

ESTTA Tracking number: **ESTTA392027**

Filing date: **02/07/2011**

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

Proceeding	91198022
Party	Defendant Missouri I.P. Holdings, LLC
Correspondence Address	THOMAS A. POLCYN THOMPSON COBURN LLP 505 N 7TH ST STE 3500 SAINT LOUIS, MO 63101-1693 ipdocket@thompsoncoburn.com
Submission	Answer and Counterclaim
Filer's Name	Thomas A. Polcyn
Filer's e-mail	tpolcyn@thompsoncoburn.com, mbraunel@thompsoncoburn.com, hal-shathir@thompsoncoburn.com, ipdocket@thompsoncoburn.com
Signature	/s/ Thomas A. Polcyn
Date	02/07/2011
Attachments	2011-02-07 Answer and Counterclaim.pdf (7 pages)(167077 bytes)

Registration Subject to the filing

Registration No	2922101	Registration date	02/01/2005
Registrant	Bavaria USA, Inc. 5819 Sandshell Ct. Dallas, TX 75252 UNITED STATES		
Grounds for filing	The registration was obtained contrary to Trademark Act section 2(a)		

Goods/Services Subject to the filing

Class 032. First Use: 1997/06/00 First Use In Commerce: 1997/06/00 All goods and services in the class are requested, namely: Beer

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

BAVARIA N.V. and BAVARIA, USA, INC.)	
)	
Opposers,)	Opposition No. 91198022
)	
v.)	Re: U.S. Ser. No. 85/009,664
)	
MISSOURI I.P. HOLDINGS, LLC)	
)	
Applicant.)	

**APPLICANT MISSOURI I.P. HOLDINGS, LLC’S
ANSWER, ADDITIONAL DEFENSES, AND COUNTERCLAIM**

ANSWER

This is Applicant Missouri I.P. Holdings, LLC’s (“MOIP”) Answer to the Notice of Opposition filed by Bavaria N.V. and Bavaria, USA, Inc. (collectively, “BNV” or “Opposers”). To the extent any allegation of BNV’s Notice of Opposition is not expressly and specifically admitted, that allegation is hereby denied.

MOIP answers BNV’s Notice of Opposition as follows:

1. MOIP lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 1 and therefore denies them.
2. MOIP lacks knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 2 and therefore denies them.
3. MOIP admits the allegations of paragraph 3.
4. MOIP admits the allegations of paragraph 4.
5. MOIP denies that “BAVARIA HOLLAND” and “BAVARIA” are “marks” as alleged in paragraph 5, as such allegation implies a legal conclusion, including, but not limited

to, that “BAVARIA HOLLAND” and “BAVARIA” are distinctive. MOIP lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 5 and therefore denies them.

6. MOIP denies that “BAVARIA HOLLAND” is a “mark” as alleged in paragraph 6, as such allegation implies a legal conclusion, including, but not limited to, that “BAVARIA HOLLAND” is distinctive. MOIP lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 6 and therefore denies them.

7. MOIP denies that “BAVARIA HOLLAND” and “BAVARIA” are “marks” as alleged in paragraph 7, as such allegation implies a legal conclusion, including, but not limited to, that “BAVARIA HOLLAND” and “BAVARIA” are distinctive. MOIP lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 7 and therefore denies them.

8. MOIP denies the allegations of paragraph 8.

FIRST CLAIM FOR RELIEF

9. MOIP repeats and incorporates each and every response set forth in paragraphs 1 through 8 as if fully set forth and restated herein.

10. MOIP denies the allegations of paragraph 10.

11. MOIP denies the allegations of paragraph 11.

12. MOIP denies the allegations of paragraph 12.

SECOND CLAIM FOR RELIEF

13. MOIP repeats and incorporates each and every response set forth in paragraphs 1 through 12 as if fully set forth and restated herein.

14. MOIP denies the allegations of paragraph 14.

15. MOIP denies the allegations of paragraph 15.

16. MOIP denies the allegations of paragraph 16.

THIRD CLAIM FOR RELIEF

17. MOIP repeats and incorporates each and every response set forth in paragraphs 1 through 16 as if fully set forth and restated herein.

18. MOIP denies the allegations of paragraph 18.

19. MOIP denies the allegations of paragraph 19.

20. MOIP denies the allegations of paragraph 20.

ADDITIONAL DEFENSES

For its additional defenses, MOIP states:

1. Opposers' Notice of Opposition fails to state a claim upon which relief may be granted.

2. There is no likelihood of confusion between BAVARII and either BAVARIA HOLLAND or BAVARIA.

3. Opposers do not own the exclusive right to "BAVARIA HOLLAND" for beer, because the same consists of or comprises geographically deceptively misdescriptive matter in relation to beer. BNV has already admitted, in its June 7, 2004 response to the Trademark Office's refusal to register BAVARIA HOLLAND under Section 2(e)(3), that the words BAVARIA HOLLAND "clearly refer to a geographic region of Germany and a country, respectively"; that the words BAVARIA HOLLAND "are also descriptive of a type of beer"; and that the beer sold by BNV is in fact made in Holland, not Bavaria.

4. Opposers do not own the exclusive right to "BAVARIA" for beer, because the same is geographically deceptively misdescriptive in relation to beer. BNV has already

admitted, in its June 7, 2004 response to the Trademark Office's refusal to register BAVARIA HOLLAND under Section 2(e)(3), that the word BAVARIA refers to "a geographic region of Germany"; that the word BAVARIA is "also descriptive of a type of beer"; and that the beer sold by BNV is in fact made in Holland, not Bavaria.

5. Opposers do not own the exclusive right to "BAVARIA HOLLAND" for beer, because the same consists of or includes geographically deceptive matter in relation to the identified goods under Section 2(a).

6. Opposers do not own the exclusive right to "BAVARIA" for beer, because the same is geographically deceptive in relation to the identified goods under Section 2(a).

7. Opposers do not own the exclusive right to "BAVARIA" for beer, because the primary significance of the term "BAVARIA" is geographic.

8. Neither BAVARIA HOLLAND nor BAVARIA are eligible for registration on either the Principal or Supplemental Register.

9. Opposers will not be damaged or injured by registration of MOIP's BAVARII mark for beer.

10. Opposers' claims are barred by the doctrine of estoppel.

11. Opposers' claims are barred by the doctrines of unclean hands or trademark misuse.

12. MOIP reserves its right to amend its Answer to assert any defense that is later discovered during these proceedings.

ACCORDINGLY, MOIP respectfully requests that the Board enter judgment in MOIP's favor, dismiss BNV's Notice of Opposition with prejudice, and grant all other relief to which MOIP is entitled.

COUNTERCLAIM

PETITION FOR CANCELLATION

MOIP has been and will continue to be damaged by U.S. Registration No. 2,922,101 owned by Bavaria, USA, Inc. (“BUSA”) and, pursuant to 15 U.S.C. §1064, hereby petitions to cancel that registration. In support, MOIP states the following:

PARTIES

1. MOIP is a limited liability company of the State of Missouri with offices in St. Louis, Missouri.

2. BUSA represents that it is a corporation of the State of Texas with offices in Dallas, Texas.

BUSA’s REGISTRATION WAS OBTAINED CONTRARY TO 15 U.S.C. §1052(a)

3. BUSA’s U.S. Registration No. 2,922,101 was obtained contrary to the provisions of 15 U.S.C. §1052(a).

4. The alleged mark shown in BUSA’s U.S. Registration No. 2,922,101 is being used by, or with the permission of, BUSA so as to misrepresent the source of the goods on or in connection with which the alleged mark is used.

5. BAVARIA HOLLAND consists of or includes geographically deceptive matter in relation to the identified goods and is not eligible for registration on either the Principal or Supplemental Register.

6. The primary significance of the term “BAVARIA” is geographic.

7. By BUSA’s own admission, its goods do not originate in any geographic location known as “Bavaria.”

8. The public is likely to believe that BUSA's goods originate from the German region known as Bavaria, because Bavaria is well-known for its beer of high quality and purity, and this belief would be a material factor in a significant portion of the relevant consumers' decision to purchase the goods.

9. By reason of the foregoing, BUSA's U.S. Registration No. 2,922,101 should be cancelled.

WHEREFORE, MOIP respectfully requests that this Petition for Cancellation be granted and that U.S. Registration No. 2,922,101 be cancelled.

MOIP authorizes the Commissioner for Trademarks to charge the fee of \$300 to Deposit Account 20-0823 for filing this Petition for Cancellation. MOIP believes that no additional fees are due; however, the Commissioner for Trademarks is authorized to debit our Account 20-0823 for any additional fees.

Respectfully Submitted,

THOMPSON COBURN LLP

By: /s/ Thomas A. Polcyn
Thomas A. Polcyn
Matthew A. Braunel
One US Bank Plaza
St. Louis, MO 63101
(314) 552-6000 (telephone)
(314) 552-7000 (fax)

Attorneys for Applicant,
Missouri I.P. Holdings, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via First Class Mail, postage prepaid, this 7th day of February, 2011, to the following attorney of record for Opposers:

Jennifer Sheehan Anderson
Honigman Miller Schwartz and Cohn LLP
38500 Woodward Ave., Suite 100
Bloomfield Hills, MI 48304

Attorney for Opposers

/s/ Thomas A. Polcyn