

ESTTA Tracking number: **ESTTA32280**

Filing date: **05/05/2005**

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	Pete's Brewing Company		
Entity	Corporation	Citizenship	California
Address	14800 San Pedro Avenue Suite 300 San Antonio, TX 78232 UNITED STATES		

Correspondence information	J. Scott Gerien Attorney Owen, Wickersham & Erickson, P.C. 455 Market Street Suite 1900 San Francisco, CA 94105 UNITED STATES sgerien@owe.com Phone: 415-882-3200
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Applicant Information

Application No	78059410	Publication date	04/26/2005
Opposition Filing Date	05/05/2005	Opposition Period Ends	05/26/2005
Applicant	Corr, Robert J. 51015 Lake Park Dr. Grand Beach, MI 49117 UNITED STATES		

Goods/Services Affected by Opposition

Class 032.

All goods and services in the class are opposed, namely: Non alcoholic light beverages, namely soft drinks

Attachments	SFXF9B.pdf (4 pages)
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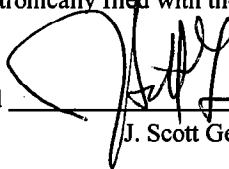
Signature	/J. Scott Gerien/
Name	J. Scott Gerien
Date	05/05/2005

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Certificate of Electronic Filing

I hereby certify that this correspondence is being electronically filed with the TTAB through the ESTTA system located at <<http://estta.uspto.gov>>.

Dated: 5/5/05

Signed  _____
J. Scott Gerien, Esq.

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

In the matter of Trademark Application

Serial No.: 78/059,410
Filed: April 20, 2001
Mark: WICKED RUSH
Classes: International Class No. 32
Goods: Non-alcoholic light beverages, namely soft drinks

Pete's Brewing Company,)
Opposer,)
v.)
Robert J. Corr,)
Applicant.)

Opposition No.
NOTICE OF OPPOSITION

Pete's Brewing Company, a corporation organized under the laws of the State of California and located at 14800 San Pedro Avenue, Suite 300, San Antonio, TX 78232 ("Opposer"), believes it will be damaged by registration of the mark WICKED RUSH for non-alcoholic light beverages, namely soft drinks, shown in Serial No. 78/059,410, filed on April 20, 2001 by Robert J. Corr ("Applicant") and hereby opposes the same.

Opposer alleges, solely for the purpose of this proceeding, as grounds for opposition the following:

1. Applicant has filed an intent-to-use trademark application for the mark WICKED RUSH in class 32 for non-alcoholic light beverages, namely soft drinks. That trademark

1 application was filed on April 20, 2001 by Applicant and assigned U.S. Trademark Application
2 Serial No. 78/059,410.

3 2. Opposer is the owner of the following trademarks:

4 (a) Registration No. 1,646,210 for the mark WICKED ALE for beer in
5 International Class 32, alcoholic-beverages similar to those identified in Applicant's application;

6 (b) Registration No. 1,761,609 for the mark PETE'S WICKED ALE for beer
7 in International Class 32, alcoholic-beverages similar to those identified in Applicant's
8 application;

9 (c) Registration No. 1,992,442 for the mark WICKED WINTER BREW
10 (Stylized) for ale in International Class 32, alcoholic-beverages similar to those identified in
11 Applicant's application.

12 (d) Registration No. 1,945,788 for the mark WICKED WARE for direct mail,
13 catalog and mail order services, featuring clothing, tee-shirts, sweatshirts, polo shirts, jackets,
14 caps, watches, mugs, cups, glasses, duffel and barrel bags, towels, buttons, can openers and
15 coasters in International Class 42, services encompassing goods related to those identified in
16 Applicant's application.

17 (e) Registration No. 2,022,295 for the mark GET WICKED TONIGHT for
18 clothing, namely t-shirts, sweatshirts and caps in International Class 25, goods related to those
19 identified in Applicant's application.

20 (f) Registration No. 2,177,847 for the mark PETESWICKED.COM for
21 providing information concerning the beer brewing industry on a global computer network in
22 International Class 42, services related to the goods identified in Applicant's application.

23 (g) Registration No. 2,297,277 for the mark WICKED for clothing, namely,
24 t-shirts, sweatshirts, baseball jerseys and hats in International Class 25, goods related to those
25 identified in Applicant's application.

26 (h) Application Serial No. 76/189,172 for the mark PETE'S WICKED RED
27 RUSH for beer.

28 (i) Application Serial No. 76/330,260 for the mark WICKED for beer and ale.

1 3. Together, the above-cited marks constitute a family of "WICKED" marks.
2 Opposer's "WICKED" family of marks are inherently distinctive.

3 4. Opposer's "WICKED" family of marks have also been extensively used and
4 continuously used and/or not abandoned, and have been advertised, and promoted throughout the
5 United States and the world in connection with beer and related goods and services since as early
6 as February of 1987, prior to any date of first use or constructive date of first use upon which
7 Applicant can rely for its WICKED RUSH mark.

8 5.. In an office action issued against Opposer's Application Serial No. 76/330,260 for
9 the mark WICKED for beer and ale, the USPTO has stated that should Applicant's earlier-filed
10 Application Serial No. 78/059,410 become registered, it could be cited against Opposer's
11 WICKED application so as warrant refusal of Opposer's WICKED application on the basis of
12 Section 2(d) of the Trademark Act and Opposer's WICKED application has been suspended on
13 such basis pursuant to 37 C.F.R. §2.83.

14 6. Because Opposer possesses prior rights in its "WICKED" family of marks for beer
15 and related goods and services, if there exists any likelihood of confusion between Applicant's
16 WICKED RUSH mark for non-alcoholic light beverages, namely soft drinks and Opposer's
17 WICKED mark for beer and ale, then Applicant's application for WICKED RUSH should be
18 refused based on Opposer's prior rights in its WICKED family of marks.

19 7. So long as the USPTO refuses to publish Opposer's application for its WICKED
20 mark for beer and ale based on the application which is the subject of this opposition, such
21 application is damaging Opposer.

22 WHEREFORE, Opposer prays that the opposition be sustained and that registration be
23 refused.

24 Applicant requests that the \$300.00 in filing fees for this Notice of Opposition to
25 Application Serial No. 78/059,410 be debited from Applicant's counsel's deposit account
26 #502333.

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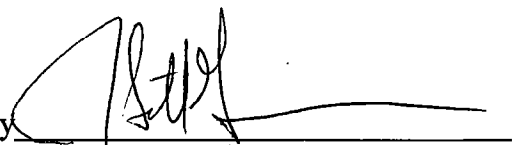
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Dated: May 5, 2005

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON

By 
J. Scott Gerien

455 Market Street, 19th Floor
San Francisco, CA 94105

Attorneys for Opposer,
Pete's Brewing Company