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

Proceeding	91220585
Party	Defendant Tower Brew Co., LLC dba Sactown Union Brewery
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Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Candace L. Moon
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Signature	/clm/
Date	10/22/2015
Attachments	Amended Counterclaim to Cancel Opposer's Reg.pdf(2606268 bytes )

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

In the Matter of Application Serial Number 86/358,183  
For the mark SACTOWN UNION BREWERY and Design  
Published in the Official Gazette on October 14, 2014

UNION CRAFT BREWING )  
COMPANY, LLC dba UNION )  
CRAFT BREWING COMPANY, a )  
Maryland Limited Liability )  
Company, )  
Opposer, )  
v. )  
TOWER BREW CO., LLC dba )  
SACTOWN UNION BREWERY, a )  
California Limited Liability )  
Company, )

Opposition No.: 91220585

Applicant.

**APPLICANT'S AMENDED COUNTERCLAIM TO CANCEL OPPOSER'S  
REGISTRATION NO. 4,410,239**

Applicant Tower Brew Co., LLC dba Sactown Union Brewery (hereinafter "Applicant"), hereby files this Petition for Cancellation against Union Craft Brewing Company, LLC dba Union Craft Brewing Company (hereinafter "Opposer"), for Opposer's Mark UNION CRAFT BREWING, Registration Number 4,410,239.

As grounds for this Cancellation, Applicant hereby states as follows:

1. Applicant is the owner of the trademarks SACTOWN UNION BREWERY, and SACTOWN UNION BREWERY & DESIGN, U.S.P.T.O Trademark Application Serial

Numbers, 86/277,442, filed on May 9, 2014, and 86/358,183, filed on August 5, 2014, respectively, both for use in Class 032 for "Beer." The applications were published for opposition and Opposer filed Notices of Opposition for each, presently pending before the Board in the present consolidated action.

2. Opposer is the record owner of the trademark UNION CRAFT BREWING, Registration Number 4,410,239, for use in Class 032 for "Beer," registered on October 1, 2013. Thus, this Petition for Cancellation is timely filed less than five years from the date of registration.

3. Opposer's Application was filed on January 9, 2013 in connection with "beer" in International Class 32 under a Section 1(a) basis, claiming a date of first use in commerce of at least June 1, 2012. Upon information and belief, and as set forth in detail below, Opposer's registration was fraudulently obtained, and Opposer had not used the trademark in interstate commerce as of the date it claims.

5. Applicant is damaged by Opposer's Registration because Opposer attempts to prevent Applicant's trademark from being registered based upon a false date of first use.

6. Pursuant to the U.S. Department of Treasury, Tax and Trade Bureau, one must acquire a Certificate of Label Approval ("COLA"), to ship alcoholic beverages across state lines. Opposer, as a seller and distributor of beer is required to acquire such certificate. As of January 9, 2013, Opposer had not acquired a COLA certificate. Therefore, of January 9, 2013, Opposer could not have been using the mark in interstate commerce, despite its claimed Section 1(a) basis for use at least as early as June 1, 2012. Rather, upon information and belief, Opposer had only sold beers within the state of Maryland. The lack of a COLA evidences Opposer's failure to use goods in interstate commerce. As a result,

7. On information and belief, Opposer knew or should have known that its statement under oath that it was using the name UNION CRAFT BREWING in interstate commerce was false and material to the application. Said false statement was made with the intent to induce agents of the USPTO to grant said registration, and reasonably relying upon the truth of said false statements, the USPTO did in fact grant the registration. Therefore, on information and belief, Opposer has committed fraud upon the USPTO and its registration is void ab initio.

WHEREFORE, Applicant respectfully prays that Opposer's mark UNION CRAFT BREWING, Registration Number 4,410,239 be cancelled..

Dated: 10/22/15

By: Candace L. Moon

Candace L. Moon, Esq.  
Attorney for Applicant  
Tower Brew Co., LLC doing business as  
Sactown Union Brewery

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this paper is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via the electronic filing procedure on at San Diego, California.

By: Candace L. Moon

**CERTIFICATE OF SERVICE**

I, Candace L. Moon, counsel for Tower Brew Co. doing business as Sactown Union Brewery, hereby certify that a copy of the foregoing Answer to Notice of Opposition and, was served upon the attorney for the Opposer, via first class mail, postage prepaid on October 22, 2015 at the following address:

Glenn A. Rice, Esq.  
Funkholder Vegosen Liebman & Dunn Ltd.  
55 West Monroe Street, Suite 2300  
Chicago, Illinois 60603

Dated: October 22, 2015

By: Candace L. Moon  
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