEVEN DEVILS LODGE	Unregistered	Hotel and bar services	Seven Devils Lodge 4043 Council Cuprum Road Council, ID 83612	At least as early as January 1, 1982

Mark	Registration No.	Goods & Services	Owner/Location	Date of First Use
SEVEN DEVILS	Unregistered	Beer	Olde Hickory Brewing 222 Union Square Hickory, NC 28601	2007, but no longer in production

**Conclusion**

Accordingly, applicant respectfully requests reversal of the Examining Attorney's Section 2(e)(1) refusal, and remand to the Examining Attorney with instructions to issue an Office action for payment of the filing fees and, upon payment of those fees, allow the application and forward it to publication for the purposes of opposition.

Dated: February 11, 2019.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

/ David P. Cooper /

David P. Cooper  
 Registration No. 33,372  
 520 S.W. Yamhill Street, Suite 300  
 Portland, OR 97204  
 Telephone: (503) 224-6655  
 Facsimile: (503) 295-6679  
 Of Attorneys for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that this Brief for Applicant is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop: TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on February 11, 2019.

/ Mandi M. Carsey /  
 Mandi M. Carsey