

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

**U.S. Application Serial No.** 79289398

**Mark:** ORTHODOX

**Correspondence Address:**

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RUSSIAN FED.

**Applicant:** Limited Liability Company "Georgievsky F ETC.

**Reference/Docket No.** N/A

**Correspondence Email Address:**

## NONFINAL OFFICE ACTION

Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

**International Registration No.** 1507435

### Notice of Provisional Full Refusal

**Deadline for responding.** The USPTO must receive applicant's response **within six months of the "date on which the notification was sent to WIPO (mailing date)"** located on the WIPO cover letter, or the U.S. application will be abandoned. To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database, select "US Serial, Registration, or Reference No.," enter the U.S. application serial number in the blank text box, and click on "Documents." The mailing date used to calculate the response deadline is the "Create/Mail Date" of the "1st Refusal Note."

Respond to this Office action using the USPTO's Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

**Discussion of provisional full refusal.** This is a provisional full refusal of the request for extension of protection to the United States of the international registration, known in the United States as a U.S. application based on Trademark Act Section 66(a). *See* 15 U.S.C. §§1141f(a), 1141h(c).

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

#### SUMMARY OF ISSUES

- Section 2(d) Refusal– Likelihood of Confusion
- Request for Information - Required
- Applicant's Email Required
- U.S. Licensed Attorney Required

#### SECTION 2(D) REFUSAL: LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4701239. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the '*du Pont* factors'). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, "not all of the *DuPont* factors are relevant or of similar weight in every case." *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."); TMEP §1207.01.

Applicant seeks registration of the mark “ORTHODOX” in standard characters for “Alcoholic beverages, except beer; vodka,” in International Class 33.

Similarly, registrant owns a registration for the mark “UNORTHODOX” in standard characters for “Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy,” in International Class 32.

### Comparison of Marks

Marks are compared in their entirety for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772* 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

When comparing marks, “[t]he proper test is not a side-by-side comparison of the marks, but instead whether the marks are sufficiently similar in terms of their commercial impression such that [consumers] who encounter the marks would be likely to assume a connection between the parties.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 1373, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (quoting *Coach Servs., Inc. v. Triumph Learning LLC* 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re St. Helena Hosp.*, 774 F.3d 747, 750-51, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014); *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 1007, 169 USPQ 39, 40 (C.C.P.A. 1971)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

In this case, applicant’s mark, ORTHODOX, is confusingly similar to registrant’s mark, UNORTHODOX, in appearance, sound, and commercial impression. In particular, the only difference between the marks is the registrant’s placement of the lettering, “UN”: inserted before the term, “ORTHODOX.” Accordingly, because the marks share the identical term, ORTHODOX, a consumer would likely believe the marks are related and refer to the same source.

The applicant’s use of the term, “ORTHODOX,” without the inclusion of the lettering, “UN” does not render the marks dissimilar for purposes of Section 2(d). In particular, marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat’l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986) *aff’d sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). Here, the marks in the application and registration are highly similar because they share use of the identical wording ORTHODOX.

Accordingly, upon comparison, the marks are confusingly similar because they share common use of the identical term, ORTHODOX thereby creating an overall similar commercial impression. Here, the average consumer would retain a general impression of the mark and would believe the goods come from the same source.

### Comparison of Goods and/or Services

The goods and/or services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC* 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC* 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

In this instance, the identification in the registration and application identify highly related alcoholic beverages. In particular applicant’s “alcoholic beverages, except beer; [and] vodka” and registrant’s “beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter [and] shandy” are highly related for purposes of a Section 2(d) analysis.

Even though the application identification does not include “beer,” the registration goods and identification goods are still related. Since material obtained from the Internet is generally accepted as competent evidence, see the attached website excerpts from Bent, Two Brothers and Round Barn captured on September 3, 2020. See *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 966, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007); *In re Reed Elsevier Props., Inc.*, 482 F.3d 1376, 1380, 82 USPQ2d 1378, 1381 (Fed. Cir. 2007); TBMP §1208.03; TMEP §710.01(b). These website screenshots establish that the same entity commonly manufactures, produces, or provides the relevant spirits (e.g., vodka and gin) and beer and markets these goods under the same mark. Thus, applicant’s and registrant’s goods are considered related for likelihood of confusion purposes. See, e.g., *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

The presumption under Trademark Act Section 7(b) is that the registrant is the owner of the mark and that their use of the mark extends to all goods and/or services identified in the registration. 15 U.S.C. §1057(b). In the absence of limitations as to channels of trade or classes of purchasers in the

goods and/or services in the registration, the presumption is that the goods and/or services move in all trade channels normal for such goods and/or services and are available to all potential classes of ordinary consumers of such goods and/or services. *See In re I-Coat Co.*, 126 USPQ2d 1730, 1737 (TTAB 2018); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); TMEP §1207.01(a)(iii).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Therefore, because the marks are confusingly similar and the goods are closely related, purchasers encountering these services are likely to believe, mistakenly, that they emanate from a common source. Accordingly, there is a likelihood of confusion, and registration is refused pursuant to Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal, applicant must also respond to the requirements set forth below.

#### **REQUEST FOR INFORMATION REQUIRED**

To permit proper examination of the application, applicant must submit additional product information about applicant's goods. *See* 37 C.F.R. §2.61(b); TMEP §814. The requested product information should include fact sheets, instruction manuals, and/or advertisements. If these materials are unavailable, applicant should submit similar documentation for goods of the same type, explaining how its own product will differ. If the goods feature new technology and no competing goods are available, applicant must provide a detailed description of the goods.

Factual information about the goods must clearly indicate how they operate, their salient features, and their prospective customers and channels of trade. Conclusory statements regarding the goods will not satisfy this requirement.

Failure to comply with a request for information is grounds for refusing registration. *In re Harley*, 119 USPQ2d 1755, 1757-58 (TTAB 2016); TMEP §814. Merely stating that information about the goods is available on applicant's website is an insufficient response and will not make the relevant information of record. *See In re Planalytics, Inc.*, 70 USPQ2d 1453, 1457-58 (TTAB 2004).

#### **APPLICANT EMAIL REQUIRED**

Applicant must provide applicant's email address, which is a requirement for a complete application. *See* 37 C.F.R. §2.32(a)(2); *Mandatory Electronic Filing & Specimen Requirements*, Examination Guide 1-20, at III.A. (Rev. Feb. 2020). Applicant's email address cannot be identical to the listed primary correspondence email address of any attorney retained to represent applicant in this application. *See* Examination Guide 1-20, at III.A.

#### **US LICENSED ATTORNEY REQUIRED**

**Applicant must be represented by a U.S.-licensed attorney at the USPTO to respond to or appeal the provisional refusal.** An applicant whose domicile is located outside of the United States or its territories is foreign-domiciled and must be represented at the USPTO by an attorney who is an active member in good standing of the bar of the highest court of a U.S. state or territory. 37 C.F.R. §§2.11(a), 11.14; *Requirement of U.S.-Licensed Attorney for Foreign-Domiciled Trademark Applicants & Registrants*, Examination Guide 4-19, at I.A. (Rev. Sept. 2019). An individual applicant's domicile is the place a person resides and intends to be the person's principal home. 37 C.F.R. §2.2(o); Examination Guide 4-19, at I.A. A juristic entity's domicile is the principal place of business; i.e., headquarters, where a juristic entity applicant's senior executives or officers ordinarily direct and control the entity's activities. 37 C.F.R. §2.2(o); Examination Guide 4-19, at I.A. Because applicant is foreign-domiciled, applicant must appoint such a U.S.-licensed attorney qualified to practice under 37 C.F.R. §11.14 as its representative before the application may proceed to registration. 37 C.F.R. §2.11(a). *See Hiring a U.S.-licensed trademark attorney* for more information.

Only a U.S.-licensed attorney can take action on an application on behalf of a foreign-domiciled applicant. 37 C.F.R. §2.11(a). Accordingly, the USPTO will not communicate further with applicant about the application beyond this Office action or permit applicant to make future submissions in this application. And applicant is not authorized to make amendments to the application.

**To appoint or designate a U.S.-licensed attorney.** To appoint an attorney, applicant should submit a completed Trademark Electronic Application System (TEAS) Change Address or Representation form. The newly-appointed attorney must submit a TEAS Response to Examining Attorney Office Action form indicating that an appointment of attorney has been made and address all other refusals or requirements in this action, if any. Alternatively, if applicant retains an attorney before filing the response, the attorney can respond to this Office action by using the appropriate TEAS response form and provide his or her attorney information in the form and sign it as applicant's attorney. *See* 37 C.F.R. §2.17(b)(1)(ii).

**How to respond.** Click to file a response to this nonfinal Office action.

/Mariessa Terrell/  
Examining Attorney  
Law Office 106  
571-272-5764  
mariessa.terrell@uspto.gov

## RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to abandon.** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. **TEAS** and **ESTTAmaintenance** or unforeseen circumstances could affect an applicant's ability to timely respond.
- Responses signed by an unauthorized party are not accepted and can **cause the application to abandon**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant. If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find contact information for the supervisor** of the office or unit listed in the signature block.

**DESIGN MARK**

**Serial Number**

86195313

**Status**

SECTION 8-ACCEPTED

**Word Mark**

UNORTHODOX

**Standard Character Mark**

Yes

**Registration Number**

4701239

**Date Registered**

2015/03/10

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Two Roads Brewing Company LLC LIMITED LIABILITY COMPANY CONNECTICUT  
1700 Stratford Ave. Stratford CONNECTICUT 06615

**Goods/Services**

Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: [Beer;  
Beer, ale and lager; Beer, ale and porter;] Beer, ale, lager, stout  
and porter; Beer, ale, lager, stout, porter, shandy [; Beers; Brewed  
malt-based alcoholic beverage in the nature of a beer]. First Use:  
2013/10/01. First Use In Commerce: 2013/10/01.

**Filing Date**

2014/02/17

**Examining Attorney**

BERNS, LEE-ANNE

**Attorney of Record**

Richard E. Skawinski

Unorthodox



MOERSON  
HOSPITALITY  
GROUP


WHOLESALE &

RELEASE CALENDAR



## 12 IBUs

## 75 IBUs



**Round Barn**  
WINERY • DISTILLERY • BREWERY

LOCATIONS

HOURS

TASTINGS

EVENTS

MT TABOR TRAILS

TROLLEY EXPERIENCE

TEACHER'S HALL PASS

Wines

Beers


PRIVATE EVENTS

ABOUT US

CONTACT US

CAREERS

SHOP ROUND BARN



MOERSCH  
HOSPITALITY  
GROUP

TABOR HILL

FREE RUN CELLARS

MOERSCH HG

WHOLESALE &



### DIVINE VODKA

DISTILLED FROM VINEYARD GRAPES

Indulge in Michigan's first ultra-premium, handcrafted vodka. Only the finest grapes are distilled in our copper pot still and bottled onsite.

AVAILABILITY	ALC BY VOLUME
750 ML Bottles	40%
BATCH NO.	PROOF
9	80



### RED SKY RUM

DISTILLED FROM BLACKSTRAP MOLASSES

Our winter travels led to this light and tropical silver rum, perfect for any of your specialty drinks. Small batch distillation ensures it's smooth and flavorful.

AVAILABILITY	ALC BY VOLUME
750 ML Bottles	40%
BATCH NO.	PROOF
9	80





# Year-Round Beers

If you love true independent craft beer, you're going to feel warm and fizzy inside.

→







## Modern Gin

Using our original artisan blend of 11 different botanicals - including Citra hops and Tellicherry peppercorns - Two Brothers Artisan Spirits Gin offers a modern spin on a classic. Extremely smooth with orange, grapefruit and mild juniper, but with a bit of a pepper bite, this gin brings a new twist to your favorite cocktail.

### TASTE EXPERIENCE:

Smooth & dry, Robust notes with slight pine, Complex black pepper finish

### INGREDIENTS:

Specialty Italian junipers, Citra hops, Tellicherry peppercorns

### HOW TO ENJOY:

In your favorite cocktail, Paired with your favorite craft beer, such as Two Brothers Twenty-Plus Pilsner Lager, On the rocks with a splash of tonic

### DISTILLER NOTES:

Our artisan botanical blend is added to a botanical basket at the top of the pot while vapors from our distilled vodka pass through. It is then properly rested and aged before proofing and bottling.



## Citruscello Liqueur

Our spin on the classic Limoncello takes that signature citrus profile up a few notches. Rather than simply using lemon zest for flavor, our Citruscello contains orange, grapefruit, tangerine and lemon creating an extra-bold citrus character.

### TASTE EXPERIENCE:

Sweet, slightly tart and pleasantly refreshing this complex liqueur is best enjoyed chilled at any time of day, but also makes for a great post-meal choice.

### INGREDIENTS:

Orange, tangerine, grapefruit and lemon zest.

### HOW TO ENJOY:

Enjoy chilled in a shot or cordial glass, before or after-meal drink or paired with a citrus forward beer, such as Citra United IPA.

### DISTILLER NOTES:

In order to create a bold, citrus profile, we crafted a complex liqueur using not only lemon, but orange, grapefruit and tangerine.

## Gin

### Gunner Ghost

Navy-Strength Gin Hand-Crafted from a Modern Mix of Botanicals



**ABV:** 57%

**PROOF:** 114

**AVAILABILITY:** 750ml at Retail; 375ml bottles at the Brewstillery

**LIST OF BOTANICALS:** Juniper, Apricot Kernel, Angelica Root, Coriander, Grains of Paradise, Lavender, Rose Hips, Vanilla, Grapefruit Peel, Lemon Grass, Cascade Hops and three more you'd need to make us walk the plank for.

Gunner Ghost breaks all the gin conventions. A modern mix of botanicals meshes with the traditional juniper berry to create a floral aroma with intense flavor that begins earthy and herbal with a citrus finish.

Back in the day, Naval vessels carried booze in wooden barrels. If that barrel broke during battle, the booze could soak the gunpowder and render it unusable. But gunpowder soaked in 114 proof booze still lights. (Trust us; don't try it yourself) Once this was determined, no booze under 114 proof was allowed on naval vessels.

[FIND GUNNER GHOST](#)





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## Year-Round

[Nordic Blonde](#) | [Enuff](#) | [Nicked](#)

Use our [Beer and Spirits Finder](#) to find Bent Brewstillery products.



### Nordic Blonde

Amber Blonde Ale

**ABV:** 5.7%

**IBU:** 27

**COLOR:** Amber Blonde

**AVAILABILITY:** Taproom, Draft, and 1 Pint Pounders

This is a clean, crisp, delicately balanced beer with subdued sweetness and a pleasantly refreshing tang in the finish. Because of the low hop bitterness and dry, light body, this beer is easily mistaken for a lager or light beer. These qualities make it a great anytime beverage. This beer is brewed using our local pure water without any additives.

This beer was our very first recipe. It was our introduction into craft beer. We brewed what we wanted to drink, and this quickly became a favorite among our friends and family who weren't ready for the more brutal styles on the Bent Brewstillery beer menu. This beer is best when fresh.



### ENUFF

India Pale Ale

**ABV:** 6.5%

**IBU:** 65

**COLOR:** Golden

**AVAILABILITY:** Taproom, Draft and 1 Pint Pounders

A classic London-style, export-strength IPA loaded with specialty malt and buckets of hops, notes of tangerine, grapefruit marmalade, and green tea finishing crisp and thoroughly hoptastic. Too much? Just Enuff !

### Nicked