

ESTTA Tracking number: **ESTTA684050**

Filing date: **07/16/2015**

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

| | |
|------------------------|--|
| Proceeding | 92061715 |
| Party | Defendant Speakeasy Ales & Lagers, Inc. |
| Correspondence Address | SPEAKEASY ALES & LAGERS INC PO BOX 882724 SAN FRANCISCO, CA 941882724 UNITED STATES |
| Submission | Answer and Counterclaim |
| Filer's Name | Stephen J. Jeffries |
| Filer's e-mail | stephen.jeffries@hklaw.com, ptdocketing@hklaw.com |
| Signature | /Stephen J. Jeffries/ |
| Date | 07/16/2015 |
| Attachments | suds session answer and counter-claims_07_16_2015_13_33_31_260.pdf(1347347 bytes) |

Registrations Subject to the filing

| | | | |
|--------------------|---|-------------------|------------|
| Registration No | 3113041 | Registration date | 07/04/2006 |
| Registrant | B.C. Marketing Concepts, Inc. 506 Columbia Street Hood River, OR 97031 UNITED STATES | | |
| Grounds for filing | The registered mark has become the generic name for the goods. | | |

Goods/Services Subject to the filing

| |
|--|
| Class 032. First Use: 2004/12/01 First Use In Commerce: 2005/05/10 All goods and services in the class are requested, namely: Brewed Malt Based Alcoholic Beverages, Namely Beer, Ales and Lagers |
|--|

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4224510 | Registration date | 10/16/2012 |
| Registrant | B. C. MARKETING CONCEPTS, INC. 506 COLUMBIA STREET HOOD RIVER, OR 97031 UNITED STATES | | |

Goods/Services Subject to the filing

| |
|--|
| Class 032. First Use: 2005/05/10 First Use In Commerce: 2005/05/10 All goods and services in the class are requested, namely: Beer, ale and lager; Brewed malt-based alcoholic beverage in the nature of a beer |
|--|

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4224511 | Registration date | 10/16/2012 |
| Registrant | B. C. MARKETING CONCEPTS, INC. 506 COLUMBIA STREET HOOD RIVER, OR 97031 UNITED STATES | | |

Goods/Services Subject to the filing

Class 032. First Use: 2005/05/10 First Use In Commerce: 2005/05/10
All goods and services in the class are requested, namely: Beer, ale and lager; Brewed malt-based alcoholic beverage in the nature of a beer

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4265584 | Registration date | 12/25/2012 |
| Registrant | B. C. MARKETING CONCEPTS, INC. 506 COLUMBIA STREET HOOD RIVER, OR 97031 UNITED STATES | | |

Goods/Services Subject to the filing

Class 032. First Use: 2011/10/01 First Use In Commerce: 2011/10/01
All goods and services in the class are requested, namely: Brewed malt-based alcoholic beverage in the nature of a beer; lagers

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4265585 | Registration date | 12/25/2012 |
| Registrant | B. C. MARKETING CONCEPTS, INC. 506 COLUMBIA STREET HOOD RIVER, OR 97031 UNITED STATES | | |

Goods/Services Subject to the filing

Class 032. First Use: 2005/05/10 First Use In Commerce: 2005/05/10
All goods and services in the class are requested, namely: Brewed malt-based alcoholic beverage in the nature of a beer; Lagers

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 4265586 | Registration date | 12/25/2012 |
| Registrant | B. C. MARKETING CONCEPTS, INC. 506 COLUMBIA STREET HOOD RIVER, OR 97031 UNITED STATES | | |

Goods/Services Subject to the filing

Class 032. First Use: 2009/06/24 First Use In Commerce: 2009/06/24
All goods and services in the class are requested, namely: Brewed malt-based alcoholic beverage in the nature of a beer; lagers

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

| | | |
|--------------------------------|---|---------------------------|
| |) | |
| B.C. Marketing Concepts, Inc., |) | |
| DBA Full Sail Brewing Company |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Cancellation No. 92061715 |
| |) | |
| Speakeasy Ales & Lagers Inc. |) | |
| |) | |
| Respondent. |) | |
| |) | |

**RESPONDENT'S ANSWER TO PETITION FOR CANCELLATION AND
COUNTERCLAIMS**

Speakeasy Ales & Lagers Inc. ("Respondent"), by and through counsel, states the following in answer to the Petition for Cancellation filed by B.C. Marketing Concepts, Inc., DBA Full Sail Brewing Company ("Petitioner ") in the captioned proceeding.

RESPONDENT'S ANSWER TO PETITION FOR CANCELLATION

Respondent answers the numbered paragraphs set forth in the Petition for Cancellation as follows.

1. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 1, that "Petitioner, B C Marketing Concepts, Inc., dba Full Sail Brewing Company, is a manufacturer and distributor of brewed malt based alcoholic beverages, namely beer, ales and lagers and the owner of intellectual property rights." Respondent denies the allegation, set forth in Paragraph 1, that Petitioner owns any exclusive "rights to use SESSION for brewed malt based alcoholic beverages, including beers, ales and lagers."

2. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 2, that “Petitioner has marketed brewed malt based alcoholic beverage, namely beer, ales and lagers throughout the United States under the now-well-known name SESSION since at least December 1, 2004.” Respondent admits the allegation, set forth in Paragraph 2, that Petitioner “owns Reg. No. 3,113,041, registered July 4, 2006 for the mark SESSION.” Respondent admits the allegation, set forth in Paragraph 2, that “(a) copy of Reg. No. 3,113,041 is attached” to the Petition for Cancellation.

3. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 3, that “Petitioner has marketed beer, ale and lager; brewed malt based alcoholic beverages in the nature of a beer throughout the United States under the well-known name SESSION & Design since at least May 10, 2005.” Respondent admits the allegation, set forth in Paragraph 2, that Petitioner “owns Reg. No. 4,224,510, registered October 16, 2012 for the mark SESSION & Design.” Respondent admits the allegation, set forth in Paragraph 3, that “(a) copy of Reg. No. 4,224,510 is attached” to the Petition for Cancellation.

4. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 4, that “Petitioner has marketed beer, ale and lager; brewed malt based alcoholic beverages in the nature of beer throughout the United States under the well-known name SESSION in stylized format since at least May 10, 2005.” Respondent admits the allegation, set forth in Paragraph 4, that Petitioner “owns Reg. No. 4,224,511, registered October 16, 2012 for the mark SESSION (Stylized).” Respondent admits the allegation, set forth in Paragraph 4, that “(a) copy of Reg. No. 4,224,511 is attached” to the Petition for Cancellation.

5. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 5, that “Petitioner has marketed brewed malt based alcoholic beverages in the nature of beer; lagers throughout the United States under the well-known name SESSION FEST since at least October 1, 2011.” Respondent admits the allegation, set forth in Paragraph 5, that Petitioner “owns Reg. No. 4,262,584, registered December 25, 2012 for the mark SESSION FEST.” Respondent admits the allegation, set forth in Paragraph 5, that “(a) copy of Reg. No. 4,262,584 is attached” to the Petition for Cancellation.

6. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 6, that “Petitioner has marketed brewed malt

based alcoholic beverages in the nature of beer; lagers throughout the United States under the well-known name SESSION LAGER since at least May 10, 2005.” Respondent admits the allegation, set forth in Paragraph 6, that Petitioner “owns Reg. No. 4,265,585, registered December 25, 2012 for the mark SESSION LAGER.” Respondent admits the allegation, set forth in Paragraph 6, that “(a) copy of Reg. No. 4,265,585 is attached” to the Petition for Cancellation.

7. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations, set forth in Paragraph 7, that “Petitioner has marketed brewed malt based alcoholic beverages in the nature of beer; lagers throughout the United States under the well-known name SESSION BLACK since at least June 24, 2009.” Respondent admits the allegation, set forth in Paragraph 7, that Petitioner “owns Reg. No. 4,265,586, registered December 25, 2012 for the mark SESSION BLACK.” Respondent admits the allegation, set forth in Paragraph 7, that “(a) copy of Reg. No. 4,265,586 is attached” to the Petition for Cancellation.

8. Respondent denies the allegations set forth in Paragraph 8.

9. Respondent denies the allegations set forth in Paragraph 9.

10. Respondent denies the allegation, set forth in Paragraph 10, the Petitioner has “rights in and to its SESSION marks.” Respondent admits the allegation, set forth in Paragraph 10, that Respondent “on November 15, 2014, filed an application for registration of the mark SUDS SESSION for beer, ale, lager, stout, porter, shandy.”

11. Respondent admits the allegations set forth in Paragraph 11.

12. Respondent denies the allegations set forth in Paragraph 12.

13. Respondent denies the allegations set forth in Paragraph 13.

14. Respondent denies the allegations set forth in Paragraph 14.

15. Respondent denies the allegations set forth in Paragraph 15.

16. Respondent denies the allegations set forth in Paragraph 16.

17. Respondent denies the allegations set forth in Paragraph 17.
18. Respondent denies the allegations set forth in Paragraph 18.
19. Respondent denies the allegations set forth in Paragraph 19.
20. Respondent denies the allegations set forth in Paragraph 20

Respondent further denies that Petitioner is entitled to the relief which it seeks. In all other respects, to the extent that any allegation in the Petition for Cancellation has not been specifically admitted herein, such allegation is hereby denied.

WHEREFORE, Respondent prays that the Petition for Cancellation be denied.

**RESPONDENT'S FIRST COUNTERCLAIM: COUNTERCLAIM FOR
CANCELLATION OF REGISTRATION NO. 3,113,041**

21. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 3,113,041 for the mark SESSION (in standard characters). The goods identified in Registration No. 3,113,041 are "brewed malt based alcoholic beverages, namely beer, ales and lagers." Said registration was issued on July 4, 2006.

22. In United States English, "session beer" is the common name for "(a) beer that has a relatively low alcoholic content and is therefore suitable for drinking over an extended period." See Exhibit 1 (printout from Oxford Dictionaries website located at <www.oxforddictionaries.com>). The Oxford Dictionaries website printout attached at Exhibit 1 provides the following example sentences that include the term "session beer":

'I'm a big fan of understated session beers but there was something missing.'

'All were fine session beers, and if there was a favorite, it was probably Hofbrau's.'

'The Hefeweizen was very good indeed, an excellent session beer, superbly fruity.'

23. In United States English, “session beer” is the class name for “(a) beer that has a relatively low alcoholic content and is therefore suitable for drinking over an extended period.” See *id.*

24. The goods identified in Registration No. 3,113,041 encompass all types of beer, including session beer.

25. The mark set forth in Registration No. 3,113,041 is the generic name for the goods for which it is registered.

26. Because the mark set forth in Registration No. 3,113,041 is the generic name for the goods for which it is registered, and Petitioner has pleaded Registration No. 3,113,041 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark.

27. Respondent hereby petitions the Board to cancel Registration No. 3,113,041 pursuant to Trademark Act §§14(3) and 18 on grounds that the mark set forth in the registration is the generic name for the goods for which it is registered.

RESPONDENT’S SECOND COUNTERCLAIM: COUNTERCLAIM TO RESTRICT OR RECTIFY REGISTRATION NO. 4,224,510 BY ENTERING A DISCLAIMER

28. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 4,224,510 for the mark SESSION (and design). The goods identified in Registration No. 4,224,510 are “beer, ale and lager; brewed malt-based alcoholic beverage in the nature of a beer.” Said registration was issued on October 16, 2012.

29. The allegations set forth in numbered paragraphs Nos. 22 and 23, above, are incorporated herein as if fully repeated herein.

30. The goods identified in Registration No. 4,224,510 encompass all types of beer, including session beer.

31. The portion of the mark set forth in Registration No. 4,224,510 comprised of the term “session” is the generic name for the goods for which the mark is registered.

32. Because the portion of the mark set forth in Registration No. 4,224,510 comprised of the term “session” is the generic name for the goods for which the mark is registered, and Petitioner has pleaded Registration No. 4,224,510 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark unless the registration is amended to include a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

33. Because the portion of the mark set forth in Registration No. 4,224,510 comprised of the term “session” is the generic name for the goods for which the mark is registered, Respondent hereby petitions the Board to amend Registration No. 4,224,510 to enter a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

RESPONDENT’S THIRD COUNTERCLAIM: COUNTERCLAIM TO RESTRICT OR RECTIFY REGISTRATION NO. 4,224,511 BY ENTERING A DISCLAIMER

34. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 4,224,511 for the mark SESSION (in stylized form). The goods identified in Registration No. 4,224,511 are “beer, ale and lager; brewed malt-based alcoholic beverage in the nature of a beer.” Said registration was issued on October 16, 2012.

35. The allegations set forth in numbered paragraphs Nos. 22 and 23, above, are incorporated herein as if fully repeated herein.

36. The goods identified in Registration No. 4,224,511 encompass all types of beer, including session beer.

37. The portion of the mark set forth in Registration No. 4,224,511 comprised of the term “session” is the generic name for the goods for which the mark is registered.

38. Because the portion of the mark set forth in Registration No. 4,224,511 comprised of the term “session” is the generic name for the goods for which the mark is registered, and Petitioner has pleaded Registration No. 4,224,511 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark unless the registration is amended to include a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

39. Because the portion of the mark set forth in Registration No. 4,224,511 comprised of the term “session” is the generic name for the goods for which the mark is registered, Respondent hereby petitions the Board to amend Registration No. 4,224,511 to enter a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

**RESPONDENT’S FOURTH COUNTERCLAIM: COUNTERCLAIM TO RESTRICT
OR RECTIFY REGISTRATION NO. 4,262,584 BY ENTERING A DISCLAIMER**

40. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 4,262,584 for the mark SESSION FEST (in standard characters). The goods identified in Registration No. 4,262,584 are “brewed malt-based alcoholic beverage in the nature of a beer; lagers.” Said registration was issued on December 25, 2012.

41. The allegations set forth in numbered paragraphs Nos. 22 and 23, above, are incorporated herein as if fully repeated herein.

42. The goods identified in Registration No. 4,262,584 encompass all types of beer, including session beer.

43. The portion of the mark set forth in Registration No. 4,262,584 comprised of the term “session” is the generic name for the goods for which the mark is registered.

44. Because the portion of the mark set forth in Registration No. 4,262,584 comprised of the term “session” is the generic name for the goods for which the mark is registered, and Petitioner has pleaded Registration No. 4,262,584 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark unless the registration is amended to include a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

45. Because the portion of the mark set forth in Registration No. 4,262,584 comprised of the term “session” is the generic name for the goods for which the mark is registered, Respondent hereby petitions the Board to amend Registration No. 4,262,584 to enter a statement that Petitioner disclaims the exclusive right to use the word “session” apart from the mark as shown.

**RESPONDENT'S FIFTH COUNTERCLAIM: COUNTERCLAIM FOR
CANCELLATION OF REGISTRATION NO. 4,265,585**

46. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 4,265,585 for the mark SESSION LAGER (in standard characters). The goods identified in Registration No. 4,265,585 are "brewed malt-based alcoholic beverage in the nature of a beer; lagers." Said registration was issued on December 25, 2012.

47. The allegations set forth in numbered paragraphs Nos. 22 and 23, above, are incorporated herein as if fully repeated herein.

48. The goods identified in Registration No. 4,265,585 encompass all types of beer, including session beer.

49. The portion of the mark set forth in Registration No. 4,262,585 comprised of the term "session" is a generic name for the goods for which the mark is registered.

50. The goods identified in Registration No. 4,265,585 encompass lager.

51. The portion of the mark set forth in Registration No. 4,262,585 comprised of the term "lager" is a generic name for the goods for which the mark is registered.

52. Because the terms comprising the mark set forth in Registration No. 4,262,585 are generic, and Petitioner has pleaded Registration No. 4,262,585 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark.

53. Respondent hereby petitions the Board to cancel Registration No. 4,262,585 pursuant to Trademark Act §§14(3) and 18 on grounds that the mark set forth in the registration is generic in its entirety.

**RESPONDENT'S SIXTH COUNTERCLAIM: COUNTERCLAIM FOR
CANCELLATION OF REGISTRATION NO. 4,265,586**

54. In the Petition for Cancellation, Petitioner has pleaded that Petitioner owns Registration No. 4,265,586 for the mark SESSION BLACK (in standard characters). The goods identified in Registration No. 4,265,586 are "brewed malt-based alcoholic beverage in the nature of a beer; lagers." Said registration was issued on December 25, 2012.

55. The allegations set forth in numbered paragraphs Nos. 22 and 23, above, are incorporated herein as if fully repeated herein.

56. The goods identified in Registration No. 4,265,586 encompass all types of beer, including session beer.

57. The portion of the mark set forth in Registration No. 4,262,586 comprised of the term "session" is a generic name for the goods for which the mark is registered.

58. "Black beer" is the common name for a type of dark lager.

59. "Black beer" is the class name for a type of dark lager.

60. "Black lager" is the common name for a type of dark lager.

61. "Black lager" is the class name for a type of dark lager.

62. The goods identified in Registration No. 4,265,586 encompass all types of beer and lager, including black beer and black lager.

63. The portion of the mark set forth in Registration No. 4,262,586 comprised of the term "black" is a generic name for the goods for which the mark is registered.

64. Registration No. 4,265,586 includes Petitioner's disclaimer of the exclusive right to use the term "black" apart from the mark as shown.

65. The disclaimer set forth in Registration No. 4,265,586 constitutes Petitioner's admission that the term "black" is merely descriptive of the goods for which the mark is registered.

66. Because the terms comprising the mark set forth in Registration No. 4,265,586 are merely descriptive and/or generic, and Petitioner has pleaded Registration No. 4,265,586 in the Petition for Cancellation, Respondent is damaged by the continued registration of the mark.

67. Respondent hereby petitions the Board to cancel Registration No. 4,265,586 pursuant to Trademark Act §§2(e)(1), 14(3) and 18 on grounds that the mark set forth in the registration is merely descriptive and/or generic in its entirety.

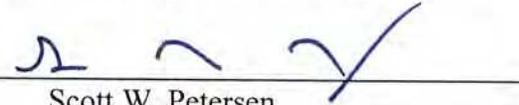
WHEREFORE, Respondent prays that its counterclaims be granted.

Respectfully submitted,

SPEAKEASY ALES & LAGERS INC.

Dated: July 16, 2015

By:



Scott W. Petersen
Stephen J. Jeffries
Daniel C. Neustadt
HOLLAND & KNIGHT LLP
131 S Dearborn St. Fl 30
Chicago, Il 60603-5517

Counsel for Respondent

EXHIBIT 1

ENG (US)

US English

session beer



O'Reilly AUTO PARTS

A/C PRO R-134a Refrigerant with Hose & Gauge 20 oz

SAVE \$5

\$39.99 EACH

SHOP COOLANTS >

HOME > US ENGLISH > SESSION BEER

session beer

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Syllabification: ses-sion beer

Definition of *session beer* in English:
noun

A beer that has a relatively low alcohol content and is **therefore** suitable for **drinking** over an extended period: *'a session beer with just 4% alcohol by volume'*

MORE EXAMPLE SENTENCES

'I'm a big fan of understated session beers but there was something missing.'

'All were fine session beers, and if there was a favorite, it was probably Hofbrau's.'

'The Hefeweizen was very good indeed,

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2. ixtle
3. racism
4. derecho
5. Que.

= trending



an excellent session beer, superbly fruity.'

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Definition of **session beer** in:

- [British & World English](#) dictionary

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9 drinks named after people



Random apostrophization strikes again!



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5 language arguments you can stop having



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Find out what it means 

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English (US)

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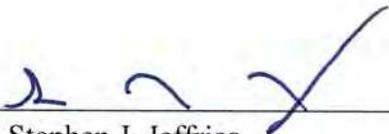
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Respondent's Answer to Petition for Cancellation And Counterclaims was sent by first class mail, postage pre-paid, to:

Charles H. Devoe, Esq.
Kolisch Harwell PC
520 SW Yamhill Street, Suite 200
Portland, OR 97204
United States

on this 16th day of July, 2015.



Stephen J. Jeffries