

To: Coors Global Properties, Inc. (lhansen@sheridanross.com)
Subject: TRADEMARK APPLICATION NO. 77284994 - STONES - 4060KE-1027
Sent: 12/3/2007 11:09:31 PM
Sent As: ECOM110@USPTO.GOV
Attachments: [Attachment - 1](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/284994

MARK: STONES

77284994

CORRESPONDENT ADDRESS:
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SHERIDAN ROSS P.C.
1560 BROADWAY, SUITE 1200
DENVER, CO 80202

RESPOND TO THIS ACTION:
<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Coors Global Properties, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :
4060KE-1027
CORRESPONDENT E-MAIL ADDRESS:
lhansen@sheridanross.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 12/3/2007

The assigned examining attorney has reviewed the referenced application and determined the following.

Search of Office Records

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2168093 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978). TMEP §§1207.01 *et seq.*

In determining whether there is a likelihood of confusion, the examining attorney must consider all circumstances surrounding the sale of the goods. *Industrial Nucleonic Corp. v. Hinde Engineering Co.*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers and the degree of similarity between the marks and between the goods. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. If the

goods of the parties differ, it is necessary to show that they are related in some manner. *In re Mack*, 197 USPQ 755 (TTAB 1977). TMEP §§1207.01 *et seq.*

Comparison of the Marks

The examining attorney must compare the marks for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977). TMEP §§1207.01(b) *et seq.*

Additionally, when the applicant's mark is compared to a registered mark, "the points of similarity are of greater importance than the points of difference." *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37, 108 USPQ 161 (D.C. Cir.), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956). TMEP §1207.01(b).

The applicant's proposed mark is "Stones" for beer. The registrant's referenced mark is "Stone" for beers and ales. The respective marks are comprised in either whole of significant part of the term "Stone[s]." Consequently, the marks share the same over-all sound, appearance and commercial impression.

Comparison of the Goods

The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). TMEP §1207.01(a)(i).

Since the respective marks are essentially identical, the only issue before the examining attorney is whether the applicant's goods are so related to the registrant's goods that confusion as to source of origin or sponsorship is likely to occur. The examining attorney must conclude that they are so related, for it is foreseeable that customers of the applicant might encounter the registrant's respective goods and mark in the marketplace given similar channels of trade within which the identified goods travel. Specifically, it is likely that the applicant's beer and the registrant's beers and ales will be marketed, advertised and ultimately sold or offered in the same or similar fashions.

Confusion as to source of origin or sponsorship is extremely likely if the applicant's proposed mark is allowed to register. Registration is therefore refused by the examining attorney.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Drawing Does Not Match Specimen

The mark depicted on the drawing disagrees with the mark on the specimen. In this case, the drawing displays the mark as "STONES," while the specimen shows the mark as "STONES" with a " ' " before the word "Stones."

The mark shown on the drawing must be a substantially exact representation of the mark as used on or in connection with the goods and/or services, as shown by the specimen. 37 C.F.R. §2.51(a); *see* C.F.R. §2.72(a)(1).

Therefore, applicant must submit one of the following:

- (1) A new drawing of the mark that agrees with the mark on the specimen but does not materially alter the original mark; 37 C.F.R. §2.72(a); TMEP §§807.14 *et seq.*; or
- (2) A substitute specimen that shows use of the mark that appears on the drawing, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**The substitute specimen was in use in commerce at least as early as the filing date of the application.**" 37 C.F.R. §2.59(a); TMEP §904.05. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c).

If applicant cannot satisfy the above requirements, applicant may amend the Section 1(a) filing basis (use in commerce) to Section 1(b) (intent to use basis), for which no specimen is required. However, should applicant amend the basis to Section 1(b), registration cannot be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. 15 U.S.C. §1051(c); 37 C.F.R. §§2.76, 2.88; TMEP Chapter 1100.

In order to amend to Section 1(b), applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §2.20: "**Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the filing date of the application.**" 15 U.S.C. §1051(b); 37 C.F.R. §§2.34(a)(2), 2.35(b)(1); TMEP §806.01(b).

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

Giancarlo Castro
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RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

TYPED DRAWING

Serial Number

75083606

Status

SECTION 8 & 15-ACCEPTED AND ACKNOWLEDGED

Word Mark

STONE

Standard Character Mark

No

Registration Number

2168093

Date Registered

1998/06/23

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

STONE BREWING CO. CORPORATION CALIFORNIA 155 Mata Way, Suite 104 San Marcos CALIFORNIA 92069

Goods/Services

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: beers and ales. First Use: 1998/01/06. First Use In Commerce: 1998/01/06.

Filing Date

1996/04/04

Examining Attorney

KING, LINDA

Attorney of Record

Neil K. Nydegger