

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

Application Serial No. 75/883,254

TTAB

Published in the *Official Gazette* on March 2, 2004

Pabst Brewing Company Opposer, v. Lone Star Steakhouse & Saloon, Inc. Applicant	Opposition No.: _____
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NOTICE OF OPPOSITION

Pabst Brewing Company, having its principal place of business at 100 Shoreline Highway, Mill Valley, California 94941, believes that it will be damaged by registration of the mark LONE STAR & Design shown in Serial No. 75/883,254 in International Class 25 and hereby opposes same.

The grounds for the opposition are as follows:

1. Applicant seeks to register the mark LONE STAR & Design as a trademark for clothing, namely t-shirts, men's and women's sport shirts, sweat shirts, polo shirts and caps. Applicant filed its application on December 29, 1999 and the U.S. Patent and Trademark Office published the mark in the *Official Gazette* on March 23, 2004. Opposer has been granted an extension of time until September 19, 2004 in which to file this opposition.

2. Opposer and its predecessors in title have since at least as early as 1940 used the mark LONE STAR on a variety of goods including, but not limited to, beer, clothing, steins, and glassware. Opposer is submitting Exhibit "A," U.S. Registration No. 674,291 issued on February 17, 1959, and Exhibit B, U.S. Registration No. 2,191,783 issued on September 28, 1998, as evidence of such use. This Exhibit is incorporated herein by reference. Said registered marks of Opposer are valid and subsisting and are *prima facie* evidence of Opposer's exclusive right to use said marks in commerce on the goods specified in said registrations. In view of the similarity of the respective marks and the related nature of

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the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's registered marks, as to be likely to cause confusion, or to cause mistake, or to deceive.

3. Opposer is the owner of several other federal trademark registrations incorporating LONE STAR in the mark. Said registered marks of Opposer are valid and subsisting and are *prima facie* evidence of Opposer's exclusive right to use said marks in commerce on the goods specified in said registrations. In view of the similarity of the respective marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's registered marks, as to be likely to cause confusion, or to cause mistake, or to deceive.

4. Opposer and its predecessors in title have since at least as early as 1940 used, and is now, using LONE STAR as a corporate name, trade name, and/or use analogous to trademark use in connection with the sale of on a variety of goods including, but not limited to, beer, clothing, steins, and glassware. Said use has been valid and continuous since said date of first use and has not been abandoned. In view of the similarity of the respective names and marks and the related nature of the goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's names and/or marks, as to be likely to cause confusion, or to cause mistake, or to deceive.

5. There is no issue as to priority. The issue date of Opposer's trademark registrations and dates of use are at least thirty (30) years prior to Applicant's claimed date of first use.

6. Opposer has sold goods including, without limitation, clothing items, under the LONE STAR mark throughout the United States. Opposer has developed an exceedingly valuable goodwill in respect to the marks. By virtue of its efforts, and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its products, the Opposer has gained a valuable reputation under the mark and the mark is famous.

7. Upon information and belief, Opposer alleges that Applicant's goods will be offered in similar channels of commerce and offered to similar customers.

8. The trademark proposed for registration by the Applicant, namely LONE STAR & Design, so resembles Opposer's LONE STAR marks and/or name, and will be applied to goods the same

or similar to those sold by Opposer, so as to be likely to be confused therewith and mistaken therefore. The Applicant's mark is deceptively similar to Opposer's mark and/or name so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

9. If Applicant is permitted to use and register the mark LONE STAR & Design for its goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's mark and/or name. Persons familiar with Opposer's mark and/or name would be likely to buy Applicant's goods as and for a product made and sold by the Opposer. Any such confusion in trade inevitably would result in harm to the Opposer. Furthermore, any defect, objection or fault found with Applicant's products bearing the LONE STAR & Design mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its mark and/or name.

10. If Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer including, without limitation, dilution of the distinctive quality of Opposer's marks and/or name.

WHEREFORE, Opposer, Pabst Brewing Company, requests that the application for the mark LONE STAR & Design, Serial No. 75/883,254, be rejected and that the registration for the mark LONE STAR & Design be refused.

Opposer hereby appoints Jackson Walker L.L.P. to act as attorneys for Opposer herein, with full power to prosecute said Opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts, and to receive all official communications in connection with this Opposition.

Filing Fee

The filing fee due with this request is \$300.00. Enclosed is the fee payment for the Notice of Opposition:

- Attached is a check in the sum of \$300.00.
- Charge Account 07-2400 for any additional fee required or credit for any excess fee paid.
- Charge fee to Account 07-2400 and this is a request to charge for any additional fee required or credit for any excess fee paid.

Respectfully submitted,

JACKSON WALKER LLP
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 San Antonio, TX 78205
 (210) 978-7700
 (210) 978-7790 (Fax)

By *William Nash*
 William B. Nash, Reg. No. 33,743
 Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service in an envelope addressed to the "Commissioner of Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202-3514," as follows:

<u>37 CFR 1.8(a)/1.10</u>	<u>37 CFR 1.10</u>
<input type="checkbox"/> With sufficient postage as First Class Mail.	<input type="checkbox"/> As "Express Mail Post Office to Addressee," Mailing Label No. EL 811096094 US.
Date: _____, 2004	Date: <u>August 25</u> , 2004

Hallie Cooper
 Printed Name of Person Mailing Paper or Fee
Hallie Cooper
 Signature of Person Mailing Paper or Fee

The United States of America



CERTIFICATE OF RENEWAL

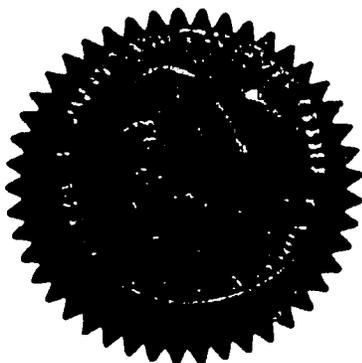
Reg. No. 674291

Application to renew the above identified registration having been duly filed in the Patent and Trademark Office and there having been compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

This is to certify that said registration has been renewed in accordance with the Trademark Act of 1946 to Lone Star Brewing Co., Inc., of San Antonio, Texas

Delaware Corporation

and said registration will remain in force for twenty years from February 17, 1979 unless sooner terminated as provided by law.



In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this sixth day of February, 1979.

Donald W. Banner

COMMISSIONER OF PATENTS AND TRADEMARKS



Nº 674291

THE UNITED STATES OF AMERICA

This is to certify that from the records of the Patent Office it appears that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents,

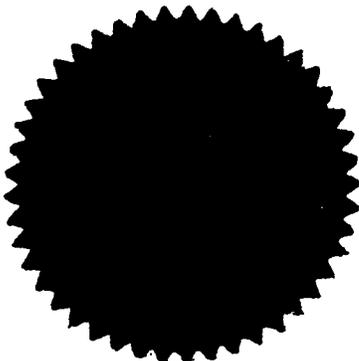
Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, and the said Mark has been duly registered this day in the Patent Office on the

PRINCIPAL REGISTER

to the registrant named herein.

This registration shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed this seventeenth day of February, 1959.



Robert C. Watson
COMMISSIONER OF PATENTS

ATTEST:

C. M. Wendt
ATTESTING OFFICER

PRINCIPAL REGISTER
Trademark

Ser. No. 50,368, filed Apr. 25, 1958

**LONE
STAR**

Lone Star Brewing Co. (Texas corporation)
542 Simpson St.
San Antonio, Tex.

For: BEER, in CLASS 48.
First use Feb. 1, 1940; in commerce Feb. 26, 1958.

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,191,783

United States Patent and Trademark Office

Registered Sep. 29, 1998

**TRADEMARK
PRINCIPAL REGISTER**

LONE STAR

STROH BREWERY COMPANY, THE (ARIZONA
CORPORATION)
100 RIVER PLACE
DETROIT, MI 48207

FIRST USE 2-1-1940; IN COMMERCE
2-1-1940.

OWNER OF U.S. REG. NOS. 674,291 AND
676,429.

FOR: ALCOHOLIC AND NONALCOHOLIC
MALT BEVERAGES, IN CLASS 32 (U.S. CLS.
45, 46 AND 48).

SER. NO. 75-177,598, FILED 10-7-1996.

ROBERT J. CROWE, EXAMINING ATTORNEY