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Filing date: **07/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86115113
Applicant	Balencorp Inc.
Applied for Mark	SILVER TRAIL DISTILLERY HARDIN, KENTUCKY
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Submission	Reply Brief
Attachments	Silver Trail REPLY.pdf(5420146 bytes)
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Date	07/01/2015

In re the Application of: Balencorp Inc.

Application Serial No.: 86/115,113

Filed: November 11, 2013

Mark: SILVER TRAIL DISTILLERY HARDIN, KENTUCKY (& Vintage Car Design)

International Classes: 40, 41

The Trademark Trial and Appeal Board P.O. Box 1451, Alexandria, VA 22313-1451

On Appeal from the Trademark Examining Operation

APPLICANT'S REPLY BRIEF

The Examining Attorney in his Response Brief does not address the fact that Applicant offers distillery services to others. Offering distillery services to others under a service mark is fundamentally different than distilling and/or selling a product you make for your own benefit. Applicant's so called "contract distilling services" serve a market that is entirely different than the retail sale of alcoholic beverages in which Registrant operates.

None of the third-party distilled spirit sellers that the Examining Attorney identifies in his Response Brief appear to offer distillery services to third-parties.

Catoctin Creek distills its own products that it sells to consumers under the CATCOCTIN CREEK brand and other brands. See <http://catoctincreekdistilling.com/>.

Green Hat Gin distills gin bearing its GREEN HAT GIN mark for sale to consumers. See <http://greenhatgin.com/#products>.

A. Smith Bowman Distillery distills its own products that it offers for sale under a family of BOWMAN marks . See <http://www.asmithbowman.com/home.aspx> and Exhibit A hereto.

Copper Fox Distillery distills whiskeys and gin that it sells under the COPPER FOX mark and other trademarks. See <http://www.copperfox.biz/products/>

Applicant has applied to register a mark for use in connection with the offering of distillery services, a real activity, for the benefit of third-parties who wish to use Applicant to distill third-party products. Those products bear third-party trademarks. This service is fundamentally different from, and can be easily distinguished from the finished products sold by the Registrant, namely wine bearing the SILVER TRAIL word mark on its label. Thus the coexistence of Applicant's mark and Registrant's Mark on Principal Register is unlikely to cause consumer confusion.

For the foregoing reasons, Applicant requests that the final Office Action issued by the Examining Attorney be overturned and the application be permitted to proceed towards registration.

/s/Amy S. Cahill

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EXHIBIT A

Bourbon's Virginia Home: A Visit To A. Smith Bowman Distillery

Posted on November 22, 2014 by DrinkInsider

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One of the most common misconceptions I hear about Bourbon is that it has to be produced in Kentucky. Bourbon doesn't have to be produced in Kentucky—it just so happens that the vast majority of the best Bourbon is produced there, but that has nothing to do with the actual legal requirements around what makes Bourbon, Bourbon. In fact, there is some damn fine Bourbon being produced outside of Kentucky, in other parts of the United States.



If you asked me to name the distillery that's producing perhaps the best Bourbon outside of Kentucky, I may just be inclined to say **A. Smith Bowman** in Fredericksburg, Virginia. And, frankly, are you surprised that a distillery owned by Sazerac (who also owns Buffalo Trace) is producing ridiculously awesome liquid? No, not really. But Bowman slides a bit under the radar, in part because its products see fairly limited national distribution (sorry, Massachusetts), and also in part because the A. Smith Bowman we know today is a fairly new incarnation of the distillery it once used to be.

Last month I was in the DC area and put aside a few hours to swing down to Fredericksburg and visit the distillery. It's only about an hour from Washington, so I highly recommend the jaunt down if you find yourself in a position to do so. A. Smith Bowman aside, Fredericksburg is a really interesting city from a historical perspective. It's the midway point between the capitals of the opposing forces of the Civil War, and was the site of the **Battle of Fredericksburg**. So, there's a lot of cool history to take in if you dig that kind of thing.



The distillery itself is just about a mile outside of downtown in a huge, unassuming brick building. The company moved here in 1988 after leaving their original location in Northern Virginia due to economical reasons. Of course, if the American whiskey market was as strong then as it is now, that may have not been a problem. But, nevertheless, after spending about five decades on a farm in Northern Virginia, A. Smith Bowman moved to Fredericksburg. 15 years later in 2003 the company was bought by **Sazerac Company**, and thus the distillery's modern era as the producer of **Bowman Brothers Small Batch Bourbon**, **John J. Bowman Single Barrel Bourbon** and their very special limited release **Abraham Bowman** line was born.



I'm not sure how many square feet the building is that the distillery inhabits, but if it helps you get an idea of the immense capacity, it used to be the home of the largest cellophane factory in the country. I'm thinking thousands of people could have easily been pumping cellophane in this place on any given day. So when Mary Ahrens, my amazingly hospitable tour guide, told me that there is a total of seven people working at the distillery, my mind was blown. Since they get some

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... it's a team of seven people working in the distillery any time they're down. But they get some part time help for bottling and such, but... seven people.



Aside from the building they occupy, though, A. Smith Bowman is a relatively small operation. Especially compared to Kentucky standards. But, they're producing great whiskey and doing things the right way, so I wouldn't be surprised to see them start taking over more of the building in due time (and they already have their eye on a few unused areas). For now, every bottle that comes out of Bowman is hand-crafted and hand-corked. And the team of seven continues to fill up more and more barrels in the distillery's impressive warehouse every day (where they currently have 6,000-7,000 barrels aging, according to Ahrens).



At the heart of A. Smith Bowman is a 1,700 gallon copper pot still that is fondly referred to as "Mary," named after the mother of the namesake Bowman brothers. Standing over 20 feet tall, Mary commands attention and is absolutely stunning in an industrially awesome kind of way. The still was installed in the early 90's, and, as the story goes, there must be something very special about Mary because the juice she produces is nothing short of top notch. Of course, it doesn't hurt that the distillery has been blessed with a number of very talented distillers over the years either.



If you're familiar with A. Smith Bowman's story, you may know that the distillery tragically lost one of their most influential head distillers just a few years ago. Truman Cox led the distilling operation from the fall of 2011 through February 2013. Prior to getting the job as Master Distiller at Bowman, Cox was at Buffalo Trace working with the masters like Elmer T Lee and Harlan Wheatley. But even during his short time at Bowman, Truman played a major role in continuing to shape the distillery's transformation through his innovative spirit and undeniable passion for the work. Shortly after Truman passed, the distillery brought on Brian Prewitt to take on the role and continue pushing the distillery further down its impressive journey.



The work that distillers like Cox and Prewitt have done with the A. Smith Bowman distillery in the past decade or so since the Sazerac acquisition is quite remarkable. Their entry-level Bourbon, Bowman Brothers Small Batch, is simply one of the best \$30 Bourbon's on the current market

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(review below). Their John J. Bowman Single Barrel whiskey stacks up with many of the great single barrel releases coming out of Kentucky. And their innovative and highly sought-after Abraham Bowman line has produced some of the best American whiskeys in recent years.



Some Abraham Bowman highlights include the 10-11 year rye whiskey (which was the very first release in this line), the 18-year cask strength, and their two Port-finished Bowman Brothers Small Batch releases. All of the Abraham Bowman whiskeys come in short supply due to the limited nature of their production/experimentation (about 2-12 barrels per release). The most recent, Double Barrel Bourbon, is a cask finished whiskey that spent its final year in first fill, charred oak barrels. The whiskey came out earlier this year, but I was lucky enough to snag a bottle during my fall visit.



If you're planning to visit the [A. Smith Bowman distillery](#), which I highly recommend you do, plan about an hour to take a full tour of the space—which includes a tasting at the end. It really is an amazing distillery, and the tour staff will treat you right. And if you're lucky, you may just find the latest Abraham Bowman release for sale in their gift shop.



My Take: Bowman Brothers Small Batch Bourbon

Coconut, vanilla, dark cherries and oak spice coat the nose. Dry spice, brown sugar, sharp baking spices and apple on the palate. It's not the most complex Bourbon, but for \$35 it's a damn fine sipper. *89 points*

A big thanks to Mary Ahrens at A. Smith Bowman for the hospitality and great tour!

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Jim Haman · 7 months ago
I will say this for Truman, the Port finished bourbon that he was involved creating is absolutely the smoothest and most flavorful bourbon I have ever had the privilege to drink.

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Drink Insider [Mod](#) · Jim Haman · 7 months ago
Thanks for the comment, Jim. I heartily agree.

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just curious · 7 months ago
Did you see the grain processing operation?

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Benjamin McNeil just curious · 7 months ago

Hah! I was going to ask much the same thing: "How big are the fermenting tanks?"

Hint: it's a trick question...

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Drink Insider Mod · Benjamin McNeil · 7 months ago

in due time...

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just curious Drink Insider · 7 months ago

It's a good article, informative and more extensive than sometimes seen in bourbon blogs, but why not mention this?

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Benjamin McNeil Drink Insider · 7 months ago

Really? I thought they don't have plans to ferment anything. They said differently?

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Drink Insider Mod · Benjamin McNeil · 7 months ago

According to my contact at Buffalo Trace, it is in the planning, but more details should be coming soon.

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Va Whiskey lover Drink Insider · 7 months ago

They have a new 500 gallon still arriving in January. They will then be fermenting and doing a bunch of experimental Whiskey, Rum, brandy etc. While still getting distillate from Buffalo Trace to redistill and produce the existing brands

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thanks for sharing the add'l info!

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