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

Proceeding	91178512
Party	Defendant PABST BREWING COMPANY
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Signature	/Stephen F Kampmeier/
Date	03/07/2008
Attachments	Answer to Notice of Opposition.pdf ( 10 pages )(524585 bytes )

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

ANHEUSER-BUSCH, INCORPORATED,

Opposer,

v.

PABST BREWING COMPANY,

Applicant.

Opposition No. 91178512

Serial No. 78/844,352

Attorney Docket No.  
011741-0018-999

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Pabst Brewing Company (“Applicant”), by its attorneys, hereby answers the Notice of Opposition filed by Anheuser-Busch Incorporated (“Opposer”) as follows:

With respect to the allegations contained in the opening paragraph of the Notice of Opposition, Applicant admits that it filed the mark shown in Application Serial No. 78/844,352 in International Class 32, and states that it is without knowledge or information sufficient to form a belief as to the remaining allegations in the opening paragraph of the Notice of Opposition and, therefore, denies the same.

1. Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and, therefore, denies the same.

3. Applicant admits that Opposer is the record owner of Federal Registration Nos. 2282182 and 2282183. Applicant states that it is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Notice of Opposition and, therefore, denies the same.

4. Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies the same.

5. Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition and, therefore, denies the same.

6. Applicant states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition and, therefore, denies the same.

7. Applicant denies the allegations contained in paragraph 7 of the Notice of Opposition.

8. In response to the statements contained in paragraph 8 of the Notice of Opposition, Applicant restates and incorporates by reference its responses in paragraphs 1 through 7 above.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. In response to the statements contained in paragraph 10 of the Notice of Opposition, Applicant restates and incorporates by reference its responses in paragraphs 1 through 9 above.

11. Applicant admits that on March 23, 2006 it filed a trademark application to register the mark NATTY BOH. Except as admitted, Applicant denies the allegations of Paragraph 11 of the Notice of Opposition.

12. Applicant admits that on November 6, 2006, Applicant executed a Declaration in support of its intent to use trademark application. Except as admitted, Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

13. Applicant denies that in its application it alleged use of the mark NATTY BOH in commerce since at least August 31, 1959, and therefore denies the allegations contained in paragraph 13 of the Notice of Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

1. There is no likelihood of confusion, mistake or deception arising from the concurrent use and registration of the marks because Applicant's mark and the pleaded marks of Opposer differ in terms of appearance, sound, meaning and overall commercial impression.

2. There is no likelihood of confusion, mistake or deception arising from the concurrent use and registration of the marks because Applicant's mark and the pleaded marks of Opposer have different connotations. Opposer's "Natty" is a variation of the word "Natural" as in Opposer's NATURAL LIGHT and NATURAL ICE marks for beer, as Opposer represented in two Office Action responses filed before United States Patent and Trademark Office on or about March 11, 2004. Applicant's mark does not have this connotation. In fact, Applicant's mark "NATTY BOH" connotes Applicant's NATIONAL BOHEMIAN beer.

3. There is no likelihood of confusion, mistake or deception arising from the concurrent use and registration of the marks because NATTY BOH has acquired a strong secondary meaning identifying NATIONAL BOHEMIAN beer.

4. There is no likelihood of confusion, mistake or deception arising from the concurrent use and registration of the marks because the United States Patent and Trademark

Office approved Applicant's Application Serial No. 78/844,352 for publication, after reporting that "The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d)."

5. Applicant's NATTY BOH mark, used in connection with beer, has priority over Opposer's claimed use date of July 1998. For example, attached hereto at Exhibit A is a representative newspaper article dated January 4, 1996 from the Baltimore Sun referencing NATTY BOH in connection with NATIONAL BOHEMIAN beer, which reads, in relevant part:

The move is of no small significance for Mr. Fried, who opened Doner's Baltimore office in 1955 to handle a new account for the Baltimore-based National Brewing Co., Heileman's predecessor and brewer of National Bohemian. That's Natty Boh, as every good Baltimorean knows...

6. Opposer's claims in the Notice of Opposition are barred by the doctrines of laches and estoppel, waiver, and unclean hands.

7. Opposer's claims in the Notice of Opposition are barred because Opposer acquiesced to Applicant's conduct and the conduct of Applicant's predecessors-in-right.

8. Opposer's Notice of Opposition fails to state a claim, in whole or in part, upon which relief may be granted.

9. Applicant reserves and preserves its right to assert any and all other affirmative defenses that it becomes aware of during the course of discovery.

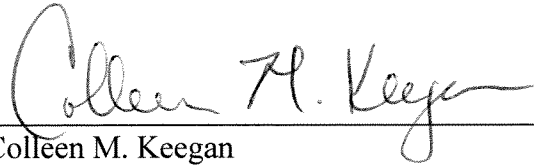
In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown where it is, where it will be, or is likely to be, damaged by the registration of Applicant's trademark; that Applicant's trademark is manifestly distinct from any alleged mark of the Opposer or any designation of the Opposer; and,

wherefore, Applicant prays that the Notice of Opposition be dismissed and that the United States Patent and Trademark Office issue a Notice of Allowance in favor of Application Serial No. 78/844,352.

Please address all correspondence in this matter to Colleen M. Keegan, Esq., Jones Day, 222 East 41<sup>st</sup> Street, New York, New York 10017.

Dated: March 7, 2008

Respectfully submitted,



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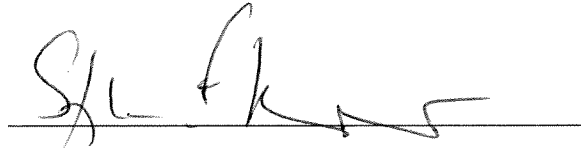
Attorneys for Defendant  
PABST BREWING COMPANY

NYI-4011976

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES** has been served on Douglas N. Masters by mailing said copy on March 7, 2008, via UPS overnight courier, postage prepaid to:

Douglas N. Masters, Esq.  
LOEB & LOEB LLP  
321 North Clark Street, Suite 2300  
Chicago, IL 60610-4746

A handwritten signature in black ink, appearing to read "S. F. Kampmeier", is written over a horizontal line.

Stephen F. Kampmeier

# EXHIBIT A



Westlaw

NewsRoom

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1996 WLNR 966781

Baltimore Sun (MD)  
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January 4, 1996

Section: Financial

DONER WELCOMES HOME ALL OF HEILEMAN'S BREWS; AFTER 5-YEAR EFFORT, AD AGENCY WINS  
BACK LONE STAR, 2 OTHERS

Gary Gately SUN STAFF

Herb Fried sat in his posh office 11 stories above the Inner Harbor yesterday and celebrated a homecoming he's longed for since 1990.

At long last the brewer of National Boh and Colt 45 had returned all its advertising work to the agency that made the beers famous: Mr. Fried's W. B. Doner & Co.

G. Heileman Brewing Co.'s decision to consolidate all its creative and media-buying advertising functions with Doner represents the culmination of a concerted, five-year effort by the agency and particularly its chairman, Mr. Fried.

Heileman's decision, announced yesterday, awards Doner the Old Style, Lone Star and Rainier beers accounts and media buying for all Heileman products.

The move is of no small significance for Mr. Fried, who opened Doner's Baltimore office in 1955 to handle a new account for the Baltimore-based National Brewing Co., Heileman's predecessor and brewer of National Bohemian.

That's Natty Boh, as every good Baltimorean knows, brewed with pride in the "Land of Pleasant Living."

"If it weren't for that account," he said yesterday, "we wouldn't be sitting here today in these great digs."

Doner handled all advertising for National Brewing and Heileman for 35 years, surviving four ownership changes and the relocation of its headquarters to Chicago. Heileman still operates its brewery in Halethorpe, where it produces various brands, including Colt 45, National Premium and National Bohemian.

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But Heileman dropped Doner altogether in 1990, prompting Mr. Fried's agency to mount an aggressive campaign to win back its first major account and its only beer advertising. Doner went so far as to build a sports bar in the lobby of its Detroit office -- complete with Chicago Bears and Bulls paraphernalia and, of course, Heileman products -- to woo back the brewer.

In 1994, persistence paid off, when Heileman signed Doner to handle about \$7.5 million worth of Heileman accounts, including Natty Boh, Colt 45, Mickey's, Champale and Special Export. Last year, Heileman tapped Doner to advertise the Henry Weinhard's brand.

But Mr. Fried wasn't satisfied. He wanted to take Rainier and Old Style back from the Chicago agency Bayer Bess Vanderwalker.

He wanted to take Lone Star back from Monte Mayor in San Antonio. He wanted to take all Heileman's media buying back from SFM Media in New York. And he told Heileman so, as often as possible.

"Let's put it this way: It's been a long journey for me, and it was very difficult mentally," he said. "The whole thing was built on the old National Brewing Co."

Heileman declined to disclose billings for the business it awarded Doner, effective this week. The brewery's entire ad budget totaled about \$22.5 million in the 1994 fiscal year, Doner said.

Joe Martino, a Heileman senior executive, said Doner's work with the Colt 45 and Special Export brands prompted the brewery to award the remainder of its advertising work to the agency.

"We're thrilled with the work they're doing," Mr. Martino said, "and it seems to be working in the marketplace."

He credited ad campaigns for rebounding sales last year of both Special Export and Colt 45.

The EX ads, for Special Export beers and malt liquors, have generated some controversy. The suggestive ads, launched in the Midwest, feature slogans such as "The Joy of EX," "Practice Safe EX," "Men Think About EX 100 Times a Day."

Criticism and clamor to pull the ads doesn't bother Mr. Fried. "We like that kind of publicity," he said, however unforeseen.

W. B. Doner, with annual billings exceeding \$500 million, has offices in Baltimore, Boston, Cleveland, Dallas, Detroit, London, Montreal, Tampa, Fla., and Toronto.

PHOTO HILLERY SMITH : SUN STAFFNew products: Herb Fried, chairman of W. B. Doner & Co., shows some of the products his agency will advertise.

---- INDEX REFERENCES ----

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COMPANY: SFM

NEWS SUBJECT: (Sales (1SA20); Business Management (1BU42))

INDUSTRY: (Advertising (1AD82); Advertising & Public Relations (1AD83);  
Advertising Agencies (1AD19); Advertising Campaigns (1AD39))

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OTHER INDEXING: (COLT 45; DONER; HEILEMAN; HEILEMAN BREWING CO; HENRY WEINHARDS;  
MICKEYS CHAMPALE AND SPECIAL EXPORT; NATIONAL BOH AND COLT 45; NATIONAL BOHEMIAN;  
NATIONAL BREWING; NATIONAL BREWING CO; NATIONAL PREMIUM; NATTY BOH; PHOTO; SFM;  
SPECIAL EXPORT; STYLE) (Bayer Bess Vanderwalker; Doner; Fried; G.; Herb Fried;  
Joe Martino; Lone Star; Martino; W. B. Doner) (Advertising)

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