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Sent: 3/5/2019 4:03:48 PM

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Subject: U.S. TRADEMARK APPLICATION NO. 87438793 - SEVEN DEVILS - GRT404 - Request for
Reconsideration Denied - Return to TTAB - Message 1 of 2

Attachment Information:

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rebecca-1.jpg, 87438793.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 87438793

MARK: SEVEN DEVILS



CORRESPONDENT ADDRESS:

DAVID P COOPER

KOLISCH HARTWELL PC

520 S W YAMHILL STREET SUITE 300

PORTLAND, OR 97204

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

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APPLICANT: Carlton Cellars, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

GRT404

CORRESPONDENT E-MAIL ADDRESS:

docketing@khpatent.com

REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 3/5/2019

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The following requirement(s) and/or refusal(s) made final in the Office action dated March 1, 2018 are maintained and continue to be final: 1) refusal of the mark under Section 2(d) of the Trademark Act; and 2) requirement for proper amendment to the identification of goods. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues.

First, it is noted that the instant application has been revived following applicant's Petition to Revive. Accordingly, a new search for conflicting marks has been conducted.

Through the Request for Reconsideration dated December 11, 2018, applicant has submitted additional evidence concerning the refusal of the proposed mark under Section 2(d) of the Trademark Act. Applicant argues that the refusal under Section 2(d) of the Trademark Act should be withdrawn because the cited registration should be entitled to a relatively narrow scope of protection. To support this argument, applicant relies on evidence "that at least eight other parties own marks with SEVEN DEVILS or 7 DEVILS for goods or services related to Registrant's goods." However, applicant's evidence is not persuasive for several reasons.

First, the weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks in use in the marketplace in connection with similar goods and/or services. *See Nat'l Cable Tel. Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Evidence of widespread third-party use of similar marks with similar goods and/or services "is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection" in that particular industry or field. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005); *see In re Coors Brewing Co.*, 343 F.3d 1340, 1345, 68 USPQ2d 1059, 1062-63 (Fed. Cir. 2003).

However, evidence comprising only a small number of third-party registrations for similar marks with similar goods is generally entitled to little weight in determining the strength of a mark. *See In re i.am.symbolic, llc*, 866 F.3d 1315, 1328-29, 123 USPQ2d 1744, 1751-52 (Fed. Cir. 2017); *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973). These few registrations are "not evidence of what happens in the market place or that customers are familiar with them." *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d at 1406, 177 USPQ at 269; *In re I-Coat Co.*, 126 USPQ2d 1730, 1735 (TTAB 2018).

Further, evidence comprising third-party registrations for similar marks with different or unrelated goods and/or services has "no bearing on the strength of the term in the context relevant to this

case.” See *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1058 (TTAB 2017) (citing *In re i.am.symbolic, llc*, 866 F.3d at 1328, 123 USPQ2d at 1751).

In this case, applicant has not submitted third party registration evidence. Instead, applicant relies on a very small number of third party advertisements for goods and services that are different from the goods in this case. For example, applicant relies on third party advertising for the “Seven Devils Lodge” at TSDR pages 24-30 and for the “Seven Devils Playwrights Conference” at TSDR pages 31-56. The examining attorney respectfully submits that this evidence is distinguishable from the goods at issue in this application since the goods identified in the cited registration are “Distilled Spirits; Spirits; Whiskey spirits, in International Class 33” and applicant’s goods are wines, clothing and wine accessories.

Applicant’s evidence also includes an abandoned application, namely, U.S. Application No. 78/833271 for good and/or services, which are unclear. Please see Applicant’s December 11, 2018 Request for Reconsideration at TSDR page 22. However, third-party applications have no probative value other than as evidence that the applications were filed. *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1270 n.8 (TTAB 2009).

Applicant’s evidence and arguments are also countered by the records of the USPTO. Specifically, a search of the USPTO database indicates that the cited registration, U.S. Registration No. 4,845,400, is the only live registration for the wording “SEVEN DEVILS” or the wording “7 DEVILS” in the database. This evidence is indicative of the strength of the cited registration. Please see the attached search results.

The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed “weak” or merely descriptive are still entitled to protection under Section 2(d) against the registration by a subsequent user of a similar mark for closely related goods and/or services. TMEP §1207.01(b)(ix); see *King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1246 (TTAB 2010). Thus, this protection under Section 2(d) extends to marks registered on the Supplemental Register. TMEP §1207.01(b)(ix); see, e.g., *In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1743 (TTAB 2016) (citing *Towers v. Advent Software, Inc.*, 913 F.2d 942, 946, 16 USPQ2d 1039, 1042 (Fed. Cir. 1990); *In re Research & Trademark Corp.*, 793 F.2d 1276, 1278, 230 USPQ 49, 49 (Fed. Cir. 1986); *In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978)). However, in this case, applicant’s cumulative evidence fails to establish that the cited registration, U.S. Registration No. 4,845,400, is weak. It is also noted that the marks of the parties are identical.

With respect to the relatedness of the goods, please also see additional third party advertising, which supports the finding that the goods of the parties are related, commonly originate from the same source and travel in the same channels of trade.

Finally, applicant has not properly amended the identification of goods and has not complied with the requirements of a multiple-class application under Section 1(a) of the Trademark Act.

Accordingly, the request is denied.

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/Linda M. Estrada/


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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	87369087	5358574	FERMENTED DEVELOPMENT REISLING 2017 POPPED CULTURE WINES, INC	TSDR	LIVE
2	87208227	5284169	WCDA WYOMING COMMUNITY DEVELOPMENT AUTHORITY - EST. 1975 -	TSDR	LIVE
3	86310960	4687838	7 INCH DAREDEVIL	TSDR	LIVE
4	86636462	4897795	NS NEWMAN & SONS PROPERTY LEASING & DEVELOPMENT ESTABLISHED 1937	TSDR	LIVE
5	86677264	4845400	SEVEN DEVILS	TSDR	LIVE
6	85249810	4068642	JIM BEAM BEAM FORMULA B A STANDARD SINCE 1795 DEVIL'S CUT 90 PROOF KENTUCKY STRAIGHT BOURBON WHISKEY	TSDR	LIVE
7	85741646	4360408	AE THE AMMERMAN EXPERIENCE EXCELLENCE IN COMMUNICATION SKILLS DEVELOPMENT SINCE 1973	TSDR	LIVE
8	79212916	5510373	7 DEVELOPMENTAL WONDERS	TSDR	LIVE
9	79104544	4270245	CHAMPAGNE LANSON FONDE EN 1760 FOURNISSEURS ATTITRES DE S.M. LA REINE ELISABETH II PURVEYORS BY APPOINTMENT TO H.M. QUEEN ELISABETH II DEPUIS 1760 CHAMPAGNE	TSDR	LIVE
10	77762191	3760381	LANSON WHITE LABEL BRUT REIMS - FRANCE ELABORE PAR CHAMPAGNE LANSON 75CL 12.6% VOL	TSDR	LIVE
11	77544737	3688269	WOMEN IN MINISTRY CLAIMING OUR INHERITANCE...CREATING OUR LEGACY DEVELOPING, COACHING, AND MENTORING CHRISIAN WOMEN NUMBERS 27.7	TSDR	LIVE
			DEVIL 7S	TSDR	LIVE

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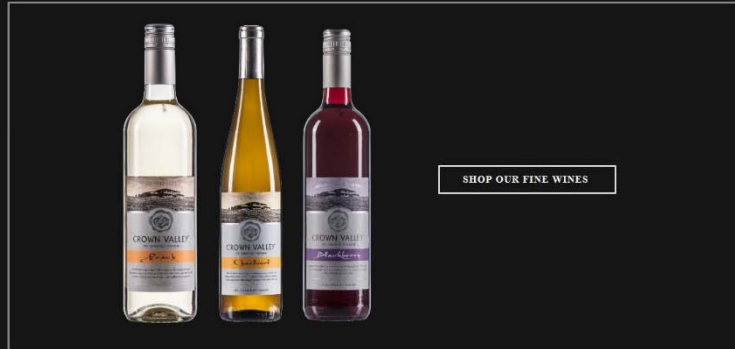
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