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

Proceeding	91217273
Party	Defendant Three Notch'd Brewing Company, LLC
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Attachments	2015-06-08 Three Notch'd Opposition to Monster Motion to Compel (Redacted).pdf(2431709 bytes)

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

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MONSTER ENERGY COMPANY,)	
)	
Opposer,)	
)	Opposition No. 91217273
v.)	
)	Serial No. 85/920,112
THREE NOTCH'D BREWING COMPANY, LLC,)	
)	
Applicant.)	
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APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO COMPEL

Applicant Three Notch’d Brewing Company, LLC (“Applicant”) hereby submits this opposition to Opposer Monster Energy Company’s (“Opposer”) Motion to Compel filed May 18, 2015.

INTRODUCTION

On May 1, 2013, Applicant filed Application Serial No. 85/920,112 for the mark shown below, in connection with “Beer” in International Class 32 (“Applicant’s Mark”):



Opposer, a large energy drink company that recorded \$2.5 billion in net sales in 2014, and does not sell beer or any other alcoholic beverages,¹ filed a Notice of Opposition on July 9, 2014, opposing registration of Applicant’s Mark, and commencing the present proceeding.

¹ See Exhibit A, Feb., 26, 2015 Monster press release, announcing net sales for 2014 fiscal year; Exhibit B, Opposer’s Responses to Applicant’s Requests for Admission Nos. 1-4 (admitting that Opposer does not sell beer or any other alcoholic beverages).

On February 10, 2015, less than five weeks prior to the close of discovery,² Opposer served 58 requests for production of documents, 51 requests for admission, and 29 interrogatories on Applicant, a small independent brewer, the majority of which requests were and are irrelevant to the question of whether Applicant's Mark should be permitted to register. Notwithstanding, Applicant timely and in good faith responded to the requests, and produced documents to Opposer on March 17, 2015. Applicant's document production included many documents reflecting Applicant's use of Applicant's Mark on product labels, product packaging, and advertisements and marketing materials; documents reflecting the use of Applicant's Mark with the goods recited in its application, namely, beer; documents reflecting the inspiration for Applicant's Mark, namely, Jack Jouett's colonial-era midnight ride to Charlottesville, Virginia along historic Three Notch'd Road; documents listing the bars, restaurants, and stores in which Applicant's goods are sold; and documents discussing the opening of Applicant's brewery in August, 2013.

Six weeks later, on May 1, 2015, Opposer sent a letter to Applicant, complaining of Applicant's responses and production, and demanding information and documents that have no bearing on whether Applicant's Mark should be permitted to register, including information and documents regarding marks *other than* Applicant's Mark, isolated portions of Applicant's Mark rather than Applicant's Mark as a whole, and goods and services sold by Applicant other than the goods recited in the application for Applicant's Mark. Despite the overbreadth of Opposer's requests, Applicant nonetheless attempted to satisfy Opposer and avoid unnecessary motion practice by supplementing its responses, producing additional documents on May 14, 2015, including sales invoices, press releases, and additional documents pertaining to the origin and

² The close of discovery was subsequently suspended for 60 days by the Board as a result of Opposer's notification on February 13, 2015 that it had retained an expert.

development of Applicant's Mark, and agreeing to search for and supplement its production with documents relevant to this proceeding.

Notwithstanding Applicant's efforts to resolve the present dispute, Opposer files the instant Motion to burden Applicant and to attempt to compel additional information and documents not material to the question of whether Applicant's Mark should be permitted to register. Applicant therefore respectfully requests that the Motion be denied in its entirety.

INTRODUCTION

As the Trademark Trial and Appeal Board's Manual of Procedure (TBMP) instructs, "[e]ach party has a duty . . . to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the proceeding." TBMP § 402.01. It is well settled that "[t]he scope of discovery in Board proceedings . . . is generally narrower than in court proceedings." TBMP § 402.01; *see also* Anne Gilson Lalonde, GILSON ON TRADEMARKS § 9.01[2][b] (2014) ("much of the evidence relevant to infringement actions . . . is of little or no import to TTAB practice"). Here, Opposer seeks to compel information and documents that are not relevant to the question of registrability of Applicant's Mark. Applicant addresses the specific requests in further detail below.

1. Request for Production Nos. 1 and 4

Request for Production (RFP) No. 1 seeks "[a]ll documents and things referring or relating to the origin, conception, derivation, selection and/or adoption of Applicant's Mark, including, but not limited to, how Applicant created, conceived, selected, cleared and acquired Applicant's Mark, whether in the United States or abroad." Along the same lines, RFP No. 4 seeks "[a]ll documents and things referring or relating to the reasons Applicant selected Applicant's Mark for the goods sold or offered for sale in connection with Applicant's Mark."

Opposer suggests that, with respect to RFP Nos. 1 and 4, Applicant's production is incomplete insofar as it does not include all "communications between or among" Applicant and employees of Okay Yellow, a third party that designed Applicant's Mark. The Board has stressed that due to "the narrowness of the issues" in Board proceedings, the "burden and expense of e-discovery will weigh heavily against requiring production in most cases." *Frito-Lay N. Am., Inc.*, 100 U.S.P.Q.2d 1904 (TTAB Nov. 16, 2011). Applicant has already produced documents in response to RFP Nos. 1 and 4, including documents discussing the inspiration for Applicant's Mark, namely, Jack Jouett's colonial-era midnight ride to Charlottesville, Virginia along historic Three Notch'd Road, and photographs of notches in trees of the kind that Jack Jouett made along his ride. *See, e.g., Exhibit C*, examples of documents produced in response to RFP Nos. 1 and 4. Applicant has also responded fully to Opposer's Interrogatory No. 3 on the *same exact topic*. *See* Exhibit 4 to Declaration of Jason A. Champion in Support of Opposer's Motion to Compel, at 4. Opposer makes no effort to explain what information it believes it is still lacking with respect to these requests, nor does Opposer make any effort to explain the believed relevance of documents "referring or relating to . . . how Applicant created, conceived, selected, cleared and acquired Applicant's Mark . . . **abroad**." *See* Mot. at 14-15 (emphasis added).

Finally, Applicant understands from Opposer's Motion that Opposer has obtained information and documents from Okay Yellow in response to a subpoena, including communications between Applicant and Okay Yellow relating to the origin, conception, derivation, selection and/or adoption of Applicant's Mark, and accordingly Opposer is already in possession of the same information and documents it seeks to compel. Applicant submits that the Motion should be denied with respect to RFP Nos. 1 and 4.

2. Request for Production No. 5

RFP No. 5 seeks “[a]ll documents and things **sufficient to show** the person or persons who assisted with or otherwise developed and/or created Applicant’s Mark” (emphasis added). Opposer complains that it has not received all documents responsive to this request.

Applicant has responded fully to Interrogatory No. 1, which seeks the *very same information*, namely, the identification of “each person involved with the design, development, selection or approval of Applicant’s Mark” as well as the “role” of each such person “in such design, development, selection or approval.” RFP No. 5 is therefore cumulative of the information already sought and obtained in Interrogatory No. 1, especially since RFP No. 5 only seeks documents “sufficient to show” that information. Thus Opposer has the requested information and its efforts to compel additional documents on this topic will not provide Opposer with any additional responsive information, but will rather only create an unnecessary burden. Indeed, Opposer does not even explain what information it believes it lacks with respect to RFP No. 5. *Mitchell Miller, A Prof'l Corp. DBA Miller Law Grp., P.C.*, 2010 WL 9597747, at *4 (TTAB Sept. 30, 2010) (“Opposer’s motion, which requests the Board to compel responses where sufficient responses were already made and to hazard guesses as to why applicant’s responses were unacceptable to opposer, is improper”).

Applicant thus submits that Opposer’s Motion should be denied with respect to RFP No. 5, as Opposer is already in possession of the information sought.

3. Request for Production Nos. 8 and 20

RFP No. 8 seeks “All documents referring or relating to plans, including but not limited to, marketing plans, advertising plans, and business forecasts, by Applicant to adopt or use

additional marks that include the following portion of Applicant's Mark: ” and RFP No. 20 seeks “marketing and business plans relating to Applicant’s Goods.”

As noted in Applicant’s objections to RFP No. 8, this request is not relevant and not reasonably calculated to lead to the discovery of admissible evidence with respect to “additional marks” and a “portion” of Applicant’s Mark, insofar as it purports to seek documents and things that pertain to marks *other than* the Applicant’s Mark, or to Applicant’s Mark other than in its entirety. *See* TBMP § 414(11) (“A party need not provide discovery with respect to those of its marks and goods and/or services which are not involved in the proceeding and have no relevance thereto.”); *Volkswagenwerk Aktiengesellschaft v. Thermo-Chem Corp.*, 176 USPQ 493, 493 (TTAB 1973) (applicant need not provide information as to its other marks or its other products, or as to whether involved mark is used on other products); 6 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 32:101 (4th ed. 2014) (“In an opposition, likelihood of confusion is determined only as to the registrability of the applicant’s mark exactly as shown in the application . . .”). Because RFP No. 8 only seeks documents and things pertaining to marks not involved in this proceeding, Opposer’s Motion with respect to RFP No. 8 should be denied.

In addition, with respect to RFP Nos. 8 and 20, Opposer cites to TBMP § 414(15), stating that “a party’s plans for expansion” may be discoverable, but Applicant has responded to Opposer’s requests on that very topic. *See, e.g.*, Exhibit 4 to Declaration of Jason A. Champion in Support of Opposer’s Motion to Compel, at 7 (responding to Interrogatory No. 8 and stating that “Applicant does not know its ‘plans to expand’ with respect to Applicant’s Mark”).

Opposer further contends that the documents sought are relevant to “the similarity of the trade channels used or the trade channels in which Applicant’s goods are likely to expand.” However, the Board has consistently held that “in the absence of specific limitations in the application and registration,” the issue of likelihood of confusion must be resolved “on consideration of the normal and usual channels of trade.” *Mcdonalds Corp. v. McSweet, LLC*, 112 U.S.P.Q.2d 1268 (TTAB Sept. 29, 2014); *see also In Re Carolina Precision Fibers, Inc.*, 2011 WL 1399237, at *1 (TTAB Mar. 25, 2011) (Board will assume goods are sold through “all the normal trade channels . . . regardless of what any extrinsic evidence might show the actual . . . channels of trade . . . to be”).

Accordingly, Applicant submits that Opposer’s Motion should be denied with respect to RFP Nos. 8 and 20.

4. Request for Production No. 21

RFP No. 21 seeks “documents and things concerning your efforts and/or intent to expand Applicant’s Mark to different product lines or geographical areas.” As noted in Applicant’s objection to RFP No. 21 and for the same reasons addressed above with regard to RFP Nos. 8 and 20, this request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

With respect to “efforts and/or intent to expand to different . . . geographical areas,” for instance, the Board has consistently held that “the geographical extent of applicant’s and registrant’s activities is not relevant to our likelihood of confusion determination.” *In Re Moveon.org Political Action*, 2011 WL 5014012, at *7 (TTAB Sept. 30, 2011); *see also In Re Gila River Gaming Enterprises, Inc.*, 2012 WL 1424425, at *3 (TTAB Apr. 10, 2012) (“Because registrant’s and applicant’s description of services are geographically unrestricted . . . we must

decide the issue of likelihood of confusion as if applicant's mark and registrant's mark were in use throughout the entire United States."). In any event, Applicant has produced documents reflecting where Applicant's beer is currently sold,³ and as noted *supra*, "Applicant does not know its 'plans to expand' with respect to Applicant's Mark."

With respect to "efforts and/or intent to expand to different . . . different product lines," again, "[a] party need not provide discovery with respect to . . . goods and/or services which are not involved in the proceeding and have no relevance thereto." TBMP § 414(11); *see also* McCarthy, § 32:101 ("In an opposition, likelihood of confusion is determined only as to the registrability of the applicant's mark exactly as shown in the application and *only as to the goods listed . . .*") (emphasis added); *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147, 149 n.2 (TTAB 1985) (information regarding goods other than those in involved application and registration is irrelevant). And, again, Applicant does not know its "plans to expand." *See supra* Section 3 of this opposition brief.

Accordingly, Applicant submits that Opposer's Motion should be denied with respect to RFP Nos. 21.

5. Request for Production Nos. 22, 23, and 24 and Interrogatory No. 10

RFP No. 22 seeks "[d]ocuments sufficient to show, on a monthly basis, your total net and gross sales (both in units and dollars) and total net and gross profits for each of Applicant's Goods." RFP No. 23 seeks "[d]ocuments sufficient to show, on a monthly basis, your total net and gross sales (both in units and dollars) for each of Applicant's Goods by geographic area." RFP No. 24 seeks "[s]ales summaries or sales reports for Applicant's Goods." Interrogatory No.

³ Opposer acknowledges that it is aware of this information. *See* Mot. at 3.

10 calls for “your net and gross sales (in units and dollars) and net and gross profits, on a monthly basis, for each of Applicant’s Goods since the date of first sale of each product.”

Opposer argues that “**annual** sales . . . figures, stated in round numbers,” are discoverable, despite the fact that its RFP Nos. 22 and 23 and Interrogatory No. 10 seek well more than this – i.e., “*net* and gross sales (both in units and dollars)” and “*net and gross profits*” on “a **monthly** basis” (emphasis added). Thus, Opposer does not argue that it is entitled to all of the information and documents sought, and effectively concedes that RFP Nos. 22 and 23 and Interrogatory 10 were overreaching at the outset.

Further, Opposer’s Motion misstates that Applicant has “refused to produce” documents and information “responsive to the requests.” Applicant has produced a number of invoices reflecting sales of its beer. *See, e.g., Exhibit D*, invoices produced to Opposer. Further, to the extent that Opposer argues that “the extent of Applicant’s sales is relevant to assessing the opportunity for confusion to have occurred,” as stated, Applicant has produced documents reflecting where Applicant’s beer is currently sold. *See supra* Section 4 and footnote 4. Also, to the extent Opposer believes that the information sought “is relevant to identifying geographic regions,” the requested “[a]nnual sales . . . stated in round numbers” will not provide such information. Regardless, Applicant has again referred Opposer to the already-produced documents reflecting where Applicant’s beer is sold.

Notwithstanding the foregoing, as Opposer has now limited its request to “annual” sales figures, Applicant has supplemented Interrogatory No. 10 contemporaneously with this filing and provided annual sales figures in round numbers, and accordingly Opposer’s Motion is moot with respect to RFP Nos. 22-24 and Interrogatory No. 10.

6. Request for Production No. 25

RFP No. 25 seeks “[d]ocuments sufficient to show the prices charged for Applicant’s Goods, including, but not limited to, price lists for the products.”

Opposer concedes that Applicant has “provided some pricing information” but then misrepresents in its Motion that Applicant “refused to produce any documents responsive to” RFP No. 25. Applicant initially produced documents reflecting the pricing of its beer growlers and growler fills, and supplied the same information in response to Opposer’s Interrogatory No. 9, which seeks the *same information* as RFP No. 25. Applicant then supplemented and provided invoices reflecting sales of its beer, as well as 1/2 keg, 1/4 keg, and case pricing information (wholesale and retail), in response to Interrogatory No. 9. *See Exhibit 5 to Declaration of Jason A. Champion in Support of Opposer’s Motion to Compel*, at 7-8. Opposer therefore has in its possession all information requested, and does not explain what information it believes it is lacking.

And, in any event, to the extent Opposer believes that such information is “relevant to the level of sophistication of consumers . . . , the degree of care exercised by purchasers, and marketing channels,” *see Mot.* at 10, such information is not relevant to this proceeding, inasmuch as Applicant’s application does not contain any limitations or restrictions, and the Board will therefore presume that the relevant goods travel in the usual channels, and are sold to the usual classes of consumers. *See, e.g., Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1496 (Fed. Cir. 1992) (“The authority is legion that the question of registrability...must be determined on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to...the particular channels of trade or the class of purchasers to which sales of the goods are directed.”); *CBS Inc. v. Morrow*, 708 F.2d

1579, 1581 (Fed. Cir. 1983) (“in the absence of specific limitations in the registration, [confusion must be decided] on the basis of all normal and usual channels of trade and methods of distribution”); *In re New York Football Giants, Inc.*, 2014 WL 3427342 at *10 (TTAB July 3, 2014) (because application did not limit consumers “we must presume that the t-shirts and tank tops of both Applicant and Registrant would be sold to all classes of [] consumers”); *In re Bercut-Vandervoort & Co.*, 229 U.S.P.Q. 763, 764 (TTAB 1986) (because application lacked any restriction of the customers to “extremely sophisticated wine connoisseurs,” likelihood of confusion analysis should incorporate all wine consumers).

Accordingly, Applicant submits that Opposer’s Motion should be denied with respect to RFP No. 25.

7. Request for Production No. 26

RFP No. 26 seeks “[a]ll documents and things referring or relating to any and all advertising agencies, public relations agencies, marketing firms, market research agencies or other person(s) which Applicant has used, participated with or cooperated with in advertising, marketing or promoting any of Applicant’s Goods.”

Again, Opposer effectively concedes that RFP No. 26 is overbroad, not relevant, and not reasonably calculated, inasmuch as Opposer argues in its Motion that the “*identity* of [an advertising or marketing] agency and of the most knowledgeable people therein” is discoverable, notwithstanding that RFP No. 26 goes well beyond this. Mot. at 13 (emphasis added). Applicant has already disclosed to Opposer the identity of the branding and design firm that it engaged, Okay Yellow, as well as the most knowledgeable individuals at Okay Yellow, in response to Opposer’s Interrogatory No. 1. Opposer has also since subpoenaed documents from Okay Yellow, and has noticed Okay Yellow and each of the disclosed individuals for depositions.

Inasmuch as Opposer is already in possession of the relevant information sought, Opposer's Motion should be denied with respect to RFP No. 26.

8. Interrogatory No. 13

Interrogatory No. 13 calls for Applicant to “[i]dentify, on an annual basis, the dollar amount Applicant spent on advertising Applicant’s Mark from the date of first use to the present.” While this request is confusing in that it seeks a dollar amount spent on advertising *Applicant’s Mark*, as opposed to the *beer sold under Applicant’s Mark*, and while the information sought is not relevant or material to the question of whether Applicant’s Mark should be permitted to register, Applicant has nonetheless supplemented its response to Interrogatory No. 13 contemporaneously with this filing, and provided annual advertising figures in round numbers. Accordingly, Opposer’s Motion is moot with respect to Interrogatory No. 13.

CONCLUSION

Applicant has met its obligation to produce relevant information and documents. The additional information and documents Opposer seeks to compel from Applicant through its Motion are not material to the question of registrability, or have otherwise already been produced, and Opposer’s Motion therefore serves only to burden Applicant and the Board. Opposer appears to continue its well-known pattern of harassing litigation against small companies, including those in the craft brewing industry. The Board has expressed its displeasure with such “overzealous litigation” in the past. *Gen. Mills, Inc. v. Fage Dairy Processing Indus. S.A.*, 100 U.S.P.Q.2d 1584 (TTAB Sept. 14, 2011). Applicant submits that Opposer has not demonstrated that it is entitled to the information and documents sought, in light of the scope of discovery in opposition proceedings and the information that is already in its

possession. Opposer's Motion, like its initial requests, only seeks to burden Applicant, and should be denied.

THREE NOTCH'D BREWING COMPANY, LLC,

Date: June 8, 2015

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Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2015, the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL has been served on Opposer, Monster Energy Company, by mailing a true and correct copy of the same by first class mail, postage prepaid, to:

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EXHIBIT A



February 26, 2015

Monster Beverage Reports 2014 Fourth Quarter and Full Year Financial Results

Fourth Quarter Net Sales Rise 12.0% to \$605.6 Million; Fourth Quarter Net Income Increases 64.7% to \$125.3 Million

CORONA, Calif., Feb. 26, 2015 (GLOBE NEWSWIRE) -- Monster Beverage Corporation (Nasdaq:MNST) today reported financial results for the three- and twelve-months ended December 31, 2014.

2014 Fourth Quarter

Gross sales for the 2014 fourth quarter increased 12.1 percent to \$696.3 million from \$621.1 million in the same period last year. Net sales for the three-months ended December 31, 2014 increased 12.0 percent to \$605.6 million from \$540.8 million in the same quarter a year ago.

Gross profit, as a percentage of net sales, for the 2014 fourth quarter was 54.8 percent, compared with 51.2 percent for the comparable 2013 quarter. Operating expenses for the 2014 fourth quarter decreased to \$138.9 million from \$142.4 million in the same quarter last year.

Distribution costs as a percentage of net sales were 4.1 percent for the 2014 fourth quarter, compared with 4.5 percent in the same quarter last year.

Selling expenses as a percentage of net sales were 9.3 percent for the 2014 fourth quarter, compared with 10.8 percent in the same quarter a year ago.

General and administrative expenses for the 2014 fourth quarter were \$57.6 million, or 9.5 percent of net sales, compared with \$59.6 million, or 11.0 percent of net sales, for the corresponding quarter last year. Stock-based compensation (a non-cash item) was \$6.0 million in the fourth quarter of 2014, compared with \$7.2 million for the fourth quarter of 2013.

Operating income for the 2014 fourth quarter increased 43.2 percent to \$192.9 million from \$134.8 million in the comparable 2013 quarter.

The effective tax rate for the 2014 fourth quarter was 34.7 percent, compared with 42.2 percent in the same quarter last year. The decrease in the effective tax rate primarily reflected profits earned in certain foreign subsidiaries that have no related income tax expense as the result of the prior establishment of valuation allowances on their deferred tax assets.

Net income for the 2014 fourth quarter increased 64.7 percent to \$125.3 million from \$76.1 million in the same quarter last year. Net income per diluted share increased 63.2 percent to \$0.72 from \$0.44 per diluted share in the 2013 comparable quarter.

Net sales for the Company's DSD segment for the 2014 fourth quarter increased 12.6 percent to \$584.8 million from \$519.4 million for the same period in 2013.

Gross sales to customers outside the United States rose to \$160.1 million in the 2014 fourth quarter from \$137.9 million in the corresponding quarter in 2013.

Factors Impacting Profitability

Results for the 2014 fourth quarter continue to be impacted by expenses related to regulatory matters and litigation concerning the advertising, marketing, promotion, ingredients, usage, safety and sale of the Company's Monster Energy® brand energy drinks. Such expenses were \$2.9 million for the 2014 fourth quarter, versus \$4.7 million for the 2013 fourth quarter, and \$20.6 million for the 2014 fiscal year, versus \$17.9 million for the 2013 fiscal year.

2014 Fiscal Year

For the year ended December 31, 2014, gross sales increased 9.3 percent to \$2.8 billion from \$2.6 billion a year earlier. Net sales for the year ended December 31, 2014 increased 9.7 percent to \$2.5 billion from \$2.2 billion in the prior year.

Gross profit as a percentage of net sales was 54.4 percent for the year ended December 31, 2014, compared with 52.2 percent a year earlier.

Operating expenses for the year ended December 31, 2014 decreased 1.3 percent to \$592.3 million from \$600.0 million in the prior year. Operating income for the year ended December 31, 2014 increased 30.5 percent to \$747.5 million from \$572.9 million last year.

Distribution costs as a percentage of net sales were 4.4 percent for the year ended December 31, 2014, compared with 4.5 percent in the prior year.

Selling expenses as a percentage of net sales were 10.2 percent for the year ended December 31, 2014, compared with 11.9 percent in the prior year.

General and administrative expenses for the year ended December 31, 2014 were \$232.1 million, or 9.4 percent of net sales, compared with \$230.2 million, or 10.2 percent of net sales, for last year. Stock-based compensation (a non-cash item) was \$28.6 million for the year ended December 31, 2014, compared with \$28.8 million for last year.

Net income for the year ended December 31, 2014 rose to \$483.2 million from \$338.7 million in the prior year. Net income per diluted share for the year ended December 31, 2014 increased to \$2.77 from \$1.95 per diluted share for the prior year.

Long-Term Strategic Partnership with The Coca-Cola Company

In August 2014, Monster Beverage and The Coca-Cola Company entered into definitive agreements for a long-term strategic partnership to accelerate growth for both companies in the global energy drink category. Under the agreements, The Coca-Cola Company will acquire an approximate 16.7 percent ownership interest in Monster (post issuance) and will transfer ownership of its worldwide energy business to Monster, which, in turn, will transfer its non-energy business to The Coca-Cola Company. Monster and The Coca-Cola Company will amend their current distribution coordination agreements to expand distribution with Coca-Cola bottlers into additional territories. Upon closing, The Coca-Cola Company will become Monster's preferred distribution partner globally, and Monster will become The Coca-Cola Company's exclusive energy play. The transaction, which is subject to customary closing conditions, is expected to close in the second quarter of 2015.

Rodney C. Sacks, Chairman and Chief Executive Officer, said: "We are pleased to report another quarter and year of continuing sales growth, in both our domestic and international markets. In particular, we continued to achieve solid sales growth in Japan, which is becoming one of our largest international markets. In addition to launching Monster Energy® Unleaded, as well as Monster Energy® Ultra Sunrise™ in the United States during the second half of 2014, we are currently launching Monster Energy® Ultra Citron™ and Monster Rehab® Peach Tea + Energy. We believe that these products will play an important part in our business plan in 2015.

"The Coca-Cola transaction continues to present a unique opportunity for us. Our Company will be bolstered by The Coca-Cola Company's energy brands in a number of geographies, providing us with complementary product offerings in many countries, access to new geographies, as well as access to new channels, including vending and specialty accounts. We are making good progress in working through transitional issues and anticipate that the transaction will close during the second quarter of 2015," Sacks added.

Investor Conference Call

The Company will host an investor conference call today, February 26, 2015, at 2:00 p.m. Pacific Time (5:00 p.m. Eastern Time). The conference call will be open to all interested investors through a live audio web broadcast via the internet at www.monsterbevcorp.com in the "Events & Presentations" section. For those who are not able to listen to the live broadcast, the call will be archived for approximately one year on the website.

Monster Beverage Corporation

Based in Corona, California, Monster Beverage Corporation is a holding company and conducts no operating business except through its consolidated subsidiaries. The Company's subsidiaries market and distribute energy drinks and alternative beverages including Monster Energy® energy drinks, Monster Energy Extra Strength Nitrous Technology® energy drinks, Java Monster® non-carbonated coffee + energy drinks, M3® Monster Energy® Super Concentrate energy drinks, Monster Rehab® non-carbonated energy drinks with electrolytes, Muscle Monster® Energy Shakes, Übermonster® energy drinks, and Peace Tea® iced teas, as well as Hansen's® natural sodas, apple juice and juice blends, multi-vitamin juices, Junior Juice® beverages, Blue Sky® beverages, Hubert's® Lemonades and PRE® Probiotic drinks. For more information, visit www.monsterbevcorp.com.

Note Regarding Use of Non-GAAP Measures

Gross sales is used internally by management as an indicator of and to monitor operating performance, including sales performance of particular products, salesperson performance, product growth or declines and overall Company performance. The use of gross sales allows evaluation of sales performance before the effect of any promotional items, which can mask certain performance issues. We therefore believe that the presentation of gross sales provides a useful measure of our operating performance. Gross sales is not a measure that is recognized under accounting principles generally accepted in the United States of America ("GAAP") and should not be considered as an alternative to net sales, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of net sales. Additionally, gross sales may not be comparable to similarly titled measures used by other companies, as gross sales has been defined by our internal reporting practices. In addition, gross sales may not be realized in the form of cash receipts as promotional payments and allowances may be deducted from payments received from certain customers.

Caution Concerning Forward-Looking Statements

Certain statements made in this announcement may constitute "forward-looking statements" within the meaning of the U.S. federal securities laws, as amended, regarding the expectations of management with respect to our future operating results and other future events including revenues and profitability. The Company cautions that these statements are based on management's current knowledge and expectations and are subject to certain risks and uncertainties, many of which are outside of the control of the Company, that could cause actual results and events to differ materially from the statements made herein. Such risks and uncertainties include, but are not limited to, the following: whether and when The Coca-Cola Company transactions are completed, and results expected from them; unanticipated litigation concerning the Company's products; the current uncertainty and volatility in the national and global economy; changes in consumer preferences; changes in demand due to both domestic and international economic conditions; activities and strategies of competitors, including the introduction of new products and competitive pricing and/or marketing of similar products; actual performance of the parties under the new distribution agreements; potential disruptions arising out of the transition of certain territories to new distributors; changes in sales levels by existing distributors; unanticipated costs incurred in connection with the termination of existing distribution agreements or the transition to new distributors; changes in the price and/or availability of raw materials; other supply issues, including the availability of products and/or suitable production facilities; product distribution and placement decisions by retailers; changes in governmental regulation; the imposition of new and/or increased excise and/or sales or other taxes on our products; criticism of energy drinks and/or the energy drink market generally; our ability to satisfy all criteria set forth in any U.S. model energy drink guidelines; the impact of proposals to limit or restrict the sale of energy drinks to minors and/or persons below a specified age and/or restrict the venues and/or the size of containers in which energy drinks can be sold; political, legislative or other governmental actions or events, including the outcome of any state attorney general and/or government or quasi-government agency inquiries, in one or more regions in which we operate. For a more detailed discussion of these and other risks that could affect our operating results, see Monster's reports filed with the Securities and Exchange Commission. The Company's actual results could differ materially from those contained in the forward-looking statements. The Company assumes no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

(tables below)

MONSTER BEVERAGE CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME AND OTHER INFORMATION
FOR THE THREE-AND TWELVE-MONTHS ENDED DECEMBER 31, 2014 AND 2013
(In Thousands, Except Per Share Amounts) (Unaudited)

	Three-Months Ended		Twelve-Months Ended	
	December 31,		December 31,	
	2014	2013	2014	2013
Gross sales, net of discounts and returns*	\$ 696,290	\$ 621,070	\$ 2,827,092	\$ 2,586,531
Less: Promotional and other allowances**	90,723	80,221	362,225	340,103
Net sales	605,567	540,849	2,464,867	2,246,428
Cost of sales	273,783	263,689	1,125,057	1,073,497
Gross profit	331,784	277,160	1,339,810	1,172,931

Gross profit as a percentage of net sales	54.8%	51.2%	54.4%	52.2%
Operating expenses	138,862	142,405	592,305	600,015
Operating expenses as a percentage of net sales	<u>22.9%</u>	<u>26.3%</u>	<u>24.0%</u>	<u>26.7%</u>
Operating income	192,922	134,755	747,505	572,916
Operating income as a percentage of net sales	31.9%	24.9%	30.3%	25.5%
Other (expense) income:				
Interest and other (expense) income, net	(1,008)	(3,047)	(1,676)	(11,737)
(Loss) gain on investment and put option, net	<u>(2)</u>	<u>34</u>	<u>(41)</u>	<u>2,715</u>
Total other (expense) income	<u>(1,010)</u>	<u>(3,013)</u>	<u>(1,717)</u>	<u>(9,022)</u>
Income before provision for income taxes	191,912	131,742	745,788	563,894
Provision for income taxes	<u>66,580</u>	<u>55,637</u>	<u>262,603</u>	<u>225,233</u>
Net income	<u>\$ 125,332</u>	<u>\$ 76,105</u>	<u>\$ 483,185</u>	<u>\$ 338,661</u>
Net income as a percentage of net sales	20.7%	14.1%	19.6%	15.1%
Net income per common share:				
Basic	<u>\$ 0.75</u>	<u>\$ 0.46</u>	<u>\$ 2.89</u>	<u>\$ 2.03</u>
Diluted	<u>\$ 0.72</u>	<u>\$ 0.44</u>	<u>\$ 2.77</u>	<u>\$ 1.95</u>
Weighted average number of shares of common stock and common stock equivalents:				
Basic	<u>167,675</u>	<u>167,262</u>	<u>167,257</u>	<u>166,679</u>
Diluted	<u>174,932</u>	<u>173,368</u>	<u>174,285</u>	<u>173,387</u>
Case sales (in thousands)				
(in 192-ounce case equivalents)	58,563	52,780	238,280	221,348
Average net sales per case	\$ 10.34	\$ 10.25	\$ 10.34	\$ 10.15

* Gross sales is used internally by management as an indicator of and to monitor operating performance, including sales performance of particular products, salesperson performance, product growth or declines and overall Company performance. The use of gross sales allows evaluation of sales performance before the effect of any promotional items, which can mask certain performance issues. We therefore believe that the presentation of gross sales provides a useful measure of our operating performance. Gross sales is not a measure that is recognized under GAAP and should not be considered as an alternative to net sales, which is determined in accordance with GAAP, and should not be used alone as an indicator of operating performance in place of net sales. Additionally, gross sales may not be comparable to similarly titled measures used by other companies, as gross sales has been defined by our internal reporting practices. In addition, gross sales may not be realized in the form of cash receipts as promotional payments and allowances may be deducted from payments received from certain customers.

**Although the expenditures described in this line item are determined in accordance with GAAP and meet GAAP requirements, the disclosure thereof does not conform with GAAP presentation requirements. Additionally, our definition of promotional and other allowances may not be comparable to similar items presented by other companies. Promotional and other allowances primarily include consideration given to the Company's distributors or retail customers including, but not limited to the following: (i) discounts granted off list prices to support price promotions to end-consumers by retailers; (ii) reimbursements given to the Company's distributors for agreed portions of their promotional spend with retailers, including slotting, shelf space allowances and other fees for both new and existing products; (iii) the Company's agreed share of fees given to distributors and/or directly to retailers for advertising, in-store marketing and promotional activities; (iv) the Company's agreed share of slotting, shelf space allowances and other fees given directly to retailers; (v) incentives given to the Company's distributors and/or retailers for achieving or exceeding certain predetermined sales goals; (vi) discounted or free products; (vii) contractual fees given to the Company's distributors related to sales made by the Company direct to certain customers that fall within the distributors' sales territories; and (viii) commissions paid to our customers. The presentation of promotional and other allowances facilitates an

evaluation of their impact on the determination of net sales and the spending levels incurred or correlated with such sales. Promotional and other allowances constitute a material portion of our marketing activities. The Company's promotional allowance programs with its numerous distributors and/or retailers are executed through separate agreements in the ordinary course of business. These agreements generally provide for one or more of the arrangements described above and are of varying durations, ranging from one week to one year.

MONSTER BEVERAGE CORPORATION AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

AS OF DECEMBER 31, 2014 AND 2013

(In Thousands, Except Par Value) (Unaudited)

	<u>2014</u>	<u>2013</u>
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 370,323	\$ 211,349
Short-term investments	781,134	402,247
Accounts receivable, net	280,203	291,638
Distributor receivables	552	4,542
Inventories	174,573	221,449
Prepaid expenses and other current assets	19,673	21,376
Intangibles held-for-sale	18,079	--
Prepaid income taxes	8,617	9,518
Deferred income taxes	<u>40,275</u>	<u>20,924</u>
Total current assets	1,693,429	1,183,043
INVESTMENTS	42,940	9,792
PROPERTY AND EQUIPMENT, net	90,156	88,143
DEFERRED INCOME TAXES	54,106	63,611
INTANGIBLES, net	50,748	65,774
OTHER ASSETS	<u>7,496</u>	<u>10,146</u>
Total Assets	<u>\$ 1,938,875</u>	<u>\$ 1,420,509</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 127,641	\$ 119,376
Accrued liabilities	40,271	59,113
Accrued promotional allowances	114,047	99,470
Deferred revenue	49,926	13,832
Accrued compensation	17,983	14,864
Income taxes payable	<u>5,848</u>	<u>9,359</u>
Total current liabilities	355,716	316,014
DEFERRED REVENUE	68,009	112,216
STOCKHOLDERS' EQUITY:		
Common stock - \$0.005 par value; 240,000 shares authorized; 207,004 shares issued and 167,722 outstanding as of December 31, 2014; 206,014 shares issued and 166,822 outstanding as of December 31, 2013	1,035	1,030
Additional paid-in capital	426,145	368,069
Retained earnings	2,330,510	1,847,325
Accumulated other comprehensive loss	(11,453)	(1,233)
Common stock in treasury, at cost; 39,282 and 39,192 shares as of December 31, 2014 and 2013, respectively	<u>(1,231,087)</u>	<u>(1,222,912)</u>

Total stockholders' equity

1,515,150 992,279

Total Liabilities and Stockholders' Equity

\$ 1,938,875 \$ 1,420,509

CONTACT: Rodney C. Sacks

Chairman and Chief Executive Officer

(951) 739-6200

Hilton H. Schlosberg

Vice Chairman

(951) 739-6200

Roger S. Pondel / Judy Lin Sfetcu

PondelWilkinson Inc.

(310) 279-5980



Source: Monster Beverage Corporation

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EXHIBIT B

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

MONSTER ENERGY COMPANY,

Opposer,

v.

THREE NOTCH'D BREWING COMPANY, LLC

Applicant.

)
) Opposition No. 91217273

)
) Serial No.: 85/920112

) Mark:  **Three Notch'd**
BREWING COMPANY
Charlottesville, Va

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR
ADMISSIONS TO OPPOSER (NOS. 1-40)**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Monster Energy Company ("Opposer" or "MEC") hereby responds to Three Notch'd Brewing Company, LLC's ("Applicant") First Set of Requests for Admissions to Opposer (Nos. 1-40) as follows:

PRELIMINARY STATEMENT

1. The following responses are based upon information presently available to and located by MEC and its counsel and reflect the current state of MEC's knowledge, understanding and belief respecting the matters about which inquiry was made. MEC has not completed its investigation of the facts relating to this Opposition or preparation for trial and anticipates that as this Opposition proceeds, further facts may be discovered. Without obligating itself to do so,

MEC reserves the right to modify or supplement these responses with any such pertinent information.

2. MEC's responses are made without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving:

- a. The right to raise all questions of authenticity, relevancy, materiality, privilege and admissibility as evidence for any purpose of the information and/or documents identified in response to these requests, which may arise in any subsequent proceeding in, or trial of, this or any other action;
- b. The right to object to the use of the information and/or documents in any subsequent proceeding in, or the trial of, this or any other action on any grounds;
- c. The right to object on any ground at any time to other interrogatories, requests, or other discovery involving the information and/or documents or the subject matter thereof; and
- d. The right to make subsequent answers if MEC uncovers additional information and/or documents as discovery is still ongoing and MEC's investigation of the facts and the evidence pertinent to this action has not been completed.

3. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in the patent and trademark laws, and MEC specifically disavows any such meaning or connotation that might be accorded to such terms.

4. Without waiving objections set forth below, and subject to the limitations stated above, MEC has provided the information it believes is responsive and the subject of legitimate discovery which has been uncovered by reasonable investigation.

5. Specific objections to various requests are made in the responses set forth below. In addition to those specific objections, MEC generally objects to the requests as follows:

GENERAL OBJECTIONS

The following General Objections are incorporated by reference to each response set forth below and are not waived with respect to any response.

1. MEC generally objects to Applicant's Requests for Admissions to the extent that they seek disclosure of any information protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the Federal Rules of Civil Procedure, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws including, but not limited to, information protected by the attorney-client privilege, the work product doctrine and/or other applicable privilege. The specific objections stated below on the grounds of attorney-client privilege and/or work product in no way limit the generality of this objection. Nothing contained in these responses is intended to be nor should be considered a waiver of any attorney-client privilege, work product protection, the right of privacy, or any other applicable privilege or doctrine, and to the extent that any request may be construed as calling for disclosure of information protected by such privileges or doctrines, a continuing objection to each and every such request is hereby imposed.

2. MEC generally objects to Applicant's Requests for Admissions, including the instructions and definitions, to the extent they purport to impose upon MEC obligations greater

than those imposed by the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d), or other applicable rules or law.

3. MEC generally objects to Applicant's Requests for Admissions to the extent they ask MEC to admit or deny facts that are protected from disclosure by agreements MEC has with another entity, if any, or obligations MEC has to another entity, if any.

4. MEC generally objects to Applicant's definitions and instructions in the discovery requests to the extent they make the individual requests vague, ambiguous, or unintelligible, in that Applicant attributes new meanings to ordinary words or defines the same word to have multiple meanings.

5. MEC generally objects to Applicant's Requests for Admissions to the extent that they are overbroad, unduly burdensome, or fail to describe the facts sought with a reasonable degree of specificity.

6. MEC generally objects to Applicant's Requests for Admissions to the extent that they ask MEC to admit or deny facts that are not reasonably calculated to lead to the discovery of admissible evidence or to the extent that the Requests for Admissions ask MEC to admit or deny facts beyond the scope of discovery as provided by the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d), or other applicable rules of law.

7. MEC generally objects to Applicant's Requests for Admissions to the extent that they ask MEC to admit or deny facts that are not in MEC's possession, custody or control.

8. MEC generally objects to Applicant's Requests for Admissions to the extent that they ask MEC to admit or deny facts that are a matter of public record or otherwise available to Applicant without imposing undue burden on Applicant.

9. The terms "MEC" and "Opposer" refers to Monster Energy Company.

10. The term “Applicant” refers to Three Notch’d Brewing Company, LLC.

11. The term “Applicant’s Mark” shall mean and refer to the mark that is subject of U.S. Trademark Application Serial No. 85/920112.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that Opposer does not offer for sale or sell alcoholic beverages.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Opposer incorporates its Preliminary Statement and General Objections above as if set forth fully herein. Opposer further objects to this Request as vague and ambiguous, particularly with regard to the term “offer for sale or sell.” Subject to and without waiving the foregoing general and specific objections, Opposer responds as follows:

Opposer admits that it does not currently offer for sale or sell alcoholic beverages.

REQUEST FOR ADMISSION NO. 2:

Admit that Opposer does not offer for sale or sell beer.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Opposer incorporates its Preliminary Statement and General Objections above as if set forth fully herein. Opposer further objects to this Request as vague and ambiguous, particularly with regard to the term “offer for sale or sell.” Subject to and without waiving the foregoing general and specific objections, Opposer responds as follows:

Opposer admits that it does not currently offer for sale or sell beer.

REQUEST FOR ADMISSION NO. 3:

Admit that Opposer does not offer for sale or sell alcoholic beverages under any of Opposer’s Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Opposer incorporates its Preliminary Statement and General Objections above as if set forth fully herein. Opposer further objects to this Request as vague and ambiguous, particularly with regard to the terms “offer for sale or sell” and “under.” Subject to and without waiving the foregoing general and specific objections, Opposer responds as follows:

Opposer admits that it does not currently offer for sale or sell alcoholic beverages under any of Opposer’s Marks.

REQUEST FOR ADMISSION NO. 4:

Admit that Opposer does not offer for sale or sell beer under any of Opposer’s Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Opposer incorporates its Preliminary Statement and General Objections above as if set forth fully herein. Opposer further objects to this Request as vague and ambiguous, particularly with regard to the terms “offer for sale or sell.” Subject to and without waiving the foregoing general and specific objections, Opposer responds as follows:

Opposer admits that it does not currently offer for sale or sell beer under any of Opposer’s Marks.

REQUEST FOR ADMISSION NO. 5:

Admit that Opposer does not use any of the following terms in connection with the sale of goods under Opposer’s Marks: “THREE”, “NOTCH”, “THREE NOTCH’D”, “BREWING COMPANY”, and “Charlottesville, VA”.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Opposer incorporates its Preliminary Statement and General Objections above as if set forth fully herein. Opposer further objects to this Request on the grounds that it seeks

EXHIBIT C

B R E W I N G C O M P A N Y



Three Notch'd
BREWING COMPANY

Charlottesville, Va



STAY IN TOUCH

Enter Your Email Address

SIGN UP



LOGIN

BEER FINDER

HOME | ABOUT | BEER | LOCATIONS | CONTACT | EVENTS | HARRISONBURG

BREWERY

[About](#)

[Team](#)

[History](#)

[Tours](#)

Brewery Location

Charlottesville Location

946 Grady Ave
Charlottesville, VA 22903

[Map It](#)

Harrisonburg Location

241 East Market Street,
Harrisonburg, VA 22801

[Map It](#)

Brewery Tours

Schedule a Tour Today!

[Sign Up Now](#)

About the Brewery

Originally, the Three Notch'd Road was a colonial-era thoroughfare running east and west through central Virginia. It is believed to have taken its name from a distinctive marking of three notches burnt or axed into trees to blaze the trail. As legend has it, the road was made famous by Jack Jouett's midnight ride to Charlottesville, VA, in June of 1781. After General Benedict Arnold defected to the British, he sacked Richmond and caused a number of our founding fathers, including then Governor Thomas Jefferson, to seek refuge at Jefferson's home, Monticello, in Charlottesville, VA. Learning of this, General Cornwallis ordered Banastre Tarleton to ride to Charlottesville and capture the group. Captain Jack Jouett of the Virginia Military heard the sound of Tarleton's cavalry from his Louisa County home just 40 miles from Charlottesville. Upon witnessing the cavalry pause for an extended rest, he raced the moon-lit Three Notch'd Road to Monticello to warn the Governor and his state legislators to flee Charlottesville. Recognizing their debt to Jouett, the legislature passed a resolution on June 15, 1781 to honor him, and "Jack Jouett's Ride" became a legendary portion of Virginia's history.

The original trail runs less than a quarter mile from the location of our brewery. It only makes sense that at Three Notch'd Brewing Company it will be our primary goal to align our products with the rich history of Virginia and lead our patrons down the Three Notch'd Road to great beer.

In doing this, we at Three Notch'd Brewing Co. will never be as legendary as some of the most revered characters in Virginia history, but we do aim to leave our humble mark in the world of craft beer. As we evolve from our beginnings, and get to know all of you, we look forward to brewing great beer, while telling the stories of some of the greatest characters in American History - from a very unique Virginian-craft brew perspective. From Jack Jouett, to Thomas Jefferson and Patrick Henry; and from John Brown to Stonewall Jackson and Robert E. Lee, our brewery will develop around bold characters that left their mark on our country's history.

Much like the people mentioned above who left their marks on all of us, our brewery's mission respects the inalienable rights of man, and we want to celebrate these with each and every one of our patrons. We encourage you to learn about our beers, our identities, and also yourselves while you take the trip down Three Notch'd Road and find how you will Leave Your Mark.

Jack left his mark, we're leaving ours, how will you leave yours?

Three Notch'd Brewing Company, LEAVE YOUR MARK.

[Read about Three Notch'd In the News](#)



STAY IN TOUCH

Enter Your Email Address

SIGN UP

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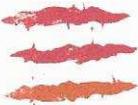


THREE
NOTCH'D
BREWING

EXHIBIT D



REDACTED



Three Notch'd

BREWING COMPANY

Charlottesville, Va

REDACTED

Three Notch'd Brewing Company LLC

Invoice

REDACTED

Three Notch'd Brewing Company LLC

Invoice

REDACTED