

ESTTA Tracking number: **ESTTA742087**

Filing date: **04/25/2016**

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

Proceeding	91219162
Party	Plaintiff Great Adirondack Steak & Seafood Cafe, Inc.
Correspondence Address	RACHEL L PEARLMAN HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203 UNITED STATES so@hrfmlaw.com, rlp@hrfmlaw.com
Submission	Answer to Counterclaim
Filer's Name	RACHEL L PEARLMAN
Filer's e-mail	rlp@hrfmlaw.com, sks@hrfmlaw.com, so@hrfmlaw.com
Signature	/RACHEL L PEARLMAN/
Date	04/25/2016
Attachments	1031.004OPP - ANSWER TO AMENDED PETITION FOR CANCELLATION (H0571139xD16FB).pdf(1180586 bytes)

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

GREAT ADIRONDACK STEAK & SEAFOOD CAFÉ, INC.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91219162
v.	:	(Parent)
	:	
ADIRONDACK PUB & BREWERY, INC.,	:	
	:	
Applicant.	:	
ADIRONDACK PUB & BREWERY, INC.,	:	
	:	
Counterclaim-Plaintiff,	:	
	:	
v.	:	Cancellation No. 92058318
	:	
GREAT ADIRONDACK STEAK & SEAFOOD CAFÉ, INC.,	:	
	:	
Counterclaim-Defendant,	:	

**OPPOSER/COUNTERCLAIM-DEFENDANT’S ANSWER TO
AMENDED PETITION FOR CANCELLATION**

GREAT ADIRONDACK STEAK & SEAFOOD CAFÉ, INC. (“Great Adirondack”), a corporation organized and existing under the laws of New York, by and through its attorneys, hereby Answers the Amended Petition for Cancellation of Registration No. 4,425,098 for the trademark GREAT ADIRONDACK BREWING COMPANY as follows:

1. Great Adirondack admits that according to the United States Patent Office’s TESS database, Adirondack Pub & Brewery, Inc. (“Petitioner”) is listed as the owner of U.S. Application Serial No. 86/027,053 for the mark ADIRONDACK BREWERY. Great Adirondack is without knowledge or information sufficient to form a belief as

to the truth of the remaining allegations contained in Paragraph 1 of the Amended Petition for Cancellation and therefore denies the same.

2. Admitted.
3. Great Adirondack admits that its application for U.S. Registration No. 4,425,098 contained the statement: “In International Class 032, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 12/30/1997, and first used in commerce at least as early as 12/30/1997, and is now in use in such commerce.” Great Adirondack denies the remaining allegations contained in Paragraph 3 of the Amended Petition for Cancellation.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.
12. Great Adirondack admits that it has obtained various Certificates of Label Approval for beer and ale, but otherwise denies the allegations contained in Paragraph 12 of the Amended Petition for Cancellation.
13. Great Adirondack admits that the Board’s prior Order dated March 30, 2015, recited the standard for unlawful use quoted by Petitioner.
14. Denied.

15. Denied.

16. Great Adirondack repeats its assertions in Paragraphs 1 through 15 above in response to Petitioner's allegations in these preceding paragraphs.

17. Denied.

18. Denied.

19. Denied.

AFFIRMATIVE DEFENSES

Great Adirondack states as follows for its affirmative defenses:

First Affirmative Defense

1. Great Adirondack's GREAT ADIRONDACK BREWING COMPANY mark is presently in use in commerce in connection with all goods listed in U.S. Registration No. 4,425,098 and has been continuously in use in commerce in connection with such goods since at least as early as March 8, 2013.

Second Affirmative Defense

2. Petitioner's claims are barred because Great Adirondack possesses multiple Certificates of Label Approval (COLA) issued by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) on or before March 8, 2013, the date on which the application for U.S. Registration No. 4,425,098 was filed, that include the brand name GREAT ADIRONDACK BREWING COMPANY. For example, attached hereto as **Exhibit A** are true and accurate copies of COLAs issued to Great Adirondack by the TTB on July 9, 2009. Copies of these COLAs are also publicly accessible at <https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do>.

RELIEF REQUESTED

WHEREFORE, having fully answered the Petition, Great Adirondack requests that the Petition be denied and that the Petition be dismissed with prejudice.

Respectfully submitted,

Dated: April 25, 2016

By: /Rachel L. Pearlman/
Nicholas Mesiti, Esq.
Shanna K. Sanders, Esq.
Rachel L. Pearlman, Esq.
HESLIN ROTHENBERG FARLEY & MESITI P.C.
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Email: nm@hrfmlaw.com
sks@hrfmlaw.com
rlp@hrfmlaw.com

Attorneys for Opposer/Counterclaim-Defendant
GREAT ADIRONDACK STEAK & SEAFOOD CAFÉ
RESTAURANT, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER/COUNTERCLAIM-DEFENDANT'S ANSWER TO AMENDED PETITION FOR CANCELLATION was served on the Applicant, postage prepaid, by First Class U.S. Mail on April 25, 2016, in an envelope addressed to:

Charles H. Knull
Knull, P.C.
630 Ninth Ave Ste 405
New York, NY 10036
UNITED STATES
Attorney for Applicant and Counterclaim-Plaintiff
Adirondack Pub & Brewery, Inc.

/Rachel L. Pearlman

**OPPOSER/COUNTERCLAIM-DEFENDANT’S
ANSWER TO AMENDED PETITION FOR
CANCELLATION**

EXHIBIT “A”

Example Certificates of Label Approval

OMB No. 1513-0020 (01/31/2009)


FOR TTB USE ONLY			DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice on Back)
TTB ID 08170001000164			
1. REP. ID. NO. (If any)	CT 901	OR 02	

PART I - APPLICATION

2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BR-NY-GRE-1		3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required) GREAT ADIRONDACK BREWING COMPANY, GREAT ADIRONDACK STEAK & SEAFOOD CAFE INC. 2442 MAIN ST LAKE PLACID NY 12946	
4. SERIAL NUMBER (Required) 08AL01		5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE			
6. BRAND NAME (Required) GREAT ADIRONDACK BREWING COMPANY			8a. MAILING ADDRESS, IF DIFFERENT		
7. FANCIFUL NAME (If any) ADIRONDACK LAGER					
9. EMAIL ADDRESS		10. FORMULA/SOP NO. (If any)		11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	
12. NET CONTENTS 15.5 GAL. (1/2 BBL) 5 GAL. 7.75 GAL. (1/4 BBL)		13. ALCOHOL CONTENT		14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL		16. PHONE NUMBER (518) 523-0233		17. FAX NUMBER (518) 523-2821	
18. TYPE OF APPLICATION (Check applicable box(es))					
a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL					
b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.)					
c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount)					
d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____					
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celoseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. GREAT ADIRONDACK BREWING COMPANY LAKE PLACID, NY NET CONTENTS 15.5 GALLONS 58 2/3 LITERS MAXIMUM WORKING PRESSURE 60 PSI DO NOT REMOVE VALVE CONTENTS UNDER PRESSURE WARNING NEVER EXCEED MAXIMUM WORKING PRESSURE					

PART II - APPLICANT'S CERTIFICATION

Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.

20. DATE OF APPLICATION 06/18/2008	21. SIGNATURE OF APPLICANT OR AUTHORIZED AGENT (Application was e-filed)	22. PRINT NAME OF APPLICANT OR AUTHORIZED AGENT ERIC KUGEMAN
PART III - TTB CERTIFICATE		
This certificate is issued subject to applicable laws, regulations and conditions as set forth in the instructions portion of this form.		
23. DATE ISSUED 07/09/2008	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU 	

FOR TTB USE ONLY	
QUALIFICATIONS Other (The name / address of the poducer, net contents and "LAGER" must appear on the label in legible printing on a completely contrasting background.)	EXPIRATION DATE (if any)
STATUS THE STATUS IS APPROVED.	
CLASS/TYPE DESCRIPTION BEER	

AFFIX COMPLETE SET OF LABELS BELOW

Image Type:

Brand (front)

Actual Dimensions: 6.75 inches W X 6.75 inches H

Note: The image below has been reduced to fit the page. See actual dimensions above.



Image Type:

Other

Actual Dimensions: 2.5 inches W X 2.5 inches H



Image Type:

Other

Actual Dimensions: 3.5 inches W X 1.5 inches H

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

OMB No. 1513-0020 (01/31/2009)


FOR TTB USE ONLY			DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE BUREAU APPLICATION FOR AND CERTIFICATION/EXEMPTION OF LABEL/BOTTLE APPROVAL (See Instructions and Paperwork Reduction Act Notice on Back)
TTB ID 08170001000205			
1. REP. ID. NO. (If any)	CT 902	OR 02	

PART I - APPLICATION

2. PLANT REGISTRY/BASIC PERMIT/BREWER'S NO. (Required) BR-NY-GRE-1		3. SOURCE OF PRODUCT (Required) <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Imported		8. NAME AND ADDRESS OF APPLICANT AS SHOWN ON PLANT REGISTRY, BASIC PERMIT OR BREWER'S NOTICE. INCLUDE APPROVED DBA OR TRADENAME IF USED ON LABEL (Required) GREAT ADIRONDACK BREWING COMPANY, GREAT ADIRONDACK STEAK & SEAFOOD CAFE INC. 2442 MAIN ST LAKE PLACID NY 12946	
4. SERIAL NUMBER (Required) 08WW01		5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE			
6. BRAND NAME (Required) GREAT ADIRONDACK BREWING COMPANY		8a. MAILING ADDRESS, IF DIFFERENT			
7. FANCIFUL NAME (If any) WHEAT WINE STYLE ALE					
9. EMAIL ADDRESS		10. FORMULA/SOP NO. (If any)		11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	
12. NET CONTENTS 15.5 GAL. (1/2 BBL) 5 GAL. 7.75 GAL. (1/4 BBL)		13. ALCOHOL CONTENT		14. WINE APPELLATION IF ON LABEL	
15. WINE VINTAGE DATE IF ON LABEL		16. PHONE NUMBER (518) 523-0233		17. FAX NUMBER (518) 523-2821	
18. TYPE OF APPLICATION (Check applicable box(es))					
a. <input checked="" type="checkbox"/> CERTIFICATE OF LABEL APPROVAL					
b. <input type="checkbox"/> CERTIFICATE OF EXEMPTION FROM LABEL APPROVAL "For sale in _____ only" (Fill in State abbreviation.)					
c. <input type="checkbox"/> DISTINCTIVE LIQUOR BOTTLE APPROVAL. TOTAL BOTTLE CAPACITY BEFORE CLOSURE _____ (Fill in amount)					
d. <input type="checkbox"/> RESUBMISSION AFTER REJECTION TTB ID. NO. _____					
19. SHOW ANY WORDING (a) APPEARING ON MATERIALS FIRMLY AFFIXED TO THE CONTAINER (e.g., caps, celoseals, corks, etc.) OTHER THAN THE LABELS AFFIXED BELOW, OR (b) BLOWN, BRANDED OR EMBOSSED ON THE CONTAINER (e.g., net contents etc.). THIS WORDING MUST BE NOTED HERE EVEN IF IT DUPLICATES PORTIONS OF THE LABELS AFFIXED BELOW. ALSO, PROVIDE TRANSLATIONS OF FOREIGN LANGUAGE TEXT APPEARING ON LABELS. GREAT ADIRONDACK BREWING COMPANY LAKE PLACID, NY NET CONTENTS 15.5 GALLONS 58 2/3 LITERS MAXIMUM WORKING PRESSURE 60 PSI DO NOT REMOVE VALVE CONTENTS UNDER PRESSURE WARNING NEVER EXCEED MAXIMUM WORKING PRESSURE					

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Under the penalties of perjury, I declare; that all statements appearing on this application are true and correct to the best of my knowledge and belief; and, that the representations on the labels attached to this form, including supplemental documents, truly and correctly represent the content of the containers to which these labels will be applied. I also certify that I have read, understood and complied with the conditions and instructions which are attached to an original TTB F 5100.31, Certificate/Exemption of Label/Bottle Approval.

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23. DATE ISSUED 07/09/2008	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU 	

FOR TTB USE ONLY	
<p>QUALIFICATIONS</p> <p>THIS PRODUCT MUST BE MADE FROM A FERMENTABLE BASE THAT CONSISTS OF AT LEAST 25% BY WEIGHT MALTED WHEAT. Other (The name / address of the producer, net contents, and "ALE" must appear on the label in legible printing on a completely contrasting background.)</p> <p>STATUS</p> <p>THE STATUS IS APPROVED.</p> <p>CLASS/TYPE DESCRIPTION</p> <p>ALE</p>	<p>EXPIRATION DATE (if any)</p>

AFFIX COMPLETE SET OF LABELS BELOW

Image Type:

Brand (front)

Actual Dimensions: 6.75 inches W X 6.75 inches H

Note: The image below has been reduced to fit the page. See actual dimensions above.



Image Type:

Other

Actual Dimensions: 2.5 inches W X 2.5 inches H

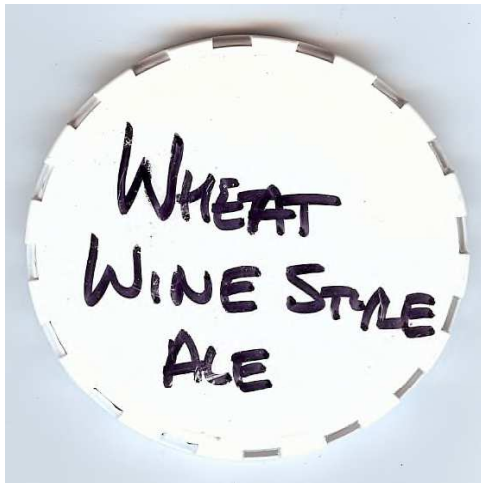


Image Type:

Other

Actual Dimensions: 3.5 inches W X 1.5 inches H

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE

OMB No. 1513-0020 (01/31/2009)


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TTB ID 08170001000200			
1. REP. ID. NO. (If any)	CT 902	OR 02	

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4. SERIAL NUMBER (Required) 08BB01		5. TYPE OF PRODUCT (Required) <input type="checkbox"/> WINE <input type="checkbox"/> DISTILLED SPIRITS <input checked="" type="checkbox"/> MALT BEVERAGE			
6. BRAND NAME (Required) GREAT ADIRONDACK BREWING COMPANY		8a. MAILING ADDRESS, IF DIFFERENT			
7. FANCIFUL NAME (If any) BIG BEAR IMPERIAL BROWN ALE					
9. EMAIL ADDRESS		10. FORMULA/SOP NO. (If any)		11. LAB. NO. & DATE / PREIMPORT NO. & DATE (If any)	
12. NET CONTENTS 15.5 GAL. (1/2 BBL) 5 GAL. 7.75 GAL. (1/4 BBL)		13. ALCOHOL CONTENT		14. WINE APPELLATION IF ON LABEL	
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23. DATE ISSUED 07/09/2008	24. AUTHORIZED SIGNATURE, ALCOHOL AND TOBACCO TAX AND TRADE BUREAU 	

FOR TTB USE ONLY	
QUALIFICATIONS Other (The name / address of the producer, net contents, and "ALE" must appear on the label in legible printing on a completely contrasting background.) STATUS THE STATUS IS APPROVED. CLASS/TYPE DESCRIPTION ALE	EXPIRATION DATE (if any)

AFFIX COMPLETE SET OF LABELS BELOW

Image Type:

Brand (front)

Actual Dimensions: 2.5 inches W X 2.5 inches H



Image Type:

Other

Actual Dimensions: 6.75 inches W X 6.75 inches H

Note: The image below has been reduced to fit the page. See actual dimensions above.

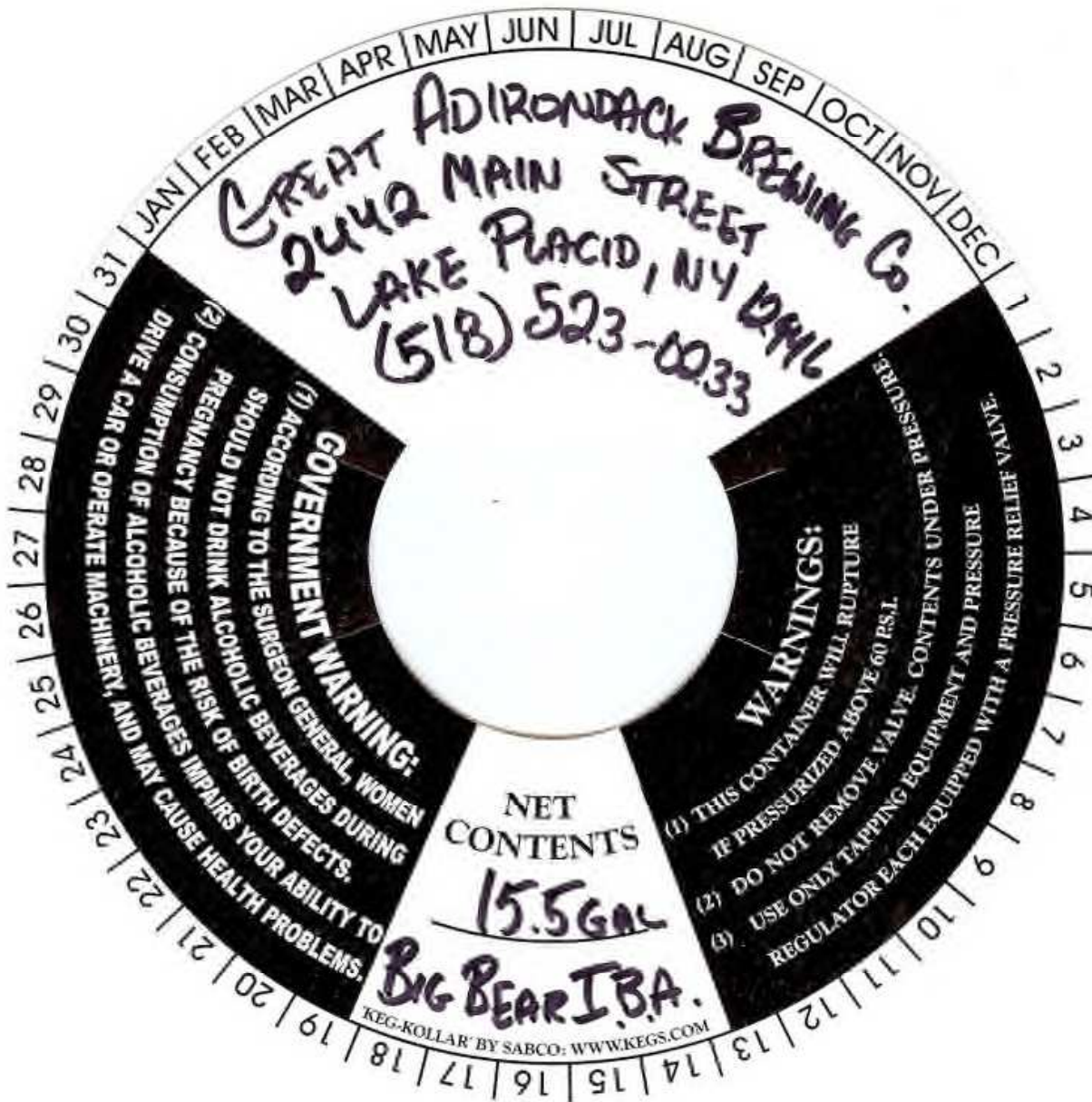


Image Type:

Other

Actual Dimensions: 3.5 inches W X 1.5 inches H

GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

TTB F 5100.31 (6/2006) PREVIOUS EDITIONS ARE OBSOLETE