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

Proceeding	91219852
Party	Plaintiff 2323 N. Milwaukee LLC
Correspondence Address	GLENN A RICE FUNKHOUSER VEGOSEN LIEBMAN & DUNN LTD 55 W MONROE ST, SUITE 2300 CHICAGO, IL 60603 UNITED STATES grice@fvldlaw.com
Submission	Motion to Compel Discovery
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Date	12/17/2015
Attachments	Opposer's Motion to Compel.pdf(1099347 bytes )

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

<b>2323 N. MILWAUKEE LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No. 91219852</b>
	)	<b>Application Serial No. 86217676</b>
<b>URBAN CHESTNUT BREWING COMPANY, INC.,</b>	)	
	)	<b>MARK: REVOLUTION SERIES</b>
	)	
<b>Applicant.</b>	)	

**OPPOSER’S MOTION TO COMPEL DISCOVERY**

Pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523, Opposer 2323 N. Milwaukee LLC (“Opposer”), by its counsel, hereby moves for an Order compelling Applicant Urban Chestnut Brewing Company, Inc. (“Applicant”), to respond properly and completely to Opposer’s Interrogatory Nos. 27, 29, 31, 33, 35, 37, 39, 40, 43 and 44 and Document Request Nos. 35 and 36.

Opposer states that it has made a good faith effort, by conference and correspondence, to resolve the issues presented in this motion and that it has been unable to reach an agreement resolving the issues. Exhibit H.

**BACKGROUND**

As grounds for opposition, Opposer alleges that the applied-for REVOLUTION SERIES mark for beer is likely to cause confusion with Opposer’s REVOLUTION and REVOLUTION BREWING marks for beer and trade names and that Opposer has priority. Applicant has denied that there is a likelihood of confusion.

On April 13, 2015, Opposer served its First Set of Interrogatories on Applicant. Interrogatory No. 18 asked Applicant to describe the material facts and documents that supported Applicant's denial of the allegation that its mark was likely to cause confusion. A series of evasive and insufficient responses followed.

Applicant first sought to avoid answering the interrogatory altogether, responding only that it would "produce documents to the extent that such are available from Applicant's business records." *See* Exhibit A. Opposer advised Applicant that its attempt to avoid answering the interrogatory was improper because Applicant failed to establish any of the three requirements for invoking Rule 33(d) under the Board's case law precedent. *No Fear, Inc. v. Rule*, 54 USPQ2d 1551, 1555 (TTAB 2000). The response was also wholly disingenuous given that Applicant itself now states that it is "not aware" of any documents that support its position that there is no likelihood of confusion. *See* Exhibits E and G.

Applicant subsequently served a supplemental answer that was equally evasive and obfuscatory, stating: "Applicant bases its assertions upon the information set forth in these responses and the information provided to the United States Patent and Trademark Office in relation to Applicant's trademark registration [sic] Serial No. 86/217,676." *See* Exhibit B. After another meet and confer discovery conference, Applicant then served a second supplemental answer providing Opposer with just a threadbare list of *du Pont* factors: "Applicant states that the *Dupont* factors, including dissimilarity and nature of the goods or services, dissimilarity of trade channels, conditions under which and by or to whom sales are made, number and nature of similar marks in use on similar goods, absence of confusion, and minimal extent of potential confusion are all factors which lead a conclusion that no likelihood of confusion exists." *See* Exhibit C. While this response parroted verbatim the wording of several *du Pont* factors, it thus

still failed to set forth the actual underlying material facts on which Applicant relies with respect to the cited *du Pont* factors and its position that there is no likelihood of confusion.

Following these evasive and incomplete responses, on September 9, 2015, Opposer served Applicant with the follow-up interrogatories (*see* Exhibit D) and document requests (*see* Exhibit F) that are at issue. The follow-up interrogatories and document requests address separately each of the *du Pont* factors that Applicant listed in answering Interrogatory No. 18 and ask Applicant to describe as to each *du Pont* factor the “material facts” that support its position and identify and produce the “material documents”. They also seek basic discovery related to Applicant’s annual sales and advertising expenditures under its mark.

On October 16, 2015, Applicant served Opposer with its responses and objections to the interrogatories and document requests. *See* Exhibits E and G. As discussed below, Applicant has refused to provide even a single substantive answer to Opposer’s interrogatories. Applicant instead objects to providing Opposer with the “material facts” that support its position that there is no likelihood of confusion under each of the relevant *du Pont* factors because discovery is “ongoing.” As further discussed below, Applicant has also refused to identify or produce documents relating to its annual sales revenue and its annual advertising expenditures under its mark.

**Interrogatory Nos. 27, 29, 31, 33, 35, 37, 39, 40**

Opposer’s Interrogatory Nos. 27, 29, 31, 33, 35, 37, and 39 call for Applicant to describe the “material facts” for each separate *du Pont* factor that Applicant asserts supports its position that there is no likelihood of confusion. Opposer’s Interrogatory Nos. 28, 30, 32, 34, 36, and 38 request Applicant to identify the “material documents” for each separate *du Pont* factor that supports Applicant’s position that there is no likely confusion. Opposer’s Interrogatory No. 40

further asks Applicant to describe the “material facts” and “material documents” which support Applicant’s denial of allegation likelihood of confusion in Opposer’s Amended Notice of Opposition, which added Opposer’s trade names rights as a basis for refusing registration.

With respect to identifying the “material documents” that support Applicant’s position that confusion is not likely under the various *du Pont* factors, Applicant has now sought to avoid providing Opposer with discovery by repeatedly stating that it “is not aware of any material documents at this time.” *See* Exhibit E Interrogatory Response Nos. 28, 30, 32, 34, 36, 38, 40. Apart from undermining its credibility and defense in this opposition, Applicant thereby acts at its own peril in openly inviting appropriate application of the Board’s estoppel sanction.<sup>1</sup>

However, Applicant takes a completely different tact with respect to Opposer’s interrogatories that ask Applicant to describe the “material facts” that support its position that there is no likelihood of confusion. Applicant does not claim that it is unaware of any material facts that are responsive to Interrogatory Nos. 27, 29, 31, 33, 35, 37, 39 and 40. Instead, Applicant asserts a blanket objection to answering the interrogatories on the basis that discovery is still “ongoing”. In refusing to answer any of Opposer’s interrogatories, Applicant asserts the same boilerplate objection: “Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined.” *See* Exhibit E, Responses to Interrogatory Nos. 27, 29, 31, 33, 35, 37, 39, 40, at pp. 3-9.

Applicant’s refusal to answer Opposer’s interrogatories is completely unsupportable. The central issue in this opposition is whether there is a likelihood of confusion. Thus, there is no question that Opposer’s interrogatories are relevant and proper discovery to aid it in preparing

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<sup>1</sup> Thus, if Applicant belatedly “finds” responsive documents that should have been identified and produced pursuant to Opposer’s interrogatories and document requests during the discovery period, Opposer intends to seek enforcement, as appropriate, of the Board’s estoppel sanction to bar Applicant’s use of any such documents. Fed. R. Civ. P. 37(c)(1); TBMP § 527.01(e).

for trial. Applicant should not be able to evade fact discovery and skirt its obligation to provide fair discovery by merely asserting that discovery is “ongoing” and the discovery period has not closed. Parties in oppositions and cancellation proceedings routinely serve interrogatories asking for the basic facts that support their adversaries’ allegations, denials, and affirmative defenses. Indeed, Applicant has a clear duty to cooperate *during* discovery. TBMP § 408.01 (“The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and looks with extreme disfavor on those who do not.”). Applicant’s refusal to provide proper and complete answers to Opposer’s interrogatories, and its repeated evasiveness, is the exact opposite of cooperation in the discovery process.

In the parties’ discovery meet and confer conference, Applicant’s counsel sought to justify Applicant’s refusal to answer the interrogatories by characterizing them as overly broad contention interrogatories that require Applicant to disclose to Opposer each and every fact known to it and all of its evidence prior to trial. That characterization is baseless. None of the interrogatories call for Applicant to disclose “each and every fact” or “all facts” that support its position. Contrary to Applicant’s assertion, the interrogatories are narrowly framed to properly seek Applicant’s disclosure of the *material facts* as to the *du Pont* factors that Applicant claims supports its position that there is no likelihood of confusion.

Moreover, courts have repeatedly held that discovery requests that seek the *material facts* or *material documents* relevant to a matter are appropriate. As explained in *Moses v. Halstead*, 236 F.R.D. 667, 674 (D. Kan. 2006) (footnotes omitted):

“[C]ontention interrogatories” are overly broad and unduly burdensome on their face if they seek “all facts” supporting a claim or defense, such that the answering party is required to provide a narrative account of its case. Thus, the general rule in this Court is that interrogatories may “properly ask for the ‘principal or material’ facts which support an allegation or defense.” In addition, interrogatories may seek the identities of knowledgeable persons and supporting

documents for the “principal” or “material” facts supporting an allegation or defense.

*See also Atkinson v. L-3 Commc’ns Vertex Aerospace, LLC*, 2008 U.S. Dist. LEXIS 27256, at \*3 (W.D. Okla. Apr. 1, 2008) (“[T]he Court finds that plaintiff’s request that L-3 identify ‘material’ facts and documents is clearly not improper but is a recognized and approved method of narrowing interrogatories seeking facts and documents which support identified allegations or defenses.”); *Turner v. Moen Steel Erection Co.*, 2006 WL 3392206, at \*4 (D.Neb. 2006) (“The parties’ interrogatories may properly ask for the principal or material facts which support an allegation or defense, and may seek the identities of knowledgeable persons and supporting documents for the principal or material facts supporting an allegation or defense.”); *Steil v. Humana Kan. City, Inc.*, 197 F.R.D. 445, 447 (D. Kan. 2000) (“An interrogatory may reasonably ask for the material or principal facts which support a party’s contentions in the case.”).

In fact, both the Board and courts have limited overly broad interrogatories requests seeking “all facts” to require that parties properly identify the relevant *material facts*. *E.g.*, *Chanel, Inc. v. Dana Chanel Beauty Salon and Barber Studio*, Opposition No. 91214049 at p. 4 (TTAB Nov. 28, 2014) (holding as to interrogatory seeking “all facts and evidence” showing earliest date of use of applicant’s mark, “The interrogatory is improper to the extent that it seeks all facts and evidence applicant intends to use at trial. The Board finds that applicant’s response is sufficient as it has provided the *material facts* with respect to its earliest date of use of the mark in connection with the services.”) (emphasis added); *Presbyterian Manors, Inc. v. Simplexgrinnell, L.P.*, 2010 WL 3880027, at \*14 (D. Kan. Sept. 28, 2010) (“Defendant is entitled to know the theories under which Plaintiff is proceeding and the factual basis of Plaintiff’s claims. The Court, however, will limit this interrogatory to the material or principal facts supporting the contention, rather than requiring Plaintiff to describe ‘all’ facts.”); *Mancini v. Ins.*

*Corp. of New York*, 2009 WL 1765295, at \*3 (S.D. Cal. June 18, 2009) (“Contention interrogatories are often overly broad and unduly burdensome when they require a party to state ‘every fact’ or ‘all facts’ supporting identified allegations or defenses. Accordingly, the Court hereby modifies each interrogatory to seek ‘the material or principal facts’ instead of ‘all facts’”) (citation omitted); *Haggarty v. Wells Fargo Bank, N.A.*, 2012 WL 4113341, \*2 (N.D. Cal. Sept. 18, 2012) (noting that courts can modify interrogatories to seek the material or principal facts instead of “all facts”).

Here, Opposer’s interrogatories seek Applicant’s disclosure of the *material facts* that go to the heart of its position that certain *du Pont* factors support its denial that there is a likelihood of confusion. Opposer’s interrogatories thus seek proper discovery from Applicant, and Applicant’s objection to answering them should be overruled.

**Interrogatory Nos. 43 and 44 and Document Request Nos. 35 and 36**

Applicant also refuses to identify or produce records to substantiate its annual sales revenue and its annual advertising expenditures under its mark. *See* Exhibit E, Responses to Interrogatory Nos. 43, 44, at pp. 10-11; Exhibit G, Responses to Document Request Nos. 35, 36, at pp. 6-7. Applicant asserts boilerplate, conclusory objections that the requests are not relevant or reasonably calculated to lead to the discovery of admissible evidence, overbroad or burdensome. Applicant’s objections are not well-taken, and it should be ordered to comply with Opposer’s requests for its information and business records sufficient to substantiate its annual sales revenue and its annual advertising expenditures under its mark at least in rounded numbers. *Varian Associates v. Fairfield-Noble Corp.*, 188 U.S.P.Q. 581, 583 (TTAB 1975) (holding that sales revenues and advertising expenditures have bearing on registrability). This information is unquestionably relevant to the parties’ dispute. *See* TBMP § 414(18) (“Annual sales and



advertising figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are proper matters for discovery."); *Ovation LLC v. E! Entertainment Television, LLC*, Opposition Nos. 91210506, 91217286 and 91217287 (TTAB Sept. 2, 2015) (ordering applicant to produce documents sufficient to show applicant's annual royalty or advertising revenue under its marks in round numbers). Thus, Applicant should be ordered to identify and produce business records sufficient to substantiate its annual sales revenue and its annual advertising expenditures under its mark at least in rounded numbers.

**The Board Should Order Applicant To Properly Verify Its Interrogatory Answers**

Last, Applicant should be ordered to properly verify the truth and correctness of its interrogatory answers under oath. Fed. R. Civ. P. 33(b)(3); TBMP § 405.04(b); 28 U.S.C. § 1746. Applicant's "Verification" merely states that its answers to the interrogatories "come from information available to" Applicant. *See* Exhibit E at p.11. Applicant's "Verification" is thus deficient on its face because it fails to properly attest to truth or correctness of the interrogatory answers. "Requiring a party to sign interrogatory responses under oath serves the critical purpose of ensuring that the responding party attests to the truth of the responses." *Villareal v. El Chile, Inc.*, 266 F.R.D. 207, 211 (N.D. Ill. 2010). For example, Applicant can provide a proper attestation in compliance with 28 U.S.C. § 1746, as follows: "I declare under penalty of perjury under the laws of the United States of America that the foregoing interrogatory answers are true and correct." Applicant should therefore be ordered to provide a proper verification attesting to the truth of its interrogatory answers.



# **EXHIBIT A**

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

**Trademark: REVOLUTION SERIES**  
**Serial No.: 86/217,676**  
**Filed: 03/11/2014**  
**Published in the Official Gazette: August 26, 2014**

<b>2323 N. MILWAUKEE, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	<b>Opposition No. <u>91219852</u></b>
<b>v.</b>	)	
	)	
<b>URBAN CHESTNUT BREWING</b>	)	
<b>COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**APPLICANT’S OBJECTIONS AND RESPONSES TO OPPOSER’S FIRST  
INTERROGATORIES TO APPLICANT**

Urban Chestnut Brewing Company, Inc., (“Applicant” or “UCBC”) hereby objects and responds to 2323 N. Milwaukee, LLC’s First Interrogatories to Applicant.

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent the interrogatories seek information protected by attorneys’ work product or trial preparation, attorney/client privilege, or seeks confidential information.
  
2. Applicant objects to these interrogatories to the extent that they are overbroad, irrelevant, burdensome, vague and are not reasonably calculated to lead to the discovery of admissible evidence and/or require Applicant to provide information outside the scope of the Federal Rules of Civil Procedure.
  
3. Applicant objects to these interrogatories insofar as the interrogatories seek information that is already in the possession of Opposer or is readily accessible to Opposer or

**RESPONSE:**

Subject to the objections, the retail price of beer sold under the REVOLUTION SERIES mark is generally about \$5 per pint and \$11.99 for a 4 pack of bottles.

18. Describe in detail all material facts and identify all documents supporting Applicant's denial of paragraph 8 of the Notice of Opposition: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer."

**RESPONSE:**

Subject to the objections, Applicant will produce documents to the extent that such are available from Applicant's business records.

19. Describe in detail all material facts and identify all documents supporting Applicant's assertion that it is without knowledge or information sufficient to form a belief as to the truth of the first sentence of paragraph 5 of the Notice of Opposition that: "The word 'SERIES' in the REVOLUTION SERIES mark is descriptive in connection with a series of beers offered by Applicant."

**RESPONSE:**

Subject to the objections, Applicant will produce documents to the extent that such are available from Applicant's business records.

# **EXHIBIT B**

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

Trademark: **REVOLUTION SERIES**  
Serial No.: **86/217,676**  
Filed: **03/11/2014**  
Published in the Official Gazette: **August 26, 2014**

<b>2323 N. MILWAUKEE, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	<b>Opposition No. <u>91219852</u></b>
<b>v.</b>	)	
	)	
<b>URBAN CHESTNUT BREWING</b>	)	
<b>COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**APPLICANT’S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO OPPOSER’S  
FIRST INTERROGATORIES TO APPLICANT**

Urban Chestnut Brewing Company, Inc., (“Applicant” or “UCBC”) hereby objects and responds to 2323 N. Milwaukee, LLC’s First Interrogatories to Applicant.

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent the interrogatories seek information protected by attorneys’ work product or trial preparation, attorney/client privilege, or seeks confidential information.

2. Applicant objects to these interrogatories to the extent that they are overbroad, irrelevant, burdensome, vague and are not reasonably calculated to lead to the discovery of admissible evidence and/or require Applicant to provide information outside the scope of the Federal Rules of Civil Procedure.

3. Applicant objects to these interrogatories insofar as the interrogatories seek information that is already in the possession of Opposer or is readily accessible to Opposer or

Lakeshore Beverage, Major Brands Premium Beverage Distributors, Missouri Eagle LLC, NH Scheppers Distributing Company, Superior Distributing Company, Union Distributing, Wil Fischer Companies, and Zink Distributing Company, which are identified as Bates Nos. [URBC 0548-0692]

17. State the range in retail price of beer sold under the REVOLUTION SERIES Mark.

**RESPONSE:**

Subject to the objections, the retail price of beer sold under the REVOLUTION SERIES mark is generally about \$5 per pint and \$11.99 for a 4 pack of bottles. Also see generally Bates Nos. [URBC 0058-0059].

18. Describe in detail all material facts and identify all documents supporting Applicant's denial of paragraph 8 of the Notice of Opposition: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer."

**RESPONSE:**

Subject to the objections, Applicant bases its assertions upon the information set forth in these responses and the information provided to the United States Patent and Trademark Office in relation to Applicant's trademark registration Serial No. 86/217,676.



VERIFICATION

The answers to these interrogatories come from information available to URBAN CHESTNUT BREWING COMPANY, INC.

Date: 6/22/15

By: [Signature]  
David Wolfe  
President  
Urban Chestnut Brewing Company, Inc.

ACKNOWLEDGEMENT

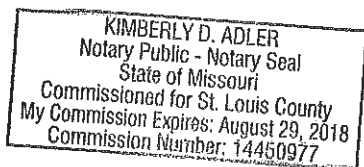
COUNTY OF ST. LOUIS )  
STATE OF MISSOURI )

On this 22 of June 2015, before me personally appeared the above-named David Wolfe POOSER, personally known to me and known by me to be the one who executed the foregoing instrument, and acknowledged that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

My commission expires 8/29/2018

[Signature]  
Notary Public

(Notarial Seal)



# EXHIBIT C

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

**Trademark: REVOLUTION SERIES**  
**Serial No.: 86/217,676**  
**Filed: 03/11/2014**  
**Published in the Official Gazette: August 26, 2014**

<b>2323 N. MILWAUKEE, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	<b>Opposition No. <u>91219852</u></b>
<b>v.</b>	)	
	)	
<b>URBAN CHESTNUT BREWING</b>	)	
<b>COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**APPLICANT’S SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO  
OPPOSER’S FIRST INTERROGATORIES TO APPLICANT**

Urban Chestnut Brewing Company, Inc., (“Applicant” or “UCBC”) hereby objects and responds to 2323 N. Milwaukee, LLC’s First Interrogatories to Applicant.

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent the interrogatories seek information protected by attorneys’ work product or trial preparation, attorney/client privilege, or seeks confidential information.
  
2. Applicant objects to these interrogatories to the extent that they are overbroad, irrelevant, burdensome, vague and are not reasonably calculated to lead to the discovery of admissible evidence and/or require Applicant to provide information outside the scope of the Federal Rules of Civil Procedure.
  
3. Applicant objects to these interrogatories insofar as the interrogatories seek information that is already in the possession of Opposer or is readily accessible to Opposer or

Lakeshore Beverage, Major Brands Premium Beverage Distributors, Missouri Eagle LLC, NH Scheppers Distributing Company, Superior Distributing Company, Union Distributing, Wil Fischer Companies, and Zink Distributing Company, which are identified as Bates Nos. [URBC 0548-0692]

17. State the range in retail price of beer sold under the REVOLUTION SERIES Mark.

**RESPONSE:**

Subject to the objections, the retail price of beer sold under the REVOLUTION SERIES mark is generally about \$5 per pint and \$11.99 for a 4 pack of bottles. Also see generally Bates Nos. [URBC 0058-0059].

18. Describe in detail all material facts and identify all documents supporting Applicant's denial of paragraph 8 of the Notice of Opposition: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer."

**RESPONSE:**

Subject to the objections, Applicant submits that REVOLUTION SERIES mark is not likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d). Applicant states that the *Dupont* factors, including dissimilarity and nature of the goods or services, dissimilarity of trade channels, conditions under which and by or to whom sales are made, number and nature of similar marks in use on similar goods, absence of actual confusion,

and minimal extent of potential confusion are all factors which lead to a conclusion that no likelihood of confusion exists.

19. Describe in detail all material facts and identify all documents supporting Applicant's assertion that it is without knowledge or information sufficient to form a belief as to the truth of the first sentence of paragraph 5 of the Notice of Opposition that: "The word 'SERIES' in the REVOLUTION SERIES mark is descriptive in connection with a series of beers offered by Applicant."

**RESPONSE:**

In its AMENDED ANSWER TO NOTICE OF OPPOSITION, Applicant admits to paragraph 5.

20. Describe in detail all material facts and identify all documents supporting Applicant's assertion that it is without knowledge or information sufficient to form a belief as to the truth of paragraph 6 of the Notice of Opposition that: "Applicant's use and registration REVOLUTION SERIES mark is without Opposer's permission or authorization." and paragraph 7 of the Notice of Opposition: "Applicant is in no way authorized, sponsored, or licensed by, or in any other way legitimately connected with, Opposer."

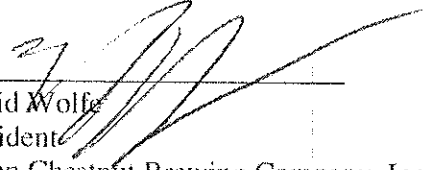
**RESPONSE:**

In its AMENDED ANSWER TO NOTICE OF OPPOSITION, Applicant admits to paragraph 6 and 7.

**VERIFICATION**

The undersigned hereby declares under penalty of perjury that the information contained in these responses is true and correct based upon the best of my knowledge and information.

Date: 7/16/15

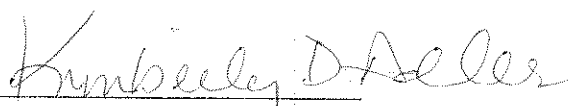
By:   
David Wolfe  
President  
Urban Chestnut Brewing Company, Inc.

**ACKNOWLEDGEMENT**

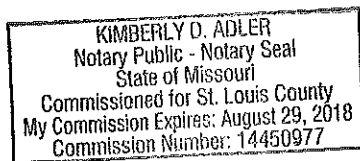
COUNTY OF ST. LOUIS )  
  )  
STATE OF MISSOURI )

On this 16 of July 2015, before me personally appeared the above-named David Wolfe POOSER, personally known to me and known by me to be the one who executed the foregoing instrument, and acknowledged that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

My commission expires 8/29/18

  
Notary Public

(Notarial Seal)



# **EXHIBIT D**

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

**In the Matter of Application Serial No. 86217676 for the mark REVOLUTION SERIES  
Published in the *Official Gazette* on August 26, 2014**

<b>2323 N. MILWAUKEE LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No. 91219852</b>
	)	
<b>URBAN CHESTNUT BREWING COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**OPPOSER’S SECOND SET OF INTERROGATORIES TO APPLICANT**

Opposer 2323 N. Milwaukee LLC, by its undersigned attorneys, pursuant to Federal Rule of Civil Procedure 26 and 33 and Trademark Rules 2.116 and 2.120, hereby serves this Second Set of Interrogatories upon Applicant Urban Chestnut Brewing Company, Inc., to be answered fully and in writing under oath within 30 days of the date hereof. In accordance with Rule 26(e) of the Federal Rules of Civil Procedure, these Interrogatories are to be deemed continuing and the answers thereto are to be supplemented promptly upon Applicant’s acquisition of further or additional information.

**DEFINITIONS AND INSTRUCTIONS**

1. The term “Applicant” and “you” or “your” as used herein means and refers to the Applicant Urban Chestnut Brewing Company, Inc., its subsidiaries and divisions, its predecessors and successors, and controlling, controlled or affiliated companies and present officers, managers, employees, agents, and representatives thereof.



2. The term “person” or “persons” as used herein includes, without limitation, any individual or association, partnership, corporation, firm, or any other business entity or organization.

3. The term “Opposer” as used herein means and refers to 2323 N. Milwaukee LLC, its predecessors in interest, its subsidiary and related companies, and the officers, directors, employees, agents and representatives thereof.

4. The term “REVOLUTION SERIES Mark” shall mean and refer to the trademark for beer shown in the opposed U.S. Application No. 86217676.

5. The term “Opposer’s Marks” shall mean and refer to Opposer’s REVOLUTION and REVOLUTION BREWING trademarks for beer, the REVOLUTION and REVOLUTION BREWING trade names, and the REVOLUTION BREWING trademark shown in U.S. Registration No. 3,822,436 for beer.

6. The term “documents” shall mean or refer to all written, recorded or graphic matter in any and all media of every kind or description, and electronically stored information, however produced or reproduced, whether draft or final, original or reproduction, including, but not limited to, writings, drawings, graphs, charts, photographs, data and data compilations (including those from which information can be obtained, translated, if necessary, by you through detection devices into reasonable form), papers, emails, correspondence, memoranda, minutes, notes, contracts, agreements, inter-office and intra-office communications, reports, data processing discs or readable computer-produced interpretations thereof, and all other methods for the expression or retention of information, tape and disc recordings, containers, cartons, package labels, summaries, abstracts, and all tangible things within the scope of Federal Rule of Civil Procedure 34(a), which are in Applicant’s possession, custody or control.

7. “Identify” with respect to a person shall mean, to provide to the extent known, the following information: the name, job title, current or last known home address and home telephone number, last known place of employment, and the address and telephone number of such place of employment.

8. “Identify” with respect to a business entity shall mean the name of such business entity, its last known business address and telephone number, the jurisdiction under whose laws it is organized and the jurisdiction in which it maintains its principal place of business.

9. “Identify” with respect to a document shall mean to provide, to the extent known, the following information: the title and date of the document, if any, its author, addressees and recipients, and a description of its contents.

10. As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of a request all documents which might otherwise be construed to be outside its scope.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 27:**

Describe in detail the material facts that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set Of Interrogatories that consideration of the second *du Pont* factor concerning the “dissimilarity and nature of the goods or services” leads to a conclusion that no likelihood of confusion exists.

#### **INTERROGATORY NO. 28:**

Identify the material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set of Interrogatories that consideration of the second *du Pont* factor

concerning the “dissimilarity and nature of the goods or services” leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 29:

Describe in detail the material facts that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set of Interrogatories that consideration of the third *du Pont* factor concerning the “dissimilarity of trade channels” leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 30:

Identify the material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set of Interrogatories that consideration of the third *du Pont* factor concerning the “dissimilarity of trade channels” leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 31:

Describe in detail the material facts that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set of Interrogatories that consideration of the fourth *du Pont* factor concerning the “conditions under which and by or to whom sales are made” leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 32:

Identify the material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set of Interrogatories that consideration of the fourth *du Pont* factor concerning the “conditions under which and by or to whom sales are made” leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 33:

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 34:

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 35:

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 36:

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 37:

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the twelfth *du Pont* factor concerning the "minimal extent of potential confusion" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 38:

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the twelfth *du Pont* factor concerning the "minimal extent of potential confusion" leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 39:

Describe in detail the material facts and identify the material documents that support Applicant's position that consideration of any other *du Pont* factor not specifically identified in Applicant's response to Interrogatory No. 18 of Opposer's First Set of Interrogatories leads to a conclusion that no likelihood of confusion exists.

INTERROGATORY NO. 40:

To the extent not otherwise specifically answered in response to the above Interrogatories, describe in detail the material facts and identify the material documents that support Applicant's denial of the allegations of paragraph 8 of the Amended Notice of Opposition that: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks and

trade names as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer.”

INTERROGATORY NO. 41:

State the number of units sold annually under the REVOLUTION SERIES Mark in barrels of beer or case equivalents from the date of first use of the REVOLUTION SERIES Mark to the present.

INTERROGATORY NO. 42:

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 41.

INTERROGATORY NO. 43:

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 13 concerning Applicant’s annual sales revenue for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

INTERROGATORY NO. 44:

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 14 concerning Applicant’s annual advertising and promotional expenses for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has caused the foregoing **Opposer's Second Set Of Interrogatories To Applicant** to be served upon counsel of record for Applicant in these proceedings, Scott A. Smith, via email to [ssmith@polsterlieder.com](mailto:ssmith@polsterlieder.com) on this 9th day of September, 2015.

/Glenn Rice/

\_\_\_\_\_  
One of the Attorneys for Opposer  
2323 N. Milwaukee LLC



# **EXHIBIT E**

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

**Trademark: REVOLUTION SERIES**  
**Serial No.: 86/217,676**  
**Filed: 03/11/2014**  
**Published in the Official Gazette: August 26, 2014**

<b>2323 N. MILWAUKEE, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	<b>Opposition No. <u>91219852</u></b>
<b>v.</b>	)	
	)	
<b>URBAN CHESTNUT BREWING</b>	)	
<b>COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**APPLICANT’S OBJECTIONS AND RESPONSES TO OPPOSER’S SECOND  
INTERROGATORIES TO APPLICANT**

Urban Chestnut Brewing Company, Inc., (“Applicant” or “UCBC”) hereby objects and responds to 2323 N. Milwaukee, LLC’s Second Interrogatories to Applicant.

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent the interrogatories seek information protected by attorneys’ work product or trial preparation, attorney/client privilege, or seeks confidential information.
2. Applicant objects to these interrogatories to the extent that they are overbroad, irrelevant, burdensome, vague and are not reasonably calculated to lead to the discovery of admissible evidence and/or require Applicant to provide information outside the scope of the Federal Rules of Civil Procedure.
3. Applicant objects to these interrogatories insofar as the interrogatories seek information that is already in the possession of Opposer or is readily accessible to Opposer or that

purports to impose upon Applicant an obligation to search publicly available materials when such materials are not otherwise contained in files maintained by Applicant.

Applicant notes their objections and makes the responses to the Request For Interrogatories propounded by Opposer. These objections and responses are currently based on Applicant's best knowledge and information known to Applicant at this time. However, Applicant's objections and responses are made without prejudice to Applicant's right to revise or supplement based on the discovery taken in this case. Further, Applicant's objections and responses are based on Applicant's good faith interpretation of the interrogatories and are subject to correction for errors or omissions, if any.

In providing answers to the interrogatories, Applicant does not in any way waive or intend to waive, but rather intends to preserve and is preserving:

- (a) all objections as to the vagueness, ambiguity, or other infirmity in the form of the interrogatories and any objections based on the undue burden imposed by the interrogatories and each specific request contained therein;
- (b) all rights to object on any ground to the use of any of the responses or their subject matter in any subsequent proceedings;
- (c) all rights to object on any ground to any further interrogatory requests involving or related to the subject matter of the interrogatory;
- (d) the right supplement responses to the interrogatories prior to commencement of the trial; and
- (e) any and all privileges and/or rights under the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence, the Court's Local Rules, statutes, or the common law.

These General and Specific objections notwithstanding, Applicant makes the following replies to the First Set of Interrogatories:

### **INTERROGATORIES**

#### **INTERROGATORY NO. 27:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the second *du Pont* factor concerning the "dissimilarity and nature of the goods or services" leads to a conclusion that no likelihood of confusion exists.

#### **RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, including dissimilarity and nature of the goods or services, lead to a conclusion that no likelihood of confusion exists.

#### **INTERROGATORY NO. 28:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the second *du Pont* factor concerning the "dissimilarity and nature of the goods or services" leads to a conclusion that no likelihood of confusion exists.

#### **RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 29:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the third *du Pont* factor concerning the "dissimilarity of trade channels" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, dissimilarity of trade channels, lead to a conclusion that no likelihood of confusion exists.

**INTERROGATORY NO. 30:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the third *du Pont* factor concerning the "dissimilarity of trade channels" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 31:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the fourth *du Pont* factor concerning the "conditions under which and by or whom sales are made" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, including conditions under which and by or whom sales are made, lead to a conclusion that no likelihood of confusion exists.

**INTERROGATORY NO. 32:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the fourth *du Pont* factor concerning the "conditions under which and by or whom sales are made" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 33:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections,

Applicant states that the *Dupont* factors, including number and nature of similar marks in use on similar goods, lead to a conclusion that no likelihood of confusion exists.

**INTERROGATORY NO. 34:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 35:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, including absence of actual confusion, lead to a conclusion that no likelihood of confusion exists.

**INTERROGATORY NO. 36:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 37:**

Describe in detail the material facts that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the twelfth *du Pont* factor concerning the "minimal extent of potential confusion" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, including minimal extent of potential confusion, lead to a conclusion that no likelihood of confusion exists.

**INTERROGATORY NO. 38:**

Identify the material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the twelfth *du Pont* factor concerning the "minimal extent of potential confusion" leads to a conclusion that no likelihood of confusion exists.



**RESPONSE:**

Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 39:**

Describe in detail the material facts and identify the material documents that support Applicant's position that consideration of any other *du Pont* factor not specifically identified in Applicant's response to Interrogatory No. 18 of Opposer's First Set Of Interrogatories leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, lead to a conclusion that no likelihood of confusion exists. Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 40:**

To the extent not otherwise specifically answered in response to the above Interrogatories, describe in detail the material facts and identify the material documents that support Applicant's denial of the allegations of paragraph 8 of the Amended Notice of Opposition that: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks and trade names as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer."

**RESPONSE:**

Applicant objects because discovery is ongoing and all factual and legal bases for lack of a likelihood of confusion have not yet been discovered or determined. Subject to the objections, Applicant states that the *Dupont* factors, lead to a conclusion that no likelihood of confusion exists within the meaning of Section 2(d) of the Trademark Act. Subject to the objections, Applicant is not aware of any material documents at this time.

**INTERROGATORY NO. 41:**

State the number of units sold annually under the REVOLUTION SERIES Mark in barrels of beer or case equivalents from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this interrogatory as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this interrogatory to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

**INTERROGATORY NO. 42:**

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 41.

**RESPONSE:**

Applicant objects to this interrogatory as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the

discovery of admissible evidence. Applicant objects to this interrogatory to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

**INTERROGATORY NO. 43:**

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 13 concerning Applicant's annual sales revenue for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this interrogatory as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this interrogatory to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

**INTERROGATORY NO. 44:**

Identify the underlying business records and documents of Applicant that substantiate your answer to Interrogatory No. 14 concerning Applicant's annual advertising and promotional expenses for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this interrogatory as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Applicant's OBJECTIONS AND RESPONSES TO OPPOSER'S SECOND INTERROGATORIES TO APPLICANT is being served via E-mail, this 16th day of October 2015, upon the following:

FUNKHOUSER VEGOSEN LIEBMAN & DUNN, LTD.  
Glen A. Rice  
55 W. Monroe St., Suite 2300  
Chicago, IL 60603  
(312) 701-6800  
(312) 701-6801  
E-Mail: [grice@fvldlaw.com](mailto:grice@fvldlaw.com)  
*Attorney for Opposer*

/Scott A. Smith/

# **EXHIBIT F**

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

**In the Matter of Application Serial No. 86217676 for the mark REVOLUTION SERIES  
Published in the *Official Gazette* on August 26, 2014**

<b>2323 N. MILWAUKEE LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No. 91219852</b>
	)	
<b>URBAN CHESTNUT BREWING COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**OPPOSER’S SECOND REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO APPLICANT**

Opposer 2323 N. Milwaukee LLC, by its undersigned attorneys, pursuant to Federal Rule of Civil Procedure 34, hereby requests that Applicant Urban Chestnut Brewing Company, Inc. produce the following documents and things for inspection, copying and reproduction at the offices of Funkhouser Vegosen Liebman & Dunn Ltd., 55 West Monroe Street, Suite 2300, Chicago, Illinois 60603, within 30 days of the date hereof.

**DEFINITIONS AND INSTRUCTIONS**

1. The term “Applicant” and “you” or “your” as used herein means and refers to the Applicant Urban Chestnut Brewing Company, Inc., its subsidiaries and divisions, its predecessors and successors, and controlling, controlled or affiliated companies and present officers, managers, employees, agents, and representatives thereof.

2. The term “person” or “persons” as used herein includes, without limitation, any individual or association, partnership, corporation, firm, or any other business entity or organization.

3. The term “Opposer” as used herein means and refers to 2323 N. Milwaukee LLC, its predecessors in interest, its subsidiary and related companies, and the officers, directors, employees, agents and representatives thereof.

4. The term “REVOLUTION SERIES Mark” shall mean and refer to the trademark for beer shown in the opposed U.S. Application No. 86217676.

5. The term “Opposer’s Marks” shall mean and refer to Opposer’s REVOLUTION and REVOLUTION BREWING trademarks for beer, the REVOLUTION and REVOLUTION BREWING trade names, and the REVOLUTION BREWING trademark shown in U.S. Registration No. 3,822,436 for beer.

6. The term “documents” shall mean or refer to all written, recorded or graphic matter in any and all media of every kind or description, and electronically stored information, however produced or reproduced, whether draft or final, original or reproduction, including, but not limited to, writings, drawings, graphs, charts, photographs, data and data compilations (including those from which information can be obtained, translated, if necessary, by you through detection devices into reasonable form), papers, emails, correspondence, memoranda, minutes, notes, contracts, agreements, inter-office and intra-office communications, reports, data processing discs or readable computer-produced interpretations thereof, and all other methods for the expression or retention of information, tape and disc recordings, containers, cartons, package labels, summaries, abstracts, and all tangible things within the scope of Federal Rule of Civil Procedure 34(a), which are in Applicant’s possession, custody or control.

7. As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of a request all documents which might otherwise be construed to be outside its scope.



## **DOCUMENTS AND THINGS TO BE PRODUCED**

26. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the second *du Pont* factor concerning the "dissimilarity and nature of the goods or services" leads to a conclusion that no likelihood of confusion exists.

27. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the third *du Pont* factor concerning the "dissimilarity of trade channels" leads to a conclusion that no likelihood of confusion exists.

28. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the fourth *du Pont* factor concerning the "conditions under which and by or to whom sales are made" leads to a conclusion that no likelihood of confusion exists.

29. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

30. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

31. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set of Interrogatories that consideration of the twelfth *du Pont* factor

concerning the “minimal extent of potential confusion” leads to a conclusion that no likelihood of confusion exists.

32. The material documents that support Applicant’s position that consideration of any other *du Pont* factor not specifically identified in Applicant’s response to Interrogatory No. 18 of Opposer’s First Set of Interrogatories leads to a conclusion that no likelihood of confusion exists.

33. The material documents that support Applicant’s denial of the allegations of paragraph 8 of the Amended Notice of Opposition that: “The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer’s REVOLUTION and REVOLUTION BREWING marks and trade names as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer.”

34. The underlying business records and documents of Applicant that substantiate the number of units sold annually under the REVOLUTION SERIES Mark in barrels of beer or case equivalents from the date of first use of the REVOLUTION SERIES Mark to the present.

35. The underlying business records and documents of Applicant that substantiate Applicant’s annual sales revenue for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

36. The underlying business records and documents of Applicant that substantiate Applicant’s annual advertising and promotional expenses for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

37. All documents and things identified in response to Opposer’s Second Set of Interrogatories to Applicant.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has caused the foregoing **Opposer's Second Request For Production of Documents And Things To Applicant** to be served upon counsel of record for Applicant in these proceedings, to be served upon counsel of record for Applicant in these proceedings, Scott A. Smith, via email to ssmith@polsterlieder.com on this 9th day of September, 2015.

*/Glenn Rice/*

\_\_\_\_\_  
One of the Attorneys for Opposer  
2323 N. Milwaukee LLC

# **EXHIBIT G**

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

**Trademark: REVOLUTION SERIES**  
**Serial No.: 86/217,676**  
**Filed: 03/11/2014**  
**Published in the Official Gazette: August 26, 2014**

<b>2323 N. MILWAUKEE, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	<b>Opposition No. <u>91219852</u></b>
<b>v.</b>	)	
	)	
<b>URBAN CHESTNUT BREWING</b>	)	
<b>COMPANY, INC.,</b>	)	
	)	
<b>Applicant.</b>	)	

**APPLICANT’S OBJECTIONS AND RESPONSES TO OPPOSER’S SECOND  
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Urban Chestnut Brewing Company, Inc., (“Applicant”) hereby objects and responds to 2323 N. Milwaukee, LLC’s Second Request for Production of Documents and Things.

**GENERAL OBJECTIONS**

1. Applicant objects to the Requests For Production to the extent the Request seeks information protected by attorneys’ work product or trial preparation, attorney/client privilege, or seeks confidential information.
  
2. Applicant objects to the Requests For Production to the extent the Request is overbroad, irrelevant, burdensome, vague and is not reasonably calculated to lead to the discovery of admissible evidence and/or require Applicant to provide information outside the scope of the Federal Rules of Civil Procedure.
  
3. Applicant objects to the Requests For Production insofar as the Request seeks information that is already in the possession of Opposer or is readily accessible to Opposer or that

purports to impose upon Applicant an obligation to search publicly available materials when such materials are not otherwise contained in files maintained by Applicant.

Applicant notes its objections and makes the responses to the Request For Production requests propounded by Opposer. These objections and responses are currently based on Applicant's best knowledge and information known to Applicant at this time. However, Applicant's objections and responses are made without prejudice to Applicant's right to revise or supplement based on the discovery taken in this case. Further, Applicant's objections and responses are based on Applicant's good faith interpretation of the production requests and are subject to correction for errors or omission, if any.

In providing answers to the production requests, Applicant does not in any way waive or intend to waive, but rather intends to preserve and is preserving:

- (a) all objections as to the vagueness, ambiguity, or other infirmity in the form of the production requests and any objections based on the undue burden imposed by the production requests and each specific request contained therein;
- (b) all rights to object on any ground to the use of any of the responses or their subject matter in any subsequent proceedings;
- (c) all rights to object on any ground to any further production requests involving or related to the subject matter of the production request;
- (d) the right supplement responses to the production requests prior to commencement of the trial; and
- (e) any and all privileges and/or rights under the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence, the Court's Local Rules, statutes, or the common law.

These General and Specific objections notwithstanding, Applicant makes the following replies to the First Set of Production Requests:

**DOCUMENTS AND THINGS TO BE PRODUCED**

26. The material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set Of Interrogatories that consideration of the second *du Pont* factor concerning the “dissimilarity and nature of the goods or services” leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 26.

27. The material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set Of Interrogatories that consideration of the third *du Pont* factor concerning the “dissimilarity of trade channels” leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 27.

28. The material documents that support Applicant’s answer to Interrogatory No. 18 of Opposer’s First Set Of Interrogatories that consideration of the fourth *du Pont* factor concerning the “conditions under which and by or whom sales are made” leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**



Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 28.

29. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the sixth *du Pont* factor concerning the "number and nature of similar marks in use on similar goods" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 29.

30. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the seventh *du Pont* factor concerning the "absence of actual confusion" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 30.

31. The material documents that support Applicant's answer to Interrogatory No. 18 of Opposer's First Set Of Interrogatories that consideration of the twelfth *du Pont* factor concerning the "minimal extent of potential confusion" leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 31.

32. The material documents that support Applicant's position that consideration of any other *du Pont* factor not specifically identified in Applicant's response to Interrogatory No. 18 of Opposer's First Set Of Interrogatories leads to a conclusion that no likelihood of confusion exists.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 32.

33. The material documents that support Applicant's denial of the allegations of paragraph 8 of the Amended Notice of Opposition that: "The REVOLUTION SERIES mark, when used for the goods in the application opposed, so resembles Opposer's REVOLUTION and REVOLUTION BREWING marks and trade names as to be likely to cause confusion, mistake, and/or deception within the meaning of Section 2(d) of the Trademark Act, to the consequent damage of Opposer."

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 33.

34. The underlying business records and documents of Applicant that substantiate the number of units sold annually under the REVOLUTION SERIES Mark in barrels of beer or case equivalents from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this request as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this request to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

35. The underlying business records and documents of Applicant that substantiate Applicant's annual sales revenue for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this request as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this request to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

36. The underlying business records and documents of Applicant that substantiate Applicant's annual advertising and promotional expenses for beer sold under the REVOLUTION SERIES Mark from the date of first use of the REVOLUTION SERIES Mark to the present.

**RESPONSE:**

Applicant objects to this request as seeking information about that is not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to the discovery of admissible evidence. Applicant objects to this request to the extent it is, overbroad, burdensome, such that Applicant cannot reasonably respond.

37. All documents and things identified in response to Opposer's Second Set of Interrogatories to Applicant.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 37.

38. All documents and things that Applicant reviewed or upon which Applicant relied in the preparation of Applicant's responses to Opposer's Second Set of Interrogatories to Applicant not otherwise requested in Document Request No. 37 above.

**RESPONSE:**

Applicant is unaware of any documents and/or things available at this time which are responsive to Applicant's Request No. 38.

**VERIFICATION**

The answers to these interrogatories come from information available to URBAN  
CHESTNUT BREWING COMPANY, INC.

Date: 10/16/15

By: 

David Wolfe  
President  
Urban Chestnut Brewing Company, Inc.

**ACKNOWLEDGEMENT**

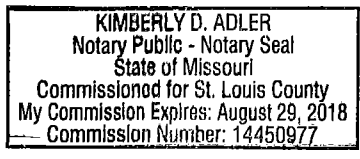
COUNTY OF ST. LOUIS )  
 )  
STATE OF MISSOURI )

On this 16 of ~~June~~ oct 2015, before me personally appeared the above-named David Wolfe POOSER, personally known to me and known by me to be the one who executed the foregoing instrument, and acknowledged that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

My commission expires 8/29/18

Kimberly D. Adler  
Notary Public

(Notarial Seal)



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Applicant's OBJECTIONS AND RESPONSES TO OPPOSER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT is being served via E-mail, this 16<sup>th</sup> day of October 2015, upon the following:

FUNKHOUSER VEGOSEN LIEBMAN & DUNN, LTD.  
Glen A. Rice  
55 W. Monroe St., Suite 2300  
Chicago, IL 60603  
(312) 701-6800  
(312) 701-6801  
E-Mail: [grice@fvldlaw.com](mailto:grice@fvldlaw.com)  
*Attorney for Opposer*

/Scott A. Smith/

# EXHIBIT H

## **DECLARATION OF GLENN A. RICE**

I, Glenn A. Rice, declare as follows:

1. I am counsel of record for Opposer in this matter. I have personal knowledge of the facts set forth in this declaration and, if called to testify, I could and would testify competently thereto.

2. On September 9, 2015, Opposer served Applicant with its second set of interrogatories and requests for production. True and correct copies of these discovery requests are attached as Exhibits D and F to Opposer's Motion to Compel.

3. On October 16, 2015, Applicant served Opposer with its responses and objections to the second set interrogatories and document requests. True and correct copies of these discovery requests are attached as Exhibits D and F to Opposer's Motion to Compel. Applicant objected to answering any of the interrogatories and produced no responsive documents. On October 19, 2015, I wrote to Applicant's counsel in an effort to resolve the issue over Applicant's failure to provide any answers to Opposer's interrogatories or produce any documents, requesting a meet and confer discovery conference. A copy of that email to Applicant's counsel is attached.

4. On October 23, 2015, counsel for the parties conducted a discovery conference by telephone to discuss the insufficiencies in Applicant's discovery responses. Despite fully discussing the issues concerning the insufficiencies of Applicant's responses, Applicant's counsel advised that Applicant believed its responses were proper and stood on its objections, and that Opposer would need to file a motion to compel if it believed Applicant's responses and objections were improper.

5. On October 29, 2015, I wrote to Applicant's counsel concerning the parties' discovery conference and inability to resolve the outstanding discovery issues, including the fact



that Applicant was maintaining its objections and that a motion to compel would be necessary to resolve the issues. A copy of that email is attached.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of December, 2015.

/s/ Glenn A. Rice

## Rice, Glenn A.

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**From:** Rice, Glenn A.  
**Sent:** Thursday, October 29, 2015 3:41 PM  
**To:** Scott A. Smith  
**Cc:** Carlson, Lisa S.; Marisa Lucchesi  
**Subject:** RE: 2323 N. Milwaukee LLC v. Urban Chestnut Brewing Company, No. 91219852- Applicant's Responses to Opposer's 2nd Requests for Discovery

Scott,

I am writing to confirm the discovery conference call that we had on Friday October 23 to try to resolve the outstanding discovery issues regarding your client's failure to provide full and complete answers and responses to Interrogatory No. 18 in Opposer's first set of interrogatories, Interrogatory Nos. 27, 29, 31, 33, 35, 37, 39, and 40-44 of Opposer's second set of interrogatories, and Document Request Nos. 34-36.

Despite our fully discussing the Interrogatories and Document Requests and the issues with the insufficiencies of Applicant's responses, you told me that your client maintains its position that it has provided proper responses to the Interrogatories and Document Requests, that your client stands on its objections to the Interrogatories and Document Requests, and that Opposer will have to file a motion to compel with the Board if it believes the responses and objections of your client are not proper.

Given your client's continuing refusal to supplement its answers and responses to resolve the discovery issues and because we are unable to resolve them, please be advised that Opposer will seek the Board's aid by filing an appropriate motion to compel.

Glenn

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Glenn A. Rice

**FUNKHOUSER VEGOSEN LIEBMAN & DUNN LTD.**  
55 West Monroe Street, Suite 2300 | Chicago, IL 60603  
V: 312.701.6895 | F: 312.701.6801  
[grice@fvldlaw.com](mailto:grice@fvldlaw.com) | [www.fvldlaw.com](http://www.fvldlaw.com)



*Someone here has  
done it before.*

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**From:** Rice, Glenn A.  
**Sent:** Monday, October 19, 2015 2:56 PM  
**To:** Scott A. Smith  
**Cc:** Carlson, Lisa S.; 'Marisa Lucchesi'  
**Subject:** 2323 N. Milwaukee LLC v. Urban Chestnut Brewing Company, No. 91219852- Applicant's Responses to Opposer's 2nd Requests for Discovery

Scott,

We are in receipt of your client's responses to Opposer's second sets of interrogatories and document production requests.

I am sending this communication to you pursuant to Trademark Rule 2.120(e)(1) in an effort avoid having to file a motion to compel your client's full and proper responses to the outstanding discovery requests and seek the Board's intervention.

Urban Chestnut's responses are plainly evasive, incomplete and deficient, failing to provide even a single substantive interrogatory answer or identify or produce a single responsive document.

As you know, Opposer's second sets of interrogatories and document production requests were served as a follow-up to your client's similarly evasive and insufficient response to Interrogatory No. 18 of the first set of interrogatories, which seeks the factual basis and supporting documents for Urban Chestnut's denial of the allegation in the Notice of Opposition that there is a likelihood of confusion. Indeed, your client's response to Interrogatory No. 18 fails to set forth any facts or identify any documents, as requested, and instead evasively responds by merely parroting verbatim the wording of several *du Pont* factors.

Opposer's second sets of interrogatories and document production requests are focused precisely on seeking (1) the factual basis for your client's position that the *du Pont* factors it identifies show there is no likely confusion and (2) the documents supporting its position. They further properly seek Urban Chestnut's records that substantiate its claimed annual revenues and units sold under its mark and annual advertising and promotional expenses, which are all subjects the Board has found to be relevant in opposition and cancellation proceedings.

Please advise me when you are available Tuesday or Wednesday for a meet and confer call to try to resolve the dispute over your client's deficient responses.

Last, when we spoke and you asked for additional time to respond to Opposer's second sets of interrogatories and document production requests, you agreed to a 30 day extension of time on the discovery cut-off date if my client had an issue with the sufficiency of your client's responses, which plainly it does. Per your agreement, I am therefore going to file a consented-to motion to extend the discovery cut-off (and other corresponding dates) by 30 days.

Please let me know when you are available to schedule the meet and confer call.

Glenn

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Glenn A. Rice

FUNKHOUSER VEGOSEN LIEBMAN & DUNN LTD.  
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Someone here has  
done it before.

---

**From:** Marisa Lucchesi [<mailto:mlucchesi@polsterlieder.com>]

**Sent:** Friday, October 16, 2015 4:49 PM

**To:** Rice, Glenn A.; Scott A. Smith

**Cc:** Carlson, Lisa S.

**Subject:** 2323 N. Milwaukee LLC v. Urban Chestnut Brewing Company, No. 91219852- forwarding Applicant's Responses to Opposer's 2nd Requests for Discovery

Mr. Rice:

Please find attached Applicant's Responses to Opposer's Second Set of Discovery Requests.

Please contact Mr. Scott Smith should there be is anything else.

Regards,

Marisa Lucchesi



*Marisa Lucchesi*

*Litigation Legal Assistant*

12412 Powerscourt Drive, Suite 200

St. Louis, Missouri 63131

[mlucchesi@polsterlieder.com](mailto:mlucchesi@polsterlieder.com)

314-238-2400

314-238-2401 Fax

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has caused the foregoing **Motion To Compel Discovery** to be served upon counsel of record for Applicant in these proceedings, Scott A. Smith, via email to ssmith@polsterlieder.com on this 17th day of December, 2015.

/Glenn Rice/

\_\_\_\_\_  
One of the Attorneys for Opposer  
2323 N. Milwaukee LLC