

ESTTA Tracking number: **ESTTA731505**

Filing date: **03/05/2016**

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

Proceeding	91223456
Party	Defendant t & beer, inc
Correspondence Address	GREGORY J WINSKY ARCHER & GREINER PC ONE CENTENNIAL SQUARE, PO BOX 3000 HADDONFIELD, NJ 08033 UNITED STATES trademarks@archerlaw.com;t.simone@prodi
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Date	03/05/2016
Attachments	Motion.pdf(58019 bytes) Exhibits.pdf(500637 bytes)

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

In the Matter of Trademark Application No.: 86/566,095

Brouwerij Nacional Balashi N.V.,	:	Opposition No. 91223456
	:	
Opposer,	:	Serial No. 86/566,095
	:	MARK: BALASHI SPIRITS
	:	
v.	:	I hereby certify that this submission and
	:	all marked attachments, if any, is being electronically
	:	filed with the Trademark Trial and Appeal Board
t & beer, inc.,	:	through their website located at http://estta.uspto.gov
	:	on March 5, 2016.
	:	
Applicant.	:	<u> /s/ Gregory J. Winsky </u>
	:	GREGORY J. WINSKY, ESQUIRE

**APPLICANT t & beer, inc.’s MOTION FOR JUDGMENT ON THE PLEADINGS
AND TO SUSPEND PROCEEDINGS PENDING RESOLUTION OF MOTION**

Applicant, t & beer, inc., by and through its undersigned counsel, hereby moves to dismiss, by way of the instant Motion for Judgment on the Pleadings, the Notice of Opposition filed by Opposer Brouwerij Nacional Balashi N.V. (“Opposer”) to Applicant’s application for registration of the trademark “Balashi Spirits.”

Opposer’s Notice of Opposition should be dismissed with prejudice because Opposer has not pled sufficient facts to give rise to a plausible claim demonstrating that valid ground exists for opposing of Applicant’s application for registration of the mark, Balashi Spirits. Further, the Notice of Opposition does not allege any facts giving rise to a plausible claim that Opposer has any priority to the Balashi Spirits mark. For these reasons, the Notice of Opposition should be dismissed and Applicant’s application for the Balashi Spirits mark should proceed.

FACTS

On March 17, 2015, Applicant filed an application for registration of the mark, Balashi Spirits, U.S Trademark Application No. 86/566,09. Applicant filed an intent-to-use application pursuant to 15 U.S.C. §1501(b). No defects are alleged as to Applicant's pending application. The Notice of Opposition alleges that "upon information and belief, Applicant did not have a bona fide intent-to-use in commerce the Balashi Spirits mark..." *See* Notice of Opp'n. ¶4. Opposer similarly alleges, again on "information and belief," that Applicant has not marketed or taken any "concrete steps" toward using the mark and that it has not invested financial resources toward using the mark." *Id.* ¶¶ 5, 6.

The Notice of Opposition alleges that Opposer has been doing business since 1999 including the "production, offering and sale of beer to consumers, including but not limited to U.S. citizens." Notice of Opp'n. ¶10. Notably, the Notice of Opposition does not allege that any of Opposer's "production, offering and sale of beer" occurred in United States commerce. *See id.* ¶¶ 14-15, 17-19.

The Notice of Opposition references several applications filed by Opposer pending before the USPTO. Two of the applications were filed based upon Section 44(d) of the Lanham Act. *See* Notice of Opp'n. ¶¶11, 12. The Notice of Opposition does not disclose, however, that Application No. 86/701,463, Application No. 86,701,470, and Application No. 86/701,475 were filed with the USPTO on July 25th, 22nd and 22nd of 2015 respectively. *See* Exs. 1-3 attached hereto.¹ Further the applications are based upon a purported foreign trademark which Opposer

¹ Opposer's applications referenced in the Notice of Opposition are attached hereto for the convenience of the Board and do not constitute evidence or materials outside of the pleadings because the applications are part of the record of this proceeding even without further action of the parties. *See* 37 C.F.R. §2.122(b). Thus, the Board may take judicial notice of the timing of Opposer's applications and current status of same without converting the instant motion to one for summary judgment.

reports was issued on **June 7, 2011**, more than four years before the Section 44(b) applications were filed.

The Notice of Opposition further alleges an additional application filed on behalf of Opposer, Application No. 86/734,984, filed pursuant to Section 1(a) of the Lanham Act claiming “use in commerce” at least as early as 2004. Notably, the Notice of Opposition does not allege that any such use in commerce was in the United States. Rather, the Notice of Opposition alleges only that any use in commerce has been outside of the United States. See Notice of Opp’n. ¶¶19-21. For example, Opposer alleges that “[u]pon information and belief,” U.S. consumers have brought beer into the United States through U.S. customs and distributed “some of their BALASHI beer supply to friends and family within the United States.” *Id.* ¶21. Opposer alleges only that it engaged in “commercial intercourse” with “U.S. citizens” in “receiving and responding” to inquiries about distributorships and potential online marketing. *Id.* ¶¶ 22, 23.

There is no allegation that Opposer uses the Balashi mark in commerce within the United States.

ARGUMENT

A party may move for judgment on the pleadings after the pleadings have been closed if the motion does not delay trial. See TBMP §504.01; Fed. R. Civ. P. 12 (c). For purposes of the motion, all well pleaded factual allegations of the nonmoving party must be accepted as true, while those allegations of the moving party which have been denied (or which are taken as denied, pursuant to Fed. R. Civ. P. 8(b)(6), because no responsive pleading thereto is required or permitted) are deemed false. See TBMP §504.02 (citing *Kraft Group LLC v. Harpole*, 90 USPQ2d 1837, 1840 (TTAB 2009), dismissed in favor of a cancellation proceeding, slip op.

Opposition No. 91185033 (TTAB September 5, 2011)). Importantly, conclusions of law are not taken as admitted. *See id.*

Similar to the standard for dismissal under Fed. R. Civ. P. 12(b)(6), on a motion for judgment on the pleadings, the Board must consider the sufficiency of the factual allegations contained in Opposer's Notice of Opposition. The sufficiency of the pleading is determined by prevailing Supreme Court precedent. *See Caymus Vineyards v. Caymus Med., Inc.*, 2013 TTAB LEXIS 343, at *3, 107 U.S.P.Q.2D (BNA) 1519, 1521-1522 (TTAB July 12, 2013).

Accordingly,

[u]nder Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.' . . . [T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007))(emphasis added)(internal citations omitted). Thus, to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570); *see also Caymus Vineyards*, 2013 TTAB LEXIS 343, at *3.

Under *Iqbal*, two principles underlie a decision on a motion to dismiss. First, while a Court must accept as true all allegations in a complaint, this principle is inapplicable to legal conclusions. "Threadbare recitals of the elements of cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 663 (citations omitted). Second, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.*

Determining whether a complaint states a plausible claim for relief, is a "context-specific task"

which “requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 663-664.

The Supreme Court further instructed that, “a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* at 664. “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement of relief.” *Id.* The Board is not compelled to accept . legal conclusions “couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

The Notice of Opposition fails to state a claim because it alleges only that “upon information and belief,” Applicant lacks the requisite bona fide intent to use the mark in commerce. In addition, the applications of record demonstrate that Opposer does not have any priority in the United States on the name Balashi. Neither of these allegations provides a basis for this Opposition.

A. Opposer’s Allegations Regarding Bona Fide Intent Fail to State a Plausible Claim That a Valid Ground Exists for Opposing Applicant’s Application.

Opposer’s allegations regarding bona fide intent fail to state a claim. Opposer misapprehends the purpose of an application pursuant to Section 1(b) of the Lanham Act, which expressly allows for applications based upon an intent-to-use a mark in commerce. *See* 15 U.S.C. §1501(b); *Aktieselskabet AF 21 November 2001 v. Fame Jeans, Inc.*, 525 F.3d 8, 19 (D.C. Cir. 2008). Opposer alleges only that upon its “information and belief,” Applicant lacks a bona fide intent to use the mark because, again upon its “information and belief,” Applicant has not

invested financial resources or marketed any products under the Balashi Spirits mark. *See* Notice of Opp'n. ¶¶ 4-7.

These allegations do not render relief under Opposer's Notice of Opposition plausible because there is no requirement under the law that an intent-to-use applicant make use of or incur expenses related to the mark at the time of filing a Section 1(b) application. *Aktieselskabet*, 525 F.3d at 19. Allowing a party to oppose an intent-to-use application on the basis of nothing more than their "information and belief" that insufficient financial investment has been made, with no other facts alleged, defeats the purpose of an intent-to-use application.

In *Aktieselskabet*, the Court of Appeals for the D.C. Circuit discussed priority in a Board appeal highlighting the history and purpose of an intent-to-use application. "Congress created the intent-to-use application in the 1988 amendments to the Lanham Act with the goal of eliminating the need to use a mark before applying to register it." *Id.* Indeed, the intent-to-use application was designed to avoid the "unnecessary legal uncertainty" caused by the use requirement because "a business might adopt a mark and invest in product development and marketing without being sure its use had earned it rights to the mark." *Id.* Allowing an opposer to devalue an application on the "assumption" that the applicant had not made actual use by the date of the application is "precisely the result Congress wanted to avoid." *Id.*

Similarly here, no plausible claim can be maintained where Opposer simply pleads that upon its "information and belief" Applicant has not taken sufficient steps toward marketing and investing in the mark. There is simply no legal precedent requiring that Applicant make any "meaningful investment" in the mark prior to filing an intent-to-use application pursuant to Section 1(b) of the Lanham Act. *See id.* at 19. Nor is there any requirement that an applicant make any particular level of investment or progress on its intended use of the mark within the

thirty or even sixty day deadline for filing a notice of opposition.² And there is certainly not a requirement that an intent-to-use applicant make progress toward use in commerce that satisfies an opposer's "information and belief." Absent any such requirement and any factual allegations to give rise to a plausible claim that Applicant does not intend to use the mark in commerce, no valid ground exists for opposing of Applicant's application and the Notice of Opposition should be dismissed on those grounds. *See Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555 (2007)) ("'[N]aked assertion[s]' devoid of 'further factual enhancement'" do not satisfy pleading requirements).

B. The Applications of Record Demonstrate Opposer Cannot Establish Any Priority In the Mark.

The Notice of Opposition alleges that Opposer will suffer "substantial harm" if Applicant's application is granted. *See* Notice of Opp'n. ¶26. Opposer bases this bald legal assertion on the "fact" that there is a likelihood of confusion as between Opposer's purported "marks" and Applicant's Balashi Spirit mark. *See id.* ¶¶ 28-30. Accordingly, Opposer contends that pursuant to Section 2(d) of the Lanham Act, Applicant's application should be denied. *See id.* ¶35.

This argument also fails to state a plausible claim. In order to prevail on the basis of a Section 2(d) claim, Opposer must be able to establish priority in the mark. *See* 15 U.S.C. §1502(d). Section 2(d) mandates that registration shall be issued unless, *inter alia*, the mark "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned..." 15 U.S.C. §1052(d); *Belmora, LLC v. Bayer Consumer Care AG*, 84 F. Supp. 3d 490, 515 (E.D. Va. 2015) (granting motion for judgment on the pleadings in trademark

² As Applicant's application is currently in suspense pending resolution of this Opposition proceeding, there is also no requirement for Applicant to continue expending resources for any additional development because of the uncertain status of the application.

cancellation proceeding and acknowledging that Section 2(d) “explicitly requires domestic use of a mark.”); *Aktieselskabet*, 525 F.3d at 20. This is because “absent some use of its mark in the United States, a foreign mark holder generally may not assert priority rights under federal law, even if a United States competitor has knowingly appropriated that mark for his own use.” *Punchgini ITC Ltd. v. Punchgini*, 482 F.3d 135, 156 (2d Cir. 2007)(citing *Person’s Co. v. Christman*, 900 F.2d 1565, 1569-70 (Fed. Cir. 1990))(emphasis supplied).

Opposer’s applications, which are of record in this proceeding, along with the allegations asserted by Opposer, demonstrate that Opposer cannot sustain a claim of priority either by operation of its purported foreign trademarks or any use in commerce in the United States. As noted above, Opposer’s three applications, the ‘463, ‘470, and ‘475 applications, were filed pursuant to Section 44(e) of the Lanham Act. Thus, each of the applications relies upon an allegedly prior foreign trademark. *See* Exs. 1 - 3. In its applications, Opposer discloses that the foreign registration was issued in July of 2011. *See id.* The ‘463, ‘470, and ‘475 applications were each filed in July of 2015, more than four years after the issuance of the foreign mark.

Section 44(e) of the Lanham Act requires “timely” registration in the United States of a duly issued foreign mark. *See* 15 U.S.C. §1126(d). Specifically, Section 44(d) requires that in order for a foreign trademark holder to have any priority, an application for registration in the United States must be filed, *inter alia*, “within six months from the date on which the application was first filed in the foreign country.” *Id.* Opposer’s application documents of record in this proceeding demonstrate that Opposer has failed to file a timely application pursuant to receive the benefit of a priority date. *See* Exs. 1 - 3; *Aktieselskabet*, 525 F.3d at 19.

By Opposer’s own admission in the Notice of Opposition, Opposer has not used the mark in commerce in the United States. *See* Notice of Opp’n. ¶¶19-26. At best, Opposer’s pleading establishes only that it has conducted business abroad related to the mark with travelers who are

assumedly from the United States, but there are no allegations to demonstrate that any of that business occurred in “U.S. commerce.” Absent any such allegation, the Notice of Opposition fails to establish any basis for a valid claim pursuant to Section 2(d). *See Aktieselskabet*, 525 F.3d at 20 (collecting cases holding that “sporadic or minimal” sales are not sufficient to establish actual use of a mark); *Zuzu Designs v. L’Oreal, S.A.*, 979 F.2d 499, 503 (7th Cir. 1992) (“A few bottles sold over the counter ... and a few more mailed to friends” does not constitute sufficient use.). *See also Belmora*, 84 F. Supp. 3d at 510 (citing *Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 69 F. Supp. 3d 175, 201 (D.D.C. 2014)) (“It also is a basic tenet of American trademark law that foreign use of a mark creates no cognizable right to use that mark within the United States.”). Accordingly, Opposer cannot establish any priority in a mark bearing the word “Balashi” and this proceeding should be dismissed.

CONCLUSION

For all these reasons, the Notice of Opposition fails to assert any valid ground exists for opposing of the subject application and Applicant respectfully requests that the Board dismiss the Opposition for failure to state a claim and further suspend further proceedings pending disposition of the motion.

Respectfully submitted,

ARCHER & GREINER
A Professional Corporation
Attorneys for Applicant, t & beer, inc.

By: /s/ Gregory J. Winsky Reg. No. 30,435
GREGORY J. WINSKY, ESQUIRE
KERRI E. CHEWNING, ESQUIRE

Dated: March 5, 2016.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion for Judgment on the Pleadings** was served on counsel for the Opposer, this 5th day of March, 2016, by sending the same via U.S. First Class mail, postage prepaid, and emailed to:

Jeffrey D. Feldman
Susan J. Latham
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By: /s/ Gregory J. Winsky
GREGORY J. WINSKY, ESQUIRE

113940126v1

EXHIBIT 1

Generated on: This page was generated by TSDR on 2016-03-04 13:20:05 EST

Mark: BALASHI PREMIUM BEER BREWED IN ARUBA



US Serial Number: 86701463

Application Filing Date: Jul. 22, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 03, 2015

Mark Information

Mark Literal Elements: BALASHI PREMIUM BEER BREWED IN ARUBA

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a green horizontal stripe across the top of the mark. Just below the stripe are the words PREMIUM BEER in black curved up, below the words PREMIUM BEER is a red banner with the word BALASHI written in white across the banner. Under the banner the words Brewed in Aruba appear, but this is not part of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) Green, red, white, black is/are claimed as a feature of the mark.

Design Search Code(s): 24.09.07 - Advertising, banners; Banners

26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle
26.17.01 - Bands, straight; Bars, straight; Straight line(s), band(s) or bar(s); Lines, straight
26.17.05 - Bands, horizontal; Horizontal line(s), band(s) or bar(s); Bars, horizontal; Lines, horizontal

Foreign Information

Foreign Registration Number: 29411

Foreign Registration Date: Jun. 07, 2011

Foreign Application/Registration Country: ARUBA

Foreign Expiration Date: Mar. 30, 2021

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Clothing, footwear, headgear

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 44(e)

For: Beer
International Class(es): 032 - Primary Class
Class Status: ACTIVE
Basis: 44(e)

U.S Class(es): 045, 046, 048

For: Advertising
International Class(es): 035 - Primary Class
Class Status: ACTIVE
Basis: 44(e)

U.S Class(es): 100, 101, 102

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: Yes	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Brouwerij Nacional Balashi N.V.
Owner Address: Balashi #62, St. Cruz
Santa Cruz
ARUBA
Legal Entity Type: naamloze vennootschap (nv) State or Country Where Organized: ARUBA

Attorney/Correspondence Information

Attorney Name: Ashley G. Kessler
Attorney Primary Email Address: trademarks@feldmangale.com
Attorney of Record
Docket Number: 1918 - Balas
Attorney Email Authorized: Yes
Correspondent
Name/Address: ASHLEY G. KESSLER
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Phone: 305.358.5001 Fax: 305.358.3309
Correspondent e-mail: trademarks@feldmangale.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 03, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2015	NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2015	NON-FINAL ACTION WRITTEN	81112
Nov. 02, 2015	ASSIGNED TO EXAMINER	81112
Jul. 30, 2015	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Jul. 29, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 25, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: HUSSAIN, TASNEEM

Law Office LAW OFFICE 118
Assigned:

File Location

Current Location: TMO LAW OFFICE 118- EXAMINING
ATTORNEY ASSIGNED

Date in Location: Nov. 03, 2015

Proceedings

Summary

Number of 1
Proceedings:

Type of Proceeding: Opposition

Proceeding Number: 91223456

Filing Date: Aug 24, 2015

Status: Pending

Status Date: Aug 24, 2015

Interlocutory Attorney: ELIZABETH A DUNN

Defendant

Name: t & beer, inc

Correspondent Address: GREGORY J WINSKY
ARCHER & GREINER PC
ONE CENTENNIAL SQUARE, PO BOX 3000
HADDONFIELD NJ , 08033
UNITED STATES

Correspondent e-mail: trademarks@archerlaw.com; t.simone@prodi

Associated marks

Mark	Application Status	Serial Number	Registration Number
BALASHI SPIRITS	Opposition Pending Plaintiff(s)	86566095	

Name: Brouwerij Nacional Balashi NV

Correspondent Address: SUSAN J LATHAM
FELDMAN GALE PA
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UNITED STATES

Correspondent e-mail: trademarks@feldmangale.com, slatham@feldmangale.com, feldman@feldmangale.com, akessler@feldmangale.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BALASHI PREMIUM BEER 11.27 FL OZ (333.3ML)	Non-Final Action - Mailed	86701463	
BALASHI PREMIUM BEER 20CT. BOTTLE VOLUME CONTENTS 22 CL 5.0% ALC/VOL	Non-Final Action - Mailed	86701470	
BALASHI PREMIUM BEER ARUBA'S BEER	Non-Final Action - Mailed	86701475	
	Non-Final Action - Mailed	86734984	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 24, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 24, 2015	Oct 03, 2015
3	PENDING, INSTITUTED	Aug 24, 2015	
4	ANSWER	Oct 02, 2015	

EXHIBIT 2

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Mark: BALASHI PREMIUM BEER BREWED IN ARUBA BROUWERIJ
NACIONAL BALASHI N.V.



US Serial Number: 86701470

Application Filing Date: Jul. 22, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 03, 2015

Mark Information

Mark Literal Elements: BALASHI PREMIUM BEER BREWED IN ARUBA BROUWERIJ NACIONAL BALASHI N.V.

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a square with a rounded top outlined in yellow. Inside the square the background is light green and dark green, there is an oval outlined in yellow. The inside of the oval is dark green with the words PREMIUM BEER BREWED IN ARUBA written on top BREWED IN ARUBA is not part of the mark. Written on the bottom part of the oval are the words Brouwerij Nacional Balashi N.V., this is not part of the mark. Inside the middle of the oval is a picture of a beach with a tree depicted on the shore and the word BALASHI is written in a red banner across the lower half of the oval. This banner is on the foreground of the image.

Color Drawing: Yes

Color(s) Claimed: The color(s) blue, white, red, dark green, light green and yellow is/are claimed as a feature of the mark.

Design Search Code(s): 01.15.25 - Light rays; Dust; Spilling liquids; Sand; Pouring liquids; Liquids, spilling; Coal
05.01.25 - Willow tree; Cypress tree; Other trees or bushes
06.03.01 - Coastlines; Beaches; Shores
24.09.07 - Advertising, banners; Banners
26.03.17 - Concentric ovals; Ovals, concentric; Ovals within ovals; Concentric ovals and ovals within ovals
26.03.21 - Ovals that are completely or partially shaded
26.09.21 - Squares that are completely or partially shaded
26.09.25 - Squares with curved sides

Foreign Information

Foreign Registration Number: 29412

Foreign Registration Date: Jun. 07, 2011

Application/Registration Country: ARUBA

Foreign Expiration Date: Mar. 30, 2021

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Clothing, footwear, headgear

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 44(e)

For: Beer

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 44(e)

For: Advertising

International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 44(e)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: Yes

Currently 44E: Yes

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Brouwerij Nacional Balashi N.V.

Owner Address: Balashi #62, St. Cruz
Santa Cruz
ARUBA

Legal Entity Type: naamloze vennootschap (nv)

State or Country ARUBA
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Ashley G. Kessler

Docket Number: 1918 - Balas

Attorney Primary Email Address: trademarks@feldmangale.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: ASHLEY G. KESSLER
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Miami, FLORIDA 33131-1806
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Correspondent e-mail: trademarks@feldmangale.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 03, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2015	NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2015	NON-FINAL ACTION WRITTEN	81112
Nov. 02, 2015	ASSIGNED TO EXAMINER	81112

Jul. 30, 2015 NOTICE OF DESIGN SEARCH CODE E-MAILED
 Jul. 29, 2015 NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM
 Jul. 25, 2015 NEW APPLICATION ENTERED IN TRAM

TM Staff and Location Information

TM Staff Information

TM Attorney: HUSSAIN, TASNEEM

Law Office LAW OFFICE 118
 Assigned:

File Location

Current Location: TMO LAW OFFICE 118- EXAMINING
 ATTORNEY ASSIGNED

Date in Location: Nov. 03, 2015

Proceedings

Summary

Number of 1
 Proceedings:

Type of Proceeding: Opposition

Proceeding 91223456
 Number:

Filing Date: Aug 24, 2015

Status: Pending

Status Date: Aug 24, 2015

Interlocutory ELIZABETH A DUNN
 Attorney:

Defendant

Name: t & beer, inc

Correspondent GREGORY J WINSKY
 Address: ARCHER & GREINER PC
 ONE CENTENNIAL SQUARE, PO BOX 3000
 HADDONFIELD NJ , 08033
 UNITED STATES

Correspondent e-mail: trademarks@archerlaw.com; t.simone@prodi

Associated marks

Mark	Application Status	Serial Number	Registration Number
BALASHI SPIRITS	Opposition Pending Plaintiff(s)	<u>86566095</u>	

Name: Brouwerij Nacional Balashi NV

Correspondent SUSAN J LATHAM
 Address: FELDMAN GALE PA
 2 SOUTH BISCAYNE BOULEVARD ONE BISCAYNE TOWER, 30TH FLOOR
 MIAMI FL , 33131
 UNITED STATES

Correspondent e-mail: trademarks@feldmangale.com; slatham@feldmangale.com; jfeldman@feldmangale.com; akessler@feldmangale.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
BALASHI PREMIUM BEER 11.27 FL OZ (333.3ML)	Non-Final Action - Mailed	<u>86701463</u>	
BALASHI PREMIUM BEER 20CT. BOTTLE VOLUME CONTENTS 22 CL 5.0% ALC/VOL	Non-Final Action - Mailed	<u>86701470</u>	
BALASHI PREMIUM BEER ARUBA'S BEER	Non-Final Action - Mailed	<u>86701475</u>	
	Non-Final Action - Mailed	<u>86734984</u>	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 24, 2015	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 24, 2015	Oct 03, 2015
3	PENDING, INSTITUTED	Aug 24, 2015	
4	ANSWER	Oct 02, 2015	

EXHIBIT 3

Generated on: This page was generated by TSDR on 2016-03-04 13:28:51 EST

Mark: BALASHI PREMIUM BEER ARUBA'S BEER



US Serial Number: 86701475

Application Filing Date: Jul. 22, 2015

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Nov. 03, 2015

Mark Information

Mark Literal Elements: BALASHI PREMIUM BEER ARUBA'S BEER

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a red horizontal banner with the word BALASHI written in white inside of the banner. Above the red banner are the words PREMIUM BEER curved up, under the banner are the word Brewed in Aruba curved down, but these are not part of the mark. At the very bottom of the design are the words ARUBA'S BEER written in a different font, these are part of the mark.

Color Drawing: Yes

Color(s) Claimed: The color(s) Red, white and black is/are claimed as a feature of the mark.

Design Search Code(s): 24.09.07 - Banners; Advertising, banners

Foreign Information

Foreign Registration Number: 29417

Foreign Registration Date: Jun. 07, 2011

Foreign Application/Registration Country: ARUBA

Foreign Expiration Date: Mar. 30, 2021

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *,* identify additional (new) wording in the goods/services.

For: Clothing, footwear, headgear

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 44(e)

For: Beer

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class(es):
Class Status: ACTIVE
Basis: 44(e)

For: Advertising
International Class(es): 035 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE
Basis: 44(e)

Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: Yes	Currently 44E: Yes	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Brouwerij Nacional Balashi N.V.
Owner Address: Balashi #62, St. Cruz
Santa Cruz
ARUBA
Legal Entity Type: naamloze vennootschap (nv)
State or Country Where Organized: ARUBA

Attorney/Correspondence Information

Attorney Name: Ashley G. Kessler
Attorney Primary Email Address: trademarks@feldmangale.com
Attorney of Record Docket Number: 1918 - Balas
Attorney Email Authorized: Yes
Correspondent Name/Address: ASHLEY G. KESSLER
Feldman Gale P A
1 Biscayne Tower FI 30
Miami, FLORIDA 33131-1806
UNITED STATES
Phone: 305.358.5001 Fax: 305.358.3309
Correspondent e-mail: trademarks@feldmangale.com
Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
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