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

Proceeding	91227404
Party	Defendant Bullfrog Bikes, LLC
Correspondence Address	RAMAN N. DEWAN JACKSON WALKER L.L.P. 100 CONGRESS AVE STE 1100 AUSTIN, TX 78701-4042 rdewanipdocket@jw.com
Submission	Answer
Filer's Name	Raman N. Dewan
Filer's e-mail	rdewanipdocket@jw.com
Signature	/RND/
Date	05/31/2016
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**In the Matter of:
U.S. Application Serial No. 86/400,566
For the Mark FAT TIRE TOURS (Words)
Published in the *Official Gazette* October 20, 2015**

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

New Belgium Brewing Company, Inc., Opposer, v. Bullfrog Bikes, LLC, Applicant.	Opposition No. 91227404
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APPLICANT'S ORIGINAL ANSWER

Applicant, Bullfrog Bikes, LLC ("Applicant"), hereby answers the *Notice of Opposition* (the "Notice of Opposition" or "Opposition") filed by Opposer, New Belgium Brewing Company, Inc. ("Opposer"), by reference to the numbered paragraphs of the Notice of Opposition as follows:

**I.
ADMISSIONS AND DENIALS**

1. Applicant admits that U.S. Trademark Registration No. 1,846,908 identifies Opposer as the registrant of the referenced mark FAT TIRE for "fermented malt beverages; namely, ale" in International Class 32; that the application for said registration appears to have been filed on September 15, 1993; and that said registration appears to have issued on July 26, 1994. With respect to Opposer's allegation that it "has used the FAT TIRE mark on and in connection with the aforementioned goods since at least as early as June 28, 1991," Applicant notes that said registration references a first use in commerce date of March 20, 1992 for the

FAT TIRE mark; thus, Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

2. Applicant admits that U.S. Trademark Registration No. 2,989,629 identifies Opposer as the registrant of the referenced mark FAT TIRE for “neon and electric signs” in International Class 9, for “paper goods, namely, decals, posters, paper coasters and postcards” in International Class 16, and for “clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets, socks, fleece pullovers” in International Class 25; that the application for said registration appears to have been filed on June 30, 2004; and that said registration appears to have been issued on August 30, 2005. With respect to Opposer’s allegation that it “has used the FAT TIRE mark on and in connection with the aforementioned goods since at least as early as December 1995 for the International Class 9 goods, at least as early as May 1995 for the International Class 16 goods, and at least as early as June 1992 for the International Class 25 goods,” while Applicant notes that said registration references the stated dates, Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

3. Applicant admits that U.S. Trademark Registration No. 2,513,468 identifies Opposer as the registrant of the referenced mark TOUR DE FAT for “Entertainment in the nature of arranging, organizing, and conducting festivals featuring a variety of activities, namely, sporting events, games, competitions, educational exhibitions in the fields of community-related issues and bicycling, live music, and the like” in International Class 41; that the application for said registration appears to have been filed on May 8, 2000; and that said registration appears to have been issued on November 27, 2001. With respect to Opposer’s allegation that it “has used the TOUR DE FAT mark on and in connection with the aforementioned services since at least as

early as March 1, 2000,” Applicant notes that said registration references a first use in commerce date of September 2, 2000 for the TOUR DE FAT mark; thus, Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

4. Applicant admits that U.S. Trademark Registration No. 4,625,941 identifies Opposer as the registrant of the referenced design mark



for “neon and electric signs” in International Class 9, for “paper goods, namely, decals, posters, paper coasters and postcards” in International Class 16, for “clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets, socks, fleece pullovers” in International Class 25, for “beer” in International Class 32, for “providing business information and business consultation to beer distributors concerning point-of-sale issues; developing promotional campaigns for business” in International Class 35, for “entertainment in the nature of arranging, organizing, and conducting festivals featuring a variety of activities, namely, sporting events, games, competitions, educational exhibitions in the field of community-related issues and bicycling, live music, and the like; providing recognition and incentives by way of educational programs to demonstrate excellence in the field of beverage distribution services; incentive award program to encourage people to ride bicycles more often” in International Class 41, and for “restaurant services” in International Class 43; that the application for said registration appears to have been filed on August 1, 2013; and that said registration appears to have been issued on October 21, 2014. With respect to Opposer’s allegation that it “has used the



mark on and in connection with the aforementioned goods and services since at least as early as December 16, 2013,” while Applicant notes that said registration references the stated date, Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

5. Applicant admits that U.S. Trademark Registration No. 2,900,009 identifies Opposer as the registrant of the referenced design mark



for “fermented malt beverages, namely, beer and ale” in International Class 32; that the application for said registration appears to have been filed on November 24, 2003; and that said registration appears to have been issued on November 2, 2004. With respect to Opposer’s allegation that it “has used the



mark on and in connection with the aforementioned goods since at least as early as June 28, 1991,” Applicant notes that said registration references a first use in commerce date of March 20, 1992; thus, Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

6. Applicant admits that U.S. trademark registration No. 2,891,589 identifies Opposer as the registrant of the referenced design mark



for “clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets, shorts, pants, and socks” in International Class 25; that the application for said registration appears to have been filed on December 14, 2001; and that said registration appears to have been issued on October 5, 2004. With respect to Opposer’s allegation that it “has used the



mark on and in connection with the aforementioned goods since at least as early as April 2001,” Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

7. Applicant admits that U.S. Trademark Registration No. 3,048,894 identifies Opposer as the registrant of the referenced design mark



for “neon and electric signs” in International Class 9; that the application for said registration appears to have been filed on May 11, 2004; and that said registration appears to have been issued on January 24, 2006. With respect to Opposer’s allegation that it “has used the



mark on and in connection with the aforementioned goods since at least as early as May 2002,” Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

8. Applicant admits that U.S. Trademark Registration No. 3,644,381 identifies Opposer as the registrant of the referenced design mark



for “paper goods, namely, stickers, decals, posters, postcards, folders, and paper coasters” in International Class 16, for “clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets, shorts, and socks” in International Class 25, and for “beer and ale” in International Class 32; that the application for said registration appears to have been filed on January 8, 2008; and that said registration appears to have been issued on June 23, 2009. With respect to Opposer’s allegation that it is the owner of said registration for “pants” in International Class 25, Applicant notes that the published information for said registration does not include “pants” and, accordingly, denies it. With respect to Opposer’s allegation that it “has used the



mark on and in connection with the aforementioned goods since at least as early as June 2006,” Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

9. Applicant admits that U.S. Trademark Registration No. 3,425,207 identifies Opposer as the registrant of the referenced mark TEAM WONDERBIKE for “incentive award

program to encourage people to ride bicycles more often” in International Class 41; that the application for said registration appears to have been filed on January 3, 2007; and that said registration appears to have been issued on May 13, 2008. With respect to Opposer’s allegation that it “has used the TEAM WONDERBIKE mark on and in connection with the aforementioned services since at least as early as April 2005,” Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

10. With respect to Opposer’s allegation that it “is also the owner of numerous other United States registrations that include touring-themed, riding-themed, or bicycle-themed marks,” Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it. Applicant admits that Opposer appears to own the following U.S. Trademark Registrations: 4,808,796 for ENJOY THE RIDE; 4,676,739 for SLOW RIDE; 4,701,453 for SLOW RIDE; 4,057,556 for JOY RIDE; 4,664,892 for TOUR DE FALL; 4,173,048 for SHIFT; 3,628,447 for GIDDY UP!; and 3,874,734 for CLIPS OF FAITH, but notes that each of such registrations appears to be only for the following: (A) U.S. registration number for 4,808,796 for ENJOY THE RIDE is for beer and for paper products, namely, posters, coasters, postcards, stickers and decals; (B) U.S. registration number for 4,676,739 for SLOW RIDE is for beer; (C) U.S. registration number for 4,701,453 for SLOW RIDE is for paper goods, namely, decals, posters, paper coasters and postcards and for clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets, socks, fleece pullovers; (D) U.S. registration number 4,057,556 for JOY RIDE is for beer and for paper products, namely, posters, coasters, postcards, stickers and decals; (E) U.S. registration number 4,664,892 for TOUR DE FALL is for beer, for paper goods, namely, decals, posters, paper coasters and postcards, and for clothing, namely, hats, caps, shirts, sweatshirts, vests, t-shirts, jerseys, jackets,

socks, fleece pullovers; (F) U.S. registration number 4,173,048 for SHIFT is for beer; (G) U.S. registration number 3,628,447 for GIDDY UP! is for beer and ale; and (H) U.S. registration number 3,874,734 for CLIPS OF FAITH is for entertainment services in the nature of planning, arranging, and conducting movie exhibitions.

11. Applicant admits that Exhibit A of the Opposition includes copies of the TSDR Records for the registrations referenced in numbered paragraphs 1-10 above. Applicant denies that Exhibit A of the Opposition includes copies of the TSDR Records for any applications.

12. With respect to Opposer's allegation that Opposer "also enjoys common law rights for the other FAT TIRE-derivative marks owned by [Opposer] used in connection with various bicycle-themed festivals, events, social gatherings which regularly tour the United States," Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

13. With respect to Opposer's allegation that "[a]s a result of [Opposer's] extensive advertising, sales, and marketing, the NBB Marks have amassed a tremendous following among cyclists, adventure tourism customers, brewery tourism customers, and are generally well known to consumers across the U.S.," Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

14. With respect to Opposer's allegation that "[b]y virtue of [Opposer's] extensive use and promotion of its NBB Marks, [Opposer] has established valuable goodwill in the marks, and the public has come to associate the NBB Marks with [Opposer]. As such, the public has come to know the NBB Marks as an indication of goods and services that originate from [Opposer]," Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

15. With respect to Opposer's allegation that "[a]s a result of substantial sales and extensive advertising and promotion for over twenty (20) years, the public has come to associate the FAT TIRE mark with [Opposer] and to know the FAT TIRE mark as an indicator of source. The FAT TIRE mark is a famous mark well known to purchasers. The FAT TIRE mark is famous under the Lanham Act, specifically 15 U.S.C. § 1125 *et seq.*, and is among the most recognizable trademarks in the beer industry," Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it. Applicant notes that, as admitted by Opposer, Opposer's FAT TIRE mark is recognizable as a trademark only for beer within the beer industry.

16. With respect to Opposer's allegation that "[a]s a part of its daily business operations, [Opposer] conducts Guided Tours of the [Opposer's breweries] in Colorado and North Carolina, which feature [Opposer's] FAT TIRE beer as a part of the Tour," Applicant lacks knowledge or information sufficient to form a belief about the truth of such allegation and, accordingly, denies it.

17. Applicant denies the allegations set forth in paragraph 17.

18. Applicant admits that it filed an intent to use application having U.S. Trademark Application Serial No. 86/400,566 on September 19, 2014 for "arranging and conducting guided sightseeing tours and excursions for others; coordinating travel arrangements for individuals and for groups; booking of seats for travel as part of local sightseeing packages; travel agency services, namely, making reservations and bookings for transportation and sightseeing for tourists as part of local sightseeing packages; vehicle rental services; warehousing services, namely, temporary storage of backpacks, luggage, personal belongings, and small packages; transportation services, namely, providing shuttle transport of tourists and sightseers to

prearranged local sightseeing destinations offered as part of tour packages” in International Class 39 and for “Educational and training services, namely, conducting classes in the field of sales, business, personal development, sales team building and business team building; conducting guided tours of museums, historical sites, and points of local and regional interest” in International Class 41.

19. Applicant admits that it is, among other things, in the business of arranging and conducting guided sightseeing tours and excursions for others, including by way of example bicycle tours, and offering travel and training services, including by way of example, coordinating travel arrangements for individuals and for groups, booking of seats for travel as part of local sightseeing packages, travel agency services, vehicle rental services, warehousing services, transportation services, and educational and training services in the field of team building. Applicant denies the remainder of paragraph 19 because it does not understand what Opposer means by its allegation that Applicant “offer[s] similar travel-related services.”

20. Applicant denies the allegations set forth in paragraph 20.

21. Applicant admits the allegations set forth in paragraph 21.

22. Applicant admits the allegations set forth in paragraph 22.

23. Applicant denies the allegations set forth in paragraph 23.

24. Applicant denies the allegations set forth in paragraph 24.

25. While it appears that Opposer’s use of the FAT TIRE mark for beer does well predate Applicant’s filing date of September 19, 2014, Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning the date when Opposer began using the FAT TIRE mark, and, accordingly, denies those allegations. Applicant denies the remaining allegations, if any, set forth in paragraph 25.

26. Applicant admits that the cited marks of Opposer appear to have been in use prior to September 19, 2104. Applicant denies the remaining allegations set forth in paragraph 26, including that the cited marks allegedly owned by Opposer are well known.

27. Applicant denies the allegations set forth in paragraph 27.

28. Applicant denies the allegations set forth in paragraph 28.

29. Applicant denies the allegations set forth in paragraph 29.

30. Applicant admits that if its FAT TIRE TOURS mark is permitted to register, the registration would presumptively entitle Applicant to prima facie exclusive ownership and rights to the FAT TIRE TOURS mark as applied for. Applicant denies the remaining allegations set forth in paragraph 30.

31. To the extent any part of paragraphs 1 – 30 above do not respond to a specific allegation of the Opposition, Applicant denies that allegation.

II. AFFIRMATIVE DEFENSES

32. To the extent any of the foregoing responses constitute affirmative defenses, they are incorporated herein by reference for all purposes.

33. Additionally and/or alternatively, Opposer has failed to state a claim upon which relief can be granted.

**III.
PRAYER**

For these reasons, Applicant respectfully requests that the Opposition be denied and these proceedings be dismissed with prejudice, that a Notice of Allowance issue for U.S. Application Serial No. 86/400,566, and that Applicant be awarded all other relief to which it may be entitled.

Dated: May 31, 2016
Austin, Texas

Respectfully submitted,

JACKSON WALKER LLP

By: 

Raman N. Dewan
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000 – Telephone
(512) 236-2002 – Facsimile
rdewan@jw.com
rdewanipdocket@jw.com

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing *Applicant's Original Answer* was served via first-class mail, postage prepaid upon the following on May 31, 2016:

David Sipiora
Daniel I. Ackerman
KILPATRICK TOWNSEND & STOCKTON LLP
1400 Wewatta Street, Suite 600
Denver, Colorado 80202

ATTORNEYS FOR OPPOSER



Raman N. Dewan