

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86365318
LAW OFFICE ASSIGNED	LAW OFFICE 113
MARK SECTION	
MARK	http://tsdr.uspto.gov/img/86365318/large
LITERAL ELEMENT	VICKERS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ARGUMENT(S)	
<p>The mark is presently refused registration on the basis that it is primarily merely a surname. Applicant respectfully disagrees.</p> <p>With respect to the factors that the Office relies upon, Applicant respectfully disagrees that factors 1, 3, and 4 weigh in favor of finding the mark to be primarily merely a surname. With respect to factor (1), the surname of Vickers is certainly rare (see the Census data cited by the Office). Twenty-two thousand instances in a population of over 315 million is rare. That amounts to only 1 individual in over 14,000 having that last name. The surname is rare, and this weighs in favor of finding that it is not primarily merely a surname.</p> <p>With respect to item (4), Applicant notes that the various surnames relied upon for showing that "--ICKERS" and "VICK--" connote a surname are also quite rare such that consumers would not necessarily recognize these phonetic components as indicating surnames.</p> <p>Most importantly, the Office overlooks the nature of the distilled spirit industry when concluding that, per factor (3), the term VICKERS does not have a recognized meaning other than as a surname. The primary significance of a surname used in the distilled spirits industry is as a source identifier. This is simply the nature of the industry. There are so many distilled spirits that bear surnames, that consumers appreciate that marks sounding like surnames serve to identify a distinctive source over distilled spirits bearing other names.</p> <p>In the channels of trade of distilled spirits, one encounters a multitude of surnames, and quickly comes to appreciate that surname's serve as source identifiers in this industry. A few names can serve as examples, and include: (1) examples of bourbon distilled spirit surnames – Booker (Booker's Bourbon), Baker (Baker's Bourbon), Hayden (Basil Hayden's), Russel (Russel's Reserve), Beam (Jim Beam), Craig (Elijah Craig), Williams (Evan Williams), (2) examples for gin – Barton (Barton London Extra Dry), Booth (Booth's London Dry), Burnett (Burnett's London Dry), Fleischmann (Fleischmann's Extra Dry), Glenmore (Glenmore London Dry), McCormick (McCormick's Dry), and Hendrick (Hendrick's Gin).</p> <p>In the world of distilled spirits, consumers have come to expect surnames functioning as source identifiers, and distilled spirit drinkers are discerning in the drinks they select such that they are likely to know with whom they are dealing. Thus, a surname does not prevent a consumer from understanding that it is a source that is being identified by the use of the surname. Surnames are so ubiquitous in this industry that their recognized meaning is that they are source identifiers.</p> <p>As to factor (2), the fact that the surname relates to two historical brothers as opposed to a single historical individual should not frustrate the application of the general rule that reference to a single historical individual weighs against the mark being primarily merely a surname. Two historical brothers are no different than one historical individual, and the historical achievements of the Vickers brothers are significant (having established a gin brand over 100 years ago that is still sold today), and "Vickers" does not relate to "numerous individuals with varying degrees of historical significance. See In re Theimo LabSystems, 85 USPQ 2d 1785. See attached.</p> <p>Reconsideration is respectfully requested.</p>	

EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_23249982-20150421134917930909 . 2015-04-21 Attachment for Response re VICKERS brothers.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT16\IMAGEOUT16\863\653\86365318\xml5\ROA0002.JPG
DESCRIPTION OF EVIDENCE FILE	Printout of webpage describing significance of Vickers brothers contributions to production of gin
SIGNATURE SECTION	
RESPONSE SIGNATURE	/marklweber/
SIGNATORY'S NAME	Mark L. Weber
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	330-376-1242
DATE SIGNED	04/21/2015
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Apr 21 14:18:43 EDT 2015
TEAS STAMP	USPTO/ROA-XX.XXX.XX.X-201 50421141843125888-8636531 8-5305573bd434e4171b86958 58d15524748479d7f667f4a07 492a82708fa6bd13de-N/A-N/ A-20150421141543277561

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **86365318** VICKERS(Standard Characters, see <http://tsdr.uspto.gov/img/86365318/large>) has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The mark is presently refused registration on the basis that it is primarily merely a surname. Applicant respectfully disagrees.

With respect to the factors that the Office relies upon, Applicant respectfully disagrees that factors 1, 3, and 4 weigh in favor of finding the mark to be primarily merely a surname. With respect to factor (1), the surname of Vickers is certainly rare (see the Census data cited by the Office). Twenty-two thousand instances in a population of over 315 million is rare. That amounts to only 1 individual in over 14,000 having that last name. The surname is rare, and this weighs in favor of finding that it is not primarily merely a surname.

With respect to item (4), Applicant notes that the various surnames relied upon for showing that "--ICKERS" and "VICK--" connote a surname are also quite rare such that consumers would not necessarily recognize these phonetic components as indicating surnames.

Most importantly, the Office overlooks the nature of the distilled spirit industry when concluding that, per factor (3), the term VICKERS does not have a recognized meaning other than as a surname. The primary significance of a surname used in the distilled spirits industry is as a source identifier. This is simply the nature of the industry. There are so many distilled spirits that bear surnames, that consumers appreciate that marks

sounding like surnames serve to identify a distinctive source over distilled spirits bearing other names.

In the channels of trade of distilled spirits, one encounters a multitude of surnames, and quickly comes to appreciate that surname's serve as source identifiers in this industry. A few names can serve as examples, and include: (1) examples of bourbon distilled spirit surnames – Booker (Booker's Bourbon), Baker (Baker's Bourbon), Hayden (Basil Hayden's), Russel (Russel's Reserve), Beam (Jim Beam), Craig (Elijah Craig), Williams (Evan Williams), (2) examples for gin – Barton (Barton London Extra Dry), Booth (Booth's London Dry), Burnett (Burnett's London Dry), Fleischmann (Fleischmann's Extra Dry), Glenmore (Glenmore London Dry), McCormick (McCormick's Dry), and Hendrick (Hendrick's Gin).

In the world of distilled spirits, consumers have come to expect surnames functioning as source identifiers, and distilled spirit drinkers are discerning in the drinks they select such that they are likely to know with whom they are dealing. Thus, a surname does not prevent a consumer from understanding that it is a source that is being identified by the use of the surname. Surnames are so ubiquitous in this industry that their recognized meaning is that they are source identifiers.

As to factor (2), the fact that the surname relates to two historical brothers as opposed to a single historical individual should not frustrate the application of the general rule that reference to a single historical individual weighs against the mark being primarily merely a surname. Two historical brothers are no different than one historical individual, and the historical achievements of the Vickers brothers are significant (having established a gin brand over 100 years ago that is still sold today), and "Vickers" does not relate to "numerous individuals with varying degrees of historical significance. See *In re Theimo LabSystems*, 85 USPQ 2d 1785. See attached.

Reconsideration is respectfully requested.

EVIDENCE

Evidence in the nature of Printout of webpage describing significance of Vickers brothers contributions to production of gin has been attached.

Original PDF file:

[evi_23249982-20150421134917930909_.2015-04-21_Attachment for Response re VICKERS brothers.pdf](#)

Converted PDF file(s) (1 page)

[Evidence-1](#)

SIGNATURE(S)

Response Signature

Signature: /marklweber/ Date: 04/21/2015

Signatory's Name: Mark L. Weber

Signatory's Position: Attorney of Record

Signatory's Phone Number: 330-376-1242

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86365318

Internet Transmission Date: Tue Apr 21 14:18:43 EDT 2015

TEAS Stamp: USPTO/ROA-XX.XXX.XX.X-201504211418431258

88-86365318-5305573bd434e4171b8695858d15

524748479d7f667f4a07492a82708fa6bd13de-N

/A-N/A-20150421141543277561

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Vickers

In Regency-era London, brothers John and Joseph Vickers created a drink of exceptional refinement and purity. Their distillery, J & J Vickers and Co. was first registered in 1813.

The Vickers proprietary blend of botanicals and water sourced from an underground aquifer are distilled to crystal clarity in the true London Dry Gin tradition. The result, a smoothly balanced classic with signature notes of evergreen juniper, citrus and light flora aromas. Vickers Gin is an unquestionable classic. Dressed up or down. Boldly accessorized in a cocktail. Elegantly minimalist in a martini or tonic.



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Products

Vickers Gin 700mL 37%