

Brewing Industry Insight - How to register a trademark for beer that is similar to a trademark for another alcoholic beverage

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Although beer and other alcoholic beverages are generally considered to be closely related for likelihood of confusion purposes, there are strategies for simultaneously registering similar trademarks for those products.

Decision Refusing Registration



Alaskan Brewing & Bottling Co. filed an intent to use application to register HUSKY for “beer, ale and lager” even though KPO Marketing Company Limited had previously obtained several registrations of HUSKY for “vodka.” The application and one of the registrations were both for this mark in standard characters, meaning that they could appear in identical forms of display. The Examiner refused registration, and the brewer appealed to the Trademark Trial and Appeal Board (TTAB).

The TTAB affirmed the refusal. It stated that the marks were identical, denoting a powerful sled dog. The mark HUSKY was arbitrary as applied to vodka, so was said to be entitled to a wider scope of protection than a less distinctive, weaker, suggestive or descriptive mark.

The TTAB acknowledged that there is no per se rule that all alcoholic beverages are related. But it noted that in recent years the traditional line of demarcation between brewers and distillers no longer existed. “Beer” could encompass craft beers, and “vodka” could encompass

craft vodka, and the evidence of websites and third-party registrations demonstrated that such goods may emanate from the same source.

The applicant contended that the regulations of most states mandated the sale of beer and vodka be in non-overlapping trade channels to different consumers. This argument was unavailing because neither the application nor the cited registration contained any limitation on sales outlets, so they were assumed to be offered in all channels of trade. Further, the record showed a growing trend for craft brewers and distillers to sell products directly to consumers in their own tasting rooms, stores and restaurants.

Finally, neither the application nor the registration limited conditions of sale, so the TTAB presumed that the parties sold their products at all price points to the general public, including at lower prices to unsophisticated purchasers.

In re Alaskan Brewing & Bottling Co., Application No. 87142867 (T.T.A.B. September 25, 2018). After this decision, the Applicant abandoned this application.

How to Avoid Refusal

The *Alaskan Brewing* decision suggests steps that, if taken, might have had a different result when seeking to register a beer trademark that was previously registered for another alcoholic beverage:

1. Apply to register the beer trademark in a distinctive logo form of display that differentiates it from the registered mark.
2. If the registered mark is in standard characters, include another word in the logo, such as “ALASKAN” to make the marks, and the goods to which they relate, distinguishable on their face.
3. If appropriate, include in your beer application limitations as to
 - the channels of trade, such as “sold in stores not selling distilled spirits.”
 - the price, such as “at premium prices.”
 - the customers, such as “intended for sophisticated customers.”

If the prior registration does not contain any such limitations, your application may nevertheless be rejected unless you contact the registrant and negotiate a consent agreement in which limitations are mutually agreed. Also, the registrations sometimes must be amended to reflect the terms of the consent.