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

Proceeding	91210379
Party	Defendant Atlas Brew Works LLC
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Signature	/Anna King/
Date	02/26/2014
Attachments	Answer to Amended Notice of Opposition.pdf(95907 bytes )

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<b>Atlas Brewing Company, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	<b>Opposition No. 91210379</b>
v.	)	<b>Serial No. 85/642,549</b>
	)	
<b>Atlas Brew Works LLC,</b>	)	<b>Mark: ATLAS</b>
	)	
<b>Applicant.</b>	)	

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**ANSWER TO AMENDED NOTICE OF OPPOSITION**

Applicant, Atlas Brew Works LLC, formerly known as Volstead Beer Works LLC and Atlas Beer Works LLC, by and through its undersigned attorneys, responds to the Notice of Amended Opposition served by Opposer, Atlas Brewing Company, LLC, on February 12, 2014.

With regard to the preamble to the Amended Notice of Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations, and therefore denies them. With respect to the numbered paragraphs of the Amended Notice of Opposition, Applicant Answers each numbered paragraph as follows:

1. Admitted.
2. Denied.
3. Admitted.
4. Admitted.
5. Denied.
6. Denied.
7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Admitted.

14. Applicant admits to receiving correspondence from Opposer's counsel dated February 26, 2013. Applicant admits that the correspondence included an allegation that Applicant's use of the "ATLAS" mark would create a likelihood of confusion with Opposer's "ATLAS BREWING COMPANY" and "ATLAS GOLDEN ALE" marks. Applicant denies the remaining allegations in paragraph 14 of the Amended Notice of Opposition.

15. Paragraph 15 appears to state a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, Applicant denies the remaining allegations of paragraph 15 of the Amended Notice of Opposition.

16. Paragraph 16 appears to state a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, the allegations of paragraph 16 of the Amended Notice of Opposition and, therefore, denies said allegations.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Applicant denies that Opposer will be damaged by registration of its mark. The remaining statements in this paragraph contain the prayer for relief that do not require an admission or denial of fact by Applicant.

22. Applicant repeats and realleges each and all of its responses to the allegations contained in paragraphs 1-21 above as though fully set forth herein.

23. Admitted.

24. Applicant admits that its application for VOLSTEAD BEER WORKS was pending on June 4, 2012. Applicant admits that its VOLSTEAD BEER WORKS application and ATLAS application cover “beer” and that the application for VOLSTEAD BEER WORKS covered other goods in Class 32 as well. Applicant denies the remaining allegations in paragraph 24 of the Amended Notice of Opposition.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Applicant repeats and realleges each and all of its responses to the allegations contained in paragraphs 1-29 above as though fully set forth herein.

31. Denied.

32. Denied.

33. Denied.

34. Applicant admits that it has not yet filed an amendment alleging use or a statement of use. Applicant admits that 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 denies the remaining allegations of Paragraph 34 of the Amended Notice of Opposition.

35. Applicant admits that its application cannot be placed on the Principal Register or the Supplemental register at this time, because there is a pending opposition suspending its application. Applicant denies the remaining allegations of Paragraph 35 of the Amended Notice of Opposition.

### **AFFIRMATIVE DEFENSES AND ALLEGATIONS**

1. Opposer has failed to state a claim on which relief can be granted.
2. The constructive date of first use of Applicant's mark is June 4, 2012. None of Opposer's activities prior to the constructive date of first use of Applicant's mark would give rights to support a claim of priority by Opposer in this proceeding.
3. Applicant had a bona fide intention to use its mark in connection with its goods at the time it filed the application that is the subject of this proceeding and has made actual use of its mark in commerce since the filing of the application.
4. Applicant's mark is not primarily geographically descriptive of its goods.

**WHEREFORE**, the Applicant, Atlas Brew Works LLC, prays that this Amended Opposition be dismissed and that the notice of allowance be issued.

Respectfully submitted,

Date: February 26, 2014

By: /Anna King/  
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Attorneys for Applicant, Atlas Brew Works LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2014, a copy of the foregoing ANSWER TO AMENDED NOTICE OF OPPOSITION was served on the following counsel of record for Opposer via first class mail, postage prepaid, addressed as follows:

Lema A. Khorshid  
Fuksa Khorshid, LLC  
70 W. Erie, 2nd Floor  
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/Anna King/