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

Proceeding	91210379
Party	Plaintiff Atlas Brewing Company, LLC
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Date	07/18/2014
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**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. 91210379
	)	
ATLAS BREW WORKS, LLC,	)	MARK: ATLAS
f/k/a VOLSTEAD BEER WORKS LLC,	)	
f/k/a ATLAS BEER WORKS LLC	)	
	)	
Applicant.	)	

**OPPOSER’S PETITION TO THE DIRECTOR SEEKING REVIEW OF THE DENIAL  
OF SUMMARY JUDGMENT, AND MOTION TO SUSPEND THE PROCEEDINGS**

Opposer, ATLAS BREWING COMPANY, LLC, (“Opposer”) 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, respectfully petitions the Director of the Trademark Trial and Appeal Board (“TTAB”) to reverse the Board’s denial of summary judgment in Opposer’s favor and enter an order granting summary judgment under Federal Rule of Civil Procedure 56(c), and sustaining its opposition of Applicant ATLAS BREW WORKS, LLC’s (“Applicant’s”) Trademark Application Serial No. 85/642,549 (the “549 Application”) for the mark ATLAS. Opposer also moves, pursuant to 37 C.F.R. §2.127(d), that the Board suspend this proceeding pending determination of this Petition as of the date of submission.

## **INTRODUCTION**

On February 12, 2014, Opposer filed its motion for summary judgment pursuant to Fed. R. Civ. P. 56(c). The motion relied on two distinct rationales. First, Opposer argued that Applicant's mark is primarily geographically descriptive of the Atlas District of Washington, D.C. The argument was based, in large part, on Applicant's sworn answers to interrogatories in which its president stated that it chose the ATLAS mark "because the Atlas District is the commercial strip neighborhood in the District of Columbia near the intended location of the brewery." A copy of the Applicant's answer to Opposer's Interrogatory 7 is attached as Exhibit 1. Opposer also argued that the Applicant lacked a bona fide intent to use the mark at the time it filed its application. This Petition does not object to the denial of summary judgment on that basis.

Opposer now seeks the Director's review of the denial of summary judgment pursuant to her powers under 37 C.F.R. §2.146. Opposer asks the Director to enter summary judgment in its favor because the applied-for mark is primarily geographically descriptive and therefore ineligible for primary registration.

## **FACTUAL BACKGROUND**

On June 4, 2012, Applicant filed the '549 Application seeking registration of the mark ATLAS, based on intent to use the mark in commerce under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b) (the "Applicant's Mark"). On June 5, 2012, the Applicant's chief executive officer, Justin Cox, sent an email regarding the name of the Applicant's planned brewery under the subject line "Volstead Update 6/5".<sup>1</sup> A copy of this email is attached as Exhibit 2. In the June 5<sup>th</sup> Email, Mr. Cox explained the trademark issue Applicant was having with Volstead Beer Works and that he was contemplating an alternative mark: "Atlas Brew Works". See Ex. 2. The

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<sup>1</sup> Applicant previously sought to register a "Volstead Beer Works" mark, but later withdrew the application.

June 5<sup>th</sup> Email solicited the “thoughts” of the recipients of the email, presumably the investors of the brewery. *Id.* In that same email, Mr. Cox discussed the reason for the name “Atlas” stating that “[t]he Atlas District is the name of the commercial strip neighborhood in DC that we will be near.” *Id.*

On September 21, 2012, Applicant received an office action from the USPTO refusing the registration of Applicant’s Mark due to a likelihood of confusion with another mark, SKINNY ATLAS LIGHT, which was registered on the Principal Register for “beer and ale” under United States Registration Number 2089219. In response to the USPTO’s office action, Mr. Cox presented an affidavit on October 2, 2012 (the “Cox Affidavit”). A copy of the Cox Affidavit is attached as Exhibit 3. In the Cox Affidavit, Mr. Cox testified that the Applicant’s “ATLAS mark will be used exclusively in connection with our brewery in the Washington, DC area.” *See Ex. 3*. Additionally, Mr. Cox testified that the Applicant’s “beers will be marketed exclusively to beer connoisseurs in the Washington, DC area.” *See Ex. 3*. Further, Mr. Cox testified that “the trade channels of [Applicant’s] goods bearing the ATLAS mark will be offered exclusively through [its] brewery location in Washington, DC and will be offered at wholesale to various local bars and restaurants in the Washington, DC area.” *Id.*

In Applicant’s response to Opposer’s Interrogatory Request No. 7, produced in discovery on December 24, 2013, Applicant stated that Cox “began considering the mark ATLAS as an alternative” to Volstead in late May 2012. “This was because the ‘Atlas District’ is the name of the commercial strip neighborhood in the District of Columbia near the intended location of the brewery.” Ex. 1.

On April 24, 2013, Opposer timely filed its Notice of Opposition of the ‘549 Application based on a likelihood of consumer confusion with its trade name usage of Atlas Brewing

Company and its use of “Atlas Brewing Company” in commerce no later than July 19, 2012. In the course of moving for summary judgment, Opposer was granted leave to amend its Opposition, adding affirmative grounds for refusal because (a) Applicant’s Mark is primarily geographically descriptive of the goods to be marketed and sold thereunder, and (b), even if Applicant’s Mark is not primarily geographically descriptive, Applicant had no bona fide intent to use the Applicant’s Mark at the time it filed the ‘549 Application.

In denying Opposer’s motion for summary judgment, the Board accepted Applicant’s contentions that the brewery’s location is near, but not directly in, the Atlas District, and that the Atlas District is neither a commonly-known geographical location, nor a location known for its production of beer, create genuine issues of material fact about the significance of the Applicant’s Mark. *See* Dkt. 9, “Ex. A”.; Dkt. 13, pp. 8-9. Applicant also proposed alternative meanings associated with the Atlas mark which were not mentioned in the answer to interrogatories, but which the Board felt created genuine issues of material fact about the primary significance of the ATLAS mark. *See Id.*

### **LEGAL STANDARDS**

37 C.F.R. 2.146 provides that parties may petition the Director in a variety of circumstances, including “to invoke the supervisory authority of the Director in appropriate circumstances. . .” 37 C.F.R. 2.146(a)(3). Further, “[a] petition from an interlocutory order of the [TTAB] shall be filed within thirty days after the date of mailing of the order from which relief is requested.” 37 C.F.R. 2.146(d)(2).

Summary judgment is appropriate in cases where the moving party establishes that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is material when its resolution would affect the outcome of the

pending litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is genuinely in dispute only if a reasonable fact finder could return a verdict in favor of the nonmovant. *Id.*

## **ARGUMENT**

Based on the facts disclosed by the Applicant in discovery, Opposer is entitled to judgment as a matter of law. The '549 Application is primarily geographically descriptive of the location where the goods originate. The Applicant's own internal emails, as well as the statements in its sworn interrogatory answers betray this fact. When given the opportunity to explain the choice of mark, in a sworn interrogatory, the Applicant cited the geographical location – not Greek titans or other factors – as the primary motivation for choosing the ATLAS name. Ex. 1.

Furthermore, the interrogatories were answered on December 24, 2013, at a point in time when Applicant knew where its brewery was located – that is, when it knew that the brewery was near but not in the Atlas District. Only after it recognized the danger of citing a geographical location as its namesake under oath did Applicant advance a much more involved set of reasons for choosing the name, including that the brewery is near, but not in, the Atlas District. *See* Dkt. 9, "Ex. A." Applicant's attempt to manufacture a genuine issue of material fact in response to a motion for summary judgment should not be indulged. Summary judgment should enter for the Opposer because the Applicant's mark is primarily geographically descriptive, by its own admission.

A trademark will not be granted registration on the Principal Register if it consists of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically descriptive of them. 15 U.S.C. §1052(e)(2); T.M.E.P. §§1209.01(b), 1210.01. In

order to establish a prima facie case of unregistrability, an opposer must prove that: (a) the primary significance of the mark is a generally known geographic location; and, (b) the relevant public purchasers would be likely to believe that the goods and services originate in the geographic place identified in the mark. *In re Nantucket, Inc.*, 677 F.2d 95, 213 U.S.P.Q. 889, 891 (C.C.P.A. 1982).

In the present case, both criteria are satisfied. Applicant's own disclosures indicated that the primary significance of the mark "Atlas" is a generally known geographic location, namely the Atlas District in Washington DC. Applicant stated, under oath, via its answer to interrogatories, that it had chosen the name "Atlas" because "the 'Atlas District' is the name of the commercial strip neighborhood in the District of Columbia near the intended location of the brewery." See Ex. 1. In the June 5<sup>th</sup> Email, the Applicant's chief executive officer, Justin Cox, also stated, when suggesting the name "Atlas Beer Works" to investors that "[t]he Atlas District is the name of the commercial strip neighborhood in DC that we will be near." See Ex. 2.

The "Atlas District" is a generally known geographic location as defined by the TBMP and the Board's case law. See: T.B.M.P. §1210.02(a) (a geographic location may be any term identifying a particular locality, region or area); *In re Spirits of New Merced, LLC*, 85 U.SP.Q.2d 1614 (TTAB 2007)("[i]t is well settled that a recognized nickname or other informal name for a geographic location is considered the equivalent of the official or formal name for the purposes of determining registrability of the geographic term"). The Atlas District gets its name from the Atlas Theatre, which is now known as the Atlas Performing Arts Center. A copy of the Atlas Performing Arts Center's Webpage is attached as Exhibit 4. The Atlas Performing Arts Center's website states the neighborhood surrounding the theatre is "known as the Atlas District." See Ex. 4.

The Atlas District has its own Wikipedia page, which describes it as “an arts and entertainment district located in the Near Northeast neighborhood of Washington, DC.” A copy of the Wikipedia Page is attached as Exhibit 5. The Atlas District has a Web site devoted to it, [www.atlasdistrictdc.com](http://www.atlasdistrictdc.com) (the “Atlas District Web Site”). A screenshot of the Atlas District Web Site is attached as Exhibit 6. The Atlas District even has its own designated page on Yelp (the “Atlas District Yelp Page”). A screenshot of the Atlas District Yelp Page is attached as Exhibit 7.<sup>2</sup> Google Maps recognizes the Atlas District as a searchable neighborhood in Washington, D.C. A screenshot of the Google Maps Search for Atlas District is attached as Exhibit 8.

Applicant’s response to the motion for summary judgment contains a blatant contradiction. It admits that the Atlas District is a recognized area in Washington D.C. and admits that it chose the name, at least in part, because of the brewery’s proximity to the Atlas District, yet goes on to pretend that the Atlas District hardly exists as a recognized location. Dkt. 9, “Ex. A”, ¶¶ 28-29. Applicant can point to no standard under trademark law or otherwise suggesting that a place name must be the most common one used to describe the area in order to meet the primarily geographically descriptive criteria.

Purchasers would be likely to believe that the goods and services originate in the geographic place identified. Goods or services may be said to “originate” from a geographic location if, for example, they are manufactured, produced or sold there. T.B.M.P. §1210.03. Applicant’s intended principal place of business is its brewery and restaurant, which is located approximately 1.3 miles from the center of the Atlas District.<sup>3</sup> Applicant’s beers, which

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<sup>2</sup> It bears noting that one of the other businesses listed on the Atlas District’s Yelp page chose the name “Atlas Room” for a restaurant in the district, further contradicting Applicant’s insistence that the Atlas District is not a recognized name for the “H Street Corridor.” See Ex. 7.

<sup>3</sup> The short distance between the threshold of the Atlas District and the location of Applicant’s principal place of business does not affect Opposer’s argument that there is goods/place association between ATLAS beer and the Atlas District; the T.B.M.P. states that the goods may be produced, manufactured or sold “in or near” the place for purchasers to form the requisite association. T.B.M.P. §1210.04. See *In re Spirits of New Merced, LLC*, 85

Applicant intends to sell under the name ATLAS, will be brewed solely at Applicant's principal place of business and sold there on a daily basis.

Applicant even testified that it is exclusively targeting individuals in the Washington, D.C. area. In the Cox Affidavit, which was submitted to the USPTO in furtherance of the '549 Application, Cox testifies that the "ATLAS mark will be used exclusively in connection with our brewery in the Washington, DC area." *See* Ex. 3, ¶1. Applicant testified that "the trade channels of our goods bearing the ATLAS mark will be offered exclusively through our brewery location in Washington, DC and will be offered at wholesale to various local bars and restaurants in the Washington, DC area." *Id.*

Moreover, Applicant entered into a distribution agreement with a third party, after which a press release (the "Press Release") explained that Applicant was to "distribute local craft beer District wide." A copy of the Press Release is attached as Exhibit 9. The Press Release also states that Applicant's distribution agreement "will guarantee beer drinkers within the District" that they would have access to Applicant's goods, further illustrating that Applicant is targeting its sales and marketing efforts at the group of consumers most likely to know that Applicant's Mark refers to the Atlas District. Since the mark will be used exclusively in the D.C. area, the Applicant's purchasers would be intimately knowledgeable of the Atlas District in Washington, D.C.

Applicant argued in its response to summary judgment that there is no evidence that the Atlas District is known for beer. In analyzing such an argument, courts have held that the geographical location described in an applied-for mark need not be "well-known or noted for the

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U.S.P.Q.2d 1614, 1621 (TTAB 2007)(holding YOSEMITE BEER geographically descriptive of beer produced and sold in a brewpub in Merced, California; the Board stated that "[s]ince the goods originate at or near [Yosemite National Park], we can presume an association of applicant's beer with the park."). Applicant acknowledged as much in the June 5<sup>th</sup> Email.

goods,” *In re Loew’s Theatres, Inc.*, 769 F.2d 764, 226 U.S.P.Q. 865 (Fed. Cir. 1985). Cox testified that Applicant’s “beers will be marketed exclusively to beer connoisseurs in the Washington, DC area, between the ages of 21 and 40, with disposable income who are seeking local beers,” which according to Cox is a “highly specialized industry.” See Ex. 3. That may not amount to an admission that the area is known for beer, but it is entirely consistent with a marketing plan aimed at people who will, in fact, know about the Atlas District and associate the Applicant’s products with that district.

It is not Opposer’s burden to show that the Atlas District is known for beer; it is Opposer’s burden to show that Applicant chose the mark primarily in connection with a geographical location and that the primary meaning conveyed is geographical. “Though more than a geographic name is required in order to meet the ‘primarily geographically descriptive’ category, there is no requirement that the challenger to a trademark demonstrate that the area is noted for the goods in question. The proper inquiry is ‘What meaning, if any, does the term convey to the public with respect to the goods on which the name is used?’” *Burke-Parsons-Bowlby Corp. v. Appalachian Log Homes, Inc.*, 871 F. 2d 590, 595 (6th Cir. 1989) (quoting *In re Nantucket*, 677 F. 2d at 102). Given Applicant’s own admissions on the subject there is no doubt that its intention is to create a goods/place association in the consumer’s mind between the ATLAS mark and the Atlas District.

Applicant admitted its intention to focus its marketing and sales efforts on precisely the relevant purchasing public that would be most familiar with the Atlas District, and, therefore, most capable of forming the goods/place association set forth in *In re Nantucket, LLC*, between Atlas beer and the Atlas District.

Applicant's ATLAS mark is primarily geographically descriptive of the Atlas District and cannot be registered on the Principal Register without acquiring distinctiveness through secondary meaning. However, because Applicant has not yet placed its mark in commerce and consumers have had no opportunity to encounter the mark in the marketplace, it is impossible for the Applicant to establish acquired distinctiveness.

Without acquired distinctiveness, Applicant's merely descriptive mark can only be placed on the Supplemental Register. However, an applicant who relies on §1(b) of the Lanham Act for registering a mark cannot seek registration on the Supplemental Register until the applicant has submitted an amendment to allege use or a statement of use. *See* T.M.E.P. §1102.03; 37 C.F.R. §§2.47(d), 2.75(b). Applicant has not submitted either an amendment to allege use or a statement of use. Applicant's application is based solely on §1(b). If Applicant ever does submit such an amendment or statement, the filing date of the amendment will be the filing date of the application. T.M.E.P. §1102.03; *see also* T.M.E.P. §206.01; 37 C.F.R. §2.75(b). Since Opposer applied for Opposer's Mark under §1(a) of the Lanham Act, alleging its first use in commerce as of July 19, 2012, it would be impossible for the Applicant to establish priority over the Opposer's Mark and proceed to registration on the Supplemental Register. Since the Applicant's Mark cannot be registered on either register, the Board could not reasonably return a verdict in favor of the Applicant. The Opposer's Opposition must be sustained.

Opposer respectfully requests that the Director grant summary judgment in its favor on the basis that Applicant's Mark is primarily geographically descriptive.

### **CONCLUSION**

WHEREFORE, Opposer requests that the Director suspend the proceedings until the disposition of this Petition, reverse the decision of the Board denying summary judgment, and

grant summary judgment in Opposer's favor sustaining Opposer's Opposition and refusing registration for Application Serial No. 85642549.

Respectfully submitted,  
ATLAS BREWING COMPANY, LLC

/Thomas D. Carroll/  
Date: July 18, 2014

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## CERTIFICATE OF SERVICE

I, Robert J. Schaul, hereby certify that I caused a true and complete copy of the foregoing Opposer's Petition To The Director Seeking Review Of The Denial Of Summary Judgment, And Motion To Suspend The Proceedings to be served upon Applicant's attorney of record via first class postal and electronic mail on this 18<sup>th</sup> day of July, 2014, at the following address:

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10 S Wacker Drive  
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/Robert J. Schaul/  
Robert J. Schaul,  
Attorney of Record

# EXHIBIT 1

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

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Atlas Brewing Company, LLC,	)	Attorney Docket 008150.00003
	)	
Opposer,	)	Opposition No. 91210379
v.	)	
	)	Serial No. 85/642,549
Atlas Brew Works LLC,	)	
	)	Mark: "ATLAS"
Applicant.	)	

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**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Trademark Rule 2.120, and subject to its right to supplement these responses based on further investigation and discovery, Applicant, Atlas Brew Works LLC ("Applicant"), hereby objects and responds to Opposer's, Atlas Brewing Company, LLC ("Opposer's"), First Set of Interrogatories ("Opposer's Interrogatories") as follows:

**PRELIMINARY STATEMENTS**

1. Applicant's responses are made solely for purposes of this action. Each response is subject to the general and specific objections set forth below, as well as to all objections as to competence, relevance, materiality, and admissibility, and to any and all other objections on any grounds that would require the exclusion of any statements contained herein if such interrogatory were asked of, or statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

**Interrogatory Request No.7.**

Describe in detail the process in which Applicant created and/or chose Applicant's Mark, including when it was created, the reasons for its creation, and the person(s) involved in its creation.

**RESPONSE:**

Applicant objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or attorney work product doctrine. Subject to and without waiver of the General Objections and the foregoing objections, Applicant responds that it originally intended to use the term VOLSTEAD with its beer. On May 9, 2012, Applicant received an Office Action in its U.S. trademark application for "Volstead Beer Works" citing a likelihood of confusion refusal. Accordingly, in late May, 2012 Applicant's Chief Executive Officer, Justin Cox, began considering the mark ATLAS as an alternative. This was because the "Atlas District" is the name of the commercial strip neighborhood in the District of Columbia near the intended location of the brewery. Moreover, the name was determined to go well with the logo designed by Applicant's designer, Alan Guidera, for the previous mark and a preliminary sketch of the tap handle by Mr. Guidera was found to make a strong impression. Applicant's Chief Executive Officer also concluded that the initials of the intended brewery name, Atlas Beer Works, "ABW" would be useful for promotional purposes. Applicant's Chief Executive Officer also searched the U.S. Trademark Office's database and did not identify any conflicting registered or pending marks.

**Interrogatory Request No.8.**

Describe in detail all advertisements (i.e. promotional materials, marketing materials, commercials, brochures, labels and the like) for Applicant's products or services utilizing

# EXHIBIT 2



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## Volstead Update 6/5

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Justin Cox <justin@volsteadbeerworks.com>  
To: Justin Cox <Justin@volsteadbeerworks.com>

Tue, Jun 5, 2012 at 8:56 AM

REDACTED

Hello all,

I wanted to pass along an update on our progress with Volstead. First thing is we've run into a trademark issue with the name Volstead Beer Works. House Spirits distillery in Portland, OR applied to register a trademark for "Volstead" in the distilled spirits category about two months before we applied to register in the beer category. That does not necessarily preclude our using that name, but it does cloudy the water in terms of our chance of parsing the trademark details out in court. Rather than run that risk, we reached out to the CEO of House Spirits in hopes of reaching an agreement allowing us to use the name without litigation. I spoke to him in person briefly yesterday, he plans to get back to me in the next couple of days after talking with his lawyers. I've never known a lawyer (you know who you are out there) to be optimistic and advise a client to take the risk, so I am not hopeful we will be able to use the name Volstead.

After racking our brains through hundreds of alternatives, we landed on Atlas Beer Works. The Atlas District is the name of the commercial strip neighborhood in DC that we will be near. I think the name goes well with our current logo and my designer sent the attached preliminary sketch of a tap handle that makes a strong impression. We think the name is simple, strong, and memorable. And the initials ABW will be useful in swag, etc. Would love to hear your thoughts.

We are still trying to work out a lease for our brewing space. We are in negotiations with two different landlords. One is a two story building about two blocks from the NY Ave metro and the other is a warehouse space in the Florida Avenue Market (about 1/2 mile from metro). The process has been slower than I would like, but I hope to have something locked up in the next couple of weeks. Our preference is the 2 story building (in which we would only take about 1/4 of the bottom floor but have access to the roof deck). The listing broker has been dragging his feet in responding to our request for proposal and we just learned that he was working a deal with another tenant interested in the entire building, but that looks to be falling through. His attention is now focused on us and I hope they will have something over to us in the next couple of days. In the meantime, we are going through the proposal process with the Florida Avenue Market space as well. Trying to keep the ball moving as quickly as possible.

Once we have a deal worked out at either location, we will order our equipment and begin the build out. There is about a 14 week lag time for delivery of equipment which we will use to build out the space, apply for permits, design and post our website, facebook, twitter, merchandise, and start pre-selling some beer! We are waiting until we have some real estate locked down before we issue a press release about our existence. Most breweries start talking about their plans in the press more than a year before they are ready to brew. Our time frame should

12/20/2013

Atlas Brew Works LLC Mail - Volstead Update 6/5

be a matter of months and I hope the quick ramp-up time will build some instant gratification excitement in the DC beer community. If we can get the real estate deal done in the next couple weeks, I believe we will still be on track for production starting in September.

Thanks for all your support and I will be in touch with another update as soon as we have news to break.

Cheers,  
Justin

—

**Justin Cox**

CEO

Volstead Beer Works LLC

[www.volsteadbeerworks.com](http://www.volsteadbeerworks.com)

202-642-4606 (m)

888-832-5080 (f)



**Atlas tap handle.pdf**

191K

# EXHIBIT 3



**AFFIDAVIT OF JUSTIN COX**

COMES NOW Justin Cox, a resident of the District of Columbia and a citizen of the United States of America above the age 18 and states as follows:

My name is Justin Cox and I am a citizen of the United States of America and resident of the District of Columbia.

In the course and scope of my work I have become familiar with the goods which will be offered under the ATLAS mark, the manner by which these goods will be offered to the public, general information concerning our customers, as well as general information concerning the use of the mark ATLAS to identify our goods. I have also conducted research concerning the prior registered mark SKINNY ATLAS LIGHT as used by Berhard P. Molldrem as more fully identified in U.S. Registration Number 2,089,219 (Hereinafter referred to as "Molldrem mark") and the prior pending mark ATLAS & PLEIONE as used by AA Energies, Ltd. as more fully identified in U.S. Serial Number 85/590,021 (Hereinafter referred to as "AA Energies mark").

In this regard, I state the following based upon my own knowledge:

1. Our ATLAS mark will be used exclusively in connection with our brewery in the Washington, DC area. The mark will be used in association with the brewery itself; however, we will sell a variety of different beers under individual names.
2. Our beers will be marketed exclusively to beer connoisseurs in the Washington, DC area, between the ages of 21 and 40, with disposable income who are seeking local beers. It is a highly specialized industry in which there is no overlap in the trade and/or marketing channels utilized by the average consumer of wine, liquor, or local beers brewed in Syracuse, New York. In support thereof, I have attached evidence concerning like companies that specialize in local

breweries in the Washington, DC area, such as Capital City Brewing Company, DC Brau, and Old Dominion Brew House. *See Exhibits A - C.*

3. In contrast, the Molldrem mark is used in connection with a light beer created by The Empire Brewing Company in Syracuse, New York. The beer is named after the famous pristine lake, Skaneateles, from which the Empire Brewing Company draws its brewing water. The Molldrem mark is meant to be a play on words, as the pronunciation of Lake Skaneateles is very similar to "Skinny Atlas." Thus, most of Molldrem's patrons will make an instant association to the lake referenced therein. *See Exhibit D.*

4. Also in contrast, it can only be assumed that the AA Energies mark is used exclusively in association with wine and liquor. However, no evidence could be found that the mark is currently being used in commerce at all.

5. The trade channels of our goods bearing the ATLAS mark will be offered exclusively through our brewery location in Washington, DC and will be offered at wholesale to various local bars and restaurants in the Washington, DC area.

6. In contrast, it appears that the trade channels for the Molldrem mark are offered exclusively through the Empire Brewing Company in Syracuse, New York. *See Exhibit D.*

7. Also, in contrast it appears that the AA Energies mark does not currently have any trade channels. The owner of the mark, AA Energies, is listed as a provider of oilfield equipment and does not mention liquor, wine, or alcoholic beverages of any kind on their website. *See Exhibit E.*

8. Accordingly, there is simply no overlap in the channels of trade between the goods which will be provided under our ATLAS mark and the goods provided under the Molldrem mark or AA Energies mark.

9. To sell our goods bearing the ATLAS mark we will market through word of mouth referrals, social media, promotional materials distributed to local bars and restaurants, promotional events hosted at our brewery, participating in festivals and events, and through our website hosted at [www.atlasbrewworks.com](http://www.atlasbrewworks.com).

10. The Molldrem mark does appear to maintain an active website but does not appear to market its goods and services through promotional materials distributed to Washington, DC bars and restaurants, promotional events, or by participating in local festivals or events.

11. The AA Energics mark also appears to maintain an active website but the mark referenced herein is not mentioned anywhere on that website. The AA Energics website appears to only be used in association with oilfield equipment and does not mention alcoholic beverages of any kind. See Exhibit E. Additionally, the AA Energics mark does not advertise through social media, promotional materials distributed to local bars and restaurants, promotional events, or participating in festivals and events. AA Energics does not appear to be marketing its goods at all.

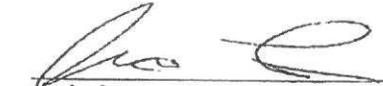
12. In my experience with our business our clients will exercise a very high level of sophistication in choosing the goods offered under the ATLAS mark. After all, they will be choosing goods which are designed to attract a very specific group of individuals, namely, beer connoisseurs in the Washington, DC area, between the ages of 21 and 40, with disposable income who are seeking local beers.

13. We will offer growlers of beer at our brewery for approximately \$10 and will sell our beers to local restaurants and bars for approximately \$6 per pint. In contrast, Molldrem's mark is used to attract individuals in Syracuse, New York who are seeking beers brewed in that area. It can only be assumed that Molldrem's goods cost approximately \$5 to \$8 per pint, based on

similar goods, as no price lists could be found. Also in contrast, it can only be assumed that the AA Energies mark would be used to attract individuals seeking wine and liquor. However, no evidence could be found that any goods are being sold under the AA Energies mark at all.

14. In both my personal life as well as in my understanding of wines, liquors, and beers brewed in Syracuse, New York, I do not believe that there is any potential for a likelihood of confusion between our ATLAS mark and the blocking marks. This assertion is strengthened further by the fact that Molldrem is using their mark in association with one, individual beer, while we are using our ATLAS mark as a brand identifier for our brewery and will sell our beers under a variety of different names. Additionally, Molldrem uses their mark in reference to a lake in Syracuse, New York We, while we use the term ATLAS in reference to the titan, Atlas. Thus, the commercial impressions are very distinct from one another.

BEFORE ME, the undersigned authority, this 2<sup>nd</sup> day of October 2012, personally appeared Justin Cox, who after being first duly sworn, states that the above information is true and correct, and who is personally known to me or who has produced DC-DL as identification and who did take an oath.

  
Justin Cox  
10/2/12  
Date

Notary Public: Joyce A. Fleming (signature)  
Notary Public: Joyce A. Fleming (Typed/Printed name of Notary Public)  
Commission No. \_\_\_\_\_

My Commission Expires:

JOYCE A FLEMING  
District of Columbia  
05/14/2014

# EXHIBIT 4

# ATLAS



SEARCH

go

ATTEND  
EVENTS

MAKE A  
DONATION

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THE ATLAS

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YOUR VISIT

ABOUT  
THE ATLAS

LEARN  
MORE

## OUR STORY

Catch up on current news at our [Atlas Blog](#).

### ATLAS MISSION

The Atlas mission is to bring people together through the arts to share and celebrate a range of artistic expressions and traditions. The Atlas fulfills its mission by:

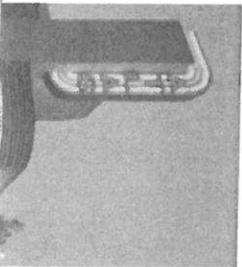
- fostering the growth of professional and aspiring artists throughout the region through offering opportunity, support and respect;
- providing a collaborative management environment to promote partnerships and appreciation;
- using the arts to give young people a chance to spark imagination, enhance self-esteem, and promote mutual understanding;
- training individuals in the arts and stagecraft to build respect for the arts as a vocation;
- actively engaging its neighbors to make the Atlas a center for community conversation and a force to sustain the economic and cultural revitalization of H Street.

The Atlas' vision is to create a dynamic hub where artists, audiences, seniors, young people, neighbors and arts enthusiasts are actively engaging in and having meaningful conversations about art and ideas. It is the Atlas belief that the arts have the capacity to connect people and create understanding and respect among them and build a stronger community for all. In this way, the Atlas increases public understanding of the value of the arts in our community, enhances the civic wellbeing of all its citizens, and strengthens Washington, DC's role as an international leader in the arts.

### ATLAS HISTORY

The Atlas Theater was originally built in 1938 by the Kogod-Burka movie chain. The very first film shown in that 1000 seat theater was the Mickey Rooney vehicle, *Love Finds Andy Hardy*. The Atlas was one of four movie theaters which once thrived on the H Street corridor.

H Street Northeast, originally known as Swampoodle, was a bustling commercial district for much of the early and mid twentieth century. The neighborhood consisted of Irish, Russian, German, Jewish and African-American residents and business owners who lived and worked in relative harmony considering that much of the city was



# ATLAS

ATTEND  
EVENTS

MAKE A  
DONATION

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THE ATLAS

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YOUR VISIT

ABOUT  
THE ATLAS

LEARN  
MORE



H Street Northeast, originally known as Swampoodle, was a bustling commercial district for much of the early and mid twentieth century. The neighborhood consisted of Irish, Russian, German, Jewish and African-American residents and business owners who lived and worked in relative harmony considering that much of the city was segregated during this time period. The neighborhood even petitioned the city to allow them to have an integrated school but they were denied. Department stores, music shops, pharmacies and car dealerships all kept company with the Atlas throughout this heyday. In the late 1950s and early 1960s residents and businesses began leaving cities exacerbated by the riots which followed the assassination of Dr. Martin Luther King Jr. in 1968 and devastated several areas of the city, including H Street. While many buildings were burned and destroyed the Atlas remained.

The neighborhood fell into decline as residents and businesses fled and the Atlas Theater closed its doors for good in 1976. The 1980s and 90s were difficult for the neighborhood as the many vacant buildings provided havens for drug users and the streets became better known for their criminal activity. The Atlas was shrouded and become covered in graffiti and the lights on the historic marquee were dark.

In 2001 The Atlas Performing Arts Center purchased the empty theater with the idea of creating a multiple venue arts center which would be the catalyst for the revitalization of H Street Northeast. The city got behind the idea in 2003 creating the H Street Overlay which divided the street into three sections, the Atlas anchoring the new Arts and Entertainment District. The Atlas' re-opening sparked the economic revitalization that is occurring on H Street, NE.

While the Atlas continues to promote economic development, the board and staff understand that today's performing arts centers may also act as curators of neighborhood identity. Through its programs and service to the community, the Atlas seeks to honor and maintain the history and traditions of H Street, NE while also fostering the changes taking place to renew the H Street corridor. The Atlas seeks to be a center for community conversation where a range of artistic and individual experiences can come together to be celebrated.

The Atlas presents innovative, thought-provoking performances and it provides arts education opportunities for DC's Near Northeast community. Today this neighborhood is known as the Atlas District. The Atlas' restored Art Moderne marquee once again shines over H Street which has become a nightlife destination for eclectic dining, music and the performing arts.

# EXHIBIT 5

# Atlas District

Coordinates: 38°54′0.8″N 76°59′15.7″W﻿ / ﻿﻿ / ﻿

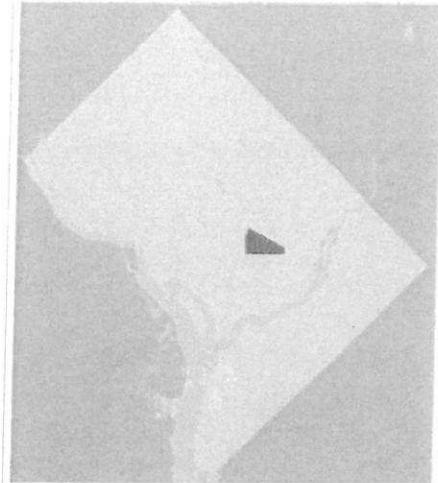
From Wikipedia, the free encyclopedia

The **Atlas District** (also known as the **Atlas** or the **H Street District**) is an arts and entertainment district located in the Near Northeast neighborhood of Washington, DC. It runs along the resurgent H Street Corridor from the outskirts of Union Station to the crossroads with Fifteenth Street, Bladensburg Road, and Florida Avenue. The name is not historical. It is part of a neighborhood branding campaign built around the revitalized Atlas Theater.

The area suffered economic setbacks after the riots following Martin Luther King, Jr.'s 1968 assassination. The neighborhood began a resurgence after Joe Englert announced plans in the late nineties to transform this three block area with various bars and music venues. Examples of bars that he opened were: the Pug; the Red and Black; the Rock N Roll Hotel; the Bee Hive; the Olympic, a sports bar with pool tables; Dr. Granville Moore's Brickyard; and the Showbar.<sup>[1]</sup> Additionally, the area has benefited from the economic resurgence that has affected most of the district since the turn of the 21st century.

The area is served by the X2 Metrobus. The city is building a streetcar system running up H Street from Union Station to Benning Road that would pass through the Atlas district; the streetcar is expected to open in late 2013.<sup>[2]</sup>

The Atlas Theater, the district's namesake, was originally built in 1938. It was converted into the Atlas Performing Arts Center in 2001. The marquee and external appearance of the original movie theater were preserved, but the insides were completely replaced. The building now houses rehearsal and performance space for local performing arts groups, including the Capital City Symphony.



A map of Washington, D.C., with the Atlas District highlighted in maroon.



Atlas Performing Arts Center on H Street, NE

## References

- ↑ Plans to Set The Bar High On H Street NE (<http://www.washingtonpost.com/wp-dyn/content/article/2005/08/25/AR2005082500654.html>)
- ↑ Benning Road/H Street Great Streets Project - Releases - District Department of Transportation (<http://newsroom.dc.gov/show.aspx/agency/ddot/section/2/release/12542>)

## External links

- AtlasDistrict.com (<http://www.AtlasDistrict.com>)

# EXHIBIT 6

# ATLASDISTRICTDC

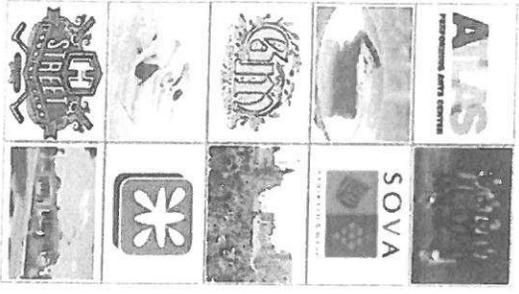
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## Welcome To AtlasDistrictDC!

Washington, DC is not only our nation's Capital and home to our federal government, but it is also a cosmopolitan city with a variety of opportunities that attract residents and visitors from around the world. A city, full of distinctive neighborhoods, each with a different tempo, focus and style that makes each community individually unique.

AtlasDistrictDC.com is a convenient online resource with information regarding businesses and events on H Street Northeast also known as "Atlas District". Whether trying to find an event, locate the closest restaurant, or see the next performance - AtlasDistrictDC.com makes it easy!

**Atlas District On Twitter**  
 Tweets from a list by Atlas District DC

- ArgonautDC** @ArgonautDC 1m
- RT @ryanpope23** @ArgonautDC let's do this as we

# EXHIBIT 7



## Browsing H Street Corridor/Atlas District/Near Northeast, Washington, DC Businesses

Showing 1-10 of 2238

Arts & Entertainment  
Automotive  
Beauty & Spas

Education  
Event Planning & Servi  
Financial Services

Food  
Health & Medical  
Home Services

Hotels & Travel  
Local Services  
Nightlife

Pets  
Professional Services  
Real Estate

Religious Organizations  
Restaurants  
Shopping

More categories

### Sort By

Best Match  
Highest Rated  
Most Reviewed

### Neighborhoods

H Street  
Corridor/Atlas  
District/Near  
Northeast  
 Capitol Hill/Northeast  
 Trinidad  
 Eckington  
More Neighborhoods

### Distance

Bird's-eye View  
Driving (5 mi.)  
Biking (2 mi.)  
Walking (1 mi.)  
Within 4 blocks

### Price

\$  
 \$\$  
 \$\$\$  
 \$\$\$\$

### Features

Offering a Deal  
 Open Now 2:44 PM  
 Sells Gift Certificates  
 Accepts Credit Cards  
More Features



### 1. H & pizza

★ ★ ★ ★ ★ 272 reviews  
\$ · Pizza

H Street Corridor/Atlas  
District/Near Northeast  
1118 H St NE  
Washington, DC 20002  
(202) 733-1285



Try the Farmer's Daughter Pie and you'll know my conundrum.



### 2. Sidamo Coffee and Tea

★ ★ ★ ★ ★ 191 reviews  
\$ · Coffee & Tea, Breakfast & Brunch,  
Sandwiches

H Street Corridor/Atlas  
District/Near Northeast  
417 H St NE  
Washington, DC 20002  
(202) 548-0081



Quite a diverse selection of Ethiopian coffee.



### 3. Toki Underground

★ ★ ★ ★ ★ 770 reviews  
\$\$ · Taiwanese, Japanese

H Street Corridor/Atlas  
District/Near Northeast  
1234 H St NE  
Washington, DC 20002  
(202) 388-3086



The Hakata classic never fails to impress me.



### 4. HR-57

★ ★ ★ ★ ★ 111 reviews  
\$ · Jazz & Blues, Music Venues

H Street Corridor/Atlas  
District/Near Northeast  
1007 H St NE  
Washington, DC 20002  
(202) 253-0044



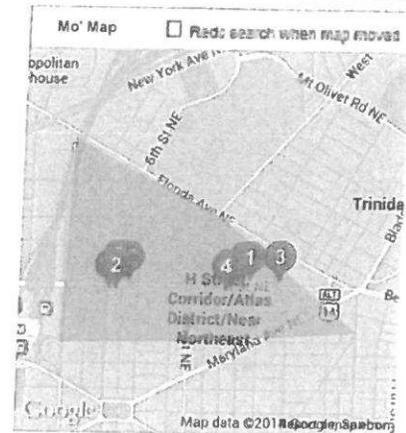
The place is BYOB and has a bar (an unusual combination)



### 5. Cirque Du Rouge

★ ★ ★ ★ ★ 84 reviews  
\$\$ · Tattoo

H Street Corridor/Atlas  
District/Near Northeast  
416 H St NE  
Washington, DC 20002  
(202) 544-4701



### Ads by Google

#### D.C. - Street Map

www.local.com/  
Looking for Street Map in Washington D.C.? Find it here!

#### H Street Corridor

www.about.com/H+Street+Corridor  
H Street Corridor Search Now! Over 60 Million  
Visitors  
173,977 people follow About.com on Google+

I've been planning my very first tattoo for some time now and Cirque Du Rouge stood out immediately. There are so many positive reviews and all for good reason. I called early in the...



6. The Atlas Room  
★★★★★ 166 reviews  
\$\$\$ · American (Traditional)

H Street Corridor/Atlas District/Near Northeast  
1015 H St NE  
Washington, DC 20002  
(202) 388-4020



I enjoyed the short rib ravioli just like everyone else



7. Metro Mutts NE  
★★★★★ 58 reviews  
Pet Stores, Dog Walkers

Serving Washington, DC and the Surrounding Area  
(202) 450-5661



This review is about their dog-walking services. I have been so happy with the Metro Mutts service! First of all, Darnita is very response on email and has been able to schedule extra...



8. Granville Moore's  
★★★★★ 653 reviews  
\$\$ · American (New), Belgian, Gastropubs

H Street Corridor/Atlas District/Near Northeast  
1238 H St NE  
Washington, DC 20002  
(202) 399-2546



Can't wait to try out more mussels on the next trip.



9. Little Miss Whiskey's Golden Dollar  
★★★★★ 215 reviews  
\$\$ · Bars, Dance Clubs

H Street Corridor/Atlas District/Near Northeast  
1104 H St NE  
Washington, DC 20002



Cool bartenders, excellent beer selection, chill vibe



10. Ethiopic  
★★★★★ 309 reviews  
\$\$ · Ethiopian

H Street Corridor/Atlas District/Near Northeast  
401 H St NE  
Washington, DC 20002  
(202) 675-2066



The vegetarian sampler ranks among the best I've had anywhere.

Page 1 of 100

1 2 3 4 5 6 7 8 9 ...

Not here? Tell us what we're missing.

If the business you're looking for isn't here, add it!

Got search feedback? Help us improve

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FAQ  
Advertise  
Content Guidelines

More

Careers  
Yelp Mobile  
The Weekly Yelp

Languages

English

Countries

# EXHIBIT 8

Get directions My places

alias brew works

alias district, dc

Add Destination • Show options

GET DIRECTIONS

West Virginia Ave NE 1.3 mi, 4 mins

West Virginia Ave NE and MI In current traffic: 5 mins

Oliver Rd NE 4.9 mi, 6 mins

Or take Public Transit (BNS) 12 mins

### Driving directions to H Street Corridor, Washington, DC

**Alias Brew Works**  
2052 West Virginia Ave NE #102  
Washington, DC 20002

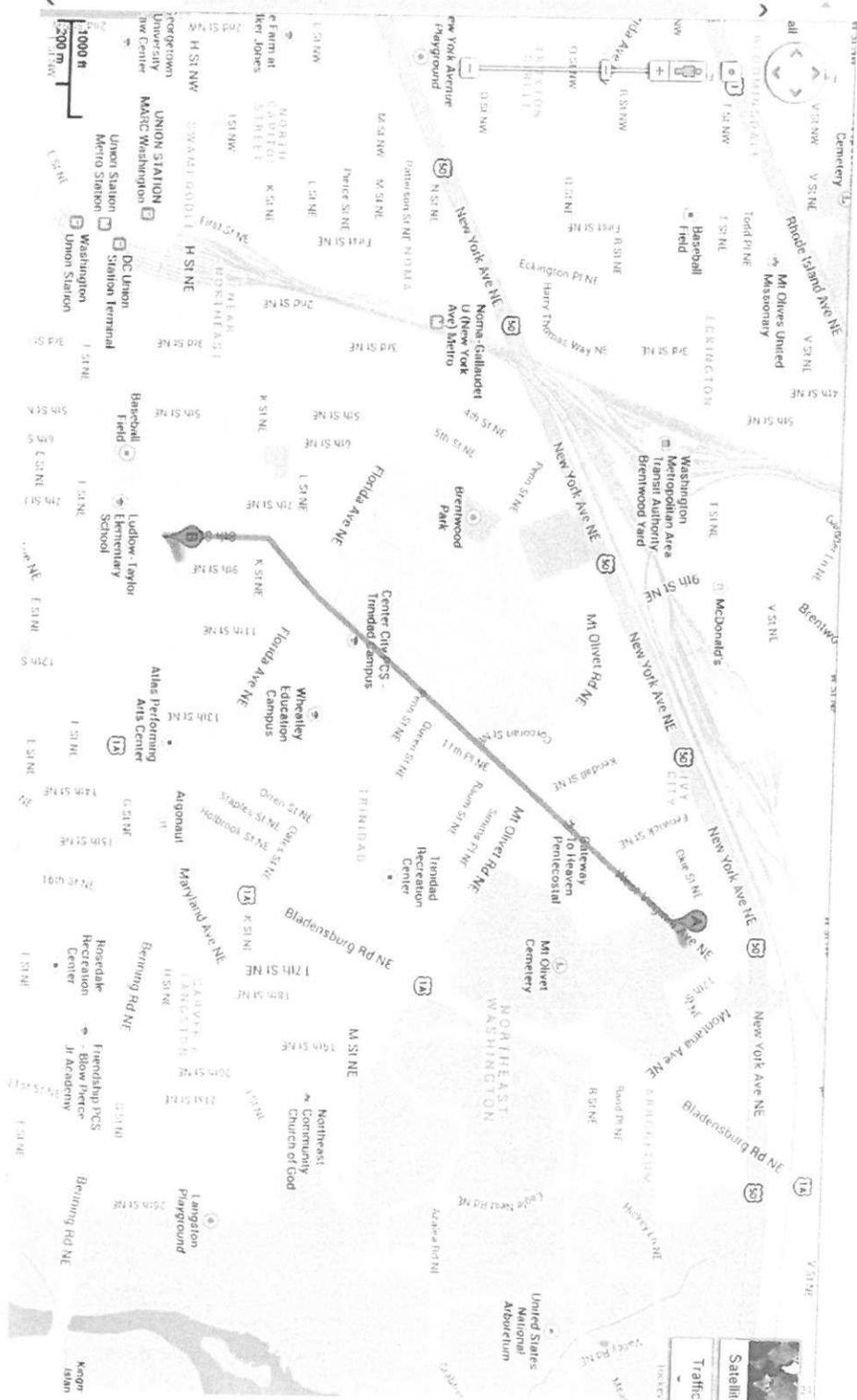
1. Head southwest on West Virginia Ave NE toward 15th St NE

2. Turn left onto 8th St NE

**H Street Corridor**  
Washington, DC

Save to My Maps

These directions are for additional purposes only. You may find more information on the map.



# EXHIBIT 9



Atlas Brew Works LLC  
2052 West Virginia Ave NE  
Suite 102  
Washington, DC 20002

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## FOR IMMEDIATE RELEASE

April 10, 2013

@AtlasBrewWorks  
facebook.com/AtlasBrewWorks

## Contact

Justin Cox  
Founder & CEO  
info@atlasbrewworks.com  
(202) 832-0420

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## Atlas Brew Works partners with Premium Distributors of Washington DC to distribute local craft beer District wide

**WASHINGTON, D.C.** – Atlas Brew Works, the District's newest production craft brewery, today announced the signing of a distribution deal with Premium Distributors of Washington DC, the leader in beer distribution within the District.

"Premium's track record in craft beer speaks for itself," said Atlas CEO Justin Cox, "They have the infrastructure, resources, and professionalism to best represent Atlas in the District."

Atlas Brew Works, founded by Cox and award winning professional brewer Will Durgin, is on track to open this summer with three beers: Rowdy, a hop-forward American-style ale, accented by peppery rye notes, District Common, a California Common featuring Czech Saaz hops, and a third beer which will remain a surprise.

"We are thrilled to be working with a local DC brewery," commented John Zeltner, President of Premium Distributors of Washington DC, "Atlas will fill a void in our craft portfolio by offering a DC local and enhance our great selection of beers. Justin and Will are passionate brewers with a commitment to brew high quality beer; we look forward to partnering with them for many years to come."

The collaborative efforts of Atlas and Premium will guarantee beer drinkers within the District can enjoy a pint of fresh, locally crafted beer wherever fine beverages are served.