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

Proceeding	91210379
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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

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**APPLICANT’S BRIEF IN OPPOSITION TO OPPOSER’S MOTION FOR SUMMARY  
JUDGMENT**

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT.....	3
	A. The Disputed Issues of Material Fact Relating to Opposer’s Claim that Applicant’s Mark is Primarily Geographically Descriptive.....	3
	B. The Disputed Issues of Material Fact Relating to Opposer’s Claim that Applicant did not have a bona fide intent to use the mark ATLAS in commerce.....	6
III.	ARGUMENT.....	7
	A. Legal Standard for Summary Judgment.....	7
	B. Genuine Issues of Material Fact Preclude Summary Judgment.....	8
	1. Applicant’s Mark is not <i>primarily</i> geographically descriptive.....	8
	2. Applicant’s bona fide intent to use the mark ATLAS in commerce.....	12
IV.	CONCLUSION.....	18

### EXHIBITS

Exhibit #	Description
A	Declaration of Justin Cox in Support of Applicant’s Opposition to Opposer’s Motion for Summary Judgment <sup>1</sup> and Exhibits A-1 through A-15 thereto [Note: Exhibits A-8, A-9, A-13 and A-14 are confidential and filed separately under seal]
B	<i>Merriam-Webster</i> Online Dictionary definition for “ATLAS”
C	Summary of TESS Search results for the word mark ATLAS
D	Excerpt from Washington DC Economic Partnership’s DC Neighborhood Profiles 2013

<sup>1</sup> Citations to the Cox Declaration will be “Cox Dec. ¶ \*\*” and to the exhibits to the Cox Declaration will be “Cox Ex. A-\*\*\*”.

**TABLE OF AUTHORITIES**

**Cases**

*Anderson v. Liberty Lobby, Inc.*,  
477 U.S. 242, 248 (1986).....8

*Celotex Corp. v. Catrett*,  
477 U.S. 317, 323 (1986).....8

*Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*,  
26 USPQ2d 1503, 1505 (TTAB 1193).....13, 16, 17

*Copeland’s Enterprises Inc. v. CNV Inc.*,  
20 USPQ2d 1295, 1299 (Fed. Cir.1991).....17

*Intel Corp. v. Enemy*,  
No. 91123312, 2007 WL 1520948 (TTAB May 15, 2007).....12 - 13

*Lane Ltd. v. Jackson Int’l Trading Co.*,  
33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994).....14

*Loew’s Theatres, Inc., In re*  
226 USPQ 865, 868 (Fed.Cir. 1985).....11

*Nautica*,  
2001 WL 1182881, at \*2; *Vignette Corp. v. Marino*, No. 91158854, WL 1801611, at \*2  
(T.T.A.B. 2005).....14

*Nautica Apparel, Inc. v. Crain*,  
No. 113893, 2001 WL 1182881, at \*2 (TTAB Sept. 21, 2001).....14

*Speedway*,  
2004 WL 2075108, at \*7; *Kellogg Co. v. The Earthgrains Co.*, No. 91110121, 2003 WL  
22273096, at \*2 (T.T.A.B. Sept. 30, 2003); *Pixel Instruments Corp. v. Sweven Corp.*, No.  
97136 1999 T.T.A.B. LEXIS 715, at \*6 (T.T.A.B. Dec. 30, 1999).....14

*Speedway Superamerica LLC v. Renegade Tobacco Inc.*,  
No. 91124822, 2004 WL 2075108, at \*7 (T.T.A.B. Sept. 2, 2004); *Discovery Comm., Inc. v.*  
*Cooper*, No. 109154, 2000 T.T.A.B. LEXIS 185, at \*4 (T.T.A.B. Mar. 29, 2000).....14

*Vignette*, 2005 WL 1801611, at \*2.....14

**Rules**

37 C.F.R. § 2.127(e).....1

Fed. R. Civ. P. 56(c).....7-8

Rule 56 Fed. R. Civ. P.....1

**Other Authorities**

3 McCarthy on Trademarks and Unfair Competition § 19:17 (4th ed.) (2014).....13

15 USC § 1052(e)(2).....8

15 USC § 1052(e)(3).....8

15 USC § 1052(a).....9

TBMP § 528.....1

TMEP § 1210.01(a).....8

TMEP § 1210.02(b)(i).....8

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Atlas Brew Works LLC,	)	<b>Mark: ATLAS</b>
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**APPLICANT’S BRIEF IN OPPOSITION  
TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to 37 C.F.R. §2.127(e), Rule 56 Fed. R. Civ. P., and TBMP §528, Applicant Atlas Brew Works LLC (“Applicant”) herewith responds to, and opposes, Opposer Atlas Brewing Company, LLC’s (“Opposer”) Motion for Summary Judgment.<sup>1</sup>

In support of its opposition to Opposer’s Motion for Summary Judgment, Applicant relies on the following Declaration and Exhibits:

Exhibit #	Description
A	Declaration of Justin Cox in Support of Applicant’s Opposition to Opposer’s Motion for Summary Judgment <sup>2</sup> and Exhibits A-1 through A-15 thereto [Note: Exhibits A-8, A-9, A-13 and A-14 are confidential and filed separately]

<sup>11</sup> Opposer’s Motion for Summary Judgment was combined with a motion to amend its notice of opposition and a motion to suspend the proceedings. Applicant does not oppose Opposer’s Motion to Amend its Notice of Opposition (Exhibit C to the Motion), and has timely filed its amended Answer to the Amended Notice of Opposition on February 26, 2014. Applicant notes that the Board typically suspends proceedings upon filing of a motion for summary judgment, and therefore considers the motion for suspension to be unnecessary. However, for completeness, Applicant confirms that it does not object to suspension of proceedings pending resolution of Opposer’s Motion for Summary Judgment.

<sup>2</sup> Citations to the Cox Declaration will be “Cox Dec. ¶ \*\*” and to the exhibits to the Cox Declaration will be “Cox Ex. A-\*\*\*”.

	under seal]
B	<i>Merriam-Webster</i> Online Dictionary definition for “ATLAS”
C	Summary of TESS Search results for the word mark ATLAS
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## I. INTRODUCTION

Opposer seeks summary judgment on two grounds only recently pleaded: (1) that Applicant’s ATLAS trademark at issue in this proceeding (“ATLAS”) is primarily geographically descriptive of Applicant’s goods; and (2) that Applicant did not possess a bona fide intent to use its ATLAS mark in commerce at the time it filed its intent-to-use application. Opposer has failed to prove either of these grounds.<sup>3</sup> There are genuine issues of material fact in dispute with respect to:

- (a) Whether ATLAS is primarily geographically descriptive of Applicant’s goods; and
- (b) Whether Applicant had a bona fide intention to use ATLAS in commerce when it filed its intent-to-use application.

The facts set forth below demonstrate that Applicant’s mark is not primarily geographically descriptive of its goods. Further, Applicant not only had a bona fide intention to use the mark in commerce at the time it filed its intent-to-use application, the facts show a steady course of activity after filing the application that resulted in Applicant making actual use of the ATLAS mark in commerce not long after filing the application.

For the reasons set forth herein, Opposer’s motion for summary judgment should be denied.

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<sup>3</sup> Opposer’s motion also fails to meet the basic standard for summary judgment of identifying which statements of material fact are not in dispute.

## II. STATEMENT OF DISPUTED ISSUES OF MATERIAL FACT

### A. The Disputed Issues of Material Fact Relating to Opposer's Claim that Applicant's Mark is Primarily Geographically Descriptive

Opposer relies on the following evidence of record in its "Factual Background" section of its summary judgment motion<sup>4</sup> (Pp. 5-6 of SJ Motion) with respect to its assertion that ATLAS is primarily geographically descriptive:

- (a) A June 5, 2012, email from Applicant to its investors stating that the reason for choosing name ATLAS is that "[t]he Atlas District is the name of the commercial strip neighborhood in DC that we will be near". (P. 5 of SJ Motion and Ex. B to SJ Motion)
- (b) An Affidavit submitted in support of Applicant's response to an Office Action issued for ATLAS stating that ATLAS will be used exclusively in connection with Applicant's brewery in Washington, DC, Applicant's beers will be marketed exclusively to beer connoisseurs in the Washington, DC, area and that Applicant's goods will be offered exclusively through its brewery and will be offered to local bars and restaurants in the DC area. (P. 5 of SJ Motion and Ex. 5 to SJ Motion)
- (c) Applicant's response to Opposer's Interrogatory No. 7 indicating that the Atlas District is the name of the commercial strip neighborhood in the District of Columbia near the intended location of the brewery. (P. 6 of SJ Motion and Ex. G to SJ Motion)

The foregoing evidence relied on by Opposer does not provide the complete explanation of the meaning or significance of the term ATLAS with respect to Applicant's goods, and, in fact, creates a misleading impression that there are no genuine issues of material fact. The

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<sup>4</sup> Citations to pages in Opposer's Motion for Summary Judgment will be presented as "P. \* of SJ Motion" and citations to exhibits to Opposer's Motion for Summary Judgment will be "Ex. \* to SJ Motion".

following facts demonstrate that there are genuine issues of material fact with respect to whether the term ATLAS is primarily geographically descriptive of Applicant's goods:

- (a) In the Affidavit referenced in (b) above (Ex. F to SJ Motion), Justin Cox, Applicant's Chief Executive Officer ("Cox"), states that the term ATLAS was intended to signify the Titan "Atlas" from Greek mythology. (See also Cox Dec. ¶11)
- (b) In the June 5th email referenced above (Ex. B to SJ Motion), the statement that "the Atlas District was near where we were going to be" was only one of the reasons why ATLAS was being considered as an alternative name. Additionally, Cox stated that, "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." (Cox Dec. ¶12) The logo referenced in the June 5th email was a design featuring the Titan Atlas (Cox Ex. A-3)
- (c) Opposer's selective quoting from the June 5<sup>th</sup> email (P. 5 of SJ Motion) and Applicant's response to Interrogatory No. 7 (p. 6 of SJ Motion) gives the incorrect impression that proximity to the Atlas District was the sole basis for selecting the name ATLAS as the name of its brewery. In fact, at the time the email was sent, Applicant did not have a signed lease for any location and only had expected that its business would to be located near the Atlas District. (Cox Dec. ¶12). As it turned out, the brewery ended up being located in the Ivy City neighborhood, not the Atlas District. (Cox Dec. ¶18)

Moreover, the following facts demonstrate ATLAS is not primarily geographically descriptive for Applicant's goods:

- (a) The primary significance of ATLAS is its principal dictionary definition, a “book of maps”. The secondary definition is “a Titan who for his part in the Titans’ revolt against the gods is forced by Zeus to support the heavens on his shoulders.” (See Exhibit B).
- (b) The USPTO TESS records identify 133 active registrations for the word mark ATLAS across a wide range of classes, which is strong evidence that the primary significance of the term ATLAS is not as a geographically descriptive term (see Exhibit C).
- (c) The Atlas District is not a “generally known” neighborhood of Washington, DC, and is more commonly known as “H Street District,” “H Street Northeast” or “H Street Corridor” (Cox Dec. ¶29). (See also Ex. H, I, J, K and M to Opposer’s SJ Motion, which also reference other names for the Atlas District.)
- (d) Applicant is located 1.3 miles from the Atlas District of DC, thus its goods do not originate from the Atlas District. (Ex. M to SJ Motion and Cox. Dec. ¶31)
- (e) Opposer has presented no evidence that the Atlas District is known for beer. In fact, exhibits H and I to Opposer’s Motion for Summary Judgment identify the Atlas District as an “arts and entertainment” district. Per Cox, who is familiar with the area in the District of Columbia, the Atlas District is not known for beer, and purchasers are not likely to believe that Applicant’s beer originates from the Atlas District. (Cox Dec. ¶30)

Thus, the material facts that Opposer relies on for its argument that ATLAS is primarily geographically descriptive are disputed.

**B. The Disputed Issues of Material Fact Relating to Opposer's Claim that Applicant did not have a bona fide intent to use the mark ATLAS in Commerce**

The facts Opposer relies on to support the contention that Applicant had no bona fide intent to use the ATLAS mark in commerce at the time it filed its federal trademark application are equally in dispute. Opposer relies on the following evidence of record in its "Factual Background" Section (Pp. 4-6 of SJ Motion) to support its assertion:

- (a) Applicant did not abandon its application for its initial trademark, VOLSTEAD BEER WORKS, until November 2012. (P. 4 of SJ Motion)
- (b) On June 5, 2012, the day after Applicant filed its intent-to-use trademark application for ATLAS, Applicant sent correspondence to investors requesting thoughts on the alternative name, "Atlas Beer Works". (P. 5 of SJ Motion and Ex. B to SJ Motion)
- (c) Applicant's response to Opposer's Interrogatory Request No. 7 indicated that Applicant was only considering ATLAS as an alternative in May 2012. (P. 6 of SJ Motion and Ex. G to SJ Motion)

In his Declaration, Cox makes clear that:

- (a) Applicant intended to abandon its application for VOLSTEAD BEER WORKS in June of 2012, when it was determined that a consent agreement could not be reached with the owner of the VOLSTEAD application. Thus, it abandoned any intention to maintain the application in June 2012. (Cox Dec. ¶16).
- (b) Cox states that his June 5, 2012 correspondence (Ex. B to SJ Motion) solicited comments from Applicant's investors about its trademark situation. However, the decision to adopt ATLAS as Applicant's alternative trademark in case it could not resolve the VOLSTEAD matter was already decided when the June 5, 2012 correspondence was sent to investors. In fact, Applicant had already filed a

- trademark application for ATLAS on June 4, 2012 and was working with its designers to work in the theme of ATLAS the Titan with its prior logo, including a map. (Cox Dec. ¶13 and Cox Ex. A-5)
- (c) Cox states that initially Applicant was only considering ATLAS as an alternative in May 2012 because its decision to adopt the mark was conditioned on whether the owner of VOLSTEAD would consent to its use of the VOLSTEAD BEER WORKS mark. (Cox Dec. ¶15). However, prior to filing its trademark application on June 4, 2012, Cox also states that Applicant had already conducted a trademark search, and email correspondence with its designers indicates that it was already working on plans to enable it to change its name to ATLAS. (Cox Dec. ¶¶10, 14).
- (d) In addition to the foregoing activities prior to filing its application for ATLAS, Applicant's bona fide intent is also supported by its activities shortly after filing its trademark application, which included moving forward with the redesign of its logo to incorporate ATLAS, notifying its investors, and changing its name to Atlas Beer Works LLC on June 18, 2012. (Cox Dec. ¶¶16, 17).

In view of these facts, it is clear that Opposer is relying entirely on disputed issues of material fact to support its argument that Applicant lacked a bona fide intent to use ATLAS in commerce when its application was filed.

## **I. ARGUMENT**

### **A. Legal Standard for Summary Judgment**

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.

R. Civ. P. 56(c). If the court determines, upon review of the facts in the light most favorable to the non-moving party, that there are genuine issues regarding the material facts, summary judgment is not appropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

#### **B. Genuine Issues of Material Fact Preclude Summary Judgment**

Opposer moves for summary judgment on two grounds: (1) that Applicant’s mark is primarily geographically descriptive of Applicant’s goods and (2) that Applicant lacked a bona fide intention to use its mark in commerce at the time its application was filed. Both of these issues depend heavily on the factual underpinnings for the claims. The material facts underlying Opposer’s motion are clearly in dispute and Opposer’s motion should be denied.

##### **1. Applicant’s Mark is not *primarily* geographically descriptive**

TMEP § 1210.01(a) states the following factors that must be shown in order to establish a prima facie case for refusal to register a mark as primarily geographically descriptive:

- (1) the primary significance of the mark is a generally known geographic location;
- (2) the goods or services originate in the place identified in the mark; and
- (3) purchasers would be likely to believe that the goods or services originate in the geographic place identified in the mark.

Turning to the first factor, the *primary* significance of ATLAS is not a generally known geographic location. TMEP § 1210.02(b)(i) explains that “if the most prominent meaning or significance of the mark is not geographic, or if the mark creates a separate readily understood meaning that is not geographic, registration must not be refused under §2(e)(2), §2(e)(3), or

§2(a).” Opposer did not provide any evidence that the geographical significance of Applicant’s Mark is its *primary* significance.

In fact, the primary significance of ATLAS is its first dictionary definition, a book of maps. The second definition of ATLAS in the dictionary is the Titan Atlas from Greek mythology. (See Ex. B.) (Applicant chose ATLAS to reference the mythical figure named ATLAS from Greek mythology.) (Ex. F to SJ Motion and Cox Dec. ¶11). While proximity to the Atlas District was identified as a factor to Applicant’s investors, in that same email Applicant’s CEO explained that it fit with the existing logo, was simple and strong, and the letters ABW would be useful in marketing efforts. (Cox Dec. ¶12)

Opposer, relying selectively on the reference to the Atlas District in the June 5, 2012 email, and the response to Interrogatory No. 7, fails to acknowledge that both of those items also include references to Atlas the Titan. The meaning and significance of ATLAS is also evident in the preliminary sketch of a tap handle commissioned by Applicant showing Atlas from Greek mythology bearing the weight of hops on his shoulders. (Cox Dec. ¶11 and Cox Ex. A-4). It was also referenced in a June 6, 2012 email from Cox to an investor in which he stated: “[w]e are also throwing around the idea of putting different stuff on Atlas’s back for different beers.” (Cox. Ex. A-3). Finally, Applicant referenced this meaning in its CEO’s Affidavit in support of its response to the office action for the ATLAS application wherein he (Cox) stated, “...we will use the term ATLAS in reference to the titan, Atlas.” (Ex. F to SJ Motion).

Moreover, Opposer did not provide evidence that the alleged geographic meaning of Atlas is “generally known”. It simply asserts that Atlas District is generally known because it is the nickname for a geographic location. (P. 8 of SJ Motion). In fact, Opposer’s own evidence contradicts its assertion that the Atlas District is generally known because Exhibits H, I, J, K and

M to Opposer's summary judgment motion show that "Atlas District" is only one of a few designations for the geographic area better known as "H Street District," "H Street Northeast", "H Street Corridor", or simply "H street". (See also Cox Dec. ¶29). A recent publication, the Washington, DC, Economic Partnership's DC Neighborhood Profiles 2013, designates the neighborhood simply as "H Street." (Exhibit D).

Opposer attempts to bolster its geographic descriptiveness argument by asserting that because the Affidavit submitted to the PTO (Ex. F to SJ Motion) indicated that Applicant's target audience is limited to Washington, DC beer drinkers, the mere fact that the Atlas District is in Washington, DC, means that "...Applicant's purchasers would be intimately knowledgeable of the Atlas District in Washington, D.C." (P. 9 of SJ Motion) Aside from the complete lack of evidence to support this assertion, as well as evidence to the contrary noted above, Opposer fails to show that the geographic location would be the *primary* significance of the mark, even for DC natives. At the very least, Applicant has demonstrated that there are genuine disputes of material fact relating to whether the primary significance of ATLAS is a generally known geographic location.

The second factor of the test for whether a mark is primarily geographically descriptive addresses whether the goods originate in the place identified in the mark. Applicant's goods do not originate from the Atlas District. (Cox Dec ¶31). Opposer's evidence shows that Applicant is 1.3 miles from the Atlas District of Washington, D.C. (Ex. M to SJ Motion). In fact, Applicant is located in the Ivy City neighborhood of Northeast DC. (Cox Dec ¶28). Opposer does not provide a single case to support its contention that Applicant's *intended* place of business being *near* the Atlas District meets this factor requiring that the goods originate in the Atlas District. Opposer's claim that the mark is primarily geographically descriptive must fail

because the evidence of record demonstrates that the goods do not originate in the place identified in the mark.

Finally, to prove that a mark is primarily geographically descriptive, Opposer must show that purchasers would likely believe that the goods originate from the geographic place identified in the mark. The only evidence Opposer provided on this issue, Ex. H and I to its summary judgment motion, identify the Atlas District as an “arts and entertainment” district. Per Cox, who is familiar with the area, the Atlas District of Washington, DC is not known for beer. (Cox Dec ¶30). Opposer attempts to meet this element of the test by arguing that Applicant intended to target consumers from Washington, DC, who are familiar with the Atlas District, and thus would believe the goods originate from the District. However, Opposer once again overlooks that Applicant’s logo is Atlas from Greek mythology and that most consumers would either think of a book of maps when hearing the term ATLAS, or alternatively, of the Titan Atlas. (Ex. B). Opposer provides no evidence that any of Applicant’s consumers associate Applicant’s mark with a geographic location, much less provides any cases to support its contention that the familiarity of one subset of a product’s purchasers with a geographic location would overcome the fact that the *primary* significance of the mark is not geographic.

Opposer cites *In re Loew’s Theatres, Inc.*, in support of its statement that a place need not be “well-known or noted for the goods” so long as Applicant’s goal is to associate the goods with the location. (P. 10 of SJ Motion). However, in *In re Loew’s Theatres*, the PTO was able to show that the goods were produced and marketed in the relevant location. *In re Loew’s Theatres, Inc.*, 226 USPQ 865, 868 (Fed.Cir. 1985). Opposer provides no such evidence that any beer is brewed in the Atlas District, including that of Applicant. In addition, the evidence of

record shows that Applicant's goal was to associate the goods with the Titan Atlas from Greek mythology. (Cox Dec ¶¶11, 14).

Opposer argues that because Applicant's mark is primarily geographically descriptive, it cannot be registered on the Principal Register without proof of acquired distinctiveness. It goes on to assert that because Applicant has not placed its mark in use in commerce, it cannot prove acquired distinctiveness, nor amend the application to the Supplemental Register. (Pp. 10-11 of SJ Motion). However, Applicant's goods are in use in commerce. (Cox Dec ¶26). Moreover, Opposer's arguments that ATLAS is only suitable for the Supplemental Register are irrelevant, given that its mark is not primarily geographically descriptive.

Applicant has amply demonstrated that there are genuine issues of material fact with respect to the alleged geographic descriptiveness of its mark. Opposer failed to provide evidence to support any of the factors of the test to show that ATLAS is primarily geographically descriptive of Applicant's goods. Opposer's Summary judgment motion on the ground of geographic descriptiveness should be denied.

## **2. Applicant's bona fide intent to use the mark ATLAS in commerce**

The second ground for Opposer's summary judgment motion is that Applicant allegedly lacked a bona fide intention to use its mark in commerce as of the filing date of the application. As demonstrated above, there are genuine issues of material fact on this ground for summary judgment, and Opposer has failed to meet its burden of proof.

In a claim for lack of bona fide intent to use a mark in commerce made during the course of an opposition proceeding, the Opposer has the burden of proof of establishing, by a preponderance of the evidence, that the Applicant lacked the requisite bona fide intent to use its mark in connection with the goods covered by the application. *Intel Corp. v. Enemy*, No.

91123312, 2007 WL 1520948 (TTAB May 15, 2007). Even if the Opposer is able to establish a *prima facie* case for lack of requisite bona fide intent, the burden will shift to the applicant to provide evidence to refute the claim. *Id.* However, the burden of persuasion by a preponderance of the evidence remains with the opposer. *Id.* Not only has Opposer failed to meet this burden, Applicant has provided substantial evidence to the contrary.

Opposer argues that Applicant lacked a bona fide intention to use the mark in commerce at the time it filed its federal trademark application because it was still considering using VOLSTEAD BEER WORKS. However, Applicant had a contingent bona fide intent to use each of the marks. (Cox Dec ¶15). McCarthy's treatise states, "...the applicant can have a bona fide intent to use each of several candidate marks if the intent is contingent on the occurrence of some external, objective "circumstances" such as...*obtaining a consent agreement with a prior user who arguably may have some superior rights.*" [emphasis added] 3 McCarthy on Trademarks and Unfair Competition § 19:17 (4th ed.) (2014); *see also Commodore Elec Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1505 (TTAB 1193) ("a bona fide intention to use a mark at the time the application for registration thereof is filed simply means an intention that is firm, even though it may be contingent upon the outcome of a future event such as market research or product testing"). That is precisely the situation that occurred here.

As Cox explained in his declaration, if Applicant was unable to obtain a consent from the owner of the cited VOLSTEAD mark, it was determined to adopt and use the ATLAS mark. (Cox Dec.¶15). Applicant's decision to use ATLAS was contingent only upon objective external contingencies. (Cox Dec. ¶15). Applicant had the requisite bona fide intent to use the mark in commerce.

According to the relevant case law, bona fide intent can be demonstrated by actions such as preparing business plans, retaining investors<sup>5</sup>, conducting trademark searches for the mark<sup>6</sup>, performing preparatory graphic design work for the mark<sup>7</sup>, obtaining the necessary regulatory permits<sup>8</sup>, correspondence mentioning the planned use of the mark<sup>9</sup>, efforts in looking for a place of business<sup>10</sup>, consistent efforts to put its mark to use in commerce after the filing date<sup>11</sup> and using the mark in commerce with the applied for goods. As shown by the Cox Declaration (Cox Dec ¶¶10, 13-14, 18-25), Applicant did all of these things in connection with its ATLAS mark.

Specifically, Cox, and Applicant's head brewer, Will Durgin ("Durgin"), began discussions to develop a brewery in 2008. (Cox Dec ¶2). In October 2011, Cox began putting his plans to develop a brewery on paper and considering recipes, well in advance of the filing date of its application for ATLAS. (Cox Dec ¶3). Cox began securing investors from late 2011 through 2012. (Cox Dec ¶5). Applicant also filed an intent-to-use trademark application for its then mark, VOLSTEAD BEER WORKS on January 29, 2012. (Cox Dec ¶6).

On May 9, 2012, a potential likelihood of confusion rejection issued in the VOLSTEAD BEER WORKS trademark application citing an application for VOLSTEAD covering distilled spirits owned by House Spirits Distillery LLC. (Cox Dec ¶8). As this entity appeared to have superior rights to VOLSTEAD, Applicant reached out several times to its Chief Executive

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<sup>5</sup> *Nautica Apparel, Inc. v. Crain*, No. 113893, 2001 WL 1182881, at \*2 (TTAB Sept. 21, 2001)

<sup>6</sup> *Speedway Superamerica LLC v. Renegade Tobacco Inc.*, No. 91124822, 2004 WL 2075108, at \*7 (T.T.A.B. Sept. 2, 2004); *Discovery Comm., Inc. v. Cooper*, No. 109154, 2000 T.T.A.B. LEXIS 185, at \*4 (T.T.A.B. Mar. 29, 2000)

<sup>7</sup> *Speedway*, 2004 WL 2075108, at \*7; *Kellogg Co. v. The Earthgrains Co.*, No. 91110121, 2003 WL 22273096, at \*2 (T.T.A.B. Sept. 30, 2003); *Pixel Instruments Corp. v. Sweven Corp.*, No. 97136 1999 T.T.A.B. LEXIS 715, at \*6 (T.T.A.B. Dec. 30, 1999)

<sup>8</sup> *Nautica*, 2001 WL 1182881, at \*2; *Vignette Corp. v. Marino*, No. 91158854, WL 1801611, at \*2 (T.T.A.B. 2005)

<sup>9</sup> *Lane Ltd. v. Jackson Int'l Trading Co.*, 33 U.S.P.Q.2d 1351, 1355 (T.T.A.B. 1994)

<sup>10</sup> *Vignette*, 2005 WL 1801611, at \*2

<sup>11</sup> *Lane Ltd. v. Jackson Int'l Trading Co.*, 33 U.S.P.Q.2d 1351 (T.T.A.B. 1994) (actions to use a trademark shortly after the filing date of the trademark application are relevant to show Applicant's bona fide intent to use the trademark).

Officer to discuss a consent agreement. Ultimately, Applicant was unsuccessful in obtaining the consent from House Spirits Distillery LLC. (Cox Dec. ¶8).

When it was unable to make contact with the owner of the VOLSTEAD mark, in late May 2012, Applicant began considering the mark ATLAS as an alternative trademark to VOLSTEAD BEER WORKS. (Cox Dec ¶¶9, 10). Applicant conducted a search of the trademark records of the United States Patent & Trademark Office and internet searches for ATLAS. (Cox Dec ¶10). As those searches did not reveal any obstacles, Applicant commissioned its designer to prepare preliminary sketches of a tap handle for the new mark. (Cox Dec ¶11). On June 4, 2012, Applicant filed its federal intent-to-use trademark application for ATLAS including a declaration signed by Applicant's CEO (Cox) that Applicant had a bona fide intent to use the ATLAS mark in commerce. (Cox Dec ¶13).

On June 5, 2012, Applicant sent correspondence to its investors outlining the trademark issue with "Volstead Beer Works" and indicating that "Atlas Beer Works" was to be the alterative name for the brewery. (Cox Dec ¶13; Ex. B to SJ Motion). In the same correspondence, Applicant sent the preliminary sketch of a tap handle showing Atlas from Greek mythology holding a hop that it had commissioned from its designer, which was dated June 4, 2012. (Cox Dec ¶11; Cox. Ex. A-3). Applicant's designer continued to work on a stylized version of ATLAS and sent a preliminary sketch to Applicant on June 13, 2012. (Cox Dec ¶14; Cox Ex. A-6).

On June 15, 2012, Applicant sent correspondence to its investors advising that it had decided to officially change its name and email addresses to "Atlas Beer Works". (Cox Dec ¶16; Cox Ex. A-7). Applicant changed its name from Volstead Beer Works LLC to Atlas Beer

Works LLC with the Delaware Secretary of State on June 18, 2012. (Subsequently, the name was changed to Atlas Brew Works LLC.) (Cox Dec ¶17; Cox Ex. A-8).

As of July 26, 2012, Applicant was actively purchasing brewing supplies and materials. (Cox Dec ¶19; Cox Ex. A-9). A location for the brewery was chosen and a lease was signed in December 2012. (Cox Dec ¶20; Cox Ex. A-10 ). Applicant issued its first press release regarding its brewing enterprise on December 10, 2012. (Cox Dec ¶21; Cox Ex. A-11). Shortly thereafter, on December 27, 2012, Applicant filed its Brewer's Notice with the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau. (Cox Dec ¶22; Cox Ex. A-12).

On February 23, 2013, Applicant signed an agreement with a branding company to help further develop and expand its brand. (Cox Dec ¶23; Cox Ex. A-13). Applicant entered into a distribution agreement on April 2, 2013. (Cox Dec ¶24; Cox Ex. A-14 ). Applicant received its license from the Alcoholic Beverage Regulation Administration to provide tastings to consumers on July 26, 2013. (Cox Dec ¶25; Cox Ex. A -15). Applicant's beer was first sold in the District of Columbia on September 2, 2013. (Cox Dec ¶26).

These actions, and documentation thereof, overwhelmingly support Applicant's bona fide intent to use the ATLAS mark before, at the time of, and after the filing date of its application. Opposer cites to *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha Opposition*, 26 USPQ2d 1503 (TTAB 1993). In *Commodore*, the Board denied Applicant's motion for summary judgment because material issues of fact remained as to Applicant's intent where it did not submit *any* documentary evidence as to its intent. Here, Applicant has provided extensive evidence to show its bona fide intent to use ATLAS in commerce, thus showing that material issues of fact exist.

Opposer suggests that Applicant was merely reserving a right in the ATLAS trademark by filing its application. (P. 13 of SJ Motion). However, as Applicant already noted, its decision to use ATLAS was contingent only on House Spirits' decision to allow a consent agreement with respect to VOLSTEAD BEER WORKS. (Cox Dec ¶15).

Applicant had a bona fide contingent intent to use ATLAS prior to and on the day it filed its trademark application. Since the filing date, Applicant steadily continued to develop its business under the ATLAS mark, which has now culminated in use of the ATLAS mark in commerce for Applicant's goods. (Cox Dec. ¶26). Opposer cites no cases to support its claim that filing for two marks (with one being an alternate name in case the other one receives an objection or faces other difficulties) demonstrates lack of bona fide intent. As shown above, the opposite is true. Further, as the Board in *Commodore* noted, "as a general rule, the factual question of intent is particularly unsuited to disposition on summary judgment." *Id.* (quoting *Copeland's Enterprises Inc. v. CNV Inc.*, 20 USPQ2d 1295, 1299 (Fed. Cir.1991).

The evidence submitted herewith in support of Applicant's opposition to summary judgment demonstrates, conclusively, that Applicant *had* a bona fide intention to use the mark ATLAS in commerce before its application was filed, at the time its application was filed, and continuously thereafter. However, even if the Board is not prepared at this time to rule affirmatively that the Applicant had a bona fide intent to use the mark in commerce, at a minimum, the evidence submitted herewith demonstrates that there are genuine issues of material fact as to whether Applicant had the requisite bona fide intention to use its mark in commerce. Accordingly, Opposer's motion for summary judgment on this ground should be denied.

**IV. CONCLUSION**

In view of the numerous genuine issues as to material facts discussed herein, the Board should deny Opposer's Motion for Summary Judgment.

Respectfully submitted,

Date: March 19, 2014

By: /Helen Hill Minsker/  
Helen Hill Minsker  
Anna L. King  
Evan M. Clark  
Banner & Witcoff, Ltd.  
10 South Wacker Drive  
Chicago, Illinois 60606  
Telephone: (312) 463-5000  
Facsimile: (312) 463-5001  
Email: BWPTOTM@bannerwitcoff.com

Attorneys for Applicant, Atlas Brew Works LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2014, a copy of the foregoing APPLICANT'S BRIEF IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT 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  
Chicago, IL 60654

/Helen Hill Minsker/

# Opposition to Motion for Summary Judgment

## Exhibit A



30, 2012, I reached out to its Chief Executive Officer to discuss a consent agreement. After followup from me by telephone and email, on June 11, 2012, the CEO informed me that, based on counsel from its lawyers, House Spirits Distillery LLC wanted us to "...avoid the use of our VOLSTEAD mark now and in the future" [*emphasis in original*]. Further, on July 11, 2012, we also received a cease and desist letter from House Spirits Distillery LLC's attorneys. Attached as Exhibit A-2 are copies of my email correspondence with the CEO of House Spirits Distillery LLC, as well as the July 11, 2012, cease and desist letter received from its attorneys. As explained below, by the time we received the cease and desist letter, we had already changed our name to Atlas Beer Works.

9. In late May/early June of 2012, when the CEO of House Spirits Distillery LLC was not responding to our attempts to contact him, we became concerned that we would not be able to overcome the potential objection based on the VOLSTEAD mark owned by House Spirits Distillery LLC. Accordingly, we began to explore alternative names.

10. Ultimately, we decided on the name ATLAS. We conducted a preliminary search of the United States Patent & Trademark Office records and preliminary internet searches for ATLAS. When no obstacles were identified, we decided to proceed with "Atlas Beer Works".

11. As part of our initial activities with respect to the name ATLAS, we had our designer sketch a preliminary drawing of a tap handle featuring "Atlas" the mythological figure bearing the weight of hops and incorporating our previous map theme. Attached as Exhibits A-3 through A-5 are copies of correspondence between myself and an investor regarding the ATLAS theme involving Atlas from Greek mythology (Ex. A-3), the preliminary drawing of the tap handle featuring "Atlas" (Ex. A-4), and correspondence between myself and my designer regarding the creation of new designs for ATLAS incorporating Atlas from Greek mythology (Ex. A-5).

12. In a June 5, 2012, email to Applicant's investors cited by Opposer in its Summary Judgment Motion, (Ex. B to Opposer's Summary Judgment Motion), I explained the difficulties we had with the VOLSTEAD BEER WORKS mark, and stated that in "racking our brains" for a new name, "...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...." At the time I sent this email, Applicant had not yet signed a lease for its brewery, so we did not know the exact location for it. However, we expected it would be somewhere in North East Washington, which included the commercial district known as the Atlas District, among others.

13. My June 5, 2012, correspondence (Ex. B to Opposer's Summary Judgment Motion) solicited comments from our investors about our trademark situation. However, the decision to adopt ATLAS as our alternative trademark in case we could not resolve the VOLSTEAD matter was already decided when the June 5, 2012, correspondence was sent to investors. In fact, we had already filed a trademark application for ATLAS on June 4, 2012 (the one that is the subject of this opposition), and, as shown by Exhibits A-4 and A-5, we were

working with our designers to work in the theme of ATLAS the Titan with our prior logo, including a map theme.

14. We continued throughout early June 2012 to work with our designer on a stylized version of ATLAS and the ATLAS Logo. In addition to Exhibit A-5, Exhibit A-6 includes correspondence between me and my designer regarding the creation of new designs for ATLAS incorporating Atlas from Greek mythology and correspondence between me and my designer regarding creation of a stylized version of ATLAS.

15. Initially, our decision to pursue the ATLAS trademark was contingent on whether we could negotiate a consent agreement on behalf of the Applicant with House Spirits Distillery LLC. However, I confirm that at the time the trademark application for ATLAS was filed on June 4, 2012, Applicant had a bona fide intent to use the ATLAS trademark in commerce in connection with the goods covered by the application, as is evidenced by the preliminary work in selecting the mark as an alternative to VOLSTEAD BEER WORKS, including work with our designer for a logo for ATLAS. The only reason we would not have proceeded with the ATLAS name was if we were able to obtain a consent agreement from House Spirits Distillery LLC. When House Spirits Distillery LLC informed us on June 11, 2012 that it would not grant consent for us to use and register the VOLSTEAD BEER WORKS mark, we decided to move forward with ATLAS.

16. On June 15, 2012, I reported to Applicant's investors that the decision to change the brewery name to "Atlas Beer Works" was official and that I had already changed my email address and Durgin's email address to "@atlasbeerworks.com" addresses. Attached as Exhibit A-7 is correspondence from me to investors reporting the official name change to "Atlas Beer Works" and that myself and our head brewer had changed our email addresses to "@atlasbeerworks.com" email addresses. As of that date, Applicant had no intention of pursuing its trademark application for VOLSTEAD BEER WORKS. However, rather than file an express abandonment of the VOLSTEAD BEER WORKS application at that time, Applicant instead elected not to respond to the pending office action and allowed the application to go abandoned.

17. On June 18, 2012, we officially changed our name from Volstead Beer Works LLC to Atlas Beer Works LLC with the Delaware Secretary of State. (Subsequently, on September 25, 2012, our name was further amended to Atlas Brew Works LLC.) Exhibit A-8 includes copies of the Delaware Secretary of State records documenting the name change filings on June 18 and September 25, 2012.

18. Once we had changed our name to Atlas Beer works, we continued with our business activities to get our brewery up and running, including the activities described in the following paragraphs.

19. As of July 2012 Applicant was purchasing brewing supplies and materials. An invoice for brewing materials is attached as **Sealed** Exhibit A-9. (The sealed exhibits are submitted separately from the non-confidential exhibits to this Declaration and are subject to the protective order in the proceeding.)

20. A location was chosen and a lease was finalized on December 6, 2012. The lease for our property is attached as **Sealed** Exhibit A-10.

21. Our first press release was issued December 10, 2012, and a copy is attached as Exhibit A-11.

22. On December 27, 2012, we filed our Brewer's Notice with the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau. Attached as Exhibit A-12 is a copy of Applicant's application for its Brewer's Notice with the Department of Treasury Alcohol and Tobacco Tax and Trade Bureau.

23. On February 23, 2013, Applicant signed an agreement with a branding company to help further develop and expand the brand. Attached as **Sealed** Exhibit A-13 is a copy of Applicant's contract with its branding company.

24. Applicant entered into a distribution agreement on April 2, 2013. **Sealed** Exhibit A-14 is a copy of Applicant's distribution agreement.

25. Applicant received its license from the Alcoholic Beverage Regulation Administration to provide tastings to consumers on July 26, 2013. Attached as Exhibit A-15 is a copy of Applicant's license from the Alcoholic Beverage Regulation Administration to provide tastings to consumers.

26. On August 28, 2013, we had a private event and tasting for our distributor at our brewery in Washington, DC. Our first event for the public where our beer was sold was September 2, 2013 at Meridian Pint in Washington, DC. Thus, by September 2013, our beer was commercially available at bars in the District of Columbia.

27. Meanwhile, as we were preparing to get our business operations up and running under the ATLAS name, our trademark application (Serial No. 85/642549), which I had filed myself, was going through the examination process. During the course of the prosecution of our trademark application for ATLAS, a prior registration for the mark SKINNY ATLAS LIGHT (Reg. No. 2,089,219) was cited against our application as a bar to registration on the ground of likelihood of confusion. We retained counsel to represent us in prosecuting the application, and our response to the office action dated October 12, 2012, included an Affidavit by me. (See Ex. F to Opposer's Summary Judgment Motion.) In that Affidavit, I explained that ATLAS in our mark was intended to represent the Titan, Atlas, whereas it was my understanding that the cited mark was a reference to a lake in Syracuse, New York, where the owner of the SKINNY ATLAS LIGHT application was located. (As shown in Ex. A-5, the earliest logo we developed for ATLAS was based on the Titan, Atlas.)

28. As explained in the June 5, 2012, email to investors (Ex. B to Opposer's Summary Judgment Motion) the selection of the ATLAS name also was desirable because it fit well with our marketing plan. We expected that our brewery would be near the Atlas District in the District of Columbia. However, the proximity of the Atlas District was not the sole basis for selecting ATLAS, as was explained both in the June 5 email to investors and in my Affidavit

before the USPTO (Exhibits B and F to Opposer's Summary Judgment Motion). Indeed, at the time we selected the ATLAS name, we had not yet signed a lease for our premises. As it turned out, after negotiations for two different leases in the NoMa neighborhood fell through, we eventually located our brewery in the Ivy City Neighborhood in DC, which is near the Atlas District, but not within the Atlas District.

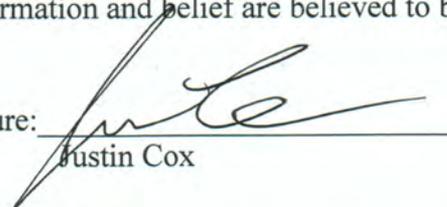
29. Although the Atlas District is a neighborhood in the District of Columbia, I do not believe that the name Atlas District is generally known. In fact, it is not even the most common name for that neighborhood, which is more commonly known as "H Street District," "H Street Northeast", "H Street Corridor", or simply "H Street".

30. I am personally familiar with the types of businesses located in the Atlas District. The Atlas District was named after the Atlas Theater, and as evidenced by Exhibits H and I to Opposer's Summary Judgment Motion, it is known as an "Arts and Entertainment" district. To the best of my knowledge, the Atlas District is not particularly known for beer, nor are purchasers likely to believe that Applicant's beer originates from the Atlas District.

31. Applicant's goods, namely, beer, do not originate from the neighborhood in DC known as both the Atlas District and the H Street District.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of Applicant's application or any resulting registration, declares that the facts set forth in this declaration are true; all statements made of his knowledge are true; and all statements made on information and belief are believed to be true.

Date: 3/19/14

Signature:   
Justin Cox

## INDEX TO EXHIBITS

Exhibit #	Description
A-1	Application for Incorporation of Volstead Beer Works LLC
A-2	Correspondence with House Spirits Distillery LLC re VOLSTEAD mark
A-3	June 6, 2012 emails between Justin Cox and an investor regarding the ATLAS theme involving Atlas from Greek mythology
A-4	June 4, 2012 preliminary drawing of the tap handle featuring "Atlas"
A-5	May 23, 2012-June 11, 2012 emails between Justin Cox and his designer regarding the creation of new designs for ATLAS incorporating Atlas from Greek mythology
A-6	June 13, 2012 email between Justin Cox and his designer regarding creation of a stylized version of ATLAS
A-7	June 15, 2012 e-mail from Justin Cox to investors regarding change of name to Atlas Beer Works
A-8	Certificates of Amendment reflecting changes of name from Volstead Beer Works LLC to Atlas Beer Works LLC and subsequently to Atlas Brew Works LLC
A-9	<b>Sealed</b> Invoice for brewing materials [ <b>CONFIDENTIAL</b> ]
A-10	<b>Sealed</b> Property lease [ <b>CONFIDENTIAL</b> ]
A-11	Press release dated December 10, 2012
A-12	Application of Brewer's Notice for Atlas Brew Works LLC
A-13	<b>Sealed</b> Agreement with branding company [ <b>CONFIDENTIAL</b> ]
A-14	<b>Sealed</b> Distribution Agreement [ <b>CONFIDENTIAL</b> ]
A-15	License from the Alcoholic Beverage Regulation Administration

Declaration of Justin Cox

Exhibit A-1

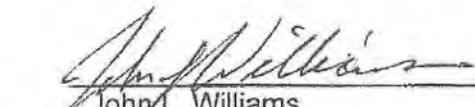
State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:50 PM 11/04/2011  
FILED 02:34 PM 11/04/2011  
SRV 111168487 - 5061686 FILE

CERTIFICATE OF FORMATION  
OF  
Volstead Beer Works LLC

The undersigned, being an authorized person for purposes of executing this Certificate of Formation on behalf of Volstead Beer Works LLC, a Delaware Limited Liability Company (the "L.L.C."), desiring to comply with the requirements of 6 Del.C. Section 18-201 and the other provisions of the Delaware Limited Liability Company Act, 6 Del.C. Section 18-101, et seq. (the "Act"), hereby certifies as follows:

1. Name of the L.L.C. - The name of the L.L.C. is: Volstead Beer Works LLC.
2. Registered Office and Registered Agent of the L.L.C. - The name of the registered agent for service of process on the L.L.C. in the State of Delaware is Agents and Corporations, Inc. The address of the registered agent of the L.L.C. and the address of the registered office of the L.L.C. in the State of Delaware is 1201 Orange Street, Suite 600, Wilmington, DE 19801.
3. Date of Formation and Effective Date - The date of formation and the effective date of the L.L.C. shall be the date of filing of this Certificate of Formation with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned hereby executes this Certificate of Formation in accordance with the provisions of 6 Del.C. Section 18-201 on November 4, 2011.

  
John L. Williams  
(Authorized Person)



Declaration of Justin Cox

Exhibit A-2



## Volstead TM

Justin Cox <justin@volsteadbeerworks.com>  
To: Thomas Mooney <thomas@housespirits.com>

Mon, Jun 11, 2012 at 1:34 PM

Tom,

Thanks for the reply. I am sorry to hear that you are not open to reaching an agreement to avoid a potential issue in the future. However, as stated we have no intention of using the term Volstead in the distilled spirits category that your mark is in.

Best of luck,  
Justin

On Mon, Jun 11, 2012 at 9:56 AM, Thomas Mooney <thomas@housespirits.com> wrote:  
Justin,

Thank you for your patience. We did consult the matter with our attorneys, and based on their counsel we must ask you to avoid the use of our Volstead mark now and in the future. Best,

Tom.

### HOUSE SPIRITS DISTILLERY

Old World Philosophy for the New World Palate

\*1-310-460-8582

**From:** Justin Cox <justin@volsteadbeerworks.com>  
**Date:** Monday, June 11, 2012 6:19 AM  
**To:** Thomas Mooney <thomas@housespirits.com>  
**Subject:** Re: Volstead TM

Tom,

I hope you had a good weekend. Just wanted to check in with you quickly to see if you've had a chance to consider our message below? Thanks and I look forward to your thoughts.

Cheers,  
Justin

On Wed, May 30, 2012 at 12:23 PM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Hello Tom:

My name is Justin Cox and I am in the process of opening a craft brewery in Washington, DC. We are currently planning on using the name "Volstead Beer Works" and saw that you were just granted a trademark for the use of "Volstead" in the distilled spirits category. We have a pending application in for the name "Volstead Beer Works" for use in the beer category. My understanding is that once your trademark converts to registered, this might affect our ability to also use the word "Volstead." While there is a distinction between distilled spirits and beer, as well as between our names, I would like to discuss the matter with you now so I can concentrate on building a brewery and making some delicious beer here in DC.

This is a small start-up business for me and my partner/head brewer Will Durgin (coincidentally working at Pyramid in Portland until he moves East). We are two friends that after years of talking about it are taking the leap to realize our dream of owning our own business and bringing our passion for craft beer to market. We have not started production yet, but hope to have our build out done and equipment installed by late summer.

We want to be upfront with you and hopefully build a lasting and amicable relationship. We've invested some money but more so time, heart & soul into the name, the story, and the logos for Volstead Beer Works. As you can imagine it fits a DC brewery quite well. We are not at the point of no return but would love to retain our brewery's name and art with no ambiguity over propriety. Would you be open to reaching an agreement for us to use our name Volstead Beer Works? We hope we can work something out small business to small business. Let's hop on the phone sometime soon. I would love to speak with you and talk through all of this. I'd also like to tell you more about our story and beer, and send you some samples once things are up and running!

Thanks for your time and I look forward to hearing from you.

Cheers,  
Justin

PS - Big fan of your Aviation Gin, well done! Makes my Tom Collins sing.

--

**Justin Cox**  
CEO  
Volstead Beer Works LLC  
[www.volsteadbeerworks.com](http://www.volsteadbeerworks.com)  
202-631-3460 (m)  
888-832-5080 (f)

--

**Justin Cox**  
CEO  
Volstead Beer Works LLC  
[www.volsteadbeerworks.com](http://www.volsteadbeerworks.com)

3/18/2014

Atlas BrewWorks LLC Mail - Volstead TM

202-642-4606 (m)

888-832-5080 (f)

-

**Justin Cox**

CEO

Volstead Beer Works LLC

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July 11, 2012

JERE M. WEBB  
Direct (503) 294-9460  
jmwebb@stoel.com

VIA E-MAIL JUSTIN@VOLSTEADBEERWORKS.COM

Mr. Justin Cox  
CEO  
Volstead Beer Works LLC  
1124 7th St. NE  
Washington, DC 20002

**Re: VOLSTEAD Trademark**

Dear Mr. Cox:

We represent House Spirits Distillery LLC ("House Spirits"). It has come to our attention that Volstead Beer Works: (1) recently filed for an intent-to use application for the mark VOLSTEAD BEER WORKS, Ser. No. 85/528,066, for beer (the "Infringing Mark"); (2) is using the name Volstead Beer Works as its business name; and, (3) intends to sell beer branded with the Infringing Mark. On behalf of House Spirits, we write to demand that Volstead Beer Works promptly cease use of the word "VOLSTEAD" in all variations, in connection with its products and services and abandon its intent to sell beer and related goods under the Infringing Mark. As explained in this letter, House Spirits believes such uses of the Infringing Mark infringes House Spirits' prior rights in its VOLSTEAD trademark and related federal application.

As you know, House Spirits is in the business of selling distilled spirits and related goods and services. House Spirits owns the federal trademark application for the mark VOLSTEAD for "distilled spirits," Ser. No. 85/424,098, which published and received a Notice of Allowance on February 28, 2012 (the "VOLSTEAD Mark").

Volstead Beer Works' use of the Infringing Mark for beer would constitute infringement of the VOLSTEAD Mark, be likely to cause confusion among consumers and would damage the distinctiveness, value and customer brand appeal of the VOLSTEAD Mark. For these reasons, Volstead Beer Works must promptly abandon its intent to use the Infringing Mark.

Moreover, the United States Patent and Trademark Office ("USPTO") agrees there is a conflict. The USPTO determined in an Office Action dated May 9, 2012 that the application for the Infringing Mark may be likely to cause confusion with the VOLSTEAD Mark.

71883134.1 0042039-00002

STOEL RIVES LLP  
ATTORNEYS AT LAW  
900 S.W. 4th Avenue, Suite 2000  
Portland, Oregon 97204  
Phone 503.274.3180  
Fax 503.270.3180  
www.stoel.com

ATLAS0000624



Mr. Justin Cox  
July 11, 2012  
Page 2

As background, courts have held that beer, wine and distilled spirits are related goods. Also, when dominant portions of the marks are the same (*i.e.* "VOLSTEAD"), confusion may be likely notwithstanding other differences between the marks. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369 (Fed. Cir. 2005) and *In re Chatam Int'l Inc.*, 380 F.3d 1340 (Fed Cir. 2004). Given that: (1) "VOLSTEAD" is the dominant portion of the marks; and, (2) beer and distilled spirits are related goods likely to be encountered by the same consumers and travel in the same trade channels, confusion is likely.

Therefore, if Volstead Beer Works begins using the Infringing Mark, it would constitute infringement of House Spirits' prior trademark rights, constitute unfair competition, injure House Spirits' business reputation, and dilute the distinctive quality of the VOLSTEAD Mark, all in violation of applicable state and federal laws.

We trust you will agree that it is best to resolve these issues without legal action. Therefore, we request that you expressly abandon the pending application for the Infringing Mark and abandon any other trademark and/or business name containing the Infringing Mark or marks confusingly similar to the VOLSTEAD Mark.

Please confirm your agreement to the above requests in writing no later than July 28, 2012. This will provide you with a reasonable time to transition to a new name. Although we hope that this matter will be resolved amicably, House Spirits does not waive any rights whatsoever in connection with its trademarks, and expressly reserves all such rights and related remedies.

Thank you for your prompt attention to this matter. If you have questions about this letter, please feel free to call me or have your legal counsel do so.

Very truly yours,

Jere M. Webb  
JMW:mmr  
cc: Client

Declaration of Justin Cox

Exhibit A-3



## Volstead Update 6/5

Justin Cox <justin@volsteadbeerworks.com>

Wed, Jun 6, 2012 at 9:14 AM

To: REDACTED

kraken beer?

There is an Panamanian Atlas beer. They had trademarks registered but they both are "dead" as of 2004 and 2006. Not sure what the implications of that are really, but we'll see what the PTO says.

On Wed, Jun 6, 2012 at 9:11 AM, REDACTED wrote:  
hmm, disregard...already kraken beer. And Atlas Beer.. Uh oh...

On Wed, Jun 6, 2012 at 9:09 AM, REDACTED wrote:  
have squids/kraken been used on a beer yet? cause that would be a cool thing to have wrapped on atlas's back...and I think it somehow relates to steam....just a thought!

On Wed, Jun 6, 2012 at 9:08 AM, REDACTED wrote:  
I love the idea of different items on Atlas's back relating to the beer. I think the hop works well with your rye or an IPA...and an onion dome for BORIS would make a great stout or black ale (boris sounds like a dark bearded man). After your brand is established, though, I wouldn't limit yourself to that specific pose. You could have Atlas standing and holding items (e.g., a bushel of wheat for a heffe) or doing something (tossing a bolt of lightning?).

I think for Steam, you could simply put an old cool looking propeller (in lieu of a turbine) on dude's back. Plenty to look at here:

[https://www.google.com/search?q=propeller&hl=en&safe=active&rls=com.microsoft:en-us&prmd=imvns&source=lnms&tbn=isch&ei=-IXPT4GvG6v06AHdsbCgDA&sa=X&oi=mcde\\_link&ct=mode&cd=2&ved=0CHMQ\\_AUoAQ&biw=1280&bih=642](https://www.google.com/search?q=propeller&hl=en&safe=active&rls=com.microsoft:en-us&prmd=imvns&source=lnms&tbn=isch&ei=-IXPT4GvG6v06AHdsbCgDA&sa=X&oi=mcde_link&ct=mode&cd=2&ved=0CHMQ_AUoAQ&biw=1280&bih=642)

Congrats on leaving the Fed gov! Holler if you're in Nashville--aren't you going to be there in late July for Abby's b-day, or is that just girls?

later,  
REDACTED

On Wed, Jun 6, 2012 at 8:42 AM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Thanks dude. It is a shame to give up the sweet ass old theme. But we can still keep the logo, just change the tap handles. Fucking beer biz has so many names between breweries and all their beers, the trademark world is tough. If for some reason Atlas doesnt work, I was thinking Byzantine Beer Works and going with the original theme.

We are also throwing around the idea of putting different stuff on Atlas's back for different beers. At least the specialty ones. e.g. a Russian onion dome for BORIS, etc. You have any ideas what would be good on there for Steam? I thought something like this: [http://en.wikipedia.org/wiki/File:Aeolipile\\_illustration.JPG](http://en.wikipedia.org/wiki/File:Aeolipile_illustration.JPG) but that may be too complicated. For our flagships, cant decide if its better to use the hop for our rye beer and something else for the steam. Or just use different colored hops for each...

I miss me some nashvegas. Done with my gov job on June 25th, might have some time for a trip before we get balls deep in build out for the brewery. Where'd you all get bikes?

On Wed, Jun 6, 2012 at 8:35 AM

REDACTED

wrote:

Sounds good, man! I liked the old name and theme, but the new one is good (great!) and that's a great image work up you have.

The only question is, who is Justin Cox?

We had a fun time in Nashville last weekend partying with the Quinns, etc. We did a lot of biking around, too.

Take care and good luck,

REDACTED

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

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 cloud 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 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)  
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—  
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888-832-5080 (f)



Account: alan@131brews@gmail.com

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## Atlas letters

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Alan Guidera <131brews@gmail.com>

Wed, Jun 13, 2012 at 2:40 PM

To: Justin Cox <justin@volsteadbeerworks.com>

Trying my best! This damn "S" is giving me issues again. I attached a scan. What are your thoughts? I stylized the "A" a bit; added a touch of art nouveau. Oh, and just like the Volstead logo, the letters will have an offset edge with a slight reveal. The file I'm work in is a vector program so I can send it to the manufacturer without any hassle.

[Quoted text hidden]

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ATLAS

06.13.12

# ATLAS

• BREW WORKS •

06.04.2012



Declaration of Justin Cox

Exhibit A-4



06.04.2012

Declaration of Justin Cox

Exhibit A-5



## Logos, etc

Justin Cox <justin@volsteadbeerworks.com>  
To: Alan Guidera <131brews@gmail.com>

Mon, Jun 11, 2012 at 2:45 PM

Afternoon Alan! Sorry for the barrage of emails, just lots of things happening right now that require art. I'm working with the tap handle manufacturer and trying to sharpen up our name on the handles. Do you have the name "Atlas" in vector and/or .3dm file format from the logo? If I can send that to them, they can directly import it to their modeling.

Let me know!

Thanks again for all your work on this and I promise I'll stop emailing you soon...very soon.

Best,  
Justin

On Sun, Jun 10, 2012 at 4:55 PM, Volstead <justin@volsteadbeerworks.com> wrote:

Alan,

We are going to stick to your original tap handle designs after all. They are too awesome not to use. I am thinking about using the atlas guy as a beer logo for the rye maybe. Still tossing that around in our heads.

As for Atlas, is it possibly to send the word or letters in a vector format that I can send to the tap handle manufacturer? They did a first round of design and captured most really well, but would like the letters to be a bit sharper. These handles have a humongous lead time, so the sooner the better on this. Is what I'm asking even possible or useful?

I'm also starting to work with a website designer. Is it OK with you if I put her in touch with you about the art you've done for us?

Thanks again Alan and I'm looking forward to getting all this logo stuff wrapped up!

Cheers,  
Justin

On Jun 8, 2012, at 6:55 AM, Alan Guidera <131brews@gmail.com> wrote:

Goodmorning Justin,

If you're good on the logo, I'll get it into full, finishing gear. And of course, I'll pull out the "everyday" logo for you. No worries there. Do you have any thoughts on getting the Atlas man in the logo or just on the handles? Regarding timeline; a few more weeks to wrap this up would be great; my next few weeks are relatively open.

Thanks,

Alan

On Thu, Jun 7, 2012 at 9:35 AM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Alan,

3/14/2014

Atlas BrewWorks LLC Mail - Logos, etc

I think we are good to go with finishing up the Atlas logo. Can you also somehow pull out just the Atlas Beer Works part to be used as more of an everyday logo for biz card, swag, etc? What do you think as far as timeline here?

Thanks,  
Justin

On Mon, Jun 4, 2012 at 1:56 PM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Alan,

I'm talking it through with some investors now about the change in direction. But in the meantime can we talk concept a little bit?

I'm digging this handle a lot. I hate to give up the badass handles you designed previously, but this might be a better approach...

We need to have the logo and the handles relate, but I don't think its imperative that they fully integrated. I'm thinking that the Atlas guy is on top of a platform that has either Atlas Beer Works on it in the same lettering/rivets, etc as the logo. And have Atlas himself be metal. maybe with an exposed gear or something. Where would we put the name of the beer? Or vis-a-versa?

We could use the hop for all our standard beers but then have Atlas holding something else up for specialty beers, seasonals, limited releases etc. (e.g. a Russian onion dome for an imperial stout, etc). Would be awesome to do that for each beer, but that will get expensive and I'm not sure what we could put on there for things like schwarzbier, or our flagship steam beer (ideas?).

Should the tap be fully 3D? Would a 2D silhouette work? Anything else you can think of? Any ideas of how to use the other handles as well?

-Justin

On Mon, Jun 4, 2012 at 12:35 PM, Alan Guidera <131brews@gmail.com> wrote:  
Hey Justin,

I never put the mythological "Atlas" together with the new name. As soon as I saw the Ayn Rand cover I thought of this (see attached). Thoughts? I think it might work great on tap handles. Working it into the logo might be difficult; we can explore that option if you'd like. A couple things:

1. Did you want me to continue and change the text to Atlas on the two tap handles?
2. Let me know if you want me to continue finalizing the logo with the Atlas text, etc or if you want to explore more. I'm trying to limit how much we re-do (for both our sake!)

BTW... The more I'm thinking of it, I'm a big fan of Atlas holding the hop. Very memorable!

Cheers!

Alan

On Mon, Jun 4, 2012 at 9:09 AM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
I did the map idea. Here is an old school map of DC that I see around historic places

3/14/2014

Atlas Brew Works LLC Mail - Logos, etc

here ( [http://www.google.com/imgres?hl=en&gbv=2&biw=1439&bih=813&tbm=isch&tbnid=\\_BYbxQ515okOLM:&imgrefurl=http://www.loc.gov/exhibits/us.capitol/s3.html&docid=qjHeAfGE54RjMM&imgurl=http://www.loc.gov/exhibits/us.capitol/oneoone.jpg&w=900&h=668&ei=GrDMT-W3JMiE6AHPx83pDw&zoom=1&iact=rc&dur=377&sig=118427871399076786924&page=1&tbnh=153&tbnw=206&start=0&ndsp=18&ved=1t:429,r:7,s:0,i:93&tx=149&ty=82](http://www.google.com/imgres?hl=en&gbv=2&biw=1439&bih=813&tbm=isch&tbnid=_BYbxQ515okOLM:&imgrefurl=http://www.loc.gov/exhibits/us.capitol/s3.html&docid=qjHeAfGE54RjMM&imgurl=http://www.loc.gov/exhibits/us.capitol/oneoone.jpg&w=900&h=668&ei=GrDMT-W3JMiE6AHPx83pDw&zoom=1&iact=rc&dur=377&sig=118427871399076786924&page=1&tbnh=153&tbnw=206&start=0&ndsp=18&ved=1t:429,r:7,s:0,i:93&tx=149&ty=82) ) Don't know if that will have enough texture or color, etc. But some inspiration nonetheless.

i'm going back and forth between Atlas signifying the old map type stuff or the mythological guy holding up the world - although they are interrelated and probably we should incorporate both. I'd love to incorporate the myth guy, as that icon seems to me would be an easily recognizable. Here are a couple images: [http://www.google.com/imgres?start=174&hl=en&biw=1439&bih=813&gbv=2&addh=36&tbm=isch&tbnid=clk3eoHnTrSJoM:&imgrefurl=http://www.amazon.com/Atlas-Shrugged-Ayn-Rand/dp/0452011876&docid=tPtva6f2PU1AKM&itg=1&imgurl=http://ecx.images-amazon.com/images/I/5139Z9VGNGL\\_BO2,204,203,200\\_Plsitb-sticker-arrow-click,TopRight,35,-76\\_AA300\\_SH20\\_OU01\\_.jpg&w=300&h=300&ei=fa\\_MT-eRB6q26gH65lwn&zoom=1&iact=rc&dur=354&sig=118427871399076786924&page=6&tbnh=143&tbnw=140&ndsp=35&ved=1t:429,r:14,s:174,i:35&tx=75&ty=93](http://www.google.com/imgres?start=174&hl=en&biw=1439&bih=813&gbv=2&addh=36&tbm=isch&tbnid=clk3eoHnTrSJoM:&imgrefurl=http://www.amazon.com/Atlas-Shrugged-Ayn-Rand/dp/0452011876&docid=tPtva6f2PU1AKM&itg=1&imgurl=http://ecx.images-amazon.com/images/I/5139Z9VGNGL_BO2,204,203,200_Plsitb-sticker-arrow-click,TopRight,35,-76_AA300_SH20_OU01_.jpg&w=300&h=300&ei=fa_MT-eRB6q26gH65lwn&zoom=1&iact=rc&dur=354&sig=118427871399076786924&page=6&tbnh=143&tbnw=140&ndsp=35&ved=1t:429,r:14,s:174,i:35&tx=75&ty=93)

[http://www.google.com/imgres?start=176&hl=en&biw=1439&bih=813&gbv=2&addh=36&tbm=isch&tbnid=IESNN7fotBkbgM:&imgrefurl=http://www.mdpsins.com/financialestate.php&docid=PyJ9t\\_MY3rpuNM&imgurl=http://www.mdpsins.com/fractured%252520atlas%252520logo.jpg&w=975&h=1425&ei=6LHMT\\_rtcCsGN6QGhsuj0Cg&zoom=1&iact=rc&dur=549&sig=118427871399076786924&page=6&tbnh=145&tbnw=99&ndsp=37&ved=1t:429,r:13,s:176,i:108&tx=59&ty=39](http://www.google.com/imgres?start=176&hl=en&biw=1439&bih=813&gbv=2&addh=36&tbm=isch&tbnid=IESNN7fotBkbgM:&imgrefurl=http://www.mdpsins.com/financialestate.php&docid=PyJ9t_MY3rpuNM&imgurl=http://www.mdpsins.com/fractured%252520atlas%252520logo.jpg&w=975&h=1425&ei=6LHMT_rtcCsGN6QGhsuj0Cg&zoom=1&iact=rc&dur=549&sig=118427871399076786924&page=6&tbnh=145&tbnw=99&ndsp=37&ved=1t:429,r:13,s:176,i:108&tx=59&ty=39)

I was thinking having Atlas holding up our logo, or holding up a stripped down version with just the text and details that would show up if printed on t-shirts and glasses, etc. Could either be something you do if you are comfortable and have time to do it soon, or I can reach out to another designer for that portion and tell the to use your logo as the thing he's holding up. And maybe changing the hops on top of the tap handles to be spherical like a globe but with hop cone textures.

What do you think about all that? Good idea/bad idea? feasible? too complex? What's your artistic/designer idea?

On Fri, Jun 1, 2012 at 2:29 PM, Alan Guidera <131brews@gmail.com> wrote:  
Oh... I was thinking about somehow adding some fragments of tattered, vintage DC maps in the background aluminum... or like worn off paint or something...

On Fri, Jun 1, 2012 at 2:27 PM, Alan Guidera <131brews@gmail.com> wrote:  
Justin,

Attached is yet another rough sketch. I propose we tighten up some of the piping around the text, creating some end caps to the filigree background to the text, and add a little bit more piping to fill things in a bit. Also, your idea regarding a "globe" inspired me to take the aluminum aircraft / leather background and bend it from a flat object to semi-spherical shape. As you can see from my test render, through really clean and none of the detail is on it, it's reading much better and comes across much more like metal.

Thoughts? Let me know!

Cheers!

Alan

On Thu, May 31, 2012 at 4:16 PM, Alan Guidera <131brews@gmail.com> wrote:  
Funny you say that. Getting a good level of grittiness has been my biggest issue with trying to wrap this up. Making grit in a hand sketch is one thing but doing it in 3D and trying to make it look natural is another. No worries; it'll be weathered!

On Thu, May 31, 2012 at 4:08 PM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Great, maybe add some dirt and grit on there too. I think we're leaning in a direction where it doesn't look new and shiny.

On Thu, May 31, 2012 at 3:31 PM, Alan Guidera <131brews@gmail.com> wrote:  
I'm playing with some ideas. The smaller text definitely requires some additional features. I have an idea regarding the globe... thanks!

On Wed, May 30, 2012 at 9:19 PM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Maybe a wire frame or some other globe in there somewhere?

On May 30, 2012, at 3:59 PM, Alan Guidera <131brews@gmail.com> wrote:

Justin,

I'll sketch up a revised logo and we can discuss further. July should be fine depending on the modifications.

Alan

On Wed, May 30, 2012 at 3:52 PM, Justin Cox <justin@volsteadbeerworks.com> wrote:  
Lets do it! Do you think you're able to bang out the Atlas changes before your busy July? With less text in there now, I think the Potomac River background might show a bit more. Can we make a larger juxtaposition between the Arlington and DC sides of the background?

Thanks Alan. You going to come down and have some beers with us once we're ready to brew?

On Wed, May 30, 2012 at 3:40 PM, Alan Guidera

3/14/2014

Atlas Brew Works LLC Mail - Logos, etc

<131brews@gmail.com> wrote:

Justin,

Bummer on the name. I think the name "Atlas" will translate just fine to the logo and handle. If anything, since it is less letters and the "V" is gone, it may work even better. To change the text in the logo and to add it to the tap handles I would estimate I would spend maybe 4 hours. Lucky for you, all but one letter is already designed; they just need tweaking. Now because the name Atlas is shorter, we should tweak some components on the logo a bit to balance things out. See the attached file, there is now extra space on each side of the text. Granted, I can enlarge the text but we'll have to add a bit in my opinion.

Regarding your website, yes you can give your designer my contact info. If things come up that you would like my assistance on I'd be happy to help. My July will be busy as a forewarning, but I'm happy to help. We can judge things as they come up if you'd like.

Cheers!

Alan

On Tue, May 29, 2012 at 9:37 AM, Justin Cox

<justin@volsteadbeerworks.com> wrote:

Alan,

Hope you had a nice holiday weekend. So we're still working on this name issue, but I don't have much hope that we will prevail. So that leaves me with a couple questions for you:

1) How long do you think it would take you to alter the current logo and tap handle drawings to incorporate "Atlas" rather than "Volstead"? and  
2) We're starting web site development now too, do you mind if I put my designer in touch with you regarding your files? As you mentioned, if something comes up and we need more drawings/design from you - do you have the capacity for some more design work (for pay of course)?

Cheers!

Justin

On Wed, May 23, 2012 at 10:48 AM, Alan Guidera

<131brews@gmail.com> wrote:

Justin,

I think you should name your brewery to "Fuck Lawyers Brewing Co.". I think you would get a huge following. ;)

3/14/2014

Atlas Brew Works LLC Mail - Logos, etc

No worries. I'll continue wrapping up the logo except the text portion. Keep me posted on where you land.

Thanks,

Alan

On Wed, May 23, 2012 at 10:27 AM, Justin Cox <justin@volsteadbeerworks.com> wrote:

Alan,

We've run into an issue with the name Volstead and are not sure we will be able to use it (damned lawyers). Just wanted to let you know for any work you're doing now around that name on our logos. Hope to have it resolved soon. Considering "Atlas" as an alternative. You have any suggestions?

Cheers,  
Justin

--

**Justin Cox**

CEO

Volstead Beer Works LLC

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

202-642-4606 (m)

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3/14/2014

Atlas Brew Works LLC Mail - Logos, etc

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**Justin Cox**

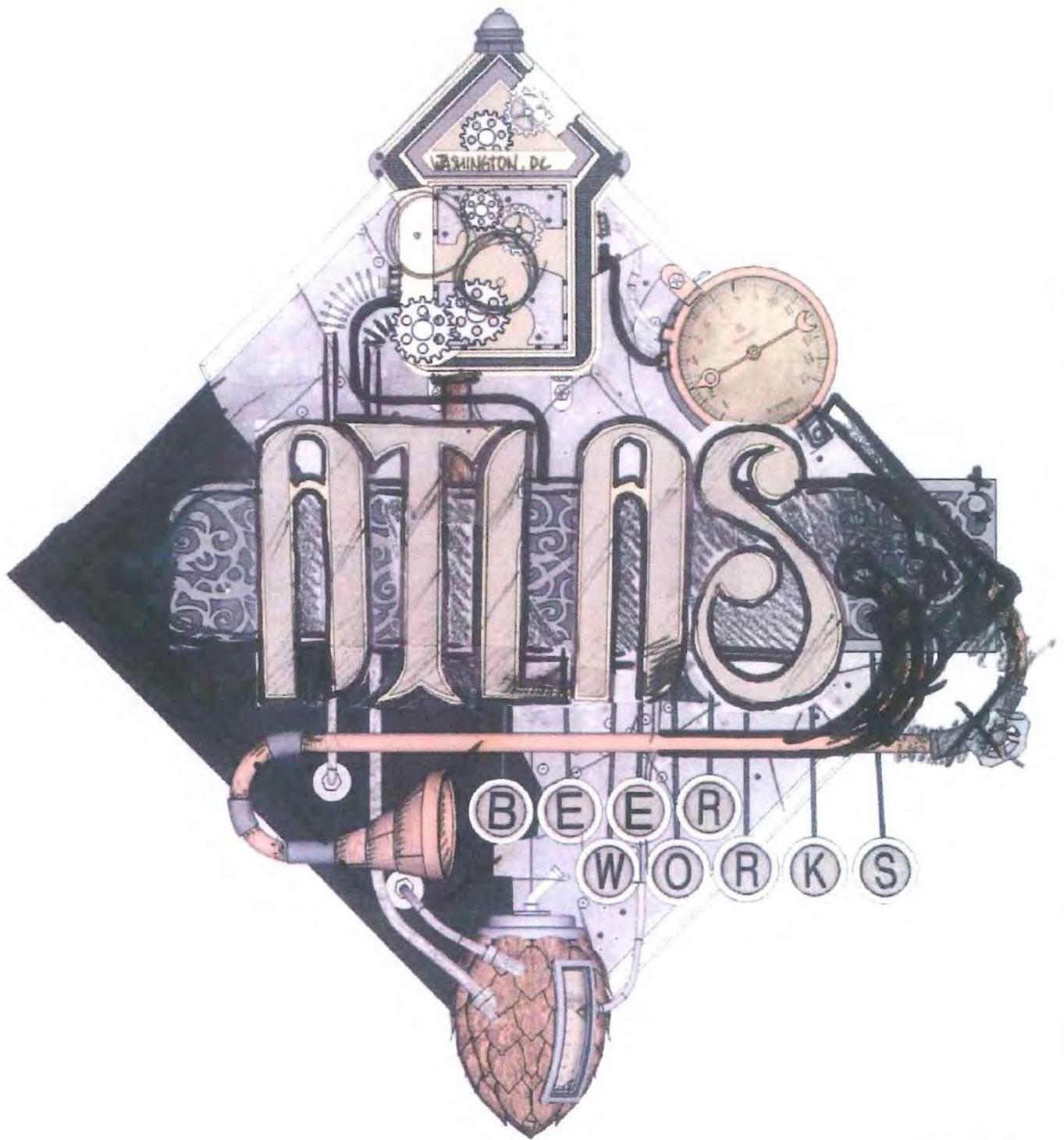
CEO

Volstead Beer Works LLC

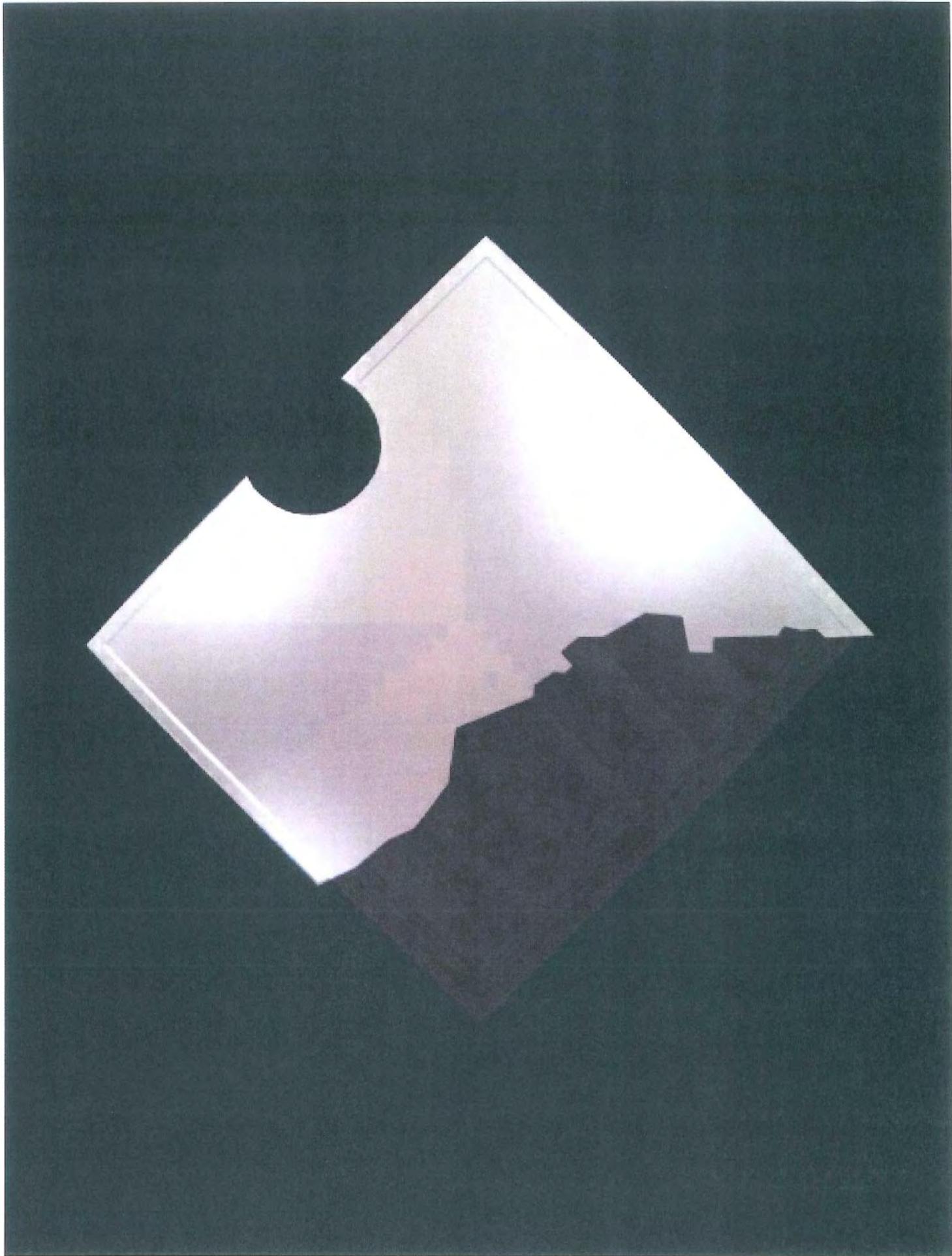
[www.volsteadbeerworks.com](http://www.volsteadbeerworks.com)

202-642-4606 (m)

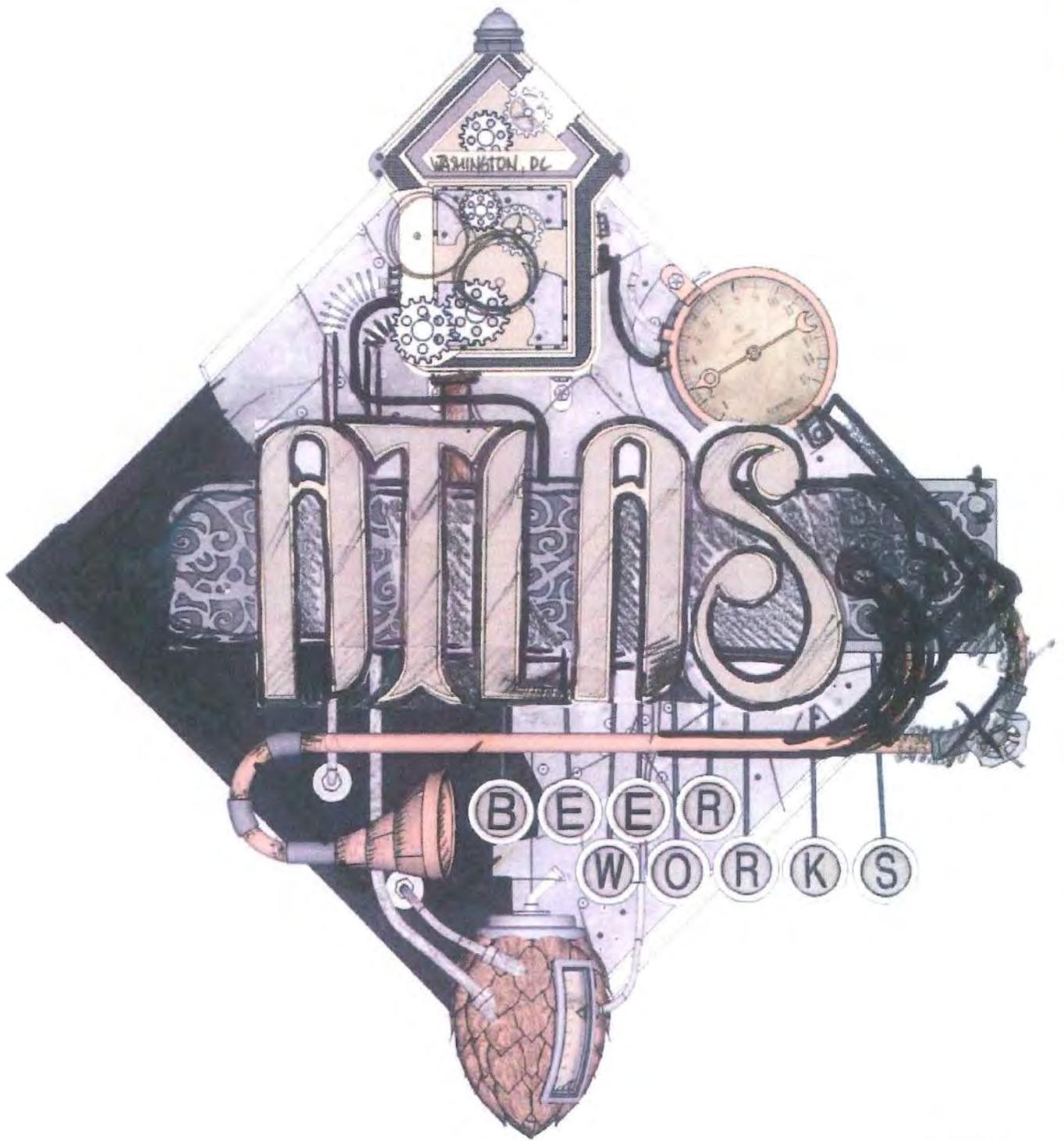
888-832-5080 (f)



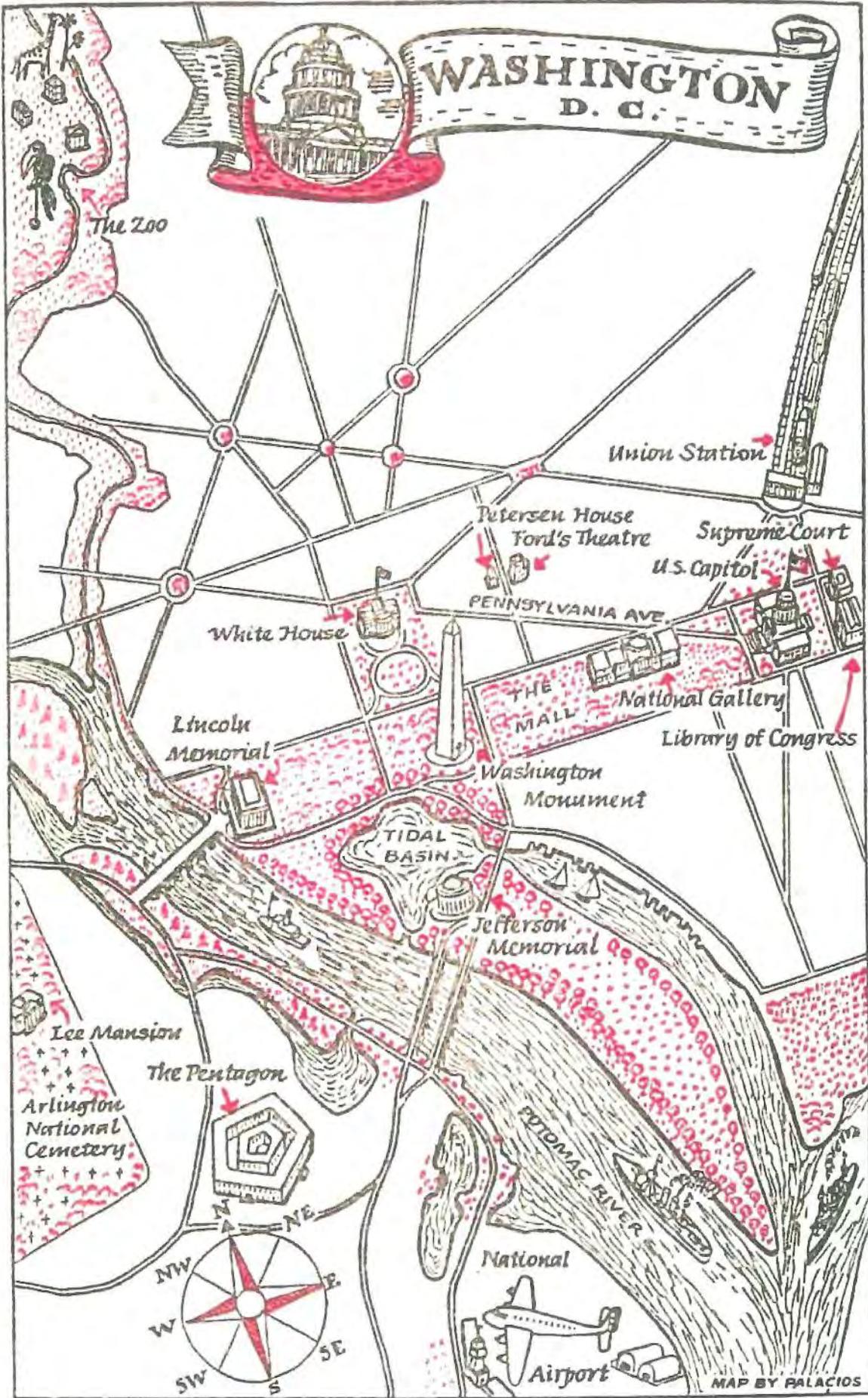
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ATLAS0000615



05.31.12





ATLAS0000618



06.04.2012



06.04.2012

Declaration of Justin Cox

Exhibit A-6



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## Atlas letters

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Alan Guidera <131brews@gmail.com>

Wed, Jun 13, 2012 at 2:40 PM

To: Justin Cox <justin@volsteadbeerworks.com>

Trying my best! This damn "S" is giving me issues again. I attached a scan. What are your thoughts? I stylized the "A" a bit; added a touch of art nouveau. Oh, and just like the Volstead logo, the letters will have an offset edge with a slight reveal. The file I'm work in is a vector program so I can send it to the manufacturer without any hassle.

[Quoted text hidden]

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ATLAS

06.13.12

Declaration of Justin Cox

Exhibit A-7



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## Official Name Change

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

Fri, Jun 15, 2012 at 2:58 PM

REDACTED

Hello everyone,

Just a quick update. We are officially changing our name to Atlas Beer Works. Our new email addresses are justin@atlasbeerworks.com & will@atlasbeerworks.com . Our old address should forward to the new ones, but that may take a week or so to take effect.

I'll be in touch with a real estate update soon.

Cheers,  
Justin

--

**Justin Cox**  
CEO  
Atlas Works LLC  
www.atlasbeerworks.com  
202-642-4606 (m)  
888-832-5080 (f)

Declaration of Justin Cox

Exhibit A-8

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "VOLSTEAD BEER WORKS LLC", CHANGING ITS NAME FROM "VOLSTEAD BEER WORKS LLC" TO "ATLAS BEER WORKS LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF JUNE, A.D. 2012, AT 11:30 O'CLOCK A.M.



5061686 8100

120756685

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9702764

DATE: 07-11-12

ATLAS0000002

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:30 AM 06/18/2012  
FILED 11:30 AM 06/18/2012  
SRV 120756685 - 5061686 FILE

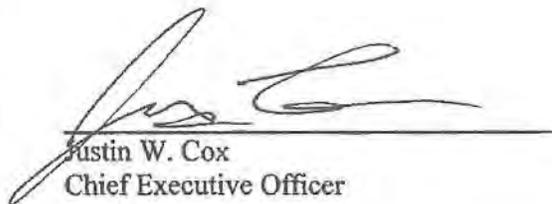
**CERTIFICATE OF AMENDMENT  
OF  
VOLSTEAD BEER WORKS LLC**

This Certificate of Amendment of Volstead Beer Works LLC, a Delaware limited liability company (the "*Company*"), is being executed by the undersigned for the purpose of amending the Company's Certificate of Formation pursuant to §18-202 of the Delaware Limited Liability Company Act.

1. The name of the Company is Volstead Beer Works LLC.
2. The Certificate of Formation of the Company is hereby amended as follows: The name of the limited liability company is: "Atlas Beer Works LLC".

**IN WITNESS WHEREOF**, the undersigned, on behalf of Volstead Beer Works LLC, has caused this Certificate of Amendment to be duly executed this 15<sup>th</sup> day of June, 2012.

By:

  
Justin W. Cox  
Chief Executive Officer



# State of Delaware

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
P.O. BOX 898  
DOVER, DELAWARE 19903

120756685

9862825  
VOLSTEAD BEER WORKS LLC  
1124 7TH ST NE  
WASHINGTON

DC 20002

07-11-2012

ATTN: JUSTIN COX

DESCRIPTION	AMOUNT
ATLAS BEER WORKS LLC	
5061686 0240 Amendment; Domestic	
Amendment Fee	180.00
Certification Fee	50.00
Court Municipality Fee, Wilm.	20.00
FILING TOTAL	250.00
TOTAL PAYMENTS	250.00
SERVICE REQUEST BALANCE	.00

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "ATLAS BEER WORKS LLC", CHANGING ITS NAME FROM "ATLAS BEER WORKS LLC" TO "ATLAS BREW WORKS LLC", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF SEPTEMBER, A.D. 2012, AT 11:30 O'CLOCK A.M.



5061686 8100

121078610

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9906203

DATE: 10-10-12

ATLAS0000007

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:30 AM 09/27/2012  
FILED 11:30 AM 09/27/2012  
SRV 121078610 - 5061686 FILE

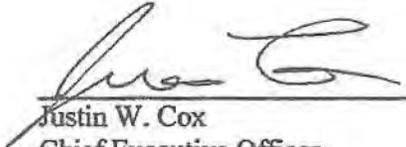
**CERTIFICATE OF AMENDMENT  
OF  
ATLAS BEER WORKS LLC**

This Certificate of Amendment of Atlas Beer Works LLC, a Delaware limited liability company (the "*Company*"), is being executed by the undersigned for the purpose of amending the Company's Certificate of Formation pursuant to §18-202 of the Delaware Limited Liability Company Act.

1. The name of the Company is Atlas Beer Works LLC.
2. The Certificate of Formation of the Company is hereby amended as follows: The name of the limited liability company is: "Atlas Brew Works LLC".

**IN WITNESS WHEREOF**, the undersigned, on behalf of Atlas Beer Works LLC, has caused this Certificate of Amendment to be duly executed this 25<sup>th</sup> day of September, 2012.

By:

  
Justin W. Cox  
Chief Executive Officer

## Declaration of Justin Cox

Exhibit A-9 is being submitted separately, under seal,  
pursuant to the confidentiality order.

## Declaration of Justin Cox

Exhibit A-10 is being submitted separately, under seal,  
pursuant to the confidentiality order.

Declaration of Justin Cox

Exhibit A-11



EATER MAPS

Tired of Tapas? Where to Avoid Small Plates on 14th St.



FOOD MEDIA

Shit Millennials Like, According to WaPo Food



SPONSORED POST

Knob Creek's Big Flavor Dinner Series Takes Over The Pig

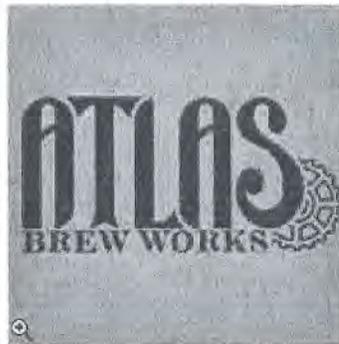
### COMING ATTRACTIONS

## Atlas Brew Works Coming to Northeast DC

Monday, December 10, 2012, by Missy Frederick

A homebrewer and a commercial brewer are teaming up to open Atlas Brew Works in Northeast DC come next year.

The new venture is a partnership between Will Durgin and Justin Cox, according to a press release. You'll be able to find the brewery at 2052 West Virginia Ave NE, and it will open some time in the first three months of next year.



The dirt on Durgin and Cox: The two became friends at Vanderbilt University (both were engineering students). Cox has spent eight years brewing beer at home, winning awards in contests such as the DC State Fair homebrew competition and the DC Homebrewers Association Contest. Durgin, for his part, has been brewing since college, and his resume includes stints at Telegraph Brewing Company in Santa Barbara and Pyramid Breweries in Portland, Oregon.

The brewery will be pretty large, at almost 10,000 square feet, and be open to the public for tours, tastings and growler purchases. The partners have been tracking some of their progress on the brewery's Facebook page.

- Atlas Brew Works [Official Site]



### ATLAS BREW WORKS

2052 West Virginia Ave NE (Washington, DC)

GIANT MAP

NORTHEAST

ATLAS BREW WORKS

COMING ATTRACTIONS

TOP

COMMENTS

Save

like

### SIGN UP FOR OUR NEWSLETTER

GO

THE BALVENIE

**RARE CRAFT**

Collection

RAISE A DRAM to Craftsmanship in America

NOVEMBER 11-12  
Washington D.C.  
Carnegie Library

RSVP today

### RELATED LINKS



## EATER DATING

meet

Declaration of Justin Cox

Exhibit A-12



DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU (TTB)  
BREWERY'S NOTICE

Brewery's Section

1. This is notice serial number **1**

2. The notice date is **12/27/2012**

3. Our brewery's name is **ATLAS BREW WORKS LLC**

4. Our trade name is **(See Attached)**

5. Our business address is **1124 7TH ST NE** **WASHINGTON** **DC** **20002-3654**  
(Number and Street) (City) (County) (State) (Zip Code)

6. Our brewery location is **2052 W WEST VIRGINIA AVE, STE# 102, WASHINGTON DC 20002-1832**  
(Number and Street) (City) (County) (State) (Zip Code)

7. Our main contact person is **JUSTIN COX** TTB can reach me at **202-642-4606**  
(Name) (Phone Number)

Brewery Description

8. Our phone number at the brewery is **202-642-4606**

9. Our E-mail Address is **JUSTIN@ATLASBREWWORKS.COM**

10. Our brewery is a: (check one only)  Brewery/Microbrewery  Brewpub (you must complete items 18 and 19)  Pilot Brewing Plant

11. We are a: (check one only)  Sole Proprietorship  Partnership  Corporation  Limited Liability Company  Limited Partnership

12. Our employer identification number is: (for example: 12-3456789) **45-3865616**  
Title to premises and equipment (list names and addresses of owner of land or buildings, or if any other mortgage or encumbrance on the land or buildings of the brewery). (See Attached)

13. Brewer's Business Day **07:00am** (List only if different than 12:00 am through 11:59 pm.)

14. We are filing this notice to:  
 give TTB our original notice that we intend to engage in the business of producing beer.  
 amend our previously approved original notice (Registry No. \_\_\_\_\_) for the following reason(s):  
 add or delete (circle one) a trade or operating name (attach registration, if your state requires, of new trade or operating name) . List new trade names(s) in Item 4 or on a separate sheet of paper. List deleted trade name(s) on a separate sheet of paper.  
 show a change in brewery premises (attach description of change) .  
 make changes in officers, directors, members, stock, or interest distribution (attach description of change; you must file personnel questionnaires for new personnel and any new person owning 10% or more of total stock) .  
 discontinuance of business as of: (date) \_\_\_\_\_  
 other \_\_\_\_\_

15.A. We are  or are not  members of a controlled group of breweries. (List all breweries with shared ownership on a separate sheet of paper.)  
B. If you are a member, will the controlled group of breweries produce more than 60,000 but less than 2,000,000 barrels of beer per year? (If so, describe how the reduced rate of tax will be apportioned among brewery members in the controlled group.)  
(See Attached)

16. The Internal Revenue Code (IRC) provides that if you produce not more than 2,000,000 barrels per year, you are entitled to a reduced rate of tax on your first 60,000 barrels. What is your estimated production in barrels per year? (check one)  
 More than 2,000,000 barrels per year. We are not entitled to the reduced rate.  
 More than 60,000 barrels per year, but not more than 2,000,000 barrels per year. We are entitled to the reduced tax rate on our first 60,000 barrels removed for consumption or sale.  
 Not more than 60,000 barrels per year. We are entitled to the reduced tax rate on all beer removed for consumption or sale.

**Signing Authority For Corporate Officials**

17. We held our board meeting with (check one)

Directors     Trustees     Managers     Governors    Date of Meeting \_\_\_\_\_

We authorize the following corporate officials, employees, or incumbents of the listed offices to execute all documents and to do all acts for us in dealing with the Alcohol and Tobacco Tax and Trade Bureau. (You must impress your corporate seal. If you do not have one, two witnesses must sign.)

By the authority of our board, I certify that this authorization is true and complete.

Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Title: \_\_\_\_\_ Title: \_\_\_\_\_  
 Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

Corporate Seal:

**Brewpub Applicant Information (If you are a brewpub, you must complete this section.)**

18. We are a brewpub. Our entire business location is the brewery premises. We understand that by initialing these boxes, we acknowledge that:

- a. We must separate the brewery operations (non-public area) from the public area of the brewery premises by an adequate partition. Access to the brewery operations must be restricted to authorized visitors and employees only.
  - b. The serving tanks as noted on our attached diagram are our tax-determined beer tanks. These tanks have a working capacity of approximately \_\_\_\_\_ and are accurately calibrated with appropriate measuring devices.
  - c. We must transfer beer ready for consumption or sale from our fermenters into an empty tax-determination tank for measurement by the approved measuring device. We will make prompt and accurate records of these transactions to determine tax due.
19. We plan to sell retail liquors other than beer.

**Attachment Section**

20. You must make attachments to complete an original notice. You may also need additional information for an amended notice. Check all the blocks here for your attachments for this notice. For original Brewer's Notices, you must attach all documents for your type of business organization. For amended Brewer's Notices, some forms are mandatory, while others may be optional.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Articles of Incorporation/Organization (Corporations/LLCs)               | <input checked="" type="checkbox"/> Personnel Questionnaires (for all owners/officers/directors/partners/members/stockholders of over 10%) |
| <input checked="" type="checkbox"/> Trade Name Registrations (if required by state)                          | <input checked="" type="checkbox"/> By-Laws (Corporations/LLCs)  |
| <input type="checkbox"/> Certificate to Transact Business in a Foreign State (if applicable)                 | <input checked="" type="checkbox"/> Partnership Agreement  |
| <input type="checkbox"/> Power of Attorney (TTB F 5000.8, or Corporate Resolution)                           | <input checked="" type="checkbox"/> Environmental Information (TTB F 5000.29)  |
| <input checked="" type="checkbox"/> Diagram (or Plat/Plan) with dimensions of the brewery                    | <input type="checkbox"/> Diagram for Brewpub as required   |
| <input checked="" type="checkbox"/> Legal description of the Brewery   | <input checked="" type="checkbox"/> Statement Describing the Security at the Brewery   |
| <input checked="" type="checkbox"/> Supplemental Information on Water Quality Considerations (TTB F 5000.30) |  |
| <input checked="" type="checkbox"/> Other _____  |  |

All statements and documents are part of this notice. Under penalties of perjury, I declare that I have examined this notice and all attachments and to the best of my knowledge and belief they are true, correct, and complete.

21. Signature of Authorized Person JUSTIN COX      Date 04/11/2013

22. Printed or Typed Name and Title JUSTIN COX, CEO

Mail this completed package with all attachments to:

Director  
 National Revenue Center  
 550 Main St, Ste 8002  
 Cincinnati, OH 45202-5215

**TTB Section - For TTB Use Only**

This Notice is: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Not Approved	Effective Date: 04/11/2013	Approval Date: 04/11/2013
Director, National Revenue Center <i>JWC</i>	Registry Number: BR-DC-20003	

TTB F 5130.10 (11/2009)

## General Instructions

**Where do I send my application?**

File this form with TTB at this address:

Director  
National Revenue Center  
550 Main St, Ste 8002  
Cincinnati, OH 45202-5215

**When may I start Brewing?** You may not operate your brewery until we approve your Brewer's Notice (including all attachments) and your Brewer's Bond.

**When must I file a Brewer's Notice?** You must file this form:

- To start business at your brewery premises;
- To amend or supplement information you previously submitted or;
- In connection with a new bond.

**Do I need to file any other documents with the Brewer's Notice?** You must file the attachments this form requires. Also, we may require you to furnish any additional information we find necessary to protect revenue and insure collection of taxes.

**What happens if I do not complete this notice?** We will return your notice to you for correction if it is not completed in accordance with these instructions or does not include all of the required information and documents. If you do not complete the notice you may not produce or package beer.

**What items do I need to complete on this notice?** You must complete all items on this notice that apply to your business, regardless of the purpose for which you are filing.

**How long must I keep my copy of this notice?** At your brewery you must keep available for TTB inspection during your normal business hours:

- Your most recently approved Brewer's Notice and
- All attachments and documents that provide current and complete information of this form.

## Specific Instructions

**Item 1. What serial number do I use?** Serially number each notice. Begin with No. 1 for the first notice and continue in sequence for each amendment or supplemental notice you file after you start business.

**Item 2. What is the notice date?** The date that you submit this notice for approval.

**Item 3. What is my brewery's name?**

If you are....	Then your name is....
an individual	Your name, followed by "sole owner" and the name you use to operate
a partnership	The name of each partner followed by the name you use to operate
a limited partnership (LP)	The name of your LP
a corporation or limited liability corporation (LLC)	The corporation or LLC name and, if different, the name you use to operate

**Item 4. What if I use a trade name?** You must list all trade names you use to do business or to package beer. Approval of a trade name does not necessarily constitute approval as a brand name for labeling purposes. Submit your requests for brand names to the Alcohol Labeling and Formulation Division on an Application for and Certificate/Exemption of Label/Bottle Approval, TTB F 5100.31. If your State requires you to register your trade name, you must submit a copy of the State trade name registration.

**Item 5. What is our business address?** Your business address may be different than the actual location of the brewery. Your business address is where you receive mail deliveries and you conduct office activity. You must include the county of this address.

**Item 6. What is our brewery location?** Your brewery location is where you actually brew your beer.

**Item 7. Who may be a contact person?** Your contact person must be someone who has authority to speak or write to any of our officers regarding any aspect of your brewing operations. You must file with us a signing authority or power of attorney for this person.

**Item 15. What information must I provide if I am a member of a controlled brewery group?**

1. A controlled brewery group is a group of breweries that share common ownership or controlled interest. Controlled groups of breweries include groups where:
  - (a) One brewery owns controlling interest in the other brewery or
  - (b) there is a common ownership in the controlling interest in each brewery.
2. If you are a member of a controlled group of breweries and you intend to transfer beer between breweries without payment of tax, you must:
  - (a) give the name and principal business address of each of the other breweries; and
  - (b) state whether condition 1.(a) or condition 1.(b) applies. If condition 1.(a) applies, state which brewery owns controlling interest in the other and the percentage of that interest. If condition 1.(b) applies, give the name and principal business address of the person owning controlling interest in both breweries and state the percentage of interest in each brewery.
3. If you are a member of a controlled group of breweries and the total production of all the breweries in the controlled group is less than 2,000,000 barrels of beer per year, you may be eligible to pay tax at the reduced rate. You must:
  - (a) give the name and principal business address of each of the other breweries;
  - (b) provide a list to allocate the reduced tax for 60,000 barrels between the members of the controlled group; and
  - (c) state whether condition 1.(a) or condition 1.(b) applies. If condition 1.(a) applies, state which brewery owns controlling interest in the other and the percentage of that interest. If condition 1.(b) applies, give the name and principal business address of the person owning controlling interest in both breweries and state the percentage of interest in each brewery.

Item 17. Who may sign for my corporation? You may indicate signature authority in two ways.

- By corporate office:** In item 17 you may list the corporate offices or employees whose incumbents may sign for your corporation. Check the box that indicates how your board authorized these officers to sign. Include the date of the meeting. List the offices by title. Attach your corporate seal. These authorities remain with the office when you change personnel in that office.
- By name:** You may authorize specific individuals to sign by executing a power of attorney (use TTB F 5000.8) or a signing authority for corporate officials (use TTB F 5100.1). You may limit these authorities to specific actions. For instance, you may grant a signing authority limited to monthly reports.

Item 18. When must I initial the brewpub information? If you are a brewpub, then you must initial each box and provide tank capacity to demonstrate that you understand special considerations for operating taverns on brewery premises. These operations are more commonly known as brewpubs.

Item 20. What are the attachments for my type of business? Follow these instructions. You must attach the organizational information and documents we require for your type of business.

If you are....	Then you must file....
Sole proprietor	<input type="radio"/> A list with the name and address of each person who holds an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that party.
Partnership	<input type="radio"/> A copy of (1) articles of partnership or association, if any; or (2) the certificate of partnership or association if required to be filed by any State, county, or municipality. <input type="radio"/> A list with the name and address of each person who holds an interest in the brewery, whether the interest appears in the name of the interested party or in the name of another for that party.
Corporation	<input type="radio"/> A copy of the corporation charter or of the certificate of corporate existence or incorporation. <input type="radio"/> A list with the name, address, and title of each officer and director. <input type="radio"/> Copies of extracts or digests of minutes of meetings of the board of directors authorizing certain individuals to sign for the corporation. <input type="radio"/> A statement showing the number of shares of stock (or other evidence of ownership) authorized and outstanding and the voting rights of the respective owners. <input type="radio"/> A list with the names and addresses of all persons having a voting interest of 10 percent or more in the corporation whether the interest appears in the name of the interested party or in the name of another person. For each person listed, show the amount of the stockholding or other interest.

- a. **May I refer to information that I filed for another operation?** If you have already filed information with us, you may incorporate that information by reference if that information is complete and accurate. You may, instead of resubmitting that information, provide a statement that:
- identifies the other premises by operating name, type (brewery, winery, etc.), and location (city and State); and
  - specifies which organizational information and documents are being incorporated. You must attach all organizational information and documents you do not incorporate by reference.
- b. **What must I keep available for TTB inspection?** You must keep available for our inspection the originals of the corporate documents we require under item 20 of this notice and certain other corporate documents (*articles of incorporation, bylaws, State certificates authorizing the brewer to operate in the State where located*). Each brewer's notice filed by multi-plant brewers must state, as part of the response to item 20, the location where we may inspect these original corporate documents.

Item 21. Who is the "authorized person" who must sign this notice? These are the persons authorized to sign this notice:

If you are a....	The notice must be....
Sole proprietor	<input type="radio"/> signed by the sole owner or <input type="radio"/> an empowered attorney-in-fact.
Partnership	<input type="radio"/> signed by all partners, or <input type="radio"/> a partner authorized to sign on behalf of all of the partners, or <input type="radio"/> an empowered attorney-in-fact
Corporation	<input type="radio"/> executed in the corporate name, followed by the signature and title of a person authorized to act for the corporation

---

### Paperwork Reduction Act Notice

This request is in accordance with the Paperwork Reduction Act of 1995. We use this information collection to determine your identity as a brewer, the location and extent of your brewery premises, and whether your brewery operations conform with Federal laws and regulations. The information we request is required for you to obtain or retain a benefit and is mandatory by law (26 U.S.C. 5401(a)).

We estimate the average burden associated with this collection of information is 3 hours per respondent or recordkeeper, depending on your individual circumstances. Address your comments concerning the accuracy of this burden estimate and suggestions to reduce this burden to: Reports Management Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current, valid OMB control number.

### Privacy Act Information

We provide this information to comply with Section 3 of the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)):

- 1. What is TTB's authority to ask for this information?** We require this information under the authority of 26 U.S.C. 5401(a). You must disclose this information to obtain authority to conduct brewing operations.
- 2. What is the purpose for this information collection?** You provide this information to give TTB notice of your intention to establish a brewery, so that we may identify you as a brewer, and to identify your brewery location and processes.
- 3. How does TTB routinely use this information?** We use this information to make determinations for the purposes described in paragraph 2. Also, we may disclose the information to other Federal, State, foreign, and local law enforcement and regulatory agency personnel to verify information on the form where such disclosure is not prohibited by law. We may disclose the information to the Justice Department if it appears that the furnishing of false information may constitute a violation of Federal law. Finally, we may disclose the information to members of the public in order to verify information on the form where such disclosure is not prohibited by law.
- 4. What is the effect of my not supplying the information TTB requests?** If you fail to supply complete information then we will delay processing and may disapprove or deny your application.

**ATTACHMENT TO BREWER'S NOTICE**

*Item 4: Our Trade Name is:*

Operating Name (DBA) Atlas Brew Works

*Item 12: Title to premises and equipment (list names and addresses of owner of land or buildings, or if any other mortgage or encumbrance on the land or buildings of the brewery).*

Does the applicant own the land or building comprising the brewery?

Yes  No

If yes, please provide us with the name and address of any mortgagee, or other person who has a claim on the land or buildings comprising the brewery. If there is no mortgagee, or other claim on the land or buildings, please enter "Not Applicable"

Not Applicable

If no, please provide us with the name/address of the owner of the land or buildings comprising the brewery, and of any mortgagee, or other claim on the land or buildings comprising the brewery

Building Owner:  
Mid-Atlantic Media Inc  
11020 Rosemont Drive  
Rockville, MD 20852

Mortgagee:  
Sovereign Bank  
7200 Wisconsin Avenue  
Bethesda, MD 20814

Does the applicant own the equipment that will be used in the operation?

Yes  No

If no, please provide name and address of the equipment owner

*Item 15B: If you produce more than 60,000 but less than 2,000,000 barrels you would qualify for the reduce rate on the first 60,000 barrels. Give the allotted barrels for each location at the reduced rate.*

**MEMBERS OF CONTROLLED GROUP**

*Item 17: We authorize the following corporate officials, employees, or incumbents of the listed offices to execute all documents and to do all acts for us relating with the Alcohol and Tobacco Tax and Trade Bureau. (You must impress your corporate seal. If you do not have one, two witnesses must sign.)*

Authority Granted by	Name
First Name	Justin
Last Name	Cox
Source of Authority	Board Meeting
Type of Board Meeting	Managers
Date of Meeting	12/14/2012
Type	Unlimited

Effective Date

12/14/2012

**ADDITIONAL BREWERY/BREW PUB PREMISES INFORMATION**

Describe each tract of land comprising the brewery, and a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used

There is only one building on the tract of land, a 36,000 square foot two story building. Our brewery space is 9,200 square feet on the first floor South West side of the building. The building is a multi-tenant building with a theater company set construction space, a vocational program space, our brewery, and some vacancy.

Describe the layout of the brewery premises, including the location of the equipment, tanks, bottling lines, doors, windows, loading docks, empty keg storage, and packaged goods storage areas, including dimensions. This description will assist TTB in interpreting the Diagram submitted with the application

As shown on the submitted diagram, our space has one front pedestrian entrance from the front of the building. After the second door, there is a loading dock area with two sets of bay doors. One set of bay doors facing the street and one set of bay doors separating the production space from the loading bay.

The actual production space is mainly an open rectangle. There is a small office space to the bottom right abutted by a small tasting/dock sales area. Our walk in cooler is just above the tasting area. There is a bathroom in the back corner.

Our tanks and brewhouse are located in the left-hand portion of the interior space.

There are two back exits that lead to a fire exit corridor for emergency use only.

If a brewpub, you must identify the portion of the brewery which will be operated as a tavern by providing the boundaries of the tavern. You must identify areas of the brewery which are accessible to the public and areas which are not. Describe security measures to be used to segregate public areas from non-public areas. Describe in detail the method to be used for measuring beer for the purpose of tax determination. Identify the tanks which will periodically contain tax-determined beer, and any other areas where tax-determined beer will be stored

Provide description of the brewery security. Brewery building must be arranged and constructed to give adequate protection to the revenue. Describe locks, access to the brewery and how un-taxpaid goods will be protected during and after business hours

Our building is solid concrete construction with very limited access points. We have a security buffer with our loading dock area that gives a second set of locked doors between the outside and the production area of the brewery. All doors, interior and exterior have locks. We also will install a security system that is monitored 24 hours a day and 7 days a week from an offsite location that will alert local authorities in the event of a breach. We also plan on installing a video surveillance system. All un-tax paid beer will either be stored within the fermenting vessels which are immovable without heavy rigging equipment, or stored in our locked walk-in cooler.

**ATLAS0000089**

## Declaration of Justin Cox

Exhibit A-13 is being submitted separately, under seal,  
pursuant to the confidentiality order.

## Declaration of Justin Cox

Exhibit A-14 is being submitted separately, under seal,  
pursuant to the confidentiality order.

Declaration of Justin Cox

Exhibit A-15



Atlas Brew Works  
Atlas Brew Works LLC  
2052 West Virginia AVE NE 102  
License Number : ABRA-091282  
License Class: Manufacturer B  
Issue Date: July 26, 2013



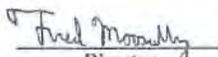
Endorsement(s): Tasting

Hours of Operation

	Operation	Sales
Sunday:	Closed -	Closed -
Monday:	6am - 1am	-
Tuesday:	6am - 1am	-
Wednesday:	6am - 1am	-
Thursday:	6am - 1am	1pm - 9pm
Friday:	6am - 1am	1pm - 9pm
Saturday:	6am - 1am	1pm - 9pm

Expiration Date: 03/31/2014

**You will be billed annually for any balance due.**

  
Director

THE LAW REQUIRES THIS LICENSE TO BE POSTED IN A CONSPICUOUS PLACE ON THE PREMISES

012599

VOID IF ALTERED

ATLAS0000070

# Opposition to Motion for Summary Judgment

## Exhibit B



m-w.com

Quizzes & Games Word of the Day Video New Words My Favorites

New! Spanish Central >

atlas

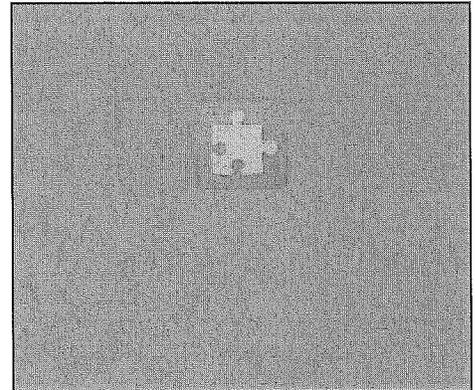
atlas

Save Popularity

10 ENTRIES FOUND:

- atlas
- Atlas beetle
- Atlas cedar

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at·las

noun Verb

: a book of maps

Full Definition of ATLAS

g+1 Like

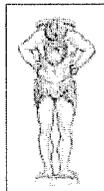
- capitalized** : a Titan who for his part in the Titans' revolt against the gods is forced by Zeus to support the heavens on his shoulders
- capitalized** : one who bears a heavy burden
- a** : a bound collection of maps often including illustrations, informative tables, or textual matter  
**b** : a bound collection of tables, charts, or plates
- 4** : the first vertebra of the neck
- plural usually at-lan-tes** : a male figure used like a caryatid as a supporting column or pilaster —called also *telamon*

See atlas defined for English-language learners > See atlas defined for kids >

Examples of ATLAS

a road *atlas* of the U.S.

Illustration of ATLAS



Origin of ATLAS

Latin *Atlant-*, *Atlas*, from Greek

First Known Use: 1513

Other Cartography Terms



What To Call That Groove Above Your Lip

Words For Things You Didn't Know Have Names



"Urbane," "Incisive" & Other Good Things to Be

Top 10 Sophisticated Compliments

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Robinson projection, benchmark, plat, projection, topography

Rhymes with ATLAS

fatless, hatless

at·las *noun* \at-las\ (*Medical Dictionary*)

Medical Definition of ATLAS

: the first vertebra of the neck

Biographical Note for ATLAS

**Atlas**, Greek mythological character. In Greek legend Atlas was a Titan who took part in the revolt against the gods. As a punishment he was condemned to hold the heavens aloft forever. Atlas was usually represented as a human figure bearing the heavens or the celestial globe upon his shoulders.

Learn More About ATLAS

Spanish Central Translation: "atlas" in Spanish

Britannica.com: Encyclopedia article about "atlas"

Browse

- Next Word in the Dictionary: Atlas beetle
- Previous Word in the Dictionary: at-large
- All Words Near: atlas

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What made you want to look up *atlas*? Please tell us where you read or heard it (including the quote, if possible).

9 comments



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Aida Garcia Gomez · Minneapolis, Minnesota  
cause for school

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Kang Hyo Ra · Works at Sa Heart Mo! :)  
:)

Reply · Like · June 18, 2013 at 12:33am



Yap Soon Peng  
What the hell?

Reply · 1 Like · May 22, 2013 at 5:21am



Frank Ramos Buenafe · Works at DepEd Philippines · 135 subscribers  
(y)

Reply · Like · February 15, 2013 at 3:46am



Jean Thouin  
usuck

Reply · Like · October 15, 2012 at 9:50am

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Opposition to Motion for Summary Judgment

Exhibit C



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List At:  OR  to record:  **133 Records(s) found (This page: 1 ~ 133)**

Refine Search

Current Search: S1: ATLAS[FM] AND LIVE[LD] AND 'RN &gt; '0' docs: 133 occ: 399

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
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2	85357376	4328841	ATLAS	TSDR	LIVE
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4	85363008	4400629	ATLAS	TSDR	LIVE
5	85722288	4389525	ATLAS	TSDR	LIVE
6	85811800	4383687	ATLAS	TSDR	LIVE
7	85552004	4229378	ATLAS	TSDR	LIVE
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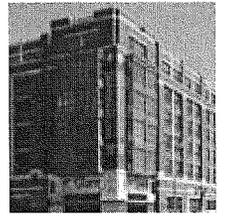
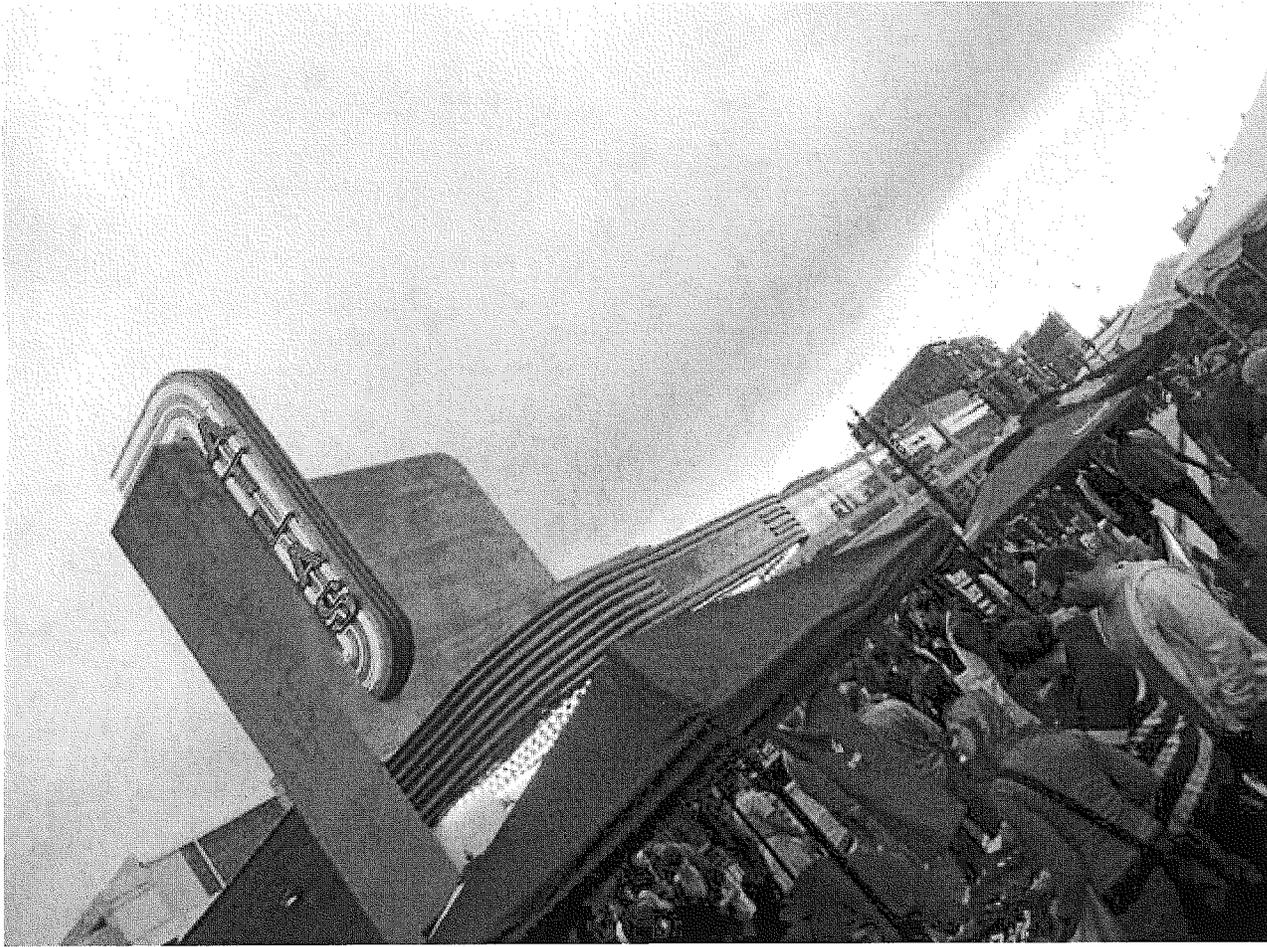
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# Opposition to Motion for Summary Judgment

## Exhibit D

# H STREET, NE



**133K+**  
SF retail planned in the  
600–900 blocks of H Street

**92**  
walk score—  
walker's paradise

**75,000**  
H Street Festival visitors  
in 2012

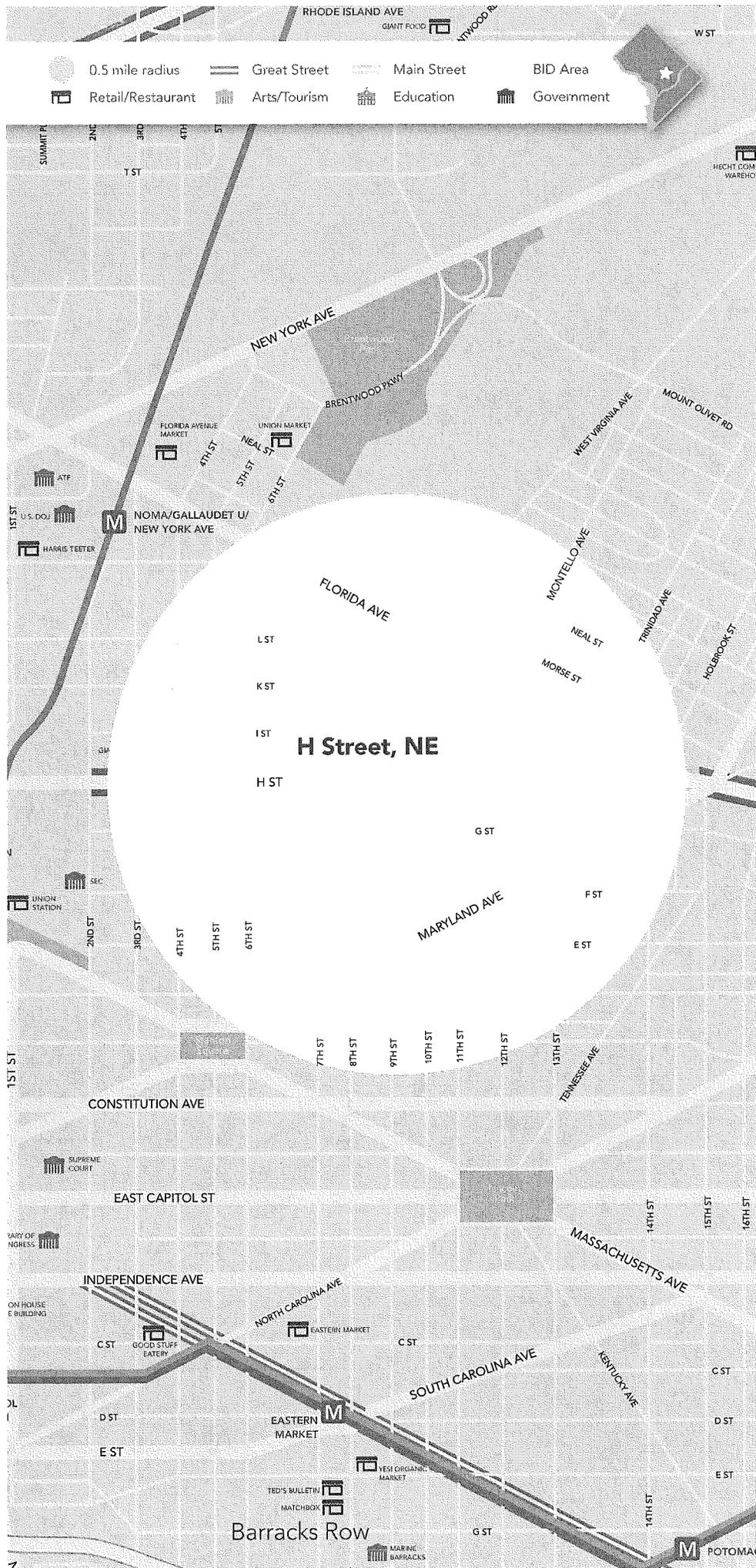
H Street has returned to its roots as a thriving, commercial hub, and is home to a diverse, cohesive community. A revitalized visual and performing arts scene, hip bars and restaurants, art galleries, music venues and a boom of high-end condos and apartments are quickly reshaping the historic corridor.

Whether it's pho, falafel or fried fish; bluegrass, jazz or rock; DC-made clothing, bicycles or vet visits, H Street offers something for everyone. The one-and-a-half mile commercial corridor boasts coffee shops, a farmer's market, more than 100 retail stores, and a collection of international cuisines, including Italian, Ethiopian, Vegan, Middle Eastern, French, Irish, Vietnamese, Japanese, Caribbean, British, Belgian and Southern, among many others. Exciting new retail stores, such as the Daily Rider and CAT Walk, enhance the quality of life in this exciting, walkable neighborhood.

There are performances to see and even participate in every night at H Street's many venues, including the Atlas Performing Arts Center, a restored Art Deco landmark theater, the Rock and Roll Hotel, and Twelve Restaurant and Lounge. Dance to free bluegrass at The Argonaut; join or watch an open jam session at HR-57 Center for the Preservation of Jazz and Blues, or sing karaoke at Sticky Rice.

All of this activity and energy has earned H Street several national awards including the 2013 Great American Main Street (National Trust for Historic Preservation), a Top 10 Great Urban Neighborhood (USA Today) and America's sixth Hippest Hipster Neighborhood (Forbes).

Union Station anchors the western end of H Street and provides local, regional and interstate access via Metrorail, Metrobus, Circulator, Amtrak, VRE, MARC, Megabus, BoltBus, Capital Bikeshare and in 2014, the H Street streetcar line.



- 0.5 mile radius
- Great Street
- Main Street
- BID Area
- Retail/Restaurant
- Arts/Tourism
- Education
- Government

**Population**

	0-0.5 mi	0-1 mi	0-3 mi
Population	15,942	48,539	292,671
Male	49%	48%	49%
Female	51%	52%	51%
High School Graduate <sup>1</sup> +	90%	85%	84%
Bachelor's Degree <sup>1</sup> +	56%	50%	44%
Graduate/Prof. Degree <sup>1</sup>	27%	26%	23%

**Households**

	0-0.5 mi	0-1 mi	0-3 mi
Households (HH)	7,333	21,747	135,144
Average HH Size	2.1	2.2	2.0
Owner-occupied	52%	45%	37%
Renter-occupied	48%	55%	63%
Median HH Value	\$431,882	\$435,090	\$361,047

**Income**

	0-0.5 mi	0-1 mi	0-3 mi
Average HH	\$80,753	\$82,522	\$74,986
Median HH	\$60,351	\$58,298	\$50,525
HH Income < \$49,999	41%	43%	50%
HH Income \$50-74,999	18%	16%	17%
HH Income \$75,000+	41%	41%	34%
Median HH Disposable	\$45,316	\$43,918	\$38,363

**Age**

	0-0.5 mi	0-1 mi	0-3 mi
Age <20	14%	18%	18%
Age 20-34	37%	33%	36%
Age 35-64	39%	39%	36%
Age 65+	10%	10%	10%
Median Age (years)	34.4	34.5	33.4

**Consumer Expenditures (\$ thousands)<sup>1</sup>**

	0-0.5 mi	0-1 mi	0-3 mi
Apparel & Services	\$16,417	\$48,055	\$263,306
Computers & Accessories	\$2,170	\$6,090	\$33,049
Entertainment & Rec	\$29,588	\$84,625	\$454,699
Pets	\$4,509	\$12,823	\$68,740
TV, Radio & Sound	\$11,356	\$33,329	\$185,540
Food at Home	\$41,424	\$121,815	\$674,007
Food away from Home	\$30,542	\$88,687	\$489,479
Home Improvement & Services	\$19,234	\$89,992	\$437,807
Household Furnishings	\$11,486	\$32,666	\$173,192
Personal Care	\$3,609	\$10,332	\$57,182
Vehicle Maint. & Repair	\$8,482	\$24,281	\$132,788
Avg. Spent per HH	\$27.4	\$28.2	\$24.8

Source: ESRI, 2012 Estimates & Projections 1. American Community Survey 2005-2009  
2. ESRI, 2011 Estimates & Projections

**Metrorail Exits (avg. weekday | avg. weekend)**  
**33,043 | 17,342 Union Station**  
**7,240 | 4,511 NoMa/Gallaudet (New York Avenue)**

**Walk Score**  
**92 Walker's Paradise**

**Contact**  
**H Street Main Street**  
 Anwar Saleem, Executive Director  
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 e| anwar.saleem@hstreet.org  
 w| www.hstreet.org



Barracks Row