

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

U.S. Application Serial No. 79351210

Mark:

Correspondence Address:

*AJ PARK
Aon Centre,
Level 22,
Wellington 6011
NEW ZEALAND*

Applicant: DELEGAT LIMITED

Reference/Docket No. N/A

Correspondence Email Address:

**NONFINAL OFFICE ACTION
Notice of Provisional Full Refusal**

International Registration No. 1686688

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 (see <https://www.uspto.gov/trademarks-application-process/abandoned-applications> for information on abandonment). To confirm the mailing date, go to the USPTO's Trademark Status and Document Retrieval (TSDR) database at <https://tsdr.uspto.gov/>, 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 "IB-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.

SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

FUNCTIONAL ELEMENTS OF DRAWING PAGE

The drawing of applicant's applied-for three-dimensional mark is not acceptable because it includes functional elements depicted in solid lines rather than broken or dotted lines. *See* TMEP §1202.02(c)(i)(A). Elements of a mark that are functional are required to be shown in broken or dotted lines. *See* 37 C.F.R. §2.52(b)(4); *In re Water Gremlin Co.*, 635 F.2d 841, 844, 208 USPQ 89, 91 (C.C.P.A. 1980); *In re Heatcon, Inc.*, 116 USPQ2d 1366, 1379-80 (TTAB 2015); TMEP §1202.02(c)(i)(A).

“Functional matter cannot be protected as a trademark.” TMEP §1202.02(a)(iii)(A); *see* 15 U.S.C. §§1052(e)(5), (f), 1091(c), 1064(3), 1115(b)(8). A feature is functional if it is “essential to the use or purpose of the [product]” or “it affects the cost or quality of the [product].” *TrafFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 32, 58 USPQ2d 1001, 1006 (2001) (quoting *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165, 34 USPQ2d 1161, 1163-64 (1995)); *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10, 214 USPQ 1, 4 n.10 (1982); TMEP §1202.02(a)(iii)(A).

In the present case, the following elements are functional: the shape and outline of the bottle, as well as the screw cap at the top. The attached evidence from applicant's prior registration, as well as third party registrations, shows that these elements are functional because these elements are conducive to the working and use of the bottle. *See In re Morton-Norwich Prods., Inc.*, 671 F.2d 1332, 1340-

41, 213 USPQ 9, 15-16 (C.C.P.A. 1982); TMEP §1202.02(a)(v).

Therefore, applicant must provide (1) a new drawing of the mark showing the functional element(s) in broken or dotted lines, and (2) an amended mark description that references the matter in broken or dotted lines and indicates such matter is not claimed as part of the mark. *See* TMEP §1202.02(c)(i)(A),(c)(ii). Applicant must provide the amended drawing regardless of whether the remaining portions of the mark are determined to be registrable. TMEP §1202.02(c)(i)(A).

The following mark description format is suggested, if accurate:

The colors blue, green, gold, and white are claimed as a feature of the mark.

The mark consists of a three-dimensional configuration of a green bottle with a blue cap with gold fine wavy lines on the bottom and has a white label on the body of the bottle with a blue oval in the top center with gold surrounding it and gold wavy lines on either side of it and a gold horizontal line below it. Below the white label is a horizontal blue line followed by a small white horizontal line. The dotted lines depicting the shape of the wine bottle and screw cap indicate placement of the mark on the goods and are not part of the mark

See TMEP §1202.02(c)(ii).

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

Email address 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); TMEP §803.05(b). This email address cannot be identical to the primary correspondence email address of a U.S.-licensed attorney retained to represent applicant in this application. *See* TMEP §803.05(b).

Applicant is required to be represented by a U.S.-licensed attorney to respond to or appeal the provisional refusal because applicant's domicile is located outside of the United States and applicant does not appear to be represented by a qualified U.S. attorney. 37 C.F.R. §2.11(a); TMEP §601.01(a). An applicant whose domicile is located outside of the United States or its territories must be represented 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); TMEP §§601, 601.01(a). In this case, applicant's domicile is identified in the application as outside of the United States or its territories. For more information, see the U.S. Counsel webpage at <https://www.uspto.gov/trademark/laws-regulations/trademark-rule-requires-foreign-applicants-and-registrants-have-us> and Hiring a U.S.-licensed trademark attorney webpage at <https://www.uspto.gov/trademarks-getting-started/why-hire-private-trademark-attorney>.

To appoint a U.S.-licensed attorney in this application, applicant should submit a completed Trademark Electronic Application System (TEAS) Change Address or Representation form at <https://teas.uspto.gov/ccr/car>. The newly-appointed attorney must submit a TEAS Response to Examining Attorney Office Action form at <https://teas.uspto.gov/office/roa/> indicating that an appointment of attorney has been made and address all other refusals or requirements in this action. 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); TMEP §604.01.

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

If the applicant has any questions or needs assistance regarding this action, please telephone the assigned examining attorney.

/Frank Lattuca/
Frank Lattuca
Trademark Examining Attorney
Law Office 109
(571) 270-1518
Frank.Lattuca@USPTO.GOV

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to abandon.** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance 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.

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/Frank Lattuca/
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- If needed, **find** contact information for the supervisor of the office or unit listed in the signature block.

Print: Fri Jun 09 2023

79159475

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated
OYSTER BAY

Translation

Goods/Services

- IC 033. US 047 049.G & S: Wine [; wine based beverages]

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code
060104 190903 191101 200310 260321 261701 261702 261705

Serial Number
79159475

Filing Date
20141006

Current Filing Basis
66A

Original Filing Basis
66A

Publication for Opposition Date
20151110

Registration Number
4890858

Date Registered
20160126

Owner
(REGISTRANT) DELEGAT LIMITED COMPANY NEW ZEALAND Level 31, PwC Tower, 15 Customs Street West, Auckland NEW ZEALAND

Priority Date
20140930

Disclaimer Statement

Description of Mark

The color(s) blue, gold, green, gray, and white is/are claimed as a feature of the mark. The mark consists of a three-dimensional configuration of a green bottle with a blue cap with gold fine wavy lines on the bottom and has a white label on the body of the bottle with a blue oval in the top center with gold surrounding it and gold wavy lines on either side of it and a gold horizontal line below it. Below the line is the design of a mountainous landscape above the wording "OYSTER BAY" with a horizontal line below the wording all in blue. The dotted lines depicting the shape of the wine bottle and screw cap indicate placement of the mark on the goods and are not part of the mark.

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

Attorney of Record
Margaret C. McHugh

Print: Fri Jun 09 2023

79316171

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated

PERE VENTURA TRESOR GRAN RESERVA CAVA BRUT NATURE DESDE 1992 FAMILY WINE
ESTATES METODE TRADICIONAL

Translation

The English translation of "TRESOR," "GRAND RESERVA," "DESDE" and "METODE TRADICIONAL" in
the mark is "TREASURE," "GRAND RESERVE," "SINCE" and "TRADITIONAL METHOD".

Goods/Services

- IC 033. US 047 049.G & S: Sparkling wine produced in the Cava region of Spain in accordance with
specific Gran Reserva standards

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

021115 190903 260117 260118 260715 260721

Serial Number

79316171

Filing Date

20210614

Current Filing Basis

66A

Original Filing Basis

66A

Publication for Opposition Date

20221122

Registration Number

6970228

Date Registered

20230207

Owner

(REGISTRANT) Pere Ventura Vendrell INDIVIDUAL SPAIN Ctra. de Vilafranca, km 0,4 E-08770 Sant

Sadurni d'Anoia (Barcelona) SPAIN

Priority Date
20201222

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GRAN RESERVA," "CAVA," "BRUT NATURE," "DESDE 1992," "FAMILY WINE ESTATES" AND "METODE TRADICIONAL" APART FROM THE MARK AS SHOWN

Description of Mark

The color(s) green, gold, red, white, and black is/are claimed as a feature of the mark. The mark consists of a three-dimensional configuration of a green wine bottle with two labels: one at the base and a second at the foil on top. The black large label at the base carries the gold wording "PERE VENTURA" above the white "TRESOR" and gold "GRAND RESERVA." At the lower left corner, the gold wording "CAVA" appears. At the lower right corner, the gold wording "BRUT NATURE" appears. Above "PERE VENTURA", a red diamond appears between the gold wording "DESDE" on the left and gold numbering "1992" on the right. Above the large label at the base, a small gold label appears comprised of a diamond with a hand print above the gold wording "PERE VENTURA FAMILY WINE ESTATES". The foil at the top is black and gold and is comprised of a checkered diamond pattern. At the base of the foil, two black concentric circles outlined in gold appear. At the center of the circles is a red diamond. In the outer concentric circle, the gold wording "PERE VENTURA" appears in the top of the circle and the gold wording "METODE TRADICIONAL" appears in the bottom of the circle. The gold wording "PERE VENTURA" wraps around the neck of the foil capsule. The broken lines depicting the bottle shape, cap, and foil indicate placement of the mark on the goods and are not part of the mark. The white background is not claimed as a feature of the mark.

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

Attorney of Record
J. Scott Gerien

Print: Fri Jun 09 2023

79320458

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated
503 BORN ROSÉ BARCELONA

Translation

Goods/Services

- IC 033. US 047 049.G & S: Wines

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code
190903

Serial Number
79320458

Filing Date
20210806

Current Filing Basis
66A

Original Filing Basis
66A

Publication for Opposition Date
20230117

Registration Number
7014549

Date Registered
20230404

Owner
(REGISTRANT) Born Brands BCN, S.L. SOCIEDAD LIMITADA SPAIN Santjoanistes 31 E-08006
BARCELONA SPAIN

Priority Date
20210409

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ROSÉ" AND "BARCELONA" APART FROM THE MARK AS SHOWN

Description of Mark

The color(s) black and clear is/are claimed as a feature of the mark. The mark consists of a three-dimensional product packaging of a clear wine bottle and stopper-type cap featuring the text "503" in large black font above the words "BORN ROSÉ" in smaller black font followed by "BARCELONA" in even smaller black font. Along the lower portion of the bottle appears a design consisting of solid black lines connected by black dots forming a geographic pattern of connected four-sided figures. A clear letter "A" is at the bottom of the bottle embossed on the glass. The text "503" also appears in black on the top of the clear, stopper-type cap. The color pink merely indicates the color of the goods and is not claimed as a feature of the mark. The matter depicted by the broken lines indicates placement of the mark and is not claimed as part of the mark.

Type of Mark

TRADEMARK

Register

PRINCIPAL

Live Dead Indicator

LIVE

Attorney of Record

Alexander Lazouski

Print: Fri Jun 09 2023

79198802

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS



Mark Punctuated

CRAFT DISTILLED BATCH NO 001 RECIPE NO 023 CRAFT DISTILLED LIVIKO EST 1898
CRAFTER'S CRAFT DISTILLED A SUPERIOR GIN MADE FROM THE FINEST SELECTED
BOTANICAL INGREDIENTS FOR AN UNRIVALED SOPHISTICATED TASTE

Translation

Goods/Services

- IC 033. US 047 049.G & S: Gin

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Code

030102 050310 051502 100301 110315 190903 191101 240102 241102 250306

Serial Number

79198802

Filing Date

20160721

Current Filing Basis

66A

Original Filing Basis

66A

Publication for Opposition Date

20180220

Registration Number

5532240

Date Registered

20180807

Owner

(REGISTRANT) AS Liviko aktsiaselts (a.s.) ESTONIA Masina 11 EE-10144 Tallinn ESTONIA

Priority Date

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRAFT DISTILLED" "BATCH NO 001" "RECIPE NO 023" AND "EST 1898" APART FROM THE MARK AS SHOWN

Description of Mark

The color(s) blue, dark blue, white, gray, red, black and brown is/are claimed as a feature of the mark. The mark consists of a three dimensional configuration of product packaging in the form of a solid blue bottle with a short neck and brown wood cap, the main portion of the body of the bottle features a repeating dark blue stylized foliage design that extends from just above the curve of the bottom of the bottle to just below the portion of the bottle where the sides start to curve upward; a white label extending from the round label to the top of the cap, with the wording "CRAFT DISTILLED" in red, "BATCH No" in black, and "001" in red; a round label on the neck of the bottle that is gray around the outside, with a white inner border and a solid blue center containing a gray crown, the wording "RECIPE No" in white, the numbers "023" in white, and the wording "CRAFT DISTILLED" in white; a white label around the upper half of the bottle that contains the wording "LIVIKO" in blue, a blue and white shield divided into four portions containing a blue crown on the white background below an ornamental stripe consisting of white and blue vertical lines in the upper left portion, a white wine glass on the blue background in the upper right portion, a lion standing on two legs drawn in white line on the blue background in the lower left portion and two olive tree branches with foliage in blue on the white background below an ornamental stripe consisting of white and blue vertical lines in the lower right portion, and the wording "EST. 1898" in blue above the wording "CRAFTER'S" in blue with gray shadowing; below the white label is the wording "CRAFT DISTILLED" in white above "A SUPERIOR GIN MADE FROM THE FINEST SELECTED BOTANICAL INGREDIENTS FOR AN UNRIVALED SOPHISTICATED TASTE" in white; the broken lines outlining the bottle and cap are not claimed as a part of the mark and serve only to show the placement of the mark.

Type of Mark
TRADEMARK

Register
PRINCIPAL

Live Dead Indicator
LIVE

Attorney of Record
Bruce L. Adams