

ESTTA Tracking number: **ESTTA598423**

Filing date: **04/14/2014**

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

Notice of Opposition

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

Opposer Information

Name	BELL'S BREWERY, INC.
Granted to Date of previous extension	04/13/2014
Address	8938 Krum Avenue Galesburg, MI 49053 UNITED STATES

Attorney information	G. Patrick SAGE HUESCHEN & SAGE, PLLC 107 West Michigan Avenue, Seventh Floor, Kalamazoo Building Kalamazoo, MI 49007 UNITED STATES gps@hueschen-sage.us, jtf@hueschen-sage.us Phone:269-382-0030
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Applicant Information

Application No	85929587	Publication date	10/15/2013
Opposition Filing Date	04/14/2014	Opposition Period Ends	04/13/2014
Applicant	Innovation Brewing 414 W Main St. Sylva, NC 28779 NEW CALEDONIA		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Statutory and Common Law priority and likelihood of confusion

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3122464	Application Date	05/19/2005
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	INSPIRED BREWING		

Design Mark	INSPIRED BREWING
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2003/12/00 First Use In Commerce: 2003/12/00 Beer, porter, ale, stout and malt liquor

U.S. Registration No.	4098319	Application Date	04/15/2011
Registration Date	02/14/2012	Foreign Priority Date	NONE

Word Mark	INSPIRED BREWING
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Design Mark	INSPIRED BREWING
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Description of Mark	NONE
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Goods/Services	<p>Class 016. First use: First Use: 2003/12/01 First Use In Commerce: 2003/12/01 Paper goods, namely, posters, stickers, bumper stickers, paper coasters; paper materials and printed matter, namely, posters, stickers, bumper stickers, paper coasters</p> <p>Class 018. First use: First Use: 2007/00/00 First Use In Commerce: 2007/00/00 Messenger bags; handbags; purses; wallets; umbrellas; patio umbrellas</p> <p>Class 021. First use: First Use: 2003/12/01 First Use In Commerce: 2003/12/01 Beverage glassware; bottle opener; reusable stainless steel water bottles sold empty; reusable plastic water bottles sold empty; insulating sleeve holders for beverage bottles; plastic coasters</p> <p>Class 024. First use: First Use: 2009/00/00 First Use In Commerce: 2009/00/00 Beach towels; towels</p> <p>Class 025. First use: First Use: 2006/00/00 First Use In Commerce: 2006/00/00 Clothing, namely, shirts, t-shirts, sweatshirts, jackets, jerseys, socks; baseball caps and hats; skull caps; scarves</p> <p>Class 028. First use: First Use: 2007/09/00 First Use In Commerce: 2007/09/00 Discs for playing disc golf; playing cards</p> <p>Class 032. First use: First Use: 2003/12/01 First Use In Commerce: 2003/12/01 Beer; ale; stout; porter; malt liquor</p>
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U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	BOTTLING INNOVATION SINCE 1985
Goods/Services	beer; ale; stout; porter; malt liquor; paper goods, namely, posters, stickers, bumper stickers

Attachments	76638946#TMSN.gif(bytes) 85296771#TMSN.jpeg(bytes) NOO.pdf(5811448 bytes)
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Certificate of Service

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

Signature	/gpsage/
Name	G. Patrick SAGE
Date	04/14/2014

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

In the Matter of Trademark
Application Serial No. 85/929,587

BELL'S BREWERY, INC.

Opposer,

v.

INNOVATION BREWING

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

BELL'S BREWERY, INC. ("Opposer"), a Michigan Corporation, located at 8938 Krum Avenue, Galesburg, Michigan 49053, believes that it will be damaged by registration of the mark INNOVATION BREWING, which is the subject of Application Serial No. 85/929,587, filed by INNOVATION BREWING, a North Carolina Limited Liability Company, identifying the goods "beer", in International Class 32 ("Application"), published in the Official Gazette on 15 October 2013, and hereby opposes the same. Opposer timely extended time to oppose on 25 October 2013 and 12 February 2014.

As grounds for opposition, it is alleged that:

1. By the Application herein opposed, Applicant seeks to register the mark INNOVATION BREWING for "beer", in International Class 32. The Application was filed on 12 May 2013 under an intent-to-use basis pursuant to 15 U.S.C. §1051(b).

2. Opposer owns the entire right, title and interest in and to the trademark INSPIRED BREWING as evidenced by U.S. Registration No. 3,122,464 issued on the Principal Register of the U.S. Patent and Trademark Office on 01 August 2006 for use in association with “beer, porter, ale, stout and malt liquor”, in International Class 32. The Registration provides that INSPIRED BREWING was first used in commerce in 2003. The Registration is valid and subsisting, unrevoked and uncancelled. Further, U.S. Registration No. 3,122,464 is incontestable pursuant to 15 U.S.C. §1065. An extract from the Trademark Status & Document Retrieval (TSDR) of the U.S. Patent and Trademark Office showing the current status and particulars of Opposer's Registration is attached hereto as Exhibit A and is made of record in this proceeding.
3. Opposer owns the entire right, title and interest in and to the trademark INSPIRED BREWING as evidenced by U.S. Registration No. 4,098,319 issued on the Principal Register of the U.S. Patent and Trademark Office on 14 February 2012 for use in association with "Paper goods, namely, posters, stickers, bumper stickers, paper coasters; paper materials and printed matter, namely, posters, stickers, bumper stickers, paper coasters, in International Class 16; Messenger bags; handbags; purses; wallets; umbrellas; patio umbrellas, in International Class 18; Beverage glassware; bottle opener; reusable stainless steel water bottles sold empty; reusable plastic water bottles sold empty; insulating sleeve holders for beverage bottles; plastic coasters, in International Class 21; Beach towels; towels, International Class 24; Clothing, namely, shirts, t-shirts, sweatshirts, jackets, jerseys, socks; baseball caps and hats; skull caps; scarves, International Class 25; Discs for playing disc golf; playing cards International Class 28; and Beer; ale; stout; porter; malt liquor, International Class 32. The Registration is valid and subsisting, unrevoked and

uncancelled. The Registration provides that INSPIRED BREWING was first used in commerce in association with some of the goods as early 2003. An extract from the Trademark Status & Document Retrieval (TSDR) of the U.S. Patent and Trademark Office showing the current status and particulars of Opposer's Registration is attached hereto as Exhibit A and is made of record in this proceeding.

4. The trademark INSPIRED BREWING was adopted by Opposer as trademark for alcoholic beverages as early as 2003. Opposer has engaged in the development, manufacture, advertising, distribution and sale in interstate commerce of alcoholic beverages under the INSPIRED BREWING trademark for approximately ten (10) years. As such, Opposer claims the benefit of all statutory and common law rights which have inured to the benefit of Opposer from the use of the INSPIRED BREWING trademark.
5. The INSPIRED BREWING trademark has been in continuous use in interstate commerce by Opposer for at least ten (10) years on or in connection with alcoholic beverages on labels bearing the trademark applied to the goods, on packaging in which the goods are shipped and sold, on display in advertising and in other manners which are customary in the trade.
6. Opposer's development, manufacture, advertising, distribution and sale in interstate commerce of products under the INSPIRED BREWING trademark significantly predate the filing date of the Application and any potential alleged use of the INNOVATION BREWING mark by the Applicant.
7. Opposer has made and continues to make significant investment in the INSPIRED BREWING brand, including manufacturing, advertising and promoting goods bearing

the INSPIRED BREWING trademark. As a result of such investment, Opposer enjoys significant sales, valuable goodwill, and an enviable reputation associated with the INSPIRED BREWING brand and trademark.

8. Opposer's INSPIRED BREWING trademark is distinctive and well-known and became well-known long prior to the filing date of the instant Application and any potential alleged use of the INNOVATION BREWING mark by the Applicant.
9. Applicant's INNOVATION BREWING mark, when considered in its entirety, is similar in sight, sound, appearance, and commercial impression to Opposer's INSPIRED BREWING trademark. Further, the mark, when applied to Applicant's goods, which are identical to and closely related to Opposer's goods bearing the INSPIRED BREWING trademark, or used in association with Applicant's goods, are likely to cause confusion and mistake, and to deceive and mislead consumers into believing that Applicant's beverages originated, are sponsored by, are licensed from, or are jointly owned by or otherwise associated with Opposer and/or Opposer's goods marked with its INSPIRED BREWING trademark.
10. Opposer owns the entire right, title and interest in and to the trademark BOTTLING INNOVATION SINCE 1985 which trademark was adopted by Opposer as trademark for alcoholic beverages as early as 2009 (herein referred to as "BOTTLING INNOVATION"). Opposer has engaged in the advertising, distribution and sale in interstate commerce of alcoholic beverages under the BOTTLING INNOVATION trademark for approximately four (4) years. As such, Opposer claims the benefit of all statutory and common law rights which have inured to the benefit of Opposer from the use of the BOTTLING INNOVATION trademark.

11. The BOTTLING INNOVATION trademark has been in continuous use in interstate commerce by Opposer since as early as 2009 on or in connection with alcoholic beverages, on delivery vehicles in which the goods are shipped, on display in advertising and in other manners which are customary in the trade.
12. Opposer's development, manufacture, advertising, distribution and sale in interstate commerce of products under the BOTTLING INNOVATION trademark significantly predate the filing date of the Application and any potential alleged use of the INNOVATION BREWING mark by the Applicant.
13. Opposer has made and continues to make significant investment in the BOTTLING INNOVATION brand, including advertising and promoting goods in association with the BOTTLING INNOVATION trademark. As a result of such investment, Opposer enjoys significant sales, valuable goodwill, and an enviable reputation associated with the BOTTLING INNOVATION brand and trademark.
14. Opposer's BOTTLING INNOVATION trademark is distinctive and well-known and became well-known long prior to the filing date of the instant Application and any potential alleged use of the INNOVATION BREWING mark by the Applicant.
15. Applicant's INNOVATION BREWING mark, when considered in its entirety, is similar in sight, sound, appearance, and commercial impression to Opposer's BOTTLING INNOVATION trademark. Further, the mark, when applied to Applicant's goods, which are closely related to Opposer's goods bearing the BOTTLING INNOVATION trademark, or used in association with Applicant's goods, are likely to cause confusion and mistake, and to deceive and mislead consumers into believing that Applicant's beverages originated, are sponsored by, are licensed from, or are jointly owned by or

otherwise associated with Opposer and/or Opposer's goods marked with its BOTTLING INNOVATION trademark.

16. Opposer will be irreparably damaged and/or injured by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of Applicant's mark sought to be registered in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and will give color of statutory rights to Applicant in violation and derogation of the statutory and common law rights of Opposer in its INSPIRED BREWING trademarks.

Wherefore, Opposer believes that it will be damaged by the registration of Applicant's marks and respectfully requests that this opposition be sustained and that registration of Application Serial No. 85/929,587 be refused.

Respectfully submitted,

THE FIRM OF HUESCHEN AND SAGE

//jtfrench//

Dated: 14 April 2014

G. Patrick SAGE (37,710)

Joanna T. FRENCH (59,688)

Attorney for Opposer

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107 West Michigan Avenue

Kalamazoo, Michigan 49007

Phone: (269-382-0030)

DORSEY & WHITNEY LLP

//smrobertson//

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EXHIBIT A

STATUS DOCUMENTS

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Mark: INSPIRED BREWING

INSPIRED BREWING

US Serial Number: 76638946 Application Filing Date: May 19, 2005
 US Registration Number: 3122464 Registration Date: Aug. 01, 2006
 Register: Principal
 Mark Type: Trademark
 Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.
 Status Date: Sep. 15, 2011
 Publication Date: May 09, 2006

Mark Information

Mark Literal Elements: INSPIRED BREWING
 Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
 Mark Drawing Type: 4 - STANDARD CHARACTER MARK
 Disclaimer: "BREWING"

Goods and Services

Note:
 The following symbols indicate that the registrant/owner has amended the goods/services:
 • Brackets [...] indicate deleted goods/services;
 • Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
 • Asterisks *...* identify additional (new) wording in the goods/services.

For: Beer, porter, ale, stout and malt liquor

International Class(es): 032 - Primary Class U.S Class(es): 045, 046, 048
 Class Status: ACTIVE
 Basis: 1(a)
 First Use: Dec. 2003 Use in Commerce: Dec. 2003

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: BELL'S BREWERY, INC.
 Owner Address: 8938 KRUM AVENUE
 GALESBURG, MICHIGAN 49053
 UNITED STATES
 Legal Entity Type: CORPORATION State or Country Where Organized: MICHIGAN

Attorney/Correspondence Information

Attorney of Record Attorney Name: G. Patrick Sage Docket Number: BELL FTM 11

Correspondent
 Correspondent Name/Address: G. Patrick Sage
 HUESCHEN & SAGE PLLC
 107 WEST MICHIGAN AVENUE
 SEVENTH FLOOR, KALAMAZOO BUILDING
 KALAMAZOO, MICHIGAN 49007
 UNITED STATES

Phone: 269-382-0030 Fax: 269-382-2030

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 16, 2011	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - MAILED	
Sep. 15, 2011	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68335
Sep. 15, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68335
Aug. 10, 2011	TEAS SECTION 8 & 15 RECEIVED	
Aug. 01, 2006	REGISTERED-PRINCIPAL REGISTER	
May 09, 2006	PUBLISHED FOR OPPOSITION	
Apr. 19, 2006	NOTICE OF PUBLICATION	
Mar. 17, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	71466
Mar. 06, 2006	ASSIGNED TO LIE	71466
Mar. 02, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 02, 2006	AMENDMENT FROM APPLICANT ENTERED	71466
Feb. 13, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	71466
Feb. 13, 2006	PAPER RECEIVED	
Dec. 16, 2005	NON-FINAL ACTION MAILED	
Dec. 15, 2005	NON-FINAL ACTION WRITTEN	76612
Dec. 14, 2005	ASSIGNED TO EXAMINER	76612
Oct. 02, 2005	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 20, 2005	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
May 31, 2005	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: TMO LAW OFFICE 115

Date in Location: Sep. 15, 2011

Assignment Abstract Of Title Information - Click to Load**Proceedings - Click to Load**

STATUS DOCUMENTS

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Mark: INSPIRED BREWING

INSPIRED BREWING

US Serial Number: 85296771

Application Filing Date: Apr. 15, 2011

US Registration Number: 4098319

Registration Date: Feb. 14, 2012

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Feb. 14, 2012

Publication Date: Nov. 29, 2011

Mark Information

Mark Literal Elements: INSPIRED BREWING

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Disclaimer: "BREWING"

Related Properties Information

Claimed Ownership of US [3122464](#)
Registrations:

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Paper goods, namely, posters, stickers, bumper stickers, paper coasters; paper materials and printed matter, namely, posters, stickers, bumper stickers, paper coasters

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 01, 2003

Use in Commerce: Dec. 01, 2003

For: Messenger bags; handbags; purses; wallets; umbrellas; patio umbrellas

International Class(es): 018 - Primary Class

U.S Class(es): 001, 002, 003, 022, 041

Class Status: ACTIVE

Basis: 1(a)

First Use: 2007

Use in Commerce: 2007

For: Beverage glassware; bottle opener; reusable stainless steel water bottles sold empty; reusable plastic water bottles sold empty; insulating sleeve holders for beverage bottles; plastic coasters

International Class(es): 021 - Primary Class

U.S Class(es): 002, 013, 023, 029, 030, 033, 040, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 01, 2003

Use in Commerce: Dec. 01, 2003

For: Beach towels; towels

International Class(es): 024 - Primary Class

U.S Class(es): 042, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: 2009

Use in Commerce: 2009

For: Clothing, namely, shirts, t-shirts, sweatshirts, jackets, jerseys, socks; baseball caps and hats; skull caps; scarves

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(a)

First Use: 2006

Use in Commerce: 2006

For: Discs for playing disc golf; playing cards

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 2007

Use in Commerce: Sep. 2007

For: Beer; ale; stout; porter; malt liquor

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 01, 2003

Use in Commerce: Dec. 01, 2003

Basis Information (Case Level)

Filed Use: Yes	Currently Use: Yes	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: BELL'S BREWERY, INC.

Owner Address: 8938 Krum Avenue
Galesburg, MICHIGAN 49053
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: MICHIGAN

Attorney/Correspondence Information

Attorney of Record

Attorney Name: G. Patrick SAGE

Docket Number: BELL FTM 21

Correspondent

Correspondent Name/Address: G. PATRICK SAGE
HUESCHEN AND SAGE PLLC
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KALAMAZOO, MICHIGAN 49007-3976
UNITED STATES

Phone: 269-382-0030

Fax: 269-382-2030

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 14, 2012	REGISTERED-PRINCIPAL REGISTER	
Nov. 29, 2011	PUBLISHED FOR OPPOSITION	
Nov. 09, 2011	NOTICE OF PUBLICATION	
Oct. 25, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	73296
Oct. 20, 2011	ASSIGNED TO LIE	73296
Sep. 27, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 23, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Sep. 23, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Sep. 23, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 21, 2011	NON-FINAL ACTION MAILED	
Jun. 20, 2011	NON-FINAL ACTION WRITTEN	76502
Jun. 15, 2011	ASSIGNED TO EXAMINER	76502
Apr. 19, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 14, 2012

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

In the Matter of Trademark
Application Serial No. 85/929,587

BELL'S BREWERY, INC.

Opposer,

v.

INNOVATION BREWING

Applicant.

Opposition No. _____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition is being served on the "Correspondent of Record" for the Applicant as well as the Attorney for the Applicant by mailing a true copy via First Class Mail, postage prepaid, addressed to:

Nicole DEXTER
414 W Main St
Sylva, North Carolina 28779-5548

Ian D. GATES, Esq.
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.
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Portland, Oregon 97205

THE FIRM OF HUESCHEN AND SAGE

//jtfrench//

Dated: 14 April 2014

Joanna T. FRENCH