

From: Adebayo, Omolayo

Sent: 8/13/2021 9:10:52 AM

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Subject: U.S. Trademark Application Serial No. 88870879 - BRICK STREET - 120139-3004 - Request for Reconsideration Denied - Return to TTAB

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Attachment Information:

Count: 11

Files: Terrace live music.jpg, Terrace restaurant.jpg, Hard Rock night club.jpg, Hard Rock restaurant.jpg, Bobby McKeys night club.jpg, Bobby McKeys restaurant.jpg, Bluebird Cafe night club.jpg, Bluebird Cafe restaurant.jpg, Birchmere night club with live music.jpg, Birchmere restaurant.jpg, 88870879.doc

**United States Patent and Trademark Office (USPTO)**  
**Office Action (Official Letter) About Applicant's Trademark Application**

**U.S. Application Serial No.** 88870879

**Mark:** BRICK STREET

**Correspondence Address:**

TERRELL R. MILLER

FOLEY & LARDNER LLP

1000 LOUISIANA ST SUITE 2000

HOUSTON, TX 77002-2099

**Applicant:** Weisman Enterprises Holdings, Inc.

**Reference/Docket No.** 120139-3004

**Correspondence Email Address:**

IPDocketing@foley.com

**REQUEST FOR RECONSIDERATION**  
**AFTER FINAL ACTION**  
**DENIED**

**Issue date:** August 13, 2021

**Applicant's request for reconsideration is denied.** *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling

evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Specifically, applicant argues that there is no likelihood of confusion between the applied for mark and the cited registered mark because the marks are dissimilar in connotation and commercial impression due to the inclusion of the term “MARKET” in the registered mark. Applicant states that this wording “reinforces the impression of the full service grocery store or produce market.” However, this argument is unpersuasive because disclaimed matter that is descriptive of or generic for a party’s services is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 1305, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)); TMEP §1207.01(b)(viii), (c)(ii). The term “MARKET” is disclaimed in the registration as descriptive of applicant’s services, therefore, consumers are less likely to focus on this wording when identifying the source of registrant’s restaurant services.

Applicant also argues that BRICK STREET MARKET provides coffee shop and restaurant services through its full service grocery store, not a night club, thus the services of applicant and registrant are unrelated. However, “[a] showing of actual confusion is not necessary to establish a likelihood of confusion.” *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); TMEP §1207.01(d)(ii). “[T]he relevant test is *likelihood* of confusion, not *actual* confusion.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1309, 128 USPQ2d 1047, 1053 (Fed. Cir. 2018) (emphasis in original). “Uncorroborated statements of no known instances of actual confusion . . . are of little evidentiary value,” especially in ex parte examination. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003).

Although applicant states that the registrant’s services will only be provided through a full service grocery store, the identification of services in the registration does not include such a restriction. The previously attached evidence from [www.930.com](http://www.930.com), [www.ginnyssupperclub.com](http://www.ginnyssupperclub.com), [www.thehamiltondc.com](http://www.thehamiltondc.com), [www.iguananyc.com](http://www.iguananyc.com), [www.songbyrddc.com](http://www.songbyrddc.com), <http://www.madamsorgan.com/>, <https://dc9.club/>, <https://www.gypsysallys.com/>, <https://www.pearlstreetwarehouse.com/>, and <https://www.unionstage.com/> shows that the relevant services in the registration, namely, restaurant services featuring sit-down service of food and take-out restaurant services, and the relevant services in the application, in the nature of night club services, namely, providing night club facilities for the entertainment of patrons through live and/or recorded musical performances, are provided by the same company and are marketed under the same mark. The additional Internet evidence attached consisting of website screenshots from [birchmere.com](http://birchmere.com), [bluebirdcafe.com](http://bluebirdcafe.com), [bobbymckkeys.com](http://bobbymckkeys.com), [hardrock.com](http://hardrock.com), and [terracerestaurantandlounge.com](http://terracerestaurantandlounge.com) further establishes that restaurants featuring sit-down and take-out services also provide night club entertainment through live and recorded musical performances, thus, the services in the application and registration are related.

Applicant further contends that applicant's and registrant's consumers are sophisticated purchasers, thus, are not likely to confuse the parties' services. However, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

Accordingly, the following refusal made final in the Office action dated March 8, 2021 is **maintained and continued**:

- Section 2(d) Refusal for likelihood of confusion with U.S. Registration No. 4740059

*See* TMEP §§715.03(a)(ii)(B), 715.04(a).

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

**If applicant has not filed an appeal** and time remains in the six-month response period, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes 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). Filing 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(c).

/Omolayo Adebayo/

Examining Attorney

United States Patent and Trademark Office

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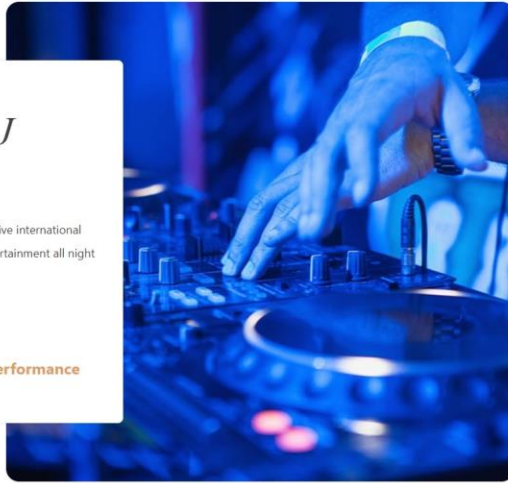
Email: Omolayo.Adebayo@USPTO.GOV

## *Live Music & DJ* *Performance*

Hear the hottest and latest records as our house DJ spins and live international singers rock out to provide you good vibes, good beats, and entertainment all night long to enjoy.

**Thursday To Sunday .....** DJ

**Friday & Saturday .....** DJ & Live Performance



*Fine Dining At Home*  
**Our Menu**

At the Terrace, we offer a wide variety menu for lunch and dinner. Following is our in dining menu for lunch and dinner. We also offer takeout; which is conveniently chosen from the same menu.

SEE FULL MENU



### *Set Menu For Groups*

#### Hot & Cold Mezza

Hummos, Mutabal, Labneh, Jibneh, Warak Enab, Tabbooleh, Mauhammara, Basterma, Fattoush, Pickles, Olive, Kibbeh Nayyeh, Falafel, Meat Borek

#### Entrées

Cheese Borek with Combination Kabob.

#### Beverages

Soft Drinks and Coffee

**\$35-50**

Per Person



# HARD ROCK LIVE

Wait Until You See Who's Performing

Hard Rock Live is your destination for the best in live entertainment. Jammin' concerts, hilarious comedy shows, dance performances—we host it all in our state-of-the-art concert and event venues. Hard Rock Live packs the houses from Las Vegas and Atlantic City to Hollywood, FL and Orlando with locally and internationally known artists. To find out who is performing at a Live location nearest you, just check out our Event Calendar.

In addition to concerts, our Live venues are the perfect option to host large events. Each venue features the latest in sound, lighting, and audio technology, as well as ample seating capacity, making them ideal for everything from corporate functions and birthday parties to bar/bat mitzvahs and wedding receptions. No matter what the celebration, our staff ensures your special event is an exceptional experience worthy of an encore.



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Legendary Burger and Fries at Hard Rock Cafe

This is our standard brand menu. Items may vary. To view prices and availability, [find your local cafe page](#).

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<https://www.hardrockcafe.com/menu.aspx>





LIVE MUSIC

FUN STARTS HERE -

PRIVATE EVENTS -

PARTY PACKAGES

MENU

BUY TICKETS

## Bobby McKey's Local Live Music

BUY TICKETS

### Buy Tickets

*Bobby McKey's! Where Music Comes to Life!*

We are excited to safely welcome you back into our venue to enjoy live music! Start planning your night out below.

We will only be seating one party at each table, so bookings must be made together as an entire table, opposed to single seats. We would be happy to place your group at a table nearby (6 feet safely) other bookings that you would like to be beside, if availability allows. Please just indicate your request in the comment section.

- The Bobby McKey's Team

VIEW FLOORPLANS



LIVE MUSIC

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PARTY PACKAGES

MENU

BUY TICKETS

New Menu\_4\_06172021.pdf 2 / 2 100%

**Chivas Sour 11**  
Chivas 12ys, sweet & sour

**Hurricane 11**  
Bacardi rum, Myers Rum, passion fruit puree,  
oj, simple syrup, grenadine

**"ZIN" Cooler 10**  
White Zinfandel, Peach Schnapps, 7-up

**Flying Dog - The Truth, Stella, Raging  
Bitch**  
Leinenkugel - Summer Shandy  
Bottle 6.50 | Bucket (6) \$35

**Blue Moon, Budweiser, Bud Light,  
Coors Light, Michelob Ultra, Miller  
Lite, Yuengling Lager**  
Bottle 5.75 | Bucket (6) \$30

### QUICK BITES

**Mckey's Wings (8)**  
Maryland Style, Buffalo, BBQ, or Sweet  
Heat "Gochujiang"  
\$13

**Chicken Tenders (5)**  
Served with Honey Mustard or BBQ  
\$12

**Sante Fe Egg Rolls**  
Cilantro ranch  
\$10

**Fried Mozzarella Sticks**  
Tomato-Basil  
\$9

**Bacon Cheese Fries**  
Served with bacon, scallion & sour cream  
\$9

**Chicken Quesadilla**  
Served with sour cream, lettuce & pico de  
Gallo  
\$13

**Beef Meatball Sliders (3)**  
Homemade Meatball, Marinara Sauce,  
Provolone Cheese, Pickle  
\$13

**Beer Cheese & Pretzels**  
Guinness beer cheese, 2 large pretzels  
\$11

**Chicken Caesar salad**  
Romaine, lettuce, Caesar dressing, parmesan  
cheese, croutons, grilled chicken  
\$13

### DESSERTS

**Drunken Shortcake \$8**  
Fresh Strawberries macerated in Grand Marnier,  
mascarpone cheese, two fluff biscuits, whipped  
creme, drizzle with honey.

**Fried Oreo's (5) \$8**

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August 2021

SUN 1	MON 2	TUE 3	WED 4	THU 5	FRI 6	SAT 7
 Sunday Spotlight with Cross Atlantic  08/01/2021 Show Time: 06:00 PM <a href="#">More info</a>	 Open Mic hosted by Barbara Cloyd  08/02/2021 Show Time: 06:00 PM <a href="#">More info</a>	 CLOSED  08/03/2021 Show Time: 06:00 PM <a href="#">More info</a>	 CLOSED  08/04/2021 Show Time: 06:00 PM <a href="#">More info</a>	 Alive At The Bluebird Presents: Blue Mother Tupelo, J.P. Williams & John Mohead (VIRTUAL show)  08/05/2021 Show Time: 07:30 PM <a href="#">More info</a>	 In the Row with Emily Earle, Jordyn Shellhart & Dustin Christensen  08/06/2021 Show Time: 06:30 PM <a href="#">More info</a>	 In the Row with Stephanie Lambing, Adam Wright & Jordyn Shellhart  08/07/2021 Show Time: 06:30 PM <a href="#">More info</a>

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Tickets

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JONATHAN BUTLER

August 15 @ 7:30 pm

The Birchmere Music Hall, 3701 Mount Vernon Avenue  
Alexandria, VA 22305 United States • [Google Map](#)

\$55.00



f t y + 25

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Tickets

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COLIN HAY (Band) "I Just Don't Know What To Do With Myself"

August 17 @ 7:30 pm

The Birchmere Music Hall, 3701 Mount Vernon Avenue  
Alexandria, VA 22305 United States • [Google Map](#)

\$65.00



