

ESTTA Tracking number: **ESTTA534194**

Filing date: **04/24/2013**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Atlas Brewing Company, LLC
Granted to Date of previous extension	04/24/2013
Address	2747 N. Lincoln Chicago, IL 60614 UNITED STATES

Attorney information	Lema A. Khorshid Fuksa Khorshid, LLC 70 W. Erie, 2nd Floor Chicago, IL 60654 UNITED STATES lema@fklawfirm.com, robert@fklawfirm.com Phone:312-266-2221
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Applicant Information

Application No	85642549	Publication date	12/25/2012
Opposition Filing Date	04/24/2013	Opposition Period Ends	04/24/2013
Applicant	ATLAS BEER WORKS LLC 1124 7TH ST NE WASHINGTON, DC 20002 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	ATLAS BREWING COMPANY		
Goods/Services	BEER		

Attachments	Notice of Opposition - Atlas.pdf (4 pages)(1033242 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lema A. Khorshid/
Name	Lema A. Khorshid
Date	04/24/2013

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

In the Matter of:
Application Serial No. 85642549
For the mark of "ATLAS"
Published in the *Official Gazette*
December 25, 2012

ATLAS BREWING COMPANY, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
VOLSTEAD BEER WORKS, LLC,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, ATLAS BREWING COMPANY, LLC, a Limited Liability Company organized and existing under the laws of the State of Illinois, with offices at 2747 N. Lincoln Avenue, Chicago, Illinois 60614, believes that it will be damaged by the registration of the mark "ATLAS" in International Classes 032 as shown in Application Serial No. 85642549, filed by Applicant, VOLSTEAD BEER WORKS, LLC, a Limited Liability Company organized and existing under the laws of the State of Delaware located at 1124 7th Street NE, Washington, District of Columbia, 20002, and hereby opposes the same and requests that registration to the Applicant be refused.

As grounds for its opposition, Opposer alleges that:

1. Applicant seeks to register a mark which consists of the term "ATLAS" for intended use in connection with "Beer" in International Class 032 (hereinafter, the "Applicant's Applied-For Mark").
2. Applicant filed its intent-to-use application on June 1, 2012.

3. Applicant's Applied-For Mark was published for opposition on December 25, 2012.
4. On January 18, 2013, Opposer requested, and was granted, a ninety (90) day extension to file this Notice of Opposition by April 24, 2013.
5. Opposer is within the ninety (90) day extension period granted to it to file this Notice of Opposition.
6. Prior to June 1, 2012, Opposer used "ATLAS BREWING COMPANY" as its trade name in connection with selling, promoting and marketing beer and prominently publicized this trade name.
7. Prior to June 1, 2012, Opposer's use of the trade name "ATLAS BREWING COMPANY" attained a significant amount of public recognition in connection with beer and was widely visible to its target demographic and its competitors.
8. Prior to June 1, 2012, the Opposer spent a great deal of time and money to cultivate goodwill and intangible value in the trade name "ATLAS BREWING COMPANY."
9. Prior to June 1, 2012, a simple internet search would have resulted in several entries substantiating the Opposer's usage of the trade name "ATLAS BREWING COMPANY" and the associated goodwill it had cultivated in connection with selling, promoting and marketing beer under this trade name.
10. Despite the fact that the Opposer's trade name usage was highly visible to the public in connection with selling beer, the Applicant filed its intent-to-use application to register the Applied-For Mark, Serial Number 85,642,549.
11. Since at least as early as July 19, 2012, the Opposer has used the marks "ATLAS BREWING COMPANY" and "ATLAS GOLDEN ALE" in commerce (the "Opposer's Marks" or its "Marks") to sell beer.

12. Opposer has owned and operated a brewery utilizing its Marks and the trade name "ATLAS BREWING COMPANY" for at least nine months without any correspondence from the Applicant demanding that it cease its use.

13. On October 24, 2012, the Opposer filed applications for its Marks in International Class 032. (The application for "Atlas Brewing Company" was assigned Application Serial Number 85,762,603. The application for "Atlas Golden Ale" was assigned Application Serial Number 85,762,629.)

14. On February 26, 2013, Opposer demanded that Applicant withdraw its application for the Applied-For Mark based on likelihood of confusion with its Marks and its trade name "ATLAS BREWING COMPANY."

15. Opposer's trade name "ATLAS BREWING COMPANY" (and its Marks) and the Applicant's Applied-For Mark are similar as to the nature of the goods and services described because Opposer currently owns and operates a brewery and sells the beer it brews and Applicant intends to own and operate a brewery and sell the beer it brews.

16. Opposer's trade name "ATLAS BREWING COMPANY" (and its Marks) and the Applicant's Applied-For Mark, "ATLAS", are similar in sound, connotation, appearance and commercial impression because the dominant portion of the Opposer's trade name (and its Marks) and the Applicant's Applied-For Mark is "*Atlas*."

17. Potential purchasers would likely mistakenly believe that the beer being offered for sale by the Applicant is somehow associated with, or approved by, the Opposer. Accordingly, Applicant's registration and use is likely to cause confusion, mistake or deception among all potential purchasers in all channels of trade for all goods offered by the Applicant.

18. If registration is issued to the Applicant's Applied-For Mark, the confusion would result in damage and injury to the Opposer and the public.

19. The registration would give the Applicant an unqualified right to misappropriate the valuable goodwill and reputation associated with Opposer's prior use of the trade name "ATLAS BREWING COMPANY" (and its Marks) and to trade on its goodwill, without expending any resources, resulting in a windfall to the Applicant.

20. More importantly, the Applicant would monetarily benefit from the likely confusion among purchasers who will believe that the Applicant's goods and services are related in some fashion to the Opposer's goods and services.

21. Opposer believes that it will be damaged by registration of the Applicant's Applied-For Mark, and hereby opposes the same pursuant to 15 U.S.C. §1052(d).

WHEREFORE, Opposer requests that this Opposition be sustained and Application Serial No. 85642549 be refused registration.

Respectfully submitted,
ATLAS BREWING COMPANY, LLC

/Lema A. Khorshid/

Lema A. Khorshid
Attorney of Record

Date: April 24, 2013

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