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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
Correspondence Address	LEMA A KHORSHID FUKSA KHORSHID LLC 70 W ERIE, 2ND FLOOR CHICAGO, IL 60654 UNITED STATES lema@fklawfirm.com, robert@fklawfirm.com
Submission	Motion for Summary Judgment
Filer's Name	Perry Gattegno
Filer's e-mail	perry@fklawfirm.com, robert@fklawfirm.com
Signature	/perry gattegno/
Date	02/12/2014
Attachments	Atlas Brewing Company Motion to Amend and Summary Judgment.Final.pdf(4232253 bytes) Pages from Atlas Brewing Co MSJ Exhibits A - E.pdf(4325760 bytes) Pages from Atlas Brewing Co MSJ Exhibits F - N.pdf(4286186 bytes)

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 COMBINED MOTION TO AMEND OPPOSITION, MOTION FOR SUMMARY JUDGMENT, AND MOTION TO SUSPEND THE PROCEEDINGS

COMES NOW 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, by its attorneys, and moves the Trademark Trial and Appeal Board (the "Board") for an order granting this combined motion to amend the pleadings under Federal Rules of Civil Procedure 15(a) and motion for summary judgment under Federal Rules of Civil Procedure 56(c), and sustaining its opposition of Applicant ATLAS BREW WORKS, LLC's Trademark Application Serial No. 85/642,549 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 Combined Motion as of the date of submission.

OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION

Pursuant to Federal Rules of Civil Procedure 15(a), C.F.R. §2.107(a), and T.B.M.P. §507, Opposer hereby requests leave to amend its Notice of Opposition. On April 24, 2013, Opposer timely filed its Notice of Opposition and cited priority and likelihood of confusion as its grounds for opposing United States Trademark Application Serial Number 85/642,549 (the "'549 Application"), owned by Atlas Brew Works, LLC, f/k/a Atlas Beer Works, LLC, f/k/a Volstead Beer Works, LLC ("Applicant"). A copy of the Notice of Opposition is attached hereto as Exhibit A. The '549 Application was filed by the Applicant on June 4, 2012 and sought registration in Class 032 for "beer". Applicant's basis for registration for the goods in Class 032 was its intent to use the mark in commerce under Section 1(b) of the Lanham Act, 15 U.S.C. §1051(b).

During the discovery period of this Opposition, facts came to light involving the Applicant's bona fide intent to use "Atlas" in commerce and reasoning for using the "Atlas" name. Specifically, on December 24, 2013, Applicant produced an e-mail dated after the '549 Application's filing date in which one of Applicant's members, Justin Cox, states that the "Atlas" name is merely an alternative in case Applicant's other trademark falls through (the "June 5th Email"). A copy of the June 5th Email is attached hereto as Exhibit B.

The subject line of the June 5th Email is "Volstead Update 6/5" and it is "signed" by Mr. Cox in his capacity as Applicant's chief executive officer. *See* Exhibit B. In the June 5th Email, Mr. Cox explains that the company is having an issue with its previously filed trademark application for "Volstead Beer Works" and that he and his team have "reached out" to another entity using "Volstead" "in hopes of reaching an agreement allowing us to use the name without litigation." *Id.* Mr. Cox goes on to state that, in the meantime, they are considering an ***alternative*** name, "Atlas Brew Works", and he "would love to hear [the] thoughts" of the e-mail's

recipients, presumably the brewery's investors. *Id.* Based on these facts, Opposer wishes to amend its Notice of Opposition to include an alternate grounds for opposition, namely that the Applicant lacked a bona fide intent to use the trademark as of the date of filing the intent to use application.

Moreover, in the June 5th Email, Mr. Cox explains that his reason for choosing the "Atlas" name is that it is associated with "[t]he Atlas District", which is "the name of the commercial strip neighborhood in DC that we will be near." *See* Exhibit B. Based on this admission, Opposer wishes to amend its Notice of Opposition to include an alternate grounds for opposition, namely that the Applicant's trademark is primarily geographically descriptive of the location where the goods or services originate.

A proposed version of the Opposer's Amended Notice of Opposition is attached hereto as Exhibit C. Section §507.02 of the Trademark Trial and Appeal Board Manual of Procedure (the "TBMP") permits a party to amend its pleading by leave of the Board, which must be freely given when justice so requires and when doing so will not unduly prejudice the adverse party. "In deciding such a motion, the Board will grant the motion unless entry of the proposed amendment would violate settled law or would be prejudicial to applicant." *Karsten Manufacturing Corp. v. Editoy AG*, 79 USPQ2d 1783, 1786. The Board has found that "it is appropriate to accept the amended notices of opposition" where the opposer learned of new allegations during discovery and filed its motion within three (3) months. *Id.*

Granting this Motion would not prejudice Applicant. Opposer first learned of facts giving rise to the claims sought to be added in January 2014 after it had an opportunity to review the Applicant's discovery documents, which were produced on December 24, 2013. Opposer brings this motion well within the three (3) months discussed in *Karsten*. In light of the foregoing,

justice requires the Board to grant leave to Opposer to amend its Notice of Opposition to plead these alternate grounds for opposition.

OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO SUSPEND COMMENCEMENT OF OPPOSER'S TESTIMONY PERIOD

Pursuant to 37 C.F.R. §2.127, Opposer moves for Summary Judgment sustaining this Opposition and for an Order refusing the '549 Application. This motion is brought on the grounds that: 1) the '549 Application is primarily geographically descriptive of the place from which the goods originate, rendering it unregistrable on the Principal Register at the current time; and, 2) the Applicant did not possess bona fide intent to use the mark in the '549 Application at the time it filed its intent to use application. Accordingly, Opposer requests that the Board deny registration of the '549 Application.

FACTUAL BACKGROUND

On January 29, 2012, Applicant, then doing business under the name Volstead Beer Works LLC, filed an intent-to-use application for VOLSTEAD BEER WORKS, Serial Number 85/528,066, in International Classes 020, 021 and 032, for "non-metal taps for beer kegs; unfitted neoprene beer keg tap covers; beer jugs; beer mugs; beer; beer wort, beer, ale and lager; beer, ale and porter; beer, ale, lager, stout and porter; beer, ale, lager, stout, porter, shandy; beers; malt beer; pale beer; porter." The United States Patent and Trademark Office (the "USPTO") issued an office action due to potential confusion with another mark owned by House Spirits Distillery of Portland, Oregon, ("House Spirits") for "distilled spirits" under U.S. Federal Registration Number 4243231. Applicant did not abandon the Volstead Application until November 2012.

Meanwhile, on June 4, 2012, Applicant filed the '549 Application seeking registration in the U.S. 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". *See* Exhibit B. In the June 5th Email, Mr. Cox explains the trademark issue they are having with Volstead Beer Works and that they have landed on an alternative, namely "Atlas Brew Works". *See* Exhibit B. The June 5th Email solicits the "thoughts" of the recipients of the email, presumably the investors of the brewery. *Id.* In that same email, Mr. Cox discusses 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. A copy of the complete file history for the '549 Application is attached hereto as Exhibit E. The USPTO permitted the applicant to "present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application." *See* Exh. E. 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 hereto as Exhibit F. 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* Exh. F. Additionally, Mr. Cox testified that the Applicant's "beers will be marketed exclusively to beer connoisseurs in the Washington, DC area." *See* Exh. F. 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."

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." A copy of the cover page of Applicant's Response to Opposer's First Set of Interrogatories and Applicant's response to Interrogatory Request No. 7 is attached hereto as Exhibit G.

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 at least as early as July 19, 2012. Pursuant to Opposer's Motion to Leave to Amend Notice of Opposition (above), Opposer has added to the grounds for its refusal that (a) Applicant's Mark was 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.

STANDARD

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 its discovery, Opposer is entitled to judgment as a matter of law because: 1) the '549 Application is primarily geographically descriptive of the location from where the goods or services originate; and, 2) the Applicant's own email correspondences establish that it did not have a bona fide intent to use the name ATLAS as of the date of the '549 Application.

I. Opposer Is Entitled To Summary Judgment Because The '549 Application Is Primarily Geographically Descriptive Of The Location From Where the Goods Or Services Originate.

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: 1) the primary significance of the mark is a generally known geographic location; and, 2) that 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, it is clear from the Applicant's own emails and testimony 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* Exhibit G. In the June 5th Email, the Applicant's chief executive officer, Justin Cox, also stated, when suggesting the name "Atlas Beer Works" that "[t]he Atlas District is the name of the commercial strip neighborhood in DC that we will be near." *See* Exhibit B.

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)(where the Board stated "[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 hereto as Exhibit H. The Atlas Performing Arts Center's website states the neighborhood surrounding the theatre is "known as the Atlas District." *See* Exhibit H.

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 hereto as Exhibit I. The Atlas District has a Web site devoted to it, www.atlasdistrictdc.com (the "Atlas District Web Site"). A screenshot of the Atlas District Web Site is attached hereto as Exhibit J. 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 hereto as Exhibit K.[1] 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 hereto as Exhibit M.

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.

[1] For the uninitiated, Yelp is "an American company that operates an 'online urban guide' and business review site." A copy of the Google Company Review of Yelp is attached hereto as Exhibit L.

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.[2] *See* Exhibit M. Applicant's beers, which 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* Exhibit F, ¶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 Distribution Agreement is attached hereto as Exhibit N. 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 refer to the Atlas District. Since the mark will be used exclusively in the DC area, the Applicant's purchasers would be intimately knowledgeable of the Atlas District in Washington, D.C.

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[2] 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 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 5th Email.

Finally, although the place need not be "well-known or noted for the goods,"[3] it is clear, by the Applicant's own admission, that the goal is to associate the Applicant's goods with the D.C. area, specifically the Atlas District. Cox even 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* Exhibit F.

In short, 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 and 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

[3] *In re Loew's Theatres, Inc.*, 769 F.2d 764, 226 U.S.P.Q. 865 (Fed. Cir. 1985).

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 therefore respectfully requests that the Board sustain its Opposition on the basis that Applicant's Mark is primarily geographically descriptive.

II. Opposer Is Entitled to Summary Judgment Because Applicant's Own Emails Establish That It Did Not Have A Bona Fide Intent To Use Applicant's Mark As Of The '549 Application Date

Applicant did not possess a bona fide intent to use the Applicant's Mark at the time it filed the '549 Application. Section 1(b) of the Trademark Act permits an applicant to file an "intent-to-use" application based on a bona fide intention to use a mark in commerce under circumstances showing the good faith of such person. 15 U.S.C. §1051(b); T.M.E.P. §1101. A verified statement of the applicant's bona fide intention to use the mark in commerce must be included in intent-to-use applications under §1(b). T.M.E.P. §1101. While the USPTO will not evaluate the good faith of an applicant in the ex parte examination of applications, consideration of issues related to good faith may arise in an *inter partes* proceeding. *Id.*

The fact that an applicant filed applications for various marks "hardly establishes a bona fide intent to use the mark." *SmithKline Beecham Corp. v. Omnisource DDS, LLC*, 97 U.S.P.Q.2d 1300 (TTAB 2010). "If the filing and prosecution of a trademark application constituted a bona fide intent to use a mark, then in effect, lack of a bona fide intent to use would never be a ground for opposition or cancellation, because an *inter partes* proceeding can only be bought if the defendant has filed an application." *Id.* at 1304. Evidence bearing on bona fide use must be "objective in the sense that is evidence in the form of real life facts and by the actions of

the applicant…" *Id.* at 1305. "Congress did not intend the issue to be resolved simply by an officer of applicant later testifying, 'Yes, indeed, at the time we filed that application, I truly did intent to use the mark at some time in the future.'" *Id.* (quoting J.T. McCarthy, McCarthy on Trademarks and Unfair Competition, §19.14 (4th ed. 2009).

Applicant filed its intent-to-use application on June 4, 2012. Yet Cox, in the June 5th Email, notified Applicant's personnel that it was ***considering*** changing its name from Volstead Beer Works to Atlas Beer Works. *See* Exhibit B. Cox also solicited input from the recipients of that email on the ***alternative*** name, establishing that the name change was neither final nor official. *Id.* Meanwhile, Applicant sustained its application for VOLSTEAD BEER WORKS until November 12, 2012. Essentially, as of the time it filed the '549 Application for ATLAS, Applicant had filed two separate marks for the same goods: "beer," in International Class 032.

Applicant's collecting of marks, both of which were filed under the intent-to-use provision of the Trademark Act before either one was ultimately chosen to be used in commerce, is akin to warehousing of trademarks. When discussing the requirement of bona fide intent in the Lanham Act, the Senate expressed concerns about this very practice: "If a product has already been marketed under one mark and an applicant continues to maintain additional applications for marks intended for use on or in connection with the same product, without good cause, this may call into question the bona fide nature of the intent." S. Rep. No. 100-515, 100th Cong. 2d Sess. at 24-25 (1988)(quoted in *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q. 1503, 1506 n .7 (TTAB 1993)).

This policy concern is reflected in the Lanham Act, which requires that bona fide use be "in the ordinary course of trade, and not made merely to reserve a right in a mark." 15 U.S.C. §1127. The legislative history of this suggestion includes a number of warehousing examples

that "may cast doubt on the bona fide nature of the intent or even disprove it entirely." S. Rep. No 100-515, *supra*, at 23. Included in that list is the circumstance where an applicant "filed numerous intent-to-use applications for a variety of desirable trademarks intended to be used on [a] single new product" and where an applicant "filed numerous intent-to-use applications to register marks consisting of or incorporating descriptive terms relating to a contemplated new product." *Id.*

Applicant filed multiple intent-to-use applications for a variety of desirable trademarks, and the application subject to this opposition is descriptive of the goods intended to be sold under the mark. *See* Section I, *supra*. Documentary evidence shows that Applicant had not resolved to use ATLAS as a trademark for beer when it filed its application. *See* Exhibit B. Further, Applicant's VOLSTEAD BEER WORKS application was still pending in front of the USPTO at the time it filed for ATLAS. Policy concerns militate in Opposer's favor. An applicant in an intent-to-use application should be fully invested in placing the goods or services represented in the application in commerce in order to comply with the letter and spirit of the bona fide intent to use requirement. Applicant should not be permitted to cut off the rights of those actually using the mark in commerce merely by reserving a list of potential trade names from which it could later choose.

Opposer therefore respectfully requests that the Board sustain its Opposition on the basis that Applicant possessed no bona fide intent to use Applicant's Mark at the time it filed the '549 Application.

CONCLUSION

WHEREFORE, Opposer requests that this Combined Motion to Amend Opposition and Motion for Summary Judgment be granted, Opposer's Opposition be sustained and Application

Serial No. 85642549 be refused registration, and to suspend the proceedings until the disposition of this Combined Motion.

Respectfully submitted,
ATLAS BREWING COMPANY, LLC

/Robert J. Schaul/
Attorney of Record
Date: February 12, 2014

FUKSA KHORSHID, LLC
Lema A. Khorshid
Robert J. Schaul
Perry Gattegno
70 W. Erie, 2nd Floor
Chicago, IL 60654
(312) 266-2221

CERTIFICATE OF SERVICE

I, Robert J. Schaul, hereby certify that I caused a true and complete copy of the foregoing Opposer's Combined Motion to Amend Opposition, Motion for 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 12th day of February, 2014, at the following address:

Banner & Witcoff, Ltd.
c/o Anna L. King, Esq.
10 S Wacker Drive
Suite 3000
Chicago, Illinois 60606
aking@bannerwitcoff.com

Robert J. Schaul, Attorney of Record

EXHIBIT A

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

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)

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)

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

FUKSA KHORSHID, LLC
Lema A. Khorshid
Robert J. Schaul
70 W. Erie, 2nd Floor
Chicago, IL 60654
(312)266-2221

EXHIBIT B

Gmail by Google

Volstead Update 6/5

Justin Cox <justin@volsteadbeerworks.com> Tue, Jun 5, 2012 at 8:56 AM
To: Justin Cox <Justin@volsteadbeerworks.com>

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 he 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

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
202-642-4606 (m)
888-832-5080 (f)

Atlas tap handle.pdf
191K

EXHIBIT C

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.	)	

AMENDED 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.

Count I: Likelihood of Confusion

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).

Count II: Lack of Bona Fide Intent to Use

22. Opposer repeats and realleges each and every allegation contained in Paragraphs 1-21, inclusive, as if fully recited herein.

23. On June 4, 2012, Applicant filed its application for the Applied-For Mark under §1(b) of the Lanham Act, representing to the USPTO that it had, at the time of filing, a *bona fide* intent to use the mark in commerce on the goods listed in the application.

24. On June 4, 2012, Applicant had another pending application for VOLSTEAD BEER WORKS, which covered the same set of goods and services as its application for Applicant's Applied-For Mark. The applications for both marks listed beer and, and in the case of the application for VOLSTEAD BEER WORKS, related goods in International Class 032.

25. Applicant did not abandon its application for VOLSTEAD BEER WORKS until November 2012, months after it filed for the Applicant's Applied-For Mark.

26. On information and belief, Applicant was attempting to reserve rights in multiple marks in connection with beer.

27. Applicant's chief executive officer, Justin Cox, announced in an e-mail dated June 5, 2012, that Applicant was merely considering an alternative name, namely "Atlas", at the time, and asked for input from the e-mail's recipients.

28. Applicant's Applied-For Mark, if registered, would damage Opposer's rights, in that the USPTO blocked Opposer's application from maturing to registration due to the potential conflict with Applicant's Applied-For Mark.

29. By filing multiple applications for trademarks that would be used in commerce with regard to the same goods, Applicant intended to reserve rights broader than those Applicant was entitled to.

Count III: Merely Descriptive Mark Not Registrable

30. Opposer repeats and realleges each and every allegation contained in Paragraphs 1-29, inclusive, as if fully recited herein.

31. Applicant's Applied-For Mark is merely descriptive because it refers to the geographical area in Washington, D.C., called the Atlas District, near where the goods and services under the Applied-For Mark originate.

32. Such primarily geographically descriptive marks require a showing of acquired distinctiveness before they may be placed on the Principal Register.

33. Applicant cannot make such showing as of the filing of this Notice.

34. Applicant's Applied-For Mark may not be placed on the Supplemental Register because applicants who apply for marks under §1(b) must file an amendment alleging use or a statement of use before the mark can be placed on the Supplemental Register. Applicant has not filed such an amendment or statement.

35. Accordingly, Applicant's Applied-For Mark may not be placed on either the Principal Register or the Supplemental Register and is not registrable at this time.

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

Respectfully submitted,
ATLAS BREWING COMPANY, LLC

/Perry Gattegno/
Attorney of Record
Date: February 12, 2014

FUKSA KHORSHID, LLC
Lema A. Khorshid
Robert J. Schaul
Perry Gattegno
70 W. Erie, 2nd Floor
Chicago, IL 60654
(312)266-2221

EXHIBIT D

United States Patent and Trademark Office

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Volstead Beer Works

Word Mark	**VOLSTEAD** BEER WORKS
Goods and Services	(ABANDONED) IC 020. US 002 013 022 025 032 050. G & S: Non-metal taps for beer kegs; Unfitted neoprene beer keg tap covers
	(ABANDONED) IC 021. US 002 013 023 029 030 033 040 050. G & S: Beer jugs; Beer mugs
	(ABANDONED) IC 032. US 045 046 048. G & S: Beer; Beer wort; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Malt beer; Pale beer; Porter
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85528066
Filing Date	January 29, 2012
Current Basis	1B
Original Filing Basis	1B
Owner	(APPLICANT) Volstead Beer Works LLC LIMITED LIABILITY COMPANY DELAWARE 1124 7th St NE Washington D.C. 20002
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD
Abandonment Date	November 12, 2012

EXHIBIT E

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	Mar. 21, 2013	Amendment and Mail Process Complete	MULTI
	Feb. 27, 2013	Post Publication Amendment	XML
	Feb. 22, 2013	TEAS Revoke Appointed Attorney	MULTI
	Dec. 25, 2012	OG Publication Confirmation	XML
	Dec. 05, 2012	Notice of Publication	XML
	Dec. 05, 2012	Notification Of Notice of Publication	XML
	Nov. 20, 2012	Publication & Issue Review Complete	MULTI
	Nov. 02, 2012	TRAM Snapshot of App at Pub for Oppostn	MULTI
	Oct. 16, 2012	Amendment and Mail Process Complete	MULTI
	Oct. 12, 2012	Response to Office Action	MULTI
	Sep. 21, 2012	Offc Action Outgoing	MULTI
	Sep. 20, 2012	XSearch Search Summary	XML
	Jun. 04, 2012	Drawing	JPEG
	Jun. 04, 2012	TEAS Plus New Application	MULTI

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EXHIBIT F

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, Skaneatles, from which the Empire Brewing Company draws its brewing water. The Molledrem mark is meant to be a play on words, as the pronunciation of Lake Skaneatles is very similar to "Skinny Atlas." Thus, most of Molledrem'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.

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 Energies mark also appears to maintain an active website but the mark referenced herein is not mentioned anywhere on that website. The AA Energies 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 Energies mark does not advertise through social media, promotional materials distributed to local bars and restaurants, promotional events, or participating in festivals and events. AA Energies 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 2nd 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 G

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

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.	)	

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 H

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

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 neighbors 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 throughout the country for the nearby suburbs and H Street began to lose its neighbors as well. This flight was 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 shuttered 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.

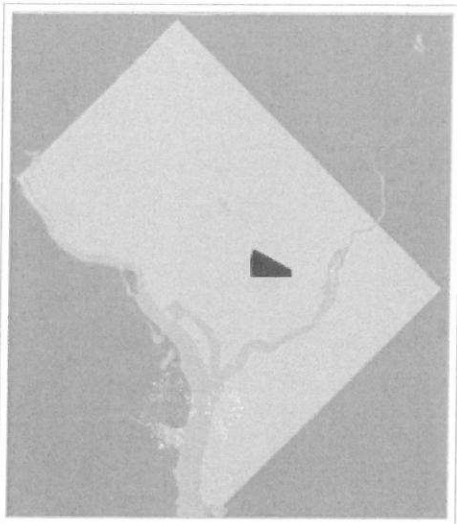
EXHIBIT I

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.



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

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.[1] Additionally, the area has benefited from the economic resurgence that has affected most of the district since the turn of the 21st century.

Atlas Performing Arts Center on H Street, NE

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.[2]

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 completed replaced. The building now houses rehearsal and performance space for local performing arts groups, including the Capital City Symphony.

References

1. ^ Plans to Set The Bar High On H Street NE (http://www.washingtonpost.com/wp-dyn/content/article/2005/08/25/AR2005082500654.html)
2. ^ 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)

- AtlasArts.org (http://atlasarts.org)
- CapitalCitySymphony.org (http://www.capitalcitysymphony.org)

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Categories: Entertainment districts in the United States | Neighborhoods in Washington, D.C. | Washington, D.C. geography stubs

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EXHIBIT J

ATLASDISTRICTDC

Who, What, When and Where in the Atlas District

CHRISTOPHER PIERCE

for all of your Washington DC real estate needs

Long & Foster Real Estate, Inc.
Capitol Hill Office
721 D Street, SE
Washington DC, 20003

202-547-9200 (office)
202-615-8871 (cell)
202-547-9783 (fax)
Cpierce@LNF.com (email)

2/12/2014

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!

[AVAILABLE AD SPACE]

[AVAILABLE AD SPACE]

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 K

yelp

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

Showing 1-10 of 2238

Arts & Entertainment
Automotive
Beauty & Spas
More categories

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

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
★★★★½ 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
★★★★½ 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
★★★★½ 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.

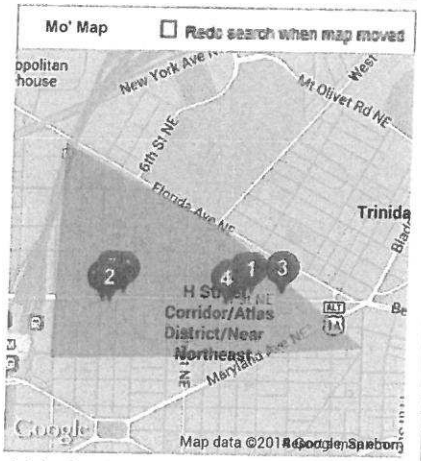
4. HR-57
★★★★½ 111 reviews
$ · Jazz & Blues, Music Venues

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 N E
Washington, DC 20002
(202) 544-4701



Ads by Google

D.C. - Street Map
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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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Countries

EXHIBIT L

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Yelp
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Yelp is the best way to find great local businesses. People use Yelp to search for everything from the city's tastiest burger to the most renowned cardiologist.

Chicago
Chicago User Reviews and Recommendations of Top ...

Gary Danko
3600 Reviews of Gary Danko "A few months ago I found out I ...

Restaurants
The Best Restaurants in Chicago on Yelp. Read about places like ...

Ike's Place
5801 Reviews of Ike's Place "These are THE BEST dirty ...

Professional Services
The Best Professional Services in Chicago on Yelp. Read about ...

Kokkari Estiatorio
2717 Reviews of Kokkari Estiatorio "OMG! the reviews were spot on!

Search yelp.com

Yelp, Inc.
Company

Yelp, Inc. is an American company that operates an "online urban guide" and business review site. Headquartered in San Francisco, Yelp was founded by Jeremy Stoppelman and Russel Simmons in 2004. Wikipedia

Stock price: YELP (NYSE) $91.29 -1.49 (-1.61%)
Feb 12, 10:48 AM EST - Disclaimer

Headquarters: San Francisco, CA

CEO: Jeremy Stoppelman

Founded: October 2004, San Francisco, CA

Founders: Jeremy Stoppelman, Russel Simmons

Feedback

EXHIBIT M

Get directions My places

A atlas brew works

B atlas district, dc

Add Destination - Show options

GET DIRECTIONS

Suggested routes

West Virginia Ave NE **1.3 mi, 4 mins**
In current traffic: 5 mins

West Virginia Ave NE and Mt Olivet Rd NE 1.9 mi, 6 mins
In current traffic: 8 mins

Or take Public Transit (Bus) 12 mins

Driving directions to H Street Corridor, Washington, DC

Atlas 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 planning purposes only. You may find that construction projects, traffic, weather, or other events

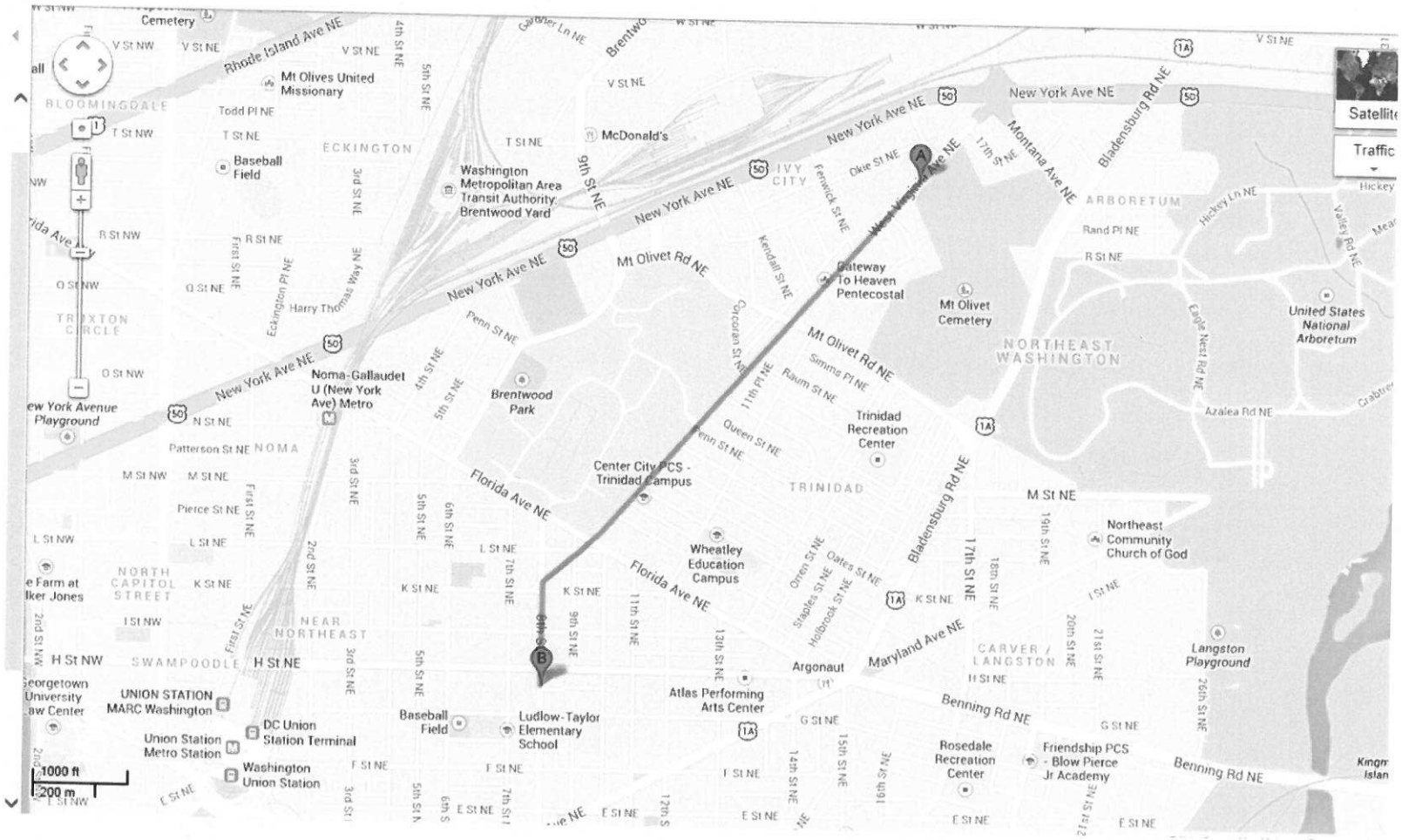

EXHIBIT N

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

FOR IMMEDIATE RELEASE

April 10, 2013

@AtlasBrewWorks
facebook.com/AtlasBrewWorks

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

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.