

ESTTA Tracking number: **ESTTA670338**

Filing date: **05/04/2015**

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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Date	05/04/2015
Attachments	Reply Brief.pdf(1356638 bytes)

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

In the Matter of Application Serial Number 86358183
For the mark SACTOWN UNION BREWERY and Design
Published in the Official Gazette on October 14, 2014

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

Opposition No.: 91220585

APPLICANT'S REPLY BRIEF IN OPPOSITION TO OPPOSER'S MOTION TO DISMISS

Tower Brew Co. doing business as Sactown Union Brewery ("Applicant"), by its attorney, Candace L. Moon, hereby replies to the Combined Motion filed by Union Craft Brewing doing business as Union Craft Brewing Company ("Opposer").

Opposer argues that (1) Applicant's grounds for cancellation are of unlawful use rather than non-use, (2) that the requirements for a showing of unlawful use have not been met, and (3) the unlawful use posited is not in fact unlawful. Accordingly, Opposer argues that Applicant has failed to state a claim under which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Opposer errs on several grounds. Applicant maintains, as it has since the beginning, that Opposer's mark should be cancelled for non-use.

As Opposer correctly notes, a “valid ground” for cancellation must be alleged that negates Opposer’s right to the subject registration. *Young v. AGB Corp.*, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998). Specifically, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claimant thus must allege well-pleaded factual matter and more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Iqbal*, 556 U.S. 662.

Here, Applicant has alleged that Opposer did not use the UNION CRAFT BREWING mark on beer in interstate commerce as of the date of first use listed on U.S. Reg. No. 4,410,239, namely June 1, 2012. This is evidenced by well-pleaded factual matter, namely that in order to ship beer across state lines (and thereby in interstate commerce) the manufacture must apply for and receive a Certificate of Label Approval from the Federal Tax and Trade Bureau. Applicant has alleged and pleaded that, factually-speaking, Opposer lacked this required federal approval and therefore must not have shipped across state lines. Rather than alleging that Opposer acted unlawfully, to the contrary, Applicant submits that Opposer acted in accordance with federal law and therefore did not sell beer in interstate commerce.

It is worth noting that the law requiring a Certificate of Label Approval for malt beverages entering interstate commerce is in fact applicable, despite Opposer’s statements to the contrary. Specifically, 27 U.S.C.A. § 205(e) holds that “[It shall be unlawful to] sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, ... malt beverages ... unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Secretary of the Treasury.... In order to prevent the sale or shipment or other introduction of ... malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, (1) ... no brewer or wholesaler of malt beverages shall bottle, and (2) no

person shall remove from customs custody, in bottles, for sale or any other commercial purpose... unless, upon application to the Secretary of the Treasury, he has obtained and has in his possession a certificate of label approval covering ... malt beverages. 27 U.S.C.A. § 205(e). While these requirements are waived for malt beverages that *do not leave the state in which they are manufactured*, this only further proves that without such Certificate of Label Approval Opposer could not have entered *interstate commerce* and therefore has not satisfied the substantive requirements of trademark registration.

In summation, the pleadings submitted by Applicant allege that Opposer did not use the mark in interstate commerce by the date of first use listed within the registration. It is a fact that Opposer lacked the federal approvals that are necessary to such an action. Accordingly, Applicant has plead "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The notice pleading rules are not meant to impose a great burden on a party seeking relief. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005); *see also Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512-13 (2002). When the sufficiency of a complaint is challenged, the factual allegations must be presumed true and should be liberally construed in the complaining party's favor. *Leatherman v. Tarrant County Narcotics & Coordination Unit*, 507 U.S. 163, 164 (1993); *see also Erickson v. Pardus*, 551 U.S. 89, 93 (2007) ("[W]hen ruling on a ... motion to dismiss, a judge must accept as true all of the factual allegations alleged in the complaint."). Federal Rule of Civil Procedure 8 requires "not a specific quantity of facts, but simply 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Aktieselskabe*, 525 F.3d at 16 (quoting Fed. R. Civ. P. 8(a)(2)). Indeed, *Twombly* itself reiterated that a complaint "does not need detailed factual allegations." 127 S. Ct. at 1964. Applicant's claims have been adequately pled, valid grounds exist for cancelling Opposer's registration, and, therefore, Applicant's claims should not be dismissed.

WHEREFORE, Applicant respectfully prays that Opposer's Motion be denied.

Dated: May 4, 2015

By: Candace Moon

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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 Reply Brief in Opposition to Opposer's Motions, was served upon the attorney for the Opposer Glenn A. Rice via electronic mail to grice@fvldlaw.com on May 4, 15.

By: 

