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Filing date: **03/09/2015**

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

Proceeding	91215896
Party	Plaintiff Bells Brewery, Inc.
Correspondence Address	SARAH M ROBERTSON DORSEY & WHITNEY LLP 51 W 52ND ST NEW YORK, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com, robertson.sarah@dorsey.com, ewing.bruce@dorsey.com
Submission	Motion to Extend
Filer's Name	Sarah M. Robertson
Filer's e-mail	ny.trademark@dorsey.com, robertson.sarah@dorsey.com, ewing.bruce@dorsey.com
Signature	/smr/
Date	03/09/2015
Attachments	20150309 Motion Extend with Robertson Declaration.pdf(1456320 bytes)

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

)	
Bell’s Brewery, Inc.,)	
)	
Opposer,)	Opposition No. 91215896
v.)	
)	
Innovation Brewing,)	
)	
Applicant.)	
)	

OPPOSER’S MOTION TO EXTEND DISCOVERY PERIOD BY THIRTY (30) DAYS

Opposer, Bell’s Brewery, Inc. (“Opposer”), hereby moves the Trademark Trial and Appeal Board (the “Board”) pursuant to Fed. R. Civ. P. 6(b) and Trademark Rule 2.120(a) for a thirty (30) day extension of the discovery period, which is currently scheduled to close on March 20, 2015. In the interest of efficiency, Opposer further moves the Board pursuant to Trademark Rule 2.120(i)(1) to resolve the instant motion by telephone conference.

ARGUMENT

This extension request is made in good faith and not for the purpose of unnecessary delay, and is not necessitated by Opposer’s lack of diligence or unreasonable delay in taking any required action. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 509.01(a) (a motion to extend time may be granted where the moving party demonstrates that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor). The requested extension would also not result in any harm or prejudice to Applicant,

Innovation Brewing (“Applicant”). See Sunkist Growers, Inc. v. Benjamin Ansehl Company, 229 U.S.P.Q. 147, 149 (TTAB 1985) (reasonable to allow opposer additional time to complete its discovery before moving to testimony period, where no harm or prejudice would result to applicant).

Opposer submits that a limited, 30-day extension of the close of discovery is required in order to allow Opposer sufficient time to address with Applicant’s counsel the substantive deficiencies that remain in Applicant’s initial responses to Opposer’s discovery requests served on October 2, 2014. Further, Opposer requires additional time to review and assess the adequacy of Applicant’s recently served supplemental responses to these requests (of which Opposer received a courtesy copy only on March 4, 2015) and supplemental document production (which was mailed by Applicant on or after this same date and which has yet to be received by Opposer).

As noted above, Opposer’s First Set of Requests for Production was served on Applicant early in the discovery period. (Declaration of Sarah M. Robertson, dated March 9, 2015 (hereinafter referred to as “Robertson Decl.”), ¶ 3, Exhibit A.) While Applicant served timely responses, its document production was woefully deficient. On February 13, 2015, Opposer’s counsel sent Applicant’s counsel a letter detailing the most glaring deficiencies in Applicant’s document production. (Robertson Decl. ¶ 4, Exhibit B.) Applicant’s counsel replied on February 20, noting that he would “inquire again with [his] client and provide an updated response as appropriate” with respect to twelve (12) of the document requests. (Robertson Decl. ¶ 5, Exhibit C.) However, because Applicant maintained certain objections and Opposer continued to believe that Applicant was improperly withholding documents, Opposer’s counsel continued its efforts to meet and confer by sending another letter on March 3, 2015, which

outlined Applicant's continued deficiencies. (Robertson Decl. ¶ 6, Exhibit D.)

At this juncture, Opposer's counsel called and also sent an email to Applicant's counsel, Ian Gates, to request a thirty-day extension of the discovery period to address all outstanding discovery issues. (Robertson Decl. ¶¶ 7 and 8, Exhibits E and F.) Applicant's counsel, however, refused to provide his consent and did not return the undersigned counsel's call to discuss such extension request.¹ Instead, Applicant's counsel served Applicant's First Amended Responses to Opposer's First Set of Requests for Production on March 4, 2015. (Robertson Decl. ¶ 9, Exhibit G.) While a courtesy copy of Applicant's bare bone responses referencing additional documents was sent by email on this date, Applicant served the supplemental document production itself by First Class Mail and Opposer has yet to receive the documents. (Id.)

Based on the facts set forth above, Opposer respectfully submits that the Board should grant this motion for a thirty-day extension of the discovery period because, despite Opposer's efforts to diligently obtain discovery from Applicant, more time is needed to meet and confer with Applicant regarding outstanding discovery requests, to review Applicant's late arriving document production, to possibly conduct follow-up discovery based on Applicant's late document production and to file a motion to compel prior to the start of the testimony period, if so required. Opposer further submits that the extension of time sought by Opposer herein is made in good faith and is not necessitated by any failure by Opposer to initiate discovery at an early stage, and that Applicant cannot show any harm or prejudice resulting from such extension.

¹ Applicant has requested that depositions to be conducted by Opposer be rescheduled to six (6) days after the close of discovery due to scheduling problems faced by both parties.

CONCLUSION

For the reasons set out above, Opposer respectfully requests that the 30-day extension of time sought herein be granted and the deadlines be reset as follows:

Discovery Closes:	04/19/2015
Plaintiff's Pretrial Disclosures:	06/03/2015
Plaintiff's 30-day Trial Period Ends:	07/18/2015
Defendant's Pretrial Disclosures:	08/02/2015
Defendant's 30-day Trial Period Ends:	09/16/2015
Plaintiff's Rebuttal Disclosures:	10/01/2015
Plaintiff's 15-day Rebuttal Period Ends:	10/31/2015

In the interest of efficiency for the Board and the parties, Opposer further requests that the Board address this motion by telephone conference pursuant to Trademark Rule 2.120(i)(1).

Respectfully Submitted,

DORSEY & WHITNEY LLP

Dated: March 9, 2015

By _____ /smr/
Sarah M. Robertson
Bruce R. Ewing
Fara S. Sunderji
51 West 52nd Street
New York, New York 10019
Tel.: (212) 415-9200
E-mail: ny.trademark@dorsey.com

THE FIRM OF HUESCHEN AND SAGE
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107 West Michigan Avenue
Kalamazoo, Michigan 49007
Tel.: (269) 382-0030

*Attorneys for Opposer,
Bell's Brewery, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2015, a copy of the foregoing OPPOSER'S MOTION TO EXTEND THE DISCOVERY PERIOD BY THIRTY (30) DAYS was served on Applicant via First Class Mail, postage prepaid to:

Ian D. Gates, Esq.
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.
1000 SW Broadway, Suite 1555
Portland, Oregon 92705

/tek/
Thomas Kearney

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

Bell's Brewery, Inc.,)	
)	
)	Opposition No. 91215896
v.)	
)	
Innovation Brewing,)	
)	
Applicant.)	
)	

**DECLARATION OF SARAH M. ROBERTSON IN
SUPPORT OF OPPOSER'S MOTION TO EXTEND THE DISCOVERY PERIOD**

I, SARAH M. ROBERTSON declare as follows:

1. I am a partner with the firm of Dorsey & Whitney LLP, representing Opposer, Bell's Brewery, Inc. ("Opposer"), in the above captioned Opposition proceeding. I am licensed to practice law in the State of New York. I submit this Declaration for the purpose of setting forth certain facts and identifying documentary exhibits in support of Opposer's Motion to Extend the Discovery Period by Thirty (30) Days.
2. The discovery period in the instant Opposition opened on September 21, 2014.
3. Opposer served Opposer's First Set of Interrogatories and Opposer's First Set of Requests for Production on Applicant on October 2, 2014. Attached as Exhibit A is a true and correct copy of Opposer's discovery requests.

4. I sent Applicant's counsel a letter on February 13, 2015, detailing the deficiencies in Applicant's responses to Opposer's First Set of Requests for Production. Attached as Exhibit B is a true and correct copy of the letter.

5. On February 20, 2015, I received a letter from Applicant's counsel addressing these deficiencies. Attached as Exhibit C is a true and correct copy of the letter.

6. On March 3, 2015, I sent Applicant's counsel a follow-up letter regarding a number of continued deficiencies in Applicant's discovery responses. Attached as Exhibit D is a true and correct copy of the letter.

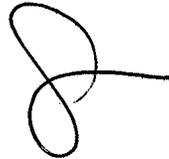
7. On March 3, 2015, I sent an email to Applicant's counsel requesting a thirty-day extension of the discovery period to, *inter alia*, allow the parties sufficient time to address the large number of unresolved discovery objections raised by Opposer and allow Opposer sufficient time to review Applicant's still yet undelivered supplemental document production. Attached as Exhibit E is a true and correct copy of the email.

8. On March 4, 2015, I called Applicant's counsel and left a voicemail to discuss a thirty-day extension of the discovery period. Applicant's counsel did not return my call. Later that day, I received an email indicating that Applicant would not agree to the requested extension. Attached as Exhibit F is a true and correct copy of this email.

9. Upon information and belief, in a follow-up email also dated March 4, 2015, Applicant sent a courtesy copy of Applicant's First Amended Responses to Opposer's First Set of Requests for Production by First Class Mail, which upon information and belief, was formally served by Applicant on this same date. Upon information and belief, a CD-ROM with Applicant's supplemental document production was also served by First Class Mail on March 4. I have not yet received the CD-ROM with Applicant's supplemental document production.

Attached as Exhibit G is a true and correct copy of the aforementioned email and the attachments thereto.

Pursuant to 28 U.S.C. §1746, I, Sarah M. Robertson, further declare under penalty of perjury that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

A handwritten signature in black ink, consisting of a large loop on the left and a horizontal line extending to the right.

Dated: March 9, 2015

Sarah M. Robertson

EXHIBIT A

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

Bell's Brewery, Inc.,)	
)	
v.)	Opposition No: 91215896
)	
Innovation Brewing,)	
)	
Applicant.)	

OPPOSER'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Bell's Brewery, Inc. ("Opposer"), by and through its attorneys, Dorsey & Whitney LLP, requests that Applicant, Innovation Brewing ("Applicant"), answer the following interrogatories in writing and under oath within thirty (30) days after service hereof upon Applicant's counsel of record in this proceeding. These interrogatories are continuing in nature and impose upon Applicant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS AND INSTRUCTIONS

A. "Innovation Brewing," "Applicant," "you," or "your" means Innovation Brewing, and any parent, subsidiaries, divisions, affiliated entities, predecessor or successor entities, and their present and former officers, directors, employees, agents, representatives, and any other persons or entities acting on their behalf.

B. “Opposer” or “Bell’s Brewery” means Bell’s Brewery, Inc., and any parent, subsidiaries, divisions, affiliated entities, predecessor or successor entities, and their present and former officers, directors, employees, agents, representatives, and any other persons or entities acting on their behalf.

C. “Opposer’s Marks” means the marks INSPIRED BREWING and BOTTLING INNOVATION SINCE 1985.

D. “Opposer’s Goods” means the goods and/or services identified in or used in connection with Opposer’s Marks.

E. The “Opposed Application” means U.S. Trademark Serial No. 85/929,587.

F. “Applicant’s Mark” means the trademark INNOVATION BREWING that is the subject of the Opposed Application.

G. “Applicant’s Identified Goods” means the goods identified in the Opposed Application, namely, “Beer.”

H. “Document(s)” means all documents, tangible things, and electronically stored information (stored in any medium from which information can be obtained)—including, for example, but without limitation, email—within the scope of Fed. R. Civ. P. 34(a).

I. “Identify,” when used in reference to a document, means to state the date, author or creator, the addressee, type of document (e.g., letter, memorandum, email, chart, tangible physical item, etc.), its present or last known location and custodian, its general subject matter(s) or content, and any other information necessary for Opposer to identify it. Alternatively, “Identify” means to provide a document identification number (e.g., a bates number) by which Opposer can identify the document as produced.

J. "Identify," when used with reference to a natural person, means to state the person's full name, present or last-known address, his/her present and prior employment positions and affiliations, and the dates of each.

K. "Substantiate" means to set forth in detail and with specificity the facts upon which you rely in making a contention or allegation and to Identify the documents and persons upon which you rely.

L. If you cannot answer the following interrogatories in full after exercising due diligence to secure the information to do so, please so state and answer to the fullest extent possible, specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion.

M. If you withhold any responsive information or document on the basis of any claim of privilege, describe generally the substance or subject matter of the information or document withheld; state the privilege being relied upon or claimed; state the basis for that claim; Identify all persons or entities who have had access to the information or document; state the date of creation for any such communication or document and the date you became aware of any such information.

N. Your obligation to respond to these interrogatories is of a continuing nature, so that if you acquire possession, custody or control of any additional information within the scope of these requests, you must produce such information immediately to counsel for Opposer.

INTERROGATORIES

INTERROGATORY NO. 1

State the origins, motives and/or reasons for Applicant's selection and adoption of Applicant's Mark.

INTERROGATORY NO. 2

Identify what type of business entity is Applicant.

INTERROGATORY NO. 3

Identify all trademark searches, including investigations, conducted to determine the availability of Applicant's Mark or any component thereof.

INTERROGATORY NO. 4

Identify all opinions and/or other advice received by Applicant concerning the availability of Applicant's Mark for use and/or registration for any goods or services.

INTERROGATORY NO. 5

Identify all persons who assisted with the creation and selection of Applicant's Mark.

INTERROGATORY NO. 6

Identify all persons who assisted with the clearance and/or searching of Applicant's Mark.

INTERROGATORY NO. 7

Identify all persons who assisted with the filing of the Opposed Application.

INTERROGATORY NO. 8

Identify, by generic name, each of Applicant's Identified Goods and any other product or service that Applicant is marketing, manufacturing, distributing or selling, or intends to market, manufacture, distribute or sell, under Applicant's Mark (each, a "Product," collectively, the "Products").

INTERROGATORY NO. 9

State the date and describe in detail the circumstances concerning when Applicant first became aware of Opposer's Marks or any of them and identify all documents concerning such awareness and such circumstances.

INTERROGATORY NO. 10

Identify all alternate marks considered in the past or currently being considered by Applicant for use with the Products and/or those goods listed in the Opposed Application.

INTERROGATORY NO. 11

State the date on which Applicant first offered each Product for sale or, if not yet offered for sale, the date on which Applicant intends to offer each such Product for sale.

INTERROGATORY NO. 12

State the volume of sales for each Product, if any, by dollar and unit, since inception.

INTERROGATORY NO. 13

State the retail and wholesale prices at which each Product is currently sold and/or is intended to be sold by Applicant.

INTERROGATORY NO. 14

Identify the actual or intended class(es) of purchasers for the Products.

INTERROGATORY NO. 15

Identify the means by which Applicant provides, or intends to provide, customers with information concerning the Products.

INTERROGATORY NO. 16

Identify the actual or intended trade channels for the Products.

INTERROGATORY NO. 17

Describe in detail Applicant's plans for expansion of the Products, including, but not limited to, any geographic expansion.

INTERROGATORY NO. 18

Identify all persons who have been or will be principally responsible for the advertising, promotion and sale of the Products.

INTERROGATORY NO. 19

State the date, if any, when Applicant first advertised or promoted the Products for sale in commerce.

INTERROGATORY NO. 20

State the annual dollar amounts, if any, expended by Applicant, or proposed to be expended by Applicant, in advertising and promoting the Products, since inception.

INTERROGATORY NO. 21

Identify all forms of advertisements and other promotional materials which demonstrate Applicant's use or intended use of Applicant's Mark in the United States for the Products.

INTERROGATORY NO. 22

Identify all agreements concerning Applicant's Mark, including all licenses and assignments.

INTERROGATORY NO. 23

Identify the persons employed or retained by Applicant, including, but not limited to, any third-party independent contractors or consultants, with the most knowledge concerning the identity and nature of Products that Applicant is marketing, manufacturing, distributing or selling, or intends to market, manufacture, distribute or sell, under Applicant's Mark.

INTERROGATORY NO. 24

Identify the persons, including, but not limited to, any third-party independent contractors or consultants, with the most knowledge concerning Applicant's business or marketing plans for the sale or intended sale of the Products.

INTERROGATORY NO. 25

Identify the facts and circumstances concerning any market research relating to Applicant's Mark and/or each Product offered or intended to be offered under or in connection therewith.

INTERROGATORY NO. 26

Identify any actual and/or intended sales representatives, dealers, distributors, retailers and/or licensees for the Products.

INTERROGATORY NO. 27

Identify all officers, directors, principals and investors of Applicant.

INTERROGATORY NO. 28

Identify all persons with knowledge concerning any instance, whether in person, in writing or by electronic mail, telephone or fax, in which any person or entity has inquired about or commented upon or referred to: (a) Opposer or Opposer's Marks; (b) any relationship between Opposer, its products and/or services and/or Opposer's Marks and Applicant; (c) any license, sponsorship or other association between Opposer and Applicant.

INTERROGATORY NO. 29

Identify all persons employed by or affiliated with Applicant, including, but not limited to, any third-party consultants or investigators with knowledge concerning any surveys, studies, focus groups or other market research concerning consumer perceptions of: (i) Products that bear or are intended to bear Applicant's Mark; or (ii) Opposer's Marks.

INTERROGATORY NO. 30

Identify any and all third-party marks upon which Applicant intends to rely in this proceeding.

INTERROGATORY NO. 31

Identify the manner in which Applicant's Mark is displayed, or proposed to be displayed including any logos, fonts or colors, on packaging or advertising for the Products.

INTERROGATORY NO. 32

State all facts that support Applicant's claim that it had a *bona fide* intent to use Applicant's Mark, prior to the filing date of the Opposed Application, for Applicant's Identified Goods.

INTERROGATORY NO. 33

Identify all persons whose files were searched for documents responsive to Opposer's First Request for Production of Documents served concurrently herewith.

INTERROGATORY NO. 34

Identify all persons who assisted in the preparation of responses to these interrogatories. If more than one person was involved, indicate the specific interrogatories to which each such person contributed all or part of the information comprising the answer.

INTERROGATORY NO. 35

Identify all expert witnesses retained by Applicant or counsel for Applicant for the purpose of offering opinions or testimony in connection with this proceeding.

INTERROGATORY NO. 36

Identify all individual(s) and/or organization(s) with whom or which Applicant has consulted in connection with Opposer's claims against Applicant and/or this Opposition.

INTERROGATORY NO. 37

Describe the financial or other involvement or participation of any individual(s) and/or organization(s) in connection with Applicant's defense of Opposer's claims against Applicant and/or this Opposition.

INTERROGATORY NO. 38

Identify all opinions and/or other advice received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's Marks and/or the merits of Opposer's claims against Applicant and/or this Opposition.

INTERROGATORY NO. 39

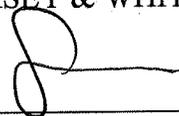
Identify all marks, including slogans, adopted and/or intended to be adopted by Applicant that incorporate the term "Innovation" and/or "Brewing," other than Applicant's Mark.

INTERROGATORY NO. 40

Describe all communications between Applicant and the Asheville Brewers Alliance and any other brewers' alliance or association.

Dated: October 2, 2014

DORSEY & WHITNEY LLP

By  _____

Sarah M. Robertson, Esq.
Bruce R. Ewing
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Tel.: (212) 415-9200
E-mail: ny.trademark@dorsey.com

THE FIRM OF HUESCHEN AND SAGE
G. Patrick Sage
Joanna T. French
Seventh Floor, Kalamazoo Building
107 West Michigan Avenue
Kalamazoo, Michigan 49007
Tel.: (269) 382-0030

Attorneys for Opposer,
Bell's Brewery, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2014, a copy of the foregoing
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on Applicant
via First Class Mail, postage prepaid to:

Ian D. Gates, Esq.
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.
1000 SW Broadway, Suite 1555
Portland, Oregon 92705



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

Bell's Brewery, Inc.,)	
)	
v.)	Opposition No: 91215896
)	
Innovation Brewing,)	
)	
Applicant.)	
)	

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Bell's Brewery, Inc. ("Opposer"), by and through its attorneys, Dorsey & Whitney LLP, requests that Applicant, Innovation Brewing ("Applicant"), respond to the Requests for Production listed below in writing and under oath within thirty (30) days after service hereof upon Applicant's counsel of record in this proceeding. Documents and things requested shall be produced at the offices of Dorsey & Whitney LLP, 51 West 52nd Street, New York, New York 10019, or at a mutually agreed-upon location.

DEFINITIONS AND INSTRUCTIONS

- A. Opposer hereby incorporates herein by reference the definitions and instructions set forth in Opposer's First Set of Interrogatories to Applicant.

- B. If you withhold any responsive Document on the basis of any claim of privilege, describe generally the substance or subject matter of the information or document withheld; state the privilege being relied upon or claimed; state the basis for that claim; identify all persons or

entities who have had access to the information or document; state the date of creation for any such communication or document and the date you became aware of any such information.

C. Your obligation to respond to these Requests is of a continuing nature, so that if you acquire possession, custody or control of any additional Documents within the scope of these requests, you must produce such documents immediately to counsel for Opposer.

REQUESTS FOR PRODUCTION

1. All Documents identified or described in response to any of Opposer's First Set of Interrogatories.
2. Documents sufficient to identify Applicant's business entity type.
3. All Documents identifying the origins, motives and/or reasons for Applicant's selection and adoption of Applicant's Mark.
4. Documents sufficient to identify all officers, directors, principals and investors of Applicant.
5. All Documents consisting of all trademark searches, including investigations, conducted to determine the availability of Applicant's Mark or any component thereof for use and/or registration for any goods or services, and any other documents relating to such availability.
6. All Documents concerning all opinions and/or other advice received by Applicant concerning the availability of Applicant's Mark or any component thereof for use and/or registration for any goods or services.
7. All Documents sufficient to identify all persons who assisted with the creation and selection of Applicant's Mark.

8. Documents sufficient to identify the date and circumstances under which Applicant first became aware of Opposer's Marks.

9. Documents sufficient to identify all alternate marks considered in the past or currently being considered by Applicant for use with the Applicant's Identified Goods and any other product or service that Applicant is marketing, manufacturing, distributing or selling, or intends to market, manufacture, distribute or sell, under Applicant's Mark (each, a "Product", collectively, the "Products").

10. All Documents that support Applicant's claim that it had a *bona fide* intent to use Applicant's Mark, prior to the filing date of the Opposed Application, for Applicant's Identified Goods.

11. All Documents developed and/or used by Applicant to market, advertise and/or promote the Products, including, without limitation, any television commercials, radio advertisements, print advertisements, social media content and/or Internet websites.

12. Documents sufficient to demonstrate Applicant's future plans for marketing, advertising and/or promoting the Products.

13. Documents sufficient to demonstrate Applicant's future business or marketing plans to sell the Products, including, without limitation, documents demonstrating the channels of trade in which such Products will be sold and the geographic areas inside and/or outside of the United States in which such Products will be sold, and/or any plans for expansion.

14. Documents sufficient to demonstrate Applicant's current and past activities in selling the Products, including, without limitation, documents demonstrating the channels of trade in which such Products are (or were) sold and the geographic areas inside and/or outside of the United States in which such goods are (or were) sold, and/or any current and past business plans for the Products.

15. All Documents relating or referring to the actual or intended class(es) of purchasers for the Products.

16. Representative samples of all Documents sold with, or used in carrying out sales of, the Products.

17. All Documents relating or referring to Opposer, Opposer's Marks and/or Opposer's Goods.

18. Documents relating to the strength as a trademark, or public recognition, of Applicant's Mark, including, without limitation, surveys, questionnaires, reports, or market studies.

19. Documents sufficient to identify the volume of sales for each Product, if any, by dollar and unit, since inception.

20. Documents sufficient to identify the retail and wholesale prices at which each Product is currently sold and/or intended to be sold by Applicant.

21. Documents sufficient to identify the date, if any, Applicant first advertised or promoted the Products for sale in commerce.

22. Documents sufficient to identify the annual dollar amounts, if any, expended by Applicant, or proposed to be expended by Applicant, in advertising and promoting the Products, since inception.

23. Documents sufficient to identify all persons who have been, are or will be principally responsible for the advertising, promotion and sale of the Products.

24. All forms of advertisement and other promotional materials which demonstrate Applicant's use or intended use of Applicant's Mark inside and/or outside of the United States for the Products.

25. Media reports relating to, referring to, or otherwise mentioning Applicant and/or the Products.

26. All agreements of any kind, including, without limitation, trademark licenses, coexistence agreements, distributor agreements and investor agreements, relating to Applicant's Mark and/or Products.

27. All Documents consisting of or containing any allegation made by Applicant that a third party was infringing Applicant's Mark.

28. All Documents consisting of or containing any allegation made by a third party that Applicant's Mark was infringing any intellectual property right of that third party.

29. All Documents concerning all individual(s) and/or organization(s) with whom or which Applicant has consulted in connection with Opposer's claims against Applicant and/or this Opposition.

30. All Documents concerning the financial or other involvement or participation of any individual(s) and/or organization(s) in connection with Applicant's defense of Opposer's claims against Applicant and/or this Opposition.

31. All Documents or things Applicant intends to offer into evidence or rely upon in the course of this Opposition proceeding.

32. All Documents concerning all opinions and/or other advice received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's Marks and/or the merits of Opposer's claims against Applicant and/or this Opposition.

33. Documents sufficient to identify all marks, including slogans, adopted and/or intended to be adopted by Applicant that incorporate the term "Innovation" and/or "Brewing," other than Applicant's Mark.

34. All Documents concerning all communications between Applicant and the Asheville Brewers Alliance and any other brewers' alliance or association.

Dated: October 2, 2014

DORSEY & WHITNEY LLP

By 

Sarah M. Robertson, Esq.
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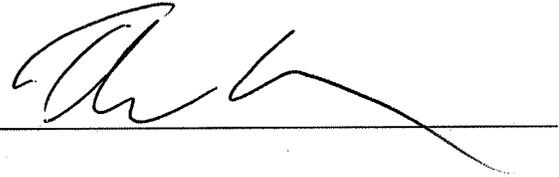
THE FIRM OF HUESCHEN AND SAGE
G. Patrick Sage
Joanna T. French
Seventh Floor, Kalamazoo Building
107 West Michigan Avenue
Kalamazoo, Michigan 49007
Tel.: (269) 382-0030

Attorneys for Opposer,
Bell's Brewery, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2014, a copy of the foregoing
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION was served on Applicant via
First Class Mail, postage prepaid to:

Ian D. Gates, Esq.
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.
1000 SW Broadway, Suite 1555
Portland, Oregon 97205



A handwritten signature in black ink, appearing to read 'Ian D. Gates', is written over a solid horizontal line.

EXHIBIT B

SARAH M. ROBERTSON
Partner
(212) 735-0788
Robertson.Sarah@dorsey.com

February 13, 2015

VIA ELECTRONIC MAIL

DISCOVERY COMMUNICATIONS
PURSUANT TO
37 C.F.R. §2.120(E)

Ian D. Gates
Dascenzo Intellectual Property Law, P.C.
1000 SW Broadway, Suite 1555
Portland, OR 97205

Re: *Bell's Brewery, Inc. v. Innovation Brewing – Opposition No. 91215896*

Dear Mr. Gates:

We write with reference to your client's Responses to Opposer's First Set of Interrogatories ("Interrogatories") and Opposer's First Set of Document Requests ("Document Requests") dated October 29, 2014. These Responses contain numerous, substantial deficiencies, as identified below, which deficiencies will need to be immediately rectified.

Failure to Provide Verification Statement

As an initial matter, we note that Applicant has fail to provide a verification statement attesting to the truth of its Responses to the Interrogatories. Please have your client verify these Responses and forward the verification to us without further delay.

Response to Request for Production No. 5

In response to Interrogatory No. 3, Applicant describes the searches conducted by Applicant to determine the availability of Applicant's Mark. However, in response to Document Request No. 5, Applicant takes an inconsistent position that no documents concerning such searches are in existence. Applicant must produce all responsive documents concerning searches performed by Applicant in connection with Applicant's Mark.

Responses to Request for Production Nos. 3, 6-8, 12, 13, 18, 27, and 28

As a general matter, in response to the above-identified Requests, Applicant simply responded "None." Noting that Applicant failed to make any objections to the merits of these particular Requests, it is inconceivable that no responsive documents were located after a diligent search. As you know, Applicant is obligated to "*thoroughly* search its records for *all* information properly sought in the request[s], and to provide such information to the requesting party." TMBP § 408.02 (emphasis added). At a minimum, there can be no doubt that Applicant

Ian D. Gates
February 13, 2015
Page 2

possesses correspondence (via email or otherwise) and business plans (formal or informal) responsive to Document Request Nos. 12 and 13, which call for documents relating to Applicant's future business plans. For example, any correspondence with state alcohol authorities or third-party distributors about the possibility of selling Applicant's Products would certainly be responsive. We therefore demand that Applicant thoroughly search its records, including emails, for all information called for in these Requests, none of which was improperly sought, and produce all responsive documents immediately.

If it is Applicant's position that it has no responsive documents in its possession, custody, or control after complying with its duty to search, Applicant must affirmatively state that to be true for each Request listed above. As a reminder, "a responding party which, due to an incomplete search of its records, provides an incomplete response to a discovery request, may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto." *Id.*

Responses to Request for Production Nos. 10, 11 and 15

Each of the above-identified requests calls for "all documents" relating to particular topics. However, it appears that Applicant has selectively produced responsive documents in violation of its obligations. Further, Applicant's Response to Request No. 15 is not responsive at all. Please produce any additional responsive documents or confirm to us in writing that all such documents have been produced.

Response to Request for Production No. 17

This Request called for "all documents relating or referring to Opposer, Opposer's Marks and/or Opposer's Goods" (emphasis added). Applicant objected to this request based on relevance but then goes on to refer to the existence of documents "associated with" the present opposition. There is clearly no basis to withhold any such documents on the basis of relevance, particularly those which predate the date on which this opposition was instituted, *i.e.*, April 14, 2014. Accordingly, please produce forthwith any responsive documents to this request which have been withheld and which were in existence prior to April 14, 2014.

Responses to Request for Production Nos. 29 and 34

Request 29 calls for "all documents concerning all individuals(s) and/or organization(s) with whom or which Applicant has consulted in connection with Opposer's claims against Applicant and/or this Opposition." Request 34 calls for "all communications between Applicant and the Asheville Brewers Alliance and any other brewers' alliance or association." Applicant objected to both requests based on relevance.

However, these Requests are unequivocally relevant, particularly since Applicant disclosed in Response to Interrogatory Nos. 36 and 38 that it consulted with at least three current or former members of the Asheville Brewer's Alliance, as well as unidentified "friends, family, and acquaintances" about this opposition. Applicant cannot contend that communications between Applicant and any non-lawyer third party relating to Opposer, its

Ian D. Gates
February 13, 2015
Page 3

marks, this Opposition, Opposer's claims, the ultimate issue of likelihood of confusion or any of the individual likelihood of confusion factors are irrelevant, particularly if Applicant's position in this opposition is shaped or directed by such communications. As such, communications made to non-lawyers are neither privileged nor irrelevant, and Applicant is obligated to conduct a thorough search and to produce forthwith copies of all communications between Applicant and the individuals and organizations identified.

* * * *

This letter represents our client's good faith effort to resolve the discovery issues raised above, in accordance with 37 C.F.R. § 2.120(e). Should the issues not be adequately resolved by **Wednesday, February 25, 2015**, our client will proceed with a Motion to Compel before the Board and seek appropriate sanctions.

Thank you for your anticipated cooperation.

Sincerely,



Sarah Robertson

cc: Joanna T. French, Esq., Hueschen & Sage PLLC

EXHIBIT C

February 20, 2015

VIA EMAIL – Robertson.Sarah@dorsey.com

Sarah M. Robertson
Dorsey & Whitney LLP
51 West 52nd Street
New York, New York 10019-6119

Re: Bell's Brewery, Inc. v. Innovation Brewing, LLC regarding INNOVATION BREWING
Mark - Opposition No. 91215896; DIPL File - IVB 401OPP

Dear Sarah:

Thank you for your letter of February 13, 2015, regarding purported deficiencies in my client's discovery responses. I address each of the purported deficiencies below.

Verification Statement

Attached with this letter is a courtesy copy of a verification statement being served today.

Request for Production No. 5

Your letter indicates that Applicant's document production in connection with Request No. 5 is inconsistent with Applicant's response to Interrogatory No. 3. I disagree. Applicant's response to Interrogatory No. 3 makes no reference to ordering a formal search from a search provider, such as that may provide a written report, makes no reference to printing out search results, and makes no reference to taking handwritten notes while conducting the described search. In fact, as Applicant's fully described trademark search was conducted solely online and returned no relevant trademarks of concern, there was no reason to print any documents or otherwise generate any documents that would be responsive to Request No. 5.

Request for Production Nos. 3, 6–8, 12, 13, 18, 27, and 28

Next, your letter indicates that it is inconceivable that no responsive documents were located after a diligent search. I disagree. Perhaps you do not understand the small business nature of my client. Applicant is closely held by two individuals who themselves operate the full extent of the business. It is in fact not uncommon for small business owners to not have formal or even informal marketing plans. That said, I will inquire again with my client and provide updated responses as appropriate.

Sarah M. Robertson
Dorsey & Whitney LLP
DIPL File – IVB 401OPP
February 20, 2015
Page 2

Request for Production Nos. 10, 11, and 15

Next, your letter suggests that my client has produced only selective documents responsive to these requests. Representative examples of all documents responsive to these requests have been produced.

Request for Production No. 17

Next, your letter disputes Applicant's response to Request No. 17. I maintain that there is no reason for me to provide to you copies of documents that were submitted to the USPTO in connection with the opposition, or to provide you with duplicate copies of correspondence between you and me, as well as between the Hueschen & Sage law firm and me, as all of such documents should be in your possession. If I am mistaken, I am happy to provide selective duplicates at your request, but I will not at this time waste unnecessary resources to provide such duplicates. Regarding other documents, I will inquire with my client and provide updated responses if appropriate.

Request for Production Nos. 29 and 34

Next, your letter suggests that correspondence may exist between my client and third parties, including the Ashville Brewer's Alliance, and suggests that Applicant's document production is inconsistent with Applicant's responses to Interrogatory Nos. 36 and 38. It seems that you fail to consider that such communications between Applicant and the identified third parties may have occurred in person without written correspondence. Having said that, I will inquire with my client and provide updated responses if appropriate.

Sincerely,



Ian D. Gates
Email: ian@dascenzioplw.com

IDG:nmg
Attachment

EXHIBIT D

SARAH M. ROBERTSON
Partner
(212) 735-0788
Robertson.Sarah@dorsey.com

March 3, 2015

VIA ELECTRONIC MAIL

DISCOVERY COMMUNICATIONS
PURSUANT TO
37 C.F.R. §2.120(E)

Ian D. Gates, Esq.
Dascenzo Intellectual Property Law, P.C.
1000 SW Broadway, Suite 1555
Portland, OR 97205

Re: *Bell's Brewery, Inc. v. Innovation Brewing – Opposition No. 91215896*
Applicant's Discovery Deficiencies

Dear Mr. Gates:

We write in response to your February 20th letter, in which you have sought to address your client's deficiencies in responding to our client's First Set of Interrogatories and First Set of Document Requests. We acknowledge receipt of your client's verification statement. However, our client views the remainder of your letter as an attempt to explain away Applicant's failure to initially conduct a diligent search for information and/or documents which were properly sought in Applicant's Requests. Opposer maintains that Applicant's responses to the discovery requests noted below are insufficient and must be rectified.

Responses to Request for Production Nos. 3, 6-8, 12, 13, 18, 27, and 28

While we appreciate that your client is closely held by two individuals, our client maintains its position that it is inconceivable that your client would not have any documents responsive to these Requests, including, but not limited to emails and text messages (in business and personal accounts) related to the marketing and distribution of your client's products. Your client cannot attempt to shirk its responsibility to diligently search for responsive documents, which applies to all parties regardless of size. *See Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, 1720 (TTAB 1987) ("It is unfair for a party to withhold documents requested or . . . fail to make a complete investigation to locate the information. Each party has an obligation to thoroughly check its records in order to provide the requested discovery..."). It bears repeating that if it is Applicant's position that it has no responsive documents in its possession, custody, or control after complying with its duty to search, Applicant must affirmatively state that to be true for each Request listed above.

Ian D. Gates, Esq.
March 3, 2015
Page 2

Responses to Request for Production Nos. 10, 11 and 15

In response to our assertion that your client has withheld documents responsive to these particular requests, you have indicated that your client has produced “[r]epresentative examples of all documents to these requests.” This is exactly our point. Each of the above-identified requests calls for “all documents” relating to particular topics. As a result, the production of representative samples is by definition insufficient. Having failed to interpose timely objections in response to these Requests, Applicant must now produce all responsive documents that are located after a diligent search, not just some responsive documents of its own choosing. We therefore renew our request that Applicant produce any additional responsive documents or confirm to us in writing that all documents responsive to these Requests have in fact been produced.

Response to Request for Production No. 17

We have already advised that your client does not have to provide documents dated after the date this Opposition was instituted, including documents filed with the USPTO and or exchanged between the parties. We will also not require duplicate copies of correspondence between the parties’ attorneys. However, this Request is not so limited. Specifically, this Request called for “all documents relating or referring to Opposer, Opposer’s Marks and/or Opposer’s Goods” regardless of the intended recipient, if any. By way of example only, this could include electronic communications such as emails and text messages between Applicant and any third parties relating or referring to Opposer’s Marks and between Ms. Dexter and Mr. Owen relating to Opposer. At a minimum, Applicant should be performing keyword searches of all its electronic files and communications for Opposer’s name and Opposer’s Marks. Please confirm that your client will proceed accordingly and in a timely manner to produce the responsive documents.

Responses to Request for Production Nos. 29 and 34

Based on your letter, it appears that Applicant is willing to search for and produce documents responsive to Request Nos. 29 and 34, and that it will not be relying on its previous relevancy objection to withhold any documents. If our understanding is incorrect, please advise immediately. Otherwise, we look forward to receiving all responsive documents forthwith.

* * * *

This letter represents our client’s good faith effort to resolve the discovery issues raised above, in accordance with 37 C.F.R. § 2.120(e). Should the issues not be finally resolved by March 9, 2015, our client will proceed with a Motion to Compel before the Board and seek appropriate sanctions.

Ian D. Gates, Esq.
March 3, 2015
Page 3

Thank you for your anticipated cooperation.

Sincerely,



Sarah Robertson

cc: Joanna T. French, Esq., Hueschen & Sage PLLC

EXHIBIT E

Kearney, Thomas

From: Robertson, Sarah
Sent: Tuesday, March 03, 2015 5:04 PM
To: Ian Gates
Cc: NY IP Records
Subject: Discovery and Trial dates

Without Prejudice

Ian – as you know, our client has a number of discovery objections pending, in response to which you have indicated that you will be directing your client to conduct a further search of documents.

You have also indicated that your client believes our client’s discovery responses are somehow deficient, but we have yet to receive any information concerning your client’s concerns.

We have also noticed your client’s deposition, which deposition cannot be conducted without all relevant documents in hand.

In light of the open and live discovery issues between the parties, we request your consent to a 30-day extension of the March 20th discovery deadline in this proceeding and all other trial dates.

Please signal your consent by return email.

Regards,

Sarah M. Robertson

Partner

.....
DORSEY & WHITNEY LLP
51 West 52nd Street
New York, NY 10019-6119
P: 212.735.0788 **F:** 212.953.7201 **C:** 917.346.3690
.....

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EXHIBIT F

Kearney, Thomas

From: Ian Gates <ian@dascenzioplw.com>
Sent: Wednesday, March 04, 2015 1:24 PM
To: Robertson, Sarah
Cc: NY IP Records
Subject: RE: Discovery and Trial dates

Dear Sarah:

Thank you for your email, below, and for your voicemail this morning. Sorry I missed your call. We will be serving an amended document production today, and I hope to have a reply letter to you today as well. Innovation Brewing does not consent to a 30-day extension at this time.

Sincerely,
Ian

~~~~~  
Ian D. Gates  
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.  
1000 SW Broadway, Suite 1555  
Portland, Oregon 97205  
[www.dascenzioplw.com](http://www.dascenzioplw.com)  
[ian@dascenzioplw.com](mailto:ian@dascenzioplw.com)  
T: 503.224.7529  
F: 503.224.7329  
~~~~~

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From: Robertson.Sarah@dorsey.com [<mailto:Robertson.Sarah@dorsey.com>]
Sent: Tuesday, March 03, 2015 2:04 PM
To: Ian Gates
Cc: nyip.records@dorsey.com
Subject: Discovery and Trial dates

Without Prejudice

Ian – as you know, our client has a number of discovery objections pending, in response to which you have indicated that you will be directing your client to conduct a further search of documents.

You have also indicated that your client believes our client's discovery responses are somehow deficient, but we have yet to receive any information concerning your client's concerns.

We have also noticed your client's deposition, which deposition cannot be conducted without all relevant documents in hand.

In light of the open and live discovery issues between the parties, we request your consent to a 30-day extension of the March 20th discovery deadline in this proceeding and all other trial dates.

Please signal your consent by return email.

Regards,

Sarah M. Robertson

Partner

.....
DORSEY & WHITNEY LLP

51 West 52nd Street

New York, NY 10019-6119

P: 212.735.0788 **F:** 212.953.7201 **C:** 917.346.3690

.....
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EXHIBIT G

Kearney, Thomas

From: Robertson, Sarah
Sent: Monday, March 09, 2015 10:35 AM
To: Kearney, Thomas
Subject: FW: Bell's Brewery, Inc. v. Innovation Brewing, LLC regarding INNOVATION BREWING Mark - Opposition No. 91215896; DIPL File - IVB 401OPP
Attachments: Robertson second letter re discovery 3-4-15; DIPL File - IVB 401OPP.pdf; Applicant's First Amended Responses to Opposer's First Set of Requests for Production 3-4-15; DIPL File - IVB 401OPP.pdf

From: Ian Gates [<mailto:ian@dascenziplaw.com>]
Sent: Wednesday, March 04, 2015 6:20 PM
To: Robertson, Sarah
Subject: Bell's Brewery, Inc. v. Innovation Brewing, LLC regarding INNOVATION BREWING Mark - Opposition No. 91215896; DIPL File - IVB 401OPP

Dear Sarah:

Please consider the attached, and please confirm receipt. Thank you.

Sincerely,
Ian

~~~~~  
Ian D. Gates  
DASCENZO INTELLECTUAL PROPERTY LAW, P.C.  
1000 SW Broadway, Suite 1555  
Portland, Oregon 97205  
[www.dascenziplaw.com](http://www.dascenziplaw.com)  
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March 4, 2015

VIA EMAIL – Robertson.Sarah@dorsey.com

Sarah M. Robertson
Dorsey & Whitney LLP
51 West 52nd Street
New York, New York 10019-6119

Re: Bell's Brewery, Inc. v. Innovation Brewing, LLC regarding INNOVATION BREWING
Mark - Opposition No. 91215896; DIPL File - IVB 401OPP

Dear Sarah:

Thank you for your letter and subsequent email of March 3, 2015, regarding purported continued deficiencies in my client's discovery responses and with a request for an extension of the March 20 end of discovery and all other trial dates. As an initial matter, my client does not agree to the requested extension. Below, I address the specific items of your letter and email, and I attach herewith a courtesy copy of Applicant's First Amended Responses to Opposer's First Set of Requests for Production being served today.

Requests for Production Nos. 3, 6–8, 12, 13, 18, 27, and 28

Please reference Applicant's First Amended Responses to Opposer's First Set of Requests for Production being served today, indicating production of new documents responsive to Request Nos. 8, 12, and 13. Applicant maintains that any continued indication of "None" meets its obligations to state that "no responsive documents exist" under TBMP § 408.02.

Requests for Production Nos. 10, 11, and 15

Please reference Applicant's First Amended Responses to Opposer's First Set of Requests for Production being served today, indicating production of new documents responsive to Request No. 15. In response to your position that "the production of representative samples is by definition insufficient," I draw your attention to our original agreement to produce electronic PDF copies of documents responsive to requests. Any PDF produced is by its very nature a representative example of the original document. Moreover, if my client happens to have two or more copies of a document in its possession, there is no reason for it to provide to you both original hard copies of that single document, and in fact, it seems that you and your client have taken the same position with respect to your client's responsive production. By way of example in connection with Request No. 11, are you suggesting that my client deliver to you all copies of the business cards in their possession that include their mark? Are you suggesting that my client provide to you all originals in their possession of the advertisement rack cards that they have

paid to have printed for distribution to area restaurants and hotels? If so, it is clear that your and your client's demands amount to nothing more than efforts to have my small client spend unnecessary legal fees on this dispute. I take this opportunity to remind you that "[t]he scope of discovery in Board proceedings, though, is generally narrower than in court proceedings." TBMP § 402.01. In particular, "in those cases where complete compliance with a particular request for discovery would be unduly burdensome, the Board may permit the responding party to comply by providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs." *Id.* at § 402.02. Further to Applicant's efforts, I note that my client went above and beyond its duties, for example, by taking photographs (i.e., creating documents solely for communication to Opposer) of representative uses of Applicant's mark, such as of Applicant's various signage shown in produced Exhibit K.

Request for Production No. 17

Please reference Applicant's First Amended Responses to Opposer's First Set of Requests for Production being served today, indicating production of new documents responsive to Request No. 17.

Request for Production Nos. 29 and 34

Please reference Applicant's First Amended Responses to Opposer's First Set of Requests for Production being served today, indicating production of new documents responsive to Request Nos. 29 and 34.

Deficiencies in Opposer's Responses

Thank you for the kind reminder that I previously raised concerns regarding deficiencies in Opposer's production. I briefly note the following:

- a) Responsive to Interrogatory Nos. 5 and 6 requesting the identification of "all licensees" of Opposer's marks, Opposer merely replied with "all of Opposer's authorized distributors." This response does not meet Opposer's obligations pursuant to this request in view of Applicant's instructions set forth in its discovery requests. Please supplement these responses.
- b) Responsive to Interrogatory No. 10, Opposer "states that it does not have actual knowledge of any current use by third parties of the term 'Innovation' [and variants thereon] for beer [or beer-related goods or services]." Responsive to Request for Admission No. 2, Opposer admits that Opposer and Applicant are not the exclusive users of the word "innovation" or variants thereon for beer or beer-related goods or services. Please supplement these responses to address this inconsistency. In particular, but

without limitation, if Opposer's admission is correct, then Opposer's response to Interrogatory No. 10 must be supplemented to identify such third party use of "innovation" and variants thereon in connection with the sale of beer or beer-related goods or services. If, instead, Opposer is playing games in its response to Interrogatory No. 10 by clarifying its answers solely with respect to "current" use, taking the position that it in fact does not have actual knowledge of what third parties are doing at the exact moment in time that the response was prepared, I note that the Interrogatory does not limit its inquiry to such narrow "current" timing. Accordingly, if this is the game being played, Opposer must supplement its response to be appropriately responsive to the Interrogatory.

- c) Similarly, responsive to Interrogatory No. 8, Opposer "states that it does not have actual knowledge of any current use by third parties of the term 'Inspired' [and variants thereon] for beer [or beer-related goods or services]." Responsive to Request for Admission No. 8, Opposer admits that Opposer is not the exclusive user of the word "inspired" or variants thereon for beer or beer-related goods or services. Please supplement these responses to address this inconsistency. In particular, but without limitation, if Opposer's admission is correct, then Opposer's response to Interrogatory No. 8 must be supplemented to identify such third party use of "inspired" and variants thereon in connection with the sale of beer or beer-related goods or services. If, instead, Opposer is playing games in its response to Interrogatory No. 8 by clarifying its answers solely with respect to "current" use, taking the position that it in fact does not have actual knowledge of what third parties are doing at the exact moment in time that the response was prepared, I note that the Interrogatory does not limit its inquiry to such narrow "current" timing. Accordingly, if this is the game being played, Opposer must supplement its response to be appropriately responsive to the Interrogatory.
- d) Responsive to Request for Admission No. 4, Opposer denies its knowledge of at least three U.S. trademark or service mark registrations owned by third parties for marks that include the word "innovation" or variants thereon, registered for beer or beer-related goods or services. Similarly, responsive to Request for Admission No. 10, Opposer denies its knowledge of at least ten U.S. trademark or service mark registrations owned by third parties for marks that include the word "inspired" or variants thereon, registered for beer or beer-related goods or services. However, Applicant has brought Opposer's attention to several such registrations both in correspondence with counsel and in response to Opposer's Interrogatory No. 30. Please explain this inconsistency.
- e) Responsive to Request for Admission No. 5, Opposer admits that it has not objected to a subset of third party use of "innovation" or variants thereon for beer or beer-related goods or services, which is inconsistent with its response to Interrogatory No. 10. Please supplement Opposer's responses to address this inconsistency.

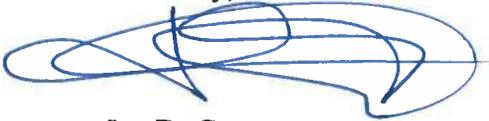
- f) Responsive to Request for Admission Nos. 11 and 12, Opposer denies that it has not objected to third party use of “inspired” or variants thereon for beer or beer-related goods or services. However, responsive to Interrogatory Nos. 8 and 9, Opposer fails to provide any responsive information as to its knowledge and objections with respect to third party use. Please supplement Opposer’s responses to address these issues.
- g) Responsive to Request for Admission No. 33, Opposer denies that it uses the BOTTLING INNOVATION SINCE 1985 mark solely in connection with advertising material. However, the documents produced responsive to Applicant’s document requests do not contain documents evidencing use of the BOTTLING INNOVATION SINCE 1985 mark other than in connection with advertising material. Moreover, Opposer’s response to Interrogatory No. 2 fails to address this matter and therefore is insufficient. Please supplement Opposer’s responses to address these issues.
- h) Responsive to Request for Production Nos. 11 and 12 regarding searching conducted by Opposer with respect to the INSPIRED BREWING mark and the BOTTLING INNOVATION SINCE 1985 mark, Opposer summarily objects with general objections 1, 2, 3, and 5 without producing any responsive documents. Applicant finds it doubtful that Opposer, the sophisticated trademark client that it is, did not perform searches at some point leading up to the adoption of these marks or the institution of the present Opposition. Moreover, search results are not subject to an attorney-client privilege, as they are not limited to communications between Bell’s and its counsel. Moreover, Applicant is perplexed by the indication that these requests are overly burdensome, vague, and do not lead to relevant evidence. Opposer’s knowledge of third party marks that include “inspired” or “innovation” or variants thereon are clearly relevant to the breadth of trademark protection afforded Opposer’s marks. Please supplement Opposer’s responses to address these issues.
- i) Responsive to Request for Production Nos. 16, 17, and 18 regarding agreements related to Opposer’s marks, Opposer produced a “template Distributor Agreement that [purportedly] forms the basis for Opposer’s agreements with all of its distributors.” This document production is insufficient, as it is merely an unsigned template that could have been drafted following these discovery requests. It also fails to identify the identity of the parties with which Bell’s has entered into agreements. Moreover, Applicant finds it hard to believe that Bell’s distributors did not require alterations to a template agreement before execution. Additionally, Applicant needs to be able to potentially depose such parties upon being identified, as their agreements with Bell’s are highly relevant to Bell’s monitoring and control of its marks. Applicant therefore requests that Opposer’s responses be supplemented to address these issues.

Thank you for your prompt attention to the above issues. We expect your substantive and full reply by no later than next Wednesday, March 11, 2015, after which time Applicant will be

Sarah M. Robertson
Dorsey & Whitney LLP
DIPL File – IVB 401OPP
March 4, 2015
Page 5

forced to consider a Motion to Compel or otherwise permit Bell's to have to rely solely on the responses provided to date to support its positions during trial. This letter represents Applicant's good faith effort to resolve the discovery issues raised here, in accordance with 37 CFR 2.120(e).

Sincerely,

A handwritten signature in blue ink, appearing to read "Ian D. Gates", with several loops and flourishes.

Ian D. Gates
Email: ian@dascenzoiplaw.com

IDG:nmg
Attachment

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

BELL'S BREWERY, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91215896
)	
INNOVATION BREWING,)	
Applicant.)	
<hr/>		

Applicant's First Amended Responses to Opposer's First Set of Requests for Production

Applicant, Innovation Brewing, for its answers and objections to Opposer Bell's Brewery, Inc.'s First Set of Requests for Production, responds as set forth below.

GENERAL OBJECTIONS

1. Applicant responds to each Request for Production subject to the general objections set forth herein. These limitations and objections form a part of the answer to each Request for Production. These limitations and objections may be specifically referred to in an answer to one or more individual Requests for Production for the purpose of clarity. The failure to specifically incorporate a general objection, however, is not a waiver of such objection.

2. Applicant objects to the Requests for Production to the extent that they purport to impose obligations or actions beyond those required by the Rules of Practice in Trademark Cases (i.e., 37 C.F.R. Part 2), the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), and the Federal Rules of Civil Procedure. Applicant responds to the Requests for Production only to the extent required thereby and subject to the objection that the Requests for Production

purport to impose any obligations that differ from, exceed, or conflict with those set forth in the Rules of Practice in Trademark Cases, the TBMP, and the Federal Rules of Civil Procedure.

3. Applicant objects to the Requests for Production to the extent they call for information protected by the attorney-client privilege, the work product doctrine, or any other applicable claim, law, or rule of privilege or immunity. Although Applicant's responses exclude any and all privileged information, Applicant will exchange privilege and redaction logs with Opposer, if required by the Federal Rules of Civil Procedure, in due course.

4. In making these objections and providing these responses, Applicant does not waive or intend to waive (a) any objection as to competency, relevancy, materiality, or admissibility of any information that may be produced or disclosed in response to the Requests for Production; (b) any right to object on any ground to the use of any information that may be produced or disclosed in response to the Requests for Production, or the subject matter thereof, at any subsequent proceeding, including during the testimony periods for this or any other action; and (c) any right to object on any ground to any Requests for Production or any other discovery request.

5. Applicant reserves the right to amend or supplement its responses as additional information is learned during further investigation and discovery.

Subject to and without waiving the foregoing, Applicant responds to the Requests for Production as follows and concurrently submits herewith a CD-ROM with the presently produced documents identified by Exhibit Letters, as noted in Applicant's responses below:

Request for Production No. 1:

All Documents identified or described in response to any of Opposer's First Set of Interrogatories.

Response No. 1:

Applicant objects to this Request as seeking information that is duplicative of the Requests that follow and submits that Applicant's production of documents that are responsive to the following Requests also is fully responsive to this Request.

Request for Production No. 2:

Documents sufficient to identify Applicant's business entity type.

Response No. 2:

Applicant previously submitted as Exhibits A and B true and correct copies of Applicant's Articles of Organization and Articles of Amendment, respectively.

Request for Production No. 3:

All Documents identifying the origins, motives and/or reasons for Applicant's selection and adoption of Applicant's Mark.

Response No. 3:

None.

Request for Production No. 4:

Documents sufficient to identify all officers, directors, principals and investors of Applicant.

Response No. 4:

Applicant previously submitted as Exhibit C a true and correct copy of Applicant's Operating Agreement.

Request for Production No. 5:

All Documents consisting of all trademark searches, including investigations, conducted to determine the availability of Applicant's Mark or any component thereof for use and/or registration for any goods or services, and any other documents relating to such availability.

Response No. 5:

None.

Request for Production No. 6:

All Documents concerning all opinions and/or other advice received by Applicant concerning the availability of Applicant's Mark or any component thereof for use and/or registration for any goods or services.

Response No. 6:

None.

Request for Production No. 7:

All Documents sufficient to identify all persons who assisted with the creation and selection of Applicant's Mark.

Response No. 7:

None.

Request for Production No. 8:

Documents sufficient to identify the date and circumstances under which Applicant first became aware of Opposer's Marks.

Response No. 8:

Applicant submits herewith Exhibit R.

Request for Production No. 9:

Documents sufficient to identify all alternate marks considered in the past or currently being considered by Applicant for use with the Applicant's Identified Goods and any other product or service that Applicant is marketing, manufacturing, distributing or selling, or intends to market, manufacture, distribute or sell, under Applicant's Mark (each, a "Product", collectively, the "Products").

Response No. 9:

Applicant objects to this Request as irrelevant as to the sole issue of likelihood of confusion and as vague and overly broad; however, in an effort to avoid an unnecessary dispute regarding this Request, Applicant previously submitted the following documents:

Exhibit D – screen shot of Applicant's website identifying various beer names.

Exhibit E – trademark application identifying originally proposed THE TRIBUTARY BREWING COMPANY mark.

Exhibit F – trademark application identifying Applicant's HOPPY CAMPER mark.

Exhibit G – trademark application identifying Applicant's FIRST FLIGHT mark.

Exhibit H – trademark application identifying Applicant’s AFTERNOON DELIGHT mark.

Request for Production No. 10:

All Documents that support Applicant's claim that it had a *bona fide* intent to use Applicant's Mark, prior to the filing date of the Opposed Application, for Applicant's Identified Goods.

Response No. 10:

Applicant previously submitted Exhibits A and B, noted above responsive to Request No. 2, and draws Opposer’s attention to the May 12, 2013 signature on page 2 of Exhibit B.

Request for Production No. 11:

All Documents developed and/or used by Applicant to market, advertise and/or promote the Products, including, without limitation, any television commercials, radio advertisements, print advertisements, social media content and/or Internet websites.

Response No. 11:

Applicant previously submitted the following Exhibits:

Exhibit I – an image depicting an advertisement rack card.

Exhibit J – a business card proof image.

Exhibit K – various images showing Applicant’s signage.

Applicant also directs Opposer to the following URLs:

www.youtube.com/watch?v=S3hH01aG4BM

www.youtube.com/watch?v=rZp3VsTwdHk&feature=youtu.be

smokymountainnews.com/aae/item/12546-this-must-be-the-place

www.innovation-brewing.com

www.facebook.com/innovationbrewing

www.twitter.com/InnovationBrew

Request for Production No. 12:

Documents sufficient to demonstrate Applicant's future plans for marketing, advertising and/or promoting the Products.

Response No. 12:

Applicant submits herewith Exhibits S and T designated as **TRADE SECRET/COMMERCIALY SENSITIVE**.

Request for Production No. 13:

Documents sufficient to demonstrate Applicant's future business or marketing plans to sell the Products, including, without limitation, documents demonstrating the channels of trade in which such Products will be sold and the geographic areas inside and/or outside of the United States in which such Products will be sold, and/or any plans for expansion.

Response No. 13:

Applicant submits herewith Exhibits S and T designated as **TRADE SECRET/COMMERCIALY SENSITIVE**.

Request for Production No. 14:

Documents sufficient to demonstrate Applicant's current and past activities in selling the Products, including, without limitation, documents demonstrating the channels of trade in which such Products are (or were) sold and the geographic areas inside and/or outside of the United States in which such goods are (or were) sold, and/or any current and past business plans for the Products.

Response No. 14:

Applicant previously submitted as Exhibit L, representative invoices for wholesale sales. Applicant also directs Opposer's attention to Exhibits S and T, designated as **TRADE SECRET/COMMERCIALY SENSITIVE**.

Request for Production No. 15:

All Documents relating or referring to the actual or intended class(es) of purchasers for the Products.

Response No. 15:

Applicant submits herewith Exhibits S and T designated as **TRADE SECRET/COMMERCIALY SENSITIVE**. Applicant directs Opposer to Applicant's website at www.innovation-brewing.com, Applicant's Facebook page at www.facebook.com/innovationbrewing, and Applicant's Twitter feed at twitter.com/InnovationBrew.

Request for Production No. 16:

Representative samples of all Documents sold with, or used in carrying out sales of, the Products.

Response No. 16:

Applicant previously submitted Exhibit K, noted above responsive to Request No. 11.

Request for Production No. 17:

All Documents relating or referring to Opposer, Opposer's Marks and/or Opposer's Goods.

Response No. 17:

Applicant objects to this Request as irrelevant as to the sole issue of likelihood of confusion; however, in an effort to avoid an unnecessary dispute regarding this Request, Applicant responds as follows. Applicant notes that Opposer has access to the various documents associated with the present opposition, and therefore does not produce duplicates here. Applicant claims privilege with respect to correspondence with Applicant's counsel. Applicant also directs Opposer's attention to Exhibits R, U, V, W, and X, submitted herewith.

Request for Production No. 18:

Documents relating to the strength as a trademark, or public recognition, of Applicant's Mark, including, without limitation, surveys, questionnaires, reports, or market studies.

Response No. 18:

None.

Request for Production No. 19:

Documents sufficient to identify the volume of sales for each Product, if any, by dollar and unit, since inception.

Response No. 19:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion; however, in an effort to avoid an unnecessary dispute regarding this Request previously submitted as Exhibit M sales reports designated as **TRADE SECRET/COMMERCIALY SENSITIVE.**

Request for Production No. 20:

Documents sufficient to identify the retail and wholesale prices at which each Product is currently sold and/or intended to be sold by Applicant.

Response No. 20:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion; however, in an effort to avoid an unnecessary dispute regarding this Request previously submitted as Exhibit M sales reports designated as **TRADE SECRET/COMMERCIALY SENSITIVE.**

Request for Production No. 21:

Documents sufficient to identify the date, if any, Applicant first advertised or promoted the Products for sale in commerce.

Response No. 21:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion. Applicant also objects to this Request as vague and ambiguous to the extent that the term “in commerce” typically is used in connection with the sale of a product or service and not merely the advertising and promotion of a product or service. However, in an effort to avoid an unnecessary dispute regarding this Request, Applicant previously submitted the following Exhibits:

Exhibit N – screenshot showing the registration date of Applicant’s original tributarybrewingcompany.com domain.

Exhibit O – screenshot showing the registration date of Applicant’s innovationbrewing.com domain.

Applicant also directs Opposer to Applicant’s Facebook page at www.facebook.com/innovationbrewing.

Request for Production No. 22:

Documents sufficient to identify the annual dollar amounts, if any, expended by Applicant, or proposed to be expended by Applicant, in advertising and promoting the Products, since inception.

Response No. 22:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion; however, in an effort to avoid an unnecessary dispute regarding this Request previously submitted as Exhibit P, an Advertiser Agreement from Blueridge Media Solutions Group designated as **TRADE SECRET/COMMERCIALY SENSITIVE**. Applicant also

submits herewith Exhibits S and T, designated as **TRADE SECRET/COMMERCIALY SENSITIVE**.

Request for Production No. 23:

Documents sufficient to identify all persons who have been, are, or will be principally responsible for the advertising, promotion and sale of the Products.

Response No. 23:

Applicant previously submitted Exhibit C, noted above responsive to Request No. 4.

Request for Production No. 24:

All forms of advertisement and other promotional materials which demonstrate Applicant's use or intended use of Applicant's Mark inside and/or outside of the United States for the Products.

Response No. 24:

Applicant previously submitted Exhibits I, J, and K, noted above responsive to Request No. 11. Applicant also directs Opposer to Applicant's website at www.innovationbrewing.com, Applicant's Facebook page at www.facebook.com/innovationbrewing, and Applicant's Twitter feed at twitter.com/InnovationBrew.

Request for Production No. 25:

Media reports relating to, referring to, or otherwise mentioning Applicant and/or the Products.

Response No. 25:

Applicant directs Opposer to the following URLs:

www.youtube.com/watch?v=S3hH01aG4BM

www.youtube.com/watch?v=rZp3VsTwdHk&feature=youtu.be

smokymountainnews.com/aae/item/12546-this-must-be-the-place

Request for Production No. 26:

All agreements of any kind, including, without limitation, trademark licenses, coexistence agreements, distributor agreements and investor agreements, relating to Applicant's Mark and/or Products.

Response No. 26:

Applicant previously submitted Exhibit P, noted above responsive to Request No. 22 and designated as **TRADE SECRET/COMMERCIALY SENSITIVE**.

Request for Production No. 27:

All Documents consisting of or containing any allegation made by Applicant that a third party was infringing Applicant's Mark.

Response No. 27:

None.

Request for Production No. 28:

All Documents consisting of or containing any allegation made by a third party that Applicant's Mark was infringing any intellectual property right of that third party.

Response No. 28:

None.

Request for Production No. 29:

All Documents concerning all individual(s) and/or organization(s) with whom or which Applicant has consulted in connection with Opposer's claims against Applicant and/or this Opposition.

Response No. 29:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion and Applicant claims privilege with respect to communications with Applicant's counsel; however, in an effort to avoid an unnecessary dispute regarding this Request, Applicant submits herewith Exhibits U, V, W, X, and Y.

Request for Production No. 30:

All Documents concerning the financial or other involvement or participation of any individual(s) and/or organization(s) in connection with Applicant's defense of Opposer's claims against Applicant and/or this Opposition.

Response No. 30:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion and Applicant claims privilege with respect to communications with Applicant's counsel.

Request for Production No. 31:

All Documents or things Applicant intends to offer into evidence or rely upon in the course of this Opposition proceeding.

Response No. 31:

Applicant directs Opposer to the table identified in response to Interrogatory No. 30, and submits that the online records of the identified trademark registrations are readily available to Opposer.

Applicant previously submitted as Exhibit Q, screen shots of websites evidencing third party use of relevant marks, as well as photographs of third party use of relevant marks.

Request for Production No. 32:

All Documents concerning all opinions and/or other advice received by Applicant concerning the likelihood of confusion between Applicant's Mark and Opposer's Marks and/or the merits of Opposer's claims against Applicant and/or this Opposition.

Response No. 32:

Applicant objects to this Request as overly burdensome and irrelevant to the sole issue of likelihood of confusion. Applicant claims privilege with respect to communications with Applicant's counsel.

Request for Production No. 33:

Documents sufficient to identify all marks, including slogans, adopted and/or intended to be adopted by Applicant that incorporate the term "Innovation" and/or "Brewing," other than Applicant's Mark.

Response No. 33:

Applicant previously submitted Exhibit J, noted above responsive to Request No. 11.

Request for Production No. 34:

All Documents concerning all communications between Applicant and the Asheville Brewers Alliance and any other brewers' alliance or association.

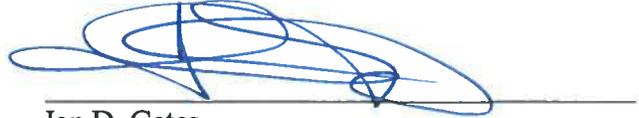
Response No. 34:

Applicant objects to this Request as irrelevant to the sole issue of likelihood of confusion; however, in an effort to avoid an unnecessary dispute regarding this Request, Applicant submits herewith Exhibits U, V, W, X, and Y.

DATED this 4th day of March, 2015.

Respectfully submitted,

DASCENZO INTELLECTUAL
PROPERTY LAW, P.C.

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

Ian D. Gates
Of Attorneys for Opposer
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's First Amended Responses to Opposer's First Set of Requests for Production together with a CD-ROM with the presently produced documents is being served on Opposer by First Class Mail on March 4, 2015 to:

Sarah M. Robertson
Dorsey & Whitney LLP
51 West 52nd Street
New York, NY 10019-6119



Ian D. Gates
Of Attorneys for Applicant