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Filing date: **11/18/2011**

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

Proceeding	91201070
Party	Defendant Matthew Harnden and Roger Scommegna
Correspondence Address	ADAM L BROOKMAN BOYLE FREDRICKSON SC 840 N PLANKINTON MILWAUKEE, WI 53203 UNITED STATES docketing@boylefred.com
Submission	Motion for Summary Judgment
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Signature	/Adam L. Brookman/
Date	11/18/2011
Attachments	Motion for Summary Judgment6.pdf (15 pages)(8825332 bytes) Declaration of Adam Brookman6.pdf (13 pages)(1493690 bytes) Declaration of Roger Scommegna6.pdf (13 pages)(5927999 bytes)

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

PROCEEDING NO. 91201070

Anderson Valley Acquisition Company, LLC

v.

Matthew Harnden and Roger Scommegna

Serial No. 85178395
Mark: BOONVILLE CIDER HOUSE BITE HARD CIDER

APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Respondents hereby move for summary judgment denying the opposition by Opposer to the registration of Serial No. 85178395 for BOONVILLE CIDER HOUSE BITE HARD CIDER. This motion is based on the accompanying declarations of Roger Scommegna and Adam Brookman, the pleadings in this matter and the asserted Registration.

Summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *Odom's Tennessee Pride Sausage, Inc. v. FF Acquisition, LLC,* 600 F.3d 1343 (Fed. Cir. 2010); *See also* Fed. R. Civ. P. 56(c). In the present case, the decision on summary judgment rises and falls almost entirely on the undisputed presentation of Opposer's and Petitioners' marks making this case is ripe for summary judgment.

In order to prevail in a trademark opposition, a petitioner needs to establish that it is "likely that the mark when applied to the goods of the applicant will cause confusion or mistake or deceive purchasers" vis-à-vis petitioner's mark. *Russell Chemical Co. v. Wyandotte Chemicals Corp.*, 337 F.2d 660, 662 (C.C.P.A. 1964). In the present case, because the marks are significantly different and the only common term is descriptive and disclaimed, there is no likelihood of confusion and hence, no basis for maintaining the present opposition.

I. The Marks in Issue

Respondents' mark is BOONVILLE CIDER HOUSE BITE HARD CIDER. The terms "Boonville," "Hard" and "Cider" and are disclaimed. Opposer's asserted registration is THE LEGENDARY BOONVILLE BEER and design (as shown below). The terms "Boonville" and "Beer" are disclaimed.

As can be clearly seen, the only thing in common between the two marks is the term BOONVILLE, which both parties have disclaimed.

I. Opposer's Use of "Boonville"

Opposer freely admits that its products originate from Boonville. *See* Opposition Complaint, ¶¶ 2 and 7. Hence the reason for the disclaimer required by the Office in the registration of "THE LEGENDARY BOONVILLE BEER." *See, e.g., In re Interco Inc.,* 29 U.S. P.Q.2d 2037 (T.T.A.B. 1993)(a disclaimer of a term constitutes both an

admission of the merely descriptive nature of the term and an acknowledgement of the lack of an exclusive right in the term).

Notwithstanding this admission, Opposer, through its pleadings, tries to assert rights in the name "BOONVILLE" alone, claiming:

> As a result of Opposer's substantial sales and advertising and its continued location in Boonville, California, the relevant public associates Opposer with alcoholic beverages marketed and sold under the name or mark BOONVILLE.

Opposition Complaint, ¶7.

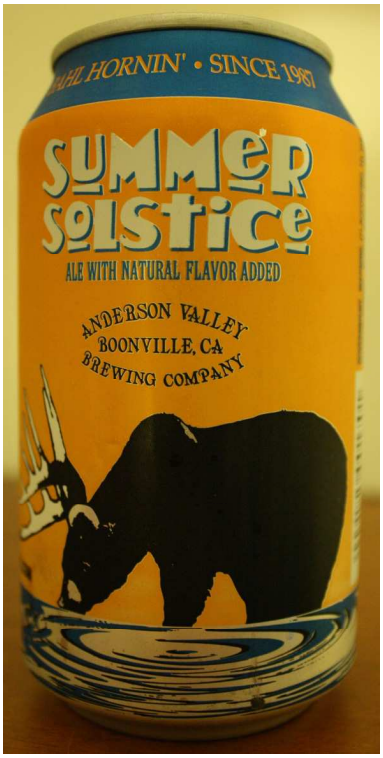
Other than this backhanded reference, however, Opposer does not plead (as it cannot) that it has ever made any stand-alone use of "BOONVILLE" as a trademark. Instead, Opposer makes clear that its use of the mark has been limited to, at best, the word mark, "THE LEGENDARY BOONVILLE BEER" in connection with beer (i.e. beer, ale, lager, stout, porter and malt liquor).

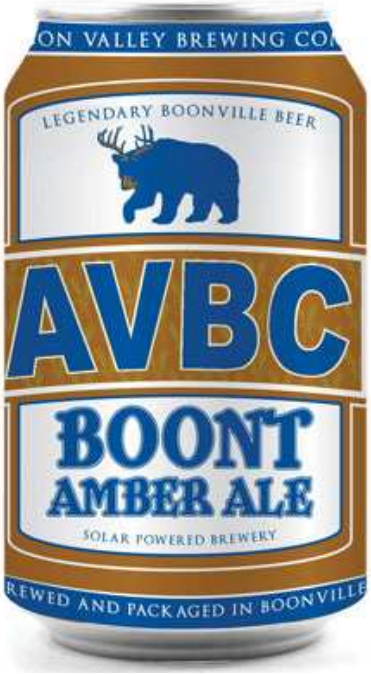
> 3. Opposer has continuously used the name and mark THE LEGENDARY BOONVILLE BEER in connection with its alcoholic beverages, namely beer, ale, lager, stout and porter, and malt liquor, since at least as early as December, 1987.
>
> 4. Opposer has achieved substantial sales of beer, ale, lager, stout and porter and malt liquor under opposer's mark THE LEGENDARY BOONVILLE BEER.
>
> 5. Opposer has spent substantial sums of money in advertising and promoting its alcoholic beverages under Opposer's mark THE LEGENDARY BOONVILLE BEER.
>
> 6. As a result of Opposer's substantial use, sale and advertising, Opposer's mark THE LEGENDARY BOONVILLE BEER has become well known to the relevant public and represents a most valuable good will owned by Opposer.

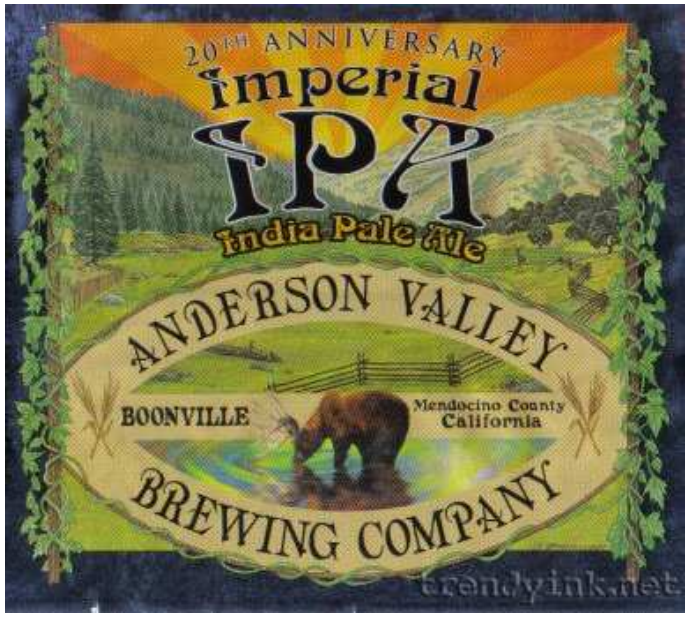
Opposition Complaint, ¶¶3-6.

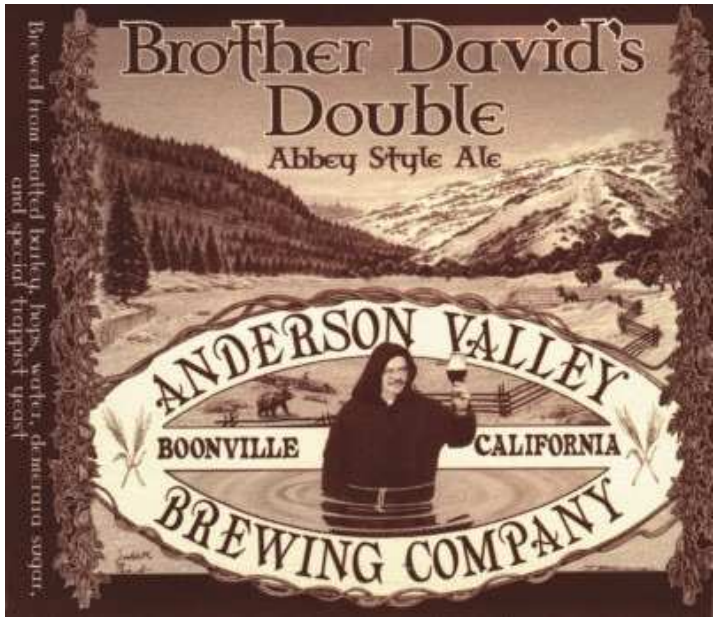
Not only has Opposer failed to make any stand-alone use of "Boonville" as a trademark, as can be seen below in samples of the various cans and labels used for Opposer's products, Opposer uses "Boonville" prominently and descriptively to identify

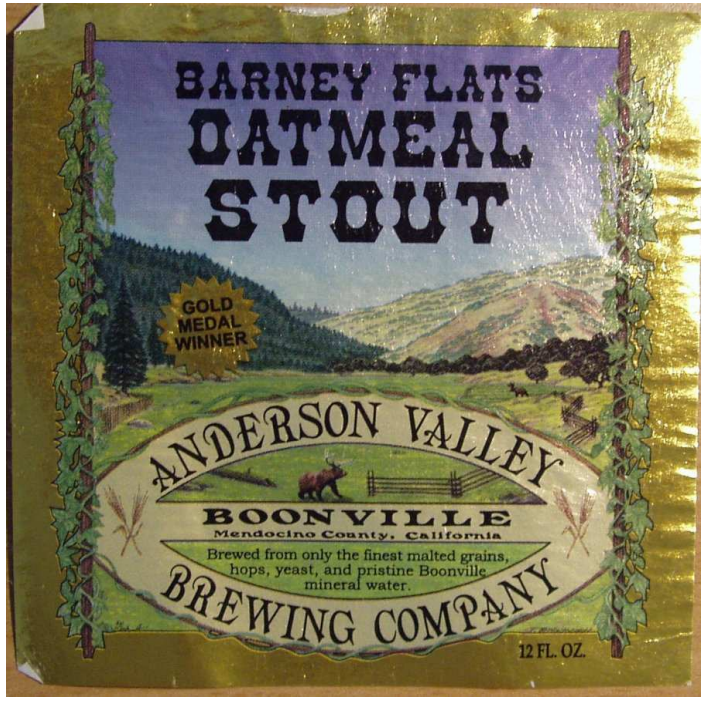
the place where it brews its beer. *See* Declaration of Roger Scommegna at ¶7 and Exhibit B attached thereto, submitted herewith.

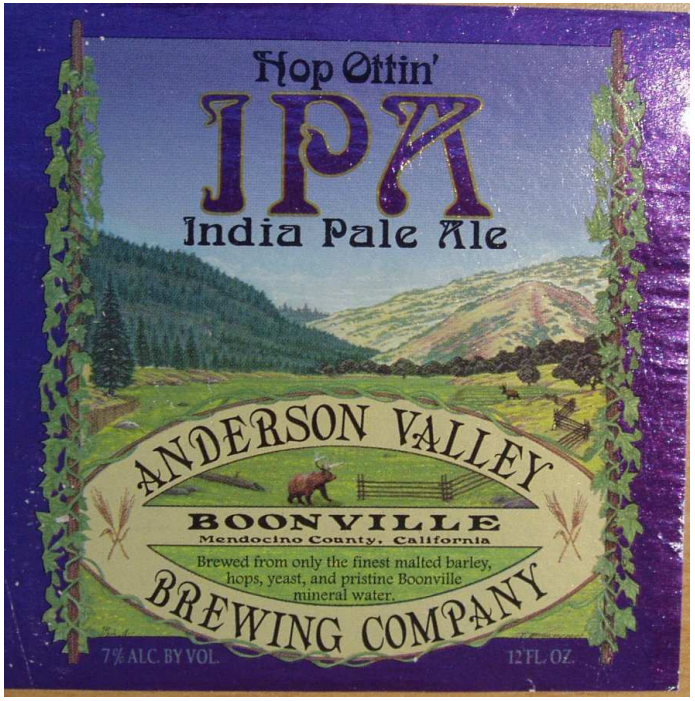


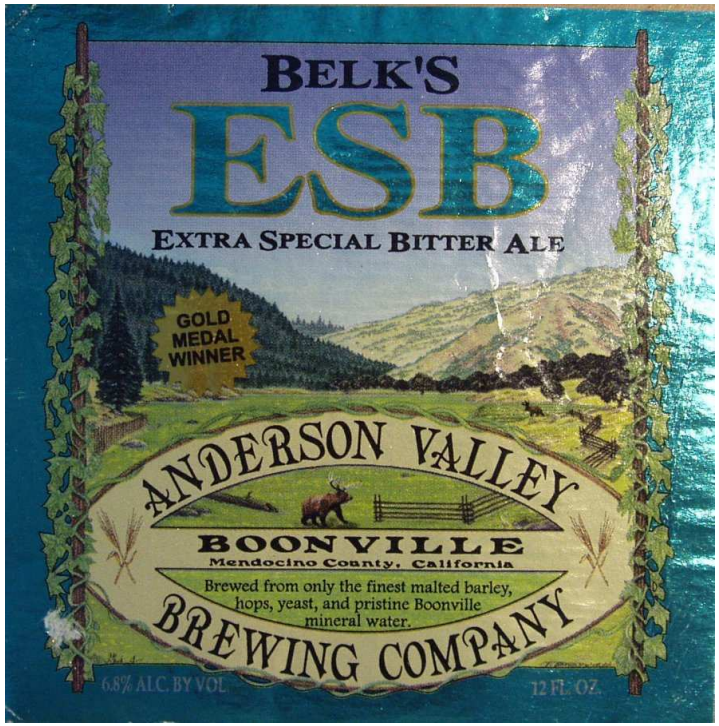


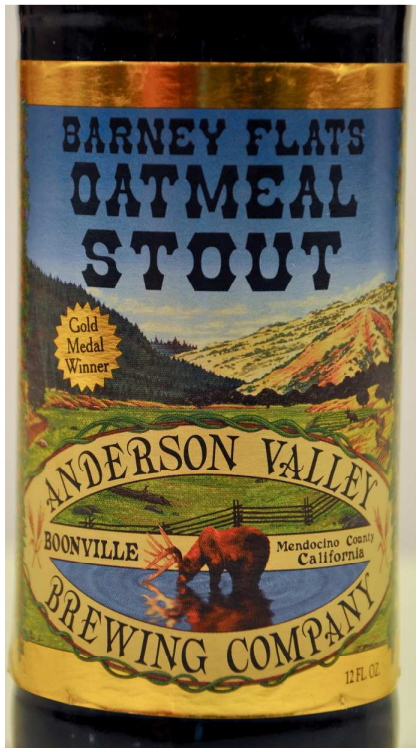

20TH ANNIVERSARY
imperial
IPA
india Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County
California
BREWING COMPANY

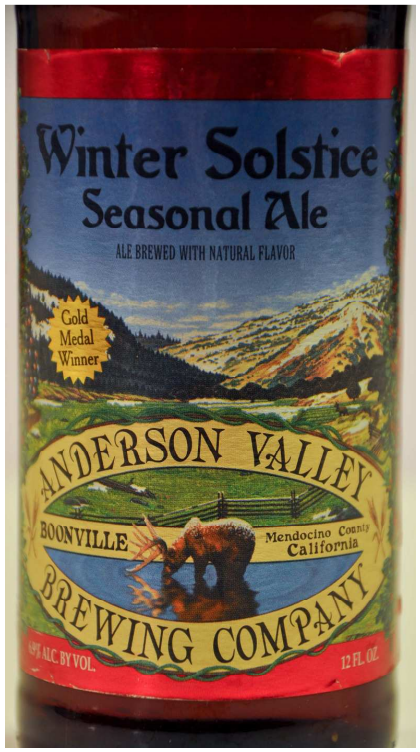

Brother David's
Double
Abbey Style Ale
Brewed from malted barley, hops, water, demerara sugar, and special trappist yeast
ANDERSON VALLEY
BOONVILLE
CALIFORNIA
BREWING COMPANY


BARNEY FLATS
OATMEAL
STOUT
GOLD MEDAL WINNER
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted grains, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
12 FL. OZ.

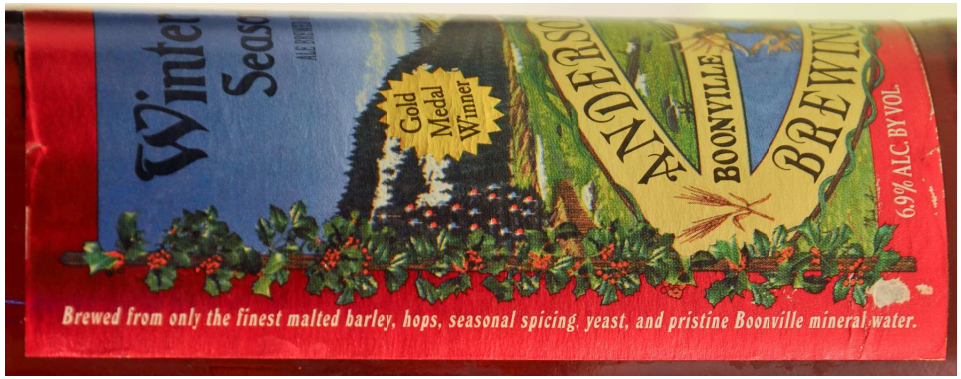

Hop Ottin'
IPA
India Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted barley, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
7% ALC. BY VOL.
12 FL. OZ.

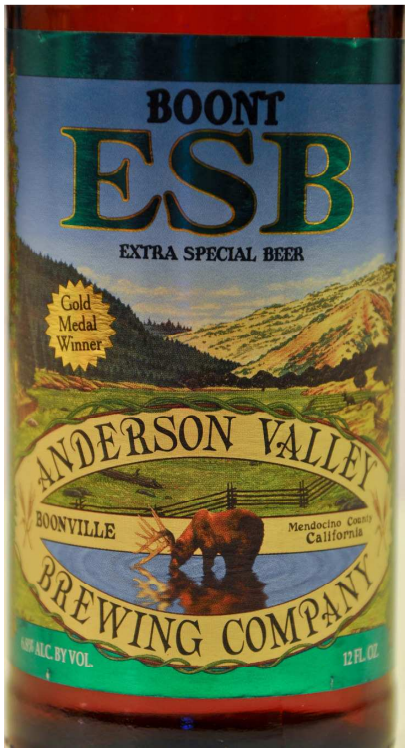

BELK'S
ESB
EXTRA SPECIAL BITTER ALE
GOLD MEDAL WINNER
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted barley, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
6.8% ALC. BY VOL.
12 FL. OZ.

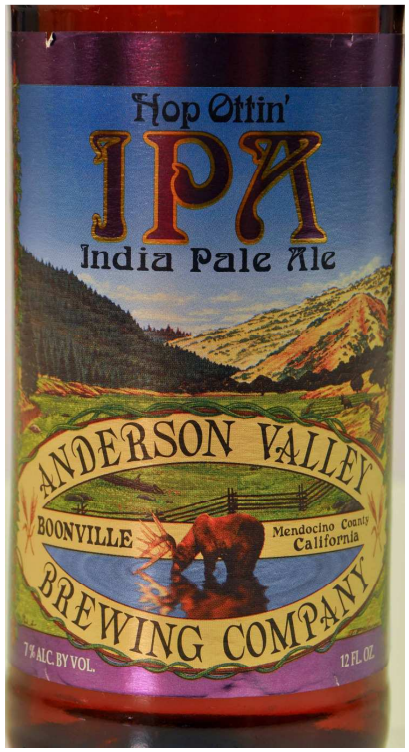

BARNEY FLATS
OATMEAL
STOUT
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
12 FL. OZ.

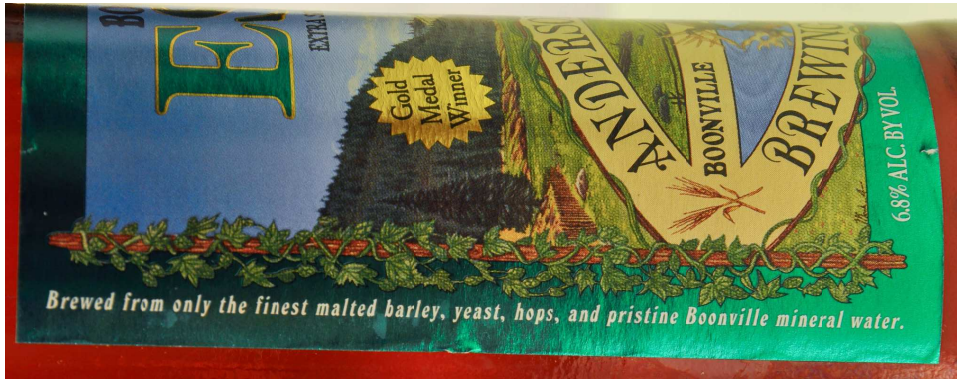

Winter Solstice
Seasonal Ale
ALE BREWED WITH NATURAL FLAVOR
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
12 FL. OZ.

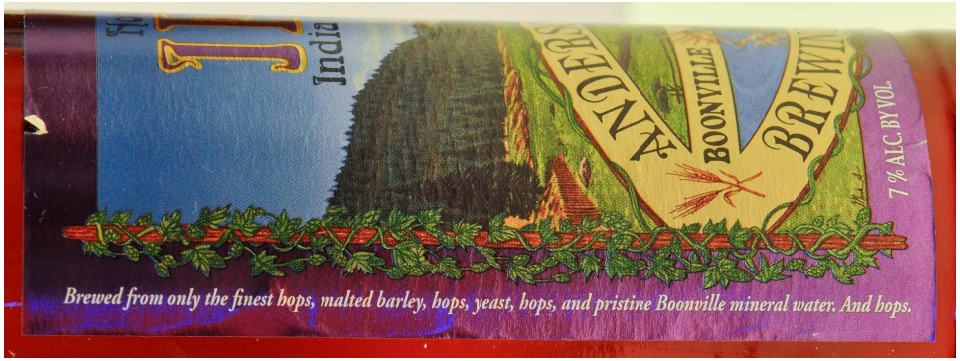
Gold Medal Winner
BOONVILLE
Brewed from only the finest malted barley, wheat, rolled oats, hops, yeast, and pristine Boonville mineral water.

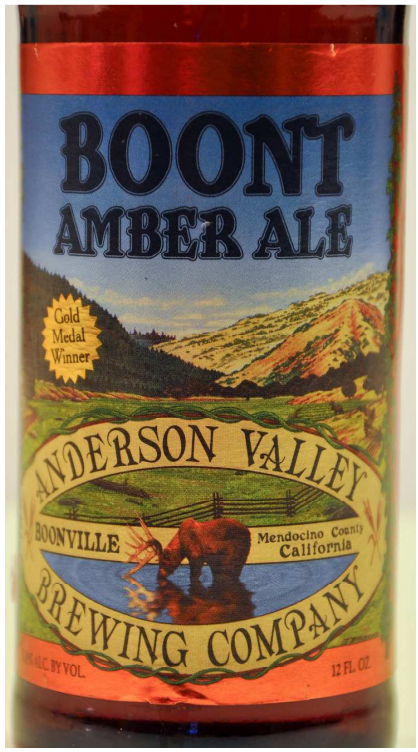

Gold Medal Winner
BOONVILLE
6.9% ALC. BY VOL.
Brewed from only the finest malted barley, hops, seasonal spicing, yeast, and pristine Boonville mineral water.

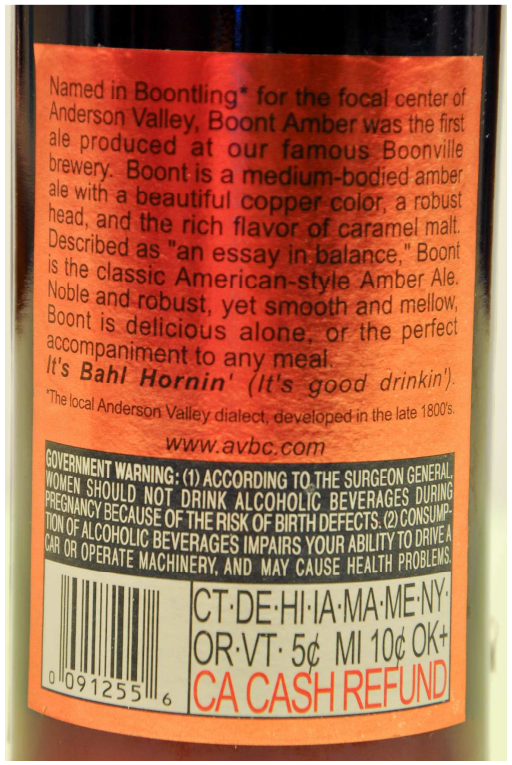

BOONT
ESB
EXTRA SPECIAL BEER
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
6.8% ALC. BY VOL.
12 FL. OZ.

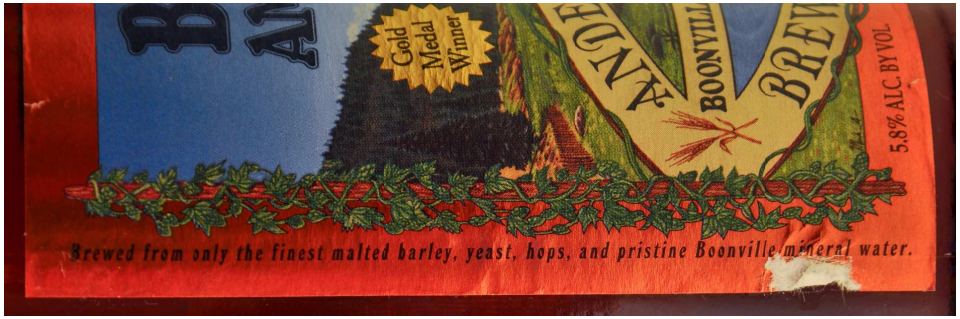

Hop Ottin'
IPA
India Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
7% ALC. BY VOL.
12 FL. OZ.


Gold Medal Winner
ANDERSON
BOONVILLE
BREWING
6.8% ALC. BY VOL.
Brewed from only the finest malted barley, yeast, hops, and pristine Boonville mineral water.


India
ANDERSON
BOONVILLE
BREWING
7% ALC. BY VOL.
Brewed from only the finest hops, malted barley, hops, yeast, hops, and pristine Boonville mineral water. And hops.


BOONT
AMBER ALE
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
ALC. BY VOL.
12 FL. OZ.


Named in Boontling* for the focal center of Anderson Valley, Boont Amber was the first ale produced at our famous Boonville brewery. Boont is a medium-bodied amber ale with a beautiful copper color, a robust head, and the rich flavor of caramel malt. Described as "an essay in balance," Boont is the classic American-style Amber Ale. Noble and robust, yet smooth and mellow, Boont is delicious alone, or the perfect accompaniment to any meal.
It's Bahl Hornin' (It's good drinkin').
*The local Anderson Valley dialect, developed in the late 1800's.
www.avbc.com
GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.
0 091255 6
CT·DE·HI·IA·MA·ME·NY·
OR·VT· 5¢ MI 10¢ OK+
CA CASH REFUND


Gold Medal Winner
ANDERSON
BOONVILLE
BREW
5.8% ALC. BY VOL.
Brewed from only the finest malted barley, yeast, hops, and pristine Boonville mineral water.

Opposer's embracing of "Boonville" as a geographic descriptor and the public's awareness of such use can also be seen from various articles about Opposer's products which prominently and descriptively identify Opposer and its products as hailing from Boonville, California. See Exs. A and B to the Declaration of Adam Brookman submitted herewith.

II. Respondents' Intended Use of the Mark

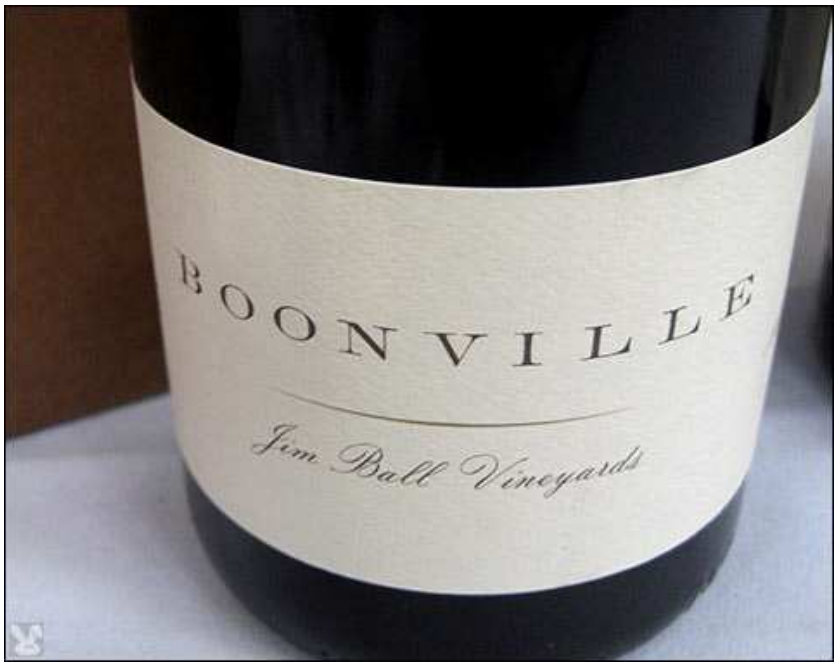
Applicant, Roger Scommegna is one of the owners of The Boonville Hotel in Boonville, California (www.boonvillehotel.com). Roger has had an ownership interest in the hotel for over eight years. As part of the services it offers, The Boonville Hotel sells wine, beer, and yes, hard cider, to its guests. It also offers and serves meals and snacks. It has done so for 23 years under that name. Declaration of Roger Scommegna at ¶2 and Exhibit A, thereto.

Roger, and Mathew Harnden, have not yet begun formal use of the mark as applied for, though some preliminary marketing and limited manufacturing of hard cider under similar marks has been made. (See below). This use is indicative of the type of use that Roger and Matt anticipate will be made under the mark. Scommegna Decl. at ¶2. As can be clearly seen, and as can be gleaned from the applied for mark, (and consistent with the disclaimer filed by Roger and Matt), "Boonville" is being (and will be) used to identify the location of the source of the hard cider – just as "Boonville" is used to identify the location of the hotel – something Roger and Matt should not be precluded from doing. *Id.* at ¶3.

BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE CIDER
EST 2010
BOONVILLE, CA

BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE
CURRANT
BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE CIDER
GRAVENSTEIN

Roger and Matt and Opposer are not the only users of "Boonville" in connection with alcoholic products. Jim Ball Vineyards, also located in Boonville, California, has been selling a Boonville Pinot Noir since at least 2007. Scommegna Decl. at ¶5.



III. Comparison of the Marks

As noted above, the only term Respondents' mark and Opposer's mark have in common is "Boonville," the geographically descriptive designator of the town to which both parties owe their homes.

BOONVILLE CIDER HOUSE BITE HARD CIDER

THE LEGENDARY ***BOONVILLE*** BEER

Moreover, the word "Boonville" is placed and used differently in the two marks. In Roger and Matt's mark, Boonville is the first word in the mark and gives consumers a location

for the "Cider House" which provides "Bite Hard Cider." In Opposer's mark "Boonville" is located toward the end of the mark and tells consumers that Boonville is the geographic origin of the product - beer. This interpretation is consistent with Opposer's use of the mark on its various products that virtually all include prominent labeling and markings that make clear that Opposer's beer originates from Boonville, California (or Booneville, Mendocino County, California located in the Anderson Valley region). Scommegna Decl. at ¶¶ 6-7.

The marks also make clear that the two parties provide different products. Matt and Roger's mark includes two references to "Cider." Opposer's mark prominently features the word "Beer." Beer is classified in International Class 32. Hard Cider is classified in International Class 33. And while hard cider and beer can occasionally originate from the same producer, as the two marks make clear, Opposer is in the business of making and selling beer, while Matt and Roger are in the business of making and selling hard cider.

IV. There is no Likelihood of Confusion

As discussed above, the term "Boonville," the only common term between the two marks in issue, is merely descriptive. As such, "Boonville" is entitled to less weight than other elements of the marks and is entitled only to a narrow scope of protection – if any. *See Bass Pro Trademarks, L.L.C .v. Sportsman's Warehouse, Inc.,* 89 U.S. P.Q.2d 1844 (T.T.A.B. 2008). Moreover, by choosing a descriptive term as part of its mark, Opposer has assumed the risk that competitors would also be able to use the term. *Id. citing Milwaukee Nut Co. v. Brewster Food Service,* 277 F.2d 190 (C.C.P.A. 1960) (opposer acted at its peril in choosing a highly suggestive mark); *see also Sure-Fit Products Co. v. Saltzon Drapery Co.,* 254 F.2d 158 (.C.C.PA. 1958) (competitors may come closer to the senior mark without creating a likelihood of confusion than would be the case with a strong mark).

As the Board is well aware, it is a long established rule that the marks must be considered as a whole in determining whether there is confusing similarity. *See, e.g., Goodall-Sanford, Inc. v. Tropical Garment Mfg. Co*., 275 F.2d 736 (C.C.P.A. 1960). Since both marks in issue are multi-word compound marks, the presence of a single common, geographically descriptive, disclaimed word is grossly insufficient to establish any confusing similarity. Indeed, as described in detail above, there are significant aural and visual differences between the two marks. This is true, without even taking into account the design aspects of Opposer's mark. The meanings of the two marks are likewise, widely disparate. Given the tremendous differences in the sight, sound and meaning of the two marks in their entireties, it is undisputed that they present entirely different commercial impressions rendering them unlikely to cause any confusion.

V. Conclusion

Based on the facts established by the declarations of Adam Brookman and Roger Scommegna, the pleadings and the submitted evidence, Respondents have established that there is and can be no likelihood of confusion between the asserted mark and opposed mark. There are no genuine issues of material fact. It is respectfully submitted that the Board should grant summary judgment terminating this Opposition.

Respectfully Submitted,

Dated: November 18, 2011

By: /Adam L. Brookman/

Adam L. Brookman
BOYLE FREDRICKSON, S.C.
840 North Plankinton Ave.
Milwaukee, WI 53203
Telephone: (414) 225-9755
abrookman@boylefred.com

Attorneys for Respondents/Applicants
Roger Scommegna and Mathew Harnden.

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT** was served in the manner indicated to the person indicated on the date indicated:

VIA FIRST CLASS U.S. MAIL
Thomas R. Leavens
Leavens, Strand, Glover & Adler, LLC
203 N. LaSalle Street
Suite 203 Floor
Chicago, Illinois 60601

On November 18, 2011.

/Adam L. Brookman/
Adam L. Brookman

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

PROCEEDING NO. 91201070

Anderson Valley Acquisition Company, LLC

v.

Matthew Harnden and Roger Scommegna

Serial No. 85178395
Mark: BOONVILLE CIDER HOUSE BITE HARD CIDER

DECLARATION OF ADAM BROOKMAN
IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT

I, Adam Brookman, based on my own personal knowledge, do hereby declare:

1. I am counsel for the applicants in this action.
2. Attached hereto as Exhibits A and B are true and correct copies of articles referring to the Anderson Valley Brewing Company the apparent dba of the Opposer in this action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 18, 2011 in Milwaukee, Wisconsin.

/Adam L. Brookman/
Adam L. Brookman

Esquire

http://www.esquire.com/features/drinking/best-canned-beers-062510

Ten Canned Beers to Drink Now

It's been 75 years since the world saw its first beer can. Now, led by can-only breweries, we're seeing a renaissance for brews that are colder, brighter, hell, more refreshing. Here are 10 that prove that.

PLUS: **How to Upgrade Your Summer Beer >>**

By Mark W. Byrne

EXHIBIT A

Dale's Pale Ale

Oskar Blues brewery tried its hand at all types of beer — a hefewiezen, a Scotch ale, a stout — but its basic brew is the best: bright and rich, not too bitter. Drink it cold or drink it just below room temperature: tastes delicious either way. And it should, since Oskar Blues has been canning all its beer since 2002 — long before the bigger craft brewers caught on.

Photo Credit: Courtesy of the Brewery

Porkslap Pale Ale

Butternuts is an upstate New York brewery that's deep in farm country, and all their craft brews bare proof of that provenance. The best, though, is Porkslap Pale Ale, a cult favorite flavored with a spot of ginger to spice things up. It clocks in at just 4.3 percent a.b.v., though, so you may need to keep this six-pack all to yourself.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

Brooklyn Lager 16 oz

Back in 1988, Brooklyn Brewery set up shop in an old matzo ball factory in Williamsburg, Brooklyn, where they taught visitors how to actually talk about hops. It took them two decades to put the stuff in a can, but it was worth waiting: it's just as good as the bottle, but comes in a 16 oz tall boy — much more efficient than 12 oz of glass.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

Fat Tire Amber Ale

In Fort Collins, Colorado, the new New Belgium brewery began canning its famous ale last summer, and it was just in time. In a can, Fat Tire tastes crisper, and you start to notice things about it, like its hint of sweet caramel, that explain why it's so popular.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

Harpoon IPA

Though this brew has been around since 1993, they just started canning it last month — for this summer only. Supplies are limited, so it's worth a try soon, especially if you pair it with Harpoon's recommendations: grilled hot dogs and toasted marshmallows. Summer? Absolutely.

Photo Credit: Courtesy of the Brewery

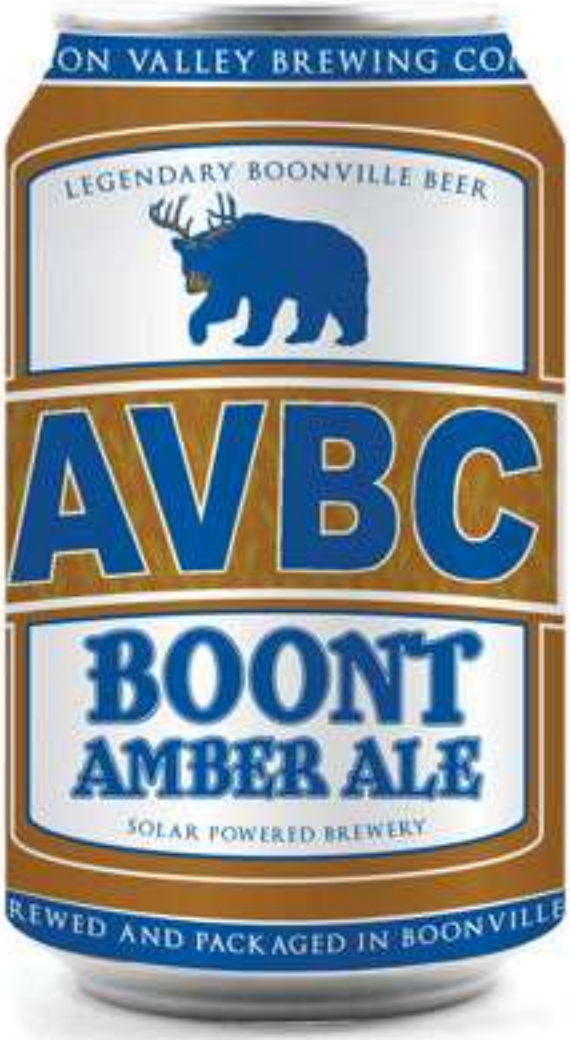
EXHIBIT A

CynicAle 16 oz

If you're in Minneapolis, head to any good liquor store for a four-pack of Surly Brewing Co tall boys. Surly offers all of its yearly and seasonal beers in cans, but we like the CynicAle the best. It's a Belgian beer, so it's light and crisp and perfect for summer. A note: If you're not in the Twin Cities, it's tough to find, so we suggest you start making friends from Minneapolis now.

Photo Credit: Courtesy of the Brewery

EXHIBIT A



Boont Amber Ale

Anderson Valley is a little brewing company up in Boonville, California, and unlike Brooklyn Brewery, they've managed to keep their operation relatively small and charming. This spring, inspired by the environmental benefits of a lighter, more recyclable material, they started offering their Boont Amber Ale in cans. The brewery recommends serving this beer between 40 and 45 degrees, which means that, if you take it out of the refrigerator and throw it in a duffel bag, it should be just right by the time you get to the park. Try that with a bottle? No thanks.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

Pabst Blue Ribbon

Because it's cheap. Because it's everywhere, because cans are easy at bars, and because that's okay. It comes in glass too, but that just looks wrong.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

Simpler Times Lager

Even cheaper than the PBR, this beer from Minhas Craft Brewery clocks in at 6.2 a.b.v and is about $3 for a six-pack at your local Trader Joe's. The plus side? It tastes much better — slightly malty, with a twang of bitter hops — than the budget cans of your college past.

Photo Credit: Courtesy of the Brewery

EXHIBIT A

One to Avoid? Genesee Cream Ale

Thick but flat, bitter but creamy. It's cheap and it's nostalgic and like so many sorta disgusting things, it's a classic. So if you're going to partake in this oddly named product, first introduced in 1960, do so out of a can, for chrissakes.

Photo Credit: Courtesy of the Brewery
http://www.esquire.com/features/drinking/best-canned-beers-062510

EXHIBIT A

CANS RULE FOR CRAFT BEER.
>> visit us at www.BallCansRule.com
Ball
Innovation.
Sustainability.
Packaging.

Friday, June 18th 2010

Anderson Valley Brewing Company (Boonville, California)

Anderson Valley Brewing Company has been putting its award-winning beers in bottles for almost 25 years yet its only been the last year or so that they've started offering some of those beers in cans. It all started with their Summer Solstivce Cerveza Crema last summer and this year they've followed up with their Poleeko Gold Pale Ale and Boont Amber Ale. Hopefully we can look forward to seeing even more of their beers in cans. Also, if you ever make it to Boonville, California be sure to bring your *Boontling* dictionary and your disc golf discs as Anderson Valley has an 18-hole disc golf course which you can play for $5 and once finished you get a $5 coupon good for anything (including beer) in their gift shop. Oh yeah, you can also buy their beer to drink while playing. How awesome is that!

The SEAMview System
• Safe & Easy to use
• More Accurate
• Fast Inspections
• Store & Print Results
Affordable Can Seam Measurement
CMCKUHNKE

Beers:	426
Breweries:	143
Styles:	66
States:	41*

Latest beer added:
White Thai
Brewed by:
Westbrook Brewing Company

Check out the ONLY canned beer database on the web.

*That includes Washington,DC!

Please order at the bar.

Here is a little more information about this brewery and their canned offerings:

Brewery Name - Anderson Valley Brewing Company

Location - Boonville, California, USA

Year Brewing Began - 1987

Annual Beer Output - @25,000 bbls

History - "Founded in the town of Boonville in 1987, Anderson Valley Brewing Co. was one of the pioneers of the American craft brewing movement. Solar powered since 2001 and brewing with the pure waters of the Anderson Valley (in Mendocino County)". The brewery also has a small hop farm, tasting room and of course the kick-ass disc golf course. Earlier this year Anderson Valley was sold to HMB holdings (a company with after 22 years of private family ownership. They brewed 700 barrels of beer their first year in operation and now produce over 35 times that amount.

Distribution - 39 states and counting. If you want to know where to find Anderson Valley beers near you go **HERE**

Number of Beers Canned - 3

From left to right:

Poleeko G old Pale Ale - "When the phrase "California Style Ale" is used, Poleeko Gold Pale Ale is the one that comes to mind. The golden color and generous use of Pacific Northwest hops establish a distinct style, separate from any domestic or European beers. Our honey-gold pale ale is crisp and clear, with an unusual lightness and dryness for such a full-flavored ale. The arousing abundance of hops adds both a floral bouquet and a lively, citrusy finish. It is excellent alone, or with full-flavored meals and spicy dishes."

Boont Amber Ale - "Boont Amber Ale is a medium bodied pale ale with a beautiful copper color, a robust head, and the rich flavor of caramel malt. This very smooth and exceptionally drinkable beer is excellent with steaks, chicken, pasta, and other flavorful meals."

Summer Solstive Cerveza Crema - "This copper colored ale is smooth, malty, and lightly sweet, with a delicate hint of spice for that oh-so-drinkable, extra velvety flavor. The character is lighter in body than its cousin, our wildly popular Winter Solstice Seasonal Ale . This is a silky, creamy dream, perfect as a warm weather beer. But why call it Cerveza Crema? Two reasons: One, this beer has become a favorite among many of our Hispanic friends, so it's named in their honor. Two, it sounds cool, and cool is what you want when its hot. Serve at 40 to 45 degrees Fahrenheit for the most optimal flavor and enjoyment. ¡Salud!"

Anderson Valley Brewing Company Media Resources

Posted by **Russ**

Permalink Tweet Share 0

Labels: Breweries that CAN!

LATEST NEWS POSTS

CANFEST 2011 Winners Announced!

Intuition Ales Coming to Cans!
Q & A with Owner/Brewer Ben Davis

Anderson Valley Brewing to Release Barney Flats Oatmeal Stout in Cans

Cigar City Unveils Can Designs!
Q & A with Artist Geiger Powell

2012: A Pint Can Odyssey

Ball to Bring Imperial Pint-Sized Cans to North American Market

Q & A: Pat Hartman and Ron Popma from Mobile Canning, LLC

Tallgrass Velvet Rooster Video
The First Tripel in a Can Cometh!

Craft Beer's First Belgian-Style Tripel in a Can: Velvet Rooster

The PeliCAN State:
Louisiana Brewers Going with Cans

LATEST REVIEWS POSTED

Winter Solstice
(Anderson Valley Brewing Company)

Pamola Xtra Pale Ale
(Baxter Brewing Company)

Velvet Rooster
(Tallgrass Brewing Company)

Crazy Mountain Amber Ale
(Crazy Mountain Brewing Company)

Boont Amber Ale
(Anderson Valley Brewing Company)

Great Crescent IPA
(Great Crescent Brewery)

Amber Road Amber Ale
(Baxter Brewing Company)

Great River Oktoberfest
(Great River Brewery)

The Public
(DC Brau)

Newport Storm Hurricane Amber Ale
(Coastal Extreme Brewing Company)

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

PROCEEDING NO. 91201070

Anderson Valley Acquisition Company, LLC

v.

Matthew Harnden and Roger Scommegna

Serial No. 85178395
Mark: BOONVILLE CIDER HOUSE BITE HARD CIDER

DECLARATION OF ROGER SCOMMEGNA
IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT

I, Roger Scommegna, based on my own personal knowledge, do hereby declare:

1. I am one of the applicants for the mark, Boonville Cider House Bite Hard Cider (the "Mark").
2. Formal use of the Mark has not yet begun. However, some preliminary marketing and manufacturing of hard cider under similar marks has been made. Samples of this use can be seen below. It is expected that formal use of the Mark will be consistent with this use.

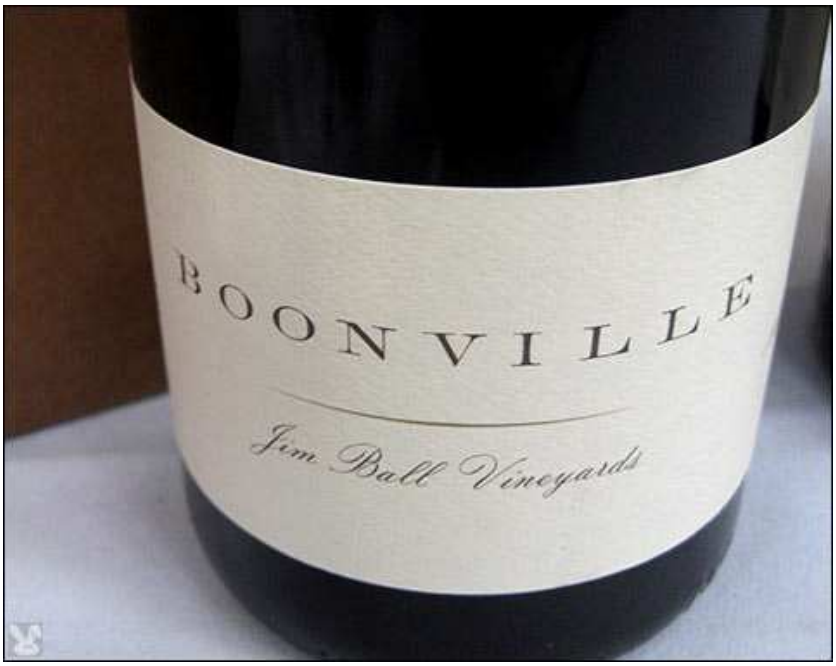
BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE CIDER
EST 2010
BOONVILLE, CA

BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE
CURRANT
BOONVILLE
CIDER HOUSE
BITE
HARD
APPLE CIDER
GRAVENSTEIN

3. The word/name “Boonville” will be used in the Mark, and has been used in the samples shown above, to identify the location of the source of the hard cider products sold under the Mark, including the apples and manufacturing operation.

4. I am also one of the owners of The Boonville Hotel in Boonville, Mendocino County, California (www.boonvillehotel.com). I have had an ownership interest in the hotel for over eight years. As part of the services it offers, The Boonville Hotel sells wine, beer, and hard cider, to its guests. It also offers and serves meals and snacks including breakfast and dinner. It has done so for more than 23 years under that name. Copies of current web pages advertising the hotel are attached hereto as Exhibit A.

5. I am also aware that Jim Ball Vineyards, located in Boonville, California, has been using the word/name “Boonville,” as shown below, to identify one of its wine products since at least 2007.



6. Anderson Valley Brewing Company, which appears to be the dba of the Opposer, Anderson Valley Acquisition Company, LLC, has a brewery and place of business in Boonville, Mendocino County, California, which is in the Anderson Valley region.

7. Over the years, and recently, I have seen many if not all of the various beer products offered for sale by the Anderson Valley Brewing Company, since, among other things, the Boonville Hotel sells these products as part of its meal offerings and in its small bar. Most of the products I have seen, include one or more references to Boonville as a location of the brewery or one or more of its ingredients. Pictures of various labels and bottles of such beer products are shown in Exhibit B, hereto. I have never seen Anderson Valley Brewing Company make any use of the term "Boonville" alone, as a trademark.

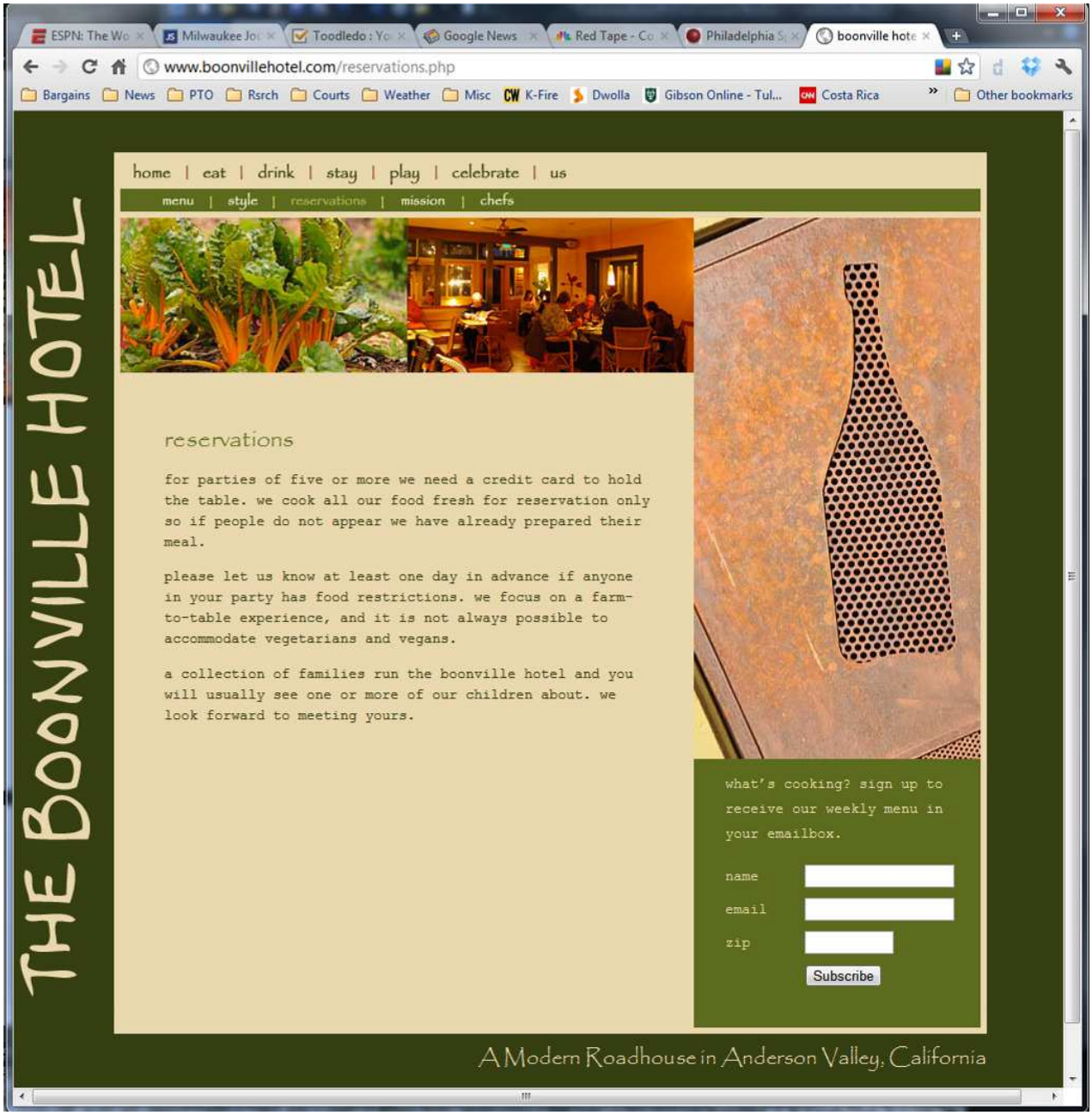
8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 18, 2011 in Milwaukee, Wisconsin.

Roger Scommegna

EXHIBIT A

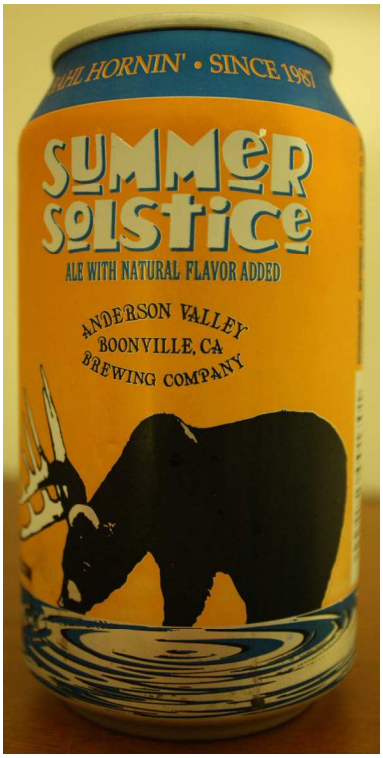
www.boonvillehotel.com
THE BOONVILLE HOTEL
home | eat | drink | stay | play | celebrate | us
baby it's cold outside
thursday
curried prawns, feta salsa verde & creamy risotto
friday
beer braised short ribs, smashed potatoes & gremolada
saturday
a simple cassoulet
sunday
slow roast pork, farro grain & roasted winter vegetables
monday
winter is coming and we might just be closed
a family style restaurant
at the boonville hotel
proprietor/chef Johnny Schmitt
TABLE 128
14050 Hwy 128, Boonville, CA
it's about people, food, drink and a well made bed...
two hours north of san francisco, halfway to the coast on highway 128, in the heart of mendocino co.
we're pulling out our woolies & getting ready for the frost
check out our blog www.ruralethos.com
A Modern Roadhouse in Anderson Valley, California

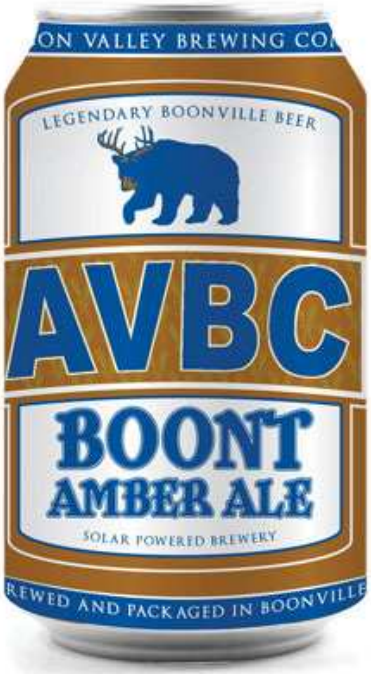

www.boonvillehotel.com/reservations.php
THE BOONVILLE HOTEL
home | eat | drink | stay | play | celebrate | us
menu | style | reservations | mission | chefs
reservations
for parties of five or more we need a credit card to hold the table. we cook all our food fresh for reservation only so if people do not appear we have already prepared their meal.
please let us know at least one day in advance if anyone in your party has food restrictions. we focus on a farm-to-table experience, and it is not always possible to accommodate vegetarians and vegans.
a collection of families run the boonville hotel and you will usually see one or more of our children about. we look forward to meeting yours.
what's cooking? sign up to receive our weekly menu in your emailbox.
name
email
zip
Subscribe
A Modern Roadhouse in Anderson Valley, California

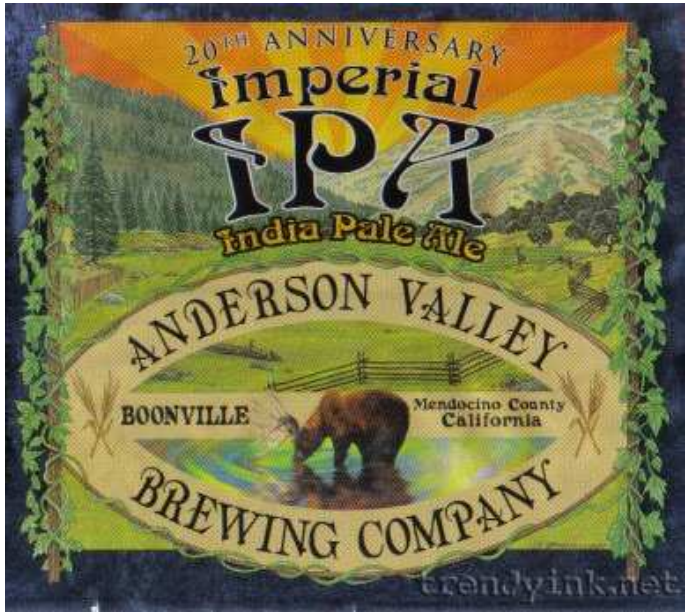
www.boonvillehotel.com/drink.php
THE BOONVILLE HOTEL
home | eat | drink | stay | play | celebrate | us
sample wine menu
besides local gems, our wine list has a number of unique and reasonable wines from abroad. the bar opens daily at 11am. stop by for a hot or cold drink, by the fire or in the garden.
A Modern Roadhouse in Anderson Valley, California

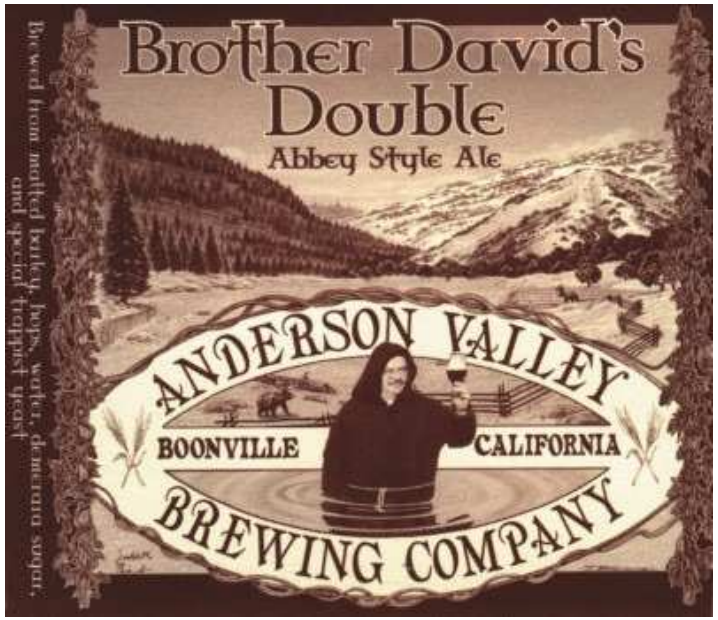
EXHIBIT B

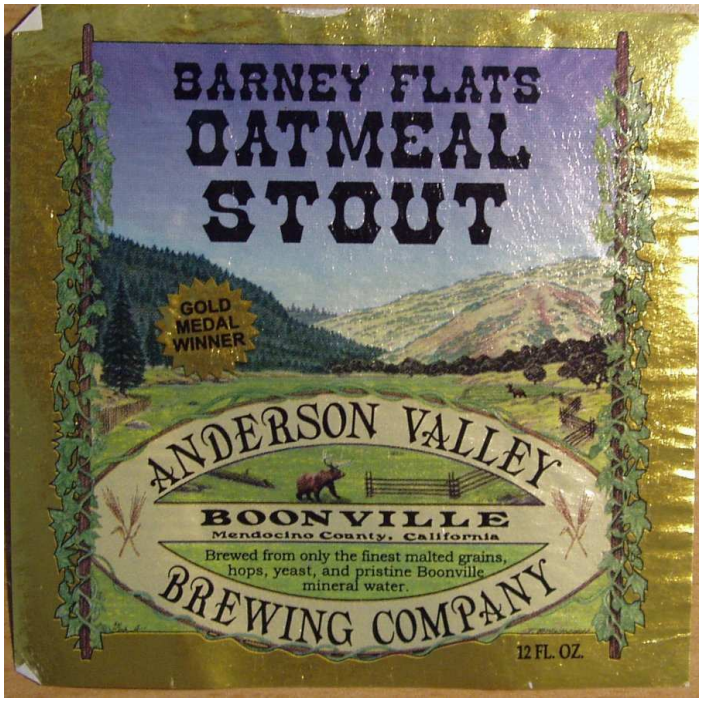
BAHL HORNIN' • SINCE 1987
Winter Solstice
Seasonal Ale
ALE WITH NATURAL FLAVOR ADDED
ANDERSON VALLEY
BOONVILLE, CA
BREWING COMPANY

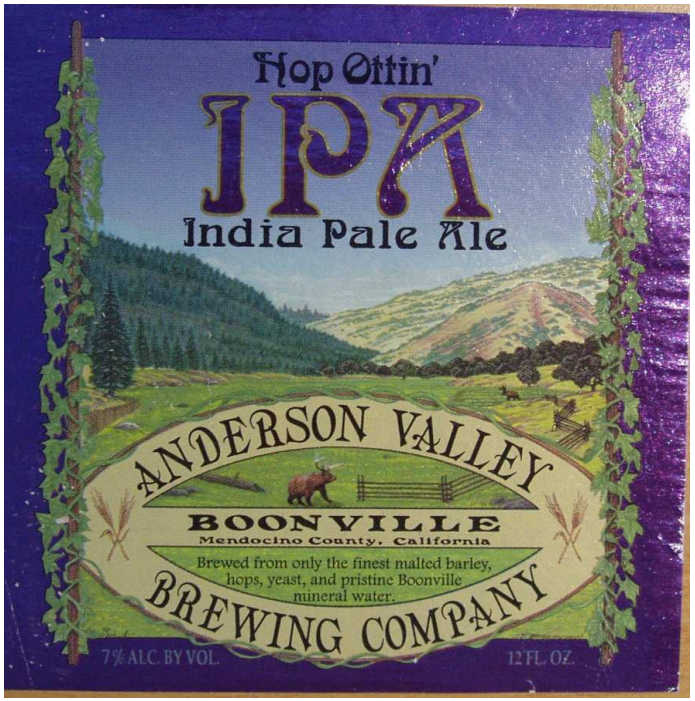

HORNIN' • SINCE 1987
SUMMER
SOLSTICE
ALE WITH NATURAL FLAVOR ADDED
ANDERSON VALLEY
BOONVILLE, CA
BREWING COMPANY

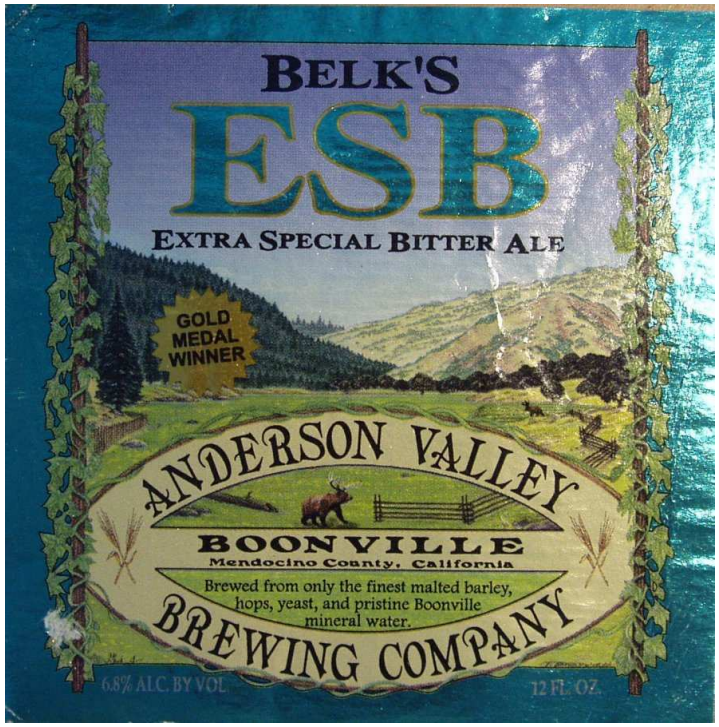

ON VALLEY BREWING CO
LEGENDARY BOONVILLE BEER
AVBC
BOONT
AMBER ALE
SOLAR POWERED BREWERY
REWED AND PACKAGED IN BOONVILLE

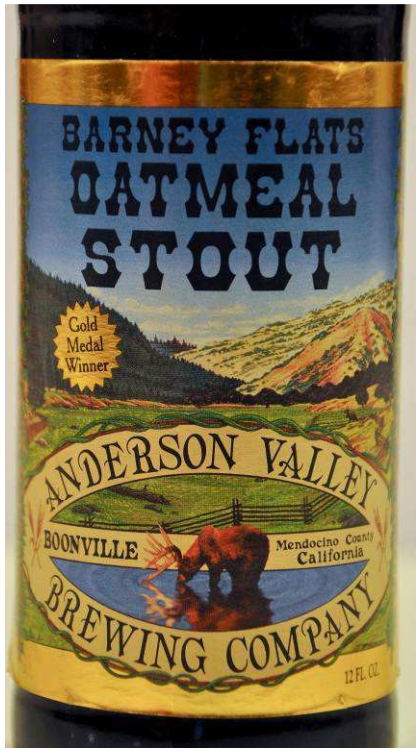

20TH ANNIVERSARY
imperial
IPA
india Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County
California
BREWING COMPANY
trendyink.net

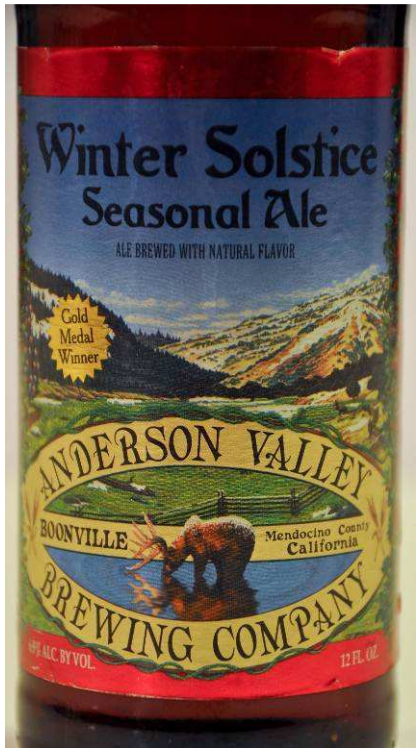

Brother David's
Double
Abbey Style Ale
Brewed from malted barley, hops, water, demerara sugar, and special trappist yeast
ANDERSON VALLEY
BOONVILLE
CALIFORNIA
BREWING COMPANY

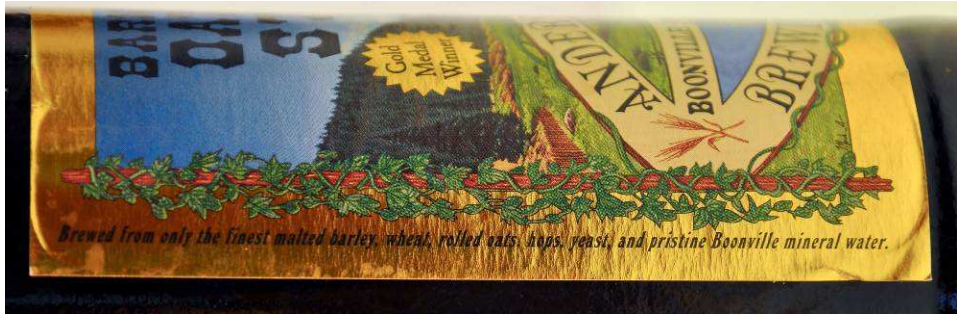

BARNEY FLATS
OATMEAL
STOUT
GOLD
MEDAL
WINNER
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted grains, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
12 FL. OZ.

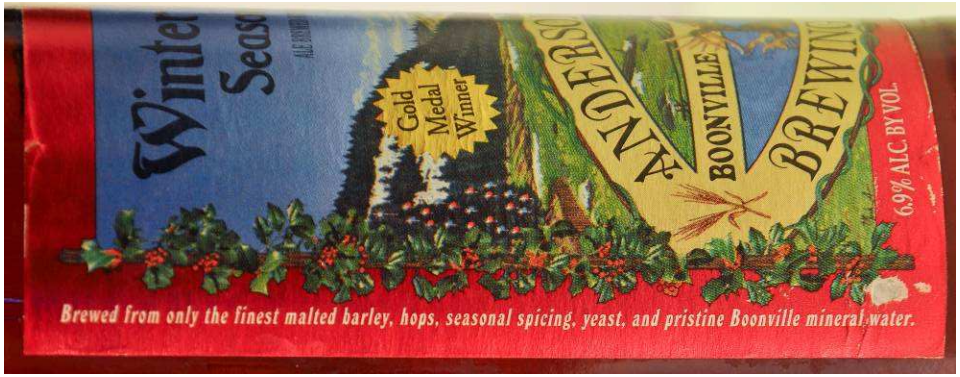

Hop Ottin'
IPA
India Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted barley, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
7% ALC. BY VOL.
12 FL. OZ.

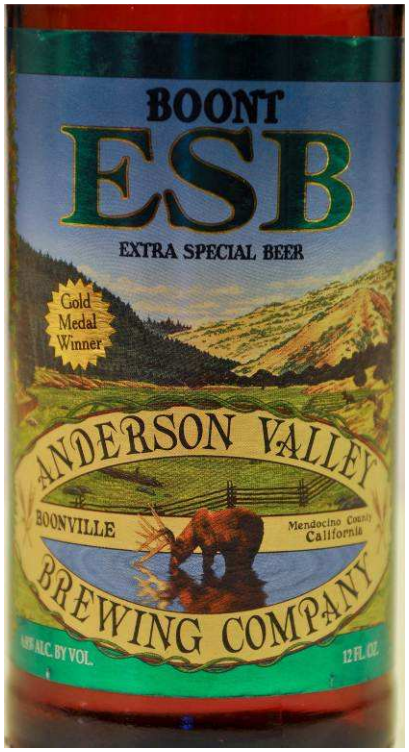

BELK'S
ESB
EXTRA SPECIAL BITTER ALE
GOLD MEDAL WINNER
ANDERSON VALLEY
BOONVILLE
Mendocino County, California
Brewed from only the finest malted barley, hops, yeast, and pristine Boonville mineral water.
BREWING COMPANY
6.8% ALC. BY VOL.
12 FL. OZ.

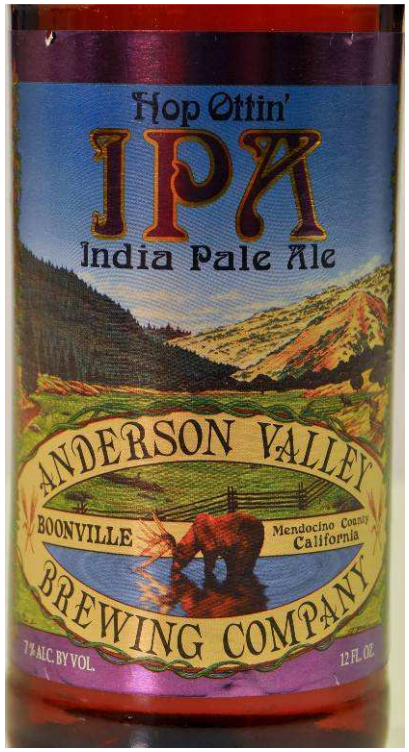

BARNEY FLATS
OATMEAL
STOUT
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
12 FL. OZ.

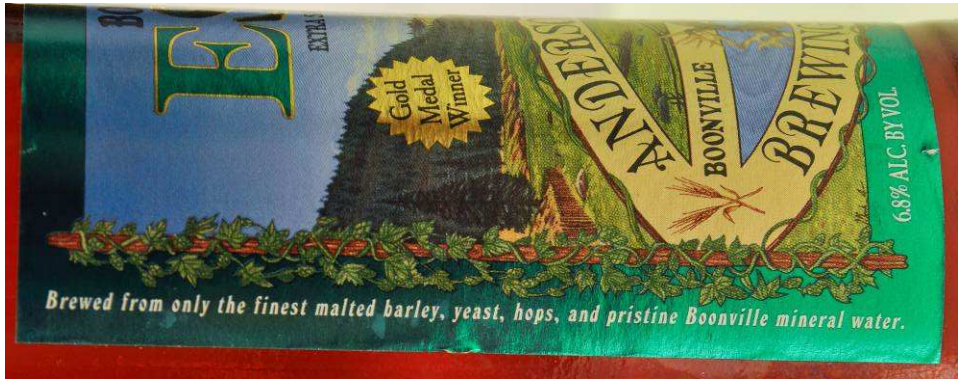

Winter Solstice
Seasonal Ale
ALE BREWED WITH NATURAL FLAVOR
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
12 FL. OZ.

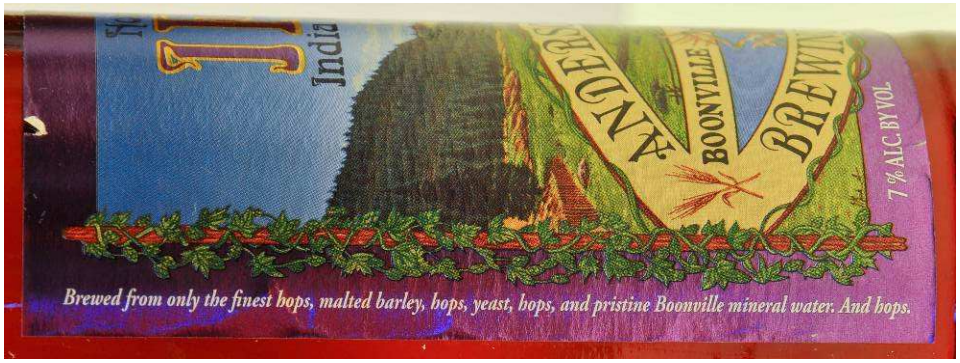

Gold Medal Winner
Brewed from only the finest malted barley, wheat, rolled oats, hops, yeast, and pristine Boonville mineral water.

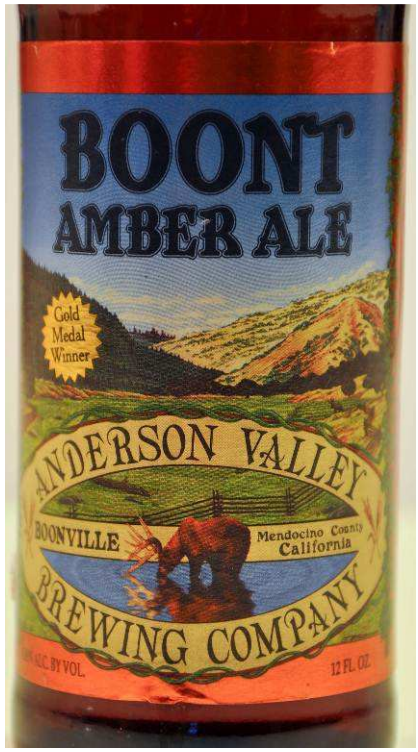

Gold Medal Winner
BOONVILLE
6.9% ALC. BY VOL.
Brewed from only the finest malted barley, hops, seasonal spicing, yeast, and pristine Boonville mineral water.


BOONT
ESB
EXTRA SPECIAL BEER
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
6.8% ALC. BY VOL.
12 FL. OZ.

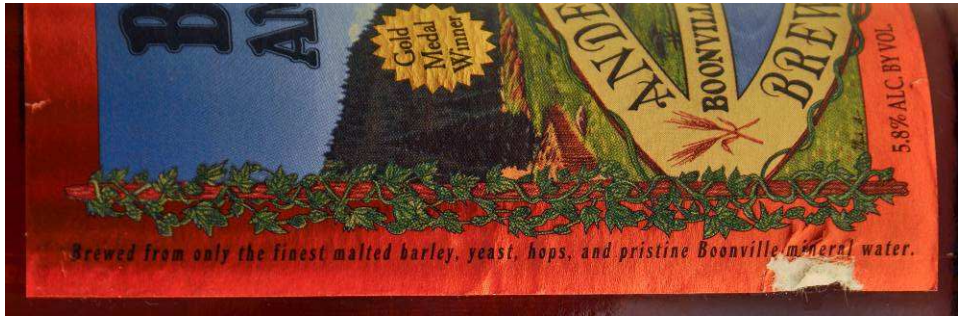

Hop Ottin'
IPA
India Pale Ale
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
7% ALC. BY VOL.
12 FL. OZ.


Gold Medal Winner
ANDERSON
BOONVILLE
BREWING
6.8% ALC. BY VOL.
Brewed from only the finest malted barley, yeast, hops, and pristine Boonville mineral water.


India
ANDERSON
BOONVILLE
BREWING
7% ALC. BY VOL.
Brewed from only the finest hops, malted barley, hops, yeast, hops, and pristine Boonville mineral water. And hops.


BOONT
AMBER ALE
Gold Medal Winner
ANDERSON VALLEY
BOONVILLE
Mendocino County California
BREWING COMPANY
12 FL. OZ.

Named in Boontling* for the focal center of Anderson Valley, Boont Amber was the first ale produced at our famous Boonville brewery. Boont is a medium-bodied amber ale with a beautiful copper color, a robust head, and the rich flavor of caramel malt. Described as "an essay in balance," Boont is the classic American-style Amber Ale. Noble and robust, yet smooth and mellow, Boont is delicious alone, or the perfect accompaniment to any meal.
It's Bahl Hornin' (It's good drinkin').
*The local Anderson Valley dialect, developed in the late 1800's.
www.avbc.com
GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.
0 091255 6
CT·DE·HI·IA·MA·ME·NY·
OR·VT· 5¢ MI 10¢ OK+
CA CASH REFUND


Gold Medal Winner
ANDERSON
BOONVILLE
BREW
5.8% ALC. BY VOL.
Brewed from only the finest malted barley, yeast, hops, and pristine Boonville mineral water.