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

Proceeding	91217290
Party	Plaintiff Christopher Lohring
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Date	03/14/2015
Attachments	Response to Motion to Compel and Exhibits _Redacted.pdf(1269400 bytes)

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

Christopher Lohring)	
)	
Opposer/Respondent)	In Re Serial. No. 85/920,112
)	Mark:
v.)	
THREE NOTCH'D BREWING COMPANY, LLC)	International Class: 032
)	Filed: May 1, 2013
Applicant/Petitioner)	Opposition No.: 91217290
)	

OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO COMPEL

Opposer Christopher Lohring, through undersigned Counsel respectfully submits the following response in opposition to Applicant's Motion to Compel.

FACTUAL SUMMARY

Christopher Lohring ("Opposer") brews and distributes his own line of beer products in interstate commerce under the trademark NOTCH (hereinafter referred to "Opposer's NOTCH trademark"). On May 3, 2011, Plaintiff received Federal Trademark Registration No. 3,955,799 from the United States Patent & Trademark Office for "NOTCH" for "beer, ale, lager, stout, and porter; de-alcoholised beer" in International Class 32 (hereinafter referred to "Reg. No. 3,955,799" or "Opposer's NOTCH trademark").

On June 18, 2012, Three Notch'd Beer And Brew Company partnership filed application Serial No. 85/654200 for the trademark THREE NOTCH'D BREWING COMPANY (words alone) for use on "beer" in International Class 32 and "brewery services" in International Class

040 (hereinafter referred to “Serial. No. 85/654200”). The Three Notch'd Beer And Brew Company partnership, the owner of Application Serial No. 85/654200, was reorganized into the THREE NOTCH'D BREWING COMPANY, LLC (the “Applicant”).

On April 24, 2013, a final office action was issued by the U.S. Patent and Trademark Office in connection with Serial No. 85/654200 in which the mark THREE NOTCH'D BREWING COMPANY was refused registration because of a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) with Opposer's Notch trademark, Reg. No. 3,955,799.

On May 1, 2013, despite the April 24, 2013 final office action rejecting Serial No. 85/654200 (the word mark THREE NOTCH'D BREWING COMPANY), Applicant filed Application Serial No. 85/920112 for the logo trademark



, for use on “beer”. (hereinafter referred to “Serial No. 85/920112” or Applicant's THREE NOTCH'D BREWING COMPANY mark).

On August 20, 2013, an office action was issued by the U.S. Patent and Trademark Office in connection with Serial No. 85/920112. The August 20, 2013 office action stated that if Application Serial No. 85/654200, for the word mark THREE NOTCH'D BREWING COMPANY, registered, then Serial No. 85/920112, or Applicant's THREE NOTCH'D BREWING COMPANY mark, may be refused under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) because of a likelihood of confusion between the two marks.

Opposer's Notch trademark, Reg. No. 3,955,799 was never raised or addressed during the prosecution of Applicant's THREE NOTCH'D BREWING COMPANY mark, Serial No. 85/920112, despite the refusal of Serial No. 85/654200 because of a likelihood of confusion

under Section 2(d) of the Lanham Act with Opposer's Notch trademark, and despite Serial No. 85/920112 being identified as having a likelihood of confusion with Serial No. 85/654200.

A Notice of Abandonment for Serial No. 85/654200 was issued on December 2, 2013.

Applicant's THREE NOTCH'D BREWING COMPANY mark, Serial No. 85/920112 was published for opposition on March 11, 2014.

On April 10, 2014, Opposer filed a 90-day extension to oppose Application Serial No. 85/920112. On July 9, 2014, Opposer commenced this Notice of Opposition proceeding against U.S. Serial No. 85/920112 for having a lack of priority to and likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d) with Opposer's Notch trademark, Reg. No. 3,955,799.

On July 9, 2014, Applicant's THREE NOTCH'D BREWING COMPANY mark, Serial No. 85/920112 also received a Notice of Opposition from Monster Energy Company, which is still concurrently pending as Opposition No. 91217273.

On August 13, 2014, Applicant filed an Answer to the Notice of Opposition and Counterclaims. The Applicant's Counterclaims seek cancellation of the Opposer's Registration on four grounds.

In Count 1 of the Counterclaims, Applicant alleges that "[o]n information and belief" Opposer has not made use of the NOTCH mark in commerce. (Applicant's Counterclaims., ¶ 9) There are no further details alleged anywhere in the Answer or Counterclaims concerning this counterclaim.

In Count 3 of the Counterclaims, Applicant alleges that "[o]n information and belief" Opposer committed fraud on the U.S. Patent and Trademark Office. (*Id.*, ¶ 13) There are no further details alleged anywhere in the Answer or Counterclaims concerning this counterclaim.

In Count 2 of the Counterclaims, Applicant alleges that "[o]n information and belief" Opposer lacked a *bona fide* intent to use the NOTCH mark in commerce. (*Id.*, ¶ 11) There are no further details alleged anywhere in the Answer or Counterclaims concerning this counterclaim.

In Count 4 of the Counterclaims, Applicant alleges "[o]n information and belief" that Opposer has abandoned the NOTCH mark, because Opposer "has not made use the mark" and "by discontinuing such use with no intent to resume." (*Id.*, ¶ 16). There are no further details alleged anywhere in the Answer or Counterclaims concerning this counterclaim.

On October 9, 2014, Applicant served Opposer its first sets of discovery requests, including its First Set of Interrogatories and First Set of Requests for Production of Documents and Things (collectively, "First Discovery Requests"). Copies of these Applicant's Discovery requests are attached hereto as Exhibits A and B.

Applicant's Interrogatory No. 9 reads: "For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present." Applicant's RPD No. 10 requests: "All documents evidencing Opposer's annual dollar volume of sales in the United States of goods and services on which or in connection with the Opposer's Mark or Variations of Opposer's Mark have been used for every year from the date of first use to the present. Include all documents which reflect, refer to, related to or evidence the information given in response to Applicant's Interrogatory No. 11."

On November 8, 2014, Opposer served its objections and responses to the First Discovery Requests ("Opposer's Initial Responses"). Copies of Opposer's Initial Responses are

attached as Exhibits C and D.

On December 23, 2014, Opposer provided supplemental responses to Applicant's discovery requests. Copies of Opposer's supplemental responses ("Opposer's Supplemental Responses") are attached hereto as Exhibits E and F.

On February 27, 2015, Applicant filed a Motion to Compel, moving the Board for an order: (a) compelling Opposer to provide complete responses to Applicant's Interrogatory No. 9 and Applicant's Request for Production of Documents and Things (RPD) No. 10; and (b) awarding Applicant's attorneys' fees incurred in bringing the Motion to Compel.

STANDARD OF REVIEW

Under Section 401 of the Trademark Trial and Appeal Board Manual of Procedure (hereinafter referred to as the "TBMP"), the Board adopted the disclosure regime of the Federal Rules of Civil Procedure (FRCP) in order to promote the early exchange of information and earlier settlement of cases and, for cases that do not settle, "more efficient discovery and trial, [reduction of] incidents of unfair surprise, and [to] increase the likelihood of fair disposition of the parties' claims and defenses."

Under Section 405.02 of the TBMP, Interrogatories may seek any information that is discoverable under Federal Rules of Civil Procedure (FRCP) 26(b). Under Section 405.02 of the TBMP the scope of a request for production of documents, in an inter partes proceeding before the Board, is governed by FRCP 34(a), which in turn refers to FRCP 26(b).

FRCP 26(b)(1) provides that Parties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action.* (Emphasis added). Parties may obtain discovery regarding any nonprivileged matter that is *relevant to any party's claim or defense.* (Emphasis added).

FRCP 26(C)(iii) provides that on motion or on its own, the [Board] *must limit the extent of discovery otherwise allowed by these rules if it determines that:* (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and *the importance of the discovery in resolving the issues.* (Emphasis added).

Under Section 402.02 of the TBMP, the right to discovery is not unlimited. Even if the discovery sought by a party is relevant, it will be limited, or not permitted, *where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information.* (Emphasis added)

Under Section 502.05 of the TBMP, the Board will not award attorneys' fees, other expenses, or damages to any party. Under Section 102.01 of the TBMP, the Board is empowered to determine only the right to register.

ARGUMENT

REDACTION

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For these reasons, Opposer asks the Board to deny Applicant's motion to compel discovery.

DATED this 14h day of March 2015.

Respectfully submitted,

/s/Daniel N. Smith
Daniel N. Smith, Esq.
Counsel for Opposer
1 Salem Green, Suite 405
Salem, MA 01970
Telephone: 978-882-0160
Facsimile: 978-882-0161
E-Mail:smith@PatentsTrademarkLaw.com

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 2.119, the undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S RESPONSE TO APPLICANT'S MOTION TO COMPEL** was served on Applicant's attorney of record at the correspondence address of record in the United States Patent and Trademark Office by e-mail and by mailing a true copy thereof, by First Class Mail; postage prepaid this 14th day of March, 2015, in an envelope addressed as follows:

Thomas F. Bergert
Williams Mullen
321 E. Main Street, Suite 400
Charlottesville, VA 22902-3200
tbergert@williamsmullen.com
ip@williamsmullen.com

Dated: March 14, 2015

/s/Daniel N. Smith
Counsel for Opposer
1 Salem Green, Suite 405
Salem, MA 01970
Telephone: 978-882-0160
Facsimile: 978-882-0161
E-Mail:smith@PatentsTrademarkLaw.com

EXHIBIT A

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

In the Matter of Application No. 85920112

Christopher Lohring,)	
)	
Opposer,)	Opposition No. 91217290
)	
v.)	
)	
Three Notch'd Brewing Company, LLC,)	
)	
Applicant.)	
)	

APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant, Three Notch'd Brewing Company, LLC ("Applicant"), by counsel, hereby submits the following First Set of Interrogatories to Opposer ("Interrogatories"), Christopher Lohring ("Lohring" or "Opposer"), Applicant requests that Opposer answer the Interrogatories as instructed within thirty (30) days following service. For the convenience of the Board and parties, Applicant requests that each interrogatory be quoted in full immediately preceding the response.

DEFINITIONS

A. The terms "Christopher Lohring", "Lohring", "Opposer", "you" or "your" refers to Christopher Lohring and all companies owned in whole or in part by Christopher Lohring, parent and subsidiary corporations, officers, directors, employees, units, offices, divisions, predecessors, predecessors in right and/or title, successors in interest, principles, agents,

representatives, attorneys, assigns, affiliates, consultants, independent contractors, and the like acting for Christopher Lohring or on his behalf.

B. The terms “Three Notch’d Brewing Company, LLC”, “Respondent” or “Applicant,” refers to Three Notch’d Brewing Company, LLC, and all representatives, assigns, and the like acting for him or on his behalf.

C. The term “Mark” means any word, name, symbol, or device, or any combination thereof used by a person to identify and distinguish his or her goods or services, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. See 15 U.S.C. § 1127. The term “Mark” includes any trademark, service mark, collective mark, or certification mark as those terms are defined under 15 U.S.C. § 1127.

D. The term “Applicant’s Mark” refers to Applicant’s trademark, the subject of U.S. Application Serial No. 85/920,112.

E. The term “Opposer’s Mark” shall include, but not be limited to, the trade name or Mark “NOTCH” for which use has been alleged in Opposer’s Notice of Opposition. The term “Variations of Opposer’s Mark” shall include, but not be limited to, other trade names or Marks used by Opposer which include the term “NOTCH” in combination with any other words, designs, symbols, letters, numbers or phrases regardless of spacing, punctuation or capitalization.

F. The term “Notice of Opposition” refers to Opposer’s Notice of Opposition filed in the United States Patent and Trademark Office, Opposition No. 91217290, on July 9, 2014.

G. The term “person” means any natural person, corporation, partnership, limited partnership, limited liability company, association, governmental agency or department or other entity of that kind, or any representative of the foregoing.

H. The term “document” means any written, recorded or graphic matter, however produced or reproduced, whether or not in your possession, custody or control, and whether or not claimed to be privileged against discovery on any grounds, including, but not limited to, reports, lists, memoranda, call reports, work logs, time sheets, drawings, designs, sketches, worksheets, correspondence, schedules, sound recordings, photographs, videotapes, film, ledgers, books of account, catalogs, brochures and written statements of witnesses or other persons having knowledge of the pertinent facts. The term “document” also includes any and all copies of any document that contain any notation or otherwise differ from the original and other copies, and specifically includes any and all drafts of the above and any and all handwritten notes or notations in whatever form together with any attachments to any such documents. The term document expressly includes all computer records, and when such computer records are incorporated within the scope of these discovery requests, all documents shall be produced in both hard copy format and in a computer readable format, together with the computer file name and the identity of the file type in which it is stored. The definition also includes items incorporated in an electronic database of any kind, including hard drives, compact disks, floppy disks, magnetic tapes of any other media.

I. The term “identify” or “the identity of” (a) when used in reference to persons or entities means to name each person or entity along with an address or phone number where such person or entity may be contacted and if the person or entity is other than a natural person, set forth its name and principal business address and the name and position of the individual purporting to act or speak for it or on its behalf; and (b) when used in reference to a document means to state the following for each document:

- i. the nature and contents thereof;

- ii. the date thereof;
- iii. the date the document was executed if different from the date it bears;
- iv. the name, address and position of the author or signor thereof;
- v. the name, address and position of the addressee, if any;
- vi. the present location thereof and the present address and position of the person or persons having present custody thereof; and
- vii. whether the document has been destroyed and, if so, with regard to such destruction, the date thereof, the reason therefore, and the identity of the person or persons who destroyed the document.

J. The term “referring or relating to” means discussing, reflecting, containing, dealing with, analyzing, evaluating, estimating, constituting, describing, evidencing or pertaining to in any way, either directly or indirectly, and either in whole or in part.

K. The term “communication” means any form of communication, to include oral, written and electronic.

L. The term “describe” or “a description of,” when referring to communications or acts, means to state:

- i. the date of each communication or act; the identity of the communicator and/or recipient(s) of each communication or the person who performed each act identified;
- ii. the substance of each communication or the nature of each act; and
- iii. the identity of all documents referring or relating to such communications and/or acts.

M. The term “in connection with” means relating or pertaining to in any way, in whole or in part.

INSTRUCTIONS

A. These discovery requests are deemed to be continuing so as to require the filing of supplemental responses in the event Christopher Lohring or his representatives (including counsel) learn of additional facts or documents not set forth or produced in the responses, or discover that information given in the responses is erroneous. Such supplemental responses may be filed from time to time but not later than thirty (30) days after such further information is received or discovered.

B. Each Interrogatory is to be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failure to respond as fully as possible. The omission of any name, fact, document or other item of information from the responses shall be deemed a representation that such name, fact, document or item is not known to Christopher Lohring, his counsel or other representatives at the time of service of the responses.

C. If you cannot supply precise information, state your best estimate or approximation (including your best approximation of dates by reference to other events, when necessary, designated as such).

D. For each person identified, summarize what you believe to be the substance and basis of his or her knowledge or information and describe the means or manner through which he or she gained such knowledge or information.

E. Where descriptions or identification of documents is requested, you may produce copies of documents, identifying the interrogatory to which the document relates, in lieu of a written response to the interrogatory, to the extent production of the documents constitutes a complete response to the interrogatory.

F. If you object to any portion or aspect of a discovery request, answer the remainder.

G. If you consider any information or document called for to be privileged, then you must include it in a list of information and documents withheld from production, identifying each item of information and document by date, addressee(s), author(s), title and subject matter. In addition, identify those persons who have seen the information and documents or who were sent copies. Finally, state the grounds upon which each document is considered privileged.

H. For purposes of these Interrogatories, including the definitions and instructions, the word "and" includes the disjunctive "or," and the word "or" includes the conjunctive "and."

I. The singular and masculine form of a noun or pronoun shall embrace the plural, the feminine, or the neuter, as the particular context makes appropriate.

J. All responses to these Interrogatories should be submitted under oath, the answers to the interrogatories should be signed by the party making them, and responses delivered to Counsel for Applicant, Thomas F. Bergert, Williams Mullen, PC, 321 E. Main Street, Suite 400, Charlottesville, Virginia, 22902.

INTERROGATORIES

Interrogatory No. 1:

Identify and provide full contact information of persons having knowledge of any facts evidencing or supporting the claims, defenses or allegations in the above-captioned opposition proceeding, and state the subject matter for which they have knowledge.

Answer:

Interrogatory No. 2:

Describe in detail how Opposer became aware of Applicant's Mark, including the identity of all persons with knowledge of Applicant's Mark, the date(s) when such persons first acquired knowledge of Applicant's Mark, and all documents evidencing or referring to such knowledge.

Answer:

Interrogatory No. 3:

Describe in detail all formal registration proceedings pursued by Opposer for the Opposer's Mark, including but not limited to, international, federal and state registration proceedings, applications for registration, or amendments thereto, and the respective dates of filing, submission, registration, expiration, cancellation, withdrawal and/or abandonment.

Answer:

Interrogatory No. 4:

Describe in detail any instance(s) where Opposer discontinued or ceased use of Opposer's Mark, including but not limited to use with beer, lager, ale, stout, porter or de-alcoholised beer (Opposer's Products), and including a description of when, where and why such discontinuance or cessation occurred, and any decision to resume use of Opposer's Mark

Answer:

Interrogatory No. 5:

State whether Opposer has conducted, commissioned or is aware of any survey, research or other studies concerning the recognition level of consumers in the United States of the Opposer's Mark, or any variation thereof, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

Answer:

Interrogatory No. 6:

Identify and describe in detail all statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Answer:

Interrogatory No. 7:

Identify and describe in detail any instance(s) in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

Answer:

Interrogatory No. 8:

Identify all agreements, licenses, or understandings between the Opposer and any third-party relating to the use or registration of the Opposer's Mark and identify the persons employed by Opposer with the most knowledge of any such agreement, license, or understanding.

Answer:

Interrogatory No. 9:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, state the annual dollar volume of Opposer's sales and revenues in the United States of products bearing or

sold under the Opposer's Mark, and the annual advertising and promotional expenditures for each year (or for each month for periods of less than a year) associated with the Opposer's Mark, from the first sale of each product of goods to the present.

Answer:

Interrogatory No. 10:

For the goods referred to in paragraph 3 of Opposer's Notice of Opposition, identify the information and documents supporting Opposer's declaration in the Statement of Use filed on or around March 4, 2011 in Opposer's Application Serial No. 77/958,348 (the "348 Application").

Answer:

Interrogatory No. 11:

State whether Opposer obtained any opinion or advice, formal or informal, regarding Applicant's Mark and, if so, for all such opinions or advice, identify the person who requested the opinion or advice, the person rendering the opinion or advice, the person receiving the opinion or advice, the date the opinion or advice was requested and the date the opinion or advice was received.

Answer:

Interrogatory No. 12:

State whether Opposer has ever been a party to any proceeding or action, other than the present action, involving Opposer's Mark and, if so, for all such proceedings or actions, identify the parties to the proceeding or action, Opposer's status in the action, the mark or marks

involved, the kind of proceeding or action, the name of the court or tribunal where the action was filed, the date and docket number of the proceeding or action, whether there was a trial or hearing and the ultimate disposition of the proceeding action.

Answer:

Interrogatory No. 14:

Identify all trademark uses by Opposer of any of the terms “THREE”, “NOTCH’D” and “Charlottesville, VA” including the date when any such term was first used as such and the products or services in connection therewith.

Answer:

Interrogatory No. 15:

State in detail all facts which support the allegation in each of paragraphs 18 through 22 of the Notice of Opposition that Applicant’s Mark so resembles Opposer’s Mark as to be likely to cause confusion, or to cause mistake or to deceive, and identify all persons with knowledge of such facts and describe their knowledge.

Answer:

Interrogatory No. 16:

State all facts which support the allegation in paragraph 23 of the Notice of Opposition that Opposer’s Mark is a famous mark and that Applicant’s Mark has diluted Opposer’s Mark, and identify all persons with knowledge of such facts and describe their knowledge.

Answer:

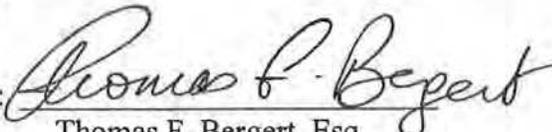
Interrogatory No. 17:

Identify all persons who were consulted in formulating the responses to the above Interrogatories.

Answer:

Respectfully Submitted,

**THREE NOTCH'D BREWING COMPANY, LLC,
Applicant**

By: 

Thomas F. Bergert, Esq.
WILLIAMS MULLEN, P.C.
321 E. Main Street, Suite 400
Charlottesville, Virginia 22902
(434) 951-5700
(434) 817-0977 (facsimile)
Counsel for Applicant

EXHIBIT B

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

In the Matter of Application No. 85920112

Christopher Lohring,)	
)	
Opposer,)	
)	Opposition No. 91217290
v.)	
)	
Three Notch'd Brewing Company, LLC,)	
)	
Applicant.)	
)	

**APPLICANT'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Applicant, Three Notch'd Brewing Company, LLC ("Applicant"), by counsel, hereby submits the following First Set of Requests for Production of Documents and Things ("First Requests") to Opposer, Christopher Lohring ("Lohring" or "Opposer"). Applicant requests that Opposer produce for inspection and copying each of the following documents at the offices of Counsel for Applicant, Williams Mullen, PC, 321 E. Main Street, Suite 400, Charlottesville, Virginia 22902, within thirty (30) days following the service of these requests, or at such other time and place as the parties may mutually agree upon.

INSTRUCTIONS

1. Each request for production shall be answered in accordance with the Federal Rules of Civil Procedure and shall be continuing to the extent permitted under Rule 26(e).

2. If Opposer contends that any information sought in these requests for production is exempt from discovery because it is exempted by any privilege or protection, Opposer is to provide the following information, in lieu of producing such documents:

- a. the privilege or protection that Opposer contends applies and facts sufficient to support the privilege or protection; and
- b. if the information is contained in a document, the author, addressee(s), all recipients, subject matter, and date of the document; if the information is not contained in a document, the persons involved in and the date of the communication giving rise to the privilege or protection that Opposer claims.

3. If any requested document or thing is no longer in existence: identify and describe each requested document by date, author(s), and recipient(s) and summarize its contents; identify each requested thing by function, brand, model and year; identify the person(s) responsible for destruction of any requested document or thing; and state the reason(s) for the destruction of any requested document or thing.

4. Unless otherwise specified in the document request, the relevant time frame for these requests is from the initial development and adoption of the NOTCH mark.

5. Pursuant to Rule 34(b), documents and things are to be produced either (1) as they are kept in the usual course of business, or (2) organized and labeled to correspond to the individual requests. Pursuant to Fed. R. Civ. P. 34(b)(1)(C), Applicant requests that electronically stored information (“ESI”) initially be produced as Static Images¹ (each document/file produced as a separate multi-page Tagged Image File Format (“TIFF”) image) unless a specific request refers to production of Native Files. If Load Files were created in the

process of converting Native Files to Static Images, or if Load Files may be created without undue burden or cost, Load Files should be produced together with the Static Images to allow plaintiff to load the images into its litigation support database application and review tool, Summation. In all cases where Opposer produces ESI as Static Image(s), the Native File(s) should be preserved.

6. For the convenience of the Board and parties, Applicant requests that each request for production be quoted in full immediately preceding the response.

7. For purposes of Applicant's First Requests, Applicant adopts and incorporates by reference the Definitions and Instructions set forth in Applicant's First Set Of Interrogatories To Opposer.

REQUESTS FOR DOCUMENTS AND THINGS

Request No. 1:

Other than communication with counsel for Opposer, all communications with third parties regarding this proceeding or the subject matter hereof.

Request No. 2:

All documents Opposer has obtained from any third party concerning any matter relating to this action.

Request No. 3:

All documents which evidence or reflect information given in response to Applicant's Interrogatory No. 18.

Request No. 4:

All documents which evidence, reflect, or refer to any survey, research or other studies done or commissioned by or on behalf of Opposer concerning the recognition level of consumers in the United States of the Opposer's Mark, or any Variation of Opposer's Mark, as used by Opposer, or concerning the Applicant's Mark, or concerning any actual confusion as between the use of these marks.

Request No. 5:

All documents evidencing, relating or referring to any instance in which a person has been confused, mistaken or deceived as to the source of Opposer's products advertised, promoted, offered for sale or sold under Opposer's Mark, including but not limited to instances of confusion, mistake or deception vis a vis Applicant's Mark.

Request No. 6:

All documents which evidence or reference statements, inquiries, comments or other communications by or from Opposer's customers, competitors or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of said customer, competitor or other third party as to the relationship, if any, between Opposer and Applicant or their respective products and/or services.

Request No. 7:

All documents which evidence, reflect, or refer to any third party uses known to Opposer of the mark NOTCH, or any other trademark or design which includes the term "NOTCH", alone or in combination with any other words, designs, symbols, letters, numbers or phrases.

Request No. 8:

All documents which evidence, reflect, or refer to any license, assignment, consent, authorization, settlement agreement, loan, security agreement or permission between Opposer and any individual or entity ever received or given by Opposer or contemplated by Opposer relating to the Opposer's Mark.

Request No. 9:

All documents which evidence, reflect, or refer to any discontinued or interrupted use of the Opposer's Mark, and any decision to resume use of the Opposer's Mark.

Request No. 10:

All documents evidencing Opposer's annual dollar volume of sales in the United States of goods and services on which or in connection with the Opposer's Mark or Variations of Opposer's Mark have been used for every year from the date of first use to the present. Include all documents which reflect, refer to, relate to or evidence the information given in response to Applicant's Interrogatory No. 11.

Request No. 11:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's Mark as currently used by Opposer in the United States.

Request No. 12:

Representative samples of all labels, packaging materials, advertisements, catalogs, products, brochures, business materials, and other promotional materials bearing the Opposer's Mark as used by Opposer in the United States which demonstrate use at the time or times stated in Opposer's response to Interrogatory No. 12.

Request No. 13:

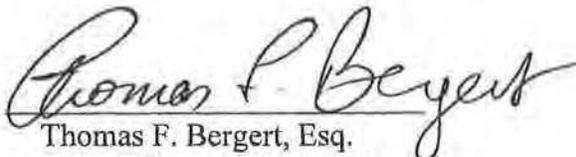
All documents evidencing, reflecting or referencing the geographic scope of Opposer's manufacturing, sales and promotion using Opposer's Mark.

Request No. 14:

All documents used to formulate the responses to Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Requests for Admission to Opposer.

Respectfully Submitted,

**THREE NOTCH'D BREWING COMPANY, LLC,
Applicant**

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EXHIBIT C

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