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Filing date: **05/19/2014**

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

Proceeding	92059034
Party	Defendant Michele Vecchiato and Sandro Vecchiato
Correspondence Address	Franco A. Serafini Themis Law 7660 Fay Ave Ste H-535 La Jolla, CA 92037 UNITED STATES fserafini@themisipc.com
Submission	Answer
Filer's Name	Franco A. Serafini
Filer's e-mail	fserafini@themisipc.com
Signature	/Franco A. Serafini/
Date	05/19/2014
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ACCOLADE WINES AUSTRALIA  
LIMITED,

Petitioner,

v.

MICHELE VECCHIATO and  
SANDRO VECCHIATO,

Respondents

Opposition no. 92059034

Registration No. 2843657

Mark: THOMAS HARDY'S ALE

ANSWER

Respondents Michele Vecchiato and Sandro Vecchiato (collectively, "Vecchiato") answer the Petition to Cancel by Accolade Wines Australia Limited ("Accolade") as follows:

With respect to the preamble to the Notice of Opposition, Vecchiato answer as follows:

As to the allegations in lines 19-22: Without knowledge, therefore denied;

As to the allegations in lines 23-25: Admitted;

The averment in line 26 does not call for a response.

With respect to the numbered paragraphs in the Petition to Cancel, Vecchiato answer as follows:

1. Vecchiato admit that the records of the United States Patent and Trademark Office show that Accolade owns application for registration no. 79139567 for THOMAS HARDY AND SONS and that registration has been refused due to likelihood of confusion with registration no. 2843657.

2. Denied.
3. Without knowledge, therefore denied.

#### AFFIRMATIVE DEFENSES

4. Accolade has engaged in a practice to harass and intimidate Vecchiato beyond what the law may be reasonably interpreted to allow.

5. In spite of couching its allegations as based “upon information and belief,” a simple internet search by Accolade would have shown that Accolade’s petition has no reasonable basis in law and fact. Without limitation, *see, e.g.* the web site [www.thomashardysale.com](http://www.thomashardysale.com), a printout of which is attached as Exhibit A (showing use of the mark in dispute) and the article attached as Exhibit B (showing that sales of beer under the mark in dispute are presently continuing. *See, e.g.* page 1, paragraph 1: “Thomas hardy’s Ale is still being brewed; it’s sold almost everywhere.”).

6. Accolade is attempting to unfairly raise the cost for Vecchiato to use and maintain their mark by filing this groundless petition and like petitions in other countries.

7. This practice of harassment and intimidation in which Accolade is engaged gives Accolade unclean hands and bars it from any relief.

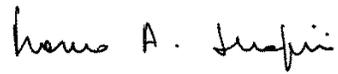
8. Vecchiato reserve all other affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure, the Lanham Act, and any other defenses at law and in equity, that may now exist or in the future be available based on discovery and further factual investigation in this case.

WHEREFORE, Vecchiato pray that:

Judgment be entered in their favor dismissing all causes of action set forth in the Petition to Cancel with prejudice; and

Vecchiato be awarded all costs, including attorney's fees, resulting from the action and such other and further relief as the Board deems just and proper.

Respectfully submitted,



Dated: May 19, 2014

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Franco A. Serafini  
THEMIS LAW  
7660 Fay Ave Ste H-535  
La Jolla, CA 92037  
Telephone: (858) 456-2868

Attorney for Defendants  
Michele Vecchiato and Sandro Vecchiato

EXHIBIT A



## THOMAS HARDY'S ALE

*the Ale*

*the story*

*feelings*

*gallery*

*museum*

*contacts*

## Birthday Brew Blunder

POSTED BY ADMIN FEB - 24 - 2014 0 COMMENT

We received an email from Clare with the description of her adventure... Have you ever lived this kind of experience with a beer? \*\*\* "I am not a beer drinker. But when I was given a 33cl bottle of 1994 Thomas Hardy vintage ale, I knew it was special. It was gifted to my daughter Read More ...

*"It was of the most beautiful colour that the eye of an artist in beer could desire; full in body, yet brisk as a volcano; piquant, yet without a twang; luminous as an autumn sunset; free from streakiness of taste, but, finally, rather heady."*

Thomas Hardy, The Trumpet Major, 1880

## ...and the first attempts

POSTED BY ADMIN NOV - 19 - 2013 2 COMMENTS

What does a brewer do when he has all the right ingredients for the beer he has in mind? Simple enough, he makes trials. Nothing comes out randomly, and no beer is just luck. We, at Thomas Hardy's Ale, are looking for perfection and we try to do our best. This is why, during these Read More ...

## Raw materials...

POSTED BY ADMIN OCT - 16 - 2013 0 COMMENT

What is a beer made up of? Of natural ingredients. In most cases water, barley malt, hops and yeast. So it is for Thomas Hardy's Ale. Here are the raw materials that contribute to the creation of this legendary Ale. We can now unveil them... Three are the malts used, Pale Ale UK, Crystal and Read More ...

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[thomas hardy](#)

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[Vintages](#)

## Famous quotes about Thomas Hardy's Ale

POSTED BY ADMIN AUG - 7 - 2013 0 COMMENT

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"Thomas Hardy's Ale is one of the most celebrated British beers of the past few decades, a venerable and venerated barley wine...". Adrian Tierney-Jones, 1001 Beers You Must Taste Before You Die \*\*\* "Thomas Hardy's Ale is brewed in small quantities and sold in numbered bottles. It is not pasteurized and the brewery suggests to Read More ...

## The Historic Vintages

POSTED BY ADMIN JUN - 18 - 2013 12 COMMENTS

When talking of a beer so extraordinary as Thomas Hardy's Ale the reference to memorable vintages is never an exaggeration. Each vintage, every year if you prefer, is actually characterised by different shades. In addition, the fascinating "miracle" of ageing in the cellar allows to enjoy, as long as you succeed in leaving a Thomas Read More ...

## *One beer, two styles?*

 POSTED BY ADMIN  MAY - 20 - 2013  5 COMMENTS

A barley wine, or an old ale? This is not as pedantic a question as it may appear. Thomas Hardy's Ale is such an important beer that it can actually be classified in two different categories. If the barley wine definition is perhaps the more common and widely-acknowledged, quite a few English experts put this Read More ...

## *Thomas Hardy's Ale*

 POSTED BY ADMIN  APR - 24 - 2013  0 COMMENT

Thomas Hardy was one of the greatest English novelists and poets of the late 19th and early 20th century. He was born in 1840 in the small village of Upper Bockhampton, Dorset. Not so far from the small city of Dorchester, where the Eldridge Pope Brewery opened its doors in 1881. Following a period spent Read More ...

## *The grounds of a comeback*

 POSTED BY ADMIN  MAR - 27 - 2013  5 COMMENTS

Basically, Thomas Hardy's Ale's return has a single reason. It is a beer that we have loved since the very first time we tasted it. So, basically, that's all there is to it! Simple. We haven't kept records over the years of the ups and downs of this exceptional barley wine, a truly unique example Read More ...

## *About us*

 POSTED BY ADMIN  FEB - 6 - 2013  2 COMMENTS

Sandro and Michele Vecchiato, champions of the return of Thomas Hardy's Ale, are two brothers from Padova who were born and raised in the world of beer. They have worked in the beer industry since 1982, their company is specializing in the import

and distribution of quality beers for the Italian market. Over thirty years, [Read More](#)

...

## *The legend is back*

 POSTED BY ADMIN  DEC - 7 - 2012  17 COMMENTS

Welcome to the new virtual home of Thomas Hardy's Ale, the world's most famous barley wine, a beer become legend. In all our years of dedication and love for our work we have come across Thomas Hardy's Ale a few times, and every time the joy this extraordinary beer brought us re-ignited our passion for [Read More ...](#)

EXHIBIT B

# Bottoms Up

BEER AND WINE IN THE BAY AREA AND BEYOND



**On Beer** with Jay R. Brooks

**Corkheads** with Jessica Yadegaran

## Thomas Hardy's Ale: Background on a classic



Here are two of my Oakland Tribune/MediaNews Group columns about Thomas Hardy's Ale. One UPDATE: Nothing has changed since 2006. Thomas Hardy's Ale is still being brewed; it's sold almost everywhere. But there's still no distributor in the San Francisco Bay Area willing to take on this classic English ale. Damn.

### Thomas Hardy's Ale: The One That Got Away

This is a sad story about a great beer, saved only by the extreme efforts of an importer in Endicott City, MD. only to be frustrated by distance and America's weird, post-Prohibition "three-tier" system that separates brewers and importers from their retail customers by a middle-tier system of distributors.

You and I, the beer drinkers, only see the beer in bottles at our favorite store or on tap at our local. But there's a vast system of distribution behind the scenes. When Prohibition – the national experiment banning the sale of alcohol – ended in 1933, the feds and the states, not wanting to recreate a system where brewers owned the pubs where their beer was consumed, created the three-tier system.

All but the smallest brewers and all importers were forbidden to sell their products directly to retailers. Instead "distributors" received the product from

producers and importers and sold to retailers. If all you're selling is Budweiser or some other mass market beer, then the system works just fine. There's really no selling involved, nor is their need for passion about the product, although I'm sure that good, passionate salespeople are a plus for Bud & Co. too. The rub comes when the distribution systems handles small volume craft beers and imports. There are fewer and fewer distributors and each is loaded with very fine craft brands, so all but the very best can get lost in the shuffle.

Which brings us to poor old Thomas Hardy's Ale. Thomas Hardy's Ale was first brewed in 1968 by the Eldridge Pope Brewery in Dorchester to commemorate the 100th anniversary of the birth of author Thomas Hardy, "Return of the Native", "Tess of the D'Urbervilles." Much of Hardy's work was set in the moors in England's West Country around Dorchester.

It was a natural. Borrowing a quote from British beer writer **Roger Protz**

"Thomas Hardy once described the beer of Dorchester as "the most beautiful colour that the eye of an artist in beer could desire; full in body, yet brisk as a volcano; piquant, yet without a twang; luminous as an autumn sunset; free from streakiness in taste; but, finally, rather heavy." "

### About

Learn more about Jessica Yadegaran and Jay R. Brooks

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- [Backgrounder: Magnolia, the San Francisco brewpub](#)
- [Backgrounder: The story behind Polygamy Porter](#)
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- [Beer of the Week: De Glazen Toren Saison, Marin Brewing Amber](#)

How could I say it better. When Thomas Hardy's Ale was first made – it was the strongest beer in Britain: 11.25 percent alcohol by volume. It slowly became a cult beer in England.

In 1986, George Saxon, of **Phoenix Imports**, Ellicott City, Maryland, began importing Thomas Hardy's Ale. I got my first sample in 1987: we drank one bottle and put the other in the cellar, where it has remained. But in 1996, the Pope family closed the brewery to concentrate on running pubs. The brand was sold to someone else who created the Thomas Hardy Brewery. But the brewery closed in 2000.

George Saxon had been the beer's best customer. So he scrambled and wound up buying the brand. Then, he found another brewer, O'Hanlon's Brewing, Whimple, Devon, England. Since 2001, they've been producing the beer, much of it for sale in the U.S. by Phoenix Imports. A great ending to a valient effort by a guy who loves beer? Not quite.

There's the knotty distributor problem. George can't sell the beer personally, he must depend on distributors and these days, strong beers are common, Tom Hardy often gets lost in the distributor morass.

Here in the Bay Area, the distributor, Conquistador, has closed. Saxon's only California distributor is in Southern California. So the only buyer for the beer in the Bay Area, is Beverages and More.

The last version BevMo has is the 2004. I found a bottle in the Orinda, CA. store on Friday and bought it. Today, BevMo's beer person, Amy Gutierrez says the entire chain has 15 bottles in stock. Three more in Orinda, a dozen at the Walnut Creek store. That's it.

## A saga of a champion...

By William Brand



January 1 really was the dawn of the new millennium, a very special day that we will never see again. But, nevertheless, I did not drink my Thomas Hardy's Barelywine Style Ale, vintage 1987.

Just before New Year's I wandered out to my "beer cellar" \_ actually, it's an old refrigerator from student days with a fading "Guinness Is Good For You!" sign pasted on the front. But to me, it's a beer cellar.

My idea was that it was finally time to consume my treasured bottle of this rare English ale and what better time than the turn of the century. I couldn't do it. Like the millennium, this is a beer that may never come our way again and I needed a more festive

occasion than a change in the calendar. The latest, 1999 vintage is still in stores \_ but the brewery has gone outof business and it's still uncertain if there ever will be another vintage.

Thomas Hardy's Ale was first brewed in 1968 by the Eldrige Pope Brewery in Dorchester to commemorate the 100th anniversary of author Thomas Hardy's birth.

Much of Hardy's work was set in the moors in England's West Country around Dorchester. When it was made \_ it was the strongest beer in Britain: 11.25 percent alcohol by volume. It slowly became a cult beer in England.

In 1986, George Saxon, of Phoenix Imports,Ellicott City, Maryland, began importing Thomas Hardy's Ale. I got my first sample in 1987: we drank one bottle and put the other in the cellar, where it has remained.

Wine lovers may scoff. But beers like this precious ale can age and change, just like a fine Cabernet. Brewed with Maris Otter malt and finished with Fuggles and East Kent Goldings, Thomas Hardy's is not pastuerized. It's bottle-conditioned, a bit of fresh yeast is added to each bottle so fermentation continues slowly over a long period.

In the bottle, the beer becomes drier and drier as the yeast consumes the remaining unfermented malt. The hops also slowly fade and the beer slowly becomes a rich, intoxicating beverage much like a fine sherry or perhaps a Madeira.

Over the years, Saxon has become the American godfather of this elegant brew. Because of his efforts, the beer has become famous among American beer lovers. So when the Eldridge Pope Brewery went out of business three years ago, Saxon arranged for production

Beer of the Week: Dogfish Head 90 Minute Imperial IPA

Beer of the Week: Duchesse de Bourgogne, kind of sour, really great

Beer of the Week: Elysian Dragonstooth Stout

Beer of the Week: Fantome Saison

Beer of the Week: Linden Street Brewing, Oakland, CA.

Beer of the Week: Ommegang Ommegeddon '08

Beer of the Week: Petrus Aged Pale

Beer of the Week: Russian River Temptation's a wowzer

Beer of the Week: Theakston Old Peculier, echoes of long ago

Belgian Beer: Orval, Petrus Aged Pale...

Books on Beer

City Beer's barrel-aged fest is rocking tonight

Food: Fish & Chips Recipe from the Star Tavern in London

Good pubs to visit in Amsterdam

He'brew – The Chosen Beer: How It All Began

Pizza Restaurants With Good Beer

The KQED Belgian beer tour: The beers we drank

Thomas Hardy's Ale: Background on a classic

What's on Tap Beer Columns

### Recent Comments:

stuart: where do you recommend parking for this event?

Bohemiac: I've got a bottle of the ale, is it worth anything?

gary bilyeu: if someone is looking for bare knuckle stout neon sign with boxing bell . it is double neon transformer...

metabrewing: Are you certain that The Abyss is a 500 barrel batch? This recent article on their own website states...

rico: I was in the army for eight years and when I would come back from a deployment that is all I would buy is...

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Corkheads

On Beer

Uncategorized

what's on tap

### Archives

February 2014

January 2014

November 2013

October 2013

July 2013

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January 2013

at another brewery.

That arrangement lasted through 1999. Because Eldrige Pope stillowns the brand name, there were complications. Saxon said he's headed to England soon and it hopes the beer can be brewed again.

In the meantime, it still can be found at stores with large beer stocks, but one must look hard. It's in an 11.2 ounce bottle and sells for \$2.95. Now that's a bargain.

For now, my lone bottle happily remains on the shelf in my cellar and I consoled myself this year with a 1995 bottle of Code Blue \_ the strong, 10 percenter from Pacific Coast Brewing here in Oakland. It's less sweet and malty than it once was \_ but it's a powerful beer and just right to toast the millennium.

Since Thomas Hardy Ale made its first appearance in the U.S., a number of craft brewers have made their own barleywines. Here are some suggestions, all are in 12 ounce bottles.

<p> Code Blue, Pacific Coast Brewing. Four Stars. Available only at the brewpub, 906 Washington St., Oakland. 12 ounce bottles, \$5.

<p> Bigfoot Barleywine Style Ale, Sierra Nevada Brewing, Chico. Four Stars. Reaches stores each February, about \$1.50. This is the American barleywine classic. Strong, dark and delicious, usually around 11 percent alcohol by volume.

<p> Old Foghorn, Anchor Brewing, San Francisco. Four Stars. Available year-round. Malt melts like honey in the mouth, balanced by Cascade hops. A smooth, powerful elixir., about 8.7 percent alcohol by volume, about \$1.50.

<p> Old Crustacean, Rogue Brewing, Newport, Ore. Killer hops dominate this darkly delicious brew. By comparison, Budweiser has 3.9 percent alcohol and 11 International Bitterness Units. Old Crustacean averages about 11 percent alcohol and has 80 IBU. Whew! Look for the 1998 or 1999 rather than the newest version. This is a beer that is meant to age. Three Stars. About \$2, 7 ounce bottle.

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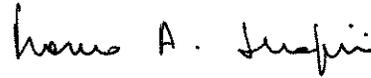
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I hereby certify that this Answer is being filed electronically with the Trademark Trial and Appeal Board on this 19th day of May, 2014.



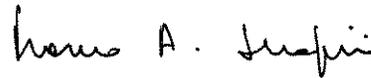
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Franco A. Serafini

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I hereby certify that a copy of the foregoing Answer has been furnished by U.S. first class mail on this 19th day of May, 2014 to:

J. Scott Gerien, Esq.  
Aaron D. Currie, Esq.  
DICKENSON, PEATMAN & FOGARTY  
1455 First St Ste 301  
Napa CA 94559



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Franco A. Serafini