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

|                        |   |
|------------------------|---|
| Proceeding             | 91217273  |
| Party                  | Defendant<br>Three Notch'd Brewing Company, LLC   |
| Correspondence Address | Thomas F. Bergert<br>Williams Mullen<br>321 E. Main Street, Suite 400<br>Charlottesville, VA 22902<br><br>tbergert@williamsmullen.com;ip@williams |
| Submission             | Answer  |
| Filer's Name           | Thomas F. Bergert   |
| Filer's e-mail         | ip@williamsmullen.com, prenie@williamsmullen.com, tbergert@williamsmullen.com   |
| Signature              | /Thomas F. Bergert/   |
| Date                   | 08/15/2014  |
| Attachments            | Answer.pdf(329476 bytes )   |

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

|                                     |   |                         |
|-------------------------------------|---|-------------------------|
| MONSTER ENERGY COMPANY,             | ) |                         |
|                                     | ) |                         |
| Opposer,                            | ) |                         |
|                                     | ) | Opposition No. 91217273 |
| v.                                  | ) |                         |
|                                     | ) | Serial No. 85/920,112   |
| THREE NOTCH'D BREWING COMPANY, LLC, | ) |                         |
|                                     | ) |                         |
| Applicant.                          | ) |                         |

**ANSWER TO NOTICE OF OPPOSITION**

Pursuant to Federal Rule of Civil Procedure 8(b) and 37 C.F.R. 2.106, THREE NOTCH'D BREWING COMPANY, LLC ("Applicant"), by counsel, hereby answers the Notice of Opposition ("Notice") filed by MONSTER ENERGY COMPANY ("Opposer") against Applicant's United States Application Serial No. 85/920,112 for the mark THREE NOTCH'D BREWING COMPANY CHARLOTTESVILLE, VA & Design shown below (the "Application") as follows.



The paragraph numbers below correspond to those in the Notice of Opposition. Applicant reserves the right to amend or supplement this Answer as appropriate.

1. Applicant admits the allegations in this paragraph. Applicant avers that the content of the Application speaks for itself.
  
2. Applicant is without information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies those allegations.

3. Applicant admits, upon information and belief, that Opposer is listed as the owner of record of United States Registration No. 2,903,214 (the "'214 Registration") for the mark identified therein, in connection with the goods identified therein, with the filing and issue dates identified therein. Applicant further admits that the stated filing date on the '214 Registration is prior to the filing date of Applicant's Application, and that copies of specifics of the '214 Registration are attached as Exhibit 1 to the Notice of Opposition. The statement in this paragraph as to incontestability is a legal conclusion to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of such allegation in this paragraph and on that basis denies the allegation. With regard to the remaining statements in this paragraph, Applicant is without information sufficient to form a belief as to the truth of such allegations in this paragraph and on that basis denies the allegations.

4. Applicant admits, upon information and belief, that Opposer is listed as the owner of record of United States Registration No. 3,434,821 (the "'821 Registration") for the mark identified therein, in connection with the goods identified therein, with the filing and issue dates identified therein. Applicant further admits that the stated filing date on the '821 Registration is prior to the filing date of Applicant's Application, and that copies of specifics of the '821 Registration are attached as Exhibit 2 to the Notice of Opposition. The statement in this paragraph as to incontestability is a legal conclusion to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of such allegation in this paragraph and on that basis denies the allegation. With regard to the remaining statements in this paragraph, Applicant is without information sufficient

to form a belief as to the truth of such allegations in this paragraph and on that basis denies the allegations.

5. Applicant admits, upon information and belief, that Opposer is listed as the owner of record of United States Registration No. 3,434,822 (the "'822 Registration") for the mark identified therein, in connection with the goods identified therein, with the filing and issue dates identified therein. Applicant further admits that the stated filing date on the '822 Registration is prior to the filing date of Applicant's Application, and that copies of specifics of the '822 Registration are attached as Exhibit 3 to the Notice of Opposition. The statement in this paragraph as to incontestability is a legal conclusion to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of such allegation in this paragraph and on that basis denies the allegation. With regard to the remaining statements in this paragraph, Applicant is without information sufficient to form a belief as to the truth of such allegations in this paragraph and on that basis denies the allegations.

6. Applicant admits, upon information and belief, that Opposer is listed as the owner of record of United States Registration No. 3,134,841 (the "'841 Registration") for the mark identified therein, in connection with the goods identified therein, with the filing and issue dates identified therein. Applicant further admits that the stated filing date on the '841 Registration is prior to the filing date of Applicant's Application, and that copies of specifics of the '841 Registration are attached as Exhibit 4 to the Notice of Opposition. The statement in this paragraph as to incontestability is a legal conclusion to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of such allegation in this paragraph and on that basis denies the allegation. With

regard to the remaining statements in this paragraph, Applicant is without information sufficient to form a belief as to the truth of such allegations in this paragraph and on that basis denies the allegations.

7. The statements in this paragraph are legal conclusions to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of the allegation in this paragraph and on that basis denies the allegation.

8. The statements in this paragraph are legal conclusions to which no response is required; to the extent that a response is required, Applicant is without information sufficient to form a belief as to the truth of the allegation in this paragraph and on that basis denies the allegation

9. Applicant is without information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies those allegations.

10. Applicant is without information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies those allegations.

11. Applicant is without information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies those allegations.

12. Applicant is without information sufficient to form a belief as to the truth of the allegations of this paragraph and on that basis denies those allegations.

13. Applicant denies that Opposer's Claw Icon Marks have become famous, and on information and belief, Applicant avers that Opposer's Claw Icon Marks are not famous. Applicant is without information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and on that basis denies those allegations.

14. Applicant admits that its Application was filed on May 1, 2013 alleging a date of use in commerce at least as early as August 29, 2013. Applicant is without information sufficient to

form a belief as to the truth of the remaining allegations in this paragraph and on that basis denies those allegations.

15. Applicant admits the allegations in this paragraph.

16. Applicant denies the allegations in this paragraph.

17. Applicant denies the allegations in this paragraph, and on information and belief, Applicant avers that Opposer's Claw Icon Marks are not famous.

18. Applicant denies the allegations in this paragraph, and on information and belief, Applicant avers that Opposer's Claw Icon Marks are not famous.

As to Opposer's prayer for relief, Applicant specifically denies that Opposer is entitled to any relief. Applicant further denies each and every allegation in the Notice that is not affirmatively admitted herein.

#### **AFFIRMATIVE DEFENSES**

1. Opposer fails to state a claim upon which relief can be granted.

2. There is no likelihood of confusion, mistake or deception between Applicant's Mark and Opposer's alleged Claw Icon marks because, inter alia, Applicant's Mark and Opposer's alleged Claw Icon marks are not confusingly similar.

3. There is no likelihood of confusion, mistake or deception between Applicant's Mark and Opposer's alleged Claw Icon marks because, inter alia, any rights Opposer may have in the pleaded marks are weak and must be narrowly circumscribed.

Applicant will rely on any and all properly provable affirmative defenses developed from discovery and further investigation, including but not limited to unclean hands, laches, estoppel, acquiescence, abandonment, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense. Applicant reserves the right to amend this pleading to conform

thereto. By stating the above affirmative defenses, Applicant does not assume any burden of proof beyond what is required by the federal trademark laws, 15 U.S.C. § 1051 *et seq.*

**PRAYER FOR RELIEF**

WHEREFORE, Applicant requests that the Notice of Opposition be denied and that judgment be entered in favor of Applicant, and for all other relief to which it is justly entitled.

THREE NOTCH'D BREWING COMPANY, LLC,  
Applicant

Date: August 15, 2014

By:



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*Counsel for Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2014, the foregoing ANSWER TO NOTICE OF OPPOSITION 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:

Diane M. Reed, Esq.  
Knobbe, Martens, Olson & Bear LLP  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92614



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