

ESTTA Tracking number: **ESTTA627224**

Filing date: **09/15/2014**

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

Notice of Opposition

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

Opposer Information

Name	The Gambrinus Company
Granted to Date of previous extension	09/14/2014
Address	14800 SAN PEDRO AVENUE, SUITE 300 SAN ANTONIO, TX 78232 UNITED STATES

Attorney information	J. Scott Gerien Dickenson, Peatman & Fogarty 1455 First Street, Ste. 301 Napa, CA 94559 UNITED STATES tmltg@dpf-law.com Phone:7072527122
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Applicant Information

Application No	86168367	Publication date	03/18/2014
Opposition Filing Date	09/15/2014	Opposition Period Ends	09/14/2014
Applicant	Wicked Weed Brewing LLC 1312 Fawn Meadow Way Arden, NC 28704 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 2012/12/28 First Use In Commerce: 2012/12/28
All goods and services in the class are opposed, namely: Beer

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1646210	Application Date	07/05/1990
Registration Date	05/28/1991	Foreign Priority Date	NONE
Word Mark	WICKED ALE		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 032. First use: First Use: 1987/02/26 First Use In Commerce: 1987/06/22 beer		
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U.S. Registration No.	1761609	Application Date	11/15/1991
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Registration Date	03/30/1993	Foreign Priority Date	NONE
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Word Mark	PETE'S WICKED ALE		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 032. First use: First Use: 1987/02/26 First Use In Commerce: 1987/06/22 beer		
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U.S. Registration No.	3552392	Application Date	10/26/2001
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Registration Date	12/30/2008	Foreign Priority Date	NONE
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Word Mark	WICKED		
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Design Mark			
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Description of Mark	NONE		
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Goods/Services	Class 032. First use: First Use: 2001/08/01 First Use In Commerce: 2001/08/01 BEER AND ALE		
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Attachments	76330260#TMSN.png(bytes) Notice of Opposition - WICKED WEED.pdf(224738 bytes)		
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Certificate of Service

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

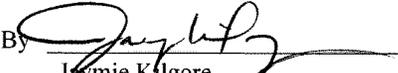
Signature	/Jaymie Kilgore/
Name	Jaymie Kilgore
Date	09/15/2014

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Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the Trademark Trial and Appeal Board through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 9/15/14

By 
Jaymie Kilgore

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

The Gambrinus Company,
Opposer,
vs.
Wicked Weed Brewing LLC
Applicant.

OPPOSITION NO.

NOTICE OF OPPOSITION

TO THE COMMISSIONER OF TRADEMARKS:

The Gambrinus Company, a Texas corporation located at 14800 San Pedro Avenue, Suite 300, San Antonio, Texas 78232 ("Opposer"), believes it will be damaged by registration of the mark WICKED WEED for beer, shown in U.S. Trademark Application Serial No. 86/168,367, filed on January 17, 2014, by Wicked Weed Brewing LLC ("Applicant") and hereby opposes same.

Solely for the purpose of this proceeding, Opposer alleges the following as grounds for opposition:

1. Applicant seeks to register WICKED WEED as a trademark for beer in International Class 32, U.S. Trademark Application Serial No. 86/168,367 (the "Application"), based on Applicant's alleged use of the mark in United States commerce since as early as December 28, 2012, as evidenced by the publication of such mark on March 18, 2014. Applicant's Application was filed on January 17, 2014.

1 2. Opposer is the owner of incontestable U.S. Trademark Registration No. 1,646,210
2 issued on May 28, 1991, for the mark WICKED ALE for beer, in International Class 32, with a
3 first use date of June 22, 1987, and constructive first use date of July 5, 1990, both of which
4 precede the filing date of Applicant's Application.

5 3. Opposer is the owner of incontestable U.S. Trademark Registration No. 1,761,609
6 issued on March 30, 1993, for the mark PETE'S WICKED ALE for beer, in International Class
7 32, with a first use date of June 22, 1987, and constructive first use date of November 15, 1991,
8 both of which precede the filing date of Applicant's Application.

9 4. Opposer is the owner of U.S. Trademark Registration No. 3,552,392 issued on
10 December 30, 2008, for the mark WICKED for beer, in International Class 32, with a first use
11 date of August 1, 2001, and constructive first use date of October 26, 2001, both of which
12 precede the filing date of Applicant's Application.

13 5. Applicant's WICKED WEED mark is likely to cause confusion, mistake or to
14 deceive the public because it is virtually identical to each of Opposer's WICKED ALE, PETE'S
15 WICKED ALE, and WICKED marks (collectively, "Opposer's WICKED Marks") and the
16 goods on which Opposer uses each of Opposer's WICKED Marks are virtually identical,
17 substantially similar or related to the goods identified in Applicant's Application and said goods
18 are purchased by the same group of consumers. Accordingly, Applicant's WICKED WEED
19 mark is confusingly similar to each of Opposer's WICKED Marks such that Applicant is not
20 entitled to register the mark WICKED WEED, and Applicant's Application should be denied in
21 accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d).

22 6. Opposer avers that if Applicant is granted the registration herein opposed, it
23 would interfere with Opposer's exclusive right to use each of Opposer's WICKED Marks herein
24 relied upon, all to the detriment and damage of Opposer. Accordingly, Opposer avers that for
25 the reasons set forth above, it will be damaged by a grant of registration to Applicant of the mark
26 WICKED WEED which is the subject of U.S. Trademark Application Serial No. 86/168,367.

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1 WHEREFORE, Opposer prays as follows:

- 2 1. That this Opposition be sustained;
- 3 2. That U.S. Trademark Application Serial No. 86/168,367 be rejected; and
- 4 3. That registration of the trademark WICKED WEED shown and specified in U.S.
- 5 Trademark Application Serial No. 86/168,367 be refused and denied.

6 Please charge Opposer's counsel's Deposit Account #503564 the \$300 filing fee for the

7 Opposition, and any other fees which may be necessary to effectuate the filing of this opposition.

8

9 Dated: September 15, 2014

DICKENSON, PEATMAN & FOGARTY

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12 By  _____

J. Scott Gerien
Aaron D. Currie

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14 1455 First Street, Ste. 301
Napa, California 94559
15 Telephone: 707-252-7122
16 Facsimile: 707-255-6876

17 Attorneys for Opposer,
The Gambrinus Company

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PROOF OF SERVICE

I declare that I am over the age of 18 years, employed in the County of Napa, and not a party to the within action; my business address is 1455 First Street, Ste. 301, Napa, CA 94559.

On September 15, 2014, I served the attached **NOTICE OF OPPOSITION** on the person(s) listed below:

DAVID M. CARTER
THE VAN WINKLE LAW FIRM
PO BOX 7376
ASHEVILLE, NORTH CAROLINA 28802-8506

by enclosing a true copy in a sealed envelope addressed as shown above and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 15, 2014, at Napa, California.


Jaymit Kilgore
Legal Secretary

DICKENSON PEATMAN & FOGARTY

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