

ESTTA Tracking number: **ESTTA766091**

Filing date: **08/23/2016**

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	SPB LLC
Granted to Date of previous extension	08/24/2016
Address	2617 Water Street Stevens Point, WI 54481 UNITED STATES

Attorney information	Richard J. McKenna Foley & Lardner LLP 777 E. Wisconsin Ave. Milwaukee, WI 53202 UNITED STATES ipdocketing@foley.com, ssuleiman@foley.com, rmckenna@foley.com, llucas@foley.com, jolsen@foley.com Phone:414-271-2400
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Applicant Information

Application No	86823037	Publication date	04/26/2016
Opposition Filing Date	08/23/2016	Opposition Period Ends	08/24/2016
Applicant	Bonefrog Brews, LLC 407 Brook Meadow Drive Mechanicsburg, PA 17050 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

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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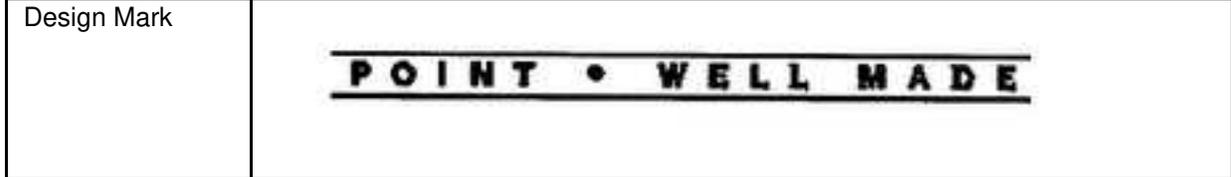
Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2805011	Application Date	02/27/2003
Registration Date	01/13/2004	Foreign Priority Date	NONE
Word Mark	POINT		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 032. First use: First Use: 1933/12/31 First Use In Commerce: 1990/05/31 Beer and soft drinks

U.S. Registration No.	2912594	Application Date	12/29/2003
Registration Date	12/21/2004	Foreign Priority Date	NONE

Word Mark	POINT WELL MADE
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Description of Mark	NONE
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Goods/Services	Class 032. First use: First Use: 1995/12/31 First Use In Commerce: 1995/12/31 Beer [and soft drinks]
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U.S. Registration No.	2829521	Application Date	03/04/2003
Registration Date	04/06/2004	Foreign Priority Date	NONE

Word Mark	POINT BREWING EXCELLENCE SINCE 1857
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Description of Mark	NONE
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Goods/Services	Class 032. First use: First Use: 1933/12/31 First Use In Commerce: 1990/05/31 Beer and soft drinks
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U.S. Registration No.	4274038	Application Date	01/07/2011
Registration Date	01/15/2013	Foreign Priority Date	NONE

Word Mark	POINT 2012 BLACK ALE
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Design Mark	
Description of Mark	<p>The mark consists of a black rectangle with gold wheat shafts in the corners; in the middle of the upper portion of the rectangle is a circular element incorporating black trees beside a white river, all inside a red circle; immediately below this is the word "POINT" in white letters; underneath this is a red colored banner. Immediately below this are the words "2012 BLACK ALE" in white letters; a representation of a Mayan calendar in black with gold highlights is positioned behind the words.</p>
Goods/Services	<p>Class 032. First use: First Use: 2010/02/24 First Use In Commerce: 2010/02/24 Ale</p>

Attachments	<p>76569327#TMSN.png(bytes) 76494454#TMSN.png(bytes) 85212679#TMSN.png(bytes) POINT MAN Notice of Opposition.pdf(1663424 bytes) Exhibit A.pdf(801980 bytes)</p>
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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	/Sara Suleiman/
Name	Sara Suleiman
Date	08/23/2016

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

In the Matter of App. Serial No.: 86823037
Mark: **POINT MAN**
Class: 032
Published: April 26, 2016

SPB LLC)
Opposer,)
)
v.)
)
Bonefrog Brews, LLC)
Applicant.)
_____)

Opposition No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, SPB LLC, a Wisconsin limited liability company having its principal place of business at 2617 Water Street, Stevens Point, Wisconsin, 54481 (“Opposer”), believes that it is and will be damaged by, and hereby opposes registration of, the mark POINT MAN that is the subject of Application Serial No. 86823037 (the “Application”) filed by Bonefrog Brews, LLC (“Applicant”). The Application was filed on November 17, 2015, and published in the *Official Gazette* on April 26, 2016. Opposer timely filed a Request for an Extension of Time to Oppose the Application on May 18, 2016. The request was granted, extending the time to oppose the Application to August 24, 2016. This Notice of Opposition is therefore timely with respect to the Application.

As grounds in support of its opposition, Opposer asserts as follows:

Opposer's Registered Marks

1. Opposer is a privately-owned brewery engaged in the brewing and sale of top quality beer, cider and soda.
2. Opposer owns a valid, subsisting, and incontestable federal trademark registration for POINT (Reg. No. 2805011) for "beer and soft drinks" in Class 32.
3. Opposer owns a valid, subsisting, and incontestable federal trademark registration for POINT WELL MADE & design (Reg. No. 2912594) for "beer" in Class 32.
4. Opposer owns a valid, subsisting, and incontestable federal trademark registration for POINT BREWING EXCELLENCE SINCE 1857 & design (Reg. No. 2829521) for "beer and soft drinks" in Class 32.
5. Opposer owns a valid and subsisting federal trademark registration for POINT 2012 BLACK ALE & design (Reg. No. 4274038) for "ale" in Class 32. The POINT and POINT-formative marks listed in Paragraphs 2 through 5 are collectively the "Opposer's Registered Marks." The goods identified in Paragraphs 2 through 5 are collectively referred to as "Opposer's Registered Goods."
6. Opposer's registrations constitute *prima facie* evidence and constructive notice of Opposer's rights in Opposer's Registered Marks. The registrations for POINT, POINT WELL MADE & design and POINT BREWING EXCELLENCE SINCE 1857 & design are incontestable pursuant to 15 U.S.C. §1065(b), thus constituting conclusive evidence of Opposer's exclusive right to use Opposer's Registered Marks for the products specified in the registrations pursuant to 15 U.S.C. §§1065 and 1115(b).
7. Opposer began using the POINT mark in United States commerce at least as early as 1990 in connection with beer and soft drinks.

8. Opposer began using the POINT WELL MADE & design mark in United States commerce at least as early as 1995 in connection with beer.

9. Opposer began using the POINT BREWING EXCELLENCE SINCE 1857 & design mark in United States commerce at least as early as 1990 in connection with beer and soft drinks.

10. Opposer began using the POINT 2012 BLACK ALE & design mark in United States commerce at least as early as 2010 in connection with ale.

Applicant's Application

11. Upon information and belief, Applicant has an address at 407 Brook Meadow Drive, Mechanicsburg, Pennsylvania 17050.

12. Applicant is the listed owner of Application No. 86/823,037, filed November 17, 2015, for the mark POINT MAN ("Applicant's Mark") for "beer" in Class 32 (the "Applicant's Goods").

13. The Application was filed on the basis of Applicant's intended future use of the mark.

Likelihood of Confusion, 15 U.S.C. §1052(d)

14. Opposer repeats and realleges each and every allegation set forth in Paragraphs 1 through 13.

15. Applicant's Mark as applied to Applicant's Goods, so closely resembles Opposer's previously used and registered trademarks, as used with Opposer's Registered Goods, that future use by Applicant in conjunction with Applicant's Goods will cause confusion, mistake, or deception in the trade, and relevant consumers are likely to believe that Applicant's Goods are associated with, connected with, or are approved, sponsored or authorized by

Opposer, or that Applicant's Goods otherwise originate from the same source, when such is not the case.

16. Applicant's Mark so closely resembles Opposer's previously used and registered trademarks used with Opposer's Registered Goods, that when applied to Applicant's Goods would be likely to or will cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act, all to the damage of Opposer.

17. The first and most dominant word in Applicant's mark is "POINT". The identical word "POINT" appears in and in fact is also first word in each of Opposer's Registered Marks. Consumers are generally more inclined to focus on the first word in any trademark. The second and weakest word in Applicant's mark is "MAN", which is a word descriptive of a person's gender. The second term "MAN" is not sufficient to distinguish Applicant's mark from Opposer's POINT and POINT-formative registrations. Applicant's Mark is therefore substantially similar to Opposer's Registered Marks.

18. Applicant's Goods, "beer," is identical to Opposer's Registered Goods of beer, soft drinks and ales.

19. Opposer has priority through its use and registration of Opposer's Registered Marks for Opposer's Registered Goods long before the filing date of the opposed application. Further, because Applicant has filed based on an intent-to-use and has not yet begun actual use, it cannot claim any rights by virtue of use.

20. Opposer did not authorize Applicant's adoption, use or registration of Applicant's Mark.

WHEREFORE, Opposer will be damaged by registration of the Application, Opposer prays that Application Serial No. 86/823,037 be denied; that the Application be refused registration; and that this Opposition be sustained in Opposer's favor.

Opposer hereby gives notice under 37 C.F.R. § 2.122(d)(1) that it will rely on its registrations as seen in Exhibit A as evidence in support of this Notice of Opposition. The registrations are evidenced by the attached printouts from the United States Patent and Trademark Office trademark database, showing current status and title of the registrations.

SPB LLC submits herewith the opposition fee in the amount of \$300 per class (\$300). The Commissioner is hereby authorized to charge any additional fees which may be required regarding this Opposition, or credit any overpayment to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Dated: 8/23/16

Respectfully submitted,

FOLEY & LARDNER LLP

By: 

Richard J. McKenna
Sara Suleiman
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Milwaukee, WI 53202-5367
Ph: (414) 271-2400
Fax: (414) 297-4900
Email: IPDocketing@foley.com
Counsel for Opposer

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid, on this 23rd day of August, 2016, upon Applicant's Attorney at the following address:

Mr. Brian Gregg
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, Pennsylvania 17101

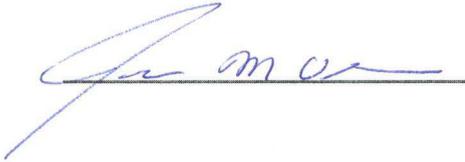
A handwritten signature in blue ink, appearing to read "J. M. V.", is written over a horizontal line.

EXHIBIT A

TESS/TARR PRINTOUTS POINT



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Word Mark	POINT
Goods and Services	IC 032. US 045 046 048. G & S: Beer and soft drinks. FIRST USE: 19331231. FIRST USE IN COMMERCE: 19900531
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78219812
Filing Date	February 27, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 21, 2003
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2805011
Registration Date	January 13, 2004
Owner	(REGISTRANT) SPB LLC LIMITED LIABILITY COMPANY WISCONSIN 2617 Water Street Stevens Point WISCONSIN 54481
Attorney of Record	Richard J. McKenna
Prior Registrations	1761612;1763156;2064718;2066579;2103500;2117342;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20131219.
Renewal	1ST RENEWAL 20131219
Live/Dead Indicator	LIVE

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For Serial Number: 78219812

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Word Mark	POINT WELL MADE
Goods and Services	IC 032. US 045 046 048. G & S: Beer [and soft drinks]. FIRST USE IN COMMERCE: 19951231.
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.01.21 - Circles that are totally or partially shaded. 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
Serial Number	76569327
Filing Date	December 29, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 28, 2004
Change In Registration	CHANGE IN REGISTRATION HAS OCCURRED
Registration Number	2912594
Registration Date	December 21, 2004
Owner	(REGISTRANT) SPB LLC LIMITED LIABILITY COMPANY WISCONSIN 2617 Water Street Stevens Point WISCONSIN 54481
Attorney of Record	Richard J. McKenna
Description of Mark	Color is not claimed as a feature of the mark.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140319.
Renewal	1ST RENEWAL 20140319
Live/Dead Indicator	LIVE

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Word Mark	POINT BREWING EXCELLENCE SINCE 1857
Goods and Services	IC 032. US 045 046 048. G & S: Beer and soft drinks. FIRST USE: 19331231. FIRST USE IN COMMERCE: 19900531
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	24.09.07 - Advertising, banners; Banners
Serial Number	76494454
Filing Date	March 4, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	January 13, 2004
Registration Number	2829521
Registration Date	April 6, 2004
Owner	(REGISTRANT) SPB LLC LIMITED LIABILITY COMPANY WISCONSIN 2617 Water Street Stevens Point WISCONSIN 54481
Attorney of Record	Richard J. McKenna
Prior Registrations	1761612;1763156;2064718;2066579;2103500;2117342;AND OTHERS
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BREWING EXCELLENCE SINCE 1857" APART FROM THE MARK AS SHOWN
Description of Mark	Color is not claimed as a feature of the mark.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140227.
Renewal	1ST RENEWAL 20140227
Live/Dead Indicator	LIVE

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Word Mark	POINT 2012 BLACK ALE
Goods and Services	IC 032. US 045 046 048. G & S: Ale. FIRST USE: 20100224. FIRST USE IN COMMERCE: 20100224
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.01.25 - Cypress tree; Other trees or bushes; Willow tree 06.03.08 - Rapids; Rivers; Streams 20.03.24 - Bumper stickers; Calendars; Checks, bank; Coupons; Currency; Manuscript paper and sheet music; Menus; Money, paper; Music, sheet; Sheet music; Stickers, bumper; Tickets, paper; Trading cards 26.01.21 - Circles that are totally or partially shaded. 26.11.21 - Rectangles that are completely or partially shaded 26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters
Serial Number	85212679
Filing Date	January 7, 2011
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 30, 2012
Registration Number	4274038
Registration Date	January 15, 2013
Owner	(REGISTRANT) SPB LLC LIMITED LIABILITY COMPANY WISCONSIN 2617 Water Street Stevens Point WISCONSIN 54481

Attorney of Record Richard J. McKenna

Prior Registrations 2805011;2829521;2912594

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BLACK ALE" APART FROM THE MARK AS SHOWN

Description of Mark The color(s) black, white, gold and red is/are claimed as a feature of the mark. The mark consists of a black rectangle with gold wheat shafts in the corners; in the middle of the upper portion of the rectangle is a circular element incorporating black trees beside a white river, all inside a red circle; immediately below this is the word "POINT" in white letters; underneath this is a red colored banner. Immediately below this are the words "2012 BLACK ALE" in white letters; a representation of a Mayan calendar in black with gold highlights is positioned behind the words.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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