






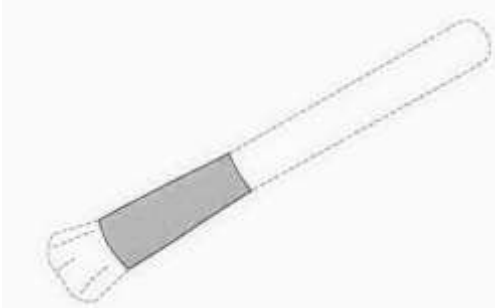
Texturmarken / tactile trade marks


| Land Country | Aktenz. Serial# | Marke Mark | Klasse Class | Anmelder Applicant | Status* | Check |
|-----------------|--------------------|---|-----------------|-------------------------------|---------|-------|
| AU | 1387333 |  <p>The mark consists of the distinctive touch and feel of a glass pump spray bottle with a plasticized surface. The pump spray bottle has a smooth surface with a weightiness, thickness and durability imparted by the glass; simultaneously the bottle has a lightness and rubber-like quality imparted by the plasticized coating.</p> | 5 | G. Pohl-Boskamp GmbH & Co. KG | E W | 2012 |
| CO | 544828 |  <p>SURFACE TEXTURE "OLD PARR" CONSISTS OF A SURFACE TEXTURE SURFACE CRACKED,</p> | 33 | DIAGEO BRANDS B.V | R | 2016 |



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|----|----------|--|-------|----------------------|-------|------|
| | | <p>QUARTERED OR RESCHEDED, CREATED FROM THE AGGLOMERATION OF IRREGULAR GEOMETRIC FORMS THAT MOST INCLUDE, PENTAGONS, ROMBOIDS AND HEXAGONES, WHOSE SIDES OR SEGMENTS OF LINE MEANS BETWEEN 3 AND 6 MILLIMETERS OF LENGTH, BETWEEN 0.08 AND 0.5 MM THRESHOLD AND BETWEEN 0.1 AND 1 MM THRESHOLD. THE SIDES / LINE SEGMENTS AND THE AREAS CONTAINED WITHIN THESE LINE SEGMENTS ARE SMOOTH. THE MATERIAL IN WHICH THIS TEXTURE IS USED WILL BE AMBER COLOR GLASS AND WILL BE USED IN DIFFERENT SIZES.</p> | | | | |
| DE | 30147108 |  <p>BGH / Federal Supreme Court No I ZB 73/05</p> | 12 | DaimlerChrysler AG | E A W | 2007 |
| DE | 30160719 | <p>Das raue Gefühl von Schmirgelpapier / The rough feeling of emory paper BPatG / Federal Patent Court # 26W(pat)3/05</p> | 32 33 | Pütz-Poulalion, Marc | E A W | 2007 |

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|----|------------|--|-------|---------------------|-------|------|
| DE | 30259811** |  <p>Name UNDERBERG in Blindenschrift / in Braille</p> | 32 33 | Underberg AG | R | 2003 |
| EM | 2541621 |  | 12 | Daimler Chrysler AG | E W | 2004 |
| EM | 4 020 392 |  <p>Es handelt sich um eine Darstellung eines Kraftfahrzeugteils, die in schematischer Weise, in Form eines Sitzes, die beanspruchte Ware wiedergibt. Hierzu sind auf einer ebenen Fläche, plastisch aus dieser hervorstehend, drei Teilelemente angeordnet, welche mittels der Hände der beteiligten Verkehrskreise durch ihre Griffgestaltung haptisch wiedererkennbar auf den Hersteller des Markenprodukts hinweisen. Die zweidimensionale Darstellung der Anmeldung</p> | 12 | Daimler Chrysler AG | E A W | 2007 |

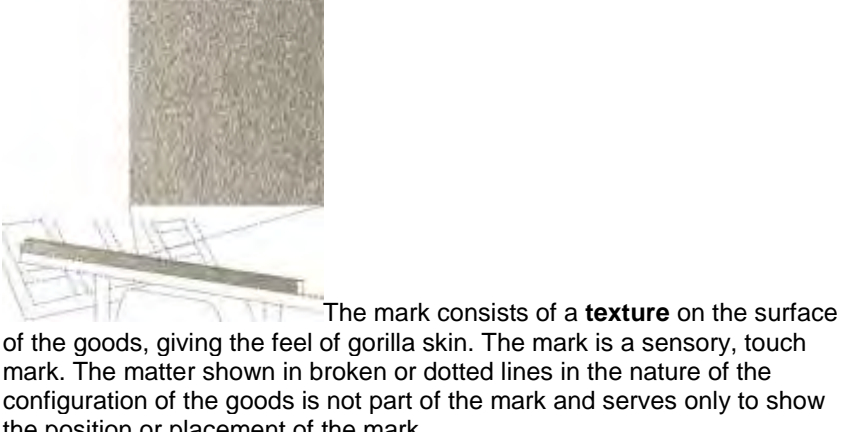

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|----|----------|--|----|--------------------|-----|------|
| | | <p>verdeutlicht die Einzelheiten: die obere und untere Darstellung, bei denen der Gegenstand gegenüber der mittleren Darstellung leicht verdreht wurde zeigt, dass diese drei Bereiche über den übrigen Bereichen des Symbols reliefartig hervorstehen. Die aus unterschiedlichen Winkeln und mit unterschiedlicher Beleuchtung aufgenommenen perspektivischen Darstellungen, die in Schrägaufsicht auf den Blick auf Seitenflächen und Kanten der Symbole freigeben, zeigen infolge ihrer Lichtreflexe und Schattenwürfe nicht nur eindeutig, dass sich die drei Symbole reliefartig von der Oberfläche des restlichen Gegenstandes abheben, sondern geben auch ein Maß für die Größenverhältnisse und insbesondere die Höhe der Symbole. HABM BK / OHIM BoA R1174/2006-1</p> | | | | |
| US | 77111874 |  <p>The mark consists of a leather-like textured covering on the surface of a bottle of wine, brandy or grappa. The dotted line in the drawing is not a feature of the mark but is intended to show the location of the mark on a typical container of the goods; the darkened lower portion of the container drawing shows the mark. The stippling in the drawing is not a feature of the mark, but a representation of how one type of leather-like textured covering may appear in visual form. The mark is a visual and sensory to the touch mark</p> | 33 | Interbalt Products | E W | 2007 |

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|----|-----------|--|----|-------------------------------|-------|------|
| US | 85/007641 |  <p>The mark consists of the distinctive touch and feel of a glass pump spray bottle with a plasticized surface. The pump spray bottle has a smooth surface with a weightiness, thickness and durability imparted by the glass; simultaneously the bottle has a lightness and rubber-like quality imparted by the plasticized coating. <u>Final Refusal: Mark Does Not Function as a Trademark & Nondistinctive Configuration of Packaging</u></p> | 5 | G. Pohl-Boskamp GmbH & Co. KG | E A W | 2013 |
| US | 85426225 |  <p>The mark consists of a scratched or etched texture on the metal neck of a cosmetic brush, connecting the handle and the brush head. The dotted line in the drawing is not a feature of the mark but shows the location of the mark on a typical cosmetic brush; the solid line part of the drawing represents the mark. The solid lines in the drawing are not a feature of the mark</p> | 21 | Hongwei Shan | E W | 2012 |

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| | | nor do they indicate color. The solid lines are a representation of how scratching or etching may appear in visual form. The mark is a sensory, touch mark. | | | | |
| US | 3155702 |  <p>The mark consists of a velvet textured covering on the surface of a bottle of wine. The dotted line in the drawing is not a feature of the mark but is intended to show the location of the mark on a typical container for the goods; the dark/lower part of the container drawing shows the mark. The stippling in the drawing is not a feature of the mark, but a representation of how one type of velvet covering may appear in visual form. The mark is a sensory, touch mark / Die Marke besteht aus einem Samtüberzug auf der Weinflaschenoberfläche. ... Die Marke ist eine Texturmarke</p> | 33 | American Wholesale Wine & Spirits, Inc | R W | 2006 2013 |

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|----|----------|---|----|----------------------------|------------------------------------|--------------|
| US | 3896100 |  <p>The mark consists of a leather texture wrapping around the middle surface of a bottle of wine. The mark is a sensory, touch mark.</p> | 33 | The David Family Group LLC | R W (no statement of use filed) | 2010 2021 |
| US | 88611480 | <p>The mark consists of a leather texture on the surface of a bottle. The mark is</p>  <p>a sensory, touch mark. OA In this case, the applied-for mark is not inherently distinctive because it takes the common shape of a wine or alcohol bottle label wrapped around the portion of a bottle one would hold while pouring or reading the label. It is not unique in that others in this industry use leather, and the feel of leather, on bottle labels. See sample attached excerpts from http://www.austondesign.com/blog/brasas, http://lisashay.blogspot.com/2011/03/custom-leather-wine-bottle-labels</p> | 33 | The David Family Group LLC | E W (no statement of use filed) | 2020 |

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| | <p>and.html, https://www.torciano.com/en/shop/library-wine/luxury-boutique/luxos-alligator-leather-wine/, https://www.youtube.com/watch?v=tfdl7bpZ0MM, and http://www.umbralabel.it/en/news/label-in-reversed-leather/. This evidence shows that the applicant's intended use of the feel of leather on a bottle label is a refinement of this commonly used ornamentation for Class 33 goods.</p> <p>In response to this refusal, applicant may assert a claim that the applied-for mark has acquired distinctiveness under Trademark Act Section 2(f). To support this claim of acquired distinctiveness, applicant may submit evidence of “advertising expenditures, sales success, length and exclusivity of use, unsolicited media coverage, and consumer studies (linking the name to a source).” <i>In re Change Wind Corp.</i>, 123 USPQ2d 1453, 1467 (TTAB 2017) (quoting <i>In re Steelbuilding.com</i>, 415 F.3d 1293, 1300, 75 USPQ2d 1420, 1424 (Fed. Cir. 2005)). A showing of acquired distinctiveness need not consider all of these types of evidence; no single factor is determinative. <i>In re Steelbuilding.com</i>, 415 F.3d at 1300, 75 USPQ2d at 1424; see TMEP §§1212.06 <i>et seq.</i> However, “[t]he evidence must relate to the promotion and recognition of the specific configuration embodied in the applied-for mark and not to the goods in general.” <i>In re Change Wind Corp.</i>, 123 USPQ2d at 1467 (citing <i>Inwood Labs., Inc. v. Ives Labs., Inc.</i>, 456 U.S. 844, 851 n.11, 214 USPQ 1, 4 n.11 (1982)).</p> <p>To establish acquired distinctiveness, an applicant may rely only on use in commerce that may be regulated by the U.S. Congress. See 15 U.S.C. §§1052(f), 1127. Use solely in a foreign country or between two foreign countries is not evidence of acquired distinctiveness in the United States. TMEP §§1010, 1212.08; see <i>In re Rogers</i>, 53 USPQ2d 1741, 1746-47 (TTAB 1999).</p> | | | | |
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| US | 6126609 |  | 8 | Bacsaver international | E R | 2020 |
| US | 6235615 |  | 12 | Bacsaver international | R | 2020 |

* ** corrected by owner to be a device mark only [sic!!]

W = zurückgezogen oder zurückgewiesen, withdrawn or rejected

R = eingetragen, registered

E = geprüft, examination

A= Beschwerde, Appeal

O = Widerspruch, Opposition