

ESTTA Tracking number: **ESTTA705667**

Filing date: **10/30/2015**

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	Prescott Brewing Company, Inc.		
Entity	Corporation	Citizenship	Arizona
Address	130 W. Gurley Street Suite A Prescott, AZ 86301 UNITED STATES		

Attorney information	Robert J. Itri Gallagher & Kennedy, P.A. 2575 E. Camelback Road Suite 1100 Phoenix, AZ 85016 UNITED STATES rji@gknet.com,jk@gknet.com,kka@gknet.com Phone:602-530-8019		
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**Applicant Information**

Application No	86609451	Publication date	10/13/2015
Opposition Filing Date	10/30/2015	Opposition Period Ends	11/12/2015
Applicant	POWAY BREWING COMPANY, LLC c/o Buchalter Nemer Los Angeles, CA 90017 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Beer
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**Grounds for Opposition**

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

U.S. Registration No.	4000733	Application Date	04/12/2010
Registration Date	07/26/2011	Foreign Priority Date	NONE
Word Mark	PBC		

Design Mark	<h1>PBC</h1>
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1994/03/15 First Use In Commerce: 1994/03/15 beverages, namely, beer and ale Class 043. First use: First Use: 1994/03/15 First Use In Commerce: 1994/03/15 bar and restaurant services

Attachments	85011964#TMSN.png( bytes ) Notice of Opposition.pdf(701676 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	/Robert J. Itri/
Name	Robert J. Itri
Date	10/30/2015

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

Prescott Prewing Company, Inc.,

Opposer,

v.

Poway Brewing Company, LLC,

Applicant.

**E-FILING**

Opposition No. \_\_\_\_\_

App. No. 86609451

Mark: PBC POWAY BREWING CO.

Published: October 13, 2015

**NOTICE OF OPPOSITION**

Prescott Brewing Company, Inc., an Arizona corporation ("Opposer"), believes that it would be damaged by the registration of the mark:



which is the subject of Application Serial No. 86609451 (the "Application") filed by Poway Brewing Company LLC, a California Limited Liability Company, ("Applicant") for all goods and services cited in the Application, namely "Beer," in International Class 32. Accordingly, Opposer hereby opposes said registration under the provisions of Sections 2(d) and 13 of the Trademark Act of July 5, 1946, as amended, (15 U.S.C. § 1051 *et seq.*).

The grounds for opposition are as follows:

1. Applicant was, upon information and belief, formed in or about April 2015 and is an operator of a microbrewery and brew pub located in San Diego County, CA. According to Applicant's web site located at [www.powaybrewingcompany.com/brewery/](http://www.powaybrewingcompany.com/brewery/), its mission is to "manufacture, distribute and supply" its craft beer products to craft beer retailers and consumers, including restaurants, bars, liquor stores and supermarkets. See website printout attached hereto as Exhibit A.

2. On April 24, 2015, Applicant filed the Application opposed hereby seeking to register the applied-for mark:

Mark: PBC POWAY BREWING CO.  
Serial No.: 86/609,451  
**Notice of Opposition**



for “Beer” in International Class 32.

3. The Application was published in the *Official Gazette* on October 13, 2015.

4. Opposer is an Arizona microbrewery and brew pub operator, which produces over 55 types of craft beer and is the owner of the trademark registration.

5. Since 1994, Opposer has promoted its brand craft beer, microbrewery and brew pub goods and services under the mark **PBC**. Opposer’s **PBC** brand craft beers are sold in restaurant, bar, liquor stores and supermarkets, including such national retailers as Safeway, Whole Food Markets, Total Wine & More and BevMo.

6. Opposer’s **PBC** brand craft beers have won 31 national and international awards in prestigious competitions such as the Great American Beer Festival, North American Brewers Association, and the international World Beer Cup.

7. Since 1994, Opposer has expended over a million dollars promoting its **PBC** brand beer through various local and national print, radio, television and outdoor advertising channels. Opposer has also made prominent use of the **PBC** mark on its website [www.prescottbrewingcompany.com](http://www.prescottbrewingcompany.com).

8. Through its extensive and long-term use of the **PBC** mark, and the expenditure of substantial sums of money in promoting its craft beer under the mark, Opposer has developed substantial goodwill and valuable rights in the **PBC** mark.

9. On July 26, 2011, Opposer obtained federal registration of the standard character mark **PBC** for use in connection with “beverages, namely beer and ale” in Class 32 and “bar and restaurant services” in Class 43 under U.S. Reg. No. 4000733.<sup>1</sup> Such registration is valid and subsisting and constitutes *conclusive* evidence of Opposer’s exclusive right to use the mark **PBC** for “beer” and to prevent registration of confusingly similar marks.

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<sup>1</sup> Opposer also owns federal registrations for its marks PRESCOTT BREWING COMPANY (standard character mark), Reg. No. 3,300,786, and PRESCOTT BREWING COMPANY ARIZONA (design mark), Reg. No. 3,300,787.

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10. The description of goods to be offered under Applicant's applied-for-mark and the description of goods offered under Opposer's **PBC** mark are identical—beer.

11. Moreover, the dominant element of Applicant's applied-for mark—**PBC**—is identical to Opposer's standard character mark. It is also the first element that consumers will encounter in both Applicant's applied-for mark and in Opposer's **PBC** mark. As such, consumers are most likely to focus upon and remember the element "PBC" when making purchasing decisions.

12. Further, neither Applicant's Application nor Opposer's registration contains any restrictions on channels of trade through which the goods will travel or the class of consumers to whom the goods will be marketed. Accordingly, Applicant's goods and Opposer's goods will undoubtedly be offered to the public through similar channels of trade, including craft beer retailers, restaurants, bars, liquor stores and supermarkets, and to the same class of consumers—drinking age consumers of beer.

13. In all, 1) Applicant's applied-for mark and Opposer's registered marks are highly similar in appearance, sound and overall commercial impression; 2) the goods offered under the marks—beer—are identical; 3) the channels of trade in which the goods will travel, including restaurants, bars, liquor stores and supermarkets are, are identical; and 4) the class of consumers to whom the goods will be sold are identical. Consequently, registration of the applied-for mark will result in consumer confusion within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)).

14. Moreover, registration of the applied-for mark in association with the applied-for goods—beer—would infringe upon Opposer's exclusive common law and federal trademark rights in the **PBC** mark.

15. In sum, Applicant attempts to register the mark



will result in consumer confusion and damage to Opposer.

Mark: PBC POWAY BREWING CO.  
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**WHEREFORE**, Opposer requests that Application Serial No. 86609451 be rejected, that no registration issue in connection with the Application, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: October 30, 2015

By: s/Robert J. Itri/

Robert J. Itri, Esq.  
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Mark: PBC POWAY BREWING CO.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of October, 2015, a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on the following via first class mail:

Gregory B. Perleberg  
BUCHALTER NEMER  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, California 90017-1730

*Counsel for Applicant*

s/Robert J. Itri/  
Robert J. Itri  
GALLAGHER & KENNEDY, P.A.  
2575 E. Camelback Road  
Phoenix, Arizona 85016  
(602) 530-8019  
(602) 530-8550

*Counsel for Opposer*

# **EXHIBIT A**



*Hometown HandCrafted  
Ales and Lagers*

HOME ([HTTP://WWW.POWAYBREWINGCOMPANY.COM/INDEX/](http://www.powaybrewingcompany.com/index/))

THE BEER ([HTTP://WWW.POWAYBREWINGCOMPANY.COM/THE-BEERS/](http://www.powaybrewingcompany.com/the-beers/))

(<http://www.powaybrewingcompany.com/index>)



## BREWERY



*Hometown HandCrafted  
Ales and Lagers*

(<http://www.powaybrewingcompany.com/wp-content/uploads/2015/02/logo.png>)

Our mission is to manufacture, distribute and supply the highest quality homemade and handcrafted beer products to the local San Diego craft beer industry including restaurants, bars, liquor stores and supermarkets. We will sell our products at profit margins that will sustain and grow PBC's business model, which will generate investor interest for our own Brewpub and eatery, located in Poway, CA. PBC produces only top quality microbrews containing robust flavors, clean finishes and stellar interpretations.



(<http://www.powaybrewingcompany.com/wp-content/uploads/2015/03/innerpage2.jpeg>)

**Homemade & Handcrafted! It's Our Time! We are all about the Beer!**



([http://www.powaybrewingcompany.com/wp-content/uploads/2015/05/PBC\\_logo\\_new.jpg](http://www.powaybrewingcompany.com/wp-content/uploads/2015/05/PBC_logo_new.jpg))



(<http://www.powaybrewingcompany.com/our-story/>)



(<http://www.powaybrewingcompany.com/the-beers/>)



(<http://www.powaybrewingcompany.com/news-events/>)

SIGN UP FOR OUR NEWSLETTER

SIGN UP

ADDITIONAL LINKS

USEFUL LINKS



12979 Community Road, Poway, CA 92064

Email: [info@powaybrewingcompany.com](mailto:info@powaybrewingcompany.com)

858-663-4790

[www.powaybrewingcompany.com](http://www.powaybrewingcompany.com)  
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